

NO. 36423-9-II

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

COURT OF APPEALS
CLERK
08 JAN -2 PM 1:52
STATE OF WASHINGTON
DEPUTY *dn*

STATE OF WASHINGTON, Respondent

v.

AMY SUZANNE ZIMMER, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE ROBERT L. HARRIS
CLARK COUNTY SUPERIOR COURT CAUSE NO. 06-1-01661-1

BRIEF OF RESPONDENT

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

TABLE OF CONTENTS

I. STATEMENT OF FACTS	1
II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1	1
III. RESPONSE TO ASSIGNMENT OF ERROR NO. 2	8
IV. RESPONSE TO ASSIGNMENTS OF ERROR NO. 3 AND NO. 4	11
V. CONCLUSION.....	15

TABLE OF AUTHORITIES

Cases

<u>City of Seattle v. Eze</u> , 111 Wn.2d 22, 27, 759 P.2d 366 (1988).....	12
<u>City of Spokane v. Douglass</u> , 115 Wn.2d 171, 178, 795 P.2d 693 (1990).....	12
<u>In Re Personal Restraint of Cashaw</u> , 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994).....	14
<u>In Re Personal Restraint of Shepard</u> , 127 Wn.2d 185, 191, 898 P.2d 828 (1995).....	15
<u>State v. Bryant</u> , 89 Wn. App. 857, 865, 950 P.2d 1004 (1998).....	11
<u>State v. Bythrow</u> , 114 Wn.2d 713, 718, 790 P.2d 154 (1990).....	9
<u>State v. Cass</u> , 62 Wn. App. 793, 816 P.2d 617 (1991)	6, 7, 8
<u>State v. Fledebo</u> , 113 Wn.2d 388, 395, 779 P.2d 707 (1989).....	8
<u>State v. Hentz</u> , 32 Wn. App. 186, 189, 647 P.2d 39 (1982)	10
<u>State v. Hernandez</u> , 58 Wn. App. 793, 798, 794 P.2d 1327 (1990).....	9
<u>State v. Kirwin</u> , 137 Wn. App. 387, 153 P.3d 883 (2007).....	7, 8
<u>State v. Mendez</u> , 137 Wn.2d 208, 970 P.2d 722 (1999).....	7
<u>State v. Mennegar</u> , 114 Wn.2d 304, 314, 787 P.2d 1347 (1990), rejected on other grounds by <u>State v. Hill</u> , 123 Wn.2d 641, 645, 870 P.2d 313 (1994).....	6
<u>State v. Mote</u> , 129 Wn. App. 276, 120 P.3d 596 (2005).....	2, 3-4
<u>State v. Motter</u> , 139 Wn. App. 797, 162 P.3d 1190 (2007).....	12, 13-14, 15
<u>State v. Perea</u> , 85 Wn. App. 339, 343, 932 P.2d 1258 (1997).....	8
<u>State v. Rathbun</u> , 124 Wn. App. 372, 376-380, 101 P.3d 119 (2004).....	8
<u>State v. Russell</u> , 125 Wn.2d 24, 62, 882 P.2d 747 (1994).....	10
<u>State v. Smith</u> , 111 Wn.2d 1, 5, 759 P.2d 372 (1988)	12
<u>State v. Stroud</u> , 106 Wn.2d 144, 152, 720 P.2d 436 (1986).....	6, 8
<u>State v. Thorn</u> , 129 Wn.2d 347, 917 P.2d 108 (1996).....	2
<u>State v. Watkins</u> , 53 Wn. App. 264, 269, 766 P.2d 484 (1989).....	9

I. STATEMENT OF FACTS

The State agrees with the statement of facts as set forth by the defendant. Where additional information, or clarification, is needed, it will be provided 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 a claim that the trial court improperly denied the defendant's motion to suppress evidence. The argument here is that the officer illegally seized the defendant and that he conducted an illegal search of her vehicle upon the arrest of the passenger on an out-of-state warrant.

This matter was subject to a suppression hearing that was held on November 2, 2006. At the conclusion of that hearing, the court entered Findings of Fact and Conclusions of Law on Motion to Suppress Evidence Pursuant to CrR 3.6. (CP 192). A copy of those Findings are attached hereto and by this reference incorporated herein.

Not every contact between a police officer and a citizen is a seizure. Police officers are free to make contacts with citizens and ask questions, including asking for name or identification, under circumstances which do not amount to a seizure of the person. There are

numerous cases supporting this principle. State v. Thorn, 129 Wn.2d 347, 917 P.2d 108 (1996) is but one of the cases, but does contain a discussion of the guiding principles of law. In summary, those principles as articulated in that decision are as follows:

(1) The constitutional protection against unreasonable searches and seizures is not implicated with respect to a person approached by a law enforcement officer unless the encounter rises to the level of seizure.

(2) A person "seized" by a law enforcement officer, within the meaning of the Fourth Amendment, only if the person is restrained by means of physical force, or by a show of authority as determined by whether a reasonable person, under the totality of the circumstances, would have felt free to leave or otherwise refuse to answer the officer's questions and terminate the encounter. The focus of the inquiry is on whether the officer's conduct was coercive, not on whether the person's freedom of movement is confined due to circumstances independent of police action.

(3) The burden of proving that a seizure occurred is on the person alleging an unlawful seizure.

- State v. Thorn, 129 Wn.2d at 350-354.

In State v. Mote, 129 Wn. App. 276, 120 P.3d 596 (2005), a police officer pulled his patrol car up behind an occupied car that was legally parked on a residential street. He walked up to the driver's side window and requested identifying information from both occupants, who complied. A warrant check revealed that the defendant, who was in the

front passenger seat, had an outstanding warrant. The officer arrested and searched him finding methamphetamine on his person.

