

COURT OF APPEALS
DIVISION II
10/20/04 10:13:04
STATE OF WASHINGTON
BY *[Signature]*

No. 40586-~~5~~II

COURT OF APPEALS DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

MIRANDA THOMAN,
Appellant.

STATEMENT OF ADDITIONAL GROUNDS

[Signature]

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Appellant Miranda Thoman submits the following points for the Court's consideration as Additional Grounds, pursuant to RAP 10.10.

First Ground.

The evidence discovered that was the basis for the search warrant for the Appellant's vehicle was obtained in violation of the Fourth Amendment to the U.S. Constitution and Washington Constitution, Article I, § 7, and the Appellant's rights guaranteed under them.

- a. The arrest and evidence were the result of an unlawful pretextual stop, thereby tainting any evidence.
- b. There was no remaining cause to search the vehicle, under search-incident-to-arrest or arms-reach exceptions, for the charge of arrest, with the Appellant handcuffed and secured in the back of a patrol car.
- c. The evidence used as the basis for the search warrant was obtained by the officer unlawfully ordering the passenger from the vehicle, without a reasonable, articulable suspicion of criminal activity, also tainting the evidence.
- d. The Appellant was denied her right to effective assistance of counsel guaranteed under U.S. Constitutional Amendment VI and Washington Const. Art. I, § 22, as shown in counsel's opening brief and the declarations attached herein, for failing to put forth the Appellant's best and most basic defense and conflict of interest.

Second Ground.

Appellant's sentence was imposed in violation of her right to a jury trial under the Sixth Amendment to the U.S. Constitution and Washington Constitution, Article I § 21, because her jury was improperly instructed that they required a unanimous verdict in order to vote "no" on her special verdict school zone enhancement.

a. Appellant's sentence included an enhancement for "Violation of the Uniform Controlled Substances Act (VUCSA)", "within 1000 feet of the perimeter of a school grounds".

b. Appellant's jury received erroneous instructions. One required unanimity to vote "no" on the special verdict form. The jury was further instructed that the special verdict form was specifically "for the crime of Possession of a Controlled Substance with Intent to Deliver", thereby creating the element of the intent to deliver within 1000 feet of a school, as shown in the record.

c. Following delivery of the verdict, one of the jurors hysterically informed the court that she did not vote on the special verdict form and was upset to discover it had been delivered as a "guilty" verdict. Upon an Order of the court to investigate, two jurors gave affidavits swearing that, had they been able to review the special verdict form, they would have voted "no", but that neither of them had voted.

d. Upon motion of the defense to dismiss the enhancement if not the charge, the court erroneously ruled that it must deny the motion because it may not consider post-verdict juror's statements that inhere in the verdict, when in fact they did not inhere in the verdict as it showed that the verdict was not complete. The special verdict not being unanimous, should have been dismissed.

e. The separate error implicating the integrity of the special verdict which added the element of intent to deliver, the court acknowledged was, "an incorrect statement of the law that is what is causing the problem".

f. The foregoing issues prejudiced the appellant.

Statement of the Facts.

The Appellant essentially concurs with the statement of the facts as provided in Counsel's Opening Brief.

First Ground.

The evidence discovered that was the basis for the search warrant for the Appellant's vehicle was obtained in violation of the Fourth Amendment to the U.S. Constitution and Washington Constitution, Article I, § 7, and the Appellant's rights guaranteed under them.

The Fourth Amendment to the U.S. Constitution provides,

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Washington Constitution, Article I, § 7, affirms,

"No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

"It is by now axiomatic that article I, section 7 provides greater protection to an individual's right of privacy than that guaranteed by the Fourth Amendment. *State v. Ferrier*, 136 Wn.2d 103, 111, 960 P.2d 927 (1998); *State v. Hendrickson*, 129 WN.2d 61, 69 n.1, 917 P.2d 563 (1996); *Young*, 123 Wn.2d at 180; *Stroud*, 106 Wn.2d at 148; *State v. Williams*, 102 Wn.2d 733, 741-42, 689 P.2d 151 (1984)(citing cases)", *State v. Parker*, 139 Wn.2d 486, 493, 987 P.2d 73 (1999); *Columbia Basin Apt. Ass'n. v. City of Pasco*, 268 F.3d 791, 801 (2001)("Washington clearly recognizes an individual's right to privacy with no express limitations").

In concert with counsel's opening brief, Issue III, page 15 which the Appellant incorporates by reference, she makes the following additional contentions:

a. The arrest and evidence were the result of an unlawful pretextual stop, thereby tainting any evidence.

"An unlawful pretext stop occurs when a police officer stops a vehicle in order to conduct a speculative criminal investigation unrelated to the driving, and not for the purpose of enforcing the traffic code. State v. Ladson, 138 Wn.2d 343, 349, 351, 979 P.2d 999 (1999).

The inquiry to discern the "fundamental difference between the detention of a citizen for the purpose of discovering evidence of crimes and a community caretaking stop aimed at enforcing the traffic code", State v. De Santiago, 97 Wn.App. 446, 451, 983 P.2d 1173 (1999)(citing Ladson, 138 Wn.2d at 358 n.10), is "whether the fact that someone has committed a traffic offense, such as failing to signal or eating while driving, justifies a warrantless seizure which would not otherwise be permitted absent that 'authority of law' represented by a warrant", Ladson, 138 Wn.2d at 352.

The Montes-Malindas¹ court stated that to determine whether a traffic stop is a pretext for accomplishing a search, "the court should consider the totality of the circumstances, including both the subjective intent of the officer as well as the objective reasonableness of the officer's behavior", Id. at 359.

In that case, an officer saw three people in a van, acting nervously. One man got out and into another car and left. The driver and remaining passenger then switched places in the car. The officer sat and watched the van, and when they left the store, he followed.

1 State v. Montes-Malindas, 144 Wn.App. 254, 182 P.3d 999 (2008)

The officer noted that the van's headlights were not on, so he pulled out to follow and the driver then turned his lights on. The officer then pulled the van over. He approached on the passenger side in order to get a better look at the passenger area. Finding that the driver did not have a driver's license, and neither had identification, he arrested the driver and searched the passenger and found paraphernalia. The passenger had initially given the officer a false name.

A search of the vehicle revealed a firearm and baggie that contained methamphetamine was found in the patrol car after he had occupied it. He was charged with possession of methamphetamine and unlawful possession of a firearm.

The Court of Appeals held that " a traffic infraction may not be used as a pretext to stop to investigate for a sufficient reason to search even further", Ladson, 138 Wn.2d at 353, Montes-Malindas, supra at 259. They also stated "[i]t is not enough for the State to show that there was a traffic violation. The question is whether the traffic violation was the real reason for the stop", State v. Meckelson, 133 Wn.App. 431, 437, 135 P.3d 991 (2006) (citing Ladson 138 Wn.2d at 358-59), review denied, 159 Wn.2d 1013(2007); and that the officer was assigned to routine patrol was not dispositive, Montes-Malindas, at 261.

The officer further did not issue a citation for any headlight violation. Although failure to issue a citation for the underlying infraction is not dispositive, it is one of the factors to be considered, State v. Minh Hoang, 101 Wn.App. 732, 742, 6 P.3d

602 (2000), Montes-Malindas, supra at 262. The Court also considered that having back-up arrive as a result of his radio call "suggests, as does his decision to proceed with caution, that Sergeant Dresker was preparing for something more than a traffic stop", and based on the totality of the circumstances, concluded that it was an unlawful pretextual stop, and ruled that the evidence uncovered as a result was tainted.

In the instant case, the Affidavit Regarding Probable Cause, Appendix I, pages 1 and 2, indicate that Officer Lowrey was on patrol when he noticed there was a vehicle that had a modified exhaust system. The vehicle's turn signal was activated less than 100 feet from the intersection, so he conducted a traffic stop. Upon asking for the Appellant's driver's license, she stated she did not have one. Upon conducting a driver's check, he found that it stated her license suspended in the third degree. He arrested her for this offense. Officer Lowrey's testimony gives only a cursory account of this. The Appellant was in fact, handcuffed and placed in the rear of his patrol car upon arrest. As he had started to do this, the Appellant asked that they move out of eyesight of the children in the car, so as not to upset them, and he did not. See Declaration, Appendix II. RP 38, 40.

Officer Smerer testified that as he arrived, he recalled that the Appellant was being asked to get out of the vehicle, RP 62.

He then testified,

A "As he was getting the driver out of the vehicle, I overheard dispatch mention something about a protection order with a male. So I went over to the passenger side of the vehicle and tried to ask information regarding who the person was, if it was in any way related to the protection order.

Q Was there anything related to that in this case?

A As it turns out, no.

Q What happened next?

A I asked the passenger in the front seat his name. And he began to say his name was, I think, Daniel, then he started saying Kaloosh (phonetic). I asked him to spell it, he spelled K-A and didn't remember how to spell the rest of it and shoved some candy in his mouth. I asked him why he didn't know how to spell, he said he only finished the third grade.. At that point, we asked him to step out of the vehicle.

Q What did you observe when he stepped out of the vehicle?

A Officer Lowrey was to my left and so he -- when the door opened, he was able to -- I guess the passenger got out of the car. Officer Lowrey at that point said there is two pipes on the floorboard.. I was at the position where the door was opening towards me, I couldn't see down into the floorboard." RP 62-63.

Officer Lowrey's testimony is much more succinct. "They were removed from the vehicle, and as the passenger was removed from the vehicle, there was an item that was noticed as he was stepping out which was a methamphetamine smoking pipe", RP 40, 41.

He further testified,

Q "Did any other officers arrive?

A Yes.

Q Who?

A Officer Smerer", RP 41.

The Affidavit Regarding Probable Cause states,

"When Officer Lowrey ran Ms. Thoman he found out she was mentioned in a protection order. Officer Smerer was now on the scene as well and he contacted the male passenger of the vehicle. Officer Smerer asked the man for identification and the man stated he did not have identification on him. The man stated his name was Darryl Kakloosh. Officer Smerer asked the man to spell Kakloosh that man replied, "K, a" and then took a bite of candy, filling his entire mouth. The man held up his hand in a gesture to wait and then continued trying to spell Kakloosh. It was obvious to the officers that the man was not telling them the truth regarding his name.

Officer Lowrey told the man to step out of the vehicle and when the man did officer could see a pipe, commonly used for smoking methamphetamine that appeared to have methamphetamine in₉ the pipe." App. I, p.3.

b. There was no remaining cause to search the vehicle, under the search-incident-to-arrest or arms-reach exceptions, for the charge of arrest, with the Appellant handcuffed and secured in the back of a patrol car.

Under the strict rule in Arizona v. Gant, 556 US ____, 129 S.Ct. ____, 173 L.Ed.2d 485, 2009 LEXIS 3120 (2009), there was no lawful reason for them to search further. This standard was held in Washington prior to Gant, State v. Rathbun, 124 Wn.App. 372, 101 P.3d 1119 (2004)(evidence was not in arms reach of defendant); State v. Walker, 129 Wn.App. 572, 575, 119 P.3d 399 (2005)(search incident to arrest for DWLS 3 and investigation for failure to transfer title within 45 days not lawful, evidence tainted).

Further, "Preexisting Washington law indicates a general preference for greater privacy for automobiles **and a greater protection for passengers** than the Fourth Amendment", State v. Parker, 139 Wn.2d 486, 987 P.2d 73 (1999)(citing State v. Mendez 137 Wn.2d 208, 219, 970 P.2d 722 (1999)). (emphasis theirs).

The Court unequivocally stated that it constituted an "unreasonable intrusion into the privacy interest of passengers under article I, section 7, Mendez, 137 Wn.2d at 220", Parker, supra at 495-96, when a nonarrested passengers belongings were searched). The Court stated, "we do not find, and the State has not cited to, a single authority for the proposition that the arrest of one person, without more, provides the authority to search another, nonarrested individual", Parker at 497.

Very pertinent, the Court in State v. Mendez, 137 Wn.2d 208, 212, 907 P.2d 722 (1999), held, "an officer has the authority to order the driver of a vehicle detained for a traffic infraction to remain in the vehicle or to leave the vehicle in furtherance of the officers' need to control the scene of the traffic stop. With respect to the passenger, however, an officer must have an articulable rationale predicate upon safety considerations to order the passengers out of the car or to remain in the car."

Also like the case at bar was State v. Brown, 154 Wn.2d 787, 117 P.3d 336 (2005), in which the Court ruled that a passenger was unconstitutionally seized under their recent decision in State v. Rankin, 151 Wn.2d 689, 92 P.3d 202 (2004), when an officer requested identification and ran a warrants and license check without any articulable suspicion of wrongdoing. A Vancouver police officer pulled over a car with Oregon license plates and trip permit because he believed the trip permit was "illegal!" He asked the passenger for his name, and the passenger initially lied about his name. The officer then searched the passenger under the guise of looking for identification that the passenger claimed not to have. The search was ruled unconstitutional and the conviction was vacated.

