NO. 42305-7-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

JOSHUA NATHAN REESE, Appellant

Appeal from the Superior Court of Pierce County
The Honorable Rosanne Buckner, Department No. 6
Pierce County Superior Court Cause No. 10-1-01902-4

Amended BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR:

1. 1. The trial court erred when it found that Mr. Reese had committed the crimes of first degree robbery (two counts),second degree assault (two counts); where the State failed to prove these charges beyond a reasonable doubt.

a. The trial court erred when it entered the following findings of fact [FOF]] in its Findings of Fact and Conclusions of Law re: Bench Trial: II, III,IV,V,VI,VII,VIII, IX, X, XI, XII.

b. The trial court erred when it entered the following conclusions of law [COL] in its Findings of Fact and Conclusions of Law re: Bench Trial: III, IV,V, VI,VII, VIII.

2. The trial court erred when it denied an evidentiary hearing on Mr. Reese's CrR 3.6 (See Appendix A) Motion where the illegal stop, subsequent illegal arrest, search and seizure of physical evidence, statements, otherwise should have been suppressed as "fruit of the poisonous tree".

a. The trial court erred when it entered undisputed finding of Fact [FOF] re: CrR Hearing 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 23.

b. The trial court erred when it entered Conclusions of Law [COL] re: Hearing: 3, 4, 5, 6, 7, 8, 9, 10.

3. Trial counsel failed to provide effective assistance of counsel when counsel, for no legitimate strategic or tactical reason, persuaded Mr. Reese to waive his constitutional right to jury trial and instead have his case decided by a trial court which had presided over two jury trials on

codefendants in the same case and had heard all of the evidence and the verdicts in those cases, and thereafter decided Mr. Reese's case after sixty seconds of deliberation.

4. The trial court erred when it imposed an exceptional sentence where the reasons given by the sentencing judge are not supported by the record under the clearly erroneous standard, do not justify a departure from the standard range under the de novo standard of review, and where the sentence is clearly too excessive under the abuse of discretion standard.

a. The trial court erred when it entered the following findings of fact [FOF]] in its Findings of Fact and Conclusions of Law re: Exceptional Sentence, thereby mandating reversal of the sentence and remand for resentencing: V, VI, VII, VIII, XIII, XV, XVI, XVII, XVIII.

b. The trial court erred when it entered the following conclusions of law [COL] in its Findings of Fact and Conclusions of Law re: re: Exceptional Sentence, thereby mandating reversal of the sentence and remand for resentencing II, VIII, IX, X, XI, XII, XIII.

5. The trial court miscalculated Mr. Reese's offender score, thereby requiring a resentencing hearing.

a. The trial court erred when it entered Findings of Fact [FOF] and Conclusions of Law for Exceptional Sentence FOF V.

b. The trial court erred when it entered Findings of Fact and Conclucions of Law [COL] for Exceptional Sentence COL II,VII, VIII, IX, X,

B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR:

1. The State has burden to prove the charges beyond a reasonable doubt. The trial court in a bench trial is required to enter findings of fact to support every element of any charge of conviction. These findings of fact must support the conclusions of law. Where the trial court's findings are deficient and the trial court has failed to find sufficient evidence to support the convictions, the defendant is entitled to reversal of the conviction and remand of the case for dismissal of the conviction.

2. The Fourth Amendment protects against unreasonable searches and seizures. Evidence seized subsequent to illegal searches and/or seizures must be suppressed and cannot be used at trial because it is "fruit of the poisonous tree". A criminal defendant in Washington has a legal right to challenge the admissibility of such evidence with testimony if required to present the motion.

3. When the trial court enters an exceptional sentence, the trial court's sentence must be based on substantial and compelling reasons, and (1) the trial court's reasons must be supported by the record; (2) the stated reasons must justify an exceptional sentence as a matter of law; and (3) the trial court cannot abuse its discretion by imposing a sentence that was clearly excessive or clearly too lenient. If the trial court imposes an exceptional sentence in violation of these principles, the trial court's sentence is contrary to law and cannot stand. The defendant is entitled to resentencing.

4. Mr. Reese was denied his constitutional right to effective assistance of counsel when trial counsel, for no legitimate strategic or tactical reason, persuaded him to waive his jury trial right and have his case heard by a trial court that had presided over the two separate jury trials of codefendants, knew the evidence and the verdicts in those cases, and spent less than sixty seconds deliberating in this case.

5. The trial court erred when it denied trial counsel's motion for an evidentiary hearing on the CrR 3.6 motion when that would have resulted in the exclusion of certain physical evidence and statements as "fruits of the poisonous tree".

6. The Sentencing Reform Act, RCW Chapter 9.94A, requires the trial court to sentence a criminal defendant using, inter alia, a correctly calculated offender score. When the trial court fails to do so, the trial court must resentence the defendant using the correct offender score.

C. STATEMENT OF THE CASE:

1. PROCEDURAL FACTS:

The State of Washington charged Joshua Reese in Pierce County Superior cause number 10-1-01902-4 in the original Information with the crimes of Murder in the First Degree, Robbery in the First Degree, and Assault in the Second Degree. CP 3-5. Mr. Reese was charged with co-defendants Clabon Terrel Berniard, Kiyoshi Alan Higashi and Amanda

Christine Knight. CP 9-12. The Honorable Roseanne Buckner, Department 6, heard the defendants' motions for severance and granted them.

The cases proceeded to trial before juries in Department 6 in the following order: Kiyoshi Alan Higashi, (see Appendix A) Amanda Christine Knight, (see Appendix B) Appellant, Joshua Reese and Clabon Terrel Berniard. The cases received substantial publicity in the media. CP 169-277. By the time of Mr. Reese's trial, the first two trials had been completed before the Honorable Roseanne Buckner. RP 206.

On day of trial, Mr. Reese entered a waiver of jury which was accepted by the trial court. RP 53, 57-60, 61; CP 363-364.

The trial court denied Mr. Reese's motion to hold a CrR 3.6 hearing with witness testimony. RP 442-444.

On June 1, 2011, the parties anticipated starting the CrR 3.6 (See Appendix C) RP 61. Trial counsel informed the court that the defendant required testimony from California police officer, Daly City Officer Klier, who made the initial stop of the vehicle in which Mr. Reese had been riding at the time of his arrest. RP 62. The State urged the court to resolve the matter based on the pleadings. RP 62.

Trial counsel argued that the trial court needed Officer Klier's testimony to resolve the stop/seizure issue RP 608 On that date, May 1, 2010, at about 11:50 a.m., Mr. Reese was a passenger in a car being driven by codefendant Amanda Knight. RP 304-305.

Officer Klier noticed Knight's car and observed that there was no front license plate on the front bumper. RP 305. At that time Officer Klier was 30-40 yards away and across 3 or 4 lanes of traffic. RP 316-317. He believed this to be a violation of ***California Vehicle Code 5204***. (See Appendix D)

Officer Klier also initially noted his police report that upon his initial sighting of the white Ford, he noticed that Reese was not wearing his seat belt. RP 305, 318. Officer Klier then maintained that he did not see this until after he made the u-turn to get behind the car. RP 319. Officer Klier saw this even though Mr. Reese wore dark clothing. RP 318. Officer Klier saw this even though he could not see that Mr. Reese is African-American. RP 318-319.

Upon stopping the car, Mr. Reese got out of the car and got back in when Officer Klier asked him to. RP 307.

The car was registered to the driver, Amanda Knight. Mr. Reese gave an incorrect name to police. RP 307, 320. Officer Klier then conducted a pat-down of Mr. Reese for "any possible weapons identification". RP 308.

The license plate was on the dashboard above the steering wheel. RP 259.

Officer Klier arrested Knight Mr. Reese and a third individual codefendant Higashi on various California violations and took them to jail. RP 322, 33, 70. At the jail, the three were immediately recognized as the

individuals named in an All Points Bulletin from Washington as suspects in the Sanders murder case. RP 83.

Shortly after that arrest, California police contacted Pierce County Sheriff's Department detectives who flew to Daly City to interview Mr. Reese. RP 70. Pierce County Sheriff's detectives never asked whether Daley City Police had discussed this matter with Mr. Reese prior to their arrival. RP 83.

At the CrR 3.5 (Appendix E) hearing, Pierce County Sheriff's Department [PCSD] Lt. Karr testified that, along with Det. Jimenez, he contacted Mr. Reese on May 4, 2010, in the San Mateo county jail in Daly City, California. RP 70, 71. Jimenez read the Miranda rights form to Mr. Reese who acknowledged that he understood his rights, waived them, and agreed to speak to police, RP 70, 72-74. Mr. Reese consented to provide a taped statement and at the commencement of the tape he again acknowledged and waived his Miranda rights. RP 75.

Karr and Jimenez contacted Mr. Reese the next day, May 5, 2010, because they wanted to confront Mr. Reese about some recently learned information. RP 77. They again advised him of his rights and he again acknowledged and waived them. RP 78-79. Mr. Reese also provided a taped statement at that time. RP 79.

When PCSD officers Karr and Jimenez contacted Mr. Reese, they did not know whether Daly City Police or other law enforcement agency officers had spoken to Mr. Reese or attempted to speak to him. RP 83.

After hearing the evidence and arguments of counsel, the trial court ruled that Mr. Reese's statements to Det's. Karr and Jimenez were admissible. RP 106.

Mr. Reese argued that the court should suppress the California search and seizure and all of the evidence subsequent thereto. Trial counsel's argument was based on the factual impossibility of the officer's testimony and also upon his misunderstanding and misapplication of the law.

On June 7, 2011, the State filed its corrected second amended information to correct a scrivener's error on count V. RP 444-445; CP 137-141.

The defense rested. RP 445.

During closing argument, trial counsel correctly argued Mr. Reese's limited culpability in this venture:

> "So it's obvious what his complicity was in this thing. He was to go in and take property from the house. And yet we have individuals that went off separately and decided to commit separate crimes on their own, and the state is trying to attach accomplice liability to them based on the old law, not under the law as it is now." RP 474.

At the conclusion of the closing arguments and indeed *sixty seconds* later, the trial court immediately announced its verdict, convicting Mr. Reese

on every count as well as the aggravators of deliberate cruelty and high degree of sophistication and planning, with firearm enhancements on all counts. RP 494-498.

Regarding accomplice liability, the trial court stated:

> "The knowledge that was clear under these circumstances was that Mr. Reese, as well as Clabon and Kiyoshi Higashi, were armed with firearms for this home invasion robbery and that they could use this to intimidate, force, and assault individuals. Therefore their whole purpose in there was to rob the family of expensive items such as rings, and this is what was accomplished on the robbery charges in the first degree of both Charlene Sanders and James Sanders of their wedding rings that were taken from their fingers. So under these circumstances, the accomplice liability is clear for the assault and the robbery. It's also clear that Mr. Reese is guilty of burglary in the first degree and felony murder in the first degree." RP 495.

The court convened the sentencing hearing on June 28, 2011. RP 499. At that time, the State asked the court to impose an exceptional sentence based on Mr. Reese's criminal history and the argument that without an exceptional sentence he would have "free" or "unpunished" crimes. The court imposed an exceptional sentence, stating:

> "I am going to be accepting the state's recommendation for sentencing in this case. In this situation, we have an offender score of 13, which would result in un-scored crimes, and also aggravating factors on each count. In addition to criminal history of two prior felonies, you have nine misdemeanors and gross misdemeanors in a two-year period. And certainly anything less than the maximum of the standard range would be too lenient in this regard. Given the manifestation of deliberate cruelty, high degree of sophistication and planning, the request for the 340 additional

months exceptional sentence is certainly reasonable under these circumstances."

The court then sentenced Mr. Reese to 1200 months (100 years). CP 594-608. Mr. Reese thereafter timely filed this appeal. CP 590.

2. TRIAL TESTIMONY:

On April 28, 2010, James Sanders informed his wife Charlene Sanders that some people were coming to their residence at 36100 106th Avenue East in Edgewood to purchase a ring he advertised on Craig' list. RP 175. The Sanders were at home that evening with their children James Sanders, Jr., and Chandler, watching a movie while they waited for potential buyers. RP 174, 176-177.

After they arrived, Mr. Sanders left the room to talk to them, a man and a woman, about the ring. RP 177. Shortly thereafter he called Ms. Sanders to help to answer questions about the ring. RP 178.

The man then pulled out a wad of cash and asked "how about this?" RP 182. The man then pulled out a gun. RP 182. Mr. and Mrs. Sanders begged the man and woman to "take everything". RP 182. The man then ordered them to the floor where they were ordered to lie down face down before their hands were zip-tied behind their backs. RP 182-183.

Ms. Sanders later identified the two intruders who performed these acts as codefendants Higashi and Knight. RP 183. Ms. Sanders never could identify Mr. Reese as one of the intruders. RP 207, 256. Ms. Sanders next

heard the sound of individuals rushing into the house and possibly rushing upstairs. RP 185. Ms. Sanders very soon thereafter noticed that the boys were in the kitchen area by a desk. RP 186. The boys were not bound RP 186-187.

During this time, the male intruder repeatedly demanded the location of the safe. RP 187. Mr. and Mrs. Sanders repeatedly implored the intruders to take everything from their residence. RP 187. When Mrs. Sanders appeared to be looking around, she was kicked in the head. RP 187. At one point, the male held a gun to Mrs. Sanders' head and counted down. RP 187. Mrs. Sanders stopped the countdown by telling the male that there was a safe. RP 188. He asked where the other safe was and became infuriated when she said there was no other safe. RP 188. Jimmy Sanders, Jr. , identified the man who held the gun to Mrs. Sanders' head as Clabon Berniard. RP 344. During the countdown, Berniard kicked Mrs. Sanders in the face two times. RP 345. While this happened, Mr. Reese was upstairs in the residence. RP 470.

Mr. Sanders took Berniard to the garage, where there was a gun safe. RP 345. As they walked to the garage, Mr. Sanders freed himself from the zip ties and began to fight with Berniard. RP 345. Jimmy jumped onto Berniard and began to fight him. RP 346. Berniard pistol whipped Jimmy and inflicted a cut to his ear leaving a scar. RP 347. Jimmy has a lasting scar from this injury. RP 347.

At one point, Mr. Sanders and his son Jimmy got up and fought with two of the intruders. RP 215. During this altercation, Jimmy was struck in the ear, which began bleeding. RP 216.

Mr. Sanders and at least one of the men then went into the garage where the safe was. RP 188-189. Moments later, shots rang out. RP 190-192. Mr. Sanders had been shot and the intruders fled. RP 191-192.

