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## A. STATEMENT OF THE CASE

On November 5, 2004, in Superior Court, Jefferson County, the Petitioner, Ryan D. Anderson was arraigned on and pled not guilty to charges of Possession of Stolen Property Third Degree, Possession of Stolen Property First degree, Identity Theft Second Degree (two counts), Unlawful Possession of Payment Instruments, Residential Burglary, Burglary Second Degree, and Taking a Motor Vehicle Without Permission Second Degree. VRP 21,22. On November 24, 2006, in open court Mr. Anderson entered Drug Court, signing the agreement attached as Appendix A. After twice departing from treatment without permission, the Superior Court terminated him from the program on September 30, 2005. VRP 57-59. On October 28, 2005, the Superior Court held a stipulated facts bench trial and found Mr. Anderson guilty of seven of the eight charged offenses. VRP 68-72. A copy of pertinent portions of the police reports admitted at this bench trial is attached as Appendix B. A certified copy of the Judgment and Sentence including the amendment thereto) is attached as Appendix C. On May 23, 2006, Mr. Anderson appealed his conviction and on August 24, 2006, the State filed its response brief. Anderson v. State of Washington, No. 34027-5-II. These briefs are attached as Appendices D and E, respectively. The citations to VRP in this PRP response refer to the record submitted by Mr. Anderson

on direct appeal and are attached as Appendix F. In his appeal Mr. Anderson argued that the Drug Court Contract was not a valid waiver of his right to trial, and that the trial court miscalculated his criminal history and offender score. On August 11, 2006, Mr. Anderson filed his PRP. In his PRP Mr. Anderson argues that (1) the trial judge should have disqualified himself as his impartiality was reasonably in question; (2) the evidence was insufficient to find him guilty of counts six, seven, and eight; and (3) the prosecutor committed misconduct by presenting an untruthful witness statement to the court and also committed misconduct by not clearly and accurately submitting his offender score to the court.

## B. ARGUMENT

ASSERTION THAT TRIAL JUDGE NOT IMPARTIAL. A personal restraint petitioner has the burden of proving constitutional error that results in actual prejudice or non constitutional error that results in a miscarriage of justice. In re Pers. Restraint of Cook, 114 Wn. 2d 802, 813 (1990). If a petition is based on matters outside the appellate record, a petitioner must show he has “competent, admissible evidence” to support his arguments. In re Personal Restraint of Rice, 118 Wn. 2d 876, 886 (1992). Also, “a petitioner must show that more likely than not he was prejudiced by the error. Bare allegations unsupported by citation to authority, references to the record, or persuasive reasoning cannot sustain this burden of proof.” State v. Brune, 45 Wn. App. 354, 363 (1986). Here, the petitioner has not met that burden. Even if his assertions that the trial judge had previously represented him in a criminal matter and his father in a civil matter were true they do not by themselves raise any inference that the judge was either biased or committed judicial error by not disqualifying himself. And, even if they did, the petitioner has failed to demonstrate that more likely than not he was prejudiced by the error.

ASSERTION THAT PROSECUTOR COMMITTED MISCONDUCT. First, the petitioner has submitted no evidence that the prosecutor negligently, recklessly, or intentionally presented a false witness statement to the court.

The complained of statement by Annie Tracy was taken by Idaho law enforcement and was part of their investigative report following Mr. Anderson's arrest in Idaho on unrelated charges. This statement, however, did relate to count six (residential burglary), count seven (burglary second degree), and count eight (taking motor vehicle without permission) by placing Mr. Anderson in knowing possession of the stolen truck (count eight) a short time after the related burglaries (counts six and seven). In his drug court contract petitioner stipulated to the admissibility of the police reports and that the facts contained therein were sufficient to find him guilty of the offenses charged. Drug Court Contract, Paragraph 19. Despite this signed agreement his attorney argued at the bench trial that Mr. Anderson was not guilty on counts 6, 7, and 8 and that the Tracy statement was false. Unfortunately for the Petitioner, the trial judge chose to give credence to it. Again, by merely making assertions without substance the Petitioner has not met his burden of showing either prosecutorial misconduct or prejudicial error.

Second, his complaint that his offender score was inaccurately presented is a major focus of his direct appeal. That being the case, it is inappropriate for him now to raise it in a PRP under the guise of prosecutorial misconduct. RAP 16.4(d) See, In re Detention of Turay, 139 Wn. 2d 379, 395 (1999). A review of his direct appeal brief also

shows that one of the issues presented is whether it is constitutional to use a “preponderance of the evidence” standard in determining criminal history. That, perhaps, explains Mr. Anderson’s use of the term “Deficient Preponderance of Standard of Evidence” on page three of his PRP.

ASSERTION THAT THE EVIDENCE IS INSUFFICIENT TO FIND HIM GUILTY OF COUNTS SIX, SEVEN, AND EIGHT. These counts of residential burglary, burglary second degree and taking a motor vehicle without permission second degree are related and arise from the following complaint received by the Jefferson County Sheriff’s Office on May 19, 2004. Gary Jensen reported that sometime during the previous night his home and business had been entered and items taken. In addition, a blue Dodge pickup truck had been taken from the business location. Mr. Jensen’s business is located a short driving distance from his residence. According to Colleen Jensen, his wife, they had arisen that morning and found fresh grass on the kitchen floor tracked in from the yard. They then found her purse missing as well as a key ring containing keys for the business. Gary then went to the business and found the chain across the lot down and the back door of the business open. Inside he found more keys missing including the key to his pickup truck. He then discovered that the truck had also been taken. Appendix B.

The standard of review for sufficiency of the evidenced claims is well known. It is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found essential elements of crime beyond a reasonable doubt. State v. Smith, 155 Wn. 2d 496 (2005). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. Smith, 155 Wn. 2d at 501.

An additional component to this insufficiency claim is the anomaly that Mr. Anderson, the Petitioner, has already in open court and upon advice of counsel stipulated that the facts contained in the police reports are sufficient to find him guilty of these counts. Paragraph 19 of the Drug Court Contract. (Appendix A). This contract contains further specific acknowledgment by both Mr. Anderson and his attorney that they have fully discussed its terms and that Mr. Anderson understood them. This court recently equated a drug court conviction to cases involving a deferred prosecution under chapter 10.05 RCW. State v. Colquitt, 133 Wn. App. 789 (2006). The court enforced the terms of the contract and suggested that if the defendant had stipulated to the sufficiency of the police report evidence as well as to its admissibility the defendant's post trial sufficiency of the evidence claim would have been foreclosed. State v. Colquitt at 792. Mr. Anderson's case presents an appropriate factual

situation to prove that suggestion correct. The State requests that this stipulation as to sufficiency of the evidence be enforced and that this court deny Mr. Anderson's request to have the sufficiency of the evidence be reviewed.

If this court undertakes a sufficiency review the State first points out that there was no dispute on whether the offenses had been committed. Both the home and business had been entered without permission and items taken. Fresh tracks of grass were on the kitchen floor of the residence. The back door of the business was found open. The truck was then taken without permission by using the keys taken from the business. The elements of the three offenses are well known and need not be delineated anew. The only factual issue was the identity of the perpetrator. It is well settled that when a person is found in possession of recently stolen property, only slight corroborative evidence of other inculpatory circumstances tending to show guilt will support a burglary conviction. State v. Mace, 97 Wn. 2d 840, 843 (1982). Thus, the only legal issue besides meeting the sufficiency standard was whether there was enough evidence other than recent possession of stolen property to find Mr. Anderson responsible for the burglary offenses.

So, what is the evidence contained in the police report pointing to Mr. Anderson? First, he was arrested just five days later on May 24, 2006,

for driving while license suspended in Benewah County, Idaho, and found to be in possession of Colleen Jensen's stolen credit cards, other pieces of identification belonging to her, and keys and key rings matching the description of those taken from Gary Jensen's business. Benewah County Deputies soon learned that the Chevrolet pickup truck he was driving had been stolen from a Coeur D'Alene parking lot. Mr. Anderson told the Deputies that he had borrowed the truck in Coeur D'Alene to give his girl friend Annie a ride to St. Maries and that he did not know her last name. Benewah Deputies found her phone number on Mr. Anderson's cell phone and located her in St. Maries, Idaho. She provided a written statement describing how Mr. Anderson had picked her up in Port Townsend on May 21, 2006, and agreed to give her a ride to St. Maries. He was driving a blue Dodge Ram diesel pickup. Along the way they used credit cards that Mr. Anderson said belonged to his aunt. Annie related how Mr. Anderson returned to their motel room in Coeur D'Alene during the evening of May 22, 2006, with a different pickup (a Chevy) and had her drive the Dodge to Rathdrum, Idaho and park it. She did. Mr. Anderson then drove her to her mother's home in St. Maries and departed in the Chevy. Benewah Deputies, with the help of Ms. Tracy, located the Dodge in Rathdrum and confirmed that it was the stolen Jensen truck.

While in custody, the Idaho Deputies questioned Mr. Anderson about the offenses occurring in Jefferson County. Mr. Anderson said he would talk about them if he got a deal on the Idaho offenses. When informed that deals were only made by the prosecuting attorney, Mr. Anderson became upset and destroyed the audio recording of the interview by pulling the tape out and eating it.

Gary Jensen discovered that one of his wife's stolen credit cards had been used to make a purchase at a gas station in Poulsbo, Washington the morning after the thefts. The amount was about what it would take to fill up his truck. Further investigation revealed that the purchaser was a male using the name "Shane Johnson" and a telephone number. The number was found to belong to a woman named Joy Reuther-Costa. When contacted by the Sheriff's Department she told them she did not know a "Shane Johnson." When asked if she knew Mr. Anderson she said she did, that she worked with Mr. Anderson's mother, and that Mr. Anderson would know her phone number very well.

When Idaho law enforcement gave Mr. Anderson's name to Gary Jensen he told them he recognized it as Mr. Anderson is an old friend of his son's and lives just a short distance from the Jensen residence.

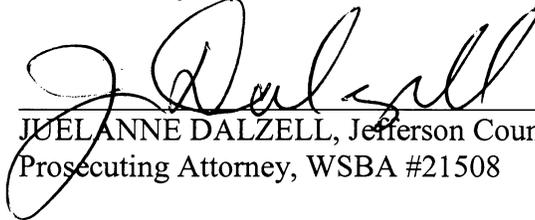
In summary, then, you have his recent possession of stolen property (the Dodge truck, the keys and key rings of the business, the

credit cards and pieces of identification from the purse taken from the residence) plus his flight from the scene in the stolen truck, his connection to and familiarity with the Jensen's, his residence in the area just a short distance from the Jensen's, his connection to the woman whose name was used with the stolen credit card in Poulsbo immediately after the offenses, and his knowledge of that woman's phone number which also was used with the credit card. Any rational trier of fact could have found him guilty beyond a reasonable doubt of all three offenses.

**C. CONCLUSION**

For the reasons stated the Petition should be denied.

Respectfully submitted this 12<sup>th</sup> day of October, 2006.



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JOELANNE DALZELL, Jefferson County  
Prosecuting Attorney, WSBA #21508

# APPENDIX A

## DRUG COURT CONTRACT

JEFFERSON COUNTY SUPERIOR COURT

CAUSE No. 04-1-00071-3

STATE'S RESPONSE TO  
PERSONAL RESTRAINT PETITION  
*State of Washington v. Ryan David Anderson*

1           4.     To abide by all rules and regulations ordered by the Court as well as those  
2 conditions and requirements set by the Treatment Provider.

3           5.     To not use or possess any alcohol or controlled substance and to not associate  
4 with or be in the proximity of any person using or possessing alcohol or any controlled  
5 substance.

6           6.     To request that any medication prescribed by a licensed physician be non-narcotic  
7 and to seek approval from the Court or Treatment Provider for any over-the-counter or  
8 prescribed medications prior to using such medication.

9           7.     To submit to witnessed urinalysis and Breathalyzer testing as required by the  
10 Court or the Treatment Provider and agrees that the verified results of urinalysis may be relied  
11 upon for sanction purposes without supporting testimony of the toxicology laboratory.

12           8.     To keep the Court and the Treatment Provider advised of my address and place of  
13 employment at all times during the Program, including written notice of any change of address or  
14 employment within 72 hours of the change.

15           9.     To appear at all Drug Court hearings pursuant to proper notice of the date and  
16 time of such hearings.

17           10.    To obey all laws while participating in the Drug Court Program.

18           11.    Shall not own or possess firearms while in the program.

19           12.    To sign any and all releases of confidentiality necessary to further the treatment  
20 goals of the Drug Court Program, including any and all releases necessary to allow the Court and  
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JEFFERSON COUNTY  
MARIANNE WALTERS  
BY \_\_\_\_\_

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR JEFFERSON COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

*RYAN ANDERSON*

Defendant.

Case No.: *04-1-71-3*

**DRUG COURT CONTRACT**

COMES NOW the Defendant and enters into the following Drug Court contract whereby  
this Court and Defendant agree to the following terms:

**Defendant agrees:**

1. To satisfactorily complete an assessment evaluation administered by the Treatment Provider for the development of a Program Treatment Plan.
2. To report to the Case Manager within 24 hours of signing this agreement.
3. To complete all required Program services as ordered and to the satisfaction of the Court and Treatment Provider.

DRUG COURT CONTRACT  
Page 1  
(Rev. 9/16/04)

JUELANNE DALZELL  
PROSECUTING ATTORNEY  
FOR JEFFERSON COUNTY  
Courthouse - P.O. Box 1220  
Port Townsend, WA 98368  
(360) 385-9180

**ORIGINAL**

Appendix A

*28*

1 counsel complete access to my diagnostic and treatment information and to my medical, mental  
2 health and other counseling records.

3 13. To make weekly payments in the amount of \$ \_\_\_\_\_ towards the cost  
4 of treatment.  
5

6 14. To make monthly payments set by the Court for my representation if I am  
7 determined to be able to contribute to my attorney costs if at any time I am represented by a staff  
8 attorney appointed by the Jefferson County Public Defender's Office while participating in the  
9 Drug Court Program.  
10

11 15. To pay full restitution to the victim, if any is owed, as a condition of graduation  
12 from the Program.

13 16. That it is the Judge's decision to determine when the defendant has earned the  
14 ability to graduate from the Program and to determine when termination from the Program will  
15 occur.  
16

17 17. That if the defendant chooses to leave the Program within the first two weeks  
18 after signing the Drug Court Contract, withdrawal will be allowed, this contract will be declared  
19 null and void, and the defendant will assume prosecution under the pending charge(s) as if this  
20 contract had never been agreed to. The defendant agrees that this ability to withdraw from the  
21 terms of this contract will cease after the period of two weeks following the effective date of this  
22 contract and thereafter the defendant shall remain in the Program until graduation unless his/her  
23 participation is terminated by the Court. The defendant further agrees that the ability to  
24 withdraw from the terms of this contract will cease within the first two weeks, if he/she has  
25

1 committed a willful violation of this contract for which, in the judgment of the Court, he/she may  
2 be terminated from the program.

