

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2009 JAN 21 PM 4:51

NO. 38383-7-II

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

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STATE OF WASHINGTON,

Respondent,

v.

BEAU NUGENT,

Appellant.

09 JAN 23 AM 11:40  
STATE OF WASHINGTON  
BY *C* DEPUTY

FILED  
COURT OF APPEALS  
DIVISION II

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR MASON COUNTY

The Honorable Toni A. Sheldon, Judge

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BRIEF OF APPELLANT

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JENNIFER M. WINKLER  
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A. ASSIGNMENTS OF ERROR

1. Insufficient evidence supports appellant's conviction for escape from community custody.

2. Insufficient evidence supports appellant's conviction for first degree escape.

Issue Pertaining to Assignments of Error

The State stipulated appellant was previously convicted of a felony. Appellant's community corrections officer (CCO) testified he ordered appellant to report to the Department of Corrections (DOC) office. And the CCO issued an "Order for Arrest and Detention," introduced into evidence, stating appellant violated a condition of post-release supervision under RCW 9.94A.628.<sup>1</sup> Under RCW 9.94A.030, however, "post-release

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<sup>1</sup> RCW 9.94A.628 provides:

If the offender violates any condition of postrelease supervision, a hearing may be conducted in the same manner as provided in RCW 9.94A.634. Jurisdiction shall be with the court of the county in which the offender was sentenced. However, the court may order a change of venue to the offender's county of residence or where the violation occurred, for the purpose of holding a violation hearing.

After the hearing, the court may order the offender to be confined for up to sixty days per violation in the county jail. Reimbursement to a city or county for the care of offenders who are detained solely for violating a condition of postrelease supervision shall be under RCW 70.48.440. A county shall be reimbursed for indigent defense costs for

(continued...)

supervision" is defined as "that portion of an offender's community placement that is not community custody." The State presented no evidence appellant was subject to community custody, which was necessary to prove both (1) escape from community custody and (2) first degree escape from custody, as that crime was charged in this case. Where no rational trier of fact could find the elements of either crime beyond a reasonable doubt, must appellant's convictions be reversed, and the charges dismissed with prejudice?

**B. STATEMENT OF THE CASE**

**1. Procedural facts**

The State charged appellant Beau Nugent with escape from community custody,<sup>2</sup> alleged to have occurred between November 7, 2007

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<sup>1</sup>(...continued)

offenders who are detained solely for violating a condition of postrelease supervision in accordance with regulations to be promulgated by the office of financial management. An offender may be held in jail at state expense pending the hearing, and any time served while awaiting the hearing shall be credited against confinement imposed for a violation. The court shall retain jurisdiction for the purpose of holding the violation hearing and imposing a sanction.

<sup>2</sup> RCW 72.09.310 provides:

An inmate in community custody who willfully discontinues making himself or herself available to the department for supervision by making his or her whereabouts unknown or

(continued...)

and March 5, 2008 (count 1). The State also charged Nugent with first degree escape<sup>3</sup> for events occurring March 5, 2008 (count 2). CP 42-45, 48-49.

A jury convicted Nugent as charged. CP 17-18. The trial court sentenced Nugent to concurrent standard-range sentences of six months on count 1 and 15 months on count 2. CP 5-16; RP 101.

2. Trial testimony, exhibit, and stipulation to prior felony

DOC employee Robert McIntosh testified he was Nugent's CCO "as to" Mason County Superior Court cause number 98-1-00216-6<sup>4</sup> between November 7, 2007 and March 5, 2008 and until a few months before trial, when another CCO took over the case. RP 27.

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<sup>2</sup>(...continued)

by failing to maintain contact with the department as directed by the community corrections officer shall be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a class C felony under chapter 9A.20 RCW.

<sup>3</sup> Under RCW 9A.76.110(1):

A person is guilty of escape in the first degree if he or she knowingly escapes from custody or a detention facility while being detained pursuant to a conviction of a felony or an equivalent juvenile offense.

<sup>4</sup> The state offered no judgment and sentence for this cause number into evidence.

