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COURT OF APPEALS
DIVISION II

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41705-7-II

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

State of Washington
Respondent

v.

KATHRYN A. LORAN
Appellant

41705-7

On Appeal from the Superior Court of Clallam County

10-1-00214-5

The Honorable Ken Williams

REPLY BRIEF

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I. **SUMMARY OF THE FACTS**

Appellant, Kathryn A. Loran, was charged in juvenile court in 2009, with misdemeanor possession of a legend drug. Findings 1, 2, CP 58. The State erroneously states that Loran pleaded guilty. Respondent's Brief (RB) at 1. Loran did not plead guilty. Instead, she opted for a deferred disposition whereby she stipulated to the State's alleged facts and agreed to obtain treatment. In return, the court would dismiss the charge without a finding of guilt provided Loran complied with the order of deferment. 9/21 RP 28, 35; Finding 1. CP 58.

The court imposed community supervision for the duration of the deferment period. RCW 13.40.127(4); Exhibit 1, Supp. CP (attached as Appendix A.) The supervisor was juvenile probation officer Joleen Goodrich. 9/21 RP 26.

Loran did not show up for treatment or maintain contact with Goodrich, so the court issued a bench warrant for her arrest. Findings 6, 8, CP 59; Memorandum Opinion, CP 51.

The Port Angeles Police provided officer support in serving the warrant. RP 30. Two officers accompanied Goodrich to Loran's apartment. CP 51; 9/21 RP 30.

Goodrich waited in the parking lot while the officers arrested Loran on the warrant and took her into custody. 9/21 RP 50. Officer Andrew Heuett handcuffed Loran and put her in the back seat of a patrol car. 9/21 RP 32. Heuett then did a protective sweep of the apartment incident to the arrest, but found nothing of interest. 9/21 RP 49, 51.

Instead of leaving after successfully completing her court-appointed mission, Goodrich approached Ms. Loran where she was handcuffed in the police car and subjected her to a custodial interrogation. 9/21 RP 39. Goodrich asked Loran if she would be able to produce a clean UA sample at that moment. Loran said she would not because she had used heroin within the past couple of days. 9/21 RP 32-33; Finding 10, CP 59.¹ Loran may or may not have been advised of her Miranda rights when Goodrich questioned her. (Officer Heuett was certain only that he read the Miranda warnings at some point before transporting Loran to the police station. 9/21 RP 53.)

Officer Heuett testified that Goodrich intended to search for drugs when she entered the apartment. RP 51. Goodrich claimed it just occurred to her after she entered the apartment that she might as well search the place while she was there. 9/21 RP 41. did it.” 9/21 RP 44.

¹ Goodrich already had an unfounded suspicion that Loran was using drugs. 9/21 RP 49.

Loran had not told Goodrich she used drugs in the apartment, but Goodrich was searching for drugs, not for evidence of failure to obtain treatment and maintain contact. “And I was standing there with [the officer and the baby], and then all of a sudden I just decided to go into her room because I was looking for the drugs that she had claimed she had done.” 9/21 RP 34. She added, “it’s something that we do on probation, if we have reason to believe that there could potentially be something there, and she had just admitted to me that she had done drugs. So I was there, it was part of my job, so I

In the bedroom, which appeared to be occupied by two adults, Goodrich started opening drawers. 9/21 RP 42. In the closed drawer of a dresser, Goodrich found a small closed box. She opened the box and found some pills inside. 9/21 RP 34, 43-44. These pills resulted in a new prosecution of Loran on fresh charges of two counts of possession of a controlled substance other than marijuana. CP 52; 93-94.

Loran moved under CrR 3.6 to suppress the evidence based on the warrantless search by Goodrich. 9/21 RP 22. The Court denied the motion. 9/21 RP 69-70; CP 22-24, 27-30.

The court dismissed Count I for lack of evidence. 1/19 RP 3. Loran was convicted on Count II after a stipulated facts trial and sentenced

to 30 days, converted to 240 hours community service. 1/19 RP 4, 11-13;
CP 63, 66.

