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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT PETITION OF: RONALD A. HALL, Petitioner.	NO. 75800-0 STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Is this petition time barred?
2. Must the petition be dismissed because any error was harmless?
3. If the petition is granted what are the State's remedies on remand?

B. STATUS OF PETITIONER:

In 1996, a jury convicted Ronald A. Hall, hereinafter "petitioner" of first degree assault while armed with a deadly weapon. Appendix A. The court imposed an exceptional sentence of 390 months in prison based on the presence of three aggravating factors: deliberate cruelty, multiple injuries, and severity of the injuries. Appendix A. The trial court determined that petitioner's offender score was four with a standard range of 129 to 171 months. The Court of Appeals affirmed the conviction, determined that one of

Office of Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

petitioner's prior convictions washed out, struck the aggravating factor of especially severe injuries, and struck the deadly weapon enhancement. State v. Hall, noted at 96 Wn. App. 1051, No. 20934-9-II consolidated with: No. 22194-2-II (1999), review denied, 139 Wn.2d 1019, 994 P.2d 848 (2000). Appendix B. The Court of Appeals remanded for a hearing to determine petitioner's correct offender score and to re-sentence him using the correct standard range, the remaining two aggravating factors, and no deadly weapon enhancement. Appendix B.

At the re-sentencing hearing on August 4, 2000, the trial court agreed with the parties that petitioner's offender score was 2, resulting in a standard range sentence of 111 to 147 months. Appendix C. The court imposed the same exceptional sentence of 366 months (original sentence without a deadly weapon enhancement). Appendices C and D. The trial court cited the aggravating factors of deliberate cruelty and multiple injuries in imposing the exceptional sentence, but added in a separate finding that "[b]ased on the defendant's conduct in this case and his criminal history, the appropriate length sentence for the defendant is 366 months in prison." Appendix D.

On appeal from that sentence, the Court of Appeals determined that petitioner's offender score was zero and again remanded because it could not determine whether the trial court would have imposed the same sentence regardless of the miscalculated offender score. Appendix E.

At the second re-sentencing hearing on September 13, 2002, the trial court imposed the same exceptional sentence of 366 months based on the aggravating factors of deliberate cruelty and multiple injuries, noting that the Court of Appeals had upheld both factors on appeal. Appendices F and G. The Court of Appeals affirmed this sentence in an unpublished opinion filed on September 16, 2003. Appendix H. The Supreme Court of

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930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

Washington denied petitioner's motion for discretionary review on May 4, 2004. Appendix I.

Petitioner filed this personal restraint petition on August 9, 2004.

C. FACTS OF THE CASE

January 1, 1996, Kim Krapf was living with petitioner. RP 190.[1] Also present on January 1 were April Duckett and Robert Aaron. RP 192. As part of an ongoing argument, Krapf threw some boots at petitioner. RP 196. Petitioner responded violently.

He struck Ms. Krapf with the back of his hand. RP 199. He proceeded to punch her repeatedly in the face with his fists. RP 199. When Ms. Krapf fell to the floor, the defendant kicked her repeatedly in the face, ribs, back and buttocks. RP 199. He continued by beating her face with the butt of a rifle. RP 217. He told Bob Aaron to get a shovel, because they were going to bury her. RP 214.

When he was done beating her, he ordered her to sit on the couch. RP 214. He later ordered her to take a shower. RP 215. She could not see because her eyes were swollen shut. RP 215. When she tried to blow her nose, her cheeks filled. RP 216. Petitioner refused to allow her to lay on the bed; she had to lay on the couch. RP 223.

April Duckett eventually returned and started to transport Ms. Krapf to the hospital. RP 224. On the way to the hospital, Ms. Duckett stopped at a friend's home to call for an ambulance to meet them at a nearby convenience store. RP 224. When medical aid and the police arrived, Ms. Duckett denied knowing the victim. RP 120. Duckett claimed that she had picked the victim up on the road. RP 120.

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[1] The Verbatim Report of Proceedings are attached as Appendix J. Photographs of the victim's injuries are attached as Appendix K.

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Medical examination disclosed that Ms. Krapf's upper jaw was broken in three places (RP 83), she had a punctured lung (RP 76), a broken nose (RP 84), a broken cheek bone (RP 84), and both eye sockets were destroyed (RP 102, 104). The skull fractures were so extensive that the bones of her face were actually separated from the rest of the skull. RP 84, 88. Extensive surgery was required to correct the fractures. RP 105-109. Permanent metal plates were required to repair some of the damage. RP 110. The injuries resulted in permanent changes in her eyes (including her vision), jaw, and scars. RP 113, 116-117.

Her eyes were swollen shut. RP 89. There were also numerous cuts and abrasions on her face. RP 90. Bruises along her neck and back showed numerous blows. RP 92.

Petitioner later surrendered himself to the police. RP 30.

D. ARGUMENT:

1. THE PETITION IS NOT TIME BARRED BECAUSE PETITIONER'S CASE WAS NOT FINAL WHEN BLAKELY V. WASHINGTON WAS DECIDED.

> Ordinarily, ascertaining the date on which a defendant's conviction becomes final poses no difficulties: State convictions are final "for purposes of retroactivity analysis when the availability of direct appeal to the state courts has been exhausted and the time for filing a petition for a writ of certiorari has elapsed or a timely filed petition has been finally denied." Caspari v. Bohlen, 510 U.S. 383, 390, 127 L. Ed. 2d 236, 114 S. Ct. 948 (1994). See also Clay v. United States, 537 U.S. 522, 527, 155 L. Ed. 2d 88, 123 S. Ct. 1072 (2003).

Beard v. Banks, 124 S. Ct. 2504, 2510, 159 L. Ed. 2d 494, 72 U.S.L.W. 4578 (2004).

Rule 13(1) of the Rules of the Supreme Court of the United States states:

> Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the

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930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

> Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.

Petitioner's case would have become final, and he would be subject to the ordinary restrictions prohibiting retroactive application of new rules, on August 2, 2004. Because Blakely v. Washington, ___ U.S. ___, ___ L.Ed.2d ___, 124 S.Ct. 2531 (2004), was decided on June 24, 2004, petitioner's case was not final when Blakely was decided. Petitioner is therefore permitted to bring his claim without having to demonstrate it is not time barred.

2. THE PETITION MUST BE DISMISSED BECAUSE ANY ERROR BY THE SENTENCING COURT'S FAILURE TO COMPLY WITH BLAKELY V. WASHINGTON WAS HARMLESS BEYOND A REASONABLE DOUBT.

In Blakely v. Washington, ___ U.S. ___, ___ L.Ed.2d ___, 124 S.Ct. 2531 (2004), the United States Supreme Court held that the defendant's Sixth Amendment right to a jury trial was violated when the trial court imposed an exceptional sentence above the standard range based on an aggravating factor that had been found by the judge, not the jury. In reaching this conclusion, the court relied on its earlier holding in Apprendi v. New Jersey, 530 U.S. 466, 147 L.Ed.2d 435, 120 S.Ct. 2348 (2000). In Apprendi, the Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Apprendi, 530 U.S. at 490. The Court in Blakely extended the scope of Apprendi by determining that "the relevant 'statutory maximum' [for Apprendi purposes] is not the maximum sentence a judge may impose after finding additional facts,

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930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
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but the maximum he may impose *without* any additional findings." Blakely, slip op. at 14 (emphasis in original).

As noted above, the Court's holding in Blakely applies to this case. See Griffith v. Kentucky, 479 U.S. 314, 328, 93 L.Ed.2d 649, 107 S.Ct. 708 (1987). Petitioner's Sixth Amendment right to a jury was violated when the trial court imposed an exceptional sentence without the jury determining the aggravating factors. Instead of vacating petitioner's sentence, however, this court must determine whether the error below can be deemed harmless.

The United States Supreme Court has made it clear that the failure to fully instruct a jury on all elements of an offense "does not necessarily render a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence." United States v. Neder, 527 U.S. 1, 9, 144 L.Ed.2d 35, 119 S.Ct. 1827 (1999). Under Neder, a defendant's Sixth Amendment right to a jury is violated when a jury is not fully instructed on all the elements of the offense, but such an error can be deemed harmless beyond a reasonable doubt. Neder, 527 U.S. at 9-10. In Neder, the materiality element in a tax and bank fraud charge was not submitted to the jury, but instead was decided by the court against the defendant. 527 U.S. at 6. An intervening case, United States v. Gaudin, 515 U.S. 506, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995), held that the materiality element must be submitted to the jury. However, when the Supreme Court applied harmless error analysis, it held that because the omitted element was "uncontested and supported by overwhelming evidence," the error was harmless. Id. at 17.

The court in Neder reasoned that failing to instruct the jury on each element of the charge does not result in automatic reversal because such error is not a "structural" error,

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i.e., "a defect affecting the framework within which the trial proceeds" that "infect[s] the entire trial process." Neder, 527 U.S. at 8. The court explained that it has found "structural error only in a *'very limited class of cases.'*" Neder, 527 U.S. at 8 (quoting Johnson v. United States, 520 U.S. 461, 468, 137 L.Ed.2d 718, 117 S.Ct. 1544 (1997)). The court gave the following list of "structural" errors subject to *automatic* reversal: (1) complete denial of counsel; (2) biased trial judge; (3) racial discrimination in selection of grand jury; (4) denial of self-representation at trial; (5) denial of public trial; (6) defective reasonable doubt instruction. Neder, 527 U.S. at 8. The omission of an element from a jury instruction is not such a "structural" error as to warrant automatic reversal. Neder, 527 U.S. at 8-9. Instead, such an error is subject to a harmless error test before it can be deemed reversible error. Neder, 527 U.S. at 9-10.

The Washington Supreme Court adopted the holding in Neder in State v. Brown, 147 Wn.2d 330, 340, 58 P.3d 889 (2002). In Brown, a jury instruction misstated the law of accomplice liability. Brown, 147 Wn.2d at 338. The Brown court followed Neder in reasoning that "not every omission or misstatement in a jury instruction relieves the State of its burden" so as to require reversal. Brown, 147 Wn.2d at 339. "Unlike such defects as the complete deprivation of counsel or trial before a biased judge, an instruction that omits an element of the offense does not *necessarily* render a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence." Brown, 147 Wn.2d at 340 (citing Neder 527 U.S. at 9). Under Brown and Neder, a "jury instruction that omits or misstates an element of a charged crime is subject to harmless error analysis to determine whether the error has relieved the State of its burden to prove each element of the case." Brown, 147 Wn.2d at 344.

The test to determine whether such constitutional error is harmless is "'whether it appears beyond a reasonable doubt that the error complained of did not contribute to the

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verdict obtained.'" Brown, 147 Wn.2d at 341(quoting Neder, 527 U.S. at 15); see also State v. Thomas, 150 Wn.2d 821, 844-45, 83 P.3d 970 (2004) (applying Neder and Brown to find error in "to convict" instruction harmless beyond reasonable doubt).

In performing this analysis, the court must determine "whether the record contains evidence that could rationally lead to a contrary finding with respect to the omitted element." Neder, 527 U.S. at 19. "If, at the end of the examination, the court cannot conclude beyond a reasonable doubt that the jury verdict would have been the same absent the error -- for example, where the defendant contested the omitted element and raised evidence sufficient to support a contrary finding -- it should not find the error harmless." Neder, 527 U.S. at 19. On the other hand, "[w]hen applied to an element omitted from, or misstated in, a jury instruction, the error is harmless if that element is supported by uncontroverted evidence." Brown, 147 Wn.2d at 341 (citing Neder, 527 U.S. at 18).

The Neder harmless error analysis applies to cases such as this in which a judge, rather than a jury, determined a fact for sentencing purposes. See, e.g. Campbell v. United States, 364 F.3d 727 (6th Cir. 2004)(Apprendi sentencing error in not having jury determine quantity of drugs in drug prosecution is subject to harmless error review); United States v. Copeland, 321 F.3d 582 (6th Cir. 2003)(Apprendi sentencing error harmless where evidence of fact used to elevate sentence was overwhelming); United States v. Matthews, 312 F.3d 652(5th Cir. 2002), cert. denied, 538 U.S 938 (2003)(finding Apprendi sentencing error harmless under Neder where evidence regarding sentencing factor at trial was "extensive, overwhelming, and essentially uncontradicted"); United States v. Barbosa, 271 F.3d 438 (3rd Cir. 2000), cert. denied, 537 U.S. 1049 (2002)(finding Apprendi sentencing error harmless under Neder); but see State v. Thomas, 150 Wn.2d 821, 849, 83 P.3d 970 (2004)(holding harmless error analysis permissible with respect to

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Tacoma, Washington 98402-2171
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guilt, but inappropriate when applied to capital murder special sentencing phase when sentence imposed is life without the possibility of parole or death).

Petitioner cites State v. Thomas, 150 Wn.2d 821, 849, 83 P.3d 970 (2004), and State v. Kitchen, 110 Wn.2d 403, 756 P.3d 105 (1988), for the proposition that the harmless error doctrine does not apply to "Apprendi – type errors." Personal Restraint Petition, at 17. This is not accurate. In Thomas, this court held that Apprendi errors would not be held harmless when applied to death or life without the possibility of parole sentences. 150 Wn.2d at 849. As noted above, however, the Thomas court did apply a Neder/Brown harmless error analysis to a guilt phase instruction. 150 Wn.2d at 844-45.

In Kitchen this court did not even have the opportunity to apply the rule established in Apprendi, as it addressed the question of unanimity when faced with "multiple acts" being the basis of a charged crime. 110 Wn.2d at 405-06. Petitioner also cites State v. Gould, 271 Kan. 394, 23 P.3d 801 (2001), for this proposition. In Gould the Supreme Court of Kansas found the state sentencing statute unconstitutional on its face, and therefore, could not engage in a harmless error analysis. 271 Kan. at 413. No court has found the Washington Sentencing Reform Act unconstitutional, so a harmless error analysis is still permissible.

Numerous jurisdictions have applied the Neder harmless error analysis to Apprendi errors. See United States v. Perez-Ruiz, 353 F.3d 1, 17 (1st Cir., 2003); United States v. Friedman, 300 F.3d 111, 127-28 (2d Cir. 2002); United States v. Outen, 286 F.3d 622, 639-40 (2d Cir. 2002); United States v. Stewart, 306 F.3d 295, 319-320 (6th Cir., 2002); United States v. Adkins, 274 F.3d 444, 454 (7th Cir. 2001); United States v. Wright, 248 F.3d 765, 766-67 (8th Cir. 2001); United States v. Allen, 357 F.3d 745, 753 (8th Cir., 2004); United States v. Nealy, 232 F.3d 825, 829-30 (11th Cir. 2000); United States v. Anderson, 289 F.3d 1321, 1326-1327 (11th Cir., 2002); United States v. Johnson, 356 U.S.

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App. D.C. 377, 331 F.3d 962, 969 (D.C. Cir. 2003). In short, Apprendi error is susceptible to harmless error analysis. United States v. Virgen-Moreno, 265 F.3d 276, 297 (5th Cir. 2001), cert. denied, 534 U.S. 1095 (2002); see also Cotton v. United States, 535 U.S. 625, 122 S. Ct. 1781, 1786, 152 L. Ed. 2d 860 (2002) (holding that Apprendi error did not "seriously affect the fairness, integrity or public reputation of judicial proceedings"); Johnson v. United States, 520 U.S. 461, 469-70, 137 L. Ed. 2d 718, 117 S. Ct. 1544 (1997) (holding that omission of "materiality" element from indictment did not "seriously affect the fairness, integrity or public reputation of judicial proceedings") (internal quotation marks omitted).

In this case, the petitioner's right to have the jury determine the aggravating factors was violated, but this error was harmless beyond a reasonable doubt under Neder. The trial court based its exceptional sentence on two aggravating factors: deliberate cruelty and multiple injuries. Appendix G. The court noted in its findings that either of these factors alone supported the exceptional sentence. Both of these findings are supported by uncontroverted evidence in the record.

Petitioner never asserted that he did not cause the injuries the victim suffered. Petitioner's defense, from opening statement, through cross-examination of the victim, to closing argument, was that he never had the intent to inflict great bodily harm, and that he did not intend to assault the victim. RP 12-14, 235-46, 300-14. The jury rejected his defense.

For a court, or a jury after Blakely, to find a defendant acted with deliberate cruelty, it must find that "the cruelty was 'of a kind not usually associated with the commission of the offense in question.'" State v. Payne, 45 Wn. App. 528, 531, 726 P.2d 997 (1986) (quoting State v. Schantzen, 308 N.W.2d 484, 487 (Minn. 1981)). There can be no doubt that the extensive beating inflicted by petitioner, as detailed above, was not of a kind

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930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

usually associated with the commission of an assault in the first degree. The beating was nothing short of horrific. See Appendix K. In its unpublished opinion, the Court of Appeals summarized the injuries inflicted as follows:

> On January 1, 1996, Robert Aaron and April Duckett spent the evening at Ronald Hall's and Kim Krapf's trailer home. After asking Duckett to leave, Krapf grew angry at Hall and threw her boots, an ashtray, and several other objects at him.
>
> Hall responded by hitting and kicking Krapf. After throwing her to the floor, he kicked Krapf repeatedly in the face, ribs, back and buttocks. He told Krapf to stay still so he could kick her. Hall also told Aaron, who was watching, to get a shovel so he could bury Krapf. Aaron left and did not return.
>
> Hall then ordered Krapf to take a shower in the garage bathroom. Krapf couldn't see because her eyes were swollen shut, so she had to sit to go down the trailer steps. When she returned to the trailer, Hall refused to let Krapf sleep in the bedroom with him so she went out to the couch.
>
> Duckett returned to the trailer and saw Krapf's condition. She went into Hall's bedroom and, after 15 or 20 minutes, came out to take Krapf to the hospital. Krapf's condition worsened, so Duckett called 911 dispatch from a neighbor's house and drove to a nearby gas station to meet the ambulance.
>
> The ambulance took Krapf to an emergency room where an examination revealed that Krapf's upper jaw was broken in three places and that both eye sockets were fractured. Krapf also had a punctured lung, a broken nose, a broken cheek bone, and broken ribs. Further injuries included bruising and lacerations along her neck and down her back to the base of her spine.
>
> Emergency room personnel surgically reinflated Krapf's lung, but her facial injuries required extensive reconstructive surgery at Harborview Hospital. Doctors repositioned her eyes because her right eye had sunken into her face, corrected her facial fractures, and removed two of her teeth. The doctors also inserted permanent plates and screws underneath Krapf's right eye, along her cheek, at the corner of her eye, and in her upper jaw. Krapf has permanent scars on her scalp and face, and her eyes are permanently misaligned.
>
> Soon after the assault, Krapf gave a statement to police in which she identified Hall as her assailant. In her statement, she said that Hall beat her

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930 Tacoma Avenue South, Room 946
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> with a rifle, as well as his hands and feet, and that he threatened her and Aaron with a pistol.

State v. Hall, No. 20934-9-II consolidated with: No. 22194-2-II, filed July 23, 1999 (Appendix B).

Given the nature of the defense, and the jury's rejection of that defense, the State proved beyond a reasonable doubt that petitioner acted with cruelty that was of a kind not usually associated with the commission of assault in the first degree. Petitioner beat the victim extensively, far more than necessary to accomplish any goal he had other than to deliberately inflict greater and greater injury. The victim testified that while she was lying on the ground, and trying to protect her head from the repeated blows, petitioner ordered her to stop moving around while he hit her. RP 199-201, 210-11. The overall depravity of the assault demonstrates petitioner acted with deliberate cruelty as he beat Ms. Krapf to the point where she had a punctured lung, numerous facial fractures, broken ribs, broken teeth, and bruising from her tailbone to the top of her skull.

Alternatively, it was harmless error for the court, rather than the jury, to find the existence of the aggravating factor that multiple injuries were inflicted upon the victim. Where the multiple injuries are the result of multiple acts on the part of a defendant, an exceptional sentence is permissible.

> The infliction of multiple injuries can support an exceptional sentence, but this factor has only been approved where the infliction of multiple injuries was caused by multiple acts. See, e.g., State v. Armstrong, 106 Wn.2d 547, 550, 723 P.2d 1111 (1986) (defendant threw boiling coffee on child, then plunged child's foot in coffee); State v. McClure, 64 Wn. App. 528, 531, 827 P.2d 290 (1992) (stating that "focus is on acts which distinguish the crime" in a case involving repeated blows to the head); State v. Warren, 63 Wn. App. 477, 478, 820 P.2d 65 (1991) (victim shot five times), review denied, 118 Wn.2d 1030, 828 P.2d 564 (1992).

State v. Cardenas, 129 Wn.2d 1, 7-8, 914 P.2d 57 (1996).

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In the present case, it is uncontroverted that the multiple injuries occurred by different acts of petitioner. Petitioner repeatedly struck and kicked the victim. If the jury had been asked, pursuant to Blakely, whether petitioner inflicted multiple injuries by committing multiple acts, there is no question it would have answered the question in the affirmative. The jury would not have been asked to find whether this in and of itself warranted an exceptional sentence that would remain the province of the trial court at sentencing. The jury would only have been asked whether petitioner inflicted multiple injuries caused by multiple acts. There is no question this was in fact the case. There was never a claim, nor could one be made, that all of the injuries incurred were the result of one punch or one kick. A review of the doctors' testimony and the photographs admitted at trial demonstrate there were numerous injuries inflicted by numerous blows. RP 73-94, 97-113, and Appendix K.

The deliberate cruelty and multiple injuries factors are supported by uncontroverted evidence. Under Neder and Brown, the trial court's error in not submitting these factors to the jury was harmless. Worth noting is that the trial court observed that petitioner's sentence would be the same even absent one of the two aggravating factors. So long as this court concludes that one of the factors was proven beyond a reasonable doubt, this petition must be dismissed.

3. IF THIS COURT GRANTS THE PETITION, ON REMAND THE STATE SHOULD BE PERMITTED TO IMPANEL A JURY AND PROVE THE EXISTENCE OF THE AGGRAVATING FACTORS.

In Blakely v. Washington, __ U.S. __, 124 S.Ct. 2531, 72 U.S.L.W. 4546 (2004), the United States Supreme Court held that a defendant has a Sixth Amendment right to have a jury determine, beyond a reasonable doubt, aggravating facts (other than those facts defendant admits or are related to prior criminal history) used to impose an exceptional

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930 Tacoma Avenue South, Room 946
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sentence above the standard range. Petitioner asserts that this court must remand for a sentence within the standard range. There is no case law that requires this court to so instruct the sentencing court.

Blakely pleaded guilty to second degree kidnapping with a firearm enhancement and faced a standard range of 49 to 53 months. At sentencing, the judge, *sua sponte*, imposed an exceptional sentence of 90 months based upon the aggravating factor of deliberate cruelty.

At the outset, the United States Supreme Court noted that:

> This case requires us to apply the rule we expressed in Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000): "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."

124 S.Ct. at 2536.

The State argued that the relevant statutory maximum for the crime was the ten-year statutory maximum for Class B felonies set forth in RCW 9A.20.020. The United States Supreme Court rejected this argument and held that the relevant statutory maximum was the top of the standard range, 53 months, and that Apprendi applied to the aggravating facts used to support an exceptional sentence above this range.

> In this case, petitioner was sentenced to more than three years above the 53-month statutory maximum of the standard range because he had acted with "deliberate cruelty." ... Our precedents make clear, however, that the "statutory maximum" for Apprendi purposes is the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant....*
>
> The judge in this case could not have imposed the exceptional 90-month sentence solely on the basis of the facts admitted in the guilty plea. Those facts alone were insufficient....

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124 S.Ct. at 2537. The court concluded that "[b]ecause the State's sentencing procedure did not comply with the Sixth Amendment, petitioner's sentence is invalid." The court went on to clarify that it did not find that the SRA was unconstitutional.

> By reversing the judgment below, we are not, as the State would have it, "find[ing] determinate sentencing schemes unconstitutional." Brief for Respondent 34. This case is not about whether determinate sentencing is constitutional, only about how it can be implemented in a way that respects the Sixth Amendment. Several policies prompted Washington's adoption of determinate sentencing, including proportionality to the gravity of the offense and parity among defendants. See Wash. Rev. Code Ann. §9.94A.010 (2000). Nothing we have said impugns those salutary objectives.

124 S.Ct. at 2540. Indeed, the Court acknowledged a variety of ways a defendant could receive an exceptional sentence even without a jury determination and noted that a defendant might prefer not to have a jury decide the aggravating factors:

> [N]othing prevents a defendant from waiving his Apprendi rights. When a defendant pleads guilty, the State is free to seek judicial sentence enhancements so long as the defendant either stipulates to the relevant facts or consents to judicial fact-finding. See Apprendi, 530 U.S., at 488, 120 S.Ct. 2348; Duncan v. Louisiana, 391 U.S. 145, 158, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968). If appropriate waivers are procured, States may continue to offer judicial fact-finding as a matter of course to all defendants who plead guilty. Even a defendant who stands trial may consent to judicial fact-finding as to sentence enhancements, which may well be in his interest if relevant evidence would prejudice him at trial.

124 S.Ct. at 2541. In its final sentence, the Blakely court simply remanded the case for further proceedings consistent with its opinion. 124 S. Ct. at 2543. The United States Supreme Court did not remand for imposition of a standard range sentence. The sentence to be imposed on remand will be up to the sentencing court, so long as it follows the dictates of Blakely. In sum, under Blakely, absent an appropriate waiver or stipulation, a jury must find, beyond a reasonable doubt, the existence of aggravating facts, other than those related to criminal history, used to support an exceptional sentence.

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930 Tacoma Avenue South, Room 946
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Main Office: (253) 798-7400

Post-Blakely, in order for an exceptional sentence to be imposed, several modifications must be made to the usual sentencing procedures. First, a jury must hear evidence of aggravating circumstances. Second, the court should provide instructions and special interrogatories to the jury with respect to the alleged aggravating circumstances. Finally, if the jury finds the existence of the aggravating circumstance, the court must then decide at sentencing whether, given the jury's findings, there are substantial and compelling reasons to impose an exceptional sentence.

a. The Absence of the Aggravating Factors in the Original Charging Document Does Not Bar the State From Seeking an Exceptional Sentence.

The Court in Blakely did not hold that the State must allege aggravating circumstances in the information or indictment before seeking an exceptional sentence. Blakely did not hold that such notice was required, and such notice is not constitutionally required given that the trial court still has discretion in deciding whether to impose an exceptional sentence. See State v. Henthorn, 85 Wn. App. 235, 932 P.2d 662 (1997). Indeed, Blakely was simply an extension of Apprendi v. New Jersey, where the court noted that the notice requirements of the Fifth Amendment had never been found to apply to the states through the Due Process Clause of the Fourteenth Amendment:

> Apprendi has not here asserted a constitutional claim based on the omission of any reference to sentence enhancement or racial bias in the indictment. He relies entirely on the fact that the "due process of law" that the Fourteenth Amendment requires the States to provide to persons accused of crime encompasses the right to trial by jury, Duncan v. Louisiana, 391 U.S. 145, 20 L. Ed. 2d 491, 88 S. Ct. 1444 (1968), and the right to have every element of the offense proved beyond a reasonable doubt, In re Winship, 397 U.S. 358, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970). That amendment has not, however, been construed to include the Fifth Amendment right to "presentment or indictment of a Grand Jury" that

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930 Tacoma Avenue South, Room 946
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was implicated in our recent decision in Almendarez –Torres v. United States, 523 U.S. 224, 140 L. Ed. 2d 350, 118 S. Ct. 1219 (1998).

Apprendi v. New Jersey, 530 U.S. 466, 477 n.3, 120 S.Ct. 2348, 2356 n.3, 147 L.Ed.2d 435 (2000).

The United States Supreme Court has even held that failure to include aggravating circumstances in a federal indictment is not fatal, even after Apprendi, provided that the defendant had other notice of the alleged aggravating circumstance. In United States v. Cotton, the federal indictment charged the defendants with conspiracy to distribute and to possess 5 kilograms or more of cocaine and 50 grams or more of cocaine base. United States v. Cotton, 535 U.S. 625, 627-628, 122 S.Ct. 1781, 1783, 152 L.Ed.2d 860 (2002). The indictment did not allege any threshold level of drug quantity that would lead to enhancement penalties under the federal sentencing statutes. Id. at 628, 122 S.Ct. at 1783. A jury found the defendants guilty. Id. At sentencing, the trial judge made a factual determination that one defendant possessed at least 500 grams of cocaine base and another possessed 1.5 kilograms of cocaine base, which triggered enhanced sentencing penalties. Id. at 628, 122 S.Ct. at 1784. Subsequently, the United States Supreme Court issued it's opinion in Apprendi v. New Jersey, which required such enhancements to be alleged in the indictment and proved to a jury. Id. Defendants appealed and argued, *inter alia*, that their sentences were invalid because the increased sentencing penalties and the facts supporting them were never alleged in the indictment. Id. at 628-629, 122 S.Ct. at 1784. The government argued that while the alleged sentencing enhancement was not pled in the indictment, the defendants were on notice by virtue of the federal statute and the facts presented at trial. A unanimous Supreme Court rejected the defendant's appeal, noting that

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the error was harmless where it "did not seriously affect the fairness, integrity or public reputation of judicial proceedings." Id. at 633, 122 S.Ct. at 1786.

There is no federal constitutional provision, state constitutional provision, statute, case law, or court rule that requires the State to include aggravating circumstances in the information. In fact, this court has specifically held that "the factual basis for an exceptional sentence upward need not be charged." State v. Gore, 143 Wn.2d 288, 315, 21 P.3d 262, (2001) (overruled on other grounds by Blakely v. Washington, __ U.S. __, 124 S.Ct. 2531, 72 U.S.L.W. 4546 (2004)).

b. The Revised Code of Washington, the Washington Court Rules, and Blakely v. Washington, Allow the Sentencing Procedure Requested by the State in this Case.

The demands of Blakely v. Washington are easily implemented under existing Washington court rules and statutes. If this court grants the petition, on remand, the sentencing court should be permitted to convene a panel of jurors and seat a jury to hear evidence. The court should submit instructions and interrogatories (or special verdict forms) to the jury regarding the existence of alleged aggravating circumstances. Finally, if the jury finds the existence of the aggravating circumstance, the court must then decide at sentencing whether, given the jury's findings, there are substantial and compelling reasons to impose an exceptional sentence.

Under existing criminal rules, the sentencing court has authority to do all of the above. First, the criminal rules require the court to provide a jury when the defendant has a right to a jury trial. CrR 6.1(a) ("Cases required to be tried by jury shall be so tried unless the defendant files a written waiver of a jury trial, and has consent of the court."). If this

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court does not determine that the failure to put the aggravating factors of deliberate cruelty and multiple injuries to a jury was harmless, then, under Blakely, petitioner has a constitutional right to a jury trial on the aggravating factors on remand. Petitioner has not filed a written waiver of his right to jury trial, and the court must therefore convene a jury.

The criminal court rules further allow the court to submit special verdict forms to the jury regarding aggravating circumstances:

> **Special Findings.** The court may submit to the jury forms for such special findings which may be required or authorized by law. The court shall give such instruction as may be necessary to enable the jury both to make these special findings or verdicts and to render a general verdict.

CrR 6.16(b). Previous appellate court decisions have required the trial court to submit special findings to the jury in a variety of contexts. See State v. Roberts, 142 Wn.2d 471, 509 n.12, 14 P.3d 713 (2000) (in death penalty case involving accomplice liability issues, jury should be presented with special interrogatories concerning the defendant's level of involvement); State v. Manuel, 94 Wn.2d 695, 700, 619 P.2d 977 (1980) (when defendant seeks reimbursement for self-defense, special interrogatories should be submitted to jury). Blakely now requires the court to do so before an exceptional sentence may be imposed in this case.

If the jury finds that the aggravating circumstance exists, the court may impose an exceptional sentence if it finds substantial and compelling reasons to do so. See Blakely, 124 S.Ct. at 2538 n.8 (acknowledging that after finding aggravating facts, judge must find that they present a compelling ground for departure); RCW 9.94A.535 ("The court may impose a sentence outside the standard sentence range for an offense if it finds, considering

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the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.")

Petitioner erroneously asserts that Blakely somehow bars the State from seeking an exceptional sentence until the legislature amends the SRA to expressly provide for a jury determination of aggravating facts. In doing so petitioner relies on State v. Kessler, 276 Kan. 202, 217, 73 P.3d 761 (2003). The Supreme Court of Kansas held: "A district court's authority to impose sentence is controlled by statute. Thus, where the statutory procedure for imposing upward durational departure sentences has been found unconstitutional, the district court has no authority to impose such a sentence." Kessler, 276 Kan. at 217. Petitioner's reliance on Kessler, however, is misplaced. The Kessler court was faced with a situation where the trial court used a statute which had been declared unconstitutional on its face to impose a sentence above the standard range. Once the statute had been declared unconstitutional, the sentencing court erred in relying on that statute. Contrary to petitioner's assertion, no court has found the Washington Sentencing Reform Act unconstitutional.

The United States Supreme Court did not hold the exceptional sentence provisions of the SRA completely void or unenforceable;[2] it simply held that *the sentencing procedures* in Blakely's case did not comply with the Sixth Amendment. "A statute held invalid as applied is not void on its face or incapable of valid application in other circumstances." Foundation for the Handicapped v. Department of Social and Health

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[2] If RCW 9.94A.535 is unconstitutional, as petitioner asserts, its provisions concerning mitigated exceptional sentences must also be unconstitutional. The aggravating and mitigating sections are mirror images of one another. It cannot reasonably be maintained that the legislature would have provided for mitigated exceptional sentences and not aggravated exceptional sentences. See Gerberding v. Munro, 134 Wn.2d 188, 197, 949 P.2d 1366 (1998) (discussion of severability issues).

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Services, 97 Wn.2d 691, 628 P.2d 884 (1982) (due process flaw in statute corrected by procedures adopted by DSHS requiring proper notice). This court can ensure that the sentencing procedures in this case comply with the Sixth Amendment and the SRA. See United States v. Ameline, ___ F.3d ___ , No. 02-30326 (9th Cir. July 21, 2004) (post-Blakely holding that federal district courts can impanel juries to decide facts concerning sentencing enhancements despite absence of federal sentencing statute explicitly providing for such a procedure).

As noted above, a trial court has authority under CrR 6.16(b) to submit special interrogatories to the jury. Washington case law recognizes that when a defendant has a constitutional right to a jury, a jury should be impaneled regardless of whether the right to jury has been incorporated into a statute. For example, although Washington's habitual offender statute, RCW 9.92.030, was amended in 1909 to delete the requirement that a jury decide the defendant's habitual offender status, trial courts regularly impaneled juries to make such determinations for over seventy years.[3] See State v. Smith, 150 Wn.2d 135, 144, 75 P.3d 934 (2003); State v. Courser, 199 Wash. 559, 560, 92 P.2d 264 (1939); State v. Fowler, 187 Wash. 450, 60 P.2d 83 (1936). The statute was still not amended after the Washington Supreme Court held in 1940 that there was a constitutional right to a jury in habitual offender proceedings. State v. Furth, 5 Wn.2d 1, 104 P.2d 925 (1940). Yet Washington courts continued to recognize that they had the power to impanel juries for

---

[3] When the habitual offender statute was first enacted in 1903, it specifically provided that the court should impanel a jury to decide whether the defendant was a habitual offender. Laws of 1903, ch. 86, §§ 1 and 2. Six years later, the Legislature amended the statute and deleted all references to a right to jury. Laws of 1909, ch. 249, §§ 34.

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habitual offender proceedings. See State v. Smith, 150 Wn.2d 135, 144, 75 P.3d 934 (2003).

Similarly, the school zone/bus stop sentencing enhancements set forth in RCW 69.50.435 make no specific provision for impaneling a jury to decide whether the facts support the enhancement. Yet there has been no doubt that Washington courts have the authority to instruct the jury and provide special verdict forms concerning the enhancement. State v. Becker, 132 Wn.2d 54, 61, 935 P.2d 1321 (1997). Certainly, this court has the power to permit trial courts to submit interrogatories concerning exceptional sentence aggravating factors to the jury.

It has long been the practice of this court that when a sentencing court imposed a sentence in error, the case is to be remanded for re-sentencing, and when appropriate, hold an evidentiary hearing. See State v. Ford, 137 Wn.2d 472, 973 P.2d 452 (1999) (ordering a sentencing evidentiary hearing when the defendant failed to put the court on notice of potential defects in his criminal history); State v. Clark, 143 Wn.2d 731, 24 P.3d 1006 (2001) (ordering a new death penalty sentencing proceeding when State improperly elicited excessive testimony regarding a prior conviction); Hawkins v. Rhay, 78 Wn.2d 389, 474 P.2d 557 (1970) (ordering a new death penalty phase when the prospective jurors improperly dismissed, but upholding conviction).

Other courts, faced with Apprendi/Blakely challenges to sentencing statutes, have interpreted the applicable statutes to allow for a jury role rather than invalidate the entire sentencing provision. In United States v. Buckland, 289 F.3d 558 (9th Cir. 2002), the Ninth Circuit held that a "drug amount" enhancement was subject to the jury trial requirements of Apprendi. The court rejected the defense argument that the enhancement statute was unconstitutional on its face and could not be applied through impaneling a jury.

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The court noted that, despite the years of federal court practice of submitting the issue to the judge at sentencing, the statute could be read as silent on the issue of who was to decide the existence of the enhancement. The court concluded:

> Our aim remains to give effect to Congress's intent. That intent is apparent: to ramp up the punishment for controlled substance offenders based on the type and amount of illegal substance involved in the crime. We honor the intent of Congress and the requirements of due process by treating drug quantity and type, which fix the maximum sentence for a conviction, as we would any other material fact in a criminal prosecution: it must be charged in the indictment, submitted to the jury, subject to the rules of evidence, and proved beyond a reasonable doubt.

United States v. Buckland, 289 F.3d 558, 568 (9th Cir. 2002); see also United States v. Cernobyl, 255 F.3d 1215 (10th Cir. 2001).

In United States v. Ameline, the defendant received an enhanced penalty without a jury determination of the facts supporting the sentencing enhancement. United States v. Ameline, ___ F.3d ___ (9th Cir., Slip Op. 02-30326, July 21, 2004). The court found that the finding of the facts necessary to impose the sentencing enhancement were done in violation of the requirements set forth in Blakely and Apprendi. Id. Defendant argued that on remand, the trial court could not impose an exceptional sentence without a jury trial on the issue and the federal sentencing guidelines, like Washington's SRA, contained no provisions for jury trials on sentencing enhancements. Id. The Ninth Circuit Court of Appeals rejected this argument, noting that Blakely did not hold determinate sentencing schemes or the federal sentencing guidelines unconstitutional. Id. ("Indeed, Blakely seems to contemplate that its holding can apply to determinate sentencing schemes without wholesale invalidation"). The Ameline court further noted that it was clearly the intent of Congress to allow federal district court judges to enhance penalties for drug offenses based

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on the quantity of drug. Id. The court rejected the defendant's arguments, holding that the trial court could hold a jury trial on the sentencing enhancement on remand. Id.

Ameline further held that allowing a jury trial on a sentencing issue after the defendant's conviction on the substantive offense did not violate double jeopardy. Ameline, supra. The court noted that imposition of an enhanced sentence on remand would only violate double jeopardy if the defendant had "a legitimate expectation of finality in his original sentence." Id. In the present case, petitioner has repeatedly challenged his exceptional sentence, and cannot assert that he had a legitimate expectation in the finality of that sentence.

Here, like the federal sentencing scheme in Buckland and Ameline, the exceptional sentence statute in Washington (RCW 9.94A.535) can be read as silent on the issue of whether a jury determination is required for certain aggravating circumstances. The statute provides a list of factors that the court may consider in deciding whether to impose an exceptional sentence without specifying how such facts must be proven. RCW 9.94A.530, in turn, allows the court, when imposing a sentence, to consider information "proven in a trial…." In short, nothing in the SRA prohibits this court from permitting the trial court to follow the procedures described in this brief.

It is the duty of the court to ascertain and give effect to the intent and purpose of the Legislature, as expressed in the act. In re Lehman, 93 Wn.2d 25, 27, 604 P.2d 948 (1980). If, among alternative constructions, one or more would involve serious constitutional difficulties, the court, without doing violence to the legislative purpose, should reject those interpretations in favor of a construction that will sustain the

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Main Office: (253) 798-7400

constitutionality of the statute. State ex rel. Morgan v. Kinnear, 80 Wn.2d 400, 402, 494 P.2d 1362 (1972); Grant v. Spellman, 99 Wn.2d 815, 818-19, 664 P.2d 1227 (1983).

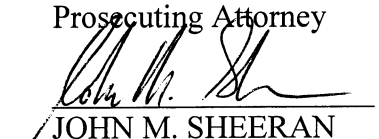
Here, there can be no doubt that the Legislature intended that certain defendants receive sentences exceeding the high-end of the standard range. Implementing the procedures described above will result in sentences that comport with both the requirements of the Sixth Amendment and the legislative purpose behind the SRA's exceptional sentence provisions. Currently, there is no authority in the State of Washington which would prohibit the sentencing court from impaneling a jury and letting it determine if the State had proven the existence of the aggravating factors. There is nothing in this petition which would require this court to order the sentencing court to impose a standard range sentence.

E. CONCLUSION:

For the aforementioned reasons, the State respectfully requests that this court dismiss the personal restraint petition, or in the alternative to remand and permit the State to impanel a jury for the purpose of establishing the existence of the aggravating circumstances of deliberate cruelty and multiple injuries caused by multiple acts.

DATED: September 9, 2004.

GERALD A. HORNE
Pierce County
Prosecuting Attorney



JOHN M. SHEERAN
Deputy Prosecuting Attorney
WSB # 26050

Office of Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the petitioner true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

9-10-04

Date Signature

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APPENDIX "A"

Original Judgment and Sentence
filed July 8, 1996

FILED
DEPT. 14
IN OPEN COURT
JUL 0 8 1996
Pierce County Clerk
By ..... DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. RONALD ARMON HALL, Defendant.	CAUSE NO. 96-1-00042-8 WARRANT OF COMMITMENT 1) [ ] County Jail 2) [✓] Dept. of Corrections 3) [ ] Other - Custody

JUL 0 8 1996

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[ ] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[✓] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

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

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96-1-00042-8

[ ] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 7-8-96

FILED
DEPT. 14
IN OPEN COURT
JUL 0 8 1996
Pierce County Clerk
By DEPUTY

By direction of the Honorable

JUDGE BRUCE W. COHOE

TED RUTT
CLERK

By: Sandy Thyppa
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date JUL 0 8 1996 By Sandy Thyppa Deputy

STATE OF WASHINGTON, County of Pierce ss: I, Ted Rutt, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____, 19___.

TED RUTT, Clerk
By: _____ Deputy

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JUL 08 1996

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. RONALD ARMON HALL, Defendant. DOB: 08/11/47 SID NO.: WA10014543 LOCAL ID:	CAUSE NO. 96-1-00042-8 JUDGMENT AND SENTENCE (FELONY/OVER ONE YEAR)

FILED
DEPT. 14
IN OPEN COURT
JUL 0 8 1996
Pierce County Clerk
By ..... DEPUTY

I. HEARING

1.1 A sentencing hearing in this case was held on July 8, 1996.

1.2 The defendant, the defendant's lawyer, SCOTT CANDOO, and the deputy prosecuting attorney, JOHN M. NEEB, were present.

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on MAY 7, 1996, by

[ ] plea [X] jury-verdict [ ] bench trial of:

Count No.: I
Crime: ASSAULT IN THE FIRST DEGREE, ARMED WITH A DEADLY WEAPON, Charge Code: (E23/E24 - ALTERNATIVE)
RCW: 9A.36.011(1)(a)/9A.36.011(1)(c), RCW 9.94A.310, .370
Date of Crime: 01/01/96
Incident No.: 96-002-0046

[ ] Additional current offenses are attached in Appendix 2.1.
[✓] A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) I.
[ ] A special verdict/finding for use of a firearm was returned on Counts _____.
[ ] A special verdict/finding of sexual motivation was returned on Count(s) _____.
[ ] A special verdict/finding of a RCW 69.50.401(a) violation in a school bus, public transit vehicle, public park, public transit shelter or within 1000 feet of a school bus route stop or the perimeter of a school grounds (RCW 69.50.435).

ENTERED
JUDGMENT #

96-9-05769-1

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[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

CRIME	DATE OF SENTENCING	SENTENCING COUNTY/STATE	DATE OF CRIME	ADULT OR JUV.	CRIME TYPE	CRIME ENHANCEMENT
TMVOP	08/16/65	LEWIS/WA	05/19/65	ADULT	NV	
UPCS	01/29/79	LEWIS/WA	08/02/78	ADULT	NV	
EXTORTION 1 (2 CTS)	09/22/81	LEWIS/WA	04/02/81	ADULT	V	STRIKE
DISPLAY WEAPON	Unknown	PIERCE/WA	12/17/89	ADULT	M	(MISDEMEANOR)
ASSAULT 4	Unknown	PIERCE/WA	09/24/91	ADULT	GM	(GROSS MISD)
ASSAULT 4	Unknown	PIERCE/WA	05/12/92	ADULT	GM	(GROSS MISD)

[ ] Additional criminal history is attached in Appendix 2.2.
[✓] Prior convictions served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(11)):

2 counts of extortion - 1981 - Lewis Co.

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2.3 SENTENCING DATA:

	Offender Score	Serious Level	Standard Range(SR)	Enhancement	Maximum Term
Count I:	4	XII	129 - 171	F/DW (adds 60 mos)	LIFE
	with enhancement:		189 - 231		

[ ] Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE:

[✓] Substantial and compelling reasons exist which justify an exceptional sentence

[✓] above [ ] ~~within [ ] below~~ the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [✓] did [ ] did not recommend a similar sentence.

2.5 RECOMMENDED AGREEMENTS:

[X] For violent offenses, serious violent offenses, most serious offenses, or any felony with a deadly weapon special verdict under RCW 9.94A.125; any felony with any deadly weapon enhancements under RCW 9.94A.310(3) or (4) or both; and/or felony crimes of possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun, the recommended sentencing agreements or plea agreements are [ ] attached [X] as follows:

STATE WILL SEEK AN EXCEPTIONAL SENTENCE OF 462 MONTHS (TWICE THE HIGH END OF STANDARD RANGE) BASED ON DELIBERATE CRUELTY, MULTIPLE INJURIES, SEVERITY OF INJURIES, AND POSSIBLY LACK OF REMORSE, FOLLOWED BY 24 MONTHS OF COMMUNITY PLACEMENT, LEGAL FINANCIAL OBLIGATIONS TO INCLUDE $ 100 CVPA, $ 110 COURT COSTSA, $ 9012.14 IN RESTITUTION TO DSHS, NO CONTACT WITH KIM KRAPF OR ANY MEMBER OF HER FAMILY, SUBMIT TO BLOOD DRAW FOR DNA PURPOSES

2.6 RESTITUTION:

[ ] Restitution will not be ordered because the felony did not result in injury to any person or damage to or loss of property.
[ ] Restitution should be ordered. A hearing is set for _____.

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[ ] Extraordinary circumstances exist that make restitution inappropriate. The extraordinary circumstances are set forth in Appendix 2.5.
[✓] Restitution is ordered as set out in Section 4.1, LEGAL FINANCIAL OBLIGATIONS.

2.7 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS: The court has considered the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court specifically finds that the defendant has the ability to pay:

[ ] no legal financial obligations.
[✓] the following legal financial obligations:
[✓] crime victim's compensation fees.
WAIVED. [✓] court costs (filing fee, jury demand fee, witness costs, sheriff services fees, etc.)
[ ] county or inter-local drug funds.
[ ] court appointed attorney's fees and cost of defense.
[ ] fines.
[✓] other financial obligations assessed as a result of the felony conviction.

A notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender, if a monthly court-ordered legal financial obligation payment is not paid when due and an amount equal to or greater than the amount payable for one month is owed.

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 [ ] The court DISMISSES.

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96-1-00042-8

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 LEGAL FINANCIAL OBLIGATIONS. Defendant shall pay to the Clerk of this Court:

$ 9,012.14, Restitution to:
DSHS - MEDICAL CASUALTY UNIT - RE: KI 120259 KEAR
P.O. BOX 45561
OLYMPIA WA 98504-5561

WAIVED

$ ~~[illegible]~~, Court costs (filing fee, jury demand fee, witness costs, sheriff service fees, etc.);

$ 100.00, Victim assessment;

$ _____, Fine; [ ] VUCSA additional fine waived due to indigency (RCW 69.50.430);

$ _____, Fees for court appointed attorney;

$ _____, Washington State Patrol Crime Lab costs;

$ _____, Drug enforcement fund of _____;

$ _____, Other costs for: _____;

$ 9,112.14, TOTAL legal financial obligations [✓] including restitution [ ] not including restitution.

Payments shall not be less than $_____ per month. Payments shall commence on AS SET BY CCO.

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

Name	Cause Number

The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement to assure payment of the above monetary obligations.

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Any period of supervision shall be tolled during any period of time the offender is in confinement for any reason.

Defendant must contact the Department of Corrections at 755 Tacoma Avenue South, Tacoma upon release or by _____.

[ ] Bond is hereby exonerated.

4.2 CONFINEMENT OVER ONE YEAR: The defendant is sentenced as follows:

(a) CONFINEMENT: (Standard Range) RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

366 months on Count No. I [ ] concurrent [ ] consecutive
_____ months on Count No. _____ [ ] concurrent [ ] consecutive
_____ months on Count No. _____ [ ] concurrent [ ] consecutive
_____ months on Count No. _____ [ ] concurrent [ ] consecutive

✓ CREDIT FOR 172 DAYS SERVED.

(b) CONFINEMENT (Sentence Enhancement): A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

24 MONTHS ON COUNT I
_____ MONTHS ON COUNT _____
_____ MONTHS ON COUNT _____
_____ MONTHS ON COUNT _____

TOTAL MONTHS CONFINEMENT ORDERED: 390.

Sentence enhancements in Counts _____ shall run
[ ] concurrent [ ] consecutive to each other.
Sentence enhancements in Counts I shall be served
[✓] flat time [ ] subject to earned good time credit.

Standard range sentence shall be [ ] concurrent [ ] consecutive with the sentence imposed in Cause Nos.:
_____.

4.3 COMMUNITY PLACEMENT AND COMMUNITY CUSTODY RCW 9.94A.120. The defendant is sentenced to community placement for [ ] **one year** [✓] **two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer.**

While on community placement or community custody, the defendant shall: 1) report to and be available for contact with the assigned community corrections officer as

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directed; 2) work at Department of Corrections-approved education, employment and/or community service; 3) not consume controlled substances except pursuant to lawfully issued prescriptions; 4) not unlawfully possess controlled substances while in community custody; 5) pay supervision fees as determined by the Department of Corrections; 6) residence location and living arrangements are subject to the approval of the department of corrections during the period of community placement.

(a) [✓] The offender shall not consume any alcohol;

(b) [ ] The offender shall have no contact with: _____

(c) [ ] The offender shall remain [ ] within or [ ] outside of a specified geographical boundary, to-wit: _____

(d) [ ] The offender shall participate in the following crime related treatment or counseling services: _____

(e) [✓] The defendant shall comply with the following crime-related prohibitions: SET BY CORRECTIONS OFFICER

(f) [ ] OTHER SPECIAL CONDITIONS AND CRIME RELATED PROHIBITIONS: _____

(g) [ ] HIV TESTING. The Health Department or designee shall test the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. (RCW 70.24.340)

(h) [✓] DNA TESTING. The defendant shall have a blood sample drawn for purpose of DNA identification analysis. The Department of Corrections shall be responsible for obtaining the sample prior to the defendant's release from confinement. (RCW 43.43.754)

[ ] PURSUANT TO 1993 LAWS OF WASHINGTON, CHAPTER 419, IF OFFENDER IS FOUND TO BE A CRIMINAL ALIEN ELIGIBLE FOR RELEASE AND DEPORTATION BY THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, SUBJECT TO ARREST AND REINCARCERATION IN ACCORDANCE WITH THIS LAW, THEN THE UNDERSIGNED JUDGE AND PROSECUTOR CONSENT TO SUCH RELEASE AND DEPORTATION PRIOR TO THE EXPIRATION OF THE SENTENCE.

EACH VIOLATION OF THIS JUDGMENT AND SENTENCE IS PUNISHABLE BY UP TO 60 DAYS OF CONFINEMENT. (RCW 9.94A.200(2)).

FIREARMS: PURSUANT TO RCW 9.41.040, YOU MAY NOT OWN, USE OR POSSESS ANY FIREARM UNLESS YOUR RIGHT TO DO SO IS RESTORED BY A COURT OF RECORD.

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: 591-7400

96-1-00042-8

ANY DEFENDANT CONVICTED OF A SEX OFFENSE MUST REGISTER WITH THE COUNTY SHERIFF FOR THE COUNTY OF THE DEFENDANT'S RESIDENCE WITHIN 24 HOURS OF DEFENDANT'S RELEASE FROM CUSTODY. RCW 9A.44.130.

PURSUANT TO RCW 10.73.090 AND 10.73.100, THE DEFENDANT'S RIGHT TO FILE ANY KIND OF POST SENTENCE CHALLENGE TO THE CONVICTION OR THE SENTENCE MAY BE LIMITED TO ONE YEAR.

FILED
DEPT. 14
IN OPEN COURT
JUL 0 8 1996
Pierce County Clerk
By ..... DEPUTY

Date: July 8, 1996.

JUDGE
BRUCE W. COHOE

Presented by:

JOHN M. NEEB
Deputy Prosecuting Attorney
WSB # 21322

Approved as to form:

SCOTT CANDOO
Lawyer for Defendant
WSB # 7815

jmn

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: 591-7400

APPENDIX F Cause No. 96-1-00042-8

The defendant having been sentenced to the Department of Corrections for a:

___ sex offense
✓ serious violent offense
___ assault in the second degree
___ any crime where the defendant or an accomplice was armed with a deadly weapon
___ any felony under 69.50 and 69.52 committed after July 1, 1988 is also sentenced to one (1) year term of community placement on these conditions:

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The Court may also order any of the following special conditions:

___ (I) The offender shall remain within, or outside of, a specified geographical boundary: _____

___ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____

___ (III) The offender shall participate in crime-related treatment or counseling services;

___ (IV) The offender shall not consume alcohol;

___ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

___ (VI) The offender shall comply with any crime-related prohibitions.

___ (VII) Other: _____

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946 County-City Building
Tacoma, Washington 98402-2171
Telephone: 591-7400

FINGERPRINTS

Right Hand
Fingerprint(s) of: RONALD ARMON HALL, Cause #96-1-00042-8

Attested by: Ted Rutt CLERK

By: DEPUTY CLERK Pamela J Smith Date: 7-8-96

CERTIFICATE

OFFENDER IDENTIFICATION

I, _____
Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: _____

_____
CLERK

By: _____
DEPUTY CLERK

State I.D. #WA10014543

Date of Birth 08/11/47

Sex MALE

Race WHITE

ORI _____

OCA _____

OIN _____

DOA _____

FILED
DEPT. 14
IN OPEN COURT
JUL 0 8 1996
Pierce County Clerk
By _____ DEPUTY

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Tacoma, Washington 98402-2171
Telephone: 591-7400

APPENDIX "B"

State v. Hall
Court of Appeals Opinion No. 20934-9-II
filed July 23, 1999

STATE OF WASHINGTON, Respondent, v. RONALD ARMON HALL, Appellant.

No. 20934-9-II consolidated with: No. 22194-2-II

COURT OF APPEALS OF WASHINGTON, DIVISION TWO

1999 Wash. App. LEXIS 1364

July 23, 1999, Filed

NOTICE: [*1] RULES OF THE WASHINGTON COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE WASHINGTON RULES OF COURT.

SUBSEQUENT HISTORY:

Petition for Review Denied January 5, 2000, Reported at: 2000 Wash. LEXIS 55.

PRIOR HISTORY: Appeal from Superior Court of Pierce County. Docket No: 96-1-00042-8. Date filed: 07/08/1996. Judge signing: Hon. Bruce W. Cohoe. State v. Hall, 96 Wn. App. 1051, 1999 Wash. App. LEXIS 3296 (1999)

DISPOSITION: Affirmed, but remanded for resentencing consistent with this opinion.

LexisNexis(R) Headnotes

COUNSEL: For Appellant: Kitteridge Oldham, Attorney At Law, Seattle, WA.

For Respondent: John C. Hillman, Pierce County Deputy Pros Attny, Tacoma, WA.

JUDGES: Authored by Elaine M. Houghton. Concurring: J. Dean Morgan, Carroll C. Bridgewater.

OPINIONBY: ELAINE M. HOUGHTON

OPINION: HOUGHTON, J.-- Ronald Armon Hall appeals his conviction for assault in the first degree while armed with a deadly weapon, arguing: (1) that the evidence was insufficient to support one of the alternatives included in the jury instructions as well as the deadly weapon special verdict; (2) that the trial court imposed an excessive exceptional sentence based upon an uncharged sentence enhancement, improper aggravating factors, and an incorrect offender score; (3) that he received ineffective assistance of counsel; and (4) that the trial court erred in denying his motion for [*2] relief from judgment. We affirm the conviction, but remand for resentencing.

FACTS

On January 1, 1996, Robert Aaron and April Duckett spent the evening at Ronald Hall's and Kim Krapf's trailer home. After asking Duckett to leave, Krapf grew angry at Hall and threw her boots, an ashtray, and several other objects at him.

Hall responded by hitting and kicking Krapf. After throwing her to the floor, he kicked Krapf repeatedly in the face, ribs, back and buttocks.

He told Krapf to stay still so he could kick her. Hall also told Aaron, who was watching, to get a shovel so he could bury Krapf. Aaron left and did not return.

Hall then ordered Krapf to take a shower in the garage bathroom.

Krapf couldn't see because her eyes were swollen shut, so she had to sit to go down the trailer steps. When she returned to the trailer, Hall refused to let Krapf sleep in the bedroom with him so she went out to the couch.

Duckett returned to the trailer and saw Krapf's condition. She went into Hall's bedroom and, after 15 or 20 minutes, came out to take Krapf to the hospital. Krapf's condition worsened, so Duckett called 911 dispatch from a neighbor's house and drove to a nearby gas station [*3] to meet the ambulance.

The ambulance took Krapf to an emergency room where an examination revealed that Krapf's upper jaw was broken in three places and that both eye sockets were fractured. Krapf also had a punctured lung, a broken nose, a broken cheek bone, and broken ribs.

Further injuries included bruising and lacerations along her neck and down her back to the base of her spine.
Emergency room personnel surgically reinflated Krapf's lung, but her facial injuries required extensive reconstructive surgery at Harborview Hospital.
Doctors repositioned her eyes because her right eye had sunken into her face, corrected her facial fractures, and removed two of her teeth. The doctors also inserted permanent plates and screws underneath Krapf's right eye, along her cheek, at the corner of her eye, and in her upper jaw.
Krapf has permanent scars on her scalp and face, and her eyes are permanently misaligned.

Soon after the assault, Krapf gave a statement to police in which she identified Hall as her assailant. In her statement, she said that Hall beat her with a rifle, as well as his hands and feet, and that he threatened her and Aaron with a pistol. The State filed an [*4] information charging Hall with one count of assault in the first degree while armed with a firearm or by any force or means likely to produce great bodily harm or death. The State later amended the information to charge assault in the first degree committed with a firearm or deadly weapon or by any force or means likely to produce great bodily harm or death, or assault resulting in the infliction of great bodily harm.
Shortly after his arrest, Hall wrote Krapf three letters of a romantic nature. Krapf testified at his trial only after the court issued a material witness warrant that resulted in her arrest. Her testimony contradicted much of what she told police directly after the assault.

The court instructed the jury that it could find Hall guilty of assault in the first degree or assault in the second degree, both based upon alternative means. The court also gave the jury a special verdict form on which it was to specify, if it found Hall guilty of first-degree assault, whether he committed the assault while armed with a deadly weapon.
During its deliberations, the jury asked the court whether hands and feet or shoes or boots, if worn, constituted a deadly weapon. [*5] The court instructed the jury to reread the instruction defining a deadly weapon.
The jury found Hall guilty of first-degree assault, and returned a special verdict finding that he committed the crime while armed with a deadly weapon.

Hall then filed a motion to arrest judgment, contending that there was insufficient proof of the material elements of intent or a deadly weapon.
The court denied the motion and imposed an exceptional sentence of 366 months plus 24 months on the deadly weapon enhancement, for a total of 390 months. The court found that the aggravating factors of deliberate cruelty, multiple injuries, and severity of the injuries justified the exceptional sentence.

Following his appeal of the conviction, Hall moved for relief from judgment based upon an affidavit from Krapf. Krapf stated that she started the incident and that Hall acted "weird" and fought imaginary people after she hit him in the head with her boots and with an ashtray. She also claimed that the prosecution forced her to lie while testifying at Hall's trial.

The State responded with an affidavit from Krapf's mother stating that Hall called and wrote Krapf repeatedly after his sentencing. [*6] The sample letter she attached documented Hall's romantic feelings toward Krapf.

The trial court denied the motion because the information was repetitive of much of Krapf's trial testimony and because it stemmed from a suspect recantation. This court consolidated Hall's appeal of that denial with the appeal of his conviction.
ANALYSIS
I. Sufficiency of the Evidence
Hall first contends that there was insufficient evidence to support the "deadly weapon" means of first degree assault and the deadly weapon special verdict, and also argues that the trial court erred in instructing the jury regarding the need to be unanimous as to the means of assault proven. The court instructed the jury that it could find Hall guilty of assault in the first degree if it found that he committed the assault with a firearm or with a deadly weapon or by a force or means likely to produce great bodily harm or death, or if it found that the assault resulted in the infliction of great bodily harm. The court added that the jury did not need to be unanimous as to which means was proved.

Washington law requires unanimous jury verdicts in criminal cases. State v. Hupe, 50 Wash. App. 277, 282, 748 P.2d 263, [*7] review denied, 110 Wash. 2d 1019 (1988). When the crime charged can be established by alternative means, jury unanimity as to the means is not necessary so long as substantial evidence supports each alternative. State v. Kitchen, 110 Wash. 2d 403, 410, 756 P.2d 105 (1988); State v. Gallo, 20 Wash. App. 717, 730, 582 P.2d 558, review denied, 91 Wash. 2d 1008 (1978). The jury cannot be instructed on an alternative means that is not supported by substantial evidence, as it may then base its finding of guilt on an invalid ground.
Hupe, 50 Wash. App. at 282. This requirement of sufficient evidence embodies constitutional considerations of due process. State v. Martin, 69 Wash. App. 686, 688, 849 P.2d 1289 (1993). Thus, the trial court properly instructed the jury that it did not need to be unanimous as to which means was proved as long as substantial evidence supported each means charged.

The evidence produced at trial to establish that Hall committed the assault with a deadly weapon is as

follows. A deputy testified that he found two weapons at Hall's home when he searched it. Krapf told the police [*8] that Hall threatened her and Aaron with a pistol during the assault.
She also told the police that, during the beating, Hall hit her in the face with the butt of a rifle. She said she could tell the difference between being struck with fists, a boot, or something else, and said that at least one blow to her face was something harder than a fist or a boot. A photograph of her face after the assault showed a vertical line on her cheek consistent with a blow from a rifle butt.

At trial, Krapf contradicted much of what she said in her statement.
She said she did not know if Hall had a gun, and could not remember telling the deputy that he had a gun. She added, however, that when she gave her statement she did her best to tell the truth.

