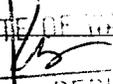


NO. 40834-1-II

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

MICHAEL WAYNE JONES, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Frederick W. Fleming

No. 09-1-04080-1

RESPONDENT'S BRIEF

MARK LINDQUIST
Prosecuting Attorney

By
KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether the special verdict form instruction constitutes harmless error when the jury found defendant guilty of two counts of unlawful possession of a firearm and the special verdict for Count III was whether defendant was armed with a firearm during the commission of the offense.

2. Whether defendant has failed to meet his burden of showing that defense counsel's performance was deficient and resulted in prejudice to defendant.

3. Whether the judgment entered below is consistent with the holding in *In re Brooks* because the judgment explicitly states that "under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense."

B. STATEMENT OF THE CASE.

1. Procedure

On September 10, 2009, the Pierce County Prosecutor's Office charged MICHAEL WAYNE JONES, hereinafter "defendant" with one count of unlawful possession of a firearm in the first degree in Pierce County Cause No. 09-1-04080-1. CP 1. On March 24, 2010, the State

amended the information to include a second count of unlawful possession of a firearm in the first degree and a charge of unlawful possession of a controlled substance with intent to deliver. CP 15-16.

Trial commenced on May 13, 2010, before the Honorable Frederick Fleming. After hearing all the evidence, the jury returned a verdict finding defendant guilty of two counts of unlawful possession of a firearm in the first degree. CP 88, 89; RP 282-283. The jury found defendant not guilty of unlawful possession of a controlled substance with intent to deliver but guilty of the lesser included offense of unlawful possession of a controlled substance. CP 90; RP 283. The jury returned two special verdicts finding that defendant was armed with a firearm during the commission of the crime of unlawful possession of a controlled substance. CP 106, 107; RP 283.

The court sentenced defendant to a standard range sentence of 102 months confinement plus 18 months for the enhancement for Count I, 102 months confinement for Count II to run concurrent with the sentence for Count I, and 60 months confinement for Count III to run concurrent with the sentence for Counts I and II. CP 111-124; RP 289. Defendant was also sentenced to 12 months of community custody for Count III. CP 111-124; RP 300. Defendant filed a timely notice of appeal from entry of this judgment. CP 129.

2. Facts

On September 9, 2009, Deputy James Oetting, with the Pierce County Sheriff's Department, was driving northbound on Canyon road when a silver four-door sedan caught his attention. RP 90-92. The car matched the description of a car that had been involved in several recent armed robberies. RP 92. The driver, who was defendant, and the female passenger were consistent with the description of the suspected armed robbers. RP 92.

The car was exiting a parking lot when Deputy Oetting drove by. Deputy Oetting noticed when defendant saw him looking at the car, defendant backed the car up and parked in the parking lot instead of leaving. RP 93. Deputy Oetting thought this was unusual behavior so he drove around the block and returned to the parking lot. *Id.* When Deputy Oetting arrived back at the parking lot, defendant's car was parked in a stall and defendant and the passenger were outside of the car smoking cigarettes. *Id.*

Defendant identified himself and Deputy Oetting confirmed defendant's identity. RP 94. Deputy Oetting explained that defendant's car looked like a car involved in several recent robberies and asked if he could speak with defendant. *Id.* Defendant agreed to speak with Deputy Oetting. *Id.*

Deputy Oetting went to his vehicle to run the defendant and the passenger's names through LESA records. RP 95. The records check confirmed that defendant is a convicted felon. While Deputy Oetting was in his vehicle, defendant rolled up the windows to his car. RP 95. Deputy Oetting thought this was strange behavior so he tried to look through the passenger window of defendant's car but the tint on the window was too dark to see inside. RP 96. Deputy Oetting then looked through the windshield of the car and saw two open beer cans on the passenger side floorboard in the car. RP 96, 110. When Deputy Oetting asked defendant about the beer cans, defendant claimed they weren't his. RP 96.

Defendant had told Deputy Oetting that defendant locked the keys in the car but when Deputy Oetting mentioned the beer cans, defendant opened the car door and removed the cans. RP 97. Contrary to what defendant had said, the car had been unlocked. *Id.*

Deputy Seth Huber, with the Pierce County Sheriff's Department arrived to assist Deputy Oetting. RP 112-114. When Deputy Huber arrived, he and Deputy Oetting looked through the windshield again and this time discovered a black semiautomatic pistol on the floorboard sticking out under the driver's seat. RP 97, 117.

At that point, Deputy Oetting placed defendant under arrest for felon in possession of a firearm. RP 99. Deputy Oetting advised

defendant of his *Miranda*¹ rights and defendant agreed to waive those rights. RP 100. Deputy Oetting asked defendant if the gun was real and defendant said that he was relatively sure it was a real gun. *Id.*

At that time, defendant claimed the gun wasn't his but admitted that he knew the gun was in the car. RP 101. Defendant said that he knew the situation looked bad because he was a convicted felon and wasn't supposed to be around firearms. *Id.*

Deputy Oetting had the car impounded so a search warrant could be issued. RP 101. Deputy Oetting did a registration check on the car and found that there was a report of sale three weeks prior but Deputy Oetting was not able to confirm who the current owner was. RP 103.