3 18. That failure to abide by any Program rule, any positive urinalysis/breath test, any  
4 missed treatment session or Court hearing, any new violation of the law, or any failure to abide  
5 by any other terms or conditions of this contract will subject the defendant to a sanction ordered  
6 by the Court, which may consist of work release, confinement in the Jefferson County Jail and/or  
7 Day Reporting, an increase in Treatment Services or any other sanction up to and including  
8 termination from the Program.  
9

10 19. If the defendant is terminated from the Program, the defendant agrees and  
11 stipulates that the Court will determine the issue of guilt on the pending charge(s) solely upon the  
12 enforcement/investigative agency reports or declarations, witness statements, field test results,  
13 lab test results, or other expert testing or examinations such as fingerprint or handwriting  
14 comparisons, which constitutes the basis for the prosecution of the pending charge(s). The  
15 defendant further agrees and stipulates that the facts presented by such reports, declarations,  
16 statements and/or expert examinations are sufficient for the Court to find the defendant guilty of  
17 the pending charge(s).  
18

19 20. Defendant waives the right to challenge the legality of any investigative or  
20 custodial detention, or the legality of any search or seizure, or the sufficiency of Miranda  
21 warnings or voluntariness of any statement made, pertaining to any evidence which forms part of  
22 the basis for the prosecution of the pending charge(s).  
23  
24  
25

1           21.     Any statement made by the defendant while a participant in the Drug Court  
2 Program which pertains to evaluation or treatment and which is made in open Court or to the  
3 Drug Court Program Administrator in the course of treatment, may be used by the Drug Court  
4 Judge to evaluate the defendant's participation in the Program or as the basis for any sanction up  
5 to and including termination from the Program.  
6

7           The defendant understands and agrees that the restriction on the use of a defendant's  
8 statement does not include any statement made by the defendant in open Court or during the  
9 course of treatment concerning criminal activity other than illegal drug use or possession and  
10 unrelated to the charge(s) which constitute the basis for the defendant's participation in the Drug  
11 Court Program.  
12

13           Urinalysis results obtained for Program purposes shall not be used as evidence of a new  
14 crime, a violation of probation or any other manner not consistent with Program goals.  
15

16           22.     That upon the defendant's successful completion of all treatment components and  
17 satisfaction of all other requirements for graduation, the Court will dismiss the pending charge(s)  
18 with prejudice and the Prosecuting Attorney will not be able to prosecute those charges in the  
19 future.  
20

21           Defendant acknowledges an understanding of, and agrees to waive the following  
22 rights:

- 23           1.     The right to a speedy trial;
- 24           2.     The right to a public trial by an impartial jury in the county where the crime is  
25 alleged to have been committed;



1 (Check the appropriate box)

2  The defendant had previously read; or

3  The defendant's attorney had previously read to him/her; or

4  An interpreter had previously read to the defendant;

5 the entire contract above and that the defendant understood it in full.

6  
7 **THEREFORE IT IS ORDERED** that this Drug Court Contract is now in full force and  
8 effect. This case will remain in Drug Court for all further proceedings. Effective \_\_\_\_\_,

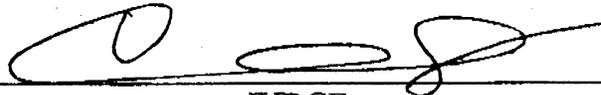
9 the defendant shall appear each and every <sup>Thursday</sup> ~~Friday~~ at 8:30 a.m. in the Jefferson County

10 Superior Court Courtroom until further ordered by this Court. Defendant shall pay

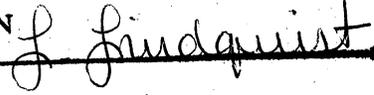
11 participation fee of \$ TBD per week. Defendant shall continue Program

12 Services with the Drug Court Treatment Provider until further order of the Court.

13  
14 DONE IN OPEN COURT this 24 day of November, 2007.

15  
16   
17 JUDGE

18  
19 I, Ruth Gordon, Clerk of the Superior Court of  
20 Jefferson County, Washington, do hereby certify that  
21 this instrument, consisting of 7 page(s), is a full,  
22 true and correct copy of the original now on file and of  
23 record in my office. WITNESS my hand and official  
24 seal this 9th day of October, 2006.

25  
26 RUTH GORDON   
27 By \_\_\_\_\_  
28 Deputy  
Port Townsend, Washington

# APPENDIX B

## POLICE REPORTS

SUBMITTED AS EXHIBIT 1

AT BENCH TRIAL

0402369

REPORT NUMBER

**Jefferson County  
Sheriff's Office  
INCIDENT REPORT**

**NARRATIVE**

**REPORTED BY 11 JOHNSON, DON**

**REPORT FILED 05/19/2004**

On 5-19-04 Gary Jensen called to report a burglary and theft to his home and business, Sony's RV, and a vehicle theft at the business.

I first met with Colleen Jensen at her home. She stated that sometime during the night, between 2300 hours and 0500 this morning, someone entered her home through the unlocked front door and took her purse from the kitchen counter and a ring of keys off the hook for the business, Sony's RV. When she and her husband, Gary Jensen, arose this morning they found fresh grass on the kitchen floor which had been tracked in from the yard. They then discovered that her purse was missing and the key ring gone. Gary went to the business and found that the back door of his business was open, key rings were missing, and his Dodge pickup was gone from behind the building. She said that there are several people who know the house, the business and their habits, who could have done it.

Colleen and I then went to Sony's RV where we met with Gary Jensen. Gary said that he first noticed that the chain across the RV lot was down and the back door of the business was open. Upon entering he found that all of the RV keys were missing, as well as the key for his Dodge pickup truck which is missing from behind the building. He spoke with a neighbor, Bradley Turner, who told him that he had heard the diesel motor start up and drive away around 0300 hours this morning, but figured that it was Shawn (Jensen), Gary's son, borrowing the truck, so he ignored it. Among the keys stolen were keys to the business safe. Gary checked the safe and found that it had not been disturbed. Some keys had been removed from the desk drawer but other keys in the drawer had been left behind. Nothing else inside the business was taken or disturbed.

The only viable suspects named at the time were J.R. Kelvey and Jason Ford. Kelvey is reportedly angry at Shawn for dating his ex-girlfriend and has made statements of getting even with him. Jason Ford is an ex-employee who is currently on good terms with the victims, but occasionally suffers from substance abuse and is unpredictable. Gary stated that attempting to locate latent fingerprints would likely not turn up any results, since he has already touched the places opened by the suspect. None of the RVs appeared to have been entered. Gary filled out and signed a stolen vehicle report for computer entry.

I contacted JR Kelvey by phone at his job, at Carr's Lube Express, in Port Townsend. He stated that he had been in Seattle last night and knew nothing about the Burglary and Theft. He was unable to name any suspects who could have been involved. I then received a call from Gary Jensen reporting that his wife had just learned that someone had used her Alaska Airlines VISA card to make a purchase of \$84.95 in Poulsbo at 0859 hours this morning. She called the credit card company for more information. The only thing they could tell her was that the card purchase company name that came up was "Chris Lee". There was no other information available as to the name of business, address, or phone number.

At my request dispatch entered the victims' Dodge pickup truck as stolen and sent out a BOLO to surrounding agencies.

I was unable to locate a business in the Poulsbo area associated with the name of Chris Lee. It is likely a gas station of some kind. Jensen told me that the amount of the charge on the card would be the same approx. cost of one tank of fuel for the pickup truck, which has dual tanks.

10

0402369

REPORT NUMBER

**Jefferson County  
Sheriff's Office  
SUPPLEMENTAL INCIDENT REPORT**

**NARRATIVE**

**SUPPLEMENT DATE** 05/25/2004  
**APPROVAL DATE**

**OFFICER** 11 JOHNSON, DON  
**OFFICER**

On 5-24-04 I Gary Jensen contacted me with information that he had located the gas station where the suspect had fueled up his Dodge pickup, charged to "Chris Lee". He said that Chris Lee is the owner of the Chevron gas station on Hwy 3 just South of the hood canal bridge. He believed that they may have video of the suspect pumping diesel fuel.

I contacted Chris Lee by phone and inquired about the incident. He told me that there are no video cameras which are aimed at the diesel pumps, so no video identification is possible. He said that one of his clerks made the sale in which the suspect used Colleen Jensen's VISA card to charge the fuel. The clerk looked at the suspect's identification and wrote down the name as "Shane Johnson", with a phone number he gave of 379-9613. The clerk did not write down the identification number. I checked the phone book and found that this number is registered to Joy Reuther-Costa. I was unable to contact Costa at that time.

At approx. 1505 hours I received a call from Deputy Levi Reynolds, Benowah County Sheriff's Office in St. Maries, Idaho. Deputy Reynolds informed me that he had arrested Ryan Anderson in his jurisdiction for possession of stolen property. At that time Anderson was driving a Chevrolet pickup truck, registered to an Idaho resident, but he was in possession of Colleen Jensen's credit cards, checking and bank account numbers for Colleen and Shawn Jensen. There was also other identification in the bag including identification for Andrea Anderson and other names unknown to me. Key rings of Jensen's business keys were also recovered. He was also arrested for felon in possession of a handgun. The vehicle Anderson was driving at the time of his arrest was impounded by Deputy Reynolds. Deputy Anderson and I exchanged information about the case. I faxed a copy of my initial report to Deputy Reynolds.

On 5-25-04 I spoke again with Gary Jensen by phone. Jensen stated that his daughter, Tanya Schweitzer had just found out that her debit card had been used in Idaho, causing her checking account to be overdrawn. Schweitzer's debit card had apparently been in Colleen Jensen's purse when it was stolen. I then spoke with Schweitzer by phone. She said that she had given her debit card to her mother a long time ago to use in an emergency, in case something happened to her. Colleen had never used the card and had forgotten that it was in her purse, so the card did not get cancelled upon discovery of the theft. She said that, so far, her checking account is \$1100 overdrawn, with approximately \$6,000 in charges from multiple uses in Coeur D Alene, Idaho on 5-22-04 and 5-23-04.

At 1420 hours I had phone contact with Deputy Reynolds who told me that he had checked phone numbers on Ryan Anderson's cellular phone and managed to locate Annie R. Tracy, who is currently living in his area in Idaho. He contacted Tracy for an interview. Tracy told him that Ryan Anderson had picked her up in Port Townsend in the Dodge pickup (Jensen's) around the time of the theft to give her a ride to Idaho, where she is currently living. While enroute to Idaho they went on a shopping spree in and around Spokane, using credit cards. Anderson told her that the credit cards belonged to his aunt and she thought he had authorization to use them. They spent the night in a motel in Coeur D Alene and moved on the next day. She told Deputy Reynolds that Anderson came up with another (Chev) pickup in an apartment complex in Rathdrum, Idaho so they left the Dodge there. She still had the Dodge pickup key in her possession and gave it to Deputy Reynolds. At this point Tracy is cooperating with the investigation as a witness and states that she is now a resident there and will continue to cooperate as a witness. Deputy Reynolds has contacted the law enforcement agency in Rathdrum to assist in locating Jensen's stolen Dodge pickup.

On 4-26-04 I contacted Joy Reuther-Costa by phone and explained that Jensen's pickup was stolen and fueled up in Poulsbo using a stolen credit card, with the suspect using the name of Shane Johnson and giving her phone number as a home phone. She replied that she does not know anyone by that name. I then asked if she knows Ryan Anderson. She said that she does, that Anderson's mother works with her and that Ryan would know her phone number very well.

Ryan Anderson has had his initial appearance in court (Benowah County) for possession of stolen property and possession of the handgun, and is currently being held without bail.

//



THE DRIVER, DEPUTY REYNOLDS AND I STOOD BEHIND THE PICKUP WHILE DEPUTY REYNOLDS ASKED THE DRIVER HIS NAME. THE MAN SAID HE IS RYAN D. ANDERSON, BIRTHDAY OF 01-15-82.

DEPUTY REYNOLDS RADIOED DISPATCH WITH RYAN'S INFORMATION. DISPATCHED CONFIRMED THAT RYAN WAS SUSPENDED THROUGH WASHINGTON.

I ASKED RYAN WHO THE OWNER OF THE PICKUP IS. RYAN SAID HE DID NOT KNOW THE GUYS NAME WHO LOANED IT TO HIM. RYAN SAID HE WAS IN COEUR D ALENE AND NEEDED TO GIVE HIS GIRLFRIEND A RIDE HOME TO ST. MARIES. RYAN SAID A GUY IN COEUR D ALENE LOANED HIM A PICKUP TO DO SO. RYAN SAID HE WAS TRYING TO GET BACK TO COEUR D ALENE TO GET THE PICKUP BACK. RYAN SAID HE LIVES IN PORT HADLOCK WASHINGTON AND THAT HE WANTED TO GET THE TRUCK BACK SO HE COULD GET ON A BUS BACK TO PORT HADLOCK.

DEPUTY REYNOLDS ASKED RYAN WHO HIS GIRLFRIEND IS. RYAN TOLD DEPUTY REYNOLDS THAT HER FIRST NAME WAS ANNIE AND THAT HE DID NOT KNOW HER LAST NAME. RYAN TOLD DEPUTY REYNOLDS THAT HE HAS KNOWN ANNIE FOR MORE THAN A MONTH. RYAN TOLD DEPUTY REYNOLDS THAT HE DROPPED ANNIE OFF AT HER HOUSE IN ST. MARIES AND WAS GOING BACK TO COEUR D ALENE.

I EXPLAINED TO RYAN THAT HE WAS UNDER ARREST FOR DRIVING WHILE SUSPENDED. I PLACED PROPERLY FITTED AND DOUBLE LOCKED HANDCUFFS ON RYAN. SEARCHED RYAN AND PLACED RYAN IN THE REAR OF THE PATROL CAR.

DUE TO THE SUSPICIOUS CIRCUMSTANCES OF THE VEHICLE AND RYAN'S LACK OF INFORMATION, DEPUTY REYNOLDS READ RYAN HIS

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MIRANDA RIGHTS. DEPUTY REYNOLDS AGAIN ASKED RYAN QUESTIONS ABOUT WHERE HE GOT THE PICKUP AND WHO HE GOT IT FROM. RYAN SAID THE SAME AS BEFORE, A FRIEND FROM COEUR D ALENE, UNKNOWN NAME.

DURING AN INVENTORY SEARCH OF THE VEHICLE, DEPUTY REYNOLDS FOUND AN ALTOIDS TIN CONTAINING MARIJUANA (UNDER 3 OZ.), A SWITCH BLADE KNIFE AND A LOADED (ROUND IN CHAMBER) .45 AUTO PISTOL IN THE GLOVE BOX.

DEPUTY REYNOLDS ASKED RYAN ABOUT THE MARIJUANA FOUND. RYAN SAID IT WAS HIS. DEPUTY REYNOLDS ASKED RYAN ABOUT THE LOADED .45. RYAN SAID HE DIDN'T KNOW ANYTHING ABOUT IT AND HE DIDN'T KNOW IT WAS IN THE PICKUP. WHEN DEPUTY REYNOLDS TOLD RYAN THE .45 WAS IN THE SAME PLACE HIS MARIJUANA WAS AT, RYAN STOPPED TALKING.

THE PICKUP IS A FOUR DOOR MODEL AND THE REAR IS FULL OF MISC. CLOTHING BAGS, NEW BOXES OF SHOES, VIDEO SURVEILLANCE EQUIPMENT AND OTHER MISC. ITEMS. BECAUSE OF THIS WE DECIDED TO FOLLOW THE IMPOUND TO BENEWAH MOTORS TO COMPLETE OUR INVENTORY.

WHILE AT BENEWAH MOTORS IN PLUMMER, DEPUTY REID ARRIVED AND TRANSPORTED RYAN TO THE BENEWAH COUNTY JAIL.

THE VEHICLE WAS SEARCHED. I FOUND TWO MARIJUANA PIPES W/ MARIJUANA RESIDUE. ONE PIPE, THE LARGER METAL PIPE, WAS IN THE CENTER CONSOLE. THE SMALLER PIPE WAS IN A SHOE BOX THAT WAS HOLDING A BLUE VELVET BAG. THE BLUE VELVET BAG CONTAINED SOME KEY RINGS THAT HAD SEVERAL (80-100) KEYS ON THEM.

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DEPUTY REYNOLDS FOUND A RED BANK BAG THAT CONTAINED SEVERAL CREDIT CARDS AND PIECES OF IDENTIFICATION WITH THE NAME "COLLEEN JENSEN" ON THEM ALSO IN THE BANK BAG WERE PIECES OF PHOTO ID FOR A MAN NAMED DAVID RAMIREZ.

DEPUTY REYNOLDS FOUND A MEN'S SUITE CONTAINER WITH A SUITE, CHECK BOOK, VEHICLE TITLE AND MISC. PAPER. THE CHECK BOOK, VEHICLE TITLE AND PAPERS HAD THE NAME DAVID RAMIREZ ON THEM.

I ADVISED BENEWAH MOTORS THAT THERE IS A POLICE HOLD ON THE VEHICLE. BENEWAH MOTORS LOCKED THE VEHICLE IN THEIR SHOP.

USING THE NAME COLLEEN JENSEN AND OTHER INFORMATION FROM CREDIT CARDS IN THE BANK BAG, DEPUTY REYNOLDS DETERMINED THAT COLLEEN LIVES IN PORT HADLOCK WASHINGTON.

