

NO. 33077-6

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

STATE OF WASHINGTON, RESPONDENT

v.

BRIAN HUTTON, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Katherine M. Stolz

No. 03-1-04822-6

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Is the appellant factually incorrect in asserting that the trial court found that the defendant signed a consent to search form? (Appellant's Supplemental Assignment of Error No. 1).
2. Should this court treat the challenged findings as verities when they are either supported by substantial evidence or reflect credibility determinations that are not subject to appellate review? (Appellant's Supplemental Assignments of Error 3 through 7).
3. Did the trial court properly exercise its discretion in excluding testimony from a handwriting expert at trial when the expert could not conclusively state that the signature was a forgery and when consent to search does not require a written waiver? (Appellant's Supplemental Assignment of Error No. 2).
4. Did the trial court properly sentence the defendant to a standard range sentence when the jury was instructed that in order to find the defendant guilty they had to find that he manufactured methamphetamine? (Appellant's Supplemental Assignment of Error No. 8).

B. STATEMENT OF THE CASE¹.

On February 8, 2005, the State made a motion in limine to exclude any further testimony regarding the authenticity of the consent to search form. RP 195. Defense counsel argued that he should be allowed to

¹ Additional statements of facts are contained in the State's response brief, and are incorporated into this supplemental response brief by reference.

present evidence regarding whether consent to search was given by the defendant. RP 196. The court then made the following ruling:

Well, the charge is manufacturing of methamphetamine and I will grant the State's motion. I don't think at this point that the authenticity or not of the consent is relevant to the jury's decision on whether or not these gentlemen are guilty of manufacturing methamphetamine.

RP 196.

C. ARGUMENT.

1. THE APPELLANT IS FACTUALLY INCORRECT IN ASSERTING THAT THE TRIAL COURT FOUND THAT THE DEFENDANT HAD SIGNED THE CONSENT TO SEARCH FORM.

An issue raised on appeal that is raised in passing or unsupported by authority or persuasive argument will not be reviewed. State v. Olson, 126 Wn.2d 315, 321, 893 P.2d 629 (1995); State v. Johnson, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992). In the present case, defendant assigns error to the court making a finding that the consent to search form was signed by the defendant. Supplemental Appellant's Brief at 1.

The appellant is factually incorrect. The trial court entered a finding of fact that stated "the court cannot say presumptively whether the signature on the consent form was Hutton's. . ." CP 145-149. Clearly, the court did not find that the signature on the consent to search form was the defendant's signature. The court did, however, make a finding that the

defendant was verbally advised of the Ferrier warnings. CP 145-149.

Defendant has provided no authority as to why verbal consent would not be sufficient. The court found that the defendant provided knowing and voluntary consent to search. Id.

2. THIS COURT SHOULD TREAT THE CHALLENGED FINDINGS AS VERITIES AS THEY ARE EITHER SUPPORTED BY SUBSTANTIAL EVIDENCE OR REFLECT CREDIBILITY DETERMINATIONS THAT ARE NOT SUBJECT TO APPELLATE REVIEW.

An appellate court's review of challenged findings of fact is limited to determining whether substantial evidence supports them, and, if so, whether the findings support the conclusions of law and judgment. State v. Macon, 128 Wn.2d 784, 799, 911 P.2d 1004 (1996). Substantial evidence exists when there is a sufficient quantity of evidence in the record to persuade a fair-minded rational person of the truth of the finding. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Unchallenged findings of fact are verities on appeal. Id. Credibility determinations are for the trier of fact and are not subject to appellate review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

In the case now before the court, defendant has assigned error to five findings of fact. The record shows that they are all supported by substantial evidence and/or reflect the court's credibility determinations and, thus, are not subject to appellate review.

- a. The defendant assigns error the trial court's finding number 10, which states that the defendant answered the door and consented to the officers entering his house, but provides no argument or authority to support his position.

An issue raised on appeal that is raised in passing or unsupported by authority or persuasive argument will not be reviewed. State v. Olson, 126 Wn.2d 315, 321, 893 P.2d 629 (1995); State v. Johnson, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992). In the present case, defendant assigns error to the court's finding that the defendant answered the door and consented to the officers entering his house. Supplemental Appellant's Brief at 1. Defendant provides no argument or authority to support his claim, and therefore this court should decline to review the issue.

