

NO. 36666-5-II

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

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STATE OF WASHINGTON, Respondent

v.

RUSSELL GENE BARNES, Appellant

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COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
DEPUTY

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
THE HONORABLE BARBARA D. JOHNSON  
CLARK COUNTY SUPERIOR COURT CAUSE NO. 07-1-00407-6

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BRIEF OF RESPONDENT

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**TABLE OF CONTENTS**

I. STATEMENT OF THE FACTS .....1  
II. RESPONSE TO ASSIGNMENT OF ERROR.....1  
III. CONCLUSION .....8

## TABLE OF AUTHORITIES

### Cases

<u>State v. Alexis</u> , 95 Wn.2d 15, 621 P.2d 1269 (1980) .....	5
<u>State v. Brown</u> .....	2
<u>State v. Cienfuegos</u> , 144 Wn.2d 222, 227, 25 P.3d 1011 (2001) .....	4
<u>State v. Crawford</u> , 159 Wn.2d 86, 99-100, 147 P.3d 1288 (2006) .....	7
<u>State v. Garrett</u> , 124 Wn.2d 504, 520, 881 P.2d 185 (1994) .....	4
<u>State v. Hendrickson</u> , 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996) .....	4
<u>State v. Hermann</u> , 138 Wn.2d 596, 604, 158 P.3d 96 (2007) .....	4
<u>State v. Lopez</u> , 107 Wn. App. 270, 275, 27 P.3d 237 (2001) .....	4
<u>State v. Piche</u> , 71 Wn.2d 583, 590, 430 P.2d 522 (1967) .....	7
<u>State v. Renfro</u> , 96 Wn.2d 902, 909, 639 P.2d 737 (1982) .....	7
<u>State v. Robtoy</u> , 98 Wn.2d 30, 653 P.2d 284 (1982) .....	5
<u>State v. Schroeder</u> , 67 Wn. App. 110, 116, 834 P.2d 105 (1992) .....	5
<u>State v. Silva</u> , 106 Wn. App. 586, 596, 24 P.3d 477 (2001) .....	4
<u>State v. Thompson</u> , 95 Wn.2d 888, 632 P.2d 50 (1981) .....	5
<u>Strickland v. Washington</u> , 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) .....	7

I. STATEMENT OF THE FACTS

The State accepts the Statement of Facts as set forth by the Defendant in his brief. Where additional information is necessary, it will be supplemented in the Argument Section of the Brief.

II. RESPONSE TO ASSIGNMENT OF ERROR

The claim on appeal is that the Defendant was denied effective assistance of counsel by his trial attorney stipulating that the Defendant had prior convictions for dishonesty. Specifically, the State in pretrial had put the defense on notice that if the Defendant were to take the stand, it was going to impeach him by his three Burglary convictions. The State maintained they were all crimes of dishonesty. (RP 7) The Prosecutor at the time indicated that he had certified copies of the underlying documentation and had provided those to the defense attorney as well as to the Court. (RP 7L 7-9) The State filed at that time a Motion for Pretrial Ruling and Notice of Intent as it related to the prior convictions (CP 51). A copy of that document is attached hereto and by this reference incorporated herein. Also filed with the Court was a Memorandum in Support of the Motion for Pretrial Ruling and Notice of Intent which included copies of the underlying documentation provided to counsel and

to the Court. The underlying documentation was a certified copy of the Judgment and Sentence that was entered on October 17, 2005, showing conviction for three counts of Burglary in the Second Degree; a copy of the Statement of Defendant on Plea of Guilty to Non-Sex Offense related to the burglaries and also a copy of the Information that was the underlying charging document (CP 52). A copy of this Memorandum in Support of Motion for Pretrial Ruling and Notice of Intent is attached hereto and by this reference incorporated herein.

After the defense attorney had had an opportunity to review these documents, the experienced defense attorney made the following comments to the Court:

“Mr. Schile (defense attorney): Your Honor, as far as I understand, those crime -- I don't think any balancing is needed because I think they were all intent to steal type. That's how they were alleged, each of the burglaries. And under State v. Brown, I think Mr. Dodds is correct. They would, again, be used to impeach his credibility.”

-(RP 7 L 10-16).

When this matter came up during the testimony of the Defendant, it was the defense, on direct examination, that first broached the subject of convictions with the Defendant.

Q. (By Mr. Schile) Mr. Barnes, you've got a criminal record; is that correct?

A. (Defendant) True.

Q. And you've been convicted of a couple of burglaries?

A. Several. I pled guilty to them. I did it, and that was that. There was --

Q. And you took your lumps?

A. Yep. And I --

Q. And none of those went to trial?

A. Yep.

-(RP 137 L 20 - 138 L5).

When the defense discussed this matter with the jury, the defense attorney was using the fact that he had pled guilty. The fact that he admitted his prior criminal activities, and that he had also admitted to some of the activities that he was charged with. In our case, was being used as a tactic.

(Mr. Schile) So what is Mr. Barnes guilty of here? Well, he's guilty of, I guess, trusting the wrong person. And he's guilty of making a very bad decision to lie to a police officer. And he admitted that he did that. He also came forward and admitted that he had earlier convictions. He admitted that he was going along with somebody else, a girlfriend of his, to cover up her involvement in a hit and run. And that is a crime and it is punishable. And Mr. Barnes understands that.

But what Mr. Barnes is not guilty of is being the driver of a truck and not rendering assistance and information, which wasn't his duty to give at that time. He was simply out there doing a reconnaissance for a friend and a girlfriend that then later backfired on him. And it's a sad fact, but sometimes we do trust the wrong people.

-(RP 200 L 11 - 201 L 1).

To establish ineffective assistance of counsel, the Defendant must show that the attorney's performance was both deficient and prejudicial. State v. Hermann, 138 Wn.2d 596, 604, 158 P.3d 96 (2007). The Appellate Court gives great deference to council's performance in order to eliminate the distorting effects of hindsight and, therefore, the Appellate Court will presume reasonable performance. State v. Lopez, 107 Wn. App. 270, 275, 27 P.3d 237 (2001). A decision regarding trial strategy or tactics will not establish deficient performance. State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996); State v. Garrett, 124 Wn.2d 504, 520, 881 P.2d 185 (1994).