The State elicited the statements Krapf made to the police to impeach her testimony at trial. Hall now complains that her out-of-court statements about his use of a gun cannot support the deadly weapon alternative because an impeaching statement is not substantive evidence of matters asserted in that statement. See State v. Johnson, 40 Wash. App. 371, 377, 699 P.2d 221 (1985) (impeachment evidence affects a witness' credibility [*9] and is not proof of the substantive facts encompassed in such evidence.) Because Hall made no objection to this evidence and because no limiting instruction was sought, the jury properly considered Krapf's prior statements as substantive evidence. State v. Myers, 133 Wash. 2d 26, 36, 941 P.2d 1102 (1997).

After the defense rested, it argued that there was insufficient evidence to support the theory that Hall committed the assault while armed with a deadly weapon. The court disagreed, finding that there was evidence in the record from which the jury could conclude that a weapon was involved in the assault. The defense did not object to Instruction 11, which defined a deadly weapon as "any firearm, whether loaded or unloaded, any weapon, device, instrument, or article, which under the circumstances in which it is used or threatened to be used, is readily capable of causing death or substantial bodily injury."

During its deliberations, the jury sent a note to the court asking whether hands and feet or shoes or boots, if worn, could be a deadly weapon. The court responded by telling the jury to reread Instruction 11.
The jury returned a verdict finding Hall [*10] guilty of assault in the first degree while armed with a deadly weapon.

Hall argues that the jury's uncertainty regarding whether the deadly weapon he used was a firearm, shows that there was insufficient evidence to support that alternative means. As stated earlier, however, the jury does not need to be unanimous as to the means employed if it is unanimous as to guilt for the underlying offense. The jurors' question does not show that there was insufficient evidence to establish that Hall committed the assault with a deadly weapon. This conclusion is bolstered by the trial court's denial of Hall's motion for arrest of judgment following the verdict.
The defense filed its motion pursuant to CrR 7.4(a), which provides that judgment may be arrested on a defendant's motion because of insufficient proof of a material element of the crime. The defense argued, in part, that there was no proof of the material element of a deadly weapon.
Defense counsel maintained that because Instruction 11 did not include a body part within the definition of a deadly weapon, there was no credible evidence that Hall used a deadly weapon. The court disagreed, observing first that Krapf's testimony [*11] on the witness stand was not very believable. "She was obviously trying to protect Mr. Hall." The court decided that the jury accepted the version of the assault that Krapf gave the police.
If the jury believes what she told the police, and not what she said on the witness stand, judging her demeanor and her attitude and the testimony and the manner in which it was given, then they are left with the fact that he used a pistol and a rifle to accomplish his purposes. I think that can rise to the level of beyond a reasonable doubt; that is, at least a reasonable trier of fact can believe that. Accordingly, I will deny the motion for arrest of judgment as it relates . . . to the armed with a deadly weapon aspect.
The trial court did not err in concluding that there was sufficient proof to support the deadly weapon alternative as well as the special verdict.
II. Jury Instructions
In a related argument, Hall contends that Instruction 9 is erroneous because it instructed the jury on an uncharged alternative. In his pro se brief, Hall contends that the information limited him to committing the assault with a firearm, thus precluding the State from instructing the jury on the [*12] alternative means of committing assault with a deadly weapon. Hall also argues that the error was compounded by Instruction 11, which defined a deadly weapon to include objects other than a firearm.

The amended information stated that Hall did unlawfully and feloniously with intent to inflict great bodily harm, assault KIM KRAPF with a firearm or deadly weapon or by any force or means likely to produce great bodily harm or death, contrary to RCW 9A.36.011(1)(a), and in the commission thereof, or in immediate flight the defendant was armed with a firearm, to-wit: A GUN, that being a firearm as defined in RCW 9.41.010, ...

First degree assault is committed when a person, acting with intent to inflict great bodily harm, either (a) assaults another with a deadly weapon or by force or means likely to produce great bodily harm; (b) causes another to take poison, the human immune deficiency virus, or any other destructive or noxious substance; or (c) assaults another and inflicts great bodily harm. RCW 9A.36.011; 13A Seth A. Fine, et al., Washington Practice, Criminal Law, sec. 301 at 37 (1998). Instruction 9 accurately set forth the elements of alternatives (a) and (c), [*13] which were the alternatives charged in the amended information.

This is not a case in which the jury was instructed on uncharged alternatives. See State v. Nicholas, 55 Wash. App. 261, 272-73, 776 P.2d 1385, review denied, 113 Wash. 2d 1030, 784 P.2d 530 (1989) (when the information alleges only one alternative, it is error to instruct the jury on uncharged alternatives). Moreover, Hall never objected to the wording of the information or requested a bill of particulars to clarify it. See State v. Leach, 113 Wash. 2d 679, 687, 782 P.2d 552 (1989) (defendant may not challenge a charging document for vagueness on appeal if no bill of particulars was requested at trial). We conclude that the "to-convict" instruction properly informed the jury of the alternative means of committing assault with which the amended information charged Hall. With regard to Instruction 11, we note that because Hall never objected to the instruction or its wording, he may not raise such an objection now. Nicholas, 55 Wash. App. at 273. Hall also contends that the jury should have been instructed on the elements of second degree assault and its definition [*14] of substantial bodily harm, and he argues that it should have been given a special verdict form applicable to second degree assault because a deadly weapon is an element of that crime. The court did instruct the jury on the elements of assault in the second degree and on the corresponding definition of substantial bodily harm. A deadly weapon enhancement is not an element of a crime. Because Hall never argued below that the court erred in failing to give the jury a special verdict form applicable to the second degree assault charge, he cannot make this argument now. RAP 2.5(a).

Hall raises the issue of second degree assault because of his belief that there was no evidence to support the first degree element of intent to cause great bodily harm. The court instructed the jury that "great bodily harm means bodily injury that creates a probability of death, or that causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ."

There is ample evidence to support the jury's conclusion that Hall intended to cause great bodily harm. He kicked and hit Hall for approximately 30 minutes, [*15] and he inflicted injuries to her lung and to her face that doctors described as potentially life threatening. Krapf has permanent scars from the assault, and her eyes are permanently misaligned. Her injuries would have been far more disfiguring without extensive reconstructive surgery.

The evidence was sufficient to support the jury's conclusion that Hall committed assault in the first degree while armed with a deadly weapon.

III. Sentencing

Although we affirm the conviction, we agree with Hall that the deadly weapon enhancement must be stricken. Hall correctly observes that the amended information charged him only with the firearm enhancement set forth in RCW 9.94A.310(3), and did not refer to the deadly weapon enhancement set forth in RCW 9.94A.310(4). Because the amended information contained no notice that the State sought penalties under RCW 9.94A.310(4) and no allegations supporting a non-firearm enhancement, the trial court erred in imposing an uncharged deadly weapon enhancement. State v. Theroff, 95 Wash. 2d 385, 392, 622 P.2d 1240 (1980) (when prosecutors seek enhanced penalties, notice of their intent must be set forth in the information).

Although [*16] it concedes the charging error, the State argues that resentencing is unnecessary because the trial court stated that it would impose the same sentence even without the enhancement. The State does note, however, that

Hall's sentence will need to be corrected so that he can earn good time for all 390 months imposed. See RCW 9.94A.150(1) (offender may not accrue good time credits for that portion of sentence resulting from any deadly weapon enhancement).

We cannot order the trial court to impose the same 390-month sentence regardless of the sentence enhancement. We must remand for resentencing in accordance with the law, leaving the length of the sentence to the trial court's discretion. See State v. Bonisisio, 92 Wash. App. 783, 797, 964 P.2d 1222 (1998), review denied, 137 Wash. 2d 1024, 980 P.2d 1285 (1999).

Hall argues further that the trial court erred in imposing an exceptional sentence. More specifically, Hall argues that the court improperly cited his deliberate cruelty and the severity of Krapf's injuries as aggravating factors, and that the court wrongfully calculated his offender score before imposing the exceptional sentence.

Review of an exceptional [*17] sentence is governed by RCW 9.94A.210(4). An appellate court is to analyze the appropriateness of an exceptional sentence by determining: (1) under the clearly erroneous standard of review, whether the reasons given are supported by the evidence in the record; (2) under the question of law standard, whether the reasons justify a departure from the standard range; and (3) under the abuse of discretion

standard, whether the sentence clearly is too excessive or too lenient.
State v. Allert, 117 Wash. 2d 156, 163, 815 P.2d 752 (1991).
The trial court found that three aggravating factors justified an exceptional sentence of 390 months:
The defendant manifested deliberate cruelty to his victim. The court has never seen a beating this cruel in over thirty years of practice, including ten on the bench. But for the remarkable skill of the medical personnel, the victim would have died. The defendant's cruelty is evidenced by the duration of the assault (thirty minutes), the multiplicity of the injuries and their locations (head, face, ribs, lower back, buttocks), the severity of the injuries that the defendant inflicted, and the fact that the defendant made his victim [*18] clean herself up and wait for almost thirty more minutes before being taken for medical attention.

The defendant inflicted multiple injuries on his victim. During this assault, the defendant hit his victim multiple times in her face and head with his fist, his feet (wearing boots), and the butt of a rifle. Both her eyes were swollen shut. Parts of her face were literally broken free from her skull. The defendant kicked his victim in the ribs, breaking several ribs and causing a punctured lung that had to be surgically reinflated.
The defendant also kicked his victim in the lower back and buttocks region multiple times, causing extensive bruising. During the assault, the defendant used these kicks to make his victim stay on the ground in front of him so he could continue the assault.

The defendant inflicted injuries that were more severe than the "normal" first degree assault. Either the punctured lung from the broken ribs or the facial injuries are sufficient for an assault one. Several of the facial injuries could each have been found to be great bodily harm.
The injuries to the victim's buttocks, while not sufficient alone for an assault one, are extensive and painful. [*19]
The court added that each of the above three aggravating factors, standing alone, would support the imposition of an exceptional sentence.

Hall argues that the court's finding of deliberate cruelty does not justify an exceptional sentence under State v. Payne, 45 Wash. App. 528, 531, 726 P.2d 997 (1986). There, the trial court imposed an exceptional sentence based, in part, on its finding that the defendant's conduct manifested deliberate cruelty to his victim. The Court of Appeals found this finding insufficiently specific to enable it to determine whether the cruelty was "'of a kind not usually associated with the commission of the offense in question.'" Payne, 45 Wash. App. at 531 (quoting State v. Schantzen, 308 N.W.2d 484, 487 (Minn. 1981)).
For this court to assume facts in the record which could support a finding of deliberate cruelty would require impermissible speculation as to the trial court's reasoning. As the conclusory finding of deliberate cruelty simply does not permit us to carry out our responsibility of evaluating the sentencing decision, we must hold that it is an improper basis for an exceptional sentence.
[*20] Payne, 45 Wash. App. at 531-32 (footnote omitted).

There is no such flaw in the court's finding of deliberate cruelty here. The court carefully set forth the facts supporting its finding, and it expressly found that the cruelty demonstrated was not the kind usually associated with assault in the first degree. The record supports the finding of deliberate cruelty, and the finding was properly used to justify the exceptional sentence.

Hall next argues that the court erred in finding that the severity of Krapf's injuries justified an exceptional sentence. The severity of a victim's injuries cannot be used to impose an exceptional sentence where the extent of the injuries is an element of the crime. State v. Cardenas, 129 Wash. 2d 1, 7, 914 P.2d 57 (1996). Although particularly severe injuries may be used to justify an exceptional sentence, the injury must be greater than that contemplated by the Legislature in setting the standard range. Cardenas, 129 Wash. 2d at 6. Cardenas was convicted of vehicular assault, which contained the element of serious bodily injury, defined as "'bodily injury which involves a substantial risk of death, serious [*21] permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.'" Cardenas, 129 Wash. 2d at 6 (quoting RCW 46.61.522(1), (2)). The victim's injuries, although severe, were evidently the type envisioned by the Legislature in setting the standard range. The court thus held that the severity of injuries suffered could not justify an exceptional sentence. Cardenas, 129 Wash. 2d at 7.

In so holding, the court distinguished State v. George, 67 Wash. App. 217, 834 P.2d 664 (1992), review denied, 120 Wash. 2d 1023, 844 P.2d 1018 (1993), overruled on other grounds, State v. Ritchie, 126 Wash. 2d 388, 894 P.2d 1308 (1995).
In George, the court upheld an exceptional sentence on an assault conviction based, in part, upon the severity of the victim's injuries despite the fact that great bodily injury was an element of the crime.
Although the Cardenas court agreed that the sentencing judge in George properly imposed an exceptional sentence based upon the defendant's deliberate and gratuitous violence, to the extent George suggested that an exceptional sentence could be imposed merely because [*22] of the severity of the injury, where this is

an element of the crime, the Cardenas court disapproved of its reasoning. Cardenas, 129 Wash. 2d at 7.

Here, as in George, great bodily injury was an element of the crime.

The trial court justified its severity finding by observing that either the punctured lung from the broken ribs or the facial injuries were sufficient for an assault one. That reasoning better supports the court's finding regarding multiple injuries. The infliction of multiple injuries can support an exceptional sentence where the infliction of multiple injuries was caused by multiple acts. Cardenas, 129 Wash. 2d at 7. Although the court improperly cited the severity of the injuries as an aggravating factor, we find that error harmless. We agree with the trial court that either of the other aggravating factors justifies an exceptional sentence. See Cardenas, 129 Wash. 2d at 12.

Hall also argues that the trial court erred in calculating his offender score and thus his standard range sentence. A sentencing court must correctly determine the standard range before it can depart therefrom.

State v. Parker, 132 Wash. 2d 182, 188, 937 P.2d 575 (1997). [*23]

The trial court concluded, after extensive discussion, that Hall had an offender score of 4 with a standard range of 129 to 171 months, with 24 months added for the deadly weapon enhancement. The State now concedes that this offender score is incorrect. Hall's 1965 felony conviction washes out because he was released from confinement in 1971 and remained crime-free for the requisite 5 years. RCW 9.94A.360(2). Therefore, we must remand so the trial court can resentence using the correct offender score.

Finally, Hall contends that the exceptional sentence imposed is excessive.

As stated, the question of whether a sentence is clearly excessive is reviewed under an abuse of discretion standard. State v. Oxborrow, 106 Wash. 2d 525, 530, 723 P.2d 1123 (1986). Discretion is abused when it is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State ex rel. Carroll v. Junker, 79 Wash. 2d 12, 26, 482 P.2d 775 (1971). There is no such abuse of discretion here.

Although the record supports the court's imposition of an exceptional sentence, we must remand for resentencing because of the improper sentence enhancement and incorrect [*24] offender score.

IV. Ineffective Assistance of Counsel

Hall next contends that he received ineffective assistance of counsel because his attorney (a) did not request a limiting instruction concerning the proper use of Krapf's prior statements, (b) did not object to the prosecutor's misconduct in stating that jurors could consider Krapf's prior statements as proof of the deadly weapon means and as support for the deadly weapon enhancement, and in stating that jurors did not need to be unanimous as to the means of first degree assault, and (c) did not object to the instruction that allowed the jury to convict him of the uncharged deadly weapon enhancement.

To prove a claim of ineffective assistance, a defendant must show that counsel's performance was deficient and that the deficient performance prejudiced the defense. State v. Bowerman, 115 Wash. 2d 794, 808, 802 P.2d 116 (1990) (citing Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). Scrutiny of counsel's performance is highly deferential, and there is a strong presumption of reasonableness.

State v. Day, 51 Wash. App. 544, 553, 754 P.2d 1021, [*25] review denied, 111 Wash. 2d 1016 (1988). If counsel's conduct can be characterized as legitimate trial strategy or tactics, it cannot serve as a basis for a claim of ineffective assistance. Day, 51 Wash. App. at 553. The court should make every effort "to eliminate the distorting effects of hindsight and must strongly presume that counsel's conduct constituted sound trial strategy." In re Rice, 118 Wash. 2d 876, 888-89, 828 P.2d 1086, cert. denied, 506 U.S. 958, 121 L. Ed. 2d 344, 113 S. Ct. 421 (1992).

Although Hall contends that counsel's failure to request a limiting instruction regarding Krapf's prior statements cannot be characterized as a tactical decision, the State points out that Krapf was primarily a defense witness. She professed her love for Hall in front of the jury, testified that the assault was her fault because she started it, and told the jury to believe her trial testimony and not what she said in prior statements because in the hospital "I didn't even know where I was at." During closing argument, the defense urged the jury to believe Krapf's trial testimony: "Kim Krapf is the best evidence that shows [*26] that there is no intention upon this defendant to hurt her. There is no evidence that shows that she is not competent to evaluate and take care and in charge of her own life. She has a clear memory."

The State argues that the defense had a vested interest in presenting Krapf as a credible person, and it reasons that a jury instruction addressing her prior contradictory statements might have worked against this interest by emphasizing that she gave conflicting versions of the attack. We agree that under the circumstances presented, the defense may have decided not to undermine Krapf as a witness by requesting a limiting instruction. See State v. Barber, 38 Wash. App. 758, 771 n.4, 689 P.2d 1099 (1984), review denied, 103 Wash. 2d 1013 (1985) (not unusual for able trial counsel to not request a limiting instruction regarding evidence that counsel believes is damaging to the client).

Although Hall argues further that defense counsel failed to object to the prosecutor's misconduct, no such misconduct is apparent. There was none in arguing that the jury could consider Krapf's prior statements as

evidence, given the absence of a limiting instruction, [*27] and the prosecutor properly argued that the jury did not need to be unanimous as to the means by which the assault occurred so long as it was unanimous that the assault did occur.

Finally, Hall contends that his attorney rendered ineffective assistance by failing to object to the special verdict instruction that allowed the jury to convict him of an uncharged enhancement. Although defense counsel did not object to the special verdict instruction on this basis, he did object to that instruction and to all additional references to a deadly weapon.

The court declined to change or withdraw any of its instructions, as it undoubtedly would have had the defense objected on the basis that the sentencing enhancement was improperly charged. (The court and the State agreed before trial that the information included the deadly weapon enhancement.) Hall's attorney was not deficient in failing to object to the special verdict instruction on this basis.

V. Motion for Relief from Judgment

Finally, Hall contends that the trial court erred in denying his motion for relief from judgment brought under CrR 7.8. The basis for his motion was an affidavit from Krapf stating that she started [*28] the fight, that her blows made Hall act abnormally, and that she lied in her testimony at trial.

CrR 7.8(b)(2) provides that a court may relieve a party from a final judgment because of newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under rule 7.6. (CrR 7.6(b) requires a motion for new trial to be served and filed within 10 days after the verdict or decision.) A new trial will not be granted on the basis of newly discovered evidence unless the moving party demonstrates that the evidence (1) will probably change the result of the trial; (2) was discovered since the trial; (3) could not have been discovered before trial by the exercise of due diligence; (4) is material; and (5) is not merely cumulative or impeaching. State v. Williams, 96 Wash. 2d 215, 222-23, 634 P.2d 868 (1981). The absence of any one of these factors is grounds for denial of a new trial. Williams, 96 Wash. 2d at 223. The trial court's refusal to grant a new trial on the basis of newly discovered evidence is reviewed under an abuse of discretion standard. State v. Savaria, 82 Wash. App. 832, 838, 919 P.2d 1263 (1996). [*29]

Additional factors must be considered when newly discovered evidence is in the nature of testimonial recantation. State v. Macon, 128 Wash. 2d 784, 804, 911 P.2d 1004 (1996). When a key prosecution witness later recants, the trial court must first determine whether the recantation is reliable before considering a defendant's motion for new trial based on the recantation. Macon, 128 Wash. 2d at 804. If the recantation is not credible, then it is not material, and an essential factor that would support a new trial is missing. State v. Ieng, 87 Wash. App. 873, 875, 942 P.2d 1091 (1997), review denied, 134 Wash. 2d 1014, 958 P.2d 317 (1998).

In Ieng, a material witness claimed three years after Ieng's trial that he lied while testifying. The trial court found that the witness had a motive to fabricate testimony at the recantation hearing favorable to the Ieng family because he wanted to date Ieng's sister. The Court of Appeals concluded that the trial court did not abuse its discretion by determining that the recantation was not credible and denying Ieng's motion for a new trial. Ieng, 87 Wash. App. at 881. [*30]

Here, Krapf's affidavit stated that she started the fight and added that when she hit Hall with an ashtray, he started acting like a zombie and fighting invisible people. She also stated that she made up the story that she gave to the police. When she tried to change it later, the prosecutor threatened her with jail. In a letter to Hall attached to her affidavit, she refers to her lies in court and to the police.

In response, the State submitted an affidavit from Krapf's mother, accompanied by telephone records and a letter Hall sent Krapf after he filed the motion for relief. The records show repeated calls from the Pierce County Jail and Clallam County Prison to Krapf's home after Hall's trial; in some cases, as many as six collect calls a day. The affidavit stated that Krapf received more than 100 letters from Hall after his sentencing. In the sample letter attached to the affidavit, Hall expresses his love and concern for Krapf.

The trial court denied Hall's request for relief from judgment, reasoning that some of the evidence presented was similar to that which Krapf gave at trial. The court also noted that part of the evidence (the letter to Hall) was available [*31] to the defense when Hall filed his first post-judgment motion for relief in June 1996. Finally, the court held that to the extent some of the information could be called newly discovered, it was an inherently suspect recantation.

Although Hall challenges that characterization of Krapf's evidence, we find the court's description accurate. The premise that Hall was out of his mind when he committed the assault apparently was one that the defense considered and rejected before trial. Krapf's description of Hall as a zombie merely expanded on her trial testimony that he was stunned after she hit him with her boots and with an ashtray. Moreover, Krapf referred to Hall acting like a zombie during sentencing on July 8, 1996, and she did not write her affidavit describing Hall as acting like a zombie and fighting imaginary people until December 13, 1996.

As in Ieng, Krapf's motive to fabricate is obvious. She wants to be on good terms with Hall either because she is

afraid of him or because she now has romantic feelings toward him. The court described the situation in denying Hall's motion:

Ms. Krapf was a very reluctant witness and one who I thought was either in extreme [*32] fear, which certainly could have been possible given the beating that she endured, or she was a classic abused spouse who, despite the beatings, professes her love for the defendant and will do whatever is necessary to protect him. That probably is more likely than the first scenario.

In its written order, the court again recalled that "the victim was a very reluctant witness at trial." The court added that she testified to "ostensibly the same information as that contained in her letter and affidavit, and the court has the evidence showing her extensive contacts with the defendant since the sentencing."

The court's conclusion that Krapf's recantation was suspect is supported by the record. When a recantation is unreliable, a trial court does not abuse its discretion by denying a motion for a new trial. Macon, 128 Wash. 2d at 805.

Hall contends in his pro se brief that the court erred in denying Krapf the opportunity to testify during the hearing on the motion for relief from judgment. Oral testimony is not required in deciding a CrR 7.8(b)(2) motion. The rule provides that a defendant seeking relief from judgment must file a motion supported by affidavits, [*33] and it adds that the court may deny the motion without a hearing if the facts alleged in the affidavits do not establish grounds for relief. CrR 7.8 (c) (1), (2).

Krapf was present when the motion was argued, and defense counsel noted that her testimony would be necessary only if the court had any questions about the materials submitted with her affidavit. Neither the court nor the prosecutor had any questions, so Krapf did not testify. No error was claimed, nor was any error committed.

Nor do we find error in the court's failure to take testimony from Krapf to evaluate her credibility. In support of his claim of error, Hall cites State v. D.T.M., 78 Wash. App. 216, 896 P.2d 108 (1995), where the defendant moved to withdraw his Alford plea after his stepdaughter recanted her allegations that he had tried to rape her. After the trial court denied the motion to withdraw, the Court of Appeals reversed and remanded, holding that the defendant was entitled to a hearing to evaluate his stepdaughter's credibility, and that he would be allowed to withdraw his plea if his stepdaughter adhered to her recantation, while under oath in open court and subject to cross-examination. [*34] More specifically, the court held that "under the circumstances, and considering D.T.M.'s persistent assertions of innocence, we believe the court should have held a hearing to evaluate M.J.'s credibility." D.T.M., 78 Wash. App. at 221 (footnote omitted).

The circumstances here do not resemble those in D.T.M. Rather, the facts here support the court's conclusion that Krapf's recantation was suspect and that no hearing on the motion was necessary.

Hall also contends that the trial court erred in denying the motion for relief from judgment in his absence. A defendant has a right to be present at a post-trial evidentiary hearing, but he need not be present during deliberations between court and counsel or during arguments on questions of law. State v. Walker, 13 Wash. App. 545, 556-57, 536 P.2d 657, review denied, 86 Wash. 2d 1005 (1975). In this case, the court denied the motion for relief from judgment without holding a hearing, as CrR 7.8(c)(2) permits. Thus, Hall's presence was not required.

Affirmed, but remanded for resentencing consistent with this opinion.

A majority of the panel having determined that this opinion will not [*35] be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Houghton, J.

We concur:

Morgan, J.

Bridgewater, C.J.

APPENDIX "C"

Second Judgment and Sentence
filed August 4, 2000

002034 770

FILED
DEPT. 14
IN OPEN COURT
AUG 04 2000
Pierce County Clerk
By DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. RONALD ARMON HALL, Defendant.	CAUSE NO. 96-1-00042-8 WARRANT OF COMMITMENT 1) [ ] County Jail 2) [X] Dept. of Corrections 3) [ ] Other - Custody "RESENTENCE"

AUG 04 2000

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[ ] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[X] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

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

DEFENDANT SHALL BE RETURNED DIRECTLY TO MCNEIL ISLAND AS SOON AS THAT CAN BE ACCOMPLISHED.

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96-1-00042-8

[ ] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

By direction of the Honorable

Dated: August 4, 2000

DATE OF RE-SENTENCING.

JUDGE BRUCE W. COHOE

TED RUTT

CLERK

By: Karen Ladensburg
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date AUG 04 2000 By Karen Ladensburg Deputy

STATE OF WASHINGTON, County of Pierce
ss: I, Ted Rutt, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____, 19___.

TED RUTT, Clerk
By: _____ Deputy

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. RONALD ARMON HALL, Defendant. DOB: 08/11/47 SID NO.: WA10014543 LOCAL ID:	CAUSE NO. 96-1-00042-8 JUDGMENT AND SENTENCE (FELONY/OVER ONE YEAR) AUG 04 2000

I. HEARING

1.1 A sentencing hearing in this case was originaly held on July 8, 1996. After remand, a resentencing hearing was held Aug. 4, 2000.

1.2 The defendant, the defendant's lawyer, SCOTT CANDOO, and the deputy prosecuting attorney, JOHN M. NEEB, were present.

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on May 7, 1996, by

[ ] plea [XX] jury-verdict [ ] bench trial of:

Count No.: I
Crime: ASSAULT IN THE FIRST DEGREE, Charge Code: (E23/E24)
RCW: 9A.36.011(1)(a) / 9A.36.011(1)(c)
Date of Crime: January 1, 1996
Incident No.: 96-002-0046

[ ] Additional current offenses are attached in Appendix 2.1.
[XX] A special verdict ~~finding~~ for use of deadly weapon other than a firearm was returned on Count (~~S~~). I. THAT SPECIAL VERDICT WAS STRUCK DOWN BY THE COURT OF APPEALS.

ENTERED
JUDGEMENT # 96-9-05769-1

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[ ] A special verdict/finding for use of a firearm was returned on Counts_____.

[ ] A special verdict/finding of sexual motivation was returned on Count(s)_____.

[ ] A special verdict/finding of a RCW 69.50.401(a) violation in a school bus, public transit vehicle, public park, public transit shelter or within 1000 feet of a school bus route stop or the perimeter of a school grounds (RCW 69.50.435).

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

N/A

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)): N/A

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Date of Crime	Crime Type
TMVOP	08/16/65	ADULT	05/19/65	NV
UPCS	01/29/79	ADULT	08/02/78	NV
EXTORTION 1 (2 counts)	09/22/81	ADULT	04/02/81	V
DISPLAY WEAPON	Unknown	ADULT	12/17/89	M
ASSAULT 4	Unknown	ADULT	09/24/91	GM
ASSAULT 4	Unknown	ADULT	05/12/92	GM

[ ] Additional criminal history is attached in Appendix 2.2.

[XX] Prior convictions served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(5)(a)):

EXTORTION 1 (2 counts) (1981); UPCS (1979) SERVED CONCURRENTLY TOTAL SCORE WAS 2.

2.3 SENTENCING DATA:

	Offender Score	Serious Level	Standard Range(SR)	Enhancement	Maximum Term
Count I:	~~3~~ 2	XII	~~120~~ - ~~160~~ 111 - 147	N/A	LIFE/50,000

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[ ] Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE:

[XX] Substantial and compelling reasons exist which justify an exceptional sentence

[XX] above [ ] within [ ] below the standard range for Count I. Findings of fact and conclusions of law were filed with the J&S that was done July 8, 1996. Those findings and conclusions still apply (except as struck by COA opinion). The Prosecuting Attorney [XX] did ~~did not~~ recommend a similar sentence.

2.5 RECOMMENDED AGREEMENTS:

[XX] For this serious violent offense and most serious offenses, the recommended sentence was as follows:

EXCEPTIONAL SENTENCE OF 462 MONTHS (TWICE THE HIGH END OF THE STANDARD RANGE AS ORIGINALLY CALCULATED) BASED ON DELIBERATE CRUELTY, MULTIPLE INJURIES, SEVERITY OF INJURIES, AND POSSIBLY LACK OF REMORSE, 24 MONTHS OF COMMUNITY PLACEMENT, LEGAL FINANCIAL OBLIGATIONS TO INCLUDE $ 100 CVPA, $ 110 COURT COSTS, $ 9,012.14 IN RESTITUTION TO DSHS, NO CONTACT WITH KIM KRAPF OR ANY MEMBER OF HER FAMILY, DNA DRAW

2.6 RESTITUTION:

[ ] Restitution will not be ordered because the felony did not result in injury to any person or damage to or loss of property.
[ ] Restitution should be ordered. A hearing is set for _____.
[ ] Extraordinary circumstances exist that make restitution inappropriate. The extraordinary circumstances are set forth in Appendix 2.5.
[X] Restitution is ordered as set out in Section 4.1, LEGAL FINANCIAL OBLIGATIONS.

2.7 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS: The court has considered the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court specifically finds that the defendant has the ability to pay:

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[ ] no legal financial obligations.
[X] the following legal financial obligations:
[X] crime victim's compensation fees.
WAIVED [ ] court costs (filing fee, jury demand fee, witness costs, sheriff services fees, etc.)
[ ] county or inter-local drug funds.
[ ] court appointed attorney's fees and cost of defense.
[ ] fines.
[X] other financial obligations assessed as a result of the felony conviction.

A notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender, if a monthly court-ordered legal financial obligation payment is not paid when due and an amount equal to or greater than the amount payable for one month is owed.

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 [ ] The court DISMISSES.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 LEGAL FINANCIAL OBLIGATIONS. Defendant shall pay to the Clerk of this Court:

$ 9,012.14 ____, Restitution to:

DSHS - MEDICAL CASUALTY UNIT RE: KI120259 KRAPF

P.O. BOX 45561 _____

OLYMPIA WASHINGTON 98504-5561 _____

$_____, Court costs (filing fee, jury demand fee, witness costs, sheriff service fees, etc.);

$ 100.00 ____, Victim assessment;

$_____, Fine; [ ] VUCSA additional fine waived due to indigency (RCW 69.50.430);

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$_____, Fees for court appointed attorney;

$_____, Washington State Patrol Crime Lab costs;

$_____, Drug enforcement fund of _____;

$_____, Other costs for: _____;

$ 9,112.14 _____, TOTAL legal financial obligations [XX] including restitution [ ] not including restitution.

[ ] Minimum payments shall be not less than $_____ per month. Payments shall commence on _____.
[XX] The Department of Corrections shall set a payment schedule.

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

Name	Cause Number

The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement to assure payment of the above monetary obligations.

Any period of supervision shall be tolled during any period of time the offender is in confinement for any reason.

Defendant must contact the Department of Corrections at 755 Tacoma Avenue South, Tacoma upon release.

[ ] Bond is hereby exonerated.

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96-1-00042-8

4.2 CONFINEMENT OVER ONE YEAR: The defendant is sentenced as follows:

(a) CONFINEMENT: (Standard Range) RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

366 months on Count No. __ I _____ [ ] concurrent [ ] consecutive
_____ months on Count No. _____ [ ] concurrent [ ] consecutive
_____ months on Count No. _____ [ ] concurrent [ ] consecutive
_____ months on Count No. _____ [ ] concurrent [ ] consecutive

Standard range sentence shall be [ ] concurrent [ ] consecutive with the sentence imposed in Cause Nos.: N/A _____.

[XX] Credit is given for ~~[illegible]~~ 1660 days served;
~~([illegible])~~ (as of 8/4/2000)

4.3 [XX] COMMUNITY PLACEMENT (RCW 9.94A.120). The defendant is sentenced to community placement for [ ] one year [XX] two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer.

[ ] COMMUNITY CUSTODY (RCW 9.94A.120(1). Because this was a sex offense that occurred after June 6, 1996, the defendant is sentenced to community custody for **three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer.**

While on community placement or community custody, the defendant shall: 1) report to and be available for contact with the assigned community corrections officer as directed; 2) work at Department of Corrections-approved education, employment and/or community service; 3) not consume controlled substances except pursuant to lawfully issued prescriptions; 4) not unlawfully possess controlled substances while in community custody; 5) pay supervision fees as determined by the Department of Corrections; 6) residence location and living arrangements are subject to the approval of the department of corrections during the period of community placement.

(a) [XX] The offender shall not consume any alcohol;
(b) [ ] The offender shall have no contact with: _____
_____
(c) [ ] The offender shall remain [ ] within or [ ] outside of a specified geographical boundary, to-wit: _____
_____
(d) [ ] The offender shall participate in the following crime related treatment or counseling services: _____
_____
(e) [XX] The defendant shall comply with the following crime-related prohibitions: AS SET BY COMMUNITY CORRECTIONS OFFICER _____
_____

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96-1-00042-8

(f) [ ] OTHER SPECIAL CONDITIONS AND CRIME RELATED PROHIBITIONS:

(g) [ ] HIV TESTING. The Health Department or designee shall test the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. (RCW 70.24.340)

(h) [XX] DNA TESTING. The defendant shall have a blood sample drawn for purpose of DNA identification analysis. The Department of Corrections shall be responsible for obtaining the sample prior to the defendant's release from confinement. (RCW 43.43.754) SEPARATE ORDER ATTACHED

[ ] PURSUANT TO 1993 LAWS OF WASHINGTON, CHAPTER 419, IF OFFENDER IS FOUND TO BE A CRIMINAL ALIEN ELIGIBLE FOR RELEASE AND DEPORTATION BY THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, SUBJECT TO ARREST AND REINCARCERATION IN ACCORDANCE WITH THIS LAW, THEN THE UNDERSIGNED JUDGE AND PROSECUTOR CONSENT TO SUCH RELEASE AND DEPORTATION PRIOR TO THE EXPIRATION OF THE SENTENCE.

EACH VIOLATION OF THIS JUDGMENT AND SENTENCE IS PUNISHABLE BY UP TO 60 DAYS OF CONFINEMENT. (RCW 9.94A.200(2)).

FIREARMS: PURSUANT TO RCW 9.41.040, YOU MAY NOT OWN, USE OR POSSESS ANY FIREARM UNLESS YOUR RIGHT TO DO SO IS RESTORED BY A COURT OF RECORD.

~~ANY DEFENDANT CONVICTED OF A SEX OFFENSE MUST REGISTER WITH THE COUNTY SHERIFF FOR THE COUNTY OF THE DEFENDANT'S RESIDENCE WITHIN 24 HOURS OF DEFENDANT'S RELEASE FROM CUSTODY. RCW 9A.44.130.~~

PURSUANT TO RCW 10.73.090 AND 10.73.100, THE DEFENDANT'S RIGHT TO FILE ANY KIND OF POST SENTENCE CHALLENGE TO THE CONVICTION OR THE SENTENCE MAY BE LIMITED TO ONE YEAR.

Date: Aug. 4, 2000
DATE OF RE-SENTENCING.

JUDGE BRUCE W. COHOE

Presented by:

JOHN M. NEEB
Deputy Prosecuting Attorney
WSB # 21322

Approved as to form:

~~SCOTT SANDOS~~ LES LOUZIN
Lawyer for Defendant
WSB # [illegible]

FILED
DEPT. 14
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AUG 04 2000
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By _____ DEPUTY

jmn

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APPENDIX F Cause No. 96-1-00042-8

The defendant having been sentenced to the Department of Corrections for a:

___ sex offense
✓ serious violent offense Assault 1°
___ assault in the second degree
___ any crime where the defendant or an accomplice was armed with a deadly weapon
___ any felony under 69.50 and 69.52 committed after July 1, 1988 is also sentenced to one (1) year term of community placement on these conditions:

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

___ (I) The offender shall remain within, or outside of, a specified geographical boundary: _____

___ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____

___ (III) The offender shall participate in crime-related treatment or counseling services;

___ (IV) The offender shall not consume alcohol;

___ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

___ (VI) The offender shall comply with any crime-related prohibitions.

___ (VII) Other: _____

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FINGERPRINTS

Right Hand
Fingerprint(s) of: RONALD ARMON HALL, Cause #96-1-00042-8

Attested by: Ted Rutt, CLERK.
By: DEPUTY CLERK Pamela J. Smith Date: 8/4/00

CERTIFICATE

OFFENDER IDENTIFICATION

I, _____
Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: _____

_____
CLERK

By: _____
DEPUTY CLERK

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DEPT. 14
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AUG 04 2000
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By _____ DEPUTY

State I.D. #WA10014543

Date of Birth 08/11/47

Sex MALE

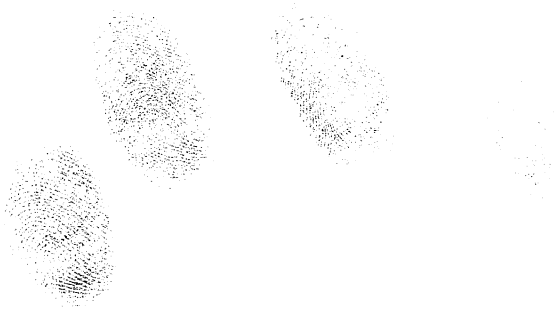
Race WHITE

ORI _____

OCA _____

OIN _____

DOA _____



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. RONALD ARMON HALL, Defendant.	CAUSE NO. 96-1-00042-8 ADVICE OF COLLATERAL ATTACK TIME LIMIT AUG 04 2000

Pursuant to RCW 10.73.110, you are hereby advised of the following time limit regarding collateral attack:

RCW 10.73.090:

(1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

(2) For the purposes of this section, "collateral attack" means any form of post conviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

(a) The date it is filed with the clerk of the trial court;

(b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction; or

(c) The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal. The filing of a motion to reconsider denial of certiorari does not prevent a judgment from becoming final.

RCW 10.73.100

The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

(1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;

(2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;

(3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, Section 9 of the State Constitution;

(4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;

(5) The sentence imposed was in excess of the court's jurisdiction; or

(6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

I have been advised of the above time limit regarding collateral attack pursuant to statutes.

RECEIPT ACKNOWLEDGED:

DATE: Aug. 4, 2000
DATE OF RE-SENTENCING.

DEFENDANT: Ronald G. Hall

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798 -7400

002034 781

FILED
DEPT. 14
IN OPEN COURT
AUG 04 2000
Pierce County Clerk
By DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. RONALD ARMON HALL, Defendant.	CAUSE NO. 96-1-00042-8 ORDER FOR BLOOD SAMPLE DRAW FOR DNA IDENTIFICATION ANALYSIS AUG 04 2000

THIS MATTER having come on regularly before the undersigned Judge for sentencing following defendant's conviction for:

[ ] A felony sex offense as defined by RCW 9.94A.030(33), to wit:

_____

and/or

[X] A violent offense as defined by RCW 9.94A.030(38), to wit:

Assault 1°,

which occurred after July 1, 1990.

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Telephone: (253) 798 -7400

96-1-00042-8

Pursuant to RCW 43.43.754, therefore, it is hereby ordered that the defendant submit to a blood draw to be used for DNA identification analysis as follows:

PLACE TO BE TESTED

[ ] (Out-of-Custody) Report immediately to the Pierce County Jail for a blood sample draw; or

[X] (In-Custody DOC) Submit to the blood sample draw by the Department of Corrections.

[ ] (In-Custody PC Jail) Submit to blood sample draw by the Pierce County Jail.

DONE IN OPEN COURT this 4th day of ~~April~~ August, 2000.

DATE OF RE-SENTENCING.

~~[illegible]~~

JUDGE

BRUCE W. COHOE

Presented by:

~~JOHN M.~~ NEEB
Deputy Prosecuting Attorney
WSB# 21322

Approved as to form:

~~SCOTT CANDOO~~ LES TOLZIN
Attorney for Defendant
WSB# [illegible]

jmn

FILED
DEPT. 14
IN OPEN COURT
AUG 04 2000
Pierce County Clerk
By DEPUTY

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798 -7400

APPENDIX "D"

Findings of Fact and Conclusions of Law
re: Exceptional Sentence
filed September 25, 2000

FILED
IN COUNTY CLERK'S OFFICE
A.M. SEP 25 2000 P.M.
PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. RONALD ARMON HALL, Defendant.	CAUSE NO. 96-1-00042-8 FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR EXCEPTIONAL SENTENCE

In 1996, this defendant was convicted by a jury of one count of Assault in the First Degree, while armed with a deadly weapon. The court imposed an exceptional sentence of 390 months in prison, 366 months plus 24 months for a deadly weapon sentence enhancement. On appeal, the Court of Appeals, Division II, affirmed the conviction, determined that one of the defendant's prior convictions washed out, struck one of the aggravating factors, affirmed the other two aggravating factors as a basis for an exceptional sentence, and struck the deadly weapon sentence enhancement. The Court of Appeals then remanded for a hearing to determine the defendant's correct offender score and to re-sentence him using the correct standard range, only the remaining two aggravating factors, and no deadly weapon enhancement.

ORIGINAL

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930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

Therefore, on August 4, 2000, this matter came on for a re-sentencing hearing before the Honorable Bruce W. Cohoe, Judge of the above entitled court. The State was represented by Deputy Prosecuting Attorney John M. Neeb, and the defendant, RONALD ARMON HALL, was present and represented by his attorney, Leslie Tolzin. The court heard the arguments of counsel regarding the offender score and appropriate length sentence and heard allocution from the defendant.

Now, deeming itself fully advised in this matter, the court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

I.

The defendant was found guilty by a jury of one count of Assault in the First Degree, a serious violent offense classified as a Level XII offense; the jury also returned a special verdict that the defendant was armed with a deadly weapon at the time of the offense. The Court of Appeals affirmed the defendant's conviction but ruled that the special verdict could not stand.

FILED
IN COUNTY CLERK'S OFFICE
A.M. SEP 25 2000 P.M.
PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

II.

Based on the certified copies filed by the State, the defendant has three prior felony convictions, all from Lewis County: TMVOP (1965), UPCS (1979), and two counts of Extortion in the First Degree (1981). The defendant also has three prior misdemeanor convictions, all from Pierce County: Display Weapon (1989), Assault 4 (1991), and Assault 4 (1992).

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III.

Under the washout provision of the SRA, RCW 9.94A.360(2), defendant's 1965 TMVOP washes out. The defendant's remaining three felony convictions count in his offender score. The extortion convictions do not wash because they are Class B felonies and the defendant did not stay crime free for ten years from his release from prison; as violent offenses, each counts as two points, but they merge because they were sentenced prior to July of 1986 and served concurrently. The UPCS conviction does not wash because the defendant never went five years without some intervening criminal activity; that conviction counts as one point, but that point merges with the extortion points because the defendant served his sentences for both cases concurrently. Therefore, the defendant has an offender score of 2 and a standard range of 111 to 147 months imprisonment.

IV.

The court finds that there are two aggravating factors in this case that justify an exceptional sentence above the standard range; those factors are set out in Findings of Fact V, and VI.

V.

The defendant manifested deliberate cruelty to his victim. The court has never seen a beating this cruel in over thirty years of practice, including ten on the bench. But for the remarkable skill of the medical personnel, the victim would have died. The defendant's cruelty is evidenced by the duration of the assault (thirty minutes), the multiplicity of the injuries and their locations (head, face, ribs, lower

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930 Tacoma Avenue South, Room 946
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back, buttocks), the severity of the injuries that the defendant inflicted, and the fact that the defendant made his victim clean herself up and wait for almost thirty more minutes before being taken for medical attention.

VI.

The defendant inflicted multiple injuries on his victim. During this assault, the defendant hit his victim multiple times in her face and head with his fist, his feet (wearing boots), and the butt of a rifle. Both her eyes were swollen shut. Parts of her face were literally broken free from her skull. The defendant kicked his victim in the ribs, breaking several ribs and causing a punctured lung that had to be surgically reinflated. The defendant also kicked his victim in the lower back and buttocks region multiple times, causing extensive bruising. During the assault, the defendant used these kicks to make his victim stay on the ground in front of him so he could continue the assault.

VII.

Each of the above two aggravating factors, if standing alone, supports the imposition of an exceptional sentence.

VIII.

Based on the defendant's conduct in this case and his criminal history, the appropriate length sentence for the defendant is 366 months in prison.

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930 Tacoma Avenue South, Room 946
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From the foregoing Findings of Fact, the court hereby makes the following Conclusions of Law:

CONCLUSIONS OF LAW

I.

There are substantial and compelling reasons justifying an exceptional sentence outside the standard range.

II.

The defendant RONALD ARMON HALL, should be incarcerated in the Department of Corrections for a determinate period of 366 months, with credit for 1660 days already served as of August 4, 2000.

ORAL RULING GIVEN
~~DONE~~ IN OPEN COURT this 4th day of August, 2000.
FFCL SIGNED this 22nd day of ~~August~~ September, 2000.

JUDGE

Presented by:

John M. Neeb
Deputy Prosecuting Attorney
WSB # 21322

FILED
IN COUNTY CLERK'S OFFICE
A.M. SEP 25 2000 P.M.
PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

Approved as to Form only:
Appearance waived at presentment;

Leslie Tolzin
Attorney for Defendant
WSB # 20177

Office of Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

APPENDIX "E"

State v. Hall
Court of Appeals Opinion No. 26358-1-II
filed May 17, 2002

STATE OF WASHINGTON, Respondent, v. RONALD ARMON HALL, Appellant.

No. 26358-1-II

COURT OF APPEALS OF WASHINGTON, DIVISION TWO

2002 Wash. App. LEXIS 1063

May 17, 2002, Filed

NOTICE: [*1] RULES OF THE WASHINGTON COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE WASHINGTON RULES OF COURT.

PRIOR HISTORY: Appeal from Superior Court of Pierce County. Docket No: 96-1-00042-8. Date filed: 08/04/2000. Judge signing: Hon. Bruce W. Cohoe.

Reported in Table Case Format at: 2002 Wash. App. LEXIS 1762. State v. Hall, 111 Wn. App. 1041, 2002 Wash. App. LEXIS 1762 (2002)

DISPOSITION: Sentence vacated and remanded.

LexisNexis(R) Headnotes

COUNSEL: For Appellant(s): Rita J. Griffith, Attorney At Law, Seattle, WA, Kevin R. Cole, Attorney At Law, Seattle, WA.

For Respondent(s): John C. Hillman, Pierce Co. Deputy Pros. Atty., Tacoma, WA.

JUDGES: Authored by Elaine M. Houghton. Concurring: J. Dean Morgan, Karen G. Seinfeld.

OPINIONBY: Elaine M. Houghton

OPINION:

HOUGHTON, J. -- Ronald Armon Hall appeals the imposition of an exceptional sentence on various grounds. Because we agree that his offender score was incorrectly calculated, we vacate the sentence and remand for re-sentencing.

FACTS

A jury convicted Hall of first degree assault and found by special verdict that he was armed with a deadly weapon. The trial court imposed an exceptional sentence of 366 months and an additional 24-month deadly weapon enhancement for a total of 390 months confinement. The trial court erroneously calculated Hall's offender score as 4 with a [*2] standard range of 129 to 171 months. n1 Hall appealed and in an unpublished opinion, *State v. Hall*, 96 Wn.App. 1051 (1999), *review denied*, 139 Wn.2d 1019, 994 P.2d 848 (2000), we affirmed the conviction. We also vacated the sentence based on an erroneously imposed deadly weapon enhancement and a miscalculated offender score. We then remanded the matter to the trial court for re-sentencing.

n1 Hall's criminal history includes three felony convictions out of Lewis County: TMVWOP (1965), UPCS (1979), and two counts of first degree extortion (1981); plus three misdemeanor convictions out of Pierce County: display of a weapon (1989), fourth degree assault (1991), and fourth degree assault (1992). First degree extortion is a class B felony. RCW 9A.56.120(2).

At re-sentencing, Hall and the prosecutor calculated an offender score of 2, resulting in a standard range sentence of 111 to 147 months. The trial court agreed. Hall argued for a sentence at the [*3] high end of the standard range of 147 months, and the prosecutor argued for an exceptional sentence of 390 months. The trial court then imposed the same exceptional sentence of 366 months (original sentence without a deadly weapon enhancement). The trial court found that there were two aggravating factors for imposing an exceptional sentence: deliberate cruelty to the victim (finding of fact V) and infliction of multiple injuries to the victim (finding of fact VI).

Hall appeals his sentence.

ANALYSIS

Pro Se Issues

1. Offender Score Calculation

Hall raises two issues pro se. One of them is persuasive.

Hall first contends that the trial court miscalculated his offender score. He asserts that his prior felony convictions should have washed out under RCW 9.94A.360(2) n2 and our state Supreme Court's interpretation of that provision in State v. Cruz, 139 Wn.2d 186, 985 P.2d 384 (1999). He claims that his offender score was zero with a standard range of 93 to 123 months, and as such, his 366-month exceptional sentence was clearly excessive. n3

n2 The 1995 (and current) version of RCW 9.94A.360(2) provides in pertinent part:

Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction. [*4]

n3 A trial court may impose an exceptional sentence outside the standard range if it finds substantial and compelling reasons to support it, and it enters written findings and conclusions to that effect. RCW 9.94A.120(2), (3); *State v. Gore*, 143 Wn.2d 288, 315, 21 P.3d 262 (2001). We will only reverse the trial court's imposition of an exceptional sentence when (1) there is insufficient evidence in the record to support the reasons for imposing the exceptional sentence, under a clearly erroneous standard; (2) an exceptional sentence is not justified by the reasons as a matter of law; or (3) an exceptional sentence is clearly excessive under an abuse of discretion standard. RCW 9.94A.210(4); *Gore*, 143 Wn.2d at 315.

The State concedes that Hall's offender score was incorrectly calculated. n4 Our Supreme Court's recent holding in *State v. Smith*, 144 Wn.2d 665, 674-75, 30 P.3d 1245, 39 P.3d 294 (2001) leads us to agree. In *Smith*, the court held that the sentencing court cannot revive [*5] an offender's previously washed-out juvenile adjudications in calculating his offender score. *Smith*, 144 Wn.2d at 674-75. Hall is similarly situated.

n4 At oral argument, for the first time, the State argued that Hall waived his right to assign error to the offender score calculation because he agreed that it was 2. The State cites In re the Personal Restraint Petition of Connick, 144 Wn.2d 442, 28 P.3d 729 (2001), and State v. Nitsch, 100 Wn.App. 512, 997 P.2d 1000, review denied, 141 Wn.2d 1030 (2000), as support. These cases hold that a defendant may waive assigning error to an agreed upon incorrect calculation. But neither Connick nor Nitsch involved a calculation that was correct at the time of sentencing based on case law that was later overruled. Thus, these cases are distinguishable and we decline to find waiver here.

Here, Hall was convicted of first degree extortion, a class B felony, in 1981, and was released [*6] from prison in May 1985. He was convicted of the offense at issue here in 1996. Before July 1995, RCW 9.94A.360(2) provided that class B felony convictions do not count in a defendant's offender score if the defendant has not committed a felony for 10 consecutive years after release from confinement. Thus, if the trial court had applied the pre-1995 amendment as Smith required, n5 all of Hall's previous felony convictions would have washed out because there were more than 10 consecutive years between Hall's release (May 1985) and his current felonious offense (January 1996). Using the correct calculation leads to Hall's offender score being counted as zero.

n5 We recognize that when the trial court re-sentenced Hall, it did not have the benefit of the Court's analysis in Smith. Instead, the trial court followed our opinion in State v. Hendricks, 103 Wn.App. 728, 14 P.3d 811 (2000), which Smith overruled. Smith, 144 Wn.2d at 675.

[*7]

The remedy when a trial court miscalculates the defendant's offender score before imposing an exceptional sentence is remand to the trial court for a correct calculation and re-sentencing. That is, we will remand a case for a correct calculation of the offender score and re-sentencing unless the record clearly

indicates that the trial court would have imposed the same sentence, regardless of the miscalculated offender score. State v. Parker, 132 Wn.2d 182, 189, 937 P.2d 575 (1997). We cannot conclude so here.

At re-sentencing, the trial court found that: "Based on the defendant's conduct in this case and his criminal history, the appropriate length sentence for the defendant is 366 months in prison." Clerk's Papers at 55 (emphasis added) (finding of fact VIII). Because the trial court included both the aggravating factors and Hall's criminal history (i.e., his offender score) in its finding, we cannot tell whether the trial court imposed the exceptional sentence, at least in part, on its determination of the offender score. Therefore, the appropriate remedy is vacation of the sentence and remand for re-sentencing using the correct offender score. n6

n6 Because we vacate the sentence, we address only those issues pertinent on remand.

[*8]

2. Mitigation Evidence

Hall further contends pro se that the trial court erred in not allowing him to present mitigation evidence regarding the finding of deliberate cruelty. Hall's argument fails.

We previously reviewed this contention in Hall's first appeal and held that substantial evidence supports the trial court's decision to impose an exceptional sentence based on deliberate cruelty. (Hall beat the victim for approximately 30 minutes; hit the victim numerous times in the face and head with his fist; kicked her in the head, face, body, and buttocks with his boots; forced the victim to stay on the ground in front of him so he could continue the beating; and made the victim clean herself up and waited an additional 30 minutes before allowing her to seek medical help).

Hall asserts that the trial court denied him the opportunity to introduce mitigating evidence to counter by finding deliberate cruelty by having the victim present at the re-sentencing. n7 The trial court noted the victim's absence, but declined to allow Hall to require her presence. The trial court correctly decided that Hall did not have a right to demand the victim's presence at the re-sentencing. [*9] WASH. CONST. art. I, § 35 (amend. 84); *State v. Stenson*, 132 Wn.2d 668, 749, 940 P.2d 1239 (1997) (the right to make a victim impact statement at sentencing belongs to the victim, not the defendant), *cert. denied*, 523 U.S. 1008, 140 L. Ed. 2d 323, 118 S. Ct. 1193 (1998).

n7 It is doubtful whether the victim's presence would have made a difference, or whether she would be willing to provide any assistance to Hall. At trial, to help Hall, she contradicted much of what she initially told the police. The trial court doubted that her presence at the re-sentencing would have any favorable effect on Hall's sentence. Report of Proceedings at 37 ("I don't think she would come here today and say anything less than she said before."). In addition, the prosecutor indicated that the last time he spoke with the victim, she was only interested in the return of her boots, which had been admitted as evidence. Finally, unlike the situation at trial, by the time of the re-sentencing, the relationship between Hall and the victim was long over, as evidenced by the fact that Hall was engaged to be married to another woman.

[*10]

Lowered Offender Score

Hall further contends, through counsel, that when a trial court errs in calculating an offender score and imposes an exceptional sentence, on remand, the court must automatically reduce the exceptional sentence. He asserts that the automatic reduction would be the difference between the high end of the standard range associated with the incorrect offender score and the high end of the standard range associated with the correct offender score. He argues that to do otherwise indicates that the trial court impermissibly disagreed with the standard range for the crime the Legislature set. We disagree.

The Sentencing Reform Act of 1981 (SRA) and later case law grant the trial court the discretion to impose an exceptional sentence in some circumstances. RCW 9.94A.120(2), (3); State v. Gore, 143 Wn.2d 288, 315, 21 P.3d 262 (2001). Neither the SRA nor case law supports Hall's claim.

The sentence is vacated and the matter is remanded for resentencing in accordance with this opinion.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed [*11] for public record pursuant to RCW 2.06.040, it is so ordered.

J. Dean Morgan

Karen G. Seinfeld

APPENDIX "F"

Third Judgment and Sentence
filed September 13, 2002

9/17/2002 6653 00003

96-1-00042-8 17284993 JDSWCD 09-16-02

Return to McNeil Island C.C. As soon as possible.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

FILED
DEPT. 14
IN OPEN COURT
SEP 13 2002
Pierce County Clerk
By _____
DEPUTY

STATE OF WASHINGTON, Plaintiff, vs. RONALD ARMON HALL, Defendant.	CAUSE NO. 96-1-00042-8 WARRANT OF COMMITMENT [XX] Dept. of Corrections

SEP 1 2 2002

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[ ] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[XX] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

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

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

76-1-00042-8

[ ] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: Sept. 13, 2002

By direction of the Honorable

JUDGE
BOB SAN SOUCIE

INTERIM CLERK

By: Karen Ladensweg
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date SEP 16 2002 By Karen Ladensweg Deputy

FILED
DEPT. 14
IN OPEN COURT

SEP 13 2002

Pierce County Clerk
By _____
DEPUTY

STATE OF WASHINGTON,)
County of Pierce) ss:

I, Bob San Soucie, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court.
DATED: _____.

BOB SAN SOUCIE, Clerk
By: _____ Deputy

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

96-1-00042-8

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty by jury verdict entered May 7, 1996, of

Count No.: I
Crime: ASSAULT IN THE FIRST DEGREE, Charge Code: (E23/E24)
RCW: 9A.36.011(1)(a) and 9A.36.011(1)(c)
Date of Crime: January 1, 1996
Incident No.: 96-002-0046

[XX] A special verdict for use of a **firearm** was returned on Count I. **THE COURT OF APPEALS REVERSED THAT PORTION OF THE JURY VERDICT.**

[ ] The crime charged in Count(s)_____involve(s) **domestic violence.**

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400): NONE

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): NONE

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	Adult or Juv	Crime Type
TMVOP	08/16/65	LEWIS CO / WA	05/19/65	ADULT	NV
UPCS	01/29/79	LEWIS CO / WA	08/02/78	ADULT	NV
EXTORTION 1 (2x)	09/22/81		LEWIS CO / WA		04/02/81
DISPLAY WEAPON	Unknown		12/17/89	ADULT	M
ASSAULT 4	Unknown		09/24/91	ADULT	GM
ASSAULT 4	Unknown		05/12/92	ADULT	GM

[XX] the court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW

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946 County-City Building
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9.94A.360): **UPCS (1979) and EXTORTION 1 (2x) (1981) - BOTH SENTENCES WERE SERVED CONCURRENTLY PRIOR TO 1986**

2.3 SENTENCING DATA:

Count	Offender Score	Serious Level	Standard Range (w/o enhancement)	Plus Enhancement*	Total Standard Range	Maximum Term
I	0	XII	93 - 123	N/A	93 - 123	LIFE/50,000

2.4 [XX] EXCEPTIONAL SENTENCE: Substantial and compelling reasons exist which justify an exceptional sentence above the standard range for Count I. Findings of Fact and Conclusions of Law are filed separately. The Prosecuting Attorney recommended a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142.

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows: NONE

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [ ]The Court DISMISSES Count(s)_____. [ ] The defendant is found NOT GUILTY of Count(s)_____.

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946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

96-1-00042-8

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court (**Pierce County Clerk, 930 Tacoma Ave #110, Tacoma, WA 98402**):

$ **9,012.14** Restitution to: **DSHS - MEDICAL CASUALTY UNIT RE: KI120259 KRAPF**
P. O. BOX 45561
OLYMPIA WA 98504-5561

$ **100.00** Victim assessment RCW 7.68.035

$ WAIVED Court costs

$ **9,112.14** TOTAL RCW 9.94A.145

[X] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010.

[X] All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than $_____ per month commencing _____. RCW 9.94A.145.

[ ] In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145.

[ ] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

[X] The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

4.2 [ ] HIV TESTING. The health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

[XX] **DNA TESTING.** The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

SEPARATE ORDER ATTACHED

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

4.3 The defendant shall not have contact with _____ _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).
[ ] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.4 **OTHER:** _____

_____

4.4(a) Bond is hereby exonerated.

4.5 **CONFINEMENT OVER ONE YEAR:** The defendant is sentenced as follows:

(a) CONFINEMENT: RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

366 **months on Count No. I**

Actual number of months of total confinement ordered is 366.

(b) **CONSECUTIVE/CONCURRENT SENTENCES.** RCW 9.94A.400. The sentence herein shall run consecutively to all felony sentences in other cause numbers for which the defendant is currently serving time.

Confinement shall commence immediately

(c) The defendant shall receive credit for 2430 days served (Date of arrest through September 12, 2002).

4.6 **[XX] COMMUNITY PLACEMENT** (pre 7/1/00 offenses) is ordered as follows:

24 MONTHS ON COUNT I

or for the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.120 for community placement -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense.

While on community placement, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled

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substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement.

[XX] The defendant shall not consume any alcohol.
[ ] Defendant shall have no contact with: _____
[ ] Defendant shall remain [ ] within [ ] outside of a specified geographical boundary, to-wit: _____

_____

[ ] The defendant shall participate in the following crime-related treatment or counseling services: _____

_____

[ ] The defendant shall undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse [ ] mental health [ ] anger management and fully comply with all recommended treatment.

[XX] The defendant shall comply with crime-related prohibitions AS SET BY DEPARTMENT OF CORRECTIONS COMMUNITY CORRECTIONS OFFICER

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

_____

4.7 [ ] **WORK ETHIC CAMP. DOES NOT APPLY.**

4.8 **OFF LIMITS ORDER** (known drug trafficker) **DOES NOT APPLY**

V. NOTICES AND SIGNATURES

5.1. **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless

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the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.145 and RCW 9.94A.120(13).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030.

5.4. **RESTITUTION HEARING. ALREADY ADDRESSED ABOVE**

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200.

5.6 **FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record.** (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047.

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION. DOES NOT APPLY**

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96-1-00042-8

5.8 **OTHER:** _____

JUDGMENT AND SENTENCE ENTERED AND SIGNED IN OPEN COURT IN THE PRESENCE OF THE DEFENDANT THIS DATE: Sept. 13, 2002.

9-13-02

JUDGE BRUCE W. COHOE

JOHN M. NEEB
Deputy Prosecuting Attorney
WSB # 21322

LESLIE TOLZIN
Attorney for Defendant
WSB# 20172

RONALD ARMON HALL
Defendant

FILED
DEPT. 14
IN OPEN COURT
SEP 13 2002
Pierce County Clerk
By _____
DEPUTY

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Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

96-1-00042-8

CERTIFICATE OF INTERPRETER

Interpreter signature/Print name: _____

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

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 96-1-00042-8

I, Bob San Soucie, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the judgment and sentence in the above-entitled action now on record in this office.