DEPUTY REYNOLDS CALLED 1-360-385-2017 TO SPEAK WITH COLLEEN JENSEN. COLLEEN WAS NOT HOME, BUT HER HUSBAND, GARY SPOKE TO DEPUTY REYNOLDS. DEPUTY REYNOLDS INQUIRED ABOUT THE CREDIT CARDS BELONGING TO COLLEEN. GARY TOLD DEPUTY REYNOLDS THAT ABOUT A WEEK EARLIER HIS HOUSE AND BUSINESS WAS BURGLARIZED AND HIS PICKUP TRUCK WAS STOLEN. GARY SAID THAT HIS WIFE, COLLEEN, HAD HER PURSE STOLEN DURING THIS BURGLARY. GARY SAID ALL OF COLLEEN'S CREDIT CARDS WERE STOLEN. GARY TOLD DEPUTY REYNOLDS THAT JEFFERSON COUNTY SHERIFF'S OFFICE DEPUTY JOHNSON WORKED THE INITIAL BURGLARY. GARY ASKED DEPUTY REYNOLDS IF HE HAPPENED TO FIND A BUNCH OF LARGE KEY RINGS WITH "MAYBE 100 KEYS". DEPUTY REYNOLDS TOLD GARY THERE WERE SEVERAL LARGE KEY RINGS FOUND IN THE PICKUP RYAN WAS DRIVING, DEPUTY REYNOLDS SAID THE DESCRIPTION OF THE KEYS AND RINGS

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THAT GARY GAVE MATCHED THE ONES FOUND IN THE PICKUP RYAN WAS DRIVING.

DEPUTY REYNOLDS SAID THAT WHEN HE MENTIONED THE NAME RYAN ANDERSON TO GARY THAT GARY RECOGNIZED THE NAME. GARY SAID THAT RYAN IS AN OLD FRIEND OF HIS SONS AND THAT RYAN LIVES JUST A SHORT DISTANCE FROM THEIR RESIDENCE.

DEPUTY REYNOLDS CALLED DEPUTY JOHNSON AND RECEIVED A FAXED COPY OF THE INITIAL BURGLARY AND GRAND THEFT REPORT. (SEE ATTACHED COPY)

DEPUTY JOHNSON SAID HE WILL TRY AND GET AN EXTRADITABLE WARRANT ON RYAN FOR THE BURGLARY AND GRANDTHEFT.

DEPUTY REYNOLDS INTERVIEWED RYAN ABOUT THE INCIDENT. RYAN WAS UNCOOPERATIVE DURING THE INTERVIEW AND KEPT BREAKING DOWN IN TEARS. RYAN WOULD SUDDENLY GET UPSET AND TRY TO DAMAGE THE INSIDE OF THE INTERVIEW ROOM. RYAN SAID HE WOULD TALK ABOUT THE INCIDENT IN PORT HADLOCK IF WE WOULD MAKE A DEAL WITH HIM ON THE CURRENT CHARGES. DEPUTY REYNOLDS EXPLAINED TO RYAN THAT WOULD BE UP TO THE PROSECUTING ATTORNEY. DEPUTY REYNOLDS WAS THE ONLY ONE PRESENT DURING THIS INTERVIEW WITH RYAN. DEPUTY REYNOLDS SAID THAT RYAN DESTROYED THE AUDIO RECORDING TAPE OF THE INTERVIEW BY PULLING THE TAPE OUT AND EATING IT.

AT THIS TIME WE HAVE BEEN UNABLE TO CONTACT THE OWNER OF THE PICKUP THAT RYAN WAS DRIVING, JOHN KESTER. THIS VEHICLE IS IN POLICE IMPOUND AS EVIDENCE UTILL CONTACT IS MADE WITH KESTER.

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THE LOCATION OF THE VEHICLE STOLEN FROM COLLEEN AND GARY JENSEN IS UNKNOWN AT THIS TIME.

INFORMATION IN THIS CASE SHOWS THAT RYAN WAS OR WAS INVOLVED IN THE INITIAL BURGLARY AND AUTO THEFT CASE IN JEFFERSON COUNTY.

ON 05-25-04, DEPUTY REYNOLDS AND I SEARCHED THE PHONE MESSAGES ON THE CELLULAR PHONES THAT WERE SEIZED. WE LOCATED THE NAME "ANNIE" WITH A PHONE NUMBER OF 1-208-245-1811. WE TRACED THIS NUMBER TO AN ADDRESS OF 1809 IDAHO AVE. IN ST. MARIES.

DEPUTY REYNOLDS AND I MADE CONTACT WITH ANNIE TRACY AT THIS RESIDENCE. ANNIE SAID THAT RYAN AND HER MET ABOUT 4-5 MONTHS EARLIER AT A PARTY IN THE PORT HADLOCK AREA. ANNIE SAID THAT DUE TO PROBLEMS AT HOME, SHE WANTED TO GO TO ST. MARIES AND LIVE WITH HER MOTHER. ANNIE SAID RYAN AGREED TO GIVE HER A RIDE TO ST. MARIES AND ARRIVED TO PICK HER UP ON 05-21-04. ANNIE SAID RYAN WAS DRIVING A BLUE DODGE RAM DIESEL PICKUP. ANNIE SAID SHE THOUGHT THE PICKUP WAS RYAN'S. ANNIE SAID FROM HER HOUSE THEY DROVE THROUGH SEATTLE AND THEY LATER STOPPED FOR FUEL, CIGARETTES AND SNACKS IN MOSES LAKE. ANNIE SAID THEIR NEXT STOP WAS IN SPOKANE WA. WHERE THEY WENT TO THE SPOKANE VALLEY MALL AND RYAN BOUGHT UNDERWEAR AND CLOTHES THAT HE PAID CASH FOR. ANNIE SAID THEY WENT TO COEUR D ALENE IDAHO WHERE THEY SPENT THE NIGHT AT A FRIENDS HOUSE, BERRY AND KIM ?? ANNIE SAID THAT IN THE MORNING OF THE 22<sup>ND</sup>, SHE SUSPECTED RYAN WAS HIGH ON METH. BUT DID NOT CONFRONT HIM ABOUT THIS BECAUSE SHE KNEW RYAN HAD A GUN AND SHE WAS SCARED OF HIM. ANNIE SAID RYAN TOOK HER SHOPPING AT THE SILVERLAKE MALL IN COEUR D ALENE

WHERE HE TOLD HER SHE COULD BUY CLOTHES USING A CREDIT CARD. ANNIE SAID RYAN GAVE HER A CREDIT CARD AND TOLD HER IT WAS HIS AUNT'S CREDIT CARD AND THAT THE AUNT SAID THEY COULD USE IT AS PART OF THERE TRIP TO ST. MARIES. ANNIE SAID SHE AND RYAN BOTH BOUGHT CLOTHING AT THE MALL. ANNIE SAID THEY WENT AROUND TO DIFFERENT STORES MAKING PURCHASES ON THE CREDIT CARD. ANNIE SAID THAT NIGHT (05-22-04) SHE RENTED A ROOM AT THE SUPER 8 MOTEL IN COEUR D ALENE. ANNIE SAID SHE WAS SLEEPING IN THE ROOM WHEN RYAN SUDDENLY WOKE HER AT ABOUT 4:00AM, THREW A HANDGUN AND A KNIFE ON THE BED AND SAID, "GET YOUR SHIT TOGETHER, WERE LEAVING IN A NEW PICKUP-UP." ANNIE SAID SHE WAS SCARED AND DID AS RYAN ASKED. ANNIE SAID RYAN TOLD HER TO DRIVE THE BLUE DODGE DIESEL TO THE RATHDRUM AREA AND TOLD HER TO PARK IT. ANNIE SAID SHE PARKED THE DODGE IN A PARKING LOT OF AN APARTMENT BUILDING AND RYAN PICKED HER UP. ANNIE SAID RYAN WAS DRIVING A GREEN AND SILVER CHEVY 4-DOOR PICKUP WITH OKLAHOMA LICENSE PLATES. ANNIE SAID THEY THEN DROVE TOWARDS ST. MARIES, BUT STOPPED IN HARRISON IDAHO FOR GAS. ANNIE SAID THAT WHILE IN HARRISON SHE SAW RYAN BREAK INTO A TRUCK AND STEAL A CELL PHONE, MONEY AND A COAT. ANNIE SAID FROM THERE, THEY WENT TO HER MOTHERS HOUSE IN ST. MARIES. ANNIE SAID HER PARENTS WOULD NOT ALLOW RYAN TO STAY AND RYAN LEFT.

ANNIE FILLED OUT WRITTEN STATEMENT FORMS. (SEE ATTACHED)

THE RATHDRUM, COEUR D ALENE AND POST FALLS POLICE DEPARTMENTS WERE NOTIFIED AND ASKED TO LOCATE THE BLUE DODGE DIESEL PICKUP. THEY WERE UNABLE TO LOCATE THE PICKUP USING THE DIRECTIONS GIVEN BY ANNIE.

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A COPY OF THIS REPORT WILL BE SENT TO DEPUTY JOHNSON AT THE JEFFERSON COUNTY SHERIFFS OFFICE AS WELL AS COEUR D ALENE POLICE DEPARTMENT.

SEE ATTACHED COPIES: STATEMENT FROM ANNIE TRACY  
INITIAL REPORT FROM JEFFERSON COUNTY  
AUTO THEFT REPORT (KESTER) CDA PD  
AUTO BURG. REPORT (RAMIREZ) CDA PD



Officer

Reviewed By

60

Benewah County Sheriff's Office

STATEMENT

Page No. 1

Name Annie R Tracy  
First Middle Last

Address 1810 Idaho Ave St. Maries ID. 83801  
Street or Box No. City State Zip

DOB 10/04/80 SOC 519152001 TELEPHONE NO. (208) 25 1111  
Home Work

Please describe what you saw, heard, or know of this incident using full names, dates and times.

The day we left was the 21<sup>st</sup> of May. To my knowledge, ~~the~~ The truck we were driving was his and he had a licence and insurance. I saw that he had a gun from the beginning, but my judgement on men in the past has been bad, but not this bad. I thought he would have had a permit for the gun. I needed a ride to St. Maries, Idaho. He offered so I said yes on the 21<sup>st</sup>. We drove through Seattle, and stopped in Moses Lake to fill up on gas and got snacks like chips & dip & pop & cigarettes. I was unaware about how he paid & I didn't

I have read this statement consisting of 1 page(s) and the facts contained therein are true and correct to the best of my knowledge.

Annie R. Tracy  
 Signature

Date 5/27/04

Time 4:25 pm

Page 1 of 1

Benevoh County Sheriff's Office

STATEMENT

Page No. 2

Name Annie R Tracy  
First Middle Last

Address 1806 Idaho Ave St. Maries ID 83861  
Street or Box No. City State Zip

DOB 10/04/80 SOC 519115/2021 TELEPHONE NO. (208) 245 1 11  
Home Work

Please describe what you saw, heard, or know of this incident using full names, dates and times.

ask. We made it all the way to Spokane & stopped at the Spokane Valley Mall. He got himself some underwear & clothes but paid cash. We then stayed the night at Benny & Kim's. The next morning of the '22nd', I suspected he was on drugs of Meth, because I used to be an addict, I didn't ask any questions because I was scared knowing he had a gun. As soon as he woke up, he woke me up and took me shopping. We went to the Silverlake mall in Coeur D'Alene. I bought some pants and some tops but he bought a lot of things like a new wallet

I have read this statement consisting of 2 page(s) and the facts contained therein are true and correct to the best of my knowledge.

Annie R Tracy  
 Signature

5/27/21  
 Date

4:25 pm TS  
 Time

Page 2 of 6

*Benewah County Sheriff's Office*

**STATEMENT**

Page No. 3

Name Annie R Tracy  
First Middle Last  
Address 1800 Wilma Ave St. Maries ID 838161  
Street or Box No. City State Zip  
DOB 10/04/82 SOC 519/15/2321 TELEPHONE NO. (208) 243-1511  
Home Work

Please describe what you saw, heard, or know of this incident using full names, dates and times.

and belt. We went to the Bon Marche & JC Penney. That night we stayed the night in the truck at the Motel 8 - I suspect so he could case it out to see how many people would go & stay that next morning. He dropped me off at Berry & Kims again the 25<sup>th</sup> & he was gone for 6 to 7 hours and came back with a bunch of stuff like surveillance equipment. He told me the credit cards were his aunts and it was OK for us to use them, but my guts said something else by the way he was acting. By this point he wanted me to go to Fred Meyer & Wal-Mart in Post Falls. I said yes because he promised that they were his aunts, ~~and~~

I have read this statement consisting of 6 page(s) and the facts contained therein are true and correct to the best of my knowledge.

Annie R Tracy  
Signature  
Date 5/17/04 74  
Time 4:25 pm

Benewah County Sheriff's Office

STATEMENT

Page No. 4

Name Annie R Tracy  
First Middle Last  
 Address 1800 Idaho Ave St. Maries 12 83861  
Street or Box No. City State Zip  
 DOB 11/04/86 SOC 579115/2021 TELEPHONE NO. (208) 245 1111  
Home Work

Please describe what you saw, heard, or know of this incident using full names, dates and times.

and he told me to sign her name I said  
 ok because I have never owned or used a  
 credit card. He wrote out a list and  
 he waited in the cars at Fred Meyer &  
 Wal Mart in Post Falls. That was the  
 last time I saw or used the card he  
 had mentioned a lowes card & how he wanted  
 to go to Lowes, but I said I didn't think  
 they had one in Coeur d'Alene. We rented  
 a hotel room that night he dropped me off  
 at the Super 8 & I fell asleep. At app.  
 9:30 or 10:00 I rented the room, cash  
 under my name. At 4:00 in the morning  
 he woke me up & I don't think he had  
 slept that night. He told me to get

I have read this statement consisting of 4 page(s) and the facts contained therein are true and correct to the best of my knowledge.

Annie R Tracy  
 Signature  
 Date 5/12/2021 75  
 Time 11:25 am

Page 4 of 6

Benewah County Sheriff's Office

STATEMENT

Page No. 5

Name Annie D Tracy
Address 1800 E. Hahn Ave St. Maries ID 83841
DOB 10/01/80 SOC 579-15-2021 TELEPHONE NO. (800) 251-1111

Please describe what you saw, heard, or know of this incident using full names, dates and times.

all my things together and at this point meet him outside, (The gun I had seen in Washington) in a new car. He threw his gun, knives on the bed & said "get your shit together, were leaving in a new truck." At this point I thought he might kill me if I didn't do exactly as he said. The car was a '93 Dodge Ram, this one was a heavy truck. 4 door - turquoise and green with Oklahoma plates. The Dodge had Idaho plates. We were then on our way to St. Maries & I told him that we would go our separate ways. We stopped in thurston but the car started up. I saw him break into a

I have read this statement consisting of 6 page(s) and the facts contained therein are true and correct to the best of my knowledge.

Signature Annie R Tracy
Date 5/27/04
Time 4:25 pm

Benewah County Sheriff's Office

STATEMENT

Page No. 6

Name Annie R Tracy
First Middle Last
Address 1501 Main Ave St. Marys ID 83801
Street or Box No. City State Zip
DOB 10/01/50 SOC 519-15-2071 TELEPHONE NO. (208) 285-1111
Home Work

Please describe what you saw, heard, or know of this incident using full names, dates and times.

truck and come out with a cell phone, money, and a coat. Our 2nd stop was at another gas station in I got \$3.45 in gas - cash - then straight to my moms & we gave him \$10.00 so he would leave. He left & I never saw or talked to him again. (Things I forgot - Mike Trinkle went to help with the '93 Dodge Ram with my mother & I on the 2nd at around 10:30 (I was sure it was stolen). (He picked me up at my friends in Post Falls (A. H. S. uninvolved))

I have read this statement consisting of 6 page(s) and the facts contained therein are true and correct to the best of my knowledge.

