

FILED

Cause No. 311899-III

JUL 29 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

**COURT OF APPEALS
STATE OF WASHINGTON
(Div. III)**

STATE OF WASHINGTON

Respondent,

v.

TAYLOR MAREAN

Appellant,

SUPERIOR COURT No. 10-1-01597-4
SPOKANE COUNTY
HONORABLE JUDGE LEVEQUE

AMENDED OPENING BRIEF

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INTRODUCTION AND STATEMENT OF THE ISSUES

This appeal challenges the sentencing court's ruling that the "willing participant" rule under RCW 9.94A.535(1) was not applicable to the charge of Vehicular Homicide, as a matter of law, because the victim was a passenger not a driver.

A. ASSIGNMENTS OF ERROR

Appellant Marean raises the following assignments of error:

1. The trial court erred as a matter of law in rejecting a toxicology report (Defense Exhibit 1) showing the minor victim's blood alcohol level was 0.12, proffered to support defendant's mitigation claim that the victim was a willing participant in the illegal events that lead to her death.
2. The trial court erred as a matter of law that a passenger could not be considered a statutory "willing participant" in the criminal conduct that lead to her death. Based on this error, the trial court improperly rejected consideration of relevant facts set forth in Defense Exhibit 2 (sworn statement of Rosenthal) and the Statement of Probable Cause (summarizing the sworn statement of Rosenthal).

B. STATEMENT OF THE CASE & PROCEEDINGS

On May 26, 2010, the defendant and co-defendant Brooke Reese, were charged by information with one count of vehicular manslaughter pursuant to RCW 46.61.520. CP 1. The charge stemmed from a collision on February 14, 2010, involving four teenagers in two vehicles: Defendant Marean's vehicle (a high-performance BMW, with one additional passenger) and a co-defendant's vehicle (a Pontiac, with one additional passenger who died as a result of the collision) due to the two vehicles racing and all the underage participants having recently consumed alcohol at a nearby party. RP 33:1, 33:15 to 35:24. The Statement of Probable Cause listed Marean's blood alcohol at 0.13. RP 36:17, and see Appendix A and B.

On July 19, 2012, the defendant plead guilty without a plea agreement to vehicular homicide based upon his legal intoxication at the time of the crime. CP 2, 5 ¶ (g).

On September 14, 2012, the defendant gave notice of his intent to seek an exceptional sentence under RCW 9.94A.535. CP 37.

On September 20, 2012, the defendant was sentenced to 36 months, the mid-range of the guideline for RCW 46.61.520(1)(a)

(“under the influence of intoxicating liquor”). CP 26 (“VEHICULAR HOMICIDE-DUI”), 28 (seriousness level IV, standard range 31-41); see, RP 98:22.

At the sentencing, the trial court was presented with two exhibits in support of the defendant’s motion for an exceptional sentence under RCW 9.94A.535(1)(a) (“willing participant”) consisting of a Supplemental Report regarding the two vehicles racing and a Toxicology Report reflecting the victim’s blood alcohol level. The court rejected the toxicology without comment, RP 50, and limited the Supplemental Report to portions of the sworn statement regarding the second car’s agreement to race. RP 54.

The court rejected the statutory mitigation as a matter of law on the sole remaining grounds, i.e, racing. The court held that the victim’s willing participation did not apply to someone who was a passenger in a vehicle. RP 97:23 to 98:2.

C. FACTS

1. State’s case

The State charged defendant Taylor Marean with a single count of vehicular manslaughter on May 26, 2010, as a result of a two-car collision on February 14, 2010, in which a passenger of the second car,

Jacoby Bryant, was killed. CP 1. The Information charged Marean in the conjunctive with being under the influence of alcohol or a drug, in a reckless manner, and with disregard for the safety of others. CP 1.

There were four underage participants in the collision. Driver Marean and his passenger Perrizo in Marean's mother's high performance BMW, and driver Reese and her passenger Jacoby Bryant in a Pontiac. Other than Ms. Bryant, none of the others were injured in the collision; Ms. Bryant was killed after Marean's car struck Reese's car along the driver's side and the two slid together into a tree, violently impacting the Reese car along the passenger door. See Ex 2, consisting of Supplemental Report at 1 and its attached Probable Cause Statement at 5 (reproduced at Appendix A).

The following was learned following the accident:

- The second driver, co-defendant Reese, gave a statement at the scene and again at the local hospital after she was re-Mirandized, in which she related "what she and her friend (Bryant) were doing prior to the collision." Ex 2 (Supplemental Rpt at 3) and CP 44 (Probable Cause Statement of Facts).
- According to Reese, the four participants had been at a nearby party. Ex 2, page 3. According to Reese, "all of the people, including

herself and Marean, were drinking alcohol.” Reese admitted to having four shots of an unidentified drink; Marean was seen to have been drinking “a lot” of vodka and beer. Ex 2 (Supplemental Rpt at 3) and CP 44 (Probable Cause Statement of Facts).

- Reese and Bryant left in Reese’s Pontiac to take Bryant home. Ex 2 at 3, and CP 44.

- Marean and Perrizo left at the same time and while driving south on Grand Blvd, Marean passed Reese, slowed down, let Reese pass, then sped up, letting Reese pass, then repass at a high rate of speed. This occurred several times until the cars pulled alongside each other at the Rocket Bakery on Hatch. Ex 2 3, and CP 70-71.

- At the corner of Grand and 43rd, Marean pulled alongside Reese and Reese stated in her interviews that it was then that Marean rolled down his window and said to Reese and Bryant, “let’s race.” Ex 2 at 3, and CP 45.¹ “Reese said she took off, speeding up to attempt to catch Marean and race him. Reese said

¹ According to the record, Marean addressed both women in the Pontiac.

she could not believe how fast Mareasn's car was, indicating his car was "way faster than than mine." CP 45. According to Reese, Marean let her catch up and pass him. Ex 2 at 3, but see CP 71.

While in the lead, Reese slowed down at 54th and Hatch to make the left hand turn to Byrant's home. Both the Supplemental Report and Probable Cause statement relate that Reese "attempted to make the left turn and lost control, sliding through the intersection into the tree where she crashed." In her statements, Reese explained that she did not see Marean's car next to her's when she began to make the turn and she thought "Marean's car ran into her vehicle after she had hit the tree." Ex 2 at 3, and CP 71.