Sometimes, conceding guilt to a lesser crime in front of the jury can be a sound trial tactic. State v. Silva, 106 Wn. App. 586, 596, 24 P.3d 477 (2001). Such an approach may help the defendant gain credibility with the jury when a more serious charge is at stake. Silva, 106 Wn. App. at 599. If that is the case, this becomes a matter of trial strategy or tactics and does not constitute deficient performance. State v. Cienfuegos, 144 Wn.2d 222, 227, 25 P.3d 1011 (2001).

The Defendant had pled guilty previously to three Burglaries in the Second Degree as demonstrated in the documentation which is attached as appendices here. At least two of the three dealt with burglaries where

theft was also the underlying motivation. That is demonstrated by the Information that the Deputy Prosecutor had also attached and was present for not only the trial court but also for the defense attorney to review with his client. Admission of prior convictions under ER 609 (a)(1) is discretionary with the Court and will not be disturbed absent a clear showing of abuse. State v. Alexis, 95 Wn.2d 15, 621 P.2d 1269 (1980); State v. Thompson, 95 Wn.2d 888, 632 P.2d 50 (1981). The admission of evidence of a prior crime is not of constitutional magnitude; the test on review is whether, within reasonable probabilities, the outcome of the trial would have been materially affected if the error had not occurred. State v. Robtoy, 98 Wn.2d 30, 653 P.2d 284 (1982).

As held in State v. Schroeder, 67 Wn. App. 110, 116, 834 P.2d 105 (1992), not all Second Degree Burglary convictions are crimes that involve dishonesty. Yet, a burglary conviction is per se admissible if the State can show that it involved dishonesty. In our situation, the defense, after reviewing the documentation, determined that the convictions involved crimes of dishonesty and thus the State had presented sufficient evidence to satisfy the defense. Even if this Defendant could prove that the Burglary convictions were inadmissible, the State submits he still cannot show prejudice to prove ineffective assistance of counsel. Here,

there was a clear tactical reason for using the convictions in the way that the defense chose to use them.

The defense on appeal maintains that there was no tactical reason for defense counsel to stipulate to the admissibility of the convictions. (Appellate's Brief, Page 6). Yet, as demonstrated in the body of the trial transcripts, the defense raised this matter first with the jury in indicating that the Defendant had pled guilty and saved the State any trial time by admitting his guilt. He also demonstrated that he was admitting that he had lied to officers on this occasion. But this was all part of tactics to avoid the more serious consequences of a conviction for a felony Hit and Run. The Defendant was attempting to gain favor with the jury by indicating that he was a "stand up guy" and, therefore, had always admitted when he was wrong in the past but was not admitting to something that he claims he did not do. The State submits that this does not demonstrate ineffective assistance of counsel, nor does it show that this prejudiced the defense in any way. Quite the contrary, it is a tactical decision made by an experienced trial attorney. Also to be factored in is the concept there is no reasonable probability that had it not been admitted, the outcome of the case would have been different. The entire involvement of the impeachment is extremely limited in the context of the

case and the nature of the witnesses and the other evidence produced at the time of trial.

Even deficient performance by counsel “does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A defendant must affirmatively prove prejudice, not simply show that “the errors had some conceivable effect on the outcome.” Strickland, 466 U.S. at 693. In doing so, the defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. State v. Crawford, 159 Wn.2d 86, 99-100, 147 P.3d 1288 (2006). The choice of trial tactic, the action to be taken or avoided, and the methodology to be employed must rest in the trial attorney’s judgment. State v. Piche, 71 Wn.2d 583, 590, 430 P.2d 522 (1967). Finally, while it is easy in retrospect to find fault with tactics and strategies that fail to gain acquittal, the failure of what initially appeared to be a valid approach does not render the action of trial counsel reversible error. State v. Renfro, 96 Wn.2d 902, 909, 639 P.2d 737 (1982).

The State submits that there has been no showing here that the Defendant did not receive effective assistance of counsel. The defense

attempted to use the convictions and the matters that were currently at trial to gain a tactical advantage with the jury. Simply because this did not work does not indicate that the Defendant did not receive adequate assistance at the time of trial.

III. CONCLUSION

The Trial Court should be affirmed in all respects.

DATED this 21 day of March, 2008.

Respectfully submitted:

ARTHUR D. CURTIS  
Prosecuting Attorney  
Clark County, Washington

By:

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

**APPENDIX "A"**

**MOTION FOR PRETRIAL RULING AND NOTICE OF INTENT**

**FILED**

**'AUG 07 2007**

*Sherry W. Parker, Clerk, Clark Co.*

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

STATE OF WASHINGTON,  
Plaintiff,  
v.  
RUSSELL GENE BARNES,  
Defendant.

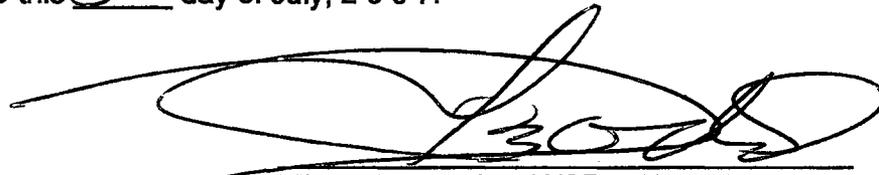
No. 07-1-00407-6

MOTION FOR PRETRIAL RULING AND  
NOTICE OF INTENT

COMES NOW, Michael B. Dodds, Deputy Prosecuting Attorney, in and for the County of Clark, State of Washington, and moves this Court for a pretrial determination pursuant to State v. Brown, 113 Wn 2d, 520, 782 P. 2d 1013 (1989) and ER 404 (b) as to the admissibility of the prior convictions of the defendant, Robert Charles Freeman, for impeachment should the defendant take the stand.

This Motion is based upon the file and records herein and upon the Memorandum attached.

DATED this 3<sup>rd</sup> day of July, 2007.



Michael B. Dodds, WSBA #10785  
Deputy Prosecuting Attorney

MOTION FOR PRETRIAL RULING AND  
NOTICE OF INTENT - 1

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**APPENDIX "B"**

**MEMORANDUM IN SUPPORT OF MOTION FOR PRETRIAL RULING AND  
NOTICE OF INTENT**

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**FILED**

**'AUG 07 2007**

*Sherry W. Parker, 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. RUSSELL GENE BARNES, Defendant.	No. 07-1-00407-6  MEMORANDUM IN SUPPORT OF MOTION FOR PRETRIAL RULING AND NOTICE OF INTENT
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The defendant, Russell Gene Freeman, is charged by Information with one count of Felony Hit and Run and one count of Making False or Misleading Statements to a Public Servant. The State is seeking to admit prior criminal convictions of the defendant consisting of Burglary in the Second Degree – three counts - under Clark County Superior Court Cause No. 05-1-01915-8. The state is attaching a copy of the defendant's Judgment and Sentence and other documents regarding those convictions and is moving to admit those convictions for impeachment purposes.

