

NO. 65858-1-I

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

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW VOGT,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY
The Honorable Michael Heavey

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

MATTHEW THAYER VOGT
Appellant

STAFFORD CREEK CORRECTIONS
191 Constantine Way
Aberdeen, WA 98520

20110914 10:00:07 AM

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in allowing into evidence a no-contact order that was invalid on its face as it lacked the statutory legend required by law.

2. The trial court erred in permitting the appellant to be represented by counsel who provided ineffective assistance by failing to object to the validity of the no-contact order.

3. The trial court erred when it allowed the State to elevate the appellant's charge of violation of a no-contact order to a felony without sufficient evidence of two prior convictions under the statutes specified in RCW 26.50.110.

4. The trial court abused its discretion when it denied appellant's half-time motion to dismiss counts 2-4 which were based on a condition of the order that was inapplicable to the crimes charged.

5. The trial court erred in calculating the appellant's offender score by counting his 5 forgery convictions separately and mistakenly treating a misdemeanor conviction as a felony.

6. Trial counsel was ineffective when it failed to argue that 4 of the appellant's prior forgery convictions encompassed "same criminal conduct" for

1
2 purposes of calculating his offender score.

3 7. The trial court erred in failing to dismiss
4 the appellant's conviction where the cumulative
5 effect of the claimed errors materially affected the
6 outcome of the trial.

7 B. STATEMENT OF THE CASE

8 1. CHARGES, MOTION TO DISMISS, AND VERDICT

9 The State charged Matthew Vogt with 5 counts of
10 felony violation of a no-contact order occurring in
11 February and March of 2009. Vogt's wife was the
12 subject of the order which was issued on July 30,
13 2008. The State elevated the charges to felonies
14 based on two previous no-contact order violations,
15 to which Vogt stipulated.

16 After the State rested, Vogt filed a half-time
17 motion to dismiss count 1 based on insufficient
18 evidences and counts 2-4 on the grounds that they
19 pertained to a condition of the no-contact order
20 that was inapplicable. He argued that whether the
21 condition applied to the crimes charged was a question
22 of law and not for the jury to decide. The court
23 dismissed count 1 but denied Vogt's motion on counts
24 2-4. Of the remaining counts, the jury acquitted
25 Vogt of all but count 5.

26 2. SENTENCING HEARING

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2 Vogt faced a standard range sentence of 41-54
3 months based on a calculated offender score of 6.
4 The trial court calculated his offender score based
5 on the following criminal history:

<u>CRIME</u>	<u>SENTENCING DATE</u>	<u>CAUSE NUMBER</u>
6 Forgery	04/14/2009	081049490 SEA
7 Forgery	04/14/2009	081049490 SEA
8 Forgery	04/14/2009	081049490 SEA
9 Forgery	04/14/2009	081049490 SEA
10 Forgery	04/14/2009	081049490 SEA
11 Forgery	04/14/2009	081049490 SEA
12 UIBC	04/14/2009	081049490 SEA

13 The trial court did not consider whether Vogt's
14 prior forgery convictions qualified as "same criminal
15 conduct" for the purpose of calculating his offender
16 score. The court imposed a prison-based drug offender
17 sentence alternative (DOSA) that included 23.75 months.

18 C. ARGUMENT

- 19 1. THE TRIAL COURT ERRED IN ALLOWING INTO
20 EVIDENCE A NO-CONTACT ORDER THAT WAS INVALID
21 ON ITS FACE AS IT LACKED THE STATUTORY LEGEND
22 REQUIRED BY LAW.

23 A charge of violation of a no-contact order must
24 be based on an "applicable" order. State v. Miller,
25 156 Wn.2d 31, 32, P.3d 827 (2005). The court has
26 previously ruled that if a restraining order does
not meet the statutory requirements, violation of
the order will not support a criminal prosecution.

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2 State v. Turner, 118 Wn. App. 135, 74 P.3d 1215 (2003).

3 RCW 10.99.040(4)(b) states the requirement of a
4 "statutory legend" (See Appendix) in order for a no-
5 contact order to be valid and therefore admissable
6 in the crime of violating such an order. The statute
7 is unambiguous. Its use of the word "shall" is
8 presumptively imperative and operates to create a
9 mandatory duty. State v. Marking, 100 Wn. App. 506,
10 510, 997 P.2d 461, 141 Wn.2d 1026 (2000). Nothing
11 in RCW 10.99.040(4)(b) suggests that the legislature
12 intended "shall" to be permissive rather than man-
13 datory.

14 Here, the no-contact order admitted into evidence
15 did not meet the "statutory legend" requirement.
16 (See Exhibit A) Although the order refers to
17 "Warnings to Defendant" as being "On the Back",
18 these warnings do not exist. The back side of the
19 order have a stamp from the issuing court stating
20 that the document is a certified copy of the original
21 and meets the "Certified Copies of Public Records
22 as Evidence" requirements set forth in ER 902(d) and
23 RCW 5.44.040 (See Appendix). Therefore, the copy
24 of the no-contact order admitted into evidence must
25 be treated as the complete court record in deciding
26 its validity.

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2 The existence of a no-contact order that is in
3 effect is an element of the crime of violation of
4 that order. State v. Miller, 156 Wn.2d 23, 24, 123
5 P.3d 827 (2005). An order is not "applicable" to
6 the crime charged if it is not issued by a competent
7 court, is not statutorily sufficient, is vague or
8 inadequate on its face, or otherwise will not support
9 a conviction of violating the order. No-contact
10 orders that are not applicable to the crime charged
11 are not admissable.

12 The court will not disturb a trial court's
13 rulings on a motion in limine or the admissability
14 of evidence absent an abuse of the court's discretion.
15 State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615
16 (1995) When a trial court's exercise of its discretion
17 is manifestly unreasonable or based upon untenable
18 grounds or reasons, an abuse of discretion exists.
19 Id. A trial court's decision is "manifestly un-
20 reasonable" if it is outside the range of acceptable
21 legal standard. In Re Marriage of Littlefield, 133
22 Wn.2d 39, 47, 940 P.2d 1362 (1997). A decision is
23 based on untenable grounds if it is based on an in-
24 correct standard or the facts do not meet the re-
25 quirements of the correct standard. Id.

26 The trial court's decision was clearly outside

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2 the range of acceptable legal standard when it allowed
3 into evidence a no-contact order that did not meet
4 the statutory legend requirement. Therefore, Vogt
5 should not have been charred with violating the order
6 and his conviction must be reversed.

7 2. VOGT WAS PREJUDICED BY COUNSEL'S FAILURE
8 TO OBJECT TO THE ADMISSABILITY OF THE NO-
9 CONTACT ORDER ON THE GROUNDS THAT IT WAS
10 INVALID ON ITS FACE.

11 Should this court find that trial counsel waived
12 the issue set forth in the preceding section of this
13 brief relating to the admissability of the no-contact
14 order because he failed to object or agreed with or
15 acknowledged its admissability, then both elements
16 of ineffective counsel have been established.

17 First, the record does not, and could not, reveal
18 any tactical or strategic reason why trial counsel
19 would have failed to properly object to the admiss-
20 ability of the no-contact order for the reasons set
21 forth in the preceding section.

22 Second, the prejudice is self-evident. Again,
23 as set forth in the preceding section, had counsel
24 properly made the objection, the trial court would
25 not have allowed the no-contact order into evidence
26 and the case against Vogt would have been dismissed.

3. THE TRIAL COURT ERRED WHEN IT ALLOWED THE
STATE TO ELEVATE THE NO-CONTACT ORDER

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2 VIOLATIONS TO FELONIES WITHOUT SUFFICIENT
3 EVIDENCE OF TWO PRIOR CONVICTIONS UNDER THE
4 STATUTES SPECIFIED IN RCW 26.50.110.

5 The court has held that whether prior convictions
6 for no-contact order violations fall under the proviso
7 of RCW 26.50.110 is an element of the felony offense.
8 The matter, not just of a conviction, but of a con-
9 viction of a specified statute, must be found beyond
10 a reasonable doubt by a jury. A trial court is not
11 permitted to determine whether the prior violations
12 were of the prerequisite statutes and relieve the
13 State from proving an essential element of the crime
14 beyond a reasonable doubt.

15 Here, the information alleged that Vogt had at
16 least two previous convictions for violating the
17 provision of a no-contact order issued under RCW 10.99.
18 The information then lists two convictions of a no-
19 contact order as alleged predicate convictions.

20 Vogt contests that there was no evidence that
21 the two convictions were appropriate predicate con-
22 victions either as listed in RCW 26.50.110 or as
23 alleged in the information as violations of RCW 10.99.

