

FILED 2012

Consol. No. 30672-1-III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

MARQUIS JONES, APPELLANT

---

CONSOLIDATED WITH:

IN RE PERSONAL RESTRAINT OF

MARQUIS JONES

---

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

HONORABLE MICHAEL P. PRICE

---

BRIEF OF RESPONDENT

AND

RESPONSE TO PERSONAL RESTRAINT PETITION

---

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I.

APPELLANT'S ASSIGNMENTS OF ERROR

1. The trial court erred in entering judgments of conviction against Mr. Jones on both Counts 4 and 5.
2. The state erred in charging Mr. Jones with both Counts 4 and 5.
3. The trial court erred in imposing firearm sentence enhancements on both Counts 4 and 5.
4. The state erred in charging firearm sentence enhancements on both Counts 4 and 5.
5. The trial court erred in entering a judgment of conviction against Mr. Jones on Count 5, given the insufficiency of evidence to convict on that charge.

II.

ISSUE PRESENTED

1. DOES THE DEFENDANT HAVE A BASIS TO PURSUE A NEW DIRECT APPEAL OUTSIDE THE MANDATE FOR RESENTENCING ISSUED BY THE WASHINGTON STATE SUPREME COURT?

### III.

#### ARGUMENT

- A. THE DEFENDANT HAS NO BASIS FOR FILING A “DIRECT APPEAL” RAISING ISSUES BEYOND THOSE SET FORTH IN THE WASHINGTON STATE SUPREME COURT RULING ON PRP No. 85108-5.

The defendant has filed a “new” appeal, with no mention that he lacks any basis upon which to file a “new” appeal. His direct appeal was filed January 29, 2001, and ruled upon May 14, 2002.

Now, the defendant launches into a “new” direct appeal without any citation to a rule or case that grants the defendant a “new” appeal. The defendant filed a Personal Restraint Petition with the Supreme Court No. 85108-5, to which the Court responded on September 7, 2011. The order stated (in part): “That the personal restraint petition is granted in part and the matter is remanded to the Spokane County Superior Court with directions to vacate the first degree burglary and attempted first degree robbery convictions and resentence Mr. Jones accordingly.”

Nowhere in the Court’s ruling is there any authority granted to the defendant to undertake yet another direct appeal. Since the defendant argued to merge the current appeal and the accompanying PRP, the PRP has no more authority to exist than the appeal does.

It is assumed by the State that the defendant believes that the fact that he prevailed on part of his CrR 7.8 motion creates an entirely new set of appeals. The Supreme Court's ruling on the CrR 7.8 motion resulted in the case being remanded for resentencing. Thus, the only issues that could be raised under the CrR 7.8 motion would be issues related to resentencing from the defendant's original convictions. There are no such issues put forth by the defendant in this appeal.

At no point in the Washington State Supreme Court's holding on the CrR 7.8 motion, is there any "expanding" language that allows the defendant to raise issues unrelated to the reason for the remand. Since the defendant does not address sentencing issues related to the ruling on the CrR 7.8 motion, there would seem to be no basis whatsoever for the filing of an entirely new "direct appeal." The defendant did not obtain a ruling pertaining to a discretionary review, so the only identification left is "direct appeal."

#### IV.

#### CONCLUSION

There being no basis upon which the defendant can pursue an "appeal," the State respectfully requests that the defendant's appeal be dismissed.

## PERSONAL RESTRAINT PETITION

### I. AUTHORITY FOR RESTRAINT OF PETITIONER

The defendant/petitioner is currently incarcerated at Clallam Bay Correction Center following his conviction in Spokane County Superior Court on January 29, 2001; and his resentencing on February 13, 2012, pursuant to the Supreme Court's Order dated September 7, 2011. Attach. A, D.

### II. STATEMENT OF THE CASE

Defendant was charged by amended information filed in Spokane County Superior Court with Murder in the First Degree, Attempted First Degree Robbery, First Degree Burglary, two counts of Attempted First Degree Robbery and First Degree Unlawful Possession of a Firearm. Attach. B. Defendant waived trial by jury and proceeded to a bench trial. (RP 7) Attach. C, F.

Dep. Thomas Walker testified that he was the first officer to arrive at the crime scene on January 23, 2000. The victim appeared to have a gunshot wound to the head and was already dead when the deputy arrived. (RP 9-11) Attach C.

Aaron Swedberg was the victim's (Michael Guilbeault) roommate. (RP 14) Attach C. He recalled that there was a knock on the door in the early afternoon. (RP 15-16) Attach. C. Two armed individuals forced their way through the front door. (RP 16-17) Attach C. The two persons told Mr. Swedberg, Mr. Guilbeault and a third male, James McQueen, to lie on the floor.

(RP 18) Attach. C. Mr. Swedberg was pistol whipped in the face by one of the intruders. (RP 18) Attach. C. One more intruder entered and warning shots were fired. (RP 18-19) Attach. C.

One of the intruders asked Mr. Guilbeault where the drugs and money were. (RP 20) Attach. C. Mr. Guilbeault replied that there "wasn't any." (RP 20) Attach. C. The intruder continued to ask the same questions. (RP 20) Attach. C. The intruders left the residence and on their way out, the victim was shot. Mr. Swedberg was keeping his head down and did not see the faces of the intruders. (RP 20) Attach. C. When Mr. Swedberg checked the victim's pulse, there was none. (RP 22) Attach. C.

James McQueen testified that after the intruders entered the residence, a black male came up to him as he lay on the floor. (RP 56) Attach. C. The black male put a gun to his head. (RP 56) Attach. C. The gunman told him to empty his pockets. (RP 56-57) Attach. C. After he emptied his pockets, he heard someone say "knock 'em out" (RP 57) Attach. C. He heard a scuffle and some shots, a pause and more shots. (RP 57) Attach. C. Mr. McQueen guessed that there were three intruders. (RP 57) Attach. C. Because of his position on the floor, Mr. McQueen could not see anyone. (RP 56, 59) Attach. C.

Tiffany Herboldt testified that she was with Randy Powell, the defendant and two other unknown persons at about 1:00 PM on January 23rd. (RP 120) Attach. C. She described Randy Powell as her boyfriend and the defendant as

their roommate. (RP 120-21) Attach. C. Ms. Herboldt was asked if she wanted to go with the group of five males to get some "weed." (RP 122) Attach. C. The group left in a car and eventually stopped one block from the victim's house. (RP 123-24) Attach. C. The males began pulling out a cooler from the interior of the car. (RP 124) Attach. C.

Ms. Herboldt was asked to go to the door of the residence, knock and ask for someone. (RP 124) Attach. C. When Ms. Herboldt knocked on the door and someone inside responded by opening the door slightly, "Randy" and "Marquis" pushed their way into the house. (RP 125) Attach. C. One of the pair told Ms. Herboldt to return to the car. When she got back to the car, she heard one gunshot and then a short time later she heard "...three or four more." (RP 125-26) Attach. C. Randy and the rest of the males came running up. "Frosty" and the unidentified males put guns back into the cooler. (RP 126-27) Attach. C.

Joshua Campbell admitted on the stand to being involved in the robbery. He identified the defendant in court as one of the participants. (RP 160, 162-63) Attach. C. He described the five persons arriving at the scene. (RP 162) Attach. C. He stated that everyone except the female was armed. (RP 163) Attach. C. The guns came from a Styrofoam cooler. (RP 167) Attach. C. Mr. Campbell recalled that the female was supposed to approach the house and say that she wanted to buy some "weed." (RP 172) Attach. C. He related that there were three people lying on the floor when he entered. (RP 164) Attach. C. The defendant

was one of two intruders inside the house who was involved in discussing "weed." (RP 176) Attach. C. At one point, the defendant walked to the kitchen and returned. (RP 165) Attach. C. Mr. Campbell felt, from the communications between the parties, that the victims knew the defendant. (RP 173) Attach. C. The defendant was concerned that the victims had seen his face. (RP 173, 176-77) Attach. C. After the shooting, they left and went to "some lady's house." (RP 166) Attach. C.

James Smith testified that he was involved with the robbery. (RP 38-39) Attach. C. However, he testified that he couldn't positively identify the defendant as "Frosty" and didn't think the defendant was present. (RP 37) Attach. C.

Det. William Francis investigated the crime scene. He recovered six 9mm empty casings. (RP 73) Attach. C. He also testified as to the medical examiner's findings upon an autopsy. The victim was shot a total of five times: once in the head, twice in the shoulder area and twice in the heart. (RP 77-78) Attach. C. Det. Francis explained that police recovered a Glock handgun from Coeur d'Alene Lake. It was determined that the recovered weapon had fired the casings found at the scene. (RP 79-81) Attach. C.

Det. Francis received tips that a person known as "Frosty" had been involved in the shooting. The defendant was known as "Frosty." (RP 82) Attach. C. It was discovered that the defendant was living with Randy Powell, known as "Danger" and Mr. Powell's girlfriend, Tiffany Herboldt. (RP 83) Attach. C. It

was determined that the gun had been handled by Randy Powell. (RP 87-88) Attach. C.

Det. Francis interviewed Joshua Campbell who provided the identities of the parties involved. (RP 83) Attach. C. Mr. Campbell was shown a photo montage in which he identified the defendant as "Frosty." (RP 85-86) Attach. C.

Michele Cozetto testified that she and Tiffany Herboldt took a "pure black" gun to Lake Coeur d'Alene and threw it off one of the docks at the lake. (RP 99-101) Attach. C. She also testified that "Danger" and "Frosty" were good friends that did activities together before and after the murder. (RP 109) Attach. C.

Dayleen Mills testified that she was at home with her children on the date in question. (RP 111) Attach. C. At approximately 4:00 PM, five visitors arrived. There was "Randy," "Frosty," "Tiffany" and two people that were unknown to Ms. Mills. (RP 111-12) Attach. C. Ms. Mills pointed out "Frosty" as being the defendant in the courtroom. (RP 112) Attach. C.

The trial judge found the defendant guilty as charged, including weapons enhancements. Attach. A; (RP 191) Attach. C.

### III. STATEMENT OF DISPUTED FACTS

Except as set forth above, respondent denies all other allegations made by petitioner.

#### IV. ISSUES PRESENTED

1. Has petitioner demonstrated that his PRP is not time barred?
2. Has the petitioner demonstrated that his PRP is not successive?
3. Has the petitioner demonstrated that his PRP is not an “abuse of the writ?”

#### V. ARGUMENT

Several rules govern consideration of a PRP to ensure that it is not a substitute for appeal. It is well settled that a personal restraint petition is a civil matter. *In re Personal Restraint of Lord*, 123 Wn.2d 737, 739 n.2, 870 P.2d 964, cert. denied, 513 U.S. 849, 115 S. Ct. 146, 130 L. Ed. 2d 86 (1994). Because a PRP involves collateral review, we held in *In re Personal Restraint of Hews*, 99 Wn.2d 80, 89, 660 P.2d 263 (1983), the petitioner has the burden of establishing the claimed error more likely than not caused actual prejudice. The "more likely than not" standard is equivalent to preponderance of the evidence. *In re Personal Restraint of Gentry*, 137 Wn.2d 378, 409, 972 P.2d 1250 (1999).

The petitioner must demonstrate by a preponderance of the evidence that any claimed constitutional error caused him actual and substantial prejudice. *In re St. Pierre*, 118 Wn.2d 321, 328, 823 P.2d 492 (1992). If the petitioner does not demonstrate actual prejudice his or her petition will be dismissed. *In re Grisby*, 121 Wn.2d 419, 423, 853 P.2d 901 (1993).

A higher standard applies to a petitioner when dealing with allegations of non-constitutional error. To obtain review of such an error in a PRP, defendant must show that the "claimed error constitutes a fundamental defect which inherently results in a complete miscarriage of justice." *In re Cook*, 114 Wn.2d 802, 812, 792 P.2d 506 (1990).

These restrictions on relief in a PRP exist because of significant policy considerations. "Collateral relief undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders." *In re Hagler*, 97 Wn.2d 818, 824, 650 P.2d 1103 (1982). As a PRP is no substitute for an appeal, the standards for review in a PRP are significantly higher than on appeal. Here, petitioner has not satisfied the threshold burden of proof to sustain the claim for relief.

There are multiple reasons why this PRP should be rejected by the court. In the first place, the defendant has requested that his direct appeal and his PRP be merged. At the same time, the defendant continues to raise much of the same arguments repeatedly without making an explanation as to why the defendant did not include the current arguments in the two previous direct appeals nor in the multiple previous PRPs.

Under the "abuse of the writ" doctrine, a personal restraint petitioner who was represented by counsel throughout post conviction proceedings may not, in a successive petition, raise new issues that could have been raised in an earlier

petition. *In re Pers. Restraint of Martinez*, 171 Wn.2d 354, 363, 256 P.3d 277 (2011). Clearly, the defendant has been represented by counsel “throughout post conviction proceedings.” The defendant has had multiple attorneys in the post-trial proceedings.

Further, the “abuse of the writ” doctrine bars successive personal restraint petitions raising new issues when the petitioner was previously represented by counsel. *In re Pers. Restraint of Adolph*, 170 Wn.2d 556, 565, 243 P.3d 540 (2010); *In re Pers. Restraint of Turay*, 153 Wn.2d 44, 48, 101 P.3d 854 (2004); *In re Pers. Restraint of Stenson*, 153 Wn.2d 137, 145, 102 P.3d 151 (2004); *In re Pers. Restraint of Greening*, 141 Wn.2d 687, 700, 9 P.3d 206 (2000); *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 885, 828 P.2d 1086, *cert. denied* 113 S. Ct. 421 (1992).

This PRP is well beyond the one year limitation listed in RCW 10.73.090. The petitioner/defendant has not addressed (or even mentioned) RCW 10.73.090. Thus, no arguments for an exception to RCW 10.73.090 are present in this PRP.

This PRP should be dismissed as the petitioner is attempting to raise new issues.<sup>1</sup>

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<sup>1</sup> If the defendant wishes to argue that he has not raised any new issues, then the PRP should be dismissed because the courts have previously ruled on the defendant’s PRPs and dismissed them.

This PRP should also be dismissed as time barred. The defendant might attempt to argue that the time bar does not apply because the Washington State Supreme Court granted the defendant's CrR 7.8 motion. The defendant's case was remanded for dismissal of two counts and appropriate resentencing. Attach. D. Nowhere in the Washington State Supreme Court's ruling is this case "opened up" for a complete relitigation of issues unrelated to the resentencing order.

There is no connection between the issues raised in the PRP or the appeal and the resentencing of the defendant. The defendant is attempting to expand the ruling on the CrR 7.8 motion to include relitigation of all areas. The defendant has not cited any statutory or caselaw authority for using a CrR 7.8 ruling in this manner. The defendant's CrR 7.8 motion was granted by the Court. The Court remanded for resentencing. The defendant has no authority to file another PRP. The case was remanded for resentencing, not "whatever idea the defense wants to relitigate."

In the alternative, the State's response to the defendant's claim that he had no notice of the amended charges is contained in Attach. E. Attach. E is an affidavit from G. Mark Cipolla the assigned prosecutor in this case at that time. Mr. Cipolla notes that he served a copy of the amended information on the petitioner and his defense counsel. Attach. E. This occurred at a hearing in front of the Honorable Judge Tari Eitzen. The hearing occurred on August 31, 2000. Attach. E. Mr. Cipolla also noted that he had discussions with the defendant and

his counsel during a “free talk.” Attach. E. According to the affidavit, defense counsel approached the prosecutor to discuss a plea to the amended information. See Attach. E.

