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

IN RE THE PERSONAL RESTRAINT
PETITION OF:

KEITH EDWARD BERRY,

Petitioner.

NO. 41925-4

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

A. ISSUES PERTAINING TO PETITIONER'S PERSONAL RESTRAINT
PETITION:

1. Should this Court dismiss the petition because petitioner failed to show that he was actually prejudiced by any constitutional error or that a fundamental defect in his trial resulted in a complete miscarriage of justice?
2. Has petitioner failed to present a cognizable claim in that he challenges the credibility of the victim on collateral review and has he failed to provide the necessary evidence to support his claim that the victim committed perjury?
3. Has the petitioner failed to demonstrate any discovery violation when the record below shows that the reason that petitioner was unable to review certain evidence prior to it being admitted at trial was due to petitioner's

1 failure to call the court's attention to the fact that he was unable to access
2 evidence that had been provided to him in discovery?

- 3 4. Has petitioner failed to show that his inability to review the audio recording
4 of phone messages left on the victim's phone hampered his ability to
5 effectively cross-examine her or that there was any due process violation
6 when he failed to ask the court for an opportunity to review the exhibit
7 before finishing his cross-examination of the victim?
8
9 5. Has petitioner failed to show any error in the calculation of his offender
10 score?

11
12 **B. STATUS OF PETITIONER:**

13 Petitioner, KEITH EDWARD BERRY, is restrained pursuant to a judgment and
14 sentence entered in Pierce County Cause No. 10-1-04063-5. Appendix A. The judgment
15 was entered on February 25, 2011, and sentenced petitioner on two counts of harassment
16 and four counts of violation of a domestic violence protection order. *Id.* Petitioner was
17 also given a suspended sentence on his conviction for malicious mischief in the third
18 degree. Appendix B. Petitioner appealed, and his appeal is currently pending before
19 Division II of the Court of Appeals in Case No. 41797-9.

20 On August 31, 2011, petitioner filed a timely, first-time, personal restraint petition
21 in the Court of Appeals challenging the victim's credibility and asserting she committed
22 perjury, that he was improperly denied discovery and that his offender score was
23 miscalculated.
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The State has no information with which to dispute a claim of indigency.

C. ARGUMENT:

I. THE PETITION MUST BE DISMISSED BECAUSE
PETITIONER FAILS TO MEET HIS HEAVY BURDEN OF
SHOWING PREJUDICIAL CONSTITUTIONAL ERROR OR A
COMPLETE MISCARRIAGE OF JUSTICE NECESSARY TO
OBTAIN COLLATERAL RELIEF.

Personal restraint procedure has its origins in the State's habeas corpus remedy, guaranteed by article 4, section 4, of the State Constitution. Fundamental to the nature of habeas corpus relief is the principle that the writ will not serve as a substitute for appeal. A personal restraint petition, like a petition for a writ of habeas corpus, is not a substitute for an appeal. *In re Hagler*, 97 Wn.2d 818, 823 24, 650 P.2d 1103 (1982). Collateral relief undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders. These are significant costs, and they require that collateral relief be limited in state as well as federal courts. *Id.*

In this collateral action, the petitioner has the duty of showing constitutional error and that such error was actually prejudicial. The rule that constitutional errors must be shown to be harmless beyond a reasonable doubt has no application in the context of personal restraint petitions. *In re Mercer*, 108 Wn.2d 714, 718 21, 741 P.2d 559 (1987); *Hagler*, 97 Wn.2d at 825. Mere assertions are insufficient in a collateral action to demonstrate actual prejudice. Inferences, if any, must be drawn in favor of the validity of the judgment and sentence and not against it. *Hagler*, 97 Wn.2d at 825 26. To obtain collateral relief from an alleged nonconstitutional error, a petitioner must show "a fundamental defect which inherently results in a complete miscarriage of justice." *In re*

1 *Cook*, 114 Wn.2d 802, 812, 792 P.2d 506 (1990). This is a higher standard than the
2 constitutional standard of actual prejudice. *Id.* at 810.

3 Reviewing courts have three options in evaluating personal restraint petitions:

- 4 1. If a petitioner fails to meet the threshold burden of showing actual
5 prejudice arising from constitutional error or a fundamental defect
6 resulting in a miscarriage of justice, the petition must be dismissed;
- 7 2. If a petitioner makes at least a prima facie showing of actual
8 prejudice, but the merits of the contentions cannot be determined
9 solely on the record, the court should remand the petition for a full
10 hearing on the merits or for a reference hearing pursuant to RAP
11 16.11(a) and RAP 16.12;
- 12 3. If the court is convinced a petitioner has proven actual prejudicial
13 error, the court should grant the personal restraint petition without
14 remanding the cause for further hearing.

15 *In re Hews*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

16 In a personal restraint petition, “naked castings into the constitutional sea are not
17 sufficient to command judicial consideration and discussion.” *In re Williams*, 111 Wn.2d
18 353, 365, 759 P.2d 436 (1988) (citing *In re Rozier*, 105 Wn.2d 606, 616, 717 P.2d 1353
19 (1986), which quoted *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970)).
20 That phrase means “more is required than that the petitioner merely claim in broad general
21 terms that the prior convictions were unconstitutional.” *Williams*, 111 Wn.2d at 364. The
22 petition must also include the facts and “the evidence reasonably available to support the
23 factual allegations.” *Id.*

24 The evidence that is presented to an appellate court to support a claim in a personal
25 restraint petition must also be in proper form. On this subject, the Washington Supreme
Court has stated:

It is beyond question that all parties appearing before the courts of this State
are required to follow the statutes and rules relating to authentication of
documents. This court will in future cases accept no less.

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3 *In re Connick*, 144 Wn.2d 442, 458, 28 P.3d 729 (2001). That rule applies to pro se
4 defendants as well:

5 Although functioning pro se through most of these proceedings, Petitioner –
6 not a member of the bar – is nevertheless held to the same responsibility as
7 a lawyer and is required to follow applicable statutes and rules.

8 *Connick*, 144 Wn.2d at 455. The petition must include a statement of the facts upon which
9 the claim of unlawful restraint is based and the evidence available to support the factual
10 allegations. RAP 16.7(a)(2); *Williams*, 111 Wn.2d at 365. Personal restraint petition
11 claims must be supported by affidavits stating particular facts, certified documents,
12 certified transcripts, and the like. *Williams*, 111 Wn.2d at 364. If the petitioner fails to
13 provide sufficient evidence to support his challenge, the petition must be dismissed.

14 *Williams*, 111 Wn.2d at 364. A reference hearing is not a substitute for the petitioner's
15 failure to provide evidence to support his claims. As the Supreme Court stated, "the
16 purpose of a reference hearing is to resolve genuine factual disputes, not to determine
17 whether the petitioner actually has evidence to support his allegations." *In re Rice*, 118
18 Wn.2d 876, 886, 828 P.2d 1086 (1992). "Bald assertions and conclusory allegations will
19 not support the holding of a hearing," but the dismissal of the petition. *Rice*, at 886,
20 *Williams*, at 364-365.

21 Petitioner raises several claims for relief in his petition; as will be more fully
22 argued below, petitioner fails to meet the heavy burden placed upon him to show that he is
23 entitled to collateral relief.
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II. THIS COURT SHOULD SUMMARILY DISMISS PETITIONER’S ATTEMPT TO CHALLENGE THE CREDIBILITY OF THE VICTIM AS THAT IS NOT A COGNIZABLE CLAIM IN A COLLATERAL ATTACK; HIS CLAIM THAT SHE COMMITTED PERJURY SHOULD BE DISMISSED AS IT IS UNSUPPORTED BY ANY EVIDENCE.

Petitioner seeks to challenge the credibility of the victim, Jessica Reed in his petition. First, credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). The trial court found Ms. Reed to be credible. Appendix C, FOF No. 2. To the extent that petitioner asserts that Ms. Reed’s cell phone records would show that she committed perjury, he needed to provide those phone records with his petition to support his claim. *In re Rice*, 118 Wn.2d at 886. As he did not provide supporting evidence, this claim is nothing but a bald assertion that should be summarily dismissed.

