

Original

NO. 36848-0-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

JOSEPH ALLEN EDINGTON,

Appellant.

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DIVISION II
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STATE OF WASHINGTON
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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

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C. STATEMENT OF THE CASE

1. Procedural History.

Joseph Edington was charged with four counts of delivery of cocaine. CP 1-2. Each count was enhanced to reflect that the delivery supposedly occurred within 1,000 feet of a designated school bus stop. CP 1-2. All four deliveries were alleged to have occurred in March 2007. CP 1-2.

Edington was tried to a jury on June 11-14, 2007. RP 3-614. Prior to the start of trial, the court held a CrR 3.5 hearing, and found admissible Edington's post-arrest statements to Vancouver Police Officer Spencer Harris. RP 15-41. The jury found Edington guilty on counts I and III, both with the school bust stop enhancement, but

hung on counts II and IV. CP 42-49. The court, Judge Robert Lewis, declared a mistrial. RP 614. Rather than retrying Edington on counts II and IV, the prosecutor moved to dismiss the charges with prejudice. RP 629; CP 57-58. The court granted the prosecutor's motion. CP 57-58.

Post-trial, Edington complained about his trial attorneys and the trial attorneys moved to withdraw. CP 50-54. The court appointed a different attorney to handle sentencing. RP 623. At a pre-sentencing hearing, Edington asked to be evaluated for a DOSA sentence. RP 636; CP 57. The court held that Edington was not eligible for DOSA because a prior juvenile felony sex offense made him statutorily ineligible. RP 641. A lengthy sentencing hearing was held on October 9. RP 646-80. Both the State and the defense argued their respective positions on issues pertaining to wash out and Oregon felony history comparability to Washington felony crimes. RP 646-63. The court agreed with the State and found that Edington had an offender score of 12. RP 663-67. After giving Edington his right of allocution, the court sentencing him to a concurrent standard range sentence of 80 months plus 24 months for the enhancements for a total of 104 months. RP 674-77; CP 125-42. The sentence also included 9-12

months of community custody plus specific terms of that custody.
CP 125-42.

Edington thereafter filed a timely notice of appeal. CP 143.

2. Trial testimony.

To prove its case, the State presented the testimony of police informant Kristine Taskey. RP 339-431. Taskey agreed to work as a police informant when she was arrested for possession of methamphetamine and possession of cocaine. RP 340. Taskey, in her own words, was in "a lot of trouble" and was willing to do what she must to avoid a two-year prison sentence. RP 341. In exchange for her work, Vancouver Police Officer Spencer Harris agreed to make a favorable sentencing recommendation to the Clark County prosecutor.¹RP 152.

Joseph Edington became Taskey's target. RP 91. Edington is Taskey's sister-in-law's boyfriend. RP 339. As Taskey was to be the State's only eye-witness to any actual drug deals between Edington and herself, the State sought to control its informant. The State called the actions of their informant "controlled buys." RP 88. In an effort to prove the four buys alleged in the Information, the

¹ In fact, Taskey received a favorable recommendation. After pleading guilty to only the methamphetamine charge, and having the cocaine charge dismissed, she received a sentence of only 20 days of work crew and a drug-treatment requirement.

State presented each controlled buy to the jury initially through the testimony of Officer Harris. Each controlled went like this:

- He met with Taskey.
- He watched Taskey dial a specific phone number and listen to the conversation as Taskey tilted the phone in his direction. During this call, Taskey made an arrangement to purchase a small amount of cocaine. The person on the other end of the phone was always male and it always sounded like the same voice.
- He or another police officer or officers searched Taskey's car for contraband and/or money.
- A female police officer, when available, strip searched Taskey in search of money or contraband. If no female officer was available, a male officer would make a more limited search.
- Taskey was given a specific amount of pre-recorded buy money to purchase the cocaine.
- Various officers in unmarked cars kept Taskey under surveillance to and from her contact with Edington.
- After the alleged buy was complete, Taskey met with Harris and handed him a small amount of cocaine.

- Taskey's car was again searched by an officer or officers;
- Taskey was again strip searched by a female officer or searched, but not by stripping, by a male officer.

RP 92-150.