Rankin was also a passenger in a vehicle, and was asked for identification without having exhibited any criminal activity whatsoever. A warrants check revealed an alleged violation of a no contact order. They ruled that a passengers right of privacy is violated when an officer request identification absent independent basis for making the request, Rankin Id. at 692.

The circumstances in the instant case become much more clear in light of these cases. The Appellant's car was pulled over for having a modified exhaust, and her failure to signal a turn at 100 feet from an intersection, RP 38. The passenger and their respective children remained in the vehicle initially, RP 62-63. She was arrested, handcuffed, and placed in the back of the patrol car, Appendix II. At RP62 Off. Smerer testified to, and the Affidavit of Probable Cause (App. I) attests to, their intent to find out if the passenger was the male named in the protection order. Having a protection order does not waive any right to privacy or the protections of the federal or state constitutions, nor does it allow for all or any random persons, or class of persons, to be checked on the off chance that they might be that person. The Appellant was the person to be protected, not subject to the suspicion of being in the company of the person she sought protection from. The passenger had not exhibited any sign of having committed a crime, or any indication that he was about to. Therefore, under the caselaw and holdings of the courts cited, the officers had no basis whatsoever to order him from the vehicle, even if he lied about his name, as proven in the proffered cases. Neither was the Appellant cited for either of the violations alleged as the reason for the initial stop, but was cited instead for DWLS 3, and failure to transfer title within 45 days, which entirely supports the Appellant's contention that the stop was pretextual, see Declaration of Appellant, Appendix II.

c. The evidence used as the basis for the search warrant was obtained by the officer unlawfully ordering the passenger from the vehicle, without a reasonable, articulable suspicion of criminal activity, also tainting the evidence.

The Affidavit of Probable Cause attached as Appendix I, shows that the pipes found in the vehicle upon having ordered the passenger out of the vehicle, at page 3 was the cause and justification for obtaining a warrant to search the vehicle.

For the reasons shown in the preceding sections, the basis for the warrant was found unlawfully since "[A] stop based on a parking violation committed by the driver does not reasonably provide an officer with grounds to require identification of individuals in the car other than the driver", *State v. Larson*, 93 Wn.2d 638, 642, 611 P.2d 771 (1980), and without the passenger having committed a crime in the officer's presence or being about to commit a crime, they do not have the authority to order the passenger in or out of the vehicle, or to produce identification, *State v. Mendez*, 137 Wn.2d 208, 907 P.2d 722 (1999); *State v. Brown*, 154 Wn.2d 787, 117 Wn.2d 336 (2005).

Therefore, having discovered the pipes by unlawful or unconstitutional means as the basis for the search warrant, the evidence is tainted, and fruits of the poisonous tree, *Wong Sun v. United States*, 371 US 471, 9 L.Ed.2d 441, 83 S.Ct. 407 (1963), and should have been suppressed or a warrant not issued, in abuse of these standards.

d. The Appellant was denied her right to effective assistance of counsel guaranteed under U.S. Constitutional Amendment VI and Washington Const. Art. I, § 22, as shown in counsel's opening brief and the declarations attached herein, for failing to put forth the Appellant's best and most basic defense and conflict of interest.

In conjunction with counsel's opening brief, Issue V, page 21-22, which the Appellant incorporates by reference, the Appellant makes the following additional contentions:

A hearing at the trial court is required to determine if the Appellant was denied effective assistance of counsel at trial. The Sixth Amendment to the U.S. Constitution guarantees every person accused of a crime the right to the effective assistance of counsel, Strickland v. Washington, 466 US 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A defendant is denied effective assistance of counsel, if her attorney's performance was deficient and it prejudiced her. *Id.* at 687. Prejudice is demonstrated where there is a reasonable probability that absent counsel's deficient performance the result would have been different. *Id.* at 693-96; State v. Leavitt, 111 Wn.2d 66, 72, 758 P.2d 982 (1988).

"To provide constitutionally adequate assistance, "counsel must, at a minimum, conduct a reasonable investigation enabling [counsel] to make informed decisions about how best to represent [the] client", In re Fleming, 142 Wn.2d 853, 865-66, 16 P.3d 610 (2001), quoting Sanders v. Ratelle, 21 F.3d 1446, 1456, (9th Cir. 1994).

While the showing here may be prima facie sufficient, most ineffective assistance claims require consideration of evidence beyond the existing appeal record, Mariano v. U.S., 538 US 500, 504-05, 123 S.Ct. 1690, 155 L.Ed.2d 714 (2003)(extra record evidence ordinarily required to resolve ineffective assistance claims).

The Appellant asks the Court to take judicial notice of additional evidence on the merits of the case under RAP 9.11 because additional facts are needed to fairly resolve the issues on review; the evidence would probably change the decision being reviewed; it is equitable to excuse a party's failure to present the evidence to the trial court, the remedy available to a party through postjudgment motion in the trial court is inadequate or unnecessarily expensive, the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive and it would be inequitable to decide the case solely on the evidence already taken in the trial court.

All six of the conditions are met, as the issue of ineffective assistance is material to this issue, brought for the first time on appeal under CrR 2.5; the evidence clearly supports the Appellant's contentions; the finding of IAC would allow review of the issue which would certainly result in reversal of the conviction; the Appellant was unable to discover the evidence until her arrival at WCCW; other remedies would result in the continued violation of rights and be expensive to all parties; a new trial would not be the appropriate remedy for this error; and this evidence being material to the contention, it would be inequitable to decide the case solely on the evidence taken on the record.

The asserted error most certainly had practical and identifiable consequences in the trial of the case. The failure of counsel to challenge the evidence in a case entirely based on a search and seizure issue is substandard performance, and the authority in the previous section prove it could have been successfully challenged. The issue can be raised on appeal under limited circumstances.

RAP 2.5(a) addresses errors raised for the first time on review. "An appellant may raise for the first time on appeal a claim of manifest error affecting a constitutional right. *State v. mGarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995)", *State v. Harris*, 154 Wn.App. 87, 94 (Jan. 2010); RAP 2.5(a)(3).

The Harris court determined, that an error is manifest if the asserted error had practical and identifiable consequences in the trial of the case, *State v. Lynn*, 67 Wn.App. 339, 345, 835 P.2d 251 (1002); The Appellant had a constitutional right to be free from unreasonable searches and seizures, and freedom from invasion of private affairs, U.S. JCosnt. Amend. IV; Wash. Const. Art. I, § 7; as well as a right to effective assistance of counsel to defend against an accusation, U.S. Const. Amend. VI, and Wash. Const. Art. I, § 22.

The extra record evidence is proof submitted by another defendant represented by Mr. Blair at the same time. She has provided a declaration and proof that Mr. Blair is under investigation for misconduct and acts similar to that case. This would be material to the allegation of ineffective assistance and this situation meets all six of the criteria for acceptance of judicial notice of additional evidence. The other client of Mr. Blair was

approached by Steve Hamilton of the Thurston County Sheriff's Office, because he is being investigated. It is also contended that Mr. Blair, having previously been a prosecutor, was actively trying to become one again.

Mr. Blair had been the prosecutor on all but one of the Appellant's previous cases to the best of her knowledge. When she found that he had been assigned as her attorney, she had no idea she had any options to change the situation, but felt that the situation was incredibly inappropriate, under those circumstances. Mr. Blair's only comment to the court was at sentencing, when the damage was already done, RP 169. The Appellant believes that this constitutes a conflict under RPC 1.9 and/or 1.11.

The first line of defense in a search and seizure case, and certainly the best and nearly the **only** defense in the case before the bar was to challenge the legality and constitutionality of the search and the admissibility of the evidence, and is a basic and necessary function of defense counsel:

12 Washington Practice - Criminal Practice and Procedure, Exclusionary Motions, § 2306, states in relevant part,

"If there is a reasonable likelihood of a pre-trial suppression motion being granted, every effort should be made to prevail, including the defendant's testimony at the hearing. **This is particularly true where the incriminating evidence is the heart of the prosecution's case and there is very little other probative evidence available to the prosecution.**"

(emphasis mine).

Further, counsel is ineffective "where counsel's primary error is failure to make a timely request for the exclusion of illegally seized evidence that is often the most probative information bearing on the defendant's guilt or innocence", Kimmelman v. Morrison, 477 US 365, 91 L.Ed.2d 305, 313, 106 S.Ct. 2574 (1986), "[c]ounsel in a criminal case fails to advance a defense authorized by statute and there is evidence to support the defense, counsel's performance is deficient. Here, that deficient performance prejudiced Nicolas Hubert", Pers. Restraint of Hubert, 138 Wn.App. 924, 926, 158 P.3d 1282 (2007).

An appellant must also show a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." A reasonable probability "is a probability sufficient to undermine confidence in the outcome", Hubert, Id. at 930.(internal citations/footnotes omitted).

That probability becomes unfortunate fact in the glaring light of the obvious holdings in the cases shown previously in the First Ground, subsections a, b, and c, and the defenses authorized by statute that were ignored. Having shown caselaw pertinent to the Appellant's precise facts, the failure to put forth that defense or challenge the evidence that is the heart of the case, is deficient performance, State v. Thomas, 109 Wn.2d 222, 229, 743 P.2d 816 (1987)("A reasonably competent attorney would have been sufficiently aware of relevant legal principles").

Please see also Girts v. Yanai, 501 F.3d 743, 756 (6th Cir. 2007)(failure to object); Everett v. Beard, 290 F.3d 500, 509 (3rd Cir. 2002)(failure to object).

"Counsel must, at a minimum conduct a reasonable investigation enabling [counsel] to make informed decision about how best to represent [the] client", In re Fleming, 142 Wn.2d 853, 865-66, 16 P.3d 610 (2001)(quoting Sanders v. Ratelle, 21 F.3d 1446, 1456 (9th Cir. 1994). Mr. Blair spent so little time with the Appellant, that she became very frustrated and discouraged. When on the few occasions he did speak to her, he gave her the "bums rush" saying, "I'm in a hurry", or "I gotta go to court, sign this", and was gone. It is the experience of the Appellant as certinty that his disregard of the Appellant was due to his knowledge of her history, and treated her like the outcome was already assured, and in the circumstances of **this** case, she really wasn't guilty. The evidence could easily have been suppressed under the standards profferred in Ground One, as well as the reasons stated in counsel's Opening Brief, therefore, but for trial counsel's deficient performance, the outcome would have been different, Strickland.

The Appellant contends that these errors and substandard performance prejudiced her by resulting in being imprisoned for the protracted period of 120 months, because the entire foundation of the case was the unlawfully garnered evidence.

The Appellant was entirely prejudiced by counsel's failure to object to the illegally garnered evidence, since she maintains that she had no knowledge of the pipes and drugs her boyfriend testified to ownership and responsibility of, RP 121-22, 125-26, 128-29. She was "clean", and had passed both of the sobriety tests at the scene by two officers, one of whom was the head of the narcotics task force. Without the evidence the case would have been dismissed, certainly. But for counsel's deficient performance in failing to perform such a basic and essential function, the Appellant was convicted and sentenced to 96 months in prison.

In a case where the defendant's criminal history was described by the prosecutor as, "abysmal", RP 169, and five sentences later, defense counsel stated, "I'm familiar with Ms. Thoman's prior criminal history. I think all but one conviction I was the prosecutor on." The Appellant contends that this shows that counsel actually represented conflicting interests. Indeed, it almost sounds as if he is bragging. It also appears to convict him of ineffective assistance since his role is critical to the ability of the adversarial system to produce just results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair, Strickland, 80 L.Ed.2d at 682, 692. Alternatively, the court should have inquired into this when counsel made the statement at RP 169. This was an actual conflict, and counsel should have been obligated to step out from it at the beginning.

Second Ground.

Appellant's sentence was imposed in violation of her right to a jury trial under the Sixth Amendment to the U.S. Constitution and Washington Constitution, Article I, § 21, because her jury was improperly instructed that they required a unanimous verdict in order to vote "no" on her special verdict school zone enhancement.

Unanimous jury verdicts are required in Washington criminal cases, State v. Stephens, 93 Wn.2d 186, 190, 607 P.2d 304 (1980); Wash. Const. Art. I § 21. Special verdicts do not require unanimity to vote "no", State v. Goldberg, 149 Wn.2d 888, 895, 72 P.3d 1083 (2003).

"[A] nonunanimous special finding by a jury is a final decision by the jury that the State has not proved its case beyond a reasonable doubt", State v. Bashaw, 169 Wn.2d 133, 146, 234 P3d 195 (2010). "In order to hold that a jury instruction error was harmless, "we must 'conclude beyond a reasonable doubt that the jury verdict would have been the same absent the error.'", State v. Brown, 147 Wn.2d 330, 341, 58 P.3d 889 (2002)(quoting Neder v. United States 527 US 1, 19, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999))." "The error here was the procedure by which unanimity would be inappropriately achieved", "We therefore cannot conclude beyond a reasonable doubt that the jury instruction was harmless", Bashaw, Id. at 147.

a. Appellant's sentence included an enhancement for "Violation of the Uniform Controlled Substances Act (VUCSA)", "within 1000 feet of the perimeter of a school grounds".