III. THE RECORD DOES NOT SUPPORT PETITIONER’S CLAIM THAT THE STATE FAILED TO PROVIDE HIM WITH AUDIO COPIES OF VOICE MAIL MESSAGES ADMITTED AT TRIAL.

Petitioner asserts that he was denied access to audio recordings of voice mail messages left on the victim’s phone that were admitted during the prosecution’s case –in-chief. The record does not support his claim that either the court or the prosecution “denied” him access to this material.

At a pre-trial hearing on December 28, 2010, the court addressed a motion to suppress filed by petitioner. 12/28/10 RP 9-10. Petitioner’s written motion to suppress argued that the audio recordings should be suppressed as the prosecution had not shown beyond a reasonable doubt that it was the petitioner’s voice on the recording. Appendix D. The prosecutor argued that petitioner’s challenges seemed to go to whether the recordings would be admissible under the evidence rules rather than articulating a basis for

1 suppression. 12/28/10 RP 9-10. Petitioner agreed that his challenge was based upon the
2 evidence rules. *Id* at 11. Petitioner also complained that he had not yet been able to listen
3 to the tapes. *Id*. The prosecutor responded that this was due to the petitioner's choice in
4 going *pro se* while he was being held in custody pending trial; petitioner's incarceration
5 prevented him from reviewing the evidence at the evidence room. 12/28/10 RP 11-12.
6 The court directed the prosecutor to assist by getting a copy of the recordings to petitioner
7 by noon on December 30, 2010. Appendix E. There is no evidence that the prosecutor
8 failed to comply with the court's order. In fact, the evidence submitted by petitioner shows
9 that the prosecutor met this deadline. *See* Pierce County Sheriff's Department Inmate
10 Behavior Log Entry Report attached to Petitioner's Motion to Supplement Personal
11 Restraint Petition (filed 8/31/11).

12 The parties were back before the court on January 18, 2011, apparently assigned
13 out for trial a day earlier than anticipated by petitioner. 1/18/11 RP 3-4. When the
14 petitioner indicated that he was not ready to proceed with trial, the court stated that it
15 would send the case back to the presiding court after re-arraigning petitioner. 1/18/11 RP
16 3-5. While still on the record, the court asks if there is anything else from the parties and
17 petitioner stated "no." 1/18/11 RP 5. Petitioner did not raise any complaint about being
18 unable to listen to the audio recording that had been provided earlier by the prosecution.
19 *Id*. When petitioner was back in court on February 2, 2011, he had another opportunity to
20 alert the court to any difficulties he might be having in accessing the audio recordings; he
21 did not do so. 2/2/11 RP 2-3.

22 Trial testimony began on February 3, 2011, but before opening statements the court
23 inquired of the parties whether there were any matters that needed to be addressed. 2/3/11
24 RP 7-8, 15. Petitioner raised a concern about some evidence he wanted to admit in his
25 case, and asked the court to sign a subpoena duces tecum, but did not raise any concern

1 about his ability to listen to the audio recordings provided by the prosecution. 2/3/11 RP
2 15- 18. The prosecutor called Jessica Reed as its second witness; after she described the
3 events of July 13, 2010, the prosecutor began to lay the foundation for the admission of
4 Exhibit 1, the recordings of the voice mail messages left on the victim's cell and home
5 phones. 2/3/11 RP 58-75. The court interrupted this process and indicated that it would be
6 taking its afternoon recess. 2/3/11 RP 75. After the recess, the prosecutor resumed laying
7 the foundation for the admission of Exhibit 1, before moving for its admission. 2/3/11 RP
8 76- 80. Petitioner objected to its admission for various evidentiary reasons, then informed
9 the court that he had not yet listened to the recording. 2/3/11 RP 80-81. The prosecutor
10 responded to the evidentiary objections and then argued that petitioner had been provided
11 with a copy of the exhibit and that he had some responsibility "to procure the resources, or
12 at least make the request to listen to it." 2/3/11 RP 81-83. Petitioner responded that he
13 wasn't allowed access to the recording in the jail because a CD disk can be used as a
14 weapon. 2/3/11 RP 83. The court admitted the exhibit. 2/3/11 RP 83.

15 This record indicates that the reason the petitioner did not hear the recording before
16 it was admitted at trial was because he did not alert the court to his predicament in a timely
17 manner. Petitioner had many opportunities to raise this concern prior to the prosecutor
18 moving for admission of the exhibit. Had he done so, the court could have directed some
19 procedure to ensure the petitioner could hear the recording, such as having the prosecutor
20 play the recording for petitioner in the courtroom during a recess in court proceedings.
21 The court had made previous efforts to accommodate petitioner's limitations in being pro
22 se while being held in custody, but no court can address a problem of which it is unaware.
23 Nor did petitioner ask the court for a recess to allow him to listen to the recording prior to
24 his cross examination of the victim, Ms Reed. 2/3/11 RP 90. Due to the court's schedule,
25 petitioner's cross examination started in the afternoon of one day, but after approximately

1 five questions, the court adjourned for the day and indicated that it would be in recess until
2 the following afternoon. 2/3/11 RP 92. Petitioner did not ask the court to provide him a
3 means of listening to the recording in the intervening time. 2/3/11 RP 92. At no point did
4 petitioner inform the court that he believed his ability to cross-examine the victim would
5 be impeded by his inability to listen to Exhibit 1. It also appears from the record that the
6 content of most of the voice mail messages could be read in Detective Tscheuschner's
7 report. 2/3/11 RP 131-137. Petitioner did not assert that he lacked access to this report.

8 Petitioner asserts that his inability to hear the recordings prior to trial made it
9 impossible for him to "effectively cross-examine the victim as to the authenticity of the
10 calls." See Declaration attached to Motion to Supplement Personal Restraint Petition. He
11 does not, however, articulate *how* he was impaired. To establish that he was actually
12 prejudiced by constitutional error or that this was a fundamental defect resulting in a
13 complete miscarriage of justice, petitioner had to present evidence identifying the material
14 on the recording that he could have used to cross-examine the victim *as well as* evidence
15 that the victim would have provided answers to his additional questions that would have
16 had a significant impact on the trial. Petitioner has provided no such evidence to support
17 his claim; he baldly asserts that he was affected but makes no effort to explain the nature of
18 that impairment or demonstrate how additional cross-examination would have adduced
19 any material evidence. As petitioner has shown neither constitutional error nor a
20 fundamental defect - much less that any prejudice flowed from such error - this claim
21 should be summarily dismissed.

1 IV. THE TRIAL COURT NEVER REFUSED TO SIGN A PROPER
2 SUBPOENA DUCES TECUM BUT ONLY REFUSED TO RECESS
3 THE TRIAL FOR SEVERAL DAYS SO PETITIONER COULD SEEK
4 DISCOVERY OF THE VICTIM'S CELL PHONE RECORDS.

4 In Washington, subpoenas in criminal proceedings are issued in the same manner
5 as subpoenas in civil actions. CrR 4.8. Civil Rule (CR) 45 sets out the rules for issuing
6 subpoenas and it requires that a subpoena shall "command each person to whom it is
7 directed to attend and give testimony or to produce and permit inspection and copying of
8 designated books, documents or tangible things in the possession, custody or control of
9 that person, or to permit inspection of premises, at a time and place therein specified[.]"
10 Courts have held that this rule requires notice to the adverse party so as to provide an
11 opportunity to quash or modify it. *State v. White*, 126 Wn. App. 131, 107 P.3d 753
12 (2005). Discovery rulings are reviewed for abuse of discretion. *Howell v. Spokane &*
13 *Inland Empire Blood Bank*, 117 Wn.2d 619, 629, 818 P.2d 1056 (1991).

14 The decision to grant or deny a motion for a continuance or recess rests with the
15 sound discretion of the trial court, and is reviewed for an abuse of discretion. *State v.*
16 *Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004); *State v. Mays*, 65 Wn.2d 58, 61, 395
17 P.2d 758 (1964).

