[redacted]

January 5, 2011

Hon. Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington DC 20510

Dear Mr. Chairman:

I have reviewed the Questionnaire for Judicial Nominees and supplemental materials dated October 1, 2010 that were filed with the Senate Judiciary Committee following my nomination for the United States District Court for the District of Colorado. With the following exceptions, I certify that the information contained in my prior submissions is, to the best of my knowledge, true and accurate:

Question 12(d):

> Panelist, Winning Trial Tactics and Skills, section on "Rapport with Judge and Jury," sponsored by Colorado Bar Association and American College of Trial Lawyers, November 12, 2010. My only written material was a copy of my article, "Joe DiMaggio and You," 37 The Colorado Lawyer 65 (April 2008)(copy previously supplied).

Question 13(f) (Court of Appeals opinions):

> *People v. Jones,* No. 07CA1984 (Slip. Op. December 2, 2010)(affirming judgment of conviction and sentence to life in prison without parole, one victim, but remanding for resentencing on a separate conviction of attempted first degree murder, different victim)(copy enclosed)

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

Richard Brooke Jackson

Richard Brooke Jackson

CC: Hon. Charles Grassley

07CA1984 Peo v. Jones 12-02-2010

COLORADO COURT OF APPEALS

Court of Appeals No. 07CA1984
Jefferson County District Court No. 05CR4231
Honorable R. Brooke Jackson, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Kenji Myricks Jones,

Defendant-Appellant.

JUDGMENTS AFFIRMED, SENTENCE VACATED,
AND CASE REMANDED WITH DIRECTIONS

Division III
Opinion by JUDGE DAILEY
J. Jones and Lichtenstein, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(f)
Announced December 2, 2010

John W. Suthers, Attorney General, John T. Lee, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Law Offices of Jonathan S. Willett, Jonathan S. Willett, Denver, Colorado, for Defendant-Appellant

Defendant, Kenji Myricks Jones, appeals the judgments of conviction entered on jury verdicts finding him guilty of first degree murder, attempted first degree murder, two counts of aggravated robbery, three counts of possession of a controlled substance, and possession of more than eight ounces of marijuana. We affirm the judgments of conviction, vacate defendant's sentence for attempted murder, and remand for resentencing on that conviction.

I. Background

Defendant was charged as a result of an incident in which he and two other men allegedly used guns to forcibly enter the Arvada home of two of their long-time friends, one of whom was a drug dealer. Inside the home, the three men stole drugs (including ecstasy, mushrooms, cocaine, and marijuana), money, and other valuables from the occupants, taunted and terrorized them with a knife, and, ultimately, shot them both in the head. The female occupant died; the male survived and testified at trial.

In addition to the male victim's testimony, the prosecution also presented evidence that (1) defendant and the two other men were seen together talking, in a secretive manner, at a bar a few hours before the robbery; (2) defendant owned a gun; (3) after the robbery, defendant stored white plastic bags filled with drugs at a coworker's home; (4) defendant tested positive for gunshot residue when he was arrested a day after the incident; and (5) latex gloves found in a trash can in defendant's front yard had both his and the female victim's DNA on them.

In his defense, defendant asserted that (1) the surviving victim identified him and the other two men as perpetrators of the incident to divert attention away from the fact that he (the surviving victim) shot the female victim in an act of domestic violence; (2) defendant was inebriated when he left the bar that evening (and thus, presumably, did not have sufficient mental or physical ability to assist in the episode); (3) gunshot residue is easily transferable; and (4) the DNA found on the gloves was from a time, three days before the incident, when defendant was with both victims.

The jury convicted defendant of the numerous charges against him, and the trial court sentenced him to an aggregate term of life imprisonment without the possibility of parole, plus eighty years.

II. Substitution of Counsel

Defendant contends that the trial court abused its discretion when it failed to appoint substitute counsel, despite an apparent breakdown in communications between himself and his attorney. We disagree.

A. Facts

Four months before a date scheduled for trial (and approximately ten months before trial actually commenced), defendant filed a pro se request for substitute counsel and had his attorney file a motion to withdraw from the case. In the letter accompanying his pro se motion, defendant alleged, as grounds for a change in counsel, that

- his attorney had made a comment which, in defendant's view, reflected a lack of belief in his cause and raised, in defendant's mind, the question as to whether the attorney would or could provide proper representation on his behalf;
- his attorney had become upset when defendant expressed his desire to have him dismissed and again when defendant asked "why [he] had not received a copy of discovery";

- he was unable to contact his attorney because (1) the attorney would not accept collect calls, and (2) the attorney's suggestion that he communicate with him through defendant's mother was impractical, given his mother's limited financial ability to receive collect calls and her difficulty, due to advanced age, in repeating important questions or answers; and
- in the previous five months, he had only seen or spoken to his attorney "a total of three times other than in court, . . . and that was only for a minute or two."

Correspondingly, at defendant's request, his attorney filed a motion to withdraw, in which he asserted that "the attorney-client relationship has deteriorated to the point that counsel can no longer meaningfully represent the defendant," because of "numerous and protracted disagreements . . . regarding strategy and litigation in this case."

Within days of the filing of these motions, the trial court – through a different judge – conducted a hearing at which defendant, given the opportunity to elaborate on his complaints, said only, "I haven't received discovery[,] . . . basically I'm left in the dark[,] . . . [and] I feel like he's not going to represent me or fight for me." In response to defendant's comments and what appeared to the court to be a normal "communication issue," the attorney

- confirmed that he would "[a]bsolutely" work on finding a workable way of communicating with defendant;
- stated that defendant had, while in jail, viewed on DVD most of the discovery, until he said "he didn't want to see any more";
- acknowledged that there was a time in which he had not communicated with defendant, but explained that during that time he was attempting to negotiate a plea, which depended, in part, on input from another prosecutor's office, input which was not forthcoming for months: "In that time I really had nothing to talk about with [defendant] because we were awaiting . . . input" from the other prosecutor's office; and,
- opined that defendant's disappointment with him stemmed from the "harsh" plea offer that was ultimately made in the case, and that he feared he and defendant would not have a

productive working relationship in the future because of defendant's deterioration of trust in him.

