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No. 94582-9

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

IN RE THE PERSONAL RESTRAINT
PETITION OF:

GARY D. MEREDITH,

Petitioner.

NO. 46671-6-II

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Must the petition be dismissed where the petitioner cannot show actual prejudice to a constitutional right?
2. Where the petitioner does not demonstrate that defense counsel accepted, or failed to object to receiving, fewer peremptory challenges than he was entitled, has the petitioner demonstrated deficiency of counsel?
3. Where the unsuccessfully challenged juror (#32) was excused and did not deliberate to a verdict, has the petitioner demonstrated prejudice?
4. Where the court exercised its discretion in denying a motion to sever counts, admitting evidence under ER 404(b), and denying a challenge to a juror for cause, has the petitioner shown a fundamental defect resulting in a complete miscarriage of justice?

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5. Where the State was required to prove a prior sex conviction as an element of a currently charged crime, did the court err in permitting evidence of the prior conviction?

6. Where prior convictions were committed during different months in different years, to different victims, was it a fundamental defect for the court to determine that the offenses were not the same criminal conduct for sentencing?

7. Where the petitioner can demonstrate no error, has he demonstrated such a cascade of errors as to deprive him of a fair trial?

B. STATUS OF PETITIONER:

Petitioner, Gary Meredith, is restrained pursuant to a Judgment and Sentence entered in Pierce County Cause No. 95-1-04949-6. Appendix A.

The petitioner went to trial in 1996. 1RP 3ff. The jury found him guilty. *See* Appendix A. The petitioner absconded and was not sentenced until November 21, 2008. *Id.* The petitioner took a direct appeal of various trial errors. *See State v. Meredith*, 163 Wn. App. 75, 259 P. 3d 324 (2011)(published in part). His conviction was affirmed by the Supreme Court. *See State v. Meredith*, 178 Wn. 2d 180, 306 P. 3d 942 (2013). The Mandate issued October 8, 2013. Appendix B. The petitioner filed a timely Personal Restraint Petition (PRP) on August 8, 2014. He later filed a revised or corrected PRP on January 29, 2015¹.

¹ The State is responding to the most recent version.

1 C. ARGUMENT:

2
3 1. THE PETITION FAILS TO DEMONSTRATE DEFICIENCY OF
4 COUNSEL OR PREJUDICE THEREBY.

5 To demonstrate ineffective assistance of counsel, a defendant must satisfy the two-
6 prong test laid out in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.
7 Ed. 2d 674 (1984); *see also State v. Thomas*, 109 Wn.2d 222, 743 P.2d 816 (1987). First, a
8 defendant must demonstrate that his attorney's representation fell below an objective
9 standard of reasonableness. Second, a defendant must show that he or she was prejudiced
10 by the deficient representation. Prejudice exists if "there is a reasonable probability that,
11 except for counsel's unprofessional errors, the result of the proceeding would have been
12 different." *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995); *see also*
13 *Strickland*, 466 U.S. at 695 ("When a defendant challenges a conviction, the question is
14 whether there is a reasonable probability that, absent the errors, the fact finder would have
15 had a reasonable doubt respecting guilt.").

16 There is a strong presumption that a defendant received effective representation.
17 *McFarland*, 127 Wn.2d at 335; *State v. Brett*, 126 Wn.2d 136, 198, 892 P.2d 29 (1995);
18 *Thomas*, 109 Wn.2d at 226. The Supreme Court recently reaffirmed this strong
19 presumption that counsel's performance was reasonable. *See State v. Grier*, 171 Wn. 2d 17,
20 246 P.3d 1260 (2011).

21 The standard of review for effective assistance of counsel is whether, after
22 examining the whole record, the court can conclude that defendant received effective
23 representation and a fair trial. *State v. Ciskie*, 110 Wn.2d 263, 751 P.2d 1165 (1988).
24
25

1 a. Number of peremptory challenges.

2 Each side is entitled to six peremptory challenges in a felony trial. *See* CrR
3 6.4(e)(1). Each party is entitled to one peremptory challenge for each alternate juror
4 selected. *See* CrR6.5.

5 The Sixth Amendment of the United States Constitution guarantees a defendant the
6 right to a fair and impartial jury. *State v. Williamson*, 100 Wn. App. 248, 251, 996 P.2d
7 1097 (2000). However, it does not guarantee peremptory challenges. *State v. Vreen*, 99
8 Wn. App. 662, 668, 994 P.2d 905, *aff'd*, 143 Wn.2d 923, 26 P.3d 236 (2001). *See also*
9 *United States v. Martinez-Salazar*, 528 U.S. 304, 311, 120 S. Ct. 774, 145 L. Ed. 2d. 792
10 (2000). Instead, peremptory challenges are governed by rule and statute. *Williamson*, 100
11 Wn. App. at 251.

12 Here, the court stated that it usually seated 14 jurors and chose two alternates at
13 random at the end of the evidence. 1 RP 9. The court seated 14 jurors. Appendix C.
14 Fourteen peremptory challenges were exercised in total. *See* Appendix D. The record does
15 not reflect how many peremptory challenges were exercised by each side, or if either party
16 used all of the peremptory challenges they were allowed. The record does not reflect that
17 either party objected to the number of peremptory challenges or being deprived a
18 peremptory challenge. The peremptory challenges were exercised at sidebar. Voir Dire RP
19 240.

20 A defendant seeking post-conviction relief must offer competent evidence to
21 support his petition. *See In re Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086, *cert. denied*, 506
22 U.S. 958, 113 S. Ct. 421, 121 L. Ed. 2d 344 (1992) (a petitioner must produce affidavits
23 that “contain matters to which the affiants may competently testify” before he will be
24 entitled to a reference hearing on a personal restraint petition); *In re Lord*, 123 Wn.2d 296,
25 303, 313, 868 P.2d 835 (1994) (allegations supporting a personal restraint petition must be

1 proven by “competent, admissible evidence.”). Personal restraint petition claims must be
2 supported by affidavits stating particular facts, certified documents, certified transcripts,
3 and the like. *In re Williams*, 111 Wn.2d 353, 364, 759 P.2d 436 (1988).

4 When a defendant submits hearsay or otherwise inadmissible evidence in support
5 of his personal restraint petition, the evidence is properly excluded through the filing of a
6 motion to strike. *In re Pirtle*, 136 Wn.2d 467, 479, 965 P.2d 593 (1998); *see also* ER
7 103(a)(1). Here, the petitioner includes a declaration of Rayanne Robertson in Appendix B
8 to his PRP. Ms. Robertson reports hearsay regarding the number of peremptory challenges.
9 The Court must disregard the petitioner’s Appendix B. The State will move to strike it.

10 The record does not reflect if the defense would have exercised another peremptory
11 challenge if he could have done so. Jury selection is not a scientific exercise. It involves
12 the exercise of counsel’s judgment, strategy, and tactics. Although it may seem obvious
13 that one party would exercise a peremptory challenge where a challenge for cause had been
14 denied, such a strategy or tactical use of challenge cannot be assumed. Because the
15 erroneous denial of a challenge for cause is “cured” by exercise of a peremptory challenge
16 on that juror, a party may wish to preserve the legal issue of the challenge for cause and
17 exercise the peremptory challenge on another undesirable prospective juror. *See, e.g. State*
18 *v. Roberts*, 142 Wn. 2d 471, 517, 14 P. 3d 713 (2000).

19 The record (not surprisingly) does not reflect the defense strategy regarding, or
20 evaluation of, the prospective jurors. It is unknown if the removal of juror #32 would have
21 made way for some other undesirable juror. Two more jurors needed to be selected after
22 juror # 32. Defense counsel may have felt it necessary to hold a peremptory challenge in
23 reserve for the remaining jurors. Given juror #32’s promises to follow the law and keep an
24 open mind, the defense may have decided to take its chances with the juror.

1 Therefore, the petitioner cannot demonstrate deficiency of counsel regarding the
2 number of peremptory challenges. Even if his attorney had exercised fewer peremptory
3 challenges than he was entitled to, the petitioner must demonstrate prejudice; that the result
4 of his trial would likely have been different. He cannot meet this burden. First, although
5 juror #32 ended up on the jury as juror #12, he was later excused when he (or his wife)
6 called in sick. 6 RP 491, Appendices E, C. Juror #32/12 did not deliberate to a verdict.

7 Second, the evidence in this case was overwhelming. The petitioner was charged
8 with having sex with a 12 year old girl. There was no dispute that he was in the bedroom
9 with her. The victim testified that he had vaginal intercourse with her. At least two
10 witnesses actually saw him having sex with the victim. Medical evidence confirmed that
11 the victim had sexual intercourse that night. Far from being criticized, trial counsel should
12 be lauded for zealously advocating the petitioner's case in the face of such evidence.

13 b. Failure to object to offender score.

14 As will be pointed out in detail below, counsel was not deficient in failing to object
15 to the calculation of the offender score, particularly the issue of same criminal conduct
16 regarding the prior convictions. To the contrary; counsel would have erred if he had argued
17 they were the same criminal conduct.

18 c. Assistance of appellate counsel.

19 To establish deficient performance by appellate counsel, the petitioner must show
20 merit to his claim; that his appellate counsel should have known, but failed, to raise the
21 issue in the appeal. *See In re Personal Restraint of Morris*, 176 Wn.2d 157, 167, 288 P.3d
22 1140 (2012). To establish prejudice, the petitioner must show that had appellate counsel
23 included the issue in the appeal, the Court would have reversed the petitioner's conviction
24 or remanded the case back to the trial court. *See In re Personal Restraint of Netherton*,
25 177 Wn.2d 798, 801, 306 P.3d 918 (2013).

1 As pointed out above, there was no deficiency or prejudice regarding juror #32/12.
2 Also, appellate counsel may have decided not to litigate the challenge for cause to juror #4
3 because any error was “cured” when juror #4 was removed with a peremptory challenge.

4
5 2. THE PETITION FAILS TO DEMONSTRATE CONSTITUTIONAL
6 ERROR OR A FUNDAMENTAL DEFECT.

7 To obtain relief in a PRP challenging a judgment and sentence, the petitioner must
8 show actual and substantial prejudice resulting from alleged constitutional errors, or, for
9 alleged nonconstitutional errors, a fundamental defect that inherently results in a
10 miscarriage of justice. *In re Personal Restraint of Cook*, 114 Wn.2d 802, 813, 792 P.2d
11 506 (1990). In a PRP, the petitioner has the burden of proof. He must establish error by a
12 preponderance of the evidence; that, more likely than not, his rights were actually and
13 substantially prejudiced. *Id.*, at 814. As *Cook* and other cases point out, the standard that a
14 petitioner must meet in a PRP is far higher than abuse of discretion. *Cook*, at 810, 812.

15 a. Severance of counts.

16 The decision whether to sever counts under CrR 4.4(b) is within the sound
17 discretion of the trial court. *See, State v. Kalakosky*, 121 Wn. 2d 525, 536, 852 P. 2d 1064
18 (1993). Here, the court considered the arguments of the parties, and concluded that the
19 evidence was admissible under ER 404(b) and to prove an element of Count II. 1 RP 70.
20 The court heard further extensive argument the next day. It considered and weighed the
21 potential prejudice. 2 RP 94. The court considered all the requisite elements for the motion
22 to sever. 2 RP 94-95. The court did not abuse its discretion in denying severance of counts.

1 b. Admission of ER 404(b) evidence.

2 The decision to admit evidence of other crimes or misconduct under ER 404(b) lies
3 within the sound discretion of the trial court and will not be disturbed on appeal absent an
4 abuse of discretion. *See State v. Brown*, 132 Wn. 2d 529, 571-572, 940 P. 2d 546 (1997).

5 Here, as will be pointed out specifically below, ER 404(b) did not apply because
6 the State was required to prove the prior conviction as an element of Count II. However,
7 the evidence was also admissible under ER 404(b) to show the intent or immoral purpose
8 element in Count II. *See State v. Lough*, 125 Wn. 2d 847, 889 P. 2d 487 (1995). The court
9 found that 1) proof was necessary as an element of the crime; and 2) that it was admissible
10 to prove *mens rea* and common scheme or plan. 1 RP 29-30. The court did not abuse its
11 discretion.

12 c. Language of the limiting instruction was correct.

13 A trial court's decision to give a particular limiting instruction is reviewed for an
14 abuse of discretion. *State v. Walker*, 136 Wn.2d 767, 771-772, 966 P.2d 883 (1998).
15 Jurors are presumed to follow the trial court's instructions. *State v. Emery*, 174 Wn. 2d
16 741, 766, 278 P. 3d 653 (2012). The parties discussed the language and use of the
17 instruction. 5 RP 448-449. The court stated that it would give the instruction when the
18 evidence was introduced and at the end of the case. 5 RP 449, *see* Instruction 14, Appendix
19 F. The defense had no objection.

20 d. Challenge of juror for cause.

21 The appellate court reviews a trial court's denial of a challenge for cause for
22 manifest abuse of discretion. *State v. Davis*, 175 Wn.2d 287, 312, 290 P.3d 43 (2012). A
23 defendant must prove actual bias. *State v. Noltie*, 116 Wn.2d 831, 838, 809 P.2d 190
24 (1991). A defendant must show "more than a mere possibility that the juror was
25 prejudiced" to successfully challenge the trial court's decision on appeal. *Id.*, at 840

1 (quoting 14 Lewis H. Orland & Karl B. Tegland, Washington Practice: Trial Practice §
2 202, at 331 (4th ed.1986)). A juror's "equivocal answers alone" do not justify removal for
3 cause. *Noltie*, at 839. The appropriate question is "whether a juror with preconceived ideas
4 can set them aside" and decide the case on an impartial basis. *Id.*, at 839. The appellate
5 court gives great deference to the trial court because of its ability "to observe the juror's
6 demeanor [during voir dire] and, in light of that observation, to interpret and evaluate the
7 juror's answers to determine whether the juror would be fair and impartial" " *Davis*, 175
8 Wn. 2d at 312 (quoting *State v. Gentry*, 125 Wn.2d 570, 634, 888 P.2d 1105 (1995));
9 *Noltie*, 116 Wn.2d at 839.

