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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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DEPUTY

NO. 40156-8-II

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

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STATE OF WASHINGTON, Respondent

v.

JAMES RANDALL STAFFORD, Appellant

---

FROM THE SUPERIOR COURT FOR CLARK COUNTY  
THE HONORABLE JOHN P. WULLE  
CLARK COUNTY SUPERIOR COURT CAUSE NO.09-1-01587-2

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BRIEF OF RESPONDENT

---

Attorneys for Respondent:

ARTHUR D. CURTIS  
Prosecuting Attorney  
Clark County, Washington

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

Clark County Prosecuting Attorney  
1013 Franklin Street  
PO Box 5000  
Vancouver WA 98666-5000  
Telephone (360) 397-2261

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I. STATEMENT OF FACTS

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

II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1

The first assignment of error raised by the defendant is a claim that the trial court failed to use a proper “to convict” instruction, in that it failed to set out all the elements of the crime of Assault in the Third Degree.

A copy of the Second Amended Information (CP 26) is attached hereto and by this reference incorporated herein. Further, the Court’s Instructions to the Jury (CP 41) are also attached hereto and by this reference incorporated herein. In the Jury Instructions, the definition of Assault in the Third Degree when dealing with a law enforcement officer is Instruction No. 8. The elements instruction dealing with that definition is Instruction No. 9. It appears that Instruction No. 9 inappropriately states one of the elements of the crime of Assault in the Third Degree against a law enforcement officer. As the definition indicates, “assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault.” The

language about performing official duties is not contained in the elements instruction, but is contained in the definition.

The State submits that this is harmless error in this situation. Clearly, the defendant was well aware that the officers were performing official duties at the time. For example, Officer Houts clearly indicated that he was on duty on 18 September, 2009 when he came in contact with the defendant. (RP 58-59). He further testified that he and the other three officers involved were all in official police uniforms. (RP 65-66). Officer Houts recalls telling the defendant that he was under arrest for harassment and that was the reason they were there confronting the defendant. (RP 66). This was also consistent with the testimony of Sergeant Yamashita. She was there with Officer Houts, Officer Tierney, and shortly after that, Deputy Nicholls, from the Clark County Sheriff's Office arrived. (RP 84).

All indications are that the officers were acting in their official capacities at the time they went to the trailer where the defendant was located. This is not disputed by anyone nor is there any question about the accuracy of the information. The officers announce themselves as being there on official duties, were in uniform, and performed the regular and normal duties of law enforcement officers at the scene. Further, as indicated, they told the defendant that he was under arrest for a crime

having been committed in the State of Washington. All of these are the activities that officers would normally perform in their official functions.

Instructions are sufficient if they are based on substantial evidence, correctly state the law, and allow each side to present its theory of the case. State v. Ng, 110 Wn.2d 32, 41, 750 P.2d 632 (1988); State v. Hansen, 46 Wn. App. 292, 299, 730 P.2d 706, 737 P.2d 670 (1986). When read as a whole, the instructions must properly inform the jury of the applicable law. State v. Clausing, 147 Wn.2d 620, 626, 56 P.3d 550 (2002).

Even if a jury instruction “omits an element of the charged offense or misstates the law,” it does not necessarily require reversal. State v. Thomas, 150 Wn.2d 821, 83 P.3d 970 (2004). Such an erroneous jury instruction is subject to harmless error analysis. Thomas, 150 Wn.2d at 844. Therefore, the Court must next determine whether the erroneous jury instruction was harmless.

“[A]n erroneous jury instruction that omits an element of the charged offense or misstates the law is subject to harmless error analysis.” Thomas, 150 Wn.2d at 844 (*citing* Neder v. United States, 527 U.S. 1, 9, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999)). “Constitutional error is presumed to be prejudicial and the State bears the burden of proving that the error was harmless.” State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d

1182 (1985). In cases involving “omissions or misstatements of elements in jury instructions, ‘the error is harmless if that element is supported by uncontroverted evidence.’” Thomas, 150 Wn.2d at 845 (*quoting State v. Brown*, 147 Wn.2d 330, 341, 58 P.3d 889 (2002)). An improper jury instruction may be harmless error so long as the jury is properly instructed on the State's burden. State v. Frost, 160 Wn.2d 765, 780, 161 P.3d 361 (2007). “‘An erroneous instruction is harmless if, from the record in [the] case, it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.’ Whether a flawed jury instruction is harmless error depends on the facts of a particular case.” State v. Carter, 154 Wn.2d 71, 81, 109 P.3d 823 (2005) (alteration in original) (*quoting State v. Brown*, 147 Wn.2d 330, 332, 58 P.3d 889 (2002)).