24 The convictions at issue are violations under
25 King County Superior Court cause number 081049490.
26 The judgment and sentence (See Exhibit B) show two
convictions of violation of a court order, listing

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2 RCW 26.50.110(1) as the statute violated. But, it
3 does not prove violations of a no-contact order under
4 RCW 10.99. Thus, for these convictions, there is
5 no evidence that they were for violations of RCW 10.99
6 as alleged in the information.

7 RCW 26.50.110(5) raises an evidentiary barrier
8 to the admission of evidence of the two prior con-
9 victions qualified as predicate convictions as defined
10 in the statute. The very relevance of the prior
11 convictions depends on whether they qualify as pre-
12 dicate convictions under the statute. If they do
13 not so qualify, the jury should not be permitted to
14 consider them.

15 The court recently addressed the elements of a
16 felony violation of a no-contact order in State v.
17 Arthur, 126 Wn. App. 243, 244, 108 P.3d 169 (2005).
18 They held that when the State charges a defendant
19 with a felony violation of a no-contact order, the
20 predicate convictions listed in RCW 26.50.110(5)
21 constitute elements of the offense. Thus, it is
22 insufficient to allege that the defendant simply
23 violated a no-contact order. Instead, the jury must
24 find that the defendant had two prior convictions
25 for violation of a no-contact order issued under chapter 26.50,
26 10.99, 26.09, 26.10, 26.26, or RCW 74.34, or of a

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2 valid foreign protection order as defined in RCW
3 26.52.020.

4 Here, the special verdict form was defective.
5 The predicate convictions specified in RCW 26.50.
6 110(5) constitute elements of the offense. The
7 special verdict form only required the jury to
8 determine whether Vogt had twice previously been
9 convicted for violating the provisions of a no-
10 contact order. Accordingly, the special verdict
11 form omitted an element of the felony charge.

12 In sum, the "to-convict" instructions properly
13 instructed the jury on the elements of a gross
14 misdemeanor. But, the special verdict form lacked
15 the essential elements of a felony violation of a
16 no-contact order.

17 Should this court find that trial counsel waived
18 the issue set forth in this section because he
19 failed to object or agreed with or acknowledged the
20 prior no-contact order violations, then both elements
21 of ineffective assistance of counsel have been
22 established.

23 First, the record does not, and could not, reveal
24 any tactical or strategic reason why trial counsel
25 would have failed to properly make the argument for
26 the reasons previously set forth.

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2 Second, the prejudice is self-evident. Again,
3 as previously set forth, had counsel properly made
4 the argument, the trial court would not have allowed
5 the State to elevate the charges against Vogt to
6 felonies. Therefore, the appellant's conviction
7 must be reversed, and the charge of violating a no-
8 contact order properly classified as a misdemeanor.

9 4. THE TRIAL COURT ABUSED ITS DISCRETION WHEN
10 IT DENIED APPELLANT'S HALF-TIME MOTION TO
11 DISMISS COUNTS 2-4 WHICH WERE BASED ON A
12 CONDITION OF THE NO-CONTACT ORDER THAT WAS
13 INAPPLICABLE TO THE CRIMES CHARGED.

14 It is prejudicial error to submit an issue to
15 the jury that is not warranted by the evidence.
16 State v. Fernandez-Medina, 141 Wn.2d 448, 455, 6
17 P.3d 1150 (2000). State v. Mills, 154 Wn.2d 1, 109
18 P.3d 415 (2005).

19 The existence of a no-contact order is an element
20 of the crime of violating such an order. However,
21 the validity of the no-contact order is a question
22 of law appropriately within the province of the
23 trial court to decide as part of the court's gate-
24 keeping function. The trial judge should not permit
25 an invalid, vague or otherwise inapplicable no-
26 contact order to be admitted into evidence. State
v. Miller, 156 Wn.2d 1,2 P.3d 827 (2005).

 The trial court has the initial responsibility

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2 of determining the relevance and admissability of
3 the underlying no-contact order violations. A trial
4 court's evidentiary decision is reviewed for an
5 abuse of discretion. An abuse of discretion occurs
6 only when no reasonable person would take the view
7 adopted by the trial court. State v. Castellanos,
8 132 Wn.2d 94, 97, 132, 935 P.2d 1353 (1997).

9 Because an applicable no-contact order is an
10 element of the offense, the evidence was insufficient
11 to support charges 2-4. Here, the no-contact order
12 lists "OTHER conditions/order" as being "only
13 applicable if checked" (See Exhibit A). Immediately
14 below is a box (which is clearly NOT CHECKED)
15 followed by: "Unless otherwise ordered by this
16 court, the defendant is prohibited from entering or
17 knowingly coming within or knowingly remaining
18 within 500ft (distance) of the protected person
19 and the protected person's residence/school/work-
20 place".

21 In denying Vogt's half-time motion to dismiss
22 counts 2-4 it put a question of law before the jury
23 (whether the "OTHER conditions" of the no-contact
24 order were applicable to the crime of Vogt being
25 seen within 500ft of the protected person's resid-
26 ence). The no-contact order's language is clear.

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2 "Only applicable if checked" is unambiguous. As no
3 reasonable person could have mistaken the correspond-
4 ing box as being checked, the "OTHER conditions"
5 were clearly not applicable and the court abused
6 its discretion. Because the issue was put before
7 the jury but not warranted by the evidence, the
8 court's error was prejudicial.

9 As a result of the trial court's abuse of dis-
10 cretion, Vogt was denied his right to a fair trial.
11 To determine whether a particular trial is fair,
12 courts look to the abuse of discretion and determine
13 whether it materially affected the verdict. State
14 v. Davenport, 100 Wn.2d 757, 762, 675 P.2d 1213
15 (1984).

16 Because the trial court denied Vogt's motion
17 to dismiss counts 2-4, he was forced to give test-
18 imony outside the scope of his defense to count 5,
19 whether he knew of the no-contact order's existence
20 at the time of the alleged offense (Vogt did not
21 dispute that he had contact with his wife, he
22 claimed that he and his wife believed the no-
23 contact order had terminated upon dismissal of the
24 underlying assault charge on January 29, 2009).

25 The State made numerous statements to the jury
26 about Vogt's blatant disregard for the law as dis-

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2 played by the number of times he was charged with
3 violating the order. Although the jury found Vogt
4 not guilty of counts 2-4, it is reasonable to assume
5 that Vogt's credibility was compromised which mat-
6 erially affected the verdict.

7 5. THE TRIAL COURT ERRED IN CALCULATING THE
8 APPELLANT'S OFFENDER SCORE BY COUNTING HIS
9 5 FORGERY CONVICTIONS SEPERATELY AND TREATING
A PRIOR MISDEMEANOR CONVICTION AS A FELONY.

10 A challenge to the calculation of an offender
11 score may be raised for the first tiem on appeal.
12 State v. Roche, 75 Wn. App 500, 513, 878 P.2d 497
13 (1994). Although a defendant generally cannot
14 challenge a presumptive standard range sentence, he
15 can challenge the procedure by which a sentence
16 within the standard range was imposed. State v.
17 Ammons, 105 Wn.2d 175, 183, 718 P.2d 796, cert.
18 denied, 479 U.S. 930 (1986). A sentencing court's
19 calculation of a defendant's offender score is a
20 question of law and is reviewed de novo. State v.
21 Mitchell, 81 Wn. App. 387, 390, 914 P.2d 771 (1996).

22 In sentencing Vogt, the trial court calculated
23 his offender score as 6 by including his 5 prior
24 forgery convictions as separate offenses in addition
25 to his prior conviction for unlawful issuance of a
26 bank check.

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2 If multiple crimes encompass the same objective
3 intent, involve the same victim and occur at the
4 same time and place, teh crimes encompass the same
5 cause of criminal conduct for purposes of determining
6 an offender score. State v. Dunaway, 109 Wn.2d 207,
7 217, 743 P.2d 1237 (1987).

8 RCW 9.94A.589(1)(a) requires multiple prior and
9 current offenses as one crime in determining the
10 defendant's offender score. State v. Tresenriter,
11 101 Wn. App. 486, 496, 4 P.3d 145 (2000). State v.
12 Tili, 139 Wn.2d 107, 118, 985 P.2d 365 (1999).

13 As used in this subsection, "same criminal conduct"
14 is defined as "two or more crimes that require the
15 same criminal intent, are committed at the same
16 time and place and involve the same victim."

17 Here, the information (See Exhibit C) clearly
18 demonstrated that 4 of the 5 prior forgery charges
19 were not differentiated by time, location, or intended
20 purpose. All 3 elements are met:

21 1. SAME CRIMINAL INTENT: Vogt forged a number
22 of documents to make it appear that his assets and
23 income were wubstantially greater than they actually
24 were. His singular intent was to persuade the victim
25 to rent the property to Vogt. This intent did not
26 change with each forged document submitted.

