

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON

IN RE THE PERSONAL ) NO. 49712-3-II  
RESTRAINT PETITION OF ) RESPONSE TO PERSONAL  
AARON M. JOHNSON ) RESTRAINT PETITION

Comes now Jon Tunheim, Prosecuting Attorney in and for Thurston County, State of Washington, by and through James C. Powers, Deputy Prosecuting Attorney, and files its response to this personal restraint petition pursuant to RAP 16.9.

I. BASIS OF CURRENT RESTRICTIONS ON LIBERTY

The petitioner is currently in the custody of the Washington Department of Corrections. In Thurston County Superior Court Cause No. 12-1-00645-1, he was sentenced on June 11, 2013 to a 209-month period of total confinement based on convictions for Burglary in the First Degree While Armed with a Deadly Weapon-Firearm/Domestic Violence, Kidnapping in the First Degree While Armed with a Deadly Weapon-Firearm/Domestic Violence, Felony Harassment/Domestic Violence, Felony Stalking/Domestic Violence, and Assault in the Fourth Degree/Domestic Violence. See Appendix B. Subsequently, a published decision was entered by the Washington Court of Appeals, Division One, on February 2, 2015,

vacating the conviction for Felony Stalking/Domestic Violence, and remanding this case for resentencing. State v. Johnson, 185 Wn. App. 655, 342 P.3d 338 (2015)(Court of Appeals No. 72365-1-I). On January 11, 2017, the petitioner was resentenced in Thurston County Superior Court. A 198-month period of total confinement was imposed at that time for the remaining convictions and firearm enhancements, with credit for time previously served in this matter. See Appendix D.

## II. STATEMENT OF PROCEEDINGS

On May 17, 2012, an Information was filed against defendant Aaron Mercedes Johnson in Thurston County Superior Court Cause No. 12-1-00645-1, charging: Count 1, Burglary in the First Degree While Armed with a Deadly Weapon-Firearm/Domestic Violence; Count 2, Kidnapping in the First Degree While Armed with a Deadly Weapon-Firearm/Domestic Violence; Count 3, Rape in the First Degree While Armed with a Deadly Weapon-Firearm/Domestic Violence; Count 4, Felony Harassment/Domestic Violence. On January 18, 2013, the State filed a First Amended Information which retained all the previous charges and added Count 5, Felony Stalking/Domestic Violence, and Count 6, Assault in the Fourth Degree/Domestic Violence. On February 6, 2013, a Second Amended

Information was filed which simply repeated all of the charges in the First Amended Information and corrected an RCW designation for one of the charges. See Appendix A.

The defendant filed a motion to suppress evidence obtained pursuant to a search warrant issued on June 25, 2012, during an investigation which led to the added charge of Stalking. A CrR 3.6 hearing was held on that motion to suppress. The trial court upheld the search warrant and identified particular pieces of evidence obtained pursuant to that warrant which would be admissible at trial. 1-28-13 Hearing RP 119. A CrR 3.5 Hearing was also held at that time, and the court ruled that all of the defendant's custodial statements were admissible at trial. 1-28-13 Hearing RP 68-71.

A jury trial in this cause was held beginning April 23, 2013, with jury verdicts rendered on May 3, 2013. The defendant was convicted of Count 1, Burglary in the First Degree/Domestic Violence, and the jury also found the firearm allegation to have been proved. The defendant was further convicted of Count 2, Kidnapping in the First Degree/Domestic Violence, and the jury again found the firearm allegation to have been proved. The defendant was found not guilty of Count 3, Rape in the Second Degree. The

defendant was found guilty of Count 4, Felony Harassment/Domestic Violence, Count 5, Felony Stalking/Domestic Violence, and Count 6, Assault in the Fourth Degree/Domestic Violence. Trial RP 1391-1394.

A sentencing hearing was held on June 11, 2013. The court found that all the convictions constituted separate criminal conduct, except for the crimes of Kidnapping in the First Degree and Felony Harassment, which constituted the same criminal conduct. See Appendix B. The court imposed 209 months of total confinement, which included 120 months imposed consecutively for the two firearm enhancements. See Appendix B

A Notice of Appeal was filed on June 11, 2013. Briefing was initially filed by the parties before Division Two of the Court of Appeals in Case No. 44996-0-II. However, the case was transferred to Division One of the Court of Appeals, which rendered a published decision in this case on February 2, 2015 in Case No. 72365-1-I. See State v. Johnson, 185 Wn. App. 655, 342 P.3d 338 (2015). In that decision, all the convictions were upheld except for Count 5, Felony Stalking/Domestic Violence, which was vacated based on a finding of insufficient evidence. Johnson, 185 Wn. App. at 669-670. The appellate court upheld the sufficiency of the charging document as to the two firearm enhancements imposed. Johnson, 185 Wn. App. at 678.

The defendant sought to also challenge the evidence seized pursuant to the 6-25-12 search warrant issued during the investigation of the separate incident which led to the stalking charge. However, the Court of Appeals refused to consider that issue because the felony stalking conviction had been reversed. Johnson, 185 Wn. App. at 658, n. 1. Finally, the appellate court ruled that the trial court did not abuse its discretion in admitting into evidence items found in the backpack that the defendant had taken to the victim's apartment, since the evidence was probative of the defendant's intent as regards the charges of burglary in the first degree and kidnapping in the first degree. Johnson, 185 Wn. App. at 672.

On March 3, 2015, the defendant filed a Motion to Reconsider. The defendant contended that his claim against the evidence seized pursuant to the search warrant should have been considered, contending that the evidence had tainted the entire trial. The defendant also sought reconsideration of the adequacy of the charging language regarding the firearm enhancements and his claim that evidence from the backpack was more prejudicial than probative. On May 11, 2015, the Court of Appeals denied this Motion for Reconsideration.

On June 10, 2015, the defendant filed a Petition for Review of this matter in the Washington Supreme Court. On July 9, 2015, an Amended Petition for Review was submitted by the defendant. On November 3, 2015, the State Supreme Court issued an Order denying this Petition.

The Court of Appeals Mandate returning this case to the Thurston County Superior Court was issued on December 11, 2015. The defendant's Personal Restraint Petition was timely filed on December 9, 2016.

### III. STATEMENT OF THE CASE

Aaron Johnson and Sara Wojdyla had an on-and-off romantic relationship for approximately two years. RP 722-24.<sup>1</sup> They had lived together for about two months and had spent nights together before that. RP 754, 1031. Johnson knew where she worked, her work schedule, and when she usually went to bed. RP 753-54.

Wojdyla ended the relationship for the final time approximately two weeks before her birthday, which was April 25, in 2012. RP 722, 724. For the first time in their relationship, she told Johnson not to contact her. Nevertheless, he contacted her repeatedly via text messages and a couple of

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<sup>1</sup> Unless otherwise noted, references to the Verbatim Report of Proceedings are to the nine-volume trial transcript.

phone calls. Wojdyla responded to most of the texts but did not answer the calls. RP 726-28. Those responses were to tell Johnson to cease contact and that the relationship was over. RP 729.

Wojdyla had not seen Johnson for approximately two weeks before April 25, 2012. He texted her four or five times that day, asking to see her for her birthday. She refused. That evening, as she exited her apartment building to meet a man who was to take her to dinner, Johnson was waiting. RP 729, 731-32. Johnson told Wojdyla's date that she was his girlfriend and the man should leave. He did. RP 735. It was raining that evening and Johnson was both angry and soaking wet. RP 738. Johnson told Wojdyla that she was the sixth f\*\*\*ing female who had done this to him. RP 734. Wojdyla returned to her apartment without interference, but shortly after she went inside Johnson telephoned her, again expressing anger at what he apparently perceived as a betrayal. RP 739-40.

After that, Wojdyla received many text messages from Johnson every day, in which he claimed to love her. In more than two of those messages he threatened to harm himself. He also made phone calls, which she did not answer. RP 741-43. She did respond to some of the text messages. RP 744. Wojdyla was concerned that Johnson would harm her and/or himself, and at

midnight on the evening of May 13-14, 2012, she changed her phone number. RP 748. Even so, her e-mails came directly to her telephone, and within moments she received an e-mail from Johnson requesting that she contact him. She did not respond, and blocked his e-mails from her phone. RP 756-58.

Wojdyla lived in a secure apartment building where the main doors are kept locked and persons who did not have keys had to be admitted by a resident. Johnson did not have a key. RP 763. On the morning of May 14, 2012, Wojdyla, carrying her purse and cell phone, opened the door of her apartment to leave for work. Johnson was waiting outside the door and immediately pushed his way in, forcing her back into the apartment, and put his hand over her mouth when she asked what he was doing. He closed and locked the door. RP 773. He also turned on the television so it would sound as if there were normal activity in the apartment. RP 835. Johnson said something to the effect that he was not leaving. RP 765-66. Wojdyla tried to unlock her phone but Johnson yanked it out of her hand and she was unsuccessful in her efforts to get it back. RP 768. Sometime later she noticed a sore on her finger that she believed occurred when Johnson took the phone away from her. RP 769-70.

Wojdyla asked several times to be allowed to go to work but Johnson refused. RP 772, 800. He did give her phone back to her and allowed her to call an associate at work, but Johnson warned her not to tell anybody he was there. RP 187, 776. When the call ended, Johnson took the phone back. RP 778. Johnson was wearing jeans, a hooded sweatshirt with a pocket across the front, and a knit cap. RP 779. In the pocket Wojdyla could see the outline of what she called a billy club. During their time together Johnson had worked at the gate to Ft. Lewis and as a security guard at a state office in Seattle and she had seen him with the club on his duty belt before. RP 780-81. She had never seen it when he wasn't wearing his utility belt. RP 782. Johnson was also carrying a backpack when he came into the apartment. She had seen it in his garage but he had never brought it to her apartment before. RP 784-85. He made no reference to it and set it on a small couch, but at one point he opened it and Wojdyla saw it contained a roll of paper towels, a bottle of what looked like window cleaner, and some zip ties, two of them looped but not pulled tight. She had never seen Johnson with zip ties before. RP 786-88.

Wojdyla described Johnson's affect as different than she had seen it before and she was alarmed. His face was empty; "he had no soul." RP 783,

798. They engaged in a lengthy conversation that focused on Johnson's intense interest in the man Wojdyla had planned to date on her birthday and an incident that had occurred with one of her girlfriends. RP 790-91. At one point Johnson held the zip ties in his hand, standing between her and the door, but when she asked him about them he merely laughed in a sarcastic manner. RP 792-93. The conversation turned to their relationship, and Wojdyla attempted to soothe Johnson by telling him what he wanted to hear—that they would be okay, even though she was not really considering resuming the relationship. RP 794-95. When Wojdyla would ask to leave, Johnson would say something along the lines of “if I can't have you, no one can.” Frightened, Wojdyla asked Johnson if he had a gun with him; he replied, “Actually, I do,” and lifted his sweatshirt to display the gun in a holster. RP 800-03.

Johnson told Wojdyla that he was going to kill her, then himself. Wojdyla believed him, based on the gun, club, and zip ties. RP 804-06. She estimated that by this time he had been in the apartment an hour. RP 807. Using a vulgarity, Johnson asked if they were going to have sex, and laughed when she said no. It occurred to her then that perhaps this is why he really came and although she did not want to have sex with him, she thought that if

she did he might let her go, so she agreed. RP 810-11. Johnson then took the gun out of the holster and tried to hand it to her, but Wojdyla refused and at her request he removed the clip and set the clip and gun on the back of a couch. RP 813-14.

Johnson and Wojdyla went into the bedroom and had intercourse. In an effort to make the encounter seem normal, Wojdyla asked him to manually bring her to orgasm, but that was unsuccessful. Afterward they both dressed. Johnson returned Wojdyla's phone to her, and when she asked again if she could go to work he nodded "yes." RP 823-27. They left her apartment together. RP 832, 834. Wojdyla drove away from the apartment building very quickly and headed for her place of employment on Ft. Lewis. RP 838, 840. While en route, she called a co-worker, Debra Cole, to let her know she was coming. RP 188-90, 842-43. She stayed at her place of employment for some time, then went with Cole to the Lacey Police Department to make a report. RP 192-95, 851-52. Later that day she was examined at St. Peter's Hospital in Olympia by a sexual assault nurse practitioner. RP 480, 872-74.

Wojdyla went to her apartment long enough to gather some belongings, but she never stayed there again, and moved out on May 19. RP 855-57. She then lived with her father in Bonney Lake; Johnson had never

been there. RP 857-58. She obtained a no-contact order against Johnson. RP 878.

