

70107-3

70107-3

NO. 70167-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

REC'D
SEP 18 2013
King County Prosecutor
Appellate Unit

STATE OF WASHINGTON.

Respondent.

v.

ERIC DAVIS.

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Mary Yu, Judge

BRIEF OF APPELLANT

ERIC J. NIELSEN
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
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Handwritten signature and date: 9/18/13

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A. ASSIGNMENTS OF ERROR

1. The State produced insufficient evidence that appellant was the person named in the no contact order and judgment. (Exhibits 11 and 12 respectively and attached hereto as an appendix).¹

2. The court erred in admitting hearsay evidence.

Issues Pertaining to Assignments of Error

1. To support the felony violation of a court order conviction, the State sought to prove the existence of a no contact order and the necessary prior violations of a no contact order by offering documentary evidence. Although the subject of the no contact order and judgment was identified as Eric Davis, the State was required to prove beyond a reasonable doubt appellant was the Eric Davis named in the documents. Where the evidence failed to show appellant was the person named in the documents, was the evidence insufficient to support the conviction?

2. Where the trial court improperly admitted the hearsay testimony of two police officers that appellant was the subject of a no contact order, and that evidence materially affected the verdict, is appellant entitled to a new trial?

¹ RAP 10.3(a)(8) and RAP 10.4(c).

B. STATEMENT OF THE CASE²

1. Procedural Facts

The King County Prosecutor charged Eric Davis with felony violation of a court order. CP 1-5; RCW 26.50.110 (1) and (5). A jury convicted Davis. CP 41. Davis was sentenced to a prison based Special Drug Offender Sentencing Alternative of 30 months confinement and 30 months of community custody. CP 54-63.

2. Substantive Facts

On August 13, 2012, Seattle Police officer Mathew Lilje responded to a 911 call that a man was seen forcing a woman into a silver Buick with a bumper sticker with the letters V and J. 3RP 16-19. A few minutes later Lilje stopped a car matching the description. There were two men and a woman in the car. 3RP 22-25. Lilje identified Davis at trial as one of the men in the car. 3RP 25.

After stopping the car Lilje asked the woman for her name and date of birth. Lilje conducted a records check on the information the woman gave him. Lilje could not find any records of a woman with that name and birth date. 3RP 26-28. It was later discovered the woman gave Lilje a false name.

² The citations to verbatim report of proceedings are as follows: 1RP January 28, 2013; 2RP January 29, 2013; 3RP January 30, 2013; 4RP January 31, 2013; 5RP March 29, 2013 (sentencing).

Officer William Griffin and his partner arrived at the scene shortly after Lilje. 3RP 36-39. While Lilje spoke with the woman, Griffin spoke with Davis who handed Griffin a temporary Washington State Driver's License. 3RP 40-41. Griffin explained to Davis "the nature of the 911 call" and Davis told Griffin the caller was mistaken. 3RP 42. Davis told Griffin he and the woman had known each other for about five years. Id.

During direct examination, the prosecutor asked Lilje what he learned about Davis during the stop. Over Davis's hearsay objection, Lilje was allowed to testify that he received information through his computer and radio that there was a no contact order that listed Davis as the "respondent," and Sabrina Anderson, with a birth date of January 1, 1968, as the "protected" party. 3RP 31-32. Again over Davis's hearsay objection, Lilje was allowed to testify he obtained a photograph of a Sabrina Anderson with the same birth date and the photograph matched the woman in the car. 3RP 32-33. Davis was then arrested for violation of a no contact order. 3RP 34.

Another officer, Lauren Hill, testified that Anderson tried to interfere with Davis's arrest, so Anderson was arrested for "false reporting, giving a fake name, and for obstructing, trying to interfere with our duties at the scene." 3RP 47. The prosecutor then asked Hill if "during your time on the scene, were you aware that there was a no

contact order between Mr. Davis and Ms. Anderson.” Over Davis’s hearsay objection the court allowed Hill to answer the question. Hill responded with a “yes.” 3RP 49.