18 The record shows that petitioner first indicated that he wanted the victim's cell
19 phone records in a pleading labeled "Motion to subpoena evidence." Appendix F. The
20 first time he asked the court to rule on this motion was on the first day of trial. 2/3/11 RP
21 16-17. The prosecutor did not oppose issuance of the subpoena, but pointed out that it was
22 not directed to a particular person or a particular custodian of records. *Id.* Petitioner
23 acknowledged that he did not know with which company the victim had her cell phone.
24 2/3/11 RP 18. The court indicated that it could not grant his motion for a subpoena
25 because petitioner had not presented an appropriate subpoena; the court indicated that it

1 would reconsider if petitioner could present a proper subpoena. 2/3/11 RP 17-18. During
2 cross-examination of the victim, petitioner learned which phone company she was using at
3 the relevant time. 2/4/11 RP 98. Despite learning this information on Friday, petitioner
4 did not take any action upon it until the following Monday. 2/7/11 RP 142. At that time,
5 he asked the court for a recess so he could obtain the victim's phone records. 2/7/11 RP
6 142-143. The court inquired whether petitioner had prepared a subpoena for signature;
7 petitioner indicated that he did not have one prepared and that he anticipated that it would
8 take him a "few days" to have one ready. 2/7/11 RP 146. The court denied petitioner's
9 motion for a recess, indicating doubt that petitioner would be able to properly prepare the
10 subpoena and that even if he managed to do so and obtain the desired records, the records
11 would show, at most, impeachment on a collateral matter. 2/7/11 RP 146-47.

12 Petitioner has failed to show any abuse of discretion in the court's rulings. He was
13 dilatory in waiting until the start of trial before seeking a ruling on his motion for a
14 subpoena. When he finally brought his motion, he lacked the basic information necessary
15 for a proper subpoena. The court did not abuse its discretion in denying a request for a
16 subpoena that was not directed at an identifiable person or business as required by the
17 court rule. Furthermore, petitioner *never* presented the court with a proper subpoena for
18 signature, even when he learned which phone company would have the relevant records.
19 Petitioner asked for a recess of the trial proceedings with no clear idea of how long a recess
20 would be required. The court, unconvinced that a delay would be fruitful or that the
21 sought after records would provide any material evidence, did not abuse its discretion in
22 denying the motion for recess.

1 Petitioner has not shown any error, much less one that is of a constitutional nature
2 or a fundamental defect. As discussed earlier, his failure to provide the missing phone
3 record in support of his petition also results in his inability to show any prejudice flowing
4 from his claimed errors. This claim should be dismissed.

5
6 V. PETITIONER HAS FAILED TO SHOW A FUNDAMENTAL
7 DEFECT RESULTING IN A COMPLETE MISCARRIAGE OF
8 JUSTICE WHEN THE TRIAL COURT SENTENCED PETITIONER
9 BASED UPON AN OFFENDER SCORE WHICH INCLUDED
 POINTS FOR HIS OTHER CURRENT OFFENSES AS WELL AS
 HIS PRIOR CRIMINAL HISTORY.

10 Under the Sentencing Reform Act

11 whenever a person is to be sentenced for two or more current offenses, the
12 sentence range for each current offense shall be determined by using all
13 other current and prior convictions as if they were prior convictions for
14 the purpose of the offender score: PROVIDED, That if the court enters a
15 finding that some or all of the current offenses encompass the same
16 criminal conduct then those current offenses shall be counted as one
 crime. Sentences imposed under this subsection shall be served
 concurrently. Consecutive sentences may only be imposed under the
 exceptional sentence provisions of RCW 9.94A.535.

17 RCW 9.94A.5891)(a).

18 Petitioner asserts that his offender score should have been two as he only had two
19 prior felony convictions. The trial court sentenced petitioner with an offender score of "7"
20 on each count. Appendix A.

21 Petitioner was found guilty of six felonies at a bench trial. Appendix A. The court
22 did not find that any of these felonies constituted the same criminal conduct. *Id.* Thus,
23 when sentencing on any one of these counts, the other current offenses would add five
24 points to the offender score under RCW 9.94A.5891)(a). Petitioner acknowledges that he
25 has two prior Washington felony convictions (conspiracy to possess a controlled substance

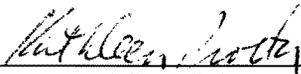
1 with intent to deliver and assault in the second degree) that counted in his offender score.
2 These convictions would have added another two points for an offender score of "7" on
3 each count. This is the offender score used by the trial court. Petitioner has failed to show
4 any error in the calculation in the offender score; this claim should be dismissed as
5 meritless.

6 D. CONCLUSION.

7 For the foregoing reasons, the State asks the Court to dismiss the petition.

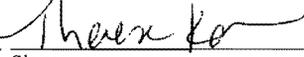
8 DATED: December 5, 2011.

9 MARK E. LINDQUIST
10 Pierce County
11 Prosecuting Attorney

12 
13 KATHLEEN PROCTOR
14 Deputy Prosecuting Attorney
15 WSB #14811

14 Certificate of Service:

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

18 12-5-11 
Date Signature

APPENDIX “A”

Judgment and Sentence

CERTIFIED COPY



10-1-04063-5 35953238 JDSWCJ 02-28-11

FILED DEPT. 6 IN OPEN COURT FEB 25 2011 Pierce County Clerk By [Signature] DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 10-1-04063-5

vs

AS TO COUNTS I, III, IV, V, VI AND VII

KEITH EDWARD BERRY,

Defendant.

WARRANT OF COMMITMENT

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

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

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

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

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

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

10-1-04063-5

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

Dated: Feb 25, 2011

By direction of the Honorable

[Signature]
JUDGE

KEVIN STOCK

By: [Signature]
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date 2/28/11 By Chris Hutton Deputy

STATE OF WASHINGTON

County of Pierce

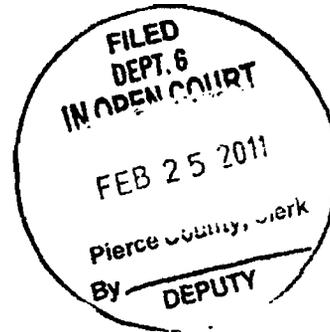
I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

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

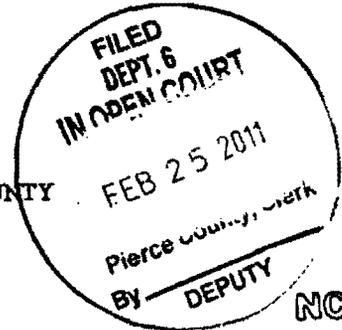
KEVIN STOCK, Clerk

By: _____ Deputy

shs



10-1-04063-5



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 10-1-04063-5

vs.

AS TO COUNTS I, II, IV, V, VI AND VII
JUDGMENT AND SENTENCE (FJS)

KEITH EDWARD BERRY

Defendant.

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

SID: 19037461
DOB: 07/25/1975

I. HEARING

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

II. FINDINGS

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

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

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	HARASSMENT - DOMESTIC VIOLENCE (KK36-DV)	9A.46.020 10.99.020		Between 06/01/10 and 07/13/10	Tacoma Police Department Incident #101941557
III	DOMESTIC VIOLENCE COURT ORDER VIOLATION (H54-DV)	7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50, 74.34, 26.52.020, 26.50.110(5), 26.50.110		07/13/2010	Tacoma Police Department Incident #101941557

11-9-02324-0

10-1-04063-5

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
IV	DOMESTIC VIOLENCE COURT ORDER VIOLATION (I47V-DV)	7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50, 74.34, 26.52.020, 26.50.110(5), 26.50.110, 10.99.020		07/13/2010	Tacoma Police Department Incident #101941557
V	HARASSMENT (KK36)	9A.46.020		Between 06/01/10 and 07/13/10	Tacoma Police Department Incident #101941557
VI	DOMESTIC VIOLENCE COURT ORDER VIOLATION (I47V-DV)	7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50, 74.34, 26.52.020, 26.50.110(5), 26.50.110, 10.99.020		Between 06/01/10 and 07/13/10	Tacoma Police Department Incident #101941557
VII	DOMESTIC VIOLENCE COURT ORDER VIOLATION (I47V-DV)	7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50, 74.34, 26.52.020, 26.50.110(5), 26.50.110		Between 06/01/10 and 07/13/10	Tacoma Police Department Incident #101941557