The State is seeking to admit under ER 609(a) and State v Brown, 113 Wn 2d, 520, 782 P. 2d 1013 (1989), the defendant's convictions as listed above. The State is purporting to utilize these convictions as crimes involving dishonesty pursuant to ER 609 (a). The Washington State Supreme Court has ruled that theft is a crime involving

MEMORANDUM IN SUPPORT OF MOTION  
FOR PRETRIAL RULING AND NOTICE OF  
INTENT - 1

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1 dishonesty per se. State v. Ray, 116 Wn. 2d 531, 543-544, 806 P. 2d 1220 (1991).

2 "Burglary performed with intent to commit theft is a crime of dishonesty." State v.

3 Schroeder, 67 Wn. App. 110, 116, 834 P.2d 105 (1992).

4 Based upon the requirements as set forth by the court, it is respectfully requested  
5 that the trial court allow the state to use the prior convictions for the purposes of  
6 impeaching the defendant's credibility.  
7

8 DATED this 3<sup>rd</sup> day of August, 2007.

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11 Michael B. Dodds, WSBA #10785  
12 Deputy Prosecuting Attorney  
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MEMORANDUM IN SUPPORT OF MOTION  
FOR PRETRIAL RULING AND NOTICE OF  
INTENT - 2

CLARK COUNTY PROSECUTING ATTORNEY  
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STATE OF WASHINGTON  
COUNTY OF CLARK

I, Sherry W. Parker, County Clerk and Clerk of the Superior Court of Clark County, Washington, 17 HEREBY CERTIFY that this document, consisting of 17 page(s), is a true and correct copy of the original now on file and of record in my office and, as County Clerk, I am the legal custodian thereof.

Signed and sealed at Vancouver, Washington this date:

07-23-07  
Sherry W. Parker, County Clerk  
By Markene S. Dodge

WEAR

S8



**FILED**  
**OCT 17 2005**  
JoAnne McBride, Clerk, Clark Co.

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLARK**

STATE OF WASHINGTON, Plaintiff,

v.

RUSSELL GENE BARNES,

Defendant.

SID: WA21544579

DOB: 3/17/1959

No. 05-1-01915-8

**JUDGMENT AND SENTENCE (JS)**

**PRISON**

**05 9 06398 9**

Clerk's action required Paragraph 5.7

**I. HEARING**

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

**II. FINDINGS**

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

2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on 10/17/05  
(Date)  
by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
01	BURGLARY IN THE SECOND DEGREE	9A.52.030	8/28/2005
03	BURGLARY IN THE SECOND DEGREE	9A.52.030	8/27/2005 to 8/28/2005
08	BURGLARY IN THE SECOND DEGREE	9A.52.030	8/15/2005 to 8/16/2005

as charged in the (            Amended) Information.

A special verdict/finding for use of firearm was returned on Count(s)             
RCW 9.94A.602, 510

A special verdict/finding for use of deadly weapon other than a firearm was returned on  
Count(s)           . RCW 9.94A.602

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- A special verdict/finding of sexual motivation was returned on Count(s) \_\_\_\_\_  
RCW 9.94A.835
- A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on  
Count(s) \_\_\_\_\_, 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.
- The defendant was convicted of vehicular homicide which was proximately caused by a person  
driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a  
vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful  
imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not  
the minor's parent. RCW 9A.44.130
- The court finds that the offender has a chemical dependency that has contributed to the offense(s).  
RCW 9.94A.607.
- The crimes charged in Count(s) \_\_\_\_\_ is/are Domestic Violence  
offense(s) as that term is defined in RCW 10.99.020:
- A special verdict/finding that the defendant committed a crime involving the manufacture of  
methamphetamine when a juvenile was present in or upon the premises of manufacture was  
returned on Count(s) \_\_\_\_\_. RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.
- 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	Adul Adult, Juv.	TYPE OF CRIME
1. No known felony convictions					

- 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 48.61.520: \_\_\_\_\_
- The State has moved to dismiss count(s) 02 (MALICIOUS MISCHIEF IN THE SECOND DEGREE),  
04 (THEFT IN THE SECOND DEGREE), 05 (MALICIOUS MISCHIEF IN THE SECOND DEGREE),

07 (MALICIOUS MISCHIEF IN THE SECOND DEGREE), 08 (THEFT IN THE SECOND DEGREE).

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
01	4	III	12 MONTHS to 18 MONTHS	None	12 MONTHS to 18 MONTHS	10 YEARS \$20000
03	4	III	12 MONTHS to 18 MONTHS	None	12 MONTHS to 18 MONTHS	10 YEARS \$20000
08	4	III	12 MONTHS to 18 MONTHS	None	12 MONTHS to 18 MONTHS	10 YEARS \$20000

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520

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) \_\_\_\_\_. 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.750/753

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

\_\_\_\_\_. 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 02 (MALICIOUS MISCHIEF IN THE SECOND DEGREE), 04 (THEFT IN THE SECOND DEGREE), 05 (MALICIOUS MISCHIEF IN THE SECOND DEGREE), 07 (MALICIOUS MISCHIEF IN THE SECOND DEGREE), 08 (THEFT IN THE SECOND DEGREE).

The defendant is found NOT GUILTY of Counts .

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

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

\$to be set	Restitution to be paid to <input checked="" type="checkbox"/> Victim(s) and amounts to be set by separate court order	RCW 9.94A.750/753
\$200.00	Criminal filing fee	RCW 9.94A.505
\$500.00	Victim assessment	RCW 7.68.035
\$ _____	DV Penalty Assessment	Chapter 15, Laws of 2004
\$100.00	Collection of biological sample (for crimes committed on or after July 1, 2002)	Chapter 289, Laws of 2002
\$700.00	Fees for court appointed attorney	RCW 9.94A.505/760/030
\$500.00	Fine	RCW 9A.20.021
\$ _____	Drug fund contribution to be paid within two (2) years Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A.760
\$ _____	Crime lab fee	RCW 43.43.690
\$ _____	Witness costs	RCW 10.01.160 and RCW 2.40.010
Court costs, including:		RCW 9.94A.030, 9.94A.505, 9.94A.760, 10.01.160, 10.48.190
\$ _____	Sheriff service fees	RCW 10.01.160 and RCW 36.18.040
\$ _____	Jury demand fee	RCW 10.01.160 and RCW 10.48.190
\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.505, 760, RCW 9.94A.030
\$ _____	Extradition costs	RCW 9.94A.505
\$ _____	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 12-21-05 @ 9:00 AM.

