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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

DEPUTY

NO. 39264-0-II

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

STATE OF WASHINGTON, Respondent

v.

BRENT CURTIS MOORE, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE JOHN F. NICHOLS
CLARK COUNTY SUPERIOR COURT CAUSE NO.09-1-00297-5

BRIEF OF RESPONDENT

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I. STATEMENT OF FACTS

The Court of Appeals granted the State's motion to supplement the Clerk's Papers with the Findings of Fact and Conclusions of Law dealing with a suppression hearing that was held on April 15, 2009. That matter is being designated at this time, but the Findings of Fact clearly set forth the factual scenario. It is not anticipated that there is any conflict with these facts. A copy of the Findings of Fact and Conclusions of Law for Suppression Hearing held 15 April, 2009 is attached hereto and by this reference incorporated herein.

II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1

The first assignment of error raised by the defendant is that the court improperly denied the defendant's motion to suppress the evidence. The claim by the defendant is that the stopping of the defendant was in fact a seizure.

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. State v. Young, 135 Wn.2d 498, 511, 957 P.2d 681 (1998). 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. State v. O'Neill, 148 Wn.2d 564, 574, 62 P.3d 489 (2003). 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 I, 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). The 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 has 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 Mendenhall, 446 U.S. at 554-55); State v. Harrington, 144 Wn. App. 558, 183 P.3d 352 (2008); State v. Afana, 147 Wn. App. 843, 196 P.3d 770 (2008); State v Mitchell, 145 Wn. App. 1, 186 P.3d 1071 (2008).

A situation similar to ours was discussed in State v. Nettles, 70 Wn. App. 706, 855 P.2d 699 (1993):

We now turn to an analysis of the facts of this case. Officer Wong did not approach Nettles and his companion with either siren or patrol lights. When exiting her car she did not draw her gun. She addressed Nettles and his companion in a normal voice when requesting to speak with them. Until Nettles voluntarily discarded a plastic baggie of cocaine, Wong made no attempt to stop Nettles'

companion, who continued to walk away after she asked to speak with both men. This alone is a forceful indication that neither individual was required to or felt compelled by the circumstances to stop. Officer Wong made no attempt to immobilize Nettles – she did not request and retain his identification and she did not direct him to place his person in any particular location or position, such as hands on the patrol car, that would have implied a loss of freedom to a reasonable person. There is nothing to indicate that he could not have declined to speak to her or approach her car.

...

Moreover, in the interest of promoting public safety, the encounter between Nettles and Officer Wong should not be characterized as a seizure. As a part of their "community caretaking" function, police officers must be able to approach citizens and permissively inquire as to whether they will answer questions. In furtherance of this function, it is not unreasonable to permit a police officer in the course of an otherwise permissive encounter to ask an individual to make his hands visible, particularly under the circumstances of this case. Such a request, by itself, does not immobilize an individual who has voluntarily agreed to speak with a police officer, does not produce property which an officer's possession of would immobilize the individual, and does not produce any incriminating evidence. Thus, the trial court properly concluded that the encounter between Officer Wong and Nettles never rose to the level of a seizure.

-(State v. Nettles, 70 Wa App at 711; 712)

As the Findings of Fact entered by the trial court clearly indicate, both officers testified that their intent was to initiate a social contact. (Deputy Dunham, RP 6, L12-13; Deputy Granneman, RP 20, L1-5). The officers did not do anything provocative or do anything that would

indicate to a defendant that he did not have a right to leave. The situation started to change when the officer asked the defendant to remove his hand from his pocket, and at which time, as the defendant did that, he threw a small white baggie out of his hand and away from his person. (RP 20-22). Also at that time the defendant provided identification and it was determined that the defendant had a felony warrant for his arrest. (RP 22).

The bottom line is that, as Deputy Granneman testified at the suppression hearing:

QUESTION (Deputy Prosecutor): Okay. And, Deputy Granneman, when you – when you got out of your car next to the defendant, at that point or when you pulled over what exactly was your intent with him?

