

NO. 43262-5-II

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

STATE OF WASHINGTON, RESPONDENT

v.

EDWARD CRABLE, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Brian Tollefson

No. 11-1-04318-7

Brief of Respondent/Response to Personal Restraint Petition

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

1. Whether the prosecutor's statements in closing were proper and did not violate the defendant's right to a fair trial?
2. Whether the defendant's offender score properly included points for two prior misdemeanor convictions for violation of a no contact order because his current offense was a crime of domestic violence?

B. STATEMENT OF THE CASE.

This case involves an appeal that has had a personal restraint petition consolidated with it. Pursuant to the Rules of Appellate Procedure, the record to be relied upon by the court for each type of proceeding is somewhat different. Compare Title 9 RAP with RAP 16.7(2)(i); RAP 16.9. *See also State v. Crace*, 157 Wn. App. 81, 93-94, 236 P.3d 914 (2010), *reversed on other grounds*, 174 Wn.2d 835, 280 P.3d 1102 (2012) (“For allegations ‘based on matters outside the existing record, the petitioner must demonstrate that he has competent admissible evidence to establish the facts that entitle him to relief.’”)

Accordingly, to minimize complication, the State incorporates by reference the entire appellate record for purposes of the personal restraint

petition. *See* RAP 16.9. Where additional material outside the appellate record is necessary for purposes of the personal restraint petition, the State will identify those items and add the materials as appendices to this brief.

1. Procedure

On October 25, 2011, the State filed an information charging the defendant with one count of domestic violence court order violation, based on an incident that occurred on October 21, 2011. CP 1. The information included an enhancement allegation that the defendant had two previous convictions for violating such orders, which enhancement increased the crime to a felony. CP 1. The information also included an aggravating allegation that the defendant committed shortly after being released from incarceration. CP1.

On January 25, 2012, the case was assigned to the Honorable Judge Brian Tollefson for trial. CP 117. Trial commenced on February 14, 2012. RP 02-14-12, p. 32, ln. 3-8.

On February 16, 2012 the jury returned a verdict finding the defendant guilty as to Count I. CP 30. The jury also answered "yes" to special verdict form A as to count I, finding that the defendant and B.W., the subject of the no contact order, were members of the same family or household. CP 31. Additionally, the jury answered "yes" to special

verdict form B as to count I, finding that the defendant committed the crime shortly after being released from incarceration. CP 32.

On March 2, 2012 the court sentenced the defendant to a total of 42 months, but imposed the time concurrent to the defendant's revoked misdemeanor sentence under CA# 11-1-02560-0. CP 81.

On March 29, 2012 the defendant timely filed a notice of appeal. CP 93-111.

On June 12, 2012 Crable separately and *pro se* filed a personal restraint petition in the Supreme Court, No. 87459-0. The Supreme Court transferred that petition to this court, which assigned it no. 44316-3-II, and consolidated it with his appeal under COA# 43262-5-II.

This brief is the State's combined response to the appellate brief and the personal restraint petition.

2. Facts

On October 21, 2011, Crable was facing charges under Pierce County Superior Court cause number 11-1-02560-0. *See* CP 118; Ex. 10. That day Crable entered a plea of guilty to an amended information charging him with count I, assault in the second Degree; Count II, violation of a no contact order - pre-sentence (a misdemeanor); and Count III, violation of a no contact order - pre sentence (a misdemeanor). RP 02-14-12, p. 34, ln. 1-3; p. 38, ln. 2-7; CP 118.

The court imposed sentence, which included the imposition of an order prohibiting contact order with B.W., one of the victims of the crime. RP 02-14-12, p. 103, ln. 5-6; p. 103, ln. 21-25; CP 118; Ex. 3; Ex. 5; Ex. 10. Crable thus had two prior convictions for violating court orders prohibiting contact as part of his plea agreement earlier that day. RP 02-14-12, p. 112, ln. 25 to p. 117, ln. 21; Exs. 3, 4, 5, 10.

After the entry of his plea agreement and the court's imposition of his sentence, that same day Crable was released from jail at about 10:00 p.m. in the evening. RP 02-14-12, p. 101, ln. 9-11; p. 102, ln. 7-9; RP 02-12-12, p. 145, ln. 11-23.

Pierce County Sheriff's Department Deputy Robert Shaw was on duty, a little after 10:00 p.m. in the evening assisting Lieutenant Karr and Detective Sergeant Adamson with an investigation of Crable upon his release. RP 02-14-12, p. 101, ln. 11 to p. 102, ln. 9. The officers were aware of the order prohibiting contact that was in place between Crable and B.W. RP 02-14-12, p. 150, ln. 14-20. The officers observed Crable upon his release to see where he was going to go and who he was going to come into contact with. RP 02-15-12, p. 145, ln. 24 to p. 146, ln. 5.

The officers were investigating Crable for an anticipated violation of an order prohibiting contact no contact with B.W. RP 02-14-12, p. 103, ln. 2 to p. 105, ln. 12. The officers observed Crable as he was released

from the Pierce County Jail and saw him walk across the campus of the adjacent County-City Building [and across S. 11th Street] to C.J. Bail Bonds. RP 02-14-12, p. 102, ln. 9-11; p. 147, ln. 20-24. Crable pulled on the door and knocked on the window at C.J. Bail Bonds, but was unable to get any response, so he proceeded down 11th Street to Tacoma Avenue. RP 02-14-12, p. 102, ln. 11-14.

Crable then turned north on Tacoma Avenue, and walked into Aladdin Bail Bonds. RP 02-14-12, p.102, ln. 14-16. After a few minutes in Aladdin Bail Bonds, Crable left Aladdin Bail Bonds and walked toward McDonalds at 9th and Tacoma Avenue, and got into a vehicle in the McDonald's parking lot. RP 02-14-12, p. 102, ln. 16-19.

Two other officers, Lieutenant Karr and Detective Sergeant Adamson were in an unmarked police vehicle that was parked next to the vehicle Crable got into. RP 02-14-12, p. 102, ln. 18-19; RP 02-15-12, p. 147, ln. 7-11. They contacted Deputy Shaw and advised him that they believed the driver of the car Crable had entered was B.W., the person with whom Crable was prohibited from having contact by the court's order. RP 02-14-12, p. 105, ln. 15-20; p. 148, ln. 9-22.

