

40006-5-II  
No. ~~40006-6-II~~

COURT OF APPEALS  
DIVISION II

10070-6 FILED 15

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON  
BY C  
DEPUTY

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STATE OF WASHINGTON,

Respondent

vs.

DAMIEN D. HARRIS,

Appellant.

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BRIEF OF APPELLANT

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APPEAL FROM THE SUPERIOR COURT FOR  
THURSTON COUNTY  
The Honorable Christine A. Pomeroy, Judge  
Cause No. 09-1-00301-1

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in entering Findings of Fact and Conclusions of Law for Trial and Exceptional Sentence [Appendix “A;” Supp. CP 127-153] findings starting on p. 16 line 18 through p. 19 line 19 and conclusions Nos. 2, 4, 5, 6, 7, 8, and 10.
2. The trial court erred in not dismissing Harris’s convictions for two counts of unlawful delivery of a controlled substance (Counts III and IV), two counts of money laundering (Counts VI and VII), and solicitation to commit murder in the first degree (Count IX) where these crimes were incidental to, a part of, or coexistent with his conviction for leading organized crime (Count I) as found by the court after a bench trial.
3. The trial court erred in entering Findings of Fact and Conclusions of Law (3.6 hearing) [Appendix “B;” Supp. CP 122-124] findings starting on p. 1 line 23 through line 26, p. 2 line 13 through line 26 and conclusions p.3 line 3 through 15.
4. The trial court erred in entering Findings of Fact and Conclusions of Law (Franks Hearing) [Appendix “B;” Supp. CP 125-126] findings starting on p. 1 line 23 through p. 2 line 13 and conclusions p. 2 line 15 through line 18.
5. The trial court erred in failing to suppress evidence obtained from Harris’s safe deposit box as the search warrant affidavit did not support a finding of probable cause and contained misrepresentations of fact.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the trial court erred in not dismissing Harris's convictions for two counts of unlawful delivery of a controlled substance (Counts III and IV), , two counts of money laundering (Counts VI and VII), and solicitation to commit murder in the first degree (Count IX) where these crimes were incidental to, a part of, or coexistent with his conviction for leading organized crime (Count I) as found by the court after a bench trial? [Assignments of Error Nos. 1 and 2].
2. Whether the trial court erred in failing to suppress evidence obtained from Harris's safe deposit box as the search warrant affidavit did not support a finding of probable cause and contained misrepresentations of fact? [Assignments of Error Nos. 3-5].

C. STATEMENT OF THE CASE

1. Procedure

Damien D. Harris (Harris) was charged by first amended information filed in Thurston County Superior Court with one count of leading organized crime (Count I), one count of unlawful possession of a firearm (Count II), two counts of unlawful delivery of a controlled substance (Counts III and IV), one count of unlawful possession of a controlled substance with intent to deliver (Count V), two counts of money laundering (Counts VI and VII), one count of tampering with a witness (Count VIII), one count of solicitation to commit murder in the first degree (Count IX), and one count of maintaining a building or dwelling for drug purposes (Count X). [CP 3-5]. The first amended

information also gave Harris notice of the State's intent to seek an exceptional sentence based on RCW 9.94A.535—the multiple offense policy; a major violation of the Uniform Controlled Substance Act, and the current offenses were committed shortly after release from incarceration. [CP 3-5].

Prior to trial Harris moved to suppress evidence obtained from a search of his safe deposit box due to a Franks violation and the fact that the affidavit in support of the search warrant did not provide probable cause to search. [Supp. CP 43, 46-63, 87-93, 94-98]. The court denied Harris's motion to suppress. [10-5-09 RP 3-20; 10-12-09 RP 3-20; Supp. CP 122-124, 125-126; Appendix "B"].

Harris waived his right to a jury trial [CP 6] and was tried at a bench trial, the Honorable Christine A. Pomeroy presiding. After hearing all the evidence, the court found Harris guilty of leading organized crime (Count I); not guilty of unlawful possession of a firearm (Count II); guilty of two counts of unlawful delivery of a controlled substance (Counts III and IV); guilty of unlawful possession of a controlled substance with intent to deliver (Count V); guilty of two counts of money laundering (Counts VI and VII); not guilty of tampering with a witness (Count VIII); guilty of solicitation to commit murder in the first degree (Count IX); and guilty of maintaining a building or dwelling for drug purposes (Count X).

[Vol. VII RP 1365-1371; Supp. CP 127-153; Appendix “A”]. The court also found aggravating factor for an exceptional sentence of the multiple offense policy; a major violation of the Uniform Controlled Substance Act, and the current offenses were committed shortly after release from incarceration. [Vol. VII RP 1371-1372; Supp. CP 127-153; Appendix “A”].

The court sentenced Harris to 198-months on Count, 120-months each on Counts III-V, 12-months each on Counts VI and VII, 411-months on Count IX, and 24-months on Count X imposing an exceptional sentence by running Counts I, III-VII concurrently and running Counts IX and X concurrently but running the two sets of counts consecutively (198-months plus 411-months) for a total exceptional sentence of 609-months. [CP 23-33; 11-19-09 RP 52-55].

A timely notice of appeal was filed on November 19, 2009. [CP 22]. This appeal follows.

2. Facts

On April 16, 2008, the Thurston County Narcotics Task Force, during an investigation of Harris, arranged for a confidential informant, Dale Shipman aka Cyrus (Shipman), as well as an undercover police officer, Clark/Skamania County Detective John Hess (Hess), to buy rock cocaine from Harris. [Vol. I RP 32-50, 63-70; Vol. II RP 260-269, 292-

299]. Shipman and Hess met Harris, who was driven to the buy location by Michael Boyer (Boyer), and Shipman purchased \$40 worth of rock cocaine from Harris. [Vol. I RP 32-50, 63-70; Vol. II RP 260-269, 292-299, 326].

On April 18, 2008, a second controlled buy was arranged by Shipman. [Vol. I RP 81-122; Vol. II RP 270-283, 300-208]. Shipman and Hess again met Harris, who was again driven to the buy location by Boyer, and purchased \$40 of rock cocaine from Harris. [Vol. II RP 270-284, 300-308, 327]. After Harris and Boyer left the buy location, police maintained surveillance of the two eventually stopping them to arrest the two based on the latest controlled buy. [Vol. I RP 130; Vol. III RP 411-413; Vol. IV RP 759-761].

Upon being transported to jail for booking, Boyer was found to be concealing additional rock cocaine on his person that Harris had told him to hold and hide. [Vol. III RP 415; Vol. IV RP 759-762, 789].

Based on their investigation, the Thurston County Narcotics Task Force conducted a search pursuant to a warrant of an apartment belonging to Kathy Kruse (Kruse). [Vol. I RP 136; Vol. II RP 340-347, 359]. Kruse testified that Harris did not live at her apartment, but she allowed him to use a room in the apartment in exchange for \$20 a month or rock cocaine. [Vol. II RP 340-347]. Harris and Boyer cooked crack cocaine at Kruse's

apartment (the spot). [Vol. IV RP 624]. After his arrest, Harris contacted Kruse and told her to get rid of any drugs in his room and to give the money (\$2600) to his girlfriend, Tamica Tamez (Tamez). [Vol. II RP 360-364]. Tamez's apartment was also searched pursuant to a warrant. [Vol. I RP 169].

Harris also contacted Tamez after his arrest and told her to get his money from Kruse and use it for bail. [Ex. 60—Tamez Transcript; Vol. IV RP 708-719]. Tamez obtained the money from Kruse giving it to Adrian Morris (Morris). Vol. IV RP 711-712, 716-718]. Harris in another contact with Tamez had her to go to his bank to get her name put on his accounts including his safe deposit box so that she could access funds. [Ex. 60—Tamez Transcript; Vol. II 382-395; Vol. IV RP 712]. Tamez was put on the accounts but did not have a key to the safe deposit box. [Vol. II RP 382-395; Vol. IV RP 712]. A search of Harris's safe deposit box pursuant to a search warrant revealed \$25,000 in small bills. [Vol. I RP 192-196].

Kevin Watkins (Watkins) testified that he knew Harris and cooked crack cocaine for him and Morris. [Vol. III RP 444-462].

Boyer admitted working for Harris by selling drugs and driving. [Vol. VI RP 1115-1121]. Boyer testified that after he bailed out of jail he was contacted by Harris and that Harris wanted to kill "Cyrus"/Shipman,

the confidential informant, asking Boyer to do so. [Vol. VI RP 1156-1166, 1261]. Leonard Hamilton (Hamilton) testified that Boyer talked of taking care of “snitches” and that he, Boyer, would kill Cyrus for free. [Vol. III RP 477-491].

Harris did not testify.

D. ARGUMENT

- (1) HARRIS MAY NOT BE CONVICTED OF TWO COUNTS OF UNLAWFUL DELIVERY OF A CONTROLLED SUBSTANCE (COUNTS III AND IV), TWO COUNTS OF MONEY LAUNDERING (COUNTS VI AND VII), AND SOLICITATION TO COMMIT MURDER IN THE FIRST DEGREE (COUNT IX) WHERE THESE CRIMES WERE INCIDENTAL TO, A PART OF, OR COEXISTENT WITH HIS CONVICTION FOR LEADING ORGANIZED CRIME (COUNT I) AS FOUND BY THE COURT AFTER A BENCH TRIAL.

Article 1, section 9 of the Washington State Constitution and the Fifth Amendment to the United States Constitution provide that no person should twice be put in jeopardy for the same offense. Double jeopardy may be violated by multiple convictions even if the sentences are concurrent. State v. Calle, 125 Wn.2d 769, 775, 888 P.2d 155 (1995). A double jeopardy argument may be raised for the first time on appeal because it is a manifest error affecting a constitutional right. State v. Turner, 102 Wn. App. 202, 206, 6 P.3d 1226, *reviewed denied*, 143 Wn.2d 1009 (2001) (*citing* RAP 2.5(a) and State v. Adel, 136 Wn.2d 629, 631, 965 P.2d 1072

(1998). The issue is whether the Legislature intended to authorize multiple punishments for criminal conduct that violates more than one criminal statute. State v. Calle, 125 Wn.2d at 772.

A three-prong test is applied to determine legislative intent. First, multiple convictions constitute double jeopardy even if the offenses “clearly involve different legal elements, if there is clear evidence that the Legislature intended to impose only a single punishment.” In the Matter of Personal Restraint of Anthony C. Burchfield, 111 Wn. App. 892, 897, 46 P.3d 840 (2002) (*citing State v. Calle*, 125 Wn.2d at 780). Because the Legislature is free to define crimes and fix punishments as it will, “the role of the constitutional guarantee is limited to assuring that the court does not exceed its legislative authorization by imposing multiple punishments for the same offense.” Brown v. Ohio, 432 U.S. 161, 165, 53 L. Ed. 2d 187, 97 S. Ct. 2221 (1977).

Here, neither the leading organized crime nor unlawful delivery of a controlled substance, money laundering, and solicitation to commit murder in the first degree statutes contain specific language authorizing separate punishments for the same conduct. RCW 9A.82.060; RCW 69.50.401; RCW 9A.83.020; RCW 9A.32.030 and RCW 9A.28.030. The offenses at issue here are thus not automatically immune from double jeopardy analysis. In re Burchfield, 111 Wn. App. at 896.

Second, when, as here, the Legislature has not expressly authorized multiple punishments for the same act, this court applies the “same evidence test,” which asks “whether each offense has an element not contained in the other.” *Id.* The statute under which Harris was convicted of leading organized crime, RCW 9A.82.060, requires a “pattern of criminal profiteering activity.” RCW 9A.82.010(12) defines “pattern of criminal profiteering” as follows:

“Pattern of criminal profiteering activity” means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods or commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events....

RCW 9A.82.010(4) further defines “criminal profiteering” as:

...[A]ny act, including any anticipatory or completed offense, committed for financial gain...as any of the following: (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050....(q) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW....(t) Money laundering, as defined in RCW 9A.83.020....

In order to obtain a conviction for leading organized crime three or more predicate offenses committed for financial gain are necessary, but none of the predicate offense statutes require they be committed for financial gain. RCW 69.50.401; RCW 9A.83.020; RCW 9A.32.030 and RCW 9A.28.030. These offenses (leading organized crime and the predicate offense) appear to contain the same elements and, therefore, may be established by the “same evidence.” In fact, the trial court specifically found that the “pattern of criminal profiteering activity,” meaning three or more predicate offenses, required for a leading organized crime conviction was sufficiently established by these very crimes. [Supp CP 127-153; Appendix “A”].<sup>1</sup> Thus the prohibition against double jeopardy may be violated here by applying the same evidence test.

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<sup>1</sup> It should be noted that the trial court in listing the predicate offenses it found satisfied the pattern of criminal profiteering activity necessary for Harris’s conviction of leading organized crime also listed witness tampering as a predicate offense. This finding by the trial court should be disregarded as the trial court found Harris not guilty to witness tampering and more importantly witness tampering is not a crime that can constitute a predicate offense for leading organized crime per RCW 9A.82.010(4).

