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DIVISION TWO

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No. 35055-6-II

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

In re Personal Restraint of:

JUSTIN SHEA,

Petitioner;

STATE OF WASHINGTON,

Respondent.

ON REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable Christine Pomeroy, Judge

SUPPLEMENTAL BRIEF OF PETITIONER

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A. ISSUES PRESENTED

1. Where petitioner did not waive his right to challenge his convictions on double jeopardy grounds, are his double jeopardy claims barred by his guilty plea?

2. Are petitioner's double jeopardy claims barred because he received the benefit of his plea bargain?

3. Where petitioner only stipulated to an exceptional community custody sentence is his double jeopardy claims barred under State v. Ermels?

4. Did petitioner's convictions for second degree assault and first degree robbery violate the constitutional prohibition against double jeopardy where the assault had no purpose independent of the robbery?

5. Did petitioner's convictions for second degree kidnapping and first degree robbery violate the constitutional prohibition against double jeopardy where the kidnapping was incidental to the robbery?

6. Should petitioner's case be remanded for resentencing using a correct calculation of his offender score?

B. STATEMENT OF THE CASE

1. Procedural History

On January 25, 2000, the Thurston County Prosecutor filed an information charging Justin Shea with eight offenses. Shea was charged with first degree burglary (Count I), two counts of second degree assault (Counts II and III), first degree robbery (Count IV), two counts of first degree kidnapping (Counts V and VI), intimidating a witness (Count VII) and second degree malicious mischief (Count VIII). Appendix A (Information). All counts included an allegation that Shea was armed with a firearm except the malicious mischief allegation (Count VIII), which contained a deadly weapon allegation. Id. Louise Rowan was the named victim in one assault charge (Count II) and one kidnapping charge (Count V) and Stephanie McElhiney the named victim in the other assault charge (Count III) and kidnapping charge (Count VI). Id.

As part of a plea agreement, on March 21, 2000, the State filed an amended information charging Shea with five offenses. Appendix B (First Amended Information). The amended information retained the first degree burglary charge but the firearm allegation was amended to a deadly weapon allegation (Count I). Id. The two second degree assault charges were replaced with one second degree assault charge containing a firearm allegation and naming both Rowan and McElhiney as the victims (Count II).

Id. The two first degree kidnapping charges were replaced one second degree kidnapping charge, again naming both Rowan and McElhiney as the victims (Count IV). Id. The Kidnapping charge did not contain either a deadly weapon or firearm allegation. Id. The second degree malicious mischief charge (Count V) was retained but without the deadly weapon allegation. Id. The first degree robbery charge (Count III) remained the same as in the original information (Count IV). Id.

On the same day the amended information was filed, Shea entered into a plea agreement with the State. Appendix C (Plea Agreement). Shea stipulated to the reports and statements regarding the case. Id. at 2-3. One of the conditions of the plea agreement was that Shea waive all “objections to withdrawal of his guilty plea.” Id. at 2. Shea also agreed to join the State’s sentencing recommendation and he agreed to an exceptional sentence but only as to the period of community custody. Id. at 1.

Shea subsequently entered guilty pleas to the charges. Appendix D (Statement of Defendant on Plea of Guilty); Appendix E (March 21, 2000 verbatim report of proceedings). As part of the factual basis for the pleas, Shea made the following statement:

On November 16, 1999, in Thurston County, 3 co-defendants and I unlawfully entered Blockbuster Video. One of my co-defendants assaulted Louise Rowan by pointing a gun at her. We unlawfully took money from Blockbuster by threatened use of immediate force and one of the co-defendants was

armed with a gun. We abducted one of the employees by forcing her into the restroom in order to facilitate the robbery. I also knowingly and maliciously damaged property belonging to Blockbuster, in an amount greater than \$250.00.

Appendix D at 3-4; Appendix E at 6.

Based on an offender score of eight, Shea was sentenced to 102 months on the burglary charge, 70 months on the assault charge, 168 months on the robbery charge, which included the 60 month firearm enhancement, 82 months on the kidnapping charge and 12 months on the malicious mischief charge. Appendix F (Judgment and Sentence). Shea was also given an exceptional community custody sentence of 60 months consistent with the plea agreement. Id. In determining Shea's offender score, all the offenses were counted as other current offenses. Brief of Respondent (BOR), filed September 1, 2006 (Appendix F).

On June 27, 2006, Shea filed a personal restraint petition (PRP). Shea argued his assault and robbery convictions and his kidnapping and robbery convictions violated double jeopardy. PRP at 6-15. The State responded arguing that Shea's petition was barred under his plea agreement, the issues were time-barred and in the alternative the convictions did not violate double jeopardy. BOR at 9-21.

On March 16, 2007, this Court entered an order referring Shea's petition to a panel and appointing the undersigned to represent Shea. In its order, this Court identified the issues as "1) whether Petitioner's double

jeopardy claim is barred by his guilty plea; 2) whether Petitioner's double jeopardy claim is barred because he received the benefit of his bargain; 3) whether State v. Ermels, 156 Wn.2d 528, 131 P.3d 299 (2006), bars Petitioner's claim; and 4) if the claim is not barred, whether the challenged convictions violate double jeopardy."

2. Substantive Facts

The facts of the case are contained in the State's Statement of Proceedings (BOR at 2-5) and in Shea's Statement of the Case (PRP at 2-4). For the sake of economy, those are incorporated herein by reference. Any additional facts are contained in the arguments.

C. ARGUMENT

THE SECOND DEGREE ASSAULT CONVICTION (COUNT II) AND FIRST DEGREE ROBBERY CONVICTION (COUNT III), AND THE SECOND DEGREE KIDNAPPING CONVICTION (COUNT IV) AND FIRST DEGREE ROBBERY CONVICTION (COUNT III), VIOLATE THE PROHIBITION AGAINST DOUBLE JEOPARDY UNDER THE MERGER DOCTRINE.

1. Shea's Guilty Plea Agreement and the Ermels Decision do not Bar his Double Jeopardy Claim

Shea pleaded guilty to the amended charges as part of a bargained plea agreement. He argues that some of those convictions, however, violate double jeopardy. The threshold issue is whether his plea, the plea agreement or recent Washington Supreme Court decisions bar his double jeopardy claims.

A guilty plea to a charge does not waive a claim that, judged on its face, the charge is one, which the State may not constitutionally prosecute. In re Butler, 24 Wn. App. 175, 178, 599 P.2d 1311 (1979) (citing Menna v. New York, 423 U.S. 61, 96 S. Ct. 241, 46 L. Ed. 2d 195 (1975); Launius v. United States, 575 F.2d 770 (9th Cir. 1978)); State v. Cox, 109 Wn. App. 779, 782, 37 P.3d 1240, review denied, 147 Wn. 2d 1003 (2002); see also United States v. Broce, 488 U.S. 563, 575-76, 109 S. Ct. 757, 102 L. Ed. 2d 927 (1989) (defendant's double jeopardy claim not barred by guilty plea where violation obvious on face of the indictment).

Moreover, even though Shea received the benefit of his bargained pleas, he may still raise a double jeopardy claim. In a recent decision the Washington Supreme Court was divided¹ on the issue of whether a petitioner could raise a double jeopardy challenge following a bargained guilty plea without moving to withdraw the plea. In re Pers. Restraint of Shale, __ Wn.2d __, 158 P.3d 588 (2007).

In Shale, Cole Shale Shale's pleaded guilty to multiple counts of possession of stolen property and unlawful possession of payment instruments. Shale, 158 P.3d at 589. His pleas were entered and accepted in the same proceeding, referred to one another, and were part of a plea bargain. Id. at 590. Shale subsequently filed a personal restraint petition

¹ Only eight justices participated in the Shale decision. Shale, 158 P.3d, 591, 594.

arguing that his some of his convictions violated double jeopardy because they were the same unit of prosecution. Id. at 589.

Four justices would have held that because Shale did not move to withdraw the pleas but was only challenging a portion of an indivisible packaged plea deal, he was estopped from raising the double jeopardy issue. Shale, 158 P.3d at 590 (C. Johnson, J. writing for the plurality) (citing State v. Turley, 149 Wn.2d 395, 398, 69 P.3d 338 (2003) and State v. Ermels, 156 Wn.2d 528, 541, 131 P.3d 299 (2006)).