The petitioner claims he was not arraigned on the amended information. State’s Attach. E indicates that the petitioner was arraigned on the amended information, but it ultimately does not matter. A lack of a formal arraignment is not of constitutional magnitude as long as the petitioner had knowledge of the amended information. *State v. Anderson* 12 Wn. App. 171, 528 P.2d 1003 (1974).

The basic argument of the PRP is without merit.

## VI. CONCLUSION

For the reasons stated, this Personal Restraint Petition should be dismissed

Dated this 27<sup>th</sup> day of November, 2012.

STEVEN J. TUCKER  
Prosecuting Attorney



Andrew J. Metts #19578  
Deputy Prosecuting Attorney  
Attorney for Respondent

# ATTACHMENT A

I certify that this document is a true and correct copy of the original on file and of record in my office

ATTEST

OCT 17 2012

THOMAS R. FALLQUIST COUNTY CLERK  
COUNTY OF SPOKANE, STATE OF WASHINGTON

BY Mary Gato DEPUTY

FILED

FEB 13 2012

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE  
STATE OF WASHINGTON**

Plaintiff,

v.  
Jerome Hunt AKA we  
MARQUIS JONES  
BM 08/31/75

Defendant.

SID: 090131758

No. 00-1-00934-9

PA# 00-9-03451-1

RPT# CT I - V, VII: 001-00-0021795

RCW CT I: 9A.32.030(1)(A)-F (9.94A.602) (#23701)

CT II: 9A.56.200 (1)(A)AT-F (9A.28.020(1))  
(9.94A.602) (#68326)

CT III: 9A.52.020(1)(A)AC-F (9.94A.602)  
(#17703)

CT IV - V: 9A.56.200(1)(A)ATAC-F (9A.28.020(1))  
(9.94A.602) (#68302)

CT VII: 9.41.040(1)(A)-F (#37060)

**AMENDED**

FELONY JUDGMENT AND SENTENCE (FJS)

Prison

RCW 9.94A.507 Prison Confinement  
(Sex Offense and Kidnapping of a Minor)

Clerk's Action Required, para 2.1, 4.1 and 4.3a,  
4.3b, 5.2, 5.3, 5.5 and 5.7

Defendant Used Motor Vehicle

Juvenile Decline  Mandatory  Discretionary

**I. Hearing**

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

**II. Findings**

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon

guilty plea (date) \_\_\_\_\_  jury verdict (date) \_\_\_\_\_  bench trial (date) 10/31/00:

Count No.: 1

**MURDER IN THE FIRST DEGREE**

RCW 9A.32.030(1)(A)-F (9.94A.602) (#23701)

Date of Crime January 23, 2000

Incident No. 001-00-0021795

FELONY JUDGMENT AND SENTENCE (FJS) (Prison)  
(Sex Offense and Kidnapping of a Minor Offense)(Gang)  
(RCW 9.94A.500, .500)(WPF CR 84.0400(7/2011))

X-X

- Count No.: II     ATTEMPTED FIRST DEGREE ROBBERY  
RCW 9A.56.200 (1)(A)AT-F (9A.28.020(1)) (9.94A.602) (#68326)  
Date of Crime January 23, 2000  
Incident No. 001-00-0021795
  
- Count No.: III    FIRST DEGREE BURGLARY  
RCW 9A.52.020(1)(A)AC-F (9.94A.602)(#17703)  
Date of Crime January 23, 2000  
Incident No. 001-00-0021795
  
- Count No.: IV     ATTEMPTED FIRST DEGREE ROBBERY  
RCW 9A.56.200(1)(A)ATAC-F (9A.28.020(1)) (9.94A.602) (#68302)  
Date of Crime January 23, 2000  
Incident No. 001-00-0021795
  
- Count No.: V      ATTEMPTED FIRST DEGREE ROBBERY  
RCW 9A.56.200(1)(A)ATAC-F (9A.28.020(1)) (9.94A.602) (#68302)  
Date of Crime January 23, 2000  
Incident No. 001-00-0021795
  
- Count No.: VII    FIRST DEGREE UNLAWFUL POSSESSION OF A FIREARM  
RCW 9.41.040(1)(A)-F (#37060)  
Date of Crime January 23, 2000  
Incident No. 001-00-0021795

to the Amended Information

- Additional current offenses are attached in Appendix 2.1a.
- The defendant is a sex offender subject to indeterminate sentencing under **RCW 9.94A.507.**

The jury returned a special verdict or the court made a special finding with regard to the following:

- The defendant used a **firearm** in the commission of the offense in Count(s) \_\_\_\_\_. RCW 9.94A.602, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count(s) \_\_\_\_\_. RCW 9.94A.602, 9.94A.533.
- For the crime(s) charged in Count \_\_\_\_\_, **domestic violence** was pled and proved. RCW 10.99.020. (For offenses pled and proven on or after August 11, 2011.)
- The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count \_\_\_\_\_. RCW 9.94A.839
- The offense was predatory as to Count(s) \_\_\_\_\_. RCW 9.94A.836.
- The victim was under 15 years of age at the time of the offense in Count(s) \_\_\_\_\_. RCW 9.94A.837.
- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count(s) \_\_\_\_\_ RCW 9.94A.838, 9A.44.010.

- [ ] The defendant acted with **sexual motivation** in committing the offense in Count(s) \_\_\_\_\_ RCW 9.94A.835
- [ ] This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- [ ] Count \_\_\_\_\_, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435 took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, in a public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- [ ] The defendant committed a crime involving the manufacture of methamphetamine including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count(s) \_\_\_\_\_. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- [ ] Count \_\_\_\_\_ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a **minor** in order to involve that minor in the commission of the offense 9.94A.833.
- [ ] Count \_\_\_\_\_ is the crime of **unlawful possession of a firearm**. The defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.\_\_\_\_\_.
- [ ] The defendant committed [ ] **vehicular homicide** [ ] **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- [ ] Count \_\_\_\_\_ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer 9.94A.834.
- [ ] In Count \_\_\_\_\_ the defendant has been convicted of **assaulting a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time or the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm**. RCW 9.94A.831, 9.94A.533.
- [ ] Count \_\_\_\_\_ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- [ ] The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- [ ] In Count \_\_\_\_\_, **assault in the first degree (RCW 9A.36.011) or assault of a child in the first degree (RCW 9A.36.120)**, the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540).
- [ ] Counts \_\_\_\_\_ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589)

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

	Crime	Cause Number	Court (county & state)
1.			
2.			

\*DV: Domestic Violence was pled and proved.

[ ] Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

**2.2 Criminal History: (RCW 9.94A.525):**

Crime	Date of Crime	Crime Type	Adult or Juv	Place of Conviction	Sent. Date
RIOT	060697		A	SPOKANE CO, WA	090799
ASSAULT 2	121994	VIOLENT	A	SPOKANE CO, WA	050896
ASSAULT 2	121994	VIOLENT	A	SPOKANE CO, WA	050896
ASSAULT 3	121994	NON-VIOLENT	A	SPOKANE CO, WA	050896
EVADE POLICE	122894	NON-VIOLENT	A	LOS ANGELES CO, CA	020195

\*DV: Domestic Violence was pled and proved.

[ ] Additional criminal history is attached in Appendix 2.2

The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.

[ ] The prior convictions listed as number(s) \_\_\_\_\_ above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525).

[ ] The prior convictions listed as number(s) \_\_\_\_\_ above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520:

**2.3 SENTENCING DATA:**

CT NO	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus enhancements*	Total Standard Range (including enhancements)	Maximum Term
I	9+	XV	411-547M	120M	531-667M	LIFE
<del>IV</del>	9+	IX	96-75#-120M	72M	120M	10yr
V	9+	IX	96-75-120M	72M	120M	10yr
VII	9+	VII	87-116M		87#-116M	10yr

\*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude, (ALF) assault law enforcement with firearm, RVW 9.94A.533(12).

[ ] Additional current offense sentencing data in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended **sentencing agreements or plea agreements** are [ ] attached [ ] as follows: \_\_\_\_\_

2.4 [ ] **Exceptional Sentence:** The Court finds substantial and compelling reasons that justify an exceptional sentence:

[ ] below the standard range for Count(s)\_\_\_\_\_.

[ ] above the standard range for Count(s) \_\_\_\_\_.

[ ] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

[ ] Aggravating factors were [ ] stipulated by the defendant, [ ] found by the court after the defendant waived jury trial, [ ] found by jury by special interrogatory.

[ ] within the standard range for Count(s) \_\_\_\_\_, but served consecutively to Count(s) \_\_\_\_\_.

Findings of fact and conclusions of law are attached in Appendix 2.4. [ ] Jury's special interrogatory is attached. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 **Legal Financial Obligations/Restitution.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.01.160). The court makes the following specific findings:

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

[ ] The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

**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 defendant is found **NOT GUILTY** of Counts \_\_\_\_\_ in the charging document

[ ] The Court **DISMISSES** Counts \_\_ in the charging document.

**IV. SENTENCE AND ORDER**

**IT IS ORDERED:**

4.1 **Confinement.** The court sentences the defendant to total confinement as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

429 (months) on Count No. I : + 120 m enh \$49M  
48 (months) on Count No. IV : + 72 m enh 120M  
48 (months) on Count No. V : + 72 m enh 120M  
116 (months) on Count No. VII :  
 \_\_\_\_\_ (months) on Count No. \_\_\_\_\_ :  
 \_\_\_\_\_ (months) on Count No. \_\_\_\_\_ :

The confinement time on Count(s) I contain(s) a mandatory minimum term of 20 years.

The confinement time on Count I IV V includes 2624 months as enhancement for  firearm  deadly weapon  sexual motivation  VUCSA in a protected zone  manufacture of methamphetamine with juvenile present  sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: 693 month

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth in Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively with the sentence in cause number(s) \_\_\_\_\_ but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(b) **Confinement.** RCW 9.94A.507 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:  
Count \_\_\_\_\_ minimum term: \_\_\_\_\_ maximum term: Statutory Maximum  
Count \_\_\_\_\_ minimum term: \_\_\_\_\_ maximum term: Statutory Maximum

(c) **Credit for Time Served.** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.

(d)  **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the

conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for remaining time of confinement.

**4.2 Community Custody.** (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

(A) The defendant shall be on community placement or community custody for the longer of:

- (1) the period of early release. RCW 9.94A.728(1)(2); or
- (2) the period imposed by the court, as follows:

- Count \_\_\_\_\_ 36 months for Sex Offenses
- Count I 36 months for Serious Violent Offenses
- Count \_\_\_\_\_ 18 months for Violent Offenses
- Count \_\_\_\_\_ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

(Sex offenses, only) For count(s) \_\_\_\_\_, sentenced under RCW 9.94A.507, for any period of time the defendant is released from total confinement before the expiration of the statutory maximum.

The DOC is directed that the total terms of confinement and community custody must not exceed the statutory maximum sentence for the convicted offense(s).

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) for sex offenses, submit to electronic monitoring if imposed by DOC; and (10) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement. For sex offenders sentenced under RCW 9.94A.709, the court may extend community custody up to the statutory maximum term of the sentence.

The court orders that during the period of supervision the defendant shall:

- consume no alcohol.
- have no contact with: any member of the Guilbeault family at work or *to be possible*
- remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_ *be possible*
- not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030.
- participate in the following crime-related treatment or counseling services: \_\_\_\_\_ as deemed appropriate by DOC
- undergo an evaluation for treatment for  domestic violence  substance abuse  mental health  anger management and fully comply with all recommended treatment.
- comply with the following crime-related prohibitions:

[ ] Other conditions: No contact w/ co-defendant

(C) For sentences imposed under RCW 9.94A.507, the Indeterminate Sentence Review Board may impose other conditions (including electronic monitoring if DOC so recommends). In an emergency, DOC may impose other conditions for a period not to exceed seven working days.

[ ] 1. That the defendant be required to observe a curfew of \_\_ PM to \_\_ AM, unless gainfully employed during these hours. During the period of the curfew, the defendant is required to be physically at his/her residence, as approved by the Department of Corrections (DOC). The DOC-approved residence must have operational residential telephone service.

[ ] 2. That the defendant not be allowed to have any association or contact with known felons or gang members or their associates. A specific list will be provided to the defendant by DOC and updated as required by the assigned Community Corrections Officer (CCO).

3. That the defendant shall have no new law violations. The term law violations includes any cases heard by any city, state or federal courts.

4. That the defendant shall not initiate any contact, directly or indirectly, with any person listed as a witness, victim, ~~law enforcement officer or court official,~~ excluding his/her defense attorney, as a result of this case.

[ ] 5. That the defendant shall not be in any of the specific locations or areas as noted below: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[ ] 6. That the defendant shall not wear clothing, insignia, medallions, etc., which are indicative of gang lifestyle. Furthermore, that the defendant shall not obtain any new or additional tattoos indicative of gang lifestyle.

[ ] 7. That the defendant shall notify the CCO of any vehicles owned or regularly driven by him/her.

8. That the defendant shall diligently seek and maintain part-time or full-time employment at a business approved by the CCO, or ~~be enrolled in and attending a part-time or full-time educational or vocational program.~~

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

**4.3a Legal Financial Obligations:** The defendant shall pay to the clerk of this court:

JASS CODE

PCV \$500.00 Victim Assessment RCW 7.68.035

PDV \$ \_\_\_\_\_ Domestic Violence Assessment RCW 10.99.080

CRC <sup>110.00</sup> ~~\$200.00~~ Court costs, including: RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal Filing fee \$ \_\_\_\_\_ FRC

Witness costs \$ \_\_\_\_\_ WFR

Sheriff service fees \$ \_\_\_\_\_ SFR/SFS/SFW/WRF

Jury demand fee \$ \_\_\_\_\_ JFR

Extradition costs \$ \_\_\_\_\_ EXT

Other \$ \_\_\_\_\_

PUB \$ \_\_\_\_\_ Fees for court appointed attorney RCW 9.94A.760

WRF \$ \_\_\_\_\_ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTH \$ \_\_\_\_\_ Fine RCW 9A.20.021; [ ] VUCSA chapter 69.50 RCW, [ ] VUCSA additional fine deferred due to indigency RCW 69.50.430

CDF/LDV

FCD/NTF/

SAD/SDI \$ \_\_\_\_\_ Drug enforcement fund of \_\_\_\_\_ RCW 9.94A.760

MTH \$ \_\_\_\_\_ Meth/Amphetamine Cleanup Fine, \$3000. RCW 69.50.440, 69.50.401(a)(1)(ii)

CLF \$ \_\_\_\_\_ Crime lab fee [ ] suspended due to indigency RCW 43.43.690

\$ <sup>100</sup> DNA collection fee RCW 43.43.7541

FVP \$ \_\_\_\_\_ Specialized forest products

\$ \_\_\_\_\_ Other fines or costs for: \_\_\_\_\_

RTN/RJN \$ \_\_\_\_\_ Emergency response costs (Vehicular Assault, Vehicular Homicide Felony DUI only, \$1,000 maximum) RCW 38.52.430

Agency: \_\_\_\_\_

RTN/RJN \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

(Name and Address-address may be withheld and provided confidentially to Clerk's Office)

\$ <sup>610</sup> TOTAL RCW 9.94A.760 *previously ordered and paid*

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

[ ] shall be set by the prosecutor

[ ] is scheduled for \_\_\_\_\_

[ ] The defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_

[ ] **Restitution.** Schedule attached.