Based on what it had heard, the court denied the motions for withdrawal and substitution for counsel, finding that (1) there was no animosity between defendant and his attorney; (2) "there's no indication of any ethical problem" between defendant and his attorney, (3) "there is no indication . . . that [the attorney] is not going to be able to provide effective assistance of counsel," and (4) the extent of any future communication, or whether there would be a breakdown in communication, "was solely within the province of [defendant] to determine."

Approximately seven weeks later, defendant's attorney filed a second motion to withdraw from the case, repeating the contents of his earlier motion, but adding that, because of his disagreements with defendant, "it has become impossible for counsel to effectively represent" defendant and "there has been a complete breakdown in communications" between them.

The trial court – again acting through the different judge – conducted a hearing on the motion. At the hearing, defendant said that he had filed a grievance against his attorney with the supreme court. When asked by the trial court whether it was "because of lack of contact or lack of ability," defendant responded, "I'm not happy with his performance. I don't think he's representing me the way he should." Later, he affirmed, as "correct," the court's understanding that he had "issues communicating and [he] did not like the course that [his] case was taking with [his] current attorney." After the court warned defendant that it would not change counsel based on defendant's refusal to talk to or cooperate with his attorney, defendant stated that he was "not happy with the representation" because, unlike his codefendants, he did not have an investigator assigned to his case. He indicated that he had talked with his attorney, but only for a few minutes, two or three weeks earlier.

In response to defendant's comments, his attorney said that

- he had hired an experienced investigator, who had indeed met with defendant;
- a co-counsel had been appointed in the case;

- defendant had sent him a letter asking him to not visit defendant anymore; and,
- the problem, as he saw it, was that defendant had interpreted counsel's request for defendant's input as an indication that counsel did not know what he was doing.

During the course of the hearing, the court determined that (1) there was not an ethical issue other than that defendant "was unhappy about the communication and with what he perceives as being [the] planned defense in the case" and (2) this was insufficient justification for requiring a substitution of counsel. Defendant agreed that he would meet and cooperate with his lawyers and investigator.

Defendant made no further complaint about his attorneys for the remainder of time leading up to trial, that is, for eight months.

B. General Principles and Standard of Review

"An attorney's motion to withdraw, as well as a defendant's motion to discharge an attorney, are matters addressed to the sound discretion of the trial court, whose ruling will not be disturbed on review absent a clear abuse of discretion." *People v.*

Hodges, 134 P.3d 419, 425 (Colo. App. 2005), *aff'd*, 158 P.3d 922 (Colo. 2007).

"[I]f the trial court has a reasonable basis for concluding that the attorney-client relationship has not deteriorated to the point at which counsel is unable to give effective assistance in the presentation of a defense, then the court is justified in refusing to appoint new counsel." *People v. Rocha*, 872 P.2d 1285, 1289 (Colo. App. 1993).

When a defendant objects to court-appointed counsel, the trial court must inquire into the reasons for the dissatisfaction. *People v. Kelling*, 151 P.3d 650, 653 (Colo. App. 2006). An indigent defendant is not, however, entitled to new counsel absent a showing of good cause therefor, such as a conflict of interest, a complete breakdown in communication, or an irreconcilable conflict with appointed counsel that may lead to an apparently unjust verdict. *Id.*

Disagreements about matters of trial preparation, strategy, and tactics do not establish good cause for substitution of counsel. *Id.* Similarly, "[t]he mere loss of confidence in his appointed counsel does not establish 'good cause'"; the "[d]efendant must have some well founded reason for believing that the appointed attorney cannot or will not competently represent him." 3 Wayne R. LaFave, Jerold H. Israel, Nancy J. King & Orin S. Kerr, *Criminal Procedure* § 11.4(b), at 703-04 (3d ed. 2007).

C. Analysis

Initially, we observe that, during the course of the two hearings, the court gave defendant ample opportunity to state the grounds of his dissatisfaction with his lawyer.

Next, we reject defendant's assertion that the trial court misunderstood or misapplied the applicable legal standard for determining whether appointment of new counsel was warranted. Although, at different times, the court said that there was no ethical reason to require substitution of counsel,[1] it did not confine its analysis to that factor alone. Instead, during both hearings, the

---

[1] We note, in this regard, that the fact that defendant filed a grievance with the supreme court did not require disqualification of his trial counsel. *See People v. Martinez*, 722 P.2d 445, 446 (Colo. App. 1986) ("The mere filing of a grievance because of disagreement as to trial tactics does not, without more, demonstrate that the relationship has deteriorated to a point at which counsel is unable to give effective aid to the client.").

court recognized that there appeared to be some type of communication problem, just not of a type or degree that would warrant appointment of new counsel.

To warrant discharge of original counsel and appointment of a new one, defendant had the burden of showing a "complete breakdown in communications." *Kelling*, 151 P.3d at 653. In *United States v. Lott*, 310 F.3d 1231, 1249 (10th Cir. 2002), the Tenth Circuit Court of Appeals noted:

> The types of communication breakdowns that constitute "total breakdowns" defy easy definition, and to our knowledge no court or commentator has put forth a precise definition. As a general matter, however, we believe that to prove a total breakdown in communication, a defendant must put forth evidence of a severe and pervasive conflict with his attorney or evidence that he had such minimal contact with the attorney that meaningful communication was not possible.

See also Kelling, 151 P.3d at 656 (the defendant's burden was to show "a completely fractured relationship with appointed counsel because of . . . a total breakdown in communication").

Whether a defendant has substantially and unreasonably contributed to the underlying conflict with his attorney, or to a breakdown in communications between them, has been identified as a factor in assessing whether new counsel should be appointed. *See People v. Bergerud*, 223 P.3d 686, 695, 705 (Colo. 2010) (citing *Lott*, 310 F.3d at 1250-51).

