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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Personal Restraint of
STEVEN DANIEL KRAVETZ,
Petitioner.

PETITIONER UNDER RESTRAINT OF A JUDGMENT OF THE
LEWIS COUNTY SUPERIOR COURT,
The Honorable Richard L. Brosey

**PERSONAL RESTRAINT PETITION AND BRIEF IN SUPPORT
OF PETITION**

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I. STATUS PETITIONER

A. RESTRAINT

Steven Kravetz is currently incarcerated at the Monroe Correctional Center pursuant to a judgment entered on May 17, 2013 in Lewis County Superior Court, by the Honorable Richard L. Brosey. He is serving an exceptional sentence of 300 months for Assault 1° (Count II)¹, a standard range sentence of 32 months for Assault 2° (count IV), and a standard range sentence of 364 days for Unlawfully Disarming a Law Enforcement Officer (Count III). (Appendix A). His sentences on all counts were ordered to run concurrently, except that the 12 month deadly weapon enhancement of the sentence imposed on Count IV was ordered to run consecutively to the other sentences, thus the total period of confinement ordered by the sentencing court was 312 months.

B. DIRECT APPEAL

Petitioner appealed his convictions to Division Two of the Washington Court of Appeals and that Court affirmed his convictions in an unpublished decision issued on February 18, 2015. Petitioner sought discretionary review from the Washington Supreme Court and that Court denied review on August 5, 2015. The mandate was issued on August 14, 2015. No prior personal restraint petition has ever been filed.

II. JURISDICTION

Petitioner's restraint is unlawful pursuant to RAP 16.4(c)(2). His

¹ The jury also found Kravetz not guilty of Attempted Murder 1 which was charged in Count I.

conviction was obtained in violation of the federal and state constitutions.

In addition Petitioner's restraint is unlawful pursuant to RAP 16.4(c)(2) because his sentence was imposed in violation of the Constitution of the United States and also in violation of the sentencing laws of the State of Washington.

III. EVIDENCE RELIED UPON

Petitioner relies upon:

(1) The verbatim report of proceedings for Petitioner's trial. The trial transcript was filed with this Court as part of the record in Petitioner's prior direct appeal (COA No. 44923-4-II);

(2) The clerk's papers filed with this Court in connection with that same prior appeal; and

(3) The accompanying declaration of James E. Lobsenz, counsel for Petitioner, and the exhibits attached thereto.

(4) The accompanying declaration of Suzanne Lee Elliott, and the exhibits attached thereto.

IV. CONDITIONAL REQUEST FOR A REFERENCE HEARING

Petitioner believes that there is no need for a reference hearing in this case because on the undisputed facts it is inconceivable that trial defense counsel could have had a legitimate strategic reason for his conduct. It is simply not conceivable that he could have had a legitimate strategic reason for failing (1) to bring a motion to suppress, (2) to make the argument that Counts II and III constituted the same criminal conduct,

and (3) to make the argument that the use of the fact that Kravetz knew that Deputy Davin was a law enforcement officer as a basis for an the exceptional sentence constituted double counting of the same fact in violation of the rule laid down in *State v. Nordby*, 106 Wn.2d 514, 723 P.2d 1117 (1986).

However, in the event that this Court disagrees and thinks that is somehow possible that defense counsel might have had some legitimate strategic reason for choosing not to make such arguments, then Petitioner asks this Court to order a reference hearing so that a Superior Court can make findings as to whether trial counsel believed he had any legitimate strategic reason for his conduct.

V. STATEMENT OF THE CASE

A. Events of February 3, 2012.

On February 3, 2012, Corrections Officer Steve Youmans was working at the Grays Harbor county Jail when he was notified that there was a man over at the courthouse who was acting strangely. RP 185. Youmans walked over to the courthouse to investigate and there he saw Kravetz standing inside the main entrance to the courthouse. RP186-87. Youmans saw that Kravetz was watching people come and go, looking at his watch, and taking notes as people were leaving the courthouse. RP 187. It was getting close to 5:00 p.m. which was closing time. RP 189.

After watching Kravetz for a few minutes, Youmans attempted to make contact with him, but Kravetz avoided Youmans and walked out the main door and down the walkway to the sidewalk of West Broadway. RP

189. Youmans followed him but stayed inside the building and watched what Kravetz did outside. RP 190. He saw Kravetz take more notes on a piece of paper. RP 190.

Youmans then exited the courthouse and attempted to contact Kravetz but Kravetz walked away down the street and went to stand in front of the Grays Harbor Administration Building. RP 190. Moments later Kravetz returned to the area in front of the courthouse and appeared to make more notes, and when Youmans again tried to contact him Kravetz left the area and Youmans did not see him again. RP 191.

B. Events of March 9, 2012

At Petitioner's trial the State presented testimony that the following events occurred on March 9, 2012. Around 11:45 a.m. Petitioner entered the Grays Harbor County Courthouse carrying a briefcase. RP 39. A court administrator felt he looked suspicious and she alerted a sheriff's department employee who in turn alerted Deputy Sheriff Polly Davin. RP 39-42, 55, 63. Davin contacted Kravetz and asked him what his name was and to provide her with some identification. RP 67. Kravetz then grabbed Davin, threw her to the ground and began struggling with her. RP 69. Judge Edwards heard the commotion and attempted to assist Davin. RP 130-132. Kravetz stabbed Judge Edwards in the neck with a knife. RP 111. Davin drew her gun but Kravetz took the gun away from her and then shot Davin with her own gun. RP 72, 74. Davin was shot in the arm. RP 59

After shooting Davin, Kravetz left the courthouse and walked to

the law office of Robert Erhardt, a local attorney. RP 182-183, 198-99. Kravetz asked the receptionist if she would call his mother for him and tell her that he needed a ride home. RP 199. The receptionist placed the call and left that message for his mother. RP 201. Kravetz then left the attorney's office, but he returned a minute or two later and asked the receptionist to call his mother at her place of work. RP 201-02. At this point Kravetz's mother called the office and the receptionist told her that Kravetz was there and needed a ride home. RP 202. Kravetz left the law office again and then came back around 3 p.m. and had the receptionist call his mother again. RP 203-04. Thereafter Roberta Dougherty, Kravetz's mother, arrived and Kravetz got into her car and they left. RP 204-05. Dougherty drove her son to her home in Olympia, Washington where he lived with her. RP 223. Dougherty was completely unaware of what had happened at the Grays Harbor County Courthouse and Kravetz said nothing about the incident to her. RP 223.

C. Search of the Kravetz home, the garage associated with the home, and the seizure of documents found inside a box found in the garage, including a sketch of the county courthouse and a photograph of Deputy Sheriff David Libby.

The next day Dougherty heard on her car radio that police were looking for her son. RP 225. She pulled her car over and called the police. RP 225.

Later that day Detective Kameron Simper of the Thurston County Sheriff's Office executed a search warrant at the Dougherty/Kravetz home. RP 243. Police found Kravetz there and they arrested him. RP 244, 372.

In a bathroom they also found Deputy Davin's gun which Kravetz had used to shoot Davin, and the knife that he had used to stab Judge Edwards. RP 245.

Police also searched the detached garage associated with the house, and in the garage they found a box. RP 250. Inside the box detective Simper found several documents. RP 250. The box contained a document (Exhibit No. 57)² which had been labeled with the words, "self-guided tour of Grays Harbor County Courthouse." RP 251. Exhibit No. 57 was a hand drawn sketch of the courthouse. RP 251. Also inside the box was a folder (Exhibit No. 59) which the prosecutor described during a sidebar conference at trial as follows:

Your Honor, I'm going to read from Detective Simper's report, at page 563 of the discovery:

"I assisted in the search of the detached garage. While doing so, I located a box, which contained miscellaneous notes and documents. Inside there was a folder labeled master plan. That's number 58 [sic]. I opened the folder and immediately recognized a photograph of Deputy David Libby. There were numerous other documents which listed the home addresses for Deputy Libby. There were also photographs of Deputy Libby, while he was in the Navy."

That's what this is. This [the folder] is number 58.³

RP 254.⁴ According to the prosecutor, the photograph of Libby and the

² Detective Simper testified that the sketch "came out of Exhibit No. 47 and No. 48. RP 251. The prosecutor later stated that the photo of Deputy Libby came out of Exhibit No. 48. RP 258. The Exhibit List identifies No. 47 as "Kravetz Notes and Records Part 1-78" and Exhibit No. 48 as "Kravetz Notes and Records Part 2-77."

³ Although the prosecutor said that this folder was Exhibit No. 58, the Exhibit List made by the deputy clerk of the Superior Court identifies the folder as Exhibit No. 59, so perhaps the prosecutor misspoke.

documents with Libby's addresses were part of Exhibit No. 59. RP 254.

Jackie Walkinshaw, a court administrator for the Grays Harbor County District Court, testified before the jury that Deputy Libby had previously arrested Kravetz on a FTA warrant issued in September of 2009. RP 51-52.

Defense counsel never made any motion to suppress. No contention was ever made that any portion of the search was unconstitutional.

D. Kravetz' video recorded statement played for the jury.

Petitioner agreed to waive his rights and to make statements to the police when he was arrested. RP 306. He was interviewed for approximately six hours and his interview was audio and video recorded. RP 309-311. The entire video of his recorded interview was played for the jury. RP 396, 401-407.⁵ A copy of the sheriff's department's transcript of that interview is attached to the *Declaration of James Lobsenz* as Appendix D-1 and D-2. Thus from watching and listening to the video of

⁴ During the sidebar conference the trial prosecutor also stated that more than one box was searched: "Officer Simper wrote a report and said that *he went through boxes and papers and items that were found* in the garage, these – particularly the ones we have identified here. He specifically says in his report that they found a photograph of Deputy Libby. It is available. It is available for inspection upon request. I don't know what else I'm supposed to do. You can look at these exhibits. You can see what's in them, and *there are reams and reams of pieces of paper and little scraps of paper*. These are all available for inspection." RP 252-53 (emphasis added).

⁵ The court reporter did not transcribe the video statement while it was being played in open court and thus the contents of the six hour statement does not appear in the verbatim report of proceedings. However, the police did prepare a transcript of the statement, and that transcript was furnished in discovery to Kravetz's trial counsel, and later, a copy of it was sent to undersigned PRP counsel by the prosecutor's office in response to a public disclosure act request. See *Declaration of Lobsenz*, ¶ 6.

the detectives' interview, the jury learned the following facts.

The interview began at 3:02 p.m. on March 10, 2012. *Id.*, App. D-1, 2. The detectives asked Kravetz "what happened" yesterday and Kravetz proceeded to tell them about the events that were "behind" the events of March 9th. *Id.*, App. D-1, 2. He said he went to the courthouse in order to steal records concerning a criminal case filed seven years earlier in 2005. *Id.*, App. D-1, 7.

For several hours Kravetz gave a rambling discourse on how he was "raped" in 2005 when he was arrested by police officers. Kravetz said he went to the courthouse in 2012 to get the records that would enable him to learn the identities of the people involved in that prior rape incident so that he could have those people prosecuted. *Id.*, App. D-1, 8.

Kravetz explained that on May 24, 2005 his mother called the sheriff's department because she thought he was depressed and upset. *Id.*, App. D-1, 12-13, 44. Sheriff's deputies Jim Lauer and David Libby responded, and eventually they took Kravetz into custody believing that he was contemplating suicide. *Id.*, App. D-1, 44-46. Kravetz said that when Deputy Libby frisked him, Libby "got a little . . . carried away" and he "put his hand in [Kravetz's] groin area" which caused Kravetz to "freak out." *Id.*, D-1, 47-48. Deputy Libby detained Kravetz for a mental health evaluation and transported him to the Mark Reed Hospital. *Id.*, D-1, 48-49.

Kravetz told the detectives that once he got to the hospital things got worse when nurses and the sheriff's deputies threatened him with rape:

They even took a thermometer and put it up to my mouth . .

. and I kind turned my head away, and then she came back and said well we can stick it up your butt, but we'll take your temperature one way or the other. And I took that as a rape threat and I was and when that happened I said this is a very dangerous place and I gotta get out of here. . . .

Id., App. D-1, 51.

Then "another nurse decided that I they were gonna want me to do a urine test," and Kravetz didn't want them to do that. *Id.* He felt that a urine test would be "sickening" so he "decided that [he] wasn't going to do it." *Id.*, App. D-1, 51-52.

And then this nurse and I remember this nurse had gotten frustrated that I wasn't gonna do the test and she said if you don't urinate into the cup we're gonna take a catheter and stick it up your penis. And I just freaked out. I couldn't believe that these people were like psychotic or something. I had to uh I wanted to escape from there. So I decided uh the first thing I was gonna do I was going to ask the deputy you know I don't want to do this um can we not do this but he was adamant about it. He wanted these people to go ahead with this procedure. And he went along with it, he made the same threat. You know you don't urinate in a cup we'll take a cath catheter and stick it up your penis. And I I just that blew me away because as a law enforcement officer he should have done something right there. He's going along with it. What do I do[?] . . .

Id. App. D-1, 52. Kravetz said the nurses and Deputy Libby said he could have five minutes to think it over, and so after "praying that [there would be] something that I can come up with something to get out of this whole thing this urine test and this rape thing," Kravetz finally told them he would do the urine test. *Id.*, App. D-1, 53.

Kravetz told the detectives he was allowed to go into a bathroom where he could urinate into a cup but once inside the bathroom he saw a

window and he thought about trying to escape out the window. *Id.*, App. D-1, 53. Kravetz took the hinges off the window and then he ripped the screen off but his escape attempt was discovered so he threw the screen at the nurse and he jumped out of the window and ran. *Id.*, App. D-1, 56. Deputy Lauer chased him, caught up to him, and Kravetz decided to surrender. *Id.*

Got down on the ground, Libby got up to me and he put his knee in my back and he pulled me up by my hair, he drove me he actually dragged me by my hair into the hospital and my hands were handcuffed behind my back and Libby and [Dr.] Thorp and uh yeah they were held held me down on the bed and they forcibly used the catheter and they forcibly used the rectal thermometer, and it was intentionally painful

Id., App. D-1, 57.

After the hospital was through examining him (“after the rape was over”) Deputy Libby took Kravetz to the Grays Harbor County Jail. *Id.* App. D-1, 59. At the jail he had another bad experience because a large correctional officer told Kravetz to take off his clothes so he could do a strip search and Kravetz initially refused to do so. *Id.*, App. D-1, 60. He was then tased with a taser gun, and this persuaded him to take his clothes off and he was then subjected to a strip search. *Id.*, App. D-1, 60-61.

Kravetz told the detectives that as a result of this incident he was charged with escape in the third degree and malicious mischief in the third degree. *Id.*, App. D-1, 58. He was released on bail, and eventually a judge ordered that Kravetz undergo a mental evaluation, but Kravetz decided that he was not going to show up for his mental health evaluation

so a bench warrant was issued for his arrest. *Id.*, App. D-1, 74.

Then, in 2008, Kravetz was arrested for trespassing at the Centralia public library. *Id.*, App. D-1, 76. Kravetz said he had reserved one of the computers at the library but someone thought he was a transient and questioned his right to use the computer. *Id.* A librarian told him to leave the library and when he failed to leave police were summoned. *Id.*, App. D-1, 78-79. One of the officers accused Kravetz of giving him a false name and then announced he was going to do a weapons check on him. *Id.*, App. D-1, 86. This caused Kravetz to recall what Deputy Libby had done to him three years earlier and led him to resist the officer's attempt to conduct a pat down on him:

We're gonna do a weapons check on you. And I thought about how I was treated by Libby during that first that frisk about being touched on the groin and then possibly gonna be raped. I started thinking you know the first time I ever dealt with these kinds of people this happened, what if this happens again. I started thinking that, and uh he reached for me to do a uh um weapons check and I thought he was gonna sexually abuse me because of what happened with Grays Harbor County that they didn't prosecute these people they didn't ask me for a prosecution. I thought this is gonna happen again and they're gonna get away with it because in my mind their reputation in my mind is law enforcement officers are going to do whatever they want to do and get away with it . . .

Id., App. D-1, 86-87. Kravetz said he resisted the officers' attempt to do a weapons pat down and wound up being tased and arrested again. *Id.*, App. D-1, 87. This incident resulted in Kravetz being charged with Assault in the Third Degree. *Id.*, App, D-1, 88.

At some point another bench warrant got issued for Kravetz's arrest when he intentionally failed to appear for a court hearing (apparently a hearing in connection with the Grays Harbor criminal case for escape and malicious mischief). *Id.*, App. D-1, 124. So by the time of the March 9, 2012 incident there were two outstanding bench warrants for Kravetz's arrest.

