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53250-2

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COA No. 53250-2-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION 1

FILED
2005 FEB 25 AM 10:47
CLERK OF COURT

IN RE PERSONAL RESTRAINT)
OF)
)
)
JACOB BOWMAN,)
)
)
PETITIONER.)
_____)

RESPONSE TO PERSONAL
RESTRAINT PETITION

1. IDENTITY OF MOVING PARTY

Respondent, State of Washington, by and through deputy prosecuting attorney Kimberly Thulin seeks the relief below.

2. STATEMENT OF RELIEF SOUGHT

Petitioner Jacob Bowman's collateral attack must be dismissed as untimely. He was convicted of murder in the second degree predicated on drive by shooting. Drive by shooting supports a conviction for second degree felony murder. 9A.32.050(1)(b), 9A.36.045. Thus, In re PRP of Andress, 147 Wn.2d 602, 56 P.3d 981 (2002), is not material Bowman's case and does not therefore, provide a basis for filing this untimely collateral attack. Bowman's petition should be procedurally barred.

3. FACTS RELEVANT TO MOTION

On July 3, 1997, Appellant Jacob Bowman fired a gun out the window of a moving car. One of the bullets struck and killed 18 year-old Raymond Hunter. Exhibit A (affidavit of probable cause).

On July 9, 1997, the State charged Bowman with first-degree murder, RCW 9A.32.030(1)(b). Exhibit B, (first information). On April 30, 1998, Bowman pleaded guilty to an amended information charging him with second degree felony murder predicated on drive by shooting, RCW 9.94A.310(3)(a); RCW 9A.32.050(1)(b). Exhibit C, D (first amended information, guilty plea). The court sentenced Bowman to 280 months in prison (220 months on the underlying murder, plus an additional 60 months on the firearm enhancement). See Bowman PRP, judgment and sentence dated May 28th, 1998. Bowman's Judgment and sentence for murder in the second degree was entered May 18th, 1998.

4. GROUND FOR RELIEF AND ARGUMENT

RCW 10.73.090 bars the filing of a collateral attack more than one year after judgment is final. An exception exists for

significant changes in the law that are material to the conviction.
RCW 10.73.100(6).

In the case of In re PRP of Andress, 147 Wn.2d 602, 56 P.3d 981 (2002), the Washington Supreme court held that felony murder predicated on assault was not a crime in the State of Washington. In the recent case of In re PRP of Hinton, No. 73504-2, 2004 WL 2609069 (Wash. Nov. 18, 2004), the Supreme Court held that the Andress decision applies to all felony murder convictions obtained under the version of RCW 9A.32.050(1)(b), if assault in the second degree was the predicate felony.

But Petitioner's conviction for felony murder under RCW 9A.32.050(1)(b) was predicated on drive by shooting. The Andress court did not hold that drive by shooting cannot serve as a predicate for felony murder. Felony murder based on drive by shooting was and is a valid offense under Washington law. By the terms of Bowman's own petition, he acknowledges Andress is not material to his conviction but nonetheless asks this court to consider extending Andress to all felony murders predicated on drive by shooting. See PRP at 4. Since Andress is not a material change in the law that effects Bowman's conviction, this claim is time-barred and this PRP must be dismissed. RCW 10.73.100(6)

Petitioner argues that drive by shooting cannot be a predicate offense for felony murder because, as with the predicate of assault, it does not make sense to punish as murder a death caused "in furtherance of" drive by shooting where, according to the Bowman, the conduct constituting the drive by shooting and the homicide are the same. PRP at 6 (citing In re PRP of Andress, supra). He further argues that the legislature could not have intended to hold him liable for murder when the mens rea of drive by shooting is based on reckless conduct.