Four justices, on the other hand, would have held that where a double jeopardy violation is evident on its face, a guilty plea does not foreclose an attack on the conviction through a personal restraint petition. Shale, 158 P.3d at 591-592 (Madsen, J. writing for the plurality) (citing Menna v. New York, 423 U.S. at 62). In determining whether a judgment and sentence is invalid on its face, courts look at the judgment and sentence itself and those documents signed as part of a plea agreement. State v. Phillips, 94 Wn.App. 313, 317, 972 P.2d 932 (1999); see In re Hemenway, 147 Wn.2d 529, 55 P.3d 615 (2002) (plea documents are relevant when they disclose invalidity in the judgment and sentence); see also In re Stoudmire, 141 Wn.2d 342, 353-54, 5 P.3d 1240 (2000) (court may consider plea documents in determining whether judgment and sentence is invalid on its face). That same plurality would have also held

that because the judgment and sentence did not reveal a double jeopardy violation and Shale participated in the amendment of charges and in crafting the plea bargain in order to preserve his eligibility for a first offender waiver, he waived his right to bring the double jeopardy challenge. Id. at 593-594.

Because the plurality decisions in Shale failed to garner a majority on the issue of whether a double jeopardy challenge to a plea agreement can be brought in a personal restraint petition, the decision on that issue has no precedent. See Roy Supply, Inc. v. Wells Fargo Bank, 39 Cal.App. 4th 1051, 1067 (1995) (an opinion that expresses the views of less than a majority of the members of the court is not precedent). Here, the judgment and sentence on its face shows a double jeopardy violation, which Shea can raise in a personal restraint petition.

Additionally, Shea's challenge is not barred by the holding in Ermels. In Ermels, Ermels' stipulated an exceptional sentence as part of an indivisible plea agreement. As part of the agreement he also waived his right to appeal his exceptional sentence. Ermels, 156 Wn.2d at 533-534. After he entered into the plea agreement the United States Supreme Court decided Blakely v. Washington, 542 U.S. 296, 301, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), holding that Washington's exceptional sentencing scheme was unconstitutional because it allowed a judge and a not a jury

determine if there was a factual basis to support an exceptional sentence. Ermels appealed arguing his waiver of the right to appeal his exceptional sentence was not knowing or voluntary because he did not know he had the right to have a jury decide the facts supporting an exceptional sentence until Blakely was decided. He requested his case be remanded for a sentence within the standard range. Ermels, 156 Wn.2d at 540. The Ermels Court held because Ermels' stipulated to an exceptional sentence as part of an indivisible plea package, he waived his right to challenge his sentence and his only remedy was to challenge the entire plea. Id. at 544-545.

Here, Shea does not challenge his stipulated exceptional community custody sentence. Moreover, in the plea agreement, Shea did not waive his right to challenge his convictions on double jeopardy grounds. State v. Kells, 134 Wn.2d 309, 314, 949 P.2d 818 (1998). Thus, the holding in Ermels is inapposite and is not a bar to Shea's petition.

Shea pleaded guilty to the amended charges pursuant to a plea agreement. He is not asking to withdraw his pleas. He is challenging some of those convictions on double jeopardy grounds. Although he received the benefit of the plea agreement, he did not waive his right to challenge his convictions on double jeopardy grounds and the plea agreement contains no stipulations or other conditions that show an

implicit or explicit waiver of his right to raise a double jeopardy violation. On its face, the judgment and sentence shows the multiple convictions violated double jeopardy.

2. Double Jeopardy

The double jeopardy clauses of the State and federal constitutions prevent the imposition of multiple punishments for the same offense. U.S. Const. Amend. 5; Const. art. 1, § 9; In re Orange, 152 Wn.2d 795, 815, 100 P.3d 291 (2004); State v. Calle, 125 Wn.2d 769, 772, 776, 888 P.2d 155 (1995).² The State may bring multiple charges arising from the same criminal conduct in a single proceeding. State v. Freeman, 153 Wn.2d 765, 770, 108 P.3d 753 (2005) (citing State v. Michielli, 132 Wn.2d 229, 238-39, 937 P.2d 587 (1997)). Courts may not, however, enter multiple convictions for the same offense without offending double jeopardy. Freeman, at 770-71 (citing State v. Vladovic, 99 Wn.2d 413, 422, 662 P.2d 853 (1983) (quoting Albernaz v. United States, 450 U.S. 333, 344, 101 S. Ct. 1137, 67 L. Ed. 2d 275 (1981))). Thus, a concurrent sentence does not cure a double jeopardy violation. State v. Adel, 136 Wn.2d 629, 632, 965 P. 2d 1072 (1998); State v. Read, 100 Wn. App. 776, 793, 998 P.2d 897 (2000); see also State v.

² The Double Jeopardy Clause of the United States Constitution reads, “nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb....” U.S. Const. amend V. Washington’s constitution reads, “No person shall be... twice put in jeopardy for the same offense.” Const. art. I, § 9.

Womac, ___ Wn.2d ___, ___ P.3d ___, 2007 WL 1704661 (Opinion filed June 14, 2007, at ¶ 26);

The double jeopardy protection is constitutional, but because the legislature is free to define crimes and fix punishments, "the role of the constitutional guarantee is limited to assuring that the court does not exceed its legislative authorization by imposing multiple punishments for the same offense." Brown v. Ohio, 432 U.S. 161, 165, 53 L. Ed. 2d 187, 97 S. Ct. 2221 (1977). "Where a defendant's act supports charges under two criminal statutes, a court weighing a double jeopardy challenge must determine whether, in light of legislative intent, the charged crimes constitute the same offense." Freeman, 153 Wn.2d at 771 (quoting In re Pers. Restraint of Orange, 152 Wn.2d at 815). To determine legislative intent, this Court first considers any express or implicit legislative intent. Evidence of Legislative intent may be clear on the face of the statute, found in the legislative history, the structure of the two statutes, the fact the two statutes are directed at eliminating different evils, or any other source. Freeman, at 773 (citing Ball v. United States, 470 U.S. 856, 864, 105 S. Ct. 1668, 84 L. Ed. 2d 740 (1985)); State v. Calle, 125 Wn.2d at 779-80.

An indication the legislature intended two crimes to constitute the same offense is where the crimes are identical in both fact and law. This test is called the same evidence test, which is similar to the same elements test in

Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932). State v. Louis, 155 Wn.2d 563, 569, 120 P.3d 936 (2005); Calle, 125 Wn.2d at 777-78.

If the crimes do not meet the same evidence test, however, the court may turn to other aids in determining legislative intent, such as the merger doctrine. Freeman, 153 Wn.2d at 772-73. “Washington courts, however, have occasionally found a violation of double jeopardy despite a determination that the offenses involved clearly contained different legal elements.” State v. Womac, ___ Wn.2d ___, ___ P.3d ___, 2007 WL 1704661 (Opinion filed June 14, 2007, at ¶ 17) (citing State v. Schwab, 98 Wn.App. 179, 184-85, 988 P.2d 1045 (1999); State v. Johnson, 92 Wn.2d 671, 679-80, 600 P.2d 1249 (1979); State v. Potter, 31 Wn.App. 883, 887-88, 645 P.2d 60 (1982); In re Burchfield, 111 Wn.App. 892, 899, 46 P.3d 840 (2002)).

Merger is a "doctrine of statutory interpretation used to determine whether the Legislature intended to impose multiple punishments for a single act which violates several statutory provisions." State v. Vladovic, 99 Wn.2d at 419 n.2. “The merger doctrine is simply another means by which a court may determine whether the imposition of multiple punishments violates the Fifth Amendment guarantee against double jeopardy, i.e., whether the legislative branch, acting within its own constitutional

limitations, has authorized cumulative punishments.” State v. Frohs, 83 Wn.App. 803, 811, 924 P.2d 384 (1996).

3. The Second Degree Assault and First Degree Robbery Merge

Here, the second degree assault did not have any purpose independent from the first degree robbery. Thus, the two convictions merge.

In Freeman, the Court ruled first degree robbery and second degree assault will always merge unless they have an independent purpose or effect. Freeman, 153 Wn.2d at 780. The Freeman Court specifically held, “we find no evidence that the legislature intended to punish second degree assault separately from first degree robbery when the assault facilitates the robbery.” Freeman, 153 Wn.2d at 776.

The State alleged in the amended information that Shea committed first degree robbery by taking the property of Blockbuster Video from Louise Rowan, in her presence and against her will by the threatened or immediate use of force. Appendix B at 1. It also alleged that Shea was armed with a firearm. Id. at 2. The second degree assault charge was based on the use of the same deadly weapon and likewise named Rowan as the victim. Id.

Additionally, the force used against Rowan to commit the robbery was the same force used in the assault. In his Statement on Plea of Guilty, Shea states that his co-defendant was armed with a gun and assaulted

Rowan by pointing the gun at her, which was the force used to facilitate the robbery. Appendix D at 3-4; Appendix E at 6.