Assuming arguendo this court accepts review of this issue, the court made a credibility determination in finding that the defendant answered the door and consented to the officers entering the house, and such credibility determination may not be reviewed by this court. Officer Stephen testified that the defendant answered the door and allowed him inside. RP 19. Officer Warner testified that the defendant answered the door and let him and Officer Stephen inside. RP 50. The defendant testified that he did not let the officers inside his house. RP 94. The court clearly found Officer Stephen's testimony and Officer Warner's testimony

credible, based on the findings the court made. This court should consider finding of fact number ten to be a verity.

- b. The defendant assigns error the trial court's finding number 12, which states that the defendant was advised of his Miranda warnings, the defendant acknowledged and waived the warnings, and the defendant was not handcuffed because he was cooperative, but provides no argument or authority to support his position.

As argued above, this court should decline review because no argument was provided by the defendant on this assignment of error. Assuming arguendo that this court accepts review, the court made a credibility determination in finding that the defendant was read his Miranda warnings, that the defendant acknowledged and waived his rights, and that he was not handcuffed. Officer Stephen testified that the defendant was advised of his Miranda warnings, which he acknowledged, and that the defendant was not handcuffed. RP 20-22. The defendant testified that he was handcuffed and was not read his Miranda warnings. RP 95. With conflicting testimony, the court made a credibility determination and found that the defendant was advised of his rights. CP 145-149. The court also found that the defendant's testimony was not "particularly credible." RP 187. Credibility determinations are not subject to appellate review, and this court should decline to do so.

- c. The defendant assigns error the trial court's finding number 15, which states that Officer Stephen requested permission to search the defendant's residence, gave the defendant Ferrier warnings, and that the defendant did not revoke his consent to search, but provides no argument or authority to support his position.

As argued above, this court should decline review of credibility determinations. The court heard testimony from Officer Stephen that he gave the defendant Ferrier Warnings, requested permission to search his residence, and told the defendant that he could limit the scope of the search. RP 22-23. Officer Warner testified that he overheard Officer Stephen advising the defendant of his Ferrier Warnings. RP 53. The defendant testified Officer Stephen did ask him permission to search the residence, but only after he had started searching. RP 95-96. Clearly, the court found Officer Stephen's testimony the more credible, and this court cannot review such credibility determination.

- d. The defendant assigns error the trial court's finding number 16, which states that the defendant consented to the search, signed a consent to search form, and did not limit or revoke his consent, but the court's finding that it could not presumptively find that the defendant signed the form is supported by substantial evidence.

Undisputed fact number 16 states:

Hutton consented to the search and signed a consent to search form that included the Ferrier warnings. He did not limit or revoke his consent in any way.

CP 145-149.

Finding number two in the “findings as to disputed facts” section states:

The court cannot say presumptively whether the signature on the consent to search form was Hutton’s, but the court finds that Hutton was advised of his Ferrier warnings at least verbally. The court also found several variations in Hutton’s signature when looking at several different court orders that he admittedly signed.

CP 145-149.

Clearly, undisputed finding number 16 is in conflict with finding as to disputed facts number two, as they relate to the signing of the consent to search form. However, finding as to disputed fact number two specifically comports with the court’s oral ruling. This court is permitted to supplement the written findings with the oral record. See In re Lawrence, 105 Wn. App. 683, 686, 20 P.2d 972 (2001). When the findings of fact are considered in conjunction with the court’s oral ruling, it is clear that the court did not find that the defendant signed the consent to search form, as reflected in finding as to disputed fact number two. The court’s oral ruling is almost identical to finding as to disputed fact number two. The court’s oral ruling states “So given the testimony, I can’t presumptively say it is not his signature, but the Court does find that he was verbally advised of his Ferrier warnings. . .” RP 189. It is apparent

that finding as to disputed fact number two comports with the court's oral ruling and, as argued above, was supported by the evidence presented.

3. THE COURT PROPERLY EXERCISED ITS
DISCRETION IN EXCLUDING TESTIMONY
FROM A HANDWRITING EXPERT AT TRIAL.

The admission or exclusion of relevant evidence is within the discretion of the trial court. State v. Swan, 114 Wn.2d 613, 658, 790 P.2d 610, 632 (1990); State v. Rehak, 67 Wn. App. 157, 162, review denied, 120 Wn.2d 1022 (1992). A party objecting to the admission of evidence must make a timely and specific objection in the trial court. ER 103; State v. Guloy, 104 Wn.2d 412, 421, 705 P.2d 1182 (1985). Failure to object precludes raising the issue on appeal. Guloy, 104 Wn.2d at 421. The trial court's decision will not be reversed on appeal absent an abuse of discretion, which exists only when no reasonable person would have taken the position adopted by the trial court. Rehak, 67 Wn. App. at 162.