The State inquired whether "pursuant to that conviction" Nugent had "certain obligations imposed upon him" requiring him to report to and follow McIntosh's directives. RP 28. McIntosh replied affirmatively and testified he ordered Nugent to report the first and third Wednesdays of each month. RP 28. McIntosh ordered Nugent to report to the office on November 7 in particular. RP 28.

Nugent did not report on that date or thereafter. RP 29. In December 2007, McIntosh prepared an "Order for Arrest and Detention." RP 29-30; Exs. 1 (redacted order admitted into evidence) and 1A (unredacted order).<sup>5</sup> The document contains various boxes to be checked according to the applicable form of DOC supervision, including two different options for "Community Custody." Exs. 1, 1A. But the order admitted into evidence has only one box checked, which corresponds not with community custody but with "Post-Release Supervision . . . RCW 9.94A.628." Ex. 1.<sup>6</sup> The order then alleges:

Having been convicted of an offense and placed under the jurisdiction of the [DOC], by the Superior Court of the state of Washington for [Mason] County on . . . 1/25/05. . . it

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<sup>5</sup> Copies of Exhibits 1 and 1A are attached to this brief as Appendices A and B, respectively.

<sup>6</sup> The unredacted Order also contains a box checked corresponding with "Probation . . . RCW 9.95.220," but likewise no checkmarks corresponding with community custody. Ex. 1A.

now appears the above person has violated condition(s) or requirements of sentence or supervision as follows:

Allegation #1

Failing to report to DOC on 11-07-2007, in Mason County, WA.

Allegation #2

Failing to be available [redacted] since 11-7-2007, in Mason County, WA.

Ex. 1.

McIntosh testified he sent the Order to the sheriff's department and court anticipating a bench warrant would be issued. RP 30.

Officer Michael Ware of the Squaxin Island Tribal Police Department and Sergeant Jason Dracobly of the Mason County Sheriff's Office were present for Nugent's arrest the evening of March 5, 2008. Police located Nugent while seeking another man on a warrant at a home on the Squaxin Island reservation. RP 31-38. Dracobly recalled hearing there was a warrant for Nugent's arrest over the radio. RP 39. At some point, Dracobly noticed Deputy Kenneth McGill struggling with Nugent. RP 41. Dracobly later assisted in patting down Nugent and removing taser probes from Nugent's body and clothing. RP 41.

McGill testified he found Nugent hiding under blankets in the back bedroom of the Squaxin Island home. RP 43. After learning there was

a warrant for Nugent's arrest, McGill handcuffed Nugent and led him to his patrol car. RP 44-46.

While McGill was unlocking his car, Nugent fled. RP 45. McGill tasered and tackled Nugent about 200 yards away. RP 46.

The jury heard the following stipulation:

The parties stipulate that, for purposes of the crimes of Escape from Community Custody and Escape in the First Degree as charged herein, the defendant, Beau E. Nugent, was previously convicted on January 25, 2005, in Mason County Superior Court Cause No. 98-1-00216-6 of a felony.

CP 41. The state then rested.

Nugent testified the DOC knew his address and phone number because he provided each in 2006 and neither had changed. RP 52-53. Nugent disputed McGill told him he was under arrest on a DOC warrant. RP 55, 58. Instead, Nugent said he was informed he was being detained for "officer's safety while they swept the house." RP 54-55.

Nugent did not deny running from McGill. RP 58. Nor did he deny failing to report to CCO McIntosh between November 7, 2007 and March 5, 2008. RP 55-57. The prosecutor asked, "So you did, in fact, escape from community custody because you weren't reporting[?]" The court, however, sustained Nugent's objection that the question asked for a legal confusion, and Nugent did not answer. RP 56-57.

On rebuttal, McGill testified before Nugent ran off he told Nugent he was under arrest for a DOC warrant. RP 59. The State then recalled CCO McIntosh and the following exchange occurred:

Mr. McIntosh, in general, with regard to your supervision of the defendant or any other person you supervise out of the Mason County Superior Court, is it your duty to chase after them or is their duty to respond to you and report as directed and keep you advised --

RP 61. At that point, Nugent objected. RP 61. The court overruled the objection and McIntosh testified it was the individual's responsibility to report. RP 61. McIntosh also testified that during the count 1 charging period, he repeatedly but unsuccessfully attempted to contact Nugent in person and over the phone. RP 63. While trying to contact Nugent, McIntosh learned Nugent's purported residence was vacant. RP 63.