In 2012, Kravetz decided he had to investigate his 2005 arrest because he "had to know who these rapists were" who had raped him at the Mark Reed Hospital. *Id.*, App. D-1, 125. He became convinced that the courts had some records that they were withholding from him,

So I wanted to go into these agencies and see if I could get my hands on these files and see if they had not just that but case files like criminal case files to see if they had information that they don't want me to have and information they didn't want the public to know about.

Id., App. D-1, 129. So Kravetz decided to see if he could sneak into the offices of the court and the prosecutor so that he could find the files that would tell him the names of the people who "Raped" him in 2005:

And so my motivation for dealing with and I'll say this I was at the courthouse in Grays Harbor on the Friday third of February and then yesterday [March 9, 2012] because my intention was to somehow sneak into these offices and take the files and then I can I got them I can expose them and and can you know basically try to create a revolution in the eyes of the public concerning politics and the fact that our public servants need to be supervised better because (inaudible) too too much adamantly. And I also wanted to help myself so I could get the concrete evidence that proved yes there was a conspiracy to try to prove or try to make it official that I was the one in the wrong concerning the rape case . . .

Id., App. D-1, 130.

Kravetz told the detectives that inside the courthouse a female sheriff's deputy asked him what his name was and he told her his name was Michael Thomas. *Id.*, App. D-2, 13. She then asked him for identification. *Id.*, App. D-2, 14. Kravetz became alarmed that if she found out who he really was, she would discover that there was a warrant out for his arrest, and that would lead to his being taken into custody, which in turn could lead to his again being "raped" or sexually assaulted:

I thought and based upon my past experiences with Grays Harbor County I felt I couldn't trust this person and that something was going to happen not just because of questioning but because of the bench warrant and it's likely they would find out about the bench warrant against me . . .

So I wanted to physically stop this person from uh continuing the continuing the uh the the questioning. . . .

I had grabbed this person and wrestled her to the ground.

Id., App. D-2, 15-16.

I had a knife with me and I wanted to do something that would hurt them so that they would be you know they would not you know they would be hurt and they would not want to continue you know you know they would uh they would uh they wanted to stop pursuing, I wanted to somehow hurt them just enough to stop them just temporarily.

Id., App. D-2, 16.

Kravetz told the detectives that a man intervened and pushed him away from the female deputy and knocked him down. *Id.*, App. D-2, 20. The deputy then pulled out her gun and Kravetz took it away from her and

fired the gun twice:

KRAVETZ: And uh from that point the female person uh had pulled out a firearm and I thought this person was going to shoot me and I didn't want that. So from there I grabbed it from her hands and as soon as I did that you know basically it just happened so fast I just panicked.

DETECTIVE PITTMAN: Um, hm.

KRAVETZ: And fired two shots. And then I just got out I just wanted something so that these people would not be able to you know if somebody is stunned in some sort of a way by something like that then I can get out of there, they won't be able to hurt me.

Id., App. D-2, 26.

KRAVETZ: When she had she had the firearm and I thought she was gonna shoot.

Id., App. D-2, 29.

KRAVETZ: Uh I grabbed it, I stood away and I you know because of how upset I was about this person's gonna shoot me you know.

DETECTIVE GARDNER: Were you angry?

KRAVETZ: No I wasn't I.

DETECTIVE GARDNER: Scared?

KRAVETZ: I was afraid and I knew that this person had a taser gun.

DETECTIVE GARDNER: Um, hm.

KRAVETZ: I assumed it.

* * *

So if this person I had this you know (inaudible) their hands because I think they're gonna shoot me, but I also think that they can shoot me (inaudible) the taser gun.

DETECTIVE GARDNER: Um, hm.

KRAVETZ: And I don't want that.

Id., App. D-2, 32-33.

DETECTIVE GARDNER: And I told ya I'd ask ya how you feel about things and what you were thinking, okay so that's what we're going to do at this point. Um do you recall when you first thought about how this officer could eventually find out about my warrant and uh you just didn't want to go to jail I take it that was your reason?

KRAVETZ: Yeah and.

DETECTIVE GARDNER: Uh, huh.

KRAVETZ: Because of Grays Harbor County.

DETECTIVE GARDNER: Because of the past history you've had?

KRAVETZ: Yeah I because you know they'd done this thing.

DETECTIVE GARDNER: Yeah.

KRAVETZ: The uh the rape on (inaudible) the County's going after me.

DETECTIVE GARDNER: Um. Hm. And I think we've covered that really well in the first part of this interview.

* * *

KRAVETZ: But I also know that um one of the concerns is if I uh this person would find out about my warrant they might want to they might want to do a you know an arrest and a pat down and I was concerned about the female person doing that (inaudible).

DETECTIVE GARDNER: And that really bothers you?

KRAVETZ: It does.

DETECTIVE GARDNER: And the people that have to listen to this interview that may not know you very well

can you can you go into detail can you explain what it is that that really bothers you about that so they can have an understanding?

KRAVETZ: I think it's because it's kind of like uh you know I I would take it you know some people would be concerned about pat downs and frisks they would consider it you know the police are just doing it to to uh do their checks and all that stuff and (inaudible). But to me when somebody's touching you in a certain area it I feel it's a sexual abuse. And I get scared when I think about those things.

Id., App. D-2, 60-62.

Kravetz acknowledged, "I get paranoid about things like that I get extremely uptight about things like that." *Id.*, App. D-2, 65. He said that after he fired the gun at the deputy he felt horrible about it and he acknowledged that it was both an illegal and an immoral thing to do:

KRAVETZ: I felt bad about it I did not want things to end up that way the last thing I ever wanted was that I would not have wanted something like that I just um I thought it was horrible it ended up that way just terrible.

DETECTIVE GARDNER: Do you feel that you were justified in doing what you did to that officer?

KRAVETZ: Um what I did was basically an instinctive thing that was brought on by fear.

DETECTIVE GARDNER: Okay.

KRAVETZ: But uh from a legal standpoint I would say no.

* * *

DETECTIVE GARDNER: How about from a morale [sic] standpoint?

KRAVETZ: Morale [sic] standpoint?

DETECTIVE GARDNER: You're a very morale [sic]

person you know we talked about that, from a morale [sic] standpoint strictly based on that scenario that played out do you feel that was the right thing for you to do?

KRAVETZ: You mean after it happened?

DETECTIVE GARDNER: Shooting another human being?

KRAVETZ: Well what I'm just saying.

DETECTIVE GARDNER: Um, hm.

KRAVETZ: Okay.

DETECTIVE GARDNER: Yeah.

KRAVETZ: Yeah okay.

DETECTIVE GARDNER: And I don't mean to be so cold about it I'm trying to

KRAVETZ: Yes I I understand that it's an immoral thing to do.

DETECTIVE GARDNER: Okay.

KRAVETZ: And you know I just you know sometimes you just really react instinctively with a freak thing and go oh my God I can't believe I did that.

DETECTIVE GARDNER: You can't take it back now huh.

KRAVETZ: Yeah it's you know the whole thing was horrible.

DETECTIVE GARDNER: Um, hm. If hat officer was here today what would you say to her?

KRAVETZ: That I'm sorry it I'm sorry the whole thing happened.

Id., App. D-2, 67-69.

DETECTIVE GARDNER: Okay I mean you and I think you have a very good grasp especially since you say that you're a victim of being wronged in the past so you you

definitely know the difference so there's not [sic?] doubt in your mind that regardless of the reason you know and again this is a tough question for you but regardless of the reason that you reacted the way you did it was wrong.

KRAVETZ: Yeah after it was all over I came to my senses.

DETECTIVE GARDNER: Um, hm.

KRAVETZ: Yes of course.

DETECTIVE GARDNER: Okay. I appreciate you know the honesty on that. . . .

Id., App. D-2, 76-77.

The detectives asked whether Kravetz had any kind of “diagnosis” that would have “any bearing on anything that occurred or [on his] ability to understand and . . . comprehend.” *Id.*, App. D-2, 81. Kravetz replied, “I might be obsessive compulsive.” *Id.* When asked why he thought he might be obsessive compulsive he replied:

KRAVETZ: Just like I'm uptight about things like certain you know substances or you know fluids or just anything that I would be uptight about that I wouldn't want to even touch.

DETECTIVE GARDNER: Oh okay so (inaudible) and germs?

KRAVETZ: Exactly.

DETECTIVE GARDNER: Okay.

KRAVETZ: And also on the issue of you know people who are touching things that uh have done wrong to me in the past.

DETECTIVE GARDNER: Um, hm.

KRAVETZ: Like just you know if some if like if you're sitting in a chair that some child molester sat on (inaudible) and you don't want to sit on it.

DETECTIVE GARDNER: Okay. . .

Id., App. D-2, 81-82.

Detective Gardner also questioned Kravetz about the photo of deputy sheriff Libby that law enforcement officers had found in the course of searching the contents of boxes found in the Kravetz garage. He asked Kravetz why he had this photo and Kravetz explained he was doing research so he could “expose” the people who had raped him in 2005:

DETECTIVE GARDNER: Okay. Alright. You know I think you were very descriptive of how you feel about the Grays Harbor County um specifically a few of the deputies that that you feel have abused you. Um one in particular there will be some information that would be added from the house after you were arrested this afternoon where you had some information about Deputy Libby, do you know what I’m talking about?

KRAVETZ: I think so.

DETECTIVE GARDNER: Okay. Can we kinda go into that a little bit so we can clear that up?

KRAVETZ: Um I I think I might have had uh some sort of uh photograph of him or something like that.

DETECTIVE GARDNER: You had some personal information about him just in general or?

KRAVETZ: Yeah.

DETECTIVE GARDNER: Do do you can do you recall what it is is it part of the research you were doing for your legal stuff?

KRAVETZ: Yeah.

DETECTIVE GARDNER: Kay. And what were your plans to do with that information?

KRAVETZ: Well if I could go and get all the information I needed to expose these people.

DETECTIVE GARDNER: Um, hm.

KRAVETZ: That I uh could use this information to have a what do they call it summons summons lawsuit and uh a complaint to maybe uh uh government agency.

Id., App. D-2, 73.

Kravetz said that he got information about any of the officers who were involved in the 2005 incident by doing research on a library computer. *Id.*, App. D-2, 74. Detective Gardner asked whether he intended to harm any of those officers and he denied having any such intent:

DETECTIVE GARDNER: Okay. Did you have any attempt [sic] to do any of them any harm?

KRAVETZ: No my intent was to properly identify everyone involved in the matter.

DETECTIVE GARDNER: Okay.

KRAVETZ: So I could find out who did this thing.

DETECTIVE GARDNER: Okay. (Inaudible) dealing with between counties and stuff like that as getting proper information so you could proceed with it?

KRAVETZ: Yeah.

DETECTIVE GARDNER: Okay. So what you're telling me now is but [sic] you're not a fan of these people you weren't trying to do anything to hurt them or their families or anything like that?

KRAVETZ: No.

DETECTIVE GARDNER: Okay. (Inaudible).

KRAVETZ: I wanted to identify these people you know I'm kinda like uh kind of a stickler for information.

Id., App. D-2, 74-75.

The detectives ended the interview at 10:48 p.m. *Id.*, App. D-2, 84.

E. **Presentation of a diminished capacity defense.**

Petitioner Kravetz did not testify at trial. His trial attorney presented a diminished capacity defense. Psychologist David Dixon testified that Kravetz suffered from a delusional disorder and an anxiety disorder. RP 451. Kravetz had been previously arrested in May of 2005 by a Grays Harbor deputy sheriff. At that time Kravetz had been civilly committed for a brief period of time, and during his commitment at the Mark Reed Hospital Kravetz believed he had been raped. RP 452.

Dixon explained that Kravetz was obsessed and preoccupied with this prior incident, and that he believed that a deputy sheriff had raped him when he booked Kravetz into jail on that prior occasion. RP 452-53.

In 2012, Kravetz knew that there was an existing bench warrant for his arrest, and he was worried that he might be arrested on it. Kravetz believed that if he were to be arrested on that warrant and taken to jail, he would be raped again, or possibly even killed. RP 453, 455. Dixon testified that Kravetz's thought processes were "very delusional." RP 455.

Operating under these delusions Kravetz went to the county courthouse to do "reconnaissance." RP 454, 459. He was obsessed with locating the court file that contained the outstanding warrant for his arrest. RP 455. He believed that if he was arrested "there would be some sexual assault; he could be raped or even killed." RP 455. His contact with Deputy Davin triggered his fear about being arrested and sexually assaulted. RP 456. That "put him right into the center of this delusional

system” and caused him to be paralyzed with fear. RP 456-57. Dixon testified that in his opinion Kravetz’s ability to form the requisite intent was substantially diminished by his delusional mental disorder. RP 471.

In rebuttal the prosecution presented the testimony of Brett Trowbridge and Dr. Marilyn Ronnei. Trowbridge agreed that Kravetz had a delusional disorder. RP 501. Trowbridge agreed that Kravetz suffered from a belief that he had been previously raped, and that he agreed that Kravetz believed that “whenever he gets contact by a Grays Harbor County Sheriff’s officer that he’s afraid that they are going to rape him, because he views a normal search that an officer gives you when being detained is some sort of sexual assault” RP 497. But Trowbridge opined that Kravetz could distinguish right from wrong, did know the nature and quality of his acts, and he saw “nothing that would impair his ability to act with intent to kill.” RP 503-04.

Dr. Ronnei testified that Kravetz suffered from either paranoid schizophrenia or from a delusional disorder. RP 525. She acknowledged that Kravetz was afraid that he would be sexually assaulted again, and that what most other people would regard as a normal pat down Kravetz would regard as a sexual assault. RP 538. Like Trowbridge, she opined that there was impairment of his ability to form the intent to kill, or the intent to inflict great bodily harm. RP 530. She also thought it was possible that he met the criteria for obsessive/compulsive disorder. RP 537.

Thus, *no one* disputed the fact that Kravetz was mentally ill and that he was delusional. Everyone agreed that he believed that on a prior

occasion that preceded the courthouse incident by roughly seven years, he had been arrested by Deputy Libby, and that he had formed the belief that Deputy Libby had raped him when he booked him into jail.

F. **The admission of documents at the trial.**

At trial the prosecution offered both the sketch of the courthouse (Exhibit #57) and the photograph of Libby (Exhibit #59) as evidence. Petitioner's defense attorney did not object to either one and both were admitted. RP 248, 255-56, 258-59. Defense counsel did object to the admission of another document (Exhibit #58) which was a list of employees of the Mark Reed Hospital. RP 253. He objected to that document on the ground that he had not been given notice of the State's intent to offer it. RP 256. The prosecutor agreed not to offer the list of hospital employees. RP 257. Both Exhibit #57 and Exhibit #59 were admitted. RP 259.

G. **The prosecution's use of the courthouse sketch and the Libby photograph to support its argument that Kravetz was able to plan the courthouse attack, and was able to form the intent to kill which was an element of the crime of Assault in the First Degree.**

In closing argument, the prosecution referred to Kravetz's sketch of the Grays Harbor County Courthouse and to the photograph of Deputy Sheriff Libby at great length. The prosecutor told the jury that Kravetz scouted the courthouse and reminded them that he had drawn a map of the courthouse floor plan:

He had scouted the courthouse, before back in February of 2012. He had gone there and spent a number of hours

taking notes, watching people, seeing who came, who went to various offices, and he even prepared a hand drawn floor plan. He's pick up the little flyer that's at the front door of the courthouse, and on the back he had drawn a fairly good floor plan, the first floor and part of the second floor, and he had notes on it about when people came, when people went. He's got notes at locations, benches, stairways, doorways, whether a door is locked. He's got one noted as locked.

RP 602.

He also argued that Kravetz had a "long standing hatred" of police officers which explained the actions he took on March 9, 2012:

That's what happened on March 9. Those are the facts. That's the evidence. That's the testimony.

Put these facts now into the framework of the instructions the judge gave you. I think you will again to [sic] see how they fit together. The defendant had a long-standing hatred, dislike for the Gray's Harbor County Sheriff's Office, not really just Grays Harbor County, the Sheriff's Office, but most law enforcement. He didn't like the Mason County Sheriff's Office. He didn't like the Centralia Police Department. He didn't like the Grays Harbor County Sheriff's Department, and he's trying to get into some papers from a case from 2005 that he's fixated on.

RP 610-611.

The prosecutor reminds the jury that Kravetz has done computer research on deputy Libby, the deputy who arrested him and took him to the Mark Reed Hospital in 2005:

In 2009 and 2012, as he's doing research, he's researching people involved in the case. ***You will find some of that research in evidence. You will also find the warrants to indicate the officer that was involved, Officer Libby, and you will find in that research a lot of history that the***

defendant has dug up on Libby, so he's very aware of what he's doing. He's very aware of how to get information, but he's decided there's something – they have got something in those files, and I have got to get it out.