The defendant moved to suppress the evidence on the ground that he was illegally seized when the officer asked for his identification. The trial court denied his motion and held that he was not seized until he was arrested.

The Court of Appeals affirmed the trial court and made the following observations:

Not every encounter between a police officer and a private individual constitutes an official intrusion requiring objective justification. United States v. Mendenhall, 446 U.S. 544, 551-55, 100 S. Ct. 1870, 64 L.Ed. 2d 497 (1980). Article I, section 7 permits social contacts between police and citizens. Young, 135 Wn.2d at 511. An officer's mere social contact with an individual in a public place with a request for identifying information, without more, is not a seizure or an investigative detention. Young, 135 Wn.2d at 511; Mendenhall, 446 U.S. at 555; State v. Armenta, 134 Wn.2d 1, 11, 948 P.2d 1280 (1997). This is true even when the officer subjectively suspects the possibility of criminal activity but does not have suspicion justifying a Terry stop. O'Neill, 148 Wn.2d at 574-75. Police officers must be able to approach citizens and permissively inquire into whether they will answer questions as part of their "community caretaking" function. State v. Nettles, 70 Wn. App. 706, 712, 855 P.2d 699 (1993).

A seizure under Article 1, section 7 occurs only when an individual's freedom of movement is restrained and the individual would not believe that she is free to leave, or decline a request, due to an officer's use of physical force or display of authority. O'Neill, 148 Wn.2d at 574. This determination is made by looking objectively at the actions

of the law enforcement officer. Young, 135 Wn.2d at 501, 504-05, 510 (rejecting the mixed objective/subjective test adopted in California v. Hodari D., 499 U.S. 621, 111 S. Ct. 1547, 113 L. Ed. 2d 690 (1991), to determine whether a Fourth Amendment seizure occurred). This relevant question is whether a reasonable person in the individual's position would feel he or she was being detained. O'Neill, 148 Wn.2d at 581. "The reasonable person standard does not mean that when a uniformed law enforcement officer, with holstered weapon and official vehicle, approaches and asks questions, he had made such a show of authority as to rise to the level of a Terry stop." O'Neill, 148 Wn.2d at 581.

Examples of circumstances that might indicate a show of authority constituting a seizure would be: "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." Young, 135 Wn.2d at 512 (quoting Mendenhall, 446 U.S. at 554-55).

Absent such circumstances, inoffensive contact between the police and a private citizen cannot, as a matter of law, amount to a seizure of that person. Young, 135 Wn.2d at 512 (quoting Mendahall, 446 U.S. at 554-55).

- State v. Mote, 129 Wn. App. at 282-283.

At the suppression hearing, the defendant testified. Her recollection of events was that she had just put in a new transmission and the car was acting erratically. She had stopped to fix the driveline so she and her passenger could get home. (RP 34-35). She indicated that as she was doing this, the officer drove up and asked if they needed help. She told him no. He then asked their names which they gave to him. (RP 35).

She said that all this did not take very long and that while she was pulling out to leave, the officer had stopped her car and her initial recollection was that the officer approached the passenger, Mr. Taggart, first and removed him from her vehicle and then came to her side and told her that she needed to step out of the vehicle also. (RP 36). She did not recall him getting her driver's license. (RP 36, L.10-14). She does not discuss anywhere in her testimony that he was offensive or that he had done anything up to that point other than ask for her name.

On cross-examination, she was asked:

QUESTION (Deputy Prosecutor): So was it after Mr. Taggart was arrested, taken out of the vehicle and arrested, that Sergeant Slyter asked you for your driver's license?

ANSWER (the Defendant): Yeah.

(RP 38, L.4-7).

She further indicated on cross-examination that the only time she recalls him turning on his emergency or flashing lights was when she was attempting to leave. Up until that time, there was no indications of any problems. (RP 40-41). It was only after she had been asked to get out of the car and Mr. Taggart had been arrested, that any show of force or anything was being done to her. The initial contact between the defendant and Sergeant Slyter was not coercive or restrictive of any of her freedoms. Her later refusal in the face of threatened arrest demonstrates that she was

not coerced or restrained by the Sergeant's initial contact to see if she needed assistance or by his request for her name.

Once the officer learned of the existence of an outstanding arrest warrant, the officer then has the duty to arrest. State v. Mennegar, 114 Wn.2d 304, 314, 787 P.2d 1347 (1990), rejected on other grounds by State v. Hill, 123 Wn.2d 641, 645, 870 P.2d 313 (1994). Upon learning of the arrest warrant for Mr. Taggart, Sergeant Slyter therefore had authority to stop the defendant's vehicle from leaving in order to arrest Mr. Taggart.

Once Mr. Taggart had been arrested, Sergeant Slyter had the authority to search the vehicle in which he had been riding incident to his arrest. This authority to search did not depend on whether he was a driver or passenger in the vehicle. State v. Stroud, 106 Wn.2d 144, 152, 720 P.2d 436 (1986).

In State v. Cass, 62 Wn. App. 793, 816 P.2d 617 (1991), the defendant claimed that a search of her vehicle incident to the arrest of her passenger was not authorized. In affirming the conviction, the appellate court held that the Stroud court sought to eliminate any such case by case analysis because of the difficult burden it places on police officers who must make a decision to search with little more than a moments reflections. Stroud, 106 Wn. 2d at 151.

Finally, in the present case, Sergeant Slyter was justified in ordering the defendant to get out of the vehicle in order to allow his search of it. State v. Mendez, 137 Wn.2d 208, 970 P.2d 722 (1999) held that a police officer who has stopped a vehicle has authority to control the scene, including authority to order the driver or occupants to remain in the vehicle or to get out.