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

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 \$ As Established 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.

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

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

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

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

4.3 The defendant shall not have contact with Richard C Franklin, Chevron, Mike Kim including, but not limited to, personal, verbal, telephonic, electronic, written or contact through a third party for 10 years (not to exceed the maximum statutory sentence).

Supplemental Domestic Violence Protection Order or Antiharassment Order attached as Form 4.3.

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

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

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

366 (days/months) on Count 01

366 days/months on Count 03

366 days/months on Count 06

366 days

Actual number of months of total confinement ordered is:

(Add mandatory firearm and deadly weapons 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 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) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505.

Credit for 49 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced.

- (c) Other conditions of sentence:

- 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: \_\_\_\_\_
- Other conditions may be imposed by the court or Department during community custody, or are set forth here: \_\_\_\_\_
- The conditions of community supervision/community custody shall begin immediately or upon the defendant's release from confinement unless otherwise set forth here: \_\_\_\_\_
- Defendant shall not violate any federal, state or local criminal laws, and shall not be in the company of any person known by him/her to be violating such laws.
- Defendant shall not commit any like offenses.
- Defendant shall notify his/her community corrections officer within forty-eight (48) hours of any arrest or citation.
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be convicted felons, or presently on probation, community supervision/community custody or parole for any offense, juvenile or adult, except immediate family. Additionally, the defendant shall not initiate or permit communication or contact with the following persons: \_\_\_\_\_
- Defendant shall not have any contact with other participants in the crime, either directly or indirectly.

- Defendant shall not initiate or permit communication or contact with persons known to him/her to be substance abusers.
- Defendant shall not possess, use or deliver drugs prohibited by the Uniform Controlled Substances Act, or any legend drugs, except by lawful prescription. The defendant shall notify his/her community corrections officer on the next working day when a controlled substance or legend drug has been medically prescribed.
- Defendant shall not possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, cellular phones, police scanners, and hand held electronic scheduling and data storage devices.
- Defendant shall not frequent known drug activity areas or residences.
- Defendant shall not use or possess alcoholic beverages  at all  to excess.  
The defendant  will  will not be required to take monitored antabuse per his/her community corrections officer's direction, at his/her own expense, as prescribed by a physician.
- Defendant shall not be in any place where alcoholic beverages are sold by the drink for consumption or are the primary sale item.
- Defendant shall undergo an evaluation for treatment for  substance abuse  mental health  anger management treatment and fully comply with all recommended treatment.
- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a  substance abuse  mental health  anger management treatment program as established by the community corrections officer and/or the treatment facility.
- Based upon the Pre-Sentence Report, the court finds reasonable grounds to exist to believe the defendant is a mentally ill person, and this condition was likely to have influenced the offense. Accordingly, the court orders the defendant to undergo a mental status evaluation and participate in outpatient mental health treatment. Further, the court may order additional evaluations at a later date, if deemed appropriate.
- Treatment shall be at the defendant's expense and he/she shall keep his/her account current if it is determined that the defendant is financially able to afford it.
- Defendant shall submit to urine, breath or other screening whenever requested to do so by the treatment program staff and/or the community corrections officer.
- Defendant shall not associate with any persons known by him/her to be gang members or associated with gangs.
- Defendant shall not wear or display any clothing, apparel, insignia or emblems that he/she knows are associated with or represent gang affiliation or membership as determined by the community corrections officer.
- Defendant shall not possess any gang paraphernalia as determined by the community corrections officer.
- Defendant shall not use or display any names, nicknames or monikers that are associated with gangs.
- Defendant shall comply with a curfew, the hours of which are established by the community corrections officer.
- Defendant shall attend and successfully complete a shoplifting awareness educational program as directed by the community corrections officer.

- Defendant shall attend and successfully complete the Victim Awareness Educational Program as directed by the community corrections officer.
- Defendant shall not accept employment in the following field(s):  
\_\_\_\_\_
- Defendant shall not possess burglary tools.
- Defendant's privilege to operate a motor vehicle is suspended/revoked for a period of one year; two years if the defendant is being sentenced for a vehicular homicide.
- Defendant shall not operate a motor vehicle without a valid driver's license and proof of liability insurance in his/her possession.
- Defendant shall not possess a checkbook or checking account.
- Defendant shall not possess any type of access device or P.I.N. used to withdraw funds from an automated teller machine.
- Defendant shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections.
- Defendant shall not be eligible for a Certificate of Discharge until all financial obligations are paid in full and all conditions/requirements of sentence have been completed including no contact provisions.
- Defendant shall not enter into or frequent business establishments or areas that cater to minor children without being accompanied by a responsible adult. Such establishments may include but are not limited to video game parlors, parks, pools, skating rinks, school grounds, malls or any areas routinely used by minors as areas of play/recreation.
- Defendant shall not have any unsupervised contact with minors. Minors mean persons under the age of 18 years.
- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a sexual deviancy treatment program as established by the community corrections officer and/or the treatment facility. "Cooperate with" means the offender shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity.
- Defendant shall submit to periodic polygraph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody.
- Defendant shall submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody.
- Defendant shall not possess or use any pornographic material or equipment of any kind and shall not frequent establishments that provide such materials for view or sale.
- Defendant shall sign necessary release of information documents as required by the Department of Corrections.
- Defendant shall adhere to the following additional crime-related prohibitions or conditions of community placement/community custody:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 4.7 The Bail or release conditions previously imposed are hereby exonerated and the clerk shall disburse it to the appropriate person(s).
- 4.8 This case shall not be placed on inactive or mail-in status until all financial obligations are paid in full.
- 4.9 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.68.020. The following areas are off limits to the defendant while under the supervision of the Department of Corrections:

4.10 Other:

#### V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten (10) years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A505(5).
- 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
- 5.7  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 forward an Abstract of Court Record to the Department of Licensing, who must revoke the defendant's driver's licenses. RCW 48.20.285.

**Cross off if not applicable:**

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

vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

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

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

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

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

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

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

5.9 Persistent Offense

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

9.94A.506

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.

