

03163-2

03163-2

NO. 63163-2-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

SHANNON JOHNSON,

Appellant.

---

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

---

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT.

The prosecution accused Shannon Johnson of having contact with Tralenea Givens on two occasions in violation of a no contact order. Givens did not testify at Johnson's trial. The State's proof for the first incident rested entirely on reports to 911 even though the callers described completed incidents and, objectively viewed, there was no ongoing emergency. For the second incident, the critical link in the prosecution's evidence showing Johnson had contact with Givens was Givens's statement to police at the precinct, after arrest, admitting her identity despite previously giving a different name. Because the evidence necessary for both incidents relied on unopposed out-of-court testimonial statements, the prosecution violated the Sixth Amendment's Confrontation Clause and the error was far from harmless.

Additionally, the prosecution failed to prove that Johnson had two prior qualifying convictions for violating no contact orders, which was an essential element of both counts of felony violation of a no contact order. Finally, the prosecution did not give Johnson the necessary notice of the essential factual basis of the charges against him by failing to specify the underlying convictions that elevated his charges from gross misdemeanors to felonies.

B. ASSIGNMENTS OF ERROR.

1. The court's admission of out of-court, unfronted, testimonial statements violated the Confrontation Clause of the Sixth Amendment and Article I, section 22 of the Washington Constitution.

2. The court erroneously admitted hearsay statements as present sense impressions when they did not qualify under that hearsay exception.

3. The prosecution failed to prove Johnson was previously convicted of two eligible violations of a no contact order, which is an essential element of felony violation of a no contact order.

4. The charging document did not provide Johnson with the required notice of all essential factual and legal elements of felony violation of a no contact order.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. An accused person's right to confront witnesses against him requires the prosecution prove that out-of-court statements made by absent witnesses were not testimonial when made. Here, the prosecution relied on out-of-court statements by the complainant and her son but those statements to 911 and the police involved completed events and were testimonial in nature.

Some of these statements were also inadmissible under hearsay rules. Where the prosecution did not meet its burden of proving out of court statements were not testimonial, or admissible under hearsay rules, did their erroneous admission violate Johnson's right of confrontation and right to a fair trial, requiring reversal due to the plain prejudicial effect?

2. An essential element of felony violation of a no contact order as charged in this case is that the accused have two prior convictions for specified offenses. Here, the defense objected to the prosecution's proof of his prior convictions but the court speculated that the offenses seemed likely to qualify as valid prior convictions, thus rejected the challenge to the lack of proof. Did the prosecution fail to meet its burden of proof and did the court err by surmising the convictions were valid predicates absent any evidence supporting such a conclusion?

3. The charging document in a criminal prosecution must include the elements of the crime and the conduct which is alleged to have constituted that crime. Here, the charging document tracked the statutory language pertaining to having a prior conviction for violating a no contact order but did not include any information about what prior convictions the prosecution alleged.

When Johnson's defense rested on the inapplicability of a prior conviction, did the inadequate charging document deprive Johnson of his due process right to notice and also cause actual prejudice to his ability to prepare a defense?

D. STATEMENT OF THE CASE.

Shannon Johnson was not allowed to have contact with Tralenea Givens. Ex. 5. On September 15 2008, Tralenea Givens called 911 and reported that she had contact with Johnson in violation of a no contact order. CP 37-46, Ex. 14.<sup>1</sup> On November 7, 2008, a police officer saw Givens and Johnson sitting together in a car. 2/18/09RP 39, 51.<sup>2</sup> Johnson was charged with two counts of felony violation of a no contact order. CP 47-48.

Neither Givens nor any other eyewitness testified about the September incident. Police arrived after the incident and spoke with Givens but did not see Johnson. 2/18/09RP 77-78. The State relied on a 911 call from Givens and her son, Jelani Givens-

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<sup>1</sup> The prosecution prepared a transcript of the 911 calls, the pertinent portion of which is attached herein as Appendix A. CP 37-46. Appendix A does not include the transcript of an additional 911 call that the prosecution did not seek to admit and was excised from the trial exhibit. 2/12/09RP 65, 79.

<sup>2</sup> The verbatim report of proceedings (RP) is referred to herein by the date of the proceeding.

Jackson, to establish that Johnson had contact with Givens that day.

In the November 7, 2008 incident, both Johnson and Givens were arrested because they were sitting in a car that had been reported stolen. 2/18/09RP 39, 51. Givens told the arresting officer that her name was Latenea Givens. 2/18/09RP 42. Arresting officer Ryan Keith verified in his database that there is a person named Latenea Givens, who is Tralenea's sister. 2/18/09RP 41, 46. But at the police precinct, the officer found a photograph of Tralenea, and without comparing it to any photograph of Latenea, suspected the woman he arrested was Tralenea. 2/18/09RP 43-46. When the officer questioned Tralenea at the police precinct about her true identity, she admitted she was Tralenea. 2/18/09RP 47. At Johnson's jury trial, the court overruled his objections to out-of-court statements by Tralenea Givens without the opportunity for cross-examination and in violation of the hearsay rules. 2/18/09RP 23, 31, 47.

The jury convicted Johnson of two counts of felony violation of a no contact order after the trial court rejected his arguments that the prosecution had not proven his prior convictions qualified as eligible predicate convictions. 2/19/09RP 28-31; CP 85-86. He

received a standard range sentence of 45 months in prison, and timely appeals. CP 87-95; CP 96.

Pertinent facts are addressed in further detail in the relevant argument sections below.

E. ARGUMENT.

1. THE ADMISSION OF THE STATEMENTS TO 911 FROM THE ABSENT COMPLAINANT AND HER SON VIOLATED JOHNSON'S RIGHT TO CONFRONT THE WITNESSES AGAINST HIM UNDER THE SIXTH AMENDMENT

a. The confrontation clause prohibits admission of uncross-examined statements by absent declarants when those statements are "testimonial" in nature. The Sixth Amendment right of confrontation prohibits the prosecution from eliciting out-of-court statements by non-testifying witnesses when there has not been an opportunity for adequate cross-examination. Davis v. Washington, 547 U.S. 813, 830, 126 S.Ct. 2266, 165 L.Ed.2d 224, 237 (2006); Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 1359, 158 L.Ed.2d 177 (2004); State v. Mason, 160 Wn.2d 910, 920, 162 P.3d 396 (2007); U.S. Const. amend. 6 (guaranteeing a defendant the right, "to be confronted with witnesses against him."); Wash.

Const. art. I, § 22 (guaranteeing the accused the right “to meet the witnesses against him face to face.”).

In Davis, the Supreme Court ruled that statements recounting completed criminal acts to investigating officers are “inherently testimonial.” 547 U.S. at 830. Moreover, “[s]tatements taken by police officers in the course of interrogations are . . . testimonial under even a narrow standard.” Crawford, 541 U.S. at 52. In Mason, the Washington Supreme Court recognized that statements to police involving the report of a crime are testimonial unless there is an “ongoing emergency.” 160 Wn.2d at 920. When the offense is over, there is not an “ongoing emergency” for the purposes of the confrontation clause, even if the complainant still seeks protection from the police. Id.

