

NO. 44808-4-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

EDDIE LEE TRICE, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Ronald Culpepper

No. 06-1-02168-3

BRIEF OF RESPONDENT

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Prosecuting Attorney

By
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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether appellant's 1995 Florida sexual battery conviction is substantially similar to a comparable Washington state offense such that it should be included in his offender score?

2. Whether appellant's 1987 Arkansas aggravated robbery conviction is substantially similar to a comparable Washington state offense such that it should be included in his offender score?

B. STATEMENT OF THE CASE.

1. Procedure

On April 17, 2008 Eddie Lee Trice was convicted by jury of three counts of child rape in the first degree, one count of child molestation in the first degree, and one count of burglary in the first degree in Pierce County Superior Court cause 06-1-02168-3. All offenses involved one child and acts done on May 8, 2006. Appellant was sentenced on July 1, 2008 as a persistent offender under the Two Strikes law. Appellant appealed his conviction and sentence. The Court of Appeals issued an unpublished opinion in 37930-9 finding that the other sex offense conviction could not be counted in Washington as a comparable offense

because there was insufficient admissible factual information available. The convictions were affirmed, but the case remanded for resentencing.

After the case returned to the trial court, several sentencing dates were set. Argument and discussion were heard on both March 15, 2013 and April 5, 2013. The trial judge had since left the bench, so a judge other than the one who oversaw the trial was assigned the sentencing. Sentencing occurred and was finalized on April 5, 2013. Defendant timely appealed his sentence.

2. Facts

Eddie Lee Trice came to Washington State with several felony convictions from various states. The appellant stipulated that he had the following convictions:

- (1) Aggravated Robbery, 1987, Arkansas
- (2) Theft of Property, 1987, Arkansas
- (3) Sexual Assault & Battery, 1996, Florida
- (4) Residential Burglary, 1996, Florida

(CP 115-117, *Handwritten stipulation*).

The appellant essentially contested all prior convictions arguing they were not comparable to Washington offenses. The Court of Appeals addressed the Florida sexual offense and the State conceded that the statute was not comparable. The Court also found that a factual analysis could not be done because the offender entered a 'nolo contendere' plea.

No additional facts were apparently stipulated to or admitted, therefore the sentencing court was unable to look to additional documentation to determine comparability. The same argument held true for the corresponding burglary that accompanied the sexual assault.

The Court of Appeals did not address the aggravated robbery conviction from Arkansas because appellant's argument was not properly supported by authority at the time of the appeal. It is the focus of appellant's briefing this time.

The parties agreed that the child sex convictions constituted same criminal conduct, and were counted accordingly. The trial court ultimately found the appellant had an offender score of five. (CP 100-114, *Judgment and Sentence, 06-1-02168-3*). He reached that number by including two points for the other current offense, two points for the aggravated robbery, and a single point for the sexual battery. RP 50. The State concedes the sexual battery conviction cannot be counted in any fashion. The State however believes the aggravated robbery and the other current offense are proper and should be affirmed, giving appellant a score of four.

C. ARGUMENT.

1. THERE IS NO A WASHINGTON OFFENSE SUBSTANTIALLY SIMILAR TO APPELLANT'S 1995 FLORIDA CONVICTION FOR SEXUAL BATTERY, AND UNDER CURRENT LAW THERE IS NO PROVISION TO ALLOW IT BE INCLUDED IN HIS OFFENDER SCORE.

In appellant's prior appeal, No. 37930-9, the Court accepted the State's concession that the Florida statute was neither legally nor factually comparable to the Washington statutes. (*No. 37930-9*, p. 24).

The trial court counted the conviction as a class C felony and gave the conviction one point. RP 41-42, 57. Though RCW 9.94A.525 was not specifically discussed by the trial court or parties, it is clear that appellant's Florida conviction is a "state" conviction, not a federal conviction. The statute clearly speaks only to crimes that are exclusively federal. Therefore, appellant's sexual battery conviction should not be included in the calculation of his offender score.

2. WASHINGTON'S CRIME OF ROBBERY IN THE FIRST DEGREE IS SUBSTANTIALLY SIMILAR TO APPELLANT'S 1987 ARKANSAS ROBBERY CONVICTION AND THEREFORE IS COMPARABLE AND PROPERLY INCLUDED IN HIS OFFENDER SCORE.
 - a. Appellant's Arkansas robbery conviction is legally comparable to Washington's crime of robbery in the first degree.

