

COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
BY     *au*      
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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

NO. 41413-9

STATE OF WASHINGTON,

Respondent,

vs.

JOSEPH KOROSHES,

Petitioner.

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MOTION FOR DISCRETIONARY REVIEW

STATE OF WASHINGTON FOR CLALLAM COUNTY

CAUSE NO. 10-1-00099-1

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**STATE'S ANSWER TO THE MOTION FOR REVIEW**

BRIAN WENDT, WSBA #40537  
Deputy Prosecuting Attorney

Clallam County Courthouse  
223 East Fourth Street, Suite 11  
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Attorney for Respondent

<b>SERVICE</b>	<p>Mr. Larry Freedman 325 E. Washington Street, Suite 214 Sequim, WA 98382</p>	<p>This brief was served via U.S. Mail or the recognized system of interoffice communications as follows: original + one copy to Court of Appeals, 950 Broadway, Suite 300, Tacoma, WA 98402, and one copy to counsel listed at left. I CERTIFY (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED: November 24, 2010 at Port Angeles, WA <u>    <i>BW</i>    </u></p>
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**I. RESTATEMENT OF THE ISSUE:**

1. Did the trial court abuse its discretion when it denied counsel's motion to withdraw even though (1) the defense had the discovery necessary to evaluate the State's plea offer and advise the defendant of the consequences/risks of a decision to plead or proceed to trial, (2) the State is not obligated to disclose the identity of a confidential informant before the defendant elects to accept/reject the plea offer, and (3) no actual conflict of interest existed?
2. Does the recent Washington Supreme Court decision, *State v. A.N.J.*, 168 Wn.2d 91, 225 P.3d 956 (2010), require the defense to obtain the identity of a confidential informant prior to a client's decision to accept/reject a plea offer in order to render effective assistance of counsel?

**II. STATEMENT OF THE CASE:**

Between March and July 20, 2010, the Olympic Peninsula Narcotics Enforcement Team (OPNET) utilized a confidential informant (C.I.) to purchase methamphetamine from the defendant, Mr. Joseph Koroshes. *See* Appendix B at 2. On three separate occasions, the C.I. successfully purchased methamphetamine from the defendant. *See* Appendix B at 2.

On July 20, 2010, OPNET executed a search warrant at Mr. Koroshes' residence. *See* Appendix B at 2. Upon execution of the warrant, detectives seized multiple items related to narcotics trafficking. *See* Appendix B at 3. Mr. Koroshes was subsequently arrested. *See* Appendix B at 3.

On July 23, 2010, the State charged Mr. Koroshes with three counts of delivery of a controlled substance (methamphetamine).<sup>1</sup> *See* Appendix A at 1-2. The prosecution provided the defense with all discoverable materials – except the C.I.’s identity.<sup>2</sup> Instead of disclosing the C.I.’s identity, the State provided the defense with a summary of the C.I.’s criminal history (including multiple arrests for burglary and theft), drug use history, and motivation to work with law enforcement (including the dismissal of certain prosecutions and reduction of other criminal charges). *See* Appendix L at 1-3. Additionally, the State provided a copy of the C.I.’s agreement/contract with law enforcement. *See* Appendix L at 4-6.

It is the State’s policy to protect a C.I.’s identity prior to the acceptance/rejection of a plea offer. *See* Appendix J at 2. This policy (1) ensures the C.I.’s safety, (2) preserves the viability of any investigation that employs the C.I., and (3) allows the State to utilize the C.I. in future investigations. *See* Appendix J at 2, 7-8. However, if a criminal defendant

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<sup>1</sup> The State also filed a fourth charge of possession of a controlled substance other than marijuana. *See* Appendix A at 3.

<sup>2</sup> The State provided the defense with 194 pages of discovery. This discovery included: numerous investigative police reports; crime lab reports that analyzed the drugs the C.I. purchased from the defendant; transcripts of recorded conversations between the C.I. and the defendant; a summary of the C.I.’s credibility; and a copy of the C.I.’s agreement with law enforcement.

rejects the State's plea offer, the prosecution will promptly disclose the C.I.'s identity. *See* Appendix J at 2.

On August 19, 2010, the State made a plea offer to Mr. Koroshes. *See* Appendix C. The State expressly conditioned its offer on the defendant not requesting/obtaining the C.I.'s identity. *See* Appendix C at 3.

On September 2, 2010, the previously appointed defense attorney advised the court that he requested discovery pertaining to the C.I.<sup>3</sup> *See* Appendix D. However, the court file does not include a formal discovery demand, nor does it reflect what information was requested. *See* Appendix D, E.

On September 28, 2010, Mr. Koroshes present attorney filed a motion to withdraw. *See* Appendix F. In support of this motion, the attorney claimed the State's refusal to disclose a C.I.'s identity prior to a plea agreement inhibited his ability to represent his client:

Counsel by this limitation is not able to ascertain whether there is a conflict with prior representation and further is not able to adequately advise the Client as to the case against him, the strengths or weakness of the State case and is not able to carry out the Attorney's duties to his client by

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<sup>3</sup> The trial court originally appointed Mr. John Hayden, who sits on the Clallam County Drug Court's panel, to represent Mr. Koroshes. Mr. Hayden withdrew due to a possible conflict, advising the court the C.I. was a participant in drug court. *See* Appendix D.

advising anything relative to the plea offer without being in violation of the ethical duties.

*See* Appendix F at 1. The trial court promptly denied the motion; however, it allowed counsel to seek discretionary review. *See* Appendix G. Mr. Koroshes' attorney then filed a motion to stay further proceedings. *See* Appendix H.

Again, the defense outlined its argument why it needed to seek review. According to counsel, he "cannot give effective assistance to Mr. Koroshes due to the restrictions placed on the plea offer made by the State." *See* Appendix H at 1. Additionally, counsel moved the court to "certify the case to the Court of Appeals under RAP 2.3(b)(4) as involving a controlling question of law with substantial grounds for difference of opinion." *See* Appendix H at 2. However, the defense acknowledged the trial court held the C.I.'s identity was not necessary to "[advise] Mr. Koroshes to accept the existing plea offer, make a counteroffer, or reject the offer and proceed to trial would not constitute ineffective assistance of counsel under *State v. A.N.J.*, 168 Wn.2d 91, 225 P.3d 956 (2010)." *See* Appendix H at 1. *See* also Appendix G, I, K.

On October 28, 2010, the State filed its response to the motion. *See* Appendix J. First, it argued the mere possibility of a conflict of interest did not warrant counsel's withdrawal. *See* Appendix J at 3. Second, it

explained there was no legal duty that compels the State to provide the C.I.'s identity prior to the acceptance/rejection of a plea, and that federal and state laws permit guilty pleas on less than full disclosure, so long as the plea is made knowingly, intelligently, and voluntarily. *See* Appendix J at 3-7. Finally, it maintained counsel could effectively advise his client without knowing the C.I.'s name. *See* Appendix J at 3-8. The trial court agreed. *See* Appendix G, I, K..

On November 1, 2010, the defense sought review.

### **III. ARGUMENT:**

#### **A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED THE MOTION TO WITHDRAW.**

When an attorney files a motion to withdraw, the matter is addressed to the discretion of the trial court. *Kingdom v. Jackson*, 78 Wn. App. 154, 158, 896 P.2d 101 (1995), *review denied*, 129 Wn.2d 1014 (1996). An appellate court will reverse the trial court's discretionary decision only for an abuse of discretion. *Id.*

1. The defense can still provide effective assistance of counsel without the C.I.'s identity prior to a guilty plea.

With respect to claims of ineffective assistance of counsel, the defendant has the burden to show (1) that counsel's performance fell below an objective standard of reasonableness, and (2) that counsel's poor

performance prejudiced the defense. *State v. A.N.J.*, 168 Wn.2d 91, 109, 225 P.3d 956 (2010). Because a claim of ineffective assistance of counsel presents mixed questions of law and fact, this Court reviews the issue *de novo. Id.*

RPC 1.1 requires all attorneys to provide competent representation. The rule states “[c]ompetent representation requires the legal knowledge, skill, thoroughness and preparation *reasonably* necessary for the representation.” RPC 1.1 (emphasis added). This duty extends to an attorney’s evaluation of a plea offer. *A.N.J.* 168 Wn.2d at 111 (citing RPC 1.1).

The Washington Supreme Court has held that an attorney’s “failure to investigate, *at least when coupled with other defects, can* amount to ineffective assistance of counsel.” *A.N.J.*, 168 Wn.2d at 110 (emphasis added). With respect to a duty to investigate a plea offer, the Supreme Court provided the following:

Effective assistance of counsel includes assisting the defendant in making an informed decision as to whether to plead guilty or to proceed to trial. The degree and extent of investigation required will vary depending upon the issues and facts of each case, but ... counsel must *reasonably* evaluate the evidence against the accused and the likelihood of a conviction if the case proceeds to trial so that the defendant can make a meaningful decision as to whether or not to plead guilty.

*Id.* at 111 (emphasis added). However, the law does not require a criminal defense attorney to obtain all impeachment evidence prior to the entry of a guilty plea, especially when such information is of limited evidentiary value and the State has a legitimate interest to withhold the evidence unless there is a trial. *See United States v. Ruiz*, 536 U.S. 622, 629-32, 122 S.Ct. 2450, 153 L.Ed.2d 586 (2002), *infra*.

Here, defense counsel possesses the discovery necessary to advise his client competently and effectively. First, he has the substantive discovery that establishes guilt. This includes numerous investigative police reports, crime lab reports analyzing the drugs purchased from the defendant; and transcripts of recorded conversations between the C.I. and Mr. Koroshes during two of the alleged drug sales. Second, he has information from law enforcement that outlines the C.I.'s credibility. *See* Appendix K at 1-6. This summary contains the impeachment evidence that counsel would learn through the C.I.'s name – *i.e.* criminal history, record of reliability, and motivation to work with law enforcement. *See* Appendix K at 1-6. Third, the defendant knows whether the alleged transactions actually occurred, and he is in a unique position to know the facts surrounding the incidents in question. Finally, there is nothing preventing counsel from interviewing the investigating officers.

In light of these facts, the defense already possesses the discovery/evidence that he must review in order to provide competent and effective counsel, and to ensure that any plea or decision to go to trial is made knowingly, intelligently, and voluntarily. *See* RPC 1.1 – Comment 5 (“Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem [.]”). *See also A.N.J.*, 168 Wn.2d at 111 (counsel must reasonably evaluate the evidence against the accused).

While impeachment evidence, *i.e.* the C.I.’s identity, might aid Mr. Koroshes’ decision on whether he should gamble and proceed to trial, *see Ruiz*, 536 U.S. at 629, this information is never available to the defense prior to the acceptance/rejection of a plea. *See Ruiz*, 536 U.S. at 629-32; *Moen*, 150 Wn.2d at 230-31. Thus, defense counsel is not “ineffective” for failing to obtain that which his client is not constitutionally entitled to receive. *See State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995) (defendant must satisfy both prongs of a two-part test to prevail on ineffective assistance of counsel).

Because counsel possesses the substantive evidence against his client, this Court should hold the trial judge did not abuse his discretion when he denied the motion to withdraw. *See* Appendix F, H, J.

2. The law does not require the State to disclose the name of a confidential informant before consideration of a plea offer.

A criminal defendant does not have a constitutional right to a plea bargain. *State v. Yates*, 161 Wn.2d 714, 741, 168 P.3d 359 (2007). Instead, a plea bargain is a contract. *State v. Moen*, 150 Wn.2d 221, 230, 76 P.3d 721 (2003). Both sides to the agreement must perceive an advantage before entering the bargain. *Moen*, 150 Wn.2d at 230.

A contractual condition requiring a defendant to give up a constitutional right does not, by itself, violate due process. *Moen*, 150 Wn.2d at 230. After all, “[t]he theoretical basis for all plea bargaining is that defendants will agree to waive their constitutional rights.” *Moen*, 150 Wn.2d at 231.

a. *Washington’s law affirms that the State need not disclose a C.I.’s identity prior to the entry of a guilty plea.*

The State has a legitimate interest in protecting its confidential informants because they are valuable assets of law enforcement. *Moen*, 150 Wn.2d at 231. The relevant court rule also recognizes this important State interest:

Disclosure of an informant’s identity *shall not* be required where the informant’s identity is a prosecution secret and a failure to disclose will not infringe upon the constitutional rights of the defendant. ...

CrR 4.7(f)(2) (emphasis added). When the State conditions a plea offer on the defendant not compelling disclosure of a C.I.'s identity, "the State gains protection of its informants and, in exchange, the defendant receives the opportunity to bargain for a reduction or dismissal of charges." *Moen*, 150 Wn.2d at 230. A policy that serves as a disincentive to compel disclosure of confidential informant does not offend due process. *Moen*, 150 Wn.2d at 230-31.