In State v. Bresolin, 13 Wn. App. 386, 534 P.2d 1394 (1975), review denied, 86 Wn.2d 1011 (1976), Bresolin was convicted of robbery and second degree assault. Bresolin beat the victim -- Mark Medearis -- with a gun, threatened him with a knife if he did not disclose the location of drugs, and then took Medearis' money and several weapons. Id. at 388-89. The court vacated the assault conviction:

We find the acts of force necessary to commit the robbery of Mark Medearis to be the same as the acts of force inflicted upon him as alleged in the count charging assault in the second degree. The litany of injuries inflicted upon the victim was part of a continuing, uninterrupted attack to secure 'dope' or money, and constituted proof of an element included within the crime of robbery. Under the evidence in this case, the assaults inflicted were not separate and distinct from the force required for the robbery. . . . The evidence in this case indicates that there was no cessation of the infliction of fear and injury upon the victim and a later resumption of a separate and distinct act of violence. The purpose of the acts of the defendant was the single purpose of effectuating the robbery of the victim. Where an act constituting a crime also constitutes an element of another crime, a defendant is placed in double jeopardy if he is charged with both crimes.

Bresolin, 13 Wn. App. at 394 (citations omitted).

The second degree assault here was based on the use of the same deadly weapon. The force used to commit the assault was the same force used to facilitate the robbery and the victim in both was the same. Like in

Bresolin, the purpose of the assault was to effectuate the robbery. The two offenses did not have an independent purpose of effect. Thus, the assault and the robbery merge and the assault conviction should be vacated.

4. Second Degree Kidnapping and First Degree Robbery Merge

This Court has held that where restraint of a victim's movement is merely incidental to and integral to the commission of another crime, such restraint does not constitute the independent crime of kidnapping. State v. Korum, 120 Wn.App. 686, 703-04, 86 P.3d 166, aff'd in part, rev'd in part on other grounds, 157 Wn.2d 614, 141 P.3d 13 (2006); see State v. Johnson, 92 Wn.2d 671, 679-80, 600 P.2d 1249 (1979) (where the Court struck the kidnapping and assault convictions even though the offenses involve different legal elements because the kidnapping and assault were incidental to the first degree rape). This Court reasoned that the Washington criminal code, with its clearly defined degrees of crimes, demonstrates the legislature's intent to "remove the occasion for pyramiding crimes which had in the past resulted in unjust and oppressive multiple punishments for a single offense." Korum, 120 Wn.App. at 704 (quoting State v. Ingham, 26 Wn.App. 45, 49, 612 P.2d 801 (1980)). This Court's rationale in Korum was recently recognized as a valid tool in determining whether convictions for multiple offenses violate double

jeopardy. “The double jeopardy doctrine protects defendants against ‘prosecution oppression.’” State v. Womac, 2007 WL 1704661, at ¶ 13 (citing 5 Wayne R. LaFave, Jerold H. Israel & Nancy J. King, Criminal Procedure § 25.1(b), at 630 (2d ed.1999)).

It is anticipated the State will argue that under State v. Louis, 155 Wn.2d 563, 571, 120 P.3d 936 (2005), the kidnapping and robbery offenses do not merge as a matter of law. First degree kidnapping requires an abduction with the intent to commit one of five enumerated acts. RCW 9A.40.020(1) (a) through (e). In Louis, the Court reasoned that first degree kidnapping requires proof the defendant intentionally abducts a person with the further element of the intent to commit any one of the five enumerated acts. And, because the act itself does not need to be completed, first degree kidnapping does not merge with first degree robbery as a matter of law where the person abducted is robbed. Id. at 571.

Second degree kidnapping, however, only requires proof there was an intentional abduction in circumstances not amounting to first degree kidnapping. RCW 9A.40.030(1). Abduct is defined as restraining “a person by either (a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use deadly force.” RCW 9A.40.010(2). Restrain means “to restrict a person's movements without

consent and without legal authority in a manner which interferes substantially with his liberty.” RCW 9A.40.010(1). Because second degree kidnapping requires only an intentional abduction and does not require the intent to commit one of the enumerated acts that would elevate the crime to first degree kidnapping, the State does not have to prove any other element beyond either holding a person in a place where the person is not likely to be found or the use of threatened use of deadly force. Thus, the holding in Louis is limited to the issue of whether first degree kidnapping merges with first degree robbery and is not controlling.

Here, Shea was charged with second degree kidnapping. The Kidnapping had no independent purpose or effect and was incidental to the robbery. The restraint was for the sole purpose of facilitating the robbery. The same use of threat of deadly force was used to commit both offense. The victims were not moved from the location of the robbery to a place where they would likely not be found. And, the restraint was not longer than required for the commission of the robbery. See, Korum, 120 Wn.App. at 707. Because a second degree kidnapping only requires an intentional abduction and not any other element, and the abduction here was incidental to the robbery, under this Court’s reasoning in Korum, the kidnapping merges with the robbery. This Court should vacate the kidnapping conviction.

5. Shea was Prejudiced

The double jeopardy violations were constitutional errors. To obtain relief in the context of a personal restraint petition a petitioner must demonstrate actual prejudice where the error is constitutional. In re Cook, 114 Wn.2d 802, 812-13, 792 P.2d 506 (1990); In re Haverty, 101 Wn.2d 498, 504, 681 P.2d 835 (1984).

Shea was prejudiced because the assault and kidnapping convictions were counted as other current violent offenses in calculating his offender score increasing his offender score by four points. Appendix F. This case should be remanded to the trial court for a new sentencing hearing based on the corrected offender score.

D. CONCLUSION

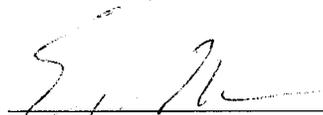
Shea can raise his double jeopardy claims in a personal restraint petition despite his guilty pleas. Because Shea's assault conviction merges with the robbery conviction and his kidnapping conviction merges with the robbery conviction, the assault and kidnapping convictions should be vacated.

Shea's offender score was calculated based on those two erroneous convictions. Thus, his sentence should be reversed and the trial court ordered to impose a standard range sentence based on a corrected offender score. Even if this Court finds either the assault or the kidnapping convictions merge with the robbery, but not both, Shea's sentence should be reversed because each was counted as an other current violent offense to calculate his offender score.

DATED this 27 day of June, 2007.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



ERIC J. NIELSEN

WSBA No. 12773

Office ID No. 91051

Attorneys for Petitioner

APPENDIX A

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

00 JAN 25 PM 3:19

BETTY J. GOULD, CLERK

BY _____
DEPUTY

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

STATE OF WASHINGTON,

Plaintiff,

vs.

JUSTIN MICHAEL SHEA
W,M,5'9,140,BRN,BRN
DOB: 12-08-80
SID: WA15677354
FBI: 63219MB1
PCN: 005832365
c/o Thurston County Jail
BOOKING NO. C91611

Defendant.

NO. 00-1-109-0

INFORMATION

JOHN M. "JACK" JONES
Senior Deputy Prosecuting Attorney

CO-DEFENDANT:

JASON ALLEN GOUDY

NO. 00-1-105-7

DOMINIC LAPRAIM

NO. 00-1-111-1

KAHLIL RANELL EDWARDS

NO. 00-1-112-0

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

**COUNT I: BURGLARY IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON,
RCW 9A.52.020(1), RCW 9.94A.125 and RCW 9.94A.310:**

That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of November, 1999, as principal or accomplice, with intent to commit a crime against a person or property therein, did enter or remain unlawfully in a building and while in such building or in immediate flight therefrom, the defendant or another participant in the crime was armed with a deadly weapon or assaulted a person therein. It is further alleged that during the commission of this offense, the defendant or accomplice was armed with a deadly weapon, to-wit: a firearm.

**COUNT II: ASSAULT IN THE SECOND DEGREE WHILE ARMED WITH A DEADLY WEAPON-
FIREARM, RCW 9A.36.021(1)(c), RCW 9.94A.125 and RCW 9.94A.310:**

That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of November, 1999, as principal or accomplice, did assault another, to-wit: Louise Rowan, with a deadly weapon, to-wit: a firearm. It is further alleged that during the commission of this offense, the defendant or an accomplice was armed with a deadly weapon, to wit: a firearm.

W.S.P. IDENT.



005832365

INFORMATION - 1

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

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3 COUNT III: ASSAULT IN THE SECOND DEGREE WHILE ARMED WITH A DEADLY WEAPON -
FIREARM. RCW 9A.36.021(1)(c). RCW 9.94A.125 and RCW 9.94A.310:

4 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
5 November, 1999, as principal or accomplice, did assault another, to-wit: Stephanie McElhiney, with a deadly
6 weapon, to-wit: a firearm. It is further alleged that during the commission of this offense, the defendant or
an accomplice was armed with a deadly weapon, to wit: a firearm.

