Supreme Court No. ____
COA No. 58646-1-II



IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

---

STATE OF WASHINGTON,

Respondent,

v.

RONALD K. MIDDLEBROOKS JR.,

Petitioner.

---

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

---

# PETITION FOR REVIEW

---

MATTHEW E. CATALLO
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, WA 98101
(206) 587-2711

TABLE OF CONTENTS

TABLE OF AUTHORITIES

**Washington Cases**

**Federal Cases**



**Rules**

## A. IDENTITY OF PETITIONER

Ronald Middlebrooks, the petitioner here and appellant below, asks this Court to accept review of the Court of Appeals' decision terminating review.

## B. COURT OF APPEALS DECISION

Mr. Middlebrooks seeks review of the Court of Appeals' decisions affirming the convictions dated June 17, 2025, and denying reconsideration dated August 18, 2025. Both decisions are appended to this petition.

## C. ISSUES PRESENTED FOR REVIEW

1. Joinder is only permissible if separately charged offenses satisfy CrR 4.3(a). The offenses must be of similar character, or based on the same conduct, a series of connected acts, or a series of acts constituting a single scheme. Here, the court joined robbery and theft charges that occurred on May 3 with assault and resisting arrest charges that occurred on May 5. The court joined these offenses because the State alleged Mr. Middlebrooks

possessed the same gun on May 5 as the one used during the May 3 offenses. But the text of CrR 4.3(a) does not support joinder under this theory, and the State did not contend otherwise on appeal. Instead, the State argued the offenses were part of a scheme to steal cars, even though there was no evidence of such a scheme. The Court of Appeals sidestepped this issue, resolving the case under harmless error.

While this Court has held offenses must satisfy the language of CrR 4.3(a) before they can be joined, there is *no* published case law in Washington addressing that language. The lack of guidance is problematic as courts routinely address joinder by considering prejudice without examining the language of CrR 4.3(a). This Court's review is needed for this undeveloped area of law. RAP 13.4(b)(4).

2. There is a lack of clarity about how appellate courts review joinder. This Court has reversed due to improper joinder without applying the conventional

harmless error analysis. Instead, it assessed whether the prejudicial effect outweighed the benefits of joinder. Here, in contrast, the Court of Appeals affirmed because, "even if [Mr.] Middlebrooks had faced separate trials for his May 3 and May 5 offenses, there is a reasonable probability that the jury would have convicted" him of all the charges. Slip Op. at 12, 15. This holding disregards this Court's precedent and misapplies the harmless error test. This Court should grant review and provide clarity to this muddled area of law. RAP 13.4(b)(1), (b)(4).

3. To prove a firearm enhancement, the State must demonstrate the defendant intended to use a firearm during the crime. On May 5, officers tackled Mr. Middlebrooks to the ground and Mr. Middlebrooks tried to push himself up as he wrestled with the officers. After they arrested Mr. Middlebrooks, the officers found a gun in a bag near his feet. From this incident, the State charged Mr. Middlebrooks with two counts of assault with two firearm enhancements.

The Court of Appeals contravened this Court's precedent by finding sufficient evidence for the two firearm enhancements, justifying this Court's review. RAP 13.4(b)(1).

## D. STATEMENT OF THE CASE

Marc Stilwell and Barbara Benigno went to a bank in Tacoma to withdraw money on May 3, 2022. RP 225, 227, 229. They were at the ATM when an SUV pulled into the parking lot. RP 229–30. Two men exited the SUV and approached the couple. RP 230–31. Mr. Stilwell could not see their faces, as they were "covered up" and it was "too dark." RP 229, 231. Mr. Stilwell describe both men as Black but could not describe anything else about their appearances or what they were wearing. RP 250.

After Ms. Benigno withdrew cash, the couple tried returning to their parked Chrysler 300. RP 228–31. The two men blocked their path. RP 230–31. One of them had a gun. RP 231. This man told the couple to give him their money.

RP 231. He cocked the gun, ejecting an unfired bullet from the chamber. RP 232.

The armed man took the car keys from Mr. Stilwell while the other man took the money from Ms. Benigno. RP 234. The armed man drove away in the Chrysler while the other man left in the SUV. RP 234–35. An officer found an unfired .40 caliber round on the ground near the ATM. RP 255–56.

Another officer later noticed the Chrysler driving to a gas station. RP 279–83. The driver parked the car at the gas station and went inside. RP 281. As officers surrounded the Chrysler, the driver exited the gas station, got into a different car, and left. RP 284, 293, 307. Officers did not catch the driver. RP 307.

The State contended Mr. Middlebrooks was the person that robbed Mr. Stilwell and Ms. Benigno at gunpoint and the driver of the Chrysler. CP 1–3. It charged him with two counts of first-degree robbery, one count of

vehicle theft, and one count of unlawful possession of a firearm. CP 4–6, 20–22.

After Mr. Middlebrooks pleaded not guilty, the State moved to join three offenses from a different matter to the case. CP 18; RP 733. The three offenses arose during Mr. Middlebrooks' unrelated contact with police on May 5, 2022. CP 12.

On that date, police officers—who were not investigating the May 3 offenses—arrested Mr. Middlebrooks at a motel for reasons unrelated to the robberies. CP 12; 5/18/23 RP 5. The State alleged Mr. Middlebrooks resisted arrest and assaulted "the two officers who attempt[ed] to detain him." CP 12. From this, the State charged Mr. Middlebrooks with two counts of third-degree assault and one count of resisting arrest. CP 10.

The State moved for joinder because, during the May 5 contact, the police found "a loaded Glock 22 semi-automatic pistol inside of a sling bag" near Mr.

Middlebrooks. CP 12, 15. Toolmark identification suggested the unspent cartridge discovered at the bank on May 3 came from the Glock. CP 13. Solely because of the firearm, the State argued the offenses from May 3 were of "the same or similar character and are part of a series of acts connect[ed]" with the offenses from May 5. CP 15; 5/18/23 RP 4. Mr. Middlebrooks objected, noting his antagonistic defenses in the two cases. 5/18/23 RP 9.

The court agreed with the State and permitted joinder. 5/18/23 RP 12; CP 26. The court noted the evidence of the offenses was not cross-admissible but still found the prejudice did not prevent joinder. 5/18/23 RP 13–14.

The State added two third-degree assault and one resisting arrest charges to the information. CP 22–24. It also added four firearm enhancements: two for the robbery counts and two for the assault counts. CP 19–24.

At trial, Mr. Stilwell admitted he did not see the robbers "very well" and was unable to describe them beyond

stating they were Black. RP 250–51. He could not identify whether any of the robbers were present in court. RP 251. A detective testified that while he saw the Chrysler driving on the road, he "did not see who was in the vehicle." RP 285.

The prosecution presented extensive testimony about the event on May 5. On that day, police were investigating an unrelated car in the motel parking lot in Lakewood. RP 508–10. They incidentally noticed a man exit a Toyota Prius without a license plate. RP 511. Officers reviewed that car's VIN and learned it had been reported stolen. RP 426. Two officers found the man that exited the Prius and grabbed his arm and placed him under arrest. RP 514–16. A lengthy struggle ensued between the three, which ended after a third officer tased the man. RP 439–41. The court admitted video footage of this incident. RP 472; Exs. 13, 14.

