

NO. 34999-0-II

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

STATE OF WASHINGTON, Respondent

v.

CARL JOSEPH ANTUNEZ, Appellant

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY DEPUTY

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE ROBERT L. HARRIS
CLARK COUNTY SUPERIOR COURT CAUSE NO. 05-1-01229-3

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

I. STATEMENT OF THE CASE.....	1
II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1	1
III. RESPONSE TO ASSIGNMENT OF ERROR NO. 2	13
IV. RESPONSE TO ASSIGNMENT OF ERROR NO. 3	14
V. CONCLUSION.....	16

TABLE OF AUTHORITIES

Cases

<u>In Re Personal Restraint of Echeverria</u> , 141 Wn.2d 323, 335, 6 P.3d 573 (2000).....	15
<u>State v. Callahan</u> , 77 Wn.2d 27, 29, 459 P.2d 400 (1969).....	11
<u>State v. Douglas</u> , 71 Wn.2d 303, 305, 428 P.2d 535 (1967)	10
<u>State v. Elliott</u> , 114 Wn.2d 6, 17, 785 P.2d 440 (1990).....	13
<u>State v. Ford</u> , 33 Wn. App. 788, 790, 658 P.2d 36 (1983)	12
<u>State v. Hughes</u> , 154 Wn.2d 118, 153, 110 P.3d 192 (2005).....	15
<u>State v. Lessley</u> , 118 Wn.2d 773, 778, 827 P.2d 996 (1992).....	14
<u>State v. Partin</u> , 88 Wn.2d 899, 906, 567 P.2d 1136 (1977)	12
<u>State v. Portee</u> , 25 Wn.2d 246, 253, 170 P.2d 326 (1946).....	11
<u>State v. Q. D.</u> , 102 Wn.2d 19, 28, 685 P.2d 557 (1984).....	11
<u>State v. Rhinehart</u> , 21 Wn. App. 708, 712, 586 P.2d 124 (1978)	11
<u>State v. Rockett</u> , 6 Wn. App. 399, 402, 493 P.2d 321 (1972).....	12
<u>State v. Rye</u> , 2 Wn. App. 920, 927, 471 P.2d 96 (1970).....	11
<u>State v. Salinas</u> , 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)	10
<u>State v. Salle</u> , 34 Wn.2d 183, 208 P.2d 872 (1949).....	11
<u>State v. Stockmyer</u> , 136 Wn. App. 212, 218, 148 P.3d 1077 (2006).....	14
<u>State v. Tilli</u> , 139 Wn.2d 107, 123, 985 P.2d 365 (1999).....	14
<u>State v. Walton</u> , 64 Wn. App. 410, 415, 824 P.2d 533 (1992)	12
<u>Washington v. Recuenco</u> , 2006 U.S. LEXIS 5164, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006).....	15

Statutes

RCW 9A.08.010(1)(b)	12
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I. STATEMENT OF THE CASE

The State accepts the statement of facts as set forth by the defendant in his brief. Where additional information is needed, it will be set forth in the argument section of the brief.

II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1

The first assignment of error raised by the defendant is that there was insufficient evidence to convict him of First Degree Possession of Stolen Property and First Degree Malicious Mischief. A copy of the Second Amended Information (CP 14) is attached hereto and by this reference incorporated herein. Counts 1 and 2 of this Second Amended Information deal with the allegations of Possession of Stolen Property in the First Degree and Malicious Mischief in the First Degree and give a time period from February 15, 2005, to February 22, 2005.

The elements of the crimes were set forth in the elements instructions to the jury as part of the Court's Instructions to the Jury (CP 16).

Instruction No. 9 of the packet was the elements of Possession of Stolen Property in the First Degree and those elements were set forth as follows:

1. That between February 15, 2005, and February 22, 2005, the defendant knowingly possessed stolen property;
2. That the defendant acted with knowledge that the property had been stolen;
3. That the defendant withheld or appropriated the property to the use of someone other than the true owner or person entitled thereto;
4. That the value of the stolen property exceeded \$1500; and
5. That the acts occurred in the State of Washington.

