

NO. 35837-9-II

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

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STATE OF WASHINGTON, Respondent

v.

MICHAEL VASILY KOLESNIK, Appellant

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07 JUL 17 PM 2:00  
COURT OF APPEALS  
DIVISION II  
STATE OF WASHINGTON  
BY DEPUTY

FROM THE SUPERIOR COURT FOR CLARK COUNTY  
THE HONORABLE JOHN P. WULLE  
CLARK COUNTY SUPERIOR COURT CAUSE NO. 05-1-02752-5

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BRIEF OF RESPONDENT

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I. STATEMENT OF FACTS

The State accepts the statement of facts as set forth by the defendant in his brief.

II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1

The first assignment of error raised by the defendant is that trial counsel's failure to object to testimony from one of the experts constituted ineffective assistance of counsel. Specifically, the State called Margaret Dean, the Medical Director of Western State Hospital, as a witness. She testified concerning mental evaluations performed on the defendant and that in her opinion the defendant suffered from antisocial personality disorder (among other problems). The defendant now, on appeal, maintains that this constituted ineffective assistance by not objecting to this.

To demonstrate ineffective assistance of counsel, a defendant must make two showings: (1) defense counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances; and (2) defense counsel's deficient representation prejudiced the defendant, i.e., there is a reasonable probability that, except for counsel's unprofessional errors, the result of

the proceeding would have been different. State v. Thomas, 109 Wn.2d 222, 225-226, 743 P.2d 816 (1987). Competency of counsel is determined based upon the entire record below. State v. White, 81 Wn.2d 223, 225, 500 P.2d 1242 (1972). There is a strong presumption that trial counsel's representation was effective. State v. Brett, 126 Wn.2d 136, 198, 892 P.2d 29 (1995).

Defense counsel's legitimate trial strategy or tactics cannot be the basis for a claim of ineffective assistance of counsel. State v. Garrett, 124 Wn.2d 504, 520, 881 P.2d 185 (1994); State v. Mak, 105, Wn.2d 692, 731, 718 P.2d 407 (1986). Decisions regarding the subjects for examination or cross-examination generally are not basis for concluding counsel's performance was deficient. State v. Piche, 71 Wn.2d 583, 590-591, 430 P.2d 522 (1967); State v. Wilkinson, 12 Wn. App. 522, 525-526, 530 P.2d 340 (1975).

Before and during the testimony of Dr. Dean, there was discussion concerning the scope of her testimony. Defense counsel made it quite clear that he was not going to be objecting a lot to her conclusions because it was part of an overall strategy.

MR. BARRAR (Defense Attorney): And we will state, Your Honor, that this is a trial strategy that we need to get all the information that the doctor used in front of the jury for our defense. So rather than piecemeal it and try to get

certain parts out, certain parts sanitized, we're allowing the bulk of it to go to the jury as a trial strategy.

THE COURT: And you've talked about this with your client?

MR. BARRAR: Yes.

THE COURT: Is that correct, Mr. - - ?

THE DEFENDANT: Yes.

(RP 218, L.20 – 219, L.6)

Thus, as part of this strategy, the defense attorney wanted the jury to know that the defendant suffered from a serious drug and alcohol problem and that he had an antisocial personality and that on a previous occasion he had cut an electronic home confinement bracelet off for purposes of escape. When the defense attorney then began questioning Dr. Dean, it was in line with the concept that the defendant, rather than forcefully attacking the officer for purposes of killing him or assaulting him, was merely attempting, in his own feeble way, to escape from the officer.

QUESTION (Mr. Barrar, Defense Attorney): Okay. You then - - you further offer an opinion that you said it's therefore possible that he was experiencing substance abuse induced psychosis symptoms at the time; however, he most likely was not. Is that - - is that an accurate - -

ANSWER (Dr. Dean): No. What my opinion was, was that although it's possible that he was experiencing substance-induced psychotic symptoms at the time, but

nevertheless, even if he was, he was still able to form intent.

QUESTION: We all have certain controls on our behavior that tend to get more and more severe or less severe dependent upon the amount of intoxication, whether it's alcohol, drugs.

So it's possible that he was on a sliding scale of controlling his behavior at the time to the point where he knew that what he was doing was risky but he did it anyway.

And as opposed to if he was totally sober, he may not have exhibited those same behaviors, because the behavior would be risky.

ANSWER: Yes, that would be fair to say, but that could be the result of intoxication, being a little bit more impulsive, for sure.

Although also people who are antisocial are prone to - - to doing risky things and, as you put it, not caring.

QUESTION: Okay. So - - so when a normal person looks at behavior they may, you know, they may say that's - - that's dangerous. But when he looks at behavior, he doesn't quite see it the same, dangerous behavior, he doesn't quite see it the same way.

ANSWER: That - - the reason I'm not really comfortable necessarily saying yes to that question is that it implies that that's the way he always is, it's a permanent stage.

QUESTION: And I - - and I would stipulate that he's not always that way, but when intoxicated - -

ANSWER: Uh-huh.

QUESTION: - - he really doesn't care about anybody else, he just wants to get high.

ANSWER: That would be fair to say.

(RP 237, L.2 – 238, L.17)

This then fits into the overall strategy of the defense when they are allowed lesser included offensives of assault in the second and assault in the third degrees. The argument that counsel then makes during closing is that the jury should disregard the attempted murder and assault one aspects of this and concentrate rather on whether this is an assault in the second degree or an assault in the third degree. Part of the defense closing:

MR. BARRAR (Defense Attorney): Your job is to listen to the evidence and determine whether or not the State had proved beyond a reasonable doubt that he intended to either kill or cause great bodily harm. And they haven't done that by any stretch of the imagination.