Under ER 401, evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. Such evidence is admissible unless, under ER 403, the evidence is prejudicial so as to substantially outweigh its probative value, confuse the issues, mislead the jury, or cause any undue delay, waste of time, or needless presentation of cumulative evidence.

A defendant may only appeal a non-constitutional issue on the same grounds that he or she objected on below. State v. Thetford, 109 Wn.2d 392, 397, 745 P.2d 496 (1987). For example, in State v. Hettich, 70 Wn. App. 586, 592, 854 P.2d 1112 (1993), the court held that Hettich could not raise a *Frye* objection on appeal because he did not make a *Frye* objection at trial.

The Sixth Amendment, applied to the states through the Fourteenth Amendment, guarantees criminal defendants a fair opportunity to present exculpatory evidence free of arbitrary state evidentiary rules. Rock v. Arkansas, 483 U.S. 44, 56, 107 S. Ct. 2704, 97 L. Ed. 2d 37 (1987), Washington v. Texas, 388 U.S. 14, 18, 23, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967). The right to present evidence is not absolute, however, and must yield to a state's legitimate interest in excluding inherently unreliable testimony. Chambers v. Mississippi, 410 U.S. 284, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973); State v. Baird, 83 Wn. App. 477, 482, 922 P.2d 157 (1996), review denied, 131 Wn.2d 1012 (1997).

A defendant has a constitutional right to present a defense consisting of relevant evidence that is not otherwise inadmissible. State v. Rehak, 67 Wn. App. 157, 162, review denied, 120 Wn.2d 1022 (1992); In re Twining, 77 Wn. App. 882, 893, 894 P.2d 1331, review denied, 127 Wn.2d 1018 (1995). Limitations on the right to introduce evidence are not

constitutional unless they affect fundamental principles of justice.

Montana v. Engelhoff, 518 U.S. 37, 116 S. Ct. 2013, 2017, 135 L. Ed. 2d 361 (1996) (stating that the accused does not have an unfettered right to offer [evidence] that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence (quoting Taylor v. Illinois, 484 U.S. 400. 410, 108 S. Ct. 646, 653, 98 L. Ed. 2d 798 (1988)). Similarly, the Supreme Court has stated that the defendant's right to present relevant evidence may be limited by compelling government purposes. State v. Hudlow, 99 Wn.2d 1, 16, 659 P.2d 514 (1983).

The confrontation clause in the Sixth Amendment protects a defendant's right to cross-examine witnesses. State v. Johnson, 90 Wn. App. 54, 69, 950 P.2d 981 (1998). Generally, a defendant is allowed great latitude in cross-examination to expose a witness's bias, prejudice, or interest. State v. Knapp, 14 Wn. App. 101, 107-08, 540 P.2d 898, review denied, 86 Wn.2d 1005 (1975). Nevertheless, the trial court still has discretion to control the scope of cross-examination and may reject lines of questions that only remotely tend to show bias or prejudice, or where the evidence is vague or merely speculative or argumentative. State v. Jones, 67 Wn.2d 506, 512, 408 P.2d 247 (1965); State v. Kilgore, 107 Wn. App. 160, 184-185, 26 P.3d 308, (2001).

Under ER 401, evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence.” ER 401. The trial court already determined that the defendant gave consent to search, at least verbally. The court correctly determined that testimony about the validity of the defendant’s signature on the consent to search form was irrelevant. RP 196. There was no argument below that a written consent to search form was required in order for a search to be lawful. Testimony from the handwriting expert as to whether or not the defendant’s signature appeared on the form was irrelevant. Moreover, the handwriting expert for the defendant was unable to conclusively state that the signature on the consent to search for was not the defendant’s signature, and therefore McFarland’s testimony would merely be speculation as to whether the signature was genuine. RP 133, 144. The trial court did not err in excluding McFarland’s testimony.

4. THE TRIAL COURT PROPERLY SENTENCED THE DEFENDANT TO A STANDARD RANGE SENTENCE WHEN THE JURY WAS INSTRUCTED THAT IN ORDER TO FIND THE DEFENDANT GUILTY, THEY HAD TO FIND THAT THE DEFENDANT MANUFACTURED METHAMPHETAMINE.