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

RJN

NAME of other defendant Cause Number (Victim Name) (Amount\$)

- The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8)
- All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by the DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ 25 per month commencing 3-1-12 RCW 9.94A.760.

The defendant shall report to the Spokane County Superior Court Clerk's Office immediately after sentencing if out of custody or within 48 hours after release from confinement if in custody. The defendant is required to keep an accurate address on file with the Clerk's Office and to provide financial information when requested by the Clerk's Office. The defendant is also required to make payments on the legal-financial obligations set by the court. **Failure to do any of the above will result in a warrant for your arrest.** RCW 9.94A.760(7)(b).

- The Court orders the defendant to pay costs of incarceration at the rate of \$ \_\_\_\_\_ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160

**4.3b[ ] Electronic Monitoring Reimbursement.** The defendant is ordered to reimburse \_\_\_\_\_ (name of electronic monitoring agency) at \_\_\_\_\_, for the cost of pretrial electronic monitoring in the amount of \$ \_\_\_\_\_.

**4.4 DNA Testing.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754 **FAILURE TO REPORT FOR TESTING MAY BE CONSIDERED CONTEMPT OF COURT.**

- HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340 **FAILURE TO REPORT FOR TESTING MAY BE CONSIDERED CONTEMPT OF COURT.**
- The victim, based upon their request, shall be notified of the results of the HIV test whether negative or positive. (Applies only to victims of sexual offenses under RCW 9A.44.) RCW 70.24.105(7)

**4.5 No Contact:**

The Defendant shall not have contact with \_\_\_\_\_ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party until \_\_\_\_\_ (which does not exceed the maximum statutory sentence.)

The defendant is excluded or prohibited from coming within \_\_\_\_\_ (distance) of:  \_\_\_\_\_ (protected person's  home/residence  work place  school  (other location(s)) \_\_\_\_\_

\_\_\_\_\_, or  
 other location: \_\_\_\_\_, until \_\_\_\_\_ (which does not exceed the maximum statutory sentence).

A separate Domestic Violence No-Contact Order or Anti-Harassment No-Contact Order or Sexual Assault Protection Order is filed concurrent with this Judgment and Sentence.

**4.6 Other:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4.7 Off-Limits Order.** (Known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: \_\_\_\_\_  
\_\_\_\_\_

## V. Notices and Signatures

- 5.1 Collateral Attack on Judgment.** If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 Length of Supervision.** If you committed your offense prior to July 1, 2000, you 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, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purposes of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606
- 5.4 Community Custody Violation.**  
(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633.  
(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.
- 5.5 Firearms.** You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047.
- 5.7 Motor Vehicle:** If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The

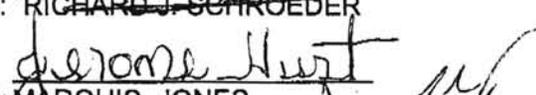
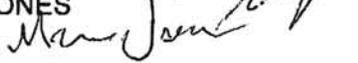
clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

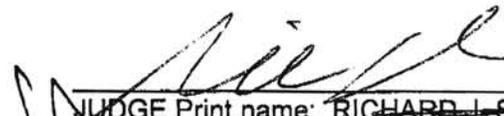
5.8 Other: Any pre-trial surety bond not previously forfeited shall be exonerated.

Done in Open Court in the presence of the defendant this 10<sup>th</sup> day of February, 2012.

  
G MARK CIPOLLA  
Deputy Prosecuting Attorney  
WSBA# 22202

  
KEVIN J. CURTIS  
Attorney for Defendant  
WSBA# 12045

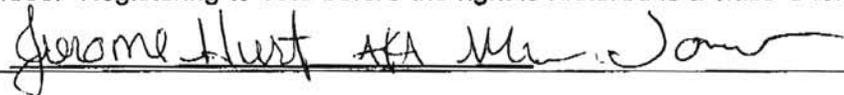
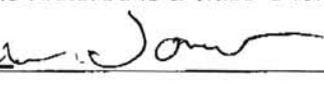
  
JEROME HURT  
AKA MARQUIS JONES  
Defendant 

  
MICHAEL P. PRICE  
JUDGE Print name: RICHARD J. SCHROEDER

**Voting Rights Statement:** I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction:  
a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature:  AKA 

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the \_\_\_\_\_ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at \_\_\_\_\_, on \_\_\_\_\_  
(city) (state) (date)

\_\_\_\_\_  
Interpreter Print Name

VI. IDENTIFICATION OF DEFENDANT

SID No. 090131758

Date of Birth 08/31/1975

(If no SID take fingerprint card for State Patrol)

FBI No. 426272WA7

Local ID No. 0230378

PCN No.

Other

DOB 08/31/1975

Alias name

Race:

Ethnicity:

Sex:

[ ] Asian/Pacific Islander

[ ] Black/African-American

[ ] Caucasian

[ ] Hispanic

[ ] Male

[ ] Native American

[ ] Other: \_\_\_\_\_

[ ] Non-hispanic

[ ] Female

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto.

THOMAS R. FALLOQUIST, County Clerk

Clerk of the Court: [Signature]

Deputy Clerk. Dated: 2/10/12

DEFENDANT'S SIGNATURE:

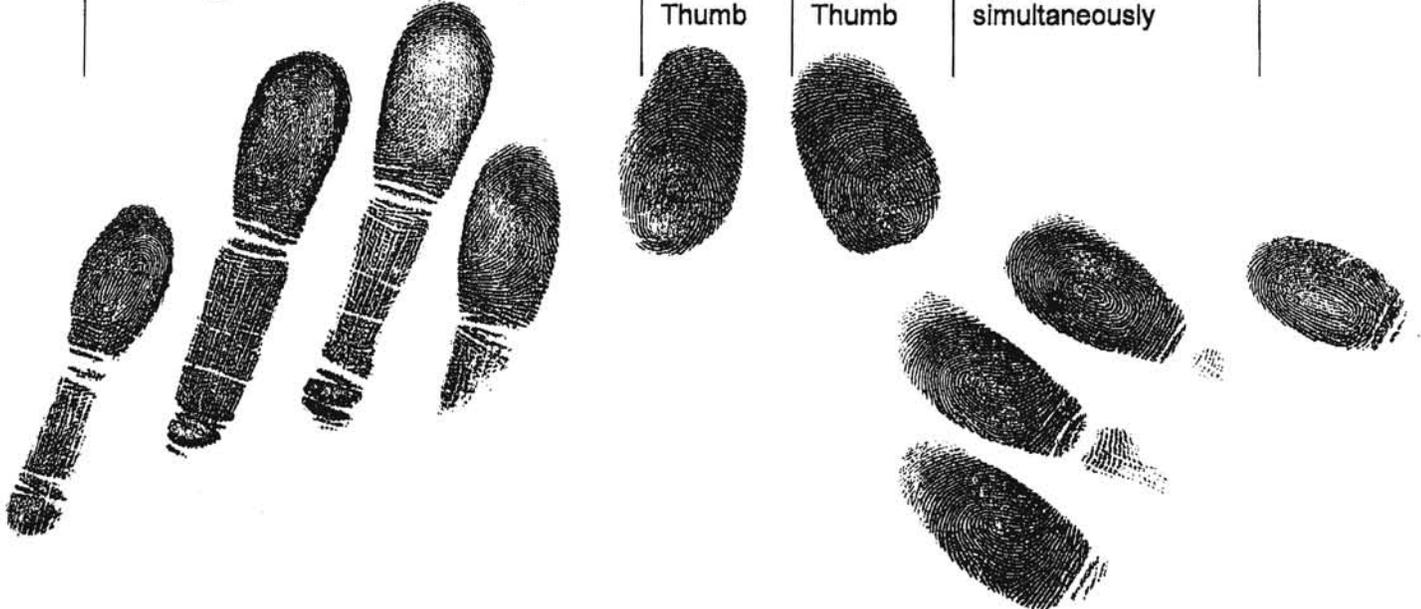
Jerome Hurt AKA Mike Jones

Left 4 fingers taken simultaneously

Left Thumb

Right Thumb

Right 4 fingers taken simultaneously



REST

OCT 17 2012

FILED

JAN 29 2001

THOMAS R. FALLOQUIST  
SPOKANE COUNTY CLERK

SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE  
STATE OF WASHINGTON  
BY Mary Cato DEPUTY  
SPOKANE CO. CLERK Plaintiff,

CREDITOR

Must become  
MARQUIS JONES,  
BM 083175

DEBTOR

Defendant.

SID: 090131758

No. 00-1-00934-9  
PA# 00-9-03451-1  
RPT# 01-00-0021795  
RCW CT I: 9A.32.030(1)(A)&(1)(C)-F (#23705 & 23709)  
CT II: 9A.56.200(1)(A)AT-F (#68301)(9A.28.020(1)(A))  
CT III: 9A.52.020(1)(A)AC-F(#17703)  
CT IV-V: 9A.56.200(1)(A)ATAC-F(#68302)(9A.28.020(1))  
CT VII: 9.41.040(1)(A)-F(#37037)

JUDGMENT AND SENTENCE (JS)

- Prison
- Persistent Offender
- Jail One Year or Less
- First Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative

44

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the deputy prosecuting attorney were present.

COURT COST 110

VICTIM ASSESS 500

II. FINDINGS

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

RESTITUTION \_\_\_\_\_

DRUG FEE \_\_\_\_\_

ATTY FEE \_\_\_\_\_

SHERIFF \_\_\_\_\_

OTHER COST \_\_\_\_\_

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 10/31/00  
by  plea  jury verdict  bench trial of:

Count No.: I Crime: CT I: MURDER IN THE FIRST DEGREE

RCW CT I: 9A.32.030(1)(A)-F (#23701)

Date of Crime January 23, 2000

Incident No. 01-00-0021795

Count No.: II Crime: ATTEMPTED FIRST DEGREE ROBBERY

RCW 9A.56.200(1)(A)AT-F(#68301)(9A.28.020(1)(A))

Date of Crime January 23, 2000

Incident No. 01-00-0021795

JUDGMENT AND SENTENCE (Felony) (JS)  
(RCW 9.94A.110,.120)(WPF CR 84.0400 (6/2000))

01900622-3

PAGE 1

F

Count No.: III Crime: CT III: FIRST DEGREE BURGLARY  
 RCW CT III: 9A.52.020(1)(A)AC-F(#17703)  
 Date of Crime January 23, 2000  
 Incident No. 01-00-0021795

Count No. IV Crime: ATTEMPTED FIRST DEGREE ROBBERY  
 RCW 9A.56.200(1)(A)AT-F(#68301)(9A.28.020(1)(A))  
 Date of Crime January 23, 2000  
 Incident No. 01-00-0021795

Count No. V Crime: ATTEMPTED FIRST DEGREE ROBBERY  
 RCW 9A.56.200(1)(A)AT-F(#68301)(9A.28.020(1)(A))  
 Date of Crime January 23, 2000  
 Incident No. 01-00-0021795

Count No. VII Crime 1<sup>ST</sup> DEGREE UNLAWFUL POSSESSION OF FIREARM  
 RCW 9.41.040(1)(A)-F(#37037)  
 Date of Crime January 23, 2000  
 Incident No. 01-00-0021795

as charged in the Amended Information

- Additional current offenses are attached in Appendix 2.1
- A special verdict/finding for use of a firearm was returned on Count(s) I-V.  
 RCW 9.94A.125, .310
- A special verdict/finding for use of a deadly weapon other than a firearm was returned on Count(s) \_\_\_\_\_. RCW 9.94A.125, .310
- A special verdict/finding of sexual motivation was returned on Count(s) \_\_\_\_\_.  
 RCW 9.94A.127
- A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s)\_\_\_\_\_, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, in a public transit vehicle, or in a public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture was returned on Count(s)\_\_\_\_\_.  
 RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.

- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.\_\_\_\_\_.
- The crime charged in Count(s)\_\_\_\_\_ involve(s) **domestic violence**.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):
  - 1° Murder*
  - 1° Burglary*
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 **CRIMINAL HISTORY: (RCW 9.94A.360):**

Crime	Date of Crime	Crime Type	Adult or Juv	Place of Conviction	Sent. Date
RIOT	060697		A	SPOKANE CO, WA	090799
ASSAULT 2	121994	VIOLENT	A	SPOKANE CO, WA	050896
ASSAULT 2	121994	VIOLENT	A	SPOKANE CO, WA	050896
ASSAULT 3	121994	NON-VIOLENT	A	SPOKANE CO, WA	050896
EVADE POLICE	122894	NON-VIOLENT	A	LOS ANGELES CO, CA	020195

- Additional criminal history is attached in Appendix 2.2
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 **SENTENCING DATA:**

JUDGMENT AND SENTENCE (Felony) (JS)  
 (RCW 9.94A.110,.120)(WPF CR 84.0400 (6/2000))

CT NO	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus enhancements*	Total Standard Range (including enhancements)	Maximum Term
I	9+	X ✓	411-548	(E) 120 m	531-668m	Life
II	9+	LX	96.75-129.25	(E) 72 m	120M	10 Yr
III	9+	VII	87-116	(F) 120	207-236m	2 Yr

\*(F) Firearm, (D) other deadly weapons, (V) VUCSA in a protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, (JP) Juvenile present.

[ ] Additional current offense sentencing data in Appendix 2.3

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 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are  
 [ ] attached [ ] as follows \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**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** Counts

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

STATE OF WASHINGTON	)	
	)	NO. 00-1-00934-9
Plaintiff,	)	
	)	PA# 00-9-03451-1
v.	)	RPT# 01-00-0021795
	)	RCW CT I: 9A.32.030(1)(A)&(1)(C)-F
	)	(#23705 & 23709)
MARQUIS JONES,	)	CT II: 9A.56.200(1)(A)AT-F
BM 083175	)	(#68301)(9A.28.020(1))
	)	CT III: 9A.52.020(1)(A)AC-F
	)	(#17703)
	)	CT IV-V: 9A.56.200(1)9A)ATAC-F
	)	(#68302)
	)	CT VII: 9.41.040(1)(A)-F(#37037)
	)	ADDITIONAL CURRENT OFFENSE
Defendant(s)	)	SENTENCING DATA (APPENDIX
	)	2.3, JUDGMENT AND SENTENCE)
	)	

2.3 The additional current offense sentencing data is as follows:

CT#	OFFENDER SCORE	SERIOUS-NESS LEVEL	STANDARD RANGE (not including enhancements)	Plus enhancements*	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM
IV	9+	IX	96.75-128.25	F 72m	120m	10yr
IV	9+	V	96.75-128.25	F 72m	120m	10yr
VII	9+	VII	87-116		87-116	10yr

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

[ ] See additional sheets for more current offenses, criminal history and current offenses sentencing data.