The officers identified Mr. Middlebrooks as the person they arrested on May 5. RP 453, 461, 496, 516, 523. An

officer found a pistol in a zipped bag by Mr. Middlebrooks' feet shortly after the arrest. RP 524–25.

The jury convicted Mr. Middlebrooks on all counts, including the four firearm enhancements. RP 693–95; CP 87–97. The court sentenced Mr. Middlebrooks to 300 months in prison, 156 of which are due to the firearm enhancements. CP 282–83; RP 735.

The Court of Appeals affirmed. Slip Op. at 1. It failed to consider the merits of whether joinder was proper. Slip Op. at 12. Instead, it affirmed because "there is a reasonable probability that the jury would have convicted Middlebrooks" even if no joinder occurred. Slip Op. at 13, 15. It also found sufficient evidence for the firearm enhancement for the two assault convictions, focusing on the evidence that Mr. Middlebrooks "kept reaching for his waist" while he wrestled with the officers. Slip Op. at 18.

## E. LAW AND ARGUMENT

### 1. The trial court flouted CrR 4.3(a) by joining the offenses, but the Court of Appeals did not address the merits of this issue. As this case demonstrates, our state requires this Court's guidance on the application of CrR 4.3(a).

The May 3 and May 5 offenses did not revolve around similar conduct, nor were the offenses interrelated or part of a single scheme. Nevertheless, the trial court permitted joinder because the State thought Mr. Middlebrooks possessed the same gun during both incidents. CrR 4.3(a)(2) does not support joinder under this basis, and the State did not contend otherwise on appeal.

The trial court's misjoinder in this case is unsurprising. There is no published case law examining the text of CrR 4.3(a)(2), leaving trial courts without any guidance. This Court should grant review to address this undeveloped area of law. RAP 13.4(b)(4).

*a. Separate offenses are joinable only if they satisfy the plain language of CrR 4.3(a).*

"'Joinder' refers to bringing multiple criminal charges against one person as separate counts in a single charging document." *State v. Bluford*, 188 Wn.2d 298, 305, 393 P.3d 1219 (2017). Washington courts "have recognized that joinder is inherently prejudicial." *State v. Ramirez*, 46 Wn. App. 223, 226, 730 P.2d 98 (1986).

CrR 4.3(a) maintains the balance between judicial economy and the right to a fair trial. Under that rule, if two or more offenses were originally charged in separate charging documents, a trial court "may" join the offenses. CrR 4.3(a). Determining whether joinder is proper must start with the plain language of CrR 4.3(a). *State v. Martinez*, 2 Wn.3d 675, 685, 541 P.3d 970 (2024); *Bluford*, 188 Wn.2d at 310.

Offenses may be joined if they are:

1. Based on the same conduct;

2. Based on a series of acts connected together; or

3. Based on a series of acts constituting parts of a single scheme or plan.

CrR 4.3(a)(2).

*b. The May 3 and May 5 offenses do not satisfy the requirements of CrR 4.3(a).*

Solely because the officers discovered the gun on May 5, the trial court reasoned the offenses were joinable under each basis in CrR 4.3(a)(2). That is incorrect.

First, the May 3 offenses—robbery of a couple and motor vehicle theft—were not the "same conduct" as the May 5 offenses—assaulting two officers and resisting arrest. Proving elements of the former offenses would not prove elements of the later ones, and they were based on entirely different facts. *See United States v. Myers*, 700 F. Supp. 1358, 1364–65 (D.N.J. 1988).

Second, the discovery of the firearm did not make the offenses part of a single scheme or plan. In considering the

existence of such a scheme, courts assess "whether the events all occurred in the same place, within a short time period, and with the same modus operandi." *Martinez*, 2 Wn.3d at 685. But the offenses occurred in different places, against different people, on different days, and there was nothing unusual or distinctive about the offenses.

Third, the offenses were not part of a series of connected acts. There are only two similarities between these two groups of offenses: (1) Mr. Middlebrooks was allegedly responsible for all the offenses and (2) the gun found by police during the May 5 incident that possibly related to the May 3 robberies.

Regarding the former, a defendant's participation in two separate offenses is plainly not a basis for joinder. *United States v. Jawara*, 474 F.3d 565, 575 (9th Cir. 2007). And "[o]ffenses do not become logically related solely by way of an intervening arrest." *United States v. Richardson*, 161 F.3d 728, 734 (D.C. Cir. 1998).

The discovery of the gun on May 5 did not make the different offenses a series of connected acts. In an unpublished decision (and the only decision that examines the language of CrR 4.3(a)(2)), the Court of Appeals addressed whether joinder is permissible where law enforcement discovers evidence of one offense when it is investigating a completely different one. *State v. Taylor*, 194 Wn. App. 1044, 2016 WL 3598308, at *3 (June 28, 2016).

In *Taylor*, law enforcement searched Mr. Taylor's house to investigate whether he unlawfully discharged a gun. *Id.* at *1. During this search, it discovered guns and drugs. *Id.* Because of this simultaneous discovery, the trial court permitted the State to join a reckless endangerment charge with several drug charges. *Id.* at *2.

The Court of Appeals reversed. *Id.* "Beyond Taylor's name and the allegation that the offenses occurred in March, the information contains no other details about the offenses from which to draw a connection or similarity." *Id.* at *4.

"Rather, the only connection or similarity between the offenses is that the State charged Taylor with committing both offenses and discovered evidence of the drug related charges on Taylor's property in the course of investigating the reckless endangerment." *Id*.

The discovery of drugs did not make the offenses part of a connected series of acts. *Id*. at *5. "[T]he standard for whether offenses are properly joined is not whether the State discovered the separate evidence for the separate offenses at the same time." *Id*.

The same is true here. The discovery of the firearm on Mr. Middlebrooks during an unrelated investigation by unrelated officers does not mean all the offenses are a connected series of acts. *See id*. The court's basis for joining the offenses fails.

*c. The State's alternative bases for joinder also fail.*

The State did not defend the trial court's reasoning on appeal. Instead, it contended the offenses were part of a

"single scheme" under CrR 4.3(a)(2) and reflected the "same or similar character" under CrR 4.3(a)(1).[1] These arguments fail.

Regarding the single scheme prong in CrR 4.3(a)(2), offenses can only be joined if they "are logically related or where the counts stem from related transactions." *Taylor*, 2016 WL 3598308, at *4. "This standard is satisfied in cases with a 'concrete connection between the offenses that goes beyond mere thematic similarity.'" *Id*. (quoting *Jawara*, 474 F.3d at 574).

On appeal, the State argued all the offenses dealt with a continuing scheme of committing car thefts, but there is no indication they were part of a single scheme, and there is no evidence that the same people were involved in both. The only similarities between May 3 and May 5 are Mr. Middlebrooks' alleged involvement and the presence of the

[1] CrR 4.3(a)(1) permits joinder if charges are "of the same or similar character."

gun, but that is not nearly enough. *See Jawara*, 474 F.3d at 575 ("Here, there is no direct connection between the acts other than Jawara's participation in both events.").