The “same evidence” test, however, is not always dispositive. In re Burchfield, 111 Wn. App. at 897; In re Personal Restraint of Percer, 150 Wn.2d 41, 50-51, 75 P.3d 488 (2003). This court must also determine whether there is evidence that the Legislature intended to treat conduct as a single offense for double jeopardy purposes. Id. This merger doctrine is simply another way, in addition to the “same evidence” test, by which this court may determine whether the Legislature has authorized multiple punishments. State v. Frohs, 83 Wn. App. 803, 811, 924 P.2d 384 (1996). “Thus, the merger doctrine is simply another means by which a court may determine whether the imposition of multiple punishments violates the Fifth Amendment guarantee against double jeopardy....” Id. The question is whether there is clear evidence that the Legislature intended not to punish the conduct at issue with two separate convictions. State v. Calle, 125 Wn.2d at 778. If a defendant is convicted of two crimes, his or her second conviction will stand if that conviction is based on “some injury to the person or property of the victim or others, *which is separate and distinct from and not merely incidental to the crime of which it forms the element.* [Emphasis Added]. State v. Johnson, 92 Wn.2d 671, 680, 600 P.2d 1249 (1979).

Here, as found by the trial court, Harris committed three or more predicate offenses (solicitation to commit murder; two deliveries of a controlled substance; and two separate instances of money laundering) in order to find him guilty of leading organized crime. This court should construe this as evidence that the first crime (leading organized crime) was not completed as the second crime(s) (the predicate offenses) was in progress, then the predicate offenses *were incidental to, a part of, or coexistent with the leading organized crime*, with the result that the second convictions (the predicate offenses (Counts III-IV, VI-VII and IX) will not stand under the reasoning in State v. Johnson, supra. Again, this seems especially true given the court's specific finding that the "pattern of criminal profiteering activity," meaning three or more predicate offenses, required for a leading organized crime conviction was sufficiently established by these very crimes. [Supp CP 127-153; Appendix "A"].

The Washington Supreme Court has observed that "[t]he United States Supreme Court has been especially vigilant of overzealous prosecutors seeking multiple convictions based upon spurious distinctions between the charges." State v. Adel, 136 Wn.2d at 635. Accordingly, if this court determines that the predicate offenses (Counts III-IV, VI-VII and IX) "were incidental to, a part of, or coexistent" with the leading organized crime

(Count I), then Harris's convictions in Counts III-IV, VI-VII, and IX cannot be sustained on these facts and must, therefore, be reversed.

Recent caselaw from our State Supreme Court supports this conclusion. Formerly, as set forth in State v. Wanrow, 91 Wn.2d 301, 588 P.2d 1320 (1978), the State Supreme Court rejected an argument that a defendant cannot be convicted of both felony murder and the underlying felony. The court upheld both convictions by considering statutory merger and due process finding neither was principle violated. However, recently in State v. Womac, 160 Wn.2d 643, 160 P.3d 40 (2007), the State Supreme Court apparently reversed this decision by analyzing the issue in terms of double jeopardy.

In Womac, the defendant was charged in three separate counts and convicted of homicide by abuse, felony murder based on criminal mistreatment, and assault. The trial court accepted all three convictions, but imposed sentence only on the homicide by abuse. On appeal, the appellate court remanded the case for resentencing on the homicide by abuse and conditionally dismissed the felony murder and assault convictions so long as the homicide by abuse conviction withstood further appeal. The State Supreme Court vacated the felony murder and assault convictions on double jeopardy grounds holding Womac had in actuality committed a single offense against a single victim yet was held

accountable for three crimes in violation of double jeopardy prohibition against multiple punishments for a single offense. In doing so, the State Supreme Court engaged in the three-part analysis set forth above. The State Supreme Court determined that double jeopardy was violated even though Womac received no sentence on the felony murder and assault convictions as “conviction” in itself, even without imposition of sentence, carries an unmistakable onus which has a punitive effect. In sum, the court held:

As this court noted in Calle, “[i]t is important to distinguish between charges and convictions—the State may properly file an information charging multiple counts under various statutory provisions where evidence supports the charges, *even though convictions may not stand* for all offenses where double jeopardy protections are violated.

[Citations omitted]. State v. Womac, 160 Wn.2d at 657-58.

That is what exactly what has happened here. The State properly filed an information charging multiple counts (the leading organized crime charge as well as the predicate offenses), obtained convictions on these multiple counts and even obtained a sentence on all of the convictions, but all the convictions cannot stand given double jeopardy principles for the reasons set forth above. This court should reverse Harris's convictions on Counts III-IV, VI-VII, and IX.

(2) THE TRIAL COURT ERRED IN DENYING HARRIS'S MOTION TO SUPPRESS.

The Fourth Amendment to the federal constitution guarantees the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. State v. Hudson, 124 Wn.2d 107, 112, 874 P.2d 160 (1994), *citing* Mapp v. Ohio, 367 U.S. 643, 647, 6 L. Ed. 2d 1081, 81 S. Ct. 1684 (1961). Art. 1 section 7 of the Washington constitution provides:

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

This provision has been construed many times to provide broader protection of personal privacy rights than the Fourth Amendment. *See e.g.* State v. Stroud, 106 Wn.2d 144, 720 P.2d 436 (1986); State v. Myrick, 102 Wn.2d 506, 688 P.2d 151 (1986); State v. Mendez, 137 Wn.2d 208, 970 P.2d 722 (1999).

The exclusionary rule requires that all evidence obtained during a search based on a search warrant issued without probable cause must be suppressed. Wong Sun v. United States, 371 U.S. 471, 9 L. Ed. 2d 441, 83 S. Ct. 407 (1963); State v. Crawley, 61 Wn. App. 29, 808 P.2d 773, *review denied*, 117 Wn.2d 1009 (1991).

a. The Affidavit In Support Of The Search Warrant Does Not Establish Probable Cause For Issuing The Warrant.

The Fourth Amendment to the federal constitution and Art. 1 section 7 of the Washington Constitution requires that a search warrant only issue upon a showing of probable cause. State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999); State v. Patterson, 83 Wn.2d 49, 515 P.2d 496 (1973). “Probable cause is established by affidavit supporting a search warrant setting forth facts sufficient for a reasonable person to conclude the defendant is probably involved in criminal activity.” State v. Maxwell, 114 Wn.2d 761, 769, 791 P.2d 222 (1990) (*quoting State v. Huff*, 106 Wn.2d 206, 209, 720 P.2d 838 (1986)); State v. Perrone, 119 Wn.2d 538, 551, 834 P.2d 611 (1992). The affidavit need not establish proof of this activity, but merely probable cause to believe it may have occurred. State v. Gunwall, 106 Wn.2d 54, 73, 720 P.2d 808 (1986). The affidavit in support of the search warrant must adequately show circumstances that extend beyond suspicion and mere personal belief that the evidence of a crime will be found on the premises searched. State v. Seagull, 95 Wn.2d 898, 907, 632 P.2d 44 (1981); State v. Ranitsch, 40 Wn. App. 771, 780, 700 P.2d 382 (1985); State v. Dalton, 73 Wn. App. 132, 137, 858 P.2d 873 (1994). Probable cause must be based on facts and not mere conclusions. Aguilar v. Texas, 378 U.S. 108, 112-13, 12 L. Ed. 2d 723, 727, 84 S. Ct. 1509, 1512-13 (1964). Support for the issuance of a

search warrant is sufficient if a reasonable, prudent person would understand from the facts and circumstances contained in the affidavit that the items sought are connected with criminal activity and will be found in the place to be searched. State v. Fisher, 96 Wn.2d 962, 965, 639 P.2d 743, *cert. denied*, 457 U.S. 1137, 73 L. Ed. 2d 1355, 102 S. Ct. 2967 (1982); State v. Thein, 138 Wn.2d 133, 140, 151, 977 P.2d 582 (1999); State v. Goble, 88 Wn. App. 503, 509, 945 P.2d 263 (1997).

An affidavit is evaluated in a commonsense manner with doubts resolved in favor of validity, and with considerable deference being accorded the issuing judge's determination. State v. Partin, 88 Wn.2d 899, 904, 567 P.2d 1136 (1977). Reasonableness is the key in determining whether a search warrant should issue. State v. Gunwall, 106 Wn.2d 54, 73, 720 P.2d 808 (1986). While deference is given to the magistrate's ruling, and doubts are resolved in favor of the warrant's validity, State v. Seagull, *supra*; State v. Wilkie, 55 Wn. App. 470, 476, 778 P.2d 1054 (1989), the deference accorded the magistrate is not boundless. State v. Maxwell, 114 Wn.2d at 770. The review of the search warrant's validity is limited to the information the magistrate had when the warrant initially issued, that is, the four corners of the document. Aguilar v. Texas, 84 S. Ct. at 1511 n. 1; State v. Stephens, 37 Wn. App. 76, 80, 678 P.2d 832, *review denied*, 101 Wn.2d 1025 (1984). The appellate court reviews de

novo the information presented to the magistrate to determine whether there was probable cause. State v. Estorga, 60 Wn. App. 298, 908 P.2d 813, *review denied*, 116 Wn.2d 1027 (1991); In re Det. of Peterson, 145 Wn.2d 789, 801-02, 42 P.3d 952 (2002). Facts, which standing alone would not support probable cause, can do so when viewed together with other facts. State v. Cole, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). However, probable cause cannot be established by merely showing that a drug dealer is associated with a particular place. State v. Thein, 138 Wn.2d at 151; State v. McGovern, 111 Wn. App. 495, 499, 45 P.3d 624 (2002). An affidavit that fails to establish probable cause for a search is invalid, and all evidence obtained as a result of the illegal search is tainted and must be suppressed. *See* State v. Huft, 106 Wn.2d 206, 720 P.2d 838 (1986); State v. Ridgway, 57 Wn. App. 915, 790 P.2d 1263 (1990).

Here, the affidavit for search warrant, [Supp. CP 51-61, 71-81], did not support a finding of probable cause for the issuance of a warrant to search Harris's safe deposit box. The affidavit in support of the search warrant for Harris's safe deposit box outlines the police investigation into Harris including a controlled buy on April 16<sup>th</sup>—the buy money was not recovered, a second controlled buy on April 18<sup>th</sup> after which Harris was arrested—the buy money was recovered, a search of two residences (Kruse and Tamez) associated with Harris, that Harris had directed Kruse

to give items he had at Kruse's apartment to Tamez including some money, and the fact that Harris during a phone call from jail on April 25<sup>th</sup> after his arrest wanted Tamez to be given access to his bank accounts and safe deposit box, and that Tamez was added to his accounts including his safe deposit box but was not given a key to the safe deposit box and could not gain entry to the same. There was nothing in the affidavit that suggests that the buy money from the April 16<sup>th</sup> controlled buy was in the safe deposit box (the stated purpose for the search warrant) as according to the affidavit Tamez only attempted to obtain access to Harris's safe deposit box on April 25<sup>th</sup> (she did not have access prior to this date and according to the affidavit in support of the search warrant she did not have the key to the safe deposit box after this date before the issuance of the search warrant on April 28<sup>th</sup>). There was nothing in the affidavit indicating that Harris had even been to his safe deposit box after the April 16<sup>th</sup> controlled buy until his arrest on April 18<sup>th</sup>. Absent any showing that there was any likelihood that Harris had accessed his safe deposit box between April 16<sup>th</sup> to April 18<sup>th</sup> to hide the buy money from the controlled buy of April 16<sup>th</sup>, the issuance of a search warrant for Harris's safe deposit box consists of nothing but mere speculation—a "police hunch"—that does not establish probable cause. In fact, the buy money from the April 16<sup>th</sup> controlled buy was not found in the safe deposit box. In ruling to the

contrary, as demonstrated by the trial court's findings of fact and conclusions of law [Supp. CP 122-124; Appendix "B"], the trial court erroneously found probable cause for the issuance of the search warrant for Harris's safe deposit box because there was nothing in the affidavit for the search warrant that indicated that Harris had been to his safe deposit box after April 16<sup>th</sup> (the first controlled buy) and his arrest on April 18<sup>th</sup>. The trial court should have suppressed the evidence obtained from the search of Harris's safe deposit box for lack of probable cause to uphold the warrant with the result that one of Harris's convictions for money laundering should be reversed.

b. The Affidavit In Support Of The Search Warrant Contains Material Misrepresentations That Invalidate The Warrant.

Material misrepresentations, made knowingly, intentionally, or with reckless disregard for the truth will invalidate a search warrant. State v. Garrison, 118 Wn.2d 870, 872, 827 P.2d 1388 (1992) (*citing* Franks v. Delaware, 438 U.S. 154, 57 L. Ed. 2d 667, 98 S. Ct. 2674 (1978)). State v. Seagull, 95 Wn.2d at 907-08; *accord* State v. O'Connor, 39 Wn. App. 113, 116-17, 692 P.2d 208 (1984), *review denied*, 103 Wn.2d 1022 (1985). The defense bears the burden of demonstrating by a preponderance of the evidence that the affidavit contains material misrepresentations or omissions. State v. Lodge, 42 Wn. App. 380, 384, 711 P.2d 1078 (1985),

*review denied*, 105 Wn.2d 1021(1986). Reckless disregard for the truth can be shown by the existence of obvious reasons to doubt the affiant. State v. Jones, 55 Wn. App. 343, 346, 777 P.2d 1053 (1989) (*quoting State v. O'Connor, supra*). Thus, a search warrant must be voided and the fruits of the search excluded when a defendant establishes by a preponderance of the evidence that: (1) statements made by an agent of the State in an affidavit in support of a search warrant were false or made with reckless disregard for the truth; and (2) the remaining material in the affidavit is insufficient to establish probable cause. State v. Wilke, 55 Wn. App. 470, 480, 778 P.2d 1054 (1989). A statement made in reckless disregard for the truth will invalidate the warrant, although allegations of innocent or negligent mistakes will not suffice. State v. Seagull, 95 Wn.2d at 908.