[ ] The defendant is found NOT GUILTY of Counts \_\_\_\_\_

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of the Court

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

JASS CODE \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

RTNR/JN \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_  
(Name and Address-address may be withheld and provided confidentially to Clerk's Office)

PCV \$500.00 Victim Assessment RCW 7.68.035

CRC \$110.00 Court costs, including: RCW 9.94A.030, 9.94A.120, 10.01.160,  
10.46.190

Criminal Filing fee \$ \_\_\_\_\_ FRC  
Witness costs \$ \_\_\_\_\_ WFR  
Sheriff service fees \$ \_\_\_\_\_ SFR/SFS/SFW/SRF  
Jury demand fee \$ \_\_\_\_\_ JFR  
Other \_\_\_\_\_ \$ \_\_\_\_\_

PUB \$ \_\_\_\_\_ Fees for court appointed attorney RCW 9.94A.030

WRF \$ \_\_\_\_\_ Court appointed defense expert and other defense costs RCW  
9.94A.030

FCM/MTH \$ \_\_\_\_\_ Fine RCW 9A.20.021; [ ] VUCSA additional fine deferred due to  
indigency RCW 69.50.430

CDF/LDV \$ \_\_\_\_\_ Drug enforcement fund of \_\_\_\_\_  
RCW 9.94A.030

FCD/NTF/SAD/SDI  
CLF \$ \_\_\_\_\_ Crime lab fee [ ] deferred due to indigency RCW 43.43.690

EXT \$ \_\_\_\_\_ Extradition costs RCW 9.94A.120

\$ \_\_\_\_\_ Emergency response costs (Vehicular Assault, Vehicular Homicide only,  
\$1,000 maximum) RCW 38.52.430

\$ \_\_\_\_\_ Other costs for: \_\_\_\_\_

\$ 610 TOTAL RCW 9.94A.145

[  ] The above total does not include all restitution or other legal financial  
obligations, which may be set by later order of the court. An agreed restitution  
order may be entered. RCW 9.94A.142. A restitution hearing:

[  ] shall be set by the prosecutor

[ ] is scheduled for \_\_\_\_\_

[ ] RESTITUTION. Schedule attached, Appendix 4.1

[ ] Restitution ordered above shall be paid jointly and severally with:  
NAME of other defendant CAUSE NUMBER (Victim Name) (Amount\$)

RJN

[ ] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010

[ ] All payments shall be made in accordance with the policies of the clerk and on a schedule established by the DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$\_\_\_\_\_ per month commencing \_\_\_\_\_ RCW 9.94A.145.

[ ] In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145

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

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

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

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

4.3 The Defendant shall not have contact with \_\_\_\_\_ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence.)

[ ] Domestic Violence Protection Order or Anti-Harassment Order is filed with this Judgment and Sentence.

4.4 OTHER \_\_\_\_\_

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

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

1 (months) on Count No. 649; includes 120 months enhancement  
11 (months) on Count No. 120; includes 72 months enhancement  
IV (months) on Count No. 120; includes 72 months enhancement  
VII (months) on Count No. 120; includes 72 months enhancement

Actual number of months of total confinement ordered is: 265 months (Add mandatory firearm or deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above). 236 months enhancement

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

The sentence herein shall run consecutively with the sentence in cause number(s) \_\_\_\_\_ but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400.

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 287 days

4.6  COMMUNITY PLACEMENT is ordered on Count 1 for 24 months, Count ~~2~~ for \_\_\_\_\_ months, Count \_\_\_\_\_ for \_\_\_\_\_ months.

COMMUNITY CUSTODY is ordered as follows:  
Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;  
Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;  
Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;  
or for the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.120(9) for community placement offenses—serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense—RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall:

(1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

- The defendant shall not consume any alcohol.
- Defendant shall have no contact with: Victim Family;  
Randy Powell, James Smith, Josh Campbell
- Defendant shall remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_
- The defendant shall participate in the following crime-related treatment or counseling services: a deemed appropriate
- The defendant shall undergo an evaluation for treatment for  domestic violence  substance abuse  mental health  anger management and fully comply with all recommended treatment.
- The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_

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

- 1. That the defendant be required to observe a curfew of \_\_ PM to \_\_ AM, unless gainfully employed during these hours. During the period of the curfew, the defendant is required to be physically at his/her residence, as approved by the Department of Corrections (DOC). The DOC-approved residence must have operational residential telephone service.
- 2. That the defendant not be allowed to have any association or contact with known felons or gang members or their associates. A specific list will be provided to the defendant by DOC and updated as required by the assigned Community Corrections Officer (CCO).

- [ ] 3. That the defendant shall have no new law violations. The term law violations includes any cases heard by any city, state or federal courts.
- [ ] 4. That the defendant shall not initiate any contact, directly or indirectly, with any person listed as a witness, victim, law enforcement officer or court official, excluding his/her defense attorney, as a result of this case.
- [ ] 5. That the defendant shall not be in any of the specific locations or areas as noted below: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- [ ] 6. That the defendant shall not wear clothing, insignia, medallions, etc., which are indicative of gang lifestyle. Furthermore, that the defendant shall not obtain any new or additional tattoos indicative of gang lifestyle.
- [ ] 7. That the defendant shall notify the CCO of any vehicles owned or regularly driven by him/her.
- [ ] 8. That the defendant shall diligently seek and maintain part- time or full-time employment at a business approved by the CCO, or be enrolled in and attending a part-time or full-time educational or vocational program.

4.7 [ ] **WORK ETHIC CAMP.** RCW 9.94A.137, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

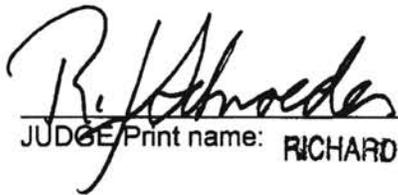
4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** 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, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.145 and RCW 9.94A.120(13).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030
- 5.4 **RESTITUTION HEARING.**  
[ ] Defendant waives any right to be present at any restitution hearing (sign initials):  
\_\_\_\_\_
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047.

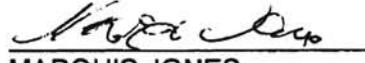
5.8 OTHER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DONE in Open Court in the presence of the defendant this 26 day of  
Jan, 2000.

  
JUDGE Print name: RICHARD J. SCHNEIDER

  
G MARK CIPOLLA  
Deputy Prosecuting Attorney  
WSBA # 22202

  
ROBERT COSSEY  
Attorney for Defendant  
WSBA# 16481

  
MARQUIS JONES  
Defendant

Translator signature/Print name: \_\_\_\_\_

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the  
\_\_\_\_\_ language, which the defendant understands. I translated this  
Judgment and Sentence for the defendant into that language.

CAUSE NUMBER of this case: 00-1-00934-9.

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

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

\_\_\_\_\_. Clerk of said County and State, by: \_\_\_\_\_

Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. 090131758

Date of Birth 08/31/1975

(If no SID take fingerprint card for State Patrol)

FBI No. 426272WA7

Local ID No. 0230378

PCN No.

Other

SSN 573-37-1248, DOB 08/31/1975

Alias name

Race:

Ethnicity:

Sex:

Asian/Pacific Islander

Black/African-American

Caucasian

Hispanic

Male

Native American

Other: \_\_\_\_\_

Non-hispanic

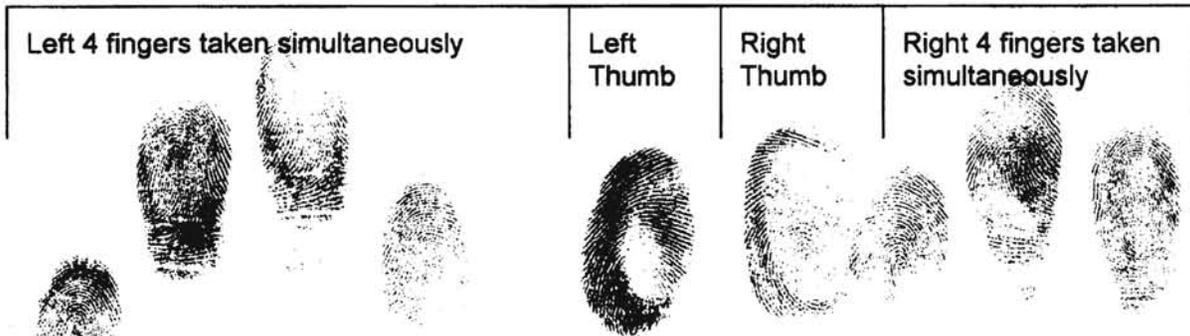
Female

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto.

THOMAS R. FALLOTT, County Clerk

Clerk of the Court: \_\_\_\_\_, Deputy Clerk. Dated: 1-26-01

DEFENDANT'S SIGNATURE: \_\_\_\_\_



# ATTACHMENT B

I certify that this document is a true and correct copy of the original on file and of record in my office

**FILED**

**AUG 3 1 2000**

ATTEST **OCT 17 2012** IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

THOMAS R. FALLOQUIST COUNTY CLERK IN AND FOR THE COUNTY OF SPOKANE  
COUNTY OF SPOKANE, STATE OF WASHINGTON

**THOMAS R. FALLOQUIST  
SPOKANE COUNTY CLERK**

BY May Cato DEPUTY  
Plaintiff,

v.

RANDY O. POWELL  
BM 050373  
TIFFANY HERBOLDT  
WF 072081  
MARQUIS JONES  
BM 083175

Defendant(s)

) AMENDED  
) INFORMATION

) NO. 00-1-00934-9

) G MARK CIPOLLA  
) Deputy Prosecuting Attorney

) PA# 00-9-03451-0  
) RPT# 01-00-0021795

) CT I: RCW 9A.32.030(1)(A)&(1)(C)-F  
) (#23705 & 23709)

) CT II: 9A.56.200(1)(A)AC-F(#68304)

) CT III: 9A.52.020(1)(A)AC-F(#17703)

) CT IV-V: 9A.56.200(1)(A)ATAC-F (#68302)

) CT VI: 9.41.040(1)(A)-F(#37037) **POWELL**

) CT VII: 9.41.040(1)(A)-F(#37037) **JONES**

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

COUNT I: MURDER IN THE FIRST DEGREE, committed as follows: That the defendants, RANDY O. POWELL, MARQUIS JONES and TIFFANY HERBOLDT, as actors and accomplices to each other, in the State of Washington, on or about January 23, 2000, while committing and attempting to commit the crime of FIRST DEGREE ROBBERY and FIRST DEGREE BURGLARY and in the course of and in furtherance of said crime and in immediate flight therefrom, did cause the death of MICHAEL JON GUILBEAULT, a human being, not a participant in such crime, said death occurring on or about JANUARY 23, 2000, the defendants, RANDY O. POWELL, MARQUIS JONES and TIFFANY HERBOLDT, being at said time armed with a firearm under the provisions of RCW 9.94A.125 and 9.94A.310(3)

18

COUNT II: FIRST DEGREE ROBBERY, committed as follows: That the defendants, RANDY O. POWELL, MARQUIS JONES and TIFFANY HERBOLDT, as actors and accomplices to each other, in the State of Washington, on or about January 23, 2000, with the intent to commit theft, did unlawfully take and retain personal property, lawful US currency and wallet, from the person and in the presence of MICHAEL JON GUILBEAULT, against such person's will, by use or threatened use of immediate force, violence and fear of injury to MICHAEL JON GUILBEAULT, and in the commission of and immediate flight therefrom, the defendant was armed with a deadly weapon, firearm, the defendants, RANDY O. POWELL, MARQUIS JONES and TIFFANY HERBOLDT, being at said time armed with a firearm under the provisions of RCW 9.94A.125 and 9.94A.310(3)

COUNT III: FIRST DEGREE BURGLARY, committed as follows: That the defendants, RANDY O. POWELL, MARQUIS JONES and TIFFANY HERBOLDT, as actors and accomplices to each other, in the State of Washington, on or

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

about January 23, 2000, with intent to commit a crime against a person or property therein, did enter and remain unlawfully in the building of MICHAEL JON GUILBEAULT, located at E 10921 Nixon, and in entering and while in such building and in immediate flight therefrom, the defendant or another participant in the crime, was armed with firearm, a deadly weapon, the defendants, RANDY O. POWELL, MARQUIS JONES and TIFFANY HERBOLDT, being at said time armed with a firearm under the provisions of RCW 9.94A.125 and 9.94A.310(3)

COUNT IV: ATTEMPTED FIRST DEGREE ROBBERY, committed as follows: That the defendants, RANDY O. POWELL, MARQUIS JONES and TIFFANY HERBOLDT, as actors and accomplices to each other, in the State of Washington, on or about January 23, 2000, with intent to commit the crime of FIRST DEGREE ROBBERY as set out in RCW 9A.56.200, committed an act which was a substantial step toward that crime, by attempting FIRST DEGREE ROBBERY, with the intent to commit theft, did attempt to unlawfully take and retain personal property, lawful U.S. currency and personal items, from the person and in the presence of AARON SWEDBERG, against such person's will, by use or threatened use of immediate force, violence and fear of injury to AARON SWEDBERG, and in the commission of and immediate flight therefrom, the defendant was armed with a deadly weapon, firearm, the defendants, RANDY O. POWELL, MARQUIS JONES and TIFFANY HERBOLDT, being at said time armed with a firearm under the provisions of RCW 9.94A.125 and 9.94A.310(3)

COUNT V: ATTEMPTED FIRST DEGREE ROBBERY, committed as follows: That the defendants, RANDY O. POWELL, MARQUIS JONES and TIFFANY HERBOLDT, as actors and accomplices to each other, in the State of Washington, on or about January 23, 2000, with intent to commit the crime of FIRST DEGREE ROBBERY as set out in RCW 9A.56.200, committed an act which was a substantial step toward that crime, by attempting FIRST DEGREE ROBBERY, with the intent to commit theft, did attempt to unlawfully take and retain personal property, lawful U.S. currency and personal items, from the person and in the presence of DJ BORDNER (aka DJ MCQUEEN), against such person's will, by use or threatened use of immediate force, violence and fear of injury to AARON SWEDBERG, and in the commission of and immediate flight therefrom, the defendant was armed with a deadly weapon, firearm, the defendants, RANDY O. POWELL, MARQUIS JONES and TIFFANY HERBOLDT, being at said time armed with a firearm under the provisions of RCW 9.94A.125 and 9.94A.310(3)

COUNT VI: FIRST DEGREE UNLAWFUL POSSESSION OF A FIREARM, committed as follows: That the defendant, RANDY ODELL POWELL, in the State of Washington, on or about January 23, 2000, did own or have in his possession or have in his control, a firearm, to-wit: 9mm, after he had previously been convicted in this State or elsewhere of a serious offense as defined in Chapter 9.41 RCW, to-wit: Second Degree Assault,

COUNT VII: FIRST DEGREE UNLAWFUL POSSESSION OF A FIREARM, committed as follows: That the defendant, MARQUIS JONES, in the State of Washington, on or about January 23, 2000, did own or have in his possession or have in his control, a firearm, to-wit: firearm, after he had previously been convicted in this State or elsewhere of a serious offense as defined in Chapter 9.41 RCW, to-wit: Second Degree Assault,

*[Handwritten Signature]*  
Deputy Prosecuting Attorney #2220

\*\*\*\*\*  
**DEFENDANT INFORMATION:** MARQUIS JONES  
 Address: 610 S HELENA ST SPOKANE WA 99202-5511  
 Height: 603 Weight: 178  
 Hair: Bro Eyes: Bro  
 DOL #: State:  
 SID #: 17685169 DOC #:  
 \*\*\*\*\*

# ATTACHMENT C

1 THE COURT: Did you sign it after discussing it  
2 with him?

3 MR. JONES: Yes, sir.

4 THE COURT: Is it your desire to waive your right  
5 to a jury trial?

6 MR. JONES: Yes, sir.

7 MR. COSSEY: For the record, Your Honor, Mr.  
8 Jones was the one that approached me with the idea that  
9 he wanted a bench trial rather than a jury trial.