ANSWER (Deputy Granneman): It was just to talk to him, just a social contact, a common part of my job.

-(RP 23, L12-17)

III. RESPONSE TO ASSIGNMENTS OF ERROR NOS. 2 & 3

The issue raised deals with a provision of the Judgment and Sentence based on a finding of Possession of a Controlled Substance - Methamphetamine and imposing community custody conditions which include the following:

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 or data storage devices.

-(Portion of Judgment and Sentence, page 8 – CP 57)

Generally, as part of any sentence, the sentencing judge may impose and enforce crime-related prohibitions and affirmative conditions. RCW 9.94A.505(8). A crime-related prohibition is “an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted” RCW 9.94A.030(13). State v. Cayenne, 165 Wn.2d 10, 14, 195 P.3d 521 (2008).

The Court reviews the imposition of community custody conditions for abuse of discretion and will reverse only if the trial court's decision is manifestly unreasonable or based on untenable grounds. State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993).

The defendant maintains that this particular provision of the defendant’s sentence is “hopelessly vague”. (Brief of Appellant, page 14). Further, he 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 was raised and rejected 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)

In State v. Bahl, 164 Wn.2d 739, 193 P.3d 678 (2008) the Supreme Court held that a pre-enforcement challenge to a community custody condition prohibiting the possession of pornographic material was ripe for review. The Supreme Court found that the pre-enforcement challenge was ripe because a prohibition on possessing pornography implicates First Amendment rights and thus, dealt with a purely legal issue that courts could resolve on the present record without the need for additional facts to aid in the court's inquiry. Bahl, 164 Wn.2d at 752-753.

Bahl further suggested that the following test for appellate courts should be used in determining whether a community custody condition challenge is sufficiently ripe for review: 1. The issues raised are primarily legal, 2. Determination of these issues requires no further factual inquiry; and 3. The challenged action is final.

Applying this test to our situation, the State submits that the defendant's challenge is not ripe for review. In Bahl, the prohibition dealt with possession of pornographic materials which implicated First Amendment rights. But here, the defendant bases his vagueness challenge on a due process argument, which does not implicate the First Amendment. When a vagueness challenge does not involve a First Amendment right, the court evaluates it in light of the facts of each particular case. City of Spokane v. Douglass, 115 Wn.2d 171, 182, 795

P.2d 693 (1990). An inquiry into whether the community custody paraphernalia condition is unconstitutionally vague, as applied to this defendant, is premature unless or until he can show that the conditions actually caused him harm. Because he has not yet been released from confinement and placed on community custody, he cannot show that this condition causes him harm.

Further, if a case can be decided on nonconstitutional grounds, the court should decline to consider the constitutional issues. State v. Hirschfelder, 148 Wn. App. 328, 199 P.3d 1017, 1028 (2009). The State submits that the community custody paraphernalia condition of the sentence is not unconstitutionally vague. The issue is not ripe for review. State v. Valencia, 148 Wn. App. 302, 198 P.3d 1065 (2009).

There is a vast difference between a community custody condition, as in Bahl which barred possession of pornography and a community custody condition at issue here which prohibited possession of drug paraphernalia. The defendant cannot assert any specific facts inviting review of whether the facts dealing with possession of drug paraphernalia meet a statutory definition of drug paraphernalia under RCW 69.50.102(a) nor can he argue that he has a specific factual context in which this challenge can be reviewed. As the court in Bahl noted, “ripeness is an appropriate doctrine to apply when deciding whether a pre-enforcement

vagueness challenge is premature and applying the ripeness doctrine can help identify the cases where a more developed factual record is necessary before a decision on the constitutionality of the sentencing conditions can be made.” Bahl, 164 Wn.2d at 749.

