

**NO. 41439-2-II**

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

DEONDRE POSEY, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Stephanie Arend

No. 10-1-00604-6

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**BRIEF OF RESPONDENT**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether evidence of gang membership and behavior was admissible as probative of motive, intent, and premeditation?
2. Whether evidence of gang membership and behavior was admissible as res gestae?
3. Whether evidence of gang membership and behavior was admissible to prove the alleged sentencing aggravating circumstance; gang activity?
4. Whether the court adequately weighed the probative value of the gang evidence with its potential prejudicial effect?
5. Whether the trial court correctly calculated the defendant's offender score?
6. Whether the trial court abused its discretion in determining, for this case, that the defendant's three prior convictions for drive-by shooting were not the same criminal conduct, where the defendant had agreed that they were not the same criminal conduct at the time of the original sentencing?

B. STATEMENT OF THE CASE.

1. Procedure

On February 8, 2010, the Pierce County Prosecuting Attorney (State) charged the defendant, Deondre Posey, and over 30 other persons,

with one conspiracy to commit murder in the first degree, robbery in the first degree, assault in the first degree, drive-by shooting, burglary in the first degree, and several other crimes. CP 1. The defendant joined the co-defendants in *Knapstad*<sup>1</sup> motions regarding the over-arching conspiracy. *See*, CP 62 . The court granted the motions, which had the effect of severing the defendant from the other defendants for trial. CP ??.

The case ultimately went to trial on a Second Amended Information which charged the defendant specifically with attempted murder in the first degree and unlawful possession of a firearm in the first degree (UPF1). CP 113-114. The attempted murder count also included a firearm sentencing enhancement. CP 113. The State alleged a gang activity aggravating factor in both counts. CP 113-114; RCW 9.94A.535(3)(s).

After hearing all the evidence, the jury found the defendant guilty as charged. CP 185, 189. The jury also found that the defendant was armed with a firearm during the attempted murder. CP 187. The jury did not make a finding regarding the gang aggravator. CP 188, 190.

On October 22, 2010, the court sentenced the defendant within the standard range to 340 months incarceration, plus 60 months for the firearm enhancement. CP 199. The defendant filed a timely notice of appeal on November 9, 2010. CP 207.

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<sup>1</sup> *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986)

## 2. Facts

The evening of September 9, 2009, Martin Newson-Jones (the victim) was hanging out with friends on the stairs of a small apartment complex at South 14<sup>th</sup> and M Streets in Tacoma. 4 RP 466. He was with Liam Hines and Corey Jagers. 4 RP 466, 5 RP 523.

Meanwhile, a few blocks away, Anthony Smith was hanging out with Steve Lovelace and Chris Sims. 5 RP 596. Smith had had a prior “problem” or disagreement with the victim, but it had been resolved or “washed.” 5 RP 598. In fact, the victim and Hines had chanced upon Smith earlier the evening of September 9 and there had been no problem or confrontation. 5 RP 596.

The defendant, accompanied by another person, approached Smith, Lovelace, and Sims. 5 RP 600. The defendant told Smith that recently the defendant had been in the neighborhood and had heard that the victim had been “talking.” 5 RP 601. The defendant reported that the victim had accused Sims and Smith’s brother of trying to rob the victim’s house. 5 RP 601. The defendant also reported that the victim had said that Smith was “cornball.” *Id.*

Smith found the “cornball” term disrespectful. 5 RP 602. He became angry, thinking that all had been resolved or “squashed” between him and the victim. *Id.* He felt that if the victim was still “talking stuff,” things were not resolved. *Id.* Knowing that the victim was just down the street, Smith and the others decided to go confront the victim. *Id.*

As the group walked toward the victim's location, Smith's anger began to cool. 5 RP 603. However, the defendant encouraged him, saying that the victim would not back down. *Id.*

Smith confronted the victim. Smith said that the victim could not "go around calling people cornball" and saying that Smith's brother tried to rob him. 5 RP 605. Smith then challenged the victim, saying that if the victim had a problem, they could "handle" it right now. *Id.* The victim, trying to calm things, said that some people were just trying to instigate trouble or "get things started." 5 RP 606.