Detective Jaime Newcomb of the Lacey Police Department took the report from Wojdyla and located Johnson at his residence in Lakewood. RP 551-52. He and Detective Bev Reinhold met Lakewood and Pierce County officers at that residence. RP 387, 402, 553. The officers made unsuccessful efforts to get Johnson to come out. RP 403,554-56. Detective Reinhold obtained a search warrant for the residence, RP 406, and a Pierce County deputy with a K-9 unit entered the house. Johnson was located in a crawl space under the house, accessed by a trap door in the floor of a bedroom closet. RP 229-231. The dog, which was trained to bite, was sent down into the crawl space. RP 233. A short time later, Johnson emerged from the crawl space, the dog still holding onto his foot. RP 235, 238. Shortly thereafter, Johnson was taken to the hospital for treatment of the dog bite injuries. RP 565.

Detective Reinhold obtained an addendum to the search warrant permitting a search of two vehicles located in the garage of Johnson's residence. RP 407. During the search of the house officers located a 9mm automatic handgun, with a round in the chamber, in the crawl space. RP 452,

456. A gun case was located in a dresser in Johnson's bedroom, along with a loaded magazine. RP 424. In a black BMW, parked closer to the door of the garage than a Honda Civic, they found an empty baton holder, a roll of toilet paper, and a backpack containing a knife, some zip ties, a roll of duct tape, a handsaw, a roll of paper towels, a drop cloth like those used by painters, leather gloves, rubber gloves, a hat, and a water bottle. RP 436-41, 459, 463-64.

At the scene, Newcomb advised Johnson of his *Miranda* warnings. RP 566. At the hospital, Johnson admitted that he had been at Wojdyla's apartment that morning. He said that he had been sending text messages to Wojdyla in an attempt to reconcile with her. He admitted that she had asked him to stop contacting her, that the previous night she had changed her cell phone number, and that one of the reasons he went to Lacey is because he was unable to otherwise contact her. He said he entered the apartment building by waiting outside until someone left and he was able to get in while the door was open. RP 568-69. He said that when Wojdyla opened her apartment door she started to cry and he placed his hand around her mouth in an effort to keep her quiet. RP 570. Johnson admitted that he did not have permission to enter the apartment, and that he had put his arm around her

waist to prevent her from leaving. He denied pushing Wojdyla against the wall of the apartment, but rather described it as a hug. RP 571. Johnson further admitted to taking the phone from Wojdyla's hand so that she could not contact law enforcement. He denied threatening to harm Wojdyla but admitted to threatening to kill himself. RP 572. He admitted that he had a gun with him and that he had shown it to Wojdyla. RP 573. He said that she had asked to leave and he had told her she could not until they finished their conversation. RP 574. He said that they had consensual sex, and that he had removed his gun before that at Wojdyla's request. RP 575-76. Johnson told Newcomb he had taken a backpack into Wojdyla's apartment; he called it a survival bag. When asked why there was a hand saw in the bag, he replied that it had fallen off the wall of his garage and he had put it into the car. He did not explain why it was in the backpack. RP 578-79. He told the officer that the zip ties and duct tape in the backpack were for fastening cables around his residence, but did not answer when asked why he took those items to Wojdyla's apartment. RP 579.

On June 22, 2012, Wojdyla left her workplace at Ft. Lewis and was driving north on I-5 toward Bonney Lake when she saw behind her in traffic a black BMW that she believed was Johnson's car. RP 877. The BMW stayed

behind her, passing at least two exits that Johnson could have taken to get to his own residence. RP 880-81, 883. The BMW followed her when she exited I-5, heading for Highway 512. She gave it ample opportunities to pass her but it remained behind her, maintaining a constant distance. RP 883-86. Wojdyla called 911 and explained the situation. She was directed to flash her emergency lights so Washington State Patrol troopers in the area could identify her car. RP 635, 887, 892. Wojdyla was further directed to stop her car at a Chevron station; when she turned to enter the lot, the black BMW suddenly made a left turn from a through lane into a lot on the opposite side of the highway. RP 673-74, 895-96. Trooper Jason Caton contacted Johnson, the driver of the BMW, who said he was meeting a friend at a sushi place in Bonney Lake but he did not know the friend's name; he had to call her. RP 676. He later identified the friend as "Sara" and gave a last name Trooper Caton could not recall at trial. RP 677. Trooper Caton verified that a no-contact order was in place naming Wojdyla as the protected party and Johnson was arrested. RP 678, 683.

The BMW was left in the parking lot where Johnson was arrested, but the following day, after more information was obtained, it was impounded, towed to a WSP facility, and eventually searched incident to a search warrant.

RP 683-84. The officers found and seized a roll of duct tape, a pair of black gloves, a black hat, and a bag containing a woman's black wig, a pair of black sunglasses, and two receipts from a beauty supply store in Lakewood, both dated June 22, 2012. RP 684, 687; CP 239.

### III. RESPONSE TO ISSUES RAISED

1. Viewing the evidence in this case in the light most favorable to the prosecution, the evidence was sufficient for a rational trier of fact to have found beyond a reasonable doubt that the defendant committed kidnapping in the first degree by the alternative means of an abduction with the intent to facilitate the commission of rape in the first degree.

The defendant in this case was convicted of kidnapping in the first degree. That is an alternative means crime. State v. Harrington, 181 Wn. App. 805, 818, 333 P.3d 410 (2014). Kidnapping in the second degree requires proof of an intentional abduction. Kidnapping in the first degree requires proof of not only an intentional abduction, but also that the abduction was with the additional intent to accomplish one or more of outcomes identified in the kidnapping statute, RCW 9A.40.020. Harrington, 181 Wn. App. at 816.

In the present case, the jury was instructed that the charge of kidnapping in the first degree alleged that the defendant intentionally abducted Sara Wojdyla to facilitate the commission of burglary in the first

degree or flight thereafter, to facilitate the commission of rape in the first degree or flight thereafter, to inflict bodily injury on that person, or to inflict extreme emotional distress on that person. Trial RP 1239-1240. When alternative means are alleged for the commission of a single crime, unanimity of the jury as to any particular alternative means is not required for conviction provided there is sufficient evidence presented to each of the alternative means considered by the jury. State v. Arndt, 87 Wn.2d 374, 376, 553 P.2d 1328 (1976).

Such sufficient evidence is present it is determined that, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime, committed by that alternative means, proved beyond a reasonable doubt. State v. Ortega-Martinez, 124 Wn.2d 702, 708, 881 P.2d 231 (1994). In determining whether sufficient evidence was presented, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Circumstantial evidence is accorded equal weight with direct evidence. State

v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The defendant in the present case contends that there was insufficient evidence presented to support a first-degree kidnapping conviction by the alternative means of intending to facilitate the commission of the crime of rape in the first degree. That crime of rape, as alleged in this case, consisted of sexual intercourse with another person by means of forcible compulsion where a deadly weapon, or what appeared to be a deadly weapon was used or threatened to be used, or where the other person was kidnapped. RCW 9A.44.040(1)(a) or (b). Trial RP 1241-1242. In arguing this claim, the defendant focuses on testimony presented concerning the point in time when the sexual intercourse occurred, and specifically testimony supporting the defendant's assertion that Sara Wojdyla consented to the sexual intercourse that occurred. The jury determined that the State had not proved beyond a reasonable doubt that the sexual intercourse had been brought about by means of forcible compulsion. Hence, the defendant argues this court should conclude there was not sufficient evidence to support a conviction for kidnapping in the first degree committed with the intent to facilitate the crime of rape in the first degree.

However, whether there was sufficient evidence for that alternative

means first-degree kidnapping is a different question from whether there was evidence beyond a reasonable doubt that a rape in the first degree was committed. The kidnapping charge necessarily focuses on the defendant's state of mind at the time of the abduction leading to the eventual act of sexual intercourse. The State contends that there was sufficient evidence for a rational trier of fact to conclude it was proved beyond a reasonable doubt that the defendant intentionally abducted the victim with the intent of facilitating the crime of rape, even though in the end the victim consented to the sexual intercourse, thereby allowing the defendant to accomplish that goal by means other than forcible compulsion.

During the incident at issue in this case, the evidence showed a consistent use of force and use of both direct and indirect threat of force by the defendant to overcome the will of the victim, leading up to the point they both entered the bedroom and sexual intercourse took place. For weeks prior to the incident, the victim had been demanding that the defendant leave her alone and stop trying to communicate with her, but the defendant refused to comply. Trial RP 724-752. This incident occurred directly after the victim had changed her phone number and blocked the defendant's e-mails. Trial RP 756-758. The defendant wanted the victim to return to a romantic

relationship with him, and was pressuring her to give in to what she did not want.

During the incident, it was the defendant who initiated the subject of having sexual intercourse. Trial RP 809. However, this was only after he had taken steps to impress upon the victim that she was going to do only what he wanted her to do. The defendant knew the victim would not let him into her apartment willingly. That is why he waited until someone left the building, so that he could slip inside before the door closed and locked. Trial RP 569. That is also why he waited outside her door until she opened the door to leave. Trial RP 570. That is why he forced his way into the apartment, and put his hand over her mouth to prevent her from crying out as he did so. Trial RP 765-766.

The defendant then forcibly took the phone from the victim's grasp to prevent her from calling the police. Trial RP 571-572, 767-768. He kept control over the phone thereafter, only allowing her to call work to say she would be late, while he closely monitored the call. Trial RP 775-779. After entering the apartment, the defendant closed and locked the door, and used his body to propel the victim into the living room. Trial RP 773-774. He repeatedly refused to allow her to leave, making clear he intended to keep her

there against her will until he had finished all he had in mind to do. Trial RP 771, 800. The defendant told the victim that if he could not have her, no one else would. He told her that he was going to kill her and then kill himself there at the apartment. Trial RP 801-804.

The defendant reinforced this controlling and threatening behavior with the items he had brought with him. He had a club inside the pocket of his sweatshirt. Trial RP 780-782. He had a gun at his waist, which he displayed to her. Trial RP 802-804. While the defendant owned these things for work, he had not previously brought the club into her apartment, and had seldom brought the gun in, usually leaving it in the glove compartment of his vehicle . Trial RP 781, 802-803.

He also pulled zip ties out of his backpack and displayed them to the victim. Trial RP 792. There were other things in his backpack, but it was the zip ties that he made sure she saw. His purpose in doing so was apparent to the victim, and so she asked him where he was going to tie her up at. He laughed and said he was going to tie her to herself, meaning to restrain her. Trial RP 792-793. Since he had not used the zip ties yet, this was evidence he had in mind to do something further with the victim that would involve physically restraining her.

It was after that the defendant brought up the subject of having sex, in a context where it must have been apparent to the defendant that the victim was scared and upset. The victim initially responded by saying, “no”, and the defendant simply laughed when he heard that. Trial RP 809. It was apparent to the victim that this is what the defendant seriously wanted. Trial RP 811-812. The victim then chose to agree to have sex with the defendant, so that he would hopefully leave after he got what he wanted. Trial 812. And in fact the defendant did leave after he had sex with her. Trial RP 833-834.

Based on the evidence, as summarized above, a rational trier of fact could have concluded beyond a reasonable doubt that the defendant, in his anger over the victim’s refusal to come back to him, formed the intent to use force, threats, and intimidation to place the victim in a situation where he was in control of her, with no one available to help her, so that he could force her to have sex with him, and thereby give him what she would not give willingly. A rational trier of fact could have concluded that a completed rape did not occur only because of how the victim chose to react to the situation, not because of any lack of intent on the part of the defendant. Thus, there was sufficient evidence to support a conviction for kidnapping in the first degree committed by the alternative means of intentionally abducting the

victim to facilitate the commission of rape in the first degree.

2. . Viewing the evidence in the light most favorable to the prosecution, the evidence was sufficient for a rational trier of fact to have found beyond a reasonable doubt that the defendant committed kidnapping in the first degree by the alternative means of an abduction with the intent to inflict extreme emotional distress on the victim.

In this case, the jury was also instructed that the defendant could be found to have committed kidnapping in the first degree if it had been proved beyond a reasonable doubt that the defendant had intentionally abducted the victim with the intent to inflict extreme emotional distress upon her. Trial RP 1239-1240. The defendant contends that there was not sufficient evidence to support that alternative means of committing first-degree kidnapping.

The term “extreme mental distress” is not defined by statute. However, it requires more mental distress than a reasonable person would feel from being restrained by deadly force, since such restraint by itself would constitute kidnapping in the second degree. State v. Harrington, 181 Wn. App. 805, 818-819, 333 P.3d 410 (2014). The issue is whether the defendant intended to inflict extreme emotional distress upon the victim, and therefore the focus must be on what the evidence proves concerning the mental state of the defendant. Harrington, 181 Wn. App. at 819.

