

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

NO. 85992-2 2012 JUN 19 P 2

WILLIAM R. CARPE
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re Personal Restraint Petition of

CHARLES WEBER,

Petitioner.

STATE'S SUPPLEMENTAL BRIEF

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A. ISSUE PRESENTED IN SUPPLEMENTAL BRIEFING.

Whether Weber's petition should be dismissed as untimely where his gateway claim of "actual innocence" falls short of establishing that new reliable evidence would lead a court to conclude that it is more likely than not that, but for constitutional error, no reasonable juror would have convicted him?

B. STATEMENT OF THE CASE.

Charles Weber pled guilty to the crime of possession of cocaine with intent to deliver, and was found guilty by jury verdict of the crimes of attempted murder in the second degree with a firearm, assault in the first degree with a firearm, and unlawful possession of a firearm in the first degree. Appendix A and B.¹ On appeal, Weber's convictions were affirmed, but this Court directed the superior court to vacate the attempted murder in the second degree conviction based on double jeopardy principles.

Appendix C. Mandate issued on January 2, 2007. Appendix C. An Amended Judgment and Sentence was entered on March 27,

¹ Appendices A-D referenced herein were attached to the State's Response to Personal Restraint Petition filed with the Court of Appeals on July 18, 2011.

2007. Appendix A. This personal restraint petition was filed more than four years later, in May of 2011.

The evidence presented at trial established that in the early morning of March 18, 2003, Gabriel Manzo-Vasquez ("Manzo") was at his friend Rhonda Encinas's apartment socializing and drinking beer. RP 6/18/03 118, 123. Nick Renion and Weber were also at Encinas's apartment. RP 6/18/03 129, 132. Manzo knew Weber only as "Guero Loco," which translates as "crazy white guy" in English. RP 6/17/03 40-41; RP 6/18/03 131. Manzo had met Weber on one prior occasion at Encinas's apartment. RP 6/18/03 129. When Weber first arrived at the party, he stayed for approximately 30 minutes, and then left. RP 6/18/03 136. He returned later, and Weber, the victim and others remaining at the party socialized for a while before an argument broke out between Manzo and Renion and Weber. RP 6/18/03 137-45. Renion was pressuring Manzo to go outside so they could fight. RP 6/18/03 141. Manzo refused and Weber threatened him by pointing a gun at Manzo's stomach. RP 6/18/03 143.

Manzo ran into one of the bedrooms and held the door shut. RP 6/18/03 145-46. Manzo then escaped the apartment by jumping out of the bedroom window. RP 6/18/03 147. As Manzo

ran to his car, he saw Weber chasing after him and shooting at him.

RP 6/19/03 15-17.

Numerous bullets entered Manzo's Chevy Blazer as he drove away. RP 6/19/03 19. One bullet grazed Manzo's stomach.

RP 6/19/03 20. The security guard at Manzo's apartment complex noticed the bullet damage to Manzo's car and called the police.

RP 6/19/03 21.

Manzo initially told the police that his car was shot in the parking lot. RP 6/19/03 22. However, because the physical evidence did not support this version, the police confronted Manzo and asked him to tell them what really happened. RP 6/17/03 29-31. Manzo admitted that he lied about what happened because he was scared of retaliation and because he had a warrant.

RP 6/19/03 22. Manzo then told the police that "Guero Loco" shot at him. RP 6/17/03 31.

Manzo provided the police with a physical description of the shooter, which included a large, distinctive tattoo of "206" on the back of the shooter's neck. RP 6/17/03 39. Manzo told Detective McCurdy that the shooter was 5'6", slim and had short brown hair. RP 6/17/03 40. At the time of his arrest, Weber was 5'7", 165 pounds and had very close cropped dark hair. See Exhibit 8 to

PRP. Manzo identified Weber and Renion from photo montages. RP 6/17/03 50; RP 6/25/03 98. Manzo identified Weber in the montage with 80% certainty, indicating that he would like to see the blacked out tattoos in order to be 100% certain. RP 6/17/03 50.

Manzo identified Weber at trial as the shooter and confirmed that Weber had the same tattoos he had seen before and reported to police. RP 6/18/03 129; RP 6/19/03 39. Weber has the letters "LOCO" tattooed across his knuckles, a large "206" tattoo on the back of his neck, and "Wedo Loco" written in cursive on his neck. RP 6/17/03 83; RP 6/18/03 86. At trial, Detective Alvarez of the King County Sheriff's Office testified that Weber's "206" tattoo on the back of his neck was very distinctive. RP 6/25/03. In his four years of patrolling the neighborhood, he had never seen another person with a large "206" tattoo on the back of the neck. RP 6/25/03 11.²

Neighbors' accounts and physical evidence corroborated Manzo's account of the shooting. Jennifer Martini, who lived nearby, heard eight shots and identified Manzo's and Weber's cars

² Similarly, in the CrR 3.5 hearing, Detective McCurdy testified that while he had seen many Seattle-based gang members with "206" tattooed on their hand, he had never seen anyone else with a large "206" tattooed on the back of the neck. RP 6/10/03 29.