10 Here, juror #32 forthrightly answered questions raised by defense counsel. Voir
11 Dire RP 236-239, Appendix H. The juror honestly admitted struggling with the concepts
12 and information the attorneys were questioning him about. However, he did agree and
13 promise to set aside his own ideas and to decide the case solely upon the evidence admitted
14 and the instructions of the court. Voir Dire RP 238. This is all we can ask of any juror.
15 Jurors are presumed to follow the instructions of the court. *See State v. Warren*, 165
16 Wn.2d 17, 29, 195 P.3d 940 (2007). The trial court did not abuse its discretion. The
17 petitioner cannot show actual prejudice where juror #32/12 did not deliberate to a verdict.

18
19 3. CHALLENGE TO APPLICATION OF RCW 9.68A.090 AND
ER404(b).

20 Where a person is charged under RCW 9.68A.090(2), the State must prove beyond
21 a reasonable doubt that the defendant has "previously been convicted under this section or
22 of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other
23 felony sexual offense in this or any other state". *See, State v. Bache*, 146 Wn. App. 897,
24 905, 193 P. 3d 198 (2008), citing *State v. Oster*, 147 Wn.2d 141, 52 P.3d 26 (2002). To
25 avoid the details of the prior offense being placed before the jury, a defendant may offer to

1 stipulate to the predicate offense. *See Old Chief v. United States*, 519 U.S. 172, 191, 117
2 S. Ct. 644, 136 L.Ed.2d 574 (1997). However, the defendant must stipulate. *See, State v.*
3 *Gladden*, 116 Wn. App. 561, 565, 66 P. 3d 1095 (2003). Otherwise, the evidence of the
4 prior conviction is not only admissible, but required. Therefore, ER 404(b) does not apply.
5 *See Gladden, supra. See also State v. Roswell*, 165 Wn.2d 186, 195, 196 P.3d 705 (2008).

6 The courts can only do so much to mitigate the effect of the defendant's prior
7 conviction. Roswell was charged with communicating with a minor for immoral purposes
8 as a felony which required proof of a prior conviction for a felony sexual offense. *Id.*, at
9 192. Roswell requested that he be allowed to stipulate to the existence of a prior sex
10 offense so the jury would not be informed of his convictions. He proposed bifurcating the
11 elements of the crime, so that the jury would decide only whether there had been
12 communications with a minor for immoral purposes, but the judge would make a
13 determination on the prior conviction element. 165 Wn.2d at 190. The trial and appellate
14 courts agreed with Roswell's stipulation, but not his request to bifurcate. *Id.*, at 198.

15 Here, the petitioner offered to stipulate to his prior conviction, but argued that the
16 prior conviction was considered by the court at sentencing, not by the jury as an element.
17 1RP 24-25. This is legally incorrect. *See, Bache, supra*. He refused to stipulate for the jury.
18 *Id.* Consistent with this argument, the petitioner proposed a change to the elements
19 instruction for Count II; omitting proof of the prior conviction. *See Appendix G, 5 RP 450*.
20 Therefore, the State proved the prior conviction. The court gave a proper jury instruction
21 limiting the consideration of the prior conviction. *See Instruction 14, Appendix F*. There
22 was no error.

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4. CALCULATION OF THE OFFENDER SCORE WAS CORRECT.

The petitioner argues at length that the trial court erred in calculating his offender score. If true, this would qualify as a “fundamental defect” in the judgment. *See In re Personal Restraint of Goodwin*, 146 Wn. 2d 861, 868, 50 P. 3d 618 (2002). Generally, the calculation of an offender score, as a matter of law, is reviewed *de novo*. *State v. Tili*, 148 Wn.2d 350, 358, 60 P.3d 1192 (2003). However, same criminal conduct is a factual determination, reviewed for abuse of discretion. *See In re Personal Restraint of Toledo-Sotelo*, 176 Wn. 2d 759, 764, 297 P. 3d 51 (2013).

The petitioner argues that the trial court failed to determine if his two prior convictions were the same criminal conduct. Pet., at 47ff. To begin with, the defendant has the burden to establish that the crimes constitute the same criminal conduct, not the court. *See State v. Graciano*, 176 Wn.2d 531, 539, 295 P.3d 219 (2013). The petitioner made and makes no effort to demonstrate how the two prior convictions were the same criminal conduct.

In order to be the same criminal conduct for sentencing purposes, crimes must have been committed against the *same victim*, at the *same time and place*, and encompass the *same criminal intent*. *See* former RCW 9.94A.400(1)(a). In the present case, the petitioner admits that he had two prior felony convictions: rape in the third degree, and assault in the third degree (with a finding of sexual motivation). Pet. at 47. He further admits that these were sentenced on different dates: the first on December 17, 1991, the second on March 26, 1992. These facts themselves are sufficient for the sentencing court to find that the two convictions are not the same criminal conduct. The petitioner includes a copy of the prior assault judgment in his Appendix D. The assault was under Pierce County cause #92-1-

1 00297-5, sentenced by Judge Tollefson. The date of that crime was November 9, 1991.

2 That document reflects that the prior rape was committed on July 19, 1991².

3 The petitioner has the burden to prove same criminal conduct. However, his own
4 admissions and documents provided show that it is impossible for his two prior convictions
5 to be the same criminal conduct. The trial court correctly calculated the offender score.

6 5. THERE WAS NO CUMULATIVE ERROR.

7 The cumulative error doctrine applies where a combination of trial errors denies the
8 accused of a fair trial, even where any one of the errors, taken individually, would be
9 harmless. *In re Detention of Coe*, 175 Wn.2d 482, 515, 286 P.3d 29 (2012); *In re*
10 *Personal Restraint of Lord*, 123 Wn.2d 296, 332, 868 P.2d 835 (1994). The test to
11 determine whether cumulative errors require reversal of a defendant's conviction is
12 whether the totality of circumstances substantially prejudiced the defendant and denied
13 him a fair trial. *In re Personal Restraint of Cross*, 180 Wn. 2d 664, 690, 327 P. 3d 660
14 (2014). The petitioner bears the burden of showing multiple trial errors and that the
15 accumulated prejudice affected the outcome of the trial. *Id.* There is no prejudicial error
16 under the cumulative error rule if the evidence is overwhelming against a defendant. *Id.*, at
17 691.

18 The petitioner fails to demonstrate such a cascade of errors as to deprive him of a
19 fair trial. Indeed, he has not shown any errors. Also, as pointed out above, the evidence
20 against the petitioner was overwhelming.

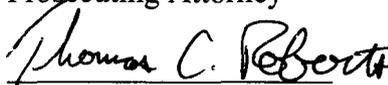
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² The rape in the third degree was entered under Pierce County cause # 91-1-02619-1, sentenced by Judge
Thompson. Appendix I.

1 D. CONCLUSION:

2 The petitioner received a fair trial where he was represented by excellent counsel.
3 He had the opportunity to raise all of the above issues in his direct appeal, but decided not
4 to. He fails to show error; much less meet the high burden of actual and substantial
5 prejudicial error required in a PRP. The State respectfully requests that the petition be
6 denied.

7 DATED: April 20, 2015.

8 MARK LINDQUIST
9 Pierce County
10 Prosecuting Attorney
11 
12 Thomas C. Roberts
13 Deputy Prosecuting Attorney
14 WSB # 17442

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

16 4-20-15 
Date Signature

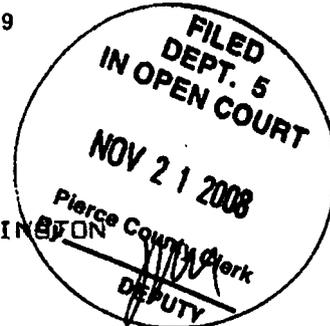
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APPENDIX “A”

Judgment and Sentence



95-1-04949-6 30988902 JDSWCD 11-24-08



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

STATE OF WASHINGTON,
Plaintiff,

vs.

GARY DANIEL MEREDITH,
Defendant.

CAUSE NO. 95-1-04949-6

WARRANT OF COMMITMENT NOV 21 2008

- 1) [] County Jail
- 2) [X] Dept. of Corrections
- 3) [] Other - Custody

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

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

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

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

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

95-1-04949-6

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

Dated: 11/21/08

By direction of the Honorable

Vicki Hogan
J U D G E

KEVIN STOCK
C L E R K

By: *Melvin Engler*
D E P U T Y C L E R K

CERTIFIED COPY DELIVERED TO SHERIFF

Date NOV 21 2008 By *Melvin Engler* Deputy



STATE OF WASHINGTON, County of Pierce
ss: I, KEVIN STOCK, Clerk of the above
entitled Court, do hereby certify that
this foregoing instrument is a true and
correct copy of the original now on file
in my office.

IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of Said Court this
_____ day of _____, 19____.

KEVIN STOCK, Clerk
By: _____ Deputy

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

STATE OF WASHINGTON,

Plaintiff,

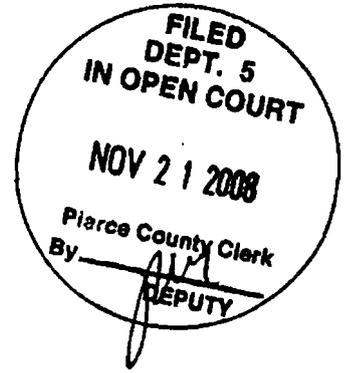
vs.

GARY DANIEL MEREDITH,

Defendant.

CAUSE NO. 95-1-04949-6
JUDGMENT AND SENTENCE
(FELONY/OVER ONE YEAR)

NOV 21 2008



DOB: 6/13/70
SID NO.: WA15494138
LOCAL ID:

I. HEARING

11-21-08
WA

- 1.1 A sentencing hearing in this case was held on ~~7-2-06~~
- 1.2 The defendant, the defendant's lawyer, BRETT PURTZER, and the deputy prosecuting attorney, JAMES S. SCHACHT, 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 June 10, 1996 by
 plea jury-verdict bench trial of:

Count No.: I
Crime: RAPE OF A CHILD IN THE SECOND DEGREE, Charge Code: (I37)
RCW: 9A.44.076
Date of Crime: 10/29/94
Incident No.: TPD 94 307 0871

Count No.: II
Crime: COMMUNICATION WITH A MINOR FOR IMMORAL PURPOSES, Charge Code: (I3)
RCW: 9.68A.090
Date of Crime: 10/29/94
Incident No.: SAME

- Additional current offenses are attached in Appendix 2.1.
- A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s).

JUDGMENT AND SENTENCE
FELONY / OVER ONE YEAR - 1

089-14635-0

95-1-04949-6

- A special verdict/finding for use of a firearm was returned on Counts_____.
- A special verdict/finding of sexual motivation was returned on Count(s)_____.
- A special verdict/finding of a RCW 69.50.401(a) violation in a school bus, public transit vehicle, public park, public transit shelter or within 1000 feet of a school bus route stop or the perimeter of a school grounds (RCW 69.50.435).
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

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

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

<u>CRIME</u>	<u>DATE OF SENTENCING</u>	<u>SENTENCING COUNTY/STATE</u>	<u>DATE OF CRIME</u>	<u>ADULT OR JUV.</u>	<u>CRIME TYPE</u>	<u>CRIME ENHANCEMENT</u>
RAPE 3	12/17/91		7/19/91	ADULT	SEX	
ASLT 3 W/SEX MOT	3/26/92		12/17/91	ADULT	SE X	

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

2.3 SENTENCING DATA:

	<u>Offender Score</u>	<u>Serious Level</u>	<u>Standard Range (SR)</u>	<u>Enhancement</u>	<u>Maximum Term</u>
Count I:	9	X	149-198 mos		LIFE
Count II:	9	III	51-60 mos		5yrs/\$10,000

- Additional current offense sentencing data is attached in Appendix 2.3.

JUDGMENT AND SENTENCE
FELONY / OVER ONE YEAR - 2

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

95-1-04949-6

2.4 EXCEPTIONAL SENTENCE:

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

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

2.5 RECOMMENDED AGREEMENTS:

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

2.6 RESTITUTION:

[] Restitution will not be ordered because the felony did not result in injury to any person or damage to or loss of property.

[X] Restitution should be ordered. ~~A hearing is set for~~ 

[] Extraordinary circumstances exist that make restitution inappropriate. The extraordinary circumstances are set forth in Appendix 2.5.

[] Restitution is ordered as set out in Section 4.1, LEGAL FINANCIAL OBLIGATIONS.

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

- [] no legal financial obligations.
- [X] the following legal financial obligations:
 - [X] crime victim's compensation fees.

JUDGMENT AND SENTENCE
FELONY / OVER ONE YEAR - 3

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- court costs (filing fee, jury demand fee, witness costs, sheriff services fees, etc.)
- county or inter-local drug funds.
- court appointed attorney's fees and cost of defense.
- fines.
- other financial obligations assessed as a result of the felony conviction.

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

III. JUDGMENT

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

3.2 The court DISMISSES.

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

- \$ 756.91, Restitution to:
 - \$306.84 CV Compensation VR20792
 - \$450.07 CV Compensation VH00144
- \$ 110, Court costs (filing fee, jury demand fee, witness costs, sheriff service fees, etc.);
- \$ 100, Victim assessment;
- \$ _____, Fine; VUCSA additional fine waived due to indigency (RCW 69.50.430);
- \$ _____, Fees for court appointed attorney;
- \$ _____, Washington State Patrol Crime Lab costs;

JUDGMENT AND SENTENCE
FELONY / OVER ONE YEAR - 4

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\$ _____, Drug enforcement fund of _____;

\$ 1388.30, Other costs for: Extradition;

\$ 2345.20, TOTAL legal financial obligations [] including
restitution [] not including restitution.

Payments shall ^{be as set by D.O.C.} ~~not be less than \$ _____ per month.~~ Payments shall
commence on _____.

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

Name	Cause Number
_____	_____
_____	_____

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

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

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

[X] Bond is hereby exonerated.