What they've shown is that a methamphetamine addicted individual attempted to get away from a police officer, because he cut the bracelet off, his electronic monitoring bracelet, and was facing a PV, probation violation.

You don't want to kill somebody just for that, even if you're high on meth. He was - - he was more concerned about just getting high as opposed to killing a person. Does - - he never focused on the officer, he never focused on the person, he never - - he never had any reason to kill the person.

He wanted to get away because he didn't want to get caught. To kill somebody right there in public when

there's officers coming and everything else, it doesn't make sense.

What makes sense is he wants to get away.

And to find him guilty of Murder in the Second Degree (sic) or Assault in the First Degree you have to find that he wanted to stick around and really hurt this officer. He didn't. Just wanted to get away.

I submit to you your only choices you have are the assault two or assault three. And I want to leave that up to you. Assault two means that he recklessly inflicted substantial bodily harm. Kinda fits.

(RP 338, L.14 – 339, L.21)

Another way of looking at this scenario is that this borders on the concept of an invited error by the defense. The doctrine of invited error prohibits a party from setting up an error at trial and then complaining of it on appeal. State v. Wakefield, 130 Wn.2d 464, 475, 925 P.2d 183 (1996). The judge specifically asked the defendant whether or not he was in agreement with this approach and was told, by the defendant, that he agreed. The State submits that he should not be allowed at this time then to argue on appeal that his attorney was ineffective.

Finally, although the outcome of the strategy or tactics used is not the test for determining ineffective assistance, it is to be noted that the defendant was not found guilty of the more serious charge of attempted murder. Obviously there was something that the defense attorney did that

was successful. The State submits that the defendant was adequately represented by his attorney.

III. RESPONSE TO ASSIGNMENTS OF ERROR NO. 2 AND NO. 3

The second and third assignments of error raised by the defendant deal with the conviction of assault in the first degree with a finding that the defendant knew that the victim was a police officer. His claim is that the trial court should not have enhanced the penalties because this really constitutes nothing more than an assault in the third degree. The attorney on appeal goes on to clarify that the argument is that the legislature did not intend to allow the enhancements under RCW 9.94A.535(3)(v) to apply in charges of first and second degree assault against police officers. (Brief of Appellant, page 20).

The legislature has the authority to define offenses and set punishments. State v. Calle, 125 Wn.2d 769, 776, 888 P.2d 155 (1995). When a defendant's conduct violates more than one statute, the critical question is whether the legislature intended the result. In Re Personal Restraint of Orange, 152 Wn.2d 795, 815, 100 P.3d 291 (2004).

The jury found the defendant guilty of Assault in the First Degree as charged in the Second Amended Information. (CP 32). The jury was also supplied special verdict forms concerning two questions. One of the special verdict forms dealt with the use of a deadly weapon and the jury

answered that in the affirmative. (CP 81). The other special verdict form dealt with whether or not the defendant knew that the victim was a law enforcement officer who was performing his or her duties at the time of the offense. To that special verdict, the jury also answered yes. (CP 82). This was consistent with the notices that had previously been supplied to the defendant as part of the Second Amended Information. A copy of the Second Amended Information (CP 32) is attached hereto and by this reference incorporated herein. Concerning the offense committed against the law enforcement officer, the defendant was put on notice that the applicable statute was RCW 9.94A.535 (3)(v).

RCW 9.94A.535(3)(v) deals with aggravating circumstances which are to be considered by the jury and then imposed by the court. The list under aggravating circumstances is “an exclusive list of factors that can support a sentence above the standard range.” (3)(v) reads as follows:

The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim’s status as a law enforcement officer is not an element of the offense.

RCW 9.94A.535(3)(v)

The charge of Assault in the First Degree lists Greg Zimmerman as the victim but does not identify him as a police officer, merely as a “person”. The fact that he is a police officer is not an element of the crime

of Assault in the First Degree. Therefore, a clear reading of the statute would indicate that the legislative intent was that if this matter was to go to a jury and if the jury found in the affirmative, then additional penalties could be imposed by the court.

Finally, the jury was supplied lesser included instructions concerning assault in the second degree and assault in the third degree. A copy of the Court's Instructions to the Jury (CP 34) is attached hereto and by this reference incorporated herein. The jury chose not to find the defendant guilty of these lesser crimes. Assault in the third degree would have incorporated within the statutory language the fact that Greg Zimmerman was a police officer. With that in mind, the enhancements previously discussed would not apply. However, the jury chose not to do so. There is nothing to indicate that the jury was not properly instructed on the law or that they disregarded the jury instructions that they had been given. They made a decision that the proper charge was Assault in the First Degree and they found that this assault occurred with the use of a deadly weapon and that it was an assault against a police officer performing his duties.

#### IV. RESPONSE TO ASSIGNMENT OF ERROR NO. 4

The fourth assignment of error raised by the defendant on appeal is that the trial court erred when it imposed an exceptional sentence that the

defendant claims was clearly excessive. In this case, the State had recommended 240 months in prison. The standard range topped out at 184 months with the enhancements.

As the prosecutor argued to the court at the time of sentencing:

This was nearly, very nearly one of the most serious crimes that could have been committed on a law enforcement officer. If you'll recall the testimony of the emergency room doctor, Dr. Stump, he testified that on numerous blows inflicted by the defendant with that very obviously deadly screwdriver, he missed Corporal Zimmerman's temporal artery by a matter of centimeters, barely missed his temple, and drove – drove it one time a significant depth into his ear canal.

Had Corporal Zimmerman not been just incredibly lucky like he was and probably able to deflect the blows just – just barely in the amount that he did, we could easily be sentencing the defendant here on a murder case, and I could be asking for an exceptional sentence above, well above the standard range on a murder instead of an assault one.