Here, the affidavit for search warrant, [Supp. CP 51-61, 71-81], contains a misrepresentation of fact that further emphasizes the lack of probable cause to support the search warrant for Harris's safe deposit box. The affidavit in support of the search warrant for Harris's safe deposit box specifically states that Tamez, at Harris's direction via jail phone calls, had "access" to Harris's safe deposit box so that she could conceal items before law enforcement could find them (the April 16<sup>th</sup> buy money). Contrary to the affidavit in support of the search warrant for Harris's safe

deposit box, the transcripts of the phone calls between Tamez and Harris<sup>2</sup> indicate that Tamez's name was placed on Harris's bank accounts including his safe deposit box, but she could not gain entry to the safe deposit box as she did not have a key. Since the affidavit in support of the search warrant was meant to establish probable cause to search Harris's safe deposit box based on the assumption that the buy money from the April 16<sup>th</sup> controlled buy concealed by Tamez would be found in the safe deposit box and since Tamez could not gain entry into the safe deposit box—she did not have “access” to the safe deposit box, this misrepresentation was material to the trial court's erroneous finding of probable cause as there was no other evidence submitted in the affidavit in support of the search warrant giving any indication that evidence of the April 16<sup>th</sup> controlled buy (the buy money) would be found in the safe deposit box. There was no probable cause to support the search warrant for Harris's safe deposit box. In ruling to the contrary, as demonstrated by the trial court's findings of fact and conclusions of law [Supp. CP 125-126; Appendix “B”], the trial court erroneously found that no material

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<sup>2</sup> This court should note that appellate counsel designated the tape recording of the jail phone calls, Exhibit No. 60, played during trial as part of a supplemental designation of clerk's papers. No transcript of Exhibit No. 60 was presented or filed by the State at Harris's bench trial. A commissioner of this court after appellate counsel made a motion to settle the record, ordered the transcript of these jail phone calls prepared in State v. Tamez COA No. 391930-9-II (the Tamez Transcript) would be considered in this appeal. As such, the conversation between Tamez and Harris referenced in this argument is found at the Tamez Transcript pp. 86-87 and was made part of Harris's motion to suppress. [CP 48].

false statement had been made in the affidavit for the issuance of the search warrant for Harris's safe deposit box. The trial court should have suppressed the evidence obtained from the search of Harris's safe deposit box based on the material false statement contained in the affidavit in support of the search warrant with the result that one of Harris's convictions for money laundering should be reversed.

Based on the above, the trial court erred in denying Harris's motion to suppress. This court should reverse this ruling and dismiss one of Harris's convictions for money laundering as the search warrant for his safe deposit box where the money was found was not supported by probable cause and contained a material false statement.

E. CONCLUSION

Based on the above, Harris respectfully requests this court to reverse and dismiss his convictions.

DATED this 6<sup>th</sup> day of December 2010.

*Patricia A. Pethick*  
PATRICIA A. PETHICK  
Attorney for Appellant  
WSBA NO. 21324

CERTIFICATE OF SERVICE

Patricia A. Pethick hereby certifies under penalty of perjury under the laws of the State of Washington that on the 6<sup>th</sup> day of December 2010, I delivered a true and correct copy of the Brief of Appellant to which this certificate is attached by United States Mail, to the following:

Damien D. Harris  
DOC# 713339  
Clallam Bay Corrections Center  
1830 Eagle Crest Way  
Clallam Bay, WA 98326

Jon Skindar  
Thurston County Dep. Pros. Atty.  
2000 Lakeridge Drive SW  
Olympia, WA 98502  
(and the transcript)

Signed at Tacoma, Washington this 6<sup>th</sup> day of December 2010.

Patricia A. Pethick  
Patricia A. Pethick

BY DP  
STATE OF WASHINGTON  
10 DEC -6 PM 4:15  
CLALLAM BAY  
CORRECTIONS CENTER

APPENDIX "A"

Findings of Fact and Conclusions of Law  
for Trial and Exceptional Sentence

Filed July 20, 2010

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SUPERIOR COURT  
THURSTON COUNTY WA

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**IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR THURSTON COUNTY**

NO. 09-1-00301-1

STATE OF WASHINGTON,  
  
vs.  
  
DAMIEN DARNELL HARRIS

Plaintiff,  
  
  
Defendant.

**FINDINGS OF FACT  
AND CONCLUSIONS OF LAW  
FOR TRIAL AND EXCEPTIONAL  
SENTENCE**

THIS MATTER came on for a bench trial before Thurston County Superior Judge Christine Pomeroy on October 20, 2009 through November 5, 2009. A Sentencing Hearing was held on November 19, 2009. Present before the Court were Deputy Prosecuting Attorney Scott M. Jackson on behalf of the State of Washington, the Defendant, Damien Darnell Harris, and Gregory Smith, Attorney for Defendant. The Court, having heard and considered the testimony of all the witnesses, the evidence admitted during trial, briefs filed by counsel, applicable case law and the arguments of the attorneys, enters the following findings:

**FINDINGS OF FACT**

During the last week of March 2008, the Thurston County Narcotics Task Force (also referred to as TNT) began a criminal investigation of Damien Darnell Harris. Thurston County Narcotics Task Force Detective Ken Lundquist was contacted by Lacey Police Officer Dave Miller about an individual

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - I**

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1 who indicated he could purchase controlled substances from Damien Harris. Officer Miller introduced  
2 Det. Lundquist to Dale Shipman. Mr. Shipman met with Det. Lundquist and explained that he knew a  
3 person by the name of "D-Locc" who was selling rock cocaine. Mr. Shipman indicated he had  
4 purchased rock cocaine from "D-Locc" on several occasions in the past and would be willing to work  
5 with the Narcotics Task Force to do controlled buy operations. Based on past experience, Detective  
6 Lundquist knew the person referred to as "D-Locc" was in fact Damien Darnell Harris. Mr. Shipman  
7 agreed to become a confidential informant for TNT and was assigned a confidential source number of  
8 702. (referred to as C/S #702). Mr. Shipman was commonly known as and was referred to as "Syrus or  
9 "Cyrus" by many of the witnesses and the defendant during the trial. "Syrus" was a street name that Mr.  
10 Shipman known by.

11 During a meeting with Detective Lundquist, Mr. Shipman related how he typically arranged to  
12 buy drugs from Damien Harris. Mr. Shipman said that all his contacts or deals with Harris were by  
13 "cold call". A "cold call" was described as a spontaneous telephone call to Mr. Harris and he would  
14 agree to meet Mr. Shipman. They would agree to meet at a specified location, usually a public parking  
15 lot. Mr. Shipman said that they never prearranged deals to occur. Mr. Shipman indicated Mr. Harris  
16 typically drove a maroon/brownish Chrysler New Yorker. Detective Lundquist confirmed that Mr.  
17 Harris was the registered owner of a brown 1988 Chrysler New Yorker.

18 Detective Lundquist and Detective Hedin-Baughn were assigned as case agents for the controlled  
19 buy operations from Mr. Harris. The Narcotics Task Force Detectives formulated a strategy to utilize  
20 Mr. Shipman as a conduit for introducing an undercover police officer to Mr. Harris. The operational  
21 plan called for an undercover officer to accompany Mr. Shipman during a couple controlled buy  
22 operations so that Mr. Harris would eventually feel comfortable selling crack cocaine directly to the  
23 undercover officer. Due to Mr. Harris familiarity with local law enforcement officers, Detective  
24 Lundquist and Sergeant Didion sought the assistance of Detective John Hess with the Washington State  
25 Patrol. Det. Hess was an undercover officer that was assigned to the Clark/Skamania County Drug Task  
26 Force. Det. Hess was contacted and requested to take on the undercover officer role in this operation.  
Detective Hess agreed to assist in the investigation.

On April 16, 2008, Detective Lundquist requested Mr. Shipman (C/S#702) contact Mr. Harris

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 2**

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and arrange to purchase some crack cocaine that day. In the presence of TNT detectives, Mr. Shipman placed several calls to Mr. Harris but was unable to reach Mr. Harris. After some time, Mr. Harris called Mr. Shipman back and seemed upset that Mr. Shipman had placed so many calls to his phone. Detectives overheard Mr. Harris express anger that Mr. Shipman's calls were using up his allotted cell phone minutes. Harris eventually told Shipman that he would meet him at Buddy's Deli near Carpenter Road and Marvin Way in Lacey, WA. Detectives assigned to surveillance during the controlled buy operation began to drive to Buddy's Deli to set up their positions prior to Mr. Harris' arrival.

Pursuant to protocol, Detective Lundquist searched Mr. Shipman to make sure he did not have any money, drugs, or contraband on his person prior to sending him on the controlled buy operation. Mr. Shipman did not have any such items on his person when searched. Next, Mr. Shipman was provided with \$40.00 of pre-recorded buy funds which were to be used to purchase crack cocaine from Mr. Harris. Detective Hess was acting in an undercover capacity and was assigned to drive Mr. Shipman to the agreed location. Detective Hess drove Mr. Shipman's turquoise/green Geo Metro.

While traveling to Buddy's Deli, Mr. Shipman received a call from Mr. Harris. Detective Hess was present when this call was received. Mr. Harris directed Mr. Shipman to now meet him the Car Toys parking lot in Olympia, WA. The parking area is located at the address of 3328 Pacific Ave SE in Olympia, WA. This information was relayed to Detective Lundquist and the assisting detectives. Detectives Lundquist and Hedin-Baughn were following Shipman's vehicle and were able to quickly arrive at the newly designated location. Detective Hess and Mr. Shipman arrived in the parking lot of the Car Toys store and were able to locate Mr. Harris' previously identified Chrysler New Yorker parked in a parking stall. Detectives Lundquist and Hedin-Baughn took up a position that enabled them to observe the expected transaction. The surveillance detectives were unable to set up to obtain any photographic or video surveillance of the transaction due to the last minute change in locations.

Upon arrival, Det. Hess noticed Harris' vehicle was backed into the parking stall. Detective Hess parked one stall away from Mr. Harris' vehicle and parked "nose in". This positioning allowed the driver's side of Hess' vehicle to be adjacent to the driver's side of Harris' vehicle. There was one vehicle parked between Hess and Harris' vehicle. Det. Hess observed the driver's side window of Harris' vehicle to be halfway down. Mr. Shipman exited his vehicle and walked over to Harris' vehicle.

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 3**

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After a few minutes, Mr. Shipman returned to his own vehicle and got in the passenger side. Mr. Shipman testified Damien Darnell Harris was the sole occupant of the Chrysler New Yorker. He got in the vehicle and conducted a brief exchange of the \$40.00 in pre-recorded buy money for four rocks of crack cocaine.

During trial, Mr. Shipman positively identified the defendant, Damien Darnell Harris, as the person who sold him the crack cocaine. When Shipman left Harris' vehicle, he immediately returned to the Geo Metro and handed Det. Hess the four rocks of crack cocaine. Mr. Harris' vehicle began to pull out as Det. Hess was also pulling out of his parking stall. Detective Hess testified he was able to see the person driving the Chrysler New Yorker and was able to positively identify the individual as Damien Darnell Harris. He further testified in court that the defendant was the same person he saw driving the Chrysler New Yorker out of the parking stall immediately after the controlled buy had occurred.

Det. Hess and Mr. Shipman returned to the pre-determined meet location and were met by Detectives Lundquist and Hedin-Baughn. Detective Hess turned over the crack cocaine to Detective Lundquist. Mr. Shipman was again searched by Det. Lundquist to determine that he did not secrete any drugs, money, or other contraband on his person during the controlled buy operation. Mr. Shipman did not have any such items. Detectives Lundquist and Hedin-Baughn returned to their office and processed the evidence by photographing, weighing, packaging and placing the rocks of crack cocaine into the evidence system. The crack cocaine was later sent for testing by the Washington State Patrol Crime Lab. Forensic Scientist Franklin Boshears testified he conducted an analysis of the substance delivered by Mr. Harris and found it to contain a controlled substance, cocaine.

On April 18, 2008, Detective Lundquist planned to conduct another controlled buy operation from Mr. Harris utilizing Mr. Shipman and Det. Hess. Due to the problems with surveillance during the first operation, TNT detectives made arrangements to have the assistance of a Washington State Patrol aircraft equipped with a surveillance camera. TNT Detective Ryan Russell was assigned to conduct the aerial surveillance. Detective Matt Renschler and Lacey Officer Dave Miller were assigned to obtain photographic and video surveillance of the controlled buy operation from a vehicle parked in the area of the transaction. Sergeant Didion was assigned to a separate vehicle and also tasked with trying to obtain

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 4**

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1 video recordings of the controlled buy operation. Detective Lundquist had previously sought and been  
2 granted authorization to use a wire recording device during this transaction between Mr. Shipman and  
3 Mr. Harris.