as the ones she saw leaving the scene. RP 6/17/03 141; RP 6/18/03 10,15,16. Aracelia Figueroa, who lived in a neighboring apartment, also heard shots. RP 6/17/03 130. There were seven shots to Manzo's car and one that entered a building across the street from Encinas's apartment. RP 6/26/03 39. Manzo suffered a bullet wound to his stomach where a bullet grazed him. RP 6/19/03 20. When officers arrested Weber the day after the shooting, they found a note containing the name "Rhonda" and a phone number at which Detective Tompkins had previously contacted Rhonda Encinas. RP 6/25/03 112.³

At trial, Weber presented the testimony of Stephanie Fisher, Weber's cousin, to establish an alibi for the evening. RP 6/26/03 93, 95, 113. However, Fisher admitted that Weber had left two times during the evening. RP 6/26/03 96, 105. The prosecutor also impeached her testimony by showing that she initially told the detective she did not know where Weber went, but later testified

³ The police reports reflect that Rhonda Encinas refused to cooperate with the police investigation. She told police that after Weber was arrested, she received three threatening phone calls accusing her of being the person that called the police. See Exhibit 9 to PRP. Another witness to the assault, Victor Garcia-Rodriguez, identified Charles Weber from a photo montage as one of the people arguing with the victim before the shooting. See Exhibit 9 to PRP; Appendix D to State's Response to PRP. Garcia-Rodriguez did not testify at trial.

that Weber left to buy milk at 10 p.m. and subsequently left to buy beer. RP 6/26/03 96, 102, 122.

In this petition, Weber does not dispute that the following facts are true: Gabriel Manzo-Vasquez was shot in the early morning hours of March 18, 2003. The shooting occurred outside Rhonda Encinas's apartment. Members of the "Barrios Locos" street gang, including Nick Renion, were present at the time of the shooting. The shooter was a person known by the street name "Guero Loco." The victim provided the police with a description of the shooter that matches Weber's physical description, including a large, distinctive "206" tattoo on the back of his neck. Manzo picked Weber from a photo montage without the benefit of seeing the distinctive "206" tattoo on Weber's neck.

In this petition, Weber has presented declarations of Andrew Larson, Scott Meth and Brian Strickland. In his declaration, Andrew Larson asserts that he is the cousin of Nick Renion, and was at Rhonda Encinas's apartment on the night of the shooting with Renion. See Exhibit 13 to PRP. He asserts that while he was in the kitchen, he heard gunshots and everyone left the party. He did not see the shooting and does not state that he witnessed any argument. He states there were a dozen people there, half of

whom he did not know. He asserts that he has known Charles Weber since sixth grade and he did not see Weber at Rhonda Encinas's apartment that night. He asserts that another person, who went by the nicknames "Boxer" and "Guero Loco" was at the party, and that this person had tattoos.⁴

In his declaration, Scott Meth asserts that he was also at Rhonda Encinas's apartment on the night of the shooting, but left at 9 p.m. See Exhibit 14 to PRP. He was not present for the shooting. He asserts that there was a male from Southern California at the party that went by the nicknames "Boxer" and "Guero Loco" and that he had tattoos. He asserts that this person looked like Weber. Scott Meth has a prior conviction for robbery in the second degree. Appendix E, attached hereto. The Certification for Determination of Probable Cause from that case alleges that Meth and two accomplices stole a man's dog at gunpoint. Appendix F, attached hereto. Meth held a .38 caliber revolver to

⁴ The declaration of Alwin Farr asserts that Andrew Larson is the same person as "Andreas," who was referred to in the police reports in this case. See Exhibit 12 to PRP. According to Manzo's statement to police on March 18, 2003, Andreas was involved with the altercation: when Manzo refused to go outside after Weber pointed the gun at him, Andreas stood up and said, "No. Three of us are going to jump you. Now go outside." See Exhibit 6 to PRP. Since Andrew Larson was an accomplice to the assault, it is likely he would be advised by independent counsel to invoke his Fifth Amendment right to remain silent if called to testify about the events of that night.

the victim's head. Appendix F. Meth also has prior convictions for taking a motor vehicle without permission and vehicle prowling in the second degree. Appendix F.

In his declaration, Brian Strickland asserts that in 2003 there was a male from Southern California or Mexico around "our neighborhood" whom people knew by his nicknames, "Boxer" and "Guero Loco," and that this male "looked similar" to Weber. See Exhibit 15 to PRP. He asserts that this person had a "206" on the back of his neck. Brian Strickland has a prior conviction for unlawful imprisonment. Appendix G, attached hereto. The victim of that crime, which occurred in July of 2003, was Stephanie Fisher, Strickland's girlfriend and Weber's cousin. Appendix H, attached hereto. The information from that case indicates that Strickland and Fisher were dating and living together at the time of Weber's trial in June of 2003. Strickland also has prior convictions for unlawful possession of a firearm, obstructing a law enforcement officer, and assault in the first degree while armed with a firearm. Appendix H and I, attached hereto.

Weber presented a declaration from Dr. Geoffrey Loftus regarding general principles of eyewitness perception and memory. See Exhibit 17 to PRP. Weber also presented a declaration from

Marty Hayes, a firearm expert. See Exhibit 16 to PRP. Relying on testimony of the victim at trial that the shooter pulled a magazine from his right pocket with his right hand and held the gun with his left hand, Hayes asserts that it is "extremely unlikely" that a right-handed person would hold a gun in his left hand while shooting.

Finally, Weber has submitted his own declaration, in which he asserts that he was not at the party at Rhonda Encinas's on the night of the shooting. See Exhibit 10 to PRP.