The defendant took offense at the victim's remarks. At that point, the defendant pulled out a gun and pointed it at the victim's head. 5 RP 607. Hines grabbed the defendant's arm. *Id.* The defendant challenged the victim: "Are saying I'm lying?" *Id.* Hines and the defendant struggled as the defendant continued to point the gun at the victim. Smith and Hines tried to calm the defendant and get him to put the gun away. 5 RP 609. Smith stood between the victim and the defendant. 5 RP 610. The defendant then reached over them and shot the victim. 5 RP 609, 610. The defendant then fled.

911 was called for help. 5 RP 670. When medical response did not arrive, neighbors drove the victim to St. Joseph's Hospital, a few blocks away. 5 RP 671.

C. ARGUMENT.

1. EVIDENCE OF GANG MEMBERSHIP AND BEHAVIOR WAS ADMISSIBLE AS PROBATIVE OF MOTIVE, INTENT, AND PREMEDITATION, AND AS RES GESTAE.

a. ER 404(b) and gang evidence generally.

Generally, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. ER 404(b). Evidence of gang membership and activity falls under this rule. *See, State v. Scott*, 151 Wn. App. 520, 213 P.3d 71 (2009). However, evidence of gang membership and activity is admissible to prove motive, intent, or premeditation. *State v. Yarbrough*, 151 Wn. App. 66, 81, 210 P. 3d 1029 (2009). The appellate court reviews the trial court's decision to admit evidence under ER 404(b) for abuse of discretion. *State v. Foxhoven*, 161 Wash.2d 168, 174, 163 P.3d 786 (2007).

The defendant cites *State v. Bluehorse*, 159 Wn. App. 410, 248 P. 3d 537 (2011); *Scott, supra*; and *State v. Asaeli*, 150 Wn. App. 543, 208 P. 3d 1136 (2009) to support the argument that gang evidence is inadmissible. None of these cases hold that gang evidence is inadmissible. In fact, they all acknowledge that such evidence *is* admissible. *See, Bluehorse*, at 426; *Scott*, at 527; and *Asaeli*, at 574ff.

In *Scott*, the evidence was inadmissible because only one person was identified as a gang member. 151 Wn. App. at 528. There was no

evidence regarding the importance of the concept of respect in gang culture, nor how violence was a recognized response to disrespect. *Id.*

In *Asaeli*, there was no evidence that the alleged gang, the Cushman Blokk, even existed. 150 Wn. App. at 577. Therefore, there was no basis for the allegation, and the evidence was inadmissible.

In *Bluehorse*, the Court found that the evidence was insufficient to support the jury's finding. 159 Wn. App. 431. The State did not even prove that Bluehorse was a gang member. *Id.*

Here, unlike the case in *Bluehorse* and *Asaeli*, there was evidence that the defendant, Smith, Sims, and Hines were all Hilltop Crips, a well-known street gang. 5 RP 599-600, 6 RP 737. The victim was either a member or a hanger-on. 5 RP 599, 6 RP 738.

The evidence and its purpose in the present case is more analogous to *Yarbrough*, *supra*, and *State v. Boot*, 89 Wn. App. 780, 950 P. 2d 964 (1998). In *Yarbrough*, the defendant was charged with aggravated first degree murder by extreme indifference. The Court of Appeals affirmed the admission of gang-related evidence for several reasons: to prove motive; that Yarbrough shot at the victim because of gang rivalry; and context, to provide an explanation of why someone would do such an otherwise inexplicable act. 151 Wn. App. at 84. The evidence was also admitted to prove the alleged the same aggravating circumstance alleged in the present case; that Yarbrough killed the victim in order to advance Yarbrough's position in Yarbrough's gang. *Id.*, at 84.

Boot was also charged with aggravated first degree murder. Boot's victim was not a rival gang member. He killed her during or following a robbery. Evidence of Boot's gang membership was admitted to show context of the crime and premeditation. *Boot*, 89 Wn. App. at 789. It was evidence of premeditation in that it tended to show that he intended to kill to advance his status in his gang. *Id.* It showed context in that the evidence explained how and why one's status could be advanced through killing. *Id.*

In the present case, the State presented evidence of the connection to the gang, motive, and intent. The reason for the confrontation was disrespect of Smith and the defendant. 5 RP 602, 605, 607. The victim had been "talking," accusing Smith's brother of breaking into the victim's home. 5 RP 601. The defendant had told Smith that the victim had called Smith "cornball." *Id.* Smith found this disrespectful. 5 RP 602. The "talk" and insult showed disrespect to Smith, especially where Smith and other gang members had given the victim a prior beating for "saying certain stuff." 5 RP 629-630. He further testified that there were different levels of reaction to perceived disrespect in the Hilltop Crips. 5 RP 662. One might react by fighting. A "hothead" might shoot someone. 5 RP 663.