In State v. Daniels, ___ Wn. App. ___, 2004 WL 2943988 (Wash.App.Div.2, Dec. 21, 2004), a defendant similarly challenged his conviction for felony murder predicated on criminal mistreatment pursuant to Andress. Daniels argued that criminal mistreatment, like assault, is not independent of homicide and therefore criminal mistreatment may not serve as a predicate offense to the murder for purposes of a felony murder prosecution. The Court rejected this argument and refused to extend Andress. Rather the court held that because it is possible to commit murder without committing criminal mistreatment, the two crimes are independent of each other. Daniels, at 5. Accordingly, the Court held that criminal

mistreatment could serve as a predicate to felony murder in the second degree. Id.

As in Daniels, drive by shooting and murder are independent crimes; it is possible to commit murder without committing drive by shooting. Thus, where one commits drive by shooting and in the course or furtherance of this felony causes the death of another, such conduct satisfies the elements of the felony murder prong of second degree murder and the perpetrator may properly be charged with second degree murder. RCW 9A.32.050(1)(b), RCW 9A.36.045.

Andress was a novel interpretation of Washington law – an interpretation that should not be extended to other crimes without compelling justification.¹ In Andress, a majority of the Washington Supreme Court held that the legislature could not have meant assault to be a predicate crime because it is “nonsensical” to say that an assault is a part of the res gestae of the murder when the assault and the murder are based on the same act. Andress, at 610. But immediately following the Andress decision, the

¹ As this Court recently observed in a different context, “[f]or the Court to abandon an unbroken line of precedent on a question of statutory construction after more than 25 years is highly unusual...” State v. Medina, ___ Wn. App. ___, 101 P.3d 872, 877 (2004).

Legislature, in a nearly unanimous vote, restored assault in the second degree as a predicate offense for felony murder. The Legislature emphatically disagreed with the Supreme Court's reasoning:

The legislature finds that the 1975 legislature clearly and unambiguously stated that any felony, including assault, can be a predicate offense for felony murder. The intent was evident: Punish, under the applicable murder statutes, those who commit a homicide in the course and in furtherance of a felony. This legislature reaffirms that original intent and further intends to honor and reinforce the court's decisions over the past twenty-eight years interpreting 'in furtherance of' as requiring the death to be sufficiently close in time and proximity to the predicate felony. The legislature does not agree with or accept the court's findings of legislative intent in *State v. Andress, Docket No. 71170-4 (October 24, 2002)*, and reasserts that assault has always been and still remains a predicate offense for felony murder in the second degree. To prevent a miscarriage of the legislature's original intent, the legislature finds in light of *State v. Andress, Docket No. 71170-4 (October 24, 2002)*, that it is necessary to amend RCW 9A.32.050. This amendment is intended to be curative in nature. The legislature urges the supreme court to apply this interpretation retroactively to July 1, 1976."

Laws of 2003, Ch. 3, §. 1. The provision took effect immediately after approval by the Governor. Laws of 2003, Ch. 3, § 3. Clearly, the legislature believes that it is sensible to punish defendants for murder where they commit a felony assault and a person dies as a result. There is no reason to think the legislature intends a different rule for drive by shooting. Accordingly, there is no reason to

believe that the Legislature intended to exclude drive by shooting from the phrase “any felony” in RCW 9A.32.050(1)(b). The Andress decision does not control the result in this case, and it’s reasoning should not be extended beyond its narrow holding.

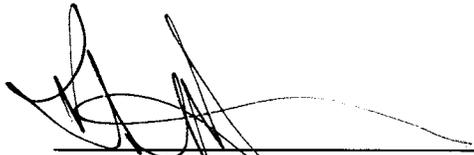
Finally, felony murder based on drive by shooting is easily distinguished from manslaughter. Drive by shooting requires a person to recklessly discharge a firearm in a manner which creates substantial risk or death or serious physical injury to another person and the discharge is either from a vehicle or immediate area of the vehicle used to transport the shooter RCW 9A.36.045. Although drive by shooting contains an element of recklessness, it is hardly equivalent to general manslaughter, which simply requires proof of recklessness causing death. See RCW 9A.32.060 (Manslaughter in the first degree). It was eminently reasonable for the legislature to punish as murder a death caused by and in the course of the felony of drive by shooting. “Any felony” in RCW 9A.32.050 reasonably includes the felony of drive by shooting.