On September 11, 2009, Detectives James Loeffelholz and Lynelle Anderson, from the Pierce County Sheriff's Department executed a search warrant on defendant's car. RP 120-123, 164. When searching the car, Detective Loeffelholz discovered a nine millimeter semiautomatic handgun on the driver's side floorboard of the car. RP 139, 191. At trial, Detective Loeffelholz testified that someone sitting in the driver's seat would have been able to easily pick up the gun and immediately take control of it. RP 140.

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

During the search, Detective Loeffelholz and Anderson also discovered a stuffed animal in the engine compartment of the car. RP 141, 192. Inside the stuffed animal was a .22 caliber semiautomatic handgun. *Id.* Inside the trunk of the car, was a lockbox, a black zippered pouch, and a handgun magazine that appeared to be identical to the magazine removed from the nine millimeter handgun found under the driver's seat. RP 141-142, 191. A substance that appeared to be methamphetamine was also found inside the lockbox. RP 142-143.

Detective Loeffelholz petitioned for an addendum to the search warrant. RP 192. After obtaining the addendum, Detective Anderson and Forensic Officer Steve Mell returned to conduct a second search of the car. RP 192-193.

During the search, Detective Anderson discovered a scale and an Altoids tin with a baggie of white crystal powder in the lockbox. RP 194. Also inside the lock box was a piece of glass commonly used to smoke methamphetamine. RP 196.

Inside the black pouch in the trunk, there were multiple bags of a white crystal substance. RP 198. A key was found under the floor mat on the passenger's side of the car but Detective Anderson was unable to match the key to the lockbox because the lockbox had been damaged when Detective Loeffelholz pried the box open. RP 198-199. Also found in the car was a photograph of defendant. RP 199-200.

At trial, Jane Boysen, a Forensic Scientist with the Washington State Crime Laboratory, testified that she analyzed the substances found in the trunk of defendant's car. RP 170, 174. One of the substances was confirmed to be methamphetamine. RP 177. The other substance was determined to be methylsulfonylmethane, which is a common cutting agent for methamphetamine. RP 172, 177.

Forensic Officer Steve Mell testified at trial that he tried to lift fingerprints off of the handguns found in defendant's car but was unable to recover any identifiable fingerprints. RP 207, 212-213. Officer Mell confirmed that both handguns were in operable condition and capable of firing a projectile. RP 213-214. The State and the defense stipulated that defendant had been previously convicted of a serious offense. RP 218-219.

C. ARGUMENT.

1. DEFENDANT DID NOT OBJECT TO THE SPECIAL VERDICT INSTRUCTION AT TRIAL AND THEREFORE HAS FAILED TO PRESERVE THIS ISSUE ON APPEAL. EVEN IF DEFENDANT HAD PRESERVED THIS ISSUE, ANY ERROR IS HARMLESS BECAUSE ABSENT SUCH ERROR, THE VERDICT WOULD HAVE BEEN THE SAME.

a. Defendant did not object to the special verdict instruction at trial and therefore did not preserve this issue for appeal.

CrR 6.15 requires a party objecting to the giving or refusal of an instruction to state the reason for the objection. The purpose of this rule is to afford the trial court an opportunity to correct any error. *State v. Colwash*, 88 Wn.2d 468, 470, 564 P.2d 781 (1977). Consequently, it is the duty of trial counsel to alert the court to his position and obtain a ruling before the matter will be considered on appeal. *State v. Rahier*, 37 Wn. App. 571, 575, 681 P.2d 1299 (1984), citing *State v. Jackson*, 70 Wn.2d 498, 424 P.2d 313 (1967). Only those exceptions to instructions that are sufficiently particular to call the court's attention to the claimed error will be considered on appeal. *State v. Harris*, 62 Wn.2d 858, 872-3, 385 P.2d 18 (1963). The Court of Appeals will not consider an issue raised for the first time on appeal unless it involves a manifest error affecting a constitutional right. RAP 2.5(a); See *State v. Brewer*, 148 Wn. App. 666, 673, 205 P.3d 900 (2009).

The State agrees that the decision in *State v. Bashaw*, 169 Wn.2d 133, 234 P.3d 195 (2010) is the controlling law on the challenged special verdict instruction, number 24, in this case. However, the rule adopted in *Bashaw* is not constitutional. *Bashaw*, 169 Wn.2d at 146 n. 7. Rather, it is a common law rule. *Id.* As such, this challenge cannot be raised for the first time on appeal. In order to challenge this instruction, it must have been objected to below. In the instant case, no objection to this jury instruction was raised. There is no ruling from the trial court to be considered on appeal. As such, this court should decline to address defendant's challenge to the special verdict instruction as it is not of a constitutional nature and is raised for the first time on appeal.

- b. Even if defendant had preserved this issue for appeal, any error was harmless.

Jury instructions are proper where, read together, they correctly inform the jury of the applicable law, do not mislead the jury and, allow both parties to argue their theories of the case. *State v. Dana*, 73 Wn.2d 533, 537, 439 p.2d 403 (1968). Claimed errors of law in a jury instruction are reviewed *de novo*. *In re Hegney*, 138 Wn.App. 511, 521 158 P.3d 1193 (2007). Errors in jury instructions are subject to harmless error analysis. *State v. Brown*, 147 Wn.2d 330, 341, 58 P.3d 889 (2002). An error is harmless if the court concludes beyond a reasonable doubt that the

jury verdict would have been the same absent the error. *State v. Bashaw*, 169 Wn.2d 133, citing *State v. Brown*, 147 Wn.2d at 341.

