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State of Washington  
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No. 38493-4-III

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

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STATE OF WASHINGTON,

Respondent,

v.

RAYMOND BROWN,

Appellant.

---

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

---

BRIEF OF APPELLANT

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## **A. INTRODUCTION**

Stephnie Hansen and Raymond Brown fought after Ms. Hansen accused Mr. Brown of cheating on her. During the fight, Mr. Brown hit Ms. Hansen in the face. He said he was acting in self-defense, but she said he was not, and the State charged him with second-degree assault.

After Mr. Brown had been incarcerated for nearly two years awaiting trial, the State moved to amend the information to add a different alternative means of assault. The court wrongly permitted the late amendment, and this Court should reverse and remand for dismissal of the charge. In the alternative, this Court should remand for a new trial due to violations of the rules of evidence and Mr. Brown's constitutional rights to present a defense and confront adverse witnesses.

At a minimum, this Court should reverse the sentence as unconstitutionally cruel. The court sentenced Mr. Brown to die in prison for a third "strike," but his prior strikes resulted in no

physical injury, his current strike was a mere reckless assault, no other state would impose the same sentence for this crime, Washington imposes the same sentence for multiple counts of aggravated murder, and the three-strikes law is imposed in an extremely racially disproportionate manner. Whether viewed under the as-administered analysis of *State v. Gregory*, the categorical-bar analysis of *State v. Bassett*, or the proportionality framework of *State v. Fain*, Mr. Brown's sentence violates article I, section 14 of the Washington Constitution.

## **B. ASSIGNMENTS OF ERROR**

1. The trial court erred under CrR 2.1 and violated Mr. Brown's constitutional right to notice by permitting the State to amend the information 22 months into the case.

2. In this assault trial, the court violated ER 404(b) and ER 403 by admitting evidence that Mr. Brown allegedly assaulted Ms. Hansen on two prior occasions.

3. The trial court violated Mr. Brown's constitutional rights to present a defense and confront adverse witnesses by prohibiting him from cross-examining the complaining witness about her own alleged prior crime of domestic violence and by prohibiting him from cross-examining an officer about how he allegedly covered up his own role in an accident by falsely ticketing of the victim of his reckless driving.

4. The sentence of death in prison (life without parole) violates the cruel punishment clause of the Washington Constitution.

### **C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Article I, section 22 of the Washington Constitution guarantees the right to notice of the charge a defendant must meet. Consistent with the Constitution, CrR 2.1 vests trial courts with discretion to deny a State's motion to amend the information, and it requires courts to deny such motions if the amendment would prejudice a defendant's substantial rights.

Did the trial court err in permitting the State to amend the information 22 months into the case to add an allegation of assault by reckless infliction of substantial bodily injury, where the court stated it was required to permit the amendment and the only action it could take to address prejudice was to provide a continuance?

2. ER 404(b) prohibits admission of prior acts to show action in conformity therewith and ER 403 provides for exclusion of evidence which is substantially more prejudicial than probative. Thus, the admissibility of prior acts of domestic violence is confined to cases where the State has established their overriding probative value, such as to explain a witness's otherwise inexplicable recantation. In this trial for assault, did the court abuse its discretion by admitting evidence of two prior alleged assaults to show the complaining witness's credibility and absence of self-defense, where the complaining witness did not recant and the evidence was only relevant to self-defense through a forbidden propensity inference?

3. Article I, section 22 and the Sixth Amendment guarantee the rights to confront witnesses and to present a defense. A criminal defendant must be given extra latitude in cross-examination to show motive or credibility, especially when the particular prosecution witness is essential to the State's case. Did the trial court violate Mr. Brown's constitutional rights by prohibiting him from cross-examining Ms. Hansen about her own prior domestic violence arrest and by excluding evidence of a testifying police officer's prior misconduct?

4. The Supreme Court struck down the death penalty under article I, section 14 of the Washington Constitution because a statistical study demonstrated it was administered in an arbitrary and racially biased manner and this, combined with other jurisdictions' practices, showed it did not comport with evolving standards of decency.

a. Data from the Caseload Forecast Council show that only 54% of those serving death-in-prison sentences



under the three-strikes law are white, while 37% are Black, even though Black people make up only 4.4% of Washington's population. Moreover, only ten other states impose death-in-prison sentences under similar recidivist schemes. Is the three-strikes law unconstitutional as administered?

b. Even if the three-strikes law as a whole is not unconstitutional as administered, is the law unconstitutional as administered for those convicted of second-degree assault, where only 50% of those sentenced to die in prison for this crime are white, 38% are Black, and **no** other state in the nation includes crimes comparable to our second-degree assault in the list of strike offenses that result in death-in-prison sentences?

5. The Supreme Court held a law was categorically unconstitutional under article I, section 14 where it was contrary to the national consensus, disproportionate to the

culpability of the offender, and inconsistent with legitimate penological goals.

a. Is the three-strikes law categorically unconstitutional, where only ten other states impose death-in-prison sentences for a third “strike,” the same sentence applies to people who commit multiple aggravated murders, and the law is imposed in an extremely racially disproportionate manner?

b. Is the three-strikes law categorically unconstitutional for second-degree assault strikes, where no other state imposes death in prison for a comparable crime, three counts of mere reckless infliction of substantial bodily harm results in the same sentence as three (or more) counts of aggravated murder, and the law is imposed in an extremely racially disproportionate manner?

6. The Supreme Court held a sentence was unconstitutionally disproportionate under article I, section 14

based on an evaluation of the nature of the offense, the legislative purpose, the sentences imposed in other jurisdictions for the same crime, and the sentences imposed in Washington for other crimes.

a. Is the three-strikes law unconstitutionally disproportionate for those convicted of second-degree assault as a strike, where the offense has a seriousness level of four (out of 16), the legislative purpose is to imprison “the most dangerous criminals,” no other jurisdiction includes a comparable crime in their lists of strikes subject to death-in-prison sentences, and Washington imposes the same sentence for multiple aggravated murders?

b. Is Mr. Brown’s death-in-prison sentence unconstitutionally disproportionate, where he is a Black man subjected to a racially disproportionate sentencing scheme, his two prior strike crimes caused no physical injury to his victims, his current strike was a reckless

second-degree assault— which no other jurisdiction punishes as a strike, and Mr. Brown received the same sentence as those who commit multiple aggravated murders?

#### **D. STATEMENT OF THE CASE**

- a. *Mr. Brown and Ms. Hansen got into a fight after Ms. Hansen accused Mr. Brown of cheating on her. The State charged Mr. Brown with assault.*

Raymond Brown and Stephnie Hansen started dating in the summer of 2019 after meeting on Facebook. RP (Gipson) 350-52.<sup>1</sup> One night in July, Ms. Hansen became angry after Mr. Brown received a text message and told her he was going out to meet friends. RP (Gipson) 353-55. Ms. Hansen believed Mr. Brown was actually planning to meet another woman, and she was not happy because she believed their relationship was

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<sup>1</sup> The transcripts in this case are not paginated sequentially; instead each court reporter started at page “1.” Therefore, Mr. Brown cites the verbatim reports of proceedings by putting the court reporter’s last name in parentheses. Where a court reporter filed a supplemental transcript, Mr. Brown labels it “Supp.”

supposed to be exclusive. RP (Gipson) 355. The two argued, and Mr. Brown again told her he was meeting friends and wanted to borrow her gun for protection. RP 356.

According to Ms. Hansen, she gave Mr. Brown one of the two guns she owned because she believed he was making a threatening motion toward her. RP (Gipson) 357. Mr. Brown then tried to fire it into the couch because he believed someone was hiding under it, but the gun jammed. RP (Gipson) 358. Mr. Brown dumped out five of the six bullets, and accused Ms. Hansen of loading the gun with blanks. RP (Gipson) 359. Ms. Hansen explained that the bullets were not blanks, but hollow points. RP (Gipson) 359.

Mr. Brown did not want the gun with hollow point bullets, and he asked Ms. Hansen for her other gun. RP (Gipson) 358-59. Ms. Hansen told him the other gun was in her truck, and the two went outside. RP (Gipson) 359-60. But the other gun was not in the truck, and the two continued to argue. RP (Gipson) 360-62.

Mr. Brown placed the first gun on the hood of Ms. Hansen's car, and went back inside. RP (Gipson) 361-62. Ms. Hansen then picked up the gun. RP (Gipson) 362.

Mr. Brown came back outside with a helmet and the keys to Ms. Hansen's motorcycle, intending to borrow the motorcycle to go out for the evening. RP (Gipson) 362. Ms. Hansen did not want him to take the motorcycle that night, so, with gun in hand, she went to the motorcycle and laid the motorcycle down. RP (Gipson) 362-63.

According to Mr. Brown, Ms. Hansen then pointed her gun at him, and he knocked it out of her hand and hit her in self-defense. RP (Gipson) 628-29. According to Ms. Hansen, she was trying to put the gun down, and Mr. Brown punched her in anger. RP (Gipson) 363.

The gun fell out of Ms. Hansen's hand, and the two continued to struggle. RP (Gipson) 363, 630. According to Mr. Brown, Ms. Hansen threatened to kill him as she crawled toward the gun. RP (Gipson) 630. According to Ms. Hansen,

Mr. Brown struck her again with something that felt like a gun. RP (Gipson) 363-64. The two continued to struggle over possession of the gun, until a neighbor came out with his own gun drawn and asked what was going on. RP (Gipson) 364-65.

Another neighbor had heard the commotion and called 911, and multiple officers responded to the scene. RP (Gipson) 320-23, 341, 483-85, 498. Both Mr. Brown and Ms. Hansen provided their respective accounts of what occurred. RP (Gipson) 324-27, 331, 506-07, 511. While Officer Michael Brunner was interviewing Ms. Hansen inside, other officers searched in vain for the gun. RP (Gipson) 332-33, 486, 494, 507. Officer Brunner then went back outside and retrieved the gun from under a bush. RP (Gipson) 328, 332-33, 495.

Officers arrested Mr. Brown, and the State charged him with second-degree assault, alleging that he assaulted Stephnie Hansen with a deadly weapon. CP 1-5. The State also charged him with unlawful possession of a firearm, CP 1, and later

added two counts of witness tampering and two counts of violating a no-contact order. CP 88-89.<sup>2</sup>

b. *After Mr. Brown had been incarcerated for 22 months waiting and preparing for trial, the court permitted the State to amend the information.*

Because the State arrested and charged Mr. Brown in July of 2019, he had a right to a speedy trial in September of 2019. CrR 3.3(b)(1)(i); Supp. CP \_\_\_\_ (Sub no. 17). But his attorney needed more time to prepare, so he agreed to a continuance to October, then another to November 12. Supp. CP \_\_\_\_ (Sub no. 19); RP (Rosadovelazquez) 3-5; Supp. CP \_\_\_\_ (Sub no. 25).

On October 28, 2019, counsel again requested more time for investigation in light of the fact that the second-degree assault was an alleged third strike offense for which Mr. Brown would be sentenced to die in prison if convicted. Supp. CP \_\_\_\_

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<sup>2</sup> The State originally charged these crimes under a second cause number, but after a jury could not reach a verdict in that trial, Mr. Brown and the State agreed to join the offenses in a single trial. RP (Gipson) 30, 73-74.



(Sub no. 31). The trial court granted the motion without a hearing and continued the trial to February 10, 2020. Supp. CP \_\_\_ (Sub no. 31).

At the readiness hearing on January 27, 2020, counsel still was not prepared, despite having previously received continuances of several months. Counsel requested and received another continuance of the trial to March 2, 2020, with a readiness hearing scheduled for February 18, 2020. (Supp. CP \_\_\_ Sub no. 33); RP (Cox Supp.) 2-4.

On February 18, 2020, counsel *still* was not ready, and requested another continuance of the trial to April 3, 2020. RP (Cox Supp.) 5-6. He did not appear in person, but another attorney from his office made the request for him. RP (Cox Supp.) 5-6. The prosecutor's office had recently reassigned the case to another attorney, and while this attorney believed she could be ready for the scheduled date of March 2, she supported a "brief continuance, if needed" for defense counsel to prepare.

RP (Cox Supp.) 6. She also stated the parties were “still talking about potential resolutions on this case.” RP (Cox Supp.) 7.

Mr. Brown objected. RP (Cox Supp.) 6. He stated, “By rights, I should have a right to a fast and speedy trial and by -- effective counsel. And I can assure you no, your Honor my -- my counsel is not being effective. And so I would ask the Court to remove him from my case at this time.” RP (Cox Supp.) 7.

The court noted the case was 213 days old and denied the request for a continuance. RP (Cox Supp.) 7. The court stated:

What I’m going to do is deny his request for a continuance. I believe he has time to prepare between now at March 2nd; also time to attempt resolution. It doesn’t appear be a good cause. So we’re going to keep this on for trial on March 2nd, and Mr. Charbonneau will let him know that it’s scheduled to go out on March 2nd.

RP (Cox Supp.) 7-8.

Despite the court’s denial of a continuance, the parties appeared on February 27, 2020, and jointly requested another continuance. RP (Cox Supp.) 9-13. Mr. Brown did not speak at this hearing, but his attorney averred he agreed with the

continuance so that counsel could be properly prepared to defend him. RP (Cox Supp.) 11. The court granted a continuance of the trial date to March 23, 2020, but expressed frustration and stated, “I think we’re also getting down to the point where it’s going to have to get to trial.” RP (Cox. Supp.) 13. Thus, more than seven months after his arrest and incarceration, Mr. Brown still had not been brought to trial.

Starting in mid-March of 2020, the COVID-19 pandemic limited court operations for a full year, with both the Washington Supreme Court and the Spokane County Superior Court issuing orders restricting in-person proceedings and suspending the speedy-trial rule.<sup>3</sup> There were no hearings in Mr. Brown’s case between March 9 and August 31, 2020. *See* Dkt. Instead, the court entered ex parte orders continuing the

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<sup>3</sup> *See* <https://www.courts.wa.gov/opinions/index.cfm?fa=opinions.scorders> (Supreme Court orders, including COVID-19 orders); <https://www.spokanecounty.org/AlertCenter.aspx?AID=287> (Spokane County Superior Court emergency orders in response to pandemic).

trial date. *Id.*; Supp. CP \_\_\_\_ (Sub nos. 41, 44, 46). Mr. Brown was notified and he objected, but the court cited COVID-19 orders from the governor and Supreme Court as good cause for continuances. Supp. CP \_\_\_\_ (sub nos. 41, 44, 46).

The Spokane County Superior Court resumed jury trials on July 6, 2020, but suspended them again on July 31.<sup>4</sup> There is nothing in the court file indicating why Mr. Brown's case was not one of the cases that went to trial that month, after he had been incarcerated for a year.

Trials resumed in mid-August.<sup>5</sup> On August 31, 2020, Mr. Brown appeared in court for the first time in six months. *See* Dkt. He was there for a readiness hearing and his trial was to start on September 14. Supp. CP \_\_\_\_ (Sub no. 46).

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<https://www.spokesman.com/stories/2020/jul/31/spokane-county-superior-court-again-suspends-jury-/>.

<sup>5</sup> [https://m.facebook.com/spokesmanreview/posts/jury-trials-may-again-resume-in-spokane-county-superior-court-starting-next-week/10157151095131721/?locale=ms\\_MY](https://m.facebook.com/spokesmanreview/posts/jury-trials-may-again-resume-in-spokane-county-superior-court-starting-next-week/10157151095131721/?locale=ms_MY).

Mr. Brown's attorney did not appear, and another lawyer covered for him. RP (Cox Supp.) 17-18. Although the attorney had had a full year to prepare for trial, he asked for yet another continuance, apparently due to a scheduling conflict with another case. RP (Cox Supp.) 18. The stand-in also averred Mr. Brown's attorney was still negotiating a resolution with the prosecutor. RP (Cox Supp.) 18.

Mr. Brown said, "Oh, no." RP (Cox Supp.) 18. The prosecutor noted Mr. Brown had filed several pro se motions, and suggested the court address them. RP (Cox Supp.) 19. The court said, "Mr. Brown, you're objecting to any continuance of your trial date?" RP (Cox Supp.) 19. Mr. Brown responded:

Yes, sir. I'm objecting to it all, Your Honor. This - this is where it's been for a whole year. I haven't been represented by no one. I've been representing myself. All the motions that I've had to file in my case, I've had to file myself. Anything that I've had to do in my case, Your Honor, I've been ready to go the trial since July of last year. I don't know why it keeps getting continued.

I don't have no representation ever. I put in twice to have him removed from my case, Your Honor. I

don't know what else to do. I -- I don't think this is fair at all.

RP (Cox. Supp.) 19.

The court explained the attorney was in another trial that was continued because of COVID, but that "we're not going to have you sit there any longer than is necessary." RP (Cox Supp.) 20. The court continued the case for two weeks. RP (Cox Supp.) 20; Supp. CP \_\_\_\_ (Sub no. 50). The court also told defense counsel to file Mr. Brown's motion to substitute counsel for him. RP (Cox Supp.) 21. Counsel did so, but at the hearing on that motion on September 17, Mr. Brown stated he would keep his attorney so long as trial occurred as scheduled on September 28. RP (Cox) 1-4.

Trial did not occur on September 28. The court continued the trial for two weeks because defense counsel said he needed more time to interview witnesses. Supp. CP \_\_\_\_ (Sub no. 55). But on October 8, counsel moved for yet another continuance. RP (Cox) 6-7. He said he still needed to interview Officer

Brunner about misconduct he had committed seven months earlier. RP (Cox) 6-7; Supp. CP \_\_\_\_ (Sub no. 57).<sup>6</sup>

Mr. Brown objected to the continuance. RP (Cox) 7. He said that in October of 2019, his attorney “pleaded with the court to give him two months’ continuance” so he could prepare. RP (Cox) 8. But now, “I am 450 -- 452 days in.” RP (Cox) 8. Mr. Brown begged the court, “Don’t put my trial off, my fast and speedy trial rights off.” RP (Cox) 9.

The court explained that much of the delay was attributable to COVID-19, but also said, “My concern here is if Mr. Lorenz doesn’t have a chance to interview the arresting officer prior to proceeding to trial, he might not be prepared and he might not be effective.” RP (Cox) 10. The court believed if that happened, the case “would just be reversed on appeal, and we’d have to do it again.” RP (Cox) 10. Mr. Brown again

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<sup>6</sup> *See also* <https://www.spokesman.com/stories/2020/jul/09/wsp-investigation-spokane-officer-was-driving-twic/>.

objected and said, “I’m getting thrown all kinds of injustice trucks, your Honor. I don’t understand.” RP (Cox) 10. The court nevertheless continued trial to October 19. RP (Cox) 10-11; Supp. CP \_\_\_\_ (Sub no. 60).

Trial did not occur in October. It was again reset, this time for November 30, over Mr. Brown’s objection. Supp. CP \_\_\_\_ (Sub no. 64). But on November 30, trials were suspended again due to COVID-19. Supp. CP \_\_\_\_ (Sub no. 65). The court rescheduled Mr. Brown’s trial for January 4, 2021, and rescheduled it again to January 19, 2021. Supp. CP \_\_\_\_ (Sub nos. 65, 68).

At the end of December, 2020, Mr. Brown’s attorney announced he was retiring and Mr. Brown’s case would be assigned to another lawyer in his office. RP (Beck) 3-6. The court continued the trial to February 8, 2021, with a readiness hearing January 19, so that new counsel could get up to speed. RP (Beck) 7-8.



Throughout January, Mr. Brown repeatedly contacted the public defender's office in an attempt to determine who would be representing him. RP (Gipson) 8. The office finally assigned a new attorney at the beginning of February. RP (Gipson) 5; RP (Dashiell) 4. Because the attorney was new on the case, he requested a continuance, and the court granted the request over Mr. Brown's objection. RP (Gipson) 5; RP (Dashiell) 3-6.

On March 11, 2021, Mr. Brown moved to represent himself because he felt his new attorney was not prepared. RP (Gipson) 5-8; RP (Dashiell) 8-9, 11. The court performed a colloquy and granted the motion. RP (Gipson) 10-30. Mr. Brown stated that while he did not want to waive his right to a speedy trial, he would do so in order to prepare his defense. RP (Gipson) 39. He requested a continuance of the trial to May 17, 2021, which the court granted. RP (Gipson) 39.

The State subsequently moved to amend the information, and the court held a hearing to address that issue on May 6, 2021. RP (Gipson) 70-71, 101-14. The prosecution sought to

add an allegation that Mr. Brown committed second-degree assault through a different alternative means. RP (Gipson) 101; CP 88-89. While the original information alleged only that Mr. Brown committed second-degree assault by assaulting Ms. Hansen with a deadly weapon, the proposed amended information alleged in the alternative that Mr. Brown committed second-degree assault by recklessly inflicting substantial bodily harm. CP 1, 88-89; RP (Gipson) 102.

The State argued that adding this allegation nearly *two years* after the original charge would not prejudice Mr. Brown because the new allegation was not based on any new information. RP (Gipson) 102. The State did not explain why it waited so long to add the charge if the necessary information had existed all along.

Mr. Brown objected to the amendment. RP (Gipson) 102-03. He noted he had been incarcerated for 22 months, trial was supposed to start imminently, and all of a sudden the state was adding an allegation. RP (Gipson) 102-03. He explained the

amendment was prejudicial and should not be permitted. RP (Gipson) 102-03.

The court stated it was required to permit the amendment and the only way it could address the prejudice to Mr. Brown was to give him a continuance. RP (Gipson) 103.

THE COURT: As the State said, the rules allow them to amend the Information ... to how they believe they can prove the case up until verdict, so until it actually goes to the jury. The only thing the Court has to decide is, one, is it prejudicial, and if it's prejudicial and prior to verdict, the only issue the Court can do is say I'm going to grant you additional time to prepare if they're adding charges or if they're adding a second way to prove it.

RP (Gipson) 103.

Mr. Brown agreed he would need a continuance to investigate any new charge, but he objected to the amendment and to a continuance. RP (Gipson) 102-03, 108-09; Supp. CP \_\_\_\_ (Sub no. 110). The court nevertheless permitted the amendment and continued the trial to June 1<sup>st</sup>. CP 88-89; Supp. CP \_\_\_\_ (Sub no. 110).

Mr. Brown requested additional continuances during the summer of 2021 in order for his investigator to interview more witnesses, including interviewing a doctor and dentist about the alleged victim's injuries, which would not have been necessary under the original charge. RP (Gipson) 169-70; RP (Weeks) 172.

*c. At trial, the court admitted evidence of Mr. Brown's alleged prior misconduct but excluded evidence of the State's witnesses' alleged prior misconduct.*

Trial began in September of 2021. At pre-trial hearings, Mr. Brown indicated that he wanted to bring in evidence of Officer Brunner's misconduct to challenge his credibility. RP (Gipson) 180; Supp. CP \_\_\_\_ (Sub no. 57). The officer "was driving 65 mph in a 30 mph zone seconds before he T-boned another car, injuring the two people inside it on March 25." Maggie Quinlan, *WSP investigation: Spokane officer was driving twice speed limit before crash that led to charges*, Spokesman Review (July 9, 2020). The officer attempted to cover up his own culpability by ticketing the injured victims,

but after the Washington State Patrol investigated, the ticket was dismissed and the officer was charged with two counts of vehicular assault. *Id.*; Supp. CP \_\_\_\_ (Sub no. 57); RP (Weeks) 164-66.