Nugent testified on surrebuttal he was living at the same address and his arrest occurred at the home of friends who lived across the street. RP 65. The prosecutor asked:

Mr. Nugent, you don't disagree do you, that the Court, in sentencing you for the felony that you were on supervision for, put the duty on you --

RP 65. Counsel for Nugent objected, contending the question was outside the scope of direct examination. RP 65. The court overruled the objection, and the prosecutor asked:

You don't disagree, do you . . . that the Court put the duty on you to keep your CCO advised of where you were and to report to him and he didn't have to go chasing after you?

RP 66. Nugent's counsel objected that the questions asked for a legal conclusion. The court agreed and sustained the objection. RP 66.

3. Jury instructions

As to count 1, the trial court instructed the jury

To convict [Nugent] of the crime of escape from community custody, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That during the period of November 7, 2007 to March 5, 2008, [Nugent] was subject to community custody pursuant to a conviction of a felony;

(2) That [Nugent] willfully discontinued making himself available to the [DOC] for supervision by

(a) making his whereabouts unknown, or by

(b) failing to maintain contact with the [DOC] as directed by his . . . CCO;

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

CP 33 (Instruction 11).<sup>7</sup>

As to count 2, the court instructed the jury:

To convict [Nugent] of the crime of escape in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about [March 5, 2008], [Nugent] knowingly escaped from custody;

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<sup>7</sup> The court directed the jury it need not be unanimous as to the alternative means under the second element of count 1, but that each juror must find one or the other was proved beyond a reasonable doubt. CP 33 (Instruction 11).

(2) That [Nugent] was being detained pursuant to a conviction of a felony;

(3) That [Nugent] knew that his actions would result in leaving custody without permission, and

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

CP 39 (Instruction 16). The court also provided the following instruction explaining what constituted detention "pursuant to conviction of a felony" under the second element of count 2:

A person subject to community custody pursuant to a conviction of a felony who is detained on the strength of an outstanding arrest warrant issued for violating his . . . community custody conditions is detained pursuant to a felony conviction.

CP 38 (Instruction 15).

4. Closing arguments

The prosecutor argued Nugent essentially admitted guilt on the first alternative means of count 2 because he admitted he failed to report to his CCO between November 7, 2007 and March 5, 2008. RP 82-86.

As to count 2, the prosecutor argued even though Nugent denied being informed he was under arrest, McGill was the more credible witness. RP 87-88. In addition, according to the prosecutor, it was not necessary Nugent successfully escape. RP 88. As for the second element requiring that Nugent was "being detained pursuant to a conviction of a felony," Instruction 15 provided the parameters of such detention: "[W]hen you

are on community supervision and there's an arrest warrant issued because you haven't complied with the terms of [sic] conditions and you are then arrested on the basis of that warrant, you are being detained pursuant to a conviction of a felony. Period. End of story." RP 89-90.

Defense counsel argued the State had the burden of proving each element beyond a reasonable doubt and failed to do so. Counsel's accurate summary of the evidence triggered a number of objections by the State, which were overruled as follows:

. . . . If you then go look at jury Instruction 7, 11, 12, and 15, you'll find a . . . critical element the State has failed to prove.

And, again, you'll have to recall what . . . Mr. McIntosh's testimony was, what the questions were that were asked of him because a critical element -- the critical element -- for the State here is whether or not Mr. Nugent was on community custody at the time. Not whether he was on post-release supervision under RCW 9.94A.628, not that he was under LFO--

[The State]: Objection, Your Honor. Objection to counsel reading law that doesn't apply.

[Defense counsel]: I'm reading from the exhibit, Your Honor. This is admitted into the evidence.

THE COURT: You may continue.

[Defense counsel]: Not that he was under community supervision. The elements require he was under community custody under a certain statute. And if you look at Exhibit No. 1, it indicates he was under post-release supervision. He wasn't under community custody.

