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COURT OF APPEALS
DIVISION III

10 FEB -4 AM 11:29

NO. 39485-5-II

STATE OF WASHINGTON

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

DEPUTY

STATE OF WASHINGTON, Respondent

v.

JAMES PHILLIP ATKINSON, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE JOHN F. NICHOLS
CLARK COUNTY SUPERIOR COURT CAUSE NO.09-1-00040-9

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
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I. STATEMENT OF FACTS

The defendant went to trial on an Amended Information (CP 15) charging, among other crimes, the felony of Harassment (Felony – Death Threats) (Domestic Violence), which purportedly occurred on or about January 3, 2009.

The jury found him guilty of the felony harassment and he was sentenced on that matter on June 12, 2009. (Felony Judgment and Sentence, CP 117).

The jury instructions that were prepared and submitted without objection were contained in The Court's Instructions to the Jury (CP 68). In those jury instructions, No. 21 was the elements instruction for the crime of Harassment. However, the crime of Harassment that was instructed on was the gross misdemeanor only.

II. RESPONSE TO ASSIGNMENTS OF ERROR

RCW 9A.46.020 deals with the crime of Harassment. Normally the crime of Harassment is a gross misdemeanor unless there is a death threat involved. (A copy of RCW 9A.46.020 is attached hereto and by this reference incorporated herein). The defendant was put on notice that this was a death threat allegation and the defendant was sentenced by the court on a death threat allegation, but the jury was instructed on the gross

misdemeanor only. That is, the elements that the jury was instructed on dealt with bodily injury or substantially harming the victim with respect to her physical health or safety.

A “to convict” instruction must contain all elements of the charged crime because the instruction dictates how the jury measures the evidence to determine guilt or innocence. State v. Smith, 131 Wn.2d 258, 263, 930 P.2d 917 (1997); State v. Emmanuel, 42 Wn.2d 799, 819-820, 259 P.2d 845 (1953). In our case, the “to convict” instruction dealt exclusively with the gross misdemeanor. In fact, the definition of the crime given in instruction No. 20 also is the definition for gross misdemeanor and not the felony. Further, the definitions of “threat” under Instruction No. 22 and “reasonable fear” under No. 23 also only deal with the gross misdemeanor standard.

The State agrees that the jury was not properly instructed on the elements of the felony, but only on the elements of a gross misdemeanor.

It’s of note that the defendant was convicted of Burglary in the First Degree and Malicious Mischief in the Second Degree. Further, the defendant was also found guilty by special verdict of use of a deadly weapon other than a firearm in the commission of the Burglary I. It is the State’s position that there’s nothing in this appeal that is questioning or requesting overturning of the other convictions that the jury found.

III. CONCLUSION

The State agrees with the defense that the jury was improperly instructed as relates to Count 3, Harassment (Felony – Death Threats). The defendant should be returned to the Superior Court for resentencing on misdemeanor Harassment and the other felonies since this affects his point totals.

DATED this 1 day of Feb, 2010.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By:


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

§ 9A.46.020. Definition -- Penalties

(1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) To cause physical damage to the property of a person other than the actor; or

(iii) To subject the person threatened or any other person to physical confinement or restraint; or

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

(2) (a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.

(b) A person who harasses another is guilty of a class C felony if either of the following applies: (i) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order; or (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person.

(3) The penalties provided in this section for harassment do not preclude the victim from seeking any other remedy otherwise available under law.

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9:12
Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

v.

JAMES PHILLIP ATKINSON

Defendant.

AMENDED INFORMATION

No. 09-1-00040-9

(CCSO 09-119)

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 - BURGLARY IN THE FIRST DEGREE - 9A.52.020

That he, JAMES PHILLIP ATKINSON, in the County of Clark, State of Washington, on or about January 3, 2009, with intent to commit a crime against a person or property therein, did enter or remain unlawfully in the building of Fail Zelkanovic, located at 6811 NE 121st Avenue #H69, and, in entering or while in the building or in immediate flight therefrom, the defendant or another participant in the crime was armed with a deadly weapon; contrary to Revised Code of Washington 9A.52.020(1)(a).