7 COUNT IV: ROBBERY IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON -
FIREARM. RCW 9A.56.200(1). RCW 9.94A.125. RCW 9.94A.310:

8 In that the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
9 November, 1999, as principal or accomplice, did unlawfully take personal property of Blockbuster Video
10 from a person, to-wit: Louise Rowan or their presence, against such person's will, by use or threatened use
11 of immediate force, violence, or fear of injury to such person or his property, with the intent to commit theft
of the property, and in the commission of or immediate flight therefrom, the accused was armed with a deadly
weapon or displayed what appeared to be a firearm. It is further alleged that during the commission of this
offense, the defendant or an accomplice was armed with a deadly weapon, to-wit: a firearm.

12 COUNT V: KIDNAPING IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON -
FIREARM. RCW 9A.40.020(1)(b). RCW 9.94A.125 and RCW 9.94A.310:

13 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
14 November, 1999, as principal or accomplice, did intentionally abduct another person, to-wit: Louise Rowan,
15 with intent to facilitate the commission of any felony. It is further alleged that during the commission of this
offense, the defendant or an accomplice was armed with a deadly weapon, to-wit: a firearm.

16 COUNT VI: KIDNAPING IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON -
FIREARM. RCW 9A.40.020(1)(b). RCW 9.94A.125 and RCW 9.94A.310:

17 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
18 November, 1999, as principal or accomplice, did intentionally abduct another person, to-wit: Stephanie
19 McElhiney, with intent to facilitate the commission of any felony. It is further alleged that during the
commission of this offense, the defendant or an accomplice was armed with a deadly weapon, to-wit: a
firearm.

20 COUNT VII: INTIMIDATING A WITNESS WHILE ARMED WITH A DEADLY WEAPON -
21 FIREARM. RCW 9A.72.110(1). RCW 9.94A.125 and RCW 9.94A.310:

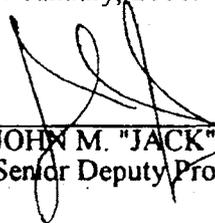
22 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
23 November, 1999, as principal or accomplice, by use of a threat directed to a current or prospective witness,
24 to-wit: Louise Rowan, did attempt to influence the testimony of such person, or induce that person to elude
25 legal process summoning him or her to testify or induce that person to absent him or her self from such
26 proceedings, or induce that person not to report the information relevant to a criminal investigation or not
give truthful or complete information relevant to a criminal investigation. It is further alleged that during the
commission of this offense, the defendant or an accomplice was armed with a deadly weapon, to-wit: a
firearm.

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COUNT VIII: MALICIOUS MISCHIEF IN THE SECOND DEGREE, WHILE ARMED WITH A DEADLY WEAPON-FIREARM. RCW 9A.48.080(1)(a), 9.94A.125, 9.94A.310:

That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of November, 1999, as principal or accomplice, did knowingly and maliciously cause physical damage to the property of another, in excess of \$250. It is further alleged that during the commission of this offense the defendant or accomplice was armed with a deadly weapon.

DATED this 25th day of January, 2000.



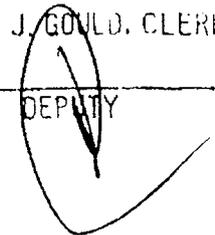
JOHN M. "JACK" JONES, WSBA#16786
Senior Deputy Prosecuting Attorney

APPENDIX B

FILED
SUPERIOR COURT
THURSTON COUNTY WA

2000 MAR 21 PM 2: 53

BETTY J. GOULD, CLERK

BY  DEPUTY

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

5 STATE OF WASHINGTON,

Plaintiff,

6
7 vs.

8 JUSTIN MICHAEL SHEA
W,M,5'9,140,BRN,BRN
9 DOB: 12-08-80
SID: WA15677354
10 FBI: 63219MB1
PCN: 005832365
11 c/o Thurston County Jail
BOOKING NO. C91611

Defendant.

NO. 00-1-109-0

FIRST AMENDED
INFORMATION

JOHN M. "JACK" JONES
Senior Deputy Prosecuting Attorney

CO-DEFENDANT:

JASON ALLEN GOUDY
NO. 00-1-105-7
DOMINIC LAPRAIM
NO. 00-1-111-1
KAHLIL RANELL EDWARDS
NO. 00-1-112-0

12
13
14 Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the
15 defendant with the following crime:

16 COUNT I: BURGLARY IN THE FIRST DEGREE, RCW 9A.52.020(1):

17 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
18 November, 1999, as principal or accomplice, with intent to commit a crime against a person or property
19 therein, did enter or remain unlawfully in a building and while in such building or in immediate flight
therefrom, the defendant or another participant in the crime was armed with a deadly weapon or assaulted
a person therein.

20 COUNT II: ASSAULT IN THE SECOND DEGREE, RCW 9A.36.021(1)(c):

21 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
22 November, 1999, as principal or accomplice, did assault another, to-wit: Louise Rowan and Stephanie
McElhiney, with a deadly weapon, to-wit: a firearm.

23 COUNT III: ROBBERY IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON -
24 FIREARM, RCW 9A.56.200(1), RCW 9.94A.125, RCW 9.94A.310:

25 In that the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
26 November, 1999, as principal or accomplice, did unlawfully take personal property of Blockbuster Video
from a person, to-wit: Louise Rowan or their presence, against such person's will, by use or threatened use
of immediate force, violence, or fear of injury to such person or his property, with the intent to commit theft

W.S.P. IDENT.



006832365

INFORMATION - 1

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

1 of the property, and in the commission of or immediate flight therefrom, the accused was armed with a
2 deadly weapon or displayed what appeared to be a firearm. It is further alleged that during the commission
of this offense, the defendant or an accomplice was armed with a deadly weapon, to-wit: a firearm.

3 COUNT IV: KIDNAPING IN THE SECOND DEGREE, RCW 9A.40.030(1):

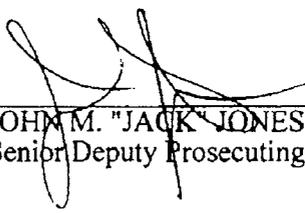
4 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
5 November, 1999, as principal or accomplice, did intentionally abduct another person, to-wit: Louise Rowan
and Stephanie McElhiney, with intent to facilitate the commission of any felony.

6 COUNT V: MALICIOUS MISCHIEF IN THE SECOND DEGREE, RCW 9A.48.080(1)(a):

7 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
8 November, 1999, as principal or accomplice, did knowingly and maliciously cause physical damage to the
property of another, in excess of \$250.

9 DATED this 20th day of March, 2000.

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JOHN M. "JACK" JONES, WSBA#16786
Senior Deputy Prosecuting Attorney

APPENDIX C

FILED
SUPERIOR COURT
THURSTON COUNTY

2000 MAR 21 PM 2:

BETTY J. GOULD, CLE

DEPUTY

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

STATE OF WASHINGTON
Plaintiff,

vs.

JUSTIN MICHAEL SHEA,
Defendant.

NO. 00-1-109-0

PLEA AGREEMENT

The State will allow the defendant to plead guilty to, *Burglary in the First Degree, Robbery in the First Degree Wile Armed with a Deadly weapon-Firearm, Assault in the Second Degree, Kidnaping in the Second Degree, and Malicious Mischief in the Second*), under the following conditions:

1. The defendant shall plead guilty to these charges and shall accept responsibility for defendant's part in having committed these offenses Defendant shall agree with, do nothing to undermine, and shall join the State in its sentencing recommendation, and agree to a stipulated exceptional sentence as to the period of community custody.
2. The defendant's plea will be guilty to the charges listed above. The defendant's total standard range for these charges, is 168-204 months. The State will recommend a 168 month sentence and a 60 month period of community custody, if the below conditions are met. Defendant hereby acknowledges the right to be sentenced within 40 court days of defendant's guilty plea, and hereby irrevocably, knowingly, intelligently and voluntarily waives immediate sentencing and agrees to not be sentenced until after completion of the trial of any and all other participants in this crime who may be charged, tried or plead guilty.
3. The defendant shall attend all court and/or other proceedings, voluntarily participate in any additional truthful, complete, and comprehensive interviews, along with any necessary follow-up interviews requested by the

1 State, and provide every detail of defendant's own participation in these
2 offenses, as well as that of every other person's participation, actions, or
3 inactions, in Tumwater Police case #99-3219.

4 4. In the event that the defendant is deceptive, untruthful, incomplete, or if
5 defendant in any way fails in any of defendant's obligations under this
6 agreement or attempts to evade any of defendant's responsibilities under this
7 agreement, the State and the defendant hereby stipulate and agree to the
8 withdrawal of the defendant's guilty plea, judgement and sentence, upon
9 notice by the State, after which time defendant shall be subject to
10 prosecution for all appropriate charges originally available out of these
11 incidents. The defendant hereby irrevocably, knowingly, intelligently and
12 voluntarily waives any and all objections to withdrawal of his guilty plea
13 pursuant to this agreement, and his subsequent bench trial on the charges
14 that will be brought against him, and he acknowledges and hereby
15 irrevocably, knowingly, intelligently and voluntarily waives his right to a
16 speedy trial within 60 days of his original arraignment and/or arraignment
17 on an amended information. Defendant acknowledges his right to a jury
18 trial, and hereby irrevocably makes this knowing, intelligent and voluntary
19 waiver of that right.