[The State]: Your Honor, I'm going to object to counsel misleading the jury. The evidence is that he was on community custody. It's been testified to.

[Defense counsel]: If that's the jury's recollection of the testimony, then that's the jury's recollection of the testimony.

THE COURT: And it will be the jury's job to be able to determine what the facts are in the case based upon your individual memories, your notes that you've made and your collective memory together. You may continue.

[Defense counsel]: Thank you. As I was saying, in Exhibit No. 1, which is the Order for Arrest and Detention, and it was -- it indicated it was drafted by Mr. McIntosh. The only box that's checked is that Mr. Nugent is on post-release supervision. He is not on community placement; he is not on community custody. Therefore, the State has failed to prove an essential element to every one of the crimes charged.

RP 91-92.

In contrast, the prosecutor summarized the testimony and argument in rebuttal as follows:

[Y]ou've heard absolutely no argument that the defendant is not guilty as to count [2]. Because the terms escape from custody and the terms escape from community custody are two separate and distinct concepts in the law. And I would submit to you that there is a concession in that sense that count [2] is proven . . . . You heard absolutely no argument to the contrary.

With regard to the argument you now hear based on Exhibit [1] only, it, of course completely ignores the specific question put to Mr. McIntosh; was the defendant on community custody under your supervision during this timeframe? And the answer was, yes. And was he cross

examined about that to try to refute that? No. The evidence is clear, he was on community custody and he is also, as a result, guilty of count [1].

RP 93-94.

5. Note from Jurors

During deliberations, the jury asked whether there was a difference between community custody and post-release supervision. CP 19. The court replied in writing, "You must consider the instructions given and the evidence." CP 19.

C. ARGUMENT

THE STATE FAILED TO PROVE NUGENT GUILTY OF EITHER COUNTS 1 OR 2.

In every criminal prosecution, the State must prove every element of the crime charged beyond a reasonable doubt. U.S. Const., amend. 14; Const. art. I, § 3; In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). A reviewing court must reverse a conviction for insufficient evidence and dismiss with prejudice where no rational trier of fact could find all elements of the crime proven beyond a reasonable doubt. State v. Smith, 155 Wn.2d 496, 504-05, 120 P.3d 559 (2005); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

1. Insufficient evidence supports the conviction for escape from community custody.

An "inmate in community custody" commits escape if he "willfully discontinues making himself . . . available to the department for supervision by making his or her whereabouts unknown or by failing to maintain contact with the department as directed" by the CCO. RCW 72.09.310. As requested by the State, the court instructed the jury the first element of the crime was "[t]hat during the period of November 7, 2007 to March 5, 2008, [Nugent] was subject to community custody pursuant to a conviction of a felony." CP 33 (Instruction 11).

No rational juror could find the State proved this element beyond a reasonable doubt. Although the parties stipulated Nugent had a felony conviction and McIntosh testified Nugent was required to report, the State presented no evidence Nugent was subject to community custody. Contrary to the State's rebuttal argument, McIntosh did not so testify. RP 25-30, 61-64, 93-94. The State could have easily asked McIntosh whether Nugent was on community custody. Or the State could have sought to admit a redacted copy of Nugent's judgment and sentence. It did neither. Further, neither Nugent nor any other witness testified Nugent was on community custody.

Indeed, the one exhibit admitted at trial indicated Nugent was subject to post-release supervision under RCW 9.94A.628. Under the Sentencing Reform Act (SRA), post-release supervision is "that portion of an offender's community placement that is not community custody." Former RCW 9.94.030(33) (2006).<sup>8</sup>

The jury's question indicated it was confused in light of the evidence and State's argument, which may have led to its verdict. CP 17-19. But a prosecutor's closing argument is not evidence. Smith, 155 Wn.2d at 505. And on the evidence the State did present, no rational trier of fact could have convicted Nugent on count 1. The remedy is, accordingly, dismissal with prejudice. Id. at 504-05.

2. Insufficient evidence supports the conviction for first degree escape.

For similar reasons, no rational juror could have found the State proved each element of count 2.