RP 612 (emphasis added).

The prosecutor ridiculed the notion that Kravetz acted out of fear: “The defendant argues that he panicked, but that's not consistent with the facts.” RP 616. He argued that Kravetz had a preexisting plan that included a plan of escape:

[He] goes to the location that *he already planned to go to* change his clothes in case people were looking for him. *That's not a man who's in panic.* That's a man who's thinking about what he's doing. He knows what he's doing.

RP 617 (emphasis added).

He also argued that Kravetz decided to kill Deputy Davin because “he was not going to be arrested [so] there was only one thing for him to do: He had to kill the deputy.” RP 617. The prosecutor asserted that “luck” was the only reason Deputy Davin was not killed. RP 618. She turned her body slightly before the shot was fired and “by turning this way, it [the bullet] hits on the inside of her arm and goes out through the top of the arm. It's her movement that saved her . . .” RP 618.

H. **Defense counsel's closing argument.**

1. **Lack of intent to kill and lack of intent to inflict great bodily harm.**

Defense counsel argued that because the State had failed to prove (a) that Kravetz intended to kill Deputy Davin, or (b) that he had intended

to inflict great bodily harm upon her, that the jury should acquit Kravetz of Assault 1 and only find him guilty of Assault 2 against her. RP 620-21.

Defense counsel stressed how obsessed Kravetz was with the incident in 2005 in which he believed he had been the victim of a sexual assault, and he disputed the prosecutor's contention that Kravetz hated law enforcement officers:

And you heard his mother testify that ever since that event occurred in 2005, . . . it was a daily concern of his. Every day he ruminated about this event, where you have heard the discussions about what happened, how he believed he was sexually assaulted by Gray's Harbor and by Mark Reed Hospital employees, and *everything he did for those next seven years was not in an effort as the State said in their closing a long standing hatred of law enforcement.*

In fact you heard Detective Pittman describe the defendant as he wasn't angry at all. *He was just telling this story he was fixated on. It wasn't hatred.* What there was was a long standing obsession from his untreated – Dr. Ronnei and others – psychotic – all the other experts bring. That's the concern in this case is there's no doubt that three doctors testified: Dr. Dixon, Dr. Trowbridge and Dr. Ronnei and all three of them testified for sure Steven suffers a severe mental illness. . . .

He is paranoid. He has delusional beliefs of conspiracies. He is fixated on this 2005 event, which everyone agrees is a delusional occurrence to him that has erupted into this life altering event.

RP 624-25 (emphasis added).

[O]n March 9 of last year, what was his biggest fear, with respect to the Grays Harbor County Sheriff's Office? You know getting arrested, because in his untreated, paranoid, schizophrenic brain that if he got arrested he was going to be sexually assaulted, he was going to be raped, and for someone who for everyday of his life for the last seven

years – as his mother has said, which is confirmed by what the doctors have talked about, what Dr. Ronnei when she tried to interview him when she couldn't get him off the subject, what Detective Gardner and Pittman observed in that interview with him, one tract paranoid mind: . . . And oh my God, here comes a sheriff deputy, and I have a warrant for my arrest so gives her a false name, then, oh, no, I'm going to get arrested, . . . I'm going to get raped.

RP 636

Defense counsel further argued that Kravetz only intended to stun Deputy Davin, not to harm her:

You heard what Dr. Ronnei explained that the defendant told her. He said he told her that he fired – he thought he was firing at where a bulletproof vest was, because everything you have heard the defendant either say himself or about what the doctors have said, *his intent was to get away. His intent was – they say to hurt. He also said he wanted to stun them.* The key here is Steven is not on trial for attempting to stun Deputy Davin. Steven is on trial for attempting to kill Deputy Davin.

RP 627-28. Defense counsel suggested that he if he really wanted to kill her he could easily have done so:

He's over the top of Polly Davin, and all he's got to do if he wants to kill Polly Davin is just keep pulling the trigger until it goes blank. Not only that if he's that far away from Polly, you want to kill somebody, just start plugging at the head, guys. This isn't rocket science. It's not that difficult. You don't kill somebody by aiming at a bulletproof vest trying to stun them, missing one time, shooting them in the arm and then looking around and fleeing the scene. That's not intending to kill somebody.

RP 628.

Defense counsel also argued that Kravetz did not have the intent to inflict great bodily harm upon Judge Edwards, and he pointed out that the

knife wounds inflicted upon Judge Edwards were very shallow:

I asked that doctor how deep that injury was and how wide it was. It was one-half of one centimeter wide and one-half of one centimeter deep . . . so . . . one-half of a centimeter is 1/5th of an inch, less than 1/5th of an inch. That's how deep the wound was.

* * *

Again, when that injury was caused to the neck of judge Edwards, you have to find in order to convict him of First Degree Assault that he intended to inflict great bodily harm on the judge, with that one swing or however many swings the State tries to convince you occurred there. . . .

RP 631-32.

Defense counsel argued that since Kravetz did *not* have any intent to inflict great bodily harm upon either Deputy Davin or Judge Edwards, they should acquit Kravetz of both Assault 1 charges (Counts II and IV) and only find him guilty of second degree assault on those two counts. RP 644. 647-48.⁶

2. Defense counsel attempted to defuse the incriminating impact of the sketch of the courthouse.

In his closing argument, defense counsel attempted to defuse the impact of the sketch of the courthouse by arguing that the sketch was so badly and inaccurately drawn that it showed the lack of clear thinking in Kravetz's diseased brain:

Exhibit 57 is a drawing that the defendant made of the

⁶ "So that leaves you with the lesser-included potentially Assault Second. If you find that Steven assaulted Deputy Davin with a deadly weapon, the gun or the knife, that's Assault Second. If you find that he stabbed or assaulted – merely assaulted the judge with a knife, that's Assault Second." RP 648.

courthouse. Look at it. It says “stairs.” This document is evidence of the clarity of Steven Kravetz’s brain. It’s – there’s writing sideways, up sideways, across.

RP 634.

I. **The prosecutor’s rebuttal argument.**

In his rebuttal argument, the prosecutor returned to his theme that the map of the courthouse showed that Kravetz wasn’t mentally ill at all and that he was able to form the intent to kill:

Exhibit 57, the map, I don’t know if any of you have ever tried to draw a floor plan. Some of you may have tried to remodel a house at some point in time. If you have done that your experience is probably the same as mine. You are not very good at it. You don’t get the box that’s not quite square and doesn’t quite fit up in terms of sizes and scale. You have to mark down where the windows are, where the door is, because you don’t get the door right. *That doesn’t mean there’s something wrong with you that you have a mental illness. That doesn’t mean you are unable to form intent, do intentional things.*

I would submit to you just looking at this map you would say this man wasn’t mentally ill at all.

RP 652-53 (emphasis added).

Oddly, at the same time the prosecutor conceded that all of the doctors agreed that Kravetz was mentally ill, he argued that did not mean that Kravetz was unable to commit intentional acts:

I want to go to the doctors, because there’s another strawman. We had three doctors testify, concerning his mental status. *They all agreed that he has a mental disorder, and there were slight differentiations between them, but they are all on the same page:* It’s paranoid something, either disorder, paranoid schizophrenia, paranoid disorder with schizophrenia tendencies, and they all come to the same conclusion, but this is not an insanity

case.

He's capable of knowing right from wrong. His brain can distinguish right from wrong. All three of those doctors said he's not insane, so don't get confused. Mr. Arcuri is really making an insanity argument to you that he's not responsible for what he did. He's so crazy but he's not insane, and two of the doctors said he's clearly able to act intentionally. He can form intent, and he did act intentionally. He acted with the purpose and objective. . .

RP 655-56.

The only thing he could do to stop that deputy sheriff from following him is kill her, and he was in the process of doing that, when he was interrupted by Judge Edwards.

RP 657.

He also stressed the point that for the Assault 1 charges the State had to prove an *intent* to inflict great bodily harm, but the State did not have to prove that great bodily harm was actually inflicted. RP 660. He asked the jury to find Kravetz guilty of all of the charges. RP 662.

J. **Verdicts**

Rejecting the prosecutor's contention that Kravetz intended to kill Deputy Davin, the jury acquitted Kravetz of Attempted Murder 2, the crime charged in Count I. CP 314 (Appendix B). But the jury did convict Kravetz of Assault 1, the crime charged in Count II, finding that the prosecution had proved that Kravetz acted with the intent to inflict great bodily harm upon Deputy Davin. CP 315 (Appendix C).

The jury convicted Kravetz of Disarming a Police Officer (Count III). CP 316 (Appendix D).

Finally, the jury rejected the prosecutor's contention that Kravetz

intended to inflict great bodily harm upon Judge Edwards by acquitting Kravetz of the Assault 1 crime charged in Count IV, choosing instead to find him guilty of the lesser degree offense of Assault 2. CP 317, 319 (Appendices E & F).

K. Sentencing.

1. Count II: Assault in the First Degree with a special allegation of being armed with a firearm.

For the Assault 1 offense against Deputy Davin (Count II), the prosecution told the sentencing judge that Kravetz had an Offender Score of 4, and that this produced a standard range sentence of 129 to 171 months. *Prosecutor's Pre-Sentence Report*, at 7. CP 361. Due to the jury's special verdict finding that Kravetz was armed with a firearm during the commission of the Assault 1, an additional 60 months was added to the standard range, producing a calculated standard range of 189 to 231 months. Petitioner's attorney told the sentencing judge that *he agreed* with the prosecution's calculation of the standard range for the Assault 1 conviction on Count II. RP 5/17/13 at 18. The sentencing judge accepted the attorneys' agreed Offender Score calculation and used an offender score of 4 when calculating the standard range for the Assault 1 conviction. *Appendix A-2*.⁷

One of the four points in the offender score for the Assault 1 was points given for Kravetz's concurrent conviction for Disarming a Law

⁷ Although it is not a finding of fact and is actually a legal conclusion, the sentencing judge also stated in his third Finding of Fact that for sentencing purposes for Count II, Assault in the First Degree, the defendant has an offender score of four. CP 393.

Enforcement Officer. Kravetz's attorney failed to make any argument to the sentencing judge that the Assault 1 (Count II) and the Disarming a Law Enforcement Officer (Count III) constituted the "same criminal conduct," and therefore Disarming should not add 1 point to the offender score for Assault 1. If this argument has been raised, and if the sentencing judge had recognized that the two offenses did constitute the same criminal conduct, then Kravetz's Offender Score on Count II would have been 3 instead of 4.⁸ If the Court had used an Offender Score of 3, then the standard range for Assault 1 would have been 120 to 160 months, instead of the 129 to 171 month range that the sentencing judge employed.

Because of the jury's special verdict firearm finding, the sentencing judge added a mandatory 60 month enhancement to the standard range (as he calculated it) of 129 to 171 months and this produced a standard range of 189 to 231 months. Finally, the sentencing judge decided to go to the top end of (what he believed was) the standard range – 231 months – and to impose an exceptional sentence by adding 69 more months on top of that. Thus the sentencing judge ended up imposing an exceptional sentence of 300 months ($231 + 69 = 300$).

This exceptional sentence was based upon the jury's special verdict finding that the Assault 1 was committed against a law

⁸ For Count III, the Disarming a Police Officer offense, the standard range was 0 to 12 months. Because Disarming is an unranked offense, there was no calculation of an Offender Score since unranked offenses are not covered in the Sentencing Grid set forth in RCW 9.94A.510. Therefore the failure to recognize that Count II and Count III were the same criminal conduct did not produce an inflated offender score, or an inflated standard range, for the Disarming Offense.

enforcement officer and Kravetz *knew* that the victim was a law enforcement officer. The sentencing judge entered Findings of Fact and Conclusions of Law in support of the exceptional sentence. CP 392-95 (Appendix G). In FF No. 2 the court noted that the jury unanimously found beyond a reasonable doubt that the Assault I offense charged in Count II “was committed against a law enforcement officer who was performing her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer and the victim’s status as a law enforcement officer was not an element of the crime of Assault in the First Degree.” CP 392-93 (Appendix G). In what was labeled as FF No. 4 the court found that the jury finding that Kravetz knew that the victim was a police officer was supported by the evidence. CP 393 (Appendix G).

The observation in FF No. 2 that Kravetz knew that Davin was a law enforcement officer *was* not a fact already accounted for in the standard range for Assault 1, was actually a legal conclusion. And this legal conclusion is correct because an Assault 1 can be committed against anyone. But the fact that Davin was a law enforcement officer *was a fact already accounted for* in the standard range for the crime of Disarming a Law Enforcement Officer because that fact *is* an element of that crime.

Moreover, *all of the facts* inherent in the crime of Disarming a Law Enforcement Officer also contributed to the standard range for Assault 1 because the Assault 1 standard range was based upon an Offender Score of 4, and that score of 4 included 1 point for the conviction for Disarming a Police Officer. Thus, without proof of the fact that Davin was a law

enforcement officer, which was essential to the Disarming conviction, the Offender Score for Assault 1 would have been 3 instead of 4. So that fact was the basis for *both* an increase in the Offender Score for Assault 1 *and* for an exceptional aggravating factor.

Petitioner's attorney failed to make any argument that basing an exceptional sentence on the fact that Kravetz knew that Davin was a law enforcement officer constituted impermissible double-counting of the same fact.

VI. GROUNDS FOR RELIEF

1. Petitioner was denied his Sixth Amendment right to effective representation of counsel by his attorney's failure to move to suppress the papers found in a box in Petitioner's garage during a search of his residence on the ground that the search warrant was partially overbroad.
2. Petitioner was denied his Sixth Amendment right to effective assistance of counsel by his attorney's failure to move to suppress papers found in a box in Petitioner's garage on the ground that their seizure exceeded the scope of the warrant because the seized papers did not show dominion or control over the residence.
3. Petitioner was denied his Sixth Amendment right to effective representation of counsel by his attorney's failure to ask the sentencing judge to find that the offenses of Assault 1 and Disarming a Police Officer were the "same criminal conduct" for purposes of calculating Petitioner's Offender Score.
4. Petitioner was denied his Sixth Amendment right to effective assistance of counsel by his attorney's failure to argue that using the fact that Kravetz knew Deputy Davin to be a police officer as an aggravating factor was improper and constituted double counting because that fact was already accounted for by the standard range set for the offense of disarming a police officer.
5. Petitioner's sentences are unlawful because the sentencing judge's refusal to find the statutory mitigating factor of mental illness which significantly impaired Petitioner's ability to conform his conduct to the law is not sustainable. There is no substantial

evidence to support a negative finding that Petitioner did not have such a mental disorder because all of the experts, both defense and prosecution, *agreed* that Petitioner had a serious delusional disorder.

6. Petitioner's exceptional sentence above the standard range on Count II is unlawful. The sentencing judge justified the sentence on the ground that the defendant's mental illness made him dangerous and likely to commit more crimes in the future, even though *State v. Barnes* holds that an exceptional sentence for a nonsexual offense may not be based upon future dangerousness.

VII. ARGUMENT IN SUPPORT OF PETITION

- A. **Petitioner's attorney failed to move for suppression of documents found in a box in the garage on the ground that the warrant was partially overbroad because there was no probable cause nexus between the documents sought and the crimes under investigation. This failure constituted ineffective assistance of counsel.**

In order to prevail on a claim of ineffective assistance of counsel ("IAC"), a defendant must show both that counsel's representation fell below an objective standard of reasonableness, *Strickland v. Washington*, 466 U.S. 668 (1984) (the deficient conduct prong) and that there exists a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different (the prejudice prong).

If there is no conceivable legitimate tactic that would explain trial counsel's performance, deficient conduct has been shown. *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004). When the basis for a motion to suppress is available to defense counsel and no suppression motion is made, the failure to challenge a search cannot be explained as a legitimate tactic. *Id.* at 131.

To prevail upon an IAC claim based upon counsel's failure to make

a motion to suppress, the defendant must also prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice. *Kimmelman v. Morrison*, 477 U.S. 365, 375 (1986). See, e.g., *Reichenbach*, 153 Wn.2d at 137.

1. The search warrant authorized officers to search for, and to seize “papers [or] receipts showing dominion and control of the residence” that Kravetz was living in in Olympia, Washington.

On March 10, 2012, Detective Rhoades of the Mason County Sheriff’s Department made a telephonic application for a search warrant at 12:15 p.m. *Lobsenz Declaration*, Appendix E. At 12:20 p.m. Judge Sheldon issued the requested search warrant. *Id.*, Appendix F. The Court found probable cause to believe that the crimes of Assault 1 and Attempted Murder have been committed and issued a warrant authorizing police to search:

The property, curtilage, residence, outbuildings, and vehicles currently located at 336 Division St., Olympia, WA, further described as a single story brown residence w/light trim with a detached garage.

