

CAPITAL PUNISHMENT CASE STATUS REPORT

August 10, 2011

CAPITAL LITIGATION TEAM:

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INTRODUCTION

The Capital Punishment Case Status Report is published monthly by the Office of the Attorney General, Corrections Division. It details the legal status of each case where an individual is currently under sentence of death. For easy reference, the names of current counsel for each case are italicized and bolded, and the latest developments on each case are also in bold print. Further information about any of these cases may be obtained by contacting Tim Lang, Corrections Division, or the members of the Capital Litigation Team as listed on the cover page of this report.

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KEY TO COURT ABBREVIATIONS

WSSC	Washington State Supreme Court
EDC	United States District Court for the Eastern District of Washington
WDC	United States District Court for the Western District of Washington
9CIR	United States Court of Appeals for the Ninth Circuit
USSC	United States Supreme Court

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		CROSS, Dayva Michael D.O.B.: September 19, 1959 Race: Caucasian
<u>DATE OF CRIME:</u>		March 6, 1999
<u>PLACE OF CRIME:</u>		King County
<u>BRIEF FACTS:</u>		Dayva Michael Cross pleaded guilty to three counts of aggravated first degree murder for the stabbing deaths of his wife, Anouchka Baldwin, and two stepdaughters, Amanda Baldwin and Salome Holly. The aggravating circumstances were that there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person. <i>State v. Cross</i> , King County Cause 99-1-02212-9.
<u>DATE OF GUILTY PLEA:</u>		October 23, 2000
<u>SPECIAL SENTENCING:</u>		May 7, 2001
<u>JUDGMENT AND SENTENCE:</u>		King County Superior Court Cause No. 99-1-02212-9 June 22, 2001
<u>TRIAL JUDGE:</u>		Honorable Joan DuBuque
<u>DEFENSE ATTYS:</u>		Mark Larranaga Richard Warner Seattle, WA
<u>PROSECUTING ATTYS:</u>		Norm Maleng, Prosecuting Attorney Don Raz, Senior Deputy Prosecutor Tim Bradshaw, Deputy Prosecutor King County Courthouse 516 Third Avenue, Suite W554 Seattle, WA 98104-2362 (206) 296-9000
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, WSSC Cause #71267-1) Todd Maybrown Allen Hansen & Maybrown P.S. 600 University Street, Suite 3020 Seattle, WA 98101-4105 (206) 447-9681 Kathryn Ross Jones, Ross, Besman & Connolly 828 Second Street, Suite D Mukilteo, WA 98275-1601 (425) 348-7937
<u>PETITIONER'S ATTYS:</u>		(Personal Restraint Petition, Washington Supreme Court #79761-7) TODD MAYBROWN ALLEN HANSEN & MAYBROWN 600 UNIVERSITY ST., SUITE 3020 SEATTLE, WA 98101-4105 (206) 447-9681 JAMES LOBSENZ CARNEY BADLEY SPELLMAN 701 5TH AVENUE, SUITE 3600 SEATTLE, WA 98104-7010 (206) 622-8020
<u>RESPONDENT'S ATTYS:</u>		DANIEL T. SATTERBERG, PROSECUTING ATTORNEY Timothy Bradshaw, Deputy (withdrew 01/24/03) DONALD RAZ, DEPUTY JAMES WHISMAN, DEPUTY RANDI J. AUSTELL, DEPUTY

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
06/29/01	71267-1 WSSC	Notice of Judgment and Sentence
06/22/04	71267-1 WSSC	Oral argument held
03/30/06	71267-1 WSSC	Opinion (affirming conviction and sentence of death). Majority opinion authored by Justice Chambers. Chief Justice Alexander filed a concurring opinion. Justice Madsen, joined by Justices Charles Johnson, Sanders, and Owens, dissented. <i>State v. Cross</i> , 156 Wn.2d 580, 132 P.3d 80 (2006).
04/06/06	71267-1 WSSC	Cost Bill [\$128,781 to be paid to OPD, \$706.18 to King County]
11/06/06	06-6333 USSC	Petition for Writ of Certiorari denied. <i>Cross v. Washington</i> , 549 U.S. 1022, 127 S. Ct. 559, 166 L. Ed. 2d 415 (2006).
11/30/06	71267-1 WSSC	Mandate
12/19/06	71267-1 WSSC	Amended Mandate
01/30/07	99-1-02212-9	Death Warrant (setting execution for February 27, 2007)
01/31/07	79761-7 WSSC	Application for Stay of Execution
02/02/07	79761-7 WSSC	Order Granting Stay of Execution and Appointing Counsel
08/01/07	79761-7 WSSC	Petitioner's Motion for Leave to Conduct Discovery
09/05/07	79761-7 WSSC	Department of Corrections' Response to Motion for Leave to Conduct Discovery; Declaration of Richard Morgan.
09/06/07	79761-7 WSSC	Order (Petitioner's motion for appointment of Professors Boerner and Denno is denied. Motion for appointment of investigator Sanderson and Dr. Souter is granted. Motion to file under seal denied.)
09/07/07	79761-7 WSSC	Reply in Support of Petitioner's Motion for Leave to Conduct Discovery
09/18/07	99-1-02212-9	Defendant's Motion to Allow Contact with Jurors
09/26/07	79761-7 WSSC	Respondent's Objection to Ex Parte Order Granting Investigator on Jury Misconduct Issue and Request for Reconsideration
10/01/07	79761-7 WSSC	Petitioner's Response to Respondent's Motion for Reconsideration
10/24/07	79761-7 WSSC	Placeholder Petition
11/16/07	79761-7 WSSC	Order (Respondent's motion to reconsider is denied. The motion to contact jurors is granted as to both parties, subject to the requirements of RPC 3.5(c). The parties are also directed to specifically inform jurors that they may, but are not required, to speak with representatives of either or both the petitioner and the respondents, and may end the interviews at any time. The remaining motions are denied. All further proceedings related to discovery relative to alleged juror misconduct shall be heard by King County Superior Court Judge Joan E. DuBuque, except for any Petitioner requests for additional funding, which shall be considered by this Court)
01/29/08	79761-7 WSSC	Personal Restraint Petition; Brief in Support of Personal Restraint Petition; Declarations of Maria Ferndanda Torres, Jonathan L. Grindlinger, MD, Mark Larranaga, Todd Maybrown,

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
		Jeffrey Ellis, David Boerner, Dr. Robert Thompson, James E. Lobsenz, Jeffrey Robinson, Richard Warner.
07/10/08	79761-7 WSSC	Order (denying Respondent's Motion for Judicial Determination of Petitioner's Competency, Respondent's RAP 16.26 Motion for Discovery, and Petitioner's Motion for Oral Argument)
10/13/08	79761-7 WSSC	Response to Personal Restraint Petition
11/10/08	79761-7 WSSC	Order (Respondent's Second Motion for Discovery is granted; Petitioner's Motion for Oral Argument is denied; Respondent's Motions to Strike Declarations of Boerner, Robinson, and Torres are denied)
03/06/09	79761-7 WSSC	Order on Petitioner's Renewed Motion for Discovery re: Lethal Injection Claims
03/16/09	79761-7 WSSC	Department of Corrections' Motion for Protective Order
03/17/09	79761-7 WSSC	Order (Motion for a protective order is granted on a temporary basis only. This temporary protective order will remain in effect pending further order of the Court)
04/03/09	79761-7 WSSC	Order (Petitioner's motion for oral argument is granted only on the <i>Alford</i> plea issues. Oral argument will be heard on June 25, 2009. All other issues in this case are stayed pending resolution of the <i>Alford</i> plea issues)
05/11/09	79761-7 WSSC	Supplemental Brief of Petitioner
06/03/09	79761-7 WSSC	Brief of Amicus Curiae Washington Association of Criminal Defense Lawyers
06/08/09	79761-7 WSSC	Supplemental Brief of Respondent Re: <i>Alford</i> Plea of Guilty
06/15/09	79761-7 WSSC	Response to Brief of Amicus Curiae Washington Association of Criminal Defense Lawyers
06/19/09	79761-7 WSSC	Petitioner's Supplemental Reply Brief Re: <i>Alford</i> Plea of Guilty
06/25/09	79761-7 WSSC	Oral argument held
07/08/09	79761-7 WSSC	Order (the Court denies relief based on the <i>Alford</i> plea issues presented. The Court's reasoning will be set forth in its opinion on the merits of the Petitioner's Personal Restraint Petition to be released in due course.)
11/06/09	79761-7 WSSC	Order (Respondent's motion to lift the stay is granted in part and denied in part. The motion is denied with respect to consideration of the legality of Washington's lethal injection protocol. The motion to lift the stay is granted with respect to all other claims. The Respondent's motion for immediate dissemination of discovery is granted in part.)
12/08/09	79761-7 WSSC	Reply Brief in Support of Personal Restraint Petition
02/12/10	79761-7 WSSC	Order (Petitioner's motion for the appointment of Maria Fernanda Torres is denied but Ms. Torres may provide representation under the supervision of death penalty qualified counsel at public expense. The Respondent's motion for a deadline is granted. Petitioner has 30 days from entry of this order to comply with this Court's November 6, 2009, discovery order. The Respondent's motion for 60 days from receipt of discovery to file any additional relevant briefing on the ineffective assistance of counsel claims, and the Petitioner's motion for 60 days to respond, are granted.)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
06/25/10	79761-7 WSSC	Order (The Respondent's motion to compel production is deferred pending further consideration of this court. Within 30 days of this order, the Petitioner shall provide this court with: (1) copies of any disputed documents, which shall be filed under seal, for this court's in camera review; and (2) a brief explaining why said documents should not be disclosed. The Respondent's request to clarify this court's November 10, 2008 order is denied without prejudice to a more specific future motion. The Respondent's motion for an extension of time is granted.)
08/26/10	79761-7 WSSC	Motion for Compliance with Court's June 25th Order, Article I, § 10, GR 15, and RAP 18.5
09/01/10	79761-7 WSSC	Petitioner's Response to Respondent's Motion for Compliance
09/27/10	79761-7 WSSC	Order (Both the Respondent's motion to compel production of the 12 documents submitted for the Court's en camera review and its Motion for compliance are denied.)
11/19/10	79761-7 WSSC	Respondent's Motion for Permission to File Documents by Protective Order and for Directions as to Format for the Filing; State's Supplemental Response to PRP (filed under seal)
12/21/10	79761-7 WSSC	Petitioner's Response to Respondent's Motion Regarding Filing of Discovery
05/02/11	79761-7 WSSC	Petitioner's Reply Brief to State's Supplemental Response to PRP (filed under seal); Second Declaration of Richard Warner; Second Declaration of Mark Larranaga; Declaration of Teresa A. McMahill

