

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
FOR DIVISION TWO

MICHAEL LOUIS RHEM,)
)
) Petitioner,)
)
) vs.)
)
) STATE OF WASHINGTON,)
)
) Respondent.)

NO. **35195-1**
PERSONAL RESTRAINT PETITION

FILED
COURT OF APPEALS
06 JUN 21 PM 1:09
STATE OF WASHINGTON
BY *[Signature]*

I. STATUS OF PETITIONER

MICHAEL LOUIS RHEM, petitioner, is now in custody at the Washington State Penitentiary serving a sentence imposed under Pierce County Superior Court Cause Number 99-1-04722-4.

By a third amended information, Petitioner was charged with two counts of assault in the first degree, and two counts of unlawful possession of a firearm in the first degree. The assaults stemmed from an alleged shooting involving Michael Rollins and Kimberly Matthews. After pleading not guilty at a second trial (with a third set of charges), Petitioner proceeded to trial on the first degree assault charges, and the unlawful possession of a firearm charges, containing weapon enhancements.

**PETITIONER MAY FILE THE
PETITION WITHOUT PAYMENT OF
A FILING FEE**

[Signature]
COURT CLERK 8/1/06

II. STATEMENT OF FACTS

Procedural Background

This is the third time this case has been before this Court. In the first appeal which was consolidated with another defendant, this Court reversed Petitioners convictions for two counts of assault in the first degree, and unlawful possession of a firearm, due to instructional error and introduction of improper habit evidence. (SEE Clerk's Papers page 18-42, C.O.A. #29958-5-II/Consolidated).

Upon remand to the trial court, the state filed a third amended information to eliminate all counts that resulted in acquittal in the first trial, leaving the Petitioner with two counts of first degree assault, with firearm enhancements, and two counts of unlawful possession of a firearm. (SEE Report of Proceedings [RP] for 1/10/03 at page 55, C.O.A. #29958-5-II, hereafter).

The jury found the petitioner guilty of first degree assault and returned verdicts that the petitioner was armed with a firearm. (1/30/03-RP 1684-86).

Petitioner received an SRA sentence of 561 months confinement (2/7/03-RP 12), and that decision was affirmed by unpublished opinion. (C.O.A.#29959-5-II).

Substantive Facts.

Petitioner was originally charged in Pierce County for three counts of first degree assault with firearm enhancements and a drive-by shooting. (CP 1-7). The jury found the Petitioner "not guilty" of these charges. He was however found guilty of two counts of assault in the first degree, and one count of unlawful possession of a firearm first degree. He appealed and this court reversed and remanded for a new trial. (SEE Unpublished Opinion, 7/22/02, Div.II, C.O.A. #26220-7-II).

On remand, Petitioner and his co-defendant both moved to sever the trials, and although the trial court considered the previous history of the case, it denied severance. (1/9/03-RP 36-37).

In pre-trial hearings, the State informed the court that the parties had agreed to the motions and orders from the previous trial, with a few exceptions. (1/9/03-RP 40-42). The State moved and was allowed to introduce gang evidence, and that the incidents leading up to the shots fired were gang motivated, and began on July 21, 1999. (1/15/03-RP 224). The Petitioner objected because there was no evidence that he was a gang member, and that the evidence

show that the incidents that occurred were not at all gang related. (1/15/03-RP 225-28). The trial court, however, allowed the gang related evidence to come into the trial. (1/15/03-RP 229-33).

The trial court ordered during pre-trial motions that the State could not discuss Petitioner's possession of a .10mm weapon in front of the jury. (1/10/03-RP at 40). The court also ordered that the parties could not mention that there was another trial, or talk about there being a first trial. (1/10/03-RP 46). The trial court further restricted the number of people present, and during voir dire, the trial court put several of Petitioner's family members out of the courtroom. (1/13/03-RP 75). This mistreatment of family members continued throughout the trial. (1/16/03-RP 391).

The trial court ruled that there would be no "speaking objections" at trial, and it would be counsel's responsibility to make the record at the appropriate time. (1/15/03-RP 240).

Upon conclusion of the State's case the jury found the Petitioner guilty of all charges. (1/29/03-RP 1684-85). The trial court sentenced the Petitioner to the same amount of time as in the previously remanded trial. (2/7/03-RP 4-12).

III. GROUNDS FOR RELIEF AND ARGUMENT

(a) Petitioner claims several reasons for this court to grant him relief from the conviction and his sentence described in Part I.

(1) Petitioner's Right To A Fair Trial Was Violated By The Violations Of The Court Order Excluding Evidence On The Motions In Limine By Petitioner

During the Petitioner's trial, the trial court's pre-trial orders were violated several times, which denied the Petitioner a fundamentally fair trial. There were several instances of mentioning that the Petitioner possessed a .10mm firearm. (SEE 1/15/03-RP at 199-200).

The State's Prosecutor even in closing arguments boldly violated the trial court's order by stating that "Mr. Rhem has a .10mm handgun." (1/29/03-RP 1524).

"A party who loses a motion in limine has a standing objection that preserves the issue for appeal." State v. Sullivan, 69 Wn.App. 167, 171, 847 P.2d 953 (1993). But in the absence of any unusual circumstance that makes it impossible to avoid the prejudicial impact of inadmissible evidence, the complaining party still must object to preserve the issue for appeal. State v. Sullivan, 69 Wn.App. at 173.

In SULLIVAN, the defendant successfully moved in limine to exclude testimony that would place the defendant in a high risk group of sexual offenders. The defendant did not object to the testimony at issue, but he argued on appeal that one of the State's witnesses violated the in limine order. Because he did not object at trial and did not raise the issue in his post-trial motions, this Court held that the defendant had waived appellate review. State v. Sullivan, 69 Wn.App. at 169-73.

Although Petitioner Rhem did not object at the time of trial when the evidence came in, he did move shortly afterwards for a mistrial. The Courts concern in SULLIVAN was that a party who wins in a motion in limine but does not object to a violation at trial "could simply lie back, not allowing the trial court to avoid the potential prejudice, gamble on the verdict, and then seek a new trial on appeal." State v. Sullivan, 69 Wn.App. at 172. Petitioner Rhem does not run afoul of this concern. He raised the issue in time for the trial court to take corrective action, even though he did not ask for a limiting instruction. Therefore, he did not waive the issue.

