

NO. 55488-3-I

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

DIVISION ONE

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IN RE PERSONAL RESTRAINT OF JOHNNY NAV

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STATE OF WASHINGTON,

Respondent,

v.

JOHNNY NAV,

Petitioner.

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2005 JUL 29 PM 4:38  
FILED  
CLERK OF COURT

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

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PERSONAL RESTRAINT PETITION SUPPLEMENTAL BRIEF

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JASON B. SAUNDERS  
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711

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A. ASSIGNMENT OF ERROR

1. Petitioner's conviction for second degree felony murder predicated on reckless endangerment, an offense listed in the Assault Chapter of the Revised Code of Washington, is contrary to Washington law, violates due process, and must be vacated under In re Personal Restraint of Andress, 147 Wn.2d 602, 56 P.3d 981 (2002) and In re Personal Restraint of Hinton, 152 Wn.2d 853, 100 P.3d 801 (2004).

2. Pursuant to RAP 10.1(g), Mr. Nav adopts by reference the arguments presented in the linked case of In the Matter of the Personal Restraint of Jacob Bowman, 53250-2-1.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

In Andress, the Supreme Court held assault cannot serve as the predicate offense to second degree felony murder. Johnny Nav was convicted of second degree felony murder with reckless endangerment as the predicate offense. Because reckless endangerment is defined as an assault, is Mr. Nav's second degree felony murder conviction based on the predicate crime of assault reversible?

C. STATEMENT OF THE CASE

Steve Williams hosted a Halloween party on October 24, 1996, which he suspected might include rival gang members. Certification for Determination of Probable Cause at 1 (Appendix A). Johnny Nav and his friends attended the party. *Id.* Inevitably, members of many rival gangs began “flashing gang signs” and a fight ensued. *Id.* at 2. Nav got into a van to leave the party and sat behind the driver’s seat. *Id.* at 2-3.

Shots were fired from the van, killing one person and injuring two others. *Id.* at 3. Nav admitted to police that he was responsible for the shootings, but claimed he fired only warning shots from the gun into the air and was not aiming the gun at any person. *Id.* at 4.

Nav was charged with felony murder in the second degree predicated on assault, and two counts of first degree assault. Information (a copy of the Information is attached as Appendix B). Mr. Nav pleaded guilty to an amended information, charging Mr. Nav with second degree felony murder and only one count of second degree assault. Appendix C.

Mr. Nav’s statement on plea of guilty provided,

On 10-26-96 in Seattle, King County, WA I shot out of a van and killed James Taupule although acting in self defense, the force used was not reasonable and thus I admit my guilt to the charge. I also shot and wounded Topelagi Siva/Robert Herman which was also unreasonable and unlawful under second degree assault

App. C at 6. Mr. Nav was convicted on March 21, 1997, and Judge Michael Spearman imposed a 180-month sentence. Judgment and Sentence at 1, 3 (Appendix D).

On October 24, 2002, the Washington Supreme Court decided Andress, holding a defendant may not properly be convicted of murder in the second degree predicated on an assault. Andress, 147 Wn.2d at 605.

On November 18, 2004, the Court decided In re Personal Restraint of Hinton, 152 Wn.2d 853, 100 P.3d 801 (2004). Hinton held the decision in Andress applies retroactively to personal restraint petitioners convicted of second degree felony murder predicated on assault. 152 Wn.2d at 860-61.

On January 3, 2005, Mr. Nav filed a Personal Restraint Petition, seeking vacation of his sentence under Andress.

On February 16, 2005, the State filed a Response to Personal Restraint Petition. On June 7, 2005, this Court entered an Order Appointing Counsel, Linking Personal Restraint Petitions,

and Referring to a Panel. This Court appointed counsel to represent Mr. Nav and linked his case with In the Matter of the Personal Restraint of of Jacob Daniel Bowman, CoA: 53250-2-1.

D. ARGUMENT

MR. NAV'S CONVICTION FOR SECOND DEGREE FELONY MURDER IS CONTRARY TO WASHINGTON LAW, VIOLATES DUE PROCESS, AND MUST BE VACATED.

1. Assault cannot serve as a predicate crime for second degree felony murder. In Andress, the Supreme Court decided only one issue, "whether assault may serve as the predicate felony for second degree felony murder." 147 Wn.2d at 605. Sean Andress was convicted of second degree murder with a predicate offense of second degree assault. 147 Wn.2d at 604. The Court agreed with Mr. Andress that the Legislature's change in the 1976 felony murder statute lead to a conclusion that assault could not be the predicate offense:

Former RCW 9.48.040 was replaced effective July 1, 1976. The new statute defining second degree felony murder is the same version in effect now. It provides in relevant part:

(1) A person is guilty of murder in the second degree when:

(a) With intent to cause the death of another person but without premeditation, he causes the death of such person or of a third person; or

(b) He commits or attempts to commit any felony other than those enumerated in RCW 9A.32.030(1)(c), and, in the course of and in furtherance of such crime or in immediate flight therefrom, he, or another participant, causes the death of a person other than one of the participants . . . .

Andress, 147 Wn.2d at 608, citing RCW 9A.32.050. The Court concluded that the “in furtherance of” language included in the 1976 statute meant that an assault could not be a predicate crime for felony murder:

an assault on the person killed is not encompassed within the newer version of the second degree felony murder statute. If it were, the statute would provide, essentially, that a person is guilty of second degree felony murder when he or she commits or attempts to commit assault on another, causing the death of the other, and the death was sufficiently close in time and place to the assault to be part of the *res gestae* of assault. It is nonsensical to speak of a criminal act--an assault--that results in death as being part of the *res gestae* of that same criminal act since the conduct constituting the assault and the homicide are the same. Consequently, in the case of assault there will never be a *res gestae* issue because the assault will always be directly linked to the homicide. Therefore, if assault were encompassed within the unenumerated felonies in RCW 9A.32.050(1)(b), the “in furtherance of” language would be meaningless as to that predicate felony. In short, unlike the cases where arson is the predicate felony, the assault is not independent of the homicide.