To prove first degree escape: "(1) the person must be detained pursuant to a felony conviction, and (2) escape from either custody or a detention facility." State v. Walls, 106 Wn. App. 792, 795, 25 P.3d 1052 (2001). In addition, the escape must occur knowingly. RCW 9A.76.110-

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<sup>8</sup> The definition is currently codified at RCW 9.94A.030(38).

(1); 11A Washington Practice: Washington Pattern Instructions Criminal § 120.26 (3rd ed. 2008).

In Walls, the reviewing court held a defendant arrested on a felony warrant for violating the conditions of community placement was "detained pursuant to a felony conviction" and "escaped from custody" when he ran following arrest. 106 Wn. App. at 796-98.

Over Nugent's objection, the court permitted the State to amend the original charge from second degree escape<sup>9</sup> to first degree escape based on a theory of the case espoused by the Walls court. CP 42-49; RP 6-10 (argument and court ruling permitting amendment of information).

Consistent with the State's proposed instructions, the trial court instructed the jury it had to find Nugent "was being detained pursuant to a conviction of a felony." CP 39 (Instruction 16). Consistent with the Walls theory of first degree escape, the court instructed the jury that "detained" meant Nugent's detention was based on "an outstanding arrest warrant issued for violating his . . . community custody conditions." CP 38 (Instruction 15).

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<sup>9</sup> RCW 9A.76.120 provides that "[a] person is guilty of escape in the second degree if . . . [h]aving been charged with a felony or an equivalent juvenile offense, he or she knowingly escapes from custody."

As discussed above, however, the State failed to prove Nugent was on community custody. And while various witnesses testified Nugent was arrested based on a warrant, the State presented no evidence the warrant was issued for a community custody violation stemming from a prior felony conviction. See RP 39 (Sergeant Dracobly refers to "some sort of warrant"); RP 44 (Deputy McGill refers to a "warrant for [Nugent's] arrest"); RP 59 (McGill answers affirmatively to prosecutor's question, "prior to [Nugent] running away from you after he was handcuffed, had he been advised that he was under arrest for his DOC warrant?"). Again, the only exhibit the State introduced at trial explicitly provided Nugent was *not* on community custody. Ex. 1.

Absent evidence Nugent was on community custody for a prior felony, no rational juror could have found the State proved the elements of count 2 beyond a reasonable doubt. Accordingly, Nugent's count 2 conviction must be reversed and dismissed with prejudice.

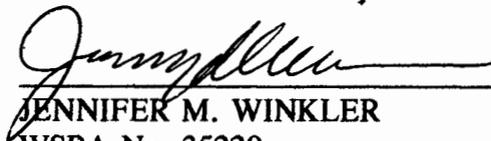
D. CONCLUSION

The evidence was insufficient to convict Nugent of escape from community custody and first degree escape. His convictions should therefore be reversed and the charges dismissed with prejudice.

DATED this 21<sup>ST</sup> day of January, 2009.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



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JENNIFER M. WINKLER

WSBA No. 35220

Office ID. 91051

Attorneys for Appellant

# **APPENDIX A**



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

ORDER FOR ARREST AND DETENTION

OAA OFFENDER  
NOV  
NOV DATE:

YES  NO  
 YES  NO  
11-13-07

NOTICE TO DETAINING AGENCY  
 COUNTY STAFF WILL SCHEDULE HEARING  
 DOC WILL SCHEDULE HEARING  
 NOT APPLICABLE

OFFENDER NAME <b>Nugent, Beau</b>		DOC NUMBER <b>833638</b>	CAUSE / FOS NUMBER <b>AB 981002166 MASON</b>	
DATE ISSUED <b>12-13-07</b>	COMMUNITY CORRECTIONS OFFICER <b>McIntosh, Robert</b>	PHONE NUMBER <b>360-427-2020</b>	WARRANT EXPIRATION DATE <b>N/A</b>	

**NOW THEREFORE**, the above Community Corrections Officer, pursuant to the authority vested by the provisions of RCW 9.94A.628, RCW 9.94A.631, RCW 9.94A.634, RCW 9.94A.740, RCW 9.95.220, RCW 72.04A.090 and/or RCW 10.77.190, does hereby order said offender to be arrested and detained in jail or appropriate custodial facility pending appearance before the Superior Court or Community Corrections Hearing Officer. Offender shall not be released from custody on bail or personal recognizance except upon approval of the Superior Court or Department of Corrections hearing rendered duly authorized authority.

