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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 31162-7

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

KENNETH LEROY STEPHENS,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

This is a case of claimed false imprisonment. Following a three day trial that took place August 1-3, 2012, a jury of twelve persons returned a verdict for the defense.

II. RESTATEMENT OF THE ISSUES

- A. **There Is Substantial Evidence To Sustain The Verdict Of The Jury Under The Instructions Given To Them By The Trial Court**
- B. **The Jury Correctly Found That Plaintiff's Imprisonment Was Not Unlawful Under The Facts Of The Case**

III. SUMMARY OF THE CASE

On February 7, 2007, Kenneth Stephens pleaded guilty to second degree theft in Yakima County Superior Court Cause No. 06-1-02624-7. He was sentenced to 17 months in prison with credit for 15 days served. Ex. 1; App. A.¹ Exactly one year later on February 6, 2008, plaintiff pleaded guilty to second degree possession of stolen property in Yakima County Superior Court Cause No. 06-1-02170-9. As part of the February 2008 plea bargain, the prosecutor agreed to dismiss several other felony charges in exchange for recommending a sentence of 22 months in prison.

¹ In his brief, plaintiff refers to the 2007 theft judgment and sentence as the "Shopko Case" and the 2008 possession of stolen property case as the "coin box case." In its brief, the defense refers to the 2007 judgment and sentence (cause no. 06-1-02624-7) as the "theft case" because plaintiff was convicted of theft in that case. The defense refers to the 2008 judgment and sentence (cause no. 06-1-02170-9) as the "possession of stolen property case" because plaintiff was convicted of possession of stolen property in that case.

In the written plea agreement, Mr. Stephens acknowledged that the 22 month sentence was consecutive to all prior sentences. Ex. 25. Plaintiff was sentenced to 22 months imprisonment for possession of stolen property on February 6, 2008. The 2008 judgment and sentence stated that plaintiff was to receive credit for pretrial confinement on that cause number back to November 16, 2006, plus three days. The judgment and sentence also stated that the 22 month sentence was consecutive, not concurrent, to prior sentences. Ex. 2; App. B.

By February 6, 2008, plaintiff had been confined in the Yakima County Jail continually since November 16, 2006, on both cause numbers. The 2008 judgment and sentence ordered plaintiff committed to the custody of the Washington State Department of Corrections. Ex. 2 at 6. He was transferred from Yakima County Jail to Department of Corrections custody on February 13, 2008. RP at 186-87. Following plaintiff's receipt into Department of Corrections custody, Department auditors reviewed both judgments and sentences to determine plaintiff's earned release date (ERD). This was done by dividing the total sentence by one third and then crediting jail confinement and jail good time credits as

applicable. RP at 230-32.² As of February 13, 2008, plaintiff owed a total of 39 months confinement on both judgments (17 months from the 2007 judgment and 22 months from the 2008 judgment). Department auditors divided the total confinement time by one third and allowed plaintiff credit for jail confinement back to November 16, 2006, plus three days, off the 2008 possession of stolen property conviction, as expressly ordered by the 2008 judgment and sentence as. In addition, he was allowed credit for 15 days plus good time as ordered in the 2007 judgment and sentence. RP at 243-44. Department auditors did not allow the same jail credit back to November 16, 2006, against the 2007 sentence because the sentences were ordered to be served consecutively, not concurrently. RP at 243-46. This resulted in an ERD of January 2009. RP at 248.

Plaintiff argues in this appeal that Department erred by not crediting the entire jail confinement back to November 16, 2006, against both sentences. If the Department had done so, plaintiff argues, he would have served all his time on both sentences prior to his transfer to

² Offenders are entitled to credit earned release time (“good time” credits), as well as credit for jail confinement served prior to transfer to Department of Corrections custody with “good time” credits added to jail time served if applicable, when computing the offender’s release date from DOC custody. Pursuant to RCW 9.94A.728, the maximum amount of aggregate earned release time in 2008 could not exceed 50 percent of the total sentence. The amount of earned release time, which ranged from ten percent up to 50 percent, was based upon the category of the crime the offender was convicted of, with the default amount of earned release time in 2008 being one-third of the total sentence. See RCW 9.94A.728 (effective 2003 through July 1, 2010) attached as App. D hereto.

Department of Corrections custody on February 13, 2008. Thus, he was unlawfully imprisoned between February 13, 2008 and July 25, 2008, the date he was released from Department custody.

The Department of Corrections properly refused to allow plaintiff credit for time served dating back to November 16, 2006, on both sentences. To do so would have required Department auditors to ignore the language in both judgments and sentences that the sentences were consecutive, not concurrent, to prior sentences. If plaintiff's argument were accepted, he would only have been required to serve 15 months (November 16, 2006, to February 13, 2008) on a total sentence of 39 months which was less than 50 percent of the aggregated sentences. The order in which the credits were applied is meaningless, because plaintiff was not entitled to credit for all jail confinement against both sentences when DOC determined his earned release date. Until the sentencing judge amended the 2007 judgment and sentence on July 21, 2008, the sentences were ordered to be served consecutively, not concurrently. The jury correctly determined that plaintiff was not confined without justification between February 13, 2008 and July 25, 2008. App. C. The verdict of the jury must stand.

IV. COUNTERSTATEMENT OF THE CASE

A. The Crimes And The Arrests

Plaintiff Kenneth Stephens has a lengthy criminal history dating back to the late 1980s. The majority of his offenses are crimes of theft which he admittedly commits to support his drug habit. RP at 73-76; 200-11; Exs. 11-19.

On September 3, 2006, plaintiff was arrested and charged with second degree theft and possession of stolen property when he and an associate were seen removing a pay telephone coin box from a Yakima parking lot. This arrest occurred within days of plaintiff's release from prison related to a prior theft conviction. RP 179, 209. Following his new arrest, he was confined in the Yakima County Jail for three days until his father posted bail on September 5, 2006. RP at 179. Yakima County prosecutors filed information charging plaintiff with several felonies related to the theft of the coin box. Yakima Superior Court Cause No. 06-1-02170-9. This case remained unresolved until February 6, 2008.

While released on bail, plaintiff was arrested several weeks later on October 28, 2006, when he was arrested for shoplifting at a Yakima Shopko store. RP at 179. Yakima Prosecutors filed information charging plaintiff with several felony counts of theft in Cause No. 06-1-02624-7. RP at 176. Plaintiff was held in the Yakima County Jail following this

arrest. After serving several days in the Yakima County Jail, plaintiff was transferred to Chelan County Jail due to outstanding warrants from other cases. RP at 178. He was returned to Yakima County Jail several days later on November 16, 2007, because his two new felony cases were still pending in Yakima County Superior Court. RP at 178.

Plaintiff remained in the Yakima County Jail thereafter until he was transferred to the custody of the Department of Corrections on February 13, 2008. This followed the resolution by plea bargain of both the cases. Acceptance of the plea bargains by the court and entry of judgment and sentence on both pending cases took place exactly one year apart on February 6, 2007 (when plaintiff pled guilty to second degree theft arising from the arrest at Skopko on October 28, 2006) and February 6, 2008 (when plaintiff pled guilty to possession of stolen property arising from the September 3, 2006 arrest). Plaintiff remained in confinement in the Yakima County Jail on both cases between November 16, 2006 and February 13, 2008, when he was transferred to the custody of the Department of Corrections pursuant to the court's order of commitment. RP at 178.

B. The Plea Bargains And Sentences

On February 6, 2007, Kenneth Stephens formally entered a plea of guilty in Cause No. 06-1-02624-7 (the "theft case") to one count of second

degree theft. The plea was accepted by Judge James Gavin in open court on that date. Judgment and sentence was issued on that date. The judgment and sentence stated that plaintiff was to serve 17 months imprisonment, the low end of the standard range of 17-22 months. The judgment and sentence stated that the 17 months was “*consecutive with other sentences.*” RP at 177. (emphasis added); Ex. 1 at 2. Plaintiff was granted 15 days credit for jail time served in the 2007 judgment and sentence, the time between his arrest on October 28, 2006, and transfer to Chelan County to clear other warrants. Ex. 1; App. A; RP at 178.

Plaintiff remained confined in the Yakima County Jail after February 6, 2007, because Cause No. 06-1-02170-9 (the “possession of stolen property case”) remained unresolved. RP at 178. On February 6, 2008, plaintiff entered a plea of guilty to one count of possession of stolen property arising from the September 3, 2006 theft of the coin box pursuant to a plea bargain reached with prosecutors. Ex. 25; RP at 182. Plaintiff was sentenced to 22 months in prison, also the low end of the standard range, for this offense. Ex. 2; RP at 180-81; App. B. The plea agreement stated that the 22 months was “consecutive to case #06-1-02624-7” (the “theft case” resolved in 2007). Like the 2007 judgment and sentence, the 2008 judgment and sentence stated that the 22 months was to be “*served consecutive with other sentences.*” (emphasis added). The February 6,

2008 judgment and sentenced granted “credit from November 16, 2008, plus 3 days,” the three days he served in jail immediately following his arrest for the coin box theft on September 3, 2006, before posting bail, recognized that plaintiff had been in jail custody since November 16, 2008. In exchange, the prosecutor agreed to drop several other felony charges. RP at 183; Ex. 2 at 2. The February 6, 2008 judgment and sentence included a warrant of commitment signed by Judge Gavin on that date which ordered plaintiff transferred from the Yakima County Jail to the custody of the Department of Corrections. RP at 184; Ex. 2 at 6.

C. Computation Of Earned Release Date By The Department Of Corrections

On February 13, 2008, plaintiff was transported pursuant to the warrant of commitment to Washington Corrections Center for processing. RP at 186-87. Yakima County Jail sent the Department certifications for jail time credit served and earned release time related to the jail time served on the two cause numbers so that the Department could set plaintiff’s release date.³

³ Pursuant to RCW 9.94A.728(1) county jail administrators are directed to certify to the Department of Corrections time spent in county jail custody as well as whether “good time” credits or earned release credit (typically one third of time served) are to be added to the county jail credits for use by the Department of Corrections in computing an offender’s earned release date. *See* App. D. In doing so, Department auditors subtract jail time served and jail good time credit off the total sentence and then reduce that number by one third. RP at 234; Ex. 6.

In its initial certifications, Yakima County granted plaintiff 387 days credit for jail time served and earned release time (“good time” credits earned in jail) of 193 days for total credits of 580 days for the 2007 judgment and sentence in Cause No. 06-1-02624-7 (“theft case”). Ex. 3. In a second certification, Yakima also granted plaintiff 455 days credit for jail time and 227 days earned release credits for total credits of 682 days in regard to Cause No. 06-1-02170-9 (“possession of stolen property case”), the 2008 judgment and sentence. Ex. 32. This meant that plaintiff initially received jail credit off both sentences for his entire jail confinement between November 16, 2006 and February 13, 2008, the date he was received into Department of Corrections custody. RP at 241-43.

