

FILED  
COURT OF APPEALS

NO. 34706-7-II

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

STATE OF WASHINGTON  
BY 12 JN  
CLERK

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STATE OF WASHINGTON, Respondent

v.

JOSEPH MICHAEL SCIMEMI, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
THE HONORABLE DIANE M. WOOLARD  
CLARK COUNTY SUPERIOR COURT CAUSE NO. 05-1-02816-5

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BRIEF OF RESPONDENT

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Attorneys for Respondent:

ARTHUR D. CURTIS  
Prosecuting Attorney  
Clark County, Washington

MICHAEL C. KINNIE, WSBA #7869  
Senior Deputy Prosecuting Attorney

Clark County Prosecuting Attorney  
1013 Franklin Street  
PO Box 5000  
Vancouver WA 98666-5000  
Telephone (360) 397-2261

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I. STATEMENT OF FACTS

The defendant was convicted of multiple charges on or about February 15, 2006.

The defendant was convicted of Assault in the Third Degree – Domestic Violence purportedly occurring on or about November 28, 2005. Defendant was also convicted of Felony Domestic Violence Court Order Violation (Assault) purportedly occurring on the same date.

A copy of the Felony Judgment and Sentence Prison – Community Placement/Community Custody (CP 77) is attached hereto and by this reference incorporated herein.

The defendant was also convicted of two gross misdemeanors. He was convicted of Malicious Mischief in the Third Degree (damage exceeding \$50) – Domestic Violence purportedly occurring on November 28, 2005. He was also convicted of Interference with Reporting of Domestic Violence purportedly occurring on the same date.

A copy of Findings of Fact, Conclusions of Law and Judgment and Sentence (Misdemeanor) (CP 67) is attached hereto and by this reference incorporated herein.

A copy of the Court's Instructions to the Jury (CP 8) is attached hereto and by this reference incorporated herein. Instruction No. 5 is the

elements instruction relating to Assault in the Third Degree. The elements are as follows:

- (1) That on or about November 28, 2005, the defendant caused bodily harm to Alisa Clements;
- (2) That the bodily harm was accompanied by substantial pain that extended for a period of time sufficient to cause considerable suffering;
- (3) That the defendant acted with criminal negligence;
- (4) That Alisa Clements is a family or household member;
- and
- (5) That this act occurred in the State of Washington.

Instruction No. 12 is the elements instruction for a Felony Domestic Violence Court Order Violation (Assault). The elements that needed to be proven beyond a reasonable doubt are as follows:

- (1) That on or about November 28, 2005, the defendant willfully had contact with Alisa Clements;
- (2) That such contact was prohibited by a no-contact order;
- (3) That the defendant knew of the existence of the no-contact order;
- (4) That Alisa Clements is a family or household member;
- and
- (5) That the acts occurred in the State of Washington.

Instruction No. 18 is the elements instruction gross misdemeanor of Malicious Mischief in the Third Degree (Domestic Violence). The elements of that crime are as follows:

- (1) That on or about November 28, 2005, the defendant knowingly and maliciously caused physical damage to the property of another in an amount exceeding \$50 [but not exceeding \$250];
- (2) That Alisa Clements is a family or household member;
- and

(3) That the acts occurred in the State of Washington.

Instruction No. 21 is the elements instruction for the crime of Interference with the Reporting of a Domestic Violence Offense. The elements are as follows:

- (1) That on or about November 28, 2005, the defendant committed the crime of Assault in the Third Degree Domestic Violence, Felony Domestic Violence Court Order Violation (Assault) or Malicious Mischief in the Third Degree Domestic Violence against Alisa Clements as charged in Counts 1, 2 and 3;
- (2) That on that date the defendant was a family or household member of Alisa Clements;
- (3) That the defendant prevented or attempted to prevent Alisa Clements or a witness to Assault in the third Degree Domestic Violence, Felony Domestic Violence Court Order Violation (Assault) or Malicious Mischief in the Third Degree (Domestic Violence) from calling a 911 emergency communication system or obtaining medical assistance or making a report to any law enforcement officer; and
- (4) That the acts occurred in the State of Washington.

The jury was also given a Special Verdict Form relating to the Violation of the No Contact Order. Instruction No. 27 discussed with them this Special Verdict Form and how they were to utilize it. The Special Verdict Form (CP 46) found that the conduct constituted the violation of the No Contact Order did amount to an Assault in the Third or Fourth Degree and further that the conduct that constituted the violation of the No Contact Order was reckless and created a substantial risk of death

or serious physical injury to another person. A copy of the Special Verdict Form (CP 46) is attached hereto and by this reference incorporated herein.

## II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1

The first assignment of error raised by the defendant is that there is insufficient evidence of the crimes that he was convicted of committing.

Evidence is sufficient to support a conviction if, when viewed in a light most favorable to the State, it permits a rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Tilton, 149 Wn.2d 775, 786, 72 P.3d 735 (2003). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn there from. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence is as reliable as direct evidence. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The appellate court will defer to the trier of fact regarding witness credibility or conflicting testimony. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). The trier of fact is the entity which should resolve conflicting testimony, evaluate the credibility of witnesses, and generally weigh the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-416, 824 P.2d 533 (1992).

The complaining witness in this case was Alisa Clements. Ms. Clements was twenty-seven years old at the time of the incident and the

defendant had been living with her off and on. (RP 47-48). At the time that this incident occurred in November, 2005, there was a No Contact Order in place. (RP 49). The police had been called out on a domestic violence with a possible weapon. When Vancouver Police Officer Lear came in contact with Ms. Clements, the officer indicated that there was very noticeable bruising around her eyes and nose. Further, the officer saw damage to the door in the residence and that Ms. Clemens was extremely reluctant to write out a statement concerning what had occurred. (RP 36-42).

Ms. Clemens testified that it was her parents who called the police because they were concerned about her safety. (RP 51). She testified that the injuries that she had sustained she received in a struggle between herself and the defendant. She indicated that this oral argument had turned violent and had become physical. (RP 54-56). She testified for the jury that the defendant woke up angry that morning (RP 89-90) and that the injuries to her face were the result of being head-butted by the defendant. (RP 65, 79, 93).

She testified that she had gone into another room to get away from him and that she may have been afraid of him at that time. She indicated that he punched a hole through the door and actually stuck his head into the other room. When he put his head through the hole in the door, she

punched him in the face. (RP 65-66). She indicated too that she had a cell phone but the defendant had taken it away from her (RP 64) and indicated that the defendant had taken the phone away from her so she could not call the police. She said she knew this because he told her that. (RP 75).

Ms. Clemens was a reluctant witness and that reluctance was obvious to everyone in the courtroom. She did indicate that at the time that the defendant had head-butted her in the face that she thought that he was doing it intentionally. (RP 79). She further indicated that the head-butt had caused damage to her nose which required the defendant to reset her nose at a later time. As she indicated to the jury, he told her that he was going to hurt her “like reset my nose”. (RP 69, L.4). She further indicated that the two of them got into her car and went to the State of Oregon. While they were in the car, the argument started up again and he backhanded her while they were driving in Oregon. (RP 68).

Finally, she testified that after this event that she was afraid of the defendant. (RP 74).

The State also offered in their case-in-chief a certified copy of the No Contact Order between the parties. (RP 124). Another police officer testified that he also saw the injuries to her face. (RP 145).