The court prohibited any mention of the officer's misconduct, stating that Officer Brunner had not yet been convicted of the charges and the charged crimes were not crimes of dishonesty. RP (Gipson) 180-83. Mr. Brown pointed out that the officer had falsely ticketed the victims of his reckless driving, and that he wanted to introduce this relevant information. RP (Gipson) 180-83. The court told him to produce "evidence" of this fact, and Mr. Brown told the court he was relying on the information that was available to the public. RP (Gipson) 180-83; RP (Weeks) 164-66. The court denied Mr. Brown's motion and prohibited all mention of the officer's misconduct. RP (Gipson) 180-83; RP (Weeks) 164-66.

The State moved to admit evidence that Mr. Brown had allegedly assaulted Ms. Hansen on two prior occasions. CP 56-

71. Although ER 404(b) prohibits propensity evidence, the State asserted these alleged prior acts were admissible “to show intent and disprove the absence of mistake, accident or self-defense,” and to show Ms. Hansen’s credibility regardless of whether she recanted. CP 57, 60-63; RP (Weeks) 197-200.

Mr. Brown stated he did not object so long as he could: (1) elicit evidence that he was never charged with crimes for these incidents, and (2) bring in *Ms. Hansen’s* prior crime of domestic violence, for which she was arrested, to challenge her credibility. RP (Weeks) 35-38, 200-202; RP (Gipson) 283-84; Supp. CP \_\_\_\_ (Sub. No. 149). Mr. Brown explained that his alleged prior assaults against Ms. Hansen were mere police reports that never resulted in charges or convictions, whereas Ms. Hansen was arrested for domestic violence against another person. RP (Weeks) 240-41; RP (Gipson) 283-84. The police report in her case showed she claimed her then-boyfriend assaulted her, but in fact, she had smashed the man’s phone due to jealousy and was arrested for domestic violence malicious

mischief. Supp. CP \_\_\_\_ (Sub. No. 149); RP (Weeks) 240-41; RP (Gipson) 283-84.

Although the circumstances of Ms. Hansen's arrest for domestic violence tended to show she lacked credibility, the court *excluded* evidence of her prior crime while *admitting* evidence of Mr. Brown's alleged prior crimes. CP 108-11; RP (Weeks) 207; RP (Gipson) 279-84, 302, 480-81. The court also prohibited Mr. Brown from eliciting evidence that charges were never filed against him for those alleged incidents. RP (Gipson) 400-01.

Mr. Brown objected to the imbalance, noting the court was admitting the State's evidence against him but excluding his evidence challenging the credibility of the State's witnesses:

I just want to clarify that so we can't bring in Mr. Brunner's, anything about him because of no character, nothing about Stephnie about prior character, but everything can be admitted about me about things that hasn't been – I'm never been convicted of, never been just, you know, it seems prejudicial to me.

RP (Weeks) 209.

At trial, Mr. Brown again objected contemporaneously, but Ms. Hansen testified that Mr. Brown had been “physically abusive” toward her on two earlier occasions. RP (Gipson) 369-70. Both Ms. Hansen and Mr. Brown testified to their respective versions of the events on the night in question. RP (Gipson) 349-429, 621-53. Officer Brunner and other officers also testified about their response to the scene, and a doctor testified that Ms. Hansen had a fracture in a bone above her teeth. RP (Gipson) 453-61.

The jury acquitted Mr. Brown of second-degree assault with a deadly weapon, but convicted him of the late-added charge of second-degree assault by reckless infliction of substantial bodily harm. CP 153, 160. The jury also convicted him of unlawful possession of a weapon, witness tampering, and violation of a no-contact order. CP 154-58.



d. *Though Mr. Brown requested mercy and described his positive conduct in the community, the court sentenced him to die in prison for a third “strike.”*

At sentencing, the State told the court it was required to impose a sentence of death in prison (life without the possibility of parole) because the crime was a third “strike.” RP (Weeks) 399. The prosecutor claimed the State “doesn’t take any pleasure” in requesting this sentence, even though the State chose to try Mr. Brown for a strike offense after he refused to plead guilty to a lesser offense. RP (Weeks) 214, 399.

Mr. Brown requested mercy, and described his background as an African American and Native American man who recovered from a drug addiction and got his life back on track with a job as a supervisor at a dog food plant. RP (Weeks) 400-03. He suffered a setback after a traumatic incident during which he witnessed a deadly attack by a disgruntled employee against a coworker, but he promised he was on the path toward again becoming a contributing member of society. RP (Weeks) 402-03.

The court explained it had no discretion under the statute, and imposed a sentence of death in prison. RP (Weeks) 405-06; CP 248-53.

## **E. ARGUMENT**

### **1. The assault conviction should be reversed and dismissed because the trial court erred in ruling it was required to permit the State to amend the information 22 months into the case.**

In the summer of 2019, the State charged Mr. Brown with second-degree assault, alleging he assaulted Ms. Hansen with a deadly weapon. Twenty-two months later, in the spring of 2021, the State moved to amend the information to add an allegation that Mr. Brown alternatively committed second-degree assault by recklessly inflicting substantial bodily harm. The trial court permitted the amendment based on a misunderstanding of the law. The court thought it was required to permit the amendment, and could only address the prejudice to Mr. Brown through a continuance. The relevant rule and case law are to the contrary, and this Court should reverse.

- a. *A court always has discretion to deny the State's motion to amend an information, and the court must deny the motion if amendment would prejudice the defendant's substantial rights.*

The criminal rules provide that “[t]he court may permit any information or bill of particulars to be amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced.” CrR 2.1(d). Pursuant to this rule, “the trial court *cannot permit amendment* of the information if substantial rights of the defendant would be prejudiced.” *State v. Lamb*, 175 Wn.2d 121, 130, 285 P.3d 27 (2012) (emphasis added). This prohibition is consistent with article I, section 22 of the Washington Constitution, which guarantees that a defendant receive adequate notice of the charge he is to meet. Const. art. I, § 22; *State v. Ziegler*, 138 Wn. App. 804, 808, 158 P.3d 647 (2007).

Thus, for example, this Court reversed where the trial court erroneously permitted a late amendment to the information to add two child rape charges. *Ziegler*, 138 Wn.

App. at 806. The late amendment “was a violation of Zeigler’s right to know of and defend against the State’s charges.” *Id.* Moreover, “adding two child rape charges during trial affected Ziegler’s ability to prepare his defense,” thereby causing prejudice. *Id.*

Even where there is *no* prejudice, the trial court has discretion to deny a State’s motion to amend the information. *Lamb*, 175 Wn.2d at 131. In one case, for instance, a court properly exercised its discretion when it refused to permit the State to amend an information to charge a felony instead of a misdemeanor, even though the amendment did not prejudice the defendant. *Id.* (discussing *State v. Rapozo*, 114 Wn. App. 321, 322-24, 58 P.3d 290 (2002)). And in *Lamb*, the court properly exercised its discretion in denying the State’s motion to amend an information to change the predicate conviction for firearms charges, irrespective of whether the amendment prejudiced the defendant. *Id.* at 131-32.

b. *Here, the court wrongly believed it lacked discretion to deny the amendment and thought it could only address prejudice by continuing the trial.*

Here, the trial court erred because it believed it lacked discretion to deny the State’s motion and thought it could only address prejudice by continuing the case. RP (Gipson) 69-71, 101-09. This failure to exercise discretion is itself an abuse of discretion. *State v. McFarland*, 189 Wn.2d 47, 56, 399 P.3d 1106 (2017); *State v. Grayson*, 154 Wn.2d 333, 335–36, 111 P.3d 1183 (2005). Moreover, if the court agreed Mr. Brown was prejudiced by the amendment—which it apparently did—it not only had authority to deny the amendment, it was *required* to so. *Lamb*, 121 Wn.2d at 130.

Twenty-two months into the case, the State moved to amend the information to add an allegation that Mr. Brown committed second-degree assault by recklessly inflicting substantial bodily harm. RP (Gipson) 69-71, 101-09; Supp. CP \_\_\_\_ (Sub no. 96). The State averred there was no prejudice to Mr. Brown because the charge was “not based on any new

information.” RP (Gipson) 102; *see also* Supp. CP \_\_\_\_ (Sub no. 96) (relying on police report filed in August of 2019). This is incorrect. That the State brought new charges based on information it had for 22 months demonstrates their own mismanagement, but does not show a lack of prejudice to Mr. Brown. *Cf. State v. Michielli*, 132 Wn.2d 229, 243-45, 937 P.2d 587 (1997) (trial court properly dismissed late-added charges for government mismanagement under CrR 8.3(b), where the new charges were based on information the State possessed three months earlier).

Mr. Brown was prejudiced because after waiting for 22 months to be brought to trial, he suddenly had to investigate previously irrelevant medical evidence to determine the precise extent of Ms. Hansen’s injury. RP (Gipson) 103. Thus, Mr. Brown objected to the amendment. RP (Gipson) 109.

The judge understood the prejudice to Mr. Brown, but stated it lacked discretion to deny the amendment and could only offer a continuance of the trial date to address the

prejudice. RP (Gipson) 70, 102-03. The judge said, “As the State said, the rules allow them to amend the Information ... to how they believe they can prove the case up until verdict, so until it actually goes to the jury.” RP (Gipson) 103. She went on, “The only thing the Court has to decide is, one, is it prejudicial, and *if it’s prejudicial and prior to verdict, the only [thing] the Court can do is say I’m going to grant you additional time* to prepare if they’re adding charges or if they’re adding a second way to prove it.” RP (Gipson) 103 (emphasis added). This was error. The court had not only the authority, but also the duty, to deny the amendment. *Lamb*, 175 Wn.2d at 130. At a bare minimum, it had the discretion to do so, and it erred in failing to recognize this discretion. *Id.* at 131-32.

c. *The remedy is reversal of the conviction on count one and remand for dismissal of the charge with prejudice.*

Because the court misunderstood its authority, it necessarily abused its discretion. *McFarland*, 189 Wn.2d at 56; *Grayson*, 154 Wn.2d at 335–36. The remedy is reversal of the

assault conviction and dismissal of the late-added alternative. *See Ziegler*, 138 Wn. App. at 811. Because the jury acquitted Mr. Brown of the originally charged alternative, the assault charge in its entirety must be dismissed with prejudice. *See id.*; *State v. Corrado*, 81 Wn. App. 640, 646, 915 P.2d 1121 (1996) (prohibition on double jeopardy bars retrial following acquittal). After vacating the assault conviction, the trial court should resentence Mr. Brown on the remaining counts.

**2. In the alternative, Mr. Brown is entitled to a new trial on count one because the court violated ER 404(b) and ER 403 by admitting evidence of alleged prior bad acts that were relevant only by demonstrating a propensity to commit assault.**

In the alternative, Mr. Brown is entitled to a new trial on the assault charge. ER 404(b) prohibits admission of alleged prior bad acts to show a propensity to commit crimes. Over Mr. Brown's objection, the trial court admitted evidence of his two prior alleged assaults against Ms. Hansen to bolster her credibility and rebut self-defense. But the evidence only



achieved these purposes through an improper propensity inference. The court erred in admitting the evidence, and this Court should reverse.

- a. *ER 404(b) prohibits admission of prior bad acts to prove action in conformity therewith, and ER 403 prohibits admission of evidence that is substantially more prejudicial than probative.*

“The purpose of the rules of evidence is to secure fairness and to ensure that truth is justly determined.” *State v. Wade*, 98 Wn. App. 328, 333, 989 P.2d 576 (1998). Consistent with this purpose, ER 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

The “forbidden inference” of propensity to act in conformity with prior acts “is rooted in the fundamental American criminal law belief in innocence until proven guilty, a concept that confines the fact-finder to the merits of the current case in

judging a person's guilt or innocence." *Wade*, 98 Wn. App. at 336.

When the prosecution seeks admission of an accused person's alleged prior bad acts, the trial court must: (1) find by a preponderance of the evidence that the prior act occurred, (2) identify the purpose for which the evidence is offered, (3) decide whether the evidence is relevant to prove an element of the crime charged, and (4) determine whether the evidence would be substantially more prejudicial than probative. *State v. Slocum*, 183 Wn. App. 438, 448, 333 P.3d 541 (2014). The fourth step of the ER 404(b) analysis is consistent with ER 403, which states that "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" *See State v. Gunderson*, 181 Wn.2d 916, 923, 333 P.3d 1090 (2014).

"A trial court must always begin with the presumption that evidence of prior bad acts is inadmissible." *State v. DeVincentis*, 150 Wn.2d 11, 17, 74 P.3d 119 (2003). The State

bears the burden of demonstrating a proper purpose for admitting evidence of a defendant's prior bad acts. *Id.* at 17. Courts must "resolve any doubts on whether to admit the evidence in the defendant's favor." *State v. Fuller*, 169 Wn. App. 797, 829, 282 P.3d 126 (2012).

This Court reviews a trial court's interpretation of ER 404(b) de novo. *State v. Fisher*, 165 Wn.2d 727, 745, 202 P.3d 937 (2009). If the trial court interprets the rule correctly, this Court reviews the admission of evidence for abuse of discretion. *Id.* A trial court abuses its discretion if it relies on unsupported facts, makes a manifestly unreasonable decision, applies the wrong legal standard, or bases its ruling on an erroneous view of the law. *Slocum*, 183 Wn. App. at 449.

- b. *The court abused its discretion in admitting the alleged prior acts to support the complaining witness's credibility and to show the nature of domestic violence, where no expert testified and the witness did not recant.*

In this case, the court admitted the alleged prior acts "to show [the] nature of [a] domestic violence relationship and to

rebut a claim of mistake and self-defense.” CP 109. Neither purpose is valid here.

As to the first proffered purpose, the trial court stated that, “even absent a recantation,” alleged “[p]rior domestic violence acts are admissible to show relationship context in assessing [alleged] victim credibility.” CP 109 (citing *State v. Baker*, 161 Wn. App. 468, 259 P.3d 270 (2011)). The court was wrong. The Supreme Court has made clear that there is no “domestic violence exception for prior bad acts.” *Gunderson*, 181 Wn.2d at 925 n.3; *see also id.* at 924 n. 2 (rejecting *Baker*’s suggestion that “prior acts of domestic violence might always be admissible”).

In limited circumstances not present here, a defendant’s alleged prior bad acts are admissible to assess the complaining witness’s credibility. For instance, the Supreme Court has held that “prior acts of domestic violence, involving the defendant and the crime victim, are admissible in order to assist the jury in judging the credibility of a *recanting* victim.” *State v. Magers*,

164 Wn.2d 174, 186, 189 P.3d 126 (2008) (lead opinion) (emphasis added); *accord id.* at 195 (Madsen, J., concurring). In such circumstances, testimony about the dynamics of a domestic violence relationship may be admissible through an expert, like a therapist. *Gunderson*, 181 Wn.2d at 924 n.2. But where a complaining witness gives “no conflicting statements,” this rationale fails. *Id.* at 924.

In *Gunderson*, the State charged the defendant with domestic violence felony violation of a no-contact order based on assault. *Id.* at 918. The police never took a statement from the alleged victim, and at trial she testified there was no physical violence. *Id.* at 920. The State sought to impeach her credibility by introducing the defendant’s two prior domestic violence convictions for crimes against the same person. *Id.* at 920-21. The trial court admitted the evidence, but the Supreme Court reversed. *Id.* at 921-22.

After noting the alleged victim never gave conflicting statements, the court cautioned, “[m]uch like in cases involving

sexual crimes, courts must be careful and methodical in weighing the probative value against the prejudicial effect of prior acts in domestic violence cases because the risk of unfair prejudice is very high.” *Id.* at 925. “To guard against this heightened prejudicial effect, we confine the admissibility of prior acts of domestic violence to cases where the State has established their overriding probative value, such as to explain a witness’s otherwise inexplicable recantation or conflicting account of events.” *Id.* The Court explained that without such a limitation, “the jury may well put too great a weight on a past conviction and use the evidence for an improper purpose.” *Id.*

Here, like in *Gunderson*, the complaining witness never recanted or gave conflicting accounts. She told police Mr. Brown assaulted her and she told the jury Mr. Brown assaulted her. CP 3; RP (Gipson) 363. Nor did any expert testify about the nature of domestic violence relationships. *See Gunderson*, 181 Wn.2d at 924 n.2. Thus, the trial court abused its discretion in admitting the evidence to show the nature of an alleged

domestic violence relationship in order to help the jury evaluate credibility. The evidence simply bolstered the complaining witness's credibility by implying Mr. Brown had a propensity to assault her. The evidence was substantially more prejudicial than probative, and its admission for this purpose violated ER 404(b) and ER 403. *See id.* at 925.

*c. The court abused its discretion in admitting the alleged prior acts to rebut self-defense, where the evidence achieved this purpose only through a propensity inference.*

The other purported purpose for the evidence is equally invalid. The court admitted the evidence “to rebut a claim of mistake and self-defense,” CP 109, but Mr. Brown never claimed “mistake,” and the evidence rebuts self-defense only through a forbidden inference: because Mr. Brown assaulted Ms. Hansen before, he must have intended to assault her again on the night in question. This is improper. ER 404(b); *State v. Kelly*, 102 Wn.2d 188, 198, 685 P.2d 564 (1984).

In *Kelly*, the defendant was charged with murder for killing her husband. *Id.* at 189-90. She claimed self-defense and

presented expert testimony regarding “battered woman syndrome” to support her self-defense claim. *Id.* at 190. To rebut this testimony, the State presented evidence of the defendant’s own prior violent acts and threats. *Id.* at 190-91. The trial court admitted the prior bad acts to rebut the self-defense evidence, but the Supreme Court reversed. *Id.* at 191.

First, the Supreme Court rejected the State’s argument that the prior bad acts were admissible to prove the defendant’s “character” under ER 405, because character is not an element of a self-defense claim. *Id.* at 197. Second, the Court rejected the State’s argument that the prior bad acts were admissible under ER 404(b). *Id.* The Court noted, “Before evidence of prior crimes, wrongs, or acts can be admitted, it must be shown to be logically relevant to a material issue before the jury and its probative value must be shown to outweigh its potential for prejudice.” *Kelly*, 102 Wn.2d at 198. The Court ruled the evidence of the defendant’s prior aggressive acts and threats did not support an inference of motive, intent, or absence of



mistake or accident, and that, in any event, “petitioner’s theory was one of self-defense, not absence of mistake or accident.”

*Id.*

The same is true here. Mr. Brown never claimed mistake or accident; his defense was self-defense. His alleged prior assaults against Ms. Hansen were not relevant to rebut that claim except through a forbidden propensity inference. Accordingly, the admission of the alleged prior acts was improper. ER 404(b); ER 403; *Kelly*, 102 Wn.2d at 198.

d. *The remedy is reversal of the conviction on count one and remand for a new trial.*

Where a trial court improperly admits one or more prior acts under ER 404(b), reversal is required if it is reasonably probable the outcome would have been different absent the error. *Gunderson*, 181 Wn.2d at 926. “[W]here there is a risk of prejudice and no way to know what value the jury placed upon the improperly admitted evidence, a new trial is necessary.” *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 673, 230 P.3d 583 (2010) (internal quotation omitted).

Here, the facts were hotly disputed, with Ms. Hansen and Mr. Brown each testifying to their version of events. Although neighbors and police officers also testified, none witnessed the altercation. The jury may have credited Mr. Brown's testimony if Ms. Hansen had not been permitted to claim that Mr. Brown had "physically abuse[d]" her twice in the past. RP (Gipson) 369-70. The court did not instruct the jury that it could consider this evidence only for limited purposes, and even if it had, the jury could only have considered the evidence for those purposes through a propensity inference. Under these circumstances, it is reasonably probable the outcome would have been different absent the improper admission of the evidence, and this Court should reverse the assault conviction and remand for a new trial.

**3. The trial court violated Mr. Brown’s constitutional rights to present a defense and to confront the witnesses against him by excluding evidence relevant to the credibility of the State’s witnesses.**

While the trial court *admitted* evidence of Mr. Brown’s alleged prior misconduct, it *excluded* evidence of alleged prior misconduct of State’s witnesses. This imbalance violated Mr. Brown’s constitutional rights to present a defense and to confront the witnesses against him. For this reason, too, this Court should reverse the assault conviction and remand for a new trial.

- a. *Article I, section 22 and the Sixth Amendment guarantee the rights to present a defense and to confront adverse witnesses.*

Article I, section 22 of the Washington Constitution and the Sixth Amendment to the United States Constitution guarantee the rights to present a defense and to confront adverse witnesses. Const. art. I, § 22; U.S. Const. amend. VI; *State v. Orn*, 197 Wn.2d 343, 347, 482 P.3d 913 (2021). This Court reviews de novo whether the trial court’s evidentiary rulings

violate the defendant's constitutional rights. *Orn*, 197 Wn.2d at 350.

“The primary and most important component” of the Confrontation Clause “is the right to conduct a meaningful cross-examination of adverse witnesses.” *State v. Darden*, 145 Wn.2d 612, 620, 41 P.3d 1189 (2002). “Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested.” *Davis v. Alaska*, 415 U.S. 308, 316, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974). Because limiting a defendant's cross-examination calls into question the integrity of the fact-finding process, “the right to confront must be zealously guarded.” *Darden*, 145 Wn.2d at 620.

The rules of evidence are construed in tandem with this imperative. *State v. McSorley*, 128 Wn. App. 598, 612-13, 116 P.3d 431 (2005). ER 608(b) provides:

Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the

discretion of the court, if probative of truthfulness or untruthfulness be inquired into on cross examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness ....

“It is well established that a criminal defendant is given extra latitude in cross-examination to show motive or credibility, especially when the particular prosecution witness is essential to the State’s case.” *McSorley*, 128 Wn. App. at 612-13; *State v. York*, 28 Wn. App. 33, 36, 621 P.2d 784 (1980). Because of the constitutional rights at stake in a criminal trial, relevant evidence may be excluded only “if the State can show a *compelling* interest to exclude prejudicial or inflammatory evidence.” *Darden*, 145 Wn.2d at 621 (emphasis added). In other words, “if relevant, the burden is on the State to show the evidence is so prejudicial as to disrupt the fairness of the fact-finding process at trial.” *State v. Jones*, 168 Wn.2d 713, 720, 230 P.3d 576 (2010).

In *McSorley*, the defendant was convicted of child luring after a 10-year-old testified the defendant pulled his truck up

beside him and ordered him to get in. *McSorley*, 128 Wn. App. at 600. The court prohibited the defendant from cross-examining the child about pranks he had committed where he pretended to need help from passing motorists. *Id.* at 602. This Court reversed, noting ER 608(b) must be read with the Confrontation Clause in mind. *Id.* at 611-13. So long as the pranks were “not too remote in time,” they were relevant to credibility and could not be excluded. *Id.* at 613-14.

In *York*, an undercover investigator testified to buying drugs from the defendant. *York*, 28 Wn. App. at 34. The defense sought to cross-examine the investigator about his dismissal from a previous job due to irregularities in his paperwork and general incompetence. *Id.* But the court granted the State’s motion in limine to exclude cross-examination on the issue, ruling it was a collateral matter. *Id.* The appellate court reversed under ER 608(b) and the Confrontation Clause, because “[c]redibility was not ... collateral; it was the very essence of the defense.” *Id.* at 36.

b. *The trial court violated Mr. Brown's constitutional rights by excluding evidence of the complaining witness's prior crime and a testifying officer's misconduct.*

Here, as in *McSorley* and *York*, the trial court erred and violated Mr. Brown's constitutional rights by refusing to let him cross-examine the key State's witnesses about their prior alleged misconduct. The court allowed the prosecutor to examine the complaining witness about *Mr. Brown's* alleged prior domestic violence, ruling it was relevant to credibility, but prohibited Mr. Brown from cross-examining the same witness about her own alleged prior domestic violence which was at least as relevant to credibility. And it prohibited him from cross-examining the officer who found the gun Mr. Brown was charged with possessing, even though public records revealed this officer had falsely ticketed a driver after crashing into him at double the speed limit.