The prosecution bears the burden of proving statements it wishes to elicit are non-testimonial. State v. Koslowski, 166 Wn.2d 409, 417 n.3, 209 P.3d 479 (2009); see Melendez-Diaz v. Massachusetts, \_\_ U.S. \_\_, 129 S.Ct. 2527, 2540, 174 L.Ed.2d 314 (2009) (“fundamentally, the Confrontation Clause imposes a burden on the prosecution to present its witnesses”). The record is examined objectively and reviewed *de novo*, as a question of law. Koslowski, 166 Wn.2d at 421.

The Koslowski Court offered a detailed assessment of pertinent factors and their application in discerning the testimonial nature of a crime report to the police or 911. Id. at 422-29. In a nutshell, the factors are (1) whether the events are actually occurring; (2) would a reasonable listener find the speaker was presently facing on-going emergency; (3) were the statements made necessary to resolve present emergency or do they show what happened in the past; and (4) the level of formality of the interrogation.

b. Out-of-court statements to 911 reporting a completed incident in September 2008 were testimonial and inadmissible when the declarants did not testify. In the case at bar, neither the complainant or any other eyewitness testified at trial nor was subject to cross-examination. To prove Johnson violated the no contact order on September 15, 2008, the prosecution relied on 911 calls from the complainant and her son. CP 37-46 (App. A). But these calls reported a completed criminal incident. Thus, they are testimonial and their content inadmissible absent the opportunity for cross-examination. Davis, 547 U.S. at 827. Furthermore, even if not testimonial at its inception, a 911 conversation may become testimonial, and thus, “[t]hrough *in limine*

procedure, [courts] should redact or exclude the portions of any statement that have become testimonial.” Id. at 829.

The trial court concluded the calls were not testimonial based its interpretation of the callers apparent subjective intent and without explaining its reasoning in great detail. 2/12/09RP 78-79. The court declined to redact any portion of the calls even though Johnson asked for such an alternative approach. 2/12/09RP 81-82.

i. The incident was over. The timing and nature of the telephone calls to 911 is confusing because the record does not show which call occurred at which time. In one call, Jelani Givens-Jackson reports that a car drove off with his mother: “the dude just drove off with my mom dog.” CP 37. Yet at the same time or close in time, Givens reports that her son is in the car and her boyfriend drove off with her son (“they’re headed to Burien”), but then says that the driver has dropped off her son (“left my son down here on the corner . . . . My son is not in the car.”). CP 44-45.

Givens also alleged that her son was one of the people beating her up, thus diminishing the potential that her call was intended to report some on-going danger to her son. CP 45. The

callers claims cannot be accurate descriptions of what occurred, because of the internal conflicts as to who was dropped off from the car first, but an objective listener cannot know the order of events because the callers never came to court to explain further.

The prosecution bears the burden of proving the calls were not testimonial when made. Here, despite the convoluted nature of the reports to 911, it is objectively clear that the incident was over at the time of the calls. Both Givens and her son were out of the car, both called 911 and reported they were out of the car, and thus no one was being assaulted, abducted, or held in a presently dangerous situation. The prosecution did not prove the calls involved a presently occurring emergency.

ii. No reasonable listener would find Givens or her son were facing an ongoing emergency. An ongoing emergency may arise from either “a bona fide physical threat,” or the need for medical assistance. Davis, 547 U.S. at 827; Koslowski, 166 Wn.2d at 419 n.7. Even if the speaker is frightened, or excited, the emotional state does not establish an ongoing emergency. Koslowski, 166 Wn.2d at 423.

Here, Givens told the 911 operator that her hand is bleeding. But she declined medical attention, and when asked if she needed

a medic, she said “I’m just going to wash it off.” CP 44. She expressed no concern that Johnson will return to the scene and said she would go back to her house rather than waiting for the police. Her intention to return to her house shows that she was not hiding from Johnson out of fear he would return. CP 43. Neither Givens nor her son expressed a need for rescue or medical attention. Because the incident was over, no emergency remained. A reasonable listener would conclude the danger had passed and no medical assistance was required. Koslowski, 163 Wn.2d at 424-25.

iii. The nature of the interrogation indicated an intent to report a crime. A third factor to consider in deciding the testimonial nature of an out-of-court statement is the nature of the questions and answers, “objectively viewed.” Koslowski, 163 Wn.2d at 425. A court misapplies the critical confrontation clause analysis by focusing on the purpose or understanding of the declarant but rather on whether “the circumstances objectively indicate the primary purpose was to enable police assistance to meet an ongoing emergency.” Id. at 431

Tralenea Givens began her report to 911 not by asking for help or explaining a pressing peril, but by repeatedly giving the

car's license plate number. CP 40-42. Presumably, she offered this information so the police could investigate her allegations against her boyfriend, who had thrown her out of his car and "was trying to beat me up." CP 40. The 911 operator asked if she was assaulted, and she said yes; the operator asked if she needed a medic and she said no; the operator asked where she would wait for the police; and the operator asked for more details of the incident, such as the description of the perpetrator, her relationship to him, her full name, his race, his date of birth, and his clothing. CP 42-46. Givens volunteered that there was a no contact order between she and Johnson. CP 45. The content of the call shows both an operator and a caller focused on gathering and relaying information to be used in investigating a completed incident.

The trial court concluded that Givens was asking for help, and she could be scared that he would return, even though the court acknowledged she did not say that she was concerned about Johnson returning. 2/12/09RP 79. The court summarily concluded Givens had "no testimonial intent." Id. The excited nature of the declarant or considerations pertinent to evidentiary hearsay rules have no place in the context of confrontation clause analysis. Crawford, 541 U.S. at 61 (divorcing confrontation clause from the

“vagaries of the rules of evidence” or “amorphous notions of reliability”). Rather, the question must be whether the prosecution proved that, objectively viewed, the absent declarants were simply reporting on-going emergencies.

The court did not apply the proper “objective” viewpoint in assessing the testimonial nature of the call. Koslowski, 163 Wn.2d at 425, 430 n.13. The court did not consider redacting portions of the call even though defense counsel asked for redactions of any testimonial aspects of the call. 2/12/09RP 72.

The trial court rested its testimonial analysis for Jelani Givens-Jackson’s call based on its determination that his subjective intent in calling 911 was unclear, and he did not seem to be an effort to report a crime but more likely was seeking advice about what to do. 2/12/09RP 78. The court did not refer to the objective nature of the inquiry, but rather it tried to discern what Jelani-Givens subjectively thought.

Givens-Jackson’s objective intent is somewhat unclear because he did not ask for immediate assistance, or for anything specific. It is the prosecution’s burden to prove the call was objectively made to report an ongoing emergency. Givens-Jackson’s objectively viewed ambiguity in intent does not work to

the favor of the prosecution. Koslowski, 163 Wn.2d at 430.