Likewise, there is no logical association between the May 3 and May 5 offenses. For instance, there is no evidence Mr. Middlebrooks committed the May 5 offenses because he was trying to evade capture for the robberies. On the contrary, it is far more plausible that he was trying to evade capture for possessing the Prius, as he was seen with that allegedly stolen car right before he was contacted by police at the hotel in Lakewood. RP 515. In short, there are simply too many unknown intervening variables to conclude the May 5 offenses "flowed from" the May 3 offenses. *See Jawara*, 474 F.3d at 575.

For the "similar character" basis in CrR 4.3(a)(1), "'the similar character of the joined offenses should be ascertainable—either readily apparent or reasonably inferred—from the face of the indictment. Courts should not

have to engage in inferential gymnastics or resort to implausible levels of abstraction to divine similarity.'" *Taylor*, 2016 WL 3598308 at *4 (quoting *Jawara*, 474 F.3d at 575, 578).

The joined offenses did not share any notable similarities. For the May 3 offenses, the State charged Mr. Middlebrooks for robbing a couple and then stealing their car. CP 19–21. For the May 5 offenses, the State charged Mr. Middlebrooks for resisting arrest and assaulting two officers. CP 22–24. These are legally and factually distinct, and they lack any unifying commonality. They were committed against different people in different ways, required proof of distinct elements, and were separated both temporally and geographically. These offenses were not joinable under CrR 4.3(a)(1).

*d. Even if joinder was proper under CrR 4.3(a), the court still erred because it caused undue prejudice.*

"[E]ven if joinder is legally permissible, the trial court should not join offenses if prosecution of all charges in a single trial would prejudice the defendant." *Bluford*, 188 Wn.2d at 308–09 (quotations omitted). Courts consider four factors when determining whether joinder causes undue prejudice: "(1) the strength of the State's evidence on each count; (2) the clarity of defenses as to each count; (3) court instructions to the jury to consider each count separately; and (4) the admissibility of evidence of the other charges even if not joined for trial." *State v. Russell*, 125 Wn.2d 24, 63, 882 P.2d 747 (1994). These factors illustrate the undue prejudice from the joinder of offenses here.

First, the State had stronger evidence for the May 5 offenses than the May 3 offenses. In the May 5 case, the entire event was captured on video, and there was no dispute about the identity of the suspect. 5/18/23 RP 10–11.

In contrast, there was an open question about the identity of the suspect for the May 3 offenses, as there was no video evidence of Mr. Middlebrooks driving the Chrysler and there was no testimony identifying Mr. Middlebrooks as the robber. 5/18/23 RP 9; RP 251, 285.

Second, given the strength of the State's evidence in the May 5 case, the only available defense was that the officers assaulted Mr. Middlebrooks. 5/18/23 RP 9. That weak defense significantly undercut the stronger identification defense for the May 3 offenses. 5/13/23 RP 10–11.

Third, the trial court merely instructed the jury to consider each count separately. CP 53. The instruction "did not specifically admonish the jurors that they could not consider evidence of one set of offenses as evidence establishing the other." *Bean v. Calderon*, 163 F.3d 1073, 1084 (9th Cir. 1998).

Fourth, the only cross-admissible evidence was the firearm. None of the other evidence—specifically, of Mr. Middlebrooks resisting arrest and assaulting two officers—would have been admissible to prove the May 3 offenses. Indeed, the trial court acknowledged this lack of cross-admissibility. 5/18/23 RP 13; *see, e.g.*, *State v. Harris*, 36 Wn. App. 746, 752, 677 P.2d 202 (1984) (finding joinder was unduly prejudicial because "proof of one [charge] could not have been adduced at a separate trial for the other").

All four factors demonstrate that the prejudice from joinder was considerably greater than the benefit to judicial economy. The court erred by joining these offenses.

Without this Court's intervention, courts will continue to join offenses without adherence to the text of CrR 4.3(a). But joinder is inherently prejudicial, and it should only occur if justified by the text of CrR 4.3(a). To ensure courts do not unduly prejudice defendants with improper joinder, this Court must grant review. RAP 13.4(b)(4).

**2. The Court of Appeals resolved this case under harmless error, but its decision highlights the lack of clarity under this area of law.**

The Court of Appeals did not disagree with Mr. Middlebrooks' argument on the merits. It nevertheless affirmed, holding, "even if Middlebrooks had faced separate trials for his May 3 and May 5 offenses, there is a reasonable probability that the jury would have convicted Middlebrooks" of all the charges. Slip Op. at 12, 15. That holding reflects the incorrect test for determining whether joinder requires reversal, under either this Court's precedent or the conventional harmless error test.

*a. This Court's precedent evaluates whether misjoinder requires reversal by assessing the prejudice and benefits from joinder.*

A reviewing court must undertake several analytic steps when considering the misjoinder of offenses. It must initially consider whether joinder was proper under CrR 4.3(a). *Bluford*, 188 Wn.2d at 310. Even if it is, the court must examine four factors to determine "whether joinder

cause[d] undue prejudice." *Id.* at 311. If either inquiry indicates joinder was improper, the court must examine whether the misjoinder constitutes reversible error.

At this stage of the analysis, a court does not apply the conventional harmless error test. Instead, it must determine if "the prejudicial effect of trying all the counts together outweighed the benefits of joinder." *Id.* at 315; *accord State v. Slater*, 197 Wn.2d 660, 680, 486 P.3d 873 (2021). If that test is answered in the affirmative, reversal and remand is required. *Slater*, 197 Wn.2d at 680; *Bluford*, 188 Wn.2d at 315.

The Court of Appeals affirmed without applying the framework from *Bluford* and *Slater*. Applying the correct test reveals that misjoinder significantly prejudiced Mr. Middlebrooks, requiring reversal.

Due to the joinder of offenses, the jury saw graphic footage of Mr. Middlebrooks fighting with multiple officers on May 5. Exs. 13, 14. It also heard that Mr. Middlebrooks

possessed a different stolen vehicle. RP 426, 511. This evidence was inadmissible to prove the May 3 offenses under ER 404(b), and created a substantial risk of convincing the jury that Mr. Middlebrooks is guilty because he "is a criminal-type person who would be likely to commit the crime charged." *State v. Foxhoven*, 161 Wn.2d 168, 175, 163 P.3d 786 (2007).

The same concern applies to the May 5 offenses. There, in determining whether Mr. Middlebrooks assaulted officers, the jury considered evidence that allegedly depicted Mr. Middlebrooks robbing two elderly people at gunpoint and taking their car. This posed the significant risk of depicted Mr. Middlebrooks as a "violent person who had a violent criminal propensity." *See In re Pers. Restraint of Quintero*, 29 Wn. App. 2d 254, 299, 541 P.3d 1007 (2024).

The need for joinder was particularly low. There was minimal overlap in the proof, as the only cross-admissible evidence was the gun. The State would not have relied on

the same evidence to prove either set of offenses, and different witnesses would have testified at each trial.