147 Wn.2d at 610.

The Court also noted, “[i]n addition to the change of language in the second degree felony murder statute, decisions relating to felony murder and the statutory scheme as a whole

disclose that assault as a predicate felony for felony murder results in much harsher treatment of criminal defendants than [previously] apparent . . .” 147 Wn.2d at 613. Furthermore, the Court was repelled by the State’s ability to elect to charge second degree felony murder rather than intentional murder where assault is the predicate felony, thus allowing the State to obtain a second degree murder conviction without establishing an intent to kill. 147 Wn.2d at 614. Specifically, the Court noted the State could obtain a conviction for second degree murder without proving any mental element at all. Id.

2. “Reckless endangerment” is an “assault” as contemplated by *Andress* and cannot serve as a predicate crime to second degree felony murder. The prosecutor now argues *Andress* and *Hinton* only apply to convictions where the predicate crime was second degree assault. Response at 3. The *Andress* Court did not limit the type of assault covered by the decision, instead ruling any assault could not be a predicate crime for second degree felony murder under the former statute. 147 Wn.2d at 604, 613, 616. The Court specifically noted that none of the various degrees of assault could serve as a predicate crime for second degree felony murder and explained this was because

some forms of assault, such as third degree assault, had no mental state proof requirement at all:

[F]irst, second, and third degree assault are all felonies, and thus could stand as a predicate felony for second degree felony murder if RCW 9A.32.050(1)(b) is read to include assault. Yet for a number of assaults, no mental element comparable to intent is required. See, e.g., RCW 9A.36.021(1)(c) (second degree assault where a person “[a]ssaults another with a deadly weapon”); RCW 9A.36.031(1)(b) (third degree assault where a person “[a]ssaults a person employed as a transit operator or driver . . . while that person is performing his or her official duties”); RCW 9A.36.031(1)(d) (third degree assault where “[w]ith criminal negligence, [the person] causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm”). By electing to charge second degree felony murder, the State may, depending upon the circumstances, be relieved of any burden to prove intent or any comparable mental state. And, of course, by electing to charge second degree felony murder, the State does not have to prove intent to kill, or, indeed, any mental element as to the killing itself.

Andress, 147 Wn.2d at 614-15. The Court did not limit the ruling to second degree assault, but instead held the second degree felony murder statute precluded any assault as a predicate crime. 147 Wn.2d at 604, 613, 616.

Mr. Nav was convicted of second degree felony murder with “Reckless Endangerment” as the predicate crime. Appendix C and D. The Reckless Endangerment and Drive-by Shooting statutes are codified in the assault chapter of the Revised Code of

Washington. Reckless Endangerment is defined as follows:

(1) A person is guilty of reckless endangerment when he or she recklessly engages in conduct not amounting to drive-by shooting but that creates a substantial risk of death or serious physical injury to another person.

(2) Reckless endangerment is a gross misdemeanor.

RCW 9A.36.050. "Drive-by shooting" is currently proscribed by

RCW 9A.36.045, which states,

(1) a person is guilty of drive-by shooting when he or she recklessly discharges a firearm as defined in RCW 9.41.010 in a manner which creates a substantial risk of death or serious physical injury to another person and the discharge is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge.

(2) A person who unlawfully discharges a firearm from a moving motor vehicle may be inferred to have engaged in reckless conduct, unless the discharge is shown by evidence satisfactory to the trier of fact to have been made without such recklessness.

(3) Drive-by-shooting is a class B felony.

RCW 9A.36.045. Drive-by shooting in 1996 was listed as first degree reckless endangerment under former RCW 9A.36.045(1).

Chapter 9A.36 of the Revised Code is entitled "Assault – Physical Harm." Chapter 9A.36 lists many different forms of assault, but each offense is an assault, including reckless

endangerment.<sup>1</sup> As with many other assaults, for Reckless Endangerment, the State need not prove the element of "intent" since the mens rea element of that crime is recklessness. State v. Austin, 65 Wn.App. 759, 762, 831 P.2d 747 (1992); see Andress, 147 Wn.2d at 614 (noting various assaults wherein the State would be relieved of a burden to prove intent or any comparable mental state). Because the Andress Court was disturbed by the State's ability to prove second degree murder without having to prove a mental state, it concluded the Legislature did not intend assault (such as reckless endangerment) to be a predicate offense for second degree felony murder. 147 Wn.2d at 614-15.

3. The holding in Daniels does not apply to the instant case because criminal mistreatment is not an assault. One may argue that the holding in State v. Daniels, 124 Wn.App. 830, 103 P.3d 249 (2004), should apply to this case, as it did on appeal in the linked case, In the Matter of the Personal Restraint of Jacob

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<sup>1</sup> Chapter 9A.36, entitled "Assault," lists the following crimes: first degree assault (.011); second degree assault (.021); third degree assault (.031); fourth degree assault (.041); drive-by shooting (.045); reckless endangerment (.050); promoting a suicide attempt (.060); coercion (.070); malicious harassment and threats against governor or family (.078, .080, .083, .090); custodial assault (.100); first degree assault of a child (.120); second degree assault of a child (.130); third degree assault of a child (.140); and interfering with the reporting of domestic violence (.150).

Bowman, CoA: 53250-2-I. In Daniels, the State charged the defendant with second degree murder felony murder based on the alternate predicate offenses of second degree assault or first degree criminal mistreatment. 124 Wn.App. at 833. The Court of Appeals reversed Daniels's conviction in light of Andress, but allowed the State to retry Daniels on second degree murder based on the predicate offense of criminal mistreatment. Id.

The Daniels decision does not benefit the prosecution in Mr. Nav's case. First, the Court reversed the conviction in Daniels based on the Andress violation of convicting an individual of second degree felony murder based on the predicate offense of assault. 124 Wn.App. at 833. The remaining holding of Daniels was that criminal mistreatment may be a predicate offense to second degree felony murder, which has no application here. 124 Wn.App. at 833.