- Deputy Rosenthal opined that Marean's car likely hit Reese's at the intersection in a "T" formation while Reese's car was turning left through the northbound lane in the center of the intersection with 54th and Hatch, and thereafter driving Reese's Pontiac sideways across a curb and into a tree. Ex 2 at 2.

- Reese's passenger, Jacoby Bryant, was pronounced dead at the scene. Ex 2 at 1.

- Marean and his passenger Perizzo invoked their Miranda rights and were not interviewed. Ex 2 at 3, and CP 43.

2. Defense's plea & motion for exceptional sentence

After multiple continuances by both sides extending over 24 months, the state notified defense counsel in mid-2012 that no plea agreement could be reached. RP 80. The case was set for trial in the Fall, 2012. At a status conference on July 12, 2012, the trial court advised counsel that due to his retirement he was no longer available for any trial that fall. The court proposed a transfer to another chambers. RP 4. Defense counsel responded with a solution, advising the court and prosecutor that in the absence of any progress toward a negotiated sentence in the intervening years, the defendant was prepared to change his plea to guilty without a pre-arranged agreement. RP 5-9.

A change of plea was entered on July 19, 2012. CP 2. The factual basis for the plea included the defendant's operation of a vehicle while under the influence of alcohol and the resulting death of Jacoby Bryant. CP 2, 9. The written plea acknowledged that Mr. Marean had an offender score of 0 and his standard range was 31 to 41 months. CP 3. Although no plea agreement existed between the parties, CP 5, the prosecutor indicated that she would recommend a sentence within the guideline range. CP 5, ¶ (g), RP 22:17-21. The court specifically advised the defendant that an exceptional sentence "may be imposed

below the standard range if there's a finding of mitigating circumstances supporting that exceptional sentence." RP 23: 2-5. Sentencing was scheduled and defense counsel stated he believed 2 hours would be necessary. RP 17:1-3, 38.

Following the court's acceptance of the plea, RP 30:6-14, the prosecutor read into the record portions of the Probable Cause Statement. RP 31:19 to 35:24; and see CP 66-71. The remarks contained statements from lay witnesses who estimated the car's speed in excess of 60 miles per hour and the investigating detective's estimate that the minimum speed was 51 miles per hour at the time of collision. RP 34. The reconstruction performed by Detective Thornberg showed that Marean's vehicle likely struck the Reese Pontiac while the Pontiac was executing a left hand turn and that both cars lost control, Marean's vehicle pushing the Pontiac sideways where the driver's side tipped upwards due to the Pontiac's passenger side wheels hitting the curb, and culminating with the Pontiac passenger door against trees alongside the opposite roadway. The impact deformed the Pontiac's passenger door 16 inches. RP 34-35. The State's recitation included Marean's blood alcohol (0.13), higher than the one actually set forth in the

Probable Cause statement, see CP 70 (“0.13”), but did not not include the blood alcohol level for any other participant. RP 35:17.

The cause of Ms. Jacoby’s instantaneous death was the separation of her brain stem due to blunt force trauma at impact. RP 35:18-23.

The defense noted that there were inaccuracies in the reports but that this would be addressed at sentencing. RP 29:10.

On September 14, 2012, the defendant filed a notice of his intention to seek an exceptional sentence downward. The notice specifically cited to the statute addressing sentence mitigation. CP 37. Days in advance of sentencing the defendant filed and served copies of letters to the Court in support of the defendant.² CP 42:3-9.

Immediately before the time of sentencing, the defense provided to the prosecutor copies of two exhibits previously provided by the State to the defense in pretrial discovery, with the Probable Cause Statement attached. RP 44-45, referring to Exhibit 1 (Appendix A), Exhibit 2 (Appendix B) and to the Probable Cause Statement of Facts (CP 69-70).

The State objected to the defense’s exhibits. RP 43, 44-45. The State specifically objected to the defense conducting a “real facts

² The record does not show that defense counsel was served copies of letters submitted on behalf of the victim. Defendant Marean did not object to the reading of the victim’s family’s letters despite the lack of notice.

hearing” in view of the defendant’s plea of guilty and argued that the defense was restricted to the facts presented at the time of plea. RP 44-45. The State also argued that it had no notice of the defense’s intent to use the exhibits and therefore was “not sure what [the victim’s blood alcohol report] has to do as to why Mr. Marean should get an exceptional sentence...” and was forced to “guess and respond to things on the fly” regarding a Rosenthal’s original police report. RP 45:5-14; see Exhibits 1 [victim’s blood alcoho] and 2 [Rosenthal’s report] and compare Ex. 2 against the edited version of Rosenthal’s report found in the probable cause recitation at CP 42-43.

Defense counsel responded that the case had been in negotiations for two years and that the singular basis for the defendant’s motion for an exceptional sentence had been the subject of discussion throughout the entire time. The defense claimed that there could be no surprise about the defendant’s argument in support of an exceptional sentence. RP 46:15, 47. The defense also noted that the court specifically had discussed with the defendant the operation of the exceptional sentencing procedures and that at the change of plea defense counsel notified the court that the sentencing hearing could take two or more hours. RP 46:10-15. The defense noted, as well, that although the

statute required notice from the State when it sought an exceptional sentence but was silent regarding any reciprocal duty on the part of the defendant. RP 46:2-8. Counsel noted that the statute specifically permitted an exceptional sentence based on information (1) admitted by the plea agreement, (2) or admitted, acknowledged or proved in a trial, or (3) at the time of time of sentencing. Counsel argued that this was the time of sentencing and that the defendant's intent to introduce evidence for the court's consideration of an exceptional sentence was squarely within the intent and wording of the statute. RP 48:18 to 49:3.

The court expressed concern that the State was unfairly prejudiced by not knowing the defense's intention to submit specific records in support of the exceptional sentence. RP 49. The defense³ reiterated that the subject matter — the victim's participation in the offense that resulted in her death — was under discussion between counsel for two years. RP 49. The State raised the concern that it was prejudiced in not having available the co-defendant (Reese) or the other passenger

³ The transcript attributes RP 49:11-17 to "Ms. Brady". This is an error; by its content, the remark can be logically attributed only to defense counsel. The attribution error may not matter as the point was uncontested: the deceased's participation was discussed for the two years this case was in pretrial status.