In *Slater*, this Court reversed because the evidence of the joined charges was not cross-admissible, "the witnesses for the charges do not overlap, and trying the charges together presents a risk of improper propensity inferences." 197 Wn.2d at 680. The same is true here—the prejudice here clearly outweighed the benefit to judicial economy. This Court should grant review and clarify the proper test for reversal in this context. RAP 13.4(b)(1), (b)(4).

*b. The Court of Appeals failed to apply the correct harmless error test.*

Even assuming reviewing courts apply the traditional harmless error test for joinder, the Court of Appeals still erred. It held there was a "reasonable probability" the jury would have convicted Mr. Middlebrooks of all charges even if the May 3 and May 5 offenses were tried separately. Slip Op. at 12, 15. That is the incorrect test.

For non-constitutional errors, reviewing courts employ the "materially affected" standard. *In re Dependency of A.C.*, 1 Wn.3d 186, 194, 525 P.3d 177 (2023). This test asks if, "within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred." *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997).

The Court of Appeals did not apply this standard. It held, "even if Middlebrooks had faced separate trials for his May 3 and May 5 offenses, there is a reasonable probability that the jury would have convicted Middlebrooks." Slip Op. at 12, 15.

The court's holding represents an inversion of the harmless error test. An error is not harmless if, without the error, there is a "reasonable probability that the outcome of the trial would have been different." *State v. Gower*, 179 Wn.2d 851, 857, 321 P.3d 1178 (2014).

Even if a conviction is reasonably probable, that does not mean an error lacked a material effect. Instead, courts must determine if there is a reasonable probability that an error made a difference at trial. This test "focuses on the prejudicial effect of a trial court's error." *A.C.*, 1 Wn.3d at 195. If an "error might have provided the impetus that caused the jury to convict" the defendant, "the error cannot be brushed aside as harmless." *State v. Jackson*, 102 Wn.2d 689, 696, 689 P.2d 76 (1984) (Pearson, J., concurring).

The Court of Appeals erred by using the wrong test. Properly construed, examining the prejudicial effect of misjoinder here reveals this error was not harmless.

The evidence about the May 5 offenses would not have been admissible in a trial for the May 3 offenses as the two set of offenses had no substantive association. Because of this joinder, however, the jury learned that Mr. Middlebrooks assaulted two officers, possibly stole a different vehicle, had a criminal record that prevented him

from owning a firearm, and saw videos of him fighting officers. This evidence was incredibly prejudicial.

The lack of a consistent defense to either set of offenses caused further prejudice. The State's evidence against Mr. Middlebrooks was much stronger for the May 5 offenses than the May 3 offenses. For the former, there was no dispute that Mr. Middlebrooks was the suspect. Exs. 13, 14. For the latter, no one was able to identify Mr. Middlebrooks as the robber in the surveillance footage at the bank, and the only eyewitness to that offense did not identify Mr. Middlebrooks. RP 251, 285.

Mr. Middlebrooks had a far weaker defense against the May 5 offenses than his identity defense against the May 3 offenses. For the May 5 offenses, Mr. Middlebrooks essentially ran a nullification defense and argued he was the victim of police brutality. RP 671. That is not a legally valid defense. *State v. Brown*, 130 Wn. App. 767, 771, 124 P.3d 663 (2005).

The State's firearm evidence also did not conclusively indicate Mr. Middlebrooks' firearm from May 5 was the same firearm used on May 3. The State's firearm expert found similarities and dissimilarities between the cartridge found at the bank and known cartridges fired from Mr. Middlebrooks' gun. RP 606. The firearm at issue was a third generation Glock 22, but these firearms generally produce "almost identical" toolmarks. RP 526; 5/18/23 RP 7–8.

The Court of Appeals failed to consider prejudice. This Court should grant review to clarify how courts determine whether misjoinder requires reversal.

### 3. The State failed to present sufficient evidence to support the firearm enhancements for Mr. Middlebrooks' two assault convictions.

To prove Mr. Middlebrooks was armed for the purpose of the firearm enhancements, the State needed to demonstrate he intended to use the firearm during the offenses. *State v. Brown*, 162 Wn.2d 422, 434, 173 P.3d 245 (2007). The Court of Appeals incorrectly held Mr.

Middlebrooks had an intent to use the firearm in the zipped bag merely because he was trying to push himself off the ground when he struggled with the officers. Slip Op. at 17–18.

Two officers tackled Mr. Middlebrooks to the ground and struggled to get control of Mr. Middlebrooks. RP 431–32. Mr. Middlebrooks resisted and continuously tried to put his arms under his body. RP 439, 464–65.

After the officers subdued Mr. Middlebrooks and placed him in handcuffs, they found a satchel that contained the gun. RP 524. The satchel was "underneath" Mr. Middlebrooks' feet. RP 524. It was also zipped shut throughout the incident. RP 524–25, 531.

These facts do not demonstrate that Mr. Middlebrooks was trying to access the gun throughout the incident. The video footage never showed Mr. Middlebrooks reaching for the bag. Exs. 13, 14. None of the officers testified that Mr.

Middlebrooks was reaching for his gun or his bag. RP 432, 441.

This case is similar to *State v. Gurske*, 155 Wn.2d 134, 118 P.3d 333 (2005). There, this Court found insufficient evidence to support the firearm enhancement because the defendant did not try to access the gun in his backpack during the offense. *Id*. at 143. There was no indication "whether Gurske could unzip the backpack, remove the torch, and remove the pistol from the driver's seat where he was sitting at the time he was stopped by the police officer." *Id*.

Similarly, here, there is no indication Mr. Middlebrooks tried to access the gun, or even whether he could have accessed the gun. Instead, the facts demonstrate Mr. Middlebrooks was trying to push himself off the ground while he struggled with officers. The Court of Appeals disregarded this Court's precedent in finding sufficient

evidence for these two enhancements, justifying review. RAP 13.4(b)(1).

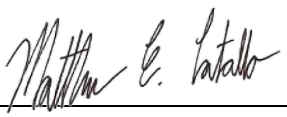
## F. CONCLUSION

Mr. Middlebrooks respectfully asks this Court to accept discretionary review. RAP 13.4(b).

This petition is 4,892 words long and complies with RAP 18.7.

DATED this 17th day of September 2025.

Respectfully Submitted



Matthew E. Catallo (WSBA 61886)
Washington Appellate Project (91052)
Counsel for Mr. Middlebrooks
Matthew@washapp.org
wapofficemail@washapp.org

# Court of Appeals' Decision Affirming Convictions

Filed
Washington State
Court of Appeals
Division Two

June 17, 2025

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

| | |
|---|---|
| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>RONALD KEITH MIDDLEBROOKS, JR.,<br><br>Appellant. | No. 58646-1-II<br><br><br><br><br><br>UNPUBLISHED OPINION |

LEE, P.J. — Ronald K. Middlebrooks, Jr. appeals his judgment and sentence, arguing the trial court erred by (1) joining separate offenses for a single trial, (2) allowing a law enforcement officer to identify Middlebrooks in surveillance camera footage, and (3) finding sufficient evidence to support the firearm sentencing enhancements on two assault charges. We affirm.