The vehicle in which Crable was a passenger left the McDonald's parking lot and headed southbound on Tacoma Avenue, towards 11th Street. RP 02-14-12, p. 105, ln. 20-21. As the vehicle proceeded in that

direction, it passed Deputy Shaw who was parked in an unmarked car on Tacoma Avenue. RP 02-14-12, p. 105, ln. 22-24; RP 02-15-12, p. 147, ln. 15-17. Deputy Shaw confirmed that the driver of the vehicle appeared to be B.W., with whom Crable was prohibited from having contact. RP 02-14-12, p. 105, ln. 23 to p. 106, ln. 1. He also ran the license plate on the vehicle and confirmed that the vehicle was registered to B.W. RP 02-14-12, p. 106, ln. 1-4.

Deputy Shaw followed the vehicle to Pacific Avenue where he activated his emergency lights and siren and stopped B.W.'s vehicle. RP 02-14-12, p. 106, ln. 6-9. B.W.'s vehicle stopped, and Deputy Shaw contacted the female driver and asked for her I.D. and confirmed that she was in fact B.W. RP 02-14-12, p. 106, ln. 13 to p. 107, ln. 25; p. 109, ln. 25 to p. 110, ln. 2; Ex. 6, 7.

Deputy Shaw also looked at the passenger and verified that he was in fact Crable. RP 02-14-12, p. 108, ln. 2 to p. 109, ln. 24. Crable was then placed in handcuffs, and assisted out of the vehicle. RP 02-14-12, p. 109, ln. 18-21. After Deputy Shaw confirmed that the no contact order was in effect and valid, he advised Crable that he was under arrest. RP 02-14-12, p. 110, ln. 11-18. Upon being arrested, Crable stated that B.W. was the only person in the State of Washington that he knew, that he was just trying to get a ride home and had been released from jail, and that he

just wanted to get his things and get a shower. RP 02-14-12, p. 110, ln. 22 to p. 111, ln. 2; RP 12-15-12 p. 155, ln. 11-13. Crable claimed he told B.W. that he couldn't stay at her residence. RP 12-15-12 p. 155, ln. 17-19. Crable asked the Deputies to let him go and said if they would let him go he wouldn't have any other contact with B.W. RP 02-14-12, p. 111, ln. 3-5.

B.W. told Deputy Shaw that she had been contacted by a friend in California who told her that Crable was supposed to be released that day between 5:00 p.m. and 10:00 p.m. RP 02-14-12, p. 112, ln. 19-24.

The defense called B.W. as a witness. RP 02-15-12 p. 173, ln. 16. B.W. testified that she was in shock and disbelief as a result of the charges filed against Crable in the first case [involving the charge of assault in the second degree] and didn't agree with what he was charged with. RP 02-15-12, p. 77, ln. 13-18; p. 196, ln. 18 to p. 197, ln. 8.

She claimed that she did not want the court to impose a no contact order as part of Crable's plea agreement and instead wanted an order that only prohibited Crable from having hostile contact with B.W. and that she faxed a letter to that affect to the prosecutor handling that case. RP 02-15-12, p. 177, ln. 2-7.

Prior to picking Crable up that day, B.W. spoke with Crable's best friend, Jeremy who was in California and learned from him that Crable

was being released from jail. RP 02-15-12, p. 203, ln. 2-22; p. 205, ln. 5-13; p. 209, ln. 3-10. B.W. was on the cell phone with Jeremy while she was in the McDonald's parking lot waiting for Crable. RP 02-15-12, p. 205, ln. 21-25.

B.W. testified that when Crable approached her vehicle in the McDonald's parking lot, he was standoffish, so she rolled down her window and said it was okay [for him to approach] because she had faxed the prosecutor and had the no contact order dropped to a no hostile contact order. RP 02-15-12, p. 179, ln. 18-20.

C. ARGUMENT.

1. THE PROSECUTOR'S STATEMENTS IN CLOSING DID NOT VIOLATE CRABLE'S RIGHT TO A FAIR TRIAL WHERE THEY DID NOT IMPLIEDLY INVITE THE JURY TO SEND A MESSAGE.

In his appeal, Crable claims that the prosecutor committed misconduct in closing, asserting that two of the prosecutor's statements amounted to an implied argument inviting the jury to "send a message." Br. App. 9-10.

This claim is without merit where the prosecutor's argument did not invite the jury to send a message, but rather was an encouragement to take the case seriously. Moreover, the second comment pertained to the

special verdict for the aggravating factor that the defendant committed his crime shortly after release from custody.

The right to a fair trial is secured by both the United States and Washington Constitutions. The right to a fair trial arises from the Due Process clauses of the Fifth and Fourteenth Amendments. However, it is given specific form by the Sixth Amendment, which enumerates particular guarantees. See *U.S. v. Wade*, 388 U.S. 218, 226-27, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967). The Fourteenth Amendment also makes the right to a fair trial applicable to the States. *Cone v. Bell*, 556 U.S. 449, 451, 129 S. Ct. 1769, 173 L. Ed. 2d 701 (2009).

The Washington Constitution's protection of a fair trial parallels the federal. The right to a fair trial arises from the Due Process Clause of Article I, section 3, while Article I, section 22 enumerates particular guarantees that apply to criminal prosecutions, some of which thereby serve to protect the due process right to a fair trial. See *State v. Clark*, 143 Wn.2d 731, 773, 24 P.3d 1006 (2001). The due process clause of article I, section 3 has repeatedly been held to generally provide the same protections as the due process clause of the federal constitution. *State v. McCormick*, 166 Wn.2d 689, 699, 213 P.3d 32 (2009); *In re Dyer*, 143 Wn.2d 384, 394, 20 P.3d 907 (2001) (citing *State v. Ortiz*, 119 Wn.2d 294, 304, 831 P.2d 1060 (1992)); *Young v. Konz*, 91 Wn.2d 532, 538-39,

588 P.2d 1360 (1979); *State v. Pitney*, 79 Wash. 608, 610, 140 P. 918 (1914).

Some acts of prosecutorial misconduct can be so egregious as to rise to the level that deprives a defendant of the right to a fair trial. *State v. Davenport*, 100 Wn.2d 757, 762, 675 P.2d 1213 (1984). However, absent a proper objection at trial, a defendant cannot raise the issue of prosecutorial misconduct on appeal unless the misconduct was so “flagrant and ill intentioned” that no curative instruction would have obviated the prejudice it engendered. *State v. Hoffman*, 116 Wn.2d 51, 93, 804 P.2d 577 (1991); *State v. Ziegler*, 114 Wn.2d 533, 540, 789 P.2d 79 (1990), *State v. Belgarde*, 110 Wn.2d 504, 507, 755 P.2d 174 (1988). Even where the conduct was objected to, in order to prevail on a claim of prosecutorial misconduct the defendant must establish that the conduct was both improper and prejudicial. *State v. Fisher*, 165 Wn.2d 727, 747, 202 P.3d 937 (2009).