Petitioner, relying on State v. Evans, 129 Wn. App. 211, 118 P.3d 419 (2005), asserts that the jury did not find specifically what controlled substance the defendant was manufacturing. Supplemental Brief of

Appellant at 12. Petitioner's claim is not persuasive. Evans is distinguishable on its facts.

In State v. Evans, this court held that former RCW 69.50.401(a)(1)(ii) criminalized the manufacture of methamphetamine in its pure form only and did not criminalize methamphetamine hydrochloride. Evans, 129 Wn. App. at 227-28. In that case, the State charged the defendant with manufacturing methamphetamine (count I) and possessing methamphetamine with intent to deliver (count II). Id. at 218. The State introduced evidence at trial that, when officers executed a search warrant, they found methamphetamine base in the garage and methamphetamine hydrochloride in a briefcase. Id. at 229. The jury returned a verdict of guilty on both counts, but did not identify the particular controlled substance they were relying on for each count. Id. At sentencing, the court determined that the substance was methamphetamine base and sentenced Evans under former RCW 69.50.401(a)(1)(ii). Id. In doing so, the court increased the standard sentencing range that defendant was facing.² The Court of Appeals held that, under Blakely, the trial court invaded the province of the jury when it

² Under RCW 69.50.401(a)(1)(ii), the penalty for manufacturing methamphetamine is ten years, while the penalty for manufacturing any other controlled substance is five years under RCW 69.50.401(a)(1)(iii).

sentenced Evans under former RCW 69.50.401(a)(1)(ii) because this necessarily involved a factual finding that the jury did not make (i.e., that the substance that Evans manufactured and unlawfully possessed was methamphetamine base). Id. In reaching its conclusion, the court relied in part on its earlier decision in State v. Morris, 123 Wn. App. 467, 98 P.3d 513 (2004), where it found that former RCW 69.50.401(a)(1)(ii) covered only the pure form of methamphetamine (its base) and not methamphetamine hydrochloride. Id. at 228; Morris, 123 Wn. App. at 474.

Unlike Evans, the jury in this case was instructed that in order to convict the defendant, they needed to find that the defendant manufactured methamphetamine. While the verdict form states only that the defendant was found guilty of “manufacturing a controlled substance,” the “to convict” instruction states that in order to find the defendant guilty, the jury had to find that the defendant was manufacturing methamphetamine. CP 152-187; See Appendix “A”. In Evans, there was evidence presented from which the jury could have found the defendant guilty in multiple ways—by manufacturing methamphetamine base, methamphetamine hydrochloride, or both. The analysis in Evans is inapplicable here.

The error being claimed here is not that the jury was presented with various alternatives by which they could have found the defendant guilty,

but rather that the word “methamphetamine” was missing from the verdict form, even though it is specified in the “to convict” instruction. The only evidence presented by the State related to methamphetamine and methamphetamine manufacture. The “to convict” instruction stated that in order to find the defendant guilty the jury had to find that the defendant was manufacturing methamphetamine. The jury clearly found the defendant guilty of manufacturing methamphetamine, and the court sentenced the defendant accordingly.

The co-defendant, Ronald Legarreta, had a separate verdict form which stated that the jury was finding him not guilty of unlawful manufacturing of a controlled substance, methamphetamine. Id. It appears that the omission from the defendant’s verdict form was merely a scrivener’s error, as the word “methamphetamine” appears in Legarreta’s verdict form. The jury was properly instructed on the law in the “to convict” instruction.

Finally, there was no objection to the verdict form below. Only those exceptions to instructions that are sufficiently particular to call the court's attention to the claimed error will be considered on appeal. State v. Harris, 62 Wn.2d 858, 385 P.2d 18 (1963). CrR 6.15(c) requires an objection to an instruction be first raised before the trial court and that defendant’s reasons for the objection be stated. Compliance with CrR

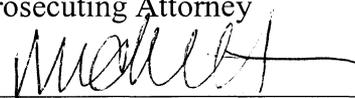
6.15(c) enables the trial court to correct any claimed error at the time it matters and helps avoid unnecessary appeals. State v. Arndt, 87 Wn.2d 374, 386, 553 P.2d 1328 (1976). In the present case, no specific constitutional violation is alleged on appeal. No objection was made to either the “to convict” instruction or the verdict forms and therefore the issue was not properly preserved for appeal. The defendant cannot show that the verdict form submitted to the jury was constitutional error, nor is constitutional error alleged. The “to convict” instruction clearly states that one of the elements the jury must find is that the defendant manufactured methamphetamine, not just any controlled substance. Because the jury was correctly instructed on the law, any possible error in the verdict form is harmless.