10 THE COURT: Okay. Let the record reflect that I  
11 have signed a waiver of the jury trial, finding that the  
12 defendant has knowingly and voluntarily waived his right  
13 to a jury trial and also find that he is competent to do  
14 so. You may be seated.

15 Let the record reflect that I did meet previously  
16 in chambers with counsel before coming out on the bench  
17 and was advised that the, that there is a stipulation as  
18 to the chain of evidence. Mr. Cipolla, would you state  
19 that stipulation for the record, please?

20 MR. CIPOLLA: Yes, Your Honor. For the record,  
21 the evidence, the photographs and all of the scientific  
22 testing in this matter, there's a stipulation to not  
23 object to the admissibility of that evidence and that  
24 chain of custody but also the accuracy of that evidence.  
25 There's also demonstrative exhibits that the parties

1 Deputy Thomas H. Walker, called as a witness on  
2 behalf of the Plaintiff  
3 herein, having been first  
4 duly sworn, was examined and  
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. CIPOLLA:

8 Q Would you please state your full name and spell  
9 your last name for the record?

10 A Thomas H. Walker, W-A-L-K-E-R.

11 Q What is your occupation?

12 A Deputy Sheriff, Spokane County Sheriff's Office.

13 Q And how long have you been so employed?

14 A Three years.

15 Q Okay. And what is your mailing address?

16 A Normally use 1121 West Gardner.

17 Q Is that in Spokane, Washington?

18 A Yes, it is.

19 Q You briefly tell the Court the training that you  
20 have gone through to become a law enforcement officer?  
21 Briefly?

22 A Um, I have four and a half years as a Reserve for  
23 the Spokane County Sheriff's Office and also the Basic  
24 Law Enforcement training.

25 Q Okay. Were you employed and on duty January 23rd  
of this year at about 3:45 in the afternoon?

1 A Yes, I was.

2 Q And did you respond to a call on that date?

3 A Yes, I did.

4 Q At that time?

5 A Yes, sir.

6 Q To what location?

7 A The address is on Nixon, 10921 East Nixon.

8 Q Okay. And what type of call did you respond to?

9 A It was a shooting call with a victim.

10 Q Okay. And let me back up a little bit. What State  
11 or County is that Nixon address in?

12 A Spokane County.

13 Q State of Washington?

14 A Yes.

15 Q What happened upon your arrival at that location?

16 A As I pulled up I was the first one on scene, and I  
17 noticed a white male and white female in the front yard.  
18 Normally, we normally park quite a ways away from the  
19 house to approach the house, and often on a call like  
20 that. But since somebody was in the front yard, I  
21 pulled in closer, and the male came out to me and was  
22 very upset. The female, I believe, was on the cell  
23 phone talking to 9-1-1, or possibly a radio.

24 The male told me that a friend of his was shot  
25 and was in the house. He said he had gone in the house

1 and had checked his friend and then left the house  
2 immediately.

3 I waited for another unit to arrive. At that  
4 point we entered the house, and in so doing the front  
5 door was blocked by something, we didn't know what, if  
6 it was possibly a person or what it was at that point.  
7 We then forced ourselves in and saw that there was a  
8 male laying on the ground between the wall and the door,  
9 which was what was blocking the door.

10 After we entered the house another deputy came in  
11 behind us. We checked the entire house with the  
12 exception of one room which was locked.

13 Q When you entered you observed a dead body, is that  
14 correct?

15 A Correct.

16 Q Did you check for pulse?

17 A At that moment, no, we did not. We, for safety  
18 purposes we cleared the house first.

19 Q Did you find any weapons in the house?

20 A No weapons in the house.

21 Q Did you -- What were you observing of the  
22 individual laying on the floor?

23 A The immediate observation, we saw one bullet entry  
24 into the head area, and at that point that was the only  
25 thing that we saw, because we were, like I said, busy

1 MR. CIPOLLA: No further questions, Your Honor.

2 THE COURT: Mr. Cossey?

3 MR. COSSEY: No questions, Your Honor.

4 THE COURT: Okay. You may be excused, then.

5 Thank you.

6 MR. CIPOLLA: Your Honor, the State would call

7 Aaron Swedberg.

8 AARON SWEDBERG, called as a witness on  
9 behalf of the Plaintiff  
10 herein, having been first  
11 duly sworn, was examined and  
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. CIPOLLA:

15 Q Mr. Swedberg, for the record please state your full  
16 name and spell your last name.

17 A Aaron Gregory Swedberg, and the last name is  
18 S-W-E-D-B-E-R-G.

19 Q What is your date of birth?

20 A 7/5/80.

21 Q Okay. And where were you living in January of this  
22 year?

23 A With Michael Guilbeault.

24 Q What is, was the address?

25 A I actually don't know the address there.

Q Where is it located?

1 A It's on Nixon.

2 Q Is that in Washington?

3 A Yes.

4 Q In the Valley?

5 A It's in the Valley.

6 Q Mr. Swedberg --

7 MR. CIPOLLA: Excuse me, Your Honor. May I  
8 approach and turn the diagram?

9 THE COURT: Yes.

10 Q (By Mr. Cipolla) Does that diagram accurately  
11 depict the house you were living in at the time with Mr.  
12 Guilbeault?

13 A Um hm.

14 Q Okay.

15 A Yes.

16 Q Do you remember January 23rd, 2000?

17 A Yes.

18 Q Please tell the Court what you were doing on the  
19 afternoon of January 23rd, 2000.

20 A Um, I was over at Mike Guilbeault's house with D.  
21 J. Bordner and Guilbeault.

22 Q Anything unusual happen that afternoon?

23 A Yes. A knock on the door.

24 Q About what time was this?

25 A It was early afternoon.

1 Q Okay. You say early afternoon. About what time?

2 A It was between 12 and 2, somewhere around there.

3 Q Okay. Are you sure of the time?

4 A I'm not sure of the time that it happened.

5 Q You wear a watch?

6 A No.

7 Q But something unusual happened. Why don't you  
8 please tell the Court what happened?

9 A I, a knock came at the door, and Michael walked up,  
10 answered the door, and I followed behind him. And he  
11 asked who it was, and somebody answered with a name,  
12 Chuck.

13 Q What happened after the person answered with the  
14 name Chuck?

15 A Um, I'm not sure if Michael Guilbeault opened the  
16 door or the door was forced open, because Michael was,  
17 had his hand on the doorknob, and the door just came  
18 open.

19 Q When you say, came open, how did it come open?

20 A It just came open.

21 Q Okay. What happened next?

22 A Um, two hands with guns were stuck in the door, and  
23 two people forced their way in.

24 Q Okay. Can you describe the individuals that forced  
25 their way in?

1 A No.

2 Q Okay. Were they black or white? Were the hands  
3 you saw black or white?

4 A The hands were black.

5 Q Did you see their faces?

6 A No.

7 Q Were their faces covered? Do you remember?

8 A I don't remember.

9 Q Okay. What happened next.

10 A Um, they forced their way in. There was a really,  
11 really short struggle of Mike trying to hold the door  
12 back, and they were able to get in. And because Mike  
13 was trying to hold the door back, he was able to shut  
14 it, and he locked it real quick.

15 Q Okay.

16 A But --

17 Q Were these two individual in or out when he locked  
18 it? Were these two individuals in or out?

19 A These two individuals were inside. He was  
20 struggling with them, and when they came in his weight  
21 was basically against the door, so it shut, and his hand  
22 went and locked it real quick. Exactly why he did that  
23 because they were already in there, I don't know, but --

24 Q Did you see anybody else?

25 A Yes. There was, at that time I don't remember

1 whether or not I did see another person. But after  
2 those two came in and --

3 Q Let's stop right there. The two individuals came  
4 in. Then what happened?

5 A The two individuals came in and they told us all to  
6 get to the ground and --

7 Q Everybody get to the ground?

8 A Yes. That's what they told us. And D. J.  
9 Bordner was already on the ground, because he saw the  
10 guns I would guess. And me and Mike, Mike got to the  
11 ground. I don't know; I got hit in the eye, pistol-  
12 whipped.

13 Q Who hit you?

14 A I got pistol-whipped by one of the, I don't know  
15 whether I went down when they said so or they hit me  
16 down. I went down to the ground, and then those two --  
17 But a third person came in after they had all three of  
18 us more or less subdued.

19 Q When you were on the ground could you tell whether  
20 it was one or more people that came through the door,  
21 the second group of people?

22 A I could tell it, I might not have been on the  
23 ground at that time.

24 Q So how many people came through the door the second  
25 time?

1 A Only one.

2 Q Then what happened?

3 A Then they asked -- Can I go back to when the first  
4 two were in, because one of them --

5 Q Sure.

6 A One of them went to D. J. And basically stayed on  
7 him with a gun to his head or whatever. And the other  
8 one let the third guy in, and it was --

9 Q Did they say anything when they came in?

10 A No, they didn't say anything when they came in  
11 until they were all three in. They told us to get down,  
12 and there were a couple warning shots fired sometime  
13 during the whole thing.

14 Q In that diagram, where were each of you on the  
15 ground?

16 A The couch was right here (indicating), and D. J.  
17 Bordner was on the ground in front of the couch.  
18 Michael Guilbeault, this is the front door right here  
19 (indicating), right?

20 Q Um hm.

21 A Mike Guilbeault was in the corner, basically, of  
22 the front door, and I was probably right here  
23 (indicating) in between pretty much Mike and D. J.

24 Q Okay. Once all of the individuals were in, what  
25 happened next?

1 A One of them asked Michael Guilbeault, where's the  
2 drugs? Where's the money? And Mike replied, there  
3 isn't any. And he repeated the exact same thing:  
4 Where's the drugs? Where's the money? And Mike said  
5 there wasn't any, and --

6 Q Okay. What, did anybody ask you for anything?

7 A No.

8 Q Okay. Did you know what happened to Mr. Bordner or  
9 Mr. McQueen at the time?

10 A I don't know what was happening. I didn't see  
11 whether or not they did, but I couldn't say. They  
12 searched them, as far as I know.

13 Q Did you see anything?

14 A I didn't see anything. My eyes weren't in his  
15 direction or anything, so --

16 Q At any time were you able to see any of these  
17 individuals that were in the house?

18 A No.

19 Q After there was a request or demand for money and  
20 drugs, what happened?

21 A They all three got up and walked out and shot  
22 Michael Guilbeault on their way out. One of them, or --

23 Q Did anybody leave the room? Did all these  
24 individuals stay in this room with you, or do you know?

25 A Nobody left the room at all. They didn't look

1 A Yes.

2 Q What did you do next?

3 A I got up and checked Mike's pulse.

4 Q What -- Why did you check his pulse? What did you  
5 hear that made you want to check his pulse?

6 A I heard gunshots. They walked past me; I heard  
7 gunshots. They left, and I just knew Mike had been  
8 shot, and I got up. And the way he looked, I didn't see  
9 any blood or anything, just when I checked his pulse.  
10 But just from the way he looked, I knew. That's why I  
11 checked his pulse, because I had a feeling he had been  
12 shot.

13 Q Were you hit in the head with the gun? Is that  
14 correct?

15 A I was hit in the eyes.

16 Q Were you pretty clear-headed after you got hit?

17 A I believe I was, but from my memory of some things  
18 and what-not, I can't say I am positive, but I feel I  
19 was, yeah.

20 Q Did they, did the blows stagger you at all?

21 A Not really, no.

22 Q Did you go to the hospital afterwards?

23 A Yeah.

24 Q What was the medical diagnosis?

25 A Um, I had, I, something it fractured, and I had a

1 A Um, I don't know. Basically getting high,  
2 drinking.

3 Q Okay. And who were you with?

4 A Me and a guy named Danger and a guy named Josh, I'm  
5 not sure what the last name is, and some guy called  
6 Frosty.

7 Q Is that individual known as Frosty in the  
8 courtroom?

9 A They say it's him, but that's not, I can't  
10 positively identify him as Frosty.

11 Q Have you ever met this individual before?

12 A I had seen him before, but I don't think this was  
13 the dude that was there. I don't think --

14 Q Could you please tell the Court what happened that  
15 afternoon?

16 A Well, we all, I went to a guy named Danger's house.  
17 We smoked some weed, and so, some weed. First he came  
18 and picked us up; then he came and picked me and a guy  
19 named Josh up and we went to his house. We got high.  
20 We went to rob a guy named Michael. We all got in the  
21 house. A guy named Danger shot Michael.

22 Q Okay. When you got to the house where was the  
23 house located?

24 A Ah --

25 Q Where was the house located at?

1 A In the Valley.

2 Q What happened when you got to the house? Who went  
3 to the house?

4 A I was in the car. And then me and this guy named  
5 Josh, we were in the car, and Danger and his friend went  
6 into the house, and then me and Josh went in after them.

7 Q When you say they went into the house, there was  
8 just four of you, is that correct?

9 A There was a girl there, too.

10 Q Have you met the girl before?

11 A No.

12 Q You went to the door. What happened when you got  
13 to the door?

14 A The girl knocked on the door, and then Danger and  
15 his friend, the one they called Frosty, they went in the  
16 house, and me and Josh were on the front door by then.  
17 I heard the shot fired, and later I found out it was  
18 from Danger's gun. He hit Michael.

19 Q What happened when you were outside the door? Why  
20 didn't you go in, also?

21 A Because someone was up against the door from the  
22 inside, and we couldn't open it.

23 Q How did you get in the house?

24 A We pushed our way in, but we didn't get in from  
25 pushing our way in. Somebody from the inside opened it.

1 Q And you and Josh went in?  
2 A Um hm.  
3 Q What happened next?  
4 A Well, Michael Guilbeault was setting, he was  
5 sitting on the floor, like next to the door, on his  
6 knees, and he had his hands behind his head, and --  
7 Q Who else was in the house?  
8 A Me, Josh and Danger and Frosty.  
9 Q And who else was in the, was there any other people  
10 there besides Mr. Guilbeault?  
11 A There were other guys laying on the floor. I  
12 didn't really see any of them, because by the time I got  
13 in the house they were already on their faces.  
14 Q Why were you there?  
15 A Hmmm?  
16 Q Why were you at that house?  
17 A To carry weed out.  
18 Q Carry weed out. What does that mean?  
19 A What?  
20 Q You were there to rob the individuals?  
21 A Yeah.  
22 Q Is that correct? And you forced your way in. So  
23 what happened once you were inside the house?  
24 A When we were inside the house? I was standing with  
25 my back to the door, Danger was facing me, and

1 Q Did they come into the house by this time?  
2 A Yeah.  
3 Q How many were there?  
4 A I saw two people. I saw a third person making  
5 their way in. I saw two people definitely.  
6 Q What happened next?  
7 A I fell to the floor, and I was facing into the  
8 kitchen.  
9 Q Okay. Where were you actually? Using that diagram  
10 where were you on the ground at?  
11 A I was right here (indicating), laying on the ground  
12 facing the kitchen.  
13 Q Did you see what Aaron and Mike were doing?  
14 A No.  
15 Q Okay. What happened next?  
16 A Um, somebody came up to me and put a gun to the  
17 side of my head and told me to empty out my pockets.  
18 Q Did you empty out your pockets?  
19 A Yes, sir.  
20 Q Could you tell if that individual was a white  
21 person or a black person?  
22 A It was a black person.  
23 Q Okay. What happened next?  
24 A As I was lying there looking into the kitchen,  
25 another guy walked by with lighter skin, and he was

1 carrying a firearm as well.