The State submits that if there were error, it is harmless error. From this record it appears obvious and certainly beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.

### III. RESPONSE TO ASSIGNMENT OF ERROR NO. 2

The second assignment of error raised by the defendant is a claim that the trial court denied the defendant the right to a fair trial when it allowed hearsay over the defendant’s objection. Specifically, the

prosecution was asking what type of information the officers had received from dispatch prior to and at the time that they were there at the scene. This was an area that had been discussed with the court and once it was determined that this was not “hearsay” but was being offered for other purposes, the trial court allowed the information to go to the jury. However, prior to the giving of this information to the jury, the Judge admonished them with a special instruction, which read as follows:

THE COURT: Alright. Ladies and gentlemen, I am now instructing you that the answer to this question you are not to accept it as truth, but only to – for it to be shown how it affected this officer’s conduct at the scene. Okay? You may answer.

-(RP 125-126)

Decisions as to the admissibility of evidence are within the trial court's discretion and reversible only for an abuse of that discretion. State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995); State v. Smith, 115 Wn.2d 434, 444, 798 P.2d 1146 (1990). The court abuses its discretion when its decision is manifestly unreasonable, or is exercised on untenable grounds or for untenable reasons. State v. Alexander, 125 Wn.2d 717, 731, 888 P.2d 1169 (1995); State v. Herzog, 69 Wn. App. 521, 524-25, 849 P.2d 1235 (1993), review denied, 122 Wn.2d 1021, 863 P.2d 1353. The Appellate Court reviews evidentiary rulings for an abuse of discretion.

State v. Halstien, 65 Wn. App. 845, 849-50, 829 P.2d 1145 (1992), aff'd, 122 Wn.2d 109, 857 P.2d 270 (1993). But an error in admitting evidence does not require reversal unless it prejudices the defendant. Brown v. Spokane County Fire Prot. Dist. No. 1, 100 Wn.2d 188, 196, 668 P.2d 571 (1983). The improper admission of evidence is harmless error if the evidence is of minor significance in reference to the overall, overwhelming evidence as a whole. Thieu Lenh Nghiem v. State, 73 Wn. App. 405, 413, 869 P.2d 1086 (1994). Where the error arises from a violation of an evidentiary rule, that error is not prejudicial unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred. State v. Halstien, 122 Wn.2d 109, 127, 857 P.2d 270 (1993).

When a statement is not offered for the truth of the matter asserted but is offered to show why an officer conducted an investigation, it is not hearsay and is admissible. See, e.g., State v. Williams, 85 Wn. App. 271, 280, 932 P.2d 665 (1997) (holding that officer's statement to another that he smelled alcohol on the breath of the defendant was not offered to prove the truth of the matter, but to show why the officer then requested the defendant to perform a Breathalyzer test, and was not inadmissible hearsay). State v Kirkman and Candia, 159 Wn.2d 918, 155 P.3d 125 (2007).

The State submits that the trial court did not abuse its discretion when making its ruling concerning the discussion with the officer. It was a small portion of a case but it added to the jury's overall understanding of the defendant's acts. It is also consistent with the nature of the defense being offered that he did not do any potential violence towards the officers. The court properly instructed the jury that this was not being used for the truth of the matter stated but to explain how it was that the officer did what they did there at the scene. It would have been essential for the officers to be aware that the defendant possibly was acting irrationally or that he may be assaultive toward the police. It was not being offered to show that he in fact was irrational or assaultive, but rather to indicate and demonstrate what steps the officers took for purposes of safety and control of the situation.

The State does agree with the defense that the test is whether or not this is more prejudice than probative value. The court took this into advisement after the long discussions it had with counsel concerning whether or not this information was to go to the jury and made a determination that it was more probative of the entire scenario and further would help a jury understand the actions taken by the police. The approach taken by the prosecution and by the court was that this matter

was raised by the defense and thus allowed the prosecution an opportunity to respond. In ruling the court stated:

THE COURT: ... As to the other question that you raised, Mr. Harvey [Deputy Prosecutor], I agree with you. I believe Mr. Bennett [Defense Attorney] did open the door a crack that you could now ask a simple question, what did dispatch advise you. Not a conclusion that he is in fact, dangerous because of prior incidents, but that this officer or these officers were advised that this individual had the potential to harm police officers because it – that would then color the manner in which they approached this scene.