## FACTS

### A. MAY 3 INCIDENT

#### 1. Robbery and Car Theft

In the early morning hours of May 3, 2022, Marc Stilwell and his girlfriend, Barbara Benigno,[1] visited a bank to withdraw cash. Stilwell drove himself and Benigno to the bank in his cream-colored Chrysler 300.

[1] Benigno passed away before trial and was not available to testify.

After parking, the couple walked up to the ATM (automatic teller machine) and withdrew $600 in cash. The couple then noticed a white SUV pull into the parking lot. Two men approached the couple and blocked them from leaving the ATM area. One of the men was carrying "a big black gun." 2 Verbatim Rep. of Proc. (VRP) (July 10, 2023) at 232. That man pointed the gun at the couple, told them to stop, and said that he wanted their money. The armed man ejected one of the bullets out of the gun to show the couple that the gun "was loaded and ready to shoot." 2 VRP (July 10, 2023) at 232. The armed man then took the Chrysler 300 keys from Stilwell, while his accomplice took the cash from Benigno. The armed man drove off in the Chrysler 300.

After the men drove away, Benigno called 911. The responding officer collected an unfired, .40 caliber ammunition cartridge from the scene. The responding officer also reported the Chrysler 300 as stolen to alert other law enforcement personnel.

The incident was captured on video by the bank's surveillance cameras. The video was admitted into evidence and published to the jury.

2. Gas Station Sighting

Around 2:03 AM on May 3, after the robbery occurred, Detective Tobin Volkman noticed a Chrysler 300 while on patrol. Detective Volkman observed the vehicle pull into a gas station. Because Detective Volkman had already been alerted to look out for the vehicle, he requested back up. When Detective Volkman and other officers approached the vehicle, it was unoccupied.

After securing the vehicle, Detective Volkman reviewed surveillance footage of the inside and outside of the gas station store. Both videos were admitted into evidence and published to the jury.

Surveillance footage from outside the store showed a Chrysler 300 entering the gas station lot and parking in front of the store around 2:02 AM. Around 2:04:30, a man and woman walked away from the car, they paused in front of the store, and the man entered while the woman walked towards the gas pumps. Surveillance footage from outside the store also showed Detective Volkman's police cruiser enter the gas station lot, the woman outside noticing Detective Volkman's arrival, and the woman going into the store.

Around the same time, surveillance footage from inside the store showed the man entering the store between 2:04 and 2:05 AM. The video captured the man's face and clothing clearly, and the man's clothing appears to be the same as the armed man's clothing on the bank surveillance footage. *Compare* Ex. 11, at 4:35-5:06 *with* Ex. 9, Camera 3, at 11:27.03-12:06.45. The inside surveillance footage then showed the woman entering the store and walking towards where the man had been. The woman and man then exited the store. After leaving the store, the outside surveillance footage captured the man getting into a white SUV and leaving the gas station while the police inspected the Chrysler 300.

B. MAY 5 INCIDENT

Two days after the robbery, Officer Nile Teclemariam was on patrol when he noticed a vehicle without a license plate; however, the vehicle fled before Officer Teclemariam could investigate. Because Officer Teclemariam had seen the vehicle exit a nearby hotel's parking lot, he went to the hotel to view its surveillance footage.

The hotel surveillance footage depicted a man and a woman exiting an unlicensed Prius. The man and the woman entered room 214. Officer Teclemariam asked another officer to run the Prius' vehicle identification number and learned that the Prius had been reported stolen. Officer

Teclemariam then spoke with the hotel manager, who asked Officer Teclemariam to trespass the guests in room 214.

As Officer Teclemariam and Officer Stephen Moffitt approached room 214, the man Officer Teclemariam had seen exit the Prius earlier exited room 214. Officer Teclemariam recognized the man as Middlebrooks and called out his name, telling him to stop. When Middlebrooks continued walking away, Officer Teclemariam grabbed Middlebrooks' shoulder, pinned him against the door, and told him he was under arrest.

At that point, Middlebrooks hit Officer Teclemariam in the face and then on the cheek. In response, Officer Moffitt took Middlebrooks to the ground. Middlebrooks grabbed Officer Teclemariam and dragged him to the ground as well. Officer Moffitt then attempted to use a pain compliance technique on Middlebrooks, but Middlebrooks bit Officer Moffitt's hand.

A third officer—Officer Kaybree Eames—noticed the altercation and went to help. When Officer Eames arrived, she attempted to control Middlebrooks' legs. Middlebrooks continued resisting, so Officer Teclemariam told Officer Eames to tase Middlebrooks. Officer Eames grabbed Officer Teclemariam's taser and used it once on Middlebrooks. The taser caused Middlebrooks to stop resisting, and he was taken into custody. The altercation between the officers and Middlebrooks was captured on video, which was later admitted into evidence and published to the jury.

After handcuffing Middlebrooks, Officer Teclemariam noticed a bag under Middlebrooks' feet. When Officer Teclemariam picked up the bag, he felt the shape of a firearm inside it. Officer Teclemariam opened the bag and found a Glock 22 inside.

C. PRETRIAL

For the May 3 incident, the State charged Middlebrooks with one count of first degree robbery, one count of theft of a motor vehicle, and one count of third degree theft. For the May 5 incident, the State charged Middlebrooks under a separate cause number with one count of first degree unlawful possession of a firearm, two counts of third degree assault, and one count of resisting arrest.[2]

1. Motion to Join the May 3 and May 5 Offenses

Prior to trial, the State moved to join the May 3 and May 5 offenses and to amend the information to add firearm sentencing enhancements to the two assault charges and to add one count of first degree robbery, also with a firearm sentencing enhancement. Middlebrooks objected.

Middlebrooks argued that joinder was inappropriate because trying the May 3 and May 5 charges together would prejudice him. Specifically, Middlebrooks asserted that allowing the jury to hear evidence from the May 5 officers and to see video of the May 5 assaults would prejudice Middlebrooks in defending against the May 3 charges, where his defense—no way to identify him as the robber—was much stronger.

The trial court granted the State's motion and joined the May 3 and May 5 offenses. The trial court also entered written findings of fact and conclusions of law. The trial court's findings and conclusions relevant here include:

[2] The original information for the May 5 offenses is not in the record on appeal.

FINDINGS OF FACT & CONCLUSIONS OF LAW

. . . .

2. Based on the representations by the State of the alleged facts, the alleged robbery by use of a firearm on 05/02/22[3] and the subsequent arrest involving an alleged assault of the police officers on 05/03/22[4] are based on the same conduct or series of acts constituting one single scheme or plan, when the officers found a firearm in the defendant's possession, are connected as a series of acts involving the same firearm.

. . . .

6. The Court finds that the State's evidence on the offenses are similar involving evidence of possession of the firearm. The State represents that the offenses are provable through video and other identifying evidence of the defendant and the firearm allegedly used.
7. The Court finds that the defenses on each count, although somewhat dissimilar, do not contradict one another or prejudice the presentation of the defendant's ability to present his current stated defenses to all of the listed charges.
8. The Court finds that there is a presumption that jurors will follow the jury instructions concerning their requirement to consider each count separately. Although there may be instances where jurors do not adhere to this instruction, there is no evidence or indication given the nature of the charges that they would be unable to follow their instructions in this case.
9. Evidence of the gun allegedly found on the defendant on 05/03/22[5], would likely be relevant and admissible evidence during the state's attempt to prove the earlier robbery on 05/02/22.[6]
10. The State represents that within the presentation of their case they will present evidence that the firearm matches the caliber of the ejected cartridge left at the scene of the robbery, the appearance of the Glock 22 matches the description provided by the witness, and the State will present evidence of toolmark identification connecting the ejected cartridge to the firearm.