5. CONCLUSION

Jacob Bowman was convicted of felony murder based on drive by shooting, a proper charge under Washington law. Given the legislatures clear intend to include any felony within the

parameters of the felony murder in the second degree, this court should decline Bowman's request to extend the reasoning and limited holding of Andress to felony murder predicated on drive by shooting. In re PRP of Andress does not invalidate that charge and is not material to Bowman's conviction Thus, Bowman's petition is time-bared, and must be dismissed.

Respectfully submitted this 24th day of February, 2005.



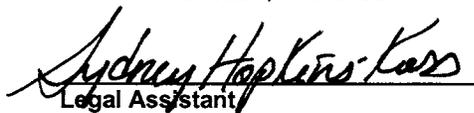
KIMBERLY THULIN, WSBA #21210
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

CERTIFICATE

I certify that on this date I placed in the mail with proper postage thereon, or caused to be delivered, a true and correct copy of the document to which this certificate is attached, to this Court and pro se petitioner, addressed as follows:

JACOB BOWMAN
DOC No. 781542
Washington Correction Center
IMU-B-210
P.O. Box 900
Shelton, WA 98584

FILED
2005 FEB 25 AM 10:47
CLERK OF COURT
#1


Legal Assistant


Date

EXHIBIT A

FILE
COUNTY CLERK
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY AM 11 18

1
2
3
4 THE STATE OF WASHINGTON,)

5)
6 Plaintiff,)

7)
8 v.)

9)
10 JACOB DANIEL BOWMAN,)

11)
12)
13 Defendant.)
14

WHATCOM COUNTY
No. 97-1-00572-1

AFFIDAVIT FOR PROBABLE
CAUSE DETERMINATION

15
16 DAVID S. McEACHRAN, being first duly sworn on oath, deposes
17 and says: that he is the Prosecuting Attorney in and for Whatcom County, State of
18 Washington. The following information was received from the Whatcom County
19 Sheriff's Office. Your affiant believes that this information establishes probable
20 cause for the detention of **Jacob Daniel Bowman**.

21 On the 3rd day of July, 1997 at approximately 2:37 A.M. officers of the Bel-
22 lingham Police Department were dispatched to 1700 Alabama apartment #1 on the
23 report of a shooting at that location. Sergeant Ramsey and Officer Scott Snider
24 arrived at the residence and were directed inside by a number of people. Officer
25 Snider observed Raymond Hunter laying on the floor of the living room with a
26 pool of blood around his head. He did not appear to be breathing at that time. Peo-
27 ple in the apartment were directed outside and the aid personnel arrived and started
28 to treat Raymond Hunter. The officers noticed several bullet holes in the walls of
29 the room and in a window.

30 Officer Snider contacted Patrick Allen, an eighteen year old male. He stated
31 that he, Whitney Harmon and Raymond Hunter were in the living room when he
32 heard approximately four shots. After he heard the shots he looked over and could
33 see that Raymond Hunter had been shot in the head. David Budde was also in the

1 penetrated the building.

2 Officer Monson attempted to obtain a track with Police Dog Major, but due
3 to the people in the area was not able to find a scent. From the witnesses state-
4 ments officers believed that the shooter had been in a vehicle and had left the
5 scene driving in a northerly direction.