Id. The warrant authorized Detective Rhoades to search the above described property and to arrest Kravetz and to seize six specified kinds of evidentiary items. The last category of evidentiary items which the warrant authorized officers to seize was: “DNC – Items showing dominion/control of residence.” *Id.*

In his telephonic search warrant affidavit Detective Rhoades

explained that on March 9th Steven Kravetz “entered the Grays Harbor County Courthouse” where employees noticed that he was acting suspiciously; the employees called 911 to request a deputy to investigate, and Deputy Davin was tasked to do that. *Id.*, Appendix E-3. Rhoades explained that Kravetz stabbed Deputy Polly Davin with an edged weapon, attempted to stab Judge Edwards in the back of his neck, took Deputy Davin’s gun away from her, fired two rounds at her hitting her once, and then fled the courthouse. *Id.* Both Deputy Davin and another courthouse employee identified Kravetz as the person who assaulted Judge Edwards and Deputy Davin. *Id.*

Rhoades explained that he had met with attorney Robert Ehrhardt and that Ehrhardt said that Kravetz had come to his law office from the courthouse right after the attack; that Ehrhardt’s wife had called Kravetz’s mother Roberta Dougherty and asked her to come to Montesano to pick Kravetz up; and that Dougherty had come to the law office and had picked him up. *Id.* Rhoades told the judge that on the morning of March 10th Dougherty had heard a news story on the radio which identified her son as a person wanted for an attack committed inside the Grays Harbor County Courthouse; that she had called police and notified them that her son was currently residing with her at 336 Division Street in Olympia; and that he was in the residence when she left it that morning. *Id.*

Based upon this recitation of facts, Detective Rhoades asked for a search warrant “for the property, curtilage, residence, outbuildings and vehicles currently located at 336 Division Street.” *Id.* Rhoades asked for

authorization to arrest Kravetz, and to seize the clothes worn, and the weapons used by Kravetz on March 9th, and the bag he had been carrying on March 9th. *Id.* In the last sentence of his oral application, Detective Rhoades asked for permission to seize the following kinds of papers:

Also to look for items um papers, receipts showing dominion and control of the residence anything that could be used to help identify the occupants and or any conspirators, co-conspirators involved in this case.

Id. The search warrant affidavit contains no information to explain why papers showing dominion and control of the house in Olympia would constitute evidence of the assaults on Deputy Davin and Judge Edwards which were committed in Montesano.

Deputy Sheriff Gray filed a supplemental report which explains his role in executing the search warrant at the Kravetz home on Division Street. Gray's report states that he arrived at the residence at 1:45 p.m. and that as detectives searched, Gray photographed each item of evidence that they collected, and then Gray placed the item into the Thurston County Sheriff's Office evidence system. *Id.*, Appendix G. The Evidence Form recites that items 65 through 80 were "taken under auspice of search warrant for 336 N. Division St., Olympia, WA." *Id.*, Appendix H. Gray listed Items 77 through 79 as follows:

77	Notes and records, garage, PL 10	Gray/1451
78	Notes and records, garage, PL 10	Gray/1453
79	Notes and records, garage, PL 10	Gray/1455

Id.

Based on the discovery of a folder inside one of the boxes of records found in the Kravetz garage, Rhoades sought another search warrant later that same afternoon. In his second warrant application Detective Rhoades explained what had been found inside the box:

Um also while serving the warrant um detectives entered the detached garage on the property which was covered under the original warrant, inside of that we've recovered some documents uh that appear to be of interest and specifically uh one file in particular which is marked um with the writing on it saying master plan, when that file was opened it's discovered to contain items inside showing or at least suggesting that the attacks at the courthouse were possibly premeditated of spec uh specific in particular interest inside of this file. We located some personal information at least the name and address of Dave Libby, Dave Libby is currently a Grays Harbor County um deputy. Um it appears that it's possible that uh mister Kravetz had been planning an attack of some sort uh particular on uh Grays Harbor deputies and possibly even mister Libby. Uh, we are requesting at this time your Honor to expand the original warrant to include papers and documents, digital media files showing state of mind and premeditation uh of the suspect for the crime of assault in the first degree attempted homicide.

Id., Appendix J. Judge Sheldon granted the requested expansion of the search warrant. But at least as far as Petitioner can tell from the records produced in response to his Public Records Act request, no further papers of evidentiary significance appear to have been found as a result of the expanded search. *Decl. Lobsenz*, ¶12.

2. The Particularity Clause of the Fourth Amendment serves three purposes.

The Fourth Amendment provides that “no warrants shall issue, *but*

upon probable cause, supported by oath or affirmation, and *particularly describing* the place to be searched, and the persons or *things to be seized*.” (Italics added). The Particularity Clause serves three purposes:

“[1] the prevention of general searches, [2] prevention of the seizure of objects on the mistaken assumption that they fall within the issuing magistrate's authorization, and [3] prevention of the issuance of warrants on loose, vague, or doubtful bases of fact.”

State v. Perrone, 119 Wn.2d 538, 545, 834 P.2d 611 (1992).

The Particularity Clause prohibits general searches by forbidding a “general, exploratory rummaging in a person’s belongings.” *Andresen v. Maryland*, 427 U.S. 463, 480 (1976). “This requirement ‘makes general searches . . . impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.’” *Andresen*, 427 U.S. at 480, quoting *Stanford v. Texas*, 379 U.S. 476, 485 (1965).

Second, the clause eliminates the danger of conferring unlimited discretion in the executing officer’s determination of what to seize. *Marron v. United States*, 275 U.S. 192, 196 (1927). “Where a search warrant authorizing a search for materials protected by the First Amendment is concerned, the degree of particularity demanded is greater than in the case where the materials sought are not protected by the First Amendment.” *Perrone*, 119 Wn.2d at 547.

Third, the Particularity Clause is related to the Probable Cause requirement of the Fourth Amendment, because it serves to insure that

only items supported by probable cause to believe that item is evidence of a crime will be seized by the officers executing the warrant. Thus the two clauses are “inextricably intertwined”:

The third purpose identified as underlying the particularity requirement is the prevention of warrants issued on loose, vague, or doubtful bases of fact. The particularity requirement is thus tied to the probable cause determination. 2 W. LaFare § 4.6(a), at 236. “It must be probable (i) that the described items are connected with criminal activity, and (ii) that they are to be found in the place to be searched.” 2 W. LaFare § 4.6(a), at 236. The particularity requirement is involved because “[t]he less precise the description of the things to be seized, the more likely it will be that either or both of those probabilities has not been established.” (Footnote omitted.) 2 W. LaFare § 4.6(a), at 236; *see, e.g., United States v. Spilotro*, 800 F.2d 959, 963 (9th Cir. 1986) (identifying existence of probable cause to seize all items of a certain type described in the warrant as one measure of sufficiency of description of items to be seized); *United States v. Stubbs* 873 F.2d 210 (9th Cir. 1989) (search warrant simply described broad classes of documents relating to defendant's real estate business; affidavit did not provide probable cause for reasonable belief that tax evasion permeated entire real estate business; warrant defective in that it failed to provide objective standards by which executing officer could determine what could be seized); *see also United States v. Christine*, 687 F.2d 749, 758, 69 A.L.R. Fed. 503 (3d Cir. 1982) (particularity and probable cause requirements are inextricably intertwined).

Perrone, 119 Wn.2d at 548-49.

3. When specifying what items can be seized the Fourth Amendment requires a probable cause nexus between the item to be seized and the crime being investigated.

As noted above, the Fourth Amendment requires a showing “that the described items are connected with criminal activity.” *Perrone*, 119

Wn.2d at 548. “[P]robable cause requires a nexus between criminal activity and the item to be seized, . . .” *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999), quoting *State v. Goble*, 88 Wn. App. 503, 509, 945 P.2d 263 (1997). Accord *State v. Neth*, 165 Wn.2d 177, 183, 196 P.3d 658 (2008); *State v. Powell*, 181 Wn. App. 716, 724, 326 P.3d 859 (2014). Such a nexus must be established by specific facts. *Id.* at 145. In *Goble* this Court explained that probable cause has two nexus requirements:

One is whether a reasonable person, given the evidence presented, would believe that the item sought is contraband or other evidence of a crime (in other words, that a crime has occurred, or is occurring, and that the item sought is evidence of that crime). If the answer is yes, the police have a valid reason to seize the item sought. The other is whether a reasonable person, given the evidence presented, would believe that the item sought is likely to be found at the place to be searched. If the answer is yes, the police have a valid reason to search that place.

Goble, 88 Wn. App. at 508-09.

A warrant is “overbroad” if *either* nexus requirement is not satisfied. *State v. Maddox*, 116 Wn. App. 796, 805, 67 P.3d 1125 (2003), *aff’d*, 152 Wn.2d 499, 98 P.3d 1199 (2004). “Furthermore, a warrant will be found overbroad if some portions are supported by probable cause and other portions are not.” *Maddox*, 116 Wn.2d at 806; *State v. Higgs*, 177 Wn. App. 414, 426, 311 P.3d 1266 (2013).

Thein and *Goble* both involved the required nexus to the place to be searched. But the present case involves the required nexus between the crime and the item which police are authorized to seize. No such showing was made in this case.

4. There was no probable cause showing of a nexus between the crimes under investigation (Assault 1 and Attempted Murder) and documents showing dominion and control over the Kravetz residence.

Detective Rhoades applied for and was granted a warrant which authorized the seizure of documents which showed “dominion/control of residence.” But documents which show dominion and control over the residence at 336 Division Street in Olympia have no nexus to assaults committed in Montesano, Washington in the Grays Harbor County Courthouse. In fact, Detective Rhoades did not even attempt to advance any basis for making a finding of probable cause to believe that papers showing dominion and control over the Olympia residence would constitute evidence of the assault crimes. Thus, to the extent that it authorized police to search for, and to seize, papers showing dominion and control of the residence, the warrant was overbroad.

State v. Higgs, 177 Wn. App. 414, 311 P.3d 1266 (2013) demonstrates that trial counsel’s failure to make a motion to suppress on overbreadth grounds constitutes deficient conduct. In *Higgs* the police were investigating the crime of delivery of amphetamine and possession of methamphetamine. Although the defendant’s trial attorney *did* make a motion to suppress, that motion was based *solely* on the contention that “probable cause did not support the warrant because the informant’s reliability was unproven and because she did not have an adequate basis for her knowledge of the items to be found in Higgs’ residence. Higgs did not argue at that time that the warrant was overbroad.” *Id.* at 422. “Higgs

. . . argue[d] for the first time on appeal that the evidence found in his home should have been suppressed because it was seized under an overbroad warrant.” *Id.* at 423. Accordingly, this Court addressed Higgs’ claim that his trial counsel’s failure to make this argument constituted ineffective assistance of counsel. *Id.* at 424.

In paragraph number 1, the *Higgs* search warrant authorized the seizure of drugs; in paragraphs 2 through 12 it authorized the seizure of various kinds of records, books, real estate transaction documents, utility bills, bank statements, and correspondence. *Id.* at 422, n.1. The State conceded that the warrant was overbroad and that the paragraphs which authorized the seizure of records, documents, financial information, utility bills and the like, were overbroad. This Court accepted the State’s concession and agreed that the failure of Higgs’ attorney to move to suppress on overbreadth grounds was deficient conduct.⁹

Similarly, this Court found warrant overbreadth in *State v. Johnson*, 104 Wn. App. 489, 17 P.3d (2001). There police were investigating a complaint of child rape based on an accusation that Johnson used a massager to stimulate the genital area of two young girls. This Court held that a search warrant authorizing police to seize both a sex toy described as a vibrating massager, and “magazines, books, movies and photographs depicting nudity and/or sexual activity,” was partially

⁹ “Here, the State concedes that there was no probable cause for much of the search warrant, and essentially concedes that trial counsel should have argued at the suppression hearing that the warrant was overbroad. Therefore, we address whether the failure to make this argument prejudiced Higgs.” *Higgs*, 177 Wn. App. at 425.

overbroad insofar as it purported to authorize the seizure of videotapes of sexual conduct. There was probable cause to believe “that Johnson had committed child rape or child molestation; that a vibrating massager was evidence of the crimes; and that a massager would probably be found in his home.” *Id.* at 500. But there was no showing of any probable cause nexus between videotapes and the crimes under investigation:

The affidavit did not contain probable cause to believe that the other listed items (e.g., magazines, books, movies, photographs, correspondence, diaries, tape recordings, sexual aids other than the massager) constituted evidence of the crimes. . . .

Johnson, 104 Wn. App. at 500.

In *Johnson* the prosecution argued that the valid and invalid portions of the search warrant were severable. This Court agreed but held that made no difference to the validity of the seizure of the videotapes:

If the warrant was invalid as to all items, it did not justify seizing or viewing the two videotapes. If the warrant was invalid only as to items other than the massager, it still did not justify seizing or viewing the videotapes – unless the evidential nature of those tapes appeared in plain view during a search for the massager.

Johnson, 104 Wn. App. at 501. This Court rejected the argument that seizure of the videotapes was justified under the plain view doctrine: “nothing about the exterior of the tapes gave probable cause to believe the tapes were evidence of a crime.” *Id.* at 502.¹⁰

¹⁰ Nevertheless, Johnson’s convictions were affirmed because after the massager was found, and before the videotapes were found, Johnson gave his full, voluntary consent to a complete search of the house, and he signed a consent to search form. *Id.* at 494. His
(Footnote continued next page)

In another case, this Court has found a search warrant to be overbroad and reversed convictions where the State could not show that the erroneous admission of evidence seized pursuant to an overbroad portion of the warrant was harmless. *See, e.g., State v. Nordlund*, 113 Wn. App. 171, 53 P.3d 520 (2002) (“Although the affidavits establish the presence of a computer in Nordlund’s home and his noncriminal use of that computer, they do not contain particularized information demonstrating the required nexus between the computer and the possible evidence of crimes under investigation.”).

5. The failure to move to suppress on overbreadth grounds was deficient conduct.

In this case, as attorney Elliott has stated in her declaration, defense counsel’s failure to make a motion to suppress constituted deficient conduct. *Decl. Elliott*, ¶ 11. Any competent Washington criminal defense attorney would know that the state and federal constitutions prohibit overbroad or general warrants. *Id.*, ¶ 9. Basic legal research would reveal cases such as *State v. Perrone*, 119 Wn.2d 538, 834 P.2d 611 (1992) and a review of the search warrant in this case would have made it clear that the warrant was overbroad. *Id.* “[A] competent Washington criminal defense attorney who knew the facts of this case and

signed consent authorized officers “to seize any article which they consider to be of value as evidence.” *Id.* Since he consented to a search of the entire house for anything the officers thought would be of evidentiary value, the partial invalidity of the search warrant was simply irrelevant because the tapes were independently seized pursuant to Johnson’s valid consent-to-search. In the present case neither Kravetz nor his mother ever gave any consent to search. So the overbreadth of the warrant was not cured by an independent untainted basis for the seizure of the documents found in the box in Kravetz’s garage.

the relevant law would have brought a motion to suppress the evidence seized from the boxes in the garage.” *Id.*, ¶ 11.

Here, as in *Higgs*, this Court should find that trial counsel’s failure to move to suppress on overbreadth grounds constituted deficient conduct. There is no nexus between papers that show “dominion or control” over the residence at Division Street in Olympia, and the crimes of assault and attempted murder allegedly committed in Montesano. There is simply no nexus between the item sought and the crimes under investigation. Consequently, if Kravetz’ trial attorney had made a motion to suppress, and had argued that the portion of the warrant authorizing the seizure of records showing “dominion/control of the residence” was overbroad, he quite obviously would have won the motion and such documentary evidence would have been suppressed.

6. **Kravetz was prejudiced by his attorney’s deficient conduct. The prosecutor used both the sketch of the courthouse and the “research” on Deputy Libby to argue that Kravetz had the ability to form the intent to inflict great bodily harm upon Deputy Davin. Absent this evidence, there is a reasonable probability that the jury would have rejected the Assault 1 charge, and would have only convicted Kravetz of Assault 2, just as it did when it rejected the charge of Assault 1 upon Judge Edwards and only an Assault 2 on that Count.**

In this case, the introduction of evidence seized pursuant to an invalid, overbroad portion of a search warrant, was prejudicial, and should result in reversal of Kravetz’s Assault 1 conviction, just as the introduction of illegally seized evidence resulted in the reversal of one of the defendant’s convictions in the *Nordlund* case.