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		DAVIS, Cecil Emile D.O.B.: September 1, 1959 Race: Black
<u>DATE OF CRIME:</u>		January 25, 1997
<u>PLACE OF CRIME:</u>		Pierce County
<u>BRIEF FACTS:</u>		Cecil Emile Davis was convicted of one count of aggravated first degree murder for the suffocation/asphyxiation murder of 65-year-old Yoshiko Couch using a poisonous chemical ("Goof-Off"/Xylene), after burglarizing her home, robbing her, and raping her. The aggravating circumstance was that the murder was committed in the course of and or furtherance of the crimes of Burglary in the First Degree or Burglary in the Second Degree, Robbery in the First Degree or Robbery in the Second Degree, Rape in the First Degree and/or Rape in the Second Degree. <i>State v. Davis</i> , Pierce County Cause 97-1-00432-4.
<u>DATE OF CONVICTION:</u>		February 6, 1998
<u>SPECIAL SENTENCING:</u>		February 10-12, 1998 May 15, 2007
<u>JUDGMENT AND SENTENCE:</u>		Pierce County Superior Court Cause No. 97-1-00432-4 February 23, 1998, May 18, 2007
<u>TRIAL JUDGE:</u>		Honorable Frederick W. Fleming
<u>DEFENSE ATTYS:</u>		Ronald Ness John L. Cross Port Orchard, WA Julia Lindstrom Lloyd Alton, Jr. Tacoma, WA
<u>PROSECUTING ATTYS:</u>		Gerald Horne, Prosecuting Attorney John W. Ladenburg (Former Prosecuting Attorney) John M. Neeb, Deputy Prosecutor (Withdraw 01/26/00) John Hillman, Deputy Prosecutor (Former Prosecuting Attorney) Gerald T. Costello, Deputy Prosecutor Pierce County Prosecutor's Office 930 Tacoma Avenue South, Room 946 Tacoma, WA 98402-2171
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, WSSC Cause #66537-1) Judith Mandel Port Orchard, WA (Direct Appeal, WSSC Cause #80209-2) Eric Broman (Withdraw 1/15/09) ERIC NIELSEN NIELSEN BROMAN & KOCH LLC 1908 E. MADISON STREET SEATTLE, WA 98122-2842 (206) 623-2488
		Ronald D. Ness Port Orchard, WA DAVID KOCH NIELSEN BROMAN & KOCH LLC 1908 E. MADISON STREET SEATTLE, WA 98122-2842 (206) 623-2488

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
		Clerk will send a copy of the Court revised Appellant's brief to the counsel of record in this matter.)
01/19/11	80209-2 WSSC	Order (Motions to file amicus briefs granted)
01/19/11	80209-2 WSSC	Brief of Amici Curiae (1) American Civil Liberties Union of Washington, (2) Washington Association of Churches, (3) Lutheran Public Policy of Washington State, and (4) Disability Rights Washington in Support of Appellant's Appeal filed
02/02/11	80209-2 WSSC	Motion to Strike Improper Arguments and Appendices in Amici Briefs
02/10/11	80209-2 WSSC	Order (Motion to Strike Improper Arguments and Appendices in Amici Briefs is passed to the merits)
02/10/11	80209-2 WSSC	Oral argument held

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>								
<u>NAME:</u>	ELMORE, Clark Richard (aka James Elmore aka James Lee Dickey) D.O.B.: November 17, 1951 Race: White									
<u>DATE OF CRIME:</u>	April 17, 1995									
<u>PLACE OF CRIME:</u>	Whatcom County									
<u>BRIEF FACTS:</u>	Clark Richard Elmore pleaded guilty to one count of aggravated first degree murder of Christy Onstad, the 14-year-old daughter of Elmore's live-in girlfriend. The two aggravating circumstances were (1) the murder was in the course of and in flight from Rape in the Second Degree, and (2) the murder was committed to conceal the commission and perpetrator of the crime. <i>State v. Elmore</i> , Whatcom County Cause 95-1-00310-1.									
<u>DATE OF GUILTY PLEA:</u>	July 6, 1995									
<u>SPECIAL SENTENCING:</u>	March 12, 1996									
<u>JUDGMENT AND SENTENCE:</u>	Whatcom County Superior Court Cause No. 95-1-00310-1 May 3, 1996									
<u>TRIAL JUDGE:</u>	Honorable David Nichols									
<u>DEFENSE ATTYS:</u>	John Komorowski Douglas Hyldahl Bellingham, WA									
<u>PROSECUTING ATTYS:</u>	David S. McEachran, Prosecuting Attorney Whatcom County Prosecutor's Office Whatcom County Courthouse 311 Grand Avenue Bellingham, WA 98225 (360) 676-6784									
<u>APPELLANT'S ATTYS:</u>	<table border="0"> <tr> <td colspan="2">(Direct Appeal, Washington Supreme Court #64085-8)</td> </tr> <tr> <td>Michael P. Iaria Seattle, WA</td> <td>Meredith Martin Rountree Austin, TX</td> </tr> <tr> <td>Rita Griffith Seattle, WA</td> <td>Charlotte Cassady (Withdrawn 03-06-98) Mobile, AL</td> </tr> <tr> <td colspan="2">Jon Ostlund (06/17/96) Bellingham, WA</td> </tr> </table>		(Direct Appeal, Washington Supreme Court #64085-8)		Michael P. Iaria Seattle, WA	Meredith Martin Rountree Austin, TX	Rita Griffith Seattle, WA	Charlotte Cassady (Withdrawn 03-06-98) Mobile, AL	Jon Ostlund (06/17/96) Bellingham, WA	
(Direct Appeal, Washington Supreme Court #64085-8)										
Michael P. Iaria Seattle, WA	Meredith Martin Rountree Austin, TX									
Rita Griffith Seattle, WA	Charlotte Cassady (Withdrawn 03-06-98) Mobile, AL									
Jon Ostlund (06/17/96) Bellingham, WA										
<u>PETITIONER'S ATTYS:</u>	<table border="0"> <tr> <td colspan="2">(Personal Restraint Petition, Washington Supreme Court #70233-1)</td> </tr> <tr> <td>Jeffrey E. Ellis The Defender Association 810 Third Avenue Suite 800 Seattle, WA 98104-1655 (206) 447-3900</td> <td>Meredith Martin Rountree 510 South Congress Avenue Suite 308 Austin, TX 78704-1739 (512) 320-0334</td> </tr> </table>		(Personal Restraint Petition, Washington Supreme Court #70233-1)		Jeffrey E. Ellis The Defender Association 810 Third Avenue Suite 800 Seattle, WA 98104-1655 (206) 447-3900	Meredith Martin Rountree 510 South Congress Avenue Suite 308 Austin, TX 78704-1739 (512) 320-0334				
(Personal Restraint Petition, Washington Supreme Court #70233-1)										
Jeffrey E. Ellis The Defender Association 810 Third Avenue Suite 800 Seattle, WA 98104-1655 (206) 447-3900	Meredith Martin Rountree 510 South Congress Avenue Suite 308 Austin, TX 78704-1739 (512) 320-0334									

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
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(Federal Habeas Corpus, USDC WDC #C08-0053)

JEFFREY E. ELLIS	STEVE WITCHLEY
OR CAPITAL RESOURCE CTR	ELLIS, HOLMES & WITCHLEY PLLC
621 SW MORRISON ST, SUITE 1025	705 SECOND AVENUE, SUITE 401
PORTLAND, OR 97205-3813	SEATTLE, WA 98104
(206) 218-7076	(206) 262-0300

RESPONDENT'S ATTYS: (Personal Restraint Petition, Washington Supreme Court #70233-1)
David S. McEachran, Prosecuting Attorney

(Federal Habeas Corpus, USDC WDC #C08-0053)

ROBERT M. MCKENNA, ATTORNEY GENERAL
GREGORY J. ROSEN, ASSISTANT ATTORNEY GENERAL
RONDA D. LARSON, ASSISTANT ATTORNEY GENERAL
CORRECTIONS DIVISION
PO BOX 40116
OLYMPIA, WA 98504-0116
(360) 586-1445

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
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05/13/96	64085-8 WSSC	Notice of Appeal
11/19/98	64085-8 WSSC	Oral argument held
10/07/99	64085-8 WSSC	Opinion affirming conviction and death sentence and granting State’s motion to strike Appellant’s “Social History”. Justice Talmadge authored the opinion for the Court. Justice Sanders dissented. <i>State v. Elmore</i> , 139 Wn.2d 250, 985 P.2d 289 (1999)
10/02/00	99-9587 USSC	Petition for Writ of Certiorari denied, <i>Elmore v. Washington</i> , 531 U.S. 837, 121 S. Ct. 98, 148 L. Ed. 2d 57 (2000)
10/09/00	64095-8 WSSC	Mandate issued
10/10/00	70233-1 WSSC	Motion for Appointment of Counsel and for Stay of Execution Pursuant to Rules 16.24 and 16.25 of the Rules of Appellate Procedure
10/31/00	95-1-00310-1	Death Warrant (setting execution for November 28, 2000)
11/07/00	70233-1 WSSC	Notation Order (motion for stay of execution is granted; request for appointment of counsel will be considered upon receipt of a recommendation from the Office of Public Defense)
11/15/00	70233-1 WSSC	Petitioner’s Statement Pursuant to RAP 16.25
11/16/00	70233-1 WSSC	Order (appointing Jeffrey Ellis and Meredith Martin Rountree as counsel)
06/04/01	70233-1 WSSC	Notation Order on Motions (granting Petitioner’s ex parte motions for appointment of mental health experts, investigator, and attorney expert)
06/29/01	70233-1 WSSC	Petitioner’s Personal Restraint Petition and Brief in Support

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
11/20/01	70233-1 WSSC	Response to Personal Restraint Petition and Brief
12/31/01	70233-1 WSSC	Petitioner's Reply in Support of Personal Restraint Petition [Tab D of the brief is a sealed document]
09/27/02	70233-1 WSSC	Order (trial court is directed to hold a reference hearing on the issue of whether counsel's failure to consult and call mental health experts in the penalty phase was deficient performance. The court is directed to take evidence on whether counsel's representation in this regard fell below an objective standard of reasonableness based on consideration of all circumstances, including whether any legitimate strategic or tactical reasons supported the decision not to consult and call such experts. The trial court at the conclusion is to enter findings of fact on the issue referred and expedite the process)
06/05/03	70233-1 WSSC	Order (Petitioner has not established facts that give rise to a substantial reason to believe that the renewed motion for appointment of attorney expert and renewed motion for funds to hire an investigator will produce information that would support relief under RAP 16.4(c). The order for the reference hearing does not require the trial court to make a legal conclusion regarding the adequacy of trial counsel's performance. The trial court is directed to find the facts regarding the performance of trial counsel, leaving for this court the determination whether trial counsel's performance was legally adequate. Therefore, no funds are authorized for attorney experts or an investigator. The request to file this order under seal is denied)
01/27/05	70233-1 WSSC	Trial Court Findings of Fact
04/12/05	70233-1 WSSC	Supplemental Brief of Petitioner
05/11/05	70233-1 WSSC	Respondent's Supplemental Brief
11/21/07	70233-1 WSSC	Opinion denying personal restraint petition. Justice Madsen authored the opinion for the Court. Justice Sanders dissented. <i>In re Elmore</i> , 162 Wn.2d 236, 172 P.3d 335 (2007)
12/03/07	70233-1 WSSC	Cost Bill (\$238,315.31 to be paid to OPD, \$7,643.22 to Whatcom County)
01/14/08	C08-0053 WDC	Application for Writ of Habeas Corpus; Application for Appointment of Counsel; Request for Stay of Execution
01/18/08	C08-0053 WDC	Order Permitting Elmore to File Amended Petition; Order Granting Motion for Stay of Execution
02/22/08	70233-1 WSSC	Order Denying Motion for Reconsideration
03/05/08	70233-1 WSSC	Ruling on Cost Bill (\$245,662.53 to be paid to OPD, \$496.00 to Whatcom County); Certificate of Finality
04/22/08	C08-0053 WDC	First Amended Petition for Writ of Habeas Corpus
12/19/08	C08-0053 WDC	Respondent's Answer and Memorandum of Authorities
03/13/09	C08-0053 WDC	Petitioner's Traverse and Reply
09/30/09	C08-0053 WDC	Motion for Evidentiary Hearing
10/30/09	C08-0053 WDC	Response to Petitioner's Motion for Evidentiary Hearing
11/13/09	C08-0053 WDC	Reply in Support of Motion for Evidentiary Hearing