Det. Ringer testified as an expert regarding gang culture in general and the Hilltop Crips in particular. 5 RP 713 ff. He testified that the concept of respect was extremely important to Hilltop Crips. 5 RP 735. He stated that while the word "cornball" did not have the same extreme

connotation as “crab,” or “slob,” in context it was disrespectful and could result in a violent reaction. 6 RP 739.

The evidence showed that this case was inextricably related to the Hilltop Crips and their gang culture. It was about gang rules regarding respect and status. The defendant, with higher status, assaulted the victim, who was considered a weakling and of low gang status, for showing disrespect to the “better” gang members. The victim had been “disciplined” on a prior occasion, with a beating. This was a more extreme example of the same. This assault was a warning to others: respect will be enforced, and don’t mess with the defendant.

b. The gang evidence was admissible as *res gestae*.

The *res gestae* exception to ER 404(b) allows evidence of other bad acts ‘{t}o complete the story of the crime on trial by proving its immediate context of happenings near in time and place.’ *State v. Tharp*, 27 Wn.App. 198, 204, 616 P.2d 693 (1980), *affirmed*, 96 Wn.2d 591 (1981). In *State v. Boot*, similar evidence was admitted as “necessary to permit the jury to get the whole picture and try to make some sense out of a senseless crime.” 89 Wn. App. at 790. *See also Yarbrough*, 151 Wn. App., at 84.

The State’s theory in this case was that the victim’s weakness and disrespect for the gang members was the context of the shooting. Evidence

of other gang violence showed that context. The defendant shot the victim, a fellow gang member, over mere words, and what might otherwise be perceived as a minor slight; disputing what the defendant had said. Here, as in *Boot*, it was admissible to show the greater context.

- c. Evidence of the gang membership and activity of the defendant and others was admissible to prove the alleged aggravating circumstance.

Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” ER 401. The State alleged that the crimes were committed “to obtain or maintain [defendant’s] membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.” CP 113, 114; RCW 9.94A.535(3)(s). Therefore, the State needed to present evidence gang membership and gang behavior, including its values or “code” and how those values and the gang’s code is enforced. This evidence is normally admitted through testimony of a gang expert. *See, e.g., State v. Bluehorse*, 159 Wn. App. at 418; *Yarbrough*, 151 Wn. App. at 79-80.

Here, both an expert, Det. Ringer, and one of the gang member witnesses, Smith, testified regarding the significance of prestige in the Hilltop Crips. Smith testified that a gang member gains prestige or status

by being a “shooter.” 5 RP 631. In fact, one of the reasons the victim was considered a weak member or associate of the gang was that he did not shoot or engage in violent gang behavior. *Id.* He said it depended on who and why the gang member shot. *Id.* He stated that one Hilltop Crip shooting a weaker could result in increased prestige or status. *Id.* Smith went on to explain that, in the gang, shooters, fighters, non-fighters, and weaklings are regarded with different levels of respect and status in the gang, based upon what they have done. 5 RP 663. He said that, in the Hilltop Crips, you know who and who not to “mess with.” *Id.* The obvious conclusion being: don’t mess with the guy who will shoot upon the slightest disrespect.

Det. Ringer testified that gang status depended on several factors or skills of the members. 5 RP 724. One of the factors was whether the gang member “put in work” for the gang by doing gang-related violence. *Id.* Members who did not show support of the gang through gang activity were given beatings, and considered weak. 5 RP 728.

Consistent with Smith’s previous testimony, Det. Ringer testified that weaklings or “busters” had very low status in the gang. 5 RP 728, 730. He also testified that gang status could be improved or maintained by being a “shooter.” 6 RP 739. Such a person could be counted on for violent “work” of the gang. *Id.* Such a person also would have a status or reputation of “don’t mess with this guy.” 6 RP 740.

- d. The trial court appropriately weighed the probative value of the evidence with the possible prejudicial effect.