The improperly seized evidence played a prominent role in the prosecutor's closing argument. He reminded the jurors that Kravetz had scouted the courthouse "and he even prepared a hand drawn floor plan" complete with notes as to the location of stairways and doors. RP 602. He specifically argued that Kravetz's detailed map contradicted the contention that Kravetz had a mental illness which prevented him from forming the intent required to commit the charged crimes. RP 652-53. The prosecutor also drew the jury's attention to the photo of deputy sheriff Libby and the research file with information regarding deputy Libby's addresses, arguing that these documents showed Kravetz's "long standing hatred, dislike for the Grays Harbor County Sheriff's Office." RP 610-611. He specifically argued that Kravetz's research on Deputy Libby showed that Kravetz was aware of what he was doing. RP 612.

Given the prosecutor's express reliance upon the illegally seized evidence, it is clear that the *Strickland* prejudice requirement has been met. Had this evidence been suppressed there is a reasonable probability that Kravetz would not have been convicted of Assault 1 in Count II.

B. Trial counsel failed to move to suppress the documents found in the boxes in the garage on the ground that the documents seized did not fall within the scope of the search warrant because they did not show dominion or control of the Kravetz residence. This failure to move to suppress constituted ineffective assistance of counsel.

1. Officers who seize an item which is not within the scope of a search warrant violate the Fourth Amendment.

"Pursuant to the Fourth Amendment of the United States

Constitution, an officer must execute a search warrant strictly within the bounds set by the warrant.” *State v. Kelley*, 52 Wn. App. 581, 585, 762 P.2d 20 (1988), citing *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 394 (1971).¹¹ As the Supreme Court has bluntly stated:

If the scope of the search exceeds that permitted by the terms of a validly issued warrant or the character of the relevant exception from the warrant requirement, the subsequent seizure is unconstitutional without more.

Horton v. California, 496 U.S. 128, 140 (1990).

2. **The seizure of the two documents was unlawful because they were not covered by the search warrant. Neither the sketch nor the photo of Deputy Libby showed dominion or control over the residence associated with the garage.**

A sketch of the floor plan of the Grays Harbor County Courthouse does not show dominion or control over the Kravetz residence, and neither does a photo of deputy sheriff Libby. Nor do papers showing addresses where deputy sheriff Libby lived. Thus, Exhibits 57 and 59 do not fall within the scope of the warrant, and their seizure was unconstitutional. Had Kravetz’s trial counsel made a motion to suppress them on this

¹¹ In *Kelley* this Court affirmed the trial court’s order suppressing marijuana found in an unattached garage and in a barn: “[T]he warrant authorized a search of the house, and the attached carport, only. The warrant made no mention of other buildings not attached to the house. Consequently, when the officers searched the barn and the garage they clearly exceeded the bounds of the search warrant.” *Kelley*, at 586. Accord *State v. Niedergang*, 43 Wn. App. 656, 658, 719 P.2d 576 (1986) (“Because the automobile was not within the curtilage, the court concluded that the search of the car was not within the scope of the warrant.”) (trial court suppression order affirmed).

ground, under *Horton* the trial court judge would have been compelled to grant the motion and they would have been suppressed.

3. It was deficient conduct for trial counsel to fail to make a motion for suppression of the sketch of the courthouse and the photo of Deputy Libby and the failure to make that motion to suppress was prejudicial.

As noted above, there is no conceivable legitimate strategic reason to fail to make a motion to suppress incriminating evidence which the State is going to offer. *Reichenbach*, 153 Wn.2d at 130. If the motion to suppress fails, the defendant is simply in the same position that he was in before the motion was made. If the motion to suppress succeeds, the defendant is in a better position because he has succeeded in excluding some incriminating evidence. In the present case, it was deficient conduct to fail to move to suppress on the ground that the officers exceeded the scope of the warrant when they seized the papers they found in the box in the Kravetz garage.

This case is similar to the case of *State v. Legas*, 20 Wn. App. 535, 581 P.2d 172 (1978). There a search warrant authorized the search of a garage that contained a stolen bike, and the search of the house associated with the garage. It also authorized the seizure of “bills, papers, receipts, and other documents bearing the address to be searched and naming the occupants.” *Id.* at 537. Police entered the house and searched it. Inside they found a briefcase and inside the briefcase they found what the warrant authorized them to seize: “an earnest money agreement and other

documents clearly linking [the] defendant to the premises.” *Id.* at 541.

They did not stop their search there, however:

Having found [the earnest money agreement and the other papers], they still continued their search and found a small box; they removed it from beneath the bed, opened it, and found some credit cards.

Id. at 541. The Court held that “[s]ince they had already found what they sought,” the extension of their search to the seizure and opening of the box “was more in the nature of a general search.” *Id.*¹² The Court held that this extension of their search was unconstitutional: “The officers’ opening the small box with the credit cards was activity beyond the scope of the warrant.” *Id.* at 542. Consequently, the Court of Appeals reversed the defendant’s conviction for credit card theft, while leaving five other convictions intact. *Id.* at 545. Similarly, in the present case, this Court should reverse Kravetz’s conviction on Count II (the Assault 1 conviction) while leaving the other convictions intact.

As previously noted in section VII(A)(5), if Exhibits 57 and 59 had been suppressed there is a reasonable probability that Petitioner would not have been convicted of Assault 1 as charged in Count II.

¹² The facts of this case are similar. As the Thurston County Evidence Form shows, before the officers started searching through boxes in the defendant’s garage, the officers had already found the gun, the knife, the clothes, and the satchel bag that they were looking for. See Appendix H to *Declaration of Lobsenz*. As attorney Elliott has noted, any competent Washington criminal defense attorney would have recognized that there was a strong argument that the officers used the authorization to search for papers of dominion and control as an excuse to conduct a general search. *Decl. Elliott, Id.*, ¶ 10. Any objectively reasonable criminal defense attorney “would [know] that proof of dominion and control of the premises applies to possessory offenses but has minimal relevance to an investigation for assault that took place 30 miles away from the premises searched.” *Id.*

Accordingly, this Court should find that Petitioner's trial counsel provided ineffective assistance of counsel and Petitioner's conviction on Count II should be reversed.

C. **Petitioner's Attorney Failed to Ask the Sentencing Judge to Find That Disarming an Officer and Assault 1 (on that same Officer) Constituted the Same Criminal Conduct. This Failure Constituted Ineffective Assistance of Counsel.**

RCW 9.94A.589(1)(a) provides in pertinent part:

Except as provided in (b), (c), or (d) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. "Same criminal conduct," as used in this subsection, means two or more crimes that require *the same criminal intent, are committed at the same time and place, and involve the same victim.* . . .

(Emphasis added).

1. **Same time, same place, same victim, and same objective purpose.**

In the present case, Counts II and III both involved the same victim (Deputy Davin), and they occurred at the same time and at the same place in the Grays Harbor County Courthouse. Thus, the only conceivable issue is whether these two crimes involved the same criminal intent. If they did then they constituted the same criminal conduct.

[I]n deciding if crimes encompassed the same criminal conduct, trial courts should focus on the extent to which the criminal intent, as objectively viewed, changed from one crime to the next. . . . [P]art of this analysis will often include the related issues of whether one crime furthered the other and if the time and place of the two crimes remained the same.

State v. Dunaway, 109 Wn.2d 207, 215, 743 P.2d 1237 (1987), citing *State v. Edwards*, 45 Wn. App. 378, 382, 725 P.2d 442 (1986). “Intent, in this context is not the particular *mens rea* element of the particular crime, but rather is the offender's objective criminal purpose in committing the crime.” *State v. Adame*, 56 Wn. App. 803, 811, 785 P.2d 1144, *rev. denied*, 114 Wn.2d 1030, 793 P.2d 976 (1990).

In *Dunaway* the Supreme Court held that robbery and kidnapping of the same victim constituted the same criminal conduct because the defendant’s “objective remained the same with respect to each crime.” *Dunaway*, 109 Wn.2d at 217. “[I]t is evident that the kidnapping furthered the robbery and that the crimes were committed at the same time and place. Therefore, the kidnapping and robbery of a single victim should be treated as one crime for sentencing purposes.” *Id.*

2. *State v. Miller* controls.

Washington courts have not hesitated to rule that one offense furthered another and that consequently two offenses should have been counted as one because they constituted the same criminal conduct.

While many examples of this can be cited,¹³ there are two cases which are particularly on point. First, this Court's decision in *State v. Miller*, 92 Wn. App. 693, 964 P.2d 1196 (1998) is extremely similar to this case. There the defendant was stopped by a Vancouver police officer. When the officer attempted to handcuff him, Miller put his hands on the officer's holstered gun and tried to pull it away from the officer. *Id.* at 697. They struggled over possession of the gun until a civilian witness came to the officer's assistance and broke up the fight. Miller was charged and convicted of two offenses: Attempted Theft of a Firearm and Assault 3. The Vancouver police officer was the victim of both offenses. There was not dispute over the fact that both offenses occurred at the same time and place. Miller argued that the two offenses constituted the same criminal conduct and thus the sentencing judge should not have included each offense in the offender score calculation for the other. This Court agreed:

Here, the evidence shows that Miller intended throughout to deprive the officer of his weapon. Officer Ford and three other witnesses testified that Miller had at least one hand on the gun during the entire struggle. One witness even stated, "He pretty much the whole time was trying to get the gun." Thus, the assault on Officer Ford, when viewed objectively,

¹³ See, e.g., *State v. Garza-Villareal*, 123 Wn.2d 42, 49, 864 P.2d 1378 (1993) (possession with intent to deliver cocaine and possession with intent to deliver heroin "both furthered the same the overall criminal objective of delivering controlled substances in the future." *State v. Tili*, 139 Wn.2d 107, 985 P.2d 365 (1999) (although two acts of rape were committed in a short period of time, the defendant's criminal intent comprising the two charges did not change; his objective was to achieve sexual intercourse therefore the two crimes constituted same criminal conduct). *State v. Vike*, 125 Wn.2d 407, 410, 885 P.2d 824 (1994)(multiple counts of possession of controlled substances involving different drugs encompassed the same criminal conduct because objective did not change); *State v. Porter*, 133 Wn.2d 177, 184-86, 942 P.2d 874 (1997) (multiple counts of delivery encompassed same criminal conduct).

was “intimately related” to the attempted theft. Miller could not deprive Officer Ford of his holstered weapon without assaulting him. Because the two offenses encompass the same criminal conduct, the trial court erred in calculating the offender score of 3 for each offense.

Miller, at 708.

The facts of this case are extremely similar. Miller attempted to take the officer’s gun away from him, but Kravetz actually succeeded. So while Miller’s gun crime was charged as Attempted Theft of a Firearm, Kravetz’s crime was charged as Disarming a Police Officer. Like Miller, Kravetz’s criminal objective did not change. Like Miller his intent was to assault the officer. Like Miller’s gun crime, Kravetz’s firearm crime was “intimately related” to his assault crime. And like Miller, his gun crime furthered his assault crime.

In fact, the in furtherance connection is even stronger in this case because Deputy Davin’s gun was the firearm which Kravetz used to commit the Assault 1 offense, and it was the firearm upon which the firearm special verdict was predicated. It was simply impossible for the charged Assault 1 crime to have been committed without first committing the Disarming a Police Officer crime, because it was the officer’s firearm that enabled Kravetz to assault Deputy Davin with a firearm. Here, even more than in Miller, one crime furthered the other.

3. Here, as in *Anderson*, one crime furthered the other.

Division One’s decision in *State v. Anderson*, 72 Wn. App. 453, 864 P.2d 1001 (1994) is similar. There again, one crime committed against a police officer furthered a second crime. The defendant in

Anderson was being transported from King County Jail to Harborview Hospital for a medical appointment when he attacked Corrections Officer Bergman by slamming him into the car. *Id.* at 456. Like Miller, defendant Anderson tried to grab the officer's gun. *Id.* When Anderson bit the Officer's ear, Bergman let go of his gun and Anderson then pointed the gun at the officer's head. *Id.* at 457. They continued to struggle and Anderson fired the gun but that shot missed Bergman. *Id.* Anderson tried to fire again but the gun would not fire. *Id.* Anderson then ran away and escaped. *Id.* Division One held that the two offenses constituted the same criminal conduct:

The evidence in this case clearly shows that Anderson committed the assault on Bergman in order to further his escape from Bergman's custody. Without incapacitating Bergman or at least neutralizing Bergman's firearm, Anderson would have been unable to complete his escape. Objectively viewed, Anderson's criminal intent was the same from one offense to the other: a desire to escape Bergman's custody. Therefore, we conclude the two offenses encompassed the same criminal conduct. The trial court abused its discretion in counting the offenses separately for sentencing purposes.

Anderson, 72 Wn. App. at 464.

Given this Court's holding in *Miller*, and Division One's holding in *Anderson*, it is clear that Counts II and IV in this case constituted the same criminal conduct. Defense counsel should have raised this issue. His failure to do so seriously prejudiced Kravetz and resulted in illegal sentences based upon an incorrect offender scores. In *Miller* this Court remanded the case for resentencing. *Id.* at 709. In this case, the Court

should do the same.

Sentencing a defendant while using an incorrect offender score is a fundamental defect which results in a miscarriage of justice and therefore the error must be corrected in a personal restraint petition. *In re Johnson*, 131 Wn.2d 558, 569 933 P.2d 1019 (1997). Moreover, defense counsel's failure to raise the same criminal conduct issue and his failure to object to the incorrect offender score which was used for sentencing on Counts II and IV, constituted deficient performance. *See, e.g., State v. Saunders*, 120 Wn. App. 800, 825, 86 P.3d 232 (2004) (finding ineffective assistance because "defense counsel was deficient for failing to make this argument" (that kidnapping and rape were the same criminal conduct) and since "the case law provided strong support to this argument, the failure was prejudicial"); *State v. Phuong*, 174 Wn. App. 494, 548, 299 P.3d 37 (2013) ("defense counsel's failure to argue same criminal conduct at sentencing constituted deficient performance" and there was reasonable probability sentencing judge would have accepted the argument). It is *per se* objectively unreasonable to fail to object to an erroneous offender score that is too high. There cannot possibly be any strategic reason for allowing a defendant to be sentenced on the basis of an erroneously calculated offender score that is too high.

To show prejudice a defendant need only show that there is a reasonable probability that the outcome of his sentence would have been different. In the present case the defendant can and has shown that it is a virtual certainty that had a proper objection been raised, lower offender

scores would have been used, and thus lower standard ranges would have been calculated. On Count II, if the standard range had been properly calculated, the top of that range would have been 220 months (160 months, plus 60 months for the firearm enhancement). The trial judge added 69 months to the top of what he believed was the standard range. Had he added 69 months to the top of a correctly calculated standard range, that would have produced a sentence of 289 months. Thus, at the very least, on Count II, petitioner was prejudiced by the addition of 11 months. And had the trial judge realized that Disarming and Assault 1 were the same criminal conduct, he might have decided to add additional time for an exceptional aggravating circumstance onto a term of months that was *lower* than the top of the standard range for Assault 1. For example, had he used the median of 140 months as a starting point, and added the 60 months for the firearm enhancement to that mid-range sentence, that would have produced a sentence of 200 months. And had he then added the 69 months which he felt appropriate given the exceptional aggravating circumstance, that would have produced a sentence of 269 months. Such a sentence would be 31 months shorter than the sentence that Petitioner received.

D. Trial counsel's failure to raise the sentencing issue of double counting of the same fact constituted ineffective assistance.

1. The SRA prohibits a court from basing an exceptional sentence upon a fact that has already been taken into account in the setting of the standard sentencing range.

“A factor used in establishing the presumptive range may not be considered a second time as an “aggravating circumstance” to justify departure from the range.” *State v. McAlpin*, 108 Wn.2d 458, 463, 740 P.2d 824 (1987); *State v. Nordby*, 106 Wn.2d 514, 518 & n.4, 723 P.2d 1117 (1986); *State v. Fisher*, 108 Wn.2d 419, 426, 739 P.2d 683 (1987). Thus, proof of a fact is an element of a crime, that fact cannot be used as the basis for an exceptional sentence above the standard range because that fact has already been considered and accounted for by the Legislature when it set the standard range. In *Nordby*, for example, one of the reasons given for imposing an exceptional sentence above the standard range was the seriousness of the victim's injuries. But because the crime of vehicular assault required proof of the infliction of “Serious bodily injury,” this fact “was already considered in setting the presumptive sentence range for vehicular assault. It cannot, therefore, be a basis for a sentence outside the presumptive range.” *Nordby*, 108 Wn.2d at 519

In the present case, the jury found that Kravetz knew that Davin was a law enforcement factor when he committed the crime of Assault 1 against her. CP 321. The sentencing judge used this fact as the aggravating factor which justified the imposition of an exceptional sentence of 300 months, which was 69 months above what the judge

believed to be the top of the standard range. Petitioner submits that this violated the rule of *Nordby* that a fact already considered in the standard range cannot be considered again as the basis for an exceptional sentence.

