

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

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STATE OF WASHINGTON,	)	Trial Court No. [REDACTED]
	)	
Plaintiff/Respondent,	)	
	)	Court of Appeals No.
v.	)	[REDACTED]
	)	
[REDACTED]	)	MEMORANDUM IN
	)	SUPPORT OF APPEAL
Defendant/Appellant.	)	BOND AND
	)	CONDITIONAL RELEASE
	)	PENDING APPEAL
	)	

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**I. IDENTITY OF PARTY AND RELIEF SOUGHT**

[REDACTED] asks this Court to order that the judgments in this matter be stayed pending appeal and that the court set conditions of release or bond.

**II. FACTUAL BACKGROUND**

Following a jury trial in November 2019, [REDACTED] was convicted of one count of first degree theft and two counts of second degree theft. Based on aggravating factors, the court imposed an exceptional sentence upward on count one for a total sentence length of ten years.

In April 2020, appellate counsel filed a motion in this Court seeking a stay and conditional release pending resolution of the appeal.

██████████ argued this was appropriate primarily for three reasons. First, ██████████ was not a danger to the community. He is appealing convictions for theft, a non-violent offense, and his criminal history consists of non-violent offenses. Second, ██████████ who is incarcerated at the Monroe Correctional Complex, is at an increased risk of death or serious illness from COVID-19 due to his health condition, age, and status as an African-American. Inmates and staff at the facility have tested positive for COVID-19. Third, ██████████ has a home to reside at and a supportive wife, where he could social distance and stay safe.

The prosecution opposed ██████████ request, arguing an appeal bond should be completely denied.

On May 1, 2020, this Court denied ██████████ request. App. I. The Court found that an appeal bond was inappropriate, concluding that (1) ██████████ posed a serious risk to the safety of members of the community if he were released; and (2) a stay of the sentence would create significant delay and this delay will unduly diminish the deterrent effect of the punishment. App. I at 1-2. As for ██████████ argument that an appeal bond was appropriate given the unique circumstances created by the pandemic to ██████████ health, the trial court concluded this did not matter. App. VI at 3. Recharacterizing ██████████ argument, the trial court concluded that ██████████ had not proved that Washington State was

failing in its constitutional duty to provide for [REDACTED] safety and welfare. App. I. at 3.

[REDACTED] filed emergency motion seeking to stay the judgment and for review of the trial court's decision pursuant to RAP 8.2(b). The State opposed [REDACTED] request. On June 8, 2020, a Court of Appeals' Commissioner denied [REDACTED] motion. App. II. [REDACTED] filed a motion to modify commissioner's ruling in the Court of Appeals.

On August 13, 2020, the Court of Appeals issued an order granting [REDACTED] motion to modify commissioner's ruling and remanding to the Superior Court:

This matter having come on regularly before this court upon the appellant's motion to modify the commissioner's ruling denying bail. After consideration, it is hereby

ORDERED that the motion to modify is granted. In addition, we remand to the Pierce County Superior Court to hold a hearing to determine whether bail and conditional release should be set pursuant to RCW 9.94A.585(3), RCW 9.95.02, RCW 10.73.040, and other applicable rules and statutes pending the resolution of the appeal.

The hearing shall occur within 14 days of this order, unless, upon motion of a party, the Superior Court finds good cause to continue the hearing. The bases for continuing the hearing shall be articulated on the record. In no event shall the hearing be continued longer than 28 days unless excused by order of this court or the Washington State Supreme Court.

App. III.

### III. ARGUMENT

The Court should grant [REDACTED] request for a stay of the judgment and conditional release or bond pending resolution of his appeal.

This Court is authorized to do so under RCW 9.94A.585(3), RCW 9.95.062, RCW 10.73.040, and the Court of Appeals' order.

- a. As a 53-year-old African-American male with high blood pressure and other health conditions, [REDACTED] is at a high risk of death or serious illness from COVID-19. [REDACTED] incarceration at the Monroe Correctional Complex creates a significant risk to his wellbeing that can be substantially mitigated by his release.*

Washington remains in the throes of a pandemic from COVID-19. In the country, there have been over 5.4 million cases and over 170,000 deaths caused by the disease.<sup>1</sup> In Washington, there have been over 70,000 cases and nearly 2,000 deaths.<sup>2</sup> The virus has not disappeared and is unlikely to in near future.

Should [REDACTED] contract the virus, he may become seriously ill or even die. [REDACTED] is almost 54 years old. App. IV. According to the Department of Corrections' guide, those who are "[a]ged 50 years or older" "should be considered at high risk." App. V, p. 5. The guide notes that the "National Institute of Corrections recognizes that incarcerated

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<sup>1</sup> <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#states> (last accessed August 18, 2020).

<sup>2</sup> Id.

population ages 50 and above are considered elderly.” Id. at p. 5 n.\*\*; accord Colvin v. Inslee, No. 98317-8, 2020 WL 4211571, at \*1 (Wash. July 23, 2020) (“The current widely reported medical evidence suggests that the COVID-19 risks of serious complications or death are highest for offenders over age 50 and those with certain preexisting medical conditions, but it can also be serious for younger people and those in good health.”).

Consistent with the Department of Corrections’ guide, healthcare staff from the Department have identified [REDACTED] as being at an increased risk from COVID-19. App. VI, VII. In addition to his age, he suffers from high blood pressure and takes medications to address this condition. App. VII. Having high blood pressure increases the odds of having worse symptoms or dying from COVID-19.<sup>3</sup> [REDACTED] has medical complications from past injuries and suffers from joint pain and severe foot problems. App. VII. He has extensive dental care and eye-care needs. App. VII. Among other medications, he takes pain medications.

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<sup>3</sup> <https://www.webmd.com/lung/coronavirus-high-blood-pressure#1> (last accessed June 22, 2020)

App. VII. ██████████ is also an African-American male. App. VII.

African-Americans have suffered disproportionately from COVID-19.<sup>4</sup>

In sum, ██████████ health, age, and status as an African-American male place him at a high risk from COVID-19.

██████████ is incarcerated at the Monroe Correction Complex-WA State Reformatory. Due to his incarceration, ██████████ risk of contracting COVID-19 is substantially increased. As of submission, 62 incarcerated individuals and 16 staff members at the Monroe Correctional Complex have tested positive for COVID-19. App. VIII.<sup>5</sup> Tragically, a corrections officer at the Monroe Correctional Complex died from COVID-19.<sup>6</sup>

The recent outbreak of COVID-19 at Coyote Ridge Corrections Center is a stark reminder that the danger from COVID-19 has not passed. Due to an outbreak, there have been 233 confirmed cases for inmates

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<sup>4</sup> <https://www.npr.org/sections/health-shots/2020/04/18/835563340/whos-hit-hardest-by-covid-19-why-obesity-stress-and-race-all-matter> (last accessed June 22, 2020)

<sup>5</sup> For updated data, see <https://www.doc.wa.gov/corrections/covid-19/data.htm#confirmed> (last accessed August 18, 2020)

<sup>6</sup> <https://www.kiro7.com/news/local/departments-corrections-officer-dies-covid-19/S62PL3YXURERRL4XUIVZU3473Q/> (last accessed June 22, 2020).

along with two tragic deaths at Coyote Ridge. App. VIII. There have also been 70 confirmed cases among the staff at Coyote Ridge. App. VIII. Due to the outbreak, conditions at the facility deteriorated, resulting in a petri dish of inhumane conditions according to a nurse who worked at the facility. App. IX.<sup>7</sup>

Recognizing that dire situation at Coyote Ridge, the Court of Appeals, Division Three, recently issued an order granting release pending appeal and setting conditions in State v. Almaguer, No. 36995-1-III. App. X. Mr. Almaguer was serving a sentence of 26 months for forgery. App. X. at 1. In granting Mr. Almaguer's request for release over the State's opposition, the Court of Appeals recognized the danger posed by COVID-19 to Mr. Almaguer while in prison:

In March 2020, the Governor Jay Inslee began issuing emergency proclamations designed to limit the spread of COVID-19. Mr. Almaguer is 45-years-old and a diabetic. As such, he is at increased risk of harm from COVID-19. The realities of the prison environment make preventing the transmission of COVID-19 difficult. The facility at which Mr. Almaguer has been housed has had an outbreak of COVID-19 among its inmates and staff members. It does not appear Mr. Almaguer has been exposed to COVID-19, but an individual adjacent to his cell has been quarantined due to possible exposure.

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<sup>7</sup> Maggie Quinlan, "Nurse at Coyote Ridge prison describes 'petri dish' of 'inhumane conditions,'" Spokesman Review (Aug. 15, 2020), available at: <https://www.spokesman.com/stories/2020/aug/14/nurse-at-coyote-ridge-prison-describes-petri-dish/> (last accessed August 18, 2020).

App. X. at 2.

Here, the evidence likewise establishes that [REDACTED] conditions of confinement increase the risk of him contracting COVID-19.

App. VII. It is overcrowded and there is virtually no social distancing.

App. VII. Consistent with [REDACTED] declaration, the Washington Supreme Court has recognized that concerns about conditions in prison and COVID-19 “are legitimate and well founded.” Colvin, No. 98317-8, 2020 WL 4211571, at \*1. “Prisons are not designed to easily accommodate social distancing.” Id. at 2.

And similar to Mr. Almaguer, [REDACTED] is at an increased risk of seriousness illness or death from COVID-19 due his age, health, and status as an African-American male.

[REDACTED] is married and has a supportive wife. [REDACTED] can live with his wife during the pendency of the appeal. App. VII, XI.<sup>8</sup> In Almaguer, the Court of Appeals found the fact of having a spouse and a place to stay weighed in favor of granting release pending appeal. App. X at 2.

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<sup>8</sup> Appendix X contains a copy of an unsigned declaration. Counsel has sent a copy of this declaration to Mr. [REDACTED]’s wife, [REDACTED], to sign. Counsel has spoken to her and counsel represents that the unsigned declaration attached in this memorandum is accurate.

*b. This Court should exercise its authority under RCW 9.94A.585(3) and order that a stay be grant while [REDACTED] appeal is pending.*

“Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.” RCW 9.94A.585(3) (emphasis added). By its plain language, this provision grants this Court authority to order [REDACTED] [REDACTED] release pending review. State v. Portomene, No. 81264-5-I, 2020 WL 2114633, at \*3 (Wash. Ct. App. Apr. 29, 2020) (unpublished)<sup>9</sup>; see RAP 8.2(a) (“The conditions under which a defendant in a criminal case or a juvenile in a juvenile offense proceeding may be released pending review, or may obtain a stay of execution of sentence, are set forth in the criminal rules, juvenile court rules, and in statutes.”) (emphasis added). In fact, the Court of Appeals order in Almaguer, which granted conditional release, was granted “[p]urasuant to RCW 9.94A.585(3).” App. IX at 3.

As argued, this Court should exercise this authority for two reasons. First, due to [REDACTED] health and incarceration, he is placed at an unnecessary and increased risk of death or serious illness from COVID-19. Second, he is not a flight risk and does not pose a danger to the community.

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<sup>9</sup> Cited for persuasive authority. GR 14.1.

As the Court of Appeals did in Almaguer, it is appropriate take into account the risk to [REDACTED] from COVID-19 in consideration of a stay. App. X at 2. Similarly, as the Massachusetts Supreme Court has reasoned, “[i]n these extraordinary times, a judge deciding whether to grant a stay should consider not only the risk to others if the defendant were to be released and reoffend, but also the health risk to the defendant if the defendant were to remain in custody.” Christie v. Commonwealth, 484 Mass. 397, 401, 142 N.E.3d 55 (2020). “In evaluating this risk, a judge should consider both the general risk associated with preventing COVID-19 transmission and minimizing its spread in correctional institutions to inmates and prison staff and the specific risk to the defendant, in view of his or her age and existing medical conditions, that would heighten the chance of death or serious illness if the defendant were to contract the virus.” Id. at 401-02.

Here, [REDACTED] is at high risk of serious illness or death from COVID-19. COVID-19 has infected staff members and inmates at the Monroe Correctional Complex. A serious outbreak is possible like at Coyote Ridge. [REDACTED] is not a danger to anyone’s safety. The convictions he is appealing, along with his criminal history, are non-violent. He has a place to stay with his wife in Pierce County. If he disobeys a condition of release, he would again be confined. In sum,

granting [REDACTED] release will significantly reduce the risk from COVID-19 to his health.

It is also in the public interest because the more people that are incarcerated in a facility, the greater the risk of spreading COVID-19, which results in more cases and deaths. The more people in a facility, the more likely an inmate or staff member is likely to contract or transfer COVID-19. This increases the risk that a staff member may become infected and transfer the virus to the public. This is part of the reason why the governor and the Department took action to reduce the inmate population in Washington prisons by ordering early release for several groups of inmates. See In re Pers. Restraint of Pauley, 13 Wn. App. 2d 292, 304-05, 466 P.3d 245 (2020).

Further, while [REDACTED] has not filed his merits brief in the Court of Appeals, appellate counsel has identified several issues in support of reversing the convictions along with other issues that may offer sentencing relief.

This includes an argument that the evidence was insufficient to prove the three theft counts. These theft counts were premised on two alternatives: that [REDACTED] (1) wrongfully obtained or exerted unauthorized control over the money paid or loaned to him by Mr. Mesick or (2) obtained control over the money by color or aid of deception. See

RCW 9A.56.020(1); App. XII (jury instructions). But here, the money at issue was money that Mr. Mesick loaned or paid [REDACTED] A mere breach of contract or a failure to pay back a debt, as appears to be the case here, does not constitute the crime of theft. State v. Pike, 118 Wn.2d 585, 595, 826 P.2d 152 (1992). “The difference between theft and breach of contract or failure to pay a debt is criminal intent.” State v. Mermis, 105 Wn. App. 738, 748, 20 P.3d 1044 (2001).

Moreover, insufficient evidence *on either alternative* will require reversal of the convictions. See State v. Joy, 121 Wn.2d 333 345-46, 851 P.2d 654 (1993) (remanding two theft convictions for retrial on theft by deception theory because sufficient evidence did not support alternative means of theft by embezzlement). This is because “[w]hen one alternative means of committing a crime has evidentiary support and another does not, courts may not assume the jury relied unanimously on the supported means.” State v. Woodlyn, 188 Wn.2d 157, 162, 392 P.3d 1062 (2017).

Here, [REDACTED] has a very strong argument that the evidence was insufficient to prove that he committed theft through the wrongful exertion of unauthorized control over the funds Mr. Mesick paid or loaned [REDACTED] [REDACTED] The State’s theory at trial on this alternative was that [REDACTED] “wrongfully” exercised control over the funds because a condition of

community custody and a subsequent condition of release forbade [REDACTED] [REDACTED] from engaging in landscaping work. App. XII (RP 856-57). But violating some ancillary law does not transform a transaction into a theft by taking. If this were the case, a person who does labor without the appropriate license (or with an expired license) commits theft. For example, under the State's theory, a child who sells lemonade without the appropriate license or in violation of child labor laws is guilty of theft when the child sells a customer lemonade.<sup>10</sup> While the child may be violating the law by selling lemonade, the child is not committing criminal theft because there has been no wrongful obtaining or exertion of unauthorized control over the customer's payment of money in exchange for the lemonade. See State v. Lau, 174 Wn. App. 857, 869-72, 300 P.3d 838 (2013) (state failed to prove that two municipalities had a property interest in gross gambling receipts so understatement of receipts for tax purposes did not constitute theft); State v. Gillespie, 41 Wn. App. 640, 705 P.2d 808 (1985) (borrower who obtained bank loan to buy sailboat, but

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<sup>10</sup> In fact, some lawmakers this year introduced bills to make lemonade stands operated by children legal. <https://www.nwpb.org/2020/01/23/do-kids-have-a-right-to-sell-lemonade-washington-lawmakers-want-to-guarantee-it/> (last accessed August 17, 2020).

then used money for other purposes could not be convicted of theft by a taking).

██████████ also plans to make other arguments in his appeal, including arguments that his convictions should be reversed due to the trial court's errors in (1) admitting prior bad acts evidence under ER 404(b); (2) admitting hearsay; and (3) refusing to give proposed defense instructions.

In sum, ██████████ arguments on appeal weigh in favor of granting a stay and conditional release because there is good chance of success on appeal.

c. *RCW 9.95.062 does not preclude ██████████ request of a stay and conditional release pending appeal.*

Contrary to this Court's previous ruling, denial of ██████████ requested relief is not precluded by RCW 9.95.062. This statute states:

Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant in a criminal action shall not stay the execution of the judgment of conviction, if the court determines by a preponderance of the evidence that:

(a) The defendant is likely to flee or to pose a danger to the safety of any other person or the community if the judgment is stayed; or

(b) The delay resulting from the stay will unduly diminish the deterrent effect of the punishment; or

(c) A stay of the judgment will cause unreasonable trauma to the victims of the crime or their families; or

(d) The defendant has not undertaken to the extent of the defendant's financial ability to pay the financial

obligations under the judgment or has not posted an adequate performance bond to assure payment.

RCW 9.95.062(1) (emphasis added). The statute does not reference RCW 9.94A.585(3). That statute is an independent grant of authority to both the sentencing court (this Court) and the Court of Appeals. The Court of Appeals did not apply RCW 9.95.062(1) in Almaguer when granting the request of conditional release pending appeal, which indicates the statute is inapplicable when a court exercises its authority under RCW 9.94A.585(3). App. X.

In any event, ██████ respectfully submits that this Court erred in its previous ruling finding that the State had met its burden to prove by a preponderance grounds (a) and (b). App. I at 2. This is impliedly why the Court of Appeals remanded to this Court. App. III.

On ground (a), this Court previously found that ██████ “poses a serious risk to the safety of members of the community within the meaning of RCW 9.95.062(1)(a) if he were to be released on bond or on his own recognizance.” App. I at 2. (emphasis added). The standard is not a “serious risk,” it is whether the evidence shows by a preponderance that it is “likely” (meaning more probable than not) that ██████ poses a danger

to the safety of the community. RCW 9.95.062(1)(a). A serious risk (e.g., infection from COVID-19 in prison) may exist but still not be likely to come to fruition. See State v. Rich, 184 Wn.2d 897, 904, 365 P.3d 746 (2016) (“A “risk,” of course, is not a certainty.”). Here, the prosecution has not proved that [REDACTED] is likely to flee or that he likely poses a danger to the community if the judgment is stayed.

As for ground (b), that a stay would “create significant delay and this delay will unduly diminish the deterrent effect of the punishment,” the prosecution has not proved this ground. This standard requires that the deterrent effect be “unduly” (i.e. excessively) diminished by a stay. RCW 9.95.062(1)(b). The evidence does not show this by a preponderance. Indeed, a conditional release would have a deterrent effect against unlawful behavior because if [REDACTED] violates the conditions of release, the stay may be revoked. Moreover, [REDACTED] is not a young man for whom punishment might ordinarily need to be immediately imposed for it to have a deterrent effect. [REDACTED] has already served part of his sentence. This punishment has a deterrent effect even if the appeal delays him from serving the full sentence (assuming he is unsuccessful in his appeal).

Further, this criteria needs to be balanced with the risk to [REDACTED] posed by COVID-19 while he is imprisoned. The Massachusetts Supreme Court recognized this reality and instructed its lower courts to consider not merely the risk that the defendant poses from release, but the health risk to the defendant if he remains in prison. Christie, 484 Mass. at 401-02. RCW 9.95.062 should likewise be read in a flexible manner. The Court of Appeals impliedly recognized this too by remanding this matter back to this Court.

*d. Bail and proposed conditions.*

Given the circumstances regarding the pandemic and the specific facts of this case, no bail or bond should be required to secure release. If the court believes some amount is appropriate, it should not exceed \$150,000, which was the bail amount ordered prior to trial.

Appropriate conditions of release would include: that [REDACTED] (1) telephonically check in with Pierce County Office of Pre-Trial Services on a weekly basis unless otherwise directed by that office or the court; (2) have no new criminal law violations; (3) maintain residence at [REDACTED]; (4) appear at all court hearings requiring the appearance of [REDACTED]. If a ruling or decision by the appellate court affirms the conviction and sentence or dismisses the appeal, and no further court dates are issued, [REDACTED]

shall report to serve the remainder of his term of incarceration within 30 days of issuance of the appellate mandate, as directed by the State, the court or the Department of Corrections; (5) no contact with Mr. Mesick; and (6) comply with all COVID-19 directives issued by the state or local authorities applicable to the county of residence. See App. X (setting out these conditions in releasing Mr. Almaguer).

IV. CONCLUSION

██████████ respectfully requests this Court stay the judgment pending the appeal and set conditions of release or bond.

Respectfully submitted this 18th day of August, 2020.



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Richard W. Lechich – WSBA #43296  
Washington Appellate Project – #91052  
Attorney for defendant/appellant

# Appendix I

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5 **IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE**

6 STATE OF WASHINGTON,

7 Plaintiff,

8 vs.

9 [REDACTED]

10 Defendant.

Cause No: [REDACTED]

**ORDER DENYING MOTION FOR A STAY OF  
SENTENCE AND FOR RELEASE**

11 The Court has considered Defendant's motion, the State's response and Defendant's reply and  
12 all attachments to these documents. The Court has considered all authorities submitted, including  
13 Defendant's additional authority, State v. Portomene. The Court has also considered the evidence  
14 presented at trial and at Defendant's sentencing hearing.

15 The undersigned Judge has been ordered by the Presiding Judge of Pierce County Superior  
16 Court to remain away from the Courthouse and to only work remotely, in an effort to ensure availability of  
17 judicial officers who are free of infection from COVID 19 in the event that any judicial officers working at  
18 the courthouse become infected. For this reason, and because the Court considers itself fully advised by  
19 the thorough briefing of the parties, the Court now waives oral argument on Defendant's motion under  
20 PCLR 7(a)(10).

21 The Court has focused on RCW 9.95.062(1), as urged by both parties. After considering the  
22 evidence described above, the Court now FINDS by a preponderance of the evidence:

23 1. Defendant poses a serious risk to the safety of members of the community within the meaning  
24 of RCW 9.95.062(1)(a) if he were to be released on bond or on his own recognizance.  
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1 Defendant committed felonies that caused demonstrable and substantial financial and emotional  
2 harm in the present case, despite specific and direct orders from his supervising Community Corrections  
3 Officer that he stay away from any landscaping "work." Defendant made concerted efforts to hide his  
4 activities from his Community Corrections Officer.

5 For many years Defendant has repeatedly ignored court orders and directives of Department of  
6 Corrections authorities when he is not physically incarcerated.

7 The Court has no confidence whatsoever that Defendant would follow and obey conditions of a  
8 sentencing stay and conditions of release. The Court has ample grounds to believe and does believe that  
9 Defendant would, at his earliest opportunity, again prey upon an elderly and vulnerable member of the  
10 community. Defendant has repeatedly shown that if he is not physically incapacitated, he is pursuing  
11 criminal schemes and designs.

12 2. A Stay of sentence will create significant delay and this delay will unduly diminish the deterrent  
13 effect of the punishment, within the meaning of RCW 9.95.062(1)(b).

14 The evidence before the Court demonstrates that the only way to deter Defendant from  
15 committing crimes is physical incarceration. Staying Defendant's sentence would deliver a message to  
16 Defendant exactly opposite of what this Court intended by its judgment and sentence. An order releasing  
17 Defendant would be perceived by Defendant as an acknowledgement that his convictions at trial were  
18 probably without due process of law and/or his crimes were less serious than this Court tried to express  
19 by its judgment and sentence.


20 Incarceration specifically deters this Defendant from continuing his criminal career. Restoring  
21 Defendant's freedom, for whatever reason, will only serve to embolden Defendant to believe that he is  
22 free to resume the criminal lifestyle he has continuously pursued except when he is incarcerated. Simply  
23 put, Defendant has no respect for the law and for the rights of others.

1 The Court further FINDS:

2 3. Defendant has failed to prove by a preponderance of the evidence that the State of  
3 Washington has failed in its constitutional duty to appropriately provide for Defendant's safety and  
4 welfare. This Court is satisfied that the Department of Corrections is continuing to use all appropriate and  
5 reasonable means to protect all persons committed to its custody and care. The Defendant has not  
6 proved otherwise and is not entitled to any remedy.

7 Accordingly, because Defendant has failed in his proof and because of the findings made under  
8 RCW 9.95.062(1), the Court now DENIES Defendant's motion. IT IS SO ORDERED.

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10 Dated this 1<sup>st</sup> day of May, 2020.

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13 Judge Jerry Costello  
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# Appendix II



# Washington State Court of Appeals

## Division Two

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

Derek Byrne, 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.

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June 8, 2020

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CASE #: [REDACTED]  
State of Washington, Respondent v. [REDACTED] Appellant

Counsel:

On the above date, this court entered the following notation ruling:

### **A RULING BY COMMISSIONER SCHMIDT:**

The motion to stay sentence or for conditional release pending appeal is denied. Given the Appellant's extensive criminal history, the delay resulting from the stay would reduce the deterrent effect of the sentence. RCW 9.95.062(1)(b). His physical condition does not place him at such increased risk of Covid-19 infection as to warrant release pending appeal.

Appellant is granted an extension of time to and including July 1, 2020, to file the Appellant's Opening Brief.

Very truly yours,

Derek M. Byrne  
Court Clerk

# Appendix III

August 13, 2020

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

No. [REDACTED]

Respondent,

v.

**ORDER GRANTING MOTION TO  
MODIFY COMMISSIONER'S RULING  
AND REMANDING TO THE SUPERIOR  
COURT**

Appellant.

This matter having come on regularly before this court upon the appellant's motion to modify the commissioner's ruling denying bail. After consideration, it is hereby

ORDERED that the motion to modify is granted. In addition, we remand to the Pierce County Superior Court to hold a hearing to determine whether bail and conditional release should be set pursuant to RCW 9.94A.585(3), RCW 9.95.02, RCW 10.73.040, and other applicable rules and statutes pending the resolution of the appeal.

The hearing shall occur within 14 days of this order, unless, upon motion of a party, the Superior Court finds good cause to continue the hearing. The bases for continuing the hearing shall be articulated on the record. In no event shall the hearing be continued longer than 28 days unless excused by order of this court or the Washington State Supreme Court.

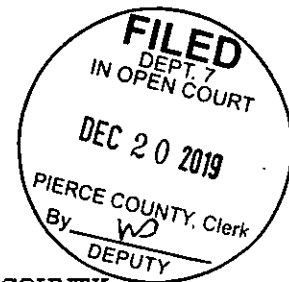
IT IS SO ORDERED.

Panel: Jj. Melnick, Sutton, Cruser

FOR THE COURT:

  
Melnick, J.

# Appendix IV



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: [REDACTED]

vs.

WARRANT OF COMMITMENT

1) ☐ County Jail

2) ☒ Dept. of Corrections

3) ☐ Other Custody

Defendant.

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

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

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

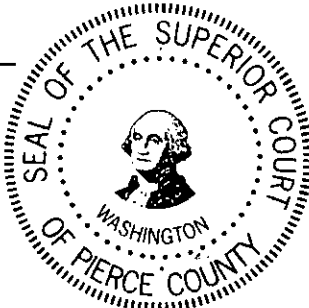
[X] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

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

WARRANT OF COMMITMENT -1

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

Dated: 12-20-19



By direction of the Honorable

Jerry Costello  
JUDGE

JERRY T. COSTELLO KEVIN STOCK

CLERK

By: Dorilee Reyes  
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date DEC 23 2019 By Dorilee Reyes Deputy

STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

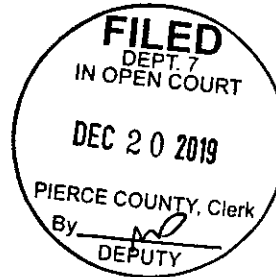
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

KEVIN STOCK, Clerk

By: \_\_\_\_\_ Deputy

mkr





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. [REDACTED]

vs.

JUDGMENT AND SENTENCE (JS)

Defendant.