Here, the record does not reveal an attorney-client relationship shorn by such a severe and pervasive conflict or by such minimal contact that meaningful communication was not possible. Instead, it reveals that (1) defendant's disagreements with his counsel centered on counsel's inability to obtain a better plea offer and other strategic matters; (2) counsel had provided defendant access to discovery; (3) there was a period of time in which counsel had not contacted defendant because there was nothing new to talk about; (4) counsel was willing to find more workable ways of communicating with defendant; and (5) though defendant had, at times, refused or resisted efforts to be contacted by counsel or his assistants, he ultimately agreed to meet and cooperate with his attorneys and investigators.

From these facts, and the fact that defendant made no further complaint about his attorney in the eight months leading up to trial, we perceive no abuse of the court's discretion from its denial of the motions for withdrawal and substitution of counsel. *Cf.* *People v. Thornton*, ___ P.3d ___, ___ (Colo. App. No. 08CA1027, Sept. 30, 2010) (no complete breakdown in communication where, although trial counsel acknowledged that "there have been a lot of communication breakdowns," he maintained that he was continuing to represent the defendant's interests and "had a number of visits with" the defendant); *People v. Gonyea*, 195 P.3d 1171, 1173 (Colo. App. 2008) (no abuse of discretion in declining to dismiss counsel where the defendant's own actions had contributed to the problems between them and, because the defendant and his attorney agreed to resolve their differences and cooperate, there was no breakdown of communication); *Hodges*, 134 P.3d at 425-26 (attorney's statement that he was "concerned that we're not truly communicating" did not require a finding of a complete breakdown of communication); *People v. Jenkins*, 83 P.3d 1122, 1126 (Colo. App. 2003) (the defendant's allegations that counsel was not defending him zealously, had not spent adequate time with him, had met with him only once in nine months, had not discussed potential witnesses, and had not given him copies of discovery did not show a complete breakdown of communication).

III. Relieving the Prosecution of Its Burden of its Proof

Next, defendant contends that reversal is required because, during jury voir dire, the trial court made a statement that relieved the prosecution from its burden of proving that a murder and an assault occurred. Again, we disagree.

A. Facts

At defendant's request, the court, during voir dire, told the prospective jurors of the names of the other two suspects to ensure that no one knew them. One prospective juror indicated she had heard about them or the incident, and that it involved "murder or shootings." Subsequently, another prospective juror said that she may have trouble being fair and impartial knowing that there was a murder involved. In response, the court said:

> There was a person shot to death. That's not going to be disputed. There was a person shot and wounded. That won't be disputed either. The dispute concerns whether [defendant] was involved. And if he was involved in any part of the incident, whether he is guilty of what he is charged with. None of us have to think murder is a good idea. Of course not. It's not.

> Murder is the most serious level of felony crime that we have in our system. But the issue here is whether or not [defendant] is guilty. Regardless of what [the other gunmen] did or didn't do, regardless of whether they've been tried and convicted or not, the issue in this case is what, if any, participation did [defendant] have? And more specifically, beyond a reasonable doubt, did he do what he's accused of doing? That's it.

Defendant subsequently moved for a mistrial on the grounds that the court had wrongfully relieved the prosecution of its burden of proof by stating that there was no dispute as to whether a murder occurred. The court denied the motion, noting that it thought it only said "there's no dispute there was a shooting." The court indicated that it would consider any curative instruction proposed by defendant. Although defendant never tendered a curative instruction, the court gave one sua sponte.

B. General Legal Principles & Analysis

The prosecution must prove every element of a charged crime beyond a reasonable doubt. *People v. Dunaway*, 88 P.3d 619, 627 (Colo. 2004). As a result, a trial court errs when it instructs a jury that, as a matter of law, the prosecution has satisfied its burden of proving one of the elements, thereby withdrawing that element from the jury's consideration. *People v. Gracey*, 940 P.2d 1050, 1053 (Colo. App. 1996).

Here, we perceive nothing improper about the court's remarks. Contrary to defendant's assertion, the trial court did not tell the jury that "a murder and assault occurred." Indeed, the court did not refer to an assault at all and its only references to murder were general remarks about its seriousness and that no one had to think it was a "good idea."

The only things the court said were undisputed were that one person was shot to death, while another person was shot and wounded. The court was correct, and its recitation of those facts did not, in any way, indicate that a murder – or an assault – had in fact been committed.

Moreover, the court, on its own accord, informed the jury, after defendant's motion for mistrial:

> I think it's not disputed that one person was killed and one person was injured . . . it's disputed for what role, if any, the defendant had in any of it. But if I said that it's undisputed that a murder took place, murder really is a technical term. And the People have to prove that a murder took place, as well as . . . if this defendant had any role in it . . . I think

> it's just undisputed that there was an incident where someone was killed and someone was injured, and the rest of it has to be proven.

In our view, this instruction sufficed to alleviate any potential prejudice occasioned by the court's earlier remark. *See People v. Mersman*, 148 P.3d 199, 203 (Colo. App. 2006) (generally, curative instructions will remedy any harm caused by a prejudicial statement); *People v. McNeely*, 68 P.3d 540, 542 (Colo. App. 2002) (curative instruction "inadequate only when evidence is so prejudicial that, but for its exposure, the jury might not have found the defendant guilty") (quoting *People v. Gillispie*, 767 P.2d 778, 780 (Colo. App. 1988)); *cf. Edmisten v. People*, 176 Colo. 262, 276, 490 P.2d 58, 65 (1971) ("error in admitting evidence may be cured by instructing the jury to disregard it unless such evidence is so prejudicial that the jury will unlikely be able to erase it from their minds").

Also, the court instructed the jurors regarding the presumption of innocence and the burden of proof, and, absent evidence to the contrary, we presume they followed those instructions. *See, e.g., People v. McKeel*, ___ P.3d ___, ___ (Colo. No. 10SA164, Oct. 18, 2010).[2]

IV. Hearsay & Confrontation

We are also unpersuaded by defendant's contention that reversal is required because the trial court erroneously admitted several hearsay statements in violation of his constitutional right to confront adverse witnesses.