---

[3] Bank surveillance footage establishes that the robbery occurred on May 3, and both Middlebrooks and the State allege the robbery occurred on May 3 on appeal. Presumably the trial court made a clerical error.

[4] Presumably, the trial court meant the assault on May 5, 2022.

[5] Presumably, the trial court meant the gun found on May 5, 2022.

[6] Presumably, the trial court meant May 3, 2022.

> 11. Evidence of the assault against the law enforcement officers is not found to be overly prejudicial to the defendant and the alleged unlawful possession of a firearm charge would be admissible and probative evidence to be presented during the states [sic] attempt to prove the alleged robbery on 5/02/22.[7]

Clerk's Papers (CP) at 26-27.

Pursuant to the trial court's joinder order, the State filed an amended information joining the May 3 and May 5 offenses. For the May 3 incident, the State charged Middlebrooks with two counts of first degree robbery and one count of theft of a motor vehicle. For the May 5 incident, the State charged Middlebrooks with one count of first degree unlawful possession of a firearm, two counts of third degree assault, and one count of resisting arrest. The two first degree robbery counts and the two third degree assault counts were charged with a firearm sentencing enhancement.

2. Identification Testimony

Also prior to trial, the State moved to allow Officer Teclemariam to identify Middlebrooks as the person depicted in the gas station surveillance footage. Middlebrooks objected.

At the hearing on the State's motion, Officer Teclemariam testified that he had previously contacted Middlebrooks in September 2020, at which time Middlebrooks had a firearm. Officer Teclemariam also recounted his altercation with Middlebrooks on May 5. The trial court granted the State's motion, explaining it would allow Officer Teclemariam to identify Middlebrooks as the man in the gas station surveillance footage "based on his contact with the defendant on [May] 5th." 3 VRP (July 11, 2023) at 486.

[7] Presumably, the trial court meant May 3, 2022.

D. TRIAL

At trial, the State's witnesses testified regarding the May 3 and May 5 incidents as set out above. Additional testimony relevant to this appeal is included below.

1. Witness Testimony

Stilwell testified that he "didn't get a good look at [the men's] faces" because the men wore face coverings and it was dark. 2 VRP (July 10, 2023) at 231. Stilwell was only able to testify that the armed man was Black. Furthermore, Stilwell was unable to identify Middlebrooks as either of the men who robbed him and Benigno.

Officer Teclemariam also gave identification testimony. Officer Teclemariam identified Middlebrooks in court as the person he arrested on May 5. Officer Teclemariam then stated that prior to testifying, he reviewed the gas station surveillance footage from May 3. The man in the gas station surveillance footage was the same person Officer Teclemariam arrested on May 5—Middlebrooks.

2. Fingerprint Evidence

Sheena Meara, a forensic technician with the Pierce County Sheriff's Department, testified that she compared two latent prints lifted from the Chrysler 300 with a known set of Middlebrooks' fingerprints. By manually comparing the latent prints to a known set of prints, Meara was able to match two of the prints lifted from the Chrysler 300 to Middlebrooks. Meara also testified that in her opinion, the prints could not have belonged to anyone but Middlebrooks.

Danielle McCready, another forensic technician, testified that she reviewed Meara's work and concurred with Meara's results. Jordyn Casteel, a forensic investigator, also testified that she reviewed Meara's work and concurred with Meara's results.

3. Firearm Evidence

Theunis Brits, a forensic scientist with the Washington State Patrol Crime lab, testified regarding the unfired cartridge recovered from the May 3 crime scene and the firearm recovered from the May 5 crime scene. Brits testified that the firearm he received was capable of holding 16 rounds: 15 in the magazine and one in the chamber. Brits explained that if Middlebrooks ejected an unfired cartridge from the firearm on May 3, the firearm would have 14 bullets in the magazine and one bullet in the chamber for a total of 15 bullets in the firearm. Officer Teclemariam testified that the firearm he recovered on May 5 was loaded with 15 bullets.

Brits also conducted a tool-mark identification analysis on the cartridge ejected on May 3 and the firearm recovered on May 5. Brits compared the unfired cartridge recovered from the May 3 robbery to two live rounds that he cycled through the firearm recovered from Middlebrooks on May 5. Brits concluded that "[b]ased on the quantity and quality of unique markings that I saw on the evidence piece, the unfired cartridge, it is my opinion that that unfired cartridge was cycled through the Glock 22" recovered on May 5. 4 VRP (July 12, 2023) at 600. Brits acknowledged that this was a subjective conclusion.

The jury found Middlebrooks guilty as charged. The trial court sentenced Middlebrooks to a total of 300 months confinement.

Middlebrooks appeals.

## ANALYSIS

### A. JOINDER

Middlebrooks argues that the trial court erred by joining the May 3 and May 5 offenses for trial. Even assuming without deciding that the trial court erred by joining Middlebrooks' offenses for trial, any error was harmless.

#### 1. Legal Principles

"'Joinder' refers to bringing multiple criminal charges against one person as separate counts in a single charging document" and is governed by CrR 4.3(a). *State v. Bluford*, 188 Wn.2d 298, 305-06, 393 P.3d 1219 (2017). Under CrR 4.3(a):

> Two or more offenses may be joined in one charging document, with each offense stated in a separate count, when the offenses, whether felonies or misdemeanors or both:
>
> (1) Are of the same or similar character, even if not part of a single scheme or plan; or
>
> (2) Are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.

Trial courts have "'considerable discretion'" when it comes to joinder. *Bluford*, 188 Wn.2d at 310 (quoting *State v. Thompson*, 88 Wn.2d 518, 525, 564 P.2d 315 (1977), *overruled on other grounds by State v. Thornton*, 119 Wn.2d 578, 580, 583, 835 P.2d 216 (1992)). We review "a trial court's decision on a pretrial motion for joinder . . . for abuse of discretion."[8] *Id.* at 305.

[8] Middlebrooks argues that "[w]hether separate offenses satisfy [CrR 4.3's] textual requirements presents a legal question this Court reviews de novo." Br. of Appellant at 19 (citing *State v. Martinez*, 2 Wn.3d 675, 541 P.3d 970 (2024)). In *Martinez*, our Supreme Court recognized "some confusion over the proper standard of review" for joinder decisions. 2 Wn.3d at 681 n.3. While the court stated that "[b]ecause joinder must first be allowable under CrR 4.3, part of a reviewing court's analysis is interpreting court rules, which is a legal question and subject to de novo review," it was merely restating the well-establish rule that we review legal questions de novo, such as when the parties argue over the meaning of the words in CrR 4.3, as opposed to arguing over whether

A trial court abuses its discretion when its decision "is manifestly unreasonable or based on untenable grounds or reasons." *State v. Sanjurjo-Bloom*, 16 Wn. App. 2d 120, 125, 479 P.3d 1195 (2021). Because "a judge cannot abuse [their] discretion based on facts that do not yet exist," this court considers "only the facts known to the trial judge at the time [it rules on a pretrial joinder motion], rather than the events that develop later at trial." *Bluford*, 188 Wn.2d at 310; *accord State v. Martinez*, 2 Wn.3d 675, 682, 541 P.3d 970 (2024).