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

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No.: WA10014543 (If no SID take fingerprint card for WSP)

Date of Birth: 08/11/1947

FBI No. 600159FA1

Local ID No. _____

PCN No. _____

Other _____

Alias name, SSN, DOB: _____

Race:

[ ] Asian/Pacific Islander
[ ] Black/African-American
[XX] Caucasian
[ ] Native American
[ ] Other: _____

Ethnicity:

[ ] Hispanic
[XX] Non-Hispanic

Sex:

[XX] Male
[ ] Female

FILED
DEPT. 14
IN OPEN COURT
SEP 13 2002
Pierce County Clerk
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DEPUTY

jmn

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APPENDIX F Cau No. 96-1-00042-8

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SEP 13 2002
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By
DEPUTY

The defendant having been sentenced to the Department of Corrections for

✓ sex offense
✓ serious violent offense ASSAULT 1°
____ assault in the second degree
____ any crime where the defendant or an accomplice was armed with a deadly weapon
____ any felony under 69.50 and 69.52 committed after July 1, 1988 is also sentenced to one (1) year term of community placement on these conditions:

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

____ (I) The offender shall remain within, or outside of, a specified geographical boundary: _____

____ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____

____ (III) The offender shall participate in crime-related treatment or counseling services;

✓ (IV) The offender shall not consume alcohol;

____ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

✓ (VI) The offender shall comply with any crime-related prohibitions. SET by CCO.

____ (VII) Other: _____

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FILED
DEPT. 14
IN OPEN COURT
SEP 13 2002
Pierce County Clerk
By _____
DEPUTY

96-1-00042-8

FINGERPRINTS

Right four fingers taken simultaneously | RIGHT THUMB.

Left four fingers taken simultaneously | Left thumb

I attest that I saw the same defendant who appeared in Court on this Document affix his or her fingerprints and signature thereto. Clerk of the Court, BOB SAN SOUCIE:

Joanne Martin, Deputy Clerk.

Dated: Sept 13, 2002

DEFENDANT'S SIGNATURE: _____

RONALD ARMON HALL

DEFENDANT'S ADDRESS: _____

_____

DEFENDANT'S PHONE#: _____

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APPENDIX "G"

Findings of Fact and Conclusions of Law
re: Exceptional Sentence
filed September 13, 2002

96-1-00042-8 17293523 FNFCL 09-17-02

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. RONALD ARMON HALL, Defendant.	CAUSE NO. 96-1-00042-8 FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR EXCEPTIONAL SENTENCE SEP 16 2002

In 1996, this defendant was convicted by a jury of one count of Assault in the First Degree, while armed with a deadly weapon. The court imposed an exceptional sentence of 390 months in prison, 366 months plus 24 months for a deadly weapon sentence enhancement. On appeal, the Court of Appeals, Division II, affirmed the conviction, determined that one of the defendant's prior convictions washed out, struck one of the aggravating factors, affirmed the other two aggravating factors as a basis for an exceptional sentence, and struck the deadly weapon sentence enhancement. The Court of Appeals then remanded for a hearing to determine the defendant's correct offender score and to re-sentence him using the correct standard range, the remaining two aggravating factors, and no deadly weapon enhancement.

On August 4, 2000, this matter came on for a re-sentencing hearing before the Honorable Bruce W. Cohoe, Judge of the above entitled court. At that hearing, the court determined the defendant's

ORIGINAL

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offender score was 2 and imposed 366 months. On appeal, the Court of Appeals determined the defendant's offender score was incorrect and should have been 0 and remanded again.

Therefore, on September 13, 2002, this matter came on for another re-sentencing hearing. The State was represented by Deputy Prosecuting Attorney John M. Neeb, and the defendant, RONALD ARMON HALL, was present and represented by his attorney, Leslie Tolzin. The court heard arguments of counsel regarding the appropriate sentence sentence and heard allocution from the defendant.

Now, deeming itself fully advised in this matter, the court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

I.

In 1996, a jury found the defendant guilty of one count of Assault in the First Degree. Assault in the First Degree is a serious violent offense classified as a Level XII offense under the SRA. The jury also returned a special verdict that the defendant was armed with a deadly weapon at the time of the offense. The Court of Appeals affirmed the defendant's conviction but ruled that the special verdict could not stand.

II.

The State has previously filed certified copies of the defendant's three prior felony convictions, all from Lewis County: TMVOP (1965), UPCS (1979), and two counts of Extortion in the First Degree (1981). The defendant also has three prior misdemeanor convictions, all from Pierce County: Display Weapon (1989), Assault 4 (1991), and Assault 4 (1992).

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III.

Under the washout provision of the SRA, the defendant's 1965 TMVOP, his 1979 UPCS, and his 1981 Extortion 1 (2 counts) all wash out. (See RCW 9.94A.360(2); State v. Smith, 144 Wn.2d 665 (2001).) Therefore, the defendant has an offender score of zero (0) and a standard range of 93 to 123 months imprisonment. (See State v. Hall, 2002 Wash. App. LEXIS 1063).

IV.

The court finds that there are two aggravating factors in this case that justify an exceptional sentence above the standard range; those factors are set out in Findings of Fact V, and VI. Both of these aggravating factors were upheld by the Court of Appeals during the defendant's direct appeal.

V.

The defendant manifested deliberate cruelty to his victim. The court has never seen a beating this cruel in over thirty years of practice, including ten on the bench. But for the remarkable skill of the medical personnel, the victim would have died. The defendant's cruelty is evidenced by the duration of the assault (thirty minutes), the multiplicity of the injuries and their locations (head, face, ribs, lower back, buttocks), the severity of the injuries that the defendant inflicted, and the fact that the defendant made his victim clean herself up and wait for almost thirty more minutes before being taken for medical attention.

VI.

The defendant inflicted multiple injuries on his victim. During this assault, the defendant hit his victim multiple times in her face and head with his fist, his feet (wearing boots), and the butt of a rifle. Both her eyes were swollen shut. Parts of her face were literally broken free from her skull. The

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defendant kicked his victim in the ribs, breaking several ribs and causing a punctured lung that had to be surgically reinflated. The defendant also kicked his victim in the lower back and buttocks region multiple times, causing extensive bruising. During the assault, the defendant used these kicks to make his victim stay on the ground in front of him so he could continue the assault.

VII.

Each of the above two aggravating factors, if standing alone, supports the imposition of an exceptional sentence.

VIII.

Based on the defendant's conduct in this case, the appropriate length sentence for the defendant is 366 months in prison.

IX.

This court would impose the same length sentence irrespective of the defendant's criminal history or offender score. This court would impose the same sentence if only one of the above aggravating circumstances existed. The sentence of 366 months is the appropriate length sentence for what the defendant did to his victim in this case.

From the foregoing Findings of Fact, the court hereby makes the following Conclusions of Law:

CONCLUSIONS OF LAW

I.

There are substantial and compelling reasons justifying an exceptional sentence above the standard range.

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96-1-00042-8

II.

The defendant RONALD ARMON HALL, should be incarcerated in the Department of Corrections for a determinate period of 366 months, with credit for 2430 days served as of September 12, 2002.

DONE IN OPEN COURT this 13th day of September, 2002.

FILED
DEPT. 14
IN OPEN COURT

SEP 13 2002

Pierce County Clerk
By _____ DEPUTY

BRUCE W. COHOE, JUDGE

Presented by:

JOHN M. NEEB
Deputy Prosecuting Attorney
WSB # 21322

Approved as to form:

LESLIE TOLZIN
Attorney for Defendant
WSB #20[illegible]

Office of Prosecuting Attorney
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Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

APPENDIX "H"

State v. Hall
Court of Appeals Opinion 29384-6-II
filed September 16, 2003

STATE OF WASHINGTON, Respondent, v. RONALD ARMON HALL, Appellant.

No. 29384-6-II

COURT OF APPEALS OF WASHINGTON, DIVISION TWO

2003 Wash. App. LEXIS 2076

September 16, 2003, Filed

NOTICE: [*1] RULES OF THE WASHINGTON COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE WASHINGTON RULES OF COURT.

PRIOR HISTORY: Appeal from Superior Court of Pierce County. Docket No: 96-1-00042-8. Date filed: 09/13/2002. Primerica Life Ins. Co. v. Madison, 114 Wn. App. 364, 57 P.3d 1174, 2002 Wash. App. LEXIS 2876 (2002)

DISPOSITION: Affirmed.

LexisNexis(R) Headnotes

COUNSEL: For Appellant(s): Rita Joan Griffith, Attorney at Law, Seattle, WA.

For Respondent(s): Kathleen Proctor, Pierce County Prosecuting Atty Ofc, Tacoma, WA.

JUDGES: Authored by Elaine Houghton. Concurring: David H Armstrong, J Robin Hunt.

OPINIONBY: Elaine HOUGHTON

OPINION:

HOUGHTON, J. - Ronald Armon Hall appeals the trial court's decision at his second resentencing to again impose an exceptional sentence of 366 months despite the elimination of a factor used to justify that sentence at Hall's first resentencing. We affirm.

Facts

In 1996, a jury convicted Hall of first degree assault while armed with a deadly weapon. The court imposed an exceptional sentence of 390 months in prison based on the presence of three aggravating factors: deliberate cruelty, multiple injuries, and severity of the injuries. *State v. Hall*, noted at 96 Wn. App. 1051, [published in full-text format at 1999 Wash. App. LEXIS 1364, at *5] (1999), *review denied*, 139 Wn.2d 1019, 994 P.2d 848 (2000). The trial court [*2] determined that Hall's offender score was 4 with a standard range of 129 to 171 months. Clerk's Papers (CP) at 3; *State v. Hall*, noted at 111 Wn. App. 1041, [published in full-text format at 2002 Wash. App. LEXIS 1063] (2002). We affirmed the conviction, determined that one of Hall's prior convictions washed out, struck the aggravating factor of especially severe injuries, and struck the deadly weapon enhancement. *Hall*, 96 Wn. App. 1051 (1999). We then remanded for a hearing to determine Hall's correct offender score and to resentence him using the correct standard range, the remaining two aggravating factors, and no deadly weapon enhancement. As our opinion stated, "We must remand for resentencing in accordance with the law, leaving the length of the sentence to the trial court's discretion." *Hall*, at *16 (1999).

At the resentencing hearing on August 4, 2000, the trial court agreed with the parties that Hall's offender score was 2, resulting in a standard range sentence of 111 to 147 months. CP at 4, *Hall*, at *2 (2002). The court imposed the same exceptional sentence of 366 months (original sentence without a deadly weapon enhancement). CP at 4, *Hall*, at *2 [*3] (2002). The trial court cited the aggravating factors of deliberate cruelty and multiple injuries in imposing the exceptional sentence, but added in a separate finding that "'[b]ased on the defendant's conduct in this case *and his criminal history*, the appropriate length sentence for the defendant is 366 months in prison.'" CP at 6, *Hall*, at *7 (2002).

On appeal, we determined that Hall's offender score was zero and again remanded because we could not determine whether the trial court would have imposed the same sentence regardless of the miscalculated offender score. CP at 3, *Hall*, 111 Wn. App. 1041 (2002). "Because the trial court included both the aggravating factors and Hall's criminal history (i.e., his offender score) in its finding, we cannot tell whether the trial court imposed the exceptional sentence, at least in

part, on its determination of the offender score. Therefore, the appropriate remedy is vacation of the sentence and remand for re-sentencing using the correct offender score." CP at 6, *Hall*, at *7 (2002). In so ruling, we rejected Hall's contention that an automatic reduction of his exceptional sentence was required [*4] by the reduction of his offender score and standard range sentence. CP at 7-8, *Hall*, at *10 (2002).

At the second resentencing hearing on September 13, 2002, the trial court imposed the same exceptional sentence of 366 months based on the aggravating factors of deliberate cruelty and multiple injuries, noting that we had upheld both factors on appeal. The trial court observed that it did not intend to base Hall's sentence in any particular way on his offender score. "This was without any question, Mr. Hall, a terrible beating. You know that and I know that. And I felt that the sentence that was imposed initially less the enhancement was the appropriate sentence then and I think that is the appropriate sentence now." Report of Proceedings at 19. The court entered the following pertinent findings of fact in support of the 366-month sentence:

> V.
>
> The defendant manifested deliberate cruelty to his victim. The court has never seen a beating this cruel in over thirty years of practice, including ten on the bench. But for the remarkable skill of the medical personnel, the victim would have died. The defendant's cruelty is evidenced by the duration of the assault (thirty [*5] minutes), the multiplicity of the injuries and their locations (head, face, ribs, lower back, buttocks), the severity of the injuries that the defendant inflicted, and the fact that the defendant made his victim clean herself up and wait for almost thirty more minutes before being taken for medical attention.
>
> VI.
>
> The defendant inflicted multiple injuries on his victim. During this assault, the defendant hit his victim multiple times in her face and head with his fist, his feet (wearing boots), and the butt of a rifle. Both her eyes were swollen shut. Parts of her face were literally broken free from her skull. The defendant kicked his victim in the ribs, breaking several ribs and causing a punctured lung that had to be surgically reinflated. The defendant also kicked his victim in the lower back and buttocks region multiple times, causing extensive bruising. During the assault, the defendant used these kicks to make his victim stay on the ground in front of him so he could continue the assault.
>
> . . . .
>
> IX.
>
> This court would impose the same length sentence irrespective of the defendant's criminal history or offender score. This court would impose the same sentence if only one of [*6] the above aggravating circumstances existed. The sentence of 366 months is the appropriate length sentence for what the defendant did to his victim in this case.

CP at 27-28. Hall now appeals his sentence.

ANALYSIS

I. Abuse of Discretion

Hall argues initially that the trial court abused its discretion in failing to consider his lower standard range and zero offender score on remand when it had expressly relied on his criminal history in imposing his prior sentences.

As support, he cites the following statement from *State v. Parker*, 132 Wn.2d 182, 187, 937 P.2d 575 (1997): "[W]hen imposing an exceptional sentence the court must first consider the presumptive punishment as legislatively determined for an ordinary commission of the crime before it may adjust it up or down to account for the compelling nature of the aggravating or mitigating circumstances of the particular case." The *Parker* court added that when the sentencing court incorrectly calculates the standard range before imposing an exceptional sentence, remand is the remedy unless the record clearly indicates the sentencing court would have imposed the same sentence anyway. 132 Wn.2d at 189. [*7]

Here, we remanded for resentencing because it was unclear whether the trial court would have imposed the same sentence regardless of its incorrect calculation of the standard range. Although the trial court relied primarily on the aggravating factors of deliberate cruelty and multiple injuries in the initial resentencing, it stated in an additional finding that Hall's conduct and his criminal history justified the 366-month exceptional sentence.

At the second resentencing, the trial court explained that Hall's conduct, and not his offender score, was the basis for the exceptional sentence and reaffirmed that 366-month sentence. This result was well within the

parameters we outlined in ordering a remand; we ordered that remand because the court's basis for the exceptional sentence was unclear. Moreover, we expressly rejected Hall's contention that an automatic reduction of his exceptional sentence was required because of the reduction of his standard range sentence.

It is well established that a trial court can impose the same exceptional sentence on remand even after some of the original aggravating factors have failed to withstand review. *See State v. Smith*, 123 Wn.2d 51, 58, 864 P.2d 1371 (1993) [*8] (remanding to see whether trial court would impose same exceptional sentence after two of four aggravating factors found invalid). We see little difference between such a situation and the circumstances presented here. Moreover, we have already affirmed the two aggravating factors cited as the primary support for the 366-month sentence. We see no abuse of discretion in the trial court's clarification, on remand, that it imposed the 366-month exceptional sentence because of Hall's deliberate cruelty and the multiple injuries he inflicted. n1

n1 Hall disputes the State's contention that a defendant's prior history of unscored convictions can support an exceptional sentence. *See State v. Ratliff*, 46 Wn. App. 325, 332, 730 P.2d 716 (1986), *review denied*, 108 Wn.2d 1002 (1987). Because the trial court did not rely on such support in resentencing Hall, we do not reach address this contention.

II. Due Process

Hall also contends that the trial court's decision to impose the same exceptional [*9] sentence on remand was vindictive and violated his due process rights.

The federal due process clause prohibits increased sentences motivated by a judge's vindictive retaliation after reconviction following a successful appeal. *State v. Franklin*, 56 Wn. App. 915, 920, 786 P.2d 795 (1989) (citing *North Carolina v. Pearce*, 395 U.S. 711, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969)), *review denied*, 114 Wn.2d 1004, 788 P.2d 1078 (1990). A more severe sentence under such circumstances establishes a rebuttable presumption of vindictiveness. *Franklin*, 56 Wn. App. at 920.

The *Franklin* court found no such presumption because the defendant's sentence was not increased following his reconviction. In *Franklin*, the trial court originally imposed concurrent sentences at the high end of the standard ranges for the defendant's robbery and attempted murder convictions: 144 months for the robbery and 411 months for the attempted murder. 56 Wn. App. at 917. On appeal, the convictions were affirmed but the case was remanded for resentencing because of a miscalculated offender score. Upon remand, the standard range for the attempted [*10] murder was adjusted downward by approximately 90 months. The court reimposed the original sentence for the robbery and imposed an exceptional sentence of 411 months for the attempted murder, citing the aggravating factors of deliberate cruelty and multiple injuries to the victim. *Franklin*, 56 Wn. App. at 918.

Division Three rejected the defendant's argument that the trial court violated his due process rights by using previously rejected aggravating factors to impose an exceptional sentence on remand. The court found it apparent that the trial court regarded the multiple stabbings to be the significant factor in fixing and maintaining the sentence at 411 months. *Franklin*, 56 Wn. App. at 920.

Similarly, Division One failed to find vindictiveness in the court's reimposition of the same sentence despite a change in the offender score in *State v. Barberio*, 66 Wn. App. 902, 833 P.2d 459 (1992), *affirmed*, 121 Wn.2d 48, 846 P.2d 519 (1993). In *Barberio*, the trial court originally sentenced the defendant to exceptional concurrent sentences of 72 months for second degree rape and 28 months for third degree rape. 66 Wn. App. at 904. [*11] Although the court used a mathematical formula to determine the exceptional sentence for the third degree rape, it did not use such a formula to determine the second degree rape sentence, instead imposing a sentence close to the statutory maximum because of several aggravating factors. *Barberio*, 66 Wn. App. at 904. After Division One reversed the third degree rape conviction, the case was returned to the trial court for resentencing on the remaining conviction. Despite the reduction in the offender score and standard range resulting from the reversed conviction, the trial court imposed the same exceptional sentence of 72 months. *Barberio*, 66 Wn. App. at 905.

Division One cited *Franklin* in upholding that sentence, observing that while evidence of vindictiveness might be present where the trial court refused to follow a mathematical formula used in the first sentencing, no such formula had been employed in sentencing the defendant on the second degree rape charge. *Barberio*, 66 Wn. App. at 907-08. "[A]n appellate court will not find an abuse of discretion simply because a trial court, after consideration of valid aggravating factors, [*12] reimposes the same sentence after a change in the offender score." *Barberio*, 66 Wn. App. at 908.

We are not aware of how the trial court initially arrived at the 366-month figure; it was not twice the high end of the standard range. *See Barberio*, 66 Wn. App. at

907 (formula used where sentence was two times the upper end of the standard range). It is clear, however, that the trial court did not rely on any such formula in adhering to the 366-month figure at Hall's first resentencing. Rather, it reimposed that sentence based on the aggravating factors that survived appellate review. When the court once again imposed an exceptional sentence of 366 months at Hall's second resentencing, it did not abandon a previous formula but adhered to those aggravating factors. We see no evidence of vindictiveness in the trial court's imposition of the same exceptional sentence based on valid aggravating factors.

We note in this regard that Hall has filed a pro se brief challenging the factual and legal underpinnings of those aggravating factors. We analyzed these factors in Hall's initial appeal, and our decision that they are valid is now the law of the case [*13] and no longer subject to review. *See State v. Taylor*, 111 Wn. App. 519, 527, 45 P.3d 1112 (2002) (court will not revisit findings in support of exceptional sentence that have already withstood appellate scrutiny), *review denied*, 148 Wn.2d 1005, 60 P.3d 1212 (2003).

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Houghton, J.

We concur:

Armstrong, J.

Hunt, C.J.

APPENDIX "I"

State v. Hall, 151 Wn.2d 1022, 91 P.3d 94
Filed May 4, 2004

STATE OF WASHINGTON, Respondent, v. RONALD ARMON HALL, Petitioner.

NO. 74623-1

SUPREME COURT OF WASHINGTON

151 Wn.2d 1022; 91 P.3d 94; 2004 Wash. LEXIS 339

May 4, 2004, Decided
May 4, 2004, Filed

NOTICE: [*1] DECISION WITHOUT PUBLISHED OPINION

PRIOR HISTORY:

C/A NO. 29384-6-II. 118 Wn. App. 1041. 9/16/03. State v. Hall, 118 Wn. App. 1041, 2003 Wash. App. LEXIS 2876 (2003)

JUDGES: Gerry L. Alexander, CHIEF JUSTICE.

OPINION:

ORDER

Department I of the Court, composed of Chief Justice Alexander and Justices Johnson, Sanders, Bridge and Owens, (Justice Chambers sat for Justice Owens) considered this matter at its May 4, 2004, Motion Calendar, and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 4th day of May, 2004.

For the Court

Gerry L. Alexander

CHIEF JUSTICE

APPENDIX "J"

Report of Proceedings from Trial

COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	
vs.	)	NO. 96-1-00042-8
	)	
RONALD ARMON HALL,	)	
	)	
Defendant,	)	

VERBATIM REPORT OF TRIAL PROCEEDINGS

VOLUME 1 OF 5

PAGES 1 - 64

BE IT REMEMBERED that on the 30th day of April, 1996, the above-captioned cause came on duly for hearing before the HONORABLE BRUCE W. COHOE, Superior Court Judge in and for the County of Pierce, State of Washington; the following proceedings were had, to-wit:

APPEARANCES

FOR THE PLAINTIFF: JOHN M. NEEB
Deputy Prosecuting Attorney

FOR THE DEFENDANT: SCOTT A. CANDOO
Attorney at Law

Reported By:
Dorylee Reyes, CSR, RPR

JOHN W. LADENBURG
NOV 12 1996
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REPORTER'S NOTE: "*" indicates the exhibit was marked pretrial and off the record. (A) indicates exhibit admitted. (D) indicates exhibit denied.

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APRIL 30, 1996

MORNING SESSION

* * * * * * *

(Plaintiff's Exhibits 1-23 were premarked.)

THE COURT: Good morning, ladies and gentlemen. If you will give your attention to the opening statement on behalf of the State.

MR. NEEB: Thank you, Your Honor.

"Happy New Year" is a phrase that normally connotates a celebration, a fresh start, and maybe some resolutions that we put on ourselves for things that we want to change. For Kim Krapf that phrase has an entirely different meaning, because from January the 1st of this year on, Ms. Krapf has had nothing but misery in her life. She was brutally assaulted on the night of January the 1st, 1996, and as a result of that beating intense pain, numerous operations, medical appointments, follow-ups, blurred vision, loss of teeth, and some disfigurement that will be with her for the rest of her life.

On the night of January the 1st, 1996, Kim Krapf was living out in Kapowsin with her boyfriend or even fiance' of three years, the defendant Ronald Hall. That evening an individual named Bob Aaron and another person named April Duckett were over at the trailer where

1 Ms. Krapf and Mr. Hall were living at the time. At some
2 point in that evening there was an argument -- or during
3 the evening April Duckett left, and at some point there was
4 an argument between Ms. Duckett and Mr. Hall about a debt
5 that was owed or something about a motor that somebody owed
6 to the defendant or to Mr. Aaron. And at some point the
7 defendant got angry with Ms. Krapf because she disrespected
8 him. There was an argument and the argument stopped for a
9 bit. It resumed a short time later and the result was that
10 Ms. Hall got the beating that you will hear about and that
11 you will see pictures of.
12 Bob Aaron was there the entire time. Bob Aaron
13 was on the couch when this thing happened, in the same room
14 as it happened. And Ms. Krapf will tell you that the
15 defendant, he started by slapping her with some paper work
16 that he had. Before it was over, he had punched her in the
17 face, kicked her in the head and in the ribs and in the
18 butt numerous times, and had hit her in the head at least
19 once and maybe a couple times with what she thought was the
20 butt of a rifle. He also had a pistol in his hands at the
21 time that he was telling Bob Aaron to stay put, and that
22 while this was going on he was ordering Ms. Krapf to stay
23 down, to stay down on the ground.
24 She will tell you that she was curled up
25 protecting her head and face as much as she could with her

arms. And notwithstanding what she was trying to do, you will see the pictures of the damage that was done even as she tried to protect herself.

After it was over, at some point the defendant ordered her to go get cleaned up. So she got up from where she was on the floor in the trailer that they have. She had to go outside and across a distance into a shop area where there was a bathroom. She could hardly see. Her eyes were so swollen and her face was so swollen that when she left the trailer she had to crawl down the stairs outside.

She got into the shop and she made her way to the bathroom. And she will tell you that one of the things that she can most vividly remember about this was that she tried to blow her nose and when she tried to blow her nose she could feel fluid moving in her cheeks and in her sinus areas. You are going to find out that that's the result of multiple broken bones in her face.

She eventually got a shower and got cleaned up and went back into the trailer. She went into the bedroom that the defendant and she shared and the defendant made a comment about, "You're not coming in here." And she said, "I wouldn't want to," or words to that effect, and she went and laid down on the couch. She was having a difficult time breathing and she was in intense pain.

1 Eventually her difficulty breathing increased and
2 she had to change her position because she was having such
3 discomfort, which you will come to find out was from broken
4 ribs and a punctured lung as a result of the kicks and the
5 blows that she got from the defendant.
6 Ms. Duckett came back to the trailer and went
7 into the room where the defendant was for approximately 20
8 minutes or so, and then came out and indicated to Ms. Krapf
9 something about taking her to the hospital for her
10 injuries. Ms. Krapf will tell you that April Duckett sort
11 of freaked out when she saw how bad she was hurt.
12 They start to go towards the hospital from
13 Kapowsin, which is way out at the end or way out on
14 Meridian, a long ways away. Ms. Krapf will tell you that
15 at one point she didn't think she would make it to the
16 hospital, so she asked April Duckett to pull over and call
17 911, which April Duckett did. The fire department and the
18 ambulance met them at 224th and Meridian. There is an
19 AM/PM market there. Ms. Krapf would not tell the people
20 who were there, including Deputy Deborah Shin of the
21 sheriff's department, who had assaulted her. She did not
22 want to give that information. And Ms. Duckett wasn't
23 being cooperative, either.
24 Ms. Krapf was taken by ambulance to the
25 hospital. It's there that it is determined that she has

1 the punctured lung and that she has the numerous broken
2 bones in her face. During her treatment there the
3 physician had to put in a chest tube which he had to insert
4 between two ribs on her right side. Sue Vojir is a
5 registered nurse at that hospital, and Deputy Shin was
6 there, also. As they went to put the chest tube in to try
7 and reinflate the punctured lung, Kim Krapf cried out
8 several different times, "Stop it, Ron, you're hurting me.
9 Stop it, Ron, you're hurting me." That was the first
10 indication as to who the assailant was in this case.
11 Ms. Krapf also had an injury to her lip that was
12 stitched up at Good Samaritan Hospital and then she was
13 transferred to Harborview Hospital in Seattle for some
14 extensive reconstructive plastic surgery.
15 You will also hear from Dr. Nicholas Vedder, who
16 is a plastic surgeon at Good Samaritan Hospital, and he
17 will describe to you what the injuries were that Ms. Krapf
18 had to her face. She had what is called a Le Fort's
19 fracture. She had a broken nose. She had broken eye
20 sockets. And Dr. Vedder will tell you that if left
21 untreated, the eyes would sink into the head, the cheeks
22 will sink in, the nose will sink in, and the effect at
23 profile is a flattening of the face unless something is
24 done.
25 You will also hear from the doctors that a

1 punctured lung can be fatal if left untreated and that the
2 complications from the facial injury that Ms. Krapf had
3 eventually would have been an inability to breathe
4 correctly, difficulty eating and swallowing at all, which
5 could eventually result in death, as well.
6 Dr. Vedder did the reconstructive surgery on her
7 and he will describe that process to you in much more
8 detail than I will, but the result of it is that they had
9 to make an incision from ear to ear across the top of
10 Ms. Krapf's scalp, peel down her scalp, remove an eyeball,
11 and build her face back up, then replacing things and
12 putting them back. Staples were used. Screws and plates
13 were used. And eventually everything was completed and was
14 actually very successful. And Dr. Vedder will testify that
15 she has near anatomical alignment of her eyeballs. Her
16 right eye is slightly higher than her left eye. And that,
17 folks, is permanent disfigurement. Nobody wants to walk
18 around with their eyes uneven.
19 She has also had two teeth removed. She had a
20 chest tube in for six days or so, and she has had all the
21 follow-ups that she has had to do, including she still has
22 blurred vision that eventually may return to normal.
23 This case is going to come down to four yes or no
24 questions when it is all over. Did the defendant intend
25 great bodily harm when he assaulted Ms. Krapf? Did he use

1 a deadly weapon? Was he armed with a deadly weapon? And
2 did he inflict great bodily injury on Ms. Krapf? Those are
3 the four yes or no questions that you will have.
4 It's a difficult subject matter. It's hard to
5 hear about these kind of injuries and it is difficult to
6 believe that somebody in a relationship with someone can do
7 the damage that the defendant did to Kim Krapf. By the
8 same token, it is not a difficult case from the facts that
9 you are going to hear. The one thing that may complicate
10 matters is that, due to the schedules of the doctors and
11 the schedules of the officers, this case will not be
12 presented to you in a chronological fashion from start to
13 finish, and so I would thank you in advance for your
14 attention and urge you to pay close attention so that you
15 can get the time sequence in order from all of the
16 witnesses that you will hear from. I'm confident that if
17 you do that, in the end you will return -- you will find
18 that all of the answers to your questions are yes and that
19 the defendant is guilty of Assault in the First Degree as
20 charged, armed with a deadly weapon.
21 Thank you.
22 THE COURT: Thank you, Counsel.
23 Counsel, do you intend to give your opening
24 statement at this time?
25 MR. CANDOO: Yes.

1 THE COURT: Please give your attention then to
2 the opening statement on behalf of the defendant.
3 MR. CANDOO: Thank you, ladies and gentlemen.
4 Although my client has the right to have me wait until the
5 end of the State's case to present an opening statement, it
6 is his and my choice to present it now because we do not
7 wish to have you confused at all about the requirements
8 that the State bears when they file charges of this nature
9 against anyone.
10 They bear the burden of proving throughout this
11 case all elements of this crime. They bear not only the
12 nature of the injuries, which are going to be largely
13 undisputed. We are going to hear about the injuries. We
14 are not going to like what we hear. My client is not going
15 to like what he hears. I don't know that any of us are
16 going to be feeling good about the nature or the
17 description of the injuries. And that's why we asked you a
18 bit in voir dire, the questioning part of the case, about
19 how you felt about photos, et cetera.
20 But, beyond that, beyond proving serious
21 injuries, the State is not complete in its requirement to
22 obtain a conviction from you. The State still must show
23 you that the defendant bore an intent at the time of these
24 injuries. The injuries themselves will be the results, but
25 what was his intent at the time of any injuries that he was

1 a party to inflicting? They have the burden to prove that
2 beyond a reasonable doubt.
3 And it's suggested that their case will rely in
4 large fact upon you bearing a visceral or gut reaction and
5 response to those injuries that spills over into easing the
6 burden that they must show to prove mental intent on the
7 part of the defendant. They must also show the defendant's
8 identity as the person who did this. I don't want to pass
9 that over as an inconsequential step, but it remains the
10 State's burden throughout this case to prove these
11 elements, each and every one of them.
12 You will hear that this defendant, when he
13 realized that he was being requested for police -- by the
14 police to answer for anything concerning this, he
15 voluntarily presented himself without being picked up,
16 without being arrested. He came in and presented himself
17 to respond when he found out that there were inquiries
18 about his presence or where he was.
19 You will find out that these two, that Kim Krapf
20 and Mr. Hall, did have a relationship, were seriously
21 emotionally committed to one another; that of the people,
22 other people that are concerned with these injuries,
23 Mr. Hall is not the least concerned. He is in fact very
24 mortified by the results of this episode.
25 You will hear more about the episode than the

1 State alluded to in the opening statement, and I think
2 Ms. Krapf will be able to give you a broader picture of how
3 this episode occurred.
4 But, I want you to keep in mind that the mental
5 intent, the intent at the time of any of this action, in
6 order to be Assault in the First Degree, which is the
7 charge presented to you, has to be at that point the mental
8 intention of producing great grievous life-threatening
9 bodily injuries. And that's what the State has undertaken
10 to prove to you and it is suggested to you that that will
11 not be met when they present the evidence and you hear all
12 of the evidence.
13 I thank you for being willing to be here and
14 perform your duties as jurors. Thank you.
15 THE COURT: Thank you, Counsel.
16 You may call your first witness.
17 MR. NEEB: Your Honor, the State will call Loree
18 Barnett of the sheriff's department. She was going to be
19 here at a quarter 'til, so I want to make sure that she is
20 here.
21 MR. NEEB: Your Honor, Ms. Barnett is just down
22 the hall and will be here in a few minutes.
23 THE COURT: If it will be a few minutes, we will
24 excuse the jury.
25 The Court will be at recess.

1 (Recess taken.)

2 MR. NEEB: The State would call Loree Barnett,

3 Your Honor.

4 LOREE BARNETT, Called as a witness on behalf of

5 the Plaintiff, after first being

6 duly sworn, was examined and

7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. NEEB:

10 Q Please state your full name and spell it for the court

11 reporter.

12 A My name is Loree Barnett; L-O-R-E-E, B-A-R-N-E-T-T.

13 Q How are you employed?

14 A I'm employed as a forensic investigator with the Pierce

15 County Sheriff's Office.

16 Q What are your duties?

17 A To document crime scenes: Photograph, videotape, search

18 for latent fingerprints, that sort of thing.

19 Q Have you received training in order to do that job?

20 A Yes, I have.

21 Q What was the training?

22 A I have attended some F.B.I. road schools for

23 fingerprinting; attended several classes on crime scene

24 investigation through the Washington State Criminal Justice

25 Training Commission, and on-the-job training.

1 Q How long have you been with the sheriff's department?
2 A A little over four years.
3 Q Were you asked to take some photographs regarding the case
4 960020046?
5 A Yes, I was.
6 Q Were those pictures that were taken at a crime scene during
7 an investigation, or when were they taken?
8 A No. They were taken at Harborview Hospital.
9 Q When were the pictures taken?
10 A On January 4th, 1996.
11 Q Who were the pictures taken of?
12 A Kim Krapf.
13 Q What was the purpose of taking the pictures?
14 A To document injuries, her injuries during an assault.
15 MR. CANDOO: Objection.
16 THE COURT: Overruled.
17 MR. CANDOO: It was alleged, I guess. It was
18 overruled.
19 THE COURT: Overruled.
20 Q (By Mr. Neeb) Have you had an opportunity to review the
21 negatives of the pictures that you took with some
22 photographs that are here in the courtroom?
23 A Yes, I have.
24 Q I'm going to hand you what have been marked as Plaintiff's
25 Exhibits 2, 3, 4, 5, 6 and 7. Are those photographs or

1 blow-ups of photographs that you actually took regarding
2 this incident?
3 A Yes, they are.
4 Q And do those appear to be accurate blow-ups of the
5 negatives that you reviewed?
6 A Yes, they are.
7 Q Do they accurately depict the pictures that you took on
8 January 4th?
9 A Yes.
10 MR. NEEB: Offer 2 through 7, Your Honor.
11 MR. CANDOO: No objection.
12 THE COURT: They will be admitted.
13 Q (By Mr. Neeb) I hand you what's been marked for
14 identification as Plaintiff's Exhibit 8 and ask you the
15 same questions. Is that a copy of a picture that you took?
16 A Yes.
17 Q Does it accurately reflect the negative in a larger size?
18 A Yes.
19 Q And the injuries that you documented?
20 A Yes.
21 MR. NEEB: Offer 8, Your Honor.
22 MR. CANDOO: I have no objection to 8, except
23 that it's duplicative of one of the others. In the
24 interest of not duplicating -- I know he wants a larger one
25 blown up, that's fine, but I don't know if there needs to

1 be two of the same picture.
2 THE COURT: Is it duplicative of some that we
3 have already offered?
4 MR. NEEB: No, Your Honor, it is a different
5 picture.
6 MR. CANDOO: Is it? I have no objection then.
7 THE COURT: It will be admitted.
8 Q (By Mr. Neeb) I'm going to hand you what now have been
9 marked as Plaintiff's 15, 16, 17, 18, 19 and 20. Did you
10 actually take those photographs?
11 A No, I did not.
12 Q Do you know what the purpose of those photographs is?
13 A I assume just to show what she looks like now as opposed to
14 what she looked like in January.
15 Q When were those pictures taken?
16 A Her finger is covering the date on the reader card, but
17 it's April of '96.
18 Q Have you compared those pictures with the negatives of the
19 pictures themselves?
20 A Yes, I have.
21 Q Do they each appear to accurately reflect the negative?
22 A Yes, they do.
23 MR. NEEB: I would offer 15 through 20, as well,
24 Your Honor.
25 MR. CANDOO: Let me ask a question, if I may.

1 VOIR DIRE EXAMINATION

2 BY MR. CANDOO:

3 Q These pictures were generated in your office, right?

4 A Yes.

5 Q And the negatives were kept as a part of the ordinary

6 office procedures?

7 A Yes, we always keep those.

8 Q And even though you didn't take the photos themselves, you

9 were --

10 A I compared them to the negatives, yes.

11 MR. CANDOO: No objection.

12 THE COURT: They will be admitted.

13 DIRECT EXAMINATION (resumed)

14 Q (By Mr. Neeb) Did you have these in front of you, the

15 actual blow-ups, when you compared them to the negatives?

16 A Yes, I did.

17 Q Thank you, Ms. Barnett.

18 MR. NEEB: Your Honor, that's all the questions I

19 have of Ms. Barnett.

20 MR. CANDOO: I have no cross.

21 THE COURT: You may step down. Thank you.

22 (Witness excused.)

23 MR. NEEB: The State would call Deputy Roland

24 Bautista.

25 /

1 DEPUTY ROLAND BAUTISTA, Called as a witness on behalf of
2 the Plaintiff, after first being
3 duly sworn, was examined and
4 testified as follows:
5 DIRECT EXAMINATION
6 BY MR. NEEB:
7 Q State your full name and spell it for the court reporter.
8 A Roland Morales Bautista. Last name is spelled
9 B-A-U-T-I-S-T-A.
10 Q How are you employed?
11 A I am employed with the Pierce County Sheriff's Department.
12 Q In what capacity?
13 A As an investigator with the domestic violence unit.
14 Q Are you a commissioned deputy sheriff?
15 A I am.
16 Q How long have you been a deputy sheriff?
17 A Nine years.
18 Q What kind of training did you receive in order to become a
19 deputy sheriff?
20 A I received a 40-week course in interviewing and
21 interrogation through the Reid school. I also was sent to
22 two different domestic violence conferences sponsored by
23 The Criminal Justice Commission.
24 Q Let me back you up a second. Not your domestic violence
25 training, but the training you received just to become a

1 deputy sheriff.
2 A I received 440 hours of academy training prior to going
3 into my field training position as a deputy sheriff. I
4 also received three weeks of in-house training through the
5 sheriff's department prior to going to the state academy.
6 Q What does the field training position entail?
7 A That is a twelve-week program in the street with a field
8 training officer.
9 Q A deputy sheriff with more experience than you?
10 A Yes, correct.
11 Q How long have you been with the domestic violence unit?
12 A I have been with the domestic violence unit since July of
13 '95.
14 Q When was the domestic violence unit created out of the
15 sheriff's department?
16 A It was created back in October of 1994.
17 Q Do you know what the purpose of that was?
18 A It was to take a more aggressive stance on investigating
19 domestic violence cases, assaults, anything that has to do
20 with domestic violence.
21 Q And is that specifically your area of focus now?
22 A Yes.
23 Q How many other deputy sheriffs do the same job?
24 A Three.
25 Q And outline again, if you would, what you did to

1 specifically focus on domestic violence cases.
2 A I was sent to a four -- correction, a one-week school
3 sponsored by the Reid technique in interviewing and
4 interrogating techniques. I was also sent to two separate
5 domestic violence conferences sponsored by the state
6 academy.
7 Q Were you assigned case number 960020046?
8 A I was.
9 Q What were you assigned it for?
10 A To do the follow-up investigation on an assault case that
11 had come into the office.
12 Q Why did it come to the domestic violence unit, if you know?
13 A To my knowledge, it was a boyfriend/girlfriend
14 relationship, based on the report, and that there were
15 substantial injuries. And any felony cases that come in
16 are usually assigned to one of the investigators.
17 Q What kind of follow-up investigation do you normally
18 undertake in a case like this?
19 A My first attempt would be to try to contact the victim and
20 obtain a statement, photographs of injuries, and medical
21 reports, if I can.
22 Q At the time that you were assigned this case -- when was
23 that, by the way?
24 A January 3rd.
25 Q At the time you were assigned this case, was a suspect

1 arrested?
2 A No.
3 Q So, what was the first thing then that you did in this
4 case?
5 A It was to contact Good Samaritan Hospital to find out the
6 condition of the victim Kim Krapf and to determine whether
7 she was there and available to give me a statement or at
8 least talk with me a little bit about her report.
9 Q What did you find?
10 A I was advised that she had been transported to --
11 MR. CANDOO: Objection. I'm sorry. I
12 anticipated hazardous testimony, but this sounds very
13 appropriately responsive.
14 THE COURT: Yes, this is not for the truth of the
15 matter insofar as you are telling us that she was not
16 there.
17 THE WITNESS: That's correct.
18 Q (By Mr. Neeb) Where did you determine Ms. Krapf was?
19 A At Harborview Medical Center in Seattle.
20 Q Did you eventually contact Ms. Krapf there?
21 A Yes, I did.
22 Q Prior to contacting Ms. Krapf, did you attempt to arrest
23 anybody in this case?
24 A Yes. Based on the report that there was a suspect that was
25 listed on there, myself and the other members of my unit

1 contacted two officers out in the District 19 unit and
2 attempted to contact Ronald Hall at his residence.
3 Q Where is the District 19 office?
4 A I believe it's in Eatonville.
5 Q Was that successful?
6 A No.
7 Q Did you have contact with a person named April Duckett
8 regarding this case?
9 A Yes, I did.
10 Q When did that happen?
11 A That was on my trip back. This was a phone call contact
12 that I made with her after leaving the Hall property and I
13 was en route back to my office. I had obtained her phone
14 number through our information system and gave her a call
15 in my car while I was en route.
16 Q Did you actually talk with April Duckett on the 3rd of
17 January?
18 A Yes, I did.
19 Q Was she cooperative with you?
20 A To a certain extent, yes.
21 Q What do you mean by that?
22 A She confirmed that she was the one that had transported
23 Ms. Krapf to the AM/PM for medical attention. She also --
24 MR. CANDOO: I would object to this line of
25 answering. I think it's hearsay.

1 THE COURT: I think I will sustain the objection,
2 Counsel, and you can ask specific questions.
3 Q (By Mr. Neeb) Did you have information that she may know
4 details about this incident?
5 A Yes.
6 Q And did she in fact give you details about the incident?
7 A She had advised me that she had picked up Ms. Krapf on the
8 road and that she was very injured.
9 Q Did she admit to knowing anything about who had done this
10 or that the victim and defendant even knew each other?
11 A She admitted that she knew the victim and the defendant,
12 but would not give me information as to what she knew about
13 their relationship or what had happened that night
14 involving the two of them.
15 Q And was that information contrary to what you had learned
16 about the night of the incident?
17 A Yes.
18 MR. CANDOO: I think this is all objectionable.
19 I mean --
20 THE COURT: I will sustain the objection.
21 Q (By Mr. Neeb) Based on the phone contact, did you make an
22 appointment to take a statement from her personally?
23 A Yes, I did.
24 Q When was that appointment to be held?
25 A On January 5th.

1 Q Did Ms. Duckett show up for her appointment?
2 A No, she did not.
3 Q Did you eventually go to Harborview Hospital and talk to
4 Ms. Krapf?
5 A Yes, I did.
6 Q What was the purpose of that contact?
7 A To obtain a statement from her regarding her assault and
8 obtain photographs, if I could, of her injuries.
9 Q Did you actually talk to Ms. Krapf that day?
10 A Yes, I did.
11 Q What observations did you make of her condition at the time
12 that you talked to her?
13 A I noted that her face was very badly bruised, that her eyes
14 were swollen shut. She had massive bruising about her
15 face, neck, buttocks, and chest area.
16 Q Did she have any difficulty speaking with you?
17 A She did.
18 Q Based on the information that she had gotten -- based on
19 the information that she gave you, did you attempt to
20 contact any other potential witnesses in this case?
21 A Eventually, yes, I did.
22 Q Who would that be?
23 A Besides April Duckett, Robert Aaron.
24 Q After you talked to Ms. Krapf, was it your request that the
25 pictures that are in this case be taken?

1 A I'm sorry?
2 Q That was a pretty terrible question. Let me rephrase it.
3 Did you request that the pictures of Ms. Krapf's
4 injuries be taken by Ms. Barnett?
5 A Yes, I did.
6 Q Have you actually reviewed those pictures and the blow-ups
7 of them?
8 A I have.
9 Q Did you do anything in regards to this incident the next
10 day, January the 4th?
11 A On January 4th I began work-up on my search warrant and the
12 arrest warrant for the suspect.
13 Q Did you actually serve a search warrant at some point?
14 A On January 5th, yes, we did.
15 Q Prior to the service of the search warrant, what
16 information did you have about the whereabouts of Mr. Hall?
17 A Well, we had been told that he might be at one of a number
18 of places, particularly a friend named Jim Keller, and also
19 he could still be at the residence.
20 Q Did you have any knowledge of whether or not there were
21 actually people at the residence near the time of the
22 warrant being served?
23 A Yes. On the morning that we met with the S.W.A.T. team and
24 briefed them on the warrant service, we were advised by
25 officers from the D-19 detachment that they had received

1 complaints from neighbors around --

2 MR. CANDOO: Objection.

3 MR. NEEB: It's not offered for the truth of the

4 matter, Your Honor. It is offered for why they actually

5 went to the residence to serve a warrant.

6 THE COURT: Overruled.

7 A They had advised us that they had received some complaints

8 the morning before our service and that there was a loud

9 party of some sort up at the Hall property.

10 Q Did you then proceed to the residence itself?

11 A Yes, we did.

12 Q Was the defendant there?

13 A No, he was not.

14 Q Did you serve the search warrant at the residence?

15 A Yes, we did.

16 Q What if any evidence did you locate there?

17 A We located blood evidence in the recreation room of the

18 property -- of the residence. We also located blood and

19 hair evidence in a bathroom area in a shop located behind

20 the residence. We found some blood evidence in the kitchen

21 area, and we also found two weapons in the residence.

22 Q Based on being at the scene and serving the search warrant,

23 Deputy Bautista, did you do some diagrams of the area?

24 A I did.

25 (Plaintiff's Exhibits 24, 25, 26 marked.)

1 Q (By Mr. Neeb) Deputy Bautista, I'm going to hand you
2 what's been marked for identification as Plaintiff's
3 Exhibit No. 24. Do you recognize that?
4 A Yes, I do.
5 Q What is it?
6 A It is a diagram of the property at 31712 145th Avenue Court
7 East.
8 Q And based on your knowledge, who resided at that address?
9 A Ronald Hall and Kim Krapf.
10 Q What was the purpose of drawing that diagram, No. 24?
11 A To give the prosecutor's office an idea of the layout of
12 the property, where buildings were located and where some
13 of the evidence was located.
14 Q And does that specifically have the trailer that you have
15 described and the shop area where the bathroom was on it?
16 A Yes.
17 Q Is it to scale?
18 A No, it's not.
19 Q I'm going to hand you also what have been marked as 25 and
20 26. Do you recognize those?
21 A Yes.
22 Q What are they?
23 A They are diagrams. Exhibit No. 25 is a diagram of the
24 trailer and addition on the property at 31712 145th Avenue
25 Court East. And Exhibit No. 26 is a diagram of the shop

1 and bathroom located to the rear of the residence at that
2 property.
3 Q Is it safe the say that 25 and 26 are blow-ups of
4 structures that are on 24?
5 A Yes.
6 Q Are either of those to scale?
7 A No, they are not.
8 MR. NEEB: I would offer 24, 25 and 26, Your
9 Honor.
10 MR. CANDOO: No objection.
11 THE COURT: They will be admitted.
12 Q (By Mr. Neeb) After the warrant was served -- well, at
13 some point was Ronald Hall arrested?
14 A Yes, at some point. Not during that day, though.
15 Q When was he actually placed under arrest?
16 A I believe on January the 10th.
17 Q Do you know the circumstances surrounding that?
18 A He had turned himself in to the Puyallup Police Department.
19 Q Did you have information that the defendant knew that the
20 sheriff's department was looking for him about this
21 incident?
22 A Yes.
23 Q Did you eventually contact Robert Aaron?
24 A Yes, I did.
25 Q When did that happen?

1 A My first contact was on January 11th.
2 Q Now, Deputy Bautista, you are referring to some notes.
3 What is it that you have?
4 A This is my supplemental report.
5 Q When was that generated?
6 A This was generated on the 26th -- completed on the 26th of
7 January.
8 Q What's the purpose of that?
9 A This is a documentation of my activities regarding this
10 case.
11 Q Does referring to it help you with specific dates and
12 times?
13 A Yes, it does.
14 Q When you talked to Bob Aaron, what was the purpose of
15 talking to him?
16 A I had obtained information through my statement with the
17 victim, my interview with the victim, that Bob Aaron was
18 one of -- was a witness at the residence, a person at the
19 residence when this assault occurred.
20 Q Did you have information that he could have actually
21 witnessed the assault?
22 A Yes.
23 Q When you talked to Mr. Aaron, did he confirm that
24 information with you?
25 A Yes.

1 Q Did you eventually make an appointment to speak with him?
2 A Yes, I did.
3 Q I mean personally.
4 A Yes.
5 Q And let me back up. The contact you had with him January
6 11th, was it in person or on the phone?
7 A That was in person.
8 Q Did you eventually make an appointment to take a
9 tape-recorded statement?
10 A Yes, I made an appointment with him for the 12th, that very
11 next day.
12 Q Why did you not take the taped statement on the 11th?
13 A Because he did not want to talk about it and he wanted to
14 talk with Mr. Hall before talking with me.
15 Q Did he eventually come in on the 12th for your
16 tape-recorded statement?
17 A No, he did not.
18 Q When did you actually take a statement from him?
19 A Can I refer to my report here? On the 16th of January.
20 Q And had his memory improved or worsened, if you will, about
21 the incident when you actually talked to him?
22 MR. CANDOO: Objection. Not only is it hearsay,
23 but it causes this person to speculate as to the memory of
24 a person who is a hearsay declarant, as far as I can tell.
25 MR. NEEB: I will rephrase the question.

1 THE COURT: I will sustain the objection for
2 different reasons.
3 Q (By Mr. Neeb) When you talked to Bob Aaron, did he provide
4 you details of the assault?
5 A Some. Very vague details.
6 Q Did he confirm or deny that he had actually witnessed what
7 had happened?
8 A In my mind, he confirmed. He stated he was there. He
9 stated --
10 MR. CANDOO: Objection.
11 THE COURT: Sustained. The question was
12 answered.
13 Q (By Mr. Neeb) Did he make reference to whether or not he
14 had more information that he wasn't giving you?
15 MR. CANDOO: Objection; calls for hearsay.
16 MR. NEEB: Your Honor, one, it is not offered for
17 the truth of the matter and, two, it is offered to explain
18 his lack of cooperation.
19 THE COURT: Counsel, I'm going to sustain the
20 objections to this line of questioning. You may get into
21 it in rebuttal.
22 Q (By Mr. Neeb) When you talked to Bob Aaron the two times
23 that you talked to him, did you form the opinion that he
24 was telling the truth about what he knew?
25 MR. CANDOO: Objection.

1 MR. NEEB: That calls for his opinion, Your
2 Honor, not hearsay.
3 MR. CANDOO: If this officer can offer an opinion
4 as to truthfulness on everybody --
5 THE COURT: I will sustain the objection.
6 Q (By Mr. Neeb) Did you have subsequent contact with Bob
7 Aaron at all?
8 A After the taped statement?
9 Q Yes.
10 A No.
11 Q Did you have contact again then with April Duckett?
12 A Yes, I did.
13 Q When did that occur?
14 A On the 18th of January.
15 Q Was that in person or over the telephone?
16 A That was by phone.
17 Q What was her attitude during that conversation?
18 A She was very abrasive and upset at me in particular.
19 Q Did she agree to come in -- did she agree to come back in
20 and give the statement that she never gave originally?
21 A No.
22 Q Have you had contact with her since?
23 A No.
24 Q Do you know whether or not -- Have you tried to find her
25 since?

1 A Yes, I have.
2 Q What steps have you taken?
3 A I have gone out there several times trying to locate her at
4 the address that she was at. And I have also requested the
5 officers in the Eatonville detachment to keep an eye out
6 for her and try to find her, if possible, so I can try to
7 talk with her, if nothing more than to get a location that
8 I may be able to serve her with a summons.
9 Q Do you know, Deputy Bautista, if the people at the D-19
10 detachment that you mentioned know Ms. Duckett, Mr. Aaron,
11 and the defendant on sight?
12 A I don't know that they know Mr. Aaron or Ms. Duckett on
13 sight. I know they have met Mr. Hall at one point or
14 another.
15 Q But you asked them specifically to keep their eye out for
16 Ms. Duckett?
17 A Correct.
18 Q Did you do that about Mr. Aaron, as well?
19 A No. I knew where to find Mr. Aaron.
20 Q Have you ever determined that he would be cooperative with
21 the prosecution in this case?
22 A No.
23 Q That was a bad question. No, you didn't, or, no, he
24 wouldn't?
25 A No --

1 MR. CANDOO: It's been asked and answered.
2 MR. NEEB: My question was vague, Your Honor.
3 THE COURT: Overruled.
4 Q (By Mr. Neeb) No, he wouldn't be cooperative, or, no, you
5 didn't --
6 A No, he would not be cooperative.
7 Q Has Ms. Duckett been seen since, that you know of --
8 A No.
9 Q -- based on your investigation?
10 At some point later in the month of January,
11 Deputy Bautista, did you have contact with Kim Krapf again?
12 A Yes, I did.
13 Q Where did that take place?
14 A At my office at Room 108 of the County-City Building.
15 Q At that time did she give you any documentation that
16 related to this case?
17 A No. No.
18 Q Have you ever gotten from her anything in the form of
19 letters?
20 A Yes.
21 Q When did that happen?
22 A This was a visit that occurred at her mother's home on the
23 25th of January.
24 Q When you talked to Ms. Krapf in the hospital at Harborview,
25 did she appear to you to be cooperative with the

1 prosecution?
2 A Yes.
3 Q When you talked to her on the 25th, did that appear to have
4 changed?
5 A Yes.
6 Q During that visit did you receive anything from her, any
7 physical documentation?
8 A Yes, I received three letters from her that she had
9 received from Mr. Hall.
10 Q What did you do with those letters?
11 A I provided those to counsel.
12 Q To whom?
13 A To you, John Neeb.
14 Q I'm going to hand you what have been marked for
15 identification as Plaintiff's Exhibits 21, 22 and 23. Do
16 you recognize those?
17 A Yes, I do.
18 Q What are they?
19 A These are three letters that Kim Krapf delivered to me when
20 I visited her home on the 25th. She stated she had
21 received these from Mr. Hall.
22 Q Do the envelopes contain the letters?
23 A Yes.
24 Q Do they appear to have changed at all since you got them
25 from Ms. Krapf?

1 A No.

2 MR. NEEB: Offer 21, 2 and 3, Your Honor.

3 MR. CANDOO: I would like to take that up,

4 reserve objection. I'd like to -- they're -- We don't have

5 any chain of custody, and I think it's premature to offer

6 those until Ms. Krapf testifies.

7 THE COURT: You want to reserve or --

8 MR. CANDOO: I would like to reserve argument.

9 THE COURT: All right. We will hear argument on

10 that later, outside the presence of the jury.

11 Q (By Mr. Neeb) At some point in your investigation, Deputy

12 Bautista, did you determine the physical statistics of the

13 defendant, height and weight?

14 A Of the defendant?

15 Q Yes. Do you have that in any of your reports?

16 A Just on the -- off of the general report.

17 Q What is the height and weight that is listed for him?

18 A Height of 6'4", weight of 210 pounds.

19 MR. NEEB: Your Honor, that's all the questions I

20 have at this time, although I may need to recall Deputy

21 Bautista later for a different subject matter.

22 THE COURT: That's fine. Counsel?

23 MR. CANDOO: Thank you.

24 /

25 /

1 CROSS-EXAMINATION

2 BY MR. CANDOO:

3 Q Now, Deputy, you determined, I think you testified, that
4 Robert Aaron was someone who I guess was of interest, at
5 least, after talking to Kim Krapf. And as I recall your
6 testimony -- I want to be accurate on this -- the interest
7 that you had in Mr. Aaron was based upon the, again,
8 information gathered from Ms. Krapf that indicated that he
9 may have been present at the time?

10 A That he was present according to her statement.

11 Q Okay. And were you able to confirm that with him?

12 A I had contacted him --

13 Q Yes or no? I don't want to get too far into these
14 statements.

15 A Yes, I did.

16 Q And do you know where he is, I guess, today?

17 A No, I do not know where he is today. I know a physical
18 location, address, that he listed as his address.

19 Q And so I guess as we sit here he is at least available to
20 you or to the State to call as a witness if that was
21 desired; is that correct? You know how to get ahold of
22 him, don't you?

23 A I have an address that he listed as his address that if I
24 wanted to go look for him that's where I would look for
25 him. Whether he is there now or has ever been there, I

1 couldn't tell you.
2 Q There's no reason to believe he is any other place than
3 where he told you, is there?
4 A No reason for me, no.
5 Q And as far as keeping track of April Duckett, it's my
6 understanding you told -- you checked at a former address
7 and then told police officers in the area to keep an eye
8 out for her. Anything else to keep track of her?
9 A Just to keep track of her.
10 Q And as far as you can tell, she's out of contact with
11 anyone?
12 A Yes.
13 Q You don't know where to find her?
14 A I don't know where to find her.
15 Q And nevertheless, you knew by -- you had no reason to
16 believe that the police officers in the area would even
17 recognize her, did you?
18 A I know that one of the officers I dealt with does know --
19 does know her by sight.
20 Q I'm sorry. I must have misheard. You didn't testify
21 earlier that you didn't think they recognized her or
22 Mr. Aaron but knew perhaps they could, you know, recognize
23 the defendant? Earlier in your testimony did you not say
24 that they did not -- you did not know whether or not they
25 would recognize Mr. Aaron or Ms. Duckett?

1 A Right. I don't know -- I don't know that they know what
2 they look like.
3 Q Okay. Are you changing that with respect to one officer
4 who now you say would know what Ms. Duckett would look
5 like?
6 A Yes.
7 Q Any other efforts to keep track of her that we haven't
8 talked about?
9 A Not by myself, no.
10 Q Based upon information, I guess at least from Ms. Krapf,
11 was there reason to believe that April Duckett was present
12 at or about the time that she received her injuries?
13 A Not at the time she received her injuries, no. She was at
14 that location on the date that the assault occurred.
15 Q You talked with her on January 18th, 1996, and you found
16 her at least over the phone abrasive and upset, is your
17 testimony?
18 A That's correct.
19 Q And did you set up a time to meet with her?
20 A She refused to meet me at all.
21 Q What was your next effort to contact her?
22 A None. She had requested that I have no contact with her
23 after that.
24 Q When did you change your mind about having no contact with
25 her? Did you accept her statement that she declined

1 contact and you just respected that?
2 A Yes.
3 Q And when did you change your mind to have other officers
4 keep their eye out for her?
5 A When a new trial date was coming up I assumed that there
6 would be more questions that I may need to contact her
7 regarding to see if she would be willing to talk with me
8 again.
9 Q And just, I guess, to complete this area, there's been no
10 feedback from any other officers or any of your other
11 sources that she has been spotted; right?
12 A No.
13 MR. CANDOO: I have no further questions.
14 THE COURT: Mr. Neeb?
15 MR. NEEB: Your Honor, there is an additional
16 subject matter for Deputy Bautista's testimony, but it's
17 something that we have to take up without the jury
18 present.
19 THE COURT: All right. Do you want to do that at
20 this time?
21 MR. NEEB: We have Deputy Bautista, so that would
22 probably be a good thing.
23 THE COURT: I will have the jury step out for a
24 moment.
25 (Jury excused from the courtroom.)

1 MR. NEEB: Your Honor, the matter that we have to
2 take up regarding Deputy Bautista's testimony is the 911
3 tape. I have prepared a stipulation that I gave to
4 Ms. Whitmer before she left. Do you have that in front of
5 you? Yes. A stipulation, Your Honor, regarding the fact
6 that this was properly prepared by LESA Communications and
7 that it actually records the 911 call in this incident.
8 That's been agreed to and I would ask the Court to read
9 that to the jury prior to testimony about this.
10 The reason that I needed the jury excluded was
11 that I know Mr. Candoo has objected to the tape being
12 played, so I needed to take that up for the Court to rule
13 on before I offered it in front of the jury.
14 THE COURT: What questions are you going to ask
15 of Officer Bautista that would be --
16 MR. NEEB: He procured the tape for me, Your
17 Honor. He requested it of LESA Communications and brought
18 the actual tape to me.
19 THE COURT: So it is chain of custody type
20 questions?
21 MR. NEEB: Right, to lay the foundation that this
22 is the tape relating to that incident.
23 THE COURT: Okay.
24 MR. NEEB: And then with that stipulation I would
25 ask that it be played.

1 THE COURT: Okay. Counsel?

2 MR. CANDOO: Actually, I understood the

3 stipulation to maybe even make it simpler than Counsel

4 thinks it is. I understood that we were eliminating an

5 unnecessary witness who could be easily procured from the

6 tape center to come in and authenticate the tape and make

7 sure it connects up. And Mr. Hall understands that that

8 stipulation eliminates a waste of time, virtually, to call

9 up and produce a person who is a records person.

10 And as far as playing the tape, once Officer

11 Bautista indicates the nature of the tape and identifies

12 it, it sounds like it is an ordinary business record that's

13 kept in the ordinary course of business, so --

14 THE COURT: Then let's move on to the more

15 important question. You object to the tape being played?

16 MR. CANDOO: Not once Officer Bautista

17 authenticates it, no.

18 MR. NEEB: Okay.

19 MR. CANDOO: Sorry.

20 MR. NEEB: That's different than what I knew of

21 yesterday and this morning.

22 THE COURT: I guess we are all on the same page

23 here.