This is apparent when we review the community custody prohibition of possessing drug paraphernalia which requires proof of the defendant’s intent to use ordinary household objects to ingest or to facilitate the sale or transfer of illegal drugs. Any analysis of this intent is going to require additional factual determinations which, obviously, cannot be made while the defendant is still incarcerated. Community custody conditions will not begin to operate until the defendant is out of custody, operating in the real world, and, at that point, this issue may become germane if the community corrections officers decide to impose the conditions. It would only be at that stage where the defendant can suffer any type of significant hardship. If the defendant can show actual harm once he is released on community custody, he would likely have standing to file a personal restraint petition raising this issue at that time. RAP 16.4; In re Personal Restraint of Shepard, 127 Wn.2d 185, 191, 898 P.2d 828 (1995).

As indicated by Division II in State v. Valencia, 148 Wn. App.

302, 198 P.3d 1065 (2009):

Second, Sanchez and Sanchez Valencia's community custody conditions prohibit them from processing drug paraphernalia. And, unlike pornography, a court's determination of whether Sanchez or Sanchez Valencia have been provided sufficient warning of what items they are prohibited from possessing necessarily rests on a factual record demonstrating the manner in which they used or possessed the item alleged to violate the prohibition. For example, a soda pop can used for its intended purpose is not drug paraphernalia. But when the same soda pop can is modified for use as a pipe to ingest illegal drugs, it becomes drug paraphernalia. Thus, whether Sanchez and Sanchez Valencia's community custody condition prohibits them from possessing an item such as a can of soda pop depends on how they modify it for a different use or intend to use the item. And a reviewing court cannot make that determination without context. Because a more developed factual record is necessary to resolve Sanchez and Sanchez Valencia's vagueness challenge, they fail to satisfy the second prong of the Bahl issue maturity test.

Finally, because an innocent object does not transform itself into drug paraphernalia absent a person's intention to use it to ingest illegal drugs, withholding review of the constitutionality of the conditions at issue does not cause Sanchez and Sanchez Valencia significant hardship. In contrast, requiring that the trial court anticipate all future unlawful modifications or potential illegal uses of otherwise innocuous items before lawfully conditioning a convicted drug offender's release on avoiding such unlawful conduct poses a significant and likely insurmountable hardship. We agree, as the dissent suggests, that citation to statutes and infractions defining "drug paraphernalia" like RCW 69.50.102 and RCW 69.50.4121(1)(a)-(m) can assist in defining the phrase. We note, however, that, because these statutory lists are not exclusive, Sanchez and Sanchez Valencia's vagueness

challenge remains. Their arguments demand an exhaustive and exclusive list of prohibited items the law does not require. Because it is not possible for the sentencing court to anticipate unlawful modifications and uses of otherwise lawful innocuous items, the validity of an alleged violation is necessary fact-based. Sanchez and Sanchez Valencia's challenge is premature and not ripe for review.

Bahl does not disturb the second limitation to vagueness challenges of community custody conditions: that "[i]mpossible standards of specificity' are not required since language always involves some degree of vagueness." 164 Wn.2d at 759 (internal quotation marks omitted) (quoting State v. Halstein, 122 Wn.2d 109, 118, 857 P.2d 270 (1993)). And a community custody condition "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). While a greater degree of specificity is required when a community custody condition implicates First Amendment rights, such as a prohibition on possessing pornography, there is no corresponding First Amendment right to possess drug paraphernalia. Bahl, 164 Wn.2d at 757-58; see City of Tacoma v. Luvone, 118 Wn.2d 826, 842-44, 827 P.2d 1374 (1992) (city ordinance prohibiting soliciting, enticing, inducing, or procuring another to exchange, buy, sell, or use drug paraphernalia did not reach into arena of constitutionally protected First Amendment conduct).