Following plaintiff’s transfer from the Yakima County Jail to Department of Corrections custody, DOC Auditor Wendy Stigall reviewed the two jail certifications for accuracy in order to set plaintiff’s early release date pursuant to the Department’s legal authority to do so. As part of her audit, Ms. Stigall discovered that Yakima had granted him credit for the entire amount of jail confinement between September 2006 and February 13, 2008, off the sentences in both cause numbers. This included the three days between September 5-7, 2006, the 15 days served between October 28 and plaintiff’s return from Chelan County, and all jail

time served after November 16, 2006, up to the date of transfer to Department custody on February 13, 2008. RP at 241-43.

This double credit contradicted the provisions in the judgments and sentences that the sentences in each case were ordered to run *consecutive with other sentences* and was contrary to the holding of *In Re Costello*, 131 Wn. App. 828, 129 P.3d 827 (2006). In *Costello* the Court of Appeals held that an offender was not entitled to credit for jail time served on two sentences which were ordered to run consecutively as opposed to concurrently. The *Costello* decision also granted the Department of Corrections authority to adjust county jail certifications to be consistent with the applicable judgment and sentence as well as state law in setting the offender's early release date. RP at 234-35, 243.

As part of her audit, Ms. Stigall directed Yakima to eliminate all but 22 days credits on the 2007 sentence on Cause No. 06-1-02624-7 (the "theft case"). Ex. 4; RP at 243-44. The remaining 22 days represented credit for 15 days jail credit referenced in the judgment and sentence plus earned release time of 7 days for a total adjusted credit on this cause number of 22 days. Yakima complied and issued an amended certification which reduced the credit on the 2007 judgment and sentence to 22 days from 580 days granted in the earlier certification. Exhibit 5. The jail certification for Cause No. 06-1-02170-9 (the "possession of stolen

property case”) remained unchanged. Ms. Stigall testified that she applied the credit back to November 16, 2006, plus three days on the 2008 “possession of stolen property case,” for total credits of 682 days, because the 2008 judgment and sentence expressly granted credit “from 11-16-06 plus 3 days.” In addition, the 2008 judgment and sentence had the earlier cause number and arose out of the earlier arrest. RP at 245. DOC also granted credit for 15 days plus good time as expressly set forth in the 2007 judgment and sentence. The only effect of the adjustment was to eliminate the overlapping credits for jail time served between November 16, 2006 and February 13, 2008, from one of the sentences, consistent with the fact that the two sentences were each consecutive, not concurrent, sentences. RP at 246.

The elimination of the credits from Cause No. 06-1-02624-7 (the “theft case”) resulted in a January 9, 2009, early release date. RP at 248.

D. Stephens Returns To Court

Plaintiff objected to the January 2009 release date in a series of grievances which he filed while still at WCC and later following his transfer to Airway Heights Correctional facility. RP at 122-131, 142. In these grievances, plaintiff claimed that he should have been released immediately after entering his plea bargain on the “possession of stolen property case” in February of 2008 because he had already served the time

required on both sentences if the original credits awarded to him by the Yakima Jail had been applied. He maintained that he would never have entered a plea of guilty in the “possession of stolen property case” in February 2008 if he was not subject to immediate release, despite language in the 2008 judgment and sentence and plea agreement that it was to be consecutive to other sentences. RP at 107, 114; Ex. 2 at 2. Plaintiff demanded credit for pretrial confinement and related good time off both sentences, despite the fact that Judge Gavin ordered that the two sentences were ordered to be served consecutively, not concurrently. Exs. 1 and 2.

Plaintiff brought the 2007 judgment and sentence back before Judge Gavin under Cause No. 06-1-02624-7 (the “theft case”) because DOC had removed the overlapping credits from that cause number. RP at 121, 143-44, 191; Ex. 7. A hearing took place before Judge Gavin in Yakima County Superior Court on July 21, 2008.⁴

E. Judge Gavin Amends The 2007 Judgment And Plaintiff Is Released

Following argument on July 21, 2008, Judge Garvin amended the February 6, 2007 judgment and sentence in Cause No. 06-1-02624-7 (the “theft case”) and restored the 387 days of pretrial confinement credits

⁴ The Department of Corrections did not appear at the hearing because it was not a party to the criminal case and, therefore, did not receive notice of the hearing.

initially granted by Yakima County on that cause number (“theft case”). Ex. 21. In doing so, Judge Gavin changed his prior order that both sentences were to be served consecutive to other sentences and now ordered that they were to run concurrently. Ex. 21; RP at 192. Yakima County restored the disputed credits on July 23, 2008. Ex. 28. This made plaintiff eligible for release in February 2008, prior to his transfer to DOC custody.

A copy of Judge Gavin’s order amending the judgment and sentence was received by the Department by fax on July 23, 2008. Ex. 29. Mr. Stephens was released two days later on July 25, 2008. RP at 144-47; Ex. 26. Following his release, Mr. Stephens has continued to break laws and has been arrested and convicted for several additional crimes. RP at 211-14.

V. SUMMARY OF THE ARGUMENT

Plaintiff argues that he had completed his 17 month sentence (17 months reduced by one third jail good time) on the “theft case” by February 6, 2008, when he was sentenced on the “possession of stolen property case”. Therefore, he argues, he no longer had “consecutive sentences” to serve as of February 6, 2008, when he was sentenced to 22 months for possession of stolen property and the Department, he argues, erred when it ordered Yakima County to take away his jail credits from

the “theft case” in setting his earned release date. He argues that by adjusting the jail credits, the Department eliminated his one third good time credits from the 2007 sentence.

The order in which the credits were applied makes no difference because plaintiff was not entitled to credit for jail confinement against both judgments and sentences. Under the strict language of the judgments and sentences the Department of Corrections was required to set plaintiff’s earned release date by starting with a total sentence of 39 months on both cause numbers (17 months plus 22 months). The Department then subtracted the allowable credits for jail confinement served prior to February 13, 2008, applied other credits set forth in the judgments and sentences, and then divided this by one third.

Because both sentences were ordered to be served consecutively, not concurrently, Department of Corrections auditors could not grant plaintiff jail credit back to November 16, 2006, from both sentences. RP at 234, 241-42. This would have reduced plaintiff’s sentence from a total of 39 months to 15 months, less the 50 percent of the aggregate sentences.

Department of Corrections auditors could not ignore the fact that the sentences were ordered to be served consecutively. They properly applied the overlapping jail credits back to November 16, 2008, to the 2008 judgment and sentence (the “possession of stolen property case”) and

took the overlapping credits away from the 2007 judgment and sentence (the “theft case”) because the 2008 judgment and sentence expressly stated that plaintiff was entitled to credit back to November 16, 2008, plus three days. The 2007 judgment did not. In doing so, DOC auditors were following the express direction of both judgments and sentences and also properly denied plaintiff credit for overlapping jail time served on the two consecutive sentences.

Under the holding of *Costello* Department auditors could not ignore the express language in both judgments and sentences that the sentences were to be served consecutively when they computed plaintiff’s earned release date. Until Judge Gavin amended the 2007 judgment and sentence in the “theft case” and restored the disputed jail credits on August 21, 2008, the Department of Corrections was correct in denying plaintiff overlapping jail credits back to November of 2006 on both cause numbers. The verdict of the jury that plaintiff was not unlawfully confined under the circumstances of the case between February 13, 2008 and his release on August 25, 2008, is supported by substantial evidence, and must be upheld on appeal.

VI. ARGUMENT

A. **There Is Substantial Evidence To Support The Verdict Of The Jury That Plaintiff's Confinement Was Justified**

Plaintiff argues that it was error to submit the case to the jury because he was entitled to a ruling as a matter of law that his confinement after February 13, 2008, was unlawful. This is inconsistent with the procedural position taken by plaintiff throughout the case, first when he opposed a motion for summary judgment made earlier in the case by the defendant and later when he opposed the motion for directed verdict made by the defendant at the close of the evidence. Earlier in the case, the Department made a motion for summary judgment seeking a ruling as a matter of law that the confinement was lawful under the circumstances. CP 6-7. Plaintiff opposed the defense motion and did not cross move for summary judgment. CP 12. The trial court denied the defense summary judgment motion and ordered the case to proceed to jury trial. CP 17-18.

At the close of the evidence presented at trial, the defense made a motion for directed verdict arguing that the confinement at issue in the present case was not unjustified as a matter of law. RP at 289-96. Plaintiff opposed the motion and also argued as to how jurors should be instructed. RP at 301-02. At the close of her argument in opposition to the defense motion, as an afterthought, plaintiff's counsel stated that her

client, not the defendant, was entitled to a directed verdict. The trial court denied both motions and ordered the case submitted to the jury to determine whether the Department was unjustified in the actions that it took. RP at 304.

Jurors were then instructed by the court. CP 33. Included was instruction no. 9 which defined unlawful imprisonment as “the intentional confinement of another’s person, without legal authority, and unjustified under the circumstances.” CP 33. In instruction no. 10, the court defined consecutive and concurrent sentences and correctly stated the law as set forth in *Costello* that when sentences are ordered to run consecutively the offender is not entitled to credit for jail time served on both sentences. CP 33. Plaintiff did not assign error to any of the court’s instructions. These instructions are now the law of the case. *E.g. Washburn v. City of Federal Way*, 167 Wn. App. 402, 413, 273 P.3d 462 (2012), *aff’d* on other grounds, 178 Wn.2d 732 (2013); (and cases cited therein). The only question on appeal is whether there is sufficient evidence to sustain the verdict under the instructions given. *State v. Hickman*, 135 Wn.2d 97, 102-03, 954 P.2d 900 (1998).

The jury returned a verdict finding in a special verdict form that under the circumstances of the case the confinement by the Department of Corrections was not unlawful. CP 34; App. C. Judgment for the defense

was entered on the verdict. CP 38. Substantial evidence exists if it is sufficient to persuade a rational person of the declared premise. A jury's verdict must be sustained if whether there is evidence or reasonable inferences to sustain the verdict made by the jury. *E.g. Brown v. Superior Underwriters*, 30 Wn. App. 303, 306, 632 P.2d 887 (1980). There is substantial evidence to support the verdict of the jury that plaintiff's confinement was not unjustified under the facts of the case. The verdict must be upheld on appeal.

B. The Trial Court Properly Denied Plaintiff's Motion for Directed Verdict Because Plaintiff's Imprisonment Was Not Unlawful As A Matter of Law Under The Facts Of The Case

Plaintiff moved for a directed verdict at the close of the evidence. RP at 302. The trial court denied plaintiff's motion and submitted the case to the jury to determine whether or not the Department's actions were unjustified under the circumstances of the case. RP at 304. This was submitted to jurors by a special verdict form. Following deliberations, the jurors unanimously determined that the Department was justified in confining Plaintiff for the period in question. CP 34.

The trial court was correct when it denied plaintiff's motion for directed verdict on liability and submitted the case to the jury. Plaintiff failed to establish that he was not imprisoned pursuant to lawful process between February 6, 2008 and July 21, 2012, when the sentencing judge

amended his original judgment and sentence in the “theft case” and ordered the disputed jail credits restored to him in the 2007 judgment and sentence. Plaintiff’s immediate release from DOC custody followed entry of the amended judgment and sentence.