Sentencing courts may employ a two part test to determine the comparability of a foreign offense. *State v. Thieffault*, 160 Wn.2d 409, 415, 158 P.3d 580 (2007). A foreign conviction is equivalent to a Washington offense if there is either legal or factual comparability. *See also In re Pers. Restraint of Lavery*, 154 Wn.2d 249, 255-58, 111 P.3d 837 (2005).

If the elements of the two statutes are not identical or if the foreign statute is broader than the Washington definition of the particular crime, the trial court must then determine whether the offense is factually comparable. *State v. Morley*, 134 Wn.2d at 606, 952 P.2d 167 (1998).

A foreign offense is legally comparable “if the elements of the foreign offense are substantially similar to the elements of the Washington offense.” *Thieffault*, 160 Wn.2d at 415.

The State must prove the foreign conviction is comparable to a Washington crime by preponderance of the evidence. *State v. Ford*, 137

Wn.2d 472, 479-80, 973 P.2d 452 (1999). An out-of-state conviction may not be used to increase the defendant's offender score unless the State proves it is a felony in Washington. *State v. Weiland*, 66 Wn. App. 29, 831 P.2d 749 (1992).

The trial court must compare the elements of the foreign crime to determine if they are substantially similar to the elements of a Washington criminal statute in effect when the foreign crime was committed. *In re Lavery*, 154 Wn.2d at 255 (citing *State v. Morley*, 134 Wn.2d 588, 605–06, 952 P.2d 167 (1998)). If the elements of the foreign conviction are comparable to the elements of a Washington offense on their face, the foreign conviction counts toward the defendant's offender score. *In re Lavery*, 154 Wn.2d at 255.

In the present case, appellant's aggravated robbery charge is substantially similar to Washington's robbery in the first degree.

Arkansas defines robbery as follows:

A person commits robbery if, with the purpose of committing a felony or misdemeanor theft or resisting apprehension immediately after committing a felony or misdemeanor theft, the person employs or threatens to immediately employ physical force upon another person.

A.C.A §5-12-102. (App. A). Aggravated robbery is defined as:

(a) A person commits aggravated robbery if he or she commits robbery as defined in §5-12-102, and the person:

- (1) Is armed with a deadly weapon;
 - (2) Represents by word or conduct that he or she is armed with a deadly weapon; or
 - (3) Inflicts or attempts to inflict death or serious physical injury upon another person.
- (b) Aggravated robbery is a Class Y felony.

A.C.A. §5-12-103. (App. B).

The Washington crime of robbery in the first degree has the following elements:

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

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

[Remainder omitted.] . Washington Pattern Jury Instruction 37.02

(robbery in the first degree). (App. C). The 1987 charging document,

“*Felony Information*,” states:

The appellant committed aggravated robbery on January 5, 1987 when he "did unlawfully, feloniously, employ physical force upon Betty Griffin and Clarence Griffin, with the purpose of committing a theft, while armed with a deadly weapon, to-wit: a shotgun, against the peace and dignity of the State of Arkansas."

(App. D).

The State asserts that the robbery statutes of the two states are substantially similar and therefore appellant's conviction should be included. First, both statutes identify the same intent: intent to commit a theft. Second, both statutes contemplate the taking or theft to be accomplished by employing, or threatening to employ, the use of immediate physical force. Next, both include the offender was armed with a deadly weapon and in some fashion made that weapon known to the intended victim. For example, Arkansas uses the phrase, "represents by word or conduct that he or she is armed with a deadly weapon."

Washington reduces the requirement to “displayed what appeared to be a firearm or what appeared to be a firearm or other deadly weapon.” In short, the intended victim must be aware the offender is armed at the time of the robbery. Though not apparently applicable to the 1987 case, both

statutes include an alternative to the weapon requirement by substituting the infliction of injury. Arkansas requires serious physical injury or death and Washington, “bodily injury.” The statutes both seek to punish identical conduct: the intent to take the property of another by force or fear with a deadly weapon.

The two statutes do have a difference, i.e., Arkansas does not require the theft be successful. It appears one may be convicted in Arkansas of robbery even if no property is taken. Washington, on the other hand, requires there be a successful "taking," for the crime to be considered a *completed* robbery. However, Washington as an offense for the circumstances where no property is taken in a robbery: attempted robbery. With that charge a “substantial step” must be taken toward completing the intended crime, in this case robbery.

When reviewing the charging document it is apparent that appellant was successful in obtaining property. Count 2 states that he successfully committed the crime of theft when he stole the victim's shotgun. (App. D). Arkansas, however, charges the completed theft separately. The theft count is charged in the same document, has the same date of crime, and the same victims. It is clear it is the same occurrence. When viewing this document as a whole, and reading it logically, it is clear the appellant committed what would be considered in Washington

State to be robbery in the first degree. The analysis may conclude at this stage.

Should the Court find that further factual analysis is required, one need only look to the *Judgment and Commitment Order* to confirm the crimes are comparable. (App. E). It includes a statement that the defendant knowingly entered a guilty plea *and* “acknowledged factual bases for charges.” (App. E). The factual information is clear, the appellant took a shotgun from the Griffins, armed himself, and displayed a firearm. The statutes are substantially similar and the actions properly comparable.

Based on the comparability of the statutes, and the factual information proven, the appellant's 1987 Arkansas aggravated robbery conviction was properly included in his offender score.

- b. If the Court determines that appellant's 1987 Arkansas conviction is not sufficiently comparable to Washington's robbery in the first degree, the Court should still count it as attempted robbery in the first degree.

If the Court is not inclined to find the Arkansas aggravated robbery sufficiently comparable to Washington's robbery in the first degree, the State asserts that it should still be counted as the attempted crime. While Arkansas robbery definition does not require property be taken, it can be

compared to the attempted robbery statute in Washington. That offense is identical to the one stated earlier, except it would include the following:

(1) A person commits the crime of attempted robbery in the first degree when, with intent to commit that crime, he or she does any act that is a substantial step toward the commission of that crime.

Wash. Pattern Jury Instruction 100.01 (attempt) (App. F). If the Court elected not to view appellant's Arkansas charging documents and judgment and sentence order together for the purpose of assessing his criminal conduct, the Court should look at attempted robbery in the first degree. (App. G). The analysis remains the same as stated above, but with the addition of the concept of the uncompleted offense. If one can be convicted in Arkansas of intending to, and acting on that intent, to commit a robbery without taking any property, it would be comparable to the attempted, but unsuccessful taking of an attempted robbery in Washington. The trial court concurred:

Well, he was accused of employing physical force upon Betty Griffin and Clarence Griffin with the purpose of committing a theft. He did employ physical force with that purpose while armed with a deadly weapon, so I think that is comparable to attempted robbery in the first degree in Washington and I'm going to make that finding,

RP 50. The trial court's interpretation of the facts is logical and supported by the documentation and common sense. The conviction should be included as comparable to attempted robbery in the first degree.

- c. If the Court rejects either the completed or attempted robbery in the first degree, the Court should, at a minimum, count it as robbery in the second degree.

Appellant's counsel concurred with the court that the Arkansas conviction would be a Washington robbery in the second degree. When asked by the court, counsel stated, "I would agree that it might be a robbery in the second degree." RP 23.

Washington Pattern Instruction-Criminal 37.04, robbery in the second degree provides:

To convict the defendant of the crime of robbery in the second degree, each of the following elements of the crime must be proved beyond a reasonable doubt

- (1) That [on date], the defendant unlawfully took personal property from the person [or in the presence] of another;
- (2) That the defendant intended to commit theft of the property;
- (3) That the taking was against that person's will by the defendant's use or threatened use of immediate force, violence, or fear of injury to that person [omitted] ;
- (4) That force or fear was used by the defendant [to obtain or retain possession of the property] [or] [to prevent or overcome resistance to the taking]; [or] [omitted];
- (5) That any of these acts occurred in the State of Washington.

(Remainder omitted) (App. H). If there were any questions whether appellant brandished or displayed the firearm, then robbery in the second degree would be available. Once again the elements are substantially similar to those of the Arkansas statute, with the exception of the required

taking. Conceivably, attempted robbery in the second degree could also be available. In any case, the appellant's Arkansas conviction for robbery counts as a robbery in the State of Washington.

- d. Appellant's Arkansas robbery conviction was properly included in appellant's offender score.

The trial court properly included appellant's 1987 Arkansas aggravated robbery conviction in his offender score and it should be affirmed.

D. CONCLUSION.

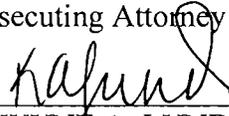
The State of Washington does not yet have a provision that counts a conviction from another state in an offender score when its comparability cannot be ascertained due to a plea of nolo contendere even when it is clearly a felony in Washington. As a result, appellant's Florida conviction for sexual battery does not count in his offender's score and should be deleted.

However, the State has proven by a preponderance of the evidence that appellant's aggravated robbery conviction from Arkansas is substantially similar and comparable to Washington's robbery in the first degree statute. Alternatively, it is next most similar to Washington's attempted robbery in the first degree and should be included in his

offender score. There is sufficient factual information to support the comparability. Appellant's offender score should be four (4).

DATED: January 27, 2014.

MARK LINDQUIST
Pierce County
Prosecuting Attorney



KAWYNE A. LUND
Deputy Prosecuting Attorney
WSB # 19614

Certificate of Service:

The undersigned certifies that on this day she delivered by ~~U.S. mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

1/27/14 
Date Signature

APPENDIX “A”

A.C.A. §5-12-102

C

Effective:[See Text Amendments]

West's Arkansas Code Annotated Currentness

Title 5. Criminal Offenses (Refs & Annos)

▣ Subtitle 2. Offenses Against the Person (Chapters 10 to 24)

▣ Chapter 12. Robbery (Refs & Annos)

→→ **§ 5-12-102. Robbery, defined**

(a) A person commits robbery if, with the purpose of committing a felony or misdemeanor theft or resisting apprehension immediately after committing a felony or misdemeanor theft, the person employs or threatens to immediately employ physical force upon another person.

(b) Robbery is a Class B felony.

CREDIT(S)

Acts of 1975, Act 280, § 2103; Acts of 1987, Act 934, § 1.

Formerly A.S.A. 1947, § 41-2103.

Current through end of 2013 Regular and First Ex. Sessions, including changes made by Ark. Code Rev. Comm. received through 11/27/13.

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END OF DOCUMENT

APPENDIX “B”

A.C.A. §5-12-103

C

Effective:[See Text Amendments]

West's Arkansas Code Annotated Currentness

Title 5. Criminal Offenses (Refs & Annos)

▣ Subtitle 2. Offenses Against the Person (Chapters 10 to 24)

▣ Chapter 12. Robbery (Refs & Annos)

→→ **§ 5-12-103. Aggravated robbery**

(a) A person commits aggravated robbery if he or she commits robbery as defined in § 5-12-102, and the person:

(1) Is armed with a deadly weapon;

(2) Represents by word or conduct that he or she is armed with a deadly weapon; or

(3) Inflicts or attempts to inflict death or serious physical injury upon another person.

(b) Aggravated robbery is a Class Y felony.

CREDIT(S)

Acts of 1975, Act 280, § 2102; Acts of 1979, Act 1118, § 1; Acts of 1981, Act 620, § 13; Acts of 1995, Act 1296, § 2.

Formerly A.S.A. 1947, § 41-2102.

Current through end of 2013 Regular and First Ex. Sessions, including changes made by Ark. Code Rev. Comm. received through 11/27/13.

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END OF DOCUMENT

APPENDIX “C”

WPIC 37.02

WPIC 37.02

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

(1) That on or about the [date] day of, the defendant unlawfully took personal property from the person [or in the presence] of another;

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

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

(4) That the force or fear was used by the defendant [to obtain or retain possession of the property] [or] [to prevent or overcome resistance to the taking] [or] [to prevent knowledge of the taking];

(5) [(a) That in the commission of these acts [or in immediate flight therefrom] the defendant [was armed with a deadly weapon]] [or]

[(b) That in the commission of these acts [or in the immediate flight therefrom] the defendant displayed what appeared to be a firearm or other deadly weapon] [or]

[(c) That in the commission of these acts [or in the immediate flight therefrom] the the defendant inflicted bodily injury] [or]

[(d) That the defendant committed the robbery within and against a financial institution];
and

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

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements [(5)(a),] [(5)(b),] [(5)(c),] or [(5)(d)], have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury

need not be unanimous as to which of alternatives [(5)(a),] [(5)(b),] [(5)(c),] or [(5)(d)] has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

APPENDIX “D”

Arkansas Felony Information

MP

FRED

JAN 13 1987



In The PULASKI CIRCUIT COURT 5th Division

JACQUETTA ALEXANDER, Circuit Clerk STATE OF ARKANSAS vs.

