

APR 08 2015

E CRF
Ronald R. Carpenter
Clerk

Supreme Court of The State of Washington

State of Washington,

Respondent,

Vs.

Jerry Lynn Davis,

Petitioner,

Case No: 91343-9

Court of Appeals, Div II

Case No's: 45274-0-11 and 45280-4-11

(Pierce County Case No's: 12-1-03559-0 ; 13-1-00377-7)

(Also, Court of Appeals case No's: 44728-2-11 ; 44735-5-11)

Motion For Discretionary Review (RAP,inclusive)

Comes now Petitioner, Jerry Lynn Davis, in pro se, and respectfully seeks permission from the Honorable Supreme Court of the State of Washington to file the foregoing Motion For Discretionary Review of the Court of Appeals erroneous unpublished opinion affirming petitioners conviction in this matter, dated February 18, 2015. Petitioners forgoing Motion For Discretionary Review is timely filed. See: Unpublished Opinion attached herein. This court Retains Jurisdiction.

Petitioner is not an attorney, is in pro se, is without meaningful access to a law library, and prays this court will be liberal to promote justice and equal protection of the

constitution.

Table of Authorities

Federal Cases

Bearden v. Georgia, 416 u.s 660,669,103 s.ct. 2064 (1983).....

Boykin v. Alabama, 395 u.s. 238 (1969).....

Mitchell v. Mason, 325 F.3d 732 (6th Cir.).....

Lockhart v. Terhune, 250 F.3d 1223 (9th Cir.).....

Massion v. United States, 377 u.s. 201 (1964).....

McCarthy v. United States, 394 u.s. 459,466,895.ct.1166 (1969).....

Strickland v. Washington, 333 u.s. 668,104 s.ct.2052 (1984).....

In re Winship, 397 u.s. 358,90 s.ct. 1068 (1970). Prove elements.....

Washington State Cases

Hendrickson, 129 wn. 2d at 78.....

In re PRP of Rice, 188 Wn. 2d 876, 888, 828 P.2d 1086, Cert denied, 509 U.S. 958 (1992)...

State v. Bahl, 164 Wn.2nd 739, 744, 193 P.3d 678 (2008).....

State v. Bowerman, 155 Wn.2nd 749, 808, P.2d 116 (1990).....

State v. Chervenell, 99 Wn. 2d 309, 312, 662 P.2d 836 (1983).....

State v. Engel, ~~166~~ Wash. 2nd 572, 210 P.3d 1007 (2009).....

State v. Ford, 137 Wn. 2nd 427, 477-78, 973 P.2d 452 (1999).....

State v. Jury, 19 Wn.App. 256, 263, 576, P.2d 1302 (1978).....

State v. McCollum, 88 Wn. App. 977, 947, P.2d 1235 (1997) ; citing Taylor, at 597.....

State v. McFarland, 127 Wn. 322, 336, 899 P.2d 1251 (1995).....

State v. Moen, 129 Wn. 2d 535, 543-48, 919 P.2d 69 (1996).....

State v. Saunders, 91 Wn. App. 575, 578, 958, P.2d 364 (1998).....

State v. Taylor, 83 Wn. 2d 594, 596, 521, P.2d 699, 700-1 (1974).....

State v. Thomas, 109 Wn. 2d 222, 226, 743 P.2d 816 (1987).....

State v. Zhao, 157 Wn. 2d 188, 200, 137 P.3d 835, 841 (2006).....

Constitutional Provisions

U.S. Const. Amend. V.....

U.S. Const. Amend. VI.....

U.S. Const. Amend. XIV.....

Wash. Const. Art 1, 21.....

Wash. Const. Art 1, 22.....

Wash. Const. Art 1, 3.....

Wash. Const. Art 1, 9.....

Bill Of Rights, Inclusive.....

Washington Statutes

RCW 9A.52.030.....

RCW 9A.04.11(5).....

RCW 9A.04.100.....

RCW 10.01.160.....

Other Authorities

SAG RAP 10.10, inclusive.....

RAP, inclusive.....

CrR 4.2(f), inclusive.....

Foot Note:

Any other authorities the Washington Supreme Court deems just and appropriate under the circumstances. Petitioner is in Pro Se and without access to a law library.

Issues of Errors Presented

1. Was the order Affirming Conviction by the Court of Appeals, Division II, erroneous in not acknowledging the State v. Engel Law?
2. Did the Court of Appeals, Division II, error in not considering Petitioners SAG RAP 10.10 document(s) First, and/or at all, to better assist the lower Court whether trial Counsel(s) were ineffective?
3. Did the lower Courts error when they ignored Petitioner's filed motion, Pre-Trial Writ of Habeas Corpus, Letters and Notices, that Petitioner's Sixth Amendment rights, and fast speedy trial rights were violated under State and Federal Constitutional guarantee?
4. Did the lower Courts error when they ignored that Petitioner's Sixth Amendment right to Effective Counsel under Massiah v. United States, 377 U.S. 201 (1964) was violated because Petitioner was "interrogated" by Government agent; when the proper standard under Supreme Court precedent is whether the Government agent "diligently elicited" information from Petitioner?
5. Collectively, did both trial court attorney's provide ineffective assistance that was prejudicial, rendering invalid plea and/or conviction that warrant redress?

6. Was Appellate counsel ineffective in failing to examine the entire trial court record and raise all of Petitioner's constitutional claims, that was prejudicial? To include ineffective assistance of both trial counsels, fast and speedy trial right violations and for not raising that the legal Financial obligations (LFO'S) were in fact unconstitutional? ?

7. Did the trial Court and the Court of Appeals error in ordering Petitioner to pay a amount of \$2,000.00 LFO debt, and the appeal court for ordering Petitioner to pay direct appeal cost bill of \$3,102.95, that petitioner does not have the present and/or future ability to pay due to being indigent, mental health problems, unemployable, and who struggles with housing?

Did appellate counsel fail to raise Petitioners LFO issues for the first time on direct appeal?

A Trial Court may only order an offender to pay LFO'S upon finding that he/she has the present or likely future ability to pay.

Whether Erroneously- imposed LFO'S may be challenged for the first time on appeal when it's a constitutional deprivation and manifest hardship ?

Issues Presented

8. Was it an unconstitutional error for the petitioner to receive an LFO debt from the sentencing court in the amount of \$2,000.00 with a 12% interest rate running from the date of sentencing, increasing the LFO debt while Petitioner serves his sentence? Petitioner suffers from a life long history of mental health disabilities that heavily documented, and does not have the present or future ability to pay the increasing LFO debt. See: Bearden v. Georgia, 461 u.s. 660, 669, 103 s.ct. 2064, 76L.Ed 221 (1983). Was "all" LFO debt levied against Petition "erroneous"?
9. Did the Court of Appeals "erroneously" dismiss Petitioners Motion for Discretionary review on June 19, 2013, regarding fast and speedy trial right violations, because Petitioner was ordered indigent in the Pierce County Superior Court and too poor to pay the filing fee in the Court of Appeals for further Constitutional review of the fast and speedy trial right violations? Pursuant to Petitioners "Indigent Manifest Hardship", did manifest injustice accrue in this matter? And, should the fast and speedy trial right violation issues have been resolved prior to Petitioner being advised by trial counsel to enter into any plea negotiations? See: Trial counsels letter dated April 10, 2013, regarding Petitioners fast and speedy trial rights falling on deaf ears.
10. Did the trial court error and erroneously grant a trial continuence on March 20, 2013? And did the trial court error in not hearing and allowing Petitioner to proceed in pro se motion March 20, 2013, negating trial counsels request for an unconstitutional trial continuence that was prejudicial to Petitioner. Petitioner has been granted permission to represent himself in the Washington Supreme Court, in pro se, in the present foregoing Petition herein.

Facts

The State charged Pititioner with burglary in the second degree and felony harassment in Pierce County case No. 12-1-03559-0. The department of assigned council, upon the Courts Order granting "Indigency" appointed trail counsel, Antonio Hill. Petitioner informed Mr.Hill, _____, that Petitioner did NOT wish to surrender his fast and speedy trail rights , and that Petitioner had a witness, Ricky Powell, who wanted to testify, under oath, that Petitioner had No knowledge of any crime being committed in the burglary case, the reviewable record shows.

See: Attached Exhibits / Appendix herein, "Transcripts".

A few months later, the State charged Petitioner in a separate information with trafficking in stolen property in the first degree and theft of a motor vehicle, Case No. 13-1-00377-7. On March 7, 2013 Peirce County Deputy Prosecutor Frank Krall, interviewed Petitioner in a Pierce County jail holding cell, Mr. Krall questioned Petitioner about the "events" in both cases, and when Petitioner asked where Mr.Hill was, Mr.Krall advised Petitioner to sign a continuance form dated March 7, 2013.

A hearing was re-scheduled for March 11, 2013.

See: Attached continuance form signed by Petitioner and Prosecutor assigned to both cases, Mr.Krall. However, March 11, 2013 Mr. Krall was not present at the rescheduled hearing for "Trail Continuance", was removed from both cases, the Transcripts and Records demonstrate.

See: Massian v. United States, 377 u.s. 201 (1964)

On March 11, 2013 trial counsel, Mr. Hill requested a trial continuance without Petitioner's consent, Petitioner "objected" informing the court on record that his key witnesses were moving out of state for personal reasons, and that if a trial continuance was granted, Petitioner would be constitutionally deprived of a fair trial which would be seriously prejudicial. The Court agreed with Petitioner and denied trial counsel's request, the record shows. See: March 11, 2013 Hearing Transcripts. Court denied continuance.

On March 20, 2013 Mr. Hill, trial counsel, went behind Petitioner's back without Petitioner's consent, and got a different judge to grant a continuance anyways, in serious violation of petitioner's fast and speedy trial rights under State and Federal Constitutional guarantee. Petitioner was present and "Strongly Objected", reciting the same Constitutional reason from the March 11, 2013 hearing. *The State did not object nor was anything new presented by trial counsel.*

On March 20, 2013 the Court abused its discretion by granting a trial continuance, and agreed Petitioner would not receive a fair trial because of the continuance, the record shows.

See: March 20, 2013 Continuance Hearing Transcripts. Also, in open court on March 20, 2013 Petitioner filed a motion to proceed in Pro Se under the 6th Amendment of the U.S. Constitution to prevent a trial continuance that was ignored and remains unruled on to date, the record shows. On March 27, 2013, trial counsel goes on record to withdraw. Later new counsel was appointed by the Court, without Petitioner's consent.

Trail Counsel, Mr. Hill, failed in his constitutionally imposed duty to conduct an investigation in the burglary case what so ever, and failed to file so much as one pre-trial motion in petitioner's defense, the record shows. Counsel deliberately deprived Petitioner from exercising his fast and speedy trial "rights", demonstrating that trial counsel was seriously ineffective, the record shows.

Further, the record demonstrates that Petitioner "filed" a Pre-Trail Petition for writ of Habeas Corpus Case No: 13-1-00377-7 that was suspended in violation of the U.S. Constitution, and

Remains unrled on, the record shows. See: Writ, herein. *The primary evidence [Car] was tainted.*

Petitioner filed an Emergency Motion To Dismiss for fast and speedy trail right violations that remains unrled on to date, the record shows. Petitioner filed a "Brady Motion" to interview all witnesses and was denied his right to a fair trail and to face his accusers, in serious violation of Petitioner's due process and equal protections of the law/constitution.

Petitioner also filed a Motion For Discretionary Review for fast and speedy trail right volations to the Court of Appeals, division 2, was dismissed erroneously on June 19, 2013.

The record for review by this court demonstrates that Petitioner sent several notioeces to Division 2 that Petitioner was indigent and could not pay filing fee(s) to proceed his discretionary review of both Pierce County Cases No's: 13-1-00377-7 and 12-1-03559-0.

See: Appeal Review No's: 44735-5-11 and 44728-2-11.

Petitioner clearly provided to the Court of Appeals that he did not wish to abandon his filed discretionary review, which was dismissed anyways on June 19, 2013, without any notice provided to Petitioner.

The matter, fast and speedy trial right violations, was mentioned in Petitioner's Amended Opening Brief by Appellant Counsel, motion to dismiss and several other motions/ writ, was ignored and remains unruled on to date, the record shows, without further litigation.

Petitioner also mailed to the Court of Appeals a Declaration / Errata of Appellant to SAG Pursuant To RAP 10.10, presenting the fast and speedy trial right violations to the Court of Appeals for review and consideration. Coupled with the flagrant ineffective assistance of trial counsel(s), this claim was exhausted. Petitioner's 5th, 6th and 14th U.S. Constitutional rights were violated.

Next, the department of assigned counsel, upon the Court's order granting "Indigency", New Trial Counsel was appointed, James Schoenberger. See: Counsel's letter informing Petitioner in April, 2013, that Petitioner's fast and speedy trial right of violations would fall on deaf ears, who also failed to investigate the 2nd degree burglary case whatsoever, admitted on record that he failed to depose Mr. Duvall, an untruthful witness who was shooting at Petitioner.

A critical Motion To Depose Mr. Duvall, an unwilling untruthful witness, who was shooting at Petitioner. A critical Motion To Depose Mr. Duvall, an unwilling untruthful victim, never was filed by trial counsel, depriving Petitioner from facing his accuser and bringing out the truth.

New trial counsel also failed to file any pre-trial motions in Petitioner's defense.

Additionally, trial counsel deliberately failed to subpoenaed Petitioner's key witness in Case No. 12-1-03559-0, Ricky Lee Powell , who would of cleared Petitioner of any wrong doing. Mr. Schoenberger waited until the day of the trial on Auhust 5, 2013 to inform Petitioner that he failed to supoen a Mr. Powell, and that Petitioner better take a plea deal. See: Transcripts August 5, 2013..P.6 " I don't have him (Powell) under subpoena—but this all factors into my discussion with Mr. Davis about his risk at trial. Even the Prosecutor went on record during the July 29, 2013 hearin g transcripts and stated: " Cause No: 12-1-03559-0, one of the witnesses that the defense was responsible for subpoenaing didn't get subpoenaed and is in Doc (Powell) and won't be transported here until this Friday."

See: All of Petitioners pro se SAG RAP 10.10 documents "presented" to the Court of Appeals for review and exhuation purpose that have in fact been ignored.

Petitioner firmly contends that he had no choice in taking an unconstitutional Alford plea deal of 40 months in prison, and an LFO debt that Petitioner has no future ability to pay, in the amount of \$2,000.00, and rising. Both court appointed trial attorneys failed to investigate, file any motions, failed to subpoena critical key witness, failed to depose victim, and waited until the day of trial to give Petitioner his final "ultimatum". Petitioner received ineffective assistance of counsel, a manifest injustice.

See: Declaration for Probable Cause

In respondents brief, the facts of Case No. 12-1-03559-0 were so inflammed, that petitioner submits that a clear look into the true facts is necessary. For example, the victims written statement and the neibors written statement demonstrates that "no one" was ever screaming I'm going to "fucking kill you". Rather the victim stated: "They threatened to kill me to get away"....(while petitioner was unarmed, running away in fear for his life, being shot at).

See: Written Statement

Petitioner contends that the facts are not correct also in the declaration for probable cause regarding another critical fact, because Petitioner ran through the "wet lands" where there was no fence, and not the wood as was misleading in the declaration for probable cause.

Here, Petitioner points out that the police and the victim were untruthful in the burglary case, which raises suspension as to whether or not anything was moved around and/or stolen as the alleged victim claims. What is clear to see is that the victim, Mr. Duvall, refused to be deposed, instead, trial counsel dropped the ball and failed to provide Petitioner a meaningful defense what so ever, pursuant to what's stated by trial counsel(s) themselves on the record in reviewable transcripts. Not so much as one motion was filed by either trial attorney's, forcing Petitioner to file several of his own pro se motions. Without an investigation conducted, trial counsel never knew the facts either, prior to advising Petitioner to enter an Afford Plea. Hence, there's no way Petitioner's plea was made knowing and intelligently.

The record demonstrates that Petitioner never was going to receive a fair trial by either court appointed trial attorney's.

The Probable Cause States As Follows:

“Per the victim, his property is fenced where it can be fenced, and there is a steep natural barrier that cannot be fenced. The U-Haul was parked within the fenced area. The gate to the fence is locked and there was a no trespassing sign posted right where the defendant's vehicle was parked.

Argument:

In State v. Engel, 166 Wash. 2nd 572, 210 P.3d 1007 (2009), the Washington Supreme Court reversed the conviction holding:

“ Business private yard that was partially enclosed by a fence and partially bordered by sloping terrain was not a “fenced area” , as required to support conviction for second – degree burglary of a building of defendant who entered yard and stole items.

West’s RCWA 9A.52.30 ; 9A.04.110(5).

The Court of Appeals has entered an erroneous unpublished opinion filed February 18, 2015, Affirming Petitioner’s conviction in Pierce County Case No. 12-1-03559-0, that should be overruled, vacated, and dismissed with prejudice, because the “elements” clearly do not exist to support a conviction in Petitioner’s Alford Plea to attempted burglary in the second degree in Case No. 12-1-03559-0. Engel, Id.

Moreover, the Court of Appeals failed to even acknowledge the law in the Engel ruling that was strongly presented to said court in the Amended opening brief, and Petitioners filed and/or submitted SAG RAP 10.10 documents / declarations. Reversal is in order, relief should be granted.

The Court of Appeals failed to review all of the Constitutional Errors for the first time on direct appeal, specifically ineffective assistance of trial counsel(s), due process of the law, fast and speedy trial right violations. In the interest of justice Petitioner prays the Washington Supreme Court will fully review and consider making a just ruling on all of the constitutional violations Petitioner has suffered due to trial counsel(s) flagrant disregard for Petitioner state and federal constitutional rights inclusive...6th Amendment U.S Constitution.

Both the state and federal constitution guarantee the accused the right to effective assistance of counsel. Strickland v. Washington , 333 u.s. 668, 104 s.ct. 2052 (1984). To show ineffective assistance, a defendant must show that, despite a presumption of effectiveness, counsel's representation was deficient and that the deficiency caused prejudice. State v. Bowerman, 155 wn. 2d 794, 808 P.2d 116 (1990). Counsel's performance is deficient if it falls below an "objective standard of reasonableness and was not " sound strategy". See: In re PRP of Rice, 188 w. 2d 876, 888, 828 P.2d 1086, Cert. Denied, 509 u.s. 958 (1992).

That performance prejudices that defense when there is a reasonable probability that, but for counsel's deficient performance, the results would have been different. Hendrickson, 129 wn. 2d at 78. A "reasonable probability" is one which is sufficient to undermine confidence in the outcome. State v. Thomas, 109 wn. 2d 222, 226, 743 P.2d 816 (1987).

CrR 4.2 (f) dictates that the trial court shall allow a defendant to withdraw his plea of guilty whenever it appears that withdraw is (1) necessary to correct a (2) "manifest injustice.) State v. Taylor, 83 wn. 2d. 594, 596, 521 P.2d 699, 700-1 (1974). This standard applies equally whether the defendant moves to change his plea of guilty before or after sentencing. Taylor, Id. There are four possible indicia of manifest injustice: (1) The denial of effective assistance of counsel. (2) The plea was ratified by the defendant or one authorized by him to do so. (3) The plea was involuntary or (4) The plea agreement was not kept (DOSA) by the prosecutor. State v. McCollum, 88wn. App. 977, 947P.2d 1235 (1997); citing Taylor, at 597.

Due process requires a guilty plea to be knowing, intelligent, and voluntary. McCollum, Id., citing Boykin v. Alabama, 395 u.s. 238 (1969). " A defendant must be appraised of the nature of the offense before a guilty plea will be accepted as knowing, intelligent, and voluntary". Id. "The defendant must have adequate notice and understanding of the elements of the charges against him".

State v. Zhao, 157 wn. 2d. 188, 200, 137 P.3d 835, 841 (2006). See: RCW 9A.04.100., "No person may be convicted of a crime unless "each element" of such crime is proved by competent evidence beyond a reasonable doubt".

"The pre-trial period constitutes a "critical period" in criminal proceedings because it encompasses counsels constitutionally imposed duty to investiagte the case. Mitchell v. Mason, 325 F.3d 732 (6th Cir). The presumption of counsel's competence can be overcome by a showing,

among other things, that counsel failed to conduct appropriate investigations. State v. Thomas 109 wn. 2d 222, 743 P.2d 816 (1987) citing; State v. Jury, 19 wn. App. 256, 263, 576 P.2d 1302 (1978). But for counsel's unprofessional errors, the results of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Thomas, Id., quoting Strickland, at 694." "Defendants 6th Amendment right to counsel includes the right to be represented by an attorney with undivided loyalty." Lockhart v. Terhune, 250 F.3d 1223 (9th Cir).

Petitioner hereby incorporates the entire Pierce County Superior Court record as if fully incorporated herein. Petitioner further is incorporates the entire Court of Appeals record as if fully incorporated herein for the Honorable Courts full review of any and all reverable Constitutional errors herein.

Without trial counsels conducting any investigation in to the burglary case to realize the elements never existed to support a conviction prior to advising Petitioner to plead guilty in an Alford plea in Case No. 12-1-03559-0, it's clear to conclude that theres no way in the world Petitioner's Alford Plea was lawfully made knowing, intelligent, and voluntary. GR4.2(f).Id. Where the elements never did exist to support a conviction, and Petitioner never received relevant notice of these facts, cleary a manifest injustice exist due to trial counsels ineffectiveness that has prejudice Petitioner with the appropriate investigation of case law conducted by trial counsel, the results would have been different. State v. Zhao, Id. , State v. Taylor , Id. Here, Petitioner firmly contends the elements never did exist to support a conviction in Case No. 12-1-03559-0, and trail counsel should never have advised Petitioner to enter an Alford Plea in the first place, to receive a 40 month prison sentence, a \$2,000.00 LFO debt Petitioner does not have the future ability to pay, over a \$5.00 used gas can the owner received back.

See: State v. Engel, Id., West's RCWA 9A.52.030., 9A.04.110(5). In re Winship, 397 u.s 358, 905, ct. 1068 (1970). Elements.

A conviction based on a guilty plea that is not knowing and voluntary is unconstitutionally invalid. State v. Chervenell, 99 wn. 2d 309, 3112, 662 P.2d 836 (1983). A guilty plea is not truly voluntary "unless the defendant possesses an understanding of the law in relation to the facts."

McCarthy v. United States, 394 u.s. 459, 466, 895. Ct. 1166 (1969).

See: State v. Engel, ~~166~~ Wash. 2d 572, 210 P.3d 1007 (2009).

In Pierce County Case No. 13-1-00377-7, taking a motor vehicle without owners permission, Petitioner received the max range of 29 months and has fully served all the time as of 12-22-2014. Peitioner has payed in a coin that cannot be refunded and Petitioner respectfully moves this Honorable Court to determine if his fast and speedy trial rights were in fact violated? Was Petitioners unrulod on Motion to Dismiss unconstitutionaly ignored that deserves relief by this court? Was trial counsel ineffective for failing to conduct the required investigation prior to any plea deals, for failing to file a Motion to Depose , Subpoena Peitioner's key witness, Ricky Powell, and waiting until the day of the trial to suprise Petitioner with all these unconstitutional errors that was seriously prejudicial, and that clearly amounts to a manifest injustice, collectively? Was trial Counsel(s) ineffective in these matters?

Therefore, the court of Appeals order affirming Petitioner's conviction in Case No. 12-1-03559-0, is erroneous, and should be reversed, pursuant to all the forgoing reasons articulated above.

The Court of Appeals erreded in not considering Petitioners SAG RAP 10.10 ineffective assistance of counsel claims, first, and for notacknowledging the standard law already set under the Engel ruling by the Washington Supreme Court.

Additionally, pursuant to an "Order of Indigency" Petitioner received a court appointed Direct Appeal attorney, Stephanie Cunningham, who was also seriously ineffective on direct appeal. Petitioner complained over and over for Ms. Cunningham to "motion" for all the Superior Court Transcripts, which resulted in the Amended opening brief filed, who completely failed to file necessary trial counsel ineffective claims that Petitioner raised on his own in his SAG RAP 10.10 document(s), declarations, that the Court of Appeals and Ms. Cunningham completely ignored.

Petitioner contends that an unethical misconduct epidemic is present, through the department of assigned counsel (DAC), in violation of State and federal constitutional protected rights. *Specifically: Director of DAC.*

In the present case, trial counsel was clearly ineffective for not investigating into whether or not the property was completely fenced in at the property of Mr. Duvall, in Case No. 12-1-03559-0, attempted burglary in the second degree. Location: 40218 Templin Rd. S. Roy, Wa 98580. See:

Google Map Attached herein. Trial counsel was ineffective for not disclosing the victims "Written Statement" dated 8-7-2012, which indicated "Wetland", where there was no fence either. See: Mr. Duvall's written statement attached herein.

Defense counsel provides ineffective assistance by failing to make a valid objection absent a tactical reason. State v. Saunders, 91 Wn. App. 575, 577, 958 P.2d 364 (1998) (citing State v. McFarland, 127 Wn. 2d 323, 336, 899 P.2d 1251 (1995)).

Business private yard that was partially enclosed by a fence and partially bordered by sloping terrain was not a "fenced area", as required to support conviction for second-degree burglary of a building of defendant who entered yard and stole items. See: West's RCWA 9A.52.030; 9A.04.110(5). State v. Engel, 166 Wash. 2d 572, 210 P.3d 1007 (2009).

Petitioner strongly contends that his Alford Plea in Case No: 12-1-03559-0 was not knowingly, intelligently, and voluntary enter, based on the ineffective assistance of counsel(s) presented through out this matter, resulting in a manifest injustice.

Unconstitutional / Manifest Hardship

LFO and Cost Bill Debt's

Petitioner firmly contends that, but for trial counsel's ineffectiveness, Petitioner would not have been convicted of burglary in the second degree. Thus, there would not have been an LFO debt of \$2,000.00 plus 12% interest invoked, nor an additional debt of \$3,102.95 plus 12% interest invoked for the cast bill in Petitioner's direct appeal that was unequivocally unconstitutional and creates a burdensome maifest hardship.

Here, Petitioner has no income, no assets, is not employable due to mental disabilities, will continue to struggle with housing, survives on socail security ~~assistance~~, remians indigent, and he does not have the present or future ability to pay LFO and cost bill debt's—with a 12% interest invoked upon the filed date of Judgment. The burden and stress this places upon Petitioner, who must take mental health medication to function better in secioty, creates additional depression and a sense of hopelessness that does not foster a quality life style of success. Petitioner firmly argues that the LFO's (collectively) ordered against Petitioner was unconstitutional. See: Bearden v. Georgia, 461 u.s. 660, 669, 103 s. Ct. 2064 (1983). Additionally, our Washington Supreme Court has also visited this issue most resently in Nicholas Blazina and Mauricio Paige- Colter cases, vaction LFO debt's, remanding for resentencing where both defendants were indigent.

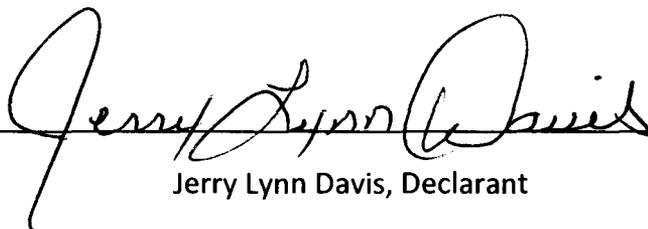
Although most issues may not be raised absent objection in the trial court, illegal or erroneous sentences may be challenged for the first time on appeal. State v. Ford, 137 wn. 2d 427, 477-78, 973 P.2d 452 (1999) ; State v. Bahl, 164 wn. 2d. 739, 744, 193 P.3d 678 (2008). An offender may challenge imposition of a criminal penalty for the first time on appeal. State v. Moen, 129 wn. 2d 535, 543-48, 919 P.2d 69 (1996).

In the present case the lower courts have violated Petitioners right to counsel by imposing attorney's fees in a manner that impermissibly "chills" the exercise of that right. Collectively, all LFO's ordered by the lower courts against Petitioner in this matter should be vacated and terminated, in the interest of justice, and with prejudice.

Declaration

Petitoiner herby declares under penalty of perjury under the law of the State of Washington that the foregoing information and facts in his Motion For Discretionary Review are true and correct.

Dated this 8th day of April, 2015 and signed in Tacoma, Washington.

By:  _____
Jerry Lynn Davis, Declarant

In Pro Se

Conclusion

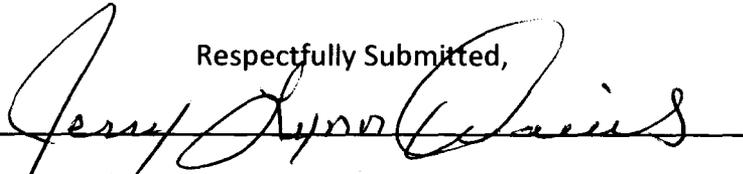
Wherefore, pursuant to all the reasons articulated above, and any other reasons this Honorable Court deems just and appropriate, Petitioner prays for the Constitutional relief he is entitled to, and to rectify the flagrant harm trial counsel(s) have deliberately caused in this matter, by violating Petitioner's right to effective assistance of counsel guaranteed by the Sixth Amendment of The United States Constitution.

Petitioner prays this Honorable Court will vacate Pierce County Superior Court Case No. 13-1-00377-7, and dismiss said cause with prejudice, due to fast and speedy trial right violations that were clearly violated and ignored prior to petitioner being forced into a plea deal, that was also breached by the prosecutor under verbal DOSA promises.

Further, Petitioner prays this Honorable Court will vacate Pierce County Superior Court Case No. 12-1-03559-0, because the elements never did exist to support a conviction pursuant to this court's Engel ruling. It is requested that cause No. 12-1-03559-0 be dismissed with prejudice.

And last, terminate all LFO debt's in this consolidated matter, with prejudice.

Dated this 8th day of April, 2015.

Respectfully Submitted,
By: 
Jerry Lynn Davis, Petitioner In Pro See

Declaration of Service

Petitioner hereby declares under penalty of perjury under the law of the State of Washington that a true and correct copy of the forgoing Motion for Discretionary Review was placed in the U.S. mail, postage prepaid, and mailed to respondent as follows:

Thomas Charles Roberts
Peirce County Prosecuting Attorney
930 Tacoma Ave. , S. Room 946
Tacoma, WA 98402-2171

Dated: April 8th, 2015.

By: Jerry L. Davis
Jerry L. Davis, Declarant

Petitioner In Pro Se
RAP/Lincoln Park Work Release
DOC No. 368483
3704-06 South Yakima Av.
Tacoma, Wa 98418

Volunteer Typing Assistance

By: Brandee Vass

Printed Name: Brandee Vass

Notes: All statements are from the framers memory
of prior or different statements must be objected to
and to impede the witness or record,

INCIDENT #
12-220-1068

Page _____ of _____

HANDWRITTEN STATEMENT FORM

PIERCE COUNTY SHERIFF/TACOMA POLICE

Date 8-7-12 Time 9:10 PM

My name is Phil Orew Duvall I am 53 years of age.

I reside at [REDACTED] with MY WIFE Lynn Marie Duvall

I am employed at Self Contractor

I have been informed of my constitutional rights. _____

Narrative of facts: apprehension of people stealing fuel & tractor parts

We started having trouble with ^{The PT} 3 or 4 days earlier

Today me and my wife went to make sure the gate to our drive was closed it was but we noticed that there were foot ^{prints} over our fresh tire tracks, and the seeing tractor and parts toils out of a truck they were stored in. I went back to the house armed myself with pistol and steel pipe and hid in the bushes approx thirty minutes later a man climbed over the fence and snuck down and started to pull things out of the storage truck (he was joined by another man and woman) they started to leave I confronted them told them to stay where they were and get on the ground instead the men came at me I fired a shot into the ground they backed up and came again ~~but~~ grabbed the pipe that was in my left hand I pulled loose then grabbed again I fired in to the ground again one man + woman got down. The third ran into the wetlands I fired a shot into the ground hoping he would stop they threaten to kill me to get away - (intimidation)

The above is a true and correct statement to the best of my knowledge. No threats or promises have been made to me nor any duress used against me.

[Signature]
Signature

WITNESSES:
[Signature] H430

-If you need additional space use other side-

Nothing mentioned about anyone else hearing [they] or

Say I was going to kill him to get away.
this is bull shit

Page ____ of ____

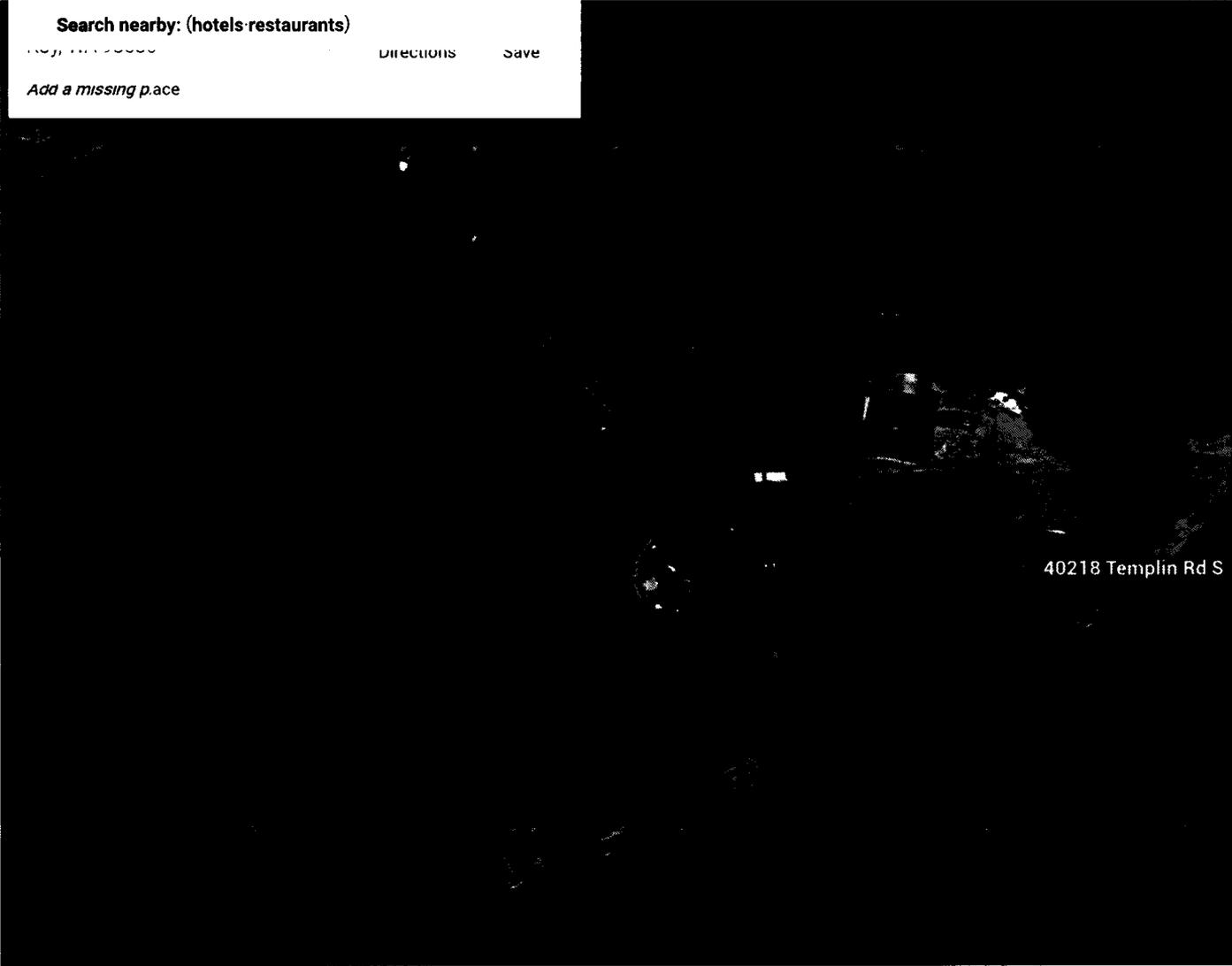
INCIDENT #

- My neighbors should up and the chemist
The gas can at their car is ours
what else was taken I don't know yet

~~At 11:00 AM~~

isn't it

True Davis informed Mr. Duvall that he was
unarmed and didn't do anything wrong. That if
Mr. Duvall shot Davis that he would do the
rest of his life locked up in prison for murder.
So why did Mr. Duvall and the police omit all
these relevant facts from the discovery?



No
Fence
↙

Wetlands, No fence

See: Engel
166 Wash. 2d 572, 210 P.3d 1007 (2009).

BULLETS DON'T MATCH GUN

Alabama man freed after 30 years on death row

BY KIM CHANDLER
The Associated Press

BIRMINGHAM, ALA. — A man who spent nearly 30 years on Alabama's death row walked free Friday hours after prosecutors acknowledged that the only evidence they had against him wasn't enough to prove he committed the crime.

Ray Hinton was 29 when he was arrested for two 1985 killings. Freed at age 58, with gray hair and a beard, he was embraced by his sobbing sisters, who said "thank you Jesus," as they



Hinton

wrapped their arms around him outside the Jefferson County Jail.

Prosecutors said this week that new ballistics tests couldn't match his mother's gun to any of the

six bullets found at the crime scenes.

"I shouldn't have sat on death row for 30 years. All they had to do was test the gun," Hinton said.

Hinton was arrested in 1985 for the murders of two Birmingham fast-food restaurant managers after the survivor of a third restaurant robbery identified Hinton as the gunman. Prosecution experts said at the trial that bullets recovered at all three crime scenes matched Hinton's mother's .38 caliber

Smith & Wesson revolver. He was convicted despite an alibi: He had been at work inside a locked warehouse 15 minutes away during the third shooting.

The U.S. Supreme Court ruled last year that Hinton had "constitutionally deficient" representation at trial because his defense lawyer wrongly thought he had only \$1,000 to hire a ballistics expert to rebut the state's case. The only expert willing to take the job at that price struggled so much under cross-examination

that jurors chuckled at his responses.

Attorney Bryan Stevenson, who directs Alabama's Equal Justice Initiative, hired independent experts to re-examine the ballistics evidence. The experts "were quite unequivocal that this gun was not connected to these crimes," he said. "That's the real shame to me. What happened this week to get Mr. Hinton released could have happened at least 15 years ago."

LOCAL NORTHWEST

PIERCE COUNTY CONVICTS

2 get a break from high court

BY STACIA GLENN
Staff writer

Two Pierce County defendants will get new sentencing hearings because the judges in the cases imposed standard legal financial obligations without looking at whether the men could afford them, the state Supreme Court has ruled.

In a decision released Thursday, the high court ordered new hearings for Nicholas Blazina and Mauricio Paige-Colter.

Although attorneys for neither man objected at their sentencings, they made their case to the Court of Appeals, which declined to take up the case.

The Supreme Court said it issued a ruling to "emphasize the trial court's obligation to consider the defendant's ability to pay."

After Blazina's conviction for second-degree assault, a judge ordered him to pay \$3,287 in legal fees for his defense attorney, extradition and various other costs.

A judge levied \$1,800 in legal fees against

Paige-Colter after he was sentenced to 30 years in prison for first-degree assault and first-degree unlawful possession of a firearm.

Chief Justice Barbara Madsen wrote that the sentencing judges used boilerplate language rather than assessing Blazina and Paige-Colter's financial circumstances and whether they could pay the amounts.

"The Legislature did not intend LFO (legal financial obligation) orders to be uniform among cases of similar crimes," she wrote in the decision. "Rather, it intended each judge to conduct a case-by-case analysis and arrive at an LFO order appropriate to the individual defendant's circumstances."

The ruling notes studies that have shown ordering standard financial obligations without consideration of a particular defendant's case can make it harder for the person to re-enter society.

It also increases

recidivism rates and makes it difficult for the government to recoup the money, according to the ruling.

Some poorer defendants never pay their legal fees and others pay a small monthly stipend.

That means the court stays involved in the defendant's life much longer — possibly creating issues with employment, housing and credit rates — and the defendant could end up paying more in the long run, the ruling states.

In Washington, those who pay a monthly installment accrue interest at a 12 percent rate. They also can be subject to additional fees if they make a late payment.

"On average, a person who pays \$25 per month toward their LFOs will owe the state more 10 years after conviction than they did when the LFOs were initially assessed," the chief justice wrote.

Madsen also points out that it can be impossible for the government to collect

the legal fees.

In 75 percent of cases from January and February 2004, for example, less than 20 percent of the financial obligations were paid three years after sentencing, according to the state Minority and Justice Commission.