2 Q Okay. And did you see what he did in the kitchen?

3 A He just walked into the kitchen, turned around and  
4 walked back out.

5 Q And did these individuals say anything to you?

6 A The guy on top of me, he said, I want you to empty  
7 everything out of your pockets. I want you to break  
8 yourself.

9 Q Did you empty your pockets and give whatever you  
10 had in your pockets to the individual?

11 A I emptied everything out of my pockets.

12 Q Do you know how many individuals were in the house?

13 A I didn't see how many individuals. I can guess  
14 there were three.

15 Q There could have been more?

16 A There could have been more.

17 Q You don't know how many people were outside, is  
18 that correct?

19 A That's correct.

20 Q What happened after you emptied out your pockets?

21 A I heard somebody say, knock 'em out. And then I  
22 heard some wrestling around, and then as I laid there I  
23 heard somebody, I want you to do your stuff. And then  
24 after that I heard some shots, a pause, and then another  
25 series of shots.

1 Q Okay. And they both had guns?

2 A Um hm.

3 Q And once they were in did the third person come  
4 right in, or was there a break in time?

5 A You know, I mean as the door swung open and I saw  
6 the guns come out and told everybody to get to the  
7 ground, I just dropped to the ground.

8 Q From your vantage point you couldn't really see  
9 what was going on. Is that correct?

10 A Yes.

11 Q You said an individual was walking to the kitchen.  
12 Was that a dark man or lighter colored skin?

13 A It was a lighter colored. I'm not sure if he was  
14 Mexican or mixed. He was carrying what looked to be a  
15 Mack Ten.

16 Q After they left and the shooting you left, what  
17 happened next?

18 A Um, I called over at Mike's house and asked for  
19 Mike, and --

20 Q Could you identify anybody that came into the house  
21 that day?

22 A No.

23 Q Did you or any of the other individuals, Aaron or  
24 Mike, have any guns?

25 A No.

1 MR. CIPOLLA: May I approach the witness, Your  
2 Honor?

3 THE COURT: Yes.

4 Q (By Mr. Cipolla) Detective, handing you State's  
5 Exhibit 1 through 6, can you please identify those  
6 items?

7 A These are 1 through, there are 5 in sequential  
8 bags, 1, 2, 3, 4 and 5. These bags were, I was with  
9 Detective Bentley during this crime scene search, and  
10 the first five bags contain 9 millimeter cartridge empty  
11 casings. The bag labeled item 15 is another empty 9  
12 millimeter cartridge casing, total of six empty casings.

13 Q Where were they found?

14 A They were found in this area (indicating), right  
15 where Mr. Guilbeault had been positioned. Again, we had  
16 the first casing here (indicating) which would have been  
17 item number 1. Then as we searched this area  
18 (indicating), say within two or three feet of the victim  
19 we found the remaining five empty casings around Mr.  
20 Guilbeault, one as we entered the scene. From the  
21 information that we first obtained, there was a gunshot  
22 initially shot into the ceiling. Up above this area  
23 right here (indicating) was a bullet hole that went  
24 through the sheet rock and exited the residence through  
25 the room.

1       A    Sixteen is one of the casings. Eighteen is a  
2 piece of the door jam, and 15, 14 and 17, 17 is the  
3 cellular phone; 14, and 15, those are the casings, empty  
4 casings. Fourteen depicts an area where two casings  
5 were found.

6       Q    Thank you. As part of your investigation was an  
7 autopsy done also?

8       A    Yes, it was.

9               MR. CIPOLLA: May I approach the witness, Your  
10 Honor?

11              THE COURT: Yes.

12       Q    (By Mr. Cipolla) Item number 16, please tell the  
13 Court what that is.

14       A    This is a photograph of Mr. Michael Guilbeault. It  
15 was taken at the Forensic Institute during the autopsy  
16 process by Dr. George Lindholm, medical examiner.

17       Q    And that's a photograph, is that accurate, of the  
18 beginning of the autopsy?

19       A    Yes, it was.

20              MR. CIPOLLA: Move for its admission at this  
21 time, Your Honor.

22              MR. COSSEY: No objection.

23              THE COURT: Exhibit 16 is admitted.

24                        (Exhibit No. 16 admitted)

25       Q    (By Mr. Cipolla) That photograph indicates how

1 many bullet wounds?

2 A Yes, it does. It indicates five bullet wounds.  
3 There's one to the upper left portion of the head, two  
4 to the shoulder area, just, say below the clavicle. And  
5 then two right above the left side in the heart area.

6 Q Thank you. Detective, I hand you State's Exhibit  
7 number 10. Would you identify that?

8 A Um, Exhibit number 10 is the autopsy report. It's  
9 usually referred to our office through Dr. Lindholm's  
10 office as a result of his findings after the medical  
11 examination of the autopsy.

12 Q To the best of your knowledge, that's accurate?

13 A Yes.

14 MR. CIPOLLA: Move for its admission at this  
15 time:

16 MR. COSSEY: No objection.

17 THE COURT: Exhibit 10 is admitted.

18 (Exhibit No. 10 admitted)

19 Q (By Mr. Cipolla) Who's that autopsy concerning?

20 A This autopsy is concerning Michael Guilbeault, date  
21 of birth 8/31/75.

22 Q What were the conclusions in that report?

23 A The pathological diagnosis read, gunshot wound to  
24 the head. Entrance to the left temporal scalp, passing  
25 through the left temporal lobe to the mid-range to lock

1 in the right neck. Chest gunshot wound to the left  
2 shoulder. And there were two under the chest, gunshot  
3 wound upper anterior chest downward to the lung and  
4 heart and gunshot wound to the upper anterior chest  
5 through the heart. The, probably the end, looks at the  
6 end by Dr. Lindholm the death was caused by the gunshot  
7 wound.

8 Q Thank you. Detective, I hand you State's Exhibit  
9 number 17. Please open that. Can you identify that  
10 item?

11 A This item is a Glock automatic handgun, Model 19.  
12 It's absent the magazine. This item was recovered on  
13 July 30th from the Coeur d'Alene Police Department.  
14 Detective Knechtel and I had contacts with the witness  
15 in this case, and this gun had been recovered after  
16 being thrown off a swim dock near the Coeur d'Alene  
17 Resort.

18 Q Why had you gone out there to recover that gun?

19 A We had gone to interview a girl, Michele Cozzetto,  
20 who's a friend of another party involved in this case.  
21 And when we interviewed Michele Cozzetto, I asked her if  
22 she had any knowledge about where this gun had gone, and  
23 at that time she did admit that she had, and this other  
24 girl, Tiffany Herboldt, had taken this gun and dropped  
25 it in the lake.

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MR. CIPOLLA: I move for the gun's admission at this time, Your Honor.

MR. COSSEY: No objections.

THE COURT: Exhibit 17 is admitted.

(Exhibit No. 17 admitted)

Q (By Mr. Cipolla) Detective, I hand you State's Exhibit 8 and 9. Please identify those exhibits.

A Exhibit number 8 is the Washington State Patrol Crime Laboratory Report. This report was made by Firearm Examiner Robinson concerning this homicide case. The items that Examiner Robinson had examined concerning this case were the five empty cases that Detective Bentley and I had located at the crime scene or the residence of the victim, and this report was dated, first submission of the evidence was 1/23 of 2000.

Q What conclusions were drawn from that report?

A Beg your pardon. I have to back up. It was submitted 1/27 of 2000. Conclusions by Mr. Robinson at that time, cartridges or empty casings that were found at the scene were 9 millimeter and that the type of characteristics that were on these casings were consistent with the Glock handgun.

MR. CIPOLLA: Move for the admission of that exhibit, Your Honor.

MR. COSSEY: No objections.

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THE COURT: Exhibit 8 is admitted.

(Exhibit No. 8 admitted)

Q (By Mr. Cipolla) Please tell the Court about Exhibit 9.

A Exhibit 9 is the second report generated from Firearms Examiner Robinson, and this again is a report concerning the Glock 9 millimeter handgun that was recovered from Coeur d'Alene Lake. Also submitted at that time were the casings found at the crime scene and Examiner Robinson's conclusion that that handgun was the gun that was used to make the casings that were recovered at the crime scene.

Q Okay. So go ahead.

A In that regard, in regard to the Glock handgun, bullets shot from the Glock handgun are not identifiable, but the specific casings, the way the mechanism of the pistol ejects the casings, each Glock has to have a specific type of characteristic to the type of bullet spent or casing spent, rather.

Q So the conclusion here is the weapon recovered out of Coeur d'Alene Lake was the weapon that killed Guilbeault, is that correct?

A That's correct.

MR. CIPOLLA: Move for admission of that exhibit, Your Honor.

1 MR. COSSEY: No objections.

2 THE COURT: Exhibit 9 is admitted.

3 (Exhibit No. 9 admitted)

4 Q (By Mr. Cipolla) Now detective, it's part of your  
5 responsibilities in this case basically to investigate  
6 the crime. Is that correct?

7 A Yes.

8 Q And as part of your investigation, did you develop  
9 Marquis Jones as a suspect in this case?

10 A Yes, I did.

11 Q How did you develop him as a suspect?

12 A Initially we had some tips that were from  
13 anonymous sources called in to us and from some of the  
14 friends of Mike Guilbeault possibly there were two  
15 individuals involved: One person named Marquis Jones  
16 who had the name of Frost or Frosty and another person,  
17 Gerald Cavet had a street name of Petey.

18 Q As part of your -- Did you check to see in the  
19 computer system and with your intelligence sources  
20 whether there was anyone else known to the Spokane  
21 police community as Frosty?

22 A Yes, I did. I had a number of contacts with our  
23 gang unit, and from that time the only person that I  
24 could really locate with the name of Frost or Frosty was  
25 Marquis Jones or he has an alias of Jerome Hurt.

1 Q Did you develop, as part of your investigation did  
2 you develop where he was living and who he was living  
3 with?

4 A Yes, I did.

5 Q First of all, where was he living?

6 A Through our investigation he lived on South  
7 Collins, Apartment 1. Point in the last part of the  
8 investigation he lived in the South 600 block of  
9 Progress. There he lived with Randy Dell Powell or  
10 Danger and another, Randy Powell's girlfriend, Tiffany  
11 Herboldt.

12 Q How did you, at some point in your investigation  
13 did you develop any more leads on Mr. Jones as a suspect  
14 in this case?

15 A It was in the early part of April. I had contacts  
16 with Detective Hollenbeck, Spokane Police Department,  
17 who basically had another suspect in another murder case  
18 who revealed that he had been present during the  
19 shooting of Michael Guilbeault. At that time I  
20 interviewed Joshua Campbell, which led us to the  
21 identity of the people at the Guilbeault residence.

22 Q And in your discussion with Mr. Campbell, did you  
23 use a photo montage to identify the defendant?

24 A Yes, I did.

25 MR. CIPOLLA: May I approach the witness, Your

1 Q And he understood English when you spoke to him?

2 A Yes, he did.

3 Q Was anything other than that warning read to Mr.  
4 Campbell before he made his selection?

5 A No.

6 Q Okay. Who was present during that process?

7 A I believe Officer Saunders. I can't remember  
8 Officer Saunders. I have to check my report to see who  
9 was there.

10 Q That's fine. So there were other people present,  
11 other than yourself?

12 A Yes.

13 Q Mr. Campbell select a photograph from the montage?

14 A Yes, he did.

15 Q Did he indicate his selection he made, that person  
16 was involved in the crime?

17 A Yes, he did.

18 Q The crime you were discussing on that day?

19 A Yes.

20 Q And did he indicate how that person was involved?

21 A He was the person that, he basically knew him as  
22 Frosty, had met him through James Smith, and that they  
23 knew what they said through street languages, like  
24 robbery and that this person, Danger or Randy Powell,  
25 they met and then went to the Guilbeault home where this

1 robbery and shooting occurred.

2 Q Which photograph number did he select?

3 A He selected number 3, which is a photo of Marquis  
4 Jones.

5 Q Is that individual in the courtroom now?

6 A Yes, he is.

7 Q Who would that be?

8 A It's the man sitting next to Mr. Cossey.

9 MR. CIPOLLA: I move for admission of the montage  
10 at this time.

11 MR. COSSEY: No objections.

12 THE COURT: Exhibit 7 is admitted.

13 (Exhibit No. 7 admitted)

14 Q (By Mr. Cipolla) In your discussion with Mr.  
15 Campbell, did you have to use photo montages to identify  
16 the other parties involved?

17 A Yes, I did.

18 Q Was he able to identify the other individuals  
19 involved in this crime?

20 A Yes. He identified each party that we have  
21 arrested in this case.

22 Q Okay. And they have all admitted their complicity  
23 in this matter?

24 A Yes, they have.

25 Q Did you know --

1 MR. CIPOLLA: No further questions, Your Honor.

2 THE COURT: Mr. Cossey?

3 MR. CIPOLLA: I reserve the right to recall this  
4 witness, Your Honor.

5 THE COURT: Okay. Mr. Cossey?

6 MR. COSSEY: Thank you, Your Honor.

7

8 CROSS EXAMINATION

9 BY MR. COSSEY:

10 Q Detective, you and I have known each other for a  
11 period of time from other cases?

12 A Yes.

13 Q If I ask you a question that's confusing like I did  
14 sometimes, just ask me to rephrase it, okay? Now, the  
15 Glock, through your investigation you were able to  
16 determine the Glock was handled by Randy Powell,  
17 correct?

18 A Yes.

19 Q In fact, was there any other indications at all in  
20 the residence, other than from the Glock?

21 A Yes, there was. No, no, I'm sorry. Not in the  
22 residence.

23 Q So within the residence the only indications were  
24 from the Glock, correct?

25 A Yes.

1 Q And you knew that Randy Powell, from your  
2 investigation from events, was the individual that had  
3 the Glock, correct?

4 A As far as I know, yes.

5 Q Nothing changed to change your opinion on that?

6 A No.

7 Q Now, you did a search for people, for others, for  
8 Danger, for Frosty and --

9 A Yes.

10 Q And Frosty. Do you know of an individual named  
11 Chauncey that could be gang related? Have you ever  
12 heard that name?

13 A Yes. That's Chauncey Boyce, I believe is his last  
14 name, and he's Randy Powell's cousin.

15 Q And when you met with Mr. Campbell and did, your  
16 interview was in April?

17 A Yes.

18 Q And that was approximately three and a half to four  
19 months after the incident in the residence on Nixon,  
20 correct?