In Fenimore v. Donald M. Drake Constr. Co., 87 Wn.2d 85, 92, 549 P.2d 483 (1976), the Washington Supreme Court stated that where the trial court grants the appellant's motion to exclude evidence no objection is necessary to preserve the right to claim error if the evidence was nevertheless admitted, citing State v. Smith, 189 Wash. 422, 65 P.2d 1075 (1937).

In SMITH, the defendant, a former deserter of the United States Marine Corps, was charged with two counts of assault that allegedly occurred while he was privately employed. There the trial court, in response to the defendant's pre-trial motion to exclude any reference to the desertion, ordered that if the State intended to inject on cross the manner in which the defendant was separated from the Marine Corps, it first obtain a court ruling on the propriety of such evidence. Ignoring the court ruling, the State, without objection by the defense, inquired of the manner in which the defendant was separated from the Marine Corps. The trial court denied the defendant's motion for a new trial. The trial court was reversed, the Supreme Court ruling that the absence of an objection was not controlling because

an objection, even if sustained, was likely more damaging than almost any answer. In view of the State's deliberate disregard of the court's ruling, the Supreme Court ruled that the prejudice must be presumed and a new trial should have been given.

Herein, the the State and the counsel for the Petitioner at trial argued ad nauseum concerning the fact that there was not proper foundation to allow the .10mm evidence to be introduced as being tied to Petitioner. Its limited evidentiary value was for the ballistic commentary. (SEE 1/10/03-RP 40-46).

Error is also attributed to the violation of the trial court's order on the Petitioners motion in limine concerning the mentioning of the first trial. At the January 10, 2003 pre-trial hearing the trial court cautioned the parties that there would be no mentioning the first trial. (1/10/03-RP 46).

On more than one occasion either defense counsel or one of the State's witnesses mentioned the fact that there was another trial. (SEE 1/16/03-RP 500; 1/21/03-RP 519; 1/21/03-RP 586-90, 600; 1/21/03-RP 609, 618, 620, 633-37).

Because the trial court's instructions on the order on the motion in limine were not followed, the Petitioners right to a fundamentally fair trial was denied. Therefore, this court should remand for further proceedings.

(2) Petitioner's Right To Confrontation Under The Sixth Amendment To The United States Constitution Was Violated Due To Admission Of His Codefendant's Statement

During trial citing Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968), the Petitioner argued that his Sixth Amendment Right to confront the witness against him was violated by the introduction of Wynn's statement to the detectives. (1/23/03-RP at 1124-56). The trial court overruled the objection.(RP at 1131). Detective Davidson did not record the statement given to him by co-defendant Kimothy Wynn, but rather used his redacted notes to tie Petitioner to 99% of the State's alleged acts.

"In all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him." U.S. Const. amend.VI. The confrontation clause prohibits admission of testimonial statements made out of court by a witness who is unavailable

for trial unless there has been a prior opportunity for cross-examination. Crawford v. Washington, 541 U.S. 36, 68, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).

In CRAWFORD, the defendant was on trial for stabbing a man who allegedly tried to rape the defendant's wife. The wife, a witness to the stabbing, was unavailable at trial due to the marital privilege. The trial court allowed the State to play for the jury a tape recording of the wife's statement to the police describing the stabbing. Her statement arguably contradicted the evidence that the stabbing occurred in self defense. The Court held that the State's use of the wife's out of court testimonial statement violated the confrontation clause because the defendant had no opportunity to test it by cross-examination.

Herein, it is undisputed that co-defendant Wynn was unavailable because he chose his right not to testify at trial.

In BRUTON, the defendant was involved in a joint trial in which the confession of one defendant incriminated both. Bruton, 391 U.S. at 124. The defendant who made the statement did not testify.

The trial court admitted the statement without redaction and instructed the jury to consider the statement only against the defendant who made it. The United States Supreme Court held that, despite the limiting instruction, introduction of such evidence at a joint trial violates the nonconfessing defendant's Sixth Amendment right to cross-examination:

"[T]here are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored. Such a context is presented here, where the powerfully incriminating extrajudicial statements of a codefendant, are deliberately spread before the jury in a joint trial."

Bruton, 391 U.S. at 135-36.

Since BRUTON, the United States Supreme Court has twice addressed the admission of such statements where an attempt has been made to redact the statement to eliminate reference to the other defendant. In Richardson v. Marsh, 481 U.S. 200, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987), the confession of the nontestifying codefendant was redacted to omit all indication that the defendant was present during an incriminating conversation between two people in a car. The defendant then testified she had been

in the car at the time. The Supreme Court held that admission of one defendant's confession redacted to omit all reference to another defendant, does not, on its face, violate the other defendant's Sixth Amendment confrontation rights, even where the statement later becomes linked with other evidence. The Court left for another day the admissibility of a confession where the second defendant's name is replaced by a pronoun. Richardson, 481 U.S. at 211, n. 5.

Washington cases have also addressed this issue. In State v. Vannoy, 25 Wn.App. 464, 610 P.2d 380 (1980), the codefendants' statements described the participants driving around in a car after the crime. The statements were redacted so that names were replaced by "we." Police had observed all the defendants in the car, however, and the court held the Redaction violated BRUTON, because the jury "could readily conclude that defendant Vannoy was included in the 'we's' of the codefendants' statements." State v. Vannoy, 25 Wn.App. at 474. (In similar circumstances, the Supreme Court of Arkansas concluded that admission of a non-testifying codefendant's statement violated BRUTON

even though the statement was redacted to use "him" and "he." State v. Jefferson, ___ S.W.3d ___, 2004 WL 2609803, 2004 Ark. LEXIS 726 (Ark. 2004).)

Herein, the redaction does not protect the Petitioner sufficiently from the prejudice of a statement that he cannot cross-examine. The statement made by codefendant Wynn was so prejudicial, that there was no way to prevent the jury from concluding the redacted reference is obviously to the codefendant, making it impossible for the jury not to convict Rhem.

Here, there were only two participants on trial for the alleged crimes, and only two defendants present. On direct examination, Detective Davidson's testimony about the "statement" that Wynn "saw," or "was with," "another guy" or "someone," before during or after the incidents he was being questioned about. The redaction thus failed in its purpose, because the only reasonable inference to be drawn was that the other guy, or someone, that was mentioned in the statement was Petitioner Rhem. Thus, the redaction and admission of Wynn's testimony in the joint trial violated BRUTON and CRAWFORD.