Lilje identified Exhibit 11, a no contact order issued by the King County Superior Court in cause number 10-1-02386-7 SEA, as containing the same information he learned on August 13, 2013. 3RP 57-58; Ex. 11. Davis objected to the admission of the exhibit on relevancy grounds. 3RP 59, 69. Davis argued that because there was no evidence the Eric Davis named in the order was the defendant the exhibit was irrelevant. 3RP 59-61. The prosecutor responded the evidence showed police “ran his name” and as a result “learned of the no contact order.” 3RP 61. And, the order “has his name” and “Ms. Anderson’s name.” 3RP 61. The court overruled the objection and admitted the exhibit. Id.

The prosecutor then asked Lilje if the “information that you were able to view on your computer screen in your patrol car related to the no contact order. Did that give you descriptors of Mr. Davis and Ms. Anderson?” 3RP 68-69. Lilje said it did. 3RP 69. Davis’s hearsay objection to the testimony was overruled. Id. Lilje was then asked “And did those descriptors that you were able to observe match Mr. Davis and Ms. Anderson?” Id. Lilje responded, “yes.” Id.

The State also moved to admit Exhibit 12, a 2010 judgment in the same cause number as Exhibit 11 (no contact order). 3RP 62, 71; Ex. 12. The exhibit was admitted over Davis's relevancy objection. 3RP 63-64, 71.

After the State rested, Davis moved to dismiss. 3RP 72. Davis argued there was no evidence that he was the Eric Davis named in the no contact order (Exhibit 11) or the judgment (Exhibit 12). 3RP 72-74, 76-79. The State responded that Lilje pulled up the no contact order on the computer in his patrol car, and the descriptions of Davis and Anderson matched. 3RP 74-75. The court denied the motion reasoning that Davis was the person who Lilje contacted on August 13th and who produced the temporary driver's license. 3RP 78-79.

C. ARGUMENTS

1. THE EVIDENCE WAS INSUFFICIENT TO PROVE THAT DAVIS WAS THE SAME PERSON NAMED IN THE NO CONTACT ORDER AND JUDGMENT.

Davis was charged with felony violation of a no contact order. This Court should reverse and dismiss Davis's conviction because the State failed to present sufficient evidence he was the person named in the no contact order he allegedly violated, and in the 2010 judgment for violations of a no contact order.

Violation of a no contact order consists of three essential elements: (1) willful contact with another, (2) the prohibition of such contact by a valid no contact order, and (3) the defendant's knowledge of the order. State v. Washington, 135 Wn. App. 42, 49, 143 P.3d 606 (2006) (quoting State v. Clowes, 104 Wn. App. 935, 944, 18 P.3d 596 (2001)). The violation is a felony if the accused has at least two previous convictions for violating the provisions of an order issued under various statutes. RCW 26.50.110(5).

Due process requires the State to prove beyond a reasonable doubt all the necessary facts of the crime charged. U.S. Const. Amend. 14; Const. art. 1, § 3; In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Crediford, 130 Wn.2d 747, 749, 927 P.2d 1129 (1996). Evidence is sufficient to support a conviction only if, viewed in the light most favorable to the State, a rational trier of fact could find each element of the crime beyond a reasonable doubt. State v. Smith, 155 Wn.2d 496, 502, 120 P.3d 559 (2005). When the prosecution fails to present sufficient evidence on any essential element, reversal and dismissal of the conviction is required. State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998); State v. Stanton, 68 Wn.App. 855, 867, 845 P.2d 1365 (1993).

It is axiomatic in criminal trials that the prosecution bears the burden of establishing beyond a reasonable doubt the identity of the accused as the person who committed the offense. State v. Huber, 129 Wn.App. 499, 501, 119 P.3d 388 (2005). When criminal liability depends on the accused being the person to whom a document pertains, the State must do more than authenticate and admit the document. Huber, 129 Wn. App. at 502. It must show beyond a reasonable doubt that the accused is the person named in the document; identity of name is insufficient. Id.³ See, Livingston v. State, 537 N.E.2d 75, 77-78 (Ind.Ct.App.1989) (Although the prosecution argued the same birth dates and social security numbers provided a link between the defendant and the prior conviction documents the court held, without more such as photographs or a fingerprint comparison, the evidence was insufficient to demonstrate that it was indeed the defendant who was convicted of the prior offense).

