

NOTE: This case was initiated by Spokane County Superior Court transferring Mr. Brockie's motion to vacate judgment and sentence to Division III of the Court of Appeals for treatment as a personal restraint petition. (See CrR 7.8) A copy of the order transferring and correspondence with the Court of Appeals regarding the transfer is attached to the back of this motion.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,	)	No. 02-1-00790-3.
Plaintiff,)	
)	
vs.	)	MOTION TO VACATE
	)	JUDGMENT AND SENTENCE
	)	(CrR 7.4; 7.5; 7.8)
)	
BENJAMIN B. BROCKIE,)	
Defendant,)	

I. RELIEF REQUESTED

COMES NOW, Benjamin Brockie, defendant pro se, asks this court to grant his Motion to Vacate his convictions for counts 4-22, and order a new trial, in which the jury will be instructed only on the charges that are alleged in the Information.

II. STATEMENT OF FACTS

On March 18, 2002, the Spokane County Prosecutor charged Benjamin Brockie with 3 counts of first degree robbery, 6 counts of first degree kidnapping (based on the commission of the robberies), 2 counts of threats to bomb, and 1 count of attempted first degree robbery. (See

accompanying Brockie Affidavit, Ex A (Dkt. 1)-
Information.)

The first degree robbery counts were charged pursuant
to the statute applicable to Brockie, former RCW
9A.56.200(1)(b):

"COUNT []: FIRST DEGREE ROBBERY, committed
as follows: That the defendant, Benjamin B.
Brockie, in the State of Washington, on or
about [], with intent to commit theft...
and in the commission of and immediate
flight therefrom, the defendant displayed
what appeared to be a firearm or other
deadly weapon."

Counts 1, 4, 9 (Emphasis added).

On November 22, 2002 the State amended the
information to include 11 additional counts of first
degree kidnapping: one count for every person present
during each charged robbery. Brockie Affidavit, Ex B
(Dkt. 33) Amended Information.

The first degree robbery charge under count 1 and
its corresponding kidnapping charges, counts 2 and 3, were
severed (and eventually dismissed). Dkt. 41 and 132. Trial
for the remaining charges, counts 4 through 23, began in
December, 2002. The jury was unable to reach a verdict, so
the trial court declared a mistrial. Dkt. 48.

After the mistrial, Brockie's attorney resigned. In
January, 2003, new counsel was appointed to represent
Brockie. Dkt. 55, 56.

In November, 2003, a new trial began. Id. at ¶5, Dkt. 76. Although the information was amended twice, both informations charged Brockie with first degree robbery based only on the allegation, that in the commission of the robbery, "he displayed what appeared to be a firearm or other deadly weapon"; former RCW 9A.56.200(1)(b), Dkts. 1 and 33.

Nevertheless, after both sides had rested, the jury was instructed by the trial court that either two means of first degree robbery could sustain a conviction for the robbery counts. Id. ¶5, Dkt. 81. The court instructed the jury on an uncharged means of committing first degree robbery as follows:

Instruction No. 8:

A person commits the crime of robbery in the first degree when in the commission of a robbery he or she is armed with a deadly weapon or displays what appears to be a firearm or other deadly weapon.

Brockie Declaration, ¶5, Ex C, RP 778 (Emphasis added).

¹ Under this RCW it states;

(1) A person is guilty of robbery in the first degree if in the commission of a robbery or of immediate flight therefrom, he/she:

...

(b) Displays what appears to be a firearm or other deadly weapon[.]

Former RCW 9A.56.200, Laws of 1975, 1st Ex. Sess., Ch.260.

Instructions 9 and 30:

To convict the defendant of the crime of robbery in the first degree in count [], each of the following elements must be proved beyond a reasonable doubt:

- (1) That on or about the [] day of [], 2002, the defendant unlawfully took personal property from the person or in the presence of [];
- (2) That the defendant intended to commit theft of the property;
- (3) That the taking was against the person's will by the defendant's use or threatened use of immediate force, violence or fear of injury to that person or property of another;
- (4) That the force or fear was used by the defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking;
- (5) That in the commission of these acts the defendant was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon.
- (6) That these acts occurred in the State of Washington.

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

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

Brockie Aff., ¶5, Ex C, RP 778-779, 786-788, (Emphasis

added).

The court also instructed the jury that to convict Mr. Brockie of first degree kidnapping, they had to find that he intentionally abducted each victim in the commission of these first degree robberies. See RCW 9A.40.020(b), jury instructions 20, 22, 24, 26, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51. RP 781-796.

The defense did not purpose these instructions, in fact, they were purposed by the State. Ex C, RP 770: 16-20.

The jury returned its verdict and found Brockie guilty of 2 counts of first degree robbery (based on the instructions given), 15 counts of first degree kidnapping (based on the robberies), and 2 threats to bomb. The jury's verdict did not specify under which alternative means the jury relied on to convict Brockie of the first degree robberies. Brockie Aff., ¶5, Dkts. 81-101.

III. ISSUES PRESENTED

Was the jury incorrectly instructed on an alternative means of committing first degree robbery that was not alleged in the Information? Did these uncharged uncharged convictions (the robberies) form the predicate offense in which all other convictions rest on?

IV. EVIDENCE RELIED UPON

Mr. Brockie refers to his accompanying Affidavit of Benjamin Brockie in Support; Dkt. 17 Information; Dkt. 33, Amended Information; Dkt. 81- Jury Instructions; and Report of the Proceedings (RP), 801, 802, 805-808, and the court file in this case.

V. LEGAL ARGUMENT

Instructional errors are errors of constitutional magnitude and may be challenged for the first time on review. RAP 2.5(a); CrR 7.4; CrR 7.5; CrR 7.8; State v. Davis, 141 Wn.2d 798, 866, 10 P.3d 977 (2000).

Under the U.S. Constitution, 6th Amend. and the Wash. Const, art. 1, §22, a criminal defendant must be informed of all charges he must face at trial and cannot be tried for a crime that has not been charged. State v. Vangerpen, 125 Wn.2d 782, 787, 888 P.2d 1122 (1995).

When a statute provides that a crime may be committed in alternative ways or by alternative means, the information may charge one or all of the alternatives, provided the alternatives are not repugnant to one another. State v. Bray, 52 Wn.App. 30, 34, 756 P.2d 1332 (1988). When the information charges only one of the alternatives, however, it is error to instruct the jury that they may consider other ways or means by which the crime could have

been committed, regardless of the range of evidence admitted at trial. Id. The manner of committing an offense is an element, and the defendant must be informed of this element in the information in order to prepare a proper defense. Id.

The defendant has a right to notice of all the crimes charged. Allowing the jury to consider uncharged alternative means violates the defendant's right to notice and is reversible error. State v. Doogan, 82 Wn.App. 185, 188, 917 P.2d (1996).

A. Brockie was Convicted in Counts 4 and 9 in Violation of his State and Federal Constitutional Right to Notice of the Charges Against him.