When 404(b) evidence is offered, the trial court must weigh the probative value with the possible prejudicial effect of the evidence. *See Foxhoven*, 161 Wn. 2d at 175. It is permissible for the court to adopt the reasoning or argument of one of the parties. *See State v. Pirtle*, 127 Wn. 2d 628, 650-651, 904 P. 2d 245 (1995).

Here, there was considerable argument and discussion regarding the admissibility of the gang evidence. 2 RP 35-116. Ultimately, the court decided that it was admissible, agreeing with the State's argument. 2 RP 103-104. The court's reasoning included the necessity for the jury to understand the context of the crime. 2 RP 105. The court also concluded that the probative value outweighed the possible prejudicial effect. 2 RP 106. The court did not err.

2. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DETERMINING THAT THREE PRIOR CONVICTIONS FOR DRIVE-BY SHOOTING WERE NOT SAME CRIMINAL CONDUCT.

A trial court's determination that prior convictions are not the same criminal conduct is reviewed for the abuse of discretion or the misapplication of the law. *State v. Burns*, 114 Wn. 2d 314, 317, 788 P. 2d 531 (1990).

A defendant may waive an objection to the determination of same criminal conduct by stipulating to facts, even to the calculation of the offender score for two or more current offenses. *State v. Nitsch*, 100 Wn. App. 512, 522, 997 P. 2d 1000 (2000); *In re Personal Restraint of Goodwin*, 146 Wn.2d 861, 50 P. 3d 618 (2002) (citing *Nitsch* with approval at 875). “[W]aiver can be found where the alleged error involves an agreement to facts, later disputed, or where the alleged error involves a matter of trial court discretion.” *Goodwin*, at 874.

In *Nitsch*, the defendant pleaded guilty in exchange for the State’s promise not to file additional charges. 100 Wn. App., at 522. Nitsch agreed to the standard sentence range as if calculated where the two counts were scored against each other; therefore not the same criminal conduct. *Id.* The Court of Appeals held that Nitsch waived his objection to the offender score when he agreed to this calculation of the standard range. *Id.*, at 514.

In *Nitsch*, the Court of Appeals specifically rejected the argument that the trial court was required to *sua sponte* make the same criminal conduct analysis. *Id.*, at 520-521. It was not, therefore, error for the trial court in this case to fail to do a more detailed same criminal conduct analysis.

At sentencing in the present case, the defendant raised the issue of same criminal conduct regarding scoring the three drive-by shooting convictions in Pierce County #06-1-02580-8. Sent. RP 2. The State proved

the conviction and original scoring by presenting a copy of the judgment and sentence from the 2006 case. Sent. RP 3, Sent Exh. 1 (Appendix A).

The court noted that the box on the 2006 judgment regarding the finding of same criminal conduct was not checked. Sent. RP 5, Sent. Exh. 1. The prosecutor pointed out that the 2006 plea was an agreed resolution reducing greater charges to three lesser ones and, therefore, a lower sentence. Sent. RP 5. The court reviewed the original Information in the 2006 case via LINX, the county's digital document database. Sent. RP 6.

Defense counsel did not disagree with the prosecutor's argument, but, out of an abundance of caution, wanted more time to research the issue. Sent RP 11. In order to preserve the objection, the defendant ultimately disagreed with the calculation of the offender score. Sent RP 15, 19.

The court accepted the 2006 judgment at face value. Sent RP 14. The court deferred to the reasoning and determination by the original sentencing judge that the three prior convictions for drive-by shooting were not the same criminal conduct and would be scored separately. Sent. RP 12.

Here, in the prior plea agreement regarding the three counts of drive-by shooting, the defendant stipulated that the three current offenses were not the same criminal conduct. As in *Nitsch*, he stipulated by accepting the offender score that resulted in the agreed resolution. Sent. Exh. 1, Appendix A. The trial court in the present case was free to accept the

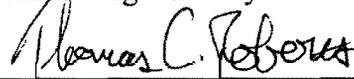
previous stipulation and trial court's determination that the three prior drive-by shootings were not the same criminal conduct.

D. CONCLUSION.

The trial court did not err in admitting gang evidence in this case. The court properly determined the defendant's offender score. The State respectfully requests that the conviction be affirmed.

DATED: October 4, 2011.