Before an appellate court reviews a claim based on prosecutorial misconduct, it should require “that [the] burden of showing essential unfairness be sustained by him who claims such injustice.” *Beck v. Washington*, 369 U.S. 541, 557, 82 S. Ct. 955, 8 L. Ed. 2d 834 (1962).

A defendant claiming prosecutorial misconduct bears the burden of demonstrating both that the remarks were improper and that they

prejudiced the defense. *State v. Finch*, 137 Wn.2d 792, 839, 975 P.2d 967 (1999); *State v. Mak*, 105 Wn.2d 692, 726, 718 P.2d 407, *cert. denied*, 479 U.S. 995, 107 S. Ct. 599, 93 L. Ed. 2d 599 (1986); *State v. Binkin*, 79 Wn. App. 284, 902 P.2d 673 (1995), *review denied*, 128 Wn.2d 1015 (1996). If a curative instruction could have cured the error, and the defense failed to request one, then reversal is not required. *Binkin*, at 293-294.

To prove that a prosecutor's actions constitute misconduct, the defendant must show that the prosecutor did not act in good faith and the prosecutor's actions were improper. *State v. Manthie*, 39 Wn. App. 815, 820, 696 P.2d 33 (1985) (citing *State v. Weekly*, 41 Wn.2d 727, 252 P.2d 246 (1952)). Allegedly improper comments are reviewed in the context of the entire argument, the issues in the case, the evidence addressed in the argument and the instructions given. *State v. Bryant*, 89 Wn. App. 857, 873, 950 P.2d 1004 (1998) ["remarks must be read in context."] *State v. Pastrana*, 94 Wn. App. 463, 479, 972 P.2d 557 (1999).

"It is not misconduct... for a prosecutor to argue that the evidence does not support the defense theory. Moreover, the prosecutor, as an advocate, is entitled to make a fair response to the arguments of defense counsel." *State v. Russell*, 125 Wn.2d 24, 87, 882 P.2d 747 (1994).

The defendant also has the burden to establish prejudice that rose to such a level it rendered the trial unfair. See *State v. Emery*, 174 Wn.2d 741, 762, 278 P.3d 653 (2012). Improper remarks do not constitute prejudicial error unless the appellate court determines there is a substantial likelihood that the misconduct affected the jury's verdict. *Finch*, 137 Wn.2d 792 at 839. Moreover, the trial court, not the appellate court, is best suited to evaluate the prejudice of the statement. *State v. Weber*, 99 Wn.2d 158, 166, 659 P.2d 1102 (1983).

Crable relies upon two statements in the prosecutor's closing argument as the basis for the alleged error. The first occurs at the very beginning of the prosecutor's closing and refers to the rules that we live by every day as being part of the social contract. Br. App. 9, (citing RP 02-16-12, p. 253). The second statement occurs later in the argument when the prosecutor referred to the defendant having been sentence and later that very same day blatantly violating a court order as a "slap in the face to the judicial system." Br. App. 9 (citing RP 02-16-12, p. 260).

The defense asserts that the prosecutor's two statements in closing contained a, "...theme of implying that the jury should 'send a message.'" Br. App. at 10. However, When the prosecutor's statements are each viewed in context, that defense claim is misplaced and without merit.

Indeed, the defense refers to the prosecutor's arguments as "implying" that the jury should "send a message." Br. App. 10. That highlights the fact that the prosecutor in fact did not expressly argue that the jury should send a message. Moreover, the prosecutor's statements, neither expressly nor impliedly asked the jury to send any message.

Certainly an argument that the jury send a message would be improper insofar as such an argument would suggest that the need to send a message regardless of the underlying facts might be more important than the need to render a verdict based on the evidence of the defendant's guilt beyond a reasonable doubt. *See, e.g., State v. Ramos*, 164 Wn. App. 327, 338, 263 P.3d 1268 (2011).

However federal appellate courts have held that even some express statements in closing that the jury "send a message" did not constitute reversible misconduct where they were not objected to at trial. *See Cole v. Roper*, 623 F.3d 1183, 1193-16 (8th Cir. 2010); *Henley v. Bel*, 487 F.3d (6th Cir. 2007); *United States v. Harris*, 498 F.3d 278, 293 (4th Cir. 2007). The federal courts have also held such arguments not to be error where the defense has objected, and the court gave a limiting instruction. *United States v. Zanghi*, 189 F.3d 71, 81 (1st Cir. 1999).

Even where an explicit argument that the jury "send a message" does occur, depending upon how it is made such an argument is not

necessarily inherently improper. Indeed, federal courts have held that some express statements inviting the jury to "send a message" do not rise to the level of prosecutorial misconduct in the first place. See *United States v. Modena*, 302 F.3d 626, 634-35 (6th Cir. 2002); *Buell v. Mitchell*, 274 F.3d 337, 365 (6th Cir. 2001); *United States v. Reliford*, 58 F.3d 247, 251 (6th Cir. 1995).

One court distinguished the proper remarks there from improper remarks in another case in which the prosecutor asked the jury in a child sexual abuse case not to tell a child that kind of touch was o.k., to let such children know jurors are ready to believe them and enforce the law on the child's behalf. *Finch*, 137 Wn.2d at 840-41 (citing *State v. Bautista-Caldera*, 56 Wn. App. 186, 195, 783 P.2d 116 (1989)). The argument in *Bautista-Caldera* was improper because it exhorted the jury to "send a message" to society about the general problem of child sexual abuse rather than focus on the evidence of the defendant's guilt. *Finch*, 137 Wn.2d at 841. Moreover, in *Bautista-Caldera* there were additional highly inflammatory statements by the prosecutor. See *Bautista-Caldera*, 54 Wn. App. at 195.