(Perizzo), and any information about Ms. Bryant — who as the victim could not be interviewed — was prejudicial. RP 49:25 to 50:5.

Nevertheless, the State waived the court's offer to continue the sentencing and consented to proceed. RP 54:4-6.

The court then ruled that it was not going to admit Exhibit 1, the toxicology report on Ms. Bryant, finding “no value to that in terms of the issues before the Court for sentencing.” RP 50, 54:1. (See Exhibit 1, attached as Appendix A). The court next determined that the gist of Exhibit 2 was contained in the Probable Cause statement previously reviewed by the court at the change of plea. RP 52:22 to 53:2. Exhibit 2 was admitted for limited purposes relating to the statements by Marean to both Ms. Reese and Ms. Bryant. RP 54:7-8. (See Exhibit 2 consisting of Rosenthal's Supplemental Report and compare with CP 69-70).

At that point, the court permitted letters from the decedent's family to be read aloud. The first letter referenced the family's awareness that Marean would be raising the actions of the other teens at the scene, including the deceased, in mitigation. RP 55:20-24. Other remarks referenced facts outside the record, including matters that occurred in

the sentencing of co-defendant Reese. The court properly indicated⁴ that these references opened the opportunity for defense counsel to remark on matters addressed and the court knew how to take account of matters outside the record. RP 86. The remarks specifically predicted a defense claim that the deceased was a willing participant in the fatal race, see for example RP 55:22-24, and in one instance challenged the claim that Ms. Bryant and Ms. Reese agreed to race as highly unlikely because of the decedent's and co-defendant's high intelligence, 59:16-24, and the known capacities of the high-performance BMW driven by Marean. Other comments referenced the drinking by all four participants, RP 57:18-21, noting that Marean's passenger was never tested.

Following the victim's family's letters, the court heard from defense counsel on the motion for an exceptional sentence. The lower court noted the defendant's heart rending submissions and his "impressive" post-arrest conduct. RP 94:13-16. The court then turned to the issue on appeal:

THE COURT: Mr. Finer addressed some circumstances that he believes the legislature has included in the framework of an argument based upon -- and doing so without any condemnation or

⁴ Marean does not complain in this appeal regarding the victim's family's statements, as the court permitted the defense a limited opportunity to respond, RP 86:12-15, and indicated it was mindful how to treat matters outside the record.

judgment but actually in reality [--] that there is argument by law that the Court should hear and consider referencing the theory of a willing participant. Ms. Brady on behalf of the State said that misses the point. The passenger in the vehicle, the young girl who is dead, that's who we're talking about. She wasn't driving. She didn't participate in anything other than being in the vehicle. The argument on the other side is that she was in the vehicle and the information provided to the Court could indicate that that driving described as racing was something that she was willingly participating in as a passenger. So with that understanding that's where I went.

I agree with the State. I do not believe we have the legal basis for a willing participant criteria that the Court can use to allow a downward.

RP 97:10-25.

The court focused on the defendant's conduct as established by the record and reiterated that it saw "nothing mitigating in the circumstances of this particular act or crime." RP 98:8-9. The court then imposed the midrange sentence of 36 months, noting that the sentence was "harsh but justified" and lawful. RP 99:2-4.

I. THE DEFENDANT IS ENTITLED TO A REVIEW OF THE LOWER COURT'S EXCLUSION OF EVIDENCE RAISING A STATUTORY CHALLENGE TO THE STANDARD RANGE.

Standard of Review

Under Washington's presumptive sentencing, a defendant who is sentenced within a properly determined standard range generally has no right to appeal. This rule, however, is modified where a defendant

seeks but is denied an exceptional sentence below the standard range. *State v. Grayson*, 154 Wn.2d 333, 342 (2005). “[E]very defendant is entitled to ask the trial court to consider such a sentence and to have the alternative actually considered.” *Id.* Review is limited to those circumstances where the court has either refused to exercise its discretion at all or has used an impermissible reason to refuse granting the exceptional sentence below the standard range. *State v. Garcia-Martinez*, 88 Wn.App. 322 at 330 (Div 1, 1997).

II. RCW 9.94A.535(1) PROVIDES A STATUTORY MITIGATION TO THE PRESUMPTIVE GUIDELINE RANGE WHERE THE VICTIM OF A CRIME WAS A “WILLING PARTICIPANT.”

- a. The Sentencing Act requires that the facts proffered for an exceptional sentence below the guidelines (1) were not considered in the standard range, (2) are extraordinary and (3) must relate to circumstances of the crime.**
 1. Victim as “willing participant” was not considered in determining the seriousness level for Vehicular Homicide.

Several restrictions guide the exercise of a sentencing court’s discretion to consider mitigation under 9.94A.535(1)(a). If the proffered basis for mitigation represents matters already taken into account in the court’s determination of the standard range then the matter is not available for further consideration as a basis for mitigation. See, 13B Washington

Prac. 3803 (collecting cases). This test is easily met: the factors considered for the standard range are the seriousness of the crime and the defendant's criminal history. *State v. Norby*, 106 Wn.2d 514, 518 (1986). Whether the victim was a willing participant has no bearing up the defendant's criminal history and, as far as counsel can determine, the Legislature gave no consideration to the conduct of victims in determining the seriousness level for the three levels of vehicular homicide.

2. Victim as "willing participant" factor is categorically extraordinary under the statute, and here, the court abused its discretion by determining it had no basis to consider mitigation.

By willing participant, the defendant understands that the Legislature was not referring to one who is participating in legal conduct and along the way becomes a crime victim. Willing participant would require that the victim, "to a significant degree" be willingly engaged in the criminal conduct itself and therefore responsible to a degree for the attendant social harm and risks of that conduct. Thus, the defendant asserts he must prove the more difficult nexus between the victim's willing conduct and the ensuing crime. The standard of proof requires that the defense's evidence establish the facts of mitigation by a preponderance. RCW 9.94A.535(1).