In fact, the Daniels Court recognized that Andress applied solely where assaults were the predicate offense:

In Andress, our Supreme Court held:  
It is nonsensical to speak of a criminal act--an assault--that results in death as being part of the res gestae of that same criminal act since the conduct constituting the assault and the homicide are the same. Consequently, in the case of assault there will never be a res gestae issue because the assault will always be directly linked to the homicide.

Daniels, 124 Wn.App. at 841-42, quoting Andress, 147 Wn.2d at 610. The Daniels Court distinguished assault and criminal mistreatment as felony predicate crimes, holding:

Although one cannot commit homicide without assaulting a victim, one can commit homicide without criminally mistreating the victim. One commits first degree criminal mistreatment of a victim when he or she recklessly causes great bodily harm by withholding basic necessities of life. RCW 9A.42.010(1), (2)(c), .020(1). But to commit a homicide, it may not be necessary to withhold the basic necessities of life. Therefore, we hold that criminal mistreatment is independent of homicide and thus can serve as a predicate offense to second degree felony murder.

124 Wn.App. at 841-42. The Daniels decision supports Mr. Nav's prayer for relief because it reiterates the proposition that "assault" cannot be the predicate crime to second degree felony.

4. Reversal of Mr. Nav's conviction is required. In Hinton, the Supreme Court found that its interpretation of the former felony murder statute in Andress "determined what the statute had meant since 1976." Hinton, 152 Wn.2d at 859. Therefore, anyone convicted under that statute is entitled to relief.<sup>2</sup> Hinton, 152 Wn.2d at 860-61. Because Mr. Nav was convicted of second

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<sup>2</sup> In 2003, the statute was amended to expressly include assault as a predicate offense. See Laws of 2003, ch. 3, § 2. That amendment was prospective only. Hinton, 152 Wn.2d at 861.

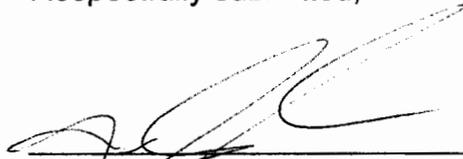
degree felony murder based on a predicate "assault" offense, his conviction must be reversed.

E. CONCLUSION

Mr. Nav is unlawfully restrained. For the reasons stated above, as well as in Mr. Nav's personal restraint petition filed with this Court, his conviction for second-degree felony murder is contrary to Washington law, violates due process and must be vacated.

DATED this 29<sup>th</sup> day of July, 2005.

Respectfully submitted,



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JASON B. SAUNDERS (WSBA 24963)  
Washington Appellate Project – 91052  
Attorneys for Petitioner

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CAUSE NO. 96-1-07541-4 KNT

CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

That Dana Cashman is a Deputy Prosecuting Attorney for King County and is familiar with the police report and investigation conducted in King County Department of Public Safety case No. 96-337707;

That this case contains the following upon which this motion for the determination of probable cause is made;

Defendant Johnny Nav is 16 years old and is subject to the exclusive original jurisdiction of the adult court pursuant to RCW 13.04.030, as amended by the 1st Special Session, Chapter 7, Section 519, 1994 laws, because he is charged with Murder in the Second Degree and two counts of Assault in the First Degree, serious violent crimes, as defined in RCW 9.94A.030(29).

Pursuant to RCW 13.04.030 (3), as amended by the 1st Special Session, Chapter 7, Section 519, 1994 laws, the State recommends that the Court order the defendant to be held in the King County Department of Adult Detention, subject to the Court's bail conditions in this cause.

In early October of 1996, Steve Williams decided to have a Halloween Party at his home, located at 14453 25th Avenue South, SeaTac, King County, Washington, on October 25, 1996. He printed up some flyers to advertise the party and posted them around the neighborhood. Williams, concerned that members of rival gangs might attend the party, included the words, "No set trippin!" on the flyer. This language was intended to inform party goers that all were welcome, but that there would be no gang rivalry tolerated at the party.

On the morning of the 25th, Thuy T. Nguyen (date of birth: 9/25/76) drove her stepfather's grey and blue Ford Aerostar van to pick up her boyfriend Kepvong "Jeff" Kaeodala; (date of birth: 5/6/78). They spent the day together, shopping and seeing friends. At about 2:00 p.m. they met up with Cola Bounyarith "Cola", Chansomone Vongkhamphet "Looney", Thongsamouth Louangmath "Little" and the defendant, Johnny Nav "Jay" (date of birth: 12/29/79). Nguyen had seen the flyer for the party at Williams' home earlier that week and they discussed attending the party (none of them knew Williams).

At about 9:30 p.m., Jeff, Nguyen, Cola, Looney and the defendant got into the Nguyen's van and drove to the party. Little

Certification for Determination  
of Probable Cause - 1

Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

*Appendix A*

1 and several other friends followed in her grey Toyota Corolla. They  
2 all parked on the street and went into the party.

3 There were about 20 to 30 people at the party when the  
4 defendant and his friends arrived. Most of those already in  
5 attendance were Samoan. People were drinking and smoking Marijuana.  
6 A Disc jockey was playing music and several people were dancing. At  
7 about 10:30 p.m. some hostility between the Samoans and the  
8 defendant and his friends, who are all Asian, began to develop.

9 The defendant, who is affiliated with the Tiny Rascals Gang, or  
10 TRG, and Looney, Jeff and Phouva Khammanivong "Pooh", who are  
11 affiliated with the Bad Side Posse, or BSP, began to display their  
12 gang signs. Several of the Samoans, who were affiliated with the  
13 Cycle Lane gang, began to display their gang signs. The Asians  
14 began to yell "South Side", because most of their gang members were  
15 active in South Seattle. The Samoans began to yell, "West Side",  
16 because most of their members are active in West Seattle. An  
17 argument erupted between one member of each group (Kosene Tulimona  
18 from the Samoans and possibly "Pooh" from the Asians) and the party  
19 moved outside to watch the two of them fight. The two removed their  
20 shirts, but one of the Samoan's calmed everyone down.

21 Jeff became concerned about the hostility that was developing  
22 and suggested to his friends that they should leave the party. They  
23 gathered to leave and walked outside to their van. As they  
24 approached the van, Priscilla Taupule overheard the defendant say  
25 several times to one of his friends, "Pass me the gun."