"If joinder was not proper but offenses were consolidated in one trial, the convictions must be reversed unless the error is harmless." *State v. Bryant*, 89 Wn. App. 857, 864, 950 P.2d 1004 (1998), *review denied*, 137 Wn.2d 1017 (1999); *see also State v. Watkins*, 53 Wn. App. 264, 273, 766 P.2d 484 (1989) ("Consistent with [the harmless error] rule, we conclude that misapplication of ER 404(b) in severance cases does not compel a new trial where, within reasonable probabilities, the error is harmless.").

2. Any Error Was Harmless

Below, the trial court ordered that Middlebrooks' offense be joined together pursuant to CrR 4.3(a)(2):

> Based on the representations by the State of the alleged facts, the alleged robbery by use of a firearm on 05/02/22[9] and the subsequent arrest involving an alleged assault of the police officers on 05/03/22[10] are based on the same conduct or series of acts constituting one single scheme or plan, when the officers found a firearm in

---

the facts of a specific case satisfy the rule's textual requirements. *Id.* Moreover, the *Martinez* court reaffirmed that "the standard of review of trial court motions granting or denying joinder motions is abuse of discretion." *Id.*

[9] Presumably, the trial court meant May 3, 2022.

[10] Presumably, the trial court meant May 5, 2022.

> the defendant's possession, are connected as a series of acts involving the same firearm.

CP at 26. We need not address the merits of the trial court's ruling because even assuming without deciding that Middlebrooks' offenses were joined in error, any error was harmless.

a. May 3 offenses

Here, any error was harmless because even if Middlebrooks had faced separate trials for his May 3 and May 5 offenses, there is a reasonable probability that the jury would have convicted Middlebrooks of two counts of first degree robbery and one count of theft of a motor vehicle.

"A person commits robbery when [they] unlawfully take[] personal property from the person of another or in [their] presence against [their] will by the use or threatened use of immediate force, violence, or fear of injury to that person or [their] property or the person or property of anyone." RCW 9A.56.190. First degree robbery occurs where, "[i]n the commission of a robbery or of immediately flight therefrom," the defendant "[i]s armed with a deadly weapon" or "[d]isplays what appears to be a firearm or other deadly weapon." RCW 9A.56.200(1)(a)(i)-(ii).

"A person is guilty of theft of a motor vehicle if he or she commits theft of a motor vehicle." RCW 9A.56.065(1). "Theft" means "[t]o wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services." RCW 9A.56.020(1)(a).

Ample evidence shows that Middlebrooks robbed Stilwell and Benigno and stole Stilwell's vehicle on May 3. For example, bank surveillance footage captured the robbery on video. After pointing the gun at Stilwell and Benigno, the man and his accomplice took $600 from the couple

and their vehicle before fleeing the scene. The jury could have compared both Middlebrooks' in court appearance and the bank surveillance footage to surveillance footage from the gas station following the robbery to conclude that Middlebrooks was the person in the bank and gas station surveillance footages. Also, Middlebrooks' fingerprints were found on the Chrysler 300.

Furthermore, Stilwell testified that one of the men who robbed him was carrying "a big black gun" and that the same man pointed the gun at Stilwell and Benigno before ejecting one of the bullets to show the couple that the gun was loaded and ready to shoot. 2 VRP (July 10, 2023) at 232. The State would likely have introduced the gun recovered from Middlebrooks on May 5 to further prove his identity as the robber on May 3. And tool-mark identification analysis showed that the unfired cartridge used to threaten Stilwell and Benigno at the bank matched the unique markings of bullets fired with the gun recovered from Middlebrooks on May 5.

Thus, in light of the evidence, there is a reasonable probability that the jury would have convicted Middlebrooks of two counts of first degree robbery and one count of theft of a motor vehicle even if the May 3 and May 5 incidences were tried in separate trials.

b. May 5 Offenses

Similarly, any error was harmless with regard to the May 5 offenses because there is a reasonable probability that the jury would have convicted Middlebrooks of one count of first degree unlawful possession of a firearm, two counts of third degree assault, and one count of resisting arrest.

A person commits unlawful possession of a firearm in the first degree "if the person owns, accesses, has in the person's custody, control, or possession, or receives any firearm after having

previously been convicted . . . in this state or elsewhere of any serious offense." RCW 9.41.040(1)(a).

A person commits third degree assault if, "[w]ith intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself, herself, or another person, assaults another." RCW 9A.36.031(1)(a).

"A person is guilty of resisting arrest if he or she intentionally prevents or attempts to prevent a peace officer from lawfully arresting him or her." RCW 9A.76.040(1).

Here, the three officers involved in Middlebrooks' arrest provided ample evidence that Middlebrooks assaulted two officers and resisted arrest on May 5. Officer Teclemariam testified that when he attempted to arrest Middlebrooks on May 5, Middlebrooks hit him in the face and on the cheek. Officer Moffitt testified that after he and Officer Teclemariam took Middlebrooks to the ground, Middlebrooks bit Officer Moffitt's hand. Officer Eames witnessed much of the altercation and testified that Officers Teclemariam and Moffitt were trying to control Middlebrooks' hands and that Middlebrooks was actively resisting their attempts to control him. In fact, Officer Eames testified that it was not until she used a taser on Middlebrooks that he stopped resisting.

There was also ample evidence to show that Middlebrooks was in possession of a firearm on May 5. Officer Teclemariam testified that after handcuffing Middlebrooks, he noticed a bag near Middlebrooks' feet. When Officer Teclemariam picked the bag up, he felt the shape of a firearm inside it. Officer Teclemariam opened the bag and found a Glock 22 inside.

Thus, there is a reasonable probability that the jury would have convicted Middlebrooks of one count of first degree unlawful possession of a firearm, two counts of third degree assault, and one count of resisting arrest even if the May 3 and May 5 incidences were tried in separate trials.

Because there is a reasonable probability that a jury would have convicted Middlebrooks as charged, even if he faced the May 3 and May 5 charges in separate trials, any error in joining the offenses was harmless.

B. IDENTIFICATION TESTIMONY

Middlebrooks argues that the "trial court improperly allowed Officer Teclemariam to identify Mr. Middlebrooks as the individual in the gas station surveillance footage." Br. of Appellant at 38. Middlebrooks argues that the trial court's error was not harmless because without Officer Teclemariam's testimony, there was insufficient evidence identifying Middlebrooks as the person in the May 3 bank footage. Even assuming without deciding that the trial court improperly allowed the officer to provide identification testimony, any error was harmless.