As to Ms. Hansen, Mr. Brown provided a police report in support of his motion to admit evidence of her alleged prior misconduct. Supp. CP \_\_\_\_ (Sub no. 147). The police report

shows that just two years before the incident in this case, Ms. Hansen called 911 alleging her boyfriend punched her in the face and she needed medical help. *Id.* Just like in this case, Ms. Hansen was jealous because she believed her boyfriend was texting another woman. *Id.* She woke her boyfriend up and grabbed his phone. *Id.* The two argued and struggled for possession of the phone, and Ms. Hansen threw the man's phone at the wall and smashed it. *Id.* According to Ms. Hansen, the man then punched her in the face. *Id.* But the man denied hitting Ms. Hansen, and the responding officer did not observe any injuries. *Id.* The officer did not arrest Ms. Hansen's boyfriend, and instead arrested her for domestic violence malicious mischief. *Id.*

The court ruled Mr. Brown could not cross-examine Ms. Hansen about this prior misconduct because, "although it was DV" and "[t]he only allegations that stood up was she threw the phone and broke it," it was "not admissible because it's reputation evidence, and she wasn't convicted." RP (Gipson)



283. “She wasn’t arrested for assault, and the officer didn’t charge her with any kind of false reporting or otherwise.” RP (Gipson) 283-84. The court concluded, “So as far as getting that 404(b), as far as motive, intent or purpose, it doesn’t meet the requirements. So it wouldn’t be admissible.” RP (Gipson) 284. Moreover, it “would not be admissible for the purposes of impeachment or otherwise.” RP (Gipson) 302.

The court was wrong. As Mr. Brown properly pointed out:

And I have to put on the record I object, Your Honor, but I do want to say this on the record. This is how I feel it would be very prejudicial to me because the State was allowed to admit things, prior DV incidences by Ms. Hansen about me and I wasn’t even charged with. They was just allegations. They was just police reports. They took it. They investigated it. They found there wasn’t such assault, and they never charged me. So the State allowed that, and they’re going to use that against me in trial.

RP (Gipson) 284; *See also* RP (Weeks) 240-41 (objecting again). In other words, if mere allegations of Mr. Brown’s prior misconduct were relevant and admissible to assess credibility,

so too were the allegations, supported by a police report and arrest, of Ms. Hansen's prior misconduct. This is especially so because Mr. Brown is the only party that has a constitutional right to present a defense and confront the witnesses against him. *See McSorley*, 128 Wn. App. at 611-14.

The court also wrongly prohibited Mr. Brown from cross-examining Officer Brunner about his alleged prior misconduct. The court refused to allow Mr. Brown to confront the witness about this misconduct absent "proof." RP (Weeks) 165. But Mr. Brown had already provided a sufficient offer of proof to permit examination on this topic. Before Mr. Brown proceeded pro se, his attorney filed a declaration noting that the officer "has been charged with criminal offenses for an incident when he initially charged another individual with an infraction." Supp. CP \_\_\_\_ (Sub no. 57). The officer was involved in a "serious injury collision" after which he ticketed the person he crashed into. *Id.* The ticket was dismissed two

days later, and the officer was later charged with two counts of vehicular assault. *Id.*

In addition to the declaration, Mr. Brown rightly pointed out that the officer's misconduct was "public record." RP (Weeks) 165. Multiple news reports confirmed that the officer was driving more than twice the speed limit when he T-boned the other car, yet he ticketed the victims. *E.g.* Quinlan, Spokesman Review, *supra*.<sup>7</sup> The victims of the officer's crime believed he ticketed them in any effort to cover up his own culpability. *Id.* This was a valid impeachment topic because Mr. Brown had a constitutional right to confront the witnesses against him and to challenge the credibility of an officer who arrested him. *See York*, 28 Wn. App. at 36. The court erred in ruling otherwise.

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<sup>7</sup> Available at: <https://www.spokesman.com/stories/2020/jul/09/wsp-investigation-spokane-officer-was-driving-twice/>

c. *The remedy is reversal of the convictions on counts one and two, and remand for a new trial.*

Because the court's rulings violated Mr. Brown's rights under article I, section 22 and the Sixth Amendment, the constitutional harmless error standard applies. *Orn*, 197 Wn.2d at 359. The State must prove beyond a reasonable doubt that the errors were harmless. *Jones*, 168 Wn.2d at 724.

As to counts one and two, the State cannot meet that heavy burden. As to those counts, the case came down to a credibility contest. The State was permitted to ask about *Mr. Brown's* prior alleged misconduct, but Mr. Brown was not permitted to ask about *Ms. Hansen's* prior alleged misconduct. And, he was not permitted to confront the officer who found the gun about the officer's misconduct. The officer testified he participated in training "to make sure that patrol was done correctly," and that his job was to "protect and serve." RP (Gipson) 321. An officer's testimony "has an aura of special reliability and trustworthiness." *State v. Hawkins*, 14 Wn. App.

2d 182, 189, 469 P.3d 1179 (2020). Yet Mr. Brown was not permitted to elicit evidence tending to show this officer was *not* reliable and credible. The State cannot prove that this one-sided credibility attack did not make a difference. Thus, this Court should reverse the convictions on counts one and two, and remand for a new trial.

**4. The sentence of death in prison under the three-strikes law violates the cruel punishment clause of the Washington Constitution.**

If this Court does not reverse the conviction, it should reverse the sentence as unconstitutionally cruel. The Persistent Offender Accountability Act (“POAA”) mandates a sentence of death in prison (also called “life without the possibility of parole” or “LWOP”) if a person is convicted of a third “most serious offense.” RCW 9.94A.030(32), 37(a); RCW 9.94A.570. The Act is also known as the “three strikes and you’re out” law. *State v. Moretti*, 193 Wn.2d 809, 814, 446 P.3d 609 (2019). All class A felonies are “most serious offenses,” and a few lesser

felonies, including the class B crime of second-degree assault, are also strike offenses. RCW 9.94A.030(32).

Mr. Brown was sentenced to die in prison for a third “strike” of second-degree assault—an offense that has a low seriousness level of four and a mental state of mere recklessness with respect to the harm caused. RCW 9.94A.515; RCW 9A.36.021(1)(a); CP 153, 160, 248-53. The sentence Mr. Brown received is the same as that imposed on people who commit multiple counts of the most serious crime possible: aggravated premeditated murder. RCW 10.95.030(1).

Three-strikes sentences are imposed in an extraordinarily racially disproportionate manner, and such sentences do not comport with evolving standards of decency as demonstrated by other jurisdictions’ practices. Whether viewed under the as-administered analysis of *State v. Gregory*, the categorical-bar analysis of *State v. Bassett*, or the proportionality analysis of *State v. Fain*, the death-in-prison sentence imposed upon Mr.

Brown violates article I, section 14 of the Washington Constitution.

- a. *The three-strikes law is unconstitutional as administered under Gregory because it is administered in a racially disproportionate manner and does not comport with evolving standards of decency.*

First, this Court should hold that the three-strikes provision of the POAA<sup>8</sup> is unconstitutional as administered because it is imposed in a racially disproportionate manner and does not comport with evolving standards of decency.

Alternatively, at a minimum, this Court should hold the Act is unconstitutional as administered for those convicted of second-degree assault.

In *Gregory*, the Supreme Court held the death penalty violated article I, section 14 as administered. *State v. Gregory*,

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<sup>8</sup> Mr. Brown challenges only the *three-strikes* law, and uses “POAA” to refer to that law, not the two-strikes law that applies to sex offenders. See RCW 9.94A.030(37)(a) (defining “Persistent Offender” for three-strikes provision); RCW 9.94A.030(37)(b) (defining “Persistent Offender” for two-strikes provision).

192 Wn.2d 1, 5, 427 P.3d 621 (2018) (lead opinion of Fairhurst, C.J.); *id.* at 36 (Johnson, J., concurring); Const. art. I, § 14. The Court cited a statistical study demonstrating that in Washington, African American defendants were more than four times as likely to be sentenced to death as other defendants. *Id.* at 12 (citing Katherine Beckett & Heather Evans, *The Role of Race in Washington State Capital Sentencing, 1981-2014* (Oct. 13, 2014)). The Court also noted that local, national, and international trends disfavored capital punishment, signaling that the death penalty did not comport with evolving standards of decency. *Id.* at 23-24. The Court concluded, “When the death penalty is imposed in an arbitrary and racially biased manner, society’s standards of decency are even more offended. Our capital punishment law lacks fundamental fairness and thus violates article I, section 14.” *Id.* at 24 (internal quotation omitted).

In reaching this result, the Court noted that while the defendant had presented a regression analysis to support his



claims, such mathematical precision was not required to demonstrate constitutionally cognizable racial discrimination. *Gregory*, 192 Wn.2d at 20-23. The Court “decline[d] to require indisputably true social science to prove that our death penalty is impermissibly imposed based on race,” *id.* at 21, and took “judicial notice of implicit and overt racial bias against black defendants in this state.” *Id.* at 22. Two years later, the Court reaffirmed its recognition of systemic racial bias, including “the overrepresentation of black Americans in every stage of our criminal and juvenile justice systems.” Supreme Court Ltr. to the Legal Community, 1 (Jun. 4, 2020).<sup>9</sup>

After *Gregory*, people who committed aggravated murder, including people who committed multiple aggravated murders, now receive the same sentence as those convicted of lesser crimes under the Persistent Offender Accountability Act.

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<sup>9</sup> Available at:

<http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf>.

*Gregory*, 192 Wn.2d at 36 (“All death sentences are hereby converted to life imprisonment” without the possibility of parole.). Because “*Gregory* limited the array of punishments that may be imposed for the most serious offenses,” “[p]ersistent offenders who have committed ... assaults are now grouped with offenders who have committed the most violent of crimes, including aggravated murder and multiple rapes.” *Moretti*, 193 Wn.2d at 835 (Yu, J., concurring). “The principles set forth in *Gregory* compel us to ask the same questions about a life sentence without the possibility of parole. Is it fairly applied? Is there a disproportionate impact on minority populations? Are there state constitutional limitations to such a sentence?” *Id.* at 840.

The answers to these questions are: (1) No, it is not fairly applied; (2) Yes, there is a disproportionate impact on minority populations; and (3) Yes, there are state constitutional limitations to such a sentence.

**i. The three-strikes law as a whole is unconstitutional as administered.**

The Persistent Offender Accountability Act is not fairly applied; instead there is a strikingly disproportionate impact on minority populations. The Caseload Forecast Council (CFC) has tracked the race of all defendants sentenced under the Act since the law went into effect.<sup>10</sup> The Sentencing Guidelines Commission (SGC) compiled the first fifteen years' worth of data (through June 2008) and found only 52.2% of defendants sentenced under the three-strikes law were white, while 40.4% were Black. State of Washington Sentencing Guidelines Commission, *Two-Strikes and Three-Strikes: Persistent*

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<sup>10</sup> See <https://www.cfc.wa.gov/Publications.htm>. Under the "Criminal Justice" category, the CFC has a link to the Sentencing Guidelines Commission's Report on the Persistent Offender Accountability Act for all cases from the Act's inception through June of 2008. Also under the "Criminal Justice" category, the CFC has a link to "Statistical Summaries" of adult felony sentencing. The 2017 summary includes racial data for all POAA cases in between the 2008 report and the 2017 summary. The summaries for 2018 through 2021 each contain racial data for POAA sentences imposed during the periods covered.

*Offender Sentencing in Washington State Through June 2008*, 10 (February, 2009).<sup>11</sup> The next year, Columbia Legal Services issued a report similarly concluding that, as of 2009, only 47% of three-strikes defendants were white, while 39.6% were Black. Columbia Legal Services, *Washington's Three Strikes Law: Public Safety & Cost Implications of Life Without Parole*, 8 (2009).<sup>12</sup> The report emphasized the extraordinary nature of the disparity given that only 3.9% of the state's population was African American. *Id.* at 7.

Despite the dire data these reports highlighted, stark racial disproportionalities continued after 2009. Data from the CFC and SGC show that by 2021, Blacks made up 41% of

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<sup>11</sup> Available at: [https://www.cfc.wa.gov/PublicationSentencing/PersistentOffender/Persistent\\_Offender\\_asof20080630.pdf](https://www.cfc.wa.gov/PublicationSentencing/PersistentOffender/Persistent_Offender_asof20080630.pdf).

<sup>12</sup> Available at: [https://columbialegal.org/wp-content/uploads/2019/03/CLS-Report\\_Washingtons-Three-Strikes-Law.pdf](https://columbialegal.org/wp-content/uploads/2019/03/CLS-Report_Washingtons-Three-Strikes-Law.pdf).

those sentenced to die in prison under the three-strikes law, while whites made up only 52%. Appendix (“Appx.”) at 16.<sup>13</sup>

The Legislature recently removed second-degree robbery from the list of strike offenses, and made the amendment retroactive, partly because of concerns about racial disproportionality. Nina Shapiro, *Legislature moves to resentence up to 114 people serving life without parole under Washington’s three-strikes law*, Seattle Times (Apr. 8, 2021).<sup>14</sup> But even after removing second-degree robbery from the list of

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<sup>13</sup> The Appendix compiles the data from the inception of the POAA through fiscal 2021. Again, the data are in six separate documents on the CFC website: (1) The SGC Report of all cases through fiscal year 2008, (2) The 2017 CFC Statistical Summary with an appendix listing all cases from fiscal year 2008 through fiscal year 2017, (3) The 2018 CFC Statistical Summary, (4) The 2019 CFC Statistical Summary, (5), the 2020 CFC Statistical Summary, and (6) The 2021 CFC Statistical Summary. The Appendix further explains the sources and data compilation process.

<sup>14</sup> Available at: <https://www.seattletimes.com/seattle-news/politics/up-to-114-people-serving-life-without-parole-to-get-resentenced-as-washington-legislature-eases-three-strikes-law/>.

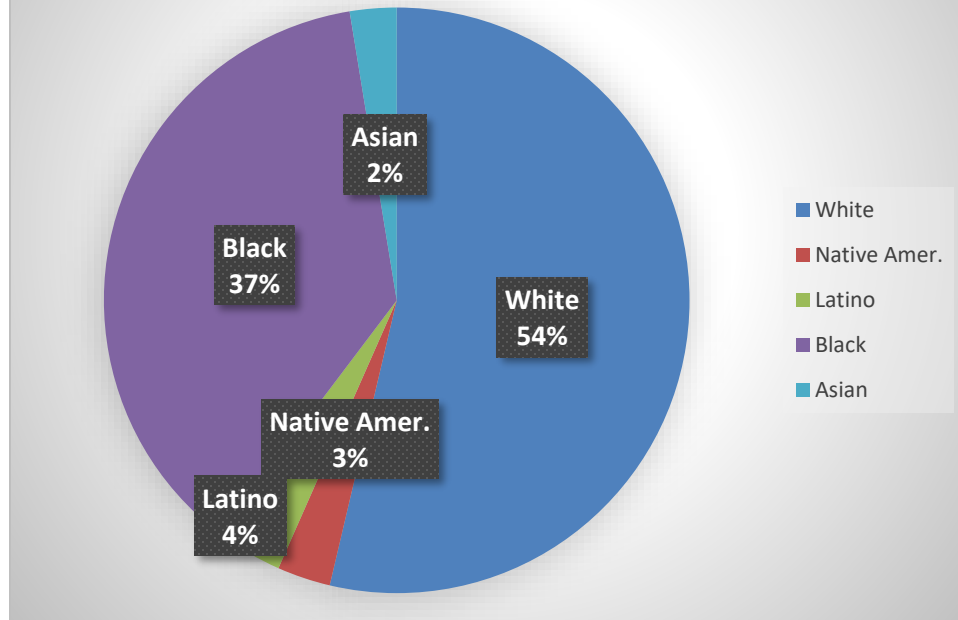
most serious offenses, extreme racial disproportionality remains in three-strikes sentencing. Appx. at 17.

Excluding those who will be resentenced following the removal of second-degree robbery as a strike, 272 defendants remain subject to death in prison as a result of the three-strikes law. Appx. at 6-15, 17. Of those defendants, only 146 are white, while 101 are Black.<sup>15</sup> *Id.* In other words, 54% are white and 37% are Black. *Id.* at 17.

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<sup>15</sup> Ten are Latino, eight are Native American, and seven are Asian. *Id.*

### Three Strikes Cases Without Rob 2s Through Fiscal 2021

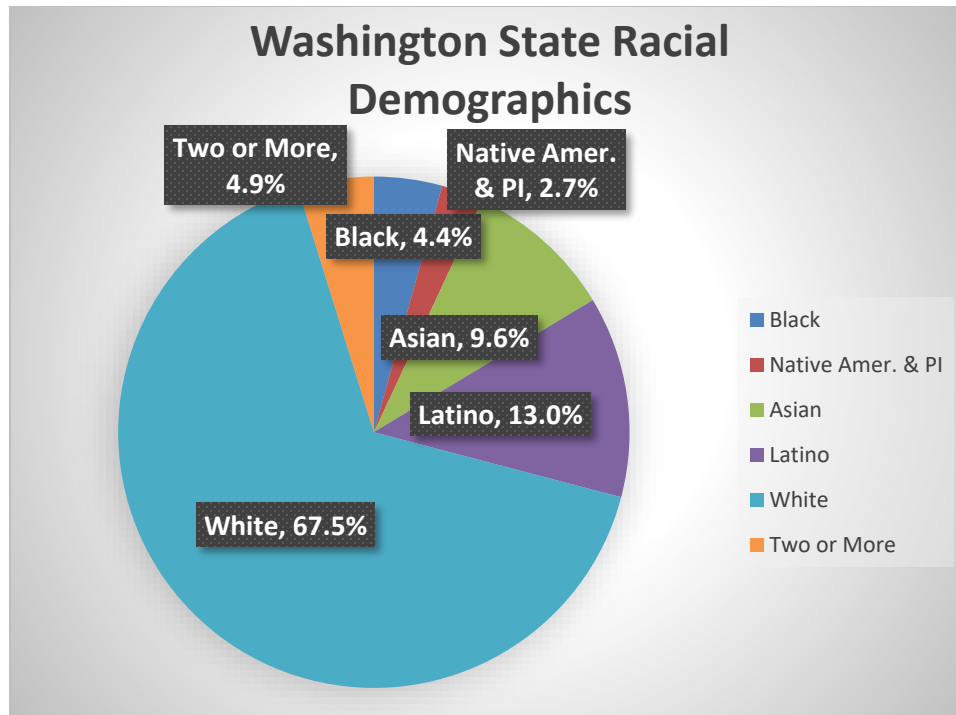


This is a striking statistic in a state where, currently, only 4.4% of the population is Black.<sup>16</sup> Appx. at 19.

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<sup>16</sup> See

<https://www.census.gov/quickfacts/fact/table/WA/PST045221>. The Census Bureau notes its total of all races slightly exceeds 100% because the Bureau draws its numbers from different data sources. *Id.*



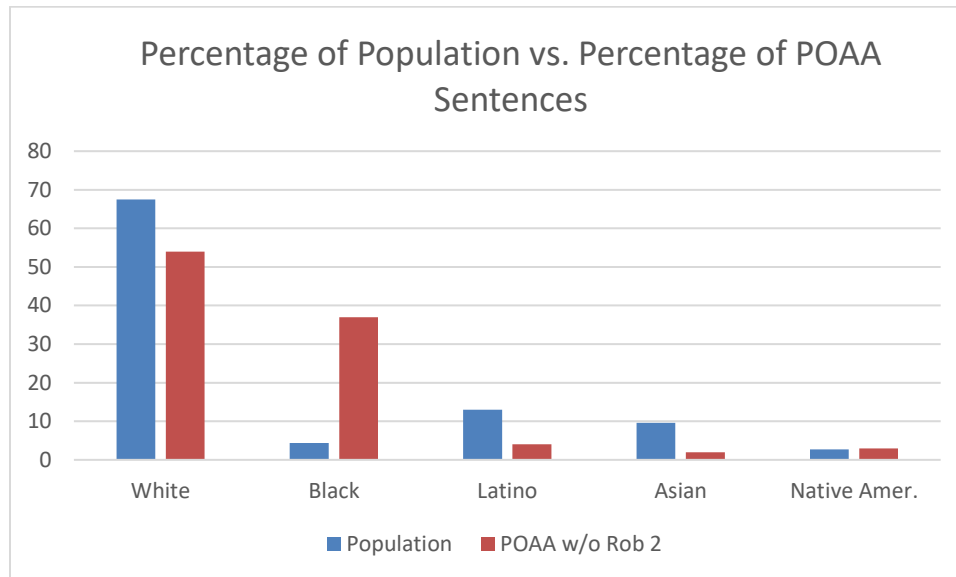
Indeed, given that only 4.4% of the population is Black, but 37% of remaining three-strikes defendants are Black, Black people are overrepresented relative to their share of the population by a factor of **8.4** ( $37 \div 4.4$ ).<sup>17</sup> And while Black

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<sup>17</sup> For an explanation of relative disproportionality and comparative disproportionality, see Task Force 2.0: Race and the Criminal Justice Sys., *Race and Washington’s Criminal Justice System: 2021 Report to the Washington Supreme Court*, ix (2021) (hereinafter “Task Force 2.0”), available at: [https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1116&context=korematsu\\_center](https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1116&context=korematsu_center).



defendants remain strikingly overrepresented, White defendants remain significantly underrepresented. Appx. at 20.



These data cannot be dismissed as representing differences in crime commission rates. *See* Steve Miletich, *Two State Supreme Court Justices Stun Some Listeners with Race Comments*, *Seattle Times* (Oct. 21, 2010) (“State Supreme Court justices Richard Sanders and James Johnson stunned some participants at a recent court meeting when they said African Americans are overrepresented in the prison population because they commit a disproportionate number of crimes and

not because of racial discrimination.”).<sup>18</sup> Rather, “[r]acial and ethnic bias distorts decision-making at various stages in the criminal justice system, thus contributing to disproportionalities in the criminal justice system.” Task Force 2.0 at 7 (citing Task Force on Race & Criminal Justice Sys., *Preliminary Report on Race and Washington’s Criminal Justice System* (2011)).

While this substantial racial disparity on its own demonstrates a violation of society’s standards of decency, *see Gregory*, 192 Wn.2d at 24, other jurisdictions’ laws also show that the Persistent Offender Accountability Act does not comport with “evolving standards of decency that mark the progress of a maturing society.” *Id.* at 23 (quoting *State v. Fain*, 94 Wn.2d 387, 397, 617 P.2d 720 (1980)). Although many other states have also enacted three-strikes statutes and other recidivist schemes, Washington is one of only eleven states in

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<sup>18</sup> Available at: <https://www.seattletimes.com/seattle-news/two-state-supreme-court-justices-stun-some-listeners-with-race-comments/>.

the nation that mandates a death-in-prison sentence for a third strike.<sup>19</sup> Appx. at 21-30 (listing statutes). Other states increase either the minimum term or the total sentence, but do not mandate life without the possibility of parole upon a third most serious offense.<sup>20</sup> *Id.*

Further demonstrating that the POAA does not comport with evolving standards of decency, in 2015, the American Law Institute revised the Model Penal Code to call for a “second look” provision, that is, “a mechanism to reexamine a person’s sentence after 15 years no matter the crime of conviction or the length of the original sentence.” Katherine Beckett & Heather

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<sup>19</sup> New Jersey and Virginia could be considered a 12<sup>th</sup> and 13<sup>th</sup> state in the list, but New Jersey does provide parole eligibility for people sentenced under their three strikes statute who have served at least 35 years and reached at least 70 years of age, N.J. Stat. Ann. § 2C:43-7.1, and Virginia permits parole for 65-year-olds who have served at least five years and 60-year-olds who have served at least 10 years. Va. Code Ann. § 19.2-297.1.