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2 2. SAME TIME AND PLACE: The forged documents
3 were submitted on August 18, 2007 in King County,
4 Washington.

5 3. SAME VICTIM: The victim was the leasing
6 company, MacPherson's Property Management.

7 Had the trial court submitted Vogt's criminal
8 history to the "same criminal conduct" test, there
9 is no question that 4 of the 5 forgery convictions
10 would have been consolidated to 1 point. Vogt pled
11 guilty on January 29, 2009 to counts 1-4 of the
12 information (See Exhibit C) which are identical
13 with respect to the 3 required elements and read
14 as follows:

15 1. SAME CRIMINAL INTENT: "...with intent to
16 injure or defraud, did falsely make, complete and
17 alter a written instrument..."

18 2. SAME TIME AND PLACE: "...in King County,
19 Washington, on or about August 18, 2007..."

20 3. SAME VICTIM: "...did possess, utter, offer,
21 dispose of and put off as true to MacPherson's
22 Property Management such written instrument..."

23 Therefore, the offenses encompassed the same
24 course of criminal conduct for the purposes of
25 calculating Vogt's offender score.

26 With regard to the prior conviction for un-

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2 lawful issuance of a bank check, Vogt also pled
3 guilty on January 29, 2009. In the Statement of
4 Defendant on Plea of Guilty to Felony Non-Sex
5 Offense (See Exhibit D) on page 10, the defendant
6 states in his own words what he did that made him
7 guilty of the crimes which reads as follows:

8 "... (Count VIII) On October 22, 2007 and October 29,
9 2007, I did present checks for payment knowing I
10 did not have sufficient funds to meet such checks,
11 of an amount LESS than \$250."

12 The crime of unlawful issuance of a bank check
13 of an amount LESS than \$250 is a misdemeanor. The
14 trial court mistakenly classified this crime as a
15 felony and scored it accordingly when calculating
16 Vogt's offender score.

17 With these results, the matter must be remanded
18 for resentencing based on an offender score of 2.

19 6. TRIAL COUNSEL WAS INEFFECTIVE WHEN IT FAILED
20 TO ARGUE THAT 4 OF THE APPELLANT'S PRIOR
21 FORGERY CONVICTIONS ENCOMPASSED "SAME
CRIMINAL CONDUCT" AND TREATING HIS UIBC
CRIME AS A MISDEMEANOR.

22 Should this court find that trial counsel waived
23 the issues set forth in the preceeding section of
24 this brief relating to the calculation of Vogt's
25 offender score because he failed to object or agreed
26 with or acknowledged the standard range, then both

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2 elements of ineffective assistance of counsel have
3 been established.

4 First, the record does not, and could not, reveal
5 any tactical or strategic reason why trial counsel
6 would have failed to properly make the argument for
7 the reasons set forth in the preceding section.

8 Second, the prejudice is self-evident. Again,
9 as set forth in the preceding section, had counsel
10 properly made the argument, the trial court would
11 not have imposed a sentence based on an incorrect
12 offender score.

13 7. THE CUMULATIVE EFFECT OF THE ERRORS CLAIMED
14 HEREIN MATERIALLY AFFECTED THE OUTCOME OF
15 VOGT'S TRIAL AND REQUIRE REVERSAL OF HIS
16 CONVICTION.

17 An accumulation of non-reversible errors may
18 deny a defendant a fair trial. State v. Perrett,
19 86 Wn. App. 312, 322, 936 P.2d 426 (1977). The
20 cumulative error doctrine applies where there have
21 been several trial errors, individually not justify-
22 ing reversal, that, when combined, deny a defendant
23 a fair trial. State v. Greiff, 141 Wn.2d 910, 929,
24 10 P.3d 390 (2000).

25 Here, for the reasons argued in the preceding
26 sections of this brief, even if any one of the issues
presented standing alone does not warrant reversal
of Vogt's conviction, the cumulative effect of these

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errors materially affected the outcome of his trial and his conviction should be reversed, even if each error examined on its own would otherwise be considered harmless. State v. Coe, 101 Wn.2d 772, 789, 684 P.2d 668 (1984).

D. CONCLUSION

Based on the above stated grounds, Vogt respectfully requests this court to reverse and dismiss his conviction, reclassify his conviction as a misdemeanor, or, in the alternative, to remand for resentencing based on an offender score of 2.

DATED this the 22nd day of March, 2011.

Respectfully submitted,


MATTHEW THAYER VOGT
DOC No. 329830

Appellant

EXHIBIT A

KIRKLAND MUNICIPAL COURT
KING COUNTY, STATE OF WASHINGTON

CITY OF KIRKLAND
 CITY OF _____
Plaintiff,
vs.
Defendant,
VOGT, MATTEW

Case No. 30807

**NO-CONTACT ORDER - DOMESTIC VIOLENCE
(CLERK TO NOTIFY POLICE)**

**EXPIRATION DATE: THIS ORDER SHALL REMAIN
IN EFFECT UNTIL FURTHER ORDER OF THE COURT**

I. FINDINGS

1.1 Based upon the documents contained in the case records, the court finds that the defendant has been charged with, arrested for, or convicted of a domestic violence offense, and further finds that to prevent possible recurrence of violence, this Domestic Violence No-Contact Order shall be entered pursuant to chapter 10.99 RCW. The person protected by this order is:

(Name, DOB): APRIL VOGT

1.2 The Court further finds that the defendant's relationship to the person protected by this order is:

- a current or former spouse a current or former cohabitant as intimate partner
 the parent of a common child any other family or household member as defined in RCW 10.99

1.2 The Court makes the following findings pursuant to RCW 9.41.800:

- the defendant previously committed an offense that makes him ineligible to possess a firearm under the provisions of RCW 9.41.040; or
 possession of a firearm or other dangerous weapon by the defendant presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.

II. ORDER

IT IS HEREBY ORDERED THAT:

Defendant is PROHIBITED from:

- (A) Causing or attempting to cause physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking the protected person.
(B) Coming near and from having any contact whatsoever, in person or through others, by phone, mail or any means, directly or indirectly, except for mailing or service or process of court documents by a 3rd party or contact by defendant's lawyers with the protected person.

OTHER conditions/orders (only applicable if checked below).

- Unless otherwise ordered by this Court, the Defendant is prohibited from entering or knowingly coming within or knowingly remaining within 500ft (distance) of the protected person and the protected person's
 residence school workplace other: _____
 The Defendant may return to the shared residence one (1) time only, to retrieve personal belongings, after first calling 911 and making arrangements for a civil standby officer to be present.
 The Defendant shall immediately surrender all firearms and other dangerous weapons within the Defendant's possession or control, and any concealed pistol license, to the **KIRKLAND POLICE DEPARTMENT**. The Defendant is prohibited from obtaining or possessing a firearm, other dangerous weapon or concealed pistol license.
 Other: _____

It is further ordered that the clerk of the court shall forward a copy of this order to the City of Kirkland Police Department who shall enter it in a computer-based criminal intelligence system available in this state by law enforcement to list outstanding warrants.

DATED this 30 day of July, 2008. TIME: 1:30 PM

[Signature]
Judge/Judge Pro Tem/Commissioner

I have read, or had read to me, this order including the "Warnings to the Defendant" ON THE BACK of this order. I understand the terms and conditions of this order and the "Warning to the Defendant" and the consequences of violating this order or the "Warnings to the Defendant." I agree to abide by the terms and conditions set forth in this order.

Matthew Vogt
Defendant

EXHIBIT B

FILED
2009 APR 14 PM 3:17
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

CERTIFIED COPY TO COUNTY JAIL APR 14 2009

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	No. 08-C-04949-0 SEA
)	
Plaintiff,	)	JUDGMENT AND SENTENCE,
	)	NON-FELONY -- Count(s) XII -XIV ONLY
v.	)	[ ] DEFERRING Imposition of
	)	Sentence/Probation
MATTHEW THAYER VOGT)	<input checked="" type="checkbox"/> SUSPENDING Sentence
)	
Defendant.)	