20 5. Defendant must willingly testify completely and truthfully on behalf of the
21 State in the trial of any and all individuals charged in connection with the
22 crimes described above.

23 6. If the State finds, in good faith, that the defendant has failed under any of
24 defendant's obligations under this agreement, then the defendant stipulates
25 and agrees that the State is released from its sentencing recommendation
26 obligation; that defendant's guilty plea, and judgement and sentence, will be
withdrawn, and the State will be free to file all appropriate charges
originally available from the cases referenced above, and related incidents.
Defendant shall be entitled to a hearing by this court in the event defendant
alleges the State has acted in bad faith in finding that the defendant has

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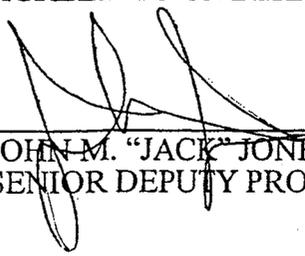
failed under any of defendant's obligations under this agreement. Defendant shall have the burden of proof, by a preponderance of the evidence, at such hearing. Defendant further irrevocably voluntarily, knowingly, and intelligently waives defendant's right to a jury trial and stipulates to the admission at defendant's bench trial, without objection, of all reports and statements regarding the cases referenced in paragraph three, and all related incidents, as supplemented by any further investigation, and including the defendant's own custodial statements, if any, and the statements of all other victims, witnesses and/or participants.

I have read the above agreement and have had the agreement explained to me by my attorney. I fully understand this agreement and knowingly, voluntarily, and intelligently, agree to be bound by its terms.

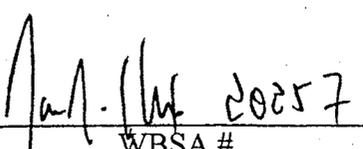
Dated this 21st day of MARCH, 2000.


JUSTIN MICHAEL SHEA

AGREED TO ON BEHALF OF THE PLAINTIFF:


JOHN M. "JACK" JONES, WSBA #16786
SENIOR DEPUTY PROSECUTING ATTORNEY

REVIEWED AND APPROVED:


_____, WSBA #
ATTORNEY FOR DEFENDANT

APPENDIX D

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

FILED
SUPERIOR COURT
THURSTON COUNTY WA

2000 MAR 21 PM 2:53

DETTY J. GOULD, CLERK

BY _____
DEPUTY

THE STATE OF WASHINGTON,)
)
Plaintiff,)
)
v.)
Justin Michael SHEA)
Defendant.)

No. 00-1-109-0

STATEMENT OF
DEFENDANT ON
PLEA OF GUILTY

1. My true name is Justin Michael SHEA
2. My age is 19
3. I went through the 12 grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is James Dixon

(b) I am charged with the crime(s) of: Burglary 1^o; Assault 2^o; Robbery 1^o with Armed with a deadly weapon - Firearm; Kidnapping 2^o; Malicious Mischief 2^o

The elements of the crime(s) are: - see First Amended Information filed herein -

_____, as set forth in the State's information, which is incorporated herein by this reference.

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during the trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to have witnesses testify for me and made to appear at no expense to me;
- (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a determination of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

(a) The crime(s) with which I am charged carries the maximum sentence LIFE years imprisonment and a \$ 50,000 fine. The standard sentence range is from 108-144 months confinement, based on the prosecuting attorney's understanding of my criminal history.

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes my prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase, and community placement may be required if a department of corrections, prison sentence results and I am convicted of a community placement offence, as explained in the SRA score sheet which is incorporated herein by this reference (see paragraph "k" below). Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase, and even though a mandatory sentence of life imprisonment without the possibility of parole is required by law.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ 500 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, and attorney fees. Furthermore, the judge may place me on community supervision, community placement, impose restrictions on my activities, and order me to perform community service, and impose crime related prohibitions.

(f) The prosecuting attorney will make the following recommendation to the judge:

168 MONTHS, 60 MOS. COMM. CUSTODY, COSTS, CVR, STIP. EXCEPTIONAL SENTENCE, COMM. ALCA AGREEMENT IS INCORPORATED HEREIN BY THIS REFERENCE.

(g) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(h) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(i) The crime(s) of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(a)(ii). *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

M (j) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise. *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

(k) A term or terms of confinement totaling more than one year shall be served in the department of corrections.

In addition to confinement in prison (the department of corrections) or in the county jail:

M (i) **Prison:** The judge will sentence me to community placement as follows: When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When a court sentences a person to a term of total confinement to the custody of the department of correction for an offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, a serious violent offense, vehicular homicide, or vehicular assault, committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. When a court sentences a person to the custody of the department of corrections for an offense categorized as a sex offense committed on or after June 6, 1996, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

M (ii) **Jail:** On all sentences of confinement for one year or less, the court may impose up to one year of community supervision. An offender shall be on community supervision as of the date of sentencing. However, during the time for which the offender is in total or partial confinement pursuant to the sentence or a violation of the sentence, the period of community supervision shall toll. *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

(1) The judge may sentence me as a first time offender, instead of giving a sentence within the standard range, if I qualify under RCW 9.94A.030(20). This sentence could include as much as 90 days' confinement, twenty-four months

of community supervision, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

(m) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge. *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

(n) If the crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

(o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis. *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

(p) Because this crime involves kidnaping of a minor child that is not a relative, or a sex offense, I will be required to register with the sheriff of the county of the state of Washington where I reside. I must register immediately upon being sentenced unless I am in custody, in which case I must register within 24 hours of my release.

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

If I change my residence within a county, I must send written notice of my change of residence to the sheriff at least 14 days before moving and must register again with the sheriff within 24 hours of moving. If I change my residence to a new county within this state, I must send written notice of my change of residence to the sheriff of my new county at least 14 days before moving, register with that sheriff within 24 hours of moving and I must give written notice of my change of address to the sheriff of the county where last registered within 10 days of moving. If I move out of Washington State, I must also send written notice within 10 days of moving to the county sheriff with whom I last registered in Washington State. *(If not applicable, these three paragraphs should be stricken and initialed by the defendant and the judge.)*

(q) This offense is a most serious offense as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses (or at least one prior conviction for a most serious offense in the case of a current conviction for certain sex offenders), whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

(r) I understand that I may not possess, own or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. (PURSUANT TO RCW 9.41.047(1), THE JUDGE SHALL READ THIS SECTION TO THE DEFENDANT IN OPEN COURT IF THE DEFENDANT IS PLEADING GUILTY TO A FELONY OR ANY OF THE FOLLOWING CRIMES WHEN COMMITTED BY ONE FAMILY OR HOUSEHOLD MEMBER AGAINST ANOTHER: ASSAULT IN THE FOURTH DEGREE, COERCION, STALKING, RECKLESS ENDANGERMENT, CRIMINAL TRESPASS IN THE FIRST DEGREE, OR VIOLATION OF THE PROVISIONS OF A PROTECTION ORDER OR NO-CONTACT ORDER RESTRAINING THE PERSON OR EXCLUDING THE PERSON FROM A RESIDENCE (RCW 25.50.060, 26.50.070, 26.50.130, OR 10.99.040)). THE CLERK SHALL FORWARD A COPY OF THE DEFENDANTS DRIVER'S LICENSE, IDENTICARD, OR COMPARABLE IDENTIFICATION TO THE DEPARTMENT OF LICENSING ALONG WITH THE DATE OF CONVICTION.)

7. I plead GUILTY to the crime(s) of: Burglary 1^o, Robbery 1^o, White Assault with Firearm, Assault 2^o, kidnaping 2^o and Malicious Mischiefs 2^o

as charged in the 1st Amended information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me, or to any other person, to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth on this statement.

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime. This is my statement: On November 16, 1999, in Thurston County, 3 co-defendants and I

unlawfully entered Blockbuster Video. One of my co-defendants assaulted
Lavise Polwan by pointing a gun at her. We then unlawfully took money
from Blockbuster by threatened use of immediate force and one of the co-
defendants was armed with a gun. We abducted one of the employees

by forcing her into the restroom in order to facilitate the robbery. I also knowingly and maliciously damaged property belonging to Blockbuster, in an amount greater than \$250.

12. My lawyer has explained to me, and we fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

DEFENDANT'S ADDRESS:

Justin Allen
Defendant

I have read and discussed this statement with the defendant and I believe that the defendant is competent and fully understands this statement, and makes this plea freely, knowingly, and voluntarily.