On appeal, Loran challenges Goodrich's warrantless search of her home as a violation of Washington Constitution article 1, § 7 and the Fourth Amendment. Appellant's Brief (AB) at iv, 5.

II. SUMMARY OF ARGUMENTS IN REPLY

1. The trial court erred in admitting evidence obtained in violation of Wash. Const. art. 1, § 7 and the Fourth Amendment, because the diminished privacy expectations of adult convicted felons are not shared by juveniles who have not been convicted but instead are under court supervision subject to a deferred disposition. Convicted felons on probation are in community custody in lieu of a suspended sentence of incarceration. In a deferred disposition, by contrast, a finding of guilt has not been entered and never will be entered, provided the juvenile complies with the terms of the deferment. Therefore, the juvenile's constitutional privacy rights remain intact.

2. No Washington statute supports an exception to the warrant requirement.

3. The Order of Deferment is the governing law of the case.

4. Goodrich lacked probable cause to search Loran's home.
5. Even supposing the diminished expectation of privacy extends to juvenile supervisees who have not been convicted or sentenced, evidence seized in a warrantless search by a probation officer is admissible solely in probation revocation proceedings — not in a prosecution on new charges.

III. **ARGUMENTS IN REPLY**

1. **THE SEARCH OF LORAN'S HOME VIOLATED WASH. CONST. ART 1, § 7 AND THE FOURTH AMENDMENT.**

The Fourth Amendment guarantees the right of the people to be secure in their houses against warrantless searches without probable cause.” U.S. Const. amend. IV. Our state constitution likewise provides that no person’s private affairs or home may be invaded without “authority of law.” Const. art. I, § 7. *State v. Neth*, 165 Wn.2d 177, 182-83, 196 P.3d 658 (2008). The State has the burden to show that a warrantless search was reasonable under one of the “jealously guarded” exceptions to the strictly enforced warrant requirement. *State v. Hendrickson*, 129 Wn.2d 61, 70-71, 917 P.2d 563 (1996).

No evidence derived from a warrant violation may be admitted in any Washington court for any purpose. *State v. Chenoweth*, 160 Wn.2d

454, 473, 158 P.3d 595 (2007). Suppression inevitably follows whenever there is a meaningful causal connection between unlawful government activity and the acquisition of the evidence, because the evidence is “the fruit of the poisonous tree.” *Wong Sun v. United States*, 371 U.S. 471, 487-88, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963); *Chenoweth*, 160 Wn.2d at 472, n.14, citing *State v. Ladson*, 138 Wn.2d 343, 359, 979 P.2d 833 (1999).

Here, the State contends that Goodrich did not need a warrant to search the home of Loran and Scott because Loran was on probation. Brief of Respondent (BR) 1. But this fundamental premise is false. Loran never pleaded guilty to anything and was not on probation. 9/21 RP 28, 35; Finding 1. CP 58.

There is a difference between the fact of conviction and the facts underlying the conviction. *In re Detention of Stout*, 159 Wn.2d 357, 367, 150 P.3d 86 (2007). A guilty plea constitutes a conviction. *See, e.g., State v. Tate*, 2 Wn. App. 241, 245, 469 P.2d 999 (1970). By contrast, a deferred disposition means there is no finding of guilt and no conviction.

According to the statutory scheme, Loran merely stipulated to the factual allegations. Then, the court entered an order of deferred disposition, whereby no conviction would ensue and the charge would be dismissed if Loran obtained treatment and otherwise complied with the

order of deferment. 9/21 RP 28. The court would enter a finding of guilt based on the stipulated facts in the future, but only if she did not comply. 9/21 RP 35; Finding 1. CP 58.

The court has no jurisdiction to impose or revoke probation except as authorized by statute. In adult prosecutions, that authority is found in RCW 9.92.060, RCW 9.95.200 and RCW 9.95.220. *State v. Riddell*, 75 Wn.2d 85, 87, 449 P.2d 97 (1969). These statutes do not apply here.²

First, they are adult sentencing statutes, and Loran is a juvenile. Second, they apply solely to persons who have been convicted of crime and sentenced and so are technically in the custody of the Department of Corrections. They authorize the court to suspend the sentence that has been imposed and to issue an arrest warrant. Loran was not convicted, and sentence had not been imposed.