*w/ln 24 hrs of release
1st Business day*

JUDGMENT AND SENTENCE
FELONY / OVER ONE YEAR - 5

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95-1-04949-6

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

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

198 months on Count No. I [] concurrent [] consecutive
60 months on Count No. II [] concurrent [] consecutive
_____ months on Count No. _____ [] concurrent [] consecutive
_____ months on Count No. _____ [] concurrent [] consecutive

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

[] Credit is given for 135 days served;

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

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

(a) [] The offender shall not consume any alcohol;
(b) [] The offender shall have no contact with: Victim Bobbi Lopic
Amanda Bevequa, Mellissa Jacobus, or Shyanne Thompson or their families

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

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

(e) [] The defendant shall comply with the following crime-related prohibitions: See Appendix E.

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

JUDGMENT AND SENTENCE
FELONY / OVER ONE YEAR - 6

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95-1-04949-6

- (g) HIV TESTING. The Health Department or designee shall test the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. (RCW 70.24.340)
- (h) DNA TESTING. The defendant shall have a blood sample drawn for purpose of DNA identification analysis. The Department of Corrections shall be responsible for obtaining the sample prior to the defendant's release from confinement. (RCW 43.43.754)

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

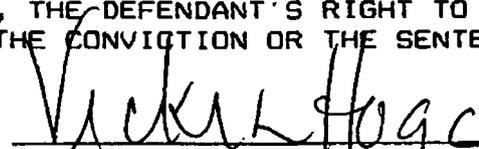
EACH VIOLATION OF THIS JUDGMENT AND SENTENCE IS PUNISHABLE BY UP TO 60 DAYS OF CONFINEMENT. (RCW 9.94A.200(2)).

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

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

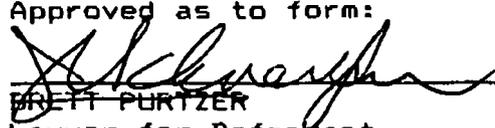
PURSUANT TO RCW 10.73.090 AND 10.73.100, THE DEFENDANT'S RIGHT TO FILE ANY KIND OF POST SENTENCE CHALLENGE TO THE CONVICTION OR THE SENTENCE MAY BE LIMITED TO ONE YEAR.

Date: 11.21.08

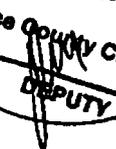

 VICKI L. HOGAN
 JUDGE

Presented by:

 JAMES S. SCHACHT
 Deputy Prosecuting Attorney
 WSB # 17298

Approved as to form:

 BRETT PURTZER
 Lawyer for Defendant
 WSB # 33603

mj

FILED
 DEPT. 5
 IN OPEN COURT
 NOV 21 2008
 Pierce County Clerk
 By 
 DEPUTY

JUDGMENT AND SENTENCE
 FELONY / OVER ONE YEAR - 7

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APPENDIX F

Cause No. 95-1-04949-6

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

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

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

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

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

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

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

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

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

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

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

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

(IV) The offender shall not consume alcohol;

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

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

(VII) Other: _____

Case Number: 95-1-04949-6 Date: April 20, 2015
SerialID: D84BD52F-F20F-6452-DCCAB13699F90DF9
Certified By: Kevin Stock Pierce County Clerk, Washington

FINGERPRINTS

Right Hand
Fingerprint(s) of: GARY DANIEL MEREDITH, Cause #95-1-04949-6

Attested by: _____ CLERK
By: DEPUTY CLERK Pam Mayhew Date: 11/21/08

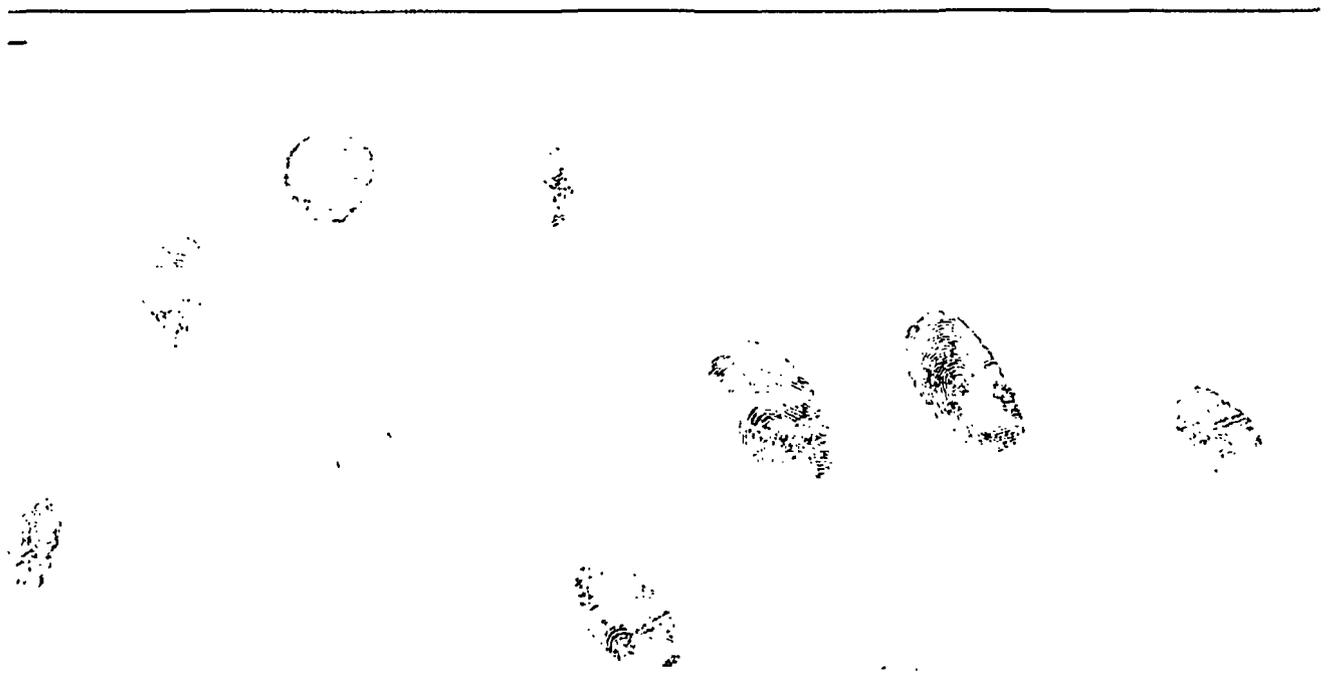
CERTIFICATE
OFFENDER IDENTIFICATION

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

State I.D. #WA15494138
Date of Birth 6/13/70
Sex MALE
Race WHITE
ORI _____
OCA _____
OIN _____
DOA _____

Dated: _____

CLERK
By: _____
DEPUTY CLERK



FINGERPRINTS

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 20 day of April, 2015



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Apr 20, 2015 12:26 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter **SerialID: D84BD52F-F20F-6452-DCCAB13699F90DF9**.

This document contains 11 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “B”

Mandate



95-1-04949-6 41393095 MND 10-16-13

Case Number: 95-1-04949-6 Date: April 20, 2015
SerialID: D84C0C3C-110A-9BE2-A964D062D88F8A21
Certified By: Kevin Stock Pierce County Clerk, Washington

IN COUNTY FILED
CLERK'S OFFICE
A M OCT 15 2013 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

GARY DANIEL MEREDITH,

Petitioner.

MANDATE

NO. 86825-5

C/A No. 38600-3-II

Pierce County Superior Court
No. 95-1-04949-6

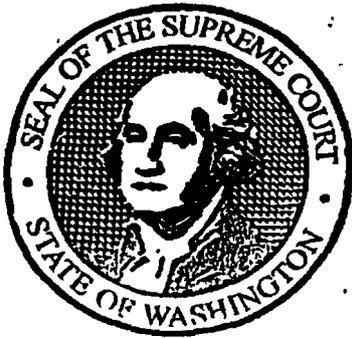
THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington
in and for Pierce County.

The opinion of the Supreme Court of the State of Washington was filed on August 8,
2013, and became final on October 4, 2013, upon entry of the Order Denying Motion for
Reconsideration. This case is mandated to the superior court from which the appeal was taken
for further proceedings in accordance with the attached true copy of the opinion.

FILED
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2013 OCT -8 A 10:09
BY RONALD R. ARPENTER
CLERK

Page 2
86825-5

Pursuant to Rule of Appellate Procedure 14.6(c) and the CLERK'S RULING ON COSTS dated August 26, 2013, costs are taxed as follows. Costs in the amount of \$3,172.42 are awarded to the Washington State Office of Public Defense, and costs in the amount of \$55.18 are awarded to Respondent, Pierce County Prosecuting Attorney's Office, to be paid by Petitioner, Gary Daniel Meredith.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 8th day of October, 2013.

Ronald R. Carpenter
Clerk of the Supreme Court
State of Washington

cc: Hon. Vicki Hogan, Judge
Hon. Kevin Stock, Clerk
Pierce County Superior Court
James Elliot Lobsenz
Kathleen Proctor
Brian Neal Wasankari
Reporter of Decisions

Case Number: 95-1-04949-6 Date: April 20, 2015
SerialID: D84C0C3C-110A-9BE2-A964D062D88F8A21
Certified By: Kevin Stock Pierce County Clerk, Washington

FILE
IN CLERK'S OFFICE
SUPREME COURT, STATE OF WASHINGTON
DATE AUG 08 2013

Madsen, C. J.
CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 86825-5
)	
v.)	En Banc
)	
GARY DANIEL MEREDITH,)	
)	Filed <u>AUG 08 2013</u>
Petitioner.)	
_____)	

OWENS, J. -- The equal protection clause of the federal constitution prohibits racial discrimination during the jury selection process. *Batson v. Kentucky*, 476 U.S. 79, 86, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986). Such discrimination in jury selection harms not only individual defendants and excluded jurors, it undermines the public's confidence in the basic fairness of the judicial system. *Id.* at 87. The United States Supreme Court established a three-part test (the *Batson* test) to detect and eradicate the discriminatory use of peremptory challenges during jury selection. The first step of the *Batson* test requires that the defendant make a prima facie showing of discrimination. *Id.* at 93-94.

State v Meredith
 No 86825-5

In 2010, this court addressed that first step of the *Batson* test in *State v. Rhone*, 168 Wn.2d 645, 229 P.3d 752 (2010). In *Rhone*, the four-vote lead opinion applied this state's established rule for the first step of the *Batson* test. *See id.* at 657. The four-vote dissent proposed a new bright-line rule. *See id.* at 661. Chief Justice Madsen wrote a concurrence stating, "I agree with the lead opinion in this case. However, going forward, I agree with the rule advocated by the dissent." *Id.* at 658 (Madsen, C.J., concurring). This has caused lower courts to question whether, going forward, they should follow the rule in the lead opinion or the dissent of *Rhone*. *See, e.g., State v. Meredith*, 163 Wn. App. 75, 165 Wn. App. 704, 711-12, 259 P.3d 324 (2011), *review granted*, 173 Wn.2d 1031, 275 P.2d 303 (2012).

To clarify this issue, we granted review in this case solely on the scope of the bright-line rule articulated in *Rhone*. We now clarify that *Rhone* did not establish a bright-line rule and that the rule in Washington remains the rule applied in the lead opinion in *Rhone*.

FACTS

In 1996, Gary Meredith was charged by amended information with rape of a child in the second degree and communication with a minor for immoral purposes. During jury selection for Meredith (a Caucasian man) the State used a peremptory strike to remove the only African-American member of the venire panel, juror 4. Meredith's counsel raised a *Batson* objection to the State's use of a peremptory

State v Meredith
No 86825-5

challenge against juror 4. Explaining the basis for the objection, Meredith's counsel stated that none of the juror's answers provided a proper basis for removal (such as confusion, evasiveness, or bias) and that the only reason the juror was removed was because of her race.

The prosecutor responded that Meredith's counsel had failed to satisfy his burden of proof because he had not presented any evidence other than to indicate that juror 4 appeared to be the only African-American on the panel. The prosecutor then indicated that there might be other racial minorities on the panel. Meredith's counsel responded that a prima facie case had been made and not rebutted. He then moved for a mistrial. The trial court denied Meredith's *Batson* objection. The jury subsequently found Meredith guilty of both rape of a child in the second degree and communicating with a minor for immoral purposes.

After his conviction, Meredith absconded and did not appear for his sentencing hearing in July 1996. The court then issued a bench warrant for Meredith's arrest. Twelve years later, Meredith was finally arrested and extradited to Washington.¹ In 2008, the trial court entered the judgment and sentence, imposing a 198-month sentence. Meredith appealed and while that appeal was pending, this court decided *Rhone*.

¹ The State does not make any argument as to whether Meredith's decision to abscond has any legal significance in this case. Because we find that *Rhone* did not establish a bright-line rule, we do not address whether Meredith's decision to abscond has legal significance.

State v Meredith
 No 86825-5

The Court of Appeals affirmed Meredith's conviction and sentence. *Meredith*, 165 Wn. App. at 707. With respect to the *Batson* objection, the Court of Appeals majority expressed confusion as to whether the *Rhone* court adopted the bright-line rule from the dissent, but the Court of Appeals majority proceeded to hold that Meredith had failed to establish a prima facie case of purposeful discrimination under either the *Rhone* lead opinion's analysis or the dissent's bright-line rule.

Meredith petitioned this court for review of the Court of Appeals decision with respect to his *Batson* objection. We granted review "only on the issue of the scope of the bright line rule articulated in [*Rhone*] in establishing a prima facie case of discrimination under [*Batson*]." Order, *State v. Meredith*, No. 86825-5 (Wash. Apr. 23, 2012).

ISSUE

What is the scope of the bright-line rule articulated in the *Rhone* dissent?

ANALYSIS

In *Rhone*, four justices signed the lead opinion that employed the rule articulated in *State v. Hicks*, 163 Wn.2d 477, 490, 181 P.3d 831 (2008), and *State v. Thomas*, 166 Wn.2d 380, 397-98, 208 P.3d 1107 (2009), that a trial court may, but need not, find that a party has made a prima facie showing under *Batson* "based on the dismissal of the only venire person from a constitutionally cognizable group." *Rhone*, 168 Wn.2d at 653 (lead opinion) (internal quotation marks omitted) (quoting

State v Meredith
No. 86825-5

Thomas, 166 Wn.2d at 397). The lead opinion required “‘something more’ than a peremptory challenge against a member of a racially cognizable group.” *Id.* at 654.