Defendant argues that the court improperly instructed the jury on the special verdict forms. The special verdict instruction states in relevant part:

If you find the defendant guilty of this crime, you will then use the respective special verdict forms and fill in the blank with the answer “yes” or “no” according to the decision you reach. In order to answer the special verdict forms “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.”

CP 59-87; Jury Instruction 24.

The State concedes that under current case law, the jury instruction regarding the special verdict was an incorrect statement of the law. See *State v. Bashaw*, 169 Wn.2d 133. However, the error was harmless because absent the error, the verdict would have been the same.

In the present case, the jury found defendant guilty of two counts of unlawful possession of a firearm and guilty of possession of a controlled substance. CP 88, 89, 90; RP 282-283. The jury was instructed that

For purposes of a special verdict, the State must prove beyond a reasonable doubt that the defendant was armed with a firearm at the time of the commission of the crime in Count III.

A person is armed with a firearm if, at the time of the commission of the crime, the firearm is easily accessible and readily available for offensive or defensive use. The State must prove beyond a reasonable doubt that there was a connection between the firearm and the defendant or an accomplice. The State must also prove beyond a reasonable doubt that there was a connection between the firearm and the crime. In determining whether these connections existed, you should consider, among other factors, the nature of the crime and the circumstances surrounding the commission of the crime, including the location of the weapon at the time of the crime.

If one participant in a crime is armed with a firearm, all accomplices to that participant are deemed to be so armed, even if only one firearm is involved.

A “firearm” is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

CP 59-87; Jury Instruction 25. The jury found defendant guilty of two counts of possession of a firearm. The special verdict form required the jury to find, beyond a reasonable doubt, that defendant was armed with a firearm during the commission of Count III which was for possession of a controlled substance. Even if the jury had been properly instructed that it did not need to be unanimous to answer “no” on the special verdict form, the verdict would have been the same.

The jury found that defendant was guilty beyond a reasonable doubt of two counts of unlawful possession of a firearm. The possession of the controlled substance charge came out of the same events as the possession of the firearm charges. In order to find defendant guilty of unlawful possession of a firearm, the jury had to find that defendant was

armed with a firearm. The jury could not have found defendant guilty of the crime of possession of a firearm without a firearm. Since defendant possessed the controlled substance in the same act as he possessed the firearms, the jury had already found beyond a reasonable doubt that defendant was armed during the commission of all three crimes. Therefore, the erroneous instruction requiring a unanimous “no” for the special verdict form did not change the outcome of the verdict for any of the charges or for the firearm enhancements.

Although it was error for the court to instruct the jury that it must be unanimous in its decision to answer “yes” or “no” on the special verdict forms, the error was harmless.

2. DEFENDANT HAS FAILED TO MEET HIS BURDEN OF SHOWING BOTH DEFICIENT PERFORMANCE AND RESULTING PREJUDICE NECESSARY TO SUCCEED ON A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL.

A defendant has the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution, and Article I, Section 22 of the Washington Constitution. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. Hendrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). A defendant who raises a claim of ineffective assistance of counsel must show: (1) that

his or her attorney's performance was deficient, and (2) that he or she was prejudiced by the deficiency. *State v. Hendrickson*, 129 Wn.2d at 77-78.

Under the first prong, the appellate court will presume the defendant was properly represented. *Id.* Under the second prong, the defendant must show that there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different. *State v. McFarland*, 127 Wn.2d 322, 337, 899 P.2d 1251 (1995); *State v. Thomas*, 109 Wn.2d 222, 226, 743 P.2d 816 (1987).

In order to prevail on a claim of ineffective assistance of counsel, both prongs of the test must be met. *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002). If either part of the test is not satisfied, the inquiry need go no further. *State v. Hendrickson*, 129 Wn.2d at 77-78. Additionally, the reviewing court will defer to counsel's strategic decision when the decision falls within a wide range of professionally competent assistance. *Strickland*, 466 U.S. at 489 (*internal citations omitted*). If defense counsel's trial conduct can be characterized as legitimate trial strategy or tactics, it cannot form a basis for a claim of ineffective assistance of counsel. *State v. Lord*, 117 Wn.2d 829, 883, 822 P.2d 177 (1991). "Rare are the situations in which the wide latitude counsel must have in making tactical decisions will be limited to any one technique or approach." *Harrington v. Richter*, 131 S. Ct 770, 789, 178 L. Ed. 2d 624 (2011).

There are “countless ways to provide effective assistance [of counsel] in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.” *Harrington v. Richter*, 131 S. Ct. at 788-789. In determining whether trial counsel’s performance was deficient, the actions of counsel are examined based on the entire record. *State v. White*, 81 Wn.2d 223, 225, 500 P.2d 964 (1993), *review denied*, 123 Wn.2d 1004 (1994). Defendant must show, from the record as a whole, that defense counsel lacked a legitimate strategic reason to support his or her challenged conduct. *State v. McFarland*, 127 Wn.2d at 336. An appellate court is unlikely to find ineffective assistance on the basis of one alleged mistake. *State v. Carpenter*, 52 Wn. App. 680, 684-685, 763 P.2d 455 (1988).