In the present case, the defendant forced his way into the victim's apartment, shoved her back so that her head hit the bathroom door frame, covered her mouth with his hand, and locked the door. Trial RP 765-766, 772-773. He used his body to force her into the living room and ordered her to sit down. He repeatedly told her she could not leave. Trial RP 771, 774-775. In the course of restraining the victim in the living room, he displayed a firearm. Trial RP 802-804. This was all very stressful to the victim, as anyone in the defendant's position would expect it to be. Trial RP 769. However, it was stress resulting from the abduction which involved the threat of deadly force, and so by itself could not be sufficient to constitute the extreme mental distress required for kidnapping in the first degree.

However, the defendant went further than that in causing mental distress to the victim. He told her that if he could not have her, no one could, which caused her to become frightened of what he intended to do. Trial RP 800-801. The he told her he was going to kill her there at the apartment and then kill himself. The victim believed he was going to follow through with this threat. Trial RP 804-806. The defendant then continued to keep the victim restrained there in the apartment for some time, while he was still armed with the firearm, and while the victim had no way of preventing the

defendant from doing what he had threatened to do. In other words, the victim was left to contemplate her impending death. The obvious purpose of the defendant in saying such things to the victim after she was already restrained and in his control, and while he was armed with a deadly weapon, was to inflict extreme emotional distress on her.

In State v. Harrington, supra, Harrington restrained his wife in a bedroom by pulling out a gun and pointing it at her. Distress from that alone would have been stress resulting from the abduction itself. However, Harrington added an additional layer of mental distress by threatening to kill the victim.

. . . We note that a victim can be restrained by deadly force without the perpetrator actually threatening to kill the victim. The perpetrator may restrain the victim by aiming the gun at the victim and telling the victim not to move or leave the room without specifically telling the victim he intends to kill her. Actually threatening to kill the victim under circumstances where the victim believed she would die immediately can add a layer to the mental distress.

Harrington, 181 Wn. App. at 819. In Harrington, the Court of Appeals found that the added layer of mental distress in that case constituted sufficient evidence to support a conviction of first degree kidnapping based on the alternative means of intending to inflict extreme emotional distress. Harrington, 181 Wn. App. at 819-820. The same conclusion should be

reached in the present case. The Court in Harrington noted that causing a person to reasonably believe she is about to die is about as extreme as mental distress can be. Harrington, 181 Wn. App. at 819. Therefore, a rational trier of fact could conclude beyond a reasonable doubt that the threats made by the defendant in this case, while he had the defendant in his control and had the means to cause her death, were made with the intent to inflict extreme mental distress upon her.

In Harrington, the court noted that defendant Harrington testified that he only wanted to kill himself, not his wife. The court found that even if it was assumed that was the case, the evidence would still have been sufficient to support a conviction for first-degree kidnapping based upon the alternative means of intending to inflict extreme mental stress. That was because severe mental distress would follow from being told that he was going to kill himself in the victim's presence. Harrington, 181 Wn. App. at 820.

The same applies in the present case. Here, the defendant denied to police that he had threatened to kill the victim, but admitted he had threatened to kill himself. Trial RP 572. Even if that were so, such evidence would support a rational juror finding sufficient evidence to convict the defendant of first-degree kidnapping based on an intent to inflict extreme

mental distress for the reasons stated in State v. Harrington, supra.

3. Since the defendant was not convicted of rape in the first degree, the merger doctrine has no application to this case and does not invalidate the defendant's conviction for kidnapping in the first degree.

The defendant argues that in this case, by application of the doctrine of merger, the first-degree kidnapping charge and the first-degree rape charge were essentially the same charge, since the kidnap was charged as incidental to the rape. The defendant therefore argues that since the jury acquitted on the rape charge, the kidnapping charge could not result in a separate conviction.

However, this claim is based upon an inaccurate application of the merger doctrine. Merger is a doctrine of statutory interpretation used to determine whether the Legislature intended to impose multiple punishments when a defendant commits an act that violates more than one statutory provision. In re Fletcher, 113 Wn.2d 42, 50-51, 776 P.2d 114 (1989). The merger doctrine may apply in cases where a crime can be elevated to a higher degree by proof of another crime proscribed elsewhere in the criminal code. Thus, second-degree rape can be elevated to first-degree rape by reason of the rape victim having been kidnapped. State v. Eaton, 82 Wn. App. 723, 730, 919 P.2d 116 (1996).

In State v. Johnson, 92 Wn.2d 671, 600 P.2d 1249 (1979), the Washington Supreme Court made clear that the merger doctrine is concerned with multiple punishments, not multiple charges. The court concluded it was the intent of the Legislature that when a crime such as kidnapping was involved in the perpetration of a rape, such as to elevate a rape conviction to that of first-degree rape, then the separate conviction for kidnapping should be dismissed as having merged into the first-degree rape conviction, thereby preventing multiple punishments. Johnson, 92 Wn.2d at 676-678.

However, the State Supreme Court in Johnson clarified that the first-degree kidnapping and the first-degree rape remained separate charges. Thus, a prosecutor could charge both even where the potential for merger existed. The jury might not be persuaded that the first-degree rape charge had been proven, while at the same time finding the defendant guilty of the first-degree kidnapping charge, in which case the kidnapping conviction would stand because there was nothing to merge it with. Johnson, 92 Wn.2d at 680-681. Merger would only come into play if there were convictions for both crimes, at which point the kidnapping conviction would merge into the conviction for first-degree rape. Johnson, 92 Wn.2d at 681-682.

Thus, in State v. Hudlow, 36 Wn. App. 630, 676 P.2d 553 (1984),

Hudlow was convicted of two counts of first-degree rape, two counts of first-degree kidnapping, and one count of second-degree assault. His co-defendant, Harper, was convicted of one count of first-degree rape and two counts of first-degree kidnapping. Applying the merger doctrine as interpreted in State v. Johnson, supra, the Court of Appeals ruled that both of Hudlow's first-degree kidnapping convictions must merge into his two first-degree rape convictions. Similarly, one of Harper's first-degree kidnapping convictions merged into the conviction for the first-degree rape conviction involving the same victim. However, Harper's other first-degree kidnapping conviction remained in effect as a separate conviction because he had not been found guilty of raping the other victim. Hudlow, 36 Wn. App. at 631-633. In other words, that first-degree kidnapping conviction of Harper's did not merge because there was nothing for it to merge with.

The merger doctrine did not make the first-degree kidnapping charge and the first-degree rape charge in this case the same offense. The merger doctrine could never do that in any case. The merger doctrine comes into play only when there are convictions for both such charges in a single case, and the criminal acts involved in the kidnapping conviction are the same ones responsible for elevating the rape conviction from second degree to first

degree, in which case the separate kidnapping conviction merges with the first-degree rape conviction to avoid multiple punishments. Since that situation did not arise in this case, the merger doctrine has no application to this case.

4. Because the stalking conviction in this case was previously vacated, the defendant cannot show that his claim of error in the issuance of the search warrant in June, 2012 could have resulted in any actual or substantial prejudice to the defendant in the trial of this cause, and that therefore this claim should not be considered at this time.

In this Personal Restraint Petition, the defendant seeks to challenge the issuance of the search warrant for the search of the defendant's vehicle after the defendant was found to have been following Sara Wojdyla's vehicle on June 22, 2012. That same attempt was made in the direct appeal in this case. In the Court of Appeals decision on that appeal, the court vacated the conviction for the stalking charge which was the only charge derived from that June incident. All the other convictions were for charges relating to the actions of the defendant on May 14, 2012. Therefore, the court found it to be unnecessary to consider the defendant's claims regarding the search warrant. State v. Johnson, 185 Wn. App. at 658, n. 1. In the defendant's Motion to Reconsider this decision, the defendant argued that the search warrant issue should have been considered because the evidence seized pursuant to that

search warrant tainted the entire trial. That Motion to Reconsider was denied.

Now the defendant again contends that the search warrant issue should be considered because the evidence seized pursuant to the warrant tainted the entire trial in this case. A claim that was rejected on its merits on direct appeal should not be considered in a personal restraint petition unless the petitioner can show that reconsideration will serve the ends of justice. In re Personal Restraint of Vandervlugt, 120 Wn.2d 427, 432, 842 P.2d 950 (1992). Of course, in this instance, the claim against the search warrant was not decided on its merits. However, what was decided was that there was no reason to consider the issue once the stalking conviction had been reversed.

When a defendant seeks relief through a personal restraint petition, the defendant must show that a claim of error such as the one asserted here resulted in actual and substantial prejudice. In re Personal Restraint of Davis, 152 Wn.2d 647, 672, 101 P.3d 1 (2004). In meeting this burden, the defendant cannot rely solely on conclusory allegations. In re Personal Restraint of Cook, 114 Wn.2d 802, 813-814, 792 P.2d 506 (1990). The defendant's claim of taint throughout the entire trial fails to satisfy that burden. For that reason, this court should refuse to consider the defendant's claims regarding that search warrant.

The evidence admitted at trial from the search of the defendant's vehicle pursuant to the search warrant consisted of a woman's black wig, a pair of sunglasses, and two receipts. The defendant was contacted in the vehicle on June 22, 2012. Trial RP 675. The vehicle was impounded on June 23, 2012. Trial RP 682. The search warrant was granted on June 25, 2012 and the items seized that day. Trial RP 684-685. Exhibits 79 and 99, photos of these items, were admitted through the testimony of witness Trooper Jason Caton. Trial RP 685. The items themselves were also admitted through his testimony. Trial RP 688-691.

The defendant asserts that these items were relied on heavily by the State in arguing that the defendant's criminal intent on May 14, 2012 had been proved. However, not only is that not accurate, in fact the State never made any effort in closing argument to link these items to the events of May 14, 2012.

The defendant cites comments by the prosecutor in closing argument that the jury instructions state that each charge needs to be evaluated individually, but that evidence can overlap and apply to multiple counts. Trial RP 1255. However, these were simply general, and accurate, remarks about the evaluation of evidence overall. There was no reference to the items

seized from the car in the course of these remarks. There was no specific attempt to link that evidence in any way with the events of May 14. The defendant argues that the prosecutor's remarks encouraged the jury to apply all evidence to all charges, regardless of relevance. However, since the prosecutor never said such a thing, that claim is unfounded.

Further into the closing argument, the prosecutor made a reference to the wig found in the car in distinguishing between direct evidence and circumstantial evidence.

You have the troopers from Pierce County who saw the defendant's vehicle in the proximity of Ms. Wojdyla's on June 22<sup>nd</sup>, who talked to the defendant, who saw the wig. So you have direct evidence. But you also have a lot of circumstantial evidence. And what is circumstantial? . . .

Trial RP 1256. Again, there was no reference to the events of May 14, nor any suggestion in this brief reference to the wig that it was evidence that pertained to anything but the stalking charge.

A little later in the prosecutor's continuing discussion of the distinction between direct and circumstantial evidence, he returned once again to these items of evidence.

We saw the wig and the receipts that are – the fact that the wig was bought two-and-a-halfish hours before he was stopped by the State Patrol. Again, that's circumstantial evidence. Mostly, all of these are of his intent, and we'll get to that in a bit. What does your

common sense tell you the reason he had these items were?

Trial RP 1258. Again, there was no attempt to link these items to the events of May 14. This was simply an argument that these items were relevant to the defendant's intent in the context of the stalking incident.

In the entire duration of the prosecutor's closing argument, there was only one other point at which there was any reference to these items seized pursuant to the warrant. That occurred in the context of the prosecutor's argument as to what evidence supported the stalking charge.

The items that were found in the car, circumstantial evidence of trying to hide his identity? Whether it be in the car? Okay. Whether it maybe out of the car later? Who knows. Maybe to hide her identity at some point. Why else did he have those items? A wig that was bought two-and-a-half hours before he was stopped? That's an awfully big coincidence. . . .

Trial RP 1296. There was absolutely no attempt here to link this evidence to the events of May 14. The items were referred to as circumstantial evidence of his intent to disguise either his identity in the context of the stalking, or perhaps Ms. Wojdyla's identity at some point during the defendant's violation of the no-contact order in effect at that time.

Finally, in the prosecutor's rebuttal argument, there was one brief reference to the wig and sunglasses, suggesting that the defendant may have had those in order to use them later in watching the victim. Trial RP 1374.

Again, the only intent referred to was as to the stalking charge.

Thus, the State made no effort whatsoever to link this evidence to anything beyond the stalking charge alleged to have occurred on June 22, 2012, more than a month after the May 14<sup>th</sup> date of all the other charges. The defendant cannot cite any attempt by the prosecutor to link this evidence to the May 14<sup>th</sup> charges because there was not any. This, of course, is why the Court of Appeals previously found it unnecessary to address the defendant's claims against the 6-25-12 search warrant for the search of the defendant's vehicle.

