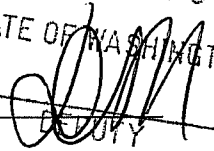


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STATE OF WASHINGTON

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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

JEREMY EDWARD GAINES

v.

STATE OF WASHINGTON

Appeal from the Superior Court of Pierce County
The Honorable Thomas J. Felnagle
Pierce County Superior Court Cause No. 13-1-02515-1

BRIEF OF APPELLANT

By
Barbara Corey, WSBA #11778
Attorney for Appellant

902 South 10th Street
Tacoma, WA 98402
(253) 779-0844

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A. ASSIGNMENTS OF ERROR

1. The trial court denied Mr. Gaines his constitutional right to retained counsel of his choice even after trial counsel invited the deputy prosecutor to discuss plea bargaining a case where Mr. Gaines was represented by other counsel and that counsel had not been notified of this contact, not consented to it, and also after there had been a breakdown in attorney-client communication.

2. The trial court violated Mr. Gaines right to privacy under (Washington Constitution Article I, section 7), and right to be free from unlawful searches and seizures under the Fourth Amendment of the United States Constitution when it affirmed the search warrant for his car.

3. The trial court erred when it entered conclusions of law 2, 3, 4, 6, 7, 8 in its Order on CrR 3.6 Hearing.

4. Gaines is entitled to dismissal of counts 2, 3, and 5 because the State failed to prove beyond a reasonable doubt that he committed the charged crimes.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Mr. Gaines was denied his Sixth Amendment right to representation by retained counsel of his choice who breached his trust by

inviting the deputy prosecutor into a private attorney-interview room to discuss plea bargaining in a case where Mr. Gaines was represented by another attorney who had not been notified of the meeting, not consented to the meeting, and was not there to represent Mr. Gaines.

2. Mr. Gaines was denied his Sixth Amendment right to representation by retained counsel of his choice after a breakdown in communication with counsel.

3. Mr. Gaines was denied his constitutional right to privacy under Washington Constitution Article I, section 7, and right to be free from unlawful searches and seizures under the Fourth Amendment of the United States Constitution when the trial court affirmed the search warrant for his car.

4. The trial court erred when it failed to enter any findings of fact regarding the search warrant that are relevant to its determination of probable cause and that permit meaningful appellate review.

5. The trial court's conclusions of law nos. 2, 3, 4, 5, 6, 7 are not supported any of the findings of fact.

6. Because the findings of fact do not support the trial court's conclusions of law, the conclusions of law must be stricken and the matter remanded for trial with the challenged evidence suppressed.

7. There was insufficient probable cause to support the warrant for the search and seizure of Mr. Gaines and his car on June 20, 2013.

8. The State failed to prove beyond a reasonable doubt that Mr. Gaines committed the offenses charged in count II unlawful possession of a firearm; count III, unlawful solicitation to deliver a controlled substance, Count V, conspiracy to deliver a controlled substance.

C. STATEMENT OF FACTS

1. Procedure.

The State of Washington in Pierce County Superior Court Case 13-1-02512-1 charged JEREMY EDWARD GAINES, defendant herein, with Unlawful Possession of a Controlled Substance and Unlawful Possession of a Firearm in the First Degree. Supp. CP 294-95¹². The State also filed a Persistent Offender [“three strikes”] notice. Supp CP 296³. After numerous continuances⁴, on March 17 – 18, 2014, the court held a suppression hearing. RP 3/17/14 3-4 *et. seq.* The State conceded that the search warrant for the defendant’s Puyallup residence was not valid and that

¹ Appellant has designated supplemental clerk’s papers and also appended them to this brief for the convenience of the Court and respondent.

² Appendix A, Information.

³ Appendix B.

⁴ These are set forth in detail in section ____, the argument regarding denial of Mr. Gaines right to retained counsel of his choice.

the evidence taken from the Puyallup residence required suppression. RP 3/17/14 8. Mr. Gaines filed a memorandum in support of motion to suppress as well as a memorandum in support of motion to suppress [corrected]. CP 1-26; CP 26-52. Both memoranda contained copies of the complaint for search warrant and the search warrant⁵ itself.

The State sought to admit evidence came from Mr. Gaines' car, a Dodge charger. RP 3/17/14 8. That search warrant was dated June 17, 2013; however the complaint for warrant was dated June 18, 2013. RP 3/17/14 10. The State argued that sufficient probable cause was established where the search warrant stated that Mr. Gaines' involvement in the first controlled buy was that the car used was registered to Mr. Gaines and that when it arrived the individual matched the description of Mr. Gaines. RP 3/17/14 9. However, there was no testimony identifying the individual who identified saw Mr. Gaines as the individual in the car. *Passim*. Further, surveillance of that car followed that car back to Mr. Gaines' residence. *Id*. These observations, the State averred, were sufficient evidence to show that Mr. Gaines drove the car for the controlled buy. *Id*.

In response to the court's concerns about the dates on the complaint and the warrant, the deputy prosecutor replied that he could not respond

⁵ Appendix C, Complaint for Search Warrant and Search Warrant.

because the issue had not been raised in the defense, briefing nevertheless, that the error was a mere scrivener's error, "that the court was entitled to recognize them for what they are", and that they were not fatal to the search warrant. *Id.*

Mr. Gaines' attorney in fact did raise this in his corrected brief and could find no cases on point. RP 3/17/14 11.

The court took a recess to consider the issues. RP 3/17/14 13.

When the court went back on the record, the deputy prosecutor supplemented the record with hearsay statements from the police officer who presented the warrant. RP 3/17/14 14.

The deputy prosecutor reported that the police officer stated that he presented both documents simultaneously to the Judge. *Id.*

The court stated that it would not consider the deputy prosecutor's supplemental information in its ruling. RP 3/17/14 15.

In its oral ruling, the court held that the discrepancy in the dates was a scrivener's error and that the scrivener's error in no way prejudiced the defendants. RP 3/17/14 15-16. The court noted that defendants had not raised the date discrepancy as a basis for suppression. RP 3/17/14 16.

The court ruled that any evidence obtained from a search of the Gaines' residence on June 12, 2013, was suppressed. *Id.*

Finding probable cause for the issuance of the search warrant for Mr. Gaines' car, the court noted that the complaint recited that Mr. Gaines had been "involved" in the local drug scene for nearly fourteen years, has and is familiar with controlled substances, including methamphetamine, which was alleged to be involved here. RP 3/17/14 17-18.

The court held that the defendant had not challenged the basis of knowledge for the informant, Jessica Handlen but rather had challenged the reliability of the informant. RP 3/17/14 18. Even so, Handlen never identified the individual who sold the methamphetamine to her on either occasion to be Jeremy Gaines. CP 1-26, Appendix B. Rather, police merely assumed based on some unidentified person's alleged glimpse of the driver during a "very brief" transaction with Handlen. RP 31-32. Schultz did not see that transaction. RP 87. He did not see the window down. RP 87. Although he testified that the window had been rolled down, he did so based on hearsay from an unidentified individual and also from his experience that one can't do a drug deal unless the window is rolled down. RP 87.

The court noted that the CI stated that she could purchase meth from Handlen and had done so twice. *Id.* The court noted that "entire transaction" occurred on June 3, 2013 and June 12 and was observed by officers. *Id.* However the court had suppressed the evidence from the June 12, 2013

incident and thus could not and should not have relied on that suppressed evidence. The CI contacted Handlen to purchase drugs on June 3rd prior to meeting her Handlen outside her residence and was told that she needed her supplier to arrive. *Id.* After the white Dodge Charger arrived, Handlen contacted the driver who matched the description of the registered owner, Jeremy Gaines. RP 3/17/13 18-19. Schultz testified that he did not see the driver of the white Dodge Charger because he was out of his target area. RP 88. Thus, in fact, there was no evidentiary support for that statement in the warrant. *Supra.*

The court nevertheless made a connection between Mr. Gaines and the June 3, 2013 delivery. *Id.*

The court found that the CI was reliable because she had participated in two prior controlled buys, had contacts with suppliers on the street and made arrangements to purchase narcotics, and conducting transactions. *Id.* Law enforcement did not attest that any of these prior controlled buys had resulted in arrests. *Passim.* Of course, the court had suppressed the June 12, 2013, transaction because the search was invalid. *Supra.*

On June 3, 2013, Handlen went to the Dodge Charger, contacted someone, and returned to the CI with the controlled substance. The court

found that this connected to him to the delivery and created probable cause for his arrest. RP 3/17/13 20.

The court found that the June 3, 2013 transaction provided “sufficient nexus between the defendant and between the crime and the defendant and the crime and his vehicle because the vehicle was used to bring the controlled substances to the June 3rd transaction.” RP 3/17/13 20-21.

The court further rejected the argument that the period between June 3, 2013 and June 17-18, 2013 [dates of issuance of warrants] rendered the warrants stale. RP 3/17/13 21-22.

The court later entered findings of fact and conclusions of law regarding its ruling. CP 94-97. RP 3/17/13 34-35.

On May 15, 2014, the parties appeared before the presiding judge. RP 3/14/17 27. Geoffrey Cross presented a motion from Mr. Gaines to allow withdrawal and substitution of counsel. *Id.* Defense counsel also moved for a competency evaluation for Mr. Gaines. RP 3/14/13 27-28. The court granted the motion for a Western State Hospital competency evaluation and denied the motion for substitution of counsel. RP 3/14/13 30-31.

On 9/10/14, the trial court entered an order finding Mr. Gaines competent to stand trial. Supp.CP⁶.

On 10/16/14, Mr. Gaines moved to retain new counsel. RP 10/16/14 2.

Mr. Gaines had been trying without success to have Mr. Cross removed from the case since May of 2014. RP 10/16/14 28. The court characterized Mr. Gaines' conduct as "kind of a tantrum when he won't talk to you". *Id.*

Rather than focus on Mr. Gaines' constitutional right to retain an attorney of his choice when he had serious issues with the conduct of current counsel which had resulted in breakdowns in communication, the trial court focused on attorney Corey's trial calendar and decided that it was too busy to permit her to take the case. RP 10/16/14 8-9, 15-16, 19-20. The deputy prosecutor encouraged the trial court to take this view. *Id.* This was so because of his estimation and the trial court, she would not be able to get the case in before October 2014. RP 5. T¹ Appendix D.

His last reason, of course, was purely speculative and appeared to be based on the prosecutor's desire not to have a case against attorney Corey.

*Passim.*⁷

⁶ Appendix D.

Mr. Gaines had refused to speak to attorney Cross when he visited him in the Pierce County Jail prior to trial. RP 4; Supp. Clerk's Paper ____ - Declaration of Geoffrey Cross 9/26/14. In fact, Mr. Gaines would not come out of his cell to talk to Mr. Cross. *Id.* Attorney Cross averred that there had been a total breakdown in communications. *Id.*

The prosecutor contended that Mr. Gaines was not entitled to a new attorney of his choice and particularly attorney Corey. RP 4-5. This was so because of his estimation and the trial court, she would not be able to get to the case in before October 2015. RP 5. This last reason, of course, was purely speculative and appeared to be based on the prosecutor's desire not to have a case against attorney Corey. *Passim.* The prosecutor characterized Mr. Gaines as "more or less throwing a tantrum that if he's not going to get what he wants, he'll just stop talking to Mr. Cross and force the Court's hand in giving him what he wants. And that's not how justice is handled in this court or any other court. So again, I have nothing to add. I think Judge Chushcoff made the right decision this morning." RP 6-7.

⁷ Subsequent to this case, a second whistleblower complaint was filed against the Pierce County Prosecutor. This complaint alleged that the Prosecuting Attorney had instructed his deputies to treat attorneys who had filed declarations in support of sheriff's detectives who had taken a position, contrary to that office.

When asked by the court whether he was ready to proceed, the prosecutor said that he was not in fact able to proceed with the CrR 3.5 hearing: “It came as a little bit of a surprise that I was getting assigned out on this case today.” RP 9.

The deputy prosecutor Jesse Williams complained at length about the age of the case when it was clear that the age of the case at least in part was attributable to the State’s failure to make timely discovery and to his own trial schedule. RP 13-14, 14-15.

Although there had been a breakdown in communications and a lack of trust between Mr. Gaines and his counsel after counsel Cross and the deputy prosecutor entered the interview room and attempted to plea bargain a case where Mr. Gaines was represented by attorney Corey. RP 10/16/14 12. Neither counsel had notified attorney Corey of their intention to attempt to plea bargain the case in which she represented Mr. Gaines. RP 10/16/14 12 12. These attorneys, neither Cross nor the deputy prosecutor, had informed attorney Corey of their intent to contact Mr. Gaines and certainly had not conveyed any plea offer to her. *Id.* Their conduct was improper under Rule of

Professional Responsibility 4.2⁸ Mr. Gaines would not speak to counsel Cross.

Id.

Counsel Cross had been moving to get off the case since May, 2013.

RP 10/16/14 5. Counsel informed the court that Mr. Gained had been trying to discharge Mr. Cross since May, 2014, six months prior to the motion date. RP 10/16/14 18.

The trial court did not consider any of the arguments on the merits.

Passim. Rather the trial court speculated on attorney Corey's pending trial schedule and those cases⁹ would settle or go to trial. RP 10/16/14 8, 15, 19.

⁸ RPC Rule 4.2: Communication with person represented by counsel: "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order."

⁹ To the extent that it is even relevant, the trial and the prosecutor were simply wrong about their predictions of attorney Corey's caseload. The trial court referred by name to many cases that would prohibit what the trial court believed was a timely trial. It is a matter of public record that Brady, #13-1-03593-8, entered guilty pleas and was sentenced on 2/4/15; Overly, #13-1-02658-1, counsel [retained] allowed to withdraw and a third attorney appointed; Page, #13-1-02687-4, dismissed per global resolution of cases, #13-1-04609-3, dismissed per global resolution of cases; 13-1-04937-8, pleaded guilty to assault 2, dismissal of attempted first degree attempted robbery and assault 2; Flewellen, #12-1-024040-1, assault of child 2- trial – not guilty; Banks – 13-1-00732-2 – attempted murder 1- trial – not guilty; Banks – 13-1-00457-0 – pleaded guilty to Unlawful Possession of a Firearm 2, dismissal of assault 2; Jefferson -13-1-02796-0 – trial – guilty – att murder

The deputy prosecutor predicted that attorney Corey would not be able to try the case until October 2015. RP 10/16/14 14. Of course, the deputy prosecutor had no basis for this prediction and may well have an improper motive¹⁰.

Judge Bryan Chuschoff, who heard the motion for substitution, set the matter for trial, thereby denying the motion for substitution. Mr. Cross remained on the case. RP 1.

After the motion for substitution by attorney was denied so that the matter could immediately proceed to trial, the parties appeared before Judge Felnagle on September 30, 2014. A joint motion for continuance was granted because "defendant" was trying to track down material witness. Witnesses for the State were not available. Status of defendant's representation "up in the air." Supp. CP¹¹.

The parties appeared before the Honorable Thomas J. Felnagle for trial on October 16, 2014. RP 1.

1, assault 1, UPFA 1. All of these cases were resolved by the end of May, 2015.

¹⁰ The case of Michael Ames v. Pierce County, #13-1-02658-1, is a matter of public record. It is also a matter of public record that attorney Corey filed a declaration in support of Ames' character on April 14, 2014. After that Pierce County Prosecuting Attorney instructed his deputies not to give "good deals" to the attorneys who signed declarations in support of Ames. See Appendix E.

¹¹ Appendix F.

During trial, the State's witness Washington State Patrol Crime Laboratory forensic technician Maureena Dudschus testified that, based on her examination of State's Exhibit #1, the suspected methamphetamine was *not* methamphetamine at all. RP 143. The State asked this question again to confirm that the expert had not erred in her testimony. *Id.* Dudschus identified the substances as MSM, methylsulfonylmethane, a dietary supplement, that is not a controlled substance. RP 146. It is sometimes used as a cutting agent with methamphetamine, but it is not methamphetamine. RP 146.

Upon receipt of those answers, the deputy prosecutor asked for a "full break" and then returned with a Third Amended Information changing the charge of Unlawful Delivery of a Controlled to Unlawful Distribution of an Imitation Controlled Substance. CP 300; RP 144.

During his trial testimony, Officer Shipp, who had been unable to identify Mr. Gaines at the CrR 3.5 hearing two days earlier, identified him before the jury. RP 153-54. He testified that he was able to do so because after he failed to do so in court, he returned to his office and looked at booking photos of Mr. Gaines. RP 155. Defense counsel failed to object to this testimony. *Id.*

The prosecutor asked Shipp the leading question, “And fair to say that the reason you may not arrested Mr. Gaines or recognized Mr. Gaines two days ago us because you see a lot of faces in your work?” RP 155. Defense counsel also failed to object to this patently improper question. *Id.*

At the conclusion of Shipp’s testimony, the prosecutor asked for another recess to amend the information. RP 156. The deputy prosecutor’s third amended information had incorrectly charged Unlawful Distribution of a Controlled Substance with Intent to Distribute, a non-existent offense. RP 156.

The court instructed the jury that the prosecutor had charged Mr. Gaines with Unlawful Distribution of an Imitation Controlled Substance. RP 176.

The trial court failed to address this important concern. 4.2. *Id.*

After the State rested, the defendant made a motion to dismiss. RP 236-237. Defense counsel argued for dismissal of Count I, because the State had failed to present any evidence that Mr. Gaines ever had represented that he was selling methamphetamine as well as that he had ever sold any “bunk”, imitation or counterfeit controlled substance. *Id.* The Washington State Patrol Crime Laboratory technician had identified the substance as methylsulfonylmethane, commonly known as MSM, a dietary supplement. RP

143. This is not a controlled substance. RP 146. It is not illegal to possess this substance any more than it is illegal to possess baking soda.

The defendant also made a motion to dismiss the Count II, unlawful possession of a firearm in the first degree. RP 237-38. Officer Schultz testified that on June 20, 2013, he saw Mr. Gaines' hands on the firearm. RP 87. He then recanted his testimony and claimed that "the surveillance units" did. RP 87. However, there was no identification of the individual[s] that supposedly saw this important point and there is no opportunity for cross-examination. RP 86-87. This is significant because this sighting occurred at the time that there allegedly was movement suggesting that someone was putting something, the gun, in the foot well of the driver's seat. RP 47. However, he was not certain that the gun was actually on the floorboard. RP 47. He later saw the gun on the floorboard but could not say when it was put there or who put it there. RP 47. It could have been put there just as police extricated Mr. Gaines from the car. Schultz testifies that he was watching Mr. Gaines' hands and that he saw him with a firearm. RP 45. Schultz recanted his testimony that he actually saw any firearm in Mr. Gaines' hand. RP 48. He admitted that he could not see any firearm until after the door was opened. RP 48.

There were three individuals in the car at the time the Officer's Shipp's car rammed Mr. Gaines' car. RP 56. There was thus no physical evidence connecting Mr. Gaines to the firearm. RP 98-99 .

The defendant also moved to dismiss counts III, unlawful solicitation to deliver a controlled substance, where there was no testimony about whom he solicited or what he intended to deliver. RP 237. Further, there was no corpus delicti to this crime save for Mr. Gaines' own statements. RP 237.

The defendant also moved to dismiss Count V, conspiracy to deliver a controlled substance. RP 237. The defendant argued that absent his statements there was no corpus dilecti for the crime of conspiracy. RP 264. In support of the motion, the defendant directed the court's attention to Exhibit 7¹², the notes of Officer Schultz, where he wrote that Mr. Gaines said he was a runner for the Mexicans, that he had taken him to the Mexicans he was picking up from, but never said the word methamphetamine. RP 271. The State had charged Mr. Gaines only with dealing the controlled substance of methamphetamine. *Passim*. However the State had not been able to prove that Mr. Gaines possessed any methamphetamine at in this case. RP 271.

The court denied the motions to dismiss. RP 252.

¹² Notes of Officer Schultz – Supplemental Clerks Papers.

The State filed its Fourth Amended Information. CP 266-269; RP 266. Mr. Gaines entered not guilty pleas. *Id.*

On October 29, 2013, the jury acquitted Mr. Gaines on Count I, delivery of an imitation controlled substance; convicted him on Counts II, unlawful possession of a firearm; Counts III and IV, solicitation to deliver a controlled substance, both with special verdicts for firearm enhancements; Count V, conspiracy to deliver a controlled substance with special verdict for firearm enhancement. RP10/29/13 5-6.

On October 31, 2013, the court sentenced Mr. Gaines as required by law in three strikes case to life imprisonment without the possibility of parole. CP 276-287.

Mr. Gaines timely filed this appeal. CP 272.