(3) Petitioner's Right To A Fair Public Trial Under Art. I, § 10 Was Violated When The Trial Court Closed The Court To His Family Members During Voir Dire Jury Selection, And Pre-Trial

The Washington Constitution clearly establishes a right of access to court proceedings. It states in part as follows: "Justice in all cases shall be administered openly..." Const. art.1, § 10. This "separate, clear and specific provision entitles the public, [Rhem's family is part of that public] to openly administered justice." See Cohen v. Everett City Counsel, 85 Wn.2d 385, 388, 535 P.2d 801 (1975).

Our State Supreme Court has developed a strict, well-defined standard for closing a hearing in opposition to the public's right to open proceedings under Article I, § 10 of the Washington Constitution. This procedure is what is referred to as the ISHIKAWA method in criminal proceedings and is set forth succinctly in the court's subsequent opinion in State v. Bone-Club, 128 Wn.2d 254, 906 P.2d 325 (1995).

"1. The proponent of closure or sealing must make some showing [of a compelling interest], and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a 'serious and imminent threat' to that right.

2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.

3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests.

4. The court must weigh the competing interests of the proponent of closure and the public.

5. The order must be no broader in its application or duration than necessary to serve its purpose."

State v. Bone Club, 128 Wn.2d at 258-59.

Here, the trial court did not consider any of the rights of the Petitioner or his family when it decided that there was not enough room in the court, and closed the courtroom. The trial court did not make any prerequisite findings before considering its actions. SEE 1/13/03-RP at 75, 391.

Because the trial court did not follow the Supreme Court's ISHIKAWA METHOD before ordering the courtroom to be closed, Petitioner was denied a fair open trial to the public.

For the foregoing reasons, and the authorities cited, this court should grant the petition.

- (4) If This Court Finds that Petitioner's Defense Counsel At Trial Failed To Propose Proper Instructions To Exclude Evidence Concerning The .10mm Or Petitioner's Confrontation Rights, Or Petitioner's Right To A Fair Trial Before The Public, Then Petitioner Was Denied Effective Assistance Of Counsel Under The Sixth Amendment

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense." U.S. Const. amend. VI. When such a true adversarial proceedings has been conducted, even if defense counsel is court appointed, "the essence of an ineffective-assistance claim is that counsel's unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect." Limmelman v. Morrison, 477 U.S. 365, 374, 91 L.Ed.2d 305, 106 S.Ct. 2574, 2582 (1986).

The two prong test outlined in Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674; and State v. Thomas, 109 Wn.2d 222, 743 P.2d 816 (1987) is clearly met herein.

Defense counsel is presumed to be competent during trial when representing their clients. SEE State v. Piche, 71 Wn.2d 583, 590-91, 430 P.2d 522 (1967).

That presumption will not be found to be ineffective assistance of counsel, if the actions are found to go to the theory of the case or trial tactics. See State v. Garrett, 124 Wn.2d 504, 520, 881 P.2d 185 (1994).

Petitioner herein received ineffective counsel by his defense attorney during trial not requesting or proposing proper limiting instructions, or making proper objections, or violating orders he requested for his client in motions in limine during pretrial.

Mr. Stewart requested that the Court order that no reference be made to his client's use of a .10mm weapon during the trial. Yet, during the trial, he made no objection when the prosecution clearly stated that "Mr. Rhem has a .10mm handgun." 1/29/03-RP at 1524.

Counsel also requested in pre-trial that no one mention that there was a previous trial, which the court granted as well. Yet, Counsel or the State mentioned the first trial several times during its questioning of witnesses. 1/16/03-RP at 500; 1/21/03-RP at 519, 586-90, 609, 618, 620, 633-37. None of these instances were objected to by counsel.

Second, it is clearly shown that these errors violated Petitioners right to a fair trial with prejudice.

Prejudice exists if "there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different. State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995); Strickland, 466 U.S. at 695.

Because defense counsel requested the instructions in pretrial, it is a reasonable probability that there was a great chance for prejudice to Petitioner. Yet, the defense counsel did not object, and violated the requested order himself during the trial. There is a great probability that had these errors not occurred that the outcome of the trial would have been different.

For the foregoing reasons, this petition should be granted.

(b) Other Remedies Inadequate.

There are no other adequate remedies available to Mr. Rhem. His right to challenge his convictions on direct appeal expired in January 2006.

(c) Unlawful Restraint.

Mr. Rhem's restraint is unlawful under RAP 16.4(c) because the conviction was obtained or the sentence or other order was entered in a criminal proceeding ...instituted by the state or local government was imposed or entered in violation of the Constitution of the United States, or the Constitution or laws

of the State of Washington. SEE Rules of Appellate Procedure. RAP 16.4(c)(2).

IV. STATEMENT OF FINANCES

A court declared Mr. Rhem, petitioner herein, indigent for purposes of his 2000 and 2003 appeals, and his 2005 petition for review. His position has not changed since that time due to his incarceration since 1999.

Petitioner Rhem has no assets, and is not currently working within the prison system. He is not earning no wage or gratuity, and has \$21.33 in his inmate account. Therefore, under RAP 16.15(h), Mr. Rhem respectfully requests that this court waive his filing fee and other costs necessary for consideration of his personal restraint petition. (SEE Account Statement attached).

V. REQUESTED RELIEF

Petitioner, Mr. Rhem, respectfully requests that his convictions herein be vacated and the charges dismissed, as they were obtained in violation of laws of the United States Constitution, or the laws and Constitution of the State of Washington.

In the alternative, Petitioner Rhem requests that this court remand him to the trial court for further proceedings or a new trial, consistent with the laws of the United States Constitution, and/or the laws of the State of Washington.

VI. DECLARATION

I, MICHAEL RHEM, declare that I have read the foregoing petition and have knowledge of the facts contained herein.

I declare, under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct, to the best of my knowledge.

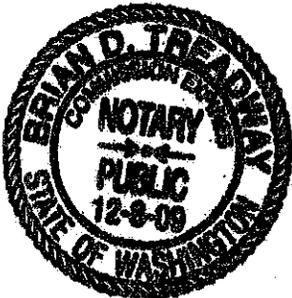
Dated this 14 day of JULY, 2006.

Michael Rhem

Michael Rhem, Petitioner #723868
Washington State Penitentiary
1313 North 13th Avenue, 6-D-10
Walla Walla, Washington 99362

NOTARY OR WITNESS

Subscribed and Sworn to before me,
this 14th day of July, 2006.