☒ Prison  
☐ RCW 9.94A.712/9.94A.507 Prison Confinement  
☐ Jail One Year or Less  
☐ First-Time Offender  
☐ Special Sexual Offender Sentencing Alternative  
☐ Special Drug Offender Sentencing Alternative  
☐ Alternative to Confinement (ATC)  
☐ Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8  
☐ Juvenile Decline ☐ Mandatory ☐ Discretionary

SID: [REDACTED]  
DOB: [REDACTED]

I. HEARING

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

II. FINDINGS

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

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on

11-14-19  
by ☐ plea ☒ jury-verdict ☐ bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
1	THEFT IN THE FIRST DEGREE (JJ92)	9A.56.020(1)(c) 9A.56.030(1)(a) 9.94A.535(3)(d)	NONE	05/01/2018 - 05/31/2018	TACOMA PD #1828901513
2	THEFT IN THE SECOND DEGREE (JJ93)	9A.56.020(1)(a) 9A.56.040(1)(a) 9.94A.535(3)(d)	NONE	06/01/2018 - 06/30/2018	TACOMA PD #1828901513
3	THEFT IN THE SECOND DEGREE (JJ93)	9A.56.020(1)(a) 9A.56.040(1)(a) 9.94A.535(3)(d)	NONE	07/01/2018 - 07/31/2018	TACOMA PD #1828901513

- \* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Harm, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the ORIGINAL Information

- [ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- [ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	FTC		DISTRICT COURT 1 (TACOMA)	11-17-1989	A	MISD
2	FTC		DISTRICT COURT 1 (TACOMA)	11-29-1989	A	MISD
3	FTC		DISTRICT COURT 1 (TACOMA)	02-13-1990	A	MISD
4	FTC		DISTRICT COURT 1 (TACOMA)	04-18-1990	A	MISD
5	FTAS		DISTRICT COURT 1 (TACOMA)	11-26-1990	A	MISD
6	NVOL		DISTRICT COURT 1 (TACOMA)	01-10-1991	A	MISD
7	DWLS/FTAS		TACOMA MUNICIPAL COURT	07-16-1991	A	MISD
8	DWLS/FTAS		DISTRICT COURT 1 (TACOMA)	08-10-1991	A	MISD
9	DWLS/FTAS		TACOMA MUNICIPAL COURT	10-22-1991	A	MISD
10	NVOL		DISTRICT COURT 1 (TACOMA)	02-22-1992	A	MISD
11	DWLS/FTAS		TACOMA MUNICIPAL COURT	06-12-1992	A	MISD
12	DWLS/FTAS		TACOMA MUNICIPAL COURT	07-24-1992	A	MISD
13	THEFT 3		DISTRICT COURT 1 (TACOMA)	09-16-1992	A	MISD
14	DWLS		TACOMA MUNICIPAL COURT	08-28-1993	A	MISD
15	DWLS		DISTRICT COURT 1 (TACOMA)	11-18-1993	A	MISD
16	DWLS		DISTRICT COURT 1 (TACOMA)	11-22-1993	A	MISD
17	DWLS		DISTRICT COURT 1 (TACOMA)	11-29-1993	A	MISD
18	DWLS		TACOMA MUNICIPAL COURT	12-01-1993	A	MISD
19	DWLS		DISTRICT COURT 1 (TACOMA)	12-21-1993	A	MISD
20	DWLS		DISTRICT COURT 1 (TACOMA)	07-28-1994	A	MISD
21	CITY LIC VIO		MICREST MUNICIPAL COURT	11-20-1995	A	MISD
22	THEFT 3		DISTRICT COURT 1 (TACOMA)	03-27-1996	A	MISD
23	THEFT 3		DISTRICT COURT 1 (TACOMA)	03-27-1996	A	MISD
24	THEFT		DISTRICT COURT 1 (TACOMA)	04-02-1996	A	MISD

25	DWLS		DISTRICT COURT 1 (TACOMA)	04-05-1996	A	MISD
26	DWLS		TACOMA MUNICIPAL COURT	06-13-1996	A	MISD
27	DWLS		TACOMA MUNICIPAL COURT	07-23-1996	A	MISD
28	DWLS		TACOMA MUNICIPAL COURT	08-04-1996	A	MISD
29	THEFT 3		LAKEWOOD MUNI COURT	09-15-1996	A	MISD
30	DWLS		DISTRICT COURT 1 (TACOMA)	09-23-1996	A	MISD
31	DWLS		LAKEWOOD MUNI COURT	10-24-1996	A	MISD
32	DWLS		TACOMA MUNICIPAL COURT	08-25-1997	A	MISD
33	THEFT 3		DISTRICT COURT 1 (TACOMA)	12-05-1997	A	MISD
34	DWLS/FALSE STATEMENTS		DISTRICT COURT 1 (TACOMA)	12-07-1997	A	MISD
35	DWLS		DISTRICT COURT 1 (TACOMA)	12-26-1998	A	MISD
36	THEFT 3		LAKEWOOD MUNI COURT	02-12-1999	A	MISD
37	DWLS 3		LAKEWOOD MUNI COURT	12-01-1999	A	MISD
38	DWLS 3		LAKEWOOD MUNI COURT	12-14-1999	A	MISD
39	DWLS 3		LAKEWOOD MUNI COURT	02-21-2000	A	MISD
40	THEFT 3		LAKEWOOD MUNI COURT	06-30-2001	A	MISD
41	THEFT 3		LAKEWOOD MUNI COURT	12-15-2004	A	MISD
42	THEFT 3		LAKEWOOD MUNI COURT	06-28-2005	A	MISD
43	CRIM TRSP 1		SUPERIOR CT - PIERCE CTY	05-27-2016	A	MISD
44	FAILURE TO OBTAIN BUSINESS LIC		SUPERIOR CT - PIERCE CTY	05-27-2016	A	MISD
45	THEFT IN THE SECOND DEGREE	07-22-1993	SUPERIOR CT - PIERCE CTY	02-10-1993	A	NV
46	THEFT IN THE SECOND DEGREE	09-16-1993	SUPERIOR CT - PIERCE CTY	08-19-1993	A	NV
47	THEFT IN THE SECOND DEGREE	07-08-1999	SUPERIOR CT - PIERCE CTY	11-26-1997	A	NV
48	UDCS COCAINE	04-06-2000	SUPERIOR CT - PIERCE CTY	02-11-2000	A	NV
49	CONSP UDCS (COCAINE) W/SCHOOL ENHANCEMENT	03-08-2002	SUPERIOR CT - PIERCE CTY	09-19-2001	A	NV
50	ESCAPE 2	03-08-2002	SUPERIOR CT - PIERCE CTY	09-19-2001	A	NV
51	UPCS COCAINE	02-22-2007	SUPERIOR CT - PIERCE CTY	06-26-2005	A	NV
52	THEFT 1	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
53	ORGANIZED CRIME - LEADING	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
54	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
55	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
56	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
57	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV

58	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
59	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
60	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
61	UPCS	02-04-2011	SUPERIOR CT - PIERCE CTY	04-21-2010	A	NV
62	UPCS		SUPERIOR CT - PIERCE CTY	08-19-2015	A	NV
63	UPCS	10-26-2015	SUPERIOR CT - PIERCE CTY	08-19-2015	A	NV
64	THEFT 2		SUPERIOR CT - PIERCE CTY	03-05-2018	A	NV
65	THEFT 2		SUPERIOR CT - PIERCE CTY	03-06-2018	A	NV

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

### 2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	9+	II	43-57 MONTHS	NONE	43-57 MONTHS	10 YEARS
2	9+	I	22-29 MONTHS	NONE	22-29 MONTHS	5 YEARS
3	9+	I	22-29 MONTHS	NONE	22-29 MONTHS	5 YEARS

2.4[ ] **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence:

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

[X] above the standard range for Count(s) I, II, III

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

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

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

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

[X] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

Defendant is indigent.

2.6 [ ] **FELONY FIREARM OFFENDER REGISTRATION.** The defendant committed a felony firearm offense as defined in RCW 9.41.010.

[ ] The court considered the following factors:

[ ] the defendant's criminal history.

[ ] whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

[ ] evidence of the defendant's propensity for violence that would likely endanger persons.

[ ] other: \_\_\_\_\_

[ ] The court decided the defendant [ ] should [ ] should not register as a felony firearm offender.

### III. JUDGMENT

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

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

### IV. SENTENCE AND ORDER

#### IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

#### JASS CODE

RTN/RJN	\$ 11,829.68	Restitution to: <u>Melvin Mesick</u>
	\$ _____	Restitution to: _____
	(Name and Address--address may be withheld and provided confidentially to Clerk's Office).	
PCV	\$ 500.00	Crime Victim assessment
DNA	\$ <del>100.00</del>	DNA Database Fee <u>Waived</u>
PUB	\$ _____	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ <del>200.00</del>	Criminal Filing Fee <u>Waived</u>
FCM	\$ _____	Fine
JFR	\$ _____	Jury Fee

#### OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ 12,329.68 TOTAL

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

[ ] shall be set by the prosecutor.

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

☒ **RESTITUTION.** Order Attached

[ ] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$\_\_\_\_\_ per month commencing \_\_\_\_\_. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

[ ] **COSTS OF INCARCERATION.** In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

**COLLECTION COSTS** The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

**INTEREST** The restitution obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. No interest shall accrue on non-restitution obligations imposed in this judgment. RCW 10.82.090.

**COSTS ON APPEAL** An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse \_\_\_\_\_ (name of electronic monitoring agency) at \_\_\_\_\_ for the cost of pretrial electronic monitoring in the amount of \$\_\_\_\_\_.

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

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

4.3 **NO CONTACT**  
The defendant shall not have contact with Melvin Mesick 7-23-43 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 10 years (not to exceed the maximum statutory sentence).

[ ] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.


4.4a Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days unless forfeited by agreement in which case no claim may be made. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b BOND IS HEREBY EXONERATED

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

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

120 months on Count 1 months on Count

60 months on Count 2 months on Count

60 months on Count 3 months on Count

Cts II, III Concurrent w/ each other & Concurrent w/ Count I  
Actual number of months of total confinement ordered is: 120 months

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[ ] The confinement time on Count(s) contain(s) a mandatory minimum term of

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following which shall be served consecutively: Consecutive to [redacted] basis

Served now.

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589:

Confinement shall commence immediately unless otherwise set forth here:

(c) Credit for Time Served. The defendant shall receive credit for eligible time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served. No time served on this act. Defendant serves a

4.6 [ ] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows: defence on [redacted]

Count for months;

Count for months;

Count for months;

[ ] COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

The defendant shall be on community custody for:

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

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

(B) While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

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

- ☐ consume no alcohol.
- ☐ have no contact with: \_\_\_\_\_
- ☐ remain ☐ within ☐ outside of a specified geographical boundary, to wit: \_\_\_\_\_
- ☐ not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age
- ☐ participate in the following crime-related treatment or counseling services: \_\_\_\_\_
- ☐ undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse  
☐ mental health ☐ anger management and fully comply with all recommended treatment
- ☐ comply with the following crime-related prohibitions: \_\_\_\_\_
- ☐ Other conditions: \_\_\_\_\_
- ☐ For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

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

**PROVIDED:** That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 **[ ] WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

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

#### V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**

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

5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.

N/A

5.8 [ ] The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER: \_\_\_\_\_

DONE IN OPEN COURT and in the presence of the defendant this date: 12-20-19

JUDGE

Print name

JERRY T. COSTELLO

Sven Nelson  
Deputy Prosecuting Attorney

Print name: Sven Nelson

WSB # 24235

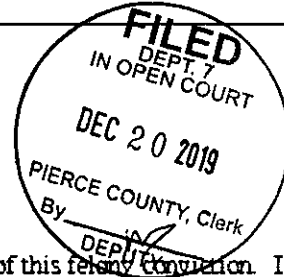
Chris Van Vechten  
Attorney for Defendant

Print name: Chris Van Vechten

WSB # 47320

[Signature]  
Defendant

Print name: \_\_\_\_\_



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

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

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

Defendant's signature: [Signature]

1  
2 **CERTIFICATE OF CLERK**

3 CAUSE NUMBER of this case: 18-1-04280-3

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

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

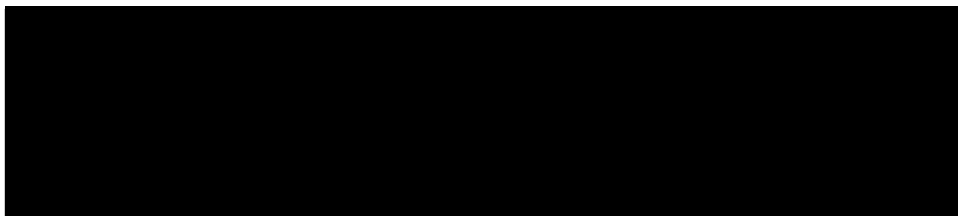
7 Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

8  
9 **IDENTIFICATION OF COURT REPORTER**

10 **KARLA THOMAS**

11 Court Reporter

# IDENTIFICATION OF DEFENDANT



Alias name, SSN, DOB: [REDACTED]

## Race:

☐ Asian/Pacific  
Islander

☒ Black/African-  
American

☐ Caucasian

## Ethnicity:

☐ Hispanic

## Sex:

☒ Male

☐ Native American

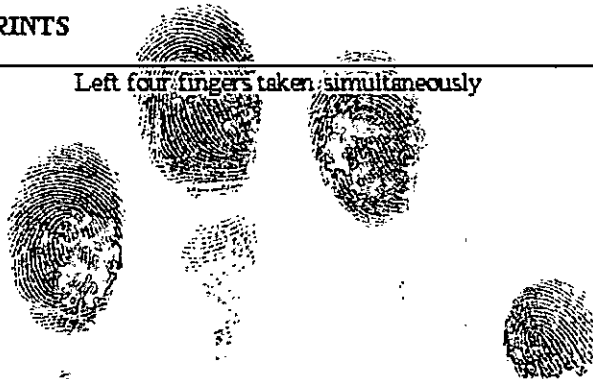
☐ Other: :

☒ Non-  
Hispanic

☐ Female

## FINGERPRINTS

Left four fingers taken simultaneously



Left Thumb



Right Thumb



Right four fingers taken simultaneously



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, [Signature] Dated: 12-20-19

DEFENDANT'S SIGNATURE: [Signature]

DEFENDANT'S ADDRESS: \_\_\_\_\_

# Appendix V

# WA State DOC COVID-19 Screening, Testing, and Infection Control Guideline

## Version 20

The purpose of this guidance document is to allow the Washington State Department of Corrections (DOC) to better respond to the emerging COVID-19 outbreak. This document covers screening, assessment, testing and infection control of patients housed in Washington DOC facilities.

### [View Guideline Updates](#)

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## Screening

- 1) **Patients presenting with symptoms prior to Health Services contact:** Direct the patient to immediately don a surgical mask, place them in an isolated area and contact Health Services.
- 2) **Intersystem intakes (Patient arriving from other than a DOC facility):** All intersystem intakes coming into DOC facilities will have a temperature taken and will be asked the two screening questions listed below as a. and b. If any of the three screening items are positive, the patient should immediately don a surgical mask and be placed in an isolated area.
- 3) Intersystem intakes originating from the community, such as patients from community custody field offices, work release, or community custody violators in jails will be screened prior to transport. If the patient screens positive they should be transported by staff in PPE including an N95 mask per the [Transportation of patients with suspected or confirmed COVID-19 disease](#) section below.
- 4) **Patients presenting with symptoms in Health Services:** Patients with symptoms concerning for COVID-19 should immediately don a surgical mask and be placed in an isolated area.
- 5) **Intrasystem intakes (Patients transferring to another DOC facility):** All intrasystem intakes should have a temperature taken prior to boarding and upon exiting the transport bus. If the patient has temperature greater than 100.4F immediately direct the patient to don a surgical mask, place them in an isolated area, and contact health services.
- 6) **Active screening of staff:** All staff entering DOC facilities will be screened for signs and symptoms of COVID-19 with questions and a temperature check. Staff screening positive will not be allowed entry to the facility and will have follow up through the secondary staff screening process.
- 7) **Active screening of patients prior to entering Health Services:** All patients entering Health Services areas for scheduled or unscheduled care will be screened for signs and symptoms of COVID-19 with questions and a temperature check. Patients screening positive will immediately don a surgical mask and be placed in an isolated area for evaluation, according to the [Health Services Evaluation](#) section below.

## Health Services Evaluation

- 1) Any health care provider making contact with patients referred from the screening section above should don personal protective equipment listed below *before* the evaluation:
  - a. Fit-tested N95 mask
  - b. Gloves
  - c. Eye protection defined as goggles or face shield
  - d. Gown
  - e. If not fit tested use PAPR instead of N95
- 2) For instructions on proper donning and doffing of PPE see the following [video](#) and/or [document](#). The purpose of this video is to demonstrate proper donning and doffing of PPE. For detailed guidance regarding appropriate PPE for each clinical situation, see the [PPE matrix](#) or the [Infection Control and Prevention](#) section of this document.
- 3) Nurse performs a clinical assessment, including temperature check, and asks the following 2 screening questions:

- a. Do you have a fever **OR** any new cough, shortness of breath, sore throat, diarrhea, or loss of taste/smell?
- b. Did you have contact with someone with possible COVID-19 in the previous 14 days?
- 4) If the answer to **either** screening questions is yes, or temperature is greater than 100.4F, notify a healthcare practitioner for further assessment:
  - a. If a practitioner is available onsite, they will assess the patient clinically and decide whether symptoms are compatible with COVID-19 disease. If yes, proceed to step C.
  - b. If no practitioner is onsite, the nurse will discuss the patient's case with the practitioner.
  - c. All patients screening positive for symptoms or fever who are placed in isolation should be tested for COVID-19 disease as described in the Testing Procedure section below.
  - d. The practitioner will determine the following:
    - i. Level of care based on acuity
      1. To emergency department for severely ill patients
      2. To a negative pressure room for any non-severely ill patient if one is available and the patient requires IPU level care, under airborne medical isolation precautions. Facilities may establish alternative isolation units with 24-hour nursing coverage, which are acceptable alternatives for patients requiring this level of medical care.
      3. Living unit medical isolation with contact and droplet precautions for patients with mild illness.
        - a. Patients isolated in a living unit with suspected or confirmed COVID-19 will have nursing assessments and vital signs at least every shift
    - ii. Patients remaining in the facility will have the following diagnostic workup:
      1. During influenza season (September through the end of March) perform rapid influenza testing
      2. Perform COVID-19 testing according to the Testing Procedure section below
        - a. If the initial COVID-19 test is negative AND it is influenza season (September through the end of March) send a viral respiratory panel (Interpath # 2910) along with the second COVID-19 test
      3. Consider other diagnostic testing as clinically appropriate, i.e. chest x ray for community acquired pneumonia
    - iii. In the event that the patient is unable to be tested but for whom clinical suspicion remains, the patient should be isolated for presumptive COVID-19 disease.

## Testing Procedure

- 1) Sample collection and testing:
  - a) Upper respiratory samples appropriate for COVID-19 testing can include any of the following. Patient collected nasal anterior and mid-turbinate samples should be preferred in settings where N95 masks are in short supply. All sampling techniques require synthetic tipped swabs, such as dacron, nylon, or polyester, without wooden handles:
    - i) Nasopharyngeal (NP) swab:
      - (1) NP swab sample collection is considered an aerosol generating procedure that requires the clinician to wear full PPE including an N95 mask.

- (2) Perform NP swab on both sides of the nasopharynx, with either one swab or two depending on composition of testing kit and swab availability
- (3) Please review the following nasopharyngeal swab sample collection guidance:
  - (a) NP swab is clinician collected only
  - (b) [NP swab guidance document](#)
  - (c) [NP swab demonstration video](#)
- ii) Nasal mid-turbinate swab:
  - (1) Nasal mid-turbinate swab can be clinician or patient collected.
  - (2) Use a flocked tapered swab. Tilt patient's head back 70 degrees. While gently rotating the swab, insert swab less than one inch (about 2 cm) into nostril (until resistance is met at turbinates). Rotate the swab several times against nasal wall and repeat in other nostril using the same swab.
- iii) Anterior nares specimen swab:
  - (1) Anterior nares specimen swab can be clinician or patient collected.
  - (2) Using a flocked or spun polyester swab, insert the swab at least 1 cm (0.5 inch) inside the nares and firmly sample the nasal membrane by rotating the swab and leaving in place for 10 to 15 seconds. Sample both nares with same swab.
- b) There are currently three options for COVID-19 testing:
  - i) Washington State DOH/public health laboratory:
    - (1) Refer to [Washington DOH COVID-19 Specimen Collection and Submission Instructions](#) for guidance on collecting, submitting, and shipping of test samples.
    - (2) When the decision is made to test patients for COVID-19 use the following lab testing equipment:
      - (a) Nasal swab (any of the three described above) in viral transport media testing tube is the preferred testing sample in all patients. Use only synthetic sterile swabs.
      - (b) Test sputum **if easily available** using a sterile specimen cup. Do not induce sputum in patients who are not producing sputum.
    - (3) Use the [Washington State DOH Sample Submission Form](#) to submit test samples to the state DOH lab.
    - (4) Write the provided PUI# on the submitter section of the submission form.
    - (5) Send samples via Federal Express pickup using supplied packaging that complies with the IATA/DOT regulations for shipping category B biological substances. Laboratory personnel can review the following [guidance](#) for more shipping information about shipping samples through Federal Express. Shipping labels will be provided for both testing laboratories.
  - ii) Interpath Laboratory:
    - (1) Testing through Interpath can be accomplished according to the instructions below. Testing through Interpath does not require specialized supplies for packaging and shipping as samples are picked up through the established Interpath lab courier.
      - (a) Order COVID-19 PCR testing as an unlisted test
      - (b) Preferred specimen: Nasal Swab (any of the 3 described above) in Viral Transport Media
      - (c) Alternate specimen: Nasal Swab (any of the 3 described above) in Sterile Tube w/Saline
      - (d) Preferred submission: Nasal Swab (any of the 3 described above) in Viral Transport Media
        - (i) Submitted frozen
      - (e) Alternate submission: 1 mL Nasal Swab (any of the 3 described above) in Sterile Tube w/Saline
      - (f) Submitted frozen

- (g) Handling: State Patient Address
- (h) Rejection criteria: Calcium alginate swabs or swabs with wooden shafts
- (i) Stability:
  - (i) Ambient: Unacceptable
  - (ii) Refrigerated: 3 Day(s)
  - (iii) Frozen: 2 Month(s)
  - (iv) Incubated: Unacceptable
- iii) University of Washington Virology Lab:
  - (1) Use the following [testing instructions](#) and the linked [UW Virology COVID-19 test requisition](#).
  - (2) Send samples via Federal Express pickup using supplied packaging that complies with the IATA/DOT regulations for shipping category B biological substances. Laboratory personnel can review the following [guidance](#) for more shipping information about shipping samples through Federal Express. Shipping labels will be provided for both testing laboratories.
- 2) Notify facility Infection Prevent Nurse, Facility Medical Director, and Health Services Manager

## Patients at High Risk for Severe COVID-19

- 1) Patients with underlying conditions and those with advanced age are at higher risk for severe disease and complications if they acquire COVID-19. Patients with the following conditions should be considered at high risk:
  - a) Aged 50 years or older\*\*
  - b) COPD or moderate to severe asthma
  - c) Cardiovascular disease including hypertension
  - d) Patients who are immunosuppressed based on diagnosis or due to medication
  - e) Cancer
  - f) Morbid obesity (BMI >40)
  - g) Diabetes, particularly if poorly controlled
  - h) Chronic kidney disease including those with ESRD on dialysis
  - i) Hepatic cirrhosis
  - j) Pregnancy or the immediate post-partum period
- 2) The following recommendations should be made for patients identified as high risk :
  - a) Wear issued face covering when out of cell or when within 6 feet of others
  - b) Perform frequent hand hygiene
  - c) Perform frequent cleaning of cell throughout the day
    - i) Highly discourage the use of bleach as this can exacerbate conditions for those patients with underlying lung disease
  - d) Avoid contact of high-touch surfaces
  - e) Limit movement in the facility
  - f) Social distancing (staying at least 6 feet from others) should be maintained during Day Room, Yard, Gym, Dining Halls, Religious Services, Pill Line, and other areas where the incarcerated population congregates.

\*\*National Institute of Corrections recognizes that incarcerated population ages 50 and above are considered elderly

## Triage for appropriate care setting of suspected or confirmed COVID-19 patients:

- 1) COVID-19 can display a very wide range of disease severity, from asymptomatic and mild upper respiratory symptoms to severe lower respiratory tract disease with ARDS and multiple organ failure. Therefore triage to the appropriate care setting and subsequent monitoring are important aspects of clinical care for patients with COVID-19.
- 2) Risk factors for severe disease and mortality include the following:
  - a) Lung disease including COPD and asthma
  - b) Cardiovascular disease including hypertension and cardiomyopathy
  - c) Diabetes
  - d) Immunosuppression due to diagnosis or medication
    - i) History of Transplant
    - ii) HIV with CD4 <200 or detectable viral load
    - iii) Immune modulators or immunosuppressive medications including corticosteroid treatment at the equivalent of 20 mg of oral prednisone or more daily
  - e) Cancer
  - f) Chronic kidney disease
  - g) Cirrhosis
  - h) Age 50 years old or greater
- 3) Patients with one or more of the risk factors above should be considered at high risk for clinical deterioration and should be monitored closely regardless of initial care setting.
- 4) Patients with confirmed or suspected COVID-19 disease can be triaged into the following groups based on the clinical evaluation:
  - a) Mild disease: Patients with mild disease may have fever, cough, upper respiratory tract symptoms, myalgias, and fatigue without significant dyspnea or hypoxia (oxygen saturation 96% or greater).
  - b) Moderate to severe disease: Patients with significant dyspnea, hypoxia (oxygen saturation less than 96%) or other clinical evidence for severe disease should be triaged to a higher level of care.
    - i) If hypoxia is mild (92-95% on room air) and the patient is otherwise clinically stable admission to an inpatient unit or other unit with 24 hour nursing coverage, with on- site diagnostic evaluation may be considered:
      - (1) In addition to the diagnostic testing described in the Health Services Evaluation section above, at a minimum perform a chest x ray and the following lab studies:
        - (a) CBC with differential
        - (b) CMP
        - (c) CRP
        - (d) LDH (Interpath #1018)
        - (e) INR
        - (f) D-dimer (Interpath #2657)
        - (g) Creatine kinase (CK) (Interpath #1015) and troponin (Interpath #2688)
        - (h) lactic acid (Interpath #2092)
      - (2) Patients in this group with risk factors for severe disease are at high risk for rapid clinical deterioration. Consider emergency department evaluation as indicated based on clinical judgement.

- ii) If hypoxia is severe (inability to maintain oxygen saturation above 95% on 4L supplemental O2 or greater) or there is other clinical evidence of severe disease, including sepsis, cardiac complications, or coagulopathy, the patient should be transferred to the emergency department for further diagnostic evaluation and treatment.

### **Treatment and monitoring of outpatients with suspected or confirmed COVID-19 and mild disease as defined above:**

- 1) Treatment for patients with mild disease is supportive:
  - a) Patients with mild disease will be isolated in a living unit and will have nursing assessments every shift. Signs of clinical deterioration that should provoke transfer to a higher level of care or further diagnostic assessment include:
    - i) Hypoxia with oxygen saturation less than 96% on room air
    - ii) Development of significant dyspnea
    - iii) Inability to tolerate oral intake
    - iv) Clinical evidence for sepsis, cardiac complications, or coagulopathy.
  - b) Supportive care can include oral hydration, anti-emetics if indicated, and analgesics/antipyretics:
    - i) Prefer acetaminophen for fever and myalgias
    - ii) Anecdotal reports initially suggested NSAIDs may have been associated with worsening COVID-19 disease in some patients. Currently there is no evidence to support either harm or safety for use of NSAIDs in patients with confirmed or suspected COVID-19. In the face of this uncertainty, acetaminophen should be used preferentially for pain and fever in this patient group; however, NSAIDs can be used intermittently based on clinical judgement on a case-by-case basis if no contraindications are present.
    - iii) Nebulized treatments should not be used as they may aerosolize virus. If bronchodilator treatment is needed metered dose inhalers can be used.
  - c) For patients in the mild disease category be aware that early experience with COVID-19 cases suggests the potential for clinical deterioration **five to ten days after illness onset**, including the onset of respiratory failure, sepsis, and cardiac complications.
  - d) There are no data to suggest a link between ACE inhibitors and ARBs with worse COVID-19 outcomes. These medications should be continued unless the clinical picture warrants holding them (ex. hypotension).

### **Treatment and monitoring of the COVID-19 patient admitted to an inpatient unit or similar setting:**

- 1) Patients initially triaged to an inpatient unit care setting or another unit with 24 hour nursing coverage, or admitted to one after return from an emergency department evaluation or hospitalization for COVID-19:
  - a) Admit to negative pressure room with airborne medical isolation precautions *if available*
  - b) Until further evidence for benefit and safety is available, anti-viral agents are not recommended.
  - c) Supportive care ordered as described above for patients with mild illness
  - d) Supplemental oxygen by nasal cannula if patient is dyspneic or O2 saturation is less than 96% on room air.
  - e) Close monitoring for clinical deterioration including worsening hypoxia, with awareness of the potential for severe disease to develop 5-10 days after illness onset.
  - f) Clinical factors that should provoke consideration for transfer to a higher level of care:
    - i) Need for greater than 2L supplemental oxygen to maintain saturation above 92%
    - ii) Bilateral infiltrates on chest x ray suggesting moderate to severe pneumonia
    - iii) Elevated D Dimer > 1000 ng/ml

- iv) Elevated CRP > 100
- v) LDH > 245
- vi) CPK > 2x ULN
- vii) Abnormal/elevated troponin
- viii) Elevated AST and ALT
- ix) Significant lymphopenia or neutrophilia:
  - (1) Calculate absolute neutrophil to absolute lymphocyte ratio: if 3.0 or greater the patient should be considered at high risk for clinical deterioration **OR**
  - (2) Absolute lymphocyte count < 0.8
- x) Lactate > 4
- xi) New creatinine elevation
- xii) Other clinical findings based on clinical judgement of medical team
- g) Consider monitoring diagnostic studies recommended above through the course of illness until clear clinical improvement is seen.
- h) Patient may transfer back to living unit medical isolation for the remainder of the medical isolation period after clinical improvement is seen and the risk for deterioration has passed.

**For questions or consultation regarding management of patients with suspected or confirmed COVID-19 call the DOC COVID medical duty officer phone: 564-999-1845**

## Infection Control and Prevention

### Infection control and prevention principles:

- 1) Definitions:
  - a) **Medical isolation:** Separating a symptomatic patient with a concern for a communicable disease from other patients. Medical isolation status also applies to asymptomatic patients testing positive for COVID-19.
  - b) **Quarantine:** Separating asymptomatic patients who have been exposed to a communicable disease from other patients through close contact.
  - c) **Cohort:** Grouping patients infected with or exposed to the same agent together. Isolated and quarantined patients should NOT cohort together.
- 2) All incarcerated individuals in facilities, including work releases, will wear DOC provided mandatory routine face coverings.
- 3) PPE must be changed between EVERY patient in isolation or quarantine any time there is close contact except in the following situations:
  - a) Regional Care Facilities and tiers, units or pods of isolation units where ALL patients have a confirmed positive result for COVID-19:
    - i) It is not necessary to change eye protection, mask/respirator, and gown between each patient.
    - ii) Hand hygiene and new gloves are still needed between each patient. This can be achieved by double gloving, removing the outer gloves, disinfecting the inner gloves, and putting on new outer gloves between patients.
    - iii) All PPE should be changed if visibly soiled.
- 4) **Facility management of isolated/quarantined patients:**

- a) If possible, cluster cases in medical isolation within in a single location/wing within the facility to help streamline ongoing assessments and delivery of services to the affected population
- b) If possible, medical isolation areas should not be located in units housing quarantined patients or general population individuals unless it has been confirmed by environmental analysis that isolation cells are under negative pressure and air is ventilated into the outdoors.
- c) If patients need to be isolated/quarantined in a living unit, allowances will be made to accommodate patients in this location:
  - i) Television, playing cards and/or other recreational activities will be provided
  - ii) There will be no cost to the patient for the duration of their stay
  - iii) All patients placed in medical isolation/quarantine will be issued hygiene kits and new clothing as needed
- d) Provision of health care
  - i) Routine health care will be provided at cell front.
  - ii) Medications will be given at cell front
  - iii) Insulin and other diabetic services will be given at cell front
  - iv) Routine mental health services will be provided at cell front
  - v) Emergency medical needs will be assessed immediately by medical personnel, as required. Patient will be transported as deemed necessary if a higher level of medical care than can be delivered in the unit is required. There is not a medical indication for restraints during transport. Patient will don a surgical mask if it is not contraindicated.
- e) Meals will be provided by Food Services and delivered to the cell.
  - i) The Unit staff will notify Food Services at the beginning of each shift the number of meals that are needed
  - ii) **Gloves** will be worn when picking up used trays
- f) Education Programs will be suspended
- g) **Phone Use in Medical Isolation and Quarantine:**
  - (1) Phone Use in Medical Isolation and Quarantine for Areas WITH In-Cell Phone Use:**
  - (2) Staff shall don appropriate PPE:
    - (a) Symptomatic patients with presumed or confirmed COVID-19: **N95 respirator, eye protection, gown, and gloves**
    - (b) Asymptomatic patients with presumed or confirmed COVID-19: **surgical mask, eye protection, gown and gloves**
  - (3) Staff shall cover the phone handset with a plastic sleeve and use tape/bands to cinch both ends to enclose the entire handset
  - (4) Patient will wear a surgical mask, if they are medically able to do so
  - (5) Staff shall pass the handset of the phone to the patient via the cuff port or an opening of the door if necessary
  - (6) Staff shall have the patient wash his/her hands immediately after using the phone
  - (7) Staff shall carefully remove the plastic sleeve from the phone and dispose of it in the garbage container

- (8) Staff shall remove PPE appropriately and then sanitize or wash hands as per protocol
- (9) Staff shall spray disinfectant over the entire phone, let it sit for 10 min., and put on new gloves before wiping it off

**ii) Phone Use in Medical Isolation and Quarantine for Areas WITHOUT In-Cell Phone Use:**

- (1) Facility will designate staff member to make weekly status update phone calls to person identified by patient
- (2) When a patient is placed into medical isolation, he/she shall be asked to provide the name and telephone number of a person for a weekly phone call, which will be provided to the designated staff person making the call
- (3) Designated staff will verify no current restrictions on contact exist prior to making call
- (4) Designated staff will make call to identified person to notify of placement into medical isolation, as well as a weekly call to update on status
- (5) Designated staff will note the call by placing a chrono in OMNI

**h) Showers in Medical Isolation and Quarantine:**

- i) Patients in Medical Isolation and Quarantine will be allowed to maintain personal hygiene including showers according to the following:
  - (1) Patients should be offered showers starting after day 7 in medical isolation. For patients in quarantine, showers should be offered per custody unit schedule.
  - (2) These patients can be rotated, and must remain at least 6 feet apart.
  - (3) The patients must wear a **surgical mask** at all times while out of their cell.
  - (4) PPE for unit staff having close contact with patients:
    - (i) **N95 mask, disposable gown, gloves, and eye protection**
  - (5) The showers will need to be disinfected according to the manufacture's guidelines after each shower.
  - (6) Showers should not be vigorously scrubbed, deep cleaned, or power washed due to concern that these methods could cause virus to be aerosolized.
  - (7) PPE for staff or incarcerated individuals cleaning showers used by patients in Medical Isolation:
    - (a) **surgical mask, disposable gown, gloves and eye protection**

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## **Infection Prevention and Control Categories:**

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### **Medical isolation:**

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- 1) Medical isolation status is indicated for patients in the following clinical situations:
  - a) Patients identified as having an influenza-like illness or other symptoms potentially caused by COVID-19.
  - b) Asymptomatic patients testing positive for COVID-19.
- 2) All patients placed into medical isolation for influenza-like illness will be tested for COVID-19
- 3) As soon as staff become aware that a symptomatic patient is suspected or confirmed as a COVID-19 case, staff should direct the patient to put on a surgical mask until the patient can be isolated.
  - a) Each housing unit and Shift Commander's office will maintain a supply of surgical masks
  - b) Surgical masks will be made available in clinic waiting rooms
  - c) Staff will work to isolate the patient and notify medical if they are identified outside the clinic

- 4) If the patient is off the living unit at the time COVID-19 symptoms are noted, staff working with the patient will notify the applicable housing unit that they are sending the patient back for single cell confinement until the patient can be assessed by medical
  - a) If a single room is not immediately available, confine the patient at least 6 feet away from others until they have been evaluated by medical
  - b) If the patient is already in the living unit, isolate the patient in their cell and notify medical
- 5) Droplet Precautions will be initiated:
  - a) Droplet Precaution Medical isolation signs will be hung outside the room at cell front
  - b) Proper PPE will be available outside the medical isolation cell or somewhere easily accessible
- 6) All staff must wash hands with soap and water or with alcohol sanitizer prior to entering a patient's cell and removing gloves.
- 7) All patients requiring medical isolation under this protocol who require ongoing use of aerosol generating medical treatments such as continuous positive airway pressure or nebulized bronchodilator treatment should be housed in negative pressure isolation rooms, if available, until release criteria have been met as described in Clinical Management of Medical Isolation Patients #3b below. If a negative pressure isolation room is not available, consult the COVID medical duty officer to discuss placement.