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

as charged in the Second Information

- The crime charged in Count(s) I, III, IV, V, VI, VII involve(s) domestic violence
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	OTHER CURRENT OFFENSE 10-1-04063-5 HARASSMENT	02/25/11	Pierce County Superior Court, WA	Between 06/01/10 and 07/13/10	A	NV

10-1-04063-5

2	OTHER CURRENT OFFENSE 10-1-04063-5 DOMESTIC VIOLENCE COURT ORDER VIOLATION	02/25/11	Pierce County Superior Court, WA	07/13/10	A	NV
3	OTHER CURRENT OFFENSE 10-1-04063-5 DOMESTIC VIOLENCE COURT ORDER VIOLATION	02/25/11	Pierce County Superior Court, WA	07/13/10	A	NV
4	OTHER CURRENT OFFENSE 10-1-04063-5 HARASSMENT	02/25/11	Pierce County Superior Court, WA	Between 06/01/10 and 07/13/10	A	NV
5	OTHER CURRENT OFFENSE 10-1-04063-5 DOMESTIC VIOLENCE COURT ORDER VIOLATION	02/25/11	Pierce County Superior Court, WA	Between 06/01/10 and 07/13/10	A	NV
6	OTHER CURRENT OFFENSE 10-1-04063-5 DOMESTIC VIOLENCE COURT ORDER VIOLATION	02/25/11	Pierce County Superior Court, WA	Between 06/01/10 and 07/13/10	A	NV
7	CONSPIRACY TO POSS W/INT	06/01/98	Pierce County Superior Court, WA	05/08/98	A	NV
8	DV - ASSAULT 2	06/02/06	Pierce County Superior Court, WA	06/01/05	A	V
9	ASSAULT 3	12/13/93	St. Louis County, Mo.	07/22/93	A	NV
10	NVOL		Tacoma Municipal Court, WA	01/24/00	A	NV
11	PAT A PROSTITUTE		Tacoma Municipal Court, WA	04/25/00	A	NV
12	DV - DESTRUCTION OF PROPERTY		Tacoma Municipal Court, WA	01/02/03	A	NV
13	DV - CRIMINAL ASSAULT		Tacoma Municipal Court, WA	01/02/03	A	NV
14	HARASSMENT		Pierce County Superior Court, WA	06/01/05	A	NV
15	VPO	03/16/10	Pierce County Superior Court, WA	04/13/08	A	NV
16	VPO	03/16/10	Pierce County Superior Court, WA	04/13/08	A	NV
17	DV - HARASSMENT - THREATEN BODILY		Tacoma Municipal Court, WA	04/24/08	A	NV

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

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2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	7	III	33 MOS. TO 43 MOS.		33 MOS. TO 43 MOS.	5 YRS./ \$10,000
III	7	V	51 MOS. TO 60 MOS.		51 MOS. TO 60 MOS.	5 YRS./ \$10,000
IV	7	V	51 MOS. TO 60 MOS.		51 MOS. TO 60 MOS.	5 YRS./ \$10,000
V	7	III	33 MOS. TO 43 MOS.		33 MOS. TO 43 MOS.	5 YRS./ \$10,000
VI	7	V	51 MOS. TO 60 MOS.		51 MOS. TO 60 MOS.	5 YRS./ \$10,000
VII	7	V	51 MOS. TO 60 MOS.		51 MOS. TO 60 MOS.	5 YRS./ \$10,000

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:

within below the standard range for Count(s) _____.

above the standard range for Count(s) _____.

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defend' s past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

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

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

III. JUDGMENT

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

3.2 The court DISMISSES Courts _____ The defendant is found NOT GUILTY of Courts

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

JASS CODE

RIN/RJN \$ _____ Restitution to: _____

\$ _____ Restitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

PUB \$ 500 Court-Appointed Attorney Fees and Defense Costs

FRC \$ 200.00 Criminal Filing Fee

FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 1310 TOTAL

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

shall be set by the prosecutor.

is scheduled for _____

RESTITUTION. Order Attached

Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant	CAUSE NUMBER	(Victim name)	(Amount-\$)
RJN			

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

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ 100.00 per month commencing month. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

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

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

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

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

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

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

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

4.3 NO CONTACT
The defendant shall not have contact with KESSILA BIRD (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 5 years (not to exceed the maximum statutory sentence).

[X] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

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

<u>DOMESTIC VIOLENCE EVALUATION AND FOLLOW-UP TREATMENT</u>	

10-1-04063-5

4.4a BOND IS HEREBY EXONERATED

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

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

<u>43</u> months on Court	<u>I</u>	_____ months on Court	_____
<u>60</u> months on Court	<u>III</u>	_____ months on Court	_____
<u>60</u> months on Court	<u>IV</u>	_____ months on Court	_____
<u>43</u> months on Court	<u>V</u>	_____ months on Court	_____
<u>60</u> months on Court	<u>VI</u>	_____ months on Court	_____
<u>60</u> months on Court	<u>VII</u>	_____ months on Court	_____

Actual number of months of total confinement ordered is: 60 MONTHS

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

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

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 143 DAYS

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

Count _____ for _____ months,

COMMUNITY CUSTODY is ordered as follows:

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

Count IV for a range from: 12 to 12 Months,

Count VI for a range from: 12 to 12 Months,

Count VII for a range from: 12 to 12 Months,

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

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

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

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories, or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

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

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While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC, and (8) for sex offenses, submit to electronic monitoring if imposed by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

[] The defendant shall not consume any alcohol.

[X] Defendant shall have no contact with: VILTIM

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

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

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

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

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

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

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

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

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

4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

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V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 **RESTITUTION HEARING.**
 Defendant waives any right to be present at any restitution hearing (sign initials): _____
- 5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.6 **FIREARMS** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.
 N/A
- 5.8 The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

10-1-04063-5

5.10 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: Feb 25, 2011

JUDGE

Print name

[Handwritten Signature]

Deputy Prosecuting Attorney

Print name:

NEIL HORIBE

WSB #

36724

Attorney for Defendant

Print name:

KEVIN B. REEDY

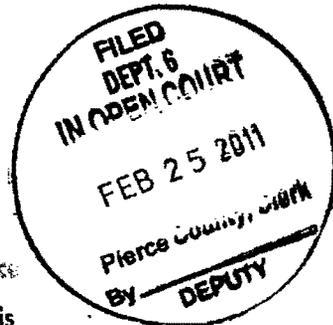
WSB #

Defendant

Print name: _____

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: *[Handwritten Signature]*



STATE OF WASHINGTON, County of Pierce
I, Kevin Stock, Clerk of the above
entitled Court, do hereby certify that this
forgoing instrument is a true and correct
copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of said Court this
5th day of Dec, 20 11
[Handwritten Signature]
Kevin Stock, Clerk

10-1-04063-5

1
2
3 **CERTIFICATE OF CLERK**

4 CAUSE NUMBER of this case: 10-1-04063-5

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

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

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

9
10 **IDENTIFICATION OF COURT REPORTER**

11 _____
12 Court Reporter

APPENDIX "F"

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

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

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

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

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

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

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

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

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

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

- _____ (I) The offender shall remain within, or outside of, a specified geographical boundary: _____
- _____ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____
- _____ (III) The offender shall participate in crime-related treatment or counseling services;
- _____ (IV) The offender shall not consume alcohol; _____
- _____ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or
- _____ (VI) The offender shall comply with any crime-related prohibitions
- _____ (VII) Other: _____

10-1-04063-5

IDENTIFICATION OF DEFENDANT

SID No. 19037461
(If no SID take fingerprint card for State Patrol)

Date of Birth 07/25/1975

FBI No. 577571TA2

Local ID No. UNKNOWN

PCN No. 540245509

Other

Alias name, SSN, DOB: _____

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

FINGERPRINTS

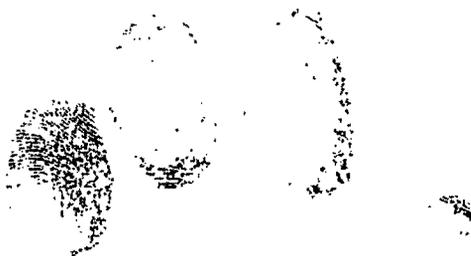
Left four fingers taken simultaneously

Left Thumb



Right Thumb

Right four fingers taken simultaneously



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk Regina M. Johnson Dated: 08/20/11

DEFENDANT'S SIGNATURE: [Signature]

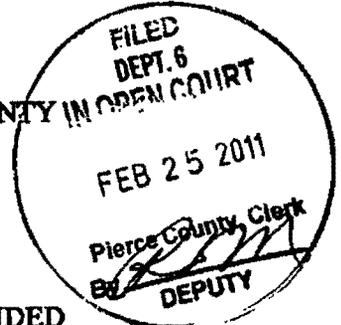
DEFENDANT'S ADDRESS: M/A

APPENDIX “B”

Judgment and Sentence

CERTIFIED COPY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY IN OPEN COURT



STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 10-1-04063-5

vs.