-(RP 127, L16-24)

The State submits that the trial court was within its rights to exercise its discretion and found that the information, in its very limited nature, was more probative than prejudicial.

#### IV. RESPONSE TO ASSIGNMENT OF ERROR NO. 3

The third assignment of error raised by the defendant is a claim that the trial court erred when it entered a “No Contact Order” in the Judgment and Sentence. Specifically, the defense maintains that the no contact by the defendant with Officer Houts could not be justified as a community custody condition.

A copy of the Judgment and Sentence (CP 69) is attached hereto and by this reference incorporated herein. It indicates a no contact by the defendant with several of the officers involved in this: the sergeant on the

scene, Sergeant Yamashita and Officer Houts. The no contact was for a period of five years. The State maintains that this is appropriate under the circumstances because of the general animosity shown by the defendant against law enforcement officers. There is nothing in the evidence to suggest that the defendant had a particular complaint or gripe against Sergeant Yamashita, but rather it appeared to be an overall anger toward law enforcement officers. At least two of the officers requested no contact orders be entered and as such, the State feels this was appropriate.

A defendant may raise objections to community custody conditions for the first time on appeal. State v. Jones, 118 Wn. App. 199, 204, 76 P.3d 258 (2003). Although the Appellate Court generally reviews crime-related prohibitions for an abuse of court discretion, “the key question in this case is not whether the trial court abused its discretion in exercising admittedly existing authority, but rather whether the trial court had any authority under the S[entencing ]R[eform ]A[ct] to impose the no-contact order at issue” and the Court reviews the trial court's decision de novo. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). A sentencing court has the discretion to impose crime-related prohibitions. See RCW 9.94A.030(13), RCW 9.94A.505(8), and RCW 9.94A.715(2)(a). Crime-related prohibitions include no-contact orders. Armendariz, 160 Wn.2d at 119. The imposition of a no-contact order prohibits conduct that

relates directly to the circumstances of the crime charged. RCW 9.94A.030(13).

The State submits that all of the circumstances of this crime relate to an overall animosity and assaultive behavior towards law enforcement officers. At least two of these officers were present at the scene and directly involved with this defendant. Because of that, they are subject to no contact orders.

V. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 12 day of July, 2010.

Respectfully submitted:

ARTHUR D. CURTIS  
Prosecuting Attorney  
Clark County, Washington

By:

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

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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.  
JAMES RANDALL STAFFORD  
Defendant.

**Second (2<sup>nd</sup>) AMENDED INFORMATION**

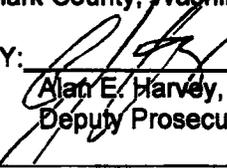
No. 09-1-01587-2  
(CCSO 09-13520)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that **- ASSAULT IN THE THIRD DEGREE - 9A.36.031(1)(g)**

*Count 1*  
That he, JAMES RANDALL STAFFORD, in the County of Clark, State of Washington, on or about September 18, 2009, did intentionally assault a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, to wit: Washougal Police Sgt. Yamashita; contrary to Revised Code of Washington 9A.36.031(1)(g).

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

Date: December 7, 2009

BY:   
Alan E. Harvey, WSBA #25785  
Deputy Prosecuting Attorney

<b>DEFENDANT: JAMES RANDALL STAFFORD</b>			
<b>RACE: W</b>	<b>SEX: M</b>	<b>DOB: 9/1/1962</b>	
<b>DOL: STAFFJR388OA WA</b>		<b>SID: WA17307254</b>	
<b>HGT: 601</b>	<b>WGT: 185</b>	<b>EYES: HAZ</b>	<b>HAIR: BRO</b>
<b>WA DOC:</b>		<b>FBI: 75637XA9</b>	
<b>LAST KNOWN ADDRESS(ES):</b>			
H - 2107 32ND ST, WASHOUGAL WA 98671			



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

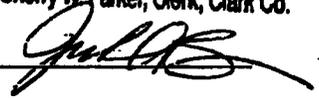
STATE OF WASHINGTON,  
Plaintiff,  
v.  
James Randall Stafford  
Defendant.