#### ***PPE for medical isolation:***

- 1) In the following situations PPE will be comprised of an **N95 mask, eye protection, gown, and gloves**:
  - a) Patients with suspected or lab confirmed COVID-19 while symptomatic with cough or sneezing.
  - b) While performing diagnostic nasopharyngeal swab sample collection or any other potentially aerosol generating procedures.
- 2) In the following situations PPE will be comprised of a **surgical mask, eye protection, gown, and gloves**:
  - a) When speaking with a symptomatic patient from outside of a medical isolation cell with an open door. Speaking to a patient from outside a medical isolation cell with the door closed does not require PPE other than general use face covering.
  - b) Any patient who has tested negative for COVID-19 but remains in medical isolation and continues to be symptomatic
  - c) Patients with suspected or lab confirmed COVID-19 without cough or sneezing.
  - d) Asymptomatic patients who have tested positive for COVID-19.
- 3) All staff must wash hands with soap and water or with alcohol sanitizer after leaving a patient's cell and removing gloves.
- 4) A trash bin and bag, hand sanitizer, and gloves should be available immediately outside the cell or unit to assist staff in proper doffing of PPE.

#### ***Nursing and Unit Management of Patients on Medical Isolation Status:***

- 1) Custody will work with medical staff to determine the best location to house patients on medical isolation status.
- 2) If single cell is not available, it is acceptable to cohort patients with COVID-19 together if they both/all have lab confirmed disease and are not thought to have other communicable diseases concurrently (i.e. influenza or another viral respiratory disease).
- 3) Symptomatic isolated patients and asymptomatic COVID positive patients must be housed separately from asymptomatic exposed patients (quarantined).

- 4) If possible, avoid isolating patients with suspected or confirmed COVID-19 in cells with open bars.
- 5) As a general rule, isolated patients will not be allowed out of the cell unless security or medical needs require it
- 6) If an isolated patient needs to be out of their cell, they will don a surgical mask during the necessary movement
- 7) Staff will ensure that the patient goes where directed by communication between the sending and receiving area staff
- 8) Any pill line medications will be delivered by medical staff unless medical staff determines the need for a different protocol

***Clinical management of medical isolation patients:***

- 1) Patients isolated in a living unit with suspected or confirmed COVID-19 will have nursing assessments and vital signs at least every shift, with referral to a practitioner as clinically indicated.
- 2) Medical practitioners should document an assessment on patients in medical isolation for confirmed or suspected COVID-19 each business day until they are asymptomatic for 24 hours.
- 3) Patients with laboratory confirmed COVID-19 will remain in medical isolation until they have been asymptomatic for 14 days with the following exceptions:
  - a) Patients with confirmed COVID-19 who are significantly immunocompromised may continue to shed contagious virus after the isolation period is complete. To prevent potential spread of COVID-19 disease from these patients additional time in medical isolation may be required.
    - i) Any patient with significant immunocompromise by diagnosis or medication as determined by a medical practitioner will be discussed with the COVID medical group by calling the COVID medical duty officer phone prior to release from isolation in order to determine a strategy to ensure safe release from medical isolation.
  - b) Patient with confirmed COVID-19 who require ongoing use of medical treatments that may aerosolize virus, such as nebulized bronchodilators and continuous positive airway pressure (CPAP) will require negative COVID testing prior to release from the negative pressure isolation room.
    - i) Perform the first test on day 15 of medical isolation
    - ii) The patient will remain in a negative pressure isolation room until they have tested negative for COVID-19 on two consecutive tests 48 hours apart. If the patient tests positive for COVID-19 retain in negative pressure isolation and repeat the test in 7 days.
- 4) Patients who tested negative for COVID-19 will remain in medical isolation until:
  - a) they have been asymptomatic for 14 days, unless they have a documented or confirmed alternative diagnosis that explains their symptoms, such as in the following examples:
    - i) Mild respiratory illness with a positive influenza test
    - ii) Fever explained by infection at another site, such as UTI or cellulitis
  - b) **OR**
  - c) they have been asymptomatic for at least 72 hours and have tested negative for COVID-19 twice with at least 48 hours between tests
- 5) Patients with symptoms isolated for suspected or confirmed COVID-19 disease who become asymptomatic:
  - a) After an isolated patient is asymptomatic for 24 hours, the intensity of monitoring can be decreased to once daily temperature and symptom checks at cell front. Patients with recurrence of symptoms should be evaluated by a medical practitioner.
  - b) Recommended PPE for these asymptomatic medical isolation nursing checks will include **surgical mask, eye protection, gown, and gloves.**

- c) Unless transfer to a setting for a higher level of medical care is required, all medical care should be delivered in the patient's medical isolation cell.
- 6) Asymptomatic patients testing positive for COVID-19:
  - a) Place in medical isolation for 14 days from the date of the positive test if the patient remains asymptomatic
  - b) If the patient subsequently becomes symptomatic, follow the isolation criteria in Medical Isolation section below

### **Quarantine:**

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Patients who are asymptomatic but have been in close contact with confirmed or suspected COVID-19 patients should be placed on quarantine status.

#### ***PPE for staff interacting with quarantined patients:***

- 1) Staff performing tier checks in open dorm style housing units should remain 6 feet away and have patients sit on their beds. PPE worn during these tier checks includes **gloves**.
- 2) Staff performing nursing or medical assessments on quarantined patients requiring close contact including in open dorm style housing units, should don the following PPE: **surgical mask, gown, eye protection and gloves**.
- 3) Staff interacting with quarantined patients in units with barred cells WITHOUT contact and staying at least 6 feet away do not require PPE other than a **routine face covering**.
- 4) Staff performing a temperature check through a closed cell door with an open cuff port should don the following PPE: **surgical mask, eye protection, and gloves**.

#### ***Nursing and Unit Management of Patients on Quarantine Status:***

- 1) Quarantined patients can be housed alone or cohorted with other quarantined patients from the same exposure.
- 2) If the patient develops symptoms or fever, a full assessment should be done by entering the cell in PPE appropriate for symptomatic patients including full PPE with N95 mask.
- 3) Patients in quarantine should don a **surgical mask** anytime they leave their cell.
- 4) Any pill line medications will be delivered to the quarantined patient by medical staff unless medical staff determines the need for different protocol.
- 5) A trash bin and bag, hand sanitizer, and gloves should be available immediately outside the cell or unit to assist staff in proper doffing of PPE.
- 6) Unless transfer to a setting for a higher level of medical care is required, all medical care should be delivered in the patient's quarantine cell.
- 7) Signage indicating that the quarantine cells are under droplet precautions will be hung at the unit or tier level.

#### ***Clinical Management of Patients on Quarantine Status:***

- 1) Asymptomatic patients are placed on quarantine status after being identified as a close contact of a symptomatic suspected or confirmed COVID-19 case, or an asymptomatic confirmed COVID-19 case.
- 2) Patients placed into quarantine status who are close contacts of confirmed (by a positive COVID test) cases will be tested for COVID-19 with a viral PCR test within 24 hours of confirmation of the positive test result.
  - a) Quarantine patients testing positive for COVID-19 or who become symptomatic will be transferred to medical isolation. Further management of these patients is described in the [Asymptomatic Patients Testing Positive for COVID-19](#) section.

- b) Patients testing negative for COVID-19 will remain on quarantine status. They will be retested for COVID-19 on quarantine day #7.
  - i) Patients testing negative for COVID-19 will remain on quarantine status until 14 days from the time of last contact with the index case has elapsed.
  - ii) Patients who test positive for COVID-19 or become symptomatic will be transferred to medical isolation. Further management of these patients is described in the [Asymptomatic Patients Testing Positive for COVID-19](#) section.
- 3) Close contacts of patients who test negative for COVID-19 may only be released from quarantine if the associated symptomatic patient tests negative for COVID-19 on two tests at least 48 hours apart:
  - a) If repeat testing is not available, close contacts of patients testing negative once for COVID-19 may be released from quarantine 14 days after their last contact with the symptomatic patient per the Medical Isolation section above.
- 4) At a minimum patients in quarantine will be assessed twice daily by nursing staff. The assessment will include a temperature check, oxygen saturation, and monitoring for development of any symptoms at a minimum. If the patient develops symptoms, fever, or oxygen desaturation while in quarantine, they will be assessed by a medical practitioner per Health Services Evaluation section step #3.
  - a) For stand-alone camps, Health Services staff will determine scheduling to accommodate assessment of quarantined patients 7 days per week.
  - b) If a quarantined patient develops symptoms of COVID-19, they will be immediately removed from quarantine, if they were housed with other asymptomatic patients, and placed into medical isolation. If cohorted with other asymptomatic patients, the quarantine period for those patients will be reset to day 0 of 14.
  - c) If the symptomatic patient lived in dormitory-style housing, consider quarantining an entire dorm or wing of a housing unit, especially if multiple cases occur.
  - d) Staff performing nursing assessments of patients in quarantine should do so by discussing development of symptoms and perform temperature check at the cell front after donning PPE outlined above.
    - i) Disposable thermometers should be used by patients if available. If multi-use thermometers must be used, they should be disinfected in between patients.
- 5) Close contacts of patients who test positive for COVID-19 will remain in quarantine 14 days after the last exposure to the patient.

#### **Routine Pre-procedure COVID-19 Testing:**

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- 1) Community health care providers may require routine COVID-19 testing of asymptomatic patients prior to surgical or other procedures.
  - a) Patients may be housed in their usual housing units without special quarantine or isolation procedures while awaiting test results.
  - b) Staff interacting with these patients may do so without additional PPE other than a **routine face covering**.
  - c) Patients testing positive should follow [guidance](#) above regarding asymptomatic COVID positive patients.

#### **Intersystem Transfer Separation:**

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Intersystem transfer separation can include individuals entering or exiting DOC custody that require separation from the general population to reduce the potential risk of COVID spread

#### **Intake separation:**

- 1) This section applies to all intersystem intakes into DOC facilities, including:

- a) Community custody violators
  - b) Patients arriving from county jails or other detention facilities
  - c) Work release, GRE, or rapid reentry returns
- 2) Patients in these categories will be housed separate from the general population as a cohort after intake to the receiving facility
- a) Within 24 hours of arrival patients in intake separation will be tested for COVID-19
    - i) If the COVID-19 test is negative and the patient is asymptomatic, the patient remains in intake separation and is re-tested on day 7 after intake. If the second test is negative, the patient can be released to the general population on day 10 post intake.
    - ii) Patients becoming symptomatic or testing positive at either point will be transferred to medical isolation and managed according to protocol.
    - iii) If a patient in an intake separation cohort tests positive for COVID-19, all patients testing negative from that cohort will be placed on quarantine status.
- 3) Patients in these categories should be separated from the general population at the receiving facility for 14 days after arrival if COVID-19 testing is not available or is not feasible due to the patient's length of stay
- 4) Patients arriving together at the facility on the same day can be cohorted together
- 5) Additional PPE, other than a **routine face covering**, is not needed when interacting with asymptomatic patients in intake separation status.
- 6) If a patient in routine intake separation becomes symptomatic, they should enter medical isolation status and the remaining intake cohort should be placed in quarantine for 14 days.

### Protective Separation

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- 1) Housing units with a high concentration of individuals at high risk for severe COVID-19 may be placed on protective separation status in order to reduce the risk of introduction and transmission of virus.
- a) At the current time, the following units are on protective separation status:
    - i) CRCC-Sage
    - ii) AHCC K unit
- 2) Special direction to staff working on protective separation units:
- a) Only necessary and assigned staff should have access to this unit
  - b) Staff must wash hands before entering and exiting the unit
  - c) Staff will remove and store their routine face covering and don a new surgical mask prior to entering the unit.
  - d) No staff interacting with quarantined and isolated individuals should be entering these units during their assigned shift
- 3) Special direction to incarcerated individuals living on special units:
- a) Individuals are restricted to their living unit
  - b) Patients are provided a routine face covering for use at all times
  - c) Patients are restricted from eating in main chow halls and meals are delivered to the living unit
  - d) Individuals shall be given pill line at their cells
  - e) Individuals should be allowed to self-quarantine if they choose

### PPE Requirements for Prisons and Work Release Staff:

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- 1) **Tyvek suites** are not considered appropriate PPE for the purpose of this guideline and should not be used when contacting patients with suspected or confirmed COVID-19 or those on quarantine.

- 2) Contact with asymptomatic individuals who are not on medical isolation or quarantine:
  - a) **Gloves**
    - i) Follow standard universal precautions
  - b) **Routine face covering**
- 3) Contact with individuals on medical isolation status:
  - a) In the following situations **N95 mask, eye protection, gown, and gloves** should be worn:
    - i) Contact with incarcerated individuals with suspected or lab confirmed COVID-19 while symptomatic with cough or sneezing
  - b) In the following situations **surgical mask, eye protection, gown, and gloves** should be worn:
    - i) When speaking with a symptomatic patient from outside of an medical isolation cell
    - ii) Any contact with a patient who has tested negative for COVID-19 but remains on medical isolation
    - iii) Any contact with incarcerated individuals with suspected or lab confirmed COVID-19 without cough or sneezing.
    - iv) Any contact with incarcerated individuals who are asymptomatic but have tested positive for COVID-19.
  - c) In the following situations PPE will be comprised of **gloves**:
    - i) Passing items through a closed door cuff port and NO face to face contact
    - ii) If possible, avoid medical isolation in cells with open bars
- 4) Contact with individuals on quarantine status:
  - a) Open bay units:
    - i) Close contact (ex. Temp check): **surgical mask, gown, gloves, eye protection**
    - ii) No close contact (example walking through unit): **gloves**
  - b) Dayroom/or other close quarters:
    - i) Close contact (within 6 feet): **surgical mask, gown, gloves, eye protection**
    - ii) No close contact (example walking through unit): **gloves**
  - c) Pat searches:
    - i) **Surgical mask, gown, gloves** (for every person pat searched), **eye protection**
  - d) Closed door cells with *cuff port*:
    - i) Passing items through cuff port and NO face to face contact: **gloves only**
    - ii) No contact at all (talking through the door): **No PPE required**
    - iii) Close contact: **surgical mask, gloves, eye protection**
  - e) Bar cells:
    - i) Close contact (ex. temp check): **surgical mask, gown, gloves, and eye protection**
- 5) Staff active screening of patients or staff at entry into facilities, health services, or other :
  - a) **Active screening without use of a protective barrier:**
    - i) **Surgical mask, gown, gloves and eye protection**
    - ii) **When an active screener should change PPE:** If a facility active screener comes within 6 feet of a staff member or patient that screens positive PPE should be removed and discarded, hand hygiene should be performed, and new PPE should be donned prior to resuming screening.
  - b) **Active screening while using protective barrier:**
    - i) PPE should consist of **gloves and routine face covering**
    - ii) The screener should stand behind the protective barrier. Temperature should be taken by reaching around the barrier. The screener should ensure they are positioned so that the barrier blocks any potential respiratory droplets from the screened individual. If no contact was made between the

screeners and the screened individual, gloves do not need to be changed between screenings, unless they are visibly soiled or torn.

- 6) All staff working in DOC locations must wear an approved face covering while on duty.
- 7) Recommended personal protective equipment for both Health Services and Prisons/Work Release staff is summarized in the linked [PPE matrix](#).

## Environmental Cleaning

- 1) Enhanced frequency of cleaning and disinfection procedures of high touch surfaces is recommended for COVID-19 in healthcare settings, including those patient-care areas in which aerosol-generating procedures are performed.
- 2) Disinfectant must be:
  - a) EPA-approved as a hospital/healthcare or broad spectrum disinfectant
  - b) Contain quaternary ammonium
- 3) Management of laundry:
  - a) Laundry from medical isolation or quarantine patients and cells will be placed in rice bags and transported in yellow bags. Contents should be washed/treated as infectious laundry.
- 4) Food service management:
  - a) Meals for isolated and quarantined patients should be served in disposable clamshells. If trays are used, staff should wear gloves and wash hands before and after handling.
- 5) Medical waste from medical isolation and quarantined cells can be discarded using the regular waste disposal process.
- 6) Any individuals involved in cleaning rooms occupied by isolated suspected or confirmed COVID-19 cases, including DOC staff and employed incarcerated individuals, should wear the following PPE: **surgical mask, gown, eye protection and gloves**.
- 7) Any individuals involved in handling laundry and food services items of patients in medical isolation or quarantine, without entering the cell, should wear the following PPE:
  - a) **Gown and gloves**
- 8) Rooms occupied by quarantined patients, who are moved prior to the complete 14-day period, should be similarly cleaned only by individuals wearing the following PPE: **surgical mask, gown, eye protection and gloves**.
- 9) Areas with potential COVID-19 exposure should not be scrubbed, deep cleaned, or power washed due to concern that these methods could cause virus to be aerosolized.
- 10) Areas with potential COVID-19 exposure should not be vacuumed due to the potential for vacuuming to aerosolize virus.

## Reuse of N95 Respirators:

Supplies of N95 respirators are in increased demand creating critical shortages during infectious diseases outbreaks. Existing CDC guidelines recommend a combination of approaches to conserve supplies while safeguarding health care workers in such circumstances. In these situations, existing guidelines recommend:

- Minimizing the number of individuals who need to use respiratory protection
- Using alternatives to N95 respirators where feasible
- Implementing practices allowing reuse of N95 respirators when acceptable during encounters with multiple patients

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## **Reuse of N95 respirators:**

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- 1) Re-use can occur under the following conditions:
  - a) N95 respirators must only be used by a single individual and should never be shared
  - b) Use a full-face shield that covers entire extent of N95 respirator and/or surgical mask over an N95 to reduce surface contamination of the respirator. For aerosol generating procedures, both a face shield and surgical mask are necessary for re-use.
  - c) Keep used respirator in a clean dry paper bag between uses
  - d) Write your name on the bag and elastic straps of the N95 so that the owner is clearly identified (Do not write on the actual mask)
  - e) Use a new paper bag each time the respirator is removed
- 2) Always use clean gloves when donning a used N95 respirator and performing a user seal check.
- 3) Perform hand hygiene over gloves before touching or adjusting the respirator as necessary
- 4) Discard gloved after the N95 is donned and any adjustments are made to ensure the respirator is sitting comfortably on your face with a good seal.
- 5) Perform hand hygiene. Anytime one touches the N95, perform hand hygiene again.

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## **Do NOT reuse and DISCARD N95 respirators if:**

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- 1) The N95 respirator becomes visibly soiled with blood, respiratory or nasal secretions, or other bodily fluids
- 2) The N95 respirator becomes visibly damaged or difficult to breathe through
- 3) The straps are stretched out so they no longer provide enough tension for the respirator to seal to the face
- 4) The nosepiece or other fit enhancements are broken
- 5) If the inside of the respirator is touched inadvertently
- 6) The respirator was used during an aerosol generating procedure, except when the respirator is protected by a surgical mask as described below.

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## **Donning and Doffing of N95 respirator:**

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### **Donning a NEW N95 respirator:**

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- 1) Perform hand hygiene
- 2) Remove routine face covering
- 3) Perform hand hygiene
- 4) Don gown
- 5) Don gloves
- 6) Don a new, fit-tested N95 respirator and adjust as necessary
- 7) Don a full face shield ensuring it fully covers both eyes and respirator
- 8) Perform patient care activities

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### **Donning a USED N95 respirator:**

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- 1) Perform hand hygiene
- 2) Remove routine face covering
- 3) Perform hand hygiene
- 4) Don gloves
- 5) Remove the used N95 respirator from the paper bag by the straps
- 6) Don the respirator without touching the front of the mask

- 7) Sanitize gloves and adjust the mask for comfort and to ensure a good face seal
- 8) Remove gloves and perform hand hygiene
- 9) Don gown, new gloves, and full face shield

#### Doffing an N95 respirator:

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- 1) When finished with patient care prior to leaving isolation area, remove gown and gloves and discard
- 2) Perform hand hygiene
- 3) Don new gloves
- 4) Leave isolation area
- 5) Immediately outside isolation area, remove gloves
- 6) Perform hand hygiene
- 7) Put on new gloves
- 8) Remove face mask by touching only the ear pieces
- 9) Remove respirator touching only the straps
- 10) Place respirator in a new, clean paper bag labeled with the user's name
- 11) Remove gloves
- 12) Perform hand hygiene
- 13) Put back on routine use mask

### Release of Patients into the Community

- 1) Patients in medical isolation: For any patient with suspected or confirmed COVID-19 disease in medical isolation who is releasing from a DOC facility, the Health Services Manager, Infection Prevention Nurse and Facility Medical Director will have a conference call with the COVID-19 medical duty officer (**564-999-1845**) prior to release for discussion of release planning.
- 2) Patients in quarantine: Upon release from DOC custody while on quarantine status, patients will be provided a surgical mask and will be directed to self-quarantine in their place of residence until the remainder of their 14-day quarantine period. Direction should be given that they should immediately report to their CCO via phone to arrange future reporting requirements.

### Transportation of Patients with Suspected or Confirmed COVID-19 Disease

- 1) This section refers to transportation of patients under Washington DOC jurisdiction to or between DOC facilities who are confirmed or suspected (by a licensed medical provider) to have COVID-19 disease. This includes community custody violators, work release/GRE returns, and patients currently housed in DOC facilities.
- 2) No patient with confirmed COVID-19 disease will be transported into or between DOC facilities without approval of the CMO in consultation with the COVID-19 EOC.
- 3) When two or more cases of confirmed COVID-19 are present within a 30-day time period in a facility's housing unit, transfers in and out of that unit will be suspended and the situation discussed with Prisons/Health Services Unified Command.
- 4) For any patients with confirmed or suspected (by a licensed medical provider) COVID-19 disease being transported into or between DOC facilities, custody officers, community custody officers, or other DOC staff in close contact with the patient will don the following personal protective equipment:
  - a) A pair of disposable examination gloves
  - b) Disposable medical isolation gown
  - c) Any NIOSH-approved particulate respirator (i.e., N-95 or higher-level respirator)

- d) Eye protection
- e) If unable to wear a disposable gown or coveralls because it limits access to duty belt and gear, ensure duty belt and gear are disinfected after contact with individual.
- 5) Transportation staff should adhere to the following procedure when doffing PPE after transport of a patient with suspected or confirmed COVID-19:
  - a) Transfer patient to custody of facility staff
  - b) Doff PPE per protocol into nearest garbage can except for mask and sanitize hands
  - c) Return to vehicle and don clean gloves
  - d) Sanitize vehicle
  - e) Doff PPE and sanitize hands
  - f) Don routine face covering
- 6) The transport vehicle will be cleaned and disinfected after use.
- 7) For any patients on quarantine for contact with a suspected or confirmed COVID-19 case, DOC staff will don the following PPE:
  - a) A pair of disposable examination gloves
  - b) Disposable medical isolation gown
  - c) Surgical mask

## Contact Tracing and Case Reporting

- 1) Cases of suspected and confirmed COVID-19 will be thoroughly investigated by the Infection Prevention Nurse (IPN):
  - a) Review the patient's cell and living unit location, job, classes, etc. to determine who could have been exposed and needs to be quarantined.
  - b) If in the course of the contact tracing it is apparent that DOC staff may have had close contact with the confirmed or suspected COVID-19 case, the IPN will send an email with case details to the following Occupational Health email address: [DOCoccupationalhealthandwellness@DOC1.WA.GOV](mailto:DOCoccupationalhealthandwellness@DOC1.WA.GOV)
  - c) The decision to classify a contact as close or high risk and requiring quarantine will be a clinical decision by the IPN taking into consideration the guidance described here. IPNs should strongly consider consultation with a DOC Infectious Disease physician or local/state public health departments if any uncertainty exists regarding how to classify a contact with a suspected or confirmed COVID-19 case.
  - d) A close, or high-risk, contact with potential COVID-19 cases will be defined as follows for the purpose of this guideline:
    - i) Being within approximately 6 feet of a person with confirmed or suspected COVID-19 for a prolonged period of time, defined as at least several minutes. Examples include caring for or visiting the patient or sitting within 6 feet of the patient in a healthcare waiting room.
    - ii) Having unprotected direct contact with infectious secretions or excretions of the patient (e.g., being coughed on, touching used tissues with a bare hand).
  - e) Contact not considered close or high risk include briefly entering the patient room without having direct contact with the patient or their secretions/excretions, brief conversation with a patient who was not wearing a facemask.

- f) Mitigating and exacerbating factors should be considered in determination of contact risk. For example, a suspected or confirmed COVID-19 case will be more likely to transmit disease if they are actively coughing during the contact, and less likely if they are wearing a facemask.
  - g) Report the need to isolate a patient and the need to quarantine other patient/s as indicated to the Health Care Manager or designee who will then notify the Superintendent at the facility, Facility Medical Director, and Headquarters EOC.
  - h) Enter the information about the case of suspected/confirmed COVID-19 and the information about the exposed patients on the [Influenza like illness log](#).
  - i) The results of contact investigations will be communicated to the Facility Medical Director, HSM, and facility Human Resources who will help ensure that people who have been exposed are identified, notified, and all appropriate infection control measures are put in place to reduce transmission (masking, quarantine, cohorting etc.)
- 2) All COVID-19 test results for DOC patients should be reported via phone to the COVID medical duty officer (phone **564-999-1845**), FMD, IPN, and facility COVID incident command post immediately upon receipt from the testing lab.
- a) Notification of positive COVID tests should also be sent to the following email address: [doccovid19cases@doc1.wa.gov](mailto:doccovid19cases@doc1.wa.gov).
  - b) The IPN will update the contact investigation and review medical isolation/quarantine status of the tested and exposed patients after receipt of test results.
  - c) The IPN will report positive COVID cases to their local public health jurisdiction. If the patient was transferred to a second facility for medical isolation or care, the case should be reported to the local public health jurisdiction of the patient's original location.
  - d) Occupational Nurse Consultants will, in communication with the IPN, review the case for potential close contacts among DOC staff.

## Guideline Update Log

### 03/06/2020

- Under Health Services Evaluation, section 3.iii, added subsection 3 to include criteria for isolating patients who are suspected COVID-19 who cannot be tested.
- Under Infection control and Prevention section C.5, d. "COVID-19 patients will not be isolated in an IPU, unless they require IPU level of medical care." was deleted.
- Under Infection control and Prevention section C.9 added.
- Section Transportation of patients with suspected or confirmed COVID-19 disease added.

### 03/09/2020

- Section Contact Tracking and Case Reporting added
- Section Health Services Evaluation 3.3.2 changed to reflect updated DOH and CDC testing guidance

### 03/11/2020

- Section Health Services Evaluation part 2 added instruction for donning and doffing PPE.
- Section Contact Tracking and Case Reporting added guidance and definitions for determining risk of contact with suspected or confirmed COVID 19 cases.
- Section Contact Tracking and Case Reporting changed COVID-19 log to Influenza-like illness log.

### 03/12/2020

- Section Health Services Evaluation part 5 Testing Procedure updated

### 03/13/2020

- Section Testing Procedure information regarding testing through Interpath labs

### 03/17/2020

- Section Screening Intrasystem Intakes changed to require temperature screening at both boarding and exiting the transport bus.
- Section Health Services Evaluation 3A (screening question #1) changed from AND to OR
- Section Infection Control and Prevention changed to reflect updated PPE requirements for staff evaluating quarantined patients

### 03/18/2020

- Section Infection Control and Prevention changed the duration of medical isolation recommended
- Section Testing Procedure, deleted #3 regarding Interpath Labs, as they are no longer performing COVID testing
- Section Health Services Evaluation added information regarding when to order COVID testing in the context of influenza test results

### 03/19/2020

- Section Infection Control and Prevention, changed criteria for use of N95 mask when in contact with isolated patients.

### 03/20/2020

- Section Infection Control and Prevention, changed monitoring of isolated patients after they become asymptomatic to once daily at cell front

### 03/25/2020

- Section Patients at High Risk for Severe COVID-19 added
- Section Infection Control and Prevention added statement regarding release from quarantine requirements
- Section Health Services Evaluation added pharyngitis to screening questions
- Section Infection Control and Prevention, added PPE Requirements for Prisons and Work Release Staff

### 03/27/2020

- Section Testing Procedure- deleted reference to need for PUI number and approval prior to sending COVID tests to the Washington DOH public health lab
- Section Release of Patients into the Community added direction for patients on quarantine status at the time of release

### 04/03/2020

- Section Testing Procedure added NP swab demonstration video
- Section Infection Control and Prevention added eye protection to PPE needed for evaluation of quarantined patients
- Section Infection Control and Prevention, PPE for Work Release and Prisons Staff, added criteria for changing PPE for screeners

## 04/07/2020

- Section Clinical Care of Patients with Suspected or Confirmed COVID-19 added
- Section Screening added statements about active screening of staff and patients
- Section Infection Control and Prevention changed waste disposal from biohazard red bag/bin to regular trash bins.