<sup>20</sup> Maryland mandates a death-in-prison sentence for a *fourth* strike, but not a third, and its equivalent to Mr. Brown’s second-degree assault does not constitute a strike. Md. Crim Law § 14-101; Md. Crim Law § 3-202; Md. Crim Law § 3-203.

D. Evans, *About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington State*, 80 (Feb. 2020).<sup>21</sup> And internationally, only 20% of the world's countries allow death-in-prison sentences for *any* crime, including aggravated murder. *Id.* at 5.

In sum, like the death penalty, the mandatory death-in-prison sentence for a third strike violates article I, section 14 because it is imposed in a significantly racially disproportionate manner and does not comport with evolving standards of decency. This Court should strike down the statute, reverse Mr. Brown's sentence, and remand for resentencing within the standard range.

**ii. As applied to those with second-degree assault strikes, the three-strikes law is unconstitutional as administered.**

If this Court does not invalidate the entire three-strikes law, it should hold the law is unconstitutional as administered

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<sup>21</sup> Available at: <https://lsj.washington.edu/research/publications/about-time>.

for defendants with second-degree assault strikes. There is even greater racial disproportionality in this context, and it appears **no** other state includes a comparable crime in its list of strike offenses for death-in-prison sentences, demonstrating our law is inconsistent with evolving standards of decency. Thus, this court should invalidate that portion of the statute and reverse Mr. Brown's sentence.

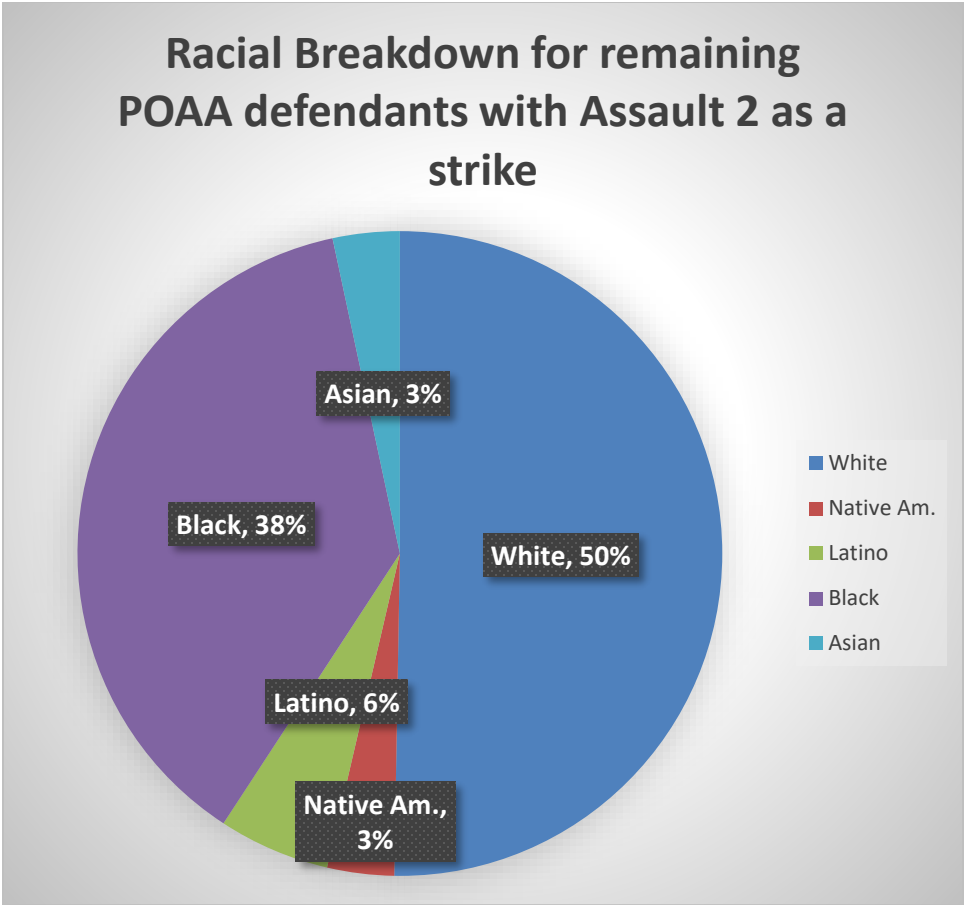
As noted above, racially disproportionate administration of the law with respect to second-degree robbery strikes influenced the Legislature's decision to remove that crime from the list of most-serious offenses. Shapiro, *supra*. The same problem raised constitutional concerns. *State v. Jenks*, 197 Wn.2d 708, 728, 487 P.3d 482 (2021) (Yu, J., concurring) (citing Const. art. I, § 14).

The constitutional infirmities identified with respect to second-degree robbery strikes also exist with respect to second-degree assaults. While the three-strikes law as a whole is administered in an unconstitutionally racially disproportionate

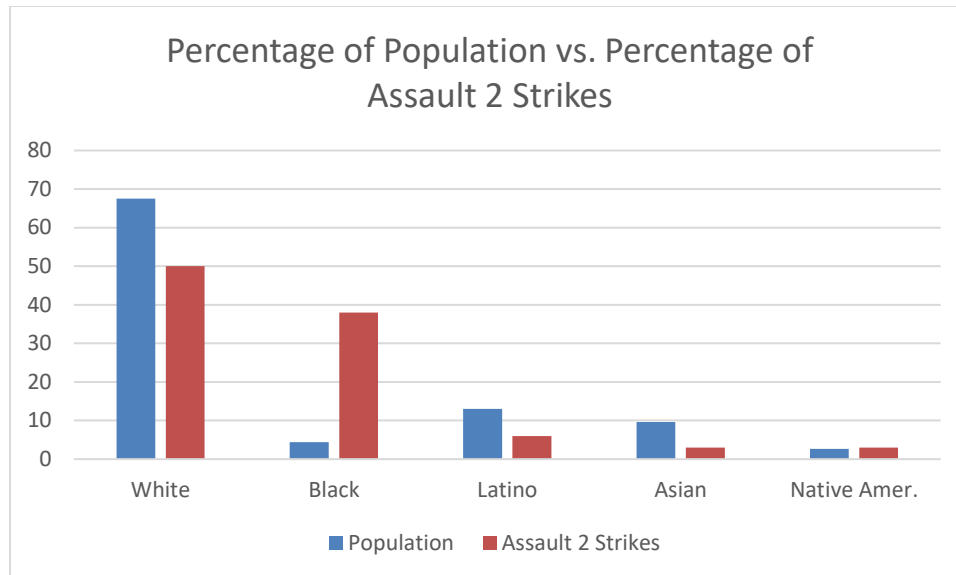
manner, the disparity is even greater for those convicted of second-degree assault. After removing those sentenced for second-degree robbery, there are 179 people with second-degree assault strikes who have been sentenced to death in prison under the POAA.<sup>22</sup> Appx. at 6-15, 18. Of those, only 90 are white. *Id.* In other words, while white people make up 67.5% of Washington's population, they constitute only 50% of those sentenced to die in prison for a second-degree assault strike. Appx. at 18-20. And Black people with second-degree assault strikes are overrepresented relative to their share of the population by a factor of **8.6** ( $38 \div 4.4$ ).

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<sup>22</sup> This number excludes those convicted of assaults with deadly weapon enhancements or sexual motivation enhancements. Such enhancements on their own render any class B felony a strike. RCW 9.94A.030(32)(r), (s). Thus, for example, even though second-degree robbery has been removed from the "most serious offense" list, a second-degree robbery with either of these enhancements would still be a strike. *Id.*



Thus, the relative disproportionality with respect to second-degree assault sentences is even more striking than for the POAA as a whole:



Moreover, while the Persistent Offender Accountability Act in general does not comport with evolving standards of decency as demonstrated by other jurisdictions' laws, this is even more true for second-degree assault strikes. Of the ten other states that mandate death in prison for repeat offenders, it appears **none** includes a crime comparable to Washington's second-degree assault in the list of strike offenses. Ga. Stat. Ann. § 17-10-7(b); Ga. Stat. Ann. § 17-10-6.1(a); La. Rev. Stat. § 15:529.1(3)(b); La. Rev. Stat. § 14:2B; La. Rev. Stat. § 14:34.1; La. Rev. Stat. § 14:35; Ma. Stat. 279 § 25(b); Miss. Code § 99-19-83; Miss. Code § 97-3-7; Mont. Code Ann. § 46-



18-219; Mont. Code Ann. § 45-5-202; N.C. Gen. Stat. Ann. § 14-7.7; N.C. Gen. Stat. Ann. § 14-7.12; N.C. Gen. Stat. Ann. § 14-33(c)(1); S.C. Stat. § 17-25-45; S.C. Stat. § 16-3-600; Tenn. Code Ann. § 40-35-12; Tenn. Code Ann. § 40-35-118; Wis. Stat. Ann § 939.62; Wis. Stat. Ann § 940.19; Wyo. Stat. Ann. § 6-10-201; Wyo. Stat. Ann. § 6-2-501; Wyo. Stat. Ann. § 6-2-502.<sup>23</sup> Washington is grossly out of line with society's standards of decency, and this situation cannot be squared with our state's ostensibly strong protection against cruel punishment. Const. art. I, § 14; *Gregory*, 192 Wn.2d at 23-24. This Court should hold that as applied to those with second-degree assault strikes, the POAA is unconstitutional as administered.

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<sup>23</sup> It is conceivable that second-degree assault would be a strike offense in Louisiana, but it appears Mr. Brown's Washington crime is comparable to the Louisiana misdemeanor of simple battery, not second-degree battery. *See* La. Rev. Stat. § 14:34.1; La. Rev. Stat. § 14:35.

b. *The three-strikes law is categorically unconstitutional under Bassett because it is contrary to the national consensus, disproportionate to the culpability of the offender, and inconsistent with legitimate penological goals.*

While the “as administered” analysis above resolves the sentencing issue, this Court could alternatively reverse the sentence under the categorical-bar analysis of *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018). The *Bassett* Court explained that a categorical-bar analysis is appropriate for addressing cruel punishment claims based on either the nature of the offense or the characteristics of the offender. *Id.* at 84.

Under the categorical-bar framework, a court asks: (1) whether there is a national consensus against the sentencing practice at issue, “as expressed in legislative enactments and state practice,” *Bassett*, 192 Wn.2d at 85, and (2) whether, in the court’s independent judgment, the severity of the punishment is proportionate to the culpability of the offenders and whether the sentencing practice “serves legitimate

penological goals.” *Id.* at 87 (quoting *Graham v. Florida*, 560 U.S. 48, 67, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010)).

Applying this analysis to a “characteristics of the offender” case, the Court held that a sentence of death in prison was categorically unconstitutional for those who committed their crimes before the age of 18—even for those who, like *Bassett*, committed multiple counts of aggravated murder. *Bassett*, 192 Wn.2d at 73 (citing Const. art. I, § 14). And applying the analysis to a “nature of the offense” case, the United States Supreme Court held the death penalty was categorically unconstitutional for those who committed child rape. *Kennedy v. Louisiana*, 554 U.S. 407, 413, 128 S. Ct. 2641, 171 L. Ed. 2d 525 (2008). Acknowledging the crime was devastating to its victims, the Court maintained the punishment was disproportionate to any crime not resulting in death. *Id.* at 435-37.

Applying these principles here, this Court should hold that a sentence of death in prison for a third strike under the

POAA is categorically unconstitutional. In the alternative, this Court should hold that a death-in-prison sentence for a “strike” of second-degree assault is categorically unconstitutional.

**i. The three-strikes law as a whole is categorically unconstitutional.**

The three-strikes law as a whole is categorically unconstitutional under *Bassett*. First, as explained in the “as administered” section above, there is a national consensus against the sentencing practice at issue, because only 11 states out of 50 impose mandatory death-in-prison sentences for a third strike. Appx. at 21-30. This is similar to the situation in *Kennedy*, where only six states made child rape a capital crime. *Kennedy*, 554 U.S. at 433. Likewise, in *Enmund v. Florida*, only eight jurisdictions authorized the death penalty for vicarious felony murder, leading the Court to declare a national consensus against the practice. *Id.* (citing *Enmund v. Florida*, 458 U.S. 782, 789, 792, 102 S. Ct. 3368, 73 L. Ed. 2d 1140 (1982)).

Second, this Court should apply its independent judgment to find that the severity of the punishment is disproportionate to the culpability of the offenders and that a sentence of death in prison for a third strike does not serve legitimate penological goals. The punishment of death in prison is disproportionate to a third strike offense because it is the same punishment imposed on people who commit multiple aggravated murders. *Moretti*, 193 Wn.2d at 835 (Yu, J., concurring). And the sentence does not serve legitimate penological goals where it is imposed in a significantly racially disproportionate manner. *See Gregory*, 192 Wn.2d at 24 (“Given our conclusion that the death penalty is imposed in an arbitrary and racially biased manner, it logically follows that the death penalty fails to serve penological goals.”). Moreover, studies find “no credible statistical evidence that passage of three strikes laws reduces crime by deterring potential criminals or incapacitating repeat offenders.” *About Time*, *supra*, at 17 (citing Tomislav V. Kovandzic, John J. Sloan, and Lynne M.

Vieraitis, *“Striking out” as Crime Reduction Policy: The Impact of “Three Strikes” Laws on Crime Rates in U.S. Cities*, Justice Quarterly 21, no. 2, 234 (June 1, 2004)).

Thus, under a categorical-bar analysis, the three-strikes provision of the POAA violates article I, section 14.

**ii. As applied to those with second-degree assault strikes, the three-strikes law is categorically unconstitutional.**

In the alternative, this Court should hold the three-strikes law is categorically unconstitutional for those convicted of second-degree assault as a strike.

First, there is even more of a national consensus on this point than there is with respect to the POAA as a whole. As noted above, it appears none of the other ten states that mandate death in prison for a third strike would count Mr. Brown’s second-degree assault as a strike.<sup>24</sup> Thus, Washington is the

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<sup>24</sup> Ga. Stat. Ann. § 17-10-7(b); Ga. Stat. Ann. § 17-10-6.1(a); La. Rev. Stat. § 15:529.1(3)(b); La. Rev. Stat. § 14:2B; La. Rev. Stat. § 14:34.1; La. Rev. Stat. § 14:35; Ma. Stat. 279 § 25(b); Miss. Code § 99-19-83; Miss. Code § 97-3-7; Mont. Code Ann. § 46-18-219; Mont. Code Ann. § 45-5-202; N.C.

only state in the nation that imposes death in prison for this crime. Appx. at 21-30.

Second, for the category of those convicted of second-degree assault, the sentence is grossly disproportionate and does not serve legitimate penological goals. Second-degree assault has a seriousness level of four, because the level of harm caused is much less than for other crimes. RCW 9.94A.515. Yet a person convicted of second-degree assault as a strike would receive the same sentence as those convicted of strikes with seriousness levels of five to 16. *Id.* Indeed, a person convicted of three second-degree assault strikes would receive the same sentence as a person convicted of multiple counts of the level 16 crime of aggravated murder. *Id.*; *Gregory*, 192 Wn.2d at 36.

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Gen. Stat. Ann. § 14-7.7; N.C. Gen. Stat. Ann. § 14-7.12; N.C. Gen. Stat. Ann. § 14-33(c)(1); S.C. Stat. § 17-25-45; S.C. Stat. § 16-3-600; Tenn. Code Ann. § 40-35-12; Tenn. Code Ann. § 40-35-118; Wis. Stat. Ann § 939.62; Wis. Stat. Ann § 940.19; Wyo. Stat. Ann. § 6-10-201; Wyo. Stat. Ann. § 6-2-501; Wyo. Stat. Ann. § 6-2-502. Again, the possible exception is Louisiana.

As the *Kennedy* Court explained, imposing the same harsh sentence for a lesser crime as for a greater is not only disproportionate to the offender's culpability, but also creates a perverse incentive to commit the greater crime. *See Kennedy*, 554 U.S. at 445-46. And here, the death-in-prison sentence for second-degree assault strikes is imposed in an even more racially disparate manner than three-strikes sentences generally. Appx. at 18-20. Thus, like the death sentence for child rape in *Kennedy*, the death-in-prison sentence for second-degree assault here is disproportionate and fails to serve any legitimate penological goals. *See Kennedy*, 554 U.S. at 445-46; *Gregory*, 192 Wn.2d at 24 .

In sum, like the *Gregory* as-administered analysis, the *Bassett* categorical-bar analysis demonstrates that Mr. Brown's sentence of death in prison violates article I, section 14. This Court should reverse the sentence and remand for resentencing within the standard range.



c. *The sentence is unconstitutionally disproportionate under Fain.*

Finally, this Court should alternatively reverse the sentence under the proportionality framework of Washington's seminal case, *State v. Fain*, 94 Wn.2d at 397. Under that test, the court considers: "(1) the nature of the offense, (2) the legislative purpose behind the statute, (3) the punishment the defendant would have received in other jurisdictions, and (4) the punishment meted out for other offenses in the same jurisdiction." *Bassett*, 192 Wn.2d at 83 (citing *Fain*, 94 Wn.2d at 397). If, after an evaluation of these factors, the court concludes the punishment is disproportionate to the crime, the sentence must be reversed as cruel under article I, section 14. *Fain*, 94 Wn.2d at 402.

In *Bassett*, after the Court held death-in-prison sentences for juveniles violated article I, section 14 under a categorical-bar analysis, the Court alternatively reached the same holding under the *Fain* proportionality framework. *Bassett*, 192 Wn.2d at 90-91. The Court acknowledged that under the first prong,

“aggravated murder is the most serious criminal offense.” *Id.* at 90. But the Court noted that under the second factor, the legislature enacted a statute with the intent to account for the diminished culpability of youth, and that the third factor, other jurisdictions’ practices, weighed in the defendant’s favor under *Fain* just as it did under the categorical analysis. *Id.* at 90-91. Under the fourth factor, the Court considered punishments for other crimes in Washington, and found that juvenile defendants would be eligible for release after 20 years for all crimes except aggravated murder. *Id.* at 91. The Court concluded this “extreme jump” also weighed in favor of finding an LWOP sentence unconstitutionally cruel. *Id.* The Court concluded, “Even if we applied the *Fain* test to Bassett’s categorical constitutional challenge, life without parole is a disproportionate sentence for juvenile offenders, and therefore, RCW 10.95.030(3)(a)(ii) is unconstitutional under article I, section 14.” *Bassett*, 192 Wn.2d at 91.

In *Fain*, the Court applied its proportionality analysis to the specific facts of the defendant's case, and concluded the defendant's sentence was unconstitutionally cruel. *Fain*, 94 Wn.2d at 397-402. The defendant was sentenced to life in prison with the possibility of parole as early as 10 years, under a "habitual criminal" statute that mandated such a sentence following the commission of three felonies of a particular type. *Id.* at 388-90 (citing former RCW 9.92.090). But the defendant's crimes were merely three thefts totaling \$470 (approximately \$2,500 in today's dollars), *id.* at 389, which the Court noted were "relatively minor" compared with crimes of violence. *Id.* at 398. Comparing Washington to other jurisdictions, the Court found that at that time, our state was one of only three that imposed similar sentences after three felonies. *Id.* at 399. And in looking at sentences for other crimes in Washington, the Court noted that the only other crime for which our legislature mandated a life sentence was first-degree murder, and that those who had stolen more money during the

commission of a single count of theft were subject to a maximum punishment of ten years. *Id.* at 401. Thus, without even reaching the “legislative purpose” prong, *id.* at 401, n.7, the Court held the defendant’s sentence violated article I, section 14 because it was “entirely disproportionate to the seriousness of his crimes.” *Id.* at 402.

Here, this Court should hold that under the *Fain* framework, a death-in-prison sentence is disproportionate to the strike crime of second-degree assault. In the alternative, it should hold that under *Fain*, the death-in-prison sentence is disproportionate on the specific facts of Mr. Brown’s case, where Mr. Brown is a Black man whose third strike was a mere second-degree assault and whose other strikes caused no physical harm to the victims.

**i. As applied to those with second-degree assault strikes, the three-strikes law is unconstitutionally disproportionate.**

First, just as the *Bassett* Court alternatively invalidated a death-in-prison sentence for a category of offender under the

*Fain* framework, this Court may invalidate a death-in-prison sentence for a category of offense (second-degree assault) under the *Fain* test.

Unlike in *Bassett*, the first factor, nature of the offense, weighs heavily in favor of a finding of cruel punishment. As noted above, second-degree assault has a seriousness level of four, yet a person convicted of second-degree assault as a strike would receive the same sentence as those convicted of multiple counts of the level 16 crime of aggravated murder. RCW 9.94A.515; *Gregory*, 192 Wn.2d at 36.

The second factor, legislative purpose, also weighs in favor of finding a death-in-prison sentence disproportionate for a second-degree assault strike. The purpose of the three-strikes law was to:

- (a) Improve public safety by placing the most dangerous criminals in prison.
- (b) Reduce the number of serious, repeat offenders by tougher sentencing.

- (c) Set proper and simplified sentencing practices that both the victims and persistent offenders can understand.
- (d) Restore public trust in our criminal justice system by directly involving the people in the process.

RCW 9.94A.555(2). But as just explained, people who commit second-degree assault, a level four offense, are not “the most dangerous criminals,” where crimes against persons with seriousness levels of five to 16 are more dangerous. And while sentencing a person to die in prison may be “simpler” than calculating an offender score and a standard range, public trust in our criminal justice system is severely hampered by draconian and unfairly administered sentencing practices. *See Moretti*, 193 Wn.2d at 835-36 (Yu, J., concurring) (We must “align this state’s sentencing practices with society’s expectations of a criminal justice system that is both fair and free of bias and imposes punishment that is proportional to the crime.”).

The third factor, other jurisdictions' practices, weighs strongly in favor of a finding of cruel punishment, because it appears **no** other state includes a crime comparable to Washington's second-degree assault in statutes that require death-in-prison sentences upon commission of a third strike. *See* Section (4)(b)(2), *supra*; Appx. at 21-30.

Finally, the fourth factor, punishment for other crimes in Washington, also weighs strongly in favor of finding that inclusion of second-degree assault as a strike violates article I, section 14. Outside of the three strikes law, the only other crimes that mandate death in prison are aggravated murder and two strikes of sex offenses. *About Time* at 31-34. Outside of the POAA context, second-degree assault is a class B offense subject to a 10-year maximum even where the jury finds aggravating factors. RCW 9A.36.021(2)(a); RCW 9.94A.537; RCW 9A.20.012. Absent aggravating factors, even a recidivist with the highest offender score possible could not be sentenced to more than 84 months for second-degree assault. RCW

9.94A.510. Thus, under *Fain*, the inclusion of second-degree assault as a strike offense violates article I, section 14.

**ii. The three-strikes law is unconstitutionally disproportionate as applied to Mr. Brown, an African American man whose third strike was a second-degree assault and whose other strikes caused no physical harm.**

At a minimum, this Court should hold the sentence of death in prison violates article I, section 14 as applied to the specific facts of Mr. Brown's case. *See Fain*, 94 Wn.2d at 397-402 (applying the proportionality factors to the specific facts of Mr. Fain's three crimes); *see also Moretti*, 193 Wn.2d at 831-34 (applying *Fain* test to three POAA defendants in consolidated cases).