So the prosecutor's office, like I say, we – we went into really a very significant amount of discussion in what is the right sentence to impose when somebody intentionally tries to maim a police officer who's in uniform, is trying to take a – an enforcement action.

And we think twenty years, Your Honor, is an appropriate amount of time.

(RP 381, L.22 – 382, L.22)

The length of an exceptional sentence will not be reversed as clearly excessive absent an abuse of discretion. State v. Ritchie, 126 Wn.2d 388, 392, 894 P.2d 1308 (1995); State v. Oxborrow, 106 Wn.2d

525, 530, 723 P.2d 1123 (1986). A sentence is clearly excessive if it is based on untenable grounds or untenable reasons, or an action no reasonable judge would have taken. Oxborrow, 106 Wn.2d at 531.

The State submits that this sentence given by the court was not clearly excessive. It was based on grounds that were firmly rooted in the testimony at the time of trial and could clearly be considered by the trial court after the findings by the jury.

V. RESPONSE TO ASSIGNMENT OF ERROR NO. 5

The fifth assignment of error raised by the defendant is that the trial court erred when it imposed community custody conditions not authorized by the legislature. Specifically, the claim appears to be that the trial court should not have imposed conditions dealing with controlled substances. The Appellate Court reviews the imposition of community custody conditions for abuse of discretion, reversing only if the decision is manifestly unreasonable or based on untenable grounds. State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). A condition is manifestly unreasonable if it is beyond the court's authority to impose. State v. Jones, 118 Wn. App. 199, 207-208, 76 P.3d 258 (2003). A "crime related prohibition" is a court order prohibiting conduct that directly relates to the circumstances of the crime for which the offender is being sentenced. RCW 9.94A.030(13). In our situation, there was ample testimony that the

defendant not only at the time of the occurrence was using methamphetamine, but that he had a very strong drug problem that needed to be addressed. Even the defendant when he was discussing this with the people at Western State Hospital was letting them know how serious a problem he had. Further, much of the argument that was made to the jury by the defense (as part of the overall strategy) was that he was out of control because of his drug use and other antisocial behavioral problems. The State submits, with that in mind, that these conditions are appropriate.

VI. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 12 day of July, 2007.

Respectfully submitted:

ARTHUR D. CURTIS  
Prosecuting Attorney  
Clark County, Washington

By:

  
MICHAEL C. KINZIE, WSBA#7869  
Senior Deputy Prosecuting Attorney

**APPENDIX "A"**  
**SECOND AMENDED INFORMATION**

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**FILED**

DEC 05 2006

JoAnne McBride, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

v.

MICHAEL VASILY KOLESNIK, AKA

NICHAEL M KOLESNIK

Defendant.

**SECOND AMENDED INFORMATION**

No. 05-1-02752-5

(VPD 05-24578)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

**COUNT 01 - ATTEMPTED MURDER IN THE SECOND DEGREE - 9A.32.050(1)(a)**

**/9A.28.020(3)(a)**

That he, MICHAEL VASILY KOLESNIK also known as NICHAEL M KOLESNIK, in the County of Clark, State of Washington, on or about December 13, 2005, with intent to commit the crime of Murder in the Second Degree, did an act which was a substantial step toward the commission of that crime by attempting to intentionally cause the death of Greg Zimmerman, contrary to Revised Code of Washington 9A.28.020(1) and Revised Code of Washington 9A.32.050(1)(a).

Further, the State of Washington notifies the Defendant that it is seeking a sentence above the standard sentencing range based upon the following aggravating circumstance(s):

The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense. RCW 9.94A.535(3)(v).

And further, that the defendant, did commit the foregoing offense while armed with a deadly weapon as that term is employed and defined in RCW 9.94A.602 and RCW 9.94A.533(4), to-wit: a screwdriver.

This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(28), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

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1 **OR, IN THE ALTERNATIVE,**

2 **ASSAULT IN THE FIRST DEGREE - 9A.36.011(1)(a)**

3 That he, MICHAEL VASILY KOLESNIK also known as MICHAEL M KOLESNIK, in the County  
4 of Clark, State of Washington, on or about December 13, 2005, with intent to inflict great bodily  
5 harm, did assault another person, Greg Zimmerman, with a deadly weapon or by any force or  
6 means likely to produce great bodily harm or death; contrary to Revised Code of Washington  
7 9A.36.011(1)(a).

8 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the  
9 standard sentencing range based upon the following aggravating circumstance(s):

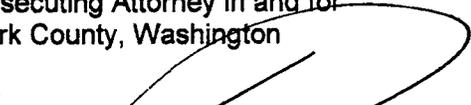
10 The offense was committed against a law enforcement officer who was performing his or her  
11 official duties at the time of the offense, the offender knew that the victim was a law enforcement  
12 officer, and the victim's status as a law enforcement officer is not an element of the offense.  
13 RCW 9.94A.535(3)(v).

14 And further, that the defendant, did commit the foregoing offense while armed with a deadly  
15 weapon as that term is employed and defined in RCW 9.94A.602 and RCW 9.94A.533(4), to-  
16 wit: a screwdriver.

17 This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act  
18 (RCW 9.94A.030(28), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

19 ARTHUR D. CURTIS  
20 Prosecuting Attorney in and for  
21 Clark County, Washington

22 Date: December 4, 2006

23 BY:   
24 ANTHONY F. GOLIK, WSBA #25172  
25 Deputy Prosecuting Attorney

26 DEFENDANT: MICHAEL VASILY KOLESNIK, AKA MICHAEL M KOLESNIK			
27 RACE: W	28 SEX: M	29 DOB: 12/20/1984	
DOL:		SID: WA21841127	
HGT: 510	WGT: 150	EYES: BRO	HAIR: BRO
WA DOC: 863743		FBI: 584470TBO	
LAST KNOWN ADDRESS(ES):			
H - 4912 NICHOLSON RD, VANCOUVER WA 98661			

**APPENDIX "B"**

**COURT'S INSTRUCTIONS TO THE JURY**

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**FILED**

DEC 05 2006

3:35 PM  
JoAnne McBride, Clerk, Clark Co.