WHEREAS THE ABOVE OFFENDER:

(Post-Release Supervision) (RCW 9.94A.628)

(SRA, Community Supervision) (RCW 9.94A.631)

(CCP, Community Custody, Prison) (RCW 9.94A.740)

(LFO Only) (RCW 9.94A.634, 9.94A.740)

(CCI, Community Placement) (RCW 9.94A.740)

(CCJ, Community Custody, Jail) (RCW 9.94A.740)



Having been convicted of an offense and placed under the jurisdiction of the Department of Corrections, by the Superior Court of the state of Washington for MASON County on this date: 01/25/05 cause AB.

(Insanity Acquittal) (RCW 10.77.190)  N/A

WHEREAS, it now appears the above person has violated condition(s) or requirements of sentence or supervision as follows:

Allegation #1

Failing to report to DOC on 11-07-2007, in Mason County, WA.

Allegation #2

Failing to be available since 11-7-2007, in Mason County, WA.

*I certify or declare under penalty of perjury of the laws of the state of Washington that the foregoing statements are true and correct to the best of my knowledge and belief.*

DOB : 10/29/1980 SEX : 1 MALE RACE : 1 WHITE HAIR: 4 BROWN EYES:  
5 GREEN HEIGHT : 5 FT 10 IN WEIGHT: 175 LBS. COMPLEXION: 2 MEDIUM  
HISPANIC ORIGIN: N NO SPANISH SPEAKING? N COMPREHENDS ENGLISH? Y  
SID NO: 18428991 FBI NO: 960328DB6 FBI FINGERPRINT CODE:  
PMDI05PO15PI70071716 BORN IN: WA WASHINGTON ETHNIC : 002

EMERGENCY CONTACT: ED NUGENT/FATHER TELEPHONE  
NO: 206 937-8879 SCARS, MARKS, TATTOOS: "SCORPIO", "M", RUA  
Photo Attached:  Yes  No

Issued by (CCO): Robert McIntosh Date: 12-13-07  
Copy served by: \_\_\_\_\_ Date: \_\_\_\_\_  
Received by: \_\_\_\_\_ Date: \_\_\_\_\_  
(If applicable) Supervisor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# **APPENDIX B**



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

ORDER FOR ARREST AND DETENTION

OAA OFFENDER  YES  NO  
NOV  YES  NO  
NOV DATE: 11-13-07

NOTICE TO DETAINING AGENCY  
 COUNTY STAFF WILL SCHEDULE HEARING  
 DOC WILL SCHEDULE HEARING  
 NOT APPLICABLE

OFFENDER NAME <b>Nugent, Beau</b>		DOC NUMBER <b>833638</b>	CAUSE / FOS NUMBER <b>AB 981002166 MASON</b> <b>AC 071001808 MASON</b>	
DATE ISSUED <b>12-13-07</b>	COMMUNITY CORRECTIONS OFFICER <b>McIntosh, Robert</b>	PHONE NUMBER <b>360-427-2020</b>	WARRANT EXPIRATION DATE <b>N/A</b>	

**NOW THEREFORE**, the above Community Corrections Officer, pursuant to the authority vested by the provisions of RCW 9.94A.628, RCW 9.94A.631, RCW 9.94A.634, RCW 9.94A.740, RCW 9.95.220, RCW 72.04A.090 and/or RCW 10.77.190, does hereby order said offender to be arrested and detained in jail or appropriate custodial facility pending appearance before the Superior Court or Community Corrections Hearing Officer. Offender shall not be released from custody on bail or personal recognizance except upon approval of the Superior Court or Department of Corrections hearing rendered duly authorized authority.