[Signature]
Deputy Prosecuting Attorney, WSBA# 6786

[Signature] 20257
Defendant's Lawyer, WSBA#

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that (check the appropriate item):

- (a) the defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her; or
- * (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.**

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 21 day of March, 2000

[Signature]
JUDGE
CHRISTINE A. POMEROY

* I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language which the defendant understands, and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this _____ day of _____

Interpreter

****Verification by Interpreter.** If a defendant is not fluent in the English language, a person the court has determined has fluency in the defendant's language shall certify that the above written statement of defendant upon plea of guilty has been translated orally or in writing and that the defendant has acknowledged that he or she understands the translation.

APPENDIX E

1 March 21, 2000

Olympia, Washington

2

AFTERNOON SESSION

3

Department 6

Hon. Christine Pomeroy, Presiding

4

(Appearances as heretofore noted.)

5

Monica Jean Mestas, Official Reporter

6

--o0o--

7

8

MR. JONES: Your Honor, if we could next do

9

Item No. 6, State vs. Shea. It might be add-on 6.

10

THE CLERK: Add-on 6.

11

MR. DIXON: Good afternoon, your Honor.

12

THE COURT: Good afternoon, Counsel.

13

MR. JONES: Your Honor, this is on for

14

arraignment on an amended information. I'll hand up the

15

first amended information and I'll also serve a copy,

16

having previously furnished a copy of that first amended

17

information to the defendant and Mr. Dixon.

18

MR. DIXON: Mr. Shea acknowledges receipt of a

19

copy of the first amended information, waives its

20

reading, also waives advisement of rights. Mr. Shea's

21

intention is to enter pleas of guilty to all counts in

22

that first amended information, and I'm asking Mr. Jones

23

to hand up the plea statement. Mr. Shea and I have gone

24

over that statement in its entirety half an hour ago.

25

MR. JONES: I'm also handing up the statement of

1 this defendant's criminal history, the SRA score sheets,
2 a comprehensive plea agreement and a stipulation as to
3 an exceptional sentence, if the court so permits.

4 THE COURT: Mr. Shea, you're 19 years old.

5 THE DEFENDANT: That's correct.

6 THE COURT: You went through the 12th grade.
7 You're pleading guilty to burglary in the first degree,
8 assault in the second degree, robbery in the first
9 degree, while armed with a deadly weapon, to wit, a
10 firearm; kidnapping in the second degree and malicious
11 mischief in the second degree. Let's go over the rights
12 you're giving up.

13 You're giving up your right to a speedy trial. Do
14 you understand that?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: You're giving up your right to hear
17 and question witnesses and to call witnesses in your own
18 defense. Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: The presumption of innocence is lost
21 once you plead guilty. Do you understand?

22 THE DEFENDANT: Yup.

23 THE COURT: And the right to appeal the
24 determination of guilt is lost once you plead guilty.

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Now, the maximum sentence for
2 burglary in the first degree, robbery in the first
3 degree is a life sentence. Do you understand that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: The others, assault in the second
6 degree, kidnapping in the second degree, is ten years.
7 Malicious mischief in the second degree is five years.
8 That's the worst that can happen to you.

9 There are high fines for these. Although I have
10 never given those, I must tell you those on the record.
11 That is \$50,000 for a Class A felony, which burglary in
12 the first degree and robbery in the first degree are.
13 You understand that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: You understand the assault in the
16 second degree and kidnapping in the second degree are
17 both Class B felonies, and the fine is \$20,000. A
18 Class C felony, which is malicious mischief in the
19 second degree, that's \$10,000. That's the worst that
20 can happen to you.

21 Now, the standard range for this is 168 to
22 204 months.

23 I ask this of both of you. The 168 through 204,
24 does that include the enhancement for a firearm?

25 MR. JONES: Yes, your Honor, it does.

1 THE COURT: Do you understand that?
2 THE DEFENDANT: Yes, I do.
3 THE COURT: Do you understand that it must be
4 enhanced because of a deadly weapon, a firearm?
5 THE DEFENDANT: Yup.
6 THE COURT: And that's 36 months?
7 MR. JONES: Sixty months, your Honor. Sixty
8 months for a Class A felony, 36 months for a B felony.
9 THE COURT: Now, their recommendation is for the
10 low end, 168; 60 months of community custody, which
11 means probation or parole afterwards; court costs; crime
12 victim's compensation; stipulate to an exceptional
13 sentence.
14 MR. JONES: As to the --
15 THE COURT: Complete plea agreement is
16 incorporated herein by this reference. And 60 months'
17 period of community custody, is that 168 plus 60?
18 MR. JONES: Correct, your Honor.
19 THE COURT: For 218?
20 MR. JONES: Well, the first part will be in
21 prison; the last 60 months is served in community
22 custody at community placement outside of the prison.
23 THE COURT: Is that parole?
24 MR. JONES: Yeah. It's like parole, your Honor.
25 THE COURT: I just want to make sure that we're

1 not talking 218. It's parole.

2 And you understand that, sir, Mr. Shea.

3 THE DEFENDANT: Yes, I do.

4 MR. JONES: The standard period would only be
5 12 years -- 12 months, rather.

6 MR. DIXON: Twenty-four.

7 THE COURT: You have to participate and answer
8 truthfully anything that they want you to. Truthfully.

9 What this says to me is "On November 16th, 1999, in
10 Thurston County, three codefendants and I entered
11 Blockbuster Video. One of my codefendants assaulted
12 Louise Rowan (phonetic spelling) by pointing a gun at
13 her. We unlawfully took money from Blockbuster by
14 threatening use of immediate force. And one of the
15 codefendants was armed with a gun. We abducted one of
16 the employees by forcing her into the restroom in order
17 to facilitate the robbery. I also knowingly and
18 maliciously damaged the property to an amount greater
19 than \$250."

20 Is that what happened?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Have you read all four pages of this
23 statement?

24 THE DEFENDANT: (Nods head.)

25 THE COURT: Counsel, you have gone over it, you

1 told me, right before. Is that correct?

2 MR. DIXON: Yes, your Honor, I did.

3 THE COURT: Do you believe this is a knowingly
4 made plea?

5 MR. DIXON: Yes, your Honor.

6 THE COURT: And you believe that he understands
7 the charge and the consequences?

8 MR. DIXON: I do, your Honor.

9 THE COURT: Is this what you want to do? Is
10 this what you want to do? Is this what you -- do you
11 want to plead guilty?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: I accept this, then. After
14 questioning the defendant and counsel, there is a
15 factual basis that supports this. I will now accept it.
16 Now, with this, do you wish to set sentencing?

17 MR. DIXON: We're prepared to proceed to
18 sentencing today, your Honor.

19 MR. JONES: Yes, your Honor. The comprehensive
20 plea agreement is such that if necessary the plea can be
21 withdrawn, although we do not contemplate that.

22 I would also indicate that I believe some people are
23 here that were a victim or associated with the victim of
24 this crime and may wish to address the court.

25 THE COURT: Okay. Tell me about it.

1 MR. JONES: Yes, your Honor. This occurred last
2 year. It was the Blockbuster Video in Tumwater on
3 Trospen Road. Folks were closing up the shop. It was
4 closed, not open for business.

5 The four entered the premises. One of them was
6 armed with a firearm. They were aware of where things
7 were on the premises, I believe because this defendant
8 was a former employee there.

9 They went to the camera that took recordings of
10 everything that was going on in the store and pulled the
11 tape so that they would not leave pictures of themselves
12 behind.

13 They threatened the employee with a firearm. They
14 took all the money from the safe after waiting for some
15 time. They threatened the folks that were there. There
16 was both an employee and another person that was there.
17 Louise Rowan and Stephanie McElhiney (phonetic
18 spelling). And they were also taken to the bathroom and
19 told to stay there when the employees left -- I mean,
20 when the robbers left.

21 This defendant and three other defendants, two of
22 whom have pled guilty previously but have not been
23 sentenced yet and one of whom has yet to plead guilty
24 and be sentenced here this afternoon, Mr. Edwards, are
25 all before the court.

1 THE COURT: Okay. Anything you want to say?

2 MR. DIXON: There's a lot I'd like to say, your
3 Honor. But in the interest of time -- and I understand
4 it's a pretty busy calendar -- I'll try to keep it brief
5 despite the fact I have a very strong obligation to
6 Justin and his family.

7 This is a case, your Honor, quite frankly, that
8 Mr. Shea didn't have much wiggle room. It was a very,
9 very strong case for the state and it included two
10 statements from two respective codefendants fully
11 implicating Mr. Shea. And quite frankly, all of the
12 pieces fit.