The Appellant's Judgment and Sentence, p. 1-2, Appendix IV shows, "Count I **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school bus, within 1000 feet of the perimeter of a school grounds".

The Appellant's sentence was 96 months on Count I, which, "includes 24 months as enhancement for firearm deadly weapon VUCSA in a protected zone manufacture of methamphetamine with juvenile present", page 4, Judgment and Sentence, attached. The record of the sentencing hearing also reflects this, RP 167-175, Appendix V.

b. Appellant's jury received erroneous instructions. One required unanimity to vote "no" on the special verdict form. The jury was further instructed that the special verdict form was specifically "for the crime of Possession of a Controlled Substance with Intent to Deliver", thereby creating the element of intent to deliver within 1000 feet of a school, as shown in the record.

The Court's Instructions To The Jury, attached as Appendix VI, Instruction 17, WPIC 50.60 requires that the jurors reach a unanimous verdict in order to vote "no". The instruction states,

"You will also be given a special verdict form for the crime of Possession of a Controlled Substance with Intent to Deliver. If you find the defendant not guilty of this crime, do not use the special verdict form. If you find the defendant guilty of this crime, you will then use the special verdict form and fill in the blank with the answer "yes" or "no" according to the decision you reach. Because this is a criminal case, **all twelve of you must agree in order to answer the special verdict form.** In order to answer the special verdict form "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. **If you unanimously have a reasonable doubt as to this question, you must answer "no".**

emphasis mine).

The recent decision of the Supreme Court in State v. Bashaw, 169 Wn.2d 133, 145, 234 P.3d 195 (2010) No. 81633-6, Decided July 1, 2010, unequivocally declares this an incorrect instruction.

"The jury instruction issue in this case is a narrow one: when a jury has unanimously found a defendant guilty of a substantive crime and proceeds to make an additional finding that would increase the defendant's sentence beyond the maximum penalty allowed by the guidelines, must the jury's answer be unanimous in order to be final? We answered this question in State v. Goldberg, 149 Wn.2d 888, 72 P.3d 1083 (2003), and the answer is no. A nonunanimous jury decision on such a special finding is a final determination that the State has not proved that finding beyond a reasonable doubt." Bashaw, supra at 145.

The Goldberg court concluded "[i]n sum, special verdicts do not need to be unanimous in order to be final." Id. at 895, 72 P.3d 1083."

"The rule from Goldberg, then, is that a unanimous jury decision is not required to find that the State has failed to prove the presence of a special finding increasing the defendant's maximum allowable sentence. A nonunanimous jury decision is a final determination that the State has not proved the special finding beyond a reasonable doubt", State v. Bashaw, supra at 146.

While the Court rejected the parties' having framed the issue as jury coercion, the Appellant submits that it would still have the **effect** of being stated "coercively", as the average person would understand, because it takes away the choice, and would not otherwise be termed an, "incorrect statement of the law", Bashaw, at 147. "However, instructions are to be given to and understood by lay jurors and the instruction in its present form might tend to confuse a juror as to his fundamental duty", State v. Ring, 52 Wn.2d 423, 325 P.2d 730 (1958).

c. Following delivery of the verdict, one of the jurors hysterically informed the court that they did not vote on the special verdict form and was upset to discover it had been delivered as a "guilty" verdict. Upon an Order of the court to investigate, two jurors gave affidavits swearing that, had they been able to review the special verdict form, they would have voted "no", but neither had voted.

It is at this point that the issue becomes very complicated. There are several conceivable ways that this problem could be categorized:

1) that it is strictly a matter of an incorrect statement of the law, and that the jurors affidavits cannot be considered at all; 2) that there was also jury misconduct; 3) that there was a combination of circumstances that ultimately deprived the Appellant of a fair trial or prejudiced her.

The trial court chose the first option, in that they stated that the affidavits of the jurors inhered in the verdict, and therefore could not be considered, RP 9 04/07/10, App. V.

The trial court seemed to only consider the affidavits in terms of a motion for a new trial, p. 6 - 9.

THE COURT: ""That's not how I would have voted."

"During our deliberations, I did not read the special verdict form." She doesn't say she didn't have the opportunity to read it. She said I didn't read it. That inheres in the verdict."

..."Corson's statements inhered in the verdict. Because a trial court may not consider postverdict juror's statement that inhere in the verdict when ruling on a new trial motion, the trial court abused its discretion by granting a new trial." Not only is there no authority, but it gives me no authority to even consider these affidavits."

Defense counsel asked for more than a new trial, See App. VIII, in "Defendant's Motion & Memorandum for Arrest of Judgment (CrR 7.4), New Trial (CrR 7.5), or Relief From Judgment (CrR 7.8)".

After informing counsel of what was going on, the court ordered an investigation, which bore fruit in the form of two affidavits by jurors, which stated that they had not voted on the special verdict, Appendix VIII.A hearing was held on the matter, the transcript of which is attached as Appendix IX.

d. Upon motion of the defense to dismiss the enhancement if not the charge, the court erroneously ruled that it must deny the motion because it may not consider post-verdict juror's statements that inhere in the verdict, when in fact they did not inhere in the verdict as it showed that the verdict was not complete. The special verdict not being unanimous, should have been dismissed.

"The jurors were not polled, they went back to the jury room, Ms. Thoman and I left, and before I -- or just as I was pulling out of the parking plot, (sic) I got a call from the Court saying or suggesting that I needed to come back right away, because there was a juror here that was in tears, so I returned and I talked briefly Alene Holt, who was one of the jurors. She was in tears. She appeared very upset, and she was explaining to me that she had not had the opportunity to review the special verdict form, and when they heard the clerk read it that was not her understanding whatsoever -- wasn't her vote to vote yes on that particular verdict form, so I got some information from her, then, I subsequently got some information from the Court with regard to a couple of other jurors.

The Court authorized an investigator to contact these folks, which he did and the Court has their affidavits and then a handwritten note from Richard Core, in addition to his affidavit, and the bottom line is those jurors -- and I don't know what was going on in the jury room, but they were not given the opportunity to see the special verdict form, and when they heard the special verdict from being read, clearly they didn't agree with it, and it had a significant effect on Ms. Holt. ... "I would ask the Court at a minimum the special verdict enhancement -- special verdict form should be -- I would argue that in fact they were not unanimous, as far as that special verdict and that it should be dismissed."

The Court denied the motion, RP 8, saying that he could not consider the affidavits, because it inhered in the verdict, when it proved that the verdict was not unanimous, or "complete",

Both affidavits affirm that they did not in fact vote on the special verdict. Not being relevant to or limited by the portion of the motion for new trial this could have been considered for the facts alone, "consider only those facts stated in relation to misconduct of the juror, and which in no way inhere in the verdict itself", *State v. Parker*, 25 Wash. 405 (1901); *Byerly v. Madsen*, 41 Wn.App. 495, 499, 704 P.2d 1236 (1985)(same); *Turner v. Stime*, 153 Wn.App. 581 (2010); *Gardner v. Malone*, 60 Wn.2d 836, 376 P.2d 918 (1962).

This then begs the question, is the act of the presiding juror turning in the verdict form as "complete" in spite of the stated "duty" in Court's Instructions To The Jury, Nos. 15, 16, and 17 respectively, conspicuously without the consideration of the dissenting jurors, misconduct?

The court's instructions are clear regarding the duty. "As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict", No. 15, Appendix VI. "The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, **and that each one of you has a chance to be heard on every question before you.**" "When completing the verdict form," ...**"If you unanimously agree on a verdict, you must fill in the blank provided ...according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided"**. "Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the proper form of verdict or verdicts to express your decision. The presiding juror must sign the verdict form(s) and notify the bailiff", No. 16. "Because this is a criminal case, all twelve of you must agree in order to answer the special verdict form. If you find the defendant guilty of this crime, you will then use the special verdict form and fill in the blank", No. 17. (emphasis mine).

e. The separate error implicating the integrity of the special verdict which added the element of intent to deliver, the court acknowledged was, "an incorrect statement of the law that is what is causing the problem".

At the hearing of April 7, 2010, Appendix IX the court stated at page 8, "However, even if I consider them, it's an incorrect statement of the law that is what is causing the problem, so I'm denying the motion."

The Court's Instructions To The Jury, Appendix VI, No. 17 tells the jury,

"You will also be given a special verdict form **for the crime of Possession of a Controlled Substance with Intent to Deliver.** If you find the defendant not guilty of the crime, do not use the special verdict form. If you find the defendant guilty of this crime, you will then use the special verdict form and fill in the blank with the answer "yes" or "no" according to the decision you reach. Because this is a criminal case, all twelve of you must agree in order to answer the special verdict form. In order to answer the special verdict form "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you uananimously have a reasonable doubt as to this question, you must answer "no"."

(emphasis mine).

The Oath of Jurors is to "a true verdict give", RCW 4.44.260. The "Manner of giving verdict", is "whether they have agreed", RCW 4.44.370.

"A jury's action does not become a verdict until it is finally rendered in open court and received by the trial judge", **"A jury returns a verdict when all members have agreed upon the verdict and the presiding juror completes and signs the verdict form,** returning it to the judge in open court. CrR 6.16(a)(2). Former RCW 4.44.460 (2002) provided that a jury's verdict was not final until the court received the verdict and the clerk filed the "complete" verdict, the court then discharged the jury. Former RCW 4.44.460 (statute made applicable to criminal cases in *State v. Badda*, 68 Wn.2d 50, 51, 411 P.2d 411 (1966)", *State v. Wirth*, 121 Wn.App. 8, 14, 85 P.3d 922 (2004). (emphasis mine).

The Appellant submits to the Court that there was not a "complete" verdict rendered to the trial court as required, shown by the facts in the jurors affidavits, and the special verdict school zone enhancement should have been dismissed.

Finally, the Appellant also suggests that a combination of circumstances ultimately deprived the Appellant of a fair trial or prejudiced her.

Defense counsel did not poll the jury RP 2 04/17/09. The affidavits of the jurors were identical, Appendix VII. Whoever typed them on behalf of the jurors worded them in such a way that they might inhere in the verdict and likely be rejected by the court.

The special verdict form, Appendix VI, states,

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

Did the defendant, MIRANDA ROSE THOMAN, **possess a controlled substance, with intent to deliver within one thousand feet of the perimeter of the school grounds?**

ANSWER: Yes
"yes" or "No"

DATED this 18 day of February, 2010."

(emphasis mine).

THIS, is the, "incorrect statement of the law that is what is causing the problem". Notwithstanding the prior contentions regarding the completeness of the verdict stated above, the Appellant contends that there was also a separate error due to this improper instruction, which created in the element of intent to deliver attached to the special verdict.

The jury was told this in court as well. The prosecutor, in closing, stated at RP 145-46,

"The state submits all the evidence you have seen, as well as where it was located, as well as the testimony of the officers as to its significance, leads to one conclusion, that's **that Ms. Thoman was in constructive possession of methamphetamine with intent to sell the same on December 3rd, 2009, in the State of Washington. And it was done within 1,000 feet of the perimeter of a school.** Thank you." 31 (emphasis mine).

The state put the two statements together again at RP 142. The jury had no basis to think anything **other** than that they were supposed to decide, "Did the defendant, MIRANDA ROSE THOMAN, possess a controlled substance, with intent to deliver, within one thousand feet of the perimeter of a school grounds?"

This is an incorrect statement of law. The court acknowledged also that at RP 8 04/07/10, "There's no requirement that it be that she had the intent to deliver within a 1000 feet of the school. It's that she possessed it within a thousand feet of the school".

Yet in both trial and written instructions, this is how the jury was instructed. They could not have thought other than this was the standard that they must use, as it is the ONLY standard that they were given. The special verdict was not "complete", as stated previously.

"The parties are entitled to jury instructions that, taken as a whole, properly instruct the jury on the applicable law and allow each party the opportunity to argue his or her theory of the case. State v. Cyrus, 66 Wn.App. 502, 508, 832 P.2d 142 (1992)(citing State v. Hoffman, 116 Wn.2d 51, 804 P.2d 577 (1991), affirmed by McGinnis v. Blodgett, 67 F.3d 307 (9th Cir. 1995), cert. denied, 506 US 1160(1996)), review denied, 120 Wn.2d 1031 (1994)", State v. Dejarlais, 88 Wn.App. 297, 301, 944 P.2d 1110 (1997).

Likewise, "the jury has the right under **Emmanuel**¹ to regard the [] instruction as a complete statement of the law; when that instruction fails to state the law completely and correctly, a conviction based upon it cannot stand. It cannot be said that a defendant has had a fair trial if the jury must guess at the meaning of an essential element of a crime or if they jury might assume that an essential element need not be proved. State v. Johnson, 100 Wn.2d 607, 623, 674 P.2d 145 (1983)(holding that the specific crime intended is not an "element" of burglary), overruled on other grounds in State v. Bergeron, 105 Wn.2d 1, 711 P.2d 1000 (1985)", State v. Smith, 131 Wn.2d 258, 263, 930 P.2d 917 (1997).