*Elizabeth N. Wells*

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

STATE OF WASHINGTON,

Plaintiff,

v.

MICHAEL VASILY KOLESNIK,

Defendant.

No. 05-1-02752-5

COURT'S INSTRUCTIONS TO THE JURY



SUPERIOR COURT JUDGE JOHN P. WULLE

12-5-06

DATE

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INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses, and the exhibits that I have admitted, during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In

considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

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

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

INSTRUCTION NO. 2

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

INSTRUCTION NO. 3

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff and has the burden of proving each element of the crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists.

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

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

INSTRUCTION NO. 4

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

INSTRUCTION NO. 5

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

INSTRUCTION NO. 6

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

INSTRUCTION NO. 7

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

INSTRUCTION NO. 8

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

INSTRUCTION NO. 9

A person commits the crime of attempted murder in the second degree when, with intent to commit that crime, he or she does any act which is a substantial step toward the commission of that crime.

INSTRUCTION NO. 10

To convict the defendant of the crime of attempted murder in the second degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 13, 2005, the defendant did an act which was a substantial step toward the commission of murder in the second degree;

(2) That the act was done with the intent to commit murder in the second degree;  
and

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

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

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

INSTRUCTION NO. 11

A person commits the crime of murder in the second degree when with intent to cause the death of another person but without premeditation, he or she causes the death of such person.

INSTRUCTION NO. 12

A person commits the crime of assault in the first degree when, with intent to inflict great bodily harm, he or she assaults another with any deadly weapon or by any force or means likely to produce great bodily harm or death.

INSTRUCTION NO. 13

To convict the defendant of the crime of assault in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about December 13, 2005, the defendant assaulted Officer Greg Zimmerman;
- (2) That the assault was committed with a deadly weapon or by a force or means likely to produce great bodily harm or death;
- (3) That the defendant acted with intent to inflict great bodily harm; and
- (4) That this act occurred in the State of Washington.

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

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

INSTRUCTION NO. 14

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

INSTRUCTION NO. 15

Great bodily harm means bodily injury that creates a probability of death, or which causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ.

INSTRUCTION NO. 16

A person commits the crime of assault in the second degree when he or she intentionally assaults another and thereby recklessly inflicts substantial bodily harm or assaults another with a deadly weapon.

INSTRUCTION NO. 17

To convict the defendant of the crime of assault in the second degree, each of the following two elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 13, 2005, the defendant:

(a) intentionally assaulted Greg Zimmerman and thereby recklessly inflicted substantial bodily harm; or

(b) intentionally assaulted Greg Zimmerman with a deadly weapon; and

(2) That this act occurred in the State of Washington.

If you find from the evidence that element (2) and either alternative element (1)(a) or (1)(b) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (1)(a) or (1)(b) has been proved beyond a reasonable doubt, as long as each juror finds that either (1)(a) or (1)(b) has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to either element (1) or (2), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 18

A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and the disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

Recklessness also is established if a person acts knowingly.

INSTRUCTION NO. 19

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

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

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

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INSTRUCTION NO. 20

Substantial bodily harm means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or that causes a fracture of any bodily part.

INSTRUCTION NO. 21

An assault is an intentional touching or striking or cutting or shooting of another person, with unlawful force, that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking or cutting or shooting is offensive if the touching or striking or cutting or shooting would offend an ordinary person who is not unduly sensitive.

An assault is also an act, with unlawful force, done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

INSTRUCTION NO. 22

A person commits the crime of assault in the third degree when he assaults a law enforcement officer who was performing his or her official duties at the time of the assault.

INSTRUCTION NO. 23

To convict the defendant of the crime of assault in the third degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about December 13, 2005, the defendant assaulted Officer Greg Zimmerman;
- (2) That at the time of the assault Officer Greg Zimmerman was a law enforcement officer who was performing his or her official duties; and
- (3) That any of these acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 24

No act committed by a person while in a state of voluntary intoxication is less criminal by reason of that condition. However, evidence of intoxication may be considered in determining whether the defendant acted with intent.

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INSTRUCTION NO. 25

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. For this purpose, use the form provided in the jury room. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and four verdict forms, A and B and C and D.

When completing the verdict forms, you will first consider the crime of Attempted Murder in the Second Degree or Assault in the First Degree as those crimes are charged. If you unanimously agree on a verdict on either of those crimes, you must fill in the blank provided in verdict form A or in the alternative, Form B, the words "not

guilty" or the word "guilty," according to the decision you reach. If you cannot agree on a verdict for either crime of Attempted Murder in the Second Degree or Assault in the First Degree as charged in the alternative, do not fill in the blank provided in Verdict Form A or B.

If you find the defendant guilty on verdict form A or B, do not use verdict form C or D. If you find the defendant not guilty of the crime of Attempted Murder in the Second Degree and Assault in the First Degree, or if after full and careful consideration of the evidence you cannot agree either of those crimes, you will consider the lesser crime of Assault in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form C the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form C.

If you find the defendant guilty on verdict form C, do not use verdict form D. If you find the defendant not guilty of the crime of Assault in the Second Degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of Assault in the Third Degree. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form D the words "not guilty" or the word "guilty," according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the proper form of verdict or verdicts to express your decision. The presiding juror must sign the verdict form(s) and notify the bailiff. The bailiff will bring you into court to declare your verdict.