C. ARGUMENT.

1. SUMMARY OF ARGUMENT.

Weber raises three claims in his petition: ineffective assistance of counsel, newly discovered evidence, and actual innocence. Weber's petition is untimely as it was filed more than four years after his conviction became final. RCW 10.73.090. Weber's claim of ineffective assistance of counsel falls within no exceptions to the time bar set forth in RCW 10.73.100. However, Weber argues that he should not be procedurally barred from bringing his ineffective assistance of counsel claim because he is actually innocent of the crime. In In re Carter, 172 Wn.2d 917, 931,

263 P.3d 1241 (2011), a majority of this Court opined for the first time that a credible claim of actual innocence could serve as an equitable exception to the time bar that will apply to allow a petitioner to litigate an otherwise time-barred constitutional claim. However, in Carter, this Court concluded that the petitioner had fallen short of meeting the burden of showing a credible claim of actual innocence. Id. at 934.

Like Carter, Weber has fallen short of showing that he has new reliable evidence of actual innocence that would justify allowing him to litigate his time-barred constitutional claim. Similarly, the evidence presented by Weber does not meet the standard for newly discovered evidence, pursuant to RCW 10.73.100(1). For these reasons, Weber's petition should be dismissed as untimely.

2. THE EVIDENCE SUBMITTED BY WEBER DOES NOT MEET THE "NEWLY DISCOVERED EVIDENCE" STANDARD AND THUS IS NOT A BASIS FOR RELIEF UNDER RCW 10.73.100(1).

Weber's claim of newly discovered evidence would fall within the exception to the one-year time bar set forth in RCW 10.73.100(1) if established. Thus, Weber does not need to

establish actual innocence for this Court to review that claim.

Under the "avoidance principle" explained in In re Carter, 172 Wn.2d at 933-34, this Court must address this claim first.

However, as the State has previously argued, the evidence presented by Weber in this petition does not meet the newly discovered evidence standard set forth by this Court in State v. Macon, 128 Wn.2d 784, 799-800, 911 P.2d 1004 (1996). In order to support a claim of newly discovered evidence, the defendant must prove that the evidence: (1) will probably change the result of the trial; (2) was discovered after the trial; (3) could not have been discovered before the trial by the exercise of due diligence; (4) is material; and (5) is not merely cumulative or impeaching. Id. A request for a new trial may be denied if any one of the factors is missing. Id. at 800.

The purported new evidence from Andrew Larson could have been discovered before the trial, as "Andreas" was implicated in the police reports, and thus does not meet the Macon standard. Likewise, any expert testimony from Dr. Loftus or Mr. Hayes could have been presented at trial with due diligence. There is no probability that the purported new evidence from Scott Meth and Brian Strickland would change the result of the trial, as neither of

them was present at the time of the shooting. They could not testify that someone else committed the shooting or that Weber was not there at the time of the shooting. Weber has failed to establish newly discovered evidence under the Macon standard.

3. THE EVIDENCE SUBMITTED BY WEBER IS INSUFFICIENT TO DEMONSTRATE "ACTUAL INNOCENCE" SUCH THAT HIS TIME-BARRED CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL MAY BE CONSIDERED.

Weber alternatively claims that he received ineffective assistance of counsel. This claim is untimely. However, Weber contends that because he has presented sufficient evidence of "actual innocence," his untimely claim should be considered pursuant to In re Carter, 172 Wn.2d at 931. Weber is mistaken. He has failed to demonstrate that he has new, reliable evidence of actual innocence.

Under federal law, in order to be entitled to use actual innocence as a "gateway" to obtain review of a constitutional claim that would otherwise be procedurally barred, a petitioner must be able to demonstrate that, in light of all the evidence, "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." Schlup v. Delo, 513 U.S. 298,

327, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995).⁵ In this context “actual innocence” means factual innocence, not legal insufficiency. See Sawyer v. Whitley, 505 U.S. 333, 339, 112 S. Ct. 2514, 120 L. Ed. 2d 269 (1992).

The United States Supreme Court has held that a gateway claim of actual innocence requires “new reliable evidence — whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence.” House v. Bell, 547 U.S. 518, 537, 126 S. Ct. 2064, 165 L. Ed. 2d 1 (2006) (emphasis added). In considering whether the evidence submitted is reliable, the court may “consider how the timing of the submission and the likely credibility of the affiants bear on the probable reliability of that evidence.” Schlup, 513 U.S. at 331-32; see also House, 547 U.S. at 538. A court may determine that a petitioner has failed to provide new reliable evidence of actual innocence without an evidentiary hearing. Gandarela v. Johnson, 286 F.3d 1080, 1087-88 (9th Cir. 2001); Downs v. Hoyt, 232 F.3d 1031, 1041 (9th Cir. 2000). Indeed, the United States Supreme

⁵ The standard differs depending on whether the petitioner is claiming he is innocent of the crime or innocent of a sentence. The Schlup standard applies to petitioners claiming innocence of the crime. In contrast, the Sawyer standard, which requires “*clear and convincing evidence* that but for constitutional error, no reasonable juror would find him eligible’ for the sentence received.” In re Carter, 172 Wn.2d at 924 (quoting Sawyer, 505 U.S. at 348) (emphasis added).