AS TO COUNT II ONLY

KEITH EDWARD BERRY,

CONDITIONS ON SUSPENDED SENTENCE

Defendant.

This matter coming on regularly for sentencing before the Honorable R. Beckner, Judge, on the 25 day of Feb 2011 and the Court having sentenced the defendant KEITH EDWARD BERRY to the term of 1 year for the crime(s) of MALICIOUS MISCHIEF IN THE THIRD DEGREE and the Court having suspended that term, the Court herewith orders the following conditions and provisions:

- 1. Termination date is to be 2 year(s) after date of sentence.
- 2. The Defendant shall be under the charge of a probation officer employed by the Department of Corrections and follow implicitly the instructions of said Department, and the rules and regulations promulgated by the Department of Corrections for the conduct of the Defendant during the time of his/her probation herein.
- 3. That the Defendant be under the supervision of the Court (bench probation) from DC system
- 3. Defendant will pay the following amounts to the Clerk of the Superior Court, Pierce County, Washington.

\$ 500

Attorney fees as reimbursement for a portion of the expense of his/her court appointed counsel provided by the Pierce County Department of Assigned Counsel. The court finds that the defendant is able to pay said fee without undue financial hardship.

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

10-1-04063-5

1
2
3 \$ 500 Crime Victim Compensation penalty assessment per RCW 7.68.035;

4 \$ 200 Court Costs;

5 \$ _____ Fine;

6 \$ _____ Other: _____

7 \$ _____ Restitution to be forwarded to: _____

8
9
10
11 Restitution hearing set for _____

12 \$ 1200 TOTAL payable at the rate of \$ per clerk per month commencing

13 concurrent with felony charges

14 Revocation of this probation for nonpayment shall occur only if defendant wilfully fails to
15 make the payments having the financial ability to do so or wilfully fails to make a good faith
16 effort to acquire means to make the payment.

17 A notice of payroll deduction may be issued or other income-withholding action may be
18 taken, without further notice to the offender, if a monthly court-ordered legal financial obligation
19 payment is not paid when due and an amount equal to or greater than the amount payable for one
20 month is owed.

21 THE FINANCIAL OBLIGATIONS IMPOSED IN THIS JUDGMENT SHALL BEAR INTEREST
22 FROM THE DATE OF THE JUDGMENT UNTIL PAYMENT IN FULL, AT THE RATE
23 APPLICABLE TO CIVIL JUDGMENTS. RCW 10.82.090. AN AWARD OF COSTS ON APPEAL
24 AGAINST THE DEFENDANT MAY BE ADDED TO THE TOTAL LEGAL FINANCIAL
25 OBLIGATIONS. RCW 10.73.

26 Any period of supervision shall be tolled during any period of time the offender is in
27 confinement for any reason.

28 (1) Further Conditions as follows: 365 days in jail ^{concurrent to felony work} supervisor conditions

1. Monitor Low Monthly bedload

2. No contact with victim

3. Obtain DV CIVIL ORDER and successfully complete treatment

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

10-1-04063-5

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6 IT IS FURTHER ORDERED that, upon completion of any incarceration imposed the

7 defendant shall be released from the custody of the Sheriff of Pierce County and report to the

8 authorized Probation Officer of this district, to receive his instructions: Bail is hereby

9 exonerated.

10

11 [] PURSUANT TO 1993 LAWS OF WASHINGTON, CHAPTER 419, IF THIS

12 OFFENDER IS FOUND TO BE A CRIMINAL ALIEN ELIGIBLE FOR

13 RELEASE AND DEPORTATION BY THE UNITED STATES IMMIGRATION

14 AND NATURALIZATION SERVICE, SUBJECT TO ARREST AND RE-

15 INCARCERATION IN ACCORDANCE WITH THIS LAW, THEN THE

16 UNDERSIGNED JUDGE AND PROSECUTOR CONSENT TO SUCH

17 RELEASE AND DEPORTATION PRIOR TO THE EXPIRATION OF THE

18 SENTENCE.

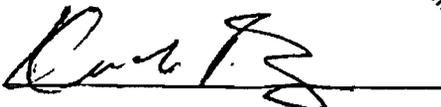
19 DONE IN OPEN COURT this 25 day of Feb. 2011.

20 
 21 JUDGE *Palmer*

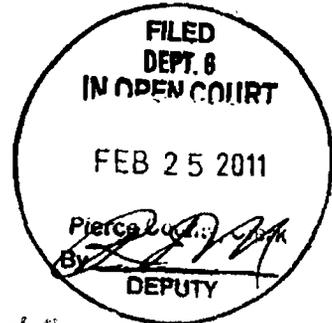
22 Presented by:

23 
 24 NEIL MORIBE
 25 Deputy Prosecuting Attorney
 26 WSB # 36724

27 Approved as to Form:

28 

Attorney for Defendant
 WSB #



STATE OF WASHINGTON, County of Pierce
 I, Kevin Stock, Clerk of the above
 entitled Court, do hereby certify that this
 foregoing instrument is a true and correct
 copy of the original now on file in my office.
 IN WITNESS WHEREOF, I hereunto set my
 hand and the Seal of said Court this
25 day of Feb. 20 11
 Kevin Stock, Clerk
 Deputy

Office of Prosecuting Attorney
 930 Tacoma Avenue S. Room 946
 Tacoma, Washington 98402-2171
 Telephone: (253) 798-7400

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KEITH EDWARD BERRY

Defendant

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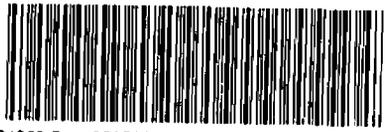
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930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

APPENDIX “C”

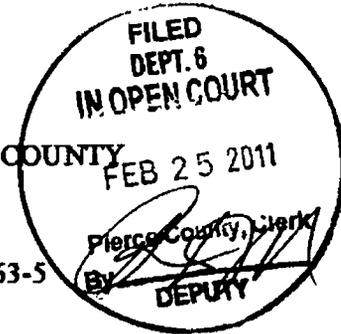
Findings of Fact

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10-1-04063-5 35952679 FNFL 02-28-11



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 10-1-04063-5

vs.

KEITH EDWARD BERRY

Defendant.