2. Facts.

In June 2013, Tacoma Police Department [TPD] Officer Howard Schultz was assigned to the special investigations unit and handled confidential informants [CI's]. RP 15-16. He often used informants to conduct controlled buys. *Id.*

In a controlled buy, officers search a CI for narcotics, narcotics paraphernalia, weapons, cash, and remove any such items. RP 17. Police then give the CI marked or prerecorded cash. RP 17. The serial numbers are

prerecorded so that later on during the seizure, that money is recovered and used as evidence of the buy. RP 17. This effort, thus, is an attempt to control the circumstances of an encounter between a CI and the target. RP 17-18. The informant's car would be searched before the controlled buy if the car was to be used therein. RP 18-19.

Police surveillance is used during a controlled buy. RP 19-20. Police also search the informant after the controlled buy is completed. RP 21.

On June 3, 2013, TPD officers Schultz and Buchanan conducted a controlled buy using a CI for a buy from target Jessica Handlen. RP 24. They searched the CI. *Id.* They did not use a body wire on the CI. *Id.* Because the CI drove a vehicle to the buy, they searched the car. RP 25-26.

Schultz had no recollection of how much cash the CI was given for the buy. RP 85. He did not recall that any of the money showed up on Mr. Gaines or in his possessions. RP 86. He did not personally check this although someone probably ran his money through "the machine" as that usually happens. RP 86.

Schultz did not know what had happened to the monies taken from Mr. Gaines after the search on June 20th nor did he know that the money had been released to him. RP 86.

The location of the first buy was the 1200 block of South Altheimer. RP 26. The officers watched the CI met up with Handlen through binoculars as they were more than a hundred yards away. RP 27. The CI met Handlen in front of an apartment building. RP 27.

After a lengthy wait, Handlen met up with a white Charger that Handlen had told the CI was her "source." RP 28. Officer Schultz recalled that it was a 2013 white Dodge Charger registered to Jeremy Gaines. RP 29-30. The car had tinted windows. RP 31.

Handlen approached the driver's side and the window went down. *Id.* Police believed that a transaction happened. *Id.* The transaction was "very brief." RP 32.

Schultz himself did not identify the driver as Mr. Gaines as he was not in Schultz's "targeting radar" at that time." RP 88. He could not identify the individual who made the identification. RP 87,88,89. But police concluded that the driver matched the identification of the owner of the car. RP 30 Handlen never identified the driver to the police prior to the presentation of the complaint for search warrant to the court. *Passim.*

Schultz handled the CI and documented his observations in his report. RP 87. He did not mention anything about the window being rolled down. RP 86-87.

After the transaction, the CI returned with the drugs, a package of methamphetamine. RP 32,33. She was searched. *Id.* Her car was searched. RP 32.

The methamphetamine was weighed at 6.4 grams or about a quarter ounce. RP 35-36. Officer Schultz did not recall how much money the CI had paid for the meth. RP 37. After this buy, police did not arrest Mr. Gaines. RP 38.

Mr. Gaines was arrested on June 20, 2013 in Puyallup. RP 39. There were three other passengers in his car. RP 45. Mr. Gaines was the driver. RP 46. Codefendant Brandon Lee Ryan was the front seat passenger. RP 46.

Mr. Gaines was arrested by several police officers travelling in separate cars. RP 153. Shipp struck the Gaines car from the back, causing an impact. RP 153.

At the time of the arrest, Officer Schultz may have seen a firearm on the floor on the floor of the car. RP 45. The officer had no independent recollection of where the first firearm found was but after reading his report, he *believed* that “it was at his feet and that there was some movement there.” RP 47. The officer explained, “Meaning that, through the —through the—as we were making contact with him, it appeared that he was making a motion down there, which is what directed our attention to it, meaning I wrote in my report

that he placed the firearm there.” RP 47. The officer went on to claim that he witnessed Mr. Gaines placing the gun on the floor of the car. *Id.*

Officer Schultz clarified that he had not seen the gun in Gaines’ hands but that he saw his hands moving and then saw the gun. RP 48.

He could not see this until after the door was opened. *Id.*

At that moment, Officer Scripps took Gaines out of the car and put him in wrist restraints. RP 48-49. Scripps noticed a second firearm on the front of the floorboard of the front passenger side and pointed that out to Schultz. RP 49.

Officer Shipp advised Mr. Gaines, co-defendant Ryan, and the two passengers of their Miranda rights and advised them of the search warrant. RP 57, 149. Shipp also read them a copy of the search warrant provided by Schultz. *Id.*

Although Shipp had been unable to identify Mr. Gaines at the CrR 3.5 hearing two days prior to his testimony, he was able to identify him at trial. RP 153-54. He was able to do so because after he failed to do so in court, he returned to his office and looked at booking photos of Mr. Gaines. RP 155. The prosecutor asked Shipp the leading question, “And fair to say that the reason you may not have arrested Mr. Gaines or recognized Mr. Gaines two days ago is because you see a lot of faces in your work?” RP 155.

Schultz and Mr. Gaines spoke for a few minutes. RP 60. Mr. Gaines denied the specific allegations. RP 60. According to Schultz, Mr. Gaines stated that he was “a small fish” and that he was “a runner for the Mexicans.” RP 61. Mr. Gaines stated that he had just wired money to Mexico as proof of what he was saying. RP 62. He also stated that he was supposed to pick up a kilo of meth. RP 62-63.

Police searched Mr. Gaines after he was moved off the roadway. RP 121. He had \$657 in cash. RP 121. When police take money in a drug arrest, they place the money into property and have a seizure hearing. RP 122. A seizure hearing is a court process by which the money is forfeited to law enforcement. RP 122. However in this case, the money was returned to Mr. Gaines. RP 123.

Police found receipts from wire transfers in the car. RP 66-72. One of the receipts was dated June 20, 2013 and was from the Safeway at 11501 Canyon Road with the recipient identified as Jesus Enrique Palomera and the sender as Brandon Ryan. RP 75-76. A Western Union transaction form showed that Mr. Gaines wired \$900 to an unnamed recipient, possibly Ana Cueva Ramos, in Jalisco, Mexico on May 29, 2013. RP 77-78.

Police did not find any drugs in the Gaines car. RP 90. They found some methylsulfonylmethane, commonly known as MSM, a dietary

supplement. RP 143, 146. Possession of a legal dietary supplement is not a crime. RP 143, 146.

Schultz knew that no one dealing in drugs would sell a kilo of methamphetamines for \$900. RP 90.

A forensic technician examined Exhibits 3, 4, 5, 6, the firearms for fingerprint evidence and found nothing. RP 107, 109-110.

Although DNA tests may identify the individuals who have handled the weapons, those tests were not requested in this case. RP 112.

Washington State Patrol Crime Laboratory forensic scientist Maureena Dudschus analyzed the drugs seized in this case. RP 140-143. When she examined State Ex. 1, the drugs seized from Mr. Gaines car, she determined that the substance was *not* methamphetamine. RP 143. Dudschus identified the substance to be methylsulfonylmethane, commonly known as MSM, a dietary supplement. RP 143. This is not a controlled substance. RP 146.

Dudschus had seen MSM used as a cutting substance for methamphetamine. RP 146. A cutting substance is something that is used to dilute an actual drug. *Id.* It looks like the drug, mixes in with the drug, and thus is indistinguishable from the drug itself. *Id.* However, she did not identify any methamphetamine in the substance she tested. *Passim.*

Robert Page, from Washington Employment Security, testified to records regarding Mr. Gaines from January 2012 to "probably through current." RP 183-185. They had no record of wages paid or unemployment applied for. RP 185. Page agreed that their records would not confirm if Mr. Gaines was on Social Security. RP 185. Mr. Page had no way of accessing that information. 185-86.

Jessica Handlen used meth, heroin, and pills in June 2013, RP 202. She had had a drug habit for 14 years by then. *Id.* Meth was her drug of choice. *Id.* She used it daily, sometimes as much as half an ounce. *Id.* Meth cost her \$400 a day. RP 203. She also used heroin. RP 202. On June 20, 2012, she was arrested for delivering drugs. RP 203. She was booked into jail, charged, convicted and sentenced to prison. RP 204. She was released on March 11, 2013. *Id.*

She knew Mr. Gaines and had met him through an old boyfriend. RP 206. They became best friends, social friends. *Id.* She bought drugs, meth and a couple of pills, from him a couple of times. *Id.*

Prior to June 20, 2012, she had last bought drugs from Mr. Gaines probably a month and a half earlier. *Id.* She had a hard time remembering that day because she wanted to know who the CI was and as she was dealing with a lot of people, she could not remember who the CI was. RP 208.

She was arrested, brought to the court and charged the next day with delivering and other crimes. RP 208. She plead guilty. *Id.* In that case, she was charged with selling meth to a police officer. RP 209. The information she was given about the case alleged that police had seen her meet with Mr. Gaines during that buy. *Id.*

Handlen did not remember that incident because she had been using so many drugs. *Id.* She was still using meth at time of trial, albeit a much lesser quantity. RP 210-11. She acknowledged that chronic meth use had adversely affected her memory. RP 211.

Handlen explained that she was unable to recall that time in her life. "I mean, I don't remember that exact day, anything I did on that exact day. I know I was there, obviously, the police says it, so -at that apartment." RP 211.

She recalled being at the apartment at 12th and Altheimer. *Id.* She was there to make some money dealing drugs. RP 211-12. She was dealing a lot at that time. RP 212.

Her source of income was prostitution. RP 213. She also worked as an informant for the Lakewood Police Department. *Id.* She worked for them to get a friend out of jail. *Id.* She did not complete her informant contract

because they wanted her to turn in Jeremy Gaines but she would not. RP 214.

When she would not, they terminated the contract. *Id.*

She told her attorney that the drug she received from Mr. Gaines on June 2, 2013 was not methamphetamine. RP 214.

She remembered that Jeremy drove a white Charger at that time. RP 212-13.

When shown State's Exhibit 1 [the packaged methylsulfonylmethane, commonly known as MSM, a dietary supplement], the prosecutor asked, "Does that look like methamphetamine to you?", she replied, "Some bunk." RP 217. The prosecutor sought to clarify, "Looks like some bunk to you?" *Id.* Handlen answered, "Yeah." *Id.* The prosecutor continued, "What do you mean by that?" *Id.* Handlen, "Looks like garbage." *Id.* The prosecutor, "Meaning what?" *Id.* Handlen, "Meaning it's not looking very good. It's powdery." *Id.*

D. LAW AND ARGUMENT.

1. THE TRIAL COURT DENIED MR. GAINES HIS RIGHT TO RETAINED COUNSEL OF HIS CHOICE EVEN AFTER TRIAL COUNSEL INVITED THE DEPUTY PROSECUTOR TO DISCUSS PLEA BARGAINING IN A CASE WHERE MR. GAINES WAS REPRESENTED BY OTHER COUNSEL AND THAT COUNSEL HAD NOT BEEN NOTIFIED OF THIS CONTACT NOR CONSENTED TO IT, WHERE THERE HAD BEEN A HISTORY OF BREAKDOWNS IN COMMUNICATION, AND WHERE

DEFENSE COUNSEL HAD MADE MOTIONS TO BE REMOVED FROM THE CASE.

"The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence. ", *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006). An element of this right is the right of a defenda who does not require appointed counsel to choose who will represent him. Id. The Sixth Amendment right to counsel of choice commands "not that a trial be fair, but that a particular guarantee of fairness be provided - to wit, that the accused be defended by the counsel he believes to be best." Id. at 146.

The deprivation of a defendant's right to counsel of choice is complete" when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received. To argue otherwise is to confuse the right to counsel of choice—which is the right to a particular lawyer regardless of comparative effectiveness—with the right to effective counsel—which imposes a baseline requirement of competence on whatever lawyer is chosen or appointed. *Gonzalez-Lopez*, 548 U.S. at 148.

Where the right to be assisted by counsel of one's choice is wrongly denied, it is unnecessary to conduct an ineffectiveness or prejudice inquiry to

establish a Sixth Amendment violation. *Gonzalez-Lopez*, 548 U.S. at 147-48.

This is so because the denial of the right to counsel of choice is a structural error. Structural errors “‘defy analysis by “harmless-error” standards’ because they ‘affect the framework within which the trial proceeds,’ and are not ‘simply an error in the trial process itself.’” *Gonzalez-Lopez*, 548 U.S. at 148 (alteration in original) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309-10, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991)).

In this case, Mr. Gaines asked the trial court to replace one retained counsel with another retained counsel. Although it should not require scrutiny, his reasons were sound: his attorney had breached his trust by exceeding the scope of his representation and violating his duty of confidentiality when, attorney Cross and the deputy prosecutor entered the attorney-client room to speak to him. These attorneys, without notice or consent of his attorney of record on the other case, attempted to plea bargain that case in that meeting.

The right to counsel of choice does not extend to defendants who require counsel to be appointed for them.” *Gonzalez-Lopez*, 548 U.S. at 151 (citing *Wheat*, 486 U.S. at 159; *Caplin & Drysdale*, 491 U.S. at 624, 626).

The Court has “recognized a trial court’s wide latitude in balancing the right to counsel of choice against the needs of fairness, [*Wheat*, 486 U.S.] at 163-164, and against the demands of its calendar, *Morris v. Slappy*, 461 U. S.

1, 11-12[, 103 S. Ct. 1610, 75 L. Ed. 2d 610] (1983).” *Gonzalez-Lopez*, 548 U.S. at 152. Although “no ... flat rule can be deduced from the *Sixth Amendment* presumption in favor of counsel of choice,” courts “have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them.” *Wheat*, 486 U.S. at 160.

In this case, Mr. Gaines had a legitimate concern that attorney may have acted unethically when he invited the deputy into the private attorney-client interview room without Mr. Gaines’ permission and attempted to plea bargain a case where Mr. Gaines was represented by another attorney. RP 12. This was and is a serious concern. When brought to the trial court’s attention at the motion for new counsel, the trial court simply ignored it. This information was not denied by Mr. Cross who acknowledged only that he had attempted to plea bargain his own case and declined to address that issue.

Passim.

Mr. Gaines retained private counsel to defend him in this “three strikes” case. Supp CP – Notice of Appearance and Demand for Discovery, 07/09/13¹³. Mr. Gaines is a client to who requires extra attorney time due to his mental and physical limitations. Gaines suffered from long-term mental

¹³ Appendix F.

illnesses, lasting physical disabilities resulting from a gunshot wound to the stomach in 1996, and had limited mental abilities. Report – Forensic Mental Health Evaluation – May 27, 2014-

Supp. C P ____.¹⁴ The forensic mental health evaluator at that time found him incompetent to proceed. *Id.* After a restoration commitment, Mr. Gaines was determined to be competent to proceed. Order Determining Competency to Stand Trial¹⁵ – 9/10/14 – Supp.CP ____.

On September 10, 2014, the court entered the order finding Mr. Gaines competent to stand trial and set his trial for one week later, September 16, 2014, the same day as his motion for new counsel. Supp CP¹⁶, _____. At that time, counsel Cross's attempts to speak to Mr. Gaines had proved futile. Declaration of Geoffrey Cross – 9/29/14 - Supp CP _____. Cross noted that Mr. Gaines refused to come out of his cell to speak to Cross and flatly refused to talk to him. *Id.* In any case, this is significant and warrants new counsel. In a “three strikes” case, it is unthinkable that counsel would not be allowed to withdraw when he could not even communicate with his client.

Thus, when the trial court heard his motion for new counsel, Mr. Gaines' trial date had been manipulated so that it appeared he was asking for a

¹⁴ Appendix G.

¹⁵ Appendix I, Order Finding Defendant Competent to Stand Trial.

¹⁶ Appendix J, Scheduling Order

new attorney on the eve of trial. However, Mr. Gaines had been seeking new counsel since May, 2014.

Mr. Gaines intended to discharge retained counsel, Mr. Cross, and retain attorney Corey. He had a Sixth Amendment right to be defended by the retained counsel he believed to be best. *Gonzalez-Lopez*, 548 U.S. at 146. Mr. Gaines intended to exercise that right by hiring attorney Corey who he believed would represent him well and would adhere to the rules of professional conduct.

2. MR. GAINES' RIGHT TO COUNSEL OF CHOICE WAS VIOLATED WHEN THE TRIAL COURT APPLIED THE WRONG LEGAL STANDARD AND FAILED TO CONSIDER THIS CONSTITUTIONAL RIGHT.

Washington courts may consider two of the so-called *Roth* [*State v. Roth*, 75 Wn. App. 808, 825, 881 P.2d 268 (1994)], factors when determining whether to grant motions for substitutions when there has been no breakdown in communication or other ethical or professional issue warranting substitution. *State v. Hampton*, 182 Wn. App. 805, 820-21, 332 P.3d 1020 [2014]. Those factors are (1) whether the court had granted previous continuances at the defendant's request; (2) whether available counsel is prepared to go to trial. *Id.*

Regarding the first factor, Mr. Gaines made no motions for continuance. He joined in and/or did not oppose motions made by the deputy prosecutor or the codefendant's attorney. However, the record affirms that numerous continuances were granted. In fact, several of the continuances were granted to accommodate the deputy prosecutor's busy trial schedule. Other lengthy continuances were required because the State was completing discovery.

After Mr. Gaines was arraigned on June 21, 2013, the parties agreed to the first continuance on July 22, 2013 to October 15, 2013, for the reason that "additional time needed" –Order for Continuance of Trial Date – 7/22/13 – Supp Clerk's Papers ___;

-The parties agreed to a second continuance on September 16, 2013 to January 15, 2014 for the reason that "discovery not complete"; Order for Continuance of Trial Date – 9/16/13 - Supp Clerk's Papers ___;

-On January 15, 2014, a continuance was granted until January 27, 2014 because the deputy prosecutor was in trial; Order for Continuance of Trial Date – 1/15/14 - Supp Clerk's Papers ___;

-On January 27, 2014, a continuance was granted until March 11, 2014, because the deputy prosecutor was in trial and discovery was not

complete; ; Order for Continuance of Trial Date – 1/27/14 - Supp Clerk's Papers ___;

-On 1/27/14, a continuance was granted to March 27, 2014

-On March 11, 2014, a continuance was granted until March 17, 2014

because the codefendant's attorney was ill; Order for Continuance of Trial Date – 3/11/14 - Supp Clerk's Papers ___;

-On March 17, 2014, a continuance was granted until April 7, 2014

because both the prosecutor and the defense attorneys had conflicts;

Continuance of Trial Date – 3/17/14 - Supp Clerk's Papers ___;

-On April 7, 2014, a continuance was granted until May 1, 2014

because the State had filed another case against Mr. Gaines and the parties wanted to "assess" that case with the instant case and the State's primary detective was on vacation out of state; Continuance of Trial Date- Supp Clerk's Papers ___;

-On May 1, 2014, the court granted another continuance to June 3, 2014, because the deputy prosecutor was in another trial; Continuance of Trial Date - Supp Clerk's Papers ___;

-Motions for new counsel/motions for Attorney Cross to withdraw were filed on May 7-8, 2014 and scheduled for argument on May 15, 2014; Appendix ___.

-On May 15, 2014, the court entered an order for a competency examination of Mr. Gaines; after that forensic examiner opined that Mr. Gaines was not competent, he was sent to Western State Hospital for restoration; Appendix H.

-Mr. Gaines returned to court and was found competent on September 10, 2014. Appendix I. On that date, he made a motion for substitution of counsel that was denied.

The court set his trial date for September 16, 2014. On 9/17/14 the parties continued the trial until October 1, 2014, Supp CP – Order for Continuance of Trial – 9/17/14 - _____. The parties jointly requested this to discuss resolution and also to address the defense witness list and discovery. *Id.*

From arraignment on June 21, 2013, to the first trial date of September 16, 2014, the deputy prosecutor's continuances due to his trial schedule and/or discovery issues accounted for approximately nine months.

Regarding the other permissible factor, (3) whether available counsel is prepared to go to trial, the trial court refused to consider defense counsel's arguments. Of course some delay would be required to prepare in a "three strikes" case. The court took the unusual step of setting a trial date one week after Mr. Gaines was found competent to stand trial. Any attorney new to a

case necessarily would require some time for trial. Any attorney would require preparation in any case, especially a “three strikes” case. No mitigation package had been prepared in this case. *Passim*. There were experts to retain and witnesses to interview.

The trial court also belittled defense counsel for not having settled some cases with prosecutors when, of course, the court knew nothing about negotiations or issues in those cases. RP 10/16/14 8,10,14, 15, 20 . The court speculated on which cases would or would not go to trial. *Id.* The deputy prosecutor, whose own trial schedule, had caused months of continuances in this case, slammed defense counsel for her trial schedule. See pages 37-39, *supra*. Further, not all cases go to trial and in fact there is no way reliably to reasonably predict a criminal defense trial attorney’s schedule. As for the issue of settling or not settling cases, the trial court had no idea whether the State even had made offers in outstanding cases. Of course, defense counsel has no ability to control the prosecutor’s willingness to make reasonable offers. The trial court simply did not want Mr. Gaines to have new counsel and instead conjured up various scenarios of horrors. RP 10-11.