C. The Verdict Of The Jury That Plaintiff Was Not Unlawfully Confined Without Justification Between February 13, 2008 And August 25, 2008, Is Supported By The Evidence

To establish a case of unlawful imprisonment a plaintiff must present evidence demonstrating his intentional confinement by the defendant without his consent and without legal authority. *Hennick v. Bowling*, 115 F. Supp.2d 1204 (W.D. Wa. 2000) (citing *Bender v. Seattle*, 99 Wn.2d 582, 591, 664 P.2d 492 (1983)). *See also, Kellogg v. State*, 94 Wn.2d 851, 856, 621 P.2d 133 (1980); *Demelash v. Ross Stores Inc.*, 105 Wn. App. 508, 20 P.3d 447 (2001), *review denied*, 145 Wn.2d 1004 (2001). An imprisonment done pursuant to a valid legal process is not false imprisonment. *Mundt v. United States*, 611 F.2d 1257, 1259 (9th Cir. 1980); *Kellogg*, 94 Wn.2d at 856.

The critical question in an unlawful imprisonment lawsuit is whether the defendant was lawfully entitled to restrain the liberty of the plaintiff when the confinement took place. An initial confinement made pursuant to a lawful arrest or other valid legal process is not an unlawful imprisonment. *Mundt*, 611 F.2d 1257; *Tufte v. City of Tacoma*, 71 Wn.2d

866, 870, 431 P.2d 183 (1967); *Bender*, 99 Wn.2d at 591. Whether the restraint of liberty was lawful is determined *under the circumstances* of a particular case. *Kellogg*, 94 Wn.2d at 856.

In *Kellogg* state parole officers were held not liable for unlawful imprisonment when they lawfully sought the arrest of plaintiff who was under their supervision after an assault victim had identified plaintiff as his assailant, an identification that later turned out to be false. In upholding the trial court's dismissal of plaintiff's tort lawsuit claiming false imprisonment, the Washington Supreme Court held that plaintiff was not unlawfully imprisoned under the particular circumstances of the case because the state officers in question sought plaintiff's detention under lawful authority to do so. Therefore, the imprisonment was justified under the circumstances and subject to a privilege. *Id.* at 854-55. In so holding, the Supreme Court noted that "a detention which might be unreasonable and unjustifiable in the case of a truly free man may in some cases be reasonable or justifiable insofar as a parolee is concerned." *Id.* at 851. Since the state had legal authority to confine plaintiff, a convicted felon under supervision, for suspicion of a new offense under the terms of his parole supervision, the confinement was lawful and justified.

A confinement that is initially lawful can become unlawful if the defendant fails to release the plaintiff when the circumstances of the

particular case change and require plaintiff's release. *Kellogg v. State*, 94 Wn.2d at 854; *Tufte*, 71 Wn.2d at 870-71 (Plaintiff's initial arrest by state officers was justified and confinement pursuant to this lawful arrest did not constitute false imprisonment because the officers had probable cause to believe plaintiff was intoxicated. Once the officer knew that plaintiff was a diabetic and was not intoxicated, they were under a duty to release him and the continued confinement became unlawful). When the continued confinement is no longer legally justified, the privilege granted to the defendant to confine is lost. This occurs when the confinement becomes unjustified under the particular circumstances of the case. *Tufte*, 71 Wn.2d at 570-71. *See also, Housman v. Byrne*, 9 Wn.2d 560, 115 P.2d 673 (1941).

In the present case, plaintiff was in the custody of the Department of Corrections pursuant to valid legal process until July 23, 2008, when the Department learned Judge Gavin had amended his 2007 judgment and sentence entered in Cause No. 06-1-02624-7 two days earlier and ordered the disputed jail credits restored to plaintiff. By doing so, the court converted the sentence imposed on the February 6, 2007, from a consecutive to a concurrent sentence. Until the 2007 judgment was amended, the confinement of plaintiff was lawful and privileged under the authority of the Department of Corrections under RCW 9.95.020 and

9.94A.728 to confine a convicted felon after the court has imposed sentence and its authority under RCW 9.94A.728(1) and the *Costello* decision to determine pretrial and earned release credits when establishing the early release date.

RCW 9.94A.728, in effect in 2008, provides that no person serving a sentence and who is committed to the custody of the Department of Corrections “shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows.” The statute continues in RCW 9.94A.728(1) and provides for early release based upon earned release time (good behavior) at the correctional facility as well as credit for pretrial confinement served in the county jail.⁵ See App. D. The 2006 decision of the Washington Court of Appeals in *Costello* held that the Department of Corrections, not the county jail, is the final arbiter of the amount of credit for pretrial confinement that an offender is entitled to receive. *Costello*, 131 Wn. App. at 833. *Costello* held that an offender is not entitled to duplicate pretrial confinement credit when the offender’s sentences are ordered to be consecutive with other sentences. *Id.*

⁵ The amount of good time credit is based upon the crime but can never exceed 50 percent of the sentence imposed. RCW 9.94A.728(1)(b)(i); App. D. In plaintiff’s case, he was entitled to a one third reduction for good time.

In *Costello* the petitioner was sentenced in 2001 to 87 months for burglary and felony eluding. He was sentenced in 2002 to 57 months for two theft convictions to run consecutively. Before transfer from the county jail to the Department of Corrections he served 472 days in jail on both cause numbers. As part of the transfer, the county credited the entire 472 days against the 2001 sentence and also credited 317 days against his 2002 sentence. As in the present case, the county jail calculated pretrial confinement credits and applied the credits to both the earlier and later cause numbers with the jail time overlapping. The Department objected and amended the jail certifications, as it did in the present case, to eliminate the duplicate credits, and 427 days applied the credit only to the earlier cause number. The petitioner filed a personal restraint petition seeking restoration of the credits to the sentence in the earlier cause number. The Court of Appeals ruled in favor of the Department and held that the petitioner was not entitled to credit for pretrial confinement off the sentences imposed in both cause numbers because the 57 months were ordered to be served consecutively as opposed to concurrently with other sentences. *Id.* at 834-35. To allow double credits in this situation, the court held, would convert the sentence of 57 months imposed in the later cause number to a concurrent, not consecutive, sentence.

Cases in other jurisdictions have held that a state department of corrections does not unlawfully imprison an offender when the offender is held pursuant to valid legal process, even when a court later determines that actual term of confinement set by corrections officials was erroneous. Resolution of the tort case turns, as in every case of unlawful imprisonment, upon whether the Department lawfully confined the offender by setting the term in the first place. This, in turn, is based upon whether the Department made a reasonable interpretation of the applicable judgments and sentences when it set the release date. These cases hold that when prison officials calculate credits from an offender's sentence based upon the legal authority to do so and based upon a reasonable interpretation of the judgment and sentence a claim for unlawful imprisonment does not arise when the sentence is later reduced by the court.

In *Mundt v. United States*, 611 F.2d 1257 (9th Cir. 1980), plaintiff was held in civil contempt and was later convicted of postal offenses in federal court and sentenced to a two year term for the postal felonies. The district court ordered that the sentences for the civil contempt and the felony offenses were to run consecutively. The Court of Appeals later reversed the district court and held that the two year sentence for the felony convictions ran concurrently with the contempt confinement rather

than consecutively. By the time the Court of Appeals ruling came down, the offender had been held 78 days beyond the two year sentence. The offender brought a tort claim for false imprisonment after he was released. The Court of Appeals for the Ninth Circuit, applying Arizona common law, affirmed the dismissal of the tort claim for false imprisonment holding that the detention for 78 days had occurred pursuant to valid legal process and was not unlawful:

Here Mundt was unquestionably detained pursuant to valid legal process. His confinement for contempt was proper and his conviction for postal offenses was upheld by this court on appeal. When this court ruled that the contempt confinement and sentence for postal offenses were to run concurrently because of the presumption of concurrent sentences . . . [citations omitted] this did not render any of the proceedings under which Mundt was confined illegal in the tortious meaning of the term.

611 F.2d at 1259.

Because the Corrections officials who continued to confine the offender “were acting in good faith” and in the “lawful performance” of their duty, the offender did not have a claim for unlawful imprisonment under these circumstances. *Id.*

A similar result was reached by the Maryland appellate court in *State v. Hall*, 122 Md. App. 664, 716 A.2d 335 (1998). In *Hall*, as in the present case, the Maryland Department of Corrections had statutory

authority to calculate good time credits for an offender in setting the sentence to be served. In so doing for the offender in question, the Department inadvertently applied the incorrect formula based upon a statute that had recently been revised and denied the offender 370 days of good time credits. The offender brought the matter before the court in a habeas corpus petition. The court in the habeas proceeding granted the credits to the offender after holding that the Department applied the incorrect statute. This meant that the offender was entitled to immediate release and had been held 108 days too long. As in the present case, the Department complied with the court order and released the offender following the ruling in the habeas corpus proceeding.

After his release, the offender in *Hall* brought a tort lawsuit against the State of Maryland for unlawful imprisonment, claiming that he had been unlawfully confined for 108 days. The trial court dismissed the offender's lawsuit on summary judgment. The appellate court upheld the dismissal, holding that the necessary elements of a case for false imprisonment are "a deprivation of the liberty of another without his consent and *without legal justification.*" *Hall*, 716 A.2d at 668 [citations omitted]. (emphasis added).

In upholding the dismissal, the appellate court in *Hall* noted that in certain circumstances, such as an officer making an arrest who believes he

or she had authority to make the arrest or in the setting of a term of confinement by corrections officers, common and statutory law permit a citizen's confinement. Plaintiff's confinement by the Department of Corrections, therefore, was a lawful confinement pursuant to a judgment and sentence imposed by the Court. The Department of Corrections was authorized by statute and regulations to determine good time credits. The erroneous computation of good time credits by the Department while it was acting within its legal authority to determine good time credits did not indicate an intention to confine the offender beyond the expiration of his sentence for purposes of imposing tort liability and did not constitute unlawful imprisonment, even though the offender was incarcerated an additional 108 days as a result. *Id.* at 669. The fact that the court in the habeas corpus proceeding restored the credits did not mean that the offender had been confined "without legal authority" for purposes of determining whether the State of Maryland had committed a tort. *Id.*

The same reasoning set forth in *Mundt* and *Hall* applies in the present case. The Washington State Department of Corrections did intentionally confine plaintiff until he was released on July 25, 2008, two days after it learned that Judge Gavin had amended the 2007 judgment and sentence in Cause No. 06-1-02624-7 and restored the disputed credits for pretrial confinement in the "theft case." However, the Department did not

intend to confine plaintiff beyond what it computed to be the expectation of his sentence. Therefore, the Department did not unlawfully confine plaintiff between February 13 2008 and July 25, 2008, because it acted reasonably and within its legal authority to establish an offender's release date. Until it received the amended judgment which restored the credit to the "theft case" and converted the sentences from consecutive to concurrent sentences on July 23, 2008, the Department confined plaintiff subject to lawful process. After receiving the amended judgment and sentence, the Department was under a duty to release plaintiff in a reasonable period of time. *Tufte*, 71 Wn.2d at 856. It did so two days later on July 25, 2008. As a matter of law, this release took place within a reasonable time, namely two days after the confinement became unlawful. *See Kellogg v. State*, 94 Wn.2d at 856 (release of plaintiff within 1 day of learning of mistaken identity was reasonable).