D. CONCLUSION.

The State respectfully requests that the defendant’s convictions be affirmed.

DATED: JUNE 28, 2006

GERALD A. HORNE
Pierce County
Prosecuting Attorney

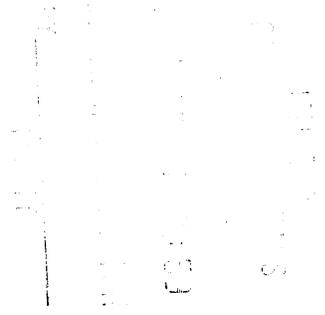


MICHELLE HYER
Deputy Prosecuting Attorney
WSB # 32724

Certificate of Service:

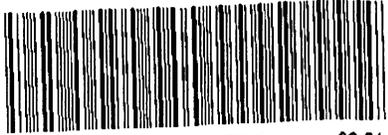
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

4/30/10
Date Signature *Richard Johnson*

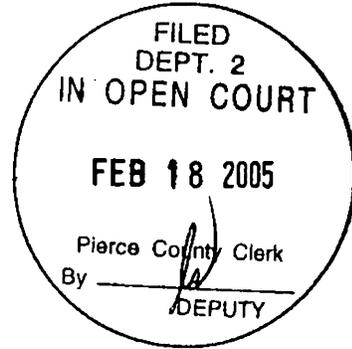


APPENDIX “A”

Jury Instruction No. 18



03-1-04821-8 22605222 CTINJY 02-24-05



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,

CAUSE NO. 03-1-04821-8
03-1-04822-6

vs.

RONALD LEE LEGARRETA
BRIAN PHILLIP HUTTON
Defendants.

COURT'S INSTRUCTIONS TO THE JURY

DATED this 16TH day of February, 2005.

[Handwritten Signature]

JUDGE

ORIGINAL

INSTRUCTION NO. 1

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

A charge has been made by the prosecuting attorney by filing a document, called an information, informing the defendant of the charge. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence that either was not admitted or that was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given the testimony of each. In considering the testimony of any witness, you may take into

account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorneys' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.

INSTRUCTION NO. 2

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

INSTRUCTION NO. 3

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff, and has the burden of proving each element of the crime beyond a reasonable doubt.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly and carefully considering all of the evidence or lack of evidence. If, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

INSTRUCTION NO. 4

A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

INSTRUCTION NO. 5

A separate crime is charged against each defendant. The charges have been joined for trial. You must consider and decide the case of each defendant separately. Your verdict as to one defendant should not control your verdict as to any other defendant.

All of the instructions apply to each defendant.

INSTRUCTION NO. 6

A separate crime is charged against one or more of the defendants in each count. The charges have been joined for trial. You must decide the case of each defendant or each crime charged against that defendant separately. Your verdict on any count as to any defendant should not control your verdict on any other count or as to any other defendant.

INSTRUCTION NO. 7

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness' information, together with the factors already given you for evaluating the testimony of any other witness.

INSTRUCTION NO. 8

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 9

You are the sole judges of the credibility of the witnesses and of what weight is to be given the testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias, or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

INSTRUCTION NO. 10

The defendant is not compelled to testify, and the fact that the defendant has not testified cannot be used to infer guilt or prejudice him in any way.

INSTRUCTION NO. 11

You may give such weight and credibility to any alleged out-of-court statements of the defendant as you see fit, taking into consideration the surrounding circumstances.

INSTRUCTION NO. 12

You may not consider an admission or incriminating statement made out of court by one defendant as evidence against a codefendant.

INSTRUCTION NO. 13

Evidence has been introduced in this case on the subject of Mr. Hutton having misdemeanor warrants for the limited purpose of background information Officer Patrick Stephen learned prior to going to the Hutton residence on October 13, 2003. You must not consider this evidence for any other purpose or for the purpose of inferring that Mr. Hutton is guilty in this case.

INSTRUCTION NO. 14

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result, which constitutes a crime.

INSTRUCTION NO. 15

A person knows or acts knowingly or with knowledge when he or she is aware of a fact, circumstance or result, which is described by law as being a crime, whether or not the person is aware that the fact, circumstance or result is a crime.

If a person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by law as being a crime, the jury is permitted but not required to find that he or she acted with knowledge.

[Acting knowingly or with knowledge also is established if a person acts intentionally.]