The deputy prosecutor also asked the court to look at the impact of the substitution on attorney Corey’s other clients. RP 10/16/14 13. Suffice it to

say, that the deputy prosecutor had not then or now any reason to conjecture that relations between attorney and client are anything but satisfactory.

The deputy prosecutor argued that the State would suffer prejudice from a continuance, although the State previously had sought fifteen months of prior continuances, for the reason that “we have civilian witnesses involved who were involved in drug trafficking.” RP 10/16/14. Who were these witnesses? The State had endorsed Jessica Handlen and the CI – who was never identified to the defense and never called. Those were the only civilian witnesses. State’s Witness List – filed 9/12/14¹⁷ -Supp CP _____. The State at no time alleged that Handlen was difficult to contact or uncooperative.

Passim.

While it is true that counsel was in a murder trial that was expected to last until the end of October, early November, counsel’s next trial settings were in 2015. She thus had a gap in her trial calendar.

What was clear was that the court did not take seriously Mr. Gaines’ very real concern that attorney Cross had breached Mr. Gaines’ trust in him when he brought the deputy prosecutor into the attorney-client room to discuss plea-bargaining a case in which attorney Cross did not even represent him.

¹⁷ Appendix L. State’s Witness List.

A criminal defendant must be allowed to be represented by an attorney he retains especially where the attorney he seeks to discharge has committed an ethical violation. The defendant cannot choose his prosecutor, even when he engages in the same conduct.

The second factor to be considered under *Hampton*, regarding the additional delay that would result from the granting of Mr. Gaines cannot be determined because the trial court failed to apply the proper standard.

Further, as is apparent from the record in the case, the deputy prosecutor needed more time to get ready for trial. Thus, the State was responsible for more inevitable delay. Several States' witnesses were not available for the trial date. These important witnesses included Mr. Adam, the lead detective on the case, two forensic scientists from the Washington State Patrol Crime Lab, and a police officer who was present at the scene. 2/3/14 RP 16, 45, 55; 2/4/14 RP 8, 39, 75.

"The erroneous denial of counsel bears directly on the 'framework within which the trial proceeds.'" *Gonzalez-Lopez*, 548 U.S. 150. Thus, the wrongful denial of a defendant's counsel of choice is structural error and no showing of prejudice is required. *Hampton*, 182 Wn. App. 827-828. Because the trial court erroneously denied Mr. Gaines his right to counsel of choice, reversal is required.

3. THIS COURT MUST DISMISS THE CHARGE OF SOLICITATION TO DELIVER A CONTROLLED SUBSTANCE WHERE GAINES IS ENTITLED TO DISMISSAL OF THE CHARGES WHERE THAT IS NOT A CRIME UNDER WASHINGTON LAW.

Drug offenses are not defined in the criminal code, RCW Title 9A. Rather, RCW Title 69 defines offenses involving various kinds of controlled substances. "Delivery of methamphetamine is prohibited under the Uniform Controlled Substances Act, RCW 69.50.401." In re Pers. Restraint of Hopkins, 137 Wn.2d 897, 899, 976 P.2d 616 (1999).

"In general, Washington law criminalizes three inchoate or 'anticipatory' offenses: attempt; solicitation; and conspiracy. RCW 9A.28.020, .030, .040." *Hopkins*, 137 Wn.2d at 900.

However, the Uniform Controlled Substances Act, RCW 69.50, expressly includes attempt and conspiracy as specific offenses under chapter 69.50 RCW. *Id.* at 900-01 (Holding *solicitation to deliver*, unlike attempt and conspiracy, is not an offense under RCW 69.50 because not specifically included therein).

Appellate courts have therefore "consistently and specifically distinguished between anticipatory offenses expressly included within RCW 69.50 as opposed to those generally falling within RCW 9A.28." *Id.* at 902 (citing cases) see also *State v. Cameron*, 80 Wn. App. 374,379,909 P.2d 309

(1996) ("Conspiracy to possess marijuana with intent to deliver is governed by RCW 69.50.407, and not by the general conspiracy statute, RCW 9A.28.040.").

Mr. Gaines' conviction for unlawful solicitation to deliver a controlled substance therefore must be dismissed, there being no law criminalizing such conduct.

4. THE STATE FAILED TO PROVE ITS CASE BEYOND A REASONABLE DOUBT.

Under the state and federal constitutions, a criminal conviction requires proof beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Evidence is not sufficient to support a conviction unless, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find all of the elements of the crime charged beyond a reasonable doubt. *State v. DeVries*, 149 Wn.2d 842, 849, 72 P.3d 748 (2003). The court must consider "whether the totality of the evidence is sufficient to prove all the required elements." *State v. Marin*, 150 Wn. App. 434, 438, 208 P.3d 1184 (2009), quoting *State v. Ceglowski*, 103 Wn. App. 346, 349-50, 12 P.3d 160 (2000).

Mr. Gaines was convicted in Count V of conspiracy to deliver a controlled substance, methamphetamine. A conspiracy requires three people, one who delivers the controlled substance, who receives the controlled substance and a third person who has also agreed to engage in or cause the performance of such conduct. RCW 69.40.401(d)(2)(a); 69.50.407¹⁸.

In the instant case, the State failed to prove the existence of any conspiracy. The State presented no evidence that Mr. Gaines had wired any money to Mexico after May 29, 2013, RP69. This date was prior to the charging period. Brandon Ryan wired money on June 20. RP68 There is no evidence that this money was wired at the direction of Mr. Gaines. Further, there is no evidence that the wired money was ever received by any party, much less any drug dealers. The State produced no evidence that Mr. Gaines received anything in exchange for the money. Even assuming that he may have expected to receive something, the State had no evidence that another party had agreed to provide that substance or even who that party was. Thus, there was no evidence that any third party had agreed to engage in or cause the performance of such conduct. The State's theory was that Mr. Gaines wired the money for methamphetamine. RP 286. However, the State's expert witness on drug trafficking, Officer Schultz, testified that Mexican drug

¹⁸ Appendix M.

dealers would not sell a kilo of drugs for these paltry sums \$900. RP 90.

Schultz also knew that it was “common for suspects in drug cases to generate wild fantasies to try to get immunity and trade off.” RP 90. Based on the facts in this case, Gaines clearly was trying to talk his way out of an unfortunate situation. Schultz said that law enforcement’s job was to corroborate the information. RP 90. He contended that Mr. Gaines’ story corroborated “exactly what we observed” but he offered no details for this opinion. RP 90.

The State also produced the testimony of Jessica Handlin who said that she had received drugs from Mr. Gaines a few times. She did not remember when she had done so. RP 207. However, the State failed to prove that she received them from him on either of the earlier controlled buys. He made no sales on the date of his arrest, June 20, 2013.

Viewing the evidence in the light most favorable to the State and assuming arguendo the validity of the warrant, the State proved that police stopped Mr. Gaines on June 20, 2013. They found no drugs in his car or on his person. They did find a legal diet drug. Possession of this substance was indistinguishable from possessing baking soda, baking powder, or any number of other similar products, all of which presumably could be used for other purposes. Even so, mere possession of them is not a criminal offense.

Although Mr. Gaines made statements that he was going to pick up something from the Mexicans, his statements alone are insufficient to convict of a crime.

The State likewise failed to prove the alleged crime of solicitation to deliver a controlled substance. This charge required the State to prove that, with intent to promote or facilitate the commission of a crime, he or an accomplice offers to give or gives money or other thing of value to another to engage in specific conduct that would constitute such crime or would establish complicity of such person in its commission or attempted commission had such crime been attempted or committed. The State's theory here had to be that Mr. Gaines was sending money to "the Mexicans" to get drugs to promote or facilitate the crime of drug-dealing.

Handlen could not provide a date when she had received methamphetamine from Gaines. She told police that she may have sold it in the past but there is no evidence, assuming arguendo that she bought on June 3rd from Gaines, he knew she was going to sell it. She said she purchased methamphetamine from him for personal use in the past. RP 206

The State thus failed to prove this case even under the liberal test for assessing the sufficiency of the evidence. There is no evidence regarding the purpose for sending the Ryan money order [the Gaines money order was sent

outside the charging period]. The only evidence regarding the purpose of the money orders was Mr. Gaines' statement to police. This was insufficient to establish a corpus delicti for the crime. The corpus delicti rule prohibits the admission of a confession absent prima facie evidence that a crime has been committed. See State v. Aten, 130 Wn.2d 640, 655-56, 927 P.2d 210 (1996). The purpose of the rule is to prevent a person from being convicted based on a confession to a crime that has not been committed. City of Bremerton v. Corbett, 106 Wn.2d 569, 576-77, 723 P.2d 1135 (1986); State v. Dodgen, 81 Wn. App. 487, 492, 915 P.2d 531 (1996).

The State had only one money order sent by codefendant to someone in Mexico during the charging period. RP68. Nothing more. As noted herein, there was no independent evidence regarding the identity or occupation of the recipient, whether the money in fact was ever received by anyone, etc. That is insufficient to sustain a conviction for conspiracy to deliver a controlled substance.

Finally, the State failed to prove the charge of unlawful possession of a firearm. The State's evidence of possession depended on the testimony of Officer Schultz. Officer Schultz's testimony was so contradictory as to defy credence:

Schultz: As we were making contact with him [Gaines], it appeared that he was making a motion down there, which is what directed our attention to it, meaning I wrote in my report that he placed the firearm there. RP 47.

Prosecutor: You say motion, can you explain that?

Schultz: With his hands, because like I said, I was watching his hands. RP 47.

Prosecutor: So you see something going on with his hands: is that correct? RP 48.

Schultz: Correct. RP 48.

Prosecutor: Do you see the gun in his hands? RP 48

[objection and ruling deleted]

Schultz: I don't recall specifically seeing the gun in his hands. I just saw his hands moving down there and I saw the gun. RP 48.

Prosecutor: So you see his hands motioning downward? RP 48.

Schultz: Correct. RP 48.

Prosecutor: And that draws your attention downward? RP 48.

Schultz: Correct, correct. RP 48:

Prosecutor: And that is when you see the firearm? RP 48.

Schultz: Correct. RP 48.

Prosecutor: So from where you are standing outside the vehicle, before the car door is even opened, are you able to see the firearm? RP 48.

Schultz: Not that I recall. RP 48.

Prosecutor: So this would have been after the door was opened. RP 48.

Schultz: After the door was opened. RP 48.

In this case, Mr. Gaines possession of the firearm was based upon the inconsistent and contradictory observations of Schultz. Consider that there were four individuals in the car. Brandon Ryan, in the passenger front seat, also a convicted felon with a firearm disability, was found with a firearm in his possession. Schultz admitted that he never saw the firearm in Mr. Gaines' physical possession. He could not have known how long it was on the floor of the driver's foot well. It is equally plausible that Brandon Ryan moved the

firearm over there as soon as he knew that police were stopping the car. It is also possible that during the impact caused by police purposefully hitting Mr. Gaines' car, a firearm from the backseat was pushed on the floor from the backseat through to the driver's seat.

The State could not prove beyond a reasonable doubt that Mr. Gaines unlawfully possessed a firearm.

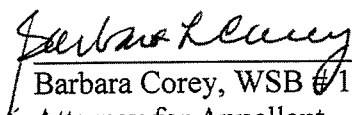
If a reviewing court finds insufficient evidence to prove an element of a crime, reversal is required. *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1988). In that case, the court held, "Retrial following reversal for insufficient evidence is 'unequivocally prohibited' and dismissal is the remedy." *Id.*

Because the State failed to adduce sufficient evidence to prove its charges Mr. Gaines and also convicted him of a non-existent crime, Mr. Gaines is entitled to the remedy of dismissal.

E. CONCLUSION

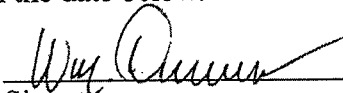
For the foregoing reasons, Mr. Gaines respectfully asks this court to grant his appeal and dismiss his convictions.

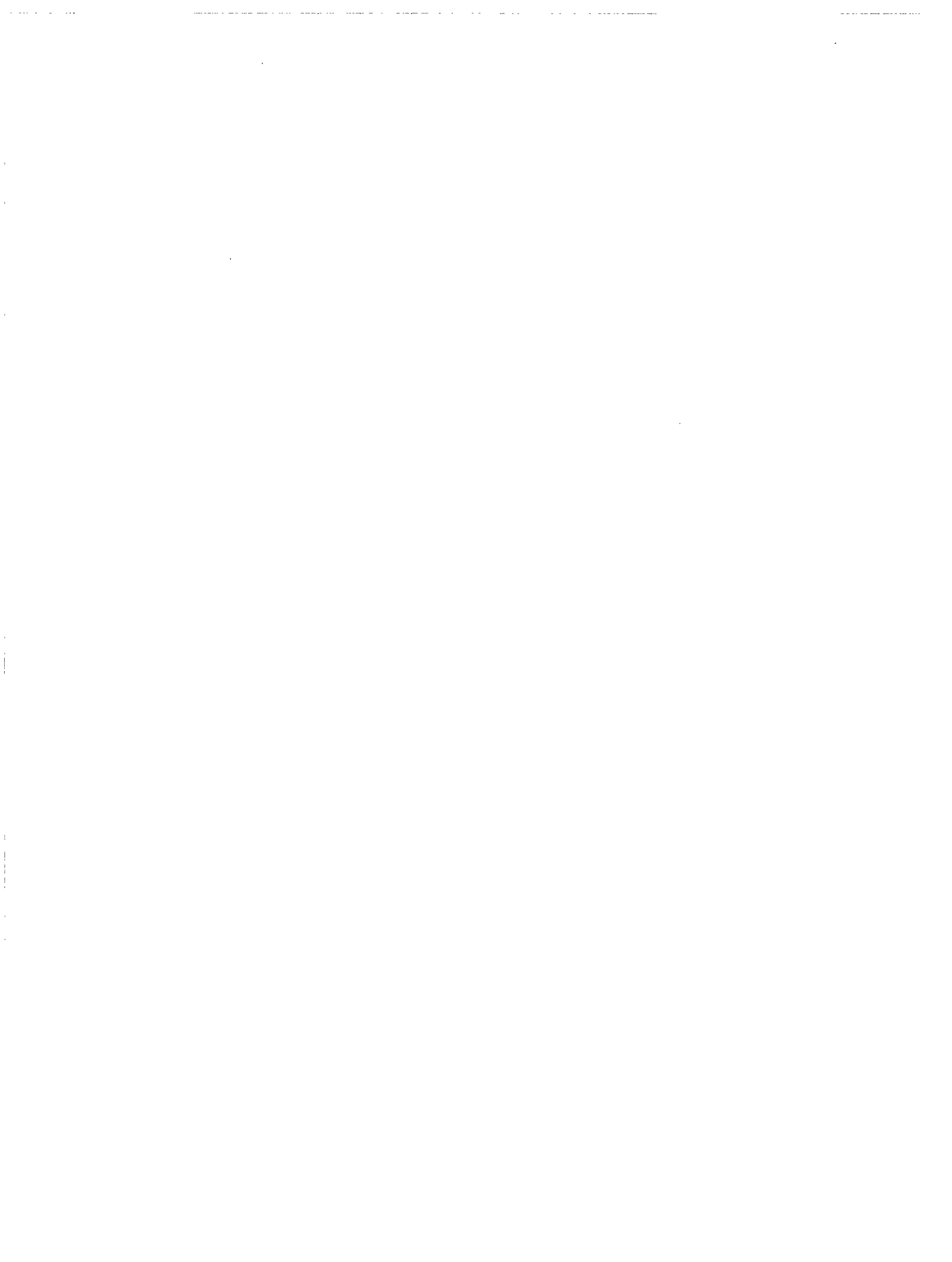
DATED this 17th day of June, 2015.


Barbara Corey, WSB #11778
Attorney for Appellant

CERTIFICATE OF SERVICE:

The undersigned certifies that on this day she delivered by U.S. Mail or ABC-LMI delivery to the Appellate Unit, Room 946 County-City Building, Tacoma, Washington 98402 a true and correct copy of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

6/17/15 
Date Signature



APPENDIX A

June 21 2013 10:44 AM

KEVIN STOCK
COUNTY CLERK

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-02515-1

vs.

JEREMY EDWARD GAINES,

INFORMATION

Defendant.

DOB: 7/29/1978

SEX : MALE

RACE: WHITE

PCN#: 541005978

SID#: 15619093

DOL#: WA GAINEJE224M9

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JEREMY EDWARD GAINES of the crime of UNLAWFUL DELIVERY OF A CONTROLLED SUBSTANCE, committed as follows:

That JEREMY EDWARD GAINES, in the State of Washington, on or about the 3rd day of June, 2013, did unlawfully, feloniously, and knowingly deliver to another, a controlled substance, to-wit: Methamphetamine, classified under Schedule II of the Uniform Controlled substance Act, contrary to RCW 69.50.401(1)(2)(b), and against the peace and dignity of the State of Washington.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JEREMY EDWARD GAINES of the crime of UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That JEREMY EDWARD GAINES, in the State of Washington, on or about the 3rd day of June, 2013, did unlawfully, feloniously, and knowingly own, have in his possession, or under his control a

INFORMATION- 1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

1 firearm, he having been previously convicted in the State of Washington or elsewhere of a serious
2 offense, as defined in RCW 9.41.010(16), contrary to RCW 9.41.040(1)(a), and against the peace and
3 dignity of the State of Washington.

4 DATED this 21st day of June, 2013.

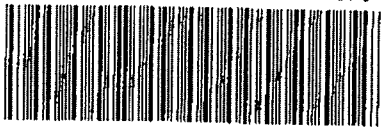
5 TACOMA POLICE DEPARTMENT
WA02703

MARK LINDQUIST
Pierce County Prosecuting Attorney

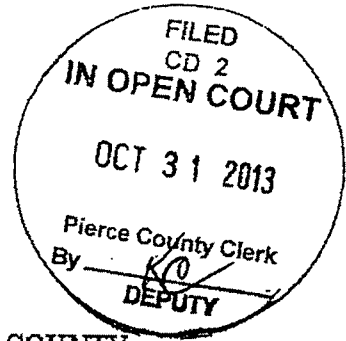
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By: /s/ ROBERT YU
ROBERT YU
Deputy Prosecuting Attorney
WSB#: 40013

APPENDIX B



13-1-02515-1 41486382 STRIKE3 11-01-13



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-02515-1

vs.

JEREMY EDWARD GAINES,

PERSISTENT OFFENDER NOTICE
(THIRD CONVICTION)

Defendant.

YOU, the above named defendant, JEREMY EDWARD GAINES, are hereby given NOTICE that the offense of UNLAWFUL SOLICITATION TO DELIVER A CONTROLLED SUBSTANCE (with a Firearm-Sentencing Enhancement), and CONSPIRACY TO DELIVER A CONTROLLED SUBSTANCE (with a Firearm-Sentencing Enhancement), with which you have been charged, is a "Most Serious Offense" as defined in RCW 9.94A.030. If you are convicted at trial or plead guilty to this charge or any other most serious offense, and you have been convicted on two previous occasions of other "most serious offenses," you will be classified at sentencing as a "Persistent Offender," as defined in RCW 9.94A.030 and your sentence will be life without the possibility of parole as provided in RCW 9.94A.570.

DATED this 31st day of October, 2013.

MARK LINDQUIST
Pierce County Prosecuting Attorney

By: Jesse Williams
JESSE WILLIAMS
Deputy Prosecuting Attorney
WSB # 35543

jcw

APPENDIX C

6

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY
SEARCH WARRANT
(Evidence)

STATE OF WASHINGTON)

) **COPY** No.

County of Pierce)

THE STATE OF WASHINGTON TO THE SHERIFF OR ANY PEACE OFFICER OF SAID COUNTY:

WHEREAS, A. Schultz #151 has this day made complaint on oath to the undersigned one of the judges of the above entitled court in and for said county that on or about the 3rd of June 2013 and continuing until the present in Pierce County, Washington, a felony, to-wit: Unlawful Delivery of a Controlled Substance (Methamphetamine) 69.50.401, was committed by the act, procurement or omission of another, and that the following evidence, to-wit:

1. Controlled substances, including but not limited to Methamphetamine. . .
2. Safes, books, records, receipts, notes, ledgers, and other papers relating to the transport, ordering, purchase and distribution of controlled substances, in particular Methamphetamine. If a lock-box or safe is found, and it cannot be opened, it is to be removed from the scene and opened by a locksmith within a reasonable amount of time.
3. Addresses and or telephone books and papers reflecting names, addresses, and or telephone numbers, including, but not limited to names of, addresses of, and/or telephone numbers of co-conspirators in the distribution, purchase, and possession of Methamphetamine, or other illegal narcotics. Telephone bills which may tend to establish the identity of co-conspirators who do not live within the same area code.
4. Books, records, receipts, bank statements and records, money drafts letters of credit, money orders and cashier's checks receipts, passbooks bank checks and other items evidencing the obtaining, secreting, transfer and or concealment of, and/or expenditure of money. Bank cards, credit cards, billing records pertaining to same.
5. Photographs, in particular, photographs of co-conspirators, assets and or controlled substances, in particular Methamphetamine.
6. Drug paraphernalia, including materials for packaging, separating, weighing, and distributing Methamphetamine including, but not limited to baggies, scales, and heat sealers.
7. Indicia of occupancy, residency, dominion and control and/or the ownership of the place and vehicles described in the search warrant, including but not limited to telephone bills, canceled envelopes and keys.
8. Computer records, software, diskettes, tapes, printouts relating to the transportation and ~~distribution of controlled substances, in particular Methamphetamine or other narcotics.~~
9. United States currency.
10. Firearms and ammunition.

