

NO. 34319-3-II

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

STATE OF WASHINGTON, Respondent

v.

JOSEPH ALBERT FULLER, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE ROBERT A. LEWIS
CLARK COUNTY SUPERIOR COURT CAUSE NO. 05-1-01692-2

BRIEF OF RESPONDENT

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I. STATEMENT OF THE CASE

The State accepts the statement of facts as set forth by the appellant. In some sections of the argument, it will be necessary for the State to further comment on the evidence and it will be done so at that point.

II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1

The first assignment of error raised by the defendant is that the trial court erred in not suppressing evidence based on a search warrant. The claim is that the search warrant was unsupported by probable cause.

The affidavit for the search warrant and the underlying documentation was admitted as Exhibit No. 10 in the pretrial hearing. (RP 62). A copy of Exhibit No. 10 is attached hereto and by this reference incorporated herein.

After an extensive 3.6 hearing, the trial court gave its oral opinion. This oral opinion is extremely detailed. As of this date, the trial court is still reviewing proposed Findings of Fact and Conclusions of Law on the 3.6 issue. A copy of the trial court's oral decision (from transcript) is attached hereto and by this reference incorporated herein. (RP 114-119). The State submits that if the purpose of required written findings and

conclusions is to ensure efficient and accurate appellate review (State v. McGary, 37 Wn. App. 856, 861, 683 P.2d 1125 (1984)), the delayed entry of the findings in this case should not prejudice either the State or the defense because of the detailed oral decision by the trial court. The State will move to supplement once the trial court has finalized the Findings of Fact.

From the oral decision entered by the court, it is obvious that the alleged victim of the assault, Mr. Cain, received a number of cuts and lacerations to his body and bled from those injuries. This was testified to at the 3.6 hearing by Officer Jeff Nichols of the Vancouver Police Department who visited Mr. Cain in the hospital and noted that he had blood on him, and there was blood on his clothing. (RP 7-8; 114). Further, the defense agreed that Mr. Cain had been bloodied in the assault. (RP 10-11). The officer further indicated that the alleged victim told him that the defendant (who he knew) armed with a pipe had assaulted him and driven away in the defendant's gold Mazda 626. (RP 9-10). He said that the defendant was a passenger in that vehicle.

The trial court concluded that when the vehicle was stopped the next day, there was probable cause to believe that there might be evidence of a crime of assault in the vehicle. The court determined that there was probable cause and the search was appropriate.

However, at the time that they applied for the search warrant, they had probable cause to believe that evidence of blood or bodily fluids, the other things they were looking for, might be in the car. Mr. Fuller had been in the car, or at least allegedly had been in the car right after he'd been involved in an assault in which the person bled and in which he was in close proximity to them.

The fact that they later found something else and didn't find blood or bodily fluids is irrelevant because we don't judge affidavits for search warrant and search warrants from what you find afterwards, it's what you found -- what you knew and perhaps knew at the time that you applied for them.

I haven't heard any argument and I don't find any facts that indicate that once they got the search warrant that they executed it improperly. They opened the car up and searched it and in the process of it they found the evidence that's the subject here.

So the motion to suppress is denied.

(RP 119, L.1-23)

A search warrant affidavit must demonstrate reasonable inferences that the defendant is involved in criminal activity and that evidence of the criminal activity will be found in a place to be searched. State v. Cole, 128 Wn.2d 262, 287, 906 P.2d 925 (1995). Issuance of a search warrant is a matter of judicial discretion and is reviewed only for abuse of that discretion. The affidavit must be accepted on its face and any doubts should be resolved in favor of the warrant. State v. Dobyms, 55 Wn. App.

609, 620, 779 P.2d 746 (1989); State v. Fisher, 96 Wn.2d 962, 639 P.2d 743 (1982).

A trial court abuses its discretion when it renders a decision on untenable grounds or for untenable reasons. State v. Brown, 132 Wn.2d 529, 572, 940 P.2d 546 (1997). The appellate courts give great deference to the trial court and to the issuing magistrate. State v. Cole, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). In doing so, the appellate court evaluates the affidavit from a common sense and reasonable person approach. Inferences can be drawn from factual information. State v. Thein, 138 Wn.2d 133, 148-149, 977 P.2d 582 (1999); Cole, 128 Wn.2d at 286.

The assault took place on July 7, 2005. The vehicle was not seized until July 8, 2005. It is reasonable to conclude that the defendant could have, easily, stored items of clothing involved in the assault in his vehicle. That would include the trunk area of his vehicle. Thus, in the affidavit for search warrant on page 4 the affiant states as follows:

Your affiant knows that Anthony R. Cain sustained serious injuries to his head from a blunt object. Your affiant also knows that the person delivering these blows to Cain may have clothing that was contaminated with Cain's bodily fluids (including but not limited to blood). Your affiant also knows that blood and other bodily fluids can be transferred from the clothing to the seats and other interior components of the vehicle used to flee the crime scene in. In addition, at the time of his arrest and after the search of Wake's residence, the blunt object used was not recovered

and may be located inside the passenger compartment of the car used by Fuller to leave the crime scene in.

The question of the clothing worn by the defendant at the time that he assaulted Mr. Cain is also further referenced earlier on page 4 when the indication is made that the defendant's girlfriend, Chelsea Wake, is not sure where all of his clothing might be, but she does provide some of it to officers.

Wake told your affiant that some of the items dropped off at her residence may have included the clothing worn by Fuller when he assaulted Cain. Wake said she was not sure if these items were inside her residence or still located inside his (Fuller's) car.

This is consistent with what Officer Spencer Harris, Vancouver Police Department testified to at the time of the 3.6 hearing. He indicated that he had talked to the defendant's girlfriend, Chelsea Wake, and she had given him a bag with some clothes in it which she claimed belonged to the defendant. The officer indicated he didn't see any blood on the clothing but that these were mostly underclothes. (RP 50-57).

The State submits that the affidavit for the search warrant was appropriate, that it was not overly broad, and that the officer described areas within the vehicle (not just the passenger compartment) as possibly containing evidence dealing with the assault. Further, the trial court appropriately reviewed the factual evidence submitted by the officers

together with the affidavit for the search warrant and determined that it was appropriate under the circumstances.

III. RESPONSE TO ASSIGNMENT OF ERROR NO. 2

The second assignment of error raised by the defendant is a claim that there is not substantial evidence in the record to support the crime of Possession of Controlled Substance with Intent to Deliver.

The jury heard from a number of witnesses dealing with the search of the vehicle and the statements of the defendant. Vancouver Police Officer Spencer Harris testified that in the search of the vehicle was found a bag of men's clothes (RP 202, L.10-13) and a registration card in the glovebox was also recovered. This was marked as Trial Exhibit No. 10. (RP 202; 207).

Vancouver Police Officer Jeff Nichols testified that the defendant told him that he had been in the Mazda automobile the day before it was seized and the drugs found. (RP 286-287). He again indicated that the defendant told him that he had been in the Mazda on July 7, 2005. (RP 298). Trial Exhibit No. 10 is the registration found in the glovebox and was admitted and provided to the jury. (RP 344). Also marked and admitted was Exhibit No. 14 which was the vehicle certificate of title.

(RP 346; 355). The officer indicated on cross examination that the vehicle was registered to and owned by the defendant. (RP 375, L.20-22).

The vehicle was seized, and the drugs were found on July 8, 2005. Officer Nichols further testified that other documents were also found in the vehicle which belonged to the defendant and put him in the car back on June 22, 2005. (RP 378). The officer again, on cross examination, indicated that the defendant placed himself in the vehicle that he owned on July 7, 2005. (RP 396). No women's clothing was found in the Mazda, but men's clothing and men's sandals were found in the vehicle. (RP 425). Further, the officer indicated that three months earlier (April, 2005) the defendant had told the officer that Chelsea Wake was his girlfriend. (RP 425-426).

Washington State Patrol Detective Hess testified as an expert concerning local drug trade and packaging of drugs, and in particular methamphetamine. He indicated that the objects found in the car were of the type and weight that are normally packaged for sale in baggies. (RP 448; 460). The drugs were also identified as methamphetamine. Other witnesses testified concerning the area where the car was seized as being within the boundaries for purposes of enhancements that were found in the case.