INSTRUCTION NO. 16

It is a crime for any person to manufacture a controlled substance that the person knows to be a controlled substance.

INSTRUCTION NO.

17

Methamphetamine is a controlled substance.

INSTRUCTION NO. 18

To convict the defendant of the crime of manufacture of a controlled substance, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 13th day of October, 2003, the defendant manufactured a controlled substance; and
- (2) That the defendant knew that the substance manufactured was a controlled substance, Methamphetamine;
- (3) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 19

Manufacture means the production, or preparation, or propagation, or compounding, or conversion, or processing, directly or indirectly, as well as the packaging or repackaging of any controlled substance.

INSTRUCTION NO. 20

It is a crime for any person to possess ammonia with intent to manufacture methamphetamine.

INSTRUCTION NO. 21

To convict the defendant of the crime of Unlawful Possession of Ammonia with Intent to Manufacture Methamphetamine, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 13th day of October, 2003, the defendant possessed ammonia;
- and
- (2) That the defendant possessed the ammonia with the intent to manufacture methamphetamine; and
- (3) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 22

It is a crime for any person to unlawfully store ammonia.

INSTRUCTION NO. 23

Anhydrous Ammonia contains Ammonia.

INSTRUCTION NO. 24

To convict the defendant of the crime of Unlawful Storage of Ammonia, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 13th day of October, 2003, the defendant stored ammonia; and
- (2) That the defendant possessed, transported, or delivered pressurized ammonia gas or pressurized ammonia gas solution in a container that either;
 - i) was not approved by the United States Department of Transportation to hold ammonia; or
 - ii) was not constructed to meet state and federal industrial health and safety standards;and
- (3) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 25

It is a crime for any person to possess a controlled substance.

INSTRUCTION NO. 26

To convict the defendant of the crime of possession of a controlled substance, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 13th day of October, 2003, the defendant possessed a controlled substance; and

(2) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 27

Possession means having a substance in one's custody or control. It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the substance. Dominion and control need not be exclusive to establish constructive possession.

INSTRUCTION NO. 28

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime; or
- (2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

INSTRUCTION NO. 29

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted into evidence, these instructions, and a verdict form for each defendant and for each count.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty," according to the decision you reach.

Since this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror will sign it and notify the judicial assistant, who will conduct you into court to declare your verdict.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

RONALD LEE LEGARRETA

Defendant.

CAUSE NO. 03-1-04821-8

VERDICT FORM A

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of UNLAWFUL MANUFACTURE OF A CONTROLLED SUBSTANCE----
METHAMPHETAMINE as charged in Count I.

PRESIDING JUROR

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

RONALD LEE LEGARRETA

Defendant.

CAUSE NO. 03-1-04821-8

VERDICT FORM B

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of UNLAWFUL POSSESSION OF AMMONIA WITH INTENT TO MANUFACTURE
METHAMPHETAMINE as charged in Count II.

PRESIDING JUROR

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

RONALD LEE LEGARRETA

Defendant.

CAUSE NO. 03-1-04821-8

VERDICT FORM C

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of UNLAWFUL STORAGE OF AMMONIA as charged in Count III.

PRESIDING JUROR

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

RONALD LEE LEGARRETA

Defendant.

CAUSE NO. 03-1-04821-8

VERDICT FORM D

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE----
METHAMPHETAMINE as charged in Count IV.

PRESIDING JUROR

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

BRIAN PHILLIP HUTTON

Defendant.

CAUSE NO. 03-1-04822-6

VERDICT FORM A

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of UNLAWFUL MANUFACTURING OF A CONTROLLED SUBSTANCE as charged in Count
V.

PRESIDING JUROR

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

BRIAN PHILLIP HUTTON

Defendant.

CAUSE NO. 03-1-04822-6

VERDICT FORM B

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of UNLAWFUL POSSESSION OF AMMONIA WITH INTENT TO MANUFACTURE
METHAMPHETAMINE as charged in Count VI.

PRESIDING JUROR

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

BRIAN PHILLIP HUTTON

Defendant.

CAUSE NO. 03-1-04822-6

VERDICT FORM C

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of UNLAWFUL STORAGE OF AMMONIA as charged in Count VII.

PRESIDING JUROR

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

BRIAN PHILLIP HUTTON

Defendant.

CAUSE NO. 03-1-04822-6

VERDICT FORM D

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE----
METHAMPHETAMINE as charged in Count VIII.

PRESIDING JUROR