Court has previously noted that, "[g]iven the rarity of such evidence, 'in virtually every case, the allegation of actual innocence has been summarily rejected.'" Calderon v. Thompson, 523 U.S. 538, 559, 118 S. Ct. 1489, 1503, 140 L. Ed. 2d 728 (1998) (quoting Schlup, 513 U.S. at 324). "The Schlup standard is demanding and permits review only in the 'extraordinary' case." House, 547 U.S. at 538. This Court has also stated that the actual innocence doctrine should be applied only "in the narrowest of circumstances." In re Carter, 172 Wn.2d at 929.

This Court has also previously noted that post trial affidavits casting blame on third parties, particularly *unidentified* third parties, must be viewed with a "fair degree of skepticism." State v. Riofta, 166 Wn.2d 358, 372-73, 209 P.3d 467 (2009) (quoting Herrera v. Collins, 506 U.S. 390, 399, 113 S. Ct. 853, 872, 122 L. Ed. 2d 203 (1993)). In Herrera, affidavits submitted by the petitioner were viewed by the Court as not reliable in part because "they conveniently blame a dead man—someone who will neither contest the allegations nor suffer punishment as a result of them." Herrera, 506 U.S. at 423.

The declaration of Dr. Loftus is not new reliable evidence that makes it more likely than not that no reasonable juror would

have found Weber guilty. Dr. Loftus's declaration focuses on general principles of eyewitness identification. However, Manzo's identification of Weber was not based upon a brief encounter with a total stranger. Manzo had met Weber on a previous occasion. On the night of the shooting, Weber was at the apartment for 30 minutes before leaving and then returning. In addition, the montage procedure used in this case supports the reliability of Manzo's identification. The necks were blacked out so that tattoos could not aid in identification. Yet, Manzo was able to identify the one person whose tattoos matched exactly the tattoos that he described to police. Moreover, other evidence corroborates Weber's identity as the shooter. An independent witness, Jennifer Martini, identified Weber's car as the car she saw pulling out of the parking lot after the shooting. When arrested less than 24 hours after the shooting in that same car, Weber had Rhonda Encinas's phone number in his car. A reasonable juror, viewing all of this evidence, could conclude beyond a reasonable doubt that Manzo correctly identified Charles Weber in the photo montage.

The declaration of Marty Hayes is not new reliable evidence that makes it more likely than not that no reasonable juror would have found Weber guilty beyond a reasonable doubt. His

declaration asserts that it is unlikely that a right-handed person would fire a handgun with his left hand. However, it is possible that Manzo was mistaken about what hand Weber held the gun in, particularly since he was driving away in fear for his life as the shots were fired. Moreover, it does not take a great deal of dexterity to pull the trigger of a gun, and one would not have to be particularly ambidextrous to use one's less dominant hand to do so. A reasonable juror could conclude beyond a reasonable doubt, based on all the evidence and in spite of Hayes' purported testimony, that Weber was the shooter, whether he is right-handed or left-handed.

The declaration of Andrew Larson is not new reliable evidence that makes it more likely than not that no reasonable juror would have found Weber guilty beyond a reasonable doubt. As an accomplice to the assault, a reasonable juror would be justified in finding Larson's testimony not credible, assuming that he agreed to waive his Fifth Amendment rights and testify as to the events. Manzo reported to police that when he was refusing to step outside at gunpoint, "Andreas" joined the confrontation and stated that he would help Weber and Renion "jump" him. See Exhibit 6 to PRP. Larson makes no mention of being involved in the altercation that

led to the shooting, of seeing the altercation, or of seeing the shooting. He simply states that he was at the party and Weber was not. His attempts to implicate an unidentified third person are facially unreliable, as noted in Riofta and Herrera. A reasonable juror would be justified in finding Andrew Larson not credible, and dismissing his account.

Similarly, the declaration of Scott Meth is not new reliable evidence that makes it more likely than not that no reasonable juror would have found Weber guilty beyond a reasonable doubt. As a felon convicted of three prior crimes of dishonesty, a reasonable juror could conclude that Meth is not credible. Moreover, according to his declaration, he was not at the party at the time the shooting occurred and did not witness the shooting. Thus, a reasonable juror could conclude that even if Meth was telling the truth, Weber came to the party after Meth left and was the shooter. Moreover, as with Larson, his attempts to implicate an unidentified third person must be viewed with skepticism, as noted in Riofta and Herrera.

Finally, the declaration of Brian Strickland is not new reliable evidence that makes it more likely than not that no reasonable juror would have found Weber guilty beyond a reasonable doubt. With

his history of violent felonies, Strickland cannot be viewed as a reliable witness. It is more than a bit curious that Strickland, who was living with defense witness Stephanie Fisher at the time of the trial, did not testify at that time. It simply defies credulity that Strickland did not know that Weber was charged with this crime. The timing of his declaration makes it less credible. Moreover, Strickland does not claim to have been at the party or to have witnessed the shooting. And, as with Larson and Meth, his attempt to implicate an unidentified third person must be viewed with skepticism, particularly since it is based on his alleged memory of a tattoo that he saw on a mere acquaintance eight years ago. A reasonable juror could find his new testimony not credible, particularly in light of the police detectives' testimony that Weber's large "206" tattoo on the back of his neck was very distinctive in their experience.