4 Detectives Lundquist, Hess, and Hedin-Baughn met with Mr. Shipman on April 18, 2008 at a  
5 pre-determined location in anticipation of a controlled buy operation involving Mr. Harris. Det.  
6 Lundquist conducted a search of Mr. Shipman's person prior to the operation to assure he did not have  
7 any drugs, money, or contraband on his person. Detective Lundquist then requested Mr. Shipman to  
8 place a telephone call to Mr. Harris and inquire about making another purchase of crack cocaine later  
9 that day. Mr. Shipman placed a call to Mr. Harris in the presence of the detectives. Shipman contacted  
10 Mr. Harris and they agreed to meet at a Texaco station located at 9139 Pacific Ave SE in Olympia, WA.  
11 Prior to leaving for the Texaco station, Shipman was provided \$40.00 in pre-recorded buy money to  
12 purchase the drugs and a wire recording device.

13 Detective Hess drove Mr. Shipman to the agreed location in Shipman's Geo Metro. Shipman  
14 and Hess arrived before Mr. Harris' vehicle. Mr. Harris arrived a short time later in his Chrysler New  
15 Yorker. Harris was positioned in the passenger seat and the vehicle was being driven by Michael Boyer.  
16 Mr. Shipman exited his vehicle and walked over to Mr. Harris' vehicle. At about the same time, Steven  
17 Parra walked up to Harris vehicle and entered into the rear driver-side seat. Mr. Shipman entered the  
18 rear passenger side seat. Mr. Shipman testified Steven Parra purchased crack cocaine from Mr. Harris  
19 and exited the vehicle. Mr. Shipman then purchased \$40.00 worth of crack cocaine from Mr. Harris. Mr.  
20 Harris handed Mr. Shipman the cocaine directly. Mr. Shipman positively identified Mr. Harris as the  
21 person who delivered the crack cocaine during his testimony. Mr. Boyer was present during the  
22 transaction but did not take part in the actual exchange of money for drugs. Just prior to Shipman's exit  
23 of the vehicle, Mr. Boyer questioned who the person was that Mr. Shipman had brought with him. Mr.  
24 Shipman and Mr. Boyer engage in a short discussion about the driver of his vehicle. Shipman exited  
25 Harris' vehicle and immediately returned to Hess' vehicle.

26 The audio and video recordings of this transaction were admitted and played during the trial.  
The audio and video recordings supported Mr. Shipman's testimony about the drug transaction that

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 5**

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1 occurred at the Texaco station. The video recordings clearly showed two individuals enter the rear  
2 passenger compartment of Mr. Harris' vehicle. The individuals were identified as Mr. Shipman and Mr.  
3 Parra. Neither person remained in the vehicle for more than a minute or two. The audio recording clearly  
4 captured the discussion of a drug transaction by the occupants. Mr. Shipman's testimony was credible  
5 and further supported by these recordings. In addition, Mr. Boyer also testified that Harris sold crack  
6 cocaine to Mr. Shipman during this transaction.

7 Upon Shipman returning to his vehicle, he turned over the crack cocaine purchased to Detective  
8 Hess. Mr. Harris left the parking lot in his vehicle with Mr. Boyer. They were followed by the  
9 Washington State Patrol aircraft and detectives in unmarked vehicles. Hess and Shipman then left the  
10 parking lot and returned to the meet location. On the drive away from the Texaco station, Mr. Shipman  
11 received several calls from Mr. Harris. Mr. Harris expressed concern about the individual who drove  
12 Shipman to the drug deal. Harris also said he thought he was being followed by the police as he drove  
13 away. After some discussion, Harris told Shipman not to bring anyone to any further transactions. Mr.  
14 Shipman relayed this information to Detectives Hess and Lundquist. Detectives Lundquist and Hedin-  
15 Baughn again met with Shipman. The detectives conducted the post-operation search of the informant  
16 and did not locate any contraband. They also recovered the wire recording device and took custody of  
17 the crack cocaine. The detectives subsequently photographed, processed and packaged the evidence  
18 received during the buy operation. The crack cocaine was later sent for testing by the Washington State  
19 Patrol Crime Lab. Forensic Scientist Franklin Boshears testified he conducted an analysis of the  
20 substance delivered by Mr. Harris and found it to contain a controlled substance, cocaine.

21 Next, Mr. Harris and Mr. Boyer continued to travel around Thurston County while being  
22 followed by several of the detectives and the WSP aircraft. Testimony indicated that Harris and Boyer  
23 were making additional drug sales. Having viewed the aerial surveillance video, it was apparent that  
24 Harris and Boyer were continuing to make drug deliveries. On at least two occasions, they made a quick  
25 stop in a parking lot. A person entered their vehicle and then exited in less than one minute. Mr. Boyer  
26 testified that Harris was making additional drug sales during these quick stops. Harris and Boyer  
eventually became aware they were being followed. As a result, Detective Lundquist decided that the  
original operation plan was no longer viable and decided to arrest Harris.

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 6**

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1           Marked police units were called in and they stopped Harris' vehicle. The detectives arrested the  
2 two occupants of Harris' vehicle, Damien Harris and Michael Boyer. Detective Renschler advised Mr.  
3 Harris of his Miranda Warnings at the scene. Mr. Harris acknowledged he understood his rights and said  
4 he would be willing to speak with the detectives about the matter after DOC Officer Boone was done  
5 with him. While still at the arrest scene, Harris indicated he wanted to speak with Lacey Officer Dave  
6 Miller. Officer Miller was present at the arrest scene and went over to talk to Mr. Harris. Damien Harris  
7 told Officer Miller that he was tired of this lifestyle and did not want to go back to prison. Officer Miller  
8 told Harris he was not the case detective and could not make any decision related to Harris custodial  
9 status. Harris told Officer Miller that he could buy kilos of cocaine and could buy guns from gang  
10 members. Officer Miller said he would pass the information onto the case detective.

11           Harris and Boyer were then transported to the Thurston County Jail in separate vehicles.  
12 Olympia Police Officer Dan Duncan drove Mr. Boyer to the jail. During the booking process, Mr. Boyer  
13 told an officer that he had some contraband secreted. Officer Duncan contacted TNT Detective  
14 Renschler and asked him to return to the jail booking area to recover items Mr. Boyer had told him  
15 about. Det. Renschler returned to the jail booking area and contacted Mr. Boyer. Boyer told Det.  
16 Renschler that he had concealed narcotics in his rectum just prior to being stopped by the police. Det.  
17 Renschler asked Boyer if the narcotics belonged to Harris. Boyer told Renschler that he did not want to  
18 die and he was concerned for his life. Detective Renschler had Mr. Boyer drop his pants and squat.  
19 Detective Renschler observe a plastic baggy partially protruding from Boyer's rectum. Renschler  
20 recovered the plastic bag and found it to contain money, crack cocaine, and marijuana. The detectives  
21 later determined that the \$40.00 of pre-recorded buy money used earlier in the day by Mr. Shipman to  
22 purchase cocaine from Harris was in the baggy recovered from Boyer.

23           Detective Renschler testified that Boyer appeared scared and concerned for his safety during the  
24 discussion in the jail about the secreted drugs and money. Mr. Boyer would not say who the drugs  
25 belonged to at the time of his arrest. During his trial testimony, Mr. Boyer said the crack cocaine, money  
26 and some of the marijuana that was recovered from him after his arrest and booking was given to him by  
Damien Harris. Boyer testified as the police were pursuing their vehicle, Harris handed Boyer a bag

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 7**

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1 containing crack cocaine, marijuana, and some money. Boyer took Harris' bag of crack cocaine, money  
2 and marijuana and put it into a larger bag with Boyer's own marijuana. Boyer then attempted to stuff the  
3 bag with the money and drugs into his rectum so the police would not be able to find these items when  
4 they searched the car.

5 The evidentiary items recovered from Mr. Boyer at the jail were photographed, processed and  
6 packaged as evidence by Det. Renschler. The suspected crack cocaine was later sent for testing by the  
7 Washington State Patrol Crime Lab. Forensic Scientist Franklin Boshears testified he conducted an  
8 analysis of the suspected crack cocaine and found it to contain a controlled substance, cocaine. This  
9 Court believes the crack cocaine belonged to Mr. Harris and was possessed by Mr. Harris on April 18,  
10 2008 with the intent to deliver. This was evidence by his conduct during the controlled buy operation  
11 and the subsequent observations of his conduct by the police as they followed Mr. Harris. Furthermore,  
12 Mr. Boyer's testimony about Mr. Harris' activities on this date as well as the testimony about Mr.  
13 Harris' drug distribution activities makes it clear the cocaine belonged to Harris and he intended to  
14 distribute it.

15 After Mr. Harris arrest on April 18, Det. Lundquist and other officers went to the Courtside  
16 Apartments at 612 American Street in Olympia, WA. They went to this location to ascertain or locate  
17 where Mr. Harris was staying. They eventually contacted Kathy Kruse at apartment L-205. Ms. Kruse  
18 told Det. Lundquist that Harris "stayed" at her apartment occasionally and he had some clothing,  
19 personal items, and bags in one of the rooms in her apartment. Kruse told the police Harris had his own  
20 room in the apartment and she never went in it. The police requested permission to enter the apartment  
21 but Ms. Kruse denied permission.

22 On April 21, 2008, Detective Lundquist returned to Ms. Kruse's apartment with a search warrant.  
23 The police searched the apartment but did not locate anything of evidentiary value. During this second  
24 encounter, Ms. Kruse told the police that Mr. Harris was actually renting a bedroom from her in the  
25 apartment. Ms. Kruse testified she initially agreed to rent the room to Damien Harris in exchange for  
26 \$20.00 per day. She said Mr. Harris did not live there but rather he just came over used the room. She  
testified Harris did not live at her apartment and he did not spend the nights there. Kruse further testified  
that the agreement between her and Damien Harris changed after a period of time. Ms. Kruse testified

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 8**

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1 that she agreed to accept \$20.00 worth of crack cocaine a day from Mr. Harris in exchange for his being  
2 able to use the room in her apartment.

3 Mr. Kruse went on to tell the police about several phone calls she received from Mr. Harris since  
4 his arrest. She also said she had been contacted by other people on Harris' behalf. Harris called Rob  
5 Bennett from the Thurston County Jail and directed Mr. Bennett to do a three-way call and put Harris in  
6 contact with Ms. Kruse. Ms. Kruse testified that Harris contacted her after his arrest and instructed her to  
7 enter into his room in the apartment. Ms. Kruse said she was told to go into Harris' closet and retrieve  
8 some items in a black leather jacket. In Harris' jacket, Kruse found three golf ball sized pieces of rock  
9 cocaine. She also found several bags with pills and approximately \$2600.00. Harris instructed Kruse to  
10 get rid of the drugs, whether it was to smoke it or flush it down the toilet. He further instructed her to  
11 hold onto the money and deliver it to one of his associates. The inmate telephone calls from the Thurston  
12 County Jail are recorded. The phone calls made by Mr. Harris to Mr. Bennett and Ms. Kruse were  
13 admitted and played during the trial. Mr. Bennett also testified to the nature of Mr. Harris calls from the  
14 jail and the instructions he was given by Mr. Harris to pass onto Ms. Kruse. Ms. Kruse's testimony and  
15 the testimony of Mr. Bennett about the content of Mr. Harris' call and his instructions were supported by  
16 these recorded telephone calls.

17 Kruse also testified that Adrian Morris came to her apartment in an attempt to obtain Harris'  
18 money and other items in the room. Kruse refused to let Morris inside and Morris attempted to gain  
19 entry by force. Morris left after someone called the police about the disturbance he created. Sometime  
20 later, Harris had his girlfriend go to the apartment to collect Harris money. Temica Tamez was Harris'  
21 girlfriend. Kruse received instructions from Harris to give the money to Tamez. Kruse testified when  
22 Tamez came to her apartment, Kruse gave the money from the jacket to Tamez. Based on the totality of  
23 the evidence, it was clear this money was in fact money gained from drug sales. During a recorded jail  
24 telephone call, Tamez discussed with Damien Harris about going to Kruse's apartment and collecting the  
25 money. Tamez told Harris during the recorded call "I told her I was going to beat the shit out of her"  
26 when discussing her conversation with Kruse about retrieving Harris' drug money.

Detective Lundquist began to listen to and monitor Harris' recorded jail telephone conversations  
over the next several days and weeks. Det. Lundquist also learned Harris had reported to his DOC officer

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
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1 his residence to be 2008 Evergreen Park Dr. SW #206 in Olympia, WA. At the time of his arrest, Harris  
2 was living at this address with his girlfriend, Temica Tamez. On April 24, 2008, Det. Lundquist served  
3 a search warrant at this location and collected several items of evidence. Several documents were  
4 collected at this residence which indicated it to be the residence of Damien Harris and Temica Tamez.  
5 Officers took photographs of items in the bedroom of this apartment that were admitted during the trial.  
6 The photographs showed several items of male clothing and shoes in the closet. Located in that same  
7 closet was a suitcase that contained a Bryco Arms .22 caliber handgun.