This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(29), RCW 9.94A.030(33), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

And further, that the defendant, or an accomplice, did commit the foregoing offense while armed with a deadly weapon as that term is employed and defined in RCW 9.94A.602 and RCW 9.94A.533(4), to-wit: a knife.

COUNT 02 - ASSAULT IN THE SECOND DEGREE - 9A.36.021

/9A.36.021(1)(c)/9A.36.021(1)(c)

That he, JAMES PHILLIP ATKINSON, in the County of Clark, State of Washington, on or about January 3, 2009, did knowingly and intentionally assault Fail Zelkanovic, a human being, with a deadly weapon, to-wit: a knife; contrary to Revised Code of Washington 9A.36.021(1)(c).

And further, that the defendant, or an accomplice, did commit the foregoing offense while armed with a deadly weapon as that term is employed and defined in RCW 9.94A.602 and RCW 9.94A.533(4), to-wit: a knife.

This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(29), RCW 9.94A.030(33), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

AMENDED INFORMATION - 1
CC

Domestic Violence Prosecution Center
210 East 13th Street
P.O. Box 1995
Vancouver Washington 98660
(360) 487-8530

29

1 **COUNT 03 - HARASSMENT (FELONY - DEATH THREATS) (DOMESTIC VIOLENCE) -**
2 **10.99.020 /9A.46.020(1)(a)(i)/9A.46.020(2)(b)(ii)**

3 That he, JAMES PHILLIP ATKINSON, in the County of Clark, State of Washington, on or about
4 January 3, 2009, knowingly and without lawful authority, did threaten to kill another,
5 immediately or in the future, to-wit: Shyler Sigsbee, or any other person; and the
6 Defendant, by words or conduct, placed the person threatened in reasonable fear that
7 the threat would be carried out, contrary to Revised Code of Washington
8 9A.46.020(1)(a)(i) and (2)(b)(ii).

9 And further, that this crime was committed by one family or household member against another,
10 and that this is a domestic violence offense as defined by RCW 10.99.020 and within the
11 meaning of RCW 9.41.040. [DV]

12 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
13 standard sentencing range based upon the following aggravating circumstance(s):

14 The current offense involved domestic violence, as defined in RCW 10.99.020, and the following
15 was present: (ii) The offense occurred within sight or sound of the victim's or the offender's
16 minor children under the age of eighteen years. RCW 9.94A.535(3)(h).

17 **COUNT 04 - MALICIOUS MISCHIEF IN THE SECOND DEGREE - 9A.48.080(1)(a)**

18 That he, JAMES PHILLIP ATKINSON, in the County of Clark, State of Washington, on or about
19 January 3, 2009, did knowingly and maliciously cause physical damage in an amount
20 exceeding two hundred fifty dollars (\$250.00) to the property of another, to-wit: Damage
21 to Fail Zukanovic's door; contrary to Revised Code of Washington 9A.48.080(1)(a).

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

25 Date: May 8, 2009

26 BY:



27 Daniel A. Gasperino, WSBA #35626
28 Deputy Prosecuting Attorney

29 DEFENDANT: JAMES PHILLIP ATKINSON			
RACE: W	SEX: M	DOB: 9/23/1984	
DOL: ATKINJP164O3 WA		SID: WA18764867	
HGT: 506	WGT: 140	EYES: BRO	HAIR: BRO
WA DOC:		FBI:	
LAST KNOWN ADDRESS(ES):			
H - 4626 NE ST JAMES RD #A, VANCOUVER WA 98663			

40.

FILED

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Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

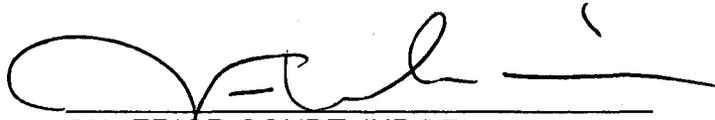
v.