21 A Correct.

22 Q So there was a time lag between the incident on  
23 Nixon and when you interviewed Josh Campbell, agreed?

24 A And during that period of time you were in contact  
25 with Mr. Powell on other matters, or the police force

1 (The following proceedings were held in open  
2 court)

3 THE COURT: At this time we'll recess until one  
4 o'clock.

5 (Noon recess called October 30, 2000)

6  
7 AFTERNOON SESSION

8 October 30, 2000

9 MR. CIPOLLA: Your Honor, the State would call  
10 Michele Cozzetto at this time.

11 MICHELE COZZETTO, called as a witness on  
12 behalf of the Plaintiff  
13 herein, having been first  
14 duly sworn, was examined and  
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. CIPOLLA:

18 Q Ms. Cozzetto, please state your full name and spell  
19 your last name.

20 A Michele Lynn Cozzetto, C-O-Z-Z-E-T-T-O.

21 Q What is your date of birth?

22 A 1/22/82.

23 Q And are you familiar with an individual by the name  
24 of Tiffany Herboldt?

25 A Yeah.

Q Okay. Did Ms. Herboldt approach you sometime this

1 summer about disposing of a gun?

2 A Yes.

3 Q Okay. Can you please tell the Court what exactly  
4 happened?

5 A Um, Randy had called her from jail and was talking  
6 to her, and when she got off of the phone she told me  
7 that we had to get rid of the gun, and that's about it.

8 Q Okay. What, where was the gun located?

9 A At, I can't remember the girl's name, Robbie, I  
10 think Robbie's house.

11 Q Did you go to someone else's home?

12 A Yeah. Wasn't in the house.

13 Q Can you describe the gun?

14 A It was black, pure black. It was, um, might have  
15 been unloaded, I think.

16 Q You went over to this other person's house,  
17 retrieved the gun? Whose car were you driving?

18 A Um, pretty sure we were driving the white car that  
19 we had drove to California.

20 Q Okay. And once you picked up the gun where did you  
21 go?

22 A To Coeur d'Alene.

23 Q What happened at Coeur d'Alene? You went to the  
24 Coeur d'Alene, or the City of Coeur d'Alene?

25 A To the Coeur d'Alene Lake, well, in the City of

1 Coeur d'Alene.

2 Q About what time of day was it when you went there?

3 A Um, maybe two, one.

4 Q Morning or afternoon?

5 A Afternoon.

6 Q What did you do when you arrived at Coeur d'Alene?

7 A Went to the Coeur d'Alene Lake and wiped off the

8 gun and threw it in the lake.

9 Q Okay. And did you wrap the gun up in any way?

10 A In a paper, well, not paper but plastic sack.

11 Q Where exactly did you throw it?

12 A Off one of the docks that went off into the water.

13 Q Now, you stated you knew Tiffany Herboldt. Is she

14 a good friend of yours?

15 A Yeah.

16 Q How long have you known Tiffany?

17 A About eight years now, nine years.

18 Q You know Randy Powell. Is that correct?

19 A Yeah.

20 Q How did you know Randy Powell?

21 A I met him at the bus plaza.

22 Q And did you know him by any other name?

23 A Danger.

24 Q Okay. Do you know Marquis Jones?

25 A Yeah.

1 A Yeah, from what I know.

2 Q Thank you. No further questions.

3 THE COURT: Mr. Cipolla?

4

5 REDIRECT EXAMINATION

6 BY MR. CIPOLLA:

7 Q Just a couple more questions and I will let you go.  
8 Were Randy, Danger and Frosty fairly close? Were they  
9 good friends?

10 A Yeah.

11 Q Did they do a lot of things together?

12 A Yeah.

13 Q Did they do a lot of things after the homicide  
14 together? Did they hang out together a lot?

15 A Yeah.

16 Q They hung out a lot together before the homicide?

17 A Yeah.

18 Q Were they inseparable?

19 A No.

20 Q They did things on their own, also?

21 A Yeah.

22 Q What about Chauncey? Was Chauncey around a lot, if  
23 you remember, in January?

24 A I believe he left before that.

25 Q He left before January?

DIRECT EXAMINATION

BY MR. CIPOLLA:

Q Good afternoon, Ms. Mills.

A Hi.

Q For the record, please state your full name and spell your last name.

A Dayleen Michele Mills, M-I-L-L-S.

Q What is your date of birth?

A 9/14/72.

Q Where do you live?

A East 10813 Augusta.

Q Is that Spokane, Washington?

A Yeah. It's in the Valley.

Q Do you remember the date of January 23rd, 2000?

A Yes.

Q Can you please tell the Court what you were doing that afternoon?

A I was just at home with my kids.

Q Okay. Did anyone come over that afternoon?

A Yes.

Q Okay. About what time did people come over?

A Approximately four o'clock.

Q Okay. Who came over to your house?

A Randy. There was a couple people that I didn't know, Tiffany and Frosty.

1 Q Is the person you know as Frosty in the courtroom  
2 right now?

3 A Yes.

4 Q Who's that individual?

5 A Right over there (indicating).

6 Q Can you please describe him a little better,  
7 please, than right over there?

8 A He's sitting over there in the blue (indicating).

9 Q Okay. Now they came over about four o'clock, is  
10 that right?

11 A Approximately four.

12 Q And do you remember what they were wearing when  
13 they came over?

14 A No.

15 Q About how many people came over? You said there  
16 were a couple people you didn't know.

17 A I think there were five altogether.

18 Q Okay. There was Randy?

19 A Randy, Frosty, Tiffany, there were five because  
20 there were a couple people I didn't know.

21 Q Both of those, can you describe those individuals?

22 A One was a light-skinned black, Joe, and the other  
23 one was kind of a short, stocky kind of Mexican looking.

24 Q Okay. And they came over to your house. About how  
25 long did they stay?

1 A Tiffany Herboltd, H-E-R-B-O-L-D-T.  
2 Q What is your date of birth?  
3 A 7/20/81.  
4 Q And what is your address?  
5 A 814 South Progress Road.  
6 Q Okay. Do you remember the date of January 23rd,  
7 2000?  
8 A Um hm.  
9 Q Can you please tell the Court who you were with on  
10 that day, and the afternoon of that date?  
11 A Marquis Jones, Randy Powell, um, I don't know the  
12 other two last names.  
13 Q Can you please describe the two other individuals?  
14 A A short Mexican and, um, a younger dark-skinned  
15 guy.  
16 Q Okay. And about what time were you with them?  
17 A Um, around one.  
18 Q Okay. And is that in the afternoon?  
19 A Yeah.  
20 Q Okay. And where did you go?  
21 A They came to my house.  
22 Q The Progress address?  
23 A Um hm.  
24 Q How do you know Randy Powell?  
25 A He's my boyfriend.

1 Q And about how long had you known him prior to  
2 January 23rd?  
3 A Since July, '99.  
4 Q Okay. Is he pretty close?  
5 A Um hm.  
6 Q How do you know Marquis Jones?  
7 A He was our roommate.  
8 Q How long was he your roommate?  
9 A Since around December or January.  
10 Q Okay. Is the person you know as Marquis Jones, is  
11 that person now in the courtroom?  
12 A Yeah.  
13 Q Can you please describe that individual?  
14 A Tall, light-skinned, long hair.  
15 Q Where is he seated?  
16 A Over there (indicating).  
17 Q Which position, please?  
18 A The third person at the right.  
19 Q Okay. Thank you. Now, what was your boyfriend,  
20 Mr. Powell's, relationship to Mr. Jones?  
21 A Um, they were friends.  
22 Q Okay. Good friends?  
23 A Um, they were pretty close.  
24 Q When you first moved in they were pretty good  
25 friends?

1 A Yeah.

2 Q Let's get back to the date of January 23rd. That  
3 afternoon Mr. Jones and Mr. Powell and these two other  
4 individuals came to your house. Is that correct?

5 A Um hm.

6 Q Are you sure of the time?

7 A No.

8 Q You tell us what happened when they arrived at your  
9 home?

10 A Um, they came in. I was watching TV, and they went  
11 into the room, came out, and they said they were going  
12 to get some weed and asked me if I wanted to go, and so  
13 I went along with them.

14 Q Did they tell you where they were going?

15 A Just to get some weed. They didn't tell me exactly  
16 where.

17 Q And so did you go with them?

18 A Um hm.

19 Q And how did you, did you walk, drive?

20 A Yeah. They drove a white Sunbird, I think it is.

21 Q Okay. And who was in the car?

22 A Me, Randy, Marquis and the two other guys.

23 Q Where was everybody located in the car?

24 A Randy was driving, I was in the passenger seat, and  
25 I think it was Frosty and then the Mexican and then the

1 other guy.

2 Q Did anything unusual happen in the car as you were  
3 driving over?

4 A Not really.

5 Q Okay. Did you observe anything happening?

6 A Um, not really.

7 Q Did you see any masks?

8 A No.

9 Q Any guns?

10 A No.

11 Q Okay. Where did you go to?

12 A We stopped at Pak 'n' Save, and then Frosty gave  
13 Randy directions to the house on Nixon.

14 Q Okay. You say you stopped at Pak 'n' Save. About  
15 how far is the house on Nixon from your house? Do you  
16 know?

17 A I'm not sure.

18 Q About how long did it take you to get there?

19 A Around 10 or 15 minutes.

20 Q Okay. You got to the house, is that correct?

21 A Um hm.

22 Q Can you describe the house?

23 A Um, no.

24 Q What happened when you arrived at the house?

25 A He parked about a block from the house.

1 Q Who's he?

2 A Randy parked about a block from the house, and we  
3 got out, and he, Frosty, said, asked me to go knock on  
4 the door of the house. He pointed across to the house,  
5 and he said that, to ask for Joe or a name. I don't  
6 remember the name. And so, uh, the two other guys were  
7 in the back of the car. They were getting out this blue  
8 icebox thing.

9 Q Where were they getting the blue icebox from?

10 A I think it was from under the seat, by the seat or  
11 something. And Frosty was putting a black, like long  
12 thing over his face, and they said for me to go knock on  
13 the door. And I was kind of hesitant, and I just, you  
14 know, I said, just go knock on the door and ask for the  
15 guy?

16 Q Stop for a second. They got a blue cooler. Who  
17 specifically got the blue cooler out?

18 A Josh, I think, the Mexican.

19 Q And what did they do with the cooler?

20 A I don't know. I started walking toward the house,  
21 but they were getting something from the back. I  
22 started walking toward the house.

23 Q Okay. Did you, so you walked to the house by  
24 yourself?

25 A Um hm.

1 Q Who's he?

2 A Randy parked about a block from the house, and we  
3 got out, and he, Frosty, said, asked me to go knock on  
4 the door of the house. He pointed across to the house,  
5 and he said that, to ask for Joe or a name. I don't  
6 remember the name. And so, uh, the two other guys were  
7 in the back of the car. They were getting out this blue  
8 icebox thing.

9 Q Where were they getting the blue icebox from?

10 A I think it was from under the seat, by the seat or  
11 something. And Frosty was putting a black, like long  
12 thing over his face, and they said for me to go knock on  
13 the door. And I was kind of hesitant, and I just, you  
14 know, I said, just go knock on the door and ask for the  
15 guy?

16 Q Stop for a second. They got a blue cooler. Who  
17 specifically got the blue cooler out?

18 A Josh, I think, the Mexican.

19 Q And what did they do with the cooler?

20 A I don't know. I started walking toward the house,  
21 but they were getting something from the back. I  
22 started walking toward the house.

23 Q Okay. Did you, so you walked to the house by  
24 yourself?

25 A Um hm.

1 Q And what were the other individuals doing?

2 A Randy was lifting up the hood of the car and --

3 Q What happened next?

4 A I went and knocked on the door and he said, who's  
5 there? And I said, is Joe there? And he didn't hear  
6 me. And so he asked again, and then the door came open  
7 a crack, and then the other guys, Randy and Marquis were  
8 right behind me, and they pushed their way through the  
9 door. I heard somebody say, --

10 Q Slow down. Did they walk to the door with you?

11 A No.

12 Q They walked up behind you?

13 A Yeah.

14 Q Tell the Court what happened next.

15 A I just saw a guy open the door, and he was kind of  
16 peeking out, and I turned around. They were right  
17 behind me, and I heard one of them say, Tiffany, go back  
18 to the car. And I saw them burst their way inside the  
19 house.

20 Q Did they have anything in their hand?

21 A No, I didn't see anything. I just saw masks on  
22 their face.

23 Q Both of them had masks?

24 A I think so. I'm not sure. I just remember the  
25 black nylon.

1 Q You saw nothing in their hand?

2 A No.

3 Q Where was the other two?

4 A Um, they were coming from the other side, and they  
5 were going around the other side of the house. The door  
6 slammed shut. I saw them after they barged through, and  
7 the door slammed shut. I started walking back to the  
8 car.

9 Q So all four of them went in eventually?

10 A Um hm.

11 Q Did you hear anything?

12 A I went back to the car, and the car was on, and I  
13 heard one shot, and then about ten seconds later I heard  
14 three or four more.

15 Q What happened next?

16 A Um, I was standing there, and I was looking around  
17 to see if, you know, anyone would, you know, if any of  
18 the neighbors heard it, and Randy came out first. Randy  
19 came out running to the car first and the rest of them  
20 behind him. He shut the hood of the car and turned off  
21 the hazard light and they got in the back.

22 Q Did you notice anything? Were they carrying  
23 anything at that time?

24 A Um, yeah. They had, Frosty and the other two guys  
25 were, they had guns, and they were putting them back in

1 the cooler, and Randy just took off driving. I didn't  
2 see him with a gun at the time.

3 Q Did he have a gun?

4 A I don't know.

5 Q Did he carry a gun?

6 A Sometimes.

7 Q So you don't know if he had one, but it's possible  
8 that he did?

9 A Um hm.

10 Q Okay. Where did you drive to?

11 A We drove east for about a mile to this other lady's  
12 house.

13 Q Who's the other lady's house?

14 A Dayleen.

15 Q Okay. Had you been there before?

16 A Yes.

17 Q Okay. About how far was that? Do you remember how  
18 long it took you to get there?

19 A Um, five to ten minutes.

20 Q What happened when you arrived at Dayleen's house?

21 A Um, we parked down the street from her house, and I  
22 just got out of the car and started walking towards her  
23 house.

24 Q Okay.

25 A And Frosty took out the cooler and was passing the

1 A Marquis Jones.

2 Q Did you know Mr. Jones prior to this date?

3 A No.

4 Q Have you seen him since?

5 A Nope.

6 Q Okay. And did you know him as Marquis Jones?

7 A Nope?

8 A What did you know him as?

9 A Frosty, I think.

10 Q Who else was there?

11 A I don't know the other guy's name. Danger.

12 Q Can you describe him?

13 A Medium build; black guy. He had a ring in the

14 middle of his lip.

15 Q You met up with Marquis Jones and Danger later.

16 Where did you meet up?

17 A A motel. I am not really too good with Spokane, so

18 I don't know where it is.

19 Q Let's talk about that. Where are you from?

20 A California.

21 Q Did you know Mr. Powell in California?

22 A No.

23 Q Did you know Mr. Jones in California?

24 A No.

25 Q How long have you been in Spokane before this

1       happen and where it was and stuff like that.