As to count I, the deal was said to have occurred near Evergreen Park. RP 92-113, 233. The deal on counts II and IV were said to have occurred inside Edington's Vancouver apartment. RP 114-50. On count IV, the deal was said to have occurred near the Silver Dragon bar and restaurant. RP 132-41. On Counts I and III, the police saw Edington and Taskey together at the respective locations. RP 233-34. The police did not witness any exchange of cocaine or money. Both exchanges took place in cars with tinted windows. RP 244, 291. Taskey testified and filled in the specifics of each buy. RP 339-431. Various officers who searched Taskey, searched Taskey's car and/or searched Taskey's person, and/or provided surveillance also testified. RP 227-42, 251, 259-86, 296, 306-07, 314-35.

Edington was arrested on an April 4 traffic stop. RP 153. At the time of his arrested, he possessed no controlled substances. RP 208. He had none of the buy money. RP 208. Post-arrest, an officer other than Harris transported Edington to the Clark County

Jail. RP 153-54. At the jail, Edington asked what was going on. RP 156. Harris explained that he was being charged with delivery. RP 156. Harris denied that he had delivered cocaine. RP 156-57. Up to that point, Harris had not mentioned that the arrest was for delivery of cocaine. RP 157. However, that Edington was arrested for cocaine was mentioned earlier by other officers . RP 209-10.

3. The defense case.

Edington did not testify. His attorney argued that there was insufficient proof that Edington actually delivered cocaine to Taskey. RP 569-82. To support the argument, Edington presented testimony from several witnesses who knew Taskey and said that she had a reputation for dishonesty in the community. RP 499, 502. The court refused to allow Edington to present testimony that Officer Harris' controlled buys were arguably not as controlled as presented. RP 381-88. Through an offer of proof, Edington established that in 2006, Taskey had court obligations in Oregon that required her to do UA's. RP 381-84. Rather than submitting her own urine however, Taskey acquired urine from another person, placed it in a glass container, and stored the glass container in her vagina. RP 381-84. The witness to this was Kandi Sales, Taskey's sister-in-law. RP 381.

D. ARGUMENT

1. THE TRIAL COURT VIOLATED JOSEPH EDINGTON'S CONSTITUTIONAL RIGHT TO CALL WITNESSES AND PRESENT A DEFENSE BY EXCLUDING TESTIMONY THAT THE INFORMANT HAD PREVIOUSLY HIDDEN CONTRABAND ON HER BODY TO DECEIVE LAW ENFORCEMENT AND TO GO UNPUNISHED FOR VIOLATING COURT ORDERS.

The Sixth Amendment to the United States Constitution and Washington Constitution Article I, Section 22 guarantee an accused the right to call witnesses and present a defense. U.S. Const. Amend. VI; Wash. Const. Article I, Section 22; *Douglas v. Alabama*, 380 U.S. 415, 419, 85 S.Ct. 1074, 13 L.Ed.2d 934 (1965); *State v. Hudlow*, 99 Wn.2d 1, 14-15, 659 P.2d 514 (1983); see also RCW 10.52.040; CrR 6.12. Under the Sixth Amendment and Article 1, Section 22, a criminal defendant has the right to present his version of the facts to the jury so that it may decide "where the truth lies." *State v. Maupin*, 128 Wn.2d 918, 924, 913 P.2d 808 (1996) (quoting *Washington v. Texas*, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d. 1019 (1967)); *Chambers v. Mississippi*, 410 U.S. 284, 294-95, 302, 93 S.Ct. 1038, 35 L.Ed2d 297 (1973). The United States Supreme Court has described the importance of this right:

The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to

present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecutions' witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

Washington v. Texas, 388 U.S. at 19, cited with approval in *State v. Smith*, 101 Wn.2d 36, 41, 677 P.2d 100 (1984).

A criminal defendant has a constitutional right to present a defense consisting of relevant, admissible evidence. *State v. Rehak*, 67 Wn. App. 157, 162, 834 P.2d 651 (1992), *review denied*, 120 Wn.2d 1022, *cert. denied*, 508 U.S. 953 (1993); *State v. Rice*, 48 Wn. App. 7, 12, 737 P.2d 726 (1987) ("Due process demands that a defendant be entitled to present evidence that is relevant and of consequence to his or her theory of the case."). Indeed, "[f]ew rights are more fundamental than that of an accused to present witnesses in his own defense." *Chambers v. Mississippi*, 410 U.S. 284 at 302.