## 04/15/2020

- All sections changed 'isolation' to 'medical isolation'
- Section Clinical Care of Patients with Suspected or Confirmed COVID-19 added recommendation to use metered dose inhalers instead of nebulizers for administration of bronchodilators.
- Section Infection Control and Prevention added link to recommended PPE matrix.
- Section Release of Patients in the Community changed notification for patients releasing who are on medical isolation
- Section Clinical Care of Patients with Suspected or Confirmed COVID-19 changed criteria for starting supplemental oxygen to less than 96% on room air
- Section Testing Procedure added back Interpath Laboratory as they have resumed COVID-19 testing
- Section Testing Procedure added statement to perform NP swabs of both sides of the nasopharynx

## 04/21/2020

- Section Infection Control and Prevention added statement that Tyvek suites are not appropriate PPE for this purpose and should not be used.
- Section Infection Control and Prevention added statement that quarantined patients must don a surgical mask anytime they leave their cells.
- Section Infection Control and Prevention added statement regarding all staff wearing approved face coverings while on duty.
- Section Patients at High Risk for Severe Covid-19 changed interventions for high risk and very high risk patients
- Section Contact Tracing and Case Reporting changed positive COVID test result reporting to include COVID medical duty officer and COVID cases email box.
- Section Health Services Evaluation added diarrhea and loss of taste/smell to screening questions.
- Section Infection Control and Prevention added statement regarding droplet precaution signs in quarantine units
- Section Infection Control and Prevention added subsections h. and i. regarding phone use in medical isolation

## 04/24/2020

- Section Infection Control and Prevention subsection PPE requirements for Prisons and Work Release Staff added use instructions and PPE for staff using barriers during active screening
- Section Health Services Evaluation linked PPE video
- Section Testing Procedure added information regarding anterior nasal and nasal mid-turbinate swab sample collection
- Section Health Services Evaluation eliminated influenza testing and added statement regarding testing for influenza during influenza season

## 05/06/2020

- Section Testing Procedure added statement that patient collected nasal swabs should be preferred if N95 masks are in short supply and removed preference for NP swabs in all testing situations
- Section Infection Prevention and Control added statement regarding mandatory use of routine face coverings by incarcerated individuals.
- Section Health Services Evaluation added statement that all patients entering isolation will be tested for COVID-19.
- Section Infection Control and Prevention added subsection Post-isolation Convalescent Housing
- Section Infection Control and Prevention added two negative tests at least 48 hours apart as new criteria for release from isolation and associated quarantine
- Section Infection Control and Prevention added subsection Routine Pre-procedure COVID-19 Testing
- Section Patients at High Risk for COVID-19 Disease deleted 'very high risk' section
- Section Infection Control and Prevention added subsection Asymptomatic Patients Testing Positive for COVID-19
- Section Infection Control and Prevention added subsection Showers in Medical Isolation
- Section Infection Control and Prevention added subsection Routine Intake Separation
- Section Infection Control and Prevention added subsection Protective Isolation Prior to Work Release Transfer

## 05/15/2020

- Section Infection Control and Prevention added information for each care situation regarding when to change PPE
- Section Infection Control and Prevention added subsection Protective Separation
- Section Reuse of N95 Respirators added
- Section Health Services Evaluation changed testing criteria for viral respiratory panel
- Section Infection Control and Prevention subsections Routine Intake Separation and Separation Prior to Work Release Transfer were combined into Intersystem Transfer Separation and the period of pre-work release separation was changed to 14 days

## 06/29/2020

- Section Infection Control and Prevention added eye protection to PPE requirement for close contact with asymptomatic confirmed COVID patients
- Section Infection Control and Prevention – Environmental Cleaning corrected placement of laundry to: placed in rice bags and transported in yellow bags.
- Section Contact Tracing and Case Reporting added requirement for reporting confirmed COVID cases to the patient's local public health jurisdiction
- Section Infection Control and Prevention subsection Facility Management of Isolation/Quarantine, added statement that medical isolation and quarantine areas should not be located in the same unit
- Section Infection Control and Prevention subsection Clinical Management of Quarantine Patients revised to require COVID-19 testing of all patients placed on quarantine status who are close contacts of confirmed COVID 19 cases
- Section Infection Control and Prevention added statement recommending against deep cleaning, scrubbing, or power washing due to concerns over aerosolized virus.

- Section Infection Control and Prevention added oxygen saturation monitoring to quarantine nursing assessments

**07/20/2020**

- Section Infection Control and Prevention Categories, Quarantine, Clinical Management of Patients on Quarantine Status, changed #2 to 'Patients placed into quarantine status who are close contacts of confirmed (by a positive COVID test) cases will be tested for COVID-19 with a viral PCR test within 24 hours.'
- Section Infection Control and Prevention Categories, Medical Isolation- Clinical Management of Medical Isolation Patients- added #3b: Any patient with significant immunocompromise by diagnosis or medication as determined by a medical practitioner will be discussed with the COVID medical group prior to release from isolation
- Section Transportation of Patients with Suspected or Confirmed COVID-19 Disease #4 added describing procedure for donning and doffing PPE before and after disinfection of the transport vehicle.
- Section Infection Control and Prevention- Environmental Cleaning- added #10 'Areas with potential COVID-19 exposure should not be vacuumed due to the potential for vacuuming to aerosolize virus.'
- Section Infection Control and Prevention Categories- Medical Isolation- added #7 requiring patients on medical isolation who use CPAP or nebulizer treatments to be housed in negative pressure isolation rooms.
- Section Infection Control and Prevention Categories- Medical Isolation- Clinical Management of Medical Isolation Patients- added #3a regarding patients with confirmed COVID-19 using CPAP or nebulizers requiring 2 negative COVID-19 tests 48 hours apart prior to release from isolation.
- Section Infection Control and Prevention Categories- Intake Separation added COVID-19 testing process for intersystem intakes (added to version 19)
- Section Infection Control and Prevention Categories- Post Isolation Convalescent Housing was deleted
- Section Infection Control and Prevention Categories- Quarantine- Intake Separation- changed #3 to 'Patients in these categories should be separated from the general population at the receiving facility for 14 days after arrival if COVID-19 testing is not available or is not feasible due to the patient's length of stay'
- Section Infection Control and Prevention Categories, Separation Prior to Work Release Transfers was deleted
- Section Transportation of Patients with Suspected or Confirmed COVID-19 Disease- added #3 'When two or more cases of confirmed COVID-19 are present within a 30 day time period in a facility's housing unit transfers in and out of that unit will be suspended and the situation discussed with Prisons/Health Services Unified Command.'

# Appendix VI

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

---

STATE OF WASHINGTON,	)	
	)	No. [REDACTED]
Plaintiff/Respondent,	)	(CoA No. [REDACTED])
	)	
v.	)	EVIDENCE IN SUPPORT
	)	OF MOTION FOR APPEAL
[REDACTED]	)	BOND
	)	
Defendant/Appellant.	)	
	)	

---

As represented in his reply in support of setting an appeal bond, attached is a copy of the document from the Department of Corrections, dated April 4, 2020, showing that [REDACTED] has “been identified as someone at increased risk for getting Covid 19.”

Respectfully submitted this 28th day of April, 2020.



---

Richard W. Lechich – WSBA #43296  
Washington Appellate Project – #91052  
Attorney for [REDACTED]

Attn: Rich Lechich

Thanks For working on my situation. You are appreciated.  
Stay safe and healthy.

RECEIVED

APR 28 2020

WASHINGTON APPELLATE

HEALTH SERVICES KITE

PROJECT  
SCANNER



This fill and print form is for healthcare staff to initiate communication with patients.  
Patient offenders are to use the 3-part NCR form to communicate with staff.

LAST NAME	[REDACTED]	FIRST NAME	[REDACTED]
DOC NUMBER	[REDACTED]	FACILITY	MCC-WSR
		UNIT/CELL	C416

### HEALTH SERVICES RESPONSE/ENCOUNTER

This form must be filed if any information is entered below except for: simple prescription refills, finance, non-medical work/bunk change, religious diets, shoes, classification, non-health services issues

#### TYPE OF RESPONSE

- ☒ MEDICAL      ☐ DENTAL      ☐ MENTAL HEALTH  
☐ OPTOMETRY      ☐ OTHER:

☐ Schedule within \_\_\_\_\_ days/weeks/months      ☐ Next available sick call      ☐ No visit required

★ You have been identified as someone at increased risk for getting Covid 19. It is recommended that you consider the following:

- A) Encourage self-quarantine in cell
- B) Wear a surgical mask if leaving cell
- C) Perform frequent hand hygiene
- D) Perform frequent cleaning of cell throughout the day
- ☐ highly discourage the use of bleach as this can exacerbate conditions for those patients with underlying lung disease
- E) Avoid contact of high-touch surfaces
- F) Limit movement in the facility
- G) Social distancing (stay at least 6 feet from others) should be maintained during Day Room, Yard, Gym, Dining Halls, Religious Services, Pill Line, and other areas where the incarcerated population congregates.

Medical only has enough masks to issue to EXTREMELY high risk patient at this time. You are not one of those patients. If medical gets more masks, they will be distributed with an HSR, as supply allows.  
Please kite me, if you have any further questions.

RESPONDER typed name and signature

Jennifer Ross PA-C

DATE

04/09/2020

**PRESCRIPTIONS MUST BE WRITTEN ON DOC 13-435 PRIMARY ENCOUNTER REPORT (PER) OR IN CIPS**

Distribution: ORIGINAL – Health Record, COPY – Offender

State law (RCW 70.02) and/or federal regulations (42 CFR Part 2) prohibit disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law.

### DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached was filed in the **Pierce County Superior Court Clerk's Office**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Kristie Barham, Pierce County Prosecuting Attorney  
[PCpatcecf@co.pierce.wa.us]

☐ appellant

☐ other party



MARIA ANA ARRANZA RILEY, Legal Assistant

Date: April 28, 2020

## Maria Riley

---

**From:** SUPERIOR COURT <PCCLKLINX@piercecountywa.gov>  
**Sent:** Tuesday, April 28, 2020 4:16 PM  
**To:** Maria Riley; SUPERIOR COURT  
**Subject:** Filing Notification

Thank you. Your documents have been submitted to the Pierce County Clerks Office.

Case: [REDACTED]  
STATE OF WASHINGTON vs [REDACTED] [REDACTED]

The date and time of this submission was 04/28/2020 4:15 PM

The following Filing(s) were successfully submitted:

54659432 - Motion

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# Appendix VII

**Defendant/Appellant.**

### Declaration of

DATED this 27 day of May, 2020

# Appendix VIII

# COVID-19 Data

- [Confirmed Cases](#)
- [Demographics](#)
- [Regional Care Facilities](#)
- [Testing, Isolation & Quarantine](#)

## Confirmed Cases

Current as of Monday, August 17, 2020. Numbers are updated Monday-Friday, except for holidays.

### Incarcerated Population COVID-19 Confirmed Cases by Location

A confirmed case is counted at the facility/location where the case was confirmed. After confirmation, an individual may be transported to another correctional facility/location to receive appropriate level of care.

Location	Number Confirmed Cases	Number of Deaths
<b>Prisons</b>		
Airway Heights Corrections Center	0	0
Cedar Creek Corrections Center	0	0
Clallam Bay Corrections Center	0	0
Coyote Ridge Corrections Center	233	2
Larch Corrections Center	0	0
Mission Creek Corrections Center for Women	0	0
Monroe Correctional Complex	62	0
Olympic Corrections Center	0	0
Stafford Creek Corrections Center	0	0
Washington Corrections Center	3	0
Washington Corrections Center for Women	2	0
Washington State Penitentiary	114	0
<b>Work Release</b>		
Ahtanum View Work Release	0	0
Bellingham Work Release	0	0
Bishop Lewis Work Release	0	0
Brownstone Work Release	0	0

Location	Number Confirmed Cases	Number of Deaths
Eleanor Chase House Work Release	0	0
Helen B. Ratcliff Work Release	0	0
Longview Work Release	0	0
Olympia Work Release	0	0
Peninsula Work Release	0	0
Progress House Work Release	0	0
Reynolds Work Release	7	0
Tri-Cities Work Release	1	0
<b>Other</b>		
Community Medical Center	1	0


#### Incarcerated Population COVID-19 Confirmed Case Totals

Confirmed Cases	Active Cases	Recovered Cases	Deaths
424	100	322	2

#### Staff COVID-19 Confirmed Cases

Staff includes department employees and contracted staff. All staff confirmed cases are self-reported.

Location	Number Confirmed Cases	Number of Deaths
<b>Business &amp; Training Offices</b>		
Olympia Area Offices	2	0
Mill Creek Regional Performance Center	8	0
<b>Prisons</b>		
Airway Heights Corrections Center	5	0
Cedar Creek Corrections Center	0	0
Clallam Bay Corrections Center	2	0

Location	Number Confirmed Cases	Number of Deaths
Coyote Ridge Corrections Center	70	0
Larch Corrections Center	0	0
Mission Creek Corrections Center for Women	0	0
Monroe Correctional Complex	16	1
Olympic Corrections Center	0	0
Stafford Creek Corrections Center	0	0
Washington Corrections Center	4	0
Washington Corrections Center for Women	4	0
Washington State Penitentiary	10	0
<b>Work Release</b>		
Ahtanum View Work Release	4	0
Bellingham Work Release	0	0
Bishop Lewis Work Release	0	0
Brownstone Work Release	0	0
Eleanor Chase House Work Release	1	0
Helen B. Ratcliff Work Release	0	0
Longview Work Release	0	0
Olympia Work Release	0	0
Peninsula Work Release	2	0
Progress House Work Release	0	0
Reynolds Work Release	2	0
Tri-Cities Work Release	0	0
<b>Community Corrections</b>		
(See <a href="#">Community Facilities Map</a>  for section designations)		
Community Corrections Section 1	3	0
Community Corrections Section 2	3	0
Community Corrections Section 3	0	0
Community Corrections Section 4	1	0
Community Corrections Section 5	0	0
Community Corrections Section 6	6	0

Location	Number Confirmed Cases	Number of Deaths
Community Corrections Section 7	0	0
Other		
Community Medical Center	0	0
Totals		
All Locations	143	1

## Demographics

The below tables represent the demographic information for confirmed cases of COVID-19 in the incarcerated population. See the [Agency Fact Card](#) for more information about the demographics of the total incarcerated population. Other statistical reports are available at [Data Analytics](#) page.

Current as of Friday, August 14, 2020. Numbers are updated on the last business day of the week, excluding holidays.

### Age of Confirmed COVID-19 Cases in the Incarcerated Population

Age Range	Number of Individuals	Percentage of Confirmed Cases	Percentage of Total Incarcerated in Age Range
Under 22	3	0.8%	2.6%
22-25	18	4.8%	7.5%
26-30	44	11.7%	14.7%
31-35	41	10.9%	17.5%
36-40	57	15.1%	16.2%
41-45	47	12.5%	11.6%
46-50	40	10.6%	9.3%
51-55	39	10.3%	7.8%
56-60	41	10.9%	5.7%
61-65	24	6.4%	3.6%
66-70	10	2.7%	1.8%
Over 70	13	3.4%	1.7%

## Race of Confirmed COVID-19 Cases in the Incarcerated Population

Race	Number of Individuals	Percentage of Confirmed Cases	Percentage of Total Incarcerated by Race
White	267	70.8%	69.5%
Black	54	14.3%	17.8%
American Indian/Alaska Native	29	7.7%	5.9%
Asian/Pacific Islander	13	3.5%	4.3%
Other	7	1.9%	1.6%
Unknown	7	1.9%	0.9%

## Ethnicity of Confirmed COVID-19 Cases in the Incarcerated Population

Hispanic Origin	Number of Individuals	Percentage of Confirmed Cases	Percentage of Total Incarcerated by Hispanic Origin
No	310	82.2%	85.4%
Yes	67	17.8%	14.6%

## Regional Care Facilities

The Washington Department of Corrections (DOC) is taking deliberate steps to continue to mitigate the spread of infection to the incarcerated population, staff and general public.


Suitable locations, referred to as a Regional Care Facility (RCF), were previously identified by department leaders and key stakeholders, including local facility subject matter experts. These RCF's would safely and comfortably house incarcerated individuals who have tested positive for COVID-19 and may require more comprehensive medical attention and physical isolation from healthy populations, but do not require hospitalization. Should an infected individual's medical conditions or needs become severe, the department and agency medical personnel will work collaboratively with hospital partners to provide the necessary medical care.

(Current as of Monday, August 17, 2020. Numbers are updated Monday-Friday, except for holidays)  
 Incarcerated individuals from the Confirmed Cases chart are transported, when necessary, to one of the regional care facilities listed below.

Regional Care Facility	Incarcerated Individuals Housed
Airway Heights Corrections Center	5
Washington Corrections Center (Shelton)	0
Washington Corrections Center for Women (Gig Harbor)	0

## Testing, Isolation & Quarantine

Current as of Monday, August 17, 2020. Numbers are updated Monday-Friday, except for holidays.

Testing Among Incarcerated Housed in Prison & Work Release Facilities  
 Screening and testing is conducted based on the guidance of the [WA State DOC COVID-19 Screening, Testing, and Infection Control Guideline](#) 

Individuals Tested	Tests Completed	Negative Results	Positive Results	Pending Lab Results
4,358	4,666	4,194	424	48

### Isolation and Quarantine Among Incarcerated Population

**Isolation:** separating a symptomatic patient with a concern for a communicable disease from other patients.

**Quarantine:** separating from other individuals those who are not showing symptoms yet have been exposed to an individual with a contagious disease.

Federal quarantine and isolation currently apply to the following diseases: cholera; diphtheria; infectious tuberculosis; plague; smallpox; yellow fever; viral hemorrhagic fevers; influenza caused by new or re-emergent flu viruses that are causing, or have the potential to cause, a pandemic; and severe acute respiratory syndromes (which may include COVID-19).

Incarcerated Individuals in Isolation	Incarcerated Individuals in Quarantine
135	796



# Appendix IX

# CORONAVIRUS

COVID-19

COVID-19: Local COVID-19: National COVID-19: Business Coronavirus 101

NEWS

## Nurse at Coyote Ridge prison describes ‘petri dish’ of ‘inhumane conditions’

UPDATED: Sat., Aug. 15, 2020



THE SPOKESMAN-REVIEW

**(Molly Quinn / The Spokesman-Review)**



By **Maggie Quinlan**   
[maggieq@spokesman.com](mailto:maggieq@spokesman.com)  
(509) 459-5135

As chaotic conditions at an Eastern Washington prison have deteriorated, COVID-19-positive inmates with severely restricted access to bathrooms are refusing to drink water, according to one prison nurse’s account.

With clothing changes only once per week and little privacy in the COVID-19 tents outside, sick inmates fear the “humiliation” of soiling their clothes and sitting in filth for days, the nurse wrote.

These are just two of the many concerns Katrina Pinkerton laid out in a July 28 email to 30 Department of Corrections staff about what she described as the department’s “serious neglect” in managing the coronavirus’s spread at the Coyote Ridge Corrections Center in

Connell.

The DOC confirmed in a statement that Pinkerton worked as a contracted nurse for the prison from late June to mid-July and worked mostly graveyard shifts.

Pinkerton, a Yale School of Nursing graduate, described temporary nurses having no medical information about their patients, staff losing track of where virus-positive inmates were housed, officers using handcuffing maneuvers reserved for punishment to deal with sick inmates and “inhumane conditions” she feared would lead to inmates’ “irreversible psychological trauma.”

She also praised DOC leaders for working despite fatigue to get resources like masks and water bottles in bulk for the facility, writing “you’re doing what you can to deal with an impossible task.”

“No one at any given organization is going to get things just ‘right,’ ” she wrote. “And yet all of us are capable of always striving to do better, no matter how hard the circumstance. Especially when our present efforts fail to help, and even cause harm, to thousands of others.”

A DOC statement from Communications Director Janelle Guthrie said the department takes the allegations in the email “very seriously” and that the department’s health care quality team and other staff plan to meet with the Coyote Ridge health team to review processes and “ensure continuous improvement.”

Two inmates have died from coronavirus at Coyote Ridge and 233 others have tested positive. Victor Bueno, the first of two Coyote Ridge inmates to die from the virus, was about [three months away](#) from his expected release date .

Coyote Ridge has had more positive cases than any other Washington prison, the DOC statement said.

As of Aug. 7, seven inmates from Coyote Ridge were “considered to have active COVID-19 symptoms,” and three of them were housed there on that date.

Pinkerton questioned the case numbers. She cited dozens of inconclusive tests, which she said probably represented a “glaring problem” in the prison’s method of sample collection, transport or labeling. She also described harsh conditions for sick inmates that could encourage them to keep quiet about symptoms.

But whether a test is considered inconclusive has “nothing” to do with the quality of the test, according to the DOC. Tests can come back inconclusive when an inmate is developing symptoms or post-symptomatic, the statement said.

The DOC statement said Coyote Ridge had a “very small” number of tests that were compromised in transport from Connell to Seattle, where they were processed, but not the dozens reported by Pinkerton.

Pinkerton wrote that staff often did not know an inmate’s most recent test results. Managing the disease’s spread was impossible, Pinkerton said, due to “mass confusion” among prison staff and “incredibly haphazard tracking” of inmates.

“From the privilege of my unique temporary position on the ground,” Pinkerton wrote, “I was able to clearly see many issues others have been too busy, too physically removed, or too overwhelmed to look at.”

In solitary confinement, officers and nurses “had zero access to consistent, reliable, up-to-date information” about who was there for punishment and who was there for quarantine, she wrote.

Guthrie, the DOC communications director, disputed those claims.

While a temporary nurse’s tasks include monitoring symptoms, taking vital signs, noting symptoms on a form and sending the information to permanent medical staff at the end of each shift, Guthrie said, “these duties did not require providing her access to incarcerated individuals’ medical charts.”

Contract nurses also had access to permanent corrections health care staff if they needed specific medical history, the statement from Guthrie said.

After asking health care staff, Pinkerton said her overall impression was that “it was best” if she avoided performing “even basic nursing tasks” such as listening to heart or lung sounds, she wrote.

Given that officers were performing similar functions, including temperature taking and asking preset questions about symptoms, Pinkerton questioned the department's decision to hire registered nurses at "high wages" to perform duties at "the level of unlicensed personnel," such as a nurse's assistant or lay caregiver.

With no medical histories, nurses devised their own means of record-keeping, filling binders with records of daily temperature checks and asking inmates to talk through their medical history, Pinkerton wrote.

The lack of medical information about patients and other barriers often made it impossible for nurses to carry out "even the most basic of health monitoring," she wrote. For inmates with COVID-19, she claimed, it also meant harsh treatment.

She wrote that inmates who test positive reported to her that they were suddenly taken to an isolation room and given few details about why, or for how long they would be alone.

In solitary, inmates said they don't talk to other people or "move their body in the fresh air, for weeks on end," she wrote. Inmates' time outside the cell is limited to one shower per week and one call to friends or family per week.

That routine is only broken by medical assessments that involve sitting handcuffed in a cell's doorway while "disguised" medical personnel in PPE try to check blood pressure and ask questions, Pinkerton wrote.

Inmates have described similar scenes. Janet Gonzalez said her son, who tested positive for the virus at Coyote Ridge, told her via email that he "had to beg" for clean clothes for three weeks. During the same three weeks, he went without medications related to his chronic issues with kidney stones and migraines, she said.

Under quarantine, Gonzalez' son also described getting 30 minutes outside of his cell every two days, she said. He wrote that he hopes his story gets attention because conditions in quarantine are "insane."

The tents weren't much better, according to Gonzalez and the nurse's letter. Pinkerton said a few men in temporary housing tents reported being in severe pain due to their cots and asked to sleep on the concrete floor instead. She described "swarms of insects," and three portable toilets to be shared by 50 sick men.

Gonzalez said when her son was held in a tent, he told her 100 men had access to only a few portable toilets and only "when the guards feel like letting them," she said. Her son described one man there who had turned to urinating in a cup, she said.

The letter and Gonzalez' description echo earlier reports from inmates who [hadn't yet tested positive](#) in minimum security at Coyote Ridge. There, men described being held in two-man cells with no toilet for up to 36 hours at a time, defecating in coffee cans and urinating in water bottles.

The DOC statement said all inmates have had ready access to bathrooms while respecting social distancing, "with the exception of a brief period early in the response where some individuals in cells without toilets needed to request permission because their cells were locked."

Coyote Ridge health care professionals worked with Pinkerton throughout her employment to respond to concerns and to address her needs, the statement said.

But the nurse wrote that, while she tried to call attention to many of her concerns to DOC and Coyote Ridge officials, she "received no meaningful responses."

Pinkerton wrote that she did not know anyone in a prison system, neither officer nor inmate, prior to her contracted work at Coyote Ridge. But after her experience, she found herself having the "surprising thought" that it would be better to let offenders out, with community officers monitoring them.

"The alternative is keeping everyone at CRCC in a petri dish of severe stress, mass confusion, inhumane conditions and circulating illness which then leaks into the community," Pinkerton wrote.

The Washington Supreme Court in April rejected a lawsuit seeking to force Gov. Jay Inslee to order the release of thousands of people from Washington prisons to protect them from potential exposure to the coronavirus. In a 5-4 decision, a court majority found the emergency petition by Columbia Legal Services had not proved the state is failing in its duties to incarcerated people.

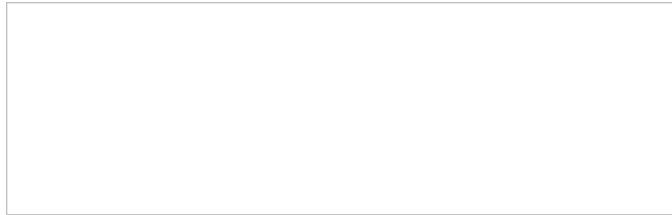
Pinkerton said she recognized that her letter pointed to issues "deeply rooted in a large system" and "lofty ideas" about reducing prison population.

“I venture to guess that some of you receiving this email feel overwhelmed and like you don’t have the power to do anything,” she wrote. “But because lack of meaningful action can be as damaging as intentionally hurtful action, I urge you to share these concerns.”

## **THE SPOKESMAN-REVIEW**

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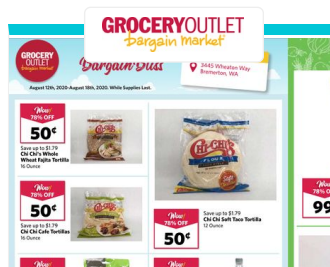
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### This Week's Circulars



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### COVID-19 Updates



## BUSINESS

**S&P 500 crests at highest-ever level as stocks drift higher**

UPDATED: 12:12 p.m.

[Teens struggle to balance school, family, work amid COVID-19 ...](#)[Walmart's online sales soar as shoppers stock up on supplies ...](#)[WNBA All-Star Cambage set to return to Australian league ...](#)[Spokane County crests 100 deaths due to COVID-19, as case counts continue to plateau and hospitalizations decline ...](#)[UNC Chapel Hill moves all classes online after 130 more students infected with COVID-19 ...](#)[Actress Sharon Stone criticizes COVID-19 testing in Montana ...](#)**Most read stories**[Spokane doctors' \\$191 million bankruptcy denied after judge rules they lied ...](#)[USPS ending mail processing in Wenatchee and Yakima, redirecting to Spokane ...](#)[Former Gonzaga center Przemek Karnowski gets opportunity to resume pro career ...](#)[Soft drink stockpiling causes aluminum can shortage ...](#)**Swedish Thoracic Surgery: Partners in patient care**



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# Appendix X

**Renee S. Townsley**  
**Clerk/Administrator**

**(509) 456-3082**  
**TDD #1-800-833-6388**

***The Court of Appeals  
of the  
State of Washington  
Division III***



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July 29, 2020

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[jeffrey.uttecht@doc.wa.gov](mailto:jeffrey.uttecht@doc.wa.gov)

CASE # 369951  
State of Washington v. Julian Almaguer  
SPOKANE COUNTY SUPERIOR COURT No. 161025138

Dear Counsel and Mr. Uttecht:

Enclosed is a copy of the Order Granting Release Pending Appeal and Setting Conditions, filed today.

A party may seek discretionary review by the Supreme Court of the Court of Appeals' decision. RAP 13.5(a). A party seeking discretionary review must file a motion for discretionary review in the Supreme Court and a copy in the Court of Appeals within 30 days after this Court's Order. The address for the Washington State Supreme Court is: Temple of Justice, P. O. Box 40929, Olympia, WA 98504-0929.

Sincerely,

Renee S. Townsley  
Clerk/Administrator

RST: res

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

STATE OF WASHINGTON,	)	
	)	No. 36995-1-III
Respondent,	)	
	)	ORDER GRANTING RELEASE
v.	)	PENDING APPEAL AND
	)	SETTING CONDITIONS
JULIAN ALMAGUER,	)	
	)	
Appellant.	)	

THE COURT has considered appellant Julian Almaguer's motion for stay of sentence pending appeal; the appellant's statement of additional authorities; the record and file herein; and oral argument of the parties.

The motion is based on the following facts, which are not in dispute:

Mr. Almaguer is incarcerated at the Coyote Ridge Correctional Facility in Connell, Washington. He is serving a 26-month sentence for forgery. Mr. Almaguer's offense involved an attempt to cash a \$156 fraudulent check at a Money Tree store in Spokane, Washington.

Mr. Almaguer was released from custody pending trial in Spokane County Superior Court and complied with the terms of release. At his sentencing hearing, Mr. Almaguer requested a stay of his term of incarceration pending appeal. The court denied the request. Although the court found Mr. Almaguer did not pose a danger to the

community or risk of flight, it determined that a stay of sentence would diminish the deterrent effect of punishment. Mr. Almaguer began serving his term of incarceration on July 26, 2019.

On August 5, 2019, Mr. Almaguer filed a notice of appeal. Mr. Almaguer appeals both his conviction and sentence. The briefing on appeal is not yet complete and Mr. Almaguer's case has yet to be set for hearing before a panel of this court. The State filed its response brief on July 23, 2020. In its brief, the State concedes that Mr. Almaguer is entitled to resentencing.

In March 2020, the Governor Jay Inslee began issuing emergency proclamations designed to limit the spread of COVID-19. Mr. Almaguer is 45-years-old and a diabetic. As such, he is at increased risk of harm from COVID-19. The realities of the prison environment make preventing the transmission of COVID-19 difficult. The facility at which Mr. Almaguer has been housed has had an outbreak of COVID-19 among its inmates and staff members. It does not appear Mr. Almaguer has been exposed to COVID-19, but an individual adjacent to his cell has been quarantined due to possible exposure.

Mr. Almaguer is married and has a supportive wife who lives in Yakima, Washington. Mr. Almaguer's wife has filed a declaration stating Mr. Almaguer can live with her during the pendency of his appeal.

During a July 28, 2020, telephonic hearing on this motion, counsel for the State affirmed that Mr. Almaguer does not pose a risk of flight or danger to the community. Mr. Almaguer has not engaged in any misconduct during his current term of incarceration that would undermine his claim for release pending appeal.

The State opposes Mr. Almaguer's request for release pending appeal. Nevertheless, should the court grant release, the parties agree on the appropriate conditions.

Based on the foregoing, IT IS HEREBY ORDERED that the appellant's motion for stay of sentence pending appeal is GRANTED.

Pursuant to RCW 9.94A.585(3), Mr. Almaguer is ordered released pending appeal and shall contact the Spokane County Office of Pre-Trial Services (OPTS) by telephone within 24 hours of his release from custody. The OPTS is a designee of the court and will monitor compliance of Mr. Almaguer with the following conditions of release:

1. Telephonically check in with OPTS on a weekly basis unless otherwise directed by OPTS or the court.
2. No new criminal law violations, including no possession of a firearm.
3. Maintain residence at 2502 Fruitvale Blvd., Apt #105, Yakima, Washington.

4. Appear at all court hearings requiring the appearance of Mr. Almaguer. If a ruling or decision by the appellate court affirms the conviction and sentence or dismisses the appeal, and no further court dates are issued, Mr. Almaguer shall report to serve the remainder of his term of incarceration within 30 days of issuance of the appellate mandate, as directed by the State, the court or the Department of Corrections.

5. No contact with any Money Tree branch or similar check cashing institution. This restriction does not apply to any FDIC-insured banking institution.