Rather, his failure to ask for help or appear in dire need of such help shows there was no ongoing emergency. Because the rest of the calls shows the situation had resolved and he was not involved in an emergency, the prosecution did not prove this caller was primarily motivated to request immediate help rather than to report a crime.

iv. The calls had some degree of formality.

Formality is not the definitive factor in a testimonial determination although it is one aspect a court may consider. A certain level of formality exists whenever a police officer, or a police agent, questions a person. Koslowski, 163 Wn.2d at 429. The calls in the case at bar contained particular efforts to elicit information, even if less formal than a police precinct interview. The degree of formality of the discussion does not make the calls nontestimonial here.

c. Givens's statements to the police at the police station in November were testimonial and inadmissible absent cross-examination. A statement to a police officer in the course of a police investigation is the "core class" of statements considered testimonial. Crawford, 541 S. at 68-69; see Davis, 547 U.S. at 822

Statements to police who are investigating a completed incident are testimonial regardless of whether they are volunteered rather than given in answer to a specific police question. Melendez-Diaz, 129 S.Ct. at 2535.

In the November incident, Johnson and the woman he was with were both arrested because they were sitting in a car that had been reported stolen. 2/18/09RP 39. Upon her arrest, Givens gave her name to police as Latenea Givens. 2/18/09RP 41. Police officer Keith's database showed valid identifying information for a person with such a name. 2/18/09RP 42-43. Later, at the police precinct, Keith found a no contact order "in the system" between Johnson and Tralenea Givens. He "investigated it further" and found a booking photograph of Tralenea. 2/18/09RP 43. Keith did not look for or locate any photographs of Latenea, who was Tralenea's sister. 2/18/08RP 46. Even though he had no idea what Latenea looked like, Keith concluded Tralenea matched the booking photograph, admitted as Ex. 2.

Then, Keith told Givens of his investigation. Givens admitted to the officer she was Traleanea. 2/18/09RP 47. Johnson objected to this out-of-court statement on hearsay grounds but the court overruled it. Id. Although Johnson did not

also argue the issue as a confrontation clause violation, the claim is “unquestionably constitutional in nature.” State v. Kronich, 160 Wn.2d 893, 900, 161 P.3d 982 (2007). Because the court’s ruling turned on whether the statement was admitted for its truth, which would also govern a confrontation clause claim as a statement not admitted for its truth is not testimonial, the error is manifest and reviewable on appeal. See Crawford, 541 U.S. at 59 n.9

At an earlier side bar anticipating this testimony, the court had ruled that Givens’ statements to the police about her name were not being offered for their truth. 2/18/09RP 31-32. But the court’s reasoning is befuddling as the statement would necessarily be used by the jury for the truth of the matter asserted.

The prosecution bore the burden of proving Tralenea Givens was the person in the car in November. CP 82 (Instruction 13). Tralenea Givens refused to come to court and testify about whether she was this person. The police officer’s investigation of Givens’ true name was conducted for the purpose of a police investigation of an completed crime. Objectively viewed, the police officer elicited this information for purposes of investigating a completed crime.

The court's claim that the statement was simply pertinent to credibility and whether Givens lied when giving her name is the incorrect analysis. Givens did not testify and her credibility was not at issue. Either Johnson was with her on November 2008 or he was not, it did not matter whether she invited or consented to the contact. CP 80 (Instruction 11, explaining consent of person contacted is not a defense). The court's contention that the statement was admissible to show the complainant lied about her first identification presupposes she was telling the truth when she gave her name as Tralenea, and her identity was a necessary element that the prosecution was required to prove.

Givens' statement to the police of her name was testimonial and its admission in the absence of cross-examination violated Johnson's Sixth Amendment right to confrontation.

d. The call from the complainant's son was inadmissible under hearsay rules. The trial court ruled that the 911 call from Givens' son was not an excited utterance because the son's words were cool and collected. 2/12/09RP 75-76. But the court found his statements qualified as present sense impressions, and because they were not testimonial, were admissible under this hearsay exception.

Statements of present sense impression must be made “while” the declarant is perceiving the event or “immediately thereafter.” ER 803(a)(1). They must be a “spontaneous or instinctive utterance of thought,” evoked by the occurrence itself, unembellished by premeditation, reflection, or design. Beck v. Dye, 200 Wash. 1, 9-10, 92 P.2d 1113 (1939).

“An answer to a question may not be a present sense impression.” State v. Martinez, 105 Wn.App. 775, 782, 20 P.3d 1062 (2001), overruled on other grounds, State v. Rangel-Reyes, 119 Wn.App. 494, 81 P.3d 157 (2003) (citing State v. Hieb, 39 Wn.App. 273, 278, 693 P.2d 145 (1984)).

The caller Jelani Givens-Jackson was reporting an event in which his involvement had ended. He explained to the 911 operator that “the dude just drove off with my mom.” CP 37. As the trial court found, Givens-Jackson did not appear particularly phased by the incident. 2/12/09RP 75-76. His voice was cool and collected. He did not ask for emergency service or report a need for immediate assistance.

Givens-Jackson gave a lengthy statement to the 911 operator, elicited by the operator. Other than, “the dude just drove off with my mom dog,” which he offered after the operator implicitly

asked for an explanation by saying, “this is Seattle Police you were . . . trying to call 911,” the entire statement was elicited by questions from the operator. CP 37-40. Givens-Jackson’s name, his description of the perpetrator and incident, his location, and all further explanations were offered in response to the 911 operator’s questions. Id.

Because the description of events was elicited by the operator, it was not a spontaneous recounting of an event. It was purposefully drawn out by the operator, and therefore, does not meet the definition of a present sense impression. The court unreasonably admitted the entire 911 call from Givens-Jackson as a present sense impression. At the least, everything following, “Uh the dude just drove off with my mom dog,” should have been stricken because they were not spontaneous statements but were purposeful responses to targeted questions.

e. The erroneous admission of the testimonial statement requires reversal. The improperly admitted statements in violation of Johnson’s right of confrontation are harmless only if the State proves beyond a reasonable doubt they did not affect the outcome of the case. Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); see also Delaware v. Van

Arsdall, 475 U.S. 673, 684, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)

("The correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt").

Here, the prosecution cannot establish the allegations charged in count I without the content of the 911 calls. The responding police officer who spoke with Givens knew nothing of the incident. At best, he could say he saw Givens, who was upset, and had a bloody hand. 2/18/09RP 78-79. This testimony would not establish Johnson's connection to the incident.

Count II similarly rested on the officer's confirmation that Johnson was with Tralenea Givens in November. But the officer did not know Tralenea, and he did not compare her photograph with Latenea's picture, so his claim that he believed her to be Tralenea, rather than her sister, would be highly speculative, uncorroborated, and of dubious value. Absent Givens's statement to the officer that she was Tralenea, the prosecution would not have been able to prove the violation of the no contact order.