Brian D. Treadway

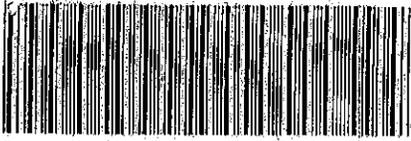
Notary Public, in and for the State of Washington
residing at 1313 Nth 13th W² WA. My
Commission expires: 12-08-09.

ATTACHMENTS

- Attachment A.....Amended INFORMATION
- Attachment B.....JUDGMENT AND SENTENCE
- Attachment C.....STATEMENT OF KIMOTHY WYNN
- Attachment D.....INMATE ACCOUNT STATEMENT

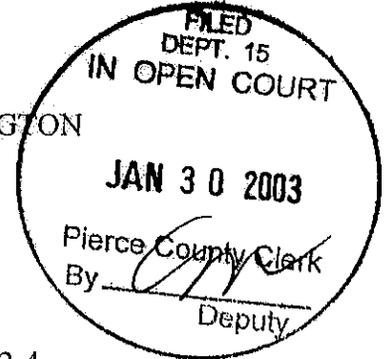
ATTACHMENT

"A"



99-1-04722-4 18383316 NOTE 02-03-03

FEB 03 2003



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

STATE OF WASHINGTON,

Plaintiff,

vs.

MICHAEL LOUIS RHEM,

Defendant.

CAUSE NO. 99-1-04722-4

THIRD AMENDED INFORMATION

DOB: 09/13/1975 SEX: MALE RACE: BLACK
SS#: 548-15-2915 SID#: WA14981478 DOL#: UNKNOWN

CO-DEF: KIMOTHY MAURICE WYNN 99-1-04723-2

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse KIMOTHY MAURICE WYNN and MICHAEL LOUIS RHEM of the crime of ASSAULT IN THE FIRST DEGREE-FIREARM ENHANCEMENT, committed as follows:

That KIMOTHY MAURICE WYNN and MICHAEL LOUIS RHEM, acting as accomplices, in the State of Washington, on or about the 21st day of August, 1999, did unlawfully and feloniously, with intent to inflict great bodily harm, intentionally assault Michael Rollins with a firearm or deadly weapon or by any force or means likely to produce great bodily harm or death, contrary to RCW 9A.36.011(1)(a) and 9A.08.020, and in the commission thereof the defendant was armed with a firearm, to-wit: semi-automatic pistols, those being firearms as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of the State of Washington.

THIRD AMENDED INFORMATION - 1

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

99-1-04722-4

COUNT II

And I, GERALD A. HORNE, Prosecuting Attorney aforesaid, do accuse KIMOTHY MAURICE WYNN and MICHAEL LOUIS RHEM of the crime of ASSAULT IN THE FIRST DEGREE-FIREARM ENHANCEMENT, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That KIMOTHY MAURICE WYNN and MICHAEL LOUIS RHEM, acting as accomplices, in the State of Washington, on or about the 21st day of August, 1999, did unlawfully and feloniously, with intent to inflict great bodily harm, intentionally assault Kimberly Matthews with a firearm or deadly weapon or by any force or means likely to produce great bodily harm or death, contrary to RCW 9A.36.011(1)(a) and 9A.08.020, and in the commission thereof the defendant was armed with a firearm, to-wit: semi-automatic pistols, those being firearms as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of the State of Washington.

COUNT III

And I, GERALD A. HORNE, Prosecuting Attorney aforesaid, do accuse MICHAEL LOUIS RHEM of the crime of UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That MICHAEL LOUIS RHEM, in the State of Washington, on or about the 21st day of August, 1999, did unlawfully, feloniously, and knowingly own, have in his possession, or under his control a firearm, he having been previously convicted in the State of Washington or elsewhere of a serious offense, to wit: Burglary in the Second Degree, contrary to RCW 9.41.040(1)(a), and against the peace and dignity of the State of Washington.

99-1-04722-4

COUNT IV

And I, GERALD A. HORNE, Prosecuting Attorney aforesaid, do accuse KIMOTHY MAURICE WYNN of the crime of UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That KIMOTHY MAURICE WYNN, in the State of Washington, on or about on or about the 21st day of August, 1999, did unlawfully, feloniously, and knowingly own, have in his possession, or under his control a firearm, he having been previously convicted in the State of Washington or elsewhere of a serious offense, to wit: Assault in the Second Degree, contrary to RCW 9A.040(1)(a), and against the peace and dignity of the State of Washington.

DATED this 14th day of January, 2003.

TACOMA POLICE DEPT CASE
WA02703

GERALD A. HORNE
Prosecuting Attorney in and for said County
and State.

By: 
GREGORY L. GREER
Deputy Prosecuting Attorney
WSB#: 22936

ATTACHMENT

"B"

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 99-1-04722-4

vs.

JUDGMENT AND SENTENCE (JS)

MICHAEL LOUIS RHEM
Defendant.

- Prison
- Jail One Year or Less
- First-Time Offender
- SOSA
- DOSA
- Breaking The Cycle (BTC)

SID: WA14981478
DOB: 09/13/75

Defendant.

I. HEARING

1.1 A sentencing hearing was held on February 7, 2003, and the defendant, the defendant's lawyer, Michael A. Stewart, and the deputy prosecuting attorney were present.

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 01/30/2003 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME	INCIDENT NO.
I	ASSAULT IN THE FIRST DEGREE W/FASE CHARGE CODE: E23	9A.36.011(1)(a)	08/21/99	99-233-1355
II	ASSAULT IN THE FIRST DEGREE W/FASE CHARGE CODE: E23	9A.36.011(1)(a)	08/21/99	99-233-1355
III	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE CHARGE CODE: GGG66	9A.040(1)(a)	08/21/99	99-233-1355

as found guilty by a jury.

- A special verdict/finding for use of firearm was returned on Counts I and II. RCW 9.94A.602, 510.
 Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
 Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	THEFT 2	12/17/90	Pierce Co WA	10/31/90	JUV	NV
2	THEFT 2	11/15/91	Pierce Co WA	10/2/91	JUV	NV
3	UPCS	4/1/93	Pierce Co WA	12/11/92	JUV	NV
4	TMVWOP	8/26/93	Pierce Co WA	8/2/93	JUV	NV
5	PSP1	6/28/94	Pierce Co WA	6/1/94	ADULT	NV
6	ATT ELUDE	6/28/94	Pierce Co WA	6/1/94	ADULT	NV
7	REND CRIM ASSIST	8/28/96	Pierce Co WA	8/28/96	ADULT	NV
8	ASSAULT 2	7/14/00	Pierce Co WA	7/23/99	ADULT	V
9	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	5/10/00	Pierce Co WA	10/20/99	ADULT	NV

- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9	XII	240-318 MOS	*60 MOS (F)	300 - 378 MOS	LIFE
II	0	XII	93-123 MOS	*60 MOS (F)	153-183 MOS	LIFE
III	9	VII	87-116 MOS	N/A	87-116 MOS	10 YRS

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence above below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [] attached [] as follows: Disposition was by jury trial, therefore, there are no plea agreements.