Four justices signed a dissent authored by Justice Alexander that would have adopted, in that case, a bright-line rule “that a prima facie case of discrimination is established under *Batson* when the sole remaining venire member of the defendant’s constitutionally cognizable racial group or the last remaining minority member of the venire is peremptorily challenged.” *Id.* at 661 (Alexander, J., dissenting). Chief Justice Madsen signed neither opinion and instead wrote a two-sentence concurrence stating, “I agree with the lead opinion in this case. However, going forward, I agree with the rule advocated by the dissent.” *Id.* at 658 (Madsen, C.J., concurring).

The Court of Appeals expressed uncertainty as to whether the court had adopted the bright-line rule described in the *Rhone* dissent. We now clarify that the court did not adopt that bright-line rule. Chief Justice Madsen’s concurrence with the lead opinion “in this case” resolved the *Rhone* case. *Id.* Her second sentence expresses support for adoption of a bright-line rule in a future case, but it does not relate to the disposition of *Rhone* and is merely dicta. Until five justices agree to actually adopt such a bright-line rule, the previous rule remains in effect.

The Court of Appeals found that the trial court did not err under pre-*Rhone* case law. Because we granted review only on the scope of the bright-line rule articulated in *Rhone*, we do not review this portion of the Court of Appeals decision and thus

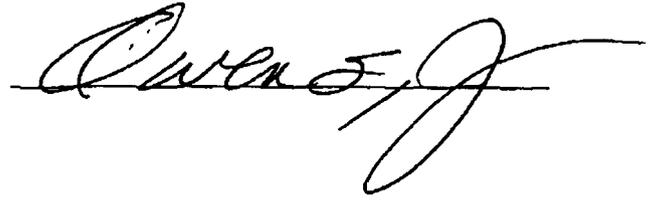
State v Meredith
No 86825-5

need not proceed with an analysis of Meredith's *Batson* objection under *pre-Rhone* case law.

CONCLUSION

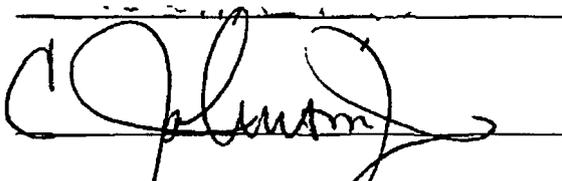
We granted review of this case so that we could clarify whether *Rhone* established a bright-line rule. We hold that it did not. Accordingly, we affirm the Court of Appeals.

State v Meredith
No 86825-5

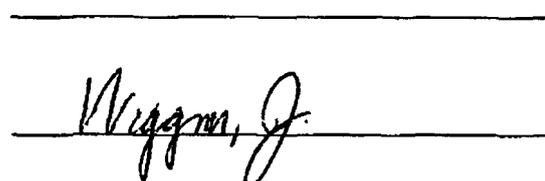
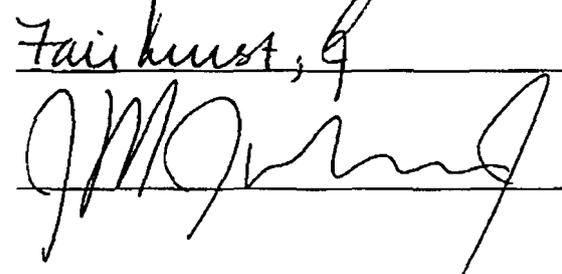


Owen, J.

WE CONCUR:



Fairhurst, J.



Wiggan, J.

State v. Meredith (Gary Daniel)

No. 86825-5

MADSEN, C.J. (concurring)—In *State v. Rhone*, 168 Wn.2d 645, 658, 229 P.3d 752 (2010) (Madsen, C.J., concurring), I agreed with the dissent that a defendant should be able to establish a prima facie case under *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986), if the prosecutor exercised a peremptory challenge causing dismissal of the only remaining member of the venire who is in the same constitutionally cognizable racial group as the defendant or is the last remaining minority member of the venire.

This method of establishing a prima facie case is consistent with the United States Supreme Court's descriptions of ways to establish the prima facie case. In *Batson*, the Court observed that instead of showing systematic discrimination, a defendant can rely solely on circumstances surrounding jury selection in his or her own case. *Batson*, 476 U.S. at 95. The Court noted that the prima facie case may be shown when an inference of discrimination arises from a pattern of strikes against black members of the venire or, similarly, questions and answers during voir dire and jury selection may support an inference of discriminatory purpose. *Id.* at 96-97.

No. 86825-5
Madsen, C.J., concurring

In *Miller-El v Dretke*, 545 U.S. 231, 125 S. Ct. 2317, 162 L. Ed. 2d 196 (2005), the Court examined other specific ways in which evidence might establish a prima facie case, including, among other things, statistical evidence showing prosecutors disproportionately excluded blacks from the jury pool, evidence of markedly different questioning of black members of the venire from questioning of white members of the venire, and side-by-side comparisons of black venire members who were excluded to white venire members who were accepted.

State courts are not bound to any specific method for establishing the prima facie case. The Court has explicitly said that the states have “flexibility in formulating appropriate procedures to comply with *Batson*” and recognized that this flexibility applies to establishment of the prima facie case *Johnson v California*, 545 U.S. 162, 168, 125 S. Ct. 2410, 162 L. Ed. 2d 129 (2005).¹ Permitting an inference of discrimination to arise from a peremptory strike against the sole member of the defendant’s racially cognizable group or the last remaining member of a minority in the jury pool is a rule for establishing a prima facie case that falls within the guidelines suggested by the Court and lies within the “flexibility” a state court has to formulate ways in which to comply with *Batson*’s test.

In *Rhone*, although the dissent would have applied the bright line rule it advocated, I did not agree that the rule should apply in *Rhone* itself but instead should be a rule “going forward.” *Rhone*, 168 Wn 2d at 658 (Madsen, C.J., concurring). By “going

¹ The Court has also expressed confidence that trial courts will be able to decide whether circumstances give rise to the inference *Batson*, 476 U.S. at 97.

No 86825-5
Madsen, C J , concurring

forward,” I mean that this alternative method of establishing the prima facie case should be available once trial courts, prosecuting attorneys, and defendants and their counsel are on notice that this rule may be followed to establish a prima facie case. Thus, the rule should apply only when jury selection in the particular case occurred after *Rhone* was filed.

We have not yet been confronted with such a case. In the present case, jury selection occurred many years prior to the April 1, 2010 filing date of *Rhone*. Therefore, in my view, we have no cause to decide whether the rule in *Rhone*’s dissent, to which I agreed, should apply.

I concur in the majority’s conclusion that the rule does not apply in the present case.

Case Number: 95-1-04949-6 Date: April 20, 2015
SerialID: D84C0C3C-110A-9BE2-A964D062D88F8A21
Certified By: Kevin Stock Pierce County Clerk, Washington

No 86825-5
Madsen, C J , concurring

Madsen, C J

State v. Meredith (Gary Daniel)

No. 86825-5

STEPHENS, J. (concurring)—In its attempt to decide this case on the narrowest possible ground, the majority offers an opinion that does nothing. It merely explains that our prior decision in *State v. Rhone*, 168 Wn.2d 645, 229 P.3d 752 (2010) also did nothing, at least nothing in terms of modifying the framework for evaluating claims of discriminatory jury selection under *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986). I find today's opinion wholly unsatisfying.

This case will no doubt be read in conjunction with *State v. Saintcalle*, No. 86257-5 (Wash. Aug. 1, 2013), in which the lead and concurring opinions lament that *Batson* has been largely ineffective, though only one opinion—Justice Chambers's dissent—would embrace the burden-shifting approach that five members of this court favored in *Rhone*. While we have today confirmed that *Rhone* did not garner a majority view, I think we do a disservice to leave matters at that. We should answer the question whether the use of a peremptory challenge to eliminate the sole African American venire member automatically establishes a

State v Meredith (Gary Daniel)
(Stephens, J. Concurrence)

prima facie case of race-based discrimination. It was unnecessary to answer this question in *Saintcalle*, but it is squarely presented here.

The answer to this question is no because *Batson* seeks to eradicate only purposeful discrimination. *Johnson v. California*, 545 U.S. 162, 125 S. Ct. 2410, 162 L. Ed. 2d 129 (2005); *State v. Hicks*, 163 Wn.2d 477, 181 P.3d 831 (2008); *State v. Thomas*, 166 Wn.2d 380, 208 P.3d 1107 (2009). A trial judge has discretion to determine when a peremptory challenge that removes the sole member of a protected group from the jury panel shows a discriminatory purpose. An absolute rule that requires a trial judge to find purposeful discrimination without any evidence of discriminatory purpose is not required by the constitution and crosses the line into making public policy. I signed the lead opinion in *Rhone* because it is consistent with what the constitution requires, and I would take this opportunity to reinforce that holding.

My view should not be confused with a lack of concern for *Batson*'s empty promise of community representation on juries. It is a shame that we have seen so little progress so many years after *Batson*. But, as I observed in my concurrence in *Saintcalle*, the problem is not one the judicial branch can solve on its own. Finding a meaningful solution will require consideration of issues far beyond the briefing in these two cases and legislative and social resources beyond what this court can devote.

I respectfully concur in the decision to affirm.

Case Number: 95-1-04949-6 Date: April 20, 2015

Serial ID: DB4C0C3C-110A-9BE2-A964D062D88F8A21

Certified by: Kevin Stock Pierce County Clerk, Washington

State v Meredith (Gary Daniel) 86825-5
(Stephens, J. Concurrence)

A handwritten signature in cursive script, appearing to read "Stephens, J.", is written over a horizontal line.

State v. Meredith, No. 86825-5 (González, J. dissenting)

No. 86825-5

GONZÁLEZ, J. (dissenting)—Our democracy is based on respect for the rule of law. When we are unable to resolve our disputes amicably by ourselves, we go to court and accept the judgment of our peers even when we do not like the outcome. This system works only if we all believe it is fair. If people are excluded from jury service because of color or creed, we risk eroding faith in the justice of our democracy.

Fortunately, the equal protection clause of the federal constitution prohibits all racial discrimination during the jury selection process. *Batson v. Kentucky*, 476 U.S. 79, 86, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986). *Batson* was a good first step toward implementing the promise of the equal protection clause in jury selection, but it left the job partly done. *Batson* established a three-part test to determine if the State improperly used a peremptory challenge in a criminal case to exclude a potential juror based on race, real or perceived. First, the defendant must make a prima facie case of purposeful discrimination by raising an inference that a peremptory challenge was used to exclude a potential juror because of his or her race. *State v. Rhone*, 168 Wn.2d 645, 651, 229 P.3d 752 (2010) (citing *Batson*, 476 U.S. at 96). This first element is the one at issue for Meredith. Second, once a prima facie case is made, the prosecutor is asked if there is a race-neutral explanation for wanting to remove the

State v Meredith, No. 86825-5 (González, J dissenting)

person from the pool. *Id.* Finally, considering the challenge, the race-neutral response, and the record as a whole, the court must determine if the defendant has established purposeful discrimination by a preponderance of the evidence. *Id.* If the court has followed this procedure, the judge's determination is given great deference on appeal, and the ruling will stand unless it is clearly erroneous. *Rhone*, 168 Wn.2d at 651 (citing *State v. Hicks*, 163 Wn.2d 477, 468, 181 P.3d 831 (2008)).¹

In *Rhone*, five justices of this court established a more stringent rule to police against racial prejudice in jury selection. In *Rhone*, those five justices established that "going forward," "a prima facie case of discrimination is established under *Batson* when the sole remaining venire member of the defendant's constitutionally cognizable racial group or the last remaining minority member of the venire is peremptorily challenged." *Rhone*, 168 Wn.2d at 658 (Madsen, C.J., concurring), 661 (Alexander, J., dissenting joined by Sanders, Chambers, and Fairhurst, JJ.). *Rhone* applies to all cases not final the day it was announced. *In re Pers. Restraint of St. Pierre*, 118

¹ The *Batson* rule has been extended to defendants as well as prosecutors. *Georgia v McCollum*, 505 U.S. 42, 44, 112 S. Ct. 2348, 120 L. Ed. 2d 33 (1992). It has also been extended to civil cases. *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 616, 111 S. Ct. 2077, 114 L. Ed. 2d 660 (1991). The rule was further extended to cover gender discrimination. See *J.E.B. v. Alabama ex rel T.B.*, 511 U.S. 127, 145, 114 S. Ct. 1419, 128 L. Ed. 2d 89 (1994). The rule in *Batson*, however, is narrower than the equal protection clause. If construed penuriously, the *Batson* rule addresses only overt discrimination and does little, if anything, to combat implicit bias.

In another case before this court, *State v. Saintcalle*, the limitations of the *Batson* rule and our jury selection process are apparent. No. 86257-5 (Wash. Aug. 1, 2013). The bright spot is that a majority of this court recognizes that bias is a factor in jury selection in Washington and that the *Batson* rule is largely ineffective in preventing it. Perhaps this recognition will lead to real changes in the jury selection process.

State v Meredith, No. 86825-5 (González, J. dissenting)

Wn.2d 321, 330, 823 P.2d 492 (1992). Meredith's appeal was not final the day *Rhone* was announced. He is entitled to its benefit.

Meredith is not a sympathetic litigant. He was convicted by a jury of rape of a child in the second degree and communication with a minor for immoral purposes. Meredith is white. He objected to the dismissal of a juror who was not white: the only African American person on the jury panel. Meredith argued that there was nothing in the jury questionnaires or the prospective juror's responses that indicated the juror would not be a fine juror. In response, the State asserted that Meredith had not met his burden of proof under *Batson*. The trial judge agreed in a cursory ruling. The judge did not require the State to offer a race-neutral reason for dismissing the last African American juror.

Meredith was convicted by that jury. Before he was sentenced, he ran away and hid for a dozen years, avoiding punishment for his crimes. He was eventually arrested and sentenced in 2008. If Meredith had not been in hiding for over a decade, he would have been sentenced and likely would have served a long prison term. He would probably not have had a successful challenge to the process of jury selection in his case under the *Batson* rule as applied in our State at the time. See, e.g., *Hicks*, 163 Wn.2d at 486. While he was gone, however, the law changed in his favor.

