

NO. 45075-5-II

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

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

MIGUEL GARCIA,

Appellant.

RESPONDENT'S BRIEF

SUSAN I. BAUR
Prosecuting Attorney
AARON BARTLETT/WSBA 39710
Deputy Prosecuting Attorney
Representing Respondent

HALL OF JUSTICE
312 SW FIRST
KELSO, WA 98626
(360) 577-3080

TABLE OF CONTENTS

	PAGE
A. ANSWERS TO ASSIGNMENTS OF ERROR.....	1
B. STATEMENT OF THE CASE.....	1
C. ARGUMENT.....	5
THE STATE'S EVIDENCE WAS SUFFICIENT TO PROVE THAT MR. GARCIA POSSESSED METHAMPHETAMINE WITH THE INTENT TO DELIVER.	5
D. CONCLUSION	8

TABLE OF AUTHORITIES

	Page
CASES	
<i>State v. Brown</i> , 68 Wn.App. 480, 843 P.2d 1098 (1993).....	6
<i>State v. Callahan</i> , 77 Wn.2d 27, 459 P.2d 400 (1969).....	6
<i>State v. Camarillo</i> , 115 Wn.2d 60, 794 P.2d 850 (1990).....	5
<i>State v. Delmarter</i> , 94 Wn.2d 634, 618 P.2d 99 (1980)	5
<i>State v. Gallagher</i> , 112 Wn.App. 601, 51 P.3d 100 (2002).....	6
<i>State v. Harris</i> , 14 Wn.App. 414, 542 P.2d 122 (1975).....	6
<i>State v. Salinas</i> , 119 Wn.2d 192, 829 P.2d 1068 (1992)	5
<i>State v. Walton</i> , 64 Wn. App. 410, 824 P.2d 533 (1992).....	6
STATUTES	
RCW 69.50.401(1).....	1
RCW 69.50.435(1)(c)	1
RCW 9.94A.535(3)(c)	1

A. ANSWERS TO ASSIGNMENTS OF ERROR

1. The State presented sufficient evidence to prove the offense charged.

B. STATEMENT OF THE CASE

- 1) Procedural History

On March 4, 2013 the Cowlitz County Prosecuting Attorney filed an information charging Miguel Tadeo Garcia¹ with Violation of the Uniform Controlled Substances Act – Possession with the Intent to Deliver methamphetamine. CP 1-2.² The information included the allegation that the offense took place within 1,000 feet of a school bus stop and provided notice that an exceptional sentence was sought because the alleged offense was a major violation of the Uniform Controlled Substances Act.³ The case proceeded to a jury trial before The Honorable Michael Evans, which commenced on June 18, 2013 and concluded on June 19, 2013. RP 1-356.

The jury found Mr. Garcia guilty as charged and answered the special verdict forms in the affirmative. RP 344-49; CP 50-53; CP 54.

¹ The appellant is also known as Gabriel Contrera-Patino.

² RCW 69.50.401(1).

³ RCW 69.50.435(1)(c); RCW 9.94A.535(3)(e).

The court imposed an exceptional sentence of 70 months, which included the school bus stop enhancement. RP 356-66; CP 54-70. Mr. Garcia filed a timely notice of appeal. CP 71-72.

2) Statement of Facts

On February 27, 2013 a fugitive apprehension team comprised of members from several local law enforcement agencies received information that a wanted person was located at the residence at 837 7th avenue in Longview, Washington. RP 18, 54, 89-90, 175, 196. Officers setup surveillance at the home and watched it for about five to ten minutes prior to performing a knock-and-talk. RP 21-23, 55, 196-98. The wanted person was not found within the home. RP 24, 91.

While the officers were surveilling the home and conducting the search for the wanted person within it they noticed activity outside by a shed. RP 22, 24-25, 33-35, 55, 198. Daphne Kraabell, a resident of the home, was observed exiting the shed. RP 24-25, 64, 142, 177, 181-82, 198. She was contacted and explained that one person remained in the shed. RP 25-26, 92, 116.

Because they were still looking for the wanted person, officers approached the shed, knocked, announced their presence, and asked for

the person inside to exit. RP 25-26, 92-93, 115-16, 178. Mr. Garcia then exited the shed, though whether he did so immediately or after a delay that was more than typical was the subject of conflicting testimony. RP 26, 57, 92, 139, 178, 183-84. When Mr. Garcia exited the shed he was calm and followed the directions of officers. RP 93, 138, 186. Next, officers entered the shed and in plain view observed a pound of packaged methamphetamine, drug paraphernalia, currency bundled in 20, 50, and 100 dollar denominations, a scale with drug residue, and plastic bags. RP 27-28, 94. After the discovery of the drug evidence the officers immediately exited the shed, had Mr. Garcia and Ms. Kraabell arrested, and applied for a search warrant to search the shed. RP 28, 55, 65-66, 132, 141-42, 180-81.