A. Facts

During trial, the following evidence was admitted:

---

[2] Defendant appears to argue that the prejudice from the court's comment was heightened or revealed when (1) the court, ostensibly in response to his motion for mistrial, admitted evidence of another codefendant's subsequent purchase of a gun, and (2) the jury inquired, during deliberations, about the applicability of a complicity instruction to the charges. We have, however, already determined that the court's comments were not prejudicial. And because, by defendant's own admission, "the motion for mistrial has no bearing on the admissibility of evidence," and because defendant did not raise the evidentiary or jury inquiry issues as separate claims of error, or support them with either authority or developed argument, we decline to address those issues. *See People v. Wallin*, 167 P.3d 183, 187 (Colo. App. 2007) (declining to address arguments presented in a perfunctory or conclusory manner); *see also United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("A skeletal 'argument,' really nothing more than an assertion, does not preserve a claim [for appellate review].").

- a police officer recounted what the surviving male victim told him on the way to the hospital about the incident;
- the male victim testified that, during the robbery, the female victim asked defendant, "How can you do this? You're like my brother," to which defendant responded, "It is what it is";
- a detective testified that the male victim had told him at the police station that he was concerned that the men responsible for the robbery and shootings "were going to kill his family"; and,
- the same detective testified that, when asked at the station whether he shot the female victim in a domestic dispute and then shot himself to make it look like a murder-suicide, the male victim said, "That did not happen."

Defendant objected to the first two statements as hearsay and to the last two statements on both hearsay and confrontation grounds. The trial court ruled that the first statement was admissible as an excited utterance and that the second statement was admissible because it was not offered for the truth of the matter asserted (and, thus, was not hearsay). The court overruled defendant's objections to the last two statements without making any additional findings.

B. General Legal Principles and Standard of Review

Hearsay is defined as "a statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." CRE 801(c); *see People v. Huckleberry*, 768 P.2d 1235, 1241 (Colo. 1989). Hearsay is inadmissible, unless it falls within an exception to the rule against hearsay. CRE 802.

An out-of-court statement offered, not for the truth of the matter it asserts, but solely to show its effect on the listener, is not hearsay. *People v. Rodriguez,* 888 P.2d 278, 287 (Colo. App. 1994).

The admission of hearsay evidence may implicate a defendant's confrontation rights under the federal and state constitutions. *See Davis v. Washington*, 547 U.S. 813, 823, 126 S.Ct. 2266, 2274, 165 L.Ed.2d 224 (2006) (admission of "testimonial" hearsay violates federal confrontation rights); *Compan v. People*, 121 P.3d 876, 882-86 (Colo. 2005) (admission of nontestimonial hearsay as violative of state confrontation rights).

However, the admission of nonhearsay does not implicate a defendant's confrontation rights. *Crawford v. Washington*, 541 U.S. 36, 59 n.9, 124 S.Ct. 1354, 1369, 158 L.Ed.2d 177 (2004) ("The [Confrontation] Clause . . . does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted."); *People v. Isom*, 140 P.3d 100, 103 (Colo. App. 2005) (no right of confrontation or hearsay preclusion exists when statements are not offered for their truth); *People v. Bornman*, 953 P.2d 952, 956 (Colo. App. 1997) (because the information was not hearsay, "no issue of confrontation is presented").

Trial courts have considerable discretion in determining the admissibility of evidence, and we will not disturb their evidentiary determinations on appeal absent a showing of an abuse of discretion. *People v. Boykins*, 140 P.3d 87, 95 (Colo. App. 2005).

C. Analysis

Initially, we note that, although defendant properly preserved his hearsay objections in the trial court, he has not properly presented some of them to us for review. *See Roca v. E.I. du Pont de Nemours & Co.*, 842 A.2d 1238, 1242 (Del. 2004) ("If an appellant fails to comply with [the] requirements [of presenting an argument] on a particular issue, the appellant has abandoned that issue on appeal irrespective of how well the issue was preserved at trial.").

For instance, defendant has provided no argument challenging the trial court's determination that the account given by the victim on the way to a hospital was, if hearsay, admissible as an excited utterance. Because he has not challenged that part of the trial court's ruling, his challenge to the admissibility of the victim's account is not properly before us. *Cf. IBC Denver II, LLC v. City of Wheat Ridge*, 183 P.3d 714, 717 (Colo. App. 2008) (it is incumbent on the appellant to challenge on appeal all stated reasons or grounds for the trial court's decision, and failure to do so requires affirmance of the trial court's ruling).[3]

With respect to the other statements, defendant does not attempt to show how they were admitted for the truth of the matter,

---

[3] By its nature, an excited utterance is unlikely to be "testimonial" hearsay implicating confrontation rights. *See People v. King*, 121 P.3d 234, 240 (Colo. App. 2005). In any event, the admission of hearsay from a witness who, like the male victim, testifies at trial and is subject to cross-examination does not violate a defendant's right to confrontation. *See People v. Argomaniz-Ramirez*, 102 P.3d 1015, 1019 (Colo. 2004).

and, thus, qualified as hearsay. Instead, he equates truth of the matter asserted with whether the statement was important to the prosecution's case or prejudicial to his own.

Because the prosecution was not trying to prove the truth of the matter asserted in the female victim's statement (that is, how could defendant do this, since he and she were indeed like family), it was not admitted for a hearsay purpose. Indeed, it was admitted for nonhearsay purposes, that is, for its effect on the listener (here, defendant), *see Rodriguez*, 888 P.2d at 287, and for providing context for his response. [4] *See People v. Arnold*, 826 P.2d 365, 366 (Colo. App. 1991).