Possession may be actual or constructive. State v. Echeverria, 85 Wn. App. 777, 783, 934 P.2d 1214 (1997). Constructive possession means that the goods are not in actual, physical possession, but that the person charged with possession has dominion and control over the goods. State v. Callahan, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). Exclusive control by the defendant is not required for a finding of constructive possession. State v. Amezola, 49 Wn. App. 78, 86, 741 P.2d 1024 (1987). No single factor is dispositive in establishing dominion and control over a premises. The totality of the circumstances must be considered. State v. Collins, 76 Wn. App. 496, 501, 886 P.2d 243 (1995). Constructive possession requires that the defendant have dominion and control over the contraband or the premises where the contraband is found. State v. Morgan, 78 Wn. App. 208, 212, 896 P.2d 731 (1995). A vehicle is a “premises” for purposes of a establishing dominion and control. State v. Huff, 64 Wn. App. 641, 654, 826 P.2d 698 (1992). When the sufficiency of the evidence is challenged on the basis that the State has shown dominion and control only over premises, and not over drugs, courts correctly maintain that the evidence is sufficient because dominion and control over premises raises a rebuttable inference of dominion and control over the drugs. State v. Cantabrana, 83 Wn. App. 204, 208, 921 P.2d 572 (1996).

On a challenge to the sufficiency of the evidence, the evidence is viewed in a light most favorable to the prosecution. State v. Green, 94 Wn.2d 216, 220-222, 616 P.2d 628 (1980). The appellate court defers to the trier of fact in resolving conflicting testimony and evaluating evidentiary persuasiveness. State v. Carver, 113 Wn.2d 591, 604, 781 P.2d 1308 (1989). Reasonable inferences are drawn in the State's favor and interpreted against the defendant. State v. Partin, 88 Wn.2d 899, 906-907, 567 P.2d 1136 (1977).

In our situation, the State had established the ownership and possession of the motor vehicle where the drugs were found. The drugs were found in the trunk area along with male clothing. Further, there was documentation in the vehicle which not only established ownership of the vehicle by the defendant, but also that he had been present in the vehicle at least two weeks prior to the seizure of the vehicle and, by his own statements, he was in the vehicle the day before the vehicle was seized. The victim of the assault also saw him using the vehicle. The vehicle was stopped by the officers and was in the possession of the defendant's girlfriend. It was stopped at the courthouse where the defendant was also present. The State submits that based on the evidence and the totality of the situation, the trier of fact could reasonably infer that the defendant had dominion and control over the drugs.

IV. RESPONSE TO ASSIGNMENT OF ERROR NO. 3

The third assignment of error raised by the defendant is a claim that the prosecutor committed prosecutorial misconduct during his closing argument by commenting on the defendant's failure to call witnesses. Specifically, the claim is that prosecutorial misconduct occurred because the defendant had not called his girlfriend, Chelsea Wake, or her father.

The defendant testified in his own behalf in this case and clearly was trying to throw the possession of the motor vehicle and possession of the drugs on to someone else. It appears from the evidence that the person he was trying to blame for this was either his girlfriend or her friends. (RP 526-529). He also claimed that the large amount of money found on his person at the time of his arrest was the proceeds of the sale of some tires and rims to his girlfriend's father. (RP 534-535). He further testified that although he and Chelsea Wake are no longer engaged, they still know each other and that he is still a friend and he is still friends with her father. (RP 540).

The State of Washington follows the majority rule that permits the missing witness inference in criminal cases where the defense fails to call logical witnesses. State v. Blair, 117 Wn.2d 479, 486, 816 P.2d 718 (1991).

In our case, no missing witness instruction was given. The defense objected to the comments by the prosecutor and the objection was sustained. The sustaining of the objection dealt with the prosecutor's comments about the girlfriend. The trial court did not sustain an objection dealing with the father. However, the father's involvement in this would have been limited to the large sum of money found on the defendant and would not necessarily be involved with drugs. As mentioned in the Blair case, the missing witness doctrine is improper if the prosecutor's comments infringe on the defendant's constitutional rights and they give as an example the constitutional right to remain silent. The court went on to indicate though it didn't agree that any comment referring to a defendant's failure to produce witnesses is an impermissible shifting of the burden of proof. As indicated in Blair:

Here, nothing in the prosecutor's comments said that the defendant had to present any proof on the question of his innocence. The prosecutor was entitled to argue the reasonable inference from the evidence presented. Defendant testified. In so doing, he waived his right to remain silent. He specifically testified about the notations on the slips of paper. He testified he knew, at the time he was arrested, how to locate the people listed on the slips. Only their first names were listed, and according to his testimony he had a business or personal relationship with the people listed. Under these circumstances, the prosecutor's comments about defendant's failure to call witnesses were not error.

Moreover, we note the trial court properly instructed the jury that counsel's remarks are not evidence, Instruction 1, Clerk's Papers at 15; and that the State has the burden of proof and the defendant is presumed innocent, Instruction 2, Clerk's Papers at 17.

- State v. Blair, 117 Wn.2d at 491-492.

The court's instructions to the jury in our case (CP 138) also contain the same instructions.

The State submits that the prosecutor is doing nothing more than referring to the logical witnesses that the defendant has referenced, and the fact that they have not testified. The prosecutor did no more than argue an inference in context of the missing witness rule. The inference was one which the doctrine permits. Nevertheless, the trial court did sustain an objection and the prosecutor did not renew this line of inquiry concerning the girlfriend. In reference to the father, the trial court felt that it was appropriate and allowed the argument.

The defense during its closing argument shows the logical connection of Chelsea Wake with this entire issue. Part of the closing argument dealing with her was as follows:

The problem, ladies and gentlemen, is, is that if he was the only one driving the car, okay, I would probably agree. But he wasn't. He wasn't. There were other people that had access to that.

What makes it a little bit more difficult for the State is that, okay, if he had a key to the car, even though he says, Hey, I

gave it to Chelsea, I had nothing to do with that car. Maybe I'd ride in it with her every once in a while, but I really didn't drive the car, he'd have a key. He testified he gave the key to Chelsea, only one key, that was it.

The officers got the key from Chelsea, off of Chelsea's key ring, which had her house stuff on it, her house keys and all the other keys she had, okay. And when they took Mr. Fuller to jail, they didn't get the keys off of him, okay. No car key.

He turned the key, the key to the car, over to Chelsea. That was gone in May of 2005, it was gone.

So if he go – if he rode in the vehicle, he rode in the vehicle because Chelsea would let him ride or he would ask for a ride, okay, but so would anybody else that Chelsea let ride in that vehicle, so would anybody else.

Now, I – I'm not sure what the significance of the fact that Chelsea was Mr. Fuller's girlfriend or not, I – I – I – other than she had equal access to the trunk, but more importantly, she let other people use the vehicle with or without her.

And as Mr. Fuller testified yesterday, he was upset with her that she would let people use the vehicle because that was for her, okay.

So he had no control over who she let use the vehicle. He didn't use the vehicle 'cause he didn't have a key. So what are we left with? We're left with the State has to come up with something else other than a title, other than a registration, which he testified to. He purchased it in September of 2004, registered it, and then sold it to Chelsea (indicating).

Now, why did he sell – sell it to Chelsea? Again, he testified to this yesterday, the State chose to - -

MR. VU: Your Honor, objection, counsel is misstating the facts. The facts were that he gave the car to Chelsea, not sold it.

MR. KURTZ: I – I'm sorry, gave it, I apologize. I apologize. He gave it, didn't sell it.

But he also said why. They had taken the vehicle for forfeiture and Chelsea wanted the title, needed the title so she could go in and fight forfeiture. He's in jail. It's her car. She needed to save it. That's why he signed the title over.

But who cares? He – he explained to you why he did it, okay. He turned the vehicle over to her physically in May of 2005, okay, physically, and just gave it to her in – in November so she could take advantage of her – make sure she saved it from forfeiture, because that's her vehicle.

(RP 610, L.2 – 612, L.13)

Defense counsel also makes reference to the transaction involving her father and shows why he is also a logical witness to testify for the defense.