The defendant on page 17 of her brief argues that State v. Cass, supra, is “no longer good law and should be reversed.” Although the defendant goes into a lengthy discussion concerning this claim, no current case law is cited by her.

State v. Kirwin, 137 Wn. App. 387, 153 P.3d 883 (2007) is a Division II case dealing with the issues similar to ours. The defendant was driving when the police officer saw the passenger in his truck throw a beer can onto a sidewalk. The passenger was arrested for littering in violation of the Olympia municipal code. Upon searching the truck, the officer found controlled substances. The defendant, the driver, was convicted of one count of unlawful possession of controlled substance. On appeal, because the police officer saw the passenger throw the can from the vehicle, that gave the officer the authority to lawfully arrest the passenger for littering and to search the truck incident to that arrest.

Division II in analyzing the similar question raised here indicated “In the context of a vehicle search incident to arrest, the so called ‘automobile exemption’ to the warrant requirement, the vehicle is the object searched; thus, it must have been within the arrestee’s control immediately before or at the moment of arrest.” State v. Kirwin, 137 Wn. App. at 392; State v. Rathbun, 124 Wn. App. 372, 376-380, 101 P.3d 119 (2004); State v. Cass, 62, Wn. App. at 796-797.

The passenger compartment of an unlocked vehicle and any unlocked container therein are subject to search. State v. Stroud, 106 Wn.2d 144, 152, 720 P.2d 436 (1986); State v. Perea, 85 Wn. App. 339, 343, 932 P.2d 1258 (1997). A woman’s purse is not a locked container and is therefore subject to search at the time of the arrest. State v. Fledebo, 113 Wn.2d 388, 395, 779 P.2d 707 (1989).

The State submits that there has been no violation of the defendant’s rights and that the search was incident to an arrest and within the passenger compartment of a motor vehicle.

III. RESPONSE TO ASSIGNMENT OF ERROR NO. 2

The second assignment of error is a claim that the trial court should have granted a motion to sever counts 1 and 2.

The Camas Police Department arrested and searched the defendant’s truck on May 7, 2005. Some methamphetamine was

discovered and the Camas Police sent it to the Washington State Crime Lab. She was not placed in custody at that time. At some point the lab tests came back and the Camas Police Department posted her as a person to be arrested on probable cause basis for the possession of the methamphetamine on May 7, 2005. It was not until August 29, 2006, that the defendant was arrested in Camas and in searching her motor vehicle incident to that arrest, methamphetamine was discovered. This led to the two counts that were charged and that she went to trial on.

Defendants seeking severance have a burden of demonstrating that a trial involving both counts would be so manifestly prejudicial as to outweigh the concern for judicial economy. State v. Bythrow, 114 Wn.2d 713, 718, 790 P.2d 154 (1990). The appellate court reviews a trial court's refusal to sever charges for an abuse of discretion. State v. Bythrow, 114 Wn.2d at 717. In making this determination, the appellate court considers the following "prejudice – mitigating factors": (1) the strength of the State's evidence on each count; (2) the clarity of the defenses as to each count; (3) whether the trial court properly instructed the jury to consider the evidence of each crime; and (4) the admissibility of evidence of the other crimes. State v. Hernandez, 58 Wn. App. 793, 798, 794 P.2d 1327 (1990); State v. Watkins, 53 Wn. App. 264, 269, 766 P.2d 484 (1989).

In examining these factors, it is noted that:

(1) The strength of the State's evidence on each count – in each instance the methamphetamine was found in her vehicle.

(2) The clarity of the defense as to each count – the defendant maintained that the methamphetamine was not hers but she was not disputing that it was in fact methamphetamine.

(3) Whether the trial court properly instructed the jury to consider the evidence of each crime – the Court's Instructions to the Jury (CP 140) set forth in 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 any other count." (Court's Instructions to the Jury, CP 140, Instruction No. 2).

(4) The admissibility of evidence of the other crime – because the identical drug is used in both, it is arguable that, under ER 404(b), the evidence of drug possession may be admissible in both or either of the two trials if this matter were severed.

A trial court may join offenses under CrR 4.3(a)(2) where the offenses are of the same or similar character or where the offenses are based "on a series of acts connected together or constituting parts of a single scheme or plan." State v. Russell, 125 Wn.2d 24, 62, 882 P.2d 747 (1994). This rule is construed expansively to promote the public policy of conserving judicial and prosecutorial resources. State v. Hentz, 32 Wn. App. 186, 189, 647 P.2d 39 (1982). The underlying principle behind this rule ensures that the defendant receives a fair trial untainted by undue

prejudice. In deciding whether joinder was proper as a matter of law, the appellate court determines whether the defendant suffers any actual prejudice. State v. Bryant, 89 Wn. App. 857, 865, 950 P.2d 1004 (1998).

The defense in our case moved for severance on April 18, 2007. After argument, the court indicated “I don’t see the prejudice. Obviously the jury is going to be considering each of the cases separately, will be instructed as such. There is some overlap of the same witnesses and there is judicial economy being achieved in this matter.” (RP 57, L.3-7).

The State submits that the court was exercising its discretion appropriately in denying the motion for severance.

IV. RESPONSE TO ASSIGNMENTS OF ERROR NO. 3 AND NO. 4

The third and fourth assignments of error deal specifically with a provision in the Judgment and Sentence (CP 173) which indicates as follows:

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, police scanners, and hand held electronic scheduling and data storage devices.

(Judgment and Sentence, CP 173, page 8)

The defendant maintains that this particular provision of the defendant’s sentence is “hopelessly vague”. (Brief of Appellant, page 42).