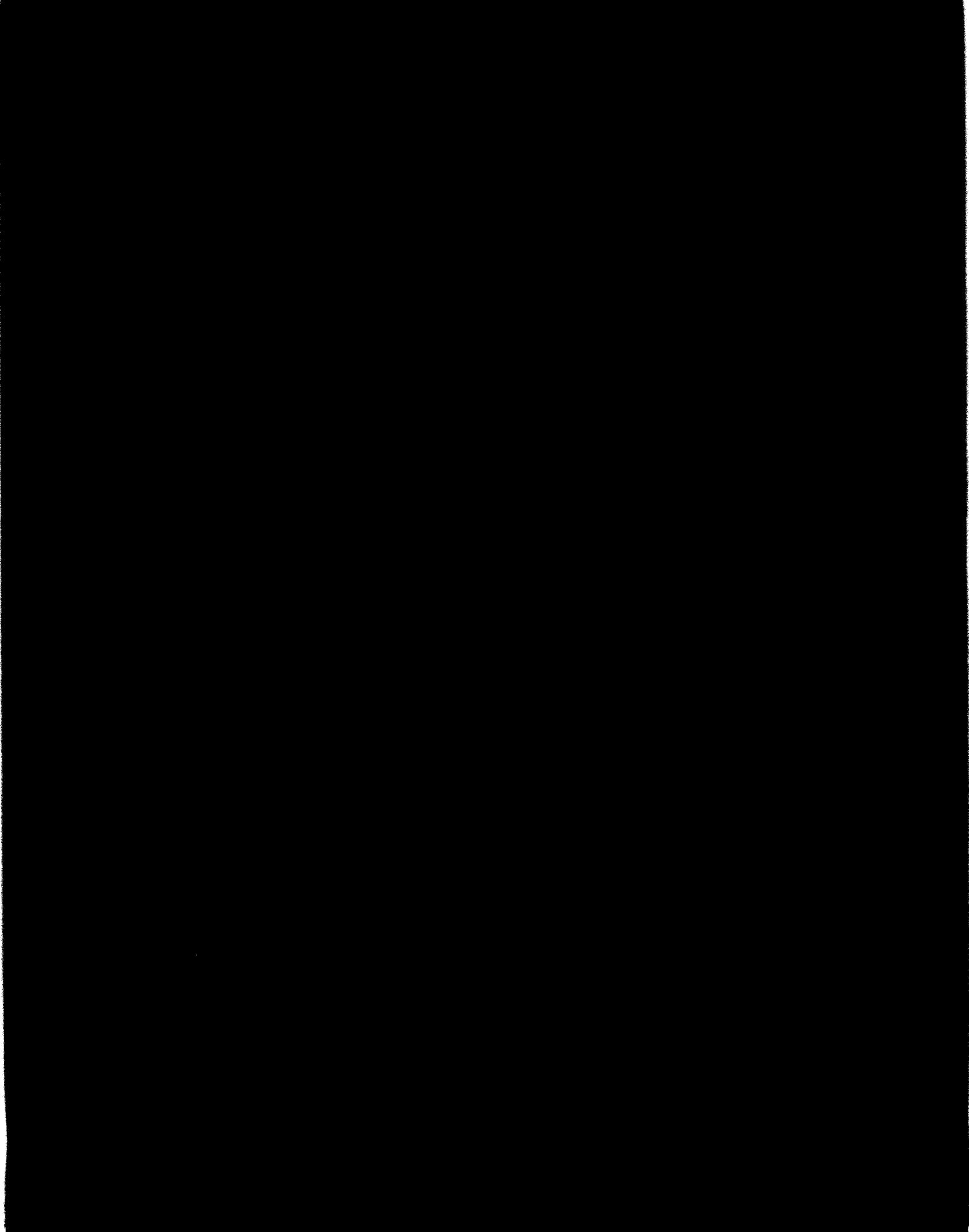
There also are discrepancies in fees levied for drug-related offenses and against Hispanics and men.

Counties in Washington with higher violent crime rates, smaller populations and those that designate less of their budgets to law and justice assess higher legal financial obligations than other counties, according to the ruling.

"Practically speaking, this imperative under RCW 10.01.160(3) means that the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry," the chief justice said.

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

FILED APPEALS
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DIVISION II
2015 JAN 22 AM 9:08
STATE OF WASHINGTON
BY DEPUTY

STATE OF WASHINGTON,
Respondent,
v.
JERRY L. DAVIS,
Appellant.

No. 45274-0-1

ORDER WITHDRAWING DOSA
ISSUE RAISED IN AMENDED
APPELLANT'S BRIEF

Appellant moves the court to withdraw the DOSA issue he raised in his amended appellant's brief. After review of the files and records herein, we grant the motion.

Appellant's raised DOSA issues will not be further addressed by the court.

Dated this 9th day of January, 2015.

FOR THE COURT:


Presiding Judge

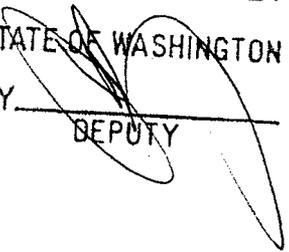
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED
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DIVISION II

2015 FEB 18 AM 9:21

STATE OF WASHINGTON

BY  DEPUTY

STATE OF WASHINGTON,
Respondent,

v.

JERRY LYNN DAVIS,
Appellant.

No. 45274-0-II
consolidated with
No. 45280-4-II

UNPUBLISHED OPINION

MELNICK, J. — Jerry Lynn Davis appeals his conviction of attempted burglary in the second degree, arguing that the trial court erred by finding a factual basis for his guilty plea. In his statement of additional grounds (SAG), Davis further alleges that he received ineffective assistance of counsel before and during the plea proceedings. We affirm his conviction.

FACTS

The State charged Davis with burglary in the second degree and felony harassment. A few months later, the State charged him in a separate information with trafficking in stolen property in the first degree and theft of a motor vehicle.

Davis eventually agreed to enter an *Alford*¹ plea to an amended charge of attempted burglary in the second degree in the first case, and to plead separately to the amended charge of taking a motor vehicle without permission in the second degree in the second case. The trial court found that a factual basis supported the *Alford* plea and that each plea was entered freely, knowingly, and voluntarily. The trial court imposed concurrent sentences of 40 months on the attempted burglary conviction and 29 months on the motor vehicle conviction.

Davis now appeals his attempted burglary conviction.

¹ *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

ANALYSIS

I. FACTUAL BASIS

Davis contends that the trial court erred by finding that a factual basis existed for his *Alford* plea to attempted burglary in the second degree. He adds that because he did not understand that the alleged facts would not support his conviction, his plea was not knowing, voluntary, and intelligent. Because this challenge has constitutional implications, we address its merits for the first time on appeal. RAP 2.5(a)(3); *In re Pers. Restraint of Hews*, 108 Wn.2d 579, 592, 741 P.2d 983 (1987).

A conviction based on a guilty plea that is not knowing and voluntary is constitutionally invalid. *State v. Chervenell*, 99 Wn.2d 309, 312, 662 P.2d 836 (1983). A guilty plea is not truly voluntary “unless the defendant possesses an understanding of the law in relation to the facts.” *McCarthy v. United States*, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969). Toward this end, the trial court must determine that the conduct the defendant admits constitutes the offense charged. *In re Pers. Restraint of Bratz*, 101 Wn. App. 662, 672, 5 P.3d 759 (2000). The trial court’s determination that a factual basis exists for the plea does not require that the court be convinced of a defendant’s guilt beyond a reasonable doubt, but only that sufficient evidence exists to sustain a jury finding of guilt. *State v. Newton*, 87 Wn.2d 363, 370, 552 P.2d 682 (1976); *State v. Amos*, 147 Wn. App. 217, 228, 195 P.3d 564 (2008), *abrogated sub silentio on other grounds*, *State v. Hughes*, 166 Wn.2d 675, 212 P.3d 538 (2009). In determining factual basis, the court may consider any reliable source of information as long as it is in the record. *Amos*, 147 Wn. App. at 228; *State v. Arnold*, 81 Wn. App. 379, 382, 914 P.2d 762 (1996).

In entering his *Alford* plea, Davis did not admit to committing attempted burglary in the second degree but acknowledged that a jury could find him guilty based on the facts set forth in the probable cause statement. That statement alleged that the victim saw Davis and two accomplices approach the victim's U-Haul, where the victim stored car parts. Davis and another man opened the back of the U-Haul and pulled out a radiator and two buckets. When the victim yelled at them to get on the ground, Davis tried to pull a metal pipe free before fleeing. A car owned by one of his accomplices was parked at the victim's locked gate. The probable cause statement concluded as follows:

Per the victim, his property is fenced where it can be fenced, and there is a steep natural barrier that cannot be fenced. The U-Haul was parked within the fenced area. The gate to the fence is locked and there was a no trespassing sign posted right where the defendants' vehicle was parked.

Clerk's Papers at 4.

"A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building other than a vehicle or a dwelling." RCW 9A.52.030(1). In addition to its ordinary meaning, "[b]uilding" includes "any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale, or deposit of goods[.]" RCW 9A.04.110(5). A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he takes a substantial step toward committing that crime. RCW 9A.28.020(1).

Davis contends that the facts in the probable cause statement were insufficient to show that he entered or attempted to enter a building because the victim's property was not a fenced area under RCW 9A.04.110(5). We reject this contention. Davis entered an *Alford* plea that permitted the trial court to rely on the probable cause statement in finding a factual basis for the plea. That statement clearly provided that the U-Haul was parked in a fenced area. Therefore, we find that a sufficient factual basis exists for Davis's plea to attempted burglary in the second degree and we reject his challenge to the validity of his plea.

II. SAG

In his SAG, Davis argues that he received ineffective assistance of counsel when his attorney did not investigate the facts in the probable cause statement supporting his attempted burglary charge. Davis contends further that his attorney did not depose and subpoena key witnesses.

A defendant whose guilty plea was validly entered generally waives complaints about alleged errors that occurred before entry of the plea. *Garrison v. Rhay*, 75 Wn.2d 98, 101, 449 P.2d 92 (1968); *In re Pers. Restraint of Teems*, 28 Wn. App. 631, 637, 626 P.2d 13 (1981). We note further that when Davis pleaded guilty, he acknowledged that he was waiving his right to call witnesses to testify on his behalf. Having upheld the validity of Davis's plea and its underlying factual basis, we need not consider his claim of ineffective assistance of counsel.

We affirm.

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

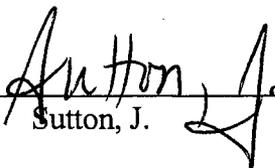


Melnick, J.

We concur:



Worswick, P.J.



Sutton, J.

In The Court of Appeals, Division Two
Of The State Of Washington

State of Washington,
Respondent,

vs.

Jerry Lynn Davis,
Appellant.

Case NO. 45274-0-11

Objection To
Cost Bill #3,102.95

Appellant "Strongly Objects" to the States
cost bill of \$3,102.95 for the following reasons:

1. An Order of Indigence was entered by the Superior
trial court and the Court of Appeals in this matter.
Appellant has remained indigent, and who suffers from
mental illnesses, and does not have the future
ability to pay the burdensome debt that would
in fact create a serious manifest hardship to Appellant,
and is hereby requesting forgiveness from the Cost bill,
See: RCW 10.73.160 (4).
2. Appellant is presently at the RRP/Lincoln Park
Work Release facility receiving counseling, chemical
dependency treatment, and who is on mental health
medication. The thought of further debt Appellant does
not have the future ability to pay, due to being indigent,
is making Appellant's mental health depression worse.

3. Appellant Counsel was ineffective during the direct appeal proceedings. On several occasions Appellant was forced to direct Counsel to "Motion" the Courts for all the Superior Court Transcripts, who failed to raise All of Appellants "Constitutional" direct appeal claims, and who was directed to file Appellant's "Amended" Opening Brief regarding Appellants unconstitutional Alford plea in Case No. 12-1-03559-0, attempted burglary in the second degree, Specifically:

"The Washington Supreme Court, in State v. Engel, 166 Wash. 2d 572, 210 P.3d 1007 (2009), held:

"Business private yard that was partially enclosed by a fence and partially bordered by sloping terrain was not a "fenced Area", as required to support conviction for second-degree burglary of a building of defendant who entered yard and stole items. West's RCWA 9A.52.030 ; 9A.04.110(5)." See: Order of Affirmance filed in this Court on February 18, 2015.

4. Appellant Counsel was further ineffective for not informing this Court, in advance, to waive the cost bill, pursuant to all the reasons above, in violation of Appellants state and federal constitutional right to receive effective assistance of Counsel.

5. Appellant Counsel has received adequate "Notice" of Appellant's mental health disabilities, change of address to the RFP work release facility, indigency status, and Appellant's mental health medication and his future inability to pay the cost bill and LFO debt(s).

6. And last, Appellant's Motion to file Discretionary Review to the Washington Supreme Court has been granted in Case No. 91343-9.

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing information is true and correct in Appellant's Objection To Cost Bill of \$3,102.95.

Conclusion

Therefore, for the reasons mentioned above, Appellant prays this Court will deny and waive the Cost Bill in this matter so Appellant will not further suffer a manifest hardship. With good cause appearing, relief is warranted, in the interest of justice.

Dated this 5th day of March, 2015 and signed in Tacoma, Washington.

Respectfully Submitted,
Jerry Lynn Davis
Jerry Lynn Davis, Appellant/Declarant
In Pro Se

Objection To Cost Bill \$3,102.95

Cc: WA. S. Ct. Clerk
Pierce Co. Prosecutor
File

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

STATE OF WASHINGTON,	
Respondent,	NO. 45274-0
v.	COST BILL
JERRY DAVIS,	
Appellant.	

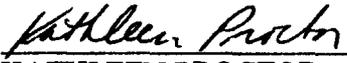
The STATE OF WASHINGTON, Respondent, asks that the following costs be awarded:

1. Charges for reproduction of	
Respondent's Brief:	\$ 4.69
Attorney Fees	2,692.00
VRPS	303.82
Pro Se Fees	00.00
Clerk's Papers	84.00
Appellant's Brief copies	<u>18.44</u>
	\$ 3,102.95

1 The above items are expenses allowed as costs by RAP 14.3, and RCW 10.73.160
2 (Laws 1995, Chapter 275), reasonable expenses actually incurred, and reasonably necessary
3 for review. The amount of \$4.69 should be awarded to the Pierce County Prosecuting
4 Attorney's Office; all remaining costs should be awarded to the Office of Public Defense,
5 State of Washington. Appellant should pay the cost.

6 DATED: February 20, 2015.

7 MARK LINDQUIST
8 Pierce County
9 Prosecuting Attorney

10 
11 KATHLEEN PROCTOR
12 Deputy Prosecuting Attorney
13 WSB # 14811

14 Certificate of Service:
15 The undersigned certifies that on this day she delivered by U.S. mail, e-file,
16 or ABC-LMI delivery to the attorney of record for the appellant and
17 appellant c/o his or her attorney or to the attorney of record for the
18 respondent and respondent c/o his or her attorney true and correct copies
19 of the document to which this certificate is attached. This statement is
20 certified to be true and correct under penalty of perjury of the laws of the
21 State of Washington. Signed at Tacoma, Washington, on the date below.

22 2-20-15 Therena Ka
23 Date Signature



**WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE**
Appellate Program

**Indigent Defense Fund
Cost Summary Request**

Use this form to request a summary of the amount paid by the Washington State Office of Public Defense on a case as outlined in RAP 14.3.

TO BE COMPLETED BY REQUESTOR

Request Date: 2/18/15 Due Date: 03/02/15
 Case Name: ST. V. JERRY DAVIS COA No.: 45274-0
 Superior Court No.: 12-1-03559-0 County: Pierce
 Requestor Name: THERESE KAHN
 Phone No.: _____ Email Address: _____

Email the completed request form to: Michele.young@opd.wa.gov

TO BE COMPLETED BY OPD ACCOUNTING DIVISION

Amount Paid to Date

Counsel Fees: \$ 2692.00 ^{4.69}
 VRP: \$ 303.82
 VRP copy (RAP 10.10(e)): \$ 0
 Clerk's Papers: \$ 84.00
 Brief Copies: \$ 18.44
 TOTAL: \$ 3098.26 ^{3102.95}

If this box is checked either no invoice or only a partial invoice has been received and additional expenses may be incurred.

For cases consolidated with one or more co-defendants, the amount provided here reflects an even distribution of the total cost with the exception of counsel fees.

Signature of OPD Staff: [Signature] Date: 2/18/15

QUESTIONS

Michele Young, Fiscal and Budget Manager
 Washington State Office of Public Defense
 P.O. Box 40957
 Olympia, WA 98504-0957
 (360) 586-3164 ext. 101
michele.young@opd.wa.gov

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

STATE OF WASHINGTON,
Respondent,

vs.

JERRY LYNN DAVIS,
Appellant.

Appeal No. 45274-0-II (Consol.)
Pierce Co. No. 12-1-03559-0 & 13-1-00377-7

OBJECTION TO COST BILL
(RAP 14.5)

1. IDENTITY OF MOVING PARTY

Appellant JERRY LYNN DAVIS, through his court-appointed counsel, STEPHANIE C. CUNNINGHAM, asks for the relief designated in Part 2 below.

2. STATEMENT OF RELIEF SOUGHT

Appellant objects to the Cost Bill filed by Respondent State of Washington pursuant to RAP 14.5.

3. FACTS RELEVANT TO MOTION

Mr. Davis pleaded guilty to amended informations charging one count of attempted second degree burglary and one count of taking a motor vehicle without permission. The court imposed a standard range sentence totaling of 40 months of confinement. Mr. Davis timely appealed. Mr. Davis requested that he be allowed to appeal at public expense because he had no income, no employment, no assets, and survived on social security disability payments. (See attached Motion) The trial court found that Mr. Davis was indigent by orders dated September 18, 2013.

On appeal, Mr. Davis raised the issue of whether there was a factual basis for his guilty plea to attempted second degree burglary. Mr. Davis also filed a Statement of

Additional Grounds raising ineffective assistance of counsel claims. In an unpublished opinion dated February 18, 2015, this Court affirmed Davis' pleas and convictions. The State filed a cost bill on February 20, 2015, requesting that \$3,102.95 in appeal costs be imposed on Mr. Davis.

4. GROUNDS FOR RELIEF & ARGUMENT

Under RCW 10.73.160 and RAP Title 14, this Court may order a criminal defendant to pay the costs of an unsuccessful appeal. Rule 14.2 provides, in relevant part: "A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review." But imposition of costs is not automatic even if a party establishes that they were the "substantially prevailing party" on review. State v. Nolan, 141 Wn.2d 620, 628, 8 P.3d 300 (2000). In Nolan, our highest Court made it clear that the imposition of costs on appeal is "a matter of discretion for the appellate court," which may "decline to order costs at all," even if there is a "substantially prevailing party." Nolan, 141 Wn.2d at 628.

In fact, the Nolan Court specifically *rejected* the idea that imposition of costs should occur in every case, regardless whether the proponent meets the requirements of being the "substantially prevailing party" on review. 141 Wn.2d at 628. Rather, the authority to award costs of appeal "is **permissive**," the Court held, so that it is up to the appellate court to decide, in an exercise of its discretion, whether to impose costs **even** when the party seeking costs establishes that they are the "substantially prevailing party" on review. Nolan, 141 Wn.2d at 628 (emphasis added).

This Court should not exercise its discretion to impose the costs on appeal that the prosecution seeks in this case. Mr. Davis has no income, no assets, and no employment, and survives on social security disability payments from the State. He has no means to repay these additional costs.

This Court should decline to impose costs in this case for another reason as well -- because the imposition of costs on appeal is now inconsistent with important constitutional rights and principles. In State v. Blank, 131 Wn.2d 230, 237, 930 P.2d 1213 (1997), the Supreme Court upheld the imposition of costs on appeal under RAP Title 14 and RCW 10.73.160 as constitutional even though our state's constitution guarantees the right to appeal. The Court held that it was proper to impose such costs even upon indigent appellants because they may later acquire the means to be able to pay, could later object to the enforcement of such costs if they were unable to pay, and could at some point ask for the "remission" of such costs based on indigence. Blank, 131 Wn.2d at 242-43. Citing U.S. Supreme Court precedent, our state's highest court noted that a defendant cannot be imprisoned or punished based upon his indigency, so that a trial court is required to inquire into ability to pay prior to imposing sanction for failure to do so. Id., *citing*, Bearden v. Georgia, 461 U.S. 660, 669, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983). The Blank Court assumed that this was, in fact, a protection included in enforcement of the law, so that it found ordering costs was not inconsistent with constitutional principles. Blank, 131 Wn.2d at 242-43.

But we now know that the protections upon which the Court relied in Blank have not prevented imprisonment of people such as Mr. Davis based upon inability to pay the

astronomical and crushing amounts they end up owing for legal financial obligations. In a recent, scathing report, it was revealed that the trial courts of this state are routinely requiring people to give up public assistance and other public monies they need for basic necessities of life in order to avoid imprisonment for failing to pay legal financial obligations.¹ Further, a National Public Radio investigation also uncovered evidence that in at least one county in our state, Benton County, 25 percent of all of the people in the jail on a typical day over a four month period were in custody for failing to pay fines or fees on a misdemeanor offense.² And the Washington State Minority and Justice Commission has reported that imposition of legal financial costs makes it far more difficult for the defendant, once released, to secure stable housing, employment, education and other rehabilitation in order to become a productive member of society and discourage recidivism.³

It is thus clear that, despite the expectations of the Court in Blank, the ability to pay is not being truly considered in later enforcement and punishment and that the crushing weight of debt upon an already indigent defendant has a strong negative impact on the goals of reform and rehabilitation.

It is important to note that, once the cost bill order is entered in this case and made a part of the judgment and sentence below, Mr. Davis not only becomes

¹ See ACLU/Columbia Legal Services Report: Modern-Day Debtors' Prisons: The Ways Court-Imposed Debts Punish People for Being Poor (February 2014), available at <http://columbialegal.org/resources/publications>.

² See Joseph Shapiro, Supreme Court Ruling Not Enough to Prevent Debtors Prisons, available at: <http://www.npr.org/2014/05/21/313118629/supreme-court-ruling-not-enough-to-prevent-debtors-prisons>.

³ See Washington State Minority and Justice Commission, The Assessment and Consequences of Legal Financial Obligations in Washington State (2008), available at http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf.

immediately liable for the amount for which the prosecution is asking but also begins to have interest levied on the account **immediately**, at the incredibly high interest rate of 12 percent. See RCW 10.82.090.

This Court should not exercise its discretion to impose appellate costs in a case where the defendant is indigent. The imposition of the requested costs on the indigent appellant in this case would not serve the purposes of justice. This Court should decline to impose the requested discretionary costs in this case and should deny the Cost Bill request with prejudice.

5. CONCLUSION

Based on the above-stated authority and argument, Mr. Davis respectfully requests that this Court deny the State's requests for an award of appellate costs.

DATED: March 6, 2015



STEPHANIE C. CUNNINGHAM, WSB #26436
Attorney for Appellant Jerry Lynn Davis

CERTIFICATE OF MAILING

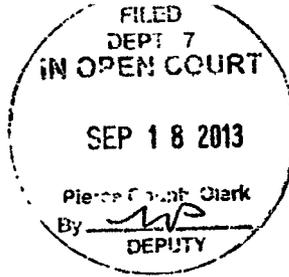
I certify that on 03/06/2015, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Jerry L. Davis, DOC# 368483, RAP/Lincoln Park Work Release, 3704-06 South Yakima, Tacoma, WA 98418.



STEPHANIE C. CUNNINGHAM, WSBA #26436



13-1-00377-7 41240585 MTIND 08-18-13



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SUPERIOR COURT OF PIERCE COUNTY WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs

JERRY LYNN DAVIS,

Defendant.

NO. 13-1-00377-7

MOTION AND DECLARATION
FOR AUTHORIZING THE
DEFENDANT TO SEEK REVIEW
AT PUBLIC EXPENSE AND
PROVIDING FOR APPOINTMENT
OF ATTORNEY ON APPEAL

A. MOTION

COMES NOW the defendant and moves the Court for an order allowing the defendant to seek review at public expense and providing for appointment of attorney on appeal. This motion is based on RAP 2.2(a)(1) and is supported by the following declaration.

DATED this 22nd day of August 2013.

James A. Schoenberger WSBA #33603
Attorney for Defendant

B. DECLARATION

I plead guilty to taking motor vehicle without permission 2° before the Honorable Jerry Costello. A judgment and sentence was entered in this matter on August 22nd 2013. I desire to appeal the conviction and the judgment imposed. I believe that the appeal has merit and is not frivolous and make the following assignments of error:

Time for trial violations.

MOTION AND DECLARATION FOR
AUTHORIZING THE DEFENDANT TO SEEK
REVIEW AT PUBLIC EXPENSE AND PROVIDING
FOR APPOINTMENT OF ATTORNEY ON APPEAL

ORIGINAL
1 of 4

LAW OFFICE OF
JAMES A SCHOENBERGER
1008 Yakima Ave Ste 201
Tacoma, WA 98405-4850
253 444 3111

1 I have previously been found to be indigent. The following declaration
2 provides information as to my current financial status:

- 3 1.) That I am the defendant in the above-captioned cause;
- 4 2.) That I do do not own any real estate (if so, appraised value is
5 approximately \$ 0 and rental income is \$ 0.);
- 6 3.) That I do/do not own any stocks, bonds, or notes (if so, value is
7 approximately \$ 0.);
- 8 4.) That I am am not the beneficiary of a trust account or accounts (if so,
9 income therefrom is approximately \$ 0.);
- 10 5.) That I own the following motor vehicles or other substantial items of
11 personal property:

12	ITEM	VALUE/AMOUNT OWED ON ITEM
13	<u>0</u>	<u>0</u>
14	<u>0</u>	<u>0</u>
15	<u>0</u>	<u>0</u>

16 6.) That I do/do not have income from interest or dividends (if so, amount
17 is approximately \$ 0);

18 7.) That I have approximately \$ 0 in checking account(s), \$ 0 in
19 savings account(s), and \$ 0 in cash.);

20 8.) That I am am not married (if so, my spouse's name and address is:

21 Melissa Dotson 6424 161st St. N.E. Puyallup, WA);
22 98375

23 9.) That the following persons are dependent on me for their support:

23	NAME	RELATIONSHIP	AGE
24			<u>N/A</u>

25 MOTION AND DECLARATION FOR
AUTHORIZING THE DEFENDANT TO SEEK
REVIEW AT PUBLIC EXPENSE AND PROVIDING
FOR APPOINTMENT OF ATTORNEY ON APPEAL

ORIGINAL
2 of 4

LAW OFFICE OF
JAMES A. SCHOENBERGER
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253 444 3111

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10.) That I have the following substantial debts or expenses:

NAME	AMOUNT OWED	MONTHLY PAYMENT
_____	_____	Ø

11.) That I am personally receiving public assistance from the following sources (or was until I was incarcerated):

AGENCY OR PROGRAM	AMOUNT OF ASSISTANCE
SSI	687 No longer while in prison.
_____	_____

12.) That I am/am not employed (if so, take-home pay is approximately \$ Ø per month.);

13.) That I have no substantial income other than what is set forth above;

14.) Other circumstances affecting my financial position include:
I will not receive anything while in prison.

15.) I authorize the court to obtain verification information regarding my financial status from banks, employers, or other individuals or institutions, if appropriate.

1 16.) That I will immediately report to the Court any change in my financial
2 status which materially affects the Court's finding of indigence.

3 17.) I certify that review is being sought in good faith. I designate the
4 following parts of the record, which are necessary for review:

- 5 (X) Pre-trial hearing Date(s): 2012-2013 *To include motions filed*
6 Judge(s): Churchoff and ?
- 7 () Trial, excluding voir dire Date(s): _____
8 and opening statements Judge(s): _____ *perpelier*
- 9 () Post-trial hearing Date(s): _____
10 Judge(s): _____ *03/20/13*
- 11 () Sentencing hearing(s) Date(s): _____
12 Judge(s): _____
- 13 () Other: _____ Date(s): _____
14 Judge(s): _____

15 18.) That the foregoing is a true and correct statement of my financial
16 position to the best of my knowledge and belief.

17 For the foregoing reasons, I request the Court to authorize me to seek review at
18 public expense, including, but not limited to, all filing fees, attorney's fees, preparation
19 of briefs, and preparation of verbatim report of proceedings as set forth in the
20 accompanying order of indigency, and the preparation of necessary clerk's papers.

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

23 SIGNED in Tacoma, Washington this 23 day of August 2013

24 Jerry R. Davis

April 10, 2013

Jerry L. Davis
BID 2013027045
930 Tacoma Ave. S.
Tacoma, WA 98402

Re: State v. Davis 12-1-03559-0, 13-1-00377-7

Dear Mr. Davis:

I spoke with DPA Oliver after we met and she informed me that the 3/20 continuance was granted at request of Mr. Hill who stated that he would be unprepared for trial and cited *State v. Campbell* (a WA case where a continuance should be granted when counsel for defendant is not prepared to proceed to trial). # /20 was still within your 60 day time for trial. As such, any motion to dismiss based on speedy trial violations will fall on deaf ears.

I'll be in touch about a bail hearing. In the meantime, please add your ssn and signature to the HIPAA form, enclosed, and get it to medical.

Very Truly yours,



James A. Schoenberger

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

<p>State of Washington Respondent</p> <p style="text-align:center">Vs</p> <p>Jerry Lynn Davis Appellant</p>	<p style="text-align:right"><u>No. 45274-0-II (Consol.)</u></p> <p style="text-align:center"><u>Pierce County Superior Court</u> <u>Cause No's: 12-1-03559-0 and</u> <u>13-1-00377-7</u></p>
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Comes now Jerry Lynn Davis, pro se, pursuant to RAP 10.10 (e) with statement of additional grounds for the Courts review. **1. The Elements Do Not Support A Conviction For Burglary In Cause No. 12-1-03559-0; 2. Specific Performance of Guilty Plea Agreement (DOSA) Binding Contract.**

STANDARD OF REVIEW

Appellant is requesting to come before the Court in Pro Se to raise additional (supplemental) Ground(s) pursuant to RAP 10.10(e). Appellant is without a law library for research, and prays the Court will be liberally interpreted to promote justice and facilitate the decision of this matter on their merits. **RAP 1.2(c); Haines v. Kerner, 404 U.S 519 (1972).**

Further, Appellant fully incorporates all the information in Appellant's Opening Brief filed by attorney, Stephanie C. Cunningham, as if fully incorporated herein. Appellants' Attorney has also filed an **AMENDED OPENING BRIEF** that appellant incorporates all of the information in as if fully incorporated herein. Further, Appellant posted for mailing on March 27, 2014 a **PRO SE**

ADDITIONAL SUPPLIMENTAL GROUNDS pursuant to RAP 10.10(e) that Appellant is also incorporating herein for the Courts review in this Direct Appeal. **SPECIFIC PERFORMANCE OF GUILTY PLEA AGREEMENT (DOS) BINDING CONTRACT ISSUE.**

ADDITIONAL (SUPPLIMENTAL) GROUND I

In Appellant Counsels **AMENDED OPENING BRIEF** at p.10, she states in relevant part: “There is no indication in the record that Davis understood that the facts alleged in the Declaration would not support a conviction for either the original burglary charge or the amended charge of attempted burglary. In fact, by asserting that the Declaration contained sufficient facts, the record actually shows that Davis was unaware that the alleged facts would not support a burglary conviction”.

Appellant wishes to bring to the Courts attention Facts and Evidence from the reviewable record that demonstrates Appellant did not know the elements did not exist for him to be charged with a burglary, was wishing to have a fair trial to prove his innocence, but was deprived in doing so. For example: On March 28, 2013 a pro se motion to have victim and all states witnesses interviewed before trial starts under Brady vs. The State Of Maryland, 373 U.S. 83 (1963) was filed. The alleged victim, Mr. Duvall, refused to give a deposition so trial counsel informed the trial court that the defense intended to file a motion to depose Mr. Duvall. SEE: **ORDER CONTINUING TRIAL** filed on May 30, 2013; and again on July 25, 2013. Trial counsel never did file said motion to depose Mr. Duvall regarding his TRUTHFULNESS, the record shows. Mr. Duvall, the alleged victim in cause no. 12-1-03559-0 provided a hand written statement, the FRESHEST TIME OF HIS MEMORY, indicating 1. THAT A MAN CAME DOWN ON HIS PROPERTY FIRST AND THEN AWHILE LATER A MAN AND WOMAN CAME DOWN AND TURNED TO LEAVE

AND MR. DUVALL JUMPED OUT OF THE BUSHES WITH A GUN, FROM WHERE HE WAS CLOSELY WATCHING EVERYTHING, ORDERING EVERYONE TO THE GROUND AND STARTED FIRING SHOTS.

2. THAT MR. DAVIS THREATENED TO F----- KILL HIM-- TO GET AWAY... (While Mr. Davis was being shot at), yet the NEIGHBOR makes no mention of said threat in his hand written statement. And 3. MR. DUVALL STATES IN HIS WRITTEN STATEMENT THAT NOTHING FROM THE CAR BELONGED TO HIM AS STOLEN. Trial Counsel was ineffective for not addressing the original WRITTEN STATEMENT from the victim, Mr. Duvall that would have demonstrated the ELEMENTS for burglary did not exist. Trial Counsel should have questioned that the DECLARATION FOR PROBABLE CAUSE was different than the victims WRITTEN STATEMENT at time of incident. The victim refused Appellants requested deposition upon these assertions. Trial Counsel did not conduct an investigation in cause no: 12-1-03559-0 whatsoever that would have shown insufficient evidence to support a conviction, and failed to disclose to Appellant all these facts before making an informed decision to plead guilty. Appellant contends that a manifest injustice has occurred in this matter and should be reversed. Trial Counsel deprived Appellant of his right to face his accuser by failing to file the motion to depose the victim, Mr. Duvall, as demonstrated by the reviewable record. SEE: APPENDIX/EXHIBIT. Trial Counsel did get the trial court to **ORDER FOR TRANSFER OF PRISONER, RICKY LEE POWELL**, filed on July 25, 2013, only to continue the trial and send Appellants key witness back to prison. Appellant was picking jury and had planned on going to trial on August 5, 2013 when trial counsel advised Appellant that he failed to subpoena RICKY LEE POWELL and that a plea deal was in Appellants best interest at that point which took place on the day of trial and only giving Appellant 1 and a half hours to make up his mind to take a plea deal or lose at trial. SEE: **PLEA TRASCRIPTS, P.6, "I**

DON'T HAVE HIM (POWELL) UNDER SUBPOENA"...BUT THIS ALL FACTORS INTO MY DISCUSSION WITH MR.DAVIS ABOUT HIS RISK AT TRIAL".

Appellant has diligently been attempting to receive a copy of his entire (redacted) case files, but has not been very successful. SEE: **ATTACHED LETTER FROM DEPARTMENT OF ASSIGNED COUNSEL DATED MARCH 11, 2014**, where Appellant has finally been able to read the **DECLARATION FOR DETERMINING PROBABLE CAUSE**, for the first time and requested Appellant Attorney to file the **AMENDED OPENING BRIEF** for this courts just review. CrR 4.7(h) (3) provides in relevant part: "Further, a defense attorney SHALL be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court".

Appellant submits that perhaps trial counsels performance was deficient, that the standard for effective assistance of counsel was not met under the 6th amendment of the U.S. Constitution, and that appropriate relief is warranted.

Pursuant to the **ENGEL** case, Appellant prays for the Court to reverse the guilty plea conviction in cause no. 12-1-03559-0, because clearly the elements do not exist for a conviction, coupled with compelling facts and evidence from the record. **SEE**: APPENDIX. The Washington Supreme Court overturned the **ENGEL** decision.

ADDITIONAL (SUPPLIMENTAL) GROUND II

In the Opening Brief Appellant Counsel argued that Appellant was eligible for a DOSA sentence pursuant to RCW 9.94A.660 (1) (c), because his prior past violence was over 10 years ago. As a matter of law the Court could have given the Appellant a chance to embrace a much

needed treatment opportunity through a DOSA sentence, and still can, which would assist Appellant with his re-entry back into society as a foundation towards him attending college.

Appellant submits that in his plea agreement he did initial for a DOSA request and that the plea deal was stipulated to on this matter. Appellant did request DOSA, initialed for the Court to consider DOSA, and had counsel strongly request a DOSA sentence during the sentencing hearing. (8/22/13 RP7). Appellant advised the Court he was hoping for DOSA under the DOSA statute. (8/22/13 RP16). The plea agreement states at page 6 (t), in relevant part: **"The Judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660"**. Appellant did qualify because his past violence was over 10 years as is required by law, Id. The DOSA matter was thereby stipulated to by expressed and implied Consent pursuant to the plea agreement contract papers filed in the Court on August 5, 2013 plea hearing that all parties signed. **SEE: Attached Exhibit, Guilty Plea Agreement.**

Presently Appellant consistently attends several recovery meeting's weekly, which has become his #1 priority, because nothing else in life will matter without being clean & sober. This is paramount.

Additionally, Appellant has been accepted into the Post-Prison Education Program, and will be attending college upon his re-entry back into society. Appellant understands that his #1 priority and college educational **HOPE** are not part of the record, but prays they may be somehow taken into consideration at this time to demonstrate Appellants' strong desire and determination for complete change.

Trial Counsel was correct in stating during the sentencing hearing at P.7, lines 6-22, which states in relevant part: “Mr. Davis reminds me that he wanted to ask for a DOSA, and he believes that Ms. Oliver stated that she would not oppose that but not support it either...

If Your Honor would see fit to grant a DOSA, I think Mr. Davis would be—would benefit from that. He needs help; he needs treatment; he needs to get home to his sister as soon as possible because he’s invaluable aid to her with her disabilities.

....I think this is an individual who now that he has regained his facilities, his faculties, can be a worthwhile member of a society but he needs to learn the tools. He needs to gain the tools with which to deal with life and his mental state and not self-medicate with illegal drugs”.

Appellant wishes to point out and help clarify an error regarding the States’ position on Appellants’ DOSA request. **SEE:** Sentencing Hearing, August 22, 2013, P.8. Lines 24-25. “This was a stipulated sentence based on reducing two cases”.

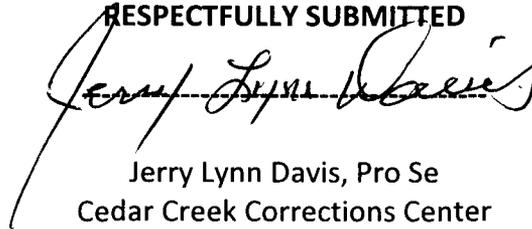
Appellant submits that a “DOSA CONSIDERATION” was in fact agreed upon in the plea agreement by all parties who signed the contract, providing Appellant was legally eligible pursuant to RCW 9.94A.660. **SEE: PLEA AGREEMENT, P.6 (t)**, that appellant initialed, which states: **“The Judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660”**. The plea agreement is clear and unambiguous regarding the states position and error, and for the state to now argue otherwise, wouldn’t that constitute a breach in the plea agreement that was in fact signed by all parties? Appellant is now requesting to receive **“SPECIFIC PERFORMANCE”** of his plea agreement contract regarding DOSA that Appellant contends was a **BINDING CONTRACT** “under contract law and Due Process of Law.

CONCLUSION

Pursuant to RCW 9.94A.660(1)(c), the trial court made a legal error when the State misrepresented that Mr. Davis was not eligible for a DOSA sentence opportunity, and the Court failed to properly exercise its discretion under the sentencing statutes. Mr. Davis sentence should be reversed and his case remanded for resentencing of whether he should receive a sentence under the DOSA statute as was stipulated to in the signed guilty plea agreement contract. Specific Performance is warranted and the relief requested by Appellant.

DATED this 27th day of March, 2014.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink that reads "Jerry Lynn Davis". The signature is written in a cursive style and is positioned over a horizontal line.

Jerry Lynn Davis, Pro Se
Cedar Creek Corrections Center
P.O. Box 37, DOC #368483
Little Rock, WA 98556-0037

APPENDIX/EXHIBITS

1. BRADY MOTION TO INTERVIEW ALL WITNESSES
2. ORDER CONTINUING TRIAL X3
3. 8/5/2013 MINUTES OF PROCEEDING
4. SEE: APPENDIX/EXHIBITS SUBMITTED ON MARCH 27, 2014 (FOR DOSA/COLLEGE)

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

**STATE OF WASHINGTON,
Respondent,**

Vs.

**JERRY LYNN DAVIS,
Appellant.**

NO: 45274-0-II

PIERCE County Case No's: 12-1-03559-0; 13-1-00377-7
(Consol.)

JUDICIAL NOTICE

SUPLIMENTAL TO STATEMENT OF

ADDITIONAL GROUNDS IAC CLAIM

COMES NOW, JERRY LYNN DAVIS, Appellant in pro se pursuant to RAP 10.10, and moves the Honorable Court of Appeals for permission to file the foregoing JUDICIAL NOTICE/SUPLIMENTAL TO STATEMENT OF ADDITIONAL GROUNDS IAC CLAIM.

Will the Court please note that Appellant is without a legal law library or effective legal assistance to help in this matter and is requesting/praying the Court will liberally interpret to promote justice and facilitate equal protection of the law. SEE: RAP 1.2 (c); Haines v. Kerner, 404 U.S. 519 (1972).

JUDICIAL NOTICE

Regrettably, Appellant comes before the Court to raise a valid complaint regarding Appellant counsel, Stephanie C. Cunningham. Appellant has diligently requested Ms. Cunningham to request ALL court hearing transcripts, which she has failed to do, to ensure Appellant does receive a full and fair direct appeal. First it was the sentencing transcripts to demonstrate the issue on Appellants DOSA request, and PLEA BREACH. Now it's the continuance hearing transcripts to demonstrate the CUMULATIVE ERRORS on an IAC claim. SEE: Appellants attached DECLARATION herein.