As part of the same packet, Instruction No. 14 was the elements instruction for Malicious Mischief in the First Degree which set forth the following elements:

1. That between February 15, 2005, and February 22, 2005, the defendant caused physical damage to the property of another in an amount exceeding \$1500;
2. That the defendant acted knowingly and maliciously; and
3. That the acts occurred in the State of Washington.

The first witness called by the State of Washington in its case-in-chief was Megan LeBov. Ms. LeBov indicated that she was the owner of the 1994 white Acura Integra automobile. She said that the vehicle was in good condition and that she had purchased it in 1999 for \$9,000. (RP 17-18). She indicated that the vehicle was stolen from her residence on or

about February 17, 2005. (RP 19). She was shown photographs of the recovered vehicle and positively identified it as her car. She further indicated that the insurance company settled out the damage to her vehicle at about \$4,000. (RP 21-23).

The next witness of substance was Sergeant Michael Chylack of the Vancouver Police Department. Sergeant Chylack indicated that he responded to a neighborhood call of a suspicious vehicle in the 2500 block of F Street. He indicated that when he arrived, he saw a white Acura automobile with no license plates and several parts of the vehicle were missing. (RP 34).

He described for the jury the nature of the vehicle's missing parts. For example, the passenger seat was missing, some parts of the dashboard, taillights, two wheels on the passenger side had been removed and the license plate had also been removed. The license plate was found in the interior of the vehicle and, when he called it in, it was reported stolen out of Portland. He found this vehicle on February 22, 2005. (RP 34-35).

The Sergeant noted that there were scrape marks on the street from the vehicle. He followed these gouge marks that had been left in the road approximately 10 blocks to a residence located at 512 East 16th Street, Vancouver, Washington. He testified that when he followed these marks they went right up the driveway of that residence. (RP 38-39). He and

another officer observed in a detached garage the tail end of a black Acura automobile. They could see that there was a car seat which was similar in shape and color to the one that was from the white Acura abandoned about ten blocks away. There was also a tire and rim that looked similar to the rim that was on the white Acura. There was one taillight on the black Acura. They attempted to contact anyone there but no one answered the door. They went next door and spoke to one of the neighbors and then, from an advantage point in the backyard of a neighbor's residence, they took some photographs of the area and decided to get a search warrant. (RP 39-42).

The Deputy Prosecutor then goes through with the Sergeant the damage on the white Acura that was found abandoned. The rear window had been broken out. The taillight assemblies were missing and tires had been removed. It also appeared that the passenger side door, seat, and airbags were also missing. (RP 44-46).

The Sergeant testified to the jury about the execution of the search warrant where the black Acura was found. A number of photographs were shown indicating the vehicle that was located there and the items that appeared to have come from the white Acura. For example, there was vehicle trim that was white in color that appeared to match the black

Acura but was just a different color. (RP 51-52). Further, there were specific indications that these items were taken from the white Acura.

QUESTION (Deputy Prosecutor): Thank you. Now I'm going to show you what's been marked as Number 22 for identification. Do you recognize it?

ANSWER (Sergeant Chylack): Yes, I do.

QUESTION: Could you describe what it is for the jury?

ANSWER: It's an Oregon vehicle registration in the name of Megan LeBov.

QUESTION: And where was this item found?

ANSWER: This was found inside the black Acura in the garage.

(RP 53, L.11-18, RP 61-62)

The officer also identified residence identification that tied the defendant to the residence where the black Acura was found. (RP 57). The officer also described Exhibit No. 37 which was identified as a U.S. bank statement that was found inside the black Acura automobile and belonged to the defendant. (RP 60).

The next witness of substance called by the State was Christina Lamp. Ms. Lamp lived next door to the residence at 512 East 16th Street. She recalled seeing the white Acura arrive approximately a week before the officers showed up. That would place it at the residence soon after it was stolen. She also saw a black Acura there in the garage and that there

were a lot of men around banging on the vehicles at all times of the day and night. She also heard a lot of arguments going on between a male and a female in the garage area. She was not able to identify any one.