6. Comply with all COVID-19 directives issued by the state or local authorities applicable to the county of residence.

The OPTS is open from 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 4:30 p.m., Monday through Friday. The OPTS check-in telephone number is (509) 477-3881.

Counsel for Mr. Almaguer shall ensure Mr. Almaguer and his wife understand the terms of release. Counsel for the State shall make the OPTS aware of the terms of this court's order.

PANEL: Judges Pennell, Siddoway, and Fearing

FOR THE COURT:



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REBECCA L. PENNELL  
Chief Judge

# Appendix XI

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STATE OF WASHINGTON, )

Plaintiff/Respondent, )

v. )

Defendant/Appellant. )

Trial No. [REDACTED]

CoA No. [REDACTED]

Declaration of

---

[REDACTED] declares the following and that if called as a witness she would testify that:

1. I am married to [REDACTED]
2. I am in support of my husband's request for bond or conditional release pending resolution of his appeal.
3. I live at [REDACTED]
4. If [REDACTED] is released, he can reside at the above address.

The foregoing is true and correct to the best of my knowledge

DATED this \_\_\_\_ day of August, 2020

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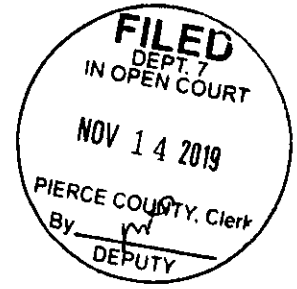
[REDACTED]

# Appendix XII

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11/18/2019



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

CAUSE NO. [REDACTED]

[REDACTED]  
Defendant.

***COURT'S INSTRUCTIONS TO THE JURY***

DATED this 13<sup>th</sup> day of November, 2019.

JUDGE *Jerry Costello*  
JERRY T. COSTELLO

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses, stipulations, and the exhibits that I have admitted, during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the judicial assistant and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict. Do not speculate whether the evidence would have favored one party or the other.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In assessing credibility, you must avoid bias, conscious or unconscious, including bias based on religion, ethnicity, race, sexual orientation, gender or disability.

In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so.

These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

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

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

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INSTRUCTION NO. 2

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

INSTRUCTION NO. 3

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

INSTRUCTION NO. 4

The defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists.

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

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

INSTRUCTION NO. 5

The evidence that has been presented to you may be either direct or circumstantial. The term “direct evidence” refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term “circumstantial evidence” refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 6

Certain evidence <sup>was DC</sup> ~~will~~ be admitted only for a limited purpose. This evidence consists of the testimony of Gerald Buettner and exhibits, if any, identified and admitted during his testimony.

This evidence may be considered by you only for the purpose of determining whether the defendant, [REDACTED], used a common scheme or plan, and/or as to [REDACTED] intent.

You may not consider this evidence for any other purpose, and any discussion of the evidence during your deliberation must be consistent with this limitation.

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INSTRUCTION NO. 7

You may consider evidence that the defendant has been convicted of a crime only in deciding what weight or credibility to give to the defendant's testimony. You may not consider it for any other purpose unless otherwise authorized by these instructions. Any discussion of the evidence during your deliberations must be consistent with this limitation.

INSTRUCTION NO. 8

You may consider evidence that a witness has been convicted of a crime only in deciding what weight or credibility to give to the testimony of the witness. You may not consider it for any other purpose. Any discussion of the evidence during your deliberations must be consistent with this limitation.

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INSTRUCTION NO. 9

A person commits the crime of theft in the first degree when he or she commits theft of property exceeding \$5000 in value.

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INSTRUCTION NO. 10

Theft means to wrongfully obtain or exert unauthorized control over the property of another, or the value thereof , with intent to deprive that person of such property or by color or aid of deception, to obtain control over the property of another, or the value thereof, with intent to deprive that person of such property.

INSTRUCTION NO. 11

Value means the market value of the property at the time and in the approximate area of the act. Whenever any series of transactions that constitute theft is part of a common scheme or plan, then the sum of the value of all transactions shall be the value considered in determining the degree of theft involved.

INSTRUCTION NO. 12

Property means anything of value.

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INSTRUCTION NO. 13

Wrongfully obtains means to take wrongfully the property or services of another.

INSTRUCTION NO. 14

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime.

INSTRUCTION NO. 15

Deception occurs when an actor knowingly creates or confirms another's false impression that the actor knows to be false or fails to correct another's impression that the actor previously has created or confirmed or promises performance that the actor does not intend to perform or knows will not be performed.

INSTRUCTION NO. 16

By color or aid of deception means that the deception operated to bring about the obtaining of the property or services. It is not necessary that deception be the sole means of obtaining the property or services.

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INSTRUCTION NO. 17

An actor is one who acts or fails to act.

INSTRUCTION NO. 18

A person knows or acts knowingly or with knowledge with respect to a fact, circumstance or result when he or she is aware of that fact, circumstance or result. It is not necessary that the person know that the fact, circumstance or result is defined by law as being unlawful or an element of a crime.

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

When acting knowingly as to a particular fact is required to establish an element of a crime, the element is also established if a person acts intentionally as to that fact.

INSTRUCTION NO. 19

To convict the defendant of the crime of Theft in the First Degree as charged in Count I, each of the following four elements of the crime must be proved beyond a reasonable doubt:

(1) That on or between the 1<sup>st</sup> day of May, 2018 and the 31<sup>st</sup> day of May, 2018, the defendant

(a) wrongfully obtained or exerted unauthorized control over property of another;  
or

(b) by color or aid of deception, obtained control over property of another;  
and

(2) That the property exceeded \$5000 in value;

(3) That the defendant intended to deprive the other person of the property;  
and

(4) That this act occurred in the State of Washington.

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

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

INSTRUCTION NO. 20

The defendant is charged in count I with Theft in the First Degree. If, after full and careful deliberation on this charge, you are not satisfied beyond a reasonable doubt that the defendant is guilty, then you will consider whether the defendant is guilty of the lesser crime of Theft in the Second Degree.

When a crime has been proved against a person, and there exists a reasonable doubt as to which of two or more degrees that person is guilty, he or she shall be convicted only of the lowest degree.

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INSTRUCTION NO. 21

A person commits the crime of theft in the second degree when he or she commits theft of property exceeding \$750 in value but not exceeding \$5000 in value.

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11/18/2019

INSTRUCTION NO. 22

To convict the defendant of the lesser included crime in Count I of Theft in the Second Degree, each of the following four elements of the crime must be proved beyond a reasonable doubt:

(1) That on or between the 1<sup>st</sup> day of May, 2018 and the 31<sup>st</sup> day of May, 2018, the defendant

(a) wrongfully obtained or exerted unauthorized control over property of another;

or

(b) by color or aid of deception, obtained control over property of another;

and

(2) That the property exceeded \$750 in value but did not exceed \$5,000 in value;

(3) That the defendant intended to deprive the other person of the property;

and

(4) That this act occurred in the State of Washington.

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

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

INSTRUCTION NO. 23

To convict the defendant of the crime of Theft in the Second Degree as charged in Count II, each of the following four elements of the crime must be proved beyond a reasonable doubt:

(1) That on or between the 1<sup>st</sup> day of June, 2018 and the 30<sup>th</sup> day of June, 2018, the defendant

(a) wrongfully obtained or exerted unauthorized control over property of another;

or

(b) by color or aid of deception, obtained control over property of another;

and

(2) That the property exceeded \$750 in value;

(3) That the defendant intended to deprive the other person of the property;

and

(4) That this act occurred in the State of Washington.

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

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

INSTRUCTION NO. 24

To convict the defendant of the crime of Theft in the Second Degree as charged in Count III, each of the following four elements of the crime must be proved beyond a reasonable doubt:

(1) That on or between the 1<sup>st</sup> day of July, 2018 and the 31<sup>st</sup> day of July, 2018, the defendant

(a) wrongfully obtained or exerted unauthorized control over property of another;

or

(b) by color or aid of deception, obtained control over property of another;

and

(2) That the property exceeded \$750 in value;

(3) That the defendant intended to deprive the other person of the property;

and

(4) That this act occurred in the State of Washington.

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

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

INSTRUCTION NO. 25

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you. Deliberations are to occur only in the jury room when all twelve jurors are present.

You are all officers of the court and must evaluate the evidence with an open mind free of bias or prejudice. If during your deliberations, you become concerned that the discussions are being influenced by preconceived bias or prejudice, you must bring this to the attention of the other jurors so that the issue may be fairly discussed among all members of the jury.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the judicial assistant. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and seven verdict forms for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

When completing the verdict forms, you will first consider the crime of Theft in the First Degree as charged in Count I. If you unanimously agree on a verdict, you must ~~fill~~<sup>fill</sup> in the blank provided in Verdict form I the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict form I.

If you find the defendant guilty on verdict form I do not use verdict form I-A. If you find the defendant not guilty of the crime of Theft in the First Degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of Theft in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form I-A the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict form I-A.

You will next consider the crime of Theft in the Second Degree as charged in Count II. If you unanimously agree on a verdict, you must ~~fill~~<sup>fill</sup> in the blank provided in Verdict form II the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict form II.

You will next consider the crime of Theft in the Second Degree as charged in Count III. If you unanimously agree on a verdict, you must ~~fill~~<sup>fill</sup> in the blank provided in

Verdict form III the words “not guilty” or the word “guilty,” according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict form III.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form(s) to express your decision. The presiding juror must sign the verdict form(s) and notify the judicial assistant. The judicial assistant will bring you into court to declare your verdict.

You will also be given special verdict forms for the crimes charged in counts I, II and III. If you find the defendant not guilty of these crimes, do not use the special verdict form. If you find the defendant guilty of these crimes, you will then use the special verdict forms and fill in the blank with the answer “yes” or “no” according to the decision that you reach. In order to answer the special verdict forms “yes,” you must unanimously be satisfied beyond a reasonable doubt that “yes” is the correct answer. If you unanimously agree that the answer to the question is “no” you must fill in the blank with the answer “no.” If after full and fair consideration of the evidence you are not in agreement as to the answer, then do not fill in the blank for that question.

INSTRUCTION NO. 26

The State has the burden of proving the existence of each aggravating circumstance beyond a reasonable doubt. In order for you to find the existence of an aggravating circumstance in this case, you must unanimously agree that the aggravating circumstance has been proved beyond a reasonable doubt.

Multiple aggravating circumstances have been alleged. You should consider each of the allegations separately. Your verdict on one allegation should not control your verdict on any other allegation.

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INSTRUCTION NO. 27

If you find the defendant guilty of Theft in the First Degree as charged in Count I or the lesser included charge of Theft in the Second Degree, then you must determine if any of the following aggravating circumstances exist:

1. Whether the defendant knew or should have known that the victim was particularly vulnerable or incapable of resistance.
2. Whether the crime was a major economic offense or series of offenses.

INSTRUCTION NO. 28

A victim is “particularly vulnerable” if he or she is more vulnerable to the commission of the crime than the typical victim of Theft in the First Degree and/or Theft in the Second Degree. The victim's vulnerability must also be a substantial factor in the commission of the crime.

INSTRUCTION NO. 29

To find that this crime is a major economic offense, at least one of the following factors must be proved beyond a reasonable doubt:

- (1) The crime involved multiple victims or multiple incidents per victim; or
- (2) The crime involved attempted or actual monetary loss substantially greater than typical for the crime; or
- (3) The crime involved a high degree of sophistication or planning or occurred over a lengthy period of time; or
- (4) The defendant used his position of trust, confidence, or fiduciary responsibility to facilitate the commission of the crime.

The above factors are alternatives. This means that if you find from the evidence that any one of the alternative factors has been proved beyond a reasonable doubt, then it will be your duty to answer "yes" on the special verdict form. To return a verdict of "yes," the jury need not be unanimous as to which of the alternatives has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

INSTRUCTION NO. 30

If you find the defendant guilty of Theft in the Second Degree as charged in Count II, then you must determine if any of the following aggravating circumstances exist:

1. Whether the defendant knew or should have known that the victim was particularly vulnerable or incapable of resistance.
2. Whether the crime was a major economic offense or series of offenses.

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11/18/2019

INSTRUCTION NO. 31

If you find the defendant guilty of Theft in the Second Degree as charged in Count III, then you must determine if any of the following aggravating circumstances exist:

1. Whether the defendant knew or should have known that the victim was particularly vulnerable or incapable of resistance.
2. Whether the crime was a major economic offense or series of offenses.

# Appendix XIII

FILED

Court of Appeals

Division II

State of Washington

4/17/2020 10:35 AM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

Defendant.

COA NO. [REDACTED]

P/C NO. [REDACTED]

JURY TRIAL AND VERDICT

REPORT OF PROCEEDINGS  
VOLUME 6, PAGES 845 - 945

WEDNESDAY, NOVEMBER 14, 2019

Pierce County Courthouse

Tacoma, Washington

Before the

HONORABLE JERRY COSTELLO

Department No. 7

[Appearances on next page]

Reported by: Karla A. Thomas, CCR, RPR  
Official Court Reporter, #82191

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APPEARANCES:

For the Plaintiff:	Sven Nelson
	Deputy Prosecuting Attorney
	Pierce County
For the Defendant:	Chris Van Vechten
	Law Office of Chris
	Van Vechten
	705 S. 9th St., Ste 206
	Tacoma, WA 98405

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THURSDAY, NOVEMBER 14, 2019; MORNING SESSION

(All parties present.)

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(Jury not present.)

THE COURT: Please be seated. Good morning,  
everyone.

MR. NELSON: Good morning, Your Honor.

THE COURT: Are we ready for the jury?

MR. VAN VECHTEN: Yes.

MR. NELSON: Yes.

(Jury present.)

THE COURT: Please be seated. Good morning,  
members of the jury. I instructed you on the law  
yesterday. As I mentioned, you'll have your own set of  
the jury instructions to take with you back into the  
jury room, so at this time I would like you to give your  
attention to Deputy Prosecutor Nelson for final argument  
on behalf of the plaintiff, State of Washington.

Mr. Nelson?

MR. NELSON: Thank you, Your Honor and  
Counsel.

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CLOSING ARGUMENT

BY MR. NELSON:

Ladies and gentlemen of the jury, this is a case I told you about in opening statement was about a case about a con man, and it's a case about a man, [REDACTED] who used his landscaping practice to get money from people. He used landscaping as kind of his way in that gets them used to writing checks and then he keeps coming back and getting more and more.

You've heard in this case from Mr. Mesick and you've heard from Mr. Buettner as well in terms of what happened to his family. And as I go through this you're going to see some similarities, and that's the reason that you heard from Mr. Buettner in the first place.

Mr. Mesick is an elderly man. He's in his mid-70s now, mid-to late 70s, has a yard that he needs to maintain, a big overgrown piece of property that he used to maintain himself until he became not able to do what he likes. You heard from him. He's got lots of shrubs. He's proud of his yard. He has lots of -- he can name all the hedges and everything in it, not that some of us could, but that's his passion. And [REDACTED] came in and he wanted cash up front for things, and that's what he does.

He wanted to fix his vehicles to get started on the

1 job. That's another thing that [REDACTED] tends to do.  
2 And then the checks started being written. First it was  
3 just the check for half of what they had initially  
4 agreed. \$1,600 was the first two jobs, the trees for  
5 \$1,000 and the hedge for \$600. You take half of that,  
6 and he wanted a check for \$800. Well, he got one that  
7 first day, but then, as you see, checks were flowing;  
8 ATM transactions were flowing even in that first couple  
9 weeks since their contact. So that was in May of 2018,  
10 just a year and a half ago now.

11 In getting to the Buettner case, Charlotte Buettner  
12 was in her mid-80s in 2005 when this event occurred.  
13 She had yard people to do her yard. She had landscapers  
14 taking care of her place in Lakewood, but the defendant  
15 still came in and wanted to clean the gutters, and it  
16 was just a \$75 job to clean her gutters, and she said  
17 fine. But what does he want also? Well, he wanted cash  
18 upfront. He wanted the 75 bucks, and he couldn't do it  
19 that day for some reason, and then he wanted her to pay  
20 to fix a vehicle so he could get the job done.

21 Before we even get to the checks that started  
22 flowing after that, it was around the time a month later  
23 that Gerald Buettner figured out that this guy was kind  
24 of weaning his way into his mom's life, and he was  
25 asking questions. And the gutters still hadn't been

1       cleaned. He hadn't been paid back on the 150 bucks for  
2       the car, for the vehicle, and so what did he do? He  
3       called [REDACTED] and he told him: You know what? I  
4       cleaned the gutters. We're not going to collect on the  
5       money, just have no further contact, all done.

6       But that's not what happened. As you heard from  
7       Mr. Buettner, when he was talking to his mom on Lopez  
8       Island, on the way back she was concerned about her  
9       checking account always having a couple dollars in it,  
10      so he looked into it, and he saw check after check after  
11      check written to [REDACTED] and to [REDACTED]  
12      colleagues. That was in -- 2005 was the gutter  
13      situation. In 2006 was when they discovered all the  
14      checks had been written.

15      These are all the transactions for the Buettner  
16      case that Mr. Buettner prepared his own Excel  
17      spreadsheet and he listed all the transactions. And you  
18      have these in evidence. You're going to have this back  
19      in the jury room to look at. It's got [REDACTED] name  
20      on a lot of these checks, but it also has other folks'  
21      names on there, and it's got a total down there at the  
22      bottom. It's kind of hard to see. It's \$43,025.  
23      That's for everybody. If you take out only the [REDACTED]  
24      [REDACTED] checks, it's in the \$30,000 range. And that's  
25      what Mr. Buettner was trying to collect from [REDACTED]

1 just the checks written to him, not checks that were in  
2 someone else's name that were suspiciously written at  
3 the same and some of the similar amounts as to [REDACTED]

4 [REDACTED]  
5 In the Mesick case Detective Schieferdecker also  
6 prepared a spreadsheet very similar to what Mr. Buettner  
7 had done in 2006, and she lists all the transactions.  
8 Again, you have this sheet for you in evidence and  
9 you'll have this back in the jury room to look at.

10 At the beginning here I just want to thank you for  
11 your time. This has been a long process for you, and I  
12 know -- maybe it seems longer to me than it does to you.  
13 We're in only the second week of trial, but it's towards  
14 the end of our second week here, and we've had testimony  
15 of nine folks and, as I said in opening, if we could  
16 line all these people up and not let anybody leave --  
17 well, Mr. Mesick took a full day. [REDACTED] took a half  
18 a day, a little bit more than that, so it wouldn't have  
19 gotten done that quickly, but a lot of times we were  
20 waiting, waiting for scheduling issues, waiting for  
21 other things. A federal holiday was thrown in there as  
22 well. You folks were obviously told to be here at  
23 certain times and we had to argue about things and  
24 therefore you waited longer. And it's a process for  
25 you, and I realize that. We all realize that and we

1       thank you for your time.

2               One of the things that jurors think that haven't  
3       been jurors before is, some of them are concerned about  
4       sitting in judgment of people, and that's one of their  
5       big concerns, is that they don't really like the idea of  
6       judging somebody else. And I want to remind right here  
7       at the outset of this closing that that's not what your  
8       role is. You're not here to determine whether [REDACTED]  
9       is a good person or a bad person. You're here to look  
10      at a specific time frame.

11             In this case you have from May 10th, 11th, through  
12      the end of the month and then you have through  
13      July 19th. That's the time frame that we're looking at  
14      to see whether or not this man, [REDACTED] committed  
15      some crimes, and we're not here to judge him good, bad.  
16      He's a likeable guy. As you saw, Mr. Mesick liked him  
17      until he kind of figured out what was happening. But  
18      we're not here to determine his popularity or anything  
19      like that. We're not sitting in judgment. We're  
20      looking at some very specific things: Did he commit  
21      these crimes.

22             And I'm going to walk through those with you  
23      because for each crime there is what we call a "to  
24      convict" instruction. That's because it starts out --  
25      this is Instruction No. 19 in your packet -- for the

1 first count here, "To convict the defendant of," and  
2 then it lists all the elements that the State has to  
3 prove. So I've taken the liberty of putting these up on  
4 the screen for you. I'm going to walk through these  
5 with you and show you what the State has to prove and  
6 how we have proved that.

7 So for this crime of Theft in the First Degree --  
8 and, again, you can follow along on Instruction No. 19  
9 if that's easier -- it is on or between this date  
10 period, and for Count I it's going to be the period of  
11 May. When we get to Count II it's going to be the  
12 period of June, but for between May 1st, '18, and May  
13 31st of '18, the defendant wrongfully obtained or  
14 exerted unauthorized control over property of another or  
15 by color or aid of deception obtained control over  
16 property of another.

17 So there's two ways of committing that second one,  
18 and we'll talk about that. That this property exceeded  
19 \$5,000, that he intended to deprive the other person of  
20 the property, and this occurred here in the state of  
21 Washington.

22 So I'm looking at the first thing here, is when did  
23 this occur. On or between that time period in May.  
24 Well, we know it occurred in May. This is the very  
25 first check that was written by Mr. Mesick to [REDACTED]

1       It was written on May 10th. The records are going to  
2       indicate that it was pushed through into the bank at  
3       least for their records on May 11th, but it's check No.  
4       1047, 800 bucks. That's what Mr. Mesick talked about.  
5       That's half of the \$1,600 for the hedge. \$800 was to  
6       get started on the work. And so we know the time period  
7       is correct and we know from Detective Schieferdecker's  
8       spreadsheet there is that things start May 10th,  
9       May 11th, and they go through the month of May, and so  
10      we know that our time period is correct.

11           Is this the defendant? That's one of the things  
12      that we have to prove, that it's [REDACTED] who did this,  
13      not somebody else. Well, [REDACTED] is not a stranger to  
14      Mr. Mesick. They know each other. Mr. Mesick  
15      identified him in open court. We know from the bank  
16      records that these checks were cashed by [REDACTED]  
17      [REDACTED] made admissions about doing them, taking  
18      this money. This is not a whodunit. This isn't a  
19      situation where we need a forensic scientist to come in  
20      and do DNA and figure out whose fingerprints are where  
21      and what's going on with these checks. It's a  
22      straightforward case, as Detective Schieferdecker told  
23      you. This is certainly not a whodunit; it's not a  
24      mystery.

25           So the next element we have to prove -- and, again,

1       this is either A or B; we don't have to prove both of  
2       these -- did he wrongfully obtain or exert unauthorized  
3       control.

4               Well, your instructions are helpful, and I would  
5       urge you that when you come into a phrase that you're  
6       not familiar with as you're debating things in the jury  
7       room to kind of reread your instructions, and often it  
8       will define things for you, like, for instance, what  
9       does "wrongfully obtain" mean, and it's actually in the  
10      instructions. It's not overly helpful because here's  
11      what it says: "It means to take wrongfully the property  
12      or services of another." Well, that seems like a pretty  
13      circular definition, but it's simple. It's not a  
14      complex thing. Was this wrongfully obtained?

15             What we know is that [REDACTED] was not supposed to  
16      be working in this capacity. And he was told by a court  
17      that he couldn't be working at this time. He was told  
18      by his community corrections officers that he could not  
19      be working in this capacity. They wanted him to find a  
20      job. They didn't want to keep him from working, but  
21      they didn't want him to work in this capacity, and you  
22      know the reasons for that and I'll explain that further  
23      as we go through this.

24             The Department of Corrections talked about the  
25      reasons for that condition: His past offense cycle.

1 And you saw some of what's in his past offense cycle and  
2 the reason why that was in there. And we're not here to  
3 debate whether it's right or wrong to have that  
4 condition. The defendant knew that it was a condition,  
5 that he couldn't work in landscaping. He could work  
6 anywhere else; he just couldn't do that. And it was  
7 under the conditions of release, as we talked about.

8 As you know, Mr. Mesick was not really on board  
9 initially with what Department of Corrections was doing.  
10 He wasn't happy when they showed up at his door asking  
11 questions about his truck and he wanted them to butt  
12 out, and the reason why is because he believed the  
13 defendant's story: "They're trying to jam me up;  
14 they're after me." And he believed the sob story from  
15 [REDACTED] And as you can tell, later he stopped  
16 believing that story. And there's reasons for that as  
17 well that we'll get into.

18 But we know [REDACTED] was working. In fact,  
19 there's a picture of [REDACTED] working in landscaping.  
20 That's the hedge that was supposed to be trimmed down to  
21 a reasonable height so that Mr. Mesick, with his bad  
22 leg, could keep it topped off. Now, [REDACTED] told you  
23 yesterday that "Oh, yeah, that hedge was done. I mean,  
24 on the street it's shaved off there." Well, look at the  
25 top of that. Does that look done to you? That's when

1 he's cleaning up the shrubbery of that.

2 Again, this is [REDACTED] working. He's not  
3 supposed to be working. And so the State has proved  
4 that he wrongfully obtained or exerted unauthorized  
5 control over this property because he wasn't supposed to  
6 be collecting money doing that type of work.

7 The other alternative for this is by color or aid  
8 of deception. And that's the main crux of this case.  
9 That's [REDACTED] main gig, is deception. And we're  
10 going to talk about that, too. That's defined for you  
11 in your instructions as well.

12 There's a couple of instructions that talk about  
13 deception. It has to be operated to bring about the  
14 obtaining of the property. It's not necessarily that  
15 it's the sole thing that gets the property. And here's  
16 a definition of "deception." There's three parts here.  
17 Knowingly creates or confirms another's false impression  
18 that the actor knows to be false; fails to correct  
19 another's impression that the actor previously has  
20 created or confirmed, or promises performance that the  
21 actor does not intend to perform or knows will not be  
22 performed.

23 It's a mixture of all these what [REDACTED] did.  
24 Primarily the last one, when he's getting money from  
25 Mr. Mesick, he knows he's not going to be repaying that

1 money. Oh, he makes promises he's going to bring it the  
2 next day. You saw him on the videotape when he says  
3 300.

4 "You're going to bring it tomorrow? By what time?  
5 By 11 a.m.?"

6 "You'll have that in your hand."

7 And he swears and everything. That's what he did  
8 every time he borrowed money, knowing that he wasn't  
9 going to give it back. And we'll talk about why we know  
10 that in a moment.

11 His deception was these are emergencies, every  
12 single day a different one, whether it's a car accident,  
13 tabs, vehicles breaking down, all kinds of reasons for  
14 why this crisis needs to be resolved today. And  
15 Mr. Mesick is the one to do it and Mr. Mesick was a  
16 player in this. He admitted to you on the stand that he  
17 went along with this and he didn't really get suspicious  
18 until July sometime when his bank account started --  
19 well, when it really drained is when he got really  
20 concerned.

21 Every time things would expand. You even saw that  
22 on the videotape. \$250 is what he was going to borrow  
23 that day and he's got him on tape. He goes, "Okay, I  
24 need 300."

25 "You said 250."

1 Well, there's, you know, tax, or there's always  
2 some other surcharge that he would raise it up. So he  
3 would go low and then always want a little more. And  
4 that was part of his deception. And, again, always pay  
5 it right back, that was always part of his promise that  
6 did not occur.

7 The defendant told Mr. Mesick plainly "my  
8 father-in-law is in Federal Way; it's in King County; I  
9 can't get to King County because I'm on probation."  
10 Well, he didn't say probation that time, I don't think,  
11 but he was not able to go to King County. And yet in  
12 court [REDACTED] said "I don't have a father-in-law in  
13 Federal Way." Well, okay, but that doesn't mean he  
14 doesn't tell Mr. Mesick that.

15 We're going to talk about credibility in a moment  
16 and how you have judged that in this case, but  
17 Mr. Mesick said that that was one of the promises, that  
18 he was going to -- his father-in-law owed him money. I  
19 don't know why his wife couldn't get the money, but  
20 there was always some reason why he couldn't get the  
21 money that was owed. He was always jammed up by the  
22 CCOs, and, of course, he doesn't tell Mr. Mesick that he  
23 was prohibited from working by the CCOs, but what he  
24 tells them is "they're always trying to jam me up and  
25 keep me from doing my job." Well, they were, but he

1 doesn't tell him that was an actual condition of his  
2 probation.

3 A bag of checks. At one time he came by with a  
4 whole bag and he said: "See these checks? I'm going to  
5 cash these and I'm going to pay you back." That was  
6 part of his deception. It's giving him hope that  
7 there's going to be payment coming, and he needed hope  
8 because he sees money going out and nothing coming in,  
9 but father-in-law; I'll go get some money; oh, it's a  
10 bag of checks, and tomorrow you're going to get the  
11 money.

12 Some days he would give him a check to hold on as  
13 collateral and then write him another check, and the  
14 next day he would come back and take that collateral  
15 check. He talked about the priest that owed him money,  
16 owed him thousands of dollars, and once the priest paid  
17 him he was going to then obviously pay back Mr. Mesick.  
18 That was part of his giving him hope that he was going  
19 to get paid.

20 Now, we heard from a priest that came in here that  
21 was a friend of the defendant's who said the opposite,  
22 that, oh, no, [REDACTED] owed me like \$4,000. That was a  
23 line that the defendant gave to Mr. Mesick to encourage  
24 him to keep giving him money, because other people were  
25 going to pay him soon and he was going to get the money.

1 Other customers owed him money, too. Another lady owed  
2 him \$6,000 for landscaping somewhere, and, of course,  
3 that was going to come to him, but it never did.

4 Part of the hope as well was getting confidence.  
5 "I'll give you titles to my vehicles." Mr. Mesick  
6 didn't want titles to vehicles; he wanted to get paid.  
7 And yet [REDACTED] would offer those as a way to  
8 supposedly encourage him -- well, not supposedly --  
9 encourage him to give him more money to help him feel --  
10 no, no, no, I'm going to pay you; you can have the  
11 titles. Well, these old trucks probably weren't enough  
12 to pay back the \$13,000 --

13 MR. VAN VECHTEN: Objection; this is not in  
14 evidence.

15 THE COURT: The jury will decide what's been  
16 proven and what's been not proven. The jury has been  
17 instructed that if arguments of counsel do not conform  
18 with the evidence, they are to disregard such arguments.

19 Please continue.

20 MR. NELSON: Thank you, Your Honor.

21 Collateral was something that he would try to say  
22 with the checks or with titles and so forth to keep up  
23 the appearance that there was going to be some payment  
24 coming at some point. It was always going to be paid  
25 right back, and it never was.

1           So the State has proven by color or aid of  
2           deception that he obtained control of the property.  
3           That's how he got Mr. Mesick to write all those checks,  
4           to take him to the ATM all those times, was by color or  
5           aid of deception.

6           Next we have to show whether this property that he  
7           obtained in the month of May exceeded \$5,000. Well, we  
8           know from Detective Schieferdecker that she had all  
9           these copies of all the checks, and you have copies of  
10          the checks that you'll have a chance to look at in  
11          evidence, and that's what she created the spreadsheet  
12          from. There's also screenshots that Mr. Mesick prepared  
13          that have a couple check copies on those, too, that  
14          didn't make it on the other copy, but that's what the  
15          detective had to work from. She also had his bank  
16          statement that highlighted all of the fraudulent  
17          activity on his bank statement.

18          Detective Schieferdecker then goes and meets with  
19          Mr. Mesick, and they have a long meeting. As you can  
20          tell, Mr. Mesick liked to talk and it wasn't going to be  
21          a 20-minute discussion about anything. But she went  
22          through everything line by line, figuring out what  
23          happened, asked questions, looked at the checks, and  
24          then took all that information back and prepared that  
25          spreadsheet that you saw. So this is just the portion

1 of the spreadsheet for May.

2 And, again, as I talked about earlier, May 11th,  
3 check No. 1047 went through the bank. It was actually  
4 dated on the check itself May 10th, but that's when it  
5 starts, \$800, and then it goes all the way down through  
6 May 31st, check 1053, \$950. And when you add up all of  
7 those checks, you get \$6,398. That's what was paid out  
8 just in that three-week period, between May 10th,  
9 May 11th, through the end of the month.