Counsel’s choice of whether or not to object at trial is a “classic example of trial tactics.” *State v. Madison*, 53 Wn. App. 754, 763, 770 P.2d 662, *review denied*, 113 Wn.2d 1002, 777 P.2d 1050 (1989). “Only in egregious circumstances, on testimony central to the State’s case, will the failure to object constitute incompetence of counsel justifying reversal.” *Id.*, (citing *Strickland v. Washington*, 466 U.S. 668, *State v. Ermert*, 94 Wn.2d 839, 621 P.2d 121 (1980). Furthermore, in order to prevail on a claim of ineffective assistance of counsel for a failure to object at trial defendant must show that the objection would likely have been sustained. *State v. Saunders*, 91 Wn. App. 575, 578, 958 P.2d 364 (1998).

When viewed in the context of the entire record, it cannot reasonably be claimed that defense counsel was ineffective. At trial, defense counsel zealously argued for a *Knapstad*² motion to dismiss Counts II and III. RP 8. Defense counsel initially won that motion. RP 31. On reconsideration, the Court denied defendant's *Knapstad* motion. RP 42. Defense counsel argued for the statements made by defendant to be excluded at trial. RP 61. Defense counsel cross examined the State's witnesses. *See* RP 53, 103, 118, 168, 182, 203, 216. Although the court denied the motion, defense counsel made a motion for a mistrial when he believed that there were improper references to the detective working for the gang unit. RP 126, 133, 136.

Defense counsel made a half-time motion to dismiss the charge for the firearm found in the hood of the car and the items found in the trunk arguing that there was insufficient evidence to link defendant with those items. RP 222-223. Defense counsel also argued for the court to give defendant the low end of the standard range sentence. RP 296.

Furthermore, defendant was acquitted of possession of a controlled substance with intent to deliver and instead found guilty of the lesser included offense of possession of a controlled substance. CP 90; RP 283.

² *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986)

a. Unwitting possession instruction for firearm charges.

Appellant claims that defense counsel's decision not to request an unwitting possession instruction amounts to ineffective assistance of counsel. Appellant's Brief, p. 9. However, that assertion is not supported by case law.

The jury was instructed that in order to find defendant guilty of unlawful possession of a firearm in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 9th day of September, 2009, the defendant knowingly owned a firearm or had a firearm in his possession or control;
- (2) That the defendant had previously been convicted of a felony, which is a serious offense; and
- (3) That the ownership, or possession or control of the firearm occurred in the State of Washington.

CP 59-87; Jury Instruction 6, 7. The first element the State needed to prove in order for the jury to find defendant guilty was that defendant *knowingly* possessed a firearm. Since the jury had to find that defendant knowingly possessed a firearm, an unwitting possession instruction was not necessary. Furthermore, case law holds requesting an unwitting possession instruction in an unlawful possession of a firearm case can constitute ineffective assistance of counsel because it shifts the burden from the State having to prove that defendant knowingly possessed a

firearm to the defense having to prove that defendant did not knowingly possess the firearm.

In *State v. Michael*, 247 P.3d 842 (2011), an inventory search of the car the defendant was driving revealed a sawed-off shotgun and shotgun shells. *Id.* Inside the car, the police also found a bag of women's clothing, a purple hairbrush, and a pill bottle with the name Jennifer on it. *Id.* The defendant claimed that he borrowed the car from a woman named Jennifer Heaton and that he had no knowledge of the gun found inside the car. *Id.* At trial, the court was not asked and did not give an instruction on unwitting possession. *Id.* Defense counsel in that case argued that the defendant did not knowingly possess the gun and emphasized that the defendant did not own the car where the gun was found. *Id.* On appeal, the defendant claimed that his counsel was ineffective for failing to request an unwitting possession instruction. *Id.*

The court of appeals found that counsel's failure to request such an instruction did not amount to ineffective assistance of counsel. *Id.* at 844. The court found that there is no pattern jury instruction for unwitting possession except in drug cases although the court recognized that the instruction could easily be changed to include firearms. *Id.* The court stated that "it falls on the defendant to prove the unwitting possession." *Id.*, citing *State v. Cleppe*, 96 Wn.2d 373, 635 P.2d 435 (1981).

The court went on to state that "[w]hile that is a useful defense in drug cases, where the State has no obligation to prove an intent element, it

is not useful in this context. By taking on the obligation to prove unwitting possession, a defense attorney would essentially relieve the State of its obligation to prove knowing possession beyond a reasonable doubt by undertaking the burden of proving the contrary by a preponderance of the evidence. There may be a rare case where defense would legitimately want to do that, but in most instances it would likely constitute ineffective assistance to even attempt to do so.” *Id.*

The court further stated that ineffective assistance of counsel has been found in cases where defense successfully requested an unwitting possession instruction in firearm prosecutions. *Id. citing State v. Carter*, 127 Wn. App. 713, 112 P.3d 561 (2005).

Just as in *Michael*, if defense counsel had requested an unwitting possession instruction in the present case, it would have effectively relieved the State’s burden to prove beyond a reasonable doubt that defendant knowingly possessed the firearms.

b. Unwitting possession instruction for drug charge.