Other cases where a "send a message" arguments were held improper include sending messages to third parties other than the defendant. Similar to *Bautista-Caldera*, but not as egregious, in *State v.*

Powell, the court held that the prosecutor's statements in a child sex abuse case that a "not guilty" verdict would send a message to children that reporting adults for sexual impropriety was ineffective as the children would not be believed were improper because the statements in effect told the jury that the purpose of its verdict would "send a message" to children, rather than consider the defendant's guilt based upon the facts of the case. *State v. Powell*, 62 Wn. App. 914, 918-19, 816 P.2d (1991). The court in *Powell* held that the statements warranted reversal in part because they came in rebuttal at the very end of trial before the jury began its deliberations and the defendant had no opportunity to respond to them. *Powell*, 62 Wn. App. at 919.

A prosecutor's argument that the jury take on a murder victim's mission to stop violence and to send a message to gang members and other people who choose to dwell in the underworld of gangs followed by appeals to patriotism were improper and sufficiently prejudicial to require reversal, particularly where combined with additional arguments that needlessly injected race and ethnicity into the trial. *State v. Perez-Mejia*, 134 Wn. App. 907, 917-18, 143 P.3d 838 (2006).

Additionally, the court has treated as similar to an improper "send a message" statement the argument that the jury should act to stop a crime that was not shown to be ongoing, as well as potential future crimes.

Thus, the prosecutor's argument was similarly improper and sufficiently prejudicial to warrant reversal where the prosecutor argued that the defendant was part of the drug world and that the jury should convict in order to protect the community from drug dealing at a mall, and was also sufficiently prejudicial that the court reversed the conviction. *State v. Ramos*, 164 Wn. App. 327, 337-38, 263 P.3d 1268 (2011). *See also United States v. Solivan*, 937 F.2d 1146, 1150-53, 1155 (6th Cir. 1991).

While the prosecutor may not appeal to the jury's passions and prejudices, the prosecution may appeal to the jury to act as the conscience of the community. *United States v. Davis*, 609 F.3d 663, 688, (5th Cir. 2010).

a. The prosecutor's "social contract" statement was proper

Here, the prosecutor began closing argument with the following:

[PROSECUTOR]: I told you early in opening this isn't the spiciest of cases. But in Washington, all over America crimes are to be zealously prosecuted when the facts are there supporting the law, that the -- the violation of law that has occurred. And the plain, simple fact, I'm not minimizing this case at all. This case is important because when the State of Washington through its superior courts issue orders under which they have jurisdiction to parties, including Mr. Crable, those orders have meanings. We all have rules that we have to abide by every day. It's part of the social contract we enter into living in a society. And whether he likes it, whether [B.W.] likes it, the rules were clear as they applied to Mr. Crable.

As of October 21st, 2011 he was under no circumstance to have any contact with [B.W.]. That's what this case is about. That -- this does in fact mean something. Now, as jurors you've been given several rules throughout this case, what time to be here, strict rules about not discussing the case amongst each other, keep --

[Δ COUNSEL]: Your Honor, I'm going to object. This has nothing to do with the evidence in this case. Asking the jurors to put themselves in the shoes of the defendant.

THE COURT: Objection overruled.

[Δ COUNSEL]: All right.

[PROSECUTOR]: And the rules have also been given to you through your jury instruction packet. [...]

[...]

RP 02-16-12, p. 252, ln. 9 to p. 253, ln. 12 ff. The prosecutor then proceeded to discuss the jury instructions at length.

References to "the social contract" have previously been held proper.

In a death penalty case, a prosecutor's remarks seeking to establish a historical context for the jury's decision on whether to impose the death penalty was not improper where it referred to "the social contract" *State v. Davis*, 141 Wn.2d 798, 873 n. 396, 10 P.3d 977 (2000). *See also Byrd v. Collins*, 209 F.3d 486, 539 (6th Cir. 2000).

Similar arguments have also been held to be proper. *See State v. Prado*, 144 Wn. App. 227, 254, 181 P.3d 901 (2008) (holding that prosecutor's statements that in America for 200 years we are a "nation of laws" was meant to relay to the jury respect for the rule of law and was not

an improper plea to the jurors patriotic sentiments, nor made in reference to the defendant's nationality or ethnicity). *State v. Smith*, 124 Wn. App 417, 430-31, 102 P.3d 158 (2004) (holding proper a prosecutor's statement referring to whether we live in a lawful society or a lawless one, and that in a lawful society people cannot use whatever means of force under whatever circumstances and say they thought it was appropriate).

A prosecutor's argument in rebuttal that a lawful society is one where people cannot use whatever means of force under whatever circumstances and then come before the jury and say subjective they thought it was appropriate, was not an argument that asked the jury to "send a message," and convict the defendant for her vigilante-like behavior, nor did it seek to improperly inflame the jury where it was responsive to the arguments of defense counsel and in context noted that a lawful society is one in which the murder victim would have respected a no contact order, but that the defendant would not have used excessive force where the victim violated that order. *State v. Smith*, 124 Wn. App. 417, 430-31, 102 P.3d 158 (2004).

A prosecutor's argument that in a civilized land we want things to be dealt with by the rule of law, and that the jury is a representative sampling of the community was held not to be improper. *State v. Finch*, 137 Wn.2d 792, 842, 975 P.2d 967 (1999). The court noted that while the

prosecutor's remarks constituted an appeal to the jury to act as the conscience of the community, such remarks were not improper, as they were not specifically designed to inflame the jury. *Finch*, 137 Wn.2d at 842.

Here, the prosecutor's "social contract" statement did not invite the jury to send a message to anyone. Quite the contrary, it was an argument against jury nullification that encouraged the jury to follow its duty and take the matter before it seriously even though the defendant's crime was for violation of a court order, an order that B.W. didn't want in place, and which Crable violated merely by getting into a car with B.W. Rather than asking the jury to disregard their duty and send a message, the prosecutor's argument asked the jury to take this case seriously, and by implication to follow the law and instructions given to it by the court.

- b. The "slap in the face of the judicial system" comment was proper.

After discussing several different instructions on various issues, the prosecutor went on to make the following statement:

[PROSECUTOR:] Special Verdict Form B, this offense occurred upon recently being released from incarceration. Jail is incarceration. And the State submits that's why this case, while not groundbreaking, earth shattering, it means something. You can't walk out of a sentencing and that very same day blatantly violate a court order. It's a slap in the face to the judicial system.

[Δ COUNSEL]: Your Honor, I'm going to object to that statement. Counsel is trying to put her prestige behind its arguments. You're supposed to just be --
THE COURT: Objection sustained.