State recommended same sentence as imposed -

III. JUDGMENT

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

3.2 [] The court DISMISSES Counts _____ [] The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

JASS CODE

RTM/RIN	\$ _____	Restitution to: _____	
	\$ _____	Restitution to: _____	
		(Name and Address--address may be withheld and provided confidentially to Clerk's Office).	
PCV	\$ 500.00	Victim assessment	RCW 7.68.035
BLD	\$ 100.00	Biological Sample Fee	RCW
CRC	\$ 110.00	Court costs, including RCW 9.94A.030, 9.94A.505, 10.01.160, 10.46.190	
	Criminal filing fee	\$ 110.00	FRC
	Witness costs	\$ _____	WFR
	Sheriff service fees	\$ _____	SFR/SFS/SFW/WRF
	Jury demand fee	\$ _____	JFR
	Other	\$ _____	
PUB	\$ _____	Fees for court appointed Attorney	RCW 9.94A.030
	\$ _____	Other costs for: _____	
	\$ 710.00	TOTAL	RCW 9.94A.760

[] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[] shall be set by the prosecutor.

[] is scheduled for _____

[] RESTITUTION. Order Attached

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

RCW 9.94A.200010.

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

\$ _____ per month commencing _____ RCW 9.94A.760.

[] In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.760.

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

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

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

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

4.3 The defendant shall not have contact with MICHAEL ROLLINS DOB: 5/4/78 and KIMBERLY MATTHEWS DOB: 2/7/80 including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 1 1/2 years (not to exceed the maximum statutory sentence).

[] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.4 OTHER:

Empty rectangular box for additional notes or conditions.

4.4(a) BOND IS HEREBY EXONERATED

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

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

318 months on Count I 183 months on Count II
116 months on Count III _____ months on Count _____
_____ months on Count _____ months on Count _____

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

60 months on Count No I 60 months on Count No II
_____ months on Count No _____ months on Count No _____
_____ months on Count No _____ months on Count No _____

Sentence enhancements in Counts I and II shall run

[] concurrent [x] consecutive to each other.
Sentence enhancements in Counts I and II shall be served
[x] flat time [] subject to earned good time credit

Actual number of months of total confinement ordered is: 561 months

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

The sentence herein shall run consecutively to all felony sentences in other cause numbers prior to the commission of the crime(s) being sentenced.

Confinement shall commence immediately unless otherwise set forth here:

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 1,206 days

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

- Count I for 24 months;
- Count II for 24 months;
- Count _____ for _____ months;

COMMUNITY CUSTODY is ordered as follows:

- Count _____ for a range from: _____ to _____ Months;
- Count _____ for a range from: _____ to _____ Months;
- Count _____ for a range from: _____ to _____ Months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to

monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.

Defendant shall have no contact with: Michael Rollins or Kimberly Matthews.

Defendant shall remain within outside of a specified geographical boundary, to wit: Per CCU

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

The defendant shall undergo an evaluation for treatment for domestic violence substance abuse

mental health anger management and fully comply with all recommended treatment.

The defendant shall comply with the following crime-related prohibitions: _____

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

4.7 **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

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

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is

completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.

5.4 **RESTITUTION HEARING.**

[] Defendant waives any right to be present at any restitution hearing (defendants initials): _____

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.

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

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. N/A

5.8 **OTHER:** Def. shall have no contact w/ Digno Dejesus
or Randall Henderson or any known gang members.

DONE in Open Court and in the presence of the defendant this date: 2-7-03

JUDGE [Signature]
Print name _____

[Signature]
Deputy Prosecuting Attorney
Print name: GREGORY L. GREER
WSB # 22936

[Signature]
Attorney for Defendant
Print name: Michael Stewart
WSB # 25981

[Signature]
Defendant
Print name: _____

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CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 99-1-04722-4

I, KEVIN STOCK, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

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

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



IDENTIFICATION OF DEFENDANT

SID No. WA14981478
(If no SID take fingerprint card for State Patrol)

Date of Birth 09/13/75

FBI No 781355VA7

Local ID No UNKNOWN

PCN No UNKNOWN

Other

Alias name, SSN, DOB:

Race:

Asian/Pacific Islander Black/African-American

Caucasian

Ethnicity:

Hispanic

Sex:

Male

Native American Other:

Non-Hispanic

Female

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously

I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk,

Dated: 2-6-03

DEFENDANT'S SIGNATURE:

Michael Kheml

ATTACHMENT

"C"

APPENDIX "F"

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

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

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

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

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

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

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

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

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

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

- (I) The offender shall remain within, or outside of, a specified geographical boundary: Per CCO
- (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: Michael Rollins, Kimberly Matthews
- (III) The offender shall participate in crime-related treatment or counseling services;
- (IV) The offender shall not consume alcohol;
- (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or
- (VI) The offender shall comply with any crime-related prohibitions.
- (VII) Other: _____

REPORT

[X] TPD [] PCSO [] OTHER

9-2331355

VICTIM/ SUBJECT OF ORIGINAL REPORT	NAME: LAST WYNN	FIRST KIMOTHY	MIDDLE M.	REPORT TITLE AGGRAVATED ASSAULT			
	ADDRESS: STREET	CITY	STATE	ZIP PHONE			
CASE STATUS	Property []	Partial []	No Further Inv. []	Investigation To []	Cleared []	Cleared []	Cleared []
	Recovered	Recovery	Pending New Leads	Be Continued	Unfounded	Exceptional	With Arrest
RELATED CASE NUMBERS							

CODE: A (Arrest) S (Suspect) SV (Suspect Verified) R (Runaway) W (Witness) O (Other) I (Institutional Impact)

Code	NAME: Last	First	Middle (Maiden)	Home Phone	Business Phone			
ADDRESS: Street			City	State	Zip	Occupation	Place of Employment/School	Rel. to Victim
Date of Birth	Race	Sex	Height	Weight/Build	Hair	Eyes	Clothing, Scars, Marks, Tattoos, Peculiarities, A.K.A.	
[] Booked	Number	Charge Details (Include Ordinance or R.C.W. Number)						
[] Cited								