As with second-degree assaults generally, as applied to the specific facts of Mr. Brown's crimes, the nature of the offense is wholly disproportionate to the sentence of death in prison. Mr. Brown's first two strikes were an arson and a robbery with an imitation firearm, CP 166, and while these offenses are serious, on the specific facts of Mr. Brown's case it



is important to note that Mr. Brown caused no physical injury in either instance. CP 173, 175. His third strike, a second-degree assault, was a hit to the face that caused a fracture of the bone above one of the middle teeth. RP (Gipson) 460. To be sure, a fracture constitutes “substantial bodily harm” under the statute, and Mr. Brown does not minimize the pain caused by a punch to the mouth. But this punch caused only two loose teeth that were adjusted back into place with the braces Ms. Hansen was already wearing. RP 536-46. Moreover, the mental state associated with this harm was mere recklessness, which is one of the least-culpable mental states in the criminal code (below premeditated intent, intent, knowledge, and extreme indifference, and above only negligence). CP 160; *See* RCW 9A.36.021(1)(a); RCW 9A.08.010; RCW 9A.32.030.

As to the second factor, sentencing Mr. Brown to death in prison does not achieve the legislative purpose of increasing punishment for “the most dangerous criminals,” where Mr. Brown is far less dangerous than people who have killed other

human beings or caused great bodily harm. Indeed, the prosecution did not think Mr. Brown needed to die in prison, as evidenced by their offering him a deal of 160 months (13 1/3 years) if he pleaded guilty to third-degree assault. RP (Weeks) 214). But Mr. Brown was penalized for exercising his constitutional right to trial, and was sentenced to death in prison. *See About Time* at 39-45 (discussing “trial penalty”).

The third factor, other jurisdictions’ practices, weighs strongly in favor of a finding of cruel punishment because Mr. Brown would not be sentenced to die in prison in any other state in the nation. *See* Section (4)(b)(2), *supra*; Appx. at 21-30.

Finally, the fourth factor, punishment for other crimes in Washington, also weighs strongly in favor of finding that Mr. Brown’s sentence violates article I, section 14. Again, Mr. Brown received the same sentence as people who commit multiple aggravated murders. For example, he received the same sentence as Gary Ridgway, a person who “killed at least 48 and probably more than 60 women.” *State v. Cross*, 156

Wn.2d 580, 632, 132 P.3d 80 (2006), *abrogated by Gregory*, 192 Wn.2d at 36. And Mr. Brown received a *harsher* sentence than people who commit one or two counts of first-degree murder, second-degree murder, or manslaughter. RCW 9.94A.510; RCW 9.94A.515.

Moreover, given the evidence of extreme racial disproportionality in the administration of the three-strikes law, it is reasonably likely Mr. Brown would not be serving a death-in-prison sentence if he were white. Mr. Brown is a Black man, and Black defendants are extraordinarily overrepresented among people sentenced to die in prison for a third strike. RP (Weeks) 401; CP 246; Appx. at 16-20.

In light of all of these circumstances, this Court should hold that Mr. Brown's sentence of death in prison violates article I, section 14. This Court should reverse the sentence and remand for resentencing within the standard range.

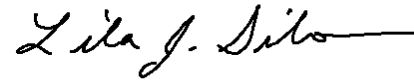
## **F. CONCLUSION**

Because the court erroneously permitted the State to amend the information 22 months into the case, this Court should reverse the assault conviction and remand for dismissal of the charge with prejudice and resentencing on the remaining counts. In the alternative, because the court erroneously admitted evidence of Mr. Brown's prior alleged misconduct but excluded evidence of the State's witnesses' alleged prior misconduct, this Court should reverse the assault conviction and remand for a new trial. If this Court does not reverse the conviction, it should reverse the life sentence as unconstitutionally cruel, and should remand for resentencing within the standard range.

This brief is proportionately spaced using 14-point font equivalent to Times New Roman and contains approximately 15,420 words (word count by Microsoft Word). Mr. Brown has

filed a motion to permit over-length briefing concurrent with  
this brief.

Respectfully submitted this 6th day of May, 2022.



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No. 38493-4-III

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

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STATE OF WASHINGTON,

Respondent,

v.

RAYMOND BROWN,

Appellant.

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

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APPENDIX

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## APPENDIX A

### Three Strikes Cases Through Fiscal 2021



## **Three Strikes Cases Through Fiscal 2021**

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Data from Caseload Forecast Council  
[cfc.wa.gov/Publications.htm](http://cfc.wa.gov/Publications.htm)

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

STATE OF WASHINGTON,  Respondent,  v.  RAYMOND BROWN,  Appellant.	No. 38493-4-III  Declaration of Lila J. Silverstein
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I, Lila J. Silverstein, declare as follows under penalty of perjury:

1. The data in the following report come from the Washington State Caseload Forecast Council. *See* <https://www.cfc.wa.gov/Publications.htm>. The CFC has tracked the crimes and race information for all defendants sentenced under the Persistent Offender Accountability Act. The Sentencing Guidelines Commission catalogued all data through May 2008 in a single report, and the CFC catalogued all data from June of 2008 through fiscal 2017 in its 2017 “statistical summary.” The CFC continued cataloguing crime and race data for POAA defendants in each of its annual statistical summaries from 2018 through 2021.
2. I entered data from the above sources into a single Excel spreadsheet, which is included as part of this report. I included only three-strikes cases, not two-strikes cases under the sex offense statute. I omitted the people who the Sentencing Guidelines Commission indicated were no

Declaration of Lila J. Silverstein

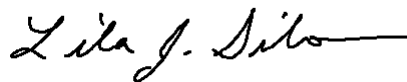
longer persistent offenders after the Court of Appeals overturned a conviction.

3. Because the Legislature recently removed second-degree robbery as a strike offense, I tracked cases in which defendants were sentenced under the POAA for a strike of second-degree robbery so I could later remove those cases from the race analysis. Where defendants were subject to a POAA sentence for other reasons, they were kept in the filtered data set. For instance, some defendants had three or more remaining strike offenses after removing second-degree robbery. The CFC listed *all* strike offenses, clearly delineating who remained subject to a POAA sentence following the removal of second-degree robbery from the strike list.
4. In order to evaluate the racial breakdown of those sentenced based on a strike of second-degree assault, I included a column for these crimes as well. I did not include in this analysis those defendants with either a deadly weapon enhancement or a sexual motivation enhancement, because these enhancements independently authorize a POAA sentence. Thus, the racial metrics for second-degree assault defendants are for those defendants sentenced to life without parole based on a strike of second-degree assault alone, with no enhancements.
5. For both robbery and assault, there were a handful of very old cases for which the CFC did not state the degree of the crime. I noted this uncertainty with a “?” in the relevant column, and did not count these cases as second-degree crimes for purposes of the filtered lists and charts.
6. After entering the data as described above, I filtered out the second-degree robbery defendants using Excel’s filter

feature, then created graphs of defendant race using Excel's charting feature.

7. I then filtered out the second-degree assault defendants and created graphs for this subgroup, again using Excel's filter and chart features.
8. In comparing the racial breakdown of the POAA and the racial breakdown of Washington's population, I used the data from the United States Census Bureau. *See* <https://www.census.gov/quickfacts/fact/table/WA/PST045221>. The Census Bureau notes that its total slightly exceeds 100% because it gathers data from multiple sources.
9. I swear under penalty of perjury that I applied the foregoing protocols and that the following spreadsheet and charts are correct to the best of my belief and knowledge.

Dated this 15th day of April, 2022.



---

Lila J. Silverstein, WSBA No. 38394

CaseNum	CauseNum	Sent Date	County	Race	Offenses	Rob 2?	Assault 2?	Assault 2 w/o DW?	Comment
1994030005	94-C-00443-0	3/3/1994	King	Black	Kidnap 1, Rob postal, rob bank	?	N		
1994061469	94-1-00147-1	6/20/1994	Snohomish	White	Rob 2 x3	Y	N		
1994061399	93-1-00127-9	6/27/1994	Stevens	White	Rape 1, Assault 2, Rape 2	N	Y	Y	
1994060593	94-1-01601-8	6/30/1994	Pierce	White	rob 2, rob 1, rob 1	Y	N		
1994091196	93-1-06019-6	9/2/1994	King	Black	rob 2 x2, assault 2	Y	Y	Y	
1994100303	94-1-01558-0	10/7/1994	king	Black	Rob 2 x3	Y	N		
1994100119	94-1-02799-5	11/4/1994	King	Black	Rob 2 x3	Y	N		
1994110281	94-1-01095-2	11/10/1994	King	Black	Rob 2-Att, Rob 2, "Robbery"	Y	N		
1994111195	94-1-00660-1	11/17/1994	Snohomish	Black	Rob 1 Att, Rob 2 x2	Y	N		
1994120063	94-1-04491-1	12/5/1994	King	Black	Rob 2, Rob 1 x2	Y	N		
1994120801	94-1-01964-5	12/7/1994	Pierce	White	Assault 2, Rob 2, Rob 1	Y	Y	Y	
1994120124	94-1-00144-9	12/16/1994	King	White	Rob 2 x3	Y	N		
1994120945	94-1-00385-7	12/16/1994	Snohomish	White	Kidnap 1, Rob 1, Rob 2	Y	N		
1994121476	94-1-00117-8	12/16/1994	Whatcom	White	Rape 2, Rob Bank, Rob 1	N	N		
1998111177	94-1-01314-5	1/6/1995	King	White	Murder 1, Att Rape 1, Rape 2	N	N		
1995011431	94-1-00541-8	1/27/1995	Snohomish	White	Child mol 2, Child mol 1, assault 2	N	Y	Y	
1995031542	94-1-01457-0	3/2/1995	Spokane	White	Burg 1, Murder 2, "Robbery"	?	N		
1995030213	94-1-05915-3	3/7/1995	King	Black	Burg 1, Rob 2 x2	Y	N		
1995030572	94-1-04687-1	3/16/1995	Pierce	Black	Rob 1 x2, Rob 2	Y	N		
1995030528	94-1-01328-1	3/20/1995	Pierce	Native Amer.	Assault 2, Rape 3, "Assault"	N	Y	N	
1995031278	94-1-05565-4	3/24/1995	King	White	Rob 1, Rob 2 att, Rob 2	Y	N		
1995041401	94-1-08084-5	4/28/1995	King	Black	Assault 2, Rob 1, Rob 2	Y	Y	Y	
1995051831	94-1-07090-4	5/25/1995	King	Black	Rob 1 x2, assault 2	N	Y	Y	
1995051994	94-1-03441-5	5/31/1995	Pierce	White	Murder 1, assault 1, assault 2	N	Y	Y	
1995060584	94-1-06563-3	6/9/1995	King	White	Rob 1 x3	N	N		
1995061892	94-1-05101-8	6/28/1995	Pierce	Black	Assault 1, rape 1, rob 2	Y	N		
1995070477	94-C-07842-5	7/14/1995	King	Black	Rob 2 x3	Y	N		
1995071016	94-1-00616-3	7/14/1995	Snohomish	White	Kidnap 1, indecent lib x2	N	N		
1995110037	95-1-00029-0	8/3/1995	Clallam	White	Murder 2 att, Murder 1, assault 2	N	Y	Y	
1995081612	94-1-00496-7	8/7/1995	Whatcom	Latino	assault 2 SM, assault 2, rob 2	Y	Y	Y	
1995080788	95-1-00002-8	8/18/1995	Clallam	White	Childmol 1, assault 2, Indecent Libs	N	Y	Y	
1995081816	95-1-00810-7	8/23/1995	King	White	Assault 2 x3	N	Y	Y	
1995081462	95-1-00080-0	8/31/1995	Clallam	White	Kidnap 1 & 2, agg murder (?)	N	N		
1995090334	94-C-08086-1	9/8/1995	King	Native Amer.	Murder 1, rob 1x2	N	N		
1995101546	95-1-00261-9	10/5/1995	Pierce	White	Rob 2, rob bank, "robbery w/ DW"	Y	N		
1995100321	95-1-01095-4	10/11/1995	Clark	White	Rob 2 x2, Rob 1	Y	N		
1995100371	94-1-06273-1	10/13/1995	King	Black	Burg 1, "Robbery" x2	?	N		
1996031887	95-C-07113-5	10/13/1995	King	Black	Rob 1, assault 2, rob 2	Y	Y	Y	
1995101774	95-1-01102-6	10/17/1995	Yakima	White	Rob 1 x3	N	N		
1995101526	95-1-00160-4	10/30/1995	Pierce	Black	Rape 1 x2, assault 1	N	N		
1995110862	95-1-00402-8	11/3/1995	Thurston	Black	child mol 1, Burg 1, promoting prost	N	N		
1995110426	94-1-05017-2	11/9/1995	King	Black	Rob 2 x3	Y	N		
1995110610	95-1-04105-3	11/14/1995	Pierce	White	Rob 2 x2, Rob 1	Y	N		
1996050614	94-1-01513-4	11/17/1995	Spokane	Black	Murder 1, rob 2, rob 1	Y	N		
1995111507	95-1-00882-0	11/20/1995	Pierce	Black	Assault 1, Rob 2, Rob 1	Y	N		
1995110496	95-1-02922-8	11/21/1995	King	White	Rob 1-Att, Assault 2 Att, Assault 2	N	Y	Y	
1995120237	95-1-00375-5	12/5/1995	Pierce	Black	Rob 1 x2, Rob 2	Y	N		
1995120383	95-1-01103-4	12/8/1995	Yakima	White	Rob 1 x2, Fed Rob	?	N		
1996010315	94-1-02336-6	12/11/1995	Spokane	White	Rob 2, Rob 1 x2	Y	N		
1996011355	95-1-00098-6	1/22/1996	Grant	Black	Rape 1, Rape 2, murder 2	N	N		

1996011570	95-1-01997-0	1/22/1996	Pierce	White	Burg 1, assault 2, rob 2	Y	Y	Y
1996050412	95-1-06668-9	2/22/1996	King	White	rob 2, rob 1, rob	Y	N	
1996030744	95-1-00787-7	3/1/1996	Snohomish	White	assault 2 x2, Att Assault 1	N	Y	N
1996030058	95-1-00297-5	3/4/1996	Walla Walla	Black	Childmol 1, Assault 2, Assault SM	N	Y	Y
1996031863	95-1-04812-1	4/11/1996	Pierce	White	Assault 1, Rob 1 x2	N	N	
1996050615	95-1-02181-7	4/16/1996	Spokane	White	Rob 1 x2, assault 2	N	Y	Y
1996041401	95-1-04641-1	4/29/1996	Pierce	White	Assault 1 x2, assault 2	N	Y	Y
1996050615	95-1-02181-7	5/15/1996	Spokane	White	Rob 1 x2, assault 2	N	Y	Y
1996060335	96-1-00126-5	6/4/1996	Snohomish	White	Rob 2, assault 2 x2	Y	Y	Y
1996031888	95-1-04144-9	6/9/1996	King	White	Rape 2 x2, assault 2	N	Y	Y
1996060661	95-1-01817-5	6/11/1996	Pierce	Black	Rob 1 x2, Rob 2	Y	N	
1996060939	96-1-00040-8	6/21/1996	Pacific	Asian	Murder 1, assault 2, burg 2	N	Y	Y
1996060944	96-1-00059-9	6/28/1996	Pacific	White	child mol 1, child mol 2, ROC 1	N	N	
1996071530	96-1-00379-9	7/14/1996	Snohomish	White	Rob 2 x3	Y	N	
1996071114	95-1-04149-5	7/30/1996	Pierce	White	Rob 1 x2, burg 1	N	N	
1996081718	96-1-00449-5	8/21/1996	King	Black	Rob 2 x2, Rob 1	Y	N	
1996080841	95-1-04872-4	8/22/1996	Pierce	Black	Kidnap 1, rob 1, rape 1	N	N	
1996091653	95-1-02141-2	9/5/1996	Yakima	White	Rape 1, 3, rob 2	Y	N	
1996090319	95-1-01839-4	9/18/1996	Clark	White	Child mol 1, extortion 1, "robbery"	?	N	
1996101504	95-1-01611-6	10/4/1996	Snohomish	Black	Rob 1 x3	N	N	
1996101525	96-1-00372-1	10/16/1996	Snohomish	White	rob 2 x2, assault 2	Y	Y	Y
1996101837	96-1-00802-2	10/16/1996	Snohomish	White	Rob 2, Rob 1 x2	Y	N	
1996101513	95-1-01355-9	10/21/1996	Snohomish	White	Att murder 1, assault2, "robbery"	?	Y	Y
1996091299	95-1-00536-0	10/25/2006	Snohomish	White	ROC 1, child mol 1, indecent lib	N	N	
1996101850	96-1-00792-1	10/28/1996	Snohomish	Native Amer.	Assault 2, arson 1, rob 1	N	Y	Y
1996101544	96-1-00633-9	10/29/1996	Thurston	White	Rob 1, rob 2, "robbery"	Y	N	
1996110323	96-1-01661-2	11/8/1996	King	Black	Att rape 1, rob 2, assault 2	Y	Y	Y
1996111578	96-1-00064-6	11/20/1996	Skagit	White	Arson1, rob 2, rob1	Y	N	
1996110958	96-1-03464-5	11/27/1996	King	Black	Rob 2, rob bank, rob 1	Y	N	
1996110957	95-1-02425-1	12/2/1996	King	White	Att rape 1, rob 2, "robbery"	Y	N	
1996120960	96-1-00452-7	12/2/1996	Kitsap	White	murder 1, burg1 x2	N	N	
1996120174	96-1-01371-1	12/6/1996	King	Black	Indecent lib, rape, "assault w/ DW"	N	?	
1996120146	92-1-02233-7	12/15/1996	King	White	Rob 1 x3	N	N	
1997010215	96-1-02814-4	1/15/1997	Pierce	White	agg murder 1 (?), rob 1, assault 2	N	Y	Y
1997010898	95-1-00539-7	1/15/1997	Cowlitz	White	Burg 1, assault 2, rob 2	Y	Y	Y
1997011085	96-1-00687-2	1/15/1997	Kitsap	White	Rape 3 x3	N	N	
1997010278	95-1-01342-7	1/17/1997	Snohomish	White	Att murder 1, rob 1, murder 2	N	N	
1997020121	96-1-04550-0	2/7/1997	King	Black	Rob 1, "robbery," assault 1	?	N	
1997020054	94-1-08323-2	2/18/1997	King	White	Veh assault, agg assault, assault 2	N	Y	Y
1997030116	96-1-05912-5	3/13/1997	King	Black	Assault 2, 2x promoting Prost.	N	Y	Y
1997030223	96-1-03101-3	3/18/1997	Pierce	Black	rob 1, rob 2 x2	Y	N	
1997030927	96-1-01035-3	3/26/1997	Snohomish	Black	Kidnap 1, rob 2, rob 1	Y	N	
1997040054	97-1-00657-7	4/22/1997	King	White	Rob 2 x3	Y	N	
1997041862	96-1-00960-4	4/22/1997	Whatcom	White	Rob 2, Rob 1 x2	Y	N	
1997051653	95-1-02242-2	5/9/1997	Spokane	White	Rape 1 x2, assault 2	N	Y	Y
1997050495	96-1-02166-2	5/22/1997	Pierce	Black	Murder 2, assault 2, rape 3	N	Y	Y
1997070007	97-1-00428-4	6/2/1997	Clark	White	Assault 2 x2, meth poss. w/ FA	N	Y	Y
1997060454	96-1-06524-9	6/13/1997	King	Black	ROC 2, indecent lib x2	N	N	
1997070133	97-1-00172-7	7/7/1997	Snohomish	White	Rob 2, Rob 1, att rob 2	Y	N	
1997070700	96-1-00754-8	7/8/1997	Thurston	White	Rob2, 2x "robbery"	Y	N	
1997070716	97-1-00720-0	7/9/1997	Pierce	White	ROC 1 x2, "Robbery - att"	?	N	
1997071119	96-1-00785-5	7/9/1997	Spokane	Black	Rob 1 x2, Rob 2	Y	N	
1997071122	96-1-01143-7	7/15/1997	Spokane	Black	murder 1, assault 2 x2	N	Y	Y

1997071169	96-1-00449-7	7/16/1997	Kitsap	White	Murder 1, veh assault, "robbery"	?	N	
1997081592	97-1-02152-1	8/19/1997	Pierce	White	ROC 1, Indecent lib, kidnap 2	N	N	
1997080655	97-1-00441-9	8/26/1997	Cowlitz	White	Assault 2 x3	N	Y	Y
1997090162	96-1-00519-2	9/11/1997	Skagit	Latino	Arson 1, att assault 2, assault 2	N	Y	Y
1997091621	96-1-01680-8	9/11/1997	Yakima	Latino	Assault 2 x3	N	Y	Y
1997091509	96-1-01904-7	9/18/1997	Spokane	White	ROC 1, child mol 2, child mol 1	N	N	
1997100375	97-1-00011-6	10/6/1997	Asotin	White	veh hom, child mol 2, burg 1	N	N	
1997100935	97-1-00325-3	10/6/1997	Clark	Black	Rob 1, "robbery"x2	?	N	
1997100764	96-1-00468-9	10/24/1997	Benton	White	Murder 1, rob 2 x2	Y	N	
1997110795	96-1-00102-2	11/18/1997	Clallam	White	ROC 1 x2, Assault2	N	Y	Y
1997110493	96-1-08165-1	11/21/1997	King	White	Rob 1, burg 1, "Assault w/DW"	N	Y	N
1997121245	96-1-08365-4	12/29/1997	King	Black	murder 1, rob 2, assault 1	Y	N	
1998030783	97-1-07087-9	3/6/1998	King	Latino	Att. Rape 2, assault 2, rob 2	Y	Y	N
1998041548	97-1-06904-8	4/17/1998	King	White	Rob 2 x3	Y	N	
1998051423	97-1-07001-1	5/8/1998	King	Black	Rob 1, att rob 2, assault 2	Y	Y	Y
1998051841	97-1-01272-9	5/15/1998	Snohomish	Black	Rob 1, att rob 2, assault 2	Y	Y	Y
1998051105	98-1-00129-4	5/28/1998	Whatcom	White	Rob 2 x2, rape 3	Y	N	
1998060183	97-1-01039-0	6/23/1998	Clark	White	Arson1, "robbery," kidnapping,	?	N	
1998072184	97-1-00852-9	7/20/1998	King	White	rob 2 x3	Y	N	
1998090265	98-1-06347-1	9/4/1998	King	White	Rob 1 x3	N	N	
1998090673	97-1-04547-1	9/23/1998	Pierce	Black	Rob 1, att murder, "assault w/FA"	N	?	N
1998101641	97-1-01936-3	10/5/1998	Spokane	White	Burg 1, rob 1 x2	N	N	
1998102007	97-1-02412-1	10/8/1998	Pierce	Black	Murder 1, rob 1, rob 2	Y	N	
1998101185	98-1-01076-6	10/30/1998	Thurston	Native Amer.	Rob 2, robbery, drug del w/ FA	Y	N	
1998110309	97-1-04824-5	11/20/1998	King	Black	Murder 2, rob 2, assault 2	Y	Y	Y
1998111042	97-1-05832-1	11/20/1998	King	Black	Att rob 1, man 1, assault 2	N	Y	Y
1998121140	98-1-00643-4	12/18/1998	Yakima	White	Rape 2, rape 1, "robbery"	?	N	
1998120362	98-1-00140-5	12/22/1998	Grant	Latino	Assault 1 x2, assault 2	N	Y	Y
1999021749	98-1-00532-0	2/9/1999	Grant	Black	Murder 2, burg 1, "robbery"	?	N	
1999020483	97-1-07256-1	2/15/1999	King	Black	Rob 2, murder 2, rob 1	Y	N	
1999020982	94-1-08085-3	2/15/1999	King	White	murder 1, assault 2, rob 2	Y	Y	Y
1999021060	98-1-01425-8	2/18/1999	Snohomish	White	Att rob 1, assault 2 x2	N	Y	N
1999020517	98-1-03956-8	2/25/1999	Pierce	White	Att ROC 2, att Child mol 2, stat rape 2	N	N	
1999032100	98-1-01823-6	3/15/1999	Thurston	White	Child mol 1, rob 2 x2	Y	N	
1999030579	98-1-05028-6	3/22/1999	Pierce	Black	Assault 2 x2, rape 2	N	Y	N
1999041292	98-1-02369-6	4/8/1999	Pierce	Black	Murder 2, assault 1 x2	N	N	
1999051096	98-1-00829-3	5/13/1999	Cowlitz	White	Att assault 1, assault 2, burg 1	N	Y	Y
1999050069	94-1-06445-9	5/15/1999	King	Black	Burg 1, assault 1, rape 2	N	N	
1999050927	98-1-00322-8	5/15/1999	Spokane	White	Burg 1, Rob 2 x2	Y	N	
1998101641	97-1-01936-3	5/18/1999	Spokane	White	Burg 1, rob 2, att rob 2	Y	N	
1999061650	97-1-03308-1	6/14/1999	Pierce	Native Amer.	Child Mol 1, vol. man., "sodomy"	N	N	
1999061704	98-1-05398-6	6/16/1999	Pierce	Latino	Rob 1, assault 2, rob 2	Y	Y	Y
1999072091	99-1-00821-9	7/1/1999	Clark	White	Rob 2, Rob 1 x2	Y	N	
1999070350	98-1-00782-2	7/7/1999	King	Black	Rob 2, "assault w/ DW," "robbery"	Y	?	N
1999070351	98-1-01231-1	7/9/1999	King	Black	Rob 2 x3	Y	N	
1999071215	98-1-00481-1	7/29/1999	Pierce	White	Murder 1, "robbery armed," "assault /battery w/ DW"	N	?	N
1999080808	98-1-00473-2	8/20/1999	Snohomish	Black	Rob 1, Assault 2, Rob 1	N	Y	Y