5.10 OTHER: \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: 10-17-06

James E. Kline  
JUDGE OF THE SUPERIOR COURT

Print Name: JAMES RULLI

Kathleen A. Hart  
Kathleen A. Hart, WSBA #24207  
Deputy Prosecuting Attorney  
12/06

Gerald L. Wear  
Gerald L. Wear, WSBA #06315  
Attorney for Defendant

Russell G. Barnes  
RUSSELL GENE BARNES  
Defendant

**SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK**

STATE OF WASHINGTON, Plaintiff,

v.

RUSSELL GENE BARNES,

Defendant.

SID: WA21544579

DOB: 3/17/1959

NO. 05-1-01915-8

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

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

**GREETING:**

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

COUNT	CRIME	RCW	DATE OF CRIME
01	BURGLARY IN THE SECOND DEGREE	9A.52.030	8/29/2005
03	BURGLARY IN THE SECOND DEGREE	9A.52.030	8/27/2005
08	BURGLARY IN THE SECOND DEGREE	9A.52.030	8/15/2005

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

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

COUNT	CRIME	TERM
01	BURGLARY IN THE SECOND DEGREE	366 days
03	BURGLARY IN THE SECOND DEGREE	366 days
08	BURGLARY IN THE SECOND DEGREE	366 days

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

The defendant has credit for 49 days served.

And these presents shall be authority for the same.

HEREIN FAIL NOT.

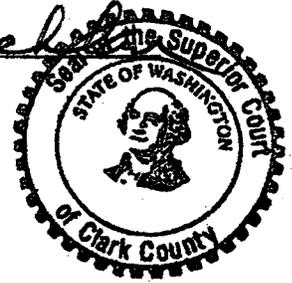
WITNESS, Honorable

James E. Lee

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 10-17-05

JOANNE McBRIDE, Clerk of the  
Clark County Superior Court

By: M. McLaughlin  
Deputy



CAUSE NUMBER of this case: 05-1-01915-8

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

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

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

IDENTIFICATION OF DEFENDANT RUSSELL GENE BARNES		
SID No. WA21544579 (If no SID take fingerprint card for State Patrol)	Date of Birth 3/17/1959	
Driver License No. BARNE-RG-418DP	Driver License State: WA	
FBI No. 698505NA4	Local ID No. (CFN): 168278	
SSN:	Corrections No.	
PCN No. _____	Other _____	
Alias name, SSN, DOB:		
Race: W	Ethnicity:	Sex: M

**FINGERPRINTS** I attest that I saw the same defendant who appeared in Court on this document take his fingerprints and signature thereon. Clerk of the Court: Joanne McBride  
Dated: 10/17/05

DEFENDANT'S SIGNATURE: Russell G. Barnes

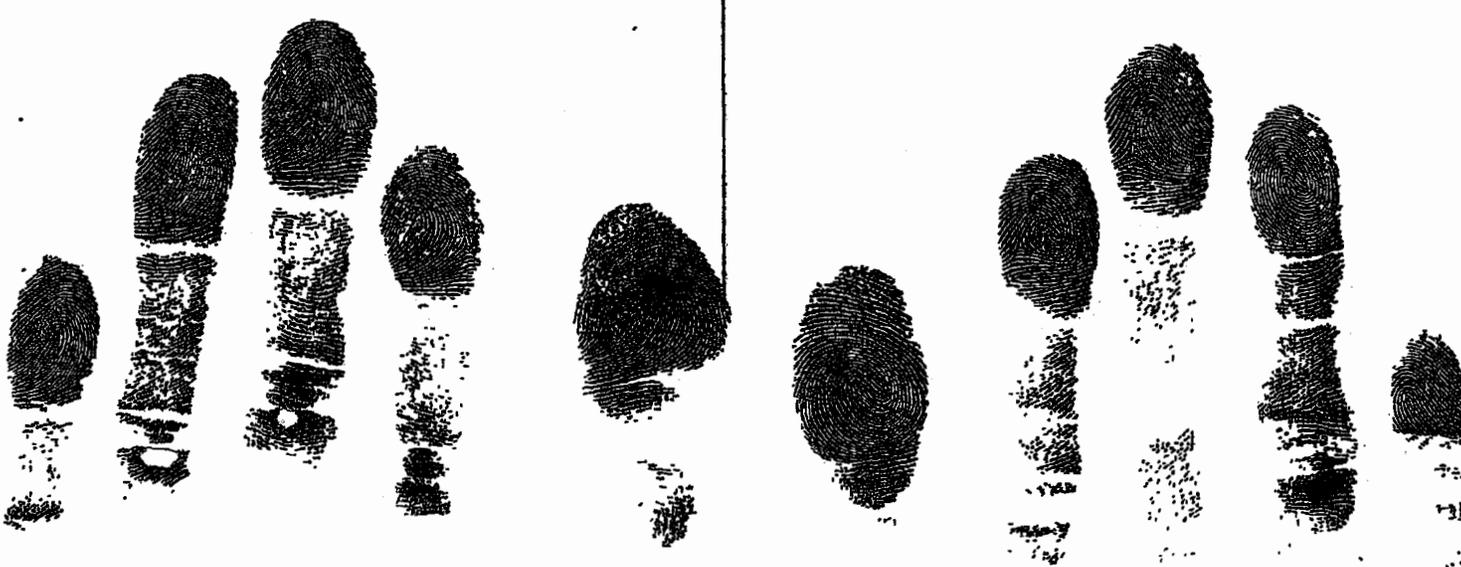


Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



STATE OF WASHINGTON  
COUNTY OF CLARK

I, Sherry W. Parker, County Clerk and Clerk of the Superior Court of Clark County, Washington, DO HEREBY CERTIFY that this document, consisting of 13 page(s), is a true and correct copy of the original now on file and of record in my office and, as County Clerk, I am the legal custodian thereof.

Signed and sealed at Vancouver, Washington this date:

01-23-07  
Sherry W. Parker, County Clerk

*Mylene S. Dodge*



**FILED**  
**OCT 1 2005**

JoAnne McBride, Clerk, C-100

**SUPERIOR COURT OF WASHINGTON  
FOR**

STATE OF WASHINGTON

Plaintiff

vs.  
RUSSELL GENE BARNES  
Defendant.