With the entire record for this Courts review, a serious IAC claim must be raised, that will warrant a reversal in cause no: 12-1-03559-0 [Alford plea], and a reversal in cause no: 13-1-00377-7 for a resentencing on a DOSA opportunity as a matter of law. The Amended Opening Brief and Appellants' SAG has already been filed. The Respondents' Brief is due very soon and Appellant is concerned his relevant IAC claim will not get filed due to Ms. Cunningham's actions.

Will the Court intervene and direct Ms. Cunningham to represent Appellant effectively in his appeal, and to request ALL the court records so she may raise the cumulative errors and IAC claim as I've requested of her to do in my behalf.

SUPPLEMENTAL STATEMENT OF
ADDITIONAL GROUNDS IAC CLAIM

Both the state and federal constitutions guarantee the accused the right to effective assistance of counsel. **Strickland v. Washington**, 366 U.S. 668, 104 S.Ct. 2052 (1984). To

show ineffective assistance, a defendant must show that, despite a presumption of effectiveness, counsel's representation was deficient and that the deficiency caused prejudice. State v. Bowerman, 155 Wn. 2d 794, 808, 802 P.2d 116 (1990). Counsel's performance is deficient if it falls below an "objective standard of reasonableness" and was not sound strategy. SEE: In re PRP of Rice, 118 Wn. 2d 876, 888, 828 P.2d 1086, cert. denied, 509 U.S. 958 (1992). That performance prejudices the defense when there is a reasonable probability that, but for counsel's deficient performance, the results would have been different. Hendrickson, 129 Wn. 2d at 78. A "reasonable probability" is one which is "sufficient to undermine confidence in the outcome". State v. Thomas, 109 Wn. 2d. 222, 226, 743 P.2d 816 (1987).

In the present case, cause no: 12-1-03559-0, attempted burglary in the second degree, trial counsel was ineffective for failing to conduct an investigation WHATSOEVER. An investigation would have shown that the alleged victim, Mr. Duvalls', written statement at the time of arrest did not support the charging DECLARATION, which became the DECLARATION OF PROBABLE CAUSE. The elements in the DECLARATION FOR PROBABLE CAUSE do not support a conviction. At p.2: "PER THE VICTIM, HIS PROPERTY IS FENCED WHERE IT CAN BE FENCED, AND THERE IS A STEEP NATURAL BARRIER THAT CANNOT BE FENCED". SEE: State v. Engel, 166 Wn. 2d 572, 210 P.3d 1007 (2009). An investigation would have further shown that there was a water line (swamp) that could not be fenced either. Our Washington Supreme Court reversed the Engel case based on the exact same circumstances as in this case.

When the alleged victim, Mr. Duvall, refused to be deposed, trial counsel was not only ineffective for not filing the MOTION TO DEPOSE, but counsel was also ineffective for not moving the court to dismiss the case entirely. Appellant filed a BRADY MOTION and had a constitutional right to face his accuser, but was deprived of said right, due to counsels' ineffective assistance of counsel that was prejudicial. Trial counsel went on record in a continuance hearing and admitted failing to file the MOTION TO DEPOSE the alleged victim, Mr. Duvall, and when counsel requested yet another continuance to file said MOTION, the court denied the request. Both of these actions were prejudicial to Appellant, without exception.

Trial counsel was further ineffective for failing to subpoena Appellants' KEY WITNESS, Ricky Powell, and then waited to inform Appellant of these assertions/facts on the day of trial. SEE: Plea Hearing Transcripts, p.6. **" I DON'T HAVE HIM (Powell) UNDER SUBPOENA" ..."BUT THIS ALL FACTORS INTO MY DISCUSSION WITH MR. DAVIS ABOUT HIS RISK AT TRIAL"**. The record demonstrates that counsel waited until the day of trial to inform Appellant of these facts, and then only gave Appellant one and a half hours to make up his mind for a plea deal, or RISK losing at trial that day. SEE: Court Minutes.

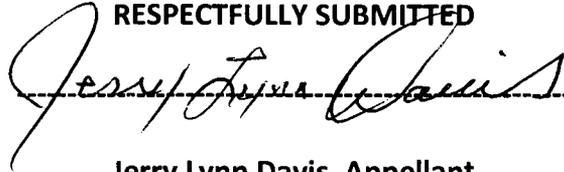
Pursuant to the IAC cumulative errors, trial counsel was clearly ineffective, and should NEVER have advised Appellant to plead guilty in an Alford Plea where the elements did not support a conviction and warrants a reversal in the interest of justice.

CONCLUSION

Therefore, Trial counsels performance of representation was so flagrantly ill-intended that there is no cure for the harm caused, and due to the cumulative errors, the Honorable Court of Appeals should reverse the attempted burglary case, cause no: 12-1-03559-0, and remand for resentencing in cause no: 13-1-00377-7, as a matter of law for a DOSA opportunity.

Dated this 4th day of May, 2014.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, reading "Jerry Lynn Davis", written over a horizontal dashed line.

Jerry Lynn Davis, Appellant

In Pro Se

APPINDIX OF EXHIBITS ATTACHED

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

**STATE OF WASHINGTON,
Respondent,**

APPEAL NO: 45274-0-II

vs.

**DECLARATION OF
APPELLANT**

**JERRY LYNN DAVIS,
APPELLANT,**

I, JERRY LYNN DAVIS, declare as follows:

1. I am the Appellant in the above captioned matter.

2. I believe the transcripts from the continuance hearings are necessary for a full and Fair appeal in my case because without them Appellants' Counsel nor I will be able to raise all the "CUMULATIVE ERRORS" of APPEALABLE ISSUES for the Courts fair and just review, to include, INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL(S) that fail below the standard range of performance for representation under the 6th and 14th Amendment of the United States Constitution. Trial counsel(s) failings to perform even the minimal duties resulted in deficiencies that were seriously prejudicial to Appellant and the outcome to his proceedings.

3. In Pierce County Cause NO: 12-1-03559-0 trial counsel goes on record and informs the court that he failed to draft and file a critical **MOTION TO DEPOSE** the alleged victim and the States witness, Mr. Duvall. Trial counsel then requested yet another continuance to draft and file said **MOTION**, but was denied said continuance request. These two actions by both trial counsel and the Court were prejudicial to Appellant, which lead up to the ALFORD PLEA that Appellant was coerced into taking in cause no: 12-1-03559-0. For example: At page 6 of the PLEA TRANSCRIPTS trial counsel states. **"I DON'T HAVE HIM (Powell) UNDER SUBPOENA"..."BUT THIS ALL FACTORS INTO MY DISCUSSION WITH MR. DAVIS ABOUT HIS RISK AT TRIAL"**. Appellant declares that trial counsel waited until the day of trial to inform his client of his failure to subpoena Appellants **"KEY WITNESS"** which would have cleared Appellant of involvement in cause no: 12-1-03559-0. And in the Court minutes of proceedings filed on 8/5/2013 there is evidence that Appellant was only given an hour and a half of time to make up his mind over a lunch break to understand his **RISK** of going to trial. **SEE ATTACHED COURT MINUTES OF PROCEEDINGS FILED 8/5/2013 IN CAUSE NO: 12-1-003559-0.**

4. Appellant declares that trial counsel(s) performance of representation was so flagrantly ill-intended that there is no cure for the harm caused, and due to the "CUMULATIVE ERRORS", the requested continuance transcripts are necessary for Appellant to receive a fair appeal that may demonstrate to this Honorable Court that Appellant did receive ineffective assistance of counsel that was deficient and prejudicial and warrants reversal of the ALFORD PLEA. See: Strickland vs. State Of Washington, U.S Sup. Ct. SEE ALSO: North Carolina vs. Alford, 400 U.S. 25, 91 S. Ct.160, 27 L. Ed. 2d. 162 (1970); STATE OF WASHINGTON vs. ENGAL, 166 Wn. 2d 572, 210 P. 3d 1007 (2009). The elements for an attempted burglary charge do not exist in cause no: 12-1-03559-0, which was withheld from Appellant by trial counsel.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND UNDERSTANDING.


JERRY LYNN DAVIS, APPELLANT

DATE: APRIL 27TH, 2014

WITH ATTACHMENT: 8/5/2013 Court minutes of proceedings

Cc: Stephanie C. Cunningham, Attorney At Law
File.

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

State Of Washington,
Respondent,

Vs.

Jerry Lynn Davis,
Appellant.

NO: 45274-0-II (Consol.)

Pierce County Superior Court
Case No's: 12-1-03559-0; 13-1-00377-7

REPLY TO STATES RESPONSE
UNDER RAP 10.10 PRO SE

COMES NOW Jerry Lynn Davis, in pro se pursuant to RAP 10.10, and request permission to file a REPLY to the states REPONSE. Appellant is without a law library and prays the Court of Appeals, Division II, will interpret liberally to promote justice and equal protection of the law under the 5th, 6th, and 14th Amend. Of the U.S. Const. SEE: **RAP 1.2 (c); Haines v. Kerner**, 404 U.S. 519 (1972). Appellants counsel has declined to file a REPLY BRIEF upon Appellants request.

REPLY ARGUMENT I

Appellant contends that the state has conceded with Appellants DOSA claim by stating on page 4, the following: **"Although the age of defendant's violent offenses did NOT automatically preclude him from a DOSA"**. Anything else the state argues was irrelevant, and should not be considered by the court, because it was not an issue to be argued on appeal. Here, the sentencing court was misinformed by the state during sentencing regarding Appellants past violence and stated Appellant was not eligible for a DOSA consideration, and

not that Appellant was deemed an improper candidate, which was in fact incorrect. Any past violence over 10 years could still be considered. **SEE: RCW 9.94A.660 (1) (c)**. Here, in the present case, Appellants past violence was over 23 years ago and he has had no further violent offenses. Appellant's history does reflect that every conviction Appellant has had was drug related, and treatment for recovery is appropriate, which should warrant a resentencing hearing before a different judge to determine whether the court should grant a DOSA opportunity, as a matter of law, and in the interest of justice. SEE: **Santobello v. New York, 404 U.S. 257, 92 S. Ct.495 (1971)**. SPECIFIC PERFORMANCE of the guilty plea agreement should be honored as Appellant has met his end of the plea deal regarding the signed plea contract that ALL PARTIES SIGNED that the state fails to mention in its RESPONSE, which states in relevant part, at p.6 (t) as follows: **"The Judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660"**. To the contrary, Appellant firmly contends that he is a **PERFECT** candidate for a DOSA sentence, in that Appellant has already embraced a solid recovery foundation while he has been incarcerated. **SEE:** Attached Recovery Attendance Print-out.

Pursuant to **RCW 9.94A.660 (1) (c)**, the trial court made a legal error when the state misrepresented that Mr. Davis was not eligible for a DOSA sentence due to his past violence that was over 23 years ago, and Appellants sentence should be reversed and his case remanded for resentencing to determine whether he should receive a sentence under the DOSA statute as was stipulated to in the signed guilty plea agreement contract. SPECIFIC PERFORMANCE is warranted, and resentencing before the Presiding Judge of the Superior Court of Pierce County would be equitable, and the relief requested by Appellant.

REPLY ARGUMENT II

In the states RESPONSE the facts have been misrepresented. For example, on page 7 the Respondent states: “The Declaration for Probable Cause alleged that defendant entered and removed items from a U-Haul parked within a fenced area on the victim’s property which had been broken into and burglarized over the past four nights. CP 4. It additionally alleged that defendant grabbed a metal pipe from the victim while screaming, “I’m going to fucking kill you,” so loud that a neighbor overheard it. CP 4.”

First, the Respondent has inflated the facts, because it was never alleged that defendant was screaming anything. Further, defendant never had a pipe, nor threatened to kill anyone. In the Declaration for Probable Cause the victim stated that Mr. Davis TRIED to pull the pipe free and that the victim shot four rounds in the ground at which time Powell sat down. Davis then fled into the WOODS. Also in the alleged victims WRITTEN STATEMENT AT THE TIME OF ARREST, Mr. Duvall stated that Mr. Davis ran into the WETLANDS of his property where there was no in closed fencing either. SEE: State v. Engel, Id. Appellant submits to the Honorable Court of Appeals that the alleged victim in the attempted burglary case, Mr. Duvall, has changed his original WRITTEN STATEMENT to protect himself from trouble. In the 5/7/2013 DEFENSE MOTION TO REDUCE BAIL HEARING, at p.6, Trial Counsel states on the record: “And I’ve been in touch with Ricky Powell who says he will come and testify on Mr. Davis’s behalf and confirm his story that he had given Ms. Jones \$20 for gas and they were giving him a ride to the Federal Courthouse on Joint Base Lewis McChord to pay a traffic ticket that he—that he received. And they stopped along the way and got involved in a situation for which they were all charged with Burglary in the Second Degree. Mr. Davis was not a part of that, and we

have a witness who will come to court at trial and testify to that". Additionally, a continuance hearing was held on July 25th, 2013, where the transcripts state in relevant part, on p.4 & 5, as followings: "Mr. Schoenberger: Well, this is my fault, Your Honor. As Your Honor knows, I've been recently sent out on a number of trials, and we had an interview of Mr. and Mrs. Duvall, who were witnesses in the case ending in 559-0. And due to my oversight, we didn't clear use of a tape recording in advance, and they refused. And the last time we were here, we sought the CONTINUANCE because I need to make a motion for a DEPOSITION. These are very important witnesses. Gunshots were fired. Mr. Duvall fired several gunshots AT PEOPLE, WHO WERE EVIDENTLY TRESPASSING ON HIS PROPERTY.

Co-defendant Powell, who has taken a plea and is at DOC, told me, among other things, that Mr. Duvall fired AT Mr. Davis back as he was fleeing, which is not what he told—not what Mr. Duvall said (SEE: Mr. Duvall's WRITTEN STATEMENT AT THE TIME OF INNCEDENT), so it's very important that I depose these people. I need to make a MOTION to do that, and I have failed and haven't done that". "Mr. Schoenberger—it goes to his (Mr. Duvall's) CREDIBILITY, and I need to gauge that before I have a trial and have a witness on the stand who I've not interviewed in the past". In the hearing held on July 25th, 2013 the court denied the Continuance request to file a motion to depose Mr. Duvall. Appellant contends that both of these actions by trial counsel and the trial court were prejudicial. Appellant submits that even the Prosecutor stated on record during a July 29th, 2013 hearing [TRANSCRIPTS], at p.2, as follows in pertinent part: "Cause NO: 12-1-03559-0, one of the witnesses that the defense was RESPONSIBLE FOR SUBPOENAING didn't get subpoenaed and is in DOC (Ricky Powell) and won't be transported here until this Friday". Appellant submits that Ricky Powell could have

testified and cleared Appellant of any wrong doing in the attempted burglary case, but trial counsel FAILED to have him subpoenaed, which would have made a major difference in the outcome in the proceedings—without exception. Trial counsel was clearly ineffective, and due to trial counsels ineffective deficient performance, Appellant was seriously prejudiced.

Both the state and federal constitutions guarantee the accused the right to effective assistance of counsel. Strickland v. Washington, 333 U.S 668, 104 S.Ct. 2052 (1984). To show ineffective assistance, a defendant must show that, despite a presumption of effectiveness, counsel's representation was deficient and that the deficiency caused prejudice. State v. Bowerman, 155 Wn. 2d 794, 808, 802 P.2d 116 (1990). Counsel's performance is deficient if it falls below an "objective standard of reasonableness" and was not sound strategy. SEE: In re PRP of Rice, 188 Wn. 2d 876, 888, 828 P.2d 1086, cert. denied, 509 U.S. 958 (1992). That performance prejudices the defense when there is a reasonable probability that, but for counsel's deficient performance, the results would have been different. Hendrickson, 129 Wn. 2d at 78. A "reasonable probability" is one which is "sufficient to undermine confidence in the outcome. State v. Thomas, 109 Wn. 2d 222, 226, 743 P.2d 816 (1987).

Here, in the present case, Appellant contends that the record demonstrates that Appellants 5th, 6th, and 14th Amendments to the United States Constitution was seriously violated by trial counsel in his proceedings—collectively.

The Appeals Court should take into consideration pertaining to Appellants IAC Claim that in Mr. Duvall's **WRITTEN STATEMENT AT THE TIME OF INCEDENT**, the alleged victim states the following: **"1. THAT A MAN CAME DOWN ON HIS PROPERTY FIRST AND THEN AWHILE LATER A MAN AND WOMEN CAME DOWN AND TURNED TO LEAVE AND MR. DUVALL JUMPED OUT OF**

THE BUSHES WITH A GUN, FROM WHERE HE WAS CLOSELY WATCHING EVERYTHING, ORDERING EVERYONE TO THE GROUND AND STARTED FIRING SHOTS. 2. THAT MR. DAVIS (ALLEGEDLY) THREATENED TO FUCKING KILL HIM—TO GET AWAY. (While Mr. Davis was unarmed and being shot at), yet the NEIGHBOR makes no mention of said threat in his hand written statement. AND 3. MR. DUVALL STATE IN HIS WRITTEN STATEMENT THAT NOTHING FROM THE CAR BELONGED TO HIM AS STOLEN”. Appellant wishes to inform this Court that in the Declaration for Probable Cause, at p.2, Ricky Powell states the following: “HE (POWELL) SAID HE NEVER OPENED ANYTHING UP, NEVER ENTERED ANY BUILDINGS AND NEVER TOOK ANYTHING”. Further, co-defendant JONES admitted in the Declaration for Probable Cause that she was so high on METH that she didn’t know up from down, basically.

The Respondent has completely failed to address Appellants ineffective assistance of counsel claim that was Filed in this appeal for review, specifically the fact that trial counsel completely failed to conduct an investigation into the relevant FACTS of the case WHATSOEVER, as such, Counsel never knew all the relevant facts of the case himself prior to advising Appellant to make an informed decision to plead guilty in the first place. Therefore, Appellant’s Alford Plea could not have been made intelligently, knowingly, or voluntarily. Nor has the Respondent given an explanation as to why the alleged victim refused to be deposed as to the truthfulness of the alleged burglary case, as Appellant clearly did file a BRADY MOTION to interview all the states witnesses that trial counsel was ineffective for not filing a MOTION TO DEPOSE in Appellants behalf. This rises to a fundamental BRADY VIOLATION under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963). The Respondent has failed to mention that the alleged victim was firing multiple shots AT Appellant, and cause for why the alleged victim, Mr.

Duvall, lied about what really happened to avoid getting into trouble for shooting at people trespassing on his unfenced property, and that neither of Appellants co-defendants were convicted through guilty pleas to ANY burglary charges, and that there is no supporting evidence that demonstrates Appellant was EVER on the alleged victims property ANY other time, nor is there ANY evidence to show that Appellant was so much as near the alleged victims home, let alone inside the home. The Respondents claims are inflammatory, without merit, and fail to argue the facts according to the truth from the record.

Further, Respondent claims in the Response Brief that Appellant never filed any motion to withdraw his plea, which is also misleading. The record shows that Appellant did file a **MOTION FOR DOSA RECONSIDERATION OR IN THE ALTERNATIVE MOTION TO WITHDRAW GUILTY PLEA** that was denied by the lower court without findings of facts and conclusion of law. Appellant filed several **MOTIONS**, to include, **EMERGENCY MOTION TO DISMISS BOTH CASES FOR FAST AND SPEEDY TRIAL RIGHTS VIOLATIONS** that were never ruled on.

Appellant has received a copy of the remaining transcripts from hearing dates held on **5/7/13, 7/25/13, 7/29/13, and 7/31/13** that fully supports **ALL** of Appellants SAG/IAC claims now filed with the Honorable Court of Appeals, Division II, for review and just consideration.

Appellant contends that a person's past history is NOT an element found in the Washington LAW to support a conviction for any burglary charge. Moreover, trial counsel had a Constitutionally imposed DUTY to file a motion to depose the alleged victim, Mr. Duvall, and trial counsel also had a Constitutionally imposed DUTY to subpoena Appellants KEY WITNESS, Ricky Powell, prior to trial starting, who then informs Appellant that his trial counsel failed to subpoena a **CRITICAL KEY WITNESS**, and then Appellant was given an hour and a half by his trial

counsel to make up his mind for a plea deal—OR RISK LOSING AT TRIAL. SEE: ATTACHED MINUTES OF PROCEEDING, DATED AUGUST 5th, 2013 CAUSE NO: 12-1-03559-0, JUDGE STEPHANIE A. AREND PRESIDING. SEE ALSO: PLEA TRANSCRIPTS, at p.6, trial counsel stated on the record as follows: "I DON'T HAVE HIM (POWELL) UNDER SUBPOENA"..."BUT THIS ALL FACTORS INTO MY DISCUSSION WITH MR. DAVIS ABOUT HIS RISK AT TRIAL".

CONCLUSION

THEREFORE, Trial counsels performance of representation was so flagrantly ill-intended that there is no cure for the harm caused, and due to the cumulative errors, the Honorable Court of Appeals should reverse the attempted burglary case, CAUSE NO: 12-1-03559-0. "The elements for an attempted burglary charge do NOT exist in this case to support a conviction". SEE: State v. Engel, 166 Wn. 2d.572, 210 P.3d 1007 (2009), and remand for resentencing in CAUSE NO: 13-1-00377-7, as a matter of law, for a DOSA consideration before the Honorable Presiding Chief Judge under RCW 9.94A.660. See: Santobello v. New York, Id. Appellant respectfully prays for the relief the Honorable Court of Appeals deems just and appropriate in this matter.

Dated this 1st day of June, 2014.

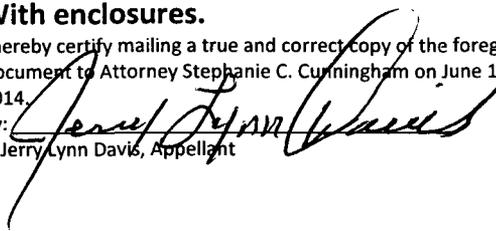
RESPECTFULLY SUBMITTED BY:



Jerry Lynn Davis, Appellant
In Pro Se

With enclosures.

I hereby certify mailing a true and correct copy of the foregoing Document to Attorney Stephanie C. Cunningham on June 1st, 2014.

By: 
Jerry Lynn Davis, Appellant

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent.

Vs.

JERRY LYNN DAVIS,

Appellant.

Case No: 45274-0-II

[Filed!]

Pierce County Case NO's: 12-1-03559-0; 13-1-00377-7 (Consol.)

DECLARATION/ERRATA OF APPELLANT

TO SAG PURSUANT TO RAP 10.10

I, Jerry Lynn Davis, declare as follows:

1. I am the Appellant in the above captioned matter.
2. Appellant is in pro se under RAP 10.10 and is respectfully requesting for permission to file the foregoing DECLARATION/ERRATA to his filed SAG, with good cause appearing. Appellant is without a legal library or effective legal assistance to help in this matter and is requesting/praying the Honorable Court of Appeals, Division II, will interpret liberally to promote justice and equal protection of the law under the 5th, 6th, and 14th

Amendment of the United States Constitution. SEE: RAP 1.2 (c); Haines v. Kerner, 404 U.S. 519 (1972).

3. Appellant declares that he has just received a true copy of the alleged victim, Mr. Duvall's, **HANDWRITTEN STATEMENT FORM dated 8-7-12**, that is a major piece of evidence trial counsel failed to make a part of the record in case NO: 12-1-03559-0, attempted burglary in the second degree, further demonstrating ineffective assistance of counsel. In Mr. Duvall's STATEMENT there is evidence that proves Appellant's SAG claims. **"That a man came down first, was later joined by another man and women, they started to leave. Several shots were fired by Mr. Duvall at Appellant. The third man ran into the WETLAND'S (and not the WOODS as the police report and declaration for probable cause indicate). I fired a shot into the ground (at appellant's back) hoping he would stop. THEY THREATEN TO KILL ME TO GET AWAY (while unarmed and being shot at)." Appellant declares that he was never screaming to fucking kill anyone at any time, as the truth has been seriously fabricated in the police report and declaration for probable cause, and Appellant ran into the WETLANDS (**swamp**) rather than the WOODS where the police have misrepresented the FACTS to get away from being shot where there is no fence on Mr. Duvall's Property either. Appellant declares that he handed Ricky Powell \$20.00 for gas and a traffic ticket and was receiving a ride to the U.S. District Courthouse to take care of the traffic ticket, and was not a part of any burglary. Appellant was not aware of any gas can Mr. Duvall alleges was his (errata issue). Appellant declares that he ran into the "WETLANDS" on Mr. Duvall's **unfenced property line** in fear for his life. Trial counsel could have gone on**

"Google. Is this property fully fenced?"

line and googled Mr. Duvall's address at **40218 Templin Rd. S., Roy, WA 98580** to see if his property was fully fenced in, but failed to even do this simple CONSTITUTIONALLY IMPOSED DUTY. The states declaration for probable cause states: "Per the victim, his property is fenced where it can be fenced, and there is a steep natural barrier that cannot be fenced." Coupled with the "WETLAND"S" (swamp) that was not fenced either; the elements do not exist to support a conviction in case No: 12-1-03559-0. SEE:

* State v. Engel, 166 Wn. 2d. 572, 210 P.3d 1007 (2009). Further, Appellant declares that Mr. Duvall and the Police were not being truthful and that the statements were in fact **TAINED**. See: Mesareosh v. U.S., 352 U.S. 1, 77 S. Ct. 1.

"Truthfulness of testimony... The dignity of the United States Government will not permit the conviction of ANY PERSON on tainted testimony."

Appellant declares that trial counsel should have filed the **MOTION TO DEPOSE** Mr. Duvall regarding his truthfulness. Trial counsel should have subpoenaed Ricky Powell to testify in Appellants behalf that would have cleared Appellant of any wrong doing in the burglary case. SEE: Trial counsels letter to Ricky Powell dated April 10, 2013, and Ricky Powell's letter to Mr. Schoenberger RECEIVED by trial counsel dated May 6, 2013. Instead, trial counsel deliberately waited until the day of trial to inform Appellant that he failed to SUBPOENA Ricky Powell to testify and that Appellant should take a plea deal or RISK losing at trial on August 5, 2013. Trial counsel had a Constitutionally imposed DUTY to **OBJECT** to the PLEA BREACH in **BOTH** of Appellants filed plea agreements regarding the DOSA request that ALL parties signed in open court on August 5th, 2013, which states: "THE JUDGE MAY SENTENCE ME UNDER THE DRUG OFFENDER

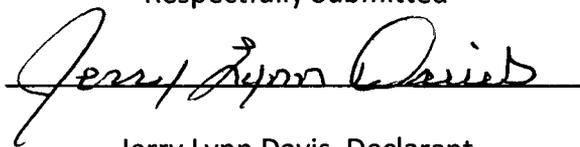
SENTENCING ALTERNATIVE ((DOS) IF I QUALIFY UNDER RCW 9.94A.660.” Instead, trial counsel goes on record and states that Appellant never requested DOSA, that there was a **basket of tricks**. August 5, 2013 transcripts. Appellant declares that trial counsel should have argued for SPECIFIC PERFORMANCE of **BOTH** guilty plea agreements, **DOSA**, pursuant to CONTRACT LAW and DUE PROCESS OF THE LAW that **ALL** parties signed.

4. Appellant declares that his fast and speedy trial rights were seriously violated, that an **OBJECTION** was entered into the record by Appellant, an EMERGENCY MOTION TO DISMISS was filed on March 28, 2013, and a NOTICE OF APPEAL/DISCRETIONARY REVIEW was filed on April 8, 2013, that was never ruled on in both cases now under appeal regarding fast and speedy trial right violations. Nor did Appellant’s counsel raise this issue on appeal at Appellant’s request months ago to be considered by this court of appeals, and should be considered now. SEE: MOTION TO DISMISS AND DISCRETIONARY REVIEW ATTACHED, APPENDIX/ERRATA.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND UNDERSTANDING.

Dated this 8th day of September, 2014, and signed at Littlerock, Washington.

Respectfully Submitted

A handwritten signature in cursive script, appearing to read "Jerry Lynn Davis", written over a horizontal line.

Jerry Lynn Davis, Declarant

Appellant Under RAP 10.10 Pro Se

Cc: Stephanie C. Cunningham, Appellant Counsel, File.

APPENDIX TO DECLARATION/ERRATA

Pursuant to RAP 10.10

Pierce County Cause NO: 12-1-03559-0; 13-1-00377-7

1. HANDWRITTEN STATEMENT FORM, Mr. Duvall, Dated 8-7-12 (victim).
2. DECLARATION FOR DETERMINATION OF PROBABLE CAUSE, NO: 12-1-03559-0.
3. UNITED STATES DISTRICT COURT VIOLATION NOTICE, dated 7-30-2012 (ticket).
4. UNITED STATES DISTRICT COURT NOTICE OF WITHDRAWAL OF SUSPENSION

* Please Note: Appellant has saved his minimum work camp money while incarcerated and has fully paid the \$275.00 fine off on 6/24/14 in the traffic ticket matter that Appellant was attempting to take care of on 8-7-12.

5. TRIAL COUNSELS LETTER TO RICKY POWELL dated April 10, 2013.
6. RICKY POWELLS LETTER TO TRIAL COUNSEL received May 6, 2013.
7. EMERGENCY MOTION TO DISMISS filed March 28, 2013.
8. NOTICE OF APPEAL/DISCRETIONARY REVIEW RAP 5.1 (c) TO THE COURT OF APPEALS, DIVISION II, FILED APRIL 8TH, 2013. *Dismissed June 19, 2013. I received No notice.*
9. BRADY MOTION TO INTERVIEW ALL WITNESSES FILED MARCH 28, 2013 (trial counsel failed to file motion to depose Mr. Mrs. Duvall).
10. APPELLANT DECLARES UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING DOCUMENTS ARE TRUE COPIES IN BOTH OF HIS PIERCE COUNTY CASES IN THE COURT OF APPEALS, DIVISION II. (In pro se).

*Jerry Lynn Davis,
Appellant RAP 10.10*

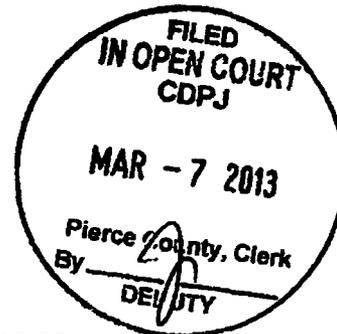
Ms. Carlson

Please Note:

This is my only copy of Transcript documents, double-sided, and I'm requesting for a copy to "please" be mailed back to me.

Sincerely,

Jerry L. Davis



IN THE SUPERIOR COURT FOR PIERCE COUNTY WASHINGTON

State of Washington,

Plaintiff

vs.

JERRY LYNN DAVIS

Defendant

No 12-1-03559-0

SCHEDULING ORDER

IT IS HEREBY ORDERED that:

1. The following court dates are set for the defendant.

Hearing Type	Date & Time	Courtroom
CONTINUANCE	Monday, Mar 11, 2013 8:30 AM	260
OMNIBUS HEARING	Monday, Mar 11, 2013 8:30 AM	260
JURY TRIAL	Wednesday, Mar 27, 2013 8:30 AM	260

2. The defendant shall be present at these hearings and report to the courtroom indicated at 930 Tacoma Avenue South, County-City Building, Tacoma, Washington, 98402

FAILURE TO APPEAR WILL RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST

- 3. DAC; Defendant will be represented by Department of Assigned Counsel.
- Retained Attorney; Defendant will hire their own attorney or, if indigent, be Screened (interviewed) for Department of Assigned Counsel Appointment.

DATED 03/07/13

Copy Received.

Jerry Lynn Davis
JERRY LYNN DAVIS, Defendant

Antonio Hill
ANTONIO HILL
Attorney for Defendant/Bar #17669

Ordered By:
[Signature]
JUDGE/COMMISSIONER

[Signature]
FRANK KRATZ
Prosecuting Attorney/Bar #16344

November 5, 2014

Jerry L. Davis, DOC #368483
Cedar Creek Corrections Center
P.O. Box 37
Little Rock, WA 98556-0037

INNOCENCE PROJECT NORTHWEST
UW School of Law
Professor Jacqueline McMurtrie, Attorney At Law
William H. Gates Hall, Suite 265
P.O. Box 85110
Seattle, WA 98145-1110

RE: Innocence Project/Personal Statement/Release Plan

Dear Professor Jacqueline McMurtrie, Attorney at Law:

I cannot express in words how happy I was to receive your letter and application for the innocence project, even if I'm not deemed appropriate for becoming a PROJECT, at least I'll know in my heart I never gave up. Thank you once again for responding to my sincere request for help.

Have you ever read Shon Hopwoods book, LAW MAN? I noticed he achieved a victory in the United States Supreme Court in a Petition for Writ of Cert. On page 170 of his book it reads: "The Sixth is the right to counsel once proceedings are under way, like in a trial. Let's say you're in the middle of a trial. The **PROSECUTOR** cannot meet you in the parking lot [jail] and try to start a conversation to **bait you** into spilling the beans, can he? **NO!**"

"If the **PROSECUTOR** tried something like that, the judge would toss out the confession **and possibly the case.**" SEE: **Massiah v. United States, 377 U.S. 201 (1964)**...the proper standard under Supreme Court precedent is whether the Government agents [prosecutor] "deliberately elicited" information from petitioner/defendant?"

LAW MAN p.175. "From these precedents, it is clear that once a defendant is indicted (charged) the Government may not deliberately elicit information from him without the presence of counsel. It is equally clear that once a defendant raises a Sixth Amendment-Massiah challenge, the question of whether the defendant was interrogated becomes constitutionally irrelevant."

In March 2013 I filed a pro se **Pre-Trial Petition for Writ of Habeas Corpus** that was ignored by my counsel and the Pierce County Superior Court. On November 2, 2014 I mailed you a copy of my hand-written Writ, and in the beginning of my pro se Writ I argued that the **[PROSECUTOR]** interviewed me in a holding cell at the jail on March 7, 2013 and baited me for information without counsel being present. On March 11, 2013 **Prosecutor Frank Krall** was not present at the Continuance hearing, and was completely removed from both of my cases-the RECORD will show. The court denied my counsels request for a continuance, because I argued that it would violate my fast and speedy trial rights due to two of my witnesses were moving out of state and would not be able to testify if a continuance was allowed, and the court agreed and denied the continuance request. 9 days later my attorney, Mr. Hill, surprised me in an ambush hearing on March 20, 2013 and had a different judge order a continuance anyways without my CONSENT, in violation of my fast and speedy trial rights under the 6th Amendment of the U.S. Constitution that I NEVER surrendered. The RECORD doesn't lie! The reason I even bring this

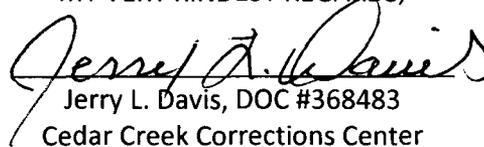
up is because I didn't realize how important this was until I read Shons book, LAW MAN, and I did move the court in my Writ to dismiss Case NO: 13-1-00377-7, my motor vehicle charges that I received 29 months for. What was Frank Krall thinking? A prosecutor isn't allowed to bait a defendant are they?

I have been seriously deprived of receiving copies of my case files from my attorney, James Schoengerger, and the Department of Assisigned Counsel, Michael Kawamura. Enclosed are copies of my **PETITION FOR WRIT OF MANDAMUS** to the Washington Supreme Court, and letters demonstrating the denial of my (redacted) case files. The Constitutional violations being committed from the Department of Assigned Counsel and the appointed attorney's in Pierce County, is far worse than anyone can imagine, an epidemic that could be labeled as SHOCKING to say the least. I have been deprived of raising all of my claims on direct appeal, and appellate counsel has deliberately refused to represent me effectively in my direct appeal, the record will show. I now owe over \$2,000.00 in LFO's.

And last, I am enclosing a copy of an **ARGUMENT** I put together, but was unable to have included in my direct appeal. I have a passion for the law and our protected Constitution, and maybe I can be directed someday like Shon Hopwood was for a much better life. I mailed my **PERSONAL STATEMENT** to UW Gates Scholarship opportunity for law school several months ago. Am I dreaming?

Thank you for your time and understanding.

MY VERY KINDEST REGARDS,



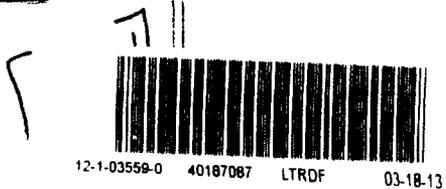
Jerry L. Davis, DOC #368483
Cedar Creek Corrections Center
Release date July 27th, 2015

P.S. If there is anything more I can say or do to receive help, please do not hesitate to let me know. Any other forms to sign? Not a problem just let me know, and thank you so much.

I grew up in Oregon, and served time in OSP, and I know **Frank Gable** very well. **He is Innocent! [1989]**. He is a good person and close friend of mine. I last seen him down in Nevada, Eli Super MAX, and I believe the innocence project may be helping him too? Is there anything I can do to help? I know firsthand about the corruption Warden Cupp was involved in at OSP...true story.

With enclosures.

Cc: File.



013

SCANNED

FILED
IN COUNTY CLERK'S OFFICE
AM. MAR 15 2013 PM

~~Letter Notice To Clerk~~

Attn: Kevin Stock, Clerk
Of The Superior Court
Pierce Co. Washington State
930 Tacoma Ave., South
Tacoma, WA 98402-2199

RE: State vs. Davis, Cause No. 12-1-03559-0 / 13-1-00377-7

Issue on hand: ~~State vs. Davis~~ See:
Letter Notice To ~~Clerk~~ ~~Judge~~

Dear Mr. Stock, Clerk of the Court:

Enclosed please find my letter-notice
~~to the Honorable Presiding Chief Judge in the~~
above listed cause numbers under State vs. Davis.

Will you please process the enclosed documents
appropriately and provide me with a copy return
of the original 2 page documents.

~~I thank you for your prompt~~
assistance and understanding in this matter.
Please do not hesitate to contact me if anything
else I may need to discuss. I am praying
for the Courts help in my present situation.

Most Sincerely,
Jeffrey L. Davis,
defendant.

Clerk's Copy Enclosed. (2 pages)

cc: File

Pg 1 of 1.

over.

[Original] copy Return
Requested.

SCANNED

Pg. 1 of 2

March 7th, 2013

Letter to Presiding, And/or
Chief Judge

Attn: Presiding-Chief Judge (Please Take Notice)
Of the Superior Court
Pierce County, State of Washington

RE: State vs. Davis; Case No. 12-1-03559-0; 13-1-00377-7

ISSUE on Hand: Speedy Trial Rights Violation's
under U.S. vs. Doggett, 906 F.2d 573; CrRLJ 3.3;
6th and 14th Amendment's of the U.S. Constitution.

Dear Presiding Chief Judge:

My name is Joseph Davis, and my Case numbers are as
listed above under State vs. Davis.

Your Honor, I am writing to you or should I say Praying
to you for help. I would like to submit to you on the record and
to the Court that my key witnesses who will be giving Testimony
for me will, after April 1st (approx) be moving out of
state for personal reasons. I am scheduled for Trial on March
26th and 27th, 2013, in both of my Cases. I have NOT been
informed I have a right to go to Trial within 60 day's if I'm
in Custody by my Attorney Pursuant to CrRLJ 3.3, Nor have I
waived my right to trial within 60 day's Pursuant to CrRLJ 3.3,
record's Show.

Therefore, at this time, your Honor, to prevent
irreparable direct harm and prejudice to my right
to have a "Fair Trial", I am submitting this letter/
notice on the record under U.S. vs. Marc G. Doggett,
906 F.2d 573. That I will be taken to trial before

SCANNED

Pg 2 of 2

my witness leave the State, and within the set trial date on record, in accordance with CrRLJ 3.3. Your Honor, based on my witnesses availability that after April 1st, 2013, I will be forced to move the court for dismissal of my (sets) based on irreparable direct harm and prejudice to the defendant.

Dated this 7th day of March, 2013.

Respectfully Submitted By:

Jerry Lynn Davis, No. 2013027045
Pierce Co. Sheriff's Department
910 Tacoma Ave. South
Tacoma, WA 98402

CC: Mr. Frank Krall, D.A.
Mr. Kevin Stockcheck
Mr. Antonio Hill, Att
File

[Original]

Attn: Clerk, please send copy of this letter back, no way to make copies and my hand is sore... Thank You

SCANNED

pg 1 of 2

March 10th, 2013

RE: Cause NO. 12-1-03559-0/13-1-00397-0

Dear Mr. Hill, Attorney At Law:

In writing; Will you please inform me with your current progress in my 2 cases. What motions have you prepared and filed that I've requested, specifically a motion to suppress the illegally seized cell phones and statements made after the illegal searches of the cell phones that the police "deliberately omitted" from the official investigation report. The car can also be excluded (is it still being held as evidence), and the victim discredited and/or on the witness stand, perjured information, and/or on the witness stand, that I have discussed in my second case. We have trial in approx 16 days on the 26th and 27th of March, 2013, and you should be ready, prepared, see: BPC, BPC, and Hill; 6th Amend. U.S. const. inclusive.