In Motter, we reasoned that "[i]t is not reasonable to require a trial court to list every item that may possibly be misused to ingest or process controlled substances." 139 Wn. App. at 804. Following Motter, we hold that the trial court is not required to list every drug paraphernalia item Sanchez and Sanchez Valencia are prohibited from possessing. The condition is sufficiently specific to notify Sanchez and Sanchez Valencia that they shall not use or possess drug paraphernalia. The fact that many legitimate items may be used to ingest or sell drugs does not make this condition unconstitutionally vague, because an item is not

drug paraphernalia if possessed for its intended, lawful use. This is particularly true when the condition lists several common items that Sanchez and Sanchez Valencia are prohibited from possessing.

-(State v. Valencia, 148 Wn. App. at 320-322)

IV. CONCLUSION

The State submits that the inoffensive contact between the police and a private citizen cannot, as a matter of law, amount to a seizure of that person. As the trial court found the seizure did not occur until after the defendant discarded the contraband and it was discovered he had a felony warrant out for him.

The State further submits that the sentence condition is not ripe for review. It does not implicate first amendment constitutional rights and as such there is a strong likelihood that it would require additional facts to determine whether or not there has been a violation of a condition.

DATED this 24 day of Nov., 2009.

Respectfully submitted:

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By:


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Senior Deputy Prosecuting Attorney

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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.

BRENT CURTIS MOORE

Defendant.

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW FOR SUPPRESSION HEARING
HELD 15 APRIL 2009**

No. 09-1-00297-5

THIS MATTER having come before the above-entitled Court for a Criminal Rule 3.6 Motion to Suppress Evidence on 15 April 2009, the Defendant being personally present and represented by his trial attorney of record, David Schultz, and the Plaintiff being represented by Jeff McCarty, Deputy Prosecuting Attorney for Clark County, State of Washington, and the Court having heard and considered testimony, physical evidence, and pleadings and argument of counsel in this case, now enters the following:

I. FINDINGS OF FACT

1. This act occurred in Clark County, Washington.
2. Two law enforcement officers, Deputy Granneman and Deputy Dunham, while on patrol, saw the defendant walking down the street around midnight.
3. The officers did not observe any criminal conduct or violations. Both officers testified that their intent was to initiate a social contact.
4. The officers pulled their patrol car over near the defendant. The officers did not activate the siren or overhead lights, *but did turn a spotlight on him.*

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FOR SUPPRESSION HEARING HELD 15 APRIL 2009 - 1

KD

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Handwritten initials/signature

- 1 5. Deputy Granneman stepped out of the patrol car and asked the defendant to talk with
- 2 him. Deputy Granneman was approximately 10-15 feet away from the defendant at
- 3 this time, *and did have his hand on his sidearm.* *JH*
- 4 6. Deputy Granneman observed the defendant quickly turn his body away from the
- 5 officers and place his right hand into his right hip pocket.
- 6 7. Deputy Granneman told the defendant to remove his hand from his pocket.
- 7 8. Deputy Granneman saw the defendant take his hand out of his pocket. As the
- 8 defendant removed his hand, Deputy Granneman saw a white baggie fly out of his
- 9 hands.
- 10 9. Deputy Granneman detained the defendant at this point. Deputy Granneman did not
- 11 place the defendant in handcuffs. Deputy Granneman did frisk the defendant for
- 12 weapons and requested identification. The defendant provided identification and the
- 13 deputies learned that he had an outstanding warrant for his arrest. Deputy
- 14 Granneman placed the defendant under arrest.
- 15 10. Deputy Granneman recovered the item that the defendant threw from his pocket.
- 16 The item was located approximately two feet from where the defendant was standing
- 17 when first contacted.
- 18 11. The recovered item was a plastic baggie containing a white, crystalline substance.
- 19 12. The substance was seized as evidence and sent to the Washington State Patrol
- 20 Crime Lab.
- 21 13. The substance was tested by a forensic scientist and proven to be
- 22 methamphetamine.