Finding pure “willing participant” cases is difficult as the statutory provision also provides mitigation where the victims were, to a significant degree, the *aggressor* or *initiator*. RCW 9.94A.535(1). E.g., *State v. Pascal*, 108 Wn.2d 125 (1987) (murder prosecution; victim was aggressor). In some instances, the courts have allowed the willing participant mitigation defense even where the victim was legally incapable of consenting to participation but where the evidence also showed the victim was an initiator. E.g., (Rape of a Child 3 degree; evidence that victim was both participant and initiator).

Thus, determining what is sufficiently extraordinary conduct has little guidance from the appellate courts and has been left up to the trial court’s exercise of discretion. Regardless, it is not within the sentencing court’s discretion to disregard the defense or to categorically deny an entire class of conduct. In *State v. Bunker*, 114 Wn.App. 407 (Div. 1, 2008) (no-contact violation), the court reversed the denial of the defendant’s “willing participant” argument and remanded for re-sentencing.

The victim in *Bunker* had a no-contact order against the defendant. The victim appeared to have been an entirely willing participant in the violation of the very order entered for her protection.

The trial court categorically excluded consideration of the defense as a matter of law. The court of appeals reversed.

For the *Bunker* court it was enough that the lower court concluded that it did not have the discretion to consider this mitigating factor. The categorical rejection was itself an abuse of discretion. *Bunker*, 144 Wn.App. at 421. Whether the crime was committed in an extraordinary way or whether the victim's participation was somehow extraordinary, the lower court erred in failing to give any consideration to the argument. "While no defendant is entitled to an exceptional sentence below the standard range, every defendant is entitled to ask the trial court to consider such a sentence *and to have the alternative actually considered.*" *Bunker*, 144 Wn.App at 420 [citation omitted]. "A trial court's erroneous belief that it lacks the discretion to depart downward from the standard sentencing range is itself an abuse of discretion warranting remand. Citing *Garcia-Martinez*, 88 Wn. App. at 329-30."

Here, the trial court discussed the defense but not before first eliminating Exhibit 1 from consideration and then determined as a matter of law that the defense was off limits because the victim was a passenger. This is reversible error.

3. The excluded evidence of the minor victim's blood alcohol level bears upon her conduct in participating willingly in the cause of her death.

The court specifically referred to Marean's conduct as meeting every level of the Vehicular Manslaughter statute: disregard for the safety of others, racing [reckless by definition], being in a "drunk state." RP 98:13-16. In each instance the evidence offered at sentencing showed that the deceased passenger was, to a significant degree, a willing participant in the conduct. Without meaning to show disrespect, and in full awareness that only Ms. Bryant paid the ultimate price for actions initiated by Marean, the evidence shows that Ms. Bryant (and her driver) were invited to race. Exhibit 2 at 3 ("Marean stopped his car in the roadway and rolled down his window to speak to her and Bryant.") Even if not explicitly stated, the inference is fair: if, as shown in the record, Marean rolled down his own window while the cars were side-by-side, then Ms. Bryant was directly across from Marean when he offered to race. It is a fair inference from the record of Reese's statement about everybody drinking at the party that Ms. Bryant was aware that both drivers had had alcohol. It is a fair inference from the record that Reese was not holding Ms. Bryant

against her will or that Ms. Bryant protested Reese's decision to race. Ms. Bryant's own alcohol level gives further support to mitigation.

Other than from the prepared remarks by the victim's family referencing matters wholly outside the record, there was no evidence before the court that Ms. Bryant resisted the Marean's invitation or her driver's acceptance of that invitation. The family asserted that neither Ms. Bryant or her driver would have agreed to race, noting that both women had high intelligence. But the proffered fact of Ms. Bryant's high blood alcohol level (see Exhibit 1, showing an impairing level of 0.12), though rejected by the court, was mute support of why a bright person's decision-making capacity might be impaired to the point where, as the record suggests, all four persons involved were there willingly and were participating in the race.

It is true that the record does not support a finding that the deceased was the instigator, initiator, or aggressor. The statute provides for those elements but they are not pertinent here. The statute also provides for a mitigation when the victim was a "willing participant." This does not reduce the social harm caused by Marean's crime, but it is — in the judgment of the Legislature — grounds for a court to consider mitigation due to the victim's acceptance of the risks

involved. Though Ms. Byrant was not an initiator/aggressor the evidence offered — along with the evidence rejected — showed her being a willing participant was a credible view of the events. The State offered no counter-evidence: nothing was offered to suggest that Ms. Bryant was held captive by her driver, or was asleep, or protested Ms. Bryant's decision to accelerate and join Marean in racing south along Hatch drive that night.

The State asked the court to make a categorical ruling that passengers cannot be “willing participants” to Vehicular Homicide. With the exclusion of Exhibit 1, the State's argument was made that much easier: the only basis for participation was now merely racing and no longer included the consumption of alcohol. As a passenger, the State argued, there is no way by which the victim could be said to have been a willing participant. But with Exhibit 1 admitted and given due consideration, the facts are substantially altered and altered in a way that reflects the reality of the circumstances. Underage drinking alone, much less drinking to the point of impairment, and then participation — willing — in a road race, are all illegal and socially harmful. The defendant had a right to have the lower court consider all the relevant evidence.

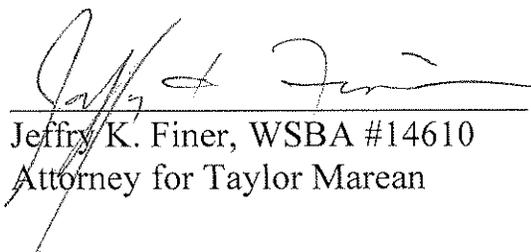
If the State was prejudiced by the late — but unsurprising — submission of the toxicology exhibit, Marean notes that the State waived the court's offer of a continuance. In any event, upon remand, the parties will not have any real basis to claim surprise.

CONCLUSION

For the reasons set forth above, Taylor Marean respectfully asks this Court to vacate the sentence and remand for new sentencing.

DATED THIS 29th day of July, 2013.