JAMES PHILLIP ATKINSON,

Defendant.

No. 09-1-00040-9

COURT'S INSTRUCTIONS TO THE JURY



SUPERIOR COURT JUDGE

May 12, 2009

DATE

35

INSTRUCTION NO. 1

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

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

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

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

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

it in reaching your verdict. Do not speculate whether the evidence would have favored one party or the other.

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

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

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

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

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

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

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

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

INSTRUCTION NO. 2

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

INSTRUCTION NO. 3

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

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

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

INSTRUCTION NO. 4

The evidence that has been presented to you may be either direct or circumstantial. The term "direct evidence" refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term "circumstantial evidence" refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 5

Certain evidence has been admitted in this case for only a limited purpose. This evidence consists of prior bad acts of the defendant, and may be considered by you only for the purpose of Shyler Sigbee's state of mind while the threats were being made. You may not consider it for any other purpose. Any discussion of the evidence during your deliberations must be consistent with this limitation.

INSTRUCTION NO. 6

You may give such weight and credibility to any alleged out-of-court statements of the defendant as you see fit, taking into consideration the surrounding circumstances.

INSTRUCTION NO. 7

A person commits the crime of burglary in the first degree when he or she enters or remains unlawfully in a building with intent to commit a crime against a person or property therein, and if, in entering, or while in the building, or in immediate flight therefrom, that person is armed with a deadly weapon.

INSTRUCTION NO. 7

To convict the defendant of the crime of burglary in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about January 3, 2009 the defendant entered or remained unlawfully in a building;
- (2) That the entering or remaining was with intent to commit a crime against a person or property therein;
- (3) That in so entering, or while in the building, or in immediate flight from the building the defendant in the crime charged was armed with a deadly weapon; and
- (4) That these acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 9

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

INSTRUCTION NO. 10

Building, in addition to its ordinary meaning, includes any dwelling.

Each unit of a building consisting of two or more units separately secured or occupied is a separate building.

INSTRUCTION NO. 11

Dwelling means any building or structure, or a portion thereof, that is used or ordinarily used by a person for lodging.

INSTRUCTION NO. 12

A person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein. This inference is not binding upon you and it is for you to determine what weight, if any, such inference is to be given.

INSTRUCTION NO. 13

A person "enters" or remains unlawfully in or upon premises when he or she is not then licensed, invited, or otherwise privileged to so enter or remain.

INSTRUCTION NO. 14

The term premises includes any building or dwelling.

INSTRUCTION NO. 15

The term "enter" includes the entrance of the person, or the insertion of any part of the person's body, or any instrument or weapon held in the person's hand and used or intended to threaten or intimidate another person, or to detach or remove property.

INSTRUCTION NO. 16

Deadly weapon means any weapon or instrument which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm.

INSTRUCTION NO. 17

A person commits the crime of assault in the second degree when he or she assaults another with a deadly weapon.

INSTRUCTION NO. 18

To convict the defendant of the crime of assault in the second degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about January 3, 2009, the defendant assaulted Fail Zelkanovic with a deadly weapon; and

(2) That this act occurred in the State of Washington.

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

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

INSTRUCTION NO. 19

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

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

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

INSTRUCTION NO. 20

A person commits the crime of harassment when he or she, without lawful authority, knowingly threatens to cause bodily injury immediately or in the future to another person; and when he, by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

INSTRUCTION NO. 21

To convict the defendant of the crime of harassment, each of the following four elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about January 3rd, 2009, the defendant knowingly threatened:

(a) to cause bodily injury immediately or in the future to Shyler Sigsbee, or

(b) maliciously to do any act which was intended to substantially harm Shyler Sigsbee with respect to her physical health or safety;

(2) That the words or conduct of the defendant placed Shyler Sigsbee in reasonable fear that the threat would be carried out;

(3) That the defendant acted without lawful authority; and

(4) That the threat was made or received in the State of Washington.