Plaintiff's argument that DOC unlawfully confined him because it incorrectly removed the disputed jail credits from the "theft case," the earlier judgment and sentence (February 7, 2007) but the second arrest (October 28, 2006) and later cause number, has no merit. As Ms. Stigall explained in her testimony, she applied the entire overlapping jail credits to the 2008 judgment and sentence in the "possession of stolen property case" which was the earlier arrest (September 2006) and the earlier cause

number, because the 2008 judgment and sentence expressly granted credit back to November 16, 2006. RP at 243-44; Ex. 2 at 2; App. B.⁶ In doing so, she followed the express direction of the 2008 judgment and sentence which ordered that “credit be given from 11-16-06 plus three days.” Ex. 1 at 2. As well, the 15 day credit set forth in the 2007 judgment and sentence was given (resulting in 22 days with jail good time). The only difference was removal of the double credit back to November of 2006. As Ms. Stigall testified, jail time served after November 16, 2006, was time served on both cause numbers. RP at 244. If she had granted credits off both sentences from that date, she would be ignoring the fact that both sentences were ordered to be served consecutively. As she also testified, the *Costello* decision prohibited the granting of such overlapping jail credits in computing the earned release date, something which she could not ignore. RP at 244.

Contrary to plaintiff’s argument in his brief, Ms. Stigall did not testify that she “made a mistake” by applying the jail credits to the 2008 sentence in the “possession of stolen property case.” She did so because it arose out of the earlier cause number and earlier offense and credit back to November 16, 2006, was expressly granted in the 2008 judgment.

⁶ This is also consistent with *Costello* which approved DOC’s application of the full jail credits to the earlier (2001) cause number.

Q: So you actually switched the letters on that. You should have put A on the one that says B and B on the one that says A.⁷

A: [E]ven if I had, if I still applied all the credits to the one, I still would have taken them off the other one if it ran first. I still wouldn't have given him double credits. So regardless of which way I ran it, the credits are still the same.

RP at 254-55.

Plaintiff's counsel continued to argue with Ms. Stigall on cross-examination, insisting that because, under his theory, plaintiff had completely served his 17 month sentence (less one third good time credits) for the "theft case" imposed in February 2007 by February 2008 when he was sentenced on the "possession of stolen property case," DOC erroneously failed to apply the credits to the 2007 sentence which arguably had been completely served by February 2008. Ms. Stigall testified that to do so would have been contrary to the express provision of both judgments and sentences that the 17 months and the 22 months were to be served consecutively not concurrently:

Q: But unfortunately, ma'am, the first sentence was over. . . .

A: So why would he come to DOC on them?

⁷ As part of her audit, Ms. Stigall labeled the 2007 judgment and sentence as "B" and the 2008 judgment and sentence as "A" (Exhibit 31). She applied the full credit to "B" (the 2008 sentence) because it was the earlier cause number and the 2008 judgment and sentence expressly stated that "credit be given from 11-16-06 plus three days." RP at 245.

Q: This sentence [2007] was already served by the time he was sentenced on the second sentence, and so by flipping these around, your Department made a mistake that cost my client six months of his life.

A: [T]he credits were applied correctly . . . They're consecutive sentences . . . If everything you're saying is true, why didn't the Court order it to be concurrent, which it had discretion to . . . then he should have been released before he ever came to DOC . . . These were consecutive . . . He's getting double credits on both of the causes and we're applying it consecutively.

RP at 260-61.

It was irrelevant which sentence the credits were initially taken from. If the overlapping credits had not been removed from one of the sentences plaintiff would have only served 15 months (November 2006 through February 2008) on a total sentence imposed of 39 months (22 months plus 17 months) before good time credits and jail credits were applied.⁸ The Department did not unlawfully confine plaintiff between February 22, 2008 and July 23, 2008. It was acting under color of its legal authority to determine credits for pretrial confinement and make a legal and reasonable interpretation of the two judgments and sentences.

⁸ This is a matter of simple mathematics. Mr. Stephens was sentenced to 17 months on the theft conviction (App. A) and 22 months for the possession of stolen property conviction (App. B). Judge Gavin ordered the sentences to run consecutively, a total of 39 months. After subtracting one third for good time credit, Mr. Stephens had 26 months to serve in jail/prison. See RCW 9.94A.728 (App. D). The parties agreed he was continually confined from November 16, 2006. Accordingly, his release date was 26 months later in January 2009. DOC set his early release date for January 9, 2009, which was correct until Judge Gavin resentenced him in July 2008 and changed his sentences from being consecutive to concurrent. Ex. 21; RP 192. The DOC auditor applied the full jail credits to the 2008 judgment and sentence because the court expressly granted plaintiff credit back to November 16, 2006, plus three days in the 2008 judgment and sentence. App. B.

Department auditors correctly interpreted the two judgments and sentences as being consecutive sentences of 17 months and 22 months for a total of 39 months to be served in Department of Corrections custody before application of the applicable credits. This includes credits for jail confinement, one third good time credits, and the other credits expressly ordered in the two judgments and sentences by the sentencing judge (15 days in Cause No. 06-1-02624-7 and credits back to November 16, 2006, plus 3 days in Cause No. 06-1-02170-9).

It is undisputed that plaintiff remained in jail custody on both Yakima County cause numbers after November 16, 2006, until transferred to DOC on February 13, 2008. Plaintiff's theory that he had completely served his 17 month sentence (17 months less one third good time) on the 2007 sentence ("theft case") presumes that he was granted jail credits which includes the period November 2006 through February 2008 off that earlier sentence. If credits had been applied off the sentence imposed in the 2008 judgment and sentence ("possession of stolen property case") in addition, as plaintiff insists, he would have received overlapping jail credits on both cause numbers. Because the two sentences were originally ordered to be served consecutively, this double credit would have violated the holding of the *Costello* decision which prohibits the granting of such overlapping jail credits.

This remained true until Judge Gavin issued his amended order in the 2008 judgment and sentence and ordered plaintiff to receive from credits back to November 16, 2006, despite the fact he had received the same jail credit off the 2007 sentence. This converted the 2008 judgment and sentence to an order that the 22 months in that judgment and sentence be served concurrently with the 2007 judgment and sentence, as opposed to consecutively. Until Judge Gavin amended his order, the Department properly denied plaintiff overlapping jail credits in computing his earned release date.

The denial of a motion for directed verdict is inappropriate only when there is clearly no evidence or reasonable inferences from the evidence sufficient to support the verdict of the jury. *Cherberg v. Peoples National Bank of Washington*, 88 Wn.2d 595, 605-06, 564 P.2d 1137 (1977). On appeal of the refusal to grant a directed verdict, the inquiry is limited to whether the evidence or reasonable inferences from the evidence presented is sufficient to sustain the verdict of the jury. *Industrial Indemnity Co. v. Kallevig*, 114 Wn.2d 907, 915-16, 792 P.2d 520 (1990). The appellate court must uphold the denial of a motion for judgment as a matter of law if any reasonable inference sustains the verdict. *Byrne v. Courtesy Ford, Inc.*, 108 Wn. App. 683, 32 P.3d 307, *review denied*, 146 Wn.2d 1019 (2001).

In the present case, it would have been error to grant plaintiff's motion verdict made as an afterthought. There was sufficient evidence to submit the issue of false imprisonment to the jury because there was evidence that the Department of Corrections did not intentionally confine plaintiff between February 13 and July 25, 2008, without legal authority. When the Department performed its audit in March and April 2008 to determine plaintiff's earned release date its auditors reviewed two judgments and sentences that ordered consecutive, not concurrent, sentences. There was evidence, based upon the Department's interpretation of the *Costello* decision and interpretation of the judgments and sentences, to support its good faith determination that plaintiff should not be granted credit for jail confinement dating back to November 2006 on both sentences. This did not change until Judge Gavin amended one of the judgments and ordered the restoration of the disputed jail credits. There is substantial evidence to support the jury's decision that until this occurred plaintiff was not imprisoned without justification.

The trial court was correct in denying plaintiff's motion for directed verdict for judgment as a matter of law on liability. If any error occurred, it was in the denial of the defense motion for judgment because the Department of Corrections did not imprison plaintiff without legal justification.

VII. CONCLUSION

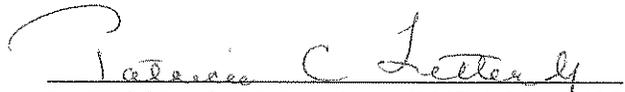
The Washington State Department of Corrections lawfully confined plaintiff until July 23, 2008, the date that it received a copy of Judge Gavin's order which amended the judgment and sentence that he had entered on February 6, 2007. As a result of this amended judgment and sentence, he was entitled to receive an additional 387 days credit (plus related earned release time) off his 2007 theft conviction related to the shoplifting offense. The amendment effectively changed plaintiff's previous order set forth in the original judgment and sentence that the 17 months that plaintiff was to serve in February 2007 for theft in Cause No. 06-1-02624-7 was to be served consecutive with other sentences. The Department received a copy of Judge Gavin's amended judgment on July 23, 2008, and released plaintiff two days later on July 25, 2008. Until the Department received information that Judge Gavin amended the 2007 judgment and sentence, the Department legally confined plaintiff. If this court were to accept plaintiff's argument that he had completed his entire sentence the 2007 sentence (by serving 12 months plus good time off the 17 months sentence) by February 2008 and then was also entitled to jail credit dating back to November 2006 on the February 2008 sentence of 22 months, it would mean he would have only served a total of 15 months (November 2006 through February 2008) on total confinement of 39

months (17 months plus 22 months) ordered for two consecutive sentences.

The Department acted within its legal authority to set plaintiff's release date. In so doing, the Department properly denied credit for pretrial confinement and related good time credits off of both sentences based upon the language of the original judgment and sentences that the sentences were to be consecutive until it learned that the sentencing Judge had amended one of the judgments. The trial court properly denied plaintiff's motion for directed verdict. The verdict of the jury is supported substantial evidence and should be upheld.

RESPECTFULLY SUBMITTED this 22 day of August, 2014.

ROBERT W. FERGUSON
Attorney General



PATRICIA C. FETTERLY, WSBA No. 8425
Assistant Attorney General

PROOF OF SERVICE

I certify that I served a copy of this document (Brief of Respondent) on all parties or their counsel of record on the date below as follows:

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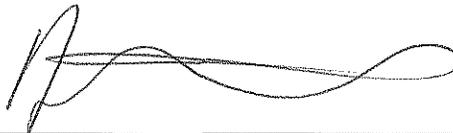
ABC/Legal Messenger

State Campus Delivery

Hand delivered by _____

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 22nd day of August, 2014, at Tumwater,
Washington.