24 MR. NEEB: The only thing, Your Honor, is that I

25 anticipated that my direct would be longer and that

1 Mr. Candoo's cross would be much longer. And with the
2 schedule of the other officers and my victim coming in at
3 1:30, this is the only witness I have left this morning.
4 THE COURT: You have the tape to play?
5 MR. NEEB: The tape needs to be played and that's
6 probably -- with the foundation to be laid, probably 10
7 minutes left.
8 THE COURT: Okay.
9 MR. NEEB: I apologize for that. I tried to get
10 a couple others lined up for this morning and they just
11 weren't available to come in.
12 THE COURT: Let me ask you another question.
13 What do you have to play it?
14 MR. NEEB: I have a tape deck right here, Your
15 Honor.
16 THE COURT: All right. So you want me to read
17 the stipulation, word for word, just read it, or do you
18 want me to editorialize a little bit as to what this is?
19 MR. NEEB: Actually, I guess what I would ask the
20 Court to do is, I will ask Deputy Bautista about requesting
21 the 911 tape, getting the physical tape and giving it to
22 me, and that this is the physical tape. Then I would ask
23 the Court to read that and I will offer the exhibit to be
24 played.
25 MR. CANDOO: I don't necessarily have a problem

1 with that format. I think your reading it is unnecessary.
2 Officer Bautista will say basically that same thing.
3 THE COURT: I will say that the parties have
4 stipulated that this tape is properly recorded from the
5 master tape. I will do that. That's fine.
6 MR. CANDOO: I apologize to Counsel for
7 miscommunicating. I knew I hadn't heard the tape
8 yesterday. I borrowed it and listened to it. I have
9 subpoenaed a lot of these 911 tapes before and it sounds
10 like a 911 tape ought to sound, so --
11 THE COURT: Let me ask a question. Do you happen
12 to have a transcript of that tape?
13 MR. NEEB: I don't, Your Honor. It is pretty
14 clear. I didn't request one because of that.
15 THE COURT: That's fine. Sometimes it is easier
16 for everybody to follow along.
17 MR. NEEB: I need to make sure that I didn't
18 misspeak. I do have three or four questions on redirect
19 regarding the cross-examination, as well, but nothing
20 extensive.
21 THE COURT: That's fine. We will get the jury
22 back. I will explain to them that these scheduling
23 problems sometimes occur.
24 MR. NEEB: Thank you, Your Honor.
25 (Jury was returned to the courtroom.)

1 THE COURT: All right, Counsel.

2 REDIRECT EXAMINATION

3 BY MR. NEEB:

4 Q Deputy Bautista, did you determine through your

5 investigation that Bob Aaron was a friend of the

6 defendant's?

7 A Yes.

8 Q What about April Duckett?

9 A Was at least an acquaintance. I don't know how good of

10 friends they were.

11 Q Did you determine whether or not there was any animosity

12 between Ms. Duckett and Ms. Krapf?

13 A Just a statement that she had made in her hospital room.

14 Q Ms. Krapf?

15 A Yes.

16 Q That apparently there was some disagreement between the two

17 of them?

18 A Yes.

19 Q Did you make it clear to both -- Well, did you make it

20 clear to Ms. Duckett where it was that you wanted to talk

21 to her and take a statement from her?

22 A Absolutely.

23 Q Did you make it clear to her how she could reach you if she

24 decided she wanted to cooperate?

25 A Yes.

1 Q Did you do the same things with Mr. Aaron?
2 A Yes.
3 Q Now, Deputy Bautista, at my request did you request a copy
4 of the 911 call that was made in this case?
5 A Yes, I did.
6 Q What steps did you actually take?
7 A I requested -- filled out a form requesting a copy of a
8 master tape regarding incident 960020046.
9 Q Did you actually receive the hard copy of that tape?
10 A Yes, I did.
11 (Plaintiff's Exhibit 27 was marked.)
12 Q (By Mr. Neeb) I'm going to hand you what's been marked for
13 identification as Plaintiff's Exhibit 27. Do you recognize
14 that?
15 A Yes.
16 Q What is it?
17 A This is a copy of the law enforcement tape sent to me from
18 the LESA support agency regarding incident number
19 960020046.
20 Q Does it appear to have changed at all since you procured
21 it?
22 A No.
23 MR. NEEB: Your Honor, I would ask the Court to
24 read the stipulation to the jury.
25 THE COURT: Ladies and gentlemen, during the

1 course of a trial the evidence can be received in various
2 ways. One of the ways it can be received is through
3 stipulation. The parties hereto have stipulated as
4 follows: The 911 tape that has been marked as an exhibit
5 was properly recorded from the master logging tape kept in
6 the LESA Communications center and, two, that the tape
7 records the 911 call relating to this incident.
8 MR. NEEB: I would offer Exhibit 27, Your Honor.
9 THE COURT: It will be admitted.
10 MR. CANDOO: No objection.
11 MR. NEEB: And I ask to play it for the jury.
12 MR. CANDOO: Again, defendant has no objection.
13 We agreed with the stipulation.
14 (LESA 911 tape played for the Court and jury.)
15 THE COURT: Did you have additional questions for
16 the officer?
17 MR. NEEB: No, Your Honor, I don't have anything
18 further at this time.
19 THE COURT: Any recross?
20 MR. CANDOO: Yes.
21 RECROSS-EXAMINATION
22 BY MR. CANDOO:
23 Q Officer, do you recognize the voice of that caller?
24 A Not by that tape. I mean, just from what she -- her
25 identifying herself.

1 Q And she identified herself as who?
2 A April Duckett.
3 Q And is there any reason for you to disbelieve that that was
4 in fact April Duckett?
5 A No.
6 Q And that's the same April Duckett that when she said she
7 would just as soon not talk with you any further, you, I
8 guess, let her go at that, right?
9 A Yes.
10 Q And besides being involved in that aspect of that day, it
11 was your information that she had been there earlier that
12 day at the residence; is that correct?
13 A On the --
14 Q On the day of the alleged beating.
15 A Yes.
16 MR. CANDOO: No further questions.
17 FURTHER REDIRECT EXAMINATION
18 BY MR. NEEB:
19 Q Deputy Bautista, is it your decision as to who becomes
20 witnesses in a case like this, or mine?
21 A I interview as many people as I can that are potential
22 witnesses. Whether or not they will be called to testify
23 is not my decision.
24 Q And had I asked you to go find April Duckett, would you
25 have made every attempt to do so?

1 A Yes.
2 Q Based on our conversations and your investigation, had you
3 concluded that that would be fruitless?
4 A Yes.
5 Q Based on the information she told you and the attitude she
6 gave you?
7 A Yes.
8 Q Safe to say, Deputy Bautista, that your training in the
9 domestic violence unit doesn't render you capable of
10 turning uncooperative people into cooperative people every
11 time?
12 A Every time, no.
13 Q Ms. Duckett is a perfect example of that?
14 A Yes.
15 MR. NEEB: That's all I have, Your Honor.
16 FURTHER RECROSS-EXAMINATION
17 BY MR. CANDOO:
18 Q In your training in the domestic violence area, you are
19 trained, are you not, to deal with people who may be
20 initially reluctant to talk with police; is that correct?
21 A Yes.
22 Q And in fact that's pretty much typical of many of the cases
23 involved; isn't it?
24 A A good part of them, yes.
25 Q And so when April Duckett initially presents as reluctant

1 to be involved, that's not in itself surprising in your
2 work, is it?
3 A No.
4 Q And you made, nevertheless, no attempt to recontact her
5 immediately after that initial phone conversation in order
6 to use your training to attempt to get past that initial
7 reluctance, did you?
8 A I spoke with her for over a half hour trying to get past
9 this and she allowed me no opportunity. I offered her
10 several times during that conversation an opportunity to
11 come in and talk with me and she refused to.
12 Q Okay. And so after that it was you who abandoned contact
13 with her?
14 A At that point I decided it was not going to happen.
15 Q And you never had a face-to-face contact with her?
16 A No.
17 Q And did the prosecutor ever ask you to follow-up in
18 contacting her?
19 A No.
20 Q So, you put out the word with the officers basically on
21 your own that they should keep an eye out for her?
22 A Correct. At that time I was assuming that there might
23 possibly be a material witness warrant pending and I wanted
24 to know where she might be found if I needed to.
25 MR. CANDOO: I have no further questions.

1 MR. NEEB: Could we have a brief sidebar, Your
2 Honor?
3 (Sidebar conference held off the record.)
4 THE COURT: All right, Mr. Neeb.
5 MR. NEEB: Thank you, Your Honor.
6 FURTHER REDIRECT EXAMINATION
7 BY MR. NEEB:
8 Q Deputy Bautista, at some point in this investigation was
9 there a law enforcement contact at the residence where
10 Ms. Duckett lived?
11 A Yes.
12 Q Without going into a lot of detail, do you know why it was
13 that people went out into Ms. Duckett's house, law
14 enforcement?
15 A The first reason to go out there was to search to see if
16 Mr. Hall was at that location.
17 Q And was he found there?
18 A No.
19 Q Was there any indication, based on what was found on the
20 outside of the residence, that Mr. Hall may have been there
21 recently?
22 A On a subsequent contact by the D-19 officers later that
23 evening, Officer Reding had located a vehicle registered to
24 Mr. Hall near the property of Ms. Duckett.
25 Q And was the vehicle out in the open or did it appear to be

1 concealed at all?
2 A According to Mr. Reding, Deputy Reding, it appeared to be
3 concealed.
4 Q When was that in relation to the search warrant executed at
5 Mr. Hall's residence?
6 A Later that evening, I believe.
7 Q When was it in relation to Mr. Hall turning himself in?
8 A Five days prior.
9 Q And when was that incident in relationship to when
10 Ms. Duckett's attitude with you soured, if you will, or got
11 abrasive, like you said? Before or after?
12 A Several weeks after.
13 Q Which was several weeks after?
14 A My last contact with her by phone was on the 18th.
15 Q Okay.
16 MR. NEEB: Thank you, Deputy Bautista.
17 That's all I have, Your Honor.
18 FURTHER RECROSS-EXAMINATION
19 BY MR. CANDOO:
20 Q The vehicle, did you know how -- You said concealed. Do
21 you know how it was so-called concealed?
22 A According to the report written by Deputy Reding, if I may
23 read it.
24 Q If it helps to refresh your recollection.
25 A White Camaro parked behind Duckett's trailer and covered

1 with tarps and plywood.
2 Q Other than the tarp and plywood, it's sitting out in the
3 open, isn't it, or do you know?
4 A This is by my report. I didn't bring his report in. I
5 don't know. Just by --
6 Q Okay. Tarp and plywood?
7 A Right.
8 MR. CANDOO: No further questions.
9 MR. NEEB: Nothing more, Your Honor.
10 THE COURT: You may step down.
11 (Witness excused.)
12 THE COURT: Ladies and gentlemen, it is the time
13 we would take the morning recess, which would be about 15
14 minutes, but as occasionally happens in these cases, we run
15 into witness scheduling problems. The result of those
16 witness scheduling problems is that I am going to release
17 you at this time to come back at 1:30. You are free,
18 obviously, to stay in the jury room, have coffee, do
19 whatever. If you wish to leave, that's fine. Just return
20 by 1:15 so we can try to get started at 1:30.
21 The jury may leave at this time. Counsel, I want
22 to have a few words with you.
23 (Jury excused from the courtroom.)
24 THE COURT: I just thought we might be able to
25 use some of this time to go over some jury instructions,

1 but I don't know if you have had an opportunity to review
2 Counsel's.
3 MR. CANDOO: I have, and I don't really have any
4 objections to their instructions. I would endeavor to
5 offer as a lesser included Assault Second Degree, and I
6 have prepared that. I have also prepared Assault Third
7 Degree. The gradations, basically, are Assault 1 is the
8 actions are done with intent to --
9 THE COURT: Let's do this. Without getting into
10 that at this point, Mr. Hall can go back upstairs. We can
11 get together in chambers and we can go over the specific
12 package that we have. If you have objections to those, we
13 will deal with them. If you don't, then I will just simply
14 consider that as being the package until such time as you
15 submit yours, which we may add or --
16 MR. CANDOO: I've got mine ready, just prepared
17 this morning. They are fresh.
18 MR. NEEB: I do have one issue that we could
19 probably take up now while the defendant is still here.
20 THE COURT: That's fine, too.
21 MR. NEEB: Your Honor, the letters that have been
22 offered, I should wait until Ms. Krapf testifies to offer
23 them. I don't have a problem with that. But, the reason
24 that I am offering all three of them is --
25 THE COURT: Counsel, maybe rather than doing it

1 this way, why don't I hear what his objection is, because I
2 may not think it is a valid objection anyway.
3 MR. CANDOO: Your Honor, thanks. I think it
4 saves time. They caught me a little off guard. I knew
5 they were going to be admitted along with Ms. Krapf as
6 having been recipient of the letters. So he offered them
7 and it caught me off guard. I have had a chance to talk
8 over the letters and the contents thereof with my client.
9 There's no dispute that he wrote those, so we are not going
10 to object to the letters.
11 THE COURT: Okay. So once she authenticates
12 them --
13 MR. CANDOO: I think it makes sense to have them
14 admitted when she is here. It ties them up. When he
15 offered them, it, again, caught me off guard and I wanted
16 to discuss that with my client and we don't have an
17 objection at this point.
18 MR. NEEB: The other thing is, though, Your
19 Honor, I would like the Court to admit a copy of the court
20 order establishing conditions of release in this matter
21 that says the defendant have no personal contact with the
22 victim, in order to show that these letters are a violation
23 of that order, which makes that constitute E.R. 404(b),
24 other bad acts evidence, if you will.
25 It is not being offered to show character or

1 conformity. It is being offered to show a couple things:
2 First of all, identity, because in at least one of the
3 letters there is an apology or what could constitute an
4 admission by the defendant that he is the assailant. And
5 they also show a reason why the victim has gone from
6 completely cooperative to less than cooperative with the
7 prosecution in this case, given that the defendant
8 repeatedly is telling her how much he misses her and how
9 much he loves her and how much he wants to be with her.
10 And I don't believe that it is beyond the jury's common
11 understanding that with a relationship of three years that
12 she may be inclined to want to think that this is true and
13 that will change her attitude towards these charges.
14 So, it goes to show both the identity and it goes
15 to show the defendant's state of mind, if you will, towards
16 reconciliation while the charges are pending. That's tied
17 up more with the court order that shows that he shouldn't
18 have been doing it as opposed to just having the letters
19 themselves.
20 THE COURT: I just disagree with that. The court
21 order is just not material to it. Clearly, the letters are
22 material for all the arguments you just made and you can
23 argue those to the jury. But, the fact that he violated
24 the court order, or may have violated a court order,
25 depending upon how you would construe it, I don't think

that's material to the charges or material to the issues that you are arguing, the fact that he was trying to reconcile and her attitude would change because of that, those kind of things.

We will take a 10-minute recess and then we can get together and talk about those instructions a little bit.

MR. NEEB: I need to see his. I saw him working on them, but I haven't gotten copies of them.

THE COURT: Okay. We will be at recess at this time.

(Noon recess taken.)

APRIL 30, 1996

AFTERNOON SESSION

* * * * * * *

MR. NEEB: Your Honor, as the Court knows, Ms. Krapf didn't appear this afternoon. I've had a material witness warrant presented to the Court that you've signed and that's been issued; I have the Sheriff's Department out to start looking for her. I have Mr. Wilkins from the Sheriff's Department who is present. His testimony is probably ten minutes. Those two were the only witnesses I had for this afternoon.

So, I don't know what the Court wants to do, if the Court wants to take this testimony today and then let the jury go, or if it would just as soon send the jury home for the afternoon.

I've tried to get other witnesses to fill in for Ms. Krapf in her absence, but the witnesses I have lined up for tomorrow morning are both physicians who were working and had to take time out of their schedules to be here. One of my deputies is currently working an off-duty job and I had scheduled her for tomorrow morning. The nurse in the emergency room works overnight, so I had scheduled her for tomorrow afternoon.

So, what I'm telling the Court is, I have tomorrow all morning and the beginning of the afternoon

1 covered. If Ms. Krapf appears or gets picked up between
2 now and then, then we can proceed right through the State's
3 case starting tomorrow morning.
4 We will need to put Mr. Wilkins on for as much as
5 his testimony is today, or just have the Court bring the
6 jury in and explain to them that it happened again.
7 THE COURT: Mr. Candoo, what are your thoughts on
8 this?
9 MR. CANDOO: Only that -- well, my thoughts are
10 somewhat typical for what has been this case. Mr. Hall is
11 sincerely concerned and actually wants her to be present.
12 We would prefer her to be present. So, we really have no
13 position to take contrary to the material witness warrant
14 that you signed. Apparently she was served --
15 THE COURT: Actually, I'm more asking that you
16 address the concept of do we just let the jury go, tell
17 them there's various problems, to be back tomorrow? Do I
18 leave that totally to the prosecutor?
19 MR. CANDOO: It seems to me we have asked the jury
20 to come back at 1:30 and to just tell them to go means they
21 have circled back for nothing. I think, all things being
22 equal, I think it would be best with their time to give
23 them some testimony, then let them know, and then we are
24 done with one witness. But that's really Mr. Neeb's
25 problem. It's not mine.

1 THE COURT: My reaction is to just let them know
2 that we have this problem, not the specifics of it, but
3 that we have a problem that has developed and that I'm
4 going to have to let them go for the afternoon, rather than
5 have them here for ten minutes.
6 MR. NEEB: That's my preference, as well, Your
7 Honor. Mr. Wilkins, I know, works tomorrow at 2:00, and I
8 could fit him in right then without having him have to come
9 up early tomorrow with the witnesses I have lined up. I
10 would prefer to do it that way if the Court is all right
11 with it.
12 THE COURT: I have a settlement conference
13 tomorrow so we can't start early, but I will tell them to
14 be back at 9:30.
15 MR. NEEB: The first doctor is scheduled to be
16 here at 9:30, and he was obviously anxious to get on and
17 off, so that would work fine for the State. I apologize to
18 the Court.
19 THE COURT: No, these things happen. I get
20 concerned about how juries react to these things, but I
21 personally have practiced law a long time. I know what
22 happens with witnesses and things. You can't do much about
23 that. Those things happen. I think what we'll do is,
24 unless you have some concerns otherwise, I am simply going
25 to have my J.A. advise them, rather than bring them out

here and so forth. I will just have her advise them that there have been problems develop this afternoon and we are going to release them for this afternoon and have them come back tomorrow morning at 9:30.

MR. NEEB: That's acceptable to the State.

MR. CANDOO: Acceptable.

THE COURT: We will be at recess then.

(Proceeding concluded.)

CERTIFICATE

STATE OF WASHINGTON

COUNTY OF PIERCE

I, Dorylee Reyes, Official Shorthand Reporter in and for the County of Pierce, State of Washington, do hereby certify that the foregoing proceedings were reported by me on said date(s) and reduced to computer-aided transcript form.

I further certify that the foregoing transcript of proceedings is a full, true and correct transcript of my machine shorthand notes of the aforementioned matter.

Dated this 15th day of July, 1996.

Dorylee Reyes

Dorylee Reyes, CSR, RPR

COPY

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF PIERCE

3 STATE OF WASHINGTON,)
4 Plaintiff,)
vs.) NO. 96-1-00042-8
5)
RONALD ARMON HALL,)
6)
Defendant,)
7

8 ----------

9 VERBATIM REPORT OF TRIAL PROCEEDINGS

10 VOLUME 2 OF 5

11 PAGES 65 - 183

12 ----------

13 BE IT REMEMBERED that on the 1st day of May, 1996, the
14 above-captioned cause came on duly for hearing before the
15 HONORABLE BRUCE W. COHOE, Superior Court Judge in and for the
16 County of Pierce, State of Washington; the following
17 proceedings were had, to-wit:
18

19 APPEARANCES

20 FOR THE PLAINTIFF: JOHN M. NEEB
Deputy Prosecuting Attorney
21

22 FOR THE DEFENDANT: SCOTT A. CANDOO
Attorney at Law
23

24 Reported By:
Dorylee Reyes, CSR, RPR
25

JOHN W. LADENBURG
PIERCE COUNTY PROSECUTING ATTORNEY
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REPORTER'S NOTE: (A) indicates exhibit was admitted.

1 MAY 01, 1996

2 MORNING SESSION

3 * * * * * * *

4 (Defendant's Exhibit 28 was marked.)

5 THE COURT: We're back on the record without the

6 jury in the matter of State of Washington v. Ronald Hall.

7 Counsel, I have related to you an issue relating

8 to Mr. Scherr and his concern over his ability to act as a

9 juror in this case. I think in chambers we agreed that,

10 given that, it would be appropriate to excuse him.

11 However, I felt that Counsel should talk with his client

12 and see that his client agreed with that process. What is

13 the result of that conference?

14 MR. CANDOO: Defendant concurs with that

15 proposal.

16 THE COURT: I think it is probably the best

17 approach. My assessment of Mr. Scherr is that, as we

18 acknowledged, he could certainly be a potentially favorable

19 juror for the State; he could certainly be a favorable

20 juror for Mr. Hall. I don't think anybody is giving up

21 anything by doing this. I think this is the appropriate

22 way to go.

23 We will advise Mr. Scherr that he can be released

24 and report down to the jury room and jury administration,

25 and then we will start with the rest of the jurors.

1 (Juror Scherr released from further service.)
2 (Jurors brought to the courtroom.)
3 THE COURT: All right, Counsel.
4 MR. NEEB: Your Honor, the State would call
5 Dr. Larry Woodard.
6 DR. LARRY WOODARD, Called as a witness on behalf of
7 the Plaintiff, after first being
8 duly sworn, was examined and
9 testified as follows:
10 DIRECT EXAMINATION
11 BY MR. NEEB:
12 Q Please state your full name and spell your last name for
13 the court reporter.
14 A Larry Odell Woodard, W-O-O-D-A-R-D.
15 Q How are you employed?
16 A I'm an emergency physician. I work at Good Samaritan
17 Hospital in Puyallup, Washington.
18 Q Would you briefly describe your educational background?
19 A I went to high school and college in Oklahoma; graduated
20 Oklahoma State University. Proceeded to Oklahoma
21 University College of Medicine; graduated with an M.D.
22 degree in 1982. I did a year of internship in internal
23 medicine, followed by two years of work experience in
24 emergency room. I proceeded to the University of Southern
25 California in Los Angeles where I did my specialty training

1 in emergency medicine.

2 I ended my residency in 1987 and sat for the

3 American Board of Emergency Medicine Specialty

4 examinations. Passed those examinations and am now a board

5 certified emergency physician and a fellow of the American

6 College of Emergency Physicians.

7 Q How long have you been at Good Samaritan Hospital?

8 A About five years.

9 Q What do the certifications that you hold in emergency

10 surgery entitle you to do?

11 A I am a licensed physician and surgeon by the State of

12 Washington and it allows me to do all emergency

13 interventions that are necessary for the immediate

14 preservation of life.

15 Q On the overnight between January 1st and January 2nd of

16 1996, were you working at Good Samaritan Hospital?

17 A Yes, I was.

18 Q Did you at some point treat an individual named Kim Krapf?

19 A Yes, I did.

20 Q How was it that you came to be the treating physician in

21 her case?

22 A I'm the only physician on duty overnight after 2 a.m. and

23 she arrived at about that time.

24 Q And if you would take us through the process of how she

25 gets from admission to you in the emergency room.

1 A Can I refer to my notes?
2 Q Sure. What is it that you have there?
3 A I have a copy of my medical record that I generated on the
4 night of the visit.
5 THE COURT: There is a desk that you can pull
6 out. There you go.
7 THE WITNESS: Thank you.
8 A She arrived by ambulance, also with police and attendants,
9 at 2:05 in the morning at Good Samaritan. She was
10 immediately placed into room number 1 Alpha, which is just
11 to the right of my desk, the distance being approximately
12 between my station and the gentleman in the jury box in the
13 white shirt. Visible. I saw her roll in.
14 She appeared to be extensively injured, so I
15 walked into the room to see her. I assumed from the extent
16 of her injuries that in all of the patients I was treating
17 at that time she was a priority and I wanted to see her
18 right away.
19 Q What is it that you attempt to determine when you first
20 contact a patient in her condition?
21 A Whenever I see someone we follow what we call the ABC's.
22 That means airway, breathing and circulation. I want to
23 make sure you are breathing; if not, I want to fix that
24 before we go on. She was breathing and appeared to be
25 getting adequate oxygen.

1 Then the next thing I want to know is is your
2 blood pressure and circulation okay, and hers were based on
3 her vital signs.
4 Once I knew that she was at least stable for the
5 immediate life-threatening injuries, then I proceeded to
6 examine her from head to toe and get a primary survey of
7 what might be wrong with her.
8 When I evaluated her I saw that she had extensive
9 facial and chest injuries. I did not hear the lung sounds
10 as well on the right side as on the left. She had what we
11 call crepitus -- which is a bony, grinding sound -- on the
12 right side of her chest when I felt over here. And also I
13 noticed she had air in the skin, which is called
14 subcutaneous emphysema. That has a certain feel you can
15 feel by touch that isn't mistakable for anything else.
16 I evaluated then her abdomen to make sure there
17 was no evidence of spleen or liver injury, or other
18 bleeding in the abdomen that might cause her to die, and
19 then proceeded to her extremities and face and evaluated
20 for fractures. I found facial fractures as well as
21 bruising and lacerations; also some bruising to the base of
22 her spine.
23 Q Did you establish oral communications with her?
24 A Yes. I introduced myself to her. I asked her how she was
25 feeling. She spoke with me. She would answer a few

1 questions, but in general she seemed pretty withdrawn and
2 resistant to communications.
3 Q As part of your job in the emergency room as the physician,
4 do you attempt to determine what happened to her, the
5 method of her injury?
6 A My interest is in mechanism of injury, not so much
7 circumstances of injury. I need to know what kind of force
8 was used, how the force was wielded, how many times the
9 force was wielded. Obviously, a knife forms different
10 injury patterns than a club or a fist, so I try to find out
11 exactly that kind of thing. I don't ask so much who did
12 it, where did it happen and that kind of thing.
13 Q Okay. What kind of information -- How cooperative was she
14 in providing that information to you?
15 A She was not very cooperative at all when she spoke with
16 me. She was uncomfortable. But even people that are
17 uncomfortable, that's the nature of my business; almost
18 everybody I see is in distress in some fashion. And based
19 on the average person in that condition, I found her less
20 cooperative than the average.
21 Q At some point while you were in the room was there an
22 attempt to find out who it was that caused her injuries?
23 A Not by me.
24 Q Okay. Did you overhear that conversation at all?
25 A We had asked her, "Who did this to you?" And she said that

1 she --

2 MR. CANDOO: Objection. Hearsay.

3 THE COURT: Overruled.

4 A We asked her, "Who did this to you?" And she said, "I know

5 who it is, but I'm not going to tell you," or words to that

6 effect. That is not a great direct quotation from her to

7 me.

8 The nurses also in the room carry on

9 conversations with her, which I might not have been

10 privileged to. Sometimes the nurse relays information to

11 me, but I did not ever find out who did the damage to her.

12 Q When you said that she had less lung sounds on one side --

13 the right side, than on the left -- what does that indicate

14 to you?

15 A There's several possibilities, but the primary ones in

16 trauma are either collapsed lung, so that air is not moving

17 in or out; or that there has been bleeding around the lung

18 and that the chest is full of blood, muffling the lung

19 sounds.

20 I was able to tell by percussion, tapping on the

21 chest wall -- fluid has a dull sound, air has a resonant

22 sound -- that it was probably air. And I confirmed this

23 with a chest x-ray.

24 Q You also mentioned crepitus, which I think you said was a

25 grinding sound?

1 A That's correct.
2 Q Where did you locate that?
3 A I located that over her right anterior lateral -- this area
4 here, rib cage.
5 Q And what does that indicate to you?
6 A Rib fractures.
7 Q And you also mentioned the popping sound of subcutaneous
8 emphysema. What is that indicative of?
9 A I didn't actually say a sound. I said there is a feel.
10 Q Okay.
11 A It feels like a -- oh, a sponginess. And that is only air
12 in the subcutaneous tissues. Air in the subcutaneous
13 tissues usually indicates that the lung has been punctured,
14 that there is a pneumothorax.
15 Q A pneumothorax and punctured lung is the same thing?
16 A For all intents and purposes, yes.
17 Q How is it you confirmed that that is what Ms. Krapf had?
18 A I did a chest x-ray.
19 Q Do you have copies of those x-rays with you?
20 A Yes, I do.
21 Q Would you be able to demonstrate to the jury where it was
22 that you saw the collapsed lung or a punctured lung?
23 A Yes, if I can use the view box.
24 Q Yes.
25 THE COURT: Doctor, if you will face us or face

1 this direction while you explain.

2 THE WITNESS: Okay.

3 Q (By Mr. Neeb) Let me hold that up.

4 A Yes, the clips really don't hold this very well.

5 This is reversed, so let's turn it around

6 properly. This is her heart. These dark substances here

7 are her lungs. And you can see the ribs moving through

8 there. What you can see, also, is there are dark patches

9 out here in the soft tissues of the chest wall. This is

10 subcutaneous air. There is probably a rib crack here and a

11 rib crack here, although there's better x-ray views to

12 obtain that. Knowing that the patient does or does not

13 have rib fracture does not influence anything that I'm

14 going to do for her lung, so I did not need to elucidate

15 that any further.

16 What is not readily apparent, because the light

17 of the courtroom doesn't let you see it very well, is that

18 there is a rim of lung here that has separated from the top

19 of the chest wall. That rim of lung is the pneumothorax.

20 There is no mistaking that for any other condition. And I

21 have another view here which you may be able to see it a

22 bit better.

23 This view here, I think you can see that there is

24 a faint white line running right there. That is the apex

25 of the lung or the top of the lung. That is supposed to be

1 sitting up here. So, based on the fact that this is a
2 conical-shaped structure, this is about a 15 percent
3 pneumothorax. So, about 15 percent of the volume of her
4 lung has been reduced.
5 Q (By Mr. Neeb) I will have you take your seat again.
6 What do you do to treat -- Let me back up. Is a
7 pneumothorax, a punctured lung, a potentially
8 life-threatening injury?
9 A Yes, it is.
10 Q How so?
11 A The lung is a structure that is a collection of air sacs.
12 It has a spongy feel. We breathe air into it through the
13 trachea and bronchial tubes, and we exhale by squeezing the
14 lung and pushing the air back out. So, to have this
15 function properly, the lung has to have the bellows
16 mechanism of the chest working.
17 When a trauma or pneumothorax occurs and the lung
18 collapses, a puncture occurs in the outside of the lung.
19 This puncture results in an air leak. Not only over time
20 does the lung inflate, but some of the air escapes into the
21 chest wall outside of the lung. There is no escape for
22 this air, so every time you breathe you are increasing the
23 pressure outside of the lung. Eventually, that pressure
24 will overcome the pressure inside of the lung and cause it
25 to collapse.

1 This process continues. It goes on and on every
2 time you breathe as long as the puncture remains open, and
3 eventually the lung will collapse in entirety. When that
4 happens you are now working on one lung and your oxygen
5 levels start to fall.
6 If this continues, the puncture continues to stay
7 open even with the lung collapsed, then you start shifting
8 the heart and the major blood vessel, the aorta, off to the
9 opposite side of the chest from the puncture, collapsing
10 the good lung. Obviously, when you collapse both lungs,
11 you are unable to breathe and you can die from lack of
12 oxygen. But, usually before that happens the blood vessels
13 or the heart are squeezed to the point that they're kinked
14 off and you actually shut off your circulation so that you
15 die of cardiovascular collapse.
16 Q What is done to treat a pneumothorax?
17 A To prevent the structures from shifting in the field, they
18 will often just insert a tube into the lung; in other
19 words, they will take a needle or some other tube and
20 actually puncture through the rib muscles into the cavity
21 outside of the lung, allowing the air in the outside and
22 the air on the inside to equalize. That's an emergency
23 stopgap measure. It doesn't fix the pneumothorax, but it
24 simply prevents the pressure from building up enough to
25 shift the heart and lungs to the other side. That was not

1 done in the field. The patient arrived with the lung still
2 collapsed and the chest wall still intact.
3 What I did then was to perform a surgical
4 procedure called a tube thoracostomy, where I actually make
5 an incision in between the ribs and insert a tube roughly
6 the size of my thumb in diameter inside the chest wall. It
7 has holes in it. So, this runs outside the lung, inside
8 the chest wall. I then hook that to a suction device that
9 drains the air out of the chest, pulling the lung upwards
10 and re-expanding it. My hope is then that the puncture
11 will contact the chest wall and by the consistent
12 application of suction be maintained there long enough to
13 seal up. The body has a mechanism of sealing wounds of a
14 certain size. Usually if the puncture is small this is all
15 the treatment that is necessary. After two or three days
16 then the doctor will clamp the tube, sealing the escape of
17 any further air, take another x-ray and make sure that the
18 lung is staying up. If the lung stays up for a period of a
19 day, then you can remove the tube and then re x-ray after
20 another day and make sure that the lung remains up, and
21 then you are considered cured.
22 There are instances where this doesn't work and
23 we actually have to go in and scar the surface of the
24 lung. We use different chemical agents to seal the lung,
25 and then repeat the process, and that usually will solve

1 the problem.
2 Q Is the length of time that the tube is actually in the
3 chest indicative of the severity at all of the punctured
4 lung?
5 A Yes, to some degree. It also is indicative a little bit of
6 where the puncture is and different things like body
7 habitus, lung disease, and so forth. Not everybody with a
8 pneumothorax has the same degree of tear. And not
9 everybody with the same degree of tear has the same length
10 of treatment. You have to individualize things.
11 Q Okay. And why is it that you don't wait to see what the
12 particular punctured lung will do before you insert the
13 tube?
14 A Well, it's a trial-by-fire thing. It's likely to result in
15 the death of your patient if you don't treat them. And
16 since, as an emergency physician, I am always in attendance
17 in the emergency room and I'm never more than 20 feet away
18 from my patients, I could probably do something like that
19 for a brief period of time and things would be okay because
20 I'm always there to fix something if it's not going in the
21 right direction. But, most of the time the surgeons or the
22 inhouse doctors are not in attendance. Their offices are
23 at home. Or, if the patient is in the hospital overnight,
24 they're home in bed, also. If something goes wrong then,
25 then you have an extended period of time before the

1 recognition of the problem and the ability to treat it.
2 And some things develop fairly rapidly. So, it is a fool's
3 choice to observe a traumatic pneumothorax.
4 Q Is the insertion of this tube a painful procedure?
5 A Yes.
6 Q Do you recall Ms. Krapf's reaction to the insertion of the
7 tube?
8 A Ms. Krapf was agitated and irritated before we did anything
9 to her. We gave her an I.V. and we gave her a medicine
10 called Versed. Versed is classified as a benzodiazepine.
11 That's in a Valium class of medication. This particular
12 medicine results in relaxation and amnesia, usually, for
13 the event, but the patient remains conscious. I did not
14 want my patient under general anesthesia because at this
15 point we had not fully assessed her for other injuries,
16 particularly brain injuries, which anesthesia might have
17 obscured.
18 In addition, I gave her a local anesthetic at the
19 rib itself through an injection, just the way you would
20 numb a cut if you were going to suture it. When I made my
21 incisions, that didn't cause her any discomfort, but it is
22 the spreading of the rib muscles that kind of shifts the
23 other tissues which I haven't been able to numb up that is
24 uncomfortable. And when you put the tube in and the lung
25 starts to re-expand, it hurts. The patient often complains

1 and coughs when that goes in.
2 She was complaining that we were hurting her when
3 we did it, only she didn't say, "Doctor, you are hurting
4 me." She said, "stop," and she gave a name, "you're
5 hurting me." It was a common first name, but I do not
6 recall what the name is. I normally am more concentrated
7 on the technical aspects of what I'm doing and am not
8 involving myself in conversations or concern about
9 conversations with my patients when this is going on.
10 Q Do you recall if you had nursing staff in the room with
11 you?
12 A Yes, I did.
13 Q Do you recall if there were any deputy sheriffs in the
14 room, as well?
15 A I do not recall that. There should not have been any
16 deputy sheriffs in the room.
17 If I might add, there is a curtain in the room
18 which we draw during the procedures. I do not recall and
19 there should not have been a deputy inside the curtain.
20 There may have been one outside the curtain that I was
21 unaware of who might have been able to hear conversations.
22 Q Do you recall whether she arrived with law enforcement or
23 not?
24 A My note says that there were police in attendance.
25 Q After that tube was in place, what did you do regarding her

1 facial injuries?
2 A I evaluated her facial injuries through a physical
3 examination. She had a cut to her lip which I repaired
4 with sutures, and then I performed -- Actually, before I
5 did the sutures, I performed a CAT scan of her face. That
6 is Computerized Axial Tomography, C-A-T. This is an x-ray
7 technique where we can get much more information about the
8 structures and the relationships of bones and more details
9 on soft tissues than plane x-rays.
10 I opted for this other than the plane x-rays of
11 the face because I knew I was going to have to CAT scan her
12 head. I did not want her to have a lot of time between her
13 visit to the x-ray and her return, so I just opted to CAT
14 scan her face at the same time. And it was in the CAT scan
15 that I found the extent of the fractures that I knew to be
16 present based on my clinical examination.
17 Q And what are those?
18 A She had what is called a -- May I refer to my notes here?
19 Q Sure.
20 A On her CAT scan she had a fracture of the anterior left
21 maxillary sinus wall; lateral and medial walls, as well.
22 So, this sinus was cracked on three sides.
23 Q That's the left side of your cheek, basically?
24 A Right, in the area I'm indicating with my finger.
25 She had what's called a Le Fort III fracture on

1 the right side. She had a fracture through this area here
2 and through the orbital wall, basically, so that her skull
3 and her face were no longer joined together.
4 And she had a nasal fracture. The nasal bone up
5 here was broken. She had what's called a Le Fort II
6 fracture on the left side where the fracture extends from
7 the tip of the nose down through the orbit and down through
8 the maxilla so that the teeth and the sinus are loose from
9 the rest of the face.
10 So, her fracture forces were through the right
11 temple, through the orbit, across the nose, through the
12 orbit, through the sinus and down through the cheek.
13 In addition, I believe she had a zygomatic arch
14 fracture. That's the cheek bone here.
15 Q On the right side?
16 A Let me just confirm that. I believe it was a right side
17 fracture. Yes, it's right side zygomatic arch fracture.
18 Q Are those injuries potentially life-threatening, as well?
19 A They can be, yes.
20 Q How so?
21 A The Le Fort III fracture, as it passes through this area
22 here, can actually rupture the facial bones underneath into
23 the skull; and the cerebral spinal fluid, which the brain
24 is bathed in, can leak out. You can damage the brain or
25 get the brain fluid infected and cause some meningitis,

1 which can be potentially fatal.
2 In addition, the structures of the face, when
3 they're that extensively damaged, can swell a great deal,
4 even down into the roof of the mouth and the pharynx,
5 occluding the airway and causing suffocation.
6 Q What was going to be necessary for Ms. Krapf's facial
7 injuries?
8 A She was going to have to have surgery to repair them,
9 extensive surgery.
10 Q Is that something you do in the emergency room?
11 A No, it's not. It is beyond the scope of emergency
12 medicine. Provided that the brain and the oral airway can
13 be guaranteed to be safe, which is what I do, then you can
14 repair these injuries up to two weeks later, in fact.
15 Obviously, the sooner the better, but for a cure being the
16 same at the end, you have a period of time which is a
17 fairly substantial window.
18 Q Where would the surgery normally be done?
19 A It depends on who is available on the call roster. We have
20 in medicine several areas of the body which share different
21 specialties. For instance, facial fractures, wherein some
22 plastic surgeons do a great deal of facial injury work,
23 others do not. Some oral maxillofacial surgeons will do a
24 lot of repairs, others limit themselves. Sometimes an ear,
25 nose and throat doctor will do facial repairs.

1 On my night on call we had a Dr. Ekland who was
2 on call for plastic surgery, whom I contacted to act as a
3 consultant, but it was not for an immediate arrival in the
4 emergency room. It was for the next day.
5 Q Do you know whether that actually was done?
6 A I do not know whether that was done or not. At the
7 conclusion of my therapy for the patient, I think I'd had
8 her for about three hours in the emergency room. I
9 admitted her to a general surgeon once I had assessed the
10 degree of her injuries, repaired what I could fix,
11 guaranteed that there was no life-threatening injuries
12 going on. I wanted to admit her to general surgery for
13 observation. The purpose for this is that there are
14 injuries that can be a problem and develop later. For
15 example, a ruptured spleen may not give you any signs or
16 symptoms that something is wrong until several hours later,
17 and I did not want her to be solely in the care of a
18 plastic surgeon who does not manage these kind of
19 injuries. So, I contacted a general surgeon whose name was
20 Dr. Ted Inouye, and Dr. Inouye agreed to act as the
21 attending physician for the patient. He admitted her to
22 the hospital. He would also be able to manage the chest
23 tube and guarantee that the lung re-expanded.
24 I do not personally know what transpired during
25 Dr. Inouye's control of the patient, but apparently the

1 next day he elected -- after some difficulty in obtaining
2 the kind of consultative advice he felt he needed -- to
3 transfer her to Harborview Medical Center where he felt
4 that he could get a more rapid response.
5 Q Are you able to quantify for us, Dr. Woodard, the amount of
6 force that it takes to crack the human rib?
7 A In foot-pounds of force or Newton meters, I can't do that
8 precisely. I can tell you that it requires substantial
9 force, but it is within the capability of a human to
10 generate that force.
11 Q Okay. Like with a kick, wearing boots?
12 A A kick could do it if you kicked hard enough, or a strike.
13 Q What about the fractures to her face?
14 A You could generate enough force in the human body to do
15 these. All these fractures are unlikely to have occurred
16 with one blow. There would have been several blows.
17 Q Are they likely to occur if someone just falls and lands on
18 their face?
19 A No.
20 Q Finally, Dr. Woodard, you mentioned these things called the
21 Le Fort's fractures?
22 A Yes.
23 Q What's the history behind that?
24 A Le Fort was a physician in France during the Napoleonic
25 era, and he did research on facial fractures. It was

1 rather crude back in those days --
2 MR. CANDOO: I would object to this. I don't
3 know the relevance of the history of Dr. Le Fort.
4 MR. NEEB: Just gives perspective for the jury,
5 Your Honor.
6 THE COURT: What is the materiality of why it is
7 called Le Fort's?
8 MR. NEEB: I guess there isn't any. It just
9 explains when he says Le Fort's II and III, how they got
10 the name and what it indicates. He has described the kinds
11 of fractures and he can explain how it was that those were
12 first observed and given the name and quantifying number
13 one, number two and number three, because there are
14 different numbers for the different fractures she had.
15 MR. CANDOO: I'm not interested in objecting --
16 THE COURT: I will let you inquire into what it
17 means by calling them number one, number two and number
18 three, what that means in terms of severity and so forth.
19 Q (By Mr. Neeb) What do the different numbers mean, Doctor?
20 A Location. Le Fort's I is a fracture to the roof of the
21 maxilla and involving the root of the teeth, below the
22 sinuses. Le Fort's II is a pyramid fracture that runs from
23 the maxilla up to the nose. And a Le Fort's III is a
24 craniofacial dissociation where the face and the head are
25 separated by fracture lines.

1 Q I'm going to hand you, Dr. Woodard, what have been
2 marked -- what have been admitted as Plaintiff's Exhibits 2
3 through 8, and would ask you if these appear to quantify
4 the injuries that you saw in Ms. Krapf on that night that
5 you treated her, or illustrate the injuries that you
6 observed?
7 A Well, she actually looks some better here than when I saw
8 her. I don't believe these were taken the night that I saw
9 her because the degree of swelling is not to the same
10 degree that I saw her. So, I would expect this to be a day
11 or two later.
12 Q Okay. And you are referring to No. 8, particularly?
13 A Number 8, yes. This is the number that we are referring
14 to?
15 Q Yes.
16 A Yeah. Okay. She has, obviously, got what are called
17 ecchymoses; common terminology is black eyes. When I saw
18 her, this eye was swollen shut. You can still see that
19 there is a substantial amount of swelling here, swelling
20 across the bridge of the nose, and swelling to this eye
21 here.
22 I was able to open this eye by prying the eye
23 open and asking her if she could see out of it, and she
24 said that she could.
25 We also like to test what we call the extraocular

1 muscle movements to see that the eyes rotate up and down,
2 left and right, appropriately. I could not get a good
3 evaluation of this because the swelling was obscuring my
4 view. The reason for that is to make sure there are no
5 fractures pinching onto the muscles and restricting their
6 motions.
7 She also has a cut across the filtrum of her lip,
8 which is the little dimple between the nose and the upper
9 lip. That was the laceration that I repaired there.
10 You can see that she has marked hemorrhage to the
11 whites of the eye. That's called subconjuctival
12 hemorrhage.
13 So, you can see that there's been a substantial
14 amount of trauma that this lady has sustained about the
15 face: A blow here, a blow here, probably a blow here, a
16 blow here. You can see that there's an abrasion to the
17 left side of her temple and an abrasion here to the left
18 cheek on the nasolabial fold, so that indicates a
19 substantial trauma.
20 What you really can't see very well is the degree
21 of fractures, because at this point the swelling actually
22 looks better. The smaller picture, number 2 here, shows
23 the ecchymosis a little more dramatically. You can see how
24 yellowed they are becoming here. So, the yellowness
25 suggests that her body is already reabsorbing the blood and

1 so this is probably three or four days on down the line,
2 although I don't know specifically when these were taken.
3 The upper lip is still fairly swollen here. You
4 can see also abrasions and contusions about her neck.
5 There's one behind her ear. There's one to her shoulder,
6 one down here on the neck. You can see a bruise to her
7 chin.
8 MR. CANDOO: I'm sorry, what number is that?
9 THE WITNESS: That's No. 3.
10 MR. CANDOO: Thank you.
11 A I believe this is her left side that she is demonstrating,
12 although with photographs you never know.
13 This actually is something that looks worse than
14 when I evaluated her. This bruising around her neck and
15 the ear here seems to have flowered a little bit.
16 Q (By Mr. Neeb) That's No. 4 that you are referring to?
17 A That's No. 4. That isn't unusual to happen. Bruising is
18 just a manifestation of bleeding underneath the skin. The
19 deeper it is in the body, the longer it takes to reach the
20 surface of the skin. Some bruises are pretty immediate if
21 they're superficial. Others can take days to actually show
22 up. So, this one, to me, to my recollection, did not look
23 this bad when I saw her.
24 Q Okay. Is it safe to assume that in the darkest area there
25 just below her ear she took a blow?

1 A Yes. Again, same thing on the face on No. 5. She has the
2 bruising starting to yellow about the neck, about the chest
3 wall. You can actually see kind of a black and blue mark
4 over here.
5 Q Those would each indicate a separate blow, as well, most
6 likely?
7 A Most likely.
8 Here is her buttocks. There's extensive bruising
9 around the sacrum. These are the sacral dimples. This is
10 the coccyx. I recall this being present when I evaluated
11 her. This along the hips looks to me to be just a bit
12 worse than when I saw her, so probably some deeper bruising
13 developing here.
14 Q Are you able to quantify the number of hits or kicks that
15 she had in that area?
16 A That could have been one or two.
17 Q Okay.
18 A And it may have been many more than that, but if you hit
19 her just so right here with a large enough object, you may
20 have caused all of that with one blow. What I'm thinking
21 is more likely is, since there's separations of normal
22 tissue intervening with this, that this is probably a blow,
23 this is probably a blow, that's probably a blow, and that's
24 probably a blow, (indicating). So, I think four is more
25 reasonable than one, but that's just an assumption.

1 Q Okay.

2 A This picture, No. 6, is the chest tube. What you are

3 seeing is the suction tube connected to the tube that I put

4 in her chest to drain it. These are not the bandages that

5 I put on. These would have been bandage changes later on

6 down the line. But, this is right about at the nipple line

7 and right at what we call the anterior axillary line, in

8 between the ribs, is where this thing enters.

9 There's a slit that I made that's approximately

10 that long that goes all the way down to the muscle, and

11 then I take what's called a trocar and actually tap through

12 the muscle like you would drive a nail, only under much

13 more controlled circumstances. I slide the tube off the

14 trocar into that. So, the trocar is inside the tube with a

15 point just past the tip, and then it goes in.

16 Q And then that piece comes out?

17 A The trocar comes out, correct.

18 Q Now, you said a slit about this long. For the record,

19 that's an inch to an inch-and-a-half?

20 A An inch to two.

21 Q Okay.

22 MR. NEEB: Your Honor, I would ask to publish to

23 the jury the pictures.

24 THE COURT: You may.

25 Q (By Mr. Neeb) Dr. Woodard, I'm going to hand you what have

1 been marked as Defendant's Exhibit No. 28. I would ask you
2 to look at the boots inside of the bag, if you would.
3 MR. CANDOO: Could we have a sidebar?
4 THE COURT: All right.
5 (Sidebar conference held off the record.)
6 Q (By Mr. Neeb) Dr. Woodard, have you had a chance to look
7 at those boots?
8 A No. I didn't know what you were doing, so I didn't.
9 Q My question, Dr. Woodard, is, looking at those boots, and
10 with the assumption that the defendant is approximately
11 6'4" and 210 pounds, are you able to render an opinion as
12 to whether or not those boots could cause the injuries that
13 Ms. Krapf suffered as exhibited by the pictures?
14 A They should be able to demonstrate substantial force enough
15 to cause these injuries.
16 MR. NEEB: Thank you, Dr. Woodard.
17 That's all I have, Your Honor.
18 THE COURT: Counsel?
19 CROSS-EXAMINATION
20 BY MR. CANDOO:
21 Q In rendering the last opinion, are you assuming that those
22 are being worn at the time by the defendant?
23 A I'm assuming that they would have been on the feet at the
24 time of the kick. My opinion is that they are able to
25 create the force, not necessarily that they did create the

1 force.
2 Q You can't say that these in fact did this?
3 A Correct.
4 MR. CANDOO: I have no further questions. Thank
5 you, Doctor.
6 MR. NEEB: No redirect.
7 THE COURT: You may step down.
8 THE WITNESS: Thank you.
9 THE COURT: Does he have his x-rays?
10 MR. NEEB: They're right here. We will need
11 those for the next witness, probably, or at least they can
12 go with the next witness.
13 THE COURT: Okay.
14 MR. NEEB: The State would call Dr. Nicholas
15 Vedder.
16 DR. NICHOLAS VEDDER, Called as a witness on behalf of
17 the Plaintiff, after first being
18 duly sworn, was examined and
19 testified as follows:
20 DIRECT EXAMINATION
21 BY MR. NEEB:
22 Q Please state your full name and spell your last name for
23 the court reporter.
24 A Nicholas V. Vedder; V, as in Victor, E D D E R.
25 Q How are you employed?

1 A I'm employed by the University of Washington as a physician
2 based primarily at Harborview Medical Center.
3 Q If you would briefly describe your education and training
4 background.
5 A I did my undergraduate education at Stanford University,
6 then medical school at Case Western Reserve University,
7 followed by surgical training at the University of
8 Washington, with additional training in plastic and
9 reconstructive surgery at Harvard Medical School and
10 Massachusetts General Hospital in Boston. And then,
11 finally, a hand and microsurgery fellowship at the
12 University of Washington.
13 Q How long have you been a physician?
14 A I received my M.D. in 1981.
15 Q How long have you been in your specialty?
16 A I finished training in plastic and reconstructive surgery
17 in 1990, so for the past six years I've been in the
18 business of plastic and reconstructive surgery.
19 Q What are your primary duties at Harborview?
20 A I take care of, primarily, trauma cases that come through
21 Harborview, patients who have problems that are plastic and
22 reconstructive in nature. I have a special interest in
23 both hand surgery as well as cranial maxillofacial trauma.
24 Q In early January of this year did you treat Kim Krapf?
25 A I did.

1 Q How was it that you became the physician on her case?
2 A I was the attending physician on call when she came in.
3 Q What information did you have before you actually contacted
4 her?
5 A I had a report from the resident physician staff describing
6 her injuries, and that was about it.
7 Q When you actually first contacted Ms. Krapf, looked at her
8 and talked to her, what were you able to determine?
9 A I was able to determine that she had suffered severe facial
10 trauma, which is where I concentrated my examination
11 because that was the area that I was working on.
12 Q So, what did you do then?
13 A At that point I had already reviewed her x-ray studies,
14 which demonstrated her facial fractures. At that point,
15 after examining her, going over the records, reviewing her
16 radiographs or x-rays, I made a plan to correct her
17 deformities and her injuries.
18 Q Did you have some underlying information as to the
19 mechanism of her injuries?
20 A I was told some background from the resident staff that
21 they had gleaned from talking with the patient, and also
22 from the social works staff, but I did not discuss it with
23 the patient myself.
24 Q What types of injuries did you think that you were dealing
25 with?

1 A They were injuries related to blows to the face, was my
2 understanding both by history, which was consistent with
3 what I saw on the radiographs, and in examining her.
4 Q During the course of your practice, have you seen a number
5 of people both in automobile accidents as well as in
6 assaultive situations demonstrating facial injuries?
7 A Yes.
8 Q Approximately how many, if you are able to even give us a
9 number?
10 A That's difficult to say over the course of my career, but,
11 I mean, it would be probably hundreds.
12 Q Are you able to quantify or rank the severity of these
13 injuries that Ms. Krapf had, based on your experience?
14 A Yes. I would characterize these as very severe facial
15 injuries.
16 Q What was the course of action that you were going to take?
17 A We had planned a surgical reconstruction of her injuries to
18 restore normal anatomic position as well as restore
19 function of the areas which were not -- which were injured
20 at that point in time, specifically around the eyes, as
21 well as the function of the teeth, the upper part of the
22 jaw. The mandible that holds the teeth was loose and
23 wasn't able to function normally.
24 Q Was this operation actually done?
25 A Yes, it was.

1 Q By who?
2 A By myself.
3 Q Take us through the operation, if you will. Actually,
4 first of all, how many people are you using in the
5 operation room for an operation of this intricacy?
6 A In this particular case it was myself and Dr. John Grant,
7 who was a resident physician on the service at the time.
8 He was my assistant, so there were two of us, as well as
9 the nursing staff.
10 Q Take us through the actual operation, if you would. Well,
11 actually, let me back up.
12 Do you have some x-rays or some CAT scans that
13 show the actual injuries that she had to her face?
14 A I do.
15 Q Do you have those with you?
16 A Yes.
17 Q Would pointing out the injuries help you to elucidate your
18 testimony?
19 A I think so.
20 Q Why don't you use the board there. I think I have to be
21 the holder, because they don't really clip tight.
22 MR. CANDOO: I'm going to interpose an
23 objection. I have no objection to the injuries, the nature
24 of the injuries and this doctor's opinion, but I do have a
25 problem in terms of materiality as to procedures employed

1 to rectify. I don't think that's an element of anything
2 charged here.
3 THE COURT: I think that probably goes more to
4 the severity than anything, and that is a question for the
5 jury.
6 MR. CANDOO: And the other thought is that, while
7 we're talking about x-rays, I think for the record it would
8 be nice to have them numbered or in some way described so
9 that we don't lose track of what x-ray is being referred to
10 by which doctor.
11 THE COURT: I do think they should be marked,
12 Counsel.
13 MR. NEEB: The only problem I have with that,
14 Your Honor, is these are the original x-rays that need to
15 go back. I'm using them as illustrative only. I don't
16 mind having him describe them, but I would prefer not to
17 have an actual court marking on them when they go back with
18 him, if that isn't a problem, as long as he distinguishes
19 between them.
20 THE COURT: For the record we can somehow refer
21 to them as Dr. Vedder's x-ray number 1, or Dr. Vedder's
22 x-ray number 2, or something so we have a record.
23 THE WITNESS: The medical center would have no
24 problem with having these marked, as long as they are
25 returned.

1 MR. NEEB: Let's do that, then.
2 MR. CANDOO: I think there's probably numbers on
3 those already that correlate to Harborview. If those
4 numbers are referred to -- because, again, I can't predict
5 the future, but in case this needed to be --
6 THE COURT: Just so we use some sort of
7 designation.
8 THE WITNESS: I will describe this as Harborview
9 Medical Center Exam Number 4674, dated 1-2-96, of patient
10 Kim Krapf.
11 THE COURT: Okay.
12 A This is a CAT scan, a computerized tomography scan, through
13 the skull showing the skull and the facial bones. This is
14 concentrated on the front of the face here.
15 Q What angle does this reflect?
16 A This shows the skull, and these lines indicate where the
17 cuts are taken with the CAT scan. So you are actually as
18 though you were looking at a slice through the skull this
19 way.
20 Here you can see the nose. Up front, the ears
21 would be on either side. And this is the front of the
22 face. We are looking, actually, from the top here. Here
23 are the eye sockets right there, moving down the face until
24 we get to the area around the bottom of the eye sockets or
25 the orbits.

1 Q It looks like we have right and left backwards, so maybe we
2 should flip this. Would that help, or no?
3 A This is the way it is normally read, but it may be easier
4 for the jury to see it from this side. So, this would be
5 the right side and this would be the left side.
6 As we get down to the area around the ear or the
7 bottom of the eye where you can feel on yourself there's a
8 bone right there, you can see that this bone has been
9 fractured into a number of pieces. The bone in front of
10 that, known as the zygoma, has been fractured, as well, and
11 has been pushed back into the face. This is the bone that
12 forms the eye socket itself. You can see that has been
13 pushed back and is actually pressing somewhat on the
14 eyeball itself.
15 Q If a kick or a hit were to cause this break, where would it
16 have to be directed, if you are able to say?
17 A To either the front or the side of the face in this region.
18 Q In the upper cheek to the right of the eye?
19 A Correct.
20 You can also see further down that there is
21 fracture of the nasal bones, as well.
22 On the other scan --
23 Q Tell us what that one is, if you would.
24 A This is another CAT scan taken in a different plane. This
25 is taken in the sagittal plane. Here you can see the front

1 of the face. I know it's maybe difficult, but the two eyes
2 are here. And these slices are taken in this direction, up
3 and down.
4 Q Sagittally means up and down?
5 A Right. Here are the two eye sockets. And as you move back
6 further into the face, you can see on the left side there's
7 a bone supporting the eyeball. On the right side you can
8 see that that bone has been pushed away and is actually
9 missing in the central portion so that the eyeball itself
10 has sunken down into the face.
11 MR. CANDOO: What Harborview number was that, the
12 second one the doctor just described?
13 THE WITNESS: We will call that exam 4674.
14 MR. CANDOO: That was the first one.
15 THE WITNESS: It's the same exam, different --
16 multiple different pictures of the same exam.
17 MR. CANDOO: Okay. I'm sorry.
18 Q (By Mr. Neeb) Do you have another x-ray that you brought
19 with you that shows something different than that?
20 A I have an x-ray that demonstrates the reconstruction that
21 we performed.
22 Q Let's do that afterwards, then.
23 If this surgery that you do, that you did on
24 Ms. Krapf, is not done, what is the result?
25 A In her particular case she had what's known as entrapment

1 of the ocular muscles, the muscles that move the eye, on
2 the right side, such that the pieces of bone had impaled
3 themselves into the muscle or the muscle was trapped by the
4 fracture so that her eye could not move normally on that
5 side. She was having double vision particularly in upward
6 gaze. So, if we had not corrected that, she would be left
7 with permanent visual impairment.
8 Q Did you also bring with you a model of the skull that would
9 show where her fractures were located?
10 A Yes. This is a model of the skull that, unfortunately, is
11 previously damaged on the right side, but most of her
12 injuries were concentrated on the right side as well as
13 some on the left side. This bone here, the zygoma, was
14 fractured back away from the facial skeleton and rotated
15 back in. This bone --
16 Q Before you go on, just so that we can describe that, we
17 would refer to that as our upper cheek bone on the right
18 side?
19 A Upper cheek bone, that's correct.
20 On the left side you can see this arch of bone
21 here. That's known as the zygomatic arch. That's missing
22 on this side. And in her case this bone was severely
23 fractured. As well, it was actually impaled into the
24 muscle that moves the jaw up and down.
25 The lower portion here of the eye socket is

1 called the orbital floor. In her case, on the right side
2 this bone was smashed so that the eyeball itself was sunken
3 down, was actually dropping down into the cheek itself.
4 This bone was also fractured on the left side, but not as
5 severely. It was fractured enough so that the eye was
6 sunken down on the left side, as well, which we couldn't
7 really appreciate until we had corrected the right side.
8 Q What about the nose?
9 A Her nose was -- the nasal bone itself, as well as the
10 cartilages, were fractured.
11 Q On one side or both?
12 A On both sides.
13 Q So then what actual surgical procedures did you perform?
14 A We performed what's known as an open reduction and internal
15 fixation. That means to open and expose the fractures, put
16 them back into their normal anatomic position, fix them in
17 place with plates and screws, as necessary. And in
18 addition, we harvested some bone from the skull to
19 reconstruct the floor of her eye sockets on both sides.
20 Q Now, I don't think I let you complete your answer a while
21 ago when I asked you, if the surgery is not done, what
22 physical effect does it have on her appearance and on her
23 function and even viability?
24 A In addition to affecting her vision, in particular on the
25 right side, over time if this is not corrected the facial

1 bones tend to be retracted or pulled back into the face so
2 that the entire face sinks back in.
3 In her case the upper jaw was loose. It was
4 fractured on both sides so that her teeth really were --
5 the entire construct that holds her teeth was loose and
6 mobile so that her teeth did not fit together normally. If
7 that had healed in that position, then she would not have
8 normal occlusion. Her teeth would not fit together
9 normally and she would have difficulty eating and
10 difficulty with her teeth over time. So, both of those
11 aspects, the chewing aspect, the function of the teeth, as
12 well as the function of the eyes, were corrected in this
13 surgery, as well as preventing the deformity that develops
14 if this isn't corrected, the face sinking back in.
15 Q What about her ability to breathe?
16 A Her ability to breathe through her nose was corrected to a
17 certain extent with this procedure, but the ability to
18 breathe through her mouth was not affected by this
19 particular injury, at least at the time that we saw her, or
20 that I saw her.
21 Q Had no reconstruction been done, would she eventually had
22 to have given up breathing through the nose, potentially?
23 A That's possible.
24 Q Now the actual operation itself, what did you have to do?
25 A In order to perform the reconstruction, all of the

1 fractures have to be exposed. So we essentially work on
2 stripping or elevating the entire face off of the facial
3 skeleton. This is done through incisions underneath the
4 eyelids on both sides, as well as incisions up in the gums
5 underneath, and then, finally, what's called a coronal
6 incision, going from one ear across the scalp to the other
7 ear and peeling the scalp forward to expose the area around
8 the eyes.
9 Once the fractures are exposed, they're then
10 reduced into their normal anatomic position and fixed in
11 place, as I said, with plates and screws.
12 Q Okay. There's a device called arch bars in your line of
13 work. What are those?
14 A The initial step in the reconstructive procedure is to
15 restore her occlusion, that is, how the upper jaw and lower
16 jaw fit together, since that is one of the most important
17 functional problems that she was having. So, you put the
18 teeth into their normal occlusion and then with a wire bar
19 going across the top, a wire bar going across the bottom,
20 and then wires between those two, you wire the jaw shut.
21 That sets the teeth in the normal position. And after
22 doing that, you can then build the rest of the facial
23 skeleton from that base.
24 Q Did you have any difficulty or any interruption in actually
25 placing those on Ms. Krapf?