8 During trial, several documents were presented that clearly indicated Mr. Harris was living at the  
9 2008 Evergreen Dr. apartment with Ms. Tamez. The photographs admitted of the clothing and shoes  
10 further supported that Mr. Harris was in fact living at the residence. Ms. Tamez testified that the firearm  
11 belonged to her and it was not in the residence while Mr. Harris lived there. Ms. Tamez also testified  
12 that Mr. Harris had moved out of the residence and was living at Kathy Kruse's apartment during the  
13 months prior to his arrest. Tamez said she brought the firearm to the residence after Mr. Harris had  
14 moved out. Mr. Harris has several prior convictions that prohibit him from possessing a firearm. Det.  
15 Lundquist testified he recovered the handgun and placed it into evidence. Upon later examination, he  
16 determined the firearm was missing the firing pin assembly at the time it was recovered. Det. Lundquist  
17 testified the firing pin assembly is an inexpensive piece that could be obtained from a local firearms  
18 dealer but it would take about 2-3 days to obtain that component. If the firing pin assembly were to be  
19 acquired, the Bryco .22 would be a fully functional firearm. Ms. Tamez was not a credible witness on the  
20 issues of Mr. Harris residential status at her apartment. However, the Court did not believe that the  
21 firearm could not be readily made functional within a short period of time due to the lack of a firing pin  
22 assembly. Given the amount of time it would take to obtain the part and make it operational, it was not a  
23 functional firearm.

24 During the weekend of April 26-27, 2008, Det. Lundquist listened to several days' worth of  
25 phone calls between Ms. Tamez and Damien Harris. These recorded phone calls listened to by Det.  
26 Lundquist had occurred during the previous week. Listening to the calls, Det. Lundquist became aware  
that Mr. Harris wanted Ms. Tamez to go to an unidentified bank and contact a person named "Josh". It  
was later determined the person referred to as "Josh" was Joshua Haia at HomeStreet Bank. Harris

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
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1 wanted Tamez to gain access to a safe deposit box and conceal items in it before law enforcement could  
2 find them. Detective Lundquist was able to locate a recorded phone call in which Harris talks to Tamez  
3 while she was in the bank. Harris instructs Tamez to hand the phone to Josh Haia. Mr. Haia talks to Mr.  
4 Harris and is directed to allow Ms. Tamez to be added to his safe deposit account as well as his bank  
5 accounts.

6 On April 28, 2008, Detective Lundquist served a search warrant on Damien Harris' safe deposit  
7 box at the HomeStreet Bank. The safe deposit box agreement card at the back indicated that Box # 530  
8 belonged to Damien Darnell Harris. The card also listed Temica Tamez as a signor on the safe deposit  
9 box. She had been added on April 25, 2008. The safe deposit box was opened and detectives located  
10 \$25,000.00 in cash. The cash was in several denominations but primarily the money was in \$20.00 bills.  
11 Det. Lundquist testified that crack cocaine is primarily sold in \$20.00 quantities. There were over  
12 16,000.00 in \$20 bills. The money was counted, packaged and seized as evidence.

13 On May 16, 2008, Det. Renschler was seeking to contact Adrian Morris (also known as C-Ragg)  
14 about the attempted break-in at Kathy Kruse's apartment relating to Damien Harris. Mr. Morris had  
15 been detained by a uniformed Olympia police officer. Det. Renschler went to the scene and contacted  
16 Mr. Morris. Mr. Morris was eventually arrested. During a search incident to his arrest, Det. Renschler  
17 located a large amount of money on his person. Christiana Lamano had been with Mr. Morris at the  
18 time of his detention and eventual arrest. Detective Renschler obtained a search warrant for Morris'  
19 vehicle and located 18 grams of crack cocaine.

20 During the next several weeks, Detective Lundquist and other officers continued to monitor Mr.  
21 Harris' recorded jail telephone calls. During these conversations, the police became aware that Mr.  
22 Harris was sending letters out to his associates. Harris sent letters to Temica Tamez with specific  
23 instructions for her and others to follow. Based on this information, detectives served a search warrant  
24 at Tamez' new residence at 5406 Emerald Street SE in Lacey, WA on May 9, 2008. Detectives located  
25 numerous letters of correspondence from Damien Harris to Ms. Tamez. Harris directed Tamez to claim  
26 the \$25,000.00 located in the safe deposit box as her own money. Harris also directed Tamez to contact  
the registered owner of the Chevrolet Suburban and change the date on the transfer of title to reflect a  
date prior to his controlled buy dates. This was done by Mr. Harris in an effort to conceal the true nature

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and identity of the proceeds of his drug sales.

1           On September 17, 2008, the Thurston County Narcotics Task Force began a separate narcotics  
2 investigation of Michael Boyer. Mr. Boyer had been released from jail on bond after his arrest with Mr.  
3 Harris in April. TNT detectives arranged to conduct a controlled buy operation from Mr. Boyer utilizing  
4 a confidential informant. Mr. Boyer had recently contacted the confidential informant and related that he  
5 had some narcotics and firearms for sale. Detective Renschler requested the confidential informant  
6 arrange to purchase oxycontin pills and a firearm from Boyer. During the controlled buy transaction, the  
7 informant purchased a firearm but Mr. Boyer said he did not have any oxycontin pills available. Boyer  
8 indicated he could get some crack cocaine shortly, as his source of supply was coming over. The  
9 confidential informant agreed to purchase the crack cocaine. As detectives watched Boyer's residence in  
10 anticipation of the drug buy, they observed Adrian Morris (C-Ragg) arrive at Boyer's residence. The  
11 confidential informant then went back to Boyer's residence and purchased the crack cocaine from Boyer  
12 with Morris present in the house. Mr. Boyer was given \$100.00 in pre-recorded buy money for the  
13 purchase of this crack cocaine. At the conclusion of the operation, detectives collected the purchased  
14 firearm and crack cocaine from the informant. Detective Hedin-Baughn followed Mr. Morris away  
15 from Boyer's residence and back to Adrian Morris' residence at 5938 Cherokee Loop SE in Lacey, WA.

16           Task Force Detectives continued to follow Adrian Morris after he left his residence. Detectives  
17 Casebolt and Hedin-Baughn observed Adrian Morris make additional drug transactions during the time  
18 they monitored his activities. Eventually, Mr. Morris was stopped and placed under arrest. Detective  
19 Lundquist recovered some marijuana and \$1495.00 cash from Morris' person. It was determined that  
20 one of \$100 bills in Morris' possession was a pre-recorded bill used in the controlled buy operations  
21 involving the purchase of the firearm and crack cocaine at Boyer's residence. Morris' vehicle was  
22 seized and impounded for purposes of obtaining a search warrant. On September 18, 2008, Detective  
23 Hedin-Baughn served a search warrant on Morris' vehicle and located a small amount of suspected crack  
24 cocaine inside.

25           On September 19, 2008, the Narcotics Task Force detectives executed search warrants at Boyer's  
26 residence and Morris' residence simultaneously. At Morris' residence, Detectives Casebolt and Didion  
located Adrian Morris and his wife, Sara Morris. In Morris sweatshirt, Detective Didion located a golf

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 12**

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1 ball-sized white rock of cocaine. At Mr. Boyer's residence, police also located an additional amount of  
2 cocaine. Both Morris and Boyer were arrested and booked into the Thurston County Jail.

3 After Michael Boyer's September 2008 arrest, he agreed to meet with Task Force detectives and  
4 discuss his knowledge and involvement in a drug trafficking organization. Damien Harris and Adrian  
5 Morris were identified as primary participants along with Mr. Boyer. During these meetings, Boyer  
6 disclosed to Det. Renschler and other detectives that Damien Harris had solicited him to kill the  
7 informant involved in the two controlled buys from Mr. Harris. Mr. Boyer also went on to describe the  
8 nature of the association between Mr. Harris, Mr. Morris and himself as it related to the distribution of  
9 narcotics. With this new information, Task Force detectives began to investigate Damien Harris and  
10 others for their involvement in drug trafficking, leading organized crime and the solicitation of murder.

11 Mr. Boyer eventually entered into a plea agreement with the State to provide information to  
12 investigators about his knowledge of Harris, Morris, and others' criminal activity. He also agreed to  
13 testify about his knowledge, participation and involvement in these criminal activities as well as his  
14 associates. In consideration for this information and testimony, Boyer was allowed to plead guilty to a  
15 lesser charge of possession of a controlled substance and the State agreed to recommend he serve one  
16 year in jail.

17 Mr. Boyer testified that he has known Mr. Harris for a long period of time and each has been  
18 involved in the drug business in the past. They became better acquainted with one another while they  
19 were both incarcerated in the Thurston County Jail. They discussed doing "business" together when they  
20 both were out of custody. Around November of 2007, Harris was released from DOC custody to serve  
21 the community custody portion of a DOSA sentence. Harris and Boyer ran into one another and started  
22 associating regularly. Boyer met Adrian Morris through Damien Harris. Harris and Morris had been  
23 long time friends and associates according to several witnesses including Sara Morris.

24 Boyer admitted he has been a "street level" drug dealer for years and has sold drugs as his  
25 primary manner of financial support. He testified that a "street level" dealer generally needs to have a  
26 good "source" or "connect" to get the illegal drugs from. A drug dealer also must establish a territory to  
sell drugs in. Boyer testified that Harris and Morris were also drug dealers. Boyer said that Harris,  
Morris, and Boyer ended up banding together to protect their territory in Thurston County from other

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dealers coming in and taking their drug customers. Damien Harris was the person with the good  
1 "source" of supply for cocaine in Tacoma. Boyer also testified at times that Boyer had his own source  
2 for cocaine. Mr. Harris was protective of who this person was and would not let Boyer deal directly with  
3 this person. As a result, Boyer would get his cocaine and crack from Mr. Harris. Boyer testified Mr.  
4 Harris would obtain the powder form of cocaine from his source of supply. In order to turn the powder  
5 cocaine into crack cocaine, the powder cocaine had to be processed. This process is known as "rocking  
6 up." This process entails taking the powder cocaine and manufacturing it through a specific process to  
7 produce the rock cocaine or crack. This is generally done so that the powder cocaine can be diluted and  
8 therefore produce a larger quantity of product to sell. The crack cocaine will yield a substantially higher  
9 profit than the original powder cocaine when sold on the street.

10 Mr. Boyer testified that he and Damien Harris were housed together in the Thurston County Jail  
11 after their arrest on April 18. During this time period, Mr. Harris told Boyer that he wanted the  
12 informant, Dale Shipman (Syrus), to be killed. Due to Harris' DOC hold, he was not eligible to be  
13 bailed out. Therefore, Mr. Harris arranged for Mr. Boyer to be bailed out of jail with his drug money  
14 collected from Kathy Kruse's apartment. Mr. Harris also told Boyer that he and Adrian Morris would  
15 have to take care of the drug customers and keep the drug enterprise going while Harris was  
16 incarcerated. Mr. Harris instructed Boyer to obtain his "white" phone that contained all his drug source  
17 phone numbers as well as his drug customers. Mr. Boyer testified when he was bailed out of jail, he  
18 worked with Adrian Morris to keep the drug business going for Mr. Harris.

19 After release from jail in April, Michael Boyer lived with his girlfriend, Cassandra Simmons.  
20 They rented a room in a residence with Rob Bennett, Bennett's girlfriend, and another roommate named  
21 Joey. Harris called Mr. Boyer frequently from the Thurston County Jail and also wrote letters to Mr.  
22 Boyer. During some of these recorded jail phone calls, Harris would use the name "Justin" when talking  
23 about or referring to Mr. Boyer. This was done to disguise the fact that Harris was having contact with  
24 Mr. Boyer. During this period of time, Mr. Boyer testified he received a letter from Mr. Harris  
25 requesting that he kill "Syrus". The letter also indicated that Harris would pay money for the killing.  
26 This letter was read by Cassandra Simmons and Rob Bennett. Mr. Boyer understood Harris wanted the  
informant killed based on their earlier conversations in jail. Boyer said he contemplated doing the killing

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 14**

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1 himself but eventually decided to recruit Leonard Hamilton to do the killing. This letter soliciting Mr.  
2 Boyer to kill the informant in exchange for money was never recovered by the police. It was unclear if  
3 the letter was destroyed or lost.

4 Bennett and Simmons both testified that they saw the letter from Harris soliciting the murder of  
5 the informant. They each testified about the basic contents of the letter being a request to kill the  
6 informant. Simmons testified she recalled the letter being a request from Mr. Harris to kill the informant  
7 but she could not recall the exact language used. Mr. Bennett testified he saw the same letter from Mr.  
8 Harris to Boyer. Bennett testified that the letter was a solicitation to kill the informant, Syrus. He did not  
9 recall the exact wording of the letter but knew that it was a request to kill the informant for "five racks".

10 Bennett testified this term meant five thousand dollars. Bennett and Simmon's testimony corroborated  
11 the testimony of Mr. Boyer. The Court found the testimony about this letter and the request by Mr.  
12 Harris to have the informant killed was credible.