If you find from the evidence that elements (2), (3), and (4), any of the alternative elements (1)(a), or (1)(b) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (1)(a), or (1)(b) has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), or (4), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 22

Threat means to communicate, directly or indirectly, the intent to cause bodily injury in the future to the person threatened or to any other person; or to do any other act that is intended to harm substantially the person threatened or another with respect to that person's health, or safety.

To be a threat, a statement or act must occur in a context or under such circumstances where a reasonable person, in the position of the speaker, would foresee that the statement or act would be interpreted as a serious expression of intention to carry out the threat rather than as something said in jest or idle talk.

INSTRUCTION NO. 23

"Reasonable fear" is fear that a reasonable person who is of the same gender as the person threatened would have, under all the circumstances.

INSTRUCTION NO. 24

For purposes of this case, "family or household members" means spouses, former spouses, adult persons who are presently residing together or who have resided together in the past, or a person sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship.

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

INSTRUCTION NO. 25

A person commits the crime of malicious mischief in the second degree when he knowingly and maliciously causes physical damage to the property of another in an amount exceeding \$250.

INSTRUCTION NO. 26

To convict the defendant of the crime of malicious mischief in the second degree, each of the following three elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about January 3, 2009, the defendant caused physical damage to the property of another in an amount exceeding \$250;
- (2) That the defendant acted knowingly and maliciously; and
- (3) That this act occurred in the State of Washington.

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

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

INSTRUCTION NO. 27

"Physical damage," in addition to its ordinary meaning, includes any diminution in the value of any property as the consequence of any act.

INSTRUCTION NO. 28

The term "property of another" includes property co-owned by the defendant.

INSTRUCTION NO. 29

Property means anything of value.

INSTRUCTION NO. 30

A person knows or acts knowingly or with knowledge with respect to a fact, circumstance, or result when he or she is aware of that fact, circumstance, or result. It is not necessary that the person know that the fact, circumstance, or result is defined by law as being unlawful or an element of a crime.

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

When acting knowingly is required to establish an element of a crime, the element is also established if a person acts intentionally.

INSTRUCTION NO. 31

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

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

INSTRUCTION NO. 32

A person acts willfully when he or she acts knowingly.

INSTRUCTION NO. 33

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

INSTRUCTION NO. 34

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

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

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

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

You will be given the exhibits admitted in evidence, these instructions, and verdict forms for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

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

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror must sign the verdict forms and notify the bailiff. The bailiff will bring you into court to declare your verdict.

INSTRUCTION NO. 35

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon at the time of the commission of the crime in Count 01 - BURGLARY I N THE FIRST DEGREE.

A person is armed with a deadly weapon if, at the time of the commission of the crime, the weapon is easily accessible and readily available for offensive or defensive use. The State must prove beyond a reasonable doubt that there was a connection between the weapon and the defendant. The State must also prove beyond a reasonable doubt that there was a connection between the weapon and the crime. In determining whether these connections existed, you should consider, among other factors, the nature of the crime and the circumstances surrounding the commission of the crime, including the location of the weapon at the time of the crime, and the type of weapon.

A knife having a blade longer than three inches is a deadly weapon. A deadly weapon is an implement or instrument that has the capacity to inflict death and, from the manner in which it is used, is likely to produce or may easily produce death. Whether a knife having a blade less than three inches long is a deadly weapon is a question of fact that is for you to decide.

INSTRUCTION NO. 36

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon at the time of the commission of the crime in Count 02 – ASSAULT IN THE SECOND DEGREE.

A person is armed with a deadly weapon if, at the time of the commission of the crime, the weapon is easily accessible and readily available for offensive or defensive use. The State must prove beyond a reasonable doubt that there was a connection between the weapon and the defendant. The State must also prove beyond a reasonable doubt that there was a connection between the weapon and the crime. In determining whether these connections existed, you should consider, among other factors, the nature of the crime and the circumstances surrounding the commission of the crime, including the location of the weapon at the time of the crime, and the type of weapon.