II. CONCLUSIONS OF LAW

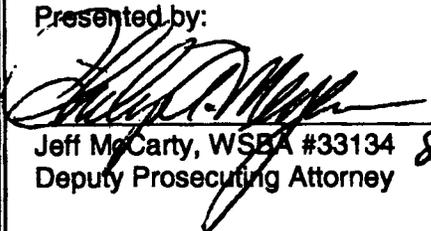
- 25 (1) The deputies' initial intent was to conduct a social contact with a citizen they
- 26 observed walking down the street.
- 27 2. The initial request to talk to the defendant did not constitute a seizure.

- 1 3. Deputy Granneman ordered the defendant to take his hand out of his pocket for
2 officer safety purposes.
- 3 4. The command ordering the defendant to take his hand out of his pocket did not
4 constitute a seizure.
- 5 5. The deputies seized the defendant after they observed him throw the baggie from
6 his pocket.
- 7 6. The deputies were justified in seizing the defendant for investigative purposes after
8 observing him throw the baggie from his pocket.
- 9 7. The Court finds that the defendant's rights were not violated, and the evidence
10 recovered is admissible.

11
12 Done in open court this 6 day of ^{Nov.} October, 2009.

13
14 
15 THE HONORABLE JOHN NICHOLS
16 JUDGE OF THE SUPERIOR COURT

16 Presented by:

17 
18 Jeff McCarty, WSBA #33134 8246
19 Deputy Prosecuting Attorney

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18 David Schultz, WSBA #33796
19 Attorney for Respondent

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29 FINDINGS OF FACT AND CONCLUSIONS OF LAW
FOR BENCH TRIAL HELD 27 OCTOBER 2008 - 3

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10 C

SCHULTZ

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Sherry W. Parker, Clerk, Clark Co.

1:41 pm

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,
v.
BRENT CURTIS MOORE,
Defendant.
SID: WA18781303
DOB: 9/12/1972

No. 09-1-00297-5

FELONY JUDGMENT AND SENTENCE
(FJS)

PRISON - COMMUNITY
PLACEMENT/COMMUNITY CUSTODY

Clerk's action required;

Paragraph 4.5 (SDOSA), 4.2,
 5.3, 5.6 and 5.8

09-9-02958-9

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 15, 2009
by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
01	POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	69.50.4013(1)	2/8/2009

(If the crime is a drug offense, include the type of drug in the second column.)
as charged in the 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 that the offense was **predatory** was returned on Count(s) _____ RCW 9.94A._____.
- A special verdict/finding that the **victim was under 15 years of age** at the time of the offense was returned on Count(s) _____ RCW 9.94A._____.

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- A special verdict/finding that the **victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult** at the time of the offense was returned on Count(s) _____ RCW 9.94A.____, 9A.44.010.
- A special verdict/finding of **sexual motivation** was returned on Count(s) _____ RCW 9.94A.835.
- 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.
- 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.
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act (VUCSA)** 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.
- 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 Adul. 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	11	I - D	12 MONTHS to 24 MONTHS		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, (SM) Sexual motivation, RCW 9.94A.533(8).

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*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

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

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.750/753.

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

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

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

III. JUDGMENT

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

3.2 The Court DISMISSES Counts _____

The defendant is found NOT GUILTY of Counts _____

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

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

RTN/RJN	\$ _____	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 7.88.035
	\$ _____	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/WR F RCW 10.01.160 and 36.18.040
	\$ 250.00	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	\$ 800.00	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
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- The above financial obligations do not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.750/753. A restitution hearing:
- shall be set by the prosecutor
 - is scheduled for _____

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

The Department of Corrections/Superior Court Clerk Collections Unit shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the Superior Court Clerk and on a schedule established by the Department of Corrections/Superior Court Clerk Collections Unit, commencing immediately, unless the court specifically sets forth the rate here:

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

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

In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate of \$ _____ RCW 9.94A.760

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160. The defendant shall pay the cost of services to collect unpaid legal financial obligations. This is an annual fee which will be automatically renewed until financial obligations are completed. RCW 9.94A.780 and RCW 36.18.190

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

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

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

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).