As to the effect on the adult offender's constitutional rights, it is the conviction that creates the diminished expectation of privacy. *Riddell*, 75 Wn.2d at 87. Probation is constitutionally indistinguishable from parole, because sentence has previously been imposed. *State v. Simms*, 10 Wn. App. 75, 79, 516 P.2d 1088 (1973) (emphasis added.)

The State's contrary authorities are distinguishable. The State erroneously relies on *State v. Campbell*, 103 Wn.2d 1, 23, 691 P.2d 929

² The Legislature expressly states that Chapter 9.92 RCW does not apply to juvenile deferred dispositions. RCW 9.92.200.

(1984), for the proposition that Loran had a diminished expectation of privacy in her home. RB 13. But not only was Campbell an adult convicted felon, he was a prison inmate on work release. *Campbell*, 103 Wn.2d at 22-23.

2. THE CONSTITUTIONAL VIOLATION
IS NOT SANCTIONED BY STATUTE.

The State claims that RCW 13.40.127 does not distinguish between deferred dispositions and convictions. BR 8. But the plain language of the statute says that the juvenile stipulates to the facts alleged in the police report, but that the stipulated report will not be entered and used to support a finding of guilt and to impose a disposition unless the juvenile fails to comply with terms of the deferment. RCW 13.40.127(3)(a) & (b).

The State misrepresents *State v. Patterson*,³ as supporting its claim that an exception to the warrant requirement exists for unconvicted juveniles on community supervision as part as a deferred prosecution. BR 8. But *Patterson* says nothing about unconvicted juveniles on community supervision. It deals solely with convicted and sentenced adult felons on probation, parolees, and prison inmates on work release. *Patterson*, 51

³ 51 Wn. App. 202, 204-07, 752 P.2d 945, *review denied*, 111 Wn.2d 1066 (1988).

Wn. App. at 204-07. The State is correct that these convicted adult offenders have diminished Fourth Amendment rights. BR 8.

But neither *Patterson* nor any other authority, extends the diminished expectation of privacy to people who have not been convicted and are not under sentence. To the contrary, it is the conviction that triggers the diminished expectation of privacy. *State v. Riddell*, 75 Wn.2d 85, 87, 449 P.2d 97 (1969). Probation is constitutionally indistinguishable from parole, because sentence has previously been imposed. *State v. Simms*, 10 Wn. App. 75, 79, 516 P.2d 1088 (1973) (emphasis added.)

In *State v. Lucas*, 56 Wn. App. 236, 783 P.2d 121 (1989), also cited by the State, Lucas was convicted of several crimes and subjected to a search while on release pending appeal. *Lucas*, 56 Wn. App. 237. He had signed a Department of Corrections Standard Conditions and Sentence Requirements form including a provision subjecting him to searches both of his person and residence. *Id.* Again, the State glosses over this, but it is a dispositive distinguishing factor. Bizarrely, the State also cites to *State v. Simms*. BR 9, 10. As discussed, *Simms* unequivocally states that probation is constitutionally indistinguishable from parole, because sentence has previously been imposed. *Simms*, 10 Wn. App. at 79.

Griffin v. Wisconsin, 483 U.S. 868, 107 S. Ct. 3164 (1987), cited by the State at BR 9 and 10, is inapposite for the same reason. The

defendant in that case was a convicted felon at the time of the disputed search. *Griffin*, 483 U.S. at 870. The terms of his probation contained an explicit provision that his home was subject to warrantless search. *Id.* at 870-71.

The State finds statutory grounds for Goodrich's warrantless search of Loran's home in RCW 13.40.127. BR 9. But that statute is at best ambiguous.