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
11/13/09	C08-0053 WDC	Petitioner's Supplemental Memorandum Regarding State's Newly Raised <i>Teague</i> Defense to Shackling Claims
01/27/10	C08-0053 WDC	Response to Petitioner's Supplemental Memorandum Regarding <i>Teague</i> Defense to Shackling Claims
01/29/10	C08-0053 WDC	Oral argument held on Motion for Evidentiary Hearing
03/23/11	C08-0053 WDC	Respondent's Citation of Supplemental Authority
04/06/11	C08-0053 WDC	Respondent's Supplemental Citation of Authority
04/15/11	C08-0053 WDC	Respondent's Memorandum of Impact on <i>Cullen v. Pinholster</i> on Elmore's Motion for Evidentiary Hearing
05/17/11	C08-0053 WDC	Petitioner's Supplemental Memorandum Regarding Application of <i>Pinholster</i>
05/23/11	C08-0053 WDC	Reply to Petitioner's Supplemental Memorandum Regarding Application of <i>Cullen v. Pinholster</i>
07/22/11	C08-0053 WDC	Petitioner's Supplemental Statement of Authority

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		GENTRY, Jonathan Lee D.O.B.: August 7, 1956 Race: Black
<u>DATE OF CRIME:</u>		June 13, 1988
<u>PLACE OF CRIME:</u>		Kitsap County
<u>BRIEF FACTS:</u>		Jonathan Gentry was convicted of the aggravated first degree murder of Cassie Holden. The aggravating circumstance was that the murder was committed to protect or conceal the identity of the person committing the crime. <i>State v. Gentry</i> , Kitsap County Superior Court Cause No. 88-1-00395-3.
<u>DATE OF CONVICTION:</u>		June 26, 1991
<u>SPECIAL SENTENCING:</u>		July 2, 1991
<u>JUDGMENT AND SENTENCE:</u>		Kitsap County Superior Court Cause No. 88-1-00395-3 July 22, 1991
<u>TRIAL JUDGE:</u>		Honorable Terence Hanley
<u>DEFENSE ATTYS:</u>		Frederick D. Leatherman, Jr. Jeffery P. Robinson (trial)
<u>PROSECUTING ATTYS:</u>		Russell Hauge, Prosecuting Attorney C. Danny Clem (former Prosecuting Attorney) Irene K. Asai, Deputy Prosecuting Attorney Brian T. Moran, Deputy Prosecuting Attorney
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, Washington Supreme Court #58415-0) Michael P. Iaria Seattle, WA Frederick D. Leatherman, Jr. Seattle, WA
<u>PETITIONER'S ATTYS:</u>		(Personal Restraint Petition, Washington Supreme Court #62677-4) (Federal Habeas Corpus, USDC WDC #C99-0289L, 9 th Cir # 09-99021) RITA J. GRIFFITH GRIFFITH & COLE 1305 NE 45TH STREET, SUITE 205 SEATTLE, WA 98105 (206) 547-1742 Brian Tsuchida (withdrew on 5/13/08) Seattle, WA Scott Engelhard (withdrew on 5/1/09) Seattle, WA 98104 TIMOTHY FORD MACDONALD HOAGUE & BAYLESS 705 SECOND AVE, SUITE 1500 SEATTLE, WA 98104-1745 (206) 622-1604 Meredith Rountree (withdrew on 5/1/09) Austin, TX
<u>RESPONDENT'S ATTYS:</u>		(Personal Restraint Petition, Washington Supreme Court #62677-4) Russell Hauge, Prosecuting Attorney Randy Sutton, Deputy Pamela B. Loginsky, Special Deputy Washington Association Of Prosecuting Attorneys

DATE CAUSE ACTION

RESPONDENT'S ATTYS:

(Federal Habeas Corpus, USDC WDC #C99-0289L, 9th Cir # 09-99021)
ROBERT M. MCKENNA, ATTORNEY GENERAL
PAUL D. WEISSER, SENIOR COUNSEL
GREGORY J. ROSEN, ASSISTANT ATTORNEY GENERAL
CORRECTIONS DIVISION
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DATE CAUSE ACTION

08/08/91	58415-0 WSSC	<i>State v. Gentry</i> ; Notice of Appeal
11/09/93	58415-0 WSSC	Oral argument held
01/06/95	58415-0 WSSC	Opinion (affirming conviction and sentence of death). Majority opinion authored by Justice Andersen. Justices Utter, Johnson and Madsen dissented. <i>State v. Gentry</i> , 125 Wn.2d 570, 888 P.2d 1105 (1995)
10/02/95	94-9582 USSC	Petition for Writ of Certiorari denied. <i>Gentry v. Washington</i> , 516 U.S. 843, 116 S. Ct. 131, 133 L. Ed. 2d 79 (1995)
10/05/95	58415-0 WSSC	Mandate issued
11/02/95	88-1-00395-3	Death Warrant (setting execution for December 5, 1995)
11/14/95	58415-0 WSSC	Order staying execution date of December 5, 1995 pending certificate of finality or further order of the court
12/15/95	62677-4 WSSC	Order appointing counsel
02/18/99	62677-4 WSSC	Opinion denying personal restraint petition. Justice Talmadge authored the opinion for the Court. Justice Sanders, joined by Justice Johnson, dissented in part. <i>In re Gentry</i> , 137 Wn.2d 378, 972 P.2d 1250 (1999)
03/01/99	C99-0289 WDC	Application for Appointment of Counsel
03/08/99	C99-0289 WDC	Order Appointing Counsel (Scott J. Engelhard and Meredith Martin Rountree)
03/09/99	62677-4 WSSC	Petitioner's Motion for Reconsideration
06/30/99	62677-4 WSSC	Order (Petitioner's motion for reconsideration is denied); Order Changing Opinion; Order (Respondent's motion, to dissolve the stay of execution upon issuance of the certificate of finality, is granted)
07/19/99	C99-0289 WDC	Order (staying execution of Jonathan Lee Gentry)
07/21/99	62677-4 WSSC	Certificate of Finality
07/26/99	62677-4 WSSC	Order (the State of Washington is awarded costs in the total amount of \$178,869.57 to be paid by the Petitioner, Jonathan Lee Gentry)
10/22/99	C99-0289 WDC	Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254
01/24/00	C99-0289 WDC	Respondent's Answer and Memorandum of Authorities

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
01/24/00	C99-0289 WDC	First Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. §2254
02/11/00	C99-0289 WDC	Respondent's Amended Answer and Memorandum of Authorities
07/12/01	C99-0289 WDC	Order Regarding Exhaustion of Claims (the following claims presented were in fact exhausted in the Washington courts and may be considered here: (1) the Brady/Napue claim regarding Brian Dyste; (2) the victim impact statement claims; (3) the claim regarding the admission of petitioner's previous conviction; and (4) the juror exclusion claim. The following claims were unexhausted and cannot be considered here: (1) the Brady/Napue claims regarding Leonard Smith, Timothy Hicks, and detective misconduct; and (2) the ineffective assistance of counsel claims.)
08/30/01	C99-0289 WDC	Order for Clarification of Exhaustion Order; Order Deferring Motion to Conduct Discovery
07/02/03	C99-0289 WDC	Order Regarding Procedural Default (the claims identified as unexhausted in the Court's Order of Clarification [08/30/01] are now procedurally barred; directing the parties to file memoranda regarding cause and prejudice)
03/26/04	C99-0289 WDC	Order Regarding Cause and Prejudice (reconsidering <i>sua sponte</i> , and reversing, the Court's prior decision that the <i>Brady/Napue</i> claims concerning Timothy Hicks and Detectives Wright and Wagner are unexhausted and procedurally defaulted; reserving ruling as to whether Gentry has shown cause for his default regarding the Leonard Smith claims pending an evidentiary hearing; concluding that Gentry has failed to show cause to excuse his default of the penalty phase ineffective assistance claim; denying Gentry's motion to strike)
08/03/05	C99-0289 WDC	Order Regarding Discovery and Evidentiary Hearing (granting Petitioner's request to conduct depositions of Brian Moran, Timothy Hicks, Brian Dyste, Detective Wright, Detective Wagner, and CCO Karen Adams; denying Respondent's request for depositions; scheduling evidentiary hearing on Petitioner's <i>Brady/Napue</i> claims)
01/05/06	C99-0289 WDC	Petitioner's Motion for Summary Judgment (re: Claim A [dismissal of juror for cause]).
01/23/06	C99-0289 WDC	Response in Opposition to Motion for Summary Judgment
01/27/06	C99-0289 WDC	Reply in Support of Motion for Summary Judgment
03/6-9/06	C99-0289 WDC	Evidentiary hearing held
03/15/06	C99-0289 WDC	Minute Order (the Court has conducted an in camera review of witness Jan Mahan's taped interview and written notes from her subsequent telephone conversation with Brian Dyste. The Court concludes that the <i>Gentry</i> case is never mentioned or referenced in these materials and that they have no bearing on this proceeding).
03/28/06	C99-0289 WDC	Petitioner's Report of Kay Sweeney in Support of Claim that Counsel was Ineffective for Failing to Investigate Crime Scene Evidence
08/28/06	C99-0289 WDC	Order on Motion for Summary Judgment (denying Petitioner's motion for summary judgment re: claim A [dismissal of juror for cause])
10/18/07	C99-0289 WDC	Respondent's Motion for Summary Judgment
11/13/07	C99-0289 WDC	Petitioner's Response to Respondent's Motion for Summary Judgment and Cross Motion for Summary Judgment
11/19/07	C99-0289 WDC	Respondent's Reply and Response to Petitioner's Cross-Motion for Summary Judgment

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
12/07/07	C99-0289 WDC	Reply in Support of Petitioner's Cross-Motion for Summary Judgment
09/04/08	C99-0289 WDC	Order on Petition for Habeas Relief Based on <i>Brady</i> and <i>Napue</i> Violations (denying habeas relief).
09/05/08	C99-0289 WDC	Order on <i>Brady/Napue</i> Claims Regarding Leonard Smith (denying habeas relief); Order Denying Petitioner's Motion for Evidentiary Hearing on Denial of Effective Assistance of Counsel Due to Failure to Investigate
09/15/08	C99-0289 WDC	Order Granting Respondent's Motion for Summary Judgment, Denying Petitioner's Cross-Motion for Summary Judgment, and Order Denying Amended Habeas Petition. <i>Gentry v. Sinclair</i> , 576 F. Supp. 2d 1130 (2008).
03/23/09	C99-0289 WDC	Order Denying Motion for Reconsideration. <i>Gentry v. Sinclair</i> , 609 F. Supp. 2d 1179 (2009).
04/23/09	C99-0289 WDC	Judgment in a Civil Case
04/24/09	C99-0289 WDC	Order Denying Motion to Supplement Motions for Reconsideration; Amended Judgment in a Civil Case
05/22/09	C99-0289 WDC	Order Denying Motion for New Trial or to Amend Judgment
05/26/09	C99-0289 WDC	Notice of Appeal
10/02/09	C99-0289 WDC	Order Granting Certificate of Appealability
12/30/09	84039-3 WSSC	Personal Restraint Petition; Declaration of Jennifer Davis; Declaration of Timothy Ford
01/14/10	09-99021 9CIR	Appellant's Excerpts of Record Volume I
03/02/10	84039-3 WSSC	Response of the Department of Corrections
04/05/10	84039-3 WSSC	Petitioner's Reply to Response of the Department of Corrections to Personal Restraint Petition; Declaration of Jonathan Gentry
06/08/10	09-99021 9CIR	Opening Brief of Appellant; Appellant's Motion to File Overlength Opening Brief
06/29/10	84039-3 WSSC	Supplement to Personal Restraint Petition
11/18/10	09-99021 9 CIR	Brief of Respondent-Appellee
12/30/10	84039-3 WSSC	Opinion denying personal restraint petition. Chief Justice Madsen authored the opinion for the Court. Justice Stephens, joined by Justice Sanders, dissented. <i>In re Gentry</i> , 170 Wn.2d 711, 245 P.3d 766 (2010).
01/04/11	09-99021 9 CIR	Reply Brief of Appellant
01/18/11	84039-3 WSSC	Motion for Reconsideration
01/28/11	09-99021 9 CIR	Appellee's Citation of Supplemental Authority
02/01/11	88-1-00395-3	Motion for Post-Conviction DNA Testing; Motion for Appointment of Counsel
02/23/11	88-1-00395-3	Statement of Finances Regarding Motion for DNA Testing