A Supplemental Domestic Violence Protection Order, Antiharassment No Contact Order, or Sexual Assault Protection Order is filed with the Judgment and Sentence.

The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$ _____.

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 (DOC):

19 days/months on Count 01

Actual number of months of total confinement ordered is: 19 months
(Add mandatory firearm and deadly weapons and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

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

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with a juvenile present 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:

concurrent to DOC sanction

Confinement shall commence immediately unless otherwise set forth here: _____

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

Count	minimum term	maximum term
01		

(c) Credit for 70 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced. RCW 9.94A.505

4.6 **COMMUNITY PLACEMENT** is ordered on Counts _____ for _____ months

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

COMMUNITY CUSTODY is ordered on Counts 1 for a range from 9 to 12 months or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See

RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Community custody follows a term for a sex offense --RCW 9.94A.505. Use paragraph 4.7 to impose community custody following work ethic camp.]

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

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

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at Department of Corrections-approved education, employment and/or community service; (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by the Department of Corrections; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections and (8) for sex offenses, submit to electronic monitoring if imposed by Department of Corrections. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall be on community placement/community custody under the charge of the Department of Corrections and shall follow and comply with the instructions, rules and regulations promulgated by said Department for the conduct of the defendant during the period of community placement/community custody and any other conditions stated in this Judgment and Sentence. The defendant's conditions of Community Placement/Community Custody include the following:

- The defendant shall not consume any alcohol.
- Defendant shall have no contact with _____
- Defendant shall remain within outside of a specified geographical boundary, to wit: _____
- Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school if the offense was committed on or after July 24, 2005. (RCW9.94A.030(8)).
- The defendant shall participate in the following crime-related treatment or counseling services: _____
- Defendant shall not violate any federal, state or local criminal laws, and shall not be in the company of any person known by him/her to be violating such laws.
- Defendant shall not commit any like offenses.
- Defendant shall notify his/her community corrections officer within forty-eight (48) hours of any arrest or citation.
- Defendant shall not initiate or permit communication or contact with persons known to him/her to

be convicted felons, or presently on probation, community supervision/community custody or parole for any offense, juvenile or adult, except immediate family or as authorized by his/her community corrections officer for treatment purposes. Additionally, the defendant shall not initiate or permit communication or contact with the following persons:

-
- Defendant shall not have any contact with other participants in the crime, either directly or indirectly.
 - Defendant shall not initiate or permit communication or contact with persons known to him/her to be substance abusers.
 - Defendant shall not possess, use or deliver drugs prohibited by the Uniform Controlled Substances Act, or any legend drugs, except by lawful prescription. The defendant shall notify his/her community corrections officer on the next working day when a controlled substance or legend drug has been medically prescribed.
 - Defendant shall not possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, 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 parenting program as established by the community corrections officer and/or the treatment facility.
 - Defendant shall participate in a domestic violence perpetrator program as approved under RCW 26:50.150 and fully comply with all recommended treatment. RCW 9.94A.505 (11).
 - Based upon the Pre-Sentence Report, the court finds reasonable grounds to exist to believe the defendant is a mentally ill person, and this condition was likely to have influenced the offense. Accordingly, the court orders the defendant to undergo a mental status evaluation and participate in outpatient mental health treatment. Further, the court may order additional evaluations at a later date, if deemed appropriate.
 - Treatment shall be at the defendant's expense and he/she shall keep his/her account current if it is determined that the defendant is financially able to afford it.
 - Defendant shall submit to urine, breath or other screening whenever requested to do so by the treatment program staff and/or the community corrections officer.
 - Defendant shall not associate with any persons known by him/her to be gang members or associated with gangs.
 - Defendant shall not wear or display any clothing, apparel, insignia or emblems that he/she knows are associated with or represent gang affiliation or membership as determined by the community corrections officer.