Further, she maintains that this matter should be heard at this time and is ripe for decision.

A statute or condition is void of vagueness if it fails to define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prescribed. City of Spokane v. Douglass, 115 Wn.2d 171, 178, 795 P.2d 693 (1990). The appellate court presumes that statutes are constitutional and the defendant has a heavy burden of proving that a statute is unconstitutional beyond a reasonable doubt. State v. Smith, 111 Wn.2d 1, 5, 759 P.2d 372 (1988). The fact that some terms in a statute are not defined does not necessarily mean the statute or condition is void for vagueness. Douglass, 115 Wn.2d at 180. Impossible standards of specificity are not required, and a statute “is not unconstitutionally vague merely because a person cannot predict with complete certainty the exact point at which his actions would be classified as prohibited conduct.” City of Seattle v. Eze, 111 Wn.2d 22, 27, 759 P.2d 366 (1988).

The State submits that this identical argument and claim was raised recently in State v. Motter, 139 Wn. App. 797, 162 P.3d 1190 (2007). In the Motter case, the defendant challenged the identical provision of his judgment and sentence. He attacked it for vagueness and for the reasons also raised in this appeal. Division II, in the Motter case, indicated as follows:

B. Prohibition on Paraphernalia Possession and Use

Second, Motter challenges the trial court's order that he: 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. CP at 149. This condition does not order affirmative conduct. And, as demonstrated above, Motter's crime was related to his substance abuse. Thus, forbidding Motter from possessing or using controlled substance paraphernalia is a "crime-related prohibition" authorized under RCW 9.94A.700(5)(e). Thus, this condition is valid.

Motter argues that "almost any item can be used for the ingestion of controlled substances, such as knives, soda cans, or other kitchen utensils." Br. of Appellant at 29. A community custody condition may be void for vagueness if it fails to define specifically the activity that it prohibits. State v. Riles, 86 Wn. App. 10, 17-18, 936 P.2d 11 (1997), aff'd, 135 Wn.2d 326, 957 P.2d 655 (1998). But Motter fails to cite to authority and his argument consists of one unhelpful sentence in the context of a complex constitutional legal doctrine.

Moreover, Motter's challenge is not ripe. In State v. Massey, 81 Wn. App. 198, 200, 913 P.2d 424 (1996), the defendant challenged a condition that he submit to searches. This court held that the judicial review was premature until the defendant had been subjected to a search he thought unreasonable. And in State v. Langland, 42 Wn. App. 287, 292-93, 711 P.2d 1039 (1985), we held that the question of a law's constitutionality is not ripe for review unless the challenger was harmed by the law's alleged error. Here, Motter claims that the court order could prohibit his possession of innocuous items. But Motter has not been harmed by this potential for error and this issue therefore is not ripe for our review. It is not reasonable to require a trial court to list every item that may

possibly be misused to ingest or process controlled substances, items ranging from “pop” cans to coffee filters. Thus, we can review Motter's challenge only in context of an allegedly harmful application of this community custody condition. This argument is not properly before this court and we will not address it.

- Motter, 139 Wn. App. at 804.

The State submits that nothing has been added in this brief to undermine that Motter determination.

Finally, the defendant maintains that under the WAC provisions that this matter would not come back before the court nor would there be an opportunity for review of the conditions once they do become “ripe”. However, the State would submit that since this matter is not ripe at this time, that when it become ripe, the defendant would have the opportunity to file a personal restraint petition to seek some type of other relief at that time. It would not make any sense to forestall him at that point from raising it.

A petitioner who has had no previous or alternative avenue for obtaining state judicial review need only satisfy the requirements under RAP 16.4. E.g., In Re Personal Restraint of Cashaw, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994) (a personal restraint petition (PRP) challenging a decision of the Indeterminate Sentence Review Board concerning parole need not meet the threshold requirements for constitutional and

nonconstitutional errors because the policy of finality underlying those requirements is absent where the prisoner has had no previous or alternative avenue for obtaining state judicial review of the board decision); see also In Re Personal Restraint of Shepard, 127 Wn.2d 185, 191, 898 P.2d 828 (1995).

The State submits that Motter is the controlling case law and should be applied in this circumstance.

V. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 25 day of December, 2007.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By:


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

APPENDIX "A"

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON MOTION TO SUPPRESS EVIDENCE
PURSUANT TO CrR 3.6**

51

FILED
JUN 21 2007
Sherry W. Parker, Clerk, Clark Co.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

STATE OF WASHINGTON,
Plaintiff,
v.
AMY SUZANNE ZIMMER,
Defendant.

No. 06-1-01661-1

FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON MOTION
TO SUPPRESS EVIDENCE
PURSUANT TO CrR 3.6

THIS MATTER having come duly and regularly before the Court on the 2 day of November, 2006 for hearing on Defendant's Motion to Suppress Evidence pursuant to CrR 3.6, the Plaintiff, State of Washington appearing by and through Philip A. Meyers, Deputy Prosecuting Attorney for Clark County, Defendant Amy Zimmer appearing in person and with her attorney James Jeffrey Sowder, the Court having heard and considered the testimony of Sgt. Doug Slyter and the evidence presented, and the statements and arguments of counsel and the authorities presented, and having been fully advised, makes the following:

FINDINGS OF FACT

1. On May 7, 2005 at approximately 7:30 a.m. Camas Police Sergeant Slyter was driving on Crown Road. As he passed the access road to LaCamas Park he observed a pickup truck parked in front of the gate. The gate was closed and locked, and there

1 was a sign posted on the gate which said "No Parking/Fire Lane". The front of the truck
2 was facing the gate. There were two people under the truck. It appeared to Sgt. Slyter
3 that the truck may be broken down and the two, a man and a woman, were working on
4 it.