INSTRUCTION NO. 26

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon at the time of the commission of the crime.

A person is armed with a deadly weapon if, at the time of the commission of the crime, the weapon is easily accessible and readily available for offensive or defensive use. The State must prove beyond a reasonable doubt that there was a connection between the weapon and the defendant. The State must also prove beyond a reasonable doubt that there was a connection between the weapon and the crime. In determining whether these connections existed, you should consider the nature of the crime, the type of weapon, and the circumstances under which the weapon was found.

A deadly weapon is an implement or instrument that has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are examples of deadly weapons: blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.

INSTRUCTION NO. 27

Having found the defendant guilty, you must determine whether the following additional fact exists:

- 1) This offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, and that the defendant knew that the victim was a law enforcement officer.

The State has the burden of proving the existence of these additional facts beyond a reasonable doubt. In order for you to find the existence of these additional facts in this case, you must unanimously agree that these additional facts have been proved beyond a reasonable doubt.

**FILED**

DEC 06 2006

12:18 PM  
JoAnne McBride, Clerk, Clark Co.

*Elizabeth Miller - deputy*  
*Jury polled - unanimous*

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

STATE OF WASHINGTON,

Plaintiff,

v.

MICHAEL VASILY KOLESNIK,

Defendant.

No. 05-1-02752-5

SPECIAL VERDICT FORM.  
(regarding deadly weapon)

We, the jury, return a special verdict by answering as follows:

QUESTION: Was the defendant MICHAEL VASILY KOLESNIK armed with a deadly  
weapon at the time of the commission of the crime?

ANSWER: Yes  
(Yes or No)

*T. M.*  
\_\_\_\_\_  
Presiding Juror

6 DEC 06  
Date

52

**FILED**

DEC 06 2006

1:00 PM

JoAnne McBride, Clerk, Clark CO.

*Elizabeth Miller deputy*

*Jury polled - unanimous*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,

v.

MICHAEL VASILY KOLESNIK,

Defendant.

No. 05-1-02752-5

SPECIAL VERDICT FORM

We, the jury, having found the defendant guilty of a crime, return a special verdict by answering as follows:

**QUESTION** : Did the defendant know that the victim of this offense was a law enforcement officer who was performing his or her official duties at the time of the offense?

ANSWER: yes  
(Yes or No)

*TJ Miller*

Presiding Juror

6 DEC 06

Date

53

**SCANNED**

**FILED**

DEC 06 2006

1:00 PM  
JoAnne McBride, Clerk, Clark Co.

*Elizabeth Miller deputy  
Jury polled - unanimous*

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

STATE OF WASHINGTON,

Plaintiff,

v.

MICHAEL VASILY KOLESNIK,

Defendant.

No. 05-1-02752-5

SPECIAL VERDICT FORM

We, the jury, having found the defendant guilty of a crime, return a special verdict by answering as follows:

**QUESTION :** Did the defendant know that the victim of this offense was a law enforcement officer who was performing his or her official duties at the time of the offense?

ANSWER: yes  
(Yes or No)

*TR Miller*  
Presiding Juror

6 DEC 06  
Date

53

**APPENDIX "C"**

**FELONY JUDGMENT AND SENTENCE  
PRISON – COMMUNITY PLACEMENT/COMMUNITY CUSTODY**

**FILED**

**JAN 02 2007**

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

v.

MICHAEL VASILIIY KOLESNIK, aka MICHAEL M  
KOLESNIK,

Defendant.

SID: WA21841127

DOB: 12/20/1984

No. 05-1-02752-5

**FELONY JUDGMENT AND SENTENCE  
(FJS)**

**PRISON - COMMUNITY  
PLACEMENT/COMMUNITY CUSTODY**

Clerk's action required;

Paragraph 4.5 (SDOSA),  4.15.2,  
 5.3,  5.6 and  5.8

**I. HEARING**

**06 9 08340 6**

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

**II. FINDINGS**

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

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

COUNT	CRIME	RCW	DATE OF CRIME
02	ASSAULT IN THE FIRST DEGREE	9A.36.011(1)(a)	12/13/2005

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

- Additional current offenses are attached in Appendix 2.1.
- The court finds that the defendant is subject to sentencing under **RCW 9.94A.712.**
- A special verdict/finding that the offense was **predatory** was returned on Count(s) \_\_\_\_\_. RCW 9.94A.\_\_\_\_\_.
- A special verdict/finding that the **victim was under 15 years of age** at the time of the offense was returned on Count(s) \_\_\_\_\_ RCW 9.94A.\_\_\_\_\_.

*591*

- A special verdict/finding that the **victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult** at the time of the offense was returned on Count(s) \_\_\_\_\_ RCW 9.94A.\_\_\_\_, 9A.44.010.
- A special verdict/finding of **sexual motivation** was returned on Count(s) \_\_\_\_\_ RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- A special verdict/finding for use of **firearm** was returned on Count(s) \_\_\_\_\_ RCW 9.94A.602, 533.
- A special verdict/finding for use of **deadly weapon** other than a firearm was returned on Count(s) 2. RCW 9.94A.602, .533.
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act (VUCSA)** 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, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s) \_\_\_\_\_ RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crimes charged in Count(s) \_\_\_\_\_ is/are **Domestic Violence** offense(s) as that term is defined in RCW 10.99.020:
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are Count(s) \_\_\_\_\_. RCW 9.94A.589
- Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): \_\_\_\_\_.

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
See Attached Criminal History					

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

- The court finds that the following prior convictions are one offense for purposes of determining the offender score RCW 9.94A.525: \_\_\_\_\_
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520: \_\_\_\_\_
- The State has moved to dismiss count(s) \_\_\_\_\_.