As the State claims, RCW 13.40.127(9), the juvenile deferred disposition statute, refers to a conviction being vacated upon compliance with the terms of the deferment. But in equally plain language, RCW 13.40.127(3)(a) & (b) provide that the juvenile (a) will stipulate to the admissibility of the facts contained in the written police report; and (b) that report "will be entered and used to support a finding of guilt and to impose a disposition" if the juvenile fails to comply with terms of supervision.

The State appears to interpret RCW 13.40.127(b) as conditioning only the imposition of a disposition upon the juvenile's failure to comply with supervision. BR 9. But RCW 13.40.127(b) is fairly subject to an alternative reading: that the condition applies to the entire phrase so that only if the juvenile fails to comply will the report be entered and used to support a finding of guilt.

“If a statute is ambiguous, the rule of lenity requires us to interpret the statute in favor of the defendant absent legislative intent to the contrary.” *State v. Jacobs*, 154 Wn.2d 596, 601, 115 P.3d 281 (2005). A statute is ambiguous if it can be reasonably interpreted in more than one way. *State v. Watson*, 146 Wn.2d 947, 955, 51 P.3d 66 (2002). Any part that is susceptible to more than one meaning must be strictly construed against the State and in favor of the defendant. *State v. Gore*, 101 Wn.2d 481, 485-86, 681 P.2d 227 (1984). Lenity requires reading the RCW 13.40.127 as instructing the court not to enter a finding of guilt so long as the juvenile complies with the terms of the deferment.

The State cites *Watson* for the blanket proposition that RCW 13.40.127 is unambiguous in its entirety. BR 12. But the sole question presented in *Watson* was whether RCW 13.40.127 permits a juvenile court judge to defer disposition on two separate charges arising out of conduct committed on different dates and involving different subject matter. *Watson*, 146 Wn.2d at 949. *Watson* does not address whether the facially ambiguous language in RCW 13.40.127(3)(b) can be given the interpretation urged by the State here — that a “conviction” entered in a deferred disposition results in the loss of all constitutional rights to the same extent as the total abrogation of rights suffered by an adult offender who pleads guilty and is sentenced to prison.

Indeed, such a construction would render the statute unconstitutional on its face. But, wherever possible, a statute must be construed “so as to uphold its constitutionality.” *State v. Abrams*, 163 Wn.2d 277, 282, 178 P.3d 1021 (2008).

It is a violation of due process to accept a guilty plea without an affirmative showing that the plea was made intelligently and voluntarily. *State v. Barton*, 93 Wn.2d 301, 304, 609 P.2d 1353 (1980); *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). That means the defendant must be informed of all direct consequences of her plea. *State v. Conley*, 121 Wn. App. 280, 284, 87 P.3d 1221 (2004), quoting *Barton*, 93 Wn.2d at 305.

But RCW 13.40.127 does not require a colloquy in which the court informs the juvenile that the direct consequences of a deferment stipulation include the suspension of all fundamental civil rights. *See, e.g., Conley*, 121 Wn. App. at 284, quoting *Barton*, 93 Wn.2d at 305 (defendant must be informed of all direct consequences of her plea). Moreover, the reviewing court does not attempt to discern what weight a defendant might have given to any particular consequence. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 302, 88 P.3d 390 (2004).

Instead, the Rule of Lenity requires the ambiguous provision to be construed strictly against the State and in favor of Loran. That means the

court does not adjudicate a juvenile guilty unless she fails to comply with the deferment order.

Even if the Court construes the JJA as requiring the court to enter a conviction and defer only the disposition, the State concedes that, by contrast with adult probation, parole and work release orders, community supervision as contemplated by the JJA does not include a provision whereby the juvenile agrees to submit to warrantless searches of her home. BR 10.