In *State v. Moen*, the defendant argued the State's informal policy of refusing to plea bargain when defendant obtains a C.I.'s identity violated due process because it chilled the right to discovery. 150 Wn.2d at 224. The Washington Supreme Court recognized the policy did require that the defendant forego his or her right to discovery. *Moen*, 150 Wn.2d at 230. However, it noted the distinction between cases where the State's action "might *deter* a defendant from exercising a legal right, which did not necessarily violate due process, and cases where the prosecutor's action was in *retaliation* for exercising a right, which violates due process." *Id.* at 231 (emphasis included). The Court affirmed the State's policy because its sole purpose was to protect the C.I.'s identity, and it did not retaliate against the defendant or seek to gain an unfair tactical advantage. *Id.* at 230-31.

Here, the State's policy seeks only to protect the C.I. from harm/harassment and preserve the viability of current and future investigations. *See* Appendix J 1-8. As in *Moen*, the State's policy only deters the defendant from exercising his right to certain, limited discovery. The State is not relying on the policy for an improper purpose (*i.e.* retaliation or to gain an advantage at trial). As such, the policy does not violate due process.<sup>4</sup> *See Moen*, 150 Wn.2d at 231.

Additionally, the State's plea offer is favorable to both parties. The State would receive the benefit of protecting its C.I. and the ability to employ him/her in the future. In return, Mr. Koroshes would receive a lenient sentence: the State would dismiss one of the charges relating to delivery of controlled substance, and it would not seek any school bus enhancements. *See* Appendix C at 2.

The defense argues that *State v. Moen* does not apply in this case. *See* Motion for Discretionary Review at 4-5. The effort to distinguish *Moen* is unpersuasive. *See* Motion for Discretionary Review at 4. *Moen* involved the exact same issue: whether the State's refusal to disclose a C.I.'s identity prior to the acceptance/rejection of a guilty plea violates a defendant's constitutional rights. The Washington Supreme Court

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<sup>4</sup> If Mr. Koroshes elects to go to trial, the State will promptly disclose the C.I.'s name in order to ensure his right to a fair trial. *See* Appendix I at 2.

expressly held that such a policy does not violate constitutional safeguards. 150 Wn.2d at 230-31. The facts that (1) there is no associated civil proceeding involving a municipality, and (2) there is an existing plea offer, and (3) the defense requested the remedy of withdrawal as opposed to dismissal, are immaterial and do not alter the analysis. *See* Motion for Discretionary Review at 4. This Court should hold that *State v. Moen* controls the present dispute.

*b. Federal precedent forecloses the argument that the State's policy precludes effective assistance of counsel.*

In the present case, defense makes no effort to distinguish *United States v. Ruiz*, 536 U.S. 622, 122 S.Ct. 2450, 153 L.Ed.2d 586 (2002). The State cited *Ruiz* in its response to the motion to withdraw. *See* Appendix J at 3-5. This Court should hold that *Ruiz* sufficiently allays counsel's concern and allows him to provide effective assistance without obtaining the C.I.'s name.

In *United States v. Ruiz*, the prosecutor proposed a plea agreement that contained a set of detailed terms. 536 U.S. at 625. The plea stated the Government had provided the defense with any/all evidence that was potentially exculpatory. *Id.* In addition, the plea acknowledged the Government had a continuing duty to provide such information. *Id.* At the same time, the offer required the defendant to waive her right to receive

“impeachment information relating to any *informants* or other witnesses[.]” *Id.* (emphasis added). Because the defendant opposed the waiver, the prosecutor rescinded the offer. *Id.* Ultimately, the defendant pleaded guilty and received a greater sentence than the Government first proposed. *Id.* at 626.

The United States Supreme Court held the Government does not have an obligation to disclose impeachment evidence, *i.e.* an informant’s identity, prior to acceptance/rejection of a plea offer. *Ruiz*, 536 U.S. at 629, 633. The high court reasoned:

[I]mpeachment information is special in relation to the *fairness of a trial*, not in respect to whether a plea is *voluntary* (“knowing,” “intelligent,” and “sufficient[ly] aware”). Of course, the more information the defendant has, the more aware he is of the likely consequences of a plea, waiver, or decision, and the wiser that the decision will likely be. But the Constitution does not require the prosecutor to share all useful information with the defendant. *Weatherford v. Bursey*, 429 U.S. 545, 559, 97 S.Ct. 837, 51 L.Ed.2d 30 (1977) (“There is no general constitutional right to discovery in a criminal case”).

...

It is particularly difficult to characterize impeachment information as critical information of which the defendant must always be aware prior to pleading guilty given the random way in which such information may, or may not, help a particular defendant.

...

State’s Answer  
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[A] constitutional obligation to provide impeachment information during plea bargaining, prior to entry of a guilty plea, could seriously interfere with the Government's interest in securing those guilty pleas that are factually justified, desired by defendants, and help secure the efficient administration of justice. The [proposed rule] risks premature disclosure of Government witness information, which, the Government tells us, could "disrupt ongoing investigations" and expose prospective witnesses to serious harm.

...

[The proposed rule] could force the Government to abandon its "general practice" of not "disclos[ing] to a defendant pleading guilty information that would reveal the identities of cooperating informants, undercover investigators, or other prospective witnesses." ... It could require the Government to devote substantially more resources to trial preparation prior to plea bargaining thereby depriving the plea-bargaining process of its main resource-saving advantages. ... We cannot say that the Constitution's due process requirements demands so radical a change in the criminal justice process in order to achieve so comparatively small a constitutional benefit.

*Ruiz*, 536 U.S. at 629-32 (emphasis included). Thus, the Supreme Court held "the Constitution does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant." *Id.* at 633.

In the present case, the defense claims it cannot provide effective assistance without access to impeachment evidence – the C.I.'s identity.

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*See* Motion for Discretionary Review at 3-6. However, the C.I.'s identity is limited to impeachment purposes. While this evidence relates to Mr. Koroshes' right to a fair trial, it is not necessary to ensure a knowing, intelligent, and voluntary plea. *Ruiz*, 536 U.S. at 629. Thus, counsel may still provide effective assistance without said information based upon the evidence already in his possession. *See* State's Answer to Motion for Discretionary Review at 5-8.

While *Ruiz* does not specifically reference the Sixth Amendment, the Supreme Court was acutely aware of the fundamental right to effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). Additionally, the *Ruiz* Court recognized that knowledge of a C.I.'s identity would aid the defendant's ability to evaluate the decision to plea or go to trial, but repeatedly stated that "the Constitution" does not require the prosecutor to share this information with the defense prior to a decision to plead guilty or proceed to trial. 536 U.S. at 629. Thus, the State's policy does not deprive Mr. Koroshes of effective assistance of counsel.

3. There is no actual conflict of interest in the present case.

A lawyer may not represent a client if the representation involves a concurrent conflict of interest. RPC 1.7(a). However, the mere possibility

of a conflict of interest is not sufficient to permit counsel to withdraw. *See State v. Davis*, 141 Wn.2d 798, 861, 10 P.2d 977 (2000). Mr. Koroshes' counsel speculates that a conflict might result if the C.I. is one of his former clients. However, if the matter is resolved without disclosure there is no conflict. This Court should hold the trial court did not abuse its discretion when it denied the motion to withdraw.

In sum, the defense has offered no explanation as to why the C.I.'s name is necessary to render effective assistance of counsel. There is no constitutional obligation on the State to provide a C.I.'s identity prior to a guilty plea, and the C.I.'s name is of little/no value in light of the evidence that is already available to counsel. Finally, when counsel filed his motion, there was no conflict that limited his duties to Mr. Koroshes or a former client. The trial court did not abuse its discretion when it denied the motion to withdraw.

**B. THE SUPREME COURT'S RECENT DECISION DOES NOT REQUIRE COUNSEL TO LEARN A C.I.'S IDENTITY PRIOR TO A GUILTY PLEA.**

The present motion relies entirely on *State v. A.N.J.*, 168 Wn.2d 91, 225 P.3d 956 (2010). *See* Motion for Discretionary Review at 3-6. The State submits that counsel's reliance on this decision is misplaced.

In *State v. A.N.J.*, a juvenile sex case, the defense attorney received names of witnesses who might (1) testify the victim had been abused by

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others, and (2) provide an alternative explanation for the victim's report and precocious knowledge. 168 Wn.2d at 101. The attorney called these witnesses only once, did not reach them, and did not follow up. *Id.* Additionally, the attorney never spoke to the investigating officer, and made no request for discovery or filed any motions. *Id.*

The *A.N.J.* Court was appalled by the attorney's utter failure to investigate the allegations. 168 Wn.2d at 102. The Supreme Court held, in part, that the juvenile was entitled to withdraw his guilty plea because the defense had made absolutely no investigation into the evidence against his client. 168 Wn.2d at 119-21.

In the present case, despite claims to the contrary, Mr. Koroshes' attorney can provide "meaningful" advice as to a decision to accept/reject the plea offer and on the strengths/weaknesses of the prosecution. The defense already possesses the necessary evidence to provide his client with effective/competent counsel. *See* State's Answer to Motion for Discretionary Review at 5-8. *State v. A.N.J.* is only on point if counsel refuses to conduct his own investigation into the law, and he fails to review/evaluate the evidence already in his possession. *See A.N.J.*, 168 Wn.2d at 109-12.

Moreover, *A.N.J.* never addressed a situation that involved an undisclosed C.I. Thus, the Supreme Court did not consider precedential

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authority holding that (1) a defendant does not have a constitutional right to the identity of a C.I. prior to a guilty plea, and (2) the State has a legitimate interest in protecting the identity of a C.I. prior to a guilty plea.

Finally, the Supreme Court expressly held the defense only has a duty to “*reasonably* evaluate the evidence against the accused.” 168 Wn.2d at 111 (emphasis added). Based on a review of the substantive evidence, defense counsel must “reasonably” evaluate the likelihood of a conviction if his client elects to go to trial. *See id.* To hold the defense must first acquire all impeachment evidence before counsel can effectively represent his client expands the *A.N.J.* decision too far and contradicts the precedential authority in *Ruiz* and *Moen, supra*.

This Court should hold the Washington Supreme Court’s recent opinion in *State v. A.N.J.* reaffirms the proposition that the defense counsel has a duty to evaluate the substantive evidence against a criminal defendant. The State provided this evidence to counsel, and he has the ability to review this material in advance of a plea agreement.

**C. DISMISSAL OF THE CHARGE IS NOT AN AVAILABLE REMEDY.**

In light of the State’s policy not to disclose a C.I.’s name prior to the acceptance or rejection of a plea offer, the defense only moved to withdraw from the case. *See* Appendix E, G. Furthermore, the present

motion for discretionary review primarily argues that this Court should allow counsel to withdraw. *See* Motion for Discretionary Review at 3-6. However, the defense appears to suggest that “dismissal” of the charges is an appropriate remedy. *See* Motion for Discretionary Review at 4-5. This Court should hold that “dismissal” is not an available remedy in this case.

CrR 8.3(b) protects against arbitrary action or governmental misconduct. *Moen*, 150 Wn.2d at 226. A dismissal under CrR 8.3(b) may be justified where the State's misconduct violates the defendant's right to due process. *Id.* However, dismissal under this rule is an extraordinary remedy and is improper absent material prejudice to the rights of the accused. *Id.* This Court reviews a trial court's decision on a motion to dismiss for an abuse of discretion. *Id.*

The defense fails to provide any legal authority to support its assertion that “dismissal” is an appropriate remedy. This is because no authority exists. In *State v. Moen*, the Supreme Court held the State's decision not to make a plea offer after the defendant obtained a C.I.'s identity did not violate due process, did not constitute arbitrary action or government misconduct, and did not support a dismissal under CrR 8.3(b). *See* 150 Wn.2d at 226-32.

In the present case, the State's policy not to disclose the C.I.'s identity prior to the acceptance/rejection of a guilty plea did not violate

Mr. Koroshes' constitutional rights. *See* State's Answer to Motion for Discretionary Review at 9-20. As such, dismissal is not an available remedy. *See Moen*, 150 Wn.2d at 226-32.

**IV. CONCLUSION:**

Based upon the argument above, the State respectfully request that this Court deny the motion for discretionary review and affirm the trial court's ruling that denied the motion to withdraw.

However, the State recognizes this Court has referred the exact same issue presented in this case to a panel of judges in *State v. Gardner*, 40775-2-II, and *State v. Shelmidine*, 40743-4-II. Should this Court conclude a panel should review the present case, the State requests that the case be consolidated with the appeals in *State v. Gardner* and *State v. Shelmidine*.

DATED this November 24, 2010.



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Brian Patrick Wendt, WSBA # 40537  
Deputy Prosecuting Attorney

# APPENDIX - A

CERTIFIED  
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2010 JUL 23 A 10:06  
BARBARA CHRISTENSEN

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

STATE OF WASHINGTON,  
Plaintiff,  
vs.

JOSEPH ISRAEL KOROSHES; and  
TARI ANN PAYNE  
and each them,  
Defendant(s).