13 Mr. Boyer further testified he received several additional letters from Mr. Harris discussing the  
14 cases against them. After Mr. Boyer was arrested in September, he told the police that some of Harris'  
15 letters were in still in Cassandra Simmon's possession. The police recovered several letters written by  
16 Mr. Harris from Ms. Simmons. These letters were admitted in trial and considered by the Court in  
17 reaching verdicts in this case. One such letter dated July 13, 2008, was written by Mr. Harris to Boyer.  
18 The letter stated: "Also you know where Syrus is. What the Hell are you guys doing!!! Just staring at  
19 him for kicks or what. Reminensing how I used to be out. What's the problem. Anyway time is  
20 ticking." The August 13, 2008 letter, directed Boyer to be cautious of Temica Tamez because she is  
21 working with the police. Harris went on to instruct Boyer to get a copy of his discovery and make copies  
22 of Tamez's statements to the police. He concluded the letter by saying: "Anyways yall just got to get me  
23 out. I will take care of the rest!" In the August 25, 2008 letter, Harris says that he wants Boyer to set up  
24 an entrapment defense involving the informant. Harris spells out for Boyer what to say and directs that  
25 "we gotta throw police trying to frame in the picture. So all of you were threatened harassed to testify  
26 against me by the police." In the September 22, 2008 letter from Harris, he writes: "man yall suppose to  
be staying on the low and trying to find the \_\_\_. What is going on with that." The obvious reference in  
this letter is that Harris is directing Boyer and Morris to find the confidential informant (also know as the

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 15**

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C.I.).

1  
2           These letters written by Mr. Harris and Mr. Boyer's testimony were further bolstered by the Mr.  
3 Harris' own statements made during the recorded jail phone calls. Mr. Harris tells Mr. Boyer that Syrus'  
4 phone number is in one of Harris' phones that Boyer obtained. He also tells Boyer that Syrus is the one  
5 who "did it" meaning he was the informant. Harris also later inquires of Boyer during one of the calls if  
6 he has contacted Syrus yet and reaffirms that Syrus is the one they need to be looking for. In another  
7 conversation with Ms. Tamez, Mr. Harris is frustrated that Boyer and Morris have not dealt with the  
8 informant as he had directed. He says: "Looks like I am going to have to get out cause doesn't look like  
9 they going to do too much." The obvious implication of these conversations was that Mr. Harris wanted  
10 Boyer and Morris to deal with the informant and make his case go away. Taking these conversations  
11 together with the letters and testimony of the other witnesses, it was clear Mr. Harris wanted Syrus to be  
12 killed by Boyer or one of their associates. Furthermore, Boyer went about obtaining a firearm to be used  
13 in the killing. A Highpoint .45 caliber handgun was procured by Boyer and Morris. The handgun was  
14 seized by the Lakewood Police in an unrelated raid of Mr. Bennett's residence. Boyer also approached  
15 Leonard Hamilton and asked him to participate in the killing. Mr. Hamilton indicated there was a  
16 conversation surrounding the killing but he never agreed to do it and thought that Boyer was not serious  
17 about it.

18           The time period of January 13, 2008 to September 19, 2008, Harris was alleged to be leading  
19 organized crime. The evidence presented during trial, was that Mr. Harris was operating a drug  
20 distribution enterprise in Thurston County, Washington. When Harris was released from prison in 2007,  
21 Mr. Harris reconnected with Michael Boyer and Adrian Morris. According to Boyer, they began to band  
22 together to further their drug operations. Mr. Harris obtained powder cocaine from one or more his  
23 sources. Harris needed to turn the powder cocaine into the "rocked up" or "crack cocaine" form. To  
24 accomplish this, Mr. Harris employed Kevin Watkins to do this on occasion. Mr. Watkins testified that  
25 for about a two month period of time, Harris came over several times and Watkins manufactured or  
26 processed the powder cocaine into crack. In return for this service, Mr. Watkins received a quantity of  
the crack cocaine produced. Harris also engaged Ms. Kruse in his drug enterprise. Harris rented a room

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1 in Kruse's apartment where he could store his drugs and money. This was done so Harris' DOC officer  
2 could not search the location as he was reporting his residence was with Ms. Tamez. Mr. Boyer testified  
3 that Harris used Kruse's apartment as a stash spot for drugs and money. Mr. Harris referred to Kruse's  
4 apartment as his "spot" during recorded jail conversations. The evidence showed drugs and money were  
5 kept at this location based on the testimony of Boyer, Kruse and Mr. Harris own statements when he  
6 called Ms. Kruse to have her remove the drugs and money when he was arrested and to give them to Ms.  
7 Tamez.

8 While in jail, Mr. Harris was directing Mr. Boyer, Adrian Morris, and Temica Tamez to continue  
9 the drug operation. He directed Tamez to move his drug money so the police would not be able to find  
10 it. He further directed her to conceal his assets, specifically his vehicle and money. He also told her to  
11 falsify the title transfer of his Chevrolet Suburban and claim the money found in his safe deposit box as  
12 her life savings. Harris also directed Boyer and Morris to get a hold of a specific cell phone that had his  
13 suppliers and customers contact information. They were told to keep his drug business afloat until he  
14 was released from custody. To that end, Boyer and Morris worked together to keep Harris' drug  
15 customer's supplied with drugs. Boyer testified that he and Morris worked together while Harris was  
16 incarcerated. The fact that Boyer and Morris worked together in the distribution of crack cocaine was  
17 further evidenced by the controlled buy operation conducted by the Narcotics Task Force on September  
18 17, 2008. During the controlled buy, Boyer sold crack cocaine to a police informant using pre-recorded  
19 buy money. Adrian Morris came to the residence and supplied the crack cocaine to Mr. Boyer who in  
20 turn sold it to the informant. When Mr. Morris was arrested later that day, he had the pre-recorded buy  
21 funds in his possession. Furthermore, during the police raid on his home, Morris was found to be in the  
22 possession of a large amount of crack cocaine.

23 In the letter dated October 25, 2008, Mr. Harris wrote to Sarah Morris. Sarah Morris is married  
24 to Adrian Morris. The letter was found during a subsequent search of Sara Morris' residence. In the  
25 letter, Harris tells Sarah Morris to pass information to her husband, Adrian Morris. He tells her the  
26 police are listening to his phone calls. Harris wrote "tell Cee [Adrian Morris] to bail me out so I can  
handle shit. Or we all stuck." He goes on to write, "tell Cee [Adrian Morris] thanks once again for  
bailing me out the past 6 months like I been begging him to. Now we all might be stuck. I just gotta get

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out to handle all this now since them guys didn't want to listen when I told them the task was watching."

1 This letter along with the recorded jail phone calls clearly established the link between Boyer, Morris  
2 and their drug enterprise. It also further corroborated the testimony of Mr. Boyer about the ongoing nature  
3 of the drug enterprise. Mr. Harris' written statements about how the group is all going to be "stuck"  
4 established a working connection or relationship between Boyer and Morris. The drug distribution  
5 operation continued through Boyer and Morris at the direction of Mr. Harris to a period of time  
6 extending into September and October of 2008.

7 Furthermore, the evidence showed that Mr. Harris was intentionally organizing, managing,  
8 directing and supervising three or more people with the intent to engage in a pattern of criminal  
9 profiteering activity. The individuals involved in these activities were Michael Boyer, Adrian Morris,  
10 Temica Tamez, Kathy Kruse, and Kevin Watkins. These individuals were all connected to Mr. Harris  
11 for the purpose of furthering his drug distribution enterprise. The criminal profiteering acts involved in  
12 this leading organized crime case committed for financial gain were: the solicitation of murder in the  
13 first degree, the attempt to tamper with or intimidate witnesses, at least two acts of money laundering  
14 involving Temica Tamez and others, at least two acts of delivering a controlled substance during the  
15 controlled buy operations, the manufacturing of crack cocaine with Mr. Watkins, and the cocaine  
16 delivery by Mr. Boyer and Mr. Morris during the September controlled buy operation. The evidence  
17 showed the reasons for these acts were to continue and further the drug distribution enterprise. In  
18 conjunction with the drug enterprise, they ultimately continued to gain financially from these activities.  
19 None of these events were isolated instance and the evidence clearly established the nexus between these  
20 events and the on-going drug distribution enterprise.

21 Mr. Harris had no legitimate source of income that would account for all the money Harris was  
22 connected to in this case. The evidence has established Mr. Harris was a prolific drug dealer who could  
23 make substantial profits by selling drugs. As testified, Harris purchased an ounce powder cocaine for  
24 \$500-700 and could turn it into crack cocaine that he could sell for approximately \$2400.00. During the  
25 course of this trial, Mr. Harris was connected to a substantial amount of money to include the \$25,000.00  
26 found in his safe deposit box, the approximately \$2600.00 at Ms. Kruse apartment, the approximately  
\$3500.00 cash used to purchase the Chevrolet Suburban, and the approximately \$400.00 found during

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 18**

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0-000000144

the arrest of Mr. Harris and Mr. Boyer.

1  
2 During the time period between April 18, 2008 and April 25, 2008, Damien Harris used his drug  
3 money located in Kathy Kruse's apartment to bail Michael Boyer out of the Thurston County Jail. He  
4 directed Ms. Kruse to give the drug money to Temica Tamez. Ms. Tamez used Mr. Harris' drug money  
5 to put down the cash bail to secure Mr. Boyer's release from jail after their initial arrest. Mr. Harris  
6 knowingly conducted a financial transaction by directing payment of his money to post his associates  
7 bail. Furthermore, he knew the money used to post bail was in whole or part the proceeds from his  
8 illegal drug sales.

9 Similarly, between April 25 and April 28, 2008, Mr. Harris directed Ms. Tamez to gain access to  
10 his safe deposit box. Harris knew the safe deposit box contained the \$25,000 in cash from his drug  
11 distribution enterprise. With Ms. Tamez acting as his accomplice, Harris directed her to conduct a  
12 financial transaction to either conceal or disguise the nature, location, and ownership of the money.  
13 Harris wanted Tamez to gain access to the safe deposit box and obtain control over the drug money so  
14 the police would not be able to locate it. Furthermore, Harris later directed Ms. Tamez to claim the  
15 money as her own in one of his letters. As stated earlier, Mr. Harris had made only a nominal amount of  
16 money over the last fifteen years based Det. Lundquist's testimony about Harris employment history and  
17 his Employment Security records. The money contained in the box was in denominations consistent with  
18 street level drug transactions and was further evidenced by the testimony regarding Harris drug sales  
19 throughout the course of this trial.

20 Damien Harris maintained a building or dwelling for drug purposes during the time period  
21 between March 1 and April 25, 2008. The residence used by Harris for drug purposes was 612  
22 American Street SW #L-205 in Olympia, WA. Mr. Harris rented a room from Ms. Kruse to use as a  
23 "stash spot" for his drugs. Mr. Boyer and Mr. Kruse testified that Harris stored his drugs and money in  
24 the rented room. Harris talked about the drugs and money he kept at this location while talking to his  
25 associates on the recorded jail phone calls. Ms. Kruse further testified when she went into Harris' room  
26 as directed on April 18, she found a golf-ball sized rock of crack cocaine and other unidentified pills.  
Mr. Harris knew the drugs were there and in fact told Ms. Kruse what she would find in his black jacket

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 19**

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0-000000145

1 hanging in the closet. Mr. Harris knew that his DOC officer could search his residence with Ms. Tamez  
 2 and he could not keep his drugs at that location. To circumvent this problem, Harris subleased a room  
 3 from Mr. Kruse and began storing his drugs in this room. Mr. Harris was not living with Ms. Kruse.  
 4 The evidence showed Mr. Harris was living with Ms. Tamez during the period of time from January  
 5 2008 until his arrest in April. Ms. Tamez's testimony to the contrary was not credible and was rebutted  
 6 by Ms. Tamez' own statements on the recorded jail conversations with Mr. Harris.

7 **Exceptional Sentence**

8 Damien Darnell Harris committed multiple current offenses. He has been found guilty of eight  
 9 separate offenses during the course of this trial. Furthermore, Harris has a high offender score based on  
 10 his eleven prior felony convictions, his status of being on community custody at the time of these  
 11 offenses, and the eight current offenses he has been convicted of. These facts result in some of the  
 12 current offenses going unpunished. Prior to this case, Mr. Harris had been convicted of eleven felony  
 13 offenses as outlined below:

CRIME	SENTENCE DATE	CRIME DATE	SENTENCING COURT	ADULT/ JUV	CRIME TYPE
Theft in the Second Degree	9/21/93	7/27/93	Thurston Co. 93-1-0755-1	A	NV
Burglary in the Second Degree	9/21/93	7/31/93	Thurston Co. 93-1-0755-1	A	NV
Theft in the Second Degree	1/11/95	10/1/93	Thurston Co. 93-1-993-7	A	NV
Unlawful Possession of a Firearm	4/20/95	3/6/95	Thurston Co. 95-1-0304-8	A	NV
VUCSA-(A) Mfg/Deliver	7/18/97	10/13/95	Thurston Co. 96-1-0290-2	A	NV
VUCSA (A)-Mfg/Deliver	1/21/98	9/9/97	Thurston Co. 97-1-1547-6	A	NV
Unlawful Possession of a Firearm	2/2/046/5/06	7/10/02	Pierce Co. 03-1-1903-0	A	NV
VUCSA (A)-MFG/ Deliver	6/8/04	6/30/03	Thurston Co. 03-1-1384-0	A	NV
Unlawful Possession of a Firearm	9/14/06	10/2/04	Thurston Co. 04-1-1800-9	A	NV
Attempt. To Elude	9/14/06	10/2/04	Thurston Co.	A	NV

24 **FINDINGS OF FACT, CONCLUSIONS OF LAW FOR TRIAL AND EXCEPTIONAL SENTENCE - 20**

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			04-1-1800-9		
VUCSA-Possession	6/5/06	5/4/06	Pierce Co. 06-1-2025-3	A	NV

1  
2  
3 All eleven of these offenses counted in the determining the defendant's offender score. For each of the  
4 eight current offenses which the defendant was sentenced, his offender score was above the nine point  
5 maximum on the sentencing grids. For each offense the defendant was sentenced on, there were at least  
6 seven other current offenses and an additional point was added for being on community custody when  
7 these current offenses were committed. Due to the fact Mr. Harris was already at the top of the  
8 sentencing grid for his offender score for each offense, he would not receive any additional punishment  
9 for any of the additional seven current offenses. The Standard Range sentences for each count were  
10 determined as the following:

11 Count I: 149-198 months (Statutory Maximum-Life)

12 Counts III-V: 60+-120 months (Statutory Maximum-20 years)

13 Counts VI-VII: 0-12 months (Statutory Maximum-10 years)

14 Count IX: 308.25-411 months (Statutory Maximum-Life)

15 Count X: 60+-120 months (Statutory Maximum-5 years)

16 The sentencing ranges were not increased by the inclusion of any of the seven additional current offenses  
17 for which Mr. Harris was found guilty.