The State does not meet this burden merely because the defense presents no evidence refuting the claim of identity. Huber, 129 Wn. App. at 503. The State must present affirmative evidence that the person named

³ The Huber court cited a number of cases that support its holding. 129 Wn. App. at 502 (citing State v. Brezillac, 19 Wn. App. 11, 12, 573 P.2d 1343 (1978); State v. Kelly, 52 Wn.2d 676, 678, 328 P.2d 362 (1958); State v. Furth, 5 Wn.2d 1, 10, 12, 104 P.2d 925 (1940); State v. Harkness, 1 Wn.2d 530, 542-43, 96 P.2d 460 (1939); United States v. Weiler, 385 F.2d 63, 65-66 (3rd Cir. 1967); Gravatt v. United States, 260 F.2d 498, 499 (10th Cir. 1958)).

in the document is the defendant in the present action by evidence independent of that record. Id. at 502 (footnote citations omitted). Independent evidence can include booking photographs or fingerprints, eyewitness identification, or distinctive personal information. State v. Santos, 163 Wn.App. 780, 784, 260 P.3d 982 (2011); Huber, 129 Wn.App. at 502–03.

In Huber, a bail jumping case, the State presented documents referencing Wayne Huber, but no evidence the Wayne Huber on trial was the same person named in those documents. On appeal, the court reversed Huber’s conviction, concluding the documentary evidence was insufficient to show Huber was the person named in the documents. Huber, 129 Wn.App at 504.

In Santos, a felony driving under the influence case, the State was required to prove four or more prior offenses. To meet its burden the State presented judgments that identified the defendant named in those judgments as Santos. Santos, 163 Wn.App. at 782-783. The court found the State did not produce sufficient evidence showing Santos was the same person named in the judgments. The Santos court ruled, “None of the information in the State’s exhibits can be compared to Mr. Santos, the defendant in this case, by simple observation to determine whether he is the person named in the judgments.” Id. at 785. “The State produced no

evidence of Mr. Santos's address, birth date, or criminal history” nor did it produce “photographs of ‘Santos, Heraquio’ or ‘Heraquio Santos’ to compare to Mr. Santos, who appeared in person at trial.” Id.

Assuming for the sake of argument the court properly admitted the evidence objected to by Davis, there was insufficient evidence to show Davis was the Eric Davis named in either the no contact order or the judgment. According to Griffin, Davis gave him a temporary Washington State Driver’s License. Griffin testified the photograph on the license matched Davis. 3RP 41-42. Lilje testified after police obtained Davis’s name, he “learned” from information on his computer and radio there was a no contact order naming Davis as the “respondent” and Anderson as the “protected” party. 3RP 31. Later, in response to the State’s questions, Lilje clarified the information he “learned” from his computer was related to Exhibit 11---the no contact order. 3RP 58, 68-69. When asked if that is what gave him the descriptors of Mr. Davis, he responded “yes.” 3RP 69.

Lilje did not have any personal knowledge of the identity of the Eric Davis named in the no contact order. By his own admission the information Lilje “learned” was from Exhibit 11. Exhibit 11, however, does not contain any information whatsoever describing the Eric Davis named in the document. Ex. 11.

The only identifying information is in Exhibit 12, which is the judgment. Other than sex (M) and race (B), that information consists of a set of fingerprints and a date of birth. There is no evidence that Davis shared those fingerprints or that date of birth with the Eric Davis named in the document. Ex. 12. There was no fingerprint comparison (even though the State could have made such a comparison based on the fingerprints Davis presumably provided when he was arrested and booked in this case)⁴, and there was no evidence that the date of birth on the temporary driver's license Griffin said he saw was the same as the date of birth on the judgment.⁵ Indeed, there was no evidence that there was even a date of birth on the license.

Huber is instructive. In Huber, one of the warrants contained a general physical description, but the Huber court found this insufficient, not because the description was vague, but because the record did not reflect any comparison between that description and the person before the court. Huber, 129 Wn. App. at 503. n. 18.

⁴ According to Andrea Williams, records manager for the King County Jail, when a person is booked into jail a photograph is taken. 3RP 55. If Davis was the person named in Exhibits 11 and 12, the State could have introduced his booking photograph related to that case to compare it with his booking photograph in this case.

⁵ Inexplicably neither the temporary license Griffin said Davis handed him nor a certified copy was introduced at trial.