Mrs. Sanders later noticed that her wedding ring was gone and she surmised that it was taken while her hands were zip-tied behind her back. RP 198-199. Mrs. Sanders did not know that Mr. Sanders' wedding ring was apparently gone until someone told her so later. RP 199. The wedding ring of James Sander, Sr. was removed from his finger at some unknown point during the events. Charlene Sanders testified that she "didn't even know that my husband got his ripped off until they told me he didn't have it on." RP 199. She realized it had been taken when Det. Jimenez showed her the ring a couple of days after the crimes. RP 199-200. After that, she speculated that this might have happened based on "movements" but she did not know for sure. RP 199. However, there was no evidence as to when or who took James Sanders, Sr. ring. ***Passim.***

On May 1, 2010, Officer Eddy Klier of the Daly City, California Police Department contacted Mr. Reese, a passenger in a car stopped for a possible license plate violation. RP 303 – 305. The vehicle did not have a front license plate on the front bumper. RP 305. In addition, as Klier drove in

the opposite direction toward that car, Klier observed that Mr. Reese was not wearing his seat belt. RP 305. Codefendant Knight was the driver. RP 309.

Mr. Reese did not provide a verifiable name to Klier and so he conducted a pat-down "for weapons or identification." RP 308.

Because Klier and a fellow officer believed that Mr. Reese and a rear passenger Higashi were passing drugs and/or a weapon, they handcuffed both men for further investigation. RP 309.

Klier arrested Mr. Reese for an infraction, considered him to be in custody, and did not advise him of his Miranda rights. RP 322.

Ms. Knight consented to a search of the vehicle, to include her backpack. RP 310. Ms. Knight's backpack contained both live and spent ammunition as well as a concealed weapons permit. RP 311-312. Police found and seized a black revolver type handgun with a red bandanna tied around the handle. This firearm was found underneath the front passenger seat where Mr. Reese had been sitting. RP 312.

Police cited Ms. Knight for possession of the firearm because she had dominion and control over the entire vehicle which was registered to her. RP 325. In addition, she possessed ammunition that fit the firearm. RP 325.

In his statement to police, Mr. Reese explained what had happened in the Sanders residence:

> "So we drove the car and parked. Amanda goes inside, and they do what they gonna do at the front door or whatever. We are all on Bluetooth, and there were certain words I'm

looking for to hear so I can go in the house to finish up to go up to where I got to go and do. I hear those words, I go upstairs, and I'm looking for some stuff. I see the little kids, told them to go downstairs. The other person I was with, you know what I'm saying, he grabs them and was yelling, woo woo woo. *I stay upstairs. I'm upstairs the whole time.* Then I hear some gunshots. I was in the house maybe more than about eight minutes tops. You understand, we was -- it felt like eight minutes, but when I heard the gunshots, it was kind of bad. I heard the first one." RP 472. (emphasis added)

Mr. Reese emphasized that purpose of the trip to the Sanders residence was to acquire expensive goods and not to harm anyone:

> "All I hear is shut up, shut the fuck up, dah dah dah dah, yelling and shit. I'm, like, ain't that -- nobody is this stupid. What the fuck? Nobody was dumb. You guys are making a hell of a lot of noise. You feel me? It's hell late, so quiet already. So I keep hearing this yelling. I'm not paying it no mind. I'm listening to it, but I'm still trying to get all the little things I can get so I can hurry up and leave. I mean, 'cause I ain't trying to have nobody get hurt. These mother-fuckers just yelling all kinds of weirdo shit. I'm like --And then again, just a hear a little bit more of all, you are going to run automatically going to be there to counsel them and yelling at them, hitting them, screaming at them and telling them to shut the fuck up. You are just making the situation worse. We are already wrong for going inside this house anyway. You feel me. And then towards the bottom (reading:) You are wrong for doing that, so by you going in there and putting your hands on them and doing all that extra kind of shit, you made the situation worse." RP 473.

D. LAW AND ARGUMENT:

1. MR. REESE'S CONVICTIONS MUST BE DISMISSED FOR INSUFFICIENCY OF THE EVIDENCE WHERE THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT HE COMMITTED THE CHARGED CRIMES AND THUS THE TRIAL COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW FROM BENCH TRIAL ARE LEGALLY INSUFFICIENT.

A challenge to the sufficiency of the evidence presented at a bench trial requires the appellate court to review the trial court's findings of fact and conclusions of law to determine whether substantial evidence supports the challenged findings and whether the findings support the conclusions. ***State v. Moore***, 161 Wn.2d 880, 885, 169 P.3d 469 (2007). The appellate court reviews challenges to a trial court's conclusions of law de novo. ***State v. Gatewood***, 163 Wn.2d 534, 539, 182 P.3d 426 (2008).

"A finding of fact is the assertion that a phenomenon has happened or is or will be happening independent of or anterior to any assertion as to its legal effect." 1 (internal quotation marks omitted) (quoting ***Leschi Improvement Council v. Wash. State Highway Comm'n***, 84 Wn.2d 271, 283, 525 P.2d 774, 804 P.2d 1 (1974)). "Where findings necessarily imply one conclusion of law the question still remains whether the evidence justified that conclusion." ***Id.***

The reviewing court must consider the evidence in the light most favorable to the State. ***State v. Rempel***, 114 Wn.2d 77, 82, 785 P.2d 1134 (1990). Evidence is sufficient to support a conviction if, after viewing the

evidence and all reasonable inferences in a light most favorable to the State, a rational trier of fact could find each element of the crime proven beyond a reasonable doubt. ***State v. Green***, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). When a defendant is charged as an accomplice, the reviewing court necessarily must closely examine whether there is substantial evidence to establish that the defendant was an accomplice to the crime.

Under ***RCW 9A.08.020(3)(a)(i)-(ii)***, an accomplice is one who, "[w]ith knowledge that it will promote or facilitate the commission of THE crime . . . encourages . . . or aids" another person in committing a crime. In other words, an accomplice associates himself with the venture and takes some action to help make it successful. ***In re Welfare of Wilson***, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979). More specifically, the evidence must show that the accomplice aided in the planning or commission of THE crime and that he had knowledge of THE crime. ***State v. Trout***, 125 Wn. App. 403, 410, 105 P.3d 69, *review denied*, 155 Wn.2d 1005 (2005). Where criminal liability is predicated on accomplice "liability," the State must prove only the accomplice's general knowledge of his co-participant's substantive crime; the State need not prove the accomplice's specific knowledge of the elements of the co-participant's crime. ***State v. Rice***, 102 Wn.2d 120, 125, 683 P.2d 199 (1984).

Thus, accomplice liability follows only where the State proves the accomplice has general knowledge of the specific crime the principal intends

to commit, rather than general knowledge that the principal intended a crime. ***State v. Roberts***, 142 Wn.2d 471, 512-13, 14 P.3d 713 (2000) (accomplice liability follows only where the State proves the accomplice has general knowledge of the specific crime the principal intends to commit, rather than general knowledge that the principal intended a crime); see also ***State v. Cronin***, 142 Wn.2d 568, 578-79, 14 P.3d 752 (2000).

But mere presence of the defendant, without aiding the principal, despite knowledge of the ongoing criminal activity, is not sufficient to establish accomplice liability. ***State v. Parker***, 60 Wn. App. 719, 724-25, 806 P.2d 1241 (1991) (citing ***In re Wilson***, 91 Wn.2d at 492). Similar to a person who is merely present, a victim of a crime committed by another person cannot be an accomplice in that crime. ***RCW 9A.08.020(5)(a)***; a "victim" is a person who suffers injury as a direct result of a crime. ***City of Auburn v. Hedlund***, 165 Wn.2d 645, 651, 653, 201 P.3d 315 (2009).

Under ***RCW 9A.08.020(3)(a)***, an individual is guilty as an accomplice if he or she "solicits, commands, encourages, or requests" another person to commit a crime or aids in its planning or commission, knowing that his or her act will promote or facilitate the commission of the crime. The State must prove more than a person's physical presence at the crime scene and assent to establish accomplice liability. ***State v. Everybodytalksabout***, 145 Wn.2d 456, 472-73, 39 P.3d 294 (2002). But "the State need not show that the principal and accomplice share the same mental state." ***State v. Hoffman***, 116 Wn.2d

51, 104, 804 P.2d 577 (1991) (internal quotation marks omitted) (quoting ***State v. Guloy***, 104 Wn.2d 412, 431, 705 P.2d 1182 (1985)). "The word 'aid' means all assistance whether given by words, acts, encouragement, support, or presence." ***11 Washington Practice***: Washington Pattern Jury Instructions: Criminal 10.51, at 217 (3d ed. 2008).

RCW 9A.08.020(3) sets forth the definition of accomplice:

(3) A person is an accomplice of another person in the commission of a crime if:

(a) With knowledge that it will promote or facilitate the commission of the crime, he or she:

(i) Solicits, commands, encourages, or requests such other person to commit it; or

(ii) Aids or agrees to aid such other person in planning or committing it; or

(b) His or her conduct is expressly declared by law to establish his or her complicity.

This statute "requires only a mens rea of knowledge, and an actus reus of soliciting, commanding, encouraging, or requesting the commission of the crime, or aiding or agreeing to aid in the planning of the crime." ***State v. Roberts***, 142 Wn.2d 471, 502, 14 P.3d 713 (2000). The Legislature intended to impose accomplice liability upon those having "'the purpose to promote or facilitate the particular conduct that forms the basis for the charge'" and not to

impose such liability "'for conduct that does not fall within this purpose.'" ***In re Personal Restraint of Sarausad,*** 109 Wn. App. 824, 835, 39 P.3d 308 (2001) (quoting ***Roberts***, 142 Wn.2d at 510-11) (emphasis omitted). Whether a defendant participates in a crime as an accomplice or a principal, his or her culpability is the same. ***State v. McDonald***, 138 Wn.2d 680, 688, 981 P.2d 443 (1999).

The State can prove a crime either through direct or circumstantial evidence or some combination of both. *See* ***State v. Delmarter***, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). But criminal intent may be inferred only where the conduct of the defendant is "'plainly indicated as a matter of logical probability.'" ***State v. Johnson***, 159 Wn. App. 766, 774, 247 P.3d 11 (2011) (quoting ***Delmarter***, 94 Wn.2d at 638).

The State establishes knowledge by proving: (i) [the defendant] is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or

(ii) [the defendant] has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense. ***RCW 9A.08.010(b)***.

When the State fails to prove the defendant's guilt beyond a reasonable doubt, the, defendant is entitled to dismissal of the charge. This is so because the reversal for insufficient evidence is deemed an acquittal

terminating jeopardy. ***State v. Wright***, 131 Wn. App. 474, 478, 127 P.3d 742 (2006), *aff'd*, 165 Wn.2d 783, 203 P.3d 1027 (2009).

In the instant case, the trial court erroneously found that Mr. Reese was an accomplice in the crime of crimes of robbery, assault, and burglary. The trial court's findings are unsupported by the substantial evidence and its conclusions of law are not supported by the findings, as argued in the following sections.

> a. The trial court's findings of fact and conclusions of law fail to establish that Mr. Reese committed the crime of first degree robbery against Charlene Sanders. where there was insufficient evidence to prove Mr. Reese's guilt, his conviction must be reversed and remanded for dismissal.

The State lacked failed to prove beyond reasonable doubt that Mr. Reese was an accomplice to the crime of first-degree robbery committed against Charlene Sanders, Count IV. CP 629-641.

RCW § 9A.56.20 defines robbery in the first-degree in pertinent part: (1) a person is guilty of robbery in the first-degree if: (a) in the commission of a robbery or in immediate flight there from, he or she: (I) is armed with a deadly weapon; or (ii) displays with appears to be a firearm or other deadly weapon; or (iii) inflicts bodily injury.

In its Findings of Fact and Conclusions of Law VI, the trial court expressly found that the robbery of Charlene Sanders was limited to the forcible removal of his wedding ring from her finger at a time prior to Mr. Reese's entry into the house and at a time when there had been no discussion

or plans to remove/steal/take property directly from the persons of anyone inside the house. The trial court made no other Findings of Fact and Conclusions of Law regarding any robbery related to Charlene Sanders.

In the instant case, the trial court's Findings of Fact 5 is State failed to prove beyond a reasonable doubt that Mr. Reese committed the crime of first-degree robbery against Charlene Sanders. As the trial court found in Findings of Fact II, the defendants' plan was to enter the residence, tie up Mr. Sanders, and then take expensive items. The defendants had determined there was only one person, Mr. Sanders, who could thwart their plan and their pre-entry plan focused on capturing and disabling only Mr. Sanders. There was absolutely no intention to restrain and/or harm Charlene Sanders in any way. It appears that after codefendants Higashi and Knight entered the residence and well before Mr. Reese was inside, Higashi and Knight changed the plan. Codefendant Higashi pointed his firearm at Ms. Sanders, ordered her to the floor, tied her up, and forcibly removed her wedding ring prior to Mr. Reese's entry into the residence. Findings of Fact V. Mr. Reese absolutely had no knowledge that Higashi would commit the crime of first-degree robbery against Charlene Sanders by forcibly removing anything from her person. Mr. Reese's intention at most was to steal the expensive ring Mr. Sanders had listed for sale on Craigslist and to take other expensive items in the home. Findings of Fact II. The plan did not contemplate taking any property from

the person of anyone. The trial court did not find evidence of any plan to commit any personal crimes against Ms. Sanders.

In its Conclusion of Law V, finding Mr. Reese guilty of first-degree robbery against Ms. Sanders, the trial court focused on Higashi's actions. The trial court notably made no conclusions of law whatsoever regarding Mr. Reese's culpability as an accomplice. The trial court's failure to make specific findings regarding any accomplice conduct of Mr. Reese's affirms that the State failed to prove this charge beyond a reasonable doubt.

In Findings of Fact 5, the court found "the robbery of Charlene Sander's wedding ring occurred shortly after Knight and Sanders entered the Sanders' residence". At that time, Mr. Reese had not entered the residence. And, as noted, in Findings of Fact 2, Mr. Reese made no plans to commit any crimes against Charlene Sanders.

Based on the evidence adduced at trial, there was no evidence that Mr. Reese knowingly promoted or facilitated the commission of the crime by soliciting, commanding, encouraging, or requesting another person to commit the crime; or aiding or agreeing to aid such other person in planning or committing the crime. Thus, the trial court's factual finding that Mr. Reese committed first degree robbery against Charlene Sanders as an accomplice is not supported by sufficient evidence.