6 Additional officers were called to the scene to interview witnesses and
7 neighbors and follow any investigative leads. Detective Rusty Miller was sent to
8 251 Pullman Court in Lynden at approximately 7:30 a.m., to watch the residence
9 at that location and see if Ian McKnight was present. Due to the problems that Mr.
10 McKnight had had with Todd Hamilton he was believed to be a suspect in this
11 shooting. Detective Miller observed Jacob Bowman, Victoria Walker and Vibol
12 Lieu outside the residence, speaking to a person in a Camaro when he arrived.
13 Detective Miller took a position approximately a block away and conducted sur-
14 veillance. Approximately 45 minutes later the Camaro left and Detective Miller
15 followed it for a short distance. He then returned to the residence and observed
16 Bowman, Walker and Lieu getting into a black Geo Storm automobile. Mr. Bow-
17 man was carrying a green canvas bag. The three people got into the car and left the
18 area. The car returned shortly after this and then left again. Detective Miller started
19 following the Geo Storm and observed a silver Thunderbird come up behind the
20 GEO and start chasing it. The cars went to the Guide Meridian where they headed
21 south and were driving at speeds up to 85 miles per hour. Detective Miller radioed
22 the location of the cars and other officers with marked patrol units responded. At
23 the 4200 block of the Guide Meridian marked patrol units stopped the GEO Storm.
24 When the car stopped, a passenger later identified as Ian McKnight, got out of the
25 car and was ordered back in by Officer Johnson. When the passenger got back
26 inside, the car sped off again and the officers pursued the vehicle with their emer-
27 gency lights on. The GEO went to the 3900 block of Meridian Street and braked
28 hard and slid into the curb. Once again the officers tried to talk the people out of
29 the car. At this time a male, later identified as Jacob Bowman got out of the vehi-

1 cle with a gun in his hand and ran from the officers. He was pursued by Detectives
2 Miller and Jensen. He disappeared around a building and went into a bushy area.
3 He reappeared and was stopped by Detective Miller and Jensen. He was unarmed
4 at this time. Detective Jensen went to the bushy area where Mr. Bowman had been
5 and found fresh footprints and located a black assault type rifle on the ground.
6 This was identified as a 9mm Marlin, Model M-9 rifle.

7 Mr. Bowman was handcuffed and a pat down search discovered a empty
8 9mm shell casing in his right front pocket. Mr. Bowman was advised of his rights
9 and asked to have an attorney present before speaking to the officers.

10 Detective Claudia Murphy later contacted Ian McKnight and spoke to him
11 about what had occurred earlier that morning. Mr. McKnight was not candid with
12 Detective Murphy at first and indicated that he knew nothing about the shooting of
13 the apartment at 1700 Alabama. He later indicated that he had been at his house
14 with Victoria Walker, Jacob Bowman, and Vibol Lieu. He said that he had fallen
15 asleep and the others were still in the room. He woke up at 2:00 a.m. and noticed
16 that Jacob Bowman was gone and that Victoria's keys were not on the table where
17 they had been earlier. He thought that Bowman had taken her car and had gone for
18 a ride. He went back to sleep and received a telephone call a short time later from
19 Bowman. Bowman stated that he had "just put some work in," and that that there
20 were a lot of 5-0- around." The 5-0 designation referred to police officers. Bow-
21 man came back to McKnight's house at approximately 3:30 a.m. and spoke to
22 McKnight. McKnight stated that Bowman was not speaking openly since Victoria
23 Walker was present, but he indicated that Mike Smart's apartment just got shot up.
24 They talked for a few hours and then all four people left McKnight's house. Bow-
25 man picked up a green bag that he brought into the car with him. Bowman told
26 them to drive past Alabama Street and they saw police cars and a van. Bowman
27 reportedly made the comment that it looked like someone had been shot. McK-
28 night stated that Bowman had a smirk on his face and appeared to be bragging.
29 They then drove to the Lynden area and went to Vibol Lieu's house.

1 Mr. McKnight stated that when they were at Lieu's house Donny Smart
2 drove there with a number of friends. He told Bowman, Lieu and Walker that
3 Mike Smart's house had been shot up and one of the people inside had been hit in
4 the back and in the head. Shortly after talking to these people, Walker, McKnight,
5 Lieu and Bowman got into the Geo and left to come to Bellingham.

6 During the drive to Bellingham McKnight said that a Thunderbird driven by
7 Mike Smart started to chase them. The Thunderbird disappeared and they were
8 then stopped by police officers.