1999091723	98-1-06914-3	9/1/1999	King	White	Rob 2, "robbery," rob 1	Y	N	
1999091664	98-1-00899-3	9/10/1999	King	Black	Murder 2, rob 1, att rob 2	Y	N	
1999090698	99-1-00634-3	9/16/1999	Yakima	Latino	Rob 2 x2, att rob 1	Y	N	
1999100526	98-1-04136-2	10/22/1999	King	White	Burg 1, rob 2, att rob 1	Y	N	
1999101170	99-1-00011-1	10/28/1999	Mason	White	Rob 2, assault 2, burg 1	Y	Y	Y
1999100069	98-1-06431-1	10/29/1999	King	White	Rape 1, 2, rob 1	N	N	
1999110337	99-1-04885-3	11/5/1999	King	White	Rob 1 x2, att rob 2	Y	N	
1999110338	99-1-03487-9	11/5/1999	King	White	rob 2, rob 1x2	Y	N	Same person as above?
1999110726	98-1-08643-9	11/19/1999	King	Black	Murder 1, 2x att rob 1	N	N	
2000011496	99-1-02529-8	1/7/2000	Pierce	Black	Murder 1, assault 1, veh hom	N	N	
2000010678	99-1-04828-6	1/28/2000	King	White	Rape 1, rob 1, rob 2	Y	N	
2000032367	00-1-00604-3	3/2/2000	King	White	rape 1, assault 2, rob 1	N	Y	Y
2000031277	99-1-02333-3	3/10/2000	Pierce	Black	Rob 1 x2, murder 1	N	N	
2000031055	99-1-00873-6	3/22/2000	Lewis	White	Rob 2, assault 2, burg 1	Y	Y	Y
2000031721	99-1-01182-6	3/27/2000	Snohomish	Black	Rob 2 x2, att rob 2	Y	N	
2000041309	99-1-02419-4	4/14/2000	Pierce	Black	Rob 1 x2, assault 2 w/ SM	N	N	Said "no" to assault to b/c SM independently makes it a strike
2000041074	99-1-02064-4	4/17/2000	Pierce	Black	Rob 1 x3	N	N	
2000041773	99-1-00929-4	4/18/2000	Thurston	Black	Assault 2 x 2, att manslaughter (?)	N	Y	Y
2000041326	99-1-02410-1	4/26/2000	Pierce	White	Rob 2 x3	Y	N	
2000051985	00-1-00013-5	5/11/2000	Walla Walla	White	Assault 1, assault 2, burg 1	N	Y	Y
2000050438	99-1-00924-6	5/12/2000	King	Black	Assault2, murder1, "Robbery armed"	N	Y	N
2000051505	99-1-09431-6	5/19/2000	King	White	rob 2 x2, assault 2	Y	Y	Y
2000050221	98-1-02219-1	5/30/2000	Clark	White	Rob 2 x3	Y	N	
2000061406	99-1-04391-1	6/2/2000	Pierce	White	Assault 1, rob 1, rob 2	Y	N	
2000062296	99-1-00344-9	6/8/2000	Whatcom	White	Att Rob 2, assault 2, rob 1	Y	Y	N
2000060863	99-1-02129-7	6/9/2000	King	Black	Rob 1 x2, assault 2 SM	N	N	Said "no" to assault to b/c SM independently makes it a strike
2000061728	98-1-03607-1	6/9/2000	Pierce	Black	rob 1, rob 2 x2	Y	N	
2000060978	97-1-05897-6	6/30/2000	King	Black	Rape 3, Rob 1, stat rape 2	N	N	
2000081235	98-1-08431-2	8/14/2000	King	White	Assault 1 SM, Burg 1, Indecent Lib	N	N	
2000081425	00-1-02907-8	8/25/2000	King	Black	Rob 1, Rob 2, Burg 1	Y	N	
2000101303	99-1-50929-0	10/2/2000	King	Black	Rob 2 x3	Y	N	
2000121379	00-1-01184-3	12/15/2000	Snohomish	Black	Rape 2 x2, rob 1	N	N	
2001010851	99-1-05616-3	1/5/2001	King	Black	Rob 1, rob 2 x2	Y	N	
2001010666	98-1-02618-5	1/23/2001	King	Black	Rape 1, burg 1, rob 1	N	N	
2001020258	00-1-00828-9	2/2/2001	Pierce	Black	Rob 1, Rob 2, Kidnap	Y	N	
2001040561	00-1-01381-3	4/13/2001	King	White	Rob 2, rob 1, assault 1	Y	N	
2001041159	99-1-03828-4	4/13/2001	Pierce	Black	Assault 1, Rob 1 x2	N	N	
2001050484	00-1-08720-5	5/11/2001	King	White	Assault 1, burg 1, man 2	N	N	
2001050104	96-1-00102-2	5/16/2001	Clallam	White	ROC 1, stat rape, assault 2	N	Y	Y
2001061313	00-1-03051-3	6/14/2001	King	Black	Rape 1, att rape, burg 1	N	N	
2001070589	99-1-05162-5	7/20/2001	King	Black	Burg 1, Assault of Child 2, Rob Bank	N	N	Assault of child is different crime from assault.
2001070440	01-1-00941-0	7/24/2001	Spokane	White	Rob 1, "robbery," murder	?	N	
2001080274	00-1-04773-0	8/13/2001	Pierce	Black	rob 1, rob 2 x2	Y	N	
2001081497	00-1-10284-1	8/31/2001	King	White	Rob 1 x2, Rob 2	Y	N	
2001091169	00-1-08739-6	9/21/2001	King	White	Rob 2, Kidnap 1, Rob 1	Y	N	
2001090479	01-1-00091-8	9/27/2001	Mason	White	Murder 2, assault 2, rape 3	N	Y	Y
2001091915	00-1-05161-3	9/28/2001	Pierce	Black	Rape 1, att manslaughter (?), att rob 1	N	N	
2001111835	00-1-05771-3	11/9/2001	King	Black	Att murder 2, assault 2, rob 2	Y	Y	N
2001111510	00-1-03534-1	11/26/2001	Pierce	Latino	Kidnap 1, att rape 2 x2	N	N	
2001121707	01-1-00986-0	12/10/2001	Spokane	White	Rob 1, rob 2x2	Y	N	



2002011546	01-1-09988-1	1/25/2002	King	Black	Murder 1, assault 1, neg homicide	N	N	
2002012284	98-1-05398-6	1/25/2002	Pierce	White	Rob 1, assault 2, rob 2	Y	Y	Y
2002021766	01-1-00686-2	2/6/2002	Whatcom	Native Amer.	Burg 1, veh hom, rob 2	Y	N	
2002022166	01-1-01954-7	2/6/2002	Spokane	Black	Assault 2 SM, rob 1, assault 2	N	Y	Y
2002030809	00-1-08891-1	3/4/2002	King	White	Kidnap 1, burg 1, rob 1	N	N	
2002050137	01-1-04547-6	5/3/2002	Pierce	White	Assault 3 DW, rob 2, rob 1	Y	(N)	(N)
2002050321	01-1-05003-8	5/17/2002	Pierce	Native Amer.	Assault 2, burg 1, rape 1	N	Y	Y
2002050185	02-1-00208-2	5/24/2002	Pierce	Black	Murder 1, att rape 2, assault 2 FA	N	Y	N
2002060081	94-1-02669-2	6/14/2002	Pierce	White	Agg murder 1 (?), "assault w/ intent to murder" x2	N	?	?
2002060917	01-1-01175-5	6/18/2002	Cowlitz	White	ROC 2, burg 1, assault 2	N	Y	Y
2002070107	00-1-02097-0	7/5/2002	Clark	Black	rob 1, rob 2 x2	Y	N	
2002072314	02-1-00051-2	7/12/2002	Jefferson	Native Amer.	Assault 1, assault 2, rob 1	N	Y	Y
2002070358	01-1-05013-5	7/19/2002	Pierce	Black	Murder 1, rob 1, rob 2	Y	N	
2002081254	01-1-00679-8	8/16/2002	Spokane	White	Rob 2 x2, rob 1	Y	N	
2002091804	00-1-08533-4	9/20/2002	King	Black	Rob 2 x2, assault 1	Y	N	
2002090261	00-1-01934-3	9/26/2002	Clark	White	rob 1, rob 2 x2	Y	N	
2003011799	00-1-04416-6	1/17/2003	King	Black	agg murder 1 (?), assault 2, rape 1	N	Y	Y
2003011801	00-1-05915-5	1/17/2003	King	Black	rape 1, rob 2, assault 2	Y	Y	Y
2003021801	02-1-00264-2	2/24/2003	Chelan	White	Agg murder 1 (?), rob 2 x2	Y	N	
2003020071	02-1-04662-4	2/25/2003	Pierce	White	rob 1 x3	N	N	
2003030930	02-1-00090-9	3/3/2003	Chelan	White	Assault 1, rob 2 x2	Y	N	
2003032073	02-1-01963-4	3/31/2003	Spokane	Black	Man 1, arson 2, rob 2	Y	N	
2003052299	01-1-05099-7	5/16/2003	King	Black	murder 1, rape 3, assault 2	N	Y	Y
2003050486	01-1-01230-0	5/23/2003	Yakima	Black	rob 1 x2, rob 2	Y	N	
2003060095	03-1-01363-5	6/13/2003	Pierce	Black	kidnap 1, rob 1, rob 2	Y	N	
2003071739	03-1-00119-1	7/1/2003	Thurston	White	Murder 2, rape 2, rob 1	N	N	
2003070357	02-1-01012-9	7/16/2003	Cowlitz	Black	ROC 2, assault 2 x2	N	Y	Y
2003072294	02-1-06037-6	7/18/2003	Pierce	Black	rob 1, rob 2, rape 3	Y	N	
2003102418	01-1-00167-6	10/1/2003	Snohomish	White	Att rape 2, Rob DW, rape	N	N	
2003121504	02-1-02121-7	12/1/2003	Snohomish	Black	murder 2, assault 2, assault 3	N	Y	Y
2003121002	03-1-01756-8	12/19/2003	Pierce	Asian	Assault 1 X2, burg2	N	N	
2003122028	03-1-00515-3	12/22/2003	Grays Hbr	White	rob 1 x3	N	N	
2004011338	02-1-00394-6	1/12/2004	King	Black	Rob 2 x2, rape 2	Y	N	
2004041374	03-1-01422-4	4/2/2004	Pierce	Black	assault 2, ROC 2, "robbery"	?	Y	Y
2004041530	03-1-03428-4	4/23/2004	Pierce	White	Assault 1 x2, assault 2	N	Y	Y
2004041368	01-1-09546-0	4/25/2004	King	Black	murder 2, rob 2, assault 2	Y	Y	Y
2004051316	03-1-03797-6	5/28/2004	Pierce	White	assault 2, rob 1 x2	N	Y	Y
2004060315	03-1-06165-1	6/2/2004	King	White	rob 1, rob 2 x2	Y	N	
2004071703	04-1-00004-9	7/19/2004	Walla Walla	White	Arson 1 (sol), assault 2, murder1	N	Y	Y
2004072333	01-1-00895-5	7/23/2004	Benton	Black	assault 2 DW, assault 2, burg 1	N	Y	Y
2004081179	03-1-03040-7	8/20/2004	Spokane	White	Assault 2, rob 2 x2	Y	Y	Y
2004122105	03-1-02080-6	12/10/2004	King	White	ROC 1, assault 2, rob 1	N	Y	Y
2004120674	04-1-00819-8	12/16/2004	Cowlitz	White	Assault 2 x2, burg 2	N	Y	Y
2004120315	03-1-05971-6	12/17/2004	Pierce	White	Kidnap1, rape2, rob1	N	N	
2004120884	04-1-01332-5	12/20/2004	Thurston	Black	Rob 1, rob 2x2	Y	N	
2005021384	04-1-00477-0	1/19/2005	Cowlitz	White	Att assault 2, burg 2 x2	N	Y	Y
2005021557	04-1-00283-2	2/3/2005	Okanogan	White	murder 2, rob 2, assault 2	Y	Y	Y
2005021911	03-1-02220-5	2/18/2005	King	Black	ROC 1, rob 1, assault 2	N	Y	Y
2005040380	04-1-00534-2	4/15/2005	Walla Walla	White	Assault 2 x2, att murder 1	N	Y	Y
2005051247	04-1-00246-1	5/27/2005	Pierce	Asian	Assault 2 x2, burg 1	N	Y	Y

2005071453	04-1-03642-0	7/13/2005	Spokane	Black	Murder 2, burg 1, child mol 2	N	N	
2005072294	03-1-02751-7	7/29/2005	King	Black	Rob 2 x2, rob 1	Y	N	
2005081179	05-1-00159-1	8/4/2005	Cowlitz	White	Assault 2 x2, rob 2	Y	Y	Y
2005101476	05-1-02388-5	10/12/2005	Snohomish	White	rob 1, rob 2 x2	Y	N	
2005101901	05-1-00643-0	10/25/2005	Spokane	Black	Att assault 2, assault 2, rob 2	Y	Y	Y
2005101036	03-1-05918-0	10/28/2005	Pierce	Asian	Murder 2, assault 2, kidnap 2	N	Y	Y
2005110293	03-1-02581-1	11/18/2005	Pierce	Black	Rob 1 x2, assault 2	N	Y	Y
2005110310	05-1-00152-8	11/18/2005	Pierce	Black	Rob 2 x3	Y	N	
2005121433	04-1-01862-1	12/9/2005	King	Black	Rob 1 x3	N	N	
2005121478	04-1-09756-4	12/23/2005	King	White	Rob 2, assault 2, rob 1	Y	Y	Y
2006011528	04-1-00216-9	1/25/2006	Spokane	White	Assault 2 x3	N	Y	Y
2006020454	05-1-02485-2	2/3/2006	Clark	White	Murder 2, rob 2, arson 1	Y	N	
2006021421	05-1-05499-5	2/17/2006	King	Black	Assault 1, rob 2 x2	Y	N	
2006021825	04-1-02437-0	2/21/2006	Yakima	White	Murder 1, rob 1, burg 1	N	N	
2006022016	05-1-00239-2	2/28/2006	Walla Walla	White	Assault 1, rob 1 x2	N	N	
2006031053	05-1-02141-1	3/8/2006	Clark	Native Amer.	Assault 1, assault 2, rob 2	Y	Y	Y
2006031434	05-1-10528-0	3/21/2006	King	Black	Assault 2 x3	N	Y	Y
2006031705	05-1-00438-7	3/28/2006	Walla Walla	White	Burg 1, assault 1, assault 2	N	Y	Y
2006041113	04-1-01712-1	4/14/2006	Kitsap	White	Child mol 1, child mol 2, rob 2	Y	N	
2006041464	05-1-00882-1	4/21/2006	King	White	Sex exploit, rob 2, rape 2	Y	N	
2006050436	05-1-00652-3	5/12/2006	Yakima	White	Assault 1, burg 1, assault 2	N	Y	Y
2006078014	05-1-01958-1	7/10/2006	Clark	White	Murder 1, assault 2 x2	N	Y	Y
2006080248	06-1-00609-1	8/3/2006	Thurston	White	Assault 2, child mol 1, rob 1	N	Y	Y
2006080966	05-1-06802-3	8/11/2006	King	Black	murder 2, rob 1, assault 2	N	Y	Y
2006098066	06-1-00814-6	9/21/2006	Clark	Black	Kidnap 1, rob 2 x2	Y	N	
2006100850	06-1-00814-8	10/23/2006	Pierce	Black	att murder 1, rob 1, assault 2	N	Y	Y
2006111296	06-1-00468-4	11/14/2006	Snohomish	White	rob 1 x2, rob 2	Y	N	
2006110507	06-1-00822-9	11/17/2006	Pierce	White	rob 1, rob 2, rape 1	Y	N	
2006120341	03-1-00563-7	12/8/2006	King	Black	Kidnap 1, rob 2, assault 2	Y	Y	Y
2006128117	05-1-00201-0	12/8/2006	Pierce	Black	murder 2, rob 2, murder 1	Y	N	
2007010244	04-1-05575-1	1/12/2007	Pierce	Asian	Murder 2, rob 2 x2	Y	N	
2007020214	05-1-02650-8	2/5/2007	Yakima	White	rob 1, rob 2, assault 2	Y	Y	Y
2007028295	06-1-02520-4	2/9/2007	Pierce	White	Assault 1, rob 2, rob 1	Y	N	
2007030298	05-1-00276-9	3/6/2007	Skagit	White	Agg murder 1 (?), assault 2, rape 2	N	Y	Y
2007031397	04-1-05697-3	3/9/2007	King	White	Rob 1 x2, burg 1	N	N	
2007031452	06-1-03999-4	3/16/2007	King	Black	Burg 1, rape 1 x2	N	N	
2007040064	06-1-02822-2	4/5/2007	Snohomish	White	assault 2 x2, burg 1	N	Y	Y
2007040591	07-1-00037-0	4/16/2007	Walla Walla	White	Assault2 x2, arson1	N	Y	Y
2007051589	04-1-10392-1	5/18/2007	King	White	Rob 1 x2, kidnap1	N	N	
2007060448	04-1-07408-4	6/1/2007	King	Black	Rob 1 x3	N	N	
2007060481	06-1-03228-1	6/22/2007	King	Black	Burg 1, murder 2, stat rape 2	N	N	
2007061123	06-1-01148-7	6/29/2007	Yakima	Latino	Murder 2, rob 1 x2	N	N	
2007091495	07-1-00194-8	9/17/2007	Mason	White	Assault 1, murder 1, rob 2	Y	N	
2007101946	05-1-13605-3	10/5/2007	King	Black	Assault 1 x2, burg1	N	N	
2007108255	06-1-00824-1	10/25/2007	Cowlitz	White	Assault 2 DW, rob 2, att assault 2	Y	Y	Y
2007118447	05-1-04626-1	11/15/2007	Spokane	White	Rob 1 x2, assault 2	N	Y	Y
2007120571	06-1-06142-1	12/7/2007	Pierce	White	rob 1 x2, rob 2	Y	N	
2007128377	07-1-01845-1	12/14/2007	Pierce	Black	Assault 2 x2, rob 2	Y	Y	Y
2008011280	07-1-00053-8	1/10/2008	Benton	White	Assault 1, assault 2 att assault 2	N	Y	Y
2008028399	07-1-00368-6	2/25/2008	Lewis	Black	Assault 2 x2, burg1	N	Y	Y
2008030191	07-1-05900-0	3/14/2008	Pierce	Black	Rob 1 x2, rape 3	N	N	
2008038290	07-1-00090-9	3/19/2008	Clark	White	Poss. Meth w/ FA, Rob 2, rob 1	Y	N	