The State submits that given the nature of this evidence, that there was sufficient credible evidence for a rational trier of fact to find the essential elements of the crimes beyond a reasonable doubt.

### III. RESPONSE TO ASSIGNMENT OF ERROR NO. 2

The second assignment of error raised by the defendant is that the Oregon conviction for Possession of a Forged Instrument is not comparable felony to the crime of Forgery in Washington.

At the time of sentencing, the certified copies of the crime of Criminal Possession of a Forged Instrument were presented to the trial court. The defendant pled guilty to the Oregon felony of Criminal Possession of a Forged Instrument on January 15, 2004. As part of his change of plea, he indicates that the basis of the plea is “per indictment”.

A certified copy of the Indictment was also provided to the court. It was dated July 24, 2003, and indicated as Count 1:

The defendant, on or about June 17, 2003, in Washington County, Oregon, did unlawfully and knowingly possess a forged instrument knowing it to be forged with intent to utter the instrument, which instrument purported to be a check number #1384 issued by Texas National Bank of Waco, contrary to the statutes and against the peace and dignity of the State of Oregon.

The State further alleges that the face value of the instrument forged, possessed or negotiated was greater than \$1,000.

The defendant's argument is that the Washington forgery statute requires an element of intent to defraud. It is obvious from the paperwork presented at the trial court level that the Oregon statute did not contain this language. The State agrees with the defense that further clarification may be needed concerning whether or not this is a comparable felony to the Washington forgery.

The defendant was sentenced on Count 2 which was the Domestic Violence Court Order Violation with an offender score of three which set his standard range at 15-20 months. If the Appellate Court agrees that the appropriate offender score should be a two, the standard range is 13-17 months. The defendant when he was sentenced in this matter received a sentence of 17 months.

#### IV. RESPONSE TO ASSIGNMENT OF ERROR NO. 3

The third assignment of error raised by the defendant is that the trial court exceeded its authority when it ordered that he not use or possess ammunition or deadly weapons while on misdemeanor probation. (CP 67). The prohibition against firearms (on page 4 of the Findings) applies only to domestic violence cases. Further, the special provision that is complained of (No. 11) is worded in terms of a stipulation between the parties. The specific language is as follows:

11. GUNS AND WEAPONS: Defendant hereby stipulates that he shall not possess or use any firearm, deadly weapons or ammunition except for military duty.

- (CP 67, P.8, No.11)

A similar prohibition is in the felony Judgment and Sentence (CP 77). The Sentencing Reform Act authorized the Department of Corrections to impose conditions unilaterally in certain situations, "based upon the risk to community safety." RCW 9.94A.715(2)(b); State v. Smith, 130 Wn. App. 721, 123 P.3d 896 (2005).

The State submits that the question concerning the possession of ammunition for a firearm is inconsequential because the defendant also had entered at the time of his sentencing a Domestic Violence No Contact Order which had specific provisions that told him that it was a violation of State and Federal law to have a firearms or firearm ammunition. That prohibition lasts until April 13, 2011. The defendant is specifically warned under 18 U.S.C. Section 922(g) that a violation of the federal firearm laws (which includes ammunition) carries a maximum possible penalty of ten years in prison and a \$250,000 fine. It further warns him that if he is convicted of an offense of domestic violence in the future, that he will be forbidden for life from possessing a firearm or ammunition.

This particular order, the Domestic Violence No Contact Order was not ordered by the defense. The State has moved to supplement the

designation of clerk's papers to include a copy of this document for the Court of Appeals.

The defendant also claims that the concept of a deadly weapon is vague. This concept of vagueness as relates to conditions of community custody was addressed in State v. Smith, 130 Wn. App. 721, 123 P.3d 896 (2005). In Smith the court notes as follows:

The due process vagueness doctrine serves two important purposes: "first, to provide citizens with fair warning of what conduct they must avoid; and second, to protect them from arbitrary, ad hoc, or discriminatory law enforcement." State v. Halstien, 122 Wn.2d 109, 117, 857 P.2d 270 (1993). Under the due process clause, a prohibition is void for vagueness if either (1) it does not define the offense with sufficient definiteness such that ordinary people can understand what conduct is prohibited, or (2) it does not provide ascertainable standards of guilt to protect against arbitrary enforcement. City of Spokane v. Douglass, 115 Wn.2d 171, 178, 795 P.2d 693 (1990). However, a statute or condition is presumed to be constitutional unless the party challenging it proves that it is unconstitutional beyond a reasonable doubt. Haley v. Medical Disciplinary Board, 117 Wn.2d 720, 739, 818 P.2d 1062 (1991). In addition, due process does not require impossible standards of specificity or mathematical certainty. Some degree of vagueness is inherent in the use of our language. State v. Riles, 135 Wn.2d 326, 348, 957 P.2d 655 (1998).

A rule can be facially vague or vague as applied. When a challenged prohibition does not involve First Amendment rights, it must be evaluated as applied. Douglass, 115 Wn.2d at 182. The relevant conduct is the actual conduct of the party challenging the ordinance, not hypothetical situations at the periphery of the rule's scope. Douglass, 115 Wn.2d at 182-83.

In Halstien, our Supreme Court held the term "sexual motivation" to be sufficiently definite in the context of a statute allowing a jury finding of sexual motivation to be an aggravating factor in sentencing. The statute in question defines the term as "for the purpose of his or her sexual gratification". RCW 13.40.020(26). The court rejected a vagueness challenge, noting that courts have had no difficulty applying the term "sexual gratification". Halstien, 122 Wn.2d at 119-120. The prohibition at issue here - not to possess material which can be used "for sexual gratification" and which involves children - is at least as specific as the statutory prohibition at issue in Halstien.

Smith relies on this court's recent decision in State v. Sansone, 127 Wn. App. 630, 111 P.3d 1251 (2005). In Sansone, one of the offender's terms of community placement directed him not to possess "pornographic materials" without prior approval by a sexual deviancy treatment specialist or by his community corrections officer. In this context, the term "pornography" was determined to be unconstitutionally vague. The prohibition in this case is not comparable because it is considerably more specific. An ordinary person would know, without having to consult a treatment specialist or a community corrections officer, that the restriction on Smith's conduct prohibits possession of The Blue Lagoon.

Smith's primary issue below with the restriction was that it reached too far by attempting to control his thoughts, not just his actions. But the vagueness doctrine is not concerned with overreach; it is concerned with arbitrary enforcement resulting from uncertainty in terms. That a prohibition may be unreasonable in its scope does not mean that its terms are so uncertain an ordinary person cannot understand it.

In short, Smith has not shown that the prohibition is unconstitutionally vague.

- State v. Smith, 130 Wn. App. at 727-728.

The State submits that this concept of a deadly weapon is not vague or unnecessarily erroneous to the average citizen. The average person can obviously tell the difference between a steak knife and a flame thrower. Likewise, protections are put in place to review the determination of the deadly weapon above and beyond just what is indicated in the body of the documentation. The State submits that the concepts of ammunition and deadly weapon were appropriate under the circumstances and should remain in place.

V. CONCLUSION

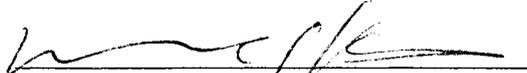
The jury had sufficient evidence to find the defendant guilty of the crimes that were presented. The prohibitions contained in the judgments were appropriate under the circumstances. The State does agree that the defendant should be returned for purposes of possible resentencing concerning the offender scoring. In all other respects the trial court should be affirmed

DATED this 1 day of Dec., 2006.