NO. 10-1-00302-8

CRIMINAL INFORMATION  
 CRIMINAL COMPLAINT (INFO)

**FOR: Counts I, II, III: DELIVERY OF A  
CONTROLLED SUBSTANCE -  
AMPHETAMINE OR  
METHAMPHETAMINE (RCW  
69.50.401(1)); Count IV: POSSESSION OF  
A CONTROLLED SUBSTANCE OTHER  
THAN MARIJUANA (RCW  
69.50.4013(1)).**

SCANNED - 3

I, JOHN TROBERG, Prosecuting Attorney for the State of Washington in the venue of Clallam County, come now in the name of and by the authority of the State of Washington and by this Information/Complaint do accuse the above-named Defendant(s) of the following crime(s), committed as follows:

**COUNT I: DELIVERY OF A CONTROLLED SUBSTANCE -  
AMPHETAMINE OR METHAMPHETAMINE**

On or about the 1st day of March 2010- to the 20<sup>th</sup> day of July, 2010, in the County of Clallam, State of Washington, the above-named Defendant did knowingly deliver a controlled substance, to-wit: methamphetamine ; contrary to Revised Code of Washington 69.50.401(1), a Class B felony.

Maximum Penalty - Ten (10) years imprisonment and/or a fine of not less than \$3,000 nor more than \$25,000.00; or if the crime involves two (2) or more kilograms of the drug, Ten (10) years imprisonment and/or a fine of not less than \$1,000 nor more than \$100,000 for the first two (2) kilograms and not more than \$50.00 for each gram in excess of two (2) kilograms pursuant to RCW 69.50.401(2)(b) and RCW 69.50.430(1), plus restitution and assessments.

(If the Defendant has previously been convicted under Chapter 69.50 RCW or any statute of the United States or any other state relating to narcotic drugs, marijuana, depressant,

PAPD No. 10-03821

cc: Jail (new in-custody)

CLALLAM COUNTY  
PROSECUTING ATTORNEY  
Clallam County Courthouse  
223 East Fourth Street, Suite 11  
Port Angeles, Washington 98362-3015  
(360) 417-2301 FAX 417-2469

stimulant, or hallucinogenic drugs, the maximum punishment shall be twenty (20) years imprisonment and/or a fine of not less than \$2,000 nor more than \$50,000.00; or if the crime involves two (2) or more kilograms of the drug, twenty (20) years imprisonment and/or a fine of not less than \$2,000 nor more than \$200,000 for the first two (2) kilograms and not more than \$100.00 for each gram in excess of two (2) kilograms pursuant to RCW 69.50.401(2)(b), 69.50.408 and 69.50.430(2), plus restitution and assessments.

**COUNT II: DELIVERY OF A CONTROLLED SUBSTANCE -  
AMPHETAMINE OR METHAMPHETAMINE**

On or about the 1<sup>st</sup> day of March 2010 to the 20<sup>th</sup> day of July, 2010, but distinct from the conduct charged in Count 1, in the County of Clallam, State of Washington, the above-named Defendant did knowingly deliver a controlled substance, to-wit: methamphetamine; contrary to Revised Code of Washington 69.50.401(1), a Class B felony.

Maximum Penalty - Ten (10) years imprisonment and/or a fine of not less than \$3,000 nor more than \$25,000.00; or if the crime involves two (2) or more kilograms of the drug, Ten (10) years imprisonment and/or a fine of not less than \$1,000 nor more than \$100,000 for the first two (2) kilograms and not more than \$50.00 for each gram in excess of two (2) kilograms pursuant to RCW 69.50.401(2)(b) and RCW 69.50.430(1), plus restitution and assessments.

(If the Defendant has previously been convicted under Chapter 69.50 RCW or any statute of the United States or any other state relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the maximum punishment shall be twenty (20) years imprisonment and/or a fine of not less than \$2,000 nor more than \$50,000.00; or if the crime involves two (2) or more kilograms of the drug, twenty (20) years imprisonment and/or a fine of not less than \$2,000 nor more than \$200,000 for the first two (2) kilograms and not more than \$100.00 for each gram in excess of two (2) kilograms pursuant to RCW 69.50.401(2)(b), 69.50.408 and 69.50.430(2), plus restitution and assessments.

**COUNT III: DELIVERY OF A CONTROLLED SUBSTANCE -  
AMPHETAMINE OR METHAMPHETAMINE**

On or about the 1<sup>st</sup> day of March 2010 to the 20<sup>th</sup> day of July, 2010, but distinct from the conduct charged in counts 1 and 2, in the County of Clallam, State of Washington, the above-named Defendant did knowingly deliver a controlled substance, to-wit: methamphetamine; contrary to Revised Code of Washington 69.50.401(1), a Class B felony.

Maximum Penalty - Ten (10) years imprisonment and/or a fine of not less than \$3,000 nor more than \$25,000.00; or if the crime involves two (2) or more kilograms of the drug, Ten (10) years imprisonment and/or a fine of not less than \$1,000 nor more than \$100,000 for the first two (2) kilograms and not more than \$50.00 for each gram in excess of two (2) kilograms pursuant to RCW 69.50.401(2)(b) and RCW 69.50.430(1), plus restitution and assessments.

(If the Defendant has previously been convicted under Chapter 69.50 RCW or any statute of the United States or any other state relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the maximum punishment shall be twenty (20) years

STATE OF WASHINGTON

v. JOSEPH ISRAEL KOROSHES

Cause No. 10-1-00302-8

imprisonment and/or a fine of not less than \$2,000 nor more than \$50,000.00; or if the crime involves two (2) or more kilograms of the drug, twenty (20) years imprisonment and/or a fine of not less than \$2,000 nor more than \$200,000 for the first two (2) kilograms and not more than \$100.00 for each gram in excess of two (2) kilograms pursuant to RCW 69.50.401(2)(b), 69.50.408 and 69.50.430(2), plus restitution and assessments.

**COUNT IV: POSSESSION OF A CONTROLLED SUBSTANCE OTHER THAN MARIJUANA**

On or about the 20<sup>th</sup> day of July, 2010, in the County of Clallam, State of Washington, the above-named Defendant did unlawfully possess a controlled substance, to-wit: methamphetamine, contrary to Revised Code of Washington 69.50.4013(1), a Class C felony.

Maximum Penalty - Five (5) years imprisonment and/or a fine of not less than \$1,000.00 nor more than \$10,000 pursuant to RCW 69.50.4013(2), RCW 9A.20.021(1)(c), and RCW 69.50.430(1), plus restitution and assessments.

(If the defendant has previously been convicted under Chapter 69.50 RCW or any statute of the United States or any other state relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the maximum punishment shall be five (5) years imprisonment and/or a fine of \$2,000 nor more than \$10,000 pursuant to RCW 69.50.4013(2), RCW 9A.20.021(1)(c), and RCW 69.50.430, plus restitution and assessments.

Contrary to the form, force and effect of the statutes in such cases made and provided, and against the Peace and Dignity of the State of Washington.

DATED at Port Angeles, Washington, this 23rd day of July, 2010.

Joseph Israel Koroshes: White Male,  
DOB 09/05/1967, 5'7", 180 lbs.,  
Brown hair, Brown eyes, DOC , WA  
DOL , SID WA ,  
Address: 1434 W. Lauridsen Blvd., Port  
Angeles, WA 98363

DEBORAH S. KELLY, Prosecuting Attorney

By:  8582  
JOHN TROBERG WBA #11548  
(Deputy) Prosecuting Attorney

/dch

CRIMINAL INFORMATION/  
COMPLAINT - Page 3

CLALLAM COUNTY  
PROSECUTING ATTORNEY  
Clallam County Courthouse  
223 East Fourth Street, Suite 11  
Port Angeles, Washington 98362-3015  
(360) 417-2301 FAX 417-2469

# APPENDIX - B

CERTIFIED  
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2010 JUL 21 A 11: 50  
BARBARA CHRISTENSEN

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

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
JOSEPH ISRAEL KOROSHES; and  
TARI ANN PAYNE  
  
and each them,,  
  
Defendant.

10 1 00302 8  
NO.

MOTION FOR DETERMINATION  
OF PROBABLE CAUSE

(MTADPC)

COMES NOW, the Plaintiff, by and through JOHN TROBERG, Deputy Prosecuting Attorney for Clallam County, Washington, and moves the Court for an order determining probable cause for the arrest of the Defendant, filing of the Information/Complaint herein, and/or for the continued cognizance of the Defendant above-named to the above-entitled Court, based upon the certificate for probable cause attached hereto as an Appendix.

DATED this 21<sup>st</sup> day of July, 2010.

DEBORAH S. KELLY, Prosecuting Attorney  
  
JOHN TROBERG WBA #11548  
Deputy Prosecuting Attorney

/dch

1 - MOTION FOR DETERMINATION  
OF PROBABLE CAUSE

CLALLAM COUNTY  
PROSECUTING ATTORNEY  
Clallam County Courthouse  
223 East Fourth Street, Suite 11  
Port Angeles, Washington 98362-3015  
(360) 417-2301 FAX 417-2469

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JUL 21 2010

CERTIFICATION FOR PROBABLE CAUSE

AGENCY:	Clallam County Sheriff's Office	DATE:	07/20/2010
CASE NO.:	2010-3821	OFFICER:	Waterhouse, J. S.
ARRESTEE:	Joseph Israel Koroshes	DOB:	09/05/1967
ALIAS:	N/A	SID:	536-74-8996
ADDRESS:	1434 W. Lauridsen Boulevard, Port Angeles, Washington, 98363	PHONE:	1-360-775-8506

CLALLAM COUNTY  
PROSECUTING ATTORNEY

I, Jeffery S. Waterhouse, am a law enforcement officer with the Clallam County Sheriff's Department. Based upon the following narrative, there is probable cause to believe the person arrested and named above has committed the following crime(s): **Delivery of a Controlled Substance (methamphetamine), three counts; 69.50.401. (D), Possession of Methamphetamine-69.50.4013 and Unlawful use of a Building for Drug Purposes-69.53.010.**

**NARRATIVE:** Between March and July 20<sup>th</sup>, 2010, OPNET detectives utilized a confidential informant to conduct three controlled purchases of methamphetamine from Joseph I. Koroshes. All three purchases of methamphetamine occurred inside Joseph I. Koroshes' residence, which is located at 1434 W. Lauridsen Boulevard, Port Angeles, Washington 98363.

These three purchases from Koroshes consisted of one confidence (non-wired buy) and two wired buys that totaled approximately 8 grams of methamphetamine purchased from Koroshes for \$700.00. The conversations that took place between Koroshes and the confidential informant were recorded during two of these buys via a transmitting device, which had been attached to the body of the confidential informant under the authority of a Clallam County Superior Court Wire Order.

All three purchases of methamphetamine were field tested and had a positive reaction for the presumptive presence of methamphetamine. Afterwards, all three baggies containing suspected methamphetamine from these three buys were sent to the Washington State Patrol Crime Laboratory for further testing.

On July 20<sup>th</sup>, 2010, at approximately 0830 hours, OPNET detectives, assisted by police officers/detectives from the Port Angeles Police Department, executed a search warrant at Joseph Koroshes' residence, which is located at 1434 W. Lauridsen Boulevard, Port Angeles, Washington. This search warrant had been granted the previous week by the honorable Judge Wood on July 15<sup>th</sup>, 2010, at approximately 1050 hours.

Upon execution of search warrant, OPNET detectives located Joseph I. Koroshes and Tari A. Payne inside. Joseph I. Koroshes was arrested on three counts of Delivery of a Controlled Substance (methamphetamine). Soon afterwards, Koroshes' girlfriend, Tari A. Payne, was arrested for Possession of Methamphetamine and Unlawful use of a Building for Drug Purposes. After further investigation and at the conclusion of Payne's interview with OPNET detectives, it was evident that Koroshes also possessed methamphetamine via a pipe with residue on a living room table and unlawfully used his residence for drug purposes.

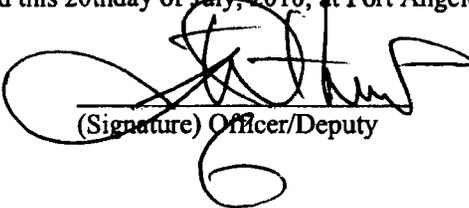
CERTIFIED  
COPY

These two methamphetamine pipes containing a white crystalline residue were found on a living room table and taken as evidence, which was the basis for the possession of methamphetamine count for Koroshes and Payne. A small amount of residue field tested positive for the presence of methamphetamine.

Other drug related items found inside the house consisted of multiple zip loc style baggies in various sizes and scales (digital and mechanical) found primarily in the living room and master bedroom. Both the scales and baggies had visible residue believed to be methamphetamine present on them and were taken as evidence.

Both Koroshes and Payne were transported to the Clallam County Corrections Facility by the Port Angeles Police Department and were booked on the aforementioned charges. All evidence in this case was taken to the Clallam County Sheriff's Office and was checked into evidence.

I CERTIFY, under penalty of perjury, of the laws of the State of Washington that the foregoing is true and correct. Signed and dated this 20th day of July, 2010, at Port Angeles, Washington.