Because Mr. Reese did not commit the crime of first-degree robbery against Charlene Sanders, he is entitled to vacation of the firearm enhancement along with dismissal of his conviction.

Because the trial court's Findings of Fact for this count of robbery against Charlene Sanders is not supported by evidence beyond a reasonable doubt, the trial court's conclusion of law (equivalent of verdict) must be reversed.

Based on the authority cited above, this court must remand this charge to the trial court for entry of an order of dismissal.

> b. The trial court's findings of fact and conclusions of law fail to establish that Mr. Reese committed the crime of first degree robbery against James Sanders. where there was insufficient evidence to prove Mr. Reese's guilt, his conviction must be reversed and remanded for dismissal.

The argument here is essentially the same as that for the insufficiency of the evidence to convict Mr. Reese of the crime of first degree robbery against Mr. Sanders, Count II. In Findings of Fact, the trial court expressly found that the defendants intended to restrain Mr. Sanders, assault him with a firearm, use force and the threat of force to steal the expensive ring that Mr. Sanders had listed for sale on Craigslist and to take other expensive items in the house.

In its Findings of Fact and Conclusions of Law, the trial court expressly found that the robbery of James Sanders was limited to the removal of her wedding ring from his finger at a time when Mr. Reese was not in the

house and at a time when there had been no discussion or plans to remove/steal/take property from any persons inside the house. The trial court made no other Findings of Fact and Conclusions of Law regarding any robbery related to James Sanders.

Again, in Conclusions of Law VI, the trial court found that codefendants Knight and Higashi robbed Mr. Sanders of his ring shortly after they entered the residence and prior to Mr. Reese's entry into the residence. Conclusions of Law VI. At that time Mr. Reese was not even in the residence. He was not aware of any plan to commit robbery of an item from the person of Mr. Sanders. In Conclusions of Law IV finding Mr. Reese guilty of first-degree robbery against Mr. Sanders, the trial court focused on Knight and Higashi's actions.

Based on the evidence adduced at trial, there was no evidence that Mr. Reese knowingly promoted or facilitated the commission of the crime by soliciting, commanding, encouraging, or requesting another person to commit the crime; or aiding or agreeing to aid such other person in planning or committing the crime. The trial court made no specific factual findings that permit this court to determine upon what evidence (versus mere conclusory statements) the trial court found Mr. Reese to be an accomplice. Thus, the trial court's factual finding that Mr. Reese committed first degree robbery against James Sanders as an accomplice is not supported by sufficient

evidence. The Findings of Fact are wholly insufficient to support Conclusions of Law IV.

The trial court notably made no conclusions of law whatsoever regarding Mr. Reese's culpability as an accomplice. The trial court's failure to make specific findings regarding any accomplice conduct of Mr. Reese's affirms that the State failed to prove this charge beyond a reasonable doubt. Because Mr. Reese did not commit the crime of first-degree robbery against James Sanders, he is entitled to vacation of the firearm enhancement along with dismissal of his conviction.

Based on the authority cited above, this court must remand this charge to the trial court for entry of an order of dismissal.

> c. The trial court's findings of fact and conclusions of law fail to establish that Mr. Reese committed the crime of second degree assault against Charlene Sanders. where there was insufficient evidence to prove Mr. Reese's guilt, his conviction must be reversed and remanded for dismissal.

It is axiomatic that mere presence is insufficient to establish accomplice liability. As the Supreme Court held in ***State v. Renneberg***, 83 Wn.2d 735, 739, 522 P.2d 835 (1974), "assent to the crime alone is not aiding and abetting, . . . the instruction correctly required a specific criminal intent, not merely passive assent, and the state of being ready to assist or actually assisting by his presence." As argued infra, the State was required to prove that Mr. Reese shared the general intent of the principal of the crime.

The State charged Mr. Reese and the codefendants with assault in the second degree, ***RCW 9A.36.021(a),(c)***, for acts committed against Charlene Sanders, count V. To prove second degree assault beyond a reasonable doubt the State had to prove that under circumstances not amounting to first-degree assault, a person intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or assaults another with a deadly weapon. ***RCW 9A.04.110(b)*** defines "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.

The trial court found that Mr. Reese's accomplice Clabon Berniard assaulted Charlene Sanders when he intentionally kicked her in the head which recklessly inflicted substantial bodily harm while repeatedly demanding the location and combination to the family safe. The trial court further found that this same accomplice assaulted Charlene Sanders by holding a deadly weapon, a semiautomatic pistol, to her head. Findings of Fact VII, Conclusions of Law VII. CP 629-641.

In this case, even viewing the evidence in the light most favorable to the State and drawing all reasonable inferences there from in the State's favor, the trial court's findings of fact are not supported by substantial evidence to prove that Mr. Reese committed the crime of second degree assault against Ms. Sanders. The trial court found that codefendant Clabon Berniard

committed all of the acts that satisfied all of the elements of the offense. FOF VII. The trial court found that Mr. Reese's actions during Berniard's assault of Ms. Sanders were focused on the sons James Sanders, Jr. and Chandler Kittelson. FOF X. The trial court also found that Mr. Reese was intent on making sure that the boys watched the codefendants beat their helpless mother and torment their father, ultimately killing their father. Of course there is not a scintilla of evidence in the record that Mr. Reese stayed in the kitchen after he walked the boys there. Not a single witness testified that he remained in the kitchen. Passim. In FOF II, the trial court found that Mr. Reese and the codefendants intended to use force and threat of force only against Mr. Sanders to steal the ring that had been advertised on Craigslist and other expensive items in the house The trial court did NOT find that Mr. Reese intended that force or threat of force should be used against anyone else in the residence. Thus Mr. Reese could not have known that any of the codefendants had the general intent to assault Charlene Sanders.

Without conceding the truth of that finding of fact, Mr. Reese contends that the trial court's finding of fact absolves him of any accomplice liability in the actual assault. Forcing someone to watch an event simply does not make that person responsible for the event. The trial court's finding of fact is insufficient. The trial court's conclusion of law VII fails to identify any conduct by Mr. Reese making him guilty of second degree assault against Ms. Sanders. Likewise, because he did not commit any assault upon

Charlene Sanders, he cannot be penalized for Clabon Berniard's use of a firearm in the assault upon her.

Mr. Reese apparently was not present even on the same floor of the residence when Berniard began to assault Charlene Sanders. Based on the evidence adduced at trial, there was no evidence that Mr. Reese knowingly promoted or facilitated the commission of the crime by soliciting, commanding, encouraging, or requesting another person to commit the crime; or aiding or agreeing to aid such other person in planning or committing the crime. Thus, the trial court's factual finding that Mr. Reese committed second degree assault by either charged alternative against James Sanders as an accomplice is not supported by sufficient evidence. The conclusions of law are not supported by the factual findings.

The trial court notably made no conclusions of law whatsoever regarding Mr. Reese's culpability as an accomplice. The trial court's failure to make specific findings regarding any accomplice conduct of Mr. Reese's affirms that the State failed to prove this charge beyond a reasonable doubt. Because Mr. Reese did not commit the crime of second-degree assault against Charlene Sanders, he is entitled to vacation of the firearm enhancement along with dismissal of his conviction.

Based on the authority cited above, this court must remand this charge to the trial court for entry of an order of dismissal.

d. The trial court's FOF & COL fail to establish that Mr. Reese committed the crime of first degree (felony) murder where the Sate charged as the predicate felony the robbery to James Sander, Sr.

In FOF VI and COL III, the Court found that codefendant Higashi and Knight removed James Sanders, Sr.'s wedding ring before Mr Reese entered the residence.

As argued above, Mr. Reese could not have been an accomplice to this act as it exceeded the "general intent" of the enterprise. See Accomplice Argument, pages

e. The trial court's refusal to convene a CrR 3.6 hearing denied Mr. Reese his fourth amendment protection oh law and resulted in the admission of statements, "fruit of the poisonous tree", that were unlawfully taken after an illegal arrest.

The Fourth Amendment of the United States Constitution controls the validity of the stop in this case. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The silver platter doctrine applies when (1) the foreign jurisdiction lawfully obtained evidence and (2) the forum state's officers did not act as agents or cooperate or assist the foreign jurisdiction in any way. ***State v. Brown***, 132 Wn.2d 529, 587-88, 940 P.2d 546 (1997). ***State v. Fowler***, 127

Wn. App. 676, 111 P.3d 1264 (2005), *affid* ***State v. Fowler***, 157 Wn.2d 387, 139 P.3d 342 (2006).

However, the fruit of the poisonous tree doctrine renders a lawful post-Miranda statement or confession inadmissible where the statement or confessions was tainted by previous unlawful government action. ***State v. Gaines***, 154 Wn.2d 711, 716-17. 116 P.2d993(2003).

In this case, Officer Klier's stop was unlawful. Because the trial court refused to permit an evidentiary hearing, Mr. Reese could not develop a complete record either for his argument or for this court's review.

In this case, Officer Klier could not have stopped Knight's car without a reasonable and articulable suspicion that a traffic offense or infraction was committed. ***Ren v. United States***, 517 U.S. 806, 111 (1996), and People v. White, 107, 12 Cal. App.4636 (2003).

In this case, Officer Klier wrote that his probable cause to stop the vehicle rested on a violation of California Vehicle Code 5204, which incorporates other states' vehicle licensing and attachment of plates into California law. (See Appendix D)

Officer Klier maintained stated that his probable cause to stop the vehicle was because it was in violation of California Vehicle Code 5204, which incorporates other states' vehicle licensing and attachment of plate laws into California law. ***Id.*** It makes it a violation of California law as well as if

they were California plates, in essence. ***Id.*** And yet Ms. Knight's car did not violate any of the provisions of California Vehicle Code 5204. ***Id.***

Officer Klier also attempted to bolster his probable cause on a claiming that he saw Mr. Reese riding without wearing a seat belt. However his claims were inconsistent. At one point, Officer Klier stated that upon first noticing the car he saw that Mr. Reese was not wearing a seat belt. RP 319. He later changed this account to testify that he in fact did not make that observation, which had been documented in his written report, until he made the u-turn to follow Knight's car, RP 318-319. Trial counsel wanted to adduce testimony at a CrR 3.6 hearing to resolve these inconsistencies which went to the very heart of whether Officer Klier had probable cause to stop Knight's car. Trial counsel had prepared as an exhibit a map showing the highways in the area to establish the unlikelihood of Klier's versions of events. (Supplemental CP Exhibit 51 3.5 Hearing)

As trial counsel argued:

> The officer stated that upon initially conducting his stop that -- well, it depends. In his probable cause statement he states that he noted Mr. Reese was not wearing his seat belt upon conducting the initial traffic stop. But yet in his statement narrative, he said that he noticed it upon the initial immediate sighting of the vehicle. So they are actually two very different locations. So the officer's testimony regarding the basis for the stop should have been the subject of testimony so that Mr. Reese could have developed a record to establish that the stop was pre-textual made by an officer from a police department which had a copy of the Pierce County Sheriff's Bulletin and was actively looking for the suspects.

Based on the record made, the trial court erred when it admitted Mr. Reese's statements which were "fruit of the poisonous tree."

Illegally obtained evidence of a crime is subject to the exclusionary rule. The rule does not, however, bar prosecution of the crime itself. As Justice Holmes noted, "if knowledge of [the facts obtained illegally] is gained from an independent source they may be proved like any others." ***Silverthorne Lumber Co. v. United States***, 251 U.S. 385, 392, 64 L. Ed. 319, 40 S. Ct. 182 (1920) (quoted in ***Wong Sun v. United States***, 371 U.S. 471, 485, 9 L. Ed. 2d 441, 83 S. Ct. 407 (1963)).

In ***Wong Sun***, the court held that the poisonous tree doctrine required the exclusion of inculpatory statements obtained as a result of the illegality. ***Wong Sun v. United States*** (1963) 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441, holding that inculpatory statements obtained by an entry in violation of the ***Fourth Amendment*** must be excluded as the fruit of the illegal entry.

> "Verbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest as the officers' action in the present case is no less the 'fruit' of official illegality than the more common tangible fruits of the unwarranted intrusion. . . . Nor do the policies underlying the exclusionary rule invite any logical distinction between physical and verbal evidence. Either in terms of deterring lawless conduct by federal officers [citation omitted], or of closing the doors of the federal courts to any use of evidence unconstitutionally obtained [citation omitted], the danger in relaxing the exclusionary

> rules in the case of verbal evidence would seem too great to warrant introducing such a distinction."

(371 U.S. at 485-86, 83 S. Ct. at 416.)

A confession obtained through custodial interrogation after an illegal arrest should be excluded unless intervening events break the causal connection between the illegal arrest and the confession so that the confession is "'sufficiently an act of free will to purge the primary taint.'" ***Brown v. Illinois*, supra**, at 602 (quoting ***Wong Sun* v. *United States***, 371 U.S. 471, 486 (1963)).

Thus, the court generally must suppress evidence taken during an illegal search and detention. This evidence extends to statements made by a defendant. In order for such statements to be admissible, the court must determine that the taint from the illegal search and detention was sufficiently attenuated, Mr. Reese's later statements must be suppressed. ***Wong Sun v. United States***, 371 U.S. 471, 9 L. Ed. 2d 441, 83 S. Ct. 407 (1963). This court reviews de novo the mixed question of fact and law whether evidence deriving from an illegal search is sufficiently tainted to require suppression, because legal concepts must be applied and judgment exercised about the values that animate the Fourth Amendment." United States v. Johns, 891 F.2d 243, 244 (9th Cir. 1989).

The pivotal question in determining attenuation is "whether,

granting establishment of the primary illegality, the evidence . . . has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." ***Wong Sun***, 371 U.S. at 487-88 (internal quotation marks omitted). In order to determine whether Mr. Reese's statements to Pierce County detectives were "come at by exploitation of" the illegal search and detention, this court considers three factors: (1) the temporal proximity of the illegal search and detention to the statement; (2) the presence of any intervening circumstances; and, "particularly " (3) the "purpose and flagrancy" of the official misconduct. ***Taylor v. Alabama***, 457 U.S. 687, 690, 73 L. Ed. 2d 314, 102 S. Ct. 2664 (1982); ***Dunaway v. New York***, 442 U.S. 200, 218, 60 L. Ed. 2d 824, 99 S. Ct. 2248 (1979); ***Brown v. Illinois***, 422 U.S. 590, 603-04, 45 L. Ed. 2d 416, 95 S. Ct. 2254 (1975). The "burden of showing admissibility rests, of course, on the prosecution." ***Brown***, 422 U.S. at 604. the instant case, this court should find that the prosecution cannot meet that burden..