RP 02-16-12, p. 260, ln. 8-19. The prosecutor then proceeded to terminate that line of argument and discuss reasonable inferences the jury is allowed to make. RP 02-16-12, p. 260, ln. 20ff.

The prosecutor's "slap in the face" statement is also not an implied invitation for the jury to send a message. Instead, it specifically addressed the special verdict form regarding the aggravator of recent recidivism and asks the jury to make the factual finding that the defendant committed his crime after recent release from custody. CP 1.

The defendant's conduct reflected a complete disregard for the orders of the court. By violating the order the same day it was entered, within hours of his plea, in what was clearly a pre-arranged and pre-planned meeting with B.W., Crable displayed a flagrant and egregious disregard for the authority of the court and its orders to him. The prosecutor's argument properly and appropriately characterized Crable's conduct as a "slap in the face to the judicial system" because it was such. Saying so was not an invitation to the jury to send a message.

Indeed, the "slap in the fact to the judicial system" argument was not improper. It asked the jury to find the aggravator based on the

defendant's willful and blatant disregard of the court's order. Nonetheless, in an abundance of caution, the trial court sustained trial counsel's objection, thereby avoiding the chance that the prosecutor would say anything further that might have been prejudicial. Rather, the prosecutor's argument again encouraged the jury to take the charges in the case seriously, in order to do its job properly and give a fair determination of the aggravator in the special verdict form.

Defense counsel objected to the second argument on the basis that the prosecutor's statement improperly attempted to invoke the prestige of the office. The defendant did not object that the statement invited the jury to send a message. The court sustained the objection. The defense did not request a limiting instruction, and none was given. But the prosecutor did not revisit the issue and moved on.

The statement was not flagrant and ill-intentioned where it was made in the context of argument for the jury to find the aggravator that the defendant committed his crime shortly after release from custody. It was an argument that the jury should not disregard the special verdict question.

The State searched, but could not find any case in Washington, federal opinions, or the opinions of the other states that addressed a "slap in the face phrase." However, at least one other comparable statement has been held not to violate a defendant's right to a fair trial.

The court held that there was no prejudice here a prosecutor made statement in closing that described domestic violence as a national problem and commented that "people get killed." *State v. Turner*, 167 Wn. App. 871, 883-84, 275 P.3d 356 (2012). The court did not consider whether the statements were improper because it held that they were not prejudicial in light of State's overall argument, the evidence and issues at trial, as well as the court's instructions that the lawyers remarks are argument and that the jury should reach its decision based on the facts proved and the law given. *Turner*, 167 Wn. App. at 883-84.

Here, neither of the prosecutor's statements were improper, and most certainly were not flagrant and ill-intentioned.

Even if the court were to hold that they were improper, the defendant was not so prejudiced that any problem with the statements could not have been cured with a limiting instruction.

Crable has failed to meet his burden to establish prosecutorial misconduct in closing. His claim on this issue is without merit and should be denied.

2. CRABLE'S PRIOR MISDEMEANOR
CONVICTIONS FOR VIOLATION OF
PROTECTION ORDERS WERE PROPERLY
COUNTED AS POINTS FOR HIS OFFENDER
SCORE WHERE HE WAS CHARGED WITH A
CRIME OF DOMESTIC VIOLENCE.

In his *pro se* personal restraint petition, Crable raises two related claims. First, he claims that his offender score is incorrect because it includes two misdemeanor convictions which should not have counted toward it. Second, he claims that his attorney was ineffective for failing to have identified and objected to the error at sentencing.

Both of Crable's claims fail because, contrary to his assertion, the prior misdemeanor convictions were correctly included in his offender score, which was correctly calculated, so that Crable's sentence was proper.

a. Crable's Offender Score Was Properly
Calculated And His Sentence Range Was
Correct.

Crable was charged in the information with Count I, domestic violence court order violation under RCW 26.50.110(5), which occurred on October 21, 2011. CP 1. The charge included the allegation that it was a crime of domestic violence under RCW 10.99.020. CP 1. *See also* CP 32, 32; RCW 10.99.020(5).

RCW 26.50.110(5) provides:

A violation of a court order issued under this chapter, chapter 7.--(the new chapter created in section 33 of this act), 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

Here, the State also alleged in the information that Crable had two prior convictions for violation of protection orders, thereby invoking the provisions of RCW 26.50.110(5). CP 1. The court instructed the jury that in order to find Crable guilty of domestic violence court order violation, one of the elements the State was required to prove beyond a reasonable doubt was that he had twice previously been convicted of violation of a domestic violence court order violation. CP 24. The State submitted evidence of two such prior convictions. Ex. 3. The jury then found Crable guilty of the crime charged. CP 30.

Thus, Crable was properly convicted of felony domestic violence court order violation based upon the fact that he had two prior misdemeanor convictions for violating a protection order.

The offender score is calculated pursuant to the provisions of RCW

9.94A.525. RCW 9.94A.525(2)(f) provides that:

Prior convictions for a repetitive domestic violence offense, as defined in RCW 9.94A.030, shall not be included in the offender score if, since the last date of release from confinement or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

A repetitive domestic violence offense as defined in RCW

9.94A.030(41)(a) [formerly RCW 9.94A.030(40)(a) (2010-2011) (eff.

June 10, 2010)] includes:

- [...]
- (ii) Domestic violence violation of a no-contact order under chapter 10.99 RCW that is not a felony offense;
- (iii) Domestic violence violation of a protection order under chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony offense
- [...]

This means that such offenses shall be included in the offender score if the offender has not yet spent ten years crime free in the community since the prior misdemeanor violations of a domestic violence court order.

RCW 9.94A.525(21)(c) provides that each adult prior conviction for a repetitive domestic violence offense as defined in RCW 9.94A.030 shall count for one point. Crable was sentenced on his two prior violations the same date he committed the current offense, so that he had not yet

spent ten years crime free in the community. Thus, each prior misdemeanor conviction for domestic violence violation of a protection order counted as one point, for a total of two points for those offenses.

Pursuant to RCW 9.94A.525(21)(a) where the defendant's current crime was committed on October 21, 2011, and thus after the August 1, 2011 effective date of that provision, his conviction for assault in the second degree counted as two points for purposes of Crable's offender score.