1 A Not that I recall.
2 Q Were there any surgical procedures that had to be done
3 prior to that?
4 A Yes. When we got in there, we found that she had injury to
5 two of her upper teeth, both of which had to be extracted
6 and were done so by the oral surgery service.
7 Q Are you able to show which teeth those were?
8 A Unfortunately, not on this model because they have been
9 knocked out, but it was her right upper canine and premolar
10 on the right side.
11 Q Which are like the second and third from the middle on her
12 right side?
13 A Yes.
14 Q And why was it they needed to be removed?
15 A They were fractured and loose.
16 Q Did you actually perform that surgery?
17 A No.
18 Q How was that done?
19 A That was done by the oral surgeons.
20 Q After that's completed, what do you do?
21 A After we completed the fixation?
22 Q After the two teeth are removed.
23 A After the two teeth were removed, we put on the arch bars
24 to wire the jaws shut and then proceeded with exposures of
25 the fractures and reduction and correction.

1 Q Take us through those steps, if you would.
2 A Well, as I said, the entire facial skeleton is elevated, or
3 the face is elevated off the facial skeleton. All the
4 fractures are individually reduced, and then small plates
5 with screws are placed across the fractures to hold them in
6 position.
7 Q And the graft that you had to take and implant, how --
8 first of all, why is that necessary?
9 A Even after reduction of the fractures, there is still a
10 hole in the bottom of the eye socket, in the bottom of the
11 orbit, so that the eye would sink down into the face.
12 Q On both sides or just one?
13 A On both sides. On the right side worse than the left
14 side. And on both sides we had to actually go in, lifting
15 up the eyeball to get into the bottom of this floor, and
16 then take some bone graft from the skull and place it
17 underneath there to hold the eye up into position.
18 Q How did Ms. Krapf tolerate all of these procedures?
19 A She tolerated them very well.
20 Q Would you term them a success?
21 A I would.
22 Q What are the resulting effects that she is going to have
23 from these operations, if any?
24 A She will permanently have plates in position as -- Do you
25 want me to show this x-ray?

1 Q Okay.
2 A This is an x-ray taken on January 10th, 1996, of her skull
3 following the reconstruction. It shows all the plates and
4 the screws that were placed to hold the fractures in
5 position. There's one plate underneath the right eye.
6 There's one along this zygomatic arch, the bone that you
7 can feel on the side of your cheek. There's one up on the
8 corner of the eye, as well as plates on both maxillary
9 buttresses which hold the upper jaw in position. These are
10 what hold the upper jaw and keep it from moving around.
11 In addition, you can see the wire bars on the
12 teeth with wires between them holding the jaw shut.
13 Q Are those temporary or permanent?
14 A These arch bars on the teeth are temporary. The remainder
15 of all the plating system is permanent.
16 Q Now, the plates and the screws that are actually shown on
17 that, from where I am sitting they are not real obvious,
18 but they show up as bright, almost white spots on the
19 x-ray?
20 A Yes. You can see them as very bright, white areas. And
21 when you look closely, you can even see individual small
22 screws.
23 MR. NEEB: I would ask the Court's permission for
24 the jury to pass that around and hold it up to the light so
25 they can see better what he is talking about.

1 MR. CANDOO: I don't have any problem. I don't
2 want to be in the way of the jury seeing this, because it
3 is serious testimony, but I am concerned because it is not
4 marked as an exhibit nor admitted as an exhibit for
5 recordkeeping purposes. I think that that should be an
6 important step.
7 THE COURT: I agree. Counsel, I think it either
8 has to become evidence or it doesn't go to the jury.
9 MR. NEEB: Your Honor, I guess I would ask the
10 Court's --
11 THE COURT: It can be returned to him at some
12 later date.
13 MR. NEEB: If we mark that and admit it, can we
14 substitute a photocopy? Is that agreeable to you?
15 MR. CANDOO: Not until I see the photocopy. I
16 don't think admitting an x-ray is an earth-shaking thing.
17 It is done a lot in courts and I think we should go ahead
18 and admit it.
19 THE WITNESS: I'd be happy to do that.
20 THE COURT: These x-rays will come back to you in
21 a month or two months.
22 THE WITNESS: Certainly. I have no problem with
23 that.
24 MR. NEEB: Why don't we do that.
25 (Plaintiff's Exhibit 29 was marked.)

1 MR. NEEB: And I will offer Plaintiff's Exhibit
2 29, Your Honor.
3 MR. CANDOO: No objection.
4 THE COURT: It will be admitted and you may
5 publish it to the jury.
6 THE WITNESS: May I make a correction?
7 MR. NEEB: Sure.
8 THE WITNESS: I testified that it was her right
9 upper canine and premolar. It was actually her left upper
10 canine and premolar.
11 Q (By Mr. Neeb) The teeth that were removed?
12 A Correct.
13 Q Right is marked with an "R" on the top of this exhibit?
14 A That is correct.
15 MR. NEEB: Your Honor, do you mind if we take
16 just a minute to let them do that before we go on?
17 THE COURT: We will let them pass it around. You
18 can wait.
19 Q (By Mr. Neeb) Dr. Vedder, I'm going to hand you what have
20 been admitted as Plaintiff's Exhibits 15 through 20,
21 indicating that those were taken early in April of this
22 year. Do those accurately reflect Ms. Krapf after the
23 reconstructive surgery?
24 A Yes, they do.
25 Q Okay. Let's go through them individually. Does No. 15

1 show anything that may have resulted from the operations
2 that were performed?
3 A Yes. On No. 15 you can see that she has some asymmetry
4 between her eyes. There is some scarring more pronounced
5 on the right side that's actually pulling her lower lid
6 down so you can see some more of the white on that side.
7 In addition, she still has some swelling around
8 the eyes, and you can see how the lateral corner of both of
9 her eyes is still elevated somewhat as a result of the
10 surgical procedure.
11 Q When you talk about asymmetry, what do you mean?
12 A A difference between one side and the other that's visible.
13 Q Of the level of her eyes, or of the size of them, or --
14 A In terms of the overall appearance. You can break it down
15 into different components. In terms of the level, the
16 eyeball itself on the right side appears to be just
17 slightly higher than the left, but a lot of that is due to
18 the optical illusion of the lower lid being retracted down
19 by scarring.
20 Q How much of that will be permanent?
21 A Some of that will be permanent. Some of that will improve
22 over time, but some of it will be permanent.
23 Q Will her eyes ever be anatomically even like they were
24 prior to the surgery?
25 A That is not likely.

1 Q Number 16, what does Number 16 illuminate?
2 A Number 16 shows some of the same changes. You can also see
3 a little bit better -- or at least I can -- the scarring
4 right underneath her eye on both sides just beneath the
5 lashes, as well as the small scar going down from the
6 side. Those scars will be permanent.
7 You can also see, again, that there is a bit more
8 white showing on the right side as a result of the
9 additional scarring that is retracting or pulling the lower
10 lid down on the right side.
11 Q And Number 17?
12 A Number 17 appears to be demonstrating the loss of teeth on
13 the left side.
14 Q It's safe to assume those won't grow back but could be
15 replaced with --
16 A Yes, I would assume so, but I'm not an expert on that.
17 Q -- bridge work.
18 18, 19 and 20, what do those show?
19 A 18, 19 and 20 show the zig-zag scar in her scalp that was
20 used to approach through this coronal incision when we go
21 in through the top and peel the scalp forward to get access
22 to the eyes.
23 Q Is that scarring permanent?
24 A Yes, it is.
25 Q And just so the record is clear, 18, 19 and 20 appear to be

1 a sequence left to right. Is that accurate?
2 A Yes, that's what it appears. This is -- 18 is on the left
3 side. 19 is around the center and top. And 20 is over on
4 the right side.
5 MR. NEEB: I would ask to publish these, as well,
6 Your Honor.
7 THE COURT: You may.
8 Q (By Mr. Neeb) Dr. Vedder, did you have any involvement at
9 all with Ms. Krapf's punctured lung?
10 A No, I did not.
11 Q Were you her treating physician at Harborview that that was
12 monitored by you or anything?
13 A I did not become her treating physician until the time that
14 I operated on her.
15 Q Do you have a copy of Ms. Krapf's medical records?
16 A I do.
17 Q Are you able to tell from there when the chest tube was
18 taken out, without it taking too difficult or too long a
19 time?
20 A I will look here. I recall an x-ray report that had the
21 time of chest tube removal on it. I'm looking at a -- The
22 first thing I come to here is an x-ray report of 1-6-96
23 with the clinical material stating: Chest tube pull at
24 twelve noon.
25 Q Okay. Does the four or five day period that the chest tube

1 was in have any significance from a medical point of view
2 on the severity of the punctured lung itself?
3 A Not necessarily.
4 Q Are you aware of whether or not this lung actually healed
5 after the removal or given the removal of the tube?
6 A The x-rays taken after the removal showed that there was
7 continued resolution of the problem, that it did not appear
8 to come back.
9 Q Do you anticipate -- Will you have any more contact with
10 Ms. Krapf for follow-up examinations or anything?
11 A Yes. I'm planning to see her again in several months.
12 Q And what is the purpose of that?
13 A To follow the course of her healing as well as the course
14 of any additional deformities that she might develop as a
15 result of her injuries.
16 Q What additional deformities are possible?
17 A As I pointed out to you, we had to re-suspend the eye on
18 both sides. Over time that tends to come down. If that
19 comes down too far, it may need to be corrected. If the
20 scarring underneath her eye on the right side continues to
21 pull the lid down such that she develops a problem with
22 exposure of her eye so that the cornea gets injured, we
23 might need to do something about that.
24 If she has problems related to the plates or the
25 screws that we put in, them either being painful or

1 uncomfortable, we might need to remove some of those.
2 Q What about potential vision problems or current vision
3 problems?
4 A Currently her vision is, as far as we can tell, essentially
5 normal following the correction that we performed.
6 Q What does "essentially normal" mean?
7 A That she has no difficulty seeing in all fields of vision.
8 She is able to look up and down from both sides and is able
9 to read print normally. I, myself, did not perform a
10 formal visual examination.
11 Q Would you expect there to be any acuity difficulties,
12 blurred vision, or anything like that?
13 A It would not be likely for her to not have blurred vision
14 now and to develop that later down the road. That would
15 not be likely.
16 MR. NEEB: Thank you, Dr. Vedder.
17 Your Honor, I think that's all the questions I
18 have.
19 MR. CANDOO: No questions.
20 THE COURT: You may step down. Thank you.
21 (Witness excused.)
22 MR. NEEB: I need to check if the next witness is
23 here, Your Honor.
24 MR. NEEB: The State would call Deputy Shin, Your
25 Honor.

1 DEPUTY DEBORAH SHIN, Called as a witness on behalf of
2 the Plaintiff, after first being
3 duly sworn, was examined and
4 testified as follows:
5 DIRECT EXAMINATION
6 BY MR. NEEB:
7 Q State your full name, spelling your last name for the court
8 reporter, please.
9 A Deborah L. Shin, last name S-H-I-N.
10 Q How are you employed?
11 A Pierce County Sheriff's Department.
12 Q How long have you been with the sheriff's department?
13 A I've been with the sheriff's department for ten years.
14 Q What are your current duties?
15 A Deputy sheriff on patrol.
16 Q What does that mean that you do?
17 A Respond to calls, assist in traffic accidents,
18 investigations, and proactive police work.
19 Q In the late evening hours of January 1st and early morning
20 of January 2nd, did you respond to a trauma scene at 224th
21 and Meridian?
22 A Yes, I did.
23 Q How was it that you got dispatched to that scene?
24 A I was working at the time and that was my district.
25 Q What did you think you were responding to?

1 A I recall it was a medical aid call where the fire
2 department medical aid was already there at the scene and
3 an unknown female at that time had been found with several
4 injuries.
5 Q When you got to the area, what did you observe?
6 A The firefighters were already there and they had her on the
7 gurney and were attempting to do some medical aid to her.
8 Q Was the person who brought her to that scene still there?
9 A Yes.
10 Q Did you get her name and information?
11 A Yes, I did.
12 Q What was the name she gave you?
13 A Her name was April Duckett.
14 Q What contact did you have with Ms. Duckett?
15 A She was standing by the door. The area that I responded to
16 was a parking lot of an AM/PM, and she was standing by the
17 door to the business with several other people. The
18 firefighters pointed her out to me as being the one that
19 drove this individual to the location, so I walked over and
20 contacted her.
21 Q Approximately how far away from where the emergency people
22 were was Ms. Duckett?
23 A About 30 or 40 feet.
24 Q Did that seem unusual to you?
25 A Yes.

1 Q Why?
2 A She was standing talking with other people rather than with
3 the individual who was getting the medical aid, the victim.
4 Q Did you attempt to determine from her what she knew?
5 A Yes, I did.
6 Q How did you go about doing that?
7 A I asked her if she was the one who called, and she said
8 yes. And I asked her if she knew the individual and she
9 said no, that she had found her walking on the road, picked
10 her up and drove her to that location to call for medical
11 aid.
12 Q Okay. Did you eventually have contact with the person who
13 was being treated?
14 A Yes.
15 Q And did you determine her identity?
16 A Yes, she told me at the scene.
17 Q And what was it?
18 A She told me that her name was Kim Krapf.
19 Q What appearance did she present to you when you first saw
20 her?
21 A She had massive injuries and bleeding to her face and her
22 head and her hands, and she was having a lot of difficulty
23 breathing.
24 Q Was she having difficulty speaking to you?
25 A It was mumbled, but -- and very quiet, but if I got down

1 close enough I could understand her.
2 Q What could you tell about her eyes?
3 A Just that they were swollen shut.
4 Q Did it appear that Ms. Krapf would have been capable of
5 walking down the road to wherever she was reported to have
6 been?
7 A No, I don't believe so at all. No.
8 Q What other information, if any, did you try to get from
9 Ms. Duckett?
10 A I also asked her why she drove so far from where she said
11 she picked up Ms. Krapf and why she hadn't stopped sooner
12 to call for help.
13 Q And what was her response?
14 A She had none.
15 Q Did she appear to be cooperating with you, or did she
16 appear to be evasive?
17 MR. CANDOO: Objection. Calls for a conclusion.
18 I think we need to hear descriptions, not conclusions.
19 THE COURT: Well, I think police officers are
20 able to give an opinion of that nature as to whether
21 someone is cooperating. I think that's a common area that
22 people can give an opinion. I will allow her to answer the
23 question.
24 Q (By Mr. Neeb) Go ahead and answer the question.
25 A I asked her for identification so that I could copy down

1 her information.

2 MR. CANDOO: Objection, nonresponsive.

3 THE COURT: Yes. Sustained.

4 The question simply was: Was she cooperating?

5 Q (By Mr. Neeb) Was she cooperating or was she evasive?

6 A She was evasive.

7 Q Did she appear to have more information about this than she

8 was giving you?

9 MR. CANDOO: Objection.

10 THE COURT: I will sustain the objection. It's a

11 leading question.

12 The question that was posed was: Did she appear

13 to be cooperating? Yes or no?

14 THE WITNESS: No.

15 Q (By Mr. Neeb) Did she indicate at any point during your

16 contact with her concern at all for Ms. Krapf?

17 A No.

18 Q After you were done with Ms. Duckett, did you talk to

19 Ms. Krapf?

20 A Yes.

21 Q What for?

22 A To find out who she was and if she had been -- how she had

23 obtained the injuries that she had.

24 Q At some point during your contact with her were you able to

25 determine an address for Ms. Krapf?

1 A I don't recall where in the evening I obtained that
2 information, but she said Kapowsin.
3 Q And at some point did you get an address?
4 A Yes.
5 Q And what was the address?
6 A The address was 31712 145th Avenue East in Kapowsin.
7 Q Did you attempt to determine what had happened to her?
8 A Yes.
9 Q What was the reason that you did that?
10 A Just part of my job. When someone is injured that badly,
11 we need to know if there was an accident, if it was a
12 hit-and-run and somebody else is out there. Or, if someone
13 had actually injured her, we needed to know who the suspect
14 was in order to apprehend them.
15 Q What information did you learn in that regard?
16 A That her boyfriend Ron had done it to her.
17 Q At some point during your investigation -- Well, what
18 happened with Ms. Krapf at that point?
19 A At the scene?
20 Q What was done with her?
21 A They transported her to Good Samaritan Hospital, and I
22 followed the ambulance down there, also.
23 Q Did you go straight from 224th and Meridian to Good
24 Samaritan Hospital?
25 A Yes, I did.

1 Q Why was it that you accompanied the ambulance and went
2 there?
3 A To confirm any identity, notify any family members that
4 needed to be notified, and to find out the extent of her
5 injuries.
6 Q How long were you at the Good Samaritan Hospital with her?
7 A I don't recall exactly.
8 Q While you were at Good Samaritan Hospital, did you go to
9 the emergency room with her?
10 A Yes.
11 Q What of her treatment did you observe, if any?
12 A They put a tube through her side into her lung that had
13 collapsed.
14 Q During the time that that was going on, did you overhear
15 Ms. Krapf make any statements?
16 A Yes.
17 Q What did she say?
18 A We were having to hold her down in order to do that
19 procedure and I was assisting in that.
20 Q Who is "we"?
21 A Myself and the nursing staff and the doctors. And she
22 was -- she was crying at the same time and saying -- and I
23 could refer to my report and get you the exact quote, but
24 she was saying -- I'll do that.
25 Over and over again she said, "Stop, Ron, you're

1 hurting me," as they were trying to insert the tube into
2 her side.
3 Q Do you recall how many times she said it?
4 A I don't recall how many. It was several, though.
5 Q As far as you knew, was anybody that was in the room with
6 her at the time named Ron?
7 A No.
8 Q After you left the emergency room, what did you do
9 regarding this incident?
10 A After I left the emergency room then I contacted two other
11 deputies who knew the location of the house.
12 Q That were familiar with the address that you had for
13 Ms. Krapf?
14 A Yes, they were.
15 Q Did you attempt to determine an identity of anybody -- You
16 said you had information about "boyfriend" and "Ron" and
17 you had heard the name "Ron" again at the emergency room.
18 Did you come up with anyone with that name during your
19 investigation?
20 A Yes, at that location that lived at that address, also, was
21 Ron Hall.
22 Q At what address?
23 A At the 31712 145th Avenue East in Kapowsin.
24 Q Did you attempt to effect an arrest of Mr. Hall based on
25 that information that you had?

1 A Yes, myself, Deputy Heishman and Deputy Heacock went up to
2 the address and attempted to contact him.
3 Q Was that successful?
4 A No, it was not. There was no answer at the door.
5 MR. NEEB: Thank you, Deputy Shin.
6 Your Honor, that's all the questions I have.
7 MR. CANDOO: I have no questions.
8 THE COURT: You may step down.
9 (Witness excused.)
10 MR. NEEB: Those are all the witnesses, Your
11 Honor, that I have lined up for this morning. The other
12 witnesses are coming at 1:30.
13 THE COURT: All right. And you have witnesses at
14 1:30?
15 MR. NEEB: Yes.
16 THE COURT: Okay. We will break for the
17 morning. You still have not heard all the evidence in this
18 case. You are not to begin making up your minds until you
19 have heard the evidence, until you have heard my
20 instructions on the law, and you have heard the argument of
21 Counsel.
22 We will reconvene at 1:30. You may be excused at
23 this time.
24 (Jury excused from the courtroom.)
25 MR. NEEB: Your Honor, a couple things that I

1 wanted to talk with the Court about scheduling so that
2 Mr. Candoo isn't surprised at all. I need to prepare to
3 present this case to the jury without a victim. I don't
4 mean to be -- well, I don't want to go any further than
5 that at the moment, although I do need to make a record at
6 a later date about some things.
7 One of the things that I anticipate -- or two
8 things that I anticipate doing this afternoon, the
9 regularly scheduled witnesses are: Ident. Officer Wilkins
10 from the sheriff's department; and Sue Vojir, who was the
11 nurse at the emergency room at Good Samaritan Hospital.
12 I'm also anticipating recalling Deputy Bautista,
13 and calling Pam Haselow -- who is a victim advocate in our
14 office who is not on the witness list -- to testify
15 surrounding Ms. Krapf's non-appearance at this time.
16 I intend to tell the jury that there's a material
17 witness warrant and that she has not been -- she has not
18 appeared to testify at least at this time.
19 And I gave Mr. Candoo a copy of Ms. Haselow's
20 notes from the interview that we did with Ms. Krapf several
21 weeks ago now.
22 MR. CANDOO: I have that.
23 MR. NEEB: And basically her testimony will be
24 her observations of that interview and not any content of
25 the discussion that was going on. But, I think I need to

1 do that. I believe I'm entitled to explain Ms. Krapf's
2 absence if we get to the point where the State eventually
3 rests and intended to go to the jury without Ms. Krapf
4 testifying. And I wanted to put that on the record so we
5 all knew what was coming up this afternoon.
6 MR. CANDOO: I'm going to object if we are going
7 to get into a motive behind her being here or not being
8 here.
9 As far as the State using efforts to subpoena her
10 and asking for a material witness warrant, I think that's
11 as far as they can go. But, if he is signalling to me he
12 wants a victim advocate to speculate as to where she really
13 is or what she is really about and why she is not here, I
14 think that's just way out of line.
15 THE COURT: My impression was that -- and it is
16 an impression; I'm not trying to put words in Counsel's
17 mouth. My impression was he was going to ask questions
18 such as, "Was she cooperative in the interview?"
19 MR. NEEB: And what her demeanor was like during
20 the interview.
21 As an offer of proof I will tell the Court that
22 she will testify -- well, Deputy Bautista and Ms. Haselow
23 combined will testify that Ms. Krapf had to be brought into
24 the office on a material witness warrant that had been
25 issued. She had to be arrested and brought down because

1 she was exhibiting a lack of cooperation.
2 During the interview she was initially hostile,
3 eventually changed her attitude somewhat, became more
4 cooperative, and during the course of the interview
5 reviewed the pictures and talked about the incident and
6 became emotional and started crying. I don't intend to go
7 into content at all, but her emotional changes that
8 Ms. Haselow observed, coupled with the fact that she was
9 served with her subpoena and knew she needed to be here,
10 all become relevant to explain her absence so that I can
11 argue to the jury, "Look at what she went through. Coming
12 in here was just too much." I think I'm entitled to lay
13 that ground work. It is not hearsay testimony. It is
14 Ms. Haselow's personal observations and Deputy Bautista's
15 personal activities.
16 MR. CANDOO: I think it is past the line. I
17 don't think -- It's a close call. I think he is liable to
18 have an inference from the pictures. I mean, my gosh,
19 we've got this testimony. I mean, I don't think he needs
20 to spoon feed this jury. They're pretty bright people.
21 They may be able to draw their own conclusion as to why or
22 why not she is here, but I think having a person testify as
23 to -- I mean, we have let them testify as to whether or not
24 they thought someone was cooperative. And I submit that
25 cooperative is also known as giving them the information

1 that they want or think that they should get, and answering
2 questions correctly, in their viewpoint.
3 I think this is perilously close to allowing the
4 prosecutor and police officers, however well meaning, to
5 infer motive into a person who is a separate person, a
6 separate actor. And I think to have people line up and
7 start saying, this is what she really meant, or this is
8 what she is really -- and that's what he is trying to get
9 to is what she is really doing or what she is really
10 thinking behind her actions. I just don't think that's the
11 proper province of testimony. It should be based upon
12 personal knowledge, and no one has personal knowledge. And
13 I think the jury is allowed to use their own common sense
14 if they want to draw that conclusion. But, I think -- I
15 really know what we're trying to depict here, and I commend
16 Counsel for the diligence or the zealousness of following
17 through on that, but I think -- I'm restating myself. I
18 don't think it's proper.
19 THE COURT: I'll tell you what we'll do as far as
20 all of that is concerned. We will see how this goes and
21 then if we get to the point where you want to call the
22 victim advocate, we will put it on the record and I will
23 make some kind of a ruling as to how I think it should
24 proceed, if at all, as far as victim/witness assistance
25 testimony. This interview took place when?

1 MR. CANDOO: Two-and-a-half weeks ago.

2 MR. NEEB: It was early in April, Your Honor.

3 The actual date was April 11th.

4 THE COURT: All right.

5 MR. CANDOO: I have another issue. We could do

6 some work on some jury instructions. I indicated to the

7 Court yesterday, I guess, that I had no objection to their

8 pattern instructions. I was going back and buttoning up my

9 instructions, or possible lesser included issues, and in

10 re-looking at Instruction No. 8, which is probably the most

11 important instruction that we have, as to Assault First

12 Degree, I do have an objection, because in my batch of

13 WPIC's I found that there's a difference and the difference

14 is fairly telling. I think maybe Counsel can just go back

15 and check that. And I pointed it out to Mr. Neeb

16 yesterday, what the problem was.

17 The problem, succinctly, is that there's a clause

18 at the end of Instruction No. 8 that describes -- the very

19 last clause says -- and I think as it stands alone that the

20 jury could be confused by it, I think, allowing a jury to

21 neglect the requirement that there be intent to inflict

22 great bodily harm at the time of the assault. It indicates

23 that -- as a last clause it says, comma, or did assault and

24 did cause great bodily injury. And I think it's not

25 clearly subordinate to the intent requirement as it is

1 required to be under the statute. It is a semantic thing,
2 but I think it is going to --
3 THE COURT: Counsel, this doesn't tell me what
4 instruction we're talking about. What is the WPIC?
5 MR. NEEB: It is the definitional instruction,
6 Your Honor. I think it is 35.07.
7 THE COURT: 35.07?
8 MR. NEEB: I think that's right.
9 MR. CANDOO: Yes.
10 MR. NEEB: Yes, 35.07.
11 MR. CANDOO: My copy of that is this one taken
12 from the book.
13 MR. NEEB: The difference, Your Honor --
14 THE COURT: I guess I don't understand the
15 objection.
16 MR. CANDOO: The objection is that the last
17 clause in No. 8 says: Or when he assaults another and
18 inflicts great bodily injury. That, I believe, is going to
19 -- First of all, it is not contained in the WPIC that I
20 have, unless there's, you know, another form. And,
21 secondly, and even more importantly, it is just not
22 consistent with the statute.
23 MR. NEEB: Maybe I can elucidate a little bit,
24 Your Honor, or clarify this. When I prepared this
25 instruction -- The charge currently is assault with a

1 deadly weapon or other instrument of great bodily harm, any
2 force or means. I added the alternative of the actual
3 infliction of great bodily harm. So, in the charging
4 document it goes "deadly weapon or any other means" first,
5 "infliction of great bodily harm" second.
6 35.07: "A person commits the crime of Assault in
7 the First Degree when with intent to inflict great bodily
8 harm he assaults another and inflicts great bodily harm,"
9 or "assaults another" and then the firearm or other force
10 language.
11 I switched it to comport with the charging
12 document, is all I did. And Mr. Candoo told me yesterday
13 that he thinks the jury will ignore the "with intent to
14 inflict great bodily harm" clause in the second line of my
15 proposed instruction because the -- or, the way I designed
16 the instruction, you have a person commits when with intent
17 he either assaults with a firearm, and then the last
18 clause, or when he assaults and inflicts. And I think it is
19 clear that those two are alternatives, especially given the
20 to-convict instruction that follows. That sets them out on
21 separate lines.
22 I think this is going to be a completely moot
23 point because I don't believe that I will be proceeding to
24 the jury with the deadly weapon language because I don't
25 believe Ms. Krapf will appear. I mean, I think we may be

1 getting ahead of ourselves because I am going to have to
2 submit revised instructions that say simply a person
3 commits Assault 1 when with intent they inflict great
4 bodily harm.
5 MR. CANDOO: I think that would eliminate any of
6 the confusion. If he somehow got to the weapon element, I
7 like the format the way it is out of the WPIC because I
8 think it clearly connects up and makes subordinate the --
9 THE COURT: I don't think the instruction as
10 written is misleading.
11 MR. NEEB: The only difference between that and
12 the WPIC are the switch, is all.
13 THE COURT: But, clearly, the whole thing goes
14 away if we are down to removing the deadly weapon aspect of
15 it.
16 MR. CANDOO: I don't want to spin wheels. We can
17 suspend any further comment on that issue.
18 MR. NEEB: Does the Court want to make up the
19 scheduling that we are going to be going by as far as in
20 Ms. Krapf's appearance or not?
21 THE COURT: Are you going to check out the
22 situation to find out what the story is and let us know?
23 MR. NEEB: I don't mean to be cryptic, but in a
24 way I kind of have to be at this point, but I can tell the
25 Court this much: I am almost certain that Mr. Hall has had

1 a hand in Ms. Krapf's non-appearance. And I really don't
2 want to go further than that right now because I want to
3 give things a chance to play out. I realize that's a
4 little bit cryptic at this point.
5 What I am going to be asking the Court to do at
6 the end of the day today is give me until Monday to resume
7 this trial with Ms. Krapf, or to take the matter up at that
8 point. I may on Monday ask for another five-day
9 continuance. The reason is -- the reason --
10 THE COURT: You don't have to go into the reasons
11 at this point.
12 MR. NEEB: I don't want to give the reasons in
13 front of the defendant because I know he is having contact
14 with the outside world.
15 THE COURT: When you give your reasons, you will
16 have to give them in front of the defendant.
17 MR. NEEB: Eventually I will, Your Honor.
18 THE COURT: My point at this point is I just want
19 to see what happens. If she shows up this afternoon,
20 fine. If she doesn't, I understand you are going to ask me
21 for some time. I will hear Counsel. We will see how that
22 plays out.
23 MR. NEEB: I do not anticipate she will be
24 showing up on her own volition. If she shows up, it will
25 be with a deputy escorting her, and they're looking.

1 THE COURT: I understand that.
2 MR. CANDOO: I want to, in response to -- I don't
3 know if there is such an adjective, but -- the "crypticism"
4 of Counsel, I'm entitled to discovery and information
5 that's being developed, and I would assert all our
6 discovery rights. If there's information that he has
7 pertinent to this case, I want it. And I don't know if you
8 want to make that in camera. I don't want to undermine the
9 judicial process or the integrity of the process, or
10 alienate it, but I do need to assert the discovery rights
11 that the defendant has.
12 MR. NEEB: I know my obligations.
13 THE COURT: Okay. We will be back at 1:30.
14 (Noon recess taken.)
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1 MAY 01, 1996

2 AFTERNOON SESSION

3 * * * * * * *

4 THE COURT: We're back on the record.

5 MR. NEEB: Yes, Your Honor. I thought we should

6 take up the matter of this scheduling again before the jury

7 came out. I have Sue Vojir here and ready. Deputy Wilkins

8 had a meth. lab that he was at today, so he won't be here

9 until about 2, so I have asked for Ms. Haselow to come down

10 between twenty 'til and ten 'til 2 to testify in the

11 interim. So, we need to take up the idea of her testimony

12 or the subject of her testimony. I thought rather than

13 have the jury come out for ten minutes for the nurse --

14 THE COURT: I agree. I think this is

15 appropriate. What you are telling me is that Ms. Krapf is

16 not present. You do not have her in custody in some

17 fashion, so she is not available.

18 MR. NEEB: Correct.

19 THE COURT: And you are asking to be allowed to

20 put Officer Bautista back on for the purpose of explaining

21 that, among other things. I don't know what else you might

22 want to put him on for, but one item is that you want to

23 put him on to explain that a material witness warrant has

24 been issued for her and that they have been unable to serve

25 it?

1 MR. NEEB: Well, yes.
2 THE COURT: Okay.
3 MR. NEEB: Except that what I was thinking, Your
4 Honor, over the lunch hour, is that what I would like to do
5 is put on the nurse, Ms. Haselow, and officer -- Ident.
6 Officer Wilkins, and then have the Court recess -- well,
7 and then take up the idea of recessing for the week.
8 THE COURT: That's where I was leading, because
9 it strikes me that all the rest of that is premature.
10 MR. NEEB: Right. I would like Deputy Bautista's
11 testimony about the warrant has been out and we've been
12 looking for her, in effect, non-stop since Tuesday, to come
13 on Monday morning if the victim has not been located,
14 rather than doing it now.
15 My opinion -- which matters not a whole lot -- is
16 that Ms. Haselow's testimony is relevant, even if the
17 victim testifies, for the limited purpose that I have laid
18 out, which is because the jury will see her once and they
19 should know whether her cooperation level has changed at
20 all in the interim. At the most, it is going to be
21 slightly cumulative if she testifies. And if she doesn't,
22 then it is in for the purpose that I have offered it for.
23 So, I don't think there's a problem putting her on today
24 even if the victim shows up.
25 THE COURT: I don't think it's a problem in the

1 sense that we're off into another area. Yes, there is some
2 slightly cumulative aspect to it.
3 Counsel, respond to the issue of Ms. Krapf is not
4 available. What do we do? Counsel asks to recess until
5 Monday morning, at which time he may want to offer some
6 brief testimony and then rest. That's basically where you
7 are?
8 MR. NEEB: Yes.
9 THE COURT: Okay.
10 MR. CANDOO: My opinion on that is that if a
11 witness is unavailable, they're unavailable. I don't think
12 you can suspend a trial or should suspend a trial from
13 going forward. I think it should be -- I mean, I don't
14 know that there's an answer to when this situation comes
15 up, how long do you suspend a trial or a jury. If there is
16 an answer, I wasn't able to find one very quickly last
17 night about high-centering the case. I don't like it
18 because we've got a jury. I wouldn't like it much anyway
19 because my client is kept under situations where he is
20 isolated and it's chafing aggresively on him.
21 We would oppose that. I don't know why they
22 waited until Tuesday to make their double check with her.
23 I don't think it's appropriate to high-center a case to
24 wait for a witness for either side unless there's, I guess,
25 a lot more on the record that I don't know about about good

1 efforts. I think she was in their custody a week and a
2 half or two weeks ago, and I guess they chose not to detain
3 her further in that custody, I guess feeling confident that
4 she would show up. I had the opportunity to meet with
5 her. I didn't feel any less confident that she would show
6 up. In fact, it's a surprise to me. I know that I fully
7 expected her to be here.
8 So, I just don't think that that's appropriate,
9 but I have no guidance. I think this is probably under the
10 heading of trial or case management from the bench, but I
11 believe it's objectionable and should not continue. We've
12 been objecting continuously, anyway, about delays in the
13 trial and I don't want to be a party to any further.
14 THE COURT: Mr. Neeb, anything further in that
15 area that you --
16 MR. NEEB: I really don't think I have anything
17 to add. Your Honor, I would file just for purposes of the
18 record the certified copy of the subpoena that she was
19 served on April 11th when she came into our office for the
20 interview, just to make that a part of the record.
21 THE COURT: Just so that there is a chronology on
22 the record, it is my understanding she was in fact arrested
23 on a material witness warrant and she was brought in and
24 you either personally or through other people dealt with
25 her as to --

1 MR. NEEB: Your Honor, as I'm sure the Court is
2 more familiar with than I am, in many of these cases the
3 defense has better contact with the victim than the State
4 does. This case is a good example of that. There was a
5 trial date set for April 1st. As that trial date
6 approached, I had no contact with Ms. Krapf. She did not
7 come in on the trial date of the 1st, which she knew was a
8 trial date, and based on that I asked the Court for a
9 material witness warrant and it was authorized.
10 Come to find out later, Mr. Candoo spoke with
11 Ms. Krapf personally and told her that the trial had been
12 or was going to be continued and she did not have to come
13 in on the 1st. I kind of thought that was my job to do,
14 but nonetheless it was accomplished.
15 On April the 11th -- And I had Deputy Bautista
16 and the people out there keeping an eye out for her with
17 the material witness warrant that had been authorized.
18 On the 11th Deputy Bautista called me from the
19 house where she was, said he had her in custody and that
20 she had explained to him why she hadn't come in. I told
21 Deputy Bautista to bring her in to my office so that the
22 three of us could sit down and talk about the circumstances
23 and, in effect, she was going to have to convince Deputy
24 Bautista and myself that she was going to come in when the
25 trial was actually going or she was going to go to jail and

1 have the judge decide if she would be released or not.
2 That's when the interview happened, on April
3 11th, and that's the interview Ms. Haselow sat in on and
4 watched Ms. Krapf go from non-cooperative and hostile to a
5 little more cooperative, to emotional and crying during the
6 interview.
7 At the end of that interview, Deputy Bautista and
8 I talked and decided that she would honor the subpoena, and
9 she was supposed to remain in contact pending today -- or
10 Monday's trial date. I spoke with her on Sunday evening on
11 the phone, reminded her that her testimony would be Tuesday
12 at 1:30 and that I wanted her in my office at 12:30 so that
13 we could talk beforehand. She assured me she would be
14 here. Her mother, who was going to give her a ride,
15 couldn't because she has just had surgery. I offered her a
16 ride from Deputy Bautista. She said, "I have a car. I've
17 got it all taken care of," et cetera.
18 Tuesday when I called to check they said --
19 whoever I talked to, whose name was Vanessa -- said, "I
20 haven't seen her for a couple days." Deputy Bautista did
21 some investigating after she didn't show up. The
22 information that he developed is that on Sunday evening she
23 laid out the defendant's clothes and said, "Someone is
24 going to have to take these to him, 'cause I'm not going."
25 She had some contact with a friend of hers, she was

1 confused, she was upset, she didn't know whether she should
2 come in or what she should do, given that she had a handful
3 of letters from the defendant in her hand. This is after
4 he has had no mail privileges. Basically, I don't know if
5 he is giving them to his friends or how he is getting them
6 out of the jail, but she has poems, she has got "I love
7 you's," she has all of this kind of stuff from the
8 defendant, Mr. Hall, which, now, understandably, she isn't
9 here.
10 So, that's the chronology of how we have gotten
11 to where we are at now. I have been in contact with the
12 jail to see if there's something that can be done to
13 further restrict him. They have a medical cell they could
14 put him in where he basically doesn't get contact with
15 anyone else. I think it's probably, you know, the horse is
16 out of the barn at this point. The victim has not come
17 in. I don't know whether or not we will find her or
18 whether or not arrangements have been made by some of
19 his -- I should back up even a further step.
20 One of the defendant's good friends is Jimbo
21 Keller. The victim has been staying with Alice Gardner,
22 Jimbo Keller's mother, on Jimbo Keller's property. The
23 original letters that were sent to the victim were through
24 Jimbo Keller. So, it is not like she has ever been out of
25 the genre of his friends from the time this whole thing

1 started. She lived with her mother briefly after surgery.
2 The mother was very adamantly pro prosecution and, you
3 know, "Do this. Get away from this guy. Look what he did
4 to you." She didn't want that. She moved back into Jimbo
5 Keller's house and then Jimbo Keller's mother's house. And
6 it's been a struggle from the beginning.
7 I thought as of Sunday night she was going to
8 come in and do what she needed to do. That's how we have
9 gotten to where we are at today.
10 THE COURT: All right. Any further comments,
11 Counsel, as to the general request that is before the Court
12 to proceed with the witnesses we have this afternoon and
13 then terminate or suspend the trial until Monday morning?
14 I guess that's the request. Monday morning?
15 MR. NEEB: Yes.
16 THE COURT: All right.
17 MR. CANDOO: First of all, I want to do two
18 things on the record: One is to kind of respond to the
19 contact that was alluded to between me and Kim Krapf as far
20 as the rescheduling of the trial date. I think I probably
21 called and told her that it had been continued. I never
22 took that for granted or assumed that that would happen. I
23 did not assume that she would not stay in contact with the
24 prosecutor at all. In fact, it was after I interviewed her
25 I went up to Mr. Neeb's office to -- it was at that time

1 when I interviewed her that I had first discovered that she
2 had a week previously been taken in and talked with by
3 detective or Deputy Bautista and the prosecutor, which is
4 all cordial, and, I mean, all appropriate, kosher.
5 And then when I went up and met with Mr. Neeb, it
6 was clear that he knew that I had been out to see her,
7 because, apparently, she had called him to let him know
8 that the defense attorney had been out to see her. So, I
9 had, again, every reason to believe that she is staying in
10 touch and fulfilling whatever promises she made to
11 Mr. Neeb, because I had no knowledge or expectation that
12 she would either contact them or not contact them about
13 that, but he knew before I advised him.
14 And I don't know anything about these letters. I
15 know my client has been only able to see and talk with me.
16 I have had great difficulties keeping him, basically, on an
17 even keel about that. I'd like to see what this handful of
18 letters pertains to. I would like to see the postmarks on
19 those letters, because I think the inference is that they
20 have been recently created and sent out through an agent to
21 her. This is the first I've heard about that. My
22 suspicion would be that there may be previous
23 correspondence that is well before this incarceration that
24 those pertain to. But, if the postmarks show otherwise,
25 then, you know, I'd like to know about that. I can't

1 respond, obviously, to something that I don't have access
2 to, but I don't want the Court stopping the case or
3 assuming that the defendant has been or had a hand in this
4 based upon that kind of representation, because I
5 understand the vulnerability of persons who have gone
6 through or sustained a significant beating, and I also
7 respect Counsel's determination not to have that
8 vulnerability used against either the victim or the case,
9 but I don't think the representation made here today can
10 place or should allow to be placed any blame on Mr. Hall
11 for whatever she had or didn't have in her hand, or what
12 her motives are for not showing up, or where she is. We
13 don't know where she is.
14 Thank you.
15 THE COURT: What we're really talking about is a
16 day and a half, because we are talking about Thursday and
17 Friday afternoon; Thursday, all day Thursday, and Friday
18 afternoon.
19 Given the circumstances surrounding this trial
20 and given the nature of the trial, given the contacts that
21 there have been -- and, obviously, I have some concern
22 about the fact there was contact, as well, when it was
23 indicated there wasn't to be contact --
24 MR. CANDOO: I'd like to make more of a record on
25 that, if I may, in terms of contact in spite of being told

1 no contact.

2 If I may, this goes back into the history of the

3 case, but the original -- My client has been dying to have

4 me present this. The original order establishing

5 conditions of release was well understood by him, and it

6 was "That the Court having determined that such

7 recognizance will not reasonably assure, that he is

8 released upon executing a cash or bond of $50,000, and that

9 the defendant have no personal contact with the complaining

10 witness or witnesses or victim."

11 First of all, he did send a letter out to her,

12 maybe a couple or maybe all three of the letters, I'm not

13 sure, prior -- or, after this order. He explains to me --

14 and I would look at it and say that it makes sense to me --

15 that it is conditions of release and it says personal

16 contact.

17 First of all, he wasn't released. And, secondly,

18 this is written and not personal contact. So, in his mind

19 I don't think that there was any deliberate transgression

20 of that. I understand that there's maybe a

21 spirit-of-this-document argument, but as far as what it

22 says, it's a condition of release and he understood that he

23 is not to contact her upon release or have direct contact,

24 and he didn't.

25 It's from that starting point that he was placed

1 into isolation and kept there from February 2nd, or so,
2 until -- continuing through today. And then he got in
3 trouble because he wrote to Detective Bautista explaining
4 in a letter to Detective Bautista that he did not intend
5 to -- you know, trying to explain what was going on here.
6 Thank you. I don't think there's been a
7 transgression, but I think that the courts, in the interest
8 of, I guess, vigilance here, not to let anything wrongful
9 happen, I guess, erred on the side of caution and said
10 there would be no contact. And then the jail, in acting on
11 that order of saying no contact, places him in an isolated
12 situation which is, I guess, how they respond to that. We
13 have not been able to change that order in spite of the
14 wear and tear it has produced on our relationship.
15 Thank you.
16 THE COURT: Basically I will continue with what I
17 was talking about. It is not material to me whether he
18 understood or didn't understand what he was supposed to
19 do. Personally having no contact, no personal contact, I
20 suppose you can argue, but no personal contact does not
21 obviously mean or necessarily mean that he has to see her
22 in person. It is certainly personal contact when you write
23 a letter. But, that's not important.
24 What's important from my perspective is that we
25 have to put what's happening here in a total overall

1 perspective. He has had contact with her, with or without
2 violation of the order. That's not the issue.
3 MR. CANDOO: I appreciate that. Thank you, Your
4 Honor, for letting me express that.
5 THE COURT: My view is that, given the fact that
6 the State has done, I think, what is appropriate in this
7 case in that they did issue a warrant for her when she
8 didn't appear on the first trial date, they did then bring
9 her in and in fact arrested her, if you will, and discussed
10 the issues with her and were convinced that she would
11 respond to the subpoena that they then served her, and now
12 that she has been, of course, served with a subpoena and
13 she is not here, and the State has now been looking for her
14 -- at least according to the offer of proof that I have --
15 since Tuesday, I do not think that it prejudices the
16 defendant in some way in his defense or in his ability to
17 conduct a defense to allow the State basically a
18 day-and-a-half of court time to see if they in fact can
19 procure her presence, which he has indicated at least
20 through Counsel that he also would like to have, that is,
21 that he wants her testimony, as well.
22 So, I do not think it is inappropriate to take a
23 recess for a day-and-a-half. I, like Counsel, do not like
24 to have juries sitting around doing nothing. Obviously,
25 some of these people will go back to work for a couple of

1 days, but I don't think it is such a long period of time
2 that it's inappropriate or that they are going to forget
3 what they heard over a day-and-a-half. Some trials go on
4 for weeks and weeks and weeks. Certainly this trial is not
5 going to go on like that. It is not going to go on much
6 longer if she doesn't appear on Monday, obviously.
7 I think setting it over until Monday is
8 appropriate. You do not intend to put Officer Bautista
9 back on today; right?
10 MR. NEEB: No, Your Honor.
11 THE COURT: Because I have some serious doubts
12 about some of the other testimony that you want to put on
13 if she doesn't show up.
14 MR. NEEB: From him, you mean?
15 THE COURT: Not so much from Bautista as the
16 other lady that you have mentioned, the victim/witness
17 person, because I'm not sure how material any of that is to
18 the charges here. You can certainly argue to the jury why
19 she didn't show up, look at her face, look what happened to
20 her, do you think she wants to go through this again. You
21 can certainly argue those things. That's not to say that I
22 think you should bring in a witness to testify and, in
23 effect, speculate as to certain aspects of this thing.
24 But, we will deal with that Monday morning if she is not
25 here. I will let you explain fully whatever reasons you

1 think are appropriate, and you may be able to convince me.
2 MR. NEEB: Just so that I know, Ms. Haselow can
3 go back upstairs, you won't let her testify today.
4 THE COURT: I don't think she should testify
5 today.
6 MR. NEEB: That's fine. I do want to be heard
7 some more on that, obviously, but I don't have a problem
8 with releasing her today and we can take it up Monday
9 morning before Deputy Bautista testifies. I understand.
10 THE COURT: I understand that you would like to
11 be able to let the jury know that she is not here and why.
12 And before I came out here I found there is a jury
13 instruction that deals with that, but I'm not sure that --
14 I haven't used it in a long time and I'm not sure of the
15 direction from which it comes, whether it has to do with --
16 MR. CANDOO: It has to do with a witness who is
17 peculiarly available to one side and whether or not an
18 inference can be drawn thereby by their not being here.
19 This case -- It would be natural for me to try
20 and posit that instruction and thereby open the door to
21 argument that the non-availability of the witness under the
22 State's control would be used to infer against the State's
23 case, but I'm not going to propose that. I really think I
24 would be flying into the face of some obvious dynamics.
25 And if I made that motion, I think I would open the door

1 for the State to try and bring in evidence of intimidation
2 and stuff. I will think through that, but I don't think
3 that that necessarily is the instruction to answer the
4 specific concern that the State has got.
5 THE COURT: I don't think so, either. I thought
6 maybe there might be some wording there that we could use
7 to give some sort of instruction or something, but I'm not
8 sure of that, either. It may be simpler simply to advise
9 the jury that she is not here and that the State has made
10 efforts to attempt to get her here and have been
11 unsuccessful.
12 MR. NEEB: My problem, Your Honor, is this: As I
13 think I told the Court before, I fully intended to go
14 through with this case whether she was here or not from the
15 beginning. But, my voir dire and my opening and a lot of
16 things would have been different had I known she was not
17 going to be here. I couldn't take up with them why
18 wouldn't a victim come in and that kind of stuff when I
19 thought she was coming in.
20 That's why I think it's critical that the State
21 get through testimony to explain the most recent contacts
22 with the victim, that she was hostile to the State at first
23 and then she was emotionally upset when she is reminded of
24 the beating that this guy gave her, and, now, after I have
25 told the jury she will be here, she has chosen not to

1 come. That's why I think it's important that the jury hear
2 that at least there's been some effort and it hasn't just
3 been the State's decision not to put her on.
4 THE COURT: I understand that. I understand
5 that. I'm sure Counsel objects to that. We will see how
6 that goes. I don't necessarily disagree with that point.
7 I just don't think her demeanor during the process of the
8 interview is really material to the issue that we have
9 here.
10 MR. NEEB: It is not material to the defendant's
11 guilt or innocence. It is material as to whether or not
12 she is here, and that's the thing I have to explain. I
13 mean, obviously, my statements are not evidence and so me
14 standing in closing argument explaining why she is not
15 here, without the evidence, I can't do it.
16 THE COURT: I understand that. But, if we
17 indicate to the jury that she is not here and the State has
18 made effort to get her here, then it seems to me that you
19 have evidence from which you can argue why she is not
20 here.
21 MR. NEEB: I'll look into that between now and
22 Monday, Your Honor.
23 THE COURT: Yes, that's fine, too. I will let
24 you argue that issue.
25 MR. CANDOO: I want to put on the record --

because I am going to look at whether or not it would be appropriate or how far a prosecutor should go in arguing an unavailable witness's probable motives in closing argument, but at this point I certainly maintain an objection to having anybody else come in here and do that. And, again, I mean, the pictures, I don't know if you have to be psychic to figure out why a person might be reluctant to associate themselves with a memory like this, but -- So, that's all I have to say about that. Thanks.

THE COURT: At this point you can call up the jury, you can proceed with your other witnesses and go from there.

(Jury brought to the courtroom.)

THE COURT: You can be seated now.

Ladies and gentlemen, sometimes these matters go like this, we spend more time out of the presence of the jury than we spend in the presence of the jury. You are not to draw any presumptions because of that or try to cast any blame; unless you want to cast it on me, that's okay.

Counsel, are you ready with the next witness?

MR. NEEB: Yes, Your Honor. The State would call Sue Vojir.

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1 SUSAN K. VOJIR, Called as a witness on behalf of
2 the Plaintiff, after first being
3 duly sworn, was examined and
4 testified as follows:
5 DIRECT EXAMINATION
6 BY MR. NEEB:
7 Q State your full name, please, and spell your last name for
8 the court reporter.
9 A It's Susan K. Vojir; V as in Victor, O J I R.
10 Q How are you employed?
11 A I'm employed as a registered nurse at Good Samaritan
12 Hospital emergency room.
13 Q Briefly describe your education and training background,
14 please.
15 A I have a Bachelor's of Science in nursing, and I have taken
16 numerous courses for certification in trauma and advanced
17 cardiac life support.
18 Q How long have you been at Good Samaritan Hospital?
19 A Nine years.
20 Q And how long have you been a nurse overall?
21 A Ten.
22 Q What are your duties at the Good Samaritan Hospital
23 emergency room?
24 A I'm a charge nurse and act as a staff nurse about once a
25 week.

1 Q Were you working overnight January the 1st to January the
2 2nd of this year?
3 A Yes, I was.
4 Q What was your role on that night?
5 A I was a staff nurse.
6 Q How many other nurses were there in the emergency room that
7 night?
8 A Before 3:00 there would have been, I believe, eight.
9 Q And you were not the charge nurse on that evening?
10 A No, I was not.
11 Q What does that mean you actually do as a staff nurse?
12 A I do patient care as a staff nurse.
13 Q Are there different kinds of nurses that are on, registered
14 nurses versus licensed practical nurses?
15 A Yes.
16 Q Do they have different roles at Good Samaritan Hospital?
17 A For the most part, no, except when it comes to certain
18 procedures and certain rooms that the L.P.N. cannot go
19 into.
20 Q Okay. Explain what those are.
21 A We have two rooms that are designated as trauma and
22 cardiac, and the L.P.N.'s, because of the type of drugs and
23 stuff that we do, they're not allowed to be the primary
24 nurse in those rooms.
25 Q Did you have contact with the patient named Kim Krapf on

1 that night?
2 A Yes, I did.
3 Q Was she placed in one of the rooms that you were just
4 talking about?
5 A Yes.
6 Q What was your role in her case?
7 A I was the primary nurse in that room.
8 Q And what does that mean that you do?
9 A That means I did the hands-on. I assisted the doctor with
10 any procedures. I did nursing procedures, gave medication.
11 Q Do you have the first oral contact with the patient when
12 they're brought in?
13 A Yes, I did.
14 Q Is it important for you to take a history of how the
15 patient came to be in the emergency room?
16 A Yes.
17 Q Why is it important?
18 A Because that gives us an idea of what we are looking at as
19 far as injuries.
20 Q Does Good Samaritan Hospital have rules as far as who can
21 come and visit a person in the emergency room or come in
22 with them?
23 A No. That's up to the emergency room staff.
24 Q Did you talk to Ms. Krapf and try to determine what it
25 was -- how it was that she ended up there?

1 A Yes, I did, but we had already had contact with the
2 paramedics.
3 Q Okay. And what was it that you had determined was the
4 reason that she was there?
5 MR. CANDOO: I just want an objection with the
6 understanding that this is offered for the limited purpose,
7 not for the truth of the matter asserted, because otherwise
8 it is hearsay.
9 MR. NEEB: That's fine with me.
10 THE COURT: All right.
11 Q (By Mr. Neeb) What was your understanding of the reasons
12 she had been brought into the emergency room?
13 A She had had a severe beating and was found wandering on a
14 road.
15 Q Did you attempt to talk with her about how she had gotten
16 beaten?
17 A Yes, I did.
18 Q Is the mechanism or the method that she got assaulted
19 important in your care?
20 A No.
21 Q Does it -- All right. Did you ask her specifically how she
22 had been assaulted?
23 A Yes, I did.
24 Q What was her response?
25 MR. CANDOO: Objection, same concern.

1 MR. NEEB: Your Honor, 803(b)(4), statements for
2 medical purposes -- (a)(4), I'm sorry. This is part of the
3 intake information.
4 THE COURT: I think she can answer it.
5 Q (By Mr. Neeb) What was it that she told you?
6 A At that point when I asked her how she had gotten hurt, she
7 did not give us any information.
8 Q Okay.
9 A But just assessing her body, we could tell what had gone
10 on.
11 Q In the nine years you have been at Good Samaritan, are you
12 able to estimate how many times you have seen assaulted
13 patients?
14 A An estimate? I couldn't give you an estimate.
15 Q Safe to say more than a hundred?
16 A Probably, yes.
17 Q How serious was Ms. Krapf's condition compared to the
18 others that you have seen?
19 MR. CANDOO: Objection. I don't believe there's
20 a foundation for that kind of qualification to be offered
21 by the witness.
22 THE COURT: I don't think you need to ask the
23 question in terms of comparison either, Counsel. You can
24 just ask the question.
25 Q (By Mr. Neeb) How serious would you consider her condition

1 when she came in?
2 A Critical.
3 Q What procedures did you assist Dr. Woodard with?
4 A I assisted him with the placing of a chest tube to inflate
5 a lung that had been collapsed, and also assisted him in
6 suturing up her lip.
7 Q Prior to those procedures being done, did you consider
8 Ms. Krapf to be cooperative with you?
9 A Yes.
10 Q When the actual chest tube procedure was -- was that done
11 before the lip was sutured?
12 A Yes.
13 Q When that was being done, did her demeanor change at all?
14 A Yes, it did.
15 Q Describe what it was that she did.
16 A She kept trying to pull away from us. We had to have
17 people help hold her into position, and she cried out,
18 "Don't hurt me any more."
19 Q Did she put a name with that?
20 A Yes, she did.
21 Q What was it?
22 A She said, "Don't hurt me, Ron. Don't hurt me any more."
23 Q Approximately how many times did she say that?
24 A I would believe about 10, 15 times.
25 Q What was she doing with her body while she was making those

1 statements?
2 A She was pulling away from the doctor and squirming around.
3 Q And were you and the doctor each -- I mean, actually hands
4 on her trying to restrain her from moving at the time?
5 A The doctor wasn't, but I was, and I had -- there were two
6 or three other nurses in the room, also.
7 Q Did she appear to know who it was that she was talking to
8 or talking to anyone in particular when she was saying
9 that?
10 A She was not talking to anyone in particular. It was just a
11 reaction to what we were doing to her.
12 Q Was anyone in the room named Ron that you knew of?
13 A No.
14 Q After the procedure was completed, did she seem to calm
15 down a bit?
16 A Yes.
17 Q Did you have an opportunity to talk to her about what she
18 had said?
19 A I asked her point blank who did this to her.
20 MR. CANDOO: I object to -- that's not
21 responsive. The question calls for a yes or no response.
22 THE COURT: I will sustain the objection in any
23 event. I don't think now we are talking about medical
24 history here.
25 Q (By Mr. Neeb) When a person is being treated in the

1 emergency room -- Well, let me ask you this: Did you know
2 that Ms. Krapf was going to be admitted to the hospital?
3 A Yes, I did.
4 Q Does the nursing staff have to make a determination as to
5 who will be able to find out information about the patient?
6 A Not usually, no.
7 Q Who makes that determination?
8 A The doctor sometimes, and sometimes the nurse.
9 Q Was that determination made in this case?
10 A Yes, it was.
11 Q And what exactly was done to limit information?
12 A I told the admitting clerk that she was to be made a
13 no-information patient.
14 Q And what does that mean?
15 A That means that she does not come up on the computer. So
16 if someone came in looking for her, they would not be told
17 that she was there.
18 Q And why was it that you did that?
19 A I felt I needed to for her safety.
20 Q Did she seem to have the same reaction as she did when the
21 chest tube went in when the stitches were being placed in
22 her lip?
23 A No.
24 Q Was she actually -- well, I guess she couldn't see very
25 well, but did she appear to know what was going on at that

1 point?
2 A Yes.
3 Q Was there a marked difference between then and when the
4 chest tube was going in?
5 A Yes. She was very calm at that point.
6 Q When you went in and talked to her about the name that she
7 had given and the statement that she had made, was she
8 cooperative in providing you more information at that
9 point?
10 A No.
11 MR. NEEB: Thank you, Ms. Vojir.
12 I think that's all the questions I have, Your
13 Honor.
14 MR. CANDOO: I have no further questions.
15 THE COURT: You may step down. Thank you.
16 JUDICIAL ASSISTANT: Ms. Vojir, I need you to
17 fill out this form.
18 THE COURT: We need to have you fill out a
19 witness slip, if you will.
20 (Witness excused.)
21 THE COURT: You can call your next witness then,
22 Counsel.
23 MR. NEEB: The State would call Ident. Officer
24 Wilkins, Your Honor.
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1 IDENT. OFFICER S. WILKINS, Called as a witness on behalf of
2 the Plaintiff, after first being
3 duly sworn, was examined and
4 testified as follows:
5 DIRECT EXAMINATION
6 BY MR. NEEB:
7 Q State your full name and spell your last name for the
8 record, please.
9 A Give me just a second. I have to catch my breath. It's
10 Steven Wilkins, W-I-L-K-I-N-S.
11 Q How are you employed?
12 A I'm a forensic investigator for the Pierce County Sheriff's
13 Office.
14 Q What does that mean that you do?
15 A I investigate crime scenes. My job is to document what's
16 there, collect any evidence, and analyze some types of
17 evidence.
18 Q Did you process a crime scene at 31712 145th Avenue East in
19 Kapowsin?
20 A Let me check my notes here. Yes.
21 Q Was that part of the service of a search warrant?
22 A Yes.
23 Q What was your role on that?
24 A My role there was to photograph any evidence that was
25 observed. In this case particularly we were looking for

1 blood evidence and to collect that evidence.
2 Q While you were at the scene did you actually recover any
3 blood evidence?
4 A Yes.
5 Q Where was it that you found that evidence?
6 A Evidence was collected from the kitchen area, from a room
7 that we designated as a rec. room, which was an add-on --
8 this was a single-wide mobile home and this was an add-on,
9 like a den -- on furniture there in that room. And then
10 there was a detached garage that had a bathroom in the
11 corner, and there was some blood and hair that was
12 collected in there.
13 Q And when that was located, what was your responsibility
14 with respect to that?
15 A At that point it was my responsibility to photograph it and
16 collect it if that was possible.
17 Q And did you do that?
18 A Yes.
19 Q I'm going to hand you what's been marked for identification
20 as Plaintiff's Exhibit 9. Actually I'm going to hand you
21 all of these, 9 through 14, and ask you if you recognize
22 those photographs?
23 A Yes. These are photographs I took that day.
24 Q From the scene that you have just described?
25 A Yes.

1 Q And how do you know that?
2 A I was there, I guess. I remember taking them.
3 Q Do they appear to accurately reflect the scene as you found
4 it that day?
5 A Yes.
6 MR. NEEB: I would offer those exhibits, Your
7 Honor, 9 through 14.
8 MR. CANDOO: No objection.
9 THE COURT: They will be admitted.
10 MR. CANDOO: Let me hold off on agreeing. I want
11 to look at those just for a minute, if I may.
12 THE COURT: You may.
13 MR. CANDOO: Just to make sure that my
14 recollection is also intact.
15 No objection.
16 Q (By Mr. Neeb) Why is it that pictures 9 and 10 were taken?
17 A Pictures 9 and 10 were taken to show the location of some
18 furniture in that rec. room that I was describing earlier,
19 basically to show their positioning in that room and what
20 was there, the contents, which in this case you see two
21 brown chairs, a brown ottoman, and a pillow in one of the
22 chairs. There was blood stains observed on the ottoman and
23 the brown chair and that pillow. And that's in Exhibit 9.
24 Exhibit 10 is a close-up photograph of the
25 pillow, showing some blood stains in one corner there.

1 Q Exhibits 11 through 14, why were those pictures taken?
2 A These pictures were taken of the detached garage, the
3 bathroom, basically to show where it was located in the
4 garage and what I observed there in that bathroom.
5 Q Why was it that you -- Well, did you believe that you were
6 to be looking specifically in the rec. room and the
7 bathroom for the evidence in this case?
8 A All I had -- Not specifically, no. I was just looking for
9 blood evidence.
10 Q Okay. When you -- Besides taking pictures, what did you do
11 to preserve the evidence that you found?
12 A In this case, if the sample is large enough or accessible,
13 I will collect those blood stains, or the item, and put
14 those in property as evidence.
15 Q The pillow that is shown in picture number 10 that had the
16 blood stain on it, was that collected?
17 A No, it wasn't.
18 Q Do you know why not?
19 A It was forgotten.
20 (Plaintiff's Exhibits 30-39
21 were marked.)
22 Q (By Mr. Neeb) Aside from taking the pictures, did you
23 collect a physical sample from the bathroom that you
24 thought related to this case?
25 A Yes, I did.

1 Q What was that?
2 A That was -- one of the pictures here shows the actual one I
3 took. Exhibit 13 shows a round blood stain that I took as
4 a sample for typing.
5 Q Did you find any hair evidence in the bathroom?
6 A There was some hair found in the bathtub.
7 Q And was that recovered?
8 A Yes, it was.
9 Q Did you bring that with you today?
10 A Yes, I did.
11 Q What is done with it from the time that you collect it
12 until it gets here today?
13 A As far as the evidence?
14 Q Mm-hm (Indicating affirmatively.)
15 A In this case blood evidence is frozen and preserved in
16 property as evidence. If it has to be sent off to be
17 analyzed, it is sent off to the state crime lab and then
18 they send it back, and basically it just stays in the
19 freezer in property until it is requested for court.
20 MR. NEEB: Your Honor, I ask to publish 9 through
21 14 to the jury.
22 MR. CANDOO: No objection.
23 Q (By Mr. Neeb) I'm going to show you what have been marked
24 as Plaintiff's Exhibits 30 through 39 and ask you if you
25 recognize these photographs?