**2.3 SENTENCING DATA:**

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
02	2	XII	111 MONTHS to 147 MONTHS	24 MONTHS (D)	135 MONTHS to 171 MONTHS	LIFE \$50000

\* (F) Firearm, (D) other Deadly Weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8).

Additional current offense sentencing data is attached in Appendix 2.3.

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

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

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

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

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

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.750/753.

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

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

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

**III. JUDGMENT**

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

3.2  The Court DISMISSES Counts \_\_\_\_\_.

The defendant is found NOT GUILTY of Counts \_\_\_\_\_

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

**IV. SENTENCE AND ORDER**

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

RTN/RJN	\$0 To be set	Restitution to be paid to:		RCW 9.94A.750/.753
		<input type="checkbox"/> Victim(s) and amounts to be set by separate court order		
PCV	\$500.00	Victim Assessment		RCW 7.68.035
	\$ _____	DV Penalty Assessment		RCW 10.99.080
CRC		Court Costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190		
	\$ 200.00	Criminal filing fee	FRC	RCW 9.94A.505
	\$ _____	Witness costs	WFR	RCW 10.01.160 and RCW 2.40.010
	\$ _____	Sheriff Service Fees	SFR/SFS/SFW/WRF	RCW 10.01.160 and 36.18.040
	\$ _____	Jury Demand Fee \$ 250.00	JFR	RCW 10.01.160 and 10.46.190
	\$ _____	Extradition costs	EXT	RCW 9.94A.505
	\$ _____	Other Costs _____		RCW 9.94A.760
PUB	\$ _____ \$ _____	Fees for court appointed attorney Trial per diem if applicable		RCW 9.94A.505/.760/.030
WFR	\$ _____	Court appointed defense expert and other defense costs		RCW 9.94A.505, .760, 9.94A.030
FCM/MTH	\$500.00	Fine		RCW 9A.20.021
CDF/LDI/FCD/NTF/SAD/SDI	\$ _____	Drug fund contribution to be paid within two (2) years Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)		RCW 9.94A.760
CLF	\$ _____	Crime lab fee - <input type="checkbox"/> Suspended due to indigency		RCW 43.43.690
	\$100.00	Felony DNA Collection fee (for crimes committed on or after July 1, 2002)		RCW 43.43.7541

RTN/RJN	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) To: _____ (List Law Enforcement Agency)	RCW 38.52.430
	\$ _____	Other Costs for: _____	RCW 9.94A.760

- The above financial obligations do not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.750/753. A restitution hearing:
- shall be set by the prosecutor
- is scheduled for \_\_\_\_\_

- Restitution ordered above shall be joint and several with the co-defendants listed in the Information or identified below: \_\_\_\_\_

The Department of Corrections/Superior Court Clerk Collections Unit shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the Superior Court Clerk and on a schedule established by the Department of Corrections/Superior Court Clerk Collections Unit, commencing immediately, unless the court specifically sets forth the rate here:

Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_  
RCW 9.94A.760.

The defendant shall report as directed by the Superior Court Clerk and provide financial information as requested. RCW 9.94A.760(7)(b). The defendant shall report in person no later than the close of business on the next working day after the date of sentencing or release from custody. A map has been provided to the defendant showing the location of the Superior Court Clerk Collections Unit, 500 West 8th Street, Suite 50, Vancouver, Washington. The defendant must report any changes in address and phone numbers to the Collections Unit within 72 hours of moving.

In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate of \$ \_\_\_\_\_. RCW 9.94A.760

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160. The defendant shall pay the cost of services to collect unpaid legal financial obligations. This is an annual fee which will be automatically renewed until financial obligations are completed. RCW 9.94A.780 and RCW 36.18.190

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

HIV TESTING. The defendant shall be tested and counseled for HIV as soon as possible and the defendant shall fully cooperate in the testing and counseling. RCW 70.24.340.

Failure to provide the DNA/HIV testing sample is a violation of this Judgment and Sentence and a warrant may be issued to compel compliance.

The defendant shall not have contact with Greg D Zimmerman including, but not limited to, personal, verbal, telephonic, electronic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

A Supplemental Domestic Violence Protection Order, Antiharassment No Contact Order, or Sexual Assault Protection Order is filed with the Judgment and Sentence.

The defendant is ordered to reimburse \_\_\_\_\_ (name of electronic monitoring agency) at \_\_\_\_\_, for the cost of pretrial electronic monitoring in the amount of \$ \_\_\_\_\_.

4.4 OTHER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

20 years months on Count 02

Actual number of months of total confinement ordered is: 20 years, including 2 year weapon enhancement  
(Add mandatory firearm and deadly weapons and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

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

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with a juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_  
\_\_\_\_\_

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

Count	minimum term	maximum term
02		

(c) Credit for 385 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced. RCW 9.94A.505

4.6  COMMUNITY PLACEMENT is ordered on Counts \_\_\_\_\_ for \_\_\_\_\_ months

COMMUNITY CUSTODY for Count(s) 2, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

**COMMUNITY CUSTODY** is ordered on Counts 1 for a range from 36 to 48 months or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Community custody follows a term for a sex offense –RCW 9.94A.505. Use paragraph 4.7 to impose community custody following work ethic camp.]