Respectfully submitted:

ARTHUR D. CURTIS  
Prosecuting Attorney  
Clark County, Washington

By:

  
MICHAEL C. KINNIE, WSBA#7869  
Senior Deputy Prosecuting Attorney

**APPENDIX "A"**

**FELONY JUDGMENT AND SENTENCE PRISON  
COMMUNITY PLACEMENT/COMMUNITY CUSTODY**

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**FILED**  
**APR 13 2006**

JoAnne McBride, Clerk, Clark Co.

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLARK**

STATE OF WASHINGTON, Plaintiff,  
v.  
JOSEPH MICHAEL SCIMEMI,  
Defendant.  
SID:  
DOB: 1/7/1983

No. 05-1-02816-5

**FELONY JUDGMENT AND SENTENCE**  
(FJS) 06 9 02395 1  
**PRISON - COMMUNITY  
PLACEMENT/COMMUNITY CUSTODY**

**Clerk's action required;**  
 Paragraph 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 February 16, by  plea  jury-verdict  
 bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
01	ASSAULT IN THE THIRD DEGREE - DOMESTIC VIOLENCE	10.99.020/9A.36.031(1)(d) /9A.36.031(1)(f)	11/28/2005
02	FELONY DOMESTIC VIOLENCE COURT ORDER VIOLATION (ASSAULT)	26.50.110(4)	11/28/2005

(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, 533.

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- A special verdict/finding for use of **deadly weapon** other than a firearm was returned on Count(s) \_\_\_\_\_, RCW 9.94A.602, .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 crimes charged in Count(s) 01 and 02 are **Domestic Violence** offense(s) as that term is defined in RCW 10.99.020:
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are Count(s) \_\_\_\_\_, RCW 9.94A.589
- Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): \_\_\_\_\_.

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

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

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.
- The court finds that the following prior convictions are one offense for purposes of determining the offender score RCW 9.94A.525: \_\_\_\_\_
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520: \_\_\_\_\_
- The State has moved to dismiss count(s) \_\_\_\_\_.

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
01	M 3	III	12 MONTHS to 16 MONTHS	9-12	9-12 months	5 YEARS \$10000
02	M 3	V	22 MONTHS to 29 MONTHS	15-20	15-20 months	5 YEARS \$10000

\* (F) Firearm, (D) other Deadly Weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present

Additional current offense sentencing data is attached in Appendix 2.3.

2.4  EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence  above  within  below the standard range for Count(s) \_\_\_\_\_.

The defendant and the State stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the Sentencing Reform Act.

Aggravating factors were:  stipulated to by the defendant,  admitted by the defendant in the Guilty Plea,  found by the court after the defendant waived jury trial,  found by jury by special interrogatory.

The defendant waives his right to have a jury determine any issues regarding the imposition of an exceptional sentence upward. *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct 2348, 147 L. Ed 2d 435 (2000), *Blakely v. Washington*, \_\_\_ U.S. \_\_\_, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

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.750/753.

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: \_\_\_\_\_

2.7 If no formal written plea agreement exists, the agreement is as set forth in the Defendant's Statement on Plea of Guilty.

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 \_\_\_\_\_.

3.3 There  do  do not exist substantial and compelling reasons justifying an exceptional sentence outside the presumptive sentencing range.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

RTN/RJN	\$ To Be Set	Restitution to be paid to: <input type="checkbox"/> Victim(s) and amounts to be set by separate court order		RCW 9.94A.750/.753
PCV	\$500.00	Victim Assessment		RCW 7.68.035
	\$ 100.00	DV Penalty Assessment		RCW 10.99.080
CRC		Court Costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190		
	\$ 200.00	Criminal filing fee	FRC	RCW 9.94A.505
	\$ _____	Witness costs	WFR	RCW 10.01.160 and RCW 2.40.010
	\$ 40.00	Sheriff Service Fees	SFR/SFS/SFW/WRF	RCW 10.01.160 and 36.18.040
	\$ _____	Jury Demand Fee \$ 250.00	JFR	RCW 10.01.160 and 10.46.190
	\$ _____	Extradition costs	EXT	RCW 9.94A.505
	\$ _____	Other Costs _____		RCW 9.94A.760
PUB	\$700.00 \$ _____	Fees for court appointed attorney Trial per diem if applicable		RCW 9.94A.505/.760/.030
WFR	\$ _____	Court appointed defense expert and other defense costs		RCW 9.94A.505, .760, 9.94A.030
FCM/MTH	\$500.00	Fine		RCW 9A.20.021
CDF/LDI/FCD/NTF/SAD/SDI	\$ _____	Drug fund contribution to be paid within two (2) years Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)		RCW 9.94A.760
CLF	\$ _____	Crime lab fee - <input type="checkbox"/> Suspended due to Indigency		RCW 43.43.690
	\$100.00	Felony DNA Collection fee (for crimes committed on or after July 1, 2002)		RCW 43.43.7541
RTN/RJN	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) To: _____ (List Law Enforcement Agency)		RCW 38.52.430
	\$ _____	Other Costs for: _____		RCW 9.94A.760

- The above financial obligations do 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.750/753. A restitution hearing:
  - shall be set by the prosecutor
  - is scheduled for \_\_\_\_\_

- Restitution ordered above shall be joint and several with the co-defendants listed in the Information or identified below: \_\_\_\_\_

- The Department of Corrections/Superior Court Clerk Collections Unit 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 Superior Court Clerk and on a schedule established by the Department of Corrections/Superior Court Clerk Collections Unit, commencing immediately, unless the court specifically sets forth the rate here:

Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_  
RCW 9.94A.760.

- The defendant shall report as directed by the Superior Court Clerk and provide financial information as requested. RCW 9.94A.760(7)(b). The defendant shall report in person no later than the close of business on the next working day after the date of sentencing or release from custody. A map has been provided to the defendant showing the location of the Superior Court Clerk Collections Unit, 500 West 8th Street, Suite 50, Vancouver, Washington. The defendant must report any changes in address and phone numbers to the Collections Unit within 72 hours of moving.

- 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 statutory rate of \$ \_\_\_\_\_. 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. The defendant shall pay the cost of services to collect unpaid legal financial obligations. This is an annual fee which will be automatically renewed until financial obligations are completed. RCW 9.94A.780 and RCW 36.18.190

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, the county or Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

HIV TESTING. The defendant shall be tested and counseled for HIV as soon as possible and the defendant shall fully cooperate in the testing and counseling. RCW 70.24.340.

Failure to provide the DNA/HIV testing sample is a violation of this Judgment and Sentence and a warrant may be issued to compel compliance.

4.3 The defendant shall not have contact with Alisa Crissy Clements including, but not limited to, personal, verbal, telephonic, electronic, written or contact through a third party for 5 years (not to exceed the maximum statutory sentence).

Supplemental Domestic Violence Protection Order or Antiharassment Order attached as Form 4.3.

4.4 OTHER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 confinement in the custody of the Department of Corrections:

12 months on Count 01

17 months on Count 02

Actual number of months of total confinement ordered is: 17 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 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 term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(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
01		
02		

(c) Credit for 1700 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced. RCW 9.94A.505

4.6  **COMMUNITY PLACEMENT** is ordered on Counts 12 for 10 months

**COMMUNITY CUSTODY** is ordered on **Counts 1 and 2** for a range from **9 to 18 months** or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement 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 under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Community custody follows a term for a sex offense --RCW 9.94A.505. 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		
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 be on community placement/community custody under the charge of the Department of Corrections and shall follow and comply with the instructions, rules and regulations promulgated by said Department for the conduct of the defendant during the period of community placement/community custody and any other conditions stated in this Judgment and Sentence. The defendant's conditions of Community Placement/Community Custody include the following:

- 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: \_\_\_\_\_
- Defendant shall not violate any federal, state or local criminal laws, and shall not be in the company of any person known by him/her to be violating such laws.
- Defendant shall not commit any like offenses.
- Defendant shall notify his/her community corrections officer within forty-eight (48) hours of any arrest or citation.
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be convicted felons, or presently on probation, community supervision/community custody or parole for any offense, juvenile or adult, except immediate family or as authorized by his/her community corrections officer for treatment purposes. Additionally, the defendant shall not initiate or permit communication or contact with the following persons: \_\_\_\_\_
- Defendant shall not have any contact with other participants in the crime, either directly or indirectly.
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be substance abusers.
- Defendant shall not possess, use or deliver drugs prohibited by the Uniform Controlled Substances Act, or any legend drugs, except by lawful prescription. The defendant shall notify his/her community corrections officer on the next working day when a controlled substance or legend drug has been medically prescribed.

- Defendant shall not possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, cellular phones, police scanners, and hand held electronic scheduling and data storage devices.
- Defendant shall not frequent known drug activity areas or residences.
- Defendant shall not use or possess alcoholic beverages  at all  to excess.  
The defendant  will  will not be required to take monitored antabuse per his/her community corrections officer's direction, at his/her own expense, as prescribed by a physician.
- Defendant shall not be in any place where alcoholic beverages are sold by the drink for consumption or are the primary sale item.
- Defendant shall undergo an evaluation for treatment for  substance abuse  mental health  anger management treatment and fully comply with all recommended treatment.
- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a  substance abuse  mental health  anger management treatment program as established by the community corrections officer and/or the treatment facility.
- Defendant shall participate in a **domestic violence perpetrator program** as approved under RCW 26.50.150 and fully comply with all recommended treatment. RCW 9.94A.505 (11).
- Based upon the Pre-Sentence Report, the court finds reasonable grounds to exist to believe the defendant is a mentally ill person, and this condition was likely to have influenced the offense. Accordingly, the court orders the defendant to undergo a mental status evaluation and participate in outpatient mental health treatment. Further, the court may order additional evaluations at a later date, if deemed appropriate.
- Treatment shall be at the defendant's expense and he/she shall keep his/her account current if it is determined that the defendant is financially able to afford it.
- Defendant shall submit to urine, breath or other screening whenever requested to do so by the treatment program staff and/or the community corrections officer.
- Defendant shall not associate with any persons known by him/her to be gang members or associated with gangs.
- Defendant shall not wear or display any clothing, apparel, insignia or emblems that he/she knows are associated with or represent gang affiliation or membership as determined by the community corrections officer.
- Defendant shall not possess any gang paraphernalia as determined by the community corrections officer.
- Defendant shall not use or display any names, nicknames or monikers that are associated with gangs.
- Defendant shall comply with a curfew, the hours of which are established by the community corrections officer.
- Defendant shall attend and successfully complete a shoplifting awareness educational program as directed by the community corrections officer.
- Defendant shall attend and successfully complete the Victim Awareness Educational Program as directed by the community corrections officer.
- Defendant shall not accept employment in the following field(s):  
\_\_\_\_\_
- Defendant shall not possess burglary tools.

- Defendant's privilege to operate a motor vehicle is suspended/revoked for a period of one year; two years if the defendant is being sentenced for a vehicular homicide.
  - Defendant shall not operate a motor vehicle without a valid driver's license and proof of liability insurance in his/her possession.
  - Defendant shall not possess a checkbook or checking account.
  - Defendant shall not possess any type of access device or P.I.N. used to withdraw funds from an automated teller machine.
  - Defendant shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections.
  - Defendant shall not be eligible for a Certificate of Discharge until all financial obligations are paid in full and all conditions/requirements of sentence have been completed including no contact provisions.
  - Defendant shall not enter into or frequent business establishments or areas that cater to minor children without being accompanied by a responsible adult. Such establishments may include but are not limited to video game parlors, parks, pools, skating rinks, school grounds, malls or any areas routinely used by minors as areas of play/recreation.
  - Defendant shall not have any unsupervised contact with minors. Minors mean persons under the age of 18 years.
  - Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a sexual deviancy treatment program as established by the community corrections officer and/or the treatment facility. "Cooperate with" means the offender shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity.
  - Defendant shall submit to periodic polygraph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody.
  - Defendant shall submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody.
  - Defendant shall not possess or use any pornographic material or equipment of any kind and shall not frequent establishments that provide such materials for view or sale.
  - If the defendant is removed/deported by the U.S. Immigration and Customs Enforcement, the community custody time is tolled during that time that the defendant is not reporting for supervision in the United States. The defendant shall not enter the United States without the knowledge and permission of U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections for supervision.
  - Defendant shall sign necessary release of information documents as required by the Department of Corrections.
  - Defendant shall adhere to the following additional crime-related prohibitions or conditions of community placement/community custody:
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

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

4.8 The Bail or release conditions previously imposed are hereby exonerated and the clerk shall disburse it to the appropriate person(s).

4.9 This case shall not be placed on inactive or mail-in status until all financial obligations are paid in full.

4.10 When there is a reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections can conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purposes of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned and possessed by the defendant.

4.11 Other:

## 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 ten (10) years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes 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 may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.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 court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

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 (e.g., 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 you are not the minor's parent), 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 out 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 a sex 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 a 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 5 days of the entry of the order. RCW 9A.44.130(7).

- 5.8  The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately punch the defendant's Washington Driver's license or permit to drive with a "C" as directed by the Department of Licensing pursuant to RCW 46.20.270.

5.9 If the defendant is or becomes subject to a court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections 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 Persistent Offense Notice

- The crime(s) in count(s) \_\_\_\_\_ is/are "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9.94A.505
- The crime(s) in count(s) \_\_\_\_\_ is/are one of the listed offenses in RCW 9.94A.030 (32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

5.11 OTHER: \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: March 24 2006.

Diane M. Woolard  
JUDGE OF THE SUPERIOR COURT

Print Name: Diane Woolard

[Signature]  
Camara L. Banfield, WSBA #33835  
Deputy Prosecuting Attorney

[Signature]  
James J. Sowder, WSBA #09072  
Attorney for Defendant

[Signature]  
JOSEPH MICHAEL SCIMEMI  
Defendant

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

NO. 05-1-02816-5

v.

JOSEPH MICHAEL SCIMEMI,

**WARRANT OF COMMITMENT TO STATE  
OF WASHINGTON DEPARTMENT OF  
CORRECTIONS**

Defendant.