  
(Signature) Officer/Deputy

07/20/2010  
Date

# APPENDIX - C

CERTIFIED COPY

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CLALLAM CO CLERK  
2010 AUG 19 A 8:44  
BARBARA CHRISTENSEN

1 STATE OF WASHINGTON ) AFFIDAVIT  
COUNTY OF CLALLAM ) ss. OF MAILING  
2 The undersigned, being first duly sworn on oath, states that on the  
day of \_\_\_\_\_, 2010, affiant deposited in the mails of the  
3 United States of America a properly stamped and addressed envelope  
directed to counsel of record: \_\_\_\_\_  
containing a copy of the accompanying document(s).  
4 I CERTIFY under penalty of perjury under the laws of the State of  
Washington that the foregoing is true and correct.  
DATED at Port Angeles, Washington, this \_\_\_\_\_ day of  
5 \_\_\_\_\_, 2010.  
6 \_\_\_\_\_  
Linda J. Mayberry

7 IN THE SUPERIOR COURT OF THE  
8 STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLALLAM

9 STATE OF WASHINGTON,  
10 Plaintiff,  
11 vs.  
12 JOSEPH I. KOROSHES,  
Defendant.

NO. 10-1-00302-8

PROSECUTING ATTORNEY  
PLEA OFFER

(PLAGSR)

13  
14 TO COUNSEL / PUBLIC DEFENDER JOHN F. HAYDEN \_\_\_\_\_:

15 You are already in receipt of investigative reports numbered 1 through \_\_\_\_\_.

16 As of this date the Defendant's criminal history appears to be as follows:

17 POCS 2008; Res Burg 1993 x2; PSP 2009 x3;  
Burglary 20 1985; Assault 1st DV 2002 (1)

18 giving the Defendant an offender score as follows: prcrors = 4

	Offender Score	Level	Guideline Range	Community Custody
19 Count 1	<u>7</u>	<u>II</u>	<u>60+ to 120</u> months	<u>12 to _____</u> months
20 Count 2	<u>7</u>	<u>II</u>	<u>60+ to 120</u> months	<u>12 to _____</u> months
21 Count 3	<u>7</u>	<u>II</u>	<u>60+ to 120</u> months	<u>12 to _____</u> months
22 Count 4	<u>7</u>	<u>I</u>	<u>12+ to 24</u> months	<u>12 to _____</u> months
23 Count 5	_____	_____	_____ to _____ months	_____ to _____ months
Count 6	_____	_____	_____ to _____ months	_____ to _____ months

24 [ ] The State will agree to Drug Court with specific conduct conditions/prohibitions  
25 similar to those if s/he pleads guilty. In the event your client enters Drug Court and is remanded

(1) PSP wash out; Burglaries do not

1 - PROSECUTING ATTORNEY  
PLEA OFFER  
rev. 10/15/2008

CLALLAM COUNTY  
PROSECUTING ATTORNEY  
Clallam County Courthouse  
223 East Fourth Street, Suite 11  
Port Angeles, Washington 98362-3015  
(360) 417-2301 FAX 417-2469

SCANNED - 3

1 or withdraws after the opt-out period, the State is free to recommend anything within the  
2 standard range upon conviction.

3 [ ] The State will agree to Friendship Diversion with specific conduct conditions/  
4 prohibitions similar to those if he/she pleads guilty. In the event your client enters Diversion  
5 and is terminated or withdraws after signing the contract, the State is free to recommend  
6 anything within the standard range upon conviction.

7 In the event your client pleads guilty [ ] as charged,  to the amended charge(s) of

8 2 Counts Delivery; No School Bus Enhancement  
9 + 1 Count POC(S)  
10 Offender

	Score	Level	Guideline Range	Community Custody
Count 1	<u>6</u>	<u>II</u>	<u>60+</u> to <u>120</u> months	<u>12</u> to <u>    </u> months
Count 2	<u>6</u>	<u>II</u>	<u>60+</u> to <u>120</u> months	<u>12</u> to <u>    </u> months
Count 3	<u>Dismiss</u>		to months	to months
Count 4	<u>6</u>	<u>I</u>	<u>12+</u> to <u>34</u> months	<u>12</u> to <u>    </u> months
Count 5			to months	to months
Count 6			to months	to months

11 the Prosecuting Attorney will recommend the following sentence to the Court:

- 12  
13  
14 1.  A sentence within the standard range of 60+ months / days with credit  
15 for time served solely on this cause.  
16 [ ] with \_\_\_\_\_ days converted to [ ] community service work.  
17 [ ] with \_\_\_\_\_ days converted to [ ] electronic home monitoring.
- 18 2.  State will agree to  prison [ ] residential DOSA.
- 19 3. [ ] "First Offender" option (RCW 9.94A.030(26)), if eligible.
- 20 4. [ ] Special Sexual Offender sentencing alternative (RCW 9.94A.120(7)(a)), local jail  
21 time up to twelve (12) months; if the assigned DPA/PA is satisfied with the  
22 evaluation and agrees that the SSOSA would be a benefit to the community.
- 23 5. [ ] The State will seek an exceptional sentence above/below the guideline range in the  
24 amount of \_\_\_\_\_ months based upon the following circumstances:  
25 \_\_\_\_\_
6.  The Prosecutor also will recommend the following, as applicable: community  
supervision/placement, court costs, crime victims fund, and crime lab analysis fee.  
In addition, attorneys fees of \$ 350.
7.  Fine of \$ 2,000, payable to the drug fund, or general fund.

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8. [X] Restitution for all victims and crimes charged or not. Restitution amount known to date: \$ \_\_\_\_\_.

**NOTE: THIS OFFER IS ONLY EFFECTIVE IF THERE IS AGREEMENT BY THE DEFENSE THAT THE COURT MAY IMPOSE RESTITUTION FOR ALL VICTIMS AND CRIMES WHETHER CHARGED OR NOT.**

9.  This offer is further conditioned upon the defendant's agreement that should he/she commit any new crimes or violate the conditions of release pending sentencing, or fail to appear for sentencing, the State is released from the obligations of this agreement as to recommended sentence, but that the defendant will still be bound to the guilty plea.

10. [ ] This offer is further conditioned upon the sentence being agreed. If Defendant presents/or permits any argument about the various conditions of sentence on his/her behalf, the State is released from the obligations of this agreement and may refile any charges that were dismissed or amended pursuant to the agreement but Defendant agrees that he will remain bound to the guilty plea entered.

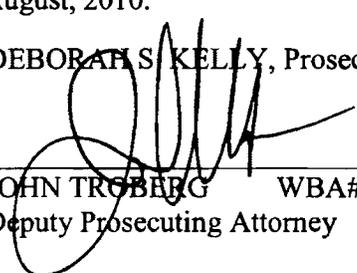
11. [X] Additional Conditions / Crime-related conditions/prohibitions: of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12.  Other: The offer is conditioned on the defendant not demanding the identity of the CI. The State will comply with a demand for the CI identity, but once

SINCE TRIAL IS SCHEDULED FOR SEPTEMBER 20 - 21, 2010, THIS OFFER REMAINS OPEN UNTIL AUGUST 31, 2010, AND ENTRY OF GUILTY PLEA SHOULD BE SCHEDULED FOR NO LATER THAN THAT DATE.

DATED this 17 day of August, 2010.

DEBORAH S. KELLY, Prosecuting Attorney

  
\_\_\_\_\_  
JOHN TROBERG WBA# 11548  
Deputy Prosecuting Attorney

/ljm

⊕ the CI's identity is disclosed the offer is withdrawn and the State will proceed to trial as charged.

# APPENDIX - D

FILED  
CLALLAM CO CLERK

2010 SEP -2 P 3:28

BARBARA CHRISTENSEN

SCANNED - 1  
CLALLAM COUNTY SUPERIOR COURT  
CRIMINAL MINUTES

CAUSE# 10-1-00302-8  
CAUSE#

NAME: **KOROSHES, JOSEPH**

APPEARING: YES NO IN CUSTODY: YES NO

H GASNICK \_\_\_\_\_ J HAYDEN X P JACKSON \_\_\_\_\_  
L OAKLEY \_\_\_\_\_ C COMMERE \_\_\_\_\_ A STALKER \_\_\_\_\_

OTHERS APPEARING \_\_\_\_\_

COURTROOM: 1  
DATE: SEPTEMBER 2<sup>ND</sup>, 2010  
JUDGE: S BROOKE TAYLOR  
CLERK: NIKKI IHRIG  
JAVS RECORDER: 1:03:26 / 1:10:40

D KELLY \_\_\_\_\_ E SOUBLET \_\_\_\_\_  
A LUNDWALL \_\_\_\_\_  
J ESPINOZA \_\_\_\_\_ J TROBERG X

CCO: \_\_\_\_\_  
P KAYS \_\_\_\_\_

**INITIAL APPEARANCE**

\_\_\_\_\_ ORD DETERMINING PROBABLE CAUSE/PRELIMINARY APPEARANCE  
\_\_\_\_\_ INFORMATION FURNISHED TO DEFENDANT  
\_\_\_\_\_ ACKNOWLEDGEMENT OF DEF'S RIGHTS  
X APPT'D PUBLIC DEFENDER/CONFLICT L. Freedman  
\_\_\_\_\_ ORD ON COND OF RELEASE/MOD \_\_\_\_\_ DEF ADVISED  
\_\_\_\_\_ FILE INFORMATION \_\_\_\_\_ @ 1:00 3:00  
\_\_\_\_\_ ARRAIGNMENT \_\_\_\_\_ @ 9:00 1:30  
\_\_\_\_\_ BASED ON DEF'S CRIMINAL OR WARRANT HISTORY / CHARGES ST RQ BAIL \$ \_\_\_\_\_

**ARRAIGNMENT/RESET**

\_\_\_\_\_ WAIVED READING INFORMATION  
\_\_\_\_\_ NOT GUILTY AS CHARGED  
\_\_\_\_\_ TRL SET ON \_\_\_\_\_ FOR \_\_\_\_\_ DAYS  
\_\_\_\_\_ STATUS HRG \_\_\_\_\_ @ 1:00 1:30 9:00  
\_\_\_\_\_ OR SETTING TRIAL & PRE-TRL HRGS/RESET  
\_\_\_\_\_ ORDER CONTINUING TRIAL  
\_\_\_\_\_ DEF ADVISED OF STATUS/TRIAL DATES

**STATUS/COP**

\_\_\_\_\_ READINESS ORDER  
\_\_\_\_\_ PLEA OFFER ACCEPTED/REJECTED  
\_\_\_\_\_ STATEMENT OF DEFENDANT ON PLEA OF GUILTY  
\_\_\_\_\_ COP & SENTENCING SET ON \_\_\_\_\_ @ 9:00 1:00 3:00

**SENTENCING**

\_\_\_\_\_ JUDGMENT & SENTENCE  
\_\_\_\_\_ WARRANT OF COMMITMENT  
\_\_\_\_\_ NOTIFICATION OF FIREARMS  
\_\_\_\_\_ OR PLACING DEF ON PAY/APPEAR PRG  
\_\_\_\_\_ NO CONTACT OR/DEF ADVISED & SERVED  
\_\_\_\_\_ ORDER FOR RESIDENTIAL TREATMENT  
\_\_\_\_\_ ORDER FOR DOSA EVAL/PSI REPORT

**MISC**

\_\_\_\_\_ ORDER FOR BW  
\_\_\_\_\_ OR QUASHING BW  
\_\_\_\_\_ DRUG COURT CONTRACT  
\_\_\_\_\_ DIVERSION AGREEMENT/ORDER  
\_\_\_\_\_ OR SETTING RST/DISBURSE FUNDS  
\_\_\_\_\_ DEFENDANT FAILS TO APPEAR, OR FOR BW SIGNED WITH BAIL SET AT \$ \_\_\_\_\_  
\_\_\_\_\_ STATE GIVES NOTICE THAT A BAIL JUMP CHARGE MAY BE FILED \_\_\_\_\_

COURT SIGNED: \_\_\_\_\_

Trial Reset

NEXT HRG DATE: 9/10/10 @ 1:30 DEF ADV OF DATE/TIME X

REV TRTMT/CSW/RESTITUTION \_\_\_\_\_ DEF ADVISED \_\_\_\_\_

THIS MATTER CAME ON FOR: STATUS HRG

MINUTES: Defense counsel advises they have requested "CI" discovery from the state. Advises they have a <sup>possible</sup> conflict w/ this case. Advises the "CI" in this case may have been in

drug court. Makes motion to withdraw. State gives position.

CC: LINDY Court grants motion & appt's new counsel. Court finds TRIAL DATE STRICKEN adequate cause to continue trial dates.