A defendant is not entitled to an unwitting possession instruction unless the evidence presented at trial is sufficient to permit a reasonable juror to find, by a preponderance of the evidence, that the defendant unwittingly possessed the contraband. *State v. Buford*, 93 Wn. App. 149, 152, 967 P.2d 548 (1998).

In the present case, defense counsel did not request an unwitting possession instruction on the possession of methamphetamine charge. Based upon the evidence in this case, even if defense counsel had requested such an instruction, it is unlikely that the court would have given the instruction as it was unsupported by any evidence.

At trial, the evidence proved that defendant was driving the vehicle in which the firearms and methamphetamine were found. RP 92, 97, 117, 141, 192, 142-143. Defendant admitted to Deputy Oetting that he knew that the 9-millimeter handgun was in the car. RP 101. In the trunk of the car, Detective Loeffelholz found a magazine clip that was identical to the clip found in the 9-millimeter handgun. RP 141-142, 192. The methamphetamine was also found in the trunk. RP 142-143. Defendant knew about the gun under the driver's seat (which is where defendant had been sitting) and a magazine clip that matched that gun was found with the methamphetamine in the trunk. The logical conclusion is that since defendant knew about the gun, he also knew about the magazine clip and the methamphetamine.

Defendant did not present any evidence that his possession of the drugs was unwitting. Defendant did not testify and did not call any witnesses to testify that he was unaware the methamphetamine was in the trunk of the car. Therefore defendant not meet the burden of proving by a preponderance of the evidence that an unwitting possession instruction should be given.

Defendant relies on *State v. George*, 146 Wn. App. 906, 193 P.3d 693 (2008) to support his claim that defense counsel's decision not to request an unwitting possession instruction amounts to ineffective assistance of counsel. Appellant's Brief, p. 9. However, defendant's reliance on that case is misplaced.

In *State v. George*, the trial court refused to give an unwitting possession instruction unless the defendant testified at trial. *Id.* This was despite the fact that the police testimony presented at trial established that the defendant denied knowledge of the drugs in the vehicle, denied ownership of the pipe, the defendant was not driving the vehicle, did not own the vehicle, and the vehicle's owner was in the front passenger seat. *Id.* at 915. The court in that case found that the police officer's testimony supported the unwitting possession instruction and that the court erred by concluding that the defendant had to testify in order to have the jury instructed on unwitting possession. *Id.*

In the present case, defendant was driving the car in which the methamphetamine was found. RP 92, 97, 142-143. Defendant admitted that he knew the 9-millimeter gun was in the car and a clip that matched that gun was found in the trunk with the methamphetamine. Defendant did not establish by a preponderance of the evidence that he was entitled to an unwitting possession instruction.

Defense counsel is not required to request a jury instruction that is meritless. Defendant has failed to prove that if defense counsel had

requested an unwitting possession instruction that the court would have given such an instruction. Since the unwitting possession instruction was not supported by the evidence, defense counsel's decision not to request such an instruction does not amount to ineffective assistance of counsel.

c. Instruction to decide each count separately.

Jury instructions are sufficient if, when taken together, they allow the parties to argue their theories of the case, are not misleading, and accurately inform the jury of the applicable law. *State v. Bradford*, 60 Wn. App. 857, 808 P.2d 174 (1991), citing *Gammon v. Clark Equipment Co.*, 104 Wn.2d 613, 707 P.2d 685 (1985). When evidence of other crimes is limited or not admissible, the primary concern is whether the jury can reasonably be expected to compartmentalize the evidence so that evidence of one crime does not taint the jury's consideration of another crime. *State v. Bythrow*, 114 Wn.2d 713, 720-721, 790 P.2d 154 (1990).

In the present case, neither defense counsel nor the prosecution proposed WPIC 3.01³. However, even without WPIC 3.01, the jury instructions taken as a whole properly instructed the jury that it must find that the State had proved each element of each charged beyond a reasonable doubt in order to find defendant guilty of that charge.

³ A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count. WPIC 3.01.

The jury was instructed that in order to find defendant guilty of unlawful possession of a firearm (9mm Semi-Automatic) in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 9th day of September, 2009, the defendant knowingly owned a firearm (9mm Semi-Automatic) or had a firearm (9mm Semi-Automatic) in his possession or control;
- (2) That the defendant had previously been convicted of a felony, which is a serious offense; and
- (3) That the ownership, or possession or control of the firearm occurred in the State of Washington.

CP 59-87; Jury Instruction 6. The jury was instructed that in order to find defendant guilty of unlawful possession of a firearm (.22 Caliber Semi-Automatic) in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 9th day of September, 2009, the defendant knowingly owned a firearm (.22 Caliber Semi-Automatic) or had a firearm (.22 Caliber Semi-Automatic) in his possession or control;
- (2) That the defendant had previously been convicted of a felony, which is a serious offense; and
- (3) That the ownership, or possession or control of the firearm occurred in the State of Washington.

CP 59-87; Jury Instruction 7. The jury was instructed that in order to find defendant guilty of possession of a controlled substance with intent to

deliver, each of the following elements must be proved beyond a reasonable doubt:

- (1) That on or about the 9th day of September, 2009, the defendant possessed a controlled substance;
- (2) That the defendant possessed the substance with the intent to deliver a controlled substance; and
- (3) That the acts occurred in the State of Washington.