Here there is also no record of any comparison between any description of the Eric Davis named in the no contact order and judgment and the Eric Davis on trial. There is no record of any comparison between fingerprints, booking or other photographs, dates of birth, or addresses, nor is there any witness testimony based on personal knowledge that the Eric Davis named in the no contact order and judgment is the same Davis that was at trial. None of the information in the State's two exhibits can be compared to Davis by simple observation to determine whether he is the person named in the documents. Although not difficult, on this record, like in Huber and Santos, the State failed to meet its burden of proof. Davis's conviction should be reversed and the case dismissed.

2. IMPROPERLY ADMITTED HEARSAY EVIDENCE MATERIALLY AFFECTED THE VERDICT.

If this Court finds the evidence sufficient, the erroneous admission of Lilje and Hill's hearsay testimony entitles Davis to a new trial.

A trial court's decision to admit evidence under evidence rules is reviewed for abuse of discretion. State v. Athan, 160 Wn.2d 354, 382, 158 P.3d 27 (2007). Reversal is required if, within reasonable probabilities, the erroneously admitted evidence materially affected the jury's verdicts. State v. Russell, 125 Wn.2d 24, 94, 882 P.2d 747 (1994).

"Hearsay" is a statement, other than one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted. ER 801(c) and 802; State v. Johnson, 61 Wn. App. 539, 545, 811 P.2d 687 (1991). A statement includes "an oral or written assertion." ER 801(a)(1).

Hearsay is objectionable because the witness repeating it does not have personal knowledge and, as such, hearsay is inadmissible. State v. Babich, 68 Wn. App. 438, 439-40, 447, 842 P.2d 1053 rev. denied, 121 Wn.2d 1015 (1993). Washington courts long have held that in general a law enforcement officer may not repeat at trial information relayed by a dispatcher or an informant, or the contents of written information received during an investigation. State v. Miles, 73 Wn.2d 67, 436 P.2d 198 (1968); State v. Johnson, 61 Wn. App. at 549; State v. Aaron, 57 Wn. App. 277, 787 P.2d 949 (1990); State v. Lowrie, 14 Wn. App. 408, 542 P.2d 128 (1975), rev. denied, 86 Wn.2d 1010 (1976); State v. Murphy, 7 Wn. App. 505, 500 P.2d 1276, rev. denied, 81 Wn.2d 1008 (1972). Rather, these out-of-court statements are admissible only when relevant to a material issue in the case and when not offered to prove the truth of the matters asserted. State v. Miles, 73 Wn.2d at 69-70; State v. Aaron, 57 Wn. App. at 280.

Lilje's testimony that there was a no contact order naming Davis as the "respondent" was based on information he received on his computer and via his radio. That information was the no contact order (Exhibit 11), which was relayed to him. The testimony was only relevant if true, and therefore an assertion offered to prove the truth of the matter asserted--- that the Davis he arrested and identified at trial was the Davis named in the no contact order. Lilje, however, had no personal knowledge of that information. His testimony was inadmissible hearsay and should have been excluded.

The same is true for Hill's testimony that she was aware there was a no contact order between Mr. Davis and Ms. Anderson. There is nothing in the record to show that Hill had any personal knowledge of a no contact order restraining Davis. Her testimony too was inadmissible hearsay.

The Admission of Lilje and Hill's hearsay testimony, taken together or alone, was not harmless. Although the testimony did not directly link Davis with the Eric Davis named in the no contact order and judgment, a reasonable juror could have inferred Lilje and Hill knew there was an order prohibiting the Davis who was on trial from contacting Anderson. Based on that testimony it would have been reasonable for a juror to conclude Davis was the Eric Davis named in Exhibits 11 and 12.

despite the lack of evidence showing they were the same person. Admission of the hearsay testimony materially affected the verdict.⁶

D. CONCLUSION

There was insufficient evidence to support the conviction. Davis's conviction should be reversed and the case dismissed. Alternatively, because the inadmissible hearsay evidence materially affected the verdict, Davis's conviction should be reversed.

DATED this 18 day of September 2013.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



ERIC J. NIELSEN

WSBA No. 12773

Office ID No. 91051

Attorneys for Appellant

⁶ The jury appeared to struggle with the issue. In a query the jury asked "Does the booking process include confirming the identities of a booked person by verifying uniquely identifying features or marks such as fingerprints or tattoos?" CP 22: 3RP 125.