(RP 119-123).

The next witness of substance was Chrystal Pickett. Ms. Pickett identified the defendant and indicated that they dated during the early part of 2005. (RP 136-137). She also indicated that she lived for a period of time at 512 East 16th Street in Vancouver. That was the location where the black Acura was located. He had moved his items into the residence sometime before the officers served their search warrant. She felt it was at least a month to a month and a half before the execution of the search warrant. (RP 138). She described the vehicle the defendant owned as the black Acura Integra. (RP 140). He had received the car in a damaged condition.

QUESTION (Deputy Prosecutor): So prior to when the search warrant was executed at your house there, how long had Carl been in possession of that black Accura?

ANSWER (Chrystal Pickett): Just like a week, maybe two weeks.

QUESTION: And had it been in somebody else's possession before that?

ANSWER: Yes. The person had wrecked the car.

QUESTION: Okay. So this vehicle was damaged somehow?

ANSWER: Yes. The --

QUESTION: Do you know how?

ANSWER: The passenger's side was, uhm, completely messed up -- as far as the wheels and stuff go. The wheels themselves were fine but the -- they were like going under. They -- it hit the median on the freeway or somethin' and --

QUESTION: Do you know who damaged the car?

ANSWER: I -- I can't say for sure. I don't know.

QUESTION: Okay. So it's your understanding is the car was damaged about two weeks before the search warrant was executed? Is that your testimony?

ANSWER: Uhm, I'm not sure when the car was damaged, I just know when it got to my house. It got to my house about a week and a half, two weeks before the search warrant.

QUESTION: Okay. And how did it get to your house?

ANSWER: It was brought on a tow truck. Like on a flat bed.

QUESTION: And so your understanding is this was Carl's car at this point; is that correct?

ANSWER: Yes. Or he was -- he was buying it. It was his.

QUESTION: So he -- did he buy it after the damage was done to it?

ANSWER: Yes. But it was his before and he sold it and it got damaged and then he bought it back.

QUESTION: He bought it back after it was damaged.

ANSWER: Yes.

(RP 140, L.14 - 141, L.21)

His plans were to fix the black Acura and sell it. (RP 142). She testified that a man by the name of Tom brought over the white Acura for purposes of fixing up the defendant's black vehicle. She testified that the defendant didn't want the car there at the residence. (RP 142-143).

QUESTION (Deputy Prosecutor): Do you remember -- what do you remember specifically Carl saying about the nature of the white Accura -- why he was concerned about it being on the property?

ANSWER (Chrystal Pickett): He didn't say. He just --

QUESTION: Why didn't Carl want the white car on the property?

MR. SOWDER: Objection as to basis of knowledge.

THE COURT: If expressed.

ANSWER: It wasn't that he didn't want the car on the property, 'cause it was my property, but, I mean, it was that he just wasn't interested in going about things that way or getting parts off that car.

QUESTION: Did Carl suspect the car was stolen?

ANSWER: I'm -- I can't say. I -- I don't know. I mean, I don't know if Tom told him that it was or if he knew -- I don't know, no.

QUESTION: Are you aware whether Carl and Tom had an agreement for Carl to buy the white car or buy parts off of that car?

ANSWER: Uhm, yes, I'm sure that he didn't have an agreement with him to buy the parts off the car and Tom was trying to figure out what he was going to do with the other car.

QUESTION: With the white car or with the black car?

ANSWER: With the white car. And Carl was working on his car, like that's what he did. He -- he couldn't be -- he --

QUESTION: All right. What has happening to the white car while it was parked in the driveway?

ANSWER: Nothing for like a day or so and then some other guys showed up and started -- or started helpin' Tom like pull off parts from it.

QUESTION: Was Carl helping as well?

ANSWER: No. He was working on his car.

QUESTION: Why were they taking parts off the white car?