I understand why some hesitate to give Meredith the benefit of this change given his crimes and his flight from justice. But we must not decide cases based on sympathy or lack of it. The law protects even those like Meredith.² In *Rhone*, five

² In *Saintcalle*, we have declined to adopt a robust reading of *Batson* or to address in any way the problem of unchecked implicit bias in jury selection. If we limit *Batson*, but are serious about

State v Meredith, No 86825-5 (González, J. dissenting)

justices of this court established that “going forward,” “a prima facie case of discrimination is established under *Batson* when the sole remaining venire member of the defendant’s constitutionally cognizable racial group or the last remaining minority member of the venire is peremptorily challenged.” *Rhone*, 168 Wn.2d at 658 (Madsen, C.J., concurring), 661 (Alexander, J., dissenting, joined by Sanders, Chambers and Fairhurst, JJ.). *Rhone* applies to all cases not final the day it was announced. *St. Pierre*, 118 Wn.2d at 330. Under *Rhone*, Meredith made a timely objection and established a prima facie case of discrimination in the selection of the jury in his case. The State was thus obligated to offer a race-neutral reason for dismissing the last African American juror. It did not. This is reversible error. Therefore, I would reverse his conviction.

I respectfully dissent.

addressing insidious discrimination in jury selection, we should consider (1) eliminating peremptory challenges all together, since we are not as good at discerning “good” jurors as we think we are; (2) reducing the number of peremptory challenges available to limit the mischief of unfettered exercise of challenges while preserving some discretion to litigants who, despite the evidence, cling to the belief that they know which jurors to eliminate; or (3) adopting a jury selection process similar to that used in federal court in the Western District of Washington, where voir dire is largely judge driven, reducing the ability of litigants to manufacture seemingly race-neutral reasons to justify challenging certain jurors based on unfounded stereotypes.

25718 10/16/2013 00021

Case Number: 95-1-04949-6 Date: April 20, 2015

SerialID: D84C0C3C-110A-9BE2-A964D062D88F8A21

Certified By: Kevin Stock Pierce County Clerk, Washington

State v Meredith, No. 86825-5 (González, J. dissenting)

A handwritten signature in black ink, reading "González, J.", is written over a horizontal line. The signature is cursive and includes a large, stylized initial "J" at the end.

State v. Meredith (Gary)

No. 86825-5

CHAMBERS, J.* (dissenting) — I dissent. I expressed my view of why *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986), does not work and must be abandoned in *State v. Saintcalle*, No. 86257-5 (Chambers, J., dissenting) (Wash. Aug. 1, 2013). I strongly believe that Justice Alexander was right in *State v. Rhone*, 168 Wn.2d 645, 229 P.3d 752 (2010). As I said in *Saintcalle*, *Batson* had a limited purpose: to reduce purposeful racial discrimination in the jury selection process. *Saintcalle*, slip op. at 1 (Chambers, J.P.T., dissenting). But “*Batson* was doomed from the beginning because it requires one elected person to find that another elected person (or one representing an elected person) acted with a discriminatory purpose. . . . Further, *Batson*, by design, does nothing to police jury selection against unconscious racism or wider discriminatory impacts.” *Id.* Following the rule set forth in Justice Alexander’s opinion in *Rhone*, I would hold that a prima facie case of discrimination is established when the sole remaining venire member of a constitutionally cognizable racial group is peremptorily challenged. *Rhone*, 168 Wn.2d at 661 (Alexander, J., dissenting).

Meredith’s appeal was pending when we announced *Rhone*. Meredith has established a prima facie case of discrimination. It was not rebutted. He is entitled to a new trial. I would reverse his conviction. I respectfully dissent.

*Justice Tom Chambers is serving as a justice pro tempore of the Supreme Court pursuant to Washington Constitution article IV, section 2(a).

Case Number: 95-1-04949-6 Date: April 20, 2015

SerialID: D84C0C3C-110A-9BE2-A964D062D88F8A21

Certified By: Kevin Stock Pierce County Clerk, Washington

State v. Meredith, No. 86825-5
Chambers, J.P.T., dissenting

A handwritten signature in cursive script, reading "Chambers, J.P.T.", is written over a solid horizontal line.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 20 day of April, 2015



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Apr 20, 2015 12:26 PM



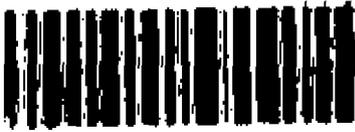
Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: D84C0C3C-110A-9BE2-A964D062D88F8A21.

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APPENDIX “C”

Jury Panel Chart



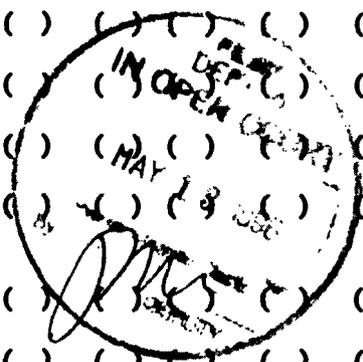
Case Number: 95-1-04949-6 Date: April 20, 2015
Serial ID: D84BD80D-E20F-6452-D2019034B136F833
Certified By: Kevin Stock Pierce County Clerk, Washington
**JUNTY SUPERIOR COURT
ADMINISTRATION**

95-1-04949-6 4731533 JYPSL 01-02-09

5/02, --- INFO SHEET - RANDOM Page 1

CASE NO: 95-1-04949-6 DEPT: 5 JUDGE: Hogan, Vicki L.

SEAT	JUROR NAME	PKR 1	STP 2	CSE 3	NR 4	SWN 5	ALT 6	BADGE #
1	MEYERS, BARBARA A	()	()	()	()	(X)	()	292406
2	LESIEUR, STEVEN C	(X)	()	()	()	()	()	292311
3	WORSLEY, DONNA G	(X)	()	()	()	()	()	292881
4	CURRIE, ALICE N	(X)	()	()	()	()	()	291925
5	HALL, BARBARA A	(X)	()	()	()	()	()	292106
6	SATHER, ROBERT LEONARD	(X)	()	()	()	()	()	292619
7	PETROVICH, MAILE M	(X)	()	()	()	()	()	292508
8	PIPPIN, JIMMY R	()	()	()	()	(X)	()	292519
9	VIGNEC, RONALD PIERRE	()	()	(X)	()	()	()	292813
10	HOWELL, GORDON W	()	()	(X)	()	()	()	292181
11	PLUMB, TERRANCE R	()	()	()	()	(X)	()	292522
12	WARD, WILLIAM R	(X)	()	()	()	()	()	292835
13	VOGEL, SHRLDA M	()	()	()	()	(X)	()	292817
14	HANSON, JOAN Y	()	()	()	()	(X)	()	292118
15	GREENWOOD, THOMAS A	()	()	()	()	(X)	()	278333
16	WENDLAND, WALTER	()	()	()	()	(X)	()	292850
17	EDENBO, DONALD GEORGE	()	()	()	()	(X)	()	291975
18	SIMMONS, VERNE W	(X)	()	()	()	()	()	292670
19	REDA, LARRY	(X)	()	()	()	()	()	292558
20	SUVER, JANICE L	()	()	()	()	(X)	()	292747
21	HIBBARD IV, EDWARD A	()	()	(X)	()	()	()	292151
22	KELLEY, MICHAEL B	()	()	(X)	()	()	()	292249
23	WYLIE, SHARON L	()	()	()	()	(X)	()	292885



3 MAY 13 2009

NUMBER OF JURORS THIS GROUP: 24 23

5/02/98

CASE INFO SHEET - RANDOM

Page 2

CASE NO:95-1-04949-6

DEPT:5

JUDGE:Hogan, Vicki L.

SEAT	JUROR NAME	PER 1	STP 2	CSE 3	NR 4	SWN 5	ALT 6	BADGE #
24	KELLY, HAROLD M	()	()	()	()	(X)	()	292251
25	GODWIN, REDERIC L	()	()	(X)	()	()	()	292070
26	KITZMAN, ARTHUR L	()	()	(X)	()	()	()	292271
27	WAHLSTROM, CHARLES D	(X)	()	()	()	()	()	292828
28	DUCOLON, KATHLEEN L	(X)	()	()	()	()	()	291968
29	FALLSTONE, KRISTINA	(X)	()	()	()	()	()	291998
30	ARMSTRONG, CRAIG W	()	()	(X)	()	()	()	291737
31	CARTER, DAVID MICHAEL	(X)	()	()	()	()	()	291852
32	KOSTELECKY, OTTO	()	()	()	()	(X)	()	292278
33	PROVENCHER, MARC BRUNO	(X)	()	()	()	()	()	292539
34	MORGAN, GEORGE M	()	()	(X)	()	()	()	292426
35	JARZYNSKA, DEBRA J	()	()	()	()	(X)	()	292211
36	WHITSKILL, JOHN M	()	()	(X)	()	()	()	292858
37	TALLEY, CARLA M	()	()	(X)	()	()	()	292752
38	RUSSELL, RANDY D	()	()	(X)	()	()	()	292606
39	BAKER, BOYD	()	()	()	()	(X)	()	291755
40	NOFFKE, RUSSELL H	()	()	(X)	()	()	()	292460
41	WAGGENER, CHARLES R	()	()	()	()	()	()	292824
42	ANDERSON, BARRY K	()	()	()	()	()	()	291723
43	JENKINS, MICHELLE	()	()	()	()	()	()	292214
44	ROBERTS, NANCY D	()	()	()	()	()	()	292584
45	OBERLE, JOHN P	()	()	()	()	()	()	292467

John P. Oberle
State 1298

Brett B.
Defense 11203

Vicki L. Hogan
Judge 5/6/98
Date

NUMBER OF JURORS THIS GROUP: 45

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 20 day of April, 2015



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Apr 20, 2015 12:26 PM



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APPENDIX “D”

Superior Court Jury List



95-1-04949-6 4731538 JTRIAL 01-02-09

STATE OF WASHINGTON

CASE # 95-1-04949-6

MEMORANDUM OF JOURNAL ENTRY

Plaintiff/Petitioner
vs.

1

Date May 1, 1996

Judge Vicki L. Hogan

Reporter ALAN CAMPBELL

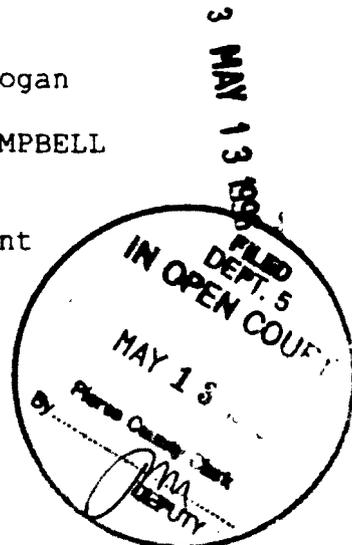
GARY MEREDITH

Pamela Mayhew
Judicial Assistant

Defendant/Respondent

Plaintiff's Attorney(s)
JAMES SCHACHT

Defendant's Attorney(s)
BRETT PURTZER



CIVIL/DOMESTIC/CRIMINAL

RESOLUTION CODES

(Check one of these if case was resolved)

- (MTHRG) Motion/Hearing
- (NOTE) Trial Reconvened
- (JTRIAL) Jury Trial
- (NJTRIAL) Non-Jury Trial

- (STPR) Settled by parties or agreed judgment without trial
- (UNDS) Formal Proof
- (DFJG) Default Judgment
- (DSM) Dismissal Without Trial
- (CHV) Change of Venue
- (DAT) Dismissal after Non-Jury Trial
- (DJT) Dismissal after Jury Trial
- (SAT) Settled during Non-Jury Trial
- (SJT) Settled during Jury Trial
- (CDAT) Judicial Decision after Trial
- (JVAT) Jury Verdict after Trial

IN THE SUPERIOR COURT PIERCE COUNTY, WASHINGTON

PIERCE COUNTY No. 95-1-04949-6

MEMORANDUM OF JOURNAL ENTRY

STATE OF WASHINGTON

2

vs.

Date May 1, 1996

GARY MEREDITH

JUDGE Vicki L. Hogan

JUDICIAL ASSISTANT Pamela Mayhew

REPORTER ALAN CAMPBELL

MINUTE ENTRY

10:02 am Court convenes day of trial. All parties are present and prepared for trial. Colloquy re jury questionnaire. Jury to be called up after motions. Atty Purtzer presents motion in regarding a Knapstad motion. Atty Schacht responds. Atty Purtzer responds. Court denys motion to dismiss assault in 2nd degree. Atty Schacht presents motion in limine regarding of the certified copies of the prior convictions. Atty Purtzer responds. Atty Schacht responds. Court rules and grants motion. Atty Purtzer presents further response on the last motion and takes exception. Atty Schacht presents motion in limine regarding Dr. Bobbi Sipes to testify. Atty Purtzer responds. Atty Schacht responds. Court rules and grants motion. Atty Purtzer presents further response on the last motion and takes exception. Regarding the foundation of Dr. Sipes. Atty Schacht presents motion regarding that the defense should not be able to cross exam the victim and girlfriends regarding their prior sexual history. Atty Purtzer responds. Court grants motion. Atty Purtzer presents motions in limine regarding statements made by Mr. Meredith to Detective Goetz. Atty Schacht responds. Atty Purtzer responds. Atty Schacht responds. Atty Purtzer responds. Court rules that there will be no testimony regarding Detective Goetz and the missed appointments. Court grants motion. Atty Purtzer presents motion regarding Victor. Atty Purtzer responds. Court rules and denies motion.

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

PIERCE COUNTY No. 95-1-04949-6

MEMORANDUM OF JOURNAL ENTRY

STATE OF WASHINGTON

3

vs.

Date May 1, 1996

GARY MEREDITH

JUDGE Vicki L. Hogan

JUDICIAL ASSISTANT Pamela Mayhew

REPORTER ALAN CAMPBELL

MINUTE ENTRY

Atty Purtzer presents motion regarding the arresting of the Meredith. Atty Schacht responds. Court grants motion. Atty Purtzer presents motion to sever counts 1 and counts 2. Atty Schacht responds. Atty Purtzer responds. Atty Schacht responds. Atty Purtzer responds. Court denies motion. Court will allow additional time for reconsideration of the ruling of the 2 prior convictions. **11:59 am** Recess.