A knife having a blade longer than three inches is a deadly weapon. A deadly weapon is an implement or instrument that has the capacity to inflict death and, from the manner in which it is used, is likely to produce or may easily produce death. Whether a knife having a blade less than three inches long is a deadly weapon is a question of fact that is for you to decide.

15C

George Brintnall

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2009 JUN 12 PM 3:06

Sherry W. Parker, Clerk
Clark County

**Superior Court of Washington
County of Clark**

State of Washington, Plaintiff,

vs.

JAMES PHILLIP ATKINSON,
Defendant.

SID: WA18764867
If no SID, use DOB: 9/23/1984

No. 09-1-00040-9

Felony Judgment and Sentence (FJS)

Prison RCW 9.94A.712 Prison Confinement
 Clerk's Action Required, para 4.5 (SDOSA),
4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

09-9-4482-1

I. Hearing

1.1 The court conducted a sentencing hearing this date; 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, in accordance with the proceedings in this case, the court **Finds:**

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon

guilty plea jury-verdict bench trial:

Count	Crime	RCW	Date of Crime
01	BURGLARY IN THE FIRST DEGREE	9A.52.020	1/3/2009
03	HARASSMENT (FELONY - DEATH THREATS) - DOMESTIC VIOLENCE	10.99.020/9A.46.020(1)(a)(i)/9A.46.020(2)(b)(ii)	1/3/2009
04	MALICIOUS MISCHIEF IN THE SECOND DEGREE	9A.48.080	1/3/2009

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

Additional current offenses are attached in Appendix 2.1.

The jury returned a special verdict or the court made a special finding with regard to the following:

The defendant is a sex offender subject to indeterminate sentencing under **RCW 9.94A.712**.

The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count ____ RCW 9.94A.____.

The offense was predatory as to Count ____ RCW 9.94A.836.

The victim was under 15 years of age at the time of the offense in Count ____ RCW 9.94A.837.

*Felony Judgment and Sentence (FJS)(Prison)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2007))*

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- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.
- The defendant acted with **sexual motivation** in committing the offense in Count _____. 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.
- The defendant used a **firearm** in the commission of the offense in Count _____. RCW 9.94A.602, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count 01. RCW 9.94A.602, 9.94A.533.
- Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took 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.
- 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** in Count _____, RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant committed **vehicular homicide** **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crime(s) charged in Count 03 involve(s) **domestic violence**. RCW 10.99.020.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (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):

<i>Crime</i>	<i>Date of Sentence</i>	<i>Sentencing Court (County & State)</i>	<i>Date of Crime</i>	<i>A or J Adult, Juv.</i>	<i>Type of Crime</i>
See attached criminal history					

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The following prior offenses require that the defendant be sentenced as a **Persistent Offender** (RCW 9.94A.570):
- 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:

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	3	VII	31 MONTHS to 41 MONTHS	(D)	55 TO 65 MONTHS	LIFE \$50,000
03	2	III	4 MONTHS to 12 MONTHS		4 MONTHS to 12 MONTHS	5 YEARS \$10,000
04	2	I	2 MONTHS to 5 MONTHS		2 MONTHS to 5 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), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9).

Additional current offense sentencing data is attached in Appendix 2.3.

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

2.4 Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

within below the standard range for Count(s) _____.

above the standard range for Count(s) _____.

The defendant and 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, found by the court after the defendant waived jury trial, found by jury, by special interrogatory.

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

2.5 Ability to Pay Legal Financial Obligations. The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

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 defendant is found **Not Guilty** of Counts 02 (ASSAULT IN THE SECOND DEGREE).

The court **Dismisses** Counts _____.