1. Temporal Proximity

The relevant question for attenuation purposes is whether this passage of time would have in any way dissipated Mt. Reese's perception that the searches had produced evidence such that his remaining silent would be useless, or decreased the extent to which the government's confronting him with the illegally seized evidence induced his statements.

To draw any conclusions from the timing of a defendant's confessions, the court must consider the temporal proximity factor in conjunction with the presence of intervening circumstances." ***United States v. Shetler***, 665 F.2d 1150, 1159 (9th Cir.2011) ***United States v. Reed***, 349 F.3d 457, 464 (7th Cir. 2003). There is "no 'bright-line' test for temporal proximity in an attenuation analysis." ***United States v. $186,416.00 in United States Currency***, 590 F.3d 942, 951 (9th Cir. 2010) (holding that a two month gap between an illegal search and a defendant's subsequent declaration was not sufficient to render the declaration attenuated from the search); *see also* ***6 Wayne R. LaFave, Search and Seizure*** 307, § 11.4(c) (4th ed. 2004) (observing that "the ***Brown"*** 'temporal proximity' factor is of virtually no significance" when evaluating a confession that followed an illegal search). In ***Shetler***, the court held that there was no reason to think that the passage of 36 hours weakened the causal connection between the illegal searches and Shetler's statements, particularly because the DEA agents may have confronted Shetler with illegally seized evidence during the interview in which he made those statements. This was so even though Shelter had been properly informed of his constitutional right prior to making any statement.

Similarly, in the instant case, there are likewise no intervening circumstances that break the causal chain between the searches and the

confession. Although Mr. Reese did receive ***Miranda*** warnings at the traffic stop and before each of the PCSD *United* interviews in California, such warnings were insufficient to "purge the taint of a temporally proximate prior illegal" act. ***States v. Washington***, 387 F.3d 1060, 1075 (9th Cir. 2004). As the Supreme Court declared in ***Brown***, "Any incentive to avoid Fourth Amendment violations would be eviscerated by making [*Miranda*] warnings, in effect, a 'cure-all,' and the constitutional guarantee against unlawful searches and seizures could be said to be reduced to 'a form of words.'" 422 U.S. at 602-03 (quoting ***Mapp v. Ohio***, 367 U.S. 643, 648, 81 S. Ct. 1684, 6 L. Ed. 2d 1081, 86 Ohio Law Abs. 513 (1961)).[4]

After Mr. Reese was placed into custody, Daly City police immediately called Pierce County Sheriff's Department detectives who flew to California. During that interval Mr. Reese remained in custody. Mr. Reese had been arrested for traffic infractions/violations and doubtless his mind was focused on those matters. In this situation Mr. Reese had no opportunity to consider his situation, to organize his thoughts regarding any possible future police contacts regarding the Pierce County matter, to contemplate his constitutional rights, and to exercise his free will. Mr. Reese spent the intervening period in detention, and did not speak to a lawyer

The temporal proximity factor thus resolves in Mr. Reese's favor.

2. Intervening Circumstances

There are likewise no intervening circumstances that break the causal chain between the searches and the confession. Like Shetler, Mr. Reese spent the intervening period in detention, and did not speak to a lawyer. Although like Shetler, Mr. Reese did receive ***Miranda*** warnings on at least three occasions after the illegal searches resulting from the "traffic infractions" and before his confession in the Daly City Jail, such warnings have been deemed insufficient to "purge the taint of a temporally proximate prior illegal" act. ***United States v. Washington***, 387 F.3d 1060, 1075 (9th Cir. 2004). As the Supreme Court declared in ***Brown***, "Any incentive to avoid Fourth Amendment violations would be eviscerated by making [***Miranda***] warnings, in effect, a "cure-all", and the constitutional guarantee against unlawful searches and seizures could be said to be reduced to 'a form of words.'" 422 U.S. at 602-03 ***Mapp v. Ohio***, 367 U.S. 643, 648, 81 S. Ct. 1684, 6 L. Ed. 2d 1081, 86 Ohio Law Abs. 513 (1961)).

3. "Purpose and Flagrancy" of the Official Misconduct

The clear purpose of the illegal pretextual stop and subsequent seizure to arrest individuals who appeared to possibly be those identified in the PCSD all points bulletin and to find evidence that could be used

against them.. The evidence found during these searches was, of course, the very same evidence we have determined to be causally connected to Mr. Reese's statements. "Because this unbroken "causal chain" links the initial illegality and [Mr. Reese's] subsequent statement[s], the [statements are] not 'sufficiently an act of free will to purge the primary taint from the [officials] unlawful actions." ***$186,416.00 in U.S. Currency***, 590 F.3d at 953 (quoting ***Brown***, 422 U.S. at 602). The State's error was not harmless beyond a reasonable doubt.

Because the government did not bear the burden of proving that Mr. Reese's statements were knowing, intelligent, and voluntary, the trial court's "Undisputed" FOF 1-24 on 3.5. Hearing are not supported by the record and its COL 1 – 10 are not supported by the FOF. Because the trial court refused to permit Mr. Reese from putting on witnesses, Mr. Reese was unable to elicit testimony from Officer Klier about the booking process and detention conditions at the California jail. This testimony would have been relevant to Mr.. Reese's argument that the ***Fourth Amendment*** violation was so proximate to his statements as to render them inadmissible.

As the result of the ***Fourth Amendment*** violations which would have and should have been resolved at an evidentiary hearing, the trial

court erroneously admitted trial exhibits139, 1143, 144, 148, 171. (SUPP CP) as well as Mr. Reese's statements.

Mr. Reese's statements were the product of the illegal stop, seizure and search of the vehicle. Although the trial court erred in denying Mr. Reese's motion for an evidentiary hearing, Mr. Reese submits that the record suffices to establish his argument. Alternatively this court should remand the matter to superior court for a full evidentiary hearing pursuant to CrR 3.6.

e. The trial court erred when it imposed an exceptional sentence where the reasons supplied by the sentencing judge were not supported by the record and/or do not justify an exceptional sentence.

As stated herein, "To reverse a sentence which is outside the standard sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient." ***RCW 9.94A.585(4)***.

In this case, the trial court's exceptional sentence of 1200 months or 100 years was "clearly excessive." CP 594-608.

Mr. Reese was born on May 21, 1989. He was sentenced on September 30, 2011. At time of sentencing, he was 22 years, 4 months, and 9

days old. As calculated by the State, and Mr. Reese does not concede the accuracy of this calculation, the high end of Mr. Reese's standard range for murder in the first degree was 548 months. COL XIV; CP 594-608. In addition, the court sentenced Mr. Reese to 4 firearm enhancements of 60 months which by law run consecutively for a total of 240 months as well as 2 deadly weapon enhancements of 36 months which by law run consecutively for a total of 72 months. The 312 (26 years) gun enhancements are flat time, meaning that Mr. Reese is ineligible for earned early release time. COL XVIII. ***RCW 9.94A.553(3)(e),(4)(e)***. By the State's calculation, Mr. Reese's sentence thus was 860 months (71.6 years). Assuming that Mr. Reese did not earn any earned early release time, he would not be eligible for release until he was approximately 94 years old.

Dissatisfied with the length of this sentence, the trial court piled on an additional 340 months (28.3 years), thus potentially imprisoning Mr. Reese until the age of 122.3 years. Unless the Department of Corrections places Mr. Reese on life support, Mr. Reese is highly unlikely to serve even the standard range as calculated by the State plus the enhancements. It is well neigh impossible that he could ever serve the 100 year exceptional sentence.

Mr. Reese respectfully submits that the trial court imposed a sentence that was "clearly excessive." The trial court regrettably followed the unfortunate recent trend among trial courts to impose ridiculously long sentences apparently to impress victims and the public with their "toughness."

Of course, that is not the purpose of the SRA or the criminal law. Therefore this court must reverse the exceptional sentence as "clearly excessive."

In 1981, the Washington Legislature enacted what has come to be known as the ***Sentencing Reform Act*** [SRA]. ***RCW Chapter 9.94A***. The statutory goal was in pertinent part: "The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to "(1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;" ***RCW 9.94A.010.***

The intent of the SRA thus was to sentence defendants as individuals rather than to sentence all codefendants in a crime to identical sentences. The rationale of this is clear. Each individual bears individual culpability which must be taken into account when he/she is sentenced. Washington is not an "in for a penny, in for a pound" state. Thus Washington courts must carefully determine individual liability prior to imposing sentence.

The SRA set forth standard ranges or presumptive sentences which are based on an individual's criminal history as well as the serious level of offenses that are then factored onto a grid yielding a standard range sentence. The SRA grants limited discretion to trial courts to impose sentences outside the standard ranges. ***RCW 9.94A.535***. These sentencing departures, or exceptional sentences, are subject to appellate review.

The trial court's discretion to impose a sentence outside the standard range is limited. These "exceptional sentences" may be imposed if the trial court finds considering the purposes of the SRA, that, inter alia, there are "substantial and compelling" reasons justifying the imposition of an exceptional sentence. ***RCW 9.94A.535***

The SRA provides: "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." ***RCW 9.94A.535***. In this case, the trial court imposed an exceptional sentence for four reasons: (1) Mr. Reese's conduct manifested deliberate cruelty based on the statutory aggravator that "the defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim." ***RCW 9.94A.535***.(a) (2) Mr. Reese's crimes evinced a high degree of planning and sophistication based on the statutory aggravator that "the offense involved a high degree of sophistication or planning", ***RCW 9.94A.535***(m); (3) Mr. Reese's misdemeanor history resulted in a sentence that allowed some crimes to go unpunished and/or was too lenient based on the statutory aggravator that "the defendant's prior un-scored misdemeanor . . . .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***. ***RCW 9.94A.535(2)(b)***"; and (4) that Mr. Reese's high offender score and his multiple convictions result in two of his current crimes going unpunished for each of defendant's six counts based on

the statutory aggravator that the defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished." ***RCW 9.94A.535(2)(c)***. CP 642-651.

Appellate review of an exceptional sentence involves a three-step analysis of whether: (1) the trial court's reasons are supported by the record; (2) the stated reasons justify an exceptional sentence as a matter of law; and (3) did the trial court abuse its discretion by imposing a sentence that was clearly excessive or clearly too lenient. ***State v. Scott***, 72 Wn. App. 207, 866 P.2d 1258 (1993), aff'd sub nom. ***State v. Ritchie***, 126 Wn.2d 388, 894 P.2d 1308 (1995); ***State v. Cardenas***, 129 Wn.2d 1, 914 P.2d 57 (1996).

Assuming that the sentencing court finds substantial and compelling reasons for imposing an exceptional sentence, it is permitted to use its discretion to determine the precise length of that sentence. ***State v. Ritchie,*** 126 Wn.2d 388, 392, 894 P.2d 1308 (1995); ***State v. Ross***, 71 Wn. App. 556, 568. 861 P.2d 473, 883 P.2d 329 (1993). A sentence is clearly excessive if it is imposed on untenable grounds, for untenable reasons. ***Ross***, 71 Wn. App. at 568-69. The question of whether a sentence is excessive is reviewed for an abuse of discretion. ***State v. Sanchez***, 69 Wn. App. 195, 207, 848 P.2d 735 (1993) (citing ***State v. Brown***, 60 Wn. App. 60, 76, 802 P.2d 803 (1990)) . In determining if the length of a particular sentence is appropriate, the court should consider "'whether the sentence imposed was one which no reasonable person would impose.'" ***Ross***, 71 Wn. App. at 571 (quoting ***State v. Batista***,

116 Wn.2d 777, 793, 808 P.2d 1141 (1991)) . A trial court does not abuse its discretion in determining the length of an exceptional sentence unless it relies upon an impermissible reason or imposes a sentence so long that it shocks the conscience of the reviewing court. ***Ross***, 71 Wn. App. at 571-72.

In this case, Mr. Reese applies the appropriate analysis to the exceptional sentence imposed in his case and established that the exceptional sentence is improper as a matter of law.

The statutory factors identified as lawful bases for upward exceptional sentences all restrict their focus only to the conduct of the defendant. ***RCW 9.94A.535(3)***. There is nothing in the statue that permits the court to impose an exceptional sentence on a defendant for the conduct of a non-accomplice codefendant.

f. The trial court's reasons for imposing an exceptional sentence are not supported by the record.

(i) Mr. Reese did not act with "deliberate cruelty".

In Findings of Fact and Conclusions of Law X from Bench Trial, the court found that "defendant's conduct during the commission of the crime of first-degree murder, first-degree robbery (Charlene Sanders), first-degree robbery (James Sanders), second degree assault (James Sanders, Jr.) and first-degree burglary manifested deliberate cruelty to the victims. This Findings of Fact provides the basis for Conclusions of Law's III, IV, V, VI, VII, VIII.

In the Findings of Fact and Conclusions of Law for Exceptional Sentence, the trial court reiterated its Findings of Fact from Bench Trial that it had found the presence of this aggravating factor on all six counts. CP 642-651.

Because the trial court's Findings of Fact and Conclusions of Law for Exceptional Sentence based on "deliberate cruelty" are (1) not supported by the record; (2) therefore do not justify an exceptional sentence as a matter of law; (3) the trial court abused its discretion by relying on this factor to impose a sentence that was clearly excessive as an upward departure from the standard range.

(ii) Mr. Reese did not act with "a high degree of planning and sophistication".

However, in its Conclusions of Law, the trial court failed to refer even once to the aggravating factor of "deliberate cruelty". At best, there is an obtuse reference to "substantial and compelling reasons justifying reasons justifying an exceptional sentence outside the standard range for each of the defendant's convictions." Conclusions of Law VIII. CP 642-651.

As a matter of law, the exceptional sentence "findings and conclusions" on deliberate cruelty and "high degree to sophisticated" and "planning" are neither supported by the record. Likewise, the findings do not support the conclusions of law.

This argument is similar to the preceding argument for the reason that the trial court's Findings of Fact and Conclusions of Law on Exceptional Sentence do not even once mention this aggravating factor. Although the trial court found the aggravator in its Findings of Fact and Conclusions of Law on Bench Trial, CP 629-641, the trial court failed to incorporate these Findings of Fact and Conclusions of Law in its exceptional sentence Findings of Fact and Conclusions of Law or even obtusely refer to them.