SECOND DAY OF TRIAL MAY 2, 1996

9:54 am Court convenes for defense motion. Atty Purtzer presents motion to sever the counts. **10:06 am** Atty Schacht responds. **10:16 am** Atty Purtzer responds. **10:20 am** Court rules and denies motion to sever. **10:25 am** Atty Purtzer requests a limiting instruction to the jury. Colloquy re: jury. Atty Purtzer makes a motion regarding referring to the witnesses as victims. Atty Schacht responds. Court grants motion to limit the reference of victims. **10:40 am** Jury brought up. **10:41 am** Jury sworn in for voir dire. Court instructs jurors regarding the case and the next procedure. Questionnaire distributed. **10:50 am** Jury excused. **10:51 am** Recess. **2:02 pm** Court reconvenes with all jurors present. **2:03 pm** Atty Schacht voir dire. **2:32 pm** Atty Purtzer voir dire. **3:04 pm** Atty Schacht voir dire. **3:34 pm** Juror # 25 excused for cause. **3:38 pm** Atty Schacht voir dire. **3:59 pm** Jury excused with cautionary instructions. **4:05 pm** Recess.

IN THE SUPERIOR COURT PIERCE COUNTY WASHINGTON

PIERCE COUNTY No. 95-1-04949-6

MEMORANDUM OF JOURNAL ENTRY

STATE OF WASHINGTON

4

vs.

Date May 1, 1996

GARY MEREDITH

JUDGE Vicki L. Hogan

JUDICIAL ASSISTANT Pamela Mayhew

REPORTER ALAN CAMPBELL

MINUTE ENTRY**SECOND DAY OF TRIAL MAY 3, 1996**

1:35 pm Court convenes with all prospective jurors present. Atty Schacht voir dire. **2:11 pm** Atty Purtzer voir dire. Jurors # 22, # 30, # 36, # 37, # 38, # 40 excused. **2:57 pm** Recess. **3:18 pm** Jurors individually questioned, 3, 8, 9, 10, 33, 35, 39, 43. Jury **4:04 pm** Jury excused except for 11, 26 and 27. Jurors # 10 excused. **4:09 pm** Jurors # 26 excused. **4:20 pm** Recess.

THIRD DAY OF TRIAL MAY 6, 1996

9:30 am Atty Schacht voir dire. **9:55 am** Atty Purtzer voir dire. **10:07 am** Side bar. **10:10 am** Atty Purtzer continues voir dire. **10:11 am** Juror # 9 excused. **10:14 am** Juror # 34 excused. **10:20 am** Challenges. **10:43 am** Jurors excused. **10:45 am** Recess. **11:07 am** Court reconvenes without jury present. Atty Purtzer presents motion regarding the challenges of Juror # 4 and move for a mistrial. **11:12 am** Atty Schacht responds. **11:14 am** Atty Purtzer responds. **11:15 am** Court rules and denies motion. **11:16 am** Atty Schacht presents motion to exclude parts of Dr. Moore's testimony and the opening statements of the defense regarding Dr. Moore's testimony. **11:20 am** Atty Purtzer responds. **11:25 am** Atty Schacht responds. **11:28 am** Court grants motion. **11:35 am** Jury brought in. The

IN THE SUPERIOR COURT PIERCE COUNTY WASHINGTON

PIERCE COUNTY No. 95-1-04949-6

MEMORANDUM OF JOURNAL ENTRY

STATE OF WASHINGTON

5

vs.

Date May 1, 1996

GARY MEREDITH

JUDGE Vicki L. Hogan

JUDICIAL ASSISTANT Pamela Mayhew

REPORTER ALAN CAMPBELL

MINUTE ENTRY

following jurors were sworn and impaneled to try this cause: 1) Barbara Meyers, 2) Jimmy Pippin, 3) Terrance Plumb, 4) Shelda Vogel, 5) Joan Hanson, 6) Thomas Greenwood, 7) Walter Wendland, 8) Donald Edenbo, 9) Janice Suver, 10) Sharon Wylie, 11) Harold Kelly, 12) Otto Kostelecky, 13) Debra Jarzynka, 14) Boyd Baker. Court instructs jury regarding the rules. 11:46 am Recess. 1:36 pm Court reconvenes. Atty Purtzer presents motion to exclude reference to any mention to the one of the gallery that was involved in a previous case of the Defendant. Atty Schacht agrees. Court indicates that would be part of the courts order. 1:39 pm Jury brought in. Atty Schacht presents opening statement. 1:51 pm Atty Purtzer presents opening statement. 1:59 pm Atty Schacht calls **MELISSA JACOVUS**, who is sworn in and testifies under direct examination. **PEXHIBIT # 1 thru # 10 marked.** 2:45 pm Recess. 3:07 pm Court reconvenes. Atty Schacht continues with direct. 3:11 pm Atty Purtzer cross exam. 3:32 pm Atty Schacht redirect. 3:35 pm Atty Purtzer recross. 3:37 pm Witness stands down. 3:37 pm Atty Schacht calls **SHYANNE THOMPSON**, who is sworn in and testifies under direct examination. 4:08 pm Atty Purtzer cross exam. 4:16 pm Witness stands down. Judge gives cautionary instructions. Recess.

Case Number: 95-1-04949-6 Date: April 20, 2015

SerialID: D84BD696-E20F-6452-DE0F4E4CE203B68E

Certified By: Kevin Stock Pierce County Clerk, Washington

IN THE SUPERIOR COURT PIERCE COUNTY WASHINGTON

PIERCE COUNTY No. 95-1-04949-6

MEMORANDUM OF JOURNAL ENTRY

STATE OF WASHINGTON

6

vs.

Date May 1, 1996

GARY MEREDITH

JUDGE Vicki L. Hogan

JUDICIAL ASSISTANT Pamela Mayhew

REPORTER ALAN CAMPBELL

MINUTE ENTRY**FOURTH DAY OF TRIAL MAY 7, 1996**

1:35 pm Court convenes without jury present. Colloguy. 1:41 pm Jury brought in. Atty Schacht calls **DETECTIVE RANDY GOETZ**, who is sworn in and testifies under direct examination. 1:51 pm Plaintiff's exhibit # 6 offered, objection, to be ruled on outside the presence of the jury. 1:52 pm Atty Purtzer cross exam. 1:59 pm Atty Schacht redirect. 2:02 pm Witness stands down. 2:02 pm Atty Schacht calls **BOBBI LAPIC**, who is sworn in and testifies under direct examination. 2:35 pm Defendant's exhibit # 11 marked. 3:05 pm Recess. 3:22 pm Court reconvenes. Atty Schacht presents motion regarding the witnesses. Court admonishes the gallery. Atty Schacht indicates that there is a stipulation regarding 7 and 8. Atty Purtzer indicates that there is not a stipulation. **PEXHIBIT # 6 admitted.** 3:30 pm Jury brought back in. Atty Schacht continues with direct. 3:41 pm Atty Purtzer cross exam. 3:43 pm **DEXHIBIT # 11** offered, objection and not admitted. 3:55 pm Jury excused. 4:01 pm Jury brought back in. Cross examination continues. 4:16 pm Atty Schacht redirect. 4:20 pm Atty Purtzer recross. 4:20 pm **PEXHIBIT # 4 and # 5** offered, no objection and admitted. 4:24 pm Jury excused. 4:24 pm Recess.

Case Number: 95-1-04949-6 Date: April 20, 2015

SerialID: D84BD696-F20F-6452-DE0F4E4CF203B68F

Certified By: Kevin Stock Pierce County Clerk, Washington

IN THE SUPERIOR COURT PIERCE COUNTY, WASHINGTON

PIERCE COUNTY No. 95-1-04949-6

MEMORANDUM OF JOURNAL ENTRY

STATE OF WASHINGTON

7

vs.

Date May 1, 1996

GARY MEREDITH

JUDGE Vicki L. Hogan

JUDICIAL ASSISTANT Pamela Mayhew

REPORTER ALAN CAMPBELL

MINUTE ENTRY**FIFTH DAY OF TRIAL- (JA LDARLAND PRESENT)**

9:08 am Court convened in the presence of the jury. All parties present and represented by counsel. Pl Atty calls **Vicky Gwin**, who is sworn in and testifies under direct examination. **9:27 am** Jury excused. Deft Atty makes objections to the line of questioning by Pl Atty. **9:28 am** Pl Atty responds. **9:29am** Court rules. **9:30 am** Jurors reseated in the Court room. **9:31 am** Cross examination. **9:38 am** Jury excused. Pl Atty makes objections to the Court. **9:39 am** Deft Atty responds. **9:39 am** Pl Atty argues further. **9:41 am** Court rules. Jury reseated. Cross continues. **9:43 am** Witness excused. Pl Atty calls **Amanda Bevacqua**, who is sworn in and testifies under direct examination. **10:27am** Jury excused. Court at recess. **11:00am** Court reconvened in the presence of the jury. Cross examination. **11:18 am** Redirect. **11:20 am** Recross. **11:24 am** Witness excused. Pl Atty calls **Charles Carter**, who is sworn in and testifies under direct examination. **PEXHIBIT #7 OFFERED**. Voir dire by Deft Atty. Objections made. **PEXHIBIT #7 ADMITTED**. **PEXHIBIT #8 OFFERED, ADMITTED**. **11:33 am** Cross examination. **11:34 am** Witness excused. **PEXHIBIT #1 OFFERED, ADMITTED**. **11:37am** Pl Atty calls **Michelle**

IN THE SUPERIOR COURT OF PIERCE COUNTY, WASHINGTON

PIERCE COUNTY No. 95-1-04949-6

MEMORANDUM OF JOURNAL ENTRY

STATE OF WASHINGTON

8

vs.

Date May 1, 1996

GARY MEREDITH

JUDGE Vicki L. Hogan

JUDICIAL ASSISTANT Pamela Mayhew

REPORTER ALAN CAMPBELL

MINUTE ENTRY

Russell , who is sworn in and testifies under direct examination.

11:44am Cross exam. **11:45am** Jury excused. Deft Atty argues to the

Court. **11:51am** Pl Atty responds. **11:52am** Court rules. Jury

reseated. Cross continues. **11:55 am** Jury excused. Deft Atty

addresses DNA testing on victim. **11:57 am** Pl Atty responds. **11:57**

am Deft Atty argues further. Court rules. **11:58 am** Jury reseated.

Cross continues. **12:05 pm** Redirect. **12:06 pm** Witness excused. Court

releases jury till tomorrow at 9:00 am. **12:08 pm** Court at recess.

2:08 pm Court reconvenes for jury instructions. Exceptions noted.

2:24 pm Recess. **2:49 pm** Court reconvenes. Atty Purtzer calls **DR.**

DAVID MOORE, who is sworn in and testifies under direct examination

for offer of proof. **3:00 pm** Cross examination. **3:23 pm** Redirect.

3:24 pm Atty Schacht presents motion to exclude Dr. Moore's

testimony. **3:32 pm** Atty Purtzer responds. **3:36 pm** Atty Schacht

rebuttal. **3:38 pm** Court grants states motion. **3:42 pm** Recess.

SIXTH DAY OF TRIAL MAY 9, 1996

9:05 am Court convenes without the jury present. Court informs

attorneys regarding juror # 12 being sick. Court excuses juror #

12 which leaves the panel as 13. All parties present and

represented by counsel and ready to proceed. **9:09 am** Jury brought

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

PIERCE COUNTY No. 95-1-04949-6

MEMORANDUM OF JOURNAL ENTRY

STATE OF WASHINGTON

9

vs.

Date May 1, 1996

GARY MEREDITH

JUDGE Vicki L. Hogan

JUDICIAL ASSISTANT Pamela Mayhew

REPORTER ALAN CAMPBELL

MINUTE ENTRY

in. Atty Schacht calls **BOBBI SIPES**, who is sworn in and testifies under direct examination. **9:18 am PEXHIBIT # 12 marked, offered, no objection and admitted.** **9:23 am** Atty Purtzer cross exam. **9:30 am** Witness stands down and excused. **9:31 am** Plaintiff's exhibits # 9 and # 10 offered, objection. **9:34 am** Jury excused. **9:34 am PEXHIBIT # 9 and # 10 offered, objection.** **9:42 am** Jury brought back in. **PEXHIBIT # admitted** Court gives limited instructions to the jury. State rests. **9:44 am** Jury excused. Atty Purtzer presents motion to dismiss count II. **9:46 am** Atty Schacht responds. **9:48 am** Atty Purtzer responds. **9:48 am** Court denies motion. **9:48 am** Atty Purtzer renews motion to sever. Atty Schacht responds. **9:50 am** Court rules and denies. **9:51 am** Jury brought in. Atty Purtzer calls **JASON GROSS**, who is sworn in and testifies under direct examination. **10:05 am** Atty Schacht cross exam. **10:14 am** Atty Purtzer redirect. **10:16 am** Atty Schacht recross. **10:19 am** Recess. **10:47 am** Jury present. Defense rests. **10:48 am** Atty Schacht indicates that he has a rebuttal witness. Not available until 11:15 am. Court at recess until that time. **11:28 am** Jury released by JA with cautionary instructions for lunch. **1:43 pm** Court reconvenes without jury present. Atty Schacht indicates that he

IN THE SUPERIOR COURT PIERCE COUNTY WASHINGTON

PIERCE COUNTY No. 95-1-04949-6

MEMORANDUM OF JOURNAL ENTRY

STATE OF WASHINGTON

10

vs.