For the reasons set forth above, the State asks that this court find that the defendant has not made any showing that his allegations of error in the issuance of the search warrant, even if accurate, resulted in any actual and substantial prejudice in the trial of this cause, and that it is therefore unnecessary to address these allegations, just as the Court of Appeals concluded at the time of the direct appeal. However, should this court rule otherwise, the State presents below its arguments as to why these claims against the search warrant are not well supported.

5. The search warrant issued on June 25, 2012, in Pierce County Superior Court, was constitutionally sufficient under both the Fourth Amendment and Art. I, § 7.

Johnson raises a number of claimed errors regarding the search warrant obtained by Washington State Patrol officers on June 25, 2012, and served on a black BMW that was driven by Johnson on the evening of June 22, 2012, shortly before he was arrested for violation of a no-contact order. CP 231-39. Johnson sought suppression in the trial court of the evidence seized from his car. 1/28/13 RP 103-21.

a. There was probable cause to believe evidence of a crime would be found in the BMW.

A search warrant must be based upon probable cause, which is defined as “the existence of reasonable grounds for suspicion supported by circumstances sufficiently strong to warrant a man of ordinary caution to believe the accused is guilty of the indicated crime. It is only the probability of criminal activity and not a prima facie showing of it which governs the standard of probable cause.” State v. Clark, 143 Wn.2d 731, 748, 24 P.3d 1006 (2001) (citing to State v. Seagull, 95 Wn.2d 898, 906-07, 632 P.2d 44 (1981)). The issuing magistrate may draw reasonable inferences from the facts set forth in the affidavit, and his or her determination is given great deference. Clark, 143 Wn.2d at 748. The magistrate’s decision will be

reversed only on a showing of abuse of discretion. The affidavit for the search warrant is to be read in a commonsense manner, and any doubts should be resolved in favor of the warrant. Id. A search warrant is entitled to a presumption of validity. State v. Wolken, 103 Wn.2d 823, 827-28, 700 P.2d 319 (1985). It is a “deliberately deferential” standard of review. State v. Chenoweth, 160 Wn.2d 454, 477, 158 P.3d 595 (2007)

Probable cause may be based upon evidence that would be inadmissible at trial, such as hearsay, a confidential informant’s tip, or other “unscrutinized” evidence. Chenoweth, 160 Wn.2d at 475. Probable cause is more than suspicion or speculation, but less than certainty. Id. at 476.

Johnson asserts that the affidavit contains nothing more than boilerplate language, the language disapproved in State v. Thein, 138 Wn.2d 133, 977 P.2d 582 (1999), and the information in the affidavit relied on propensity evidence.

In Thein, the police had evidence connecting the defendant with a marijuana grow operation in a house he owned but rented to others. Thein, 138 Wn.2d at 137-38. They obtained a search warrant for Thein’s own residence based on nothing more than stock language that drug traffickers are known to keep drugs, records, and related paraphernalia at their residences.

The affidavit lacked any evidence to believe specifically that Thein would have evidence of a crime at his home, *i.e.*, that there was any nexus between the place and the crime. *Id.* at 138-39, 147. In Johnson's case, however, even though there was some boilerplate language in the affidavit regarding conduct common to persons who violate domestic violence protection orders, CP 232, the affidavit also contained the following information: (1) the victim reported that she had a no-contact order against her ex-boyfriend and she was being followed by a black BMW registered to him, that it swerved in and out of traffic without signaling, and it changed lanes when she did, CP 232-33; (2) the affiant observed the BMW make an unsafe lane change and turn into a parking lot at the same time the victim pulled off into a different parking lot, CP 233; (3) the driver of the BMW, identified as Johnson, didn't know the name of the friend he was in the area to meet, CP 233; (4) Johnson had been arrested for stalking the same victim during an incident in which he held her at gunpoint and forcibly raped her, CP 234; (5) Johnson had a history of carrying firearms on his person and in his vehicle, and had a firearm on his person when he was arrested following the earlier incident. CP 234. The affidavit did not specify when that earlier incident occurred.

The above facts are far more than boilerplate language and permitted

an issuing magistrate to make a reasonable inference that Johnson likely had a gun in the car at the time of the June 22 incident. While propensity evidence might not be admissible at trial, ER 404(b), the facts contained in affidavits of probable cause need not meet the same standards governing admissibility of evidence at trial. State v. Withers, 8 Wn. App. 123, 125, 504 P.2d 1151 (1972). Indeed, Johnson's habit of carrying a firearm is very relevant to the likelihood that he was carrying one in the vehicle while he was following the victim.

The facts contained in the affidavit were more than sufficient to permit an ordinarily cautious person to form a reasonable suspicion that Johnson was guilty of the crime of violation of a protection order with firearm restrictions. CP 236, Clark, 143 Wn.2d at 748. Johnson was driving in a very suspicious manner and the trooper had information from Lacey Police officers that a gun had been involved in an earlier incident with the same victim. The manner in which Johnson followed the victim certainly leads to the conclusion that he intended to do something that would constitute a crime, such as he had done before. In order to do that, he would almost certainly have carried in the car whatever instruments ("weapons or other things by means of which a crime has been committed or reasonably appears

about to be committed,” CP 236) he planned to use to accomplish that goal. The nexus is established because Johnson was driving the car at the time he was committing the crime.

b. The warrant was not overbroad.

Johnson argues that the search warrant was so broad that it permitted the officers to search for evidence of any crime. “Whether a search warrant contains a sufficiently particularized description is reviewed de novo. State v. Perrone, 119 Wn.2d 538, 549, 834 P.2d 611 (1992).

The officers executing this warrant were authorized to:

Seize, if located, the following property or person(s): All firearms, any containers, implements, fruits of the crime, equipment or devices used or kept for illegal purposes, evidence of ownership to such property or rights of ownership or control of said property; records including any notebooks or written instruments or electronic records, associated with any firearms found in violation of RCW 9.41.098.

CP 236.

General exploratory searches are unreasonable. Thein, 138 Wn.2d at 149. A determination that a warrant meets the particularity requirement of the Fourth Amendment is reviewed de novo. State v. Stenson, 132 Wn.2d 668, 691, 940 P.2d 1239 (1997). The person executing the warrant must be able to identify the property to be seized with reasonable certainty. Id., at

691-92.

General warrants, of course, are prohibited by the Fourth Amendment. “The problem [posed by the general warrant] is not that of intrusion, per se, but of a general, exploratory rummaging in a person’s belongings. . . .”

Id., at 691 (citing to other cases). When the precise identity of items to be sought cannot be determined at the time the warrant is issued, a generic or general description is sufficient when probable cause is shown and it is impossible to give a more specific description. Id., at 692.

A common sense reading of the warrant here does not support Johnson’s argument. In the initial paragraph, there is a finding for probable cause for the crime of “Violation of Protection order with Brady “Firearm” Restrictions.” CP 236. The warrant authorizes seizure of “fruits of *the* crime” ( emphasis added), and “records . . . associated with any firearms found in violation of RCW 9.41.098.” A reasonable person would read this warrant as permitting search for the listed items as they pertain to the crime for which probable cause was found, not all crimes.

A search warrant must describe the items to be seized with such particularity as is reasonable and practical under the circumstances. A warrant is not constitutionally defective when it limits the officers’ discretion on what is to be seized.”

State v. Reid, 38 Wn. App. 203, 212, 687 P.2d 861 (1984). In Reid, the

challenged search warrant used the phrase “any other evidence of the homicide,” which the reviewing court found adequate to prevent a general exploratory search. Id.

RCW 9.41.098 addresses firearms which a court may order forfeited—in other words, it is unlawful for anyone to own them under the circumstances described. Under the plain view doctrine, officers could seize any contraband located even if the warrant did not authorize that specific item. *See State v. Chambers*, 88 Wn. App. 640, 645, 649, 945 P.2d 1172 (1997).

The officers executing this search warrant did not have unbridled discretion, and the factors identified in *State v. Higgins*, 136 Wn. App. 87, 91-92, 147 P.3d 649 (2006), were satisfied. It was not overbroad.

d. The items seized from Johnson’s car were all implements of the crime of violation of a protection order.

Johnson argues that the items seized were not specifically listed in the warrant and not admissible under the plain view doctrine. Appellant’s Opening Brief at 21. The warrant identified the crime for which probable cause was found as violation of a protection order with a firearm restriction. CP 236. It authorized the seizure of implements of the crime. Id. It is a reasonable inference that a wig and sunglasses could be implements of the

crime of violation of a protection order, given that they would be effective disguises for either Johnson or the victim. The warrant also authorized the seizure of evidence of ownership of such implements, and receipts are generally considered to be evidence of ownership. The trial court did not err in admitting all of the items taken from the black BMW.

5. The evidence in this case was sufficient to support the jury's verdicts that the defendant was armed with a firearm at the time he committed burglary in the first degree and when he committed kidnapping in the first degree.

In this case, the State alleged that the defendant was armed with a firearm during the commission of the offense of burglary in the first degree, and during the commission of the offense of kidnapping in the first degree. The jury found that the State had proved both of these firearm allegations beyond a reasonable doubt. A person is armed with a firearm if that weapon is easily accessible and readily available for use, either for offensive or defensive purposes, and there is a connection between the defendant, the weapon, and the crime. State v. Easterlin, 159 Wn.2d 203, 208-209, 149 P.3d 366 (2006).

In the present case, the evidence showed that the defendant had a firearm at his waist in a holster from the time he forced his way into the

victim's apartment until he took the gun off and placed it down while accompanying the victim into the bedroom. Trial RP 802-804, 813-814. The defendant had admitted as much to Detective Newcomb. Trial RP 573-574. Thus, the gun was easily accessible and readily available for offensive or defensive use.

In Easterlin, supra, an officer observed that there was a gun on Easterlin's lap at a time when it was proved that the defendant was unlawfully in possession of a controlled substance. The Washington Supreme Court found that there was more than sufficient evidence to support a connection between Easterlin and the weapon. Easterlin, 159 Wn.2d at 210. Thus, in the present case, there was clearly ample evidence to show such a connection.

In Easterlin, the State Supreme Court further found that where the defendant is in actual possession of the firearm during the commission of the crime, as the evidence proved in the present case, it will rarely be that there is not also a connection between the weapon and the crime. Easterlin, 159 Wn.2d at 209. In the present case, the defendant argues there was not such a connection because the defendant often carried a gun and was licensed in Washington to carry a concealed firearm. However, he had seldom brought

the weapon into the victim's apartment in the past, normally placing it in the glove compartment of his car before coming inside. Trial RP 802-803. Further, he displayed the gun to the victim at a time he was refusing to leave her apartment despite having no permission to be there. This display of the firearm was also at time he was preventing the victim from leaving that apartment against her will. Trial RP 571-573, 766-768, 771, 802-803. Therefore, the evidence showed a connection between the weapon and both crimes.

The defendant cites State v. Brown, 162 Wn.2d 422, 173 P.3d 245 (2006). However, Brown is easily distinguishable. That case concerned a burglary that had occurred while the resident was not at home. When the resident arrived home, after Brown and his accomplice had left, he found his unloaded rifle on the bed of the master bedroom, a short ways from the closet where it had been stored. It appeared it had been moved during the burglary, but not stolen. Therefore, there was no evidence of an intent or willingness to use the gun in furtherance of the crime. On this basis, the State Supreme Court found that there was not proof of a connection between the weapon and the crime. Brown, 162 Wn.2d at 432-433.

In the present case, not only was the defendant willing to use the gun

to further the crime, display of the gun was used to reinforce both the defendant's refusal to end his unpermitted presence at the victim's apartment, and also his illegal restraint of the victim therein. Thus, there was an evidentiary basis for the jury to find it proved that the defendant was armed during the commission of these crimes.

6. The trial court's instructions to the jury explaining why photographs of certain items admitted into evidence would be provided to the jury during deliberations instead of the items themselves, did not constitute a comment on the evidence.

During the trial, the court explained to the jury that certain photographs of items in evidence had also been admitted into evidence so that the photos would go back to the jury room for deliberations rather than the items themselves. The items included an asp, a handsaw, and a knife. The court explained that this was being done to keep potentially dangerous items from being handled by the jury. An exception was made for the firearm in evidence since it had been rendered inoperable. The judge also cautioned jurors that while the items themselves were being published to the jury, that jurors should not deploy the asp or remove either the knife or the saw from its covering. Trial RP 710-712.