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
03/03/11	84039-3 WSSC	Order (Motion for Reconsideration is denied)
03/04/11	84039-3 WSSC	Certificate of Finality
04/05/11	09-99021 9 CIR	Appellee's Citation of Supplemental Authority
04/06/11	88-1-00395-3	Response to Motion for Post-Conviction DNA Testing
04/11/11	09-99021 9 CIR	Response to Fed.R.App.P. 28(j) Citation of Supplemental Authority
05/31/11	10-10814 USSC	Petition for Writ of Certiorari; Motion for Leave to Proceed <i>In Forma Pauperis</i> ; Affidavit in Support of Motion to Proceed on Appeal <i>In Forma Pauperis</i>
06/22/11	10-10814 USSC	Respondent's waiver of brief in opposition
07/13/11	88-1-00395-3	Note for Motion Docket (Motion for Post-Conviction DNA Testing to be heard on July 25, 2011)
07/19/11	10-10814 USSC	Order (response to petition for writ of certiorari due August 18, 2011)
07/25/11	88-1-00395-3	Order Appointing Attorney Timothy Ford
07/25/11	88-1-00395-3	Order Granting Post-Conviction DNA Testing
08/04/11	09-99021 9 CIR	Order (oral argument set for November 17, 2011 at 9AM)
08/19/11	10-10814 USSC	Letter requesting until September 16, 2011 to file response to petition for writ of certiorari

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		SCHIERMAN, Conner Michael D.O.B.: September 14, 1981 Race: Caucasian
<u>DATE OF CRIME:</u>		July 16, 2006, or early morning July 17, 2006
<u>PLACE OF CRIME:</u>		King County
<u>BRIEF FACTS:</u>		Conner Schierman was convicted of four counts of aggravated first degree murder in the deaths of Olga Milkin, 28; her sons Justin, 5, and Andrew, 3; and Milkin's sister, Lyubov Botvina, 24. The aggravating circumstances were (1) there was more than one victim, and (2) the murders were committed to protect or conceal the identity of the perpetrator of a crime. <i>State v. Schierman</i> , King County Superior Court Cause No. 06-1-06563-4.
<u>DATE OF CONVICTION:</u>		April 12, 2010
<u>SPECIAL SENTENCING:</u>		May 5, 2010
<u>JUDGMENT AND SENTENCE:</u>		King County Superior Court Cause No. 06-1-06563-4 May 27, 2010
<u>TRIAL JUDGE:</u>		Honorable Greg Canova
<u>DEFENSE ATTYS:</u>		James Conroy Peter Connick Seattle, WA
<u>PROSECUTING ATTYS:</u>		Dan Satterberg, Prosecuting Attorney Scott O'Toole, Senior Deputy Prosecutor King County Courthouse 516 Third Avenue Seattle, WA 98104 (206) 296-0100
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, WSSC No. 84614-6) SUZANNE ELLIOTT DAVID ZUCKERMAN ATTORNEYS AT LAW 705 2ND AVENUE, SUITE 1300 SEATTLE, WA 98104-1797 (206) 623-0291
<u>RESPONDENT'S ATTYS:</u>		(Direct Appeal, WSSC No. 84614-6) DAN SATTERBERG, PROSECUTING ATTORNEY SCOTT O'TOOLE, SENIOR DEPUTY PROSECUTOR KING COUNTY COURTHOUSE 516 THIRD AVENUE SEATTLE, WA 98104 (206) 296-0100

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
06/01/10	84614-6 WSSC	Judgment and Sentence
06/01/10	84614-6 WSSC	Notice of Appeal; Motion for Order of Indigency and Affidavit in Support of Motion
06/02/10	84614-6 WSSC	Order Authorizing Appeal <i>In Forma Pauperis</i> , Appointment of Counsel and Preparation of Records
06/23/10	84614-6 WSSC	Order (Suzanne Elliott is appointed as lead counsel and David Zuckerman is appointed as co-counsel.)
06/24/10	84614-6 WSSC	Clerk's Notice of Final List of Proceedings in Capital Case
07/29/10	84614-6 WSSC	Objection to County Clerk's List of Proceedings
09/23/10	84614-6 WSSC	AMENDED Clerk's Notice of Final List of Proceedings in Capital Case
10/04/10	84614-6 WSSC	AMENDED Clerk's Notice of Final List of Proceedings in Capital Case
10/18/10	84614-6 WSSC	Renewed Objection to County Clerk's List of Proceedings and Motion to Accept the Attached List as the "Final List"
11/02/10	84614-6 WSSC	Response to and Concurrence with Petitioner's Renewed Objection to County Clerk's List of Proceedings and Motion to Accept Petitioner's Attached List as the "Final List"
12/09/10	84614-6 WSSC	Motion to Stay the DOC's Collection of Costs Specifically Waived by Trial Court Order
12/15/10	84614-6 WSSC	Order (The Court received the e-mail response of James M. Whisman regarding the Appellant's "Motion To Stay The DOC's Collection Of Costs Specifically Waived By The Trial Court Order." Further review of the motion, as well as a review of the status as to the actual parties in this matter, raises the issue as to whether or not the motion is properly filed in Supreme Court cause number 84614-6. First, it appears that the DOC is not a party to this action, nor would the challenge to its administrative interpretation and/or application of the terms of the trial court order regarding its apparent collections appear to be within the scope of the pending appeal. Accordingly, in that regard, the parties in this matter are directed to serve and file written comments (which may be in letter form) addressing whether or not the motion should be considered by this Court in this matter. Said comments should include citations to any authority in support of the position taken in the comments.)
12/27/10	84614-6 WSSC	Appellant's comments (via letter)
01/07/11	84614-6 WSSC	Respondent's comments
02/18/11	84614-6 WSSC	Motion to Correct or Supplement the Record Pursuant to RAP 9.9 and 9.10
03/02/11	84614-6 WSSC	Order (Appellant's Motion to Stay the DOC's Collection of Costs Specifically Waived by Trial Court Order is denied)
03/10/11	84614-6 WSSC	Response to Petitioner's Motion to Correct or Supplement the Record Pursuant to RAP 9.9 and 9.10
03/29/11	84614-6 WSSC	Reply on Motion to Correct or Supplement the Record Pursuant to RAP 9.9 and 9.10

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
04/29/11	84614-6 WSSC	Order (The "Renewed Objection To County Clerk's List Of Proceedings And Motion To Accept The Attached List As The 'Final List'" and "Motion To Correct Or Supplement The Record.." are remanded to the trial court for determination and for the trial court to settle the record on review in the matter.)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>	STENSON, Darold Ray aka Darold R. J. Stenson D.O.B. November 24, 1952 Race: White	
<u>DATE OF CRIME:</u>	March 25, 1993	
<u>PLACE OF CRIME:</u>	Clallam County	
<u>BRIEF FACTS:</u>	Darold Stenson was convicted of two counts of aggravated first degree murder for the shooting deaths of his wife, Denise Ann Stenson, and his business partner, Frank Clement Hoerner. The aggravating circumstances were (1) the murders were part of a common scheme or plan, and (2) the murders were committed to protect or conceal the identity of the perpetrator of a crime. <i>State v. Stenson</i> , Clallam County Superior Court Cause No. 93-1-00039-1.	
<u>DATE OF CONVICTION:</u>	August 11, 1994	
<u>SPECIAL SENTENCING:</u>	August 18, 1994	
<u>JUDGMENT AND: SENTENCE</u>	Clallam County Superior Court Cause No. 93-1-00039-1 August 19, 1994	
<u>TRIAL JUDGE:</u>	Honorable Kenneth D. Williams	
<u>DEFENSE ATTYS:</u>	Frederick D. Leatherman, Jr. Seattle, WA	Dave Neupert Port Angeles, WA
<u>PROSECUTING ATTYS:</u>	Deborah Snyder Kelly, Prosecuting Attorney David H. Bruneau, trial counsel and former Prosecuting Attorney Stephen Traylor, Deputy Prosecuting Attorney Clallam County Prosecutor's Office Clallam County Courthouse 223 East Fourth Street Port Angeles, WA 98362-3098 (360) 417-2301	
<u>APPELLANT'S ATTYS:</u>	(Direct Appeal, Washington Supreme Court #61965-4) James E. Lobsenz Seattle, WA	
<u>PETITIONER'S ATTYS:</u>	(Personal Restraint Petition, Washington Supreme Court #66565-6) Judith Mandel (1/29/01) Port Orchard, WA	Ronald D. Ness (1/29/01) Port Orchard, WA
	(Habeas Corpus Petition, USDC WDC Cause #C01-252P) Sheryl Gordon McCloud Attorney At Law 710 Cherry Street Seattle, WA 98104 (206) 224-8777	Robert H. Gombiner Federal Public Defenders Office 1601 Fifth Avenue, Suite 700 Seattle, WA 98101-1605 (206) 553-1100

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
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PETITIONER'S ATTYS (cont.): (Personal Restraint Petition, WSSC 72009-6)
 Sheryl Gordon McCloud Nancy Lynn Talner
 PMB 200
 6016 NE Bothell Way
 Kenmore, WA 98028-9403
 (425) 489-0569

RESPONDENT'S ATTYS: (Personal Restraint Petition #1 WSSC #66565-6)
 (Personal Restraint Petition #2 WSSC #72009-6)
 Deborah Snyder Kelly, Prosecuting Attorney
 Christopher O. Shea, Former Prosecuting Attorney
 Lauren Erickson, Deputy

(Habeas Corpus Petition, WDC Cause No. C01-252P)
 (Federal Habeas Corpus, USDC EDC #CT98-5028-JLQ)
 Robert M. McKenna, Attorney General
 John J. Samson, Assistant Attorney General
 Corrections Division
 P.O. Box 40116
 Olympia, WA 98504-0116
 (360) 586-1445