Law Offices of JEFFRY K FINER



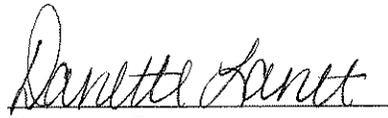
Jeffrey K. Finer, WSBA #14610
Attorney for Taylor Marean

CERTIFICATE OF SERVICE

I, Danette Lanet, certify that on the 29 day of July, 2013, I caused the foregoing *Amended Opening Brief* to be served via USPS, postage prepaid on the following:

Mark Lindsey
Spokane County Prosecutor
1100 W. Mallon
Spokane, WA 99260

DATED this 29 day of July, 2013.

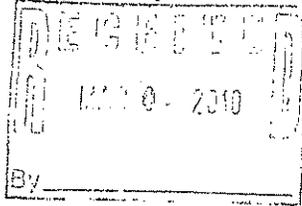

Danette Lanet

APPENDIX A

Death Investigation Toxicology Report

ST 1001344

agency case #: 10-0426
 attn: John Howard, MD
 agency: Spokane Co Medical Examiner
 N Spokane Professional Bldg
 5901 N Lidgerwood Ste 24B
 Spokane WA 99208



date received: 2-18-2010
 date completed: 2-25-2010

Last name	First name	Middle initial
Bryant	Jacoby	N

sample container labeled	blood - peri	blood - central	urine
vg	vg	vg	vr
Y	Y	Y	Y

BLOOD ETHANOL 0.12 g/100mL

BLOOD ANALYSES
 carbon monoxide <5 % Sat

URINE TEST RESULTS
 CNS drugs - nd***

Justin L. Knoy, Analyst, under permit of person that has performed the test and a blood analysis...
 copy of this report and the test results shall be provided to the person who provided the sample...
 comments are listed below their names in compliance with RCW 46A.14.010. The person that provides the sample shall receive a copy of this report.

COMMENTS
 Howard John First Class Mail (USPS)
 *drugs tested for: opiates, cocaine, amphetamines, PCP, marijuana, methadone, propoxyphene, benzodiazepines, barbiturates, tricyclic antidepressants
 Note: "nd" indicates drug not detected, "pos" indicates positive

Justin L. Knoy
 Justin L. Knoy, Analyst
 MS Forensic Science 2005
 Blood Analyst Permit since 2005

[Signature]
 Reviewer

MAREAN
 MAREAN 66

APPENDIX B

SUPPLEMENTAL REPORT

Spokane Police/Spokane County Sheriff

Page 1

AGENCY NAME/SUBSTATION SV		EVIDENCE NUMBER		INCIDENT NUMBER 10-049045	
REPORT PURPOSE			REPORTED ON DATE Mon 02/15/2010	TIME 16:00	INCIDENT XREF
INCIDENT CLASSIFICATION #1 ACCIDENT REPORT		ATTEMPTED <input type="checkbox"/>	INCIDENT CLASSIFICATION #2		ATTEMPTED <input type="checkbox"/>
INCIDENT CLASSIFICATION #3		ATTEMPTED <input type="checkbox"/>	INCIDENT CLASSIFICATION #4		ATTEMPTED <input type="checkbox"/>
DISPATCH TIME	ARRIVED TIME	CLEARED TIME		REPORT DATE 02/15/2010	REPORT TIME 15:56
PRIMARY CHARGE					UCR/NIBRS CODE
NARRATIVE					

On February 14, 2010 at approximately 0230 hours I was called to respond to a two car fatality collision at 54th and Hatch in Spokane County. I was informed by dispatch there was one confirmed death in the collision.

I arrived on scene at approximately 0300 hours. While enroute to the site I called Deputy J. Bonin to assist. I directed him to obtain the Total Station and bring the measuring instrument to the scene.

When I arrived on scene I noticed Fire personnel were standing by. The roadway had been blocked on all sides protecting the scene. Deputies D. Knight and K. Mosher were on scene. I was informed Deputies Anderberg and T. Smith were at the hospital obtaining blood draws from the two suspect drivers. See their reports.

Deputy Knight briefed me on the incident. He told me the two vehicles were racing south on Hatch Road. The black BMW was occupied by two males and the white Pontiac was occupied by two females. Deputy Knight informed me that the female driver of the Pontiac attempted to turn east (left) onto 54th and was struck by the black BMW. The resulting collision went directly across the intersection into the front yard of a residence (south east corner of 54th and Hatch) ending at a large pine tree. Deputy Knight informed me that Fire personnel had determined the female inside the passenger seat of the Pontiac was dead.

I assumed the scene as primary investigator. I inspected the scene prior to the collection of evidence. I started at the point of final rest for the two vehicles.

Vehicle number one: A 1999 Pontiac Grand Am (WA-679VGO). White in color.

Vehicle number two: A 2005 BMW 465 Coupe (WA 981ZFI). Black in color.

Vehicle number one occupants prior to collision: Brooke REESE (driver) and Jacoby BRYANT (passenger).

Vehicle number two occupants prior to collision: Taylor MAREAN (driver) and Ryan Perrizo (passenger).

The Pontiac was resting against a large pine tree, passenger side door contact with the front of the vehicle facing east. The BMW was resting against the Pontiac with the front end under the driver side of the Pontiac. REESE was still seated in the passenger seat of the Pontiac. REESE, MAREAN and Perrizo were not on scene.

The street was constructed of asphalt. Hatch Road runs predominately north and south, where 54th Avenue runs predominately east and west. There had been de-icer applied to the street. I noticed that the

ID NO /NAME OF REPORTING OFFICER #591004 - Rosenthal, Jack		DISTRIBUTION	
APPROVAL #59924 - Staley, Darin	DATE/TIME 02/15/2010 21:33		

Supplemental Report #1

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MAREAN 101

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SUPPLEMENTAL REPORT CONTINUED

Spokane Police/Spokane County Sheriff

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INCIDENT CLASSIFICATION ACCIDENT REPORT	ATTEMPTED <input type="checkbox"/>	INCIDENT NUMBER 10-049045
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de-icer was not wet. I requested dispatch to ascertain from the road department when the de-icer had been applied. I was later informed the de-icer was applied several days prior to the collision. The street lighting was on and illuminated the intersection well. The center line was painted in yellow dashes with solid white fog lines on both sides of the roadway. The temperature was above freezing with no precipitation at the time of the collision.