2008048366	07-1-00942-6	4/24/2008	Clark	Black	Assault 2, att. Murder, stat rape1	N	Y	Y	
2008058460	08-1-00257-5	5/8/2008	Cowlitz	White	Rob 1 x3	N	N		
2008051763	06-1-07497-8	5/19/2008	King	Black	Assault 2 DW, rob 1 x2	N	Y	N	
2009050613	07-1-01875-1	5/15/2009	Clark	White	Killing police dog, assault 2, murder 2	N	Y	Y	
2008100547	08-1-00941-3	10/9/2008	Cowlitz	White	Rob 1 x2, assault 2 x2	N	Y	Y	
2008100548	08-1-00945-6	10/9/2008	Cowlitz	White	Rob 1 x2, assault 2 x2	N	Y	Y	Same person as above? If so, two POAAs?
2008100553	08-1-00860-3	10/9/2008	Cowlitz	White	Rob 1 x2, assault 2 x2	N	Y	Y	Same person as two above? If so, three POAA sentences?
2008100566	08-1-00735-6	10/15/2008	Cowlitz	White	Assault 2, burg 1 x2	N	Y	Y	
2009032188	07-1-06919-1	3/26/2009	King	Black	Assault 2 x2, assault 1	N	Y	Y	
2008071101	08-1-00002-8	7/14/2008	Mason	White	Child mol 1 x2, rape 3	N	N		
2008120470	96-1-02166-2	12/5/2008	Pierce	Black	man 1, rape 3, assault 2	N	Y	Y	
2009060565	08-1-05886-9	6/5/2009	Pierce	White	Rob 1 x7, rob 2 x2	N	N		Said "no" to rob 2 b/c rob 1s independently justify POAA sentence.
2009040328	06-1-03300-5	4/7/2009	Snohomish	White	Rob 1 x3, rob 2 x2	N	N		Said "no" to rob 2 b/c rob 1s independently justify POAA sentence.
2009031706	07-1-02025-1	3/6/2009	Spokane	Black	Rape 1, att. assault 2, rob 2, rape 2	Y	Y	Y	
2009031719	07-1-02261-0	3/6/2009	Spokane	Black	Rape 1, att. assault 2, rob 2, rape 2	Y	Y	Y	same person as above? But can't be more than one POAA sentence here.
2009051499	08-1-00164-5	5/5/2009	Spokane	Black	Burg 1, assault 2 DW, Rob 2	Y	Y	N	
2008071639	07-1-00312-0	7/23/2008	Thurston	White	murder 1, rob 2 x3	Y	N		
2008081338	07-1-02207-0	8/13/2008	Yakima	White	Assault 1, rob 2, rob 2 DW, Rape 3	N	N		Said "no" to rob 2 b/c DWE independently justifies POAA sentence.
2010050995	09-1-00496-9	5/24/2010	Clallam	White	Rob 2, res burg, burg1	Y	N		
2009071836	08-1-05501-5	7/31/2009	King	White	Rob 2, rape 2, rape 1	Y	N		
2009081605	08-1-05652-6	8/18/2009	King	Black	Kidnap 1, Rob 1 x2	N	N		
2009091697	08-1-05055-2	9/18/2009	King	Black	Rob 1, rob 2 x5	Y	N		
2010061615	07-1-10896-0	6/25/2010	King	Black	Rob 2, rob 2 DW, Rob 1, murder 2	Y			Even though one of the rob 2's has a DWE, the current offense is plain rob 2
2010051867	10-1-00055-5	5/27/2010	Lewis	White	Kidnap 1, rob 1 x4	N	N		
2009081106	08-1-03497-8	8/27/2009	Pierce	Black	Assault 1, assault 2 x2	N	Y	Y	
2009121643	05-1-04496-1	12/4/2009	Pierce	White	Assault 2, rape 1, assault 1	N	Y	Y	
2009121644	08-1-04006-4	12/4/2009	Pierce	White	Assault 2 x2, burg 1 x2	N	Y	Y	
2010051064	07-1-04704-3	5/20/2010	Spokane	Black	Rob 1 x4, rob 2	N	N		said "no" to rob 2 b/c rob 1's independently justify sentence.
2010061206	08-1-03595-7	6/2/2010	Spokane	White	Agg murder 1 (?), burg 1 x2	N	N		
2010061501	09-1-01946-1	6/10/2010	Spokane	Black	Assault 1, Assault 2 x2, Rob 1 x3, Rob 2	N	N		said "no" to rob2 and assault 2 b/c other crimes independently justify sentence.
2009110602	09-1-00693-1	11/19/2009	Thurston	Black	Rape 1, rob 2, assault1	Y	N		
2010060337	08-1-00877-3	6/8/2010	Whatcom	White	Rape 1, rob1, assault 2	N	Y	Y	
2010040166	08-1-00233-6	4/2/2010	Yakima	White	Assault 1, assault 2 x2	N	Y	Y	
2010100833	08-1-01255-4	10/27/2010	Cowlitz	White	Murder 1 (solicit.), att. Assault 2, assault 2	N	Y	Y	
2010101947	08-1-12186-7	10/29/2010	King	Black	Rape 2 x2, assault 2	N	Y	Y	
2011011226	09-1-04159-4	1/26/2011	King	Black	assault 2 x3	N	Y	Y	
2011041777	09-1-05942-6	4/1/2011	King	Black	Rob 1, rob 2 x4	Y	N		
2011031844	10-1-01499-5	3/18/2011	Pierce	White	Rob 1, indecent lib, child mol 2	N	N		
2011031862	10-1-01842-7	3/30/2011	Pierce	Black	Murder 2, rape 2, assault 2	N	Y	Y	
2011031193	10-1-02131-5	3/23/2011	Snohomish	White	Assault 2 x3	N	Y	Y	
2011060533	10-1-01110-7	6/29/2011	Snohomish	White	Rob 2, veh hom, rob1	Y	N		
2010120968	09-1-02931-9	12/2/2010	Spokane	Black	Assault 2x2, riot DW	N	Y	Y	
2011020202	09-1-01772-1	2/8/2011	Thurston	White	Murder 1, assault 2 x2, drug w/ FA, Burg 1	N	N		Said "no" to assault 2 b/c other offenses independently justify POAA sentence.

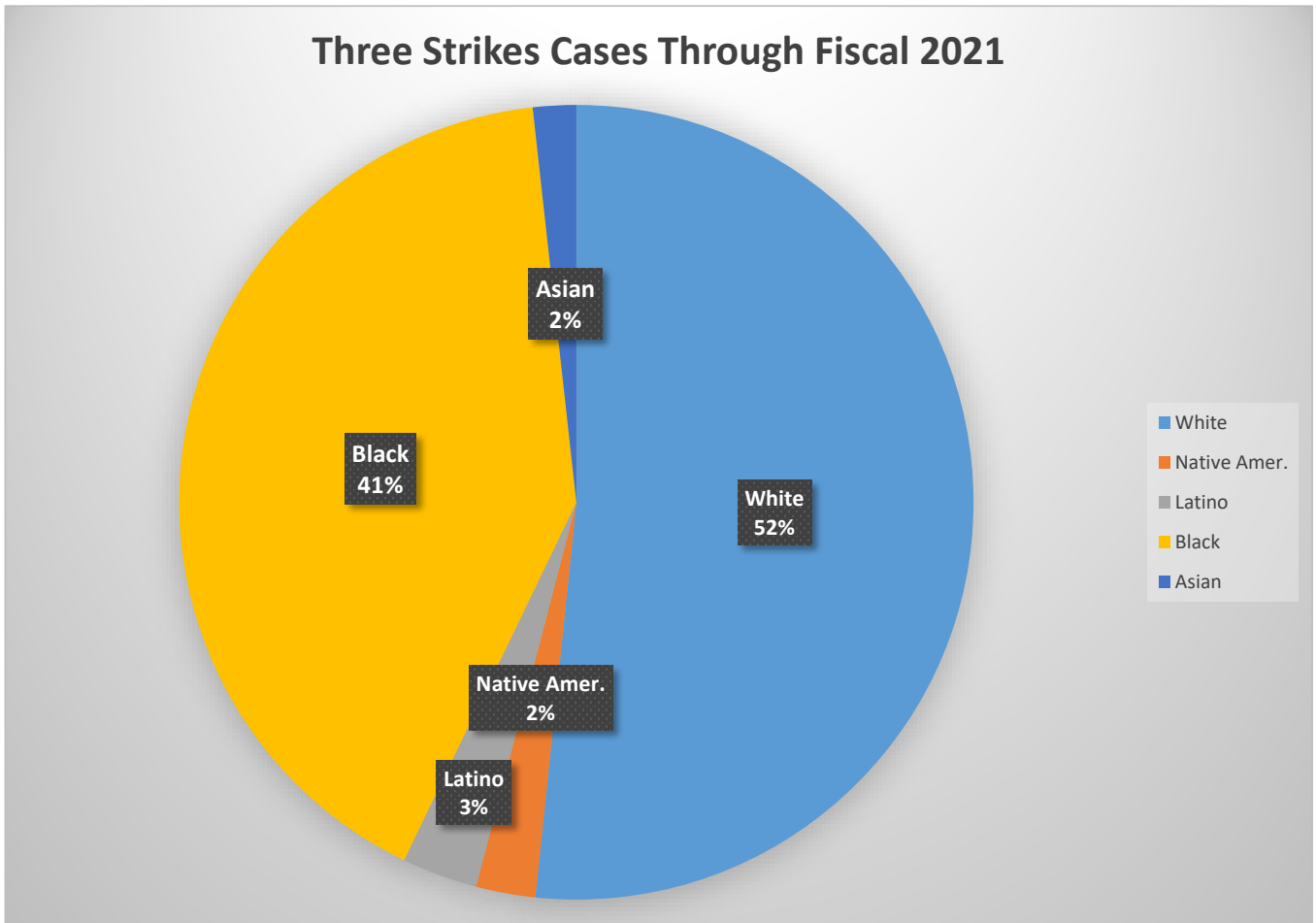
2011060032	09-1-00982-7	6/2/2011	Yakima	White	Rape 1 x3, burg 1	N	N		
2012031592	10-1-00043-9	3/27/2012	Asotin	White	Rape 2, rob 1 x2, rob 2	N	N		Said "no" to rob 2 b/c other offenses authorize POAA sentence.
2012020713	11-1-00557-4	2/27/2012	Cowlitz	White	Assault 2 x2, assault 1	N	Y	Y	
2012040352	11-1-00172-2	4/13/2012	Cowlitz	White	Assault 1 x2, assault 2 x2	N	Y	Y	same person as above?
2011120323	10-1-50293-8	12/13/2011	Franklin	White	Rob 1 x2, att. Rob 1, rob 2, assault 2	N	N		Said "no" to rob 2 and assault 2 b/c other offenses authorize sentence.
2011070902	11-1-00085-3	7/25/2011	Grays Hbr	White	Assault 1, rob 1 x2	N	N		
2011081347	10-1-01028-5	8/19/2011	King	White	Veh assault, rob 1, ROC 1	N	N		
2011081414	11-1-00406-2	8/19/2011	King	White	Rob 2 x3, att. Rob 2	Y	N		
2011101590	09-1-07421-2	10/28/2011	King	Black	ROC 1, Rob 1 att., Assault 2	N	Y	Y	
2012011548	10-1-10200-7	1/13/2012	King	Black	Rob 1 x3, burg 1, assault 2	N	N		Said "no" to assault 2 b/c other offenses authorize the sentence.
2012051193	10-1-00198-7	5/11/2012	King	Black	assault 2, rob 2 x3	Y	Y	Y	
2011121092	10-1-00485-2	12/16/2011	Lewis	White	murder 1, assault 2 x3, burg 1	N	Y	Y	
2011091975	10-1-03382-5	9/23/2011	Pierce	Black	Burg 1, assault 2, rob 1	N	Y	Y	
2012021908	09-1-04643-5	2/24/2012	Pierce	White	Rob 1 x4, rob 2	N	N		
2012031644	10-1-02833-3	3/2/2012	Pierce	Black	Assault 2 x3	N	Y	Y	
2012031821	11-1-01404-7	3/23/2012	Pierce	Black	Murder 2, assault 2, rob 1	N	Y	Y	
2012051776	09-1-03627-8	5/11/2012	Pierce	Black	murder 1 x3, Rape 3, rob 1	N	N		
2011070792	10-1-00159-9	7/20/2011	Skagit	White	Child Mol 1, indecent lib, ROC 1 x2	N	N		
2011071686	07-1-04236-0	7/21/2011	Spokane	White	Rob 1, rob 2 x12, att rob 2 x3	Y	N		
2011081289	10-1-03146-5	8/19/2011	Spokane	White	Rob 1, assault 2, assault 1	N	Y	Y	
2012051574	11-1-02747-4	5/10/2012	Spokane	White	assault 2 w/ FA, assault 2 x2, rob 1	N	Y	Y	same person as above?
2012061617	11-1-03625-2	6/27/2012	Spokane	White	Rob 1 x2, rob 2	Y	N		
2012070843	11-1-01087-0	7/24/2012	Cowlitz	Black	Assault 2 x2, man 2	N	Y	Y	
2012081008	11-1-00015-3	8/22/2012	Garfield	White	Rape 2, kidnap 2, kidnap 1, assault 2 DW, assault 2	N	N		Said "no" to assault 2 b/c other offenses independently authorize LWOP.
2012071294	10-1-02308-5	7/20/2012	King	Black	Rob 2, rob 1 x4	N	N		Said "no" to rob 2 b/c other offenses independently authorize LWOP.
2012081229	11-1-03021-7	8/31/2012	King	Black	Rob 1 x2, Assault 1, rob 2 x3	N	N		Said "no" to rob 2 b/c other offenses independently authorize LWOP.
2013012006	12-1-02435-1	1/11/2013	Pierce	White	ROC 1, rob 1 att., Rape 1 x2, Rape 2	N	N		
2013041845	12-1-00172-5	4/19/2013	Pierce	Black	assault 1, assault 2, rob 1	N	Y	Y	
2013051815	11-1-01768-2	5/31/2013	Pierce	Black	Rape 2, rob 2, rob 1	Y	N		
2013061369	12-1-00068-1	6/27/2013	Pierce	Asian	VUFA 1, assault 2, rob 1	N	Y	Y	
2013040698	05-1-00276-9	4/18/2013	Skagit	White	Agg murder 1 (?), assault 2, rape 2	N	Y	Y	
2012120378	12-1-00342-9	12/12/2012	Snohomish	White	Rob 1, assault 2 x2	N	Y	Y	
2013010951	12-1-00210-4	1/24/2013	Snohomish	White	Rob 1 x2, assault 2, rob 2, promoting prost.	Y	Y	Y	
2013031355	11-1-03648-1	3/28/2013	Spokane	White	Rob 1 x2, att rob 1	N	N		
2013051005	11-1-03853-1	5/8/2013	Spokane	White	Assault 1, assault 2, rob 1	N	Y	Y	
2013051744	11-1-03698-8	5/23/2013	Spokane	Black	Murder 2, rob 2, assault 2 x2	Y	Y	Y	
2012100077	11-1-00359-6	10/1/2012	Yakima	Latino	Assault 1, assault 2 x2	N	Y	Y	
2013080701	13-1-00226-4	8/20/2013	clark	White	Assault 2 x2, assault 1	N	Y	Y	
2014020138	13-1-01135-0	2/10/2014	Cowlitz	Black	kidnap 1, rob 2 x2, att. Assault 2	Y	Y	Y	
2014010467	12-1-50117-2	1/14/2014	Franklin	White	Murder 2, assault 2, rob 1 att.	N	Y	Y	

2013120712	13-1-00155-2	12/13/2013	Island	White	Assault 2 x2, burg 1 x2, rob 1	N	N		said "no" to assault 2 b/c other offenses authorize the sentence.
2013111299	12-1-01861-4	11/1/2013	King	White	Child mol 2, man 1, assault 2	N	Y	Y	
2013111739	10-1-04933-1	11/12/2013	Pierce	White	Murder 1, assault 2 DW, rob 1	N	Y	N	
2014052016	13-1-03881-3	5/2/2014	Pierce	Black	Rob 1, rob 2 x3	Y	N		
2013111254	11-1-01397-0	11/1/2013	Spokane	White	ROC 1 x2, Burg 1 x 2	N	N		
2013120990	13-1-00170-6	12/12/2013	Spokane	Black	Assault 1, rob 1 x6	N	N		
2015030192	14-1-00056-3	3/5/2015	Asotin	White	Assault 1, assault 2, rob 2	Y	Y	Y	
2014101633	13-1-01405-6	10/23/2014	King	Black	Assault 1, rob 1 x6	N	N		
2015011388	12-1-01885-1	1/21/2015	King	Black	Rape 1 x2, rob 1 x5, rob 2 x4	N	N		said "no" to rob 2 b/c other offenses independently authorize sentence.
2015031435	08-1-12186-7	3/20/2015	King	Black	Rape 2 x2, assault 2	N	Y	Y	
2015041440	09-1-05942-6	4/1/2015	King	Black	rob 1, rob 2 x4	Y	N		
2015020027	13-1-00973-9	2/2/2015	Kitsap	White	Assault 2 x2, rob 2	Y	Y	Y	
2014102286	13-1-02515-1	10/31/2014	Pierce	White	MFG./Del. w/ FA, assault 2, burg 1, assault 2 DW x2	N	N		said "no" to assault 2 b/c other offenses independently authorize sentence.
2014111666	12-1-00068-1	11/21/2014	Pierce	Asian	Burg 1, assault 2, rob 1	N	Y	Y	
2014111670	14-1-00724-0	11/21/2014	Pierce	White	assault 3 DW, assault 2 x2, man 2	N	Y	Y	
2014100239	12-1-01937-6	10/2/2014	Snohomish	Black	Assault 2, rob 2, rob 1	Y	Y	Y	
2014070897	13-1-03443-4	7/22/2014	Spokane	Black	Assault 1, rob 1 x2, burg 1	N	N		
2015071061	15-1-00005-8	7/24/2015	Grays Hbr	White	Rob 1, arson 1, veh assault	N	N		
2015090628	14-1-00059-9	9/16/2015	Grays Hbr	White	Burg 1, rob 1, rob 2	Y	N		
2015071410	09-1-07421-2	7/31/2015	King	Black	Child mol 1, rob 1, assault 2	N	Y	Y	
2015121325	12-1-01374-4	12/3/2015	King	White	murder 1, rob 1, rob 2	Y	N		
2016031633	14-1-06738-7	3/4/2016	King	Asian	Assault 1, burg 1, assault 2	N	Y	Y	
2016041738	15-1-03007-4	4/25/2016	King	Black	rape 2, assault 2 x3	N	Y	Y	
2016061561	15-1-02082-6	6/29/2016	King	Black	commercial sex abuse of a minor, rob 1, rob 2	Y	N		
2016040620	08-1-00600-4	4/13/2016	Lewis	White	Rob 1 x4, assault 2 x3, burg 1, theft 1 DW	N	N		said "no" to assault 2 b/c other offenses independently authorize sentence.
2016041204	15-1-00429-8	4/28/2016	Mason	Latino	assault 1, assault 2 x2	N	Y	Y	
2015081848	13-1-04905-0	8/21/2015	Pierce	White	murder 2, assault 2, att. Assault 2	N	Y	Y	
2015121728	13-1-01440-0	12/18/2015	Pierce	Black	murder 1, rob 1, rob 2 x2	Y	N		
2016041460	13-1-03881-3	4/22/2016	Pierce	Black	assault 2, rob 2 x3	Y	Y	Y	
2015070920	14-1-00704-4	7/16/2015	Spokane	White	Assault 1, assault 2 FA att., rob 1	N	Y	N	
2016021077	13-1-01926-8	2/24/2016	Thurston	White	Rob 1 x6, rob 2 att.	N	N		said "no" to rob 2 b/c other offenses independently authorize sentence.
2016010778	14-1-01197-6	1/22/2016	Yakima	Black	rob 1, att. Rob 1 x2, promoting prost, kidnap 2	N	N		
2016091148	15-1-00031-7	9/28/2016	Grant	Latino	VUCSA del w/ SM, assault 2, rob 1	N	Y	Y	
2016121382	15-1-05809-2	12/9/2016	King	Black	veh hom, rob 2 x2, att. Rob 2, assault 2	Y	Y	Y	
2017011763	15-1-04203-0	1/27/2017	King	Black	murder 2, att. Rob 1, assault 2 DW, rob 2	N	Y	N	said "no" to rob 2 b/c other offenses independently authorize sentence.
2017041537	15-1-03379-1	4/28/2017	King	Black	assault 2 x3	N	Y	Y	
2017051389	15-1-06293-6	5/19/2017	King	Black	assault 2, rob 1, burg 1	N	Y	Y	
2016091582	13-1-02554-1	9/15/2016	Pierce	Black	murder 1, rob 2, man 1	Y	N		
2016090375	16-1-01366-1	9/1/2016	Spokane	White	Burg 1, rob 1, rob 2	Y	N		
2016100855	14-1-03384-3	10/17/2016	Spokane	Black	Burg 1, assault 2 att., rob 2	Y	Y	Y	
2017060704	14-1-04486-1	6/22/2017	Spokane	White	Rob 1 x2, rob 2	Y	N		

2017090561	17-1-00032-1	9/15/2017	Grays Hbr	White	Child mol 1 x4	N	N	
2017081694	16-1-04833-8	8/18/2017	King	Black	Assault 2 x4, rob 2	Y	Y	Y
2017101650	15-1-02193-8	10/13/2017	King	Black	Rob 1 x 11, assault 2 SM	N	N	
2017121390	16-1-04911-3	12/1/2017	King	White	Murder 2, assault 2, assault 1	N	Y	Y
2018011781	16-1-03560-6	1/5/2018	Pierce	Black	murder 2, man 1, rob 2	Y	N	
2017121156	17-1-00830-8	12/28/2017	Snohomish	White	res burg, assault 2 x2	N	Y	Y
2018120523	18-1-00017-3	12/17/2018	Ferry	Black	assault 2, rob 1, burg 1, rob 2	Y	Y	Y
2018071543	17-1-02754-1	7/13/2018	King	Black	rob 2 x 7	Y	N	
2018081279	15-1-03905-5	8/30/2018	King	White	murder 1, assault 2 x2	N	Y	Y
2018110184	16-1-01563-6	11/2/2018	Kitsap	Black	rob 1, rob 2, assault 2	Y	Y	Y
2018070916	15-1-02459-1	7/12/2018	Spokane	Black	Murder 1, rob 1 consp., rob 1, burg 1, assault 2	N	N	said "no" to assault 2 b/c other offenses independently authorize the sentence.
2018070925	14-1-00873-3	7/12/2018	Spokane	Native Amer.	murder 1, rob 1, assault 2 att.	N	Y	Y
2019050444	17-1-00553-4	5/2/2019	Spokane	White	Burg 1 x2, assault 2	N	Y	Y
2018080083	14-1-01397-9	8/3/2018	Yakima	Latino	Assault 1, rob 1, assault 2	N	Y	Y
2020040085	19-1-00741-1	4/3/2020	Grays Hbr	Native Amer.	ROC 1, att. Rob 1, assault 2	N	Y	Y
2019102061	17-1-07239-3	10/7/2019	King	Black	murder 1, rob 1 x2	N	N	
2020011882	18-1-01747-1	1/17/2020	King	White	Rape 2, att. Rob 1, rob 1, burg 1	N	N	
2020031363	18-1-00859-6	3/6/2020	King	Black	assault 2 x2, rob 2 x2, att. Rob 2	Y	Y	Y
2019081500	17-1-02461-1	8/9/2019	Pierce	Black	VUCSA mfg/del w/ FA, child mol 2 x3, assault 2	N	N	said "no" to assault 2 b/c other offenses independently authorize sentence.
2019100965	16-1-01284-1	10/16/2019	Skagit	Latino	murder 1, att. Assault 2, assault 2	N	Y	Y
2019080572	18-1-01415-2	8/14/2019	Snohomish	White	murder 2, assault 2, arson 1	N	Y	Y
2019120296	19-1-00961-1	12/6/2019	Snohomish	White	assault 2, rob 2, rob 1	Y	Y	Y
2019100201	17-1-04571-4	10/1/2019	Spokane	White	assault 1, rob 2, man 1	Y	N	
2020030931	17-1-04081-0	3/16/2020	Spokane	White	Burg 1, assault 2 x2, veh assault, indecent lib	N	N	said "no" to assault 2 b/c other offenses independently authorize sentence.
2020110816	17-1-04714-3	11/20/2020	King	Black	murder 1, rape 2, rob 1, att. Rape 2	N	N	
2021010804	17-1-04489-6	1/29/2021	King	Black	murder 2, att. Rob 1, rob 2 x5	Y	N	
2020120965	18-1-03583-1	12/8/2020	Pierce	Black	Kidnap 1, rob 1 x2, rob 2 DW	N	N	
2021061339	20-1-01331-7	6/11/2021	Pierce	Black	Assault 1, assault 2 x3	N	Y	Y
2021050595	19-1-10065-7	5/20/2021	Spokane	Black	murder 2, assault 2 x2	N	Y	Y

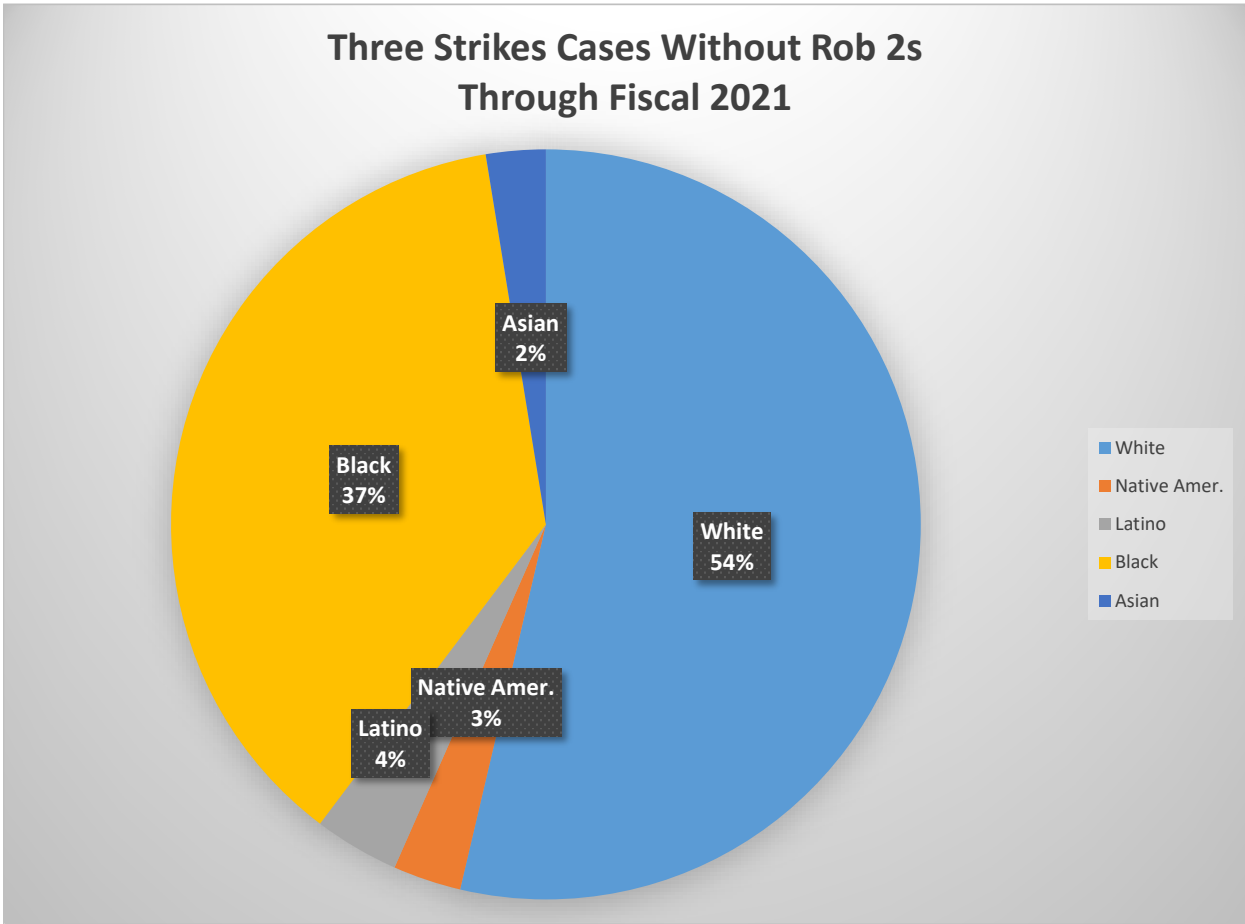
**All Three Strikes Cases through fiscal 2021:**

<b>Race:</b>	White	235
	Native Amer.	11
	Latino	14
	Black	187
	Asian	8
	<b>All:</b>	<b>455</b>



272 cases (out of original 455) after removing those who should be resentenced based on rob 2 strikes.