DEBBIE BATES

FILED

2007 FEB -6 PM 5:11

KIM M. EATON
EX OFFICIO CLERK
SUPERIOR COURT
WASHINGTON COUNTY

SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY
WASHINGTON, WASHINGTON

State of Washington

Plaintiff,

NO. 06-1-02624-7

vs.

FELONY JUDGMENT AND SENTENCE
(FJS)

KENNETH LEROY STEPHENS
aka Robert Lee Stephens

Defendant.

Prison

SID NO.: WA11517314
Motor Vehicle Involved: No
D.L.#: STEPHKL402NA; DOC: 705432;
DOB: 8/1/1960; SEX: Male; RACE: White

Clerk's Action Required: 4.D.6 (Payroll
Deduction); 5.2 (NLVR); 5.5 (NTIPF)

I. HEARING

1.1 **Hearing:** A sentencing hearing was held February 6, 2007. Present were the defendant, KIMBERLY GRIJALVA, attorney for the defendant, and THERESE M. MURPHY, Deputy Prosecuting Attorney.

1.2 **Allocution:** The defendant was given the right of allocution and asked if any legal cause existed why judgment should not be entered. There being no reason why judgment should not be pronounced, the Court makes the following findings and judgment.

II. FINDINGS

Based on testimony heard, statements by the defendant and/or victims, argument of counsel, any pre-sentence report, and case record to date, the court finds:

2.1 **Current Offense(s):** On May 30, 2005, the defendant was found guilty by a plea of:

Count 1 **Crime: SECOND DEGREE THEFT**
RCW 9A.56.040(1)(a) and 9A.56.020(1)(a)
Date of Crime: October 28, 2006
Law Enforcement Incident No.: Yakima PD #06-20104

2.2 **Special Findings:** The Court makes no special findings.

2.3 **Criminal History:** Prior criminal history used in calculating the offender score (RCW 9.94A.525):

| Crime | Date of Sentence | Sentencing Court (County & State) | Date of Crime | Adult or Juvenile | Type of Crime |
|------------------------|------------------|-----------------------------------|---------------|-------------------|---------------|
| Second Degree Theft | 03/27/2006 | Yakima Co, WA | 05/30/2004 | Adult | NV |
| Second Degree Burglary | 03/22/2006 | Yakima Co, WA | 08/04/2005 | Adult | NV |
| First Degree Theft | 05/28/2004 | Yakima Co, WA | 04/07/2004 | Adult | NV |
| Second Degree Theft | 12/03/2003 | Yakima Co, WA | 10/20/2003 | Adult | NV |
| Second Degree Theft | 12/04/2002 | Yakima Co, WA | 09/11/2002 | Adult | NV |
| Second Degree Theft | 06/10/1997 | Yakima Co, WA | 01/02/1997 | Adult | NV |
| Second Degree Theft | 02/10/1995 | Yakima Co, WA | 11/27/1994 | Adult | NV |
| VUCSA | 03/22/1993 | Yakima Co, WA | 02/24/1993 | Adult | Drug |

APP A

2.4 Other Current Convictions under other cause number(s) used to determine offender score:

| Crime | Cause Number | Court (County and State) |
|-------|--------------|--------------------------|
| None | | |

2.5 Sentencing Data: The following is the defendant's standard range for each crime pursuant to RCW 9.94A.510:

| Count | Offender Score | Seriousness Level | Standard Range | Enhancements* | Enhanced Range | Maximum Term |
|-------|----------------|-------------------|----------------|---------------|----------------|--------------|
| 1 | 8 | I | 17-22 Months | | | 5 Years |

2.6 Exceptional Sentence: Substantial and compelling reasons do not exist which justify an exceptional sentence.

2.7 Financial Ability: The Court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The Court finds that the defendant has the present ability or likely future ability to pay the financial obligations imposed herein. RCW 9.94A.753.

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

III. JUDGMENT

3.1 Guilty: IT IS ADJUDGED that the defendant is guilty of the counts and charges listed in paragraph 2.1.

IV. SENTENCE AND ORDER

IT IS ORDERED that the defendant serve the sentence and abide by the conditions set forth below.

A. CONFINEMENT

4.A.1 Confinement: The defendant is sentenced to the following term of confinement:

~~17~~ ¹⁷ Months on Count 1

Doc will check to see if when the Chelan bulk was made. to see if he gets a few more days credit.

Credit for Time Served in the Yakima County Jail: The defendant shall be given credit for 15 days served on this charge only. The defendant shall be given credit for good behavior as administered and computed by the Yakima County Department of Corrections.

Credit for Time in Other Jail: The defendant shall receive _____ days credit for time served on this case in jail or prison _____; in transport from _____; in other _____

4.A.2 Concurrent or Consecutive:

Consecutive With Other Sentences: Unless otherwise specified here, this sentence shall be consecutive with prior sentences. RCW 9.94A.589(2).

4.A.3 Means of Confinement: The defendant shall serve this sentence as follows:

Total Confinement: The defendant shall serve the balance of confinement in a prison operated by the Washington State Department of Corrections because the term of confinement is over one year.

4.A.4 Time of Confinement: If not already in custody, the defendant shall report to the above facility immediately on or before _____ by _____ a.m./p.m. to begin serving this sentence.

B. SUPERVISION BY THE DEPARTMENT OF CORRECTIONS

4.B.1 No Community Custody: The defendant, by virtue of the offense committed, is not subject to community custody.

C. SENTENCE CONDITIONS

4.C.1 DNA Testing: The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. If you are out of custody at the time of sentencing, you will immediately report to the front desk of the Yakima County Jail for the taking of a DNA sample. RCW 43.43.754.

4.C.2 No Conditions: Because there is no supervision ordered, the defendant must only complete any incarceration ordered and pay all financial obligations.

D. FINANCIAL OBLIGATIONS

4.D.1 Financial: The defendant shall pay financial obligations and abide by the conditions as set forth below. The defendant shall be under the jurisdiction and supervision of this Court for purposes of payment of financial obligations ordered until they are paid. The defendant shall report to the Yakima County Clerk, Yakima County Courthouse, Room 323, 128 North Second Street, Yakima, WA, within 24 hours of this order or release from incarceration, whichever is later. The defendant must notify the Yakima County Clerk's Office of changes in address or employment. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule. RCW 9.94A.760(7)(b).

4.D.2 Jurisdiction: All legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes 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. The clerk of the court is authorized to collect unpaid financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her financial obligations. RCW 9.94A.753(4) and RCW 9.94A.760(4):

4.D.3 Restitution, Costs, Assessments, and Fine: Defendant shall pay the following to the Yakima County Superior Court Clerk, Room 323, Yakima County Courthouse, Yakima, WA 98901:

| | | | |
|-----|----|-------------------|-------------------------------------------------------------------------|
| RTN | \$ | -0- | Restitution distributed to: _____, subject to modification |
| PCV | \$ | 500.00 | Crime Penalty Assessment – felony or gross misdemeanor (RCW 7.68.035) |
| FRC | \$ | 200.00 | Criminal filing fee |
| PUB | \$ | 600.00 | Court appointed attorney recoupment (RCW 9.94A.760) |
| DNA | \$ | 100.00 | DNA collection fee (any felony committed after 7/1/02) (RCW 43.43.7541) |
| RDV | \$ | 100.00 | Domestic Violence Assessment (RCW 10.99.080) |
| | \$ | 1,500.00 | TOTAL |

4.D.4 Costs of Incarceration: In addition to the above costs, the court finds that the defendant has the means to pay for the costs of incarceration, in prison at a rate of \$50.00 per day of incarceration or in the Yakima County Jail at the actual rate of incarceration but not to exceed \$100.00 per day of incarceration (the rate in 2006 is \$63.48 and the rate in 2007 is \$65.43 per day), and orders the defendant to pay such costs at the statutory rate as assessed by the Clerk. Such costs are payable only after restitution costs, assessments and fines listed above are paid. RCW 9.94A.760(2). *Not to exceed 250*

4.D.5 Costs of Medical Care: In addition to the above costs, the court finds that the defendant has the means to pay for any costs of medical care incurred by Yakima County on behalf of the defendant, and orders the defendant to pay such medical costs as assessed by the Clerk. Such costs are payable only after restitution costs, assessments and fines listed above are paid. RCW 70.48.130.

4.D.6 Forfeiture of Funds: The financial obligations ordered above, in part or in full, shall be paid from defendant's funds held by _____ who is ordered to pay such funds to the Clerk of the above Court. Any balance shall be paid by the defendant.

4.D.7 Payments: Unless provided above, the Yakima County Clerk shall, after investigation, set a minimum monthly payment for the defendant to pay towards the financial obligations. The Clerk may modify the monthly payment amount. Payments shall first apply to any restitution. Costs and assessments shall be paid in 180 days after restitution is paid in full/release. All other fees shall be paid in 270 days after restitution is paid in full/release. The defendant shall pay financial obligations to the Clerk of the Court, Room 323, Yakima County Courthouse, Yakima, Washington.

4.D.8 Payroll Deduction: Without further notice, the Yakima County Clerk may issue a Notice of Payroll Deduction at any time until all financial obligations are paid. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

4.D.9 Interest, Judgment, and Collection: The financial obligations listed herein shall bear interest from the date hereof until paid in full at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total financial obligations. RCW 10.73.160. The financial obligations listed above may be enforced in the same manner as a civil judgment. The defendant shall pay the costs of services to collect unpaid legal financial obligations.

4.D.10 Petition For Remission: The defendant, if not in willful default on financial obligations due hereunder, may at any time petition the court for remission of all or part of the financial obligations due, except restitution or interest on restitution, or to modify the method of payment under RCW 10.01.160 through RCW 10.01.180 and RCW 10.73. Non-restitution interest may be waived only after the defendant has either (a) paid the principal amount in full or (b) made 24 consecutive monthly payments as set by the Clerk, and further payment of interest will cause a significant hardship. RCW 10.82.090.

V. NOTICES

The defendant, by signing below, acknowledges each of the statements in this section.

5.1 Collateral Attack: The defendant may not file a petition or motion for collateral attack on a judgment and sentence in a criminal case more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction. For purposes of this section, "collateral attack" means any form of post-conviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw a guilty plea, a motion for a new trial, and a motion to arrest judgment under RCW 10.73.090 and RCW 10.73.100.

5.2 **Loss of Voting Rights:** The defendant understands and acknowledges that:

1. The defendant's right to vote is lost because of this felony conviction.
2. If the defendant is registered to vote, his or her registration will be canceled.
3. The defendant's right to vote may be restored by:
 - a. A certificate of discharge issued by the Yakima County Superior Court, as provided in RCW 9.94A.637; or
 - b. A court order issued by the Yakima County Superior Court restoring the defendant's right to vote, as provided in RCW 9.92.066; or
 - c. A final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or
 - d. A certificate of restoration issued by the governor, as provided in RCW 9.96.020.
4. Voting before the right to vote is restored is a class C felony under RCW 29A.84.660.