There was debris from the collision spreading approximately 47 feet south into the yard of the residence. There was debris in the middle of the intersection indicating a point of impact (POI) between the two vehicles. From that initial point of impact, debris was spread toward the final resting point (FRP) of both vehicles. From the physical evidence in and on the roadway, I determined the BMW had collided with the Pontiac in the intersection; then rode together as one unit in a "T" formation through the intersection, up the curb, through the shrubbery and coming to a stop against the pine tree.

There were several scratches on the roadway leading from the POI to the FRP. I photographed the scene and vehicles. See attached photo log. I measured the scene using the Total Station to later complete a scaled diagram of the collision site and intersection.

The Medical Examiner arrived on scene and took custody of the deceased. Both vehicles were impounded as evidence. I observed both vehicles from the scene to the secured storage facility where they were held in anticipation of a search warrant.

I cleared the scene and went to Sacred Heart Medical Center to contact REESE. I located her in the Emergency Room. REESE was with her parents, identified as Kevin and Julie Reese.

In the presence of her parents I informed REESE of who I was and my role in the investigation. I asked her if she was feeling up to being interviewed. REESE said she was fine and would agree to be interviewed. Mr. & Mrs. Reese asked if they could stay in the room while I conducted the interview. I had no objections. Mr. Reese stayed and Mrs. Reese exited.

I asked REESE if she recalled being interviewed by the other deputy. REESE said she did remember it. I asked REESE if she recalled being advised of her Miranda Rights. REESE said she did remember being advised of her rights. I told REESE that I was informed she initially waived her rights and answered some questions. I asked REESE if that was correct. She said yes.

In the presence of Kevin REESE I asked Brooke if she would like to be re-advised of her Miranda Rights prior to this interview. REESE stated she would feel better if she was re-advised. I read from a pre-printed rights card. I then handed REESE the card and told her that she was free to read the card herself if she wished. She stated that she did not need to read the card. I asked REESE if she understood her rights. She stated yes. I asked REESE if she would be willing to waive her rights and answer some questions. REESE stated yes. I asked REESE to sign the card. REESE took the card and signed it. See attached card.

I told REESE that I was going to re-construct the collision and would be able to determine how the collision took place, however I could not tell why the collision took place. I asked REESE if she would tell me what she and her friend (BRYANT) were doing prior to the collision. REESE agreed.

Supplemental Report

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MAREAN 102

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SUPPLEMENTAL REPORT CONTINUED
Spokane Police/Spokane County Sheriff

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REESE told me that she and Bryant were friends since kindergarten. REESE stated she and Bryant were hanging out on the night of the crash. REESE stated at about 7:00 p.m. she and Bryant went to a friends' house near 25th and Grand (location and friend not identified). REESE stated Taylor MAREAN and Ryan Perrizo arrived at the same location around midnight. REESE stated all of the people, including herself and MAREAN, were drinking alcoholic beverages. REESE admitted to having about four shots (type of alcohol not identified). REESE stated MAREAN was drinking "a lot," stating he was drinking vodka and she believed beer as well.

REESE stated around 2:00 a.m. she and Bryant decided to leave. She stated they finally left around 2:15 a.m. REESE stated she and Bryant left the house in her Pontiac and headed south on Grand. REESE stated she intended to take Bryant home, who lived off of 54th Avenue near Hatch Road.

REESE stated MAREAN and Perrizo followed them in MAREANS' car. REESE initially described MAREANS' car as a Mercedes then later stated she thought it was a BMW. REESE stated that as she and Bryant were driving south on Grand MAREAN would speed up and pass them. REESE stated MAREAN would then slow way down and let her catch up to him, then allow her to pass him, only to again speed up and pass her and Bryant again at a high rate of speed. REESE stated MAREAN did this several times between 25th and Grand and the intersection of 37th and Hatch, where the Rocket Bakery is located.

REESE stated at the intersection where the Rocket Bakery is, MAREAN stopped his car in the roadway and rolled down his window to speak to her and Bryant. REESE stated that while at the intersection MAREAN said to her "let's race." REESE admitted she made "the worst decision in my life" and agreed to race MAREAN. REESE stated MAREAN sped off at a high rate of speed south on Hatch Road. REESE admitted she took off, speeding up to attempt to catch MAREAN and race him. REESE stated she could not believe how fast MAREANS' car was, indicating his car was "way faster then mine."

REESE stated she believed MAREAN was letting her catch up and pass him during the race. REESE stated when she got close to 54th she realized she needed to slow down to make the left turn. REESE stated she attempted to make the left turn and lost control, sliding through the intersection into the tree where she crashed. REESE stated she did not see MAREANS' car next to her when she started to make the left turn. REESE said that it all happened so fast, she thought that MAREANS' car ran into her vehicle after she had hit the tree.

At about that time (approximately 0940 hours) Mrs. Reese re-entered the room. She was holding her cellular phone to her ear. She told me that she was on the phone with her lawyer and was being advised to stop the interview. She identified her lawyer as Rick Bechtol. Mrs. Reese handed me the phone. I spoke with the attorney briefly and agreed to stop the interview immediately.

I explained to Mr., Mrs. and Brooke Reese that if they and their attorney wished to continue the interview at a later date that I would be willing to do so. I left the room with no further incident.

I later reviewed the photos from the collision scene. I then recalled the statements made by REESE about the driving actions of MAREAN. I recalled that REESE stated on several occasions MAREAN would speed past her then slow way down letting her pass him, only to speed up and pass her again. From the physical evidence on scene and admissions made by REESE, I believed MAREAN was attempting to speed up and

SUPPLEMENTAL REPORT CONTINUED

Spokane Police/Spokane County Sheriff

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INCIDENT CLASSIFICATION ACCIDENT REPORT	ATTEMPTED <input type="checkbox"/>	INCIDENT NUMBER 10-049045
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pass REESE when she was attempting the left turn onto 54th. This would explain the point of impact being in the north bound lane of travel in the center of the intersection of 54th and Hatch Road. It would further explain why REESE did not see MAREAN next to her when she started to make the left turn.

Both MAREAN and Perrizo invoked their Miranda Rights. No interview of them was attempted.