IV. Sentence and Order

It is Ordered:

4.1a The defendant shall pay to the clerk of this court:

JASS CODE
RTN/RJN

\$ \$643.79 Restitution to FAIL ZELKANOVIC (\$643.79)

PCV \$ 500.00 Victim assessment RCW 7.68.035

\$ 100.00 Domestic Violence assessment RCW 10.99.080

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

Criminal filing fee \$ 200.00 FRC
 Witness costs \$ _____ WFR
 Sheriff service fees \$ _____ SFR/SFS/SFW/WRF
 Jury demand fee \$ _____ JFR
 Extradition costs \$ _____ EXT
 Other \$ _____

PUB \$ _____ Fees for court appointed attorney RCW 9.94A.760

\$ _____ Trial per diem, if applicable

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

FCM/MTH \$ 500.00 Fine RCW 9A.20.021; VUCSA chapter 69.50 RCW, VUCSA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/FCD \$ _____ Drug enforcement Fund # 1015 1017 (TF) RCW 9.94A.760
NTF/SAD/SDI

CLF \$ _____ Crime lab fee suspended due to indigency RCW 43.43.690

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

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

\$ _____ Other costs for: _____

\$ _____ **Total** RCW 9.94A.760

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

shall be set by the prosecutor.

is scheduled for _____

Restitution Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

Name of other defendant **Cause Number** (Victim's name) (Amount-\$)

RJN

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

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

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 at 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.

The court finds that the defendant has the means to pay, in addition to the other costs imposed herein, for the cost of incarceration and the defendant is ordered to pay such costs at the rate of \$50 per day, unless another rate is specified here: _____. (JLR) RCW 9.94A.760.

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

4.1b **Electronic Monitoring Reimbursement.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$ _____.

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

HIV Testing. The defendant shall submit to HIV testing. RCW 70.24.340.

4.3 No Contact: The defendant shall not have contact with SHYLER MONIQUE SIGSBEE AND FAIL ZELKANOVIC including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE years (not to exceed the maximum statutory sentence).

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

4.4 Other: _____

4.5 Confinement Over One Year. The court sentences the defendant to total confinement as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

55 days/months on Count 01

4 days/months on Count 03

2 days/months on Count 04

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

The confinement time on Count ONE includes 24 months as enhancement for firearm deadly weapon sexual motivation VUCSA in a protected zone manufacture of methamphetamine with juvenile present sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: 55 MONTHS

The combined total amount of confinement and Community Placement or Community Custody shall not exceed the statutory maximum. RCW 9.94A.505(5)

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

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

in either District Court or Superior Court unless otherwise specified herein: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) **Confinement.** RCW 9.94A.712 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count 01	minimum term _____	maximum term _____
Count 03	minimum term _____	maximum term _____
Count 04	minimum term _____	maximum term _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served unless the credit for time served prior to sentencing is specifically set forth here by the court: 160 DAYS CREDIT.

4.6 Community Placement or Community Custody. The court orders community placement or community custody as follows:

- Community Placement:**
_____ days/months on Count 01
_____ days/months on Count 03
_____ days/months on Count 04

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

- Community Custody:**
Count 01 for a range from 18 to 36 months
~~Count 03~~ for a range from _____ to _____ months
~~Count 04~~ for a range from _____ to _____ months

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

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

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

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) 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 DOC; (7) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (8) for sex offenses, submit to electronic monitoring if imposed by DOC; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.720. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

- The defendant shall not consume any alcohol.
- The defendant shall have no contact with: SHYLER SILSBEE OR FAIL ZELKANOVIC
- The defendant shall remain within outside of a specified geographical boundary, to wit: _____
- The defendant shall not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).
- The defendant shall participate in the following crime-related treatment or counseling services: _____
- The defendant shall undergo an evaluation for treatment for domestic violence substance abuse mental health anger management and fully comply with all recommended treatment.
- The defendant shall comply with the following crime-related prohibitions: _____
- Other conditions: _____
- For sentences imposed under RCW 9.94A.712, other conditions, 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.