Evidence warrant

Page 1

Officer A.I. Schultz
Tacoma Police Department
3701 South Pine Street
Tacoma WA 98409
(253) 591-5896

11. Any documentation and/or notations referring to the computer, the contents of the computer, the use of the computer, or any computer software and/or communications. All information within the above listed items including, but not limited to machine readable data, all previously erased data, and any personal communications including, but not limited to e-mail, chat capture, capture files, correspondence stored in electronic form.
12. Personal communications in electronic or written form including, but not limited to e-mail, chat capture, capture files, correspondence stored in electronic or written form, and/or correspondence exchanged in electronic or written form as indicative of use in obtaining, maintenance, and/or evidence of said offense and/or indicative of other victims as yet unknown.

is material to the investigation or prosecution of the above described felony and that said A. Schultz #151 verily believes said evidence is concealed in or about a particular house, person, place or thing, to-wit:

1. The apartment located at 1207 S Altheimer #4 Tacoma, WA
2. The person of Jessica Ann Handlen DOB 04-29-1986 currently residing at the above listed residence.
3. The person of Jeremy Edward Gaines DOB 07-29-1978
4. The residence of Jeremy E. Gaines at 15801 Canyon Rd E Puyallup, WA a 1.5 story single family residence. Green in color with white trim (search is to include any outbuildings or other parked vehicles at this specific location).
5. The vehicle WA License AKZ7273 a white 2013 Dodge Charger registered to and driven by Jeremy E. Gaines Registered at the above listed address at 15801 Canyon Rd E.

THEREFORE, in the name of the State of Washington, you are commanded that within ten days from this date, with necessary and proper assistance you enter into and/or search the said house, person, place or thing, to-wit:

1. The apartment located at 1207 S Altheimer #4 Tacoma, WA
2. The person of Jessica Ann Handlen DOB 04-29-1986 currently residing at the above listed residence.
3. The person of Jeremy Edward Gaines DOB 07-29-1978
4. The residence of Jeremy E. Gaines at 15801 Canyon Rd E Puyallup, WA a 1.5 story single family residence. Green in color with white trim (search is to include any outbuildings or other parked vehicles at this specific location).
5. The vehicle WA License AKZ7273 a white 2013 Dodge Charger registered to and driven by Jeremy E. Gaines Registered at the above listed address at 15801 Canyon Rd E.

And then and there diligently search for said evidence, and any other. And if same, or evidence material to the investigation or prosecution of said felony or any part thereof, be found on such search, bring the same forthwith before me, to be disposed of according to the law.

And to seize all controlled substances there found, together with the vessels in which they are contained and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnished, or otherwise disposed of such controlled substances, and any papers, documents or other matter tending to establish the identity of persons exercising dominion and/or control over the premises, or any controlled substances found therein, and to safely keep the same and to make a return of said warrant within three days, showing all acts and things done there under, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in possession of such articles the return shall so state.

Evidence warrant

Page 2

Officer Al Schultz
Tacoma Police Department
3701 South Pine Street
Tacoma WA 98409
(253) 591-5896

00000000

A copy of said warrant shall be served upon the person or persons found in possession of such controlled substances, furniture or fixtures so seized, and if no person be found in possession thereof, a copy of said warrant shall be posted upon the door of the building or room where the same was found, or if there is no door, then in any conspicuous place upon the premises. You are also commanded in the name of the State of Washington to arrest any person or persons who is a resident of or found to be in possession of controlled substances during such search and bring them into court to be dealt with according to law. Bail is to be set in open court.

GIVEN UNDER MY HAND this 17 day of June, 2013

Jack Raven

SUPERIOR COURT JUDGE

COPY

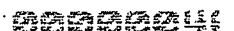


EXHIBIT B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY
COMPLAINT FOR SEARCH WARRANT

STATE OF WASHINGTON

County of Pierce

COPY

No.

THE STATE OF WASHINGTON TO THE SHERIFF OR ANY PEACE OFFICER OF SAID COUNTY:

WHEREAS, A. Schultz #151 has this day made complaint on oath to the undersigned one of the judges of the above entitled court in and for said county that on or about the 3rd of June 2013 and continuing until the present in Pierce County, Washington, a felony, to-wit: Unlawful Delivery of a Controlled Substance (methamphetamine) 69.50.401, was committed by the act, procurement or omission of another, and that the following evidence, to-wit:

1. Controlled substances, including but not limited to methamphetamine.
 2. Safes, books, records, receipts, notes, ledgers, and other papers relating to the transport, ordering, purchase and distribution of controlled substances, in particular (but not limited to) methamphetamine. If a lock-box or safe is found, and it cannot be opened, it is to be removed from the scene and opened by a locksmith within a reasonable amount of time.
 3. Addresses and or telephone books and papers reflecting names, addresses, and or telephone numbers, including, but not limited to names of, addresses of, and/or telephone numbers of co-conspirators in the distribution, purchase, and possession of methamphetamine, or other illegal narcotics. Telephone bills which may tend to establish the identity of co-conspirators who do not live within the same area code.
 4. Books, records, receipts, bank statements and records, money drafts letters of credit, money orders and cashier's checks receipts, passbooks bank checks and other items evidencing the obtaining, secreting, transfer and or concealment of, and/or expenditure of money. Bank cards, credit cards, billing records pertaining to same.
 5. Photographs, in particular, photographs of co-conspirators, assets and or controlled substances, in particular methamphetamine.
 6. Drug paraphernalia, including materials for packaging, separating, weighing, and distributing methamphetamine including, but not limited to baggies, scales, and heat sealers.
 7. Indicia of occupancy, residency, dominion and control and/or the ownership of the place and vehicles described in the search warrant, including but not limited to telephone bills, canceled envelopes and keys.
 8. Computer records, software, diskettes, tapes, printouts relating to the transportation and distribution of controlled substances, in particular methamphetamine or other narcotics.
-
9. United States currency.
 10. Firearms and ammunition.

Evidence warrant

Page 1

Officer AJ Schultz
Tacoma Police Department
3701 South Pine Street
Tacoma WA 98409
(253) 591-5896

2013 JUN 20 10:00 AM

11. Any documentation and/or notations referring to the computer, the contents of the computer, the use of the computer, or any computer software and/or communications. All information within the above listed items including, but not limited to machine readable data, all previously erased data, and any personal communications including, but not limited to e-mail, chat capture, capture files, correspondence stored in electronic form.
12. Personal communications in electronic or written form including, but not limited to e-mail, chat capture, capture files, correspondence stored in electronic or written form, and/or correspondence exchanged in electronic or written form as indicative of use in obtaining, maintenance, and/or evidence of said offense and/or indicative of other victims as yet unknown.

is material to the investigation or prosecution of the above described felony and that said A. Schultz #151 verily believes said evidence is concealed in or about a particular house, person, place or thing, to-wit:

1. The apartment located at 1207 S Altheimer #4 Tacoma, WA
2. The person of Jessica Ann Handlen DOB 04-29-1986 currently residing at the above listed residence.
3. The person of Jeremy Edward Gaines DOB 07-29-1978
4. The residence of Jeremy E. Gaines at 15801 Canyon Rd E Puyallup, WA a 1.5 story single family residence. Green in color with white trim (search is to include any outbuildings or other parked vehicles at this specific location).
5. The vehicle WA License AKZ7273 a white 2013 Dodge Charger registered to and driven by Jeremy E. Gaines Registered at the above listed address at 15801 Canyon Rd E.

THEREFORE, in the name of the State of Washington, you are commanded that within ten days from this date, with necessary and proper assistance you enter into and/or search the said house, person, place or thing, to-wit:

1. The apartment located at 1207 S Altheimer #4 Tacoma, WA
2. The person of Jessica Ann Handlen DOB 04-29-1986 currently residing at the above listed residence.
3. The person of Jeremy Edward Gaines DOB 07-29-1978
4. The residence of Jeremy E. Gaines at 15801 Canyon Rd E Puyallup, WA a 1.5 story single family residence. Green in color with white trim (search is to include any outbuildings or other parked vehicles at this specific location).
5. The vehicle WA License AKZ7273 a white 2013 Dodge Charger registered to and driven by Jeremy E. Gaines Registered at the above listed address at 15801 Canyon Rd E.

And then and there diligently search for said evidence, and any other. And if same, or evidence material to the investigation or prosecution of said felony or any part thereof, be found on such search, bring the same forthwith before me, to be disposed of according to the law.

And to seize all controlled substances there found, together with the vessels in which they are contained and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnished, or otherwise disposed of such controlled substances, and any papers, documents or other matter tending to establish the identity of persons exercising dominion and/or control over the premises, or any controlled substances found therein, and to safely keep the same and to make a return of said warrant within three days, showing all acts and things done there under, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in possession of such articles the return shall so state.

Evidence warrant

Page 2

Officer Al Schultz
Tacoma Police Department
3701 South Pine Street
Tacoma WA 98409
(253) 591-5896

A copy of said warrant shall be served upon the person or persons found in possession of such controlled substances, furniture or fixtures so seized, and if no person be found in possession thereof, a copy of said warrant shall be posted upon the door of the building or room where the same was found, or if there is no door, then in any conspicuous place upon the premises. You are also commanded in the name of the State of Washington to arrest any person or persons who is a resident of or found to be in possession of controlled substances during such search and bring them into court to be dealt with according to law. **Bail is to be set in open court.**

Your affiant is a member of the TPD Special Investigations Division. On 06/03/2013 at approximately 1230 hrs your affiant was contacted by CI# 981 regarding a subject they had been introduced to over the weekend who had boasted of dealing large quantities of methamphetamine in the Hilltop area of Tacoma. Per the CI, the subject had been introduced to them only as "Jessica", a W/F with long dark hair. The CI added that "Jessica" had provided them with the phone number (253) 230-9464 with which to call her when the CI was ready to purchase quantities of meth. Per the CI, "Jessica" stated that she would only sell in quantities of a quarter ounce or larger. I noted that on the street this amount was significant when most users only purchase a gram or slightly more than a gram. (There are 26 grams to the ounce).

Your affiant asked the CI if they would attempt to arrange a narcotics transaction with this "Jessica" in my presence using the number they had provided. The CI called the listed number, and a transaction was scheduled for later that afternoon. I obtained pre-recorded narcotics funds from our SID vault. Officer Buchanan and I met with the CI and I searched the person of the CI and their vehicle in the presence of Officer Buchanan for any narcotics, paraphernalia, weapons and money with none being found. I provided the CI with the pre-recorded narcotics funds and we followed them to the vicinity of the transaction. "Jessica" had asked the CI to meet them in the 1300 block of S "G" St. Surveillance units set up in the area and watched as the CI waited in their vehicle. After a while I contacted the CI and asked them to call "Jessica" again, which the CI did. Per the CI, "Jessica" stated that she was currently "out" of methamphetamine and was waiting for her source to show up and invited the CI over to her apartment located at 1207 S Alzheimer Apt #4. I advised surveillance units of this updated information.

We observed as the CI walked away from their vehicle towards the location. Surveillance units observed a W/F exit 1207 S Alzheimer and contact the CI. This subject was positively identified at this time as Jessica Ann Handlen DOB 04/29/1986 and hereafter referred to as S)HANDLEN. The CI waited outside the apartment with S)HANDLEN until her "source" arrived. When her source arrived, S)HANDLEN asked the CI to remain where they were while S)HANDLEN contacted their source. Surveillance units observed as S)HANDLEN contacted a 2013 White Dodge Charger registered to Jeremy Edward Gaines DOB 07/29/1987. A routine records check corroborated that the driver matched the description of registered owner hereafter referred to as S)GAINES) and that the RO had prior criminal history for weapons violations, and narcotics. After briefly meeting with S)GAINES, S)HANDLEN returned to the CI and completed the transaction. During this time the surveillance team split up with a portion remaining with S)HANDLEN and the CI and the remainder following S)GAINES away.

Shortly after the transaction was completed the CI left S)HANDLEN who had returned to her apartment, and proceeded directly to our pre-determined safe meeting location to turn over the narcotics. The CI was under constant visual surveillance during the entire transaction. I again searched the person of the CI and their vehicle for any other narcotics, paraphernalia, weapons and money finding none. I field tested the suspected narcotics and noted that they field tested positive as methamphetamine. I placed the methamphetamine into property. I released the CI at this time and joined surveillance units as they followed S)GAINES around.

Over the course of the following week, continued surveillance determined that S)GAINES was in fact residing at 15801 Canyon Rd E in Puyallup, as stated on his vehicle registration. I noted that a routine records check of S)GAINES revealed that he had extensive violent criminal history to include UPOF,

Evidence warrant

Page 3

Officer Al Schultz
Tacoma Police Department
3701 South Pine Street
Tacoma WA 98409
(253) 591-5896

Assault 1, Assault 2, PSP 1, and Burglary 1. During continued surveillance of S)HANDLEN it was determined that she was residing at 1207 S Altheimer Apt#4. A routine records check determined that S)HANDLEN had extensive criminal history for UDCS, UPCS w/Intent, Escape from Custody and Obstructing.

On 06-12-2013 I contacted the CI and requested that they attempt to arrange another narcotics transaction with S)HANDLEN. Per conversation it was apparent that S)HANDLEN had re-upped from S)GAINES the night before and was "holding" some narcotics, specifically methamphetamine for distribution. The CI arranged to purchase a quantity of narcotics from S)HANDLEN that afternoon. I obtained narcotics funds from our SID vault. Officer Kim and I met with the CI and I searched the person of the CI and their vehicle in the presence of Officer Kim for any narcotics, paraphernalia, weapons and money with none being found. I provided the CI with narcotics funds and we followed them to S)HANDLEN's apartment building located at 1207 S Altheimer. S)HANDLEN met with the CI inside the apartment building and conducted the transaction. A short while later, the CI exited the apartment and returned to a pre-arranged meeting location where the CI promptly turned over the narcotics to me. I again searched the person of the CI and their vehicle (in the presence of Officer Kim) for any other narcotics, paraphernalia, weapons and money finding none. I field tested the suspected narcotics and noted that they field tested positive as methamphetamine. I placed the methamphetamine into property. I released the CI at this time.

It is your affiant's training and experience that drug dealers often use vehicles, and/or persons within the vehicles, as well as persons within residences, to conceal and carry the Controlled Substances to/at places for sale or for storage. When storing or concealing the Controlled Substances in vehicles, drug dealers often conceal the drugs and/or assets in concealed areas of the vehicle to avoid detection by police. When storing Controlled Substances at residences, drug dealers often conceal drugs and drug related assets in hiding places upon the curtilage of the residence or place to avoid detection by police and to avoid theft from other members of the criminal narcotics community.

It is your affiant's training and experience that it is common practice for narcotic traffickers to maintain in their residences, records relating to their narcotics trafficking activities. This is because narcotic traffickers are frequently 'fronted' (to sell on consignment) narcotics to distribute. The narcotic trafficker will reimburse the supplier who 'fronted' the narcotics, while keeping part of the proceeds for themselves. Such record keeping is necessary to keep track of amounts paid and owed to suppliers and to keep track of amounts owed by customers.

Additionally, narcotic traffickers, to assist in the efficient distribution of narcotics, frequently keep telephone and/or address listings of suppliers and customers. Furthermore it is also consistent for narcotic traffickers to utilize multiple residences to conceal large sums of currency that are proceeds of narcotic trafficking (or for the purchase of large quantities of narcotics), and/or quantities of narcotics. This purpose of dividing and concealing their narcotics monies and narcotics is to prevent law enforcement or other dealers/users from seizing or locating all of their money and/or narcotics. It is also common for narcotic traffickers to utilize wire transfer, money orders, or cashiers checks to purchase narcotics from suppliers or to transfer money to associates or associated accounts. These types of transactions produce receipts, which are routinely found in the residences of the narcotic traffickers.

The reliability of the confidential and reliable informant is based on the fact that they have participated in two (2) controlled reliability buys (each), wherein the confidential and reliable informant purchased controlled substances for the affiant at locations where he/she stated controlled substances could be purchased. On each occasion the confidential and reliable informant was searched for controlled substances with none being located. On each occasion, the confidential and reliable informant was supplied with funds from the Tacoma Police Special Investigations narcotics investigative fund, to make purchases of controlled substances. The confidential and reliable informant was observed contacting a subject on the street and arranging to purchase narcotics and then conducting the narcotic transaction. The confidential and reliable informant was constantly observed during the transaction and after was followed to a

Evidence warrant

Page 4

Officer Al Schultz
Tacoma Police Department
3701 South Pine Street
Tacoma WA 98409
(253) 591-5896

prearranged location where they turned over the narcotics to your affiant. The confidential and reliable informant was again searched for controlled substances, with no additional controlled substances found. The reliability of the confidential and reliable informant (CI #981) is further supported by the fact that he/she has been involved in the local drug scene for nearly (14) years and is familiar with the controlled substances heroin, methamphetamine and powder cocaine, illicit prescription drugs and marijuana. The confidential and reliable informant has also displayed a working knowledge to your affiant of the street prices of the controlled substances heroin, cocaine, prescription pills and marijuana, as well as normal packaging methods used for the illicit street sales.

Additionally, your affiant believes that the identity of the informant should remain confidential. Your affiant further believes that the disclosure of their identities would expose them to retaliation by members of the criminal narcotics community. Your affiant also believes that the revelation of the informants identity would render him/her inoperative for any future investigation wherein he/she may be able to render assistance to your affiant.

Your affiant has been a full time commissioned Law Enforcement Officer for over 9 years. Your affiant was employed with the City of Tacoma Police Department from April 2003 until the present. Your Affiant has made or assisted in making over 400 narcotics related arrests. Your Affiant is currently assigned to Tacoma Police Department's Special Investigation's Division, which is tasked with investigating narcotics and vice. Your Affiant is also assigned to the Department's SWAT team and has served in that capacity from September of 2005 to present. Your affiant has received specialized training regarding the identification and packaging of narcotics while at the Basic Law Enforcement Academy and while attending an 80 hour DEA Basic Narcotics Investigations course. Additionally, your affiant has attended a 40 hour Narcotics Interdiction Course, and a 40 hour Undercover Narcotics Officer course. Prior to employment with the City of Tacoma PD, your Affiant also served in a reserve capacity as a Reserve Patrol Officer for the City of Fife PD from January 2000 through January 2002. Your Affiant has received in-service training in Identifying Controlled Substances, including cocaine, both powder and crack, heroin, methamphetamine and marijuana as well as training on narcotics trafficking methodology from Special Investigations Unit Detectives.

GIVEN UNDER MY HAND this 18 day of June, 2013

Albert A. Schultz # 151
 Officer Albert A. Schultz #15

Jack Traven
 SUPERIOR COURT JUDGE

COPY

RETURN OF OFFICER

STATE OF WASHINGTON

COUNTY OF PIERCE

NO. _____

THIS IS TO CERTIFY that I received the within Search Warrant on the _____ day of _____, and that pursuant to the command contained therein, I made due and diligent search of the property described therein and found the following:

NARCOTICS
FIREARMS
AMMUNITION
SCALE
BALLISTIC VESTS

DOCUMENTS
CAMERAS
D.V.R

Names of persons found in possession of property:

JEREMY GAINES

Names of persons served with true and complete copy of Search Warrant:

JEREMY GAINES

Description of door or conspicuous place where copy of Search Warrant posted:

KITCHEN TABLE

Place where property is now kept:

TACOMA POLICE

DATED this 20 day of JUNE 2013.

Witnesses:

[Signature]

[Signature]

15801 CANYON RD E
Puyallup, WA

RETURN OF OFFICER

STATE OF WASHINGTON

COUNTY OF PIERCE

NO. _____

THIS IS TO CERTIFY that I received the within Search Warrant on the _____ day of _____, and that pursuant to the command contained therein, I made due and diligent search of the property described therein and found the following:

SCALE

Names of persons found in possession of property:

CHARLES CONNER

Names of persons served with true and complete copy of Search Warrant:

CHARLES CONNER

Description of door or conspicuous place where copy of Search Warrant posted:

LIVING ROOM TABLE

Place where property is now kept:

TACOMA POLICE

DATED this 20 day of JUNE 2013.