Because the trial court's Findings of Fact and Conclusions of Law for Exceptional Sentence based on "high degree of sophistication and planning" are (1) not supported by the record; (2) therefore do not justify an exceptional sentence as a matter of law; (3) the trial court abused its discretion by relying on this factor to impose a sentence that was clearly excessive as an upward departure from the standard range.

g. The trial court's improperly found as a basis for the exceptional sentence that Mr. Reese had eight prior misdemeanor convictions that were not counted as part of his offender score.

In this case, Mr. Reese has eight misdemeanor convictions. The convictions from Auburn Municipal Court. In cases C00094105 and C00094106, the charges, committed on the same day, resulted in convictions and sentenced on the same date, February 28, 2008. In case Auburn Municipal Court cases C00095204 and C00094298, again, the charges, committed on the same day, resulted in convictions and sentenced on the

same date, December 24, 2007. In Auburn Municipal Court C00093808 and C00094752, again, the charges, committed on the same day, resulted in convictions and sentenced on the same date, October 21, 2007. Mr. Reese concedes that the other two misdemeanors, the 2009 resisting arresting conviction from the City of Des Moines Municipal Court, and the 2008 violation of NCO from Auburn Municipal Court are separate misdemeanor convictions. CP 452-589.

His misdemeanor history is not extraordinary when compared to that of defendants whose misdemeanor histories were properly used as aggravators in exceptional sentences.

For example, in ***State v. Ratliff***, 46 Wn. App. 325, 730 P.2d 716, (1986), the appellate court affirmed the use of multiple misdemeanor convictions as an aggravating factor where the defendant had 34 misdemeanor convictions, thus resulting in a sentence that was clearly too lenient.

In this case, the trial court found in Findings of Fact re: Exceptional Sentence IX, X, XI, XII that the State had proved Mr. Reese's misdemeanor history beyond a reasonable doubt and that this history resulted in a sentence that was "clearly too lenient."

However, the "clearly too lenient" is not a factual finding because there is nothing in the record to support it. It appears to be simply the opinion of the trial court. The SRA aspires for sentences that , inter alia, (3) are

commensurate with the punishment imposed on others committing similar offenses. ***RCW 9.94A.010(3)***. The trial court thus was required to articulate some reason why failure to consider Mr. Reese's misdemeanor convictions resulted in a sentence that was "clearly too lenient." Conclusions of Law XI merely parrots the statutory language and is not supported by any Findings of Fact, because there is no proper Findings of Fact.

Because the trial court's Findings of Fact and Conclusions of Law for Exceptional Sentence based on "unscored misdemeanor history" are (1) not supported by the record; (2) therefore do not justify an exceptional sentence as a matter of law; (3) the trial court abused its discretion by relying on this factor to impose a sentence that was clearly excessive as an upward departure from the standard of appellate review for determining whether an exceptional sentence is "clearly excessive" is abuse of discretion. A trial court abuses its discretion "only if no reasonable person would take the view adopted by the trial court." ***State v. Armstrong***, 106 Wash. 2d 547, 552, 723 P.2d 1111 (1986).

Although this is a high standard to meet, Mr. Reese has satisfied it on the facts of his case. No reasonable person would impose a sentence of 100 years vs. the standard sentence of 74 years on a 22+ year old man. There is no chance that Mr. Reese will ever live to serve the 100 years and it is unlikely that he will live long enough to serve the 74+ year sentence.

No reasonable person would find that a 100 year sentence was anything but an attempt by the trial court to assuage the emotions of the victims' survivors (and Mr. Reese means them absolutely no disrespect), to placate the prosecutors, and apparently to express the court's own personal opinion of the SRA. The sentence flies in the face of reason and must be reversed.

h. Trial counsel failed to provide constitutionally effective assistance of counsel.

Criminal defendants have the right to competent counsel under the ***Sixth Amendment to the United States Constitution***. ***WASH. CONST. Art. I, § 22.***

To demonstrate ineffective assistance of counsel, a defendant must show that: (1) defense counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances; and (2) defense counsel's deficient representation prejudiced the defendant, i.e., there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different. ***State v. Hendrickson***, 129 Wn.2d 61, 77-78, 917 P.2d 563}. "A failure to establish either element of the test defeats the ineffective assistance of counsel claim." In re Pers. Restraint of Davis, 152 Wn.2d 647, 673, 101 P.3d 1 (2004) ***In re Pers. Restraint of Davi***s, 152 Wn.2d 647, 673, 101 P.3d 1 (2004). We may begin our review with either prong of the two-part test.

Courts engage in a strong presumption that counsel's representation was effective. ***State v. Brett***, 126 Wn.2d 136, 198, 892 P.2d 29 (1995). The presumption of effective assistance can be overcome by a showing that counsel's representation was "'unreasonable under prevailing professional norms and that the challenged action was not sound trial strategy.'" ***Davis***, 152 Wn.2d at 673 (quoting ***Kimmelman v. Morrison***, 477 U.S. 365, 384, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986)). Deliberate tactical choices may constitute ineffective assistance of counsel if they fall outside the wide range of professionally competent assistance, however, "'exceptional deference must be given when evaluating trial counsel's strategic decisions.'" ***Davis***, 152 Wn.2d at 714 (quoting ***State v. McNeal***, 145 Wn.2d 352, 362, 37 P.3d 280 (2002)).

In this case, trial counsel failed to provide effective assistance of counsel when he advised Mr. Reese to waive his constitutional right to trial by jury. The constitutional right to jury trial is guaranteed under the ***Sixth Amendment to the United States Constitution 5 and article I, sections 21 6 and 22 7 of the Washington Constitution***. In this case, trial counsel advised Mr. Reese to permit his case to be decided by a court that had already heard two trials of codefendants charged with the same crimes based on exactly the same facts. The juries in both of those cases had convicted those defendants as charged.

In ***United States v. Cowden***, 545 F.2d 257 (1st Cir. 1976), the court affirmed the trial court's decision not to recuse itself from defendant's jury trial although the tial court already presided over the two jury trials of the codefendants. The court held that on these facts there was no reason to question the trial court's impartiality.

The instant case stands in marked contrast to Cowden. Here the trial court decided the merits of Mr. Reese's case after presiding over two jury trials of codefendants. The trial court knew the verdicts in those cases. The trial court rendered its verdict in 60 SECONDS. To say that the trial court deliberated in Mr. Reese's case defies credence.

Any competent counsel would have had no strategic or tactical reason for advising his client to waive the jury and to permit the trial court to decide this case. Any competent counsel would have been able to foresee the risk that the risk that the trial court, whether consciously or unconsciously, would consider evidence from the two prior trial when "deliberating" on Mr. Reese's case.

The trial court reached its verdict in less time than it would have taken the jury to read even the introductory jury instruction. This fact alone establishes beyond any doubt that the trial court decided Mr. Reese's on something other than the evidence in his case.

Based on the arguments above on the insufficiency of the evidence which were well-argued below, the result of the trial likely would have been

different had a jury heard the case. A jury would have followed the law – would have maintained the presumption of innocence as articulated to the factfinder: "A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt" ***WPIC 4.01***.

Because trial counsel should have known the risk that the trial court would have been unable to block the facts of the codefendants' crimes and the prior jury verdicts from the its decision, trial counsel was constitutionally ineffective for advising Mr. Reese to waive his right to trial by jury.

i. The trial court erred in not merging a second degree assault convictions with a robbery conviction, as well as the robbery conviction with the felony murder conviction, thereby resulting in an incorrect offender score and improper imposition of additional firearm enhancements

The Legislature has provided a sentencing court with the discretion to decide whether or not to merge a burglary with the included crime: Every person who, in the commission of a burglary shall commit any other crime, may be punished therefore as well for the burglary, and may be prosecuted for each crime separately. RCW 9A.52. 050; see also, ***Slate v. Davis***, 90 Wn. App. 776, 783-84, 954 P. 2d 325 (1998) (trial court may, in its discretion, refuse to apply the provisions of the burglary " anti- merger" statute).

The merger doctrine is a tool of statutory interpretation used to determine whether the Legislature intended to impose multiple punishments for a single act which violates several statutory provisions. ***Slate v. Davis***, 90

Wn. App. 776, 783-84, 954 P. 2d 325 (1998) . (trial court may, in its discretion, refuse to apply the provisions of the burlary "anti-merger" statute.)

The merger doctrine is a tool of statutory interpretation used to determine whether the Legislature intended to impose mulitiple punishments for a single act which violates several statutory provisions. ***State v.Michielli***, 132 Wn.2d 229, 238, 937 P.2d 587 (1997). Application of the doctrine arises after the State has obtained convictions on multiple crimes that potentially merge. Id. Whether merger applies is evaluated on a case -by -case basis: "it turns on whether the predicate and charged crimes are sufficiently intertwined." ***State v. Saunders***, 120 Wn. App.800, 821, 86 P. 3d 232 (2004).

The merger doctrine must be distinguished from the "same criminal conduct" analysis provided under the Sentencing Reform Act SRA). For merger to apply, Mr. Reese does not need to show that the offenses were the same criminal conduct.

Under the SRA, multiple offenses that encompass the same criminal conduct are counted as a single offense in calculating a defendant's offender score. ***RCW 9.94A.589(1)(a)***. When one of those offenses is burglary, however, the sentencing court has discretion to either apply the same criminal conduct provision and count the offenses as one crime, or apply the burglary anti- merger statute and score the offenses separately. ***State v. Lessley***, 118 Wn.2d 773, 781, 827 P. 2d 996 (1992).

Under the same criminal conduct provision of ***RCW 9.94A.589(1)(a)***, a defendant who has committed multiple crimes that involve the same time and place, same intent, and same victim constitute the same criminal conduct, and may be punished as one offense.

Merger, on the other hand, is a component of double jeopardy analysis and prevents "pyramiding the charges" to obtain greater punishment. ***State v Johnson***, 92 Wn.2d 671,678 -80, 600 P. 2d 1249 (1979); see also ***State v. Vladovic***, 99 Wn.2d 413, 419, 662 P. 2d 853 (1983) (citing ***Blockburger v. United States***, 284 U. S. 299, 52 S. Ct. 180, 76 L.Ed. 306 (1932) and ***Whalen v United States***, 445 U. S. 684, 100 S. Ct. 1432, 63 L.Ed. 2d 715 (1980)).

Therefore, two crimes may constitute the same criminal conduct but may not merge. See e.g. ***Saunders***, 120 Wn. App. at 824 -25. On the other hand, a crime may merge into another offense without satisfying all three predicates of the " same criminal conduct" test. Rather, " the underlying substantive criminal offense "is more properly viewed as a species of lesser - included offense." ***United States v Dixon***, 509 U.S.7 688, 698, 113 S. Ct. 2349, 125 L.Ed.2d 556 (1993).

Merger would have required the included crime being vacated and would have prevented the imposition of multiple punishments. ***Johnson***, 92 Wn.2d at 682 (application of merger doctrine results in " striking" of convictions). Here, the court abused its discretion by applying the anti -

merger statute on untenable grounds. See ***State ex rel. Carroll v Junker***, 79 Wn.2d 12, 26, 482 P. 2d 775 (1971).

2. THE TRIAL COURT ERRED IN NOT MERGING THE SECOND DEGREE ASSAULT CONVICTION INVOLVING CHARLENE SANDERS INTO THE ROBBERY CONVICTION, AND THEN BOTH CONVICTIONS INTO THE BURGLARY CONVICTION. THEREBY RESULTING IN AN INCORRECT OFFENDER SCORE AND IMPROPER IMPOSITION OF ADDITIONAL FIREARM ENHANCEMENTS.

In this case the offenses of second degree assault and first degree robbery met the predicates for merger with the burglary because the crimes were sufficiently "intertwined" for the doctrine to apply. The burglary was merely incidental to the robbery just as the assault of Charlene Sanders was incidental to the burglary. Compare ***Johnson***, 92 Wn.2d at 680 (additional conviction " cannot be allowed to stand unless it involves some injury ... which is separate and distinct from and not merely incidental to the crime of which it forms an element ").

In this case, the State attempted to justify its "pyramiding" of the charges by asserting in closing argument as well as in the FOF/COL on Bench Trial that this robbery was complete when Charlene Sander's wedding ring was taken, apparently at the outset of the events. Of course, the acts of theft by robbery continued and many other items were removed while Charlene Sanders was physically restrained. Indeed, she was assaulted at gunpoint while Berniard demanded to know the location and combination for

the safe. The State's coy effort to "part out" the offenses speaks volumes about its intention to pyramid the charges.

Because the trial court failed to correctly apply the burglary anti-merger statute, this matter must be remanded for resentencing.

3. THE TRIAL COURT ERRED IN NOT MERGING THE SECOND DEGREE ASSAULT CONVICTION INVOLVING CHARLENE SANDERS INTO THE ROBBERY CONVICTION, AND THEN BOTH CONVICTIONS INTO THE BURGLARY CONVICTION. THEREBY RESULTING IN AN INCORRECT OFFENDER SCORE AND IMPROPER IMPOSITION OF ADDITIONAL FIREARM ENHANCEMENTS.

The two offenses merge if to prove a particular degree of crime, the State must prove that the crime "was accompanied by an act which is defined as a crime elsewhere in the criminal statutes." *State v. Vladovic*, 99 Wn.2d 413, 419,& n.2 , 662 P.2d 853 (1983)

In the context of felony murder, the reviewing court looks to the statutory elements of each crime to determine whether the legislature intended to impose a single punishment for a homicide committed in furtherance of or in immediate flight from an armed robbery. *Id.* The offenses merge if the essential elements of the homicide include all the elements of the robbery, such that the facts establishing one necessarily also establish the other. *Id.* at 20-21***Id.*** at 20-21; ***Zumwalt***, 119 Wn.App at 131; ***State v. Johnston***, 100 Wn.App 126, 138, 996 P.2d 629 (2000).

Whether the merger doctrine bars double punishment is a question of law that we review de novo. *State v Zumwalt*, 119 Wn. App. 126, 129, 82

P.3d 672 (2003) ***State v. Zumwalt***, 119 Wn.App 126, 129, 82 P.3d 672 (2003), *aff'd sub nom.* ***State v. Freeman***, 153 Wn.2d 765, 108 P.3d 753 (2005). *State v n*, 153 Wn.2d 765, 108 P.3d 753 (2005)We then look to the statutory elements of each crime to determine whether the legislature intended to impose a single punishment for a homicide committed in furtherance of or in immediate flight from an armed robbery. ***Id.*** The offenses merge if the essential elements of the homicide include all the elements of the robbery, such that the facts establishing one necessarily also establish the other. *Id.* at 20-21 ***Id*** at 20-21; ***Zumwalt***, 119 Wn.App at 131; ***State v. Johnston***, 100 Wn.App 126, 138, 996 P.2d 629 (2000).