13 When Mr. Shea was arrested, he didn't provide any
14 statement. And when the -- one of the other
15 codefendants was arrested, he didn't provide a
16 statement, either.

17 However, the other two codefendants have cooperated
18 with the state and have given full disclosures to the
19 state, and all of the facts fit. It was a very
20 straightforward case for the state to prove.

21 That being said, it was -- with that in mind, it was
22 difficult, if not virtually impossible, for me to
23 continue to bang on Mr. Jones' door and beg, plead,
24 cajole him for some sort of a deal, if you will, that I
25 thought Mr. Shea could live with.

1 Mr. Jones, to his credit, as he always is, was
2 willing to discuss with me -- or was willing to listen
3 to me, to what I had to say. But he didn't have to
4 give. And he gave a little bit toward the very end, but
5 it was a very, very strong case for the state.

6 Mr. Shea is a life-long member of this community.
7 He has very strong family support. His grandfather is
8 here in court this afternoon. His other family members
9 would have been here had they had a little bit more
10 notice but they all work and couldn't get away.

11 This is a young man, your Honor, who until literally
12 months ago had never been in trouble, ever, about
13 anything. And now he's looking at going to prison for
14 168 months. That is an incredible amount of time.

15 THE COURT: That's over ten years. I don't know
16 how much.

17 MR. DIXON: It's 11 and some odd years of real
18 time, bearing in mind that the 60-month sentencing
19 enhancement includes no good time and must be served
20 consecutive to the standard range for the underlying
21 offenses. So by my calculation, he's looking at real
22 time of 11 years, a little over 11 years. And for a
23 young man in his situation --

24 THE COURT: He'll be 30 years old.

25 MR. DIXON: Thirty years old. And what I told

1 him today and what I've been telling him during the
2 pendency of this case, is You have a chance to get out
3 when you're 30; that's better than not getting out at
4 all.

5 Because had he gone to trial and been convicted of
6 all of the underlying offenses, with all of the firearm
7 enhancements and under the provisions of the law as they
8 currently are, meaning consecutive sentences for the
9 firearm enhancements, no good time, the sentencing
10 enhancements alone, just alone, would have been 40 years
11 mandatory. But 11 years is a very, very long time for a
12 young man in this situation to go to prison.

13 He did a very stupid thing, a very criminal thing.
14 He robbed Blockbuster Video with three other people, and
15 he's going to prison for 11 years.

16 I would like to be able to ask the court to give him
17 some -- something less than the sentence that is
18 recommended, but I can't. There is no basis for an
19 exceptional sentence, either in fact or in law. This is
20 an agreement that, as I mentioned earlier, Mr. Jones and
21 I have had a lot of discussions about, albeit, kind of
22 one-way discussions on my part.

23 But finally, we've come to an agreement on
24 something that Mr. Shea can literally -- I don't mean
25 figuratively; I mean literally -- live with. We're

1 asking the court to impose the sentence that's jointly
2 recommended, your Honor. Thank you.

3 THE COURT: Mr. Shea, is there anything you want
4 to tell us?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Anything else?

7 MS. JENSEN: Your Honor, my name is
8 Kristen Jensen (phonetic spelling) and I represent
9 Blockbuster Video. I just would like the court to know
10 the impact that this crime has had not only on the
11 company but, more importantly, on the staff of the
12 store.

13 THE COURT: Are you the manager at the store?

14 MS. JENSEN: No. I'm in the loss prevention
15 department. That evening it was -- excuse me -- it was
16 very stressful for the entire crew and it has continued
17 to be throughout this whole process. We just want the
18 court to know what impact he's had and that we -- we can
19 only ask for the maximum amount of sentencing you can
20 give.

21 THE COURT: Thank you. Mr. Shea, you're
22 19 years old. That's young, by my book. Even the loss
23 prevention people, it really actually -- your emotions
24 and her emotions -- this is an emotional time. Your
25 grandpa is here, heart sick.

1 I agree with counsel; there is no reason to go down
2 from this sentence.

3 MR. JONES: Your Honor, I would -- I forgot to
4 mention to you that one of the victims, Louise Rowan,
5 would not be here because she has died since these
6 events took place, having taken her own life.

7 THE COURT: Whoa. That is even -- you know, I
8 guess you have to live with that.

9 But firearms -- I bet you never realized what the
10 impact was on you as you planned this out. I think you
11 planned a robbery but I don't think you planned the
12 results, if that makes any sense to somebody.

13 The legislature has said you will pay. And pay
14 dearly you will for such a thing. I am only thankful
15 that you have a very good defense attorney and a
16 reasonable prosecutor, because 40 years is too long to
17 sit for a mistake.

18 Now, you're going for 11 years, 11 and a half years,
19 and then you're going for 60 plus months community
20 placement as I give you the 168 months plus (sic)
21 60 months of community custody.

22 The costs of \$500 crime victim's compensation and
23 \$110 costs. You are stipulating to an exceptional
24 sentence; and pursuant to the plea agreement, it will be
25 incorporated herein.

1 Mr. Shea, 11 and a half years. You can do one of
2 two things: You can learn a trade, you can get an
3 education, you can work your way up to Cedar Creek or
4 one of the work camps. I don't know if you can. But
5 I'm saying there are systems within the prison system to
6 help you.

7 So when you get out and you're 30 years old, you can
8 be a welder, you can be a computer programmer. I want
9 you to do something for yourself but also for the young
10 lady who took her own life. I'm not saying that you
11 were the cause of it. But it may have had an impact.

12 You can do something for society if you use it well.
13 You can either learn to be a better criminal -- and if
14 you come back on even a Class C felony with this
15 history, you'll go away for life --

16 This is a strike, is it not, Counsel?

17 MR. JONES: Yes, your Honor. These will all
18 count together as one strike.

19 THE COURT: As one strike, yes. Which means
20 three strikes law, you're out.

21 But when you see your grandpa -- he's going to come
22 and visit you -- when you see your friends and family
23 and when you see anyone else after you're 30 years old,
24 you say, "I made a mistake, I did my time but I will not
25 make a second mistake. I will do something for myself."

APPENDIX F

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff,

No.00-1-109-0

FILED
SUPERIOR COURT
THURSTON COUNTY WA
2000 MAR 21 PM 2:51

JUSTIN MICHAEL SHEA ,
Defendant.

PCN: 005832365
SID: WA19722388
If no SID, use DOB: 12-08-80

JUDGMENT AND SENTENCE (JS)

- BY _____
DEPUTY
- Prison
 - Jail One Year or Less
 - First Time Offender
 - Special Sexual Offender Sentencing Alternative
 - Special Drug Offender Sentencing Alternative

I. HEARING

1.1 A sentencing hearing was held on March 21, 2000 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:

W.S.P. IDENT.



005832365

2.1 CURRENT OFFENSE(S): The defendant was found guilty on March 21, 2000 by plea jury verdict bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
I	BURGLARY IN THE FIRST DEGREE	9A.52.020(1)	November 16, 1999
II	ASSAULT IN THE SECOND DEGREE	9A.36.021(1)(c)	November 16, 1999
III	ROBBERY IN THE SECOND DEGREE WHILE ARMED WITH A DEADLY WEAPON - FIREARM	9A.56.200(1) 9.94A.125 9.94a.310	November 16, 1999
IV	KIDNAPING IN THE SECOND DEGREE	9A.40.030(1)	November 16, 1999
V	MALICIOUS MISCHIEF IN THE SECOND DEGREE	9A.48.080(1)(a)	November 16, 1999

as charged in the (FIRST AMENDED) Information

- Additional current offenses are attached in Appendix 2.1
- A special verdict/finding for use of a firearm was returned on Count(s) III RCW 9.94A.125, .310
- A special verdict/finding for use of a deadly weapon other than a firearm was returned on Count(s) _____
RCW 9.94A.125, .310
- A special verdict/finding of sexual motivation was returned on Count(s) _____ RCW 9.94A.127
- A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, in a public transit vehicle, or in a public stop shelter.
- 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
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):
- Other current conviction listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360)

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult or Juv.	TYPE OF CRIME
THEFT IN THE FIRST DEGREE	02-15-00	THURSTON COUNTY 99-1-1441-7	09-07-99	A	NV

- 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.360
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

2.3 **SENTENCING DATA:**

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	Plus enhancement for Firearm (F), other deadly weapon finding (D), or VUCSA (V) in a protected zone	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	8	VII	77-102 mos.	N/A	77-102 mos	LIFE
II	8	IV	53-70 mos.	N/A	53-70 mos.	10 YRS
III	8	IX	108-144 mos	60 mos.	168-204 mos	LIFE
IV	8	V	62-82 mos.	N/A	62-82 mos.	10 YRS.
V	5	I	4-12 mos	N/A	4-12 mos.	5 YRS.