The relitigation of a case that has been tried and affirmed on appeal, years later, puts the State at a considerable disadvantage. Key witnesses may no longer be available, and their memories will certainly have faded. Physical evidence may have degraded, or been destroyed. This Court must insure that, as in the federal system and other states, the threshold for a gateway actual

innocence claim in Washington remains high. Because Weber has failed to present new, reliable evidence of actual innocence, his claim of ineffective assistance of counsel remains time-barred. His petition should be dismissed as untimely without further proceedings.

4. SHOULD THIS COURT ORDER A REFERENCE HEARING, THE STATE IS FREE TO PRESENT ADDITIONAL EVIDENCE OF GUILT TO REBUT WEBER'S CLAIM OF ACTUAL INNOCENCE.

As argued above, the evidence presented by Weber to support his claim of actual innocence is not reliable on its face. No further proceedings are necessary to make this determination. However, should this Court conclude otherwise, and remand the matter for a reference hearing to allow a trial court to judge the reliability of the evidence presented by Weber, this Court should provide guidance to the trial court as to the parameters of such a hearing.

As explained by the United States Supreme Court, the question to be answered by such a hearing is whether the petitioner is factually innocent, not whether the evidence at trial was sufficient to establish guilt. Bousley v. United States, 523 U.S. 614, 623, 118

S. Ct. 1604, 140 L. Ed. 2d 828 (1990). Thus, the State is not limited to the existing record to rebut any showing that petitioner might make. Id. The State is permitted to present any evidence of petitioner's guilt. Id. The court must consider "all the evidence, old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted." House, 547 U.S. at 537-38. The court is not bound by the rules of admissibility that would govern at trial. Schlup, 513 U.S. at 327. The task of the trial court will be to assess how reasonable jurors would react to the overall, newly supplemented record. House, 547 U.S. at 538. A showing of actual innocence requires more than a showing that a reasonable doubt exists, but rather that no reasonable juror would have found the petitioner guilty. Schlup, 513 U.S. at 329.

If the trial court were to conclude, based on consideration of all the evidence presented by both parties and the evidence presented at trial, that it is more likely than not that no reasonable juror would find the petitioner guilty, then Weber should be allowed to litigate his ineffective assistance of counsel claim. Testimony of trial counsel should be considered in judging whether his performance at the time of trial was either deficient or prejudicial.

However, if the trial court were to conclude that a reasonable juror could find Weber guilty in light of all the evidence presented, then Weber's ineffective assistance of counsel claim remains time-barred, and his petition should be dismissed.

5. THIS COURT HAS NOT RECOGNIZED A "FREESTANDING" CLAIM OF ACTUAL INNOCENCE, AND SHOULD NOT DO SO IN THIS CASE.

This Court has not recognized a "freestanding" claim of actual innocence that would provide a basis for reversal of a conviction and remand for a new trial absent an underlying constitutional error, such as ineffective assistance of counsel or failure to disclose exculpatory evidence. There is no need to address this important issue in this case, for two reasons. First, Weber has an underlying claim of constitutional error: ineffective assistance of counsel. Thus, Weber does not need to assert a freestanding claim of actual innocence. Second, as explained above, because the declarations submitted by Weber fall short of the standard required to establish a gateway claim of actual

innocence, they necessarily fall short of establishing a freestanding claim of actual innocence.

House v. Bell, supra, is instructive. In that case, new evidence called into question forensic evidence that was central to the State's case and the Court held that House had met the demanding Schlup standard. House, 547 U.S. at 554.⁶ However, the Court refused to consider House's claim that the Court should also recognize a freestanding claim of actual innocence. The Court held that "whatever burden a hypothetical freestanding innocence claim would require, this petitioner has not satisfied it." Id. at 555. A freestanding claim of actual innocence requires more convincing proof of innocence than a gateway claim of actual innocence. Id. State courts that have approved of a freestanding claim of actual innocence under state constitutional principles have set a very high standard for such a claim. See Montoya v. Ulibari, 142 N.M. 89, 97-99, 163 P.3d 476 (2007). California requires petitioners to present evidence that "undermines the entire prosecution case and

⁶ Three justices dissented, concluding that they did not find it probable that no reasonable juror would find House guilty beyond a reasonable doubt in light of the new evidence. House, 547 U.S. at 556 (Roberts, J., concurring/dissenting).

points unerringly to innocence and reduced culpability." In re Clark, 5 Cal.4th 750, 21 Cal. Rptr.2d 509, 855 P.2d 729, 739 (1993).

Texas requires a petitioner to establish that newly available evidence "unquestionably" establishes the petitioner's innocence.

Ex parte Spencer, 337 S.W.3d 869, 878 (Tex.Crim.App. 2011).

This Court should reserve a decision on whether there should be a freestanding claim of actual innocence under the Washington Constitution for a case in which that issue is squarely presented. See In re Carter, 172 Wn.2d at 935 (Stephens, J., concurring) ("We should heed our own holding and refrain from an unnecessary discussion of the parameters and application of the actual innocence doctrine.").

D. CONCLUSION.

This Court should hold that Weber has failed to present new reliable evidence that, in light of all the evidence, it is more likely than not that no reasonable juror would have found him guilty

beyond a reasonable doubt. Weber's petition should be dismissed as untimely with no further proceedings.

DATED this 19th day of June, 2012.