10 Work completed, \$1,000 for the trees. And, again,  
11 the trees weren't actually completed. That was the  
12 agreed amount, \$1,000, Mr. Mesick told you about. He  
13 then tried to hire one of the tree workers later to  
14 finish the job. That didn't work out. But that's the  
15 amount that Mr. Mesick said that's a fair price: Those  
16 guys worked hard and, you know, I would have paid \$1,000  
17 for that; that's fair.

18 \$300 is what Mr. Mesick said the hedge was worth.  
19 And, again, the hedge wasn't finished. Mr. Mesick  
20 wanted the hedge finished and it never got finished. He  
21 told you in court here that it was half. He told  
22 Detective Schieferdecker earlier, as was brought out,  
23 that he was going to give the defendant credit for that  
24 against the money because he was feeling generous at  
25 that time, but, honestly, what was it worth? He told

1       you \$300 for that job, and that's what he told you in  
2       court earlier this week. Actually, it was last week.

3               So if you take out the \$1,000 -- and, again, some  
4       of this work was done in the month of May and so  
5       theoretically you could take that out of the \$6,398 and  
6       take that down and you'll get \$5,098, which is above the  
7       \$5,000 threshold for Theft in the First Degree.

8               I want to talk about credibility at this point  
9       because I'm talking about what Mr. Mesick told you about  
10      what things were worth. [REDACTED] actually has  
11      different numbers and so forth, so we need to really  
12      talk about credibility and how you figure out  
13      credibility.

14              Your instruction talks about that, and it's the  
15      very first instruction, which is a very long  
16      instruction. It goes on for numerous pages. But it  
17      gives you in the middle of that somewhere kind of a  
18      snapshot of what things that you can look for to assess  
19      credibility. And one of the things is the opportunity  
20      of the witness to observe or to know the things that  
21      they testify about, the ability to observe accurately,  
22      quality of their memory while testifying, any personal  
23      interest in the outcome, bias or prejudice that they  
24      might have shown, reasonableness in light of all the  
25      testimony, and any other factors that might affect. We

1 all have ways of assessing credibility, so you can use  
2 your common sense and you can use your intuition about  
3 what makes somebody credible when they testify.

4 And the State called five witnesses, and I'm going  
5 to go through real quickly credibility. I'm not going  
6 to talk too much about Officer Kunkel. He was the first  
7 witness. He talked about the phone call, that he called  
8 Mr. Mesick once. Mr. Mesick had called 911. They said  
9 we'll have somebody call you. Officer Kunkel was  
10 assigned to call him and he took that initial fraud  
11 report.

12 You heard from Mr. Mesick. He testified all day,  
13 and I'll talk about him in more detail in just a moment.  
14 I'm going to skip over him for just a second. Detective  
15 Schieferdecker you heard from as well. She's a veteran,  
16 been doing police work for decades, has been doing  
17 detective work for a long time, financial crimes, elder  
18 abuse, for a long time. And she meticulously went  
19 through the records. She did her investigation. And,  
20 again, judge her credibility as you would anybody else.  
21 Just because she's an officer doesn't mean she has more  
22 or less credibility than Mr. Mesick or anybody else.

23 You also heard from Isaiah Garrison, the community  
24 corrections officer, and he testified about what his  
25 role was, and he was pretty candid, "Yeah, the defendant

1 doesn't really like me," probably because he kept  
2 finding him in violation and putting him back into some  
3 confinement for punishment for that violation. But as  
4 Officer Garrison told you, "I'm a professional," is what  
5 Garrison was saying, "and I'm doing my job. I don't  
6 have problems -- I could work with him. It wasn't like  
7 we were at loggerheads or anything." And, again, you  
8 get to assess his credibility. Was Officer Garrison  
9 credible when he came in and testified about what he  
10 told you? Assess his credibility just like you would  
11 anybody else.

12 You also need to assess the State's last witness,  
13 Mr. Buettner. And Mr. Buettner came in and testified  
14 about things that happened 14 years ago in some  
15 circumstances. And, you know, it's hard for me to think  
16 back 14 years. That's a long time to remember things.  
17 And, again, though, you get to assess his credibility.  
18 Who did he remember? What was his demeanor like while  
19 he was testifying? You heard about him, and,  
20 fortunately, he kept a pretty decent log of what  
21 happened and he was pretty sure of what happened back in  
22 2005, 2006. Some of the dates were kind of, you know,  
23 fuzzy at first. You know, some of us don't know when  
24 our parents have passed away and so forth, but he knew  
25 how old she was and when she was born, and we can do the

1 math and figure out that it was a couple years after  
2 this incident, is what it boils down to. But, again,  
3 you get to assess Mr. Buettner's credibility just as you  
4 do all the other witnesses.

5 The defense called four witnesses, Investigator  
6 Jeremy Pawloski, who briefly talked about an interview  
7 that was completed, a couple of them. He talked about  
8 not seeing Mr. Mesick with a cane. Well, Mr. Mesick  
9 walks with a cane, as he told you, when he's out and  
10 about. He doesn't always use it, but he talked about  
11 his cane. [REDACTED] even talked about Mr. Mesick having  
12 a cane.

13 You heard from Stephen Morrison, and he was the  
14 Anglican priest that came in and talked about [REDACTED]  
15 talked about loaning him money for his legal defense, is  
16 what it seemed like, although he was a little fuzzy on  
17 some of the details on what it was for when I was trying  
18 to drill down, but he gave him money, and it wasn't the  
19 other way around. It was pretty clear that it wasn't  
20 the priest owing him money. He did some work and he  
21 didn't complete it. You know, he'll do more work once  
22 he pays him the \$4,000, the \$3,600 plus some work that  
23 wasn't completed. Once he does that, he would hire him  
24 again. And, again, you get to assess his credibility,  
25 but you've also got to ask what did he really add to the

1 proceedings; what did he add to this case. But, again,  
2 assess his credibility just like you do from any others.

3 You heard from Michael Booker. He was one of the  
4 tree guys that came in. And, again, yeah, he worked  
5 there for a while, parts of two days, it sounds like,  
6 maybe eight hours, and got paid 100 bucks by [REDACTED]  
7 is what his testimony was. He talked about knowing that  
8 Mr. Mesick had a wife but never talked to her and didn't  
9 know her. She didn't seem to be a factor in this case,  
10 but he brought that up. Again, assess his credibility  
11 as you would any of the others and ask what did he add  
12 to the proceedings.

13 You heard from [REDACTED] and I'll talk about him  
14 in detail here because it's really [REDACTED]  
15 credibility put in direct contrast with Mr. Mesick's  
16 credibility is kind of what's going to decide a lot of  
17 these factors. Mr. Buettner's to some extent, too,  
18 because of what he testified about, but it's really  
19 [REDACTED] credibility that I want to spend some time  
20 on here.

21 My first question to him was talking about his  
22 marriage, and it took awhile to even figure out when  
23 that occurred, if it was three years ago or ten years  
24 ago, and it was a little bit hard to get a straight  
25 answer about that. He talked about his wife not being

1 involved in his finances; she couldn't help him with any  
2 of these things, but then later it's like, Oh, no, she's  
3 responsible for helping me with finances. And, again,  
4 you got to see what adds up. What's consistent in the  
5 testimony is one of the things that you look at in  
6 judging credibility.

7 Father-in-law in King County. He told you he  
8 doesn't have a father-in-law. Well, it could be true.  
9 He certainly told Mr. Mesick something completely  
10 opposite and promised that he would get paid from that  
11 father-in-law once that money was given.

12 We talked a lot about the Poodle Dog Restaurant and  
13 the contact that happened there, and the reason that's  
14 important is because [REDACTED] as you know, was on  
15 probation. The defense brought that out and they wanted  
16 you to know that he's on probation. And he was. And he  
17 was on probation for crimes, and Officer Garrison was  
18 assigned to watch over him and to make sure he's looking  
19 for legitimate work and make sure that he's not  
20 violating conditions of his probation, one of those  
21 being not working as a landscaper.

22 And that morning at the Poodle Dog he wanted to  
23 know where he was. He went out in the community and saw  
24 him there. And as Officer Garrison said, as he talked  
25 to him for awhile, he wasn't getting straight answers

1 and that's why he kept asking him questions, and one of  
2 the things that didn't add up is why he had this elderly  
3 gentleman's vehicle, and that was suspicious to Officer  
4 Garrison, who knew that he wasn't supposed to be working  
5 as a landscaper.

6 And in asking questions he goes, "No, I'm borrowing  
7 it because my truck's in the shop." Well, that's not  
8 the reason why he had the truck. He had the truck  
9 because he was going to take Mr. Mesick's shrubbery and  
10 stuff to the dump for him. That's what he told you.  
11 And that's what Mr. Mesick told you. And yet he's not  
12 going to tell his community corrections officer that  
13 because if he does that, that means he's working in  
14 landscaping and he's going to jail, so he doesn't tell  
15 his CCO what's happening, and the CCO is suspicious of  
16 that and can't really figure out what's going on, so he  
17 goes and contacts Mr. Mesick. And this is May 22nd.  
18 This is 10, 12 days after [REDACTED] comes in to  
19 Mr. Mesick's life.

20 Mr. Mesick has bought into his story at this point.  
21 He is being jammed up by people. He has all these  
22 emergencies and once he gets things straightened out,  
23 then he'll do the work, then he'll pay back money. He  
24 doesn't think people should be hassling [REDACTED] and he  
25 apparently thinks that's what the CCO is doing by

1       contacting him. He's annoyed that the CCO is banging up  
2       on his door, ripping it off his hinges, as you heard him  
3       testify. He was annoyed by that, and yet what Officer  
4       Garrison was doing was following up on a legitimate  
5       violation. [REDACTED] will admit that he was doing work  
6       in open court here that was against his community  
7       corrections prohibitions and yet he's blaming his CCO  
8       for that, not for his own lack of following what the  
9       rules were on him. So, again, you get to judge his  
10      credibility as he talked to his CCO at the Poodle Dog.

11       Theft 2 convictions -- and, again, we brought these  
12      out -- this can be used only for credibility. We're not  
13      saying because he has theft 2 convictions that he's a  
14      bad person and therefore he committed these crimes  
15      because he's a bad person. That's not what you're here  
16      for. That's not what those are for. Those theft 2  
17      convictions go to whether or not he's an honest person,  
18      whether he is credible. And how many theft 2  
19      convictions does he have? Does he have one or two  
20      convictions? No, he has ten theft 2 convictions, and  
21      when you're evaluating somebody's credibility and  
22      whether they're telling you the story that is true or  
23      not, one of the things you can look at is whether they  
24      have theft 2 convictions. Well, the defendant has ten  
25      of them. That should factor in to your assessment of

1 his credibility.

2 Mr. Mesick was on the stand, as I said, for a full  
3 day. He doesn't have theft 2 convictions. He got  
4 emotional as he testified. And you saw him. The  
5 emotion came out early when we talked about his health a  
6 little bit. It came out when he talked about [REDACTED]  
7 and some of the troubles and it came out when he talked  
8 about trusting him, being embarrassed by this situation,  
9 but he trusted the defendant and he was taken advantage  
10 of in a big way. But, again, it wasn't all bad. He  
11 wasn't saying [REDACTED] never did anything; [REDACTED]  
12 did this. He talked in glowing terms about the crew  
13 that [REDACTED] assembled to work on his trees. They  
14 were like squirrels. He was really impressed with their  
15 work, and he told you that.

16 There was a \$1,550 payment on his Bank of America  
17 account that was an in-branch withdrawal that was  
18 originally marked as fraud, and he had flagged that as  
19 fraud. Detective Schieferdecker wrote that down as  
20 fraud, and yet in court he looked and he goes, "No, no,  
21 no, that wasn't; I remember that distinctly." That was  
22 something for his daughter, and he took that off the  
23 balance sheet. He didn't have to do that, as he  
24 testified, but he told you the truth about what  
25 happened. He wanted you to know that that wasn't part

1 of it. And you, again, assess his credibility. Why is  
2 he telling you that? He's telling you because that was  
3 the truth. When I asked him that direct question, he  
4 was like "no, that wasn't it," and he explained how he  
5 knew that wasn't it.

6 As we already talked about the DOC officers and how  
7 Mr. Mesick -- you know, he wasn't trying to sugarcoat  
8 and say anything good now about the corrections officer  
9 that was really trying to protect him, but he's like no,  
10 he was mad at them for bothering him, for butting in as  
11 what he figured, even though, as we know, Officer  
12 Garrison was trying to protect Mr. Mesick from what  
13 actually was happening to him at that time.

14 And we know that when Mr. Mesick said this fully  
15 hit him the hardest was when he looked at his balance.  
16 He had \$16,000 in the beginning of May. In the middle  
17 of July he had \$2,000. And when you do the math,  
18 \$13,000 of that went right to [REDACTED] \$1,500 went to  
19 his daughter for the other reason.

20 Mr. Mesick told you that he was embarrassed about  
21 everything that was happening to him. He was so  
22 embarrassed that he can't even let his adult children  
23 know what occurred; he has an accountant, and people  
24 would try to put him in a home or do something to him  
25 thinking that he lost his mind. And does that sound

1 familiar? That's kind of the Buettner situation.

2 And, again, you're looking at the Buettner  
3 situation for a couple reasons. One is to see whether  
4 this is a common scheme or plan. That's why that  
5 testimony was given to you, to see whether this is a  
6 common scheme or plan what the defendant did to the  
7 Buettners and what he did to Mr. Mesick. It's also to  
8 help you to understand what the defendant's intent was,  
9 and we're going to talk about intent a little later.

10 So, again, when you look at the amount that was  
11 paid out in May, almost \$6,400, there's a dispute about  
12 how much the trees were. Mr. Mesick told you as plain  
13 as day, no, we agreed on \$1,000. And he also told you  
14 that that was a fair amount. They did about that much  
15 work. They didn't really even finish the job, but he  
16 was so impressed with their abilities that he'll give  
17 them the full \$1,000 credit. When I asked the defendant  
18 on the stand what was the tree job, you know, it jumped  
19 around. Is it \$800? Is it \$1,200? And then how much  
20 are you going to pay these people to help you? At some  
21 point he was going to pay somebody \$1,200, but that was  
22 more than Mr. Mesick was even going to pay him, which  
23 wouldn't be a very sound business decision.

24 It turns out that -- what was paid? Well, he paid  
25 \$100 to his friend that worked for eight hours.

1 Mr. Mesick paid \$400 to another guy who did some work as  
2 well because that's what the guy said: You'll get that  
3 money back from [REDACTED] it's our arrangement; and I  
4 need this or I'm not going to start. And so he goes to  
5 the ATM; he gets money and he pays him. But that \$400  
6 is part of the \$1,000. That was to come back from

7 [REDACTED] That's not an extra bonus. The defense  
8 would like you to lop off another \$400 from this figure  
9 because that was paid to somebody else. No, that was  
10 part of the arrangement. That's part of the landscaping  
11 progress, the \$1,000, and so that doesn't get taken off.

12 [REDACTED] also wants you to take off \$30, the stop  
13 payment fees. There was a discussion between Mr. Mesick  
14 and [REDACTED] about having to stop payment on a check  
15 and Mr. Mesick said, "No, it's going to cost \$30 if I do  
16 that."

17 "No, no, it won't cost you anything."

18 He goes, "Yes, it did." And he went and showed  
19 him, printed out some document that said it was going to  
20 cost 30 bucks. I mean, look at his bank statement. It  
21 cost him \$30, and that was because [REDACTED] had trouble  
22 with one of the checks, which was lost or something, and  
23 it had to be stopped. Well, that is not Mr. Mesick's  
24 fault. That's money that Mr. Mesick lost because of

25 [REDACTED] But if you want to take off the \$30 from

1       this amount, we're down to \$5,068, so that's still over  
2       the \$5,000 threshold that's required for Theft in the  
3       First Degree.

4             The next element -- and we're almost to the end of  
5       this one; the rest are going to go a lot faster because  
6       they're very similar -- the defendant intended to  
7       deprive the other person of the property.

8             Well, how do we know what somebody intended to do?  
9       Well, you can know that by if they say "this is what I'm  
10      doing" or you can look at their actions and try to infer  
11      what their intention is.

12            This is a good time to talk about the direct versus  
13      circumstantial instruction. And this is in your packet.  
14      And basically it tells you that there are two kinds of  
15      evidence: There is direct evidence and there is  
16      circumstantial evidence. An example that I like to use  
17      is when we have a time when it's going to snow. And we  
18      all get freaked out around here about snowmagedden (ph).  
19      Last year there actually was a lot of snow.

20            But there's always a time when the weather people  
21      come on and they are all getting us hyped up about snow  
22      tomorrow, snow tomorrow, and we get all excited, and  
23      some of us are looking forward to it, some of us are  
24      like dreading it, and we look outside 10:00 before you  
25      go to sleep and there's no snow anywhere, darn it. And

1 we wake up in the morning and there's two inches of snow  
2 sometimes. Well, we weren't up to see that it snowed,  
3 but there's snow on the ground, and so do we have direct  
4 evidence that it snowed or is that circumstantial? We  
5 can kind of infer that from our common experience and we  
6 know, well, gee, snow comes down and it accumulates  
7 slowly, so if we don't see it, that's circumstantial  
8 evidence.

9 Sometimes we might have a spouse that could wake up  
10 in the middle of the night, look out the window and they  
11 see the snow falling. Well, they have direct evidence  
12 that it snowed last night. We, if we didn't see it, we  
13 have circumstantial evidence.

14 The law doesn't make a distinction as to whether  
15 one is better or worse, whether eye witnesses to a crime  
16 is better than the circumstances surrounding it.  
17 They're just different types of evidence. So when you  
18 look at what somebody's intent is, it's easy to get  
19 caught up, well, we don't really know what his intent  
20 would be, that he intended to deprive the other person  
21 of the property.

22 But how do we know that? Well, we know in this  
23 case this isn't kind of a mistake. This isn't, oh, gee,  
24 I wrote the check for the wrong amount and added a  
25 couple zeroes and nobody realized and, you know, this

1       \$13,000 is gone. No, it's not that kind of situation at  
2 all.

3           We know the defendant never returned the money.  
4 And there's been lots of discussion about that. I mean,  
5 each day had a separate excuse as to why the money  
6 wasn't returned, but the bottom line is that money was  
7 never returned and now we're 18 months after the first  
8 payment is going. I guess we're just barely 18 months  
9 after. And that money hasn't come in to this date.  
10 \$13,000, and, you know, again, it's about a 60-day  
11 period from -- or maybe 70-day period from May 10th  
12 through about July 19th.

13           We know that he went into jail in October and we  
14 know that he somehow was able to raise bail money,  
15 \$7,500. He told you all about that yesterday, that he  
16 needed to get out of jail and they didn't have money,  
17 but somehow he came up with \$7,500 to get out of jail.  
18 He also came up with \$3,650, he said, to pay restitution  
19 of the other case that he brought up as well, the other  
20 theft case. \$3,650, he came up with that amount because  
21 he thought he was going to stay out of jail, was why he  
22 was paying that back. It seems like jail is a common  
23 theme in his actions. But when you look at his intent,  
24 did he intend to keep that money?

25           Well, it's clear that he could come up with money

1       when he feels that he needs to; when he feels to not  
2       want to go to jail or get out of jail, he came up with  
3       over \$10,000, \$11,000. Well, that's about the amount  
4       that he took from Mr. Mesick, was \$13,000. He could  
5       have paid Mr. Mesick back instead of bailing out of  
6       jail.

7               His intent is also very clear from listening to  
8       Gerald Buettner, and that was, as I said earlier, the  
9       other reason why you heard his testimony, was to  
10      understand intent and the intent of the defendant to not  
11      pay back that money. How do we know when he took all  
12      these checks from Mr. Mesick that he wasn't going to pay  
13      him back? Well, we know because that's what he did with  
14      the Buettner case. He took check after check after  
15      check from Ms. Buettner, and you'll see that in the  
16      documents that you'll look at in the jury room. And  
17      that was after being told cease contact with her, don't  
18      have any contact at all. He took check after check  
19      after check, and that was in 2006. He pled guilty in  
20      2007.

21              Go forward 12 years to 2019. How much money has he  
22      paid back on the Buettner case? Well, he gave him three  
23      \$100 bills when he met them personally at the Bank of  
24      America, and that was a good faith showing that he was  
25      going to pay this money back, and he didn't want that

1 taken out of \$36,000 that they were talking about at  
2 that time. That was just a bonus just to show that "I'm  
3 on the up and up and this is kind of a sign of things to  
4 come." And that was in 2006.

5 Thirteen years later, how much money has Gerald  
6 Buettner gotten? His mom is long passed away, ten years  
7 by now. He's gotten \$5 he said from when he was in  
8 prison working in some capacity, and that was the  
9 portion. There was never an intent to pay that money  
10 back. He had time to pay that money back. He had  
11 years. That was before the Department of Corrections  
12 started putting conditions on him about not working as a  
13 landscaper.

14 Again, it's only as a landscaper. He's not barred  
15 from working. They want him to work. They just don't  
16 want him to work in a field that he's going to rip  
17 people off.

18 The last element is whether this occurred here in  
19 the state of Washington. Well, it has. This occurred  
20 in the City of Tacoma. South 70th and Yakima Avenue is  
21 where Mr. Mesick lived at the time and still does.

22 The second count -- again, I told you these would  
23 go a lot more quickly. I won't go into all the detail  
24 here. The difference between this count, Count II, from  
25 Count I is that this occurred in the month of June, and

1 we're going to span the month of June, June 1 to  
2 June 30. It's going to be the same elements other than  
3 that the property didn't exceed \$5,000 here; it just  
4 exceeded \$750. And how do we know that? Well, we know  
5 that by looking at the spreadsheet again. This is the  
6 June 1st check, 1054, for \$1,100 to [REDACTED] and then  
7 one on the 4th, another check, \$850, and then there's a  
8 couple-week break, as [REDACTED] talked about yesterday,  
9 but then towards the end of the month he came back and  
10 the 25th, 27th, 28th, 30th, a bunch of transactions.  
11 And so when you add all those up, you are going to get a  
12 total of seven transactions for just over \$4,000, and  
13 because it's \$4,000, it's less than \$5,000, so it's not  
14 going to be Theft in the First Degree; it's Theft in the  
15 Second Degree because it's over \$750.

16 And, again, all the other elements are the same.  
17 It's part of the same pattern. It's the same scheme in  
18 June that he used in May and it's going to continue on  
19 for July, as you'll see. July, again, this is spanning  
20 the month of July. We know the transactions stop on  
21 July 19th, and Mr. Mesick remembers it vividly and he  
22 told him, "If lightning strikes me down, I am not going  
23 to give you another dime." And he reached that point  
24 eventually, and it was in July that he reached that  
25 point, and he kind of just almost woke up out of this

1       haze that the defendant had put him in with this  
2       constant check writing, constant emergencies, and  
3       realized "oh, my goodness, my bank account now is way  
4       low and I'm not going to see this money." And he  
5       realized that a lot sooner than some. It only took him  
6       two months to figure out what was happening.

7               But, again, that's the time period. It's the same  
8       \$750. As we look in July here, there are transactions  
9       that are starting on July 2nd. There is the transaction  
10      on this spreadsheet that you should disregard or you  
11      should take out, that \$1,550 in-branch withdrawal on  
12      July 2nd. That was for his daughter. But you have  
13      other ones. You have these O'Reilly's, a time when he  
14      went to O'Reilly's and paying for car parts and then,  
15      you know, okay, I'll pay for the car parts. And then  
16      what does the defendant do? He throws on some floor  
17      mats and just like, okay, fine, you know, just kind of  
18      include these in it. It's just like, you know, you're  
19      paying for this, just keep paying, keep paying. Didn't  
20      even ask him. They go get gas, \$66 for gas. Not only  
21      does he get gas for his vehicle but he fills up other  
22      things because he's not paying for any of this.

23              So there's more transactions in July, and the total  
24      of 12 transactions, they total \$2,700. That's without  
25      the \$1,550 in there. I took that out already. And so

1       that's Count III. And, again, the State has proven each  
2       of those elements beyond a reasonable doubt for Counts  
3       I, II, and III.

4               I'm going to wrap up fairly soon. I've been  
5       talking at you for quite a while here. The State has to  
6       prove each of these elements to you beyond a reasonable  
7       doubt. It's our burden of proof, that the State has the  
8       burden of proving this case, and because of that -- not  
9       because of that, but it's something that a lot of us  
10      don't use the term "beyond a reasonable doubt" in our  
11      normal lives, but it's a common term that's used in  
12      every criminal case and it's proof to you and, as the  
13      instructions says, it's such a doubt as would exist in  
14      the mind of a reasonable person after fully, fairly, and  
15      carefully considering all the evidence or lack of  
16      evidence.

17             And when you get to the next sentence there, after  
18      such consideration, you have an abiding belief in the  
19      truth of the charge, you are convinced beyond a  
20      reasonable doubt, it doesn't say beyond all doubt. It  
21      doesn't say beyond a shadow of a doubt, as you see on  
22      TV, or 100 percent certainty. There's always going to  
23      be questions. There's always going to be a little bit  
24      of doubt. There's not ever a way to prove anything with  
25      ultimate 100 percent certainty.

1           What if an alien came down and abducted [REDACTED]  
2           and put a replica right in his place and we don't have  
3           the real [REDACTED] here? What if he's got an evil twin  
4           brother that looks just like him? There's all these  
5           kinds of things, right? Those are all -- they're  
6           possibilities. You know, they're not very likely. We  
7           don't have to prove beyond 100 percent doubt that that's  
8           not what happened. What we do have to show is beyond a  
9           reasonable doubt all of the elements that are before  
10          you, and that's why there's those "to convict"  
11          instructions that list out those elements, but we  
12          certainly don't have to prove other things.

13           You might have questions in other areas. Why did  
14          Mr. Mesick, who seems like a pretty smart guy, why did  
15          he not catch on as quickly as he could? And we don't  
16          know that. You saw him. He likes to help people. He's  
17          a talker. He talked to all the tree guys and he knows  
18          Ghost's name and he traded cell phone numbers with  
19          people. I mean, he's a personable person and yet you  
20          may have a question about that. It doesn't really make  
21          a lot of sense to a lot of us that are sitting back  
22          rationally looking at it. Well, this seems kind of  
23          fishy; why would this have occurred? That's not one of  
24          the things we have to prove. We have to prove beyond a  
25          reasonable doubt those elements, and that's what we've

1       done in this case.

2               We talked about the abiding belief. So these are  
3       the three: May is Count I, June is Count II, Theft in  
4       the Second Degree, and Count III is in July.

5               There is Special Verdict Forms for you. If you  
6       find the defendant guilty of Counts I, II, III, and/or  
7       III, there's a Special Verdict Form that's going to ask  
8       you a couple questions, and one of them is, is this  
9       victim in our case, Mr. Mesick, particularly vulnerable.  
10      And that's going to be defined for you, whether they're  
11      more vulnerable to the commission of the crime than the  
12      typical victim of that crime, and this must be a  
13      substantial factor.

14              Well, in this case his inability to kind of get  
15      around as much, to be vulnerable in that regard, is what  
16      caused this crime to happen. He wouldn't have ever  
17      asked for any landscaping help if he was still able to  
18      trim those shrubs. He loves his shrubs and his bushes  
19      and everything in his yard and he doesn't want somebody  
20      else messing with it. You saw how concerned he was when  
21      people were trimming the wrong bush and so forth. And  
22      yet because he's not getting around as much and, you  
23      know, he still walks out there and, you know, he may not  
24      use his cane all the time, but if he's walking a long  
25      distance, he said that he does.

1           And he was asked a lot of questions about is there  
2           a wheelchair ramp in the house and allegations that he's  
3           a wheelchair-bound person who is incapable of doing  
4           anything. That's not what makes him more vulnerable.  
5           It's just he can't get around and do these things, and  
6           so is he more vulnerable than a typical victim of theft?  
7           And that's what you're to decide, and I would submit  
8           that he is more vulnerable.

9           Whether this was a major economic offense is the  
10          second question for you, and that's got four subparts to  
11          it. And basically we're going to focus on the first  
12          one. I mean, it's were there multiple victims. No,  
13          because we're not going to consider the Buettner case  
14          another victim. That's only to be used to look at his  
15          intent and to see whether this was the same course of  
16          conduct what happened to him. It's not, you know, are  
17          there multiple victims. That's not what that is for.  
18          But are there multiple incidents for victims? And  
19          that's where we have it.

20          When you look at the chronology of the fraud in  
21          this case, it was almost every day. Sometimes he said  
22          he would come by several times a day trying to get  
23          money, trying to get him to the ATM, trying to do that,  
24          and it was multiple, multiple, multiple.

25          Mr. Mesick only knew him from May 10th on, and in

1       that 70-day period there was 40 some transactions. That  
2       is a lot of contact. It's multiple incidents. His loss  
3       is not substantially greater. High degree of  
4       sophistication or planning, you could find that. It's  
5       not completely sophisticated, but, you know, he has to  
6       think of something new to say every day when he needs  
7       more money.

8           Use of position or trust, he didn't really have a  
9       position of trust. He wasn't a fiduciary in the sense  
10      that he has some legal responsibilities to do anything,  
11      but certainly Mr. Mesick trusted him, and that was kind  
12      of what was painful, when it hit him in the end when he  
13      realized that he was abusing that trust. If you had a  
14      position of trust as a landscaper, I'm not sure if  
15      that's going to work or not, so I would focus on the  
16      first one. Multiple incidents per victim is what makes  
17      it a major economic offense.

18           And, again, I thank you for your time. I know  
19      you've been here for a long time and I've been talking  
20      for a long time, so I will sit down. I would ask you to  
21      keep an open mind as you listen to defense's closing.  
22      I'll get a chance to address you again in rebuttal.  
23      Then you'll go back in the jury room.

24           You're going to have all those exhibits, and I  
25      encourage you to look through the exhibits, look through

1 the jury instructions, and after you've done all of  
2 that, I'm convinced that you will be convinced beyond a  
3 reasonable doubt that the defendant, [REDACTED] is  
4 guilty of Theft in the First Degree for what happened in  
5 May, Theft in the Second Degree for what happened in  
6 June, and Theft in the Third Degree from what happened  
7 in July, and that you should answer yes on the Special  
8 Verdict Forms as well. Thank you.

9 THE COURT: Members of the jury, please give  
10 your attention to Mr. Van Vechten for final argument on  
11 behalf of the defendant, [REDACTED]

12 MR. VAN VECHTEN: Your Honor, may I briefly  
13 beg a bathroom break, please? I wasn't expecting him to  
14 take that long.

15 THE COURT: All right. We'll take a short  
16 break, 10, 15 minutes or so.

17 MR. VAN VECHTEN: Thank you, Your Honor.

18 THE COURT: Members of the jury, step into the  
19 jury room.

20 (Recess.)

21 (Jury not present.)

22 THE COURT: Please be seated. Ready for the  
23 jury?

24 MR. VAN VECHTEN: Yes, Your Honor. Again,  
25 thank you for the delay.

1 THE COURT: You're welcome.

2 (Jury present.)

3 THE COURT: You may be seated. Members of the  
4 jury, welcome back. Please give your attention to  
5 Mr. Van Vechten for final argument.

6 MR. VAN VECHTEN: Thank you, Your Honor.

7 CLOSING ARGUMENT

8 BY MR. VAN VECHTEN:

9 Whenever the State charges a person with a crime,  
10 the government is held to the highest standard of proof  
11 under the law. At no time does the law require you to  
12 be more certain about anything than when you walk out of  
13 that jury room, and you have to be unanimously certain.  
14 I want to remind you that this is not a contest to see  
15 who can bring the most witnesses to trial or even  
16 actually which side you think is the most credible.  
17 This is a safeguard to ensure that people do not get  
18 convicted of crimes in the midst of reasoned doubt.