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

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

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at Department of Corrections-approved education, employment and/or community service; (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by the Department of Corrections; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections and (8) for sex offenses, submit to electronic monitoring if imposed by Department of Corrections. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

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

The defendant's conditions of Community Placement/Community Custody include the following:

- The defendant shall not consume any alcohol.
- Defendant shall have no contact with \_\_\_\_\_
- Defendant shall remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_
- Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school if the offense was committed on or after July 24, 2005. (RCW9.94A.030(8)).
- The defendant shall participate in the following crime-related treatment or counseling services: \_\_\_\_\_

- Defendant shall not violate any federal, state or local criminal laws, and shall not be in the company of any person known by him/her to be violating such laws.
- Defendant shall not commit any like offenses.
- Defendant shall notify his/her community corrections officer within forty-eight (48) hours of any arrest or citation.
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be convicted felons, or presently on probation, community supervision/community custody or parole for any offense, juvenile or adult, except immediate family or as authorized by his/her community corrections officer for treatment purposes. Additionally, the defendant shall not initiate or permit communication or contact with the following persons:
 

---
- Defendant shall not have any contact with other participants in the crime, either directly or indirectly.
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be substance abusers.
- Defendant shall not possess, use or deliver drugs prohibited by the Uniform Controlled Substances Act, or any legend drugs, except by lawful prescription. The defendant shall notify his/her community corrections officer on the next working day when a controlled substance or legend drug has been medically prescribed.
- Defendant shall not possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, police scanners, and hand held electronic scheduling and data storage devices.
- Defendant shall not frequent known drug activity areas or residences.
- Defendant shall not use or possess alcoholic beverages  at all  to excess.  
The defendant  will  will not be required to take monitored antabuse per his/her community corrections officer's direction, at his/her own expense, as prescribed by a physician.
- Defendant shall not be in any place where alcoholic beverages are sold by the drink for consumption or are the primary sale item.
- Defendant shall undergo an evaluation for treatment for  substance abuse  mental health  anger management treatment and fully comply with all recommended treatment.
- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a  substance abuse  mental health  anger management treatment  parenting program as established by the community corrections officer and/or the treatment facility.
- Defendant shall participate in a **domestic violence perpetrator program** as approved under RCW 26.50.150 and fully comply with all recommended treatment. RCW 9.94A.505 (11).
- Based upon the Pre-Sentence Report, the court finds reasonable grounds to exist to believe the defendant is a mentally ill person, and this condition was likely to have influenced the offense. Accordingly, the court orders the defendant to undergo a mental status evaluation and participate in outpatient mental health treatment. Further, the court may order additional evaluations at a later date, if deemed appropriate.
- Treatment shall be at the defendant's expense and he/she shall keep his/her account current if it is determined that the defendant is financially able to afford it.

- Defendant shall submit to urine, breath or other screening whenever requested to do so by the treatment program staff and/or the community corrections officer.
  - Defendant shall not associate with any persons known by him/her to be gang members or associated with gangs.
  - Defendant shall not wear or display any clothing, apparel, insignia or emblems that he/she knows are associated with or represent gang affiliation or membership as determined by the community corrections officer.
  - Defendant shall not possess any gang paraphernalia as determined by the community corrections officer.
  - Defendant shall not use or display any names, nicknames or monikers that are associated with gangs.
  - Defendant shall comply with a curfew, the hours of which are established by the community corrections officer.
  - Defendant shall attend and successfully complete a shoplifting awareness educational program as directed by the community corrections officer.
  - Defendant shall attend and successfully complete the Victim Awareness Educational Program as directed by the community corrections officer.
  - Defendant shall not accept employment in the following field(s):
- 
- Defendant shall not possess burglary tools.
  - Defendant's privilege to operate a motor vehicle is suspended/revoked for a period of one year; two years if the defendant is being sentenced for a vehicular homicide.
  - Defendant shall not operate a motor vehicle without a valid driver's license and proof of liability insurance in his/her possession.
  - Defendant shall not possess a checkbook or checking account.
  - Defendant shall not possess any type of access device or P.I.N. used to withdraw funds from an automated teller machine.
  - Defendant shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections.
  - Defendant shall not be eligible for a Certificate of Discharge until all financial obligations are paid in full and all conditions/requirements of sentence have been completed including no contact provisions.
  - Defendant shall not enter into or frequent business establishments or areas that cater to minor children without being accompanied by a responsible adult. Such establishments may include but are not limited to video game parlors, parks, pools, skating rinks, school grounds, malls or any areas routinely used by minors as areas of play/recreation.
  - Defendant shall not have any unsupervised contact with minors. Minors mean persons under the age of 18 years.
  - Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a sexual deviancy treatment program as established by the community corrections officer and/or the treatment facility. Defendant shall not change sex offender treatment providers or treatment conditions without first notifying the Prosecutor, community corrections officer and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. "Cooperate with" means the

offender shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity.

- Defendant shall, at his or her own expense, submit to periodic polygraph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody.
  - Defendant shall, at his or her own expense, submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody. Copies of the examination results shall be provided to the Prosecuting Attorney's Office upon request.
  - Defendant shall not possess or use any pornographic material, defined as any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult or child human genitals: provided however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition as defined in RCW 9.68.130(2). or any equipment of any kind used for sexual gratification and defendant shall not frequent establishments that provide such materials or equipment for view or sale.
  - If the defendant is removed/deported by the U.S. Immigration and Customs Enforcement, the community custody time is tolled during that time that the defendant is not reporting for supervision in the United States. The defendant shall not enter the United States without the knowledge and permission of U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections for supervision.
  - Defendant shall sign necessary release of information documents as required by the Department of Corrections.
  - For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.
  - Defendant shall adhere to the following additional crime-related prohibitions or conditions of community placement/community custody:
- 
- 
- 

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

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

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

4.10 When there is a reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections can conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purposes of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned and possessed by the defendant.

4.11 Other:

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V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten (10) years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7606
- 5.4 **RESTITUTION HEARING.**  
 Defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

Cross off if not applicable:

**5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.**

**1. General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

**2. Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

**3. Change of Residence Within State and Leaving the State:** If you change your residence within a

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

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

**5. Notification Requirement When Enrolling In or Employed by a Public or Private Institution of Higher Education or Common School (K-12):** If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. (Effective September 1, 2006) If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.