5 2. Sgt. Slyter stopped to ask if they needed assistance and to advise them that the
6 truck could not be left parked in front of the gate. He did not intend to detain them or
7 take any enforcement action such as issuing a citation. Sgt. Slyter was in uniform and
8 driving an unmarked SUV-style police vehicle which had emergency lights in the grill
9 and rear window but did not have an exterior overhead light bar.

10 3. There is an area around the gate which is large enough for several vehicles to
11 pull safely off the road without blocking the gate. Sgt. Slyter stopped in this area but did
12 not activate his emergency lights. He got out of his vehicle, approached the two people
13 and asked if they needed assistance. Defendant Zimmer told him the truck belonged to
14 her and that it was having mechanical problems. She said they did not need
15 assistance. Slyter observed that she was removing a section of the drive line which she
16 put into the back of the truck. Sgt. Slyter asked them their names. Both Defendant and
17 her male companion, Justyn Taggart, told him their names. Sgt. Slyter then returned to
18 his vehicle.

19 4. Sgt. Slyter did not recognize either of them on sight. However, he recognized
20 Taggart's name because of Taggart's past criminal contacts with his Department. He
21 radioed his police station and requested full names and birthdates for Defendant and
22 Taggart. He got Taggart's information, but was informed that there was no information
23 in his Department's records matching Defendant's name. Sgt. Slyter used the computer
24 terminal in his vehicle to conduct a check for warrants. As he was doing this, Defendant
25 and Taggart were gathering their tools and items into the truck and preparing to leave.
26 Sgt. Slyter learned that there was an outstanding warrant from Hood River, Oregon for
27 Justyn Taggart for probation violations on Burglary and Theft. The spelling of the name
on the warrant was slightly different than listed in Camas PD records but the physical

1 description matched Taggart and the alias information on the warrant was consistent
2 with Taggart's name as spelled in Camas PD records.

3 5. By that time Defendant and Taggart were in the truck. Defendant started to back
4 away from the gate. Slyter signaled to her by hand to stop the truck. Zimmer stopped.
5 Slyter approached the driver's side and asked Zimmer if she had a driver's license. She
6 gave him her license. He then went around to the passenger side of the vehicle and
7 asked Taggart if he had any warrants. Taggart said he did not think so. Slyter asked
8 him if he had ever been arrested in Hood River, and Taggart said yes. Sgt. Slyter then
9 arrested Taggart and put him in Officer Karosich's patrol car.

10 6. Sgt. Slyter returned to the pickup and asked Defendant to step out, as he
11 intended to search it incident to Taggart's arrest. Defendant refused, telling Slyter she
12 didn't think he had the right to search her vehicle. Sgt. Slyter told her he believed he did
13 have the authority to conduct the search, and told her several more times to step out of
14 the vehicle. He warned her that she would be arrested for obstructing if she refused to
15 get out. Sgt. Slyter asked Defendant if there was something in the truck that she didn't
16 want them to find. She replied that she had some "pot" (marijuana). Officer Karosich
17 ordered Defendant out again. She refused and gripped the steering wheel. Officer
18 Karosich and Sgt. Slyter took hold of her and pulled her from the vehicle. She was
19 arrested for Obstructing a Public Servant, handcuffed, advised of her Miranda warnings,
20 and placed in a patrol vehicle.

21 7. Sgt. Slyter then searched the pickup. He found a small nylon purse on the
22 driver's side floorboard. There was a bank card with Defendant's name on it in the
23 purse. There were also two small clear plastic bags containing a clear crystalline
24 substance, several syringes, three other small plastic bags with residue, and a small
25 plastic bag with marijuana. The crystalline material in the bags was tested and found to
26 contain methamphetamine.

27 8. Defendant was taken to the police station and again advised of her Miranda
rights, after which she admitted that the methamphetamine in the purse was for her

1 personal use. Taggart was booked into the Clark County Jail on the Oregon warrant.
2 Sgt Slyter released Defendant to await test results from the crime laboratory on the
3 items seized from Defendant.

4 9. The location of the incident is outside the city limits of Camas. The City of
5 Camas and Camas Police Department are parties to an interlocal mutual aid agreement
6 with the Clark County Sheriff's Office. The agreement gives Camas Police enforcement
7 authority in the area where the incident occurred. *DEFENDANT DISPUTES*

James J. Bourke

8
9 DISPUTED FACTS

10 There are ~~no~~ disputed facts. *DEFENDANT DISPUTES #9*
11 *THAT OFFICER SLYTER WAS COMMISSIONED* *JL*

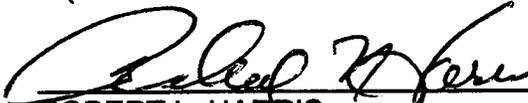
12 Based upon the foregoing Findings of Fact, the Court enters the following:

13 CONCLUSIONS OF LAW

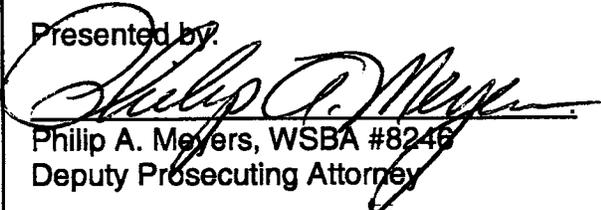
- 14 1. Sgt. Slyter's initial contact with Defendant and Taggart was not a seizure. The
15 contact was not coercive, or restrictive of her freedom. Defendant was not seized by
16 being asked for her name or asked if she needed assistance.
- 17 2. After learning of the existence of a warrant for Justyn Taggart, Sgt. Slyter had
18 authority and a duty to arrest Taggart and it was within his authority to stop the
19 Defendant from driving away in order to effect the arrest of Taggart.
- 20 3. Based upon the arrest of Taggart from the vehicle, Sgt. Slyter had authority to
21 search the vehicle incident to Taggart's arrest.
- 22 4. Defendant's refusal to get out of the vehicle, causing delay and requiring the
23 officers to use physical force to remove her, gave the officers probable cause to arrest
24 her for Obstructing.
- 25 5. Based upon her admission that there was marijuana in the vehicle, and her arrest
26 for obstructing the officers had authority to search the vehicle, including Defendant's
27 purse, incident to her arrest and the arrest of Taggart. The evidence found in
Defendant's purse and in the vehicle is therefore lawfully obtained.

1 Defendant's Motion to Suppress is therefore denied.

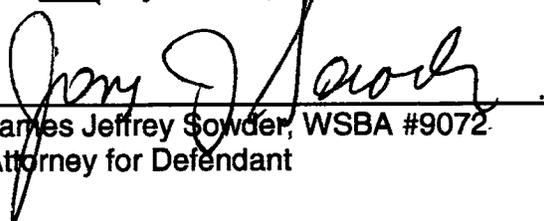
2
3 DONE in open Court this 21 day of June, 2007.

4 
5 ROBERT L. HARRIS
6 JUDGE OF THE SUPERIOR COURT

7 Presented by.

8 
9 Philip A. Meyers, WSBA #8246
10 Deputy Prosecuting Attorney

11 Copy received, approved for entry
12 this 21 day of June, 2007.

13 
14 James Jeffrey Sowder, WSBA #9072
15 Attorney for Defendant

APPENDIX "B"
AMENDED INFORMATION

FILED
OCT 17 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.
AMY SUZANNE ZIMMER
Defendant.

AMENDED INFORMATION

No. 06-1-01661-1
(CCSO 05-6523)
(CPD 06-2399)

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 A CONTROLLED SUBSTANCE - METHAMPHETAMINE - 69.50.4013(1)

That she, AMY SUZANNE ZIMMER, in the County of Clark, State of Washington, on or about May 7, 2005, did unlawfully possess a controlled substance, to-wit: Methamphetamine; contrary to Revised Code of Washington 69.50.4013(1).

And further, that this crime was a felony in the commission of which a motor vehicle was used, invoking the provisions of RCW 46.20.285. [MV]

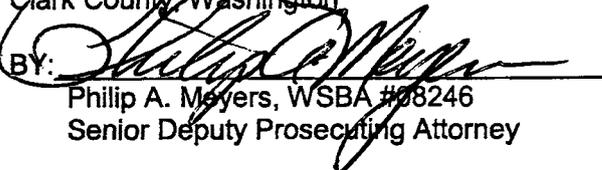
COUNT 02 - POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE - 69.50.4013(1)

That she, AMY SUZANNE ZIMMER, in the County of Clark, State of Washington, on or about August 29, 2006, did unlawfully possess a controlled substance, to-wit: Methamphetamine; contrary to Revised Code of Washington 69.50.4013(1).

And further, that this crime was a felony in the commission of which a motor vehicle was used, invoking the provisions of RCW 46.20.285. [MV]

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

Date: October 10, 2006

BY: 
Philip A. Meyers, WSBA #08246
Senior Deputy Prosecuting Attorney

9
a

DEFENDANT: AMY SUZANNE ZIMMER			
RACE: W	SEX: F	DOB: 12/13/1977	
DOL: ZIMMEAS231RL WA		SID: WA19155767	
HGT: 507	WGT: 190	EYES: HAZ	HAIR: BRO
WA DOC: 800686		FBI: 203891KB5	
LAST KNOWN ADDRESS(ES):			
H - 2906 SE 293RD AVE, WASHOUGAL WA 98671			

CCSO FUND 1015

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

APPENDIX "C"
FELONY JUDGMENT AND SENTENCE

C.15.

SOWDER

S5

FILED
JUN 05 2007

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

07-9-03566-3

STATE OF WASHINGTON, Plaintiff,

v.

AMY SUZANNE ZIMMER, aka AMY SUZANNE JENSEN,
Defendant.

SID: WA19155767
DOB: 12/13/1977

No. 06-1-01661-1

FELONY JUDGMENT AND SENTENCE
(FJS)

SPECIAL DRUG OFFENDER SENTENCING
ALTERNATIVE

PRISON NON-PRISON

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 April 19, 2007,
by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
01	POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	69.50.4013(1)	5/7/2005
02	POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	69.50.4013(1)	8/29/2006

(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 as 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.

51

- 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 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) _____

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	I - D	12 MONTHS to 24 MONTHS			5 YEARS \$10,000
02	6	I - D	12 MONTHS to 24 MONTHS			5 YEARS \$10,000

* (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 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 9.94A.750/753.

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.

4 SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

RTN/RJN	\$ _____	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
	\$ _____	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
	\$ _____	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	\$ 750.00 \$ _____	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	\$2,000.00	Drug fund contribution to be paid within two (2) years Fund # <input checked="" type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)		RCW 9.94A.760
CLF	\$100.00	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 defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

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 _____ including, but not limited to, personal, verbal, telephonic, electronic, written or contact through a third party for _____ 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 **SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE.** RCW 9.94A.660. The court finds that the defendant is a drug offender who is eligible for the special sentencing alternative and the court has determined that the special drug offender sentencing alternative is appropriate. The court waives imposition of a sentence within the standard range and imposes the following sentence:

(A) **PRISON-BASED ALTERNATIVE** (effective for sentences imposed on or after October 1, 2005):

(1) **CONFINEMENT.** Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC) (half of the midpoint of the standard range):

12 months of total confinement in the custody of DOC.
Confinement shall commence immediately unless otherwise set forth here: _____

Work release is authorized, if eligible and approved. If the midpoint of the standard range is 24 months or less, no more than three months may be served in work release status. RCW 9.94A.731.