2       Q    When you say they, what were they saying and who

3       was they?

4       A    Danger and Frosty, and they were talking about how

5       they were going to get in the house.

6       Q    What house?

7       A    The house on Nixon, I guess.

8       Q    And so he planned a robbery of whatever house you

9       were at in the Valley?

10      A    Yeah.

11      Q    What happened next?  What did you do after you

12      planned the robbery?

13      A    We left and went to the house.

14      Q    Who was with you?

15      A    Some girl, Powell and Danger and Frosty.

16      Q    Okay.  What car did you take?

17      A    Ummm, we took a little white car.  It was one of

18      theirs.  I don't know whose.

19      Q    You remember what time it was, approximately?

20      A    Ummm, in the afternoon sometime.

21      Q    Okay.  But you don't remember specifically?

22      A    No.

23      Q    Okay.  So you went, five of you went in this car

24      over to the address to this robbery, is that correct?

25      A    Yes.

1 Q Were any of you carrying guns?  
2 A Yeah.  
3 Q Who was carrying guns?  
4 A Everyone except the girl.  
5 Q Okay. What happened when you arrived at the Nixon  
6 address, the address where you did the robbery?  
7 A They put up the hood to make it look like the car  
8 broke down.  
9 Q Okay.  
10 A And got -- The girl went to the house and knocked  
11 first, and when they opened the door they pushed their  
12 way in.  
13 Q Who's they?  
14 A Danger and Frosty.  
15 Q And they were armed?  
16 A Yeah.  
17 Q Was anybody wearing masks or disguises of any kind?  
18 A Frosty had like a bandanna on his face, I believe.  
19 Q What happened after they forced their way in?  
20 A Then the door kept closing on me and James before  
21 we could get in. I don't know his name, the white guy.  
22 Q What happened to the girl?  
23 A She went in with them.  
24 Q She went in the house with them?  
25 A I think she was the second one in.

1 Q Did she stay in the house?

2 A Not that I remember. I don't know what happened to  
3 her as soon as we got in the house. There was a dog or  
4 two running around. It was pretty, a lot of commotion  
5 around.

6 Q So you're not sure the girl wasn't in the house  
7 when you actually did the robbery?

8 A When I left, I saw her in the front. She was  
9 walking off.

10 Q How did you get into the house?

11 A James started kicking at the door, and finally one  
12 of them opened it and let us in.

13 Q Did you hear anything when they entered the house?

14 A As soon as they entered there was a gun shot.

15 Q Okay. When you got in the living room of that  
16 house, what happened? What did you observe? What did  
17 you observe when you and James got in?

18 A There was three people on the ground: One near the  
19 door, one near a couch and another one on the other side  
20 of the couch.

21 Q Can you kind of point? You remember the diagram?

22 A A person there (indicating), a couch there  
23 (indicating), a person there (indicating) and one over  
24 there (indicating).

25 Q Someone over by the kitchen. What did you do once

1 you entered into there?

2 A Went at the middle of the living room.

3 Q And did you say anything?

4 A No.

5 Q Did anybody else say anything?

6 A ~~T~~hey were asking where the weed was.

7 Q Okay. And you were just in the middle of the

8 living room. Were you doing anything in particular?

9 A Just standing there.

10 Q You had a gun?

11 A Yes.

12 Q What happened next?

13 A Ummm, nothing much. They just, they were running

14 around yelling. I guess Frosty walked in the kitchen at

15 one point. When he came back we just got ready and

16 left. Danger got ready and left, and that's when it

17 happened.

18 Q What do you mean, Danger left?

19 A Jim went up to the guy that Danger was talking to

20 and started messing with his pants.

21 Q What was he doing?

22 A Like he was trying to go through his pocket.

23 Q Were anybody else's pants gone through?

24 A No. Just the man at the door.

25 Q And so James was searching the pockets. Then what

1 happened?

2 A Then James shot the guy, and everyone started to  
3 leave.

4 Q What do you mean, shot the guy?

5 A Just shot him.

6 Q How many times?

7 A Three. That's what I remember.

8 Q Okay. Could it have been more?

9 A Yeah.

10 Q Were the shots quick?

11 A Yeah.

12 Q Once he shot the guy, what happened?

13 A Then he walked out the door.

14 Q And what did you do?

15 A I walked out the door, too, but I was last. I was  
16 in the kitchen.

17 Q So you're holding the guy by the kitchen?

18 A I was standing.

19 Q What happened once you guys got outside? What  
20 happened?

21 A One was in front of me. We just got in the car and  
22 left.

23 Q Where did you go?

24 A Some lady's house.

25 Q How long did it take you to get to this lady's

1 house?

2 A Fifteen minutes, ten minutes. I am not sure.

3 Q Not very long?

4 A No.

5 Q And where did you park the car that you were in?

6 A Around the point from the lady's house.

7 Q Let's back up a little bit. Were you all carrying

8 guns at the same time before you got to the house?

9 A they were in the car in the Styrofoam chest, I

10 think.

11 Q How did you get access to them?

12 A The back seat.

13 Q The back seat folded down so you could reach them?

14 A Yeah.

15 Q Everybody got a gun?

16 A Yes.

17 Q When you went over to the girl's house, did you put

18 the guns back in the cooler?

19 A No.

20 Q What happened when you got to this girl's house?

21 A Bought some weed and then left. She gave us a ride

22 back to this house.

23 Q So what did you do when you got to Danger's house?

24 A They went and changed clothes, and they got the

25 weed and left.

1 A No.

2 Q No question in your mind that she entered the home?

3 A Like I said, I am not sure. I lose track of where  
4 she was.

5 Q But you're sure she went in, but you don't know  
6 when they came out?

7 A Yeah.

8 Q Okay. Now, do you remember at the car, what the  
9 young lady was supposed to do when she came to the door?

10 A Just get them to open the door.

11 Q Do you know how that was supposed to occur?

12 A She was supposed to say she was going to buy some  
13 weed.

14 Q She would knock on the door and say, I want to buy  
15 some weed?

16 A I guess so.

17 Q When she was knocking on the door, how far was the  
18 young lady when she was knocking on the door?

19 A About five feet.

20 Q You were watching everything that was occurring,  
21 correct?

22 A Yeah.

23 Q Did she call out the name to get him to open the  
24 door?

25 A I can't remember.

1 Q Were you aware that the person, Marquis Jones, who  
2 you think was there, if the people in the house knew Mr.  
3 Jones?

4 A Afterward I believe they -- The way they talked  
5 made it seem like they knew him, because he was worried  
6 they saw his face.

7 Q So he put on a half bandanna. What kind of object  
8 did he put over his face?

9 A I think it was a bandanna. I am not sure.

10 Q You remember what color it was?

11 A I think it was brown, but again, I am not sure.

12 Q Where did he put it on?

13 A Well, he was first messing with it at the house,  
14 and then we left. I don't remember if he put it on or  
15 if he left it off.

16 Q When he went to the door?

17 A Yeah.

18 Q So you can't remember when he entered the house if  
19 he had the bandanna on or not, correct?

20 A Yeah.

21 Q So he may have had it off when he entered the  
22 house?

23 A Yeah. Or he could have had it on.

24 Q Could have had it on. You don't remember him  
25 entering the house with it on? All you remember is

1 in your opinion, and Danger; correct?

2 A Um, a couple people. He was talking about weed,  
3 and a couple other people were asking. Danger was  
4 asking about weed.

5 Q Okay. And the people on the floor?

6 A And the people on the floor commented a couple  
7 times they didn't have no weed.

8 Q But they didn't carry on a long discussion, agreed?

9 A No.

10 Q Now, I asked you, I just want to make sure I  
11 understand it -- You believe that the person you're  
12 referring to as Frosty had talked about wearing a  
13 bandanna because the people knew him. Were you aware of  
14 that or not?

15 A I remember it starting. He was messing with a  
16 bandanna at whose ever house we were at at first.

17 Q Um hm.

18 A I saw him try it on then.

19 Q Did he tell you why he was intending to wear a  
20 bandanna around his face?

21 A No. But then as we left afterwards and we were  
22 talking, he was worried they might see him. He might  
23 not have wore the bandanna.

24 Q But if those people knew him, wouldn't it make  
25 better sense to wear the bandanna so they wouldn't

1 identify him?

2 A Yeah. When we was talking about it afterward, he  
3 was afraid they might identify him. Like I say, I am  
4 not sure whether he wore it or not.

5 Q Okay. Now, Mr. Cipolla asked you questions about  
6 time frame and everything. I know you didn't keep close  
7 tabs, but approximately when did you arrive at the  
8 house? No idea?

9 A No idea. Afternoon. Sun was shining.

10 Q You couldn't give us any idea when you went to the,  
11 Dayleen's house, the lady you, who you went to when you  
12 went home? You don't have any time frame on that,  
13 correct?

14 A It was sometime around noon.

15 Q How long were you in the home?

16 A A minute or two.

17 Q And the girl was back in the car by the time you  
18 all got back in the car to drive away from the  
19 residence?

20 A When I left the house she was the one in front of  
21 Danger, then Frosty and me.

22 Q Did you ever meet an individual by the name of  
23 Chauncey, Randy Powell's cousin?

24 A No.

25 Q How well did you know Randy Powell? Never met him?

# ATTACHMENT D

RONALD R. CARPENTER  
SUPREME COURT CLERK

# THE SUPREME COURT

STATE OF WASHINGTON



SUSAN L. CARLSON  
DEPUTY CLERK / CHIEF STAFF ATTORNEY

TEMPLE OF JUSTICE

P.O. BOX 40929  
OLYMPIA, WA 98504-0929

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e-mail: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)  
[www.courts.wa.gov](http://www.courts.wa.gov)

September 7, 2011

## LETTER SENT BY E-MAIL ONLY

Sheryl Gordon McCloud  
Law Offices of Sheryl Gordon McCloud  
710 Cherry Street  
Seattle, WA 98104-1925

Hon. Steven J. Tucker  
Andrew J. Metts, III  
Spokane County Prosecutor's Office  
1100 West Mallon Avenue  
Spokane, WA 99260

Re: Supreme Court No. 85108-5 - Personal Restraint Petition of Marquis Jones

Counsel:

Enclosed is a copy of the Order entered following consideration of the above matter on the Court's September 6, 2011, Motion Calendar.

The Petitioner's "MOTION TO PERMIT AMENDMENT OF PERSONAL RESTRAINT PETITION", "AMENDED PERSONAL RESTRAINT PETITION" and "SUPPLEMENTAL BRIEF RE: AMENDMENT OF PERSONAL RESTRAINT PETITION" were received by e-mail at 1:37 p.m. on September 6, 2011. Because the Department Two conference had already begun, the motion was received too late for consideration by the Department. In light of the Department's determination on the personal restraint petition, no action will be taken on the motion to permit amendment of personal restraint petition.

Sincerely,

A handwritten signature in cursive script that reads "Susan L. Carlson".

Susan L. Carlson  
Supreme Court Deputy Clerk

SLC:alb

Enclosure as referenced



# THE SUPREME COURT OF WASHINGTON

In re the Personal Restraint Petition of  
MARQUIS JONES,  
Petitioner.

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NO. 85108-5  
**ORDER**

Department II of the Court, composed of Chief Justice Madsen and Justices Alexander, Owens, J.M. Johnson and Wiggins, considered the Petitioner's personal restraint petition at its September 6, 2011, Motion Calendar. Based on Mr. Jones's argument and the State's concession, the department unanimously agreed that Mr. Jones's convictions for first degree burglary and attempted first degree robbery as predicates to his conviction for first degree felony murder violate double jeopardy principles. The department unanimously rejected Mr. Jones's challenge to his firearm enhancements. Accordingly,

**IT IS HEREBY ORDERED:**

That the personal restraint petition is granted in part and the matter is remanded to the Spokane County Superior Court with directions to vacate the first degree burglary and attempted first degree robbery convictions and resentence Mr. Jones accordingly.

DATED at Olympia, Washington this 7<sup>th</sup> day of September, 2011.

For the Court

Madsen, C. J.  
CHIEF JUSTICE

FILED  
SUPREME COURT  
WASHINGTON  
2011 SEP - 7 P 1:47  
BY RONALD R. CARPENTER  
CLERK

E/M

# ATTACHMENT E

I certify that this document is a true and correct copy of the original on file and of record in my office

ATTEST

OCT 1 2012

THOMAS R. FALLQUIST, COUNTY CLERK  
COUNTY OF SPOKANE, STATE OF WASHINGTON

BY Mary Cato DEPUTY

**FILED**

**FEB 27 2012**

**THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK**

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

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 00-1-00934-9
	)	
vs.	)	
	)	
MARQUIS JONES,	)	
	)	
Defendant.	)	AFFIDAVIT OF G. MARK CIPOLLA

I, G. Mark Cipolla state: That I am a Deputy Prosecuting Attorney for Spokane County, Washington and as such in charge of the above entitled matters:

1. That prior to the motion to amend there were lengthy discussions with defense counsel regarding the motion to amend, the amended information and potential plea deals.
2. That during the free talk, the defendant, defense counsel and the State discussed potential sentencing if the defendant went to trial.
3. The State, at the time of the motion to amend before Judge Tari Eitzen, as is required, served a copy of the

motion on the defendant and his counsel in court. That hearing was held on August 31, 2000.

4. That the court reviews the amended information with the defendant as a matter of course at the motion hearings. There are no facts to the contrary here.

5. That witness interviews were done and defense counsel approached the State about a plea offer based upon the amended information and no testimony.

6. That it is my belief that Judge Schroeder prior to trial reviewed the amended information, as is customary, with the parties, with the defendant present, to see if they are prepared for trial. The parties announced ready at trial. The trial occurred on October 30, 2000.

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

Dated this 27th day of February, 2012 in Spokane, Washington.

  
\_\_\_\_\_  
G. Mark Cipolla,  
Deputy Prosecuting Attorney  
WSB # 22202

I certify that this document is a true and correct copy of the original on file and of record in my office.

(Clerk's Date Stamp)

**FILED**

**OCT 31 2000**

THOMAS R. FALLOQUIST  
SPOKANE COUNTY CLERK



**SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE**

THOMAS R. FALLOQUIST COUNTY CLERK  
COUNTY OF SPOKANE STATE OF WASHINGTON  
BY Mary Cato DEPUTY

STATE OF WASHINGTON

vs.

Jones, Marguis

Plaintiff,

Defendant(s)

CASE NO. 00-1-0084-9

WAIVER OF JURY TRIAL

I understand that under the Constitutions of the United States and of the State of Washington, the statutes of the State of Washington, and criminal rules for Superior Court, I am entitled to a trial by jury of my peers who would determine my guilt or innocence. I do hereby voluntarily and with knowledge of the above rights waive my right to a jury trial and consent to the trial of this case by the court.

DATED October 19, 19 2000

Marguis Jones  
Defendant

APPROVED:

[Signature]  
Deputy Prosecuting Attorney

[Signature]  
Lawyer for Defendant

I have questioned the defendant and find that he intelligently and knowingly waived his right to a jury trial and was competent to do so. I consent to hear this case without a jury.

[Signature]  
Judge **RICHARD J. SCHROEDER**