The prejudicial effect of the statements worked against both charged incidents, because they were jointly tried and the jury

would necessarily use contact on one date to increase the likelihood of prohibited contact on another date. Had Johnson been able to realize the full potential of cross-examination, he could have explored the inconsistencies and counter-claims in the 911 calls. Furthermore, the September 911 calls describe a violent and upsetting incident that should not have been admitted and would prejudice the jury against Johnson by virtue of the unproven allegations contained in those calls. Even if some portion of the calls could have been admitted, most should not have been and without all of the information contained therein, the State would be left with too much of a muddle and a substantial lack of evidence connecting Johnson to the incidents to present a reasonable case to the jury.

2. THE PROSECUTION PRESENTED  
INADEQUATE EVIDENCE OF VALID,  
QUALIFYING PRIOR CONVICTIONS AND  
THUS DID NOT PROVE AN ESSENTIAL  
ELEMENT OF THE CHARGES.

a. The prosecution must prove that a prior conviction required to prove a felony violation of a no contact order was an eligible predicate to the offense. As a matter of due process of law, the State bears the burden of proving every essential element of a charged crime. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068,

25 L.Ed.2d 368 (1970); State v. Byrd, 125 Wn.2d 707, 713-14, 887 P.2d 396 (1995); U.S. Const. amends. 5 & 14; Wash. Const. art. I, § 22. On a challenge to the sufficiency of the evidence, this Court must reverse a conviction when, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could not have found all the essential elements of the offense proven beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 61 L.Ed.2d 560, 99 S.Ct. 2781 (1979); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

In a claim of insufficiency, the truth of the State's evidence is presumed as well as all inferences that can be reasonably drawn therefrom. State v. Theroff, 25 Wn.App. 590, 593, 608 P.2d 1254, aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980). However, when an innocent explanation is as equally valid as one upon which the inference of guilt may be made, the interpretation consistent with innocence must prevail. United States v. Bautista-Avila, 6 F.3d 1360, 1363 (9<sup>th</sup> Cir. 1993). “[U]nder these circumstances, a reasonable jury must necessarily entertain a reasonable doubt.” United States v. Lopez, 74 F.3d 575, 577 (5<sup>th</sup> Cir. 1996). Speculation and conjecture are not a valid basis for upholding a

guilty verdict. State v. Prestegard, 108 Wn.App. 14, 42-43, 28 P.3d 817 (2001).

As charged in the case at bar, the essential elements of felony violation of a no-contact order were that Johnson violated the terms of a no-contact order and he had been convicted on two previous occasions of violating no-contact orders. State v. Oster, 147 Wn.2d 141, 146, 52 P.3d 26 (2002); RCW 26.50.110.<sup>3</sup> “The prior convictions function as an element of felony violation of a no contact order.” Oster, 147 Wn.2d at 146. These prior convictions must they be proven to the jury beyond a reasonable doubt. Id.

Facts which increase the penalty for an offense beyond the statutory maximum, other than the fact of a prior conviction, are elements of the offense which must be found by a jury and proved beyond a reasonable doubt. Recuenco v. Washington, 548 U.S. 212, 220, 126 S.Ct. 2546, 165 L.Ed.2d 466 (2006) (“[w]e have treated sentencing factors, like elements, as facts that have to be tried to the jury and proved beyond a reasonable doubt.”); U.S. Const. amend. 6.

b. By failing to prove a validly entered prior conviction, the prosecution did not present sufficient evidence.

Felony violation of a no contact order expressly requires a particular type of prior convictions to establish the offense. RCW 26.50.110(5). For both counts I and II, the prosecution was required to prove that Johnson had:

two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020.

Id.; CP 47-48 (amended information).

In its case-in-chief, the prosecution's evidence showing Johnson's prior convictions consisted of three Judgment and Sentences, Exs. 7, 8, & 9. One Judgment included the statutory citation of RCW 26.50.110(1), (4), and thus showed that Johnson was convicted of violating a no contact order issued by a qualifying statute. Ex. 8. But the remaining exhibits lacked the essential citation to a pertinent statute and the court had insufficient

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<sup>3</sup> RCW 26.50.200(5) provides in pertinent part, "A violation of a court order issued under this chapter ... is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020."

information on which to base its determination that the prior convictions were valid predicates.

The court relied on the notion that “DV-VNCO” in Ex. 9,<sup>4</sup> the Seattle municipal court conviction, must mean “domestic violence,” which must be the equivalent of domestic violence for the purposes of the RCW, and VNCO must be a violation of a court order akin to that in the RCW. 2/19/09RP 22, 29-31. Yet the court’s presumption undermines the clear burden of proof placed on the prosecution by the statute. The prosecution did not establish that all Seattle municipal code violations are part of RCW 10.99, that all court orders qualify under RCW 26.50.110, or the conviction was obtained under another qualifying statute. The prosecution offered is no citation on which to determine from what code or statute this conviction stemmed.

In State v. Gray, 134 Wn.App. 547, 148 P.3d 1123 (2006), rev. denied, 160 Wn.2d 1008 (2007), the court discussed and compared a no-contact order conviction issued for a Seattle municipal code (SMC) violation, and found it was issued under the authority of RCW 10.99. But the Gray Court had before it the

precise ordinance underlying the conviction and could explore the authority under which it was issued. Id. at 558-59. Here, the prosecution did not offer a municipal ordinance or other specific information about the statute or law underlying the prior conviction.

The same lack of proof holds true for the Renton municipal court violation in Ex. 7,<sup>5</sup> and the trial court acknowledged the weakness of this proof. 2/19/09RP 31. The document contains no legal or factual explanation for the underlying conviction. The boilerplate form offers little explanation. It does not even make clear what offense Johnson was found guilty of committing.

The State did not meet its burden of proving Johnson had two eligible qualifying offenses. Without proof of this essential element, the conviction cannot stand. State v. Spruell, 57 Wn.App. 383, 389, 788 P.2d 21 (1990). In the instant case, the State's failure to prove all of the essential elements of the charged offense beyond a reasonable doubt requires reversal of Gray's felony

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<sup>4</sup> A copy is attached as Appendix B. The parties redacted the exhibit to exclude sentencing information from the jury but the unredacted version did not contain additional substantive information about the charge.

<sup>5</sup> A copy of Ex. 7 is attached as Appendix C. Like Ex. 9, the unredacted version was available to the court but contained no additional explanation of the basis of conviction.

conviction, remand for entry of a conviction for the gross  
misdemeanor violation of RCW 26.50.110 and resentencing.

3. WHERE THE CHARGING DOCUMENT  
OMITTED FACTS NECESSARY TO THE  
ESSENTIAL ELEMENTS OF THE CHARGED  
OFFENSE, IT IS INADEQUATE AND  
REQUIRES REVERSAL

a. The charging document must include the facts necessary to all essential elements. Due process of law requires the State properly inform an accused person of the charges against him. U.S. Const. amends. 5, 6, 14. Wash. Const. art. I, § 22. A charging document must contain, “[a]ll essential elements of a crime.” State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991); see CrR 2.1(a)(1) (charging document “shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged.”).