- Defendant shall not possess any gang paraphernalia as determined by the community corrections officer.
- Defendant shall not use or display any names, nicknames or monikers that are associated with gangs.
- Defendant shall comply with a curfew, the hours of which are established by the community corrections officer.
- Defendant shall attend and successfully complete a shoplifting awareness educational program as directed by the community corrections officer.
- Defendant shall attend and successfully complete the Victim Awareness Educational Program as directed by the community corrections officer.
- Defendant shall not accept employment in the following field(s):

- Defendant shall not possess burglary tools.
- Defendant's privilege to operate a motor vehicle is suspended/revoked for a period of one year, two years if the defendant is being sentenced for a vehicular homicide.
- Defendant shall not operate a motor vehicle without a valid driver's license and proof of liability insurance in his/her possession.
- Defendant shall not possess a checkbook or checking account.
- Defendant shall not possess any type of access device or P.I.N. used to withdraw funds from an automated teller machine.
- Defendant shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections.
- Defendant shall not be eligible for a Certificate of Discharge until all financial obligations are paid in full and all conditions/requirements of sentence have been completed including no contact provisions.
- Defendant shall not enter into or frequent business establishments or areas that cater to minor children without being accompanied by a responsible adult. Such establishments may include but are not limited to video game parlors, parks, pools, skating rinks, school grounds, malls or any areas routinely used by minors as areas of play/recreation.
- Defendant shall not have any unsupervised contact with minors. Minors mean persons under the age of 18 years.
- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a sexual deviancy treatment program as established by the community corrections officer and/or the treatment facility. Defendant shall not change sex offender treatment providers or treatment conditions without first notifying the Prosecutor, community corrections officer and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. "Cooperate with" means the offender shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity.
- Defendant shall, at his or her own expense, submit to periodic polygraph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody.
- Defendant shall, at his or her own expense, submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of

community placement/custody. Copies of the examination results shall be provided to the Prosecuting Attorney's Office upon request.

- Defendant shall not possess or use any pornographic material, defined as any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult or child human genitals: provided however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition as defined in RCW 9.68.130(2), or any equipment of any kind used for sexual gratification and defendant shall not frequent establishments that provide such materials or equipment 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.
- For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.
- Defendant shall adhere to the following additional crime-related prohibitions or conditions of community placement/community custody:

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

- 4.8 The Bail or release conditions previously imposed are hereby exonerated and the clerk shall disburse it to the appropriate person(s).
- 4.9 This case shall not be placed on inactive or mail-in status until all financial obligations are paid in full.
- 4.10 When there is a reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections can conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purposes of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned and possessed by the defendant.
- 4.11 Other:

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090

- 5.2 **LENGTH OF SUPERVISION** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten (10) years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A505(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): BM
- 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.

- 1. General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.
- 2. Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business 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.
- 3. Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must send signed 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 signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed 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 send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.
- 4. Additional Requirements Upon Moving to Another State:** If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints,

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

5. Notification Requirement When Enrolling In or Employed by a Public or Private Institution of Higher Education or Common School (K-12): 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. (Effective September 1, 2006) If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have 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. Within 48 hours excluding weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. 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. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

7. Reporting Requirements for Persons Who Are Risk Level II or III: If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

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

5.8 The court finds that Count _____ 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. The clerk of the court is further directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to 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

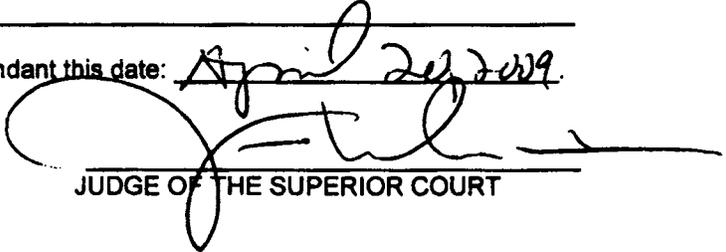
The crime(s) in count(s) _____ is/are "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind,

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.