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
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08/22/94	61965-4 WSSC	Notice of Appeal
12/10/96	61965-4 WSSC	Oral argument held
07/24/97	61965-4 WSSC	Opinion affirming conviction and death sentence. Justice Guy authored the opinion for the Court. Justice Sanders filed a dissenting opinion. <i>State v. Stenson</i> , 132 Wn.2d 668, 940 P.2d 1239 (1997)
03/09/98	97-7347 WSSC	Petition for Writ of Certiorari denied. <i>Stenson v. Washington</i> , 523 U.S. 1008, 118 S.Ct. 1193, 140 L. Ed. 2d 323 (1998)
03/16/98	61965-4 WSSC	Mandate issued
04/03/98	61965-4 WSSC	Death Warrant (setting execution for May 20, 1998)
04/07/98	66565-6 WSSC	Application for Stay of Execution Pursuant to RAP 16.24
04/08/98	66565-6 WSSC	Order (the application for stay of execution pursuant to RAP 16.24 is granted and further proceedings in trial court are stayed until further order of this Court)
01/04/01	66565-6 WSSC	Opinion denying personal restraint petition. Chief Justice Guy authored the opinion. Justice Sanders dissented. <i>In re Stenson</i> , 142 Wn.2d 710, 16 P.3d 1 (2001)
01/29/01	66565-6 WSSC	Certificate of Finality; Order Dissolving Stay of Execution
02/21/01	01-096M WDC	Order Appointing Public Defender (Robert H. Gombiner of Federal Public Defender's Office)
03/06/01	C01-252 WDC	Order Granting Motion for Stay of Execution
05/01/01	C01-252 WDC	Order (on Respondent's motion regarding 28 U.S.C § 2261)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
12/28/01	72009-6 WSSC	Personal Restraint Petition [Second]; Opening Brief in Support of Personal Restraint Petition
01/02/02	C01-252 WDC	Petition for Writ of Habeas Corpus; Memorandum in Support of Petition for Writ of Habeas Corpus; Declaration of John A. Strait
03/04/02	C01-252 WDC	Respondent's Answer, Memorandum of Authorities and Motion to Strike
04/04/02	72009-6 WSSC	Response to Personal Restraint Petition; Motion to Strike Petitioner's Personal Restraint Petition
05/01/02	72009-6 WSSC	Petitioner's Opposition to Motion to Strike Personal Restraint Petition
09/11/03	72009-6 WSSC	Opinion granting State's motion to strike Petitioner's Second Personal Restraint Petition. Chief Justice Alexander authored the opinion for the Court, holding that the petition is a mixed petition, containing both claims that are time-barred under RCW 10.73.090 and also claims that may fall within one of the exceptions to the time bar rule, RCW 10.73.100. The petition is dismissed. <i>State v. Stenson</i> , 150 Wn.2d 207, 76 P.3d 241 (2003).
10/06/03	72009-6 WSSC	Certificate of Finality
10/13/03	74593-5 WSSC	Personal Restraint Petition [Third]
11/24/04	74593-5 WSSC	Opinion denying third personal restraint petition as an abuse of the writ. Chief Justice Alexander authored the opinion for the Court. Justice Sanders dissented. <i>In re Stenson</i> , 153 Wn.2d 137, 102 P.3d 151 (2004).
01/07/05	74593-5 WSSC	Certificate of Finality
07/26/05	C01-252 WDC	Order (denying Petitioner's petition for writ of habeas corpus, granting Respondent's Motion to Strike; denying Petitioner's Motion to Expand the Record, denying Petitioner's Motion re: Evidentiary Hearing; and granting Petitioner's Motion to Take Judicial Notice); Judgment in a Civil Case
09/06/05	C01-252 WDC	Order Denying Petitioner's Motion for Reconsideration
09/14/05	C01-252 WDC	Notice of Appeal
09/15/05	C01-252 WDC	Notice of Appeal (re-file)
10/06/05	C01-252 WDC	Order (granting Petitioner's motion for certificate of appealability)
10/13/05	C01-252 WDC	Order (granting motion for stay of execution pending appeal; stay will terminate upon issuance of mandate)
09/14/06	05-99011 9CIR	Oral argument held
09/24/07	05-99011 9 CIR	Opinion affirming the judgment of the district court. Chief Judge Schroeder authored the opinion, with Judges Kleinfeld and Bea concurring. <i>Stenson v. Lambert</i> , 504 F.3d 873 (9 Cir. 2007).
03/19/08	05-99011 9 CIR	Order (denying petition for rehearing)
04/03/08	05-99011 9 CIR	Mandate

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
04/09/08	05-99011 9 CIR	Order (granting motion to recall the mandate and staying the mandate pending the filing of petition for writ of certiorari)
08/22/08	93-1-00039-1	Petitioner's Motion for DNA Testing
09/30/08	82197-6 WSSC	Petition and Memorandum in Support of Original Action Against State Officers for Writ of Prohibition and/or Mandamus; Affidavit in Support of Original Action Against State Officers for Writ of Prohibition and/or Mandamus; Motion to Proceed <i>In Forma Pauperis</i> (re: application of RCW 10.95.160(2)).
10/06/08	93-1-00039-1	Motion for Order Requiring Preservation of Evidence; Motion for Leave to Conduct Discovery; Motion for Independent DNA Testing of Evidence; Petitioner's First Request for Admissions
10/06/08	08-5328 USSC	Petition for Writ of Certiorari denied. <i>Stenson v. Uttecht</i> , 129 S. Ct. 247, 172 L. Ed. 2d 188 (2008).
10/07/08	82197-6 WSSC	Answer to Petition Against State Officers for Writ of Prohibition and/or Mandamus
10/15/08	93-1-00039-1	Motion for Leave to Conduct Discovery Re Handling of Evidence in Possession of Clallam County Sheriff's Department
10/16/08	82197-6 WSSC	Reply to Petition Against State Officers for Writ of Prohibition and/or Mandamus
10/17/08	05-99011 9 CIR	Mandate
10/17/08	93-1-00039-1	Response to Motion to Conduct DNA Testing; Response to Motion to Conduct Discovery; Response to Motion to Request Discovery Re: Evidence; Response to Motion to Preserve Evidence
10/20/08	93-1-00039-1	Motion to Conduct Investigation
10/21/08	82197-6 WSSC	Petitioner's Motion for Interim Relief; Declaration of Robert H. Gombiner
10/22/08	82197-6 WSSC	Response to Motion for Stay of Execution
10/24/08	93-1-00039-1	Minute Order Granting Motion for Protection Order on Evidence and Evidence Preservation
10/29/08	82332-4 WSSC	Personal Restraint Petition [Fourth]; Opening Brief in Support of Personal Restraint Petition; Motion to Proceed in Forma Pauperis
10/29/08	82332-4 WSSC	Response to Motion for Order Enjoining Execution
10/30/08	82332-4 WSSC	RAP 16.9 Response to Personal Restraint Petition
11/03/08	82332-4 WSSC	Memorandum in Support of Motion for Stay of Execution
11/05/08	82332-4 WSSC	Amici Curiae Brief of the American Civil Liberties Union and the American Civil Liberties Union of Washington
11/07/08	82197-6 WSSC	Order (denying Petition Against State Officers for Writ of Prohibition and/or Mandamus; denying motions for oral argument and for stay of execution)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
11/12/08	82332-4 WSSC	Response to Amici Curiae Briefs of the Washington State Bar Association, the American Civil Liberties Union and the American Civil Liberties Union of Washington and Murder Victims' Families for Reconciliation
11/19/08	82332-4 WSSC	Order Denying Review
11/21/08	82332-4 WSSC	Motion for Reconsideration
11/21/08	82489-4 WSSC	Notice of Appeal
11/21/08	82440-1 WSSC	Notice of Appeal
11/26/08	82332-4 WSSC	Response to Petitioner's Motion for Reconsideration
11/26/08	82332-4 WSSC	RAP 8.3(b) Motion to Vacate Stay of Execution and Motion for Accelerated Review of RAP 8.3(b) Motion to Vacate Stay of Execution
11/26/08	82440-1 WSSC	Response in Opposition to State's Motion for Accelerated Review; Supplemental Response in Opposition to State's Motion for Accelerated Review; Second Supplement to Response in Opposition to State's Motion for Accelerated Review
11/26/08	82440-1 WSSC	Reply to Response in Opposition to State's Motion for Accelerated Review
12/01/08	82332-4 WSSC	Order (consideration of motion for reconsideration is deferred pending further order of the Court)
12/01/08	93-1-00039-1	Memorandum of Authorities Regarding Entry of DNA Testing Order
12/01/08	82440-1 WSSC	Motion to Dismiss Review or, in the Alternative to Grant Leave Pursuant to RAP 7.2(e) to Trial Judge to Formally Enter Order
12/01/08	82440-1 WSSC	Supplemental Reply to Stenson's Supplemental Response to State's Motion for Accelerated Review of its RAP 18.3(b) Motion to Vacate the State of Execution
12/01/08	82440-1 WSSC	Opposition to Motion to Dismiss Appeal and Opposition to Motion for Leave Pursuant to RAP 7.2(e) for Entry of Order Granting DNA Testing
12/01/08	82440-1 WSSC	Order (The Court, by unanimous vote, grants the State's motion for accelerated review, but by majority vote, denies the State's motion to vacate the stay of execution, without prejudice to the State to renew before the trial court its motion to vacate the stay of execution following the passage of 90 days from the date of this order. The Court unanimously grants Stenson's motion to dismiss his notice of appeal that was filed on November 21, 2008, which leaves the trial court with authority to formally enter a subsequent order)
12/03/08	93-1-00039-1	Stipulation re Release of Evidence
12/03/08	93-1-00039-1	Order Granting Plaintiff's Motion for DNA Testing
12/04/08	93-1-00039-1	Notice of Direct Appeal
12/09/08	82489-4 WSSC	Order (Parties are to serve and file written comments as to whether or not the notice of appeal should be redesignated a notice for discretionary review. The comments should be served and filed with this court by not later than December 19, 2008. The State of Washington is requested to provide this Court with a copy of the trial court motion upon which the order of review is sought is based.)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
12/09/08	82440-1 WSSC	Dissent to Order (authored by Justice Madsen, joined by Justice J. Johnson)
12/19/08	93-1-00039-1	Washington State Patrol's Response to Court's December 3, 2008 Order Granting Petitioner's Motion for DNA Testing; Declaration of Dr. Gary Shutler
12/19/08	82489-4 WSSC	Statement of Grounds for Direct Review, Statement of Reviewability as a Matter of Right and Alternative Motion for Discretionary Review
12/22/08	82489-4 WSSC	Petitioner's Memorandum Re: Appealability of Order Granting DNA Testing
12/22/08	82489-4 WSSC	Order (redesignating notice of appeal as notice for discretionary review)
01/12/09	82197-6 WSSC	Certificate of Finality
01/22/09	93-1-00039-1	Further Order on DNA Testing
01/30/09	82489-4 WSSC	RAP 2.3(b) Motion for Discretionary Review RAP 8.3 Motion for Stay of DNA Testing RAP 18.12 Motion for Accelerated Consideration; Statement of Grounds for Direct Review; Motion and Declaration for Permission to File Overlength Motion
02/02/09	82489-4 WSSC	Order (at this time no action will be taken on the Motion for Discretionary Review RAP 8.3 Motion for Stay of DNA Testing RAP 18.12 Motion for Accelerated Consideration)
02/02/09	93-1-00039-1	Order and Memorandum re Latent Prints Subject to DNA Testing
02/06/09	82332-4 WSSC	Order Denying Motion for Reconsideration
02/12/09	93-1-00039-1	Plaintiff's Motion for Fingerprint Analysis
02/13/09	82332-4 WSSC	Dissent to Order Denying Motion for Reconsideration
02/26/09	82332-4 WSSC	Certificate of Finality
03/12/09	93-1-00039-1	Petitioner's Motion for Transfer and DNA Test of Additional Evidence
03/17/09	93-1-00039-1	Response to Petitioner's Motion for Fingerprint Analysis; Response to Petitioner's Motion for Transfer and DNA Testing of Additional Evidence
03/20/09	93-1-00039-1	Crime Lab Report Pursuant to Order dated January 22, 2009
03/26/09	93-1-00039-1	Final Crime Lab Report Pursuant to Order dated January 22, 2009
03/26/09	93-1-00039-1	Order Denying Petitioner's Motion for Transfer and DNA Testing of Additional Evidence; Order Granting Further DNA Typing of Items Previously Ordered to be Tested; Order Denying Motion for Fingerprint Analysis
03/26/09	93-1-00039-1	Declaration of Rick Wyant; Declaration of Greg Frank in Response to Petitioner's Motion for Transfer and DNA Testing of Additional Evidence
04/15/09	82489-4 WSSC	Motion to Dismiss Proceeding as Moot
04/15/09	93-1-00039-1	Crime Laboratory Report Pursuant to Order Granting Further DNA Testing of Items Dated March 26, 2009
04/29/09	05-99011 9 CIR	Motion to Recall the Mandate