1 A These are photographs of furniture and blood stains that I
2 took that day, also.
3 Q Okay. And do those document the scene as you found it the
4 day that you were there?
5 A Yes.
6 Q What day was that, if you recall?
7 A I'd have to check my notes.
8 Q Why don't you do that.
9 A It was the 5th of January. Exactly the day of the
10 calendar, I'm not sure.
11 MR. NEEB: Offer 30 through 39, Your Honor.
12 MR. CANDOO: No objection.
13 THE COURT: They will be admitted.
14 Q (By Mr. Neeb) They are in reverse order, but if you would
15 talk us through what each picture depicts.
16 A Exhibit 30 is a round blood stain that was on the kitchen
17 floor.
18 Exhibit 31 is some blood flakes that were on the
19 kitchen floor in front of the refrigerator.
20 Exhibit 32 is another picture of a round blood
21 stain that was in the kitchen.
22 And 33, I believe -- let me check here. That's
23 an additional blood stain in the kitchen. They were close
24 together next to a floor mat you can see there in the
25 picture.

1 34 is a photograph of a blood stain on the back
2 of the couch. And in the picture you see my little
3 measuring device for blowing it up if necessary.
4 Q And the stain is sort of framed by that measuring device?
5 A Yes.
6 35, the same thing, it is a blood stain on the
7 couch with my measuring tool in there.
8 36 is another one on the couch, same situation.
9 37 is some blood stains down in a seat cushion of
10 the couch.
11 38 is kind of an overall of the seat cushion of
12 the couch, showing some blood stains there.
13 And 39 is an overall view of the couch and
14 showing its location in that rec. room.
15 MR. NEEB: Ask to publish these as well, Your
16 Honor.
17 THE COURT: You may.
18 Q (By Mr. Neeb) Is it safe to say that the specimens of
19 blood that you actually collected are rather small?
20 A Yes, that's true.
21 Q And would they illuminate anything, to actually bring them
22 into the courtroom, the tiny flecks that you picked up?
23 MR. CANDOO: Objection. I think that's Counsel's
24 decision.
25 MR. NEEB: Let me rephrase the question, maybe,

1 Your Honor.
2 Q (By Mr. Neeb) Would it help your testimony at all to have
3 the actual tiny flecks to refer to, or do the pictures do
4 that for you?
5 A The pictures would be a better representation of what was
6 actually at the crime scene.
7 Q Did you recover from -- Without taking a picture, did you
8 recover any hair samples from the bathroom area of the shop
9 that night?
10 A There was a hair sample that was collected from inside the
11 bathtub and there is no picture to show that.
12 Q And do you have that with you?
13 A Yes, I do.
14 MR. NEEB: Actually, do you have that bag?
15 (Plaintiff's Exhibit 40 was marked.)
16 Q (By Mr. Neeb) Do you have some gloves here, by any
17 chance? Why don't you go ahead and open that, if you
18 would. Or, I've handed to you what has now been marked as
19 Exhibit 40, and if you would identify that for the record,
20 what that is.
21 A Exhibit 40 is, as it will show on property sheets, my item
22 B-2, and that is the hair. I have a note here on the back
23 of the envelope to myself, "hair from bathtub in garage."
24 I have "1135 hours," 11:35 in the morning on which I
25 collected it, my initials, my unit number, the date that I

1 collected it, which was the 5th of January.
2 Q And why is all that information on there?
3 A That information is on there so that if I'm not around to
4 testify to what it is, someone else could. It's a good
5 note for me to be able to keep track of what evidence I'm
6 collecting. Sometimes I collect a lot of evidence, so I
7 need to keep it separate for myself as to what it actually
8 is.
9 Q Has that been changed at all since you packaged it on the
10 5th of January?
11 A I opened it yesterday, which -- this evidence tape has
12 little flaps on it. It indicates on that evidence tape I
13 have, again, my initials, my unit number, yesterday's date,
14 and the hours of 1415, which would be 2:15 in the
15 afternoon, which I opened it up and observed what was in
16 here.
17 Q Have either of the seals that you have sealed up been
18 broken, aside from when you did it?
19 A No, they haven't.
20 Q Why don't you go ahead and open that, if you would, so that
21 it can be seen.
22 While you are doing that, is there a reason that
23 this particular sample was collected?
24 A The reason is it was a, in my opinion -- if I can give that
25 -- a very large sample of hair and I felt it was necessary

1 to collect it to show, if possible, that it related to this
2 case.
3 Q Have you been at scenes where you have processed bathrooms
4 where there have been hair samples in the drain that
5 haven't been collected?
6 A Yes.
7 Q Is this one different from that?
8 A Yes.
9 Q And why is that?
10 A The quantity, and to use the word composition, the way the
11 hair is put together. It hasn't been just sitting in a
12 drain. It is kind of like it's a wad of hair that's curled
13 around and it's all together. Even though it's in a glob
14 here, it's all together, and it just appears that it was
15 all together at one time.
16 Q Go ahead and finish what you were doing.
17 MR. NEEB: I would offer 40, if I haven't, Your
18 Honor. Have I already done that? Offer 40.
19 MR. CANDOO: No objection.
20 MR. NEEB: And ask to publish.
21 THE COURT: 40 will be admitted and you can
22 publish it.
23 MR. NEEB: I think that's all the questions I
24 have, Your Honor.
25 /

1 CROSS-EXAMINATION

2 BY MR. CANDOO:

3 Q Officer, do you know whose blood this was?

4 A No, I don't.

5 Q Do you know whose hair?

6 A No, I don't.

7 MR. CANDOO: Where are the photos? They're being

8 passed around, okay. Just keep that going.

9 Q (By Mr. Candoo) Is it safe to say you have never been in

10 an investigation in a bathroom in which you didn't find

11 some hair? There's always hair there, isn't there?

12 A Generally there is.

13 Q Did you actually compare the nature of the hair that was

14 found there from other bathrooms?

15 A If it appears that, you know, in this case there was blood

16 in the bathroom and that someone was in there bleeding, the

17 drains in the sink and the toilet and the bathtub are

18 observed for a particular hair sample. In this case it

19 stands out.

20 Q This just in your, I guess, judgment, stood out as

21 different?

22 A Yes.

23 Q As I understand it, Exhibits 34 through 39, the photographs

24 of the couch, they're all of the same couch, aren't they?

25 A Yes.

1 MR. CANDOO: I have no further questions.
2 THE COURT: Did you want to ask questions about
3 the pictures?
4 MR. CANDOO: No.
5 MR. NEEB: I have nothing, Your Honor.
6 THE COURT: You may step down.
7 (Witness excused.)
8 MR. NEEB: Your Honor, given the Court's prior
9 ruling --
10 THE COURT: I'm going to have the jury step out
11 at this time and have a brief discussion with Counsel, and
12 then I will advise the jury as to what we're going to do.
13 MR. NEEB: Your Honor, before you do that, do you
14 want to let them finish passing the exhibits?
15 MR. CANDOO: We should let them take their time
16 with what has been published.
17 THE COURT: I think we will just let them sit
18 there for just a second so they are all together, let them
19 review the pictures, and then we will let them step out.
20 (Pause.)
21 (Jury was excused from the courtroom.)
22 THE COURT: The only reason that I wanted Counsel
23 to stay and let the jury step out is the question of what
24 sort of explanation, if any, do you want me to give to the
25 jury as to why we are stopping at this point and will

1 reconvene on Monday. It may be that the safest course is
2 to give them no explanation except to indicate that we are
3 recessing the trial until Monday morning at 9:30.
4 MR. NEEB: Can you do it at 9:30 with your
5 sentencing?
6 THE COURT: I don't have anything on Monday.
7 Mr. Candoo, do you think that's the best way to
8 approach it?
9 MR. CANDOO: Yes, I do. If any explanation is
10 made, I think it should just be witness scheduling.
11 They're already aware of some of that. We may not even
12 have to explain that. The witness may become available and
13 we are all just stirring up something we don't need to
14 worry about later. Or just tell them the Court will be at
15 recess until Monday.
16 If there is explanation at all, I think it should
17 be succinct and that it has to do with scheduling of
18 witnesses. That's as far as I would recommend. This is
19 Counsel's case, so, you know, I would defer to him.
20 THE COURT: There's another alternative, and that
21 is that for reasons that they need not concern themselves
22 with, we are recessing the trial.
23 MR. NEEB: That's what I would prefer.
24 THE COURT: Do you want me to do that in open
25 court? Do you want me to simply have my J.A. relay that to

1 them, that for reasons they need not concerns themselves
2 with, we are recessing the trial until 9:30 Monday
3 morning?
4 MR. NEEB: I do not have a problem with that
5 being conveyed by the judicial assistant if it's all right
6 with the defense.
7 MR. CANDOO: Agreed.
8 THE COURT: All right. That's what we will do.
9 Anything that we need to take up?
10 MR. NEEB: There is one thing I would -- one brief
11 and the other may not be. There are three exhibits -- four
12 exhibits that have not been admitted. Exhibit No. 1 is a
13 photograph of Ms. Krapf that was taken before the incident
14 that I intended to offer through her testimony and that I
15 don't believe is going to be admitted through her
16 testimony. I talked with Mr. Candoo about stipulating to
17 the admissibility of that or, in the alternative, on Monday
18 morning I would ask to take brief testimony from
19 Ms. Krapf's mother to authenticate the picture and offer it
20 through her testimony.
21 MR. CANDOO: As I understand, the purpose of the
22 picture is a before picture, before injuries.
23 MR. NEEB: That's correct.
24 MR. CANDOO: I don't see the point in wasting
25 Ms. Krapf's mother's time to come down here for that sole

1 purpose, so we would stipulate that that can be admitted.
2 THE COURT: As an officer of the court, I assume
3 that you are telling me that you could in fact get her
4 mother here to do that, and clearly it would be admissible
5 if she identified it, so --
6 MR. NEEB: Her mother provided me the picture.
7 THE COURT: I think that's the appropriate way to
8 approach it.
9 MR. CANDOO: That's been the posture of the
10 mother consistently, so I don't think availability has been
11 a problem.
12 MR. NEEB: The mother would love to testify in
13 lieu of the daughter, Your Honor, if she could do it.
14 MR. CANDOO: I agree with that dynamics.
15 THE COURT: That's the very practical approach.
16 That's the approach we will take. It can be admitted by
17 stipulation.
18 MR. NEEB: I don't think the jury is even going
19 to know whether or not Exhibit 1 has been admitted prior to
20 now. Do you care if we just say Exhibit 1 admitted, so I
21 don't have to worry about it Monday?
22 MR. CANDOO: That's fine.
23 THE COURT: That's fine. It will be admitted.
24 MR. NEEB: The other thing is the three letters.
25 I offered them through Deputy Bautista's testimony after

1 his foundation was, "Ms. Krapf gave them to me. I gave
2 them to the prosecutor. They're the same as they were, and
3 they were represented to be letters from the defendant
4 Ronald Hall."
5 Mr. Candoo objected and said that he didn't have
6 an objection to them coming in through her testimony, he
7 just thought they were early. Now we are faced with the
8 probability that she won't testify and we need to take
9 these letters up.
10 So, I'm asking the Court under Evidence Rule
11 901(a) -- sorry, 901(b)(3), which is Comparison by Court or
12 an Expert Witness: Comparison by the court or by an expert
13 with specimens that have been authenticated is a basis of
14 authenticity for identification of exhibits.
15 There are a couple ways to do that, Your Honor.
16 One is -- and I'm going to hand these up to the Court so
17 that the Court has them to look at.
18 JUDICIAL ASSISTANT: Pardon me. Mr. Bryn
19 Volkman, Juror No. 3, I believe, is a pilot. He has a
20 flight that he is supposed to do this weekend, Saturday,
21 Sunday. He is pretty sure he will be back Monday. He
22 wants to know whether he should cancel it.
23 THE COURT: If he will be back Monday, there's no
24 problem.
25 MR. CANDOO: Who does he fly for and what is

1 their on-time rate?

2 MR. NEEB: He flies for United.

3 THE COURT: He is a pilot. I remember that.

4 That's fine. In fact, all of them can plan on going to

5 work Thursday and Friday if they want to.

6 JUDICIAL ASSISTANT: Yes, I told them that.

7 Thank you.

8 MR. NEEB: Let me hand these to the Court, Your

9 Honor, because there's a couple things that need to be

10 pointed out. First of all, the defendant's name and

11 address are on the back of each of the letters. His

12 address being, of course, the jail at the time that they

13 were written. So, I think the Court can do one of two

14 things. The Court has probably seen the defendant is

15 taking copious notes. You can compare his handwriting with

16 any one of those letters. I don't know the defendant from

17 Adam, and I recognize the handwriting already from other

18 documents that I have seen he has written.

19 Or, the Court can look at any of the documents

20 that the defendant has signed in court, including the

21 stipulation that was just entered yesterday, and look at

22 his signature on the letters, and the Court can see the

23 obvious similarities. And I think, although it seems

24 somewhat strange, but Evidence Rule 901(b)(3) seems to

25 indicate that the Court can take a look at these things,

1 determine they have been authenticated because they are
2 what they appear to be, and then with the foundation that
3 Deputy Bautista laid I think they're admissible. And I'm
4 asking the Court to do that.
5 MR. CANDOO: My only comment at this point is
6 it's premature to ask that the Court do that since we don't
7 know that Ms. Krapf won't be here Monday. I would like,
8 because these are otherwise statements of the defendant, to
9 have the chance to consider this, but it may be a moot
10 ruling if Ms. Krapf shows up Monday. I have not been cited
11 this rule. It's probably the first time I have ever heard
12 it in all the years I've been in practice, but it seems to
13 say what it says. So I don't know that I have anything new
14 to throw at it, but before inviting the Court out on that
15 limb, I think we should wait until Ms. Krapf actually
16 doesn't show Monday, if that's gonna happen.
17 THE COURT: Frankly, I think these have been
18 sufficiently authenticated to be admitted. But, you're
19 right, it's premature in one sense. If she is not here
20 Monday morning, we can deal with it, but it strikes me that
21 there has been sufficient testimony as to these documents
22 to authenticate them as being a letter from Mr. Hall.
23 MR. NEEB: Okay. I just didn't want to be in the
24 position of resting without having them ruled admissible
25 and then realizing it was too late.

1 THE COURT: Okay. We will see what happens on
2 Monday, but I do think there has been sufficient
3 authentication.
4 MR. NEEB: That was the only other thing. And I
5 will prepare for the Court, Your Honor, a new set of
6 instructions deleting the alternative, just being the
7 doomsayer that I am.
8 THE COURT: Okay. Anything else at this point?
9 MR. CANDOO: Nothing else, no.
10 THE COURT: We will be at recess until Monday
11 morning.
12 (Proceeding concluded.)
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CERTIFICATE

STATE OF WASHINGTON

COUNTY OF PIERCE

I, Dorylee Reyes, Official Shorthand Reporter in and for the County of Pierce, State of Washington, do hereby certify that the foregoing proceedings were reported by me on said date(s) and reduced to computer-aided transcript form.

I further certify that the foregoing transcript of proceedings is a full, true and correct transcript of my machine shorthand notes of the aforementioned matter.

Dated this 18th day of July, 1996.

Dorylee Reyes

Dorylee Reyes, CSR, RPR

COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff,	)	
vs.	)	NO. 96-1-00042-8
RONALD ARMON HALL, Defendant,	)	

VERBATIM REPORT OF TRIAL PROCEEDINGS

VOLUME 3 OF 5

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BE IT REMEMBERED that on the 6th day of May, 1996, the above-captioned cause came on duly for hearing before the HONORABLE BRUCE W. COHOE, Superior Court Judge in and for the County of Pierce, State of Washington; the following proceedings were had, to-wit:

APPEARANCES

FOR THE PLAINTIFF: JOHN M. NEEB
Deputy Prosecuting Attorney

FOR THE DEFENDANT: SCOTT A. CANDOO
Attorney at Law

JOHN W. LADENBURG
PIERCE COUNTY PROSECUTING ATTORNEY
NOV 12 1996
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Reported By:
Dorylee Reyes, CSR, RPR

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REPORTER'S NOTE: "**" indicates the exhibit was not offered into evidence.

1 MAY 06, 1996

2 MORNING SESSION

3 * * * * * * *

4 (The following colloquy occurred

5 outside the presense of the jury.)

6 THE COURT: Good morning, Counsel.

7 MR. NEEB: Good morning, Your Honor.

8 Last night, a little before 6:00, Ms. Krapf was

9 arrested on the material witness warrant and booked into

10 the jail. I contacted Jack Hill this morning to try to

11 expedite the appointment of counsel for her. He wasn't in

12 his office when I called. None of the Department of

13 Assigned Counsel attorneys on the fifth floor were able to

14 come down to the courtroom this morning first thing.

15 Ms. Krapf was represented by the Department of

16 Assigned Counsel on her possession in 1994, and I assume

17 that that's why this case was conflicted out to Mr. Candoo

18 to represent the defendant. So, it's appropriate, I

19 believe, for the Court to appoint the Department of

20 Assigned Counsel.

21 I have had no contact with Ms. Krapf since her

22 arrest, waiting for the appointment of counsel and to have

23 that person there when I talked to her.

24 I called the jail this morning a little after

25 9:00 and asked that Ms. Krapf be brought down -- of course,

1 separately from the defendant -- so I assume that she is on
2 her way or will be as soon as they have somebody to bring
3 her down.
4 THE COURT: Mr. Candoo, any comments?
5 MR. CANDOO: No.
6 THE COURT: Obviously, she should have counsel
7 appointed for her. Do you see any conflict as far as
8 someone from Department of Assigned Counsel representing
9 her in the matter?
10 MR. CANDOO: No.
11 THE COURT: I don't, either. All right. I will
12 appoint the Department of Assigned Counsel to represent her
13 in these proceedings. That's going to necessitate some
14 delay because we are going to have to get somebody here and
15 they are going to have to sit down with her, explain to her
16 her rights and go over that aspect of it, explaining what
17 contempt means and those kinds of things, I suppose.
18 MR. NEEB: I anticipate that we would be able to
19 finish her testimony this morning, assuming she is brought
20 down pretty quickly. So, the issue of her release is
21 something we probably won't even have to take up because
22 once she is done testifying, she could be released, but
23 that would be something we would have to address, also.
24 THE COURT: Do you know whether they're bringing
25 her down or not?

1 CORRECTIONAL OFFICER: I didn't even know she was
2 in custody. I didn't have a chance to look her up on the
3 computer, so I will try to find out who is bringing her and
4 when.
5 THE COURT: We are going to have to get somebody
6 down here from D.A.C., so that's okay.
7 Mr. Neeb, are you going to be responsible to
8 contact Mr. Hill's office and advise him of what has
9 transpired and the need for someone here as soon as
10 possible?
11 MR. NEEB: I'll do that, Your Honor. I'll call
12 down there and ask them to call somebody on the fifth floor
13 who is already in the building, so hopefully that would
14 expedite things.
15 THE COURT: Okay.
16 MR. NEEB: I anticipate Dee Arneberg, Ms. Krapf's
17 mother, will still need to testify to identify another
18 exhibit I showed Mr. Candoo on Friday. And I expected her
19 at 9:30. I have not seen her yet this morning. I mean, I
20 don't think we need to get started for ten minutes worth of
21 testimony and then to break, but we might want to inform
22 the jury that we are going to be a little bit delayed and
23 we can start up as soon as possible.
24 THE COURT: They probably are expecting it, given
25 the delays that we have had.

1 MR. NEEB: I would think so.

2 THE COURT: All right. One more thing, and that

3 is in terms of Mr. Hall's presence. I assume you feel that

4 he should be present during the process of explaining to

5 the witness what can happen if she doesn't testify, those

6 types of things.

7 MR. NEEB: What I anticipated, Your Honor, was

8 that the Department of Assigned Counsel attorney, myself

9 and Ms. Krapf, would find one of the rooms in the back here

10 to go and talk to her without Mr. Candoo or the defendant

11 present. Mr. Candoo, of course, could be there if he

12 wanted to. I don't think it is appropriate for the

13 defendant to be.

14 THE COURT: No, I understand that.

15 MR. NEEB: If there is complication with that and

16 she is going to refuse to testify or something like that

17 that we would have to make a record of, then of course he

18 would need to be here.

19 THE COURT: All right. I think what we will do

20 is we will make arrangements to have her brought down as

21 soon as possible. You make the arrangements to have

22 someone from the Department of Assigned Counsel to come

23 here to sit down with her, discuss the need for her

24 testimony, and that type of thing.

25 We will be at recess.

1 (Recess taken.)
2 (Plaintiff's Exhibit 41 was marked.)
3 (Jury brought to the courtroom.)
4 THE COURT: All right, Counsel, you may call your
5 next witness.
6 MR. NEEB: The State would call Kim Krapf to the
7 stand.
8 KIM IRENA JEAN KRAPF, Called as a witness on behalf of
9 the Plaintiff, after first being
10 duly sworn, was examined and
11 testified as follows:
12 DIRECT EXAMINATION
13 BY MR. NEEB:
14 Q State your full name and spell your last name for the court
15 reporter, please.
16 A Kim Irena Jean Krapf, K-R-A-P-F.
17 Q Where do you live?
18 A I live at 5502 81st Street, Puyallup, at my mom's.
19 Q Do you know the defendant Ronald Hall?
20 A Yes, I do.
21 Q How do you know him?
22 A Lived with him for the last three years.
23 Q You lived together for three-and-a-half years?
24 A Mm-hm. (Indicating affirmatively.)
25 Q How was it that you met him?

1 A Through a friend.
2 Q How long after you met him did you start to live with him?
3 A A couple of months. I don't know.
4 Q Was there a point in time when the two of you were going to
5 get married?
6 A Yes.
7 Q Did that happen?
8 A No.
9 Q Prior to January the 1st of this year, were you in love
10 with the defendant?
11 A Yes.
12 Q What are your feelings for him now?
13 A Same.
14 Q On January the 1st of this year, you were assaulted; is
15 that right?
16 A Yes.
17 Q By whom?
18 A Ron.
19 Q Tell the jury what happened.
20 A I started a fight and he finished it.
21 Q Who all was -- This is at the trailer that you lived in
22 with him?
23 A Yes.
24 Q What was the address there?
25 A I don't know. 31712 145th.

1 Q Was that in Pierce County?
2 A Yeah.
3 Q Who was there the night this happened?
4 A Me and Ron and April Duckett and Bob Aaron.
5 Q And what were the four of you doing?
6 A Sitting around watching a Pink Floyd video.
7 Q Was anyone drinking?
8 A Yeah, they were drinking.
9 Q Who is "they"?
10 A Ron and April and Bob.
11 Q Were you drinking?
12 A I had one sip of homemade wine. That's it. I don't drink.
13 Q What was the defendant drinking?
14 A Yakima Red and some wine.
15 Q Mackinaw Red?
16 A Yakima Red.
17 Q Yakima Red?
18 A It's beer.
19 Q Was anybody arguing?
20 A Bob was with himself.
21 Q What do you mean by that?
22 A He just is so frustrated with life, he says something and
23 he just gets mad at himself.
24 Q Is Bob Aaron a good friend of the defendant's?
25 A Not really. I mean, we're friends, but we don't go out of

1 our way to go see him.
2 Q What about April Duckett?
3 A We just can't seem to get rid of her.
4 Q Did you suspect at some point that April Duckett and the
5 defendant had some kind of a physical relationship?
6 A Yeah, when I was in jail in July.
7 Q Of 1995?
8 A Mm-hm (Indicating affirmatively.)
9 Q What was that for?
10 A Probation violation.
11 Q At some point in time did April Duckett leave the
12 residence?
13 A What, that night?
14 Q That night.
15 A Not 'til I got back, and then she left.
16 Q Where had you gone?
17 A To the neighbor's to call my aunt.
18 Q About what time was that?
19 A I don't recall. I don't remember.
20 Q Afternoon, evening?
21 A Evening.
22 Q Why was it that you were leaving?
23 A 'Cause I didn't want to stay up there.
24 Q Had you had an argument with the defendant?
25 A Yeah.

1 Q What was the argument about?
2 A From what Bob Aaron was talking about on what supposedly he
3 thought I was doing when I was at my aunt's house for three
4 days, saying that I was in a motel with these guys and how
5 I didn't relay a message and I was a piece of shit.
6 Q Bob Aaron was saying that kind of stuff?
7 A Yeah.
8 Q What was the defendant doing?
9 A Trying to ignore him. This guy does not shut up.
10 Q Was the defendant getting angry?
11 A No. He just didn't want to listen to him.
12 Q Then what did you and the defendant argue about?
13 A About how I didn't relay a message about a motor being
14 dropped off. And I just was listening to them two yak
15 about it and I just walked out the door and left.
16 Q You were supposed to relay a message to the defendant about
17 a motor?
18 A Yes.
19 Q What were the facts about that?
20 A That a motor was being dropped off by supposedly who I was
21 in the motel with.
22 Q And you were supposed to give that message to the
23 defendant?
24 A Yeah, and I forgot. It's no big deal.
25 Q He got angry with you for not giving the message to him?

1 A No.
2 Q Okay. But the two of you argued about that?
3 A Well, yeah, because he was saying I was in a motel with two
4 guys. Wouldn't you get mad? I didn't get off on that.
5 Q Did you also argue about the fact that you hadn't given him
6 the message?
7 A Well, that come into it later, which wasn't the main deal.
8 Q You left and went down to call your aunt or to go to your
9 aunt's house?
10 A To call my aunt.
11 Q Did you actually go over to your aunt's house?
12 A No. I went back home.
13 Q How long were you gone?
14 A 20 minutes, 25 minutes.
15 Q When you came back was April Duckett still there?
16 A Yes, she was.
17 Q And Bob Aaron?
18 A Yes, he was.
19 Q When after that did April Duckett eventually leave?
20 A Well, when I was coming in the door, she was leaving.
21 Q And what did the two of you talk about?
22 A About -- I just -- from what I heard outside the door was
23 Bob, 'cause he brought her up there and they were doing
24 their trip. And as soon as I left the house, Bob got mad
25 because she started paying attention to Ron, and that's

1 what I heard at the door. So, when I went in the door, I
2 told her she could leave now. And I was saying to Bob that
3 she always had this thing for Ron, it's no big deal, but
4 hit the road. And she left.
5 Q What did you do then?
6 A Went in and sat down.
7 Q In the same room with the defendant and Bob?
8 A Yeah, yeah.
9 Q What happens next?
10 A Nothing. They was just watching TV and Bob is still
11 yakking his jaw.
12 Q At what point was it that you started getting hit?
13 A I don't know. Sometime after that.
14 Q How long?
15 A I don't know. About a half hour or so, I don't know.
16 Q What caused the physical altercation?
17 A 'Cause when I came in, when I went back into my room I was
18 gonna clean it up. And when I came back in is when I
19 started thinking about April, and 'cause Bob was still
20 talking. I could hear him in the bedroom talking about
21 this shit. I went back out there to see what was going
22 on. That's when I got mad, grabbed my boots and threw them
23 around the corner and smacked Ron upside the head. And
24 then he just sat there and I started throwing things and
25 started hitting on him, and that's when it happened.

1 Q So it's your testimony now that you started the fight
2 between the two of you?
3 A Yes, I did start the fight.
4 Q Do you recall talking with Deputy Bautista and Deputy Estes
5 from the sheriff's department about this incident?
6 A No.
7 Q Do you recall being in Harborview Hospital?
8 A Yeah.
9 Q Do you remember giving them a tape-recorded statement about
10 this?
11 A Yeah.
12 Q Did you ever tell them during the tape-recorded statement
13 that you had started this fight?
14 A When your brains are scrambled you don't remember much of
15 anything but what's put into your head by what they're
16 asking you, so, no, I did not say anything that I know of,
17 that I can recall.
18 Q But today now -- three months, four months later -- you
19 recall starting the fight?
20 A No. I stated, what -- When you had me arrested the last
21 time I think is when I told -- or, I told Bautista -- no,
22 it was Bautista that I told months ago.
23 Q When you say when I had you arrested the last time, what do
24 you mean?
25 A I thought that was the incident when I told you about it,

1 but it wasn't. I just remember it was when I went to go
2 see Bautista.
3 Q Okay. Now, where is it that you started throwing things at
4 the defendant?
5 A Where is it?
6 Q In the --
7 A In between the two buildings, where the addition is added
8 on to the trailer. Right up against there it's like a half
9 a wall, and Ron's chair is right there, right in between
10 the two walls.
11 Q And do you have a chair that you usually sit in, also?
12 A On the other side of his chair.
13 Q What were you throwing at him?
14 A My boots, ash tray, anything I could find.
15 Q Did you hit him with it?
16 A Yeah.
17 Q Did he get mad?
18 A Well, I don't know. He was stunned.
19 Q I'm going to show you Exhibit 9 and ask you if you
20 recognize the picture?
21 A Yeah, I do.
22 Q What is it?
23 A That's his chair and my chair.
24 Q And the two of you were sitting in these chairs eventually?
25 A Through the night, yeah.

1 Q Okay. When was it that the defendant first hit you?
2 A I don't remember.
3 Q Well, was it after you threw the boots at him, after you
4 threw the ash tray at him, when was it?
5 A I don't remember.
6 Q Do you remember what he hit you with first?
7 A What he hit me with? He didn't hit me with nothing.
8 Q Do you remember telling Deputy Bautista and Deputy Estes
9 that he hit you with some kind of paper that he had, sort
10 of back-handed you with it?
11 A Oh, well, paper. The paper that was in his hand. He
12 didn't hit me with the paper. The paper was in his hands.
13 Q And he hit you with his hands while he was holding it?
14 A Yeah.
15 Q In what kind of a motion?
16 A Back-hand.
17 Q I mean, just like flicked his arm out?
18 A Yeah.
19 Q Right hand or left hand?
20 A Left hand.
21 Q Then what happens?
22 A I don't know.
23 Q Do you recall getting punched in the face a number of
24 times?
25 A Oh, yeah, I remember getting punched and kicked.

1 Q Was he punching you with one hand or both?
2 A I do not know. I could not see.
3 Q Okay. Were your eyes closed?
4 A Yes.
5 Q Were you covering up?
6 A Yes.
7 Q Where were you in the room?
8 A On the floor.
9 Q In what kind of position?
10 A On the floor.
11 Q I mean, were you curled up, or are you lying flat with your
12 arms out at your side, how are you?
13 A No. Covering my head.
14 Q With your arms over your head?
15 A Yeah.
16 Q How many times did he punch you in the head?
17 A I do not know.
18 Q How many times did he kick you?
19 A I do not know.
20 Q What was he wearing when he was kicking you?
21 A I do not know.
22 Q Do you recall telling Deputy Bautista and Deputy Estes that
23 you did remember what he was wearing?
24 A He was either wearing his boots or his black tennis shoes,
25 and I don't remember which ones. I said either one or the

1 other.

2 Those are my boots.

3 Q These are your boots?

4 A These are my boots. Those are the ones I hit him with.

5 Q Are these the type of boots the defendant had?

6 A No.

7 Q What kind of boots did he have?

8 A He has logger boots. They lace all the way up to here.

9 Q About the same height on the leg?

10 A Yeah.

11 Q What about the toe and the foot?

12 A They're just -- Those are steel-toed. Those are mine. His

13 are not.

14 Q Okay. Are his kind of like the ones you are wearing now?

15 A No. Logger boots, or limey (phonetic). They're like this,

16 but they go all the way up and lace to here.

17 Q They're not steel-toed?

18 A No.

19 Q Are they hard?

20 A No. Leather. No, they're like that. Well, no, they're

21 more like this.

22 Q Could you tell the difference when he was hitting you with

23 his feet and when he was hitting you with his fists?

24 A No.

25 Q Is it your testimony that you couldn't feel the difference

1 between the two, his fists and his feet?
2 A (Witness shook head in the negative.)
3 Q Prior to the time that you are lying curled up on the
4 floor -- well, prior to that time was the defendant
5 throwing you around the room at all?
6 A I don't remember. I just remember trying to save my head.
7 Q Do you recall telling Deputy Bautista that after he punched
8 you in the face he pulled you out of the chair and "dragged
9 me around the room, punching me, kicking me and slamming me
10 on the floor"?
11 A I can't remember, but if that's what I said.
12 Q The statement that you gave was just a couple days after
13 the assault; is that right?
14 A I think so. Or a day. No, it was a day after.
15 Q Is it safe to say that the details of the assault were
16 fresher in your mind then than they are now?
17 A Well, at the hospital I don't -- you can't take a statement
18 from somebody that's just had their brains scrambled. You
19 just can't. That's why I didn't understand why they came
20 in right after I got like that.
21 Q Did you know why it was that they wanted to talk to you?
22 A No.
23 Q Did they explain to you that they were there to talk to you
24 about the details of the assault?
25 A And wanted to know if I would give a statement.

1 Q And did you agree to give the statement?
2 A Mm-hm. (Indicating affirmatively.)
3 Q Did you understand the importance of giving the truth?
4 A Alls I could say is what they asked; you know, "Tell me
5 what happened."
6 Q Did you tell them what happened?
7 A Yeah.
8 Q Did you tell them the truth?
9 A I don't know. I don't even remember even going to the
10 hospital. Who knows?
11 Q Where all did the defendant kick you?
12 MR. CANDOO: Objection. It's not been answered.
13 She said she couldn't tell if she was kicked or hit.
14 THE COURT: Overruled.
15 Q (By Mr. Neeb) Let me back up and ask you a question. Do
16 you specifically recall being kicked and punched?
17 A Do I remember it?
18 Q Do you know that that's what happened to you?
19 A I remember getting beat up.
20 Q Do you remember telling Deputy Bautista that you got kicked
21 a number of times by the defendant?
22 A Mm-hm. (Indicating affirmatively.)
23 Q Do you remember telling him that the kicks were in your
24 head?
25 A I do not know where he kicked me. I just know that I was

1 beat up from my head to my tail bone.
2 Q Do you recall telling the deputies that he kicked you in
3 the ribs, the back, the butt, the chest, and the face?
4 A From here to my tail bone.
5 Q Where was Bob Aaron during this whole thing?
6 A I don't know. I couldn't see. I think he was in there on
7 the couch.
8 Q Was he helping you?
9 A No.
10 Q Was he helping the defendant?
11 A No.
12 Q Do you recall yelling for him to help you?
13 A Mm-hm. (Indicating affirmatively.)
14 Q Do you recall whether he said anything?
15 A I don't know. I think he left.
16 Q You think he laughed?
17 A Left.
18 Q Do you know why it was that he didn't help you?
19 A 'Cause he's a chicken --
20 MR. CANDOO: Objection.
21 MR. NEEB: Yes or no question.
22 THE COURT: Sustained.
23 Q (By Mr. Neeb) Let me ask you this: Do you know if the
24 defendant was doing anything to prevent him from helping
25 you?

1 A No.
2 Q Do you know if the defendant had a gun during this assault,
3 Ms. Krapf?
4 A I do not know.
5 Q Do you remember telling Deputy Bautista that he did or that
6 you thought he did?
7 A I don't remember.
8 Q Would seeing a copy of your statement help you with your
9 recollection?
10 A No, if I can't remember.
11 Q Do you remember hearing the defendant tell Bob Aaron to
12 stay where he was seated?
13 A Sited?
14 Q Where he was sitting on the couch.
15 A I don't know. I think so. I don't remember. I don't like
16 to remember this, you know, that's the whole thing.
17 Q Is it a matter of you don't like to remember it or that you
18 can't remember it?
19 A No, it's that I can't remember. When you ask me something
20 that you guys asked me months ago, then I can't remember.
21 MR. NEEB: Would you mark this, please.
22 (Plaintiff's Exhibit 42 was marked.)
23 Q (By Mr. Neeb) I'm going to hand you what's been marked for
24 identification as Plaintiff's Exhibit 42, indicating to you
25 that that's a copy of your taped statement to Deputy

1 Bautista and Deputy Estes.
2 A You want me to read this whole thing?
3 Q Why don't you look about ten lines from the bottom where it
4 says, "Now, where was Bob during all of this?" Do you see
5 that?
6 MR. CANDOO: Excuse me, what page are you --
7 MR. NEEB: Page 9.
8 MR. CANDOO: Thanks.
9 A Yeah, I see it now. "Where was Bob during all of this?"
10 Q (By Mr. Neeb) Why don't you read from there to the bottom
11 of the page to yourself, please.
12 A Now, see, even here it says, "I think so," so --
13 Q Okay. On that page you're talking about whether or not the
14 defendant had a gun during this assault?
15 A Right.
16 Q And your answer at the time was you thought so?
17 A No. "I think so." So, I can't say yes or no, so I don't
18 know.
19 Q Do you recall that they asked you what kind of gun you were
20 talking about?
21 A No, but down here it says a .22.
22 Q And did they ask you to clarify if it was a rifle or a
23 pistol?
24 A I said a pistol because I have a .22 pistol.
25 Q And after you said it was a .22 pistol, did they

1 specifically ask you whether the defendant was threatening
2 Bob Aaron with that pistol?
3 A Was he threatening Bob? No.
4 Q Do you see your answer on page 10?
5 A It just says -- no, I ain't got that far.
6 Q The second question and the second answer?
7 A Yeah, I said "yes." What's he saying?
8 Q At the time you gave the taped statement --
9 A That's not threatening to just say sit on the couch.
10 That's not a threat.
11 Q Ms. Krapf, at the time you gave this statement, when they
12 asked you if the defendant was threatening Bob Aaron to
13 make him stay on the couch, did you say "yes"?
14 MR. CANDOO: I'm going to ask for clarification
15 of the question. Is this witness being asked if that's
16 what it says on the piece of paper, or is she being asked
17 whether that piece of paper refreshes her recollection?
18 THE COURT: My understanding is she is being
19 asked if that's what it says on the piece of paper.
20 A I can't find it.
21 Q (By Mr. Neeb) The fourth line down from the top on page
22 ten.
23 A Yes, and -- It says "yes."
24 Q And the question before that is whether the defendant was
25 threatening Bob with the gun at the time of the assault,

1 yes or no?
2 A It says yes, but I don't remember saying it.
3 Q Did you know that your statement was being tape recorded at
4 the time that you gave it?
5 A Yes.
6 Q And you agreed to that?
7 A Well, I -- the next day after being beat up, you'll just
8 agree to anything, I guess.
9 Q So that's a yes, you agreed to being taped?
10 A That's a yes.
11 Q And, again, at the time that you were giving answers to
12 these questions, did you think it was important to tell the
13 truth as best you could?
14 A I was doing anything I could to get back at him for what I
15 thought him and April were doing, so I was saying anything
16 I could to get his ass in trouble.
17 Q And now you are doing anything you can to protect him,
18 isn't that accurate?
19 A I don't have to protect him.
20 Q Is it safe to say, Ms. Krapf, that your memory now is
21 different than your memory at the time of this assault and
22 just afterwards?
23 A Well, at the time of an assault, when you have to have your
24 head peeled off, your brains aren't there.
25 Q And at the time that that happened, you were willing to

1 cooperate with the prosecution of the defendant for
2 assaulting you, weren't you?
3 A What?
4 Q I said, at the time that this happened, and shortly after,
5 you were willing to cooperate with the prosecution of the
6 defendant, weren't you?
7 A I don't understand.
8 Q Immediately after this happened, you wanted the defendant
9 to go to jail for this, did you not?
10 A No, not go to jail.
11 Q You wanted him to be held responsible for this?
12 A Yeah, but not go to jail. I didn't press the charges.
13 Q In fact, you were concerned that it didn't look like you
14 were pressing the charges because you didn't want him to
15 think you were; isn't that right?
16 A No, that's not --
17 Q Do you remember telling Deputy Bautista and Deputy Estes
18 that it was important that it not come from you?
19 A Yeah, because I was the one that started it. I've been in
20 jail before for assaults because I start 'em. The person
21 that starts the fight goes to jail. I don't care if I got
22 my ass beat or not, I started the fight.
23 Q Is it your position, Ms. Krapf, that you deserved what
24 happened to you?
25 A No. Nobody deserves it.

1 Q Would you say that, regardless of whether or not you
2 started it, the defendant finished it?
3 A I don't want to see no pictures.
4 THE COURT: Wait until he finishes his question
5 before you answer.
6 Q (By Mr. Neeb) Did you say that you don't want to see the
7 pictures? Why not?
8 A I just seen them three weeks ago.
9 Q Is it uncomfortable being reminded of what the defendant
10 did to you?
11 A No, no.
12 Q Why is it that you don't want to see them?
13 A Because I just seen them three weeks ago.
14 Q Okay. Do you remember the defendant, whether or not he was
15 threatening you with the gun that you thought he had?
16 A No, he was not.
17 Q Do you recall when you talked to Deputy Bautista saying
18 something different?
19 A I don't remember.
20 Q Why don't you pick up the taped statement again, if you
21 would?
22 A Where?
23 Q The seventh line down from the top, on page 10, you will
24 see the question, "Is he threatening you with this gun?"
25 A Yeah.

1 Q And what was your answer at the time?
2 A I said yes, or "yeah."
3 Q Is it your testimony now that your memory is different?
4 A No. I can't remember.
5 Q At the time that you answered that question you were being
6 as accurate as you could?
7 A I can't say if I was or not 'cause I -- is this -- When was
8 this statement made?
9 Q Let me ask you this, Ms. Krapf: Were you consciously
10 making up details when you gave this taped statement and
11 lying to the officers?
12 A Yes.
13 Q Excuse me?
14 A I said I don't remember what I said on the statement at the
15 hospital because I can't.
16 Q What I'm asking you is, you remember making the statement;
17 right?
18 A Yes, I do.
19 Q And at the time that you gave this statement were you doing
20 your best to tell the truth as completely as you could?
21 Yes or no?
22 A Yes.
23 Q And at that time when you were asked if you were threatened
24 with a gun by the defendant, you said yes; is that correct?
25 A Yes.

1 Q What was the defendant -- while he was assaulting you, what
2 was he doing? Was he ordering you to stay on the floor, or
3 was he allowing you to move around?
4 A Stay on the floor.
5 Q How did he make you stay on the floor?
6 A By telling me to stay on the floor.
7 Q While he's doing that, while he's saying that, would you
8 try to move at all?
9 A No, I wasn't moving.
10 Q Do you recall whether or not you tried to move while you
11 were on the floor?
12 A Yeah.
13 Q Okay. And when you tried to move, what happened?
14 A He'd tell me to lay still.
15 Q And would he do anything else, Ms. Krapf? Was he kicking
16 you when you tried to move away further?
17 A Away further?
18 Q After he told you not to move and you tried to move, did he
19 kick you to make you stay still?
20 A I don't know if he kicked me or hit me. He just was
21 telling me to stay still.
22 Q Do you recall telling Deputy Bautista that he kicked you to
23 make you stay still?
24 A Kicked me or hit me, one of the two.
25 Q At the time that that was happening, was he pointing the

1 gun at you?
2 A I do not know.
3 Q Did you think that he was?
4 A I don't know.
5 Q Do you recall telling Deputy Bautista on the 3rd of January
6 that you thought he was pointing a gun at you at that time?
7 A I don't know.
8 Q Would you look at page 10 of your statement and see whether
9 or not that refreshes your recollection?
10 A Where is it on here?
11 Q About halfway down where it says, "Was he pointing the gun
12 at you at this time?" Do you see that question?
13 A No. I can't see this paper.
14 Q "Was he pointing the gun at you at this time?"
15 A Yes. It says, "I don't know."
16 Q And what does it say after that?
17 A Oh, "I think so."
18 Q So at the time you gave the statement, you thought that the
19 defendant had been pointing a gun at you during this
20 assault?
21 A I don't know.
22 Q Do you recall any statements that the defendant made to Bob
23 Aaron while you were on the floor?
24 A Just, "Sit on the couch."
25 Q Do you recall him saying something about a shovel?

1 A Something about getting a shovel.
2 Q What was the entire statement?
3 A I don't know. Go out and get a shovel.
4 Q And do what with it?
5 A What?
6 Q And what was the defendant going to use the shovel for? Do
7 you see the biggest paragraph on that page?
8 A Yeah. I'm reading it. Oh, he was gonna bury me.
9 Q The defendant told Bob Aaron, get a shovel, he's going to
10 bury you?
11 A That's what it says right here.
12 Q What did Bob Aaron do?
13 A He left.
14 Q And while he left or went out to go get something, what did
15 the defendant do?
16 A No, Bob Aaron just got up and left.
17 Q Okay. So he never came back with the shovel?
18 A No.
19 Q What did the defendant say to you while Bob Aaron was gone
20 or after he left?
21 A To go take a shower.
22 Q Okay. Do you recall whether he told you, "Get your ass up
23 and sit in the chair"?
24 A Oh, yeah.
25 Q Did you do that?

1 A Mm-hm. (Indicating affirmatively.). Then he told me to go
2 take a shower.
3 Q How long after he was finished assaulting you did he tell
4 you to go take a shower?
5 A I don't know. I don't know the time.
6 Q What did you notice about your own physical condition at
7 that point, Ms. Krapf?
8 A I couldn't see.
9 Q Why not?
10 A 'Cause my eyes were swollen.
11 Q Could you breathe?
12 A I could breathe fine until after I took a shower.
13 Q And then what?
14 A Then I couldn't hardly breathe any more.
15 Q Where was it that you had to go to take a shower?
16 A To the garage.
17 Q Did you have to leave the trailer that you were in?
18 A (Witness nodded affirmatively.)
19 Q About how far was it that you had to go?
20 A From here to the wall.
21 Q How was it that you got there?
22 A I walked.
23 Q Did you have any difficulty seeing where you were going?
24 Did you have to go outside of the trailer?
25 A Yes.

1 Q How did you get down the stairs, Ms. Krapf?
2 A On my butt.
3 Q Why was that?
4 A Because I couldn't see.
5 Q When you got into the bathroom area -- Do you need
6 something? Would you like something to drink?
7 When you got into the bathroom, did you look in a
8 mirror at all?
9 A No. I blew my nose.
10 Q Okay. What happened when you tried to blow your nose,
11 Ms. Krapf?
12 A I don't know. It wasn't going out.
13 Q Could you feel anything happening?
14 A Yeah, my cheeks were filling up.
15 Q So, when you put the kleenex or the toilet paper up to
16 blow, you could feel movement inside of your cheeks but
17 nothing was coming out?
18 A Well, yeah. It was coming out, but I think it was filling
19 up my cheeks.
20 Q How was it that you cleaned yourself up?
21 A What?
22 Q How was it -- Did you actually take a shower?
23 A Yeah, I took a shower and a bath.
24 Q And then how long did that take you, about?
25 A I don't know.

1 Q What did you do after?
2 A Then I went back up in the house and put my pajamas on.
3 Q Now I want to back up just a little bit to during the
4 assault again. Do you recall whether or not the defendant
5 used anything to actually hit you with other than his feet
6 and his fists?
7 A I don't know.
8 Q Okay. Do you recall when you talked to Deputy Bautista
9 discussing whether or not he had used the butt of a rifle,
10 Ms. Krapf?
11 A Yeah, he asked me that, and I said I don't know.
12 Q Do you recall telling them something different?
13 A That I cannot tell the difference between a kick and a hit,
14 but with something else, and I couldn't recall what it was.
15 Q When you talked to Deputy Bautista and Deputy Estes, do you
16 recall specifically Deputy Estes asking you about whether
17 or not the defendant used a gun to hit you?
18 A I don't remember.
19 Q In your taped statement, Ms. Krapf, if you would turn to
20 page 14, please, at about two-thirds of the way down the
21 page where it says, "Now you say he hit you in the head
22 with the butt of a rifle; is that right?" Do you see that
23 question?
24 A Yeah, I see it.
25 Q What was your answer on January the 3rd?

1 A I said, "Yes."
2 Q And your testimony --
3 A That don't mean nothing.
4 Q And your testimony today is that you don't recall that
5 happening?
6 A No.
7 Q You recall talking to me earlier in April in my office?
8 A Mm-hm (Indicating affirmatively.)
9 Q And we talked about this taped statement, remember?
10 A That's when I told you, yeah.
11 Q Do you believe that your memory now is as accurate as your
12 memory at the time you gave the statement?
13 A When I gave this statement, I can't remember, but what I
14 told you is I can't -- I could tell the difference between
15 a fist and a boot, but what I was hit upside the head with,
16 it was not a fist and it was not a boot. So you are trying
17 to say that I am saying it was a gun.
18 Q I'm not trying to put words in your mouth, Ms. Krapf. You
19 could tell that you were hit with something different than
20 a fist or a boot?
21 A Right. It could have been anything in the house.
22 Q And it's your testimony that you could tell the difference
23 between a fist and a foot when he was kicking and hitting
24 you; isn't that what you just said?
25 A Yeah, I could tell the difference.

1 Q At the time you gave the taped statement to the deputies,
2 you told them that you thought that object that wasn't his
3 fists or feet was the butt of a rifle; isn't that right?
4 A It says "yes" right here, but I know it wasn't.
5 Q Now you are saying that it wasn't?
6 A No, because when I gave this statement I was going to say
7 anything I could to get to him.
8 Q Do you remember if they asked you -- After you said that he
9 used the butt of a rifle, they asked you whether it was
10 once or more than once?
11 A I don't remember that.
12 Q If you will look where your answer is, it says, "I think
13 just once because that was -- it stuck into my mind, God,
14 how could he do that, you know, so I think it was just
15 once."
16 A Yeah.
17 Q Are those your words, Ms. Krapf?
18 A Yeah, I guess.
19 Q So, at the time that this happened, you were saying -- you
20 were able to think to yourself, God, how could he do this,
21 because it is not his fists or his feet; is that right?
22 A I don't know.
23 Q Isn't that what you were talking about at the time you gave
24 the statement?
25 A I don't know.

1 Q At the time you gave the statement you thought that that
2 other object was the butt of a rifle; isn't that right?
3 A No.
4 Q Do you see your words there on the page?
5 A Yeah, I know. I know that's down here, but on -- when
6 April took me down to meet the ambulance, she's putting all
7 this crap into my head. So when I gave the statement, that
8 stuck into my head.
9 Q What do you mean April was giving you a bunch of stuff?
10 A Huh?
11 Q What do you mean she was giving you a bunch of stuff and
12 putting it in your head?
13 A She was asking me what was going on, and April was just
14 talking stupid.
15 Q Well --
16 A Because we were talking earlier that night about what we
17 had gotten our kids for Christmas, okay? My son got a
18 30-30 for Christmas, and her boy -- we were talking about
19 taking the kids hunting or whatever. So then that probably
20 is what stuck into my head was a rifle right here.
21 Q I know you don't want to look at these, Ms. Krapf, but I'm
22 going to hand you what's been marked or what's been
23 admitted as Exhibit 4. Go ahead and take the picture.
24 A Yeah, I can see it.
25 Q Do you see the vertical line on your cheek in that

1 picture? That's almost a straight up-and-down line?
2 A Yeah.
3 Q Does that appear to be something that was done with either
4 fists or feet?
5 A I don't know.
6 MR. CANDOO: Objection.
7 A Could be.
8 MR. CANDOO: Calls for some kind of, I guess,
9 professional or medical conclusion about it.
10 MR. NEEB: Your Honor, she was there. It doesn't
11 call for anything.
12 THE COURT: I think she is capable of answering
13 the question, and she did answer it.
14 Q (By Mr. Neeb) Would you agree with me that it's
15 practically a straight up-and-down line?
16 A That doesn't mean nothing. There's straight up-and-down
17 lines on feet. It could have been from a hand.
18 Q Okay. This is on the right side of your head, right,
19 Ms. Krapf?
20 A Mm-hm. (Indicating affirmatively.)
21 Q And that's what you thought it was at the time that you
22 gave the statement, that the defendant used the butt of a
23 rifle; isn't that right?
24 A I don't know.
25 Q Your right side was injured worse than your left side,

1 wasn't it?
2 A What?
3 Q The right side of your head was injured worse than the left
4 side of your head?
5 A No, because they have reconstructed both sides of my face.
6 Q Did you know that you had three steel plates with screws on
7 the right side and only one on the left?
8 A I don't even know where they put them. They never told me.
9 Q Would you like to see an x-ray of where they are?
10 A No.
11 Q You have five permanent plates in your head, though, from
12 this operation; right?
13 A I don't even know how many they put in.
14 Q They told you, though, that there are a number that aren't
15 coming out?
16 A No. They just said they put plates in my head. That's
17 all.
18 Q Okay. Now, Ms. Krapf, after you took a shower and went
19 back -- you went back into the trailer?
20 A Mm-hm. (Indicating affirmatively.)
21 Q Where was it that you went?
22 A Into my bedroom.
23 Q And that was to get your pajamas?
24 A Mm-hm (Indicating affirmatively.)
25 Q You did have a short conversation with the defendant at

1 that point?
2 A Yeah. I told him I was getting my clothes on, and I went
3 out and slept on the couch.
4 Q Do you recall him telling you, "You're not coming in here
5 to sleep," or words to that effect?
6 A Yeah.
7 Q What was your response to him?
8 A I didn't care.
9 Q You said you didn't want to come in there?
10 A Right.
11 Q Did you actually lie down on the couch to try to sleep?
12 A Yeah.
13 Q Were you able to sleep?
14 A I laid there, and that's when April came back.
15 Q What did she do?
16 A She went and wanted to know where the guys were. And I
17 said, "Bob is gone and Ron is in bed," and she went back in
18 the bedroom.
19 Q How long was she there?
20 A I don't know, 15, 20 minutes, and Ron told her to take me
21 to the hospital.
22 Q When she first asked where the guys were, she asked this of
23 you specifically?
24 A Mm-hm. (Indicating affirmatively.)
25 Q Did she express any concern or anything about what you

1 looked like at the time?
2 A She couldn't see me.
3 Q Was it dark?
4 A It was dark.
5 Q She came back out?
6 A Yeah, and took me to the hospital.
7 Q How was it that she knew to take you to the hospital?
8 A Ron told her to.
9 Q What was her reaction when she saw what you looked like,
10 Ms. Krapf?
11 A She just said, "Let's go."
12 Q Do you recall that you told Deputy Bautista and Deputy
13 Estes that she completely freaked out when she saw you?
14 A It was so dark, I don't -- she couldn't probably really see
15 exactly what happened to me, no, but she was freaking and
16 she couldn't even, you know, keep her mind on driving, but,
17 yeah, we got there.
18 Q She didn't actually take you all the way to the hospital?
19 A No.
20 Q How was it that she came to pull over -- Where did she call
21 911 from?
22 A Rick and Lori's house.
23 Q How far away is that from where you were living with the
24 defendant?
25 A Probably three, three miles.

1 Q And approximately where is that located?
2 A In between Kapowsin and Graham.
3 Q Off of Meridian?
4 A Uh-uh. (Indicated negatively.) Orting-Kapowsin Highway.
5 Q Approximately how far is it from Good Samaritan Hospital,
6 do you know?
7 A No.
8 Q Why was it that April Duckett pulled over at that point?
9 A I don't know. I think she wanted --
10 MR. CANDOO: Objection, asked and answered: "I
11 don't know." Anything else is mind reading.
12 MR. NEEB: I'll rephrase the question.
13 THE COURT: Rephrase your question, Counsel.
14 Q (By Mr. Neeb) Did you tell Ms. Duckett to pull over at
15 some point and call an ambulance?
16 A I don't remember.
17 Q Do you recall ever telling me or Deputy Bautista that you
18 didn't think you could make it to the hospital, so you
19 asked April to pull over?
20 A She just went to the AM/PM and the ambulance met us there.
21 Q And was that after she had called from the house?
22 A Rick and Lori's, yeah.
23 Q So, do you recall saying that you didn't think you could
24 make it to the hospital?
25 A I don't remember.

1 Q Were you still having difficulty breathing at that point?
2 A I was breathing.
3 Q Was it painful to breathe?
4 A No.
5 Q Did you know at that point you had cracked ribs and a
6 punctured lung?
7 A No.
8 Q Did it feel like you had broken ribs, Ms. Krapf?
9 A Uh-uh. (Indicated negatively.)
10 Q Did your condition improve from when you got from the couch
11 into the car?
12 A It was the same.
13 Q Earlier you testified that you couldn't lay down on the
14 couch, you had to sit up, because you were having
15 difficulty breathing. Isn't that right?
16 A Well, I was laying on my right side on the couch. That's
17 why I had to get up, because it was pushing on my ribs.
18 Q Ms. Krapf, you indicated that you have seen these pictures
19 before, right?
20 A Mm-hm. (Indicating affirmatively.)
21 Q Any of the injuries in those pictures that were not caused
22 by the defendant that night?
23 A (Witness shook head negatively.)
24 Q Were all of them caused by his fists and feet and whatever
25 else he may have used?

1 A It was caused by the defendant on however he did it.
2 Q Now, you said that you started this by throwing your --
3 those boots at him. Did you hit him with those?
4 A Yes.
5 Q Where?
6 A In the face.
7 Q And did you hit him with the ash tray you threw?
8 A I don't remember. Yeah, I hit him upside the -- I think
9 the head, too, with the ash tray.
10 Q When he did this to you, Ms. Krapf, was he defending
11 himself from you?
12 A He could have been.
13 Q Is it safe to say the defendant is almost a foot taller
14 than you?
15 A That doesn't make any difference.
16 Q Is that a yes or no, Ms. Krapf?
17 A What?
18 Q How tall are you?
19 A 5'4".
20 Q How much do you weigh?
21 A 120.
22 Q Is it safe to say that the defendant is much stronger than
23 you are, much bigger than you are?
24 A Yeah, much bigger. That has nothing to do with it.
25 Q During the time that he was kicking and hitting you when

1 you were curled up on the floor, you told us that your arms
2 were over your head to try and protect yourself?
3 A Mm-hm. (Indicating affirmatively.)
4 Q Were you doing anything to him at that point?
5 A Using my feet.
6 Q You were trying to kick at him with your feet?
7 A Mm-hm. (Indicating affirmatively.)
8 Q Were you having any success?
9 A I don't remember.
10 Q Now, when the deputies came up and talked to you at the
11 hospital, you wanted to cooperate with prosecution at that
12 point; is that an accurate statement?
13 A They wanted testimony, or whatever you call it.
14 Q They wanted you to testify?
15 A No. They wanted me to record what happened. They didn't
16 say anything about testifying.
17 Q Do you recall them asking you whether you would be willing
18 to go all the way with this and testify in court?
19 A I told them no.
20 Q Do you recall your specific answer?
21 A No. I -- I didn't want to.
22 Q Why don't we look on page 17 of your statement. Halfway
23 down the page do you see the question: "Would you be
24 willing to take this all the way if you need to? I mean,
25 testify in court?"

1 A Where is that? Oh, right here?
2 Q Why don't you read the rest of the page to yourself,
3 please.
4 A Yeah. Yeah.
5 Q Do you recall them talking to you about whether you would
6 be willing to testify?
7 A I said in here, "No, I don't think so."
8 Q Okay. Above that do you see where it says you want the
9 State to take it because "I would be putting myself in a
10 predicament if I was to do it"?
11 A Yeah, I see that.
12 Q Is that an accurate statement at the time, Ms. Krapf?
13 A What do you mean accurate?
14 Q Did you mean what you said at the time?
15 A What, if the State took it, that if I would --
16 Q That you would be getting yourself in a predicament if you
17 were to press charges and make it look like you were the
18 one who was filing the charges.
19 A No. In the predicament I'm talking about is having to sit
20 here. That's the predicament.
21 Q Because it doesn't look good for him sitting there to see
22 you sitting there?
23 A No, it has nothing to do with him.
24 Q Do you see down the page where it says, "I can't bring
25 myself into having a snitch put on my back, you know, 'you

1 snitched your old man off because he beat your ass'"?
2 A I see that, yeah.
3 Q Was that an accurate statement at the time, you were
4 concerned that people would call you a snitch for
5 testifying?
6 A I don't care.
7 Q At the time you gave the statement, were you concerned
8 about how that would look?
9 A At the time of the statement, I guess.
10 Q After you were released from the hospital, Ms. Krapf, did
11 you move back into the house that you shared with the
12 defendant?
13 A No. I went to my mom's.
14 Q During the time that you lived at your mom's, did you get
15 some mail from the defendant?
16 A Yeah, three letters that you have and I'd like to have
17 back.
18 Q I'm going to hand you 21, 22 and 23. Are those the three
19 letters the defendant sent to you?
20 A Mm-hm. (Indicating affirmatively.)
21 Q What address were those sent -- Whose address were they
22 sent to?
23 A A friend's.
24 Q What's his name?
25 A James Keller.

1 Q Is he known by "Jimbo"?
2 A Yeah, 'cause he doesn't know my mother's address.
3 Q After you got those letters, did you move out of the house
4 that your mother lives in?
5 A After I got those letters?
6 Q Mm-hm. (Indicating affirmatively.)
7 A No, not after I got those.
8 Q Is it your testimony that you moved out before then?
9 A No. I never gave no testimony of even going out of there.
10 Q Did you eventually move out of your mother's house?
11 A Yes. I went to Jimbo Keller's mother's house because I
12 couldn't afford gas to run back and forth up to the hill to
13 move my property and his property off the hill.
14 Q And that was within a week after you got the letters from
15 the defendant; isn't that right?
16 A I do not know. I didn't keep a date.
17 Q Would it surprise you to learn that it was within a week of
18 you getting the letters?
19 A I don't see where it makes a difference.
20 Q You don't think there was any correlation between the two
21 of them?
22 A What, moving out and getting the letter?
23 Q Yes.
24 A No.
25 Q Now I'm going to hand you pictures 10, 12, 13 and 14,

1 Ms. Krapf. These are pictures from --
2 A Of my bathroom.
3 Q Right. Is that your blood that was found that's taken in
4 these pictures?
5 A Mm-hm. (Indicating affirmatively.)
6 Q The blood that's on the pillow in picture 10, is that also
7 your blood from on the couch?
8 A I don't know.
9 Q Did you use this pillow at all that night?
10 A I don't know.
11 Q Could you have?
12 A What?
13 Q Could you have?
14 A Used the pillow?
15 Q Yes.
16 A I don't know.
17 Q I'm also going to hand you what's been marked for
18 identification as Plaintiff's Exhibit 41. Do you recognize
19 that?
20 A Yes, I do.
21 Q What is it?
22 A It's a letter.
23 Q Whose handwriting?
24 A Ron's.
25 Q Who's the letter to?