No. 09-1-01587-2

**FILED**

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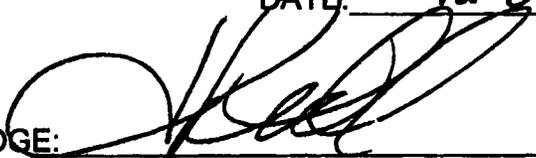
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Sherry W. Parker, Clerk, Clark Co.



COURT'S INSTRUCTIONS TO THE JURY

DATE: 12-8-09

JUDGE: \_\_\_\_\_



John P. Welle

35a

INSTRUCTION NO.   6  

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

A charge has been made by the prosecuting attorney by filing a document, called an information, informing the defendant of the charge. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence that either was not admitted or that was stricken by the court. You will not be provided with a written copy of

testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

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

The attorneys' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

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

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.

INSTRUCTION NO. 2

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to reexamine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

INSTRUCTION NO. 3

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff and has the burden of proving each element of the crime beyond a reasonable doubt.

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

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

INSTRUCTION NO. 4

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

INSTRUCTION NO. 5

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

INSTRUCTION NO. 6

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

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

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

INSTRUCTION NO. 7

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

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

An assault is also an act, with unlawful force, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the act did not actually intend to inflict bodily injury.

An act is not an assault, if it is done with the consent of the person alleged to be assaulted.

INSTRUCTION NO. 8

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

INSTRUCTION NO. 9

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

(1) That on or about the 18<sup>th</sup> of September 2009 the defendant assaulted Washougal Police Sgt. Yamashita

(2) That at the time of the assault, Sgt. Yamshitaw was a law enforcement officer ; and

(3) That the defendant knew at the time of the assault that Sgt. Yamshita was a law enforcement officer; and

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

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

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

INSTRUCTION NO. 10

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted into evidence, these instructions, and a verdict form for each count.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

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

10 C  
Alfred Bennett

FILED

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DEC 14 2009

8:46  
Sherry W. Parker, Clerk, Clark Co.

**Superior Court of Washington  
County of Clark**

**State of Washington, Plaintiff,**

vs.

**JAMES RANDALL STAFFORD,  
Defendant.**

SID: WA17307254

If no SID, use DOB: 9/1/1962

No. 09-1-01587-2 ✓

**Felony Judgment and Sentence –**

**Jail One Year or Less**

(FJS)

09-9-09298-1

**Clerk's Action Required, 2.1, 4.1, 4.3, 5.2, 5.3,  
5.5, 5.7**

**Defendant Used Motor Vehicle**

**I. Hearing**

1.1 The court conducted a sentencing hearing this date; 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, in accordance with the proceedings in this case, the court  **Finds:**

**2.1 Current Offenses:** The defendant is guilty of the following offenses, based upon

guilty plea  jury-verdict  bench trial :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
01	ASSAULT IN THE THIRD DEGREE	9A.36.031(1)(g)	FC	9/18/2009

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C),

(If the crime is a drug offense, include the type of drug in the second column.)

Additional current offenses are attached in Appendix 2.1a.

The jury returned a special verdict or the court made a special finding with regard to the following:

The defendant used a firearm in the commission of the offense in Count \_\_\_\_\_ . RCW 9.94A.602, 9.94A.533.

The defendant used a deadly weapon other than a firearm in committing the offense in Count \_\_\_\_\_ . RCW 9.94A.602, 9.94A.533.

Count \_\_\_\_\_ is a criminal street gang-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that minor in the commission of the offense. RCW 9.94A.833.

Count \_\_\_\_\_ is the crime of unlawful possession of a firearm and the defendant was a criminal street gang member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A. \_\_\_\_\_.

**Felony Judgment and Sentence (FJS) (Jail One Year or Less)**  
**(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2009))**

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A

- The defendant has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.
- The crime(s) charged in Count \_\_\_\_\_ involve(s) domestic violence. RCW 10.99.020.
- Count \_\_\_\_\_ is a felony in the commission of which the defendant used a motor vehicle. RCW 46.20.285.
- Counts \_\_\_\_\_ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

	<b>Crime</b>	<b>Cause Number</b>	<b>Court (County &amp; State)</b>
1.			

- Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

**2.2 Criminal History:**

	<b>Crime</b>	<b>Date of Crime</b>	<b>Date of Sentence</b>	<b>Sentencing Court (County &amp; State)</b>	<b>A or J Adult, Juv.</b>	<b>Type of Crime</b>
1	No known felony convictions					

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The prior convictions for \_\_\_\_\_ are one offense for purposes of determining the offender score (RCW 9.94A.525).

**2.3 Sentencing Data:**

<b>Count No.</b>	<b>Offender Score</b>	<b>Seriousness Level</b>	<b>Standard Range (not including enhancements)</b>	<b>Plus Enhancements*</b>	<b>Total Standard Range (including enhancements)</b>	<b>Maximum Term</b>	<b>Maximum Fine</b>
01	0	III	1 MONTH to 3 MONTHS		1 MONTH to 3 MONTHS	5 YEARS	\$10,000.00

- (F) Firearm, (D) Other deadly weapons, (CSG) criminal street gang involving minor.
- Additional current offense sentencing data is attached in Appendix 2.3.

**2.4  Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:

- below the standard range for Count(s) \_\_\_\_\_.
  - above the standard range for Count(s) \_\_\_\_\_.
  - The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
  - Aggravating factors were  stipulated by the defendant,  found by the court after the defendant waived jury trial,  found by jury, by special interrogatory.
  - within the standard range for Count(s) \_\_\_\_\_, but served consecutively to Count(s) \_\_\_\_\_.
- Findings of fact and conclusions of law are attached in Appendix 2.4.  Jury's special interrogatory is attached. The Prosecuting Attorney  did  did not recommend a similar sentence.

**2.5 Ability to Pay Legal Financial Obligations.** The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that:

- The defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):  
\_\_\_\_\_
- The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

**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 \_\_\_\_\_ in the charging document.

**IV. Sentence and Order**

**It is ordered:**

**4.1 Confinement.** The court sentences the defendant as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the county jail:

87 months/0 days on Count 01

Actual amount of total confinement ordered is: \_\_\_\_\_ Days/Months.

The Sentence shall be served as follows:	
<u>87</u>	<input checked="" type="checkbox"/> Days <input type="checkbox"/> Months credit for time served
<u>0</u>	<input type="checkbox"/> Days <input type="checkbox"/> Months of additional total confinement
	<input type="checkbox"/> Days <input type="checkbox"/> Months of additional <b>Partial Confinement</b> , if approved and eligible, may be served as:
	<input type="checkbox"/> Days <input type="checkbox"/> Months on work/education release
	Days on work crew – Defendant shall report within 24 hour of this order/release from custody
	Days on work crew – Defendant shall be screened while in custody
	Days of Community Service/Restitution as an <b>Alternative Conversion</b> to part or all of the jail sentence. (Converted at a rate of 8 hours = 1 day, and a maximum of 30 days)

All counts shall be served concurrently, except for the following which shall be served consecutively:

\_\_\_\_\_

The sentence herein shall run consecutively with any other sentence previously imposed in any other case, including other cases in District Court or Superior Court, unless otherwise specified herein: \_\_\_\_\_

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

**Credit for Time Served:** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute earned early release credits (good time) pursuant to its policies and procedures.

**Partial Confinement.** If granted above, if the defendant has been referred to work crew and is determined to be medically unfit to perform the work crew by the Clark County Corrections unit, Corrections may screen the defendant for community service in lieu of the work crew obligation, if legally

allowed, and if they accept him/her in their program. Corrections shall obtain medical verification of the defendant's medical disability and the defendant shall provide any waivers necessary to allow Corrections to obtain said medical information. The Corrections staff shall supervise the defendant to insure compliance. If the defendant is found to be medically unfit for work crew and not acceptable for community service, Corrections shall provide the defendant a return date to Court for further review by the court. No other court order is necessary to do this conversion.

**Alternative Conversion.** RCW 9.94A.680. If granted above, Defendant shall serve the sentence of Community Service under the supervision of the Department of Corrections (DOC) to be completed:

- on a schedule established by the defendant's community corrections officer.
- as follows: \_\_\_\_\_.

<input type="checkbox"/>	Alternatives to total confinement were not used because of:
<input type="checkbox"/>	Criminal history
<input type="checkbox"/>	Failure to appear (finding required for nonviolent offenders only). RCW 9.94A.380
<input type="checkbox"/>	Defendant has served all of confinement.
<input type="checkbox"/>	Other: _____

**Conversion of Jail Confinement (Nonviolent and Nonsex Offenses).** RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option, to reduce the time spent in the community option by earned release credit consistent with local correctional facility standards, and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.607.