ANSWER: Uhm, I mean I really can't answer that question. I don't know. I mean --

QUESTION: All right. Were the same parts they were taking off the white car parts that were damaged on the black car?

MR. SOWDER: I have an objection as to who's doing what. Is Carl taking it? Is Tom Taking it? Or is --

MR. FAIRGRIEVE: That's not -- that's not the question, Your Honor.

THE COURT: Repeat the question.

ANSWER: What was the question again?

QUESTION: The question was, were the parts they were taking off the white car the same parts that were damaged on the black car?

ANSWER: Uhm, not necessarily. I mean, yes, and no.

(RP 144, L.15 – 146, L.9)

Ms. Pickett testified that she talked to the defendant about the day that the search warrant was executed at the residence. She indicated that he had told her that he had been at the house when the officers first arrived and that he ran away. (RP 161-162).

Evidence is sufficient to support a conviction if, when viewed in a light most favorable to the prosecution, the evidence permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). In applying this test, the appellate court accepts the prosecution's evidence is true and accepts all inferences that can be reasonably drawn in support of the State's position.

Mere possession of stolen property is insufficient to support a conviction. State v. Douglas, 71 Wn.2d 303, 305, 428 P.2d 535 (1967). Conversely, actual knowledge that the goods were stolen is not required;

constructive knowledge may be established by notice of facts and circumstances from which guilty knowledge may be inferred. State v. Rye, 2 Wn. App. 920, 927, 471 P.2d 96 (1970); State v. Salle, 34 Wn.2d 183, 208 P.2d 872 (1949). Possession of stolen property in connection with slight corroborative evidence of any inculpatory circumstances is sufficient to support a conviction of possession of stolen property. State v. Rhinehart, 21 Wn. App. 708, 712, 586 P.2d 124 (1978); State v. Portee, 25 Wn.2d 246, 253, 170 P.2d 326 (1946).

When a person is found in possession of recently stolen property, slight corroborative evidence of the inculpatory circumstances tending to support guilt will sustain a conviction for possession of stolen property. Slight corroborative evidence includes false or improbable explanations of possession, flight, or physical evidence of the defendant's presence at the scene of the crime. State v. Q. D., 102 Wn.2d 19, 28, 685 P.2d 557 (1984).

Constructive possession of the vehicle is shown by substantial evidence that the defendant had dominion and control over the item in question. State v. Callahan, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). The appellate court will examine the totality of the circumstances to see if there is substantial evidence tending to establish circumstances from which the jury reasonably could have inferred that the defendant had

dominion and control over the stolen vehicle. State v. Partin, 88 Wn.2d 899, 906, 567 P.2d 1136 (1977). In State v. Rockett, 6 Wn. App. 399, 402, 493 P.2d 321 (1972) it was held that in a grand larceny case, proof that a defendant had actual knowledge that the items stolen was not required, finding it sufficient that the defendant had knowledge of facts sufficient to put him on notice that items were stolen. The persuasiveness of the evidence is usually a question that is left to the trier of fact. State v. Walton, 64 Wn. App. 410, 415, 824 P.2d 533 (1992).

Finally, a person acts knowingly or with knowledge when he is aware of facts or circumstances or a result described by a statute that defines an offense or he has information that would lead a reasonable man in the same situation to believe that facts exist which are described by a statute as defining an offense. RCW 9A.08.010(1)(b); State v. Ford, 33 Wn. App. 788, 790, 658 P.2d 36 (1983).

The State submits, that as outlined above, there is sufficient evidence here that would lead a reasonable person in the same situation to believe that the vehicle was stolen. Parts of the stolen vehicle were utilized and incorporated into the defendant's vehicle; the trashed white Acura was pulled approximately ten blocks away and ditched. In the defendant's vehicle was found identification belonging to the owner of the white vehicle and the defendant fled from the officers when they were

there to execute the search warrant. Although his girlfriend dramatically attempted to change her testimony at the time of trial, it was still apparent that there were concerns about this vehicle. The defendant did not want the white vehicle there on the premises for some reason. All of these factors make it reasonable to conclude that the defendant knew that the vehicle was stolen.