The information must contain the statutory and non-statutory elements of the crime. Kjorsvik, 117 Wn.2d at 1001. The “essential elements” required in the charging document requires not only the elements of the crime but also “the conduct of the defendant which is alleged to have constituted that crime.” Id.; see also Leonard v. Territory, 2 Wash.Terr. 381, 392, 7 P. 872 (1885) (“Under our laws an indictment must be direct and certain, both as regards the crime charged and as regards the particular circumstances thereof, when they are necessary to constitute a

complete crime.”); State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989) (“essential elements” rule requires that a charging document *allege facts supporting every element of the offense*, in addition to adequately identifying the crime charged.” (emphasis in original)).

When challenged for the first time on appeal, a charging document is construed liberally. State v. Ibsen, 98 Wn.App. 214, 216, 989 P.2d 1184 (1989). This liberal construction requires the court to first determine whether the necessary facts appear in any form in the charging document. Id. at 216. Only after the court finds the necessary information could be inferred from the face of the charging document will the court require the defendant to show he or she had been actually prejudiced from the inartful language. Id.

As charged in the case at bar, the essential elements of felony violation of a no-contact order were that Johnson violated the terms of a no-contact order and he had been convicted on two previous occasions of violating no-contact orders. Oster, 147 Wn.2d at 146. Not only are the prior convictions an element that must be proven to the jury beyond a reasonable doubt and clearly set forth as elements in the jury instructions, the charging

document must contain sufficient factual information to provide notice to the accused person.

b. Felony violation of a no contact order requires specific factual information about the existence of two prior convictions. In City of Seattle v. Termain, 124 Wn.App. 798, 103 P.3d 209 (2004), this Court found a complaint for violation of a no contact order was constitutionally defective because it failed to identify the actual order he was charged with violating. The charging document in Termain simply traced the language of the ordinance governing the violation of the no-contact order. Id. at 803. The Court of Appeals ruled, “The charging document here is awkwardly worded and vague. Frankly, it is gooblygook.” Id. at 806.

Here, the charging document alleged in pertinent part that Johnson, “did have at least two prior convictions for violating the provisions of an order issued under RCW chapter 10.99, 26.50, 26.09, 26.10, 26.26, 74.34 or a valid foreign protection order as defined in RCW 26.52.020.” CP 43.

The charging document did not give any factual explanation of these prior convictions. It did not provide a date of offense or

sentence, the court in which they were issued, or any other facts that would explain what offenses on which the prosecution relied.

Merely reciting the statutory language is not always sufficient to provide the necessary factual notice. Termain, 124 Wn.App. at 803; State v. Clowes, 104 Wn.App. 935, 941, 18 P.3d 596 (2001). In Termain, the Court faulted the charging document for failing to identify the underlying no-contact order with any degree of specificity. Termain relied on Leach, whose “core holding” was that a defendant must be apprised not only of the legal elements but also “of the conduct of the defendant which is alleged to have constituted the crime.” Id. (citing Leach, 113 Wn.2d at 688-89; Kjorsvik, 117 Wn.2d at 98).

The same reasoning extends to the failure to identify the prior convictions underlying felony violation of a no contact order. Absent specific factual allegations, Johnson could not “fairly imply” the factual predicate for the essential element of prior convictions. Identifying the specific underlying convictions was not merely academic in Johnson’s case, as he sought dismissal of the case at trial based on the ambiguous nature of one of the prior convictions. 2/19/09RP 22. The court rejected Johnson’s motion to dismiss based on its sheer speculation that the municipal court convictions

surely were covered by RCW 26.50.110. Id. at 28-31. Without proper notice, Johnson could not have been expected to marshal evidence to disprove and successfully challenge the prior convictions, which were essential elements of the offenses charged. Oster, 147 Wn.2d at 146.

c. The insufficient charging document actually prejudiced Johnson. The prosecution's failure to provide mandatory factual notice of an essential element of the crime prejudiced Johnson's ability to prepare and present a defense. The court would not let Johnson argue to the jury that one of the prior convictions appeared not to meet the legal criteria, and would not grant his motion to dismiss without Johnson presenting additional evidence explaining the nature of the contested prior conviction.

As discussed above, Johnson argued that the sentencing exhibits offered as proof of his convictions did not establish he had the necessary prior conviction for violating an applicable court order. Without receiving adequate advance notice of the facts underlying the essential element of two prior convictions, Johnson could not prepare a defense. Without requiring the prosecution to specify the underlying convictions on which it relies, the defense

cannot know whether it can defend against the charge based on the lack of proof of a prior conviction. Johnson could not investigate the prior convictions on which the accusations rest or properly contest the State's proof. Omitting this critical factual information from the charging document denied Johnson his ability to meaningfully prepare and present his defense. Thus, Johnson was actually prejudiced by this deficiency.

F. CONCLUSION.

For the foregoing reasons, Shannon Johnson respectfully requests this Court reverse and dismiss his convictions based on insufficient evidence, or alternatively, vacate the convictions and remand for proper charging notification and a trial at which Johnson is afforded his right of confrontation.

DATED this 10<sup>th</sup> day of September 2009.

Respectfully submitted,



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Washington Appellate Project (91052)  
Attorneys for Appellant

**APPENDIX A**  
**Transcript of 911 Calls**

1 Call Two of Four  
2 (Dial tone.)  
3 (Phone ringing.)  
4 CALLER: Hello.  
5 911: Hello this is Seattle Police you were uh call, trying to call 911.  
6 CALLER: Uh the dude just drove off with my mom dog.  
7 911: What's going on?  
8 CALLER: He left, he just drove off with my mom.  
9 911: Who drove off with your mom?  
10 CALLER: The dude named Shammon.  
11 911: What's that?  
12 CALLER: He just, he just left me.  
13 911: Okay this is a different operator than you were on before with this, this is Seattle  
14 Police Department not the State Patrol they were transferring you to us and uh  
15 you got disconnected somehow. So what's, what's going on there?  
16 CALLER: Uh my mom was gonna take me to school and then there, this dude wouldn't let  
17 her go. So the dude get mad then he was all telling her to be quiet so he stopped  
18 the car too quick, made my mom's head hit the window. So my mom got mad and  
19 then like he started trying to pull her out the, out of the car.  
20 911: Okay and what's the address there that you're at?  
21 CALLER: Uh, uh...  
22 911: Are you on South Dearborn Street?  
23 CALLER: ...yeah.

1 911: Okay and what, what's your name?  
2 CALLER: Jelani.  
3 911: How do you spell that?  
4 CALLER: J-E-L-A-N-I.  
5 911: And what's your uh last name?  
6 CALLER: Givens-Jackson.  
7 911: Okay and what's the phone number you're calling from?  
8 CALLER: Uh I don't know this is, I think this is his-phone, his phone so...  
9 911: Okay.  
10 CALLER: ...I was talking when I was trying to pull him off my mom.  
11 911: Okay. And what kind of vehicle did they leave in?  
12 CALLER: Uh I don't know what his car, I just...  
13 911: What color was it?  
14 CALLER: Huh?  
15 911: What color was it?  
16 CALLER: It was green.  
17 911: Was it like a sedan or a pickup or what kind of...  
18 CALLER: (Unintelligible noise)...  
19 911: ...like a two-door car, or a four-door car?  
20 CALLER: It's a four-door.  
21 911: Four-door car. Older or newer?  
22 CALLER: New.  
23 911: Okay.