Ladies and gentlemen, I could – it's reasonable to infer that somebody might testify that I got some money from somebody else for some other reason if the State has this (indicating), okay.

But if you're gonna do that, if you're gonna say, I got money from so-and-so, why complicate it? Why say I got \$400 for selling tires and rims and I got \$1800 from Chelsea Wake's dad, Danny. Just say I got \$2200 from Danny Wake. Okay. Why complicate it? I just got 2200 bucks from Danny Wake. Why say \$400 from – from – from – from a friend for the tires and the – and the wheels and 20 -- and 1800 bucks from Danny Wake? Because that's what happened. That's what he testified to.

Why complicate it even more by saying you, Well, I – I needed that money to retain the attorney? Okay. Why – you know, why go into all this detail? Because that’s what happened.

(RP 613, L.2-20)

Finally, the defense attorney in closing argument turns this entire argument on its head and wonders why the State is not calling these witnesses since it’s their job to prove all of the elements beyond a reasonable doubt.

Okay. The State has the burden, ladies and gentlemen. I’m gonna keep hitting up this. And then I’m gonna shut up pretty quick. Of proving each and every element. That means if the defendant gets on the stand and testifies, which he did, and says something that’s contradictory to what the State thought, and they have some time to do this, bring in a rebuttal witness. Bring in a rebuttal witness, okay.

There is a Chelsea Wake, there is a Danny Wake, and it’s her dad. Bring ‘em in. Why? Because it’s not the defendant’s job to prove he’s innocent, it’s the State’s job to prove he’s guilty, and if they have an issue with something he said on the stand, if for some reason they’re not – they’re a little suspicious of it, fine, prove it, prove it, prove it, um-kay.

(RP 614, L.8-24)

Prosecutorial misconduct is prejudicial only when, in context, there is a substantial likelihood it affected the jury’s verdict. State v. Neidigh, 78 Wn. App. 71, 77, 895 P.2d 423 (1995). The defendant bares the burden

of establishing both the impropriety of the prosecutor's statements and prejudicial effect. State v. Brett, 126 Wn.2d 136, 175, 892 P.2d 29 (1995).

The State submits that there has been no showing in this case that the prosecutor's comments have caused any prejudice to the defendant. The defense attorney very ably turned any arguments against the prosecution during his closing statement. There is nothing in this record to indicate that this created a substantial likelihood of affecting the jury's verdict or preventing the defendant from receiving a fair trial.

V. RESPONSE TO ASSIGNMENT OF ERROR NO. 4

The fourth assignment of error raised by the defendant deals with conditions of the Judgment and Sentence. Specifically, the claim is that the court improperly ordered the defendant to pay for a DNA sample and that it erred in imposing certain community custody conditions.

A copy of the felony Judgment and Sentence (Prison – Community Placement/Community Custody) (CP 174) is attached hereto and by this reference incorporated herein.

The first contention is that because the defendant has previously been convicted of felonies and DNA samples taken in those felony convictions, that therefore he does not have to have another DNA sample taken and thus does not have to pay the fee for taking of the sample. The

State submits that there is absolutely nothing in RCW 43.43.754 which prevents this from being done. The statute has been upheld as reasonable and is not unconstitutional. State v. Surge, 122 Wn. App. 448, 450-451, 94 P.3d 345 (2004). The State submits that there is nothing unreasonable about this. The argument raised, in part, is that the DNA sample once taken won't change over time and therefore there is no reason to take a new sample. However, that presupposes that the previous sample was properly taken, properly stored, properly indexed, etc. The defendant is convicted of a felony and a sample is to be taken. There is nothing in the statute which clouds or confounds this interpretation.

The second part of the argument deals with the conditions placed on him dealing with drug evaluation treatment and not having possession of controlled substances. The State submits that that is not unreasonable in a situation where he is possessing controlled substances with intent to deliver. Further, his criminal history would indicate four felony convictions for possession and/or delivery of drugs running from a period of approximately 1999 through 2005. The State submits that with this type of history, the conditions are appropriate under the circumstances.

VI. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 5 day of Jan, 2007.

Respectfully submitted:

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By: 
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APPENDIX "A"

PRETRIAL HEARING EXHIBIT NO. 10

**AFFIDAVIT FOR SEARCH WARRANT
AND UNDERLYING DOCUMENTATION**

IN THE DISTRICT COURT OF CLARK COUNTY
STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff,

AFFIDAVIT FOR
SEARCH WARRANT

vs.

JOE A. FULLER, DOB: 06/09/1974
JOSUAH D. HADLEY, DOB: 6/23/76
CHELSEA M. WAKE, DOB: 5/16/84
MELISSA K. PARRISH, DOB: 11/22/67
Defendant(s)

STATE OF WASHINGTON)

COUNTY OF CLARK)

I, Officer Neil T. Martin, being first duly sworn upon oath, hereby depose and say that I have good and sufficient reason to believe that the following goods, to wit:

- 1) Evidence of the crime of Assault I-RCW 9A.36.011 to include but not limited to: Blood and other body fluids belonging to the person of Anthony R. Cain, DOB: 5/30/84
- 2) Photographs of the crimes scene and recovered evidence and the development of any photographs taken of the crime scene, including still photos and video cassette recordings.
- 3) Personal property, including but not limited to the vehicle registration and/or vehicle titles and other miscellaneous paperwork in order to establish dominion and control of the vehicle, as well as to confirm the identity of the defendants.
- 4) Blunt objects to include but not limited to: wood sticks and/or metal objects that may have been used to strike Anthony Cain, DOB: 5/30/84.

The above item(s) are on this date, July 8, 2005, in the unlawful possession of the above named defendant(s) in the following vehicle(s):

A gold in color, 1989 Mazda 626, 4dr, bearing Washington license 157NTX and VIN #JM1GD2223K1714540. The vehicle is currently located in a secure lot at the Clark County Sheriff's Office Vehicle Storage Facility (907 Harney Street, Vancouver, Clark County, Washington). The vehicle has been secured (with evidence tape) since the arrest of Joe A. Fuller, DOB: 6/09/1974 and Josuah D. Hadley, DOB: 6/23/76 on July 7, 2005 for the crime of Assault I-RCW 9A.36.011

AND

A gold in color, 1987 Ford Escort, 4dr, bearing Washington license 376RDT and VIN #1FAPP259XHW332801. The vehicle is also currently located in a secure lot at the Clark County Sheriff's Office Vehicle Storage Facility (907 Harney Street, Vancouver, Clark County, Washington). The vehicle has been secured (with evidence tape) since the arrest of Joe A. Fuller, DOB: 6/09/1974 and Josuah D. Hadley, DOB: 6/23/76 on July 7, 2005 for the crime of Assault I-RCW 9A.36.011

I am informed and aware of this based upon the following:

I am employed as a sworn police officer for the City of Vancouver assigned to the Patrol Division. I have over ten (10) years experience as a law enforcement officer, including over three years of law enforcement experience in the United States Air Force, four years of experience with the Oregon State Police and three years of experience with the Vancouver Police Department. I am a police officer eligible to make a request for a search warrant and I am trained in crime investigation, preservation of evidence, search and seizure (as well as other police operations.)

Your affiant has attended the basic law enforcement academy in both the States of Washington and Oregon and I have attended advanced training in crime scene investigation to include the recovery of evidence from crime scenes. Evidence recovered from crime scenes may include blood, saliva and other bodily fluids. Your affiant is aware that these samples of blood, saliva and other bodily fluids can be analyzed by the Washington State Patrol Crime Laboratory for DNA and compared to the DNA of both the suspect(s) and victim(s) in any given case. Your affiant also knows that this evidence can be crucial in proving beyond a reasonable doubt that the suspects were involved in criminal activity involving a certain victim.

Your affiant also knows that photographing the crime scene as well as the evidence recovered is critical to showing the court the location of the seized item at the time of recovery.