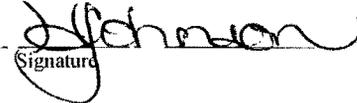
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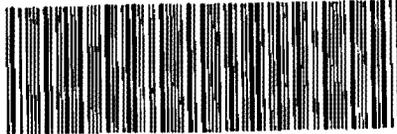
Certificate of Service:

The undersigned certifies that on this day she delivered by <sup>u-file</sup> ~~U.S. mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

10/4/11   
Date Signature

# **APPENDIX “A”**

*Judgment and Sentence*  
06-1-02580-8



06-1-02580-8 26955800 JDSWCD 02-12-07



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 06-1-02580-8

FEB 12 2007

vs.

DEONDRE JAMAR POSEY,

Defendant.

WARRANT OF COMMITMENT

- 1)  County Jail
- 2)  Dept. of Corrections
- 3)  Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[ ] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[X] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

[ ] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 2.9.07

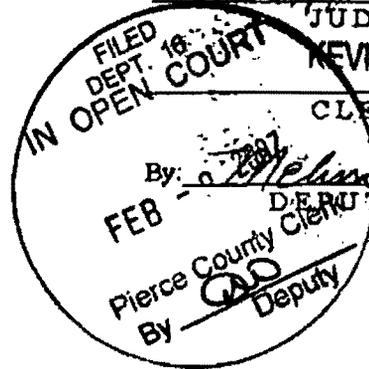
By direction of the Honorable

*Kevin Stock*

JUDGE

KEVIN STOCK

CLERK



By: *Melissa Engler*

DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

*Melissa Engler*

Date FEB 12 2007 Deputy

STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this \_\_\_\_\_ day of \_\_\_\_\_.

KEVIN STOCK, Clerk

By: \_\_\_\_\_ Deputy

klk



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

FEB 12 2007

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-02580-8

vs.

JUDGMENT AND SENTENCE (FJS)

DEONDRE JAMAR POSEY

Defendant.

- Prison [ ] RCW 9.94A.712 Prison Confinement
- [ ] Jail One Year or Less
- [ ] First-Time Offender
- [ ] SSOSA
- [ ] DOSA
- [ ] Breaking The Cycle (BTC)
- [ ] Clerk's Action Required, para 4.5 (DOSAs), 4.15.2, 5.3, 5.6 and 5.8

SID: WA19786102  
DOB: 07/17/1987

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 1-31-07 by [ X ] plea [ ] jury-verdict [ ] bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	DRIVE-BY SHOOTING (E14A)	9A.36.045(1)	NONE	06/11/06	061620118
II	DRIVE-BY SHOOTING (E14A)	9A.36.045(1)	NONE	06/11/06	061620118
III	DRIVE-BY SHOOTING (E14A)	9A.36.045(1)	NONE	06/11/06	061620118

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, See RCW 9.94A.533(8).

as charged in the Amended Information

07-9-01783-7

- [ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- [ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

**2.2 CRIMINAL HISTORY (RCW 9.94A.525):**

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	BURG 2	12/04/00		05/26/00	Juv	NV
2	BURG 2	12/06/02		05/02/02	Juv	NV
3	THEFT 1	12/06/02		05/02/02	Juv	NV

- [ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

**2.3 SENTENCING DATA:**

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancement)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancement)	MAXIMUM TERM
I	5.5	VII	41-54 MOS.	NONE	41-54 MOS.	10 YRS.
II	5.5	VII	41-54 MOS.	NONE	41-54 MOS.	10 YRS.
III	5.5	VII	41-54 MOS.	NONE	41-54 MOS.	10 YRS.

- 2.4 [ ] **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence [ ] above [ ] below the standard range for Count(s) \_\_\_\_\_. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

- 2.5 **LEGAL FINANCIAL OBLIGATIONS.** The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

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

- [ ] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:
-

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

\_\_\_\_\_  
\_\_\_\_\_

III. JUDGMENT

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

3.2  The court DISMISSES Counts \_\_\_\_\_  The defendant is found NOT GUILTY of Counts \_\_\_\_\_

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RIN \$ NA Restitution to: \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_  
(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

PUB \$ 400.00 Court-Appointed Attorney Fees and Defense Costs

FRC \$ 200.00 Criminal Filing Fee

FCM \$ \_\_\_\_\_ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ 1,200 TOTAL

All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_ RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 RESTITUTION

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

shall be set by the prosecutor.

is scheduled for \_\_\_\_\_

defendant waives any right to be present at any restitution hearing (defendant's initials): \_\_\_\_\_

RESTITUTION. Order Attached

4.3 COSTS OF INCARCERATION

[ ] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 COLLECTION COSTS

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 INTEREST

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

4.6 COSTS ON APPEAL

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.