19 All of us in our daily lives are required to make  
20 assumptions based on what people tell us. Life would be  
21 impractical if we were forced to question everything we  
22 were told. But when you serve on a jury in a criminal  
23 trial, the only assumption you're allowed to have, in  
24 fact required to have, is that the defendant is  
25 innocent.

1           Now, a big part of being a juror, and we discussed  
2           this at the start of trial, is about being the judge of  
3           credibility. And we discussed what credibility is, that  
4           it means multiple things. One thing it means is it  
5           means honesty. But honesty doesn't equate to accuracy.  
6           A lot of very honest people are blinded by their  
7           personal experiences in life and by their personal  
8           biases. One of my favorite examples of this is in 1978  
9           a red panda, which looks something like a raccoon,  
10          escaped from a zoo in Amsterdam, and this was a big  
11          deal. It got 24-hour coverage. Everyone was out  
12          looking for it.

13          Well, they found it 24 hours later. It was dead  
14          alongside the road; it had been hit by a car. But for  
15          months thereafter almost 200 people called the police to  
16          say that they had seen the red panda in their back yard,  
17          on their roof, in their trash can, and psychologists  
18          looked at this and they coined a phrase that you might  
19          have heard of called "red panda effect."

20          And what red panda effect effectively is that  
21          people can be telling the truth as they see it while not  
22          actually seeing something, and the reason for that is  
23          because if someone expects to see something, they often  
24          will see it even if it's not in front of them. Another  
25          way of thinking about that is if you want to see

1 something, it will be there regardless of whether or not  
2 it is.

3 So you heard testimony from nine witnesses over the  
4 course of this trial, including Mr. Mesick.

5 Excuse me; I will slow down.

6 Many of them were very passionate in their beliefs,  
7 and I don't think you heard from a single neutral  
8 witness with regard to my client. Some of them were  
9 better at testifying than others, but the theatrics of  
10 this court do not equate to evidence. What you're going  
11 to need to do when you go back to that room is look at  
12 the evidence from multiple facets and multiple  
13 perspectives in order to properly render a judgment  
14 based on the evidence.

15 Another important concept you need to understand is  
16 the concept of proof beyond a reasonable doubt. And,  
17 again, this is the highest standard of proof we have  
18 under the law. We take children away from their parents  
19 requiring less evidence than this.

20 The classic way to explain what proof beyond a  
21 reasonable doubt is this: If I were to take a box and I  
22 would have put a mouse in the box and then I put a cat  
23 in the box and I walked away from that box and I came  
24 back ten minutes later and I opened the box and inside I  
25 found a cat but no mouse, I can be reasonably certain

1       that the cat ate the mouse. But if I then inspected the  
2       box and I found a small hole inside, small enough for a  
3       mouse to have crawled through, then there's reason to  
4       believe that the mouse escaped. And so applying that  
5       rationality to the facts of a criminal case, if there is  
6       a hole in the State's case that is small enough for a  
7       mouse to crawl through, then doubt must crawl through  
8       with it.

9               So with that in mind, let's look at the State's  
10       case. The State has accused my client of one count of  
11       Theft in the First Degree and two counts of Theft in the  
12       Second Degree and they presented you with two theories.  
13       And I would like to address the first theory first. And  
14       that is derived from the definition of theft, which  
15       appears in Instruction No. 10.

16              In that instruction theft is first defined as to,  
17       quote -- and you don't have to follow along, but feel  
18       free if you would like to. Theft is defined as to  
19       wrongfully obtain or exert unauthorized control over the  
20       property of another with the intention to deprive that  
21       person of such property.

22              So the State presented you with evidence that my  
23       client during this time period was prohibited both by  
24       the Department of Corrections and by order of the court  
25       from working. He was unauthorized to be working, and so

1       therefore they're arguing that when my client accepted  
2       Mr. Mesick's invitation to do yard work for him, what my  
3       client did was he took unauthorized possession of his  
4       money to do work for him. So, in other words, by  
5       working he was committing a theft.

6               There are many obvious problems with that theory,  
7       chief among them being that if we also assume that  
8       Mr. Mesick was fully aware of my client's prohibitions  
9       from working, and there's substantial evidence that he  
10      was, he, even when confronted by a police officer  
11      shortly after being called by my client that DOC was  
12      coming over there, was willing to tell the officer that  
13      he wasn't working for him. If we assume that Mr. Mesick  
14      knew this, then Mr. Mesick is not the victim of a theft;  
15      he's an accomplice of a theft because he knowingly  
16      enabled my client and he knowingly protected him. So if  
17      he's an accomplice to a theft, who is the victim? Who  
18      did my client take property from?

19             So this is a pretty strange theory, and regardless  
20      of how you feel about my client, I really hope you don't  
21      render a verdict based on that idea alone.

22             The second theory the State is promoting is that my  
23      client is somehow guilty of theft by deception, and the  
24      relevant instructions related to that are 10, 15, and  
25      16. And it's not exactly clear how the State thinks my

1 client deceived Mr. Mesick. I've written out a list of  
2 facts here. To recap, my client gave Mr. Mesick his  
3 true and legal name. He gave him a business card. You  
4 saw that business card on the slide show a few minutes  
5 ago, which would have been the stupidest thing to do if  
6 you were intending to defraud someone, give them your  
7 actual name and business card. You've never heard of a  
8 bank robber who left their ID, you know, just in case  
9 you know, next time ask for Jimmy, right?

10 He often accepted payments from Mr. Mesick in the  
11 form of checks with his own name on the checks, leaving  
12 a wide paper trail. There was a brief period when he  
13 stopped doing that. He explained that that was because  
14 he lost his ID, but when he got his ID back again, the  
15 checks resumed within his real name, so there was no  
16 fear of getting checks in his own name.

17 Mr. Mesick testified he hired my client on  
18 May 11th, 2018, or it was possibly May 10th, based on  
19 the date of the check, and this was referral by a  
20 next-door neighbor, who he's still friendly with.  
21 Mr. Mesick testified my client got to work immediately.  
22 Mr. Mesick testified to you that on May 22nd, 2018, he  
23 received a panicked phone call from my client informing  
24 him that DOC officers were likely on their way to his  
25 house and that he should not talk to them. Those

1 officers were Isaiah Garrison and his partner, who  
2 showed up at Mr. Mesick's house that day just as my  
3 client had predicted they would.

4 Officer Garrison was there because he wanted to  
5 know if my client was working for Mr. Mesick. He had  
6 already arrested and jailed my client three times over  
7 the previous year for working without his permission.

8 Mr. Mesick was already by May 22nd committed enough  
9 to my client that he was willing to make a false  
10 statement to a police officer, a uniformed and armed  
11 police officer at the door, claiming that my client was  
12 not working for him. And even after that incident he  
13 continued to loan my client money for almost another two  
14 months.

15 Mr. Mesick said he repeatedly heard my client say  
16 that they, meaning the Department of Corrections and the  
17 local police, were trying to jam him up. Detective  
18 Schieferdecker confirmed that Mr. Mesick told her that  
19 my client had told him that no one could find out he was  
20 working for him and that my client was hiding trash cans  
21 on his property and parking vehicles laden with tools in  
22 his alley.

23 Mr. Mesick knew my client wasn't allowed to leave  
24 Pierce County until June 5th. Mr. Mesick testified that  
25 he wasn't allowed to write the word "yard work" or

1 "work" in general on checks. My client would ask him to  
2 tear those checks up because he was concerned about that  
3 showing up in the paper trail.

4 Mr. Mesick testified that on another occasion the  
5 police called him asking what my client was doing in his  
6 truck and informed him they had detained my client until  
7 they got an answer. And this is separate, a separate  
8 incident from the May 22nd incident. Mr. Mesick was  
9 aware of my client's legal problems and that he wasn't  
10 allowed to be working, but as he said on the witness  
11 stand, he felt my client was being persecuted and he  
12 didn't like that. And he wasn't the only witness who  
13 told you he didn't like the way my client was being  
14 treated by law enforcement. You heard the exact same  
15 thing from Father Stephen Morrison.

16 But the State seems to be implying that unless my  
17 client informed Mr. Mesick that 13 years ago he pled  
18 guilty to a theft case concerning facts that occurred  
19 between 2005 and 2006, that he somehow deceived him.

20 Turning to Jury Instruction No. 15, deception  
21 occurs when an actor knowingly creates or confirms  
22 another's false impression that the actor knows to be  
23 false or fails to correct another's impression. What  
24 false impression did my client give? He told Mr. Mesick  
25 he was in the landscaping business. That's correct. He

1 told Mr. Mesick his probation was trying to jam him up.  
2 That was correct. He told Mr. Mesick his life was out  
3 of control, in a constant crisis, and he needed help,  
4 and that was correct.

5 Is the State suggesting that unless [REDACTED]  
6 shared every unfortunate detail of his life with  
7 Mr. Mesick, he had somehow deceived him as to who he was  
8 or what his intentions were? Is the State suggesting  
9 that [REDACTED] doesn't have a right to his own  
10 perspective or his own opinion of how he ended up under  
11 the thumb of the Department of Corrections?

12 You heard Mr. Buettner testify that the 2006 case  
13 ended with a negotiated settlement. How do you  
14 negotiate with the truth? You can't. That case left  
15 both sides feeling very upset, unsatisfied with the  
16 outcome, and unhappy with how they were subsequently  
17 being portrayed. Mr. Buettner has his truth; my client  
18 has his truth. If my client shares his truth with  
19 someone else, that's not deception. He tried to share  
20 it with you on the witness stand. It's unfair to hold  
21 [REDACTED] to this standard and it's disingenuous, in  
22 fact, to ignore the incredible discrepancies of  
23 viewpoints regarding law enforcement in our community.

24 I think the second argument is that my client is  
25 supposedly guilty of deception is also derived from

1 Instruction No. 15, and that says that deception occurs  
2 when the actor promises performance that the actor does  
3 not intend to perform or knows will not be performed.

4 So now this theory is comprised of two parts.  
5 First they're claiming my client never intended to do  
6 yard work, and, second, they're claiming that my client  
7 never intended to pay back the loans.

8 So let's talk about my client's intentions to do  
9 yard work. First, that allegation -- the allegation is  
10 that he -- okay. So the allegation is that he charged  
11 too much to do the yard work, that he didn't finish the  
12 job or at least not on time, that he pressured  
13 Mr. Mesick into additional services that he couldn't  
14 necessarily afford at the time, and that basically  
15 [REDACTED] did an unsatisfactory job. But Mr. Mesick  
16 also testified on the witness stand that he felt my  
17 client had completed two-thirds of what he had been  
18 hired to do.

19 Now, you're asked to decide whether this was the  
20 intended result, did my client intend to only do  
21 two-thirds of the work he was hired to do. What  
22 evidence did you see that he intended to make Mr. Mesick  
23 unhappy or unsatisfied? You've been presented with zero  
24 evidence of his intent with regard to this particular  
25 issue.

1           Officer Garrison did testify that he had arrested  
2 my client for both offering to do yard work and actually  
3 doing yard work. You heard Father Stephen Morrison  
4 testify that [REDACTED] had completed a job for him in  
5 the past. You heard from Michael Booker concerning his  
6 history with my client, which includes repeat customers.  
7 You don't generally get repeat customers unless you're  
8 doing something right.

9           My client was operating a business under extremely  
10 challenging and illegal circumstances. It wasn't  
11 licensed. It wasn't approved. We're not here to  
12 discuss whether or not [REDACTED] was operating a  
13 business without a license or whether he's guilty of  
14 contempt of court. For some reason we're here to  
15 discuss whether or not my client has committed a theft  
16 against Mr. Mesick.

17           And to make matters particularly worse for  
18 [REDACTED] he's not particularly qualified to be in  
19 business for himself. He doesn't present as having the  
20 right background or the right skill-set. And the police  
21 were watching his house. They were watching to see if  
22 he was leaving or coming with landscaping equipment, and  
23 that gave additional challenges to his cars, so my  
24 client came up with a plan, which in retrospect was  
25 insane. He bought a fleet of junk cars and, as he

1 testified, he disbursed them throughout the city in sort  
2 of mobile sheds. And he paid for these trucks. There's  
3 no allegation that he stole them or that he didn't  
4 legitimately own them. And that way he could leave his  
5 house without DOC detecting what he was doing. And this  
6 plan has obvious flaws. For one thing, leaving a  
7 vehicle on a street for a prolonged period of time  
8 inevitably attracts attention, and, as [REDACTED]  
9 testified, twice in the time he was with Mr. Mesick his  
10 vehicles were impounded, and that's an expensive  
11 experience. He also testified that at least once  
12 someone broke into one of his trucks and stole the  
13 equipment inside, and that created additional chaos and  
14 additional expenses.

15 And to make matters worse, [REDACTED] as he  
16 testified and I think as Officer Garrison confirmed, was  
17 always subject to random DOC inspection, so now if  
18 [REDACTED] had been working at Mr. Mesick's house out  
19 there in the dirt, sweating in the hot July, and  
20 suddenly he got a call from Officer Garrison saying  
21 "meet me at the Poodle Dog in five minutes" and he  
22 showed up there covered in dirt and sweating, what do  
23 you think Officer Garrison would have thought happened?  
24 He would have concluded that [REDACTED] was out working  
25 again. So [REDACTED] could only do light work. He

1 needed to subcontract a lot of the work out, and that  
2 created additional problems because some of the people  
3 he would have been able to recruit at least within his  
4 price range weren't necessarily top-notch or incredibly  
5 reliable, as Mr. Mesick testified. And keep in mind my  
6 client was also managing other clients other than  
7 Mr. Mesick and doing this with a skeleton crew.

8 Then there was, of course, constant harassment by  
9 the police. [REDACTED] testified that he received 15  
10 traffic tickets between May and October of 2018. No  
11 matter how bad a driver you are, you don't get stopped  
12 like that unless something else is going on, and you've  
13 seen plenty of evidence and admissions even from the  
14 State's own witnesses that additional stuff was going  
15 on.

16 Now, it's true my client did intend to defy a court  
17 order and he did intend to defy Department of  
18 Corrections and he failed to pay his quarterly taxes  
19 from 2016 forward on this business, but, again, we're  
20 not here to decide those issues. We're here to decide  
21 whether or not my client has committed a theft against  
22 Mr. Mesick.

23 The evidence suggests that my client was motivated  
24 not by deception but rather by a combination of fear and  
25 hope. Fear and hope get people to do a lot of stupid

1 things. Las Vegas was founded on fear and hope. Payday  
2 lending survives because of fear and hope.

3 After getting arrested three times for working, my  
4 client thought he figured out a way to rebuilt his  
5 business, and it was a pretty stupid idea in retrospect,  
6 but he thought he could get back his clientele, raise  
7 enough money to fight his legal battles, and go forward.  
8 He has rebelled against a condition he has openly told  
9 you on the witness stand he considers to be  
10 unconstitutional. You will never convince [REDACTED]  
11 that it is morally wrong to mow someone's lawn for pay  
12 or that the government can tell you you can't do that.  
13 Now, you don't have to agree with his belief regarding  
14 that issue, but you should understand it when trying to  
15 formulize what his intent was when you go back in your  
16 deliberations.

17 Now, the State seems to also be arguing my client  
18 committed deception claiming that when he borrowed the  
19 money from Mr. Mesick, he did so without any intent of  
20 paying it back, and the evidence for this is derived  
21 from the 2005 and 2006 Buettner case. And, again, this  
22 is further evidence that this case never would have  
23 worked without Mr. Mesick or his yard or the money he  
24 lost in investing in my client. It's about something  
25 deeper. It's about punishing people for failure. It's

1 about punishing people for their mistakes even before  
2 they've made them.

3 We're not here to re-litigate the Buettner case.  
4 That is over with. And Mr. Buettner had little to do  
5 with it, by the way. By his own admission he was not  
6 present for a single exchange that his mom had with my  
7 client, so he can't testify as to what the conditions or  
8 the expectations of those payments were, when payment  
9 was due. All he was involved in was the collection  
10 process and a very tense experience in a parking lot  
11 that we spent a fair amount of time discussing.

12 Now, for the record, it's not okay to borrow money  
13 from someone and not pay them back, but it's also not a  
14 crime. Most of us have done that at one point or  
15 another. Most of us have had a situation where the  
16 money ran out before the month did and we had to make a,  
17 decision are we going to pay the credit card bill this  
18 month or are we going to pay the school tuition, are we  
19 going to pay the health care premium or are we going to  
20 deal with the mortgage; are we going to let it slide.  
21 And when we make a decision to pay one bill and not  
22 another, we are intentionally not paying back a debt.  
23 But the issue is not what we do with the money after we  
24 get it. The issue is, what is our intent when we get  
25 it. When we take out a loan, do we intend to pay it

1 back, not after we got the loan we need to suddenly  
2 decide we needed to do something else with it. That is  
3 the critical issue.

4 And that is a major issue in this country. It is  
5 for a lot of Americans. Even the president has famously  
6 filed bankruptcy six times discharging over a billion  
7 dollars in debt, and he's not the only high profile  
8 person to have done that. There's over a trillion  
9 dollars in outstanding student loan debt that's in  
10 deferral. We're not locking up our history majors for  
11 the decisions they made when they were 18.

12 My client believed he could turn the corner. That  
13 might have been delusional, but, again, being delusional  
14 and being hopeful and overly optimistic is not a crime.  
15 And it's not a crime also to express your optimism to  
16 people around you including to sympathetic ears.

17 And you also have to be aware of such things as  
18 like the sunk cost fallacy. All of you know people who,  
19 when they go to a casino or they lose \$300 at the  
20 blackjack table and instead of walking away, they think,  
21 well, I need to put another \$300 down to recover what I  
22 lost. These are not symptoms of criminal intent.  
23 They're just symptoms of being human. People do stupid  
24 things, but for the police not all people's actions are  
25 viewed the same way.

1           I think the State did provide sufficient evidence  
2           to prove that my client was very selfish with  
3           Mr. Mesick. My client knew he owed Mr. Mesick money and  
4           that Mr. Mesick had taken a considerable risk in loaning  
5           him that money. Mr. Mesick was in his corner almost  
6           from the get-go, if not from the get-go. He agreed to  
7           help him rebuild his business even after he learned that  
8           his business was prohibited by order of the court. He  
9           told the police my client wasn't working for him only  
10          because he wanted to protect my client from what he then  
11          viewed as an injustice. He's a good man. He was good  
12          to my client, but my client was consumed with his  
13          problems and with the death of his brother and the  
14          thought of going back to prison, and when you're in that  
15          situation, it's very difficult not to be selfish and not  
16          to think about how your actions are impacting others.  
17          And, again, while being selfish is a fault, it's not a  
18          crime. It's another symptom of being human. And,  
19          again, this is a situation where [REDACTED] is being  
20          punished for being human.

21          My client did offer Mr. Mesick one of his trucks.  
22          You heard the testimony from Mr. Mesick confirming that.  
23          What my client should have done is sold the truck and he  
24          should have used the proceeds to pay back Mr. Mesick  
25          what he was owed, but that's a judgment call. That's

1 not a symptom of any wrongful intent.

2 So, yes, the State has established that Mr. Mesick  
3 was selfish, but they haven't established that there was  
4 any sort of deceptive intent. My client was paralyzed  
5 with fear and somehow having money to throw at his  
6 problems gave him the security he required in that  
7 moment, but that doesn't mean he didn't intend to repay  
8 Mr. Mesick when he borrowed the money. And, in fairness  
9 to my client, he never absconded with a debt. He never  
10 lost contact with Mr. Mesick. He didn't leave the  
11 county or anything of that nature.

12 Mr. Mesick testified that after he told my client  
13 he wouldn't give him any more money, he never heard from  
14 him again, but the phone records which you saw yesterday  
15 confirmed that's not true. My client was in constant  
16 contact with Mr. Mesick to the end both by phone, both  
17 in person. He was writing letters, as I recall. Again,  
18 there's a six-minute phone call, which you'll be able to  
19 take the record of back with you to the jury room, from  
20 September 5th of 2018. There's an outgoing call from  
21 [REDACTED] to Mr. Mesick, and it's done the day after  
22 [REDACTED] resolved his case that was pending while he  
23 was working with Mr. Mesick, so at that point there was  
24 no need for any additional money; he had already  
25 resolved the case and he knew what was going forward.

1           Now, it's worth remembering that in October of 2018  
2           Mr. Mesick had a series of conversations with several  
3           members of law enforcement, and it's safe to assume that  
4           those conversations with law enforcement had influenced  
5           the way Mr. Mesick views what happened with him and  
6           [REDACTED] all those -- well, all those months later.

7           I think Detective Schieferdecker said that she  
8           spent several hours with Mr. Mesick alone, and she  
9           wasn't the first officer. She wasn't the second officer  
10          either. Before him was Mr. Kunkel and before that there  
11          were other officers.

12          During cross-examination yesterday Mr. Nelson asked  
13          my client a question that pretty much sums up my  
14          client's situation. He asked him why, if [REDACTED] was  
15          able to hire an attorney and to bail out of jail in  
16          April of 2018, was he also unable to pay back either  
17          Mr. Buettner or Mr. Mesick the money he owed them. And  
18          my client had already testified that the way he was able  
19          to bail out, the way he was able to hire an attorney was  
20          a combination of his family's own money and by borrowing  
21          money from other people. And so Father Morrison  
22          confirmed that he was one of those people who lent money  
23          to my client, and so every yard my client mows, every  
24          dollar my client borrows becomes yet another charge in  
25          this sick cycle that you have seen play out.

1 But Mr. Nelson seems to be suggesting that my  
2 client should have borrowed more money to pay off either  
3 Mr. Buettner or Mr. Mesick, recognizing full well that  
4 that would have drawn another charge even though there  
5 is no law or rule or order or restriction prohibiting  
6 [REDACTED] from borrowing money.

7 And during jury selection I asked you all if the  
8 Court ordered me to jump 200 feet in the air and hover  
9 there for two minutes before coming in for a smooth  
10 landing and I failed to do so, would that establish my  
11 intent not to obey the Court. And everyone agreed no  
12 because it's not possible.

13 Technically, [REDACTED] situation wasn't  
14 impossible. He could have won the lottery and then all  
15 of his problems might disappear, but I don't think  
16 anyone here would approve of [REDACTED] spending what  
17 money he had in that way. No one is going to hire my  
18 client. No one is going to hire him at least for any  
19 job that has a hope of paying back what he owes the  
20 Court and what he owes in restitution. Minimum wage  
21 will not get him out of his situation.

22 You heard Mr. Buettner testify that in the time my  
23 client was in prison he received a check for \$5.50 for  
24 the labor my client did in custody, but Mr. Nelson seems  
25 to think that it's still possible for [REDACTED] to be

1       paying from behind bars the money he owes Mr. Mesick and  
2       Mr. Buettner at those rates.

3               During jury selection I asked you all a trick  
4       question: What is the difference between -- I'm sorry.  
5       What is the connection between irresponsible and  
6       dishonest? Of course, there is no connection between  
7       being dishonest and irresponsible. I think we've seen  
8       significant evidence that [REDACTED] is irresponsible,  
9       but how do we come to a conclusion that that means he's  
10      dishonest?

11              We all admire people who do irresponsible things.  
12      We admire the football player who gets injured on the  
13      field and instead of seeking immediate medical  
14      attention, he finishes the game. We all know that  
15      family that is paying too much for a house, are living  
16      paycheck to paycheck or has a car they can't afford.  
17      That doesn't mean they're dishonest; it just means  
18      they're American. But, again, law enforcement doesn't  
19      view everyone's actions in the same way, and they have a  
20      very specific way of viewing [REDACTED]

21              Some of you may disagree and you may believe that  
22      the State has already presented you with sufficient  
23      evidence that [REDACTED] is guilty beyond a reasonable  
24      doubt. In that case I will draw your attention to Count  
25      I, Theft in the First Degree, which is discussed in Jury

1 Instructions 9, 11, 19, 20, 21, and 22. To convict  
2 [REDACTED] of Theft in the First Degree, you must be  
3 convinced beyond a reasonable doubt that between May 1st  
4 and May 31st of 2018 he stole more than \$5,000 from  
5 Mr. Mesick.

6 Now, when you get back into the jury room, I hope  
7 you'll take a look at the chart that Detective  
8 Schieferdecker created, which has been up on the screen  
9 multiple times. If you do the math there, and I think  
10 Mr. Nelson already did for you, but do it yourself just  
11 in case, you'll see that there is a total for the month  
12 of May of \$6,398. However, Mr. Mesick did tell  
13 Detective Schieferdecker back in October of 2018 that he  
14 believed that my client earned at least \$1,600 worth of  
15 work.

16 Now, it's interesting that after several months  
17 later and after having had several conversations with  
18 law enforcement, that \$1,600 figure has crept down to  
19 \$1,000. You heard Mr. Mesick testify that he had never  
20 had a landscaper before, but it might be that, again,  
21 influence of law enforcement might be influencing the  
22 way Mr. Mesick is viewing the value of what happened.

23 In addition, there are a few charges in the month  
24 of May that my client disputes. The \$30 check  
25 cancellation payment did not go to my client. He did

1 not receive that money, so how could he be said to have  
2 wrongly benefited from it? The \$400 payment to  
3 Mr. Wilson which, by Mr. Mesick's own account,  
4 immediately thereafter my client fired him, my client  
5 did not receive that money either, so how could he have  
6 that attributed to his total?

7 And then there's the \$800 payment mid-May, the  
8 in-branch withdrawal. If you look at the payment  
9 histories that came from Mr. Mesick to my client,  
10 anything above \$500 with the exception of that one  
11 branch withdrawal took the form of a check. There's no  
12 video we've been provided of Mr. Mesick and my client  
13 walking into a bank. It's not been explained why that  
14 \$800 was needed from an in-branch withdrawal that day  
15 when going to the ATM machine worked perfectly fine all  
16 the rest of this time. My client testified that it  
17 didn't happen. It could be that Mr. Mesick has just  
18 confused that in the same way he initially confused the  
19 \$1,550.

20 So if you total that all up, you get well below  
21 \$5,000, so there should be no way that you're able to  
22 conclude that he could be guilty of Theft in the First  
23 Degree. At most, it would be theft in the second. You  
24 don't even need to believe anything my client had to  
25 say. All you need to do is believe in the math and what

1 Detective Schieferdecker reported what Mr. Mesick  
2 initially told her.

3 We discussed briefly the aggravators in this case,  
4 and the State has alleged that this crime is aggravated  
5 by one of two circumstances. The first aggravator is  
6 whether my client knew or should have known that  
7 Mr. Mesick was particularly vulnerable or incapable of  
8 resistance. I don't think there's been any evidence  
9 presented whatsoever that Mr. Mesick isn't capable of  
10 resistance. You saw him on the witness stand. If he  
11 doesn't want to answer a question or if he doesn't like  
12 you, he'll tell you and he'll express it.

13 He was resistant to armed uniformed police officers  
14 who came to the door, and he ultimately told my client  
15 he wasn't going to give him any more money. He  
16 ultimately called the police. He said on the witness  
17 stand that "if lightning strikes again, I won't give you  
18 another cent." Apparently he said that to my client.  
19 He called the police himself to report what was going  
20 on. No one interceded on his behalf.

21 What evidence have you been provided with that he  
22 is particularly vulnerable? He's 75 years old, so that  
23 makes him slightly older than the president and Arnold  
24 Schwarzenegger, who just did another Terminator, I  
25 believe. But it makes him younger than Bernie Sanders

1 and Joe Biden. What about being 75 makes you  
2 particularly vulnerable? If you can run for president,  
3 if you can be president at that age, be commander in  
4 chief, how can you say you're vulnerable? Occasionally  
5 he has a cane and apparently his health has declined  
6 since May of 2018, but the issue is not what his  
7 situation is today, the issue is what was it back in May  
8 of 2018.

9 Instruction 28 also claims that the victim is  
10 particularly vulnerable if they are, quote, more  
11 vulnerable than the typical victim of theft. Well, we  
12 didn't hear what the typical victim of theft looks like,  
13 so I don't know how you're going to come to that  
14 conclusion. As Mr. Nelson said, the instructions aren't  
15 particularly helpful on this issue.

16 The second aggravator is that you should find that  
17 [REDACTED] is guilty of this crime and that it is a major  
18 economic offense or series of offenses. And there are  
19 four parts to this Instruction No. 29, and I'll try to  
20 address them briefly.

21 The State has only alleged that there's one victim  
22 in this case, and that's Mr. Mesick, so you won't be  
23 finding that this case involved multiple victims.  
24 Mr. Mesick paid my client to do yard work, which  
25 everyone agrees he largely performed. Mr. Mesick also

1        loaned my client money and told Detective Schieferdecker  
2        at the time that these were loans. You saw the video  
3        from July 2nd. It was clearly a loan. It does not  
4        matter that it was not memorialized in a written  
5        document, as Mr. Mesick seemed to imply.

6                There were multiple payments to my client over  
7        these two months and it wasn't always clear what each  
8        payment was for. It's therefore next to impossible to  
9        distinguish, well, this is a payment for work, this is a  
10       payment for a legitimate loan, so you're going to have a  
11       time making that distinction, but you need to make the  
12       distinction when determining the question of whether or  
13       not this is a series.

14               The second part of the claim is that the crime  
15       involved an actual monetary loss that's substantially  
16       greater than typical for the crime. The evidence shows  
17       that my client owes Mr. Mesick \$3,568 for the month of  
18       May, \$4,025 for the month of June, and \$2,404.68 for the  
19       month of July. No evidence was presented to you as to  
20       what is a typical loss, so, again, you're going to have  
21       to decide this yourselves with very limited information.

22               Three, the State alleges that the crime involves a  
23       high degree of sophistication or planning. If this is a  
24       scam, it's the dumbest one you could think of. He gives  
25       his real name. He gives a business card. He doesn't

1 leave town when he's discovered he's been arrested  
2 multiple times for the exact same thing, continues to go  
3 back to work doing the exact same thing. I don't know  
4 if you could call this sophisticated in any stretch of  
5 the imagination.

6 And then, finally, this issue of being in a  
7 position of trust to facilitate the commission of what  
8 they call a crime, I think Mr. Nelson identified that  
9 they don't believe that [REDACTED] was in a position of  
10 trust with Mr. Mesick, so we won't address that issue.

11 And now, unfortunately, this is the last time I'm  
12 going to have an opportunity to speak to you all. The  
13 rules that govern how trials should proceed require that  
14 the State be given the last word, and the reason for  
15 that is because it's the State and the State alone that  
16 has the awesome burden of proving the case beyond a  
17 reasonable doubt. No matter what Mr. Nelson says next,  
18 I won't have the ability to respond or debate it, and  
19 that is frustrating, in all candidness.

20 This has been an unusual trial. The bottom line is  
21 that, despite all the theatrics, the State is presenting  
22 you with a case that really just boils down to a breach  
23 of contract, an alleged breach of contract, and we're in  
24 a very strange situation when the State is  
25 simultaneously arguing that they can arrest [REDACTED]

1 for attempting to work, for actually working and for  
2 failing to work and calling all three of those thefts.  
3 They are alleging that he should have borrowed more  
4 money to pay off Mr. Buettner but also implying that if  
5 he borrowed more money, that would also be theft.

6 My client is in a sick cycle, and partially his  
7 incompetence and his problems did create that cycle, but  
8 the government is not acknowledging the role they played  
9 in this. My client has been set up to fail, bottom  
10 line.