Signature Annie R Tracy 77
Date 5/27/04
Time 4:25 pm

# APPENDIX C

CERTIFIED COPIES OF  
FELONY JUDGMENT AND SENTENCE  
AND  
ORDER MODIFYING  
JUDGMENT AND SENTENCE

STATE'S RESPONSE TO  
PERSONAL RESTRAINT PETITION  
*State of Washington v. Ryan David Anderson*

**CERTIFIED  
COPY**

**FILED**

05 NOV 10 PM 3:34

JEFFERSON COUNTY  
RUTH GORDON, CLERK

SUPERIOR COURT OF WASHINGTON  
COUNTY OF JEFFERSON

STATE OF WASHINGTON, Plaintiff,

vs.

Ryan David Anderson  
Defendant.

SID: WA18025305  
If no SID, use DOB: 1/15/1982

No. 04-1-00071-3

**FELONY JUDGMENT AND SENTENCE (FJS)**  
 Prison  RCW 9.94A.712 Prison Confinement  
 Jail One Year or Less  RCW 9.94A.712 Prison  
Confinement  
 First-Time Offender  
 Special Sexual Offender Sentencing Alternative  
 Special Drug Offender Sentencing Alternative  
 Clerk's Action Required, para 4.5 (SDOSA),  
4.15.2, 5.3, 5.6 and 5.8

**I. HEARING**

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

**II. FINDINGS**

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 10/28/05  
by  plea  jury-verdict  bench trial of: (Date)

COUNT	CRIME	RCW	DATE OF CRIME
I	Possession of Stolen Property <sup>3<sup>rd</sup> Degree</sup>	9A.56.170	On or about Jan. 1, 2004
II	Possession of Stolen Property First Degree, other than a firearm	9A.56.150	Jan. 17, 2004
III	Identity Theft 2 <sup>nd</sup> Degree	9.35.020	Jan. 17, 2004
IV	Identity Theft 2 <sup>nd</sup> Degree	9.35.020	Jan. 17, 2004
V	Unlawful Possession of Payment Instruments	9A.56.320(a)(i)	Jan. 17, 2004

*3ccs*

*58*

VI	Residential Burglary	9A.52.02(1)	5/19/2004
VII	Burglary in the Second Degree	9A.52.030(1)	5/19/2004
VIII	Taking Motor Vehicle Without Permission 2nd	9A.56.070(2)	5/19/2004

(If the crime is a drug offense, include the type of drug in the second column.)

as charged in the ( ) Amended Information.

Additional current offenses are attached in Appendix 2.1.

The court finds that the defendant is subject to sentencing under RCW 9.94A.712.

A special verdict/finding for use of firearm was returned on Count(s) \_\_\_\_\_, RCW 9.94A.602, 9.94A.533.

A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) \_\_\_\_\_, RCW 9.94A.602, 9.94A.533.

A special verdict/finding of sexual motivation was returned on Count(s) \_\_\_\_\_, RCW 9.94A.835.

A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) \_\_\_\_\_, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture was returned on Count(s) \_\_\_\_\_, RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.

The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.

This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.

The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.

The crime charged in Count(s) \_\_\_\_\_ involve(s) domestic violence.

Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589): *Count 7 - Burglary in the Second and Taking a motor vehicle w/o permission. It merges with count 4.*

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

SUPERIOR COURT OF WASHINGTON  
COUNTY OF

STATE OF WASHINGTON, Plaintiff,

No. 04-1-00071-3

VA  
Ryan D Anderson  
Defendant.

ADDITIONAL CURRENT OFFENSES, CRIMINAL HISTORY AND CURRENT OFFENSE SENTENCING DATA (APPENDIX 2.1, 2.2 and 2.3, JUDGMENT AND SENTENCE) (APX)

2.1 The additional current offenses of defendant are as follows:

COUNT	CRIME	RCW	DATE OF CRIME
2	PSP, 1 <sup>st</sup>	9A.56.150(1)	1/17/04
3	Identity Theft 2 <sup>o</sup>	9.35.020	1/17/04
4	Identity Theft 2 <sup>o</sup>	9.35.020	1/17/04
5	Unlawful Poss. of Paint & Ink	9A.56.300	1/17/04
6	Residential Burglary	9A.52.030(1)	5/19/04

(If the crime is a drug offense include the type of drug in the second column.)  
7 Burglary Second Degree 9A.52.030(2) 5/19/04

2.2 The defendant has the following prior criminal convictions (RCW 9.94A.100):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
<del>Theft 1<sup>st</sup></del>	<del>9/23/01</del>	<del>Jefferson Co</del>	<del>9/2/01</del>	<del>A</del>	<del>WUF</del>
Poss. of Stolen Prop (a truck)	8/29/04	Benevol, Ind	5/23/04	A	WUF

2.3 The additional current offense sentencing data is as follows: *and continued to next page*

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
2	6	II	22-29	—	22-29	10 yrs
3	6	II	22-29	—	22-29	10 yrs
4	6	II	22-29	—	22-29	10 yrs
5	6	I	14-18	same crim conducted	14-18	5 yrs

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom. See RCW 46.61.520 (JP) Juvenile Present

[ ] See additional sheets for more current offenses, criminal history and current offense sentencing data.

SUPERIOR COURT OF WASHINGTON  
 COUNTY OF

STATE OF WASHINGTON, Plaintiff,

No. 04-1-0071-3

vs. Ryan D. Anderson  
 Defendant.

**ADDITIONAL CURRENT OFFENSES, CRIMINAL HISTORY AND CURRENT OFFENSE SENTENCING DATA (APPENDIX 2.1, 2.2 and 2.3, JUDGMENT AND SENTENCE) (APX)**

2.1 The additional current offenses of defendant are as follows:

COUNT	CRIME	RCW	DATE OF CRIME

(If the crime is a drug offense, include the type of drug in the second column.)

2.2 The defendant has the following prior criminal convictions (RCW 9.94A.100):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME

2.3 The additional current offense sentencing data is as follows: *Continued from last page*

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
6	J	IV	43-57	N/A	43-57	10 yrs
7	B	III	33-43	N/A		10 yrs
8	G	I	B.c.m.e. conduct count 2	N/A		5 yrs

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom. See RCW 46.61.520 (JP) Juvenile Present

[ ] See additional sheets for more current offenses, criminal history and current offense sentencing data.

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

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

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

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

III. JUDGMENT

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

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

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

\$ 500.00 Restitution to: Jefferson County Drug Court

RTN/RJN

\$ TBD Restitution to: Colleen and Gary Jensen, Bryan Blessing

\$ TBD Restitution to: Douglas Soehl, Tamara Schweitzer  
(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

PCV

\$ 600.00 Victim assessment RCW 7.68.035

\$ Domestic Violence assessment RCW 10.99.080

CRC

\$ 148.00 Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ 110.00 FRC

Witness costs \$ WFR

Sheriff service fees \$ 38.00 SFR/SFS/SFW/WRF

Jury demand fee \$ JFR

Extradition costs \$ EXT

Other \$

PUB

\$ ~~650.00~~ N/A Fees for court appointed attorney RCW 9.94A.760

WFR

\$ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTH

\$ 2000.00 Fine RCW 9A.20.021; [ ] VUCSA chapter 69.50 RCW, [ ] VUCSA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/PCD \$ \_\_\_\_\_ Drug enforcement fund of \_\_\_\_\_ RCW 9.94A.760  
 NTF/SAD/SDI

CLF \$ \_\_\_\_\_ Crime lab fee [ ] suspended due to indigency RCW 43.43.690

\$ 100.00 Felony DNA collection fee [ ] not imposed due to hardship RCW 43.43.7541

RTN/RJN \$ \_\_\_\_\_ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000  
 maximum) RCW 38.52.430

\$ \_\_\_\_\_ Other costs for: \_\_\_\_\_

~~\$ 3096.00~~ TOTAL RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

shall be set by the prosecutor.

[ ] is scheduled for \_\_\_\_\_

[ ] RESTITUTION. Schedule attached.

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

NAME of other defendant CAUSE NUMBER (Victim's name) (Amount-\$)

RJN

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

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_  
 RCW 9.94A.760. *Defendant shall enter the pay or appear program*

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

[ ] In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50.00 per day, unless another rate is specified here: \_\_\_\_\_. (JLR) RCW 9.94A.760.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.2 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[ ] HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340.

4.3 The defendant shall not have contact with \_\_\_\_\_ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

Domestic Violence No-Contact Order or Antiharassment No-Contact Order is filed with this Judgment and Sentence.

4.4 OTHER: Shall not have contact with  
Colleen and Gary Jensen, Tanya  
Schwitzer, Bryan Blessing Douglas  
Soehl

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

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

<u>365 days on Count 1</u>			
<u>22</u> months on Count <u>2</u>		<u>14</u> months on Count <u>5</u>	
<u>22</u> months on Count <u>3</u>		<u>50</u> months on Count <u>6</u>	
<u>22</u> months on Count <u>4</u>		<u>33</u> months on Count <u>7</u>	
		<u>14</u> months on Count <u>8</u>	

Actual number of months of total confinement ordered is: 50 months  
 (Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above.)

The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively with the sentence in cause number(s) \_\_\_\_\_

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence ~~immediately unless otherwise set forth here:~~ In addition to time served in jail defendant shall have credit for 45 days.

- (b) CONFINEMENT. RCW 9.94A.712 (Sex Offenses only): The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count _____	minimum term _____	maximum term _____
Count _____	minimum term _____	maximum term _____

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

4.6  COMMUNITY PLACEMENT is ordered as follows: Count \_\_\_\_\_ for \_\_\_\_\_ months; Count \_\_\_\_\_ for \_\_\_\_\_ months; Count \_\_\_\_\_ for \_\_\_\_\_ months.

COMMUNITY CUSTODY for count(s) \_\_\_\_\_, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

COMMUNITY CUSTODY is ordered as follows:  
 Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;  
 Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;  
 Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced

*Served in  
 Transition  
 OGV*

under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

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

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)	v) Residential burglary offense	
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

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

The defendant shall not consume any alcohol.

Defendant shall have no contact with: \_\_\_\_\_

Defendant shall remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_

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

The defendant shall participate in the following crime-related treatment or counseling services: \_\_\_\_\_

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

The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_

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

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

4.7  **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 **RESTITUTION HEARING.**  
 Defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

**Cross off if not applicable:**

~~5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.~~

~~If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.~~

~~If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must also send written notice within 10 days of moving to the county~~

sheriff with whom you last registered in Washington State.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 48 hours excluding weekends and holidays after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require you to list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

- 5.8  The court finds that Count 9 is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.
- 5.10 OTHER: \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: Nov. 10, 2005

*Julie Dalzell*  
 Deputy Prosecuting Attorney  
 WSBA No. 21509  
 Print name: Suele Dalzell

*[Signature]*  
 Attorney for Defendant  
 WSBA No. 13263  
 Print name: Richard Suman

*[Signature]*  
 Defendant  
 Print name: Ryan David ANDERSON

I, Ruth Gordon, Clerk of the Superior Court of Jefferson County, Washington, do hereby certify that this instrument, consisting of 12 page(s), is a full, true and correct copy of the original now on file and of record in my office. WITNESS my hand and official seal this 9th day of October, 2005.

FELONY JUDGMENT AND SENTENCE (P.3)  
 (RCW 9.94A.500, .505)(WPF CR 84.0400 (6/2005))

RUTH GORDON  
 By *[Signature]*  
 Deputy  
 Port Townsend, Washington

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41-00071-3

**VOTING RIGHTS STATEMENT:** RCW 10.64. \_\_\_\_\_. I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: \_\_\_\_\_ . 2005 Wash. Laws 246 § 1.

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the \_\_\_\_\_ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

Interpreter signature/Print name: \_\_\_\_\_

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

WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_

Clerk of the Court of said county and state, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF DEFENDANT**

SID No. WA18025305 Date of Birth 1/15/1982  
 (If no SID take fingerprint card for State Patrol)

FBI No. 626262CB2 Local ID No. DOC # 826077

PCN No. \_\_\_\_\_ Other \_\_\_\_\_

Alias name, DOB: \_\_\_\_\_

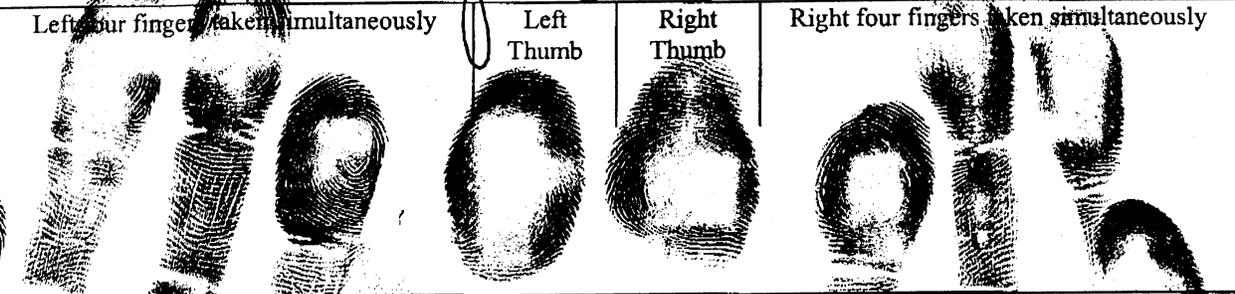
**Race:**  Asian/Pacific Islander  Black/African-American  Caucasian  Other: \_\_\_\_\_

**Ethnicity:**  Hispanic  Non-Hispanic

**Sex:**  Male  Female

**FINGERPRINTS:** I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Michelle Moore Dated: 4/10/05

DEFENDANT'S SIGNATURE: Rafa Ben



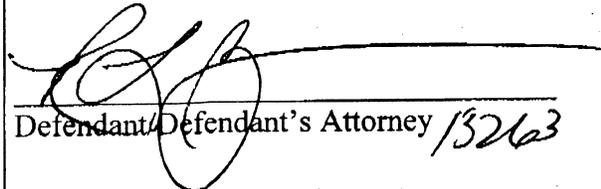
FILED BY JUDGE, COURT AND SENTENCE (FJS)  
 (RCW 9.94A.50(2)(b)) (WPF CR 84.0400 (6/2005))

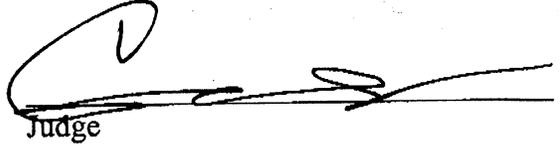


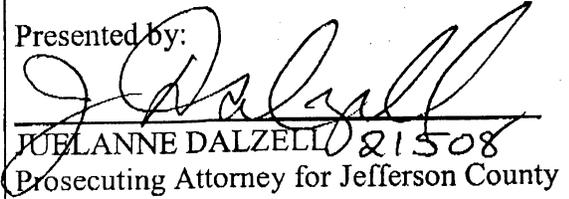
- 1  All references of "Community Custody" is replaced with the term "Community
- 2 Supervision."
- 3  All references of "Probation Officer" is replaced with the term "Comm. Corrections
- 4 Officer."
- 5  All references of "Probation" is replaced with the term "Community Custody".
- 6  12 Months of Community Custody is ordered.
- 7  The term of Community Custody is modified to \_\_\_\_\_ months/year(s).
- 8  Other: The defendant was found Not Guilty of Count #5, to wit: Unlawful Possession of
- 9 a Payment Instrument - RCW 9A.56.320(2)(a)(i)

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Judgment and Sentence  
 11 dated November 10, 2005 be, and the same is hereby modified in the requested manner.

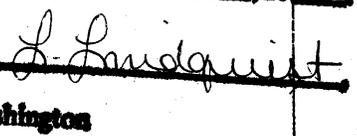
12 Done in open Court this 17 day of November, 2001.

14   
 15 Defendant/Defendant's Attorney 13263

14   
 15 Judge

17 Presented by:  
 18   
 19 JUELANNE DALZELL 21508  
 20 Prosecuting Attorney for Jefferson County

I, Ruth Gordon, Clerk of the Superior Court of  
 Jefferson County, Washington, do hereby certify that  
 this instrument, consisting of 2 page(s), is a full,  
 true and correct copy of the original now on file and of  
 record in my office. WITNESS my hand and official  
 seal this 9th day of October, 2006

RUTH GORDON  
 By   
 Deputy  
 Port Townsend, Washington

# APPENDIX D

## APPELLANT'S OPENING BRIEF

COURT OF APPEALS, DIVISION II

No. 34027-5-II

STATE'S RESPONSE TO  
PERSONAL RESTRAINT PETITION  
*State of Washington v. Ryan David Anderson*

No. 34027-5-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

**Ryan D. Anderson,**

Appellant.