FACTORS ESTABLISHING PROBABLE CAUSE

In this official capacity, your affiant is aware based upon the following:

On July 6, 2005, at about 2236hrs, Officers of the Vancouver Police Department responded to 3304 Y Street, Vancouver, Clark County, Washington in regards to an Assault with a Weapon call, in which, the person of Anthony R. Cain, DOB: 5/30/84 was assaulted with a blunt object.

Officer Robert Givens prepared a report in regards to this incident. I have reviewed this report and know that Officer Robert Givens had probable cause to arrest Joseph A. Fuller for assaulting Anthony R. Cain, DOB: 5/30/84 with a "metal pipe like object." I have attached and incorporated this report herein as Exhibit #A.

On July 7, 2005, your affiant was made aware that Officers' Jeff Nichols, Eric McGarrity and Spencer Harris arrested the person of Joseph A. Fuller at the Clark County Courthouse for

assaulting Anthony R. Cain. Their investigation also led them to arrest the person of Josuah D. Hadley for the same crime.

I also know that on this same date (July 7, 2005) and shortly after the arrest of Joseph Fuller and Josuah Hadley that Officer R. Schnell stopped a motor vehicle, bearing Washington license 157NTX as it was driving around the courthouse (westbound on 11th Street from Franklin). Your affiant also knows that Officer Schnell arrested the driver of this vehicle (identified as Melissa K. Parrish) for driving with suspended driving privileges in the State of Oregon. WACIC/NCIC/DOL records indicate the vehicle bearing Washington license 157NTX is registered to Joseph A. Fuller at an address of 7509 Van Mall Drive, #F25, Vancouver, Clark County, Washington.

Your affiant traveled to the location of this traffic stop and met with Officer R. Schnell. Officer Schnell advised that he had identified the right front passenger of this vehicle as Chelsea M. Wake, DOB: 5/16/84. Your affiant knows from a previous investigation that Chelsea M. Wake is the girlfriend of Joseph A. Fuller.

Your affiant received information from Officer S. Harris that Wake and Parrish were both present with Fuller and Hadley during the assault of Anthony Cain.

Based upon this information, I spoke with Wake reference her observations of the assault that took place on July 6, 2005. Wake told your affiant that Joseph Fuller drove his Mazda 626, bearing Washington license 157NTX to "John and Yvonne's" house. She later pointed this residence out to your affiant as 3200 Bridge Street #A., Vancouver, Clark County, Washington. Wake said Fuller called her later in the day, to come over to the above listed residence and have "dinner" with him. Wake told your affiant she rode with "Mel" (identified as Melissa Parrish) in her car (a 1987 Ford Escort, bearing Washington license 376RDT) over to 3200 Bridge Street. Wake said there were two other persons in the car that she knew only as "Jessie and Sashy." Wake identified "Jessie" as one of Fuller's friends. Wake said she met with the tenant of the residence (Yvonne) outside the above listed apartment (#A). She asked "Yvonne" if she could go inside the house and "Yvonne" told her yes. Wake told me she, Parrish and "Jessie" walked into the house. Wake said "Joshua" (later identified as Josuah Hadley), Fuller and Anthony Cain were already present in the apartment. Wake told your affiant that once Cain observed "Jessie" he ran out the back door of the residence. She said Hadley yelled something to the effect of "get him" and she watched Hadley, Fuller and "Jessie" run out of the residence after him (Cain). Wake said when they ran out of the residence, Hadley was carrying a "long piece of wood that looked similar to a table leg" and Fuller was carrying a something dark colored in his hand. She said the item Fuller carried out the door was dark in color, about eight inches in length and she thought it was constructed of metal. Wake thought the item Fuller had in his hand may have come off a desk "full" of items inside Apartment #A.

Wake told your affiant she was the last person to leave Apartment #A. Wake said she went outside and could not find anyone. Wake stated she has a set of keys to Fullers' Mazda 626, bearing Washington license 157NTX. Wake told me she opened the door to Fuller's car, started it and drove off looking for Fuller. Wake said she found Fuller approximately three to five minutes later near the intersection of 32nd Street and St. John's Blvd, Vancouver, Clark County, Washington.

She said Fuller climbed into the backseat of the car and "collapsed." She described him as "winded" upon his entry into the car. Wake said Fuller was wearing a white in color shirt, blue jean shorts and black in color sandals on this date/time. Wake did not see Fuller to still be in possession of the metal object he left the residence with. Wake told me she drove Fuller to a hotel in the Portland, Oregon area. She said they (Wake and Fuller) were later joined at the hotel by Parrish and Hadley. Parrish and Hadley arrived in her (Parrish's) 1987 Ford Escort, bearing Washington license 376RDT. Wake told your affiant she and Fuller woke up the next morning and left the hotel for an attorney appointment. Wake said Hadley and Parrish stayed behind at the hotel. Wake said after meeting with the attorney, they drove back to her current residence at 5975 NE 109th Avenue, Vancouver, Clark County, Washington. Upon arrival at her (Wake's) house they dropped items off from within the vehicle and met with Parrish and Hadley again. All four then drove in Fuller's vehicle (Mazda bearing Washington license 157NTX) to the Clark County Courthouse where he (Fuller) was to appear on an unrelated charge. Wake told your affiant that Parrish's car was parked in front of her residence on 109th Avenue the last time she saw it.

Wake told your affiant that some of the items dropped off at her residence may have included the clothing worn by Fuller when he assaulted Cain. Wake said she was not sure if these items were inside her residence or still located inside his (Fuller's) car.

Based upon the information provided by Wake, the 1989 Mazda, 626, bearing Washington license 157NTX was seized pending the application of a search warrant for it. The vehicle was secured with evidence tape and transported to a secure facility at the Clark County Sheriff's Office (907 Harney Street, Vancouver, Washington).

On this same date, July 7, 2005, your affiant and Sergeant D. McNicholas as well as Officer S. Harris traveled with Wake to her residence at 5975 NE 109th Avenue, Vancouver, Clark County, Washington. Parked in front of this residence, your affiant observed a gold in color 1987 Ford Escort, bearing Washington license 376RDT. Wake identified this vehicle as Parrish's car. Your affiant looked inside the vehicle and observed a large wood stick on the rear passenger floorboard (in plain view). I showed this stick to Wake and asked if this was the stick "Joshua" ran out of the house with on July 6, 2005. Wake looked at the stick and thought it was the same stick that "Joshua" ran out of the house with on July 6, 2005 (when he was chasing Anthony R. Cain). While at this residence officer's received written consent to search the common areas of the residence from Wake. Wake was provided with a Consent to search form containing Ferrier Warnings and initialed each of the warnings after she read them. Recovered from her residence was the blue jean shorts, white T-shirt and black sandals worn by Fuller on July 8, 2005.

Your affiant knows that Anthony R. Cain sustained serious injuries to his head from a blunt object. Your affiant also knows that the person(s) delivering these blows to Cain may have clothing that was contaminated with Cains' bodily fluids (including but not limited to blood). Your affiant also knows that blood and other bodily fluids can be transferred from the clothing to the seats and other interior components of the vehicle used to flee the crime scene in. In addition, at the time of his arrest and after the search of Wakes' residence, the blunt object used was not recovered and may be located inside the passenger compartment of the car used by Fuller to leave the crime scene in.

Your affiant knows from Officer J. Nichols that "Joshua" Hadley has been identified and arrested as a co-conspirator in this case for Assaulting Anthony R. Cain. The wood stick in Parrish's car is therefore evidence in this case and it needs to be seized in order for the state to prove their case against Hadley and Fuller.

Your affiant seized the vehicle driven by Parrish and occupied by Hadley pending the preparation of a search warrant for it. The vehicle was secured with evidence tape and towed to the same secure facility at 907 Harney Street, Vancouver, Washington.

Your affiant has checked NCIC/WACIC/DOL records for the 1987 Ford Escort bearing Washington license 376RDT. Your affiant knows this vehicle to be registered to a Jimmy K. Dawson. Dawson lists an address of 1139 126th Loop, Vancouver, Washington for his address.

In addition your affiant has checked NCIC/WACIC/DOL records for the 1989 Mazda, 626, bearing Washington license 157NTX. DOL records list this vehicle as being registered to Joseph A. Fuller at an address of 7509 Van Mall Drive, #F25, Vancouver, Clark County, Washington.