18 The Court also found beyond a reasonable doubt that the some of the current offenses were a  
19 major violation of the Uniform Controlled Substances Act related to the trafficking of controlled  
20 substances, which was more onerous than the typical offense. The Court found Mr. Harris guilty of  
21 three controlled substance violations relating to the delivery and possession with intent to deliver  
22 controlled substances. *These acts involved the events described above relating to the two controlled*  
23 *buys on April 16 and 18 and the crack cocaine found when Harris and Boyer were arrested later in the*  
24 *day after being observed to make additional narcotics transactions while being followed by the police.*  
25 Mr. Harris was also engaged with Mr. Watkins in the processing/manufacturing of crack cocaine.  
26 Finally, the circumstance of this case revealed Mr. Harris occupied a high position in this drug  
distribution enterprise. There was an abundant amount of evidence which proved Harris was in fact the

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 21**

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0-000000147

1 leader of this drug enterprise. Harris had the high level connection for powder cocaine and had a broad  
2 customer base. The letters, phone calls, and testimony of witness provided ample evidence that Mr.  
3 Harris directed, organized, financed, and oversaw the people he worked with. He delivered crack  
4 cocaine on a daily basis and was selling a large quantity of the product. In addition, Harris accumulated  
5 a large amount of money over his relatively short period of time released from prison due to the  
6 quantities sold and his position in this drug enterprise.

7 The Court also found beyond a reasonable doubt that Damien Harris committed several of these  
8 current offenses shortly after being released from incarceration. The evidence showed Mr. Harris had  
9 been release to serve the community custody portion of his DOSA sentence in late October or early  
10 November 2007. Mr. Harris was incarcerated for a violation of his DOC conditions from February 6 to  
11 February 26, 2008. Harris committed the money laundering offenses and drug offenses between his  
12 release date and April 28. These current offenses occurred less than two months after Harris was last  
13 released from incarceration by DOC. The Court finds two months is a very short period of time.

14 The Court considered imposing a sentence outside the standard range for the offenses Mr. Harris  
15 was found guilty of committing. Having considered the purpose of the SRA, the Court found substantial  
16 and compelling reasons to justify an exceptional sentence and imposed an exceptional sentence. The  
17 Court found that Mr. Harris has an extensive criminal history and an offender score well above the nine  
18 point maximum as set out in the sentencing grids. Mr. Harris criminal behavior has been extensive and  
19 on-going throughout his life. Prior to reaching age thirty-five, Mr. Harris has been convicted on nineteen  
20 felony offenses. Mr. Harris criminal activities have had a detrimental impact on our community and  
21 many individuals. Mr. Harris is a threat to the community and will likely re-offend. Mr. Harris needed  
22 to be sentenced to a term of incarceration that was longer than the standard range sentences allowed in  
23 this case. Therefore, the Court determined an exceptional sentence was justified.

#### 24 CONCLUSIONS OF LAW

- 25 1. The Court has jurisdiction over the Defendant and the subject matter.
- 26 2. During the time period between January 13, 2008 and September 19, 2008, in Thurston County, WA,  
Damien Darnell Harris did intentionally organize, manage, direct, and supervise three or more  
persons with the intent to engage in a pattern of criminal profiteering activity.

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 22**

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1 Mr. Harris did intentionally organize, manage, direct and supervise Michael Boyer, Adrian Morris,  
2 Temica Tamez, Kathy Kruse, and Kevin Watkins. These individuals were all connected to Mr.  
3 Harris for the purpose of furthering his drug distribution enterprise. The criminal profiteering acts  
4 involved in this leading organized crime case committed for financial gain were: the solicitation of  
5 murder in the first degree, the attempt to tamper with or intimidate witnesses, at least two acts of  
6 money laundering involving Temica Tamez and others, at least two acts of delivering a controlled  
7 substance during the controlled buy operations, the processing/manufacturing of crack cocaine with  
8 Mr. Watkins, and the cocaine delivery by Mr. Boyer and Mr. Morris during the September controlled  
9 buy operation. The Court finds the purpose of these acts was to continue and further the drug  
10 distribution enterprise and to ultimately continue to gain financially from these activities. None of  
11 these events were isolated instance and the evidence clearly established the nexus between these  
12 events and the drug distribution enterprise.

13 The Court finds Damien Darnell Harris has been proven guilty beyond a reasonable doubt to having  
14 committed the offense of Leading Organized Crime as charged in Count I. The Court finds Mr.  
15 Harris guilty of this offense.

16 3. During the period of time between April 1 and April 30, 2008, Damien Darnell Harris lived with  
17 Temica Tamez at 2008 Evergreen Park Dr. SW #206 in Olympia, WA. During the execution of a  
18 search warrant at this residence, detectives located a Bryco Arms .22 caliber handgun. Mr. Harris is  
19 prohibited from possessing a firearm due to several felony convictions which includes at least one  
20 serious offense of an offense involving the delivery of controlled substance which is a Class B  
21 felony. The firearm was missing the firing pin assembly when it was recovered. The Court finds the  
22 Brayco Arms .22 caliber handgun does not meet the definition of a firearm because it could not be  
23 readily made available for use based on this missing component.

24 The Court finds the State has failed to prove beyond a reasonable doubt that Mr. Harris Unlawfully  
25 Possessed a Firearm in the First Degree as charged in Count II. The Court finds Mr. Harris not guilty  
26 of this offense.

4. On April 16, 2008, Damien Darnell Harris delivered a controlled substance to another person in  
Thurston County, WA. Mr. Harris sold crack cocaine to Dale Shipman (Syrus) during a controlled

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 23**

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0-000000149

buy operation. Mr. Harris knew the substance was crack cocaine when he delivered it to Mr.

1 Shipman. The Court finds Damien Darnell Harris has been proven guilty beyond a reasonable doubt  
2 to have committed the offense of Unlawful Delivery of a Controlled Substance-Cocaine as charged  
3 in Count III. The Court finds Mr. Harris guilty of this offense.

4 5. On April 18, 2008, Damien Darnell Harris delivered a controlled substance to another person in  
5 Thurston County, WA. Mr. Harris sold crack cocaine to Dale Shipman (Syrus) during a controlled  
6 buy operation. Mr. Harris knew the substance was crack cocaine when he delivered it to Mr.  
7 Shipman. The Court finds Damien Darnell Harris has been proven guilty beyond a reasonable doubt  
8 to have committed the offense of Unlawful Delivery of a Controlled Substance-Cocaine as charged  
9 in Count IV. The Court finds Mr. Harris guilty of this offense.

10 6. On April 18, 2008, Damien Darnell Harris possessed a controlled substance with intent to deliver it  
11 to another person in Thurston County, WA. Mr. Harris was in actual and constructive possession of  
12 crack cocaine. The crack cocaine was recovered by the police when Mr. Harris and Mr. Boyer were  
13 taken into custody. Mr. Harris transferred the crack cocaine to Mr. Boyer just prior to his arrest. The  
14 Court finds the crack cocaine found on Mr. Boyer at the jail belonged to Damien Harris. Mr. Harris  
15 possessed the crack cocaine with the intent to deliver it to another person. The Court finds Damien  
16 Darnell Harris has been proven guilty beyond a reasonable doubt to have committed the offense of  
17 Unlawful Possession of a Controlled Substance-Cocaine with the Intent to Deliver as charged in  
18 Count V. The Court finds Mr. Harris guilty of this offense.

19 7. During the time period between April 18 and April 25, 2008, in Thurston County, WA, Damien  
20 Darnell Harris did conduct or attempt to conduct a financial transaction involving the proceeds of  
21 specified unlawful activity knowing the property was the proceeds of specified unlawful activity.  
22 Damien Darnell Harris directed that his drug money in Kathy Kruse's apartment be transferred to  
23 Temica Tamez and eventually used for payment of Mr. Boyer's bail. Mr. Boyer's bail payment was  
24 made with the proceeds of Harris' illegal drug enterprise. The Court finds Damien Darnell Harris has  
25 been proven guilty beyond a reasonable doubt to have committed the offense of Money Laundering  
26 as charged in Count VI. The Court finds Mr. Harris guilty of this offense.

8. During the time period between April 25 and April 28, 2008, in Thurston County, WA, Damien

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 24**

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1 Darnell Harris did conduct or attempt to conduct a financial transaction involving the proceeds of  
2 specified unlawful activity knowing the property is the proceeds of specified unlawful activity in  
3 Thurston County, WA. Furthermore, Damien Darnell Harris also knowingly directed a transaction  
4 which was designed in whole or in part to conceal the nature, location, source and ownership of the  
5 proceeds of his specified unlawful activity in Thurston County, WA. Mr. Harris deposited the  
6 proceeds of his drug distribution enterprise into his safe deposit box. He directed Temica Tamez to  
7 gain access to the box and either withdraw or conceal the money to avoid seizure by the police. The  
8 Court finds Damien Darnell Harris has been proven guilty beyond a reasonable doubt to have  
9 committed the offense of Money Laundering as charged in Count VII. The Court finds Mr. Harris  
10 guilty of this offense.

11 9. On or about April 19 to April 25, 2008, Temica Tamez and Adrian Morris contacted Kathy Kruse on  
12 different occasions. They attempted to obtain items belonging to Mr. Harris related to his drug  
13 distribution enterprise and some personal belongings. Ms. Tamez and Mr. Morris contacted Ms.  
14 Kruse at her apartment in Thurston County, WA. During these contacts, Ms. Tamez and Mr. Morris  
15 made statements that were threatening to Ms. Kruse. The Court finds the State has failed to prove  
16 beyond a reasonable doubt that Mr. Harris was an accomplice to any alleged acts related to the  
17 offense of Tampering with a Witness as charged in Count VIII. The Court finds Mr. Harris not  
18 guilty of this offense.

19 10. During the approximate time period between April 22 and May 16, 2008 in Thurston County, WA,  
20 Damien Darnell Harris offered to give money to Mr. Boyer or another to engage in a specific  
21 conduct. That such offering was done with the intent to promote or facilitate the commission of the  
22 crime of Murder in the First Degree. That the specific conduct of Mr. Boyer or another would  
23 constitute the crime of Murder in the First Degree if such crime had been attempted or committed.  
24 Mr. Harris acted with intent to cause the death of Dale Shipman. This intent to cause the death of  
25 Mr. Shipman was premeditated. Harris offered to give money or other things of value to another to  
26 kill Mr. Shipman. Damien Darnell Harris solicited Michael Boyer or another willing party to kill  
Dale Shipman in exchange for money. Harris wanted to kill Shipman due to his involvement in the

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 25**

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1 controlled buys and his status as a witness against Harris. The testimony about Mr. Harris  
2 conversation and letter soliciting the killing indicate Harris intended to have Mr. Shipman killed.  
3 Furthermore, Mr. Boyer took substantial steps toward the commission of this crime by obtaining a  
4 firearm to be used for killing Mr. Shipman and trying to recruit Leonard Hamilton to commit the act.  
5 The Court finds Damien Darnell Harris has been proven guilty beyond a reasonable doubt to have  
6 committed the offense of Solicitation to Commit Murder in the First Degree as charged in Count IX.  
7 The Court finds Mr. Harris guilty of this offense.

8 During the time period between March 1 and April 25, 2008 in Thurston County, WA, Damien  
9 Darnell Harris did knowingly keep or maintain a dwelling which was used for the keeping or selling  
10 of drugs. The room Harris rented from Kathy Kruse was a stash spot for Harris to hide and keep his  
11 drugs. The Court finds Damien Darnell Harris has been proven guilty beyond a reasonable doubt to  
12 having committed the offense of Maintaining a Dwelling for Drug Purposes as charged in Count X.  
13 The Court finds Mr. Harris guilty of this offense.