# APPENDIX - E

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CLALLAM CO CLERK

2009 SEP 24 P 2: 15

BARBARA CHRISTENSEN

SCANNED - 1

CLALLAM COUNTY SUPERIOR COURT  
CRIMINAL MINUTES

CAUSE# 10-1-00302-8  
CAUSE#

NAME: KOROSHES, JOSEPH

APPEARING:  YES NO IN CUSTODY: YES  NO

H GASNICK \_\_\_\_\_ J HAYDEN \_\_\_\_\_ P JACKSON \_\_\_\_\_  
L OAKLEY \_\_\_\_\_ C COMMERE \_\_\_\_\_ A STALKER \_\_\_\_\_

OTHERS APPEARING L. Freedman

COURTROOM: 1  
DATE: SEPTEMBER 24<sup>TH</sup>, 2010  
JUDGE: KEN WILLIAMS  
CLERK: NIKKI JHRIG  
REPORTER: 2:01:11 | 2:04:51

D KELLY \_\_\_\_\_ E SOUBLET \_\_\_\_\_  
A LUNDWALL \_\_\_\_\_  
J ESPINOZA \_\_\_\_\_ J TROBERG X

CCO: \_\_\_\_\_  
P KAYS \_\_\_\_\_

**INITIAL APPEARANCE**

\_\_\_\_\_ ORD DETERMINING PROBABLE CAUSE/PRELIMINARY APPEARANCE  
\_\_\_\_\_ INFORMATION FURNISHED TO DEFENDANT  
\_\_\_\_\_ ACKNOWLEDGEMENT OF DEF'S RIGHTS  
\_\_\_\_\_ APPT'D PUBLIC DEFENDER/CONFLICT \_\_\_\_\_  
\_\_\_\_\_ ORD ON COND OF RELEASE/MOD \_\_\_\_\_ DEF ADVISED  
\_\_\_\_\_ FILE INFORMATION \_\_\_\_\_ @ 1:00 3:00  
\_\_\_\_\_ ARRAIGNMENT \_\_\_\_\_ @ 9:00 1:30  
\_\_\_\_\_ BASED ON DEF'S CRIMINAL OR WARRANT HISTORY / CHARGES ST RQ BAIL \$ \_\_\_\_\_

**ARRAIGNMENT/RESET**

\_\_\_\_\_ WAIVED READING INFORMATION  
\_\_\_\_\_ NOT GUILTY AS CHARGED  
\_\_\_\_\_ TRL SET ON \_\_\_\_\_ FOR \_\_\_\_\_ DAYS  
\_\_\_\_\_ STATUS HRG \_\_\_\_\_ @ 1:00 1:30 9:00  
\_\_\_\_\_ OR SETTING TRIAL & PRE-TRL HRGS/RESET  
\_\_\_\_\_ ORDER CONTINUING TRIAL  
\_\_\_\_\_ DEF ADVISED OF STATUS/TRIAL DATES

**STATUS/COP**

\_\_\_\_\_ READINESS ORDER  
\_\_\_\_\_ PLEA OFFER ACCEPTED/REJECTED  
\_\_\_\_\_ STATEMENT OF DEFENDANT ON PLEA OF GUILTY  
\_\_\_\_\_ COP & SENTENCING SET ON \_\_\_\_\_ @ 9:00 1:00 3:00

**SENTENCING**

\_\_\_\_\_ JUDGMENT & SENTENCE  
\_\_\_\_\_ WARRANT OF COMMITMENT  
\_\_\_\_\_ NOTIFICATION OF FIREARMS  
\_\_\_\_\_ OR PLACING DEF ON PAY/APPEAR PRG  
\_\_\_\_\_ NO CONTACT OR/DEF ADVISED & SERVED  
\_\_\_\_\_ ORDER FOR RESIDENTIAL TREATMENT  
\_\_\_\_\_ ORDER FOR DOSA EVAL/PSI REPORT

**MISC**

\_\_\_\_\_ ORDER FOR BW  
\_\_\_\_\_ OR QUASHING BW  
\_\_\_\_\_ DRUG COURT CONTRACT  
\_\_\_\_\_ DIVERSION AGREEMENT/ORDER  
\_\_\_\_\_ OR SETTING RST/DISBURSE FUNDS  
\_\_\_\_\_ DEFENDANT FAILS TO APPEAR, OR FOR BW SIGNED WITH BAIL SET AT \$ \_\_\_\_\_  
\_\_\_\_\_ STATE GIVES NOTICE THAT A BAIL JUMP CHARGE MAY BE FILED \_\_\_\_\_

COURT SIGNED: \_\_\_\_\_

Status / Trial Reset

NEXT HRG DATE: 10-8-10 @ 1:30 DEF ADV OF DATE/TIME X

REV TRTMT/CSW/RESTITUTION \_\_\_\_\_ DEF ADVISED \_\_\_\_\_

THIS MATTER CAME ON FOR: STATUS/TRIAL RESET

MINUTES: Defense counsel makes motion to set matter over 2 wks. Advises of issues regarding a CI. Advises case may need to be consolidated. State has no objections.

CC: LINDY  
TRIAL DATE STRICKEN \_\_\_\_\_

# APPENDIX - F

SCANNED -2

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

FILED  
CLALLAM CO CLERK  
2009 SEP 28 A 8 52

STATE OF WASHINGTON  
Plaintiffs(s)

vs.

JOSEPH KOROSHES  
Defendant(s)

No. 10-1-00302-8 BARBARA CHRISTENSEN  
MOTION FOR WITHDRAWAL OF  
COUNSEL AND CERTIFICATION FOR  
APPEAL AND DECLARATION OF  
COUNSEL

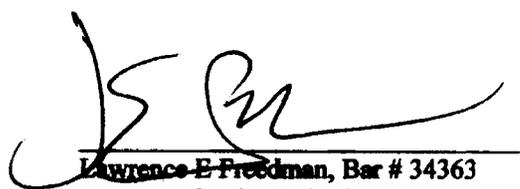
Comes now the Defendant, by Counsel, and moves the Court for a to allow Counsel to withdraw and further to Certify this case for Appeal of ethical issues and in support thereof declares the following:

1. On the 2<sup>nd</sup> of September, Lawrence E. Freedman was appointed to represent the Defendant in the above styled cause. After reviewing all of the discovery, it became clear that the case would be greatly influenced by the confidential informant and that informant's credibility.
2. A plea agreement was tendered to Counsel and the Defendant which was "conditioned on the Defendant not demanding the identity of the CI. The State will comply with a demand for the CI identity but once the CI's identity is disclosed the offer is withdrawn and the State will proceed to trial as charged."
3. Counsel by this limitation is not able to ascertain whether there is a conflict with prior representation and further is not able to adequately advise the Client as to the case against him, the strengths or weakness of the State case and is not able to carry out the Attorney's duties to his client by advising anything relative to the plea offer without being in violation of the ethical duties.

For these reasons, Lawrence E. Freedman, Attorney for the Defendant, hereby moves to be allowed to withdraw as Counsel and that the issue at hand be Certified for Appeal to determine the issues set out herein.

I, Lawrence E. Freedman, do hereby declare under penalty of perjury that the foregoing is true to the best of my knowledge and belief.

Dated this 28 day of September, 2010



Lawrence E. Freedman, Bar # 34363  
Attorney for the Defendant  
325 East Washington Street #214  
Sequim, Washington 98382  
360-809-0164 (Telephone Number)

1  
2  
3 **CERTIFICATE OF SERVICE**

4 I certify under penalty of perjury under the laws of the State of Washington that, on the date(s) stated  
5 below, I did the following:

6 On the 28 day of September, 2010 I hand-delivered a copy of the foregoing Motion for Withdrawal of  
7 Counsel and Certification for Appeal to John Troberg, Deputy Prosecuting Attorney at the following  
8 address: Clallam County Courthouse 223 East Fourth Street, Port Angeles, Washington 98362

9  
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11 Lawrence E. Freedman Bar # 34363  
12 Attorney for the Defendant  
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# APPENDIX - G

FILED  
CLALLAM CO CLERK

2010 OCT -8 P 3:06

BARBARA CHRISTENSEN

SCANNED - 1

CLALLAM COUNTY SUPERIOR COURT  
CRIMINAL MINUTES

COURTROOM 1 (2) 3

DATE: **OCTOBER 8, 2010**

JUDGE: **KEN WILLIAMS**

CLERK: **SERENA GORSS**

RPRTR: **LISA MCANENY 2:08/2:13**

CAUSE# **10-1-00302-8**

CAUSE#

NAME: **KOROSHES, JOSEPH**

APPEARING: (YES) NO IN CUSTODY: YES (NO)

H GASNICK \_\_\_\_\_ J HAYDEN \_\_\_\_\_ P JACKSON \_\_\_\_\_  
L OAKLEY \_\_\_\_\_ A STALKER \_\_\_\_\_ C COMMERE \_\_\_\_\_

OTHERS APPEARING L Freedman

D KELLY \_\_\_\_\_  
A LUNDWALL \_\_\_\_\_  
E SOUBLET \_\_\_\_\_  
J TROBERG ✓ \_\_\_\_\_  
J ESPINOZA \_\_\_\_\_  
CCO: \_\_\_\_\_  
P KAYS \_\_\_\_\_

**INITIAL APPEARANCE**

\_\_\_\_\_ ORD DETERMINING PROBABLE CAUSE/PRELIMINARY APPEARANCE  
\_\_\_\_\_ INFORMATION FURNISHED TO DEFENDANT  
\_\_\_\_\_ ACKNOWLEDGEMENT OF DEF'S RIGHTS  
\_\_\_\_\_ APPT'D PUBLIC DEFENDER/CONFLICT \_\_\_\_\_  
\_\_\_\_\_ ORD ON CONDITIONS OF RELEASE/MOD \_\_\_\_\_ DEF ADVISED  
\_\_\_\_\_ FILE INFORMATION \_\_\_\_\_ @ 1:00 3:00  
\_\_\_\_\_ ARRAIGNMENT \_\_\_\_\_ @ 9:00 1:30  
\_\_\_\_\_ BASED ON DEF'S CRIMINAL OR WARRANT HISTORY/CHARGES ST RQ BAIL \$ \_\_\_\_\_

**ARRAIGNMENT/RESET**

\_\_\_\_\_ WAIVED READING INFORMATION  
\_\_\_\_\_ NOT GUILTY AS CHARGED  
✓ TRL SET ON 11-22-10 FOR 2 DAYS  
\_\_\_\_\_ STATUS HRG \_\_\_\_\_ @ 1PM 1:30  
✓ OR SETTING TRIAL & PRE-TRL HRGS (RESET)  
\_\_\_\_\_ ORDER CONTINUING TRIAL

**STATUS/COP**

\_\_\_\_\_ PLEA OFFER ACCEPTED/REJECTED  
\_\_\_\_\_ READINESS ORDER  
\_\_\_\_\_ STATEMENT OF DEFENDANT ON PLEA OF GUILTY  
\_\_\_\_\_ CHANGE OF PLEA SET ON \_\_\_\_\_ @ 9:00 1:00 3:00

**SENTENCING**

\_\_\_\_\_ JUDGMENT & SENTENCE  
\_\_\_\_\_ WARRANT OF COMMITMENT  
\_\_\_\_\_ NOTIFICATION OF FIREARMS  
\_\_\_\_\_ OR PLACING DEF ON PAY/APPEAR PRG  
\_\_\_\_\_ NO CONTACT OR/DEF ADVISED & SERVED  
\_\_\_\_\_ ORDER FOR RESIDENTIAL TREATMENT  
\_\_\_\_\_ ORDER FOR DOSA EVAL/PSI REPORT

**MISC**

\_\_\_\_\_ OR QUASHING BW  
\_\_\_\_\_ DRUG COURT CONTRACT  
\_\_\_\_\_ DIVERSION AGREEMENT/ORDER  
\_\_\_\_\_ OR SETTING RST/DISBURSE FUNDS  
\_\_\_\_\_ DEFENDANT FAILS TO APPEAR, OR FOR BW SIGNED WITH BAIL SET AT \$ \_\_\_\_\_  
\_\_\_\_\_ STATE GIVES NOTICE THAT A BAIL JUMP CHARGE MAY BE FILED

**COURT SIGNED:**

Revised to  
Next Hearing Date: Oct 10-22-10 @ 1:30 DEF ADV OF DATE/TIME ✓

THIS MATTER CAME ON FOR: **MT FOR W/D OF COUNSEL**

MINUTES: Defense is moving to withdraw - or have a  
certified appeal - state feels the Court should deny  
the motion before it can go to appeal. Court denies  
the request to withdraw & will allow to go to appeal.

CC: LINDY \_\_\_\_\_  
TRIAL STRICKEN \_\_\_\_\_

# APPENDIX - H

FILED  
CLALLAM CO CLERK

2010 OCT 14 P 12:20

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLALLAM BARBARA CHRISTENSEN

STATE OF WASHINGTON,

NO. 10-1-00302-8

Plaintiff,

MOTION TO STAY PROCEEDINGS  
PENDING PETITION FOR DISCRETION-  
ARY REVIEW AND MOTION FOR CERTI-  
FICATION INVOLVING A CONTROL-  
LING QUESTION OF LAW AS TO WHICH  
THERE IS SUBSTANTIAL GROUND FOR  
A DIFFERENCE OF OPINION

vs.

JOSEPH KOROSHES,

Defendant.