- Additional current offense sentencing data 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) I-IV. Findings of fact and conclusions of law are attached in Appendix 2.4. 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.142

- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142): _____

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

III. JUDGMENT

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

3.2 The Court DISMISSES Counts _____

3.3 The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of the Court \$ 3932.79 Restitution to: BLOCK BUSTED VIDEO, LOSS PREVENTION MGR,
1011 SOUTHWEST KETCHIKAT WAY BLDG. C - UNIT #107, SEATTLE, WA 98134

CLASS CODE \$ 665.53 Restitution to: L & E, P.O. BOX 44288, OLYMPIA, WA 98504-4288 (CASE # A276329)

RTN/RJN \$ _____ Restitution to: _____
(Name and Address-address may be withheld and provided confidentially to Clerk's Office)

PCV \$ 500 Victim Assessment RCW 7.68.035

CRC \$ 110 Court costs, including: RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190
Criminal Filing fee \$ _____ FRC
Witness costs \$ _____ WFR
Sheriff service fees \$ _____ SFR/SFS/SFW/SRF
Jury demand fee \$ _____ JFR
Other \$ _____

PUB \$ _____ Fees for court appointed attorney RCW 9.94A.030

WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.030

FCM \$ _____ Fine RCW 9A.20.021; VUSCA additional fine deferred due to indigency RCW 69.50.430

CDF/LDV \$ _____ Drug enforcement fund of _____ RCW 9.94A.030

FCD/NTF/SAD/SDI

CLF \$ _____ Crime lab fee deferred due to indigency RCW 43.43.690

EXT \$ _____ Extradition costs RCW 9.94A.120

\$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1,000 maximum) RCW 38.52.430

\$ _____ Other costs for: _____

\$ 5208.32 TOTAL RCW 9.94A.145

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.142. A restitution hearing:
 shall be set by the prosecutor
 is scheduled for _____

RESTITUTION. Schedule attached, Appendix 4.1

Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant	CAUSE NUMBER	(Victim Name)	(Amount\$)
JASON GOVAY	00-1-105-7	LOTH	ALL
DOMINIC LARSON	00-1-111-1	"	"
KARLIL EDWARDS	00-1-112-0	"	"

The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____. RCW 9.94A.145

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. RCW 9.94A.145

The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190

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

4.2 HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340

DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county of Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

4.3 The defendant shall not use, own, or possess firearms or ammunition while under the supervision of the Department of Corrections. RCW 9.94A.120

4.4 The Defendant shall not have contact with STEPHANIE MCELGINAY BLOCK BUSTAR VILARDO, TURNER (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE years (not to exceed the maximum statutory sentence.).

Domestic Violence Protection Order or Anti-Harassment Order is attached as Appendix 4.4.

4.5 OTHER: _____

4.6 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:
(a) CONFINEMENT. RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

102 months on Count I 82 months on Count IV
70 months on Count II 12 months on Count III
168 months on Count III _____ months on Count _____
INCLUDS 60 MOS
[unclear]

Actual number of months of total confinement ordered is: 168 MO.
(Add mandatory firearm or deadly weapon enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

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 the following which shall be served consecutively: _____

The sentence herein shall run concurrently with the sentence in cause number(s) _____ but consecutively to any other felony cause not referred to in this Judgment. RCW 9.94A.400

Confinement shall commence immediately unless otherwise set forth here: _____

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

4.7 COMMUNITY PLACEMENT is ordered on Counts _____ for _____ months
 COMMUNITY CUSTODY is ordered on Counts I-IV for 60 months or for the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.120(9) for community placement offenses—serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense — RCW 9.94A.120(10). Use paragraph 4.8 to impose community custody following work ethic camp.]

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 Department of Corrections-approved education, employment and/or community 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 the Department of Corrections; (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections. The residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community placement or community custody. Community custody for sex offenders 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 not consume any alcohol.
 Defendant shall have no contact with: STEPHANIA McELHINAY OR BLOCKBUSTER VIDEO

Defendant shall remain within outside of a specified geographical boundary, to-wit: _____

The defendant shall participate in the following crime-related treatment or counseling services: _____

The defendant shall comply with the following crime-related prohibitions: _____

Other conditions may be imposed by the court or Department during community custody, or are set forth here: _____

STIPULATED EXCEPTIONAL SENTENCE

4.8 WORK ETHIC CAMP. RCW 9.94A.137, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. If the defendant successfully completes work ethic camp, the department shall convert the period of work ethic camp confinement at the rate of one day of work ethic camp to three days of total standard confinement. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions of community custody. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.7.

4.9 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

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

5.2 LENGTH OF SUPERVISION. The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. RCW 9.94A.145.

5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in paragraph 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.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030

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.200

Cross off if not applicable:

5.6 FIREARMS. 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, identicaid, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

5.8 OTHER: BAIL, IF ANY, IS HEREBY EXONERATED AND SHALL BE RETURNED TO THE POSTING PARTY _____

Done in Open Court in the presence of the defendant this date: 3/21/00

Christine Pomeroy
JUDGE Print name: CHRISTINE A. POMEROY
Justin Misdad
Defendant

Senior Deputy Prosecuting Attorney
WSBA#16786
Print name: JOHN M. "JACK" JONES

James Dixon
Attorney for Defendant
WSBA#20257
Print name: JAMES DIXON

Translator signature/Print name: _____

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.

CAUSE NUMBER of this case: 00-1-109-0

I, Betty J. Gould, 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

SID No. WA19722388

Date of Birth 12-08-80

(If no SID take fingerprint card for State Patrol)

FBI No. UNKNOWN

Local ID No. C91611

PCN No. 005832365

Other _____

Alias name, SSN, DOB: 532-11-7325 12-08-80

Race:

Ethnicity:

Sex:

Asian/Pacific Islander

Black/ African-American

Caucasian

Hispanic

Male

Native American

Other: _____

Non-hispanic

Female

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court: K. Woods, Deputy Clerk. Dated: 3/21/00

DEFENDANT'S SIGNATURE:

Justice Michael Shea

Left 4 fingers taken simultaneously	Left Thumb	Right Thumb	Right 4 fingers taken simultaneously
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON,)
)
Plaintiff,)
)
vs.)
)
JUSTIN MICHAEL SHEA,)
)
Defendant.)
_____)

NO. 00-1-109-0

FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE:
EXCEPTIONAL SENTENCE -
APPENDIX 2.4 TO JUDGMENT
AND SENTENCE

I. FINDINGS OF FACT

The Court finds the following aggravating factors:

1. The parties stipulate and agree that there are substantial and compelling reasons justifying an exceptional sentence allowing for a five year period of community custody.
2. But for the plea agreement in this case, defendant would be facing greater charges and lengthier sentences.

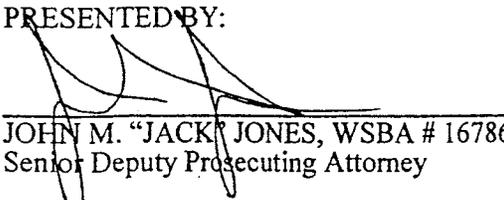
Based upon the above stipulation and findings of fact, the Court finds the presence of aggravating circumstances, as to the length of the period of community custody, to the extent stipulated by the parties.

II. CONCLUSIONS OF LAW

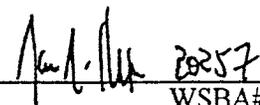
The court concludes that, based upon the above stipulation and findings, there are substantial and compelling reasons justifying an exceptional sentence outside of the standard range, to the limit of the parties stipulation, justifying a five year period of community custody.

DATED this 21 day of March 2000.


JUDGE **CHRISTINE A. POMEROY**

PRESENTED BY:


JOHN M. "JACK" JONES, WSBA # 16786
Senior Deputy Prosecuting Attorney

AGREED TO AND APPROVED BY:


WSBA#
Attorney for Defendant



JUSTIN MICHAEL SHEA, Defendant

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

STATE OF WASHINGTON)
)
Respondent,)
)
vs.)
)
JUSTIN SHEA,)
)
Appellant.)

COA NO. 35055-6-II

COURT OF APPEALS
DIVISION II
07 JUN 28 PM 12: 52
STATE OF WASHINGTON
BY DERIDY

DECLARATION OF SERVICE

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

THAT ON THE 27TH DAY OF JUNE 2007, I CAUSED A TRUE AND CORRECT COPY OF THE **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] JAMES C. POWERS
THURSTON COUNTY PROSECUTOR'S OFFICE
2000 LAKERIDGE DRIVE SW
OLYMPIA, WA 98502-6001

- [X] JUSTIN SHEA
DOC NO. 807031
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN, WA 98520

SIGNED IN SEATTLE WASHINGTON, THIS 27TH DAY OF JUNE 2007.

x Patrick Mayovsky