Here, Mr. Reese was convicted of felony first degree murder as defined by ***RCW 9A.32.030(1)(c)RCW 9A.32.030(1)(c)***. The elements expressly require an associated conviction for another crime: (1) A person is guilty of murder in the first degree when: .. . (c) He or she commits or attempts to commit the crime of . . . (1) robbery in the first or second degree . . . and in the course of or in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants. ***RCW 9A.32.030.***

In order to find Mr. Reese guilty of first degree murder, then, the court had to find him guilty of first degree robbery/robbery and of killing Mr. Sanders in the course of or in furtherance of or in immediate flight from that attempt. RCW 9A.32.030(1)(c)(1) ***RCW 9A.32.030(1)(c)(1)***. A separate

conviction for the predicate crime is, therefore, contrary to the legislative intent and the offenses merge. State v Johnson, 92 Wn.2d 671, 676, 600 P.2d 1249 (1979) ***State v. Johnson***, 92 Wn.2d 671, 676, 600 P.2d 1249 (1979).

The robbery would not merge only if it was "merely incidental" to the homicide. Vladovic, 99 Wn.2d at 421 ***Vladovic***, 99 Wn.2d at 421. That is not the case here. The robbery was integral to the killing. The shooting had no purpose or intent outside of accomplishing the robbery or facilitating Mr. Reese departure from the scene.

Because the unfortunate facts in this case present a classic case of felony murder with a robbery predicate, this court on de novo review must find that the trial court erred when it refused to merge the robbery of Mr. Sanders into the felony murder.

The felony murder statute specifically includes first degree robbery as a predicate crime. ***RCW 9A.32.030(1)(c)*** RCW 9A.32.030(1)(c)(1) The court found the robbery was complete when Mr. Reese's co-defendants committed it outside of his presence and beyond the scope of the original plan, then it could not have concluded that Mr. Reese was an accomplice to that crime.

Mr. Reese argues that, to convict him of first degree murder, the State had to prove that he committed or attempted to commit first degree robbery. And here it did that by proving that he killed the victim in furtherance of, or in immediate flight from, the separately defined crime of robbery or attempt.

The shooting was then part of the robbery attempt and inextricably related. So attempted robbery merges with first degree murder.

4. THE TRIAL COURT ERRED WHEN IT DECLINED TO FIND THAT THE ASSAULT, ROBBERY AND BURGLARY INVOLVING CHARLENE SANDERS WAS NOT "SAME CRIMINAL CONDUCT"; THAT THE ROBBERY AND BURGLARY INVOLVING JAMES SANDERS, SR., WERE NOT THE "SAME CRIMINAL CONDUCT", AND THAT THE ASSAULT AND BURGLARY INVOLVING JAMES SANDERS, JR. WERE NOT THE "SAME CRIMINAL CONDUCT."

The trial court also erred by finding the offenses were not the same criminal conduct. Crimes encompass the same criminal conduct when they " require the same criminal intent, are committed at the same time and place, and involve the same victim." ***RCW 9. 94A.589(1)(a)***. The sentencing court's decision concerning whether multiple offenses constitute same criminal conduct is reviewed for a clear abuse of discretion or misapplication of the law. ***State v. Elliott***, 114 Wn.2d 6, 17, 785 P. 2d 440 (1990).

In this case, there is no question that the burglary, assaults, and robberies occurred at the same place and time —in the Sanders residence on April 28,2010. The offenses involved the same victims: burglary= the entire Sanders family; assault = Charlene Sanders and James Sanders, Jr; robbery = Charlene Sanders and James Sanders, Sr.. In addition, the offenses required the same objective criminal intent. Criminal intent is the same for two or more crimes when the defendant' s intent, viewed objectively, does not

change from one crime to the next, such as when one crime furthers the other. ***Slate v. Lessley***, 118 Wn.2d 773, 777, 827 P. 2d 996 (1992).

Mr. Reese submits that ***Stale v Rienks***, 46 Wn. App. 537, 731 P. 2d 1116 (1987) is instructive. In ***Rienks***, Division One found that burglary, robbery and first degree assault encompassed the same criminalconduct where the defendant went to a victim's apartment to collect money owed to a third person. The defendant entered the apartment, assaulted one man and stole money from a briefcase. The court determined that the three offenses were committed as part of a recognizable scheme or plan and were committed with " no substantial change in the nature of thecriminal objective," and therefore encompassed the same criminal conductwithin the meaning of the SRA. ***Rienks***, 46 Wn. App. at 543 (citing ***State v Calloway***, 42 Wn. App. 420, 423 -24, 711 P. 2d 382 (1985)). The court pointed out that " there was no independent motive for the secondary crime; rather, the objective was to accomplish or complete the primary one." ***Rienks***, 46 Wn App. at 544.

In this case, Mr. Reese was convicted of second degree assault (2 counts), first degree robbery(2 counts), first degree burglary, and first degree [felony murder] with robbery as the predicate felony.

To convict him of first degree robbery, the court had to find that Mr. Reese in the commission of a robbery or of immediate flight therefrom was armed with w deadly weapon, or displayed what appeared to be a firearm or deadly weapon, or inflicted bodily injury. ***RCW 9A.56.200***.

To convict Mr. Reese of burglary in the first degree, the court had to find that with intent to commit a crime against person or property therein, he entered or remained unlawfully in a building and, in entering or while in the building or in immediately flight therefrom, the actor or another participant in the crime was armed with a deadly weapon or assaulted another person. ***RCW 9A.52.020***.

To convict Mr. Reese of second degree assault, the court had to find that under circumstances not amounting to assault in the first degree, he intentionally assaulted another and thereby recklessly inflicted substantial bodily harm or assaulted another with a deadly weapon. ***RCW 9A.36.021***.

Clearly, Mr. Reese had the same objective, to commit a theft when he or the accomplices committed the burglary, assaults, and robberies. They entered the residence in order to obtain expensive items. They believed that because the Sanders had a diamond ring for sale on Craigslist they must have other valuable items at their residence. The burglary put their intent into motion by providing access to the residence.. The assault against Charlene Sanders constituted a substantial step toward committing the robbery. Thus the assault, on which the burglary charge was based, furthered the attempted robbery. The attempted robbery was also committed for the same purpose as the burglary to unlawfully remove property from Sanders' s control. See ***Rienks***, 46 Wn. App. at 544. Mr. Reese's objective throughout the incident was to complete the crime of theft. There was no " substantial change in the

nature of the criminal objective." ***Rienks***, 46 Wn. App. at 543. Objectively viewed, the criminal intent was the same from one crime to the next, and the crimes furthered each other toward the same end. Because these crimes were all burglary and attempted robbery were committed at the same time and place and involved the same victims and intent, those offenses encompass the same criminal conduct. See ***RCW 9.94A.589 (1)(a)***. The trial court' s decision to the contrary was clearly wrong. The court' s failure to find that the two offenses encompassed the same criminal conduct was an abuse of discretion. Accordingly, the offenses must be scored as a single offense. See ***Lessley***, 118 Wn.2d at 781.

5. MR. REESE IS ENTITLED TO A NEW SENTENCING HEARING WHERE, BASED ON CONVICTIONS WHICH CANNOT BE SUPPORTED BY EVIDENCE BEYOND A REASONABLE DOUBT AS WELL THE TRIAL COURT'S FAILURE TO APPLY THE MERGER DOCTRINE AND SAME CRIMINAL CONDUCT RULE, THE TRIAL COURT MISCALCULATED HIS OFFENDER SCORE.

RCW Chapter 9.94A, the ***Sentencing Reform Act*** [SRA], sets for the law for criminal sentencing in felony cases. The SRA sets forth a structured grid based on seriousness levels of offenses and offender scores. It also permits trial courts the exercise of limited discretion. The court has described that discretion as "principled discretion." ***State v. Parker,*** 132 Wn.2d 182, 937 P.2d 575. 579 (1997).

The appellate court reviews a sentencing court's offender score calculation de novo. ***State v. Mitchell***, 81 Wn.App, 387, 914 State v.

Mitchell, 81 Wn. App. 387, 914 P.2d 771 (1996)*State v. Roche*, 75 Wn. App. 500, 878 P.2d 497 (1994)P.2d 771 (1996) ***State v. McCraw***, 127 Wn.2d 281, 898 P.2d 838 (1995); ***State v. Roche***, 75 Wn.App 500, 878 P.2d 497 (1994). The general rule is that a sentencing court acts without statutory authority when imposing a sentence based on a miscalculated offender score. *In re Pers. Restraint of Johnson*, 131 Wn.2d 558, 933 P.2d 1019 (1997) ***In re Pers. Restraint of Johnson***, 131 Wn.2d 558, 933 P.2d 1019 (1997): A sentencing court acts without statutory authority under the Sentencing Reform Act of 1981 when it imposes a sentence based on a miscalculated offender score. ***State v. Roche***, 75 Wn.App 500, 513, 878 P.2d 497 (1994); ***State v. Brown***, 60 Wn.Appo 60, 70, 802 P.2d 803*Stte v. Brown*, 60 Wn. App. 60, 70, 802 P.2d 803 (1990), (1990), review denied, 116 Wn.2d 1025, 812 P.2d 103 (1991), overruled on other grounds by ***State v. Chadderton***, 119 Wn.2d 390, 832 P.2d 481 (1992).

The sentencing court may impose a sentence outside the standard sentence range if it finds substantial and compelling reasons to justify an exception. ***RCW 9.94A.505***. When imposing an exceptional sentence the court must first consider the presumptive punishment as legislatively determined for an ordinary commission of the crime before it may adjust it up or down to account for the compelling nature of the aggravating or mitigating circumstances of the particular case. ***RCW 9.94A.535***.

Because the sentencing court must first correctly calculate the standard range before imposing an exceptional sentence, failure to do so is legal error subject to review. ***State v. Brown***, 60 Wn.App 60, 802 P.2d 803 (1990), review denied 116 Wn.2d 1025, 812 P.2d 103 (1991).

When the sentencing court incorrectly calculates the standard range before imposing an exceptional sentence, remand is the remedy unless the record clearly indicates the sentencing court would have imposed the same sentence anyway See, e.g. ***State v. Brown***, 60 Wn. App. at 70 *State v. Brown*, 60 Wn. App. at 70 ("This court cannot say that the much lower standard range would not have an impact on the amount of time given for the exceptional sentence" and therefore remand for resentencing is required. ***State v. Green***, 46 Wn.App 92, 101, 730 P.2d 1350 (1986); *State v. Green*, 46 Wn. App. 92, 101, 730 P.2d 1350 (1986) ("Inasmuch as we find the trial court erred in determining the offender's score as legislatively defined and being unable to determine if the court imposed its excessive sentence of approximately twice the standard range depending upon its determination of the offender score, we remand for resentencing."), *rev'd on other grounds sub nom.* *State v. Dunaway*, 109 Wn.2d 207, 743 P.2d 1237, 749 P.2d 160 (1987). ***State v. Dunaway***, 109 Wn.2d 207, 743 P.2d 1237, 749 P.2d 160 (1987). This is the standard generally used by our appellate courts in parallel contexts. [2]

Appellate courts are hesitant to affirm an exceptional sentence where the standard range has been incorrectly calculated because of the great likelihood that the judge relied, at least in part, on the incorrect standard ranges in his calculus. Affirming such would uphold a sentence which the sentencing judge might not have imposed given correct information and would defeat the purpose of the SRA. ***Parker,*** 937 P.2d at 579.

In this case, the trial court found the State's calculation of the standard ranges to be correct. FOF V, VI, VIII, XIII. XVI.CP 629-641. The trial court based the calculation of the exceptional sentence on those standard ranges. COL X, XIV, XV, XVI,XVII, XVIII,XIX. CP629-641.

Because, as argued above even assuming the sufficiency of the evidence for the convictions, numerous convictions merge and/or count as same criminal conduct, Mr. Reese's offender score must be recalculated based on this court's ruling. Although the trial court sentenced the counts to run This court then will remand the matter to the superior court for resentencing,

E. CONCLUSION:

For the foregoing reasons, Mr. Reese respectfully asks this court to reverse the convictions for insufficient evidence and to remand these matters to superior court for dismissal. In addition, for any remaining conviction, this

court should reverse the exceptional sentences imposed and should remand the matters for a new sentencing hearing.

RESPECTFULLY SUBMITTED this 17th day of August, 2012.

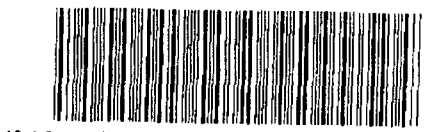
BARBARA COREY, WSBA#11778
Attorney for Appellant

CERTIFICATE OF SERVICE
I declare under penalty of perjury under the laws Of the State of Washington that the following is a true and correct That on this date, I delivered via ABC- Legal Messenger, a copy of this Document to Kathleen Proctor, Pierce County Prosecutor's Office, 930 Tacoma Ave So , Room 946, Tacoma, Washington 98402 and to appellant, Joshua Reese, DOC#323910, Washington State Penitentiary 1313 N 13th Ave., Walla Walla, WA 99362

8/17/12
Date

Kim Redford, Legal Assistant

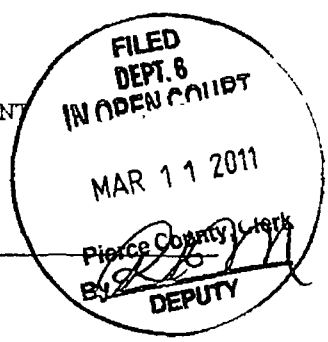
APPENDIX A



10-1-01901-6 36035579 JDSWCD 03-14-11

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. KIYOSHI ALAN HIGASHI, Defendant.	CAUSE NO. 10-1-01901-6 WARRANT OF COMMITMENT 1) ☐ County Jail 2) ☒ Dept. of Corrections 3) ☐ Other Custody



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

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

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

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

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

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone (253) 798-7400

10-1-01901-6

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

Dated: 03-11-2011

By direction of the Honorable

JUDGE
KEVIN STOCK

CLERK

By: Chris Hutton
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF
Date 3/14/11 By Chris Hutton Deputy

STATE OF WASHINGTON
ss.
County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____, _____.