WHEREAS THE ABOVE OFFENDER:

- (Post-Release Supervision) (RCW 9.94A.628)
- (Probation) (RCW 9.95.220)
- (LFO Only) (RCW 9.94A.634, 9.94A.740)
- (SRA, Community Supervision) (RCW 9.94A.631)
- (CCP, Community Custody, Prison) (RCW 9.94A.740)
- (CCI, Community Placement) (RCW 9.94A.740)
- (CCJ, Community Custody, Jail) (RCW 9.94A.740)



Having been convicted of an offense and placed under the jurisdiction of the Department of Corrections, by the Superior Court of the state of Washington for MASON County on this date: 01/25/05 cause AB, and by the Superior Court of the state of Washington for MASON County on this date: 09/21/07 cause AC.

(Insanity Acquittal) (RCW 10.77.190)  N/A

WHEREAS, it now appears the above person has violated condition(s) or requirements of sentence or supervision as follows:

Allegation #1 (both AB and AC causes):

Failing to report to DOC on 11-07-2007, in Mason County, WA.

Allegation #2 (AB cause only)

Failing to be available for urinalysis since 11-7-2007, in Mason County, WA.

Allegation #3 (AB cause only)

Failing to pay legal financial obligation since 9-1-2007, in Mason County, WA.

Allegation #4 (AB cause only)

Failing to comply with drug treatment since 11-7-07, in Mason County, WA.

Allegation #5(AC cause only)

Failing to complete a domestic violence evaluation since 11-7-07, in Mason County, WA.

I certify or declare under penalty of perjury of the laws of the state of Washington that the foregoing statements are true and correct to the best of my knowledge and belief.

DOB: 10/29/1980 SEX: 1 MALE RACE: 1 WHITE HAIR: 4 BROWN EYES: 5 GREEN HEIGHT: 5 FT 10 IN WEIGHT: 175 LBS. COMPLEXION: 2 MEDIUM HISPANIC ORIGIN: N NO SPANISH SPEAKING? N COMPREHENDS ENGLISH? Y SID NO: 18428991 FBI NO: 960328DB6 FBI FINGERPRINT CODE: PMIDI05PO15PI70071716 BORN IN: WA WASHINGTON ETHNIC: 002 EUROPEAN/N.AM./AUSTR CITIZENSHIP: 001 AMERICAN GANG AFFILIATION: NO1 ?????????????????????? EMERGENCY CONTACT: ED NUGENT/FATHER TELEPHONE NO: 206 937-8879 SCARS, MARKS, TATTOOS: "SCORPIO", "M".RUA

Photo Attached:  Yes  No

Issued by (CCO): Robert McIntosh Date: 12-13-07  
Copy served by: \_\_\_\_\_ Date: \_\_\_\_\_  
Received by: \_\_\_\_\_ Date: \_\_\_\_\_  
(If applicable) Supervisor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

ORDER FOR ARREST AND DETENTION

ERIC J. NIELSEN  
ERIC BROMAN  
DAVID B. KOCH  
CHRISTOPHER H. GIBSON

OFFICE MANAGER  
JOHN SLOANE

LAW OFFICES OF  
**NIELSEN, BROMAN & KOCH, P.L.L.C.**

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OF COUNSEL  
K. CAROLYN RAMAMURTI  
JARED B. STEED

State V. Beau Nugent

No. 38383-7-II

Certificate of Service by Mail

On January 21, 2009, I deposited in the mails of the United States of America,  
A properly stamped and addressed envelope directed to:

Gary Burleson  
Attorney at Law  
PO Box 639  
Shelton WA 98584-0639

Beau Nugent 788829  
Washington Corrections Center  
PO Box 900  
Shelton, WA 98584

Containing a copy of the brief of appellant, re Beau Nugent  
Cause No. 38383-7-II, in the Court of Appeals, Division II, for the state of Washington

I certify under penalty of perjury of the laws of the State of Washington that the  
foregoing is true and correct.



John Sloane  
Office Manager  
Nielsen, Broman & Koch  
Done in Seattle, Washington

1-21-09  
Date

FILED  
COURT OF APPEALS DIVISION II  
STATE OF WASHINGTON  
2009 JAN 21 PM 4:52

FILED  
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DIVISION II  
09 JAN 23 AM 11:40  
STATE OF WASHINGTON  
BY John Sloane  
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