The defendant shall receive 48 days of credit for time served prior to sentencing which is confinement that was solely under this cause number. RCW 9.94A.505.

(2) **COMMUNITY CUSTODY.** Defendant shall serve 9 months in community custody. (The remainder of the midpoint of the standard range.) The defendant shall comply with the community custody conditions in paragraph 4.6.

(B) **RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED ALTERNATIVE** (effective for sentences imposed on or after October 1, 2005)(Midpoint of the standard range must be less than 24 months.).

(1) Defendant shall serve _____ months in community custody (A term equal to one-half of the midpoint of the standard range or two years, whichever is greater) under the supervision of the Department of Corrections (DOC), on the condition that the defendant enters and remains in residential chemical dependency treatment certified under chapter 70.96A RCW for _____ (must be for 3-6) months.

(2) The defendant shall comply with the community custody conditions in paragraph 4.6. DOC shall make chemical dependency assessment and treatment services available to the defendant during the term of community custody, within available funding.

(3) A progress hearing is set for _____ (date).
A treatment termination hearing is scheduled for three months before the expiration of the term of community custody, on _____ (date), or to be set later.

4.6 **COMMUNITY CUSTODY.** Defendant shall report to the Department of Corrections, 210 West 11th Street, Vancouver, Washington and the Superior Court Clerk Collections Unit at 500 West 8th Street, Suite 50, Vancouver, Washington not later than 24 hours after release from custody. A map has been provided to the defendant containing the location of the Department of Corrections and the Superior Court Clerk Collections Unit. The defendant shall comply with the instructions, rules and regulations of

the Department for the conduct of the defendant during the period of community custody, shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department, shall obey all laws, shall not use illegal controlled substances and shall comply with any other conditions of community custody stated in this Judgment and Sentence. The defendant must report any changes in address and phone numbers to DOC and the Collections Unit within 72 hours of moving.

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 supervision/community custody and any other conditions stated in this Judgment and Sentence.

- Undergo and successfully complete a substance abuse treatment program approved by the division of alcohol and substance abuse of the Department of Social and Health Services.
- Undergo urinalysis or other testing to monitor drug-free status. The defendant shall pay the statutory rate to the Department, while on community custody, to offset the cost of urinalysis.
- Pay all court-ordered legal financial obligations.
- Report as directed to a community corrections officer
- Notify the court or community corrections officer in advance of any change in defendant's address or employment.
- Remain within outside of specified geographical boundary, to wit:
as specified by DOC
- 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)).
- Devote time to specific employment or training.
- The conditions of community supervision/community custody shall begin immediately or upon the Defendant's release from confinement unless otherwise set forth here:

- 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 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.

4.7 ADDITIONAL CONFINEMENT UPON VIOLATION OF SENTENCE CONDITIONS. If the defendant violates any of the sentence conditions in Section 4.6 above, or, for offenses committed on or after June 8, 2000, is found by the United States attorney general to be subject to a deportation order, a violation hearing shall be held by the department, unless waived by the offender. If the department finds that the conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. For offenses committed on or after June 8, 2000, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence. An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of the sentence as ordered by the sentencing judge and shall be subject to all rules relating to community custody and earned release time. An offender who violates any conditions of supervision as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of sentence as ordered by the sentencing judge. If an offender is reclassified to serve the unexpired term of the sentence, the offender shall be subject to all rules relating to earned release time. RCW 9.94A.660.

(b) CONFINEMENT ORDERED AT THE TREATMENT TERMINATION HEARING (effective for sentences imposed on or after October 1, 2005). At the treatment termination hearing, the court may impose a term of total confinement equal to one-half of the midpoint of the standard sentence range. Confinement imposed at the hearing shall be followed by the term of community custody in paragraph 4.8. Within available funding, DOC shall make chemical dependency assessment and treatment services available to the defendant during the terms of total confinement and community custody.

4.8 ADDITIONAL TERM OF COMMUNITY CUSTODY UPON FAILURE TO COMPLETE OR TERMINATION FROM ALTERNATIVE PROGRAM. (a) For offenses committed on or after June 8, 2000, the following term of community custody is ordered and shall be imposed upon the defendant's failure to complete or

defendant's administrative termination from the special drug offender sentencing alternative program (b) (effective for sentences imposed on or after October 1, 2005) For a defendant sentenced under the residential chemical dependency treatment-based alternative, the following term of community custody is ordered after the term of total confinement imposed at the treatment termination hearing. Defendant shall serve a range from 9 to 12 months in community custody. While on 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 custody. All conditions imposed in paragraph 4.6 are incorporated by reference as if full set forth herein and shall be imposed as conditions herein.

4.9 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:

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

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

4.12 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.

4.13 Other:

5 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-WITHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602.

Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 RESTITUTION HEARING.

Defendant waives any right to be present at any restitution hearing (sign initials): _____

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634

5.6 FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The 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:

_____	months on Count 01
_____	months on Count 02

5.8 The court finds that Counts 1 and 2 are 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.

01 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.