The shed was secured while officers obtained the search warrant, and during that time an officer noticed a surveillance camera attached to the outside of the shed. RP 202, 212-16. When the search warrant was executed officers seized the items they discovered after the initial entry into the shed and also noticed a small video monitor on a work bench, which was turned on, and displayed the approach to the shed. RP 59, 62-63, 68, 70, 79, 95-114, 202-07. In addition, the officers seized needles,

baggies similar in size to those found at street-level drug transactions, and a blue measuring container coated in drug residue. RP 59, 62-63, 103-04, 114, 193, 204-05. The money that was seized was counted and totaled between \$6,300 and \$6,800 and the methamphetamine that was seized was tested and confirmed as methamphetamine as well as determined to weigh 44 grams (just short of a pound). RP 95, 146-58. Aside from the drug evidence, the shed also contained yard tools, duct tape, and an air compressor. RP 75, 77-78, 80, 101.

At trial, the court read two stipulations to the jury. RP 235, 296-297. The first was an agreed stipulation that informed the jury that shed where the evidence was found was less than 1,000 feet from a school bus stop for the Longview School District, located at 835 Eighth Avenue, that the bus that stops at that location seats more than ten people, including the driver, is regularly used to transport students to and from school, and is owned and operated by the Longview School District. RP 235. The second stipulation was proposed by Mr. Garcia and informed the jury of the following: “Daphne Kraabell was charged with conspiracy to commit a drug crime, delivery of methamphetamine, alleged to have occurred on February 27, 2013. She pled guilty to that charge on May 20, 2013, by

admitting that she had the intent to deliver methamphetamine and she agreed with another person to engage in that conduct, and she took a substantial step in pursuance of that agreement.” RP 275-95, 296-97.

C. ARGUMENT

THE STATE’S EVIDENCE WAS SUFFICIENT TO PROVE THAT MR. GARCIA POSSESSED METHAMPHETAMINE WITH THE INTENT TO DELIVER.

Evidence is sufficient to support a conviction if, when viewed in a light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” *Salinas*, 119 Wn.2d at 201. Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Moreover, “the specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability.” *Id.* The reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v.*

Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). In order to determine whether the necessary quantum of proof exists, the reviewing court “need not be convinced of the defendant’s guilt beyond a reasonable doubt but only that substantial evidence supports the State’s case.” *State v. Gallagher*, 112 Wn.App. 601, 613, 51 P.3d 100 (2002) (citations omitted).

Possession of a controlled substance may be actual or constructive. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). Constructive possession means the person charged with possession has or had dominion and control over the substance. *Id.* The intent to deliver a controlled substance cannot be established from possession alone; rather, possession must be accompanied by an additional factor suggesting the intent to deliver. *State v. Brown*, 68 Wn.App. 480, 483-85, 843 P.2d 1098 (1993); *State v. Harris*, 14 Wn.App. 414, 418, 542 P.2d 122 (1975).

Here, the reasonable inference that can be drawn from the State’s evidence, especially when viewed in the light most favorable to the State, is that Mr. Garcia and Ms. Kraabell were involved in a major drug transaction in the shed when the officers arrived at the scene. Given the stipulation that was entered regarding Ms. Kraabell, the large amount of

cash, the large amount of methamphetamine, the various implements used to break down, weigh, and package the methamphetamine for smaller drug deals, the surveillance equipment, and the fact that Mr. Garcia was found in the shed with the aforementioned items; any inference other than that Mr. Garcia was with whom Ms. Kraabell conspired to deliver methamphetamine is far-fetched. If Mr. Garcia wanted to go in the shed to retrieve tools for yard work, or was otherwise innocently present at the scene, one would imagine that Ms. Kraabell would not allow him to enter the shed or leave him alone in there with a quantity of methamphetamine worth approximately \$10,000 and almost \$7,000 in cash. Consequently, Mr. Garcia's presence in the shed is sufficient to prove his possession of the methamphetamine and the rest of the evidence produced at trial plainly indicates, as a matter of logical probability, his intent to deliver the controlled substance.


D. CONCLUSION

For the reasons argued above, Mr. Garcia's conviction should be affirmed.

Respectfully submitted this 10th day of January, 2014.

SUSAN I. BAUR
Prosecuting Attorney

By:


AARON BARTLETT
WSBA # 39710
Deputy Prosecuting Attorney
Representing Respondent

APPENDIX A

RCW 69.50.401

Prohibited acts: A — Penalties.