III. RESPONSE TO ASSIGNMENT OF ERROR NO. 2

The second assignment of error raised by the defendant is that the convictions for Possession of Stolen Property in the First Degree and Malicious Mischief in the First Degree should be treated as the same criminal conduct for purposes of sentencing.

A copy of the Felony Judgment and Sentence (CP 97) is attached hereto and by this reference incorporated herein. The trial court treated the Possession of Stolen Property in the First Degree and Malicious Mischief in the First Degree as separate conduct and scored it appropriately.

A trial court's determination as to whether prior offenses comprise the same criminal conduct will not be disturbed absence a clear abuse of discretion or misapplication of the law. State v. Elliott, 114 Wn.2d 6, 17, 785 P.2d 440 (1990). Under the same criminal conduct test, two or more current offenses are counted as one crime only if they (1) have the same

objective criminal intent, (2) are committed at the same time and place, and (3) involve the same victim. State v. Tilli, 139 Wn.2d 107, 123, 985 P.2d 365 (1999). Each element of the test must be satisfied for multiple offenses to encompass the same criminal conduct. State v. Lessley, 118 Wn.2d 773, 778, 827 P.2d 996 (1992). The appellate court will generally construe statutes narrowly so that most crimes are not considered to be the same criminal conduct. State v. Stockmyer, 136 Wn. App. 212, 218, 148 P.3d 1077 (2006).

The State submits that the first factor is clearly not met: whether or not the crimes have the same objective criminal intent. The criminal intent of possession of stolen property is to retain or possess stolen property. Malicious mischief is the destruction of property, whether stolen or not. As set forth previously in this brief, the criminal elements that the jury was instructed on clearly set forth the statutory requirements for the two types of crimes. The objective criminal intent is totally different. Therefore, the State submits, these would not merge for purposes of sentencing nor would they count as only one crime.

IV. RESPONSE TO ASSIGNMENT OF ERROR NO. 3

The third assignment of error raised by the defendant is that his trial counsel was ineffective because he interfered with the defendant's right of allocution.

The defendant was allowed an opportunity to address the court prior to sentencing. During the statements to the court, there was some question that the defense attorney was clarifying with the court. At the end of the clarification, the court went on to sentence the defendant. The sentencing range allowed in the two crimes was 17-22 months. The court gave him a mid-range sentence of 20 months.

There was no objection at the time of the sentencing concerning this claimed inability to complete his allocution to the court. This matter cannot be raised for the first time on appeal. State v. Hughes, 154 Wn.2d 118, 153, 110 P.3d 192 (2005), overruled in part on other grounds, Washington v. Recuenco, 2006 U.S. LEXIS 5164, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006); In Re Personal Restraint of Echeverria, 141 Wn.2d 323, 335, 6 P.3d 573 (2000).

Not only was this not objected to at the trial court level, but there has been absolutely no showing of prejudice. In addition, there has been no argument really made indicating that the defendant was denied a meaningful opportunity to allocate. In our situation he had the opportunity to address the court and if fact was doing so. There is nothing to indicate that his attorney did anything improper or inappropriate nor is there any showing that it would have made any difference one way or the other. This is particularly demonstrated by the fact that there was no objection

made at the time of the sentencing by either the defendant or his attorney and that the court gave a mid-range sentence instead of imposing the maximum sentence allowable. The State submits that the defendant was not denied his right of allocution nor was his attorney providing ineffective assistance of counsel at the time of the sentencing.

V. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 7 day of March, 2007.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By:


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

APPENDIX "A"
SECOND AMENDED INFORMATION

FILED #5

MAY 16 2006

JoAnne McBride, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

v.

CARL JOSEPH ANTUNEZ

Defendant.

SECOND AMENDED INFORMATION

No. 05-1-01229-3

(VPD 05-3561)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

COUNT 01 - POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE -

9A.56.140(1)/9A.56.150

That he, CARL JOSEPH ANTUNEZ, in the County of Clark, State of Washington, between February 15, 2005 and February 22, 2005, acting as a principal or an accomplice, did knowingly receive, retain, possess, conceal, or dispose of stolen property, to-wit: a 1994 Acura Integra, of a value in excess of \$1,500, belonging to Megan Lebov, knowing that it had been stolen and did withhold or appropriate the same to the use of a person other than the true owner thereto; contrary to Revised Code of Washington 9A.56.150(1), and RCW 9A.56.140(1).

COUNT 02 - MALICIOUS MISCHIEF IN THE FIRST DEGREE - 9A.48.070(1)(a)

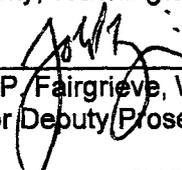
That he, CARL JOSEPH ANTUNEZ, in the County of Clark, State of Washington, between February 15, 2005 and February 22, 2005, acting as a principal or an accomplice, did, knowingly and maliciously cause physical damage, to-wit: to a 1994 Acura Integra, in an amount exceeding one thousand five hundred dollars (\$1,500.00) to the property of another, to-wit: Megan Lebov; contrary to Revised Code of Washington 9A.48.070(1)(a).

COUNT 03 - POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE HYDROCHLORIDE - 69.50.4013(1)

That he, CARL JOSEPH ANTUNEZ, in the County of Clark, State of Washington, between February 15, 2005 and February 22, 2005, did unlawfully possess a controlled substance, to-wit: Methamphetamine Hydrochloride; contrary to Revised Code of Washington 69.50.4013(1).

ARTHUR D. CURTIS
Prosecuting Attorney in and for
Clark County, Washington

Date: May 16, 2006

BY: 
John P. Fairgrieve, WSBA #23107
Senior Deputy Prosecuting Attorney

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DEFENDANT: CARL JOSEPH ANTUNEZ			
RACE: W	SEX: M	DOB: 2/2/1973	
DOL: 5060846 OR		SID: OR10403254	
HGT: 511	WGT: 145	EYES: BRO	HAIR: BLK
WA DOC:		FBI: 587495WA7	
LAST KNOWN ADDRESS(ES):			
O - 512 E 16TH ST, VANCOUVER WA 98663			
O - 2705 N AINSWORTH ST, PORTLAND OR 97217			

APPENDIX "B"

FELONY JUDGMENT AND SENTENCE

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SOWDER

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FILED

MAY 25 2006

JoAnne McBride, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

v.

CARL JOSEPH ANTUNEZ,

Defendant.

SID: OR10403254

DOB: 2/2/1973

No. 05-1-01229-3

**FELONY JUDGMENT AND SENTENCE
(FJS)**

PRISON 06 9 03341 7

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 May 19, 2006
by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
01	POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE	9A.56.140(1)/9A.56.150	2/15/2005 to 2/22/2005
02	MALICIOUS MISCHIEF IN THE FIRST DEGREE	9A.48.070(1)(a)	2/15/2005 to 2/22/2005

(If the crime is a drug offense, include the type of drug in the second column.)
as charged in the Second 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.
- A special verdict/finding for use of **deadly weapon** other than a firearm was returned on
Count(s) _____, RCW 9.94A.602, .533.

69 gm

- 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) _____ is/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) 03 (Possession Of A Controlled Substance - Methamphetamine).
- The defendant is found NOT GUILTY of Counts _____.

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	6	II	17 MONTHS to 22 MONTHS	—	17-22 mos	10 YEARS \$20000
02	6	II	17 MONTHS to 22 MONTHS	—	17-22 mos	10 YEARS \$20000

* (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. 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 9.94A750/753.

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

2.6 For the 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 03 (Possession Of A Controlled Substance - Methamphetamine).