02 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

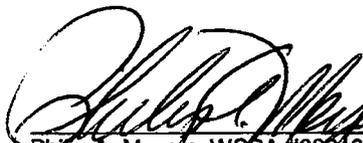
The crime(s) in count(s) _____ is/are one of the listed offenses in RCW 9.94A.030 (32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind,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

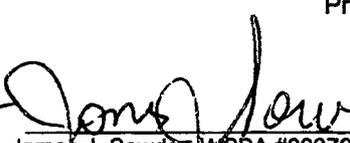
5.11 OTHER: _____

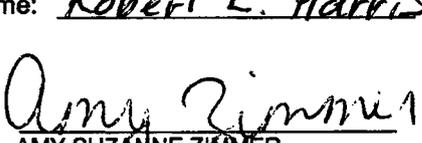
DONE in Open Court and in the presence of the defendant this date: June 5, 2007


JUDGE OF THE SUPERIOR COURT

Print Name: Robert L. Harris


Philip A. Meyers, WSBA #08246
Deputy Prosecuting Attorney


James J. Sowder, WSBA #09072
Attorney for Defendant


AMY SUZANNE ZIMMER
Defendant

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 AMY SUZANNE ZIMMER,
Defendant

No. 06-1-01661-7

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:

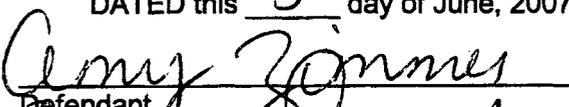
11

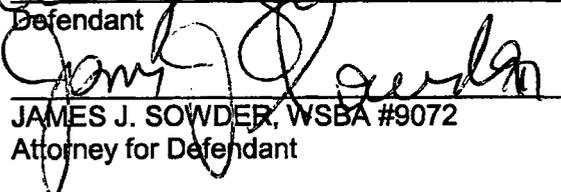
CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
PCS METHAMPHETAMINE	SKAMANIA/WA 99-1-00005-4	1/22/1999	9/16/1999	1
PCS MORPHINE	CLARK/WA 99-1-01723-4	10/11/1999	10/23/2001	1
PCS METHAMPHETAMINE	CLARK/WA 99-1-01723-4	10/11/1999	10/23/2001	same
BAIL JUMP ON CLASS B/C FELONY	CLARK/WA 00-1-01759-6	9/15/2000	10/23/2001	1
PCS METHAMPHETAMINE	CLARK/WA 00-1-01759-6	9/30/2000	10/23/2001	1
PCS METHAMPHETAMINE	CLARK/WA 01-1-02240-7	9/28/2001	3/4/2002	1

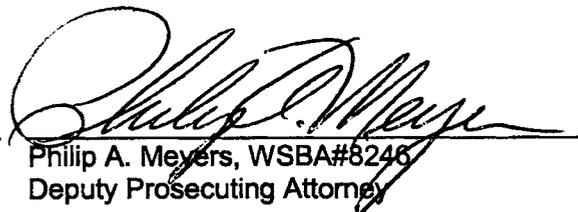
12
13
14
15
16
17
18
19
20

21 The defendant committed a current offense while on community placement (adds one
point to score). RCW 9.94A.525.

22 DATED this 5 day of June, 2007.

23
24 
Defendant

25
26 
JAMES J. SOWDER, WSBA #9072
Attorney for Defendant

27
28 
Philip A. Meyers, WSBA#8246
Deputy Prosecuting Attorney

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

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

NO. 06-1-01661-1

v.

AMY SUZANNE ZIMMER, aka AMY SUZANNE
JENSEN,

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

Defendant.

SID: WA19155767
DOB: 12/13/1977

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 A CONTROLLED SUBSTANCE - METHAMPHETAMINE	69.50.4013(1)	5/7/2005
02	POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	69.50.4013(1)	8/29/2006

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 A CONTROLLED SUBSTANCE - METHAMPHETAMINE	12 months
02	POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	12 months

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

The defendant has credit for 48 days served.

And these presents shall be authority for the same.

HEREIN FAIL NOT.

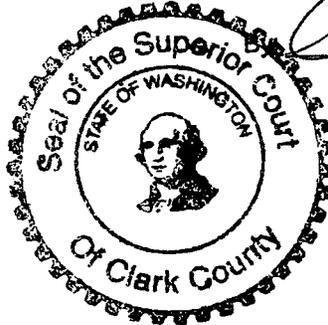
WITNESS, Honorable

Sherry W. Parker

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

6/5/07

SHERRY W. PARKER, Clerk of the
Clark County Superior Court



Christopher Miller
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: *Amy Zimmer* 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, SHERRY W. PARKER, 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.

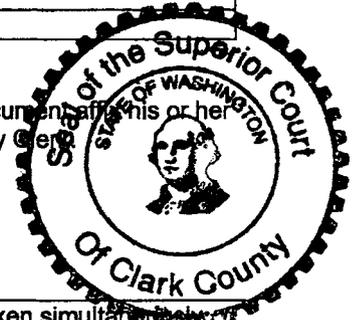
WITNESS my hand and seal of the said Superior Court affixed this date: _____

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

IDENTIFICATION OF DEFENDANT AMY SUZANNE ZIMMER	
Alias name, DOB: AMY SUZANNE JENSEN	
SID No. WA19155767 (If no SID take fingerprint card for State Patrol)	Date of Birth 12/13/1977
Race: W	Sex: F
Driver License No. ZIMMEAS231RL	Driver License State: WA
FBI No. 203891KB5	Local ID No. (CFN): 142136
	Corrections No. 800686
Other _____	

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix this or her fingerprints and signature thereto. Clerk of the Court: *Sherry W. Parker* Deputy Clerk
Dated: 01/15/07

DEFENDANT'S SIGNATURE: *Amy Zimmer*



Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously