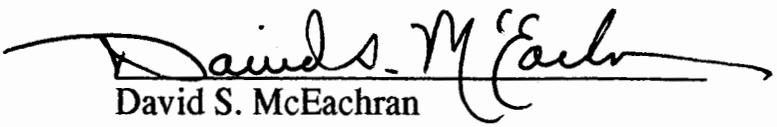
9 McKnight stated that during the early morning hours after the shooting,
10 Bowman told him that, "I got them, that will teach them." Bowman also told him
11 that he had used duct tape to cover his license plate during the shooting.

12 McKnight indicated that Jacob Bowman had been seeking acceptance from
13 the Piru gang for a long time and had been told that he needed to put in some work
14 to get respect. He felt that Bowman was trying to earn his "stripes" and was look-
15 ing for a way to do it. The situation of Hamilton and Smart beating McKnight up,
16 who was respected by the Piru's, gave him the opportunity to gain respect by
17 shooting up Smart's house.

18 The shell casings that were found at the scene of this shooting and the gun
19 taken at the time of Bowman's arrest and the 9mm shell casing found on his per-
20 son were given to Forensic Scientist Evan Thompson of the Washington State
21 Crime Lab. He examined the casings and determined that the casings found at the
22 crime scene had been fired by the gun that was taken from the possession of Jacob
23 Bowman. He also determined that the shell casing taken from Mr. Bowman's
24 pants pocket had also been fired by the 9mm gun that was taken from his posses-
25 sion.

26 All of these acts occurred in Whatcom County, Washington.
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David S. McEachran
Prosecuting Attorney
Wash. Bar # 2496

SUBSCRIBED AND SWORN to before me this 9th day of July, 1997.


NOTARY PUBLIC in and for the State
of Washington, residing at Bellingham.
My commission expires: 01-09-98

EXHIBIT B

FILED
COUNTY CLERK
JUL 9 AM 11 18
[Signature]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,	)	No. 97-1-00572-1
)	
Plaintiff,)	
	)	INFORMATION FOR:
vs.)	
)	
JACOB DANIEL BOWMAN,	)	MURDER IN THE 1ST DEGREE,
	)	ONE COUNT
Defendant.)	
)	
)	
)	

I, DAVID S. McEACHRAN, Prosecuting Attorney in and for the County of Whatcom, State of Washington, come now in the name and by the authority of the State of Washington, and by this information do accuse JACOB DANIEL BOWMAN with the crime of MURDER IN THE 1ST DEGREE, ONE COUNT committed as follows:

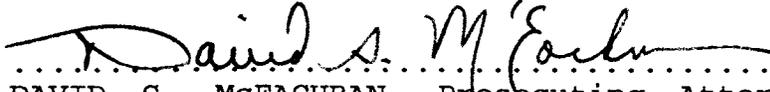
then and there being in Whatcom County, Washington,

MURDER IN THE 1ST DEGREE, ONE COUNT: That the defendant, JACOB DANIEL BOWMAN, then and there being in said county and state, on or about the 3rd day of July, 1997, under circumstances manifesting an extreme indifference to human life, did engage in conduct, to-wit: did shoot through the walls and windows of Apt. #1 located at 1700 Alabama Street, the city of Bellingham, said county and state, with a firearm, which created a grave risk of death to a person, thereby causing the death of Raymond Hunter, a human being, in violation of RCW 9A.32.030(1)(b), which violation is a Class A Felony;



contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Washington.

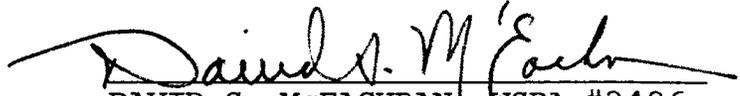
DATED this 9th day of July, 1997.



.....
DAVID S. MCEACHRAN, Prosecuting Attorney in and for Whatcom County, State of Washington.

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss.