NO. 05-1-01915-8

**STATEMENT OF DEFENDANT ON  
PLEA OF GUILTY TO NON-SEX  
OFFENSE  
(STTDFG)**

1. My true name is:

RUSSELL GENE BARNES

2. My age is: 46

3. I went through the 11<sup>th</sup> (GED) grade. I can/cannot read the English language.

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 is:

Scott L. Wey

(b) I am charged with: 3cts Burglary in the Second Degree

The elements are: In Clark County, Washington on August 27, 2005, August 28, 2005, and August 16, 2005 defendant, with intent to commit a crime he entered (1) St. John's Mini-Mart, 72nd Avenue Chevron and Discount Tobacco buildings, respectively.

STATEMENT ON PLEA OF GUILTY (NON-SEX OFFENSE)  
(STTDFG) - Page 1 of 11  
CrR 4.2(g) (08/2002)

CLARK COUNTY PROSECUTING ATTORNEY  
1200 FRANKLIN STREET • PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(360) 397-2261 (OFFICE)  
(360) 397-2230 (FAX)

*W*

2  
3  
4  
5. I UNDERSTAND I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

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

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

- 18 (a) Each crime with which I am charged carries a maximum sentence, a fine, and a  
19 STANDARD SENTENCE RANGE as follows:

COUNT NO	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
20 1	4	12-16 mos.	N/A			10 years \$2,000
21 2	4	12-16 mos.	N/A			10 years \$2,000
22 3	4	12-16 mos.	N/A			10 years \$2,000

23 \*(F) Firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, See  
24 RCW 46.61.520, (JP) Juvenile present

25 STATEMENT ON PLEA OF GUILTY (NON-SEX OFFENSE)  
26 (STTDFG) - Page 2 of 11  
27 CrR 4.2(g) (08/2002)

CLARK COUNTY PROSECUTING ATTORNEY  
1200 FRANKLIN STREET • PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(360) 397-2281 (OFFICE)  
(360) 397-2230 (FAX)

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- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, 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. 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 or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 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 amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- N/A (f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is not more than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was

2 made that I or an accomplice was armed with a deadly weapon, the judge will  
3 order me to serve at least one year of community placement. If this crime is a  
4 vehicular homicide, vehicular assault, or a serious violent offense, the judge will  
5 order me to serve at least two years of community placement. The actual period of  
6 community placement, community custody, or community supervision may be as  
7 long as my earned early release period. During the period of community  
8 placement, community custody, or community supervision, I will be under the  
9 supervision of the Department of Corrections, and I will have restrictions and  
10 requirements placed upon me.

11 For crimes committed on or after July 1, 2000: In addition to sentencing me to  
12 confinement, the judge may order me to serve up to one year of community  
13 custody if the total period of confinement ordered is not more than 12 months. If  
14 the crime I have been convicted of falls into one of the offense types listed in the  
15 following chart, the court will sentence me to community custody for the community  
16 custody range established for that offense type unless the judge finds substantial  
17 and compelling reasons not to do so. If the period of earned release awarded per  
18 RCW 9.94A.150 is longer, that will be the term of my community custody. If the  
19 crime I have been convicted of falls into more than one category of offense types  
20 listed in the following chart, then the community custody range will be based on the  
21 offense type that dictates the longest term of community custody.

22 OFFENSE TYPE	COMMUNITY CUSTODY RANGE
23 Serious Violent Offenses	24 to 48 months or up to the period of 25 earned release, whichever is longer.
26 Violent Offenses	18 to 36 months or up to the period of 27 earned release, whichever is longer.
Crimes Against Persons as defined by	9 to 18 months or up to the period of

RCW 9.94A.440(2)	earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6))	9 to 12 months or up to the period of earned release, whichever is longer.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

(g) *Conviction for a felony impacts your write to vote.*  
 The prosecuting attorney will make the following recommendation to the judge:  
*Dismiss Counts 2, 4, 5, 7 and 8 with prejudice also enhancements dismissed and no other charges filed know to filed 12 mos. 1 day.*

[ ] The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

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

*NA* (i) 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.

(j) 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. RCW 9.41.040.

- 2 (k) Public assistance will be suspended during any period of imprisonment.  
3  
4 (l) I understand that I will be required to have a biological sample collected for  
5 purposes of DNA identification analysis. For offenses committed on or after July 1,  
6 2002, I will be required to pay a \$100 DNA collection fee.

7 NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING  
8 PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE  
9 DEFENDANT AND THE JUDGE.

10 N/A [m] This offense is a most serious offense or strike as defined by RCW 9.94A.030, and  
11 if I have at least two prior convictions for most serious offenses, whether in this  
12 state, in federal court, or elsewhere, the crime for which I am charged carries a  
13 mandatory sentence of life imprisonment without the possibility of parole.

14 N/A [n] The judge may sentence me as a first-time offender instead of giving a sentence  
15 within the standard range if I qualify under RCW 9.94A.030. This sentence could  
16 include as much as 90 days' confinement, and up to two years community  
17 supervision if the crime was committed prior to July 1, 2000, or up to two years of  
18 community custody if the crime was committed on or after July 1, 2000, plus all of  
19 the conditions described in paragraph (e). Additionally, the judge could require me  
20 to undergo treatment, to devote time to a specific occupation, and to pursue a  
21 prescribed course of study or occupational training.

22 N/A [o] If this crime involves a kidnapping offense involving a minor, I will be required to  
23 register where I reside, study or work. The specific registration requirements are  
24 set forth in the "Offender Registration" Attachment.

25 N/A [p] If this is a crime of domestic violence and if I, or the victim of the offense, have a  
26 minor child, the court may order me to participate in a domestic violence  
27 perpetrator program approved under RCW 26.50.150.

28 N/A [q] If this crime involves prostitution, or a drug offense associated with hypodermic  
29 needles, I will be required to undergo testing for the human immunodeficiency  
30 (AIDS) virus.

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[r] The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under former RCW 9.94A.120(6) (for offenses committed before July 1, 2001) or RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph 6(e). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions.

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[a] If the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

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N/A [i] If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine or amphetamine, a mandatory methamphetamine clean-up fine of \$3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii).

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N/A [u] If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.

N/A [v] If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the court.

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N/A [w]

If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(8).

N/A [x]

The crime 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[m].

N/A [y]

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.

N/A [z]

I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.

N/A [aa]

I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.

N/A [bb]

I understand that if I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least 6 months if this is my first conviction and for at least 12

months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

7. I plead guilty to:

count

I Burglary in The Second Degree

count

II<sup>2</sup> Burglary in The Second Degree

count

VI Burglary in The Second Degree

in the

information. I have received a copy of that

information.