Nonconstitutional errors are harmless if, absent the error, there is a reasonable probability that the outcome of the trial would not have been materially affected. *See Sanjurjo-Bloom*, 16 Wn. App. 2d at 127-29 (applying nonconstitutional harmless error standard where trial court erred by allowing lay witness to identify defendant in surveillance footage). Here, any error was harmless because even without Officer Teclemariam's testimony, there was ample evidence tying Middlebrooks to the May 3 robbery.

Even without Officer Teclemariam's identification testimony, the jury would still have been able to compare the man in the gas station surveillance video to Middlebrooks' in court appearance. The jury also would have been able to compare the man in the bank surveillance

video to the man in the gas station surveillance video. Furthermore, the stolen vehicle that was recovered from the gas station on May 3 had two fingerprints lifted from its exterior that matched Middlebrooks' prints. And an expert testified that based on his forensic analysis of the firearm recovered from Middlebrooks on May 5, he concluded that the bullet found at the scene of the May 3 robbery had been cycled through the firearm recovered from Middlebrooks on May 5.

Thus, the evidence in the record shows a reasonable probability that the outcome of the trial would not have been materially affected by the trial court's error in allowing Officer Teclemariam's identification testimony. Therefore, even if the trial court erred by allowing the identification testimony, any error was harmless.

C. FIREARM SENTENCING ENHANCEMENTS

Middlebrooks argues that there was insufficient evidence "to support [the] firearm enhancements on Mr. Middlebrooks' two assault convictions" because the "mere presence of a weapon at a crime scene is insufficient to establish the" requisite nexus between crime and weapon. Br. of Appellant at 44. We disagree.

1. Legal Principles

Pursuant to the Sentencing Reform Act of 1981, chapter 9.94A RCW, (SRA), the trial court must increase the sentence for certain felony crimes "if the offender . . . was armed with a firearm." RCW 9.94A.533(3). To support a firearm sentencing enhancement, the State must prove that the defendant "'is within proximity of an easily and readily available deadly weapon for offensive or defensive purposes and [that] a nexus is established between the defendant, the weapon, and the crime.'" *State v. Houston-Sconiers*, 188 Wn.2d 1, 17, 391 P.3d 409 (2017) (alteration in original)

(internal quotation marks omitted) (quoting *State v. O'Neal*, 159 Wn.2d 500, 503-04, 150 P.3d 1121 (2007)).

A sufficient nexus exists "when the defendant and the weapon are 'in close proximity' at the relevant time" and where "'the facts and circumstances support an inference of a connection between the weapon, the crime, and the defendant.'" *Id.* (first quoting *State v. Gurske*, 155 Wn.2d 134, 141-42, 118 P.3d 333 (2005), then *State v. Easterlin*, 159 Wn.2d 203, 210, 149 P.3d 366 (2006)). If the defendant did not use the weapon "in the commission of the crime, it must be there to be used." *Gurske*, 155 Wn.2d at 138. Thus, the State must demonstrate the defendant's "intent or willingness" to use the weapon in the commission of the charged crimes. *State v. Brown*, 162 Wn.2d 422, 434, 173 P.3d 245 (2007).

2. Sufficient Evidence Supports the Firearm Enhancements

Middlebrooks concedes that he possessed the weapon on May 5. Thus, the only issues on appeal are whether the State offered sufficient evidence to establish a nexus between the weapon and Middlebrooks' assault charges and whether there was sufficient evidence to show that the weapon was readily available.

The admitted video of the May 5 assaults is not particularly helpful, as it is a cellphone video recording of another video playing on a computer monitor, making it difficult to make out what, if anything, Middlebrooks is doing after officers take him to the ground. However, three of the officers involved in the May 5 altercation provided testimony sufficient to establish Middlebrooks' intent to use the firearm in the commission of his assaults.

Officer Moffitt testified that after he took Middlebrooks to the ground, he saw Middlebrooks reaching for his waistband area, and that that caused him concern because in his

training and experience, "suspects commonly carry firearms . . . in their waistband." 3 VRP (July 11, 2023) at 464-65. Officer Moffitt also testified that Middlebrooks continued to reach for his waistband and that it took all of Officer Moffitt's strength to hold Middlebrooks' left arm back.

Officer Teclemariam testified that Middlebrooks kept reaching for his waist even after the officers took him to the ground and flipped him onto his stomach. Officer Teclemariam also testified that after they handcuffed Middlebrooks, he picked up a bag under Middlebrooks' feet and in the bag was a loaded firearm that could be fired by "just pull[ing] the trigger." 3 VRP (July 11, 2023) at 531. Officer Teclemariam testified that all Middlebrooks would have had to do to fire the weapon was "unzip the bag and then just grab the gun." 3 VRP (July 11, 2023) at 531.

Officer Eames testified that when she observed Middlebrooks fighting with Officers Moffitt and Teclemariam, they had Middlebrooks on his stomach and were trying to control his arms, which were tucked under his body.

The testimony of Officers Moffitt, Teclemariam, and Eames demonstrates Middlebrooks' intent or willingness to use the firearm during his assault of the officers and that a firearm was readily available to him. *Houston-Sconiers*, 188 Wn.2d at 17. And the evidence is sufficient to demonstrate a nexus between the firearm and crimes charged. *Brown*, 162 Wn.2d at 434. Thus, there was sufficient evidence to support the firearm sentencing enhancements on the assault charges.

## CONCLUSION

Any error in joining the charges and in allowing identification testimony was harmless. Also, sufficient evidence supports the firearm sentencing enhancement. Accordingly, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Lee, P.J.

We concur:

Glasgow, J.

Price, J.

# Court of Appeals' Denial of Reconsideration

Filed
Washington State
Court of Appeals
Division Two

August 18, 2025

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

| | |
|---|---|
| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>RONALD KEITH MIDDLEBROOKS, JR.,<br><br>Appellant. | No. 58646-1-II<br><br><br><br>ORDER DENYING MOTION FOR RECONSIDERATION |

Appellant, Ronald Middlebrooks, filed a motion for reconsideration of this court's unpublished opinion filed on June 17, 2025. After consideration, it is hereby

**ORDERED** that the motion for reconsideration is denied.

FOR THE COURT: Jj. Lee, Glasgow, Price,

J, J

LEE, JUDGE

## WASHINGTON APPELLATE PROJECT

## September 17, 2025 - 3:41 PM

## Transmittal Information

| | |
|---|---|
| **Filed with Court:** | Court of Appeals Division II |
| **Appellate Court Case Number:** | 58646-1 |
| **Appellate Court Case Title:** | State of Washington, Respondent v. Ronald Middlebrooks, Jr., Appellant |
| **Superior Court Case Number:** | 22-1-02019-1 |

**The following documents have been uploaded:**

- 586461_Petition_for_Review_20250917154101D2399470_5600.pdf
  This File Contains:
  Petition for Review
  *The Original File Name was washapp_20250917_5.pdf*

**A copy of the uploaded files will be sent to:**

- PCpatcecf@piercecountywa.gov
- nancy@washapp.org
- pcpatcecf@piercecountywa.gov
- teresa.chen@piercecountywa.gov

**Comments:**

---

Sender Name: MARIA RILEY - Email: maria@washapp.org
**Filing on Behalf of:** Matthew Evan Catallo - Email: Matthew@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

**Note: The Filing Id is 20250917154101D2399470**