Witnesses:

B. [Signature]

[Signature]

1207 S. Altheimer # 4
TACOMA, WA.

<input checked="" type="checkbox"/> TACOMA POLICE DEPARTMENT <input type="checkbox"/> PIERCE COUNTY SHERIFF'S DEPARTMENT <input type="checkbox"/> OTHER: _____		INCIDENT NUMBER 131540708
LOCATION: 16000 CANTON RD E	DATE: 6-20-13	
OFFICER: SID ?	TIME: ?	
NAME (LAST, FIRST, MIDDLE) GAINES, TERENCE EDWARD	(DATE OF BIRTH): 7-29-78	

ADVISEMENT OF RIGHTS

Before questioning and the making of any statement, I am going to advise you of your rights:

1. You have the right to remain silent;
2. Any statement that you do make can be used as evidence against you in a court of law; (if you are under the age of 18, anything you do say may be used against you in Juvenile Court; or if you are transferred to an adult status, then anything you say may be used against you in criminal proceedings in Adult Court);
3. You have the right at this time to talk to an attorney of your choice and to have your attorney present before and during questioning and the making of any statement;
4. If you cannot afford an attorney, you are entitled to have one appointed for you without cost to you and to have the attorney present at any time during any questioning and the making of any statement;
5. You may stop answering questions or ask for an attorney at any time during any questioning and the making of any statement.

To be asked by the officer:

1. Do you understand each of these rights I have explained to you?
2. Having been made fully aware of these rights, do you voluntarily wish to answer questions now?



 Signature

WITNESS' SIGNATURE D Walsh #0169	WITNESS' SIGNATURE
WITNESS' PRINTED NAME/TITLE D. WALSH PPO	WITNESS' PRINTED NAME/TITLE

DATE: 06-20-2013 02:29:38 PM Type: Received
SUBJECT: AM: TACSO, OLYDC, TACPD
Message:

AM.WA034015G.TACSO,OLYDC,TACPD.*03SO007NFD.TXT
TO: PIERCE COUNTY JAIL ATTN: BOOKING
SUBJECT: RYAN, BRANDON LEE OCA/DOC: 796490

WASHINGTON STATE DEPARTMENT OF CORRECTIONS

S E C R E T A R Y ' S W A R R A N T

SEX/M RAC/B DOB/19800524 HGT/508 WGT/190 EYES/BLU HAIR/BRO

WARRANT TYPE: [X] OAA [] CCI [] MIS

NOT SUBJECT TO BAIL WE WILL EXTRADITE

DOC WILL COORDINATE TRANSPORTATION ARRANGEMENTS

WASHINGTON STATE DEPARTMENT OF CORRECTIONS HAS JURISDICTION ON ABOVE SUBJECT FOR WASHINGTON STATE SUPERIOR COURT CRIMINAL CONVICTION(S):

CAUSE/27-081053000 CHARGE/BAIL JUMP WITH CLASS B OR C FELONY
/27-091053288 /POSSESSION OF CONTROLLED SUBSTANCE

THERE IS REASONABLE CAUSE TO BELIEVE THE ABOVE NAMED PERSON HAS VIOLATED A CONDITION OF COMMUNITY CUSTODY. PURSUANT TO REVISED CODE OF WASHINGTON STATUTES 9.94A.6331 AND 9.94A.740, YOU ARE AUTHORIZED AND DIRECTED TO ARREST THE OFFENDER AND PLACE HIM OR HER IN TOTAL CONFINEMENT PENDING DISPOSITION OF THE VIOLATION.

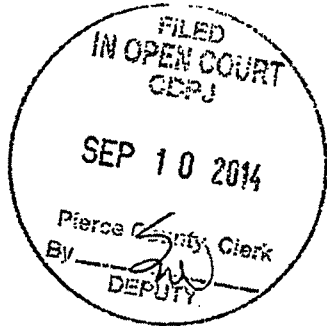
DEPARTMENT OF CORRECTIONS STAFF WILL BE NOTIFIED TO SERVE THE OFFENDER WITH DOC SECRETARY'S WARRANT.

DATED: 20130620
REFER: WARRANTS/MP
06/20/2013, 14:29:38
- MKE: UNKNOWN
- Source: OLDOD
- To: TACSO
- ISN: 03SO007NGU
- REF: 03SNG0000R

DEPARTMENT OF CORRECTIONS
TEL: 360-725-8888



13-1-02515-1 43263344 ORDCT 09-11-14



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-02515-1

vs.

JEREMY EDWARD GAINES,

ORDER REGARDING COMPETENCY OF DEFENDANT

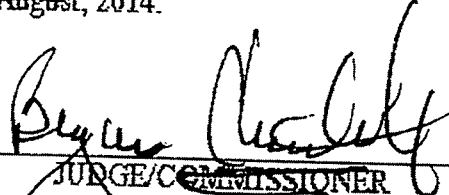
Defendant.

THIS MATTER is before the court pursuant to the defendant's court ordered evaluation for competency at Western State Hospital. In accordance with RCW 10.77.060 the defendant has been evaluated, and the court has reviewed the report of Richard Yocum, Ph.D., Licensed Psychologist, dated August 20, 2014, having considered the records and files in this matter, Competency Report, and the comments of counsel for the State and defendant, the court is satisfied that the defendant is competent to understand the proceedings against him, and to assist in his own defense. Accordingly, it is hereby

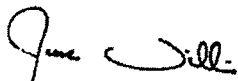
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1
2 ORDERED, ADJUDGED and DECREED that defendant, JEREMY EDWARD
3 GAINES, is competent to understand the present criminal proceedings against him, and to assist
4 in his own defense.


5 DONE IN OPEN COURT this 10 day of ^{Sept.} ~~August~~, 2014.

6
7
8 
9 JUDGE/COMMISSIONER


10 Presented by:

11 
12 JESSE WILLIAMS
13 Deputy Prosecuting Attorney
14 WSB# 35543

15 Approved as to Form:

16 
17 GEOFFREY COLBURN CROSS
18 Attorney for Defendant
19 WSB# 3089

20
21
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ajm

FILED
IN OPEN COURT
SEP 10 2014
Pierce County Clerk
By 
DEPUTY

APPENDIX D

TO: Ginny Dale
Human Resources Director
Pierce County Human Resources
615 S. 9th Street
Tacoma, WA 98405
pchumanresources@co.pierce.wa.us

AND TO: Jim Brownell
Whistleblower Manager
Washington State Auditor's Office
P.O. Box 40031
Olympia, WA 98504
jim.brownell@sao.wa.gov

WHISTLEBLOWER COMPLAINT
PCC 3.14
RCW 42.21

IMPROPER GOVERNMENTAL ACTION

BY

MARK LINDQUIST, PIERCE COUNTY PROSECUTOR

DATED MAY 21, 2015

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INTRODUCTION

This whistleblower complaint is filed under PCC 3.14 and RCW 42.21. It alleges improper government actions by Mark Lindquist, the Prosecuting Attorney of Pierce County. The information below is true and correct to the best of the complainant's knowledge. Most of the information is based on firsthand knowledge while other is from sources the complainant believes are reliable. The complainant believes a full investigation will support a finding of the improper government actions alleged and may uncover further improper actions unknown to complainant. Further, given the nature of the complaints and the office affected, the complainant believes a full investigation is necessary for the safety and well-being of the public.

I. VIOLATION OF STATE OR FEDERAL LAWS OR COUNTY ORDINANCES

A. Violation of State and Federal Labor Relations Acts

1. Interference with Union Elections

Most of the Deputy Prosecuting Attorneys (DPAs) in the Pierce County Prosecutor's Office are represented by the Pierce County Prosecuting Attorneys' Association (PCPAA). Lindquist and other management DPAs (division chiefs) are excluded from the PCPAA. In 2014, the PCPAA held an election for its officers. DPA James Schacht filed to run for a vice presidential position. Initially, no one else filed against Schacht. Lindquist feels Schacht has been unduly critical of Lindquist.

DPA Erika Nohavec then filed against Schacht for the union officer position. Nohavec is a friend of Lindquist's and the two are often seen together socializing. Lindquist then directed non-guild member management DPAs to tell guild member DPAs they should vote for Nohavec over Schacht in the PCPAA election. At least some management DPAs followed Lindquist's directive, including Misdemeanor Division Chief Timothy Lewis. Lewis encouraged the office's newest DPAs to vote for Nohavec over Schacht. One DPA, Annie Gutierrez, felt the pressure by Lewis was inappropriate and reported the interference to guild officer DPA Lisa Wagner.

2. Elimination of Union Position without Notice

In 2013 former DPA Grant Blinn decided to seek the Lakewood Municipal Court Judge position. Blinn was then the Chief of the Misdemeanor Division. In order to support Blinn's candidacy, Lindquist moved Blinn from Misdemeanor Division Chief to leader of the homicide trial team—one of several trial teams in the felony division. Lindquist believed the title of "homicide chief" would help Blinn's application.

However, division leaders are not guild members and are paid a higher salary than trial team leaders. The move would have cost Blinn several thousands of dollars in annual salary, so Lindquist reclassified the homicide trial team into a "division" in order to keep Blinn's salary the same. This "division" had and still has only one DPA, the division chief himself. Lindquist made this change unilaterally and without notice to the PCPAA, despite the fact that the action eliminated a voting PCPAA DPA position.

3. Proposed Retribution against DPAs for Statements at PCPAA Meeting

On May 1, 2015, DPA Brian Leech spoke out at a PCPAA meeting against approving an amicus brief to be filed by the PCPAA in support of Lindquist in litigation pending before the

Washington Supreme Court. On Monday, May 4, 2015, Lindquist proposed reassigning Leech from the felony property crimes trial team to the juvenile division in retaliation for the comments.

Potential Witnesses: Dawn Farina, Stephen Penner, John Sheeran, Jared Ausserer, Gregory Greer, Timothy Lewis, Amie Guitierrez, Lisa Wagner, James Schacht, Brian Leech, Grant Blinn

B. Violation of State and Federal Family Leave Acts

In 2013, Lindquist directed then-Chief Criminal Deputy Phil Sorensen to contact DPA Jared Ausserer, then team leader of the special assault trial team, while Ausserer was at home on family leave with the birth of his child, and to instruct Ausserer to come into the office while still on family leave in order to refile charges in the *State v. Lynn Dalsing* case (see Section II, Abuse of Authority, below).

Witnesses: Jared Ausserer, Phil Sorensen

C. Violation of State and Federal Equal Employment Acts

Lindquist prefers to hire and surround himself with physically attractive people. Accordingly, jobs are offered to, and preferred assignment are given to, attractive people over potentially more qualified candidates. Lindquist has jokingly used the phrase "the person meets our hiring criteria" as a euphemism for being physically attractive.

Example: Every year, the Appeals Division hires two new law students for two-year internships. In 2013, Lindquist passed over the top choice of the head of the Appeals Division and selected two lesser-ranked choices because the top candidate was overweight. One of these two choices then decided at the last minute not to start the position, leaving the Appeals Division one intern short for the next two full years.

Example: In 2013, Lindquist decided to create a 'public information officer' and selected a brand new legal assistant with no experience in media relations to fill the position. The basis for the decision appeared to be that she was young and physically attractive. Lindquist gave her an office right next to his. The woman, who had been hired to be a legal assistant, ended up quitting after having to write press releases about some of the county's most horrific crimes.

Example: In 2013, one of the legal assistants in the homicide unit left the office for other employment and a replacement needed to be reassigned there. The homicide legal assistants sit in an area that Lindquist walks by every time he goes to his office. When candidates were discussed, Lindquist made the final decision, stating that his decision was based in part on the fact that he would have to walk past the person every day.

Example: In 2014, three full-time DPA positions became available in the Misdemeanor Division. Misdemeanor Chief Timothy Lewis ranked the candidates, all of whom had already been

working in the division as interns or volunteers. One such intern/volunteer was Crystal Gunder. Lewis ranked her seventh out of seven with serious concerns about her competence. Lindquist chose Gunder and instructed Lewis to make her "passable." Again, the only apparent basis for the decision was that Lindquist found her attractive. Since then, Gunder has lost 12 of 13 trials and does not appear able to do her job competently, despite the efforts of supervisors and mentors.

Witnesses: Dawn Farina, Stephen Penner, John Sheeran, Timothy Lewis, Kit Proctor, Lisa Hilligoss

D. Evasion of Public Records Act

Lindquist directs employees to avoid email, especially for sensitive subjects, and admonishes employees who fail to follow the directive.

Lindquist schedules meetings on his calendar without indicating what the meeting is about, rather it just says "Meeting" to avoid disclosing meeting agendas through potential public records requests.

In early 2015, Lindquist called Penner, private phone to private phone, about a work matter, to wit: the Washington Supreme Court's reversal of the conviction in *State v. Darcus Allen*. Lindquist told Penner to read a newspaper article about it, then call him back. Penner called back using his work phone and Lindquist admonished him for putting Lindquist's private cell number in his PRA-available work phone call logs. Lindquist required Penner to call him back with his private phone. The next day, Lindquist again admonished Penner for not being a team player.

Witnesses: Stephen Penner, Kelly Kelstrup, Dawn Farina, John Sheeran, Jared Ausserer, Kit Proctor, Doug Vanscoy, Denise Greer

E. Violation of Due Process and Equal Protection Clauses (Rights of Criminal Defendants)

In 2014, over 30 local attorneys filed affidavits in pending litigation (*Ames v. Pierce County*) accusing Lindquist of withholding evidence and defamation and/or urging the trial court not to impose CR 11 sanctions against the attorney who had brought the suit. Lindquist dubbed these attorneys the "confederacy of dunces," a reference to the quote by author Jonathan Swift: "When a true genius appears, you can know him by this sign: that all the dunces are in a confederacy against him." Presumably, Lindquist considers himself the "true genius."

Lindquist directed team leaders to instruct DPAs not to give good deals to these attorneys, especially attorney Gary Clower, whom Lindquist believed was the leader of the group, based on his role in the *State v. Lynn Dalsing* case [see Section III. Abuse of Authority, below].

Lindquist keeps a list of high-profile media cases and instructs that good deals should not be given on those cases because the public will notice. One such case was a defendant who had embezzled money from a school district, and his attorney was Gary Clower. When the case was initiated, Penner instructed property trial team negotiator Frank Krall to treat the case like any other case. Accordingly, after the defendant paid 75% of the restitution, down to the \$5000 guideline for the office diversion program, Krall agreed to dismiss the case to the diversion program. Lindquist became upset because he did not want the media reporting the case had been dismissed, and further because

Clower was the attorney. Penner and Krall were admonished for dismissing a media case, especially one where the defendant was represented by Clower.

Thereafter, Lindquist accused Penner of not having passion for the office. When Penner replied he had a passion for justice, Lindquist replied, "Justice is a platitude." Lindquist instructed Penner to direct trial team negotiator DPAs not to give good deals to defendants represented by anyone in his 'confederacy of dunces.' When Penner declined to do so for ethical reasons, Lindquist instructed Felony Division Chief John Sheeran to deliver the directive, which he did. DPAs were also told not to be seen being friendly to these attorneys, lest their careers be adversely affected.

Witnesses: Dawn Farina, Stephen Penner, John Sheeran, Timothy Lewis, Michelle Hyer, Frank Krall, Heather Songer, Raymond Odell, Gary Clower, Bryan Hershman

F. Violation of Whistleblower Act

On May 13, 2015, DPA Steven Merrival filed a whistleblower complaint against Lindquist. Merrival made the complaint public and provided copies to the media. Merrival gave a quote to the Tacoma News Tribune and appeared on camera for television news. In response, Lindquist directed Farina to appear on camera and Denise Greer to provide a quote to the newspaper. Both did and both accused Merrival of being disgruntled because he had been passed over for leadership positions. Merrival was the drug trial team negotiator, enjoyed his position, and never sought a leadership position from Lindquist—all of which Lindquist knew.

Lindquist then called at least two meetings of office leaders (trial team and division leaders) as well as smaller meetings of top leadership DPAs. In these meetings Lindquist said Merrival had a "meltdown" and was not acting "adult and mature." After the meetings, Penner recommended Lindquist stop criticizing Merrival publicly. Penner also suggested the comments already made, including the news comments, could be the basis for a whistleblower retaliation lawsuit; Denise Greer agreed.

Penner was then admonished for not "being present" and not showing leadership regarding the Merrival whistleblower issue. Farina also admonished Penner in front of other top leaders because Penner's fiancée, attorney Elizabeth Mount, had posted a comment on the News Tribune article in support of Merrival's character. Lindquist then spoke with Penner and questioned his ability to remain Chief Criminal Deputy.

Witnesses: Dawn Farina, Stephen Penner, John Sheeran, Jared Ausserer, Timothy Lewis, Maureen Goodman, Sven Nelson, Heather DeMaine, Michelle Hyer, Frank Krall

II. GROSS WASTE OF PUBLIC FUNDS

A. Requiring In-House Attorneys to Draft Pleadings for Outside Law Firms' Signature after Obtaining Special Funds to Pay Outside Law Firms

Although there are routinely civil claims filed against the county, there have been three recent lawsuits filed against the county alleging personal misconduct by Lindquist: *Dalsing v. Pierce County* (alleging false arrest and malicious prosecution by the prosecutor's office), *Nissen v. Pierce County* (a public records lawsuit alleging Lindquist used his personal phone to conduct private business and

thereby avoid the public records act), and *Ames v. Pierce County* (alleging Lindquist used the Potential Impeachment Policy to label a detective as dishonest because he was going to testify on behalf of Dalsing in that case). Lindquist sought and obtained extra money from the County Council to hire outside law firms to represent the County and himself on these cases. These attorneys were Stewart Estes and Phil Talmadge.

However, the majority of the briefing was conducted in-house, by senior DPAs during work hours, only to have some such briefs superficially reviewed and signed by the outside attorneys. Senior DPAs required to participate in such briefing sessions included Chief of Staff Dawn Farina, Chief Civil Deputy Douglas Vanscoy, Chief Criminal Deputy Stephen Penner, Felony Division Chief John Sheeran, Appellate Division Chief Kit Proctor, Homicide Division Chief Jared Ausserer, Civil Litigation Team Leader Dan Hamilton, and Mike Sommerfeld, advisor to the Pierce County Sheriff's Department. Lindquist also participated personally. The briefing sessions would often last several full days at a time, including office-paid lunches, with as many as eight DPAs participating at the same time to conduct line-by-line editing of lengthy appellate briefs.

Witnesses: Dawn Farina, Stephen Penner, John Sheeran, Jared Ausserer, Douglas Vanscoy, Dan Hamilton, Mike Sommerfeld, Kit Proctor, Stewart Estes, Phil Talmadge

B. Providing Unpaid Legal Services to Non-Governmental Agencies and Their Attorneys; and
C. Paying Outside Law Firms to Provide Legal Services for Non-Government Agencies

One of the briefs mentioned above was an amicus brief to the Washington Supreme Court in *Nissen v. Pierce County*. This brief was not being filed by any government agency, but rather by outside parties such as the Washington Education Association, the Washington State chapters of AFSCME and IAFF, and the Pierce County DPA's union (PCPAA). The brief was written by in-house DPAs Dan Hamilton, Stephen Penner, Dawn Farina, Mike Sommerfeld, among others. It was drafted to compliment the arguments presented by the county, as named defendant, and Lindquist, as a personal intervenor. The briefing was coordinated with outside counsel, who also reviewed the draft and gave advice.

Penner questioned whether a brief for the PCPAA should be written by management, but was told that it was okay because Hamilton and Sommerfeld were PCPAA members. Sheeran expressed concern to Penner that drafting briefs for outside agencies might be a gift of public funds. Penner asked Farina about this, but Farina had no concerns. Penner asked Denise Greer, Assistant Chief of the Civil Division, who stated that paying the outside attorney (Talmadge) to review it was probably more problematic because it was direct payment, but since the in-house DPAs were salaried, it could be claimed they were working on the brief during their "break times," despite the fact that well over a hundred employee-hours were devoted to that brief alone, all during standard work time of 8:30 a.m. to 4:30 p.m..

Witnesses: Dawn Farina, Stephen Penner, John Sheeran, Jared Ausserer, Douglas Vanscoy, Dan Hamilton, Mike Sommerfeld, Kit Proctor, Scott Peters, Phil Talmadge

D. Reclassifying DPA Positions to Increase Pay for Loyal DPAs

In 2013, Lindquist reclassified the homicide team into the "homicide division" so that DPA Grant Blinn could transfer to that position from Misdemeanor Division Chief without suffering a cut in his annual salary. However, there is no supervisory aspect to the position, as the homicide "division" has only ever consisted of one DPA, the division chief himself.