Finally, in his judgment and sentence for assault in the second degree, Crable was order to serve 12 months on community custody.¹ His community custody status was undisputed, as the defense acknowledged his community custody status in the Defendant's Memorandum for Sentencing, and on the record at sentencing. *See* CP 44; RP 03-02-12, p. 290, ln. 14-16. It was also included in the Stipulation on Prior Record and Offender Score entered at sentencing, and which Crable signed. CP 71-73. Pursuant to RCW 9.94A.525(19) because Crable was under Community Custody at the time of his offense, an additional point was added to his offender score.

¹ For purposes of the personal restraint petition a certified copy of the Warrant of Commitment and Judgment and Sentence on CA# 11-1-02560-0 has been attached as Appendix A.

Thus, Crable's offender score was correctly calculated as 5.

- 1 pt. Violation of a protection order (misdemeanor)
- 1 pt. Violation of a protection order (misdemeanor)
- 2 pts. Assault in the second degree
- 1 pt. On Community Custody Status when the crime was committed.
- 5 total points in his offender score.

Crable's claim in his personal restraint petition that "...there is no provision that allows that misdemeanors be calculated in the offender score." is incorrect as a matter of law. Not only is there such a provision, but it properly applied to his conviction, and the offender score was correctly calculated. Accordingly, Crable's claim should be denied as without merit.

b. Crable's Claim Of Ineffective Assistance Of Counsel Also Fails.

To demonstrate ineffective assistance of counsel, an appellant must make two showings: (1) defense counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances; and (2) defense counsel's deficient representation prejudiced the appellant, i.e., there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different. *State v. McFarland*, 127 Wn.2d 322, 899 P.2d 1251 (1995).

To raise a claim of ineffective assistance of counsel for the first time on appeal, the defendant is required to establish from the trial record: 1) the facts necessary to adjudicate the claimed error; 2) the trial court would likely have granted the motion if it was made; and 3) the defense counsel had no legitimate tactical basis for not raising the motion in the trial court. *McFarland*, 127 Wn.2d at 333-34; *State v. Riley*, 121 Wn.2d 22, 846 P.2d 1365 (1993).

Courts engage in a strong presumption that counsel's representation was effective. The burden is on an appellant alleging ineffective assistance of counsel to show deficient representation based on the record established in the proceedings below. *McFarland*, 127 Wn.2d at 334.

Here, Crable's counsel was not ineffective because there was no error in the calculation of his offender score or his sentence, so that there was no error by his counsel. Accordingly, Crable fails to meet his burden to establish his claim of ineffective assistance of counsel. Accordingly, that aspect of his claim should also be denied.

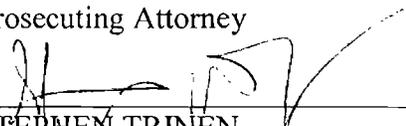
D. CONCLUSION.

The prosecutor's comments in closing did not deprive the defendant of his right to a fair trial where the statements did not impliedly encourage the jury to "send a message."

Crable's offender score in sentencing properly included two points for his prior misdemeanor convictions for violation of a no contact order because he was charged with domestic violence violation of an order prohibiting contact.

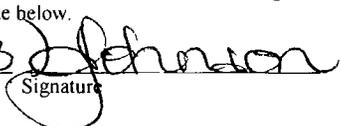
DATED: August 6, 2013

MARK LINDQUIST
Pierce County
Prosecuting Attorney


STEPHEN TRINEN
Deputy Prosecuting Attorney
WSB # 30925

Certificate of Service:

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

8/16/13 
Date Signature

APPENDIX “A”

Judgment and Sentence
11-1-02560-0

Case Number: 11-1-02560-0 Date: August 6, 2013
SerialID: 541CE504-F20F-6452-D97741670DAB976D
Certified By: Kevin Stock Pierce County Clerk, Washington



11-1-02560-0 37356728 JDSWCJ 10-24-11



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 11-1-02560-0

OCT 24 2011

vs.

EDWARD JASON CRABLE,

Defendant.

WARRANT OF COMMITMENT

- 1) 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).

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).

Case Number 11-1-02560-0 Date August 6, 2013
SerialID: 541CE504-F20F-6452-D97741670DAB976D
Certified By: Kevin Stock Pierce County Clerk, Washington

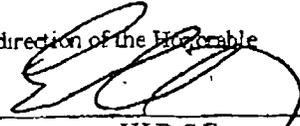
11-1-02560-0

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[] 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)

By direction of the Honorable

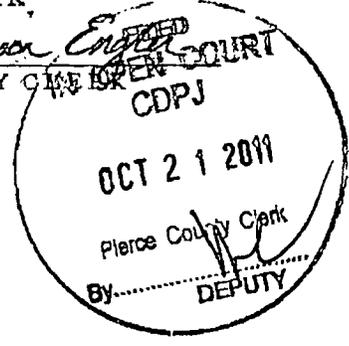
Dated: 10-21-11



JUDGE EDMUND MURPHY

KEVIN STOCK
CLERK

By: Mehoon Engler
DEPUTY CLERK



CERTIFIED COPY DELIVERED TO SHERIFF
Mehoon Engler
Date 24 2011 By _____ Deputy

STATE OF WASHINGTON

ss.

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.

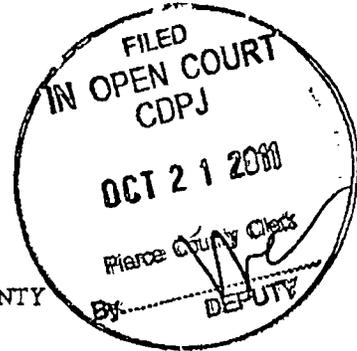
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____.

KEVIN STOCK, Clerk
By: _____ Deputy

mld

Case Number: 11-1-02560-0 Date: August 6, 2013
SerialID: 541CE504-F20F-6452-D97741670DAB976D
Certified By: Kevin Stock Pierce County Clerk, Washington

11-1-02560-0



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

NCO

OCT 24 2011

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-02560-0

AS TO COUNT I ONLY

vs.