11 Again, this all boils down to a breach of contract.  
12 That is not a crime and that is why you must find  
13 [REDACTED] not guilty on all charges. Thank you.

14 THE COURT: Ladies and gentlemen, the  
15 plaintiff does bear the burden of proof and is going to  
16 be allowed to make a brief rebuttal argument. Please  
17 give your attention to Mr. Nelson.

18 Go ahead.

19 MR. NELSON: Thank you, Your Honor.

20 REBUTTAL CLOSING ARGUMENT

21 BY MR. NELSON:

22 Ladies and gentlemen, I'm going to respond to  
23 several of the things that Mr. Van Vechten said. I'm  
24 going to kind of go in backwards order, to just kind of  
25 pick up what he just started with and kind of wrap up at

1 the end. I won't hit all the areas, but I do want to  
2 talk about a couple of these things.

3 The government has no role in the defendant's  
4 responsibility. The defendant doesn't take  
5 responsibility for anything, as you can see in this  
6 case. The defendant blames his attorneys for making him  
7 plead guilty to things. He blames his situation for  
8 what's happened. And what the government, in the broad  
9 use of the term, and I know counsel is conflating police  
10 officers with probation officers and they're all police  
11 officers in his mind, but probation officers are working  
12 with offenders who have just been released, and they're  
13 working with them and trying to get them back into the  
14 community so that they don't offend again.

15 That's the whole idea, is we don't want citizens to  
16 keep going to jail. We want them to be law-abiding  
17 citizens. And that's the whole idea, and so they put  
18 conditions on him and they put conditions on him because  
19 of his offense pattern. And his offense pattern is, as  
20 has been talked about in this case, one of scamming  
21 people. He is a competent person who does use his real  
22 name. That's part of his act. If he was going to  
23 pretend to be somebody else, that wouldn't work with  
24 him. He's just a good guy and he's misunderstood and  
25 he's got all these problems, and he'll tell you all

1 about it when he talks to you. He's really kind of  
2 confusing when you ask him for details on things, but  
3 he's really good at talking. You saw that from the  
4 witness stand. That's how he works his way into people.  
5 But that's all his doing. His scam is one of  
6 competence.

7 This isn't a loan. His payments aren't loans. He  
8 never intended to repay any of that money back, and  
9 that's why we brought in Mr. Buettner who can talk about  
10 that. And he hasn't been in custody for the last 13  
11 years. He had time out in the community, working.  
12 There weren't restrictions on him. As he talked about,  
13 those are fairly recent restrictions that were put on  
14 him.

15 He had numerous years to pay back people, to do  
16 things, and he chose not to. That's his choice, and  
17 he's living his life in the way that he's choosing.  
18 It's not someone else's fault that this is happening.

19 I know counsel brought up the president a couple  
20 times. I'm not sure how the president is related to  
21 this case. I guess he's an older gentleman. We're not  
22 saying that Mr. Mesick is vulnerable because he's older.  
23 His particular vulnerabilities caused him to be a victim  
24 of this crime. He loves his shrubs. He would rather do  
25 it himself, but he couldn't because of his

1 vulnerability. That's what the State's case was about.

2 They want you to discount an in-branch withdrawal  
3 just because it only happened once. Well, there's no  
4 testimony that didn't happen. You heard from Mr. Mesick  
5 that everything on that list happened except for that  
6 one \$1,550 transaction. You also heard that there's a  
7 \$500 limit at the cash machine, and if he needed \$800 --  
8 and he liked cash. The defendant wanted cash.  
9 Mr. Mesick, as he said, liked to write him checks and  
10 try to sneak things onto the checks because he wanted  
11 more of a paper trail.

12 The defendant wanted cash and some days he needed  
13 cash. That's why he went to the ATMs. Otherwise  
14 Mr. Mesick provided him checks for 500 bucks, for all  
15 those ATM withdrawals. And there's no evidence to show  
16 that that \$800 wasn't given to [REDACTED] That's what  
17 Mr. Mesick says. And, again, when you're assessing  
18 credibility, look to who was telling you that.

19 Mr. Mesick did not say to Detective Schieferdecker  
20 that [REDACTED] had done all the work. That's not what  
21 he said at all. He said: Okay, this is what I paid  
22 him. We agreed on this much work, and just giving him  
23 the benefit on that day, \$1,600 is what we agreed.

24 He didn't say that work was done. He's never said  
25 that, and certainly from the stand he did not say that.

1 That work was not done. Some of it was done, but not  
2 all the work was done. I mean, what he said to  
3 Detective Schieferdecker about that he was just being  
4 truthful and, okay, this is the amount that we agreed to  
5 pay for the work, this is the amount beyond that.  
6 That's what he was saying when he was talking to  
7 Detective Schieferdecker.

8 The defense asks you how can we know if he's  
9 dishonest. Well, he's dishonest, we know, because of  
10 his ten theft convictions. That's why those are  
11 relevant. That makes him dishonest.

12 The defense -- it's complicated because they  
13 brought in testimony regarding his other prior cases and  
14 his cases that were kind of ongoing at this time, and,  
15 as you heard, in April of last year he was charged with  
16 a case involving another incident that he ended up  
17 pleading guilty to two counts of theft later that year,  
18 but that was right before he met Mr. Mesick and that was  
19 right after -- I mean, he bailed out, spent \$7,500 on  
20 bail money during that time and yet when he goes to  
21 Mr. Mesick and wants money for things, he's not needing  
22 money for tabs and other things.

23 He's got all this financial stress, as he's  
24 pointing out, because he's out on bail and all of this  
25 and he's got this financial pressure of hiring an

1 attorney and all that, and that's why this is a scam.  
2 This is the defendant's scam, is that he's not a -- he's  
3 a landscaper, but that's not what he does. What he  
4 really does is get people to give him checks. I mean,  
5 that's his game. And yet in this case -- but it starts  
6 with landscaping. The landscaping is his foot in the  
7 door. If he was a door-to-door salesman and knocked on  
8 the door and wanted to sell you encyclopedias, you would  
9 probably shut the door. But he looks for people that  
10 have overgrown yards. He looks for elderly people who  
11 are less likely to want to be out there taking care of  
12 their big overgrown yard, and that's his foot in the  
13 door, and that's what he does, and that's what he did  
14 back with Ms. Buettner back in 2006, and that's what he  
15 did in this case.

16 His problems are his own creating. His  
17 complications that he's not working, that's his own deal  
18 that he was doing. He freely admits that he was  
19 violating his conditions, and that's a choice that he  
20 made. He can think it's unconstitutional, but he  
21 appealed it and he lost, and that's what he was stuck  
22 with.

23 The defense wants to talk about community  
24 perceptions of law enforcement, and that's not part of  
25 this case. You can examine what law enforcement did.

1       Examine Officer Kunkel. What was his role? What did he  
2       do? And how did he appear on the stand? Did he come  
3       across as, you know, overly aggressive or anything?  
4       Detective Schieferdecker was the other law enforcement  
5       person that was in here, and she's got a job to do just  
6       as you jurors have a job to do at this point. Her job  
7       is to read fraud reports every day as they come in and  
8       try to figure out what's fraud and what's not and to  
9       investigate that fraud, and that's what she did. Again,  
10      judge her credibility. But this isn't a referendum on  
11      whether the police are being appropriate or not. That's  
12      got nothing to do with what's happening in this case.

13           You also have Officer Garrison, who's a community  
14      corrections officer. He's not law enforcement  
15      particularly, but he's in charge with the community  
16      corrections, of keeping offenders kind of on the  
17      straight and narrow, and that's his role. And the  
18      defendant didn't like him because he was pretty good at  
19      his job.

20           He sniffed out what was going on with Mr. Mesick's  
21      truck and he took some action, and Mr. Mesick wasn't  
22      going to play ball with him at that time. And you heard  
23      him on the stand as he didn't think he should be messing  
24      with [REDACTED] He didn't know the story, obviously.  
25      He didn't know the full story because he only knew what

1 [REDACTED] told him. [REDACTED] didn't tell him: "I'm on  
2 probation for committing these thefts and I've taken  
3 this money in the past. I'm not supposed to be working.  
4 The court told me I can't work." He didn't lay that out  
5 for Mr. Mesick. There's no evidence of that. Things  
6 slowly spilled out, and Mr. Mesick is like: "You know  
7 what? I'm trying to stay out of this. I want my hedges  
8 done. It's just a hedge."

9 He kept saying on the stand "it's just a hedge;  
10 just finish the hedge, and, you know, I don't need to be  
11 involved in this." But he eventually got involved. But  
12 there's no evidence that [REDACTED] filled him in on  
13 everything that went down that day -- during those days.  
14 He only knew what [REDACTED] told him, and if [REDACTED]  
15 would have told him everything when he first came to  
16 him, Mr. Mesick wouldn't have hired him.

17 He mentioned something about there not being any  
18 neutral witnesses in this case, and I strongly disagree  
19 with that statement. I think the witnesses in this case  
20 from the State were neutral. Even Officer Garrison, who  
21 works with him, he's a corrections officer who works  
22 with offenders, but he's not anti [REDACTED] He's going  
23 to come in and tell the truth. He's a professional and  
24 he deals with people of all personalities. Some  
25 offenders he probably doesn't violate and others he

1 violates several times, but he's doing his job and  
2 acting professionally, but he's not coming in against  
3 [REDACTED] He didn't like really want to come and  
4 testify so he could really get [REDACTED] He was a fact  
5 witness as to what happened. He has a job, as I said,  
6 just like the other witnesses do in this case.

7 The same with Detective Schieferdecker. She  
8 doesn't have anything against [REDACTED] She heard of  
9 him, as she was asked on the stand about that, and she  
10 investigated what they did, but she's not, you know, on  
11 a crusade for [REDACTED] She doesn't get paid any more  
12 or less depending on what happens to him. There's not  
13 any bias in that regard. She is a neutral witness, as  
14 was Officer Kunkel; he is a neutral witness.

15 The witnesses like Mr. Mesick, I mean, he's not  
16 neutral in the sense that he has an opinion now about  
17 [REDACTED] If he were to testify back in May of 2018  
18 about [REDACTED] he would probably be saying different  
19 things because he didn't know the full story, and once  
20 he has more information, he told you what happened. But  
21 he doesn't -- as he told you, he knows he's not going to  
22 get his money back. That's not why he reported. It  
23 took him awhile to report it to the police. He stopped  
24 contact with [REDACTED] and there's some dispute about  
25 whether there was some vague phone calls later on that

1 summer, but he said "if lightning strikes me, I'm not  
2 going to give you any more money," and he tried to cut  
3 off contact with him.

4 And he said he couldn't remember any -- maybe  
5 something later on, but he didn't really have a good  
6 memory of anything that happened later after. He knows  
7 there was a note in the yard or something, he found  
8 something, but he doesn't remember that phone call. And  
9 I don't know what that phone call was. We don't know.  
10 It's all speculation.

11 But he wasn't on a crusade about [REDACTED] He  
12 eventually reported it to the police because he told you  
13 he just wanted to make sure no one else falls to this  
14 and that's why he reported it and that's why he came in.  
15 So to one extent he's not neutral, but he's not -- he  
16 used to be a strong supporter of [REDACTED] and now he  
17 came in and told you about what happened to him.

18 You heard from Mr. Buettner as well, and, again,  
19 you need to assess credibility. Counsel was talking  
20 about some really tense meeting in a parking lot.  
21 That's not what Mr. Buettner said. He said: "Yeah, I  
22 was armed. I didn't know what was going to happen. My  
23 hotheaded brother, you know, a little bit more volatile,  
24 was also there and he might have said some stronger  
25 things than I did," which is why the colonel is the one

1 who was in charge of this and he was the one who, you  
2 know, is more level-headed. But he said it wasn't  
3 intense. He said he didn't know what to expect, so, you  
4 know, he brought his firearm, which he can carry. But  
5 when he got there, [REDACTED] was affable. He's like --  
6 you know, he doesn't want to show up and be all mean.  
7 He wants to show up and "oh, yeah, yeah; no, I get it; I  
8 owe the money; I'm going to pay it back." And it was  
9 the same promises. It was: "I'm going to get it."

10 "When is it coming?"

11 "Well, I got this insurance thing coming."

12 "Okay; well, when's that?"

13 And thank goodness for the colonel; he's writing  
14 down everything that he's saying and he's also keeping  
15 him to -- he's calling him every day: "Okay; you said  
16 it was coming next week."

17 "Oh, yeah, yeah."

18 And then things start sliding and sliding and  
19 sliding, and eventually Mr. Buettner also kind of gave  
20 up with it and went to the police. And that was only  
21 after he realized this is not going to come back, after  
22 the defendant told him, "Oh, yeah, I mailed something; I  
23 mailed you something to your PO box."

24 "Well, I never got it."

25 "Oh, I must have the wrong number on the thing."

1 But he said he mailed it and he didn't. You know,  
2 that's part of the defendant's ploys in this case.

3 It comes down to credibility, and that is something  
4 that I do agree with the defense. When you look at  
5 credibility in this case, you look at the State's  
6 witnesses, I would submit that, in balance, especially  
7 when you're looking at the defendant's credibility,  
8 there is no comparison. The defendant always wants  
9 someone else to be at fault for what had happened to  
10 him. He's not taking any responsibility. And I would  
11 ask that you return a verdict that holds him accountable  
12 for what he did in May, in June, and in July of 2018.  
13 Thank you.

14 THE COURT: Members of the jury, just a few  
15 final comments. Twelve of you soon will begin your  
16 deliberations in this case. As you know, we don't lock  
17 you up until a verdict is reached. I want you to take  
18 normal hours, take a lunch break, take normal breaks as  
19 we've been doing during this case.

20 Ms. Prichard will go over the specific procedure to  
21 follow for taking breaks and to leave at the end of the  
22 day and for when you reach a verdict in the case. Do  
23 not enter the courtroom without her directing you to do  
24 so.

25 There is no set amount of time for how long your

1 deliberations should take. The deliberation room is the  
2 only place to discuss the evidence. As I mentioned to  
3 you, it's a group process. You may only discuss the  
4 case when all 12 are seated at the table or right by it.  
5 If somebody is using the restroom, you have to stop  
6 talking about the case. You cannot discuss it during a  
7 noontime recess or in the evening or anything like that.

8 The cautionary instructions continue to apply. Do  
9 not allow anyone to contact you or attempt to discuss  
10 the case or your deliberations. If this occurs, contact  
11 Ms. Prichard immediately. Do not view or listen to any  
12 media source about this case. Don't do any research on  
13 the law or about any of the factual issues that are  
14 involved here. You cannot communicate with anyone about  
15 your deliberations on social media or by any other  
16 means. Likewise, do not tell Ms. Prichard about your  
17 deliberations or the status of your vote count or the  
18 like.

19 Testimony provided during the trial cannot be  
20 repeated or reproduced in whole or in part. You have to  
21 rely on your collective memories and on your notes.  
22 Your cell phones, your other devices, you need to have  
23 them powered completely off while you're in the jury  
24 room working on the case. Certainly during lunchtime or  
25 recesses you can use your phones.

1           This time you'll be taking your notes with you and  
2           your copy of the Court's instructions into the  
3           deliberation room. The original set of instructions and  
4           the verdict forms should be set aside until you've  
5           reached a verdict. I don't want you to write any  
6           extraneous notes on the original jury instructions  
7           because they're going to be filed in the publicly  
8           accessible court file. You can write all the notes you  
9           wish to on your own set of the jury instructions.  
10          They're going to be destroyed at the end of the case.  
11          When you're done deliberating, your instructions and  
12          your notes are all going to be destroyed, so you can  
13          make all the notes you wish to on those things, but  
14          don't make any notes on the instructions. And when it's  
15          time to fill out the verdict forms, that's when you  
16          should do that.

17                Our alternate jurors in this case are in seats 13  
18                and 14, Mr. Everett and Mr. Day. I'm going to be  
19                temporarily excusing you from participation in this case  
20                any further. I emphasize "temporarily" because if any  
21                of the other jurors are unable to continue to work on  
22                the case, you're going to get the call and you're going  
23                to have to come in right away to start deliberations.  
24                So the cautionary instructions, they have to continue to  
25                apply to you as well. You cannot express your opinions

1 about evidence that you've heard. You can't discuss  
2 with anybody what's going on with this case. When the  
3 jury reaches a verdict, you'll be notified immediately;  
4 Ms. Prichard will let you know.

5 I want to thank you both for your patient attention  
6 and your hard work in this case. You may yet have to  
7 work on the case some more. I want you two gentlemen to  
8 please leave your materials here in the courtroom, but  
9 you'll be allowed to go inside the jury room and collect  
10 your things and say farewell to the other jurors, and  
11 Ms. Prichard is going to provide you with certificates  
12 that I signed acknowledging and thanking you for your  
13 service in this case.

14 All right. Ladies and gentlemen, I'll be excusing  
15 all 14 into the jury room, but only the 12 jurors that  
16 are going to deliberate, bring your materials with you.  
17 Ms. Prichard will be in shortly. She'll be bringing in  
18 the exhibits for you.

19 (At 11:25 a.m. the jury was excused  
20 to begin deliberations, and the  
21 following proceedings were had:)

22 THE COURT: Counsel, I need you to review the  
23 exhibits to make sure that Ms. Prichard has correctly  
24 assembled only those exhibits that are to go into the  
25 jury room and then tell me on the record if you agree

1 she's done that.

2 (Pause in the proceedings.)

3 THE COURT: So, Mr. Nelson, you agree that the  
4 exhibits are correctly assembled?

5 MR. NELSON: Yes.

6 THE COURT: And Mr. Van Vechten?

7 MR. VAN VECHTEN: We're in agreement.

8 THE COURT: Okay. Very good. I know that  
9 Mr. Nelson has got an activity this afternoon, a CLE, I  
10 believe.

11 MR. NELSON: It is. It's down at the  
12 La Quinta. It's 2:15 to 3:00, is my speaking window.

13 THE COURT: Well, I assume you've got somebody  
14 to cover for you if the jury has a question or a  
15 verdict.

16 MR. NELSON: Yes.

17 MR. VAN VECHTEN: I'm sorry. Your Honor said  
18 that they're immediately going into deliberation or you  
19 wanted them back after lunch? I didn't quite  
20 understand.

21 THE COURT: Well, I leave that to the jury.  
22 Ms. Prichard will be bringing in the exhibits. I assume  
23 they'll be taking a lunch break sometime around noon.

24 MR. VAN VECHTEN: Okay.

25 THE COURT: They'll work till approximately

1           4:00 and then they'll be released.

2                   MR. VAN VECHTEN: Is the plan for them, if  
3 they haven't reached a verdict by 4:00, to return  
4 tomorrow?

5                   THE COURT: Definitely. Juries can and do  
6 deliberate on Fridays.

7                   MR. VAN VECHTEN: Good to know.

8                   THE COURT: Okay. Court's at recess.

9

10                               (The matter was concluded until  
11 further notice.)

12

13                               (Noon recess taken.)

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1 THURSDAY, NOVEMBER 14, 2019; AFTERNOON SESSION

2 (All parties present.)

3  
4  
5 --oOo--

6  
7 (The Court heard another matter.)

8  
9 V E R D I C T

10 (Jury not present.)

11 THE COURT: We're back on the record with  
12 [REDACTED] Please be seated. Now, Sven Nelson is not  
13 here. Tim Jones is here, deputy prosecutor for a  
14 different case that we started here.

15 Mr. Jones, are you able to stand in here for the  
16 hearing of this verdict?

17 MR. JONES: Yes, Your Honor. I was approached  
18 by Mr. Nelson during the lunch hour. He said he had to  
19 go do a presentation and asked me if I could cover any  
20 questions or a verdict.

21 I should let the Court know and just let counsel  
22 know, I was victimized by [REDACTED] about 27 years ago  
23 or so to the tune of about \$50 worth of yard work that  
24 he didn't do. I never reported it to the police. I  
25 essentially viewed it as a fool and his money are soon

1       parted. I fell for it; so be it. I had forgotten  
2       about.

3               I was the barrel deputy for a number of years, and  
4       I had heard when [REDACTED] was being booked into the  
5       Pierce County Jail, I thought I had something to do with  
6       it. I never did. I was the barrel deputy in CD-1 for  
7       almost two years, so I saw a lot of charges go through.

8               There's nothing I can do here other than stand in  
9       for Sven, take the verdict, whatever the verdict is.  
10      All I would be able to say is the State would ask that  
11      he be held without bail pending sentencing and pick a  
12      date or prepare for the paperwork and then he goes back  
13      to serving his prison sentence.

14              I don't have a problem with it. I don't think  
15      counsel has a problem with it, and I don't know that if  
16      [REDACTED] even has a recollection or a problem with it,  
17      that there's anything we can do about it because there's  
18      nothing I can do either to his benefit or his detriment  
19      today as I stand here as a DPA.

20              THE COURT: Mr. Van Vechten?

21              MR. VAN VECHTEN: I was caught a little off  
22      guard by this issue. I was just made aware of it  
23      moments ago. My client has expressed some concern about  
24      Mr. Jones stepping in. I explained to him that all  
25      Mr. Jones would do would be to receive the verdict;

1       there would be no substantive thing he would be able to  
2       do; we would not be doing sentencing today if there were  
3       a guilty verdict, but he says that he feels  
4       uncomfortable with Mr. Jones filling in this role.

5             I don't know if I have a legal basis to argue  
6       against that given the role that he's proposing, but on  
7       behalf of my client making a record regarding his  
8       concern.

9             THE COURT: Well, I don't know what the  
10      verdict is. If it's not guilty, then, of course,  
11      there's going to be an acquittal order signed by the  
12      Court. Mr. Jones would not be making any arguments to  
13      the Court about that, whether he might be affected in  
14      some way by a bias against [REDACTED] If the verdict is  
15      guilty, then I'm going to set a sentencing date, and the  
16      only issue that would be within my discretion is whether  
17      or not [REDACTED] should be held in jail pending a  
18      sentencing hearing.

19            I thought I heard during testimony that [REDACTED]  
20      is right now serving a sentence for the offense that he  
21      pled guilty to in 2018. Isn't that correct?

22            MR. VAN VECHTEN: That's correct.

23            THE COURT: So it wouldn't matter at all  
24      really what I would decide about, if the verdict is  
25      guilty, what I would decide about a sentencing date and

1 his conditions of potential release pending sentencing  
2 because he's being held under the court's sentence on  
3 the other case. Right?

4 MR. VAN VECHTEN: The only thing I could think  
5 that Mr. Jones could do in this case is argue for a date  
6 of sentencing. That's about it. If I were to say one  
7 day and he were to say another day and my client felt  
8 that that was a problem -- I don't know why -- but  
9 beyond that, I'm in total agreement with Your Honor.

10 THE COURT: Well, I understand why [REDACTED]  
11 has some anxiety about this based on what Mr. Jones has  
12 described, but I've known Mr. Jones a very long time.  
13 Setting that aside, he's an officer of the court. He  
14 has quasi judicial duty as a prosecutor -- all right. I  
15 see Mr. Nelson just walked in.

16 MR. NELSON: I dragged my feet just long  
17 enough to avoid this whole thing.

18 THE COURT: I was going to allow it, but it  
19 just doesn't matter now because Mr. Nelson is here.  
20 Welcome back, Mr. Nelson.

21 MR. NELSON: Thank you, Your Honor.

22 THE COURT: Ready for the jury then?

23 MR. VAN VECHTEN: Yes, Your Honor.

24 THE COURT: I understand we have a verdict.  
25 I'm going to poll the jury regardless of what the

1 verdict is.

2 MR. VAN VECHTEN: Thank you.

3 (Jury present.)

4 THE COURT: Please be seated. It looks like  
5 Juror No. 3 is the presiding juror.

6 Would you please give the paperwork to  
7 Ms. Prichard?

8 Verdict Form 1 pertaining to Theft in the First  
9 Degree: We, the jury, find the defendant, [REDACTED]  
10 [REDACTED] guilty of Theft in the First Degree. That's  
11 charged in Count I, signed by the presiding juror.

12 Verdict Form 1A is blank.

13 Verdict Form 2: We, the jury, find the defendant  
14 guilty of the crime of Theft in the Second Degree as  
15 charged in Count II.

16 Verdict Form 3: We, the jury, find the defendant  
17 guilty of Theft in the Second Degree as charged in Count  
18 III.

19 Special Verdict Form as to Count I, the first  
20 question, did the defendant know or should he have known  
21 that the victim was particularly vulnerable or incapable  
22 of resistance? Answer: Yes.

23 Question 2: Was this a major economic offense?  
24 Answer: Yes. Signed and dated by the presiding juror.

25 Special Verdict Form as to Count II: First

1 question, was the victim particularly vulnerable? The  
2 answer is yes.

3 Question 2, was this a major economic offense? The  
4 answer is yes, signed and dated.

5 Special Verdict Form 3 as to Count III, particular  
6 vulnerability, the jury answers yes.

7 Question 2, was it a major economic offense? The  
8 jury answers yes, signed and dated.

9 Members of the jury, I'm going to poll you. What  
10 that means is I'm going to ask you two questions about  
11 these verdicts, and the questions are: Is this your  
12 personal decision, your personal verdict, and is the  
13 jury unanimous; do all 12 agree. And you can answer  
14 that by raising your hands when I ask you the question.  
15 When you raise your hand, that means your answer is yes.  
16 If you don't raise your hand, then the answer is no.

17 So as to Verdict Form 1, it indicates guilty of  
18 Theft in the First Degree. So the question is twofold:  
19 Is this your personal decision and is this the verdict  
20 of the jury; do all 12 agree. If so, please raise your  
21 hand.

22 I see 12 hands raised. All right. Thank you.

23 Verdict Form 2, 1A, is left blank. Verdict Form 2  
24 indicates guilty of Theft in the Second Degree as to  
25 Count II. Is this your personal decision and do all 12

1 jurors agree? If so, raise your hand.

2 Twelve hands are raised. Thank you.

3 Verdict Form 3, it indicates guilty of Theft in the  
4 Second Degree as to Count III. Is this your personal  
5 verdict and do all 12 jurors agree?

6 Twelve hands are raised.

7 The Special Verdict Form as to Count I, indicates  
8 yes as to both questions, whether the victim was  
9 particularly vulnerable and was it a major economic  
10 offense as to Theft in the First Degree Count I.

11 Is this your personal decision that yes is the  
12 correct answer to both questions and do all 12 jurors  
13 agree with these answers?

14 Twelve hands are raised. Thank you.

15 Same questions for Special Verdict Form Count II,  
16 Theft in the Second Degree. The answers are yes as to  
17 both of these questions. Are these your personal  
18 verdicts and do all 12 jurors agree?

19 Twelve hands are raised.

20 Finally, as to the special verdict for Count III,  
21 it indicates yes, the victim was particularly vulnerable  
22 and yes, it was a major economic offense. Are these  
23 your personal decisions, that yes is the correct answer,  
24 and do all 12 agree?

25 Again, 12 hands are raised.

1           Very well. Members of the jury, I'm going to  
2           accept these verdicts. They will be filed. At this  
3           point I'm going to thank you for your service in this  
4           case. I'll be excusing you from further duties. You  
5           are now free to discuss this case with anybody that you  
6           wish or with nobody at all. It's entirely up to you.

7           It's common that the attorneys like to stick around  
8           and have jurors stick around and ask questions of you.  
9           You don't have to stay around. Again, that's totally up  
10          to you. I do want you to step into the jury room for at  
11          least a couple of minutes here. Ms. Prichard is going  
12          to be bringing in certificates that I signed  
13          acknowledging and thanking you for your service, and  
14          then when she comes in in just a couple minutes here,  
15          you can let her know if you want to stay around to  
16          answer any questions or if you want to leave. And if  
17          you want to leave, you'll be free to do that, otherwise  
18          you can stick around. Thank you very much. Please step  
19          into the jury room.

20                               (The jury was excused and the  
21                               following proceedings were had:)

22           THE COURT: You folks can be seated. I want  
23           to schedule a sentencing hearing date.

24           JUDICIAL ASSISTANT: The 6th is our next  
25           available, Your Honor.

1                   THE COURT: December the 6th, does that work  
2                   for the attorneys?

3                   MR. VAN VECHTEN: Your Honor, I intend to put  
4                   together a mitigation package that might include a  
5                   forensic evaluation. Can the 6th be a tentative date or  
6                   would we have to have everything finalized by then? I  
7                   don't know what the doctor's availability would be.

8                   THE COURT: Oh, I could either move the date  
9                   or pick a different date right now based on what you  
10                  want to recommend or ask for.

11                  JUDICIAL ASSISTANT: Our next one is the 20th.

12                  THE COURT: It's every other Friday, first and  
13                  third Fridays for this department, and that's a matter  
14                  of having folks from the corrections department being  
15                  able to transport people, so it's either the 6th or the  
16                  20th.

17                  MR. NELSON: I'm available on either date,  
18                  Your Honor.

19                  MR. VAN VECHTEN: Just one quick second. This  
20                  would be in the morning or the afternoon?

21                  THE COURT: Afternoon.

22                  MR. VAN VECHTEN: It appears I'll be available  
23                  on the 20th. I think I would have more confidence with  
24                  that date.

25                  THE COURT: Okay. That's fine. And whatever

1 materials you're going to submit, I would really  
2 appreciate having a working copy ahead of time.

3 MR. VAN VECHTEN: Sure.

4 THE COURT: So it will be the 20th at 1:30.  
5 As to potential conditions of release, we were  
6 discussing before Mr. Nelson got here that I believe  
7 [REDACTED] is being held on another matter. Right?

8 MR. NELSON: He is, Your Honor. He's held on  
9 a DOC sentence at this point.

10 THE COURT: Well, I'm inclined to simply order  
11 that he be held pending sentencing.

12 Mr. Van Vechten, I'll hear from you on this issue.

13 MR. VAN VECHTEN: I feel that that would make  
14 a lot of sense. I would join in that recommendation.

15 THE COURT: All right. That's what I'm going  
16 to order.

17 (Pause in the proceedings.)

18 THE COURT: Mr. Nelson, similar to my request  
19 that the defense provide me any materials in advance, if  
20 you're going to file a Sentencing Memorandum, a Victim  
21 Impact Statement, or the like, please get that to me  
22 ahead of time.

23 MR. NELSON: Certainly, Your Honor.

24 MR. VAN VECHTEN: Your Honor, my client wants  
25 me for the record to make an argument for why bail that

1        was presently installed for him, which I believe is  
2        \$75,000 or \$100,000 -- I forget -- should remain pending  
3        sentence. I'm not 100 percent certain why, but he  
4        wanted me to make a record of that.

5                THE COURT: Well, pretrial any defendant is  
6        entitled to reasonable bail, but that entitlement goes  
7        away when the verdicts are accepted. I'm not provided  
8        with any good reason to consider releasing [REDACTED]  
9        pending sentencing, so I'm going to deny that request.

10              All right. I don't believe there's anything else  
11        on this case at this time, so court will be at recess.

12              MR. VAN VECHTEN: Thank you, Your Honor.

13  
14                              (The matter was continued to Friday,  
15                              December 20, 2019, at 1:30 p.m.)  
16  
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CERTIFICATE

I, Karla Thomas, Official Court Reporter for  
Department No. 7, of the Pierce County Superior Court, do  
hereby certify that the foregoing proceedings were reported by  
me stenographically and reduced to typewritten form.

Dated this 14th day of August, 2020.

**PIERCE COUNTY SUPERIOR COURT**

**April 17, 2020 - 10:35 AM**

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[kristie.barham@piercecountywa.gov]  
Pierce County Prosecutor's Office  
[PCpatcecf@co.pierce.wa.us]

☐ appellant

☐ other party



MARIA ANA ARRANZA RILEY, Legal Assistant

Date: August 19, 2020

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