**FINDINGS OF FACT AND
CONCLUSIONS FOLLOWING
BENCH TRIAL**

THIS MATTER coming on for bench trial before the Honorable Rosanne Buckner, Judge of the above entitled court, on the 3rd day of February, 2011; the State being represented by Neil Horibe, Deputy Prosecuting Attorney, the Defendant being present and representing himself pro se after the court had previously granted his request to do so and finding that his request to proceed pro se was knowingly, voluntarily, and intelligently made, the Defendant having been charged by second amended information with the crimes of I) Harassment, II) Malicious Mischief in the Second Degree, III) Domestic Violence Court Order Violation, IV) Domestic Violence Court Order Violation, V) Harassment, VI) Domestic Violence Court Order Violation, and VII) Domestic Violence Court Order Violation; the Defendant having waived his right to jury trial and submitted the case to the Court; the Court having heard the witness testimony, the

witnesses having been sworn; the Court having reviewed the admitted exhibits, the Court having considered the evidence in light of the State's burden to prove each element of the crime charged beyond a reasonable doubt; the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

- 1. The exhibits admitted into evidence by the State are credible and are incorporated into the Court's findings of fact.
- 2. Officer Jennifer Strain, Jessica Reed, Det. Michael Tscheuschner, and Corrections Deputy Kristi Herbison, were credible witnesses.
- 3. The defendant was charged with Harassment in Tacoma Municipal Court for an incident that occurred on April 24, 2008, and Jessica Reed was the victim of that crime. The defendant later pleaded guilty to that crime in 2009.
- 4. Irene Reed obtained a protection order against the defendant on May 9, 2008. The order said that the protection order was permanently in effect. The order was served upon the defendant on October 29, 2008, by Corrections Deputy Kristi Herbison. The defendant acknowledged in his testimony that he was served with the protection order and knew that it remained in effect from 2009 onward.
- 5. Irene Reed is the mother of Jessica Reed. During June and July of 2010, Irene Reed was dying of cancer and the defendant was aware of that fact. Irene Reed did not testify at trial because she was deceased. The defendant previously resided with Irene Reed and Jessica Reed at Irene Reed's home.
- 6. That during the period between the 1st day of June 2010 and the 13th day of July 2010, the defendant knowingly threatened to cause bodily injury immediately or in the future to

10-1-04063-5

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3 Jessica Reed by calling her on the phone and stating threats to come into her house and
4 harm her. The court heard a voicemail message that was admitted into evidence that was
5 left on Jessica Reed's phone by the defendant during the period between June 1, 2010 and
6 July 13, 2010 that included, among other things, a statement directed at Jessica Reed
7 telling her "[y]ou are going to get hurt." The court finds that the defendant's tone was
8 hostile and aggressive in nature, and that the words or conduct of the defendant placed
9 Jessica Reed in reasonable fear that the threat would be carried out, and the defendant
10 acted without lawful authority. Furthermore, after reviewing court certified documents
11 admitted into evidence, the court is convinced that the defendant was previously
12 convicted in 2009 of the crime of harassment against Jessica Reed. The court also finds
13 that the threat was made or received in the State of Washington.
14

15 7. That on or about July 13, 2010, the defendant knowingly and maliciously caused physical
16 damage to Jessica Reed's car by breaking the driver's side window and removing the face
17 plate of the vehicle's stereo, which rendered it inoperable. The value of the damage
18 done by the defendant to Jessica Reed's vehicle was in an amount exceeding \$50, and
19 these acts occurred at 1719 S. 47th St. in Tacoma, Washington.
20

21 8. That on or about July 13, 2010, there existed a non-expiring, permanent protection order
22 applicable to the defendant issued in May of 2008 by the Pierce County Superior Court in
23 case number 08-2-01268-4 restraining him from contacting Irene Reed. After reviewing
24 court certified documents admitted into evidence and listening to the testimony of the
25 defendant and other witnesses, the court finds that the defendant knew of the existence of
26 this order as it was served upon him on October 29 of 2008. The court finds that on July
27 13, 2010, the defendant knowingly violated a provision of this order restraining him from
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 3 having contact with Irene Reed by going to 1719 S. 47th St. in Tacoma, Washington with
 4 the intent of contacting her, and did in fact have contact with her by coming within 500ft.
 5 of Irene Reed and demanding entrance into the Irene Reed's residence. The court
 6 reviewed court certified documents admitted into evidence relating to Pierce County
 7 Superior Court cause no. 10-1-00088-9 and finds that the defendant knowingly,
 8 intelligently, and voluntarily pleaded guilty to two separate counts of Violation of No
 9 Contact Order as charged in the amended information and was sentenced on March 16,
 10 2010. Thus the court finds that the defendant has twice been previously convicted for
 11 violating the provisions of a domestic violence related court order when he contacted
 12 Irene Reed on July 13, 2010. Any testimony by the defendant claiming otherwise was
 13 not found to be credible by the court. Furthermore, the court finds that the defendant's
 14 act/contact with Irene Reed occurred in the State of Washington.

15
 16 9. That on or about July 13, 2010, there existed a no-contact order applicable to the
 17 defendant issued in February of 2009 out of the Tacoma Municipal Court in case number
 18 D00039371 and not expiring until February of 2011, restraining him from contacting
 19 Jessica Reed. After reviewing court certified documents admitted into evidence and
 20 listening to the testimony of the defendant, the court finds that the defendant knew of the
 21 existence of this order as it was issued in open court in his presence in February of 2009
 22 and bears his signature. The court finds that on July 13, 2010, the defendant knowingly
 23 violated a provision of this order restraining him from having contact with Jessica Reed
 24 by going to 1719 S. 47th St. in Tacoma, Washington with the intent of contacting her, and
 25 did in fact have contact with her by coming within 500ft. of Jessica Reed and demanding
 26 entrance into the residence where she was at the time and yelling at her and breaking her
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10-1-04063-5

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3 vehicle parked in front of the residence. The court reviewed court certified documents
4 admitted into evidence relating to Pierce County Superior Court cause no. 10-1-00088-9
5 and finds that the defendant knowingly, intelligently, and voluntarily pleaded guilty to
6 two separate counts of Violation of No Contact Order as charged in the amended
7 information and was sentenced on March 16, 2010. Thus the court finds that the
8 defendant has twice been previously convicted for violating the provisions of a domestic
9 violence related court order when he contacted Jessica Reed on July 13, 2010. Any
10 testimony by the defendant claiming otherwise was not found to be credible by the court.
11 Furthermore, the court finds that the defendant's act/contact with Jessica Reed occurred in
12 the State of Washington.
13

- 14 10. That during the period between the 1st day of June 2010 and the 13th day of July 2010,
15 the defendant knowingly threatened to cause bodily injury immediately or in the future to
16 Irene Reed and/or her daughter Jessica Reed by calling Irene Reed on the phone and
17 stating threats to come into her house and harm her and/or her daughter Jessica Reed.
18 The court heard a voicemail message that was admitted into evidence that was left on
19 Irene Reed's phone by the defendant during the period between June 1, 2010 and July 13,
20 2010 that included, among other things, "That bitch would be laying in the
21 motherfucking grave wit you," which the court inferred to be a statement directed at
22 Irene Reed telling her that the defendant was going to kill or harm her and/or her
23 daughter. The court finds that the defendant's tone was hostile and aggressive in nature,
24 and that the words or conduct of the defendant placed Irene Reed in reasonable fear that
25 the threat would be carried out, and the defendant acted without lawful authority.
26
27 Furthermore, after reviewing court certified documents admitted into evidence, the court
28

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10-1-04063-5

is convinced that the defendant was previously convicted in 2009 of the crime of harassment against Jessica Reed, who is Irene Reed's daughter. The court also finds that the threat was made or received in the State of Washington.

- 11. That during the period between June 1, 2010, and July 13, 2010, there existed a no-contact order applicable to the defendant issued in February of 2009 out of the Tacoma Municipal Court in case number D00039371 and not expiring until February of 2011, restraining him from contacting Jessica Reed. After reviewing court certified documents admitted into evidence and listening to the testimony of the defendant, the court finds that the defendant knew of the existence of this order as it was issued in open court in his presence in February of 2009 and bears his signature. The court finds that during the period between June 1, 2010, and July 13, 2010, the defendant knowingly violated a provision of this order restraining him from having contact with Jessica Reed by speaking to her on the phone and meeting her at a Red Robin restaurant in Pierce County, Washington and eating a meal with her. In his own testimony the defendant conceded that this contact occurred. The court reviewed court certified documents admitted into evidence relating to Pierce County Superior Court cause no. 10-1-00088-9 and finds that the defendant knowingly, intelligently, and voluntarily pleaded guilty to two separate counts of Violation of No Contact Order as charged in the amended information and was sentenced on March 16, 2010. Thus the court finds that the defendant has twice been previously convicted for violating the provisions of a domestic violence related court order when he contacted Jessica Reed during the period between June 1, 2010, and July 13, 2010. Any testimony by the defendant claiming otherwise was not found to be

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credible by the court. Furthermore, the court finds that the defendant's act/contact with Jessica Reed occurred in the State of Washington.