I, DAVID S. MCEACHRAN, being first duly sworn on oath, depose and say: that I am a duly elected and acting Prosecuting Attorney in and for Whatcom County, State of Washington, I have read the foregoing information, know the contents thereof and the same is true as I verily believe.



DAVID S. MCEACHRAN, WSBA #2496
Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 9th day of July, 1997.


NOTARY PUBLIC in and for the State of Washington, residing at Bellingham. My Commission Expires on January 9, 1998.

EXHIBIT C

FILED IN OPEN COURT

4-30 1998

WHATCOM COUNTY CLERK

By [Signature] Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,	)	No. 97-1-00572-1
)	
Plaintiff,	)	FIRST AMENDED
	)	INFORMATION FOR:
vs.)	
)	
JACOB DANIEL BOWMAN,	)	MURDER IN THE SECOND DEGREE
)	
Defendant.)	

I, DAVID S. McEACHRAN, Prosecuting Attorney in and for the County of Whatcom, State of Washington, come now in the name and by the authority of the State of Washington, and by this first amended information do accuse JACOB DANIEL BOWMAN with the crime of MURDER IN THE SECOND DEGREE committed as follows:

then and there being in Whatcom County, Washington,

MURDER IN THE SECOND DEGREE: That the defendant, JACOB DANIEL BOWMAN, then and there being in said county and state, on or about the 3rd day of July, 1997, while committing or attempting to commit the crime of Drive-By Shooting, and in the course of and furtherance of said crime and immediate flight from said crime, JACOB DANIEL BOWMAN shot Raymond Hunter, a human being, thereby causing the death of Raymond Hunter, not a participant in such crime, in violation of RCW 9A.32.050(1)(b), said defendant then and there being armed with a firearm, in violation of RCW 9.94A.310(3)(a), which violation is a Class "A" Felony;

contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Washington.

A1

DATED this 30th day of April, 1998.

David S. McEachran

.....
DAVID S. MCEACHRAN, Prosecuting Attorney in and for Whatcom
County, State of Washington.

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss.

I, DAVID S. MCEACHRAN, being first duly sworn on oath,
depose and say: that I am a duly elected and acting Prosecuting
Attorney in and for Whatcom County, State of Washington, I have
read the foregoing information, know the contents thereof and
the same is true as I verily believe.

David S. McEachran
DAVID S. MCEACHRAN WSBA #2496
Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 30th day of
April, 1998.

Roni E. Whitford
NOTARY PUBLIC in and for the
State of Washington, residing
at Bellingham. My Commission
Expires on May 9, 2001.

EXHIBIT D

ORIGINAL

FILED IN OPEN COURT
4.30 19 98
WHATCOM COUNTY CLERK

By [Signature]
Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,)	
)	
Plaintiff,	)	No. 97-1-00572-1
)	
v.)	
)	
JACOB DANIEL BOWMAN,	)	STATEMENT OF DEFENDANT
	)	ON PLEA OF GUILTY
)	
Defendant.)	

1. My true name is JACOB DANIEL BOWMAN.

2. My age is 17.

3. I went through the 8th 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 RICHARD C. KIMBERLY.

(b) I am charged with the crime of MURDER IN THE SECOND DEGREE.

The elements of this crime are:

MURDER IN THE SECOND DEGREE: That the defendant, JACOB DANIEL BOWMAN, then and there being in said county and state, on or about the 3rd day of July, 1997, while committing or attempting to commit the crime of Drive-By Shooting, and in the course of and furtherance of said crime and immediate flight from said crime, JACOB DANIEL BOWMAN shot Raymond Hunter, a human being, thereby causing the death of Raymond Hunter, not a participant in such crime, in violation of RCW 9A.32.050(1)(b), said defendant then and there being armed with a firearm, in violation of RCW 9.94A.310(3)(a), which violation is a Class "A" Felony.