CP 59-87; Jury Instruction 14. The jury was also instructed that “defendant has entered a plea of not guilty. That plea puts in issue *every* element of *each* crime charged. The State is the plaintiff and has the burden of proving *each element of each crime* beyond a reasonable doubt.” CP 59-87; *See* Jury Instruction 3 (*emphasis added*).

The jury instructions properly informed the jury that it must find that the State has proven each element of each crime charged beyond a reasonable doubt in order to find defendant guilty of that crime. Additionally, the jury found defendant not guilty of possession of a controlled substance with the intent to deliver but guilty of the lesser included offense. This shows that the jury held the State to its burden of proving each crime beyond a reasonable doubt.

Defendant relies on *State v. Bradford*, 60 Wn. App. 857, to support his claim that the jury should have been instructed to consider each charge separately. Appellant’s Brief, p. 13-14. However, the

holding in *Bradford* supports the State's contention that the jury instructions, taken as a whole, properly instructed the jury on the law.

In *State v. Bradford*, the defendant was charged with possession of a controlled substance and possession of a controlled substance with intent to deliver. *State v. Bradford*, 60 Wn. App. 857. The charges occurred from two separate searches of the defendant's house that occurred on different days and under different circumstances. *Id.* Prior to trial, defense counsel unsuccessfully moved to sever the counts. *Id.* At trial, the jury was instructed to consider each count separately. *Id.* The jury submitted a question to the court asking if the jury could consider knowledge gained from one count when deliberating on the other count. *Id.* at 860. The court responded that "[t]he jury is free to determine the use to which it will put evidence presented during trial." *Id.* On appeal, the defendant argued that the court's response to the jury question contradicted the jury instruction to consider each count separately. *Id.* at 861. The court of appeals rejected the defendant's argument and found that there was evidence indicating dominion and control that was admissible on both counts. *Id.*

The present case is similar to the *Bradford* case. The evidence presented at trial established that defendant had dominion and control over the car in which both firearms and the methamphetamine were found. Defendant admitted that he knew about the 9-millimeter handgun found under the driver's seat which leads to the inference that he also knew

about the matching magazine clip that was found with the methamphetamine in the trunk of defendant's car. This evidence was admissible to prove all three charges against defendant.

Furthermore, the "to convict" instructions properly informed the jury that it must find each of the elements of each crime proven beyond a reasonable doubt. Therefore, even if defense counsel should have requested an instruction to consider each count separately, the outcomes of the trial would not have changed.

CP 59-87; Jury Instruction 6. When viewing the record in its entirety, defendant has failed to prove that defense counsel's performance was both deficient and prejudiced defendant.

3. THE JUDGMENT ENTERED BELOW IS CONSISTENT WITH THE HOLDING IN *IN RE BROOKS* BECAUSE THE JUDGMENT EXPLICITLY STATES THAT THE TOTAL TERM OF CONFINEMENT AND COMMUNITY CUSTODY SHALL NOT EXCEED THE STATUTORY MAXIMUM.

When a defendant's sentence includes both confinement and community custody, "a court may not impose a sentence providing for a term of confinement or community supervision, community placement, or community custody which exceeds the statutory maximum for the crime." RCW 9.94A.505(5). When a sentence exceeds the statutory maximum due to a combination of confinement and community custody, the court must include language that states explicitly on the judgment and sentence

that “the total term of incarceration and community custody cannot exceed the maximum.” *In re Brooks*, 166 Wn.2d 664, 673, 211 P.3d 1023 (2009); *State v. Sloan*, 121 Wn. App. 220, 224, 87 P.3d 1214 (2004).

In the present case, defendant was sentenced to 60 months confinement and 12 months community custody for his conviction for unlawful possession of a controlled substance. CP 111-124. Although defendant was sentenced to the statutory maximum plus community custody, the judgment and sentence explicitly states that “under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense.” CP 111-124.⁴

Since the judgment states the proper language as indicated in *In re Brooks*, the judgment is proper. *See Brooks*, 166 Wn.2d at 673

⁴ The judgment and sentenced is attached as Appendix A.

D. CONCLUSION.

For the above reasons, the State respectfully requests the court affirm defendant's conviction and sentence below.

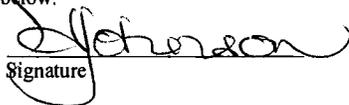
DATED: April 20, 2011

MARK LINDQUIST
Pierce County
Prosecuting Attorney


KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

Karen Judy
Rule 9 Intern
ID#9117677

Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

4/20/11 
Date Signature

11 APR 22 AM 9:39
STATE OF WASHINGTON
BY 
DEPUTY

OFFICE OF APPELLATE
LITIGATION

APPENDIX “A”

Judgment and Sentence



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 09-1-04080-1

MAY 28 2010

vs.

MICHAEL WAYNE JONES,

Defendant.