James Taupule (date of birth: 7/11/80), one of the Samoan's,  
who was described by several people at the party as intoxicated, was  
under the impression that someone was harassing his sister,  
Priscilla. He began to yell, "Who's messing with my sister?"  
Priscilla tried to assure him that no one was bothering her. James  
took off his shirt and approached the van ready to fight. He  
continued to yell about his sister.

Nguyen got into the driver's seat and Jeff got into the  
passenger seat of the van. Their friends opened the sliding  
passenger door to get in, but they began to argue with the group of  
Samoan's that had surrounded the van. Nguyen started the van, but  
one of the Samoan's (possibly James) reached in the van, grabbed her  
arm and told her that she wasn't going anywhere. He reached in and  
grabbed the key. Michael Paosa retrieved the key, returned it to  
Nguyen and told her to leave. Nguyen asked Jeff to drive because  
her arm hurt.

Jeff started the van and called out for his friends to get in  
the car because he was going to leave. The defendant, and others,

Certification for Determination  
of Probable Cause - 2

Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

1 got in. The defendant sat behind the driver's seat. They closed the  
2 door and the Samoan's began to move away from the van. Priscilla  
3 had succeeded in pulling James about a car length away from the van.  
4 Jeff began to pull away from the group, he drove down to the corner  
5 and had just begun to turn towards Pacific Highway South, when he  
6 heard gun shots.

7 Peter Neemia, who was standing on the street as the van pulled  
8 away, heard the first shot and turned to look at the van. He saw an  
9 arm, holding a gun, extended out the driver's side window of the  
10 van. A Samoan, identified only as "Matt" returned fire.

11 When Jeff and Nguyen heard the first shots, they cried out, "No  
12 Jay! Stop!" Jeff drove to a friend's house in Othello Park. He,  
13 Nguyen, Looney, Cola and the defendant went inside. No one spoke of  
14 the shooting.

15 Meanwhile, one of the shots fired by the defendant struck James  
16 Taupule in the lower lip, went through his lower teeth, and through  
17 his vertebra. Topelagi Siva (date of birth: 1/2/78), who had been  
18 standing near Taupule, was shot through the right hand and in the  
19 right calf. Robert Herman (date of birth: 6/24//74) was shot in  
20 the buttocks, the bullet went into his leg and stopped just above  
21 his knee cap. The bullet was later surgically removed. Sampson  
22 Faasuamalie had a bullet hole in his pant leg, but he was un-  
23 injured.

24 Neighbors called 911. Medics were already on the scene when  
25 King County Police officers Lindey and Connelly arrived on the  
scene. Taupule was declared dead at the scene by the medics and his  
body was removed. The street became chaotic. The Samoan's were  
hostile and un-cooperative. Officer Connelly quickly noted the  
locations of seven 9mm casings and four .40 caliber casings in the  
street and picked them up. All of the shooting victims were taken  
to Harborview Hospital.

19 Detectives Garske and Mullinax went to Harborview to interview  
20 the surviving shooting victims and their family members. Saiti  
21 Mauai told Detective Garske that one of the Asian males at the party  
22 was armed with three guns and that this same male got into the van  
23 from which shots were fired. Mauai did not know the male's name,  
24 but took the detectives to his apartment at 7900 Rainier Avenue  
25 South. This is the home of the defendant. Mauai later picked the  
defendant's picture from a montage as the person who was in  
possession of the guns at the party.

24 In an initial statement to the police, the defendant said that  
25 he was not armed at the party and that he was not involved in the  
shooting. Later, after further investigation, the defendant was

Certification for Determination  
of Probable Cause - 3

Norm Maleng  
Prosecuting Attorney  
W 354 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

1 interviewed again. He admitted to being responsible for the  
2 shootings, but claimed that he was firing warning shots in the air  
and was not aiming at Taupule. The gun has not been recovered.

3 The defendant is a gang member. His mother reported that he  
4 often does not return home at night. The State requests bail in the  
amount of \$500,000.00 and a No-Contact Order with the State's  
5 witnesses (Thuy Nguyen and Jeff Kaeodala) and the victims Topelagi  
Siva and Robert Herman.

6 Under penalty of perjury under the laws of the State of Washington,  
I certify that the foregoing is true and correct. Signed and dated  
7 by me this \_\_\_\_ day of November, 1996, at Seattle, Washington.

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Dana Cashman, WSBA #91002

Certification for Determination  
of Probable Cause - 4

**Norm Maleng**  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

FILED

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KING COUNTY  
SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON, FOR KING COUNTY

1 THE STATE OF WASHINGTON, )

2 )  
3 Plaintiff, )

No. 96-1-07541-4 KNT

4 v.  
5 JOHNNY NAV )

INFORMATION

6 )  
7 )  
8 )  
9 Defendant. )

WARRANT ISSUED  
CHARGE COUNTY \$110.00

10  
11 COUNT I

12 I, Norm Maleng, Prosecuting Attorney for King County in the  
13 name and by the authority of the State of Washington, do accuse  
14 JOHNNY NAV of the crime of Murder in the Second Degree, committed as  
15 follows:

16 That the defendant JOHNNY NAV in King County, Washington during  
17 a period of time intervening between October 25, 1996 through  
18 October 26, 1996, while committing and attempting to commit the  
19 crime of Assault, and in the course of and in furtherance of said  
20 crime and in immediate flight therefrom, did cause the death during  
21 the period of time of October 25, 1996 through October 26, 1996, of  
22 James Taupule, a human being who was not a participant in the crime;

23 Contrary to RCW 9A.32.050(1)(b), and against the peace and  
24 dignity of the State of Washington.

25 And I, Norm Maleng, Prosecuting Attorney for King County in the  
name and by the authority of the State of Washington further do  
accuse the defendant JOHNNY NAV at said time of being armed with a  
handgun, a firearm as defined in RCW 9.41.010, under the authority  
of RCW 9.94A.310(3).

COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
accuse JOHNNY NAV of the crime of Assault in the First Degree, a

INFORMATION- 1

Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000



Appendix B

1 crime of the same or similar character as another crime charged  
2 herein, and committed as follows:

3 That the defendant JOHNNY NAV in King County, Washington during  
4 a period of time intervening between October 25, 1996 through  
5 October 26, 1996, with intent to inflict great bodily harm, did  
6 assault Topelagi Siva with a firearm and a deadly weapon and force  
7 and means likely to produce great bodily harm or death, to-wit: a  
8 9mm hand gun;

9 Contrary to RCW 9A.36.011(1)(a), and against the peace and  
10 dignity of the State of Washington.

11 And I, Norm Maleng, Prosecuting Attorney for King County in the  
12 name and by the authority of the State of Washington further do  
13 accuse the defendant JOHNNY NAV at said time of being armed with a  
14 9mm hand gun, a firearm as defined in RCW 9.41.010, under the  
15 authority of RCW 9.94A.310(3).

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11 And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
12 accuse JOHNNY NAV of the crime of **Assault in the First Degree**, a  
13 crime of the same or similar character as another crime charged  
14 herein, and committed as follows:

15 That the defendant JOHNNY NAV in King County, Washington during  
16 a period of time intervening between October 25, 1996 through  
17 October 26, 1996, with intent to inflict great bodily harm, did  
18 assault Robert Herman with a firearm and a deadly weapon and force  
19 and means likely to produce great bodily harm or death, to-wit: a  
20 9mm hand gun;

21 Contrary to RCW 9A.36.011(1)(a), and against the peace and  
22 dignity of the State of Washington.

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

MAR 24 PM 3:03

Accelerated  
Non Accelerated  
DPA Defense

STATE OF WASHINGTON,

KING COUNTY  
CRIMINAL COURT CLERK  
SEATTLE, WA.

Plaintiff,

v.

JOHNNY NAV,

Defendant,

NO. 96-1-07541-4 KNT

STATEMENT OF DEFENDANT  
ON PLEA OF GUILTY  
(Felony)

SEA

1. My true name is JOHNNY NAV

2. My age is 17. Date of Birth 12-29-79

3. I went through the 7<sup>TH</sup> grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is JC BECKER

(b) I am charged with the crime(s) of MURDER 2° / ASSAULT 2°

The elements of this crime(s) are SEE ATTACHED

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

STATEMENT OF DEFENDANT ON  
PLEA OF GUILTY 1 of 8

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Appendix C

(c) The right at trial to hear and question the witnesses who testify against me;

(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) The right to be presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a determination of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I UNDERSTAND THAT:

(a) The crime with which I am charged carries a maximum sentence of LIFE years imprisonment and a \$ 20,000 fine.

RCW 9.94A.030(21), provides that for a third conviction for a "most serious offense" as defined in that statute, I may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.120(4). The law does not allow any reduction of this sentence.

(b) The standard sentence range is from 0/5 2/ XIII IV I 144 II 12+1 (days) months to 192 14 (days) months confinement, based on the prosecuting attorney's understanding of my criminal history. The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history always includes juvenile convictions for sex offenses and also for Class A felonies that were committed when I was 15 years of age or older. Criminal history also may include convictions in juvenile court for felonies or serious traffic offenses that were committed when I was 15 years of age or older. Juvenile convictions, except those for sex offenses and Class A felonies, count only if I was less than 23 years old when I committed the crime to which I am now pleading guilty.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete.

If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if I was on community placement at the time of the offense to which I am now pleading guilty, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendations may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase.

If the current offense to which I am pleading guilty is a most serious offense as defined by RCW 9.94A.030(21), and additional criminal history is discovered, not only do the conditions of the prior paragraph apply, but also if my discovered criminal history contains two prior convictions, whether in this state, in federal court, or elsewhere, of most serious offense crimes, I may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.120(4).

Even so, my plea of guilty to this charge may be binding on me. I may not be able to change my mind if additional criminal history is discovered, even though it will result in the mandatory sentence that the law does not allow to be reduced.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ 500 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damages to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs and attorney fees. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

(f) The prosecuting attorney will make the following recommendation to the judge: SRA

SENTENCE No specific rec. except that  
state will stay w/in standard range and defense  
may ask for exceptional down. VPN, Rest, costs,  
and NCC for victims.

(g) The judge does not have to follow anyone's recommendation as to the sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(h) The crime of \_\_\_\_\_ has a mandatory minimum sentence of at least \_\_\_\_\_ years of total confinement. The law does not allow any reduction of this sentence. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

The crime of MURDER 2° / ASSAULT 2° is a most serious offense as defined by RCW 9.94A.030(21), and if a fact finder determines that I have at least two prior convictions on separate occasions whether in this state, in federal court, or elsewhere, of most serious offense crimes, I may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.120(4).

(i) The sentence imposed on counts I & III will run concurrently unless the judge finds substantial and compelling reason to do otherwise. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(j) In addition to confinement, the judge will sentence me to community placement for at least one year. During the period of community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

\* IF SENTENCES DO NOT RUN CONCURRENT THE STATE WILL NOT DEPOSE DEFENDANT MAY WITHDRAW PLEA BY AGREEMENT. ~~DEFENDANT'S MOTION TO WITHDRAW THIS PLEA~~  
\* BOTH PARTIES AGREE THE DEFENDANT MAY WITHDRAW HIS PLEA SUBJECT TO THE COURT'S DISCRETION

STATEMENT OF DEFENDANT ON PLEA OF GUILTY 4 of 8

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J.N.

(k) The judge may sentence me as a first time offender instead of giving a sentence within the standard range if I qualify under RCW 9A.030(20). This sentence could include as much as 90 days' confinement plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

~~(l) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]~~

~~(m) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]~~

(n) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

~~(o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]~~

~~(p) If this crime involves a sex offense, I will be required to register with the sheriff of the county in this state where I reside. I must register immediately upon completion of being sentenced if I am not sentenced to begin serving a term of confinement immediately upon completion of being sentenced. Otherwise, I must register within 24 hours of the time of my release if I am sentenced to the custody of the Department of Corrections, Department of Social and Health Services, a local division of youth services, a local jail, or a juvenile detention facility.~~

If I do not now reside, in Washington, but I subsequently move to this state, I must register within 24 hours of the time I begin to reside in this state, if at the time of my move I am under the jurisdiction of the

Department of Corrections, the Indeterminate Sentence Review Board, or the Department of Social and Health Services. If at the time I move to this state I am not under the jurisdiction of one of these agencies, then I must register within 30 days of the time I begin to reside in this state.