5.3 **Sentence Condition Violation:** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement for any violation related to a felony charge RCW 9.94A.634. Any violation of this Judgment and Sentence is punishable by up to the total number of confinement days suspended for any violation related to a non-felony charge.

5.4 **Successful Completion:** Upon successful completion of the requirements of the sentence, the defendant shall be eligible for a certificate of discharge. RCW 9.94A.637.

5.5 **Firearms:** The defendant understands that he or she must immediately surrender any concealed pistol license and may not own, use, or possess any firearm unless the right to do so is restored by a court of record. (The clerk of the court 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.

5.6 **Restitution Hearing:** If this box is checked and initialed here _____ then the defendant gives up or waives the right to be present at any restitution hearing.

VI. SIGNATURES

DATED: February 6, 2007

Presented by:

THERESE M. MURPHY
Deputy Prosecuting Attorney
Washington State Bar No. 31442

Acknowledging the notices in Section V and receiving a copy:

JUDGE

Approved as to form:

KIMBERLY GRUJALVA
Attorney for Defendant
Washington State Bar No. 29771

DEFENDANT

VII. WARRANT OF CONFINEMENT

THE STATE OF WASHINGTON

TO: The Yakima County Sheriff
TO: The Yakima County Department of Corrections
TO: The Washington State Department of Corrections

The defendant has been convicted in the Superior Court of the State of Washington of the crime of:

SECOND DEGREE THEFT

and the court has ordered that the defendant be punished as set out in the attached Judgment and Sentence.

YOU ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

DATED: February 6, 2007

By the Direction of the Honorable

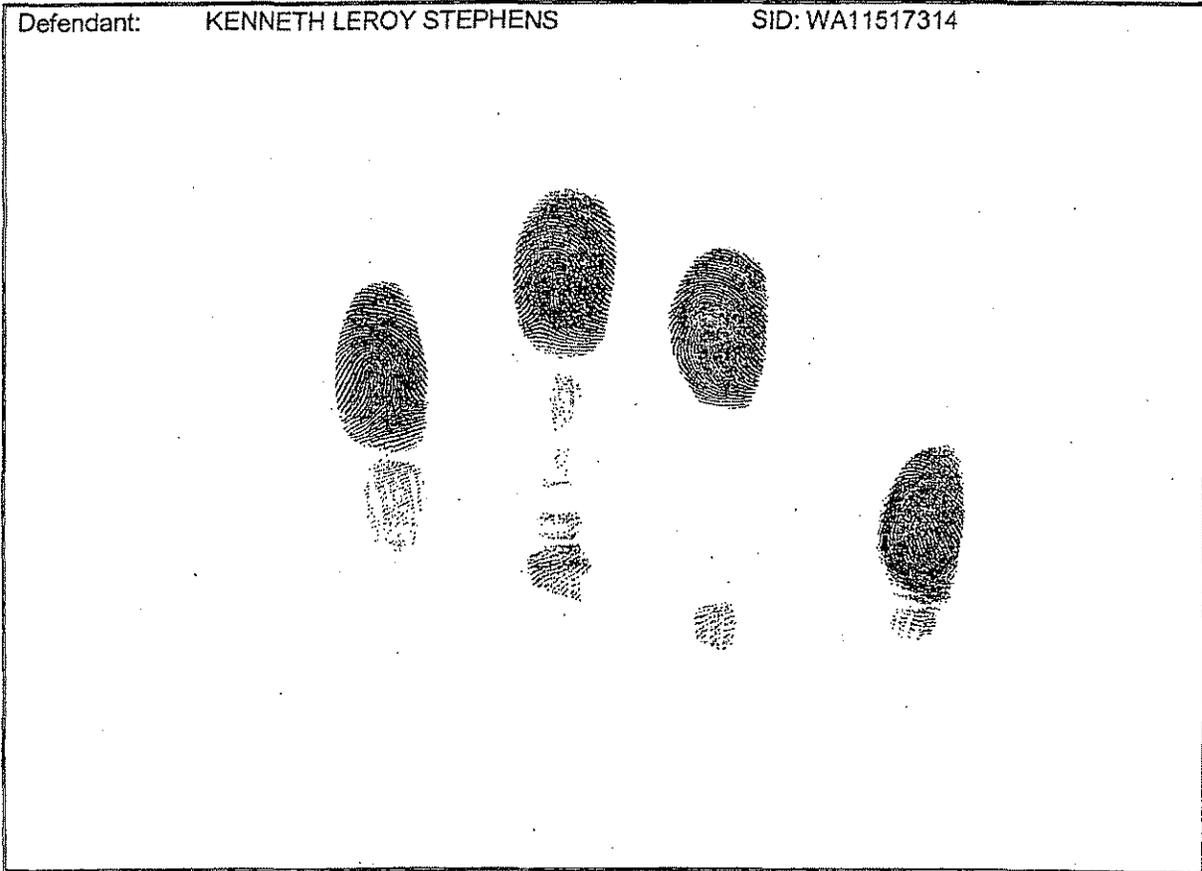
F. James Gavin
JUDGE

KIM M. EATON, Clerk

By: Kim Eaton
Deputy Clerk

Defendant: KENNETH LEROY STEPHENS

SID: WA11517314



FINGERPRINT CERTIFICATE OF ATTESTATION

STATE OF WASHINGTON)
)
 County of Yakima) ss.

I, Kim M. Eaton, Yakima County Clerk and ex-officio Clerk of the Superior Court, hereby attest that the fingerprints appearing on this certificate are the fingerprints of the above-named defendant, and were affixed in open court on February 6, 2007.

DATED: February 6, 2007

KIM M. EATON, Clerk

By: *Lynn Laurent*
 Deputy Clerk

Address of Defendant:

STATE OF WASHINGTON)
 COUNTY OF YAKIMA) ss
 I, Kim M. Eaton, Clerk of the above entitled court, do hereby certify that the 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 6th day of Feb, 20, 07
 Kim M. Eaton, CLERK
 By: *Ronald S. Zirkle* Deputy

FILED

PJ

2008 FEB -6 PM 12: 03

KIM M. EATON
EX OFFICIO CLERK
SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY
YAKIMA, WASHINGTON

State of Washington

Plaintiff,

NO. 06-1-02170-9

vs.

FELONY JUDGMENT AND SENTENCE
(FJS)

KENNETH LEROY STEPHENS

Defendant.

Prison
 Clerk's Action Required: 4.D.6 (Payroll
Deduction); 5.2 (NLVR); 5.5 (NTIPF)
 Clerk's Action Required: Dismissal of
Counts 2, 3 and 4 (ORDSM)

SID NO.: WA11517314
Motor Vehicle Involved: No
D.L.#: STEPHKL402NA; DOC: 705432;
DOB: 8/1/1960; SEX: Male; RACE: White

I. HEARING

1.1 **Hearing:** A sentencing hearing was held February 6, 2008. Present were the defendant, TIMOTHY D. COTTERELL, attorney for the defendant, and ~~FROY J. CLEMENTS~~, Deputy Prosecuting Attorney. *Michael Laws*

1.2 **Allocution:** The defendant was given the right of allocution and asked if any legal cause existed why judgment should not be entered. There being no reason why judgment should not be pronounced, the Court makes the following findings and judgment.

1.3 **Dismissal:** The State moves for dismissal of Counts 2, 3 and 4 of this action for the reason that the defendant has entered a plea of guilty or is being sentenced on Count 1 and prosecution of the indicated counts is not necessary or desired.

II. FINDINGS

Based on testimony heard, statements by the defendant and/or victims, argument of counsel, any pre-sentence report, and case record to date, the court finds:

2.1 **Current Offense(s):** On February 6, 2008, the defendant was found guilty by a plea of:

Count 1 **Crime: SECOND DEGREE POSSESSION OF STOLEN PROPERTY**
RCW 9A.56.160(a) and 9A.56.140(1)
Date of Crime: September 3, 2006
Law Enforcement Incident No.: Yakima PD #06-16312

2.2 **Special Findings:** The Court makes no special findings.

2.3 **Criminal History:** Prior criminal history used in calculating the offender score (RCW 9.94A.525):
2.4

| Crime | Date of Sentence | Sentencing Court (County & State) | Date of Crime | Adult or Juvenile | Type of Crime |
|---------------------|------------------|-----------------------------------|---------------|-------------------|---------------|
| VUCSA | 03/22/1993 | Chelan, WA | 02/24/1993 | Adult | Drug |
| Second Degree Theft | 02/10/1995 | Chelan, WA | 11/27/1994 | Adult | NV |
| Second Degree Theft | 06/10/1997 | King, WA | 01/02/1997 | Adult | NV |
| Second Degree Theft | 10/09/2002 | Chelan, WA | 09/11/2002 | Adult | NV |

Original
APP B

| | | | | | |
|------------------------|------------|------------|------------|-------|----|
| Second Degree Theft | 12/03/2003 | Yakima, WA | 10/20/2003 | Adult | NV |
| First Degree Theft | 05/28/2004 | Yakima, WA | 04/07/2004 | Adult | NV |
| Second Degree Burglary | 03/22/2006 | Yakima, WA | 08/04/2005 | Adult | NV |
| Second Degree Theft | 03/27/2006 | Yakima, WA | 05/30/2005 | Adult | NV |

2.4 *2007* Other Current Convictions under other cause number(s) used to determine offender score:

| Crime | Cause Number | Court (County and State) |
|-------|--------------|--------------------------|
| None | | |

2.5 Sentencing Data: The following is the defendant's standard range for each crime pursuant to RCW 9.94A.510

| Count | Offender Score | Seriousness Level | Standard Range | Enhancements* | Enhanced Range | Maximum Term |
|-------|----------------|-------------------|--------------------------------------------|---------------|----------------|--------------|
| 1 | <i>29</i> | 1 | 17-22 months <i>22-29 mo</i> | | | 5 years |

2.6 Exceptional Sentence: Substantial and compelling reasons do not exist which justify an exceptional sentence.

2.7 Financial Ability: The Court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The Court finds that the defendant has the present ability or likely future ability to pay the financial obligations imposed herein. RCW 9.94A.753.

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

III. JUDGMENT

3.1 Guilty: IT IS ADJUDGED that the defendant is guilty of the counts and charges listed in paragraph 2.1.

3.2 Dismissal of Counts: For the reasons given above, Counts 2, 3 and 4 are dismissed with prejudice.

IV. SENTENCE AND ORDER

IT IS ORDERED that the defendant serve the sentence and abide by the conditions set forth below.

A. CONFINEMENT

4.A.1 Confinement: The defendant is sentenced to the following term of confinement:

22 Months on Count 1 *credit to be given from 11-16-06 plus 3 days*

Credit for Time Served in the Yakima County Jail: The defendant shall be given credit for _____ days served on this charge only. The defendant shall be given credit for good behavior as administered and computed by the Yakima County Department of Corrections.