1 -CALLER: And uh my mom's hand is bleeding.  
2 911: Okay and you'll be waiting are you, do you live there or?  
3 CALLER: No we, we were in the middle of driving down the hill and then all of a sudden he  
4 just stopped the car.  
5 911: How do you know this person?  
6 CALLER: Like just like for like I don't know a couple of years now.  
7 911: You, who, how, how, how's he known to you guys though is he a friend, family,  
8 or?  
9 CALLER: Uh like my mom's on and off boyfriend.  
10 911: So it, it's your mom's boyfriend?  
11 CALLER: Yeah.  
12 911: Okay and where are you at for police to come see you and get this report from  
13 you?  
14 CALLER: I'm, I'm at, I'm at the same spot that you said.  
15 911: Okay.  
16 CALLER: South Dearborn Street.  
17 911: Do you know what the nearest cross street is?  
18 CALLER: Uh nuh-uh. I don't, I don't really live around here. I live out in Burien.  
19 911: Okay. Alright do you know what they're, what were they fighting about?  
20 CALLER: Uh taking me to school.  
21 911: Okay. And you don't know which direction they left in?  
22 CALLER: Uh I, if you were here I could tell you but I don't...  
23 911: Okay.

1 CALLER: ... think it would make much of a difference.  
2 911: Okay it looks like we've got officers on their way out into that area so. Are you  
3 still standing on the street in front of that address where it happened?  
4 CALLER: Yeah.  
5 911: Alright officers uh should be there shortly okay?  
6 CALLER: Yeah.  
7 911: Alright bye.

8 End of Call

9 Call Three of Four

10 CALLER: (Unintelligible)..  
11 911: Seattle Police and Fire.  
12 CALLER: The license plate is 274..  
13 911: Where are you?  
14 CALLER: ...SUR.  
15 911: Ma'am where are you?  
16 CALLER: In the street, my boyfriend just threw me out of the car.  
17 911: Alright ma'am tell me where you're at? Where are you?  
18 CALLER: 274 SUR..  
19 911: 274? 27..  
20 CALLER: My hand is bleeding off.  
21 911: Okay but you're talking when I'm trying to ask you, I don't know where you're at.  
22 CALLER: 274 SUR....  
23 911: 274 SUR that's his plate number?

1 (Sounds like a hang up, dial tone.)

2 VOICE MAIL: I'm sorry but the person you called has a voice mailbox that has not been set up  
3 yet.

4 End of Call

5 Call Four of Four

6 CALLER: 274 SUR.

7 911: Seattle Police and Fire, 104.

8 CALLER: Okay I'm trying to...

9 911: You're what?

10 CALLER: I'm trying to (unintelligible)... His license plate is 274 SUR, it's a...

11 911: It's hold on 274 Sam, Union, Red?

12 CALLER: ...it's green, uh yeah a green Honda CRV. No my hand is bleeding, he just threw  
13 me out of the car. He was trying to beat me up.

14 911: Okay I, I can't understand you ma'am what's going on?

15 CALLER: He (unintelligible)...

16 911: Okay where are you?

17 CALLER: I'm on 20<sup>th</sup> and Dearborn right now.

18 911: Okay so that license plate was 274 Sam, Union, Robert?

19 CALLER: SVR, or SUR.

20 911: Alright hold on you need to listen to me, 274 Sam, Union, Robert?

21 CALLER: What, what'd you say?

22 911: 274 S like Sam...

23 CALLER: SUR.

1 911: ...S like Sam?  
2 CALLER: X as in (Unintelligible).  
3 911: X-ray, U like Union?  
4 CALLER: X as in (Unintelligible).  
5 911: Okay X-U-R?  
6 CALLER: Yep.  
7 911: Okay and it's a gray Honda?  
8 CALLER: It's like a green Honda.  
9 911: A green Honda?  
10 CALLER: Yeah I'm on Lane Street, here it's Lane Street.  
11 911: Okay and I need to know...  
12 CALLER: I'm just heading down.  
13 911: Okay what happened?  
14 CALLER: And he left, he was gonna take my son to school and he gets mad because he goes  
15 you didn't get me no breakfast and he decided he's gonna beat me up.  
16 911: And do you know this person?  
17 CALLER: But (unintelligible)...he says get out of the car... (unintelligible)....  
18 911: Uh I can't understand you, you're getting a little too excited hold on okay. You  
19 need to calm down a little bit so I can understand you. Okay so is this a  
20 boyfriend?  
21 CALLER: Yep.  
22 911: Okay and did he assault you?  
23 CALLER: Yes he did.

1 911: Do you need a medic?  
2 CALLER: No I don't need a medic. My hand is bleeding but I'm just gonna wash it off.  
3 911: Okay so 20<sup>th</sup> Avenue South and South Dearborn?  
4 CALLER: Yeah.  
5 911: Are you gonna wait there?  
6 CALLER: No.  
7 911: Okay well if you don't wait there how are we gonna come see you?  
8 CALLER: No I live one block away.  
9 911: What address are you gonna wait at?  
10 CALLER: On four, on 19<sup>th</sup> and Charles.  
11 911: What's the address?  
12 CALLER: It's a corner house I don't even know the address I just moved there. I'm about to  
13 go there now.  
14 911: Okay so it's 19<sup>th</sup> and what?  
15 CALLER: Charles.  
16 911: And Charles?  
17 CALLER: Yeah.  
18 911: And do you know what side of the street that's on?  
19 CALLER: It'd be on, it was on the east side.  
20 911: The east side of 19<sup>th</sup>?  
21 CALLER: I, I, I, my no, my house is on the north, northwest corner.  
22 911: Northwest corner, what color is the house?  
23 CALLER: It's uh brown.

1 911: Okay hold on here. Okay, okay so was there two males in the vehicle?  
2 CALLER: Yes but one of them is my 15 year old son.  
3 911: Okay your son was one of the people beating on you?  
4 CALLER: Yeah.  
5 911: And your boyfriend or husband?  
6 CALLER: Yeah boyfriend.  
7 911: Okay. And what direction did they go?  
8 CALLER: I think they're headed to Burien.  
9 911: Did you see what direction they went?  
10 CALLER: No I did not. But I know my son goes to school at, in Burien.  
11 911: Okay so you didn't see what direction they (unintelligible)?  
12 CALLER: No. He drove around the corner and then he pushed me back out of the car on the  
13 next street.  
14 911: Uh okay it looks like someone else already called.  
15 CALLER: I called and then the phone hung up because I (unintelligible)...  
16 911: No someone else called, too, cause they witnessed it.  
17 CALLER: Okay.  
18 911: So let's see. What's your last name?  
19 CALLER: Givens.  
20 911: Givens?  
21 CALLER: Yeah G-I-V-E-N-S.  
22 911: And your first name?  
23 CALLER: Tralenea, T-R-A-L-E-N-E-A.