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	\$5,780.62	Restitution to be paid to: State Farm Insurance, Claim #55-S836-825 - \$5,280.62 and Megan T. Lebov - \$500.00 <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
	\$ _____	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
	\$1.75	Sheriff Service Fees	SFR/SFS/SFW/WR F	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 \$ <u>850</u>	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 \$ _____. (JRL) 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 Megan T Lebov, State Farm Insurance including, but not limited to, personal, verbal, telephonic, electronic, written or contact through a third party for 10 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:

20 months on Count 01

20 months on Count 02

Actual number of months of total confinement ordered is: 20 months
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

The Confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

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

The 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 Offense, 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) The defendant shall receive credit for time served of 5 day, that confinement being solely under this cause number. RCW 9.94A.505.

4.6 **COMMUNITY CUSTODY** does not apply.

4.7 **WORK ETHIC CAMP** does not apply.

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

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

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

4.11 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.

4.12 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.

4.13 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

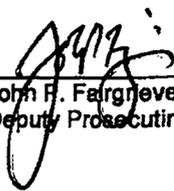
The crime(s) in count(s) _____ is/are one of the listed offenses in RCW 9.94A.030 (32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind,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

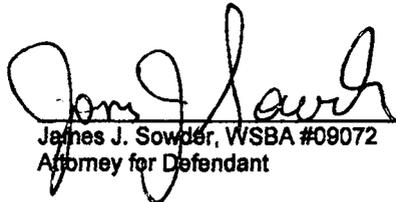
5.11 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: May 25, 2006


JUDGE OF THE SUPERIOR COURT

Print Name: Robert Harris


John F. Fairgrave, WSBA #23107
Deputy Prosecuting Attorney


James J. Sowder, WSBA #09072
Attorney for Defendant


CARL JOSEPH ANTUNEZ
Defendant

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

NO. 05-1-01229-3

v.

CARL JOSEPH ANTUNEZ,

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

Defendant.

SID: OR10403254

DOB: 2/2/1973

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	POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE	9A.56.140(1)/9A.56.150	2/15/2005 to 2/22/2005
02	MALICIOUS MISCHIEF IN THE FIRST DEGREE	9A.48.070(1)(a)	2/15/2005 to 2/22/2005

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	POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE	<i>20 months</i>
02	MALICIOUS MISCHIEF IN THE FIRST DEGREE	<i>20 months</i>

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

The defendant has credit for 5 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

Robert A. Hare

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE:

5-25-06

JOANNE McBRIDE, Clerk of the
Clark County Superior Court

By: *Joanne McBride*

Deputy



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: [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: _____

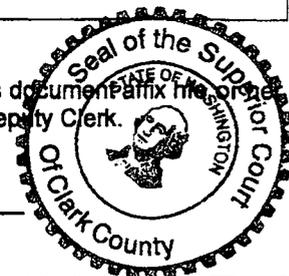
Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT CARL JOSEPH ANTUNEZ	
Alias name, DOB:	
SID No. OR10403254 (If no SID take fingerprint card for State Patrol)	Date of Birth 2/2/1973
Race: W	Sex: M
Driver License No. 5060846	Driver License State: OR
FBI No. 587495WA7	Local ID No. (CFN):
	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: [Signature], Deputy Clerk.

Dated: 5-25-06

DEFENDANT'S SIGNATURE: [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 CARL JOSEPH ANTUNEZ,
Defendant

No. 05-1-01229-3

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.
BURGLARY 1	MULTNOMAH/OR 94-11-37345		12/23/1994	1
THEFT 1	MULTNOMAH/OR 94-09-36126		12/23/1994	1
BURGLARY 1	MULTNOMAH/OR 94-09-36126		12/23/1994	1
THEFT 1	MULTNOMAH/OR 96-08-35852		10/10/1996	1
BURGLARY 1	MULTNOMAH/OR 96-08-35852		10/10/1996	1

12
13
14
15
16
17
18

19 The defendant committed a current offense while on community placement (adds one
20 point to score). RCW 9.94A.360. (5)

21 DATED this _____ day of May, 2006.

22
23 Defendant

24
25 Attorney for Defendant 9012

24
25 John P. Fairgrieve, WSBA#23107
Deputy Prosecuting Attorney

26
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