2. **The Fact that Petitioner knew that Davin was a police officer was impermissibly counted twice when determining the sentence for Assault I (count II). Knowledge that the person is a law enforcement officer is an element of the crime of Disarming a Law Enforcement Officer (Count III). Because the conviction for Disarming was counted as one point in the Offender Score calculation for the crime of Assault 1, that same fact was part of the basis for calculating the standard range for the Assault 1 offense (Count II). When the sentencing court used that same fact as the basis for an exceptional sentence above the standard range for the Assault 1 offense, it was counted a second time. Such double counting violates the SRA.**

The sentencing judge noted that the fact that Kravetz knew that Davin was a law enforcement officer was not an element of the crime of Assault 1. The crime of Assault 1 can be committed against any person; the victim need not be a law enforcement officer. Consequently the fact that the defendant *knew* his Assault 1 victim was a law enforcement officer was not already considered in the setting of the standard range for a person convicted solely of one count of Assault 1.

But the sentencing judge ignored the fact that Kravetz was convicted of *three* offenses – Assault 1 plus two other felony offenses – and those other offenses *were* considered when setting the standard range for the Assault 1 offense because they each increased the offender score that was used when calculating the standard range for Assault 1. One of

those two other offenses was the crime of Disarming a Law Enforcement Officer. Knowing that the disarmed person is a police officer *is* an element of Disarming a Police Officer. RCW 9A.76.023. Thus this fact was already taken into account when setting the standard range for Disarming a Law Enforcement officer. More importantly, this fact was *also* already taken into account *in the setting of the standard range for Kravetz's Assault 1 conviction*, because his offender score for Assault 1 was increased by one point due to the conviction for Disarming pursuant to the SRA which requires that multiple current offenses be counted as prior convictions when determining the offender score for all other current offenses. So the fact that Kravetz knew Davin was a police officer was counted twice when Kravetz was sentenced on Count II. It was counted in the offender score, and thus was used to calculate the standard range. It was counted a second time when the sentencing judge used this fact as a justification for imposition of an exceptional sentence. This is double counting in violation of *Nordby, Fisher and McAlpin*.

3. The failure of Petitioner's trial counsel to object to the use of Kravetz's knowledge of Davin's status as a law enforcement officer as the basis for an exceptional sentence constitutes ineffective assistance of counsel.

Failure to object to an illegal exceptional sentence is obviously deficient conduct. There is no conceivable legitimate strategic reason for failing to object to the imposition of a sentence that is unlawful and excessive. And obviously the resulting imposition of an additional 69 months of imprisonment was prejudicial to Petitioner Kravetz. Thus

Petitioner has shown both deficient conduct and prejudice as required by *Strickland*. Assuming that this Court decides not to vacate the conviction on Count II in its entirety due to trial counsel's failure to move to suppress, then, at the very least this Court should vacate the exceptional sentence on Count II and remand for resentencing on that count.

E. **The Sentencing Judge's refusal to find the statutory mitigating factor of mental illness is insupportable because there is no substantial evidence to support it and because acknowledged on the record that the evidence did support it.**

Pursuant to RCW 9.94A.535(1)(e) a court may impose an exceptional sentence below the standard range if it finds that:

The Defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, were significantly impaired.

Kravetz's defense counsel specifically asked the sentencing judge to find this statutory mitigating factor applied and he noted that all the evidence presented at trial supported such a finding:

There can be no doubt that the defendant's ability to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law were significantly impaired by his severe mental disorder. Clearly this was proven by a preponderance of the evidence since three different professionals with decades of experience each testified that the Defendant suffered from a mental disease or defect equivalent to a paranoid schizophrenic delusional disorder. These disorders require treatment by strong drugs and not counseling.

CP 329. See also RP 5/17/13, 28-29. Defense counsel asked the court to impose an exceptional sentence *below* the standard range based upon this

statutory mitigating factor and requested a sentence of ten years (120 months) on Count II. CP 329, 332-33.

The sentencing judge did not dispute defense counsel's assertions regarding the overwhelming evidence that established that Kravetz had a serious mental disorder and that he was delusional. On the contrary, the judge acknowledged that Kravetz was delusional; he also acknowledged that Kravetz's mental illness prevented him from conforming his conduct to law because he found that Kravetz was likely to break the law again:

I don't know what kind of delusion you were operating under, but it certainly was a delusion, just as much of a delusion as somehow the people of Grays Harbor County have it in for you.

RP 5/17/13, 38.

Mr. Arcuri says, well, you've got all kinds of mental issues. I will grant you that the testimony was that you have a number of mental issues. ***I also think you are delusional.*** I also think that you are obsessive, because that clearly came through in the testimony that was presented. But unfortunately, Mr. Kravetz, you are also very dangerous, because there is no doubt in my mind that were you not before the Court today in handcuffs and in a situation where law enforcement is here to keep you from acting out, that you would easily act out again.

I suspect if you were out in public, given an opportunity to do something like this again, you would clearly do it again.

....

RP 5/17/13, 40-41. Ultimately, the judge openly stated that it was precisely because Kravetz's delusional mental illness made him dangerous that he was going to give Kravetz an exceptional sentence *above* the standard range, so as to make sure that Kravetz didn't hurt anyone else:

I think that under the circumstances, Mr. Kravetz, one of the things this Court needs to do is to put you in a position where you are not going to be capable of hurting anybody for a very long period of time.

I also think that if and when you do see the light of day as a free man it's under circumstances where you are so old and feeble that you can't possibly do something like this over again. . . .

RP 5/17/13, 41-42.

“The absence of a finding of fact in favor of the party with the burden of proof about a disputed issue is the equivalent of a finding against that party on that issue.” *State v. Haydel*, 122 Wn. App. 365, 373, 95 P.3d 760 (2004). RCW 9.94A.535(1) places the burden of proof on the party seeking to establish a mitigating factor. Kravetz, as the defendant, carried the burden of proof to show the existence of this mitigating factor. The sentencing judge made no finding of fact regarding the existence of this statutory mitigating factor, and therefore the absence of any finding of fact is the equivalent of a finding of fact against Kravetz on this point.

Appellate review of a finding of fact is limited to determining whether the finding is supported by substantial evidence. *State v. Macon*, 128 Wn.2d 784, 799, 911 P.2d 1004 (1996). Substantial evidence exists when “a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding.” *State v. Schlieker*, 115 Wn. App. 264, 269, 62 P.3d 520 (2003).

The record in this case lacks substantial evidence to support the sentencing judge's finding against Kravetz on the applicability of this statutory mitigating factor. There is *nothing* in the record that would

persuade a rational, fair-minded person that Kravetz did *not* have a mental illness which significantly impaired his ability to conform his conduct to the requirements of law. On the contrary, the sentencing judge himself *admitted* that Kravetz had a mental illness, that he was delusional, and that his delusional illness was likely to lead him to break the law again. Thus, in his oral remarks, the sentencing judge admitted that this statutory mitigating factor *did* exist.

Because the sentencing judge's finding of fact cannot be sustained, this Court should vacate Petitioner's sentences and remand for resentencing with directions that the Superior Court must find that the statutory mitigating factor provided for in RCW 9.84A.535(1)(e) does apply in this case. The Superior Court should be directed to consider imposing an exceptional sentence below the standard range based upon this mitigating factor.

F. **The sentencing judge used future dangerousness as a reason for imposing an exceptional sentence *above* the range. This violates the rule of *State v. Barnes* that future dangerousness is not an appropriate factor to consider in a case that does not involve a sexual offense. By using future dangerousness caused by mental illness as an aggravating factor, the sentencing judge abused his discretion.**

The sentencing judge perverted the Legislative directive to consider such a mental illness as a mitigating factor, and used it instead as a de facto aggravating factor. It was precisely because the judge was convinced that mental illness rendered Kravetz unable to conform his

conduct to the requirements of law that he imposed an exceptional sentence *above* the standard range.

This is an untenable reason for imposing an exceptional mitigating circumstance, and consequently this is an egregious abuse of discretion. In *State v. Barnes*, 117 Wn.2d 701, 712, 818 P.2d 1088 (1991), the Supreme Court held that “future dangerousness is not an appropriate factor justifying an exceptional sentence in nonsexual offense cases.” *Accord State v. Halgren*, 137 Wn.2d 340,-346, 971 P.2d 512 (1999); *In re Vandervlugt*, 120 Wn.2d 427, 434-35, 842 P.2d 950 (1992). An exceptional sentence based on such a rationale violates the SRA:

The extension of the future dangerousness factor to nonsexual offense cases violates the certain purposes of sentencing reform. It disrupts the proportionality policy of imposing sentences in accordance with the seriousness of the crime and the criminal record. Finally, it allows too broad a grant of discretion to the sentencing judge, which discretion the Legislature intended to limit.

Barnes, 117 Wn.2d at 711-12.¹⁴ This is not a sexual offense case. Accordingly, under *Barnes* the exceptional sentence on Count II must be vacated and the case remanded for resentencing.

¹⁴ Even in sexual cases, in order to base an exceptional sentence upon future dangerousness, there must be a finding of lack of amenability to treatment. *State v. Pryor*, 115 Wn.2d 445, 454, 799 P.2d 244 (1990) (“amenability to treatment, or lack thereof, is crucial in assessing the likelihood an individual may pose a danger to the public in the future”). In the present case, the sentencing judge heard no evidence and made no finding regarding Kravetz’s amenability to treatment. Thus, even if this had been a sex offense case, an exceptional sentence based upon future dangerousness *still* could not have been sustained.

Under the SRA, in nonsexual cases, sentencing judges are not permitted to lock up convicted defendants for exorbitant periods of time because they are dangerous as a result of mental illness. Nevertheless that is precisely what the sentencing judge did in this case. Given that the sentencing judge so blatantly disregarded the well established rule of *Barnes*, this Court's remand should also direct that resentencing should take place in front of a different judge to maintain the appearance of fairness. See, e.g., *State v. A.W.*, 181 Wn. App. 400, 326 P.3d 737 (2014). In *State v. M.L.*, 134 Wn.2d 657, 661, 952 P.2d 187 (1998) the Court remanded for resentencing before a different judge because the sentence originally imposed was excessive and "[t]here was no evidence before the court to indicate" that the sentence imposed would foster the goals of the Juvenile Justice Act. In this case there is no evidence to support the sentencing judge's rejection of the statutory mitigating factor of mental illness and his use of dangerousness as an aggravating factor is directly contrary to the SRA and to this Court's decision in *Barnes*. Here, as in *M.L.*, the resentencing should be before a new judge.

VIII. CONCLUSION

Petitioner's trial counsel provided ineffective assistance of counsel by failing to make a motion to suppress on two grounds:

(1) The warrant was partially overbroad because there was no probable cause to believe that documents showing dominion or control would be evidence of the crime under investigation; and

(2) the documents seized did not show such dominion and control and therefore the officers exceeded the scope of the warrant by seizing them. Petitioner asks this Court to vacate his convictions and order a new

trial at which the evidence of the papers seized from his garage would not be admissible.

In the alternative, Petitioner asks this Court to vacate his judgment and sentence and to remand for resentencing as follows:

(1) Pursuant to *Miller* and *Anderson*, this Court should direct that at the resentencing the offenses of Assault 1 (Count II) and Disarming a Law Enforcement Officer (Count III) should be considered the same criminal conduct so that neither counts in the Offender Score calculation for the other.

(2) This Court should vacate the exceptional sentence on Count II because the use of the fact that Kravetz knew Davin was a police officer as an aggravating factor violated the double counting rule of *Nordby*. The Superior Court should be instructed that this fact cannot be used as a basis for an exceptional sentence above the standard range.

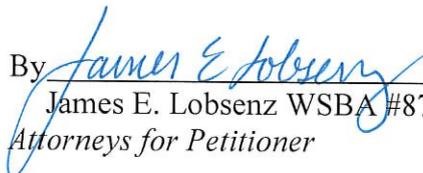
(3) Even if this Court does not find a violation of the *Nordby* double counting rule, this Court should still vacate the exceptional sentence on Count II for a separate and independent reason: the sentencing judge impermissibly considered future dangerousness as the basis for an exceptional sentence even though no sexual offenses were involved in violation of the rule of *Barnes*. The Superior Court should be instructed that future dangerousness may not be considered as a basis for an exceptional sentence above the standard range.

(4) Because it was undisputed that Kravetz had a severe mental illness which significantly impaired his ability to conform his conduct to the requirements of law, the sentencing court should be directed to find that the statutory mitigating factor RCW 9.94A.535(1)(e) is applicable to this case. The Superior Court should be directed to consider the possibility of imposing an exceptional sentence below the standard range based upon that statutory mitigating factor.

(5) Finally, the remand order should specify that all future proceedings should be held before a different judge.

Respectfully submitted this 4th day of August, 2016.

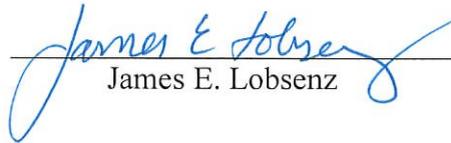
CARNEY BADLEY SPELLMAN, P.S.

By 
James E. Lobsenz WSBA #8787
Attorneys for Petitioner

AFFIRMATION

I, JAMES E. LOBSENZ, hereby affirm that I am counsel for petitioner, that I have read the foregoing petition, know its contents and I believe the petition to be true.

DATED this 8th day of AUGUST, 2016.


James E. Lobsenz

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

First-class United States mail, postage prepaid, to the following:

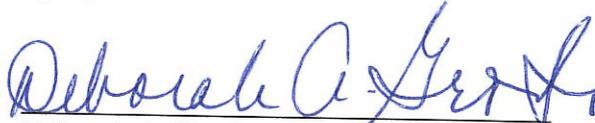
Attorney for Respondent

Katherine L. Svoboda
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Petitioner

Mr. Steven Kravetz
DOC No. 320316
Monroe Correctional Center – SOU – E231
P.O. Box 514
Monroe, WA 98272

DATED this 9th day of August, 2016.



Deborah A. Groth, Legal Assistant

FILED
COURT OF APPEALS
DIVISION II
2016 AUG -0 AM 9:33
STATE OF WASHINGTON
BY _____
DEPUTY

PERSONAL RESTRAINT PETITION AND BRIEF IN SUPPORT OF PETITION - 71

APPENDIX A

SUPERIOR COURT
LEWIS COUNTY, WASH
REC'D & FILED

2013 MAY 17 PM 4:35

KATHY BRACK, CLERK

BY Bm
DEPUTY

H6

ORIGINAL

Superior Court of Washington
County of Lewis

State of Washington, Plaintiff;

vs.

STEVEN DANIEL KRAVETZ
Defendant.

PCN:
SID: WA22804475
DOB: 11-16-1977

No. 13-1-00175-1
(Grays Harbor No. 12-1-490-8)
Felony Judgment and Sentence --
Prison
(FJS)

Clerk's Action Required, para 2.1, 4.1, 4.3, 5.2,
5.3, 5.5 and 5.7
 Defendant Used Motor Vehicle
 Juvenile Decline | Mandatory | Discretionary

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, David P. Arcuri, and (deputy) prosecuting attorney, H. Steward Menefee, were present.

II. Findings

2.1 Current Offenses: Based upon the jury's verdict entered on April 3, 2013, the defendant is guilty of:

Count	Crime	RCW (w/subsection)	Class	Date of Crime
II	ASSAULT IN THE FIRST DEGREE	9A.36.011(1)(a)	A	03-09-2012
III	UNLAWFULLY DISARMING A LAW ENFORCEMENT OFFICER	9A.76.023(1)(b)	B	03-09-2012
IV	ASSAULT IN THE SECOND DEGREE	9A.36.021(1)(c)	B	03-09-2012

Class: FA (Felony-A), FB (Felony-B); FC (Felony-C) (If the crime is a drug offense, include the type of drug in the second column.)

- Additional current offenses are attached in Appendix 2.1a.
- The jury returned a special verdict or the court made a special finding with regard to the following:
- The defendant used a **firearm** in the commission of the offense in Count II. RCW 9.94A.602, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count IV. RCW 9.94A.602, 9.94A.533.

Felony Judgment and Sentence (FJS) (Prison)(Nonsex Offender)
(RCW 9.94A.500, .505)(WPF CR 84.0400.(6/2010))

13-9-00826-6

382

Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

Crime	Cause No.	Court (County & State)

Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County and State)	DATE OF CRIME	A (Adult) or J (Juvenile)	TYPE OF CRIME
False Statement to a Public Servant	07-08-2008	Lewis County Superior Ct., WA 08-1-212-2	03-28-2008	A	GM
Assault in the Third Degree	07-08-0008	Lewis County Superior Ct., WA 08-1-212-2	03-28-2008	A	CLASS C FELONY

*DV: Domestic Violence was pled and proved.