First degree robbery is an alternative means crime. State v. Nicholas, 55 Wn.App. 261, 272, 776 P.2d 1385 (1989). The first degree robbery statute provides the State with three alternatives:

(1) A person is guilty of robbery in the first degree if, in the commission of a robbery or of immediate flight therefrom, he:

- (a) Is armed with a deadly weapon; or
- (b) Displays what appears to be a firearm or other deadly weapon; or
- (c) Inflicts bodily injury.²

former RCW 9A.56.200(1)(a)-(c), (1975).

² "These alternative elements are separate means of committing the offense, but only those alternative(s) pled in the information... should be presented to the jury." Washington Pattern Jury Instructions, WPIC 37.02, pgs. 668, 669. (3rd Ed, 2008).

In the context of a first degree robbery, "armed..." and "displayed..." do not encompass the same meaning or actions. State v. Hauck, 33 Wn.App. 75, 77, 651 P.2d 1092 (1982).

Brockie was charged with first degree robbery pursuant to RCW 9A.56.200(1)(b); that he "displayed what appeared to be a firearm or other deadly weapon." The information only alleged one alternative means of committing first degree robbery. Therefore Brockie was only on notice that he was being charged with robbery pursuant to RCW 9A.56.200(1)(b).

The primary issue on review involves instruction 8, the "Definition Instruction," and 9 and 30, the "To Convict Instructions." These instructions set forth two statutory means of committing first degree robbery defined in RCW 9A.56.200(1). Because Brockie was charged only pursuant to the second alternative, however, RCW 9A.56.200(1)(b), instructions 8, 9 and 30 failed to give him notice and erroneously permitted the jury to convict Brockie of a crime that was not charged, specifically, RCW 9A.56.200(1)(a). This is reversible error.

No other instructions were given that defined the charged crime or precluded the jury from considering the uncharged means. The jury was never instructed on the

difference between "armed" and "displayed." The jury was never instructed on which element they were required to agree upon in finding Brockie guilty of first degree robbery. In fact, the error was only compounded by the prosecutor's repeated references to the uncharged means in his closing argument:

"Judge Austin has read you the court's instructions..."

...

"A person commits the crime of first degree robbery when in the commission of a robbery he or she is armed with a deadly weapon or displays what appears to be a firearm or other deadly weapon."

...

"A gunman enters the Safeway Federal Credit Union armed..."

...

"The defendant armed himself again."

Brockie Aff., ¶5, Ex D, State's closing argument, RP 801, 802, 806.

To instruct the jury that the conviction could rest on the uncharged element was highly prejudicial and requires reversal.

B. The Error Cannot be Harmless.

An erroneous instruction given on behalf of the party in whose favor the verdict is returned is presumed prejudicial unless it affirmatively appears the error was harmless. State v. Laramie, 141 Wn.App. 332, 342-43, 169

P.3d 859 (2007)(citing Bray, at 34-35).

Error may be harmless if other subsequent instructions "clearly and specifically defined the charged crime." State v. Chino, 117 Wn.App. 531, 540, 73 P.3d 256 (2003). In addition, courts have also found harmless error where there was no possibility that the defendant was impermissibly convicted on an uncharged alternative means. See Nicholas, 55 Wn.App. at 273 (finding harmless error where the jury returned a special verdict finding that the defendant was "armed with a deadly weapon" at the time of the commission of the crime, the charged means of committing the crime). However, an error which possibly influenced the jury adversely is not harmless. Chapman v. California, 386 U.S. 18, 24 (1967).

In Severns, supra, the Washington Supreme Court held it was error to permit the jury to consider two statutory means of committing rape when only one alternative was charged in the information. The Court found that the error was exacerbated by the prosecutor's reference to the uncharged means during his closing arguments. The Court also found that the defendant was prejudiced by the absence of any subsequent instructions that expressly precluded the jury from considering the uncharged means of committing rape. Id. at 549. The Supreme Court concluded

that the error was prejudicial and reversed the conviction, because the jury might have convicted the defendant under either alternative. Id. at 552.

Division Three's opinion in Laramie, 141 Wn.App. followed the same rationale used in Severns. Laramie was charged with second degree assault based solely on the alternative means of using a deadly weapon. The court's instructions, however, incorporated the alternative means of "recklessly inflicting substantial bodily harm." Laramie, at 341. Despite the State's harmless error argument, the appellate court held that the error was not harmless and that reversal was required:

The State argues Mr. Laramie suffered no prejudice because he knew prior to trial that evidence supported the alternative means, despite Mr. Laramie's constitutional right to be informed of the nature of the charges against him. U.S. Const. Amend. VI; WASH. CONST., art I, §22; see State v. Pelkey, 109 Wn.2d 484, 490-491, 754 P.2d 854 (1987). The error was necessarily prejudicial because, under the instructions given, the jury could have convicted Mr. Laramie of second degree assault based on either the charged or the uncharged alternative means. State v. Severns, 13 Wn.2d 542, 548-49, 552, 125 P.2d 659 (1942).

Laramie, 141 Wn.App. at 343.

The same result is required here. The reversible error in Brockie's case is of the same nature and prejudice as that in Severns and Laramie.

The jury was instructed that it could convict Brockie of counts 4 and 9 under either of the two alternative means: Being armed with a deadly weapon, or displaying what appears to be a firearm or other deadly weapon. RCW 9A.56.200(1)(a) and (b). This error denied Brockie his 6th Amend. right to fair notice of the charges he was facing because it was not so charged under the statute cited. The failure to charge RCW 9A.56.200(1)(a) precluded defense counsel from preparing or presenting any defense to the uncharged alternative means.

The prosecutor referred several times to the uncharged means in his closing argument and constantly referred to Brockie as the "gunman," RP 806, 807, etc., and described the alleged weapon as a "black semi-auto gun," RP 805, 808, etc., Ex D. These statements were highly inflammatory and prejudicial and made the error particularly egregious. Severns, at 151.

The standard for whether the error is harmless is that the court must be able to conclude that there is NO POSSIBILITY a defendant was convicted on an uncharged alternative. The possibility of conviction for an uncharged alternative is impermissible. Nicholas, 55 Wn.App. at 273.

In Brockie's case the record does not affirmatively establish whether the jury based its verdict on one means or the other, or a combination of both. Therefore the record does not establish that the error was harmless, and Brockie's convictions must be reversed.

C. Brockie's Remaining Convictions Must be Reversed, as Well.

Brockie's 15 counts of first degree kidnapping and 2 threats to bomb were the product of the first degree robberies; if the first degree robbery convictions are reversed, the remaining charges must also be reversed. These convictions are only possible because of the robberies..