Similarly, although at trial the prosecution proffered the third statement as an excited utterance, the value of that statement did not depend on the truthfulness of its content, that is, whether the

---

[4] An out-of-court statement to another person "is not subject to attack as hearsay when its purpose is to establish the state of mind thereby induced in [the other], such as receiving notice or having knowledge or motive, or to show the information which [the other] had as bearing on the reasonableness, good faith, or voluntariness of subsequent conduct . . . ." 2 *McCormick on Evidence* § 249, at 134-35 (K Broun 6th ed. 2006). It is not hearsay because the value of the statement does not depend upon its truth. *Id.* at 135.

men who perpetrated the robbery and shootings would, in fact, kill the surviving victim's family members. Regardless of its truth, the statement tended to explain why (i.e., fear) the surviving victim delayed identifying his assailants. As such, the statement was not inadmissible as hearsay. *See* 2 *McCormick on Evidence* § 249, at 133 (statement is not hearsay when its value does not depend upon its truth); *cf. People v. Mossman*, 17 P.3d 165, 168 (Colo. App. 2000) (trial court should have permitted the testimony of two witnesses who would have substantiated the defendant's affirmative defense that he took his daughter from his ex-wife because he believed she was being abused while living with his ex-wife and another man).[5]

---

[5] Also, the detective had previously related to the jury this very same statement, without objection; and, the victim himself had testified that he delayed identifying his assailants out of fear for his family's safety. The statement to which defendant objected was, then, cumulative to other evidence admitted in the case. *See People v. Caldwell*, 43 P.3d 663, 668-69 (Colo. App. 2001) (holding that because the statements challenged as inadmissible hearsay were merely cumulative of other evidence, their admission was harmless beyond a reasonable doubt); *People v. Robinson*, 874 P.2d 453, 461 (Colo. App. 1993) (any violation of the defendant's confrontation clause rights was harmless beyond a reasonable doubt because hearsay testimony at issue was merely cumulative).

Finally, although a somewhat closer question, we perceive no abuse of the court's discretion in admitting evidence of the male victim's out-of-court denial of killing his companion. Just before the statement was mentioned, the prosecution had elicited evidence from the detective that "Everybody" – including the male victim – was a "possible suspect at that point." Thus, the detective's follow-up inquiry, and the victim's answer thereto, can be viewed as explaining, in part, why the police investigation proceeded as it did – a nonhearsay purpose. *See People v. Robinson*, 226 P.3d 1145, 1152 (Colo. App. 2009).

Because all three of these statements were not inadmissible hearsay, admitting them necessarily did not violate defendant's confrontation rights. Consequently, we perceive no grounds for reversing defendant's convictions.

V. Sentencing

We are, however, persuaded by defendant's contention that his case must be remanded for resentencing on his conviction for attempted first degree murder.

A remand for resentencing is appropriate where a trial court misapprehends the scope of its discretion: for example, where a trial court imposes consecutive sentences under the mistaken belief that it has no discretion to impose concurrent sentences. *People v. O'Connell*, 134 P.3d 460, 466 (Colo. App. 2005).

Here, the trial court sentenced defendant to forty-eight years imprisonment for the attempted murder consecutive to his sentence to life without parole for the murder. In so doing, the court stated its belief that the law mandated a consecutive sentence because attempted first degree murder is a crime of violence. However, in the absence of a special interrogatory, as here, attempted first degree murder is not a crime of violence. § 18-1.3-406(6), C.R.S. 2010; *People v. Webster*, 987 P.2d 836, 843 (Colo. App. 1998). Therefore, the trial court was mistaken when it twice said that it was required to impose a consecutive sentence for the attempted murder conviction.

Accordingly, we vacate that sentence and remand for resentencing on that conviction alone. *Compare O'Connell*, 134 P.3d at 466-67 (affirming the defendant's conviction where trial court never indicated that it believed that consecutive sentences were required and it indicated that it had reviewed and considered the case law pertaining to consecutive and concurrent sentencing), *with People v. Smith*, 881 P.2d 385, 390 (Colo. App. 1994) (vacating and remanding for resentencing three of the defendant's convictions because the trial court mistakenly believed that consecutive sentences were mandated by statute).

In reaching this conclusion, we necessarily reject the prosecution's assertion that a remand is unnecessary because "it appears that the district court would have imposed consecutive sentences if it believed it had the discretion [] to do so." Our reading of the record does not disclose a clear intent one way or the other on the issue.

The judgments of conviction are affirmed, the sentence on the attempted murder conviction is vacated, and the matter is remanded for resentencing.

JUDGE J. JONES and JUDGE LICHTENSTEIN concur.

AO 10 Rev. 1/2008	**FINANCIAL DISCLOSURE REPORT** **NOMINATION FILING**	*Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Jackson, Richard B.	**2. Court or Organization** UNITED STATES DISTRICT COURT FOR THE DISTR ICT OF COLORADO	**3. Date of Report** 01/05/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) DISTRICT JUDGE	**5a. Report Type** (check appropriate type) ☑ Nomination, Date 01/05/2011 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 01/01/2010 to 01/05/2011
7. Chambers or Office Address 100 JEFFERSON COUNTY PARKWAY DIVISION 6 GOLDEN CO 80401	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.** **Reviewing Officer**__________ **Date**______	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☑ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2011	STATE OF COLORADO	$0.00
2. 2010	STATE OF COLORADO	$128,598.00
3. 2009	STATE OF COLORADO	$125,216.00
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. 2011	SELF-EMPLOYED TRAVEL AGENT
2. 2010	SELF-EMPLOYED TRAVEL AGENT
3.	
4.	

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. EXEMPT				
2.				
3.				
4.				
5.				