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The prior convictions listed as number(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)
- The prior convictions listed as number(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
II	4	XII	129 to 171 months	60 months (F)	189 to 231 months	life/\$50,000
III	n/a	unranked	0 to 365 days	n/a	0 to 365 days	10 yrs/\$20,000
IV	4	IV	15 to 20 months	12 months (D)	27 to 32 months	10 yrs/\$20,000

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

Additional current offense sentencing data is attached in Appendix 2.3.

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

2.4 Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:
 below the standard range for Count(s) _____
 above the standard range for Count(s) II

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- the defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
- Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury, by special interrogatory.
- within the standard range for Count(s) _____ but served consecutively to Count(s) _____.

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

2.5 **Ability to Pay Legal Financial Obligations.** The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds:

- That the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.
- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):
- The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

III. Judgment

- 3.1 The defendant is *guilty* of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.
- 3.2 The court *dismisses* Count(s) 1 in the charging document upon the jury verdict of not guilty.

IV. Sentence and Order

It is ordered:

- 4.1 **Confinement.** The court sentences the defendant to total confinement as follows:
- (a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

300 months on Count II

364 days months on Count III

32 months on Count IV

- The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.
- The confinement time on Count II includes 60 months as enhancement for:
 firearm
- The confinement time on Count IV includes 12 months as enhancement for:
 deadly weapon

Actual number of months of total confinement ordered is: 312 months

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

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

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

- (b) **Credit for Time Served.** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.
- (c) **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to

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the conditions in Section 4.2. 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 confinement.

4.2 Community Placement or Community Custody. (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

(A) The defendant shall be on community custody for the longer of:

- (1) the period of early release, RCW 9.94A.728(1)(2); or
(2) the period imposed by the court, as follows:

Count(s) II 36 months for Serious Violent Offenses

Count(s) IV 18 months for Violent Offenses

Count(s) III n/a 12 months for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member, or associate

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition;

(7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and 706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody.

The court orders that during the period of supervision the defendant shall:

[] consume no alcohol.

[X] have no contact with: David L. Edwards, Polly Davin, Rita Zastrow, Linda Foster and Jackie Watkinson.

[] remain [] within [] outside of a specified geographical boundary, to wit:

[] not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age.

[] participate in the following crime-related treatment or counseling services:

[X] undergo an evaluation for treatment for [] domestic violence [] substance abuse

[X] mental health [] anger management, and fully comply with all recommended treatment.

[] comply with the following crime-related prohibitions:

[] Other conditions:

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

4.3 Legal/Financial Obligations: The defendant shall pay to the clerk of this court:

JASS CODE:

Table with 4 columns: JASS CODE, Amount, Description, and RCW Reference. Rows include PCV (\$500.00), CRC (\$200.00), PUB (\$TBD), WFR (\$1,200.00), CLF (\$100.00), and JASS CODE (\$30,325.78).

Restitution to: Labor and Industries, P.O. Box 44835, Olympia, WA 98504-4835, Claim Number AR46814 & AR46812

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\$1,421.07 Restitution to: Grays Harbor Sheriff's Department, P.O. Box 630,
Montesano, WA 98563

\$ 33,846.85 Total

RCW 9:94A.760.

[X] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9:94A.753.

A restitution hearing:

[X] shall be set by the prosecutor.

[] is scheduled for _____ (date).

[X] The defendant waives any right to be present at any restitution hearing (sign initials): SDK

[] Restitution Schedule attached.

[] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9:94A.7602, RCW 9:94A.760(8).

[X] All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ 25 per month commencing 60 days from this date. RCW 9:94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9:94A.760(7)(b).

[] The court orders the defendant to pay costs of incarceration at the rate of \$ _____ per day, (actual costs not to exceed \$100 per day). (JLR), RCW 9:94A.760.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10:82:090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10:73.160.

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

[] HIV Testing: The defendant shall submit to HIV testing. RCW 70.24.340.

[X] The defendant must report to the Grays Harbor County Jail within 72 hours of sentence and provide a DNA sample.

4.5 No Contact:

[X] The defendant shall not have contact with David L. Edwards, Polly Davin, Rita Zastrow, Linda Foster and Jackie Watkinson, including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life. (which does not exceed the maximum statutory sentence).

[] The defendant is excluded or prohibited from coming within _____ (distance) of:

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_____ (name of protected person(s))'s home/residence
 work place; school (other location(s)) _____
 _____ or
 other location _____ or
 until _____ (which does not exceed the maximum statutory sentence).

A separate Domestic Violence No-Contact Order or Antiharassment No-Contact Order is filed concurrent with this Judgment and Sentence.

4.6 Other:

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

V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 Length of Supervision. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 Notice of Income Withholding Action. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 Community Custody Violation. (a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633.

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(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

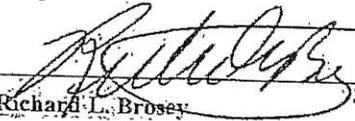
5.5 **Firearms.** You may not own, use or possess any firearm unless your right to do so is restored by a superior court in Washington State, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's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

5.6 Reserved

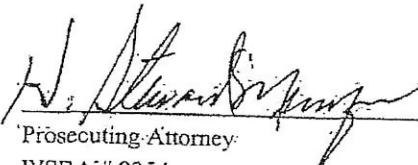
5.7 **Motor Vehicle:** If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

5.8 **Other:** _____

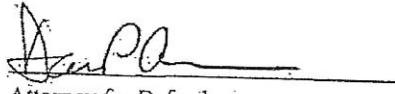
Done in Open Court and in the presence of the defendant this date: 5/17/13



Judge Richard L. Brosey



Prosecuting Attorney
WSBA # 9354
Print Name:
H. STEWARD MENEFFEE



Attorney for Defendant
WSBA # 15557
Print Name
DAVID P. ARCURI

Defendant
Print Name:
STEVEN DANIEL KRAVETZ

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Volting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of the Department of Corrections (not serving a sentence of confinement in the custody of the Department of Corrections and not subject to community custody as defined by in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: (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 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: X

Any petition or motion for collateral attack on this judgment, including but not limited to any personal restraint petition, habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for a new trial or motion to arrest judgment must be filed within one year of the final judgment in this matter. The judgment in this matter will become final on the last of the following dates: The date it is filed with the clerk of the trial court, the date an appellate court issues its mandate disposing of a timely direct appeal in this case or the date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming this conviction. Failure to file a petition or motion for collateral attack within one year of the final judgment will waive any right you may have to collaterally attack this judgment.

Defendant's signature: Steven D. Kravetz

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I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

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

Signed at Montesano, Washington, on _____

Interpreter

Print Name

I, _____, 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 the Court of said county and state, by: _____, Deputy Clerk

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VI. IDENTIFICATION OF THE DEFENDANT

SID No. WA22804475 Date of Birth: 11-16-1977

(If no SID complete a separate Applicant card (Form FD-258) for State Patrol)

FBI No. 167523JC2 Local ID No. _____

PCN No. _____ Other: DOC No. 320316

Alias name, DOB: _____

Race:

Asian/Pacific Black/African-American Caucasian

Native American Other: _____

Ethnicity:

Hispanic
 Non-Hispanic

Sex:

Male
 Female

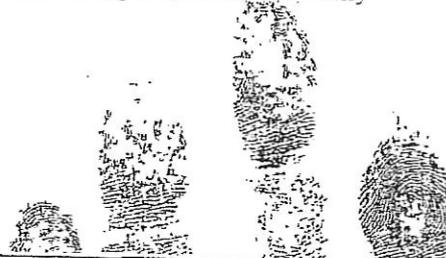
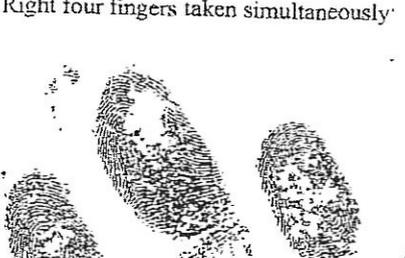
Fingerprints: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature on this document.

Clerk of the Court, Deputy Clerk _____ Dated: _____

The defendant's signature: _____

Address: _____

Phone Number: _____

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

Felony Judgment and Sentence: (FJS) (Prison) (Nonsex Offender)
(RCW 9A.04A.500-.505)(WPF-GR.84:0400 (6/2010))

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APPENDIX B

Received & Filed
LEWIS COUNTY, WASH
Superior Court

APR 03 2013

By Kathy A. Brack, Clerk
Deputy *SI*

SUPERIOR COURT OF WASHINGTON FOR LEWIS COUNTY

23

STATE OF WASHINGTON,

Plaintiff,

No: 13-1-175-1

vs.

VERDICT FORM A
(COUNT 1 - ATTEMPT TO
COMMIT MURDER IN THE
SECOND DEGREE)

STEVEN DANIEL KRAVETZ,

Defendant.

We, the jury, find the defendant, Steven Daniel Kravetz,

Not Guilty
(Write in "Not Guilty" or "Guilty")

of the crime of Attempt to Commit Murder in the Second Degree as charged in Count
I.

DATE: 4-3-13

Matt Breckels
Presiding Juror

314

APPENDIX C

Received & Filed
LEWIS COUNTY, WASH
Superior Court

APR 03 2013 ST

By Kathy A. Brack, Clerk
Deputy

SUPERIOR COURT OF WASHINGTON FOR LEWIS COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

STEVEN DANIEL KRAVETZ,

Defendant.

No: 13-1-175-1 24

VERDICT FORM A
(COUNT 2 - ASSAULT IN
THE FIRST DEGREE)

We, the jury, find the defendant, Steven Daniel Kravetz,

Guilty
(Write in "Not Guilty" or "Guilty")

of the crime of Assault in the First Degree as charged in Count II.

DATE: 4-3-13

MATT BRIGGS
Presiding Juror

3/5

APPENDIX D

Received & Filed
LEWIS COUNTY, WASH
Superior Court

APR 03 2013 ST
By Kathy A. Brack, Clerk
Deputy

SUPERIOR COURT OF WASHINGTON FOR LEWIS COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

STEVEN DANIEL KRAVETZ,

Defendant.

No: 13-1-175-1

25
VERDICT FORM A
(COUNT 3 - DISARMING A
LAW ENFORCEMENT
OFFICER)

We, the jury, find the defendant, Steven Daniel Kravetz,

GUILTY
(Write in "Not Guilty" or "Guilty")

of the crime of Disarming a Law Enforcement Officer as charged in Count III.

DATE: 4-3-13

MATT BREIGLS
Presiding Juror

316

APPENDIX E

Received & Filed
LEWIS COUNTY, WASH
Superior Court

APR 03 2013 ST

Kathy A. Brack, Clerk
By _____
Deputy

SUPERIOR COURT OF WASHINGTON FOR LEWIS COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

STEVEN DANIEL KRAVETZ,

Defendant.

No: 13-1-175-1

VERDICT FORM A
(COUNT 4 - ASSAULT IN THE
FIRST DEGREE)

26

We, the jury, find the defendant, Steven Daniel Kravetz,

NOT GUILTY
(Write in "Not Guilty" or "Guilty")

of the crime of Assault in the First Degree as charged in Count IV.

DATE: 4-3-13

MATT BRIGGS
Presiding Juror

317

APPENDIX F

Received & Filed
LEWIS COUNTY, WASH
Superior Court

APR 03 2013

By Kathy A. Brack, Clerk ST
Deputy

SUPERIOR COURT OF WASHINGTON FOR LEWIS COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

STEVEN DANIEL KRAVETZ,

Defendant.

No: 13-1-175-1

VERDICT FORM B
(COUNT 4 - ASSAULT IN THE
SECOND DEGREE)

28

We, the jury, having found the defendant, Steven Daniel Kravetz, not guilty of the crime of Assault in the First Degree, as charged in Count IV, or being unable to agree after full and fair consideration, do find the defendant, ~~not~~ guilty

(Write in "Not Guilty" or "Guilty")

of the lesser included offense of Assault in the Second Degree.

DATE: 4-3-13

Matt Brasels
Presiding Juror

319

APPENDIX G

SUPERIOR COURT
LEWIS COUNTY, WASH
REC'D & FILED
2013 MAY 17 PM 4:36
KATHY BRACK, CLERK
BY _____
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR LEWIS COUNTY

STATE OF WASHINGTON,
Plaintiff,
v.
STEVEN DANIEL KRAVETZ,
Defendant.

No.: 13-1-175-1
(Grays Harbor Number 12-1-140-8)
**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**
Appendix 2.4 of Judgment and Sentence

THIS MATTER having come before the court for sentencing on the defendant on the above-titled cause and the court having heard the testimony at trial and viewed the exhibits and evidence admitted during the trial, considered the prosecutor's presentence report, considered the defendant's recommendation on sentencing and reviewed the certified copies of the defendant's previous criminal history in Lewis County cause number 08-1-00212-2 and being familiar with the files and records herein, the court makes the following findings and conclusions:

FINDINGS OF FACT

1.

After trial, the jury returned a verdict finding the defendant guilty on Count II, First Degree Assault, committed against Deputy Polly Davin and by special verdict found the defendant was armed with and/or used a firearm during the commission of that assault.

2.

The jury unanimously and beyond a reasonable doubt found as an aggravating circumstance that the First Degree Assault charged in Count II was committed against a law

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

H. STEWARD MENESEE
PROSECUTING ATTORNEY
GRAYS HARBOR COUNTY COURTHOUSE
102 WEST BROADWAY, ROOM 102
MONTESANO, WASHINGTON 98563
(360) 248-3951 FAX 248-5064

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2 enforcement officer who was performing her official duties at the time of the offense, the
3 offender knew that the victim was a law enforcement officer and the victim's status as a law
4 enforcement officer was not an element of the crime of Assault in the First Degree. RCW
5 9.94A.535(3)(v).

6 3.

7 For sentencing purposes for Court II, Assault in the First Degree, the defendant has an
8 offender score of 4.

9 4.

10 The jury's special verdicts finding that the defendant was armed and/or used a firearm
11 during the commission of the First Degree Assault and that the First Degree Assault was
12 committed against a law enforcement officer performing her official duties at the time of the
13 offense and the offender knew that the victim was a law enforcement officer are supported by
14 evidence beyond a reasonable doubt.

15 5.

16 The defendant committed the crime of First Degree Assault against Deputy Polly Davin
17 to prevent her from placing him under arrest and taking him into custody on outstanding warrants
18 from the Grays Harbor County District Court. In order to prevent Deputy Davin from performing
19 her duties, the defendant attacked her first with a knife and then fired two shots from a
20 semiautomatic .45 caliber pistol from very close range, one of which struck Deputy Davin in the
21 left arm. The crime took place in the Grays Harbor County Courthouse during a workday.

22 6.

23 The standard range sentence for the crime of Assault in the First Degree for this
24 defendant with an offender score of 4 results in a range of 129 to 171 months. The firearm
25 enhancement imposed pursuant to RCW 9.94A.533(3)(a) by the jury's special verdict finding in
26 adds an additional 60 months to the standard range sentence.

27
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

1
2 Based upon the foregoing findings of fact, the court enters the following:

3
4 **CONCLUSIONS OF LAW**

5 1.

6 The jury's special verdict finding unanimously and beyond a reasonable doubt an
7 aggravating factor under RCW 9.94A.535(3)(v) and the court's findings above, considering the
8 purposes of the Sentencing Reform Act, are substantial and compelling reasons justifying an
9 exceptional sentence above the standard range.

10
11 2.

12 Given the aggravating factor found by the jury, a standard range sentence with the
13 addition of the deadly firearm enhancement is clearly too lenient and not proportionate to the
14 seriousness of the offense.

15 3.

16 Considering the Court's findings and the aggravating factor found by the jury, the Court
17 concludes that an additional 69 months should be added to the top end of the 171 month
18 standard range for a total standard range sentence of 240 months plus the mandatory 60 month
19 firearm enhancement resulting in a total confinement of 300 months on Count II, Assault in
20 the First Degree.

21 DATED this 17th day of May, 2013.

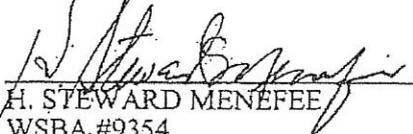
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23 JUDGE 
24
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FINDINGS OF FACT AND
CONCLUSIONS OF LAW

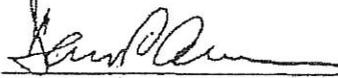
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Presented by:


H. STEWARD MENEFEE
WSBA #9354

Approved (for entry)(as to form):


DAVID P. ARCURI
Attorney for Defendant
WSBA #15557

HSM/ws

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

H. STEWARD MENEFEE
PROSECUTING ATTORNEY
GRAYS HARBOR COUNTY COURTHOUSE
102 WEST BROADWAY, ROOM 102
MONTESANO, WASHINGTON 98563
(360) 249-3851 FAX 249-8084

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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Personal Restraint of
STEVEN DANIEL KRAVETZ,
Petitioner,

NO.