Date May 1, 1996

GARY MEREDITH

JUDGE Vicki L. Hogan

JUDICIAL ASSISTANT Pamela Mayhew

REPORTER ALAN CAMPBELL

MINUTE ENTRY

will not be calling a rebuttal witness. Atty Schacht indicates that a jury instruction should read in the elements as State of Washington instead of Pierce County. Atty Purtzer agrees but indicates that he could see no problem. Court will modify the jury instruction to read State of Washington. Atty Schacht presents motion regarding to have the Defense restricted from indicating anything about the DNA testing. Atty Purtzer responds. Atty Schacht responds. Court grants State's motion. Atty Schachts makes a motion to have both sides of the gallery to not show any emotion or outburts during closing arguments. Atty Purtzer agrees. Court instructs gallery regarding any emotion or outbursts during the closing arguments will not be tolerated. Atty Purtzer presents motion regarding count I to dismiss. Atty Schacht responds. Atty Purtzer responds. Court denys motion. **1:58 pm** Jury brought out. **1:59 pm** State rests. Court reads jury instructions. **2:11 pm** Atty Schacht presents closing argument. **2:44 pm** Recess. **3:03 pm** Court reconvenes. Atty Purtzer presents closing arguments. **3:35 pm** Atty Schacht rebuttal. **3:45 pm** Juror # 7 excused. **3:52 pm** Jury begins deliberations. **4:42 pm** Jury excused with cautionary instructions.

Case Number: 95-1-04949-6 Date: April 20, 2015

SerialID: D84BD696-F20F-6452-DEF4E4CF203B68F

Certified By: Kevin Stock Pierce County Clerk, Washington

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

PIERCE COUNTY No. 95-1-04949-6

MEMORANDUM OF JOURNAL ENTRY

STATE OF WASHINGTON

11

vs.

Date May 1, 1996

GARY MEREDITH

JUDGE Vicki L. Hogan

JUDICIAL ASSISTANT Pamela Mayhew

REPORTER ALAN CAMPBELL

MINUTE ENTRY

MAY 10, 1996. 8:45 am Jury began deliberations. **9:20 am** Jury knocked verdict reached. **10:16 am** Court convenes without jury present. **10:18 am** Jury brought out. Count I guilty: Count II guilty. Jury polled. Jury released. Atty Schacht presents motion to have defendant taken into custody. Atty Purtzer responds. Court sets out of custody June 18, 1996 for sentencing. **10:31 am** Trial over.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 20 day of April, 2015



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Apr 20, 2015 12:26 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
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This document contains 11 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “E”

RP 491

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

GARY DANIEL MEREDITH,

Defendant.

)
)
) **COPY**

) Superior Court
) No. 95-1-04949-6

)
) Court of Appeals
) No. 38600-3-II
)
)

**VERBATIM TRANSCRIPT OF PROCEEDINGS
VOLUME VI**

May 9, 1996
Pierce County Superior Court
Tacoma, Washington
Before the
HONORABLE VICKI L. HOGAN

TRANSCRIBED BY:
Raelene Semago
Official Court Reporter
930 Tacoma Avenue
334 County-City Bldg.
Department 5
Tacoma, Washington 98402

1 BE IT REMEMBERED that on May 9, 1996, the
2 above-captioned cause came on duly for hearing before the
3 **HONORABLE VICKI L. HOGAN**, Judge of the Superior Court in
4 and for the County of Pierce, State of Washington; the
5 following proceedings were had, to wit:

6
7 <<<<<< >>>>>>

8
9 (JURY NOT PRESENT.)

10 THE COURT: Good morning. I wanted to advise
11 both of you that this morning on the voicemail there was a
12 message from Juror No. 12 which was apparently Juror No. 12
13 is extremely ill. She said she would not be in today and
14 she doubted seriously if she would be in tomorrow because
15 she had a high fever.

16 I want to advise you in light of that I am going to
17 excuse Juror No. 12 for illness and proceed with 13 jurors.

18 MR. SCHACHT: I have no objection.

19 MR. PURTZER: I believe that's appropriate.

20 AdmittedTHE COURT: Anything else we need to discuss?

21 MR. PURTZER: No, Your Honor. AdmittedTHE

22 COURT: Then we will go ahead and have the jurors come out.
23 What I would like to do is move Juror No. 7 so he doesn't
24 have to sit dropped down and have him sit up there.

25 (JURY PRESENT.)

APPENDIX “F”

Court’s Instructions

1. 9/ 6

Case Number: 95-1-04949-6 Date: April 20, 2015

SerialID: D84C0D75-110A-9BE2-A9F9AE4030CBDE83

Certified By: Kevin Stock Pierce County Clerk, Washington



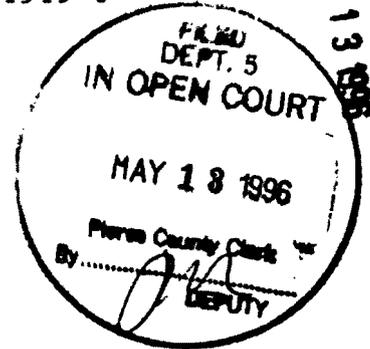
95-1-04949-6 4731536 CTINJY 01-02-09

IOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 GARY DANIEL MEREDITH,)
)
 Defendant.)

NO. 95-1-04949-6



COURT'S INSTRUCTIONS TO THE JURY

DATED this 9th day of May, 1996.

Vicki L. Hagan
 JUDGE

1. 9. 0. 9

Case Number: 95-1-04949-6; Date: April 20, 2015
SerialID: D84C0D75-110A-9BE2-A9F9AE4030CBDE83
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 1

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

A charge has been made by the prosecuting attorney by filing a document, called an information, informing the defendant of the charge. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence which either was not admitted or which was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given the testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorney's remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument which is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the

weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.

Case Number: 95-1-04949-5 Date: April 20, 2015
SerialID: D84C0D75-110A-9BE2-A9F9AE4030CBDE83
Certified By: Kevin Stock Pierce County Clerk, Washington

JURY INSTRUCTION NO. 2

The defendant has entered a plea of not guilty, which puts in issue every element of the crimes charged. The state, as plaintiff, has the burden of proving each element of the crimes beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless you find during your deliberations that it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. A reasonable doubt is a doubt that would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence.

Case Number: 05-1-04949-0 Date: April 20, 2015
SerialID: D84C0D75-110A-9BE2-A9F9AE4030CBDE83
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 3

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

Case Number: 95-1-04949-0 Date: April 20, 2015

SerialID: D84C0D75-110A-98E2-A9F9AE4030CBDE83

INSTRUCTION NO. 31
Compiled By: Kevin Stock Pierce County Clerk, Washington

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness' information, together with the factors already given you for evaluating the testimony of any other witness.

Case Number: 95-104949-6 Date: April 20, 2015

SerialID: DR4C0D75-110A-9BE2-A9F9AE4030CBDE83

Created By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 6

A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

A person commits the crime of rape of a child in the second degree when that person has sexual intercourse with another person who is at least twelve years old but less than fourteen years old and who is not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

JURY INSTRUCTION NO. 8

Sexual intercourse means that the sexual organ of the male entered and penetrated the sexual organ of the female and occurs upon any penetration, however slight.

Case Number: 09-1-04949-6 Date: April 20, 2015
SerialID: D84C0D75-110A-9BE2-A9F9AE4030CBDE83
Certified By: Kevin Stock Pierce County Clerk, Washington

JURY INSTRUCTION NO. 9

Married means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in court for legal separation or for dissolution of the marriage.

1 3 5

Case Number: 95-1-04949-81 Date: April 20, 2015

SerialID: D84C0D75-110A-9E27-A9F9AE4030CBDE83

Created By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 10

You may give such weight and credibility to any alleged out-of-court statements of the defendant as you see fit, taking into consideration the surrounding circumstances.

109

Case Number 95-1-01949-6 Date April 20, 2015

SerialID: D84C0D75-110A-9BE2-A9F9AE4030CBDE83

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 11

To convict the defendant of the crime of communicating with a minor for immoral purposes as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 29th day of October, 1994, the defendant communicated with Amanda Bevacqua for immoral purposes of a sexual nature;

(2) That Amanda Bevacqua was a minor;

(3) That the acts occurred in the State of Washington; and

(4) That the defendant had previous to the 29th day of October, 1994, been convicted of the crime of Rape in the Third Degree or Assault in the Third Degree with Sexual Motivation.

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.

1 5 4

Case Number: 95-1-0449-8 Date: April 20, 2015

SerialID: D84C0D75-110A-9BE2-A9F9AE4030CBDE83

Certified by: Kevin Scott Pinner County Clerk, Washington

INSTRUCTION NO. 12

A person commits the crime of communication with a minor for immoral purposes when that person communicates with a minor for immoral purposes of a sexual nature and that person has previously been convicted of a felony sexual offense.

Communication may be by words or conduct.

1 9 9

Case Number: 95-1-04949-6 Date: April 20, 2015

SerialID: D84C0D75-110A-9BE2-A9F9AE4030CBDE83

Certified By: Kevin Stock Pierce County Clerk, Washington

JURY INSTRUCTION NO. 13

"Minor" means any person under eighteen years of age.

Case Number: 95-1-04949-8 Date: April 20, 2015

SerialID: D84C0D75-110A-9EEA-A9F9AE4030CBDE83

INSTRUCION NO 19
County Clerk, Washington

Evidence that the defendant has previously been convicted of a crime is not evidence of the defendant's guilt. Such evidence may be considered by you in deciding Count II and for no other purpose.

JURY INSTRUCTION NO. 15

To convict the defendant of the crime of rape of a child in the second degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on the 29th day of October, 1994, the defendant had sexual intercourse with Bobbi Lopic;
- (2) That Bobbi Lopic was at least twelve years old but less than fourteen years old at the time of the sexual intercourse and was not married to the defendant;
- (3) That the defendant was at least thirty-six months older than Bobbi Lopic; and
- (4) That the 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.

JURY INSTRUCTION NO. 16

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted in evidence, these instructions and a verdict form for each count.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty," according to the decision you reach.

Since this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror will sign it and notify the bailiff, who will conduct you into court to declare your verdict.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 20 day of April, 2015



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Apr 20, 2015 12:26 PM



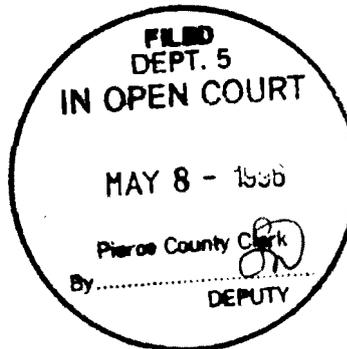
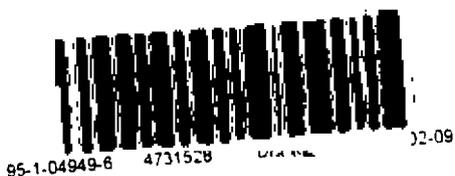
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<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
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APPENDIX “G”

Defendant’s Proposed Instructions



3 MAY 13 1996

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

GARY DANIEL MEREDITH,

Defendant.

No. 95-1-04949-6

DEFENDANT'S PROPOSED
INSTRUCTIONS TO THE
JURY

DATED this 8 day of May, 1996.

LAW OFFICES OF MONTE E.
HESTER, INC., P.S.
Attorneys for Defendant

By: [Signature]
Brett A. Purtzer
WSB #17283

Case Number: 95-1-04949-6 Date: April 20, 2015
SerialID: D84C0EEC-110A-9BE2-A9841026C9ECCEB8
Certified By: Kevin Stock Pierce County Clerk, Washington

JURY INSTRUCTION NO. 1

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

A charge has been made by the prosecuting attorney by filing a document, called an information, informing the defendant of the charge. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence that either was not admitted or that was stricken by the court. You will not be provided with a written copy of testimony during your

deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given to the testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness's memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorneys' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should

not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.

JURY INSTRUCTION NO. 2

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to reexamine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

JURY INSTRUCTION NO. 3

The defendant has entered a plea of not guilty, which puts in issue every element of the crimes charged. The state, as plaintiff, has the burden of proving each element of the crimes beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless you find during your deliberations that it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. A reasonable doubt is a doubt that would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence.

JURY INSTRUCTION NO. 4

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

JURY INSTRUCTION NO. 5

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness information, together with the factors already given you for evaluating the testimony of any other witness.

Case Number: 95-1-04949-6 Date: April 20, 2015

SerialID: D84C0EEC-110A-9BE2-A9841026C9ECCEB8

Certified By: Kevin Stock Pierce County Clerk, Washington

JURY INSTRUCTION NO. 6

A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

JURY INSTRUCTION NO. 7

A person commits the crime of rape of a child in the second degree when that person has sexual intercourse with another person who is at least twelve years old but less than fourteen years old and who is not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

JURY INSTRUCTION NO. 8

Sexual intercourse means that the sexual organ of the male entered and penetrated the sexual organ of the female and occurs upon any penetration, however slight.

JURY INSTRUCTION NO. 9

Married means one who is legally married to another,
but does not include a person who is living separate and apart
from his or her spouse and who has filed in court for legal
separation or for dissolution of the marriage.

JURY INSTRUCTION NO. 10

To convict the defendant of the crime of rape of a child in the second degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on the 29th day of October, 1994, the defendant had sexual intercourse with Bobbi Lopic;

(2) That Bobbi Lopic was at least twelve years old but less than fourteen years old at the time of the sexual intercourse and was not married to the defendant;

(3) That the defendant was at least thirty-six months older than Bobbi Lopic; and

(4) That the acts occurred in Pierce County.

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.

Case Number: 95-1-04949-6 Date: April 20, 2015

SerialID: D84C0EEC-110A-9BE2-A9841026C9ECCEB8

Certified By: Kevin Stock Pierce County Clerk, Washington

JURY INSTRUCTION NO. 11

A person commits the crime of communication with a minor for immoral purposes when that person communicates with a minor for immoral purposes of a sexual nature.

Communication may be by words or conduct.

Case Number: 95-1-04949-6 Date: April 20, 2015

SerialID: D84C0EEC-110A-9BE2-A9841026C9ECCEB8

Certified By: Kevin Stock Pierce County Clerk, Washington

JURY INSTRUCTION NO. 12

"Minor" means any person under eighteen years of age.

JURY INSTRUCTION NO. 13

To convict the defendant of the crime of communicating with a minor for immoral purposes, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 29th day of October, 1994, the defendant communicated with A.B. for immoral purposes of a sexual nature;

(2) That A.B. was a minor; and

(3) That the 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.

JURY INSTRUCTION NO. 4

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted in evidence, these instructions and a verdict form for each count.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty," according to the decision you reach.