All relevant evidence is generally admissible. ER 402. Evidence is relevant if it has the "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable" ER 401. Only minimal

relevance is necessary to warrant admission. *State v. Bebb*, 44 Wn. App. 803, 814, 723 P.2d 512 (1986).

The threshold to admit relevant evidence is very low, and even minimally relevant evidence is admissible unless the State can show a compelling interest to exclude prejudicial or inflammatory evidence. *State v. Darden*, 145 Wn.2d 612, 621, 41 P.3d 1189 (2002). Where evidence is highly probative, no state interest can be compelling enough to preclude its introduction. *State v. Hudlow*, 99 Wn.2d 1 at 16, 659 P.2d 514 (1993); *State v. Reed*, 101 Wn. App. 704 at 709, 6 P.3d 43 (2000); *State v. Barnes*, 54 Wn. App. 536, 538, 774 P.2d 547 (1989).

The defense theory was that informant Kristine Taskey was not credible, would do anything to avoid prison on her pending charge and that the police oversight of its “controlled” buys were shoddy and allowed for a desperate person like Taskey to manipulate that shoddiness to her won advantage.

The defense had evidence – the testimony of Kandi Sales – showing the extent the Taskey had previously gone to avoid apprehension and punishment for having dirty UA’s. Taskey actually secreted a bottle containing someone else’s urine in her vagina prior to having the UA pursuant to a court order. Ms. Sales’

evidence, if believed would have demonstrated Taskey's willingness to lie to the police, to manipulate the police, and effectively secrete items away from the prying eyes of the female officers that strip searched her naked body.

The State moved to exclude Sales' testimony about Taskey's manipulations and deceitful conduct. The trial court ruled in the State's favor, and prevented Mr. Edington from presenting the evidence. This ruling was seemingly based on the court's mistaken belief that defense counsel was merely seeking to impeach Caskey with extrinsic evidence of a specific instance of misconduct.² This ruling is incorrect for three reasons.

First, Sales' testimony was not offered as impeachment, but rather as substantive evidence to show that the steps taken by the police to "control" the informant and to control the circumstances of the "controlled buys were flawed from the outset because they did not go far enough. Sales was aware of how far Taskey would go to avoid any consequences to herself and how she had, in the recent past, concealed contraband in a place where the female police officers would not look. That Taskey had no access to controlled substances when she met with Edington was essential to the

² Extrinsic evidence is inadmissible for impeachment on a collateral issue. See ER 608(b).

State's case. That is why the State went to great lengths to explain to the jury the thoroughness of its pre- and post-buy search process: the search of Taskey's car by one if not two trained police officers who theoretically looked into every possible nook and cranny for evidence of concealed drugs or money; the naked strip search of Taskey before and after the buy by a trained female police officer; and the constant keeping of Taskey under surveillance to and from the buy location and never letting her out of their sight.

Second, to the extent that Sales' testimony was offered as impeachment, it was not impeachment on a collateral matter under ER 608(b). Instead, it was impeachment by contradiction on a material issue – the thoroughness of the search of Taskey as explained during the testimony of case officer Harris.³

Third, even if the trial judge was correct that the evidence fit within ER 608(b)'s prohibition on extrinsic evidence, the evidence

³ As has been noted, "Counsel an courts sometimes have difficulty in distinguishing between Rule 608 impeachment and impeachment by contradiction. The troublesome kind of case has arisen when the witness – usually the defendant – makes a claim on direct examination inconsistent with bad conduct. Extrinsic evidence may not be admitted pursuant to Rule 608 to rebut this claim. Whether extrinsic evidence may be admitted on a theory of impeachment by contradiction would depend on the circumstances of the case." *State v. Barnes*, 54 Wn. App. 536 at 548, 774 P.2d 547 (1989) (Thompson, CJ, dissenting), citing 3 J. Weinstein & M. Berger, *Evidence*, Section 608[05], at 608-31-33.

should still have been admitted because it was evidence crucial to the defense theory of the case and its exclusion resulted in unfair prejudice. Under these circumstances, the rules of evidence “may not be applied mechanistically to defeat the ends of justice.” *Chambers v. Mississippi, supra*, at 302.