DECLARATION OF
SUZANNE LEE ELLIOTT

Suzanne Lee Elliott declares as follows:

1. I have been retained by Mr. James Lobsenz to review and opine on trial counsel's failure to bring a motion to suppress evidence seized pursuant to the search warrant issued in *State v. Kravetz*. I have reviewed the search warrant and affidavit for probable cause, a narrative of the prosecutor's closing argument and Exhibits 57 and 59.
2. I have been a member of the Washington State Bar Association since 1982.
3. I began my career working for The Honorable Robert Winsor, King County Superior Court Judge, and then as a staff attorney for the Washington State Supreme Court Commissioner.
4. Since then I have worked almost exclusively as a criminal defense lawyer, first as a public defender and then in private practice. Since the early 1990's, my practice has been focused on criminal appeals and post-conviction litigation. My resume is attached as Appendix A.
5. I am one of the most experienced appellate and post-conviction lawyers in the State.
6. I am fully aware of the prevailing professional norms and standards of practice for criminal defense lawyers in the State of Washington.
8. An attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance. *Hinton v. Alabama*, -U.S.-, 134 S. Ct. 1081, 1089, 188 L. Ed. 2d 1 (2014).
9. A competent criminal defense attorney in Washington would have known that the state and federal constitution prohibit overbroad or general warrants. In particular, research would have revealed the decision in *State v. Perrone*, 119 Wn.2d 538, 547, 834 P.2d 611, 616 (1992) which discusses the prohibition on general warrants. In addition, his review of the warrant would have made clear that the warrant permitted the police to search for and seize documents.

A competent practitioner would know that a defendant's documents frequently contain items subject to First Amendment protections. He would have known that *Perrone* held that where a search warrant authorizes a search for materials protected by the First Amendment, the degree of particularity demanded is greater than in the case where the materials sought are not protected by the First Amendment.

10. A competent criminal defense attorney in Washington would also have known that the state and federal constitutions require a connection between the items sought in the warrant and the crime charged. See e.g. *State v. Thein*, 138 Wash. 2nd 133, 977 P. 2nd 582 (1999). He would have realized that there was no connection between the boxes found in the garage and opened and reviewed by the police and the crimes charged. He would have recognized that there was substantial argument that the police officers used the authorization to search to search for papers of dominion and control to conduct a general search of Kravetz home and garage. He would have known that the proof of "dominion and control" of the premises applies to possessory offenses but has minimal relevance to in an investigation for assault that took place 30 miles away from the premises searched.

11. In sum, a competent Washington criminal defense attorney who knew the facts of this case and the relevant law would have brought a motion to suppress the evidence seized from the boxes in garage.

12. Thus, it is my opinion that trial counsel in this case failed to perform basic research and was ignorant of a point of law that was fundamental to his case. This is deficient performance.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Signed in Seattle, Washington, this 8th day of August, 2016.

Suzanne Lee Elliott
Suzanne Lee Elliott, WSBA 12634
Attorney at Law

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

First-class United States mail, postage prepaid, to the following:

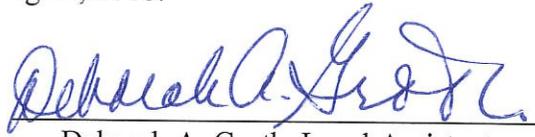
Attorney for Respondent

Katherine L. Svoboda
Grays Harbor County Prosecuting Attorney
102 W. Broadway #102
Montesano WA 98563

Petitioner

Mr. Steven Kravetz
DOC No. 320316
Monroe Correctional Center – SOU – E231
P.O. Box 514
Monroe, WA 98272

DATED this 9th day of August, 2016.



Deborah A. Groth, Legal Assistant

Suzanne Lee Elliott

Attorney at Law

1300 Hoge Building
705 Second Avenue
Seattle, WA 98104
Phone (206) 623-0291
Fax (206) 623-2186
suzanne-elliott@msn.com

BAR MEMBERSHIPS

Washington State
United States Supreme Court
United States Court of Appeals for the Ninth Circuit Court
United States District Court for the Western District of Washington
United States District Court for the Eastern District of Washington
United States District Court for the District of Alaska

AWARDS

2015 William O. Douglas Award, Washington Association of Criminal Defense Lawyers
2005 President's Award, Washington Association of Criminal Defense Lawyers
2004 Outstanding Lawyer Award (as part of the Gary Ridgway Defense Team), King County Bar Association

CERTIFICATIONS

Certified as "learned in the law of capital punishment" by the Washington State Supreme Court Capital Qualifications Committee

RATINGS

Martindale-Hubbell AV rating of 5.0/5.0
2015 Avvo rating of 10.0
Seattle Metropolitan Magazine Top Lawyer, July 2010.

EDUCATION

University of Puget Sound School of Law, Tacoma, WA

J.D. 1982, Managing Editor, Law Review, 1981-82

Whitman College, Walla Walla, WA
B.A. Political Science, 1979

EXPERIENCE

LAW OFFICE OF SUZANNE LEE ELLIOTT

1995 to Present

Practice focused on state and federal criminal defense, primarily appeals. Recent and important cases include:

State v. Besola, - Wash. 2d - , 359 P.3d 799 (2015). The Court held that description of items to be seized in search warrant were insufficiently particular to satisfy Fourth Amendment and provided for seizure of items that were legal to possess.

State v. Gradt, 45507-2-II, 2016 WL 123521 (2016). The Court held that general criminal prosecution saving statute would not save pending prosecution for offense committed prior to the marijuana reform initiative.

State v. Kurtz, 178 Wn.2d 466, 309 P.3d 472 (2013): The Court held that the common law medical necessity defense was not abrogated by the legislature's classification of marijuana as a schedule I controlled substance.

Ocampo v. Vail, 649 F.3rd 1098 (9th Cir. 2012): Murder conviction reversed after the Circuit Court found that the detectives' testimony concerning declarant's out-of-court statements confirming defendant's presence at the scene and that defendant was the shooter, constituted the introduction of testimonial statements against defendant in violation of Confrontation Clause.

Woods v. Sinclair, 655 F.3d 886 (9th Cir. 2011), *cert. granted, judgment vacated sub nom. Woods v. Holbrook*, 132 S. Ct. 1819, 182 L. Ed. 2d 612 (U.S. 2012): In this capital case, the United States Supreme Court granted Woods's petition for certiorari, reversed and remanded to the Ninth Circuit so that the Circuit Court could reconsider its decision in light of new Supreme Court rulings.

State v. Werner, 170 Wn.2d 333 (2010): Werner was accosted by a man and his seven unrestrained dogs. The Supreme Court overturned the trial court and held Werner was entitled to argue that a reasonable person could have believed the victim and his dogs posed a formidable threat of injury to him. Thus, he was entitled to jury instructions on

his claim of self-defense.

Briefed and argued, *Uttecht v. Brown*, United States Supreme Court, October Term, 2006, opinion at 551 U.S. 1, 9, 127 S.Ct. 2218, 167 L.Ed.2d 1014 (2007).

State v. Gregory, 158 Wn.2d 759, 147 P.3d 1201 (2006): Death Sentence Reversed.

United States v. Wade, Alaska District Court, 07 CR 00111: Resolved with Plea to Life Without Possibility of Parole.

Benn v. Lambert, 283 F.3d 1040, 1064 (9th Cir. 2002): Conviction and Death Sentence Reversed.

State v. Clark, 143 Wn.2d 731, 24 P.3d 1006 (2001): Death Sentence Reversed.

State v. Schierman, Washington State Supreme Court: Capital Appeal Pending.

WASHINGTON APPELLATE DEFENDER ASSOCIATION

1990 to 1995

Director, nonprofit corporation devoted to representing indigent criminal appellants in the Court of Appeals, Division I, and the Washington State Supreme Court.

ASSOCIATED COUNSEL FOR THE ACCUSED

July, 1985 to June, 1990

Staff Attorney responsible for representing indigent criminal defendants in the trial courts of the State of Washington. Represented clients in the Courts of Limited Jurisdiction, Seattle Municipal Court, Juvenile Court and the King County Superior Court. Drafted all pleadings necessary for trial including pretrial motions, trial briefs and jury instructions. Was assigned for a considerable period of time to writing RALJ appeals.

WASHINGTON STATE SUPREME COURT

May, 1983 to July, 1985

Staff Attorney assigned to the Court Commissioner's Office. Reviewed petitions for review and motions for discretionary review. Prepared bench memos for the Court's departmental conferences to advise the Court as to whether or not the petition or motion met the criteria for review.

PROFESSIONAL ORGANIZATIONS

Washington State Bar Association, Pattern Jury Instructions Committee
Cooperating Attorney Innocence Project Northwest
Washington Association of Criminal Defense Lawyers; Co-Chair Amicus Committee,
2000 to present
Former CJA Panel Representative, Western District of Washington

PUBLICATIONS AND CLE PRESENTATIONS

March 2013, Speaker, Washington Association of Criminal Defense Lawyers, "Public Records, Open Courts, Is Anything Confidential Anymore?"

June 2012, Speaker, Washington Association of Criminal Defense Lawyers Annual Conference, "Tweeting Jurors"

August 2011, Author, "Prisoner: AG Bill Limits Options for Prisoners," Washington Criminal Defense Magazine.

2009, Speaker, Criminal Law Boot Camp, May 1, 2009, "Making the Record For Appeal."

2008, Speaker, Washington State Appellate Judges, Spring Conference

2007, Speaker, "Crimes of Violence, Defense with a Passion"

2005, Speaker, "Thrills and Skills," Spokane, Washington.

2005, Speaker, "Dealing with Drugs: Defending Drug Cases in the 21st Century."

2001, Author, "Evidence: The Common Scheme or Plan Problem," Vol. 15, No. 4 Washington Criminal Defense Magazine

2000, Presenter, "Innocence Found: Wenatchee and Beyond," April 14, 2000, Washington Law School Foundation.

1998, Contributing Author, Washington Appellate Practice Handbook, Supplement.

1997, Speaker, Washington Association of Criminal Defense Attorneys, "Cutting Issues in Criminal Law."

1995, Editor, "Defense of a Drug Case", 2nd Ed., Published by the Washington Defender Association.

1995, Moderator and Speaker, Appellate Practice for the Trial Attorney.

1994, Moderator, Washington Criminal Justice Institute, I-593 Panel.

1994, Editor, "Washington State Criminal Forms," Published by the Washington Defender Association.

1993, Editor, "Defense of a Drug Case," Published by the Washington Defender Association.

1993, Speaker, SKCBA CLE, Appellate Practice, "Oral Argument."

1993, Speaker, Defender Annual Conference, "Caseload Control."

1992, Speaker, WSBA Criminal Law Section Annual CLE, "Significant Evidentiary Cases in 1992."

1992, Speaker, WSBA Bar Convention, "Recent Developments in SRA Sentencing."

1989, Speaker, Defender Annual Conference, "New Challenges to Charging Documents."

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Personal Restraint of
STEVEN DANIEL KRAVETZ,
Petitioner,

NO.

DECLARATION OF JAMES
E. LOBSENZ

I, JAMES E. LOBSENZ, do hereby declare under penalty of perjury under the laws of the State of Washington that the following facts are true and correct:

1. I am counsel for the petitioner Steven Kravetz.
2. I have personal knowledge of the facts set forth here.
3. Attached to this declaration as Appendix A is a true and correct copy of the Exhibit List which shows the exhibits which were admitted at Petitioner's trial.
4. Attached to this declaration as Appendix B is a true and correct copy of Exhibit No. 57, a sketch of the Grays Harbor County Courthouse floor plan drawn on the back of an article entitled "SELF-GUIDED TOUR Grays Harbor County Courthouse."
5. Attached to this declaration as Appendix C is a true and correct copy of Exhibit No. 59, which includes photographs of Deputy Sheriff David A. Libby, documents listing home addresses for deputy sheriff Libby, and handwritten notes.

6. Attached to this declaration as Appendix D is a copy of the transcript of the interview of Steven Kravetz conducted by Mason County Sheriff's Office Detective Pittman on November 10, 2012. This transcript was furnished to me by the Grays Harbor Prosecuting Attorney in response to a Public Records Act request which I made in 2014. However, I discovered that the transcript initially furnished to me by the Prosecuting Attorney's office in response to my PRA request was missing pages 405-418. I contacted Ms. Randi Toyra, an Administrative Assistant in the Prosecutor's Office, and she emailed the missing pages to me.

7. Attached to this declaration as Appendix E is a true and correct copy of the transcript of the telephonic search warrant application made at 12:15 p.m. on March 10, 2012 by Detective Rhoades to the Honorable Toni A. Sheldon of the Mason County Superior Court.

8. Attached to this declaration as Appendix F is a true and correct copy of the search warrant issued by Mason County Superior Court Judge Toni Sheldon at 12:20 p.m. on March 10, 2012.

9. Attached to this declaration as Appendix G is a true and correct copy of the police report of Deputy Sheriff Gray, the officer who completed the part of the Evidence Form that documented the recovery of evidentiary items from the Kravetz garage.

10. Attached to this declaration as Appendix H is a true and correct copy of the Thurston County Sheriff's Officer Evidence Form.

11. Attached to this declaration as Appendix I is a true and correct copy of the Supplemental Police Report of Sergeant Ray Brady of the Thurston Court Sheriff's Office. On the last page of that report Sgt. Brady recounts how certain evidence was found in boxes in the Kravetz garage:

I assisted with searching the detached garage at the residence. Det. Simper located a box containing a file labeled "master plan" containing pictures and information of GHSO deputies. I searched a box next to that one and located a brochure from Grays Harbor Transit. On the back of this brochure was a hard drawn sketch of the interior of the Grays Harbor Courthouse. These boxes of paperwork and items were collected and entered into evidence.

10. A second telephonic application for an expanded search warrant was made by Detective Rhoades at 2:45 p.m. on the same day (March 10, 2012). A copy of that second telephonic search warrant application is attached to this declaration as Appendix J.

11. Attached to this declaration as Appendix K is a true and correct of the Appendix to the first search warrant which Judge Sheldon issued at 2:48 p.m. on March 10, 2012, which expanded the officers' authority to search to include "Papers, documents, digital media files showing state of mind, premeditation for crimes listed above."

12. I made a Public Records Act request to the Grays Harbor Prosecuting Attorney's Office seeking records connected with the Kravetz

case, and the Prosecutor's Office produced a few thousand pages of documents in response to that request. I have searched through everything that was produced. As near as I can discern, after looking at all of the papers produced in response to my PRA request, after receiving the expanded search warrant authorizing them to look through papers and digital files for evidence of premeditation, the police did not find anything of evidentiary interest.

13. Attached to this declaration as Appendix L is a true and correct copy of the Judgment & Sentence entered by the Superior Court in this case.

14. Attached to this declaration as Appendix M are true and correct copies of all of the general verdict forms returned by the jury in this case, finding Kravetz not guilty on Count I, guilty on Counts II and III, and guilty of the lesser included offense of Assault 2 on Count IV.

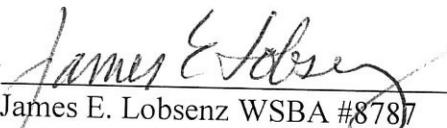
15. Attached to this declaration as Appendix N are true and correct copies of all of the special verdict forms returned by the jury in this case, including the special verdict form for Count II, which states in part: "Did the defendant know at the time of the commission of the offense that the victim was a law enforcement officer? ANSWER: Yes."

16. Attached to this declaration as Appendix O is a true and correct copy of the Findings of Fact and Conclusions of Law entered by the sentencing judge in support of the exceptional sentence which the sentencing judge imposed on Count II.

DATED this 4th day of August, 2016.

CARNEY BADLEY SPELLMAN, P.S.

By


James E. Lobsenz WSBA #8787
CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, Washington 98104-7010
Telephone: (206) 622-8020
Facsimile: (206) 467-8215
Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

First-class United States mail, postage prepaid, to the following:

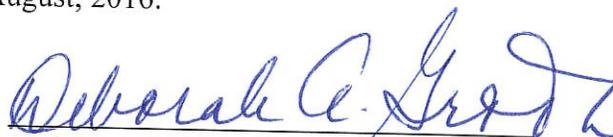
Attorney for Respondent

Katherine L. Svoboda
Grays Harbor County Prosecuting Attorney
102 W. Broadway #102
Montesano WA 98563

Petitioner

Mr. Steven Kravetz
DOC No. 320316
Monroe Correctional Center – SOU – E231
P.O. Box 514
Monroe, WA 98272

DATED this 9th day of August, 2016.


Deborah A. Groth, Legal Assistant