Based on the foregoing, I believe there is probable cause and I pray the court for issuance of a Search Warrant authorizing the search of the afore described vehicles for the above-described items and if any are found authorizing the seizure of same as it appears the above listed vehicles were used to facilitate the escape of suspects from the crime scene of an Assault I-RCW 9A.36.011.



Officer
Vancouver Police Department

Subscribed and Sworn to before me this 8 day of July, 2005.



District Court Judge
Clark County
State of Washington

**District Court of Clark County
State of Washington**

**State of Washington
Plaintiff,**

VS

SEARCH WARRANT

**JOE A. FULLER, DOB: 06/09/1974
JOSUAH D. HADLEY, DOB: 6/23/76
CHELSEA M. WAKE, DOB: 5/16/84
MELISSA K. PARRISH, DOB: 11/22/67
Defendant(s)**

State of Washington,
Clark County,

The people of the State of Washington, to any Sheriff, Police Officer, or Peace Officer in Clark County: Proof by written affidavit, under oath, made in conformity with the State of Washington Criminal Rules for Justice Court, rule 2.3, having been made to me this day by Officer Neil T. Martin of the Vancouver Police Dept, that there is probable cause for the issuance of a search warrant on the grounds set forth in the State of Washington Criminal Rules for Justice Court, rule 2.3, Section (c).

You are therefore commanded, with the necessary and proper assistance, to make a diligent search, good cause having been shown therefore, of the following described property, within 10 days of the issuance of this warrant: The property described as a gold in color, 1989 Mazda 626, 4dr, bearing Washington license 157NTX and VIN #JM1GD2223K1714540. The vehicle is currently located in a secure lot at the Clark County Sheriff's Office Vehicle Storage Facility (907 Harney Street, Vancouver, Clark County, Washington). The vehicle has been secured (with evidence tape) since the arrest of Joe A. Fuller, DOB: 6/09/1974 and Josuah D. Hadley, DOB: 6/23/76 on July 7, 2005 for the crime of Assault I-RCW 9A.36.011

AND

A gold in color, 1987 Ford Escort, 4dr, bearing Washington license 376RDT and VIN #1FAPP259XHW332801. The vehicle is also currently located in a secure lot at the Clark County Sheriff's Office Vehicle Storage Facility (907 Harney Street, Vancouver, Clark County, Washington). The vehicle has been secured (with evidence tape) since the arrest of Joe A. Fuller, DOB: 6/09/1974 and Josuah D. Hadley, DOB: 6/23/76 on July 7, 2005 for the crime of Assault I-RCW 9A.36.011

For the following items to wit:

- 1) Evidence of the crime of Assault I-RCW 9A.36.011 to include but not limited to: Blood and other body fluids belonging to the person of Anthony R. Cain, DOB: 5/30/84
- 2) Photographs of the crimes scene and recovered evidence and the development of any

photographs taken of the crime scene, including still photos and video cassette recordings.

- 3) Personal property, including but not limited to the vehicle registration and/or vehicle titles and other miscellaneous paperwork in order to establish dominion and control of the vehicle, as well as to confirm the identity of the defendants.
- 4) Blunt objects to include but not limited to: wood sticks and/or metal objects that may have been used to strike Anthony Cain, DOB: 5/30/84.

And if you find same, or any part thereof, then bring same and items of identification to identify the residents and residence thereof before the Honorable District Court Judge W. H. [Signature] to be disposed of according to law.

This Search Warrant was issued on 7/8/05 at 1550 hrs
by the Honorable Judge W. H. [Signature].

Date and time of execution: F.B. 2005 / 1621
By N. T. MARTIN #1326
[Signature]

VANCOUVER POLICE DEPARTMENT
PROPERTY INTAKE-SUBMISSION FORM

Case Number:

F - FOUND K - SEIZURE E - EVIDENCE

V 05 - 13 1284

Item # f	Prop Type	Qty.	NCIC	Article Type DRUGS
Brand		Model		Serial Number
Owner Applied Number			Color	Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description or Identifiers
7 photos bagged in crystal white substance. 1 bag of blue...
at 1700 Maple St - W 157 NTX

MAZDA

Item # A	Prop Type	Qty.	NCIC	Article Type DRUGS
Brand		Model		Serial Number
Owner Applied Number			Color	Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description or Identifiers
Purse bagged in... my laptop...
black bag found at 157 NTX

MAZDA

Item #	Prop Type	Qty.	NCIC	Article Type Mazda Registration
Brand		Model		Serial Number
Owner Applied Number			Color	Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description or Identifiers
Vehicle... Mazda...
No Mazda...

MAZDA

Item #	Prop Type	Qty.	NCIC	Article Type WEAPON
Brand		Model		Serial Number
Owner Applied Number			Color	Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description or Identifiers
WOODEN stick - found behind driver seat of Ford Escort
at 3760 RT

ESCORT

VANCOUVER POLICE DEPARTMENT
PROPERTY INTAKE-SUBMISSION FORM

Case Number:

V 05 - 13 122 1

F - FOUND K - ~~SAFETY KEYS~~ E - EVIDENCE

Item #	Prop Type	Qty.	NCIC	Article Type
				<i>FD</i>
Brand		Model		Serial Number
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type	
			OZ LB GR KG	
Description of Item(s)				
<i>Right hand glove (leather) of Fale Khan</i>				

ESCORT

Item #	Prop Type	Qty.	NCIC	Article Type
Brand		Model		Serial Number
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type	
			OZ LB GR KG	
Description of Item(s)				

Item #	Prop Type	Qty.	NCIC	Article Type
Brand		Model		Serial Number
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type	
			OZ LB GR KG	
Description of Item(s)				

Item #	Prop Type	Qty.	NCIC	Article Type
Brand		Model		Serial Number
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type	
			OZ LB GR KG	
Description of Item(s)				

APPENDIX "B"

**TRIAL COURT'S ORAL DECISION
(FROM TRANSCRIPT)**

1 falsehood.

2 MR. KURTZ: Okay. Well, my -- my -- my position
3 remains the same, I don't think the stop was
4 proper, I don't think the search was proper, I
5 think it was pretextual. I think they were looking
6 for drugs and not the -- not anything to do with
7 the assault. And that's --

8 THE COURT: Okay.

9 MR. KURTZ: -- my position.

10 THE COURT: All right, well, it's clear to me
11 that on the evening of July 6th that Mr. Cain was
12 assaulted and police were called to investigate
13 that assault.

14 Mr. Cain identified Joe Fuller as the person
15 who'd assaulted him with a pipe or table leg or
16 some metal object, and other people indicated that
17 Mr. Fuller was involved as well, as detailed in the
18 affidavit for search warrant.

19 Mr. Cain received a number of cuts and
20 lacerations to his body and bled from those
21 injuries. The information available to the
22 officers indicated that the assailants, Mr. Fuller
23 and perhaps another individual, were in close
24 proximity to him, and that Mr. Fuller left the area
25 in a gold-colored Mazda 626 sedan.

1 The next day they knew that Mr. Fuller was
2 going to be at the Clark County Courthouse and they
3 arrested him there, and then saw the Mazda 626
4 sedan, which was being driven by someone else, and
5 stopped and seized it, impounded it, and then
6 applied the next day for a search warrant, were
7 granted a search warrant, and the search warrant
8 was executed.

9 The search warrant asked to search for two
10 things. One for an -- basically two things. For a
11 blunt instrument and for evidence of bodily or
12 blood fluid related to this assault.

13 Those are pretty much all undisputed facts.
14 The disputed facts concern whether or not the
15 officers were acting under a pretext and what they
16 knew and what they either deliberately or
17 recklessly left out of the search warrant
18 affidavit.

19 With regard to the stop of the vehicle, it
20 appears to me that at the time the vehicle was
21 stopped there was probable cause to believe that
22 there might be evidence of the crime of assault in
23 the vehicle, and case law provides that a vehicle
24 may be impounded or seized for -- seized, not
25 searched, but seized for a particular period of

1 time sufficient to obtain an affidavit for search
2 warrant and to apply for a search warrant and
3 obtain it.