KEVIN STOCK, Clerk
By: _____ Deputy

FILED
DEPT. 6
IN OPEN COURT
MAR 11 2011
Pierce County, Clerk
By _____ DEPUTY

mms

Office of Prosecuting Attorney
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Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

10-1-01901-6

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

KIYOSHI ALAN HIGASHI

Defendant.

SID. 20208905
DOB 01/06/1988

CAUSE NO 10-1-01901-6

JUDGMENT AND SENTENCE (FJS)
[✓] Prison [ ] RCW 9.94A.712 Prison Confinement
[ ] Jail One Year or Less
[ ] First-Time Offender
[ ] Special Sexual Offender Sentencing Alternative
[ ] Special Drug Offender Sentencing Alternative
[ ] Breaking The Cycle (BTC)
[ ] Clerk's Action Required, para 4.5 (SDOSA),4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

FILED
DEPT. 6
IN OPEN COURT
MAR 11 2011
Pierce County, Clerk
By DEPUTY

I. HEARING

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

II. FINDINGS

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

2.1 **CURRENT OFFENSE(S).** The defendant was found guilty on MARCH 8, 2011 by [ ] plea [X] jury-verdict [ ] bench trial of.

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
I	MURDER IN THE FIRST DEGREE (D3)	9A.32.030(1)(c) 9.94A. 533/9.94A. 510 9.94A. 530 9.94A. 533(3)(a) 9.94A. 533(3)(m) 9.94A. 535(2)(b) 9.94A. 010 9.94A. 535(2)(c) 9.94A. 533(3)(q)	F	04/28/10	PCSO # 101181333

11-9-02880-2

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COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
II	ROBBERY IN THE FIRST DEGREE (AAA1)	9A.56.190 9A.56.200(1)(a)(i) 9.41.010 9.94A.533/9.94A.510 9.94A.530 9.94A.535(3)(a) 9.94A.535(3)(m) 9.94A.535(2)(b) 9.94A.101 9.94A.535(2)(c) 9.94A.533(3)(q)	F	04/28/10	PCSO # 101181333
III	ASSAULT IN THE SECOND DEGREE (E26)	9A.36.021(1)(a) 9A.36.021(1)(c) 9.41.010 9.94A.533/9.94A.510 9.94A.530 9.94A.535(3)(a) 9.94A.535(3)(m) 9.94A.535(2)(b) 9.94A.010 9.94A.535(2)(c) 9.94A.535(3)(q)	F	04/28/10	PCSO # 101181333
IV	ROBBERY IN THE FIRST DEGREE (AAA1)	9A.56.190 9A.56.200(1)(a)(i) 9.41.010 9.94A.533/9.94A.510 9.94A.530 9.94A.535(3)(a) 9.94A.535(3)(m) 9.94A.535(2)(b) 9.94A.101 9.94A.535(2)(c) 9.94A.533(3)(q)	F	04/28/10	PCSO # 101181333
V	ASSAULT IN THE SECOND DEGREE (E31)	9A.36.021(1)(a) 9A.36.021(1)(c) 9.41.010 9.94A.533/9.94A.510 9.94A.530 9.94A.533(3)(a) 9.94A.535(3)(m) 9.94A.535(2)(b) 9.94A.101 9.94A.535(2)(c) 9.94A.535(3)(q)	F	04/28/10	PCSO # 101181333
VI	BURGLARY IN THE FIRST DEGREE (G2A)	9A.52.020(1)(a)(b) 9.41.010 9.94A.533/9.94A.510 9.94A.530 9.94A.535(3)(a) 9.94A.535(3)(m) 9.94A.535(2)(b) 9.94A.010	F	04/28/10	PCSO # 101181333

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COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
		9.94A.535(2)(c) 9.94A.535(3)(q)			

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

as charged in the JURY VERDICT Information.

[X] A special verdict/finding for use of firearm was returned on Count(s) I, II, III, IV, V, VI RCW 9.94A.602, 9.94A.533.

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589).

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	TMVWOP	02/01/01	KING CO	01/02/01	J	NV
2	TMVWOP 2ND	05/21/04	KING CO	03/05/04	J	NV
3	ESCAPE 2ND	05/11/05	PIERCE CO	01/13/05	J	NV
4	ROBBERY 2ND	01/05/06	KING CO	09/08/05	J	V
5	ASSAULT 3RD (DV)	05/22/08	PIERCE CO	03/09/08	A	NV
6	RESIDENTIAL BURGLARY	01/23/09	KING CO	08/03/08	A	NV
7	MURRDER 1ST	CURRENT	PIERCE CO.	04/28/10	A	SV
8	ROBBERY 1ST	CURRENT	PIERCE CO.	04/28/10	A	V
9	ASSAULT 2ND	CURRENT	PIERCE CO.	04/28/10	A	V
10	ROBBERY 1ST	CURRENT	PIERCE CO	04/28/10	A	V
11	ASSAULT 2ND	CURRENT	PIERCE CO.	04/28/10	A	V
12	BURGLARY 1ST	CURRENT	PIERCE CO.	04/28/10	A	V

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

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[X] The defendant committed a current offense while on community placement (adds one point to score) RCW 9.94A.525.

2.3 SENTENCING DATA.

COUNT NO	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	16 5	XV	411 – 548 MOS	60 MOS	471 – 608 MOS	LIFE
II	16 5	IX	129 – 171 MOS	60 MOS	189 – 231 MOS	LIFE
III	16.5	IV	63 – 84 MOS.	60 MOS.	99 – 120 MOS.	10 YRS.
IV	16 5	IX	129 – 171 MOS.	60 MOS	189 – 231 MOS	LIFE
V	16 5	IV	63 – 84 MOS	36 MOS	99 – 120 MOS	10 YRS
VI	17 5	VII	87 – 116 MOS	60 MOS	147 -176 MOS	LIFE

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

[ ] within [ ] below the standard range for Count(s) _____.

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

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

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

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

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

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

_____

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

_____

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2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows.

III. JUDGMENT

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

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

IV. SENTENCE AND ORDER

IT IS ORDERED.

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

JASS CODE		
RTN/RJN	$ 6,619.89	Restitution to: CVC
	$ _____	Restitution to: _____
	(Name and Address--address may be withheld and provided confidentially to Clerk's Office).	
PCV	$ 500.00	Crime Victim assessment
DNA	$ 100.00	DNA Database Fee
PUB	$ 2,000.00	Court-Appointed Attorney Fees and Defense Costs
FRC	$ 200.00	Criminal Filing Fee
FCM	$ _____	Fine
EXT	$ 1,253.15	Extradition Costs
CLF	$ _____	Crime Lab Fee [ ] deferred due to indigency
WFR	$ _____	Witness Costs
JFR	$ _____	Jury Fee
FPS/SFR/SFS		
SFW/SFM/WRF	$ _____	Service of Process

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

$_____ Other Costs for: _____

$_____ Other Costs for _____

$10,172.04 TOTAL

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

[X] shall be set by the prosecutor.

[ ] is scheduled for _____

[X] **RESTITUTION** Order Attached

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[X] Restitution ordered above shall be paid jointly and severally with

	NAME of other defendant	CAUSE NUMBER	(Victim name)	(Amount-$)
RJN	JOSHUA REESE	10-1-01902-4	CVC	
	AMANDA KNIGHT	10-1-01903-2	CVC	
	CLABON BERNIARD	10-1-01904-1	CVC	

[ ] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction RCW 9.94A.7602, RCW 9 94A.760(8).

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein Not less than $ per clerk per month commencing per clerk. RCW 9 94.760 If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

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

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

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute RCW 36.18 190, 9.94A.780 and 19 16.500

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10 82.090

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations RCW 10 73 160.

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

4 2 [X] **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43 754.

[ ] **HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing RCW 70.24 340.

4 3 **NO CONTACT**

The defendant shall not have contact with James Sanders Jr , Chandler Kittlernan, Charlene Sanders (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for the remainder of the defendants life

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

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

All property to be forfieted

4.4a **BOND IS HEREBY EXONERATED**

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

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

548 months on Count I; 171 months on Count II

84 months on Count III; 171 months on Count IV

84 months on Count V; 116 months on Count VI

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections.

60 months on Count No I; 60 months on Count No II

36 months on Count No III; 60 months on Count No IV

36 months on Count No V; 60 months on Count No VI

Sentence enhancements in Counts I, II, III, IV, V, AND VI shall run
[ ] concurrent [X] consecutive to each other
Sentence enhancements in Counts _ shall be served
[X] flat time [ ] subject to earned good time credit

All counts consecutive to each other. BB

Actual number of months of total confinement ordered is: 1486 months RS

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

[X] The confinement time on Count(s) I contain(s) a mandatory minimum term of 240 mos.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589 All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other

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deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

I, II, III, IV, V, VI

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

_____

Confinement shall commence immediately unless otherwise set forth here: _____

_____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

since 05-03-2010

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

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

[ ] **COMMUNITY CUSTODY** is ordered as follows:

Count	I	For:	36 Months
Count	II	For:	18 Months
Count	III	For:	18 Months
Count	IV	For	18 Months
Count	V	For:	18 Months
Count	VI	For:	18 Months

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and 705 for community placement offenseswhich include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offense not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

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a) the defendant commited a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10 99 020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745		

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

[ ] The defendant shall not consume any alcohol.

[X] Defendant shall have no contact with Charlene Sanders, James Sanders, Jr, Chandler Kittlemen.

[ ] Defendant shall remain [ ] within [ ] outside of a specified geographical boundary, to wit._____

_____

[ ] Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school) (RCW 9.94A.030(8))

[ ] The defendant shall participate in the following crime-related treatment or counseling services. _____

_____

[ ] *The defendant shall undergo an evaluation for treatment for* [ ] *domestic violence* [ ] *substance abuse* [ ] mental health [ ] anger management and fully comply with all recommended treatment.

[ ] The defendant shall comply with the following crime-related prohibitions: _____

_____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here.

_____

[ ] For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

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

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

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defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

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

_____

_____

_____

_____

V. NOTICES AND SIGNATURES

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

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

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

5.4 **RESTITUTION HEARING.**

[ ] Defendant waives any right to be present at any restitution hearing (sign initials). KAH

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

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

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

N/A

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

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

5.10 OTHER _____

DONE in Open Court and in the presence of the defendant this date March 11, 2011

JUDGE
Print name R. Buckner

Deputy Prosecuting Attorney
Print name: Mary E. Robnett
WSB# 21129

Attorney for Defendant
Print name MW Jordan
WSB # 16906

16906
Defendant
Print name MW JORDAN

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: _____

FILED
DEPT. 6
IN OPEN COURT
MAR 11 2011
Pierce County, Clerk
By _____ DEPUTY

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Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

10-1-01901-6

CERTIFICATE OF CLERK

CAUSE NUMBER of this case 10-1-01901-6

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

WITNESS my hand and seal of the said Superior Court affixed this date _____.

Clerk of said County and State, by _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

_____

Court Reporter

Office of Prosecuting Attorney
930 Tacoma Avenue S Room 946
Tacoma, Washington 98402-2171
Telephone (253) 798-7400

10-1-01901-6

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

_____ sex offense
__X__ serious violent offense
__X__ assault in the second degree
__X__ any crime where the defendant or an accomplice was armed with a deadly weapon
_____ any felony under 69 50 and 69 52

The offender shall report to and be available for contact with the assigned community corrections officer as directed;

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC;

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

_____ (I) The offender shall remain within, or outside of, a specified geographical boundary; _____

_____

__X__ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: Charlene Sanders, James Sanders Jr., Chandler Kittleman _____

_____

_____ (III) The offender shall participate in crime-related treatment or counseling services;

_____ (IV) The offender shall not consume alcohol; _____

_____ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

_____ (VI) The offender shall comply with any crime-related prohibitions.

_____ (VII) Other: _____

_____

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10-1-01901-6

IDENTIFICATION OF DEFENDANT

SID No 20208905 (If no SID take fingerprint card for State Patrol) Date of Birth 01/06/1988

FBI No 346419RB4 Local ID No. UNKNOWN

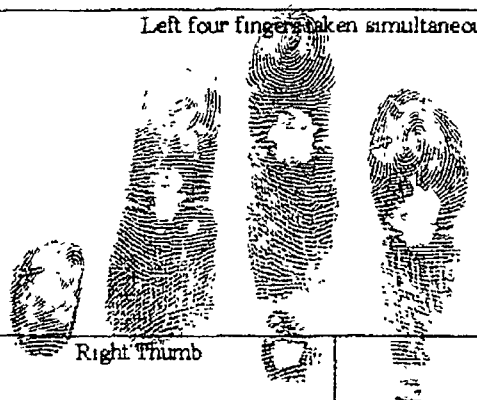
PCN No. 540111294 Other

Alias name, SSN, DOB: NONE KNOWN OR CLAIMED

Race						Ethnicity:		Sex	
[X]	Asian/Pacific Islander	[ ]	Black/African-American	[ ]	Caucasian	[ ]	Hispanic	[X]	Male
[ ]	Native American	[ ]	Other. :			[X]	Non-Hispanic	[ ]	Female

FINGERPRINTS

Left four fingers taken simultaneously



Left Thumb

Right Thumb

Right four fingers taken simultaneously

I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk Regina D. Cuzza Dated. 03.11.11

DEFENDANT'S SIGNATURE.

DEFENDANT'S ADDRESS: D.O.C.

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Telephone (253) 798-7400

APPENDIX F

APPENDIX B

10-1-01903-2 36397982 JDSWCD 05-16-11

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. AMANDA CHRISTINE KNIGHT, Defendant.	CAUSE NO 10-1-01903-2 WARRANT OF COMMITMENT 1) ☐ County Jail 2) ☒ Dept. of Corrections 3) ☐ Other Custody

MAY 16 2011

FILED
DEPT. 6
IN OPEN COURT
MAY 16 2011
Pierce County Clerk
By
DEPUTY

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

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

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

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

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

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10-1-01903-2

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

Dated: 05-13-2011

By direction of the Honorable

JUDGE

KEVIN STOCK

CLERK

By Melissa Engler

DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date MAY 16 2011 By Melissa Engler

STATE OF WASHINGTON

ss

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this
_____ day of _____, _____

KEVIN STOCK, Clerk
By: _____ _____ Deputy

FILED
DEPT. 6
IN OPEN COURT
MAY 13 2011
Pierce County, Clerk
By
DEPUTY

mms

Office of Prosecuting Attorney
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Tacoma, Washington 98402-2171
Telephone. (253) 798-7400

10-1-01903-2

FILED
DEPT. 6
IN OPEN COURT
MAY 13 2011
Pierce County, Clerk
By
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs

AMANDA CHRISTINE KNIGHT

Defendant.