Mr. Hill, the record shows you and your staff have visited me in 2012, and our visits here at the jail have Not been about developing ethical strategies towards my 2 cases, when in fact, you've been mentally abusive to me to where I'm facing physical risk, and (due to your actions) with stress and unnecessary anxieties that leave me tormented and unable to sleep or have any peace of mind. Further, I am distressed that you would not take into account my "documented" mental health conditions, which I have always represented myself. You've even threatened to not waive my "Rights" to a fast and speedy trial, in violation of BPC, CrB J.2.2, and the 6th Amend. U.S. Const. For the record Mr. Hill I do not wish for you to withdraw, nor do I wish to represent myself - at this time.

During our last visit on 2-18-2013, at the Pierce County Jail you had in your possession the copies and case cites I requested as I was instructed to get them from you, and when I asked for them, you said that the white stack (in my file) was for me, you snapped, and handed me only a couple of my originals. Did you, or will you, be getting reimbursed for them copies? May I please see the original copies and the rest of my originals? Specifically, I want a written judicial Notice and Order, signed by you, and filing to the Court.

SCANNED

pg 2 of 2 Mr. Hill, my key witnesses are moving out of state on or about April 1, 2013, so do NOT move to continue my trial dates. Please have "Ricky Powell", who is illegally serving 43 months on an Attempted Burg 2, ~~and~~ bring the DOC Prison to Pierce Co Jail immediately to testify in my behalf. I wish to question Mr. Powell's attorney of record too. I have a valid witness list pursuant to my discovery that we need to go over and call to testify in my defense, without exception. I need to formulate and agree on, so please arrange however many necessary client/attorney meetings will need to effectively prepare for trial on the 26th + 27th of March, 2013. Bring the investigation with you.

Mr. Hill, please be advised that I've recently been examined by the Medical Director and Head Doctor here at the Pierce Co Jail, who has documented New findings regarding my head injuries were far worse than I was told, more than a concussion, to include an infection, will be treated for w/ blood test done Feb 2013. Coupled with not on my mental health medication, drank a Fifth of vodka and a busted skull, are you sure I was in the right frame of mind to form a crime? What does the crime scene photo's show, "gas can", etc.

Enclosed please find your copy of my "Letter - Notice" already mailed to the Presiding Judge to avoid my fast and speedy trial rights being

In closing, it's my prayer and hope that we prepare for my trial effectively on the 26th and 27th of March, 2013. I request the copies and my Originals at your earliest convenience, please.

"Yes", Mr. Hill, I'm hurt and very mentally upset... but I still believe we can work through all this... I pray.

Enclosed:
Letter - Notice To Judge

Sincerely,
Terry J. Davis,
Your Client

cc: Presiding - Chief Judge
File

[Original
To Court]

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In The Superior Court For Pierce County Washington

State of Washington, } Cause No. 12-1-03559-0
Plaintiff, } Cause No. 13-1-00377-7
vs. }
Jerry Lynn Davis, } Mandatory Injunction
Defendant. }

Comes Now Defendant, Jerry Lynn Davis, hereinafter (Davis), who moves the Honorable Court to intervene and deny any further continuances in the above cause of actions, pursuant to the following reasons, with good cause appearing.

Davis respectfully submits that his key witnesses will be moving out of state on or about April 1, 2013. Trial is already set for March 26-27, 2013. Davis has not waived his right to a fast and speedy trial within 60 days pursuant to CrLJ 3.3. Without the critical testimony of Davis' key witnesses to testify in Davis' behalf, Davis would be seriously prejudice in not receiving a fair trial.

1 Therefore, at this time your Honor, I would like
2 to submit to you on the record and to the Court, that to
3 prevent irreparable direct harm and prejudice to my
4 right to have a fair trial, I am submitting the foregoing
5 Mandatory Injunction on the record under U.S. vs.
6 Marc G. Doggett, 906 F.2d 573; CrRLJ 3.3; and under
7 the 6th Amendment of the U.S. Constitution. "That I
8 will be taken to trial before my witnesses move out of
9 state, and within the already set trial date on record,
10 in accordance with CrRLJ 3.3 and the 6th Amendment."

11 Your Honor, based on my witnesses availability
12 that after April 1, 2013, I will be forced to move
13 the Court for dismissal of my case(s) based on irreparable
14 direct harm and prejudice to the defendant.

15 Further, please let the record show that counsel
16 was in fact appointed on 11-14-2012.

17
18 Dated this 11 day of March, 2013.

19
20 Respectfully Submitted,
21 By: Jerry Lynn Davis
22 Jerry Lynn Davis, defendant
23
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SCANNED

March 11th, 2013

MAR 14 2013

Davis, M. 2045
Sheriff's Office
10 Tacoma Ave., South
Tacoma, WA 98402-2168

RE: State vs. Davis Cause No. 13-00000

To: Honorable Bryan Chusheoff
And: Clerk of Judges Court
Superior Court, Pierce County
930 Tacoma Ave., South
Tacoma, WA 98402-2177

Dear Honorable Judge Bryan Chusheoff;
and Clerks:

Enclosed please find Motion To Intervene
Witness Ricky Lee Powell (as per [redacted] wish
to be filed and ruled on as soon as possible, as
said motion is clearly appropriate, with good cause
appearing.

Thank you for your [redacted] help,
however, I'm concerned in how my attorney will
conduct himself. Enclosed is a letter I handed
him today, 3-11-2013, and I'm requesting the
Honorable Court to please send Mr. Hill a
memo reminder to stop abusing me. For example,
he attempted to continue my trial date with
no regards to my key witnesses critical testimony,
and coupled with the enclosed letter I gave him --
an appropriate memo I'm afraid is necessary to
receive effective assistance of Court Ordered rep-
resentation. Please consider my "Memo Request".

Sincerely,
Carol J. Davis,
Counsel's Client.



12-1-03559-0 40187087 LTRDF 03-18-13

013

SCANNED

FILED
IN COUNTY CLERK'S OFFICE
AM. MAR 18 2013
P.M.
KIM STOCK, WASHINGTON
COUNTY CLERK

Attn: Kevin Stock, Clerk
Of The Superior Court
Pierce Co. Washington State
930 Tacoma Ave., South
Tacoma, WA 98402-2000

RE: State vs. Davis cause no 12-1-03559-0 / 13-1-00377

Issue on hand

Letter

Dear Mr. Stock, Clerk of the Court:

Enclosed please find my letter-notice
to the Honorable Presiding Judge
above listed cause numbers under State vs Davis.

Will you please process the enclosed documents
appropriately and provide me with a copy return
of the original.

I will appreciate your
assistance and cooperation.

Please do not hesitate to contact me if
else I may need to discuss anything
for the Courts help in my case.

Most Sincerely,
Jeffrey Davis,
Defendant.

Clerk's Copy Enclosed. (2 pages)

cc: file

Pg 1 of 1.

even

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number 12-1-03559-0
**MEMORANDUM OF
JOURNAL ENTRY**

vs

DAVIS, JERRY LYNN

Page: 2 of 2
Judge:
CRIMINAL DIVISION- PRESIDING JUDGE

MINUTES OF PROCEEDING

Judicial Assistant/Clerk SUSAN WINNIE
Start Date/Time: 03/11/13 10:14 AM

Court Reporter-KATRINA SMITH

March 11, 2013 10:13 AM This matter before the Court for continuance. DPA Claire Vitikainen, on behalf of the State. Defendant is present in custody represented by Counsel Antonio Hill. Request by counsel to continue trial. Defendant refuses to sign continuance. Defendant addresses the Court. The Court denies continuance.

End Date/Time: 03/11/13 10:16 AM

RECEIVED
DEC 17 2013
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

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

STATE OF WASHINGTON,

Plaintiff,

vs.

JERRY LYNN DAVIS,

Defendant.

No. 12-1-03559-0
13-1-00377-7
COA No. 45274-0-II

ORIGINAL

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 11th day of March 2013, the following proceedings were held before the Honorable BRYAN E. CHUSHCOFF, Judge of the Superior Court of the State of Washington, in and for the County of Pierce, sitting in Department 4.

WHEREUPON, the following proceedings were had, to wit:

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APPEARANCES

On Behalf of Plaintiff(s): CLAIRE VITIKAINEN
Deputy Prosecuting Attorney

On Behalf of Defendant(s): ANTONIO HILL
Attorney at Law

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INDEX

Page No.

Continuance

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* * * * *

EXHIBIT INDEX

(No exhibits)

1 MS. VITIKAINEN: This is the State of Washington v.
2 Jerry Lynn Davis, cause number 12-1-03559-0 and
3 13-1-00377-7. The defendant is present out of --
4 correction, in custody represented by counsel.
5 Claire Vitikainen on behalf of the State.

6 Your Honor, the State and the defense have agreed to
7 continue the trial on the basis that the defendant has
8 a new case and investigation is pending. The defense
9 needs some additional time to prepare and join the 2012
10 case with the 2013 case.

11 The parties had hoped for dates of March 27th at
12 ~~1:30 in Courtroom 260 for an OH and a pretrial on~~
13 March 21st in courtroom 270 for a -- and also a jury
14 trial on April 29th. Mr. Hill has signed those.
15 Mr. Krall from my office has signed both of these
16 orders continuing trial.

17 It is my understanding from Mr. Hill, however, that
18 the defendant refuses to sign, and so we thought that
19 it would be appropriate to put these matters on the
20 record. Thank you, Your Honor.

21 MR. HILL: Good morning, Your Honor.

22 The matter -- here's the thing, we have the two
23 cases. While we were working on the '12 case, then he
24 got charged in the '13 matter. Both of the cases have
25 been assigned to an investigator, Lea Sanders. We have

1 discussed this matter with the prosecutor. We are not
2 quite ready yet because of the investigation and so
3 forth to reach any kind of a decision. How are we
4 going to proceed? I need the time to get it all
5 together.

6 Mr. Davis is refusing to sign. I believe that in
7 the administration of justice or simply to allow the
8 defense to get ready for his case, both matters that --

9 THE COURT: Well, let's take the first one, the
10 oldest one. How much time do you need to get ready on
11 that?

12 MR. HILL: I'm sorry?

13 THE COURT: How much time do you need to get ready
14 on that? We currently have a trial date on March 27th
15 on a 2012 cause number.

16 MR. HILL: That's why I was trying to get 30 days
17 from the 27th.

18 THE COURT: I understand. You are not listening to
19 my question. On the 2012 cause number, we have a
20 current trial date of March 27th. Can it be ready on
21 March 27th?

22 MR. HILL: No.

23 THE COURT: Why not?

24 MR. HILL: I just gave it to the investigator.
25 Because of her own scheduling, she hasn't had a chance

1 to talk to the witnesses.

2 THE COURT: I would say, tell her to get ready.

3 MR. HILL: It is just that I don't want --

4 THE COURT: Now, the 2013 cause number has a trial
5 date the day before, March 26th. That one is a much
6 younger case. That I can understand needing more time.

7 Why does Mr. Davis not want to continue the cases?

8 THE DEFENDANT: May I speak, sir?

9 THE COURT: Sure.

10 THE DEFENDANT: I never waived my fast and speedy
11 trial rights. I never signed off on it. I have two
12 key witnesses that -- they are going to be moving out
13 of state on or about April 1st or there soon after.

14 MR. HILL: This is the first that I heard of that.
15 I don't know what he is referring to.

16 THE COURT: Who are these witnesses? Which case are
17 the witnesses on?

18 MR. HILL: The second one.

19 THE COURT: The 2013 case?

20 MR. HILL: Yes.

21 THE COURT: Go ahead.

22 THE DEFENDANT: From my understanding, they are
23 going to be moving for jobs. I believe that it is
24 North Dakota. It is critical that they testify on my
25 behalf because I wouldn't have a fair trial again.

1 Without them testifying on my behalf, I would be
2 prejudiced.

3 MR. HILL: Can I respond? This is something that I
4 just heard about this morning.

5 THE DEFENDANT: I did send the court a letter
6 regarding this. I don't know if you got it yet. It
7 was just sent out, I think, Friday.

8 THE COURT: Probably not. Of course, you have to
9 keep in mind, too, Mr. Davis, that there are 5,000 new
10 felony trials -- cases filed in this county every year.

11 THE DEFENDANT: These are key witnesses, Your Honor.

12 THE COURT: I guess what I'm getting at is, it is
13 hard for me to keep track of correspondence by
14 everybody because we get 100 new ones every week.

15 THE DEFENDANT: I understand.

16 THE COURT: Mr. Davis has at least persuaded me that
17 it maybe not in his best interest to at least continue
18 the 2013 case. I won't continue either one of them.

19 THE DEFENDANT: Thank you, Your Honor.

20 THE COURT: You are going to have to figure it out.

21 MR. HILL: Thank you.

22 MS. VITIKAINEN: Thank you, Your Honor.

23 (Proceedings Concluded.)

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*****CERTIFICATE*****

I, Katrina A. Smith, do hereby certify that the foregoing transcript entitled Verbatim Report of Proceedings, March 11th, 2013, was taken by me stenographically and reduced to the foregoing, and that the same is true and correct as transcribed.

DATED at Tacoma this 5th day of December 2013.

KATRINA A. SMITH/SM-IT-HK-302N9

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number 12-1-03559-0

MEMORANDUM OF

JOURNAL ENTRY

VS

DAVIS, JERRY LYNN

Page: 2 of 2

Judge:

CRIMINAL DIVISION- PRESIDING JUDGE

MINUTES OF PROCEEDING

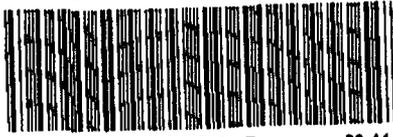
Judicial Assistant/Clerk SUSAN WINNIE

Court Reporter KATRINA SMITH

Start Date/Time: 03/11/13 10:14 AM

March 11, 2013 10:13 AM This matter before the Court for continuance. DPA Claire Vitikainen, on behalf of the State. Defendant is present in custody represented by Counsel Antonio Hill. Request by counsel to continue trial. Defendant refuses to sign continuance. Defendant addresses the Court. The Court denies continuance.

End Date/Time: 03/11/13 10:16 AM



12-1-03559-0 40149550 CME 03-11-13



IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number 12-1-03559-0

MEMORANDUM OF JOURNAL ENTRY

Page 1 of 2

vs.

DAVIS, JERRY LYNN

Judge CRIMINAL DIVISION- PRESIDING JUDGE

Court Reporter KATRINA SMITH

Judicial Assistant/Clerk: SUSAN WINNIE

FRANK KRALL

Prosecutor

ANTONIO HILL

Defense Attorney

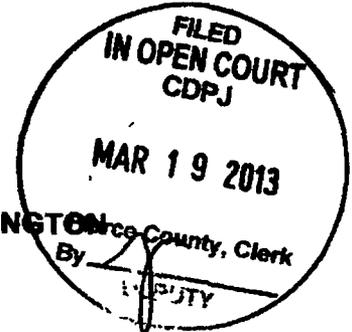
Proceeding Set. CONTINUANCE

Proceeding Date 03/11/13 8:30

Proceeding Outcome HELD

Resolution.

Clerk's Code:
Proceeding Outcome code.MTHRG
Resolution Outcome code.
Amended Resolution code



IN THE SUPERIOR COURT FOR PIERCE COUNTY WASHINGTON

State of Washington,
Plaintiff
vs.
JERRY LYNN DAVIS
Defendant

No 12-1-03559-0

SCHEDULING ORDER

IT IS HEREBY ORDERED that:

1 The following court dates are set for the defendant:

Hearing Type	Date & Time	Courtroom
CONTINUANCE	Wednesday, Mar 20, 2013 8:30 AM	260
JURY TRIAL	Wednesday, Mar 27, 2013 8.30 AM	260

2 The defendant shall be present at these hearings and report to the courtroom indicated at 930 Tacoma Avenue South, County-City Building, Tacoma, Washington, 98402

FAILURE TO APPEAR WILL RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST

- 3. DAC; Defendant will be represented by Department of Assigned Counsel.
- Retained Attorney; Defendant will hire their own attorney or, if indigent, be Screened (interviewed) for Department of Assigned Counsel Appointment.

DATED: 03/19/13

Copy Received:

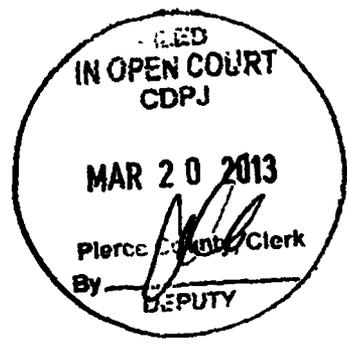
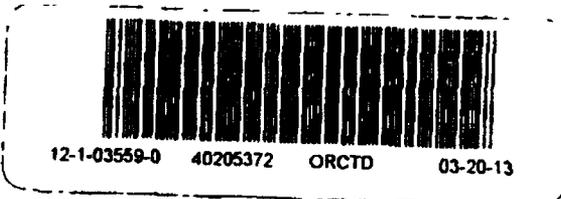
DAD will notify / i
JERRY LYNN DAVIS, Defendant

telephonically approved
ANTONIO HILL
Attorney for Defendant/Bar #17669

Ordered By:

[Signature]
JUDGE/COMMISSIONER

[Signature]
KATHLEEN OLIVER
Prosecuting Attorney/Bar #18252



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)
vs.)
Jerry Davis)
Defendant)

Cause No. 12-1-03559-0

ORDER CONTINUING TRIAL

Case Age 66 Prior Continuances 0

This motion for continuance is brought by state defendant court
 upon agreement of the parties pursuant to CrR 3 3(f)(1) or
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity.

Reasons: Defense needs time to prepare for trial & negotiations
STATE WOUND BALLS AND CHARGES on 12/27/12 FTA
STATE STARTS VACATION ON 4/11/13 UNTIL 4/24/13 on 30H case

RCW 10.46 085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING	4/10/13	8:45	260	SP
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input checked="" type="checkbox"/> Mot. on to proceed	4/10/13			
THE CURRENT TRIAL DATE OF 3-27-13	IS CONTINUED TO: 5/8/13 @ 8:30 am Room 2100 SP			

Expiration date is: 6/8/13 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 20th day of Mar, 2013

refuses to sign
Defendant

Judge
RONALD E. CULPEPPER

Attorney for Defendant/Bar #17669

Prosecuting Attorney/Bar # 18252

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language I certify under penalty of perjury that the foregoing is true and correct

Pierce County, Washington
Interpreter/Certified/Qualified Court Reporter

RECEIVED
NOV 15 2013

CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

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7 IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIERCE

8 STATE OF WASHINGTON

9 STATE OF WASHINGTON,)

10 Plaintiff,)

11 vs.)

Nos. 12-1-03559-0

13-1-00377-7

12 JERRY LYNN DAVIS,)

COA No. 45274-0-II

13 Defendant.)
14

15 -----
16 VERBATIM REPORT OF PROCEEDINGS
17 -----

18 March 20, 2013

ORIGINAL

19 Pierce County Courthouse

20 Tacoma, Washington

21 before the

22 HONORABLE RONALD E. CULPEPPER
23

24 Reported by,
25 Carla J. Higgins, CSR

A P P E A R A N C E S

1
2
3
4 For the Plaintiff: MS. KATHLEEN OLIVER
5 Deputy Prosecutor
6 930 Tacoma Avenue South
7 Room 946
8 Tacoma, Washington 98402

9 For the Defendant: MR. ANTONIO HILL
10 Attorney at law
11 201 South 34th Street
12 Tacoma, Washington 98418
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1 BE IT REMEMBERED that on the 20th day
2 of March, 2013, the above-mentioned cause came on duly for
3 hearing before the HONORABLE RONALD E. CULPEPPER, Superior
4 Court Judge in and for the County of Pierce, State of
5 Washington; the following proceedings were had, to-wit:

6 * * * * *

7 MARCH 20, 2013

8 CONTINUANCE

9 THE COURT: Mr. Davis is here on Cause No.
10 12-1-03559-0, charges of burglary in the second degree,
11 felony harassment. Trial is currently set for March 27th,
12 and you're here requesting a continuance.

13 MR. HILL: He also has another cause number, a 13.
14 It's a new case.

15 THE COURT: 13-1-003777-7, trafficking in stolen
16 property, theft of a motor vehicle. And that one,
17 apparently, he was charged while the other one was awaiting
18 trial.

19 MR. HILL: Exactly.

20 MS. OLIVER: Your Honor, for the record, Kathleen
21 Oliver. I just was assigned these two cases yesterday. I
22 suspect I actually was assigned them Monday but I was off
23 on Monday, so I just got them on Tuesday. I did do
24 subpoenas. It's a very short set. And I, right away,
25 called defense counsel to discuss this case and how we

1 wanted to proceed. The State is not objecting to a
2 continuance.

3 I'll let Mr. Hill address the Court regarding these
4 two cases.

5 THE COURT: Okay.

6 MR. HILL: As the Court is aware, the 13 case is 51
7 days old. The other one is older. While the other case --
8 while we were dealing with the other case trying to
9 negotiate, this other incident occurred.

10 THE COURT: Allegedly occurred.

11 MR. HILL: Allegedly, of course. At least the State
12 claims that it occurred.

13 Regardless, I sent the case to the investigator
14 eventually, because we were trying to resolve it, trying to
15 figure out what we were going to do. The case was sent to
16 the investigator, Leigh Sanders. Mr. Davis has made a lot
17 of requests of things that he expects us to do to prepare
18 for the case. She has been trying to comply, but it's
19 impossible. We just cannot be ready by next week. He's
20 refusing to sign because he's concerned about his speedy
21 trial rights. But if he wants to have effective counsel, I
22 have to have a continuance in both of these matters.

23 THE COURT: What kind of date are you requesting?

24 MR. HILL: Based on counsels' schedules and all of
25 our schedules, we're going to 5/8 on both cases.

1 MR. OLIVER: I leave on vacation on April 11th. I
2 come back on April 24th. The next week is judicial
3 conference. So it seemed like the first available time was
4 that week in May.

5 THE COURT: Mr. Davis, you're objecting to the
6 requested continuance?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: Why is that?

9 THE DEFENDANT: Because I have key witnesses that
10 are not going to be available after -- on or about --

11 MR. HILL: That is not correct, Your Honor.

12 THE DEFENDANT: It's come to my understanding that
13 my key witnesses to demonstrate my innocence will be moving
14 out of state for personal reasons.

15 MR. HILL: He has made that statement before and
16 that is not correct.

17 THE DEFENDANT: I haven't had a chance to talk with
18 my attorney because he hasn't come to see me to go over
19 anything.

20 MR. HILL: That's also not true. I've seen him
21 three times in the jail, two times at the office.

22 THE DEFENDANT: He has not gone over any issues in
23 my case at all.

4 MR. HILL: Also, Your Honor, there are some issues
25 that we have to deal with concerning whether we need to

1 send him to Western State. But that's something for a
2 different date.

3 THE DEFENDANT: Your Honor, I filed a Writ of Habeas
4 Corpus in this matter. I mailed it to the court. I ask
5 that it be taken a serious look at.

6 THE COURT: I'm aware of that.

7 THE DEFENDANT: It was mailed out. It was mailed.
8 I have a receipt back at the jail.

9 My attorney, he's basically threatened me to
10 withdraw if I don't waive my speedy trial rights.

11 THE COURT: You don't have to waive anything,
12 Mr. Davis. I do think -- I think there's good cause to
13 continue this. There apparently are some things --

14 THE DEFENDANT: Your Honor, I wouldn't receive a
15 fair trial without my key witnesses. That was already
16 ruled on by Judge Chuschcoff and he already ordered no
17 continuances already in this matter.

18 MR. HILL: Your Honor, that is just not correct.
19 Number one, counsel -- Judge Chushcoff decided to let us
20 see where we could proceed with the investigation and see
21 how far we can get along, and now we addressed it. So we
22 are ready to proceed. If he doesn't want a continuance, he
23 can represent himself. I have to be -- I need time to get
24 ready.

25 THE DEFENDANT: I strongly object to the

1 continuance, Your Honor.

2 THE COURT: I'm going to grant the continuance over
3 Mr. Davis' strong objection. Apparently there's some
4 things that need to be done to get prepared. Ms. Oliver
5 just got the case yesterday.

6 THE DEFENDANT: Your Honor, this would be
7 prejudicial to me if I didn't have my key witnesses to
8 testify on my behalf.

9 THE COURT: That's very possible. It's probably
10 prejudicial to go to trial without an attorney who's
11 prepared and having an investigation done as well.

12 THE DEFENDANT: I have a motion, Your Honor, that I
13 think -- at this time --

14 THE COURT: Please note it up and we can hear it.

15 THE DEFENDANT: Your Honor, Your Honor, please.

16 THE COURT: Mr. Davis, you're going to go on all
17 morning. I appreciate that. I don't have time to go on
18 all morning. It's a motion I haven't seen. I'm not going
19 to rule on it.

20 THE DEFENDANT: Can I represent myself?

21 THE COURT: Again, if I want to have something
22 heard, note it up so we have some notice of it.

23 THE DEFENDANT: It's right here.

24 THE COURT: I haven't actually read it yet,
25 Mr. Davis. That's not much notice, handing it to me.

1 I'm granting the continuance over Mr. Davis'
2 objection. We'll file the motion and we can set it for a
3 hearing.

4 Do we need an omnibus hearing before the trial date?

5 MR. HILL: We did put in omnibus hearing.

6 THE COURT: What's the date of the omnibus hearing?

7 THE DEFENDANT: Your Honor, I have a motion here.

8 I'd like to represent myself pro se.

9 THE COURT: That's an excellent thing to take up at
10 the omnibus hearing on April 10th. We have notice. Let's
11 get the original filed so it is in the court file and the
12 judge can review that.

13 (Adjourned.)

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SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF PIERCE

DEPARTMENT NO. 17

HON. RONALD E. CULPEPPER, JUDGE

STATE OF WASHINGTON,)

Plaintiff,)

vs.)

Nos. 12-1-03559-0

13-1-00377-7

JERRY LYNN DAVIS,)

COA No. 45274-0-II

Defendant.)

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

I, Carla J. Higgins, Official Reporter of the Superior Court of the State of Washington, County of Pierce, do hereby certify that the foregoing comprises a true and correct transcript of the proceedings held in the above-entitled matter.

Dated this 12th day of Nov. 2013.

Carla J. Higgins
Carla J. Higgins, CSR
Official Reporter



12-1-03559-0 40205374 MT 03-20-13

FILED
IN OPEN COURT
CDPJ
MAR 20 2013
Pierce County Clerk
BY [Signature] JLD:TY

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In The Superior Court of Pierce County Washington

State of Washington,
Plaintiff,

vs.

Jerry Lynn Davis,
Defendant-Petitioner.

Cause No. 13-1-00377-2

Cause No. 12-1-03559-0 ✓

Motion To Proceed

in Pro-Se

Supporting Declaration

Comes now defendant-petitioner, Jerry Lynn Davis (Davis) herein, moves the Honorable Court to proceed pro-se under Faretta vs. The State of California, 422 U.S. 806, and "ja", I am aware of the dangers of appearing pro-se but at this time the only way that I am going to get any justice from the Court under U.S. vs. Walker, 142 F.3d 103 (2nd Cir. 1998) which states that if a defendant asks to proceed pro-se before trial commences, the defendant's 6th Amendment Right to Self-Representation is absolute, and his request must be granted. See: U.S. Ct. 285 1776. See: Davis's Petition For Writ of Habeas Corpus (Writ). Dated this 20th day of March, 2013.

In Open Court Submitted by: [Signature]
Jerry Lynn Davis, Defendant-Petitioner, pro-se



12-1-03559-0 40250228 PT 03-28-13



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DAVIS, JERRY LYNN,

Defendant

Cause No. 12-1-03559-0

Pre-Trial/Trial Petition for
Writ of Habeas corpus (Writ)

In The Superior Court For Pierce County Washington

State of Washington,

Plaintiff,

vs,

Jerry Lynn Davis,

Defendant, Petitioner.

Cause No. 13-1-00377-7

~~Motion To Quash~~ (Prejudice)

Motion To Suppress

Motion To Dismiss

Pre-Trial/Trial Petition For Writ of Habeas Corpus (Writ)
petitioner

Comes New Defendant, Jerry Lynn Davis (Davis), who respectfully moves the Honorable Court to grant Davis's motion and writ, as this matter is time sensitive with trial set for march 26, 2013. To order suppression of tainted and illegally seized evidence and statements, pursuant to due process and illegally search and seizure U.S. constitutional violations, that the police deliberately omitted from their reports and discovery, collectively. And moves the Court to dismiss the above cause of action for the following "Bright-Line" Fruits-of-the-Poisonous-Tree Doctrine/undisputable reasons, and to avoid a fundamental miscarriage of justice.

This motion/writ is made and based upon the entire record, and hearing and/or trial testimony, the following memorandum Law Points and authorities, and attached declaration in support of compelling motion/writ, state and Federal U.S. constitutional violations, inclusive.

Date: March 17, 2013.

By: Jerry Lynn Davis

Jerry Lynn Davis, defendant-petitioner.

Memorandum OF LawPoints And AuthoritiesFacts:

The Court should take "Notice" that Davis is being deprived effective assistance of trial counsel a 6TH Amend violation, grounds for mistrial, and counsel will not file any pre-trial, or trial motions, records will show, and Davis is forced to file his own motion/writ, herein.

Davis submits that trial counsel has been conspiring with the prosecution and breaching confidentiality. On March 7TH, 2013, a bail reduction hearing was scheduled, but counsel called in sick. Counsel specifically had (attorney) Frank Krall fill in for him to meet with Davis to go over both cases counsel is assigned to, in which Davis had no idea. Mr. Krall was/is the prosecuting attorney who is assigned to this cause of action, and who did in fact advise Davis to sign a continuance document extending said hearing(s) until March 11, 2013. Mr. Krall was not present before Honorable Chushcuff on March 11, 2013, when the Court denied any continuances in both cases, records will demonstrate Davis firmly contends this is convincing grounds for the court to take serious "Notice" and to dismiss this case, with prejudice.

Conflict of interest between defendant and his trial counsel would be violation of the 6TH Amendment, entitling defendant to a "New Trial with effective counsel. see: U.S. vs. Holman, 314 F. 3d 837 (7TH Cir)

The pre-trial period constitutes a "Critical Period" in criminal proceedings because it encompasses counsel's constitutionally imposed duty to investigate the case. see: Mitchell v. Mason, 325 F. 3d 732 (6TH Cir). Trial counsel also has a constitutional duty to file necessary motions at pre-trial and trial proceedings.

Our 9TH Cir held: Defendant's 6TH Amendment right to counsel includes

1 the right to be represented by an attorney with undivided loyalty.
 2 see: Lockhart v. Terhune, 250 F.3d 1223 (9TH Cir.)

3 "Tainted Evidence"

4 Davis firmly argues that the "vehicle at bar" in this cause
 5 of action should have remained [held as evidence] pending a due process
 6 opportunity that constitutionally allows Davis to challenge and attack
 7 suspected foul play by the alleged victim in this matter, which Davis has
 8 been deprived of doing because the alleged victims vehicle has been
 9 released from evidence and is now Tainted. The foregoing will be
 10 supported by the trial testimony of Eatonville Towing and Patricia
 11 McDonald.

12 Undisputable Facts:

13 On or about 1-26-2013, Deputy Scaniffe #455, was dispatched to a call
 14 made by the alleged victim, Gloria Casson, who reported her 2002 Mercedes
 15 Benz as allegedly stolen, License plate 299ZET, who did in fact state to
 16 Deputy Scaniffe, "There was no suspect information." Mr. Casson alleges
 17 her vehicle was stolen between 8:10 and 8:30 am in broad daylight,
 18 nothing reported by neighbors. Now who leaves their car running in their
 19 drive way for half an hour or longer. For all we know, Ms. Casson could of
 20 left her car running for an hour, which certainly raises suspicion.

21 see: Discovery at page 00003, Incident Report. Further, the report
 22 documents that Ms. Casson signed the MVTR checklist form that she
 23 personally filled out. see: Discovery at page 00004, MVTR checklist
 24 "Form" signed by Ms. Casson and Deputy Scaniffe,

25 In the "Form" Ms. Casson provides the following information: (1) keys
 26 were in vehicle, (2) vehicle was left idling at the time of loss (approx 1/2 hr)
 27 (4) someone else had key [who?], (6) car was owed money on, (7) car was
 28 insured by Metro group, (8) Divorced? Paying child support? House Payment?

1 Questions to be asked during trial, (17) \$ 9,000.00 car value Davis was
 2 deprived of challenging, (18) Ms. Casson states no prior damages
 3 before theft. Davis will prove otherwise. Argument: Davis hereby
 4 submits that through pre-trial and trial testimony the Jury and Court
 5 will discover that Ms. Casson was not truthful regarding damages to
 6 her vehicle prior to it allegedly being stolen. The person with keys
 7 to Ms. Casson car needs to testify under oath, as well as Ms. Casson herself,
 8 regarding the truthfulness of No Prior Damages that have now been repaired
 9 and car returned to her.

10 Based on the primary evidence in this case not being held as evidence
 11 for the defense to investigate further for suspected foul play, that the
 12 primary evidence is now clearly tainted and must be suppressed, as Davis's
 13 due process rights have been violated causing irreparable direct harm
 14 and prejudice to the defendant.

15 Further, pursuant to Blacks Law Dictionary, under the Exclusionary
 16 Rule for Fainted Evidence, which is applicable in this case and compliments
 17 the Fruits of the Poisonous Tree Doctrine, Davis respectfully moves the honorable
 18 court to suppress/exclude the vehicle in this case, Ms. Casson's 2002 Mercedes
 19 Benz. Davis firmly argues that his 5TH, 6TH, 14TH Amendment rights of the
 20 U.S. Constitution have already been seriously violated, causing irreparable
 21 harm and is prejudicial to the defendant. The Court, upon suppressing/
 22 excluding said tainted evidence, should dismiss this cause of
 23 action with prejudice, with good cause appearing.

24 Undisputable Facts [Equal Protection Violation]

25 On or about 1-27-2013, Davis was arrested in this cause of
 26 action by Pierce County Deputy Foster, assisted by Deputy Ruder. Timothy
 27 and Cora Parker was also arrested, however, no charges were filed on
 28 either co-defendants constituting a ripe selective prosecution claim

1 that warrants dismissal pursuant to Davis equal protection of the
 2 law under his 5TH, 6TH, 14TH Amendment rights being violated, as a
 3 matter of record. Argument: Equal protection analysis is substantially
 4 identical under the 5TH and 14TH Amendment U.S. Constitution. See:
 5 Exaternal Order of Police v. U.S. 152 F. 3d 998 (D.C. Cir); (1) The
 6 equal protection clause essentially requires that all persons situated
 7 be treated alike. (2) Equal protection violation occurs when government
 8 treats someone differently then another who is similiary situated.
 9 See: Jacobs Visions and Jacob Co. v. Lawrence, KS, 927 F.2d
 10 1111 (10th Cir.); City of Cleburne v. Cleborn Living Center, 473 U.S.
 11 432, 105 S. Ct 3249.

12 The Court must take "Notice" that Ms. Parker was in
 13 possession of Meth and a glass meth pipe at the time of arrest, Davis
 14 was in possession of Pot and a Pot Pipe, exculpatory evidence the police
 15 deliberately omitted from their report and evidence they deliberately
 16 Destroyed, in violation of Davis's protected U.S. Constitutional due
 17 process rights and Brady Violations, inclusive. See: U.S. v. Rahman, 189 F.
 18 3d 88 (2nd Cir) "The government's loss of evidence may deprive a defendant
 19 of the right to a fair trial". Our 9th Cir. held: "Prosecutor has
 20 Constitutional Duty to correct evidence he knows is false". See: Hayes v.
 21 Woodford, 301 F. 3d 1054 (9th Cir). In the instant case Ms. Parker was so
 22 high on Meth at the time of her arrest. Booking at the Pierce County Jail
 23 decided to release her due to High Blood Pressure/liability concerns, rather
 24 than taking her to the hospital for obvious medical help. See: Discovery
 25 at page 00015 (Arrest Report) "Mrs Cora Parker was transported to the Pierce
 26 County Jail and booked for trafficking of stolen property, but was released
 27 because she failed booking due to high blood pressure". Here, Davis has been
 28 seriously deprived of challenging the officers handling and deliberate destroying

1 of exculpatory evidence, an illegal narcotic, demonstrating the officers' reckless
2 disregard for the defendants' due process rights and the LAW.

3 Davis firmly argues that due to the police's misconduct that he will not
4 receive a fair trial with the exculpatory evidence destroyed, and concealing
5 Mrs. Parker's under the influence condition, which is undisputably prejudicial
6 to Davis's defense -- without exception. See: Brady v. Maryland, 373 U.S. 83,
7 83 S. Ct. 1194; Frank vs. Delaware, 438 U.S. 154, 98 S. Ct. 2674.

8
9 "Suppression of Both Private Cell Phones And Statements"
10 Undisputable Facts: [Illegal Search + Seizure]

11 On or about 1-27-2013, Davis and Timothy Parker's private cell
12 phones were in fact illegally searched and seized into evidence. Deputy Foster
13 was acting lead officer, assisted by Deputy Ruder, wherein neither law
14 enforcement government officer's asked for, nor obtained "Consent" to
15 breach either private cell phones by Davis and Mr. Parker, whatsoever, nor was
16 the required legal search warrant (that could have been obtained without
17 jeopardizing the phones as evidence) ever obtained prior to the search. To make
18 matters even worse, the police deliberately omitted these critical relevant facts
19 from their official reports, depriving Davis of his protected due process/search and
20 seizure rights. Davis submits that irreparable direct harm is already presently
21 a fact throughout this entire case that warrants immediate dismissal.

22 Additionally, after the police illegally searched Davis's and Parker's
23 private cell phones, in which the police make no mention of in Report, the
24 Deputies then coerced, by threatening interrogation tactics, forced
25 unlawful statements from Davis and the Parker's, which was fabricated
26 in the police report to benefit them and the prosecutor. These Brady
27 violation and constitutional violations demonstrate the police's reckless
28 disregard for the Law, the truth, and should not be ignored.

1 The Deputies have a constitutional Duty and have sworn an oath to
 2 up-hold the laws and constitution, which has not happened in the present
 3 case. Officers are to be held to a higher standard due to their law
 4 enforcement Oath, education, and expensive training.

5 The officer's will also need to explain to the jury/court why
 6 they took Davis's personal property from his person, i.e., his wallet
 7 and Identification, Keys, vehicle title, and tossed it into Mr.
 8 Parker's vehicle, and then had it impounded. -- Knowing Davis would never
 9 see his belongings again [placing his identity in harms way
 10 deliberately], demonstrating a reckless disregard for the law and
 11 Davis's personal private identity, that could of ended up in the wrong
 12 hands. Here again, the Police deliberately omitted these facts as well.

13 Compelling Binding Argument: [Illegal Search and Seizure]

14 The 4th Amendment is very clear, moreover, the "United States
 15 Constitution" is the "Supreme Law" of our land. Based upon the officer's lack
 16 of consent, coupled with No search warrant issued pursuant to "legal probable
 17 cause", and how the police omitted favorable exculpatory evidence from their
 18 report (flat-out-lied-about-it), the Honorable Court should suppress from
 19 evidence in this case, Both illegally searched and seized private cell phones
 20 belonging to Davis and Mr. Parker, and all statements illegally
 21 obtained as a result of the illegal search and seizure, Accordingly.
 22 It is undisputable that the Brady violations are overwhelming in the
 23 present case, and the court should not be compelled to relinquish
 24 the imperative of Judicial Integrity, and forbid becoming
 25 accomplices in willful disobedience of a "Constitution" they are sworn to
 26 uphold. See Blacks Law Dictionary. Here, in the present case, the exclusionary
 27 rule is applicable and is Binding. "Fruits-of-the-poisonous-tree" Doctrine shall not
 28 be admitted into evidence, especially where the police have deliberately omitted

1 this critical information from the record, deliberately destroyed strong
 2 exculpatory evidence that was helpful to Davis's defense, with a
 3 reckless disregard for the irreparable direct [Constitutional] harm the
 4 police have deliberately caused, inflicting serious prejudice to Davis. The
 5 Judicial Administration of Justice should not turn a blind-eye to
 6 such egregious Constitutional violations that warrant immediate
 7 redress and dismissal, with prejudice. See: Terry v. Ohio, 392 U.S. 1, 16,
 8 88 S. Ct. 1868, 1877 (1968); Brady v. Maryland, 373 U.S. 83, 10 LEd 2d
 9 215, 83 S. Ct. 1194; Wayne R. LaFave + Jerold H. Israel; quoting ELKINS
 10 v. United States, 364 U.S. 206, 80 S. Ct. 1437 (1960); United States v.
 11 Caranda, 414 U.S. 338, 94 S. Ct. 613 (1974) (dissent); Frank v. Delaware,
 12 438 U.S. 154, 98 S. Ct. 2674 (1978); and Mapp v. Ohio, U.S. S. Ct (1961)

13 14 Conclusion

15 Therefore, Davis/Petitioner prays the trial court will
 16 render relief he is Constitutionally entitled to, and dismiss
 17 this cause of action forthwith, and with prejudice.