The State cites to the definition in RCW 13.34.020(4). But that definition expressly and unambiguously says it does not apply to a juvenile who has been granted a deferred disposition. (“Community supervision” means an order of disposition by the court of an adjudicated youth not committed to the department or an order granting a deferred disposition.) A mandatory condition of community supervision is that the court must order the juvenile to comply with mandatory school attendance and to notify the school of the conditions. The definition lists the additional permissible conditions, namely (a) Community-based sanctions; (b) Community-based rehabilitation; (c) Monitoring and reporting requirements; and (d) Posting of a bond. RCW 13.40.020(4). Conspicuously absent is that the juvenile will be subject to warrantless home searches. *Id.*

3. THE ORDER OF DEFERMENT IS THE
LAW OF THE CASE.

The law of this case is contained in the actual deferred disposition order entered by the court in this particular case. Supp. CP (Order filed 12/07/2009). That order does not say Loran pleaded guilty. It says merely that she stipulated to the admissibility of the alleged facts. Order at 1. It also says that the State may proceed with the prosecution of the charge if Loran fails to abide by the order's terms. Order at 4. And finally, the Order says that if Loran does comply, the charge will be dismissed. Order at 4-5. Not that the conviction will be vacated; that the charge will be dismissed. Most significantly, even if the stipulation is equivalent to a guilty plea, the Order does not include a provision whereby Loran must submit to warrantless searches. Order at 2. Thus, the language of the Order of Deferment defeats the State's claim that Loran was subject to the same diminishment of constitutional rights as an adult on probation, parole or work release following conviction and sentencing.

4. PROBABLE CAUSE, NOT ARTICULABLE SUSPICION, IS THE PREREQUISITE FOR INVADING A HOME.

The State claims that “articulable suspicion” that drugs might be found in the apartment was sufficient to justify Goodrich’s warrantless entry and search. BR 13. This is wrong. Articulable suspicion is enough to permit a brief stop in a public place. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Absent exigent circumstances or some other warrant exception, however, a government agent cannot intrude into a person’s home without first persuading a neutral magistrate that a nexus exists between a suspected crime and the place to be searched. *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999).⁴

Searches and seizures inside a home without a warrant are presumptively unreasonable under both the federal and state constitutions. *Payton v. New York*, 445 U.S. 573, 586, 100 S. Ct. 1371, 1380, 63 L. Ed. 2d 639 (1980); *State v. Bell*, 108 Wn.2d 193, 196, 737 P.2d 254 (1987); *State v. Daugherty*, 94 Wn.2d 263, 266–67, 616 P.2d 649 (1980), *cert. denied*, 450 U.S. 958, 101 S. Ct. 1417, 67 L. Ed. 2d 382 (1981).

Specifically, when a drug offense is suspected, the suspect’s home may

⁴ The State seeks to distinguish *Thein* because *Thein* was not in the custody of the Department of Corrections as a probationer or parolee. BR 16. But neither was Loran. *Thein* is directly on point regarding the requisite nexus for a home search. Whether non-custodial community supervision is the equivalent of DOC community custody is precisely the question this Court is asked to decide. BR 17.

not be invaded absent specific evidence that drugs are likely to be found there. *Thein*, 138 Wn.2d at 140.

The State cites *State v. Winterstein*, 167 Wn.2d 620, 629, 220 P.3d 1226 (2009), for the tautology that a government agent with carte blanche authority to search the residence of a Department of Corrections parolee does not need probable cause beyond ascertaining that they are at the parolee's residence. BR at 13-15. This sheds no light on the issue presented here, whether Goodrich did have intrinsic authority to search on mere suspicion. The circumstances of *Lucas*, cited by the State on this point at BR 15, are illustrative. The police had looked through the window of the suspect's home and seen suspected marijuana inside. *Lucas*, 56 Wn. App. at 244. Invading the parolee's home based on an anonymous tip, by contrast, would have been unreasonable. *Id.*

Here, the State recites grounds supporting a reasonable suspicion that Loran had used drugs. BR 16. But the record suggests no grounds whatsoever for Goodrich to believe Loran did drugs inside her home rather than elsewhere. The requisite nexus is absent.

5. THE FRUITS OF THE WARRANTLESS SEARCH
WERE ADMISSIBLE SOLELY FOR PROBATION
REVOCATION, NOT TO PROVE NEW CHARGES.

Finally, the State asks the Court to hold that evidence seized under the exception creating diminished privacy expectations for probationers should be admissible for all purposes, not just to establish a probation violation. BR 18. This is wrong, as argued with citation to authority in Loran's brief.