12. That on during the period between June 1, 2010, and July 13, 2010, there existed a non-expiring, permanent protection order applicable to the defendant issued in May of 2008 by the Pierce County Superior Court in case number 08-2-01268-4 restraining him from contacting Irene Reed. After reviewing court certified documents admitted into evidence and listening to the testimony of the defendant and other witnesses, the court finds that the defendant knew of the existence of this order as it was served upon him on October 29 of 2008. The court finds that during the period between June 1, 2010, and July 13, 2010, the defendant knowingly violated a provision of this order restraining him from having contact with Irene Reed by calling her on the phone and making threats and leaving voice messages, one of which was admitted into evidence and played for the court. The court reviewed court certified documents admitted into evidence relating to Pierce County Superior Court cause no. 10-1-00088-9 and finds that the defendant knowingly, intelligently, and voluntarily pleaded guilty to two separate counts of Violation of No Contact Order as charged in the amended information and was sentenced on March 16, 2010. Thus the court finds that the defendant has twice been previously convicted for violating the provisions of a domestic violence related court order when he contacted Irene Reed during the period between June 1, 2010, and July 13, 2010. Any testimony by the defendant claiming otherwise was not found to be credible by the court. Furthermore, the court finds that the defendant's act/contact with Irene Reed occurred in the State of Washington.

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3 13. That the defendant and Jessica Reed have been involved in a significant romantic, dating
4 relationship which started in approximately 2004 or 2005 and that the defendant is the
5 biological father of Jessica Reed's daughter, who was born in 2007.

CONCLUSIONS OF LAW

- 6
7 1. The Court has jurisdiction over the parties and the subject matter.
8
9 2. The defendant had actual notice of the no-contact order applicable to the defendant issued
10 in February of 2009 out of the Tacoma Municipal Court in case number D00039371 and
11 not expiring until February of 2011, restraining him from contacting Jessica Reed.
12 3. The defendant had actual notice of a non-expiring, permanent protection order applicable
13 to the defendant issued in May of 2008 by the Pierce County Superior Court in case
14 number 08-2-01268-4 restraining him from contacting Irene Reed.
15 4. The Court concludes that based on the totality of the circumstances, and beyond a
16 reasonable doubt, that in the State of Washington, Pierce County, the Defendant, during
17 the period between the 1st day of June, 2010 and the 13th day of July, 2010, did
18 unlawfully and feloniously, without lawful authority, knowingly threaten to cause bodily
19 injury immediately or in the future to Jessica Reed or to any other person, and by words
20 or conduct place the person threatened in reasonable fear that the threat would be carried
21 out, the defendant having been previously convicted in this or any other state of any
22 crime of harassment of the same victim or of any member of the victim's family or
23 household or any person specifically named in a no-contact or no-harassment order,
24 contrary to RCW 9A.46.020, a domestic violence incident as defined in RCW 10.99.020,
25 and against the peace and dignity of the State of Washington.
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3 5. The Court concludes that based on the totality of the circumstances, and beyond a
4 reasonable doubt, that in the State of Washington, Pierce County, the Defendant, on or
5 about the 13th day of July, 2010, under circumstances not amounting to malicious
6 mischief in the first or second degree, did unlawfully, knowingly, and maliciously cause
7 physical damage to a vehicle and/or a CD player, the property of another, contrary to
8 RCW 9A.48.090(1)(a) and 9A.48.090(2)(a), a domestic violence incident as defined in
9 RCW 10.99.020, and against the peace and dignity of the State of Washington.

10
11 6. The Court concludes that based on the totality of the circumstances, and beyond a
12 reasonable doubt, that in the State of Washington, Pierce County, the Defendant, on or
13 about the 13th day of July, 2010, did unlawfully and feloniously violate the terms of a
14 court order issued pursuant to RCW 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50, or
15 74.34, by willfully having contact with Irene Reed when such contact was prohibited by a
16 court order, to wit: Pierce County Superior Court Cause #08-2-01268-4, and after having
17 had actual notice of the existence of the court order, and that further, the defendant has
18 two previous convictions for violating orders issued under chapter 7.90, 9.94A, 10.99,
19 26.09, 26.10, 26.26, 26.50, 74.34, or a valid foreign protection order as defined in RCW
20 26.52.020, thereby invoking the provisions of RCW 26.50.110(5) and increasing the
21 classification of the crime, contrary to RCW 26.50.110 and 26.50.110(5), and against the
22 peace and dignity of the State of Washington.

23
24 7. The Court concludes that based on the totality of the circumstances, and beyond a
25 reasonable doubt, that in the State of Washington, Pierce County, the Defendant, on or
26 about the 13th day of July, 2010, did unlawfully and feloniously violate the terms of a
27 court order issued pursuant to RCW 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50, or
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10-1-04063-5

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3 74.34, by willfully having contact with Jessica Reed when such contact was prohibited by
4 a court order, to wit: Tacoma Municipal Court Cause #D00039371, and after having had
5 actual notice of the existence of the court order, and that further, the defendant has two
6 previous convictions for violating orders issued under chapter 7.90, 9.94A, 10.99, 26.09,
7 26.10, 26.26, 26.50, 74.34, or a valid foreign protection order as defined in RCW
8 26.52.020, thereby invoking the provisions of RCW 26.50.110(5) and increasing the
9 classification of the crime, contrary to RCW 26.50.110 and 26.50.110(5), a domestic
10 violence incident as defined in RCW 10.99.020, and against the peace and dignity of the
11 State of Washington.

12
13 8. The Court concludes that based on the totality of the circumstances, and beyond a
14 reasonable doubt, that in the State of Washington, Pierce County, the Defendant, during
15 the period between the 1st day of June, 2010 and the 13th day of July, 2010, did
16 unlawfully and feloniously, without lawful authority, knowingly threaten to cause bodily
17 injury immediately or in the future to Irene Reed or to any other person, and by words or
18 conduct place the person threatened in reasonable fear that the threat would be carried
19 out, the defendant having been previously convicted in this or any other state of any
20 crime of harassment of the same victim or of any member of the victim's family or
21 household or any person specifically named in a no-contact or no-harassment order,
22 contrary to RCW 9A.46.020, and against the peace and dignity of the State of
23 Washington.

24
25
26 9. The Court concludes that based on the totality of the circumstances, and beyond a
27 reasonable doubt, that in the State of Washington, Pierce County, the Defendant, during
28 the period between the 1st day of June, 2010 and the 13th day of July, 2010, did

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10-1-04063-5

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3 unlawfully and feloniously violate the terms of a court order issued pursuant to RCW
4 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34, by willfully having contact with
5 Jessica Reed when such contact was prohibited by a court order, to wit: Tacoma
6 Municipal Court Cause #D00039371, and after having had actual notice of the existence
7 of the court order, and that further, the defendant has two previous convictions for
8 violating orders issued under chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50,
9 74.34, or a valid foreign protection order as defined in RCW 26.52.020, thereby invoking
10 the provisions of RCW 26.50.110(5) and increasing the classification of the crime,
11 contrary to RCW 26.50.110 and 26.50.110(5), a domestic violence incident as defined in
12 RCW 10.99.020, and against the peace and dignity of the State of Washington.

13
14 10. The Court concludes that based on the totality of the circumstances, and beyond a
15 reasonable doubt, that in the State of Washington, Pierce County, the Defendant, during
16 the period between the 1st day of June, 2010 and the 13th day of July, 2010, did
17 unlawfully and feloniously violate the terms of a court order issued pursuant to RCW
18 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34, by willfully having contact with
19 Irene Reed when such contact was prohibited by a court order, to wit: Pierce County
20 Superior Court Cause #08-2-01268-4, and after having had actual notice of the existence
21 of the court order, and that further, the defendant has two previous convictions for
22 violating orders issued under chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50,
23 74.34, or a valid foreign protection order as defined in RCW 26.52.020, thereby invoking
24 the provisions of RCW 26.50.110(5) and increasing the classification of the crime,
25 contrary to RCW 26.50.110 and 26.50.110(5), and against the peace and dignity of the
26 State of Washington.
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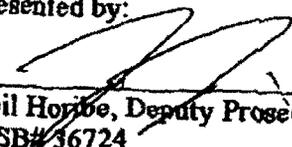
10-1-04063-5

11. The Court's oral ruling on these issues was given in open court in the presence of the Defendant on the 7th day of February, 2011, and is hereby incorporated into these conclusions of law.