1 911: And you're sure you don't need a medic?  
2 CALLER: No.  
3 911: Does he have any weapons?  
4 CALLER: No left my son down here on the corner.  
5 911: Okay.  
6 CALLER: My son is not in the car. He, I don't know where he is my son's not in the car.  
7 911: Okay what's your boyfriend's last name?  
8 CALLER: Shannon Johnson, his last name is J-O-H-N-S-O-N.  
9 911: And his first name's Shannon?  
10 CALLER: Shannon, S-H-A-N-N-O-N, Andre is his middle name.  
11 911: Okay.  
12 CALLER: A-N-D-R-E.  
13 911: What...  
14 CALLER: I have a no contact order.  
15 911: Oh, okay what race is he? What race is he White, Black Asian...  
16 CALLER: Black.  
17 911: ...okay.  
18 CALLER: He's Black with a bunch of muscles. He's got...  
19 911: Okay hold on, hold on do you know his date of birth?  
20 CALLER: Yep.  
21 911: What is that?  
22 CALLER: 7/22/1976.  
23 911: What month?

1 CALLER: 7/22/1976.  
2 911: 7/22, okay do you know what he was wearing today?  
3 CALLER: He had on some jeans and I believe a black shirt.  
4 911: Jeans and a black shirt? Are you at home now?  
5 CALLER: I'll be there in (unintelligible)...no I'm standing on the block that they're supposed  
6 to be on the way, on their way here.  
7 911: Okay so you're gonna be on 19<sup>th</sup> and Charles?  
8 CALLER: Yeah. No they're here now.  
9 911: The officers are?  
10 CALLER: Yes.  
11 911: They're with you right now?  
12 CALLER: Yeah.  
13 911: Okay go ahead and talk to them okay?  
14 CALLER: Okay.  
15 911: Okay thanks bye.

16 End of Call

17 End of Statement

18  
19  
20  
21  
22  
23

**APPENDIX B**  
**Exhibit 9**

CERTIFIED COPY

FILED JUN 13 2008 COURT 1002



IN THE MUNICIPAL COURT OF THE CITY OF SEATTLE

THE CITY OF SEATTLE ) Plaintiff, )  
Shannon A. Johnson ) Defendant. )  
DOB: 7/22/76 )

CASE NUMBER: 516639

JUDGMENT & SENTENCE ORDER

Suspended Sentence [redacted] months  
 Deferred Sentence [redacted] months

The defendant has been found guilty of the following charges by  plea of guilty  verdict of jury  finding of the court. The court imposes the following sentence:

Count 1, charge of DV-VNCO, [redacted] days in jail and suspends [redacted] days; and a fine of \$ [redacted] with \$ [redacted] suspended.  
Count 2, charge of [redacted], [redacted] days in jail and suspends [redacted] days; and a fine of \$ [redacted] with \$ [redacted] suspended.  
Count 3, charge of [redacted], [redacted] days in jail and suspends [redacted] days; and a fine of \$ [redacted] with \$ [redacted] suspended.

The jail time is  concurrent  consecutive with [redacted] with credit for time served.

Jail time to be served as follows:

[redacted] days in jail.  Work release ordered, if eligible. Defendant shall report by [redacted] days Electronic Home Monitoring  with BAC, [redacted] days Work Crew, [redacted] hours Community Service.

As a condition of deferred sentence, the defendant shall serve [redacted] days in jail and pay \$ [redacted] in fines/court costs.

The defendant shall pay the following:

FINE	\$ _____	Fine includes statutory assessments
COST	\$ _____	<input type="checkbox"/> Costs <input type="checkbox"/> CRAS <input type="checkbox"/> DIAS <input type="checkbox"/> SIVF <input type="checkbox"/> DFEE
BRTH	\$ _____	BAC Fee
PPA	\$ _____	Prostitution Prevention & Intervention Account Assessment
REST	\$ _____	Restitution to: (Name(s) Only) _____
		<input type="checkbox"/> To be determined at later date.
	\$ 43 CCFE	Other 43 CASE waived

Total \$ \_\_\_\_\_  
\$ \_\_\_\_\_ of this total is converted to \_\_\_\_\_ hours of community service.

Payment of financial obligations and timely reporting to jail/alternative confinement are conditions of suspended/deferred sentence. Failure to comply may result in additional jail time.

JUDGMENT & SENTENCE ORDER

Case # 516639

CONDITIONS OF DEFERRED OR SUSPENDED SENTENCE

V  
C D  
NVOI  
NDRO  
ABST  
DON'T  
IID  
NTSI  
CDAT  
ALCS  
DWIV  
DVTX  
NGO  
NOWP  
ANGG  
DNA  
SOAP  
HIVT  
STDG  
ST  
CSHS  
PROB

- Commit no criminal violations of law.
- Report change of address to the Court within twenty-four hours of obtaining a new address.
- Do not drive a motor vehicle without a valid license and proof of insurance.
- Commit no alcohol/drug-related infractions.
- Use no alcoholic beverages or non-prescribed controlled drugs.
- Not refuse to take a blood/breath test when asked to do so by a law enforcement officer.
- Do not drive a vehicle unless it is equipped with an ignition interlock device calibrated at .025 grams of alcohol per 210 liters of breath for a period of \_\_\_\_\_ years following eligibility for reinstatement of driver's license.
- Complete National Traffic Safety Institute. Level 1  Aggressive Driving
- Obtain a substance abuse evaluation and complete follow up treatment as required by  Treatment Agency  Probation.
- Complete Alcohol & Drug Information School within \_\_\_\_\_ days.
- Complete Victim Panel within \_\_\_\_\_ days.
- Enter and successfully complete \_\_\_\_\_
- No contact with \_\_\_\_\_ or entry into \_\_\_\_\_  per written order.
- Possess no weapons.  Forfeit weapons ~~\_\_\_\_\_~~
- Complete anger management class.  Complete parenting classes.
- Provide biological sample for DNA identification analysis.
- Stay out of areas of prostitution.  SODA Stay out of drug areas.
- Complete an HIV test within \_\_\_\_\_ days.
- Complete sexually transmitted disease class within \_\_\_\_\_ days.
- Comply with mental health treatment at \_\_\_\_\_
- Mental health evaluation and complete follow-up treatment as required by  treatment agency  probation.
- Defendant must have entered classes/treatment no later than \_\_\_\_\_ days from today.
- Perform \_\_\_\_\_ Hours of Community Service within \_\_\_\_\_ days.