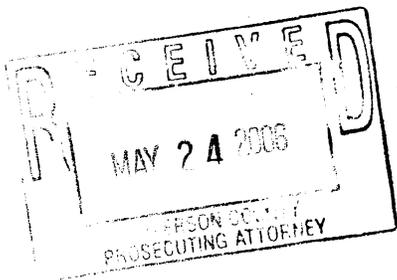
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Jefferson County Superior Court

Cause No. 04-1-00071-3

The Honorable Judge Craddock Verser

**Appellant's Opening Brief**



Jodi R. Backlund  
Manek R. Mistry  
Attorneys for Appellant

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(360) 352-5316  
FAX: 740-1650

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**ASSIGNMENTS OF ERROR**

1. Mr. Anderson was denied his constitutional right to a jury trial.
2. Mr. Anderson was denied his constitutional right to confront witnesses.
3. Mr. Anderson was denied his constitutional right to testify.
4. Mr. Anderson was denied his constitutional right to present a defense.
5. The trial court erred by convicting Mr. Anderson following a bench trial based on documentary evidence without a valid waiver.
6. The trial court erred by enforcing the unenforceable drug court contract signed by Mr. Anderson.
7. The trial court erred by failing to properly determine Mr. Anderson's criminal history.
8. The trial court erred by adopting Finding of Fact No. 2.2 of the Judgment and Sentence, which reads as follows:

2.2 The defendant has the following prior criminal convictions (RCW 9.94A.100):

CRIME	DATE OF SENTENCE	SENTENCING COURT	DATE OF CRIME	<u>A or J</u>	TYPE OF CRIME
Theft 1 <sup>st</sup>	9/28/01	Jefferson	9/2/01	A	NVF
Poss. Of Stolen Prop. (a truck)	8/20/04	Benewah, ID	5/23/04	A	NVF

Supp. CP.

9. The trial court erred by adopting Finding of Fact No. 2.3 of the Judgment and Sentence, which reads as follows:

COUNT NO.	OFFENDER SCORE	SERIOUS -NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
2	6	II	22-29	-	22-29	10 yrs
3	6	II	22-29	-	22-29	10 yrs
4	6	II	22-29	-	22-29	10 yrs

5	6	I	14-18	Same Crim. Conduct Ct 2	14-18	5 yrs
6	7	IV	43-57	N/A	43-57	10 yrs
7	7	III	33-43	N/A		10 yrs
8	7	I	Same Conduct Count 2	N/A		5 yrs

Supp. CP.

10. The trial court violated Mr. Anderson's constitutional right to a jury trial by finding that he had criminal history without submitting the issue to a jury or obtaining a waiver of the right to a jury trial.

11. The trial court erred by using a preponderance of the evidence standard in determining that Mr. Anderson had criminal history.

### **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

Ryan Anderson was charged with seven felonies and a misdemeanor. He petitioned to enter drug court, and signed a drug court contract, which purported to include a waiver of his trial rights.

There is no record of any colloquy between Mr. Anderson and the Judge reviewing the waiver of trial rights. Mr. Anderson was not advised that he had the right to participate in jury selection, that he was entitled to a jury of twelve and had the rights to be presumed innocent by the jury unless proven guilty by proof beyond a reasonable doubt, and to a unanimous verdict.

The contract contained a provision allowing a person to opt out of drug court within the first two weeks, but did not explain the mechanism for opting out.

1. Was Mr. Anderson's waiver of his right to a jury trial invalid under the state constitution? Assignments of Error Nos. 1, 2, 3, 4, 5, 6.

2. Were the waivers contained in the drug court contract unenforceable because the contract did not outline the mechanism for opting out of drug court? Assignments of Error Nos. 1, 2, 3, 4, 5, 6.

Following a bench trial, Mr. Anderson was convicted of six felonies and one misdemeanor. At sentencing, the prosecutor alleged that he had a prior felony theft and a prior out-of-state possession of stolen property conviction. Mr. Anderson contested the prosecutor's statement of criminal history, but the state did not introduce any evidence to prove the alleged prior convictions and did not introduce any evidence to establish the classification of the alleged out-of-state conviction.

The sentencing court (apparently using a preponderance standard) found that Mr. Anderson had two prior felony convictions, and orally determined that Mr. Anderson had an offender score of five (for counts II-V and count VIII) and an offender score of seven (for counts VI-VII, which were burglaries). Although the offender scores written on the judgment and sentence are illegible, the sentence ranges computed indicate that Mr. Anderson was sentenced on each count with an offender score of seven.

3. Must the judgment and sentence be vacated because the trial court failed to properly determine Mr. Anderson's criminal history and offender score? Assignments of Error Nos. 7, 8, 9.
4. Is the trial court's finding that Mr. Anderson had two prior felony convictions based on insufficient evidence? Assignments of Error Nos. 7, 8, 9.
5. Did the trial court erroneously include an alleged out-of-state conviction in Mr. Anderson's offender score without determining that the conviction was equivalent to a Washington felony? Assignments of Error Nos. 7, 8, 9.
6. Must the state be held to the existing record on remand for determination of Mr. Anderson's criminal history and offender score? Assignments of Error Nos. 7, 8, 9.

7. Did the trial court's finding that Mr. Anderson had criminal history violate his constitutional right to a jury determination of all facts used to increase his sentence? Assignments of Error Nos. 1, 8, 9, 10, 11.
  
8. Did the trial court's decision finding criminal history by a preponderance of the evidence violate Mr. Anderson's constitutional right to proof beyond a reasonable doubt of all facts used to increase his sentence? Assignments of Error Nos. 1, 8, 9, 10, 11.

## STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Ryan D. Anderson was charged in Superior Court in Jefferson County with Possession of Stolen Property Third Degree, Possession of Stolen Property First Degree, Identity Theft Second Degree (two counts), Unlawful Possession of Payment Instruments, Residential Burglary, Burglary Second Degree, and Taking a Motor Vehicle Without Permission Second Degree. CP 1-4.

Mr. Anderson entered Drug Court, signing an agreement that included the following provisions:

17. That if the defendant chooses to leave the Program within the first two weeks after signing the Drug Court Contract, withdrawal will be allowed, this contract will be declared null and void, and the defendant will assume prosecution under the pending charge(s) as if this contract had never been agreed to. The defendant agrees that this ability to withdraw from the terms of this contract will cease after the period of two weeks following the effective date of this contract and thereafter the defendant shall remain in the Program until graduation unless his/her participation is terminated by the Court. The defendant further agrees that the ability to withdraw from the terms of this contract will cease within the first two weeks, if he/she has committed a willful violation of this contract for which, in the judgment of the Court, he/she may be terminated from the program.

....

19. If the defendant is terminated from the Program, the defendant agrees and stipulates that the Court will determine the issue of guilt on the pending charge(s) solely upon the enforcement/investigative agency reports or declarations, witness statements, field test results, lab test results, or other expert testing or examinations such as fingerprint or handwriting comparisons, which constitutes the basis for the prosecution of the pending

charge(s). The defendant further agrees and stipulates that the facts presented by such reports, declarations, statements and/or expert examinations are sufficient for the Court to find the defendant guilty of the pending charges(s).

....

Defendant acknowledges an understanding of, and agrees to waive the following rights:

1. The right to a speedy trial;
2. The right to a public trial by an impartial jury in the county where the crime is alleged to have been committed;
3. The right to hear and question any witness testifying against the defendant;
4. The right at trial to have witnesses testify for the defense, and for such witnesses to be made to appear at no expense to the defendant; and
5. The right to testify at trial.

My attorney has explained to me, and we have fully discussed all of the above paragraphs. I understand them all and wish to enter into this Drug Court Contract. I have no further questions to ask the Judge.

Drug Court Contract, Supp. CP.

There is no indication that the trial judge reviewed any of these terms with Mr. Anderson on the record. RP 21-36. He was later terminated from the Drug Court program. RP 45-59; Supp. CP.

At a bench trial, the court dismissed Count V (Unlawful Possession of Payment Instruments), and Mr. Anderson was convicted of the remaining charges based on the trial judge's review of the police reports. RP 68-72.

At sentencing, his attorney contested his criminal history and the calculation of his offender score. RP 72-84. Mr. Anderson did not admit or acknowledge any prior felonies and objected to the prosecutor's

allegations regarding his criminal history. RP 72-94. The state did not submit any evidence regarding Mr. Anderson's alleged prior felony theft conviction. RP 71-94. Although the prosecutor referred to a certified copy of a prior Idaho conviction, no certified copy was marked or admitted into evidence; nor was any evidence produced to classify the alleged foreign conviction. RP 85, 71-94. The judgment and sentence included a finding that Mr. Anderson had two prior felony convictions, including an out-of state conviction. CP 5-16.

This timely appeal followed. CP 17-18.

### **ARGUMENT**

**I. THE PROSECUTION DID NOT ESTABLISH A VALID WAIVER OF MR. ANDERSON'S CONSTITUTIONAL RIGHT TO A JURY TRIAL UNDER THE STATE CONSTITUTION.**

The Sixth Amendment to the U.S. Constitution (applicable to the states through the Fourteenth Amendment) guarantees a criminal defendant the right to a jury trial. U.S. Const. Amend. VI; U.S. Const. Amend. XIV; *Duncan v. Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968). Waiver of the federal jury trial right must be made knowingly, intelligently and voluntarily; the waiver must either be in writing, or done orally on the record. *State v. Treat*, 109 Wn.App. 419 at 427-428, 35 P.3d 1192 (2001). The federal constitutional right to a jury

trial is one of the most fundamental of constitutional rights, one which an attorney “cannot waive without the fully informed and publicly acknowledged consent of the client...” *Taylor v. Illinois* 484 U.S. 400 at 418 n. 24, 108 S.Ct. 646 (1988). In the absence of a valid waiver of the federal right, a criminal defendant’s conviction following a bench trial must be reversed. *Treat, supra*.

Wash. Const. Article I, Section 21 provides that “[t]he right of trial by jury shall remain inviolate...” Wash. Const. Article I, Section 22 (amend. 10) provides that “[i]n criminal prosecutions the accused shall have the right to . . . a speedy public trial by an impartial jury...”

As with many other constitutional provisions, the right to a jury trial under the Washington State Constitution is broader than the federal right. *See, e.g., City of Pasco v. Mace*, 98 Wn.2d 87 at 97, 653 P.2d 618 (1982). Because the right is broader and more highly valued under the state constitution, a waiver of the state constitutional right must be examined more carefully than a waiver of the corresponding federal right.

- A. A waiver of the state constitutional right to a jury trial is valid only if the record establishes that the accused was fully aware of the rights being waived.

The validity of a waiver under the state constitution is determined with respect to the six nonexclusive factors set forth in *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986). Under a *Gunwall* analysis, waiver of the

state constitutional right to a jury trial is valid only if the record shows that the defendant is fully aware of the meaning of the state constitutional right. This includes (among other things) an understanding of the right to participate in the selection of jurors, the right to a jury of twelve, the right to be presumed innocent by the jury unless proven guilty by proof beyond a reasonable doubt, and the right to a unanimous verdict.

**The language of the State Constitution.** The first *Gunwall* factor requires examination of the text of the State Constitutional provisions at issue. Wash. Const. Article I, Section 21 provides that “[t]he right of trial by jury *shall remain inviolate...*” *emphasis added*. The strong, simple, direct, and mandatory language (“shall remain inviolate”) implies a high level of protection, and, in fact, the Court has noted that the language of the provision requires strict attention to the rights of individuals. In *Sofie v. Fibreboard Corp.*, the Supreme Court clarified the meaning of the term “inviolate:”

The term “inviolate” connotes deserving of the highest protection. [Webster’s Dictionary] defines “inviolate” as “free from change or blemish: pure, unbroken . . . free from assault or trespass: untouched, intact . . .” Applied to the right to trial by jury, this language indicates that the right must remain the essential component of our legal system that it has always been. For such a right to remain inviolate, it must not diminish over time and must be protected from all assaults to its essential guarantees *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 656, 771 P.2d 711, 780 P.2d 260 (1989).

In addition, Wash. Const. Article I, Section 22 (amend. 10) provides that “[i]n criminal prosecutions the accused shall have the right to . . . a speedy public trial by an impartial jury...” Again, the direct and mandatory language (“shall have the right”) implies a high level of protection. The existence of a separate section specifically referencing criminal prosecutions further emphasizes the importance of the right to a jury trial in criminal cases.

Thus, the language of Article I, Section 21 and Article I, Section 22 favors the independent application of the State Constitution advocated in this case, and suggests that any waiver must be stringently examined.

**Significant differences in the texts of parallel provisions of the Federal and State Constitutions.** The second *Gunwall* factor requires analysis of the differences between the texts of parallel provisions of the federal and State Constitutions. The Federal Sixth Amendment and Wash. Const. Article I, Section 22 are similar in that both grant the “right to . . . an impartial jury.”

But Wash. Const. Article I, Section 21, which declares “[t]he right of trial by jury shall remain inviolate . . . .” has no federal counterpart. The Washington Supreme Court in *Pasco v. Mace*, 98 Wn.2d 87, 653 P.2d 618 (1982) found the difference between the two constitutions significant, and determined that the State Constitution provides broader protection.

The court held that under the Washington Constitution “no offense can be deemed so petty as to warrant denying a jury trial if it constitutes a crime.” This is in contrast to the more limited protections available under the Federal Constitution. *Pasco v. Mace*, at 99-100.

Thus, differences in the language between the state and Federal Constitutions also favor an independent application of the State Constitution in this case. Waiver of the state constitutional right to a jury trial requires more than a waiver of the corresponding federal right.

**State Constitutional history, state common law history, and pre-existing state law.** Under the third and fourth *Gunwall* factors this Court must look to state common law history, State Constitutional history, and other pre-existing state law.

Prior to the adoption of the State Constitution in 1889, the U.S. Supreme Court had ruled that (even in a civil case) “every reasonable presumption should be indulged against [a] waiver” of the fundamental right to a jury trial. *Hodges v. Easton*, 106 U.S. 408 at 412, 1 S.Ct. 307, 27 L.Ed. 169 (1882). Indeed, during the decade prior to the adoption of the State Constitution it was believed that a defendant *could not* waive the right to a jury trial: “This is a right which cannot be waived, and it has been frequently held that the trial of a criminal case before the court by the prisoner’s consent is erroneous.” *U.S. v. Taylor*, 11 F. 470 at

471 (C.C.Kan. 1882). *See also U.S. v. Smith*, 17 F. 510 (C.C.Mass. 1883): “The district judges in this district have thought that it goes even beyond the powers of congress in permitting the accused to waive a trial by jury, and have never consented to try the facts by the court...” *U.S. v. Smith at* 512. These authorities suggest that the drafters of the Constitution would have been loathe to permit a casual waiver of this important right. Even by 1900 there was still disagreement on whether or not a defendant could waive her or his right to a jury trial. *State v. Ellis*, 22 Wn. 129, 60 P. 136 (1900).

*Gunwall* factors 3 and 4 thus favor an independent application of Article I, Sections 21 and 22.

#### **Differences in structure between the Federal and State**

**Constitutions.** In *State v. Young*, 123 Wn.2d 173, 867 P.2d 593 (1994), the Supreme Court noted that “[t]he fifth *Gunwall* factor... will always point toward pursuing an independent State Constitutional analysis because the Federal Constitution is a grant of power from the states, while the State Constitution represents a limitation of the State's power.” *State v. Young*, at 180.

**Matters of particular state interest or local concern.** The sixth *Gunwall* factor deals with whether the issue is a matter of particular state interest or local concern. The protection afforded a criminal defendant

contemplating a waiver of rights guaranteed by Wash. Const. Article I, Section 21 and 22 is a matter of State concern; there is no need for national uniformity on the issue. *See State v. Smith*, 150 Wash.2d 135 at 152, 75 P.3d 934 at 941 (2003). *Gunwall* factor number six thus also points to an independent application of the State Constitutional provision in this case.