MOTION

COMES NOW, the defendant, Joseph Koroshes, through his attorney, and moves this court to stay the proceedings pending a decision of the Court of Appeals on Defendant/Petitioner's Petition for Discretionary Review. Counsel further moves this court to certify this case to Division II of the Court of Appeals on the basis of RAP 2.3(b)(4); certifying that this case involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

BASIS

Counsel, on behalf of Mr. Koroshes, has taken the unusual step of seeking discretionary review from the Court of Appeals on this Honorable Court's decision on counsel's Defense Motion to Withdraw.

Briefly, counsel's position is that the State's offer has put counsel in a position where he cannot give effective assistance to Mr. Koroshes due to the restrictions placed on the plea offer made by the State. This court ruled on October 8, 2010, on counsel's motion to withdraw and held that advising Mr. Koroshes to accept the existing plea offer, make a counteroffer, or reject the offer and proceed to trial would not constitute ineffective assistance of counsel under *State v. A.N.J.*, 168 Wn.2d 91, 225 P.3d 956 (2010).

1 - MOTION TO STAY PROCEEDINGS PENDING  
PETITION FOR DISCRETIONARY REVIEW  
AND FOR CERTIFICATION

Lawrence E. Freedman  
Attorney at Law Bar #34363  
325 East Washington St. #214  
Sequim. Wa 98382

SCANNED ✓

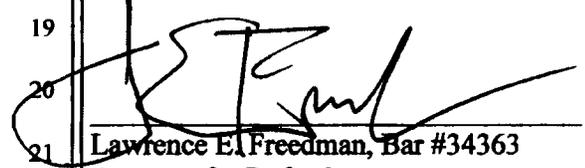
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Mr. Koroshes is seeking review of that decision with a Petition for Discretionary Review in the Court of Appeals, Division II. In order to have effective review of this decision by the Court of Appeals, if the Court of Appeals accepts review, the matter must be stayed and this Court's order must be stayed. Therefore, the defense moves that the above captioned case be stayed until the Court of Appeals can decide whether to accept review.

The defense further moves this court to certify the case to the Court of Appeals under RAP 2.3(b)(4) as involving a controlling question of law with substantial grounds for difference of opinion. Because the State has indicated it is the official policy of the Clallam County Prosecutor's Office to proceed with offers conditioned on not knowing the identity of a confidential informant, counsel anticipates this issue will come before the Court again. To preserve judicial economy, and obviate the need to preserve the record on each and every case with this issue that comes before this Court, the defense asks the Court to certify this case for review by the Court of Appeals. Because the motion is primarily based on the RPC, counsel believes without guidance from a higher court, counsel could be risking a breach of the RPC to not move to withdraw when this issue again arises. A higher court decision could create published authority on the limits of the duty to investigate set forth in *A.N.J.* For those reasons, and especially in order to preserve judicial economy and efficient use of the courts, the defense requests that this Court certify the question to the Court of Appeals, Division II, as a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

Presented by:



Lawrence E. Freedman, Bar #34363  
Attorney for Defendant

10-13-10

# APPENDIX - I

SHINING  
FILED  
CLALLAM CO CLERK  
2010 OCT 22 P 2:53  
BARBARA CHRISTENSEN

SCANNED - 1  
CLALLAM COUNTY SUPERIOR COURT  
CRIMINAL MINUTES

CAUSE# 10-1-00302-8  
CAUSE#

NAME: KOROSHES, JOSEPH

APPEARING: YES NO IN CUSTODY: YES NO

H GASNICK \_\_\_\_\_ J HAYDEN \_\_\_\_\_ P JACKSON \_\_\_\_\_  
L OAKLEY \_\_\_\_\_ C COMMERE \_\_\_\_\_ A STALKER \_\_\_\_\_

OTHERS APPEARING L. Freedman

COURTROOM: 1  
DATE: OCTOBER 22<sup>nd</sup>, 2010  
JUDGE: GEORGE L WOOD  
CLERK: NIKKI IHRIG  
REPORTER: 2:25:26 / 2:29:52

D KELLY \_\_\_\_\_ E SOUBLET \_\_\_\_\_  
A LUNDWALL \_\_\_\_\_  
J ESPINOZA \_\_\_\_\_ J TROBERG X

CCO: \_\_\_\_\_  
P KAYS \_\_\_\_\_

**INITIAL APPEARANCE**

\_\_\_\_\_ ORD DETERMINING PROBABLE CAUSE/PRELIMINARY APPEARANCE  
\_\_\_\_\_ INFORMATION FURNISHED TO DEFENDANT  
\_\_\_\_\_ ACKNOWLEDGEMENT OF DEF'S RIGHTS  
\_\_\_\_\_ APPT'D PUBLIC DEFENDER/CONFLICT \_\_\_\_\_  
\_\_\_\_\_ ORD ON COND OF RELEASE/MOD \_\_\_\_\_ DEF ADVISED  
\_\_\_\_\_ FILE INFORMATION \_\_\_\_\_ @ 1:00 3:00  
\_\_\_\_\_ ARRAIGNMENT \_\_\_\_\_ @ 9:00 1:30  
\_\_\_\_\_ BASED ON DEF'S CRIMINAL OR WARRANT HISTORY / CHARGES ST RQ BAIL \$

**ARRAIGNMENT/RESET**

\_\_\_\_\_ WAIVED READING INFORMATION  
\_\_\_\_\_ NOT GUILTY AS CHARGED  
\_\_\_\_\_ TRL SET ON \_\_\_\_\_ FOR \_\_\_\_\_ DAYS  
\_\_\_\_\_ STATUS HRG \_\_\_\_\_ @ 1:00 1:30 9:00  
\_\_\_\_\_ OR SETTING TRIAL & PRE-TRL HRGS/RESET  
\_\_\_\_\_ ORDER CONTINUING TRIAL  
\_\_\_\_\_ DEF ADVISED OF STATUS/TRIAL DATES

**STATUS/COP**

\_\_\_\_\_ READINESS ORDER  
\_\_\_\_\_ PLEA OFFER ACCEPTED/REJECTED  
\_\_\_\_\_ STATEMENT OF DEFENDANT ON PLEA OF GUILTY  
\_\_\_\_\_ COP & SENTENCING SET ON \_\_\_\_\_ @ 9:00 1:00 3:00

**SENTENCING**

\_\_\_\_\_ JUDGMENT & SENTENCE  
\_\_\_\_\_ WARRANT OF COMMITMENT  
\_\_\_\_\_ NOTIFICATION OF FIREARMS  
\_\_\_\_\_ OR PLACING DEF ON PAY/APPEAR PRG  
\_\_\_\_\_ NO CONTACT OR/DEF ADVISED & SERVED  
\_\_\_\_\_ ORDER FOR RESIDENTIAL TREATMENT  
\_\_\_\_\_ ORDER FOR DOSA EVAL/PSI REPORT

**MISC**

\_\_\_\_\_ ORDER FOR BW  
\_\_\_\_\_ OR QUASHING BW  
\_\_\_\_\_ DRUG COURT CONTRACT  
\_\_\_\_\_ DIVERSION AGREEMENT/ORDER  
\_\_\_\_\_ OR SETTING RST/DISBURSE FUNDS  
\_\_\_\_\_ DEFENDANT FAILS TO APPEAR, OR FOR BW SIGNED WITH BAIL SET AT \$  
\_\_\_\_\_ STATE GIVES NOTICE THAT A BAIL JUMP CHARGE MAY BE FILED

**COURT SIGNED:**

\_\_\_\_\_ mt to stay / mt to find  
independency  
**NEXT HRG DATE:** 10/29/10 @ 1:30 DEF ADV OF DATE/TIME X

**REV TRIMNT/CSW/RESTITUTION** \_\_\_\_\_ **DEF ADVISED** \_\_\_\_\_

**THIS MATTER CAME ON FOR:** MT TO STAY/MT TO FIND INDEGENCY

**MINUTES:** Defense makes motion for court to certify. State advises they have not filed a brief at this point. Court sets matter over 1wk to allow judge Williams to sign order denying motion. Defendants appearance is waived.

**CC:** LINDY  
**TRIAL DATE STRICKEN** \_\_\_\_\_

# APPENDIX - J

SCANNED - 8

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STATE OF WASHINGTON ) AFFIDAVIT  
COUNTY OF CLALLAM ) ss. OF MAILING

The undersigned, being first duly sworn on oath, states that on the 28<sup>th</sup> day of Oct, 2010, affiant states she deposited in box at Clerk's Office Larry Freedman, directed to counsel of record: L. Freedman, containing a copy of the accompanying document(s).

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

DATED at Port Angeles, WA, this 28<sup>th</sup> day of Oct, 2010.

*[Signature]*  
~~Linda J. Mayberry Deborah O'Brien~~

FILED  
CLALLAM CO CLERK  
2010 OCT 28 P 12:09  
BARBARA CHRISTENSEN

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

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
JOSEPH KOROSHES,  
  
Defendant.

NO. 10-1-00302-8

STATE'S RESPONSE TO  
DEFENSE COUNSEL'S MOTION  
TO WITHDRAW

COMES NOW, the Plaintiff, State of Washington, by and through John Troberg, Deputy Prosecuting Attorney for Clallam County, Washington, and requests the Court deny the defense counsel's withdrawal on the bases asserted by defense counsel. This response is based on the following Declaration of Counsel and legal argument.

**DECLARATION OF COUNSEL**

STATE OF WASHINGTON )  
: ss.  
County of Clallam )

I, JOHN TROBERG, declare the following:

1. That I am a Deputy Prosecuting Attorney in and for Clallam County, Washington, and I am familiar with this case and cause number;
2. That I prepared a written plea proposal in this matter filed on August 19, 2010.

1 - STATE'S RESPONSE TO DEFENSE  
COUNSEL'S MOTION TO WITHDRAW

CLALLAM COUNTY  
PROSECUTING ATTORNEY  
Clallam County Courthouse  
223 East Fourth Street, Suite 11  
Port Angeles, Washington 98362-3015  
(360) 417-2301 FAX 417-2469

1 3. That, in the course of discovery, defense counsel sought the identity of the  
2 confidential informant involved in this case;

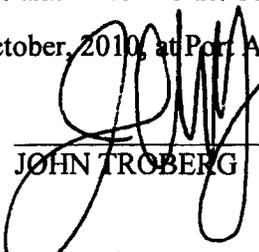
3 4. That our office responded that the office policy in all cases involving a  
4 confidential informant is to provide a plea offer at the lower end of the sentencing range. If the  
5 offer is not accepted and the Defendant still seeks the identity of the confidential informant, the  
6 office policy is to withdraw the plea offer and proceed to trial.

7 5. Protecting the identity of the confidential informant is a serious responsibility.  
8 If the confidential informant's identity is provided to the defendant, the State's legitimate  
9 interest in protecting the identity of the confidential informant is compromised.

10 6. If, however, the Defendant seeks to proceed to trial, the confidential informant's  
11 identity will be disclosed in the course of discovery. The State will in no manner interfere  
12 with the Defendant's right to full discovery in the event of a trial.

13 I CERTIFY (or declare) under penalty of perjury under the laws of the State of  
14 Washington that the foregoing is true and correct to the best of my knowledge.

15 Executed this 27th day of October, 2010, at Port Angeles, Washington.

  
\_\_\_\_\_  
JOHN TROBERG

WBA# 11548

16 SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of October, 2010.

17  
18 \_\_\_\_\_  
19 (PRINTED NAME:) Linda J. Mayberry  
20 NOTARY PUBLIC in and for the State of Washington  
21 Residing at Port Angeles, Washington  
22 My commission expires: 10/30/2011

ARGUMENT

**I. THE COURT SHOULD DENY THE DEFENSE MOTION TO WITHDRAW UNLESS THE COURT FINDS A DIFFERENT BASIS FOR WITHDRAWAL**

The decision whether a defense attorney should be allowed to withdraw prior to trial because defense counsel or Defendant claims a conflict of interest is addressed by the trial court using a two prong analysis: The attorney must withdraw if (1) the Court knows of an actual conflict or (2) the Court reasonably should know of a conflict. The mere possibility of a conflict of interest is not sufficient. *State v. Davis*, 141 Wn.2d 798, 861, 10 P.2d 977 (2000). The State contends that there is neither an actual conflict nor the possibility of a conflict of interest because the Defendant is not entitled to a plea offer. The State further contends there is neither a violation of a Defendant's constitutional rights nor ineffective assistance of counsel if the Defendant accepts a plea bargain without knowing the identity of the confidential informant.

Defense counsel posits that a conflict exists because counsel's failure to obtain the confidential informant's identity precludes his ability to evaluate whether the client should accept the plea offer; i.e. forces counsel to render ineffective assistance. Counsel cites to *State v. A.N.J.*, 168 Wn.2d 91, 225 P.3d 956 (2010), as support for the argument that defense counsel is ineffective unless counsel conducts an investigation before agreeing to plead a client guilty. That is not what the case held. Relying on *in re Brett*, 142 Wn.2d 868, 882-83, 16 P.3d 601 (2001), the Supreme Court held that the failure to investigate, "at least when coupled with other defects, can amount to ineffective assistance of counsel." *State v. A.N.J.*, at page 110.