Witnesses: Grant Blinn, Jared Ausserer, Lisa Hilligoss

III. ABUSE OF AUTHORITY

A. Vindictive Prosecution

In 2015, Pierce County Superior Court Edmund Murphy dismissed the criminal case of *State v. Lynn Dalsing*, finding that Lindquist's office had refiled the charges in response to Dalsing filing a civil lawsuit against the County after her original charges were dismissed for insufficient evidence. In addition to the findings of the judge, additional factors which weigh on the question of vindictiveness are the facts that DPA Ausserer was called in early from family leave to file the charges at a particular time, and DPAs from the civil division were involved in the decision to refile criminal charges.

After the case was dismissed for vindictive prosecution, civil DPAs were initially involved in discussions regarding reconsideration and appeal, until Penner raised concerns with Civil Chief DPA Vanscoy's initial proposal to "appeal and seek settlement of the civil suit." When Appeals Division Chief Kit Proctor voiced an opinion against appealing Murphy's ruling, Lindquist replied, "Vanscoy thinks we should appeal."

Witnesses: Jared Ausserer, Kit Proctor, Dan Hamilton, Phil Sorensen, John Sheeran, Stephen Penner, Doug Vanscoy, John Sheeran, Dawn Farina

B. Attempted Misuse of Potential Impeachment Evidence Policy

In 2013, potential impeachment evidence became available regarding PCSD Det. Mike Ames. Specifically, DPA James Richmond filed an affidavit in the *Dalsing v. Pierce County* lawsuit alleging that Ames had lied in an affidavit he had filed in the same suit. Thus, a DPA was saying that Ames had lied, information which could be relevant in any criminal case where Ames might be expected to testify.

This evidence was provided to attorney Barbara Corey, defense counsel in the murder case of *State v. D'Marcus George*, however the State planned to move to exclude the evidence from trial. Lindquist directed that Penner was to argue all motions to exclude potential impeachment evidence. Regarding Ames, Lindquist told Penner not to argue too hard against admissibility.

Due to miscommunication between Penner and the trial DPA, Kit Proctor, Proctor argued the motion to exclude potential impeachment evidence. Proctor was successful in getting the information excluded from the trial.

Nevertheless, Lindquist admonished Penner for failing to argue the motion himself. When Penner said something to the effect that "At least we got the ruling we wanted" in excluding the potential impeachment evidence, Lindquist replied, "That wasn't the ruling we wanted."

Admission of the potential impeachment evidence would have damaged the State's case in a retrial of a murder case

C. Retaliatory Job Assignments

Lindquist has reassigned or threatened to reassign DPAs from more preferred assignments to less preferred assignments when he feels a DPA has criticized him too loudly or too publicly. This is part of the "culture of fear" DPA Steven Merrival mentioned in his whistleblower complaint.

Example: Diane Clarkson was moved from the felony violent crime team to the juvenile division after speaking out at a public County Council meeting against plan to remove Minority Bar from judicial qualifications committee. Lindquist had proposed the change in law to help support the application of DPA Kevin McCann for a vacancy on the District Court Bench.

Example: James Schacht was moved from the felony violent crime team to the appeals division after speaking out against Lindquist. Lindquist and/or Farina reportedly later admitted this move was retaliatory.

Example: Steven Merrival was threatened with reassignment after his wife posted critical Facebook comments and Merrival expressed criticisms of how Lindquist ran the office, including encouraging bullying by DPAs. This move was blocked when Merrival filed his whistleblower complaint.

Example: Lindquist proposed moving Brian Leech from the felony property crime team to the juvenile division after Leech spoke out at a PCPAA Guild meeting against the proposed amicus brief in *Nissen v. Pierce County*.

Example: Lindquist suggested to Penner that he might not keep his position as Chief Criminal Deputy because he wasn't showing enough support for Lindquist after Merrival filed his whistleblower complaint.

Witnesses: Diane Clarkson, James Schacht, Steven Merrival, Stephen Penner, Brian Leech, Dawn Farina, Lisa Hilligoss

D. Intimidation of Employees for Non-Work Activities

Lindquist monitors the non-work activities of employees for anything that might be critical of Lindquist.

Example: Lindquist advised DPA Steven Merrival that Merrival's wife ought not to post things on her Facebook that were derogatory of Lindquist or the office.

Example: Michelle Walker, Justice Services/Victim Advocate Supervisor, was admonished for 'liking' a photograph of a sunset posted on Facebook by former Chief Criminal DPA Mary Robnett, whom Lindquist now dislikes and considers to be a member of his 'confederacy of dunces.'

Example: Penner was admonished when his fiancée posted an online comment in support of Merrival's character after Merrival's whistleblower complaint.

Example: Lindquist instructed Stephen Penner to admonish DPA Brian Leech for not saying hello back to members of Lindquist's leadership team who had greeted him.

Example: Juvenile Division Chief Kevin Benton was instructed to admonish DPA Diane Clarkson for not saying hello pleasantly enough when she returned a greeting from Chief of Staff Dawn Farina.

Witnesses: Steven Merrival, Michelle Walker, Stephen Penner, Brian Leech, Diane Clarkson, Kevin Benton, Lisa Hilligoss

IV. SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY

Given the unique and vital role of the prosecutor's office in enforcing the law and protecting the public, the activities of Lindquist in hiring less qualified staff, reassigning DPAs for personal reasons, requiring senior criminal management DPAs to edit civil appellate briefs, and basing charging and disposition decisions on media interest and defense attorney selection, the safety of the public has been compromised.

CONCLUSION

I make this whistleblower complaint in good faith and the information contained herein is true and correct to the best of my knowledge and belief.

[REDACTED]

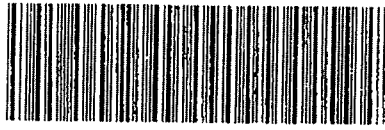
Dated: 5/21/15 at [REDACTED] Washington

Pierce County Prosecuting Attorney's Office
930 Tacoma Avenue S., Room 946
Tacoma, WA 98402

[REDACTED]

APPENDIX E

10/31/2014 3874 0177



13-1-02515-1 43551185 AMINF3 10-30-14

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-02515-1

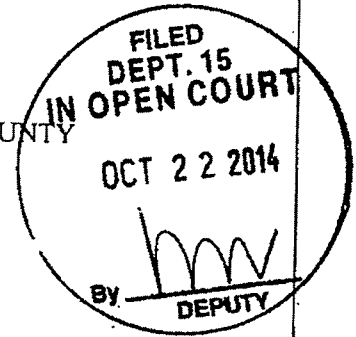
vs.

Third JCV

JEREMY EDWARD GAINES,

~~AMENDED~~ AMENDED INFORMATION

Defendant.



DOB: 7/29/1978
PCN#: 541005978

SEX : MALE
SID#: 15619093

RACE: WHITE
DOL#: WA GAINEJE224M9

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JEREMY EDWARD GAINES of the crime of UNLAWFUL DISTRIBUTION OF AN IMITATION CONTROLLED SUBSTANCE ~~UNLAWFUL DISTRIBUTION~~ committed as follows: *JCV*

That JEREMY EDWARD GAINES, in the State of Washington, on or about the 3rd day of June, 2013, did unlawfully, feloniously, and knowingly distribute an imitation controlled substance, to-wit: a substance similar in appearance to methamphetamine, classified under Schedule II of the Uniform Controlled Substance Act, contrary to RCW 69.52.030(1), and against the peace and dignity of the State of Washington.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JEREMY EDWARD GAINES of the crime of UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

SECOND AMENDED INFORMATION- 1

ORIGINAL

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

0178

3874

10/31/2014

1 That JEREMY EDWARD GAINES, in the State of Washington, on or about the 20th day of
2 June, 2013, did unlawfully, feloniously, and knowingly own, have in his possession, or under his control
3 a firearm, he having been previously convicted in the State of Washington or elsewhere of a serious
4 offense, as defined in RCW 9.41.010, contrary to RCW 9.41.040(1)(a), and against the peace and dignity
of the State of Washington.

COUNT III

5 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the
6 authority of the State of Washington, do accuse JEREMY EDWARD GAINES of the crime of
7 UNLAWFUL SOLICITATION TO DELIVER A CONTROLLED SUBSTANCE, a crime of the same or
8 similar character, and/or a crime based on the same conduct or on a series of acts connected together or
9 constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and
occasion that it would be difficult to separate proof of one charge from proof of the others, committed as
follows:

10 That JEREMY EDWARD GAINES, in the State of Washington, on or about the 20th day of
11 June, 2013, with intent to promote or facilitate the commission of the crime of UNLAWFUL DELIVERY
12 OF A CONTROLLED SUBSTANCE, as prohibited by RCW 69.50.401(1)(2)(a) - D, did offer to give or
13 give money or other thing of value to another to engage in or cause the performance of conduct which
14 would constitute the crime of UNLAWFUL DELIVERY OF A CONTROLLED SUBSTANCE or which
15 would establish complicity of such other person in the commission or attempted commission of
16 UNLAWFUL DELIVERY OF A CONTROLLED SUBSTANCE had it been attempted or committed,
17 and in the commission thereof the defendant, or an accomplice, was armed with a firearm, that being a
firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.530, and adding
additional time to the presumptive sentence as provided in RCW 9.94A.533, contrary to RCW 9A.28.030,
and against the peace and dignity of the State of Washington.

COUNT IV

18 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the
19 authority of the State of Washington, do accuse JEREMY EDWARD GAINES of the crime of
20 UNLAWFUL SOLICITATION TO POSSESS A CONTROLLED SUBSTANCE WITH INTENT TO
21 DELIVER, a crime of the same or similar character, and/or a crime based on the same conduct or on a
22 series of acts connected together or constituting parts of a single scheme or plan, and/or so closely
connected in respect to time, place and occasion that it would be difficult to separate proof of one charge
from proof of the others, committed as follows:

23 That JEREMY EDWARD GAINES, in the State of Washington, on or about the 20th day of
24 June, 2013, with intent to promote or facilitate the commission of the crime of UNLAWFUL
POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER, as prohibited by

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10/31/2014

1 RCW 69.50.401(1)(2)(a) - I, did offer to give or give money or other thing of value to another to engage
 2 in or cause the performance of conduct which would constitute the crime of UNLAWFUL POSSESSION
 3 OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER or which would establish
 4 complicity of such other person in the commission or attempted commission of UNLAWFUL
 5 POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER had it been
 6 attempted or committed,, and in the commission thereof the defendant, or an accomplice, was armed with
 7 a firearm, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW
 8 9.94A.530, and adding additional time to the presumptive sentence as provided in RCW 9.94A.533,
 9 contrary to RCW 9A.28.030, and against the peace and dignity of the State of Washington.

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COUNT V

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JEREMY EDWARD GAINES of the crime of CONSPIRACY TO DELIVER A CONTROLLED SUBSTANCE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That JEREMY EDWARD GAINES, in the State of Washington, on or about the period starting on the 3rd day of June, 2013 and ending on the 20th day of June, 2013, with intent that conduct constituting the crime of UNLAWFUL DELIVERY OF A CONTROLLED SUBSTANCE, as prohibited by RCW 69.50.401(1)(2)(a)-(d), be performed, agree with two or more persons, to engage in or cause the performance of such conduct, and any one of the persons involved in the agreement did take a substantial step in pursuance of the agreement, and in the commission thereof the defendant, or an accomplice, was armed with a firearm, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.530, and adding additional time to the presumptive sentence as provided in RCW 9.94A.533, contrary to RCW 69.50.407, and against the peace and dignity of the State of Washington.

It is further alleged that persons involved outside the act of delivery took part in the conspiracy agreement.

DATED this 22nd day of October, 2014.

TACOMA POLICE DEPARTMENT
WA02703

MARK LINDQUIST
Pierce County Prosecuting Attorney

jcw

By: _____
JESSE WILLIAMS
Deputy Prosecuting Attorney
WSB#: 35543

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10/31/2014

APPENDIX F

July 09 2013 8:41 AM

KEVIN STOCK
COUNTY CLERK
NO: 13-1-02515-1

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON

Plaintiff

vs.

JEREMY EDWARD GAINES

Defendant

NO.: 13-1-02515-1

NOTICE OF APPEARANCE

TO: CLERK OF THE ABOVE-ENTITLED COURT;
AND TO: CARL T. HULTMAN, Prosecuting Attorney

YOU, AND EACH OF YOU, ARE HEREBY NOTIFIED that the above named Defendant enters an appearance in the above-entitled matter, by and through the undersigned attorney, and directs all further pleadings and documents regarding this case, exclusive of original process, be served upon Defendant by leaving a copy thereof at the office of the undersigned attorney at the address given below. By this appearance, Defendant preserves all rights pursuant to CrR 3.3.

DATED this 9TH day of July 2013.

GARY M. CLOWER, LLC LAW OFFICE

By: /s/ Gary Clower
GARY M. CLOWER WSB# 13720

NOTICE OF APPEARANCE
Page 1 of 1

GARY M. CLOWER, LLC
ATTORNEY AT LAW
1105 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402
(253) 383-5346
FAX: (253) 572-6662

November 04 2013 3:55 PM

KEVIN STOCK
COUNTY CLERK
NO: 13-1-02515-1

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8 SUPERIOR COURT OF WASHINGTON
9 COUNTY OF PIERCE

10 STATE OF WASHINGTON,)

NO. 13-1-02515-1

11) Plaintiff,)

NOTICE OF SUBSTITUTION
OF ATTORNEYS

12) and)

13) JEREMY EDWARD GAINES,)

14) Defendant.)


15 TO: Clerk of the Court

16 AND TO: Pierce County Prosecutor's Office

17 PLEASE TAKE NOTICE that Gary Clower, hereby withdraws as
18 attorney for the defendant and herewith substitutes Geoffrey
19 Cross as attorney of record for the defendant, Jeremy Edward
20 Gaines.
21

22 DATED this 31st day of October 2013.

23 Attached
24 GARY CLOWER, WSB #13720
25 Withdrawing Attorney


26 GEOFFREY C. CROSS, WSB #3089
27 Attorney for Defendant

28 Notice of Substitution
of Counsel - 1

LAW OFFICES OF
GEOFFREY C. CROSS, P.S., INC.

1902 64TH AVENUE WEST, SUITE B,
TACOMA, WASHINGTON 98468
TELEPHONE: (253) 272-8998
FAX: (253) 572-8946
GCROSS.EMAUGHAN@YAHOO.COM

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SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE


STATE OF WASHINGTON,)
)
) Plaintiff,)
)
) and)
)
) JEREMY EDWARD GAINES,)
)
) Defendant.)

NO. 13-1-02515-1
NOTICE OF SUBSTITUTION
OF ATTORNEYS

TO: Clerk of the Court
AND TO: Pierce County Prosecutor's Office

PLEASE TAKE NOTICE that Gary Clower, hereby withdraws as attorney for the defendant and herewith substitutes Geoffrey Cross as attorney of record for the defendant, Jeremy Edward Gaines.

DATED this 31st day of October 2013.


GARY CLOWER, WSB #13720
Withdrawing Attorney

GEOFFREY C. CROSS, WSB #3089
Attorney for Defendant

Notice of Substitution
of Counsel - 1

LAW OFFICES OF
GEOFFREY C. CROSS, P.S., INC.

1602 84TH AVENUE WEST, SUITE B,
TACOMA, WASHINGTON 98466
TELEPHONE (253) 872-8888
FAX: (253) 572-8848
GCROSS@MVAUGHAN@YAHOO.COM

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SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

STATE OF WASHINGTON,)
)
 Plaintiff)
)
 and)
)
 JEREMY EDWARD GAINES,)
)
 Defendant.)

NO. 13-1-025151
DECLARATION RE FAX
SIGNATURE

The foregoing signed facsimile of Gary Clower attached to this declaration, is a complete and legible facsimile that I have examined personally and received by me.

Pursuant to RCW 9A.72.085, I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 4th day of November 2013 at Tacoma, WA.



Corinne Valdes

1 - Declaration Re
Fax Signature

LAW OFFICES OF
GEOFFREY C. CROSS, P.S., INC.
1902 84TH AVENUE WEST, SUITE B,
TACOMA, WASHINGTON 98466
TELEPHONE: (253) 272-8998
FAX: (253) 572-8946
GCROSS.EMAUGHAN@YAHOO.COM

May 07 2014 2:01 PM

KEVIN STOCK
COUNTY CLERK
NO: 13-1-02515-1

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SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE


STATE OF WASHINGTON,)
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) Plaintiff,)
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) and)
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) JEREMY EDWARD GAINES,)
)
) Defendant.)
)

NO. 13-1-02515-1

DISCHARGE OF ATTORNEY

COMES NOW, Jeremy Gaines, and discharges Geoffrey Cross as his attorney and requests that he withdraw and that he apply to the court to have a court appointed attorney take over the case.

DATE: 5/7/14


Jeremy Gaines

DISCHARGE OF ATTORNEY - 1

LAW OFFICES OF
GEOFFREY C. CROSS, P.S., INC.

1902 64TH AVENUE WEST, SUITE B,
TACOMA, WASHINGTON 98466
TELEPHONE: (253) 272-8998
FAX: (253) 572-8946
GCROSS.EMAUGHAN@YAHOO.COM

May 08 2014 9:53 AM

KEVIN STOCK
COUNTY CLERK
NO: 13-1-02515-1

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8 SUPERIOR COURT OF WASHINGTON
9 COUNTY OF PIERCE

10 STATE OF WASHINGTON,) NO. 13-1-02515-1
11)
12) Plaintiff,) MOTION FOR WITHDRAWAL
13) and) OF COUNSEL
14) JEREMY EDWARD GAINES,)
15) Defendant.)

16 COMES NOW, Geoffrey C. Cross, attorney for defendant, and at
17 the request of Jeremy Gaines, moves to withdraw from representing
18 Mr. Gaines in the above entitled cause.

19 DATED this 8 day of May 2014.

20 

21 _____
22 GEOFFREY C. CROSS, WSB #3089
23 Attorney for Defendant

24
25
26
27
28 Motion for Withdrawal
of Counsel - 1

LAW OFFICES OF
GEOFFREY C. CROSS, P.S., INC.

1902 64TH AVENUE WEST, SUITE B.
TACOMA, WASHINGTON 98466
TELEPHONE: (253) 272-8998
FAX: (253) 572-8946
GCROSS.EMAUGHAN@YAHOO.COM

July 31 2014 2:32 PM

KEVIN STOCK
COUNTY CLERK
NO: 13-1-02515-1

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SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

STATE OF WASHINGTON,)	NO. 13-1-02515-1
)	
Plaintiff,)	MOTION FOR WITHDRAWAL
and)	OF COUNSEL
)	
JEREMY EDWARD GAINES,)	
)	
Defendant.)	

COMES NOW, Geoffrey Cross, and moves that he be allowed to withdraw. This is the 2nd request from Mr. Gaines that I not be his attorney.

DATED this 31 day of July 2014.



GEOFFREY C. CROSS, WSB #3089
Attorney for Defendant

ORIGINAL

Motion for Withdrawal
of Counsel - 1

LAW OFFICES OF
GEOFFREY C. CROSS, P.S., INC.
1902 64TH AVENUE WEST, SUITE B.
TACOMA, WASHINGTON 98466
TELEPHONE: (253) 272-8998
FAX: (253) 572-8946
GCROSS.EMAUGHAN@YAHOO.COM

May 07 2014 2:01 PM

KEVIN STOCK
COUNTY CLERK
NO: 13-1-02515-1

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SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

STATE OF WASHINGTON,)
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) Plaintiff,)
)
) and)
)
) JEREMY EDWARD GAINES,)
)
) Defendant.)
)

NO. 13-1-02515-1
DISCHARGE OF ATTORNEY

COMES NOW, Jeremy Gaines, and discharges Geoffrey Cross as his attorney and requests that he withdraw and that he apply to the court to have a court appointed attorney take over the case.

DATE: 5/7/14


Jeremy Gaines

DISCHARGE OF ATTORNEY - 1

LAW OFFICES OF
GEOFFREY C. CROSS, P.S., INC.

1902 64TH AVENUE WEST, SUITE B,
TACOMA, WASHINGTON 98466
TELEPHONE: (253) 272-8998
FAX: (253) 572-8946
GCROSS.EMAUGHAN@YAHOO.COM

September 12 2014 12:08 PM

KEVIN STOCK
COUNTY CLERK
NO: 13-1-02515-1

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SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

STATE OF WASHINGTON,)
)
) Plaintiff,)
 and)
)
 JEREMY EDWARD GAINES,)
)
) Defendant.)
 _____)

NO. 13-1-02515-1

MOTION AND DECLARATION FOR
WITHDRAWAL OF COUNSEL

MOTION

COMES NOW, Geoffrey Cross, and moves that he be allowed to
withdraw.

DATED this 12 day of September 2014.