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

**7. Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

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

- 5.8  The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately punch the defendant's Washington Driver's license or permit to drive with a "C" as directed by the Department of Licensing pursuant to RCW 46.20.270. The clerk of the court is further directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

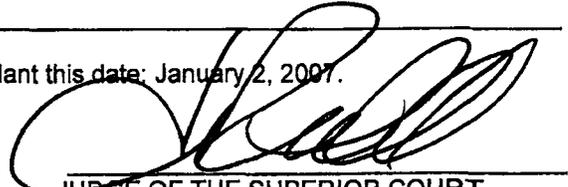
5.9 If the defendant is or becomes subject to a court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW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

5.10 Persistent Offense Notice

- The crime(s) in count(s) 2 is/are "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9.94A.505
- The crime(s) in count(s) \_\_\_\_\_ is/are one of the listed offenses in RCW 9.94A.030 (32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

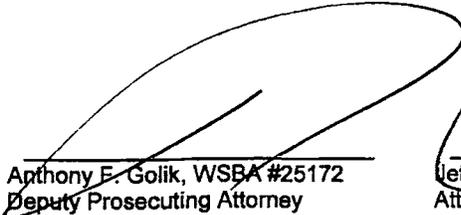
5.11 OTHER: \_\_\_\_\_

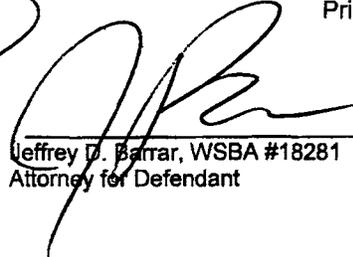
DONE in Open Court and in the presence of the defendant this date: January 2, 2007.

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

Print Name: \_\_\_\_\_

*John P. Wulle*

  
\_\_\_\_\_  
Anthony F. Golik, WSBA #25172  
Deputy Prosecuting Attorney

  
\_\_\_\_\_  
Jeffrey D. Barrar, WSBA #18281  
Attorney for Defendant

  
\_\_\_\_\_  
MICHAEL VASILY KOLESNIK  
Defendant

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

NO. 05-1-02752-5

v.

MICHAEL VASILY KOLESNIK, aka MICHAEL M KOLESNIK,

**WARRANT OF COMMITMENT TO STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS**

Defendant.

SID: WA21841127

DOB: 12/20/1984

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

**GREETING:**

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

COUNT	CRIME	RCW	DATE OF CRIME
02	ASSAULT IN THE FIRST DEGREE	9A.36.011(1)(a)	12/13/2005

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

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

COUNT	CRIME	TERM
02	ASSAULT IN THE FIRST DEGREE	20 years in prison

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

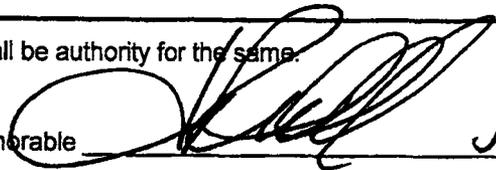
The defendant has credit for 385 days served.

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

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable



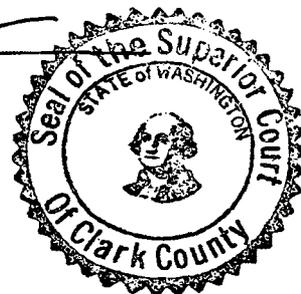
John P. Wulke

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE:

1-2-07

SHERRY W. PARKER, Clerk of the  
Clark County Superior Court

By:   
Deputy



CAUSE NUMBER of this case: 05-1-02752-5

**VOTING RIGHTS STATEMENT:** I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: *Michael Vasiliy Kolesnik*

I am a ~~not~~ certified interpreter of, or the court has found me otherwise qualified to interpret, the \_\_\_\_\_ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

Interpreter signature/Print name: \_\_\_\_\_

I, SHERRY W. PARKER, 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 MICHAEL VASILY KOLESNIK	
Alias name, SSN, DOB: MICHAEL M KOLESNIK	
SID No. WA21841127 (If no SID take fingerprint card for State Patrol)	Date of Birth 12/20/1984
Race: W	Sex: M
Driver License No.	Driver License State:
FBI No. 584470TB0	Local ID No. (CFN): 170931
	Corrections No. 863743
Other	

**FINGERPRINTS** I attest that I saw the same defendant who appeared in court on this document and his fingerprints and signature thereto. Clerk of the Court: *Sherry W. Parker*, Deputy Clerk

Dated: 1-2-07

DEFENDANT'S SIGNATURE: *Michael Vasiliy Kolesnik*



Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



1  
2  
3  
4 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

5 STATE OF WASHINGTON,  
6 Plaintiff,  
7 v.  
8 MICHAEL VASILY KOLESNIK,  
Defendant

No. 05-1-02742-5

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

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

11

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
ASSAULT 3	CLARK/WA 03-1-01627-6	8/13/2003	10/16/2003	1
UNLAWFUL IMPRISONMENT	CLARK/WA 04-1-00122-6	1/19/2004	3/11/2004	1

12  
13  
14  
15

16  The defendant committed a current offense while on community placement (adds one  
point to score). RCW 9.94A.360.

17 DATED this 2 day of January, 2007.

2 points

18  
19 Defendant

20  
21 Jeffrey G. Simpson, WSBA#34933  
Attorney for Defendant

20  
21 Anthony F. Golik, WSBA#25172  
Deputy Prosecuting Attorney

22  
23  
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25  
26  
27  
28  
29  
DECLARATION OF CRIMINAL HISTORY  
Revised 9/14/2000

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