If I subsequently change residences within a county in this state, I must notify the county sheriff of that change of residence in writing within 10 days of my change of residence. If I subsequently move to a new county within this state, I must register all over again with the sheriff of my new county, and I must notify my former county sheriff (that is, the county sheriff of my former residence) of that change of residence in writing, and I must complete both acts within 10 days of my change of residence. [If none of the above three paragraphs is applicable, they should all be stricken and initialed by the defendant and the judge.]

7. I plead GUILTY to the crime of MURDER 2<sup>o</sup>  
ASSAULT 2<sup>o</sup> as charged in the AMMENDED

information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this (these) crime(s). This is my statement:

ON 10-26-96 IN SEATTLE, KING COUNTY, WA  
I SHOT ~~AND KILLED~~ <sup>OUT OF A</sup> VAN AND KILLED JAMES TAUPULE  
ALTHOUGH ACTING IN SELF DEFENSE, THE FORCE  
USED WAS NOT REASONABLE AND THUS I ADMIT  
MY GUILT TO THE CHARGE. I ALSO SHOT AND  
WOUNDED TOPELAGI SIVA / <sup>ROBERT</sup> ~~HERMAN~~ WHICH WAS ALSO UNREASONABLE  
AND UNLAWFUL UNDER SECOND DEGREE ASSAULT

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been give copy of this "Statement of Defendant's Plea of Guilty." I have no further questions to ask the judge.

Johnny New  
DEFENDANT

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

[Signature]  
PROSECUTING ATTORNEY

[Signature]  
DEFENDANT'S LAWYER

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriated box]:

- (a) The defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

DATED this 27th day of MARCH, 1997

[Signature]  
JUDGE

I am fluent in the CAMBODIAN language and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 21 day of MARCH, 1997.

Vischaneh Mott  
INTERPRETER

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON, )  
 Plaintiff, ) No. 96-1-07541-4 KNT  
 v. )  
 JOHNNY NAV )  
 Defendant. )

AMENDED INFORMATION

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COUNT I

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse JOHNNY NAV of the crime of Murder in the Second Degree, committed as follows:

That the defendant JOHNNY NAV in King County, Washington, during a period of time intervening between October 25, 1996, through October 26, 1996, while committing and attempting to commit the crime of Reckless Endangerment, and in the course of and in furtherance of said crime and in immediate flight therefrom, did cause the death during the period of time of October 25, 1996, through October 26, 1996, of James Taupule, a human being who was not a participant in the crime;

Contrary to RCW 9A.32.050(1)(b), and against the peace and dignity of the State of Washington.

COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse JOHNNY NAV of the crime of Assault in the Second Degree, a crime of the same or similar character as another crime charged herein, and committed as follows:

That the defendant JOHNNY NAV in King County, Washington, during a period of time intervening between October 25, 1996,

Norm Maleng  
 Prosecuting Attorney  
 W 554 King County Courthouse  
 Seattle, Washington 98104-2312  
 (206) 296-9000

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1 through October 26, 1996, did intentionally assault Topelagi Siva  
2 and Robert Herman with a deadly weapon, to-wit: a 9mm handgun;

3 Contrary to RCW 9A.36.021(1)(c), and against the peace and  
4 dignity of the State of Washington.

5 NORM MALENG  
6 Prosecuting Attorney

7 By: \_\_\_\_\_  
8 D. Will Miller, WSBA #91002  
9 Deputy Prosecuting Attorney

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**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

STATE OF WASHINGTON )

Plaintiff: )

v. )

JOHNNY NAV )

Defendant: )

No. 96-1-07541-4 SEA

JUDGMENT AND SENTENCE

**\* CLERK'S ACTION REQUIRED**

763455-97  
6-17-97

**I. HEARING**

1.1 The defendant, the defendant's lawyer, J.C. BECKER, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: \_\_\_\_\_

1.2 The state has moved for dismissal of count(s) \_\_\_\_\_

**II. FINDINGS**

Based on the testimony heard statements by defendant and/or victims, argument of counsel, the presentence report(s) and case record to date, and there being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on (date): 3-21-97 by plea of:

Count No.: I Crime: MURDER IN THE SECOND DEGREE  
RCW 9A.32.050 1 B Crime Code 00146  
Date of Crime 10-26-96 Incident No. \_\_\_\_\_

Count No.: II Crime: ASSAULT IN THE SECOND DEGREE  
RCW 9A.36.021 1 C Crime Code 01020  
Date of Crime 10-26-96 Incident No. \_\_\_\_\_

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
RCW \_\_\_\_\_ Crime Code \_\_\_\_\_  
Date of Crime \_\_\_\_\_ Incident No. \_\_\_\_\_

Additional current offenses are attached in Appendix A.

**SPECIAL VERDICT/FINDING(S):**

- (a)  A special verdict/finding for being armed with a **Firearm** was rendered on Count(s): \_\_\_\_\_
- (b)  A special verdict/finding for being armed with a **Deadly Weapon** other than a **Firearm** was rendered on Count(s): \_\_\_\_\_
- (c)  A special verdict finding was rendered that the defendant committed the crimes(s) with a **sexual motivation** in Count(s): \_\_\_\_\_
- (d)  A special verdict/finding was rendered for **Violation of the Uniform Controlled Substances Act** offense taking place  in a school zone  in a school  on a school bus  in a school bus route stop zone  in a public park  in public transit vehicle  in a public transit stop shelter in Count(s): \_\_\_\_\_
- (e)  **Vehicular Homicide**  **Violent Offense (D.W.I. and/or reckless)** or  **Nonviolent (disregard safety of others)**
- (f)  Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score (RCW 9.94A.400(1), a) are: \_\_\_\_\_