SEE FELONY JES

The Prosecuting Attorney, the above-named defendant and counsel DAVID MEYER being present in Court, the defendant having been found guilty of the crime(s) charged in the amended information on 01/29/2009 by guilty plea and there being no reason why judgment should not be pronounced;

IT IS ADJUDGED that the defendant is guilty of the crime(s) of: COUNTS XII & XIII DOMESTIC VIOLENCE MISDEMEANOR VIOLATION OF A COURT ORDER RCW 26.50.110 (1) AND COUNT XIV THEFT IN THE THIRD DEGREE RCW 9A.56.050 & 9A.56.020 (1)(a)

IT IS ORDERED pursuant to RCW 9.95.200 and 9.95.210 that:
[] the imposition of sentence against the defendant is hereby DEFERRED for a period of _____ months from this date upon the following terms and conditions:

OR

the defendant is sentenced to imprisonment in the King County Jail, Department of Adult Detention, for 12 months on each count, said term(s) to run concurrently ~~[] consecutively~~ with each other, and to run [] concurrently consecutively with count(s) 1-4, 7-8 [] Cause No(s). and the sentence (less any days of confinement imposed below) is hereby **SUSPENDED** upon the following terms and conditions:

(1) The defendant shall serve a term of confinement of Ø [] in the King County Jail, Department of Adult Detention, [] in King County Work/Education Release subject to conditions of conduct ordered this date, [] in King County Electronic Home Detention subject to conditions of conduct ordered this date, with credit for [] days served [] days as determined by the King County Jail, solely on this cause, to commence no later than _____. This term shall run [] concurrently consecutively with

FILED

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	No. 08-C-04949-0 SEA
Plaintiff,)	
)	
vs.)	
	)	STATEMENT OF DEFENDANT ON
<u>MATTHEW VOET</u>	)	PLEA OF GUILTY (Nonfelony)
	)	(STDFG)
Defendant.)	
)	
)	
)	

1. My true name is MATTHEW VOET
2. My date of birth is 4/22/71
3. I went through the 12th grade college grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:
 - (a) I have the right to representation by a lawyer; if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is DAVID E. MEYER
 - (b) I am charged with the crime(s) of ~~XII~~ ~~XIII~~ - VIOLATION OF NO CONTACT ORDER ~~XIV~~ THEFT 3rd

The elements of this (these) crime(s) are set forth in the information/ X amended information, which is incorporated by reference and which I have reviewed with my lawyer.

1 5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE
2 FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY
PLEADING GUILTY:

3 (a) The right to a speedy and public trial by an impartial jury in the county where the crime
4 is alleged to have been committed;

5 (b) The right to remain silent before and during trial, and the right to refuse to testify against
6 myself;

7 (c) The right at trial to testify and to hear and question the witnesses who testify against me;

8 (d) The right at trial to have witnesses testify for me. These witnesses can be made to
9 appear at no expense to me;

10 (e) The right to be presumed innocent until the charge is proven beyond a reasonable doubt
11 or I enter a plea of guilty;

12 (f) The right to appeal a determination of guilt after a trial.

13 6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I
14 UNDERSTAND THAT:

15 (a) The crime(s) with which I am charged carries a maximum sentence(s) of 365
16 days in jail and a \$ 5,000 fine.

17 (b) The crime of _____ has a mandatory minimum
18 sentence of _____. The law does not allow any reduction of this sentence.

19 [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge

20 *[Handwritten signature]*

21 (c) The prosecuting attorney will make the following recommendation to the judge: _____
22 365 DAYS SUSPENDED ON ALL 3 COUNTS;
~~MONTHS CONCURRENT~~ CONCURRENT WITH FELONY COUNTS; 12 MONTHS

SUPERVISED PROBATION - SAME FINANCIAL OBLIGATIONS AS FELONY COUNTS;
OBTAIN SUBSTANCE ABUSE EVALUATION AND FOLLOW RECOMMENDED
TREATMENT;

NO CRIMINAL LAW VIOLATIONS, NO CONTACT WITH APRIL VOGT
 AND/OR SEARS. STATE AGREES NOT TO FILE ANY MORE VNCO
 VIOLATIONS FROM THE PERIOD OF JULY 30 2008 TO JAN 29 2009.

The prosecutor will make the recommendation stated in the Plea Agreement and State's
 Sentence Recommendation, which are incorporated by reference.

(d) The judge does not have to follow anyone's recommendation as to sentence. The judge
 can give me any sentence up to the maximum authorized by law no matter what the prosecuting
 attorney or anyone else recommends.

(e) The judge may place me on probation for up to five years if I am sentenced under RCW
 46.65.5055 or up to two years for all other offenses and impose conditions of probation.

(f) The judge will order me to pay a victim's compensation fund assessment. The judge may
 order that I pay a fine, attorney fees, and other costs, fees and assessments authorized by law. The
 judge may also order me to make restitution to any victims who lost money or property as a result of
 crimes I committed. The maximum amount of restitution is double the amount of the loss to all
 victims or double the amount of my gain.

(g) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a
 crime under state law is grounds for deportation, exclusion from admission to the United States, or
 denial of naturalization pursuant to the laws of the United States.

(h) If I am convicted of any new crimes before sentencing, or if any additional criminal
 history is discovered, the prosecuting attorney's recommendations may increase. Even so, I cannot
 change my mind and my plea of guilty to this charge is binding on me.

NOTIFICATION RELATING TO SPECIFIC CRIMES.

For any of the Following Paragraphs That Do Not Apply, the Paragraph
 Should be Stricken and Initialed by the Defendant and the Judge.

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(i) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency virus (HIV). [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge AV JKH]

(j) This plea of guilty will result in revocation of my privilege to drive by the Department of Licensing. If I have a driver's license, I must now surrender it to the judge. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge AV JKH]

(k) This crime was committed by one family or household member against another and is assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of provisions of a protective order. I understand that I am not permitted to possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge AV JKH]

(l) This crime involved driving while under the influence of alcohol and/or being in actual physical control of a vehicle while under the influence of alcohol and/or drugs, and I understand that I will be subject to

The penalties described in the "DUI" Attachment.

OR

these minimum penalties: The mandatory minimum sentence of _____ days in jail OR _____ days of electronic home monitoring and \$ _____ monetary penalty. I may also be required to drive only motor vehicles equipped with an ignition

1 interlock device as imposed by the Department of Licensing or the court. My driving
2 privilege will be suspended or revoked by the Department of Licensing for a period of
3 _____ . The court may waive electronic home monitoring and impose an
4 alternative sentence, which may include additional jail time, work crew or work camp.

5 [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge

6 

7 (m) This crime involved sexual misconduct with a minor in the second degree,
8 communication with a minor for immoral purposes, or attempt, solicitation or conspiracy to commit
9 a sex offense, or a kidnapping offense involving a minor, as defined in RCW 9A.44.130. I will be
10 required to register with the county sheriff as described in the "Offender Registration" attachment.

11 [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge

12 

13 (n) This crime involved Assault 4 with Sexual Motivation, Communication with a Minor
14 for Immoral Purposes, Custodial Sexual Misconduct 2, Failure to Register, Harassment, Patronizing
15 a Prostitute, Sexual Misconduct with a Minor 2, Stalking, Violation of a Sexual Assault Protection
16 Order, or any other offense requiring registration under RCW 9A.44.130. I will be required to have
17 a biological sample collected for purposes of DNA identification analysis. RCW 43.43.754.

18 [If not applicable, this paragraph should be stricken and initialed by the defendant and the
19 judge 

20 (o) Because this crime involved a violation of the state drug laws, my eligibility for state
21 and federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091(r) and
22

21 U.S.C. § 862a. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge]

7. I plead guilty to the crime(s) of VIOLATION OF A NO CONTACT ORDER
- TWO COUNTS -

AND THAT 30

as charged in the information/ X amended information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

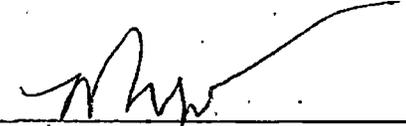
9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

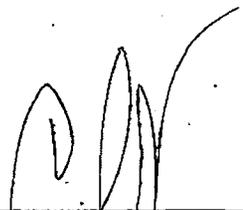
11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this (these) crime(s). This is my statement:

COUNTS XII + XIII
ON DECEMBER 11 2008 ~~IN KING~~ AND ON DECEMBER 5, 2008 IN KING
COUNTY WASHINGTON, HAVING ACTUAL NOTICE OF A VALID
NO CONTACT ORDER I DID KNOWINGLY VIOLATE THAT ORDER BY
HAVING CONTACT WITH THE PROTECTED PERSON, MY WIFE, APRIL VOQT,
(COUNT XIV) - ON DECEMBER 30 2008 IN KING COUNTY WASHINGTON,
WITH INTENT TO DEPRIVE ANOTHER OF PROPERTY, I DID WRONGFULLY
OBTAIN MERCHANDISE (A CHAIN SAW AND A VIDEO GAME) FROM SEARS
WITHOUT THEIR PERMISSION.