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
04/30/09	93-1-00039-1	Motion for Order Terminating Stay of Execution
04/30/09	93-1-00039-1	Motion for Order Compelling State to Complete DNA Testing Previously Ordered and to Order Certain Mini-STR Testing
05/01/09	05-99011 9 CIR	Response to Stenson's Motion to Recall the Mandate
05/01/09	93-1-00039-1	Motion for Primary Data, Bench Notes, and Printouts Relevant to DNA Testing; Motion to Compel State to Provide Records Necessary for Fingerprint Testing
05/05/09	82489-4 WSSC	Order (motion to dismiss granted)
05/05/09	05-99011 9 CIR	Order (motion to recall mandate denied)
05/05/09	93-1-00039-1	Response to Petitioner's Motion for Primary Data, Bench Notes, and Printouts Relevant to DNA Testing; Response to Petitioner's Motion to Compel State to Provide Records Necessary for Fingerprinting Testing; Response to Motion for Order Compelling State to Perform Additional DNA Testing; Motion to Strike all Hearsay from the Declaration of Twila Wentz
05/06/09	93-1-00039-1	Crime Lab Response to Defendant's Motion and Order Compelling State to Complete DNA Testing Previously Ordered and to Order Certain Mini-STR Testing
05/06/09	93-1-00039-1	Petitioner Darold Stenson's Response to State's Motion for Order Terminating Stay of Execution
05/06/09	93-1-00039-1	Reply to Petitioner Darold Stenson's Response to State's Motion for Order Terminating Stay of Execution
05/08/09	93-1-00039-1	Supplemental Declaration to Crime Lab Response to Defendant's Motion and Order Compelling State to Complete DNA Testing
05/11/09	93-1-00039-1	Reply to Crime Lab's Response to Defendant's Motion and Order Compelling State to Complete DNA Testing Previously Ordered and to Order Certain Mini-STR Testing; Reply to WAPA's Response to Defendant's Motion and Order Compelling State to Complete DNA Testing Previously Ordered and to Order Certain Mini-STR Testing
05/11/09	93-1-00039-1	Opposition to Motion to Strike Hearsay from Wentz Declaration
05/11/09	93-1-00039-1	Petitioner Darold Stenson's Motion for Hearing to Receive Testimony of Blank
05/12/09	93-1-00039-1	Response to Petitioner Darold Stenson's Motion for Hearing to Receive Testimony of Blank
05/12/09	93-1-00039-1	Order Denying Motion to Compel State to Provide Records Necessary for Fingerprint Testing
05/15/09	83130-1 WSSC	Personal Restraint Petition [Fifth]; Opening Brief in Support of Personal Restraint Petition
05/22/09	93-1-00039-1	Order Denying State's Motion for Order Terminating Stay of Execution and Order Directing Additional DNA Testing
05/28/09	82489-4 WSSC	Certificate of Finality
06/09/09	93-1-00039-1	Motion for Order Terminating Stay of Execution

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
06/12/09	83130-1 WSSC	Motion to Strike
06/15/09	93-1-00039-1	Reply to Opposition to Motion to Terminate Stay of Execution
06/16/09	93-1-00039-1	Opposition to Motion to Terminate Stay of Execution
06/16/09	93-1-00039-1	Motion to Compel Primer Removal at Washington State Crime Laboratory
07/08/09	83130-1 WSSC	RAP 16.9 Response to Fifth Personal Restraint Petition
07/16/09	83130-1 WSSC	Petitioner's Response to State's Motion to Strike
07/17/09	93-1-00039-1	Petitioner's Motion for Retesting of Exhibit 130A
07/20/09	83130-1 WSSC	Reply Re Motion to Strike
07/21/09	93-1-00039-1	Statement of Supplemental Authorities in Support of Motion to Compel Primer Removal at Washington State Crime Laboratory
07/22/09	93-1-00039-1	Response to Petitioner's Motion to Compel Primer Removal at Washington State Crime Lab and to Motion for Retesting of Exhibit 130A
07/22/09	93-1-00039-1	Washington State Patrol Crime Lab's Response to Defendant's Motion to Compel Primer Removal at WSP Crime Lab and for Retesting of Exhibit 130A
08/07/09	93-1-00039-1	Darold Stenson's Motion to Vacate Conviction or Alternatively Vacate Sentence of Death Pursuant to CrR 7.8(b) (filed pro se)
08/13/09	93-1-00039-1	Motion to Transfer Motion to Washington Supreme Court
08/18/09	93-1-00039-1	Memorandum Opinion
08/21/09	93-1-00039-1	Order re DNA Testing of Primer Cap
09/03/09	83558-6 WSSC	Notice of Direct Discretionary Review; RAP 2.3(b) Motion for Discretionary Review; Motion to Terminate Stay of Execution; Motion for Reassignment to Different Trial Judge, RAP 18.12 Motion for Accelerated Consideration
09/03/09	93-1-00039-1	Order Denying Petitioner Darold Stenson's Motion for Retesting of Exhibit 130A
09/08/09	83130-1 WSSC	Petitioner's Reply to State's RAP 16.9 Response to Petitioner's Fifth Personal Restraint Petition
09/09/09	93-1-00039-1	Order of Transfer and Memorandum Opinion on CrR 7.8(b) Motion to Vacate Conviction or Alternatively to Vacate Sentence of Death
09/11/09	82332-4 WSSC	Order (Counsel are requested to provide supplemental briefing to the Court addressing only the following questions: 1. Which order is controlling? 2. What is the correct number for the exhibit of which testing is sought? 3. Has the trial court entered an order granting testing of the exhibit? The briefing should be served and filed by not later than September 18, 2009.)
09/15/09	83606-0 WSSC	Petitioner Darold Stenson's Motion to Vacate Conviction or Alternatively Vacate Sentence of Death Pursuant to CrR 7.8(b)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
10/01/09	83606-0 WSSC	Order (transfer of CrR 7.8(b) motion to Supreme Court for consideration as a sixth PRP is accepted; answer to PRP due October 23, 2009)
10/07/09	83558-6 WSSC	Respondent's Response to Petitioner's Motion for Discretionary Review
10/23/09	83606-0 WSSC	RAP 16.9 Response to Sixth Personal Restraint Petition
11/06/09	61965-4 WSSC	Order (Appellant's "Petitioner's Motion Re: Release Of Exhibit 130A" [agreed by the parties to in fact be Exhibit 91] is granted, subject to the terms and conditions as set forth in Judge Williams' "Order Re DNA Testing Of Primer Cap" dated August 21, 2009.)
11/06/09	83558-6 WSSC	Order (That Petitioner's "RAP 2.3(b) Motion for Discretionary Review, Motion to Terminate Stay of Execution, and Motion for Reassignment to Different Trial Judge" are denied. Accordingly, no action is necessary on the Petitioner's "RAP 18.12 Motion for Accelerated Consideration".)
11/09/09	83606-0 WSSC	RAP 16.9 Reply to Sixth Personal Restraint Petition
12/08/09	83606-0 WSSC 83130-1 WSSC	Order (remanding matter to Clallam County Superior Court for reference hearing before Judge Williams concerning Attachment D to "Personal Restraint Petition" in No. 83130-1 ("the Photographs") and Exhibit C to "Petitioner's Reply to State's RAP 16.9 Response to Petitioner's Fifth Personal Restraint Petition" in No. 83130-1 (the "FBI File"). The State's motion to strike in No. 83130-1 is deferred pending the result of the reference hearing.)
01/20/10	93-1-00039-1	Petitioner Darold Stenson's Memorandum of Authorities re Evidentiary Hearing
01/22/10	93-1-00039-1	Memorandum of Authorities re Procedural Issues Related to Reference Hearing
01/27/10	93-1-00039-1	Response to Stenson's January 19, 2010 Motion for Discovery
01/28/10	93-1-00039-1	Petitioner's Memorandum re Discovery and Appointment of Judge Moreno to Review File
01/29/10	93-1-00039-1	Order re Privilege Judge
02/05/10	93-1-00039-1	Petitioner Darold Stenson's Motion to Suppress Due to State's Violation of RPC 4.2 and the Sixth Amendment
02/10/10	93-1-00039-1	Response to Petitioner Darold Stenson's Motion to Suppress Due to State's Violation of RPC 4.2 and the Sixth Amendment
02/16/10	93-1-00039-1	Motion for Protective Order
02/17/10	93-1-00039-1	Reply re Motion Concerning State's Violation of RPC 4.2
02/18/10	93-1-00039-1	Motion to Compel Previously Ordered DNA Testing of Exhibit 91
02/25/10	93-1-00039-1	Washington State Patrol Crime Lab's Response to Defendant's Motion to Compel Previously Ordered DNA Testing of Exhibit 91
02/26/10	93-1-00039-1	Motion to Compel Compliance with Subpoena Duces Tecum
02/26/10	93-1-00039-1	Petitioner Darold Stenson's Motion to Compel Disclosure of Notes from STA Ex Parte Unmirandized Interrogation

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
03/04/10	93-1-00039-1	Response to Petitioner's Motion to Compel Previously Ordered DNA Testing on Exhibit 91
04/16/10	93-1-00039-1 83606-0 WSSC 83130-1 WSSC	Reference Hearing Findings and Conclusions
04/16/10	93-1-00039-1	Petitioner's Objections to Findings and Conclusions
04/29/10	83606-0 WSSC 83130-1 WSSC	Motion to Transfer Designated Portions of the Clallam County Reference Hearing Record to this Court
04/29/10	83606-0 WSSC 83130-1 WSSC	Order (Counsel are directed to file supplemental briefs discussing the effects of the "Reference Hearing Findings and Conclusions" filed by Judge Williams on April 16, 2010.)
05/04/10	83606-0 WSSC	Ex Parte Motion for Appointment of Counsel; Declaration in Support of Ex Parte Motion for Appointment of Counsel
05/04/10	83606-0 WSSC	Response to Motion to Transfer Designated Portions of the Clallam County Reference Hearing Record to the Washington Supreme Court and Response to Ex Parte Motion for Appointment of Sheryl Gordon McCloud
05/05/10	83606-0 WSSC	Ex Parte Motion to Seal Both This Motion and the Ex Parte Motion for Appointment of Counsel
05/05/10	93-1-00039-1	Motion for Order Terminating Stay of Execution
05/06/10	93-1-00039-1	Motion to Unseal Documents
05/07/10	93-1-00039-1	Opposition to Motion to Dissolve Stay of Execution
05/10/10	93-1-00039-1	Reply to Opposition to Motion to Dissolve Stay of Execution
05/11/10	83606-0 WSSC	Motion for Stay of Execution
05/12/10	83130-1 WSSC	Order (Petitioner's "Motion to Transfer Designated Portions of the Clallam County Reference Hearing Record to This Court" is granted. It is further ordered that the Respondents' request in their "Response To Motion To Transfer Designated Portions Of The Clallam County Reference Hearing Record To The Washington Supreme Court And Response To Ex Parte Motion For Appointment Of Sheryl Gordon McCloud" to additionally transfer (1) the transcripts of the hearings conducted on January 22, 2010, January 29, 2010, February 12, 2010, and February 26, 2010, and (2) clerk's papers numbered 618-645, 648-651, and 653-719, is denied without prejudice to renewal of the request with additional information. The Respondents' request in their "Response To Motion To Transfer Designated Portions Of The Clallam County Reference Hearing Record To The Washington Supreme Court And Response To Ex Parte Motion For Appointment Of Sheryl Gordon McCloud" to unseal certain trial court documents, specifically sub nos. 620, 621, 680, 681, 690, 702, and 712, is denied.)
05/12/10	83606-0 WSSC	Order (Petitioner's Motion for Appointment of Counsel is granted); Order (Petitioner's "Ex Parte Motion to Seal Both This Motion and the Ex Parte Motion for Appointment of Counsel" is denied)
05/13/10	93-1-00039-1	Order Unsealing Clallam County Superior Court Pleadings Sub. Nos. 620, 621, 680, 681, 690, 702, 707, & 712