2.2 OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): \_\_\_\_\_

*Opportunity D*

*M. S. King*  
*STNY*

2.3 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	Cause Number	Location
(a)				
(b)				
(c)				
(d)				

- Additional criminal history is attached in Appendix B.
- Prior convictions (offenses committed before July 1, 1986) served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)(c)): \_\_\_\_\_
- One point added for offense(s) committed while under community placement for count(s) \_\_\_\_\_

2.4 SENTENCING DATA:

SENTENCING DATA	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENT	TOTAL STANDARD RANGE	MAXIMUM TERM
Count I	2	XIII			144 TO 192 MONTHS	LIFE AND/OR \$50,000
Count II	2	IV			12+ TO 14 MONTHS	10 YRS AND/OR \$20,000
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE:

- Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) \_\_\_\_\_ Findings of Fact and Conclusions of Law are attached in Appendix D. The State  did  did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.  
 The Court DISMISSES Count(s) \_\_\_\_\_

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
  - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.142(2), sets forth those circumstances in attached Appendix E.
  - Restitution to be determined at future hearing on (Date) \_\_\_\_\_ at \_\_\_\_\_ m.  Date to be set. **WITHIN 90 DAYS**
  - Defendant waives presence at future restitution hearing(s).
- Defendant shall pay Victim Penalty Assessments pursuant to RCW 7.68.035 in the amount of \$100 if all crime(s) date prior to 6-6-96 and \$500 if any crime date in the Judgment is after 6-5-96.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a)  \$ \_\_\_\_\_ Court costs;  Court costs are waived;
- (b)  \$ \_\_\_\_\_, Recoupment for attorney's fees to King County Public Defense Programs, 2015 Smith Tower, Seattle, WA 98104;  Recoupment is waived (RCW 10.01.160);
- (c)  \$ \_\_\_\_\_, Fine;  \$1,000, Fine for VUCSA;  \$2,000, Fine for subsequent VUCSA;  VUCSA fine waived (RCW 69.50.430);
- (d)  \$ \_\_\_\_\_, King County Interlocal Drug Fund;  Drug Fund payment is waived;
- (e)  \$ \_\_\_\_\_, State Crime Laboratory Fee;  Laboratory fee waived (RCW 43.43.690);
- (f)  \$ \_\_\_\_\_, Incarceration costs;  Incarceration costs waived (9.94A.145(2));
- (g)  \$ \_\_\_\_\_, Other cost for: **TRUST FEES AND INTEREST ARE WAIVED**

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ \_\_\_\_\_. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:  
 Not less than \$ \_\_\_\_\_ per month;  On a schedule established by the defendant's Community Corrections Officer.  \_\_\_\_\_ The Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from date of sentence or release from confinement to assure payment of financial obligations.

*Appendix D*

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing:  Immediately;  (Date): \_\_\_\_\_ by \_\_\_\_\_ m.

180 months on Count I \_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_  
14 months on Count II \_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_

ENHANCEMENT time due to special deadly weapon/firearm finding of \_\_\_\_\_ months is included for Counts \_\_\_\_\_

The terms in Count(s) I & II are concurrent consecutive.  
The sentence herein shall run concurrently/consecutively with the sentence in cause number(s) \_\_\_\_\_ but consecutive to any other cause not referred to in this Judgment.

Credit is given for  183 days served  days as determined by the King County Jail solely for conviction under this cause number pursuant to RCW 9.94A.120(15). 204 days  
36 days

4.5  NO CONTACT: For the maximum term of \_\_\_\_\_ years, defendant shall have no contact with \_\_\_\_\_  
Violation of this no contact order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest; any assault or reckless endangerment that is a violation of this order is a felony.

4.6 BLOOD TESTING: (sex offense, violent offense, prostitution offense, drug offense associated with the use of hypodermic needles) Appendix G is a blood testing and counseling order that is part of and incorporated by reference into this Judgment and Sentence.

4.7 COMMUNITY PLACEMENT, RCW 9.94A.120(9): Community Placement is ordered for any of the following eligible offenses: any "sex offense", any "serious violent offense", second degree assault, any offense with a deadly weapon finding, any CH 69.50 or 69.52 RCW offense, for the maximum period of time authorized by law. All standard and mandatory statutory conditions of community placement are ordered.  
 Appendix H (for additional nonmandatory conditions) is attached and incorporated herein.

4.8  WORK ETHIC CAMP: The court finds that the defendant is eligible for work ethic camp and is likely to qualify under RCW 9.94A.137 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the Department shall convert the period of work ethic camp confinement at a rate of one day of work ethic camp to three days of total standard confinement and the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.120(9)(b).  
 Appendix K for additional special conditions, RCW 9.94A.120(9)(c), is attached and incorporated herein.

4.9  SEX OFFENDER REGISTRATION (sex offender crime conviction): Appendix J is attached and incorporated by reference into this Judgment and Sentence.

4.10  ARMED CRIME COMPLIANCE, RCW 9.94A.103,105. The state's plea/sentencing agreement is  attached  as follows:

\_\_\_\_\_  
The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: MAY 16<sup>th</sup> 1997

Judge [Signature]  
Print Name: MICHAEL B. SPEARMAN

Presented by: [Signature]  
Deputy Prosecuting Attorney, Office: WSB.A D #91002  
Print Name: D. WILLIAMS MILLER  
\*25454

Approved as to form: [Signature]  
Attorney for Defendant, WSB.A # 14350  
Print Name: BECKER

Appendix D

FINGERPRINTS



RIGHT HAND  
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: Johnny Nav  
DEFENDANT'S ADDRESS: 708

JOHNNY NAV

DATED: MAY 16 1997

ATTESTED BY:  
M. JANICE MICHELS, SUPERIOR COURT CLERK

[Signature]  
JUDGE, KING COUNTY SUPERIOR COURT

BY: Marion Ravinec  
DEPUTY CLERK

MICHAEL S. SPEARMAN

CERTIFICATE

OFFENDER IDENTIFICATION

I, \_\_\_\_\_,  
CLERK OF THIS COURT, CERTIFY THAT  
THE ABOVE IS A TRUE COPY OF THE  
JUDGEMENT AND SENTENCE IN THIS  
ACTION ON RECORD IN MY OFFICE.