1 12. My lawyer has explained to me, and we have fully discussed, all of the above
2 paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on
3 Plea of Guilty." I have no further questions to ask the judge.

4 
5 _____
DEFENDANT

6 I have read and discussed this statement
7 with the defendant and believe that the
8 defendant is competent and fully
9 understands the statement.

10  35216
11 _____
PROSECUTING ATTORNEY
12 Print Name: Christopher L. Anderson
13 WSBA# 31206

14 
15 _____
DEFENDANT'S LAWYER
16 Print Name: DAVID R. MERRIN
17 WSBA# 14077

18 The foregoing statement was signed by the defendant in open court in the presence of the
19 defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- 20 (a) The defendant had previously read; or
21 (b) The defendant's lawyer had previously read to him or her; or
22 (c) An interpreter had previously read to the defendant the entire statement above;

and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. The
defendant understands the charges and the consequences of the plea. There is a factual basis for the
plea. The defendant is guilty as charged.

Dated this 29 day of January, 2009



JUDGE

EXHIBIT C

APR 14, 2009
8:30 AM

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2009 APR 14 PM 3:17
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

APR 14 2009
COMMITMENT ISSUED

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
Plaintiff,	)	No. 08-C-04949-0 SEA
)	
Vs.	)	JUDGMENT AND SENTENCE
	)	FELONY (FJS)
MATTHEW THAYER VOGT)	
)	
Defendant,	)	SEE MISD JES

I. HEARING

I.1 The defendant, the defendant's lawyer, DAVID MEYER, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: April Vogt

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 01/29/2009 by plea of:

Count No.: I	Crime: <u>FORGERY</u>
RCW <u>9A.60.020 (1) (a) (b)</u>	Crime Code: <u>03008</u>
Date of Crime: <u>08/18/2007</u>	Incident No. _____

Count No.: II	Crime: <u>FORGERY</u>
RCW <u>9A.60.020 (1) (a) (b)</u>	Crime Code: <u>03008</u>
Date of Crime: <u>08/18/2007</u>	Incident No. _____

Count No.: III	Crime: <u>FORGERY</u>
RCW <u>9A.60.020 (1) (a) (b)</u>	Crime Code: <u>03008</u>
Date of Crime: <u>08/18/2007</u>	Incident No. _____

Count No.: IV	Crime: <u>FORGERY</u>
RCW <u>9A.60.020 (1) (a) (b)</u>	Crime Code: <u>03008</u>
Date of Crime: <u>08/18/2007</u>	Incident No. _____

[X] Additional current offenses are attached in Appendix A

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

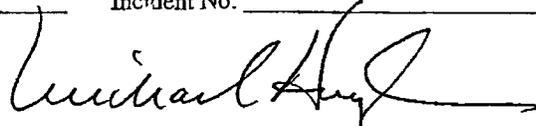
STATE OF WASHINGTON,)	
)	
	)	Plaintiff,
	)	No. 08-C-04949-0 SEA
vs.)	
	)	JUDGMENT AND SENTENCE
	)	(FELONY) - APPENDIX A
MATTHEW THAYER VOGT	)	ADDITIONAL CURRENT OFFENSES
)	
	)	Defendant,
)	

2.1 The defendant is also convicted of these additional current offenses:

Count No.: <u>VII</u>	Crime: <u>FORGERY</u>
RCW <u>9A.60.020 (1) (a) (b)</u>	Crime Code <u>03008</u>
Date Of Crime <u>10/25/2007</u>	Incident No. _____

Count No.: <u>VIII</u>	Crime: <u>UNLAWFUL ISSUANCE OF BANK CHECKS OR DRAFTS</u>
RCW <u>9A.56.060 (3)</u>	Crime Code <u>02704</u>
Date Of Crime <u>10/22/2007 - 10/29/2007</u>	Incident No. _____

Date: 4/14/09



 JUDGE, KING COUNTY SUPERIOR COURT

1 based on a series of acts connected together with another crime charged herein, committed as follows:

2
3 That the defendants APRIL DAWN VOGT and MATTHEW THAYER VOGT, and each of them, in King County, Washington, on or about August 18, 2007, with intent to injure or defraud, did falsely make, complete and alter a written instrument, to-wit: W-2 Earnings Statement, and knowing the same to be forged did possess, utter, offer, dispose of and put off as true to MacPherson's Property Management such written instrument of the following tenor and effect: Angioscore 2007 Earnings Statement for Matthew Vogt;

6 Contrary to RCW 9A.60.020(1)(a) and (b), and against the peace and dignity of the State of Washington.

7
8 COUNT III

9 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse APRIL DAWN VOGT and MATTHEW THAYER VOGT, and each of them, of the crime of Forgery, based on a series of acts connected together with another crime charged herein, committed as follows:

11 That the defendants APRIL DAWN VOGT and MATTHEW THAYER VOGT, and each of them, in King County, Washington, on or about August 18, 2007, with intent to injure or defraud, did falsely make, complete and alter a written instrument, to-wit: a bank statement, and knowing the same to be forged did possess, utter, offer, dispose of and put off as true to MacPherson's Property Management such written instrument of the following tenor and effect: a Washington Mutual Bank statement showing an account balance of \$31,333.23, dated September 2, 2007;

15 Contrary to RCW 9A.60.020(1)(a) and (b), and against the peace and dignity of the State of Washington.

16
17 COUNT IV

18 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse APRIL DAWN VOGT and MATTHEW THAYER VOGT, and each of them, of the crime of Forgery, based on a series of acts connected together with another crime charged herein, committed as follows:

20 That the defendants APRIL DAWN VOGT and MATTHEW THAYER VOGT, and each of them, in King County, Washington, on or about August 18, 2007, with intent to injure or defraud, did falsely make, complete and alter a written instrument, to-wit: a pre-approval loan letter, and knowing the same to be forged did possess, utter, offer, dispose of and put off as true to MacPherson's Property Management such written instrument of the following tenor and effect: a Country Wide home loan pre-approval letter for 1.1 million dollars, dated July 24, 2007, and signed by Loan Consultant Richard Ticeson;

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Contrary to RCW 9A.60.020(1)(a) and (b), and against the peace and dignity of the State of Washington.

COUNT V

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse APRIL DAWN VOGT of the crime of Theft in the First Degree, committed as follows:

That the defendant APRIL DAWN VOGT and MATTHEW THAYER VOGT in King County, Washington, on or about September 1st, 2007, with intent to deprive another of property or services, to-wit: occupancy of the rental property located at 2634 West Lake Sammamish Parkway SE Bellevue, WA 98008 did attempt to obtain control over such property or services belonging to MacPherson's Property Management, Sharad Mather, and Sunita Shrivastava by color and aid of deception, that the value of such property or services did exceed \$1,500;

Contrary to RCW 9A.56.020 (1), (a), and against the peace and dignity of the State of Washington.

COUNT VI

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse APRIL DAWN VOGT and MATTHEW THAYER VOGT, and each of them, of the crime of **Identity Theft in the First Degree**, based on a series of acts connected together with another crime charged herein, committed as follows:

That the defendants APRIL DAWN VOGT and MATTHEW THAYER VOGT, and each of them, in King County, Washington, on or about October 25, 2007, did knowingly obtain, possess, use or transfer a means of identification or financial information, to-wit: the particulars of proof of another person, living or dead, to-wit: MacPherson's Property Management, King County Superior Court and Christopher Fox, signed by Sharad Mathur and Sunita Shrivastava, with the intent to commit, or to aid or abet, any crime and obtained an aggregate total of credit, money, goods, services, or anything else of value in excess of \$1500;

Contrary to RCW 9.35.020(1), (2), and against the peace and dignity of the State of Washington.