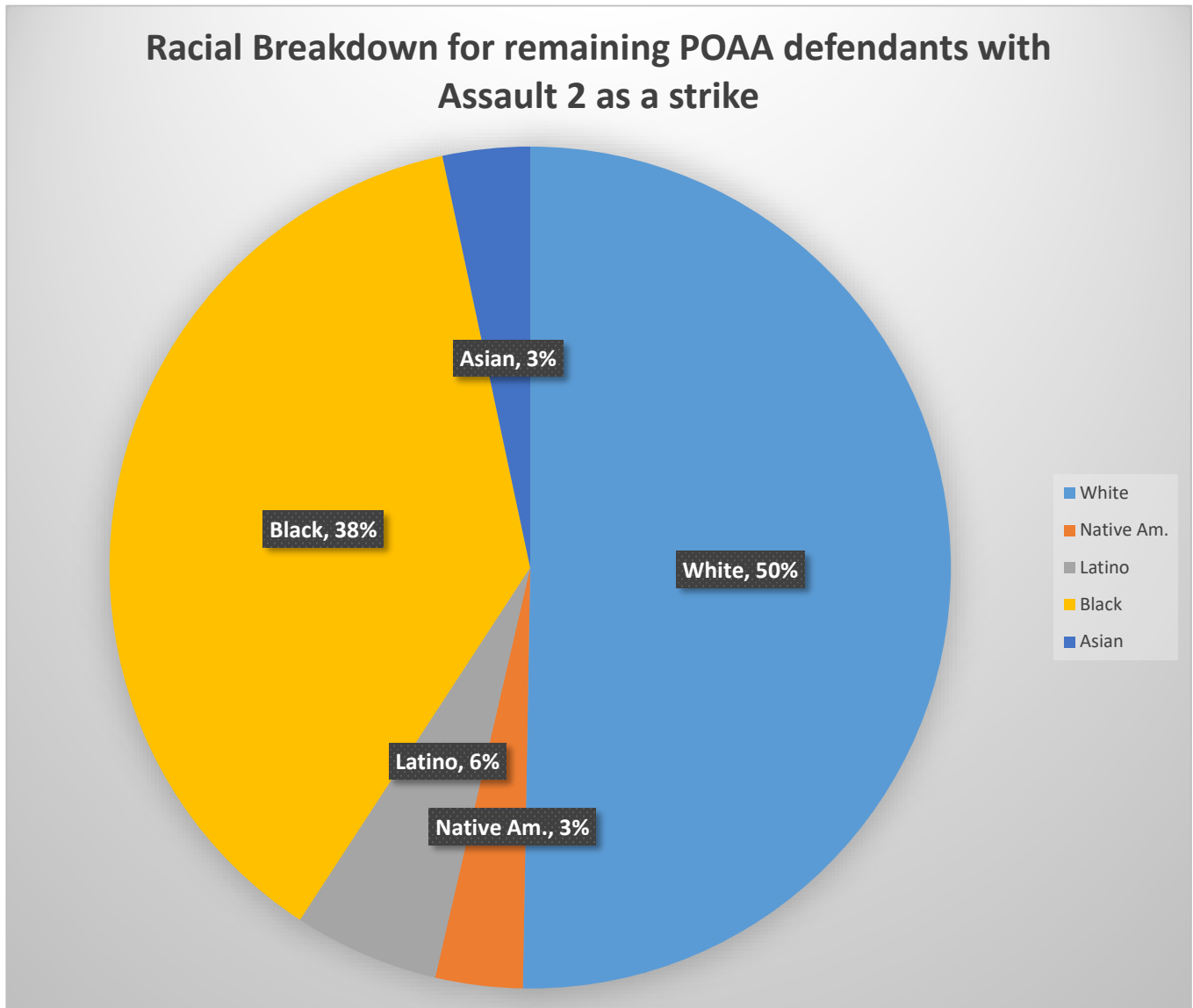
<b>Race:</b>	White	146
	Native Amer.	8
	Latino	10
	Black	101
	Asian	7
	<b>All</b>	<b>272</b>





179 Assault 2s, w/o Deadly weapon enhancement or sexual motivation enhancement

White	90
Native Am.	6
Latino	10
Black	67
Asian	6
<b>All</b>	<b>179</b>

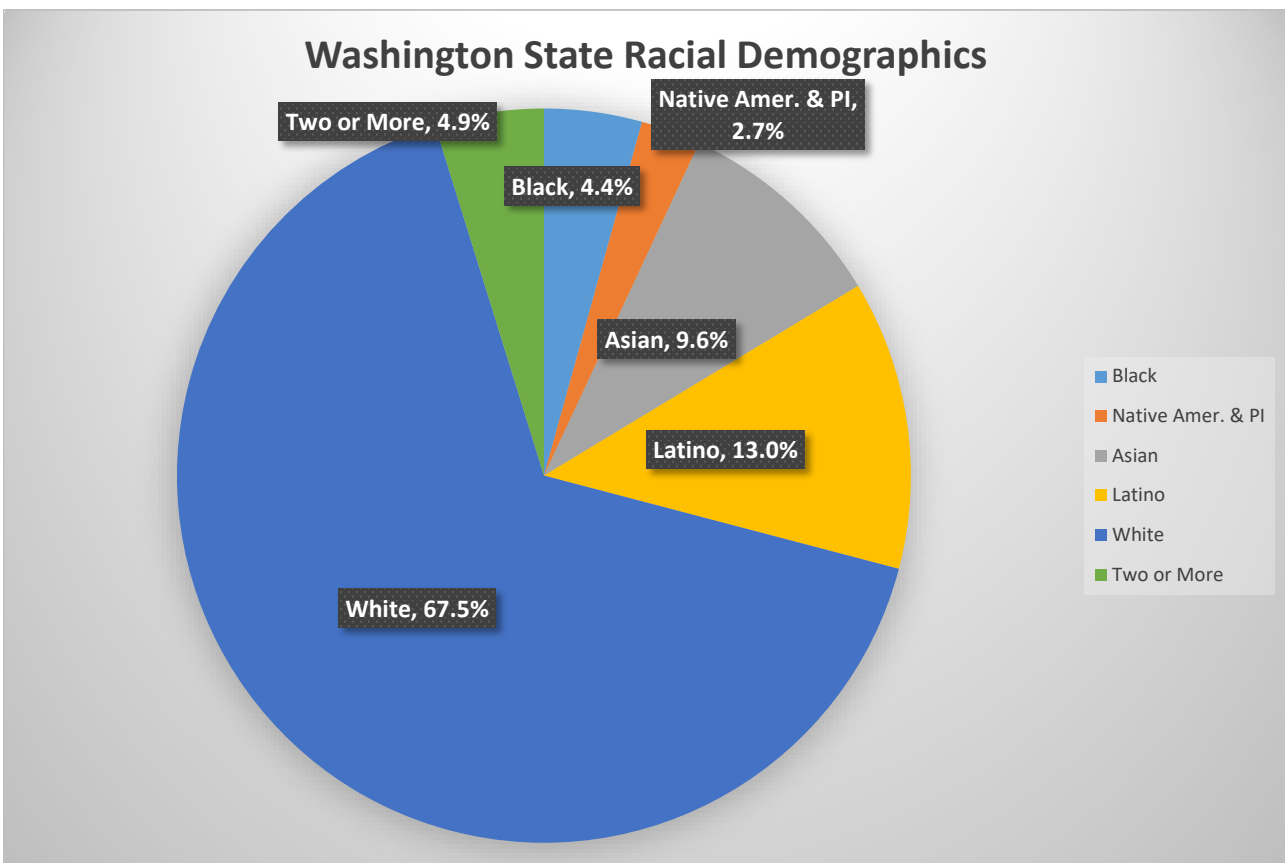


## Washington State Racial Demographics

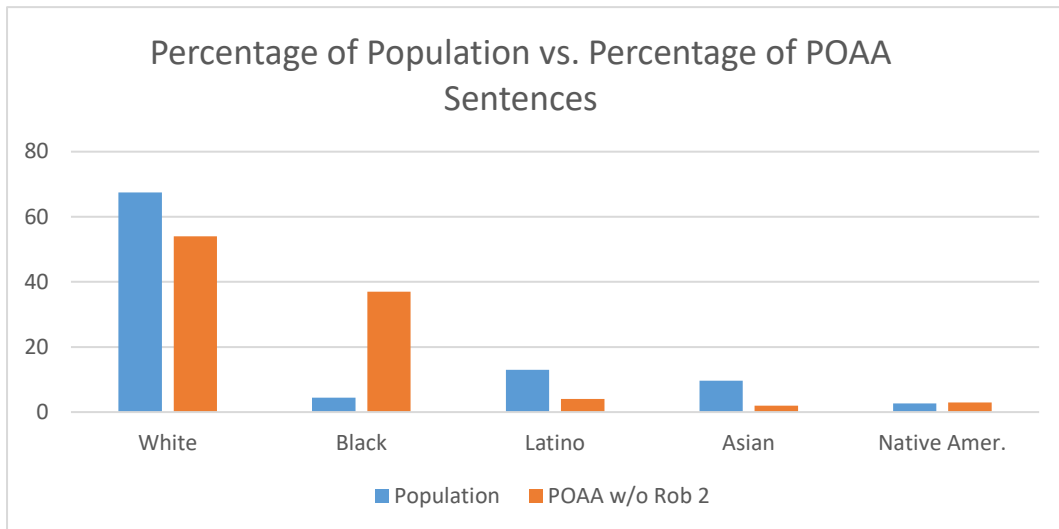
From <https://www.census.gov/quickfacts/fact/table/WA/PST045221>

Black	4.4%
Native Amer. & PI	2.7%
Asian	9.6%
Latino	13.0%
White	67.5%
Two or More	4.9%
Total:	102.1%

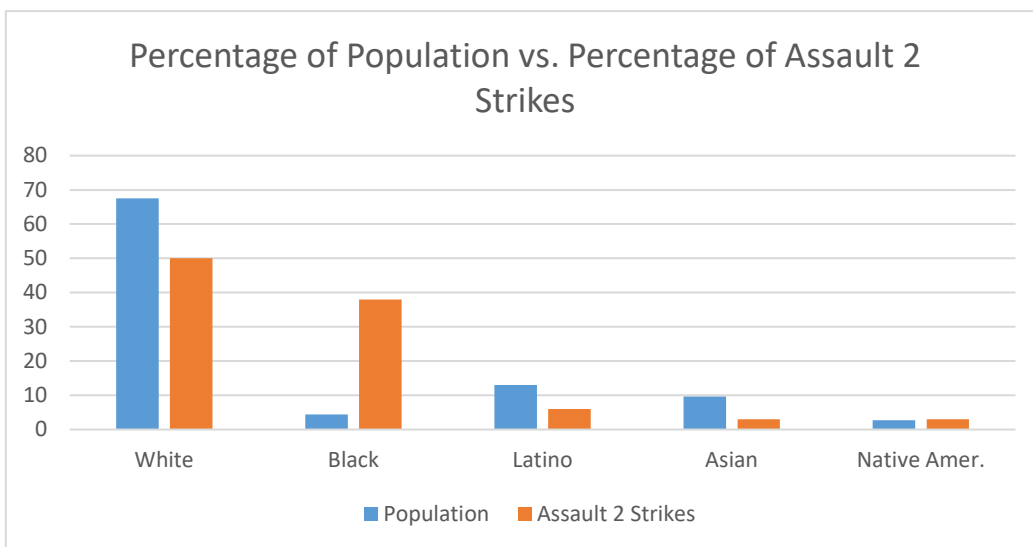
Note: The total slightly exceeds 100% because the Census Bureau draws its numbers from different data sources.



	Population	POAA w/o Rob 2
White	67.5	54
Black	4.4	37
Latino	13	4
Asian	9.6	2
Native Amer.	2.7	3



	Population	Assault 2 Strikes
White	67.5	50
Black	4.4	38
Latino	13	6
Asian	9.6	3
Native Amer.	2.7	3



APPENDIX B  
Other States' Statutes

## RECIDIVIST LAWS BY STATE<sup>1</sup>

State	Governing Law	Summary	Mandatory LWOP for Brown?
<b>Alabama</b>	Ala. Code § 13A-5-9	LWOP or 15-99 years for third class A felony	No
<b>Alaska</b>	Alaska Stat. Ann. § 12.55.125(c)(4)	Third class A felony is 15-20 years	No
<b>Arizona</b>	Az. Stat. § 13-706	Third serious offense is life with parole possible after 25 years; third violent or aggravated felony is life with parole possible after 35 years	No
<b>Arkansas</b>	Ark. Stat. Ann. § 5-4-501(c)	Second or subsequent felony involving violence can be LWOP	No
<b>California</b>	Cal. Penal Code § 667(e)(2)(A)	Third felony with two prior serious or violent convictions is life with minimum term of 25 years or 3 times	No

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<sup>1</sup> These statutes and summaries were collected by Ms. Andrea Burkhart for *State v. Smith*, Court of Appeals No. 36213-2-III, Supreme Court No. 99744-6.

		the standard term for the current offense	
<b>Colorado</b>	Colo. Rev. Stat § 18-1.3-801	Third conviction of class 1 or 2 felony or class 3 felony crime of violence is life with possibility of parole after 40 years	No
<b>Connecticut</b>	Conn. Gen. Stat. Ann. § 53a-40G)	Persistent dangerous felony offender with two enumerated priors receives enhanced minimum and maximum terms	No
<b>Delaware</b>	11 Del. Code§ 4214; 11 Del. Code § 4346(c)	Third violent felony or attempt receives enhanced minimum sentence up to life; life sentence equates to 45-year fixed term.	No
<b>Florida</b>	Fla. Stat. Ann. § 775.084(4)	Violent career criminals and three-time violent felony offenders must receive life sentence for subsequent life felonies unless	No

		court finds it unnecessary to protect public safety; no parole eligibility	
<b>Georgia</b>	Ga. Stat. Ann. § 17-10-7(b)	Second serious violent felony conviction is life without parole	No
<b>Hawaii</b>	Haw. Rev. Stat. § 706-606.5	Recidivism enhances mandatory minimum sentence	No
<b>Idaho</b>	Id. Stat. § 19-2514	Third felony conviction is term of no less than 5 years up to life	No
<b>Illinois</b>	730 11.C.S. 5/5-4.5-95; 730 11.C.S. 5/3-3-3	Third class X felony conviction is life sentence; but life sentences are eligible for parole after serving 20 years	No
<b>Indiana</b>	Ind. Code § 35-50-2-8(i)(I)	Conviction for murder with two prior unrelated felonies is additional fixed term between 6 and 20 years	No

<b>Iowa</b>	Ia. Code § 902.8	Class C or D offender with 2 prior felonies is not eligible for parole for 3 years	No
<b>Kansas</b>	Kan. Stat. § 21-6626, § 6627	No recidivism law except for repeat sex offenses	No
<b>Kentucky</b>	Ky. Rev. Stat. Ann. § 532.080	Conviction of class A or B felony with two prior felonies is term of 20-50 years, or life	No
<b>Louisiana</b>	La. Rev Stat. § 15:529.1(3)(b); § 14:2B (defining "crime of violence")	Third crime of violence is LWOP	Unclear, but appears to be No
<b>Maine</b>	Me. Stat. T.17-A § 1602	No three-strikes law except for sex offenses	No
<b>Maryland</b>	Md. Crim Law § 14-101	Fourth conviction of crime of violence is LWOP	No
<b>Massachusetts</b>	Ma. Stat. 279 § 25	Conviction of third enumerated offense is statutory maximum without parole	No



<b>Michigan</b>	Mich. Stat. § 769.11	Conviction of felony punishable by life with two felony priors may be sentenced to life	No
<b>Minnesota</b>	Minn. Stat. § 609.1095	Third felony conviction for violent crime may receive up to statutory max without parole on finding of danger to public safety	No
<b>Mississippi</b>	Miss. Code § 99-19-83	Conviction of felony with two prior felonies, any one of which is a violent felony, is LWOP	No
<b>Missouri</b>	Mo. Stat. § 558.019	Number and nature of prior offenses determine minimum prison term	No
<b>Montana</b>	Mont. Code Ann. § 46-18-219(1)(b)	Offender convicted of specified convictions with specified prior	No

		convictions must receive LWOP	
<b>Nebraska</b>	Neb. Rev. Stat. § 29-2221	Third felony conviction requires mandatory minimum sentence and maximum term of 60 years.	No
<b>Nevada</b>	Nev. Rev. Stat. Ann. § 207.012	Conviction of enumerated felony with two enumerated priors can be LWOP, 10 years to life, or 10 years to 25 years	No
<b>New Hampshire</b>	N.H. Rev. Stat. § 651:6	Murder conviction with two prior felonies can receive life imprisonment	No
<b>New Jersey</b>	N.J. Rev. Stat. § 2C:43-7.1	Conviction of murder with two or more specified prior convictions is LWOP	No
<b>New Mexico</b>	N.M. Stat. Ann. § 31-18-23	Third violent felony conviction receives additional	No

		life sentence with parole eligibility	
<b>New York</b>	N.Y. Penal Law § 70.08	Third conviction of violent felony offense requires indeterminate sentence	No
<b>North Carolina</b>	N.C. Gen. Stat. Ann. § 14-7.7, § 14-7.12	Third violent felony must receive LWOP	No
<b>North Dakota</b>	N.D. Cent. Code § 12.1-32-09	Third felony conviction as an adult may carry up to life imprisonment	No
<b>Ohio</b>	Ch. 2929 Oh. Rev. Stat.	No three strikes law	No
<b>Oklahoma</b>	Ok. Stat. T. 21 § 51.1	Third felony offense can receive increased minimum term up to life imprisonment	No
<b>Oregon</b>	O.R.S. § 137.690	No three strikes law except for sex offenders	No
<b>Pennsylvania</b>	42 Pa. C.S.A. § 9714(a)(2)	Third or subsequent conviction for crime of violence may carry LWOP if court finds minimum 25-year sentence will not	No

		protect public safety	
<b>Rhode Island</b>	R.I. Gen. Laws § 12-19-21	Third conviction of felony requires additional penalty of up to 25 years	No
<b>South Carolina</b>	S.C. Stat. § 17-25-45	Second conviction for most serious offense requires life without parole	No
<b>South Dakota</b>	S.D.C.L. § 22-7-8; § 22-6-1	Fourth felony with one or more crimes of violence enhanced to up to life sentence	No
<b>Tennessee</b>	Tenn. Code Ann. § 40-35-120	Third violent offense requires LWOP	No
<b>Texas</b>	Tex. Penal Code § 12.42(d)	Third felony conviction is punishable by life or 25 to 99 years	No
<b>Utah</b>	Utah Code Ann. § 76-3-203.5	First degree felony with two prior violent felonies is punishable as first degree felony but Board of Pardons considers habitual offender status as	No

		aggravating factor in setting minimum term	
<b>Vermont</b>	13 Vt. Stat. Ann. § 11	Fourth conviction for felony besides murder may receive up to life imprisonment	No
<b>Virginia</b>	Va. Code Ann. § 19.2- 297.1	Third crime of violence carries life sentence without parole, except after serving a portion of the sentence, inmates of a specified age may petition for conditional release	No
<b>West Virginia</b>	W. Va. Code § 61-11-18	Third qualifying felony carries life sentence; however, life sentences can be with or without mercy as a matter of discretion.	No
<b>Wisconsin</b>	Wis. Stat. Ann § 939.62	Third conviction of serious felony requires LWOP	No
<b>Wyoming</b>	Wyo. Stat. Ann. § 6-10- 201(b)(3)	Fourth felony committed after age 18 by habitual criminal carries life sentence	No

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

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STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 38493-4-III
	)	
RAYMOND BROWN,	)	
	)	
APPELLANT.	)	

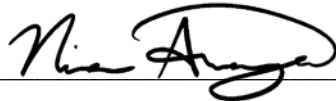
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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, NINA ARRANZA RILEY, STATE THAT ON THE 6<sup>TH</sup> DAY OF MAY, 2022, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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| [X] RAYMOND BROWN<br>429966<br>WASHINGTON STATE PENITENTIARY<br>1313 N. 13 <sup>TH</sup> AVE<br>WALLA WALLA, WA 99362   | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____                |

**SIGNED** IN SEATTLE, WASHINGTON THIS 6<sup>TH</sup> DAY OF MAY, 2022.

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**Appellate Court Case Title:** State of Washington v. Raymond Darnell Brown  
**Superior Court Case Number:** 19-1-02605-8

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