SID:

DOB: 1/7/1983

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

**GREETING:**

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
01	ASSAULT IN THE THIRD DEGREE - DOMESTIC VIOLENCE	10.99.020/9A.36.031(1)(d) /9A.36.031(1)(f)	11/28/2005
02	FELONY DOMESTIC VIOLENCE COURT ORDER VIOLATION (ASSAULT)	26.50.110(4)	11/28/2005

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of :

COUNT	CRIME	TERM
01	ASSAULT IN THE THIRD DEGREE - DOMESTIC VIOLENCE	12 Months
02	FELONY DOMESTIC VIOLENCE COURT ORDER VIOLATION (ASSAULT)	17 Months

These terms shall be served concurrently to each other unless specified herein:

The defendant has credit for 117 ~~90~~ days served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable David M. Ward

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 4/13/06

JOANNE McBRIDE, Clerk of the  
Clark County Superior Court

By: M. McRae  
Deputy



CAUSE NUMBER of this case: 05-1-02816-5

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

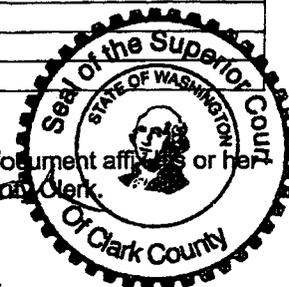
WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

IDENTIFICATION OF DEFENDANT JOSEPH MICHAEL SCIMEMI	
Alias name, SSN, DOB:	
SID No. (If no SID take fingerprint card for State Patrol)	Date of Birth 1/7/1983
Race: W	Sex: M
Driver License No.	Driver License State:
FBI No.	Local ID No. (CFN): 168551
	Corrections No.
Other	

**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: J. McRachib Deputy Clerk.  
Dated: 4/13/06

DEFENDANT'S SIGNATURE: \_\_\_\_\_



Left four fingers taken simultaneously

Left  
Thumb

Right  
Thumb

Right four fingers taken simultaneously



1  
2  
3  
4 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

5 STATE OF WASHINGTON,  
6 Plaintiff,  
7 v.  
8 JOSEPH MICHAEL SCIMEMI,  
Defendant

No. 05-1-02816-5

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

9 COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of  
10 the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the  
defendant has the following undisputed prior criminal convictions:

11

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
THEFT FIRST DEGREE	Washington/OR CO33121CR			
CRIMINAL POSSESSION FORGERY INSTRUMENTS	Hillsboro/OR OR034035J	1/15/2004		1
IDENTITY THEFT	Hillsboro/OR OR034035J	1/15/2004		1
THEFT 1ST DEGREE	Hillsboro/OR or034035j	1/15/2004		1

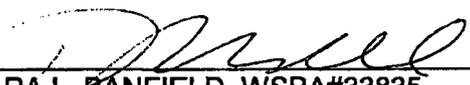
12  
13  
14  
15  
16  
17

18  The defendant committed a current offense while on community placement (adds one  
19 point to score). RCW 9.94A.360

20 DATED this 3 day of March, 2006.

21  
22 Defendant

23 JAMES J. SOWDER, WSBA #9072  
24 Attorney for Defendant

  
25 CAMARA L. BANFIELD, WSBA#33835  
26 Deputy Prosecuting Attorney

27  
28  
29 **DECLARATION OF CRIMINAL HISTORY**  
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET  
PO BOX 5000  
VANCOUVER WA 98666-5000  
(360) 397-2261

**APPENDIX "B"**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
JUDGMENT AND SENTENCE (MISDEMEANOR)**

10  
1 SOWDER

S8

FILED

APR 13 2006

JoAnne McBride, Clerk, Clark Co.

2  
3  
4  
5  
6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
7 IN AND FOR THE COUNTY OF CLARK

8 STATE OF WASHINGTON,

9 Plaintiff,

10 v.

11 JOSEPH MICHAEL SCIMEMI,

12 Defendant

13 Date of Birth: 1/7/1983

14 SID #:

No. 05-1-02816-5

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND JUDGMENT AND SENTENCE  
(MISDEMEANOR)

EXECUTION SUSPENDED

IMPOSITION DEFERRED

15 THIS MATTER, having come on regularly for sentencing on March 3, 2006, the defendant  
16 being present and represented by his/her undersigned attorney, with the State being represented  
17 by the undersigned Deputy Prosecuting Attorney, and the defendant having previously  entered  
valid pleas of guilty to  been convicted at  jury  bench trial of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
03	MALICIOUS MISCHIEF IN THE THIRD DEGREE (DAMAGE EXCEEDING \$50) - DOMESTIC VIOLENCE	10.99.020/9A.48. 090(1)(a)/9A.48.0 90(2)(a)	11/28/2005
04	INTERFERENCE WITH REPORTING OF DOMESTIC VIOLENCE	9A.36.150	11/28/2005

18  
19  
20  
21  
22  
23  
24 as charged in the Amended Information and the court having afforded each counsel the right  
25 to speak, having asked the defendant if he/she wished to make a statement in mitigation of  
26 punishment, and having heard and considered the arguments presented, now, therefore, the  
Court makes the following :

27 FINDINGS, CONCLUSIONS AND JUDGMENT AND  
SENTENCE (MISDEMEANOR) - 1  
(Rev. 02/07/2006) (PSS/MD)

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET • PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(360) 397-2261 (OFFICE)  
(360) 397-2230 (FAX)

45

I. FINDINGS OF FACT

- 1. The defendant is guilty of the above-listed crime(s);
2. The maximum terms for the above crimes are:

Table with 3 columns: COUNT, TERM, FINE. Row 1: 03, 1 YEAR, \$5000. Row 2: 04, 1 YEAR, \$5000.

3. The defendant has served 117 days of confinement prior to sentencing, said confinement being solely related to the crimes for which the defendant is being sentenced.

4. ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The Court has considered 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 [X] has [ ] does not have the ability to pay legal financial obligations as imposed below.

5. [X] The offense charged in Count(s) 03 is/are Domestic Violence offense(s) as that term is defined in RCW 10.99.020(3).

6. [ ] The State has moved to dismiss Count(s) \_\_\_\_\_.

II. CONCLUSIONS OF LAW

- 1. The Court has jurisdiction over the defendant and the subject matter.
2. The defendant is GUILTY of the crime(s) set forth above.
3. [ ] The Court DISMISSES Counts \_\_\_\_\_.

III. JUDGMENT AND SENTENCE

The court having determined that no legal cause exists to show why sentence should not be pronounced, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The defendant is sentenced to the Clark County Jail as follows:

365 days/months on Count 03

365 days/months on Count 04

said sentences to run [ ] concurrently [X] consecutively to each other but concurrent to felony

a. 248 days of the sentence shall be [X] suspended [ ] deferred for 24 months on the conditions listed in Appendix A.

b. Defendant shall serve a total of 117 days of the sentence as follows:

(a) 117 days credit for time served.

(b) 5 days/months of additional total confinement in the Clark County Jail.

(c) \_\_\_\_\_ days of partial confinement, if eligible and approved, may be served as:

\_\_\_\_\_ days of work or education release

\_\_\_\_\_ days of Work Crew

If in custody, the defendant shall be screened while in custody. A map with specific instructions on when and where to report has been provided to the defendant that contains the escape warning.