COUNT VII

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse APRIL DAWN VOGT and MATTHEW THAYER VOGT, and each of them, of the crime of **Forgery**, based on a series of acts connected together with another crime charged herein, committed as follows:

Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

1 That the defendants APRIL DAWN VOGT and MATTHEW THAYER VOGT, and each
2 of them, in King County, Washington, on or about October 25, 2007, with intent to injure or
3 defraud, did falsely make, complete and alter a written instrument, to-wit: a cashier's check
4 receipt, and knowing the same to be forged did possess, utter, offer, dispose of and put off as true
5 to King County Superior Court, Christopher Fox and MacPherson's Property Management such
6 written instrument of the following tenor and effect: a receipt of US Bank Official Check, Serial
7 # 503596534, in the amount of \$13,500;

8 Contrary to RCW 9A.60.020(1)(a) and (b), and against the peace and dignity of the State
9 of Washington.

10 **COUNT VIII**

11 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse APRIL
12 DAWN VOGT and MATTHEW THAYER VOGT, and each of them, of the crime of **Unlawful**
13 **Issuance of a Bank Check**, based on a series of acts connected together with another crime
14 charged herein, committed as follows:

15 That the defendants MATTHEW THAYER VOGT, and each of them, in King County,
16 Washington, a time intervening between October 22nd 2007 and October 29, 2007, with intent to
17 defraud did make, draw, utter and deliver to another checks or drafts on a bank or other
18 depository for the payment of money in an amount exceeding \$250, said checks or drafts being a
19 series of transactions and a part of a common scheme or plan, to-wit: check numbers 3038, 3040,
20 3041, 3044, 3047, 3051 the defendant knowing at the time of such drawing and delivery that he
21 had not sufficient funds in and credit with said bank or depository to meet such checks or drafts
22 in full upon their presentation;

23 Contrary to RCW 9A.56.060 (3), and against the peace and dignity of the State of
Washington.

COUNT IX

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse APRIL
DAWN VOGT and MATTHEW THAYER VOGT, and each of them, of the crime of **Forgery**,
based on a series of acts connected together with another crime charged herein, committed as
follows:

That the defendants APRIL DAWN VOGT and MATTHEW THAYER VOGT, and each
of them, in King County, Washington, on or about December 11, 2007, with intent to injure or
defraud, did falsely make, complete and alter a written instrument, to-wit: a receipt from
Crossroads Appliance Store, and knowing the same to be forged did possess, utter, offer, dispose
of and put off as true to MacPherson's Property Management such written instrument of the
following tenor and effect: a receipt from Crossroads Appliance Store in Bellevue.

1 Contrary to RCW 9A.60.020(1)(a) and (b), and against the peace and dignity of the State
2 of Washington.

3 COUNT X

4 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse APRIL
5 DAWN VOGT and MATTHEW THAYER VOGT, and each of them, of the crime of **Violation**
6 **of the Uniform Controlled Substances Act**, based on a series of acts connected together with
7 another crime charged herein, committed as follows:

8 That the defendants APRIL DAWN VOGT and MATTHEW THAYER VOGT, and each
9 of them, in King County, Washington, on or about December 20, 2007, unlawfully and
10 feloniously did possess Methamphetamine, a controlled substance;

11 Contrary to RCW 69.50.4013, and against the peace and dignity of the State of
12 Washington.

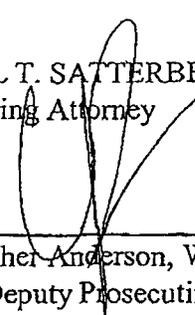
13 COUNT XI

14 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse APRIL
15 DAWN VOGT, and each of them, of the crime of Theft of Rental or Leased Property over
16 \$1500, based on a series of acts connected together with another crime charged herein,
17 committed as follows:

18 During a time intervening between December 3rd, 2007 and January 28th, 2008 the
19 defendant APRIL DAWN VOGT with intent to deprive Budget Rent A Car, the owner or owners
20 agent, did wrongfully obtain or exert unauthorized control over a motor vehicle, and by color or
21 aid of deception gain control of personal property, to-wit: a 2008 Buick Lucern WA/426WRW,
22 that is rented or leased to her; that the replacement value of said property was \$1500 or more;

23 Contrary to RCW 9A.56.096, and against the peace and dignity of the State of
Washington.

DANIEL T. SATTERBERG
Prosecuting Attorney

By: 
Christopher Anderson, WSBA #35206
Senior Deputy Prosecuting Attorney

Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

EXHIBIT D

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5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

(c) The right at trial to testify and to hear and question the witnesses who testify against me;

(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) The right to be presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a determination of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I UNDERSTAND THAT:

(a) The crime(s) with which I am charged carries a sentence(s) of:
5 PTS

Count No.	Standard Range	Enhancement That Will Be Added to Standard Range	Maximum Term and Fine
I - IV & VII	4 - 12 MONTHS	N/A	5 years \$ 10,000
VIII	4 - 12 MONTHS	N/A	5 years \$ 10,000
			_____ years \$ _____

1 The crime of _____ is a most serious offense as defined by
 2 RCW 9.94A.030, and if I have at least two prior convictions on separate occasions whether in this
 3 state, in federal court, or elsewhere, of most serious crimes, I may be found to be a Persistent
 4 Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence
 5 of life imprisonment without the possibility of early release of any kind. RCW 9.94A.570. [If not
 6 applicable, this paragraph should be stricken and initialed by the defendant and the judge. *nm* *nl*]

7 (b) The standard sentence range is based on the crime charged and my criminal history.
 8 Criminal history includes prior convictions and juvenile adjudications or convictions, whether in
 9 this state, in federal court, or elsewhere.

10 (c) The prosecuting attorney's statement of my criminal history is attached to this agreement.
 11 Unless I have attached a different statement, I agree that the prosecuting attorney's statement is
 12 correct and complete. If I have attached my own statement, I assert that it is correct and complete.
 13 If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated
 14 to tell the sentencing judge about those convictions.

15 (d) If I am convicted of any new crimes before sentencing, or if any additional criminal
 16 history is discovered, both the standard sentence range and the prosecuting attorney's
 17 recommendations may increase or a mandatory sentence of life imprisonment without possibility of
 18 parole may be required by law. Even so, I cannot change my mind and my plea of guilty to this
 19 charge is binding on me.

20 (e) In addition to sentencing me to confinement, the judge will order me to pay \$500 as a
 21 victim's compensation fund assessment and a \$100 DNA fee. If this crime resulted in injury to any
 22 person or damages to or loss of property, the judge will order me to make restitution, unless

1 extraordinary circumstances exist which make restitution inappropriate. The judge may also order
2 that I pay a fine, court costs, attorney fees, and other costs and fees. Furthermore, the judge may
3 place me on community supervision, community placement or community custody and I will have
4 restrictions and requirements placed upon me.

5 (f) In addition to confinement, the judge will sentence me to a period of community
6 supervision, community placement or community custody.

7 For crimes committed prior to July 1, 2000, the judge will sentence me to: (A) community
8 supervision for a period of up to one year; or (B) to community placement or community custody for
9 a period up to three years or up to the period of earned release awarded pursuant to RCW
10 9.94A.728, whichever is longer. [If not applicable, this paragraph should be stricken and initialed
11 by the defendant and the judge]

12 For crimes committed on or after July 1, 2000, the judge will sentence me to the community
13 custody range which is from _____ months to _____ months or up to the period of earned
14 release awarded pursuant to 9.94A.728, whichever is longer, unless the judge finds substantial and
15 compelling reasons to do otherwise. During the period of community custody I will be under the
16 supervision of the Department of Corrections, and I will have restrictions and requirements placed
17 upon me. My failure to comply with these conditions will result in the Department of Corrections
18 transferring me to a more restrictive confinement status or other sanctions being imposed. [If not
19 applicable, this paragraph should be stricken and initialed by the defendant and the judge]

20 (g) The prosecuting attorney will make the following recommendation to the judge: _____

21 12 MONTHS CONFINEMENT CONCURRENT, ON ALL SIX COUNTS; WER; COURT COSTS;
22 \$500 VICTIM PENALTY ASSESSMENT; \$100 DNA COLLECTION FEE; RECOUPMENT FOR
APPOINTED COUNSEL; RESTITUTION, IF ANY, TO AND NO CONTACT WITH

SHARAD MATHEL AND ALL THE WITNESSES IN THIS CASE, OBTAIN A SUBSTANCE

1 ABUSE EVALUATION AND FOLLOW ALL RECOMMENDED TREATMENT

STATE AGREES TO DISMISS ALL OTHER CHARGES AND FILE NO MORE CHARGES IN THIS MATTER

2 The prosecutor will make the recommendation stated in the plea Agreement and State's

3 Sentence Recommendation, which are incorporated by reference.

4 (h) The judge does not have to follow anyone's recommendation as to sentence. The judge

5 must impose a sentence within the standard range unless there is a finding of substantial and

6 compelling reasons not to do so or both parties stipulate to a sentence outside the standard range. If

7 the judge goes outside the standard range, either I or the State can appeal that sentence to the extent

8 to which it was not stipulated. If the sentence is within the standard range, no one can appeal the

9 sentence.

10 (i) The crime of _____ has a mandatory minimum sentence of

11 at least _____ years of total confinement. The law does not allow any reduction of this sentence.

12 For crimes committed on or after July 24, 2005, this does not apply to juveniles tried as adults

13 pursuant to a transfer of jurisdiction under RCW 13.40.110 (see RCW 9.94A.540(3)). [If not

14 applicable, this paragraph should be stricken and initialed by the defendant and judge

15 (j) The crime charged in Count _____ includes a firearm / deadly weapon

16 sentence enhancement of _____ months.