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

UPFA 1st (x2), UPCS (FASE)

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

X 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

09-1-04080-1

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 5-28-2010

By direction of the Honorable
[Signature]
JUDGE
KEVIN STOCK

By: *[Signature]*
CLERK
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

MAY 28 2010
Date: MAY 28 2010 By: *[Signature]* Deputy

FILED
DEPT 7
IN OPEN COURT
MAY 28 2010
Pierce County Clerk
By: *[Signature]*
DEPUTY

STATE OF WASHINGTON

County of Pierce

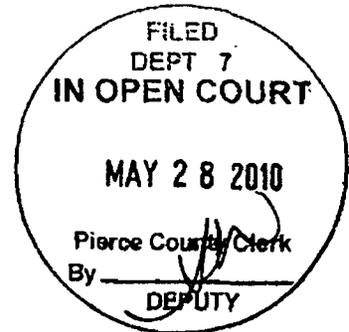
I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____.

KEVIN STOCK, Clerk
By: _____ Deputy

cac

09-1-04080-1



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 09-1-04080-1

MAY 28 2010

vs.

MICHAEL WAYNE JONES

Defendant.

JUDGMENT AND SENTENCE (FJS)

- Prison [] RCW 9.94A.712 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Breaking The Cycle (BTC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

SID: WA17346849
DOB: 11/01/73

I. HEARING

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

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on S-20-2010 by [] plea [X] jury-verdict [] bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	UPFA I (GGG66)	9.41.010(12)		09/09/09	092521368 PCSO
II	UPFA I (GGG66)	9.41.010(12)		09/09/09	092521368 PCSO
III	UPCS (J73M) METH, SCHED II	69.50.401(1)(2)(b) 9.94A.310/9.94A.510 9.94A.370/9.94A.530	FA	09/09/09	092521368 PCSO

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the AMENDED Information

10-9-06414-2

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- A special verdict/finding for use of firearm was returned on Count(s) _____ RCW 9.94A.602, 9.94A.533.
- The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	CONSP UDCS	02/04/98	PIERCE, WA	12/08/97	A	NV
2	PCP 2	07/21/98	PIERCE, WA	07/21/98	A	NV
3	PCP 2	02/08/99	PIERCE, WA	09/25/98	A	NV
4	UPCS AMPHET	02/08/99	PIERCE, WA	09/25/98	A	NV
5	PSP 2	02/08/99	PIERCE, WA	12/30/98	A	NV
6	CHILD MOL 3	06/02/00	PIERCE, WA	12/17/99	A	NV
7	ATT TO ELUDE	12/29/03	PIERCE, WA	11/29/03	A	NV
8	ASLT 3	12/29/03	PIERCE, WA	11/29/03	A	NV
9	UPFA 2	12/29/03	PIERCE, WA	11/29/03	A	NV
10	FTRASO	01/30/07	PIERCE, WA	12/28/06	A	NV
11	CURRENT	CURRENT	PIERCE, WA	09/09/09	A	

- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	12	VII	87+ to 116 Months	None	87+ to 116 Months	10 Years
II	12	VII	87+ to 116 Months	None	87+ to 116 Months	10 Years
III	12	III	51+ to 60 Months	FA	69+ to 78 Months	5 Years

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which 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 defend's past, present and future ability to pay legal financial obligations, including the

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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 following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [] attached [] as follows: N/A

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [] The court DISMISSES Counts _____ [] The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN	\$ _____	Restitution to: _____
	\$ _____	Restitution to: _____
		(Name and Address--address may be withheld and provided confidentially to Clerk's Office).
PCV	\$ <u>500.00</u>	Crime Victim assessment
DNA	\$ <u>100.00</u>	DNA Database Fee
PUB	\$ <u>400.00</u>	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ <u>200.00</u>	Criminal Filing Fee
FCM	\$ _____	Fine
CLF	\$ _____	Crime Lab Fee [] deferred due to indigency
CDF/DFA-DFZ	\$ _____	Drug Investigation Fund for _____ (agency)
WFR	\$ _____	Witness Costs

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 1200.00 TOTAL

[] The above total does not include all restitution 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 _____

[] RESTITUTION. Order Attached

[] 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, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ 137.00 per month commencing 08/01/18. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

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)

[] COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST 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

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.160.

4.1b ELECTRONIC MONITORING REIMBURSEMENT. The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____

4.2 [X] DNA TESTING. The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[] HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 NO CONTACT

The defendant shall not have contact with _____ (name, DOB) 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, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 OTHER: Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

Appendix 'F' ; NO USE or possession of controlled substances
Forfeit all items in property room
Drug treatment per CEO

4.4a BOND IS HEREBY EXONERATED

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

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

102 months on Count I months on Count

102 months on Count II months on Count

60 months on Count III months on Count

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

18 months on Count No IV months on Count No

months on Count No months on Count No

months on Count No months on Count No

Sentence enhancements in Counts shall run
[] concurrent [X] consecutive to each other.
Sentence enhancements in Counts shall be served
[X] flat time [] subject to earned good time credit

Actual number of months of total confinement ordered is: 120 months (includes 18 months flat time)
(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

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

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present 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 to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589:

Confinement shall commence immediately unless otherwise set forth here:

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(c) 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 time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 104 days

4.6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months,

Count _____ for _____ months,

Count _____ for _____ months,

COMMUNITY CUSTODY is ordered as follows:

Count III for a range from: _____ to 12 Months,

Count _____ for a range from: _____ to _____ Months,

Count _____ for a range from: _____ to _____ Months,

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offense not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, 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) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC, and (8) for sex offenses, submit to electronic monitoring if imposed by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not

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sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.