The Smith court held "The instructions here, like the erroneous instructions in **Aumick** and **Stephens**², structured the jury's deliberations by purporting to set forth the elements of the crime", Smith, Id. at 265.

In the case before the bar, the WPIC is still correct. The Appellant believes that the erroneous instruction is the result of the WPIC's being on the computer, and having inserted the crime charged in the appropriate brackets, it created this situation. A situation nonetheless, that set the stage for the jury to be instructed improperly that there was the element of intent to deliver within 1000 feet of the perimeter of a school grounds, instead of only that the substance was possessed within the stated area. If not, it was typed that way.

¹ State v. Emmanuel, 42 Wn.2d 799, 819, 259 P.2d 845 (1953).

² State v. Aumick, 126 Wn.2d 422, 894 P.2d 1325 (1995); State v. Stephens, 93 Wn.2d 186, 191, 607 P.2d 304 (1980).

In either event, the jury was erroneously instructed. "[t]he jury is presumed to read the court's instructions as a **whole**, in light of **all other** instructions. The jury is also to presume each instruction has meaning", State v. Hutchinson, 135 Wn.2d 863, 884, 959 P.2d 1061 (1998)(emphasis theirs in State v. Studd, 137 Wn.2d 533, 973 P.2d 1049 (1999)).

The jury must be absolutely presumed to have done so, as they were also instructed so in closing argument, RP 145-146. So while the Washington Pattern Jury Instruction itself may be entirely correct, the Appellant submits that under the circumstances of this case, and indeed in **any** case where such a crime may be inserted in the brackets which alter the statement of the law in such a way, the jury was given an **inc**orrect statement of the law and, "We, therefore, cannot say that the error was harmless", Smith, supra at 265. As the record reflects and the trial court themselves acknowledged at RP 8 04/17/10, this Court should find also.

f. The foregoing issues prejudiced the Appellant.

The Appellant's sentence includes an enhancement for "Violation of the Uniform Controlled Substances Act (VUCSA)" "within 1000 feet of the perimeter of a school grounds", Judgment and Sentence, Appendix IV p 1-2, which the jury was instructed improperly that they must "unanimously have a reasonable doubt" in order to vote "no" on, Court's Instructions To The Jury, Appendix VI, No. 17 and the Special Verdict Form, Appendix VI.

This was held to be an incorrect statement of the law in State v. Bashaw, 169 Wn.2d 133, 146, 169 P.3d 169 (2010). That same verdict was found to have delivered to the court, "incomplete", and the sentence imposed upon the Appellant anyway, having not been a unanimous verdict on the enhancement. The imposition of 24 additional months imprisonment upon such a circumstance shows the loss of a protected right "by improper means", Bashaw, Id. at 145, therefore prejudicing her.

The Appellant was even further prejudiced by the additional erroneous instruction that included the element of intent to deliver within 1000 feet of the perimeter of a school, instead of the correct statement that she merely possessed it there. This was compounded by the statements of the prosecutor in closing, RP 145-146, Appendix X, and conceded by the trial court at RP 8, Appendix IX as an incorrect statement of the law. The Appellant requests relief in vacating and dismissal of the enhancement as shown in State v. Bashaw, 169 Wn.2d at 146.

The Appellant had a, "valued right" to have the charges resolved by a particular tribunal, State v. Labanowski, 117 Wn.2d 405, 420, 816 P.2d 26 (1991); State v. Bashaw, 169 P.2d at 147. It cannot be concluded beyond a reasonable doubt that the verdict would have been the same absent the errors, and they were not unanimous in their finding.

CONCLUSION.

The Appellant's conviction is based upon evidence garnered in an unlawful search predicated upon a pretextual stop. The search warrant was based upon evidence seen for the sole reason that officers ordered the nonarrested passenger out of the vehicle without a reasonable, articulable suspicion of criminal activity. Indeed, the officers admit that they only wanted to find out if he was the "male" listed in the Appellant's protection order. There were no other exceptions to search under, as the Appellant had been handcuffed and placed in the patrol car. All of the evidence is therefore tainted, and should have been suppressed.

The Appellant was denied effective assistance of counsel, as there was no possible tactical reason not to challenge the sole evidence under the circumstances described by all of the parties. Counsel further failed to withdraw as counsel and the trial court failed to inquire as to an actual conflict of interest, as he had been the prosecutor on all but one of the Appellant's convictions. The Appellant has since arriving in prison discovered that the attorney is under investigation for misconduct, and asks this Court to allow the evidence under the appropriate court rules.

The Appellant's sentence was imposed in violation of other rights, as the jury was improperly instructed in more than one instance, and this as well as possible jury misconduct, prejudiced her and resulted in the Appellant being sentenced to an enhancement, despite the incomplete verdict for that enhancement.

Upon discovery, the trial court could have considered the facts alone that showed the incomplete verdict or misconduct of the jury, and dismissed the special verdict school enhancement.

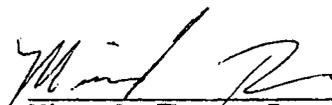
The errors alleged warrant a hearing at the trial court to determine whether the additional evidence should be taken and find the facts therefrom, and allow the admission of an issue for the first time on appeal that shows manifest error affecting a constitutional right upon that evidence, because the denial of effective assistance of counsel denied the Appellant the opportunity to fully and fairly litigate that claim. These errors warrant reversal of the judgment.

The instructional errors warrant dismissal of the special verdict school enhancement, as the error was not harmless.

The Appellant begs the Court for relief, and thanks the Court for its consideration.

Dated:

10/21/10



Miranda Thoman Pro se
Washington Corr. Center for Women
9601 Bujacich Rd. NW
Gig Harbor, WA 98332-8300

No. 40586-1-II
STATEMENT OF ADDITIONAL GROUNDS
OF MIRANDA THOMAN

APPENDIX I
Affidavit of Probable Cause

DEC 08 2009

By Nathy A. Brack, Clerk
Deputy

IN THE SUPERIOR COURT OF WASHINGTON IN AND
FOR LEWIS COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

MIRANDA ROSE THOMAN,

Defendant.

No. 09-1-00691-6

AFFIDAVIT REGARDING
PROBABLE CAUSE

II. AFFIDAVIT

STATE OF WASHINGTON)
 : ss.
COUNTY OF LEWIS)

The undersigned on oath states:

2.1 I am a Deputy Prosecuting Attorney for this county:

2.2 I am familiar with the investigative report in 09A-19301 and the following information is contained in that report:

On 12-03-09 Centralia Police Officer Doug Lowrey was on patrol in the area of E. Summa and S. Diamond Street when he noticed there was a vehicle that was traveling in front of his patrol car with a modified exhaust system. The vehicle's turn signal was activated less than 100 feet from the intersection and Officer Lowrey conducted a traffic stop on the vehicle.

AFFIDAVIT REGARDING
PROBABLE CAUSE

1 Officer Lowrey asked the driver of the vehicle, later identified as Miranda
2 Thoman, for her driver's license. Thoman stated she did not have her license. A
3 driver's check was done and Thoman returned as having a license suspended in the
4 third degree. Thoman was arrested for having a suspended license.

5 When Officer Lowrey ran Ms. Thoman he found out she was mentioned in a
6 protection order. Officer Smerer was now on the scene as well and he contacted the
7 male passenger of the vehicle. Officer Smerer asked the man for identification and the
8 man stated he did not have identification on him. The man stated his name was Darryl
9 Kakloosh. Officer Smerer asked the man to spell Kakloosh that man replied, "K, a" and
10 then took a bite of candy, filling his entire mouth. The man held up his hand in a
11 gesture to wait and then continued trying to spell Kakloosh. It was obvious to the
12 officers that the man was not telling them the truth regarding his name.

13 Officer Lowrey told the man to step out of the vehicle and when the man did
14 officers could see a pipe, commonly used for smoking methamphetamine that appeared
15 to have methamphetamine in the pipe. The man was later identified as Leonard Young,
16 Jr.. Mr. Young had an active DOC warrant for escape from community custody. Mr.
17 Young had a significant amount of cash on him.

18 A search warrant was obtained for the vehicle. There were numerous items in
19 the trunk, including a blue backpack which had two credit cards belonging to Thoman
20 inside of it. Inside the trunk of the vehicle was a large machete. Officer Lowrey pulled
21 the machete out and noticed there was a large amount of packaging material, little
22 plastic baggies with a batman logo on them. These type of baggies are commonly used
23 for packaging drugs into smaller quantities. Officer Lowrey also found a compartment
24 behind one of the panels in the trunk. Inside the compartment Officer Lowrey found a
25 cell phone and what appeared to be a methamphetamine pipe. Officer Lowrey handed
26 these items over to Officer Smerer, who continued searching the compartment. There
27 was a small cell phone case that contained a baggie containing white crystal material.
28 The white crystal material field tested positive for methamphetamine. A working digital
29

30 AFFIDAVIT REGARDING
PROBABLE CAUSE

Page 2 of 3

MICHAEL GOLDEN
LEWIS COUNTY
PROSECUTING ATTORNEY
345 W. Main Street, 2nd Floor
Chehalis, WA 98532
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1 scale, with residue on it, was also found under the cell phone case. The residue on the
2 scale field tested positive for methamphetamine.

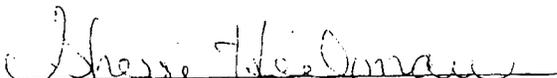
3 Officers later interviewed Thoman, after being read her Constitutional rights.
4 Thoman admitted that she took possession of the vehicle on November 28, 2009 and
5 she has been in possession of the vehicle since that date. Thoman stated on
6 November 30, 2009 or December 1, 2009, her boyfriend, Young, had cleared out the
7 trunk and put speakers in. Thoman also stated that her belongings, including her
8 backpack were located in the trunk of the vehicle. Thoman denied knowing about the
9 methamphetamine, scales or packaging material.

10 Thoman has prior felony convictions for Burglary 2 x 4, Theft 1 x 2, Theft 2,
11 Possession of Stolen Property 1, Possession of Stolen Property 2 and Residential
12 Burglary.

13 Based on the above, the State requests that the suspect, MIRANDA ROSE
14 THOMAN, be detained subject to conditions of release.

15
16 
17 SARA I. BEIGH, WSBA # 35564
18 DEPUTY PROSECUTING ATTORNEY

19
20 SUBSCRIBED and SWORN to before me December 8, 2009.

21 
22 Sherri Heilman, NOTARY PUBLIC in
23 And for the State of Washington,
24 Residing at Mossyrock.
25 My commission expires 10-13-2013

26
27
28
29
30 AFFIDAVIT REGARDING
PROBABLE CAUSE

Page 3 of 3

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No. 40586-1-II
STATEMENT OF ADDITIONAL GROUNDS
OF MIRANDA THOMAN..

APPENDIX II
Declaration of Appellant Miranda Thoman

STATE OF WASHINGTON)
COUNTY OF PIERCE) ss.

DECLARATION OF:
MIRANDA THOMAN

I, Miranda Thoman, on oath depose and say:

In late 2009, I had been staying at my boyfriend's mother's home, but kept some of my belongings in the car that I was borrowing from a friend, who was in the process of buying it.

On December 3, 2009, my boyfriend Leonard Young, myself, my son, and Leonard's daughter were going to the DSHS Office to sign up for a program they offer. We were pulled over in front of Washington School, by Officer Lowrey. The officer approached the car, and asked for my license and insurance, and I told him I didn't have either. He returned to his patrol car and confirmed this. He came back to the vehicle I was in, and ordered me to step out of the vehicle, and started to handcuff me. I asked him to step out of eyesight of the children in the back seat, so that it wouldn't upset them, and he did not. The children saw it anyway, and started crying. Officer Lowrey then put me in the back of his patrol car. I had asked him what I was being arrested for, and he said, "driving on a suspended in the third degree".

It was at this time that the other officer Officer Smerer arrived. From the back of the patrol car, I saw Officer Smerer go over to the passenger side of the car, and start talking to Leonard.

Officer Smerer opened the passenger door, and called Officer Lowrey over. They told Leonard to get out of the car, and wrenched one of his arms behind his back to arrest him. They searched his person, and took pictures of everything they had taken from him, including the \$1,200.00 he had from his per capita Tribal check. The officers placed Leonard in the back of the other patrol car.

Officer Lowrey then returned to his vehicle, and I asked him why they arrested Leonard. He said it was for a DOC warrant, and asked if I knew anything about two pipes. I said, "what pipes?". I knew nothing of any pipes in the car, or anything else.

I asked him what was going on with the children, and asked if I could step out and comfort them. He said, "no". He then told me they had to call CPS. I asked him why he had to call CPS if I didn't know anything about any drug paraphernalia in the car, and he asked if I would be able to go to the hospital and submit a U/A if I had to, and I said "yes". Instead of going to the hospital for the U/A, he did a field sobriety test on me, and another vehicle arrived. It was the head of the head of the Narcotics Task Force, Ms. Fitzgerald. She also had me submit to a sobriety test, after which they released the children to me, and allowed me to leave. They told me that the car was going to be towed, and that they were seizing the car. They said that they believed that they would find a substantial amount of drugs in the car, because of the amount of money they found on Leonard.