The trial court’s rulings on this issue left the jury with only half the story. By excluding Sales’ evidence, the court denied Edington his constitutional right to present a defense. The conviction must be reversed and the case remanded for a new trial. *State v. Elliott*, 121 Wn. App. 404, 88, P.3d 435 (2004).

2. THE TRIAL COURT VIOLATED EDINGTON’S RIGHT TO DUE PROCESS WHEN IT IMPOSED A COMMUNITY CUSTODY CONDITION SO VAGUE THAT IT DOES NOT PUT HIM ON NOTICE OF WHAT CONDUCT IT PROHIBITS.

Under Washington Constitution, Article 1, Section 3, and United States Constitution, Fourteenth Amendment, “a statute is void for vagueness if its terms are ‘so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application.’” *State v. Worrell*, 111 Wn.2d 537, 761 P.2d 56 (1988) (quoting *Myrick v. Board of Pierce Cy. Comm’rs*, 102 Wn.2d 698, 707, 677 P.2d 140 (1984)). This rule applies equally to conditions of community custody which have the effect of

a criminal statute in that their violation can result in a new term of incarceration. *State v. Simpson*, 136 Wn. App. 812, 150 P.3d 1167 (2007).

As the Washington Supreme Court explained in *State v. Aver*, 109 Wn.2d 303, 745 P.2d 479 (1987), the test for vagueness rests on two key requirements: adequate notice to citizens and adequate standards to prevent arbitrary enforcement. In addition, there are two types of vagueness challenges: (1) facial challenges, and (2) challenges as applied in a particular case. *Worrell*, 111 Wn.2d at 540. In *Aver*, the court explained the former challenge:

In a constitutional challenge a statute is presumed constitutional unless its unconstitutionality appears beyond a reasonable doubt. *Seattle v. Shepherd*, 93 Wash.2d 861, 865, 613 P.2d 1158 (1980); *Maciolek*, 101 Wn.2d at 263, 676 P.2d 996 (1984). In a facial challenge, as here, we look to the face of the enactment to determine whether any conviction based thereon could be upheld. *Shepherd*, at 865. A statute is not facially vague if it is susceptible to a constitutional interpretation. *State v. Miller*, 103 Wn.2d 792, 794, 698 P.2d 554 (1985). The burden of proving impermissible vagueness is on the party challenging the statute's constitutionality. *Shepherd*, at 865. Impossible standards of specificity are not required. *Hi-Starr, Inc. v. Liquor Control Bd.*, 106 Wn.2d 455, 465, 722 P.2d 808 (1986).

Aver, 109 Wn.2d at 306-07.

Under our facts, the following community custody condition the court imposed in this case violates due process because it is void for vagueness.

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 or data storage devices.

CP 132.

In this provision the phrase "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" is hopelessly vague. Literally, any item from a toothpick up to a dump truck could qualify under this phrase. The following gives a few examples. Any type of telephone can and are used to facilitate the transfer of drugs. Is the defendant prohibited from using any type of telephone? Any type of motor vehicle can be used for the transfer of drugs. Is the defendant prohibited from using motor vehicles? Blenders can be used to pulverize pseudoephedrine tablets as the first step in manufacturing methamphetamine. Is the defendant prohibited from using a blender? Matches are often used as a source of phosphorous in the

manufacture of methamphetamine. Is the defendant prohibited from using or possessing matches? Cigarette paper is sometimes used to smoke marijuana. Is the defendant prohibited from possessing cigarette paper? Baggies are often used to contain controlled substances. Is the defendant now forced to only use waxed paper to wrap his sandwiches? Except waxed paper can also be used to make bindles, as can glossy pages out of magazines. Perhaps Edington will be in violation if he possesses waxed paper or magazines with glossy pages. The list is endless and the reason it is endless is because the phrase "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" is so vague as to leave the defendant open to violation at the whim of his probation officer. Consequently, this condition is void and violates the defendant's right to due process under Washington Constitution, Article 1, Section 3 and United States Constitution, Fourteenth Amendment.