Convicted probationers lose some constitutional rights. *Riddell*, 75 Wn.2d at 87, citing Const. art. 1, § 22. But being on probation does not deprive the probationer of his basic constitutional protection from illegal searches and seizures. *U.S. v. Rushlow*, 385 F. Supp. 795, 797 (D.C. Cal. 1974). Accordingly, evidence seized in a warrantless search that violates the Fourth Amendment is admissible solely in proceedings to revoke the probation. The unlawfully seized evidence is not admissible in a new prosecution for possession of the items seized. *Id.*, citing *U.S. ex rel. Lombardino v. Heyd*, 318 F. Supp. 648, 650 (D.C. LA. 1970) (evidence seized during an unconstitutional warrantless search of a probationer was admissible solely to prove a probation violation at his revocation proceedings). In *Lombardino*, marijuana unlawfully seized was suppressed and the possession charge was dropped in recognition of

probationer Lombardino's right to be free from 'unreasonable searches and seizures.' *Id.*

Likewise, this Court in *State v. Kuhn*, 7 Wn. App. 190, 191, 499 P.2d 49 (1972), citing *Lombardino*, recognizes that fundamental constitutional protections are abrogated solely as to probation revocation proceedings. *Kuhn*, 7 Wn. App. at 193. *Kuhn* holds that even convicted probationers are entitled to protection from illegal searches and seizures if they are accused in a new criminal prosecution. *Id.*

The unlawfully seized evidence at issue here was not used against Loran in revocation proceedings. Rather, it was introduced in a prosecution on new charges. 1/19 RP at 4. With respect to the new charges, Loran retained the full panoply of constitutional protections.

The Remedy is to Reverse the Conviction & Dismiss the Prosecution: Goodrich subjected Loran to a warrantless search of her home in violation of art. 1, § 7 and the Fourth Amendment. Goodrich had no lawful reason to be in Loran's home. She had performed her duty to the court by reporting Loran's non-compliance with the deferred disposition order and Loran had been arrested and removed. At that point, Goodrich had no rights arising from her supervision duties.

"Retrial following reversal for insufficient evidence is 'unequivocally prohibited' and dismissal is the remedy." *State v.*

Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998), quoting *State v. Hardesty*, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996).

The State had no lawfully obtained evidence with which to establish the essential elements of the crime. Therefore the Court should vacate the judgment and sentence and dismiss the prosecution.

IV. **CONCLUSION**

For the foregoing reasons, the Court should reverse Ms. Loran's conviction, vacate the judgment and sentence, and dismiss the prosecution with prejudice.

Respectfully submitted this 3rd day of August, 2011.



Jordan B. McCabe, WSBA No. 27211
Counsel for Kathryn A. Loran

CERTIFICATE OF SERVICE

Jordan McCabe certifies that she mailed this day, first class postage prepaid, a copy of this Appellant's Brief to:

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Clallam County Prosecutor's Office
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Port Angeles, WA 98362-3015

Kathryn A. Loran
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Jordan B. McCabe, WSBA No. 27211
Bellevue, Washington

Date: August 3, 2011

BY: [Signature]
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COURT OF APPEALS
DIVISION II

APPENDIX A

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FILED
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2009 DEC -7 A 10:09
BARBARA CHRISTENSEN

IN THE SUPERIOR COURT OF WASHINGTON FOR CLALLAM COUNTY
JUVENILE DIVISION

STATE OF WASHINGTON,)
Plaintiff,)
vs.)
Kathryn A. Loran)
Respondent.)
DOB 4-30-91)

NO. 09-8-00188-4
ORDER GRANTING
DEFERRED DISPOSITION

THIS MATTER having come on regularly for hearing this day before the undersigned Judge of the above-entitled Court on petition of the Respondent for an Order Granting Deferred Disposition; and the Court having reviewed the petition and documents associated therewith, and based thereon, the Court makes the following finding:

- (a) Petitioner has stipulated to the admissibility and sufficiency of the facts as contained in the written police report and accompanying documents; and
- (b) Petitioner has acknowledged the admissibility of the stipulated facts and reports in any criminal hearing on the underlying offense or offenses held subsequent to revocation of the Order Granting Deferred Disposition;
- (c) Petitioner has acknowledged and waived the right to testify; the right to speedy trial; the right to call witnesses to testify; the right to present evidence in his or her defense; and the right to a jury trial; and
- (d) Petitioner's statements were made knowingly and voluntarily; and
- (e) Petitioner is eligible for deferred disposition because the juvenile's current offense is not a sex or violent offense; the juvenile's criminal history does not include any felony; the juvenile has no prior deferred dispositions; and the juvenile has not had more than two (2) diversions.

ORDER GRANTING
DEFERRED DISPOSITION

COPIES 10 DATE 12-7-09
PA PD PO(2) SGL
CLK TS CLALLAM PUBLIC DEFENDER yes
516 EAST FRONT STREET
PORT ANGELES, WA 98362
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SCANNED - 5

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1 BASED UPON THE FOREGOING, the Court finds that an Order Granting
2 Deferred Disposition is appropriate under these circumstances and, accordingly,
3

4 IT IS HEREBY ORDERED and DECREED that disposition of the aforesaid
5 charge(s) to have occurred on the 11th day of March, 2009 shall be
6 stayed and deferred by the Respondent for a period of twelve (12) months upon
7 the following terms and conditions:

- 8 1. Complete 0 hours of community service work, with credit for
9 time served of _____ days, within _____ days/months of entry of
10 this order.
- 11 2. The respondent is ordered to refrain from committing new offenses.
- 12 3. Respondent is further ordered to comply with the **MANDATORY SCHOOL**
13 **ATTENDANCE** provisions of RCW 28A.225, and to inform respondent's school
14 of the existence of this requirement. Respondent is to attend school
15 without unexcused absences, tardiness, or disciplinary referrals.
- 16 4. Respondent shall report regularly, and on time, to the assigned
17 probation counselor (or probation counselor's designee), as the
18 probation counselor shall schedule or direct.
- 19 5. Respondent shall keep probation counselor informed of respondent's
20 current address and telephone number and shall notify probation
21 counselor before moving to a different address.
- 22 6. Respondent shall follow all reasonable rules of the home.

23 **OPTIONAL CONDITIONS:**

- 24 ___ **CURFEW** may be set at the discretion of the probation counselor.
- 25 ___ Respondent shall **NOT USE OR POSSESS FIREARMS, AMMUNITION OR OTHER**
26 **DANGEROUS WEAPONS** during this period of community supervision.
27 Probation counselor is authorized to search respondent and items
28 carried or controlled by respondent at scheduled appointments and
29 other reasonable times, and may specify in writing further details
30 of this prohibition.
- 31 ___ Respondent shall participate in counseling, outpatient substance
32 abuse treatment programs, outpatient mental health programs, sex
offender, and/or anger management classes, as probation officer
directs. Respondent shall cooperate fully.
- ✓ Respondent shall be **EVALUATED FOR ALCOHOL OR OTHER DRUG DEPENDENCY**
at the direction of the probation counselor and if qualified, shall
comply with all recommendations consistent with CDDA treatment
requirements.

ORDER GRANTING
DEFERRED DISPOSITION

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- Shall not congregate in areas where controlled substances are being used or underage drinking is taking place.
- Respondent shall refrain from using illegal drugs and alcohol and is subject to **RANDOM URINALYSIS/PBT/BAC** as directed by the probation counselor or commissioned law enforcement officer to insure compliance with the court's orders.
- Respondent is ordered to not go upon the following premises or geographic areas: _____
- Respondent shall not contact, except through counsel or a probation counselor, the following person(s): _____
- Respondent shall reside in a placement approved by the supervising probation counselor or approved by court order.
- Respondent shall not knowingly associate with any person, adult or juvenile, who is under the supervision of any court of this or any other state for any juvenile offense or crime.
- The respondent shall attend all mental health appointments and take medications as prescribed.
- Other conditions: _____
- Respondent is order to pay **RESTITUTION** in the total sum of \$_____ for victim(s): _____
- A restitution hearing is set for: _____
- The respondent waives his/her right to be present at the restitution hearing.