8. I make this plea freely and voluntarily, of my own decision after consulting with my lawyer.

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 in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement:

In Clark County, Washington on Aug 29, 2005 Aug 28, 2005 and Aug 16, 2005, with intent to commit a crime I entered or remained unlawfully in (1) St. John's Mini-Mart (2) 72nd Ave Chevron and (3) Discount Tobacco buildings.

Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

With my attorney I have reviewed the police reports and evidence in this case and believe there is sufficient evidence for a jury to conclude I am guilty beyond a reasonable doubt; and, I want to take advantage of the plea offer.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment, if applicable. 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.

Russell G. Barnes  
Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

[Signature]  
Prosecuting Attorney Bar # [Signature]  
Michael D. Duda  
Print Name

[Signature]  
Defendant's Lawyer Bar # 6315  
Donald H. Weir  
Print Name

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 appropriate box]:

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

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: 10-17-05

[Signature]  
Judge

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

STATE OF WASHINGTON,  
Plaintiff,  
v.  
RUSSELL GENE BARNES,  
Defendant

No. 05-1-01915-8

DECLARATION OF  
CRIMINAL HISTORY

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

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
No know felony convictions				

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

DATED this 30 day of September, 2005.

Russell G. Barnes  
Defendant

Refused to sign  
Gerald L. Wear, WSBA #06315  
Attorney for Defendant

Kathleen A. Hart  
Kathleen A. Hart, WSBA #24207  
Deputy Prosecuting Attorney

DECLARATION OF CRIMINAL HISTORY  
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET  
PO BOX 5000  
VANCOUVER WA 98666-5000  
(360) 397-2291

**BURGLARY, SECOND DEGREE**  
 (RCW 9A.52.030)  
**CLASS B FELONY**  
**RESIDENTIAL AND SECOND DEGREE BURGLARY (NONVIOLENT)**  
*(If sexual motivation finding/verdict, use form on page III-13)*

**I. OFFENDER SCORING (RCW 9.94A.528(15))**

**ADULT HISTORY:**

Enter number of Burglary 1 convictions .....            x 2 =             
 Enter number of Burglary 2 or Residential Burglary convictions .....            x 2 =             
 Enter number of other felony convictions .....            x 1 =           

**JUVENILE HISTORY:**

Enter number of Burglary 1 dispositions .....            x 2 =             
 Enter number of Burglary 2 or Residential Burglary dispositions .....            x 1 =             
 Enter number of serious violent and violent felony dispositions .....            x 1 =             
 Enter number of nonviolent felony dispositions .....            x 1/2 =           

**OTHER CURRENT OFFENSES:** (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of Burglary 1 convictions .....            x 2 =             
 Enter number of other Burglary 2 or Residential Burglary convictions .....   2   x 2 =   4    
 Enter number of other felony convictions .....            x 1 =           

**STATUS:** Was the offender on community custody on the date the current offense was committed? (if yes),            + 1 =           

Total the last column to get the Offender Score (Round down to the nearest whole number) 4

**II. SENTENCE RANGE**

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL III)	1-3 months	3-6 months	4-12 months	9-12 months	12+ - 18 months	17-22 months	22-29 months	33-43 months	43-57 months	61-98 months

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.685).
- C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-6 or III-7 to calculate the enhanced sentence.
- D. If a sentence is one year or less: community custody may be ordered for up to one year (See RCW 9.94A.645 for applicable situations).

**III. SENTENCING OPTIONS**

- A. If "First-time Offender" eligible: 0-90 days confinement and up to one year of community custody. If treatment is ordered, the period of community custody may include up to the period of treatment, but shall not exceed two years.
- B. If sentence is one year or less: one day of jail can be converted to one day of partial confinement or eight hours of community service (up to 240 hours) (RCW 9.94A.690).
- C. Partial confinement may be served in home detention under certain conditions (RCW 9.94A.030).
- D. If eligible, Work Ethic Camp may be recommended (RCW 9.94A.690).
- E. If Drug Offender Sentencing Alternative (DOSA) eligible: see DOSA form for alternative sentence on page III-8 (RCW 9.94A.690).

• The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules

**BURGLARY, SECOND DEGREE**  
 (RCW 9A.02.030)  
**CLASS B FELONY**  
**RESIDENTIAL AND SECOND DEGREE BURGLARY (NONVIOLENT)**  
*(If sexual motivation finding/verdict, use form on page III-13)*

**I. OFFENDER SCORING (RCW 9.94A.021(15))**

**ADULT HISTORY:**

Enter number of Burglary 1 convictions .....            x 2 =             
 Enter number of Burglary 2 or Residential Burglary convictions .....            x 2 =             
 Enter number of other felony convictions .....            x 1 =           

**JUVENILE HISTORY:**

Enter number of Burglary 1 dispositions .....            x 2 =             
 Enter number of Burglary 2 or Residential Burglary dispositions .....            x 1 =             
 Enter number of serious violent and violent felony dispositions .....            x 1 =             
 Enter number of nonviolent felony dispositions .....            x 1/2 =           

**OTHER CURRENT OFFENSES:** (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of Burglary 1 convictions .....            x 2 =             
 Enter number of other Burglary 2 or Residential Burglary convictions .....   2   x 2 =   4    
 Enter number of other felony convictions .....            x 1 =           

**STATUS:** Was the offender on community custody on the date the current offense was committed? (If yes),            + 1 =           

Total the last column to get the Offender Score.  
 (Round down to the nearest whole number.)

**4**

**E. SENTENCE RANGE**

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL II)	1-3 months	3-6 months	4-12 months	9-12 months	12+ - 18 months	17-22 months	22-29 months	33-43 months	43-57 months	61-66 months

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.585).
- C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-6 or III-7 to calculate the enhanced sentence.
- D. If a sentence is one year or less: community custody may be ordered for up to one year (See RCW 9.94A.545 for applicable situations).

**III. SENTENCING OPTIONS**

- A. If "First-time Offender" eligible: 0-90 days confinement and up to one year of community custody. If treatment is ordered, the period of community custody may include up to the period of treatment, but shall not exceed two years.
- B. If sentence is one year or less: one day of jail can be converted to one day of partial confinement or eight hours of community service (up to 240 hours) (RCW 9.94A.660).
- C. Partial confinement may be served in home detention under certain conditions (RCW 9.94A.030).
- D. If eligible, Work Ethic Camp may be recommended (RCW 9.94A.690).
- E. If Drug Offender Sentencing Alternative (DOBA) eligible: see DOBA form for alternative sentence on page III-5 (RCW 9.94A.660).