14 11. The Court finds the State proved beyond a reasonable doubt that aggravating circumstances existed  
15 in this case which justify an exceptional sentence outside the standard range. The Court found  
16 beyond a reasonable doubt that Mr. Harris had committed multiple current offenses and his high  
17 offender score resulted in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).  
18 The Court also found beyond a reasonable doubt that Mr. Harris committed the current offenses  
19 shortly after being released from incarceration. 9.94A.535(2)(t). The Court found beyond a  
20 reasonable doubt that Mr. Harris' current offense was a major violation of the Uniform Controlled  
21 Substance Act related to trafficking in controlled substances, which was more onerous than the  
22 typical offense of its statutory definition. Mr. Harris was involved in at least three separate  
23 transactions in which controlled substances were sold, transferred or possessed with intent to do so.  
24 The circumstances of this current offenses revealed Mr. Harris occupied a high position in the drug  
25 distribution hierarchy. The current offenses also involved an attempted or actual sale or transfer of a  
26 controlled substance in quantities substantially larger than for personal use. RCW9.94A.535 (2)(e).

**FINDINGS OF FACT, CONCLUSIONS OF LAW FOR  
TRIAL AND EXCEPTIONAL SENTENCE - 26**

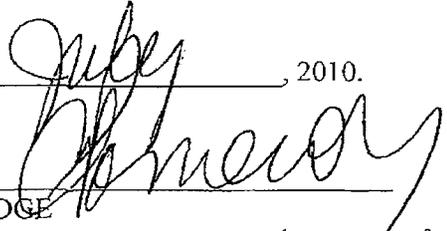
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Therefore, the Court found substantial and compelling reasons to impose an exceptional sentence in this case by running Count I consecutive to Count IX. All remaining counts were run concurrently to Counts I and IX.

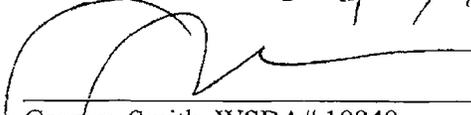
DATED this 20 day of July, 2010.

  
JUDGE

Presented by:

Approved for Entry: only as to form

  
Scott M. Jackson WSBA #26844  
Deputy Prosecuting Attorney

  
Gregory Smith, WSBA# 10840  
Attorney for Defendant

APPENDIX "B"

Findings of Fact and Conclusions of Law  
(3.6 Hearing)

and

Findings of Fact and Conclusions of Law  
(Franks Hearing)

Filed July 20, 2010

3

FILED  
SUPERIOR COURT  
THURSTON COUNTY WA

10 JUL -1 P2:05

BETTY J GOULD CLERK

By \_\_\_\_\_ DEPUTY

**IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR THURSTON COUNTY**

NO. 09-1-00301-1

STATE OF WASHINGTON,

Plaintiff,

**FINDINGS OF FACT  
AND CONCLUSIONS OF LAW  
(3.6 Hearing)**

vs.

DAMIEN DARNELL HARRIS

Defendant.

#16

THIS MATTER came on before Thurston County Superior Judge Christine Pomeroy on the Defendant's Motion to Suppress pursuant to CrR 3.6 on October 12, 2009. Present before the Court were Deputy Prosecuting Attorney Scott M. Jackson on behalf of the State of Washington, the Defendant, Damien Darnell Harris, and Gregory Smith, Attorney for Defendant. The Court, having considered the parties briefs, arguments, declarations, the search warrant affidavits, and exhibits admitted enters the following:

FINDINGS OF FACT

The Court reviewed and considered the Affidavit and Application for Search Warrant by Detective Lundquist filed on April 29, 2008 which was submitted by both parties. The Court has considered the information contained in the four corners of the warrant application by Detective Lundquist. The Defendant asserted that the application for the search warrant did not establish probable cause that the evidence of the crime would be located in the place to be searched.

The Thurston County Narcotics Task Force Detectives conducted two controlled buy operations of rock cocaine from Damien Harris utilizing a confidential informant. The informant had identified Mr. Harris as a supplier of rock cocaine and the informant had either purchased or been present on at least twenty occasions when rock cocaine had been sold by Mr. Harris. The controlled buy operations

1 occurred on April 16 and April 18, 2008. During each controlled buy operation, a confidential informant  
2 gave \$40.00 of pre-recorded buy funds to Mr. Harris. Mr. Harris then delivered the rock cocaine to the  
3 informant. Each controlled buy operation was successfully completed and the informant turned over the  
4 rock cocaine to detectives. Mr. Harris was eventually arrested later in the day on April 18, 2008.  
5 Detectives had observed Mr. Harris and Mr. Boyer making several narcotics transactions with other  
6 unidentified individuals at various locations throughout the county as they were being followed.

7 After Harris arrest, Detective Lundquist went to the Courtside Apartments and contacted Cathy J.  
8 Kruse. Ms. Kruse told Det. Lundquist that Mr. Harris occasionally stayed at her apartment. She said  
9 Harris had some belongings hanging in a closet but did not maintain a substantial amount of items in the  
10 apartment. On April 21, 2008, Detective Lundquist returned to Ms. Kruse's apartment and had another  
11 conversation about Mr. Harris' arrangement with Ms. Kruse. Ms. Kruse stated Harris had his own room  
12 within her apartment. She said Harris had his own clothing, bed, closet, and personal items within the  
13 room. Kruse indicated that she met Mr. Harris through her drug associations and Mr. Harris became her  
14 drug dealer. Mr. Harris offered Kruse a \$20.00 piece of rock cocaine every day in exchange for rental of  
15 the room in her apartment. Ms. Kruse recounted several phone calls received from Mr. Harris after his  
16 arrest. Ms. Kruse was instructed to go into Harris' room and remove items from within a jacket and give  
17 it to Harris' girlfriend, Temica Tamez. Kruse described finding four golf-sized pieces of rock cocaine  
18 along with \$2600.00 in a jacket in Harris' closet. Ms. Tamez came over and collected the money from  
19 Kruse and she was instructed to flush the cocaine down the toilet.

20 Detective Lundquist's Affidavit indicates he listened to numerous recorded jail phone calls  
21 between Mr. Harris and his girlfriend, Temica Tamez. Ms. Tamez discussed with Harris that she had  
22 received the money and "stuff" from Kruse. It was unknown what "stuff" Tamez received with the  
23 \$2600.00. During one such call, Detective Lundquist wrote "Mr. Harris instructs Ms. Tamez to go to his  
24 bank and contact 'Josh' and only 'Josh' to gain access to a safe deposit box and conceal items in it  
25 before law enforcement can find them." He further stated "Harris called Tamez as Tamez was in the  
26 bank speaking with Josh. The phone was handed to Josh and Damien Harris verbally authorized Josh to  
add Temica Tamez to his safe deposit box. Harris made another phone call to Tamez at 0944 hours.  
During that phone call, Tamez told Harris that she had been given access to his banking accounts and the  
safe deposit box." The Defendant has challenged this statement as a "misrepresentation of material  
fact." Def. Declaration at p. 3.

On April 28, 2008, Thurston County Narcotics Task Force Detective Ken Lundquist presented an  
Affidavit and Application for Search Warrant to Thurston County Superior Court Judge Richard Hicks.  
Detective Lundquist was seeking authority to search a safe deposit box belonging to Damien D. Harris in  
relation to a narcotics investigation outlined in the search warrant affidavit. The Search Warrant was  
granted by Judge Hicks on April 28, 2008. During the execution of the search warrant, Detective  
Lundquist found and seized \$25,000.00 in cash.

Detective Lundquist's affidavit does not contain a misrepresentation of material fact. Detective  
Lundquist averred that Ms. Tamez was given "access to his banking accounts and the safe deposit box."  
The Court finds that Ms. Tamez being placed on the accounts and safe deposit box as an account holder  
is the equivalent of being given access to the accounts and safe deposit box. The Court finds this was a  
true statement and did not misrepresent the facts known to Detective Lundquist at the time of the  
affidavit. There were no deliberate or reckless misrepresentations made by Detective Lundquist.

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CONCLUSIONS OF LAW

The Court finds there was probable cause to authorize the search warrant for the bank accounts and safe deposit box at issue in this case. There were sufficient facts and circumstances to establish a reasonable inference that the defendant was involved in criminal activity and that evidence of the criminal activity could be found at the place to be searched. Judge Hicks did not abuse his discretion in authorizing the warrant application. The reasonable inferences from the facts and circumstances as outlined in Detective Lundquist's affidavit that evidence of Mr. Harris' criminal activity could be found in the safe deposit box. The Court finds it was significant that Mr. Harris wanted Ms. Tamez to get into the safe deposit box given the recorded conversations between Mr. Harris and Ms. Tamez. Ms. Tamez was to get into the safe deposit box to either hid or destroy evidence before the police became aware of it. In addition, Ms. Tamez had been given approximately \$2600.00 cash from Cathy Kruse at the direction of Mr. Harris after his arrest. Eventually, the detectives located \$25,000.00 cash in the safe deposit box. The pre-recorded buy money that Detective Lundquist was seeking was not found in that amount. However, it does not matter that the pre-recorded buy money was not found in the safe deposit box. Mr. Harris had been arrested for delivering controlled substances in exchange for money. The investigation, as outlined in the search warrant affidavit, clearly shows an ongoing drug trafficking operation by Mr. Harris. Mr. Harris was secreting his money and drugs in various locations to include the residence of Cathy Kruse. Ms. Tamez was acting on behalf of Mr. Harris in collecting money, destroying evidence, and moving various items. Given all of these activities, it would be reasonable to conclude the safe deposit box could contain the evidence sought. The defendant's motion to suppress is denied.

DATED this 1<sup>st</sup> day of July, 2010.

JUDGE  
Approved for Entry: as to form

Presented by:

Scott M. Jackson WSBA #26844  
Deputy Prosecuting Attorney

Gregory Smith, WSBA# 10840  
Attorney for Defendant

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THURSTON COUNTY WA

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**IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR THURSTON COUNTY**

NO. 09-1-00301-1

STATE OF WASHINGTON,  
  
vs.  
  
DAMIEN DARNELL HARRIS

Plaintiff,  
  
  
Defendant.

**FINDINGS OF FACT  
AND CONCLUSIONS OF LAW  
(Franks Hearing)**

#16

THIS MATTER came on before Thurston County Superior Judge Christine Pomeroy on the Defendant's Motion for CrR 3.6 Evidentiary Hearing (Frank's Hearing), on October 5, 2009. Present before the Court were Deputy Prosecuting Attorney Scott M. Jackson on behalf of the State of Washington, the Defendant, Damien Darnell Harris, and Gregory Smith, Attorney for Defendant. The Court, having considered the parties briefs, arguments, declarations, the search warrant affidavits, and exhibits admitted enters the following:

FINDINGS OF FACT

On April 28, 2008, Thurston County Narcotics Task Force Detective Ken Lundquist presented an Affidavit and Application for Search Warrant to Thurston County Superior Court Judge Richard Hicks. Detective Lundquist was seeking authority to search a safe deposit box belonging to Damien D. Harris in relation to a narcotics investigation outlined in the search warrant affidavit. The Search Warrant was granted by Judge Hicks on April 28, 2008. During the execution of the search warrant, Detective Lundquist found and seized \$25,000.00 in cash.

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This Court has considered all the information contained in Detective Lundquist's application for search warrant in deciding whether there has been a substantial preliminary showing that misrepresentations were made deliberately or recklessly by the affiant in the search warrant affidavit.

Detective Lundquist's Affidavit indicates he listened to numerous recorded jail phone calls between Mr. Harris and his girlfriend, Temica Tamez. During one such call, Detective Lundquist wrote "Mr. Harris instructs Ms. Tamez to go to his bank and contact 'Josh' and only 'Josh' to gain access to a safe deposit box and conceal items in it before law enforcement can find them." He further stated "Harris called Tamez as Tamez was in the bank speaking with Josh. The phone was handed to Josh and Damien Harris verbally authorized Josh to add Temica Tamez to his safe deposit box. Harris made another phone call to Tamez at 0944 hours. During that phone call, Tamez told Harris that she had been given access to his banking accounts and the safe deposit box." The Defendant has challenged this statement as a "misrepresentation of material fact." Def. Declaration at p. 3.

Detective Lundquist's affidavit does not contain a misrepresentation of material fact. Detective Lundquist averred that Ms. Tamez was given "access to his banking accounts and the safe deposit box." The Court finds that Ms. Tamez being placed on the accounts and safe deposit box as an account holder is the equivalent of being given access to the accounts and safe deposit box. The Court finds this was a true statement and did not misrepresent the facts known to Detective Lundquist at the time of the affidavit. There were no deliberate or reckless misrepresentations made by Detective Lundquist.

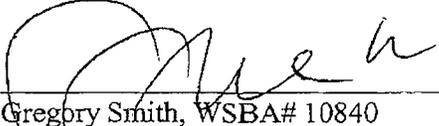
CONCLUSIONS OF LAW

The defendant's motion for a Frank's Hearing is denied. The Court finds there were no false statements or material misrepresentations/omissions in Detective Lundquist's affidavit. The defendant has failed to meet his burden to make a substantial preliminary showing that misrepresentations were made deliberately or recklessly by the affiant in a search warrant affidavit. Furthermore, there has been no showing that even if there were a false or material misrepresentation that the misstated information was material or relevant to the magistrate's determination of probable cause.

DATED this 1 day of July, 2010.

  
\_\_\_\_\_  
JUDGE  
Approved for Entry: Form Only

Presented by:  
  
\_\_\_\_\_  
Scott M. Jackson WSBA #26844  
Deputy Prosecuting Attorney

  
\_\_\_\_\_  
Gregory Smith, WSBA# 10840  
Attorney for Defendant