Respondent shall remain under the Court's jurisdiction for a maximum term of ten (10) years after respondent's 18th birthday (unless extended for an additional ten years) for the collection of ordered restitution and penalty assessment, unless these amounts have been converted to a civil judgment pursuant to RCW 9.94A.145 and/or RCW 13.40.192 and/or 13.40.198.

Jurisdiction over Respondent is automatically extended beyond the child's eighteenth birthday, because the provisions of this sentence, and/or other outstanding dispositional requirements, cause the Court reasonable concern that the Respondent may not complete this sentence before reaching age eighteen. (RCW 13.40.300)

DNA TESTING If this case is a felony, the respondent shall have a

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CLALLAM PUBLIC DEFENDER
516 EAST FRONT STREET
PORT ANGELES, WA 98362
(360) 452-3307
(800) 452-3300 FAX

1 biological sample (saliva) collected for purposes of DNA
2 identification analysis and the respondent shall fully
3 cooperate in the testing. The appropriate agency shall be
4 responsible for obtaining the sample prior to the respondent's
5 release from confinement. RCW 43.43.754.

6 ✓ DRIVER'S LICENSE REVOCATION/SUSPENSION: The Court finds that Count
7 _____ is: ___ a felony in the commission of which a motor vehicle
8 was used; or a Minor in Possession of Alcohol; or a Possession of a
9 Controlled Substance; or Unlawful Possession of a Legend Drug
10 The court clerk is directed to immediately forward an Abstract of
11 Court Record to the Department of Licensing, which must revoke the
12 Respondent's driver's license or privilege of obtain a driver's
13 License. RCW 46.10.265, RCW 13.40.265.

14 _____ FELONY FIREARM PROHIBITION: Respondent shall not use or possess a
15 firearm, ammunition or other dangerous weapon until his or her
16 right to do so is restored by a court of record. The court clerk
17 is directed to immediately forward a copy of the respondent's
18 driver's license or identicard, or comparable information, along
19 with the date of conviction, to the Department of Licensing.
20 RCW 9.41.047.

21 _____ OTHER ORDERS: _____
22 _____
23 _____

24 IT FURTHER IS ORDERED and DECREED that in the event the Petitioner
25 shall fail to abide by the terms and conditions set forth above, the Court, upon
26 reasonable notice and hearing to all parties may enter an order rescinding
27 approval of this Order and authorize the prosecution to proceed on the charge
28 (s) as filed herein; and

29 IT FURTHER IS ORDERED and DECREED that in the event the prosecution
30 for the aforesaid charge (s) is ordered to proceed as set forth herein, the
31 Petitioner shall be deemed to have waived all rights and claims he/she may have,
32 if any, under the Statute of Limitations of the Laws of the State of Washington;
and

IT FURTHER IS ORDERED and DECREED that in the event the Petitioner
complies with all the terms and conditions as set forth herein, and the Court is
notified of the completion of the aforesaid program, then the charge (s) of
Unlawful Possession of a Legend Drug, a misdemeanor shall
be dismissed and the State of Washington barred from ever bringing said charges

ORDER GRANTING
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1 to trial.

2 Review date Dec 6, 2010 at 9 AM

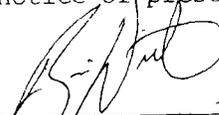
3 DONE IN OPEN COURT this 7th day of DEC., 2009.

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6 
7 JUDGE S. BROOKE TAYLOR

8 Presented by:
9 CLALLAM PUBLIC DEFENDER'S OFFICE

Copy received, approved for entry
notice of presentation waived:

10 BY: D. Hayden
11 WSB
12 Attorney for Petitioner 25738


40537
for Tracey Lassus
TRACEY LASSUS
Deputy Prosecuting Attorney

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15 Respondent

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ORDER GRANTING
DEFERRED DISPOSITION