APPENDIX

CERTIFIED COPY

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2010 JUN 29 PM 2:32

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

CERTIFIED COPY TO WARRANTS JUN 29 2010

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 10-1-0386-7 SEA

vs.

Eric Lee Davis

Defendant,

**ORDER PROHIBITING CONTACT
CONDITIONS OF SENTENCE
(DOMESTIC VIOLENCE)**

THIS MATTER having come on before the undersigned judge, and the court having considered the records and files herein, HEREBY ORDERS, that pursuant to RCW 10.99.050, and as a condition of sentence in this matter, that the defendant shall have no contact, directly or indirectly, in person, in writing or by telephone, personally or through any other person, with

- 1) Sabrina M. Anderson (1-1-08):
- 2) _____ (- - -):
- 3) _____ (- - -):

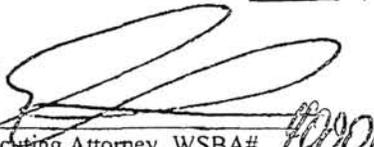
and shall not knowingly enter, remain or come within 500' (distance) of the protected person's -residence -school -workplace -other the person of Sabrina Anderson until 6/25, 2015.

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST; ANY ASSAULT, DRIVE-BY SHOOTING OR RECKLESS ENDANGERMENT THAT IS A VIOLATION OF THIS ORDER IS A FELONY. You can be arrested and prosecuted even if any person protected by this order invites or allows you to violate this order's prohibitions. You have the sole responsibility to avoid violating this order's provisions. Only the court can change this order. This order is valid and entitled to enforcement in this and all other jurisdictions.

IT IS FURTHER ORDERED, that any order prohibiting contact previously issued under the above cause is recalled and superseded by this order.

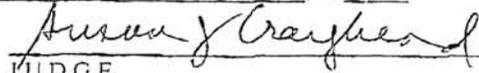
Dated this 25 day of JUNE, 20 10.

Presented by:



Deputy Prosecuting Attorney, WSBA# 10001

JUDGE



Eric Davis

(Signature of Defendant, Copy Received)

DATE: _____

White - Clerk
Yellow - Victim
Pink - Prosecutor
Goldenrod - Defendant

ORDER PROHIBITING CONTACT
CONDITIONS OF SENTENCE (DOMESTIC VIOLENCE) (rev. 1/08)

Daniel T. Satterberg
Prosecuting Attorney
W554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000



State's / -Def's Exhibit #
12-1-04603-1 SEA
State of Washington
v.
Eric Davis

FILED

KING COUNTY, WASHINGTON

JAN 30 2013

SUPERIOR COURT CLERK
BY Sarah Hudson
DEPUTY

STATE OF WASHINGTON } ss.
County of King

I, BARBARA MINER, Clerk of the Superior Court of the State of Washington, for the County of King, do hereby certify that I have compared the foregoing copy with the original instrument, as the same appears on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Superior Court at my office at Seattle this _____ day of _____ 20_____

JAN 16 2013

BARBARA MINER Superior Court Clerk
By _____
Deputy Clerk



CERTIFIED FILED
COPY
JUN 28 AM 11:13
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

COMMITMENT ISSUED JUN 28 2010

PRESENTENCING STATEMENT & INFORMATION ATTACHED

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	Plaintiff,
)	No. 10-1-02386-7-SEA
)	
Vs.)	JUDGMENT AND SENTENCE
)	FELONY (FJS)
ERIC LEE DAVIS)	
)	
)	
)	Defendant,

I. HEARING

I.1 The defendant, the defendant's lawyer, RUTH RIVAS, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

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 06/10/2010 by plea of:

Count No.: I Crime: DOMESTIC VIOLENCE FELONY VIOLATION OF A COURT ORDER
 RCW 26.50.110(1), (5) Crime Code: 0458B
 Date of Crime: 01/15/2010 Incident No. _____

Count No.: II Crime: DOMESTIC VIOLENCE FELONY VIOLATION OF A COURT ORDER
 RCW 26.50.110(1), (5) Crime Code: 0458B
 Date of Crime: 02/22/2010 Incident No. _____