Name of Person Reporting	Date of Report
Jackson, Richard B.	01/05/2011

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

Name of Person Reporting	Date of Report
Jackson, Richard B.	01/05/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. IRA #I					Exempt				
2. -VANGUARD VALUE VIPERS	B	Dividend	L	T					
3. -VANGUARD FTSE ALL WORLD EX US INDEX-	A	Dividend	K	T					
4. -VANGUARD EXTENDED MKT VIPERS	A	Dividend	L	T					
5. -VANGUARD GROWTH VIPERS	A	Dividend	L	T					
6. -BNY MELLON MUNICIPAL OPPOR TUNITIES FUND	A	Dividend	J	T					
7. B-NY MELLON NATIONAL INTERMEDI ATE MUNICIPAL BOND FUND	B	Dividend	K	T					
8. -US TREASURY NOTE 1/2011	A	Dividend	K	T					
9. -US TREASURY NOTE DTD 10/2012	A	Dividend	K	T					
10. -US TREASURY NOTE 07/13	A	Dividend	K	T					
11. BROKERAGE ACCOUNT #1									
12. FED HOME LN MTG CORP	B	Dividend	L	T					
13. FED HOME LOAN BANKS	B	Dividend	L	T					
14. US TREASURY NT 11/12	B	Interest	L	T					
15. US TREAS INFLATION IND BOND	A	Interest	L	T					
16. US TREASURY NOTE 6/2016	B	Interest	L	T					
17. US TREASURY NOTE 12/16	B	Interest	L	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

Name of Person Reporting	Date of Report
Jackson, Richard B.	01/05/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. US TREASURY NOTE 7/17	A	Interest	L	T					
19. US TREASURY NOTE 5/10	A	Interest							
20. GEN ELECT CAP CPR 9/17	A	Interest	K	T					
21. WELLS FARGO CO 5.25% 10/12	B	Interest	K	T					
22. AETNA INC	B	Interest	K	T					
23. PFIZER INC	B	Interest	K	T					
24. GOLDMAN SACHS GROUP INC	B	Interest	K	T					
25. AT & T INC	B	Interest	K	T					
26. ISHARES S&P GSCI COMMODITY IND EXED TRUST	A	Interest	K	T					
27. AIM STIT TREASURY PORTFOLIO	A	Interest	L	T					
28. SPDR TRUST SERIES 1	D	Dividend	M	T					
29. ISHARES TR MIDCAP	B	Dividend	L	T					
30. SPDR DOW JONES INDUSTRIAL AVER AGE	D	Dividend	M	T					
31. ISHARES MSCI EAFE INDX FUND	D	Dividend	M	T					
32. RYDEX MANAGED FUTURES STRAT EGY FD		None	K	T					
33. ISHARES RUSSELL 1000 INDEX FUND	C	Dividend	M	T					
34. ISHARES TR S & P SMALL CAP 600	A	Dividend	L	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

Name of Person Reporting	Date of Report
Jackson, Richard B.	01/05/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. VANGUARD EMERGING MARKETS E TF	A	Dividend	L	T					
36. FED HOME LN MTG CORP	B	Dividend							
37. FED HOME LOAN BANK	C	Dividend	M	T					
38. FED NAT MTG ASSN	B	Dividend							
39. 401(k) #1									
40. -PIMCO TOTAL RETURN FUND	B	Dividend	K	T					
41. -DODGES & COX BALANCED FUND	B	Dividend	K	T					
42. -DODGE & COX STOCK FUND	B	Dividend	J	T					
43. -FIDELITY CONTRAFUND	B	Dividend	J	T					
44. -RAINIER LG CAP GROWTH EQUITY	B	Dividend	J	T					
45. -AMERICAN FUNDS EUROPACIFIC GR	B	Dividend	J	T					
46. BROKERAGE ACCOUNT #2									
47. CHEVRON CORP	B	Dividend	K	T					
48. EXXON MOBIL	C	Dividend	L	T					
49. AIR PRDTS AND CHEMICALS INC	A	Dividend	K	T					
50. EMERSON ELECTRIC CO	A	Dividend	K	T					
51. GENERAL ELECTRIC CO	A	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

Name of Person Reporting	Date of Report
Jackson, Richard B.	01/05/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. UNION PAC CORP	A	Dividend	K	T					
53. UNITED TECHNOLOGIES CORP	A	Dividend	K	T					
54. WALT DISNEY CO	A	Dividend	J	T					
55. JOHNSON CTLS INC	A	Dividend	J	T					
56. STARBUCKS CORP	B	Dividend	M	T					
57. NESTLE S A SPONSORED ADR REPSTG REG	A	Dividend	K	T					
58. PEPSICO INC	A	Dividend	K	T					
59. PROCTER & GAMBLE CO	B	Dividend	K	T					
60. ABBOTT L ABORATORIES	A	Dividend	J	T					
61. JOHNSON & JOHNSON	B	Dividend	K	T					
62. PFIZER INC	A	Dividend	J	T					
63. THERMO FISCHER SCIENTIFIC		None							
64. TEVA PHARMACEUTICAL INDS LTS	A	Dividend							
65. INVESCO LTD	A	Dividend	J	T					
66. ACE LTD	A	Dividend	K	T					
67. JP MORGAN CHASE & CO	A	Dividend	J	T					
68. MORGAN STANLEY	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

Name of Person Reporting	Date of Report
Jackson, Richard B.	01/05/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
69. STATE STREET CORP	A	Dividend	J	T					
70. US BANCORP	A	Dividend	J	T					
71. WELLS FARGO AND CO	A	Dividend	J	T					
72. ACCENTURE PLC	A	Dividend	J	T					
73. APPLE INC	A	None	K	T					
74. CISCO SYSTEMS INC	A	None	J	T					
75. GOOGLE INC	A	None	J	T					
76. HEWLETT PACKARD CO	A	Dividend	J	T					
77. INTEL CORP	A	Dividend	J	T					
78. MASTERCARD INC	A	Dividend							
79. MICROSOFT CORP	A	Dividend	J	T					
80. SALESFORCE.COM INC		None	J	T					
81. SEMPRA ENERGY	A	Dividend	J	T					
82. WATSON PHARMACEUTICALS INC	A	Dividend	J	T					
83. ZIMMER HOLDINGS INC	A	Dividend	J	T					
84. ISHARES MSCI EAFE INDEX FD	C	Dividend	M	T					
85. ISHARES MSCI EMERGING MARKETS FD	A	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