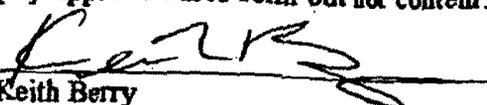
These findings and conclusions were signed this 25 day of February, 2011.

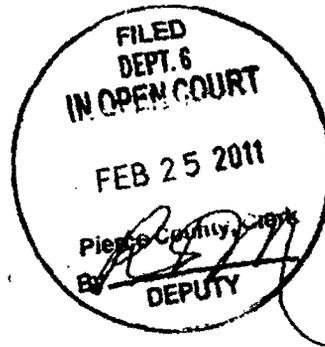

JUDGE

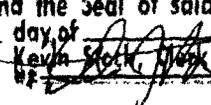
Presented by:


Neil Horibe, Deputy Prosecuting Attorney
WSB# 36724

Approved as to form and content; or
 Approved as to form but not content:


Keith Berry
Defendant
Pro Se



STATE OF WASHINGTON, County of Pierce
I, Kevin Stock, Clerk of the above
entitled Court, do hereby certify that this
pergoing instrument is a true and correct
copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of said Court this
5th day of Feb, 20 11

Kevin Stock, Clerk

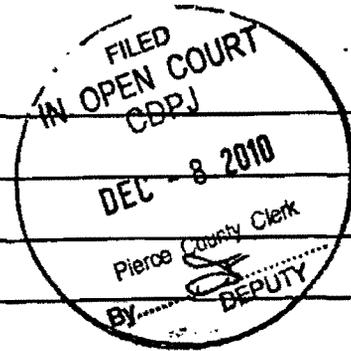
APPENDIX “D”

Motion to Suppress

CERTIFIED COPY



10-1-04083-5 35503308 MTS 12-08-10



Superior Court of the State of Washington

*State of Washington
Plaintiff*

*No. 10-1-R-063-5
Motion to Suppress
Evidence*

*v.
Keith E. Bessey
Defendant*

*I, Keith E. Bessey Pro-Se respectfully
ask the court to grant motion because of
insufficient evidence due to the fact
the Prosecution haven't prove beyond a
reasonable doubt that the plaintiff on
the tape. No professional analysis
(voice) to determine if that the plaintiff
Prosecution had from 7.15.2010 til
11.24.2010 to do so.*

Dated Dec 26, 2010

*Keith E. Bessey
Pro-Se*

*#36724
Prosecutor Atty.*

Superior Court of the State of Washington

State of Washington
PlaintiffNo. 10-1-0163-5
Motion to Suppress
Evidencevs.
Keith E. Barry
Defendant

I, Keith E. Barry Pro-Se respectfully ask the court to grant motion due to violation of Order - Penalties, Full Faith and Credit Clause and 18 USC s 2265 didn't contain the warning required under RCW 26.50.035 CJC brochures, forms, and handbook Chapter 10.99.050 DV official Response Defendant didn't have full knowledge of consequences of punishment on that conviction if it were same or different persons. 1-6-2010

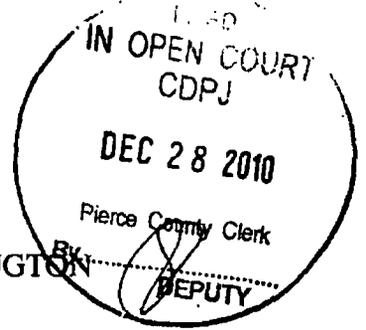
Keith E. Barry
Pro-Se#36724
Prosecutor Atty.

APPENDIX “E”

Status Conference Order



CERTIFIED COPY



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

STATE OF WASHINGTON,

Plaintiff,

NO. 10-1-04063-5

vs.

STATUS CONFERENCE
ORDER

BERRY, KEITH

Defendant.

ORSTAC

The parties represent to the Court as follows:

1. This status conference was set to address the following issues:

- _____ This issue is resolved. [] Yes [] No
- _____ This issue is resolved. [] Yes [] No
- _____ This issue is resolved. [] Yes [] No
- _____ This issue is resolved. [] Yes [] No

2. [] This case is expected to be a guilt plea on _____.

3. [] No amended information will be filed under this Cause Number.

4. Jury Trial is set for 1/3, 2011.

[] Parties are ready and available for trial. State: [] Yes No. If no explain:

Defense: Yes [] No. If no, explain:

DPA IS SCHEDULED TO RESUME TRIAL IN ANOTHER CASE ON 1/3/11.

5. Discovery is complete in all respects. [] Yes No. If no, explain:

STATE HAS BEEN ORDERED TO PROVIDE COPY OF AUDIO RECORDINGS IN PROPERLY ROOM TO DEFENDANT BY NOON ON 12/30/10.

6. Witnesses have been disclosed and Witness Lists filed. Yes [] No. If no, explain:

STATE WOULD ADD A WITNESS: RECORDS CUSTODIAN/CLERK OF THE Tacoma MUNICIPAL COURT

Status Conference Order

7. There may be the following witness scheduling problems:

None known at this time - State has subpoenaed its witnesses.

8. An interpreter is required: [] Yes [X] No Language: _____

IF YES, THE ASSIGNED DPA IS RESPONSIBLE FOR NOTIFYING THE COURT'S INTERPRETER COORDINATOR AT X6091.

9. Other: _____

10. THE COURT MAKES THE FOLLOWING ORDERS REGARDING THIS CASE:

STATUS CONFERENCES ARE HEARD ON THE RECORD IN CDPJ AND ALL PARTIES MUST REMAIN IN ATTENDANCE UNTIL YOU HAVE BEEN EXCUSED BY THE COURT.

Dated 12-28-10 20 10.

[Signature]
Defendant

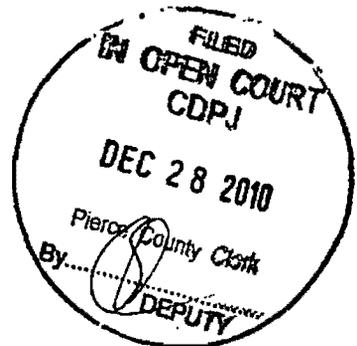
[Signature]
Judge **LINDA CJ LEE**

Defendant's Attorney/Bar #

[Signature]
Prosecuting Attorney/Bar # 36744



STATE OF WASHINGTON, County of Pierce
I, Kevin Stock, Clerk of the above
entitled Court, do hereby certify that this
 foregoing instrument is a true and correct
copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of said Court this
5th day of Dec, 20 11
[Signature]
Kevin Stock, Clerk



Status Conference Order

APPENDIX “F”

Motion to Suppress Evidence

CERTIFIED COPY

SCANNED



10-1-04063-5 35786060 MTS 01-27-11

FILED
IN COUNTY CLERK'S OFFICE

A.M. JAN 20 2011 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY: _____ DEPUTY

Superior Court of Washington for Pierce County

State of Washington
County of Pierce

Kevin E. Barry
Plaintiff vs
Defendant
Motion to Suppress
Evidence

Kevin E. Barry
Plaintiff

I, Kevin E. Barry, ask the Court to
suppress James J. Reed's cell phone
number from the records of the
state. The date covered the period
during those months.

Kevin E. Barry
Pro. Se

April Burke
Deputy

Dated: 1-26-11



STATE OF WASHINGTON, County of Pierce
I, Kevin Stock, Clerk of the above
entitled Court, do hereby certify that this
aforesaid instrument is a true and correct
copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my
Hand and the Seal of said Court this
5th day of Dec 2011
Kevin Stock, Clerk
By: _____ Deputy

PIERCE COUNTY PROSECUTOR

December 05, 2011 - 2:04 PM

Transmittal Letter

Document Uploaded: prp2-419254-Response.pdf

Case Name: In Re: The PRP of Berry

Court of Appeals Case Number: 41925-4

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Other: _____

Sender Name: Therese M Kahn - Email: tnichol@co.pierce.wa.us