GEOFFREY C. CROSS, WSB #3089
Attorney for Defendant

DECLARATION

I, Geoffrey Cross, under penalty of perjury, depose and
state that Mr. Gaines first discharged me on May 7, 2014. My

Motion and Declaration for
Withdrawal of Counsel - 1

LAW OFFICES OF
GEOFFREY C. CROSS, P.S., INC.

1902 64TH AVENUE WEST, SUITE B,
TACOMA, WASHINGTON 98466
TELEPHONE: (253) 272-8998
FAX: (253) 572-8946
GCROSS.EMAUGHAN@YAHOO.COM

ORIGINAL

1 motion for withdrawal was denied pending Mr. Gaines is going to
2 Western State for an evaluation. Mr. Gaines continues to insist
3 that I not represent him as his lawyer. Mary Kay High has said
4 that a backup lawyer is available. Mr. Gaines brought in a
5 witness that I did not recognize and I took a statement from him
6 that has been given to the prosecutor. The witness is a former
7 client of mine. That witness is pending trial and there is an
8 appearance of a conflict of interest to say the least.
9

10 DATED this 12 day of September 2014.

11 

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13 _____
14 GEOFFREY C. CROSS, WSB #3089
15 Attorney for Defendant
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28 Motion and Declaration for
Withdrawal of Counsel - 2

LAW OFFICES OF
GEOFFREY C. CROSS, P.S., INC.

1902 64TH AVENUE WEST, SUITE B,
TACOMA, WASHINGTON 98466
TELEPHONE: (253) 272-8998
FAX: (253) 572-8946
GCROSS.EMAUGHAN@YAHOO.COM

September 26 2014 2:40 PM

KEVIN STOCK
COUNTY CLERK
NO: 13-1-02515-1


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8 SUPERIOR COURT OF WASHINGTON
9 COUNTY OF PIERCE

10 STATE OF WASHINGTON,) NO. 13-1-02515-1
11)
12 Plaintiff,) RENEWED MOTION FOR
13 and) WITHDRAWAL OF COUNSEL
14)
15 JEREMY EDWARD GAINES,)
16)
17 Defendant.)
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MOTION

COMES NOW, Geoffrey Cross, and moves that he be allowed to withdraw at the request of Mr. Gaines. This motion is based on the prior discharge of Mr. Cross dated May 7, 2014 and the continued objection of Mr. Gaines to my representation.

DATED this 26 day of September 2014.



GEOFFREY C. CROSS, WSB #3089
Attorney for Defendant

Renewed Motion for
Withdrawal of Counsel - 1

LAW OFFICES OF
GEOFFREY C. CROSS, P.S., INC.

1902 64TH AVENUE WEST, SUITE B,
TACOMA, WASHINGTON 98466
TELEPHONE: (253) 272-8998
FAX: (253) 572-8946
GCROSS.EMAUGHAN@YAHOO.COM

ORIGINAL

September 26 2014 2:40 PM

KEVIN STOCK
COUNTY CLERK
NO: 13-1-02515-1

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8 SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

9 STATE OF WASHINGTON,
10 Plaintiff,
11 and
12 JEREMY EDWARD GAINES,
13 Defendant.

) NO. 13-1-02515-1

) DECLARATION OF
) GEOFFREY C. CROSS

14 Geoffrey C. Cross, under penalty of perjury, deposes and
15 states that I represent Mr. Gaines, substituting for Mr. Cloud
16 who was his former attorney. I had a fairly good relationship
17 with Mr. Gaines until he discharged me in May. I felt they
18 needed a 5551 examination and rehabilitation at Western State
19 which he completed. On his scheduled return from Western State,
20 the court elected to set his trial for October 1, 2014, over
21 Affiant's objection.

22 In an effort to settle the case your Affiant met with Mr.
23 Gaines and the prosecutor. The defendant took excessive
24 exception to the fact that I even exposed him to the prosecutor,
25 even though I was in attendance and the conversation was rather
26 appropriate. He decided that I was not on his side. I went to
27 the jail thereafter to prepare for trial and he refused to allow

28 Declaration of
Geoffrey C. Cross - 1

LAW OFFICES OF
GEOFFREY C. CROSS, P.S., INC.

1902 64TH AVENUE WEST, SUITE B,
TACOMA, WASHINGTON 98486
TELEPHONE: (253) 272-8998
FAX: (253) 572-8946
GCROSS.EMAUGHAN@YAHOO.COM

ORIGINAL

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2 access to me in the jail in Pierce County. He says he does not
3 want me as his lawyer. All communication between myself and Mr.
4 Gaines has broken down.

5 Third parties have told me indirectly that there was
6 criticism of my ethical conduct in having the prosecutor talk to
7 Mr. Gaines in my presence, outlining his risks and exposures. I
8 felt it was very appropriate as it is a three strike case.

9 This case was set with the understanding that Mr. Thompson
10 would be available. Mr. Thompson gave a statement prior to my
11 representation on Mr. Gaines, that he owned the firearm that was
12 in the car. In preparation for trial I learned that I
13 represented Mr. Thompson in 2002. As far as I know he was going
14 to cooperate and the trial date was set for October 1, 2014,
15 because Mr. Thompson would be going to court before then and I
16 would have access to serve my subpoena.

17 In fact, Mr. Thompson jumped bail. I had a process server
18 go to his reported residence and he was not found there.

19 Mr. Gaines is quite dissatisfied with my services and there
20 is no meaningful communication between us. I was prepared to
21 present this on September 26th at the status conference, but the
22 prosecutor was unavailable. I advised the Department of Assigned
23 Counsel of my situation and they are ready to step in.

24 DATED at Tacoma, Washington this 26 day of September 2014.

25
26 
27 _____
GEOFFREY C. CROSS

28 Declaration of
Geoffrey C. Cross - 2

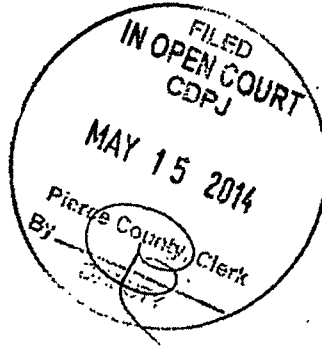
LAW OFFICES OF
GEOFFREY C. CROSS, P.S., INC.

1902 64TH AVENUE WEST, SUITE B,
TACOMA, WASHINGTON 98466
TELEPHONE: (253) 272-8998
FAX: (253) 572-8946
GCROSS.EMAUGHAN@YAHOO.COM

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13-1-02515-1 42543535 CME 05-16-14



1076

5/16/2014

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number: 13-1-02515-1

MEMORANDUM OF JOURNAL ENTRY

vs.

Page 1 of 2

GAINES, JEREMY EDWARD

Judge: CRIMINAL DIVISION- PRESIDING JUDGE

Court Reporter: ANGELA MCDOUGALL

Judicial Assistant/Clerk: Rasheedah McGoodwin

JESSE WILLIAMS

Prosecutor

GEOFFREY COLBURN CROSS

Defense Attorney

Proceeding Set: MOTION-WITHDRAWAL/SUBSTITUTION

Proceeding Date: 05/15/14 13:30

Proceeding Outcome: HELD

Resolution:

Clerk's Code:
 Proceeding Outcome code: **MTHRG**
 Resolution Outcome code:
 Amended Resolution code:

0050
1076
5/16/2014

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number: 13-1-02515-1
**MEMORANDUM OF
JOURNAL ENTRY**

vs.

GAINES, JEREMY EDWARD

Page: 2 of 2
Judge:
CRIMINAL DIVISION- PRESIDING JUDGE

MINUTES OF PROCEEDING

Judicial Assistant/Clerk: Rasheedah McGoodwin
Start Date/Time: 05/15/14 1:49 PM

Court Reporter: ANGELA MCDUGALL

May 15, 2014 01:48 PM DPA, Jesse Williams present. Defense Attorney Geoffrey Cross present w/defendant. Case comes on before the court on defense counsel motion to withdraw as counsel of record, denied.

End Date/Time: 05/15/14 1:50 PM

APPENDIX G

F



13-1-02515-1 42584530 FPE 05-27-14

0226

FILED
IN COUNTY CLERK'S OFFICE

A.M. **MAY 27 2014** P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff

vs.

GAINES, JEREMY EDWARD,
Defendant

Cause No. 13-1-02515-1

FORENSIC MENTAL HEALTH EVALUATION

5/28/2014 12:18

David T. Morgan, PhD Inc
Psychological Services
2700 NE Andresen Road, Suite #D4
Vancouver, WA 98661
(360) 828-0119

May 26, 2014

Judy Snow
PCDCC Mental Health Manager
901 Tacoma Avenue
Tacoma WA 98402

RE: Jeremy Edward Gaines
Cause #: 13-1-02515-1
Charges: Unlawful Delivery of a Controlled Substance
Unlawful Possession of a Firearm in the First Degree

Dear Ms. Snow:

Pursuant to your request, I have conducted an evaluation on Jeremy Edward Gaines to determine his competency to stand trial. Mr. Gaines was interviewed at the Pierce County Detention and Corrections Center on May 24, 2014. The following procedures were utilized to reach the conclusions that will be subsequently mentioned:

1. Clinical interview of Mr. Gaines
2. Information statement, dated 6/21/13
3. Probable Cause statement, dated 4/2/14
4. Order for Examination, dated 5/15/14
5. Criminal History Compilation, dated 4/21/14
6. Mental Status Examination, administered 5/24/14
7. Inventory of Legal Knowledge (ILK), administered 5/24/14

Mr. Gaines consented to be interviewed, and was willing to answer questions. He was informed regarding the reasons for the evaluation, and how none of the answers he provided would be considered confidential. He was aware that he could have his attorney present if he wished, and that a report would be generated and distributed to various court personnel. Mr. Gaines agreed with these conditions, and the interview proceeded. He was somewhat guarded during the interview, and trust was not easily established. However, he seemed to give good effort for the most part.

Relevant Personal and Clinical History

It should be noted that Mr. Gaines himself provided the information regarding his personal history, and no collateral contacts were made to confirm the veracity of his

COMPETENCY EVALUATION
JEREMY EDWARD GAINES

statements. The reader should bear this in mind when reviewing the following historical information.

Family History: Mr. Gaines reported that he has lived in the Puyallup/Spanaway area for many years, and that he currently lives with his mother. He reported having a number of brothers and sisters as well, but does not have much contact with them. Mr. Gaines stated that his mother and father do not live together, but he has good relations with both of them. Regarding his marital history, Mr. Gaines reported that he is currently divorced. He indicated he has fathered six children from six different women, and he has sporadic contact with some of them.

Educational History: Mr. Gaines indicated that he did not graduate from high school, and was not sure how far he progressed before dropping out. He reported that he has since earned a GED. Mr. Gaines was involved in special education classes for most of his education, and reported that he has always had difficulty learning. He indicated he had variable relationships with his teachers and peers.

Occupational History: Mr. Gaines claimed that he has a limited work history, and stated he worked at a car wash "a long time ago." He reported that he has been supporting himself through Social Security Disability benefits, and is not really interested in finding employment. Mr. Gaines denied having ever been fired from any employment.

Medical History: Mr. Gaines reported "I was shot in the stomach in 1996." He indicated that he has to use a urinary catheter to urinate, as a consequence of the shooting. Mr. Gaines indicated that he is currently taking multiple prescription medications, but did not know what they were or what they were for.

Substance Abuse History: Mr. Gaines stated he has a history of illegal drug use, and his drug of choice has been methamphetamine. He reported that he started using this drug when he was an adolescent, and his use has escalated to daily use. Mr. Gaines indicated that he was using just prior to his arrest, and did not have any time in sobriety.

Mental Health History: Mr. Gaines reported that he was involved in mental health counseling when he was a child; he stated that he was the victim of sexual abuse and was referred for counseling to address these issues. He indicated that while he was incarcerated in prison (he did not indicate a time frame), he was diagnosed with "borderline schizophrenia and PTSD." Court records also reported that Mr. Gaines has a history of "schizophrenia, bipolar disorder, and other mental illnesses." However, Mr. Gaines did not report any symptoms of these conditions at the time of the evaluation interview. (It could be that his current medication regiment has the symptoms of such disorders under control.) Mr. Gaines did report that he has anxiety issues, and cannot be in crowded places without experiencing considerable anxiety. The symptoms he described were consistent with panic attacks.

Initial DSM-V diagnostic impressions are as follows (but are based on limited clinical information, and are all considered provisional): Panic Disorder (300.01), Agoraphobia

COMPETENCY EVALUATION
JEREMY EDWARD GAINES

(300.22), Stimulant Use Disorder, Severe (304.40), Antisocial Personality Disorder (301.7).

Criminal History: Mr. Gaines has an extensive criminal history, including multiple misdemeanor and felony convictions both as an adult and as a juvenile. These crimes seem to have been associated with gang activity, including possession of firearms, assaults, thefts, and burglaries.

Official Version of Events

The following version of events is taken from the Declaration for Determination of Probable Cause, dated 4/12/14: "As outlined in the probable cause declaration filed on June 21, 2013, the defendant was identified as a methamphetamine supplier in June 2013. On June 3, 2012 drug investigators observed him deliver methamphetamine to a lower-level supplier, who in turn sold some of that methamphetamine to a confidential informant. At that time, the defendant was driving a 2013 white Dodge Charger that was registered to him. A search warrant was subsequently obtained for the defendant's vehicle and his residence. On June 20, at 12:30 p.m., officers executing the search warrant observed the defendant leaving a Safeway grocery driving his Dodge Charger. A traffic stop ensued and one of the officers who approached the defendant to arrest him observed him placing a .45 caliber handgun between his feet on the floorboard. The firearm was subsequently determined to be stolen. The defendant's passenger, Brandon Ryan, also had a firearm located between his feet on the floorboard. On the defendant's person was \$657 in cash. The defendant was advised of his constitutional rights and agreed to speak with an officer. He admitted to the officer that he used and dealt drugs and that he was a "runner for the Mexicans." The defendant described himself as a "small fish." The defendant also told the officer that the officer "screwing up" because the defendant was "supposed to be picking up two pounds right now." The defendant advised that he had just left the Safeway after "wiring the money to Mexico for the dope man." The defendant told the officer that he would take the officer to the Mexicans he was "picking up from" if the officer would make "all of this go away." When the officer declined the defendant's offer, the defendant responded, "you lose then bro." When officers subsequently searched the car pursuant to the warrant, they recovered a Western Union receipt from the Safeway, dated June 20 at 12:27 p.m., indicating that Ryan had sent \$1008 to a Jesus Enrique Palomera in Mexico. Similar receipts were also found in the vehicle."

Mental Status Examination

Mr. Gaines was interviewed in the Pierce County Detention and Corrections Center. He was dressed in jail attire but was appropriately groomed. He was oriented to person and place, but was unaware of the current date. (although he identified the year correctly.) Mr. Gaines showed short-term memory abilities that were less than average (he could not repeat a series of numbers backwards, and he could not recall a series of words after a short delay.) His fund of knowledge was somewhat compromised as well (he could not name bordering states), and his concentration abilities seemed to be challenged (he could spell the word "world" forward; but not backward.) Regarding abstract thinking, he was

COMPETENCY EVALUATION
JEREMY EDWARD GAINES

able to provide interpretation to one of two to common proverbs, but showed appropriate understanding of how to respond to a hypothetical emergency situation.

Competency

Court process and defendant rights: Mr. Gaines did not show adequate understanding regarding self-incrimination. When asked about "the right to remain silent" meant, he stated, "be quiet." He was unaware if the state would pay for a lawyer if he could not afford one. Mr. Gaines did not know the definition of perjury, and did not know if lying in court would bring a penalty or not. When asked about why it would be important for him to have an understanding of what is happening in the court process, Mr. Gaines stated, "I don't know if it is."

Roles of persons in the court process: Mr. Gaines did not know the definition of a witness, jury, or judge. However, he identified the prosecutor as "the one that is going against you."

Potential court outcomes: Mr. Gaines was not able to define what probation was, and defined being sentenced as being "sentenced to time." When asked about a plea bargain, he stated, "this is when someone tries to give you a deal." When asked what might happen if he loses his court case, he indicated, "I might stay in jail."

Relationship with defense attorney: Mr. Gaines did not show any understanding that conversations between him and his lawyer were confidential. When asked about the importance of listening to his attorney, he stated, "I should listen to what others have to say." He stated that he believed his attorney was there to help him, and could possibly help him spend less time in jail. Mr. Gaines also understood the importance of being honest with his defense attorney, stating this might help him stay out of jail as well.

General court and criminal terminology: Mr. Gaines showed an appropriate understanding of the difference between guilty and not guilty, stating if one is guilty, then he would stay in jail, and if one is not guilty, then he would get out of jail. Mr. Gaines was able to describe a felony as a serious crime, and a misdemeanor as a "low crime."

Ability to discuss elements of case: Mr. Gaines had a moderate ability to discuss the details of his current legal situation, but was somewhat guarded about this. He knew the general charges against him, and understood these were serious charges. Mr. Gaines did not want to talk about the details of his arrest, and reported that he felt that he could not trust the evaluation process. When asked whether he would be willing to talk about the details of his arrest with his attorney, Mr. Gaines said "maybe."

Inventory of Legal Knowledge: The Inventory of Legal Knowledge (ILK) is a 61-item true-false test of competency-related material. The questions are read to the defendant, and the defendant provides a verbal response. The examination covers materials related to the rights of defendants, courtroom procedures, charges, sanctions, pleas, in addition to assessing knowledge related to various persons involved in the court process, such as

COMPETENCY EVALUATION
JEREMY EDWARD GAINES

witnesses, defense attorney, judge, and prosecutor. The instrument is designed to detect feigned deficits in legal knowledge, were a person might claim less knowledge than they actually have in order to appear incompetent. Individual analysis of specific questions can also yield valuable information regarding the respondent's knowledge of competency issues (although this is not the focus of the instrument.) Mr. Gaines scored a total of 33 correct out of 61 (54%), which suggests it is unlikely that he was using a false response style. (Scores of less than 24 are typically indicative of an attempt to perform worse than one's true abilities.) However, individual analysis of answers to specific questions showed a relatively poor understanding of competency-related issues in general.

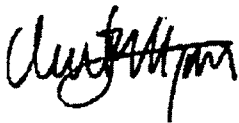
Mr. Gaines does appear to suffer from a mental disorder, and seems to suffer from developmental delays as well. His appreciation of concepts related to competency is poor to moderately poor. Some of his poor performance may have been due to the fact that he was guarded, and did not seem to trust the interview process. It is notable that, as the interview went on, he seemed to provide slightly better effort and his answers improved in quality and accuracy. **It is my opinion that Mr. Gaines does not have the capacity to understand the nature of the proceedings against him or to assist in his own defense. However, he does appear to be a good candidate for competency restoration, should the courts consider this option. If Mr. Gaines can work with someone he trusts during any recommended competency training, this may facilitate a fairly speedy restoration to competency.**

Opinion Regarding DMHP Referral

Pursuant to RCW 71.05, the following opinion is offered. Mr. Gaines does appear to have a mental disorder, but this disorder does not create an imminent risk of self to harm or others, nor does it represent a grave disability that would prevent him from attending to his basic needs or safety. A Designated Mental Health Professional referral is not needed at this time.

Thank you for the referral, and please contact me if you have any questions.

Sincerely,

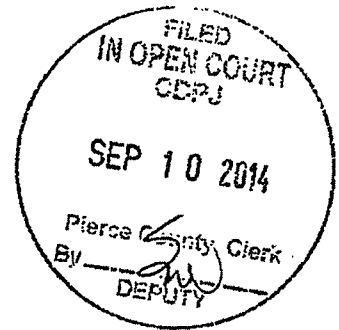


David T. Morgan, PhD
Licensed Psychologist
Washington License PY 2565

APPENDIX H



13-1-02515-1 43263344 ORDCT 09-11-14



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-02515-1

vs.

JEREMY EDWARD GAINES,

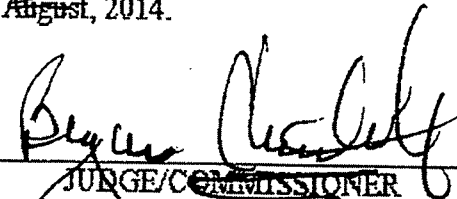
ORDER REGARDING COMPETENCY
OF DEFENDANT

Defendant.

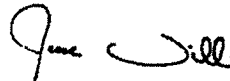
THIS MATTER is before the court pursuant to the defendant's court ordered evaluation for competency at Western State Hospital. In accordance with RCW 10.77.060 the defendant has been evaluated, and the court has reviewed the report of Richard Yocum, Ph.D., Licensed Psychologist, dated August 20, 2014, having considered the records and files in this matter, Competency Report, and the comments of counsel for the State and defendant, the court is satisfied that the defendant is competent to understand the proceedings against him, and to assist in his own defense. Accordingly, it is hereby

1
2 ORDERED, ADJUDGED and DECREED that defendant, JEREMY EDWARD
3 GAINES, is competent to understand the present criminal proceedings against him, and to assist
4 in his own defense.