Code	NAME: Last	First	Middle (Maiden)	Home Phone	Business Phone			
ADDRESS: Street			City	State	Zip	Occupation	Place of Employment/School	Rel. to Victim
Date of Birth	Race	Sex	Height	Weight/Build	Hair	Eyes	Clothing, Scars, Marks, Tattoos, Peculiarities, A.K.A.	
[] Booked	Number	Charge Details (Include Ordinance or R.C.W. Number)						
[] Cited								

Code	NAME: Last	First	Middle (Maiden)	Home Phone	Business Phone			
ADDRESS: Street			City	State	Zip	Occupation	Place of Employment/School	Rel. to Victim
Date of Birth	Race	Sex	Height	Weight/Build	Hair	Eyes	Clothing, Scars, Marks, Tattoos, Peculiarities, A.K.A.	
[] Booked	Number	Charge Details (Include Ordinance or R.C.W. Number)						
[] Cited								

Additional Persons On Report Continuation Sheet (People) Form No. Z-558

PROPERTY RECOVERED - List and indicate disposition. PROPERTY ON PROPERTY REPORT FORM (Form Z-1039)

*yellow = out
except for green
override back in.*

NARRATIVE

On 12-5-99, Det. J. Ringer and I contacted KIMOTHY WYNN in the Multnomah County Jail in Portland, Oregon. Prior to interviewing WYNN, Det. Ringer advised him of his Miranda rights, which he stated he understood, waived and signed the TPD Advisement of Rights Form.

WYNN was first asked about the shooting in front of SURINA CRUMBLE's house, TPD Case No. 99-2880642. WYNN stated that he had been

REPORTING TIME & DATE 12-7-99	OFFICER'S SIGNATURE & NO. DET. T. DAVIDSON #074	APPROVAL
REPORT PROCESSING (Judge Personnel Only)	DISTRIBUTION: Date _____ By _____	MICROFILMED: Date _____ By _____
	INDEXED: Date _____ By _____	COPY TO: _____
		REVIEWED BY: _____

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sitting in his Olds Cutlass (Washington license 523 KKP) behind the wheel. He said another guy had been sitting next to him in the passenger seat, and a third guy had been standing outside on the passenger side and leaning inside the front passenger window. WYNN said they had been listening to music and that he had not known either of them. WYNN stated that just prior to the shooting, MICHAEL RHEM had stopped by briefly in his white Cadillac and had told him that he was going up the block and would be right back. WYNN said RANDALL HENDERSON had been with RHEM. WYNN stated that a brown van then pulled up and the door slid open and gunshots were fired at them from out of the passenger side of the van. WYNN first said that he had not seen who had fired from the van, but heard it had been MICHAEL RISBY, and also heard it may have been ANDREW TUCKER.

When WYNN was asked why he had fired shots back at the van, he said, "No Comment." He was then asked if he had fired back any shots and again he said, "No Comment." Det. Ringer showed WYNN photographs of the brown van and he confirmed it was the van used in the shooting. WYNN said he remembered the "For Sale" sign in the back window. He said he had no idea whose light blue beanie was in the van.

RISBY was asked what he had told CRUMBLE immediately after the shooting. He said he had told her to put his car in the garage across the street.

WYNN was asked why RISBY would shoot at him and he said he didn't know, because he had actually saved RISBY's life. He said RHEM had pulled a gun on RISBY over at CRUMBLE's house and jacked RISBY's car. WYNN said that he had stood between RISBY and RHEM because he knew RHEM would not shoot him, but knew he would shoot RISBY. WYNN said he told them that it didn't need to go that far and the car wasn't worth getting shot over.

WYNN was then asked about the shooting at the AM/PM at So. 12th and Sprague, TPD Case Number 99-2340123. WYNN said that he had been grazed by a bullet in the left thigh. He said that he hadn't seen the shooter or any vehicles, only the muzzle flashes from the alley behind the store. WYNN said he could tell it was only one shooter, firing

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slowly and deliberately, and taking careful aim. He said the second gunshot grazed him and the third and fourth gunshots grazed RHEM. He also said a light-skinned black male he knew only as "D-LOC" had been grazed above the eye. WYNN said that after the shooting RHEM had told him that the shooter had been ANDREW TUCKER. He said RHEM told him he had seen TUCKER at the gas pumps and told him to tell his brother (MICHAEL ROLLINS) "it was on", the next time he saw him. RHEM then told him he had seen TUCKER turn his car up 12th Street toward the alley and then the shooting happened. WYNN said that LATRON SWEARINGTON told him he had seen RHEM and TUCKER arguing and also saw TUCKER turn up 12th Street, towards the alley. WYNN stated that he had not seen RHEM and TUCKER arguing and had not seen TUCKER at all.

after per state shoot - victims not offered by state

WYNN then stated that "RHEM started everything. All of it. Every God-damned thing." WYNN stated that he had been shot at during a barbecue at his aunt's house at 724 So. "L" Street, TPD Case No. 99-2331181. WYNN said that he had been outside at the barbecue, flipping meat, and his sister asked him who the people were in two cars that had just arrived. He said he saw two Ford Tauruses, one light blue and the other burgundy, in the street. WYNN said suddenly there was gunfire from both cars and a lady standing next to him got shot in the elbow. He said he could not see faces inside the cars, but could tell they were both full. He said that by the amount of shots fired, he felt everyone in both cars had been shooting. WYNN denied firing any gunshots back and said no one fired any shots back at the cars. He said RHEM had been there during the shooting, but had been inside the house. WYNN said that the only people outside during the shooting had been himself, his sister and the lady that got shot. He said his Caprice had been shot up by the gunfire. He also said that he had talked to a black cop at the scene, but had been uncooperative and told him he had seen nothing. He said RHEM never came outside and did not talk to the police.