JUDGMENT AND SENTENCE (FJS)

EDWARD J JASON CRABLE

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
- Alternative to Confinement (ATC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
- Juvenile Declines Mandatory Discretionary

SID: 18400618
DOB: 03/22/1977

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 10/21/11
by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
I	ASSAULT IN THE SECOND DEGREE/DV (E28)	9A.36.021(1)(c) 10.99.020	NA	06/22/11	111731179 PCSD

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46 61 520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8) (If the crime is a drug offense, include the type of drug in the second column)

as charged in the AMENDED Information

The crime charged in Count(s) I involve(s) domestic violence

11-9-12151-9

- The court finds that the offender has a chemical dependency that has contributed to the offense(s) RCW 9.94A.607.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589).
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number).

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	DUI	UNKNOWN	KENT MUNI, WA	12/23/97	A	MISD
2	DWLS 3	UNKNOWN	AUKEEN DIV KING, WA	01/07/01	A	MISD

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

2.3 SENTENCING DATA

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancement)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancement)	MAXIMUM TERM
1	0	IV	3-9 MONTHS	NA	3-9 MONTHS	10 YRS/ \$20,000

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:

11-1-02560-0

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

III. JUDGMENT

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

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

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

JASS CODE

RTN/RJN	\$ _____	Restitution to. _____
	\$ _____	Restitution to. _____
	(Name and Address--address may be withheld and provided confidentially to Clerk's Office).	
PCV	\$ 500.00	Crime Victim assessment
DNA	\$ 100.00	DNA Database Fee
PUB	\$ _____	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: _____

\$ 800.00 TOTAL

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

shall be set by the prosecutor.

is scheduled for 11/17/11 at 9:00 a.m.

RESTITUTION. Order Attached

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

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 \$ per CCO or Clerk per month commencing per CCO or Clerk. 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.

11-1-02560-0

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, 2.94A.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 ^{9/2/56} Bridget Warren + ^{12/12/93} B.C. (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 10 years (not to exceed the maximum statutory sentence).

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

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

• Domestic Violence eval + follow up treatment
• Substance Abuse eval + follow up treatment
• Law abiding behavior
• Any conditions per CCO
• Forfeit firearms

* If DOC declines supervision, will revert to bench probation

11-1-02560-0

1
2
3 4 a All property is hereby forfeited

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.

4 4 b BOND IS HEREBY EXONERATED

5
6
7 4 5 JAIL ONE YEAR OR LESS The defendant is sentenced as follows:

8 (a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the county jail.

9 6 ~~6~~ months on Count I days/months on Count _____
10 _____ days/months on Count _____ days/months on Count _____

11 Actual number of months of total confinement ordered is: 6 months

12 CONSECUTIVE/CONCURRENT SENTENCES RCW 9.94A.589

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

14 _____
The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

15 The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here. The sentence herein shall run consecutively to the felony sentence in cause number(s) _____

16 _____
17 The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: _____

18 Confinement shall commence immediately unless otherwise set forth here. _____

19 PARTIAL CONFINEMENT Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions. _____

20 _____
21 Work Crew RCW 9.94A.725 Home Detention RCW 9.94A.731, .190

22 Work Release RCW 9.94A.731

23 CONVERSION OF JAIL CONFINEMENT (Nonviolent and Nonsex Offenses). RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

24 BTC Facility

25 ALTERNATIVE CONVERSION RCW 9.94A.680 _____ days of total confinement
26 ordered above are hereby converted to _____ hours of community restitution (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections (DOC) to be completed on a schedule established by the defendant's community corrections officer but not less than _____ hours per month.

27 Alternatives to total confinement were not used because of: _____
28

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criminal history failure to appear (finding required for nonviolent offenders only) RCW 9.94A.680.

(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:

121 days

46 COMMUNITY SUPERVISION CUSTODY. RCW 9.94A.505. Defendant shall serve 12 months (up to 12 months) in community supervision (Offense Pre 7/1/00) or community custody (Offense Post 6/30/00).

[On or after July 1, 2003, the court may order community custody under the jurisdiction of DOC for up to 12 months if the defendant is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2006, the court shall impose a term of community custody under RCW 9.94A.715 if the offender is guilty of failure to register (second or subsequent offense) under RCW 9A.44.130(11)(a).]

Defendant shall report to DOC, 755 Tacoma Ave South, Tacoma, not later than 72 hours after release from custody, and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. For sex offenses, defendant shall submit to electronic monitoring if imposed by DOC. Defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence or other conditions imposed by the court or DOC during community custody. The defendant shall:

Remain in prescribed geographic boundaries specified by the community corrections officer

Notify the community corrections officer of any change in defendant's address or employment

Cooperate with and successfully complete the program known as Breaking The Cycle (BTC)

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

Other conditions: per Appendix E + per CCO

• DV eval + treatment

• Substance Abuse eval + treatment

• Law abiding behavior

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

The community supervision or community custody imposed by this order shall be served consecutively to any term of community supervision or community custody in any sentence imposed for any other offense, unless otherwise stated. The maximum length of community supervision or community custody pending at any given time shall not exceed 24 months, unless an exceptional sentence is imposed. RCW 9.94A.589.

The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here: _____

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

V. NOTICES AND SIGNATURES

51 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

52 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)

53 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.

54 RESTITUTION HEARING.

Defendant waives any right to be present at any restitution hearing (sign initials): EC

55 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.

56 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

57 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130. 10.01.200.

N/A

58 [] 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.

Case Number: 11-1-02560-0 Date: August 6, 2013
SerialID: 541CE504-F20F-6452-D97741670DAB976D
Certified By: Kevin Stock Pierce County Clerk, Washington

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5 9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment,
3 the defendant must notify DOC and the defendant's treatment information must be shared with DOC for
4 the duration of the defendant's incarceration and supervision. RCW 9.94A.562

5.10 OTHER: per Appendix E + COO

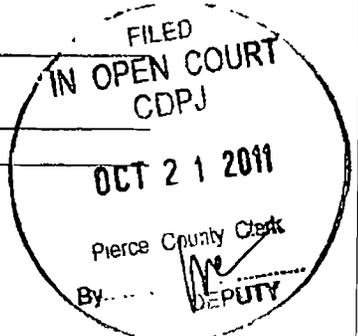
DONE in Open Court and in the presence of the defendant this date. 10/21/11

[Signature]

Deputy Prosecuting Attorney
Print name: KAYLA Sanchez
WSB # 35502

JUDGE
Print name: EDMUND MURPHY

[Signature]
Attorney for Defendant
Print name: Robert B. Lloyd
WSB # 78800



[Signature]
Defendant
Print name: Edward Cichle

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: *[Signature]*

Case Number: 11-1-02560-0 Date: August 6, 2013
SerialID: 541CE504-F20F-6452-D97741670DAB976D
Certified By: Kevin Stock Pierce County Clerk, Washington

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CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 11-1-02560-0

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

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

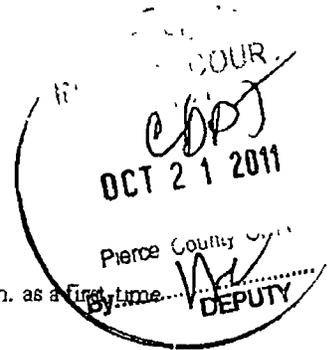
Clerk of said County and State, by _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

ANGELA McDOUGALL

Court Reporter

11-1-02560-0



APPENDIX "E" - ADDITIONAL CONDITIONS OF RELEASE

It is further ordered that the defendant, as a condition of his/her community supervision, as a first-time offender, shall.