17 This additional confinement time is mandatory and must be served consecutively to any

18 other sentence and any other enhancement I have already received or will receive in this or any other

19 cause. [If not applicable, this paragraph should be stricken and initialed by the defendant and the

20 judge

21 (k) The sentences imposed on counts I - IV, VII, VIII, except for any weapons enhancement,

22 will run concurrently unless there is a finding of substantial and compelling reasons to do otherwise.

1 [If not applicable, this paragraph should be stricken and initialed by the defendant and judge
2 _____.]

3 (l) For the crime of vehicular homicide while under the influence of intoxicating liquor or
4 any drug, the sentence will be increased by two years for each prior offense as defined in RCW
5 46.61.5055. This additional confinement time is mandatory and must be served consecutively to
6 any other sentence and any other enhancement I have already received or will receive in this or any
7 other cause. [If not applicable, this paragraph should be stricken and initialed by the defendant and
8 the judge mv mlk.]

9 (m) Counts _____ are serious violent offenses arising from separate and distinct
10 criminal conduct and the sentences on those counts will run consecutively unless the judge finds
11 substantial and compelling reasons to do otherwise. [If not applicable, this paragraph should be
12 stricken and initialed by the defendant and the judge mv mlk.]

13 (n) The judge may sentence me as a first-time offender instead of imposing a sentence
14 within the standard range if I qualify under RCW 9.94A.650. This sentence may include as much as
15 90 days of confinement plus all of the conditions described in paragraph (6)(e). In addition, I may
16 be sentenced up to two years of community supervision if the crime was committed prior to July 1,
17 2000, or two years of community custody if the crime was committed on or after July 1, 2000. The
18 judge also may require me to undergo treatment, to devote time to a specific occupation, and to
19 pursue a prescribed course of study or occupational training. [If not applicable, this paragraph
20 should be stricken and initialed by the defendant and the judge _____.]

21 (o) The judge may sentence me under the special drug offender sentencing alternative
22 (DOSA) if I qualify under former RCW 9.94A.120(6) (for crimes committed before July 1, 2001),

1 or RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a
 2 period of total confinement for one-half of the midpoint of the standard range and community
 3 custody of at least one-half of the midpoint of the standard range, plus all of the other conditions
 4 described in paragraph (6)(e). The judge could impose a residential treatment-based DOSA
 5 alternative that would include three to six months of residential chemical dependency treatment and
 6 24 months of community custody, plus all the other conditions described in paragraph (6)(e).
 7 During confinement and community custody under either alternative, I will be required to
 8 participate in substance abuse evaluation and treatment, not to use illegal controlled substances and
 9 to submit to testing to monitor that, and other restrictions and requirements will be placed on me.

10 [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge

11 MM MM

12 (p) This plea of guilty will result in revocation of my privilege to drive under RCW
 13 46.20.285 (1)-(3), (5)-(7). If I have a driver's license, I must now surrender it to the judge. [If not
 14 applicable, this paragraph should be stricken and initialed by the defendant and the judge MM MM.]

15 (q) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the
 16 judge finds I used a motor vehicle in the commission of this felony.

17 (r) If this crime involves a sexual offense, prostitution, or a drug offense associated with
 18 hypodermic needles, I will be required to undergo testing for the human immunodeficiency virus
 19 (HIV). [If not applicable, this paragraph should be stricken and initialed by the defendant and the
 20 judge MM MM.]

21
 22

1 (s) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a
2 crime under state law is grounds for deportation, exclusion from admission to the United States, or
3 denial of naturalization pursuant to the laws of the United States.

4 (t) I will be required to provide a biological sample for purposes of DNA identification
5 analysis.

6 (u) Because this crime involves a kidnapping or unlawful imprisonment offense involving a
7 minor, I will be required to register with the sheriff of the county of the state of Washington where I
8 reside, study, or work. The specific registration requirements are described in the "Offender
9 Registration" Attachment. [If not applicable, this paragraph should be stricken and initialed by the
10 defendant and the judge  

11 (v) This plea of guilty will result in the revocation of my right to possess, own, or have in
12 my control any firearm unless my right to do so is restored by a superior court in Washington State,
13 and by a federal court if required. I must immediately surrender any concealed pistol license. RCW
14 9.41.040.

15 (w) I will be ineligible to vote until that right is restored in a manner provided by law. If I
16 am registered to vote, my voter registration will be cancelled.

17 (x) Because this is a crime of domestic violence, I may be ordered to pay a domestic
18 violence assessment of up to \$100. If I, or the victim of the crime, have a minor child, the court
19 may order me to participate in a domestic violence perpetrator program approved under RCW
20 26.50.150. [If not applicable, this paragraph should be stricken and initialed by the defendant and
21 the judge  

1 (y) Because this crime involves the manufacture, delivery, or possession with intent to
2 deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine,
3 including its salts, isomers, and salts of isomers, a mandatory cleanup fine of \$3000 will be
4 assessed. RCW 69.50.401(2)(b). [If not applicable, this paragraph should be stricken and initialed
5 by the defendant and the judge W W]

6 (z) Because this crime involves a violation of the state drug laws, my eligibility for state and
7 federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091(r) and 21
8 U.S.C. § 862a. [If not applicable, this paragraph should be stricken and initialed by the defendant
9 and the judge W W]

10 (aa) Because the crimes I am pleading guilty to include both a conviction under RCW
11 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more
12 convictions for the felony crimes of theft of a firearm or possession of a stolen firearm, the
13 sentences imposed for these crimes shall be served consecutively to each other. RCW
14 9.94A.589(1)(c). [If not applicable, this paragraph should be stricken and initialed by the defendant
15 and the judge W W]

16 7. I plead guilty to the crime(s) of 5 COUNTS OF FORGERY AND
17 ONE COUNT OF UNLAWFUL ISSUANCE OF A BANK CHECK

18
19 as charged in the information/ X 3rd amended information. I have received a copy of
20 that information.

21 8. I make this plea freely and voluntarily.
22

1 9. No one has threatened harm of any kind to me or to any other person to cause me to make
2 this plea.

3 10. No person has made promises of any kind to cause me to enter this plea except as set
4 forth in this statement.

5 11. The judge has asked me to state briefly in my own words what I did that makes me
6 guilty of this (these) crime(s). This is my statement:

7 ON OR ABOUT AUGUST 18, 2007 IN KING COUNTY WASHINGTON, WITH INTENT
8 TO DEFRAUD, I DID ALTER AND KNOWINGLY PRESENTED AS TRUE:

9 (COUNT I) W-2 FORMS; (COUNT II) ANGLISPORE EARNINGS STATEMENT;

10 (COUNT III) WASHINGTON MUTUAL BANK STATEMENT; (COUNT IV) A COUNTRY -

11 WIDE LOAN PRE-APPROVAL LETTER; (COUNT VII) A US BANK OFFICIAL CHECK;
12 ON OCTOBER 22 2007 AND OCTOBER 29 2007,

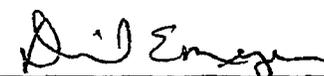
13 AND (COUNT VIII) I DID PRESENT CHECKS FOR PAYMENT KNOWING I DID
NOT HAVE SUFFICIENT FUNDS TO MEET SUCH CHECKS, OF AN AMOUNT LESS THAN
14 12. My lawyer has explained to me, and we have fully discussed, all of the above \$250.

15 paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on
16 Plea of Guilty." I have no further questions to ask the judge.

17 
18 _____
19 DEFENDANT

20 I have read and discussed this statement
21 with the defendant and believe that the
22 defendant is competent and fully
understands the statement.

20 
21 _____
22 PROSECUTING ATTORNEY
Print Name: Christophe L. Anderson
WSBA# 35206

20 
21 _____
22 DEFENDANT'S LAWYER
Print Name: DAVID E. MEYER
WSBA# 14071

APPENDIX

NO-CONTACT ORDER

RCW 10.99.040(4)(b): The written order releasing the person charged or arrested shall contain the court's directive and shall bear the legend:

"Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest, any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

CERTIFIED COPIES OF PUBLIC RECORDS AS EVIDENCE

RCW 5.44.040: Copies of all records and documents on record or on file in the offices of the various departments of the United States and of this state or any other state or territory of the United States, when duly certified by the respective officers having by law the custody thereof, under their respective seals where such officers have official seals, shall be admitted in evidence in the courts of this state.

CERTIFIED COPIES OF PUBLIC RECORDS

ER 902(d): Extrinsic evidence of authenticity as a condition precedent to admissability is not required with respect to certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification.