4.7 [ ] HIV TESTING

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 [X] DNA TESTING

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

The defendant shall not have contact with Lawrence Jeffries <sup>7.15.81</sup> (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 10 years (not to exceed the maximum statutory sentence).

[ ] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:

Empty rectangular box for additional notes or conditions.

4.11 BOND IS HEREBY EXONERATED

4.12 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

54 months on Court I months on Court

54 months on Court II \_\_\_\_\_ months on Court \_\_\_\_\_  
 54 months on Court III \_\_\_\_\_ months on Court \_\_\_\_\_

Actual number of months of total confinement ordered is: \_\_\_\_\_

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[ ] The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.

**CONSECUTIVE/CONCURRENT SENTENCES.** RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively to all felony sentences in other cause numbers prior to the commission of the crime(s) being sentenced. \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 212 days.

4.13 [ ] **COMMUNITY PLACEMENT** (pre 7/1/00 offenses) is ordered as follows:

Count \_\_\_\_\_ for \_\_\_\_\_ months,  
 Count \_\_\_\_\_ for \_\_\_\_\_ months,  
 Count \_\_\_\_\_ for \_\_\_\_\_ months,

**COMMUNITY CUSTODY** is ordered as follows:

Count I for a range from: 18 to 36 Months,  
 Count II for a range from: 18 to 36 Months,  
 Count III for a range from: 18 to 36 Months,

or for the period of earned release awarded pursuant to RCW 9.94A.726(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding,

Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

PROVIDED: That under no circumstances shall the combined term of confinement and term of community custody actually served exceed the statutory maximum for each offense

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

The defendant shall not consume any alcohol.

Defendant shall have no contact with: Lawrence Jeffries

Defendant shall remain  within  outside of a specified geographical boundary, to wit: Per CWO

The defendant shall participate in the following crime-related treatment or counseling services: Per CWO

The defendant shall undergo an evaluation for treatment for  domestic violence  substance abuse

mental health  anger management and fully comply with all recommended treatment.

The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: \_\_\_\_\_

4.14  WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.13.

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

V. NOTICES AND SIGNATURES

5.1 COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to

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3 arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

- 4 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.
- 8 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.
- 11 5.4 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 13 5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 15 5.6 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. N/A
- 17 5.7 **RESTITUTION AMENDMENTS.** The portion of the sentence regarding restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime.
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5.8 OTHER: \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: 2.9.07

JUDGE

Print name

Lisa Worswick

Lisa Worswick

Deputy Prosecuting Attorney

Print name:

GREGORY L. GREER

WSB #

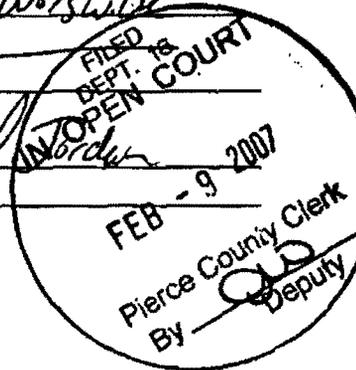
Attorney for Defendant

Print name:

Michael Jordan

WSB #

16906



Defendant

Print name:

Deondre Posey

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature:

Deondre Posey

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**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 06-1-02580-8

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

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

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF COURT REPORTER**

**SUZANNE TRIMBLE**

Court Reporter

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

(I) The offender shall remain within, or outside of, a specified geographical boundary: Per COO.

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: Lawrence Johnson

(III) The offender shall participate in crime-related treatment or counseling services;

(IV) The offender shall not consume alcohol;

(V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

(VI) The offender shall comply with any crime-related prohibitions.