Defendant shall have no contact with: Drug users and sellers

Defendant shall remain within outside of a specified geographical boundary, to wit: _____

Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8))

The defendant shall participate in the following crime-related treatment or counseling services: _____

The defendant shall undergo an evaluation for treatment for domestic violence substance abuse mental health anger management and fully comply with all recommended treatment.

The defendant shall comply with the following crime-related prohibitions: _____

DRUG C90

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. 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 total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **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.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 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. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her 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 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 may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 **RESTITUTION HEARING.**
 Defendant waives any right to be present at any restitution hearing (sign initials): _____
- 5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.
 N/A
- 5.8 The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

09-1-04080-1

5.10 OTHER: for CLO

DONE in Open Court and in the presence of the defendant this date: 5-28-2010

JUDGE

Print name

FREDERICK W. FLEMING

Deputy Prosecuting Attorney

Print name: J. C. H. to

WSB # 36945

Attorney for Defendant

Print name: Kenneth Blonk

WSB # 29955

Defendant

Print name: Michael Jones

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. 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 92A.84.660.

Defendant's signature:

Michael Jones



09-1-04080-1

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 09-1-04080-1

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

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

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

Dorylee Reyes
Court Reporter

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC;

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

(I) The offender shall remain within, or outside of, a specified geographical boundary: _____

per CCO

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: Drug users or sellers

(III) The offender shall participate in crime-related treatment or counseling services; *per CCO*

(IV) The offender shall not consume alcohol; _____

(V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections, or

(VI) The offender shall comply with any crime-related prohibitions. *per CCO*

(VII) Other: per CCO

IDENTIFICATION OF DEFENDANT

SID No. WA17346849
(If no SID take fingerprint card for State Patrol)

Date of Birth 11/01/73

FBI No. 168540XA7

Local ID No. UNKNOWN

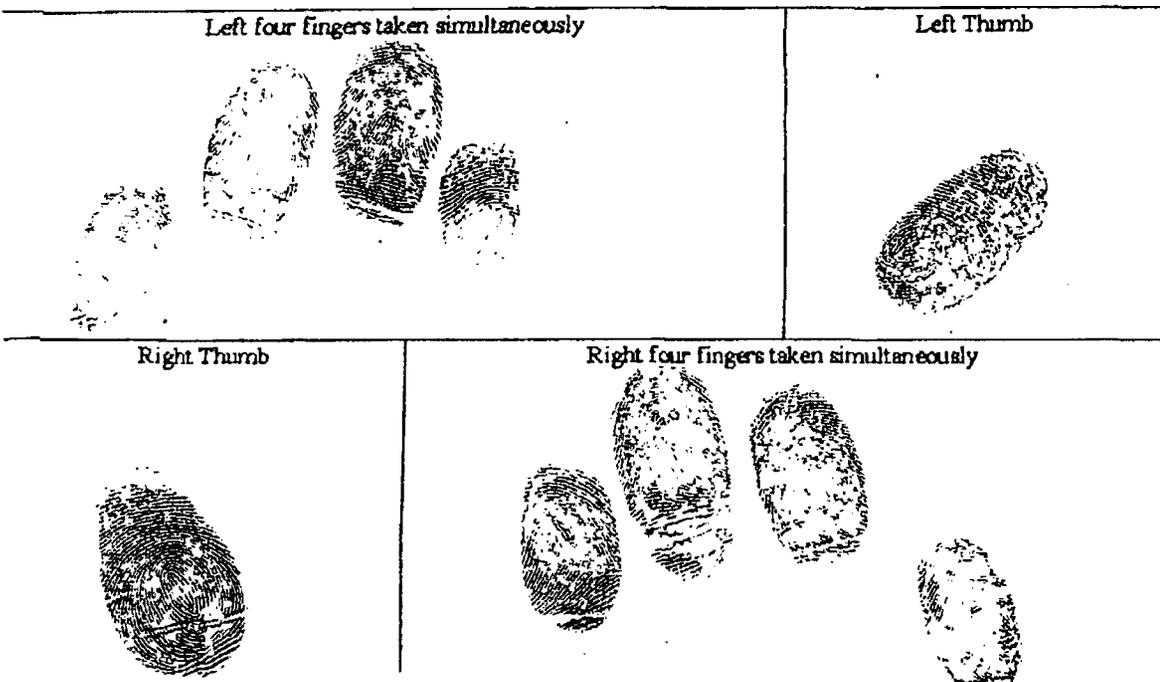
PCN No. 539902237

Other

Alias name, SSN, DOB: DOB: 11/17/73

Race:					Ethnicity:		Sex:	
<input type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/>	<input type="checkbox"/> Black/African-American	<input checked="" type="checkbox"/> Caucasian	<input type="checkbox"/>	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Male	
<input type="checkbox"/> Native American	<input type="checkbox"/>	<input type="checkbox"/> Other: :		<input checked="" type="checkbox"/>	<input type="checkbox"/> Non-Hispanic	<input type="checkbox"/>	<input type="checkbox"/> Female	

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk Sharon Anderson Dated: 5/28/10

DEFENDANT'S SIGNATURE: [Signature]

DEFENDANT'S ADDRESS: PC Jail