Approximately 3 to 4 days later, Officer Smerer called my cell phone, and left me a message, asking me to call him back. I did so, when I woke up and got the message. I asked him about my belongings, and he told me that I could come in and get them.

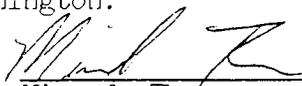
I had my friend who who had loaned me the car and was in the process of buying it come with me. I called Officer Smerer back when we got off at the Centralia exit, and asked where we were supposed to meet. He told me to come to the Police Station, and to call him back when we were outside. I did, and he told me to come around to the back door of the police station. The friend who was buying the car, Dan Miracle, and my friend Carrie went with me. Dan showed Officer Smerer his license, the title, registration, and bill of sale. Officer Smerer then said that I was under arrest, that he would explain inside, and that my friends had to go. Ms. Fitzgerald was also there.

Ms. Fitzgerald pat searched me, and I was taken inside, and arrested.

I, Miranda Thoman, declare under penalty of perjury, according to the laws of the State of Washington, that the foregoing is true and correct.

Dated and signed this 18 day of October, 2010, in Gig Harbor, Pierce County, Washington.

Dated: 10/18/10



Miranda Thoman
Washington Corr. Center for Women
9601 Bujacich Rd. NW
Gig Harbor, WA 98332-8300

No. 40586-1-II

STATEMENT OF ADDITIONAL GROUNDS
OF MIRANDA THOMAN

APPENDIX III

Declaration of Angela Bostwick

THE STATE OF WASHINGTON)
COUNTY OF PIERCE) ss.

DECLARATION IN SUPPORT
OF: STATEMENT OF ADDITIONAL GROUNDS
OF MIRANDA THOMAN

I, declare under penalty of perjury under the laws of the State of Washington that the following is a true and correct statement to the best of my knowledge.

My attorney was Don Blair, and at the time of a hearing in which the State was motioning the Court for an order to obtain a handwriting sample from me, an employee of the court/county heard Mr. Blair tell me to write left-handed on the handwriting exemplar. They reported this to the Bar Association, who contacted me in regard to my case. My case is currently under review, for the discrepancies listed in the attached letter. I was lied to and wrongly treated by Mr. Blair, and as a result, I must have to go through all the uncertainties and difficulties in attempting to withdraw my plea. The things I have been told regarding Miranda Thoman's case sound very much like the same underhanded behaviors I experienced, and which no person accused of a crime should have to have work against them by their own counsel. I hope the Court will consider the seriousness of these facts in their review of Ms. Thoman's case, and I thank the Court for its consideration.

STATE OF WASHINGTON
COUNTY OF PIERCE
10/11/11 4:11 PM
MIRANDA THOMAN

Dated: 9/30/10

Angela Bostwick

Angela Bostwick

Signature
310875

Print Name & DOC

Washington Correction Center for Women
9601 Bujacich Rd. N.W.
Gig Harbor, Washington 98332-8300



THURSTON COUNTY
SHERIFFS OFFICE
NEW CLINE

Steve Hamilton
Major Crimes Unit

2000 Abernidge Drive SW • Olympia, Washington 98502 6045

Phone (360) 754-3343 • Fax (360) 754-4080

Cell (360) 791-1653 • TDD (360) 754-2933

www.co.thurston.wa.us/sheriff/

7/2/10

I was sentenced via a plea-bargain on 5/25/10 for an exceptional sentence of 120 months, the plea agreement I had verbally agreed with my attorney on varied hugely from what it actually was. I had questioned my attorney about all the discrepancies and had told him I didn't want to sign because of all the discrepancies. He told me he had to get to court and needed to hurry and he didn't have time to discuss right now but just sign and he would take care of it and correct accordingly, but if I didn't sign I was basically screwed. I had several questions that he couldn't answer nor had time for. He also had me sign an exceptional sentence agreement in which I did not want to, but he said it was just a formality and that my range worst case scenario was 63-84 mos. He made no indication that this was my sentencing only the charge of plea. I walked into courtroom completely shocked to find news crews, full court room, he had not advised I needed to prepare a statement, prior he had told me that when eventually I was sentenced he would bring in my Mental Health Counselor, Gambling addiction medical records. When the time came he offered no

Also a ¹⁰ question of my points. ✓

defense for me other than stating I had a gambling addiction, no further evidence or argument was made.

I had several questions and was in shock and completely unprepared. He told me "just follow my lead". As I questioned what I was answering to he would just tell me to agree and he'd take care of it. I walked out of courtroom not knowing what had just happened, but the one thing I did know was I had gotten 120 mos.

I had kited law library and had sent in form to request appt. w/ attorney regarding this and another matter. But, since then on 4/21/10 I was brought in to talk to Steve Hamilton of Thurston Co. Sheriff's Dept. evidently my attorney Don Bleia of Lewis Co. is being investigated after being heard by an officer in the courtroom advising me to write left handed (I am right handed) on a handwriting exemplar and also telling me to sign court documents left handed, which I did. Det. Hamilton advised me that this may constitute tainted evidence and that this may be to my benefit. He is being investigated out of county.

due to conflict of interest. The whole
case is being reviewed and being sent for
~~my question~~
review by Bar Association.

My question is do I need
to be represented ~~by~~ by someone
or do I just let the investigation
play out since they brought it to
me?

Angela Bostwick

DOC# 310875

No. 40586-1-II

STATEMENT OF ADDITIONAL GROUNDS

OF MIRANDA THOMAN

APPENDIX IV

Judgment and Sentence for Cause # C9-1-00691-6

Defendant

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

STATE OF WASHINGTON

NO. 09-1-00691-6

VS

WARRANT OF COMMITMENT TO
THE DEPARTMENT OF CORRECTIONS

MIRANDA ROSE THOMAN,

TO: THE SHERIFF OF LEWIS COUNTY

The DEFENDANT, MIRANDA ROSE THOMAN, has been convicted in the LEWIS
COUNTY SUPERIOR COURT of the STATE OF WASHINGTON of the following crime:

COUNT I VUCSA: POSSESSION W/ INTENT TO DELIVER -METH

AND, the Court has ordered that the DEFENDANT be punished by serving the
determined sentence of:

- | | |
|----------------|-----------------------------------|
| () ___ day(s) | (X) <u>96</u> month(s) on COUNT I |
| () ___ day(s) | () ___ month(s) on COUNT II |
| () ___ day(s) | () ___ month(s) on COUNT III |
| () ___ day(s) | () ___ month(s) on COUNT IV |
| () ___ day(s) | () ___ month(s) on COUNT V |

COMMENTS: _____

The DEFENDANT shall receive credit for time served prior to this date,
as follows: 30 DAYS

YOU, THE SHERIFF, ARE COMMANDED to receive the DEFENDANT for
classification, confinement and placement as ORDERED in the Committing
Document, and to take and deliver the DEFENDANT to the proper OFFICERS
OF THE DEPARTMENT OF CORRECTIONS; and

YOU, THE OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to
receive the DEFENDANT for classification, confinement and placement
as ORDERED in the Committing Document.

BY DIRECTION OF THE HONORABLE

NELSON E HUNT

JUDGE

KATHY A BRACK

Clerk

Date 04-13-10

BY

LEWIS COUNTY SHERIFF

2010 APR 15 PM 12:12

Received & Filed
LEWIS COUNTY, WASH
Superior Court

APR 13 2010

Kathy A. Brack, Clerk
Deputy

Superior Court of Washington
County of Lewis

State of Washington, Plaintiff,

vs.

MIRANDA ROSE THOMAN,
Defendant.

SID:
DOB: 03-08-1982

No. 09-1-00691-6

Felony Judgment and Sentence --
Prison
(FJS)

Clerk's Action Required, para 2.1, 4.1, 4.3, 5.2,
5.3, 5.5 and 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

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon
 guilty plea (date) jury-verdict (date) 02-18-2010 bench trial (date) _____:

Count	Crime	RCW (w/subsection)	Class	Date of Crime
1	VUCSA: Possession of a Controlled Substance (methamphetamine) with intent to deliver (felony)	69.50.401	NV FB	12-03-2009

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 I, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public

tail

park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

- [] The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____ RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- [] 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. Laws of 2008, ch. 276, § 302.
- [] Count _____ is the crime of **unlawful possession of a firearm**. The defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.545.
- [] The defendant committed [] **vehicular homicide** [] **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- [] Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. Laws of 2008, ch. 219 § 2.
- [] Count _____ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- [] 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.
- [] 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):

	<i>Crime</i>	<i>Cause Number</i>	<i>Court (county & state)</i>
1.	None known		

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

2.2 Criminal History (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING CRT (COUNTY & STATE)	DATE OF CRIME	ADULT OR JUVENILE	TYPE OF CRIME
Residential Burglary	10-18-2004	Lewis WA	08-22-2004	A	NV felony
Burglary 2	10-18-2004	Lewis WA	08-22-2004	A	NV felony
Theft 1	10-18-2004	Lewis WA	08-22-2004	A	NV felony
Burglary 2	10-18-2004	Lewis WA	09-12-2004	A	NV felony
Burglary 2 (conspiracy)	10-18-2004	Lewis WA	09-12-2004	A	NV felony
Trafficking Stln Prop 1	10-18-2004	Lewis WA	09-12-2004	A	NV felony
Theft 1	10-18-2004	Lewis WA	09-12-2004	A	NV felony
Burglary 2	10-18-2004	Lewis WA	09-18-2004	A	NV felony
PSP 2	10-08-2004	Thurston WA	02-13-2004	A	NV felony
Theft 2	10-22-2003	Lewis WA	04-27-2003	A	NV felony

- 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 listed as number(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)
- The prior convictions listed as number(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range	Plus Enhancements*	Total Standard (including enhancements)	Maximum Term
1	10	II	60+ to 120	24 months	84+ to 144	10 years

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

- Additional current offense sentencing data is attached in Appendix 2.3.
- For violent offenses, most serious offenses, or armed offenders, recommended **sentencing agreements or plea agreements** are attached as follows: _____

- 2.4 Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:
- within 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.
- 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 to total confinement as follows:

(a) Confinement. RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

96 months on Count 1 months on Count
months on Count months on Count
months on Count months on Count

[] The confinement time on Count(s) contain(s) a mandatory minimum term of

[X] The confinement time on Count 1 includes 24 months as enhancement for [] firearm [] deadly weapon [X] VUCSA in a protected zone [] manufacture of methamphetamine with juvenile present.

Actual number of months of total confinement ordered is: 96

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

The sentence herein shall run consecutively with the sentence in cause number(s)

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here:

(b) 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 time served unless the credit for time served prior to sentencing is specifically set forth here by the court: 30 Days

(c) [] Work Ethic Program. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of confinement.

4.2 Community Placement or Community Custody. (To determine which offenses are eligible for or required for community placement or community custody see RCW 9.94A.700, .705, and .715)

(A) The defendant shall be on community placement or community custody for the longer of:

(1) the period of early release. RCW 9.94A.728(1)(2); or

(2) the period imposed by the court, as follows:

Count for a range from to months;

Count for a range from to months;

Count for a range from to months;

Count 1 for 12 months; Count for months.

(B) DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

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

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at 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 in 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.720. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or 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 treatment for domestic violence substance abuse
 mental health anger management, and fully comply with all recommended treatment. _____

comply with the following crime-related prohibitions: _____

Other conditions:

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

PCV \$ 500.00 Victim assessment RCW 7.68.035
 \$ _____ Domestic Violence assessment RCW 10.99.080
 CRC \$ _____

Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ 200.00 FRC
 Witness costs \$ _____ WFR
 Sheriff service fees \$ _____ SFR/SFS/SFW/WRF
 Jury demand fee \$ _____ JFR
 Extradition costs \$ _____ EXT
 Other \$ _____

PUB \$ 1,800⁰⁰ Fees for court appointed attorney RCW 9.94A.760
~~500.00~~

WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTH \$ 1,200⁰⁰ Fine RCW 9A.20.021; [X] VUCSA chapter 69.50 RCW, [] VUCSA
 additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/FCF \$ 500 Drug enforcement fund of Lewis County. RCW 9.94A.760
 NTF/SAD/SDI

CLF \$ 100⁰⁰ Crime lab fee [] suspended due to indigency RCW 43.43.690

\$ 100.00 DNA collection fee RCW 43.43.7541

\$ _____ Other fines or costs for: Jail recoupment fee.

RTN/RJN \$ _____ Restitution to: _____

\$ _____ Restitution to: _____

\$ _____ Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

\$ _____ **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:

Name of other defendant Cause Number (Victim's name) (Amount-\$)

RJN

[x] 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).

[x] 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 \$25 per month commencing 30 days from ~~the date~~ RCW 9.94A.760.

at Judgment & Sentence.