Kidnapping in the first degree is defined as:

(1) A person is guilty of kidnapping in the first degree if he intentionally abducts another person with intent:

- (a) To hold him for ransom, or as a shield or hostage; or
- (b) To facilitate the commission of any felony or flight thereafter; or
- (c) To inflict bodily injury on him; or
- (d) To inflict extreme mental distress on him or a third person; or
- (e) To interfere with the performance of any governmental function.

RCW 9A.40.020(1)(a)-(e), (1975).

Brockie was charged with first degree kidnapping pursuant to RCW 9A.40.020(1)(b). See Brockie Aff., ¶3; Dkts. 1 and 33, Information(s); See also Dkt. 81, Jury

Instructions.

The jury was only instructed under element (b), that Brockie committed kidnapping only by the facilitation of the two robberies, Dkt. 81. That was the only element the State charged Brockie with.

Where, as here, the commission of a specific underlying crime (the robberies) is necessary to sustain a conviction for a more serious offense (the kidnappings), jury unanimity as to the underlying crime is imperative. See State v. Whitney, 108 Wn.2d 596, 508, 739 P.2d 1150 (1987) (citing State v. Green, 94 Wn.2d 216, 233, 616 P.2d 628 (1980)).

Because we do not know what alternative means the jury relied on in convicting Brockie of first degree robbery, we do not know if there was jury unanimity as to the underlying crime as needed by Green.

First degree robbery is a separate and distinct offense, not an alternative means of committing first degree kidnapping. If the robberies are reversed, then the convicting element for each of the first degree kidnappings is removed, and consequently those convictions should also be reversed. Kidnapping is complete when all its essential elements are completed. State v. Dove, 52 Wn.App. 81, 757 P.2d 990 (1988).

Further, the jury could have rested on the uncharged means of first degree robbery, that Brockie was armed with a deadly weapon. If this was the case, then the jury could have relied on that to prove a deadly threat, as the prosecutor erroneously argued to the jury in his closing argument concerning the robberies:

"Would you expect the tellers testimony to be exactly the same when they're being threatened with deadly force."

Ex D, RP 841, State's closing argument.

If the jury was only instructed on the charged means of committing first degree robbery, that Brockie only displayed what appeared to be a firearm or other deadly weapon, then the jury might not have found that there was a deadly threat; once someone is armed with a deadly weapon, the victim will always perceive any type of threat as a deadly threat.

Simply put, if the robberies are reversed, then there can be no 15 first degree kidnappings because there is no robbery element to rest on. One required, instructed element has not been proved.

As to the threats to bomb, the State has already conceded the argument in its brief regarding the search warrant, filed on November 19, 2002:

"During the commission of the robber[ies]
[Brockie] informed the tellers that there
was a bomb outside, and he would detonate
the bomb if the tellers called the police."

Ex E, State's brief re: Search Warrant, pg. 4.

The alleged bomb threats were only made in the
commission of the robberies. If the robberies are reversed,
then the bomb threats need to be reversed.

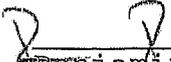
The robberies are the thread that holds the tapestry
of all the convictions together. Without the thread of
robbery, there is no tapestry. Because the robbery
convictions form the predicat "To Convict" element for the
kidnappings and are essential to the bomb threat charges;
without the improperly instructed robbery convictions, the
remaining convictions must also be reversed.

VI. CONCLUSION

For these reasons and the record, Brockie respectfully
asks this court to reverse his convictions, 4-22, and
remand for a new trial, one in which the jury will only be
instructed on the charges alleged in the information.

Dated this 2 th day of August, 2010.

Respectfully Submitted:


Benjamin Brockie
Pro, se
#866117

Stafford Creek Corr. Center
191 Constantine way
Aberdeen WA, 98520

AFFIDAVIT OF BENJAMIN BROCKIE

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

STATE OF WASHINGTON,	)	No. 02-1-00790-3
Plantiff,)	
)	
vs.	)	AFFIDAVIT IN SUPPORT
	)	OF MOTION TO VACATE
	)	JUDGMENT AND SENTENCE
)	
BENJAMIN B. BROCKIE,)	
Defendant.)	

I. AFFIDAVIT OF BENJAMIN BROCKIE

I, Benjamin Brockie, state under oath, penalty of perjury and the laws of the State of Washington, that the following is true and correct to the best of my knowledge:

1. I am making this Affidavit in support of my Motion to Vacate my judgment and sentence and to show the court I just recently discovered this information through due diligence and acted to the best of my knowledge. I did inform the court of the error in a previous motion, dated March 18, 2010, but the court responded that since I had an appeal pending, no further action would be taken until that

Affidavit in Support

issue has been resolved. Dkt. 176.

2. The Court of Appeals issued its mandate on July 22, 2010. Dkt. 177. I am now resubmitting my Motion to Vacate my Judgment and Sentence.

3. On March 8, 2002, I was arrested on probable cause for a Pizza Hut robbery. On March 18, 2002, I was charged with three counts of first degree robbery, six counts of first degree kidnapping, two threats to bomb and an attempted robbery in the first degree. Dkt. 1. On November 22, 2002, the Information was amended to include eleven additional counts of first degree kidnapping, one count for every person present in the robberies. Dkt. 33. The only reason the State amended the information was because I would not take the plea agreement they offered.

4. During this time I never received a copy of my "Charging Information."

5. I eventually went to trial (in which the jury was instructed on an uncharged means of first degree robbery and the prosecutor was able to refer to the offending instruction in his closing argument). The jury convicted me of all charges, except the attempted first degree robbery. The jury verdict did not disclose on which means they relied upon in convicting. Dkt. 81-101.

Affidavit in Support

6. I timely filed an appeal, Dkt. 110, and eventually lost in November, 2009. I filed a Petition for Review to the Washington Supreme Court.

7. It was while researching for my petition for review in January, 2010, that I discovered that I was charged with first degree robbery on counts 4 and 9 under former RCW 9A.56.200(1)(b), but the jury was instructed that they could convict me of an uncharged means of first degree robbery for which I was not charged, specifically, RCW 9A.56.200(1)(a).

8. As soon as I found this out I wrote my trial attorney, Mark Hannibal. Unfortunately, I never heard back from him. I was eventually able to contact my old appellate attorney, Lana Glenn, and informed her of what happened. She told me that I should inform the court of what happened because she no longer represented me.

9. I then tried to file a CrR 7.8 motion with the trial court, but the court responded that they could do nothing until the appeal had been resolved. Dkt. 176.

10. I never received a copy of my "Charging Information" until late January, 2009. The only reason I even received a copy was because I wrote the county clerk and requested and paid for a copy of my Indictment

Affidavit in Support

and Information.

11. This error has never been raised before in any proceedings and was never even discovered by any counsel.

12. DOC only allows inmates a limited amount of time and access to the law library and legal materials. Per DOC policy I must maintain a consistent work or educational program. Any legal or personal matters are secondary according to the DOC policy and procedures currently in place.