1 A Me.
2 Q Where was that letter? How did that letter get to you?
3 A When he turned himself in, the bag with his stuff in it was
4 brought to me with his personal belongings and this was in
5 it.
6 Q And that was by Jimbo Keller that brought you the stuff?
7 A Yeah.
8 MR. NEEB: Offer Exhibit 41, Your Honor.
9 A And why was that taken out of that stuff?
10 MR. NEEB: Offer Exhibit 41.
11 MR. CANDOO: No objection.
12 THE COURT: 41 will be admitted.
13 Q (By Mr. Neeb) Ms. Krapf, is it safe to say you didn't want
14 to be here testifying today?
15 A No.
16 Q Did you come in here voluntarily?
17 A No. I was arrested yesterday.
18 Q Prior to today, earlier in April when you were in my
19 office, did you come in voluntarily on that date?
20 A No. You had me arrested.
21 Q And that was on a material witness warrant for not showing
22 up for court, as well?
23 A No, because the court date was postponed. And because I
24 was told by somebody else on the court date and I didn't go
25 to the court date that it was supposed to be on, you had me

1 arrested because you didn't tell me it was postponed.
2 Q You heard that the trial was continued from the defense
3 attorney; is that right?
4 A Mm-hm. (Indicating affirmatively.)
5 Q And prior to that point you hadn't had any contact with me?
6 A No.
7 Q After you came in on the 11th of April, were you given a
8 subpoena for testimony in this trial?
9 A Yes.
10 Q And last week on Sunday night did you and I talk about when
11 you would testify in this case?
12 A Mm-hm. (Indicating affirmatively.)
13 Q What was your understanding of when you would testify?
14 A Tuesday.
15 Q What time were you supposed to come in on Tuesday?
16 A Noon.
17 Q Did you do that?
18 A No.
19 Q How was it that you eventually got here today?
20 A Arrested.
21 Q Were you at your mother's house?
22 A No. I was at a friend's house. I'm not at my mom's house.
23 Q Is it an accurate statement to say that you were hiding?
24 A No.
25 Q When Deputy Bautista actually came in, weren't you covered

1 up with a blanket?
2 A I was sleeping. Why would I cover up?
3 Q Why was it you didn't come in last week, Ms. Krapf?
4 A Because I totally forgot. I went somewhere else with
5 somebody else.
6 MR. NEEB: I don't think I have any further
7 questions, Your Honor.
8 THE COURT: Counsel?
9 MR. CANDOO: Thank you.
10 CROSS-EXAMINATION
11 BY MR. CANDOO:
12 Q Let me see if I can find -- Yes, there were some exhibits
13 here with photos, if my notes are accurate. You were shown
14 one of them, which was Exhibit No. 10?
15 A Yeah.
16 Q Do you remember that?
17 A Mm-hm. (Indicating affirmatively.)
18 Q And there seems to be a red stain on a pillow?
19 A Yeah.
20 Q Okay. Are you able to say whether or not that's your
21 blood?
22 A I don't know whose blood it is. It could be one of my
23 dog's blood for all I know.
24 Q Were the dogs in the house?
25 A I had six Rottweilers and they're always -- well, not

1 always all at once in the house, but --
2 Q What kind of shop is nextdoor? What goes on in the shop?
3 A It's a mechanic's shop.
4 Q Okay. Could you be more descriptive of equipment or
5 anything?
6 A Tools, two tire machines, two arc welders, two compressors,
7 two parts -- it's a machine shop, an automotive shop.
8 Q Is it unusual for anybody to cut themselves in that shop?
9 A No, it is not.
10 Q Do you work in that, too?
11 A Yes, I do.
12 Q Let me ask you about the day, I guess, of your injuries.
13 Earlier on that date -- was this January 1st?
14 A Mm-hm. (Indicating affirmatively.)
15 Q The new year?
16 A Mm-hm. (Indicating affirmatively.)
17 Q New Year's Day?
18 A Yes.
19 Q Had you been with the defendant New Year's Eve?
20 A Yes.
21 Q And was anyone else with you the previous evening?
22 A There was our neighbor Tony, and Jimbo and Vanessa, and
23 Chris.
24 Q And I don't know how typical it is, but was alcohol
25 involved on New Year's Eve?

1 A Yes.
2 Q Everybody using?
3 A Yes.
4 Q Okay. Do you remember what?
5 A Except for me. I don't drink.
6 Q Was Ron using, drinking?
7 A Everybody was drinking.
8 Q Did this go on until just midnight, or do you know when the
9 partying or drinking stopped?
10 A It stopped right after the New Year, so probably a half
11 hour to an hour afterwards.
12 Q What time, if you remember, and if you can recall today,
13 was it that Mr. Hall -- I know you testified that there had
14 been something called Yakima Red beer?
15 A Yeah.
16 Q Was he drinking anything else that day?
17 A That day of the incident?
18 Q This is the next day now. We have talked generally about
19 New Year's Eve.
20 A The next day, no. He didn't drink until April and Bob came
21 up, and that was at like 4, or something like that.
22 Q Okay. Do you know how much he had had to drink then?
23 A Who, Ron?
24 Q Yeah. Are you able to estimate that?
25 A They bought a case of Yakima Red and then they drank a

1 bottle of homemade wine.
2 Q Okay. And is this homemade at this place, or from a
3 neighbor?
4 A No, from a friend of ours, an elderly man that, you know,
5 gave us the bottle for New Year's, and he didn't drink it,
6 you know, until the next day.
7 Q Bob you have described generally as talkative.
8 A Very.
9 Q What was he saying that day? Do you remember anything?
10 A Yeah. He come up to ask Ron on what to do on some parts
11 that he had bought from this person that wasn't going to
12 come across with the deal on these parts. It's been two
13 years ago that I know that he has boughten them and the guy
14 wasn't giving him his parts and wanted to know with Ron,
15 you know, let's go talk to the guy and see what's going on
16 with the parts. And he just started bitchin'.
17 Q Was it you or Ron that first struck one or the other, do
18 you remember?
19 A I struck him first.
20 Q And what was the first article or item that you struck him
21 with, your fist or your shoes or --
22 A My boots.
23 Q We have had you identify these, have we not?
24 A Yes.
25 Q These are your boots?

1 A Yeah.
2 Q Is there any doubt about that?
3 A No doubt.
4 Q How was it that they were used?
5 A Just like how you got ahold of them like that and swung
6 them right around the corner of the wall where his chair
7 is.
8 Q Are these steel-toed?
9 A Yes, they are.
10 Q Are you able to say what part of the boots hit Mr. Hall?
11 A I do not know.
12 Q Now, did you have ahold of it when you swung it?
13 A Mm-hm. (Indicating affirmatively.)
14 Q And a pretty good whip on it?
15 A Yes.
16 Q How hard did you hit him? Was it just to irritate him like
17 that or --
18 A No, I swung it. And they're a heavy boot.
19 Q Do you feel that, as you sit here now, from your
20 recollection, could you have given anything more to that
21 swing physically than you did?
22 A No.
23 Q Did you give a hundred percent?
24 A (Witness shook head affirmatively.)
25 Q Do you want to say "yes" or "no"?

1 A Yes. Sorry.

2 MR. CANDOO: I would like to move for admission

3 of Defendant's 28, I guess.

4 MR. NEEB: No objection.

5 THE COURT: They will be admitted.

6 Q (By Mr. Candoo) After you hit him with the boots, what is

7 your next immediate recollection?

8 A Just started grabbing anything to throw at him.

9 Q You were grabbing?

10 A Yeah. I was just gonna start throwing everything I could

11 at him.

12 Q Okay. And what was it you were thinking or what was the

13 purpose behind your hitting him?

14 A April Duckett.

15 Q What was going on? April Duckett. Does this connect up

16 with anything that Bob was talking about?

17 A Yes.

18 Q Did the defendant, Mr. Hall, as you were throwing things --

19 and again, I want to try and break this down as best I

20 can -- do you remember any items that were thrown?

21 A That I had thrown?

22 Q Do you recall any specific things that were thrown besides

23 the boots?

24 A And the ash tray and just -- I think that was about it, you

25 know, thrashed the room.

1 Q If you were irritated with April Duckett, why strike the
2 defendant?
3 A He was the closest thing to me. She was gone. And because
4 I didn't like what I heard about the two of them.
5 Q Was April Duckett still on your mind when you made this
6 statement?
7 A Yes.
8 Q And when you were making this statement, you were being
9 asked about Mr. Hall, weren't you?
10 A Yes.
11 Q You knew that the focus of the questioning was with regard
12 to him; right?
13 A Yes.
14 Q And besides the injuries that you sustained, and besides
15 the anger that you harbored towards April Duckett or
16 towards that -- whatever situation was between he and she,
17 was there anything else that you can recall affecting your
18 ability to recall or accurately state what's going on in
19 this statement?
20 A Why I made the statements?
21 Q I'm asking, first of all, for anything besides -- You have
22 talked about your head being scrambled.
23 A Yeah.
24 Q Your words. Was there anything else that you recall
25 affecting your ability to think and accurately recall?

1 A Well, just my mother putting, you know, words into my head,
2 'cause she was up at that hospital that night, and that's
3 a mother, you know.
4 Q Is it fair to say at the time of this -- Can you recall
5 making this statement or recall aspects of making it?
6 A From the hospital?
7 Q Yeah.
8 A I remember them coming in and asking me if I would make a
9 statement, but that doesn't mean I have a clear mind on a
10 statement.
11 Q As you sit here now, are you able to say whether or not you
12 were angry enough at April Duckett and what you had heard
13 about she and Ron that you would make up untruths in this
14 statement in order to get him in more trouble?
15 A Yes.
16 Q What's your opinion about that? Were you willing to do
17 that?
18 A What?
19 Q You were willing to make up statements?
20 A Oh, yeah, yeah.
21 Q In order to get him --
22 A Because I was mad.
23 Q You were asked by Mr. Neeb to review page 9 of this. I'm
24 just going to read this to you. It was about whether or
25 not a gun was there.

1 You were asked: "Ron had a gun when he was doing
2 all this?"
3 "Answer: 'Yeah, I think so.'"
4 A Yeah.
5 Q Had you, to the best of your knowledge, brought up anything
6 about a gun prior to that question being asked?
7 A No.
8 Q And when that question was asked: Ron had a gun when he
9 was doing all this -- excuse me. You had indicated earlier
10 that he had had a gun in his hand. Are you willing to
11 accuse him of that to get him into more trouble? Are you
12 able to say yes or no whether or not he had a gun during
13 this episode?
14 A I would have said yes.
15 Q But you're not sure?
16 A I'm not sure. I would have said anything to get his ass in
17 trouble.
18 Q So, at the time of this statement you are saying you would
19 have -- you were angry enough to insert a gun?
20 A Sure, yeah.
21 Q If it would get him into more trouble. Is that what you're
22 saying?
23 A Mm-hm. (Indicating affirmatively.)
24 Q And when you were asked, "Was he pointing a gun at you at
25 this time?" Your answer: "I don't know. I think so,"

1 were you just as angry?
2 A Yeah, because, see, the thing is such a trip to where I
3 don't know if I want to say yes or no, you know.
4 Q When you made this statement you were in which hospital?
5 A Harborview.
6 Q Do you remember what ward or unit you were in?
7 A Burns and plastics. I think that's what it's called.
8 Q Do you know whether you had already undergone the surgical
9 procedures that implanted the --
10 A No. They had to wait a week.
11 Q So you had not even undergone that yet?
12 A No.
13 Q Were you experiencing pain at this time?
14 A Yeah.
15 Q At the time of this statement?
16 A Yeah.
17 Q You were asked to look at page 13 and describe where he hit
18 you with something, what was that, and you were asked with
19 what, and your answer was: With the butt of a rifle.
20 Do you know anything about a rifle that was there
21 that he would have used?
22 A Just an air -- pellet gun. Or, no. It's a pump for
23 pellets.
24 Q Did he use that on you?
25 A I don't know.

1 Q When you made the statement, did you care whether it was
2 accurate or not?
3 A No.
4 Q Are you afraid of the defendant?
5 A No, I'm not.
6 Q Did you stay away from court last week because you were
7 afraid of the defendant?
8 A No.
9 Q Now, it was your testimony that Ron asked April to take you
10 then to some hospital or doctor; right?
11 A Mm-hm. (Indicating affirmatively.)
12 Q Emergency room. Now, you made a statement in direct exam
13 about April putting stuff in your head in this trip?
14 A Yeah. She just wanted to know why, what happened, you
15 know.
16 Q Is this where you got the idea about a gun being used on
17 you?
18 A Well, no. Earlier that night we were talking about our
19 kids, and then it just stuck into my head because of our
20 conversation because of the kids and on what they had
21 gotten for Christmas.
22 Q That the kid had gotten some gun?
23 A My son, my 15-year-old, got a 30-30 for Christmas. And
24 she's got a son and we were talking about guns then. And
25 probably since she was in my vision and thinking of what

1 was up to the night with her, that probably stuck into my
2 head on the rifles with the kids.
3 Q So, as you sit here now, you don't know that any gun at all
4 was ever used on you; is that correct?
5 A That's correct.
6 Q In fact, you don't know for sure whether or not it was
7 boots without steel toes or black tennis shoes that might
8 have been used --
9 A I do not know.
10 Q -- if you were kicked; is that right?
11 A I don't even know.
12 Q Is there any reason that we should put more stock in what
13 you are saying now than this statement that was made in the
14 hospital? Which should the jury believe? Is there any
15 reason --
16 A What I'm saying today.
17 Q What?
18 A What I am saying today. That statement in the hospital,
19 you know, I didn't even know where I was at.
20 MR. CANDOO: I have no further questions.
21 Thank you.
22 THE COURT: Mr. Neeb?
23 /
24 /
25 /

1 REDIRECT EXAMINATION

2 BY MR. NEEB:

3 Q Ms. Krapf, I'm going to go back to what started this whole

4 incident, because you testified today that it was you

5 taking a swing at the defendant with the boots; right?

6 A Mm-hm. (Indicating affirmatively.) Yes.

7 Q When you talked with the deputies, you never told them

8 anything about you starting this; is that accurate?

9 A That's true.

10 Q They talked to you about the circumstances that surrounded

11 how this got started, didn't they?

12 A What?

13 Q They talked to you about what it was that led up to the

14 assault?

15 A Who talked to me?

16 Q The deputies.

17 A They didn't know.

18 Q No. They were asking you what led up to it?

19 A Oh, yeah.

20 Q And you told them it was because you disrespected the

21 defendant by not relaying a message?

22 A Right, and April. I --

23 Q And then when they talked to you about what got it all

24 started, you said, "He beared with it for about -- I guess

25 the timing was right to where he could get away with what

1 he did by April leaving to fix himself up and build his
2 anger up enough by wanting to go and beat the shit out of
3 somebody. Well, he sat around the house and it ate him up,
4 so he took it out on me."
5 Is that accurate, what you told the deputies at
6 the time about how this had got started?
7 A When it got started?
8 Q Mm-hm. (Indicating affirmatively.)
9 A No, that ain't right.
10 Q This is not right?
11 A No.
12 Q And later in your statement they asked you again, "How did
13 this all start?" Well, so I -- You said, "So I didn't
14 relate the message. He figured that they're ripping him
15 off and I betrayed him so he was gonna go find them and
16 beat their ass."
17 A No, that's not true.
18 Q This is more of the details that you got wrong in the
19 hospital?
20 A No. Those statements there are not all the way accurate.
21 He wasn't gonna go kick nobody's ass.
22 Q Where it says here, "so he was gonna go find them and beat
23 their ass," and the deputy says "okay," you say, "instead
24 he did mine."
25 A He didn't go nowhere that night. Instead, he took it out

1 on me. But he didn't want to go out and find and kick
2 somebody's ass.
3 Q (Reading) How did this all start? Do you remember? He
4 just started telling me what I did wrong. And I just said,
5 oh, well. And he just smacked me with the paper, that's
6 how it all started.
7 A Yeah. So?
8 Q Nothing at all about the boots or the ash tray or you
9 starting the fight.
10 A No, because I started it.
11 Q Because now it looks better for you to say --
12 A No.
13 Q -- to say you started it?
14 A No, no. Have you ever been arrested for assaults before?
15 Anybody that throws the first punch goes to jail. It don't
16 make a difference if they both hit each other. Who hits
17 first goes to jail. I've been there.
18 Q So --
19 A So I was not gonna tell them.
20 Q So it was your belief that they would have taken you from
21 an intensive care unit at Harborview to the jail?
22 A Yeah.
23 Q Now, a little later you are asked about how many times you
24 were hit and how many times you were kicked, and you said
25 you couldn't even remember. And at one point they asked

1 you what you did, and you said, "I probably just laid
2 there, let him kick me."
3 Your testimony today was that you were kicking
4 him back. Did you just leave that out at the time, also?
5 A This went on for over a half hour.
6 Q This statement?
7 A What particular time are you talking?
8 Q The statement or the fight went on for a half an hour?
9 A Somewhere in there.
10 Q The statement or the fight?
11 A The fight.
12 Q So, when you said that you just laid there and let him kick
13 you, you were talking about a particular time but not the
14 entire time?
15 A A particular time.
16 Q So there were times during this assault that you just laid
17 there and let him kick you?
18 A No.
19 Q And other times where you tried to kick back?
20 A I just didn't lay there. You don't just lay there.
21 Q That's what you told the deputies you did. And then later
22 Deputy Estes said, "You described where he hit you with
23 something. What was that?" And your answer was: "On the
24 side of my face." And Deputy Estes says, "With what?" And
25 you said, "With what?" And you said, "With the butt of a

1 rifle."

2 Is it your testimony today that the deputy

3 suggested that it was a gun before you brought it up?

4 A I don't know.

5 Q Is it your testimony that April Duckett planted the idea

6 that there was a gun involved in your head?

7 A It was just a conversation earlier that night about guns

8 that was in my head.

9 Q Although on January the 3rd you specifically remembered

10 getting hit on the side of your face with the butt of a

11 rifle.

12 A That's after everybody had come up to the hospital and

13 talked to me. They're stating this to me so, oh, gosh, I

14 guess he hit me with a gun, huh? So, you know.

15 Q By this question: "You described where he hit you with

16 something. What was it?"

17 "On the side of my face."

18 "With what?"

19 "With the butt of a rifle."

20 Who is suggesting that the defendant used a gun?

21 A That was taken how many days since I was up in the

22 hospital?

23 Q It was taken the 3rd of January.

24 A Okay. In between the time I went to the hospital and that

25 statement, I've had my mother up there, I've had April with

1 me and the deputy or whoever, and they're -- Whatever I had
2 talked about in between this statement is stuck in my mind
3 and put into my head about so I've talked to my kid about a
4 rifle, I've talked to my mom -- which, she thinks that all
5 this guy does is have guns, which is a lie -- so that's all
6 I thought about, so that's probably why I said that.
7 Q You know your mom is out in the hallway?
8 A Yeah, I know she's here.
9 Q Is it your belief that she will testify that she planted
10 the idea of the butt of a rifle in your head?
11 A I don't know what she is going to testify. I don't know
12 why she is here. She told me to point to who Ron is.
13 Q She wanted you to follow this all the way through, didn't
14 she?
15 A She doesn't care what I do.
16 Q And then later the deputy said, "Did you do anything to
17 deserve anything like this?" And your answer was, "Nope.
18 If he couldn't even ask for, for just not relating a
19 message, well" -- At that time, again, you never mentioned
20 anything about starting it, you never mentioned anything
21 about deserving any part of this.
22 A I didn't deserve anything I got.
23 Q And so on January the 3rd when you talked to the deputies,
24 the defendant had started this whole thing and he had
25 finished it; right?

1 A I started it, it got finished.
2 Q That's your testimony today, Ms. Krapf, but on the 3rd it
3 was your position that he started it and he finished it?
4 A No. I started it.
5 Q Take as much time as you need, Ms. Krapf, and show me in
6 here where it says that you started it.
7 A I didn't tell anybody I started it on this right here.
8 MR. CANDOO: I think that's been asked and
9 answered about twelve times and I think it becomes abusive.
10 THE COURT: Well, there's a lot of question here
11 as to when this came up, and I'm going to let him try to
12 get to the bottom of it.
13 Q (By Mr. Neeb) It's not there, is it?
14 A I don't know. I didn't look at it because I didn't tell
15 anybody what had happened until -- I don't know how long it
16 was. And it has nothing to do with who started it or not,
17 you know, if I don't come across as saying it.
18 Q The defendant hit and kicked you so many times that you
19 don't even know how many; is that right?
20 A I don't count.
21 Q He hit you with the butt of a rifle or hit you with
22 something other than his fists and his hands or his fists
23 and his feet?
24 A I don't know what he hit me with.
25 Q All you know is it was harder than his fists or his feet,

1 right, Ms. Krapf?
2 A Maybe his hand.
3 Q He ordered you to get your ass up and take a shower; isn't
4 that what he said?
5 A Go take a shower.
6 Q Okay. When you talked to the deputies, he told you to get
7 your ass up and take a shower. Was that just some more
8 ad libbing?
9 A Go take a shower.
10 Q He let you clean yourself up. He let you lie on the couch
11 for half an hour or so while he was having a visit with
12 Ms. Duckett?
13 A Not a visit, no.
14 Q They were in his bedroom, your bedroom?
15 A Our bedroom.
16 Q Without you in there?
17 A I don't care.
18 Q And then he had Ms. Duckett take you to the hospital?
19 A Hospital.
20 Q Okay. Can you tell us, Ms. Krapf, why it is that you are
21 not afraid of a guy that could do this to you?
22 A I'm not afraid of him. How can you pinpoint anything on a
23 fight on how long it is going to last being how damaging it
24 is? I'm not afraid of him.
25 Q Have you ever had anything anywhere even remotely close to

1 this happen to you before, Ms. Krapf?
2 A Yeah. I've been assaulted back in '83.
3 Q You have five steel plates in your face, you had to have
4 your scalp peeled down and your eyeballs repaired --
5 A You don't have to remind me.
6 Q -- and you are not afraid of this guy still?
7 A No, I am not.
8 Q And you are in love with him still?
9 A Mm-hm. (Indicating affirmatively.)
10 Q And you are trying to protect him now?
11 A I'm not protecting him.
12 Q Do you want to see him get in trouble for what he did?
13 MR. CANDOO: Objection.
14 A I don't want to see anybody get in trouble.
15 MR. CANDOO: It's irrelevant.
16 MR. NEEB: Goes to her credibility.
17 THE COURT: Counsel, you asked the same
18 questions.
19 Q (By Mr. Neeb) On January 3rd when you talked to the
20 deputies, Ms. Krapf, your words were, "I think he should
21 rot in hell."
22 A Rot in hell.
23 Q Do you want to see him get in trouble for what he did to
24 you, yes or no?
25 A No.

1 MR. NEEB: No further questions.

2 RECROSS EXAMINATION

3 BY MR. CANDOO:

4 Q The "rot in hell" was the punishment for the April and Ron

5 story, wasn't it?

6 A Yes.

7 Q And you weren't willing to tell the deputies about boots or

8 other things that you used because, as you've stated, you

9 thought that that was going to get you thrown in jail or

10 into some kind of charge, right?

11 A You do get charged, whoever does the first -- I've been

12 thrown in jail before, and you do. It doesn't make a

13 difference if you're a victim or not, you still can be

14 charged.

15 Q Telling the deputies about boots and other things that you

16 used at that time would also have the effect of not getting

17 Ron into more trouble, yes or no?

18 A Yes.

19 Q From the time that you were taken to the hospital -- not

20 counting April in the car -- but from the time you were at

21 the hospital until this recorded statement, January 3rd,

22 you were asked in one way or another about this by, you

23 estimate, how many people?

24 A To make the statement?

25 Q Just about what was going on, what happened, what was used,

1 what wasn't used.
2 A The nurses, my mother, my nieces, April, the people -- From
3 the one time when I was in the ambulance, the guy asked me,
4 "Who did this to you?" And that's all I remember.
5 Q Of the people between the time you were taken to the
6 hospital and giving this statement, was there any one
7 person that stands out as the most, I guess, consistently
8 in contact with you about this episode?
9 A My mother.
10 Q And even before this episode, what did your mother think
11 about Ron?
12 A She hates him.
13 MR. NEEB: I object to that, Your Honor. It
14 calls for speculation.
15 THE COURT: I will sustain the objection at this
16 time. It may be that you might be able to ask that
17 question later, Counsel.
18 Q (By Mr. Candoo) Has your mother expressed her sentiments
19 towards Ron?
20 A Oh, yeah.
21 MR. CANDOO: I have no further questions.
22 MR. NEEB: Nothing more.
23 THE COURT: You may step down. Thank you.
24 (Witness excused.)
25 /

1 THE COURT: Ladies and gentlemen, we are,
2 obviously, going to break for the noon recess at this
3 time. I ask you to recall my previous instructions as to
4 discussing the case among yourselves. There's still
5 potentially testimony that you will have to hear in this
6 matter.
7 We will be at recess then until 1:30.
8 (Noon recess taken.)
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1 MAY 06, 1996

2 AFTERNOON SESSION

3 * * * * * * *

4 THE COURT: All right, Mr. Neeb.

5 MR. NEEB: The State would call Dee Arneberg,

6 Your Honor.

7 DEE ARNEBERG, Called as a witness on behalf of

8 the Plaintiff, after first being

9 duly sworn, was examined and

10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. NEEB:

13 Q Please state your full name and spell your last name for

14 the court reporter.

15 A Dee, Ann is my middle name, Arneburg, A-R-N-E-B-E-R-G.

16 Q Are you related to Kim Krapf?

17 A I'm her mother.

18 Q Do you know the defendant, Ronald Hall?

19 A Yes, we've met.

20 Q How do you know him?

21 A By my daughter living with him.

22 Q Did you become aware that your daughter had been assaulted

23 the 1st of January of this year?

24 A They notified me, I believe it was, the 2nd.

25 Q Who is "they"?

1 A The hospital and her Aunt Sue.
2 Q When was the first time that you saw Kim after the 1st of
3 January?
4 A 8:00 the night of the 2nd.
5 Q And where was that?
6 A Harborview.
7 Q Did you talk with her at that time about the details of how
8 she got to be where she was?
9 A I had her sister and a five and a four-year-old at the
10 hospital with me, and we were there -- got there about 7:30
11 or 8:00 that evening. And I was more interested in talking
12 to the doctor, the charge nurse, especially after Kim --
13 she couldn't talk very clear, anyway, and she just made the
14 mumble about, "I look great, don't I?" And then she was
15 trying to reassure the little girls that it was still her,
16 to kiss her and things.
17 Q When was the first time -- Well, actually, did you know
18 that Deputy Bautista and Deputy Estes took a taped
19 statement from Kim?
20 A Yes, I did.
21 Q How did you know that?
22 A They arrived the next day right after I got up there, the
23 4th.
24 Q The 4th or the 3rd?
25 A The 3rd. The 3rd.

1 Q Were you in the room when they took the taped statement?
2 A Yes, I was.
3 Q Did you hear Kim describe the circumstances surrounding the
4 incident?
5 A Twice.
6 Q Prior to that, when she did that on the taped statement,
7 did you talk to her at all about the details?
8 A Not details.
9 Q Did you suggest to her that a gun was involved or she
10 should make up that a gun was involved?
11 A That's absurd.
12 Q After Kim was released from the hospital, where did she go?
13 A She came home with me.
14 Q And why was that?
15 A Well, there was actually nowhere else for her to go where
16 she felt safe, she said, and that also she was going to
17 stay with me 'til court was over.
18 Q Why was she going to stay with you until court was over?
19 A Just so I could take care of her.
20 Q At the time when you left the hospital with her, was she
21 intending to cooperate with prosecution, that you knew?
22 A As far as we knew --
23 MR. CANDOO: I object. This calls for
24 speculation. Again, we're asking people what other people
25 intended, and we had Kim here to ask her directly.

1 THE COURT: Rephrase your question. I will
2 sustain the objection.
3 Q (By Mr. Neeb) Did you and Kim talk about her desires or
4 intent to proceed with prosecution?
5 A Her comment was she hoped --
6 MR. CANDOO: Objection. Nonresponsive. Calls
7 for yes or no.
8 THE COURT: Sustained.
9 He just asked you a question that's a "yes" or
10 "no" answer.
11 Q (By Mr. Neeb) Did you guys talk about whether or not she
12 would cooperate with the prosecution?
13 A Yes.
14 Q How was it left between the two of you as to whether she
15 was or was not intending to follow through?
16 MR. CANDOO: Objection, calls for hearsay.
17 THE COURT: Overruled. It's not for the truth of
18 the matter.
19 Q (By Mr. Neeb) Do you understand my question?
20 A No.
21 Q Based on your conversation with her, did you know whether
22 or not she intended to come forward and to testify at
23 trial?
24 A Yes.
25 MR. CANDOO: Same objection.

1 THE COURT: Overruled.
2 Q (By Mr. Neeb) What was that intent?
3 A To be with me until we got this over with.
4 Q Now, at some point while she was staying with you, did she
5 leave?
6 A Yes. I brought her home on Monday. The following Saturday
7 she went to stay with some friends because the little girls
8 were running -- She shared the bedroom with my
9 five-year-old granddaughter, and I knew she would be home
10 from school and pre-school, so she went and stayed with a
11 family friend with her 15-year-old son.
12 Q And what was the reason for not being in the house with the
13 younger kids?
14 A They were too rough on her.
15 Q Okay. Was there a point when she moved out permanently?
16 A After the following weekend.
17 Q At some point did you become aware that the defendant had
18 sent her three letters?
19 A Yes.
20 Q When did she move out of your house in relation to when she
21 got those letters?
22 A It seems like four days.
23 MR. CANDOO: I'm sorry, I didn't hear that
24 response.
25 THE WITNESS: Possibly four to five days.

1 Q (By Mr. Neeb) Did you notice a change in her attitude
2 after she received the letters?
3 A Oh, I did.
4 Q What was the change?
5 A I even had to call Deputy Bautista and an arbitrator to
6 come to the home because she had an anxiety attack, I
7 guess. She was walking in circles and hysterical.
8 Q An arbitrator? Do you mean a victim advocate?
9 A Yes.
10 Q After she moved out, do you know where she went to stay?
11 A She went to Jimbo Keller's mother's property.
12 Q Do you know whether or not Jimbo Keller and the defendant
13 are friends?
14 A They are.
15 Q Did you keep in contact with Kim between when she moved out
16 and this past weekend, the end of April?
17 A Yes.
18 Q What contact?
19 A She was by my house several times. I got a moving van for
20 her to move her belongings off the property. And by
21 telephone quite often.
22 Q About how many times a week did you have contact with her?
23 A Well, at the beginning, at least once a day. And it slowly
24 regressed.
25 Q It got less and less?

1 A Mm-hm.
2 Q Was there a point when she lost contact with you
3 completely?
4 A Yes, last week.
5 Q Do you remember when that was?
6 A She called me Friday. Let me think. Yes, she called me
7 Friday because there was an offer for her to have
8 transportation into court Monday.
9 Q Was this this past Friday, or a week ago this past Friday?
10 A Must have been a week ago.
11 Q And between then and yesterday did you have any contact
12 with Kim?
13 A (Witness shook head negatively.)
14 Q After you had heard that she didn't -- Did you hear that
15 she didn't show up for court?
16 A Yes.
17 Q After that time, did you attempt to find her?
18 A I called every place I could think of where she might be.
19 Q Okay. Did you have any success?
20 A No.
21 Q Normally when you are looking for Kim and you contact other
22 people, is it pretty easy to get ahold of her and find out
23 where she is?
24 A Yes.
25 MR. CANDOO: I would object as to the relevance

1 of all of this.

2 THE COURT: I will sustain the objection to the

3 last question.

4 Q (By Mr. Neeb) Had you and Kim talked about whether or not

5 she was afraid to come in and testify?

6 MR. CANDOO: Objection. It's irrelevant.

7 MR. NEEB: Goes to her credibility and bias, Your

8 Honor, both.

9 THE COURT: I think we need a brief sidebar,

10 Counsel.

11 (Sidebar conference held off the record.)

12 Q (By Mr. Neeb) Ms. Arneberg, did you talk to Kim about

13 whether or not she was afraid to testify in this case?

14 A Yes. The first time it was mentioned was at the hospital.

15 Q Had she expressed to you concern for her safety if she

16 testified against the defendant?

17 A Yes.

18 Q I'm going to hand you Exhibit 41, Ms. Arneberg. Do you

19 recognize this?

20 A Yes, I do.

21 Q How is it that you recognize it? Or, let me just ask you

22 this: What is it?

23 A This is a note that fell out of a duffle bag or a gym bag

24 when I dumped it on my granddaughter's bed.

25 Q And how did you come to do that?

1 A Well, when Kim first got there, she had Jimbo Keller and
2 Vanessa bring her some clothes to wear while she was
3 there. They brought two suitcases, light blue, and this
4 gym bag of sorts. I had given her a dresser in the girls'
5 bedroom so her clothes could be put into that dresser. And
6 the weekend when she left for the weekend with her son, I
7 was cleaning up the bedroom. At the foot of the bed, under
8 the bed, was that same satchel. So, I dumped it onto the
9 bed and out came a man's black leather, like, motorcycle
10 jacket, two leg braces, and a wallet and that piece of
11 paper.
12 Q And whose wallet and leather jacket was that?
13 A Ron Hall's.
14 MR. NEEB: Thank you, Ms. Arneberg.
15 Your Honor, that's all the questions I have.
16 MR. CANDOO: I have no further questions.
17 THE COURT: All right.
18 You may step down. Thank you.
19 THE WITNESS: Thank you.
20 (Witness excused.)
21 MR. NEEB: The State would recall Deputy
22 Bautista, Your Honor.
23 THE COURT: You are still under oath.
24 /
25 /

REBUTTAL DIRECT EXAMINATION

BY MR. NEEB:

Q Deputy Bautista, did you become aware that Ms. Krapf had failed to come in and testify in this case?

A Yes, I did.

Q What steps did you take to try and find her?

A The days after realizing that she had not shown up, I immediately contacted people I thought might know where she was at, and received information on several different locations where I might try to find her at.

Q Approximately how many people did you talk to during the course of from Tuesday until this past Sunday?

A Four to five.

Q And were there other law enforcement officers looking for her, as well?

A Yes.

Q Who was that?

A I advised our detachment out in Eatonville, District 19. I faxed them a copy of the warrant and a photograph of Ms. Krapf, and they -- I believe it would be Tuesday afternoon -- attempted to serve that warrant on an address on Meridian. So, they were active in trying to serve the warrant at -- I believe the address was about 293rd and Meridian, and they weren't able to find her there.

Q Did you make it clear that finding Ms. Krapf was a

1 priority?
2 A Absolutely.
3 Q Was she eventually found?
4 A Yes.
5 Q When was that?
6 A Yesterday evening around 6:00.
7 Q Now, prior to this past week have you had occasion to go
8 out and get Ms. Krapf or to find her during the course of
9 this incident?
10 A Yes.
11 Q Have you had difficulty doing that?
12 A The first time? Are we talking about the first time I went
13 out and looked for her?
14 Q Mm-hm. (Indicating affirmatively.)
15 A Just a little difficulty. I had some locations and I was
16 able to find her.
17 Q Was this time different, this past week?
18 A Yes.
19 Q Approximately how many locations did you personally check
20 before actually finding Ms. Krapf?
21 A Approximately six.
22 Q Deputy Bautista, the address of the trailer out in Kapowsin
23 where this incident took place, is that Pierce County,
24 Washington?
25 A Yes, it is.

1 MR. NEEB: That's all the questions I have for
2 Deputy Bautista, Your Honor.
3 MR. CANDOO: I have no questions.
4 THE COURT: You may step down.
5 (Witness excused.)
6 MR. NEEB: If I could have just one second, Your
7 Honor.
8 Your Honor, the State would offer again Exhibits
9 21, 22 and 23, the three letters from the defendant.
10 MR. CANDOO: No objection.
11 THE COURT: They will be admitted.
12 MR. NEEB: With that, Your Honor, the State would
13 rest.
14 THE COURT: Counsel?
15 MR. CANDOO: I would like to ask for a recess to
16 confer with my client. It will be very brief.
17 THE COURT: Ten minutes, five minutes?
18 MR. CANDOO: At most.
19 THE COURT: We will take a brief recess at this
20 time.
21 (Recess taken.)
22 (The following colloquy occurred outside the
23 presence of the jury:)
24 MR. CANDOO: Thank you, Your Honor. I wanted to
25 take the time to reflect with my client so that the only

1 person who would testify potentially would be the
2 defendant. And before being caught into making a decision,
3 he and I have discussed this; he understands he has the
4 right to take the stand and to testify in his own behalf
5 and he also has the right to require the State to prove the
6 case without his participation. And I think he is choosing
7 the right not to be called to testify or testify in his own
8 behalf and to exercise his Fifth Amendment. But, again, I
9 didn't want to have him feel differently at the last minute
10 and do so in front of the jury, so I asked the jury to
11 leave.
12 Have I stated it correctly, Mr. Hall?
13 THE DEFENDANT: Yeah.
14 MR. CANDOO: That's satisfactory with me.
15 THE COURT: So you will also, in effect, be
16 resting?
17 MR. CANDOO: Be resting, yes.
18 THE COURT: We need to go over jury instructions
19 again briefly. How long do you think that's going to take
20 us?
21 MR. CANDOO: 20 minutes. I think you've got --
22 You know, you know where you're at in terms of what you
23 have seen of the evidence, so we can just present our
24 packets.
25 THE COURT: But we have to get twelve copies made

1 up and do all that and so forth. My question is, do you
2 think you are going to have time, given that we are at
3 2:00, if we take an hour to do that, for example, will you
4 then have time to do your closings and so forth?
5 MR. NEEB: Your Honor, I'll leave it up to the
6 Court. I don't want to rush anything and I don't want to
7 keep people late. I expect if we finish today they would
8 have to come back to start deliberations in the morning.
9 My preference would be to let them go so that we take as
10 much time as we need with instructions, because I am
11 opposed to both lesser includeds that he is proposing, and
12 then we do instructions and closings first thing in the
13 morning.
14 MR. CANDOO: I concur with that format. I think
15 going into closing this afternoon, after a day, their
16 attention span, our energy levels, might be best served by
17 doing this first thing in the morning and then they get the
18 case.
19 THE COURT: I think if they were given
20 instructions and closing arguments and then allowed to
21 deliberate, which they would probably start at about --
22 MR. NEEB: 4.
23 THE COURT: We might get to them at 11:00. I
24 don't know how long closing would be. Do I have anything
25 in the morning? I think I may have a settlement conference

1 tomorrow. I was going to suggest starting at 9.

2 MR. NEEB: I have a dental appointment at 7, but

3 that puts me here at 8:30 at the latest.

4 THE COURT: I'm almost positive I have a

5 settlement conference in the morning, so we couldn't start

6 until 9:30.

7 Do you want me to bring them back out and explain

8 to them that you have rested and that we are going to spend

9 some time arguing about the jury instructions and that they

10 will be brought back tomorrow at 9:30, I will read them

11 instructions, Counsel will argue, and they will then

12 deliberate upon a verdict?

13 MR. NEEB: I think the defense should rest on the

14 record.

15 MR. CANDOO: I think so, too.

16 THE COURT: All right. Bring them back out.

17 (Jury was returned to the courtroom.)

18 THE COURT: You may be seated.

19 Ladies and gentlemen, the prosecution has rested

20 their case and I have been advised by the defense attorney

21 that they are also resting, which means that there will be

22 no further testimony in this matter.

23 However -- and I think we were a little

24 unprepared in one sense for this -- we have a number of

25 legal issues that need to be dealt with and need to be

1 argued in open court, and they must be done, of course,
2 without the jury present. So, I am going to release you
3 today. Come back tomorrow at 9:30. You will be given my
4 instructions on the law. You will hear argument of
5 Counsel, and you will then deliberate upon a verdict in
6 this case.
7 You have heard all of the evidence in this case,
8 but you are still not to begin making up your minds, to the
9 extent that is possible, obviously, because you have not
10 heard the instructions on the law and you have not heard
11 Counsels' arguments.
12 So, we will see you back here tomorrow morning at
13 9:30. You are released at this time.
14 (Jury was released until tomorrow morning,
15 May 7, 1996.)
16 THE COURT: Counsel, my preference on these
17 issues is to initially go back and try to compare the
18 instructions, as we usually do, and then come back out and
19 put on the record whatever my decision is as to these
20 instructions. I find that we move along faster if we sit
21 down with the instructions and are able to look at them and
22 have a certain give and take.
23 It could take as much as an hour. Would you
24 prefer to take Mr. Hall back upstairs until we go through
25 that process, and then bring him back here for the actual

1 in-court part of it?

2 CORRECTIONAL OFFICER: If it is not necessary for

3 him to be here, yes, Your Honor, that's the way I would

4 have to do it.

5 THE COURT: It is not necessary for him to be

6 here, and I would expect that we would be doing this for

7 about an hour. I am going to ask that he be brought back

8 down, because we are going to put on the record what the

9 ultimate decisions are.

10 CORRECTIONAL OFFICER: So you want him to be

11 brought down at 3:00?

12 THE COURT: Why don't you just bring him back at

13 3:00.

14 CORRECTIONAL OFFICER: I will return with him at

15 3:00, Your Honor.

16 THE COURT: The court will be at recess at this

17 time.

18 (Recess taken.)

19 * * * * * * *

20 THE COURT: All right, Counsel, we considered the

21 instructions as proposed by the prosecutor's office

22 originally in this matter, and I think we agreed that all

23 of the prosecutor's instructions, with the exception of the

24 prior convictions instruction and the definition of Assault

25 I, and the concluding instruction as it was constituted,

1 should be given. And I have in fact prepared a package of
2 instructions that would include all of those other
3 instructions.
4 In addition, the defendant has requested a series
5 of instructions, the first of which is to substitute for
6 the prosecution's Assault I definition, and I have agreed
7 to give that instruction. It is the standard instruction
8 out of the Washington Pattern Instructions and I have
9 included that in the package.
10 The defense has also requested a definition of
11 lesser included offenses, a definition of Assault 2nd and
12 Assault 3rd, and also related instructions that would
13 define the elements of those, of Assault 2nd and Assault
14 3rd.
15 I am going to give Washington Pattern Instruction
16 4.11, the lesser included instruction; however, it will
17 include only an Assault 2nd reference. And I am giving the
18 Assault 2nd definition and the to-convict and also the
19 definitions in the Washington Pattern Jury Instructions
20 10.03 and 10.02. I am not going to include the definition
21 of Assault 3rd, nor the related to-convict four
22 definitional instructions.
23 Now, with that information, Counsel, are you in a
24 position or believe you are in a position to take
25 exceptions or objections to the instructions that I have

1 proposed? Starting with the State.

2 MR. NEEB: Your Honor, I would love to argue

3 against the Assault 2nd, but I think that I would be

4 walking myself right into a problem if I did, so I don't

5 have any objection to the Court's instructions.

6 THE COURT: Okay. Mr. Candoo?

7 MR. CANDOO: Thank you, Your Honor.

8 I would, on behalf of the defendant, object to

9 the deadly weapon instruction. I think that any theory

10 must be based upon substantial evidence, or substantive

11 evidence of some sort, and it's my conclusion that the

12 testimony related to a weapon was, "I think," and "maybe,"

13 and "no, it wasn't," "maybe it was."

14 I think the testimony of Kim Krapf leaves us

15 without the requisite substantial underpinning that's

16 required for that, so I object to the deadly weapon or

17 special instruction. And actually, I should probably

18 object, to be consistent with that, to any reference to

19 deadly weapon throughout and any theory of any of the

20 possibilities of conviction.

21 Secondly, I would like to, for the record,

22 indicate that we have submitted Assault 3rd Degree. I

23 don't have anything further to offer, though, but would

24 object to its not being included.

25 THE COURT: All right. Your exception to my

1 failure to give the Assault 3 instruction and the
2 definitional instructions that accompany that, as well as
3 the to-convict instruction that would accompany that, are
4 noted. My belief is that there simply is no way that one
5 could conclude that any of these injuries were negligently
6 inflicted. Intent, of course, is a different question and
7 I understand that, but this is not an Assault 3rd in the
8 sense that someone has accidentally injured someone else.
9 The punching and kicking was clearly intentional. Results
10 are really what is an issue here.
11 As for the deadly weapon instruction, I don't
12 think the standard is substantial evidence as such, but
13 there is clearly evidence in the record from which a jury
14 could conclude that he did some of this with a deadly
15 weapon. There is clearly inconsistent testimony, as well,
16 and they may very well conclude that they are not convinced
17 by that testimony or that there simply was no weapon
18 involved. However, there is evidence upon which the State
19 can argue there was a weapon involved and I think it
20 becomes thus a jury question as to whether or not the State
21 has proven beyond a reasonable doubt there was any kind of
22 a weapon involved, deadly weapon involved, in this matter.
23 Any further exceptions or objections, then?
24 MR. CANDOO: No. I wanted to make one comment
25 and that is that Mr. Neeb pointed out that the definition

1 for substantial bodily harm may have been omitted. I don't
2 know if that got resolved or not, but I know we all intend
3 to have that instruction included because it is really
4 mandatory under Assault II. I have a form for that, and
5 maybe this is under the clerical concerns, not under the --
6 THE COURT: Have you brought your instructions
7 up, the other instructions that your secretary was going to
8 bring up?
9 MR. CANDOO: No. I had in my mind only 4.11 and
10 to change the verdict form. And he kindly offered to have
11 his office do that, and I saved my secretary a trip, so,
12 no, I do not.
13 THE COURT: Okay. Because I thought you were
14 going to have that instruction included, as well.
15 MR. CANDOO: I'm sorry, if that falls on me. I
16 totally missed the boat on that. I don't think we can
17 present the jury instructions without that.
18 THE COURT: No. I will have my judicial
19 assistant -- Do you have a copy?
20 MR. CANDOO: I have a copy with the notation at
21 at the bottom.
22 THE COURT: We can simply pull it up on the
23 computer and print it up.
24 Mr. Neeb, why don't you glance at this just to
25 make sure this is the appropriate instruction.

1 MR. NEEB: I thought I did, but -- yes, that's
2 fine.
3 THE COURT: Any other issues, matters, that you
4 think we need to deal with, Counsel?
5 MR. NEEB: No. Your Honor, I prepared the
6 corrected 4.11, and the corrected concluding instruction,
7 and Verdict Form B. After I got back down here I talked to
8 Mr. Candoo about the definition of Assault I that had the
9 "or she" language, and also the to-convict instructions
10 that I was under the impression he was going to do, but
11 those should be on their way down from my office because it
12 was quicker. And we can get those once we go off the
13 record to make sure that they're in the packet. It just
14 deletes the language we talked about in the back, and adds
15 it, for that matter.
16 THE COURT: All right. Anything else?
17 MR. CANDOO: I have nothing else.
18 THE COURT: We will be at recess at this time
19 then.
20 (Proceeding concluded.)
21
22
23
24
25

CERTIFICATE

STATE OF WASHINGTON

COUNTY OF PIERCE

I, Dorylee Reyes, Official Shorthand Reporter in and for the County of Pierce, State of Washington, do hereby certify that the foregoing proceedings were reported by me on said date(s) and reduced to computer-aided transcript form.

I further certify that the foregoing transcript of proceedings is a full, true and correct transcript of my machine shorthand notes of the aforementioned matter.

Dated this 29th day of July, 1996.

Dorylee Reyes

Dorylee Reyes, CSR, RPR

COPY

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF PIERCE

3 STATE OF WASHINGTON,)
4 Plaintiff,)
vs.) NO. 96-1-00042-8
5)
RONALD ARMON HALL,)
6)
Defendant,)
7

8 ----------

9 VERBATIM REPORT OF TRIAL PROCEEDINGS

10 VOLUME 4 OF 5

11 PAGES 282 - 339

12 ----------

13 BE IT REMEMBERED that on the 7th day of May, 1996, the
14 above-captioned cause came on duly for hearing before the
15 HONORABLE BRUCE W. COHOE, Superior Court Judge in and for the
16 County of Pierce, State of Washington; the following
17 proceedings were had, to-wit:
18
19 APPEARANCES

20 FOR THE PLAINTIFF: JOHN M. NEEB
Deputy Prosecuting Attorney
21
22 FOR THE DEFENDANT: SCOTT A. CANDOO
Attorney at Law
23
Reported By:
24 Dorylee Reyes, CSR, RPR
25

JOHN W. LADENBURG
PIERCE PROSECUTING ATTORNEY
NOV 12 1996
ROOM 946
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MAY 7, 1996

MORNING SESSION

* * * * * * *

(Jury brought to the courtroom.)

THE COURT: Ladies and gentlemen, the time has come for me to give you instructions on the law, the law which you are to apply in this case.

(WHEREUPON, the Court instructed the jury.)

THE COURT: Ladies and gentlemen, if you will now give your attention to the closing statement on behalf of the State.

Mr. Neeb?

MR. NEEB: Thank you, Your Honor. Your Honor, before I begin closing argument, could we have a brief sidebar?

THE COURT: All right.

(Sidebar conference held off the record.)

* * * * * * * *

CLOSING ARGUMENTS

* * * * * * * *

MR. NEEB: Well, at least this morning you know that we didn't get started for something none of us had any control over, because we've had you up and down and in and out of the courtroom a lot during this trial.

The purpose of closing argument is to take the

1 evidence that was presented to you from the witness stand
2 and for me to apply it to the instructions the Court just
3 read to you in order to point you towards a just verdict.
4 In doing that, I want to eliminate some of the things that
5 are not going to be disputed. This case is not a case of
6 mistaken identity where the defense says, "It wasn't me."
7 This is not a case of, "I did not do what the State says
8 that I did, assault Kim Krapf." Rather, this is a case of,
9 "What I did isn't as bad as the State says it is." It's a
10 case of minimization.
11 In the Court's instructions to you, he gave you
12 what's called a to-convict instruction. That's the one
13 that has all the elements that the State has to prove in
14 order for you to find the defendant guilty of Assault in
15 the First Degree. And I want to tell you from the very
16 beginning that I'm not going to stand up here during this
17 closing argument and talk to you about Assault in the
18 Second Degree, because I don't believe that what the
19 defendant did is only an Assault in the Second Degree. He
20 committed an Assault in the First Degree. He may very well
21 ask you to compromise and give him an Assault in the Second
22 Degree, but I want to address the crime that the defendant
23 actually committed.
24 On or about the 1st day of January, the defendant
25 assaulted Kim Krapf. That isn't going to be disputed and

1 neither is the fact that it happened here in Pierce County,
2 Washington.
3 I told you in opening statements that there were
4 four "yes or no" questions that this case was going to come
5 down to. Unfortunately, I am going to add a couple more
6 "yes or no" questions, but really all it comes down to is
7 simple "yes or no" questions.
8 The first one of those is: Did the defendant --
9 Well, the first one, of course, would be: Did the defendant
10 assault Kim Krapf? And that one is not going to be
11 contested, I don't believe. Kim told the deputy, "My
12 boyfriend Ron did this to me." She cried out in the
13 hospital, "Stop it, Ron, you're hurting me." And she
14 identified the defendant from the witness stand as the one
15 who inflicted her injuries. It's clear that this person
16 sitting in the courtroom is the one who beat Kim Krapf to
17 the extent of the pictures that you saw.
18 The next question is: Did the defendant intend
19 to inflict great bodily harm when he assaulted Kim Krapf?
20 That's an element where you have to use circumstantial
21 evidence instead of direct evidence to reach the answer to
22 the question. The Court talked to you about circumstantial
23 evidence and direct evidence being equal in weight, but
24 they are different in the way that you get to hear the
25 evidence.

1 An example: You go to sleep at night. You wake
2 up in the middle of the night to get a drink of water and
3 you look outside the window and it's snowing. In the
4 morning you wake up and there's snow outside. You come
5 into court and testify, "I saw it snowing." That's direct
6 evidence.
7 By the same token, if you go to sleep at night
8 and before you go to sleep there's no snow on the ground,
9 when you wake up there is snow on the ground, and you come
10 in and testify to those two things, that's circumstantial
11 evidence that points to the conclusion that it snowed
12 overnight.
13 That's what you have to do in order to get to the
14 defendant's intent, because we're not able to go back to
15 the night of January the 1st and crawl inside of the
16 defendant's head to see what it is that he is thinking as
17 he is hitting and kicking Kim Krapf.
18 You could very well take these pictures and go
19 back into the jury room and look at them and say to
20 yourself, "What else could he have intended?" and be done,
21 because it's clear that the amount of damage that he did
22 was intentional.
23 But, look also at the other things about this
24 assault. Look at where the defendant was hitting and
25 kicking Kim Krapf. He was hitting her in the head, around

1 the throat area and her chest, in her rib cage. Look at
2 the number of times that the defendant struck her. Kim
3 Krapf's testimony was she doesn't know how many, she lost
4 count. Dr. Woodard and Dr. Vedder testified -- I think it
5 was Dr. Woodard who testified that it's safe to say that
6 each of the bruises indicates a separate blow.
7 Look also at what the defendant was using when he
8 struck her. It's not just a fist. And I don't mean to
9 minimize the amount of damage that he can do with his fist,
10 because you have seen the defendant in court and you can
11 see the size of his hands and you can see how big he is.
12 But, he does more than that. He kicks her any number of
13 times in the same areas. And Kim Krapf described to you a
14 set of logging boots that the defendant has that are up to
15 the knee and they're heavy work-type boots.
16 We also know that the defendant assaulted
17 Ms. Krapf with something other than his fists and his
18 feet. And for the purpose of the intent element, we don't
19 need to really talk about what that is, but we know that
20 she said it was an object harder than his fists or his feet
21 and that blow was directed to the side of her head, as you
22 are going to be able to see from Exhibit No. 4 where
23 there's a particular mark on her face.
24 We can look further to the defendant's intent by
25 his actions that night in addition to the actual assault.

1 He ordered her to stay down so that he could continue the
2 assault. When she tried to move, to even readjust herself,
3 he kicked her or hit her again. He ordered Bob Aaron to
4 stay out of it and to stay where he was. Then when he was
5 finished beating on her he said, "Get up and take a
6 shower," made her clean herself up, let her lie on the
7 couch injured while he was in the back room with
8 Ms. Duckett when she came back, and then had Ms. Duckett
9 take her to the hospital and not take her himself.
10 All of those things suggest that what he was
11 doing was intending to do this great bodily harm. And
12 probably most telling of all is the comment that he made to
13 Bob Aaron in the midst of this. He said to Bob Aaron, "Go
14 get a shovel. I'm gonna bury her." You don't bury a live
15 person. I mean, he is administering such a serious
16 beating -- And make no mistake about it, the defendant can
17 see the damage that he is doing there, and that speaks
18 volumes to his intent that night.
19 You should also keep in mind when you are going
20 over this element that there's nothing that requires that
21 the defendant know the legal definition of great bodily
22 harm. The definition of intent basically boils down to,
23 did he do it on purpose? The defendant had to be
24 intentionally assaulting her to the point where he does
25 enough damage that it fits to the legal definition of great

1 bodily harm, but he doesn't have to have the instructions
2 the Court read to you in front of him and saying, "This is
3 what I'm thinking."
4 The answer to the question about his intent is
5 "yes." And his intent, of course, applies to both of the
6 alternative prongs of the actual assault itself that I'm
7 going to move to.
8 The next question is: Did the defendant assault
9 Ms. Krapf with a deadly weapon? The defense is going to
10 make hay about this element because Ms. Krapf was reticent,
11 if you will, or contradictory even, in her testimony versus
12 her statement. But, you have to keep in mind the evidence
13 that you heard and the credible determination that you make
14 weighing all of the factors that you think are important.
15 On the 3rd of January when Ms. Krapf was talked
16 to in the safety of a hospital room where the defendant had
17 no access to her and couldn't influence her at all, she
18 told the deputies he hit her in the face with the butt of a
19 rifle. They asked her how many times and she said -- They
20 asked her if it was once or more than once, and she said
21 she thought it was only once because she remembered
22 thinking, "God, how could he be doing this to me?"
23 When you look at Exhibit No. 4, which is a
24 picture of the right side of Ms. Krapf's face, you are
25 going to see from just above her eye to about the middle of

her cheek a straight line up and down. No bend to it at all. No curve to it at all. Think about what that could be. It's not going to be a fist and it's not going to be a foot. It's the other object that she was talking about that was harder than both of those. On January 3rd she said it was the butt of a rifle. When she had to come in here to court and face him, she didn't want to say it was the butt of a rifle, but she did admit to you that she knew it was important to tell the truth and she was trying to be complete during the time that she gave the statement, although she was hesitant to say either one of those things, as well. And we're going to talk about Ms. Krapf's credibility and the reasons that she may say things a little different from the witness stand in a bit. The answer to that question, did he use a deadly weapon, is also "yes."

The next alternative that you are given is whether or not the defendant actually intended the great bodily harm that he inflicted. Look at the definition of great bodily harm and you see probability of death or substantial permanent disfigurement. I'm suggesting to you that the evidence supports either one of those findings.

Dr. Woodard testified that when Ms. Krapf came into the emergency room, her injuries were potentially life-threatening. That opinion was never challenged. They

1 always insert a chest tube -- and you can see a picture of
2 the size of this tube up until the bandagings -- always
3 insert a chest tube into a punctured lung because they can
4 rapidly deteriorate and that can result in death. That
5 right there is enough to find great bodily harm.
6 There's more. Ms. Krapf has a scar from ear to
7 ear on the top of her head. There are three pictures that
8 show you that scar, pictures 18, 19 and 20. Everybody
9 knows -- I mean, we don't ask you to leave your common
10 sense at home. And everyone knows that hair isn't going to
11 grow back over a scar. That scar is going to be
12 permanent. It's going to stay there. And if Ms. Krapf
13 were ever going to decide to cut her hair short, it's going
14 to show. Look through the instructions and see if it says
15 anywhere that the disfigurement has to be present and
16 apparent at all times. It doesn't say that. That scar
17 alone is also enough to find great bodily harm.
18 There's still more. Ms. Krapf's eyes are
19 permanently altered. She has scarring in the corner. It
20 doesn't appear to be very much. The eyes are open more
21 than they should be. And, most significant of all, her
22 eyeballs aren't even. Her eyes are not level. Two of the
23 pictures that you will see, or that you've seen and that
24 you will see again, demonstrate that. Those are numbers 15
25 and 16. And it's not a significant unlevel -- I think

1 that's probably not a correct word -- but, the level isn't
2 greatly off. And it doesn't have to be. When you look at
3 a person, I mean, as I'm looking at each one of you right
4 now, I'm looking you in the eye. It's one of the first
5 things you notice about people is their eyes. How many
6 times have you met a person for the first time who had a
7 lazy eyeball or a wandering eye? You notice that kind of
8 thing. Ms. Krapf's eyes are never, ever going to be
9 level.
10 There's still more permanent disfigurement, and
11 that is the two teeth that she is missing. Picture number
12 17 shows you the hole on the left side of her face where
13 she should have two teeth that are pretty close to the
14 front. Unless she gets reconstructive dental work of some
15 kind, that will always be there. And every time she talks,
16 every time she smiles, it's going to show.
17 Each one of those individually is enough for you
18 to find great bodily harm. But another, most important,
19 thing to keep in mind is, the defendant, as he sits there,
20 doesn't get the benefit of medical science. He doesn't get
21 his conduct lessened because of the remarkable skill of
22 Dr. Vedder in putting Kim Krapf back together. Dr. Vedder
23 testified -- and, again, not disputed -- that had he not
24 done the surgery he did, Ms. Krapf's eyes would have sunk
25 back and then sunken into her cheeks.

1 Her right eye, the muscle that allows her to
2 raise her eyes up, was already trapped by one of the
3 fractures and she couldn't lift her eye. Her entire face
4 would have sunken in. Her cheek bones, her nose and the
5 other side bone that was broken all would have sunken in.
6 The result would have been that she would have had no
7 profile. She would have had a flat appearance when she
8 turned sideways instead of having the prominences that each
9 and every one of us have. That testimony wasn't disputed.
10 There's no question that that's what Ms. Krapf would have
11 been like had it not been for the skill of the doctors who
12 treated her. All of those things show great bodily harm
13 and the answer to that question is "yes."
14 The amount of disfigurement Ms. Krapf would have
15 had without the surgery is a critical point in this case
16 because I anticipate -- and I may be wrong, I have been any
17 number of times before -- that Mr. Candoo is going to get
18 up in his closing argument and he is going to tell you this
19 was just substantial bodily injury so that the defendant is
20 guilty of an Assault 2, not great bodily injury that rises
21 to the level of an Assault 1.
22 It's critical to remember the amount of
23 disfigurement she would have had without the reconstructive
24 surgery. Keep in mind what Dr. Woodard told you, which is,
25 these pictures, as hideous as they are, picture number 5

1 and pictures 2 and 8, as hideous as these pictures are,
2 Ms. Krapf looks better here than when he first saw her in
3 the emergency room. The swelling had decreased
4 significantly.
5 And all you have to do is compare the pictures
6 taken before the defendant beat Ms. Krapf, number one, with
7 the smile on her face, to the time two days after when she
8 was swollen up and disfigured, and then the pictures
9 afterward where the smile is gone. I mean, it's gone. The
10 answer to the question about great bodily harm is "yes."
11 There's still a third alternative to how the
12 defendant could be convicted of Assault in the First Degree
13 and that's if he assaulted her by any means likely to
14 produce great bodily harm or death. It's kind of a
15 catchall phrase. If some of you say to yourselves, "This
16 is some serious harm, but I can't find great bodily harm,"
17 or if you say, you know, "The mark on picture 4 was
18 probably with the butt of a rifle, but I just don't know
19 beyond a reasonable doubt," this still allows you to
20 convict the defendant of Assault in the First Degree
21 because of "any means likely to produce that." He is
22 kicking her in the face with logging boots and he's hitting
23 her in the face with an object even harder than that.
24 And look closely at the picture that shows
25 Ms. Krapf's neck and chest area. It's picture number 5.

1 Look at the amount of bruising around her neck and in this
2 area. It doesn't take a doctor to testify about what
3 happens if one of the kicks lands directly in the middle of
4 her windpipe. Look at how close they all are. "Any means
5 likely to produce great bodily harm or death." It's
6 there. The answer to that question is "yes."
7 There's a separate verdict form, a special
8 verdict form for you to find whether or not the defendant
9 was armed with a deadly weapon during this assault. And I
10 want to make it clear that there's a distinction between
11 the deadly weapon, the butt of the rifle he hit her with,
12 and the .22 pistol that was talked about by Ms. Krapf
13 during her testimony. If you find the defendant guilty of
14 Assault in the First Degree for hitting her with the butt
15 of the rifle, then of course he was armed with a deadly
16 weapon because a firearm is a deadly weapon, loaded or not,
17 and that's one of the definitions the Court gave you. But,
18 this special verdict form really goes to whether or not the
19 defendant had that pistol at the time of the assault.
20 Ms. Krapf didn't want to testify about that yesterday. She
21 kept saying, "I think so," "I don't know," "maybe." And
22 her statement was pointed out to her and she went to great
23 length to say, "Here, it says right here,'I think so.'"
24 The only time when she was asked, "Did he have the pistol?"
25 or "Did he have a gun?" she said she thought so. What kind

1 of gun? She said it was a .22. She said it was a pistol
2 not a rifle. There wasn't hesitation at that point.
3 When she was asked if the defendant threatened
4 Bob Aaron with a gun she said, "Yes." When she was asked
5 if he threatened her with the gun she said, "Yes." When
6 she was asked whether he, the defendant, was pointing the
7 gun at her, she said, "I think so."
8 Nothing in the instructions that you are going to
9 read or that you are going to have say the defendant had to
10 point the gun at her and she had to see it. If he has got
11 the gun and he is threatening with the gun by just the way
12 that he is holding it or by the facts and the circumstances
13 that are going on at the time -- I mean, if he is holding a
14 gun and he is saying, "Stay down, don't move," and he is
15 drilling her with his foot every time she does move, she
16 knows he's got the gun, that's threatening her with the
17 gun. And on that part you would need to be unanimous. I
18 bring that up because I want to go back to the alternative
19 ways of committing this offense.
20 Did he use a firearm to assault her, hitting her
21 in the face with the butt of a rifle? Did he inflict great
22 bodily harm? Did he assault her by any means likely to
23 produce great bodily harm? Those are all alternatives.
24 What that means is, when you get back there, three of you
25 can say, "I'm convinced beyond a reasonable doubt it was

1 the butt of a rifle." Six of you can say, "I don't know
2 about the rifle, but I'm convinced he inflicted great
3 bodily harm." And the other three of you -- I think, if I
4 did my math right -- the other three of you can say it was
5 by any means likely. Done. He is guilty of Assault in the
6 First Degree, as long as you are unanimous with all of the
7 alternatives together.
8 Let me try that again because that didn't make
9 any sense. As long as the twelve of you agree to one of
10 the three alternatives, he is guilty of Assault 1 as
11 charged. The twelve of you all have to agree as to whether
12 or not he had the pistol to return the special verdict.
13 Beyond a reasonable doubt is the highest burden
14 that we hold any party to in a court of law, and that's
15 obviously because criminal matters are very serious
16 matters. "Beyond a reasonable doubt" is not a phrase that
17 you commonly use. When you go to the drive-thru window at
18 McDonald's, you don't say, "I'm convinced beyond a
19 reasonable doubt I'm having a Big Mac today instead of
20 something else." But, by the same token, it is a standard
21 that each and every one of you apply to your daily lives,
22 when you choose a school out of all the alternatives for
23 your children to go to, when you leave your children with a
24 babysitter for the first time, when you buy a new car out
25 of all the options that you have, or an appliance or

1 furniture. Each of those decisions you probably have some
2 doubts about whether it's the right decision. Will the
3 babysitter know the numbers to call? Should I have gotten
4 this car instead of that car? Should we have gone to
5 private school instead of the public school? You're going
6 to have some doubt.
7 If you go ahead and make the decision anyway,
8 even with those doubts, you are convinced beyond a
9 reasonable doubt. And the same thing applies in this case,
10 because you may have some doubts as to what entirely went
11 on that night. You may not think that Ms. Krapf gave you
12 the entire story, everything the defendant did to her and
13 everything the defendant said to her that night. Those are
14 some small doubts that you may have, but those aren't
15 enough to put a reason to doubt the defendant's guilt. The
16 question isn't whether or not there's evidence that you
17 should have heard that you didn't. The question is whether
18 or not the evidence that you've heard is enough, and I
19 submit to you that it is.
20 The law applies to each and every one of us the
21 same; Kim Krapf the same as the defendant. The law doesn't
22 make value judgments. All of us have to sit here and
23 wonder how could Kim Krapf say on the stand that she still
24 loves him? How could she minimize what he did and say that
25 she isn't afraid of him? Those are legitimate questions.