The State asserts that defense counsel will be able to investigate every aspect of the case except the identity of the confidential informant. Based upon the totality of the investigation, counsel can make an informed decision without knowing the identity of the confidential informant. The State is not denying counsel information that automatically triggers a claim of ineffective assistance of counsel.

For example, in *U.S. v. Ruiz*, 536 U.S. 622, 628-33, 122 S. Ct. 2450, 2453 (2002), the

1 details of the plea proposal required the defendant to waive the right to receive impeachment  
 2 information relating to any informants or other witnesses as well as the right to receive infor-  
 3 mation supporting any affirmative defense the defendant might assert at trial. Because Ruiz  
 4 would not agree to this waiver, the prosecutors withdrew their plea proposal. Later, in the  
 5 absence of any agreement, Ruiz pleaded guilty. At sentencing, Ruiz asked the judge to grant  
 6 her the same downward departure that the government would have recommended had she  
 7 accepted the original agreement. The government opposed her request, and the District Court  
 8 denied it, imposing a standard Guideline sentence instead.

9 The Ninth Circuit reversed, holding that a guilty plea is involuntary unless the govern-  
 10 ment disclosed the same impeachment information it would have had to provide had the  
 11 defendant insisted upon a trial. *United States v. Ruiz*, 241 F.3d, 1157 (2001).

12 The U.S. Supreme Court reversed the Ninth Circuit and held the Constitution does not  
 13 require the Government to disclose material impeachment evidence prior to entering a plea  
 14 agreement with a criminal defendant. *Id.* at 633.

15 The U.S. Supreme Court recognized that the plea proposal required the defendant to  
 16 waive a right the Constitution provides as part of its basic "fair trial" guarantee, but it opined  
 17 that a defendant could make a knowing, intelligent and voluntary plea without information  
 18 about impeachment evidence and possible affirmative defenses. *Id.* at 628-33. In reaching its  
 19 conclusion, the Supreme Court noted these main points: First, impeachment information is  
 20 special in relation to the *fairness of a trial*, not in respect to whether a plea is *voluntary*. *Id.* at  
 21 629-30. Secondly, the Supreme Court found no legal authority to support the decision reached  
 22 by the Ninth Circuit. *Id.* at 630.

23 Here, as we have just pointed out, the added value of the Ninth Circuit's  
 24 "right" to a defendant is often limited, for it depends upon the defendant's  
 25 independent awareness of the details of the Government's case. [ ]At the  
 same time, a constitutional obligation to provide impeachment information  
 during plea bargaining, prior to entry of a guilty plea, could seriously  
 interfere with the Government's interest in securing those guilty pleas that  
 are factually justified, desired by defendants, and help to secure the  
 efficient administration of justice.

1 *Id.* at 631.

2 The Washington State Supreme Court came to the same conclusion in *State v. Moen*,  
3 150 Wn.2d 221, 230-1, 76 P.2d 721 (2003):

4 We recognize that the prosecutor's policy requires the defendant to forgo  
5 his right to request disclosure of an informant's identity. However, a  
6 condition insisted on by the State that requires a defendant to give up a  
7 constitutional right does not, by itself, violate due process. "Agreements  
8 to forgo seeking an exceptional sentence, to decline prosecuting all  
9 offenses, to pay restitution on uncharged crimes, and to waive the right to  
10 appeal are all permissible components of valid plea agreements." *State v.*  
11 *Lee*, 132 Wash.2d 498, 506, 939 P.2d 1223 (1997); *see State v. Perkins*,  
12 108 Wash.2d 212, 737 P.2d 250 (1987). The theoretical basis for all plea  
13 bargaining is that defendants will agree to waive their constitutional rights.  
14 *Perkins*, 108 Wash.2d at 217, 737 P.2d 250.

15 *Ruiz* and *Moen* should assuage any concerns Defense Counsel has that they are  
16 ineffectively assisting their client if the State offers them a plea offer without the identity of the  
17 confidential informant. Both the state and the federal system allow a plea on less than full  
18 disclosure. Defense counsel still has an obligation to explain their concerns to their client. It is  
19 ultimately the client's decision on how to proceed after being told the offer is made without the  
20 identity of the informant.

21 **THE STATE'S POLICY IS NOT A VIOLATION OF**  
22 **DUE PROCESS**

23 Defense counsel errs when it cites to *Moen* to support its proposition that the State's  
24 plea offer creates due process issues.

25 The facts in *Moen* are instructive. The Defendant successfully compelled the  
informant's name from Spokane County in order to contest a civil forfeiture brought by  
Spokane City. Spokane County warned the Defendant that there would be no plea negotiations  
involving a potential reduction or dismissal of any subsequent felony charge if the Defendant  
learned the identity of the confidential informant. The Defendant was charged by Spokane  
County and convicted. The Defendant moved for dismissal, claiming the State's policy of

1 refusing to plea bargain violated his right to due process because it chilled his right to discovery  
 2 in a civil case. *Moen*, 150 Wn.2d 224. The trial court refused to grant the motion to dismiss.  
 3 The defendant argued on appeal the county was, in effect, punishing him for seeking the  
 4 confidential informant's identification. Both the Court of Appeal, Division Three<sup>1</sup> and the  
 5 Supreme Court disagreed with the defendant. The Supreme Court held there was no due  
 6 process violation and the State's policy was not prosecutorial misconduct.

7 Defense counsel in the present case was told that it is the policy of the Clallam County  
 8 Prosecutor's Office not to identify the confidential informant if the Defendant does not elect to  
 9 go to trial. If there was no due process violation in *Moen*, there certainly is no due process  
 10 violation here because (1) the Prosecutor's Office has a policy that it consistently follows and  
 11 (2) the Defendant is not seeking the confidential informant's identity for any other purpose than  
 12 the criminal case. As in *Moen*, where there was no due process violation when Spokane  
 13 County would not plea bargain once it released the confidential informant's name, there is no  
 14 due process violation here.

15 **THE STATE HAS NO OBLIGATION TO PROVIDE A**  
 16 **PLEA BARGAIN**

17 A criminal defendant has no constitutional right to a plea bargain. *State v. Wheeler*, 95  
 18 Wn.2d 799, 804, 631 P.2d 376, 379 (1981); *State v. Bogart*, 57 Wn. App. 353, 356, 788 P.2d  
 19 14, 15 (1990). The State may revoke any plea proposal offered to a criminal defendant until  
 20 such time as the defendant enters a plea or has made some act in detrimental reliance upon the  
 21 offer. *Wheeler*, 95 Wn.2d at 804-5; *Bogart*, 57 Wn. App. at 356.

22 As *Moen* clearly points out, the State has no obligation to provide a plea bargain, citing  
 23 to *Weatherford v. Bursley*, 429 U.S. 545, 561, 97 S.Ct. 837, 51 L.Ed.2d 30 (1977). *Weatherford*  
 24 affirmed at page 561, "[ ] there is no constitutional right to [a] plea bargain . . ." Because there  
 25 is no constitutional right to be provided with a plea bargain, no constitutional issue arises if the

---

26 <sup>1</sup> *State v. Moen*, 110 Wn.App. 125, 38 P.3d 1049 (2002).

1 State provides a plea bargain that the State considers a good bargain from its perspective. The  
2 important policy considerations provided next show that the State's offer to divulge the name  
3 of the confidential informant only if the matter will be tried is sound.

4 **THE STATE HAS A VALID REASON FOR REFUSING TO**  
5 **DIVULGE THE NAME OF THE CONFIDENTIAL INFORMANT**  
6 **EXCEPT FOR TRIAL PURPOSES**

7 *Weatherford* is instructive for another reason. In *Weatherford*, the Defendant  
8 complained that the government's undercover agent (the confidential informant) lied about his  
9 identity to defense counsel and about whether he would testify on behalf of the Defendant at  
10 trial. The undercover agent maintained his false identity until trial and then testified on behalf  
11 of the government. The Supreme Court found no error in the agent's refusal to provide his true  
12 identity:

13 Moreover, if the informant must confess his identity when confronted by  
14 an arrested defendant, in many cases the agent in order to protect himself  
15 will simply disappear pending trial, before the confrontation occurs. In  
16 the last analysis however, the undercover agent who stays in place and  
17 continues his deception merely retains the capacity to surprise; and unless  
18 the surprise witness or unexpected evidence is, without more, a denial of  
19 constitutional rights, Bursey was not denied a fair trial.

20 *Weatherford*, 545 U.S. at 560. Maintaining the confidentiality of the informant's name  
21 is important to protect the confidential informant's ability to continue assisting law enforce-  
22 ment.

23 The State's interest in protecting the identity of the confidential informant was also  
24 addressed in *Moen*, at page 230. Citing to *State v. Casal*, 103 Wn.2d 812, 815, 699 P.2d 1234  
25 (1985) and CrR 4.7(f)(2), the Supreme Court expressed why the State would adopt a policy  
protecting the identity of the confidential informant: (1) As a disincentive to defendants consi-  
dering whether to compel disclosure of confidential informants; and (2) Protect a valuable asset  
or tool of law enforcement. Based upon the clear authority cited by the State, the State is  
unwilling to divulge the confidential informant's name unless the Defendant rejects the State's

1 plea offer.

2 **CONCLUSION**

3 For the reasons stated above, the State respectfully requests that the Court deny the  
4 Defendant's motion to withdraw .

5 RESPECTFULLY SUBMITTED this 27th day of October, 2010.

6 DEBORAH S. KELLY, Prosecuting Attorney

7  
8 JOHN TROBERG WBA# 11548  
Deputy Prosecuting Attorney

9 /ljm

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8 - STATE'S RESPONSE TO DEFENSE  
COUNSEL'S MOTION TO WITHDRAW

CLALLAM COUNTY  
PROSECUTING ATTORNEY  
Clallam County Courthouse  
223 East Fourth Street, Suite 11  
Port Angeles, Washington 98362-3015  
(360) 417-2301 FAX 417-2469

# APPENDIX - K

FILED  
CLALLAM CO CLERK

2000 OCT 29 P 3 13

BARBARA CHRISTENSEN

SCANNED - 2  
CLALLAM COUNTY SUPERIOR COURT  
CRIMINAL MINUTES

COURTROOM 2

CAUSE# 10-1-00302-8  
CAUSE# \_\_\_\_\_

DATE: OCTOBER 29, 2010  
JUDGE KEN WILLIAMS  
CLERK: S. GORSS  
REPORTER: LISA MCANENY  
FROM 2:16 TO 2:26

NAME: KOROSHES, JOSEPH

APPEARING:  YES  NO IN CUSTODY: YES  NO

D KELLY \_\_\_\_\_ A LUNDWALL \_\_\_\_\_  
E SOUBLET \_\_\_\_\_ S. HOWELL \_\_\_\_\_  
J TROBERG  \_\_\_\_\_  
J ESPINOZA \_\_\_\_\_

H GASNICK \_\_\_\_\_ J HAYDEN \_\_\_\_\_ J FESTE \_\_\_\_\_  
L OAKLEY \_\_\_\_\_ P. L. JACKSON \_\_\_\_\_ A. STALKER \_\_\_\_\_

OTHERS APPEARING L Freedman

CCO: \_\_\_\_\_  
P KAYS \_\_\_\_\_

**INITIAL APPEARANCE**

\_\_\_\_\_ ORD DETERMINING PROBABLE CAUSE/PRELIMINARY APPEARANCE  
\_\_\_\_\_ INFORMATION FURNISHED TO DEFENDANT  
\_\_\_\_\_ ACKNOWLEDGEMENT OF DEF'S RIGHTS  
\_\_\_\_\_ APPT'D PUBLIC DEFENDER/CONFLICT \_\_\_\_\_  
 ORD ON CONDITIONS OF RELEASE/MODIFYING  
\_\_\_\_\_ FILE INFORMATION \_\_\_\_\_ @ 1:00 3:00  
\_\_\_\_\_ ARRAIGNMENT \_\_\_\_\_ @ 9:00 1:30

**ARRAIGNMENT/RESET**

\_\_\_\_\_ WAIVED READING INFORMATION  
\_\_\_\_\_ NOT GUILTY AS CHARGED  
\_\_\_\_\_ TRL SET ON \_\_\_\_\_ FOR \_\_\_\_\_ DAYS  
\_\_\_\_\_ STATUS HRG \_\_\_\_\_ @ 1PM 1:30  
\_\_\_\_\_ OR SETTING TRIAL & PRE-TRL HRGS/RESET  
\_\_\_\_\_ ORDER CONTINUING TRIAL  
\_\_\_\_\_ DEF ADVISED OF STATUS/TRIAL DATES

**STATUS/COP**

\_\_\_\_\_ PLEA OFFER ACCEPTED/REJECTED  
\_\_\_\_\_ READINESS ORDER  
\_\_\_\_\_ STATEMENT OF DEFENDANT ON PLEA OF GUILTY  
\_\_\_\_\_ CHANGE OF PLEA SET ON \_\_\_\_\_ @ 9:00 1:00 3:00