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

4.8 Off - Limits Order. (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move 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, you must do so 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. If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your 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 (DOC) 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.

I waive any right to be present at any restitution hearing (sign initials): _____

5.5 Community Custody Violation.

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).

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

~~Cross off or delete 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. 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. 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 five 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).

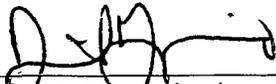
- 5.8 Count _____ is a felony in the commission of which you used a motor vehicle. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.
- 5.9 If you are or become subject to court-ordered mental health or chemical dependency treatment, you must notify DOC and you must release your treatment information to DOC for the duration of your incarceration and supervision. RCW 9.94A.562.

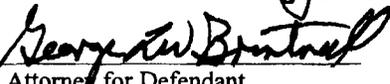
5.10 Persistent Offense Notice

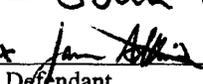
- The crime(s) in count(s) 01 is/are "most serious offense(s)." Upon a third conviction a most "serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. 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.

Done in Open Court and in the presence of the defendant this date: June 12, 2009.

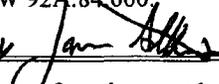

 Judge/Print Name: John F. Nichols


 Deputy Prosecuting Attorney
 WSBA No. 35626
 Print Name: Daniel A. Gasperino


 Attorney for Defendant
 WSBA No. 08090
 Print Name: George W Brintnall


 Defendant
 Print Name:
 JAMES PHILLIP ATKINSON

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: 

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 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.

Identification of the Defendant

JAMES PHILLIP ATKINSON

SID No: WA18764867

Date of Birth: 9/23/1984

(If no SID take fingerprint card for State Patrol)

FBI No.

Local ID No. 196231

PCN No. _____

Other _____

Alias name, DOB:

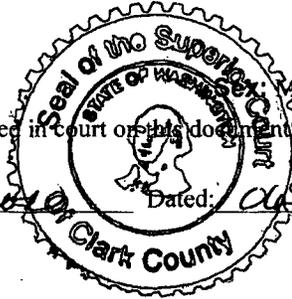
Race: W

Ethnicity:

Fingerprints: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court, Deputy Clerk

Sharon Terry



Dated: *08/13/09*

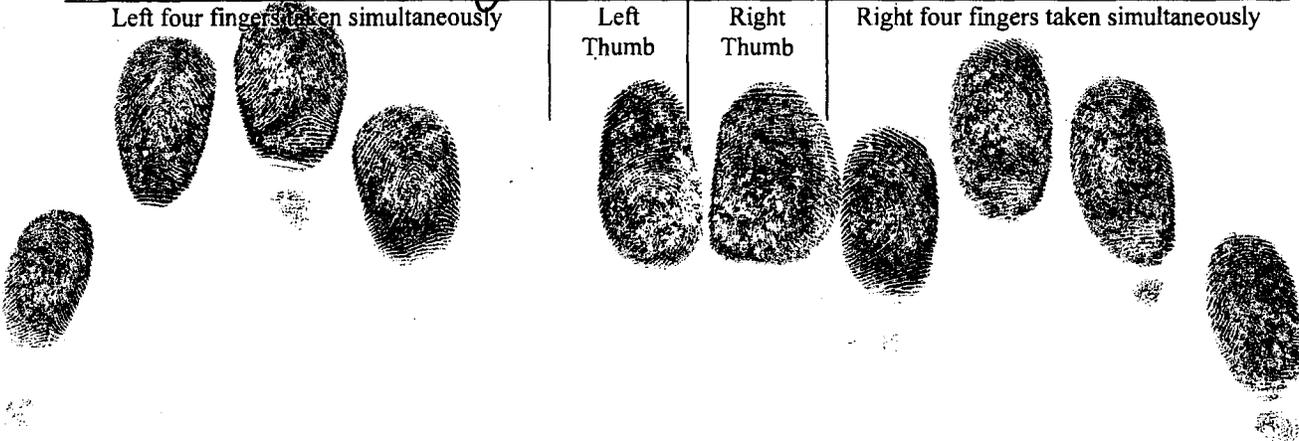
The defendant's signature: *James Phillip Atkinson*

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

NO. 09-1-00040-9

v.