The defendant now contends that these instructions to the jury constituted a judicial comment on the evidence. Under article IV, section 16

of the Washington State Constitution, a judge is prohibited from conveying to the jury the judge's personal opinion concerning the merits of the case or from instructing the jury that a fact at issue has been established. *State v. Hartzell*, 156 Wn.2d 918, 938, 237 P.3d 928 (2010). A comment on the evidence occurs only if the court's attitude toward the merits of the case or the court's evaluation to a disputed issue is inferable from the statement. *State v. Hansen*, 46 Wn. App. 292, 300, 730 P.2d 706 (1986). Generally, the touchstone of error in a trial court's comment on the evidence is whether the feeling of the trial court as to the truth value of the testimony of a witness has been communicated to the jury. *State v. Brush*, 183 Wn.2d 550, 565-566, 353 P.3d 213 (2015).

The judge's reference to the asp, saw, and knife as potentially dangerous items added nothing to what would have been obvious to any juror, namely that a person could be injured by such an item if it was improperly handled. The defendant contends that the comments bolstered the prosecutor's argument in support of the first-degree burglary charge that these items constituted deadly weapons. Trial RP 1263-1264. However, the court never used the term "weapon" when referring to these items, nor did the judge use the term "deadly". The definition of a deadly weapon given to the

jury focused on the circumstances in which the item was used, threatened to be used, or attempted to be used. Trial RP 1238. Of course, the judge made no reference to the allegations in the case concerning any use or threatened use of these items while explaining to the jury how this evidence would be provided to the jury for its deliberations.

Moreover, the defendant has not identified any serious dispute by defense counsel in closing argument regarding whether these items by their nature had the potential to be deadly weapons. Rather, instead of focusing on the nature of the items, defense counsel instead chose to argue that the defendant had the items in his bag for innocent purposes having nothing to do with his presence at the victim's apartment. Trial RP 1338-1340.

As noted in the cases cited above, the core concern of the prohibition against a judicial comment on the evidence is that a judge not convey directly or indirectly the court's attitude toward the merits of the case. Simply conveying a concern that no juror be injured by an object placed into evidence would be understood by any rational person as the judge performing his responsibility to procedurally manage the trial, not as a comment on matters at issue in the trial.

7. The defendant has failed to show that his trial counsel provided ineffective assistance.

The defendant has made multiple claims that his trial counsel was ineffective in his representation of the defendant. A defendant is constitutionally entitled to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 688, 104 S. Ct. 2052, 80 L. Ed.2d 674 (1984). When a defendant claims ineffective assistance of counsel, the courts apply a two-prong test: first, whether counsel's performance fell below an objective standard of reasonableness; second, whether any failure of counsel in that regard resulted in actual prejudice to the defendant. Strickland, 466 U.S. at 690-692. To prevail on his claim of ineffective assistance, a defendant must satisfy both prongs of this test. Strickland, 466 U.S. at 687.

When the courts consider a claim of ineffective assistance, there is a strong presumption that counsel rendered adequate assistance and rendered reasonable professional judgment. State v. Garrett, 124 Wn.2d 504, 520, 881 P.2d 185 (1994). To prove deficient performance, the defendant must show that trial counsel's conduct could not be characterized as a legitimate trial strategy or tactic. State v. Mierz, 127 Wn.2d 460, 471, 901 P.2d 286 (1995).

Any deficient performance on the part of counsel will not be found to have prejudiced the defendant unless there is a reasonable probability that,

but for the error or errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Garrett, 124 Wn.2d at 519.

a. Defense counsel's references to harassment in his comments about the stalking charge in closing argument did not constitute ineffective assistance of counsel.

The defendant contends that his trial counsel rendered ineffective assistance by acknowledging that the defendant had harassed the victim by being annoying and bothersome at times. Trial RP 1344. The defendant argues this was prejudicial because the elements of the crime of harassment, as alleged against him, required more than proof of annoying behavior. However, the comment that is challenged was not made in reference to the charge of harassment in this case. Rather, it was made in the context of arguing why the State had failed to prove the charge of stalking. Counsel was making the point that evidence of harassment in the form of annoying behavior could not satisfy the State's burden to prove stalking. Trial RP 1344-1346.

Defense counsel never acknowledged that the State had proved the elements of the crime of harassment as charged against the defendant in this case. The jury was instructed that to find the defendant

guilty of that charge, the State had to prove that the defendant had threatened to kill the victim, and that the victim reasonably believed that the threat to kill would be carried out. Trial RP 1243-1244. Thus, the charge of harassment concerned the events of May 14, since that was the only evidence regarding a threat to kill. As regards that threat, defense counsel argued that the victim's claims about that threat had changed over time and were not credible. Trial RP 1243-1244. Therefore, it is simply not accurate to contend that defense counsel conceded the defendant's guilt as to the charge of harassment pending against the defendant.

b. Defendant's argument during closing argument concerning the firearm allegations did not constitute ineffective assistance of counsel.

When defense counsel presented his argument regarding the firearm allegations, he began by stating that the defendant had been armed in the limited sense that he had a gun on him when he was at the victim's apartment, which of course was something the defendant had readily admitted to the police. However, defense counsel then argued that the legal concept of being armed, which was what the State had to prove, involved more than that. He emphasized that the State had to prove a connection between the gun and the crime, and argued that the State had failed to prove that

connection beyond a reasonable doubt because the defendant's possession of the gun was based on his common practice and was unrelated to what occurred in the victim's apartment. Trial RP 1342-1343.

The defendant contends that defense counsel conceded the legal conclusion that the defendant was armed, and thereby diminished the State's burden of proof, and in this way rendered ineffective assistance of counsel. This is a totally inaccurate description of defense counsel's argument. Defense counsel's focus on the difference between being armed in common use of that term versus the legal concept of being armed, and the additional proof requirements in regard to the latter, was a tactical choice designed to highlight what was truly at issue with regard to the firearm allegations.

c. Defendant's choice to call the prosecutor to the stand as a defense witness did not constitute ineffective assistance of counsel.

During the defense case, defense counsel called the prosecutor to the stand to ask him about whether the victim had mentioned to the prosecutor before trial some of the things she had testified about at trial. The prosecutor repeatedly responded that he did not recall the victim having mentioning these things to him. The prosecutor repeatedly acknowledged that if he had heard her say such things, he would have documented it. Trial RP 1166-

1167.

The defendant now contends that defense counsel rendered ineffective assistance of counsel by choosing to have the prosecutor testify as he did, knowing beforehand of what answers he could expect from the prosecutor. However, defense counsel's decision to do this was a reasonable tactical choice. The obvious implication of the prosecutor's answers was that the victim had not mentioned these things to the prosecutor because had she done so, the prosecutor would have documented those answers, and he had not done that. Consequently, this was arguable evidence that the victim was changing her story over time, and therefore was not credible.

In closing argument, defense counsel simply claimed that the prosecutor's testimony showed that she had never said these things. Trial RP 1330. In rebuttal, the prosecutor protested that he had not actually said that in his testimony. The defendant contends the prosecutor committed misconduct at this point by calling defense counsel a liar. However, this misconstrues the prosecutor's comments. The prosecutor simply tried to make the point that people make mistakes, and that defense counsel failing to recall something accurately was not the same as lying, and so when the victim failed to recall something, this did not mean that she was lying either. Trial RP 1351.

d. The defendant has not shown ineffective assistance of counsel based on counsel's decision not to make further argument when the sentencing court declined to hear from the defendant's aunt at the sentencing hearing.

At the sentencing hearing, defense counsel asked the court to hear from the defendant's aunt, Gloria Johnson, who is now defendant's counsel for this personal restraint petition. The court declined to hear from Ms. Johnson. Sentencing Hearing RP 1415-1416 The defendant contends that defense counsel rendered ineffective assistance by not pursuing further argument to the court on this matter. However, the court had ruled and had not invited further argument from defense counsel. Moreover, the court had exercised its discretion, which the defendant acknowledges the court had a right to do.

Furthermore, the defendant has not shown any prejudice in this regard. Any such prejudice would necessarily be limited to the sentencing, not the trial. Yet, the defendant has already had a re-sentencing due to the stalking conviction having been vacated. The defendant was represented by Ms. Johnson at that hearing, and so obviously had the benefit of her remarks. See Appendix C.

e. Defense counsel did not provide ineffective assistance at the sentencing hearing by failing to argue for an exceptional sentence below the standard range.

The defendant contends that defense counsel rendered ineffective assistance of counsel by failing to argue for an exceptional sentence below the standard sentence range, based on an argument that the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in the light of the purposes of the Sentencing Reform Act. However, the defendant has shown no likelihood that the outcome would have been any different had counsel made such an argument, given that the sentencing court chose to sentence the defendant at or near the top of each sentence range.

Furthermore, the defendant has already had the benefit of a resentencing. At that hearing, he was represented by the counsel who represents him on this personal restraint petition. The opportunity was there to argue for an exceptional sentence downward. However, the sentencing court did not choose to impose such a sentence. See Appendix D.

IV. CONCLUSION

For the reasons set forth above, the State asks that this personal restraint petition be denied.

RESPECTFULLY SUBMITTED this 13th day of March, 2017.

JON TUNHEIM  
Prosecuting Attorney

  
\_\_\_\_\_  
JAMES C. POWERS/WSBA #12791  
Deputy Prosecuting Attorney

# APPENDIX

## A

E-FILED  
SUPERIOR COURT  
THURSTON COUNTY, WA  
Feb 6, 2013 2:25 PM  
BETTY J. GOULD  
County Clerk

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

STATE OF WASHINGTON,  
  
vs.  
  
AARON MERCEDES JOHNSON  
DESC: B/M/510/190/BRN/BLK  
DOB: 03/29/1984  
SID: WA25230655; FBI: 444237ED8  
BOOKING NO: C0174117  
PCN: 767106297

Plaintiff,  
  
  
  
  
  
  
  
  
  
Defendant.

NO. 12-1-00645-1

**SECOND AMENDED INFORMATION**

(AMENDED TO CORRECT RCW IN COUNT III)

CRAIG E. JURIS  
Deputy Prosecuting Attorney

Jointly Charged with Co-Defendant(s):  
N/A

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant with the following crime(s):

**COUNT I - BURGLARY IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON-FIREARM/DOMESTIC VIOLENCE, RCW 9A.52.020(1), RCW 9.94A.825, RCW 9.94A.533(3) AND RCW 10.99.020 - CLASS A FELONY:**

In that the defendant, AARON MERCEDES JOHNSON, in the State of Washington, on, about, or between May 13, 2012 and May 14, 2012, with intent to commit a crime against Sara M. Wojdyla, a family or household member, pursuant to RCW 10.99.020, or property therein, did enter or remain unlawfully in a building and in entering such building or while in such building or in immediate flight therefrom, the actor or another participant in the crime was armed with a deadly weapon, or did assault any person. It is further alleged that during the commission of this offense, the defendant or an accomplice was armed with a deadly weapon, to-wit: a silver and black semi-automatic handgun..

**COUNT II - KIDNAPPING IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON-FIREARM/DOMESTIC VIOLENCE, RCW 9A.40.020, RCW 9.94A.825, RCW 9.94A.533(3) AND RCW 10.99.020 - CLASS A FELONY:**

In that the defendant, AARON MERCEDES JOHNSON, in the State of Washington, on, about, or between May 13, 2012 and May 14, 2012, did intentionally abduct Sara M. Wojdyla, with intent to hold that person for ransom or reward, or as a shield or hostage, or to facilitate the commission of a felony or flight thereafter, or to inflict bodily injury on that person, or to inflict extreme mental distress on that person or on a third person, or to interfere with the performance of any governmental function. It is further alleged that during the commission of this offense, the defendant or an accomplice was armed with a deadly weapon, to-wit: a silver and black semi-automatic handgun.

1 **COUNT III - RAPE IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY**  
2 **WEAPON-FIREARM/DOMESTIC VIOLENCE, RCW 9A.44.040(1)(a) AND/OR (1)(b)**  
3 **AND/OR (1)(c), RCW 9.94A.825, RCW 9.94A.533(3) AND RCW 10.99.020- CLASS A**  
4 **FELONY:**

5 In that the defendant, AARON MERCEDES JOHNSON, in the State of Washington, on, about, or  
6 between May 13, 2012 and May 14, 2012, did engage in sexual intercourse with Sara M. Wojdyla  
7 by forcible compulsion where the defendant used or threatened to use a deadly weapon or what  
8 appears to be a deadly weapon and/or where the defendant kidnapped the victim and/or the  
9 defendant inflicted serious physical injury to Sara M. Wojdyla. It is further alleged that during the  
10 commission of this offense, the defendant or an accomplice was armed with a deadly weapon, to-  
11 wit: a silver and black semi-automatic handgun.