1 Those aren't legitimate in the area of focusing on the
2 defendant's conduct. What you are here to do is to sit in
3 judgment on the defendant's conduct, not Ms. Krapf's
4 conduct or the reasons for Ms. Krapf's conduct.
5 If Ms. Krapf isn't interested in protecting
6 herself from the defendant, it is our job as a society to
7 do that for her. The way to do that is to hold the
8 defendant accountable for the actual crime that he
9 committed, not a lesser crime than he committed. The only
10 way to hold him accountable for what he actually did on
11 January the 1st to Kim Krapf is to convict him of Assault
12 in the First Degree, and I would urge you to find that
13 verdict.
14 Thank you.
15 THE COURT: Thank you, Counsel.
16 Ladies and gentlemen, please give your attention
17 to the closing argument on behalf of the defendant.
18 MR. CANDOO: Thank you, ladies and gentlemen, for
19 being willing to serve and be here.
20 I will give you a reasonable doubt. Kim Krapf
21 herself is the reasonable doubt behind the intention that
22 the State is attempting to have you plug into this case,
23 because it is absolutely the missing piece that they don't
24 have.
25 They do have pictures that are unpleasant. And I

1 apologize if any of my comments attempt to diminish or
2 undermine the disagreeable and unpleasant aspect that these
3 things reflect. They are appalling. They are unpleasant
4 to look at. They are a result, but they do not go back and
5 allow the State to avoid its burden of proving each and
6 every element beyond a reasonable doubt. To use very
7 unpleasant photographs for the purpose of evoking sympathy
8 or bias, or just to react to these without analyzing the
9 point of the law as you will remember and maybe recall when
10 you get a copy of the instructions, you are not to do
11 that. You are to handle this by evaluating the facts now
12 with the law that the Court has given you without regard to
13 bias or sympathy. And I suggest to you that these result
14 pictures are attempted to fill in that gap.
15 Now, we do have the doubt as to the defendant's
16 intention, and I'm going to start off with why that doubt
17 came from Kim Krapf herself. There is one person who knows
18 this defendant better than all of us put together, and
19 that's Kim Krapf. There was no evidence that Kim Krapf was
20 incompetent or unable to say in her own behalf what is in
21 her own true best interests. There was no psychological
22 testimony saying that she had some other agenda under the
23 surface.
24 Her statement is here. You saw her demeanor when
25 I asked her, is she afraid of the defendant, and your own

1 conclusion as to her demeanor is what I suggest you refer
2 to. I submit to you her demeanor was, absolutely, there is
3 no fear. I think she indicated her intention was to get
4 back together with him. There was no hesitation in her
5 voice. There was no flinching.
6 There was no evidence that there was nervousness
7 or fear on her part in her testimony yesterday because the
8 defendant was here. The Court or the prosecutor is asking
9 you to take, I guess, a shortened course in psychology and
10 come up with that she is operating under some kind of
11 influence that isn't present here.
12 She made a statement in the hospital. The best
13 that could be said about weapons or deadly instruments, or
14 whatever, was "I think so." "I think so" does not get you
15 to a weapon. I can tell you right now that I think that
16 you take the jury instructions and look at every reference
17 to deadly weapon or firearm and strike it out because
18 you've got an "I think so" statement.
19 And then you've got testimony here which
20 indicates that she was willing at that time to say even
21 falsehoods in order to get him in trouble. Now, the State
22 indicates to you that from the safety of the hospital room
23 she is more likely to make, I guess, the accurate
24 statement. And again, the accurate statement, the highest
25 proof that they've got is an "I think so." But, if that's

1 the accurate statement, I suggest to you that it's not. I
2 think that when you are in a hospital room, first of all,
3 you're not secure. If the State is correct that she is
4 terrified of this defendant, at the time in the hospital
5 room he was not in any custody. A hospital room is not the
6 same as bars between you and any other person.
7 The other thing is, during the hospital room, as
8 far as I'm concerned, she wasn't under oath. There was no
9 testimony that she was placed under oath. She was here
10 under oath. I think that her statements about having a
11 motive to hurt him in any way possible explains exactly
12 what's going on here. Now there's the difference. They're
13 trying to take the hospital statements and run with those,
14 but she's the one who knows and has lived with this
15 defendant.
16 You heard her answer that she had been -- had she
17 ever sustained something like this before, and she said yes
18 and it was in 1983, I think she said, that she had been,
19 apparently, beaten. She had also testified and the
20 evidence had shown that she's been only with this defendant
21 for three years. She knows this man better than all of us
22 put together here, and there was no testimony to show that
23 she is any less than competent than any one of us.
24 I want to comment about reasonable doubt.
25 Reasonable doubt and deciding the criminal charges against

1 any individual is not in any way, shape or form equivalent
2 to purchasing a household appliance. That is a financial
3 expenditure. This is a person's life, liberty; very, very
4 much. It is not to be equated. I wanted to comment about
5 the application of that analogy, which, it doesn't apply at
6 all.
7 Let me tell you about the photograph that was
8 argued as evidence of the -- I guess there's a floating
9 blunt instrument that they are trying to demonstrate to you
10 that exists somewhere. And I think it's this injury right
11 here, or black and blue mark, that they argue that from.
12 You recall, perhaps -- and I agree, it was quite
13 awhile ago we heard from Dr. Woodard. And Dr. Woodard said
14 that he felt that the injuries that he observed could be
15 inflicted by a human person. There was no testimony about
16 injury from a blunt instrument. If they're going to ask
17 you to use deadly weapon, I would have expected the
18 question to go like this: "Doctor, do you have an opinion
19 within reasonable medical probability as to whether or not
20 a blunt instrument or otherwise deadly device had to have
21 been used to inflict any of these injuries?" He was not
22 asked that question. His testimony was consistent with the
23 injuries that he saw could have been inflicted by another
24 human being. There was no mention of deadly weapon. It is
25 not enough to say probably. You have got to be convinced

1 beyond a reasonable doubt. And I submit to you that there
2 is a wholesale gap in that.
3 I want to use -- Are there some markers that are
4 kind of dark? Thanks.
5 The State's case has step one is identity. Well,
6 actually, that there's an injury. And I guess the identity
7 of the person proposed as the causative factor behind the
8 injury is the identity.
9 Step two is the intent. And down here, I submit
10 that there are subcategories in intent as you will get the
11 jury instructions. They are going to be written out for
12 you and you are going to have a printed copy of those, so
13 you won't have to suffer my handwriting any more than is
14 minimally necessary. But, we've got a result. And what
15 the State's case is doing is taking the result, as
16 unpleasant and disagreeable as those photographs are
17 there's no reason to believe that as of January 2nd or 3rd,
18 the time, you know, these are fresh injuries -- the doctors
19 and the hospital nurse all testified to it -- the result is
20 there. But, to use that to take away the State's
21 requirement of proving intent is unjustifiable. And that
22 is the essence of their case.
23 Is there intent behind the result? Again, I
24 think the reasonable doubt as to that -- One can always say
25 that, gee, the results are bad, so they must have been

1 intended. But, the best gauge and the best criteria for
2 evaluating intent that's presented to you by the State was
3 Kim Krapf and her demeanor on the stand.
4 I will not get a chance to talk with you -- talk
5 with you, as if you are talking to me. I won't get a
6 chance to talk at you or to you or make any further closing
7 statements after my comments are done here. The nature of
8 the system and how it is arranged gives me this opportunity
9 for summation and no further. The State will have, if he
10 chooses to do so, another opportunity to discuss this case
11 with you one more time. I can only suggest to you that
12 from my statements now and from the case and your own
13 recollection of it, you might know what my comments or
14 answers will be, but I am no further allowed to comment or
15 argue. There has to be a point at which even lawyers quit
16 talking, and this will be my last chance to address you on
17 these concerns.
18 The testimony of Dr. Woodard indicated that the
19 injury was potentially life-threatening. Now, the State
20 has kind of a crazy quilt that they have to guide you
21 through, because if they don't have the deadly weapon, if
22 "I think so" doesn't satisfy you beyond a reasonable
23 doubt, then they have got to get through a crazy quilt
24 called bodily injury. And that's what he was trying to
25 explain to you, and I think it will be laid out, as well,

1 in the writing.

2 Dr. Woodard said that the injury to the lung was

3 potentially life-threatening. I think he indicated that if

4 one lung was left, that there might be a shift in the

5 heart; and as one lung collapsed, apparently there is a

6 shift to the other side -- again, your recollection is what

7 you should rely on -- but that it could potentially shut

8 off circulation. Again, potentially.

9 This is probably one of the hardest things to

10 argue because it sounds as if I'm trying to poo-poo these

11 things. I want to hold you clear as to the legal standard,

12 but I don't want to be interpreted as being cavalier or

13 casual about injuries. The punctured lung, that's not

14 good. But, the criteria is that it be more probably than

15 not life-threatening. Potentially life-threatening does

16 not get you there. There has to be testimony that based

17 upon reasonable medical probability that if left untreated

18 this would threaten her life. Potentially

19 life-threatening, I just don't think the question or the

20 proof has risen to that level.

21 Again, I do not want to be interpreted as

22 thinking lighthearted about the injuries, but I cannot

23 address the serious standard that is laid out by these jury

24 instructions for Assault First Degree without addressing

25 that.

1 There is no jury instruction that says that the
2 defendant cannot benefit by medical science. When you are
3 expected to find permanent, it doesn't say permanent if
4 left untreated. There is not that jury instruction given
5 to you. There is nothing that says that your consideration
6 of these injuries should be in a vacuum and in total
7 disregard of the medical procedures that were undertaken.
8 I think you are entitled to take consideration of
9 everything that was presented to you in this court by
10 either side. And I know the jury instructions indicate
11 that, too, and that was all presented to you.
12 The intent element is the main problem in their
13 case. The intent element is required for both Assault
14 First and Second Degree. The intent for Assault First
15 Degree will be a more specific intent. Let me read the
16 language. Everything suspended under Assault First Degree
17 -- it's like a mobile that is hanging over a child's bed
18 that dangles. And under the word intent -- Did I give the
19 pens back again?
20 THE COURT: There's a box over there.
21 MR. CANDOO: For Assault First Degree the actions
22 have to be done with something other than -- beyond a mere
23 intent, that is, I am intending to walk up here. There has
24 to be a more specific intent in the actions involved in
25 Assault First Degree. And I think that this is an

1 important stair step to understand the difference between
2 Assault First and Second. And, again, you will get this in
3 writing, but the intent that's involved in Assault First
4 Degree is to inflict great bodily harm. And every element
5 under intent -- or, Assault First Degree requires that that
6 be precipitated by that intent, that the actor be involved
7 with his behaviors with that specific intent in mind.
8 Again, I think that the results are being used by the State
9 to circumvent the requirement of showing that.
10 The Assault Second Degree does not contain that
11 precision, that focus of intent. Assault Second Degree is
12 if he intentionally assaults another so that the actions
13 are intended, but the results, the focus of results is not
14 to cause great bodily harm, but when the activity is
15 undertaken the results are that there is substantial bodily
16 harm inflicted recklessly. So, it has to do with not
17 having -- or if there's reasonable doubt in your mind as to
18 whether or not this actor had this specific intent to
19 produce great bodily harm, then Assault Second Degree fills
20 in that. He doesn't at that point necessarily evade a
21 punishment, if you will.
22 It is the State's burden throughout this case to
23 prove this to you, all these elements, beyond a reasonable
24 doubt. That burden does not change. So, they have a
25 burden, even in Assault Second Degree, of showing that the

1 defendant intentionally assaulted another and thereby
2 recklessly inflicts great bodily harm or assaults another
3 with a deadly weapon. I have talked about that deadly
4 weapon. Throw it out.
5 And then the instructions break Assault Second
6 Degree down into its respective elements. It's the same
7 thing, but it helps, I think, if you identify the steps
8 that have to be considered by you as a jury. Again, if you
9 as a jury are not -- if all reasonable doubt -- Let me
10 state it this way: If the State in your mind has not
11 eradicated all reasonable doubt, then you have the
12 obligation under these instructions to enter a
13 determination of not guilty. It never changes to the
14 defendant to be forced to come forward and prove his
15 innocence.
16 In the opening comments, I think that there needs
17 to be some mention of the reference that was made at that
18 time, because -- and I wrote it down and I want to be
19 accurate, so if you will bear with me. I might have to
20 rely on your recollection, but I think words -- I don't
21 want to tie you up longer than I need to searching for
22 notes, but words to the effect of, "This is not one of the
23 kind of cases where the defendant comes forward and says
24 'it's not me.'" "This isn't one of the kind of cases that
25 says 'it didn't happen.'" "This isn't one of the kind of

1 cases where the defendant comes forward." Those first
2 comments imply that there's an initial anything required of
3 the defendant in our system to come forward and assert the
4 proposal that "it wasn't me" or anything. That is to turn
5 the burden of proof on its head.
6 The power that proposes in government requires
7 that the burden be on the government because of the
8 incredible imbalance in our system between the individual
9 and the government. That has been the foundation of proof
10 beyond a reasonable doubt that has been a part of our
11 system and distinguishes our system from, if not all,
12 virtually all other systems of government and criminal
13 procedure in the world. And we talked in voir dire about
14 concerns we had about systems, but that is really the guts
15 of what distinguishes our system. And if we don't want
16 that system, we can philosophize, but that is where we have
17 come from historically and that proof beyond a reasonable
18 doubt is absolutely required, not of the defendant.
19 Nothing is required of any person accused. It all is
20 required of the State to prove the case beyond a reasonable
21 doubt.
22 The jury instructions will advise you and guide
23 you through the application of your collective memory as to
24 what you heard and saw here in the last week. Your
25 collective memory is going to be something I recommend

1 highly to you. And the jury instructions will be followed,
2 but you will find in your deliberations, I submit, that you
3 will have a better handle on pushing and prodding and
4 evaluating the facts and the law that have been given to
5 you.
6 Its, I think, one of the great systems and the
7 greatest in the world. I think you might, if you haven't
8 served on a jury before, really be able to appreciate that
9 when you get into this.
10 I want to end basically where I began and again I
11 want to thank you for listening. I apologize for going off
12 and losing you at times, but I really appreciate the effort
13 that you have made here.
14 Kim Krapf is the best evidence that shows that
15 there is no intention upon this defendant to hurt her.
16 There is no evidence that shows that she is not competent
17 to evaluate and take care and in charge of her own life.
18 She has a clear memory. She presented to you in her own
19 demeanor when asked if there was any fear, and there was no
20 hesitation in her voice or in her eyes or anything about
21 her that indicates there is any concern whatsoever with
22 regard to being with this gentleman.
23 When you go through jury instructions, I submit
24 that the State has not met its burden of proof beyond a
25 reasonable doubt so as to allow an intention to be used,

1 notwithstanding these unpleasant photos. They don't do
2 it. They don't get you there. If you don't get there, you
3 don't get even to Assault Second Degree. If you find that
4 you are not sure on one or the other of the charges, but
5 you are convinced beyond a reasonable doubt that an assault
6 did occur, you will find from the jury instructions that
7 your duty as required under our system is to convict, if
8 you are going to convict, of the lesser of the two.
9 I have already stated and I will state one more
10 time, the weapon, there was no proof of that. The doctors
11 were present. There was the opportunity, if the State
12 desired to, to ask the requisite questions to show that a
13 blunt instrument or some deadly weapon was used, and it
14 just was not asked and I submit because the answer -- well,
15 it wasn't given to you. I don't want to speculate on what
16 somebody may or may not have said, but Dr. Woodard said,
17 you know, this is the kind of injuries that a person could
18 inflict on another person, and so he didn't make any
19 comments to any other mechanical force involved.
20 So I submit to you that you are going to find
21 that there is no proof as to intent, that you will return a
22 verdict of not guilty as to both counts. And if you have
23 to find that you can't get past these photos, then of the
24 two of the charges the only one you can find is Assault
25 Second Degree, that Assault First Degree is off the board

1 and the weapon is completely off the board.
2 Thank you very much.
3 THE COURT: Thank you, Counsel.
4 If you will give your attention to rebuttal
5 argument on behalf of the State.
6 MR. NEEB: We need to talk a little bit about Kim
7 Krapf and her credibility in this case. Frankly, if push
8 came to shove and you threw Kim Krapf's testimony out
9 completely, this defendant is still guilty of Assault in
10 the First Degree based on the observations of the injuries
11 that he inflicted and Kim Krapf's statements to Deputy Shin
12 and at the hospital, "Stop it, Ron, you're hurting me."
13 "Stop it, Ron, you're hurting me," identifies him as the
14 assaultor, and the amount of injuries that's there is the
15 great bodily harm.
16 We don't need Kim Krapf's testimony. And like I
17 told you originally, we don't require -- in fact, we
18 discourage you leaving your common sense at home. We had a
19 number of days where you just didn't hear any testimony.
20 You heard from the witness stand that Kim Krapf didn't show
21 up Tuesday and had to be arrested on Sunday night. Sort of
22 explains the delay. And it speaks volumes about her
23 credibility. Kim Krapf didn't want to be here. Kim Krapf
24 had to be arrested. Nobody is proud of the fact that a
25 victim of a serious assault had to be arrested and put in

1 jail in order to get us to the point where we are at today,
2 but the fact of the matter is that it is the defendant's
3 conduct that got us to this point.
4 Kim Krapf isn't perfect, but I will submit to you
5 that she sure is brave, because Kim Krapf did not testify
6 from the stand that this assault didn't happen. She faced
7 him and said, "He's the one who assaulted me." She
8 described what happened. Yes, she minimized. Yes, she
9 said, "I don't know" if it was stuff about the gun or if it
10 was other things that were really much more damaging to the
11 defendant than others. But, she didn't lie to you and she
12 admitted that what she said at the hospital was what she
13 said at the hospital. So, in effect, Kim Krapf has
14 testified twice, once at the hospital and once from the
15 witness stand. Look at her credibility. Credibility means
16 her manner when testifying, her ability to observe, and
17 anything else that you think is important. So, consider
18 these things.
19 Ms. Krapf came in and she told you that she is
20 still in love with the defendant. You don't have to agree
21 with it. You don't have to disagree with it. Ask
22 yourselves if you believe it, because when Ms. Krapf sat on
23 this witness stand, did you see her look at the defendant
24 even one time or make eye contact even one time? No. She
25 didn't. And if you are talking about the fact of whether

1 or not she thinks she is disfigured, she sat on that
2 witness stand and for the majority of the time she kept her
3 right hand up to her head like this so you couldn't see her
4 or that she was trying to hide her face.
5 Her first comments to the police are within 48
6 hours of this assault. She is in the hospital. She has
7 her mother there. Her mother is obviously encouraging her
8 to give -- to tell what happened. And Ms. Vojir, the nurse
9 from Good Samaritan Hospital, said that because of the
10 injuries and because they didn't know that anyone was in
11 custody, she put no information on Kim Krapf. So, there's
12 nothing to suggest the defendant knew she was at Harborview
13 at all. It's a safe environment. And, yeah, she is going
14 to be angry at the time. Look at the pictures. Who
15 wouldn't be angry at what had just happened to her? But,
16 is there a motive to make up anything about this? There
17 isn't any motive at all.
18 And when she comes into court, her attitude is
19 different. She is hostile. She wants to profess that she
20 is still in love with the defendant. She minimizes the
21 involvement. Is that because she is in love with him, or
22 is it because she is afraid of him? Love and fear are two
23 extremely strong emotions. You can't come up with a
24 legitimate reason for Ms. Krapf to say, "I'm still in love
25 with him," after what he did to her. You can come up with

1 reasons for her to be afraid of him.

2 The defendant did this to Kim Krapf because she

3 disrespected him. She didn't pass on a message. That's

4 all she did to get beaten within an inch of her life. Can

5 you imagine how much trouble she is in here if she comes in

6 and testifies to every single detail that happened when

7 he's sitting right there? That's an extraordinary

8 motivator to minimize what was done. But, by the same

9 token, she took the stand and she gave you the details

10 enough that you can find him guilty of Assault in the First

11 Degree.

12 Other motivations for her to minimize what was

13 going on in here: These are the three letters from the

14 defendant to Kim Krapf. And the couple things that are

15 interesting about these, one of them is that -- one of

16 them -- part of it goes to show the defendant's intent at

17 the time of the assault, because when you look through

18 these letters, you should be struck by the fact that he is

19 never apologetic, never says, "I shouldn't have gone as far

20 as I did," never says, "It got out of control," never says

21 anything like that. Why? Because the evidence all shows

22 that he did every single thing intentionally. And when you

23 are asked to find the defendant not guilty of any assault,

24 you have to find he didn't intend the assault. What did

25 you hear that suggests there wasn't an intent? Absolutely

1 nothing.

2 He talks about how he loves her. And you are

3 going to read these letters. You are going to have all

4 three of them. I encourage you to read them, but I want to

5 read a little bit from one of them. "As hollow as it may

6 sound at the time, I have to tell you that I love you more

7 than anyone else who has ever come into my life." This is

8 how the defendant shows love.

9 "I didn't just start to like you for no apparent

10 reason. I picked you because I wanted you. I saw you and

11 went after you in a way I've never done before." That

12 could sure have two meanings.

13 "Some day, before I leave this good earth, I

14 hope you will at least show me a smile of forgiveness

15 despite how far away from me" -- I'm sorry. "Some day,

16 before I leave this good earth, I hope you will at least

17 show me a smile of forgiveness, despite how far away you

18 may want to be to do it." He admits -- or at least this is

19 what this suggests -- that she should be afraid of him.

20 She should want to be as far away from him as possible

21 before she shows him a smile of forgiveness. Why does she

22 need to forgive him if he didn't administer this beating to

23 within an inch of her life?

24 "For about three years" -- Oh, "I will await

25 that day for a month, for a year, forever." He is telling

1 her he isn't gonna go away.

2 "For about three years I've been fighting a

3 third person in my head." He talks about the first two,

4 the loving one, the one who likes to pull jokes, and then

5 he says, "it's that third person who I want to rid myself

6 of. I don't know who he is or where he came from. I know

7 he is hateful and contemptful." That's what's going on

8 here. I mean, this is the only letter in which the

9 defendant borderline admits the assault. But when you read

10 through the rest of them, he talks about the car, he talks

11 about other things that are going on, I mean, trivial

12 nonsense that ought to make you think, where is the

13 apology? Where is any kind of remorse for what he did to

14 her? There's none there. This suggests, one, that this

15 was all intentional to the extent that it went and, two,

16 gives you a reason to understand why Kim Krapf was as

17 hostile as she was about coming in to testify, why she had

18 to be arrested and why she wouldn't even look at the

19 defendant.

20 The defense also can't have it both ways when it

21 comes to the medical testimony. If the defendant is

22 entitled to rely on medical science, that's how she got the

23 scar on her head and that's how she got the uneven eyes.

24 That's great bodily harm. It's permanent, substantial

25 disfigurement. If he doesn't get to rely on the medical

1 science, there's the punctured lung and there's what she
2 would have looked like without surgery, extensive
3 reconstructive surgery.
4 The punctured lung was described as potentially
5 life-threatening. Dr. Woodard told you, "Every single time
6 we insert a chest tube right away. We don't wait because
7 they can deteriorate so quickly." That's the risk of death
8 that we're talking about.
9 The Assault in the Second Degree, the lesser
10 included offense, is a compromise. I'm going to be right
11 upfront with you. It only takes one of you to say, I won't
12 convict of Assault 1, before the defendant gets the
13 compromise, because you have to move on to Assault 2.
14 Sitting in judgment on another human being takes a lot of
15 courage and it takes a lot of strength. Don't compromise
16 yourselves in this case. He committed an Assault 1. He
17 deserves to be convicted of an Assault 1.
18 Our criminal justice system requires beyond a
19 reasonable doubt. And I don't try to minimize "beyond a
20 reasonable doubt" with the analogy that I drew. It's a
21 high burden, but it's a burden you apply all the time.
22 It's also like a jigsaw puzzle. At some point when you are
23 building a jigsaw puzzle, you can tell from the puzzle
24 itself whether it is round or square. You don't need the
25 picture. And when you get to a point where there are 15 or

1 20 pieces missing, you know what the picture is. You don't
2 have to have every single piece in place. So, yeah, each
3 of those pieces that's not there can be a doubt, but before
4 you have a reasonable doubt you can't tell what the picture
5 is overall. Here's the picture overall. This is why you
6 ought to be convinced beyond a reasonable doubt of the
7 defendant's guilt.
8 A lot of people say the criminal justice system
9 doesn't work. The criminal justice system can work. In
10 this case, the police did their job. The prosecutor did
11 their job. The judge and the defense attorney all did
12 their job. There's only one piece left in our criminal
13 justice system, and that's the twelve of you as you sit
14 there today. In order for our criminal justice system to
15 work, you have to return a just verdict. In this case,
16 it's clearly not "not guilty," and it is not "Assault in
17 the Second Degree." This defendant needs to be held
18 accountable for what he did. He committed the most serious
19 assault that we have in our society today, it's Assault in
20 the First Degree under any of the three alternatives, under
21 every of the three alternatives. I urge you to find that
22 verdict.
23 THE COURT: Thank you, Counsel.
24 Ladies and gentlemen, at this time I am going to
25 swear in my judicial assistant to take charge of you. From

1 this point on she will be the only one that will be allowed
2 to communicate with you.
3 Do you solemnly swear that you will take the jury
4 in charge and that you will allow no one to communicate
5 with them; and when they have agreed upon a verdict, that
6 you will bring them again into court?
7 JUDICIAL ASSISTANT: I will.
8 THE COURT: Ladies and gentlemen, you will be
9 escorted at this time to the jury room for deliberations.
10 Each of you will get a copy of the instructions that I read
11 so that while you are discussing these things you don't
12 have to pass around the one copy. Everybody will get a
13 copy of the instructions. You will also get the exhibits
14 that have been admitted into evidence.
15 During the course of your deliberations there may
16 be a question. If you have a question, the presiding juror
17 must write that question down, knock on the door. You will
18 be locked in there. We don't have any sophisticated
19 communications system here. You simply knock loudly on the
20 door and the judicial assistant will come and take care of
21 your needs. We will then attempt to answer that question.
22 Consultation with the lawyers will have to occur,
23 so there would be some delay, of course, while we get them
24 here, but we will attempt to answer the question. Very
25 often the answer -- and I will just tell you in advance --

1 is, "please reread the instructions," because very often
2 the answer is contained in the instructions.
3 If there are any other concerns that you have, or
4 needs that you have, again, you simply knock on the door
5 and the judicial assistant will come and take care of those
6 needs.
7 The jury can be escorted to the deliberation room
8 at this time.
9 (Jury was excused to begin deliberation.)
10 THE COURT: Mr. Neeb, do you want to address the
11 issue you raised at sidebar? You may.
12 MR. NEEB: Well, Your Honor, my position is
13 this: My proposed instructions that I submitted were
14 without any lesser included offense. I can tell the Court
15 upfront that had I prepared a lesser included offense of
16 Assault 2, that the deadly weapon special verdict
17 instruction would have included the Assault 2 language. It
18 was an oversight on my part, once the Court decided it was
19 giving an Assault 2, to not have that instruction
20 corrected.
21 Mr. Candoo's instruction that he proposed for the
22 Assault 2 has the alternative of a deadly weapon. But the
23 jury is told that the two alternatives for Assault 2, they
24 don't have to be unanimous. For a special verdict, they
25 do. It tells us whether or not -- If they do happen to

1 come back with Assault 2, there is a significant
2 difference. I mean, it's either 24 or 36 months for the
3 hard time statute. And I don't believe that the
4 instructions as contained in No. 20, the deadly weapon
5 special verdict, is an accurate statement of the law
6 because it tells them if they don't reach a verdict on
7 Assault 1, they go to Assault 2 and they disregard the
8 special verdict form completely. But, under the elements
9 instruction, the deadly weapon is included in Assault 2 as
10 an alternative. So, they have to be able to decide on the
11 deadly weapon whether or not they're deciding on Assault 1
12 or Assault 2.
13 So, what I am suggesting the Court do is to
14 correct -- and obviously I would do that -- correct No. 2
15 to say, "If you find the defendant guilty of Assault 1 or
16 Assault 2, proceed to the special verdict." "If you find
17 the defendant not guilty or are unable to agree on either
18 or both, don't." I believe that's an accurate statement of
19 the law. I believe it corrects the problem, and it should
20 be done as soon as possible so that -- in fact, they should
21 be brought into court to say we are switching No. 20 for
22 the one -- I mean, we're taking No. 20 away and giving you
23 a new No. 20. That's what I would encourage the Court to
24 do.
25 THE COURT: Mr. Candoo?

1 MR. CANDOO: Well, first of all, the procedure
2 that is being requested is real unorthodox and I think
3 we're risking the work that has been done, for better or
4 for worse, in calling a jury back after they've received
5 closing arguments and final instruction.
6 Secondly, I didn't think there was any
7 hide-the-ball. I prepared a lesser included that was
8 Assault Second Degree. You know, I don't go out of my way
9 to add special enhancements for my defendants as part of my
10 request in the instructions, and I can't imagine doing
11 that. Once that was ruled on, I guess it's like a tennis
12 ball that goes back to the State. And once it was known
13 that there's a lesser included that's going to be given, if
14 he felt that the enhancement should be put in, then that's
15 the time to do it. I object to it.
16 MR. NEEB: Your Honor, could I just respond real
17 briefly for that? First of all, back when we had the
18 sidebar originally, it was my impression that this one got
19 by everyone because it hadn't been discussed. And if I
20 hear Mr. Candoo saying that he realized that there was an
21 error in the instructions and he specifically didn't say we
22 should change it, then shocked is about the best I can do,
23 because he just said "I don't play hide-the-ball" and then
24 said that he knew there was a problem with the enhancement
25 under the special verdict form. I mean, it's just as much

1 his obligation as mine and the Court's to make sure the
2 instructions are accurate. They aren't. They're
3 inaccurate. And to suggest that we waited until now
4 instead of taking it up when we did at sidebar before
5 closing argument is building in error. I mean, we clearly
6 intended to take this up now and it's not the timing that
7 should be in issue. So, that's all I wanted to say.
8 MR. CANDOO: Just a quick response. I did not
9 know that it was to be added on. I think the jury
10 instructions as they are are accurate and lawful and in
11 accord and should remain.
12 THE COURT: I think that essentially this one did
13 slip by us. Occasionally, sometimes, these things do, but
14 in this case I think it is sort of one of those major
15 issues that I am not really able to correct. I think
16 Counsel's statement that this is not accurate law is in
17 part correct, but it is, in effect, the law of this case
18 because we came out here, we went through the jury
19 instructions, everybody had the opportunity to take
20 exceptions or objections. That having passed, the jury
21 having been given the instructions, I think we are stuck
22 with that situation.
23 As sort of an aside, no legal basis for saying
24 I'm not going to correct the instructions, that particular
25 element of the case is probably the most area of doubt that

1 I think the jury might have, so I don't think it is going
2 to do the prosecution all that much harm.
3 And when I look at this issue of whether or not
4 we have created an error, I don't think it is appropriate
5 to say this is an error of law that would be reversed on
6 appeal, because we all have an obligation to make these
7 instructions right. Yes, we do. But, the instructions
8 generally get reversed only if they are in some fashion --
9 reversed on instruction, only if they are in some fashion
10 improper insofar as they prejudice the defendant somewhat.
11 I am going to decline to go to the extraordinary
12 measure of changing that instruction. I think it is,
13 quote, the law of this case at this point, and I am going
14 to leave it like it is.
15 MR. NEEB: Just so the Court knows where I am
16 coming from, Your Honor, I mean, I told the jury any number
17 of times not to convict this defendant of only Assault 2.
18 But if they do, I am going to renew this issue, because
19 then I will be asking for them to be sent back with the
20 special verdict request, sort of akin to a self-defense, if
21 they return a guilty of Assault 2. If they don't, it's a
22 non-issue.
23 THE COURT: I understand. Okay.
24 Now, if you will just glance at the exhibits --
25 MR. NEEB: Everything but 42 should go back.

1 THE COURT: Everything but 42 has been admitted
2 and they are all up there.
3 JUDICIAL ASSISTANT: Yes, Judge.
4 THE COURT: Then there should be no question
5 about the exhibits.
6 MR. CANDOO: And the boots are down here.
7 THE COURT: I will have my judicial assistant
8 deliver the instructions and the exhibits to them. We can
9 be at recess. You just advise her where you are going to
10 be and leave a phone number.
11 We will be at recess.
12 (Recess taken.)
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1 MAY 7, 1996

2 AFTERNOON SESSION

3 * * * * * * *

4 (Jury was brought to the courtroom.)

5 THE COURT: Would the presiding juror please

6 stand.

7 Have you reached a verdict?

8 JUROR NO. 1: Yes, we have.

9 THE COURT: If you will hand the paper work to my

10 judicial assistant.

11 "State of Washington v. Ronald Armon Hall, Cause

12 No. 96-1-00042-8. We the jury find the defendant Ronald

13 Armon Hall guilty of the crime of Assault in the First

14 Degree as charged. Signed, Susan Bemis, presiding juror."

15 "Special verdict form: We the jury return a

16 special verdict by answering as follows: Was the defendant

17 Ronald Armon Hall armed with a deadly weapon at the time of

18 the commission of the crime?"

19 "Answer: Yes."

20 Again subscribed, "Susan Bemis, presiding

21 juror."

22 Ladies and gentlemen, I'm going to ask you three

23 questions. The first question will be: Is this your

24 verdict? The second question will be: Is this the verdict

25 of the jury? And the third question will be: Is this your

1 special verdict?

2 Ms. Bemis, is this your verdict?

3 JUROR NO. 1: Yes.

4 THE COURT: And is it the verdict of the jury?

5 JUROR NO. 1: Yes.

6 THE COURT: And is it your special verdict?

7 JUROR NO. 1: Yes.

8 THE COURT: Ms. Harris, is this your verdict?

9 JUROR NO. 2: Yes.

10 THE COURT: And is it the verdict of the jury?

11 JUROR NO. 2: Yes.

12 THE COURT: And is it your special verdict?

13 JUROR NO. 2: Yes.

14 THE COURT: Mr. Volkman, is this your verdict?

15 JUROR NO. 3: Yes.

16 THE COURT: Is it the verdict of the jury?

17 JUROR NO. 3: Yes.

18 THE COURT: And is it your special verdict?

19 JUROR NO. 3: Yes.

20 THE COURT: Ms. Blood, is this your verdict?

21 JUROR NO. 4: Yes.

22 THE COURT: And is it the verdict of the jury?

23 JUROR NO. 4: Yes.

24 THE COURT: And is it your special verdict?

25 JUROR NO. 4: Yes.

1 THE COURT: Ms. Bachman, is this your verdict?
2 JUROR NO. 5: Yes.
3 THE COURT: Is it the verdict of the jury?
4 JUROR NO. 5: Yes.
5 THE COURT: And is it your special verdict?
6 JUROR NO. 5: Yes.
7 THE COURT: Mr. Hatten, is this your verdict?
8 JUROR NO. 6: Yes.
9 THE COURT: And is it the verdict of the jury?
10 JUROR NO. 6: Yes.
11 THE COURT: And is it your special verdict?
12 JUROR NO. 6: Yes.
13 THE COURT: Mr. Lopez, is this your verdict?
14 JUROR NO. 7: Yes.
15 THE COURT: And is it the verdict of the jury?
16 JUROR NO. 7: Yes.
17 THE COURT: And is it your special verdict?
18 JUROR NO. 7: Yes.
19 THE COURT: Mr. Jacobson, is this your verdict?
20 JUROR NO. 8: Yes.
21 THE COURT: And is it the verdict of the jury?
22 JUROR NO. 8: Yes.
23 THE COURT: And is it your special verdict?
24 JUROR NO. 8: Yes.
25 THE COURT: Mr. Tupa, is this your verdict?

1 JUROR NO. 10: Yes.
2 THE COURT: And is it the verdict of the jury?
3 JUROR NO. 10: Yes.
4 THE COURT: And is it your special verdict?
5 JUROR NO. 10: Yes.
6 THE COURT: Mr. Skibbs, is this your verdict?
7 JUROR NO. 11: Yes.
8 THE COURT: And is it the verdict of the jury?
9 JUROR NO. 11: Yes.
10 THE COURT: And is it your special verdict?
11 JUROR NO. 11: Yes.
12 THE COURT: Ms. Counts, is this your verdict?
13 JUROR No. 12: Yes.
14 THE COURT: And is it the verdict of the jury?
15 JUROR NO. 12: Yes.
16 THE COURT: And is it your special verdict?
17 JUROR NO. 12: Yes.
18 THE COURT: Mr. Allen, is this your verdict?
19 JUROR NO. 13: Yes.
20 THE COURT: And is it the verdict of the jury?
21 JUROR NO. 13: Yes.
22 THE COURT: And is it your special verdict?
23 JUROR NO. 13: Yes.
24 THE COURT: The jury having been polled and
25 answering in the affirmative to all the questions, I will

1 file the verdicts at this time.

2 Ladies and gentlemen, thank you for your time.
3 Win, lose or draw, in terms of how these things go, I think
4 almost all of the attorneys would be willing to agree with
5 me that you really are the cornerstone of the judicial
6 system. There's probably nothing more sacred, at least in
7 our system, as the trial by jury. Accordingly, we do thank
8 you for your time. It's not an easy task. It's a
9 difficult task. It's especially difficult when we have
10 long delays like we've had in this case, but sometimes
11 those are unavoidable and it is literally no one's fault,
12 it just happens.

13 The attorneys may wish to ask you some
14 questions. If you are willing to answer the questions, you
15 should simply stay in the hall, so to speak. I do not
16 allow the attorneys to go into the jury room. That's your
17 room and they're not allowed there. If you do not wish to
18 answer questions, you simply leave. No one will stop you
19 and ask you questions if you are unwilling to answer
20 questions, but I'm sure that they would like to ask you a
21 few questions.

22 The jury is released from the previous
23 instructions. You are now free to talk about your
24 experiences here and this case and so forth. I will excuse
25 you at this time and I will hear from Counsel briefly.

1 (Jury excused from further service on this case.)
2 THE COURT: Counsel, are you going to ask for a
3 pre-sentence report?
4 MR. NEEB: With the defendant's prior history,
5 Your Honor, I think it's probably a good idea.
6 THE COURT: All right. You don't have any
7 opinion about that, presumably.
8 MR. CANDOO: No position about that, no.
9 THE COURT: Your client has a right to be
10 sentenced within 45 working days -- 40 working days.
11 MR. NEEB: 40 working days.
12 THE COURT: 40 working days. I would assume you
13 would like that to happen.
14 MR. CANDOO: I think with all deliberate
15 dispatch, yes.
16 THE COURT: Let's see. June 24th, any problem
17 with that?
18 MR. NEEB: No.
19 MR. CANDOO: I know of no conflict with that
20 date.
21 THE COURT: Actually, I will be in CD-I in June,
22 so you can almost pick any day if there's another day that
23 would be better for you than a Monday.
24 MR. CANDOO: Let's stay with that day. I stayed
25 around here after the question from the jury and did not go

1 back to my office. I don't have my calendar with me, so
2 I'm going to assume that the 24th is fine. And if it is
3 not, I will get ahold of everybody immediately.
4 THE COURT: I will tentatively set sentencing for
5 June 24th. You don't happen to have one of the forms?
6 MR. NEEB: I was going to wait for her to come
7 out.
8 THE COURT: We have one and we will fill one
9 out. We will set it for June 24th, 9 a.m., up in CD-I.
10 MR. NEEB: Your Honor, additionally, the
11 defendant, I think, is currently -- there's currently bail
12 of $50,000 that was set. I'd ask the Court to order the
13 defendant held without bail pending his sentencing. I
14 believe the statute shifts that to a presumption unless the
15 defendant can come up with legitimate reasons not to do
16 that. He has been held in the hole since a while ago
17 because of the contact with Ms. Krapf. I don't
18 particularly care if he returns to general population at
19 this point, but I would ask the Court to change the bail to
20 no bail. I know Mr. Candoo --
21 THE COURT: It's probably a moot question from
22 your standpoint, I would assume.
23 MR. CANDOO: Fifty thousand, if he could have met
24 that, I think he wouldn't be here, except under his own
25 power. He came in under his own power, presented himself

1 without being arrested, couldn't come up with $50,000. So,
2 fifty thousand or a million dollars, I don't see that
3 either one of them is realistically proximate to him. So,
4 I don't have any position to take except to let the Court
5 know that he came in under his own power to address this
6 originally.
7 THE COURT: In view of the conviction at this
8 point, I will order him held with no bail, but I will order
9 him held in the general population so he will be free to
10 make phone calls and do what he wishes to do in that sense.
11 MR. NEEB: I will prepare that order, as well.
12 THE COURT: We will do some paper work as soon as
13 she comes out.
14 CORRECTIONAL OFFICER: The original order that's
15 holding him in 3-South in the intensive management unit is
16 the order for the restraining order, and it says, "no mail,
17 no phone calls," and whatnot. I would need --
18 MR. NEEB: We will do one here.
19 CORRECTIONAL OFFICER: Yes, we will need
20 something that says that the restraining order is
21 rescinded, that way the classification area will move him
22 out of that area, if that's what the Court is trying to
23 order. Otherwise, he will sit there with that old order.
24 MR. NEEB: CD-I is 560.
25 THE COURT: It's 560, yes.

1 MR. NEEB: I'll hand up the Order of Conditions
2 of Release, Your Honor, and I will get the date of the
3 order that was originally -- I can't do that. I didn't
4 bring my file.
5 Scott, do you have the original order that says
6 hold with no mail, no phone?
7 MR. CANDOO: No, I don't.
8 MR. NEEB: It is probably sufficient if you write
9 "Restrictions previously ordered are revoked. Defendant
10 can return to general population."
11 I have also prepared an order setting sentencing
12 at the date we have talked about, June 24th, in CD-1, with
13 the pre-sentence report to be done in custody.
14 THE COURT: Take a look at this and see if you
15 think it is sufficient. I have simply ordered that, "The
16 Court having determined such recognizance would not
17 reasonably assure his presence, the following conditions
18 are imposed: No bail; but, defendant to be returned to
19 general population."
20 CORRECTIONAL OFFICER: If they say it's not, I
21 will have them contact you.
22 MR. NEEB: It ought to be.
23 MR. CANDOO: The removal from general population,
24 as I understand it -- just so we can structure this -- was
25 secondary to the previous orders from Judge Stone, and

1 before that Judge Armijo, which said that he is to have no
2 contact, mail, or telephone privileges. And then that was
3 interpreted or manifested by the jail as removal from
4 general population. And I think that --
5 THE COURT: I will add to that, including
6 telephone privileges --
7 MR. CANDOO: Ordinary prisoner privileges
8 reinstated.
9 THE COURT: All right, including all ordinary
10 privileges. If you want to give me the order back, I will
11 add that.
12 CORRECTIONAL OFFICER: He is down there because
13 of the restraining order.
14 MR. NEEB: Thank you, Your Honor.
15 THE COURT: We will be at recess.
16 (Proceeding concluded.)
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CERTIFICATE

STATE OF WASHINGTON

COUNTY OF PIERCE

I, Dorylee Reyes, Official Shorthand Reporter in and for the County of Pierce, State of Washington, do hereby certify that the foregoing proceedings were reported by me on said date(s) and reduced to computer-aided transcript form.

I further certify that the foregoing transcript of proceedings is a full, true and correct transcript of my machine shorthand notes of the aforementioned matter.

Dated this 29th day of July, 1996.

Dorylee Reyes

Dorylee Reyes, CSR, RPR

APPENDIX "K"

Affidavit of John M. Sheeran
&
Photos of Injuries Admitted at Trial

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT PETITION OF: RONALD A. HALL, Petitioner.	NO. 75800-0 AFFIDAVIT REGARDING TRIAL EXHIBITS ATTACHED AS APPENDIX K

STATE OF WASHINGTON)
: ss.
COUNTY OF PIERCE)

The undersigned, being first duly sworn upon oath, deposes and says:

1. I am an attorney licensed to practice in the State of Washington and currently employed by the Pierce County Prosecutor's Office.

2. I am the deputy assigned to work on the response in this matter.

3. During petitioner's trial, the State introduced photographs of the victim.

4. In preparing the State's response to this personal restraint petition, I reviewed the photographs admitted during the trial while they were in the possession of the Pierce County Superior Court. After determining that the photographs were relevant to the State's harmless error argument in this response to the personal restraint petition, I checked out the exhibits from the clerk's office and presented them to a legal assistant in the Prosecuting Attorney's Office.

5. The legal assistant scanned the exhibits into the computer and then printed them using a color printer.

6. The original exhibits were then returned to the Pierce County Superior Court Clerk.

7. The printed copies are attached to this affidavit, and bear the same exhibit numbers that were used during the trial.

8. I have reviewed the attached color copies with the original exhibits and they are accurate duplications.

9. Plaintiff's exhibit number one is a picture of the victim prior to the assault. RP 177 (Appendix J). Exhibit number one was admitted by stipulation of the parties. RP 178 (Appendix J).

10. Plaintiff's Exhibits two through seven are pictures detailing the victim's injuries. These pictures were taken January 4, 1996, three days after the assault, while the victim was in the hospital. RP 16-17 (Appendix J). These exhibits were admitted without objection. RP 17 (Appendix J).

Office of Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

11. Plaintiff's Exhibits fifteen through twenty are pictures taken of the victim in April, 1996. RP 18 (Appendix J). These exhibits were admitted without objection. RP 19 (Appendix J).

Further your affiant sayeth naught.

JOHN M. SHEERAN

SUBSCRIBED AND SWORN to before me this 9th day of September, 2004.

Notary Public in and for the State of Washington, residing at Puyallup
My commission expires: 2/25/06

Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his or her attorney or to the attorney of record for respondent and respondent c/o his or her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

9-10-04
Date Signature

Office of Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

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MAY 0 1 1996

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96-1-00042-8

PLAINTIFF'S EXHIBIT
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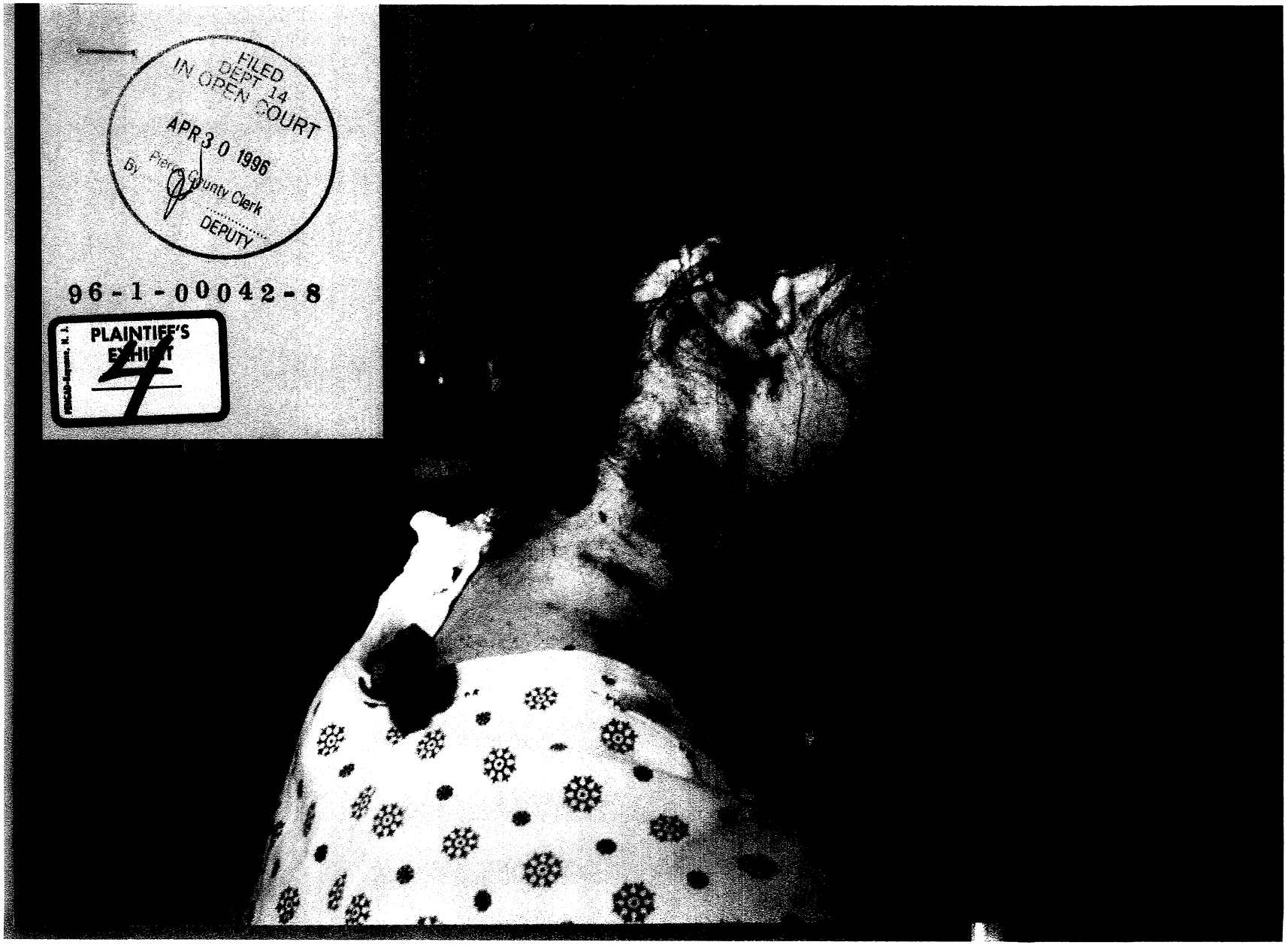
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PLAINTIFF'S
EXHIBIT
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PLAINTIFF'S EXHIBIT
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PLAINTIFF'S
EXHIBIT
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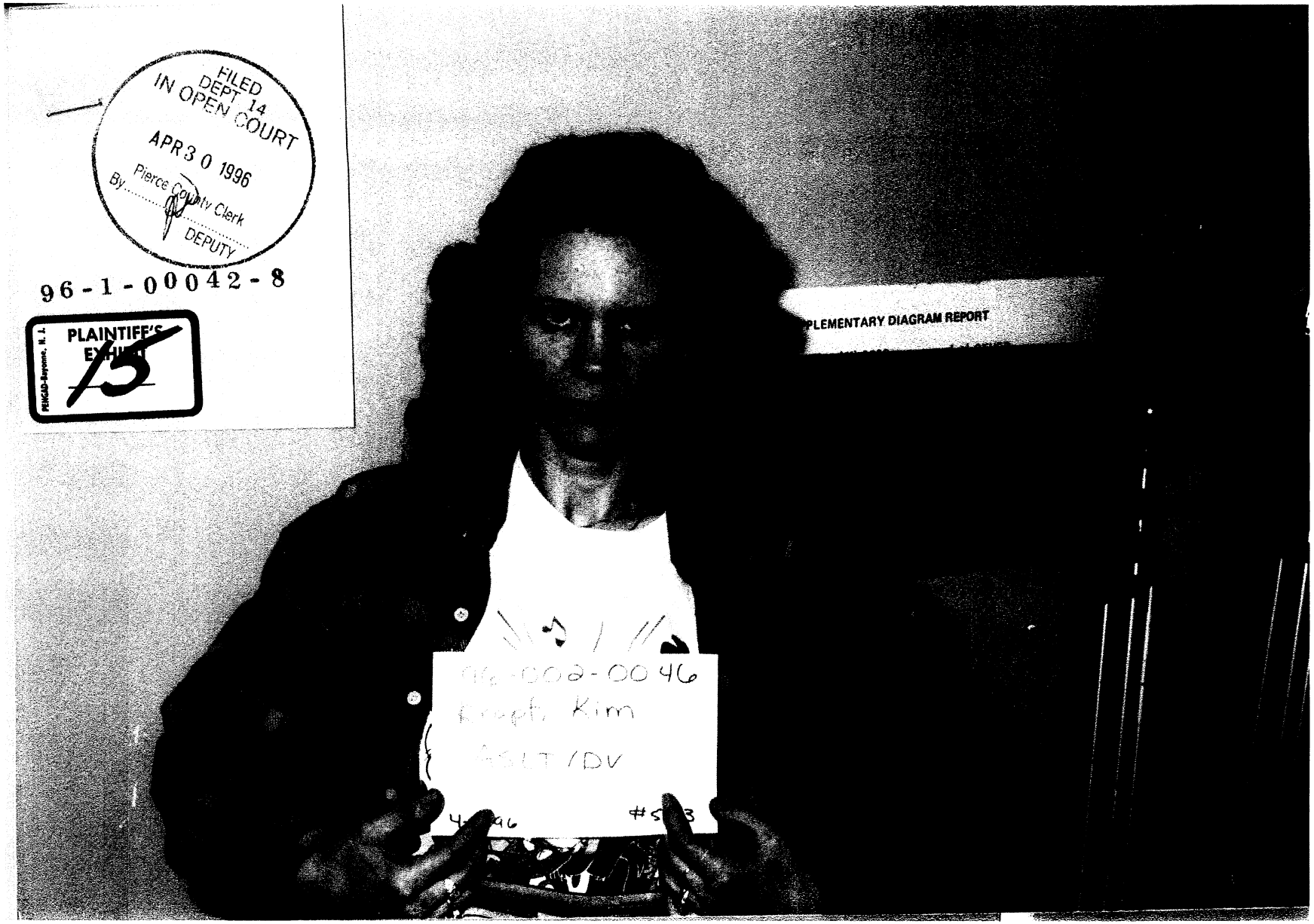
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PLAINTIFF'S
EXHIBIT
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PLAINTIFF'S
EXHIBIT
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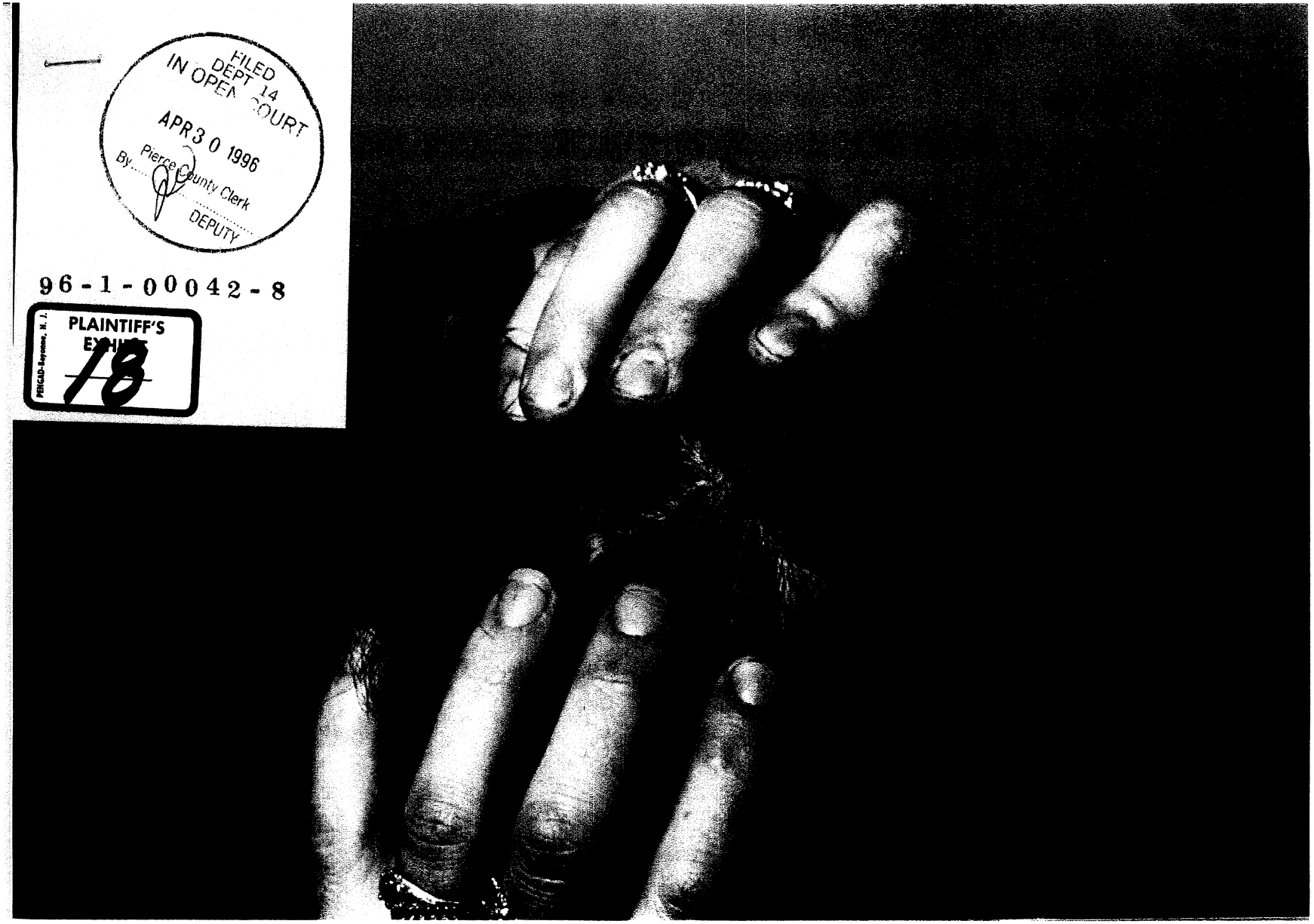
PENGAD-Bayonne, N. J.



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PLAINTIFF'S EXHIBIT 19

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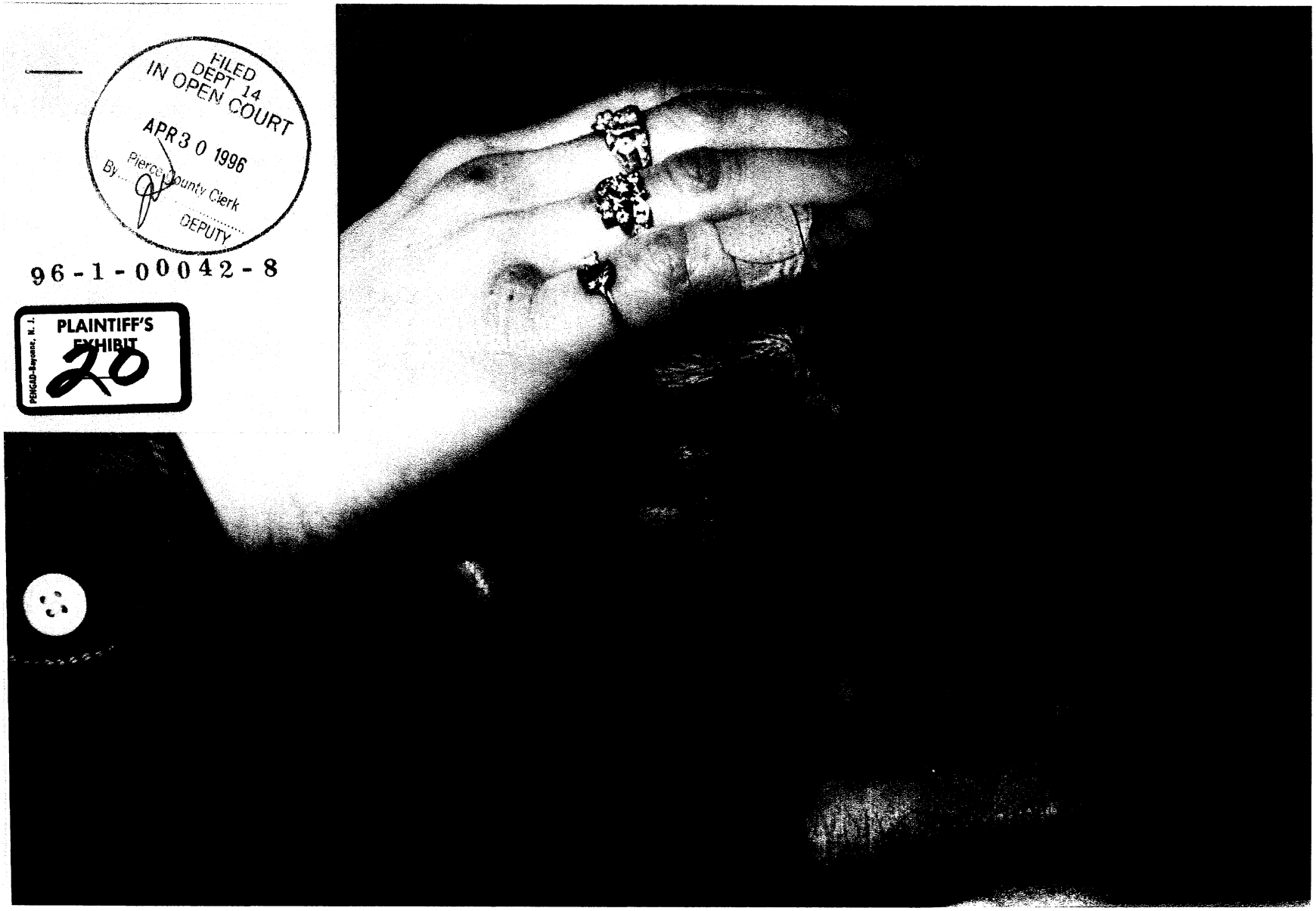
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PLAINTIFF'S
EXHIBIT
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