Count No.: _____ Crime: _____
 RCW _____ Crime Code: _____
 Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
 RCW _____ Crime Code: _____
 Date of Crime: _____ Incident No. _____

[] Additional current offenses are attached in Appendix A

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a **firearm** in count(s) _____ RCW 9.94A.510(3).
- (b) While armed with a **deadly weapon** other than a firearm in count(s) _____ RCW 9.94A.510(4).
- (c) With a **sexual motivation** in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A offense committed in a **protected zone** in count(s) _____ RCW 69.50.435.
- (e) **vehicular homicide** Violent traffic offense DUI Reckless Disregard.
- (f) **vehicular homicide** by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g) **Non-parental kidnapping** or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h) **Domestic violence** offense as defined in RCW 10.99.020 for count(s) I, II
- (i) Current offenses **encompassing the same criminal conduct** in this cause are count(s) _____ RCW 9.94A.589(1)(a).

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):
 Criminal history is attached in **Appendix B**.
 One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	7	V	51 TO 60		51 TO 60 MONTHS	5 YEARS AND/OR \$10,000
Count II	7	V	51 TO 60		51 TO 60 MONTHS	5 YEARS AND/OR \$10,000
Count						
Count						

Additional current offense sentencing data is attached in **Appendix C**.

2.5 EXCEPTIONAL SENTENCE (RCW 9.94A.535):

Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in **Appendix D**. The State did did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A**.

The Court **DISMISSES** Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
 - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
 - Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 Date to be set.
 - Defendant waives presence at future restitution hearing(s).
 - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ _____, Court costs; Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b) \$100 DNA collection fee (RCW 43.43.754)(mandatory for crimes committed after 7/1/02);
- (c) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs;
 Recoupment is waived (RCW 9.94A.030);
- (d) \$ _____, Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA;
 VUCSA fine waived (RCW 69.50.430);
- (e) \$ _____, King County Interlocal Drug Fund; Drug Fund payment is waived;
(RCW 9.94A.030)
- (f) \$ _____, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
- (g) \$ _____, Incarceration costs; Incarceration costs waived (RCW 9.94A.760(2));
- (h) \$ _____, Other costs for: _____.

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 600. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. **The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied.** Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

- Court Clerk's trust fees are waived.
- Interest is waived except with respect to restitution.

4.4 (a) **PRISON-BASED SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE (DOSA)**(for sentences imposed after 10-1-05) : The Court finds the defendant eligible pursuant to RCW 9.94A.660 and, having reviewed an examination report and concluded that a DOSA sentence is appropriate, waives imposition of sentence within the standard range and sentences the defendant as follows:

The defendant is sentenced to the following term(s) of confinement in the custody of the Dept. of Corrections (DOC) to commence immediately; [] by _____ at _____ a.m./p.m.:

28 months (if crime after 6/6/06, 12 month minimum) on Count No. I ;

28 months (if crime after 6/6/06, 12 month minimum) on Count No. II ;

_____ months (if crime after 6/6/06, 12 month minimum) on Count No. _____ ;

The above term(s) of confinement represents one-half of the midpoint of the standard range or, if the crime occurred after 6-6-06, twelve months if that is greater than one-half of the midpoint.

The terms imposed herein shall be served concurrently.

The term(s) imposed herein shall run [] CONSECUTIVE [] CONCURRENT to cause No(s) _____

The term(s) imposed herein shall run [] CONSECUTIVE CONCURRENT to any previously imposed commitment not referred to in this judgment.

Credit is given for time served in King County Jail or EHD solely for confinement under this cause number pursuant to RCW 9.94A.505(6): [] _____ day(s) or days determined by the King County Jail.
[] Credit is given for days determined by the King County Jail to have been served in the King County Supervised Community Option (Enhanced CCAP) solely under this cause number.
[] The court authorizes earned early release credit consistent with the local correctional facility standards for days spent in the King County Supervised Community Option (Enhanced CCAP).
[] Jail term is satisfied; defendant shall be released under this cause.

While incarcerated in the Department of Corrections the defendant shall undergo a comprehensive substance abuse assessment and receive, within available resources, appropriate treatment services.