13. During this time I was working five days a week, seven hours a day, and partaking in several educational programs. Adding to this were cutbacks that DOC recently enforced that significantly hampered any access to the law library and makes it almost impossible to do any type of legal work on a consistent basis. I was also moved to four different prisons in the last five years.

14. Because access to the law library was limited and the fact that I have no experience; I acted to the best of my knowledge and applied the best resources available to me in finding this new piece of information. This error even eluded my attorneys.

15. This error of constitutional magnitude, denied

Affidavit in Support

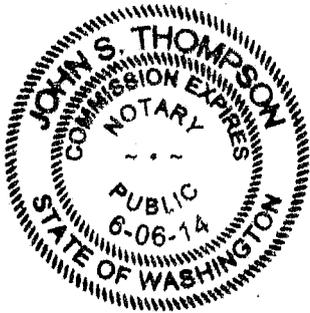
me my right to proper notification of the charges I was facing and the opportunity to prepare a proper defense. It allowed the jury to convict me of an uncharged means of first degree robbery.

Signed at Aberdeen WA, on this 12th day of August, 2010.


Benjamin Brockie
#866117

Stafford Creek Corr. Center
191 Constantine Way
Aberdeen WA, 98520

Subscribed and sworn to me on this 12th day of August, 2010.




Notary for the State of Washington

Commission expires: 6/6/14

Affidavit in Support

EXHIBIT A
(1st CHARGING INFORMATION.)

FILED

MAR 18 2002

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

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

STATE OF WASHINGTON

Plaintiff,

v.

BENJAMIN B. BROCKIE
WM 10/31/81

Defendant(s).

)
) INFORMATION
) (INFO)
) No.

02100790-3

) LARRY D. STEINMETZ
) Deputy Prosecuting Attorney

) PA# 02-9-08851-0
) RPT# CT I - III: 02-01-0311016
) CT IV - VIII: 01-02-0053897
) CT IX - XI: 02-02-0065220
) CT XII: 02-02-0068115
) RCW CT I, IV, IX: 9A.56.200(1)(B)-F (#68305)
) CT II - III, V - VII, X: 9A.40.020(1)(B)-F
) (#46503)
) CT VIII, XI: 9.61.160-F (#12011)
) CT XII: 9A.56.200(1)(B)AT-F
) (9A.28.020(1)) (#68306)

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendant(s) with the following crime(s):

COUNT I: FIRST DEGREE ROBBERY, committed as follows: That the defendant, BENJAMIN B. BROCKIE, in the State of Washington, on or about October 13, 2001, with the intent to commit theft, did unlawfully take and retain personal property, lawful U.S. currency, from the person and in the presence of MATTHEW M. MCCALL (PIZZA HUT), against such person's will, by use or threatened use of immediate force, violence and fear of injury to MATTHEW M. MCCALL (PIZZA HUT), and in the commission of and immediate flight therefrom, the defendant displayed what appeared to be a firearm or other deadly weapon,

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SPOKANE COUNTY PROSECUTING ATTORNEY
COUNTY CITY PUBLIC SAFETY BUILDING
SPOKANE, WA 99260 (509) 477-3662

COUNT II: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about October 13, 2001, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct MATTHEW M. MCCALL,

COUNT III: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about October 13, 2001, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct LEAH N. SCARCELLO,

COUNT IV: FIRST DEGREE ROBBERY, committed as follows: That the defendant, BENJAMIN B. BROCKIE, in the State of Washington, on or about February 22, 2002, with the intent to commit theft, did unlawfully take and retain personal property, lawful U.S. currency, from the person and in the presence of ANGELA THURMAN (INLAND NORTHWEST BANK), against such person's will, by use or threatened use of immediate force, violence and fear of injury to ANGELA THURMAN (INLAND NORTHWEST BANK), and in the commission of and immediate flight therefrom, the defendant displayed what appeared to be a firearm or other deadly weapon,

COUNT V: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about February 22, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct SHARLENE WIDMERE,

COUNT VI: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about February 22, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct DIANE ALFANO,

COUNT VII: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about February 22, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct TRACY GAYLORD,

COUNT VIII: THREATS TO BOMB OR INJURE PROPERTY, committed as follows: That the defendant, BENJAMIN B. BROCKIE, in the State of Washington, on or about February 22, 2002, did threaten to bomb or otherwise injure a building, common carrier, or structure, located at 1021 East Hawthorne Road,

COUNT IX: FIRST DEGREE ROBBERY, committed as follows: That the defendant, BENJAMIN B. BROCKIE, in the State of Washington, on or about March 05, 2002, with the intent to commit theft, did unlawfully take and retain personal property, lawful U.S. currency, from the person and in the presence of STEVE OLSON (SAFE FEDERAL CREDIT UNION), against such person's will, by use or threatened use of immediate force, violence and fear of injury to STEVE OLSON (SAFE FEDERAL CREDIT UNION), and in the commission of and immediate flight therefrom, the defendant displayed what appeared to be a firearm or other deadly weapon,

COUNT X: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about March 05, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct STEVE OLSON,

COUNT XI: THREATS TO BOMB OR INJURE PROPERTY, committed as follows: That the defendant, BENJAMIN B. BROCKIE, in the State of Washington, on or about March 05, 2002, did

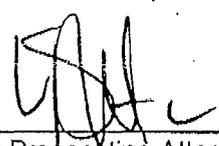
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SPOKANE COUNTY PROSECUTING ATTORNEY
COUNTY CITY PUBLIC SAFETY BUILDING
SPOKANE, WA 99260 (509) 477-3662

threaten to bomb or otherwise injure a building, common carrier, or structure, located at 504 East North Foothills Drive,

COUNT XII: ATTEMPTED FIRST DEGREE ROBBERY, committed as follows: That the defendant, BENJAMIN B. BROCKIE, in the State of Washington, on or about March 08, 2002, with intent to commit the crime of FIRST DEGREE ROBBERY as set out in RCW 9A.56.200, committed an act which was a substantial step toward that crime, by attempting, with the intent to commit theft, to unlawfully take and retain personal property, lawful U.S. currency, from the person and in the presence of A BANK EMPLOYEE (STERLING SAVINGS BANK), against such person's will, by use or threatened use of immediate force, violence and fear of injury to A BANK EMPLOYEE (STERLING SAVINGS BANK), and in the commission of and immediate flight therefrom, the defendant displayed what appeared to be a firearm or other deadly weapon,



Deputy Prosecuting Attorney
WSBA# 20635

DEFENDANT INFORMATION:

Address: 4001 N. LINCOLN ST., SPOKANE, WA 99205-1223	BENJAMIN B. BROCKIE	
Height: 6'02"	Weight: 280	Hair: Blk
Eyes: Bro	DOL #:	State:
SID #: 020492056	DOC #:	FBI NO. 481238VB6

EXHIBIT B
(AMENDED CHARGING INFORMATION.)