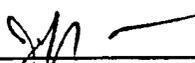
5.11 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: April 22, 2009



JUDGE OF THE SUPERIOR COURT

Print Name: John F. Nichols



Jeffrey P. McCarty, WSBA #33134
Deputy Prosecuting Attorney



David Schultz, WSBA #33796
Attorney for Defendant



BRENT CURTIS MOORE
Defendant

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

NO. 09-1-00297-5

v.

BRENT CURTIS MOORE,

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

Defendant.

SID: WA18781303

DOB: 9/12/1972

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)	2/8/2009

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	19 Days Months

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

The defendant has credit for 70 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:

concurrent to DC sentence

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable



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

4-20-09

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

By: Sarah Vignani
Deputy



CAUSE NUMBER of this case: 09-1-00297-5

VOTING RIGHTS STATEMENT: 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: Brent Moore

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.

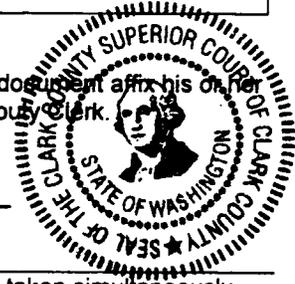
WITNESS my hand and seal of the said Superior Court affixed this date: _____

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

IDENTIFICATION OF DEFENDANT BRENT CURTIS MOORE	
Alias name, SSN, DOB:	
SID No. WA18781303 (If no SID take fingerprint card for State Patrol)	Date of Birth 9/12/1972
Race: W	Sex: M
Driver License No. MOORE-BC-283OK	Driver License State: WA
FBI No. 967925FB5	Local ID No. (CFN): 131195
	Corrections No. 782405
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: Sherry W. Parker, Deputy Clerk.
Dated: 4-20-09

DEFENDANT'S SIGNATURE: Brent Moore



Left four fingers taken simultaneously Left Thumb Right Thumb Right four fingers taken simultaneously



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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 BRENT CURTIS MOORE,
Defendant

No. 09-1-00297-5

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

9 COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.441 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:

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CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
BURGLARY 1 W/SEXUAL MOTIVATION	CLARK/WA 98-1-00180-1	1/28/1998	6/11/1998	1
FORGERY	CLARK/WA 00-1-01050-8	5/9/2000	7/24/2000	1
TAKING MOTOR VEHICLE W/O PERMISSION	CLARK/WA 00-1-02287-5	12/14/2000	2/8/2001	1
THEFT 1	CLARK/WA 01-1-01215-1	7/9/2001	8/13/2001	1
FORGERY	CLARK/WA 02-1-00886-1	5/6/2002	5/23/2002	1
THEFT 2	CLARK/WA 04-1-00017-3	12/19/2003	2/2/2004	1
FAILING TO REGISTER AS SEX OFFENDER	CLARK/WA 05-1-02654-5	9/1/2005	1/24/2006	1
CRIMINAL IMPERSONATION 1	CLARK/WA 05-1-02718-5	10/21/2005	3/2/2006	1
CONT SUB-POSS NO PRESCRIPTION	CLARK/WA 07-1-00882-9	5/13/2007	7/30/2007	1
POSSESSION OF CONTROLLED SUBSTANCE - METHAMPHETAMINE	CLARK/WA 08-1-00184-9	1/31/2008	3/24/2008	1

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

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29 DECLARATION OF CRIMINAL HISTORY
Revised 9/14/2000

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

DATED this 20 day of April, 2009.

Drew Moore

Defendant

David Schultz

David Schultz, WSBA#33796
Attorney for Defendant

Jeffery P. McCarty

Jeffery P. McCarty, WSBA#33134
Deputy Prosecuting Attorney

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