18 March 17th, 2013

By: Jerry Lynn Davis,
 19 Defendant-Petitioner

20 Declaration

21 I hereby declare from the Pierce County Jail that I
 22 am being deprived of my Constitutional rights and imprisoned by
 23 Chief Karr, that all facts and information herein are true and
 24 correct to the best of my knowledge and understanding, and that the
 25 foregoing is made of my own free will and made under penalty of perjury.
 26 See: 28 USC § 1746.

27 Dated this 17th day of March, 2013.

28 By: Jerry Lynn Davis
Defendant-Declarant-
Petitioner,

Certificate of Service

I hereby certify that I mailed a true and correct copy of the foregoing documents entitled: ~~Motion In Limine~~ Motion to Suppress / Motion To Dismiss / Pre-Trial-Trial Petition For Writ of Habeas Corpus (writ), by hand delivering said documents to Jail Deputy to be placed in the outgoing United States mail by and through Sgt. Alexander mail room Deputy Sgt, with prepayed postage for mailing on this 17th day of March, 2013, and addressed to the following parties:

Frank Krall, Bar No. ?	Antonio Hill, Bar No. 17669
Dist. Attorneys office	Trial Counsel:
930 Tacoma Ave., So.	201 So. 34 th street
Tacoma, WA 98402	Tacoma, WA 98418

Dated this 17th day of March, 2013

Certified By: 
 Jerry L. Davis, No. 2013027045
 Pierce County Jail
 910 Tacoma Ave., So.
 Tacoma, WA 98402
 Defendant - Petitioner

TO: Jerry Davis 2D-83
FROM: Chief Karr
March 28, 2013

Mr. Davis,

If you have an attorney, you should have the attorney note the writ for hearing to get your case on the docket. If you are *pro se*, it is your responsibility to get the case on the court's docket and the Jail cannot give you legal advice about how to do that.

Chief Karr



12-1-03559-0 40249283 ORH 03-27-13

IN THE SUPERIOR COURT FOR PIERCE COUNTY WASHINGTON

State of Washington,

Plaintiff

vs.

JERRY LYNN DAVIS

Defendant



No 12-1-03559-0

SCHEDULING ORDER

IT IS HEREBY ORDERED that:

1. The following court dates are set for the defendant:

Hearing Type	Date & Time	Courtroom
RETURN WITH ATTY	Thursday, Apr 4, 2013 8:30 AM	270
OMNIBUS HEARING	Wednesday, Apr 10, 2013 8:45 AM	260
JURY TRIAL	Wednesday, May 8, 2013 8:30 AM	260

2. The defendant shall be present at these hearings and report to the courtroom indicated at 930 Tacoma Avenue South, County-City Building, Tacoma, Washington, 98402

FAILURE TO APPEAR WILL RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST

- 3. DAC; Defendant will be represented by Department of Assigned Counsel.
- Retained Attorney; Defendant will hire their own attorney or, if indigent, be Screened (interviewed) for Department of Assigned Counsel Appointment.

DATED: 03/27/13

Copy Received:

REFUSED
JERRY LYNN DAVIS, Defendant

ANTONIO HILL
Attorney for Defendant/Bar #17669

Ordered By:
JUDGE/COMMISSIONER

KATHLEEN OLIVER
Prosecuting Attorney/Bar #18252

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

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.) S/C NO. 12-1-03559-0
) & 13-1-00377-7
)
 JERRY LYNN DAVIS,) COA NO. 45274-0-II
)
)
 Defendant.)

REPORTER'S TRANSCRIPT ON APPEAL

FILED
COURT OF APPEALS
DIVISION II
2013 DEC 27 PM 1:20
STATE OF WASHINGTON
BY
DEPUTY

BE IT REMEMBERED that on the 27th day of March 2013, the following proceedings were held before the HONORABLE BRYAN E. CHUSHCOFF, Judge of the Superior Court of the State of Washington, in and for the County of Pierce, sitting in CDPJ.

The Plaintiff was represented by its attorney, KATHLEEN OLIVER;

The Defendant was represented by his attorney, ANTONIO HILL;

WHEREUPON, the following proceedings were had, to wit:

ORIGINAL

Carol Lynn Frederick, CCR
Official Court Reporter
Department 18
(253) 798-6652

1 P-R-O-C-E-E-D-I-N-G-S

2 March 27, 2013

3 *****

4 MS. OLIVER: Your Honor, the next matter is Jerry
5 Lynn Davis, two cause numbers, 12-1-03559-0 and
6 13-1-00377-7. Kathy Oliver representing the State of
7 Washington. This is a Defense Motion to Withdraw.

8 MR. HILL: Your Honor, actually, it's Mr. Davis'
9 motion for a new lawyer. I was contacted by Michael
10 Kawamura who indicated to me that Mr. Davis had contacted
11 DAC. They sent me letters concerning bar complaints and
12 many allegations. I spoke again with Mr. Kawamura and I
13 indicated to him that I believe that it is unfortunate,
14 but we can't see eye to eye on anything at all, how to
15 proceed with the investigation and so forth, and Mr.
16 Kawamura said, "Fine, whatever the Court decides. We can
17 just get a return with attorney and have this case
18 reassigned." I think at this point the client/attorney
19 relationship is just beyond repair.

20 THE COURT: Ms. Oliver, do you have anything to
21 say?

22 MS. OLIVER: Your Honor, normally I would object
23 to a Motion to Withdraw based on case law, but it is my
24 understanding that Mr. Davis is filing a bar complaint
25 against Mr. Hill which I do believe gives the Court good

1 cause to appoint another attorney --

2 THE COURT: I'm not sure about that, but, in any
3 event, go ahead.

4 MS. OLIVER: -- but I am concerned about if the
5 Court does appoint another Department of Assigned Counsel
6 attorney that he may not be happy with that attorney
7 either, based on the voluminous paperwork I have received
8 in just a week of having been assigned this case, so I
9 think that if Mr. Davis does succeed in getting a new
10 attorney, he needs to accept the fact that should be his
11 last attorney, unless he is willing to pay for his own
12 private attorney.

13 MR. HILL: I just want to say, Your Honor, that
14 it is possible that it's just simply a fact of a conflict
15 of personalities and so forth. It is possible that
16 another attorney might be able to deal with him much
17 better than I have. That's all I can say.

18 THE COURT: That's certainly always a
19 possibility, and it does occasionally occur just as you
20 have described, Mr. Hill. The reason why I gave Ms.
21 Oliver a hard time about filing a bar complaint is
22 because we sometimes have the experience, unfortunately,
23 where the defendants choose to sue all of the judges in
24 the county and then say, "Well, you know, I can't have a
25 fair trial in front of these people. I'm suing them."

1 Of course, the Courts have pretty easily dismissed that
2 kind of stuff. It's just being done as kind of a tantrum
3 to make people recuse from a case. There's really no
4 ethical violation there, irrespective of Mr. Hill. I
5 don't necessarily want to reward Mr. Davis for a slew of
6 paperwork, but, on the other hand, I have become
7 convinced that, indeed, it's probably in everybody's best
8 interest, especially Mr. Davis, of course, who is the one
9 who is on trial here, to allow new counsel, so I guess
10 given that Mr. Kawamura is also apparently onboard with
11 all of this, I will do that and we will schedule a return
12 with attorney date for a week or so.

13 MR. HILL: Yes, a week would be more than enough,
14 Your Honor. I talked to Mr. Kawamura and he indicated
15 that would be enough time.

16 THE COURT: Okay, that's what we'll do. Just
17 give me a scheduling order for that and we will leave all
18 of the other dates the same for now, and when we get a
19 new order, we'll figure out where we're at.

20 MR. DAVIS: Excuse me, Your Honor. Can I have a
21 moment?

22 THE COURT: Well, I'm not sure, Mr. Davis. I
23 thought you just got what you wanted. Be careful to ask
24 for something after you've won.

25 MR. DAVIS: Well, we had a hearing in here on the

1 11th of March where you ordered no continuances, and then
2 on the 20th my attorney came in and had another judge go
3 over your order and just ignored what you had already put
4 in place. I was real concerned about that, and I've been
5 trying to reach one of my key witnesses. I believe, from
6 what I understand, that the person has already found a
7 job in North Dakota and it's going to be difficult to
8 have that person come back with a new job and everything.

9 THE COURT: I guess we'll find out.

10 MR. DAVIS: I'm just trying to go along with what
11 you had put on the record on the 11th. I got a motion
12 here for an emergency motion to dismiss. Yesterday was
13 supposed to be a trial in my one case and then today was
14 supposed to start trial on the other case, and that's
15 been completely ignored from your own order, Your Honor.

16 THE COURT: My understanding is it wasn't
17 ignored. There was a new hearing, a new judge, and a new
18 judge made a different ruling based upon new information.
19 I have no problem with that. It happens. It was Judge
20 Culpepper's ruling, as I understand it.

21 MR. DAVIS: It was based on the same information,
22 Your Honor. There was nothing new other than my attorney
23 was --

24 THE COURT: I can't go back and give you a trial
25 date yesterday. That ship sailed. The order is what it

1 is now, and we will get a new lawyer for you. If we had
2 a new lawyer for you today, they wouldn't be able to try
3 the case tomorrow. You want a new counsel. That's one
4 of the things you have asked for, Mr. Davis.

5 MR. DAVIS: Is there any way that I can file this
6 emergency motion to dismiss?

7 THE COURT: You can file it, I suppose. Well,
8 here's the thing. Why don't you wait at least until you
9 see your new lawyer and talk to your new lawyer?

10 MR. HILL: I just wanted to add that one of the
11 reasons also was that Ms. Kate Oliver was assigned all of
12 these cases that same day and, obviously, it's brand new
13 to her.

14 THE COURT: What is brand new to Ms. Oliver?

15 MR. HILL: No, no. At the time when we went in
16 front of Judge Culpepper, one of the things that had
17 changed is that Ms. Oliver had just received both of the
18 cases, but that wasn't the basis, necessarily.

19 THE COURT: I'm not going to sit here and
20 second-guess Judge Culpepper.

21 MR. HILL: He's refusing to sign, Your Honor.

22 THE COURT: I've signed.

23 MR. DAVIS: Your Honor, is this a matter that I
24 can appeal?

25 THE COURT: Having a new lawyer?

1 MR. DAVIS: No, no, that your order that was on
2 the 11th --

3 THE COURT: You can seek discretionary review. I
4 can't tell you what the odds are, but my guess is it's
5 slim. When this whole thing is resolved one way or the
6 other, you can appeal the whole thing, unless you're
7 acquitted, in which case there's nothing to appeal.

8 MR. DAVIS: Thank you.

9 THE COURT: You're welcome.

10 (Proceeding concluded.)

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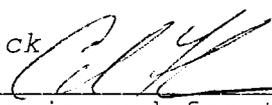
CERTIFICATE

STATE OF WASHINGTON) I, CAROL LYNN FREDERICK, a
(ss duly licensed court reporter,
) in and for the State of
Washington, residing at
Eatonville, do hereby
certify:

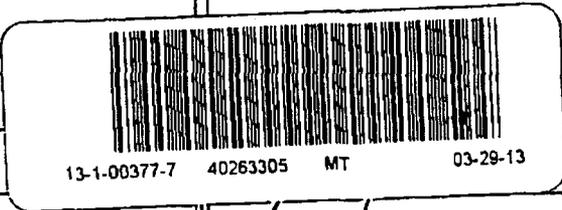
That the foregoing proceeding was transcribed by me and completed on the 27th day of March 2013 and thereafter was transcribed under my direction;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel and that I am not financially interested in the said action or the outcome thereof;

IN WITNESS WHEREOF, I have hereunto set my hand the 26th day of December 2013.

Carol Frederick 

Court Reporter in and for the State
of Washington, residing at
Eatonville.



FILED
IN COUNTY CLERK'S OFFICE

A.M. MAR-28 2013 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY DEPUTY

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Pierce County Superior Court, State of Washington

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State of Washington, Cause No. 13-1-00377-7
Plaintiff,

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v.s.

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Jerry Lynn Davis,)
Defendant-Petitioner.)

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Motion To Have Victim And All State
Witnesses Interviewed Before Trial
Starts Under Brady vs. The State
Of Maryland, 373 U.S. 83, 10 Led 2d 215,
83 S.Ct. 1194 (1963)

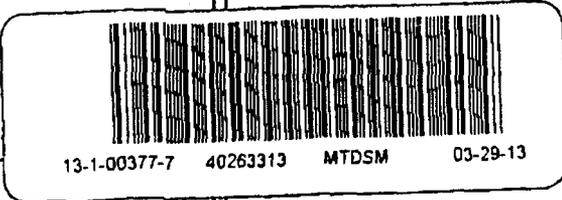
Comes Now: The defendant herein and respectfully moves
this Court for an order under the U.S. Supreme Court in Brady
vs. The State of Maryland, 373 U.S. 83, 10 Led 2d 215, 83 S.Ct.
1194 (1963) to have victim and all States witnesses interviewed
before the start of trial, which is on or about May 8, 2013.

That I am the defendant and that I have a 5th, 14th
amendment right of due process under the U.S. Constitution
to interview the victim/victims and all state witnesses
in this case. Trial starts on or about May 8, 2013.

Dated this 26th day of March, 2013.

By: Jerry Lynn Davis
Jerry Lynn Davis, Defendant-
Petitioner.

cc: File, and:
I certify mailing true
copy to prosecutor.



FILED
IN COUNTY CLERK'S OFFICE

AM. MAR 28 2013 PM.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY: DEPUTY

Pierce County Superior Court, State of Washington

State of Washington,
Plaintiff,

Cause No. 13-1-00377-7

Cause No. 12-1-03559-0

v.s.

Jerry Lynn Davis,
Defendant-Petitioner.

Emergency Motion To
Dismiss

Comes Now: The defendant-petitioner herein moves the Court to dismiss the two (2) above cases, with prejudice, good cause appearing.

Defendant submits that he will be deprived of a fair trial and that his fast and speedy trial rights have been violated under U.S. vs. Doggett, 906 F.2d 573. On March 11, 2013, Honorable Chushcoff agreed on record, in open court, with defendant, and denied attorney Antonio Hills request for trial continuance, and Ordered trial to proceed on March 26, and March 27, 2013, in both cases.

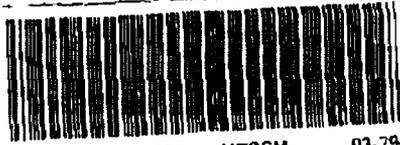
Therefore, defendant moves the Honorable Chushcoff to dismiss both causes of action in this matter, with prejudice, and to order the defendants release.

Dated this 27th day of March, 2013.

cc: D.A. Ms. Oliver
File

Submitted By: Jerry Lynn Davis

Jerry Lynn Davis, defendant-petitioner.



12-1-03559-0 40263292 MTOSM 03-29-13

FILED
IN COUNTY CLERK'S OFFICE

A.M. MAR 28 2013 PM

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

Pierce County Superior Court, State of Washington

State of Washington,
Plaintiff,

Cause No. 13-1-00377-7

Cause No. 12-1-03559-0

v.s.

Jerry Lynn Davis,
Defendant-Petitioner.

Emergency Motion To
Dismiss

Comes Now: The defendant-petitioner herein moves the Court to dismiss the two (2) above cases, with prejudice, good cause appearing.

Defendant submits that he will be deprived of a fair trial and that his fast and speedy trial rights have been violated under U.S. vs. Doggett, 906 F.2d 573. On March 11, 2013, Honorable Chushcuff agreed on record, in open court, with defendant, and denied attorney Antonio Hill's request for trial continuance, and Ordered trial to proceed on March 26, and March 27, 2013, in both cases.

Therefore, defendant moves the Honorable Chushcuff to dismiss both causes of action in this matter, with prejudice, and to order the defendant's release.

Dated this 27th day of March, 2013.

cc: D.A. Ms. Oliver
File

Submitted By: Jerry Lynn Davis
Jerry Lynn Davis, defendant-petitioner.

[original]

Pierce County Superior Court, State of Washington

State of Washington,
Plaintiff,

Cause No. 13-1-00377-7

Cause No. 12-1-03559-0

v.s.

Jenny Lynn Davis,
Defendant-Petitioner.ORDER

The Court: This very matter having come before me on March 11, 2013, and upon review of the facts of record, and in the premise in the two (2) above-entitled cause of action, good cause appearing, and in the interest of justice, irreparable direct harm does exist, causing prejudice to defendant.

Accordingly

It is hereby ORDERED that defendant's Emergency Motion To Dismiss the two (2) above-entitled causes of action, with prejudice, is Granted.

It is further ORDERED to release defendant in this matter immediately.

Dated: , 2013

D.A. Ms. Oliver
File

Prepared By:

Jenny L. Davis

Judge

[original]

Declaration of Jerry Lynn Davis

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing assertions are true and correct.

1. I am the declarant in this matter, over the age of 18, competent, and make the following assertions on my own free will.
2. Honorable Chushcoff agreed with me on March 14, 2013, in open Court, that I would be deprived of a fair trial if there was any continuance in Cause No. 13-1-00377-7, which would be prejudicial to me and my case. The Court Ordered trial to proceed on March 26, March 27, 2013, in both my cases. No. 13-1-00377-7, and 12-1-03559-0.
3. My Fast and speedy trial rights are being violated under U.S. vs. Degett, 906 F.2d 573, 5th, 6th, and 14th Amend. U.S. Constitution. Dismissal of both my cases is requested and required.

Dated this 27th day of March, 2013,
signed in Tacoma, Washington.

Jerry L. Davis
Declarant

cc: D.A. Ms. Oliver
File

" Motion Docket "

I certify mailing the prosecutor copies of the foregoing documents, and request an emergency hearing on the foregoing before honorable Chushcoff, or when there's a docket opening. Please help me, construe as Jerry L. Davis

Pierce County Superior Court, State of Washington

(Consolidate)

State of Washington,
Plaintiff.

vs.

Jerry Lynn Davis,
Defendant-Petitioner.

Cause No 13-1-00377-7
Cause No 12-1-03559-0

RAP 5.1 (a)

Notice of Appeal

Discretionary Review
RAP 5.1 (c)

Emergency Motion Stopped
To The Court of Appeals
Division II

FILED
PIERCE COUNTY CLERK'S OFFICE

A.M. APR 08 2013 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOKK, County Clerk
BY _____ DEPUTY

To: The State of Washington and Mark Lindquist
Prosecuting Attorney for Pierce County.

You, and each of you, will please take 'Notice' that the
above defendant-petitioner seeks Emergency Discretionary Review by
Division II of the Court of Appeals; Of The Order for Trial Continuance
Erroneously Entered on March 20, 2013 By Judge Culpepper I,
Judge Chusheoff court room. Abuse of discretion, manifest injustice.

The hearing transcripts will demonstrate that Judge Chusheoff
denied trial continuance on March 11 2013 "A Staying Order that was
ordered to begin in cause No. 13-1-00377-7 on March 20, 2013 and in
cause No. 12-1-03559-0 Trial was ordered to begin on March 27, 2013

On March 20, 2013

In open court, defendant "strongly Objected to trial Continuance" which was noted by the Court. Defendant-Petitioner verbally requested and submitted a Motion in open court on March 20, 2013, to proceed in pro-se, needing counsels. [Antonio Hill] already been requested for trial Continuance in both cases by Judge Chuschoff on March 11, 2013, in which "my attorney, ignored see: Faretta vs. California, 422 US 806, 45 S.Ct 2525 (1975); and, U.S. vs Walker, 142 F.3d 103 (2nd Cir 1998) 6th Amendment right of the U.S. Constitution. Request must be granted. Motion to proceed in pro-se was ignored. See: Attached.

therefore, Defendant-Petitioner herein, claims under U.S. vs. Soyette, 106 F.2d 573; 5th, 6th and 14th Amendment of U.S. Const. that U.S. fast and Speedy trial rights have now been seriously violated and that he will not receive a Fair trial, causing serious Prejudice to defendant and a manifest injustice. I have not waived my 6th and speedy trial rights, see: CRRLJ 3.3, 6th Amend. U.S. Const.

Defendant-Petitioner has made two (2) attempts to make out the foregoing Notice of Appeal - Discretionary Review - Emergency Motion to the Court of Appeals - Division I, without any success or request for Constitutional relief. The lower Courts or trial may be hindering defendant's access to this Court, in further violation of Def. Const. rights.

Pursuant to this courts review of the foregoing facts, it is respectfully requested that the lower Court be directed to dismiss both of defendant's above-entitled cases with prejudice and release the defendant immediately.

Dated this 27th day of March, 2013 and I hereby declare under penalty of perjury to be true as stated.

Respectfully Submitted By: Jeffrey Lynn Davis
Jeffrey Lynn Davis, Defendant - Petitioner

Addendum

On March 27, 2013, Defendant-Petitioner was taken before Judge Gushoff, who now appears to be against his own order in open court on March 27, 2013, for no trial continuance. Instead, on March 27, 2013, Counsel Antonio Hill was allowed to withdraw and a new scheduling order was provided in both cases, Cause No. 13-1-0377-7 and 12-1-03559-0. Please Note: Defendants motion to proceed was once again ignored, and new counsel was ordered, without defendant's request or permission, record will show. On record and in open court, Defendant provided that there was nothing new offered since March 14, 2013, to justify any trial continuance in either above cases, -he said he did not know. Rather, Defendant stated on the record that his key witness was moving to North Dakota for work, and now will not be available to provide critical testimony in defendant's behalf [all parties were aware of this fact] denying defendant of a fair trial, which is prejudicial and demonstrates a "manifest Injustice" Defendant-Petitioner has not waived his fast and speedy trial rights which are now seriously violated, and defendant refused to sign the new scheduling order, on record, and in open court on March 27, 2013.

I hereby declare under penalty of perjury to the foregoing to be true and correct to the best of my knowledge and understanding. My fast and speedy trial rights under the 6th Amend. have been violated. redress and relief is warranted. See: U.S vs Doggett, 906 F2nd 573; CrRLJ 3.3 the lower court has abused its discretion.

Dated this 28th day of March, 2013

Respectfully Submitted,

Jeery Lynn Davis

Jeery Lynn Davis, Defendant-Petitioner

Certificate of Service

I hereby certify mailing my notice of Appeal for Discretionary Review/Emergency Motion by placing in the Pierce County Jail US mailbox, Postage Prepaid which then goes to the Jail's mail room Deputy for mailing. Notice of Appeal was addressed as follows:

Pierce County Prosecutor
Mark Lindquist
930 Tacoma Ave S
Tacoma, WA 98402

Pierce Co Superior Court
Clerk, Judicial Assistant
930 Tacoma Ave S.
Tacoma, WA 98402

By Jerry L. Davis
Jerry L Davis 2013027045
Pierce Co Jail
910 Tacoma Ave S
Tacoma, WA 98402
Defendant Petitioner

x2
March 20, 28, 2013

March 31,
2013.

Att: Clerk of Court of Appeals - Division II. I cannot explain why my documents are not reaching you, or being filed in the Superior Court, will you please assist me in this matter, also, will you please construe my Emergency Motion For Discretionary Review liberally. See: U.S. v Seesing, 234 F 3rd 456 (9th Cir.); Frost v Symington, 197 F.3d 348 (9th Cir.);

Not sure who new counsel is, Requesting Mr Clower See Powell v. Alabama 287 U.S 455 3 S. Ct 55; Bland v Cal Dep of Corr. 20 Feb 3rd 1469 (9th Cir.).

April 10, 2013

Jerry L. Davis
BID 2013027045
930 Tacoma Ave. S.
Tacoma, WA 98402

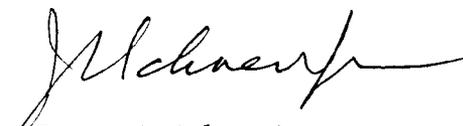
Re: State v. Davis 12-1-03559-0, 13-1-00377-7

Dear Mr. Davis:

I spoke with DPA Oliver after we met and she informed me that the 3/20 continuance was granted at request of Mr. Hill who stated that he would be unprepared for trial and cited *State v. Campbell* (a WA case where a continuance should be granted when counsel for defendant is not prepared to proceed to trial). # /20 was still within your 60 day time for trial. As such, any motion to dismiss based on speedy trial violations will fall on deaf ears.

I'll be in touch about a bail hearing. In the meantime, please add your ssn and signature to the HIPAA form, enclosed, and get it to medical.

Very Truly yours,



James A. Schoenberger



Washington State Court of Appeals Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS: 9-12, 1-4**

April 12, 2013

Jerry Davis
Booking #2013027045
Pierce County Jail
910 Tacoma Avenue South
Tacoma, WA 98402

Kathleen Proctor
Pierce County Prosecuting Atty Ofc
930 Tacoma Ave S Rm 946
Tacoma, WA, 98402-2171

CASE #: 44728-2-II
State of Washington, Respondent v. Jerry Davis, Petitioner
Re: Pierce County. No. 12-1-03559-0
Case Manager: Cheryl

Dear Jerry Davis:

This court has received the Notice of Discretionary Review you filed with the Pierce County Superior Court on April 8, 2013, but you did not pay the \$290 filing fee or paid only a portion of it. *See* RAP 5.1(b); RCW 36.18.018 (as amended June 7, 2012 by Chapter 199, Sec. 2, Laws of 2012) (imposing \$40 surcharge). Therefore, I placed your case on the motion docket for dismissal because it appears you have abandoned it. According to this court's General Order 91-1, effective April 1, 1991, this court will consider the motion for dismissal without oral argument. If you pay the \$290 filing fee by **April 22, 2013**, I will strike the motion from the docket and your appeal may proceed.

Very truly yours,

David C. Ponzoha,
Court Clerk

DCP:c

cc: Pierce County Clerk



Washington State Court of Appeals Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4

April 12, 2013

Jerry Davis
Booking #2013027045
Pierce County Jail
910 Tacoma Avenue South
Tacoma, WA 98402

Kathleen Proctor
Pierce County Prosecuting Atty Ofc
930 Tacoma Ave S Rm 946
Tacoma, WA, 98402-2171

CASE #: 44735-5-II
State of Washington, Respondent v. Jerry Davis, Petitioner
Re: Pierce County No. 13-1-00377-7
Case Manager: Cheryl

Dear Jerry Davis:

This court has received the Notice of Discretionary Review you filed with the Pierce County Superior Court on April 8, 2013, but you did not pay the \$290 filing fee or paid only a portion of it. *See* RAP 5.1(b); RCW 36.18.018 (as amended June 7, 2012 by Chapter 199, Sec. 2, Laws of 2012) (imposing \$40 surcharge). Therefore, I placed your case on the motion docket for dismissal because it appears you have abandoned it. According to this court's General Order 91-1, effective April 1, 1991, this court will consider the motion for dismissal without oral argument. If you pay the \$290 filing fee by **April 22, 2013**, I will strike the motion from the docket and your appeal may proceed.

Very truly yours,

David C. Ponzoha,
Court Clerk

DCP:c

cc: Pierce County Clerk

April 15, 2013

WA State Court of Appeals

Division Two

Notice

950 Broadway, Ste. 300

Tacoma, WA 98402-4454

Dear David Ponzona, Clerk:

Thank you for getting back to me in cause
No. 13-1-00377-7; 12-1-03559-0. Your
case # 44728-2-11; 44735-5-11.

Sir, I am indigent, I have no way to
pay the filing fee's your requesting of me. I do
believe my constitutional rights have been violated and
would like to know if there is still a way for my
request "Notice of Discretionary Review" can still
be considered and ruled on by this Court. I do NOT
wish to aband this matter, and I'm sincerely sorry
to not be able to pay, is there any forms you can
provide me with that can some how waive the fee's
I'm unable to pay? Please let me know, and will you
please move to strike the Motion from the
docket so my appeal my proceed.

Sincerely,
Jerry D. Davis

cc: File

Pierce Co. D.A.

April 17, 2013

WA State Court of Appeals
Division Two
950 Broadway, Ste. 300
Tacoma, WA 98402-4454

Notice

RE: No's. 12-1-03559-0 ; 13-1-00377-7

Please be advised that the trial court entered an Order of Indigency in the two cases I am requesting "Notice of Discretionary Review" in, case No's. 44728-2-11 ; 44735-5-11.

Will the Court of Appeals - Division II please waive the filing fee's due to the trial Courts Order of Indigency already filed in this matter. I do ~~not~~ wish to abandon neither appeals - - "Notice of Discretionary Review" regarding my fast and speedy trial rights being violated in both my cases in trial court.

Will you please strike the motion from the docket so my appeals may proceed.

Sincerely,
Jerry D. Davis

cc: File
Pierce Co. D.A.



Washington State Court of Appeals Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS:** 9-12, 1-4.

April 18, 2013

Jerry Davis
Booking #2013027045
Pierce County Jail
910 Tacoma Avenue South
Tacoma, WA 98402

Kathleen Proctor
Pierce County Prosecuting Atty Ofc
930 Tacoma Ave S Rm 946
Tacoma, WA, 98402-2171

CASE #: 44728-2-II and 44735-5
State of Washington, Respondent v. Jerry Davis, Petitioner

Dear Jerry Davis:

In response to your letter dated April 15, 2013, enclosed are the motion and order of indigency forms. Please note that a motion and order will need to be filed for each matter at the Pierce County Superior Court. Pursuant to RCW 10.73.150, counsel cannot be appointed on a discretionary review until after this court accepts review.

This Court continues the motions for dismissal to April 29, 2013, which will be considered without oral argument. If you pay the \$290 filing fee or file an order of indigency for each matter, I will strike the motions from the docket and the matters may proceed.

Very truly yours,

A handwritten signature in black ink, appearing to read "David Ponzoha", with a large, stylized flourish at the end.

David C. Ponzoha
Court Clerk

DCP:c



Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS: 9-12, 1-4.**

January 27, 2015

Jerry Davis
DOC #368483
Cedar Creek Corrections Center
PO Box 37
Littlerock, WA 98556

CASE #: 44735-5-II
State of Washington, Respondent v. Jerry Davis, Petitioner

Dear Mr. Davis:

In response to your letter dated January 9, 2015, enclosed please find the Ruling Dismissing Discretionary Review.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:c

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
Respondent,
v.
JERRY DAVIS,
Petitioner.

No. 44735-5-II

RULING DISMISSING DISCRETIONARY
REVIEW

FILED
COURT OF APPEALS
DIVISION II
2013 JUN 19 PM 1:41
STATE OF WASHINGTON
BY  DEPUTY

THIS MATTER comes before the undersigned to dismiss the above-entitled discretionary review as it appears to have been abandoned. A review of the file indicates that the Motion for Discretionary Review has not been filed as previously ordered in this Court's letter dated May 30, 2013, and that dismissal is warranted. Accordingly, it is

ORDERED that the above-entitled matter is dismissed.

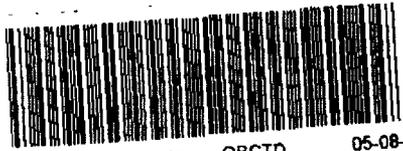
DATED this 19th day of June, 2013.


COURT COMMISSIONER

Jerry Davis
Booking #2013027045
Pierce County Jail
910 Tacoma Avenue South
Tacoma, WA 98402

Kathleen Proctor
Pierce County Prosecuting Atty Ofc
930 Tacoma Ave S Rm 946
Tacoma, WA, 98402-2171

NIC



12-1-03559-0 40492081 ORCTD 05-08-13

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,) Cause No. 12-1-03559-0
 Plaintiff)
 vs.)
TERRY LYNN DAVIDS)
 Defendant) Case Age 194 Prior Continuances 2

ORDER CONTINUING TRIAL

This motion for continuance is brought by state defendant court.
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or
 is required in the administration of justice pursuant to CrR 3 3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity.

Reasons: DEFENSE NEEDS TO OBTAIN TRANSFER OF PRISONER/ WITNESS

RCW 10 46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>5/8/13</u>	IS CONTINUED TO: <u>5/30/13 @ 8:30 am Room 360 CRT</u>			

Expiration date is: 6/30/13 (Defendant's presence not required) TFT days remaining: 80

DONE IN OPEN COURT this 8th day of MAY, 2013

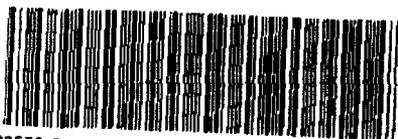
Terry Lynn Davids
 Defendant
[Signature]
 Attorney for Defendant/Bar #33603

[Signature]
 Judge
[Signature]
 Prosecuting Attorney/Bar # 18272

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

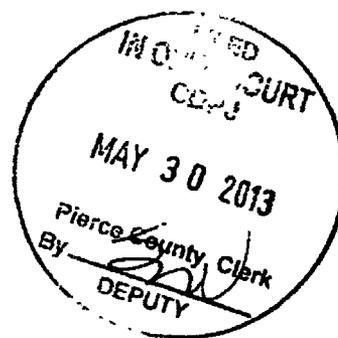
 Interpreter/Certified/Qualified Pierce County, Washington

 Court Reporter



12-1-03559-0 40613683 ORCTD 05-30-13

NIC



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff vs. JERRY LYNN DAVES, Defendant Cause No. D-1-03559-0 ORDER CONTINUING TRIAL Case Age 25 Prior Continuances 3

This motion for continuance is brought by [] state [x] defendant [] court. Upon agreement of the parties pursuant to CrR 3 3(f)(1) or [] is required in the administration of justice pursuant to CrR 3 3(f)(2) and the defendant will not be prejudiced in his or her defense or [] for administrative necessity.

Reasons: MOTION TO DENY ALLEGED VICTIMS NEEDS TO BE DRAFTED, DOCKETED AND HEARD.

[] RCW 10.46 085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

Table with columns: DATE, TIME, COURT ROOM, ID NUMBER. Rows include OMNIBUS HEARING, STATUS CONFERENCE HEARING, TRIAL READINESS STATUS CONFERENCE, and THE CURRENT TRIAL DATE OF 5/20/13 IS CONTINUED TO: 7/25/13 @ 8:30 am Room 260 COURT.

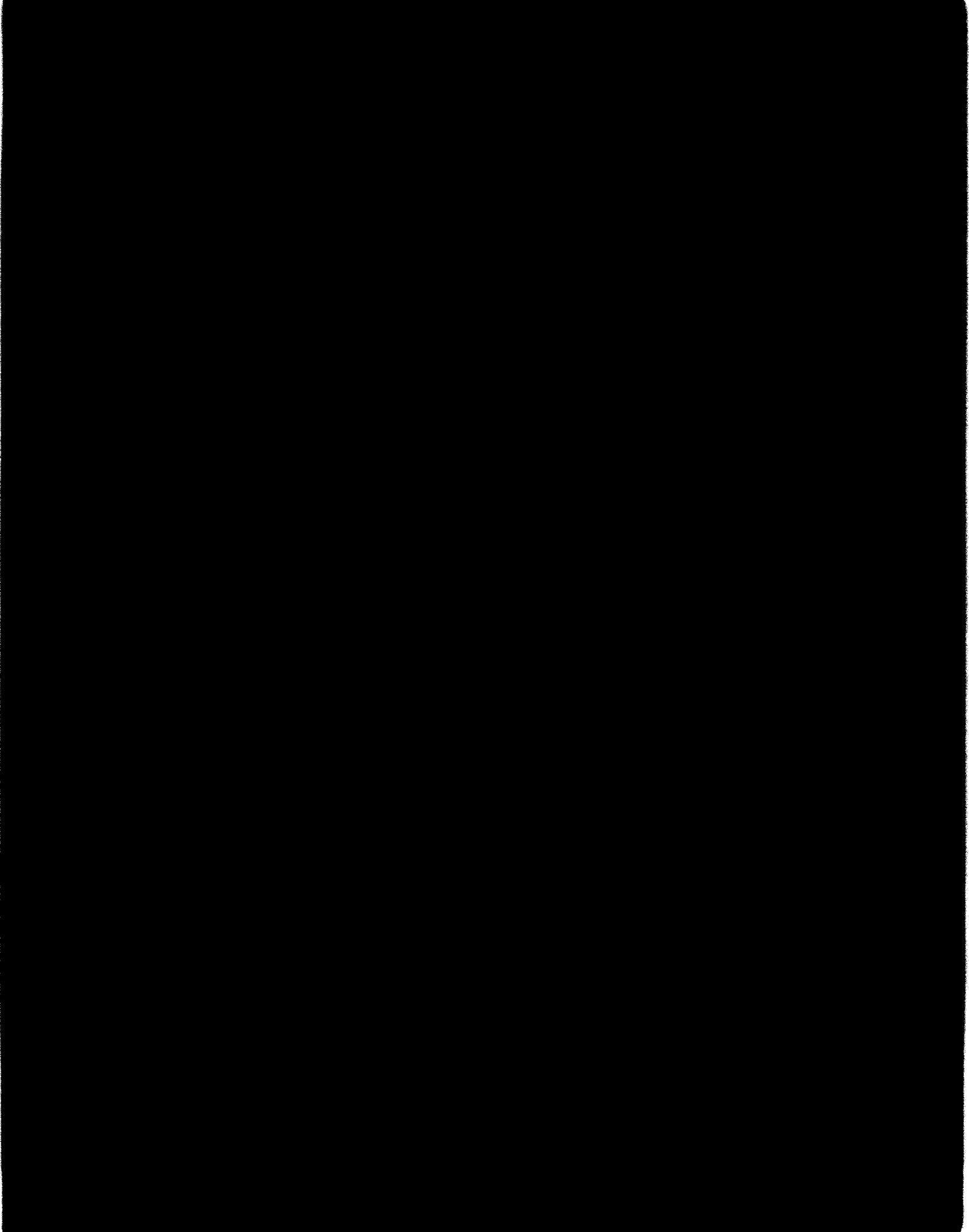
Expiration date is: 8/20/13 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 30th day of MAY, 2013.

Signatures for Defendant, Attorney for Defendant/Bar #33603, Judge, and Prosecuting Attorney/Bar #1862.

I am fluent in the language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified Pierce County, Washington Court Reporter



1 JULY 25, 2013

2 MORNING SESSION

3 * * * * *

4 MS. OLIVER: Your Honor, the next matter is
5 Jerry Lynn Davis. There's two cause numbers. The first
6 is 12-1-03559-0, Burg 2, felony harassment, set for trial
7 today, as is Cause Number 13-1-00377-7, trafficking in
8 stolen property, theft of a motor vehicle, also set for
9 trial.

10 Kathleen Oliver representing the State. The
11 State is ready to proceed with trial on this case, and the
12 defense attorney is requesting a continuance.

13 THE COURT: Mr. Schoenberger.

14 MR. SCHOENBERGER: Good morning, Your Honor.
15 Counsel is correct, I am requesting a continuance.

16 THE COURT: To when?

17 MR. SCHOENBERGER: September 23rd.

18 MS. OLIVER: Which is a non-jury week, Your
19 Honor.

20 THE COURT: I think that's in error. The only
21 thing about September 23rd is that is the week of the fall
22 judicial conference.

23 MR. SCHOENBERGER: No one tells me anything.

24 THE COURT: It's not really technically a
25 non-jury week, but there will be a lot of judges gone.

1 So, as a practical matter --

2 MR. SCHOENBERGER: That date is not cast in
3 stone. It's written in ink on my proposed order, but it's
4 certainly not cast in stone.

5 THE COURT: Anyway, so you want a continuance
6 of about two months, I guess, is what I am hearing.

7 MR. SCHOENBERGER: Well, I was looking for
8 seven weeks, but we can do with six or eight, whatever
9 would work.

10 THE COURT: Why would we do that?

11 MR. SCHOENBERGER: Well, this is my fault,
12 Your Honor. As Your Honor knows, I've been recently sent
13 out on a number of trials, and we had an interview of
14 Mr. and Mrs. Duvall, who were witnesses in the case ending
15 in 559-0. And due to my oversight, we didn't clear use of
16 a tape recorder in advance, and they refused. And the
17 last time we were here, we sought the continuance because
18 I need to make a motion for a deposition. These are very
19 important witnesses. Gunshots were fired. Mr. Duvall
20 fired several gunshots at people, who were evidently
21 trespassing on his property.

22 Co-defendant Powell, who has taken a plea and
23 is at DOC, told me, among other things, that Mr. Duvall
24 fired at Mr. Davis' back as he was fleeing, which is not
25 what he told -- not what Mr. Duvall said, so it's very

1 important that I depose these people. I need to make a
2 motion to do that, and I have failed and haven't done
3 that.

4 THE COURT: All right.

5 MR. SCHOENBERGER: Also --

6 THE COURT: Wait a minute. You are saying
7 Mr. Powell said that the victim shot at Mr. Davis --

8 MR. SCHOENBERGER: Right.

9 THE COURT: -- when Mr. Davis' back was
10 turned?

11 MR. SCHOENBERGER: Mr. Davis was fleeing the
12 scene. Mr. Duvall was evidently firing his gun into the
13 ground, and Mr. Powell got down on his hands and knees and
14 surrendered, and Mr. Davis took off. And Mr. Duvall said
15 he continued to fire into the ground, and Mr. Powell says,
16 no, he was shooting at Mr. Davis. Now, that has nothing
17 to do with the elements of the case except that --

18 THE COURT: That's what I was wondering.

19 MR. SCHOENBERGER: -- it goes to his
20 credibility, and I need to gauge that before I have a
21 trial and have a witness on the stand who I've not
22 interviewed in the past.

23 Also, Mr. Powell, who I had transported here
24 previously for trial, was disappointed that Mr. Davis
25 didn't put money on his books so he could get toothpaste,

1 and so now he's written us a letter where he's changing
2 his tune. I need to see if we can rehabilitate him into
3 testifying, so I have some work to do yet on this case,
4 and under State v. Campbell, I am not prepared today to go
5 to trial.

6 THE COURT: So, Mr. Powell is saying, "Look,
7 you were supposed to give me some money, and I would be
8 more cooperative."

9 MR. SCHOENBERGER: No, he -- no, sir, I would
10 not sanction that, but he did ask, since he was brought
11 here by Mr. Davis from DOC -- he didn't have any money to
12 buy toothpaste, and that's what he was looking for, was
13 just nominal --

14 THE COURT: Sure, but now, since he didn't get
15 it, he's changed his tune, but he's changed his tune about
16 what strikes me is a collateral matter. I mean, certainly
17 credibility is always important, but what difference does
18 it make if he's shooting in the ground or at Mr. Davis?

19 MR. SCHOENBERGER: Well, it makes a big
20 difference to me.

21 THE COURT: When the charge is burglary?

22 MR. SCHOENBERGER: It makes a big difference
23 to me in what he perceived was going on and what he was
24 doing and what his recollection is and how credible he is.
25 It makes a big difference to me.

1 THE COURT: But, now Mr. Powell may say, "You
2 know what? I think he was shooting into the ground after
3 all." Is that what I am hearing?

4 MR. SCHOENBERGER: I don't know what
5 Mr. Powell is going to say, except that he's written us.
6 I have given a copy of his letter to Ms. Oliver, and he
7 has certainly changed his tune.

8 THE COURT: So, who's the other witness that
9 you need to depose?

10 MR. SCHOENBERGER: I need to depose Mr. and
11 Mrs. Duvall, and I don't need to depose Ricky Powell, but
12 I will need to have him brought back here eventually for
13 whenever we do go to trial, Your Honor.

14 THE COURT: So, how long will it take to
15 arrange the interview of the Duvalls?

16 * MR. SCHOENBERGER: Well, I need to make a
17 motion, a written motion, to the Court to get a deposition
18 approved, because they have declined to return for an
19 interview, period, let alone allowing us to tape record
20 the interview. So, I have authorization for a court
21 reporter, I just don't have cooperation from the State's
22 witnesses.

23 THE COURT: Ms. Oliver.

24 MS. OLIVER: Your Honor, that's a -- the
25 reason it was continued on May 30th was for him to do the

1 motion. State is opposing a deposition. The State does
2 not feel there's been good cause, and that's the subject
3 of a motion. If the Court is in -- well, and just to back
4 up a little, Mr. Powell has been in the jail. He was in
5 our jail for over a month under defense counsel's
6 subpoena, and this is brand new. It's not in the letter
7 that he provided me, about the victim shooting him in the
8 back, so this is all new anyway, but I certainly could
9 have gotten that information out of him when he was in our
10 system for well over a month, having been brought back by
11 DOC by the defense attorney.

12 If the Court is inclined to continue -- and
13 for the record, the State has been prepared every single
14 trial date with subpoenas, with witnesses, and on the day
15 of trial, it gets continued. The State would ask the
16 Court to actually set a motion date, and this is going to
17 be argued by Steve Trinen in our appellate unit, and we
18 would propose August 14th or 15th, which is a Wednesday or
19 a Thursday, to actually do the motion.

20 The other issue from my standpoint is, I am on
21 vacation starting August 28th. I don't return back to the
22 office until September 18th, so I have been trying to get
23 every case I have set for trial done. Otherwise, it gets
24 set over to end of September, and I have been avoiding the
25 last week of September, thinking it was a non-jury week.

1 And just because defense brought it up, the witnesses were
2 here. They drove from Roy. We're all set for the
3 interview, and the first question out of
4 Mr. Schoenberger's mouth was, "Do you mind if I tape
5 this?" Mr. Duvall said, "Well, yeah, I do," and that was
6 it, the interview was over, and then there was a request
7 for deposition.

8 I wrote a letter to Department of Assigned
9 Counsel saying that this was --

10 THE COURT: And what day was that?

11 MS. OLIVER: Pardon me?

12 THE COURT: What day was that? Was that May
13 30th?

14 MS. OLIVER: No, this was well before May
15 30th. It was at least three months ago.

16 THE COURT: Okay.

17 MS. OLIVER: And I was told by defense counsel
18 that he would be making a motion on May 30th, and that
19 was -- did not happen, and here we are, two months later
20 after the last trial continuance, and nothing has
21 happened.

22 THE COURT: Of course, Mr. Davis is also
23 facing another charge, not necessarily since the
24 interviews, but --

25 MS. OLIVER: No, these have been tracking

1 since January, when he was picked up on the car theft. He
2 failed to appear on the burg and felony harassment and
3 then was picked up on the stolen car case, and he was in
4 custody, so these two cases are tracking.

5 THE COURT: I see.

6 Mr. Schoenberger, you get the last word on
7 this.

8 MR. SCHOENBERGER: Well, I guess I'm surprised
9 to hear Ms. Oliver say that she's not heard before about
10 the shooting. I recall distinctly telling her about that
11 conversation.

12 MS. OLIVER: A week ago.

13 MR. SCHOENBERGER: When I went to interview
14 Mr. Powell when he was here, before we sent him back, I
15 asked Ms. Oliver to accompany me, and she demurred, so she
16 had an opportunity to interview my witness, and I have yet
17 to have the opportunity to hear from her witnesses.

18 THE COURT: Okay. Well --

19 MR. SCHOENBERGER: And I should add that I am
20 going to be on vacation from the 23rd to the 28th of
21 August, coming back the same day Ms. Oliver leaves, so of
22 course, August is always tough for everybody.

23 THE COURT: I don't have any room at the inn
24 today anyway, so I can't send you out, but I don't see a
25 good cause for a continuance. But, since I can't get you

1 out anyway, I will set you over to Monday. That's the
2 best I can do for you.

3 MR. SCHOENBERGER: Your Honor, I am told it
4 takes two weeks to get someone transported from DOC. Now,
5 Ms. Oliver thinks she can do it sooner, and if that's the
6 case, I would ask her to use her good offices to do that,
7 because it takes me two weeks to get someone here from
8 DOC.

9 MS. OLIVER: I will not do that, Your Honor.
10 It's his witness, and I called, and he's at Coyote Ridge
11 over in Spokane. They transport on Tuesdays and
12 Wednesdays.

13 MR. SCHOENBERGER: Your Honor, I'm sorry, I
14 couldn't hear Ms. Oliver.

15 THE COURT: Ms. Oliver suggested that she
16 wasn't going to do that, but she also said that Mr. Powell
17 is being held at the correctional facility at Coyote
18 Ridge, and they transport on Tuesdays and Thursdays.

19 MS. OLIVER: Tuesdays and Wednesdays.

20 THE COURT: Tuesdays and Wednesdays, I'm
21 sorry, to here. So, if you want, get me an order for
22 transporting him, and I'll sign it.

23 MR. SCHOENBERGER: I will have an order for
24 you at 1:30, and I will get it to LESA records, but they
25 tell me it takes two weeks.

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THE COURT: We will see what happens.

MR. SCHOENBERGER: All right.

THE COURT: So, the case is set over to July
29th.

MS. OLIVER: Thank you.

MR. SCHOENBERGER: Thank you, Your Honor.

THE COURT: You are welcome, Mr. Schoenberger.

(Proceedings concluded.)

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

STATE OF WASHINGTON,)
)
 Plaintiff,)
) Superior Court
 v.) No. 12-1-03559-0
) No. 13-1-00377-7
 JERRY LYNN DAVIS,)
)
 Defendant.)

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss
 COUNTY OF PIERCE)

I, Sheri Schelbert, Official Court Reporter in the State of Washington, County of Pierce, do hereby certify that the forgoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

Dated this 15th day of May, 2014.

SHERI SCHELBERT, CCR
Official Court Reporter

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

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.) No. 12-1-03559-0; 13-1-00377-7
) COA No. 45274-0-II
JERRY LYNN DAVIS,)
)
 Defendant.)

VERBATIM REPORT OF PROCEEDINGS
[Motion]

[July 29, 2013]

Honorable GAROLD E. JOHNSON
Department No. 10
Pierce County Superior Court

APPEARANCES
For the Plaintiff: Kathleen Oliver
 Deputy Prosecuting Attorney

For the Defendant: James Schoenberger
 Attorney at Law

Also Present: Jerry L. Davis

LESLIE J. THOMPSON, CCR
OFFICIAL COURT REPORTER
PIERCE COUNTY SUPERIOR COURT
930 TACOMA AVE S. #334
TACOMA, WA 98402
(253) 798-2979

6-11-13 Y

1 MS. OLIVER: Next matter is Jerry Lynn Davis.

2 THE COURT: Cause Number is 12-1-03559-0.

3 MS. OLIVER: Two cause numbers, Your Honor.

4 THE COURT: You're right. 13-1-00377-7.

-01:-50:-14 5 MS. OLIVER: Your Honor, this case is set for --
6 both cases are set for trial today. The state is ready
7 to proceed.

8 We were on in front of Judge Chushcoff last Thursday.
9 Defense was requesting a continuance. The judge denied
-01:-50:00 10 it saying there was no good cause for a continuance and
11 -- but there were no courtrooms on Thursday.

12 The only thing that has changed between -- from the
13 state's perspective from last Thursday to today is that
14 on one of the cases, the 12 -- excuse me, the
-01:-49:-33 15 13-1-00377-7, one of the witnesses that the defense was
16 responsible for subpoenaing didn't get subpoenaed and is
17 in DOC and won't be transported here until this Friday.
18 And I had represented to the court based on information I
19 received from my unit that he would be here on Wednesday
-01:-49:-07 20 of this week, a witness.

21 So my proposal was to start the -- excuse me, the
22 witness was on the 12 cause number, Your Honor. So my
23 proposal was to start the trafficking stolen property and
24 theft of a motor vehicle, pick a jury, proceed through
-01:-48:-41 25 the trial, and by the time we started the next case his

1 witness would be here.

2 So that is still my proposal.

3 THE COURT: Your proposal is continue to go on
4 trial Wednesday of this week.

-01:-48:-27 5 MS. OLIVER: Pardon me?

6 THE COURT: Your proposal is to go ahead and to
7 go to trial Wednesday of this week; is that correct?

8 MS. OLIVER: My proposal is to start on the
9 cause number starting on 13 starting today, or as soon as
-01:-48:-18 10 we can get a courtroom. And then by the time we're
11 finished with that case the next case the witness for the
12 defense will be here so there won't be any interruption
13 in time.

14 THE COURT: Mr. Schoenberger.

-01:-48:-04 15 MR. SCHOENBERGER: Thank you, Your Honor.

16 Your Honor, I don't think it's quite as simple as
17 counsel would have you believe. I didn't make
18 arrangements to transfer Mr. Powell from Coyote Ridge
19 Correctional Facility because it was my intention to make
-01:-47:-50 20 a motion to take the deposition of the state's witnesses
21 in the 12 cause number.

22 Judge Chushcoff made it pretty clear that I was going
23 to be going to trial without being able to talk to those
24 witnesses, and that's why I did not have arrangements for
-01:-47:-29 25 Mr. Powell to be here. I immediately did an order for

1 transfer of prisoner on Thursday, Thursday afternoon.

2 Gave it to LESA records.

3 On Friday morning I received a call from the people
4 at Coyote Ridge, and they told me that they could not get
-01:-47:-08 5 Mr. Powell here until Thursday; that the bus would leave
6 on Thursday morning.

7 Now, the newer case, the 13 cause number, is one that
8 I would expect we would be able to deal with by way of a
9 plea bargain after the trial in the 12 cause number,
-01:-46:-47 10 however that case went. So taking that to trial first
11 doesn't serve any real purpose.

12 Two, it was my intent to ask the court to allow us a
13 continuance to Thursday because Mr. Powell would be here
14 Thursday night and we wouldn't need him until the next
-01:-46:-20 15 week.

16 But Mr. Davis tells me now this morning that his
17 mother has died on Friday, and that he will be making
18 arrangements this week for dealing with her service and
19 cremation. I've given the information to the state. And
-01:-45:-59 20 based upon that, I was going to ask for a continuance
21 until Monday so we would at least have the week to deal
22 with these family matters.

23 Ms. Oliver tells me she's done a little research on
24 this, and while she has confirmed that there's a Bernice
-01:-45:-38 25 Foote, F-o-o-t-e, who did die on Friday and is scheduled

1 to be cremated, that she can find no evidence that
2 Mr. Davis is her son.

3 THE COURT: As a practical matter, it appears
4 from looking at our -- what I can look at at the moment,
-01:-45:-13 5 it doesn't appear that there's a judge available until
6 Wednesday of this week; that's why it slipped out.
7 Wednesday is the first date available.

8 MS. OLIVER: And if that's the first available
9 date, Your Honor, I would propose that we set this case
-01:-44:-57 10 over to -- both cases over to Wednesday.

11 THE COURT: I think that's what we should do,
12 and to have a better look at it at that time. Again, the
13 issues you brought up, including the deceased mother,
14 maybe some better evidence can be presented at that time.

-01:-44:-38 15 MR. SCHOENBERGER: My only worry has been
16 -- hold on. I can't talk and listen to you, Mr. Davis.
17 May I have a moment, Your Honor?

18 THE COURT: Yes.

19 [Whereupon, a discussion was held
20 off the record.]
-01:-44:-23

21 MR. SCHOENBERGER: My only concern is, is that
22 if he has to come back here Wednesday and there are
23 services or family members, family things to attend to on
24 Wednesday, this is very difficult. Mr. Davis tells me
-01:-44:-05 25 he'll get me his birth certificate, which would offer

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proof.

I would ask to continue this to Monday so this man can have at least a week to bury his mother and mourn her loss.

-01:-43:-48

THE COURT: Continue this matter until Wednesday at 9 a.m.

MS. OLIVER: Thank you, Your Honor.

[Whereupon, the verbatim report of proceedings adjourned.]

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

STATE OF WASHINGTON,)	
)	
Plaintiff,)	COA No. 45274-0-II
)	
vs.)	No. 12-1-03559-0
)	
JERRY LYNN DAVIS,)	No. 13-1-00377-7
)	
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 31st day of July, 2013, the above-captioned cause came on duly for hearing before the HONORABLE RONALD E. CULPEPPER, Department 17, Superior Court Judge in and for the County of Pierce, State of Washington;

WHEREUPON, the following proceedings were had and done, to wit:

Reported by: Dana S. Eby, CCR



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APPEARANCES

For the Plaintiff:

Kathleen Oliver
Deputy Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402

For the Defendant:

James A. Schoenberger
Attorney at Law
1008 Yakima Avenue, Suite 201
Tacoma, Washington 98405

1 JULY 31, 2013

2 MORNING SESSION

3 * * * * *

4
5 MS. OLIVER: Your Honor, the next matter is
6 Jerry Lynn Davis. Two cause numbers. First is
7 12-1-03559-0 for two felony harassment. That case is
8 set for trial. The State is prepared to go.

9 The second cause number is 13-1-00377-7,
10 trafficking in stolen property and theft of a motor
11 vehicle. The State is also ready to proceed. On that
12 matter, Defense has a motion.

13 THE COURT: Okay. Mr. Schoenberger, you're
14 representing Mr. -- you're Jerry Lynn Davis?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You're representing him,
17 Mr. Schoenberger, on both cases. So are we ready to
18 go or --

19 MR. SCHOENBERGER: Your Honor, good morning.

20 THE COURT: Good morning.

21 MR. SCHOENBERGER: For the record, James
22 Schoenberger with Mr. Davis.

23 Your Honor, Mr. Davis's mother died on Friday.
24 Now, if Ms. Oliver's mother died Friday, you wouldn't
25 expect her to go to trial. If my mother died on

1 Friday, you wouldn't send me out to trial. This man
2 is going through a grieving process. I've just gotten
3 off the phone with his sister who's hysterical. His
4 sister bailed him out because she's disabled and needs
5 his help to do everything day-to-day. She's
6 hysterical. I think the family needs to have the
7 courtesy from the State of a little private time to
8 grieve.

9 Now, Ms. Oliver is making the argument to me that
10 she's going to be cremated; there's no memorial
11 service yet or anything like that. Well, you know,
12 that ignores the fact that people grieve and people,
13 when they're in a grieving process, they're -- they've
14 got other things on their mind and not a trial. I'm
15 going to ask to have this continued, with all due
16 respect, Your Honor.

17 THE COURT: Until when? What kind of a date
18 are you looking at?

19 MR. SCHOENBERGER: Well, until Monday at the
20 earliest. I've got a witness coming from Coyote Ridge
21 who won't even be here, won't be available until next
22 week because of the transfer issue. So sometime next
23 week.

24 THE COURT: Okay. And Ms. Oliver, is the
25 State opposed to a short continuance?

1 MS. OLIVER: Your Honor, I spoke with Bernice
2 Foote's husband yesterday, and he informed me that
3 there was no memorial, no cremation. Her ashes were
4 to be scattered, and her dying wish, and this is what
5 her husband said, "If my kids couldn't see me when I
6 was alive, I do not want them around when I'm dead."
7 So -- and he said she saw him once when she was in
8 good health, once in bad health. So the fact that --

9 THE COURT: I don't really need to get into
10 the family --

11 MR. SCHOENBERGER: This really has no
12 bearing.

13 THE COURT: There are no courtrooms available
14 today. It's unlikely there are going to be any
15 tomorrow, either, from what I understand. I've put
16 out an e-mail to my colleagues. They've, I think,
17 basically all responded. A couple of them are open
18 for one day, today or tomorrow, so the likelihood is
19 we're not going to get it out anyway. So my
20 inclination is to continue this until either Monday or
21 Tuesday. I don't know what date works better for
22 people. Monday is going to be very crowded already.
23 Does it make any difference to you? Are your folks
24 available, your witnesses?

25 MS. OLIVER: Pardon me?

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THE COURT: Are your witnesses available Monday or Tuesday?

MS. OLIVER: Yes, they are. They're also available if you want to set it over until tomorrow in the hopes that a courtroom comes open.

THE COURT: That's very unlikely. We could do it.

MS. OLIVER: Then I would propose Monday, the earlier date.

THE COURT: Monday work, Mr. Schoenberger?

MR. SCHOENBERGER: I'm taking a look, Your Honor. That would be August 5th?

MS. OLIVER: Yes.

THE COURT: Yes.

MR. SCHOENBERGER: Yes.

THE COURT: August 5th. Okay. I'm going to continue these at the defense request over the State's objection, both trials, until Monday, August the 5th.

MR. SCHOENBERGER: I'll prepare the orders, Your Honor.

THE DEFENDANT: Thank you, Your Honor.

MR. SCHOENBERGER: Thank you, Your Honor. Thank you, Counsel.

(Proceedings concluded.)

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REPORTER'S CERTIFICATE

I, Dana S. Eby, Official Court Reporter for Pierce County Superior Court, do hereby certify that the foregoing transcript entitled, "Verbatim Report of Proceedings," was taken by me stenographically and reduced to the foregoing typewritten transcript at my direction and control, and that the same is true and correct as transcribed.

DATED at Tacoma, Washington, this 9th day of May, 2014.

Dana S. Eby, CCR

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

STATE OF WASHINGTON,
Respondent,

vs.

JERRY LYNN DAVIS,
Appellant.

Appeal No. 45274-0-II

CERTIFICATE OF MAILING

I, Stephanie C. Cunningham, court-appointed counsel for Appellant Jerry L. Davis, certify that on this day I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of the VERBATIM REPORTS OF PROCEEDINGS for 05/07/13, 07/25/13, 07/29/13 and 07/31/13, and this CERTIFICATE OF MAILING, addressed to

Jerry L. Davis, DOC# 368483
Cedar Creek Corrections Center
PO Box 37
Littlerock, WA 98556-0037

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: May 28, 2014



STEPHANIE C. CUNNINGHAM, WSB #26436
Attorney for Appellant Jerry L. Davis

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

State of Washington,)
)
Plaintiff,)
)
vs.)
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)
Jerry Lynn Davis,)
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Defendant.)

RECEIVED
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STATE OF WASHINGTON

No. 12-1-03559-0
13-1-00377-7
Appeal No. 45274-0-II

ORIGINAL

Plea

Verbatim Report of Proceedings

Appearances:

Kathryn Oliver, Deputy Prosecuting Attorney, appeared on behalf of the State of Washington.

James Schoenberger, Attorney at Law, appeared on behalf of the Defendant.

BE IT REMEMBERED that on August 5, 2013, the above-captioned cause came on for hearing before the Honorable Stephanie A. Arend, Judge of the Superior Court in and for the County of Pierce, State of Washington; the following proceedings were had, to-wit:

Jan-Marie Glaze, CCR, RPR, CRR Official Court Reporter
930 Tacoma Avenue South Dept. 12, Superior Court
Tacoma, Washington 98402 (253) 798-6584

1 Monday, August 5, 2013

2 Morning Session

3 * * *

4 (Defendant present.)

5 THE COURT: Good morning. Please be seated.
6 Ms. Oliver, do you want to go ahead and call the case?

7 MS. OLIVER: Your Honor, the first case is
8 12-1-03559-0.

9 Your Honor, it's my understanding that we're going
10 to proceed on that case only. The second case would be
11 sent back depending on the outcome, but because today's
12 trial date -- that's what Judge Serko said because
13 you're on civil panel.

14 THE COURT: There's two trials? I didn't
15 know that.

16 MS. OLIVER: There are two trials, but it is
17 our understanding that you would only be hearing the
18 first one, a Burg 2nd and the felony harassment, but I
19 would ask Your Honor to call the second one because
20 today is the trial date and that is 13-1-00377-7.
21 That's trafficking in stolen property and theft of a
22 motor vehicle. The State is ready to proceed. We
23 have -- Mr. Schoenberger and his client have been
24 involved in negotiations for the last hour and he's
25 going to address the Court at this time.

1 THE COURT: Okay. Mr. Schoenberger?

2 MR. SCHOENBERGER: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. SCHOENBERGER: For the record, James
5 Schoenberger with Mr. Davis out of custody to my right.

6 Your Honor, I've been speaking with Mr. Davis
7 earnestly about the State's plea offer. I believe we
8 may have something resolved by 1:30. Mr. Davis has
9 asked me to ask the Court to give him until 1:30 to
10 decide if he wishes to take the plea bargain so he can
11 talk to his sister. Mr. Davis' mother died a week ago
12 Friday, and he was bailed out awhile back by his sister
13 who is disabled, so he could help her, and I think he
14 needs to talk to her about how she would get on if he
15 went to DOC, and there are always risks of trial, and I
16 think since it is now five minutes to 12 and we can't
17 do anything really until 1:30 anyway, we would ask Your
18 Honor to indulge us and give us until 1:30 to decide
19 whether to plead or not, and...

20 THE COURT: Okay. Does the State have any
21 objection? Is your offer open until 1:30?

22 MS. OLIVER: Yes, Your Honor. Unless you
23 want to start a little bit earlier in the event it
24 doesn't happen, we could call a jury.

25 THE COURT: What I would like to do is take

1 just a couple minutes and do, essentially, a pretrial,
2 assuming there wouldn't be a plea, so we can inform
3 jury and we know if there are motions and so forth.
4 Because I understand they are a little tight on jurors
5 today, so were you planning on seating one alternate or
6 two alternates?

7 MS. OLIVER: We probably would only need one
8 alternate, Your Honor. I'm believing the case would be
9 finished by the end of the week.

10 THE COURT: So that means that we would need
11 at least 26 jurors to seat 13 and have 13 alternates --
12 peremptories, excuse me. So that's 26 and what do you
13 guys doing these day for for-cause challenges, five
14 given the fact that it's summer?

15 MS. OLIVER: Five?

16 THE COURT: For-cause. What's your margin?

17 MS. OLIVER: That's what I'm thinking. If we
18 had at least 30 to 32.

19 MR. SCHOENBERGER: 30 to 32 would be
20 appropriate.

21 THE COURT: Dan can contact Jury about that.

22 Are you going to have any pretrial motions? Is
23 there a 3.5, 3.6?

24 MS. OLIVER: Your Honor, just the general
25 pretrial motions like keeping witnesses out, witnesses

1 not allowed to talk to each other. I did have a motion
2 that I'll give to the Court and defense counsel. My
3 office is across the street. So I don't have that.
4 There are two witnesses that one of them I knew of from
5 the defense and one I just found out from the defense
6 on Friday. They both have criminal histories to
7 include crimes of dishonesty. So if they were to
8 testify, the State would ask that I be allowed to
9 inquire as to their prior criminal convictions
10 involving crimes of dishonesty under 609.

11 THE COURT: Okay. And this is the original
12 Information with one count of burglary in the second
13 degree and one count of felony harassment; is that
14 right?

15 MS. OLIVER: Yes, Your Honor.

16 THE COURT: And I have a witness list from
17 the State with Lynn Duvall, Phil Duvall and Stephen
18 Quilici, Jennifer Eldridge and Peter Turner. Does that
19 sound like that's a complete --

20 MS. OLIVER: Yes, Your Honor.

21 THE COURT: And the defense list of Ricky
22 Powell and Pamela Gabrielski-Jones.

23 MR. SCHOENBERGER: That's right. And we have
24 a bit of a problem because we had an order to transfer
25 Mr. Powell from Coyote Ridge, and I spoke with the

1 people at Coyote Ridge a week ago Friday. They have
2 received the order to transfer, told me that the bus
3 that comes to Shelton and thus to here is on Thursdays
4 only so I expected Mr. Powell to be here at Pierce
5 County Jail Thursday evening, and I checked on Thursday
6 evening and on Friday and he's not here. I checked
7 again this morning. Now, I've not been able to get
8 back to my office to call Tara, or whatever her name
9 is, at Coyote Ridge.

10 Mr. Powell sent me a letter saying that he was
11 angry with Mr. Davis because when he was here prior --
12 previously for a trial for Mr. Davis and we sent him
13 back because we continued the trial, but he didn't get
14 money put on his books so he could get tooth paste and
15 so he was angry and he's written me a letter saying
16 that if I put him on the stand it would not be very
17 good for Mr. Davis. So maybe he's refusing to come. I
18 don't have him under subpoena. I don't know if he's
19 refusing or what the story is until I call Coyote
20 Ridge, but this all factors into my discussion with
21 Mr. Davis about his risk at trial.

22 THE COURT: Okay. And did you have any
23 opposition to Ms. Oliver's motion to exclude witnesses?

24 MR. SCHOENBERGER: Of course not.

25 THE COURT: Okay. Then the Court grants that

1 motion.

2 I don't think there's anything else that we can
3 take up.

4 MS. OLIVER: No, Your Honor.

5 THE COURT: All right. And it's noon, so
6 we'll see everybody at 1:30 --

7 MR. SCHOENBERGER: Thank you, Your Honor.

8 THE COURT: -- either ready to proceed with a
9 plea or ready to proceed with a trial.

10 MR. SCHOENBERGER: I'm going to prepare the
11 paperwork over the noon hour.

12 (Noon recess taken.)

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1 Monday, August 5, 2013

2 Afternoon Session

3 * * *

4 (Defendant present.)

5 THE COURT: Do we have a settlement?

6 MR. SCHOENBERGER: We don't know, Your Honor.

7 THE COURT: Where is your client?

8 MR. SCHOENBERGER: I asked him to be here
9 early and that evidently fell on deaf ears, and I only
10 have one of the plea statements, so I had my assistant
11 run one of the other ones down.

12 THE COURT: Hoping he won't be --

13 MR. SCHOENBERGER: I think that's what we're
14 doing.

15 THE COURT: I hope he plans to show up.

16 MS. OLIVER: Pardon me?

17 THE COURT: I said I hope he plans to show
18 up.

19 MR. SCHOENBERGER: Yeah. That would not be
20 pretty if he doesn't.

21 (Pause.)

22 THE COURT: How long does the State wait
23 until we issue a bench warrant these days?

24 MS. OLIVER: I think he will be here.

25 THE COURT: Okay.

1 MR. SCHOENBERGER: I do too.

2 MS. OLIVER: He hasn't had a problem other
3 than one time.

4 (Pause.)

5 THE COURT: They're going to have enough
6 jurors in 12 minutes for us to start a jury trial
7 unless you're going to tell me you want a plea. Okay.
8 I assume you need some time to go over the paperwork.

9 MR. SCHOENBERGER: I need 12 minutes.

10 THE COURT: Is this a resolution of both
11 cause numbers?

12 MS. OLIVER: This is on both.

13 MR. SCHOENBERGER: It is on both but we will
14 be asking the Court to set sentencing over.

15 THE COURT: Oh, sure. Not a problem. Well,
16 we only have one sentencing date a month and it's this
17 Friday. Right?

18 THE CLERK: Yes.

19 THE COURT: And then our next sentencing date
20 isn't until we get back from recess in September.

21 MR. SCHOENBERGER: We would be asking for
22 that. He has a disabled sister he cares for.

23 THE COURT: Unless he gets sentenced by
24 somebody else. I don't know what the policies are.

25 MS. OLIVER: We could do that, too.

1 THE COURT: We could set a sentencing in the
2 CD courts or something.

3 MR. SCHOENBERGER: We could, yeah.

4 THE COURT: We could do that and that way it
5 would be during the day -- weekday instead.

6 (Recess taken.)

7 MS. OLIVER: Your Honor, we're back on the
8 record in Jerry Lynn Davis, Cause No. 12-1-03559-0.
9 The State is anticipating a plea to attempted burglary
10 in the second degree. Do you want to do them one at a
11 time?

12 THE COURT: I think if you go through your
13 colloquy combined I'll ask him questions as to each one
14 separately.

15 MS. OLIVER: The second cause number is
16 13-1-00377-7. The State is anticipating a plea of
17 taking a motor vehicle without permission in the second
18 degree. Handing up the original Information -- the
19 amended Information, original agreement. I've handed
20 copies to defense attorney already.

21 THE COURT: Okay. And I would need to ask if
22 this is going to be a Newton or Alford plea.

23 MR. SCHOENBERGER: Your Honor, it's an Alford
24 plea to the case -- the 12 -- 2012 case, and that's a
25 factual plea to the 2013 case.

1 THE COURT: Then I need you to print the
2 declaration of probable cause, please.

3 Okay. Go ahead.

4 MR. SCHOENBERGER: Your Honor, then I am
5 handing forward Statements of Plea of Guilty, two
6 ten-page statements, one on each case, that I have
7 prepared. I have gone over them in their entirety with
8 Mr. Davis. He understands that by changing his plea to
9 guilty today he's giving up valuable rights. He knows
10 there is a recommendation and that the -- you or the
11 sentencing judge does not have to follow that or
12 anyone's recommendation.

13 I believe he's doing this freely and voluntarily.
14 And I should add that we have received copies of the
15 amended Information, waive formal reading and we are
16 asking you to accept his pleas of guilty to those
17 amended charges. Thank you.

18 THE COURT: Thank you. And I will just take
19 a moment to read the determination of -- Declaration
20 for Determination of Probable Cause on the '12 cause
21 number.

22 (Pause.)

23 THE COURT: The Court accepts the amended
24 Information in both cause numbers based on the
25 prosecutor's statement.

1 Is your true and correct name Jerry Lynn Davis?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Is your date of birth
4 December 23rd, 1964?

5 THE DEFENDANT: November.

6 THE COURT: November?

7 THE DEFENDANT: 23rd.

8 THE COURT: November.

9 This amended Information would then have the
10 incorrect date of birth on the front.

11 MS. OLIVER: That was the date of birth that
12 was on the -- he has two dates of birth.

13 THE COURT: He has two?

14 MS. OLIVER: 11 -- what did you say?

15 THE COURT: This one says 11/23/1964 is that
16 correct, Mr. Davis.

17 THE WITNESS: Yes, Your Honor.

18 MR. SCHOENBERGER: I previously gave counsel
19 a copy of Mr. Davis's birth certificate for other
20 purposes, and I have a copy here and it does show
21 November 23rd, 1964.

22 THE COURT: Okay. All right.

23 Mr. Davis, do you understand you have a right to
24 remain silent today?

25 THE DEFENDANT: Right.

1 THE COURT: Are you willing to give up your
2 right to remain silent so that you can answer my
3 questions and I can accept your plea?

4 THE DEFENDANT: Yes.

5 THE COURT: All right. There are two cause
6 numbers here. I'm going to go through the plea
7 paperwork on them at the same time because it's
8 basically the same form, but where there are
9 differences between the two of them, I will point those
10 out. Okay? All right.

11 So did you read both of these or go over them with
12 Mr. Schoenberger, your defense attorney?

13 THE DEFENDANT: Yes, I did.

14 THE COURT: Did he answer all of your
15 questions?

16 THE DEFENDANT: Yes.

17 THE COURT: As you stand here right now, do
18 you believe you understand what these forms say and how
19 they apply to you?

20 THE DEFENDANT: Exactly.

21 THE COURT: So as I go through them, if
22 there's anything at all that I say that you do not
23 understand, if you have any questions, if you want to
24 have further conversation with your defense attorney,
25 please interrupt me because this is the opportunity to

1 get your questions answered. Once I take your plea,
2 it's too late. Okay?

3 THE DEFENDANT: All right.

4 THE COURT: So starting with the cause number
5 that begins with 12-1, it says that you have been
6 charged by an amended Information with one count of
7 attempted burglary in the second degree on or about the
8 7th day of August 2012. It sets forth the elements of
9 that crime, states that it carries a maximum sentence
10 of ten years in prison and a \$20,000 fine and that your
11 standard sentence range is 38.25 to 51 months. Do you
12 understand the crime with which you have been charged
13 in that cause number?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand the elements of
16 that crime that the State would have to prove if you
17 chose to continue through to jury trial?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand the sentence
20 that goes with that crime?

21 THE DEFENDANT: Yes.

22 THE COURT: In the cause number that begins
23 with 13-1 it says you've been charged by an amended
24 Information with one count of taking a motor vehicle
25 without permission in the second degree on or about the

1 26th day of January 2013. It sets forth the elements
2 of that crime, says that that crime carries a maximum
3 sentence of five years in prison and a \$10,000 fine.
4 Your standard sentence range is 22 to 29 months. Do
5 you understand the crime with which you've been charged
6 in that cause number?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand the elements of
9 that crime that the State would have to prove if the
10 case were to go to trial?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand the sentence
13 that goes with that crime?

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. In Paragraph 5 of both of
16 these forms, it sets forth your constitutional rights.
17 Those rights include the right to a speedy trial, the
18 right to confront witnesses who might testify against
19 you, the right to subpoena in or bring into court
20 witnesses to testify on your behalf and the right to
21 appeal a guilty verdict following a trial. Do you
22 understand that when you plead guilty, you give up each
23 and every one of those rights?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. Paragraph 6(g) sets forth

1 the recommendation of the prosecuting attorney for
2 sentencing. Do you understand that the Court does not
3 have to go along with that recommendation?

4 THE DEFENDANT: Yes.

5 THE COURT: And as long as the Court
6 sentences you somewhere within your standard sentence
7 range on each of the two separate counts, you cannot
8 appeal that sentence. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. So in the cause number --
11 the 12 cause number, the attempted burglary second
12 degree, the prosecutor is recommending 38.25 months
13 with credit for time served plus legal financial
14 obligations. No contact with the victim. Maintain
15 law-abiding behavior. Release all interest in property
16 seized by law enforcement. Do you understand all of
17 what the prosecutor is recommending?

18 THE DEFENDANT: Yes.

19 THE COURT: And in the '13 cause number,
20 taking a motor vehicle, the prosecutor is recommending
21 29 months concurrent with the '12 cause number -- so
22 they run at the same time, right -- credit for time
23 served, legal financial obligations, no contact with
24 the victim or victims and maintain law abiding behavior
25 and release any interest in all property that's been

1 seized by law enforcement. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. Do you understand that if
4 you're not a citizen in the United States a plea of
5 guilty punishable under state law is grounds for
6 deportation, exclusion from admission of the United
7 States or denial of naturalization pursuant to the laws
8 of the United States?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that you may
11 not own, possess or have under your control any
12 firearms unless your right to do so is restored by a
13 court of record?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that you must
16 immediately surrender any concealed pistol license?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you have one?

19 THE DEFENDANT: No.

20 THE COURT: Do you understand that you will
21 be ineligible to vote until that right is restored in a
22 manner provided by law?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that government
25 assistance may be suspended during any period of

1 confinement?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that you may be
4 required -- you will be required to provide a
5 biological sample for DNA identification analysis?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that you will
8 be charged \$100 for that?

9 THE DEFENDANT: Yes.

10 THE COURT: There isn't a request for a DOSA,
11 correct?

12 MR. SCHOENBERGER: No, but I wasn't about to
13 take it away from Your Honor, so...

14 THE COURT: Okay.

15 MR. SCHOENBERGER: -- basket of tricks.

16 THE COURT: With regard to taking a motor
17 vehicle without permission in the second degree, I
18 believe that crime requires that your driver's license
19 be revoked. Right? Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you have a driver's license?

22 THE DEFENDANT: Um, no. I do. It's
23 suspended right now for a speeding ticket.

24 THE COURT: Okay. Well, I think revoked is
25 different than suspended. So... I don't know that

1 there's anything we do, or does Department of Licensing
2 simply do it?

3 MS. OLIVER: It goes in the J&S and the
4 Department of Licensing will suspend it.

5 THE COURT: Are you entering these pleas
6 today freely and voluntarily?

7 THE DEFENDANT: Yes, I am.

8 THE COURT: Has anybody threatened you in any
9 way to cause you to enter into the plea?

10 THE DEFENDANT: No.

11 THE COURT: Has anyone promised you anything
12 to get you to enter into the plea?

13 THE DEFENDANT: Just here today what's in the
14 papers.

15 THE COURT: Just what the prosecutor has
16 offered you as a plea, negotiated deal?

17 THE DEFENDANT: Yes.

18 THE COURT: In the 2012 cause number, the one
19 attempted burglary, as I was discussing with your
20 attorney and the reason I read the Declaration of
21 Probable Cause is because it's a Newton plea and so do
22 you understand what that means when I say a Newton or
23 Alford plea?

24 THE DEFENDANT: Pretty much, yes.

25 THE COURT: Do you agree that the Court can

1 read and rely upon the Declaration of Probable Cause in
2 order to establish facts sufficient to find you guilty
3 of this crime?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you agree if the case were to
6 proceed to trial that there is a substantial likelihood
7 that you could have been found guilty of that crime?

8 THE DEFENDANT: Yes.

9 THE COURT: The Court has read the
10 declaration and does find that there's a factual basis
11 for the plea.

12 In the other cause number, the 2013 cause number,
13 in Paragraph 11 it says, "In Washington, on or about
14 January 26th, 2013, I took a vehicle that was not mine
15 without the permission of the true owner." Is that a
16 true and correct statement of what you did that makes
17 you guilty of taking motor vehicle without permission
18 in the second degree?

19 THE DEFENDANT: Yes.

20 THE COURT: Are those your initials next to
21 that typed statement?

22 THE DEFENDANT: Yes.

23 THE COURT: And you are entering your plea
24 today freely and voluntarily?

25 THE DEFENDANT: Yes.

1 THE COURT: Okay. And I find that he is
2 entering his plea today freely and voluntarily; that he
3 understands the rights that he's giving up and the
4 consequences of his plea.

5 In response to the Cause No. 12-1-03559-0, amended
6 Information, attempted burglary in the second degree on
7 or about the 7th day of August 2012, what is your plea?

8 THE DEFENDANT: Guilty.

9 THE COURT: In the Cause No. 13-1-00377-7,
10 the charge of taking a motor vehicle without permission
11 in the second degree, what is your plea?

12 THE DEFENDANT: Guilty.

13 THE COURT: Thank you. And we're setting
14 over sentencing to the CD courts or to me? Which would
15 you like to do?

16 MS. OLIVER: I think the CD courts would be
17 fine unless -- you're back on September-- after
18 September 18th?

19 THE COURT: Well, we're actually back
20 September 3rd, but we're civil panel so we only have
21 one criminal docket a month.

22 MS. OLIVER: So it's the 20th.

23 THE CLERK: 27th.

24 MR. SCHOENBERGER: Given the choice, Your
25 Honor, I would prefer to stay in this department.

1 You've read the probable cause and taken the plea and
2 if it's not inconvenient for the State or prejudicial
3 in any way, we would waive speedy sentencing and ask
4 that we would remain in this department.

5 MS. OLIVER: You only have -- you wouldn't
6 have anything available on the 20th in the afternoon or
7 any time during the week?

8 THE COURT: Well, we have civil trials pretty
9 much every day during the week.

10 MS. OLIVER: Oh, okay.

11 THE COURT: And right now September is still
12 very full, and then every Friday we have huge motion
13 dockets. We're lucky to get done by noon. The
14 afternoon of the 20th we have a noncompliance docket
15 and settlement conferences.

16 MS. OLIVER: I would just as soon, because we
17 could do it sooner, have it in CDPJ. It's not like we
18 went to trial.

19 THE COURT: No. I would agree. How much
20 time does he need to -- a couple of weeks?

21 MR. SCHOENBERGER: I would like three or four
22 weeks. He has a disabled sister who bailed him out
23 because she, quite frankly, needed his help to take
24 care of her. He's gonna have to arrange for her care.
25 He'll have to put his affairs in order because he will

1 be going to DOC for a lengthy period of time, and so I
2 would ask for three to four weeks, and that kinda puts
3 us back to where we could be in your department.

4 THE COURT: We need Conditions of Release
5 Pending Sentencing.

6 MS. OLIVER: We do. Today is August 5th. I
7 would suggest like no later than August 27th.

8 THE COURT: Do you have Conditions of
9 Release, first of all?

10 MR. SCHOENBERGER: I'm not in town
11 August 27th I'm afraid.

12 THE COURT: Are you gone for the day? The
13 week?

14 MR. SCHOENBERGER: Well, you know --

15 MS. OLIVER: What about August 23rd?

16 MR. SCHOENBERGER: It's my mother's 93rd
17 birthday. If I forget that, I'm disinherited so I've
18 got to go to California.

19 MS. OLIVER: We're doing it in PJ?

20 THE COURT: I'll have him contact them about
21 a date as soon as we get a date.

22 MR. SCHOENBERGER: Well, it would have to be
23 in September.

24 MS. OLIVER: Three weeks. What about
25 August 23rd?

1 MR. SCHOENBERGER: I'm gone on the 23rd. I'm
2 gone the 23rd through the --

3 THE COURT: Is the 23rd your first day gone?

4 MR. SCHOENBERGER: Yes. That's two weeks.
5 We would like --

6 THE COURT: That's almost three full weeks.
7 The one case has been pending -- these are not fresh
8 cases. These have been around a long time. He's had a
9 long time to deal with this. There's just not a lot of
10 reason to postpone it.

11 THE CLERK: 22nd at 9:00 in CD-1.

12 MR. SCHOENBERGER: That's like two weeks. We
13 were hoping for a little more.

14 THE COURT: It's almost three full weeks of
15 court days. Today is Monday, that's a Thursday. That
16 should be plenty of time.

17 What is the State requesting for Conditions of
18 Release?

19 MS. OLIVER: He's out on bail right now. I
20 would propose that he post a rider. I don't have a
21 problem with giving him a period of time -- short
22 period of time to get that rider, but I don't feel
23 entirely confident that PR with a 38.25-month
24 sentence --

25 THE COURT: Does he have bail on both?

1 MS. OLIVER: Yes, he does on both.

2 MR. SCHOENBERGER: I would ask for a PR.
3 He's never missed a court date. He's always been here
4 for a court date, and I have --

5 MS. OLIVER: He has missed two court dates,
6 Your Honor. He has FTA for arraignment, but there
7 might be reasons for that.

8 MR. SCHOENBERGER: The FTA for arraignment is
9 not an FTA.

10 MS. OLIVER: Then he failed to appear on
11 12/27 of last year for pretrial.

12 THE DEFENDANT: That was for a couple of
13 hours.

14 THE COURT: Do you know what the bail is on
15 each case or do we need to look that up?

16 MS. OLIVER: It's \$20,000 on the '12 cause
17 number and \$35,000 on the '13.

18 THE COURT: I'm going to require that he post
19 a rider.

20 MR. SCHOENBERGER: May I request a PR on one
21 case so he only has to buy a \$50 rider on both?

22 MS. OLIVER: I don't have a problem with
23 that.

24 THE COURT: PR on one.

25 MS. OLIVER: So PR on the '13 cause number

1 and post a rider on the '12?

2 THE COURT: Fine. Do you hear that,
3 Mr. Schoenberger? All the other standard conditions
4 would apply.

5 MR. SCHOENBERGER: Your Honor was going to PR
6 him on the '13 cause number?

7 THE COURT: Yes.

8 MR. SCHOENBERGER: How much time would he be
9 allowed to have for the -- to come in with the rider
10 for the '12?

11 THE COURT: I think by 4:00 tomorrow should
12 be sufficient for him to get the rider in, and you need
13 to make sure that the prosecutor knows that you've got
14 the rider in.

15 THE DEFENDANT: I get it from the bail
16 bondsman and I take it where?

17 THE COURT: I'm sure Mr. Schoenberger can
18 tell you how to do that.

19 MR. SCHOENBERGER: If you get the rider and
20 bring it to me, I'll bring it to the Court and to
21 Ms. Oliver.

22 MS. OLIVER: I'm not sure you fill this out
23 when you get a rider. So it's \$20,000.

24 THE COURT: No. You put it under the bail
25 amount. \$20,000, and then just indicate that -- rider

1 to be provided to the Court by 4:00 on Tuesday,
2 August 6th. Bail is exonerated at the time of the
3 plea.

4 He needs to fill in his address. I'm going to put
5 in after the rider, if you don't have the rider by 4:00
6 8/6 I'm going to write, "or report to the Pierce County
7 Jail."

8 Anything else?

9 Thank you very much.

10 MS. OLIVER: Thank you, Your Honor. Thank
11 you for your patience.

12 (Proceedings concluded.)

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

State of Washington,)
)
Plaintiff,)
)
vs.)
)
)
)
Jerry Lynn Davis,)
)
)
Defendant.)

ORIGINAL

No. 12-1-03559-0
13-1-00377-7
Appeal No.45274-0-II

Motion
Verbatim Report of Proceedings

Appearances:

Lisa Wagner, Deputy Prosecuting Attorney, appeared on behalf of the State of Washington.

James Schoenberger, Attorney at Law, appeared on behalf of the Defendant.

BE IT REMEMBERED that on August 6, 2013, the above-captioned cause came on for hearing before the Honorable Stephanie A. Arend, Judge of the Superior Court in and for the County of Pierce, State of Washington; the following proceedings were had, to-wit:

Jan-Marie Glaze, CCR, RPR, CRR Official Court Reporter
930 Tacoma Avenue South Dept. 12, Superior Court
Tacoma, Washington 98402 (253) 798-6584

1 Tuesday, August 6, 2013

2 Afternoon Session

3 * * *

4 (Defendant present.)

5 THE COURT: Good afternoon, Your Honor.

6 MS. WAGNER: This is the matter of State vs.
7 Jerry Lynn Davis, Cause No. 12-1-03559-0.

8 Lisa Wagner for the State standing in for Ms. Kate
9 Oliver who went home ill at noon today. This is here
10 on Mr. Schoenberger's motion. He is here with
11 Mr. Davis, out of custody, and I'll ask -- let him
12 present his motion.

13 MR. SCHOENBERGER: Thank you, Your Honor.
14 Thank you, counsel.

15 I want to thank Ms. Wagner. I've been dealing
16 with this matter all day and with Mr. Davis who has
17 diligently been working to obtain the rider, and I've
18 been calling and e-mailing Ms. Oliver not realizing she
19 wasn't there until I called the supervisor, Tim Lewis,
20 and I want to thank Ms. Wagner for filling in.

21 Your Honor, in my experience, a bail bond rider
22 costs between \$50 and \$250 and it's just a matter that
23 they issue it, and Mr. Davis is stuck with Liberty Bail
24 Bonds and they told him that they wanted another
25 10 percent, \$2,000, to do the rider. And late today he

1 was told he had to have a second signer in addition to
2 his sister. So they've been trying to get this
3 accomplished all day long. I've been in touch with
4 him, I don't know how many phone calls, during the day
5 as he's been diligently trying to do this.

6 I just got off the phone less than five minutes
7 ago with his sister, Pat McDonald, who is at Liberty
8 Bail Bonds. She's still there after Mr. Davis left,
9 and she's told me, yes, the underwriting has approved
10 it, the bond will be written, but they can't get the
11 paperwork done by 4:00. So it is my request to this
12 Court to give us until tomorrow morning, perhaps until
13 noon, to file that rider.

14 MS. WAGNER: Your Honor, I was able to
15 contact Ms. Oliver and she's not going to object to
16 that. It is my understanding that the rider was due by
17 4:00 today. With Mr. Schoenberger's assurances, the
18 State wouldn't object to that additional time, leave it
19 to the Court's discretion.

20 THE COURT: Okay. We need amended Conditions
21 of Release.

22 MS. WAGNER: We looked for them and didn't
23 find a blank order. I was going to try to fill one out
24 just in case.

25 THE COURT: I couldn't tell you what else was

1 on the order because I don't have a copy of it, but it
2 needs to be filled out as it was before except for the
3 rider needs to be by noon tomorrow or report to jail.

4 MR. SCHOENBERGER: I usually don't need my
5 hearing aids except in your courtroom today.

6 THE COURT: Sorry. I was mumbling. I was
7 just saying that the conditions of release need to be
8 the same as yesterday except that the rider need to be
9 changed from 4:00 today until noon tomorrow; otherwise,
10 it needs to remain the same.

11 MR. SCHOENBERGER: Right. Thank you very
12 much.

13 MS. WAGNER: Mr. Vessels, are you able -- I
14 can't read her writing.

15 THE COURT: Apparently, it's already in LINX.
16 My computer is already off. I wasn't expecting this
17 today.

18 MS. WAGNER: Noon tomorrow, Your Honor?

19 THE COURT: Please. Or report to the Pierce
20 County Jail. Thank you for filling in.

21 MR. SCHOENBERGER: I changed the probable
22 cause to the defendant.

23 MS. WAGNER: Thank you.

24 MR. SCHOENBERGER: I didn't catch it
25 yesterday but somebody did.

1 THE COURT: I did.

2 MR. SCHOENBERGER: That's why you're sitting
3 up there, isn't it?

4 THE COURT: I'm just writing the date
5 underneath the defendant's signature. All right.

6 MS. WAGNER: Thank you, Your Honor.

7 THE COURT: Thank you all.

8 MR. SCHOENBERGER: Thank you, Your Honor.
9 Thank you counsel. Thank you everyone.

10 (Proceedings concluded.)

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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff,)
vs.)
JERRY LYNN DAVIS,)
Defendant.)

No. 12-1-03559-)
No. 13-1-00377-7)
COA 45274-0-II)

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VERBATIM TRANSCRIPT OF PROCEEDINGS
SENTENCING HEARING
BEFORE THE HONORABLE JERRY COSTELLO
8/22/2013

APPEARANCES

For Plaintiff State: Kathleen Oliver
For Defendant: James Schonberger
Also Present: N/A

Transcribed at the Request of Stephanie C. Cunningham Law Office.
Requested by Stephanie C. Cunningham, Attorney for Appellant
Transcribed by Tom Marshman

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BEGIN PROCEEDINGS OF 8/22/2013

MS. OLIVER: Your Honor, the next matter is Jerry Lynn Davis. Two cause numbers. 12-1-03559-0, and 13-1-00377-7. Kathleen Oliver representing the State of Washington on this matter.

Mr. Davis was set out -- sent out for trial on August 5th of this year. He subsequently plead guilty to Taking of a Motor Vehicle Without the Owner's Permission on 13-1-00377-7 and plead guilty to Attempted Burg II on 12-1-03559-0.

And today is sentencing date for Mr. Davis. The State is ready to proceed.

THE COURT: All right.

Mr. Schonberger, good morning.

MR. SCHONBERGER: Good morning, Your Honor. For the record, James Schonberger with Mr. Davis, currently out of custody to my left.

Counsel is correct, we're here for sentencing in both cause numbers.

THE COURT: All right. I'm looking at the guilty plea forms in each one of these cases. Just give me a moment, here.

All right. I've seen the prosecuting attorney's recommendation as described in the defendant's guilty plea forms. But, Ms. Oliver, I suppose for the record, why don't you go ahead and make that recommendation.

MS. OLIVER: Your Honor, the State's recommendation on 12-1-03559-0 was low end of the sentencing range, which was 38.25

1 months in department of corrections, \$200 in costs, \$100 DNA test
2 fee, \$500 crime victim penalty assessment, and \$500 BAC
3 recoupment.

4 And on Cause No. 12-1 -- I'm sorry, 12 --

5 THE COURT: 13.

6 MS. OLIVER: 13-1-00377-7 the sentencing range was -- the offer
7 was 29 months concurrent with 12-1-03559-0, \$200 costs, \$100 DNA
8 test fee, \$500 crime victim penalty assessment, and a \$500 BAC
9 recoupment. On the 13 cause number he has 100 days credit, and
10 on the 12 cause number he has 7 days credit.

11 THE COURT: Law abiding behavior was a recommendation also,
12 wasn't it? According to the plea form.

13 MS. OLIVER: Because there's no community placement or custody,
14 I don't think that's a condition that can be imposed.

15 THE COURT: What about no contact?

16 MS. OLIVER: No contact with the victims on either one of the
17 cases. The Duvalls in the 12-1-03559-0 cause number and Gloria
18 Kaysan (phonetic) in the 13-1-00377-7.

19 THE COURT: Mr. Schonberger?

20 MR. SCHONBERGER: Thank-you, Your Honor.

21 Your Honor, this has been a difficult journey with Mr.
22 Davis. When I first met Mr. Davis, he was in custody and he had
23 told me about his RV, his motor home, being stolen and him being
24 hit on the head with a lead pipe and being in the hospital for
25 that.

1 They know who hit him, who assaulted him, and have not
2 prosecuted that individual because he waited a couple weeks to
3 report it. I believe he had a warrant out. And his -- his motor
4 home is lost, it was impounded and never released.

5 He had traumatic brain injury from the hit on the head.
6 When I encountered him in custody, Mr. Davis was not in touch
7 with reality. He insisted that he couldn't be guilty of
8 possession of a stolen motor vehicle or theft of a motor vehicle
9 because he intended to return it. He was only going to siphon
10 gas out of it and going to return it; therefore, he couldn't be
11 guilty of anything.

12 And -- and I couldn't -- I was unable to -- to convince
13 him in the state that he was in that whether you take someone's
14 property for 10 minutes, 10 seconds, or 10 hours, it's still a
15 theft. He couldn't understand this.

16 I confirmed with the -- Dr. Balderama at the jail that
17 Mr. Davis -- and I did get his medical reports, which I gave to
18 counsel -- that he did have traumatic brain injury and this .
19 affected his executive functioning. And since he was bailed out,
20 his sister, who's here today, Pat McDonald is here today, she's
21 disabled and she needed Mr. Davis. So, she came up with the
22 money -- even though she's on a fixed income, to bail him out so
23 he could help her.

24 Since Mr. Davis has been out, he -- his mental state has
25 improved dramatically. He does understand, he does comprehend,

1 he -- there's been a big improvement. I also think that he's
2 gotten the drugs out of his life, which also has contributed to
3 this.

4 Quite frankly, on the burglary case, we were looking
5 forward to trial on that because we could have won that case.
6 Mr. Davis accepted a ride from Pamela Jones -- I won't even try
7 and pronounce her hyphenated second name, she was a co-defendant,
8 and Mr. Ricky Lee Powell. He was going to go to the courthouse
9 on -- was it Joint Base Lewis McChord? It was the Federal
10 courthouse to pay a ticket that he had received on Joint Base
11 Lewis McChord and he needed a ride. And they were giving him a
12 ride to do that.

13 On the way, they did a lark and they went on to the
14 Duvalls' property. Now, Mr. Davis insists he was not part of
15 that escapade and Ricky Lee Powell had given me letters in
16 support of that. He's at Coyote Ridge. He was going to testify
17 in support of Mr. Davis. We had him transported here and then we
18 continued the trial. I interviewed Ricky Lee Powell, and he was
19 going to be helpful as a witness.

20 But in his extended stay here in Pierce County he wanted
21 Mr. Davis to put money on his books so he could get toothpaste
22 and toiletries and Mr. Davis didn't do that in a timely fashion.
23 We sent Mr. Powell back and then he demanded money for a TV at
24 Coyote Ridge, and when this wasn't coming, he changed his tune
25 and he was no longer going to testify on behalf of Mr. Davis.

1 So, it -- it's a -- it's an unfortunate road that brings
2 us here to -- to today. There are serious mental health issues,
3 there are drug issues that I believe are at the root of his
4 criminal history and including, perhaps, some of these crimes or
5 in part to these crimes.

6 Mr. Davis reminds me that he wanted to ask for a DOSA,
7 and he believes that Ms. Oliver stated that she would not oppose
8 that but not support it, either. I don't remember that, but
9 perhaps Mr. Davis's short term memory is a lot better than mine.

10 If Your Honor would see fit to grant a DOSA, I think Mr.
11 Davis would be -- would benefit from that. He needs help; he
12 needs treatment; he needs to get home to his sister as soon as
13 possible because he's invaluable as an aid to her with her
14 disabilities.

15 Absent that, I would ask you to follow this
16 recommendation. I would ask to you waive discretionary fines and
17 fees because he is indigent and has appointed counsel for that.
18 I think this is an individual who now that he has regained his
19 facilities, his faculties, can be a worthwhile member of a
20 society but he needs to learn the tools. He needs to gain the
21 tools with which to deal with life and his mental state and not
22 self medicate with illegal drugs.

23 Thank-you, Your Honor.

24 I think Mr. Davis would like to address Court, as well.

25 THE COURT: All right.

1 Well, Mr. Schonberger, I have a couple of questions for
2 you. In either one of these cause numbers, was your client
3 evaluated for competency? You're describing serious mental
4 health problems.

5 MR. SCHONBERGER: No, there was no competency evaluation. I
6 don't -- I never doubted his competency once he was released from
7 prison. When he was -- I don't mean prison, I'm sorry. Once he
8 was released from Pierce County jail, his lucidity returned and I
9 had no reason to doubt his competency.

10 Had he remained in Pierce County jail persisting that he
11 couldn't be guilty of theft because he intended to return it, I
12 would have questioned his competency. But -- but once he was out
13 and got back on his feet, he -- he understood and he appreciated
14 the wrongfulness of his act. And he manned up and said, Okay, I
15 did that and I will take the penalty. So, as you notice, we have
16 an offered Newton plea to the burglary case. I -- I -- and we
17 have a factual plea to the -- to the Theft case.

18 THE COURT: Um-hmm.

19 Ms. Oliver, what's the State's position on a request
20 for --

21 MS. OLIVER: He's not eligible for a DOSA. In addition to his
22 eight or nine other prior felonies, he has an Assault in the
23 First Degree and a Kidnapping conviction. And that was not
24 discussed having a DOSA. This was a stipulated sentence based on
25 reducing two cases.

see
plea
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p. 6 (+)
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1 THE COURT: I see. Well --

2 MS. OLIVER: And -- and, Your Honor, regarding the competency
3 issue, I -- defense counsel provided me with a complete medical
4 history of Mr. Davis when he was in custody. And the overriding
5 opinion of all the medical people was that Mr. Davis was
6 malingering and that there was nothing wrong with him and that he
7 was just sending kites constantly trying to get out of custody
8 and there was -- he didn't -- there was no, you know, medical
9 diagnosis of traumatic brain injury. But competency was never an
10 issue and none of his issues that he claimed in his medical
11 reports came to fruition. They did not believe that there was
12 any medical issue regarding Mr. Davis.

13 I was looking for my copy of the medical records, which
14 are not in my file, the summaries, but that's the -- the State's
15 position is that he stipulated to the fines and costs and the
16 sentencing range on both counts.

17 THE COURT: Well, the --

18 MS. OLIVER: And he's not eligible for a --

19 THE COURT: -- The Statement on --

20 MS. OLIVER: -- DOSA even if he wanted a DOSA.

21 THE COURT: All right. The Statement on Plea indicates the
22 defendant has nine plus as an offender score.

23 Mr. Schonberger, do you agree with that?

24 MR. SCHONBERGER: I do, Your Honor.

25 THE COURT: So the standard range is not in dispute here.

1 MR. SCHONBERGER: No, it isn't.

2 THE COURT: The Court is certainly interested in knowing what
3 the criminal history is in order to decide about an appropriate
4 sentence.

5 MR. SCHONBERGER: Do we have --

6 MS. OLIVER: I'm getting the stipulated -- it -- it was not in
7 my --

8 MR. SCHONBERGER: I think those were signed.

9 MS. OLIVER: I don't think it was signed --

10 THE COURT: Apparently Mr. Davis has signed a Stipulation on
11 Prior Record?

12 MR. SCHONBERGER: I thought we did that at the time we entered
13 into a plea. It's not in the packet that you've given me this
14 morning, Counsel.

15 MS. OLIVER: I know. It would have happened at the plea but
16 it's not in the -- but, anyway, we're -- we're having it run
17 again.

18 THE COURT: All right.

19 MS. OLIVER: But that -- that's the criminal history.

20 THE COURT: Well, what I'll -- well, before I look at this, why
21 don't you show page 2 to Mr. Schonberger and then he can tell me
22 whether or not the defense agrees that this is Mr. Davis's
23 criminal history.

24 (Pause in proceedings.)

25 MR. SCHONBERGER: We believe it's accurate, Your Honor.

1 THE COURT: All right. I'd like it to review this. So, what
2 I'm looking at is page 2 of Proposed Judgment on the 2012 cause
3 number.

4 (Pause in proceedings.)

5 THE COURT: All right. Mr. Schonberger, I had another question
6 for you. You've made comments about Mr. Davis's sister needing
7 his care and attention. And I -- I'd like to have a little more
8 information about that.

9 MR. SCHONBERGER: Could we ask her to address the Court, Your
10 Honor?

11 THE COURT: I'd -- I'd be willing to hear from her. I mean, I'm
12 not going to demand that she disclose medical information but it
13 would be helpful to me.

14 MR. SCHONBERGER: Your Honor, this is Patricia McDonald, Mr.
15 Davis's sister.

16 THE COURT: Good morning. Tell me, for the record, your whole
17 name?

18 MS. MCDONALD: Patricia McDonald.

19 THE COURT: All right. Ma'am, can you give me a little more
20 information, if you wish, regarding the nature of your issues?

21 MS. MCDONALD: Well, I have arthritis in my spine, I have
22 degenerative disk disease and I've had surgeries. And I have it
23 in my hands so I can't work anymore. I have -- and I'm bipolar
24 so I have some mental issues there, with that.

25 But I've just had a lot of things that's been going on

1 these last few months with my husband passed away in May, I was
2 in the hospital in June for -- my blood pressure was real low and
3 I fainted in my bathroom and my brother was there to call 911.
4 So I was in ICU for two-and-a-half days with -- and I have fluid
5 around my heart, so now I have problems with that. If my blood
6 pressure drops down too low -- it used to be too high all the
7 time but now it's gone the other direction.

8 But I just have, you know, through the years I've just
9 gotten -- had all these medical problems just keep coming up and
10 there was one time I was -- I had seizures but that seems to be
11 under control because of the medication I take for my
12 fibromyalgia because it's a seizure-type medication.

13 But, I mean, it just goes on and on and on. In fact, I
14 going to bring a packet that my neurologist had gave me showing
15 all the problems with my back and my spine with -- from the MRIs
16 and the treatment that I received from them because I see a pain
17 management doctor.

18 THE COURT: All right.

19 MS. MCDONALD: So --

20 THE COURT: Well, have you been living alone or with someone
21 else?

22 MS. MCDONALD: I'm living alone, now. That --

23 THE COURT: And how long have you been living alone, I mean
24 roughly?

25 MS. MCDONALD: Since -- since May. Since May.

1 But, like, there was my ex-husband. Now, we had been
2 together for, like, 27 years but he got real sick and he had a
3 stroke and there was things. But he wouldn't let anybody else
4 take care of him or he wouldn't, you know, keep his doctor's
5 appointments or take his medications --

6 THE COURT: Okay.

7 MS. MCDONALD: -- so I let him move in with me so I could, you
8 know, make sure he did all these things. Well, he passed away on
9 Mother's Day.

10 And then, like I said, I was in the hospital in June.
11 And then on July 26th our mother passed away from --

12 THE COURT: All right. Well, I --

13 MS. MCDONALD: -- colon cancer, so, it's -- yeah, just --

14 THE COURT: I'm sorry for your losses and -- and for what you're
15 going through --

16 MS. MCDONALD: But my --

17 THE COURT: -- medically --

18 MS. MCDONALD: -- but Jerry has helped me with a lot, you know,
19 to get through because my ex-husband, he was really sick for --
20 and he had been in the hospital in and out for, like, six weeks.

21 But there's just so many things I can't do. You know, I
22 can't lift and can't -- you know, I live in a mobile home --

23 THE COURT: Are there any other family members in the --

24 MS. MCDONALD: No.

25 THE COURT: -- area? I mean, any close friends?

1 MS. MCDONALD: No. Everybody works. It's hard, you know, to
2 impose those things on someone after they worked all week because
3 I know I did that at one time. And it's hard to find the extra
4 time to do -- especially when you've got your own home and family
5 and whatever going on.

6 So -- and Jerry doesn't have anybody, and so I've -- you
7 know, I took him in and I tried to help him. And unfortunately
8 he just got into this big mess and it's -- and it's been hard.
9 It's been hard because we grew up we didn't have anybody. I was
10 the oldest and I had four younger brothers. Jerry's the baby.
11 So --

12 THE COURT: I see. All right.

13 MS. MCDONALD: -- and we had parents but we didn't. That's
14 basically what it boils down to.

15 THE COURT: Okay. All right. Thank-you for explaining these
16 things.

17 MS. MCDONALD: Okay. Is there anything more you wanted to know?

18 THE COURT: No.

19 MS. MCDONALD: Okay. Thank-you.

20 THE COURT: Mr. Davis, you're not required to say anything to me
21 before I decide about these cases. You may if you wish, and now
22 would be the time.

23 THE DEFENDANT: First, I'm just sorry for, you know, the people
24 that are involved with this whole matter, everything. I
25 certainly didn't mean to harm anybody or, you know, do wrong with

1 their property. It turned out that what I did was wrong and the
2 car, you know, with the car and stuff, so --

3 I was really looking forward to going to trial, and I had
4 a wonderful case because I didn't do anything wrong as far as
5 getting a ride. And I ended up in a mess with a guy that I
6 thought was my friend. And --

7 THE COURT: Well, Mr. Davis, you understand that when a
8 different Judge accepted your guilty plea, a court -- this court
9 has to treat you as guilty of that offense.

10 THE DEFENDANT: I understand that, Your Honor. And I did plead
11 guilty to it because -- under the Alford plea?

12 MR. SCHONBERGER: Yes.

13 THE DEFENDANT: Because of the way things would have probably
14 went for me, it would have been a lot worse.

15 THE COURT: All right. But I'm sure that you were told that
16 you're going to be treated in just the same as if you had
17 directly admitted to the facts.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. Go ahead.

20 THE DEFENDANT: So, with all that, you know, going on, then I
21 was released on the -- on the burg case and then I was robbed and
22 assaulted really bad. The back of my head was, you know, caved
23 in, you know, where I had two big sores on the back of my head
24 and it got infected because I didn't go to the doctor right away.
25 The guy said he would kill me if I went and turned any of this in

1 and I believed him.

2 So I was dealing with that, and I did have -- I missed a
3 court hearing by one day. So I went right back and got a -- a
4 squash hearing to take care of that. And so I did that and --
5 but in the meantime I get robbed of everything that I owned
6 because I was living in this motor home.

7 And with this brain infection that I had, because I
8 didn't get any medical help and I couldn't see it back there to,
9 you know, treat it properly, so I was in bad condition when the
10 car case came up, you know? And I just wasn't thinking clear,
11 you know. I was on foot and I was broke and I was hungry.

12 But that don't justify what I did. And just lots -- lots
13 have been going on. It's been a long time since I was in trouble
14 last, quite a while. You know, I got a family -- a little family
15 here today. I'm just trying to make things right. So, I guess
16 DOSA's out, but I was kind of hoping for that.

17 I guess that's about all I got.

18 THE COURT: All right.

19 Well, it appears to the Court that Mr. Davis is not
20 eligible for DOSA under the law. I'll impose the -- the
21 following legal and financial obligations, that which is
22 mandatory on the 2012 cause number, the \$200 cost and the \$100
23 DNA fee, crime victim penalty assessment.

24 Ms. Oliver, does the Court -- am I required to twice
25 impose the crime victim penalty assessment?

1 MS. OLIVER: Yes, Your Honor.

2 THE COURT: All right.

3 I have to follow the law with certain mandatory costs.
4 I'm not going to twice impose a DNA collection fee.

5 The recoup the to Department of Assigned Counsel. Well,
6 let me just ask a couple of questions, here. Mr. Davis, do you
7 have the ability to work? Do you have some skills? You
8 anticipate being able to work when you're released from prison?

9 THE DEFENDANT: Your Honor, I have mental problems to where it's
10 almost impossible for me to hold jobs down because of what I
11 experience while I'm working, just paranoia. I have some
12 schizophrenia.

13 THE COURT: When was the last time you worked?

14 THE DEFENDANT: It's been -- it's been several years that I've
15 actually had a job.

16 MS. OLIVER: Your Honor, he had a job -- we had a bail hearing
17 several months ago where he had a job lined up working for a
18 company. So, he is eligible to work. He was -- that was why he
19 wanted out of custody. Defense provided me with letters and
20 documentation saying that it was a company that would hire him.
21 It's a company that -- I called them up -- it's a company that
22 works with people coming out of prison, so they were willing to
23 hire him. That's why he wanted to get out of custody at one
24 point a few months ago.

25 MR. SCHONBERGER: That was a neighbor who has a fencing company.

1 THE COURT: All right.

2 MR. SCHONBERGER: Mr. Davis was going to provide some manual
3 labor. I don't know if he ever did or not.

4 THE COURT: Well, the Court -- the Court will find that Mr.
5 Davis is likely to be able to be employed in the future to a
6 reasonable such that \$500 recoupment to DAC cause number can be
7 repaid and will be ordered.

8 I'm not going to order recoupment, as well, under the 13
9 cause number.

10 So, I think that covers the legal/financial obligations.
11 200 cost on each case, 100 DNA fee on the 2012 cause, crime
12 victim penalty assessment on both cases, DAC recoupment on the
13 2012 cause number.

14 The Court is going to order no contact with the victims
15 here under both of these cause numbers as recommended by the
16 State.

17 What that leaves is the question of confinement. What --
18 all right now I've just been handed a document, here. Oh, this
19 is regarding the fence matter. A letter dated April 4th of 2013
20 from Tegco, T-e-g-c-o, Fence Company, indicating that Mr. Davis
21 has -- has a job awaiting for him.

22 Did you want this filed?

23 MS. OLIVER: It was already filed.

24 THE COURT: Oh.

25 MS. OLIVER: That was on the bail hearing.

1 THE COURT: Understood. Okay.

2 So that -- that provides further support for the Court's
3 finding that Mr. Davis at least is going to have some reasonable
4 ability to repay legal financial obligations or to pay them.

5 All right. Mr. Davis, I've taken into account what your
6 sister had to say to me, I've considered what you've said, I've
7 considered the records in this case; I -- I can't help but
8 conclude to be at the risk of being blunt, Mr. Davis, that it
9 appears to the Court that you've made a career out of crime.

10 Despite the personal problems that you've had, I -- it appears to
11 me that you're what some would call a career criminal. I -- I
12 can't go along with a low end recommendation in your case.

13 I'm going to order 40 months in the department of
14 corrections under the 2012 cause number. And the high end of the
15 2013 cause number. I will run those sentences concurrently.

16 There's no community placement under either cause number;
17 is that correct, Ms. Oliver?

18 MS. OLIVER: That's correct, Your Honor.

19 THE COURT: So, Mr. Davis, you'll do your time and -- and you'll
20 be, you know, released. And I hope that you can find some
21 meaningful employment and, you know, get on the right track.

22 THE DEFENDANT: Thank-you.

23 (Pause in proceedings.)

24 THE COURT: The Court's received a Stipulation on Prior Record
25 under the 2012 cause number. That'll be filed. Likewise under

1 the 2013 cause. The stipulations have been signed by the
2 defendant. So we'll file these on each cause.

3 (Pause in proceedings.)

4 THE COURT: If I didn't say so on the record, Mr. Davis is
5 certainly entitled to credit in this case.

6 MS. OLIVER: And I wrote it down, Your Honor. This was a 100
7 days on 13 -- the 13 cause number and 7 days on the 12 cause
8 number.

9 THE COURT: Were the 7 days on the 2012 separate in time from
10 the --

11 MS. OLIVER: Yes.

12 THE COURT: All right. So, 107 days credit.

13 I've already seen the stipulation, so that'll be -- this
14 will be filed. Okay. These are things I've already signed.
15 Kathy, I already signed these documents.

16 THE CLERK: Okay. Are these the 13?

17 THE COURT: Right.

18 (Pause in proceedings.)

19 THE CLERK: That's for 2012.

20 THE COURT: Okay. Well, I haven't seen the 2012 Judgment yet.

21 THE CLERK: I'm sorry. I thought you had it.

22 THE COURT: No.

23 THE CLERK: There it is.

24 (Pause in proceedings.)

25 THE COURT: I'm still -- no. No, not yet.

1 MR. SCHONBERGER: There's one more.

2 THE COURT: I've signed on the 2012 cause number the Judgment
3 and Sentence and Warrant of Commitment here in open court in
4 defendant's presence. But I'm waiting on the 2013.

5 THE CLERK: Did the Judge sign that?

6 MS. OLIVER: I don't -- yeah --

7 THE CLERK: That one? 2013?

8 THE COURT: I haven't seen the 2013 Judgment and Sentence yet.
9 (Pause in proceedings.)

10 THE COURT: Ms. Oliver, take a look at the Judgment on the 2012
11 case and under section 4.3, no contact?

12 MS. OLIVER: On the -- which cause number, Your Honor?

13 THE COURT: Actually, it's on the 2013 cause number. You
14 inserted the name Duvall but I think it's supposed to be a
15 different name on this 2013 cause. Kaysan or --

16 MS. OLIVER: Kaysan? Gloria Kaysan?

17 THE COURT: Kaysan? All right. Let me --

18 MS. OLIVER: She's the victim of the car?

19 THE COURT: Right. But I -- yeah, I think you inadvertently put
20 in the Duvall on the --

21 MS. OLIVER: Oh.

22 THE COURT: -- 2013 cause number. So I've handed -- you handed
23 you that particular page. If you could please fix that.

24 MS. OLIVER: Okay.

25 THE COURT: Just a scribner's error, here, Mr. Schonberger.

1 Transposed the --

2 MR. SCHONBERGER: Thank-you for catching that, Your Honor. I
3 failed to do so.

4 (Pause in proceedings.)

5 THE COURT: I see, yeah, section 4.6 it correctly indicates
6 Gloria Kaysan. So now it's correct in both sections.

7 The Court has signed both Judgments and Sentences in
8 these causes here, in open court in the defendant's presence as
9 well as the warrants of commitment and the other associated
10 documents.

11 MR. SCHONBERGER: Thank-you, Your Honor.

12 THE COURT: All right. Now Mr. Davis can be escorted back.

13 MR. SCHONBERGER: Thank-you, Counsel, for --

14 This -- this gentleman will bring you out the yellow
15 papers. Thanks.

16 END PROCEEDINGS FOR 8/22/2013

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C E R T I F I C A T E

I, Thomas Marshman, do hereby certify:

That For the Record -- is a court-approved transcription company for the state of Washington, counties of King, Pierce, Snohomish, Spokane, Wenatchee, Whitman, and Yakima;

That the annexed and foregoing transcript of electronically recorded proceedings was transcribed by me to the best of my ability;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties to said action, or a relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or outcome thereof;

I further certify that the transcript is a true and correct record of all audible portions of the taped testimony, including questions and answers, and all objections, motions and exceptions of counsel made at the time of the foregoing proceedings. Areas of the tape(s) or CD(s) that were not decipherable for any reason are noted as [INAUDIBLE].

Dated this 4th day of January 2014

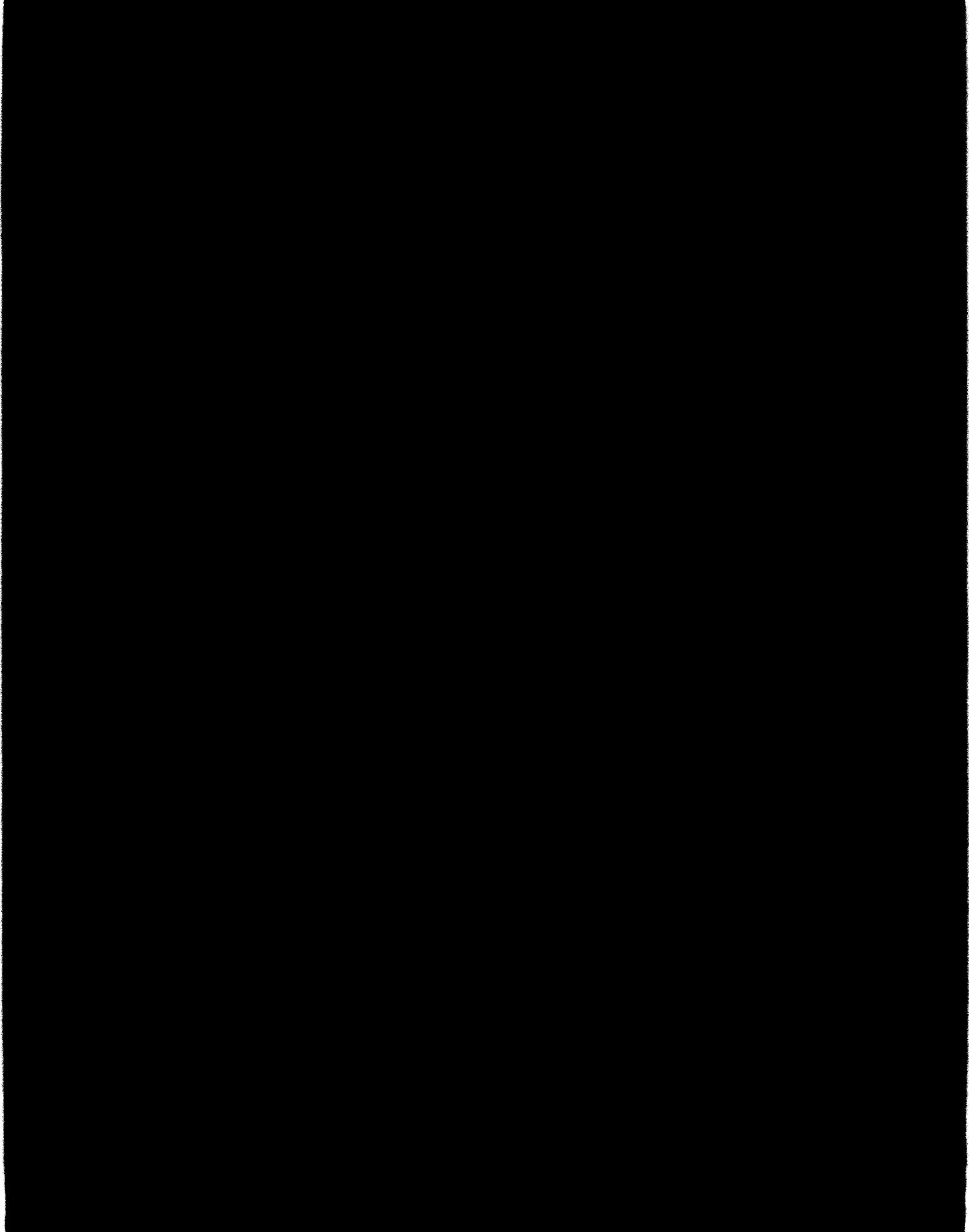


Thomas Marshman
AAERT Certified #CET**D-688
For the Record --
9801 116th St. NE
Arlington, WA 98223
(206) 714-4578

THOMAS W MARSHMAN
Notary Public
State of Washington
My Commission Expires
May 21, 2015

Notary Public in and for the
State of Washington,
Residing at Arlington.

My commission expires 5/21/2015



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IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff,

vs.

DAVIS, JERRY LYNN,
Defendant.

Cause No. 12-1-03559-0

**ORDER DENYING MOTION
FOR PRE-TRIAL TRANSCRIPTS
AND DOCUMENTS**

THIS MATTER having come on before the above-entitled Court based on the Defendant's motion for pre-trial transcripts and documents, and the Court having reviewed the records and files herein, and being fully advised, it is hereby

ORDERED, that the Defendant's motion for appointment of counsel is DENIED.

DONE IN OPEN COURT this 25 day of OCT, 2013.



JUDGE JERRY T. COSTELLO

Cc: Jerry Davis, Defendant
Kathleen Oliver, Prosecutor
Department of Assigned Counsel, Defense

THE SUPREME COURT

STATE OF WASHINGTON

RONALD R. CARPENTER
SUPREME COURT CLERK

SUSAN L. CARLSON
DEPUTY CLERK / CHIEF STAFF ATTORNEY



TEMPLE OF JUSTICE

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

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

January 9, 2014

Jerry Davis
#368483
Cedar Creek Corrections Center
PO Box 37
Littlerock, WA 98556-0037

Mr. Davis:

Your "PETITION FOR WRIT OF MANDAMUS" and related documents were received on January 9, 2014.

Pursuant to RAP 16.1 (b) and RAP 16.2 (a) this Court only exercises original jurisdiction over petitions for a writ of mandamus which are filed against "state officers"; see *Mochizuki v. King County*, 15 Wn. App. 296, 548 P.2d 578 (1976). Your petition is not directed against a state officer and therefore cannot be filed in the Supreme Court. I note that the superior court has concurrent jurisdiction over petitions for a writ of mandamus, and is not limited to cases concerning state officers.

Accordingly, your petition and related documents are rejected for filing and will be placed in the unfiled papers section of our files.

I note from reviewing the documents you provided that in Mr. Schoenberger's November 9, 2013, letter he indicated that he had forwarded your request for copies to "DAC", presumably the Department of Assigned Counsel. In the event you wish to contact this office, I have included the mailing address for DAC below:

Department of Assigned Counsel
949 Market St., Suite 334
Tacoma, WA 98402

Sincerely,

Susan L. Carlson
Supreme Court Deputy Clerk

SLC:lm



949 Market Street, Suite 334
Tacoma, Washington 98402-3696
(253) 798-6062 • FAX (253) 798-6715
email: pcassgncnsl@co.pierce.wa.us

January 29, 2014

JERRY DAVIS; #368483
CEDAR CREEK CORRECTIONS CENTER
P.O. BOX 37
LITTLEROCK, WA 98556-0037

RE: Request for Records Disclosure; State v. Davis, Pierce County Superior Court
Cause #'s: 12-1-03559-0 and 13-1-00377-7

Dear Mr. Davis:

I received your letter dated, January 24, 2014, requesting that we expedite your initial records request.

As indicated in our initial response letter, dated January 21, 2014, Mr. Schoenberger has the master file so in order to search for any documents relating to your request our office will need to obtain the file from him. We have been in contact with Mr. Schoenberger's office and we are hopeful that we will be able to obtain the file within the next few weeks. Every effort will be made to provide an earlier response, should the records become available.

Sincerely,

Char Colwell, Legal Assistant
On Behalf of
Anne Smith
Program Manager/Public Records Officer

Enclosure(s)





Pierce County

Department of Assigned Counsel

949 Market Street, Suite 334
Tacoma, Washington 98402-3696
(253) 798-6062 • FAX (253) 798-6715
email: pcassgncnsl@co.pierce.wa.us

Specifically:

MICHAEL R. KAWAMURA

Director

April 7, 2014

Jerry Davis, #368483
Cedar Creek Corrections Center
PO Box 37
Littlerock, WA 98556-0037

RE: Discovery Request regarding Pierce County Superior Court Cause Numbers 12-1-03559-0 and 13-1-00377-7

Dear Mr. Davis:

On March 19, 2014, I received your letter dated March 16, 2014, requesting copies of your redacted discovery for the above-reference cause numbers, pursuant to the Washington State RPC's and CrR 4.7 (h) (3). As identified in your letter as well as Ms. Colwell's response letters, a copy of discovery is only permitted to be provided to the defendant upon approval by the prosecuting attorney or order of the court pursuant to CrR 4.7 (h) (3). According to the information available to me, both of your referenced cases were closed/disposed of on August 22, 2013. The Pierce County Prosecuting Attorney is not approving release of discovery on post-disposition cases (i.e. closed cases). The Pierce County Superior Court Bench has likewise adopted the Prosecuting Attorney's position and has advised that they will not approve release of discovery on closed cases. For that reason, the Pierce County Department of Assigned Counsel is unable to release copies of discovery to you or anyone, redacted or otherwise.

Sincerely,

Michael Kawamura

Director

MRK:aps



May 23. 2014

Jerry L. Davis #368483
Cedar Creek Corrections Center
P.O. Box 37
Littlerock, WA 98556-0037

Michael R. Kawamura, Director
Dept. Of Assigned Counsel
949 Market Street, Suite 334
Tacoma, WA 98402-3696

RE: Pierce Co. Cause No's: 12-1-03559-0; 13-1-00377-7 "REQUEST FOR (REDACTED) DISCOVERY MATERIALS" In Open Appeal Cases No' 45274-0-II Division II

NOTICE

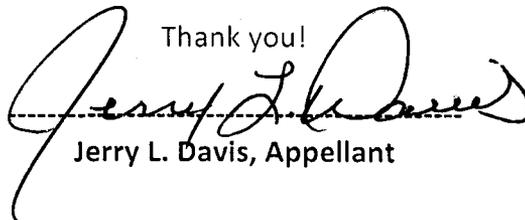
*
Mr. Karamura,

I received your letter dated April 7, 2014 stating I'm not entitled to my discovery request because you believe my cases are closed. You are mistaken on your belief because I am presently on direct appeal in division 2, case no: 45274-0-II.

Next, you are misrepresenting the RPC (inclusive), and CrR.7 (h) (3), which states in relevant part: "Further, a defense attorney SHALL be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court". It is the redactions that must be approved to protect the alleged victim's information, the states C-I, etc... and not the "DISCOVERY REQUEST".

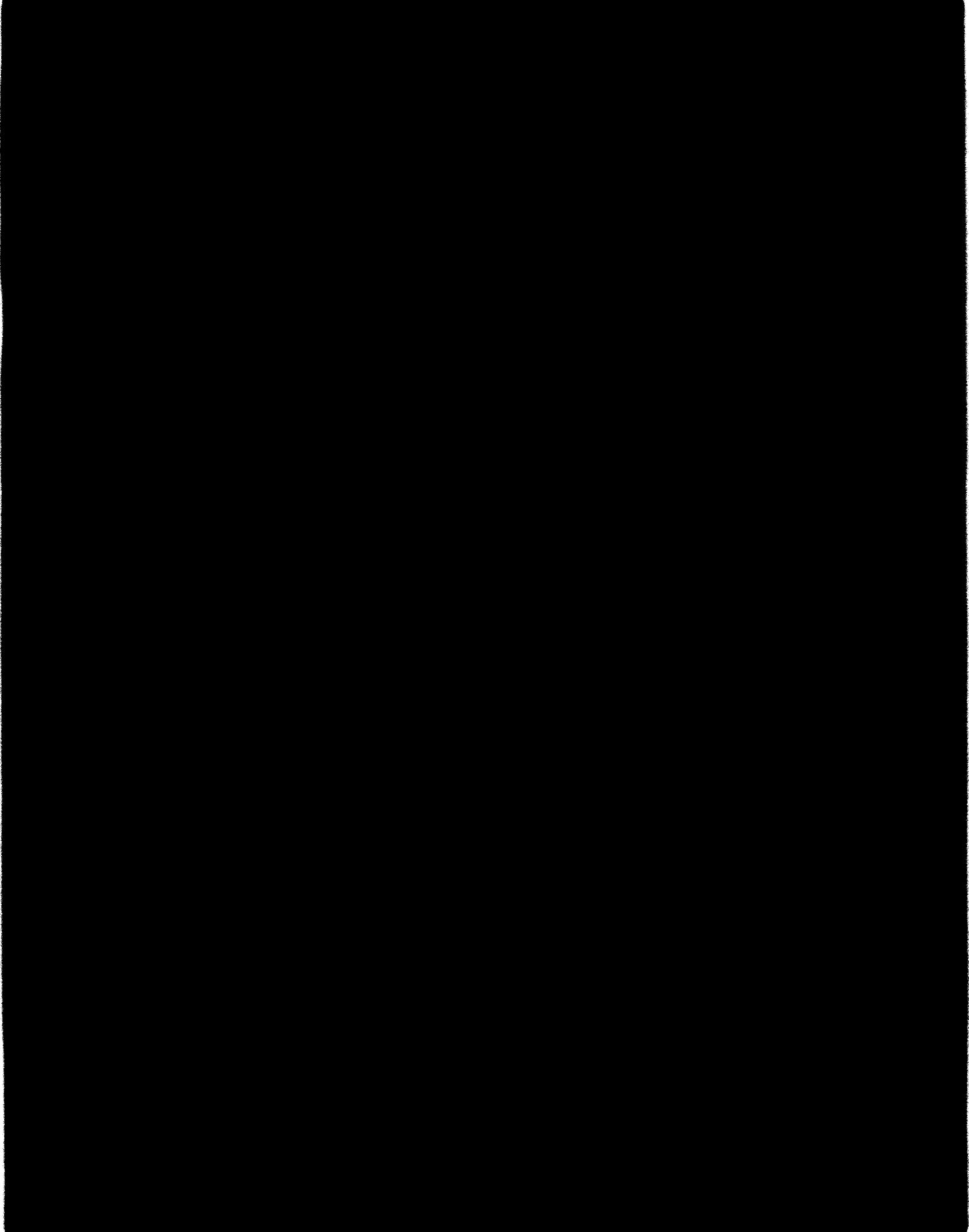
PLEASE TAKE NOTICE: Both of my cases out of Pierce County are OPEN IN Appeal No: 45274-0-II. Washington Court of Appeals Division II. I have a Constitutional right to have access to the Court of Appeals to raise all my claims on direct appeal and/or in a PRP. Will you please mail me my entire case files in both of my cases upon receiving THIS letter before it's too late? You are responsible for my relevant request, so that my rights are not further violated, depriving me access to the Court of Appeals in order to raise all my issues and claims.

Thank you!


Jerry L. Davis, Appellant

[First Letter April 20, 2014]

Cc: Washington Court of Appeals Div. II
Stephanie C. Cunningham, Attorney, File



No. 45274-0-II (Consol.)

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

JERRY LYNN DAVIS,

Appellant.

On Appeal from the Pierce County Superior Court
Cause Nos. 12-1-03559-0 & 13-1-00377-7
The Honorable Stephanie Arend, Judge
The Honorable Jerry Costello, Judge

AMENDED OPENING BRIEF OF APPELLANT

STEPHANIE C. CUNNINGHAM
Attorney for Appellant
WSBA No. 26436

4616 25th Avenue NE, No. 552
Seattle, Washington 98105
Phone (206) 526-5001

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I. ASSIGNMENTS OF ERROR

1. The trial court erred when it found that a factual basis existed in the record to support Jerry Lynn Davis' guilty plea to attempted second degree burglary.
2. The trial court erred as a matter of law when it found that Jerry Lynn Davis is not eligible to be sentenced under the Drug Offender Sentencing Alternative.
3. The trial court erred when it failed to exercise its discretion and consider whether Jerry Lynn Davis should be sentenced under the Drug Offender Sentencing Alternative.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Did the trial court err when it found that a factual basis existed in the record to support Jerry Lynn Davis' guilty plea to attempted second degree burglary, where the property Davis allegedly entered was not a building or fenced area?
(Assignment of Error 1)
2. Where an offender with a conviction for a violent crime within the last 10 years is not eligible to be sentenced under the Drug Offender Sentencing Alternative, but where Jerry Lynn Davis' violent offenses are over 23 years old, did the trial court err as a matter of law when it found that Davis is not eligible to be

sentenced under that statute? (Assignment of Error 2)

3. Did the trial court fail to properly exercise its discretion at sentencing where it refused to consider Jerry Lynn Davis' request to be sentenced under the Drug Offender Sentencing Alternative after incorrectly finding that Davis is not eligible to be sentenced under that statute? (Assignment of Error 3)

III. STATEMENT OF THE CASE

The State charged Jerry Lynn Davis in cause number 12-1-03559-0 with one count of second degree burglary (RCW 9A.52.030) and one count of felony harassment (RCW 9A.46.020). (CP 1-2) The State charged Davis in cause number 13-1-00377-7 with one count of first degree trafficking in stolen property (RCW 9A.82.050) and one count of theft of a motor vehicle (RCW 9A.56.020, .065). (CP 81-82)

Trial was continued several times with Davis' agreement. (CP 9, 42, 43, 45-47, 107-11) However, Davis objected when his attorney requested a continuance on March 11, 2013. (03/11/13 RP 6-7)¹ *
Davis told the court that two defense witnesses would be moving out of state on or about April 1, 2013, and that their testimony was critical

*

¹ The transcripts will be referred to by the date of the proceeding contained therein.

in order for him to receive a fair trial. (03/11/13 RP 6-7) The trial court found that a continuance may not be in Davis' best interest, and denied the request. (03/11/13 RP 7)

At the next hearing on March 20, 2013, the prosecutor and defense counsel informed the court that they were not ready for trial and again requested a continuance. (03/20/13 RP 4) Davis again objected, concerned that his witnesses would be unavailable after April 1. (03/20/13 RP 5) Defense counsel expressed his belief that Davis' assertion was untrue, and reiterated that counsel was not prepared for trial. (03/20/13 RP 5, 6-7) The trial court granted the continuance, over Davis' strenuous objection. (03/20/13 RP 7-8; CP 26, 89)

Davis subsequently filed a pro se motion to dismiss for speedy trial violations. (CP 31-33, 98-100) That motion was not ruled upon. Davis filed a number of other pro se motions and letters with the court throughout the proceedings, attempting to address deficiencies in his representation or requesting reconsideration of sentencing terms. (CP 27, 28-30, 36, 37-40, 85-88, 90, 91-92, 93-95, 96, 101, 102-05, 106, 145-64, 169-93) Those motions were either ignored or denied. (CP 165-67, 188-89)

The trial court appointed new counsel for Davis at a hearing

held on March 27, 2013. (03/27/13 RP 4) The State and Davis subsequently reached plea agreements on both cases, whereby Davis would plead guilty to amended informations charging one count of attempted second degree burglary (cause number 12-1-03559-0) and one count of taking a motor vehicle without permission (cause number 13-1-00377-7). (CP 48, 49, 57, 112, 113, 121)

As part of the plea, the State agreed to recommend standard range sentences in both cause numbers, and to request concurrent sentences. (CP 53, 117) Davis indicated, both in his written plea statements and during the in-court colloquy, that he understood a guilty plea meant a waiver of several important rights, including his right to a speedy trial and his right to appeal a time-for-trial violation, and the right to call witnesses to testify on his behalf. (CP 51, 115; 08/05/13 RP 13, 15, 19) Davis also initialed where the forms indicated that the judge might sentence him under the Drug Offender Sentencing Alternative (DOSA) if he is eligible. (CP 55-56, 119-20)

The trial court found that Davis' guilty pleas were entered freely and voluntarily, and found a factual basis for both counts. (08/05/13 RP 20-21) The court accepted his guilty pleas to both charges. (08/05/13 RP 21)

At sentencing, the State recommended standard range

sentences. (08/22/13 RP 3-4) Davis' attorney indicated that Davis would likely benefit from drug treatment, and that he is responsible for caring for his disabled sister so a shorter term of incarceration would be desirable. (08/22/13 RP 7) Counsel also asked the court to waive any discretionary fines or financial obligations. (08/22/13 RP 7) Davis personally asked the court to consider a DOSA sentence. (08/22/13 RP 16)

The State informed the court that Davis was not eligible for DOSA, so the trial court declined to consider it. (08/22/13 RP 8, 16) The court imposed concurrent standard range sentences, for a total of 40 months of confinement. (08/22/13 RP 19; CP 69, 133) The court also found that Davis would likely be able to find work once he was released from confinement, and imposed both mandatory and non-mandatory legal financial obligations. (08/22/13 RP 16, 18-19; CP 67, 131) This appeal timely follows. (CP 76, 140)

IV. ARGUMENT & AUTHORITIES

A. THE TRIAL COURT ERRED WHEN IT FOUND A FACTUAL BASIS FOR DAVIS' ALFORD PLEA TO ATTEMPTED SECOND DEGREE BURGLARY BECAUSE THAT FACTS DO NOT ESTABLISH THAT DAVIS ENTERED OR ATTEMPTED TO ENTER A BUILDING OR FENCED AREA.

In North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), the Supreme Court held that a defendant may

enter a plea of guilty, waiving his constitutional right to a trial, even though the defendant does not admit to having committed the charged crime. This is known as an Alford plea. The Washington Supreme Court adopted this rationale in State v. Newton, 87 Wn.2d 363, 552 P.2d 682 (1976). When a defendant makes an Alford/Newton plea, the trial court must exercise extreme care to ensure that the plea satisfies constitutional requirements. See Newton, 87 Wn.2d at 373.

Due process requires that a guilty plea be knowing, intelligent and voluntary. In re Hews, 108 Wn.2d 579, 590, 741 P.2d 983 (1987); Henderson v. Morgan, 426 U.S. 637, 644-45, 96 S. Ct. 2253, 2257-58, 49 L. Ed. 2d 108 (1976). This requirement is incorporated into Washington's criminal rules:

The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a *factual basis* for the plea.

CrR 4.2(d) (emphasis added). “[F]ailure to comply fully with CrR 4.2 requires that the defendant’s guilty plea be set aside and his case remanded so that he may plead anew.” Wood v. Morris, 87 Wn.2d 501, 511, 554 P.2d 1032 (1976).

The factual basis requirement obligates the judge, before accepting the guilty plea, to determine that the defendant's conduct "constitutes the charged offenses." In re Crabtree, 141 Wn.2d 577, 585, 9 P.3d 814 (2000). A factual basis exists if the evidence is sufficient for a jury to conclude that the defendant is guilty. Newton, 87 Wn.2d at 370. "The court may consider any reliable source of information to determine whether sufficient evidence exists to support a plea, as long as it is made part of the record at the time of the plea." State v. Arnold, 81 Wn. App. 379, 914 P.2d 762 (1996) (citing State v. Osborne, 102 Wn.2d 87, 95, 684 P.2d 683 (1984)).

In this case, Davis entered an Alford plea to the amended information charging attempted second degree burglary, and agreed that the court would review the declaration of probable cause submitted with the original information. (CP 48, 58) In that document, the State alleged that Davis and two other individuals entered P. Duval's property and began removing items from a U-Haul parked on the property. (CP 3) The Declaration states that the property "is fenced where it can be fenced, and there is a steep natural barrier that cannot be fenced. The U-Haul was parked within the fenced area. The gate to the fence is locked and there was a no

trespassing sign posted right where the defendant's vehicle was parked." (CP 4)

From these facts, the trial court was required to find a factual basis to establish the elements of attempted second degree burglary. See CrR 4.2(d); Newton, 87 Wn.2d at 370. "A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building other than a vehicle or a dwelling." RCW 9A.52.030(1). "[I]n addition to its ordinary meaning," the term "building" includes "any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein[.]" RCW 9A.04.110(5). "A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime[.]" RCW 9A.28.020(1).

In this case, the facts contained in the Declaration do not establish that Davis entered or attempted to enter a "building" because Duval's property was not a "fenced area." In State v. Engel, the defendant challenged his burglary conviction, arguing that there was insufficient evidence that he unlawfully entered or unlawfully remained in a building or fenced area, because only one third of the

property was fenced and the remainder was only “encased by . . . ‘banks, high banks, [and] sloping banks.’” 166 Wn.2d 572, 575, 210 P.3d 1007 (2009).

On appeal, our Supreme Court rejected the State’s argument that “the common understanding of fenced area includes an area partially enclosed by a fence, where topography and other barriers combine with the fence to close off the area to the public[.]” 166 Wn.2d at 578, 580. The Court reversed Engel’s conviction, finding that the term “fenced area” as used in the burglary statute “is limited to the curtilage of a building or structure that itself qualifies as an object of burglary [and t]he curtilage is an area that is completely enclosed either by fencing alone or [by] a combination of fencing and other structures. 166 Wn.2d at 580.

Similarly, Duval’s partially fenced property is not “completely enclosed” because the “steep natural barrier” surrounding part of Duval’s property is not “fencing” or “other structure.” It is therefore not a “fenced area.” The trial court clearly erred when it found a factual basis for Davis’ plea to attempted second degree burglary.

In his plea form, Davis states:

I do not admit guilt but have reviewed the evidence with my attorney and believe that there is a substantial likelihood I would be convicted if this proceeded to trial.

. . . I acknowledge that there is a factual basis for the charge(s) in the Original Information that is set forth in the Declaration for Determination of Probable Cause.

(CP 58) There is no indication in the record that Davis understood that the facts alleged in the Declaration would not support a conviction for either the original burglary charge or the amended charge of attempted burglary. In fact, by asserting that the Declaration contained sufficient facts, the record actually shows that Davis was unaware that the alleged facts would not support a burglary conviction.

A guilty plea cannot be truly voluntary “unless the defendant possesses an understanding of the law in relation to the facts.” In re Keene, 95 Wn.2d 203, 209, 622 P.2d 360 (1981) (quoting McCarthy v. United States, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969)). Accordingly, Davis’ guilty plea was not truly knowing, intelligent and voluntary. His conviction must be reversed and he must be allowed to withdraw his guilty plea.

B. DAVIS IS ELIGIBLE TO BE SENTENCED UNDER THE DOSA STATUTE AND THE COURT SHOULD HAVE EXERCISED ITS DISCRETION AND DETERMINED WHETHER A DOSA SENTENCE WOULD BE APPROPRIATE.

The special Drug Offender Sentencing Alternative allows a trial court to sentence an offender to a comprehensive substance

abuse assessment and treatment in lieu of or in addition to incarceration. RCW 9.94A.660.² If the sentencing judge determines that the offender is eligible for a DOSA, this provision authorizes the judge to “waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative . . . or a residential chemical dependency treatment-based alternative under [.]” RCW 9.94A.660(3).

No defendant is entitled to a DOSA sentence, but every defendant is entitled to ask the sentencing court for meaningful consideration of a DOSA request. State v. Grayson, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005). If a defendant satisfies the DOSA eligibility requirements, the sentencing court must make a discretionary determination about whether it should grant a DOSA to the defendant. RCW 9.94A.660(3); State v. Conners, 90 Wn. App. 48, 53, 950 P.2d 519 (1998).

As a general rule, the trial judge’s decision whether or not to grant a DOSA is not reviewable. RCW 9.94A.585(1); Grayson, 154 Wn.2d at 338; State v. Bramme, 115 Wn. App. 844, 850, 64 P.3d 60 (2003). However, an offender may always challenge the procedure

² The full text of RCW 9.94A.660 is contained in the Appendix.

by which a sentence was imposed. State v. Herzog, 112 Wn.2d 419, 423, 771 P.2d 739 (1989) (quoting State v. Ammons, 105 Wn.2d 175, 183, 713 P.2d 719, 718 P.2d 796 (1986)). An offender still has the right to “challenge the underlying legal conclusions and determinations by which a court comes to apply a particular sentencing provision.” State v. Williams, 149 Wn.2d 143, 147, 65 P.3d 1214 (2003) (citing State v. Mail, 121 Wn.2d 707, 712, 854 P.2d 1042 (1993)); see also State v. Smith, 118 Wn. App. 288, 292, 75 P.3d 986 (2003). “[I]t is well established that appellate review is still available for the correction of legal errors or abuses of discretion in the determination of what sentence applies.” Williams, 149 Wn.2d at 147 (citing State v. Ford, 137 Wn.2d 472, 479, 973 P.2d 452 (1999); Herzog, 112 Wn.2d at 423; State v. Channon, 105 Wn. App. 869, 876, 20 P.3d 476 (2001)).

At the sentencing hearing in this case, Davis’ counsel told the court that Davis has substance abuse problems and that he believed Davis would benefit from the DOSA program. (08/22/13 RP 7) Davis personally asked the court to consider imposing a sentence under the DOSA statute. (08/22/13 RP 16)

The State informed the judge that Davis is not eligible for DOSA because he has prior convictions for violent offenses (assault

and kidnapping). (08/22/13 RP 8) Based on the State's representations, the trial court found that Davis was not eligible for a DOSA and rejected Davis' DOSA request. (08/22/13 RP 16)

However, the State misrepresented the eligibility requirement contained in the DOSA statute. An offender is excluded from DOSA eligibility if the offender has been convicted of a violent offense, but only if the violent offense occurred "within ten years before conviction of the current offense." RCW 9.94A.660(1)(c).

In 1990, Davis was convicted of four violent offenses, including assault and kidnapping. (CP 61, 125) He has no other violent offenses since that time, over 23 years ago. (CP 61, 125) The State was therefore incorrect when it asserted that Davis was not eligible for a DOSA. The trial court erred when it relied on the State's representation and when it refused to consider Davis' request for a DOSA.

V. CONCLUSION

The facts presented to the trial court at the plea hearing do not contain evidence to establish the essential elements of attempted burglary, and Davis' conviction on that charge should be vacated. Furthermore, the trial court made a legal error when determining the sentence it could and could not impose in this case, and failed to

properly exercise its discretion under the sentencing statutes. Davis' sentence should be reversed and his case remanded for resentencing and consideration of whether he should receive a sentence under the DOSA statute.

DATED: March 26, 2014



STEPHANIE C. CUNNINGHAM
WSB #26436
Attorney for Jerry L. Davis

CERTIFICATE OF MAILING

I certify that on 03/26/2014, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Jerry L. Davis, DOC# 368483, Cedar Creek Corrections Center, PO Box 37, Littlerock, WA 98556-0037.



STEPHANIE C. CUNNINGHAM, WSBA #26436

APPENDIX

RCW 9.94A.660, DRUG OFFENDER SENTENCING ALTERNATIVE

West's Revised Code of Washington Annotated
Title 9. Crimes and Punishments (Refs & Annos)
Chapter 9.94A. Sentencing Reform Act of 1981 (Refs & Annos)
Sentencing Alternatives

West's RCWA 9.94A.660

9.94A.660. Drug offender sentencing alternative—Prison-based or residential alternative

Effective August 1, 2009
Currentness

- (1) An offender is eligible for the special drug offender sentencing alternative if
 - (a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533(3) or (4);
 - (b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);
 - (c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;
 - (d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;
 - (e) The offender has not been found by the United States attorney general to be subject to a deportation decision or order and does not become subject to a deportation order during the period of the sentence;
 - (f) The end of the standard sentence range for the current offense is greater than one year, and
 - (g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.
- (2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.
- (3) If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall write imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential chemical dependency treatment-

9.94A.660. Drug offender sentencing alternative—Prison-based or ... WA ST 9.94A.660

based alternative under RCW 9.94A.664. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(4) To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a chemical dependency screening report as provided in RCW 9.94A.500.

(3)(a) If the court is considering imposing a sentence under the residential chemical dependency treatment-based alternative, the court may order an examination of the offender by the department. The examination shall, at a minimum, address the following issues:

(i) Whether the offender suffers from drug addiction;

(ii) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

(iii) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and

(iv) Whether the offender and the community will benefit from the use of the alternative.

(b) The examination report must contain:

(i) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

(ii) Recommended crime-related prohibitions and affirmative conditions.

(c) When a court imposes a sentence of community custody under this section:

(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances.

(b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and 9.94A.737.

(3)(d) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.

WAS: 9/26/2024

9.94A.660. Drug offender sentencing alternative—Prison-based or..., WA ST 9.94A.660

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

(8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.

(9) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

(10) Costs of examinations and preparing treatment plans under a special drug offender sentencing alternative may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350.

Credits

[2009 c 389 § 3, eff. Aug. 1, 2009; (2009 c 389 § 2 expired August 1, 2009); 2008 c 231 § 30, eff. Aug. 1, 2009; 2006 c 339 § 302, eff. June 7, 2006; 2006 c 73 § 10, eff. July 1, 2007; 2005 c 460 § 1, eff. Oct. 1, 2005. Prior: 2002 c 290 § 20; 2002 c 175 § 10; 2001 c 10 § 4; 2000 c 28 § 19.]

Notes of Decisions (43)

West's RCWA 9.94A.660, WA ST 9.94A.660

Current with all 2013 Legislation

NO. 45274-0-II

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

STATE OF WASHINGTON, RESPONDENT

v.

JERRY DAVIS, APPELLANT

**Appeal from the Superior Court of Pierce County
The Honorable Judge Stephanie Arend
The Honorable Judge Jerry Costello**

No. 12-1-03559-0

No. 13-1-00377-7

Response Brief

**MARK LINDQUIST
Prosecuting Attorney**

**By
THOMAS C. ROBERTS
Deputy Prosecuting Attorney
WSB # 17442**

**930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400**

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

1. Did the trial court abuse its discretion in denying defendant's DOSA request where he was an improper candidate given his 9+ offender score consisting of multiple violent offenses including assault in the first degree, felon in possession of a weapon, and kidnapping?
2. Should this Court vacate defendant's Alford plea when there was a sufficient factual basis to support the plea?

B. STATEMENT OF THE CASE.

On September 20, 2012, the State charged Jerry Davis (defendant) with one count of burglary in the second degree and one count of felony harassment (12-1-03559-0). CP 1-2. On January 28, 2013, defendant was additionally charged with one count of trafficking stolen property in the first degree, and one count of theft of a motor vehicle (13-1-00377-7). CP

81-82. *Huge Gap! What about Did my ignored motions? Interesting!*

On August 5, 2013, defendant reached an agreement with the State whereby he entered into an Alford plea to the amended charges of one count of attempted burglary in the second degree (12-1-03559-0), and one

count of taking a motor vehicle without permission (13-1-00377-7). CP 48, 49, 57, 112, 113, 121; 8/5/13 RP 14-15. The trial court accepted defendant's guilty plea; finding not only that it was entered freely, knowingly and voluntarily, but also that there was a sufficient factual basis to support both counts. 8/5/13 RP 20-21. *Transcripts were offered! Prosecutor*

Defendant was sentenced on August 22, 2013. 8/22/2013 RP 3. *Plea Breach!*

The State recommended low and standard range sentences. 8/22/13 RP 3-

4. Defense counsel asked the court to follow the recommended sentence,

waive discretionary fees, and consider a Drug Offender Sentencing

Alternative (DOSA). 8/22/2013 RP 8. The State responded that DOSA

lie! → was not discussed and that defendant was ineligible. 8/22/2013 RP 10.

After hearing from both sides, as well as defendant and his sister, the court declined to grant defendant a DOSA. 8/22/2013 RP 18. The court imposed concurrent standard range sentences for a total of 40 months in custody as well as mandatory and discretionary legal financial obligations. 8/22/2013 RP 16-19; CP 67, 69, 131-133. Defendant timely filed a Notice of Appeal. CP 76, 140.

C. ARGUMENT.

1. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DECLINED TO GRANT DEFENDANT'S DOSA REQUEST WHERE HE WAS AN UNFIT CANDIDATE DUE TO HIS 9+ OFFENDER SCORE AND MULTIPLE VIOLENT OFFENSES.

As a sentencing alternative, an offender may request a Drug Offender Sentencing Alternative (DOSA). RCW 9.94A.660. The DOSA program intends to provide treatment for some offenders judged likely to benefit from it. It authorizes trial judges to give eligible [nonviolent] drug offenders a reduced sentence, treatment, and increased supervision in an attempt to help them recover from their addictions. *State v. Grayson*, 154 Wn.2d 333, 337, 111 P.3d 1183 (2005).

over 10 years may be considered.

A DOSA is a decision left to the discretion of the trial judge. *Grayson*, at 335. As a general rule, the trial judge's decision whether to grant a DOSA is not reviewable. *State v. Conners*, 90 Wn. App. 48, 52, 950 P.2d 519 (1998). However, an appellant is not precluded from challenging on appeal the "procedure" by which a sentence was imposed. *State v. Herzog*, 112 Wn.2d 419, 423, 771 P.2d 739 (1989). Despite the broad discretion given to the trial court under the Sentencing Reform Act, the trial court must exercise its discretion within the confines of the law.

Tainted transcripts!

Grayson, at 335. Any violence over 10 years may be considered. see: RCW 9.94A.660

While defendant is not entitled to automatically receive a DOSA sentence simply by requesting it, he is entitled to have his request for an alternative sentence considered by the court. *Grayson* at 342. Appellate review is not precluded for the correction of legal errors or abuses in discretion in the determination of what sentence applies. *State v. Williams*, 149 Wn.2d 143, 147, 65 P.3d 1214 (2003). A trial court abuses its discretion when the decision is based on incorrect law or untenable reasons in which it can be said no reasonable person would adopt the trial court's view. *State v. Castellanos*, 132 Wn.2d 94, 97 935 P.2d 1353 (1997).

Here, the trial court did not abuse its discretion when it declined to grant defendant's request for DOSA. Although the age of defendant's violent offenses did not automatically preclude him from a DOSA, defendant was an improper candidate for DOSA given his extensive violent criminal history. It is highly unlikely that a trial court would have granted his request, regardless of the status of his eligibility.

Defendant has a long criminal history of violent offenses: 9+ offender score consisting of 15 prior offenses including multiple violent offenses (burglary in the first degree, felony in possession of a weapon, kidnapping in the second degree), and a serious violent offense: (assault in the first degree). CP 63-75, 127-139. His extensive criminal history dates as far back as 1980 to the present, and occurred in multiple states. CP 63-75, 127-139. Defendant stipulated to his prior record, and the court was

cognizant of defendant's criminal history stating, "[t]he Court is certainly interested in knowing what the criminal history is in order to decide about an appropriate sentence." 8/22/13 RP 11. Given that defendant has continuously committed crimes of personal invasion, he would not have benefited from a DOSA sentencing alternative and would not have granted his request regardless of his eligibility. Therefore, the trial court did not abuse its discretion when it denied defendant's request for DOSA.

Respondent is not a mind reader for what the Court could have rendered in this matter.

2. THERE WAS A SUFFICIENT FACTUAL BASIS TO SUPPORT DEFENDANT'S PLEA.

"The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently, and with an understanding of the nature of the charge and the consequences of the plea." CrR 4.2(d). The rule requires a factual basis for the plea in order to ensure the plea is entered voluntarily. *State v. Perez*, 33 Wn. App. 258, 261, 654 P.2d 708 (1982). The factual basis may be established "from any source the trial court finds reliable," and is not limited to the admissions of the defendant. *State v. Newton*, 87 Wn.2d 363, 370, 552 P.2d 682 (1976). Even if the defendant does not admit guilt, the court may accept a guilty plea so long as it was a "voluntary choice among the alternative courses of action open to the defendant." *Newton*, 87 Wn.2d at 372, citing *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160 (1970).

[Elements]

Defendant challenges the sufficiency of the facts stated in the Declaration for Determination of Probable Cause considered by the court. Here, as where a defendant challenges the sufficiency of the evidence, the standard of review that should apply is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). Also, a challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. *State v. Barrington*, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), *review denied*, 111 Wn.2d 1033 (1988) (citing *State v. Holbrook*, 66 Wn.2d 278, 401 P.2d 971 (1965)); *State v. Turner*, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the appellant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). In considering this evidence, “[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal.” *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing *State v. Casbeer*, 48 Wn. App. 539, 542, 740 P.2d 335, *review denied*, 109 Wn.2d 1008 (1987)).

When a defendant completes a written plea statement, and admits to reading, understanding, and signing it, this creates a strong presumption

that the plea is voluntary. *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998), citing *Perez*, 33 Wn. App. at 261. When the trial judge personally interrogates the defendant regarding these matters, the "presumption of voluntariness is well nigh irrefutable." *Perez*, 33 Wn. App. at 261-62, citing *State v. Branch*, 129 Wn.2d at 635, 642, 919 P.2d 1228 (1996). The court should exercise caution in setting aside a guilty plea after the necessary safeguards have been satisfied. *State v. Taylor*, 83 Wn.2d 594, 597, 521 P.2d 699 (1974).

IAC was determined after the fact.

In this case, defendant entered an *Alford* plea, and the court based its factual basis for the plea on the Determination for Probable Cause. CP 48, 58. It alleged that defendant entered and removed items from a U-Haul parked within a fenced area on the victim's property which had been broken into and burglarized over the past four nights. CP 4. It additionally alleged that defendant grabbed a metal pipe from the victim while screaming, "I'm going to fucking kill you." so loud that a neighbor overheard it. CP 4.

The victim had a gun and was firing it.

From these facts, the court found a sufficient factual basis to support the elements of attempted burglary in the second degree.

insufficiently certain at trial!

Attempted burglary in the second degree requires the State to prove the defendant took a substantial step toward committing the crime of burglary in the second degree. *State v. Smith*, 115 Wn.2d 775, 782, 801 P.2d 975 (1990). "A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or

remains unlawfully in a building other than a vehicle or dwelling." RCW 9A.52.030(1). "Building," in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein..." RCW 9A.04.110(5).

Here, defendant's written plea statement and thorough in-court colloquy firmly establishes that he knowingly, voluntarily, and intelligently entered into his Alford plea. 8/5/13 RP 11-20. Defendant stated that he was aware of the elements of the crime that the State would have to prove and that he was entering into his plea freely and voluntarily. 8/5/13 RP 14-15, 19. In addition, there was a sufficient factual basis to support defendant's plea where the Declaration for Determination for Probable Cause established the elements of the crime of attempted burglary in the second degree. *Not true, explain*

Defendant claims that his plea was not made voluntarily because there was no factual basis to support his plea.¹ See Brief of Appellant at 10. Specifically, he claims that there is no factual basis to support the plea because the victim's property was not "a fenced area." *Id.* This claim fails as the victim's property included his residence, as well as a "fenced area" within the meaning of a "building" pursuant to RCW 9A.04.110(5). The

¹ In addition to defendant's claim that his plea should be vacated because there was no factual basis to support the plea, he also claims that the plea was not made voluntarily for the same reasons. However, defendant made no motion to withdraw his guilty plea.

Declaration for Determination of Probable Cause stated the following:

The victim stated that the two defendants were on his property stealing... He told deputies that his *home and property* had been burglarized for the past four nights.... Per the victim, his property is *fenced where it can be fenced, and there is a steep natural barrier that cannot be fenced.* That U-Haul was parked *within the fenced area.* The gate to the fence is locked and there was no trespassing sign posted right where the defendant's vehicle was parked.

CP 3 (emphasis added)

Defendant analogizes the facts of this case to those in *Engel* to support his claim that the victim's property was not a "fenced area." *See* Brief of Appellant at 8; *State v. Engel*, 166 Wn.2d 572, 575, 210 P.3d 1007 (2009). This claim fails however, as the victim's property was "fully enclosed" as required by the court in *Engel*.

In *Engel*, the court reversed the defendant's burglary conviction finding that the area in which he entered was not a "fenced area" where one-third of the property was fenced and the other two-thirds was surrounded by various gravel piles consisting of "banks, high banks, and sloping banks." *Engel*, 166 Wn.2d at 575. The court held that the term "fenced area" as used in the burglary statute, "is limited to the curtilage of a building or structure that itself qualifies as an object of burglary" and that "curtilage is an area that is completely enclosed either by fencing alone or, as was the case in *Wentz*, a combination of fencing and other structures." *Engel*, 166 Wn.2d at 580 (emphasis added). In support of this conclusion, the court cited justice Madsen's concurring opinion that a

"fenced area must be enclosed or contained, *or be so situated as to complete an enclosed or contained area, to require entry.* **Engel**, 166 Wn.2d at 588, citing *State v. Wentz*, 149 Wn.2d 342, 68 P.3d 282 (2003) (emphasis added). The court reached this conclusion in order to avoid the "absurd result" of criminal trespassers being held liable for burglary where they enter unmarked property that they were unaware of being fenced. **Engel**, 166 Wn.2d at 580.

This case is distinguishable from **Engel** in that it was a plea as opposed to a jury trial. Therefore, the facts in this case were not disputed as they were in **Engel**. Defendant must accept the facts alleged and all reasonable inferences that can be drawn from them. The Declaration of Determination for Probable Cause specifically states that the U-Haul, which defendant had broken into and entered, was "within a fenced area." Where the facts clearly state that the property was fenced, defendant must accept them as true and may not challenge them on appeal.

Further, the property was a "fenced area" because in addition to a no trespassing sign, it was completely enclosed by a combination of fencing and a natural barrier: "the property was fenced where it can be fenced, and not fenced where there is a steep natural barrier." It was enclosed to the fullest extent possible and therefore a "fenced area." This is consistent with the requirements in **Engel** as the property was "so situated as to complete an enclosed or contained area, to require entry." **Engel**, 166 Wn.2d at 588. The facts of this case are not only

distinguishable from *Engel*, but also consistent with the policy reasons stated in that opinion.

In *Engel*, two-thirds of the property was unfenced and consisted of various gravel piles, the victim's property here was as enclosed and fenced as it possibly could be. While a trespasser could have mistakenly entered onto the property in *Engel*, it would be impossible to enter the victim's property here without seeing the no trespass sign, and going through great lengths to bypass the fence and/or steep natural barrier. To find that this property was not a "fenced area" would create an unworkable principle. The court would never find that burglary was committed on properties that cannot be fully enclosed by a fence such as those on waterfronts or cliffs.

Even assuming *arguendo*, that the property was not a "fenced area," the facts are still sufficient to support the guilty plea. Defendant was charged with attempted burglary in the second degree. It is reasonable to infer that defendant took a substantial step toward burglarizing the victim's home; a dwelling, which certainly qualifies as a "building" for the purposes of the burglary statute. The trial court could reasonably infer that defendant took a substantial step toward burglarizing the victim's home. The trial court could reasonably infer that defendant took a substantial step toward burglarizing the victim's home were defendant was found on the victim's property removing a radiator and buckets from the victim's U-

Not
firm E

Haul, and the home had been burglarized for the past four nights. As there was a sufficient factual basis to support defendant's plea, the Court should affirm defendant's conviction.

D. CONCLUSION.

The trial court did not abuse its discretion when it denied defendant's request for DOSA where based on his extensive criminal history, he clearly was not a candidate for DOSA. Further, defendant's plea should not be vacated as there was a sufficient factual basis to support the elements of attempted burglary. For the foregoing reasons, the State asks that this Court affirm defendant's conviction.

DATED: May 19, 2014.

MARK LINDQUIST
Pierce County
Prosecuting Attorney

Thomas C. Roberts
THOMAS C. ROBERTS
Deputy Prosecuting Attorney
WSB # 17442

Robin Sand
Rule 9 Legal Intern

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.

5.19.14 *Theresa Kal*
Date Signature