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 _____ including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

[] Domestic Violence No-Contact Order or Antiharassment No-Contact Order is filed 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: _____

V. Notices and Signatures

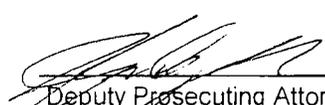
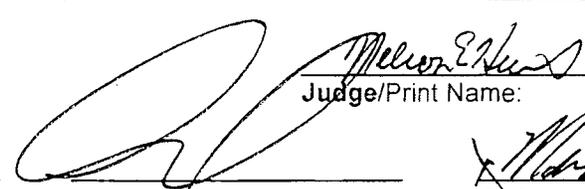
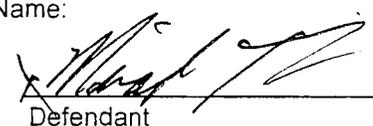
5.1 Collateral Attack on Judgment. If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion 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.737(2).
- 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, identicaid, 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:** BAIL BOND PREVIOUSLY POSTED IS EXONERATED

Done in Open Court and in the presence of the defendant this date: 04-14-2010

		
Deputy Prosecuting Attorney WSBA No. 18685 Print Name: J. Bradley Meagher	Attorney for Defendant WSBA No. <u>24637</u> Print Name: <u>Dennis Dean</u>	Judge/Print Name: Defendant Print Name: <u>McLain A Tolson An</u>

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 may be restored by: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140. Termination of monitoring by DOC does not restore my right to vote.

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: _____

VI. Identification of the Defendant

SID No. _____ Date of Birth _____
(If no SID complete a separate Applicant card (Form FD-258) for State Patrol)

FBI No. _____ Local ID No. _____

PCN No. _____ Other _____

Alias name, DOB: _____

Race: Asian/Pacific Islander Black/African-American Caucasian Hispanic Male
 Native American Other: _____ Non-Hispanic Female

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

Clerk of the Court, Deputy Clerk, K Walker Dated: 4/13/10

The defendant's name: Howard David Eslick

The defendant's signature: [Signature]

Left four fingers taken simultaneously	Left Thumb	Right Thumb	Right four fingers taken simultaneously
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**-LEWIS COUNTY CLERK CERTIFICATION OF -
DOCUMENTS AND/OR CLERK'S CERTIFICATE**

CAUSE NO. 09-1-00691-6

STATE OF WASHINGTON, VS. MIRANDA ROSE THOMAS,
PLAINTIFF DEFENDANT

STATE OF WASHINGTON
COUNTY OF LEWIS

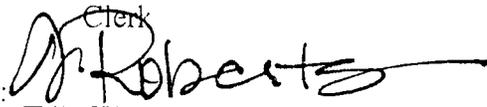
I, KATHY A BRACK, COUNTY CLERK AND CLERK OF THE SUPERIOR COURT OF LEWIS COUNTY, WASHINGTON, DO HEREBY CERTIFY THAT THE ANNEXED IS A TRUE COPY OF THE ORIGINAL ON FILE AND OF RECORD IN THIS OFFICE:

- Information
- Amended Information
- X Judgment and Sentence with Appendix
- X Warrant of Commitment
- Presentence Investigation Report to DOC
- X Other **AFFIDAVIT REGARDING PROB CAUSE**

OR THAT, IN THE MATTER OF A CHANGE OF VENUE IN THE ABOVE-ENTITLED CAUSE, THE FOREGOING IS THE ORIGINAL RECORD ON FILE WITH THE EXCEPTION OF THE ORDER CHANGING VENUE AND THE FOLLOWING;

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE SEAL OF THE SAID SUPERIOR COURT AT CHEHALIS, WASHINGTON THIS 13TH OF APRIL, 2010

KATHY A BRACK

By: 
Deputy

No. 40586-1-II

STATEMENT OF ADDITIONAL GROUNDS
OF MIRANDA THOMAN

APPENDIX V

Sentencing Hearing 04/14/10

1 April 14, 2010

2 * * * * *

3 THE COURT: All right, Mr. Meagher.

4 MR. MEAGHER: State versus Miranda Rose
5 Thoman, 09-1-691-6, Brad Meagher for the state, Don
6 Blair for the defendant who is out of custody. Matter
7 is on for sentencing.

8 THE COURT: Mr. Blair.

9 MR. BLAIR: We're ready to go other than the
10 fact my client has asked me if she can have one more
11 week.

12 THE COURT: For what reason?

13 MR. BLAIR: To get her child situated. She
14 had made arrangements that her child was going to be
15 living with her dad who is present in court, and he has
16 apparently just gotten employment where he's going to be
17 traveling out of state to build homes.

18 THE COURT: Mr. Meagher.

19 MR. MEAGHER: State's opposed, it's been
20 pending since February 18th, your Honor.

21 THE COURT: Sentencing has been?

22 MR. MEAGHER: No, she was convicted on
23 February 18th and sentencing has been pending since
24 then.

25 THE COURT: All right. Things are hard all

1 around, I'll deny the motion. So go ahead.

2 MR. MEAGHER: State asks the court to admit
3 items 1, 2, 3 and 4 which are certified copies of the
4 prior judgment and sentences in this court for Ms.
5 Thoman. By the state's calculation she has ten felony
6 points which makes her offender score at ten, level two
7 offense, that's 60 plus to 120 months. The jury also
8 found that the 1,000 feet of a perimeter of a school
9 grounds also applies to this case, that's an enhancement
10 of 24 months. So the standard range including
11 enhancements is 84 to 104 months.

12 The state's asking the court to impose 120 months.
13 That would include a portion for the, in the state's
14 mind, for the enhancement as well as pretty much maxes
15 out at ten years which is the maximum sentence in this
16 case in any event. Also ask the court to impose
17 12 months community custody obligations.

18 The following financial obligations, there is a
19 \$200 filing fee --

20 THE COURT: Mr. Meagher, before you get into
21 the financials, are we restricted by -- let's just say I
22 do the 120, then there is no community custody, right,
23 except for earned early release?

24 MR. MEAGHER: Yes, your Honor, that's right.
25 I seldom get there, I forgot that, you're right.

1 Then there is a \$500 victim assessment, \$200 filing
2 fee, I'm unsure of the court attorney's fees given I
3 believe it was a two-day trial, but that should be
4 imposed as well, \$1,000 VUCSA fine, \$500 Lewis County
5 drug fund fee, \$100 crime lab fee, \$100 DNA fee.

6 Ms. Thoman's criminal history is abysmal,
7 burglaries, trafficking, possession of stolen property,
8 now we have a drug offense. I'm hoping keeping her out
9 of circulation for a while would, one, inflict adequate
10 punishment on her, I know she will be away from her
11 child for a while, that will probably be punishment in
12 and of itself. Given her history, the state believes
13 some sort of midrange sentence is appropriate.

14 THE COURT: Mr. Blair.

15 MR. BLAIR: Thank you, your Honor. We're
16 asking the court to impose the low end which with the
17 enhancement would be 84 months. I'm familiar with Ms.
18 Thoman's prior criminal history. I think all but one
19 conviction I was the prosecutor on. And I distinctly
20 recall what the situation was back there. Jason
21 Anderson was her significant other at the time, and I
22 think he's still in prison. Unfortunately, for Ms.
23 Thoman, she got caught up with Mr. Anderson and the
24 court can see the result of that. She spent I think a
25 short period of time in prison, and then for the most

1 part has been doing very well since then, then this. If
2 we would ask the court to impose the low end which is
3 the 60 plus the 24 for a total of 84.

4 THE COURT: All right. Ms. Thoman this is
5 your opportunity to tell me what you think sentencing
6 ought to be. You don't have to if you don't want to,
7 you're free to rely on what Mr. Blair has said and done
8 on your behalf. I won't hold it against you if you
9 decide to say nothing. On the other hand, if you have
10 something to say, now is the time to say it.

11 MR. BLAIR: She won't make a statement, your
12 Honor.

13 THE COURT: All right. Well, I'm going to not
14 go with either. I don't think this is sentence that
15 merits the absolute maximum or a case that merits the
16 absolute maximum sentence. On the other hand, it is not
17 the minimum either. So I'm going to impose 96 months
18 which would be a year longer, 72 months on the
19 underlying offense, 24 months for the enhancement, for a
20 total of 96 months plus 12 of community custody.

21 The financial obligations, \$1,800 attorney fees I
22 think, is that right, for you, there was a previous
23 attorney here, I don't know if he billed or not. We
24 will say \$1,800.

25 MR. BLAIR: I didn't know there was a previous

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attorney. I didn't think -- I show on December 10th there was arraignment and trial setting.

THE COURT: Well, must not have been. Then, \$1,800 is what I would impose for that, and start the \$25 a month commencing in 30 days. Mr. Blair, you're aware why I do it that way, are you not?

MR. BLAIR: Yes, that's why I didn't say anything.

THE COURT: Does Ms. Thoman know why I'm doing it that way?

MR. BLAIR: I don't know if she does or not. Even if she doesn't, I would explain to her it is actually to her benefit.

MR. MEAGHER: I do show three days credit, your Honor, back in December '09.

THE COURT: Is that correct, Mr. Blair?

MR. BLAIR: I would guess. She says 30. It was set on a 60-day clock initially.

MR. MEAGHER: Would the court look in the court file and see when the bond was posted.

THE COURT: That's what I'm doing. It was filed on February 3rd, posted on January 5th.

MR. MEAGHER: Okay, so about 30 days.

THE COURT: They almost always know better than the jail records.

1 Mr. Thoman, I have to advise you of some rights.
2 The first concerns your appeal rights. You have the
3 right to appeal the conviction here. And the thing to
4 understand about that is it starts today. That right
5 expires in 30 days. So if you don't file your notice of
6 appeal within 30 days, your right to appeal is forever
7 lost. Mr. Blair, according to the terms of his
8 contract, is to prepare a notice of appeal if you decide
9 you want to. He's just handed that to me, so you don't
10 have to worry about that. The notice of appeal has been
11 filed as well as I'm assuming there is probably an order
12 in there for indigency.

13 MR. BLAIR: Yes, your Honor, three documents I
14 just filed.

15 THE COURT: Right. You have the right to have
16 portions of the record and also the transcript necessary
17 for review prepared at public expense if you can't
18 afford to hire it done. And I have just now signed the
19 documents verifying your indigency and allowing that at
20 public expense.

21 And, finally, you can challenge the
22 constitucionality or the validity of your conviction by
23 a collateral attack called a personal restraint
24 petition. The time limits for that are usually a year
25 from today. The issues are much more limited than the

1 notice of appeal you just filed, and you can read about
2 it at RCW 10.73.090 or .100 or have Mr. Blair explain it
3 to you. The thing to remember is the 30 days to file
4 your notice of appeal and that has been done.

5 Do you understand your appeal rights?

6 THE DEFENDANT: Yes.

7 THE COURT: I also have to advise you, as a
8 result of this felony conviction your right to own,
9 possess, or have under your control any firearm is
10 revoked. That revocation continues forever unless and
11 until you get a superior court judge in this state to
12 reinstate your right to bear arms. If you own, possess,
13 or have under your control any firearm without such a
14 written reinstatement order, it is a new felony. So
15 don't do it. Do you understand?

16 THE DEFENDANT: Yes.

17 MR. BLAIR: Would the court consider setting
18 an appeal bond for Ms. Thoman?

19 THE COURT: Well, sure, I'll set one, what are
20 you suggesting?

21 MR. BLAIR: My suggestion, how about \$5,000
22 unsecured?

23 THE COURT: I'm not making a joke about this.

24 MR. BLAIR: \$10,000.

25 MR. MEAGHER: State would ask for 50. She

1 does have significant criminal history and it is a
2 96-month commitment.

3 THE COURT: Not only that it is 50 with two.

4 MR. BLAIR: That's why I suggested 10, that
5 would make it 20.

6 THE COURT: It will be 50 with two.

7 MR. BLAIR: Thank you, your Honor.

8 THE COURT: Who will prepare that order?

9 MR. MEAGHER: I'll do it, I've got a form
10 order downstairs. Mr. Blair's here, I can get it to
11 him.

12 THE COURT: Does the judgment and sentence
13 exonerate the bond currently posted?

14 MR. MEAGHER: Yes.

15 THE COURT: Ms. Thoman, have you had an
16 adequate opportunity to review this judgment and
17 sentence with Mr. Blair?

18 THE DEFENDANT: Yes.

19 THE COURT: Did you say yes?

20 THE DEFENDANT: Yes.

21 THE COURT: Does it say what I said it should
22 say?

23 THE DEFENDANT: Yes.

24 THE COURT: It appears to me if it's supposed
25 to be on the last page, it's not there. I'll put on the

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bail bond, the paperwork, the bail bond if not already,
bail bond previously posted is to be exonerated.

MR. MEAGHER: Thank you, your Honor.

THE COURT: All right, we're at recess until
1:30 then.

(Conclusion of Proceeding)

* * * * *

No. 40586-1-II

STATEMENT OF ADDITIONAL GROUNDS

OF MIRANDA THOMAN

APPENDIX VI

Court's Instructions To The Jury and Special Verdict Form

Received & Filed
LEWIS COUNTY, WASH
Superior Court

FEB 18 2010

Kathy A. Brack, Clerk

By _____
Deputy

IN THE SUPERIOR COURT OF STATE OF WASHINGTON FOR LEWIS COUNTY

STATE OF WASHINGTON, Plaintiff)

No. 09-1-00691-6

MIRANDA ROSE THOMAN, Defendant.)