Respectfully submitted,

DANIEL T. SATTERBERG
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APPENDIX E

DNA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

FILED

98 MAY 18 AM 9:09 97-C-09079-9 KNT

Plaintiff, KING COUNTY JUDGMENT AND SENTENCE SUPERIOR COURT CLERK KENT, WA

v.

SCOTT R METH

Defendant.

I. HEARING

1. The defendant, the defendant's lawyer, DAVID ROBERSON, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were:

2. The state has moved for dismissal of count(s)

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report(s) and case record to date, and there being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on (date): 04-06-98 by plea of:

Count No.: 1 Crime: ROBBERY 2ND DEGREE RCW 9A.56.210 Crime Code 02924 Date of Crime 03-23-97 Incident No.

Count No.: Crime: RCW Crime Code Date of Crime Incident No.

Count No.: Crime: RCW Crime Code Date of Crime Incident No.

Additional current offenses are attached in Appendix A.

SPECIAL VERDICT/FINDING(S):

Table with 2 columns: Label (C/PROG, CUST, CASH, JUDG, DISB, CRIM, ACCTG, EXH) and checkboxes.

(a) A special verdict/finding for being armed with a Firearm was rendered on Count(s): (b) A special verdict/finding for being armed with a Deadly Weapon other than a Firearm was rendered on Count(s):

(c) A special verdict/finding was rendered that the defendant committed the crimes(s) with a sexual motivation in Count(s):

(d) A special verdict/finding was rendered for Violation of the Uniform Controlled Substances Act offense taking place in a school zone in a school on a school bus in a school bus route stop zone in a public park in public transit vehicle in a public transit stop shelter in Count(s):

(e) Vehicular Homicide Violent Offense (D.W.I. and/or reckless) or Nonviolent (disregard safety of others)

(f) Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score (RCW 9.94A.400(1)(a)) are:

2.2 OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

COPY TO SENTENCING GUIDELINES COMMISSION COMMITMENT ISSUED MAY 18 1998 MAY 18 1998

98-9-33019-3 8-61033-6-86



CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(a)				
(b)				
(c)				
(d)				

- Additional criminal history is attached in Appendix B.
- Prior convictions (offenses committed before July 1, 1986) served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)(c)):
- One point added for offense(s) committed while under community placement for count(s)

2.4 SENTENCING DATA:

SENTENCING DATA	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENT	TOTAL STANDARD RANGE	MAXIMUM TERM
Count I	0	IV			3 TO 9 MONTHS	10 YRS AND/OR \$20,000
Count						
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE:

- Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____ Findings of Fact and Conclusions of Law are attached in Appendix D. The State did did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

- The Court DISMISSES Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
- Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.142(2), sets forth those circumstances in attached Appendix E.
- Restitution to be determined at future hearing on (Date) _____ at _____ m. Date to be set.
- Defendant waives presence at future restitution hearing(s).
- Defendant shall pay Victim Penalty Assessments pursuant to RCW 7.68.035 in the amount of \$100 if all crime(s) date prior to 6-6-96 and \$500 if any crime date in the Judgment is after 6-5-96.
- Restitution is not ordered.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ 125⁰⁰, Court costs; Court costs are waived;
- (b) \$ 0, Recoupment for attorney's fees to King County Public Defense Programs, 2015 Smith Tower, Seattle, WA 98104; Recoupment is waived (RCW 10.01.160);
- (c) \$ 0, Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA; VUCSA fine waived (RCW 69.50.430);
- (d) \$ 0, King County Interlocal Drug Fund; Drug Fund payment is waived;
- (e) \$ 0, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
- (f) \$ 0, Incarceration costs; Incarceration costs waived (9.94A.145(2));
- (g) \$ _____, Other cost for: _____

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ _____. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:

- Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer. _____
- The Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from date of sentence or release from confinement to assure payment of financial obligations.

SENTENCE ONE YEAR CONFINEMENT: Defendant shall serve a term of total confinement in the King County Jail pursuant to RCW 9.94A.190 in the Department of Corrections as follows, commencing: Immediately; June 19, 1998 by no later than 5:00 p.m.

3 months/days on Count 1

_____ months/days on Count _____

_____ months/days on Count _____

_____ months/days on Count _____

Work release is authorized if eligible.

Home detention pursuant to RCW 9.94A.030(42) is ordered if defendant is eligible for _____ day(s), the last one-third of the term of confinement, _____

The terms in Count(s) No. _____ are concurrent/consecutive.

The sentence herein shall run concurrently/consecutively with the sentence in cause number(s) _____

but consecutive to any other term of confinement not referred to in this Judgment.

Credit is given for 1 day(s) served days determined by the King County Jail solely for conviction under this cause number pursuant to RCW 9.94A.120(15). Jail term is satisfied; defendant shall be released under this cause.

(a) ALTERNATIVE CONVERSION PURSUANT TO RCW 9.94A.380: _____ days of total confinement are hereby converted to:

- _____ days of partial confinement to be served subject to the rules and regulations of the King County Jail.
- _____ days/hours community service under the supervision of the Department of Corrections to be completed as follows: on a schedule established by the defendants community corrections officer. _____

Alternative conversion was not used because: Defendant's criminal history, Defendant's failure to appear, Other: _____

(b) COMMUNITY SUPERVISION, RCW 9.94A.383: Defendant shall serve 12 months in community supervision. Community supervision shall commence immediately but is tolled during any period of confinement. The Defendant shall report to the Dept. of Corrections, Intake Officer, 1851 Central Place South, Suite 125C, Kent, WA, 98031 (phone (253) 385-0837) no later than 72 hours of the commencement of community supervision. The defendant shall comply with all rules and regulations of the Department created for community supervision and shall not own, use, or possess any firearm or ammunition.