(d) \_\_\_\_\_ days of community service. (8 hours = 1 day)

(e) The defendant's term of confinement is to commence immediately unless otherwise indicated: \_\_\_\_\_

The sentence imposed herein shall be served consecutively to any sentences which the defendant may be sentenced to under any other cause in either District Court or Superior Court, unless otherwise specified herein.

2. The defendant shall pay the following to the Clerk of the Superior Court:

**\*\*\*SEE CONDITIONS SET FORTH IN THE FELONY JUDGMENT AND SENTENCE PRISON – COMMUNITY PLACEMENT/COMMUNITY CUSTODY\*\*\***

\$ \_\_\_\_\_ Restitution.  To be Paid to

Victim(s) and amounts to be set by separate court order. The addresses of the victims may be withheld and provided confidentially to the Clerk.

\$ \_\_\_\_\_ Victim's Assessment, RCW 7.68.035 - \$ 250. Misdemeanor/\$500. gross misdemeanor

\$ \_\_\_\_\_ DV Penalty Assessment, RCW 10.99.080

\$ \_\_\_\_\_ Criminal Filing Fee (Court Costs)

\$ \_\_\_\_\_ Witness Costs. RCW 10.01.160 and 2.40.010

\$ \_\_\_\_\_ Sheriff's Service Fees. RCW 10.01.160 and 36.18.040

\$ \_\_\_\_\_ Jury Demand Fees. RCW 10.01.160 and 10.46.190 - \$ 250.00

\$ \_\_\_\_\_ Sheriff Fees for service of warrant (\$100 max). RCW 10.01.160

\$ \_\_\_\_\_ Appointed Attorney Fees, with credit for \$ \_\_\_\_\_ prepaid to Indigent Defense Cost Recovery.

\$ \_\_\_\_\_ Court Appointed Defense Investigator/Expert and other defense costs.

\$ \_\_\_\_\_ Fine. RCW 9A.20.021

\$ \_\_\_\_\_ Drug Fund Contribution. Fund #  1015  1017 (TF). To be paid within 2 years.

\$ \_\_\_\_\_ Crime Lab Fee. RCW 43.43.690

\$ \_\_\_\_\_ Extradition Costs

\$ \_\_\_\_\_ Costs for Emergency Response. (DWI Offenses, \$ 1,000 Maximum - RCW 38.52)

Responding Agencies: \_\_\_\_\_

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ \_\_\_\_\_ Costs of Incarceration. The Court specifically finds that the defendant  does  does not have the means to pay for the cost of incarceration at the rate of \$ 50.00 per day.

Payment shall not be less than \$ \_\_\_\_\_ per month or, if left blank, the amount shall be set by the Community Corrections Officer and shall be paid in full prior to expiration of the suspended/deferred sentence. Payments shall commence on \_\_\_\_\_ or as set by the Department of Corrections. All payments shall be in accordance with the policies of the Clerk.

3. Pursuant to RCW 10.82.090, 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. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4. The defendant shall pay a monthly community supervision fee to the Department of Corrections. The amount, manner and due dates of the payments shall be as established by the policies and procedures of Department of Corrections and state law.

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

6. The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

7. The defendant shall allow, and the Department of Corrections is authorized to conduct, home visits to monitor compliance with supervision/community custody. Home visits shall include access, for the purpose of visual inspection, all areas of the residence in which the offender lives or has exclusive/joint control/access.

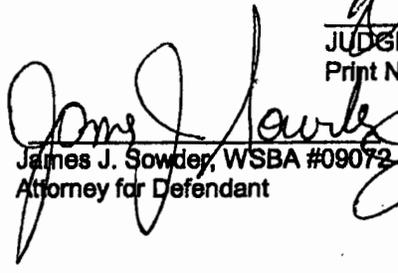
8. The court finds that Count \_\_\_\_\_ is an offense that makes mandatory the withholding of the driving privilege by the Department of Licensing. The court clerk is directed to immediately punch the defendant's Washington Driver's license or permit to drive with a "C" as directed by the Department of Licensing pursuant to RCW 46.20.270.

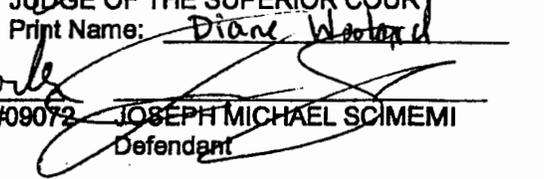
9. The bail or release conditions previously imposed are hereby exonerated and the Clerk shall disburse it to the appropriate person.

DONE in Open Court and in the presence of the defendant this date: April 13<sup>th</sup> 2004

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Camara L. Banfield,  
WSBA #33835  
Deputy Prosecuting Attorney

  
James J. Sowder, WSBA #09072  
Attorney for Defendant

  
JUDGE OF THE SUPERIOR COURT  
Print Name: Diane Woodard  
  
JOSEPH MICHAEL SCIMEMI  
Defendant

APPENDIX "A"

STATE OF WASHINGTON V. JOSEPH MICHAEL SCIMEMI  
CLARK COUNTY SUPERIOR COURT CAUSE NUMBER 05-1-02816-5

CONDITIONS OF PROBATION

**GENERAL CONDITIONS:**

- 1. LAW: Defendant shall not violate any federal, state or local criminal laws, and shall not be in the company of any person known by him to be violating such laws.
- 2. Defendant shall not commit any like offenses.
- 3. Defendant shall notify his/her community corrections officer within forty-eight (48) hours of any arrest or citation.
- 4. PROBATION:
  - a. Defendant shall be under the supervision of a Community Corrections Officer of the Department of Corrections and shall follow the conditions in this order and the rules imposed by the probation officer/Department of Corrections. Defendant shall report in person to the probation officer before 4:00 p.m. on the first business day after defendant's release and shall thereafter fully and truthfully report to such officer as directed.
  - b. The defendant shall be required to have face to face, in person contact with his Community Corrections Officer and this shall occur a minimum of once per month.
- 5. RESIDENCE: Defendant shall not move from his present address unless given prior permission by the court or the Community Corrections Officer.
- 6. EMPLOYMENT: Defendant shall devote not less than forty (40) hours per week to gainful employment or education or shall be actively seeking full time employment.
- 7. Remain in prescribed geographic boundaries specified by the community corrections officer.
- 8. Defendant shall not accept employment in the following fields:

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- 9. Defendant shall notify the Court or his/her Community Corrections Officer, in advance, of any change in his/her employment.
- 10. Defendant shall personally obtain written permission from his/her Community Corrections Officer prior to leaving the County permanently.