COURT'S INSTRUCTIONS TO THE JURY

DATE: FEBRUARY 18, 2010 Nelson E. Hunt, Judge

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

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

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

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

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

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

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

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

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

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

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

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

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

No. 2

The defendant has entered pleas of not guilty. Those pleas put in issue every element of each of the crimes charged. The state is the plaintiff and has the burden of proving each element of each of the crimes 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.

No. 3

It is a crime for any person to possess with intent to deliver a controlled substance.

To convict the defendant of the crime of Possession of a Controlled Substance with Intent to Deliver, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 3rd day of December, 2009, the defendant possessed a controlled substance, to wit: Methamphetamine;

(2) That the defendant possessed the substance with the intent to deliver a controlled substance;

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

If you find from the evidence that each of these elements have 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.

No. 5

The defendant is charged with Possession of a Controlled Substance with Intent to Deliver. If, after full and careful deliberation on this charge, you are not satisfied beyond a reasonable doubt that the defendant is guilty, then you will consider whether the defendant is guilty of the lesser crime of Possession of a Controlled Substance.

When a crime has been proved against a person, and there exists a reasonable doubt as to which of the two crimes that person is guilty, he or she shall be convicted only of the lowest crime.

No. 6

To convict the defendant of the crime of Possession of a Controlled Substance, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 3rd day of December, 2009, the defendant possessed a controlled substance, to Wit: Methamphetamine;

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

If you find from the evidence that each of these elements have 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.

No. 7

It is a crime for any person to possess a controlled substance except as authorized by law.

No. 8

Methamphetamine is a controlled substance.

No. 9

Possession means having a substance in one's custody or control. It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the substance.

Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to establish constructive possession.

In deciding whether the defendant had dominion and control over a substance, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include whether the defendant had the ability to take actual possession of the substance, whether the defendant had the capacity to exclude others ^{from} possession of the substance, and whether the defendant had dominion and control over the premises where the substance was located. No single one of these factors necessarily controls your decision.

No. 10

A person is not guilty of possession of a controlled substance if the possession is unwitting. Possession of a controlled substance is unwitting if a person did not know that the substance was in her possession.

The burden is on the defendant to prove by a preponderance of the evidence that the substance was possessed unwittingly. Preponderance of the evidence means that you must be persuaded, considering all of the evidence in the case, that it is more probably true than not true.

No. 11

Deliver means the actual or constructive transfer of a controlled substance from one person to another.

No. 12

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

No. 13

A person knows or acts knowingly or with knowledge with respect to a fact, circumstance or result when he or she is aware of that fact, circumstance or result. It is not necessary that the person know that the fact, circumstance or result is defined by law as being unlawful or an element of a crime.

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

When acting knowingly as to a particular fact is required to establish an element of a crime, the element is also established if a person acts intentionally as to that fact.

No. 14

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts which 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.

No. 15

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

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

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

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

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

You will be given the exhibits admitted in evidence, these instructions, and two verdict forms, and a special verdict form. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

When completing the verdict forms, you will first consider the crime of Possession of a Controlled Substance with Intent to Deliver as charged. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form A the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form A.

If you find the defendant guilty on verdict form A, do not use verdict form B. If you find the defendant not guilty of the crime of Possession of a Controlled Substance with Intent to Deliver, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of Possession of a Controlled

Substance. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form B the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form B.

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

No. 17

You will also be given a special verdict form for the crime of Possession of a Controlled Substance with Intent to Deliver. If you find the defendant not guilty of this crime, do not use the special verdict form. If you find the defendant guilty of this crime, you will then use the special verdict form and fill in the blank with the answer "yes" or "no" according to the decision you reach. Because this is a criminal case, all twelve of you must agree in order to answer the special verdict form. In order to answer the special verdict form "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you unanimously have a reasonable doubt as to this question, you must answer "no".

IN THE SUPERIOR COURT OF STATE OF WASHINGTON FOR LEWIS COUNTY

Received & Filed
LEWIS COUNTY, WASH
Superior Court
FEB 18 2010

STATE OF WASHINGTON, Plaintiff)
)
)
)
)
)
MIRANDA ROSE THOMAN, Defendant.)

By Kathy A. Brack Clerk
No. 09-1-00691-6 Deputy [Signature]
SPECIAL VERDICT FORM

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

Did the defendant, MIRANDA ROSE THOMAN, possess a controlled substance, with intent to deliver, within one thousand feet of the perimeter of the school grounds?

ANSWER: Yes
"Yes" or "No"

DATED this 18 day of February, 2010.

[Signature]
PRESIDING JUROR

No. 40586-1-II

STATEMENT OF ADDITIONAL GROUNDS
OF MIRANDA THOMAN

APPENDIX VII

Affidavits of Jurors

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

STATE OF WASHINGTON,)
) NO. 09-1-00691-6
)
) Plaintiff,) AFFIDAVIT OF
) ILENE HOLT
 vs.)
)
)
) MIRANDA ROSE THOMAN,)
)
)
) Defendant.)
 _____)

STATE OF WASHINGTON)
)
) ss.
 COUNTY OF LEWIS)

I, ILENE HOLT, being first duly sworn on oath, deposes and says:

On February 18, 2009, I was a jury member in Lewis County Superior Court on the case of STATE OF WASHINGTON vs. MIRANDA ROSE THOMAN, cause number 09-1-691-6. During our deliberations, I did not read the Special Verdict Form. The jury members had agreed that MIRANDA THOMAN possessed a controlled substance and was stopped within 1000 feet of the school, but I did not vote that she had the intent to deliver

AFFIDAVIT

ORIGINAL

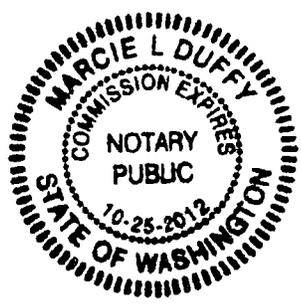
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within 1000 feet of the school. If I would have known how the Special Verdict Form read, I would have voted "no". After the jurors left the courtroom, I discussed this with jurors and they felt the same way that I did. I would ask the court to change my vote on the Special Verdict Form from "yes" to "no".

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Ilene Holton-Holt
ILENE HOLT, Jury Member

SUBSCRIBED AND SWORN TO before me this 24 day of Feb, 2010.



Marcie Klupp
NOTARY PUBLIC in and for the state of Washington, residing at: Centralia
My commission expires: 10-25-12

AFFIDAVIT

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF LEWIS

STATE OF WASHINGTON,)	NO. 09-1-00691-6
)	
Plaintiff,)	AFFIDAVIT OF
)	RICHARD CORE
vs.)	
)	
MIRANDA ROSE THOMAN,)	
)	
Defendant.)	
)	

STATE OF WASHINGTON)
) ss.
 COUNTY OF LEWIS)

I, RICHARD CORE, being first duly sworn on oath, deposes and says:

On February 18, 2009, I was a jury member in Lewis County Superior Court on the case of STATE OF WASHINGTON vs. MIRANDA ROSE THOMAN, cause number 09-1-691-6. During our deliberations, I did not read the Special Verdict Form. The jury members had agreed that MIRANDA THOMAN possessed a controlled substance and was stopped within 1000 feet of the school, but I did not vote that she had the intent to deliver

AFFIDAVIT

ORIGINAL

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within 1000 feet of the school. If I would have known how the Special Verdict Form read, I would have voted "no". After the jurors left the courtroom, I discussed this with jurors and they felt the same way that I did. I would ask the court to change my vote on the Special Verdict Form from "yes" to "no".

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Richard A. Core
RICHARD CORE, Jury Member

SUBSCRIBED AND SWORN TO before me this 25 day of FEBRUARY, 2010.



Marcie L. Duffy
NOTARY PUBLIC in and for the state of Washington, residing at: Centralia
My commission expires: 10-25-12

AFFIDAVIT

AFTER REVIEWING EVIDENCE AND TESTIMONY,
IN THE JURY ROOM WITH OTHER JURORS
I FOUND THE DEFENDANT GUILTY OF ^{PASSESSING} ~~PASSESSING~~
DRUGS WITH THE INTENT TO DELIVER. I DID
NOT READ THE SPECIAL VERDIT FORM REGARDING
INTENT TO DELIVER WITHIN 1000' OF A SCHOOL.
IN THE

No. 40586-1-II

STATEMENT OF ADDITIONAL GROUNDS
OF MIRANDA THOMAN

APPENDIX VIII

Defendant's Motion & Memorandum for
Arrest of Judgment (CrR 7.4),
New Trial (CrR 7.5), or
Relief From Judgment (CrR 7.8).

SUPERIOR COURT
LEWIS COUNTY, WASH
REC'D & FILED

2010 FEB 26 PH 2:37

KATH BRACK, CLERK

BY [Signature]
DEPUTY

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF LEWIS

3 STATE OF WASHINGTON,)

4 Plaintiff,)

5 vs.)

6 MIRANDA THOMAN,)

7 Defendant.)

691-6
No. 09-1-91-6

) DEFENDANT'S MOTION &
) MEMORANDUM FOR ARREST OF
) JUDGMENT (CrR 7.4), NEW TRIAL
) (CrR 7.5), OR RELIEF FROM
) JUDGMENT (CrR 7.8)

8 COMES NOW the Defendant, Miranda Thoman, by and through her attorney, Donald
9 Blair, and hereby moves this Court for Arrest of Judgment (CrR 7.4), New Trial (CrR 7.5), or
10 Relief from Judgment (CrR 7.8), and motions the Court for dismissal of the charge, or in the
11 alternative a new trial or in the alternative striking the school zone enhancement.
12

13 I. STATEMENT OF FACTS

14 The defendant was charged by Amended Information dated January 19, 2010,
15 with the crime of Possession of a Controlled Substance with Intent to Manufacture or Deliver
16 with a special allegation of a school zone enhancement. The defendant was convicted of the
17 charge after a two day jury trial. The jury also answered the special verdict question, answering
18 "yes," that the defendant possessed the controlled substance with intent to deliver within 1000'
19 of a school ground. The jury was not polled after the verdicts were read.
20

21 MOTION AND MEMORANDUM FOR RELEIF FROM JUDGMENT AND NEW TRIAL

22 Page 1

Donald Blair
Attorney at Law
PO Box 1207
Centralia, WA 98531
(360) 623-1070

ORIGINAL

1 After the jury was dismissed, the defendants attorney left the courthouse and was called
2 back to the courthouse almost immediately as one of the jurors, Ms. Ilene Holt, was very upset,
3 crying, and stating to court personnel that she had not voted "yes" on the special verdict form as
4 it was read in open court.

5 Mr. Blair contacted Ms. Holt who explained that she, along with other jurors she talked
6 with after they left the courtroom, agreed that they had not voted "yes" to the special verdict
7 regarding the school zone enhancement.

8 An investigator for the defense later contacted Ms. Holt and Mr. Core, another juror, who
9 both filed affidavits stating that they had not been given the opportunity to review the special
10 verdict form and if they had they would have voted "no" to the special verdict. Those affidavits
11 are attached and incorporated herein.
12
13

14 II. AUTHORITY AND ARGUMENT

15 Judgment under CrR 7.4 may be arrested if there was insufficiency of the proof of a
16 material element of the crime. The Court may grant a new trial under CrR 7.5 when it
17 affirmatively appears that a substantial right of the defendant was materially affected, including
18 misconduct of the jury, irregularity in the proceedings of the jury, by which the defendant was
19 prevented from having a fair trial; the verdict or decision is contrary to law and the evidence; or
20 that substantial justice was not been done.
21

22 The jurors were not given the opportunity to review the special verdict for to see how it
23 read. The first time the jurors heard how the special verdict form read was when the court clerk
24 read the form aloud announcing the verdicts. At least one juror contact court personnel shortly
25 after the verdicts were read in order to correct the error in the jury verdict.
26

MOTION AND MEMORANDUM FOR RELIEF FROM JUDGMENT AND NEW TRIAL

1 At a minimum, there was irregularity in obtaining the judgment with regard to how the
2 jury handled the deliberations and the verdict forms.