FILED
NOV 22 2002
THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

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

STATE OF WASHINGTON	)	AMENDED
	)	INFORMATION
Plaintiff,)	
	)	No. 02-1-00790-3
v.	)	LARRY D. STEINMETZ
	)	Deputy Prosecuting Attorney
BENJAMIN B. BROCKIE)	
WM 10/31/81	)	PA# 02-9-08851-0
	)	RPT# CT I - III: 002-01-0311016
	)	CT IV - IX: 002-02-0053897
Defendant(s).	)	CT X - XXII: 002-02-0065220
	)	CT XXIII: 002-02-0068115
	)	RCW CT I, IV, X: 9A.56.200(1)(B)-F (#68305)
	)	CT II - III, V - VIII, XI - XXI:
	)	9A.40.020(1)(B)-F (#46503)
	)	CT IX, XXII: 9.61.160-F (#12011)
	)	CT XXIII: 9A.56.200(1)(B)AT-F
	)	(9A.28.020(1)) (#68306)
	)	(AMINF)

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendant(s) with the following crime(s):

COUNT I: FIRST DEGREE ROBBERY, committed as follows: That the defendant, BENJAMIN B. BROCKIE, in the State of Washington, on or about October 13, 2001, with the intent to commit theft, did unlawfully take and retain personal property, lawful U.S. currency, from the person and in the presence of MATTHEW M. MCCALL, against such person's will, by use or threatened use of immediate force, violence and fear of injury to MATTHEW M. MCCALL, and in the commission of and immediate flight therefrom, the defendant displayed what appeared to be a firearm or other deadly weapon,

AMENDED INFORMATION
AMINF

SPOKANE COUNTY PROSECUTING ATTORNEY
COUNTY CITY PUBLIC SAFETY BUILDING
SPOKANE, WA 99260 (509) 477-3662

2 COUNT II: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about October 13, 2001, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct MATTHEW M. MCCALL,

3 COUNT III: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about October 13, 2001, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct LEAH N. SCARCELLO,

4 COUNT IV: FIRST DEGREE ROBBERY, committed as follows: That the defendant, BENJAMIN B. BROCKIE, in the State of Washington, on or about February 22, 2002, with the intent to commit theft, did unlawfully take and retain personal property, lawful U.S. currency, from the person and in the presence of ANGELA THURMAN (INLAND NORTHWEST BANK), against such person's will, by use or threatened use of immediate force, violence and fear of injury to ANGELA THURMAN (INLAND NORTHWEST BANK), and in the commission of and immediate flight therefrom, the defendant displayed what appeared to be a firearm or other deadly weapon,

5 COUNT V: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about February 22, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct SHARLENE W. WIDMERE, ✓

6 COUNT VI: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about February 22, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct DIANE L. ALFANO, ✓

7 COUNT VII: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about February 22, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct TRACY KAY GAYLORD, ✓

8 COUNT VIII: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about February 22, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct KIMBERLY JOLENE BOVA,

9 COUNT IX: THREATS TO BOMB OR INJURE PROPERTY, committed as follows: That the defendant, BENJAMIN B. BROCKIE, in the State of Washington, on or about February 22, 2002, did threaten to bomb or otherwise injure a building, common carrier, or structure, located at 1021 East Hawthorne Road,

10 COUNT X: FIRST DEGREE ROBBERY, committed as follows: That the defendant, BENJAMIN B. BROCKIE, in the State of Washington, on or about March 05, 2002, with the intent to commit theft, did unlawfully take and retain personal property, lawful U.S. currency, from the person and in the presence of STEVE OLSON (SAFEWAY FEDERAL CREDIT UNION), against such person's will, by use or threatened use of immediate force, violence and fear of injury to STEVE OLSON (SAFEWAY FEDERAL CREDIT UNION), and in the commission of and immediate flight therefrom, the defendant displayed what appeared to be a firearm or other deadly weapon,

AMENDED INFORMATION - 2

Spokane County Prosecuting Attorney
County-City Public Safety Building
Spokane, WA 99260

11

new 11

COUNT XI: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about March 05, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct STEVE OLSON, ✓

new 12

COUNT XII: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about March 05, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct NORMA KERR,

new 13

COUNT XIII: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about March 05, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct SHARON STROBRIDGE,

new 14

COUNT XIV: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about March 05, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct ANNA C. SCHULTZ,

new 15

COUNT XV: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about March 05, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct JEANETTE LANGTON,

new 16

COUNT XVI: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about March 05, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct KRISTIN M. BACON,

new 17

COUNT XVII: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about March 05, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct DARCIE G. WOLVERTON,

new 18

COUNT XVIII: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about March 05, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct YVONNE PROCTOR,

new 19

COUNT XIX: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about March 05, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct WENDY K. SPOERL,

new 20

COUNT XX: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about March 05, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct CARON C. LENNON,

new 21

COUNT XXI: KIDNAPPING IN THE FIRST DEGREE, committed as follows: That the defendant, BENJAMIN B. BROCKIE, on or about March 05, 2002, did, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct PAMELA A. LEFFLER,

new 22

COUNT XXII: THREATS TO BOMB OR INJURE PROPERTY, committed as follows: That the defendant, BENJAMIN B. BROCKIE, in the State of Washington, on or about March 05, 2002, did

Spokane County Prosecuting Attorney
County-City Public Safety Building
Spokane, WA 99260

AMENDED INFORMATION - 3

threaten to bomb or otherwise injure a building, common carrier, or structure, located at 504 East North Foothills Drive,

23

COUNT XXIII: ATTEMPTED FIRST DEGREE ROBBERY, committed as follows: That the defendant, BENJAMIN B. BROCKIE, in the State of Washington, on or about March 08, 2002, with intent to commit the crime of FIRST DEGREE ROBBERY as set out in RCW 9A.56.200, committed an act which was a substantial step toward that crime, by attempting, with the intent to commit theft, to unlawfully take and retain personal property, lawful U.S. currency, from the person and in the presence of A BANK EMPLOYEE (STERLING SAVINGS BANK), against such person's will, by use or threatened use of immediate force, violence and fear of injury to A BANK EMPLOYEE (STERLING SAVINGS BANK), and in the commission of and immediate flight therefrom, the defendant displayed what appeared to be a firearm or other deadly weapon,



Deputy Prosecuting Attorney
WSBA # 20635

DEFENDANT INFORMATION:	BENJAMIN B. BROCKIE	
Address:	4001 N. LINCOLN ST., SPOKANE, WA 99205-1223	
Height:	6'02"	Weight: 280
Eyes:	Bro	DOL #:
SID #:	020492056	DOC #:
		Hair: Blk
		State:
		FBI NO. 481238VB6

AMENDED INFORMATION - 4

Spokane County Prosecuting Attorney
County-City Public Safety Building
Spokane, WA 99260

EXHIBIT C
(JURY INSTRUCTIONS.)

1. (Jury out.)