S.I.D. NO.  
DATE OF BIRTH: DECEMBER 29, 1979  
SEX: M  
RACE: ASIAN

DATED: \_\_\_\_\_

CLERK

BY: \_\_\_\_\_  
DEPUTY CLERK

[Handwritten signature]



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

**DENIAL OF DISCLOSURE OF PUBLIC RECORDS**

7/23/04

DATE

ADDRESS

PERSON REQUESTING DISCLOSURE

1. TO: JOHNNY NAV  
DOC/763455

Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

2. YOUR REQUEST FOR DISCLOSURE OF THE RECORDS IDENTIFIED BELOW HAS BEEN DENIED TO THE EXTENT AND FOR THE REASON(S) SET FORTH BELOW.

DOCUMENT: MARKED PAGE OF APPENDIX H TO KING COUNTY CAUSE NO. 96-1-07541-4

RCW 43.17.310 (e) INFORMATION REVEALING THE IDENTITY OF PERSONS WHO ARE WITNESSES TO OR VICTIMS OF CRIME OR WHO FILE COMPLAINTS WITH INVESTIGATIVE, LAW ENFORCEMENT, OR PENOLOGY AGENCIES, OTHER THAN THE PUBLIC DISCLOSURE COMMISSION, IF DISCLOSURE WOULD ENDANGER ANY PERSON'S LIFE, PHYSICAL SAFETY OR PROPERTY:

PARTIAL-DISCLOSURE :

3. NAME  
DECIDED BY: Molly Stallard

TITLE  
Correctional Records Specialist

4. YOU MAY APPEAL THIS DECISION TO KAY WILSON-KIRBY BY COMPLETING THE APPEAL SECTION OF THIS FORM, AND MAILING THIS ENTIRE FORM, AND ANY ATTACHMENTS THERETO, TO THE ADDRESS SHOWN ON LINE 5.

5. TO: TITLE  
KAY WILSON-KIRBY PDA

ADDRESS  
OFFICE OF CORRECTIONAL OPERATIONS  
410 WEST 5<sup>th</sup>, PO BOX 41100  
OLYMPIA, WA 98504-1100

6. APPEAL

I APPEAL THE ABOVE DECISION DENYING DISCLOSURE. IT IS INCORRECT BECAUSE:

7. SIGNATURE OF PERSON MAKING APPEAL

DATE

*Appendix D*

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON )

Plaintiff, )

No. 96-1-07541-4 SEA

v. )

APPENDIX H

NAV, Johnny )

COMMUNITY PLACEMENT

Defendant, )

The Court having found the defendant guilty of offense(s) qualifying for community placement, it is further ordered as set forth below.

4.5 Community Placement: Defendant additionally is sentenced on convictions herein, for each sex offense and serious violent offense committed on or after 1 July 1990 to community placement for two years or up to the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2) whichever is longer and on conviction herein for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community placement.

Community placement is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

(a) Defendant shall comply with the following conditions during the term of community placement:

- (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) While in community custody not unlawfully possess controlled substances;
(5) Pay community placement fees as determined by the Department of Corrections;
(6) Receive prior approval for living arrangements and residence location; and
(7) Do not own, use or possess firearms or ammunitions.

The following conditions listed under 4.5(a) are hereby waived by the court:

(b) Defendant shall comply with the following other conditions during the term of community placement:

1. Do not purchase, possess, control or use any deadly weapon and submit to reasonable searches of your person, residence, property and vehicle by the Community Corrections Officer to monitor compliance, based upon well-founded suspicion.

2. Do not have direct or indirect contact with

SPECIAL SENTENCE REQUIREMENTS

3. Obtain a written substance abuse evaluation from a qualified provider and complete all treatment recommendations as approved and directed by the Community Corrections officer.

PARTIAL DISCLOSURE

page 1

Apple & D.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON )

Plaintiff, )

No. 96-1-07541-4 SEA

v. )

continued

APPENDIX H

NAV, Johnny )

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(4) While in community custody not unlawfully possess controlled substances;
(5) Pay community placement fees as determined by the Department of Corrections;
(6) Receive prior approval for living arrangements and residence location; and
(7) Do not own, use or possess firearms or ammunitions.

The following conditions listed under 4.5(a) are hereby waived by the court:

(b) Defendant shall comply with the following other conditions during the term of community placement:

- 4. Report to the Department of Corrections and successfully complete the Victim Awareness Education Program (VAEP), as directed by the Community Corrections Officer.

Date:

5/16/97

JUDGE, KING COUNTY SUPERIOR COURT

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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IN RE THE PERSONAL RESTRAINT PETITION	)	
OF JOHNNY NAV	)	
	)	
PETITIONER,	)	
	)	
v.	)	COA NO. 55488-3-1
	)	
STATE OF WASHINGTON,	)	
	)	
RESPONDENT.	)	

---

**DECLARATION OF SERVICE**

I, MARIA RILEY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

ON THE 29<sup>TH</sup> DAY OF JULY, 2005, I CAUSED A TRUE AND CORRECT COPY OF THE **PETITIONER'S SUPPLEMENTAL BRIEF** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] JIM WHISMAN, DPA  
KING COUNTY PROSECUTOR'S OFFICE  
APPELLATE DIVISION  
KING COUNTY COURTHOUSE, W-554  
516 THIRD AVENUE  
SEATTLE, WA 98104

[X] SUZANNE LEE ELLIOTT  
ATTORNEY AT LAW  
STE 1300 HOGE BLDG  
705 2ND AVE  
SEATTLE WA 98104-1741

[X] JOHNNY NAV  
DOC# 763455  
STAFFORD CREEK CC  
191 CONSTANTINE WAY  
ABERDEEN, WA 98520

2005 JUL 29 PM 4:38  
FILED  
MARIA RILEY

SIGNED IN SEATTLE, WASHINGTON THIS 29<sup>TH</sup> DAY OF JULY, 2005.

x \_\_\_\_\_ 