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
05/14/10	83606-0 WSSC	Petitioner's Supplemental Brief on Effect of Reference Court's Findings and Conclusions
05/14/10	83606-0 WSSC	Respondent's Supplemental Brief Regarding the Effects of the "Reference Hearing Findings and Conclusions"
05/17/10	83606-0 WSSC	Response to Motion for Stay of Execution
05/20/10	C10-5359 WDC	Petition for Writ Habeas Corpus
05/25/10	93-1-00039-1 83606-0 WSSC	Memorandum Opinion and Order Removing Stay of Execution
05/28/10	83606-0 WSSC	Reply Re: Motion for Stay of Execution
06/07/10	83130-1 WSSC	Petitioner's Supplemental Brief on Effect of Reference Court's Findings and Conclusions
06/14/10	C10-5359 WDC	Application to Proceed In Forma Pauperis
07/14/10	83606-0 WSSC	Order (Petitioner's Motion for Stay of Execution is granted. The stay shall be effective until further order of this Court.)
07/27/10	C10-5359 WDC	Order Denying Request to Proceed In Forma Pauperis
08/26/10	93-1-00039-1	Motion to Complete Previously Ordered DNA Testing on Exhibit 91
09/03/10	93-1-00039-1	Washington State Patrol's Crime Lab's Response to Defendant's Motion to Complete Previously Ordered DNA Testing on Exhibit 91
09/14/10	93-1-00039-1	State's Response to Defendant's Motion Re Further DNA Testing
09/16/10	93-1-00039-1	Order Granting Petitioner's Motion to Complete Previously Ordered DNA Testing of Exhibit 91
11/15/10	83130-1 WSSC	Order (State's motion to strike is granted with respect to attachment T and paragraph 3 of attachment J, and its remaining requests to strike are denied. That, with respect to Stenson's personal restraint petitions (No. 83130-1 and No. 83606-0), Judge Williams of the Clallam County Superior Court is directed to determine, based on the record from the reference hearing conducted in March 2010, whether during Stenson's trial the prosecution suppressed the newly discovered photographs and FBI file evidence in violation of <i>Brady v. Maryland</i> , 373 U.S. 83, 87, 83 S. Ct. 1194 (1963). In making this determination, Judge Williams must consider whether the suppressed evidence was "material" to guilt or punishment irrespective of good faith or bad faith, evidence being material "only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." <i>U.S. v. Bagley</i> , 473 U.S. 667, 682, 105 S. Ct. 3375 (1985); <i>see also In re Pers. Restraint of Benn</i> , 134 Wn.2d 868, 916, 952 P.2d 116 (1998). A "reasonable probability" is not whether the defendant "would more than likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a probability sufficient to undermine confidence in the outcome." <i>Benn</i> , 134 Wn.2d 868, 916. In making this determination, Judge Williams, in his discretion, may conduct an additional reference hearing and/or permit the parties to submit additional evidence and testimony. That Judge Williams is directed to file his determinations on the <i>Brady</i> question not later than January 21, 2011.)
12/08/10	93-1-00039-1	Notice of Withdrawal and Substitution of Counsel
12/14/10	93-1-00039-1	Ex Parte Motion for Appointment of Counsel (Sealed)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
12/15/10	93-1-00039-1	Order Appointing Counsel (Sealed)
12/30/10	93-1-00039-1	State's Memorandum
12/30/11	93-1-00039-1	Petitioner's Memorandum of Law Regarding Materiality Analysis Under Brady v. Maryland
01/06/11	93-1-00039-1	Memorandum re Question Raised at Hearing on January 3, 2011
01/13/11	C10-5359 WDC	Minute Order (Within 7 days of entry of this order, the Court requests the parties file an update on the status of the case. The Court requests the parties indicate what action they wish the Court to take or whether the case should be dismissed as inactive. Status Report due by 1/20/2011.)
01/20/11	C10-5359 WDC	Petitioner's Status Report
01/20/11	93-1-00039-1 83130-1 WSSC 83606-0 WSSC	Trial Court's Opinion on Remand
01/24/11	83130-1 WSSC 83606-0 WSSC	Order (The parties are to file briefs addressing Judge Williams' determinations entered on January 20, 2011. The briefs should be served and filed by not later than February 23, 2011, and should not exceed 25 pages in length)
01/24/11	83130-1 WSSC 83606-0 WSSC	Motion to Extend Time to File Briefs
01/24/11	83130-1 WSSC 83606-0 WSSC	Order (Motion to extend time to file briefs is granted, briefs now due March 2, 2011)
02/16/11	C10-5359 WDC	Notice of Appearance (Samson); Respondent's Motion to Transfer Petition, or to Dismiss for Lack of Jurisdiction; Respondent's Statement of Cause for Filing Motion in Lieu of Answer
02/23/11	83606-0 WSSC	Joint Motion for Transfer of Superior Court Record
03/01/11	83606-0 WSSC	Order (Motion for Transfer of Superior Court Record is granted)
03/02/11	93-1-00039-1 83606-0 WSSC	State's Supplemental Designation of Clerk's Papers
03/02/11	83130-1 WSSC	State's Supplemental Brief Addressing Judge Williams' Determinations Entered on January 20, 2011
03/02/11	83130-1 WSSC	Petitioner's Response to Judge Williams' Memorandum Opinion of Jan. 20, 2011
03/03/11	83606-0 WSSC	Petitioner's Brief Addressing Reference Court's Findings of January 20, 2011
03/04/11	83606-0 WSSC	Request for Oral Argument
03/07/11	93-1-00039-1	Index for State's Supplemental Clerk's Papers
03/07/11	C10-5359 WDC	Petitioner's Opposition to Respondent's Motion to Transfer Petition, or to Dismiss for Lack of Jurisdiction
03/09/11	83130-1 WSSC	Respondent's Statement of Additional Authorities

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
	83606-0 WSSC	
03/09/11	83606-0 WSSC	Response to Darold Stenson's Request for Oral Argument
03/10/11	C10-5359 WDC	Reply to Petitioner's Response to Motion to Transfer Petition, or to Dismiss for Lack of Jurisdiction
06/06/11	C10-5359 WDC	Order on Government's Motion to Transfer or Dismiss (transferring petition to the Ninth Circuit)
06/09/11	C10-5359 WDC	Petitioner's Notice of Civil Appeal
06/14/11	11-71651 9 CIR	Letter acknowledging receipt of Application to File a Second or Successive Habeas Petition
06/16/11	11-71651 9 CIR	Letter to Court clarifying that the notice of appeal is appealing the district court's order finding that the petition is successive and that the Petitioner needs permission to file the instant petition
06/28/11	83606-0 WSSC	Respondent's Statement of Additional Authorities
07/01/11	11-71651 9 CIR	Response to Application to File a Second Habeas Petition
07/11/11	83130-1 WSSC	Respondent's Statement of Additional Authorities
07/12/11	11-71651 9 CIR	Reply to State's Response to Second Habeas Petition
07/15/11	11-71651 9 CIR	Order (supplemental briefing schedule set, Petitioner's supplemental brief due August 10, 2011, Respondent's supplemental brief due September 13, 2011)
07/19/11	83130-1 WSSC	Order (case will be considered at the Court's November 3, 2011 <i>En Banc</i> Conference)
07/19/11	83606-0 WSSC	Order (Petitioner's Personal Restraint Petition is retained and the matter will be set for oral argument on October 20, 2011 at 1:30PM as the 4th case.)
07/28/11	11-71651 9 CIR	Motion for Appointment of Counsel
08/08/11	11-71651 9 CIR	Order (granting motion for appointment of counsel, appointing Robert Gombiner as co-counsel)
08/10/11	83606-0 WSSC	Respondent's Statement of Additional Authorities

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>	
<u>NAME:</u>		WOODS, Dwayne D.O.B.: 07-04-69 Race: Black	
<u>DATE OF CRIME:</u>		April 27, 1996	
<u>PLACE OF CRIME:</u>		Spokane County	
<u>BRIEF FACTS:</u>		Dwayne Woods was convicted of two counts of aggravated first degree murder for the murders of Telisha Shaver (Count 1) and Jade Moore (Count 2). As to Count 1, the aggravating circumstances were: (1) the murder was committed to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime; and (2) there was more than one victim and the murders were part of a common scheme or plan of the defendant. As to Count 2, the aggravating circumstances were: (1) [same as #1 above]; and (2) the murder was committed in the course of or in furtherance of the crime of first degree rape; and (3) [same as #2 for Count 1]. <i>State v. Woods</i> , Spokane County Superior Court Cause No. 96-1-01143-7.	
<u>DATE OF CONVICTION:</u>		June 20, 1997	
<u>SPECIAL SENTENCING:</u>		June 25, 1997	
<u>JUDGMENT AND: SENTENCE</u>		Spokane County Superior Court Cause No. 96-1-01143-7 July 23, 1997	
<u>TRIAL JUDGE:</u>		Honorable Michael E. Donohue	
<u>DEFENSE ATTYS:</u>		Richard Fasey James Sheehan James Ames Spokane, WA	
<u>PROSECUTING ATTYS:</u>		Steven Tucker, Prosecuting Attorney James R. Sweetser, prior counsel and former Prosecuting Attorney John F. Driscoll, Senior Deputy Prosecutor Spokane County Prosecutor's Office Public Safety Building West 1100 Mallon Avenue Spokane, WA 99260 (509) 477-3662	
<u>APPELLANT'S ATTYS:</u>		Lenell Rae Nussbaum Market Place Two 2001 Western Avenue Suite 200 Seattle, WA 98121-2163 (206) 728-0996	Joan M. Fisher Oliver W. Loewy Federal Public Defender - Id 317 West Sixth Street Suite 204 Moscow, ID 83843 (208) 883-0180
<u>PETITIONER'S ATTYS:</u>		(Personal Restraint Petition #71780-0) Lenell Rae Nussbaum Seattle, WA	Judith M. Mandel 524 Tacoma Ave. S. Tacoma, WA 98402-5416 (253) 272-5640

DATE CAUSE ACTION

(Federal Habeas Corpus, USDC EDC #CV-05-0319-LRS)

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Kevin Korsmo, Senior Deputy

(Federal Habeas Corpus, USDC EDC #CV-05-0319-LRS)
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DATE CAUSE ACTION

08/04/97	65585-5 WSSC	Notice of Appeal
03/22/00	65585-5 WSSC	Oral argument held
05/24/01	65585-5 WSSC	Opinion affirming conviction and death sentence. Chief Justice Alexander authored the opinion for the Court. Justice Sanders dissented. <i>State v. Woods</i> , 143 Wn.2d 561, 23 P.3d 1046 (2001)
06/01/01	65585-5 WSSC	Cost Bill (\$50,975.71 to AIDF & \$535.01 to Spokane County Prosecutor)
08/20/01	01-5921 USSC	Petition for Writ of Certiorari
10/09/01	01-5921 USSC	Petition for Writ of Certiorari denied. <i>Woods v. Washington</i> , 534 U.S. 964, 122 S.Ct. 374, 151 L. Ed. 2d 285 (2001)
10/15/01	65585-5 WSSC	Mandate issued
11/27/01	96-1-01143-7	Death Warrant (setting execution for December 12, 2001)
11/27/01	71780-0 WSSC	Application for Stay of Execution Pursuant to RAP 16.24
11/27/01	71780-0 WSSC	Notation Order (the application for stay of execution is granted)
07/02/02	71780-0 WSSC	Order (the matter is referred to the Spokane County Superior Court to hold a hearing and enter findings in answer to the following questions: (1) Is it Woods' desire to pursue a post-conviction relief by means of a personal restraint petition? (2) If the answer is yes, is it Woods' desire to proceed <i>pro se</i> in preparing and filing such a petition? (3) If Woods' answer to question two is no, or is a conditional or qualified yes, are his present counsel willing to abide by Woods' instructions regarding issues to be raised in such a petition? The