COMMUNITY CUSTODY: The court further imposes 28 months, one-half of the midpoint of the standard range, as a term of community custody during which time the defendant shall comply with the instructions, rules and regulations promulgated by the Department for conduct of the defendant during community custody; shall perform affirmative acts necessary to monitor compliance, shall obey all laws and comply with the following mandatory statutory requirements:

- (1) The defendant shall undergo and successfully complete a substance abuse program approved by the Division of Alcohol and Substance Abuse of the Dept. of Social and Health Services;
- (2) The defendant shall not use illegal controlled substances and shall submit to urinalysis or other testing to monitor compliance.

NON-COMPLIANCE. RCW 9.94A.660(5): If the defendant fails to complete the Department's special drug offender sentencing alternative program or is administratively terminated from the program, he/she shall be reclassified by the Department to serve the balance of the unexpired term of sentence. If the defendant fails to comply with the conditions of supervision as defined by the Department, he/she shall be sanctioned. Sanctions may include reclassification by the Department to serve the balance of the unexpired term of sentence.

The court further imposes the following additional terms of Community Custody upon failure to complete or administrative termination from DOSA program: [] 12 months; [] If crime committed prior to 8-1-09, a range of 9 to 12 months. The defendant in this event shall comply with the conditions of Community Custody set forth in section 4.7 herein.

4.4 (b) **RESIDENTIAL TREATMENT-BASED SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE (DOSA)**(for sentences imposed after 10-1-05) (available if the midpoint of the standard range is 24 months or less): The Court finds the defendant eligible pursuant to RCW 9.94A.660 and, having reviewed an examination report and concluded that a DOSA sentence is appropriate, waives imposition of sentence within the standard range and sentences the defendant on Count(s) ~~_____~~ as follows:

The defendant shall serve 24 months in community custody under the supervision of the DOC, on the condition that the defendant enters and remains in residential chemical dependency treatment certified under RCW Ch. 70.96 for _____ (between 3 and 6) months. The DOC shall make chemical dependency assessment and treatment services available during the term of community custody, within available resources.

Pending DOC placement in residential chemical dependency treatment, the defendant is ordered to attend a DOC day reporting center and follow all applicable rules. The defendant shall report to DOC to begin the DOC day reporting program within 24 hours of release.

The defendant shall comply with the treatment and other conditions proposed in the examination report, as mandated by RCW 9.94A.665(2)(a). Frequency and length of treatment and monitoring plan are specified in the **EXAMINATION REPORT ATTACHED AS APPENDIX 1.**

A progress hearing is set in this court, during the residential treatment, for _____ (90 days from sentencing date). Additional progress hearings may be set.

A treatment termination hearing is set in this court three months before the expiration of the community custody term, for _____ (date).

Before the progress hearing and the treatment termination hearing, the treatment provider and the DOC shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, including recommendations regarding termination from treatment.

NON-COMPLIANCE. RCW 9.94A.665(4): At the progress hearing or treatment termination hearing, the court may modify the conditions of community custody, authorize termination of community custody status on expiration of the community custody term, or impose a term of total confinement equal to one-half the midpoint of the standard range, along with a term of community custody.

The court further imposes the following additional terms of Community Custody upon failure to complete or administrative termination from DOSA program: [] 12 months; [] If crime committed prior to 8-1-09, a range of 9 to 12 months. The defendant in this event shall comply with the conditions of Community Custody set forth in section 4.7 herein.

4.5 **ADDITIONAL COMMUNITY CUSTODY CONDITIONS OF DOSA SENTENCE:** The court further imposes the following non-mandatory conditions of Community Custody (if checked):

[X] The defendant shall not use illegal controlled substances and shall submit to urinalysis or other testing to monitor compliance.

[X] The defendant shall not use any alcohol or controlled substances without prescription and shall undergo testing to monitor compliance.

[] Devote time to a specific employment or training.

[] Remain within prescribed geographical boundaries and notify the court or the community corrections officer of any change in the offender's address or employment.

[X] Report as directed to a community corrections officer.

[X] Pay all court ordered legal financial obligations.

[] Perform _____ community restitution hours on a schedule set by DOC.

[] Stay out of designated areas as follows: _____

[] Other conditions as set forth in **APPENDIX F.**

4.6 **ADDITIONAL CONFINEMENT:** The court may order the defendant to serve a term of total confinement within the standard range at any time during the period of community custody if the defendant violates the conditions of sentence or if the defendant is failing to make satisfactory progress in treatment.