(1) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(2) Any person who violates this section with respect to:

(a) A controlled substance classified in Schedule I or II which is a narcotic drug or flunitrazepam, including its salts, isomers, and salts of isomers, classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(b) Amphetamine, including its salts, isomers, and salts of isomers, or methamphetamine, including its salts, isomers, and salts of isomers, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in

the manufacture of the methamphetamine, including its salts, isomers, and salts of isomers. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

(c) Any other controlled substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(d) A substance classified in Schedule IV, except flunitrazepam, including its salts, isomers, and salts of isomers, is guilty of a class C felony punishable according to chapter 9A.20 RCW; or

(e) A substance classified in Schedule V, is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(3) The production, manufacture, processing, packaging, delivery, distribution, sale, or possession of marijuana in compliance with the terms set forth in RCW 69.50.360, 69.50.363, or 69.50.366 shall not constitute a violation of this section, this chapter, or any other provision of Washington state law.

[2013 c 3 § 19 (Initiative Measure No. 502, approved November 6, 2012); 2005 c 218 § 1; 2003 c 53 § 331. Prior: 1998 c 290 § 1; 1998 c 82 § 2; 1997 c 71 § 2; 1996 c 205 § 2; 1989 c 271 § 104; 1987 c 458 § 4; 1979 c 67 § 1; 1973 2nd ex.s. c 2 § 1; 1971 ex.s. c 308 § 69.50.401.]

Notes:

Intent -- 2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Application -- 1998 c 290: "This act applies to crimes committed on or after July 1, 1998." [1998 c 290 § 9.]

Effective date -- 1998 c 290: "This act takes effect July 1, 1998."
[1998 c 290 § 10.]

Severability -- 1998 c 290: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 290 § 11.]

Application -- 1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability -- 1989 c 271: See note following RCW 9.94A.510.

Severability -- 1987 c 458: See note following RCW 48.21.160.

Serious drug offenders, notice of release or escape: RCW 72.09.710.

RCW 69.50.435

**Violations committed in or on certain public places or facilities —
Additional penalty — Defenses — Construction — Definitions.**

(1) Any person who violates RCW 69.50.401 by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under RCW 69.50.401 or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana to a person:

- (a) In a school;
- (b) On a school bus;
- (c) Within one thousand feet of a school bus route stop designated by the school district;
- (d) Within one thousand feet of the perimeter of the school grounds;
- (e) In a public park;
- (f) In a public housing project designated by a local governing authority as a drug-free zone;
- (g) On a public transit vehicle;
- (h) In a public transit stop shelter;
- (i) At a civic center designated as a drug-free zone by the local governing authority; or

(j) Within one thousand feet of the perimeter of a facility designated under (i) of this subsection, if the local governing authority specifically designates the one thousand foot perimeter

may be punished by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment. The provisions of this section shall not operate to more than double the fine or imprisonment otherwise authorized by this chapter for an offense.

(2) It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop, in a public park, in a public housing project designated by a local governing authority as a drug-free zone, on a public transit vehicle, in a public transit stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (1)(i) of this section, if the local governing authority specifically designates the one thousand foot perimeter.

(3) It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of eighteen were not present in the school, the school bus, the public park, the public housing project designated by a local governing authority as a drug-free zone, or the public transit vehicle, or at the school bus route stop, the public transit vehicle stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (1)(i) of this section, if the local governing authority specifically designates the one thousand foot perimeter at the time of the offense or that school was not in session.

(4) It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW 69.50.401 for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(5) In a prosecution under this section, a map produced or reproduced by any municipality, school district, county, transit authority engineer, or public housing authority for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or a civic center designated as a drug-free zone by a local governing authority, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the municipality, school district, county, or transit authority has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or civic center designated as a drug-free zone by a local governing authority. Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the

governing body of a municipality, school district, county, transit authority, or public housing authority if the map or diagram is otherwise admissible under court rule.

(6) As used in this section the following terms have the meanings indicated unless the context clearly requires otherwise:

(a) "School" has the meaning under RCW 28A.150.010 or 28A.150.020. The term "school" also includes a private school approved under RCW 28A.195.010;

(b) "School bus" means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students such as transportation of students through a municipal transportation system;

(c) "School bus route stop" means a school bus stop as designated by a school district;

(d) "Public park" means land, including any facilities or improvements on the land, that is operated as a park by the state or a local government;

(e) "Public transit vehicle" means any motor vehicle, streetcar, train, trolley vehicle, or any other device, vessel, or vehicle which is owned or operated by a transit authority and which is used for the purpose of carrying passengers on a regular schedule;

(f) "Transit authority" means a city, county, or state transportation system, transportation authority, public transportation benefit area, public transit authority, or metropolitan municipal corporation within the state that operates public transit vehicles;

(g) "Stop shelter" means a passenger shelter designated by a transit authority;

(h) "Civic center" means a publicly owned or publicly operated place or facility used for recreational, educational, or cultural activities;

(i) "Public housing project" means the same as "housing project" as defined in RCW 35.82.020.