1 **SPECIAL CONDITIONS:**

- 2  1. **EVALUATION:** Defendant shall undergo an evaluation for treatment for  
3  substance abuse  mental health  anger management treatment and fully  
4 comply with all recommended treatment.
- 5  2. **TREATMENT PROGRAM:** Defendant shall enter into, cooperate with, fully attend  
6 and successfully complete all in-patient and outpatient phases of a  
7  substance abuse  mental health  anger management treatment program  
8 as established by the Community Corrections Officer and/or the treatment facility.
- 9  3. Defendant shall participate in a **domestic violence perpetrator program** as  
10 approved under RCW 26.50.150 and fully comply with all recommended  
11 treatment.
- 12  4. Treatment shall be at the defendant's expense and he/she shall keep his account  
13 current if it is determined that the defendant is financially able to afford it.
- 14  5. Defendant shall submit to urine, breath or other screening whenever requested to  
15 do so by the treatment program staff and/or the community corrections officer.
- 16  6. **ALCOHOL:** Defendant shall not possess or consume alcoholic beverages  at all  
17  to excess. The defendant  will  will not be required to submit to a program  
18 of monitored antabuse. Defendant shall not be in any place where alcoholic  
19 beverages are sold by the drink for consumption or are the primary sale item.  
20 Defendant shall submit to random urine, breath and/or other testing to detect  
21 usage of alcohol as requested by his/her Community Corrections Officer.
- 22  7. **CONTROLLED SUBSTANCES:** Except by lawful prescription, defendant shall not  
23 possess, use, or deliver any item prohibited by the Uniform Controlled Substances  
24 Act. The defendant shall notify his Community Corrections Officer on the next  
25 working day when a controlled substance has been medically prescribed.  
26 Defendant shall submit to random urine, breath and/or other testing to detect  
27 usage of drugs as requested by his Community Corrections Officer.
8. Defendant shall not possess or use any paraphernalia that can be used for the  
ingestion or processing of controlled substances or that can be used to facilitate  
the sale or transfer of controlled substances including scales, pagers, cellular  
phones, police scanners, or hand held electronic scheduling and data storage  
devices. Defendant shall not frequent known drug activity areas or residences.
9. If the defendant is or becomes subject to a court-ordered mental health or  
chemical dependency treatment, the defendant must notify the Department of  
Corrections and the defendant's treatment information must be shared with DOC  
for the duration of the defendant's incarceration and supervision.
10. Defendant shall not have any contact with other participants in the crime, either  
directly or indirectly.

1  11. **GUNS AND WEAPONS:** Defendant hereby stipulates that (s)he shall not possess  
or use any firearm, deadly weapon or ammunition except for military duty.

2  12. **ASSOCIATION:** Defendant shall not initiate or permit communication or contact  
3 with persons known to him/her to be convicted felons, or presently on probation,  
4 community supervision or parole for any offense, juvenile or adult, except  
5 immediate family or as authorized by his/her community corrections officer for  
6 treatment purposes. Additionally, the defendant shall not initiate or permit  
7 communication or contact with the following persons:  
8 \_\_\_\_\_

9  13. Defendant shall not initiate or permit communication or contact with persons  
10 known to him/her to be substance abusers.

11  14. **VICTIM CONTACT:**

12 The defendant shall not have any contact with the victim(s), Alisa Crissy Clements  
13 including but not limited to personal, verbal, written, electronic, telephonic or  
14 through a third person.

15  This condition is for the statutory maximum sentence of 5 years.

16  **DOMESTIC VIOLENCE: VIOLATION OF THIS ORDER IS A CRIMINAL  
17 OFFENSE UNDER CHAPTER 10.99 RCW AND WILL SUBJECT A VIOLATOR  
18 TO ARREST; ANY ASSAULT, DRIVE-BY SHOOTING OR RECKLESS  
19 ENDANGERMENT THAT IS A VIOLATION OF THIS ORDER IS A FELONY.**

20 A Domestic Violence Protection Order is separately entered and the clerk of the  
21 court shall forward a copy of the Domestic Violence order on or before the next  
22 judicial day following filing to the Clark County Sheriff's Department.

23  **HARASSMENT: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE  
24 UNDER CHAPTER 9A.46 RCW AND WILL SUBJECT A VIOLATOR TO  
25 ARREST.**

26 A Harassment No Contact Order is separately entered and the clerk of the court  
27 shall forward a certified copy of the order to the victim. The Clerk shall contact the  
Clark County Prosecuting Attorney's Victim/ Witness unit to obtain the address for  
mailing.

15. Defendant shall not possess burglary tools.

16. Defendant shall attend and successfully complete a shoplifting awareness  
educational program as directed by the community corrections officer.

17. Defendant shall attend and successfully complete the Victim Awareness  
Educational Program as directed by the community corrections officer.

18. Defendant's privilege to operate a motor vehicle is suspended/revoked for a  
period of \_\_\_\_\_.

19. Defendant shall not operate a motor vehicle without a valid driver's license and  
proof of liability insurance in his/her possession.

- 1  20. Defendant shall not go to \_\_\_\_\_.
- 2  21. Defendant is required to undergo HIV testing which is mandated by law and
- 3 covered by a separate written order of this Court.
- 4  22. Defendant shall not associate with any persons known to be gang members or
- 5 associated with gangs.
- 6  23. Defendant shall not wear or display any clothing, apparel, insignia or emblems that
- 7 are associated with or represent gang affiliation or membership as determined by
- 8 the Community Corrections Officer.
- 9  24. Defendant shall not possess any gang paraphernalia as determined by the
- 10 Community Corrections Officer.
- 11  25. Defendant shall not use any names, nicknames or monikers that are associated
- 12 with gangs.
- 13  26. Defendant shall submit to affirmative acts necessary to monitor compliance with
- 14 the orders of the court as required by the Department of Corrections.
- 15  27. Defendant shall sign necessary release of information documents as required by
- 16 the Department of Corrections.
- 17  28. Defendant shall comply with a curfew, the hours of which are established by the
- 18 Community Corrections Officer.
- 19  29. If the defendant is removed/deported by the U.S. Immigration and Customs
- 20 Enforcement, the community custody time is tolled during that time that the
- 21 defendant is not reporting for supervision in the United States. The defendant shall
- 22 not enter the United States without the knowledge and permission of U.S.
- 23 Immigration and Customs Enforcement. If the defendant re-enters the United
- 24 States, he/she shall immediately report to the Department of Corrections for
- 25 supervision.
- 26  30. When there is a reasonable cause to believe that the defendant has violated a
- 27 condition or requirement of this sentence, the defendant shall allow, and the
- Department of Corrections can conduct, searches of the defendant's person,
- residence, automobile or other personal property. Residence searches shall
- include access, for the purposes of visual inspection, all areas of the residence in
- which the defendant lives or has exclusive/joint control/access and automobiles
- owned and possessed by the defendant.
31. Other: \_\_\_\_\_
- \_\_\_\_\_

**IDENTIFICATION OF DEFENDANT  
JOSEPH MICHAEL SCIMEMI**

Alias name, DOB:

SID No.

(If no SID take fingerprint card for State Patrol)

Date of Birth: 1/7/1983

Race: W

Ethnicity:

Sex: M

Driver License No.

Driver License State:

FBI No.

Local ID No. (CFN): 168551

Corrections No.

Other \_\_\_\_\_

Left four fingers taken simultaneously

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thumb

Right  
Thumb

Right four fingers taken simultaneously

**APPENDIX "C"**

**COURT'S INSTRUCTIONS TO THE JURY**

33

**FILED**

FEB 16 2006

JoAnne McBride, Clerk, Clark Co

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

STATE OF WASHINGTON,

Plaintiff,

v.

JOSEPH MICHAEL SCIMEMI,

Defendant.

No. 05-1-02816-5

COURT'S INSTRUCTIONS TO THE JURY

  
\_\_\_\_\_  
SUPERIOR COURT JUDGE

2/16/06  
DATE

18

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses, stipulations, and the exhibits that I have admitted, during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In

considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

INSTRUCTION NO. 2

A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on the other count.