4.7 **CONDITIONS OF COMMUNITY CUSTODY IMPOSED AFTER TERMINATION OF DOSA:**

The defendant shall not use illegal controlled substances and shall submit to urinalysis or other testing to monitor compliance.

The defendant shall not use any alcohol or controlled substances without prescription and shall undergo testing to monitor compliance.

Remain within prescribed geographical boundaries and notify the court or the community corrections officer of any change in the offender's address or employment.

Report as directed to a community corrections officer.

Pay all court ordered legal financial obligations.

Stay out of designated areas as follows: _____

~~Other conditions:~~ ~~No contact with Sabrina Anderson for 5 years.~~
The court will consider lifting the no contact order if the defendant is in compliance with drug treatment and commits no other no contact order violations.

4.8 **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, as ordered in **APPENDIX G.**

HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in **APPENDIX G.**

4.9 **OFF-LIMITS ORDER:** The defendant, having been found to be a known drug trafficker, shall neither enter nor remain in the protected against drug trafficking area(s) as described in **APPENDIX I** during the term of community supervision. **APPENDIX I** is attached and incorporated by reference into this Judgment and Sentence.

5.0 **NO CONTACT:** For the maximum term of 5 years, defendant shall have no contact with _____

Sabrina Anderson

Date: 6/25/10

Susan J. Craighead
JUDGE
Print Name: Susan J. Craighead

Presented by: [Signature]
Deputy Prosecuting Attorney, WSBA# 90021
Print Name: Stephen Reschley

Approved as to form: [Signature]
Attorney for Defendant, WSBA# 88405
Print Name: Ruth L. Rivas

FINGERPRINTS

BEST AVAILABLE IMAGE POSSIBLE



RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: X 31 ERIC DAVIS
DEFENDANT'S ADDRESS: X 101 - DOC

ERIC LEE DAVIS

DATED: JUN 25 2010
Susan J. Crayhead
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK
BY: [Signature]
DEPUTY CLERK

CERTIFICATE

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

OFFENDER IDENTIFICATION

S.I.D. NO. WA14629938
DOB: JULY 21, 1971
SEX: M
RACE: B

CLERK

BY: _____
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
	Plaintiff,	No. 10-1-02386-7-SEA
)	
vs.)	APPENDIX G
)	ORDER FOR BIOLOGICAL TESTING
ERIC LEE DAVIS)	AND COUNSELING
)	
	Defendant,	
)	
<hr/>		

(1) **DNA IDENTIFICATION (RCW 43.43.754):**

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

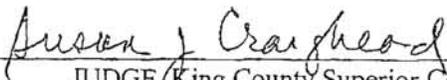
(2) **HIV TESTING AND COUNSELING (RCW 70.24.340):**

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: 6-25-10



JUDGE, King County Superior Court

State's Exhibit #12
2-1-04603-1 SEA
State of Washington
v.
Eric Davis

FILED
KING COUNTY, WASHINGTON

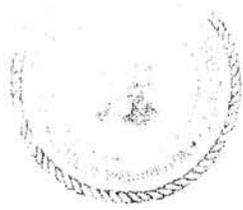
JAN 30 2013

SUPERIOR COURT CLERK
BY Sarah Hudson
DEPUTY

STATE OF WASHINGTON } ss.
County of King

I, BARBARA MINER, Clerk of the Superior Court of the State of Washington, for the County of King, do hereby certify that I have compared the foregoing copy with the original instrument as the same appears on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Superior Court at my office at Seattle this _____ day of JAN 16 2013 20_____

BARBARA MINER Superior Court Clerk
By _____
Deputy Clerk



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON)

Respondent,)

vs.)

ERIC DAVIS,)

Appellant.)

COA NO. 70167-3-1

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 18TH DAY OF SEPTEMBER, 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] ERIC DAVIS
DOC NO. 962344
WASHINGTON STATE CORRECTIONS CENTER
P.O. BOX 900
SHELTON, WA 98584

SIGNED IN SEATTLE WASHINGTON, THIS 18TH DAY OF SEPTEMBER, 2013.

X Patrick Mayovsky

SEP 19 10:11:00
STATE OF WASHINGTON
COURT OF APPEALS
DIVISION ONE
SEATTLE