VIOLATION OF NO-CONTACT ORDER PENALTIES

RCW 26.50.11: Whenever an order is granted under this chapter, chapter 10.99, 26.09, 26.10, or RCW 74.34, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of the restraint provision or of a provision excluding a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or of a provision of a foreign protection order specifically indicating that a violation will be a crime, for which an arrest is required under RCW 10.31.100(2)(a) or (b), is a gross misdemeanor except as provided in subsections (4) and (5) of this section.

RCW 26.50.11(5): A violation of a court order issued under this chapter, chapter 10.99, 26.09, 26.10, 26.26, or RCW 74.34, or of a valid foreign protection order as defined in RCW 26.52.020, 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 10.99, 26.09, 26.10, 26.26, or RCW 74.34, or a valid foreign protection order as defined in RCW 26.52.020.

OFFENDER SCORE

RCW 9.94A.525(5)(a): In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except: (i) Prior offenses which were found, under RCW 9.94A.589(1)(a) to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score.

SAME CRIMINAL CONDUCT

RCW 9.94A.589(1)(a): Same criminal conduct, as used in this subsection means two or more crimes that require the same criminal intent, are committed at the same time and place and involve the same victim.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,)
)
 Respondent,) No. 65858-1-I
 v.)
) STATEMENT OF ADDITIONAL
MATTHEW THAYER VOGT,) GROUNDS FOR REVIEW
)
 Appellant.)
)

I, Matthew Thayer Vogt, have received the opening brief prepared by my attorney. Enclosed are the additional grounds for review that are not addressed in that brief. I understand the Court will review the Statement of Additional Grounds for Review and Addendum when my appeal is considered on the merits.

Also, please note that I have not received the reports of proceeding which I requested in this case.

Finally, I was given notice that my personal restraint petition has been dismissed even though I sent my statement of indigency to the court along with my motion for extension.

DATED this the 28th day of March, 2011.


MATTHEW THAYER VOGT

20110321 09:07

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

STATE OF WASHINGTON,
Respondent,
v.
MATTHEW VOGT,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY
The Honorable Michael Heavey

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW
ADDENDUM

MATTHEW THAYER VOGT
Appellant

STAFFORD CREEK CORRECTIONS
191 Constantine Way
Aberdeen, WA 98520

20110111 10:00:07

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ADDENDUM

1. Vogt argues that the State failed to provide sufficient evidence to prove the required element that he had knowledge of the court order.

2. May violation of a no-contact order that was entered at arraignment in a domestic violence case serve as a basis for criminal prosecution after the dismissal of that case?

Here, Vogt's primary defense was that he believed that the no-contact order had been terminated when the domestic violence case was dismissed on January 29, 2009. His belief was based on advice from counsel, David Meyer, who represented Vogt in that case.

The following is taken from the Transcript of Proceeding, Cause No. 08-1-04949-0 SEA, dated April 14, 2009:

MR. MEYER: Your Honor, I just, as part of making the record, with regard to the Kirkland Municipal Court orders --

THE COURT: Talking about the D.V. order?

2 RP at 33

MR. MEYER: The no-contact order.

THE COURT: Right, right.

MR. MEYER: I believe that that order was

1
2 obviated and eliminated at the time he pled guilty
3 because, if the conviction was complete, therefore,
4 it's dependent upon whether or not this court
5 issued continuing no-contact orders.

6 2 RP at 34

7 THE COURT: You pursue it. But as I understand
8 it, I am not -- Are you suggesting that your
9 research would lead you to believe that I could
10 undo the no-contact order from a Municipal Court?

11 MR. MEYER: No, your Honor, I think as soon
12 as the plea is entered, they lose jurisdiction
13 in the case. Because the plea is entered in
14 Superior Court, that case, the Kirkland case,
15 is a legal nullity.

16 2 RP at 39

17 Clearly, the above statements made by Vogt's
18 counsel support his claim that he believed the
19 that the order was eliminated. His belief that
20 no further charges against him would be filed
21 with regard to the no-contact order is also supported by statements made by the Court on January
22 29, 2009. The following is from the Transcript
23 of Proceeding, Cause No. 08-1-04949-0 SEA, dated
24 January 29, 2009:

25 MR. ANDERSON: The State agrees to dismiss
26

1
2 all charges, and file no more charges in this
3 matter regarding the no-contact order -- it specifies
4 that in the time frame in the misdemeanor rec....

5 And the State agrees not to file any more
6 violations of no-contact order from the period
7 of July 30th, 2008 to January 29th, 2009.

8 Do you understand that's the State's recommend-
9 ation?

10 THE DEFENDANT: Yes, I do.

11 1 RP at 5

12 The above information was taken from defendant's
13 plea of guilty on January 29, 2009 and sentencing
14 on April 14, 2009. At trial in the current case,
15 counsel chose not to include this as evidence
16 of defendant's belief that the no-contact order
17 had been terminated. Both elements of ineffective
18 counsel have been established.

19 First, the record does not, and could not
20 reveal any tactical or strategic reason why trial
21 counsel would have failed to properly make the
22 argument that the defendant's belief was substantiated
23 by evidence available at the time of trial.

24 Second, the prejudice is self-evident. As
25 previously set forth, had counsel properly presented
26 the evidence, the jury could not have convicted

1
2 Vogt of violating the no-contact order when he
3 had no knowledge of the order's existence.

4 3. The State vindictively charged Vogt with
5 additional new counts when Vogt attempted to
6 withdraw his guilty plea and exercise his right
7 to jury trial, thereby violating his right to
8 due process of law.

9 On March 18, 2009, Vogt filed a pro se motion
10 to withdraw his guilty plea. The State responded
11 by filing felony violation of a no-contact order,
12 on March 20, 2009. At the hearing to withdraw his
13 guilty plea (March 30, 2009), Vogt's counsel told
14 him that he had "pissed off" the prosecutor and
15 that he was on his own. Afraid of the consequences,
16 Vogt withdrew his motion and was taken into custody
17 immediately after the hearing.

18 A prosecutor's discretion to reindict a def-
19 endant is constrained by the due process clause...
20 Once a prosecutor exercises his discretion to
21 bring certain charges against a defendant, neither
22 he nor his successor may, without explanation,
23 increase the number of or severity of those charges
24 in circumstances which suggest that the increase
25 is retaliation for the defendant's assertion
26 of statutory or constitutional rights. Hardwick

1
2 v. Doolittle, 558 F.2d 292, 301 (5th Cir. 1977)
3 cert. denied, 434 U.S. 1049 (1978).

4 The Supreme Court has held that a due process
5 violation is established by the accused's showing
6 that his second prosecution posed a "reasonable
7 likelihood of vindictiveness", creating an apprehension
8 in future defendants that the State would
9 retaliate against their exercise of constitutional
10 or statutory rights. No actual vindictiveness
11 or retaliatory motive must be shown. Miracle
12 v. Estelle, 592 F.2d 1269, 1272-73 (5th Cir.
13 1979).

14 Prosecutorial vindictiveness has been defined
15 as the intentional filing of a more serious crime
16 in retaliation for a defendant's lawful exercise
17 of a procedural right. State v. Bockman, 37
18 Wn. App. 474, 488, 682 P.2d 925 (1984). However,
19 the filing of a more serious charge following
20 a defendant's exercise of a constitutional right
21 does not violate due process of law unless the
22 prosecutor acts with the intent of retaliating
23 against the defendant. State v. Lass, 55 Wn.
24 App. 300, 306, 777 P.2d 539 (1989). More than
25 the appearance of vindictiveness is required
26 to establish a due process violation. State

1
2 v. Bonisisio, 92 Wn. App. 783, 790, 964 P.2d
3 1222 (1998).

4 Prosecutorial discretion is statutorily limited
5 by RCW 9.94A.411(2)(a)(ii) & (B) which provide
6 that the prosecutor should not overcharge to
7 obtain a guilty plea. Overcharging includes
8 charging additional counts.

9 Here, the State's actions cannot be construed
10 as anything but vindictive. Vogt was promised,
11 as part of his plea agreement, that the State
12 would not "file any more vnco violations from
13 the period of July 30, 2008 to January 29, 2009."
14 (See Exhibit B, Pg. 3 of Statement of Defendant
15 on Plea of Guilty-Non Felony). This promise
16 was confirmed in the State's further agreement
17 to "dismiss all other charges and file no more
18 charges in this matter." (See Exhibit D, Pg.
19 5 of Statement of Defendant on Plea of Guilty-
20 Felony).

21 The State's goal was accomplished, Vogt did
22 not proceed with the withdrawal of his guilty
23 plea. As a result of his attempt to exercise
24 his statutory and constitutional rights, the
25 State charged Vogt with 5 felony violations of
26 a no-contact order.