• The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules

STATE OF WASHINGTON } ss.  
COUNTY OF CLARK

#8

I, Sherry W. Parker, County Clerk and Clerk of the Superior Court of Clark County, Washington, DO HEREBY CERTIFY that this document, consisting of 2 page(s), is a true and correct copy of the original now on file and of record in my office and, as County Clerk, I am the legal custodian thereof.

Signed and sealed at Vancouver, Washington this date:

01-23-07  
Sherry W. Parker, County Clerk

*Mardene S. Sledge*  
Deputy

**FILED**  
SEP 01 2005

JoAnne McBride, Clerk, Clark Co.



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

STATE OF WASHINGTON,  
Plaintiff,  
v.  
RUSSELL GENE BARNES  
Defendant.

**INFORMATION**

No. 05-1-01915-8  
(CCSO 05-11997)  
(CCSO 05-12663)  
(CCSO 05-12709)

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 - BURGLARY IN THE SECOND DEGREE - 9A.52.030**

That he, RUSSELL GENE BARNES, in the County of Clark, State of Washington, on or about August 29, 2005, with intent to commit a crime against a person or property therein, entered or remained unlawfully in the building of Minit Mart and/or Mike Kim, located at 8817 NE St. Johns Rd., Vancouver, Washington; contrary to Revised Code of Washington 9A.52.030(1).

**COUNT 02 - MALICIOUS MISCHIEF IN THE SECOND DEGREE - 9A.48.080(1)(a)**

That he, RUSSELL GENE BARNES, in the County of Clark, State of Washington, on or about August 29, 2005, did, knowingly and maliciously cause physical damage in an amount exceeding two hundred fifty dollars (\$250.00) to the property of another, to-wit: shattered glass front door belonging to Minit Mart and/or Mike Kim; contrary to Revised Code of Washington 9A.48.080(1)(a).

**COUNT 03 - BURGLARY IN THE SECOND DEGREE - 9A.52.030**

That he, RUSSELL GENE BARNES, in the County of Clark, State of Washington, between August 27, 2005 and August 28, 2005, with intent to commit a crime against a person or property therein, entered or remained unlawfully in the building of Chevron, located at 11811 NE 72<sup>nd</sup> Avenue, Vancouver, Washington; contrary to Revised Code of Washington 9A.52.030(1).

**COUNT 04 - THEFT IN THE SECOND DEGREE - 9A.56.020(1)(a)/9A.56.040(1)(a)**

That he, RUSSELL GENE BARNES, in the County of Clark, State of Washington, between August 27, 2005 and August 28, 2005, did wrongfully obtain or exert unauthorized control over the property or services of another, to-wit: 12 cartons of cigarettes, of a value exceeding \$250,

INFORMATION - 1  
SMT

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET • PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(360) 397-2261 or (360) 397-2183

6  
7

1 with intent to deprive Chevron, the true owner thereof, of such property or services; contrary to  
2 Revised Code of Washington 9A.56.020(1)(a) and 9A.56.040(1)(a).

3 **COUNT 05 - MALICIOUS MISCHIEF IN THE SECOND DEGREE - 9A.48.080(1)(a)**

4 That he, RUSSELL GENE BARNES, in the County of Clark, State of Washington, between  
5 August 27, 2005 and August 28, 2005, did, knowingly and maliciously cause physical damage in  
6 an amount exceeding two hundred fifty dollars (\$250.00) to the property of another, to-wit:  
7 shattered glass front door of Chevron; contrary to Revised Code of Washington 9A.48.080(1)(a).

8 **COUNT 06 - BURGLARY IN THE SECOND DEGREE - 9A.52.030**

9 That he, RUSSELL GENE BARNES, in the County of Clark, State of Washington, between  
10 August 15, 2005 and August 16, 2005, with intent to commit a crime against a person or  
11 property therein, entered or remained unlawfully in the building of Richard Franklin and/or  
12 Discount Tobacco, located at 6301 NE Hwy 99, Vancouver, Washington; contrary to Revised  
13 Code of Washington 9A.52.030(1).

14 **COUNT 07 - MALICIOUS MISCHIEF IN THE SECOND DEGREE - 9A.48.080(1)(a)**

15 That he, RUSSELL GENE BARNES, in the County of Clark, State of Washington, between  
16 August 15, 2005 and August 16, 2005, did, knowingly and maliciously cause physical damage in  
17 an amount exceeding two hundred fifty dollars (\$250.00) to the property of another, to-wit:  
18 shattered window at Discount Tobacco belonging to Richard Franklin; contrary to Revised Code  
19 of Washington 9A.48.080(1)(a).

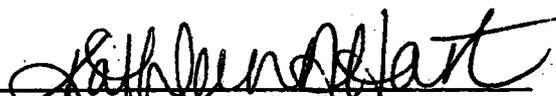
20 **COUNT 08 - THEFT IN THE SECOND DEGREE - 9A.56.020(1)(a)/9A.56.040(1)(a)**

21 That he, RUSSELL GENE BARNES, in the County of Clark, State of Washington, between  
22 August 15, 2005 and August 16, 2005, did wrongfully obtain or exert unauthorized control over  
23 the property or services of another, to-wit: miscellaneous merchandise, of a value exceeding  
24 \$250, with intent to deprive Richard Franklin and/or Discount Tobacco, the true owner thereof, of  
25 such property or services; contrary to Revised Code of Washington 9A.56.020(1)(a) and  
26 9A.56.040(1)(a).

27  
28  
29  
ARTHUR D. CURTIS  
Prosecuting Attorney in and for  
Clark County, Washington

Date: August 31, 2005

BY:

  
Kathleen A. Hart, WSBA #24207  
Deputy Prosecuting Attorney

<b>DEFENDANT: RUSSELL GENE BARNES</b>			
<b>RACE: W</b>	<b>SEX: M</b>	<b>DOB: 3/17/1959</b>	
<b>DOL: BARNE-RG-418DP WA</b>		<b>SID: WA21544579</b>	
<b>HGT: 510</b>	<b>WGT: 175</b>	<b>EYES: BLU</b>	<b>HAIR: BRO</b>
<b>WA DOC:</b>		<b>FBI: 696505NA4</b>	
<b>LAST KNOWN ADDRESS(ES):</b>			

INFORMATION - 2  
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