PLAINTIFF,

87-103

EDDIE LEE TRICE (BM) a/k/a EDDIE TRICE a/k/a EDDIE LEE WILLIAMS

DEPENDANT.

PELONY INFORMATION

Chris Piazza, Prosecuting Attorney of the Sixth Judicial District of Arkansas, in the name, by the authority, and on behalf of the State of Arkansas

Charges EDDIE LEE TRICE a/k/a EDDIE TRICE a/k/a EDDIE LEE WILLIAMS

with the crime of violating Ark. Stat. Ann. § 41-2102, AGGRAVATED

ROBBERY

committed as follows, to-wit: The said defendant, in Pulaski County,

Arkansas, on or about the 5th day of JANUARY, 1987

did unlawfully, feloniously, employ physical force upon BETTY GRIFFIN and CLARENCE GRIFFIN, with the purpose of committing a theft, while armed with a deadly weapon, to-wit: a shotgun, against the peace and dignity of the State of Arkansas.

COURT 2:

Comes Chris Piazza, Prosecuting Attorney of the Sixth Judicial District of Arkansas, in the name, by the authority, and on behalf of the State of Arkansas, and further charges EDDIE LEE TRICE a/k/a EDDIE TRICE a/k/a EDDIE LEE WILLIAMS with the crime of violating Ark. Stat. Ann. § 41-2203, THEFT OF PROPERTY, committed as follows, to-wit: The said defendant in Pulaski County, Arkansas, on or about the 5th day of JANUARY, 1987, did unlawfully, feloniously, with the purpose of depriving the true owners of their property, knowingly take unauthorized control over property, to-wit: a shotgun, such being the property of BETTY GRIFFIN and CLARENCE GRIFFIN, 1821 South Bishop, Little Rock, Arkansas, against the peace and dignity of the State of Arkansas.

The defendant, EDDIE LEE TRICE a/k/a EDDIE TRICE a/k/a EDDIE LEE WILLIAMS, has been previously convicted of more than one (1) but less than four (4) felonies, and consequently his sentence should be increased as provided for in Ark. Stat. Ann. § 41-1001:

against the peace and dignity of the State of Arkansas.

Chris Piazza Prosecuting Attorney

By Cynthia J. Baker Deputy Prosecuting Attorney.

Subscribed and sworn to before me on this 13 day of Jan., 1987. JACQUETTA ALEXANDER, Circuit Clerk

By [Signature] Deputy Circuit Clerk.

APPENDIX “E”

Arkansas Judgment and Sentence

JUDGMENT AND COMMITMENT ORDER (AMENDED)*
 IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
 6th DISTRICT 5 DIVISION

On Apr 15, 1987, the defendant personally appeared before the Court with legal counsel and, having been informed by the Court of the nature of the charge(s), of his constitutional and legal rights, of the effect of a guilty plea upon those rights, and of his right to make a statement before sentencing, the Court made the following findings:

- Defendant voluntarily, intelligently, and knowingly entered a plea of guilty or Nolo Contendere to the charge(s) herein enumerated and acknowledged factual bases for charge(s);
- Defendant is found guilty of said charge(s) by the Court, sitting as trier of fact;
- Defendant was found guilty at jury trial.

CHARGE OF VENUE: DEFENDANT'S FULL NAME: DATE OF BIRTH: RACE: SEX: H: W: EYES: HAIR: BORN: NUMBER:
 EDDIE LEE TRICE 01/28/57 W M 519443

DEFENDANT'S ATTORNEY: TYPE AYYY PROSECUTING ATTORNEY OR DEPUTY:
 Thomas B. Devine III PUB. DEF. Dale R. Barron

There being no legal cause shown by the defendant, as requested, why judgment should not be pronounced against him, a judgment of conviction is hereby entered against the defendant on each charge enumerated and court costs assessed. The County Sheriff is hereby ordered and directed to transport the defendant to
 The Arkansas Department of Corrections or County Jail, where he is sentenced to hard labor for the term specified on each charge.

STATUTE #	OFFENSE	OFFENSE DATE	DOCKET #	P	E	M	CU	SENTENCE	SUSPENDED
41-2102	AGGRAVATED ROBBERY WITH DEADLY WEAPON	1-5-87	87-00103	01	E	P	C	10YR	
41-2203	THEFT OF PROPERTY/FIREARM VALUE >2500	1-5-87	87-00103	01	E	P	C	5YRS	

If consecutive, explain:
 TO EACH OTHER

TIME TO SERVE AT ADC/PCJ: 15YRS
 OTHER SENTENCING PROVISIONS:

- HABITUAL (41-2891)
- FIREARM (41-1004/43-2336)
- DEADLY WEAPON (43-2336.1)
- OTHER:

OTHER PAROLE ELIGIBILITY PROVISIONS:
 Alternative Services (Act 378) (43-2340) - The defendant knowingly and willingly consents to sentence provisions 43-2342(c) - Eligible for parole immediately 43-2342(d) - Eligible for parole as normal

EXPLANATORY NOTES:
 HABITUAL ALLEG NOLLE PRESSED

OTHER: FINE \$
 RESTITUTION \$
 COURT COSTS \$

DEATH PENALTY
 EXECUTION DATE: / /

DEFENDANT INFORMED OF RIGHT TO APPEAL BOND PROVISIONS:
 JAIL TIME CREDIT: 099 DAYS OR NONE

DATE: 5/16/87
 CIRCUIT JUDGE (Print or Type): Judge Jack Lessenberry

CIRCUIT JUDGE (Signature): *Jack J. Lessenberry*

DATE: 5/16/87
 I certify this is a true and correct record of this Court with short report of circumstances attached.

CIRCUIT CLERK/DEPUTY: *[Signature]*

DATE: 5/16/87
 I acknowledge receipt of judgment.

DEFENDANT (Signature): *[Signature]*

SHERIFF'S RETURN

DATE REL. ON APPEAL BOND: / /
 DATE RET. TO CUSTODY: / /
 I certify the defendant named within was delivered to:
 -- The A.D.C. or
 County Jail

DATE: / / SHERIFF/DEPUTY (Signature):

White: Court file, Yellow: Sheriff, Pink: ADC or Jail, Yellow: Defendant, Pink: Prosecutor
 * CORRECTED DUE TO CLERICAL ERROR PCC #1 07/28/86

APPENDIX “F”

WPIC 100.01

INSTRUCTION NO. 100.01

A person commits the crime of attempted [charge] when, with intent to commit that crime, he or she does any act which is a substantial step toward the commission of that crime.

APPENDIX “G”

WPIC 37.02 & 100.01

INSTRUCTION NO. 37.02 § 100.01

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

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

(1) That on or about the [date] day of, the defendant unlawfully took personal property from the person [or in the presence] of another;

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

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

(4) That the force or fear was used by the defendant [to obtain or retain possession of the property] [or] [to prevent or overcome resistance to the taking] [or] [to prevent knowledge of the taking];

(5) [(a) That in the commission of these acts [or in immediate flight therefrom] the defendant [was armed with a deadly weapon]] [or]

[(b) That in the commission of these acts [or in the immediate flight therefrom] the defendant displayed what appeared to be a firearm or other deadly weapon] [or]

[(c) That in the commission of these acts [or in the immediate flight therefrom] the defendant inflicted bodily injury] [or]

[(d) That the defendant committed the robbery within and against a financial institution];

and

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

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements [(5)(a),] [(5)(b),] [(5)(c),] or [(5)(d)], have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives [(5)(a),] [(5)(b),] [(5)(c),] or [(5)(d)] has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

APPENDIX “H”

WPIC 37.04

WPIC 37.04

INSTRUCTION NO. _____

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

(1) That on or about the [date] day of, , the defendant unlawfully took personal property from the person [or in the presence] of another;

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

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

(4) That force or fear was used by the defendant [to obtain or retain possession of the property] [or] [to prevent or overcome resistance to the taking] [or] [to prevent knowledge of the taking]; and

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

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

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

PIERCE COUNTY PROSECUTOR

January 27, 2014 - 2:20 PM

Transmittal Letter

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Case Name: State v. Eddie Trice

Court of Appeals Case Number: 44808-4

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Affidavit

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