INSTRUCTION NO. 3

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff and has the burden of proving each element of the crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

INSTRUCTION NO. 4

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 5

To convict the defendant of the crime of Assault in the Third Degree (Domestic Violence), as charged in Count 1, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about November 28, 2005, the defendant caused bodily harm to Alisa Clements;
- (2) That the bodily harm was accompanied by substantial pain that extended for a period of time sufficient to cause considerable suffering;
- (3) That the defendant acted with criminal negligence;
- (4) That Alisa Clements is a family or household member; and
- (5) That this act occurred in the State of Washington.

If you find from the evidence that all the elements have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 6

A person commits the crime of assault in the third degree when under circumstances not amounting to assault in either the first or second degree he or she with criminal negligence causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm or with criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering.

INSTRUCTION NO. 7

A person is criminally negligent or acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and the failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

Criminal negligence is also established if a person acts intentionally or knowingly or recklessly.

INSTRUCTION NO. 8

The defendant is charged in Count 1 with Assault in the Third Degree (Domestic Violence). If, after full and careful deliberation on this charge, you are not satisfied beyond a reasonable doubt that the defendant is guilty, then you will consider whether the defendant is guilty of the lesser crime of Assault in the Fourth Degree (Domestic Violence).

When a crime has been proved against a person, and there exists a reasonable doubt as to which of two or more degrees that person is guilty, he or she shall be convicted only of the lowest degree.

INSTRUCTION NO. 9

An assault is an intentional touching or striking of another person, that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking is offensive if the touching or striking would offend an ordinary person who is not unduly sensitive.

An assault is also an act, done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

An assault is also an act, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

INSTRUCTION NO. 10

**Bodily injury, physical injury or bodily harm means physical pain or injury, illness or an impairment of physical condition.**

INSTRUCTION NO. 11

For purposes of this case, "family or household members" means persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship

"Dating relationship" means a social relationship of a romantic nature. In deciding whether two people had a "dating relationship," you may consider all relevant factors, including (a) the nature of any relationship between them; (b) the length of time that any relationship existed; and (c) the frequency of any interaction between them.

INSTRUCTION NO. 12

To convict the defendant of the crime of Felony Domestic Violence Court Order Violation (Assault), as charged in Count 2, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about November 28, 2005, the defendant willfully had contact with Alisa Clements;

(2) That such contact was prohibited by a no-contact order;

(3) That the defendant knew of the existence of the no-contact order;

(4) That Alisa Clements is a family or household member; and

(5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 13

A person commits the crime of violation of a domestic violence no-contact order when he or she willfully has contact with another when such contact was prohibited by a no-contact order and the person knew of the existence of the no-contact order.

INSTRUCTION NO. 14

A person knows or acts knowingly or with knowledge when he or she is aware of a fact, circumstance or result which is described by law as being a crime, whether or not the person is aware that the fact, circumstance or result is a crime.

If a person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by law as being a crime, the jury is permitted but not required to find that he or she acted with knowledge.

Acting knowingly or with knowledge also is established if a person acts intentionally.

INSTRUCTION NO. 15

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

INSTRUCTION NO. 16

A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and the disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

Recklessness also is established if a person acts intentionally or knowingly.

INSTRUCTION NO. 17

A person acts willfully when he or she acts knowingly.

INSTRUCTION NO. 18

To convict the defendant of the gross misdemeanor of Malicious Mischief in the Third Degree (Domestic Violence), as charged in Count 3, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about November 28, 2005, the defendant knowingly and maliciously caused physical damage to the property of another in an amount exceeding \$50 [but not exceeding \$250;
- (2) That Alisa Clements is a family or household member; and
- (3) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 19

A person commits the gross misdemeanor of malicious mischief in the third degree when he or she knowingly and maliciously causes physical damage to the property of another in an amount exceeding \$50 but not exceeding \$250.

INSTRUCTION NO. 20

**Malice** and **maliciously** mean an evil intent, wish, or design to vex, annoy, or injure another person.

**Malice** may be, but is not required to be, inferred from an act done in willful disregard of the rights of another.

INSTRUCTION NO. 21

To convict the defendant of the crime of Interference With the Reporting of a Domestic Violence offense, as charged in Count 4, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about November 28, 2005 the defendant committed the crime of Assault in the Third Degree Domestic Violence, Felony Domestic Violence Court Order Violation (Assault) or Malicious Mischief in the Third Degree Domestic Violence against Alisa Clements as charged in Counts 1, 2 and 3;
- (2) That on that date the defendant was a family or household member of Alisa Clements;
- (3) That the defendant prevented or attempted to prevent Alisa Clements or a witness to Assault in the Third Degree Domestic Violence, Felony Domestic Violence Court Order Violation (Assault) or Malicious Mischief in the Third Degree (Domestic Violence) from calling a 911 emergency communication system or obtaining medical assistance or making a report to any law enforcement officer; and
- (4) That the acts occurred in the State of Washington.

**If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.**

**On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any of these elements, then it is your duty to return a verdict of not guilty.**

INSTRUCTION NO. 22

A person commits the crime of interfering with the reporting of domestic violence if the person commits a crime of domestic violence and prevents or attempts to prevent the victim or a witness to that domestic violence crime from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official.

Assault in the Third Degree, Felony Domestic Violence Court Order Violation (Assault), and Malicious Mischief in the Third Degree are crimes of domestic violence when committed by one family or household member against another.

INSTRUCTION NO. 23

**The victim's alleged prior statements introduced through the law enforcement officer may be considered by you only for the purpose of impeachment. Impeachment evidence is used for determination of credibility of the witness rather than substantive evidence**

INSTRUCTION NO. 24

The defendant is not compelled to testify, and the fact that the defendant has not testified cannot be used to infer guilt or prejudice him in any way.

INSTRUCTION NO. 25

A person who commits a crime in the State of Washington in whole or in part  
Commits the crime in the State of Washington.

INSTRUCTION NO. 26

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

INSTRUCTION NO. 27

You will also be furnished with a special verdict form. If you find the defendant not guilty of the crime of violation of a no-contact order, do not use the special verdict form. If you find the defendant guilty, you will then use the special verdict form and fill in the blank[s] "yes" or "no" according to the decision you reach. In order to answer any question on the special verdict form "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you have a reasonable doubt as to the question, you must answer "no."

INSTRUCTION NO. 28

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given these instructions, and four verdict form[s] for recording your verdict.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form(s) to express your

decision. The presiding juror must sign the verdict form(s) and notify the bailiff. The bailiff will bring you into court to declare your verdict.

**APPENDIX "D"**  
**SPECIAL VERDICT FORM**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR CLARK COUNTY

**FILED**

FEB 16 2006

STATE OF WASHINGTON, )

Plaintiff, )

v. )

JOSEPH MICHAEL SCIMEMI, )

Defendant )

NO. 05-1-02816-5 JoAnne McBride, Clerk, Clark Co

SPECIAL VERDICT FORM

We, the jury, return a special verdict by answering as follows:

Was the conduct that constituted a violation of the no-contact order an assault which did not amount to an assault in the third or fourth degree?

ANSWER: NO  
(Yes or No)

Was the conduct that constituted a violation of the no-contact order reckless and did it create a substantial risk of death or serious physical injury to another person?

ANSWER: Yes  
(Yes or No)

David Lynch  
Presiding Juror

Feb 16, 2006  
Date

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