[2003 c 53 § 346. Prior: 1997 c 30 § 2; 1997 c 23 § 1; 1996 c 14 § 2; 1991 c 32 § 4; prior: 1990 c 244 § 1; 1990 c 33 § 588; 1989 c 271 § 112.]

Notes:

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Findings -- Intent -- 1997 c 30: "The legislature finds that a large number of illegal drug transactions occur in or near public housing projects. The legislature also finds that this activity places the families and children residing in these housing projects at risk for drug-related crimes and increases the general level of fear among the residents of the housing project and the areas surrounding these projects. The intent of the legislature is to allow local governments to designate public housing projects as drug-free zones." [1997 c 30 § 1.]

Findings -- Intent -- 1996 c 14: "The legislature finds that a large number of illegal drug transactions occur in or near publicly owned places used for recreational, educational, and cultural purposes. The legislature also finds that this activity places the people using these

facilities at risk for drug-related crimes, discourages the use of recreational, educational, and cultural facilities, blights the economic development around these facilities, and increases the general level of fear among the residents of the areas surrounding these facilities. The intent of the legislature is to allow local governments to designate a perimeter of one thousand feet around publicly owned places used primarily for recreation, education, and cultural activities as drug-free zones." [1996 c 14 § 1.]

Purpose -- Statutory references -- Severability -- 1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability -- 1989 c 271: See note following RCW 9.94A.510.

RCW 9.94A.535

Departures from the guidelines.

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(i) The defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose.

(j) The current offense involved domestic violence, as defined in RCW 10.99.020, and the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury - Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, "metal property" means commercial metal property, private metal property, or nonferrous metal property, as defined in RCW 19.290.010.

(aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership.

(bb) The current offense involved paying to view, over the internet in violation of RCW 9.68A.075, depictions of a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (g).

(cc) The offense was intentionally committed because the defendant perceived the victim to be homeless, as defined in RCW 9.94A.030.

(dd) The current offense involved a felony crime against persons, except for assault in the third degree pursuant to RCW 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber. This subsection shall apply only: (i) During the times when a courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and (ii) if signage was posted in compliance with RCW 2.28.200 at the time of the offense.

(ee) During the commission of the current offense, the defendant was driving in the opposite direction of the normal flow of traffic on a multiple lane highway, as defined by RCW 46.04.350, with a posted speed limit of forty-five miles per hour or greater.

[2013 2nd sp.s. c 35 § 37. Prior: 2013 c 256 § 2; 2013 c 84 § 26; 2011 c 87 § 1; prior: 2010 c 274 § 402; 2010 c 227 § 10; 2010 c 9 § 4; prior: 2008 c 276 § 303; 2008 c 233 § 9; 2007 c 377 § 10; 2005 c 68 § 3; 2003 c 267 § 4; 2002 c 169 § 1; 2001 2nd sp.s. c 12 § 314; 2000 c 28 § 8; 1999 c 330 § 1; 1997 c 52 § 4; prior: 1996 c 248 § 2; 1996 c 121 § 1; 1995 c 316 § 2; 1990 c 3 § 603; 1989 c 408 § 1; 1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10. Formerly RCW 9.94A.390.]

Notes:

Intent -- 2010 c 274: See note following RCW 10.31.100.

Intent -- 2010 c 9: See note following RCW 69.50.315.

Severability -- Part headings, subheadings not law -- 2008 c 276: See notes following RCW 36.28A.200.

Captions not law -- Severability -- 2007 c 377: See RCW 19.290.900 and 19.290.901.

Intent -- Severability -- Effective date -- 2005 c 68: See notes following RCW 9.94A.537.

Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application -- 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Effective date -- 1996 c 121: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1996]." [1996 c 121 § 2.]

Effective date -- Application -- 1990 c 3 §§ 601 through 605: See note following RCW 9.94A.835.

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17 through 35: See note following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

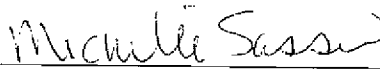
CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

Ms. Catherine E. Glinski
Attorney at Law
P.O. Box 761
Manchester, WA 98353-0761
cathyglinski@wavecable.com

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on January 10th, 2014.



Michelle Sasser

COWLITZ COUNTY PROSECUTOR

January 10, 2014 - 4:26 PM

Transmittal Letter

Document Uploaded: 450755-Respondent's Brief.pdf

Case Name: State of Washington v. Miguel Garcia

Court of Appeals Case Number: 45075-5

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Michelle Sasser - Email: sasserm@co.cowlitz.wa.us

A copy of this document has been emailed to the following addresses:
cathyglinski@wavecable.com