Investigation continuing.

I HEREBY CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DEPUTY: J. Rosenthal
NUMBER: 591004
DATE: 2-15-10
PLACE: Spokane County, WA

Supplemental Report # _____ END OF ADDITIONAL REPORT

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MAREAN 104

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- He saw one of the males talking on a cell phone and assumed this male was calling for help.
- The one female said everything was fine.
- When he first saw the vehicles coming at him, he estimated their speed at 60-70 mph.

Witness Karra Skinfill can testify:

- She lives and works in Spokane County, WA.
- On 2-14-10, around 0224 hours, she was the right front passenger in Ralph Reyes-Lao's vehicle, who was traveling northbound on Hatch Rd in Spokane County, WA.
- She saw two vehicles approaching southbound really fast.
- The two vehicles were tailgating each other, as she could not see the headlights at all of the second vehicle.
- The lead vehicle was white in color and riding the centerline of the roadway. The other vehicle was black in color.
- As the vehicles went by them, it felt like the wind coming off a passing semi-truck because it shifted the vehicle over she was riding in.
- She estimated the speed of the speed of the two vehicles to be around 60-75 mph.
- She did not see the actual crash occur, but her friend Reyes-Lao turned his vehicle around to check on them.
- She saw two males and one female standing outside the crashed vehicles at the intersection of 54th Ave and Hatch Rd.
- She saw one of the males pacing in the street talking on a cell phone, which appeared scared and intense to her.
- She saw the other male and one female standing near one of the crashed vehicles.
- She got out of Reyes-Lao's vehicle and stood up next to her door.
- She asked them if they were okay and the female said everything was okay and appeared to be fine.

Sergeant Bob Christilaw can testify:

- He is a sergeant employed by the Spokane County Sheriff's Office.
- On 2-14-10, around 0226 hours, he was on duty and responded to the scene of a collision at 54th Ave and Hatch Rd in Spokane County, WA.
- While on scene, he spoke with Ralph Reyes-Lao and Karra Skinfill.
- They told him they had been northbound on Hatch near 54th when they saw the white and black vehicles traveling southbound at a high rate of speed.
- He gathered Reyes-Lao and Skinfill's names and information and gave it to Deputy Knight so he could complete a police traffic collision report.

Deputy Damon Anderberg can testify:

- He is a deputy employed by the Spokane County Sheriff's Office.
- On 2-14-10, around 0225 hours, he was on duty and responded on a call of a collision with injury at the intersection of 54th Ave and Hatch Rd in Spokane County, WA.
- He was the first law enforcement officer to arrive on scene.
- When he arrived on scene, he saw fire and EMT personnel already present.
- He saw a white Pontiac, with WA license #679VGO, pushed up against a tree by a black BMW, with WA license #981ZFI.

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- He saw a female lying on the ground being treated by fire and two males kneeling over her holding her hand.
- He saw another female slumped over that appeared to not be breathing in the passenger side seat of the Pontiac.
- He was told by an EMT that the female still in the vehicle had died.
- He spoke to the two males that were kneeling over the female on the ground.
- These males identified themselves as Taylor D.W. Marean, DOB: 7-22-91, and Ryan A. Perrizo, DOB: 9-11-90, with their WA driver licenses.
- Marean told him he was the driver of the BMW and Perrizo said he was the right front passenger.
- He briefly spoke with the female being treated on the ground by medics.
- The female identified herself as Brooke A. Reese, DOB: 6-11-91, and the driver of the Pontiac.
- Brooke told him that her passenger was Jacoby Bryant.
- He asked Brooke what happened and she replied, "I guess...we were racing, (southbound on Hatch) his car was fast, faster that I would have ever thought. I tried to turn left onto 54th, but I was going too fast and slid and hit the tree. The other car just hit us. I feel so stupid! I want to die!"
- Based upon Reese's statements of racing, he read Marean his Miranda Warnings.
- Marean told him he understood his rights, but Marean invoked his rights and refused to speak with him without a lawyer present.
- He arrested Marean for vehicular homicide and transported him to Sacred Heart Medical Center (SHMC) for a blood draw.
- While at SHMC, he re-read Marean his Miranda Warnings and the Special Evidence Warning from the DUI packet. Marean said he understood, but refused to sign the form without first talking to a lawyer.
- He watched SHMC lab tech Thelez Oksana perform the blood draw on Marean.
- Oksana gave him the two grey top blood vials she took from Marean and he later placed the blood samples onto Property as evidence.

Deputy Tyler Smith can testify:

- He is a deputy employed by the Spokane County Sheriff's Office.
- On 2-14-10, around 0227 hours, he was on duty and responded to 54th Ave and Hatch Rd in reference to an injury collision in Spokane County, WA.
- When he arrived on scene, he observed a white passenger vehicle with the passenger side door against a tree. He observed a black passenger car with the front end against the driver's side of the white passenger car.
- He was advised by Deputy Knight a female passenger in the white car was deceased. Deputy Knight request he respond to SHMC to complete a Special Evidence blood draw on the driver of the white passenger car, Brooke Reese.
- He went to SHMC and contacted Reese in one of the ER rooms, which her parents were also present.
- He could smell the odor of an intoxicating liquor on her breath as she spoke.
- He saw that her eyes were glassy and bloodshot.
- He read Brooke her Miranda Warnings and she answered yes when asked if she understood.

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- He advised Brooke she was under arrest for vehicular homicide and then read her the Special Evidence Warning.
- Brooke started crying and said to him she was responsible for her friend's death and had to live with it the rest of her life. She also told him she had around four shots of vodka through the evening.
- He asked Brooke what happened and she said she remembered everything clearly.
- Brooke told him he was driving way too fast when she tried to turn left on 54th from Hatch. She said she was racing the other car, but the other car was a lot faster. She said she lost control while turning left and crashed into the tree. She said the other car then crashed into her. Brooke then started crying and saying that her best friend was dead.

Deputy Joe Bonin can testify:

- He is a deputy employed by the Spokane County Sheriff's Office.
- On 2-14-10, around 0315 hours, he responded to 54th Ave and Hatch in Spokane County, WA to assist Deputy Rosenthal with the investigation of a fatal collision.
- He helped Deputy Rosenthal measure the collision scene with the total station and in taking photographs.