WYNN stated that the shooting had been retaliation for RHEM having shot at RODNEY HEBERT and MICHAEL ROLLINS earlier that day at South 23rd and Wilkeson, TPD Case

having been shot at

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No. 99-2440911. WYNN said that he had been at SEAN, the mechanic's house, talking with CHRIS HEADS in the front yard. He said that he heard a gunshot and saw ^{someone} (RHEM) in the front yard of the house next door to the south, shooting at HEBERT's white Caprice Classic as it traveled northbound on Wilkeson, then westbound on So. 23rd Street. WYNN said his car had been parked on Wilkeson, in front of SEAN's house. He said he and RHEM left after the shooting and drove by MICHAEL ROLLINS' aunt's house. WYNN said they saw ROLLINS out front and he flagged them to stop. WYNN said ROLLINS asked them why they had shot at HEBERT's car and told them he had also been in the car, as had HEBERT's daughter. WYNN said he told RHEM to get out of the car and straighten things out with ROLLINS. WYNN said that RHEM got out of the car and argued with ROLLINS. WYNN said that both RHEM and ROLLINS had their hands on their guns at times during the argument. WYNN said he heard RHEM tell ROLLINS that he hadn't seen him or the little girl in the car. WYNN said they also argued over the fight at 112th and Steele Street and ROLLINS told RHEM that he had already straightened that out with JUNIOR (DIGNO DeJESUS) and then things calmed down and they left. WYNN stated that he had not seen ROLLINS or the girl in HEBERT's car.

WYNN stated that RHEM told him everything had started over the fight at 112th and Steele Street. WYNN said he had been locked up at that time. He didn't go into detail about that because he wanted to talk about the Assault 1st case he had been booked for, TPD Case No. 99-2331355. WYNN was advised that it was for the shooting at MICHAEL ROLLINS' aunt's house at 1915 So. Ash, where ROLLINS and his girlfriend, KIMBERLY MATHEWS, had been shot ^{at}. WYNN stated that he had nothing to do with that, but admitted he knew who had, although he refused to come right out and say. WYNN said that the blue Caprice that was involved in the shooting was not his. He said his blue Caprice was a 2-door and the blue Caprice used in the shooting was a 4-door. WYNN was asked if it had been LATRON SWEARINGTON's Caprice and he stated, "You guys pick it up from there." WYNN was advised that ROLLINS had identified

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him and he said that he didn't care about what ROLLINS said because he wasn't there and it was ROLLINS' word against his.

WYNN was then asked where he had been during the shooting at ROLLINS and MATTHEWS. WYNN stated that he had been at his aunt's for the barbecue with RHEM. He stated that the shooting went down at the barbecue and then RHEM phoned SWEARINGTON and asked him to come over and pick them up. WYNN said that both he and RHEM had been very angry and had been

still out talking about retaliation on whoever shot at them. WYNN said RHEM felt it had been HEBERT, but that he was not sure and didn't want to retaliate on the wrong people. He also said his grandmother had been trying to talk him out of retaliating. WYNN stated that approximately 45 to 60 minutes after RHEM phoned him,

SWEARINGTON arrived in his blue Caprice and the three of them went to the AM-PM at So. 12th and Sprague to see who was there and to try and find out if anyone knew who had shot at him. When asked why they went there to find out, WYNN said because that was where everyone hung out. WYNN said that they had only been there about five minutes when they were then shot at again and he was grazed. WYNN said that SWEARINGTON and RHEM then dropped him off back at his aunt's house and told him they would be

back later. They then left. WYNN said he drove his Caprice that had just been shot up to pick up his girlfriend, ALISHA RORIE, at work. He said he could not remember the name of the business where she worked, but provided the phone number of 572-2032. WYNN said he then drove back to his aunt's house, where he and RORIE stayed for another two and a half to three hours, at which time they left and drove to

RORIE's apartment, where they stayed the rest of the night. WYNN said SWEARINGTON and RHEM never returned after dropping him off.

I then told WYNN I wanted to be sure of what he was saying. I asked him if what he was saying was that from the time SWEARINGTON picked him and RHEM up at his aunt's house and they went to the AM-PM and were shot at, to the time they dropped him back off at his aunt's house, he was with

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Green

Wynn said Latron Swearington
in Swearington's blue caprice
put Wynn in the house

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them in SWEARINGTON's car that entire time period? WYNN said that was correct.

(B)

WYNN was then asked about the shooting at the Texaco by the Silver Unicorn, where ANDREW TUCKER had been shot at, TPD Case No. 99-2700124. WYNN said that he had seen TUCKER's car parked near the vacuum cleaner. He said that he had heard that TUCKER wanted to talk to him about everything that had been happening, and since they were from the same hood, he stopped to talk to him.

WYNN said he pulled up behind TUCKER's car and slightly to the right of it. WYNN said suddenly RHEM, who had been sitting on the passenger's side in the front seat, leaned across the front of him and began firing two guns out of the driver's window at TUCKER's car. WYNN said that just before the shooting RHEM had said, "Fuck this. That mother-fucker shot at me." WYNN said that as soon as RHEM stopped shooting,

(B)

he drove off and TUCKER shot back at them as they fled. When asked, WYNN said RHEM had been shooting a 10mm, but wasn't sure of the other gun. He said besides the 10mm, RHEM also possessed a .40 caliber and .45 caliber handgun.

(B)

WYNN was then asked what kind of car TUCKER had been in and he said a smaller dark-colored stationwagon. He said he had been driving a Regal and when asked if it had been SURINA's, he said he didn't know. When asked who else had been in the car during the shooting, he said, "No comment." When asked, WYNN said that SWEARINGTON had possessed a .380, but had traded it for something else, but was unsure of what. When asked if RHEM had ever possessed a 9mm, WYNN said, "No, I don't think so. Only the 10, 40 and .45." WYNN said he had no guns.

(B)

WYNN denied any involvement in, or knowledge of any shooting during an attempted car jack of a white Mustang, TPD Case No. 99-2330166, or a drive-by shooting on SHAWN GAINES at 64th and Puget Sound, TPD Case No. 99-2421336. WYNN denied even knowing GAINES.

WYNN volunteered that RHEM would sometimes shoot unexpectedly and for no reason when they were out cruising around. WYNN would not give specifics and said he would not volunteer any

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any information that we didn't already know about.

WYNN was asked about his car having been stolen. WYNN said ALISHA RORIE had been driving the car and had been carjacked at gunpoint at the apartments at So. 15th and Sprague. WYNN said that TIFFANY BRADLEY told him she had witnessed the carjack and that "LI'L WALTER" had done it. When asked, WYNN said that he had seen LI'L WALTER two to three times since then and had chased him.

WYNN denied ever shooting at LI'L WALTER and said RHEM had not either. (TPD Case No. 99-2711204)

WYNN was then asked how he had come into possession of the Caprice he now drove. WYNN said he had traded some Mexican a Cutlass, \$1,500.00 and some sounds for the Caprice. When asked why he left Tacoma for Portland, WYNN said it was to visit his aunt. When asked if it was before or after RHEM got arrested, he said it had been after.