Other: \_\_\_\_\_

The above-conditions to be monitored by The Probation Services Division.  
 Defendant to abide by all of their rules and regulations.  
 Defendant to report  immediately following Court,  by \_\_\_\_\_  
 Or  within 36 hours of release of custody from custody to:  
 Probation Court Compliance, 8<sup>th</sup> Floor,  Court Resource Center, 2<sup>nd</sup> Floor  
 Revenue Recovery, 1<sup>st</sup> Floor, Windows #12-16,  Community Service, 1<sup>st</sup> Floor, Window 16  
 All offices are in The Seattle Justice Center, 600 FIFTH AVENUE, SEATTLE, WA 98104-1900

DEFENDANT TO PROVIDE INFORMATION IN BOX

Shannon A Johnson  
 (Defendant's signature): First Name, MI, Last Name

\_\_\_\_\_  
 DEFENDANT'S MAILING ADDRESS

\_\_\_\_\_  
 CITY                      ZIP                      PHONE NUMBER

6/3/08  
 DATED

[Signature]  
 JUDGE/PRO TEM

[Signature]  
 PROSECUTING ATTORNEY      BAR # 8310

[Signature]  
 DEFENSE ATTORNEY      BAR # 39216

**APPENDIX C**  
**Exhibit 7**

Date 8-17-05  In Custody \$ 50 PD costs  
Bail \$ \_\_\_\_\_ Bond / Cash / Credit Card

*agreed disp*

Advice of Rights  NG Form  G Form  Atty. Waiver  S.O.C. Form  Police Report - Exh. # \_\_\_\_\_  
PLEA CT 1:  NG  G / ALFORD Amended to: \_\_\_\_\_  
FINDING CT 1:  NG / NC  G / C  Dismissed W / W/O Prejudice  C / D Motion **State Exhibit**  
PLEA CT 2:  NG  G / ALFORD Amended to: \_\_\_\_\_  
FINDING CT 2:  NG / NC  G / C  Dismissed W / W/O Prejudice  C / D Motion

Tape: \_\_\_\_\_  Set for PTR  Screen for PD (income shown)  D P Granted  
Log: \_\_\_\_\_  Set for MOT  PD Granted / Withdrew  60/90 waiver signed to: \_\_\_\_\_  
City Pros: GN  Set for NJT  Jury Trial Waiver/Demand  Order of release  
Defense Atty.: JD  Set for READY & JTR  Request for Discovery  PC Est. / Defense Stips to PC  
Ofcs: \_\_\_\_\_  By \_\_\_\_\_  Order Interpreter \_\_\_\_\_  P R Conditions Imposed

**IT IS ORDERED ADJUDGED & DECREED THAT THE COURT SENTENCES THE DEFENDANT TO:**

COUNT 1:  Sentencing Deferred  Continued w/o Finding  Jail Suspension \_\_\_\_\_ month(s) / year(s).  
Fine \$ \_\_\_\_\_ with \$ \_\_\_\_\_ Suspended for \_\_\_\_\_ year(s).  
Costs:  TPC/TPD Fee \$103  CCR Fee \$50  Prob. Active \$300  Warrant Fee \$ \_\_\_\_\_  BAC Fee \$125  D P Costs \$150  Prob. Mon. \$150  Public Defense \$ \_\_\_\_\_  
Jail \_\_\_\_\_ days imposed with \_\_\_\_\_ suspended for \_\_\_\_\_ year(s). Credit for \_\_\_\_\_ days. SERVE \_\_\_\_\_ days.

COUNT 2:  Sentencing Deferred  Continued w/o Finding  Jail Suspension \_\_\_\_\_ month(s) / year(s).  
Fine \$ \_\_\_\_\_ with \$ \_\_\_\_\_ Suspended for \_\_\_\_\_ year(s).  
Costs:  TPC/TPD Fee \$103  CCR Fee \$50  Prob. Active \$300  Warrant Fee \$ \_\_\_\_\_  BAC Fee \$125  D P Costs \$150  Prob. Mon. \$150  Public Defense \$ \_\_\_\_\_  
Jail \_\_\_\_\_ days imposed with \_\_\_\_\_ suspended for \_\_\_\_\_ year(s). Credit for \_\_\_\_\_ days. SERVE \_\_\_\_\_ days. 11/17-05

PAY TOTAL FINE/COSTS/FEEES OF \$ \_\_\_\_\_ Minimum monthly payment \$ \_\_\_\_\_ Beginning 9-17-05  
 Community Service in lieu of \$ \_\_\_\_\_ allowed at \$10 per hour.  File Proof of completion of \_\_\_\_\_ hours per month.  
Proof must be filed on letterhead with supervisor's name and phone number for verification.

CONDITIONS:

Count 1 Count 2  
 No criminal violations of law  
 No driving without valid license and insurance  
 Ineligible to possess firearms/surrender permit  
 Not use alcoholic beverages or non-prescription drugs  
 Not return to \_\_\_\_\_  
 Surrender license to court (by \_\_\_\_\_)  
 Refer to Active Probation for \_\_\_\_\_ months  
 Probation waived if no treatment required  
 Perform \_\_\_\_\_ hrs Community Service by \_\_\_\_\_  
 No contact ordered  written  oral  recalled with: \_\_\_\_\_ exp.: \_\_\_\_\_

Count 1 Count 2  
 Zero Tolerance Adopted  
 Pay restitution  set hearing w/in \_\_\_\_\_ days \$ \_\_\_\_\_ to: \_\_\_\_\_  
 Obtain  Alcohol/Drug Eval.  DV Assessment within \_\_\_\_\_ days.  
 Attend \_\_\_\_\_ AA/NA/Self help meetings per week and file proof every \_\_\_\_\_ days.  
 Attend and complete the following program(s). File proof of completion with the Court within \_\_\_\_\_ days.  
 SP1 & Treatment  
 SP2 & Treatment  
 Alcohol Information School  
 DUI Victims Panel  
 Traffic Safety Course  
 Consumer Awareness  
 Gun Safety Course  
 HIV testing  
 Anger Management Short / Batterers

IF DEFENDANT COMPLIES:

Dismiss  Defendant's presence waived  
 Amend to \_\_\_\_\_ with guilty/committed finding entered.

I have read or had this court order explained to me. If I fail to meet the conditions and/or fail to pay the Fines/Costs/Fees as ordered, the court will issue a warrant for my arrest and additional jail time and fines may be imposed.

Defendant's Signature Shannon Johnson

Mailing Address: 532 Birwell Ave S

Phone Number(s) 425-254-0970

Appeal bond set \$ \_\_\_\_\_  
 Apply bail / refund balance / exonerate: bond / bail to payor  
 Continued for PSI / Sentencing in \_\_\_\_\_ days  
 Continued for review in \_\_\_\_\_ days  
Reason \_\_\_\_\_

DONE IN OPEN COURT THIS 17 DAY OF Aug 2005

JUDGE

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

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 63163-2-I
v.	)	
	)	
SHANNON JOHNSON,	)	
	)	
Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 10<sup>TH</sup> DAY OF SEPTEMBER, 2009, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] SHANNON JOHNSON KING COUNTY JAIL 500 5 <sup>TH</sup> AVE SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

RECEIVED  
SEP 10 11:41:58  
COURT OF APPEALS  
DIVISION ONE

**SIGNED** IN SEATTLE, WASHINGTON THIS 10<sup>TH</sup> DAY OF SEPTEMBER, 2009.

X \_\_\_\_\_ 

**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, WA 98101  
Phone (206) 587-2711  
Fax (206) 587-2710