**Conclusion.** All six *Gunwall* factors favor an independent application of Article I, Section 21 and 22 of the Washington Constitution in this case. Each factor establishes that our state constitution provides greater protection to criminal defendants than does the Federal Constitution. To sustain a waiver, a reviewing court must find in the record proof that the defendant fully understood the right under the state constitution—including the right (along with counsel) to participate in selecting jurors, the right to a jury of twelve, the right to be presumed innocent by the jury unless proven guilty by proof beyond a reasonable doubt, and the right to a unanimous verdict.

B. Mr. Anderson’s waiver of his state constitutional right to a jury trial was invalid because the record does not establish that he was fully aware of the rights he was waiving.

In this case, Mr. Anderson signed a written waiver, contained in the drug court contract; there is no record of any colloquy with the trial court judge prior to acceptance of the waiver. Supp. CP; RP 21-36.

This record does not establish that Mr. Anderson fully understood the state constitutional right to a jury trial; there is nothing to show that he was aware that he could participate in selection of the jury, that he had the right to a jury of twelve, that the jurors would be required to presume him innocent unless proven guilty beyond a reasonable doubt, or that a guilty verdict required a unanimous jury. RP 21-36.

Since the record does not establish that Mr. Anderson was fully aware of his right to a jury trial under the state constitution, the waiver cannot be sustained on appeal. The conviction must be reversed and the case remanded for a new trial.

**II. THE PROVISIONAL WAIVERS SIGNED BY MR. ANDERSON WERE UNENFORCEABLE BECAUSE THE CONTRACT CONTAINING THE WAIVERS DID NOT OUTLINE THE PROCEDURE FOR OPTING OUT OF DRUG COURT.**

The Jefferson County drug court contract includes an opt-out provision: under Paragraph 17, a defendant could choose to leave the program within two weeks of the effective date of the contract. When a defendant exercises that choice, the contract is “null and void,” and prosecution resumes “as if [the] contract had never been agreed to.” Supp. CP. The contract does not outline a procedure for opting out. Supp. CP.

Waiver of a fundamental constitutional right must be the intentional relinquishment or abandonment of a known right or privilege.

*Johnson v. Zerbst*, 304 U.S. 458 at 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). Such a waiver must be made knowingly, voluntarily, and intelligently. *State v. Thomas*, 128 Wn.2d 553 at 558, 910 P.2d 475 (1996). Courts indulge every reasonable presumption against waiver. *Johnson v. Zerbst*, at 464.

Because the drug court contract provides an unconditional right to withdraw from the program within the initial two-week period, an accused who signs the contract has an expectation that he will be able to change his mind without penalty. Included in this expectation is the understanding that the full panoply of trial rights will be restored. The waivers contained in the contract are thus provisional.

But the contract does not provide guidance as to how an accused is to exercise the right to withdraw. Supp. CP. The absence of guidance on this point is fatal because a participant is provided no mechanism to withdraw the provisional waiver contained in the contract; under these circumstances, it cannot be said that the waivers were made knowingly, intelligently, and voluntarily.

For this reason, any waivers made by Mr. Anderson were invalid when made. His conviction, achieved without benefit of a jury trial, must be vacated and the case remanded to the superior court. *Johnson v. Zerbst*; *State v. Thomas*, *supra*.

**III. THE TRIAL COURT FAILED TO PROPERLY DETERMINE MR. ANDERSON'S CRIMINAL HISTORY AND OFFENDER SCORE.**

RCW 9.94A.500(1) requires that the court conduct a sentencing hearing “before imposing a sentence upon a defendant.” Furthermore, “[i]f the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record...” RCW 9.94A.500(1). Criminal history is defined to include all prior convictions and juvenile adjudications, and “shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.” RCW 9.94A.030(13). To establish criminal history, “the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing.” RCW 9.94A.530(2).

Under RAW 9.94A.525(3): “Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law.” Where the state alleges a defendant’s criminal history contains out-of-state felony convictions, the state bears the burden of proving the existence and comparability of those convictions. *Ford*, at 480. An out-of-state conviction may not be used to

increase an offender score unless the state proves the conviction would be a felony under Washington law. *State v. Cabrera*, 73 Wn. App. 165 at 168, 868 P.2d 179 (1994).

To determine whether a foreign conviction is comparable to a Washington offense, the court must compare the elements of the out-of-state offense to the elements of potentially comparable Washington statutes in effect when the foreign crime was committed. *State v. Morley*, 134 Wn.2d 588 at 606, 952 P.2d 167 (1998). “If the elements are not identical, or if the Washington statute defines the offense more narrowly than does the foreign statute, it may be necessary to look into the record of the out-of-state conviction to determine whether the defendant's conduct would have violated the comparable Washington offense.” *Ford*, 137 Wn.2d at 479 (citing *Morely*, at 606). The goal under the SRA is to match the out-of-state crime to the comparable Washington crime and “to treat a person convicted outside the state as if he or she had been convicted in Washington.” *State v. Berry*, 141 Wn.2d 121 at 130-31, 5 P.3d 658 (2000) (citing *State v. Cameron*, 80 Wn.App. 374 at 378, 909 P.2d 309 (1996)).

Illegal or erroneous sentences may be challenged for the first time on appeal. *State v. Ford*, 137 Wn.2d 472 at 477, 973 P.2d 452 (1999). The appellate court reviews the calculation of an offender score de novo. *State v. Ortega*, 120 Wn. App. 165, 171, 84 P.3d 935 (2004). Where a

defendant objects to a prior conviction, the prosecution is held to the existing record upon remand. *Ford, supra*.

Mr. Anderson did not admit or acknowledge any prior felonies; in fact, he objected to the prosecutor's allegations regarding his criminal history. RP 72-94. The state did not submit any evidence regarding Mr. Anderson's alleged prior felony theft conviction. RP 71-94. Although the prosecutor referred to a certified copy of a prior Idaho conviction, no certified copy was marked or admitted into evidence; nor was any evidence produced to classify the alleged foreign conviction. RP 85, 71-94.

Despite the absence of any evidence, the judgment and sentence included a finding that Mr. Anderson had two prior felony convictions, including an out-of-state conviction. CP 6. There is no indication in the record of how the court arrived at this finding. RP 71-94.

A trial court's findings are reviewed for substantial evidence. *In re Custody of Shields*, 120 Wn.App. 108 at 120, 84 P.3d 905 (2004).

Because the state produced no evidence establishing these convictions, and because Mr. Anderson never admitted or acknowledged them, the court's finding is unsupported and must be stricken. *Shields, supra*. The sentence must be vacated, and the case remanded for resentencing. At the

resentencing hearing, the prosecution must be held to the existing record.

*Ford, supra.*

**IV. THE TRIAL COURT VIOLATED MR. ANDERSON'S CONSTITUTIONAL RIGHT TO A JURY TRIAL UNDER *BLAKELY* BY IMPOSING AN AGGRAVATED SENTENCE WITHOUT A JURY DETERMINATION OF HIS PRIOR CONVICTIONS.**

The Sixth Amendment requires any fact used to enhance a sentence to be proved beyond a reasonable doubt to a jury. *State v. Ose*, 156 Wn.2d 140, 124 P.3d 635 (2005), citing *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531 (2004). The *Blakely* court left intact an exception for prior convictions; however, the continuing validity of that exception is in doubt. See, e.g., *State v. Mounts*, 130 Wn. App. 219 at n. 10, 122 P.3d 745 (2005), quoting Justice Thomas' observation in *Shepard v. United States*, 544 U.S. 13, 125 S.Ct. 1254 at p. 1264, 161 L.Ed.2d 205 (2005) that *Almendarez-Torres v. United States*, 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998), which underlies the exception for prior convictions, "has been eroded by this Court's subsequent Sixth Amendment jurisprudence, and a majority of the Court now recognizes that *Almendarez-Torres* was wrongly decided."

It now appears that five members of the U.S. Supreme Court (Justices Scalia, Stevens, Souter, and Ginsberg, all of whom dissented from *Almendarez-Torres*, and Justice Thomas, who authored a concurring

opinion urging a broader rule in *Apprendi v. New Jersey*, 530 U.S. 466. 120 S.Ct. 2348 (2000)) believe that prior convictions which enhance the penalties for a crime must be proved to a jury beyond a reasonable doubt.<sup>1</sup>

Here, Mr. Anderson's prior convictions were not submitted to the jury.<sup>2</sup> Instead, the trial court, using a preponderance standard, found that Mr. Anderson had eight prior felonies.<sup>3</sup> CP 6. This violated Mr. Anderson's constitutional right to a jury trial under the Sixth Amendment, and the resulting sentence was improper. The aggravated sentence must be vacated, and the case remanded for sentencing with no criminal history.

### CONCLUSION

For the foregoing reasons, the judgment and sentence must be vacated, and the case remanded for a jury trial. In the alternative, Mr. Anderson's sentence must be vacated and the case remanded to the

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<sup>1</sup> Division I has continued to rely on *Almendarez-Torres*, despite its apparent lack of support in the high court. *See, e.g. State v. Rivers*, 130 Wash .App. 689, 128 P.3d 608 (2005).

<sup>2</sup> Nor is there any indication in the record that he knowingly, intelligently and voluntarily waived his right to a jury determination of his prior convictions. RP (10-20-06) 1-109; RP (10-21-06) 1-36.

<sup>3</sup> This finding is contested in the previous section of this brief.

superior court for a new sentencing hearing, at which the prosecuting attorney must be held to the existing record.

Respectfully submitted on May 23, 2006.

**BACKLUND AND MISTRY**

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# APPENDIX E

## BRIEF OF RESPONDENT

COURT OF APPEALS, DIVISION II

34027-5-II

STATE'S RESPONSE TO  
PERSONAL RESTRAINT PETITION  
*State of Washington v. Ryan David Anderson*

No. 34027-5-II

**COURT OF APPEALS  
OF THE STATE OF WASHINGTON,  
DIVISION TWO**

---

STATE OF WASHINGTON, Respondent,

v.

RYAN ANDERSON, Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR JEFFERSON COUNTY  
# 04-1-00071-3

**BRIEF OF RESPONDENT**

---

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## INTRODUCTION

Defendant Ryan Anderson disputes enforcement of the written Drug Court Contract he accepted and signed. On November 24, 2004, defendant Anderson chose to enter Drug Court in Jefferson County rather than face trial on an eight-count Information. Under the Drug Court Contract,

if defendant is terminated from the Program, the defendant agrees and stipulates that the Court will determine the issue of guilt on the pending charges solely upon the enforcement/investigative agency reports or declarations, witness statements, field test results, lab test results, or other expert testing or examinations such as fingerprint or handwriting comparisons, which constitutes the basis for the prosecution of the pending charges.

The defendant further agrees and stipulates that the facts presented by such reports, declarations, statements, and/or expert examinations are sufficient for the Court to find the defendant guilty of the pending charges.

(Drug court contract ¶ 19; Supp. CP 4). Defendant Anderson twice ran away from the drug treatment facility, and the Superior Court finally terminated him from the program. (VRP 57-59).

On October 28, 2005, the Jefferson County Superior Court held a stipulated facts bench trial, finding Anderson guilty of seven of the eight charged offenses. (VRP 68). Defendant now appeals from these convictions, arguing that the Drug Court Contract was

not a valid waiver of his right to trial, and that the trial court miscalculated his criminal history and offender score. Because defendant Anderson understood the consequences of signing the Drug Court Contract, he waived his right to trial and his convictions are valid. Furthermore, the trial court correctly calculated defendant's offender score and sentenced him to the midpoint of the sentencing range. The State respectfully requests this court to affirm defendant Anderson's judgment and sentence and dismiss this appeal.

**I. RESTATEMENT OF ISSUES PRESENTED**

Defendant's appeal presents three issues:

A. "In general, constitutional rights may only be waived by knowing, intelligent, and voluntary acts." State v. Stegall, 124 Wn.2d 719, 724, 881 P.2d 979 (1994). As the written Drug Court Contract recites, defendant Anderson waived his rights to a jury trial after previously reading the contract and discussing its contents with his attorney. Did defendant Anderson knowingly, intelligently and voluntarily waive rights to a jury trial?

B. Both this Court and the Washington Supreme Court enforce drug court contracts, analogizing them to deferred prosecution agreements. State v. Colquitt, \_\_\_ Wn. App. \_\_\_, 137

P.3d 892 (2006). On appeal, defendant challenges the “opt-out” provisions of the contract; but while in Drug Court, defendant never attempted to lawfully exit the program. Does defendant’s alleged confusion over the opt-out provisions invalidate an otherwise enforceable contract?

C. To calculate an offender score, the trial court may “rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proven pursuant to RCW 9.94A.537.” RCW 9.94A.530(2). After two hearings on defendant’s criminal history, the trial court concluded that defendant had two prior felonies -- first degree theft in Jefferson County, and Grand Theft in Benewah, Idaho. (VRP 86). Defense counsel did not contest the first degree theft conviction and agreed that the State provided a certified copy of the Idaho conviction. (VRP 84-85). Did the trial court correctly calculate defendant’s offender score by including the two prior felonies?

## **II. STATEMENT OF FACTS**

### **A. Defendant Anderson’s Crimes**

This is a case of identity theft and residential burglary. On New Years’ day, 2004, Deputy Sheriff Brett D. Anglin was off-duty,

working as a caretaker on a farm in Jefferson County, Washington. (Affidavit for Search Warrant at 2, Attached as B to Amended Affidavit for Search Warrant, sub num. 16; CP \_\_)\* He noticed two strangers walking past the farm. "I felt that this was odd because I am acquainted with the entire neighborhood and rarely are there unknown people walking along the road." (Affidavit at 2, sub num. 16; CP \_\_). Deputy Anglin later noticed an unfamiliar car parked near the farm.

This...is a farm that includes several barns, no houses, and is rather concealed from traffic. To have a vehicle at that address, which is not owned by one of the caretakers, is unusual.

(Affidavit at 2, sub num. 16; CP \_\_).

Deputy Anglin looked in the car, saw that the dashboard had been disassembled, and noticed a letter addressed to Christian Goodwin on the front seat. Anglin called in the car's license plates and after learning the car was not reported stolen, he had it towed as an abandoned vehicle. (Affidavit at 3, sub num. 16; CP \_\_). Defendant Ryan Anderson later recovered the car, explaining it had electrical problems and that he parked it in the secluded spot to keep it from being stolen. (Affidavit at 3; sub num. 16; CP \_\_).

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\* Respondent has filed a supplemental designation of clerk's papers and CP cites do not yet exist for these documents. The brief cites to the sub number to identify the document.

On January 10, 2004, the owner of the farm, Fire Chief Charles Boggs, called Deputy Anglin and asked to meet him there.

I arrived on the scene and was led to a shed. Inside the shed were several pieces of mail that had been initially covered by hay. Chief Boggs stated that his wife, Julie, located the mail while stepping on it. I looked through the mail and noticed that all of it was addressed to several residents on West Valley Road.

(Affidavit at 3; sub num. 16; CP \_\_). The source of this mail became clear when deputies interviewed Amanda Iardella about a party she went to at defendant Anderson's house.

Amanda said she wished to report a Mail Theft that she had observed about 2 or more weeks ago. Amanda went on to explain that she was with her friend Natisia Abbot, and had gone to a party at Ryan Anderson's house. At Ryan's house were Patricia Sullivan, Jennifer Durham, and Shane Sodano. A short time later Ryan stepped into the living room with a cardboard box and dumped the contents of the box on the living room floor. The box contained mail. Ryan, Patricia, Jennifer and Shane all started opening the mail. From the pile of mail Patricia Sullivan apparently had taken a credit card, belonging to a Brenda Bowers and called activating it.

\* \* \* \*

Amanda observed Ryan open and sort the mail into sections, bank slips, L&I Statements, W-4 forms, Unemployment statements, Credit Cards, overdue bills, personal letters, Christmas Cards and cash.

Amanda made the comment to the group "I'm happy I have a locked mail box", to which the group responded "Oh, we get into those too."