3. **THIS COURT'S REFUSAL TO ADDRESS ARGUMENT 2 AS NOT RIPE WILL VIOLATE EDINGTON'S RIGHT TO DUE PROCESS AS WELL AS EDINGTON'S RIGHT TO EFFECTIVE APPELLATE REVIEW.**

In a recent decision this court ruled that constitutional arguments such as these are not ripe for decision given that the State had not sought to sanction Edington for violating the condition Edington herein claims is improper. *State v. Motter*, 139 Wn. App. 797, 162 P.3d 1190 (2007). In *Motter*, a defendant convicted of first degree burglary appealed his sentence, arguing that the trial court imposed a number of community custody conditions that violated certain constitutional rights and which were not authorized by the legislature. One of these conditions prohibited the defendant from possessing "drug paraphernalia" which the court said included such items as cell phones and data recording devices. This court refused to address this condition on the basis that the issue was not ripe for decision. This court held:

Moreover, *Motter's* challenge is not ripe. In *State v. Massey*, 81 Wn. App. 198, 200, 913 P.2d 424 (1996), the defendant challenged a condition that he submit to searches. This court held that the judicial review was premature until the defendant had been subjected to a search he thought unreasonable. And in *State v. Langland*, 42 Wn. App. 287, 292-93, 711 P.2d 1039 (1985), we held that the question of a law's constitutionality is not ripe for review unless the challenger was harmed by the law's alleged error. Here, *Motter* claims that the court order could prohibit his possession of innocuous items. But *Motter* has not been harmed by this potential for error and this issue therefore is not ripe for our review. It is not reasonable to require a trial court to list every item that may possibly be misused to ingest or process controlled substances, items ranging from

pop cans to coffee filters. Thus, we can review Motter's challenge only in context of an allegedly harmful application of this community custody condition. This argument is not properly before this court and we will not address it.

Motter, 139 Wn. App. at 804.

This decision, while appropriate at the time of *Massey* and *Langland*, is inappropriate now, and that by applying it in *Motter* and applying it under our facts, this court violates Edington's right to procedural due process under Washington Constitution, Article 1, Section 3 and United States Constitution, Fourteenth Amendment, by denying Edington's appellate review as guaranteed under Washington Constitution, Article 1, Section 22. The following presents this argument.

A criminal defendant does not have a federal constitutional due process right to either post-conviction motions or to appeal. *Rheuark v. Shaw*, 628 F.2d 297, 302 (5th Cir.1980), *cert. denied*, 450 U.S. 931, 101 S.Ct. 1392, 67 L.Ed.2d 365 (1981). However, once the State acts to create those rights by constitution, statute or court rule, the protections afforded under the due process clauses found in Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, have full effect. *In re Frampton*, 45 Wn.App. 554, 726 P.2d 486 (1986). For example,

once the State creates the right to appeal a criminal conviction, in order to comport with due process, the State has the duty to provide all portions of the record necessary to prosecute the appeal at state expense. *State v. Rutherford*, 63 Wn.2d 949, 389 P.2d 895 (1964). Similarly, the State also has the duty to provide appointed counsel to indigent appellants. *Douglas v. California*, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963); *State v. Rupe*, 108 Wn.2d 734, 741, 743 P.2d 210 (1987).

In Washington a criminal defendant has the right to one appeal in a criminal case under both RAP 2.2 and Washington Constitution, Article 1, Section 22. *State v. French*, 157 Wn.2d 593, 141 P.3d 54 (2006). Thus, this right includes the protections of procedural due process. At a minimum, procedural due process under Washington Constitution, Article 1, Section 3 and United States Constitution, Fourteenth Amendment requires notice and the opportunity to be heard before a competent tribunal. *In re Messmer*, 52 Wn.2d 510, 326 P.2d 1004 (1958). In the *Messmer* decision, the Washington State Supreme Court provided the following definition for procedural due process.

We have decided that the elements of the constitutional guaranty of due process in its procedural aspect are notice and an opportunity to be heard or defend before a

competent tribunal in an orderly proceeding adapted to the nature of the case; also to have the assistance of counsel, if desired, and a reasonable time for preparation for trial.

Messmer, 52 Wn.2d at 514 (quoting *In re Petrie*, 40 Wn.2d 809, 246 P.2d 465 (1952)).