4 That appears to be what was done here. I
5 haven't heard any argument that the amount of time
6 between the seizure and the application for the
7 warrant is unreasonable, and I don't find that it
8 would be.

9 I also do not find that the officers were
10 acting under a pretext. A pretext is a particular
11 mental state that officers have that they're
12 although saying that they're acting under one
13 legitimate purpose, they're, in fact, acting for
14 some illegitimate purpose. That's a factual
15 inquiry. It can either prove -- it can either be
16 proven direct or circumstantially, but I don't find
17 the officers here were acting in a way which would
18 circumstantially lead me to believe that they were
19 looking for something other than what they say they
20 were looking for.

21 They were called out to investigate an
22 assault, and for most of the next two days, they
23 dealt with an assault. They interviewed witnesses
24 related to the assault, they went to the scene of
25 the assault, they recovered and packaged evidence

1 related to the assault, they got an affidavit for
2 search warrant related to the assault.

3 And they searched another car pursuant to
4 that same search warrant related to the assault.

5 So everything that they were doing was
6 concerned with the assault. They may have been the
7 same officers that were involved with Mr. Fuller
8 and somebody else a few months ago, but that fact
9 alone is not enough for me to find that they had a
10 pretext in this case.

11 So I find that the stop was legitimate.
12 Then we come to the search warrant and whether it
13 was proper. And as I've indicated, I've already
14 resolved the pretext issue. If this case was
15 involving a search warrant where the only thing the
16 officers said they were still looking for was this
17 weapon, then I would suppress the evidence.

18 It's fairly clear that at the time that they
19 applied for the search warrant, not at the time
20 they seized the car, but at the time they applied
21 for the search warrant they had no reasonable
22 expectation that they would find this object in the
23 car, and that's why in the affidavit for search
24 warrant there really is basically nothing for which
25 a reasonable magistrate could find that there would

1 be this object in the car.

2 If I were to say that they could -- they had
3 probable cause to find this blunt object in the
4 car, I'd basically be saying that when a person is
5 suspected of a crime you can look anywhere they
6 might have been and for evidence, and we don't
7 allow that sort of broad, exploratory searching
8 around for things. You have to have some reason to
9 believe -- the magistrate would have to have some
10 reason to believe that the object you're looking
11 for will be in the place you're looking for it.

12 And all they had here was a -- an
13 observation that at the time Mr. Fuller was in the
14 car, the person who said he was in the car also
15 said he did have the object with him.

16 Now, they also knew that they'd recovered
17 objects at the scene which were supposedly the
18 types of things which were weapons, so it seems
19 unlikely that -- I mean, that's a -- that's another
20 issue that's troubling to me, but I don't have to
21 get to whether that was a reckless or intentional
22 omission from this because even without adding that
23 in there's nothing in the affidavit which would
24 lead officers to believe that the weapon would be
25 found in the car.

1 However, at the time that they applied for
2 the search warrant, they had probable cause to
3 believe that evidence of blood or bodily fluids,
4 the other thing they were looking for, might be in
5 the car. Mr. Fuller had been in the car, or at
6 least allegedly had been in the car right after
7 he'd been involved in an assault in which the
8 person bled and in which he was in close proximity
9 to them.

10 The fact that they later found something
11 else and didn't find blood or bodily fluids is
12 irrelevant because we don't judge affidavits for
13 search warrant and search warrants from what you
14 find afterwards, it's what you found -- what you
15 knew and perhaps knew at the time that you applied
16 for them.

17 I haven't heard any argument and I don't
18 find any facts that indicate that once they got the
19 search warrant that they executed it improperly.
20 They opened the car up and searched it and in the
21 process of it they found the evidence that's the
22 subject here.

23 So the motion to suppress is denied.

24 This matter is set on for the 9th --

25 MR. KURTZ: Yeah.

APPENDIX "C"

**FELONY JUDGMENT AND SENTENCE
(PRISON-COMMUNITY PLACEMENT/COMMUNITY CUSTODY)**

17
C ✓
SCANNED

FILED

S9

JAN 10 2006

JoAnne McBride, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

06 9 00165 5

STATE OF WASHINGTON, Plaintiff,
v.
JOE ALBERT FULLER, aka JOSEPH ALBERT FULLER,
Defendant.
SID: WA17252985
DOB 6/9/1974

No. 05-1-01692-2
FELONY JUDGMENT AND SENTENCE
(FJS)
PRISON - COMMUNITY
PLACEMENT/COMMUNITY CUSTODY
 Clerk's action required; Paragraph 4.5
(SDOSA), 4.15.2, 5.3, 5.6 and 5.8

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

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

2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on January 6, 2006
(Date)
by plea jury-verdict bench trial of

COUNT	CRIME	RCW	DATE OF CRIME
01	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE HYDROCHLORIDE	69 50 401(1),(2)(c)	7/7/2005

(If the crime is a drug offense, include the type of drug in the second column.)
as charged in the Second Amended Information.

- Additional current offenses are attached in Appendix 2.1.
- The Court finds that the defendant is subject to sentencing under **RCW 9.94A.712.**
- A special verdict/finding for use of firearm was returned on Count(s) _____
RCW 9.94A.602, 533.

55
SP

- A special verdict/finding for use of **deadly weapon** other than a firearm was returned on Count(s) _____ RCW 9.94A 602, .533.
- A special verdict/finding of **sexual motivation** was returned on Count(s) _____ RCW 9.94A.835.
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) 1, RCW 69 50 401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s) _____ RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense RCW 9.94A 030
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44 130
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s) RCW 9.94A.607.
- The crimes charged in Count(s) _____ is/are **Domestic Violence** offense(s) as that term is defined in RCW 10 99 020.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are Count(s) _____ RCW 9.94A.589
- Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number). _____
- The court finds that the current offense is a second or subsequent offense under the Uniform Controlled Substances Act, chapter 69.50 RCW, which involves the provisions of RCW 69.50.408.

2 2 CRIMINAL HISTORY (RCW 9.94A 525).

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	Adult, Juv	TYPE OF CRIME
See attached					

- Additional criminal history is attached in Appendix 2 2
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9 94A 525
- The court finds that the following prior convictions are one offense for purposes of determining the offender score RCW 9.94A 525: _____
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520. _____
- The State has moved to dismiss count(s) .

2.3 SENTENCING DATA

COUNT NO	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
01	8	II - D	60 MONTHS to 120 MONTHS	(V) 24 MONTHS	84 MONTHS TO 120 MONTHS	10 Y \$20000

* (F) Firearm, (D) other Deadly Weapons, (V) VUCSA in a protected zone, (VH) Veh Hom, see RCW 46.61 520, (JP) Juvenile present

Additional current offense sentencing data is attached in Appendix 2 3

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence above within below the standard range for Count(s) _____

The defendant and the State stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the Sentencing Reform Act

Aggravating factors were: stipulated to by the defendant, admitted by the defendant in the Guilty Plea, found by the court after the defendant waived jury trial, found by jury by special interrogatory

The defendant waives his right to have a jury determine any issues regarding the imposition of an exceptional sentence upward. *Apprendi v New Jersey*, 530 U.S. 466, 120 S. Ct 2348, 147 L Ed 2d 435 (2000), *Blakely v. Washington*, ___ U.S. ___, 124 S. Ct. 2531, 159 L Ed. 2d 403 (2004)

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

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9 94A.750/753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753): _____

2 6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows.