Defendant shall comply with special "crime related prohibitions" defined in RCW 9.94A.030 and set forth in Appendix F.

4.5 NO CONTACT: For the maximum term of 0 years, defendant shall have no contact with Jerry Cleveland

Violation of this no contact order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest; any assault or reckless endangerment that is a violation of this order is a felony.

4.6 BLOOD TESTING: (sex offense, violent offense, prostitution offense, drug offense associated with the use of hypodermic needles) Appendix G is a blood testing and counseling order that is part of and incorporated by reference into this Judgment and Sentence.

4.7 OFF-LIMITS ORDER: (known drug trafficker) Appendix I is an off limits order that is part of and incorporated by reference into this Judgment and Sentence.

4.8 SEX OFFENDER REGISTRATION: (sex offender crime conviction) Appendix J covering sex offender registration, is attached and incorporated by reference into this Judgment and Sentence.

Violations of the conditions or requirements of this sentence are punishable for a period not to exceed sixty (60) days of confinement for each violation. (RCW 9.94A.200(2))

Date: May 15, 1998

Judge Jeanette Bunge
Print Name: _____

Presented by:

[Signature] 22461
Deputy Prosecuting Attorney, Office WSBA ID #91002
Print Name: Greg B. Soudoff

Approved as to form:

[Signature]
Attorney for Defendant, WSBA # 19290
Print Name: David Roberson

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

No. 97-C-09079-9 KNT

v.

METH, Scott Ryan

Defendant,

JUDGMENT AND SENTENCE
(FELONY) - APPENDIX F,
ADDITIONAL CONDITIONS
OF SENTENCE

CRIME-RELATED PROHIBITIONS:

1. Do not have direct or indirect contact with the victim, James Cleveland.
2. Do not associate with Guadalupe Torres or Pablo Romero during the period of community supervision.
3. Do not purchase, possess, control or use any deadly weapon and submit to reasonable searches of your person, residence, property and vehicle by the Community Corrections Officer to monitor compliance, based upon well-founded suspicion.
4. Do not purchase, possess or use alcohol (beverage or medicinal) and submit to testing and reasonable searches of your person, residence, property and vehicle by the Community Corrections Officer to monitor compliance.
5. Do not purchase, possess or use any illegal drug or drug paraphernalia and submit to testing and reasonable searches of your person, residence, property and vehicle by the Community Corrections Officer to monitor compliance.

Date:

May 15, 1998

Jeanette Brugg
JUDGE, KING COUNTY SUPERIOR COURT

APPENDIX F

DNA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

Scott Meth

Defendant.

No. 97-C-09079-9 KWT

APPENDIX G
ORDER FOR BLOOD TESTING
AND COUNSELING

(1) HIV TESTING AND COUNSELING:

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense committed after March 23, 1988. RCW 70.24.340):

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 296-4848 to make arrangements for the test to be conducted within 30 days.

(2) DNA IDENTIFICATION:

(Required for defendant convicted of sexual offense or violent offense. RCW 43.43.754):

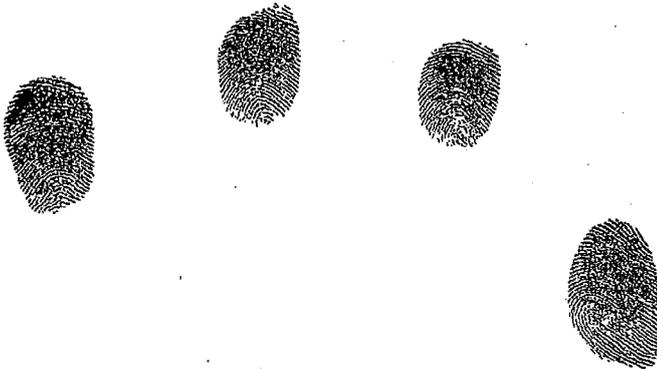
The Court orders the defendant to cooperate with the King County Department of Adult Detention and/or the State Department of Corrections in providing a blood sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangement for the test to be conducted within 15 days.

If both (1) and (2) are checked, two independent blood samples shall be taken.

Date: 5-15-98

Jeanette Berridge
JUDGE, King County Superior Court

FINGERPRINTS



RIGHT HAND
FINGERPRINTS OF:

SCOTT R METH

DATED: _____

JUDGE, KING COUNTY SUPERIOR COURT

DEFENDANT'S SIGNATURE: Scott Meth
DEFENDANT'S ADDRESS: 10420 15th AVE SW
Seattle WA 98146

ATTESTED BY:
M. JANICE MICHELS, SUPERIOR COURT CLERK
BY: VIRGINIA BARBER
DEPUTY CLERK

CERTIFICATE

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

CLERK

BY: _____
DEPUTY CLERK

OFFENDER IDENTIFICATION

S.I.D. NO.
DATE OF BIRTH: AUGUST 9, 1979
SEX: M
RACE: WHITE

APPENDIX F

FILED

CLERK

SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)

Plaintiff,)

v.)