- The defendant shall receive credit for time served in an available county supervised community option prior to sentencing. The jail shall compute time served.

**4.2 Community Custody.** RCW 9.94A.505, .702.

(A) The defendant shall serve \_\_\_\_\_ months (up to 12 months) in community custody.

The court may order community custody under the jurisdiction of DOC for up to 12 months if the defendant is convicted of a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2006, the court shall impose a term of community custody under RCW 9.94A.701 if the offender is guilty of failure to register (second or subsequent offense) under RCW 9A.44.130(11)(a) and for offenses after June 12, 2008 for unlawful possession of a firearm with a finding that the defendant was a member or associate of a criminal street gang. The defendant shall report to DOC not later than 72 hours after release from custody at the address provided in open court or by separate document.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody.

The court orders that during the period of supervision the defendant shall:

- consume no alcohol.

- have no contact with: \_\_\_\_\_
- remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_
- participate in the following crime-related treatment or counseling services: \_\_\_\_\_
- undergo an evaluation for, and fully comply with, treatment for  domestic violence  substance abuse  
 mental health  anger management.
- comply with the following crime-related prohibitions: \_\_\_\_\_
- Additional conditions are imposed in Appendix 4.2, if attached or are as follows: \_\_\_\_\_

(C) The conditions of community custody shall begin immediately upon release from confinement unless otherwise set forth here: \_\_\_\_\_

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

**4.3 Legal Financial Obligations:** The defendant shall pay to the clerk of this court:

JASS CODE

<i>RTN/RJN</i>	\$ <u>NONE</u>	Restitution to: _____ (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
<i>PCV</i>	\$ <u>500.00</u>	Victim assessment	RCW 7.68.035
<i>PDV</i>	\$ _____	Domestic Violence assessment	RCW 10.99.080
<i>CRC</i>	\$ <u>200.00</u>	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee \$ <u>200.00</u>	FRC
		Witness costs \$ _____	WFR
		Sheriff service fees \$ <u>70.00</u>	SFR/SFS/SFW/WRF
		Jury demand fee \$ _____	JFR
		Extradition costs \$ _____	EXT
		Other \$ _____	
<i>PUB</i>	\$ <u>1,500.00</u>	Fees for court appointed attorney	RCW 9.94A.760
	\$ _____	Trial per diem, if applicable.	
<i>WFR</i>	<u>To Be Set</u>	Court appointed defense expert and other defense costs	RCW 9.94A.760
	\$ _____	DUI fines, fees and assessments	
<i>FCM/MTH</i>	\$ <u>500.00</u>	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.430	
<i>CDF/LDI/FCD</i> <i>NTF/SAD/SDI</i>	\$ _____	Drug enforcement Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A.760

*Felony Judgment and Sentence (FJS) (Jail One Year or Less)*  
*(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2009))*

\$ 100.00 DNA collection fee RCW 43.43.7541  
 CLF \$ \_\_\_\_\_ Crime lab fee  suspended due to indigency RCW 43.43.690  
 FPV \$ \_\_\_\_\_ Specialized forest products RCW 76.48.140  
 RTN/RJN \$ \_\_\_\_\_ Emergency response costs (Vehicular Assault, Vehicular Homicide, Felony DUI only, \$1000 maximum) RCW 38.52.430  
 Agency: \_\_\_\_\_  
 \$ \_\_\_\_\_ Other fines or costs for: \_\_\_\_\_  
 \$ \_\_\_\_\_ **Total** RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

shall be set by the prosecutor.

is scheduled for \_\_\_\_\_ (date).

The defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_.

**Restitution** Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

RJN	Name of other defendant	Cause Number	Victim's name	Amount

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, 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 to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

The court orders the defendant to pay costs of incarceration at the rate of \$ \_\_\_\_\_ per day, (actual costs not to exceed \$100 per day). (JLR) 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.