2 THE COURT: Please be seated.

3 Mr. Hannibal, do you have any more witnesses?

4 MR. HANNIBAL: No, Your Honor.

5 THE COURT: Will you have any rebuttal?

6 MR. STEINMETZ: No, Your Honor.

7 THE COURT: All right. Okay.

8 On the instructions, do you want to meet at about
9 1:30, we will go through that. I think it's fairly cut and
10 dried. You proposed lessers on the kidnapping. And I
11 believe those were given last time, as well, were they not?

12 MR. HANNIBAL: Yes.

13 THE COURT: So I will blend the two, see what we come
14 up with.

15 MR. HANNIBAL: Judge --

16 THE COURT: Any problems with the verdict forms?

17 MR. STEINMETZ: I have not looked at Mr. Hannibal's
18 verdict forms.

19 MR. HANNIBAL: I don't think there's any problems with
20 them. He proposed them.

21 Judge, I did object, or would put no objection on Mr.
22 Steinmetz' package. He does include the Castle instruction
23 in there. I don't believe -- we would request it not be
24 given because I think the language is different than the
25 other instruction.

1 of injury to that person or to the person or property of
2 anyone. The force or fear must be used to obtain or retain
3 possession of the property or to prevent or overcome
4 resistance to the taking, in either of which cases the
5 degree of force is immaterial.

6 Instruction No. 8: A person commits the crime of
7 robbery in the first degree when in the commission of a
8 robbery he or she is armed with a deadly weapon or displays
9 what appears to be a firearm or other deadly weapon.

10 Instruction No. 9: To convict the defendant of the
11 crime of robbery in the first degree in Count 4, each of the
12 following elements of the crime must be proved beyond a
13 reasonable doubt:

14 (1) That on or about the 22nd day of February, 2002,
15 the defendant unlawfully took personal property from the
16 person or in the presence of Angela Thurman (Inland
17 Northwest Bank);

18 (2) That the defendant intended to commit theft of
19 the property;

20 (3) That the taking was against the person's will by
21 the defendant's use or threatened use of immediate force,
22 violence or fear of injury to that person or to the person
23 or property of another;

24 (4) That the force or fear was used by the defendant
25 to obtain or retain possession of the property or to prevent

1 or overcome resistance to the taking;

2 (5) That in the commission of these acts the
3 defendant was armed with a deadly weapon or displayed what
4 appeared to be a firearm or other deadly weapon; and

5 (6) That the acts occurred in the State of
6 Washington.

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

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

14 Instruction No. 10: A person commits the crime of
15 attempted first degree robbery when, with intent to commit
16 that crime, he or she does any act which is a substantial
17 step toward the commission of that crime.

18 Instruction No. 11: Theft means to wrongfully obtain
19 or exert unauthorized control over the property or services
20 of another, or the value thereof, with intent to deprive
21 that person of such property or services.

22 Instruction No. 12: Wrongfully obtains means to take
23 wrongfully the property or services of another.

24 Instruction No. 13: The term "deadly weapon" includes
25 any firearm, whether loaded or not.

1 reasonable doubt:

2 (1) That on or about the 22nd day of February, 2002,
3 the defendant threatened to bomb or otherwise injure a
4 building or structure;

5 (2) That the acts occurred in the State of
6 Washington.

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

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

14 Instruction No. 29: Threat means to communicate,
15 directly or indirectly, the intent to cause bodily injury in
16 the future to the person threatened or to any other person
17 or to cause physical damage to the property of a person
18 other than the actor.

19 Instruction No. 30: To convict the defendant of the
20 crime of robbery in the first degree in Count 10, each of
21 the following elements of the crime must be proved beyond a
22 reasonable doubt.

23 (1) That on or about the 5th day of March, 2002, the
24 defendant unlawfully took personal property from the person
25 or in the presence of Steve Olson (Safeway Federal Credit

1 Union). The rest of this instruction is the same as found
2 in Count 6.

3 Instruction No. 31: To convict the defendant of the
4 crime of kidnapping in the first degree in Count 11, each of
5 the following elements of the crime must be proved beyond a
6 -- excuse me, that is not correct.

7 Going back to that.

8 Count 10, and I'm going to read the full instruction.
9 That on or about the 5th day of March, 2002, the defendant
10 unlawfully took personal property from the person or in the
11 presence of Steve Olson (Safeway Federal Credit Union);

12 (2) That the defendant intended to commit theft of
13 the property;

14 (3) That the taking was against the person's will by
15 the defendant's use or threatened use of immediate force,
16 violence, or fear of injury to that person or to that
17 person's property of another;

18 (4) That force or fear was used by the defendant to
19 obtain or retain possession of the property or to prevent or
20 overcome resistance to the taking;

21 (5) That in the commission of these acts the
22 defendant was armed with a deadly weapon or displayed what
23 appeared to be a firearm or other deadly weapon; and

24 (6) That the acts occurred in the State of
25 Washington.

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

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

8 Instruction No. 31: To convict the defendant of the
9 crime of kidnapping in the first degree in Count 11, each of
10 the following elements of the crime must be proved beyond a
11 reasonable doubt:

12 (1) That on or about the 5th day of March, 2002, the
13 defendant intentionally abducted Steve Olson (Safeway
14 Federal Credit Union);

15 (2) That the defendant abducted the person with
16 intent to facilitate the commission of a crime of first or
17 second degree robbery; and

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

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

23 On the other hand, if, after weighing all of the
24 evidence, you have a reasonable doubt as to any one of these
25 elements, then it will be your duty to return a verdict of

EXHIBIT D
(PROSECUTOR'S REMARKS IN CLOSING ARGUMENT.)

1 women and one man on February 22nd, and on March 5th of
2 2002.

3 You heard descriptors of being frightened. Hopeless.
4 Not knowing whether or not you are going to be killed.
5 Seems like an eternity. Did not know whether or not I would
6 see my grandchildren, or children, again. This is the
7 emotional impact of 15 men -- excuse me, 15 women and one
8 man on those dates.

9 And what caused this emotional impact?

10 Then and now?

11 It was the actions, the sophistication, the planning,
12 the decision making, the power, the control, and most
13 importantly, the greed. The greed of one person, the greed
14 of Mr. Brockie.

15 It was greed in its purest and simplest form. Most
16 people work and save, work and save, work and save, to buy a
17 home. To buy a car. To buy a stereo. Not the defendant.

18 He wanted it now. For whatever reason. He wanted it
19 in February and March of 2002.

20 Judge Austin has read you the court's instructions.
21 And they may seem daunting. And I will grant you there are
22 a number of charges against the defendant. However, I would
23 submit that it was the defendant who chose the charges. And
24 it was the defendant who dictated the number of people that
25 he affected. And those people affected should be granted

1 equal protection of the laws. No one should be -- no one
2 should be denied, because of the numbers of alleged victims
3 in this case.