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
		court should make a thorough record and transmit by not later than August 15, 2002, its findings along with a complete record of the hearing)
07/11/02	71780-0 WSSC	Petitioner's Brief
07/15/02	71780-0 WSSC	Reference Hearing Report (with attached transcript of hearing)
08/12/02	71780-0 WSSC	Additional Reference Hearing Report
04/16/03	71780-0 WSSC	Amended Personal Restraint Petition
05/23/03	71780-0 WSSC	Response to Personal Restraint Petition and Brief of Respondent; Response to Motion for Evidentiary Hearing
06/24/03	71780-0 WSSC	Reply Brief in Support of Amended Personal Restraint Petition; Petitioner's Second Motion for Deposition and for Protective Order
06/27/03	71780-0 WSSC	Letter (the following motions were recently filed and the Court has determined to pass them to the merits to be considered at the same time as the Personal Restraint Petition: Respondent's motion to compel deposition; Respondent's motion to strike hearsay and incompetent evidence; Respondent's motion to strike time barred claims and Petitioner's motion to strike)
06/16/05	71780-0 WSSC	Opinion denying personal restraint petition. Chief Justice Alexander authored the opinion for the Court. Justice Sanders dissented. <i>In re Woods</i> , 154 Wn.2d 400, 114 P.3d 607 (2005)
09/30/05	71780-0 WSSC	Order (denying motion for reconsideration)
10/03/05	71780-0 WSSC	Certificate of Finality
10/14/05	C05-319 EDC	Emergency Order Staying Execution of Dwayne Anthony Woods
07/21/06	C05-319 EDC	Petitioner's Writ of Habeas Corpus
08/14/06	C05-319 EDC	Petitioner's Supplement to Writ Petition Under 28 U.S.C. 2254 for Habeas Corpus
10/31/06	C05-319 EDC	Respondent's Answer and Memorandum of Authorities
01/11/07	C05-319 EDC	Revised Petition for Writ of Habeas; Revised Supplement to Petition
07/31/07	C05-319 EDC	Order Re: Procedural Status of Claims and Request to Expand Record
01/08/08	C05-319 EDC	Amended Order Re: Procedural Status of Claims and Request to Expand Record
01/08/08	C05-319 EDC	Order Granting Respondent's Motion For Determination of Whether Claim 4.4 is Procedurally Barred
04/03/08	C05-319 EDC	Order Re: Motion to Expand Record and File Declarations and Procedural Status of Claims 5.2 and 4.7
06/02/08	C05-319 EDC	Petitioner's Merits Memorandum
07/17/08	C05-319 EDC	Respondent's Merits Brief
08/20/08	C05-319 EDC	Petitioner's Reply Merits Memorandum

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
08/21/08	C05-319 EDC	Order Denying Motion to Expand Record with Documents Re: Johnny Knight
02/05/09	C05-319 EDC	Order Denying Petition, Supplement, and Revised Petition for a Writ of Habeas Corpus; Judgment in a Civil Case
02/10/09	C05-319 EDC	Notice of Appeal
02/12/09	C05-319 EDC	Order (granting stay of execution pending Court's decision regarding certificate of appealability issue; if certificate of appealability is granted, the stay of execution will remain in effect during the pendency of the appeal and until the Court of Appeals issues its mandate)
04/10/09	C05-319 EDC	Order Granting Motion for Certificate of Appealability in Part and Denying in Part
07/06/09	09-99003 9 CIR	Opening Brief of Petitioner-Appellant
08/05/09	09-99003 9 CIR	Brief of Respondent-Appellee
09/11/09	09-99003 9 CIR	Reply Brief of Petitioner-Appellant
02/03/10	09-99003 9 CIR	Respondent-Appellee's Supplemental Brief Concerning Uncertified Issue A
02/18/10	09-99003 9 CIR	Reply Brief of Petitioner-Appellant Regarding Uncertified Claim
03/04/10	09-99003 9 CIR	Oral argument held
08/10/11	09-99003 9CIR	Opinion affirming the judgment of the district court. Judge Paez authored the opinion, with Judges Tallman and Smith concurring. <i>Woods v. Sinclair</i>, ___ F.3d ___, 2011 WL 3487061 (9 Cir. 2011).
08/10/11	09-99003 9CIR	Petitioner's Motion to Continue Time for Filing Petition for Rehearing En Banc Pursuant to General Order 6.3(a); Motion to Continue Stay of Execution Pursuant to FRAP 22-2 and 4-1

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>	
<u>NAME:</u>		YATES, Robert Lee, Jr. D.O.B.: May 27, 1952 Race: White	
<u>DATE OF CRIME:</u>		1997 and 1998	
<u>PLACE OF CRIME:</u>		Pierce County	
<u>BRIEF FACTS:</u>		Robert Lee Yates, Jr. was convicted of two counts of aggravated first degree murder for the murders of Melinda Mercer in 1997 and Connie LaFontaine Ellis in 1998. The aggravating circumstances were: (1) there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the defendant; (2) the murders were committed to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime; and (3) the murders were committed in the course of, in furtherance of, or in immediate flight from the crime of Robbery in the First Degree. <i>State v. Yates</i> , Pierce County Cause No. 00-1-03253-8	
<u>DATE OF CONVICTION:</u>		September 19, 2002	
<u>SPECIAL SENTENCING:</u>		October 3, 2002	
<u>JUDGMENT AND SENTENCE</u>		Pierce County Superior Court Cause No. 00-1-03253-8 October 9, 2002	
<u>TRIAL JUDGE:</u>		Honorable John McCarthy	
<u>DEFENSE ATTYS:</u>		Roger Hunko Port Orchard, WA	Mary Kay High Tacoma, WA
<u>PROSECUTING ATTYS:</u>		Gerald Horne, Prosecuting Attorney Jerry Costello, Deputy Prosecutor Barbara Corey-Boulet, Deputy Prosecutor 930 Tacoma Avenue South Tacoma, WA 98402 (253) 798-7400	
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, WSSC No. 73155-1) Gregory Link Thomas Kummerow Nancy Collins WA Appellate Project 1511 Third Avenue, Suite 701 Seattle, WA 98101-3635 (206) 587-2711	
		Roger Hunko (withdrew 11/04/02) Port Orchard, WA	
<u>PETITIONER'S ATTYS:</u>		(Personal Restraint Petition, WSSC No. 82101-1) RONALD NESS ATTORNEY AT LAW 420 CLINE AVE PORT ORCHARD WA 98366-4604	
		JUDITH MANDEL ATTORNEY AT LAW POSTGRADUATE BLDG 300 D CHANG'AN SOUTH RD XI'AN SHAANXI PROVINCE ZZ 710063	

DATE CAUSE ACTION

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RESPONDENT'S ATTYS:

(Direct Appeal, WSSC No. 73155-1)
Gerald Horne, Prosecuting Attorney
Jerry Costello, Deputy Prosecutor
Barbara Corey-Boulet, Deputy Prosecutor (Withdrawn 02/03/04)
Kathleen Proctor, Deputy Prosecutor
Donna Yumiko Masumoto, Deputy Prosecutor

(Personal Restraint Petition, WSSC No. 82101-1)
**KATHLEEN PROCTOR, DEPUTY PROSECUTOR
DONNA YUMIKO MASUMOTO, DEPUTY PROSECUTOR
KAREN ANNE WATSON, DEPUTY PROSECUTOR**

DATE CAUSE ACTION

10/17/02	73155-1 WSSC	Notice of Appeal
11/30/06	73155-1 WSSC	Oral argument held
09/27/07	73155-1 WSSC	Opinion affirming conviction and death sentence. Justice Owens authored the opinion for the Court. Justices Johnson and Chambers authored opinions concurring. Justice Sanders dissented. <i>State v. Yates</i> , 161 Wn.2d 714, 168 P.3d 359 (2007).
12/24/07	73155-1 WSSC	Order Denying Appellant's Motion for Reconsideration
01/03/08	73155-1 WSSC	Ruling on Cost Bill (Costs in the amount of \$173,254.08 are awarded to the Office of Public Defense and costs in the amount of \$183.56 are awarded to Respondent State of Washington, Pierce County, to be paid by Appellant Yates).
06/23/08	07-10069 USSC	Petition for Writ of Certiorari denied. <i>Yates v. Washington</i> , 128 S. Ct. 2964 (2008).
08/01/08	73155-1 WSSC	Mandate
09/05/08	00-1-03253-8	Death Warrant (setting execution date for September 19, 2008)
09/08/08	82101-1 WSSC	Application for Stay of Execution Under RAP 16.24(c)
09/10/08	82101-1 WSSC	Motion for Appointment of Counsel
09/11/08	82101-1 WSSC	Personal Restraint Petition (placeholder petition)
09/11/08	82101-1 WSSC	Order Granting Stay of Execution and Appointing Counsel
04/29/09	82101-1 WSSC	Order (motion to extend time to file brief & finding that request for stay constitutes a properly filed PRP is granted, PRP now due June 8, 2009)
05/18/09	82101-1 WSSC	Petitioner's Statement of Grounds for Relief (requested to be filed under seal)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
06/05/09	82101-1 WSSC	Order (Petitioner's motion to file petitioner's statement of grounds for direct relief under seal is denied. The motion itself will remain sealed. The petitioner's statement of grounds for relief is being returned to counsel)
06/15/09	82101-1 WSSC	Opening Brief in Support of Personal Restraint Petition
08/03/09	82101-1 WSSC	Amended Personal Restraint Petition and Supporting Brief
06/28/10	82101-1 WSSC	State's Response to Personal Restraint Petition
06/28/10	82101-1 WSSC	Motion to Strike Improper Appendices to Petitioner's Brief and Corresponding Arguments; Motion to Have Copy of Petition Served Upon Spokane County Prosecutor's Office to Address Claim that Petitioner Received Ineffective Assistance of Counsel to Plead Guilty in Spokane Cases
07/12/10	82101-1 WSSC	Petitioner's Response to State's Motion to Strike Exhibits; Petitioner's Response to State's Motion to Serve Spokane County Prosecutor with Copy of Petition
07/13/10	82101-1 WSSC	Order (Motion for Acceptance of Corrected Brief granted)
08/17/10	82101-1 WSSC	Petitioner's Motion for Discovery of All Documents and Computer Programs Used to Generate Jury Pools in Pierce County
08/24/10	82101-1 WSSC	Petitioner's Motion for the Testimony of Bruce Moran to be Taken By Deposition
08/26/10	82101-1 WSSC	State's Response to Motion for Discovery and Motion to Depose Bruce Moran
09/09/10	82101-1 WSSC	Petitioner's Reply in Support of Motion for Discovery Re: Selection of Jury Venire
09/27/10	82101-1 WSSC	Order (the Respondent's "Motion to have copy of Petition served upon Spokane County Prosecutor's Office to address claim that Petitioner received ineffective assistance of counsel to plead guilty in Spokane cases" is denied.)
11/10/10	82101-1 WSSC	Order (That Respondent's "Motion to Strike Improper Appendices to Petitioner's Brief and Corresponding Arguments" is granted. "Petitioner's Motion for the Testimony of Bruce Moran to Be Taken By Deposition" is denied. "Petitioner's Motion for Discovery of All Documents and Computer Programs Used To Generate Jury Pools in Pierce County" is denied.)