**SENTENCING**

\_\_\_\_\_ JUDGMENT & SENTENCE  
\_\_\_\_\_ WARRANT OF COMMITMENT  
\_\_\_\_\_ NOTIFICATION OF FIREARMS  
\_\_\_\_\_ OR PLACING DEF ON PAY/APPEAR PRG  
\_\_\_\_\_ NO CONTACT ORDER/DEFENDANT SERVED  
\_\_\_\_\_ ORDER FOR RESIDENTIAL TREATMENT

**MISC**

\_\_\_\_\_ ORDER FOR BW  
\_\_\_\_\_ OR QUASHING BW  
\_\_\_\_\_ DRUG COURT CONTRACT  
\_\_\_\_\_ DIVERSION AGREEMENT/ORDER  
\_\_\_\_\_ OR SETTING RST/DISBURSE FUNDS

COURT SIGNED: wavier of extradition to St of WA  
wavier of speedy trial  
NEXT HEARING DATE: Review 6-10-10 @ 1:30 DEF ADVISED   
REV TRTMT/CSW/RESTITUTION \_\_\_\_\_ DEF ADVISED \_\_\_\_\_  
THIS MATTER CAME ON FOR: MTN TO STAY/OR OF INDIGENCY

\_\_\_\_\_ DEFENDANT FAILS TO APPEAR, OR FOR BW SIGNED WITH BAIL SET AT \$ \_\_\_\_\_  
\_\_\_\_\_ STATE GIVES NOTICE THAT A BAIL JUMP CHARGE MAY BE FILED \_\_\_\_\_

MINUTES: Mr. Freedman addresses the Court. State  
presents proposed order of continuance to object for the  
record. Mr. Freedman has no objections to the form.  
Mr. Freedman moves to modify conditions of release to go  
to alaska for work. State would not object as

CERTIFIED  
COPY

long as a waiver of extradition & waiver of speedy trial are signed. Court will grant the modification.

# APPENDIX - L

COPY

**BACKGROUND OF CONFIDENTIAL INFORMANT TFI-10-07**

ATTACHMENT "B"

WIRE ORDER NUMBER: OPNET-10- 422 - kw

In May, June and August of 2009 TFI-10-07 was arrested for the crimes of Residential Burglary, Possession of Burglary Tools, Burglary 2<sup>nd</sup> Degree, Theft 1<sup>st</sup> Degree and Violation of a Protection Order. TFI-10-07 retained counsel who contacted the Clallam County Prosecuting Attorney's Office and expressed an interest for TFI-10-07 to work for OPNET as a confidential informant in exchange for a potential plea agreement in the criminal cases pending against TFI-10-07.

OPNET detectives met with TFI-10-07, TFI-10-07's attorney and the Clallam County Prosecutor's Office. TFI-10-07 provided names of persons whom the informant knows are involved in the use, barter, purchase, and distribution of controlled substances, predominantly methamphetamine. However, the informant is also familiar with cocaine, marijuana, ecstasy, and various prescription pills, such as Methadone, Vicodin, Oxycodone, Percocet, etc. and their various methods of ingestion. Methods of ingestion for these controlled substances were explained by the informant from personal experience and observations as snorting, smoking, eating and injecting with hypodermic needles.

Two of the three suspects that TFI-10-07 told OPNET about that were involved in the use and distribution of controlled substances, OPNET knew of. OPNET has received information in the form of tips from a variety of sources whom TFI-10-07 was unaware of. The persons named by the informant were people he/she knew well, used illicit drugs with and was employed by for the purposes of selling illicit drugs.

**DRUG USE HISTORY OF INFORMANT TFI-10-07**

TFI-10-07 told Affiant and other OPNET detectives that he/she has used a variety of controlled substances in the past. TFI-10-07 stated he/she has used marijuana, methamphetamine, cocaine, ecstasy, and experimented with a variety of prescription pills. Methods of ingestion for these controlled substances were explained by TFI-10-07 to be snorting, smoking, eating and injecting with hypodermic needles.

TFI-10-07 told Affiant that their drug use started with marijuana at approximately the age of sixteen and continued until approximately the age of nineteen. During this time TFI-10-07 also sold marijuana in baggies called, "Twenty's and thirty's," which represented twenty and thirty dollar amounts, to support their marijuana habit.

At approximately seventeen years of age TFI-10-07 experimented with methamphetamine. TFI-10-07's use of methamphetamine started at a rate of twice per week and eventually TFI-10-07 used methamphetamine on a daily basis. At twenty years old, TFI-10-07 began to sell methamphetamine. TFI-10-07 said that he/she sold

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methamphetamine so TFI-10-07 would be able to, "Use for free." TFI-10-07's usage eventually escalated to 2 - 3 grams per day between the approximate ages of twenty-three and twenty-four years old.

At the approximate age of twenty four, TFI-10-07 was hospitalized for hallucinations induced by the over indulgence of drug use. Three days after being admitted to the hospital, TFI-10-07 woke up and shortly afterwards went into a drug treatment program. After the drug treatment program, TFI-10-07 lived in the area until the approximate age of twenty-six.

Just prior to age twenty-six, TFI-10-07 experienced a personal tragedy and TFI-10-07 began using and selling methamphetamine again. During this time TFI-10-07 was using an eighth of an ounce (3.5 grams) of methamphetamine daily. TFI-10-07 said that he/she sold approximately one pound of methamphetamine a month during this time period. Soon afterwards, TFI-10-07 was back in treatment and attending drug court.

TFI-10-07 attended drug court and stayed clean for approximately two and half years between the ages of twenty-six and twenty-eight and one half. However, at the conclusion of attending drug court, TFI-10-07 began selling marijuana. TFI-10-07 would buy pounds of marijuana, divide it into smaller quantities and sell ounce quantities for profit.

TFI-10-07 also got back into using methamphetamine and sold a ¼ pound of methamphetamine a week to support his one gram a day use. At twenty-nine years old TFI-10-07 met with people he had attended drug court with and continued selling ¼ pounds of methamphetamine for these people as well. TFI-10-07 continued to sell methamphetamine until TFI-10-07 was arrested for burglary in August of 2009. TFI-10-07 stated that since the first week of November 2009 he/she has not used controlled substances.

During meetings with TFI-10-07 and OPNET detectives, TFI-10-07 did not exhibit the physical indications of using controlled substances. TFI-10-07 appeared physically healthy, was alert and articulate.

#### **MOTIVATION OF INFORMANT TFI-10-07 TO WORK WITH OPNET**

TFI-10-07 told Affiant that controlled substances have affected him/her in a very adverse way. TFI-10-07 told Affiant that TFI-10-07 grew tired of the, "Drama," and headaches that are associated with the use and sales of controlled substances.

TFI-10-07 recently became a father. TFI-10-07 told Affiant that any reduction of sentence for his pending charges would allow for less time away from his family.

#### **CRIMINAL HISTORY OF TFI-08-07**

- 0 - Felony(s) convictions
- 0 - Gross Misdemeanor(s) convictions
- 0 - Misdemeanor(s) convictions

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- 1 - Classification(s) unknown-Domestic Violence Court Order Violation-08/07/2006.
- OPNET contract attached.

**TFI-10-07 ENTERS INTO CONTRACT WITH OPNET**

On March 4th, 2010 the assigned Prosecuting Attorney (John Troberg), OPNET detectives, TFI-10-07 and TFI-10-07's attorney agreed upon a contract, which was signed by all parties involved as part of a plea agreement. TFI-10-07 officially became a confidential informant and was given the moniker of TFI-10-07.

Attached is a copy of the contract that TFI-10-07, OPNET and the Clallam County Prosecutor's Officer have agreed to. The contract outlines the obligations of each party.

On Thursday March 11<sup>th</sup>, 2010, TFI-10-07 purchased methamphetamine from one of his three contractually obligated individuals at the direction of the Olympic Peninsula Narcotics Enforcement Team. This was a confidence buy that took place without the use of a transmitting device.

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# OPNET

OLYMPIC PENINSULA NARCOTICS  
ENFORCEMENT TEAM

# COPY

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## AGREEMENT

THIS AGREEMENT, ENTERED INTO THIS 4 DAY OF MARCH, 2010 BY AND BETWEEN CONFIDENTIAL INFORMANT, AND THE OLYMPIC PENINSULA NARCOTICS ENFORCEMENT TEAM, and the CLALLAM COUNTY PROSECUTOR'S OFFICE EXECUTED AS FOLLOWS:

1. Confidential Informant agrees to do the following:
  - A. Confidential Informant will assist the Olympic Peninsula Narcotics Enforcement Team officers in actively seeking out persons involved in the sale, delivery or manufacture of a controlled substance or other illegal activity related to controlled substances or the seizure of controlled substances or the seizure of property which is used in the manufacture, housing, or transportation of controlled substances or actual cash that is the result of the sale of controlled substances.

Confidential Informant will be required to fulfill his/her obligation starting March 10, 2010 and continue for 90 days or until such time as all court proceedings in the cases described herein have been completed. Parties may extend the time for performance for reasonable grounds. During this time Confidential Informant will, at the direction of detectives of the Olympic Peninsula Narcotics Enforcement Team, conduct three (3) purchases of controlled substances from three (3) different individuals. Procedures will likely involve the wearing of a recording device and being videotaped. The informant will be accountable to the Olympic Peninsula Narcotics Enforcement Team during all hours until completion of the investigation during the allotted amount of time listed above. If Confidential Informant is unwilling to fulfill any part of his/her obligation as stated in this section then any obligation of Olympic Peninsula Narcotics Enforcement Team will be null and void. Failure to make a controlled buy for reasons beyond CI's control shall be not be held against the CI. Parties shall operate in good faith and fair dealing. If an issue of substantial performance cannot be resolved by the parties, either party may submit the issue to Superior Court for resolution.

- B. Subsequent to the investigation, if charges are filed against any person, the Confidential Informant agrees to cooperate with the Prosecuting Attorney's office and testify truthfully in court if called as a witness.

C. Confidential Informant understands that the nature of this investigation is highly confidential and agrees to disclose the information regarding this investigation ONLY to his attorney, detectives of the Olympic Peninsula Narcotics Enforcement Team, the Clallam County Prosecuting Attorney's Office, the Port Angeles City Attorney's Office, or other persons designated by either agency or as directed by a Superior/District Court Judge.

II. In consideration of the aforementioned, the Olympic Peninsula Narcotics Enforcement Team and the Clallam County Prosecutor agree as follows:

The State will offer to resolve the pending cases of Assault in Violation of Protection Order and DV-NCO, # 09-1-00268-1; Residential Burglary and Burglary Tools, #09-1-00209-5; and the uncharged case of Burglary/Theft/Trafficking/POCS in CCSO #09-08787, which is the burglary of the DeFrang residence, as follows:

#09-1-00268-1, dismiss with prejudice;

#09-1-00209-5, a plea to Gr Msdr Criminal trespass 1<sup>st</sup>, \$500 CVC, \$200 costs, any further jail suspended concurrent with the DeFrang Burglary;

DeFrang Burglary and related charges; the State will charge only Burglary 2d. Since he has no prior felonies, the State will recommend no further jail but a First time offender option, 2 years community custody on conditions of obtain a CDE and comply with any treatment recommendations; commit no crimes; do not use or possess controlled substances not taken exactly as prescribed by a physician; pay restitution to Wm DeFrang in an amount to be determined; pay \$500 CVC, \$200 costs, \$100 DNA fee.

III. Confidential Informant and Olympic Peninsula Narcotics Enforcement Team concur:

- A. This agreement becomes null and void if Confidential Informant commits any criminal act for which he/she is arrested, from the signing of this agreement to the end of the allotted time period as stated in Section I, Item #A.
- B. This agreement becomes null and void if Confidential Informant provides any false information to any of the parties specified in Section I, Item # C.
- C. This agreement becomes null and void if Confidential Informant fails at any time to follow instructions given by agents of the Olympic Peninsula Narcotics Enforcement Team during the allotted time stated in this agreement.
- D. Confidential Informant understands and agrees that he/she is performing services set forth in this agreement not as an employee of Olympic Peninsula Narcotics Enforcement Team and as such is entitled to no other compensation or consideration other than set forth in this agreement. Confidential Informant further understands that certain risks are involved

in participating in this investigation and assumes all risks and agrees to hold Clallam County, the City of Port Angeles, its officers, agents, and employees harmless from any and all liability incurred therefrom.

ENTERED INTO THIS March 4 DAY OF 4th, 20 10.

[Signature]  
Informant

[Signature]  
Witness

[Signature] 444  
OPNET AGENT

[Signature]  
OPNET SUPERVISOR

CLALLAM COUNTY DEPUTY  
PROSECUTING ATTORNEY

SUBSCRIBED and SWORN TO before me this 4th day of March, 20 10.

[Signature]  
NOTARY PUBLIC in and for the State of Washington  
Residing at Sequim



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