2.7 If no formal written plea agreement exists, the agreement is as set forth in the Defendant's Statement on Plea of Guilty

III. JUDGMENT

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

3 2 The Court DISMISSES Counts

The defendant is found NOT GUILTY of Counts

3 3 There do do not exist substantial and compelling reasons justifying an exceptional sentence outside the presumptive sentencing range.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court

RTN/RJN	\$ _____	Restitution to be paid to: <input type="checkbox"/> Victim(s) and amounts to be set by separate court order		RCW 9.94A.750/.753
PCV	\$500.00	Victim Assessment		RCW 7.68 035
	\$ _____	DV Penalty Assessment		RCW 10.99.080
CRC		Court Costs, including RCW 9 94A.760, 9.94A.505, 10.01.160, 10 46.190		
	\$200.00	Criminal filing fee	FRC	RCW 9 94A.505
	\$ _____	Witness costs	WFR	RCW 10 01.160 and RCW 2 40 010
	\$ _____	Sheriff Service Fees	SFR/SFS/SFW/WRF	RCW 10.01.160 and 36.18 040
	\$ _____	Jury Demand Fee \$ 250.00	JFR	RCW 10.01.160 and 10.46 190
	\$ _____	Extradition costs	EXT	RCW 9.94A 505
	\$ _____	Other Costs _____		RCW 9 94A 760
PUB	\$700.00 <i>\$ 1,275⁰⁰</i>	Fees for court appointed attorney Trial per diem if applicable		RCW 9.94A.505/.760/.030
WFR	\$ _____	Court appointed defense expert and other defense costs		RCW 9.94A 505, .760, 9 94A 030
FCM/MTH	\$500.00	Fine		RCW 9A.20.021
CDF/LDI/FCD/NTF/SAD/SDI	\$2,000.00	Drug fund contribution to be paid within two (2) years Fund # <input checked="" type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)		RCW 9.94A.760
CLF	\$ _____	Crime lab fee - <input type="checkbox"/> Suspended due to indigency		RCW 43.43 690
	\$100 00	Felony DNA Collection fee (for crimes committed on or after July 1, 2002)		RCW 43.43.7541
RTN/RJN	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) To _____ (List Law Enforcement Agency)		RCW 38.52 430
	\$ _____	Other Costs for _____		RCW 9 94A.760

200h

- The above financial obligations do not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9 94A.750/753. A restitution hearing.
 shall be set by the prosecutor
 is scheduled for _____
- Restitution ordered above shall be joint and several with the co-defendants listed in the information or identified below: _____.
- The Department of Corrections/Superior Court Clerk Collections Unit shall immediately issue a Notice of Payroll Deduction. RCW 9 94A 7602, RCW 9.94A 760(8)
- All payments shall be made in accordance with the policies of the Superior Court Clerk and on a schedule established by the Department of Corrections/Superior Court Clerk Collections Unit, commencing immediately, unless the court specifically sets forth the rate here:
 Not less than \$ _____ per month commencing _____
 RCW 9.94A.760.
- The defendant shall report as directed by the Superior Court Clerk and provide financial information as requested RCW 9.94A.760(7)(b). The defendant shall report in person no later than the close of business on the next working day after the date of sentencing or release from custody. A map has been provided to the defendant showing the location of the Superior Court Clerk Collections Unit, 500 West 8th Street, Suite 50, Vancouver, Washington. The defendant must report any changes in address and phone numbers to the Collections Unit within 72 hours of moving.
- In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate of \$ _____. RCW 9.94A.760
- The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments RCW 10.82 090. An award of costs on appeal against the defendant may be added to the total legal financial obligations RCW 10 73 160. The defendant shall pay the cost of services to collect unpaid legal financial obligations. This is an annual fee which will be automatically renewed until financial obligations are completed. RCW 9.94A.780 and RCW 36.18 190
- 4 2 **DNA TESTING.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43 43.754.
 HIV TESTING. The defendant shall be tested and counseled for HIV as soon as possible and the defendant shall fully cooperate in the testing and counseling. RCW 70 24 340.
- 4 3 The defendant shall not have contact with _____ including, but not limited to, personal, verbal, telephonic, electronic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).
 Supplemental Domestic Violence Protection Order or Antiharassment Order attached as Form 4 3
- 4 4 **OTHER** _____

- 4.5 **CONFINEMENT OVER ONE YEAR** The defendant is sentenced as follows:
 (a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections:

100 months on Count 01

Actual number of months of total confinement ordered is: 100
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above)

The confinement time on Count(s) _____ contain a mandatory minimum term of _____.

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

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

Concurrent w/sentence imposed in Clark Co Cause Nos
05-1-00837-7 and 05-1-01525-0

Confinement shall commence immediately unless otherwise set forth here _____

(b) CONFINEMENT RCW 9.94A.712 (Sex Offenses only): The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count	minimum term	maximum term
01		

(c) Credit for 187 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced. RCW 9 94A 505

4.6 COMMUNITY PLACEMENT is ordered on Counts _____ for _____ months

COMMUNITY CUSTODY is ordered on Counts 1 for a range from 9 to 12 months or for the period of earned release awarded pursuant to RCW 9.94A 728(1) and (2), whichever is longer, and standard mandatory conditions are ordered [See RCW 9.94A.700 and .705 for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9 94A 660 committed before July 1, 2000 See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Community custody follows a term for a sex offense -RCW 9.94A.505. Use paragraph 4 7 to impose community custody following work ethic camp.]

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

a) the defendant committed a current or prior		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9 94A.745.		

While on community placement or community custody, the defendant shall (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education,

employment and/or community restitution (service); (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody, (5) pay supervision fees as determined by DOC, and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9 94A 712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall be on community placement/community custody under the charge of the Department of Corrections and shall follow and comply with the instructions, rules and regulations promulgated by said Department for the conduct of the defendant during the period of community placement/community custody and any other conditions stated in this Judgment and Sentence. The defendant's conditions of Community Placement/Community Custody include the following.

- The defendant shall not consume any alcohol
- Defendant shall have no contact with _____
- Defendant shall remain within outside of a specified geographical boundary, to wit: _____
- Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8)).
- The defendant shall participate in the following crime-related treatment or counseling services: _____
- Defendant shall not violate any federal, state or local criminal laws, and shall not be in the company of any person known by him/her to be violating such laws.
- Defendant shall not commit any like offenses
- Defendant shall notify his/her community corrections officer within forty-eight (48) hours of any arrest or citation
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be convicted felons, or presently on probation, community supervision/community custody or parole for any offense, juvenile or adult, except immediate family. Additionally, the defendant shall not initiate or permit communication or contact with the following persons: _____
- Defendant shall not have any contact with other participants in the crime, either directly or indirectly.
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be substance abusers.
- Defendant shall not possess, use or deliver drugs prohibited by the Uniform Controlled Substances Act, or any legend drugs, except by lawful prescription. The defendant shall notify his/her community corrections officer on the next working day when a controlled substance or legend drug has been medically prescribed.
- Defendant shall not possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, cellular phones, police scanners, and hand held electronic scheduling and data storage devices
- Defendant shall not frequent known drug activity areas or residences

- Defendant shall not use or possess alcoholic beverages at all to excess
The defendant will will not be required to take monitored antabuse per his/her community corrections officer's direction, at his/her own expense, as prescribed by a physician.
- Defendant shall not be in any place where alcoholic beverages are sold by the drink for consumption or are the primary sale item.
- Defendant shall undergo an evaluation for treatment for substance abuse mental health anger management treatment and fully comply with all recommended treatment.
- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a substance abuse mental health anger management treatment program as established by the community corrections officer and/or the treatment facility.
- Defendant shall participate in a **domestic violence perpetrator program** as approved under RCW 26.50.150 and fully comply with all recommended treatment. RCW 9.94A 505 (11).
- Based upon the Pre-Sentence Report, the court finds reasonable grounds to exist to believe the defendant is a mentally ill person, and this condition was likely to have influenced the offense. Accordingly, the court orders the defendant to undergo a mental status evaluation and participate in outpatient mental health treatment. Further, the court may order additional evaluations at a later date, if deemed appropriate
- Treatment shall be at the defendant's expense and he/she shall keep his/her account current if it is determined that the defendant is financially able to afford it.
- Defendant shall submit to urine, breath or other screening whenever requested to do so by the treatment program staff and/or the community corrections officer.
- Defendant shall not associate with any persons known by him/her to be gang members or associated with gangs.
- Defendant shall not wear or display any clothing, apparel, insignia or emblems that he/she knows are associated with or represent gang affiliation or membership as determined by the community corrections officer.
- Defendant shall not possess any gang paraphernalia as determined by the community corrections officer.
- Defendant shall not use or display any names, nicknames or monikers that are associated with gangs.
- Defendant shall comply with a curfew, the hours of which are established by the community corrections officer.
- Defendant shall attend and successfully complete a shoplifting awareness educational program as directed by the community corrections officer
- Defendant shall attend and successfully complete the Victim Awareness Educational Program as directed by the community corrections officer
- Defendant shall not accept employment in the following field(s):

- Defendant shall not possess burglary tools.
- Defendant's privilege to operate a motor vehicle is suspended/revoked for a period of one year; two years if the defendant is being sentenced for a vehicular homicide
- Defendant shall not operate a motor vehicle without a valid driver's license and proof of liability insurance in his/her possession.