5 DONE IN OPEN COURT this 10 ^{Sect.} day of August, 2014.

6
7
8 
9 JUDGE/COMMISSIONER

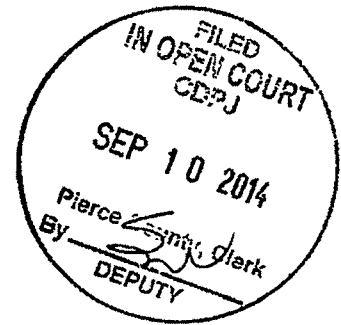
10 Presented by:

11 
12 JESSE WILLIAMS
13 Deputy Prosecuting Attorney
14 WSB# 35543

15 Approved as to Form:

16 
17 GEOFFREY COLBURN CROSS
18 Attorney for Defendant
19 WSB# 3089

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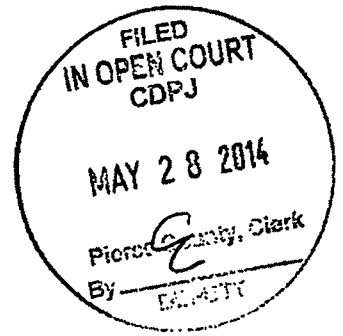


APPENDIX I

0130



13-1-02515-1 42606858 ORCMT 05-29-14



5/30/2014 12:38

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-02515-1

vs.

JEREMY EDWARD GAINES,

ORDER OF COMMITMENT TO WESTERN STATE HOSPITAL (COMPETENCY RESTORATION)

Defendant.

THIS MATTER coming on in open court upon the motion of the State, and there being reason to doubt the defendant's competency to understand the proceedings against defendant and assist in defendant's own defense, and the court having examined the report of

David T. Morgan PhD, Western State Hospital, dated May 26, 2014

and the court being in all things duly advised, Now, Therefore, IT IS HEREBY

ORDERED that the defendant, JEREMY EDWARD GAINES, be committed to Western State Hospital for a period not to exceed:

Ninety (90) days where the criminal charge is classified as a class A or class B violent felony,

Forty-five (45) days for all other felonies

1
 2 The commitment will occur without further order of the court and the defendant will
 3 undergo evaluation and treatment to restore competency to proceed to trial, to include the
 4 administration of psychotropic medications, including antipsychotics, to the defendant as deemed
 5 medically appropriate by the staff of Western State Hospital, against the defendant's will if
 6 necessary, as the court finds that there is no less intrusive form of treatment which is likely to
 7 restore the defendant's competency to stand trial; IT IS FURTHER
 8

9 ORDERED that the staff of Western State Hospital shall report to the undersigned court
 10 in the manner specified in RCW 10.77 as to a description of the nature of the examination and
 11 treatment, a diagnosis of mental condition, an opinion as to the defendant's capacity to
 12 understand the proceedings against defendant and to assist in defendant's own defense, and an
 13 opinion as to whether defendant's mind was so diseased or affected that defendant was unable to
 14 perceive the moral qualities of the act with which defendant is charged and was unable to tell
 15 right from wrong with reference to the particular acts charged. The staff is further required to
 16 give an opinion as to whether further examination, testing and treatment is required. The report
 17 is to be submitted in writing to this court within ten days of the expiration of the period of
 18 commitment unless further time is requested, and copies are to be sent to the Prosecuting
 19 Attorney, the Defense Counsel, and the Jail Physician; and, IT IS FURTHER
 20

0138

1239

5/30/2014

FILE

FILE

FILE

ORDERED that upon completion of said period of evaluation and treatment, or when defendant has regained competency, whichever occurs first, the defendant shall be returned to the custody of the Sheriff of Pierce County, to be held pending further proceedings herein.

DONE IN OPEN COURT this 28th day of May, 2014.

[Handwritten Signature]

JUDGE/COMMISSIONER

Presented by:

[Handwritten Signature]

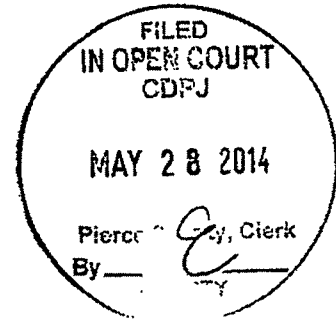
JESSE WILLIAMS
Deputy Prosecuting Attorney
WSB# 35543

Approved as to Form:

[Handwritten Signature]

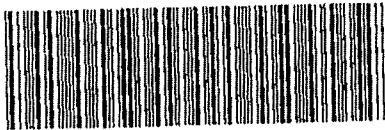
GEOFFREY COLBURN CROSS
Attorney for Defendant
WSB# 3089

ajm



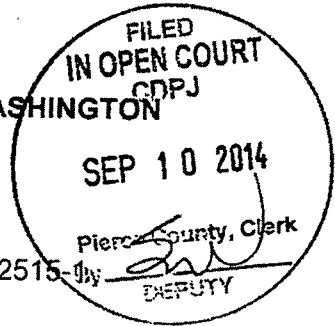
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APPENDIX J



13-1-02515-1 43263486 ORH 09-11-14

IN THE SUPERIOR COURT FOR PIERCE COUNTY WASHINGTON



State of Washington,
Plaintiff

vs.

JEREMY EDWARD GAINES
Defendant

No 13-1-02515-1

SCHEDULING ORDER

IT IS HEREBY ORDERED that:

1. The following court dates are set for the defendant:

Hearing Type	Date & Time	Judge/Room
JURY TRIAL	Wednesday, Sep 17, 2014 8:30	CDPJ 260

2. The defendant shall be present at these hearings and report to the courtroom indicated at
930 Tacoma Avenue South, County-City Building, Tacoma, Washington, 98402

FAILURE TO APPEAR WILL RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST

- DAC; Defendant will be represented by Department of Assigned Counsel.
- Retained Attorney; Defendant will hire their own attorney or, if indigent, be Screened (interviewed) for Department of Assigned Counsel Appointment.

DATED: 09/10/14

Copy Received:

JEREMY EDWARD GAINES, Defendant

GEOFFREY COLBURN CROSS
Attorney for Defendant/Bar #3089

Ordered By:

JUDGE/COMMISSIONER

JESSE WILLIAMS
Prosecuting Attorney/Bar #35543

9/12/2014 1:51:56 PM

APPENDIX K



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)

Cause No. 13-1-02515-1

vs.)
Jeremy Cooney)
Defendant)

ORDER CONTINUING TRIAL

Case Age 31 Prior Continuances 0

This motion for continuance is brought by state defendant court.
 upon agreement of the parties pursuant to CrR 3 3(f)(1) or
 is required in the administration of justice pursuant to CrR 3 3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity
Reasons: Additional time needed

RCW 10 46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED the Defendant shall be present and report to:

	DATE	TIME	COURT ROOM	ID NUMBER
<input checked="" type="checkbox"/> PTC	<u>8/26/13</u>	<u>845</u>	<u>270</u>	<u>@</u>
<input checked="" type="checkbox"/> OMNIBUS HEARING	<u>9/12/13</u>	<u>845</u>	<u>260</u>	<u>@</u>
<input type="checkbox"/> STATUS CONFERENCE HEARING				
THE CURRENT TRIAL DATE OF <u>8/13/13</u> IS CONTINUED TO: <u>10/15/13 @ 8:30 am Room @</u>				

Expiration date is: 11/15/13 (Defendant's presence not required) TFT days remaining: 80

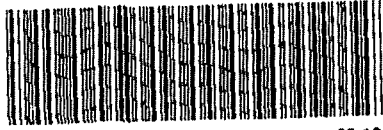
DONE IN OPEN COURT this 22nd day of July, 2013

[Signature]
Defendant
[Signature]
Attorney for Defendant/Bar # 13720

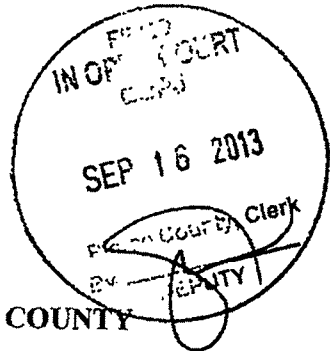
[Signature]
Judge
[Signature]
Prosecuting Attorney/Bar # 1592

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified Pierce County, Washington Court Reporter _____



13-1-02515-1 41216752 ORCTD 09-16-13



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)

Cause No. 13-1-02515-1

vs.)

ORDER CONTINUING TRIAL

Jeremy Gaines
Defendant)

Case Age 87 Prior Continuances 1

- This motion for continuance is brought by state defendant court.
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity.

Reasons: Disproportionate continuing

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim

IT IS HEREBY ORDERED the Defendant shall be present and report to:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/>				
<input checked="" type="checkbox"/> OMNIBUS HEARING	<u>12/9/13</u>	<u>845</u>	<u>260</u>	<u>(A)</u>
<input type="checkbox"/> STATUS CONFERENCE HEARING				

THE CURRENT TRIAL DATE OF 10/15/13 IS CONTINUED TO: 1/15/14 @ 8:30 am Room 260

Expiration date is: 2/11/14 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 16th day of September, 2013

[Signature]
Defendant
[Signature]
Attorney for Defendant/Bar # 13720

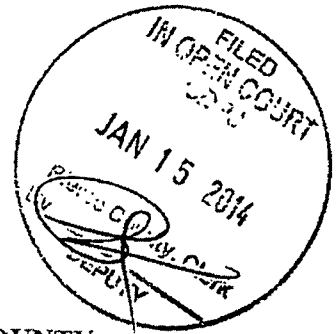
[Signature]
Judge
[Signature]
Prosecuting Attorney/Bar # 11908

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language I certify under penalty of perjury that the foregoing is true and correct

Pierce County, Washington
Interpreter/Certified/Qualified Court Reporter _____



13-1-02515-1 41871120 ORCTD 01-15-14



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)

Cause No. 13-1-02515-1

vs.)

ORDER CONTINUING TRIAL

Jeremy GAINES)
Defendant)

Case Age 207 Prior Continuances 2

- This motion for continuance is brought by state defendant court.
- upon agreement of the parties pursuant to CrR 3.3(f)(1) or
 - is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
 - for administrative necessity.

Reasons: DPA in ~~error~~ preassigned 5:00 A trial before Judge Felnygale beginning tomorrow

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED the Defendant shall be present and report to:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/>				
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
THE CURRENT TRIAL DATE OF: <u>1/15/14</u>		IS CONTINUED TO: <u>1/27/14</u> @ 8:30 am Room <u>260</u> <small>CDRTJ</small>		

Expiration date is: 2.26.14 (Defendant's presence not required) TFT days remaining: 30

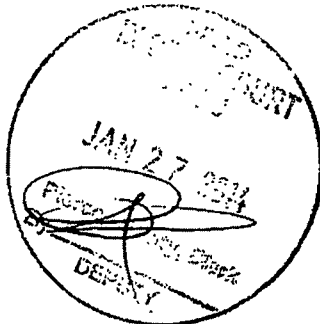
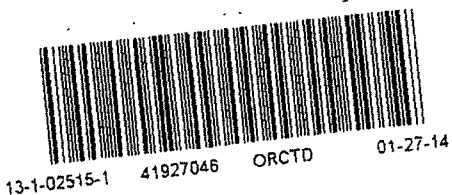
DONE IN OPEN COURT this 15 day of JAN 2014

[Signature]
Defendant
[Signature]
Attorney for Defendant/Bar # 3089

[Signature]
Prosecuting Attorney/Bar # 35543
FRANK E. CUTHBERTSON

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified Pierce County, Washington Court Reporter _____



on docket
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- UDSS, UPFAI, SJWSS &
C/UDSS

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)

Cause No. 13-1-02515-1

vs.)

ORDER CONTINUING TRIAL

Jeremy GAINES,)
Defendant)

Case Age 220 Prior Continuances 3

- This motion for continuance is brought by state defendant court.
- upon agreement of the parties pursuant to CrR 3.3(f)(1) or
- is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
- for administrative necessity.

Reasons: DISCOVERY NOT COMPLETE
PROSECUTOR IN TRIAL

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED the Defendant shall be present and report to:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/>				
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
THE CURRENT TRIAL DATE OF: <u>1/27/14</u>		IS CONTINUED TO: <u>3/11/14 @ 8:30 am Room 2602</u>		

Expiration date is: _____ (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 27th day of Jan, 2014

[Signature]
Defendant

[Signature] FRANK E. CUTHBERTSON
Judge

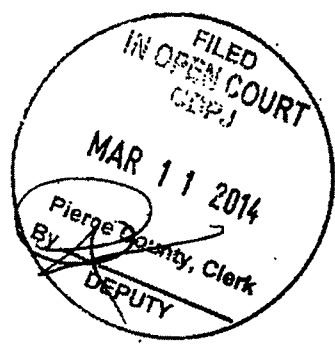
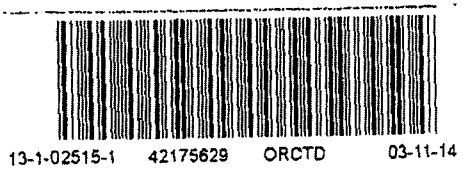
Attorney for Defendant/Bar # 3085

[Signature] 37882
Prosecuting Attorney/Bar #

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified Pierce County, Washington Court Reporter _____

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)
vs.)
Jeremy GANB)
Defendant)

Cause No. ~~13-1-02514-2~~
13-1-02515-1

ORDER CONTINUING TRIAL

Case Age 263 Prior Continuances 4

This motion for continuance is brought by state defendant court.
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity.
Reasons: CO Defendant Attorney is ill

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED the Defendant shall be present and report to:

	DATE	TIME	COURT ROOM	ID NUMBER
<input checked="" type="checkbox"/> <u>Suppression Mot</u>	<u>3/12/14</u>	<u>8:30</u>		
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
THE CURRENT TRIAL DATE OF: <u>3/11/14</u> IS CONTINUED TO: <u>3/17/14</u> @ 8:30 am Room <u>260</u> CDPJ/260				

Expiration date is: 4.16.14 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN/COURT this 11 day of MARCH 2014

[Signature]
Defendant
[Signature]
Attorney for Defendant/Bar # 388P

[Signature]
Judge FRANK E. CUTHBERTSON
[Signature]
Prosecuting Attorney/Bar # 35543

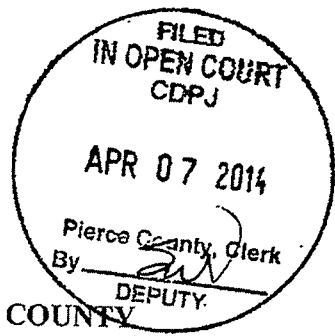
I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington
Interpreter/Certified/Qualified _____ Court Reporter _____

0222



13-1-02515-1 42324207 ORCTD 04-07-14



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)

Cause No. 13-1-02515-1

vs.)

ORDER CONTINUING TRIAL

Jeremy GAINES)
Defendant)

Case Age 290 Prior Continuances 6

This motion for continuance is brought by state defendant court.
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity.

Reasons: Δ has new charges and needs to assess impact on this case. Parties could use short setover to finalize prep for trial. Primary detective on vacation and out of state April 7-25

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED the Defendant shall be present and report to:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/>				
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
THE CURRENT TRIAL DATE OF: <u>4/7/14</u>	IS CONTINUED TO: <u>5.1.14</u>		<u>CDPJ/</u>	
			<u>@ 8:30 am Room 260</u>	

Expiration date is: 5.31.14 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 7th day of April, 20 14

[Signature]
Defendant

[Signature]
Judge

Attorney for Defendant/Bar # 3089

Prosecuting Attorney/Bar # 35543

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified Pierce County, Washington Court Reporter _____

686 4/8/2014 50

APPENDIX L

September 12 2014 3:52 PM

KEVIN STOCK
COUNTY CLERK
NO: 13-1-02515-1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON

NO. 13-1-02515-1

Plaintiff,

vs.

JEREMY EDWARD GAINES

LIST OF WITNESSES

Defendant(s).

TO: JEREMY EDWARD GAINES, defendant, and

TO: GEOFFREY COLBURN CROSS, his/her attorney

The following is a list of witnesses in the above entitled cause for JURY TRIAL on 9/17/2014

INFORMANT CONFIDENTIAL

JESSICA ANN HANDLEN

SUSAN MASON

MAUREEN AT DUDSCHUS
WASHINGTON STATE PATROL

ASKINS, AUBREY
TACOMA POLICE DEPARTMENT #914

BUCHANAN, JAMES S.
TACOMA POLICE DEPARTMENT #131

LANE, RYAN
TACOMA POLICE DEPARTMENT #39

MAY, DAVID
TACOMA POLICE DEPARTMENT #118

SCHULTZ, ALBERT
TACOMA POLICE DEPARTMENT #151

SCRIPPS, ERIC A.
TACOMA POLICE DEPARTMENT #223

SHIPP, CHRISTOPHER
TACOMA POLICE DEPARTMENT #183

SMITH, KENNETH P.
TACOMA POLICE DEPARTMENT #200

WITNESS LIST Page 1 of 2

1
2 VOLD, BRIAN
3 TACOMA POLICE DEPARTMENT #332

4 Dated this _____ day of September, 2014.

5 Mailed/Faxed/Routed/LMI'd copy this hjh
6 day of September, 2014.

7 To: GEOFFREY COLBURN CROSS

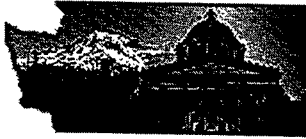
MARK LINDQUIST
Prosecuting Attorney

8 By: Jesse Williams

JESSE WILLIAMS
Deputy Prosecuting Attorney
Washington State Bar # 35543

9 By: Brian

APPENDIX M



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[RCWs](#) > [Title 69](#) > [Chapter 69.50](#) > [Section 69.50.401](#)

[69.50.369](#) << [69.50.401](#) >> [69.50.4011](#)

RCW 69.50.401

Prohibited acts: A—Penalties.

*** CHANGE IN 2015 *** (SEE [5564-S2.SL](#)) ***

(1) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(2) Any person who violates this section with respect to:

(a) A controlled substance classified in Schedule I or II which is a narcotic drug or flunitrazepam, including its salts, isomers, and salts of isomers, classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(b) Amphetamine, including its salts, isomers, and salts of isomers, or methamphetamine, including its salts, isomers, and salts of isomers, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine, including its salts, isomers, and salts of isomers. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

(c) Any other controlled substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapter [9A.20](#) RCW;

(d) A substance classified in Schedule IV, except flunitrazepam, including its salts, isomers, and salts of isomers, is guilty of a class C felony punishable according to chapter [9A.20](#) RCW; or

(e) A substance classified in Schedule V, is guilty of a class C felony punishable according to chapter [9A.20](#) RCW.

(3) The production, manufacture, processing, packaging, delivery, distribution, sale, or possession of marijuana in compliance with the terms set forth in RCW [69.50.360](#), [69.50.363](#), or [69.50.366](#) shall not constitute a violation

of this section, this chapter, or any other provision of Washington state law. [2013 c 3 § 19 (Initiative Measure No. 502, approved November 6, 2012); 2005 c 218 § 1; 2003 c 53 § 331. Prior: 1998 c 290 § 1; 1998 c 82 § 2; 1997 c 71 § 2; 1996 c 205 § 2; 1989 c 271 § 104; 1987 c 458 § 4; 1979 c 67 § 1; 1973 2nd ex.s. c 2 § 1; 1971 ex.s. c 308 § 69.50.401.

[2013 c 3 § 19 (Initiative Measure No. 502, approved November 6, 2012); 2005 c 218 § 1; 2003 c 53 § 331. Prior: 1998 c 290 § 1; 1998 c 82 § 2; 1997 c 71 § 2; 1996 c 205 § 2; 1989 c 271 § 104; 1987 c 458 § 4; 1979 c 67 § 1; 1973 2nd ex.s. c 2 § 1; 1971 ex.s. c 308 § 69.50.401.]

NOTES:

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application—1998 c 290: "This act applies to crimes committed on or after July 1, 1998." [1998 c 290 § 9.]

Effective date—1998 c 290: "This act takes effect July 1, 1998." [1998 c 290 § 10.]

Severability—1998 c 290: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 290 § 11.]

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability—1989 c 271: See note following RCW 9.94A.510.

Severability—1987 c 458: See note following RCW 48.21.160.

Serious drug offenders, notice of release or escape: RCW 72.09.710.



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Official State Government Website

[RCWs](#) > [Title 69](#) > [Chapter 69.50](#) > [Section 69.50.407](#)

[69.50.406](#) << [69.50.407](#) >> [69.50.408](#)

RCW 69.50.407 Conspiracy.

Any person who attempts or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

[1971 ex.s. c 308 § [69.50.407](#).]