12 **COUNT IV - FELONY HARASSMENT/DOMESTIC VIOLENCE, RCW**  
13 **9A.46.020(2)(b)(ii) AND RCW 10.99.020 - CLASS C FELONY:**

14 In that the defendant, AARON MERCEDES JOHNSON, in the State of Washington, on, about,  
15 or between May 13, 2012 and May 14, 2012, without lawful authority, knowingly threatened to  
16 kill Sara M. Wojdyla, a family or household member, pursuant to RCW 10.99.020, and the  
17 defendant's words or conduct placed Sara M. Wojdyla in reasonable fear that the threat would be  
18 carried out.

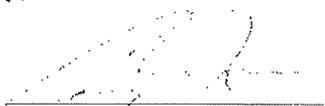
19 **COUNT V - FELONY STALKING/DOMESTIC VIOLENCE, RCW 9A.46.110(5)(b)(ii)**  
20 **AND RCW 10.99.020 - CLASS C FELONY:**

21 In that the defendant, AARON MERCEDES JOHNSON, in the State of Washington, on, about,  
22 or between April 25, 2012 and June 22, 2012, without lawful authority, intentionally and  
23 repeatedly harassed or followed Sara M Wojdyla, and thereby placed that person in reasonable  
fear that the defendant intended to injure any person or intended to injure the property of any  
person, with the intent to frighten, intimidate, or harass Sara M Wojdyla, or under circumstances  
where the defendant knew or reasonably should have known that Sara M Wojdyla was afraid,  
intimidated, or harassed; and furthermore, that this conduct was in violation of a protective order  
protecting Sara M Wojdyla.

**COUNT VI - ASSAULT IN THE FOURTH DEGREE/ DOMESTIC VIOLENCE, RCW**  
**9A.36.041 AND RCW 10.99.020 - GROSS MISDEMEANOR:**

In that the defendant, AARON MERCEDES JOHNSON, in Thurston County, Washington, on,  
about, or between May 13, 2012 and May 14, 2012, did intentionally assault Sara M. Wojdyla, a  
family or household member, pursuant to RCW 10.99.020.

DATED this 13th day of February, 2013.

  
CRAIG E. JURIS, WSBA #31076  
Deputy Prosecuting Attorney

STATE OF WASHINGTON  
County of Thurston

I, Linda Myhre Enlow, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, for Thurston County holding session at Olympia, do hereby certify that the foregoing is a true and correct copy of the original as the same appears on file and of record in my office containing two pages, IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court.

DATED: March 13, 2017

LINDA MYHRE ENLOW  
County Clerk, Thurston County, State of Washington  
By [Signature] Deputy

APPENDIX  
B

2013 JUN 11 AM 10:13

SUPERIOR COURT OF WASHINGTON  
COUNTY OF THURSTON

BETTY J. GOULD, CLERK

STATE OF WASHINGTON, Plaintiff,

vs.

No. 12-1-00645-1

AARON MERCEDES JOHNSON,  
Defendant.

FELONY JUDGMENT AND SENTENCE (FJS)

SID: WA25230655  
If no SID, use DOB: 03/29/1984  
PCN: 767106297 BOOKING NO. C0174117

Prison (non-sex offense)

I. HEARING

1.1 A sentencing hearing was held on June 11, 2013 and the defendant, the defendant's lawyer and the deputy prosecuting attorney were present.

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on MAY 3, 2013  
by  plea  jury-verdict  bench trial of

| COUNT | CRIME  | RCW  | DATE OF CRIME                        |
|-------|--|--|--------------------------------------|
| I     | BURGLARY IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON - FIREARM/DOMESTIC VIOLENCE  | 9A.52.020(1), 9.94A.825, 9.94A.533(3), 10.99.020 | MAY 13, 2012<br>THRU MAY 14, 2012    |
| III   | KIDNAPPING IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON- FIREARM/DOMESTIC VIOLENCE | 9A.40.020, 9.94A.825, 9.94A.533(3), 10.99.020    | MAY 13, 2012<br>THRU MAY 14, 2012    |
| IV    | FELONY HARASSMENT/DOMESTIC VIOLENCE  | 9A.46.020(2)(b)(ii), 10.99.020                   | MAY 13, 2012<br>THRU MAY 14, 2012    |
| V     | FELONY STALKING/DOMESTIC VIOLENCE  | 9A.46.110(5)(b)(ii), 10.99.020                   | APRIL 25, 2012<br>THUR JUNE 22, 2012 |
| VI    | ASSAULT IN THE FOURTH DEGREE/DOMESTIC VIOLENCE   | 9A.36.041, 10.99.020                             | MAY 13, 2012<br>THRU MAY 14, 2012    |

as charged in the SECOND AMENDED information.

- Additional current offenses are attached in Appendix 2.1.
- The court finds that the defendant is subject to sentencing under **RCW 9.94A.712**.
- A special verdict/finding for use of **firearm** was returned on Count(s) **I & II**. RCW 9.94A.602, 9.94A.533.
- A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) \_\_\_\_\_ . RCW 9.94A.602, 9.94A.533.
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) \_\_\_\_\_, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s) \_\_\_\_\_ . RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- For the crime(s) charged in Count **I, II, IV, V, VI** domestic violence was pled and proved. RCW 10.99.020.
- The crime charged in Count(s) **I, II, IV, V, VI** involve(s) **domestic violence**.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

| CRIME | CAUSE NUMBER | COURT (COUNTY & STATE) | DV* YES |
|-------|--------------|------------------------|---------|
|       |              |                        |         |
|       |              |                        |         |

\* DV: Domestic Violence was pled and proved

None of the current offenses constitute same criminal conduct except: Kidnapping I-DV & Felony Harassment-DV  
 (Count II) (Count IV)

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

| CRIME | DATE OF SENTENCE | SENTENCING COURT (County & State) | DATE OF CRIME | A or J Adult, Juv. | TYPE OF CRIME | DV* YES |
|-------|------------------|-----------------------------------|---------------|--------------------|---------------|---------|
| 1     | N/A              |                                   |               |                    |               |         |
| 2     |                  |                                   |               |                    |               |         |
| 3     |                  |                                   |               |                    |               |         |
| 4     |                  |                                   |               |                    |               |         |
| 5     |                  |                                   |               |                    |               |         |

\* 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 (adds one point to score).  
RCW 9.94A.525.
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:  
None of the prior convictions constitutes same criminal conduct except \_\_\_\_\_

2.3 SENTENCING DATA:

| COUNT | OFFENDER SCORE | SERIOUSNESS LEVEL | STANDARD RANGE | ENHANCEMENTS* | TOTAL STANDARD RANGE               | MAXIMUM TERM |
|-------|----------------|-------------------|----------------|---------------|------------------------------------|--------------|
| I     | 5              | VII               | 41-54 months   | 60 months (F) | 101-114 months                     | Life         |
| II    | 5              | X                 | 77-102 months  | 60 months (F) | 137-162 months*<br>197-222 months* | Life         |
| IV    | 5              | III               | 17-22 months   | N/A           | 17-22 months                       | 60 months    |
| V     | 5              | V                 | 33-43 months   | N/A           | 33-43 months                       | 60 months    |
| VI    | N/A            | GM                | 0-364 days     | N/A           | 0-364 days                         | 364 days     |

\* Total Standard Range when the firearm enhancements are run consecutively.  
\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present.  Additional current offense sentencing data is attached in Appendix 2.3.

- 2.4  EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:
- within  below the standard range for Count(s) \_\_\_\_\_.
  - above the standard range for Count(s) \_\_\_\_\_.
  - The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
  - Aggravating factors were  stipulated by the defendant,  found by the court after the defendant waived jury trial,  found by jury by special interrogatory.
- Findings of fact and conclusions of law are attached in Appendix 2.4.  Jury's special interrogatory is attached. The Prosecuting Attorney  did  did not recommend a similar sentence.

- 2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.
- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):
- \_\_\_\_\_

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

**III. JUDGMENT**

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

3.2  The defendant is found NOT GUILTY of Counts III.

**IV. SENTENCE AND ORDER**

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

|                    |                    |  |                 |
|--------------------|--------------------|--|-----------------|
| <i>RTN/RJN</i>     | \$ <u>RESERVED</u> | Restitution to: _____  |                 |
|                    | \$ _____           | Restitution to: _____  |                 |
|                    | \$ _____           | Restitution to: _____  |                 |
|                    |                    | (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)  |                 |
| <i>PCV</i>         | \$ <u>500.00</u>   | Victim assessment  | RCW 7.68.035    |
|                    | \$ <u>100</u>      | Domestic Violence assessment   | RCW 10.99.080   |
| <i>CRC</i>         | \$ <u>200.00</u>   | Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190  |                 |
|                    |                    | Criminal filing fee \$ _____   | FRC             |
|                    |                    | Witness costs \$ _____   | WFR             |
|                    |                    | Sheriff service fees \$ _____  | SFR/SFS/SFW/WRF |
|                    |                    | Jury demand fee \$ _____   | JFR             |
|                    |                    | Extradition costs \$ _____   | EXT             |
|                    |                    | Other \$ _____   |                 |
| <i>PUB</i>         | \$ _____           | Fees for court appointed attorney  | RCW 9.94A.760   |
| <i>WFR</i>         | \$ _____           | Court appointed defense expert and other defense costs   | RCW 9.94A.760   |
| <i>FCM/MTH</i>     | \$ _____           | Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.430 |                 |
| <i>CDF/LDI/FCD</i> | \$ _____           | Drug enforcement fund of Thurston County   | RCW 9.94A.760   |
| <i>NTF/SAD/SDI</i> | \$ _____           | Thurston County Drug Court Fee   |                 |
| <i>CLF</i>         | \$ _____           | Crime lab fee <input type="checkbox"/> suspended due to indigency  | RCW 43.43.690   |
|                    | \$ <u>100.00</u>   | Felony DNA collection fee <input type="checkbox"/> not imposed due to hardship   | RCW 43.43.7541  |
| <i>RTN/RJN</i>     | \$ _____           | Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)  | RCW 38.52.430   |
|                    | \$ _____           | Other costs for: _____   |                 |
|                    | \$ <u>900</u>      | TOTAL  | RCW 9.94A.760   |

The above total may 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 may be set by the prosecutor or is scheduled for \_\_\_\_\_.

RESTITUTION. Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

|                                |                     |                        |                    |
|--------------------------------|---------------------|------------------------|--------------------|
| <u>NAME of other defendant</u> | <u>CAUSE NUMBER</u> | <u>(Victim's name)</u> | <u>(Amount-\$)</u> |
|--------------------------------|---------------------|------------------------|--------------------|

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

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

The defendant shall report as directed by the clerk of the court and provide financial information as requested. RCW 9.94A.760(7)(b).

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.

[ ] In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50.00 per day, unless another rate is specified here: (JLR) RCW 9.94A.760.

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

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

4.3 The defendant shall not have contact with Sara M. Wojdyla D.O.B. 4/25/1986 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for Life years (not to exceed the maximum statutory sentence).

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

4.4 OTHER: \_\_\_\_\_

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

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

|                                       |                                      |
|---------------------------------------|--------------------------------------|
| <u>114*</u> months on Count <u>I</u>  | <u>43</u> months on Count <u>V</u>   |
| <u>149*</u> months on Count <u>II</u> | <u>36*</u> months on Count <u>VI</u> |
| <u>22</u> months on Count <u>IV</u>   | _____ months on Count _____          |

Actual number of months of total confinement ordered is: 209 months. (Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above.)

\* Include 60 month enhancement for firearm on each which must run consecutive to each other ~~for~~ after the largest total range for a total of 209 months Page 5

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

**NON-FELONY COUNTS:**

Sentence on counts ~~VI~~ VI is/are suspended for 0 months on the condition that the defendant comply with all requirements outlined in the supervision section of this sentence.

0 days of jail are suspended on Count VI  
\_\_\_\_\_ days of jail are suspended on Count \_\_\_\_\_

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively 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: \_\_\_\_\_

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

4.6 [ ] **COMMUNITY CUSTODY** is ordered as follows:

Count I & II for a range from 18 to 18 months;  
Counts IV & V for a range from 12 to 12 months;  
Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.] **STATUTORY LIMIT ON SENTENCE.** Notwithstanding the length of confinement plus any community custody imposed on any individual charge, in no event will the combined confinement and community custody exceed the statutory maximum for that charge. Those maximums are: Class A felony--life in prison; Class B felony--ten (10) years in prison; Class C felony--5 (5) years in prison.

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

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

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

Pay all court-ordered legal financial obligations                      Report as directed to a community corrections officer

Notify the community corrections officer in advance                      Remain within prescribed geographical boundaries to be  
of any change in defendant's address or employment                      set by CCO

The defendant shall not consume any alcohol and shall submit to random breath testing as directed by DOC for purposes of monitoring compliance with this condition.