**4.4 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 shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

**HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

**4.5 No Contact:**

The defendant shall not have contact with CHRISTOPHER A STAFFORD, SCHEAK RICHARDSON, Kim E Yamashita, Perry E Houts including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 5 years (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within:

**Felony Judgment and Sentence (FJS) (Jail One Year or Less)**  
 (RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2009))

500 feet  880 feet  1000 feet of:

~~CHRISTOPHER A STAFFORD, SONIA K RICHARDSON, Kim E Yamashita, Berry E Houts~~  
(name of protected person(s))'s

home/ residence  work place  school

(other location(s)) \_\_\_\_\_

other location \_\_\_\_\_

for \_\_\_\_\_ years (which does not exceed the maximum statutory sentence).

A separate Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed concurrent with this Judgment and Sentence.

**4.6 Other:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4.7 Off-Limits Order.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_

**4.8** For Offenders on Community Custody, when there is reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections is authorized to conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purpose of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned or possessed by the defendant.

**4.9** If the defendant is removed/deported by the U.S. Immigration and Customs Enforcement, the Community Custody time is tolled during the time that the defendant is not reporting for supervision in the United States. The defendant shall not enter the United States without the knowledge and permission of the U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections if on community custody or the Clerk's Collections Unit, if not on Community Custody for supervision.

## V. Notices and Signatures

**5.1 Collateral Attack on Judgment.** If you wish to petition or move 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, you must do so 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.** If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

**5.3 Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court 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.760 may be taken without further notice. RCW 9.94A.7606.

**5.4 Community Custody Violation.**

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

**5.5 Firearms.** You may not own, use or possess any firearm unless your right to do so is restored by a superior court in Washington State, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court 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.

5.6 Reserved.

**5.7 Motor Vehicle:** If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

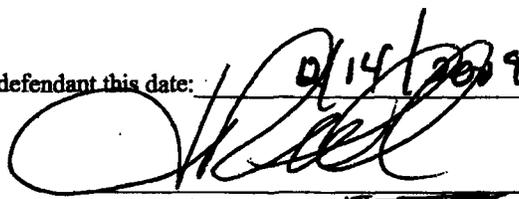
**5.8 Other:** \_\_\_\_\_

**5.9 Persistent Offense Notice**

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, 9.94A.570

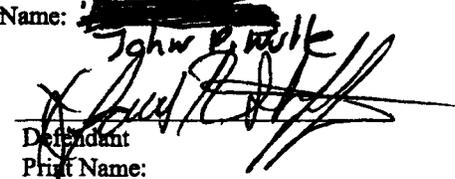
The crime(s) in count(s) \_\_\_\_\_ is/are one of the listed offenses in RCW 9.94A.030.(31)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

**Done** in Open Court and in the presence of the defendant this date: 01/14/2009

  
Judge/Print Name: ~~John E. Mulk~~

  
Deputy Prosecuting Attorney  
WSBA No. 25785  
Print Name: Alan E. Harvey

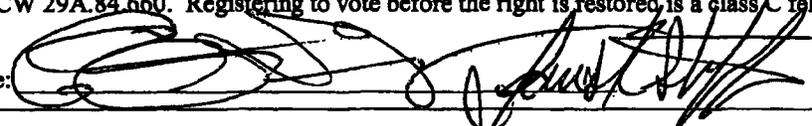
  
Attorney for Defendant  
WSBA No. 06711  
Print Name: Alfred Arthur Bennett

  
Defendant  
Print Name: JAMES RANDALL STAFFORD

**Voting Rights Statement:** I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: 

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the \_\_\_\_\_ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

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

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

**Witness** my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_.

Clerk of the Court of said county and state, by: \_\_\_\_\_, Deputy Clerk

**Identification of the Defendant**

JAMES RANDALL STAFFORD

09-1-01587-2

SID No: WA17307254  
(If no SID take fingerprint card for State Patrol)

Date of Birth: 9/1/1962

FBI No. 75637XA9

Local ID No. 173292

PCN No. \_\_\_\_\_

Other \_\_\_\_\_

Alias name, DOB:

Race: W

Ethnicity:

Sex: M

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

Clerk of the Court, Deputy Clerk,

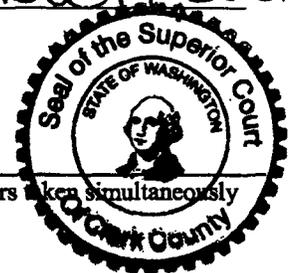
*Heather Hunt*

Dated:

*Dec 14 2009*

The defendant's signature:

*[Handwritten signature]*



Left four fingers taken simultaneously

Left  
Thumb

Right  
Thumb

Right four fingers taken simultaneously