Name of Person Reporting	Date of Report
Jackson, Richard B.	01/05/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
86. VANGUARD EXTENDED MARKET VI PERS INDEX FUND	A	Dividend	L	T					
87. DENVER CO CITY & CTY SCHOOL DS TRICT	B	Interest	L	T					
88. CASTLE PINES NORTH MET DIST CO	C	Interest	L	T					
89. THORNTON CO DTD	B	Interest	L	T					
90. RANGELY CO SCH DIST RE 4	B	Interest	L	T					
91. SNOWMASS VIG CO	B	Interest	L	T					
92. FLORIDA HSG FIN CORP REV	B	Interest	K	T					
93. UNIV COLOR ENTERPRISE SYS REV	B	Interest	L	T					
94. METROPOLITAN TRANSN AUTH NY	B	Interest	L	T					
95. METRO WASTEWTR RECLAM DSTR CO	B	Interest	L	T					
96. EL PASO CTY CO REV	B	Interest	L	T					
97. BNY MELLON MUNICIPAL OPPORT UNITIES	B	Dividend	K	T					
98. BNY MELLON NATL MUNI MONEY MKT FUND	A	Dividend	M	T					
99. HILLSBOROUGH CTY FL BOND	C	Interest							
100. ORACLE CORP	A	Dividend							
101. COMCAST CORP	A	Dividend							
102. HUDSON CITY BANCORP INC	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

Name of Person Reporting	Date of Report
Jackson, Richard B.	01/05/2011

VII. INVESTMENTS and TRUSTS *-- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
103. EXELON CORP	A	Dividend							
104. IRA #2									
105. -DREYFUS PR LRG CAP EQ FD	A	Dividend	L	T					
106. -VANGUARD FTSE ALL WORLD EX US INDEX FD	A	Dividend	K	T					
107. -VANGUARD EXTEND MKT VIPERS IN DEX FD	A	Dividend	J	T					
108. -BNY MELLON INTERM BOND FUND C LASS M	B	Dividend	K	T					
109. -DREYFUS PREMIER LTD TERM HIGH YIELD FD	A	Dividend	J	T					
110. -AIM STIT TREASURY PORTFOLIO	A	Interest	J	T					
111. BROKERAGE ACCOUNT #3									
112. DREYFUS LARGE FUND GROWTH F UND CLASS I	A	Dividend	K	T					
113. BROKERAGE ACCOUNT #4									
114. AMERICAN STRATEGIC INCOME P ORTFOLIO	B	Dividend	K	T					
115. CIT GROUP INC NEW		None	J	T					
116. GABELLI DIVIDEND & INCOME TRUST	A	Dividend	J	T					
117. AIM INV INVESCO VAN KAMPEN COR P BOND FD.	B	Dividend	K	T					
118. AIM INV INVESTCO VAN KAMPEN HI GH YD FD CLASS A	A	Dividend	K	T					
119. WELLS FARGO FDS TR SPECI TECHN		None							

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

Name of Person Reporting	Date of Report
Jackson, Richard B.	01/05/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
120. CIT GROUP INC NEW NOTE 5/13	A	Dividend	J	T					
121. CIT GROUP INC NEW 5/14	A	Dividend	J	T					
122. CIT GROUP INC NEW 5/15	A	Dividend	J	T					
123. CIT GROUP INC NEW 5/16	A	Dividend	J	T					
124. CIT GROUP INC NEW 5/17	A	Dividend	J	T					
125. GENERAL ELEC CAPITAL CORP MID TERM NOTE	A	Dividend	J	T					
126. WELLS FARGO BANK (VARIOUS A CCOUNTS)	A	Interest	K	T					
127. TRUST #1									
128. -SPDR TRUST SERIES 1	A	Dividend	K	T					
129. -SPDR DOW JONES INDUSTRIAL AVER TRUST	A	Dividend	K	T					
130. -ISHARES MSCI EAFE INDEX FD	A	Dividend	J	T					
131. -I-SHARES MSCI EMERGING MKTS FD	A	Dividend	J	T					
132. -VANGUARD EXTENDED MKT VIPERS INDX FD	A	Dividend	K	T					
133. -BNY MELLON NATL INTER MUN BD FUND	A	Dividend	L	T					
134. -BNY MELLON NATL MUNI MONEY MKT FD	A	Dividend	J	T					
135. -US TREASURY BILL	A	Interest	J	T					
136. -DIAMONDS TR	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

Name of Person Reporting	Date of Report
Jackson, Richard B.	01/05/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
137. TRUST #2									
138. -SPDR TRUST SERIES 1	B	Dividend	L	T					
139. -SPDR DOW JONES INDUSTRIAL AV TRUST	B	Dividend	L	T					
140. -ISHARES MSCI EAFE INDX FD	A	Dividend	K	T					
141. -ISGARES MSCI EMERGING MKTS IN DX FD	A	Dividend	J	T					
142. -VANGUARD EXTENDED MTK VIPERS	A	Dividend	K	T					
143. -COLO ST BD GOVERNORS UNIV ENT	B	Interest	L	T					
144. -BOULDER CNT CO SALES TAX	B	Interest	L	T					
145. -BNY MELLON NTL INT MUN BD FD	C	Dividend	L	T					
146. -US TREASURY NOTE 3/11	A	Interest	K	T					
147. -US TREASURY NOTE 7/12	A	Interest	K	T					
148. -BNY MELLONNATL MUNI MONEY MKT FD	A	Dividend	K	T					
149. -DIAMONDS TR	B	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

Name of Person Reporting	Date of Report
Jackson, Richard B.	01/05/2011

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

Name of Person Reporting	Date of Report
Jackson, Richard B.	01/05/2011

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Richard Drake Jackson

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

R. Brooke Jackson

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		30	968	Notes payable to banks-secured			
U.S. Government securities—see schedule		341	044	Notes payable to banks-unsecured			
Listed securities—see schedule	4	077	285	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable —primary residence		143	187
Real estate owned—primary residence		900	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		85	840				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		143	187
				Net Worth	5	291	950
Total Assets	5	435	137	Total liabilities and net worth	5	435	137
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor —child's home loan	1	125	000	Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities

U.S. Treasury Notes	$ 287,968
U.S. Treasury Inflation Indexed Bond	53,076
Total U.S. Government Securities	$ 341,044

Listed Securities

Account #1	
VANGUARD VALUE VIPERS	$ 68,116
VANGUARD FTSE ALLWORLD EX US	43,522
VANGUARD EXTENDED MARKET VIPERS	37,625
VANGUARD GROWTH VIPERS	73,031
BNY MELLON NATIONAL INTERMED MUN BOND	46,258
BNY MELLON MUNICIPAL OPPORTUN FUND	9,951
CRA BNY MELLON	12,506
ACCRUED INCOME	377
Account #2	
SPDR TRUST V SERIES 1	256,536
SPDR DOW JONES INDUSTRIAL AVERAGE	254,493
ISHARES MSCI EAFE INDEX FD	173,632
ISHARES TR S&PMIDCAP400 INDEX	129,686
ISHARES RUSSELL 1000 INDEX FD	165,614
ISHARES TR S&PSMALLCAP 600	62,351
VANGUARD EMERGING MARKETS ETF	75,596
FEDERAL HM LN MTGE CORP	52,436
FEDERAL HOME LOAN BANK	102,625
FEDERAL NATL MTG ASSN	54,156
RYDEX MAN FUTURE STRATEGY	19,680
FEDERAL HOME LOAN BANKS	57,641
AETNA INC	25,654
WELLS FARGO COMPANY	26,880
PFIZER INC	27,451
GOLDMAN SACHS GROUP INC	26,951
GENERAL ELEC CAP CORP	27,536
AT&T INC	28,576
ISHARES S&P GSCI COMMODITY	17,818
THE AIM STIT TREASURY PORTFOLIO	112,103
ACCRUED INCOME	7,570
Account #3	
PIMCO TOTAL RETURN FUND	49,383
DODGE AND COX BALANCED FUND	38,466
DODGE AND COX STOCK FUND	11,967
FIDELITY CONTRAFUND	14,503
RAINIER LG CAP GROWTH EQUITY	11,777
AMERICAN FUNDS EUROPACIFIC GR	15,610
Account #4	
CHEVRON CORP	44,048
EXXON MOBIL CORP	100,862
AIR PRODUCTS & CHEMICALS	25,866

EMERSON ELECTRIC	19,550
GENERAL ELECTRIC CO	9,498
UNION PAC CORP	20,275
UNITED TECHNOLOGIES CORP	22,581
THE WALT DISNEY COMPANY	9,675
JOHNSON CTLS INC	8,199
STARBUCKS CORP	134,640
NESTLE S A SPONSORED ADR REPSTG REG	42,416
PEPSICO INC	25,852
THE PROCTER & GAMBLE CO	47,940
ABBOTT LABORATORIES	8,139
JOHNSON & JOHNSON	43,085
PFIZER INC	9,291
INVESCO LIMITED	10,327
ACE LTD	17,556
JP MORGAN CHASE & CO	13,090
MORGAN STANLEY	6,115
STATE STREET CORP	9,288
US BANCORP	8,680
WELLS FARGO & COMPANY	16,326
ACCENTURE PLC	17,328
APPLE INC	20,225
CISCO SYSTEMS INC	13,412
GOOGLE INC	11,114
HEWLETT PACKARD CO	10,902
INTEL CORP	16,926
SALESFORCE.COM INC	13,922
WATSON PHARMACEUTICALS	10,967
MICROSOFT CORPORATION	11,260
ZIMMER HOLDINGS INC	9,852
SEMPRA ENERGY	10,018
ISHARES MSCI EAFE INDEX FD	117,473
ISHARES MSCI EMERGING MARKETS INDEX	43,437
VANGUARD EXTENDED MARKET VIPERS	103,916
DENVER CO CITY & CNTY SCH DISTR	50,004
CASTLE PINES NORTH MET DIST COLO	79,564
THORNTON CO DTD	56,077
RANGELY CO SCH DIST RE 4	55,819
SNOWMASS VIG CO	55,973
FLORIDA HSG FIN CORP REV	35,068
UNIVERSITY COLO ENTERPRISE SYST REV	51,164
METROPOLITAN TRANSN AUTH NY	53,038
METRO WASTEWTR RECLMATION DIS COLO	53,289
EL PASO CNTY COLOR REV	54,496
BNY MELLON MUNIPICAL OPPORTUNITIES FD	24,879
BNY MELLON NATL MUNI MONEY MKT FD M	176,149
ACCRUED INCOME	10,969
Account #5	
DREYFUS PR LRGE CAP EQ	63,800
VANGUARD FTSE ALL WORLD EX US	21,423
VANGUARD EXTENDED MARKET VIPERS	18,845
BNY MELLON INTERMEDIATE BOND FUND CL M	46,756
DREYFUS PREMIER LTD TERM HIGH YIELD FUND	4,706
THE AIM STIT TREASURY PORTFOLIO	5,644
ACCRUED INCOME	123

Account #6	
DREYFUS LARGE CAP GROWTH FUND CLASS I	24,691
Account #7	
AMERICAN STRATEGIC PORTFOLIO INCOME INC	14,784
CIT GROUP INC NEW	4,814
GABELLI INCOME AND DIVIDEND TRUST	12,801
AIM INVESCO VAN KAMPEN CORP BOND FUND	24,403
AIM INVESCO VAN KAMPEN HIGH YIELD FUND CLASS A	20,691
CIT GROUP NEW SECURED NOTE SER A	1,420
CIT GROUP NEW SECURED NOTE SER A	2,106
CIT GROUP NEW SECURED NOTE SER A	2,096
CIT GROUP NEW SECURED NOTE SER A	3,486
CIT GROUP NEW SECURED NOTE SER A	4,843
GENERAL ELECTRIC CAPITAL MED. TERM NOTE	5,006
ACCRUED INTEREST	15,881
Total Listed Securities	$ 4,077,285