Credit for Time in Other Jail: The defendant shall receive _____ days credit for time served on this case in jail or prison _____; in transport from _____; in other _____

4.A.2 Concurrent or Consecutive:

Consecutive With Other Sentences: Unless otherwise specified here, this sentence shall be consecutive with prior sentences. RCW 9.94A.589(2).

4.A.3 Means of Confinement: The defendant shall serve this sentence as follows:

Total Confinement: The defendant shall serve the balance of confinement in a prison operated by the Washington State Department of Corrections because the term of confinement is over one year.

4.A.4 Time of Confinement: If not already in custody, the defendant shall report to the above facility immediately on or before _____ by _____ a.m./p.m. to begin serving this sentence.

B. SUPERVISION BY THE DEPARTMENT OF CORRECTIONS

4.B.1 No Community Custody: The defendant, by virtue of the offense committed, is not subject to community custody.

C. SENTENCE CONDITIONS

4.C.1 DNA Testing: The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. If you are out of custody at the time of sentencing, you will immediately report to the front desk of the Yakima County Jail for the taking of a DNA sample. RCW 43.43.754.

4.C.2 No Conditions: Because there is no supervision ordered, the defendant must only complete any incarceration ordered and pay all financial obligations.

D. FINANCIAL OBLIGATIONS

4.D.1 Financial: The defendant shall pay financial obligations and abide by the conditions as set forth below. The defendant shall be under the jurisdiction and supervision of this Court for purposes of payment of financial obligations ordered until they are paid. The defendant shall report to the Yakima County Clerk, Yakima County Courthouse, Room 323, 128 North Second Street, Yakima, WA, within 24 hours of this order or release from incarceration, whichever is later. The defendant must notify the Yakima County Clerk's Office of changes in address or employment. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule. RCW 9.94A.760(7)(b).

4.D.2 Jurisdiction: All legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes 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. The clerk of the court is authorized to collect unpaid financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her financial obligations. RCW 9.94A.753(4) and RCW 9.94A.760(4).

4.D.3 Restitution, Costs, Assessments, and Fine: Defendant shall pay the following to the Yakima County Superior Court Clerk, Room 323, Yakima County Courthouse, Yakima, WA 98901:

| | | |
|-----|-------------|-----------------------------------------------------------------------------|
| RTN | \$ 1,500.00 | Restitution distributed to: Tel West Communication, subject to modification |
| | | <input type="checkbox"/> Joint and several liability with codefendants |
| PCV | \$ 500.00 | Crime Penalty Assessment – felony or gross misdemeanor (RCW 7.68.035) |
| FRC | \$ 200.00 | Criminal filing fee |
| PUB | \$ 600.00 | Court appointed attorney recoupment (RCW 9.94A.760) |
| DNA | \$ 100.00 | DNA collection fee (any felony committed after 7/1/02) (RCW 43.43.7541) |
| WRF | \$ 100.00 | Warrant fee |
| | \$ 3,000.00 | TOTAL |

~~4.D.4 **Costs of Incarceration:** In addition to the above costs, the court finds that the defendant has the means to pay for the costs of incarceration, in prison at a rate of \$50.00 per day of incarceration or in the Yakima County Jail at the actual rate of incarceration but not to exceed \$100.00 per day of incarceration (the rate in 2008 is \$71.25 per day), and orders the defendant to pay such costs at the statutory rate as assessed by the Clerk. Such costs are payable only after restitution costs, assessments and fines listed above are paid. RCW 9.94A.760(2).~~

4.D.5 Costs of Medical Care: In addition to the above costs, the court finds that the defendant has the means to pay for any costs of medical care incurred by Yakima County on behalf of the defendant, and orders the defendant to pay such medical costs as assessed by the Clerk. Such costs are payable only after restitution costs, assessments and fines listed above are paid. RCW 70.48.130.

4.D.6 Forfeiture of Funds: The financial obligations ordered above, in part or in full, shall be paid from defendant's funds held by _____ who is ordered to pay such funds to the Clerk of the above Court. Any balance shall be paid by the defendant.

4.D.7 Payments: Unless provided above, the Yakima County Clerk shall, after investigation, set a minimum monthly payment for the defendant to pay towards the financial obligations. The Clerk may modify the monthly payment amount. Payments shall first apply to any restitution. Costs and assessments shall be paid in 180 days after restitution is paid in full/release. All other fees shall be paid in 270 days after restitution is paid in full/release. The defendant shall pay financial obligations to the Clerk of the Court, Room 323, Yakima County Courthouse, Yakima, Washington.

4.D.8 Payroll Deduction: Without further notice, the Yakima County Clerk may issue a Notice of Payroll Deduction at any time until all financial obligations are paid. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

4.D.9 Interest, Judgment, and Collection: The financial obligations listed herein shall bear interest from the date hereof until paid in full at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total financial obligations. RCW 10.73.160. The financial obligations listed above may be enforced in the same manner as a civil judgment. The defendant shall pay the costs of services to collect unpaid legal financial obligations.

4.D.10 Petition For Remission: The defendant, if not in willful default on financial obligations due hereunder, may at any time petition the court for remission of all or part of the financial obligations due, except restitution or interest on restitution, or to modify the method of payment under RCW 10.01.160 through RCW 10.01.180 and RCW 10.73. Non-restitution interest may be waived only after the defendant has either (a) paid the principal amount in full or (b) made 24 consecutive monthly payments as set by the Clerk, and further payment of interest will cause a significant hardship. RCW 10.82.090.

V. NOTICES

The defendant, by signing below, acknowledges each of the statements in this section.

5.1 Collateral Attack: The defendant may not file a petition or motion for collateral attack on a judgment and sentence in a criminal case more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction. For purposes of this section, "collateral attack" means any form of post-conviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw a guilty plea, a motion for a new trial, and a motion to arrest judgment under RCW 10.73.090 and RCW 10.73.100.

VII. WARRANT OF CONFINEMENT

THE STATE OF WASHINGTON

TO: The Yakima County Sheriff
TO: The Yakima County Department of Corrections
TO: The Washington State Department of Corrections

The defendant has been convicted in the Superior Court of the State of Washington of the crime of:

COUNT 1 - SECOND DEGREE POSSESSION OF STOLEN PROPERTY

and the court has ordered that the defendant be punished as set out in the attached Judgment and Sentence.

YOU ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

DATED: February 6, 2008

By the Direction of the Honorable

F. JAMES GAVIN
JUDGE

KIM M. EATON, Clerk

By: [Signature]
Deputy Clerk



| | | |
|-------------------------------------------------------------------------------------|------------------------|-----------------|
| Defendant: | KENNETH LEROY STEPHENS | SID: WA11517314 |
|  | | |

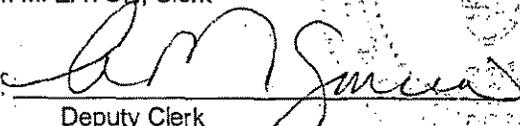
FINGERPRINT CERTIFICATE OF ATTESTATION

STATE OF WASHINGTON)
)
 County of Yakima) ss.

I, Kim M. Eaton, Yakima County Clerk and ex-officio Clerk of the Superior Court, hereby attest that the fingerprints appearing on this certificate are the fingerprints of the above-named defendant, and were affixed in open court on February 6, 2008.

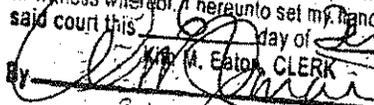
DATED: February 6, 2008

KIM M. EATON, Clerk

By: 

Deputy Clerk

Address of Defendant:

STATE OF WASHINGTON)
 COUNTY OF YAKIMA) ss.
 I, Kim M. Eaton, Clerk of the above entitled court, do hereby certify that the 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 20 day of Feb 2008
 By:  KIM M. EATON, CLERK
 Deputy

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

FILED

AUG 03 2012

KIM MORRISON
CHELAN COUNTY CLERK

KENNETH LeROY STEPHENS,)
)
Plaintiff,)
)
vs.)
)
STATE OF WASHINGTON,)
)
Defendant.)

No. 10-2-00145-4

SPECIAL VERDICT FORM

12-9 0 0991 11

1. Did the Department of Corrections unjustifiably confine Kenneth Stephens, under the circumstances, beyond the period of time that it was legally entitled to confine him?

Circle one: Yes No

If the answer to the first question is yes, answer number 2.

If your answer to the first question is no, stop here and sign verdict.

2. Was the unjustifiable confinement, under the circumstances, the proximate cause of Kenneth Stephens' damages?

Circle one: Yes No

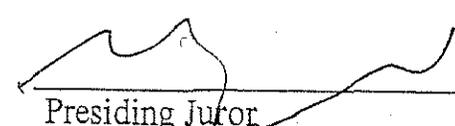
If the answer to the second question is yes, answer number 3.

If the answer to the second question is no, stop here and sign verdict.

3. What is the value of the damages suffered by Kenneth Stephens?

TOTAL AMOUNT OF DAMAGES: \$ _____

Date: 8-3-12


Presiding Juror

App C

VOLUME 1
Titles 1 through 17

2006
REVISED CODE OF WASHINGTON

Published under the authority of chapter 1.08 RCW.

Containing all laws of a general and permanent nature through the 2006 regular session, which adjourned sine die March 8, 2006.

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

9.94A.723 Court-ordered treatment—Offender's failure to inform. An offender's failure to inform the department of court-ordered treatment upon request by the department is a violation of the conditions of supervision if the offender is in the community and an infraction if the offender is in confinement, and the violation or infraction is subject to sanctions. [2004 c 166 § 7.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

9.94A.725 Offender work crews. Participation in a work crew is conditioned upon the offender's acceptance into the program, abstinence from alcohol and controlled substances as demonstrated by urinalysis and breathalyzer monitoring, with the cost of monitoring to be paid by the offender, unless indigent; and upon compliance with the rules of the program, which rules require the offender to work to the best of his or her abilities and provide the program with accurate, verified residence information. Work crew may be imposed simultaneously with electronic home detention.

Where work crew is imposed as part of a sentence of nine months or more, the offender must serve a minimum of thirty days of total confinement before being eligible for work crew.

Work crew tasks shall be performed for a minimum of thirty-five hours per week. Only those offenders sentenced to a facility operated or utilized under contract by a county or the state, or sanctioned under RCW 9.94A.737, are eligible to participate on a work crew. Offenders sentenced for a sex offense are not eligible for the work crew program.

An offender who has successfully completed four weeks of work crew at thirty-five hours per week shall thereafter receive credit toward the work crew sentence for hours worked at approved, verified employment. Such employment credit may be earned for up to twenty-four hours actual employment per week provided, however, that every such offender shall continue active participation in work crew projects according to a schedule approved by a work crew supervisor until the work crew sentence has been served.

The hours served as part of a work crew sentence may include substance abuse counseling and/or job skills training.