Defendant shall have no contact with: Sara M. Wojdyla

The defendant shall undergo evaluation and fully comply with all recommended treatment for the following:

Substance Abuse

Mental Health

Sexual Deviancy

Anger Management

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

DV Treatment Review Hearing is set for to be set at by DOC upon release.

The defendant shall enter into and complete a certified domestic violence program as required by DOC or as follows:  
WAC compliant

The defendant shall not use, possess, manufacture or deliver controlled substances without a valid prescription, not associate with those who use, sell, possess, or manufacture controlled substances and submit to random urinalysis at the direction of his/her CCO to monitor compliance with this condition.

The defendant shall comply with the following additional crime-related prohibitions: No new crimes.

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

The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here: \_\_\_\_\_

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

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

## V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her 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 or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**

Defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.

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

5.7  The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.8 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.9 **OTHER:** Bail previously posted, if any, is hereby exonerated and shall be returned to the posting party.

DONE in Open Court and in the presence of the defendant this date: June 11, 2013

[Signature]  
Judge/Print name: Samuel J. Dixon

[Signature]  
Deputy Prosecuting Attorney  
WSBA No. 41755  
Print name: Brandi Archer

[Signature]  
Attorney for Defendant  
WSBA No. 25101  
Print name: MATTHEW LAPIN

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

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the \_\_\_\_\_ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.  
Interpreter signature/Print name: \_\_\_\_\_

I, \_\_\_\_\_, 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

IDENTIFICATION OF DEFENDANT

SID No. WA25230655  
(If no SID take fingerprint card for State Patrol)

Date of Birth 03/29/1984

FBI No. 444237ED8

Local ID No. \_\_\_\_\_

PCN No. 767106297

Other \_\_\_\_\_

Alias name, DOB: \_\_\_\_\_

Race:

Asian/Pacific  
Islander

Black/African-American

Caucasian

Ethnicity:

Hispanic

Sex:

Male

Native American

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

Non-Hispanic

Female

FINGERPRINTS: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, W. J. [Signature] Dated: 6/11/13

DEFENDANT'S SIGNATURE: \_\_\_\_\_

*[Handwritten Signature]*

Left four fingers taken simultaneously

Left  
Thumb

Right  
Thumb

Right four fingers taken simultaneously



SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF THURSTON

STATE OF WASHINGTON

NO. 12-1-00645-1

Plaintiff,

vs.

WARRANT OF COMMITMENT ATTACHMENT TO  
JUDGMENT AND SENTENCE (PRISON)

AARON MERCEDES JOHNSON,

Defendant.

DOB: 03/29/1984  
SID: WA25230655 FBI: 444237ED8  
PCN: 767106297  
RACE: B  
SEX: M  
BOOKING NO: C0174117

THE STATE OF WASHINGTON TO:

The Sheriff of Thurston County and to the proper officer of the Department of Corrections.

The defendant AARON MERCEDES JOHNSON has been convicted in the Superior Court of the State of Washington for the crime(s) of:

**BURGLARY IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON-FIREARM/DOMESTIC VIOLENCE, KIDNAPPING IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON-FIREARM/DOMESTIC VIOLENCE, FELONY HARASSMENT/DOMESTIC VIOLENCE, FELONY STALKING/DOMESTIC VIOLENCE, ASSAULT IN THE FOURTH DEGREE/DOMESTIC VIOLENCE**

and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and Sentence.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

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

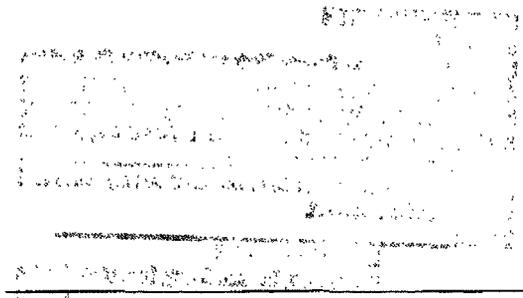
By direction of the Honorable:

*James Dixon*

BETTY J. GOULD

CLERK

By: *MBaedustn*  
DEPUTY CLERK



**STATE OF WASHINGTON**

County of Thurston

I, Linda Myhre Enlow, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, for Thurston County holding session at Olympia, do hereby certify that the foregoing is a true and correct copy of the original as the same appears on file and of record in my office containing eleven pages, IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court.

DATED: March 13, 2017

LINDA MYHRE ENLOW  
County Clerk, Thurston County, State of Washington  
By [Signature] Deputy

# APPENDIX C



|   |                   |                                  |
|---|-------------------|----------------------------------|
| <b>SUPERIOR COURT OF<br/>WASHINGTON<br/>FOR THURSTON COUNTY</b> |                   | <b>NO. 12-1-00645-1</b>          |
| <b>STATE OF WASHINGTON,</b>                                     | <b>Plaintiff,</b> | <b>JUDGE JAMES J DIXON</b>       |
| <b>vs.</b>  |                   | <b>CT REPORTER KATHY BEEHLER</b> |
| <b>AARON JOHNSON,</b>   | <b>Defendant.</b> | <b>CLERK REBECCA MCGINNIS</b>    |
|   |                   | <b>DATE: JANUARY 11, 2017</b>    |

Plaintiff Appearing: through counsel

Attorney for Plaintiff: BRANDI ARCHER

Present:  Yes  No

Defendant Appearing:  Yes  No

Attorney for Defendant: GLORIA JOHNSON

Present:  Yes  No

**THIS MATTER CAME ON BEFORE THE COURT FOR SENTENCING.**

The Court created a record as to the procedural posture of the case. Ms. Archer presented the State's recommendation as to sentencing. Ms. Johnson presented the Defense recommendation as to sentencing.

The Court issued the sentence as outlined in the Judgment and Sentence.

The Court approved and signed:

- Judgment and Sentence

STATE OF WASHINGTON

County of Thurston

I, Linda Myhre Enlow, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, for Thurston County holding sessions at Olympia, do hereby certify that the foregoing is a true and correct copy of the original as the same appears on file and of record in my office containing one page, IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court.

DATED:

March 6, 2017

LINDA MYHRE ENLOW  
County Clerk, Thurston County, State of Washington  
By [Signature] Deputy

# APPENDIX D



2017 JAN 11 AM 8:59

Linda Myhre Enlow  
Thurston County Clerk

**Superior Court of Washington  
County of Thurston**

STATE OF WASHINGTON,  
Plaintiff,  
vs.  
AARON MERCEDES JOHNSON,  
Defendant.

No. 12-1-00645-1  
Felony Judgment and Sentence --  
Prison  
(FIRST AMENDED PER APPEAL DISMISSING  
COUNT 5)

SID: WA25230655  
If no SID, use DOB: 03/29/1984  
PCN: 767106297  
BOOKING NO. C0174117

(FJS)  
 Clerk's Action Required, 2.1, 4.1, 4.2, 4.3, 4.8, 5.2,  
5.3, 5.5, 5.7, and 5.8  
 Defendant Used Motor Vehicle  
 Juvenile Decline  Mandatory  Discretionary

**I. HEARING**

1.1 A **RE-SENTENCING** hearing was held on JANUARY 11, 2017 and the defendant, the defendant's lawyer and the deputy prosecuting attorney were present.

**II. Findings**

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon  
 guilty plea (date) \_\_\_\_\_  jury-verdict MAY 3, 2013  bench trial (date) \_\_\_\_\_:

| COUNT | CRIME  | RCW  | DATE OF CRIME                   |
|-------|--|--|---------------------------------|
| 1     | BURGLARY IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON - FIREARM/DOMESTIC VIOLENCE    | 9A.52.020(1); 9.94A.825; 9.94A.533(3)<br>10.99.020 | MAY 13, 2012 TO<br>MAY 14, 2012 |
| 2     | KIDNAPPING IN THE FIRST DEGREE, WHILE ARMED WITH A DEADLY WEAPON - FIREARM/DOMESTIC VIOLENCE | 9A.40.020; 9.94A.825; 9.94A.533(3)<br>10.99.020    | MAY 13, 2012 TO<br>MAY 14, 2012 |
| 4     | HARASSMENT/DOMESTIC VIOLENCE (FELONY)  | 9A.46.020(1)(2)(b)(ii), 10.99.020                  | MAY 13, 2012 TO<br>MAY 14, 2012 |
| 6     | ASSAULT IN THE FOURTH DEGREE/DOMESTIC VIOLENCE   | 9A.36.041; 10.99.020                               | MAY 13, 2012 TO<br>MAY 14, 2012 |

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:

GV  For the crime(s) charged in Count 1, 2, 4, 6, domestic violence was pled and proved.  
RCW 10.99.020.

The defendant used a **firearm** in the commission of the offense in Count 1, 2. RCW 9.94A.825, RCW 9.94A.533.

The defendant used a **deadly weapon other than a firearm** in committing the offense in Count \_\_\_\_\_ . RCW 9.94A.825, 9.94A.533.

In count \_\_\_\_\_ the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21), RCW 9.94A. \_\_\_\_\_

Count \_\_\_\_\_ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a **minor** in order to involve that minor in the commission of the offense. RCW 9.94A.833.

Count \_\_\_\_\_ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.829.

The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.

Reasonable grounds exist to believe the defendant is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. RCW 9.94B.080

**GY**  In Count \_\_\_\_\_, the defendant had (number of) \_\_\_\_\_ **passenger(s) under the age of 16** in the vehicle. RCW 9.94A.533.

Count \_\_\_\_\_ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.

Counts 2 & 4 encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).

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

|    | <i>Crime</i> | <i>Cause Number</i> | <i>Court (County &amp; State)</i> | <i>DV*<br/>Yes</i> |
|----|--------------|---------------------|-----------------------------------|--------------------|
| 1. |              |                     |                                   |                    |
| 2. |              |                     |                                   |                    |

\* DV: Domestic Violence was pled and proved.

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

**2.2 Criminal History:**

|   | CRIME | DATE OF SENTENCE | SENTENCING COURT (County & State) | DATE OF CRIME | A or J Adult, Juv. | TYPE OF CRIME | DV* YES |
|---|-------|------------------|-----------------------------------|---------------|--------------------|---------------|---------|
| 1 | N/A   |                  |                                   |               |                    |               |         |
| 2 |       |                  |                                   |               |                    |               |         |
| 3 |       |                  |                                   |               |                    |               |         |
| 4 |       |                  |                                   |               |                    |               |         |
| 5 |       |                  |                                   |               |                    |               |         |

\* 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 numbers \_\_\_\_\_, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525).

**2.3 Sentencing Data:**

| COUNT | OFFENDER SCORE | SERIOUSNESS LEVEL | STANDARD RANGE | ENHANCEMENTS* | TOTAL STANDARD RANGE              | MAXIMUM RANGE |
|-------|----------------|-------------------|----------------|---------------|-----------------------------------|---------------|
| 1     | 3              | VII               | 31-41 months   | 60 months     | 91-101 months                     | life          |
| 2     | 3              | X                 | 67-89 months   | 60 months     | 127-149 months<br>187-209 months* | life          |
| 4     | 3              | III               | 9-12 months    | N/A           | 9-12 months                       | 60 months     |
| 6     | N/A            | GM                | 0-364 days     | N/A           | 0-364 days                        | 364 days      |

\* Total standard range when firearm enhancements are run consecutively

\* (F) Firearm, (D) Other deadly weapons, (RPh) Robbery of a pharmacy, (CSG) Criminal street gang involving minor, (P16) Passenger(s) under age 16.

Additional current offense sentencing data is attached in Appendix 2.3.

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) \_\_\_\_\_.

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 **Legal Financial Obligations/Restitution.** The court has considered the total amount owing, the defendant's 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. (RCW 10.01.160). The court makes the following specific findings:

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.

(Name of agency) \_\_\_\_\_'s costs for its emergency response are reasonable. RCW 38.52.430 (effective August 1, 2012).

2.6  **Felony Firearm Offender Registration.** The defendant committed a felony firearm offense as defined in RCW 9.41.010, and:

The defendant should register as a felony firearm offender. The court considered the following factors in making this determination:

the defendant's criminal history.

whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

evidence of the defendant's propensity for violence that would likely endanger persons.

other: \_\_\_\_\_

The defendant must register as a felony firearm offender because the offense was committed in conjunction with an offense committed against a person under the age of 18, or a serious violent offense or offense involving sexual motivation as defined in RCW 9.94A.030.

**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 **5** in the charging document.
- 3.3  The defendant is found **NOT GUILTY** of Count **3** in the charging document.