(Affidavit at 4; sub num. 16; CP \_\_\_).

The Sheriff's Office received a warrant to search defendant Anderson's house in Port Hadlock, and on January 17, 2004, investigators discovered a backpack there with more stolen mail.

I recovered a backpack (partially hidden by clothing) containing numerous pieces of mail addressed to persons not residing at the residence, numerous papers containing names of other persons and personal information relating to them, and several checks drawn on different banks by various persons not connected with the residence...Additionally, the backpack contained a print out explaining how to commit financial fraud.

(Attachment C to Amended Affidavit of Probable Cause; sub num. 16; CP \_\_\_). After waiving his rights, defendant Anderson told investigators the backpack was his, but "some other person must have put the contents in to frame him." (Attachment C; sub num. 16; CP \_\_\_).

On May 19, 2004, the Sheriff's Office received a second report about defendant Anderson, this time involving a residential burglary.

On 5-19-04 Gary Jensen reported that sometime during the previous night someone entered his home, stole key rings of keys and a purse belonging to his wife, Colleen Jensen. The purse contained identification, bank cards, and credit cards belonging to Colleen Jensen. The suspect then entered Jensen's business, Sony's RV, took all of the RV keys

and other keys from the business. Jensen's 1993 Dodge pickup truck...was taken from the rear of the business. Colleen's credit card was used that morning at a Chevron store/gas station in Poulsbo by a male subject...

Ryan Anderson was arrested by Benewah County Deputy Sheriff Levy Reynolds in Benewah County, driving a different vehicle, and found to be in possession of Jensen's keys and credit cards, among other goods and a hand gun...Through investigation Deputy Reynolds contacted Annie R. Tracey who stated that Anderson had given her a ride from Port Townsend to Idaho in a Dodge pickup, and had done a lot of shopping along the way using Anderson's "Aunt's" cards to pay for the goods. Tracy gave Deputy Reynolds a key for the Dodge pickup they left in Rathdrum, Idaho. Rathdrum Police and a Benewah County Deputy Sheriff recovered Jensen's stolen Dodge pickup in Rathdrum and found that the key given to them by Tracy belonged to that vehicle.

(Attachment A to Amended Affidavit of Probable Cause; sub num. 16; CP \_\_).

The Jefferson County Prosecuting Attorney initially charged defendant Anderson with one count of residential burglary and one count of second degree taking a motor vehicle without permission. On October 24, 2004, the Prosecuting Attorney filed an amended information, adding charges of third degree possession of stolen property, first degree possession of stolen property, two counts of second degree identity theft, unlawful possession of payment

instruments, and second degree burglary. (Amended Information; CP 1).

B. Defendant's Admission To and Termination From Drug Court

Rather than face trial on the eight-count information, defendant Anderson petitioned the Superior Court to enter Jefferson County's Drug Court. On November 4, 2004, when the Superior Court arraigned defendant Anderson on the amended information, Anderson's counsel stated "my client and I have met, and I've talked with the prosecutor. He really wants to get into drug court." (VRP 22). Later in the hearing, defense counsel clarified that Anderson would have two weeks to opt out after signing the Drug Court Contract.

MR. SURYAN: Now, is – by signing the Contract – I hate to take up the court's time, but, by signing the Contract before we know if they would even let him in, does that obligate him to one side of it without having the benefit of the other? I'm kind of concerned about that.

THE COURT: The Contract is a prerequisite to admission to Drug Court. If he decides not to do it or he's not admitted, the Contract –

MR. SURYAN: Alright-

THE COURT: He wouldn't-

MR. SURYAN: Do you understand that, Ryan?

MS. DALZELL: He has two weeks to opt out.

MR. SURYAN: Okay. Alright? Is that clear?

MR. ANDERSON: Yes.

(VRP 26-27).

On November 24, 2004, the Superior Court accepted defendant Anderson's contract and ordered his case transferred. (Drug Court Contract at 7; Supp. CP 7) As part of the Contract, defendant Anderson agreed in writing to waive his rights to trial.

**Defendant acknowledges an understanding of, and agrees to waive the following:**

1. The right to a speedy trial;
2. The right to a public trial by an impartial jury in the county where the crime is alleged to have been committed;
3. The right to hear and question any witnesses testifying against the defendant;
4. The right at trial to have witnesses testify for the defense, and for such witnesses to be made to appear at no expense to the defendant; and
5. The right to testify at trial.

My attorney has explained to me, and we have fully discussed all of the above paragraphs. I understand them all and wish to enter into this Drug Court Contract. I have no further questions to ask the Judge.

(Drug Court Contract at 6; Supp. CP 6).

The trial court noted that defendant had previously read the Contract and that his attorney had read it to him. (Drug Court Contract at 7. Supp CP. 7)

Over the next year, defendant Anderson twice violated the Contract by dropping out of the program. First, in December 2004, Anderson left an intensive outpatient treatment program and was missing until March 2005 when officers picked him up on a warrant. (VRP 49). Second, in June 2005, Anderson left SeaDruNar Treatment Center in Seattle without permission. As the Drug Court evaluator testified, “the Drug Court team met and recommended and decided that we’d given Mr. Anderson all the chances that we felt that he was worth giving, and referred him back to Superior Court.” (VRP 50).

On September 30, 2005, the Superior Court held a due process hearing on terminating defendant Anderson from Drug Court. After taking testimony from the Drug Court evaluator and defendant Anderson, the court found sufficient grounds to end Drug Court and to remand defendant to the Superior Court for trial on stipulated facts.

You violated the Drug Court Contract, there’s no question about that, in – a number of different times and a number of different ways. And we’re not going

to give you another chance to say 'please send me to treatment again', and have you leave treatment again without permission and commit more crimes.

(VRP 59).

On October 28, 2005, the Superior Court held trial on stipulated facts as agreed in the Drug Court Contract. Defendant Anderson did not contest counts one through five. (VRP 62) ("Counts One, Two, Three, Four and Five are counts that he has no issue with, and would not argue against what's in the police report on those at all"). Defendant disputed counts six through eight only on the reliability of Annie Tracy's statements.

[Mr. Anderson] has contended to me all along that she [Tracy] was using, they were both using, and that she picked him up and he didn't even have any idea that the truck was stolen. When he got to Idaho, and they got out in the mall, he came back and saw on the side of the truck what it said and had no idea until then that it wasn't her truck.

(VRP 66).

The trial court had no difficulty finding defendant guilty of counts six, seven and eight.

[W]hen you read that on May 24<sup>th</sup> he was in possession of the Jensen credit cards in Idaho and the key ring for the house, he also had connection with the Jensens prior to the burglary, and that, coupled with the flight, is enough to find him guilty of both Count Six, Residential Burglary on the 19<sup>th</sup> of May, and Count Seven, Burglary in the Second

Degree in the outbuilding, because the back door of the building had been broken, the keys were missing, the blue velvet key bag, and also taking the motor vehicle, just based on the statements of Tracy. That's certainly sufficient to find guilt of Counts Six, Seven, and Eight.

(VRP 68).

C. Calculation of the Offender Score

On November 4, 2005, the trial court held a sentencing hearing, and at issue was the calculation of defendant's offender score. The Court began by consolidating count five, unlawful possession of payment interests, because it overlapped with count two, possession of stolen property. (VRP 72). The dispute then centered on defendant's past felonies – first degree theft in Jefferson County and Grand Theft in Idaho. (VRP 73).

At the second sentencing hearing, November 10, 2005, defendant's criminal history became clear. First, defendant did not contest his conviction for first degree theft in Jefferson County.

THE COURT: And then you say he's got two priors.

MS. DALZELL: Correct.

THE COURT: What are those exactly?

MS. DALZELL: Theft First Degree out of Jefferson County.

THE COURT: What was the date of that?

MS. DALZELL: 9/2/00.

THE COURT: Is that contested?

MR. SURYAN: *That one is not.*

(VRP 84) (emphasis added).

Second, the State provided a certified copy of defendant's Idaho conviction that proved his prior felony in Idaho. This was sufficient for the Judge to include it on defendant's offender score.

THE COURT: We'll return to Mr. Anderson's matter. I've been handed, Mr. Anderson, a certified copy of a Judgment and Sentence that does find you guilty of Grand theft in Idaho...

MR. SURYAN: Yes. We've reviewed it as well, your honor.

THE COURT: Alright. So, I'm satisfied that you have an offender score of seven. The State has met its burden of proving that by a preponderance of the evidence for purposes of sentencing. And I say the offender score of seven for the Residential Burglary.

(VRP 86). Although defendant Anderson contested the offender score, he presented no evidence contradicting the two prior felonies.

The trial court sentenced defendant to the midpoint of the standard range under the sentencing grid – 50 months. (VRP 94).

Defendant now appeals, arguing the Drug Court Contract was unenforceable and that the trial court miscalculated his offender score.

## **ARGUMENT**

### **III. STANDARD OF REVIEW**

This court reviews defendant's waiver of rights in the Drug Court Contract *de novo*. See State v. Stegall, 124 Wn.2d 719, 724-25, 881 P.2d 979 (1994) (requirements of waiver); State v. Colquitt, \_\_\_ Wn. App. \_\_\_, 137 P.3d 892, 894 (2006) (interpreting Drug Court Contract).

The court reviews calculation of defendant's offender score *de novo*. State v. Tili, 148 Wn.2d 350, 358, 60 P.3d 1192 (2003).

### **IV. DEFENDANT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY WAIVED HIS RIGHTS.**

No dispute should exist that defendant Anderson wanted to enter Drug Court and signed the Contract willingly. Yet on appeal, defendant argues he did not know what he was doing.

This record does not establish that Mr. Anderson fully understood the state constitutional right to a jury trial; there is nothing to show that he was aware that he could participate in the selection of the jury, that he had the right to a jury of twelve, that the jurors would be required to presume him innocent unless proven guilty beyond a reasonable doubt, or that a guilty verdict required a unanimous jury.

(Opening Brief at 10). Defendant's new assertion is incorrect for three reasons.

A. Defendant Knew What He Was Doing.

First, defendant Anderson signed the Drug Court Contract after discussing the consequences with his attorney. (Drug Court Agreement at 6; Supp CP 6). He represented to the trial court that he understood the significance of the Contract, and the Contract itself was clear on the effects of entering Drug Court. Rather than accepting defendant's criticism of the Contract in hindsight, the Court should view defendant's waiver as the trial court did in November 2004. Defendant Anderson had no hesitation entering Drug Court and gave the trial court no hint of being confused or hesitant.

As the Supreme Court ruled in State v. Stegall, a written agreement is sufficient to waive a right to jury trial.

The validity of any waiver of a constitutional right, as well as the inquiry required by the court to establish waiver, will depend on the circumstances of each case, including the defendant's experience and capabilities. Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed. 1461 (1938). Moreover, the inquiry by the court will differ depending on the nature of the constitutional right at issue. For example, when a defendant wishes to waive the right to counsel, and proceed pro se, the trial court must

usually undertake a full colloquy with the defendant, on the record, to establish the defendant knew the relative advantages and disadvantages of proceeding pro se. See Acrey, 103 Wn.2d at 211, 691 P.2d 957 (“only rarely” will the record contain sufficient information to support a waiver of the right to counsel in the absence of a colloquy with the defendant). A guilty plea, which involves waiving numerous trial rights, is valid only if the record shows not only a voluntary and intelligent waiver, but also an understanding of the waiver's direct consequences. State v. Smissaert, 103 Wn.2d 636, 643, 694 P.2d 654 (1985).

By contrast, no such colloquy or on-the-record advice as to the consequences of a waiver is required for waiver of a jury trial; all that is required is a personal expression of waiver from the defendant. Acrey, 103 Wn.2d at 207-08, 691 P.2d 957; State v. Wicke, 91 Wash.2d 638, 591 P.2d 452 (1979); State v. Brand, 55 Wn. App. 780, 785 n.5, 780 P.2d 894 (1989) (citing additional cases), *review denied*, 114 Wash.2d 1002, 788 P.2d 1077 (1990).

Stegall, 124 Wn.2d at 725-26.

Furthermore, this court recently enforced a drug court contract by its terms, with no question of its enforceability. State v. Colquitt, \_\_\_ Wn. App. \_\_\_, 137 P.3d 892, 895 (2006) (defendant “waived his right to testify or call any witnesses on his behalf”). By signing the Contract, defendant Anderson knowingly, intelligently and voluntarily waived his rights to trial.

Under the plain language of the stipulation he signed, appellant agreed to have his “guilt determined by the court on the basis of the police report herein.” This

was a knowing and intelligent waiver of all subsequent factual, legal, or procedural issues the appellant might raise.

State v. Shattuck, 55 Wn. App. 131, 133, 776 P.2d 1001 (1989).

B. The State Constitution Does Not Require A Different Standard For Waiver

Second, the Washington Constitution does not impose a more stringent standard for waiver. Defendant argues that Article I sections 21 and 22 of the Washington Constitution imposes a broader and more highly valued right to jury trial. “A waiver of the state constitutional right must be examined more carefully than a waiver of the corresponding federal right.” (Opening Brief at 4) (citing State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986)).

The flaw in defendant’s argument appears in the third and fourth Gunwall factors – State constitutional history, state common law history, and pre-existing state law. In 1994, the Washington Supreme Court carefully examined State and federal law regarding waiver of the right to jury trial. State v. Stegall, 124 Wn.2d at 725. The Court did not hint at, let alone suggest, that Washington’s state constitution imposes any additional requirements for waiver beyond the federal standard. Nothing in the development of Washington

statutory or constitutional law suggests that the State must prove more than knowing, intelligent and voluntary waiver.

Defendant's proposed State standard – that “the record shows that the defendant is fully aware of the meaning of the state constitutional right” – has no support in Washington caselaw or statutes. (Opening Brief at 5). It is insufficient grounds for this court to create a new, undefined state standard for waiver.

C. The Opt Out Provision Is Clear

Third, defendant expressed no confusion over the opt out provision when he signed the Drug Court Contract. As reprinted above, the trial judge, defense counsel and defendant had a short conversation about the two-week period to opt out of the Contract. (VRP 26-27). Defendant in hindsight now argues that “an accused who signs the contract has an expectation that he will be able to change his mind without penalty.” (Opening Brief at 11).

This argument is unpersuasive for two reasons. First, the Contract clearly spells out what happens after the opt-out period expires. “The defendant agrees that this ability to withdraw from the terms of this contract will cease after the period of two weeks following the effective date of this contract and thereafter the defendant shall remain in the Program until graduation unless

his/her participation is terminated by the court.” (Drug Court Contract at 3; Supp. CP 3).

Second, after leaving the program once in December 2004, defendant Anderson petitioned the Court to return in March 2005. Had defendant intended to opt out of the program, he had the opportunity to raise this argument early on. He did not because he wanted to be in the Drug Court.

Defendant signed a binding Drug Court Contract. Because he understood what he was signing, and what he was doing, the trial court appropriately held him to the Contract terms and ordered a stipulated facts trial.

**V. THE TRIAL COURT CORRECTLY CALCULATED DEFENDANT’S OFFENDER SCORE**

Defendant challenges the trial court’s use of an Idaho conviction to calculate defendant’s offender score.

Despite the absence of any evidence, the judgment and sentence included a finding that Mr. Anderson had two prior felony convictions, including an out-of-state conviction. CP 6. There is no indication in the record of how the court arrived at this finding. RP 71-94.

(Opening Brief at 14). Yet as detailed above, the trial court carefully reviewed defendant’s criminal history to arrive at the

offender score. No reasonable grounds exist to resentence defendant.

First, the State provided ample proof of defendants' criminal history. At the November 4, 2005 sentencing hearing, the Prosecutor had a certified copy of the Idaho conviction and copies of the Idaho statute, showing it was comparable to Washington's. (VRP 72) ("here's the Idaho statutes; it's the same law that we have in this State"). Other than complaining that he did not have a copy of the judgment and sentence, defense counsel did not object to the comparability of the Idaho conviction. (VRP 72-73).

Second, as detailed above, defendant did not contest his conviction for first degree theft in Jefferson County.