- FTO 1) Refrain from committing new offenses.
- FTO 2) Devote time to a specific employment or occupation;
- FTO 3) Enter and successfully complete Breaking the Cycle (BTC) or other available outpatient treatment for up to two years, or inpatient treatment as designated by Community Corrections Officer;
- FTO 4) Pursue a prescribed, secular course of study or vocational training;

It is further ordered that the defendant, as a condition of his/her community supervision, shall.

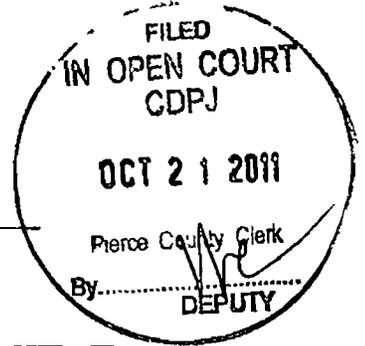
- 1) Remain within prescribed geographical boundaries. Notify the court or the community corrections officer prior to any change in the defendant's address or employment;
- 2) Report as directed to the court and a community corrections officer;
- 3) (NARC order) Refrain from entering certain geographical boundaries (designated by attachment);
- 4) Not purchase, possess, or use any controlled substances without a lawful prescription from a licensed physician or practitioner. Provide a written prescription for controlled substances to the Community Corrections Officer within 24 hours of receipt. Submit to urinalysis as directed by the Community Corrections Officer;
- 5) Refrain from associating with drug users or drug sellers.
- 6) Comply with Breaking the Cycle (BTC) Program requirements, including participation in BTC recommended chemical dependency treatment;

OTHER: per CCO

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IDENTIFICATION OF DEFENDANT



SID No 18400618
(If no SID take fingerprint card for State Patrol)

Date of Birth 03/22/1977

FBI No 715326DB0

Local ID No.

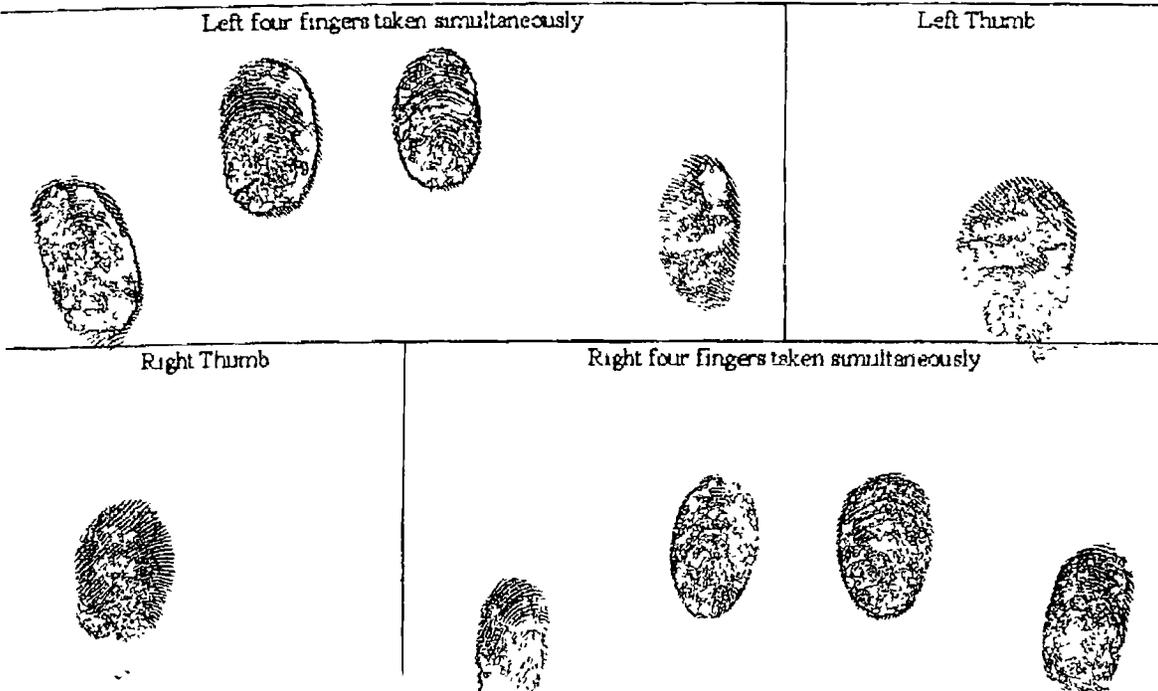
PCN No. 540459720

Other

Alias name, SSN, DOB.

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

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk

Michelle Evans Dated: *10/21/11*

DEFENDANT'S SIGNATURE *[Signature]*

DEFENDANT'S ADDRESS 31203 59th Ave E Eatonville Wa 98328

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned 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 herunto set my hand and the Seal of said
Court this 06 day of August, 2013



Kevin Stock, Pierce County Clerk

By /S/Melissa Engler, Deputy.

Dated: Aug 6, 2013 7:51 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter **SerialID: 541CE504-F20F-6452-D97741670DAB976D**.

This document contains 13 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

PIERCE COUNTY PROSECUTOR

August 06, 2013 - 3:31 PM

Transmittal Letter

Document Uploaded: 432625-Respondent's Brief~2.pdf

Case Name: State v. Edward Crable

Court of Appeals Case Number: 43262-5

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Respondent's

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

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Heather M Johnson - Email: hjohns2@co.pierce.wa.us

A copy of this document has been emailed to the following addresses:

KARSdroit@aol.com