**IV. Sentence and Order**

*It is ordered:*

**4.1 Confinement.** The court sentences the defendant as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the county jail:

101 months on Count 1\*                      364 <sup>days</sup> months on Count 6  
138 months on Count 2\*                      \_\_\_\_\_ months on Count \_\_\_\_\_  
12 months on Count 4                      \_\_\_\_\_ months on Count \_\_\_\_\_

Actual number of months of total confinement ordered is: 198 months.

All counts shall be served concurrently, except for the following which shall be served consecutively: \* Include 60 month enhancement for

This sentence shall run consecutively with the sentence in the following cause number(s) (see RCW 9.94A.589(3)): firearm on each which must run consecutive to each other after the largest total range for a total of 198 months.

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

**Partial Confinement.** The defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions: \_\_\_\_\_

- work crew RCW 9.94A.725
- home detention RCW 9.94A.731, .190
- work release RCW 9.94A.731
- electronic monitoring RCW 9.94A.030

**Conversion of Jail Confinement (Nonviolent and Nonsex Offenses).** RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option, to reduce the time spent in the community option by earned release credit consistent with local correctional facility standards, and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

- The defendant shall receive credit for time served in an available county supervised community option prior to sentencing. The jail shall compute time served.
- Alternative Conversion.** RCW 9.94A.680. \_\_\_\_\_ days of total confinement ordered above are hereby converted to \_\_\_\_\_ hours of community restitution (service) (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections (DOC) to be completed on a schedule established by the defendant's community corrections officer but not less than \_\_\_\_\_ hours per month.

**Alternatives to total confinement** were not used because of: \_\_\_\_\_  
 criminal history     failure to appear (finding required for nonviolent offenders only) RCW 9.94A.680.

(b) **Credit for Time Served:** The defendant shall receive credit for eligible time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.

**4.2 Community Custody.** RCW 9.94A.505, .702.

(A) The defendant shall serve 18 months (up to 12 months) in community custody.

The court may order community custody under the jurisdiction of DOC for up to 12 months if the defendant is convicted of a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2006, the court shall impose a term of community custody under RCW 9.94A.701 if the offender is guilty of failure to register (second or subsequent offense) under RCW 9A.44.130(11)(a) and for offenses after June 12, 2008 for

unlawful possession of a firearm with a finding that the defendant was a member or associate of a criminal street gang. The defendant shall report to DOC not later than 72 hours after release from custody at the address provided in open court or by separate document.

(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:

- not possess or consume alcohol.
- not possess or consume controlled substances, including marijuana, without a valid prescription.
- have no contact with: Sara M. Wojdyla
- remain  within  outside of a specified geographical boundary, to wit:

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

undergo an evaluation for, and fully comply with, treatment for  substance use disorder  mental health  anger management.

Complete a Washington State certified, WAC compliant domestic violence perpetrator's treatment program.

Appear for a treatment review hearing on \_\_\_\_\_ at \_\_\_\_\_.

comply with the following crime-related prohibitions: No new violations of criminal law; \_\_\_\_\_

Other conditions:

(C) The conditions of community custody shall begin immediately upon release from confinement unless otherwise set forth here: \_\_\_\_\_

Court Ordered Treatment: If any court orders mental health or substance use disorder 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

|     |               |   |                 |
|-----|---------------|---|-----------------|
| PCV | \$ <u>500</u> | Victim assessment   | RCW 7.68.035    |
| PDV | \$ <u>100</u> | Domestic Violence (DV) assessment                                     | RCW 10.99.080   |
|     | \$ _____      | Violation of a DV protection order (\$15 mandatory fine)              | RCW 26.50.110   |
| CRC | \$ <u>200</u> | Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190 |                 |
|     |               | Criminal filing fee \$ _____  | FRC             |
|     |               | Witness costs \$ _____  | WFR             |
|     |               | Sheriff service fees \$ _____   | SFR/SFS/SFW/WRF |
|     |               | Jury demand fee \$ _____  | JFR             |
|     |               | Extradition costs \$ _____  | EXT             |

Other \$ \_\_\_\_\_

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

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

\$ \_\_\_\_\_ DUI fines, fees and assessments

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

CDF/LDI/FCD \$ \_\_\_\_\_ Drug enforcement fund of Thurston County RCW 9.94A.760

NTF/SAD/SDI \$ \_\_\_\_\_ Thurston County Drug Court Fee

\$ 100 DNA collection fee RCW 43.43.7541

FPV \$ \_\_\_\_\_ Specialized forest products RCW 76.48.140

\$ \_\_\_\_\_ Other fines or costs for: \_\_\_\_\_

DEF \$ \_\_\_\_\_ Emergency response costs (\$1,000 maximum, \$2,500 max. effective Aug. 1, 2012) RCW 38.52.430

Agency: \_\_\_\_\_

RTN/RJN \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

\* \$ 900 Total

RCW 9.94A.760

- The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:
  - shall be set by the prosecutor.
  - is scheduled for \_\_\_\_\_ (date).
- The defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_.
- Restitution Schedule attached.
- Restitution ordered above shall be paid jointly and severally with:

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

RJN

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

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

The defendant shall report 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. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

\* Mr. Johnson has already paid these fees consistent with the initial sentencing decision; Thus, a second assessment of these fees is not required or appropriate.

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. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense RCW 43.43.754.

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

**4.5 No Contact:**

The defendant shall not have contact with Sara M. Wojdyla 008 4/25/1986 (name) including, but not limited to, personal, verbal, telephonic, written or contact through a third party until life (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within 500 (distance) of:  
 Sara M. Wojdyla (name of protected person(s))'s  home/  
residence  work place  school  (other location(s)) person  
 other location \_\_\_\_\_, or  
until \_\_\_\_\_ (which does not exceed the maximum statutory sentence).

A separate Domestic Violence No-Contact Order, Stalking 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: \_\_\_\_\_  
\_\_\_\_\_

**4.8 Exoneration:** The Court hereby exonerates any bail, bond and/or personal recognizance conditions.

**V. Notices and Signatures**

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

**5.2 Length of Supervision.** If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

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

**5.4 Community Custody Violation.**

(a) If you are subject to a violation hearing and DOC finds that you committed the violation, you may receive a sanction of up to 30 days of confinement. RCW 9.94A.633(1).

(b) If you have not completed your maximum term of total confinement and you are subject to a 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.633(2)(a).

**5.5a Firearms. You may not own, use or possess any firearm, and under federal law any firearm or ammunition,** unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, 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.

**5.5b  Felony Firearm Offender Registration.** The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

5.6 Reserved.

**5.7  Department of Licensing Notice:** The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. **Clerk's Action** –The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR information) (Check all that apply):**

Within two hours after driving or being in physical control of a vehicle, the defendant had an alcohol concentration of breath or blood (BAC) of \_\_\_\_\_;

No BAC test result.

BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.

Drug Related. The defendant was under the influence of or affected by any drug.

THC level was \_\_\_\_\_ within two hours after driving.

Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.

Vehicle SECOND AMENDED:  Commercial Veh.  16 Passenger Veh.  Hazmat Veh.

**5.8  Department of Licensing Notice – Defendant under age 21 only.**

Count \_\_\_\_\_ is (a) a violation of RCW chapter 69.41 [Legend drug], 69.50 [VUCSA], or 69.52 [Imitation drugs], and the defendant was under 21 years of age at the time of the offense **OR** (b) a violation under RCW 9.41.040 [unlawful possession of firearm], and the defendant was under the age of 18 at the time of the offense **OR** (c) a violation under RCW chapter 66.44 [Alcohol], and the defendant was under the age of 18 at the time of the offense, **AND** the court finds that the defendant previously committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.

**Clerk's Action** –The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.265

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

Done in Open Court and in the presence of the defendant this date: 1/11/2017

[Signature]  
Judge/Print Name: **James Dixon**

[Signature]  
Deputy Prosecuting Attorney  
WSBA No. 41755  
Print name: BRANDI L. ARCHER

[Signature]  
Attorney for Defendant  
WSBA No. 48727  
Print name: Gloria J. Johnson

[Signature]  
Defendant  
Print Name: Aaron M. Johnson

**Voting 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 DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined 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: [Signature]

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in 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 (city) \_\_\_\_\_, (state) \_\_\_\_\_, on (date) \_\_\_\_\_.

\_\_\_\_\_  
Interpreter

\_\_\_\_\_  
Print Name

**IDENTIFICATION OF DEFENDANT**

SID No. WA25230655  
 (If no SID take fingerprint card for State Patrol)

Date of Birth 03/29/1984

FBI No. 444237ED8

Local ID No. \_\_\_\_\_

PCN No. 767106297

Other \_\_\_\_\_

Alias name, DOB: \_\_\_\_\_

**Race:**

Asian/Pacific  
Islander

Black/African-American

Caucasian

**Ethnicity:**

Hispanic

**Sex:**

Male

Native American

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

Non-Hispanic

Female

**FINGERPRINTS:** I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, [Signature] Dated: 1/11/2017

**DEFENDANT'S SIGNATURE:** [Signature]

Left four fingers taken simultaneously

Left  
Thumb

Right  
Thumb

Right four fingers taken simultaneously



**SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF THURSTON**

STATE OF WASHINGTON

NO. 12-1-00645-1

Plaintiff,

vs.

**WARRANT OF COMMITMENT ATTACHMENT  
TO JUDGMENT AND SENTENCE (PRISON)**

AARON MERCEDES JOHNSON,

Defendant.

DOB: 03/29/1984  
SID: WA25230655 FBI: 444237ED8  
PCN: 767106297  
RACE: B  
SEX: M  
BOOKING NO: C0174117

THE STATE OF WASHINGTON TO:

The Sheriff of Thurston County and to the proper officer of the Department of Corrections.

The defendant AARON MERCEDES JOHNSON has been convicted in the Superior Court of the State of Washington for the crime(s) of:

BURGLARY IN THE FIRST DEGREE, WHILE ARMED WITH A DEADLY WEAPON -  
FIREARM/DOMESTIC VIOLENCE, KIDNAPPING IN THE FIRST DEGREE, WHILE ARMED WITH A DEADLY  
WEAPON - FIREARM, HARASSMENT/DOMESTIC VIOLENCE (FELONY), ASSAULT IN THE FOURTH  
DEGREE/DOMESTIC VIOLENCE

and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and Sentence.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

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

By direction of the Honorable:

**James Dixon**

LINDA MYHRE-ENLOW

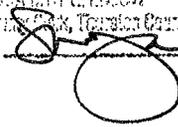
CLERK

By:   
DEPUTY CLERK

STATE OF WASHINGTON  
County of Thurston

I, Linda Myra Enlow, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, for the judicial district holding session at Olympia, do hereby certify that the foregoing is a true and correct copy of the original as the same appears on file and of record in my office containing Eleven pages, IN WITNESS WHEREOF, I have hereunto set my hand and placed the seal of said court.

Date: March 6, 2017  
LINDA MYRA ENLOW  
County Clerk, Thurston County, State of Washington

By: 

CERTIFICATE OF SERVICE

I certify that I served a copy of State's Response to Personal Restraint  
Petition on the date below as follows:

*Electronically filed at Division II*

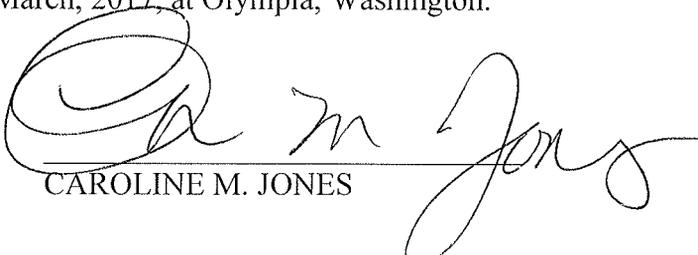
TO: DEREK M. BYREN, CLERK  
COURTS OF APPEALS DIVISION II  
950 BROADWAY, SUITE 300  
TACOMA, WA 98402-4454

AND

GLORIA J. JOHNSON  
Johnson010102@live.com

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

Dated this 13 day of March, 2017, at Olympia, Washington.

  
CAROLINE M. JONES

**THURSTON COUNTY PROSECUTOR**  
**March 13, 2017 - 11:29 AM**  
**Transmittal Letter**

Document Uploaded: 5-prp2-497123-Respondent's Brief.pdf

Case Name:

Court of Appeals Case Number: 49712-3

Is this a Personal Restraint Petition?  Yes  No

**The document being Filed is:**

Designation of Clerk's Papers                      Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

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

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

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

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

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

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

**Comments:**

No Comments were entered.

Sender Name: Caroline Jones - Email: [jonescm@co.thurston.wa.us](mailto:jonescm@co.thurston.wa.us)

A copy of this document has been emailed to the following addresses:

[Johnson010102@live.com](mailto:Johnson010102@live.com)