4 In this case, Judge Austin's advised you the defendant
5 has been charged primarily with three principal crimes.
6 With robbery. With kidnapping. And with threat to bomb.

7 A person commits the crime of robbery when he, or she,
8 unlawfully and with intent to commit theft, takes personal
9 property from the presence -- from the person or in the
10 presence of another, against that person's will by the use
11 or threatened use of immediate force, violence, or fear of
12 injury to that person or to the property of anyone. The
13 force or fear must be used to obtain or retain possession of
14 the property or to prevent or overcome resistance to the
15 taking, in either of which cases the degree of force is
16 immaterial.

17 A person commits the crime of robbery in the first
18 degree when in the commission of a robbery he or she is
19 armed with a deadly weapon or displays what appears to be a
20 deadly weapon.

21 A person commits the crime of first degree attempted
22 robbery when, with intent to commit that crime, he or she
23 does any act which is a substantial step toward the
24 commission of that crime.

25 I would submit, members of the jury, that substantial

1 gunman was wearing dark nylon pants. The gunman was
2 described as having black, or leather gloves. A blue
3 duffel, or gym bag. And again, described as being six to
4 six-foot-two. Large. Again, matching the physical
5 description of the defendant at the time of the robbery.

6 Again, the gunman attempted to disguise a voice by
7 using slang. There was a distinct use of profanity. And
8 slang language.

9 Again, the gunman became angrier and more upset.

10 Again the gunman was described as using a semi-auto
11 pistol. The defendant entered the bank. And then, as in
12 the INB bank, yelling and waving the handgun, yelling for
13 tellers to get into the vault. Tellers were again herded
14 like cattle into the manager's office. And vault area.
15 Again, the defendant knew the layout of the bank. Tellers
16 again, as in the INB bank, were forced to the ground.
17 Tellers feared that they would be killed. Suspect again
18 used specific demeaning language toward the tellers in the
19 vault. Again, the tellers indicated that it seemed like an
20 eternity during the takeover. They were forced at gunpoint,
21 as in the INB robbery, to remove the money. The tellers
22 were threatened that they would be killed if police were
23 called. And again, the defendant slash gunman, threatened
24 that they would be killed if they called the police within
25 ten minutes, and added this time that there was a sniper

1 the existence of the sun. Or of the moon. Or of the wind.
2 Those are truths that no one disputes. And in this case,
3 you have evidence that shows that the defendant committed
4 the robberies. On February 22nd. On March 5th. And March
5 8th, where he attempted a robbery.

6 Mr. Hannibal certainly can point out discrepancies in
7 the teller testimony. I would submit that if you have a gun
8 pointed in your face for a period of time, that you are not
9 going to memorize each and every detail of the gunman. Are
10 you going to be staring at the gun, or are you going to be
11 staring at the face? If every witness came in here and
12 testified the same, Mr. Hannibal would claim that they got
13 together, and prevaricated their testimony.

14 If witnesses don't testify the same, Mr. Hannibal can
15 come in and say they don't know what they're talking about,
16 because their testimony is different from each other.

17 Would you expect the tellers' testimony to be exactly
18 the same when they're being threatened with deadly force?
19 No. You wouldn't.

20 You can't even get people to testify to the same thing
21 on an accident in a street. Does it mean that the robberies
22 did not occur? No.

23 Mr. Hannibal focuses on the identity of the defendant.
24 But there are other pieces of evidence in this case which
25 are identity, as well. The mask. The surveillance at the

EXHIBIT E
(STATE'S BRIEF, 11/19/2002.)

FILED
NOV 19 2002
THOMAS R. FALLOQUIST
SPOKANE COUNTY CLERK

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

STATE OF WASHINGTON,)	
	)	NO. 02100790-3
PLAINTIFF,)	
	)	STATE'S BRIEF
vs.	)	RE: SEARCH WARRANT/ CrR 4.4 SEVERANCE OF
	)	COUNTS
BENJAMIN B. BROCKIE,)	
)	
DEFENDANT.)	

The Plaintiff, State of Washington, represented by Steven Tucker, Spokane County Prosecuting Attorney, by his deputy, Larry Steinmetz, presents the following brief in opposition to defendant's motion to sever counts 1-23 as contained within the amended Information:

I.

FACTS

The State incorporates the probable cause affidavits filed in the above referenced-cause in support of the court denying defendant's motion for severance of the offenses as contained within the Information.

II

STATE'S BRIEF
RE: CrR 4.4
Page 1 of 8

STEVEN TUCKER
PROSECUTING ATTORNEY
WEST 1100 MALLON
SPOKANE, WA 99260

Under Counts 4 through 10 (February 22, 2002/Inland Northwest Bank), the suspect entered the bank and forced the tellers onto the floor at gunpoint. He made them crawl to the vault. Inside the vault, he required them to remain in a kneeling position facing the floor and to not look at him. Thereafter, the suspect had a blue duffel bag and forced two tellers to fill it with money. The money was labeled with INB bank wrappers demarcated in \$1000 increments. The total amount taken was \$35,000. An additional \$3170 was taken from the teller stations. During commission of the robbery, the suspect informed the tellers that there was a bomb outside, and he would detonate the bomb if the tellers called the police. Also, the suspect used the same obscenities as noted above, he faked a black accent and he used "black street slang." The suspect's clothing was described as a hooded sweatshirt, black mask, black gloves, blue or black nylon athletic pants, and white tennis shoes. He also used a dark semi-automatic handgun during the robbery. The defendant repeatedly threatened to kill the tellers when they were in and outside of the vault.

Witnesses will further testify that earlier in the day on February 22, 2002, a young dark skinned male entered the bank and he requested investment information. The male provided a birth date of October 13, 1981, the same birth date as the defendant. The suspect and the male who earlier entered the bank were also the same physical build. In addition, witnesses at the bank identified the person requesting investment information as the defendant through the use of a photomontage.

During a subsequent search of the both the defendant's residence executed on March 8, 2002, detectives found thirty five (35) \$1000 empty money wrappers from Inland Northwest Bank, several of which were dated the day of the robbery with INB teller initials. In addition, on March 8, 2002, officers found a dark colored sweatshirt, blue duffel bag, a black handgun, and a black mask during a search of defendant's vehicle

STATE'S BRIEF
RE: CrR 4.4
Page 4 of 8

STEVEN TUCKER
PROSECUTING ATTORNEY
WEST 1100 MALLON
SPOKANE, WA 99260

DECLARATION OF SERVICE BY MAIL

GR 3.1

I, Benjamin Brockie, declare and say:

That on the 12 day of August, 2010, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. 02-1-00790-3:

COVER LETTER; NOTICE OF MOTION(s); MOTION TO VACATE JUDGMENT; AND SENTENCE; OBJECTION TO TRANSFER OF MOTION; AFFIDAVIT OF BENJAMIN BROCKIE; MOTION AND ORDER TO TRANSPORT; AND DECLARATION OF MAILING.

addressed to the following:

THOMAS FALLQUIST

LARRY STEINMETZ

SPOKANE COUNTY CLERK

Deputy Prosecuting Attorney

1116 W. Broadway

1100 W. Mallon

Spokane WA, 99260

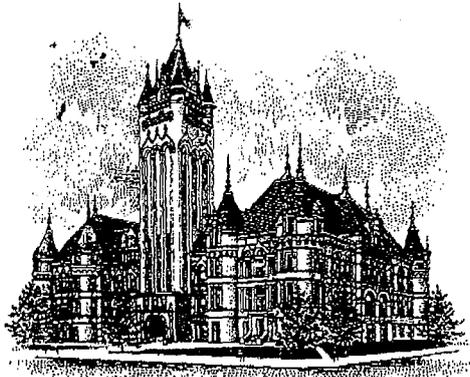
Spokane WA, 99260

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED THIS 12 day of August, 2010, in the City of Aberdeen, County of Grays Harbor, State of Washington.