The civic improvement tasks performed by offenders on work crew shall be unskilled labor for the benefit of the community as determined by the head of the county executive branch or his or her designee. Civic improvement tasks shall not be done on private property unless it is owned or operated by a nonprofit entity, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. In case any dispute arises as to a civic improvement task having more than minimum negative impact on existing private industries or labor force in the county where their service or labor is performed, the matter shall be

referred by an interested party, as defined in RCW 39.12.010(4), for arbitration to the director of the department of labor and industries of the state.

Whenever an offender receives credit against a work crew sentence for hours of approved, verified employment, the offender shall pay to the agency administering the program the monthly assessment of an amount not less than ten dollars per month nor more than fifty dollars per month. This assessment shall be considered payment of the costs of providing the work crew program to an offender. The court may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(1) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payment.

(2) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(3) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the court.

(4) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship.

(5) Other extenuating circumstances as determined by the court. [2000 c 28 § 27; 1991 c 181 § 2. Formerly RCW 9.94A.135.]

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

9.94A.728 Earned release time. No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the

aggregate earned release time may not exceed fifteen percent of the sentence. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(b)(i) In the case of an offender who qualifies under (b)(ii) of this subsection, the aggregate earned release time may not exceed fifty percent of the sentence.

(ii) An offender is qualified to earn up to fifty percent of aggregate earned release time under this subsection (1)(b) if he or she:

(A) Is classified in one of the two lowest risk categories under (b)(iii) of this subsection;

(B) Is not confined pursuant to a sentence for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor); and

(C) Has no prior conviction for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor).

(iii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that is domestic violence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine, or a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.

(iv) The department shall recalculate the earned release time and reschedule the expected release dates for each qualified offender under this subsection (1)(b).

(v) This subsection (1)(b) applies retroactively to eligible offenders serving terms of total confinement in a state correctional facility as of July 1, 2003.

(vi) This subsection (1)(b) does not apply to offenders convicted after July 1, 2010.

(c) In no other case shall the aggregate earned release time exceed one-third of the total sentence;

(2)(a) A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;

(b) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;

(c) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community placement or community custody terms eligible for release to community custody status in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(d) The department may deny transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody or community placement;

(e) An offender serving a term of confinement imposed under RCW 9.94A.670(4)(a) is not eligible for earned release credits under this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious enough to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and

(iii) Granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time;

(5) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(6) No more than the final six months of the sentence may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community;

(7) The governor may pardon any offender;

(8) The department may release an offender from confinement any time within ten days before a release date calculated under this section; and

(9) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870.

Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement. [2004 c 176 § 6; 2003 c 379 § 1. Prior: 2002 c 290 § 21; 2002 c 50 § 2; 2000 c 28 § 28; prior: 1999 c 324 § 1; 1999 c 37 § 1; 1996 c 199 § 2; 1995 c 129 § 7 (Initiative Measure No. 159); 1992 c 145 § 8; 1990 c 3 § 202; 1989 c 248 § 2; prior: 1988 c 153 § 3; 1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15. Formerly RCW 9.94A.150.]

Severability—Effective date—2004 c 176: See notes following RCW 9.94A.515.

Severability—2003 c 379: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 379 § 28.]

Effective dates—2003 c 379: "(1) Sections 1 through 12, 20, and 28 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2003.

(2) Sections 13 through 19 and 21 through 27 of this act take effect October 1, 2003." [2003 c 379 § 29.]

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Intent—2002 c 50: "The legislature has determined in RCW 9.94A.728(2) that the department of corrections may transfer offenders to community custody status in lieu of earned release time in accordance with a program developed by the department of corrections. It is the legislature's intent, in response to: *In re: Capello 106 Wn.App. 576 (2001)*, to clarify the law to reflect that the secretary of the department has, and has had since enactment of the community placement act of 1988, the authority to require all offenders, eligible for release to community custody status in lieu of earned release, to provide a release plan that includes an approved residence and living arrangement prior to any transfer to the community." [2002 c 50 § 1.]

Application—2002 c 50: "This act applies to all offenders with community placement or community custody terms currently incarcerated either before, on, or after March 14, 2002." [2002 c 50 § 3.]

Severability—2002 c 50: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 50 § 4.]

Effective date—2002 c 50: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2002]." [2002 c 50 § 5.]

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Severability—1996 c 199: See note following RCW 9.94A.505.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Application—1989 c 248: See note following RCW 9.92.151.

Effective date—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.7281 Legislative declaration—Earned release time not an entitlement. The legislature declares that the changes to the maximum percentages of earned release time in chapter 379, Laws of 2003 do not create any expectation that the percentage of earned release time cannot be revised and offenders have no reason to conclude that the maximum percentage of earned release time is an entitlement or creates any liberty interest. The legislature retains full control over the right to revise the percentages of earned release time available to offenders at any time. This section applies to persons convicted on or after July 1, 2003. [2003 c 379 § 2.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

9.94A.7282 Earned release study. The Washington state institute for public policy shall study the results of the changes in earned release under section 1, chapter 379, Laws of 2003. The study shall determine whether the changes in earned release affect the rate of recidivism or the type of offenses committed by persons whose release dates were affected by the changes in chapter 379, Laws of 2003. The Washington state institute for public policy shall report its findings to the governor and the appropriate committees of the legislature no later than December 1, 2008. [2003 c 379 § 12.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

9.94A.731 Term of partial confinement, work release, home detention. (1) An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day or, if serving a work crew sentence shall comply with the conditions of that sentence as set forth in RCW *9.94A.030(31) and 9.94A.725. The offender shall be required as a condition of partial confinement to report to the facility at designated times. During the period of partial confinement, an offender may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or the department pursuant to this chapter.

(2) An offender in a county jail ordered to serve all or part of a term of less than one year in work release, work crew, or a program of home detention who violates the rules of the work release facility, work crew, or program of home detention or fails to remain employed or enrolled in school may be transferred to the appropriate county detention facility without further court order but shall, upon request, be notified of the right to request an administrative hearing on the issue of whether or not the offender failed to comply with the order and relevant conditions. Pending such hearing, or in the absence of a request for the hearing, the offender shall serve the remainder of the term of confinement as total confinement. This subsection shall not affect transfer or placement of offenders committed to the department.

(3) Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility. [2003 c 254 § 2; 2000 c 28 § 29; 1999 c 143 § 15; 1991 c 181 § 4; 1988 c 154 § 4; 1987 c 456 § 3; 1981 c 137 § 18. Formerly RCW 9.94A.180.]

***Reviser's note:** RCW 9.94A.030 was amended by 2005 c 436 § 1, changing subsection (31) to subsection (32).

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.734 Home detention—Conditions. (1) Home detention may not be imposed for offenders convicted of:

- (a) A violent offense;
- (b) Any sex offense;
- (c) Any drug offense;
- (d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;
- (e) Assault in the third degree as defined in RCW 9A.36.031;
- (f) Assault of a child in the third degree;
- (g) Unlawful imprisonment as defined in RCW 9A.40.040; or
- (h) Harassment as defined in RCW 9A.46.020.

Home detention may be imposed for offenders convicted of possession of a controlled substance under RCW 69.50.4013 or forged prescription for a controlled substance under RCW 69.50.403 if the offender fulfills the participation conditions set forth in this section and is monitored for drug use by a treatment alternatives to street crime program or a comparable court or agency-referred program.

(2) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW

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9A.52.030 or residential burglary conditioned upon the offender:

(a) Successfully completing twenty-one days in a work release program;

(b) Having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary;

(c) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(d) Having no prior charges of escape; and

(e) Fulfilling the other conditions of the home detention program.

(3) Participation in a home detention program shall be conditioned upon:

(a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender;

(b) Abiding by the rules of the home detention program; and

(c) Compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution. [2003 c 53 § 62; 2000 c 28 § 30; 1995 c 108 § 2. Formerly RCW 9.94A.185.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Effective date—1995 c 108: See note following RCW 9.94A.030.

9.94A.737 Community custody—Violations. (1) If an offender violates any condition or requirement of community custody, the department may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(2)(a) For a sex offender sentenced to a term of community custody under RCW 9.94A.670 who violates any condition of community custody, the department may impose a sanction of up to sixty days' confinement in a local correctional facility for each violation. If the department imposes a sanction, the department shall submit within seventy-two hours a report to the court and the prosecuting attorney outlining the violation or violations and the sanctions imposed.

(b) For a sex offender sentenced to a term of community custody under RCW 9.94A.710 who violates any condition of community custody after having completed his or her

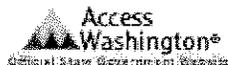


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RCW 9.95.020

Duties of superintendent of correctional institution.

If the sentence of a person so convicted is not suspended by the court, the superintendent of a major state correctional institution shall receive such person, if committed to his or her institution, and imprison the person until released under the provisions of this chapter, under [RCW 9.95.420](#), upon the completion of the statutory maximum sentence, or through the action of the governor.

[2001 2nd sp.s. c 12 § 322; 1955 c 133 § 3. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

Notes:

Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12: See notes following [RCW 71.09.250](#).

Application -- 2001 2nd sp.s. c 12 §§ 301-363: See note following [RCW 9.94A.030](#).

INSTRUCTION NO. 9

Unlawful imprisonment is the intentional confinement of another's person, without legal authority, and unjustified under the circumstances.

When a person is detained in prison without legal authority and without justification under the circumstances, the authority responsible for such detention is liable for damages for unlawful imprisonment.

It is plaintiff's burden of proof to show that each of the above elements have been met by a preponderance of the evidence.

INSTRUCTION NO. 10

Consecutive sentences means the following:

When one sentence of confinement is to follow another in point of time, the second sentence is deemed to be consecutive.

Washington law provides that when sentences are ordered to be run consecutive with other sentences, as opposed to concurrent with other sentences, that the offender is not entitled to credit for jail time served for both sentences.

KENNETH STEPHENS CHRONOLOGY

September 3, 2006 Arrest for theft of coin box in Yakima parking lot. Charged as Yakima County Cause No. 06-1-02170-9.

September 5, 2006 Released from Yakima Jail on bail after serving three days.

October 28, 2006 Arrested for theft at Yakima Shopko store. Charged as Yakima County Cause No. 06-1-02624-7. Serves 15 days in Yakima jail before transfer to Chelan County on warrants.

November 16, 2006 Returns to Yakima County Jail. Remains in Yakima County Jail until transferred to Department of Corrections custody.

February 6, 2007 Pleads guilty to second degree theft in Cause No. 06-1-02624-7. Sentenced to 17 months confinement with "credit for 15 days served." Sentence is consecutive with prior sentences.

February 6, 2008 Pleads guilty to possession of stolen property in Cause No. 06-1-02170-9. Sentenced to 22 months confinement with "credit from 11-16-06 plus 3 days." Sentence is consecutive with prior sentences.

February 13, 2008 Transferred to Department of Corrections custody.

July 21, 2008 Hearing in Yakima County Superior Court. Judge Gavin amends 2007 sentence in Cause No. 06-1-02624-7.

July 23, 2008 Department of Corrections receives amended judgment and sentence.

July 25, 2008 Released from Department of Corrections custody.

App. G