3
4 **III. CONCLUSION**

5 The defendant respectfully requests the Court to arrest judgment, dismiss the case and/or
6 special verdict, or order a new trial based on the argument above and attached affidavits of Mr.
7 Holt and Mr. Core.
8

9 DATED this 25th day of February, 2010.

10 
11 Donald Blair, WSBA #24637
12 Attorney for Defendant

No. 40586-1-II

STATEMENT OF ADDITIONAL GROUNDS

OF MIRANDA THOMAN

APPENDIX IX

Transcript of Motion Hearing 04/07/10

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 2 IN AND FOR THE COUNTY OF LEWIS

3 _____
 4 STATE OF WASHINGTON,) COURT OF APPEALS NO.
 5 Plaintiff,) 40586-5-II
 6 vs.) SUPERIOR COURT NO.
 7 MIRANDA THOMAN,) 09-1-00691-6
 8 Defendant.)
 9 _____

10
 11 VERBATIM REPORT OF PROCEEDINGS
 12 April 7, 2010
 13 (MOTION HEARING)

14 A P P E A R A N C E S

15 For the State: MR. BRAD MEAGHER
 16 DEPUTY PROSECUTOR
 17 Chehalis, Washington
 18 For the Defendant: MR. DON BLAIR
 19 ATTORNEY AT LAW
 20 Chehalis, Washington
 21 Presiding Judge: THE HONORABLE NELSON HUNT
 22 DEPARTMENT 1

23 _____
 24 JANE WESTLUND RPR NO. 813626 CSR NO. 2038
 25 LEWIS COUNTY SUPERIOR COURT
 26 345 W. MAIN 4TH FLOOR CHEHALIS, WASHINGTON 98532
 (360) 740-2658

9

1 April 7, 2010
2 Motion Hearing
3 Chehalis, Washington
4
5

6 MR. MEAGHER: This is State of Washington vs.
7 Miranda Thoman. Brad Meagher for the State. Ms. Thoman
8 is here present out of custody represented by Don Blair in
9 a matter on a defense motion.

10 THE COURT: Mr. Blair.

11 MR. BLAIR: Thank you, your Honor. While my brief
12 asks for a number of things, my objective here is to have
13 the Court dismiss the -- get rid of the enhancement,
14 based -- and this is what I know: For whatever reason --
15 I think I've done this once in the past -- but for
16 whatever reason, I didn't ask that the jury be polled, so
17 the jury came back and the clerk read the verdicts -- the
18 guilty verdict and the special enhancement verdict.

19 The jurors were not polled, they went back to the
20 jury room, Ms. Thoman and I left, and before I -- or just
21 as I was pulling out of the parking plot, I got a call
22 from the Court saying or suggesting that I needed to come
23 back right away, because there was a juror here that was
24 in tears, so I returned and I talked briefly Alene Holt,
25 who was one of the jurors. She was in tears. She

+

1 appeared very upset, and she was explaining to me that she
2 had not had the opportunity to review the special verdict
3 form and that when the clerk read it that was not her
4 understanding whatsoever -- wasn't her vote to vote yes on
5 that particular verdict form, so I got some information
6 from her, then, I subsequently got some information from
7 the Court, with regard to a couple of other jurors.

8 The Court authorized an investigator to contact
9 these folks, which he did and the Court has their
10 affidavits and, then, a handwritten note from Richard
11 Core, in addition to his affidavit, and the bottom line is
12 those jurors -- and I don't know what was going on in the
13 jury room, but they were not given the opportunity to see
14 the special verdict form, and when they heard the special
15 verdict form being read, clearly they didn't agree with
16 it, and it had a significant effect on Ms. Holt.

17 Given what -- I'm assuming what the Court or
18 someone from the Court saw, because they called me right
19 away, it had a significant impact on her, but that's not
20 how she believes she would vote, so given the affidavits
21 and I guess my argument I would ask the Court at a minimum
22 the special verdict enhancement -- special verdict form
23 should be -- I would argue that in fact they were not
24 unanimous, as far as that special verdict and that it
25 should be dismissed. The special verdict should be

‡

1 dismissed.

2 THE COURT: Mr. Meagher.

3 MR. MEAGHER: A couple of things: First off, the
4 affidavits don't match entirely Mr. Blair's argument. It
5 says, quote, "During our deliberations, I did not read the
6 special verdict form." It doesn't say they weren't given
7 an opportunity to read it. It says for whatever reason
8 they did not.

9 Number 2, there's no allegation of misconduct by
10 any jurors in that particular room by either of these two
11 jurors, and, then, lastly, I think the case we cited Cox
12 vs. Charles Wright Academy is very instructive in this
13 particular circumstance and jurors may not impeach their
14 own votes later on by an affidavit, absent some
15 extraordinary circumstance, which would show that this
16 defendant didn't get a fair trial or the jurors didn't --
17 some misconduct by the jury or a juror in deliberations.
18 The defendant is stuck with the verdict as read.

19 THE COURT: Anything further?

20 MR. BLAIR: Just briefly, I would argue that this
21 is one of those special circumstances. I don't believe I
22 have ever on my own ever gone out to contact a juror after
23 the fact for any reason, and I know jurors have been
24 contacted in other cases for the attorney's own reasons,
25 generally, it's the defense. I didn't set out to contact

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1 the jurors to question them about, hey, is this really
2 what happened? I was contacted, based upon a juror here
3 very upset and in tears, and things progressed from there,
4 so I would argue that in fact this is one of those special
5 circumstances.

6 Ms. Holt hadn't been influenced from any outside
7 sources to cause her to be upset. When I say "outside
8 sources," outside the courtroom. The events in the
9 courtroom I would argue caused her -- and I don't know if
10 your Honor witnessed that on your own or if it was the
11 Court staff only -- but the events in the courtroom caused
12 her to be upset, which prompted the Court staff to contact
13 me and I came right back to the courthouse.

14 This is one of those special circumstances that
15 she didn't go home, sleep on it, and the next day call me
16 or call the Court and say I thought about it and I really
17 want to change my vote. It was immediate.

18 THE COURT: How does that change the analysis,
19 when the backsliding occurred?

20 MR. BLAIR: well, I guess I'm just arguing that
21 this should be considered one of those special
22 circumstances that it wasn't a deliberate -- she didn't
23 consider it. I mean it was immediate. She heard the
24 verdict and it had an immediate effect. She hadn't even
25 left the jury room, when she talked to the other jurors

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1 and they agreed this isn't how we voted.

2 THE COURT: Is that what they say? That's not the
3 way I read it.

4 MR. BLAIR: well, like I said, I don't know if the
5 Court witnessed this particular juror.

6 THE COURT: It doesn't matter if I witnessed it or
7 not.

8 MR. BLAIR: well, actually, I would argue that it
9 does.

10 THE COURT: what difference would it make, if I
11 witnessed it, rather than what they are saying? And do
12 you have any authority at all for any of the positions
13 that you have taken, any legal authority for that?

14 MR. BLAIR: That in fact she's saying immediately
15 after the verdict is read that she got upset and said, no,
16 that wasn't my verdict?

17 THE COURT: Right, that she can just change it
18 after the verdict has been accepted.

19 MR. BLAIR: Other than the fact that that's not
20 how she voted. She says in her affidavit that's not how I
21 voted.

22 THE COURT: "That's not how I would have voted."

23 "During our deliberations, I did not read the
24 special verdict form." She doesn't say she didn't have
25 the opportunity to read it. She said I didn't read it.

1 That inheres in the verdict. "The juror members agreed
2 that Miranda Thoman possessed or controlled a substance
3 and was stopped within a thousand feet of a school, but I
4 did not vote that she had intent to deliver within a
5 thousand feet of a school." That's a misinterpretation of
6 what the law is. The question is did the crime occur
7 there? There's no requirement that it be that she had the
8 intent to deliver within a 1000 feet of the school. It's
9 that she possessed it within a thousand feet of the
10 school, but even if that were correct -- if even if that
11 were a correct statement of the law that got her so upset,
12 that actually inheres in the verdict.

13 There's plenty of case law on this, in addition to
14 the case cited by the State that is -- I'll give you the
15 spelling later -- Gjerde vs. Fritzsche. 55 Washington Ap.
16 387. "The jurors declarations inhere in the verdict
17 because they describe what the jury understood about the
18 instruction. The mental processes of the jury cannot be
19 rebutted or impeached by later evidence," which is exactly
20 what that is.

21 Furthermore, in Breckenridge vs. Valley General
22 Hospital 150 Washington 2d 197, at page 204, "we agree
23 that Corson's statements constituted his personal life
24 experiences rather than extrinsic evidence." This use of
25 his experience with a similar condition "are what jurors

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2 misconduct." The Court goes on to say, "However, it's
3 unnecessary to make this determination. Corson's
4 statements inhered in the verdict. Because a trial court
5 may not consider postverdict juror's statements that
6 inhere in the verdict when ruling on a new trial motion,
7 the trial court abused its discretion by granting a new
8 trial." Not only is there no authority, but it gives me
9 no authority to even consider these affidavits. However,
10 even if I consider them, it's an incorrect statement of
11 the law that is what is causing the problem, so I'm
12 denying the motion.

13 MR. BLAIR: Thank you, your Honor.

14 MR. MEAGHER: I'll have to prepare an order, give
15 it to counsel.

16 THE COURT: That will be fine. We can have it
17 done at sentencing. Has this matter been set yet?

18 MR. MEAGHER: Yes. It's set for sentencing on the
19 14th.

20 THE COURT: We're adjourned.

21 (WHEREUPON THE PROCEEDING WAS CONCLUDED.)

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4 STATE OF WASHINGTON)
5 COUNTY OF LEWIS) ss

6 I, Jane westlund, Official Court Reporter for Lewis
7 County and Notary Public in and for the State of
8 Washington, residing at Chehalis, do hereby certify:

9 That the foregoing Verbatim Report of Proceedings
10 consisting of 9 pages was reported to me and reduced to
11 typewriting by means of computer-aided transcription;

12 That said transcript is a full, true and correct
13 transcript of my shorthand notes of the proceedings heard
14 before Judge Richard L. Brosey on the 7th day of April,
15 2010, at the Lewis County Superior Court, Chehalis,
16 Washington;

17 That I am not a relative or employee of counsel or to
18 either of the parties herein or otherwise interested in
19 said proceedings.

20 WITNESS MY HAND AND OFFICIAL SEAL this 28th of
21 May, 2010.

22

23

24

Jane westlund, CSR, RPR
Official Court Reporter
Notary Public

25

No. 40586-1-II

STATEMENT OF ADDITIONAL GROUNDS
OF MIRANDA THOMAN

APPENDIX X

RP 145-146 Exerpt from Closing Argument of Prosecutor

1 talks about how, well, he somehow put this stuff in the
2 back of the trunk because he didn't want Miranda to know
3 about it because she would get mad at him. Well, that
4 explanation does not take into consideration the
5 multiple baggies that were not found in there, didn't
6 claim ownership of these. What makes sense, why would
7 anybody have this kind of stuff. The officer told you,
8 based on his training and experience, these types of
9 baggies are used for prepackaging controlled substances.

10 Go to your collective common sense, have each one
11 of you ever seen this before. Do you put candy in them,
12 do you put trinkets in them for your kids, what context
13 have you seen these types of baggies, if you ever have.
14 Mr. Young's testimony simply doesn't make sense. What
15 he did today, came in here today, already having been
16 charged with possession of methamphetamine that was
17 found on him when he got out of the car in that ball in
18 that pipe, he's coming in here today falling on his
19 sword to drag his girlfriend off. What does the
20 evidence tell you.

21 The state submits all the evidence you have seen,
22 as well as where it was located, as well as the
23 testimony of the officers as to its significance, leads
24 to one conclusion, that's that Ms. Thoman was in
25 constructive possession of methamphetamine with intent

1 to sell the same on December 3rd, 2009, in the State of
2 Washington. And it was done within 1,000 feet of the
3 perimeter of a school. Thank you.

4 THE COURT: Mr. Blair.

5 MR. BLAIR: Thank you, your Honor, and good
6 morning again, ladies and gentlemen. A lot of times in
7 these cases you have to look at the details, sometimes
8 the details slip out or don't slip out. Now, the
9 prosecutor, some of you may have caught this, the
10 prosecutor just told you that they were caught with
11 these drugs in their car. Might have been a slip, but
12 that's what he said, their car.

13 Can we really say whose car it was. Because we
14 have heard actually quite a few versions. Officers are
15 saying registered to a female out of Longview, I believe
16 was the testimony. Then Ms. Thoman came in with Dan
17 Miracle, Dan Miracle had a bill of sale that he was
18 buying the car, not she was buying the car.

19 Interestingly enough, how did you hear the officers
20 got into the trunk. And the fact is you didn't.
21 Neither of the officers said they used the key to get
22 into the trunk. So we don't know if it has one of those
23 push button openers, we don't know if it has a release
24 button at the driver's seat like a lot of cars do,
25 because they didn't tell us that. When the prosecutor

COURT OF APPEALS
DIVISION II

10 NOV -4 PM 4:04

STATE OF WASHINGTON
BY C
DEPUTY

No. 40586-5-II
COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

State of Washington)

vs.)

Miranda Thoman)

) Declaration of Service of
) Appellant's Statement of Additional
) Grounds

Jodi Backlund declares as follows:

I certify that I mailed, at the appellant's request, a copy of the Statement of Additional Grounds to the Lewis County Prosecutor and to Miranda Thoman.

I further certify that I mailed the original and one copy to the Court of Appeals for filing.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed November 3, 2010 in Olympia, Washington.



Jodi Backlund, WSBA No. 22917
Attorney at Law

*Declaration of Service of
Statement of Additional Grounds*

BACKLUND & MISTRY
Attorneys at Law

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Olympia, WA 98507
(360) 339-4870
Fax (866) 499-7475