[Signature] Benjamin Brockie

DOC 866117 Unit GB
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen. WA 98520-9504



SPOKANE COUNTY COURT HOUSE

STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

Annette S. Plese
Superior Court Judge

Spokane County Courthouse
1116 West Broadway Avenue
Spokane, Washington 99260-0350
(509) 477-4709
dept1@spokanecounty.org

FILED

FEB 28 2011

THOMAS R FALLQUIST
SPOKANE COUNTY CLERK

February 25, 2011.

Benjamin B. Brockie
#866117 GD-6
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA 98520

RE: State of Washington v. Benjamin B. Brockie Cause No. 02-1-00790-3

Dear Mr. Brockie,

On February 11, 2011, the above motion was transferred to my court by order of the Presiding Criminal Judge.

I have reviewed the entire court file in this matter, several letters to the Superior Court, and your motion to vacate the judgment and sentence which included several letters attached and dated in December 2010 and January 2011.

The Court then reviewed your brief entitled, "Motion to vacate judgment and sentence under CrR 7.8" and all your corresponding attachments. CrR 7.8(c)(2) states that the court must transfer a motion to the court of appeals "unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing".

After review, the Court has determined that your motion is **not** barred by RCW 10.73.090 and is timely. Therefore this Court will review your motion pursuant to the court rule.

When the Court reviews a motion that collaterally attacks a judgment and sentence, the petitioner bears the burden of demonstrating an entitlement to relief. *In re Quinn*, 154 Wn.App. 816 (Div. I, 2010). To obtain an entitlement to relief, the petitioner must show

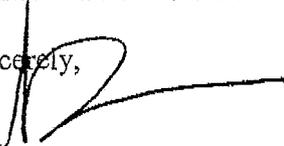
actual and substantial prejudice resulting from the alleged constitutional errors, for alleged non-constitutional errors there must be a fundamental defect that inherently results in a miscarriage of justice. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 810-814, 792 O,2d 506 (1990). If the petitioner fails to meet this burden, the Court may deny the petitioners motion without a factual hearing, so long as the facts alleged in the affidavits do not establish grounds for relief. *Toliver v. Olsen*, 109 Wn.2d 607, 612, 746 P.2d 809(1987).

After much review of the entire court file, the Court regrets to inform you that your motion to vacate judgment and sentence is denied without a hearing, due to your failure to establish adequate grounds for relief.

The Court finds that you have *not* made a substantial showing that you are entitled to relief pursuant to CrR 7.8 and your motion is not a factual question, so no hearing was held.

Since the Court has denied your motion to vacate the judgment and sentence, after a determination that you have not made a substantial showing of entitlement your case can be transferred to the Court of Appeals.

Sincerely,



Judge Annette S. Plese

Cc: Court file
DPA's office
Court of Appeals

FILED

MAR 03 2011

FILED
March 8, 2011
Court of Appeals
Division III
State of Washington

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

COA #297560

	SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE
	State of Washington Plaintiff(s)
v Benjamin Brockie Respondent(s)	

02-1-00790-3

CASE NO. _____
ORDER of transfer to
COA.

I. BASIS
moved the court for: _____

II. FINDING

After reviewing the case record to date, and the basis for the motion, the court finds that:

Good Cause exists. This court denied the DS
Motion to vacate pursuant to letter dated 2/25/11.

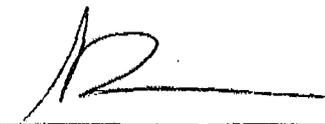
III. ORDER

IT IS ORDERED that: pursuant to the court's opinion letter, -
this case is transferred to the Court of Appeals
as a PRP.

Presented by: _____

Approved by: _____

Dated: 3/3/11


Judge: ANNETTE S. PLESE

cc: COA / DPA / Δ
ORDER

CI-03.0300-7/780WPF



Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>



April 12, 2011

Honorable Annette S. Plese
Superior Court Judge
1116 W. Broadway
Spokane, WA 99260

CASE # 297560
Personal Restraint Petition of Benjamin B. Brockie
SPOKANE COUNTY SUPERIOR COURT No. 021007903

86241-9

Dear Judge Plese:

The Court received an "Order of Transfer to COA" on March 7, 2011. A memorandum decision, which the Court of Appeals does not consider a final order, was filed at the trial court on February 28, 2011. The order of transfer references the memorandum decision to deny the motion to vacate but goes on to transfer the motion to the Court of Appeals for consideration as a personal restraint petition.

Please provide clarification so the Court may proceed appropriately. Have you denied the motion to vacate or is it your intent to transfer the motion to vacate to this court for a final decision under CrR 7.8(c)(2)? If the latter is your intent, please file an amended order of transfer and we will proceed in the usual manner for a personal restraint petition.

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:slh

c: Benjamin B Brockie
#866117
191 Constantine Way
Aberdeen, WA 98520

FILED

APR 22 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON



COPY
ORIGINAL FILED

APR 19 2011

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

STATE OF WASHINGTON,

NO. 02-1-00790-3

Plaintiff

ORDER TRANSFERRING CASE TO
THE COURT OF APPEALS

CASE # 297560

vs.

BENJAMIN B. BROCKIE

Defendant

86241-9

THIS MATTER having come before the Court on the Defendant's motion for relief under CrR 7.8, the Court finds:

- This motion is barred by RCW 10.73.090, or
- This motion is not barred by RCW 10.73.090, but
 - Defendant did not make a substantial showing of entitlement to relief; and
 - Resolution of this motion does not require a factual hearing;
- This motion challenges DOC prison infractions and/or good time credit calculations and/or jail credit calculations

NOW, THEREFORE, it is hereby ORDERED that the Defendant's motion is transferred to the Court of Appeals pursuant to CrR 7.8(c)(2) for consideration as a personal restraint petition.

DATED: April 19, 2011

Superior Court Judge

ANNETTE S. PLESE - JUDGE