JAMES PHILLIP ATKINSON,

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

Defendant.

SID: WA18764867

DOB: 9/23/1984

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	BURGLARY IN THE FIRST DEGREE	9A.52.020	1/3/2009
03	HARASSMENT (FELONY - DEATH THREATS) - DOMESTIC VIOLENCE	10.99.020/9A.46.020(1)(a)(i)/9A.46.020(2)(b)(ii)	1/3/2009
04	MALICIOUS MISCHIEF IN THE SECOND DEGREE	9A.48.080	1/3/2009

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	BURGLARY IN THE FIRST DEGREE	55 Days (Months)

COUNT	CRIME	TERM
03	HARASSMENT (FELONY - DEATH THREATS) - DOMESTIC VIOLENCE	4 Days Months
04	MALICIOUS MISCHIEF IN THE SECOND DEGREE	2 Days Months

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

The defendant has credit for 160 days served.

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

And these presents shall be authority for the same.

HEREIN FAIL NOT.

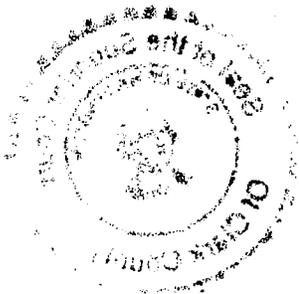
WITNESS, Honorable [Signature]

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 06/12/09

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

By: [Signature]
Deputy





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

STATE OF WASHINGTON,
Plaintiff,
v.
JAMES PHILLIP ATKINSON,
Defendant

No. 09-1-00040-9

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

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

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
RESIDENTIAL BURGLARY	CLARK/WA / PIERCE 97-8-03123-8	7/1/1997		0.5
MALICIOUS MISCHIEF SECOND DEGREE	CLARK/WA 99-8-01406-1	11/19/1999		wash
MALICIOUS MISCHIEF SECOND DEGREE	CLARK/WA 99-8-01406-1	11/19/1999		wash
CONTROLLED SUBSTANCE (MARIJUANA <40G)	CLARK/WA 00-8-00541-1	6/5/2000		--
ASSAULT 4 - DV	CLARK/WA 01-8-00171-5	2/15/2001		--

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

DATED this 12th day of June, 2009.

James Phillip Atkinson
Defendant

George Lee Brintnall
George Brintnall, WSBA #8090
Attorney for Defendant

Daniel A Gasperino
Daniel A Gasperino, WSBA#35626
Deputy Prosecuting Attorney

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)

FILED
COURT OF APPEALS
DIVISION III

10 FEB -4 AM 11:28

STATE OF WASHINGTON

BY 
DEPUTY

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

STATE OF WASHINGTON,
Respondent,

v.

JAMES PHILLIP ATKINSON,
Appellant.

No. 39485-5-II

Clark Co. No. 09-1-00040-9

DECLARATION OF
TRANSMISSION BY MAILING

STATE OF WASHINGTON)

: ss

COUNTY OF CLARK)

On 1 Feb, 2010, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

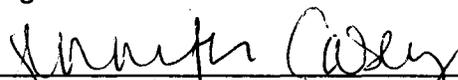
TO: David Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

Catherine E Glinski
Attorney at Law
PO BOX 761
Manchester WA 98353

JAMES PHILLIP ATKINSON
DOC # 331856
Monroe Correctional Facility
Washington State Reformatory
16700 177th Avenue SE
PO Box 777
Monroe, WA 98272-0777

DOCUMENTS: Brief of Respondent

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


Date: 1 Feb, 2010.
Place: Vancouver, Washington.