Third, defendant did not raise any substantial objection to his Idaho conviction. Defendant faults the State for not placing the certified copy of the Idaho judgment in the record, but defendant cannot argue that the certified conviction did not exist. Both the trial judge and defense counsel acknowledged on the record that it did. (VRP 85). If this Court requires a copy of the certified conviction, the State respectfully requests permission under RAP 9.10 to file the conviction in the trial court and supplement the record.

The trial court had sufficient evidence to conclude the Idaho conviction was comparable to a felony conviction under Washington law. The court's calculation of the offender score was correct.

### CONCLUSION

By twice violating the terms of his Drug Court Contract, defendant Ryan Anderson lost his chance to participate in the program. Clearly spelled out in the Contract were the consequences of failing Drug Court: a bench trial on stipulated facts. Defendant knew the risks and benefits of choosing Drug Court, and the trial court appropriately held him responsible for his decisions. Because the trial court did not err in convicting and sentencing defendant, the State respectfully requests this court to affirm defendant's judgment and sentence and dismiss this appeal.

DATED this 24 day of August, 2006.

Juelanne Dalzell  
~~Jefferson County Prosecuting Attorney~~

By 

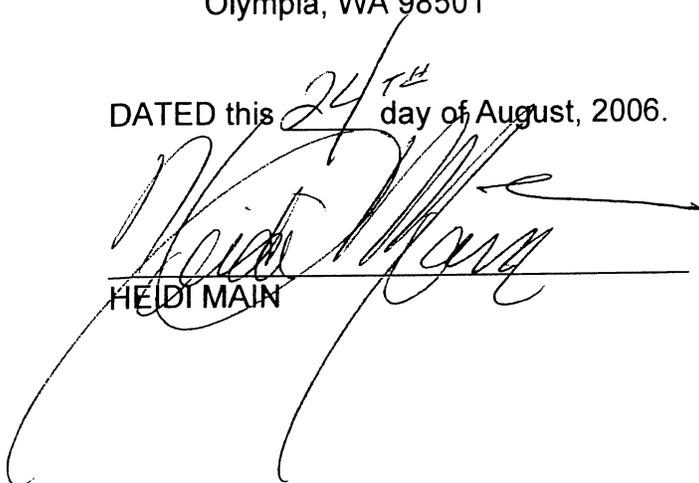
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**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the date stated below, I mailed or caused delivery of **Brief of Respondent** to:

Manek R. Mistry  
Jodi R. Backlund  
Backlund & Mistry  
203 East Fourth Avenue, Suite 404  
Olympia, WA 98501

DATED this *24<sup>TH</sup>* day of August, 2006.

  
HEIDI MAIN

# APPENDIX F

PORTIONS OF  
VERBATIM REPORT OF PROCEEDINGS

COURT OF APPEALS, DIVISION II  
34027-5-II

STATE'S RESPONSE TO  
PERSONAL RESTRAINT PETITION  
*State of Washington v. Ryan David Anderson*

1 THE COURT: State of Washington vs. Ryan Anderson.  
2 04-1-71-3. Mr. Suryan and -

3 MR. SURYAN: Good morning, Your Honor.

4 THE COURT: There's Mr. Anderson. We're on for  
5 arraignment, as well.

6 MR. SURYAN: That's correct, Your Honor. I did  
7 have a chance to review the documents since last week, and I  
8 see that there's enough there to support the affidavit - or  
9 the charge.

10 THE COURT: I - I did to. I reviewed it. I was -  
11 I didn't see, at least in my file, the - the names of the  
12 individuals as in Count Three and Four. But I assume those  
13 are provided and they would be part of the stuff that they  
14 found that was also -

15 MR. SURYAN: They are in discovery, and I don't see  
16 a problem with that. We can go ahead and -

17 THE COURT: Alright.

18 MR. SURYAN: - arraign my client.

19 THE COURT: Mr. Anderson, your attorney indicates  
20 that you're prepared to enter a not guilty plea today to  
21 Counts One through Eight of the Amended Information which was  
22 filed on October 29th. Are you prepared to enter a not  
23 guilty plea to those charges?

24 MR. ANDERSON: Yes.

25 THE COURT: Do you want me to read those charges?

1 MR. SURYAN: No, Your Honor. We would waive. I  
2 went over them with him last night, and we're pretty clear on  
3 what's involved.

4 THE COURT: Okay. Well, your plea of not guilty is  
5 accepted. I understand you're waiving reading, and we'll set  
6 the appropriate dates. Oh, oh that's right. This is an  
7 Amended Information. Alright.

8 MR. SURYAN: What is there - what do we have for  
9 dates now? Pretrial is on November 12, which is next week.  
10 Your Honor, my client and I have met, and I've talked with  
11 the prosecutor. He really wants to get into Drug Court. The  
12 prosecutor hasn't given me an answer yet. But, with the  
13 pretrial next week - With the new Amended Information, I  
14 think we have a new speedy trial timeline anyway, so can we  
15 set dates out until they can decide?

16 MS. DALZELL: He needs to meet with Mr. Kessler.  
17 He would appear to qualify under our criteria, but he has not  
18 had an evaluation with Mr. Kessler. So, before approving  
19 admission to Drug Court, I'd like that to happen.

20 MR. ANDERSON: Could I please say something.

21 MR. SURYAN: Ryan, I don't think you need to, right  
22 now. It's a question of - Nothing's changed since last  
23 night, has it? Ryan?

24 MR. ANDERSON: Yes.

25 MR. SURYAN: Nothing's changed since we talked last

1 MR. SURYAN: That was the Shoplifting.  
2 MR. ANDERSON: So I went -  
3 MR. SURYAN: You went to clear that up?  
4 MR. ANDERSON: There wasn't a warrant, though.  
5 MR. SURYAN: The warrant that he got arrested on  
6 when he went there, was the warrant from this county -  
7 THE COURT: Was the one from Drug Court.  
8 MR. SURYAN: - that he thought Ford had gotten  
9 quashed, but didn't end up happening. So he was trying to  
10 take of that at that point.  
11 THE COURT: Anything further, Mr. Suryan?  
12 MR. SURYAN: The letter is in the file. But, he  
13 doesn't have to read it.  
14 THE COURT: Mr. Seaman, anything further?  
15 MR. SEAMAN: No, Your Honor.  
16 THE COURT: Okay. Drug Court is a - it's a  
17 privilege as well as an incredible responsibility, Mr.  
18 Anderson. It's not easy to get through Drug Court, and you  
19 were told that when you got into it - that it's a very  
20 difficult thing to get through, because it addresses  
21 addiction that you have, that has led you into committing a  
22 whole lot of crimes. Presumably, the addiction does that.  
23 In our Drug Court, you were given the opportunity to go to  
24 treatment back in, well I guess it was in March, 2005, when  
25 you left treatment without permission, and you were picked up

1 on warrant then. And then you went to treatment at SeaDruNar  
2 in May, and once again left without permission. It takes -  
3 an addition to methamphetamine, it takes significant long-  
4 term treatment to recover from that. And, if you leave - and  
5 you didn't leave just once, you left twice when you had the  
6 opportunity to, and apparently engaged in some other sort of  
7 criminal activity in between June and July 7th, when you were  
8 readmitted to SeaDruNar. The Drug Court is relatively  
9 patient in recognizing that - that the addiction is very  
10 difficult to overcome. And we've had Drug Court persons who  
11 have left treatment at least on one occasion, and we've  
12 accepted back in, and they've done well. But, in your case,  
13 you've shown that you're not about to follow the court's  
14 directives. And you've shown that you're not about to really  
15 participate in treatment, Mr. Anderson. I think you use Drug  
16 Court and your - I mean, the only time you indicate that  
17 you're really going to do things - And, I read - I read your  
18 letter, and it says, you know, you recognize that if you keep  
19 using drugs you're going to be dead. That's in your letter.  
20 The only time you do that, though, Mr. Anderson, is when  
21 you're locked up. You don't do that when we release you to  
22 treatment, because you leave. You left twice. You did go  
23 back in July. But, like I say, the only time you profess to  
24 have this motivation to change your life is when you're  
25 locked up. When you're out, you don't. You violated the

1 Drug Court Contract, there's no question about that, in - a  
2 number of different times and a number of different ways.  
3 And we're not going to give you another chance to say 'Please  
4 send me to treatment again,' and have you leave treatment  
5 again without permission and commit more crimes. That's not  
6 going to happen. I - We've given you the chances, the  
7 opportunities, and you have not taken advantage of them.  
8 And, like I say, the only time you have regret and seem to  
9 care is when you're in custody. When you're not in custody,  
10 you do pretty much what you want to. So, I'm going to remand  
11 you from Drug Court; and I'll find, pursuant to the statutes,  
12 that you have violated the Drug Court Contract in such a  
13 manner that you're not an appropriate candidate to continue  
14 in Drug Court, and I'm going to remand you from Drug Court to  
15 Superior Court for consideration of criminal charges. The  
16 question is are we going to do that today, as well?

17 MR. SURYAN: I'm not prepared for that, today,  
18 Your Honor. I didn't anticipate we would do that.

19 THE COURT: Alright.

20 MR. SEAMAN: Then, can we set it over two weeks?

21 THE COURT: Two weeks. October - I won't be here  
22 the 14th, but someone will. Actually, -

23 MR. SURYAN: I'd like to have it a day when you  
24 are here.

25 THE COURT: Yeah, I think I should be here, too,

1 could tell the court about how it happened.

2 THE COURT: Okay. I reviewed the case law on  
3 residential burglary. And I recognize that possession of  
4 recently stolen property is not sufficient, but it only takes  
5 slight evidence on top of that. And the slight evidence here  
6 is that Mr. Anderson had a connection with the Jensens. He  
7 was there. And, plus the flight itself, taking off with the  
8 truck. I think that's enough in light - particularly in  
9 light of the stipulation, but when you read that on May 24th  
10 he was in possession of the Jensen credit cards in Idaho and  
11 the key ring for the house, he also had connection with the  
12 Jensens prior to the burglary, and that, coupled with the  
13 flight, is enough to find him guilty of both Count Six,  
14 Residential Burglary on the 19th of May, and Count Seven,  
15 Burglary in the Second Degree at the outbuilding, because the  
16 back door of the building had been broken, the keys were  
17 missing, the blue velvet key bag, and also taking the motor  
18 vehicle, just based on the statements of Tracy. That's  
19 certainly sufficient to find guilt of Counts Six, Seven and  
20 Eight. And I'll find him guilty of Six, Seven and Eight.  
21 The only question I have is Five the same as Two? If Five is  
22 the same as Two, he shouldn't be convicted of one of those.  
23 They're both Class C's. Alright. We'll have sentencing next  
24 week.

25 MS. DALZELL: Thank you, Judge.

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THE COURT: And you can tell me about Five and Two.

MS. DALZELL: And I'll -

THE COURT: And you'll figure out the offender score and standard range and all that.

MS. DALZELL: Thank you, Your Honor.

THE COURT: See you next week at 8:30.

MS. DALZELL: Thank you.

MR. SURYAN: Thank you, Your Honor.

THE COURT: Thank you, Mr. Suryan.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF JEFFERSON

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	Jefferson County
	)	No. 04-1-00071-3
v.	)	
	)	Court of Appeals
RYAN DAVID ANDERSON,	)	No. 34027-5-II
	)	
Defendant.	)	
	)	

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VERBATIM REPORT OF PROCEEDINGS

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BE IT REMEMBERED that on the 4th day of November, 2005, Jefferson County Cause No. 04-1-00071-3 came on for Sentencing Hearing before the Honorable Craddock Verser, Judge of the Superior Court, sitting at the Jefferson County Courthouse, City of Port Townsend, State of Washington; and the parties being represented as follows:

JUELANNE DALZELL, Jefferson County Prosecutor, P.O. Box 1220, Port Townsend, WA 98368 appearing on behalf of Plaintiff, State of Washington;

RICHARD L. SURYAN, P.O. Box 1330, Port Townsend, WA 98368 appearing on behalf of Defendant, Ryan D. Anderson;

WHEREUPON, the following proceedings were had and done to-wit:

1 THE COURT: The first matter on the calendar is  
2 State vs. Ryan Anderson, on for sentencing.

3 MR. SURYAN: Good morning, Your Honor.

4 THE COURT: Good morning, Mr. Suryan. Mr.  
5 Anderson's present. We had a question -

6 MS. DALZELL: Whether Count Five, Your Honor, was  
7 the same as Count One.

8 THE COURT: Yeah.

9 MS. DALZELL: And it isn't. It - Count Five is  
10 referring to two checks that were issued from a person in  
11 Kingston. There is a reference to it in the police reports,  
12 but the name of the victim is not there. So, at this late  
13 date, I don't know if Your Honor would like me to amend the  
14 Affidavit of Probable Cause, so that you can -

15 MR. SURYAN: Your Honor, I would have an objection  
16 to that at this point in time.

17 THE COURT: Okay.

18 MR. SURYAN: I remember one of the first lessons I  
19 learned as a prosecutor is where a guy had been charged with  
20 two separate counts that had occurred on the same day.  
21 Everything was the same. He pled to one and the second one  
22 got dismissed because I hadn't distinguished them. And I  
23 think that's the law.

24 THE COURT: I think it is, as well, Ms. Dalzell.  
25 I think it's too late now. Practically, it probably doesn't

1 really affect things, anyway, does it?

2 MS. DALZELL: Not much, Your Honor. There -

3 THE COURT: Yeah.

4 MS. DALZELL: When I was doing the sentencing  
5 papers, I found another conviction out of Idaho, which makes  
6 Mr. Anderson's offender score eight.

7 THE COURT: Well, I'll not find him - find him  
8 guilty of Count Five. He's guilty of One, Two, Three, Four,  
9 Six, Seven and Eight, but not Five. Okay.

10 MS. DALZELL: Then his offender score would be -

11 THE COURT: Seven.

12 MS. DALZELL: - seven.

13 MR. SURYAN: Your Honor, I guess I have a - is  
14 there a copy of the Judgment and Sentence from Idaho?

15 MS. DALZELL: Yeah. It was in your discovery  
16 packet.

17 MR. SURYAN: Where? Certified?

18 MS. DALZELL: Certified. And here's the Idaho  
19 statutes; it's the same law that we have in this state.

20 MR. SURYAN: Your Honor, also - I guess I'm  
21 curious to how they calculate the offender score, because I  
22 didn't calculate it that high. I find - it looks to me like  
23 the Burglary and Taking a Motor Vehicle from Jensen are  
24 basically the same course of conduct [inaudible].

25 THE COURT: That's true.

1  
2 IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
3 DIVISION II

4 STATE OF WASHINGTON,  
5 Respondent,  
6 vs.  
7 RYAN DAVID ANDERSON,  
8 Petitioner.

Case No.: ~~35225-9-II~~ <sup>35255-9</sup> <sup>34027-5</sup>  
Superior Court No.: 04-1-00071-3

DECLARATION OF MAILING

STATE OF WASHINGTON  
JUDICIAL BRANCH  
COUNTY  
06 OCT 13 PM 12:58

FILED  
COURT OF APPEALS

Janice N. Chadbourne declares:

9 That at all times mentioned herein I was over 18 years of age and a citizen of the United  
10 States; that on the 12<sup>th</sup> day of October, 2006, I mailed a copy of the State's Response to Personal  
11 Restraint Petition, to the following:

12 David C. Ponzoha, Clerk  
13 Court of Appeals, Division II  
14 950 Broadway, Suite 300  
Tacoma, WA 98402-4454

Ryan D. Anderson, Petitioner, Pro se  
#826007 B-316-U  
MCC/MSU  
P.O. Box 7001  
Monroe, WA 98272

15 I declare under penalty of perjury under the laws of the State of Washington that the  
16 foregoing declaration is true and correct.

17 Dated this 12<sup>th</sup> day of October, 2006 at Port Townsend, Washington.

18  
19   
20 Janice N. Chadbourne  
Legal Assistant

21  
22 DECLARATION OF MAILING  
23 Page 1

JUELANNE DALZELL  
PROSECUTING ATTORNEY  
FOR JEFFERSON COUNTY  
Courthouse -- P.O. Box 1220  
Port Townsend, WA 98368  
(360) 385-9180