AJ

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;

(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) I am 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, I UNDERSTAND THAT:

(a)(i) The crime with which I am charged carries a maximum sentence of LIFE imprisonment and a \$50,000.00 fine. The standard sentence range is from ONE HUNDRED TWENTY-THREE (123) months to TWO HUNDRED TWENTY (220) months confinement plus SIXTY (60) months for the firearm clause for a total of ONE HUNDRED EIGHTY-THREE (183) months to TWO HUNDRED EIGHTY (280) months confinement, based on the prosecuting attorney's understanding of my criminal history.

(a)(ii) This offense is a most serious offense as defined by RCW 9.94A.030(21), and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. (If not applicable, this sentence should be stricken and initialed by the defendant and the judge.) *J.B.*

(b) 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 also includes 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 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 set out below. 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.

CRIMINAL HISTORY: NO FELONY HISTORY OF WHICH WE ARE AWARE.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation 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 recommendations increase, and even though a mandatory sentence of life imprisonment without the possibility of parole is required by law.

(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 damage 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:

One Hundred Eighty (180) Months plus Sixty (60) Months for the firearms Clause for a total of Two Hundred Forty (240) Months confinement at the Department of Corrections; Community Placement - 2 years; Restitution in an amount to be determined; Court Costs in the amount of \$110.00; Victim Fund assessment in the amount of \$500.00; That the defendant shall have no firearms in his possession; That the defendant shall follow all of the conditions set by his Community Corrections Officer; That the defendant shall cooperate fully with the Bellingham Police Department and the Whatcom County Prosecutor's Office in the investigation of all of the events leading to the shooting death of Raymond Hunter, the events immediately after this shooting until defendant's arrest, and the involvement of any other persons in the planning, execution, and covering up of this act; That the defendant shall make a full and truthful statement to Detectives of the Bellingham Police Department and to the Whatcom County Prosecutor's Office concerning all of the events leading to the shooting death of Raymond Hunter, the events immediately after this shooting until defendant's arrest, and the involvement of any other persons in the planning, execution, and covering up of this act; That this statement shall be made under oath; That the defendant shall submit to a polygraph test or tests given by officers of the Bellingham Police Department to verify his truthfulness and the completeness of the statement or statements that he makes concerning all of the events leading to the shooting death of Raymond Hunter, the events immediately after this shooting until defendant's arrest, and the involvement of any other persons in the planning, execution, and covering up of this act; That the defendant shall, if called as a witness, testify truthfully and fully concerning all of the events leading to the shooting death of Raymond Hunter, the events immediately after this shooting until defendant's arrest, and the involvement of any other persons in the planning, execution, and covering up of this act.

(g) The judge does not have to follow anyone's recommendation as to 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. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(a)(ii). (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.) JB _____

(i) I am being sentenced for two or more violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ will run consequently unless the judge finds substantial and compelling reasons to do otherwise. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.) JB _____

(j) In addition to confinement, the judge will sentence me to community placement for at least 1 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.) _____

(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 9.94A.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.) JB _____

(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.) JB _____

(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 deficiency (AIDS) virus. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.) JB

(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.) _____

7. I plead GUILTY to the crime of MURDER IN THE SECOND DEGREE as charged in the First Amended 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 crime. This is my statement: _____

I FIRED A WEAPON INTO AN
APARTMENT IN WHATCOM COUNTY,
DURING A DRIVE-BY SHOOTING, STRIKING
RAYMOND HUNTER AND CAUSING
HIS DEATH.

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

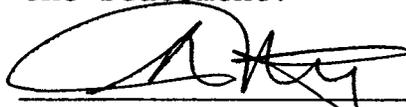


JACOB DANIEL BOWMAN
Defendant

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



DAVID S. MCEACHRAN
Prosecuting Attorney
WSBA #2496



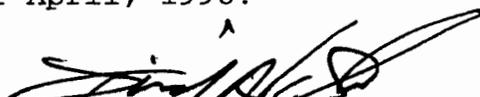
RICHARD C. KIMBERLY
Attorney for Defendant
WSBA#10666

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 appropriate 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 30th day of April, 1998.



JUDGE DAVID A. NICHOLS