In *Massey* and *Langland* the defendant's procedural due process right "to be heard or defend before a competent tribunal" was not violated even though the court found the defendant's constitutional challenge to certain probation conditions was not ripe. The reason is that in these cases the defendants had the right to contest the constitutionality of those conditions before the court in the future were the Department of Corrections to seek to sanction the defendant for failure to comply with conditions the defendant felt were unconstitutional. The problem with the decision in *Motter*, and the problem in this case, is that probation violation claims are no longer adjudicated in court. Rather, they are adjudicated before a Department of Corrections hearing officer who only has the authority to determine (1) what the conditions were, (2) whether or not DOC has factually proven a violation of those conditions, and (3) what the appropriate sanction should be if the violation was proven.

Under WAC 137-104-050 the Department of Corrections has adopted procedures whereby defendants accused of community custody violations are tried before a DOC hearing officer on the claims of violation, not before a court. The first two sections of this code section provide as follows:

(1) Offenders accused of violating any of the conditions or requirements of community custody will be entitled to a hearing, prior to the imposition of sanctions by the department.

(2) The hearing shall be conducted by a hearing officer in the department's hearing unit, and shall be considered as an offender disciplinary proceeding and shall not be subject to chapter 34.05 RCW, the Administrative Procedure Act.

WAC 137-104-050.

There is no provision under this administrative code, nor under any of the other sections of WAC 137-104 to allow the defendant to challenge the constitutionality of community custody conditions that the court imposed. In addition, while this administrative code section does grant the right to appeal, it does not grant the defendant the right at the appellate level to challenge the constitutionality of the community custody conditions imposed by the court. This section, WAC 137-104-080, states as follows:

(1) The offender may appeal the decision of the hearing officer within seven calendar days to the appeals panel. The

request for review should be submitted in writing and list specific concerns.

(2) The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to the: (a) Crime of conviction; (b) Violation committed; (c) Offender's risk of re-offending; or (d) Safety of the community.

(3) The appeals panel will also examine evidence presented at the hearing and reverse any finding of a violation based solely on unconfirmed or un-confirmable allegations.

WAC 137-104-080.

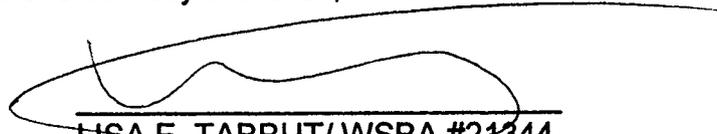
Under WAC 137-104-080 and the procedures by which community custody violations are no longer adjudicated in court, the effect of the decision in *Motter* is to deny a defendant procedural due process under Washington Constitution, Article 1, Section 3, and United States Constitution, Fourteenth Amendment by refusing to hear constitutional challenges to community custody provisions at the direct appeal level (not ripe), and then refuse to hear constitutional challenges at the violation level under WAC 137-104 (no authority to hear the claim). Thus, to comport with minimum due process, this court should find that the defendant's constitutional challenges to community custody conditions may be heard as part of a direct appeal from the imposition of the sentence.

E. CONCLUSION

Because of the trial court's error in excluding Edington's offered testimony from Kandi Sales, Edington's convictions should be reversed.

In the event that this court does not reverse Edington's convictions, his case should be remanded to the trial court to strike the vague community custody condition that Edington cannot use or possess paraphernalia.

Respectfully submitted this 26th day of March, 2008



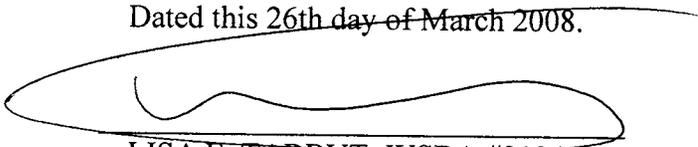
LISA E. TABBUT/WSBA #21344
Attorney for Appellant

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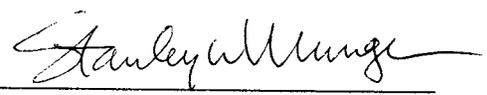
- (1) APPELLANT'S BRIEF
- (2) AFFIDAVIT OF MAILING

Dated this 26th day of March 2008.



LISA E. TABBUT, WSBA #21344
Attorney for Appellant

SUBSCRIBED AND SWORN to before me this 26th day of March 2008.



Stanley W. Munger
Notary Public in and for the
State of Washington
Residing at Longview, WA 98632
My commission expires 05/24/12