Since this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror will sign it and notify the bailiff, who will conduct you into court to declare your verdict.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 20 day of April, 2015



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Apr 20, 2015 12:26 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: D84C0EEC-110A-9BE2-A9841026C9ECCEB8.

This document contains 19 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “H”

Voir Dire

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MR. PURTZER: All right. Any doubt in your mind?

JUROR NO. 12: No.

MR. PURTZER: All right. Thank you. Anybody else? As I said, I need your complete candor on that. It's extremely, extremely important. Anybody else that because of the nature of the prior convictions would not be able to remain fair and impartial?

No. 32.

JUROR NO. 32: I didn't know up until now that there were priors up until now. I was pretty sure I could be impartial. I don't know now. I kind of doubt it.

MR. PURTZER: All right. Is it doubt that hearing the testimony or seeing the evidence of the prior convictions will overshadow everything else you hear in the testimony?

JUROR NO. 32: I don't know how to answer that. I just feel that I wouldn't be able to be impartial.

MR. PURTZER: Okay.

JUROR NO. 32: As far as giving a good verdict.

MR. PURTZER: If it was a situation where you were sitting where Mr. Meredith was, what's in your mind right now, would you want to have yourself as a juror on this case?

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JUROR NO. 32: No, I don't think so.

MR. PURTZER: That's because you don't think that you can be fair and impartial?

JUROR NO. 32: Yes.

MR. PURTZER: Your Honor, I would move to challenge No. 32 for cause.

MR. SCHACHT: Same questions I put to the juror earlier, up until now you had indicated that you could be fair and impartial in judging the facts of this case. That's even given whatever life experiences you bring to court, which are, obviously, the most important influences on you, I am sure. But be that as it may, will you commit to following the Court's instructions on the law, including whatever instructions are given as to how you consider those two prior convictions?

JUROR NO. 32: I do have a doubt now. Pretty hard for me to follow the Court's instructions.

MR. SCHACHT: Would you strive to do so?

JUROR NO. 32: I would strive to, yes.

MR. SCHACHT: Okay. Would you, as you are listening to the evidence in this case from the witness stand and the exhibits you get in court, judge this case solely on that evidence alone?

JUROR NO. 32: That's something that I would have to think about, go through all the evidence, which way

1 to go. But one thing that I don't like about it is why do
2 we have to have all of this stuff, there is no reason for
3 it.

4 MR. SCHACHT: Okay. I am not exactly sure how
5 to respond. What I am looking for here is on the question
6 of knowing that part of the evidence may be some prior
7 convictions, will you listen to the testimony you hear, the
8 evidence that is presented, and judge this case solely on
9 that evidence?

10 JUROR NO. 32: Well, I would like to think I
11 would. There again, I would have to deliberate after all
12 the evidence has come in, and when we get to the jury room,
13 see if he is telling the real truth.

14 MR. SCHACHT: If you can correct me, it bothers
15 you, it sticks in the back of your mind, but nevertheless
16 you would follow the Court's instructions, listen to the
17 testimony, judge this case solely on the evidence?

18 JUROR NO. 32: Yes.

19 MR. SCHACHT: I don't believe that a challenge
20 is appropriate.

21 MR. PURTZER: Sir, if I understand what you
22 have said, it is the fact that there is going to be a prior
23 convictions that will have more weight than other testimony
24 that you might hear?

25 JUROR NO. 32: Would you state that again?

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MR. PURTZER: The fact that there is going to be evidence of prior felony convictions for sexual offenses, would that have more weight than other evidence that you might hear?

JUROR NO. 32: Would have a lot to do with it.

MR. PURTZER: All right. So you might find yourself judging solely because of the prior convictions?

JUROR NO. 32: It's quite possible that after the evidence came in, maybe it could be changed to where I could come and be impartial.

MR. PURTZER: As we sit here right now, hearing that type of evidence, you are already leaning towards one decision?

JUROR NO. 32: Yes.

MR. PURTZER: Thank you. I renew the motion.

THE COURT: Mr. Schacht, anything further?

MR. SCHACHT: No, I don't believe the challenge for cause is appropriate.

THE COURT: I am not going to excuse Juror No. 32. Go ahead.

MR. PURTZER: All right. With that in mind, is there anybody here that finds themselves leaning to one side heavier than the other, knowing that one piece of evidence the State is going to present is that of a prior felony conviction for sexual offenses? Everybody

1 comfortable that they can go ahead and remain impartial?
2 All right.

3 It is the most important case to Mr. Meredith in this
4 juncture. He does have two prior felony convictions. Is
5 there anybody that because of that cannot at this point in
6 time presume that he is innocent of those charges? I need
7 to know that. I ask you to please share with me if you
8 have any concern whatsoever. You all will follow the oath
9 that the Judge will give to you, listen to all of the
10 evidence as it's presented, not be influenced or make a
11 decision before you hear all of the evidence?

12 Thank you. Thank you, Your Honor.

13 THE COURT: Mr. Schacht, anything further?

14 MR. SCHACHT: No further questions.

15 THE COURT: All right. Ladies and gentlemen,
16 at this point in time, the attorneys are going to exercise
17 their challenges. I need all of you to remain in the
18 courtroom. You are free to stand and you are free to visit
19 among yourselves until they exercise their challenges. I
20 would ask you not to leave the courtroom. It normally
21 takes about 5 to 10 minutes. We will be doing it here at
22 the sidebar.

23 (Sidebar held outside the hearing of the reporter.)

24 THE COURT: At this point in time, it's easier
25 for me to read off the number of the jurors who will be

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impaneled in this case. If I do not read your name, then you are excused to return down to jury administration back on the first floor.

What I would ask you to do is as I read the numbers of the jurors that are going to be seated on this case, if everyone would remain seated until I read all of the numbers, then those that are excused can leave. Then I would ask you to go into the jury deliberation room.

The following jurors will be seated on this case: Juror No. 1, Juror No. 8, 11, 13, 14, 15, 16, 17, 20, 23, 24, 32, 35 and 39. If I did not call your name, at this point in time you are excused. Please return back downstairs to jury administration.

On behalf of all of us, the State and the defense, thank you for your participation.

First of all, we don't have enough chairs. We need to move some into the jury box. We will take a 15-minute break.

(RECESS TAKEN.)

APPENDIX “I”

Judgment and Sentence 91-1-02619-1



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

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 BARY DANIEL MEREDITH,)
)
 Defendant.)

NO. 91-1-02619-1
WARRANT OF COMMITMENT DEC 17 1991
1) County Jail
2) [] Department of Corrections
3) [] Other - Custody

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

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

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

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

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



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

Dated: 12/17/91 By direction of the Honorable [Signature]
JUDGE

TED RUTT
CLERK

By: [Signature]
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO ^{Jail} SHERIFF
Date 12/17/91 By S. Hyppa Deputy

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

TED RUTT, Clerk
By: _____ Deputy

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[] A special verdict/finding of a RCW 69.50.401(a) violation in a school bus, public transit vehicle, public park, public transit shelter or within 1000 feet of a school bus route stop or the perimeter of a school grounds (RCW 69.50.435).
[] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

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

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

<u>Crime</u>	<u>Sentencing Date</u>	<u>Adult or Juv. Crime</u>	<u>Date of Crime</u>	<u>Crime Type</u>
--------------	------------------------	----------------------------	----------------------	-------------------

None known nor admitted to by defendant

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

2.3 SENTENCING DATA:

	<u>Offender Score</u>	<u>Seriousness Level</u>	<u>Range Months</u>	<u>Maximum Years</u>
Count No. 1:	0	V	6-12	5

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

2.4 EXCEPTIONAL SENTENCE:

[] Substantial and compelling reasons exist which justify a sentence [] above [] below the standard range for Count(s). Findings of fact and conclusions of law are attached in Appendix 2.4.

JUDGMENT AND SENTENCE
(FELONY) - 2

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2.5 RESTITUTION:

- Restitution will not be ordered because the felony did not result in injury to any person or damage to or loss of property.
- Restitution should be ordered. A hearing is set for _____.
- Extraordinary circumstances exist that make restitution inappropriate. The extraordinary circumstances are set forth in Appendix 2.5.

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

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

2.7 [] SPECIAL FINDINGS PURSUANT TO RCW 9.94A.120:

- The defendant is a first time offender (RCW 9.94A.030(20)) who shall be sentenced under the waiver of the presumptive sentence range pursuant to RCW 9.94A.120(5).
- The defendant is a sex offender who is eligible for the special sentencing alternative under RCW 9.94A.120(7)(a). The court has determined, pursuant to RCW 9.94A.120(7)(a)(ii), that the special sex offender sentencing alternative is appropriate.

III. JUDGMENT

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

3.2 [] The court DISMISSES .

JUDGMENT AND SENTENCE
(FELONY) - 3

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

* 465⁴⁶, Restitution to: CRIME VICTIMS COMPENSATION
406 LEGION WAY S.E.
OLYMPIA, WA. 98504

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

* 100⁰⁰, Victim assessment;

* 365⁰⁰, Fine; [] VUCSA additional fine waived due to indigence (RCW 69.50.430);

* _____, Fees for court appointed attorney;

* _____, Drug enforcement fund of _____;

* _____, Other costs for: _____;

* 1,008⁴⁶, TOTAL legal financial obligations including restitution [] not including restitution.
[] Restitution shall be ordered at a later date.

Payments shall not be less than \$ _____ per month. Payments shall commence on _____.

Restitution ordered above shall be paid jointly and severally with:

<u>WILLIAM</u>	<u>Name</u> <u>MANUS</u>	<u>Cause Number</u> <u>91-1-02620-5</u>
_____	_____	_____
_____	_____	_____

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

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

[] Bond is hereby exonerated.

JUDGMENT AND SENTENCE
(FELONY) - 4

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4.2 CONFINEMENT ONE YEAR OR LESS: The court imposes the following sentences:

(a) TOTAL CONFINEMENT: Defendant is sentenced to following term of total confinement in the County Jail commencing

12/17/91

8 MO. days on Count No. _____ [] concurrent [] consecutive
_____ days on Count No. _____ [] concurrent [] consecutive
_____ days on Count No. _____ [] concurrent [] consecutive

[] Actual number of days of total confinement ordered is: _____

[] This sentence shall be [] concurrent [] consecutive with the sentence in _____

Credit is given for 6 days served.

[] Confinement shall be intermittent as follows:

(b) ALTERNATIVE CONVERSION PURSUANT TO RCW 9A.94A.380: _____ days of actual total confinement imposed above shall be converted to:

[] _____ days of partial confinement.

[] Partial confinement shall be served in work release.

[] Partial confinement shall be served in home detention.

[] _____ hours of community service under the supervision of the Department of Corrections to be completed within _____ months of [] this date [] release from confinement.

[] Alternative conversion was not used because:

(c) COMMUNITY SUPERVISION: Defendant shall serve 12 months in community supervision under the Department of Corrections. Defendant must contact the Department of Corrections at 755 Tacoma Avenue South, Tacoma upon release or by _____. Defendant shall comply with all rules, regulations and requirements of the Department. The defendant's monthly probationer assessment to the Department is as follows (RCW 9.94A.270): [] Full payment [] Total exemption [] Partial exemption as follows:

** conditions as set forth on page 2*

(d) CRIME RELATED PROHIBITIONS AND OTHER REQUIREMENTS: Crime related prohibitions and other requirements are attached.

(e) HIV TESTING. The Health Department or designee shall test the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing.

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(f) ~~5~~ DNA TESTING. The defendant shall have a blood sample drawn for purpose of DNA identification analysis. The county shall be responsible for obtaining the sample prior to the defendant's release from confinement.

EACH VIOLATION OF THIS JUDGMENT AND SENTENCE IS PUNISHABLE BY UP TO 60 DAYS OF CONFINEMENT. (RCW 9.94A.200(2)).
ANY DEFENDANT CONVICTED OF A SEX OFFENSE MUST REGISTER WITH THE COUNTY SHERIFF FOR THE COUNTY OF THE DEFENDANT'S RESIDENCE WITHIN 30 DAYS OF DEFENDANT'S RELEASE FROM CUSTODY. RCW 9A.44.130.

Date: 12/17/91 [Signature]
JUDGE

Presented by:
[Signature]
Deputy Prosecuting Attorney
WSB # 18275

Approved as to forms:
[Signature]
Counsel for Defendant
WSB # 14360

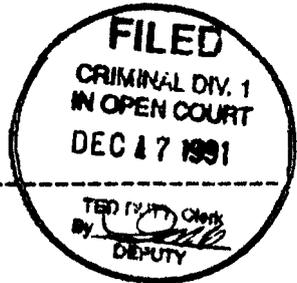
bjb

- 1. No contact with victim,
Tori Thompson
- 2. No contact with Gary
Maudith, the co-defendant
- 3. Register as a sex offender

FILED
CRIMINAL DIV. 1
IN OPEN COURT
DEC 17 1991
TED MUTT, Clerk
By: [Signature]
DEPUTY

[Signature]
Judge

SENTENCE ONE YEAR OR LESS - 2



FINGERPRINTS

Right Hand
Fingerprint(s) of: GARY DANIEL MEREDITH, Cause #91-1-02619-1

Attested by: TED RUTT CLERK
By: DEPUTY CLERK [Signature] Date: 12/17/1991

D. O'BOURKE
Deputy Clerk

CERTIFICATE

OFFENDER IDENTIFICATION

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

State I.D. #N/A
Date of Birth 06/13/70
Sex MALE
Race WHITE
ORI _____
DCA _____
DIN _____
DOA _____

Dated: _____

CLERK
By: _____
DEPUTY CLERK

FINGERPRINTS

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 20 day of April, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Apr 20, 2015 2:16 PM



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enter **SerialID: D8B0FB78-110A-9BE2-A9EB335FAB22CE98**.

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PIERCE COUNTY PROSECUTOR

April 20, 2015 - 2:54 PM

Transmittal Letter

Document Uploaded: 7-prp2-466716-Response.pdf

Case Name: In re: The PRP of Meredith

Court of Appeals Case Number: 46671-6

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion:

Answer/Reply to Motion:

Brief:

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes:

Hearing Date(s):

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other:

Comments:

No Comments were entered.

Sender Name: Therese M Kahn - Email: tnichol@co.pierce.wa.us