Deputy Jack Rosenthal can testify:

- He is a deputy employed by the Spokane County Sheriff's Office.
- On 2-14-10, around 0230 hours, he responded to a two-car fatality crash at 54th Ave and Hatch Rd in Spokane County, WA to investigate the incident, as he was the on-call traffic technician for this particular weekend.
- The roadway the collision occurred on had an asphalt surface and it was bare and dry at the time of the incident.
- The posted speed limit on Hatch Rd is 30 mph.
- The temperature was above freezing at the time of the incident.
- He measured the scene evidence with the total station mapping equipment and took several photographs of the scene and evidence.
- He impounded the vehicles involved in the collision, a 1999 Pontiac Grand Prix WA #679VGO and 2005 BMW 645 WA #981ZFI, and followed both vehicles from the scene to the Sheriff's Lot where they were stored as evidence.
- He went to SHMC to contact Reese.
- He re-read Reese her Miranda Warnings, with her parents present in the room, and Reese said she understood her rights and agreed to waive her rights and answer questions.
- Reese told him she and Bryant were hanging out on the night of the crash. Around 1900 hours, she and Bryant went to a friend's house near 25th Ave and Grand Blvd. Reese said Marean and Perrizo arrived at the same location around midnight. Reese stated all of the people, including herself and Marean, were drinking alcoholic beverages. She admitted to having about four shots. Reese said Marean was drinking "a lot". She stated he was drinking vodka and believed beer as well. Around 0200 hours, Reese and Bryant decided to leave. They finally left around 0215 hours. Reese said that she and Bryant left the house in her Pontiac and headed south of Grand Blvd. Her intent was to take Bryant home. Reese said Marean and Perizzo followed them in Marean's BMW. Reese stated that as she was driving south on Grand Blvd, Marean would speed up and pass them. Marean would slow way down and let her catch up to him and then allow her to pass him, only to again speed up and pass her again at a high rate of speed.

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Reese said Marean did this several times between 25th and Grand and 43rd and Scott where the Rocket Bakery is located. At the 43rd and Scott intersection, Reese stated Marean stopped his car in the roadway and rolled down his window to speak to her and Bryant. Reese said Marean stated, "Let's race". Reese then admitted she made "the worst decision in my life" and agreed to race Marean. Marean sped off at a high rate of speed south on Hatch Rd. Reese said she took off, speeding up to attempt to catch Marean and race him. Reese said she could not believe how fast Marean's car was, indicating his car was "way faster than mine". Reese stated when she got close to 54th, she realized she needed to slow down to make a left turn. Reese said she attempted to make the left turn and lost control, sliding through the intersection into the tree where she crashed. Reese stated she did not see Marean's car next to her when she started to make the left turn. Reese said that it all happened so fast. She thought that Marean's car ran into her vehicle after she had hit the tree.

- On 2-16-10, he attended the autopsy of Jacoby Bryant and Dr. John Howard, Spokane County Medical Examiner, stated the injuries sustained to the brain and skull were the primary cause of death.
- On 2-17-10, he authored a search warrant, which was reviewed and signed by Superior Court Judge Maryann Moreno, to search the vehicles involved in this collision.
- He executed the search warrant on 2-17-10 with Detective Thornburg.
- When he turned the ignition key to the on position in the 2005 BMW 645Ci, the onboard vehicle display came on. The first thing that was displayed was a "Steering malfunction" warning. It also listed the range at 10 miles and the speed at 43.0 mph.

Witness Asa Louis can testify:

- She is employed by the Washington State Patrol Toxicology Laboratory as a blood analyst.
- On 3-4-09, she completed a blood ethanol analysis of Taylor D.W. Marean's blood sent to the lab by Detective Thornburg.
- She determined the blood ethanol level of Marean's blood to be 0.13 g/100mL and contained 11.6 ng/mL of carboxy-THC (marijuana metabolite).
- She completed a report of her analysis.

Detective David Thornburg can testify:

- He is a detective employed by the Spokane County Sheriff's Office.
- He has 18+ years of experience investigating motor vehicle crashes, over 1,000 hours of collision investigation training, and has been trained to the level of collision reconstructionist.
- He has an Associate of Science degree in Physics from Spokane Falls Community College and is currently working on his bachelor's degree in Mechanical Engineering at Eastern Washington University.
- He reviewed all of the reports and photographs submitted by the other deputies in this incident.
- On 2-16-10, he attended the autopsy of Jacoby Bryant and Dr. John Howard, Spokane County Medical Examiner, stated the injuries sustained to the brain and skull were the primary cause of death; that these injuries were caused by the 1999 Pontiac Grand Prix crashing into the tree at the intersection of 54th Ave and Hatch Rd.

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- On 2-17-10, he assisted Deputy Rosenthal in the execution of the search warrants on the vehicles involved in this collision.
- On 2-17-10, he picked up Marean's blood samples from the Spokane Police Property Room and certified mailed them to the Washington State Toxicology Laboratory for analysis.
- He contacted Camp BMW and learned the 43 mph speed reading on the 2005 BMW 645Ci's display was an average speed over the listed range of 10 miles.
- Based upon his investigation, using known and accepted collision reconstruction equations and methodologies, he determined the speed of the Marean BMW to be a minimum of 51 mph when it struck the Reese Pontiac.
- He interviewed witnesses Ralph Reyes-Lao and Karra Skinfill.
- He determined probable cause exists to charge Taylor D.W. Marean with one count of vehicular homicide and minor in consumption of alcohol, for Jacoby Bryant's death ensued within three years as a proximate result of injury proximately caused by Taylor Marean operating a motor vehicle while under the influence of intoxicating liquor and in a reckless manner by racing Reese and for Marean consumed alcohol by having a blood ethanol level of 0.12 g/100mL.
- That all of these events occurred within Spokane County, WA and he prepared and filed this Affidavit of Probable Cause.

I HEREBY CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT. (RCW 9A.72.085)

DATE: 04/05/2010 PLACE: Spokane County, WA

SIGNATURE: DC Thornburg 966
Detective David C. Thornburg #59966