- Defendant shall not possess a checkbook or checking account
- Defendant shall not possess any type of access device or P.I.N. used to withdraw funds from an automated teller machine.
- Defendant shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections.
- Defendant shall not be eligible for a Certificate of Discharge until all financial obligations are paid in full and all conditions/requirements of sentence have been completed including no contact provisions
- Defendant shall not enter into or frequent business establishments or areas that cater to minor children without being accompanied by a responsible adult. Such establishments may include but are not limited to video game parlors, parks, pools, skating rinks, school grounds, malls or any areas routinely used by minors as areas of play/recreation.
- Defendant shall not have any unsupervised contact with minors. Minors mean persons under the age of 18 years.
- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a sexual deviancy treatment program as established by the community corrections officer and/or the treatment facility. "Cooperate with" means the offender shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity.
- Defendant shall submit to periodic polygraph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody.
- Defendant shall submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody.
- Defendant shall not possess or use any pornographic material or equipment of any kind and shall not frequent establishments that provide such materials for view or sale.
- If the defendant is removed/deported by the Department of Immigration, the Community Custody time is tolled during the time that the defendant is not in the United States. The defendant shall not enter the United States without the knowledge and permission of the Department of Immigration.
- Defendant shall sign necessary release of information documents as required by the Department of Corrections
- Defendant shall adhere to the following additional crime-related prohibitions or conditions of community placement/community custody:

4.7 **OFF LIMITS ORDER** (known drug trafficker) RCW 10 66 020. The following areas are off limit to the defendant while under the supervision of the County Jail or Department of Corrections:

4.8 The Bail or release conditions previously imposed are hereby exonerated and the clerk shall disburse it to the appropriate person(s)

4.9 This case shall not be placed on Inactive or mail-in status until all financial obligations are paid in full.

4.10 The defendant shall allow, and the Department of Corrections is authorized to conduct, home visits to monitor compliance with supervision/community custody. Home visits shall include access, for the purpose of visual inspection, all areas of the residence and curtilage in which the offender lives or has exclusive/joint control/access as well as automobiles owned or possessed by the defendant.

4.11 Other:

V. NOTICES AND SIGNATURES

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

5.2 **LENGTH OF SUPERVISION** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten (10) years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4)

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7608

5.4 **RESTITUTION HEARING.**

Defendant waives any right to be present at any restitution hearing (sign initials). _____

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

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

Cross off if not applicable:

5.7 ~~**SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in Chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.~~

~~If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if~~

you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections

If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington state, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington state.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 48 hours excluding weekends and holidays after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require you to list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing a residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State

If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within 5 days of the entry of the order RCW 9A.44.130(7).

5.8 The court finds that Count 1 is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately punch the defendant's Washington Driver's license or permit to drive with a "C" as directed by the Department of Licensing pursuant to RCW 46.20.270

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

5.10 Persistent Offense Notice

- The crime(s) in count(s) _____ is/are "most serious offense(s)" Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (2B & 32(a)), 9.94A.505

- The crime(s) in count(s) _____ is/are one of the listed offenses in RCW 9.94A.030 (32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

5.11 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: January 10, 2006.



JUDGE OF THE SUPERIOR COURT

Print Name: R.A. Lewis



Kasey T. Vu, WSBA #1528
Deputy Prosecuting Attorney



David S. Kurtz, WSBA #12152
Attorney for Defendant



JOE ALBERT FULLER
Defendant

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

NO. 05-1-01692-2

v.

JOE ALBERT FULLER, aka JOSEPH ALBERT FULLER,

WARRANT OF COMMITMENT TO STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS

Defendant.

SID. WA17252985
DOB. 6/9/1974

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

GREETING:

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
01	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE HYDROCHLORIDE	69.50 401(1),(2)(c)	7/7/2005

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72 13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of :

COUNT	CRIME	TERM
01	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE HYDROCHLORIDE	<i>100 months</i>

These terms shall be served concurrently to each other unless specified herein:

The defendant has credit for 187 days served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

Concurrent w/sentences imposed in Clark County Cause Nos 05-1-00837-7 and 05-1-01525-0.

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable



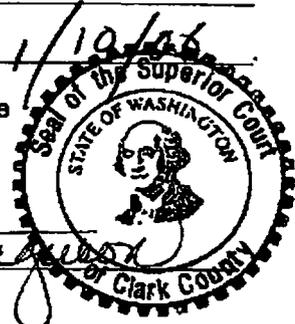
JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 1/10/06

JOANNE McBRIDE, Clerk of the
Clark County Superior Court

By:



Deputy



CAUSE NUMBER of this case: 05-1-01692-2

VOTING RIGHTS STATEMENT: RCW 10.84.____. I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9 94A.637, b) A court order issued by the sentencing court restoring the right, RCW 9.92.066, c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9 98.020. Voting before the right is restored is a class C felony, RCW 92A.84.660

Defendant's signature [Signature]. 2005 Wash. Laws 246 § 1

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

Interpreter signature/Print name: _____

I, JOANNE McBRIDE, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

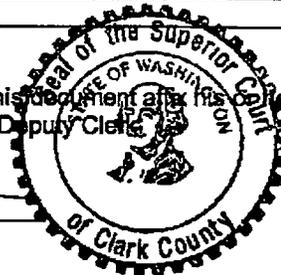
WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of said County and State, by _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT JOE ALBERT FULLER	
SID No WA17252985 (If no SID take fingerprint card for State Patrol)	Date of Birth 6/9/1974
Race: W	Sex: M
Driver License No. FULLEJA267LZ	Driver License State. WA
FBI No 838210WAO	Local ID No. (CFN)
Alias name, SSN, DOB: JOSEPH ALBERT FULLER	Corrections No.
Other	

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document after his earlier fingerprints and signature thereto. Clerk of the Court [Signature] Deputy Clerk
Dated: 11/10/06

DEFENDANT'S SIGNATURE: [Signature]



Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



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4 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

5 STATE OF WASHINGTON,
6 Plaintiff,
7 v.
8 JOSEPH ALBERT FULLER,
Defendant

No. 05-1-01692-2

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

9 COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of
10 the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the
defendant has the following undisputed prior criminal convictions:

11

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS
DCS-METH	CLARK/WA 05-1-00837-7	10/28/2004	9/9/05	1
PCS w/INTENT-METH	CLARK/WA 05-1-00837-7	4/12/2005	9/9/05	1
ASSAULT 2	CLARK/WA 05-1-01525-0	7/6/2005	12/16/05	1
ATTEMPT RESIDENTIAL BURGLARY	YAKIMA/WA 94-1-01455-8	9/6/1994	10/14/1994	1
FORGERY	YAKIMA/WA 94-1-01455-8	9/9/1994	10/14/1994	1
PSP 1	YAKIMA/WA 94-1-01455-8	9/13/1994	10/14/1994	1
CONT SUBST VIOL - SECTION (A)	YAKIMA/WA 99-1-01507-5	8/17/1999	12/29/1999	1
CONT SUBST VIOL B: DISTRIB/DISPE (A)(6)	YAKIMA/WA 99-1-01507-5	8/27/1999	12/29/1999	1

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23 The defendant committed a current offense while on community placement (adds one
24 point to score). RCW 9.94A.360.
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29 **DECLARATION OF CRIMINAL HISTORY**
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET
PO BOX 5000
VANCOUVER WA 98666-5000
(360) 397-2261

DATED this 10 day of January, 2006.

1
2 Defendant

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4 David S. Kurtz, WSBA#12152
5 Attorney for Defendant

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Kasey T. Vu
Deputy Prosecuting Attorney