SID: WA25657332
DOB: 07/15/1985

CAUSE NO 10-1-01903-2

JUDGMENT AND SENTENCE (FJS)
[X] Prison [ ] RCW 9.94A.712 Prison Confinement
[ ] Jail One Year or Less
[ ] First-Time Offender
[ ] Special Sexual Offender Sentencing Alternative
[ ] Special Drug Offender Sentencing Alternative
[ ] Persistent Offender (POAA)
[ ] Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
[ ]Juvenile Decline [ ]Mandatory [ ]Discretionary

MAY 16 2011

I HEARING

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

II. FINDINGS

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

2.1 CURRENT OFFENSE(S) The defendant was found guilty on April 14, 2011 by [ ] plea [X] jury-verdict [ ] bench trial of

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
I	MURDER IN THE FIRST DEGREE (D3)	9A.32.030(1)(c) 9.41.010 9.94A.533/9.94A.510 9.94A.530 9.94A.535(3)(a) 9.94A.535(3)(m) 9.94A.535(2)(c)	F	04/28/10	PCSO # 101181333
II	ROBBERY IN THE FIRST DEGREE (AAA!)	9A.56.190 9A.56.200(1)(a)(i) 9.41.010	F	04/28/10	PCSO # 101181333

11-9-05549-4

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COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
		9.94A.533/9.94A.510 9.94A.530 9.94A.535(3)(a) 9.94A.535(3)(m) 9.94A.535(2)(c)			
III	ASSAULT IN THE SECOND DEGREE (E26)	9A.36.021(1)(a) 9A.36.021(1)(c) 9.41.010 9.94A.533/9.94A.510 9.94A.530 9.94A.535(3)(a) 9.94A.535(3)(m) 9.94A.535(2)(c)	F	04/28/10	PCSO # 101181333
IV	ROBBERY IN THE FIRST DEGREE (AAA1)	9A.56.190 9A.56.200(1)(a)(i) 9.41.010 9.94A.533/9.94A.510 9.94A.530 9.94A.535(3)(a) 9.94A.535(3)(m) 9.94A.535(2)(c)	F	04/28/10	PCSO # 101181333
V	ASSAULT IN THE SECOND DEGREE (E26)	9A.36.021(1)(b) 9A.36.021(1)(c) 9.41.010 9.94A.533/9.94A.510 9.94A.530 9.94A.533(3)(a) 9.94A.535(3)(m) 9.94A.535(2)(c)	F	04/28/10	PCSO # 101181333
VI	BURGLARY IN THE FIRST DEGREE (G2A)	9A.52.020(1)(a)(b) 9.41.010 9.94A.533/9.94A.510 9.94A.530 9.94A.535(3)(a) 9.94A.535(3)(m) 9.94A.535(2)(c)	F	04/28/10	PCSO # 101181333

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

as charged in the CORRECTED SECOND AMENDED INFORMATION

[X] A special verdict/finding for use of firearm was returned on Count(s) I, II, III, IV, V, VI RCW 9.94A.602, 9.94A.533.

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589).

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number)

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2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	MURDER 1ST	CURRENT	PIERCE CO	04/28/10	A	SV
2	ROBBERY 1ST	CURRENT	PIERCE CO	04/28/10	A	V
3	ASSAULT 2ND	CURRENT	PIERCE CO	04/28/10	A	V
4	ROBBERY 1ST	CURRENT	PIERCE CO.	04/28/10	A	V
5	ASSAULT 2ND	CURRENT	PIERCE CO.	04/28/10	A	V
6	BURGLARY 1ST	CURRENT	PIERCE CO	04/28/10	A	V

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

2.3 SENTENCING DATA.

COUNT NO	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	10	XV	411 – 548 MOS.	60 MOS	471 – 608 MOS.	LIFE
II	10	IX	129 – 171 MOS	60 MOS.	189 – 231 MOS	LIFE
III	10	IV	63 – 84 MOS	36 MOS	99 – 120 MOS	10 YRS
IV	10	IX	129 – 171 MOS	60 MOS	189 – 231 MOS	LIFE
V	10	IV	63 – 84 MOS	36 MOS	99 – 120 MOS.	10 YRS
VI	10	VII	93 – 116 MOS	60 MOS	147 – 176 MOS.	LIFE

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

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

[ ] above the standard range for Count(s) _____

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

[ ] Aggravating factors were [ ] stipulated by the defendant, [ ] found by the court after the defendant [illegible]

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

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

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

_____

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

_____

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2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows.

III. JUDGMENT

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

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

IV. SENTENCE AND ORDER

IT IS ORDERED

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

JASS CODE

RTN/RJN $ 6,619.22 Restitution to: CVC #VM40106 ; VM40104

$ _____ Restitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV $ 500.00 Crime Victim assessment

DNA $ 100.00 DNA Database Fee

PUB $ 2000.00 Court-Appointed Attorney Fees and Defense Costs

FRC $ 200.00 Criminal Filing Fee

FCM $ _____ Fine

CLF $ _____ Crime Lab Fee [ ] deferred due to indigency

WFR $ _____ Witness Costs

JFR $ _____ Jury Fee

FPS/SFR/SFS

SAD/SDF/... $ _____ ...Defense Costs

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

$ _____ Other Costs for: _____

$ _____ Other Costs for: _____

$ 9419.22 TOTAL

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

[ ] shall be set by the prosecutor

[ ] is scheduled for _____

[X] **RESTITUTION** Order Attached

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Telephone: (253) 798-7400

[X] Restitution ordered above shall be paid jointly and severally with.

	NAME of other defendant	CAUSE NUMBER	(Victim name)	(Amount-$)
RJN	JOSHUA REESE	10-1-01902-4	CVC	$6619.22
	KIYOSHI HIGASHI	10-1-01901-6	CVC	$6619.22
	CLABON BERNIARD	10-1-01904-1	CVC	$6619.22

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

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

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

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

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

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

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

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

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

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

4.3 **NO CONTACT**
The defendant shall not have contact with Charlene Sanders, DOB 2-6-63, C.A.K., DOB 7-14-99, J.A.S., DOB 4-19-96 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence)

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

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

All property forfeited

4.4a **BOND IS HEREBY EXONERATED**

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

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

548 months on Count I; 171 months on Count II

84 months on Count III; 171 months on Count IV

84 months on Count V; 116 months on Count VI

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

60 months on Count No. I; 60 months on Count No. II

36 months on Count No. III; 60 months on Count No. IV

36 months on Count No. V; 60 months on Count No. VI

Sentence enhancements in Counts I, II, III, IV, V, VI shall run:
[ ] concurrent [X] consecutive to each other

Sentence enhancements in Counts I, II, III, IV, V, VI shall be served:
[X] flat time [ ] subject to earned good time credit

Actual number of months of total confinement ordered is: 860

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

[X] The confinement time on Count(s) I contain(s) a mandatory minimum term of 240 MOS.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with

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juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

_____

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

_____

Confinement shall commence immediately unless otherwise set forth here _____

_____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court. Booked 05-04-2010

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

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

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

(a) The defendant shall be on community custody for the longer of

(1) the period of early release RCW 9.94A.728(1)(2), or

(2) the period imposed by the court, as follows.

Count(s) I 36 months for Serious Violent Offenses

Count(s) II, III, IV, V, VI 18 months for Violent Offenses

Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

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

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

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[ ] consume no alcohol

[X] have no contact with Charlene Sanders, C A K, J A S

[ ] remain [ ] within [ ] outside of a specified geographical boundary, to wit: _____

_____

[ ] not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

[ ] participate in the following crime-related treatment or counseling services. _____

_____

[ ] undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse

[ ] mental health [ ] anger management and fully comply with all recommended treatment

[ ] comply with the following crime-related prohibitions _____

_____

[ ] Other conditions:

_____

_____

_____

[ ] For sentences imposed under RCW 9 94A 712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

Court Ordered Treatment If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision RCW 9 94A 562

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

4 7 [ ] **WORK ETHIC CAMP** RCW 9 94A 690, RCW 72 09 410 The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement The conditions of community custody are stated above in Section 4 6.

4 8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10 66 020 The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

_____

_____

_____

_____

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V. NOTICES AND SIGNATURES

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

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

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

5.4 **RESTITUTION HEARING.**

[X] Defendant waives any right to be present at any restitution hearing (sign initials) _____.

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

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

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

N/A

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

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

5.10 **OTHER** _____

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DONE in Open Court and in the presence of the defendant this date May 13, 2011

JUDGE
Print name Beckman

Deputy Prosecuting Attorney
Print name MARY E. ROBNETT
WSB # 21129

Attorney for Defendant
Print name [illegible]
WSB # 24663

Defendant
Print name: Amanda Christine Knight

VOTING RIGHTS STATEMENT: RCW 10.64.140 I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637, b) A court order issued by the sentencing court restoring the right, RCW 9.92.066, c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050, or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature

FILED
DEPT. 6
IN OPEN COURT
MAY 13 2011
Pierce County, Clerk
BY DEPUTY

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Telephone: (253) 798-7400

10-1-01903-2

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 10-1-01903-2

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

WITNESS my hand and seal of the said Superior Court affixed this date: _____.

Clerk of said County and State, by _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

_____

Court Reporter

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

_____ sex offense
__X__ serious violent offense
__X__ assault in the second degree
__X__ any crime where the defendant or an accomplice was armed with a deadly weapon
_____ any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed

The offender shall work at Department of Corrections approved education, employment, and/or community service,

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions

An offender in community custody shall not unlawfully possess controlled substances,

The offender shall pay community placement fees as determined by DOC

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC

The Court may also order any of the following special conditions

_____ (I) The offender shall remain within, outside of, a specified geographical boundary _____

_____

__X__ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals. Charlene Sanders, 02-06-1963, C.A.K., 07-14-1999; J.A.K., 04-19-1996

_____

_____ (III) The offender shall participate in crime-related treatment or counseling services;

_____ (IV) The offender shall not consume alcohol; _____

_____ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

__X__ (VI) The offender shall comply with any crime-related prohibitions.

_____ (VII) Other _____

_____

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10-1-01903-2

IDENTIFICATION OF DEFENDANT

SID No WA25657332 (If no SID take fingerprint card for State Patrol)

Date of Birth 07/15/1988

FBI No 697491HD6

Local ID No UNKNOWN

PCN No. 540108455

Other

Alias name, SSN, DOB. _____

Race						Ethnicity		Sex	
[ ]	Asian/Pacific Islander	[ ]	Black/African-American	[X]	Caucasian	[X]	Hispanic	[ ]	Male
[ ]	Native American	[ ]	Other: :			[ ]	Non-Hispanic	[X]	Female

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously

I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk _____ Dated 05.12.11

DEFENDANT'S SIGNATURE Amanda Kuga

DEFENDANT'S ADDRESS _____

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APPENDIX C

RULE 3.6 SUPPRESSION HEARINGS – DUTY OF THE COURT (a) Pleadings. Motions to suppress physical, oral or identification evidence, other than motion pursuant to rule 3.5, shall be in writing supported by an affidavit or document setting forth the facts the moving party anticipates will be elicited at a hearing, and a memorandum of authorities in support of the motion. Opposing counsel may be ordered to serve and file a memorandum of authoritie4s in opposition to the motion. The court shall determine whether an evidentiary hearing is required based upon the moving papers. If the court determines that no evidentiary hearing is required, the court shall enter a written order setting forth its reasons. (b) Hearing. If an evidentiary hearing is conducted at its conclusion the court shall enter written findings of fact and conclusions of law.

APPENDIX E

Rule 3.5 CONFESSION PROCEDURE (a) Requirement for and Time of Hearing. When a statement of the accused is to be offered in evidence, the judge at the time of the omnibus hearing shall hold or set the time for a hearing, if not previously held, for the purpose of determining whether the statement is admissible. A court reporter or a court approved electronic recording device shall record the evidence adduced at this hearing. (b) Duty of the Court tc Inform Defendant. It shall be the duty of the court to inform the defendant that" (1) he may, but need not, testify at the hearing on the circumstanced surrounding the statement; (2) if he does testify at the hearing, he will be subject to cross examination with respect to the circumstances surrounding the statement and with respect to this credibility; (3) if he does testify at the hearing, he does not by so testifying waive his right to remain silent during the trial; and (4) if he does testify at the hearing, neither this fact nor his testimony at the hearing shall be mentioned to the jury unless he testifies concerning the statement at trial. (c) Duty of Court to Make a Record. After the hearing, the court hall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefore. (d) Rights of Defendant When Statement if Ruled Admissible. If the court rules that the statement is admissible, and it is offered in evidence: (1) the defense may offer evidence or cr5oss-examinie the witnesses, with respect to the statement without waiving an objection to the admissibility of the statement; (2) unless the defendant testifies at the trial concerning the statement, no reference shall be made to the fact, if it be so, that the defendant testified at the preliminary he3aring on the admissibility of the confession; (3) if the defendant becomes a witness on this issue, he3shall be subject to cross examination to the same extent as credibility to the confession is view of the surrounding circumstances, as they see fit.

APPENDIX D

Cal Veh Code § 5204 (2012)

§ 5204. Tabs indicating month and year of expiration

(a) Except as provided by subdivisions (b) and (c), a tab shall indicate the year of expiration and a tab shall indicate the month of expiration. Current month and year tabs shall be attached to the rear license plate assigned to the vehicle for the last preceding registration year in which license plates were issued, and, when so attached, the license plate with the tabs shall, for the purposes of this code, be deemed to be the license plate, except that truck tractors, and commercial motor vehicles having a declared gross vehicle weight of 10,001 pounds or more, shall display the current month and year tabs upon the front license plate assigned to the truck tractor or commercial motor vehicle. Vehicles that fail to display current month and year tabs or display expired tabs are in violation of this section.

(b) The requirement of subdivision (a) that the tabs indicate the year and the month of expiration does not apply to fleet vehicles subject to Article 9.5 (commencing with Section 5300) or vehicles defined in Section 468.

(c) Subdivision (a) does not apply when proper application for registration has been made pursuant to Section 4602 and the new indicia of current registration have not been received from the department.

(d) This section is enforceable against any motor vehicle that is driven, moved, or left standing upon a highway, or in an offstreet public parking facility, in the same manner as provided in subdivision (a) of Section 4000.