WYNN then asked what we wanted, what it would take for him to go home. We told WYNN all we wanted was the truth and that he had only been partially truthful. WYNN said that if we dropped the charges he would tell us everything. WYNN was advised that we didn't have the authority to make deals and all we could do was pass on what he said to the Prosecutor. He was then asked what "Tell us everything" meant and he again asked what we wanted to know. WYNN was then asked several questions:

- Question #1 - Do you know who shot at you at SURINA's? WYNN responded, "Yes."
- Question #2 - Did you see anyone else? WYNN responded, "Yes."
- Question #3 - Did you see the driver? WYNN responded, "No. I saw two people."
- Question #4 - Both passengers? WYNN responded, "Yes."
- Question #5 - Are they neighborhood Crips? WYNN responded, "Yes."

WYNN then stated that he was done answering questions and asked what would happen now. He was told we would provide his statement to the Prosecutor and we would discuss it with him. We

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99-2331355

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again explained to WYNN that we did not make deals, nor would we even discuss deals with him and that the only person authorized to offer deals was the Prosecutor. WYNN assured us that if we wanted to do it, we could make it happen. The interview was then concluded.

It should be noted that this was the only time during the interview that anything along these lines was discussed and only after WYNN brought it up.

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ATTACHMENT

"D"

SOLIVER

WASHINGTON STATE PENITENTIARY

OTRTASTB

TRUST ACCOUNT STATEMENT

6.02.1.6

DOC# 0000723868 Name: RHEM, MICHAEL L
 LOCATION: E01-026-6D103

BKG# 40186

Account Balance Today (07/03/2006) Current : 120.85
 Hold : 0.00
 Total : 120.85

Account Balance as of 06/30/2006 120.85

06/01/2006 06/30/2006

SUB ACCOUNT	START BALANCE	END BALANCE
SPENDABLE BAL	4.04	21.33
SAVINGS BALANCE	73.03	73.03
WORK RELEASE SAVINGS	0.00	0.00
EDUCATION ACCOUNT	0.00	0.00
MEDICAL ACCOUNT	0.00	0.00
POSTAGE ACCOUNT	1.49	26.49
COMM SERV REV FUND ACCOUNT	0.00	0.00

DEBTS AND OBLIGATIONS

TYPE	PAYABLE	INFO NUMBER	AMOUNT OWING	AMOUNT PAID	WRITE OFF AMT.
CVCS	CRIME VICTIM COMPENSATION/07112000	04122001	UNLIMITED	41.00	0.00
COIS	COST OF INCARCERATION /07112000	04122001	UNLIMITED	164.01	0.00
MEDD	MEDICAL COPAY DEBT	04082002	0.00	3.00	0.00
MEDD	MEDICAL COPAY DEBT	08302004	2.70	0.00	0.00
MEDD	MEDICAL COPAY DEBT	01292004	0.00	3.00	0.00
MEDD	MEDICAL COPAY DEBT	04092000	0.00	3.11	0.00
COI	COST OF INCARCERATION	04122001	UNLIMITED	0.00	0.00
CVC	CRIME VICTIM COMPENSATION	04122001	UNLIMITED	61.20	0.00
SPHD	STORES PERSONAL HYGIENE DEBT	07232004	0.83	0.00	0.00
SPHD	STORES PERSONAL HYGIENE DEBT	04092000	0.00	4.26	0.00
TVD	TV CABLE FEE DEBT	09112004	2.96	0.00	0.00
TVD	TV CABLE FEE DEBT	04092000	0.00	1.50	0.00
TVD	TV CABLE FEE DEBT	06092001	0.00	5.52	0.00
COSFD	COS - FELONY DEBT (206)	03092004	0.00	180.00	0.00
COSUD	COS - OMMU DEBT (206)	03092004	66.29	8.71	0.00
PROPD	PROPERTY DAMAGE DEBT	10212002	0.00	4.65	0.00
LFO	LEGAL FINANCIAL OBLIGATIONS	20040126	UNLIMITED	22.00	0.00
POSD	POSTAGE DEBT	06042001	0.00	2.81	0.00
POSD	POSTAGE DEBT	07192004	1.17	0.00	0.00
HYGA	INMATE STORE DEBT	02172004	0.00	0.00	0.00
HYGA	INMATE STORE DEBT	05072001	0.00	42.47	0.00
IMD	LEGAL MAIL DEBT	06292005	3.17	0.00	0.00

SOLIVER

WASHINGTON STATE PENITENTIARY

OTRTASTB

TRUST ACCOUNT STATEMENT

6.02.1.6

DOC# 0000723868 Name: RHEM, MICHAEL L
LOCATION: E01-026-6D103

BKG# 40186

DEBTS AND OBLIGATIONS

TYPE	PAYABLE	INFO NUMBER	AMOUNT OWING	AMOUNT PAID	WRITE OFF	AMT.
MISCD	MISCELLANEOUS DEBT	02212003	0.00	1.69		0.00
800D	WELFARE/BETTERMENT FUND	04092000	0.00	2.00		0.00
UPSD	PERSONAL PROPERTY POSTAGE DEBT	05032001	0.00	0.34		0.00
UPSD	PERSONAL PROPERTY POSTAGE DEBT	11132003	0.00	1.86		0.00

TRANSACTION DESCRIPTIONS --

SPENDABLE BAL SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
06/07/2006	CLASS 3 GRATUITY-M.I. FOOD SERVICE P/R		42.19	46.23
06/07/2006	Deductions-CVC-04122001 D D		(2.11)	44.12
06/07/2006	Deductions-COSUD-03092004 D D		(8.44)	35.68
06/10/2006	I05 - TV CABLE FEE		(0.50)	35.18
06/21/2006	REC FEE - MUSIC-M.I. 3RD QT		(5.00)	30.18
06/26/2006	CRS SAL ORD #3495435STOR		(8.85)	21.33

TRANSACTION DESCRIPTIONS --

SAVINGS BALANCE SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS --

WORK RELEASE SUB-ACCOUNT SAVINGS

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS --

EDUCATION ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS --

MEDICAL ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS --

POSTAGE ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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06/23/2006 RECEIPT FOR POSTAGE- 25.00 26.49

TRANSACTION DESCRIPTIONS --

COMM SERV REV SUB-ACCOUNT FUND ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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