(VII) Other: \_\_\_\_\_

X Deondre Posey  
Defendant D. Posey

IDENTIFICATION OF DEFENDANT

SID No. WA19786102  
(If no SID take fingerprint card for State Patrol)

Date of Birth 07/17/1987

FBI No. 42666AC7

Local ID No. UNKNOWN

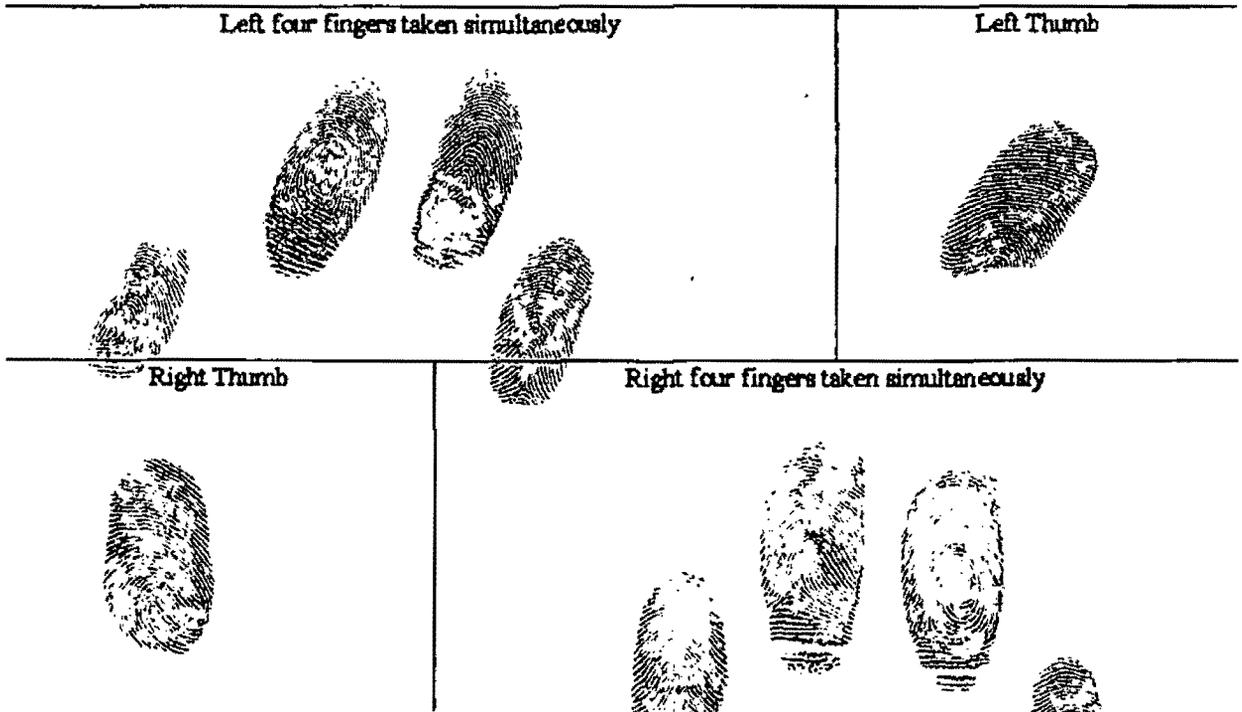
PCN No. 538789151

Other

Alias name, SSN, DOB: Deondre Jokey, Jokie L. Posey, Deondre Larnar Posey, Jokey Posey

<b>Race:</b>					<b>Ethnicity:</b>		<b>Sex:</b>
<input type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/>	<input type="checkbox"/> Black/African-American	<input type="checkbox"/>	<input type="checkbox"/> Caucasian	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Male	
<input type="checkbox"/> Native American	<input type="checkbox"/>	<input type="checkbox"/> Other: :			<input checked="" type="checkbox"/> Non-Hispanic	<input type="checkbox"/> Female	

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, [Signature] Dated: 2/9/07

DEFENDANT'S SIGNATURE: X Deondre Posey

DEFENDANT'S ADDRESS: D.C.

# PIERCE COUNTY PROSECUTOR

**October 04, 2011 - 8:04 AM**

## Transmittal Letter

Document Uploaded: 414392-Respondent's Brief.pdf

Case Name: State v. Deondre Posey

Court of Appeals Case Number: 41439-2

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

 Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Other: \_\_\_\_\_

Sender Name: Heather M Johnson - Email: **hjohns2@co.pierce.wa.us**

A copy of this document has been emailed to the following addresses:  
nancy@washapp.org