GUADALUPE TORRES, and)
SCOTT R. METH)
and each of them,)

Defendants.)

No. ~~97-C-09078-1 KNT~~
97-C-09079-9 KNT

INFORMATION
WARRANT ISSUED
CHARGE COUNTY \$110.00

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse GUADALUPE TORRES and SCOTT R. METH, and each of them, of the crime of Robbery in the First Degree, committed as follows:

That the defendants GUADALUPE TORRES and SCOTT R. METH, and each of them, together with another, in King County, Washington on or about March 23rd, 1997, did unlawfully and with intent to commit theft, take personal property of another, to-wit: a dog, from the person and in the presence of James D. Cleveland, against his will, by the use or threatened use of immediate force, violence and fear of injury to such person or his property, and in the commission of and in immediate flight therefrom, the defendant displayed what appeared to be a firearm, to-wit: a .38 caliber handgun;

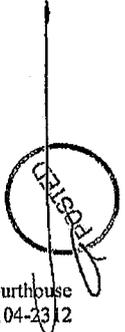
Contrary to RCW 9A.56.200(1)(B) and 9A.56.190, and against the peace and dignity of the State of Washington.

And I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendants GUADALUPE TORRES and SCOTT R. METH, and each of them, at said time of being armed with a .38 caliber handgun, a firearm as defined in RCW 9.41.010, under the authority of RCW 9.94A.310(3).

NORM MALENG
Prosecuting Attorney

By: Calvin G. Rapada
Calvin G. Rapada, WSBA #91002
Deputy Prosecuting Attorney

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000



1 CAUSE NO. 97-C-09078-1 KNT
2 CAUSE NO. 97-C-09079-9 KNT

3 CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

4 That Calvin G. Rapada is a Deputy Prosecuting Attorney for King
5 County and is familiar with the police report and investigation
6 conducted in Des Moines Police Department case No. 97-942;

7 That this case contains the following upon which this motion
8 for the determination of probable cause is made;

9 On March 23, 1997 at 5:20 p.m., the victim James D.
10 Cleveland, was walking his two dogs at Saltwater Park in Des
11 Moines, King County, Washington. Suddenly, a car pulled up and
12 three people got out, and they were later identified as the
13 defendants, Guadalupe Torres and Scott R. Meth; and the third
14 person is a juvenile named Pablo Romero.

15 The two defendants and the juvenile approached the victim and
16 they surrounded the victim. Together they pushed the victim down,
17 and then one of them took one of the dogs belonging to the victim.
18 Both defendants and the juvenile ran back to the car with the
19 victim's dog. The victim ran after them, and defendant Meth
20 reached into his waistband and pulled a .38 caliber revolver out.
21 Defendant Meth pointed the gun at the victim's head, and the
22 victim retreated, allowing the defendants and juvenile to get away
23 with his dog.

24 Witnesses saw the robbery in progress and followed the
25 getaway car, and were able to get the license plate and give it to
the police. The police tracked the license plate to the sister of
the juvenile. The juvenile was advised of his rights and gave a
complete confession, and implicated both defendants as partici-
pating in the robbery. The juvenile has also entered into a plea
agreement with the juvenile division of the prosecutor's office to
testify against both defendants.

Later, the victim was shown a photographic montage and he
positively identified defendant Meth as the person who pointed the
gun at him. Also, the detective contacted defendant Torres and
advised him of his constitutional rights. Defendant Torres
admitted that he and the others discussed robbing the victim of
his dog before they got out of the car. Defendant Torres said the
robbery was carried out and that he and defendant Meth got \$100
for selling the dog to another person. The detective has still
been unable to locate the victim's dog.

Certification for Determination
of Probable Cause - 1

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

1 Bail is requested in the amount of \$50,000 for each defen- "
2 dant. A no contact order should also issue for both defendants
3 with respect to James D. Cleveland and Pablo Romero. Defendant
4 Meth has the following prior convictions: Taking a Motor Vehicle
5 Without Permission (1996); Vehicle Prowling in the Second Degree
6 (1979); and Alcohol Offense (1996). Defendant Torres has two
7 prior convictions for Taking a Motor Vehicle Without Permission
8 (1995).

9 Under penalty of perjury under the laws of the State of
10 Washington, I certify that the foregoing is true and correct.
11 Signed and dated by me this 19 day of November, 1997, at
12 Seattle, Washington.

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Calvin G. Rapada, WSBA #91002

Certification for Determination
of Probable Cause - 2

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

APPENDIX G

FILED
03 NOV 17 AM 8:49
KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

NOV 17 2003
COMMITMENT ISSUED

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

Vs.

BRIAN R. STRICKLAND,

Defendant,

No. 03-1-02059-8 KNT

JUDGMENT AND SENTENCE
FELONY

I. HEARING

I.1 The defendant, the defendant's lawyer, PAT PASION, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 11/27/2003 by plea of:

Count No.: I Crime: UNLAWFUL IMPRISONMENT - DOMESTIC VIOLENCE
RCW 9A.40.040 Crime Code: 00664
Date of Crime: 07/09/2003 Incident No. _____

Count No.: II Crime: SEE MISDEMEANOR J/S
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Count No.: III Crime: SEE MISDEMEANOR J/S
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

[] Additional current offenses are attached in Appendix A

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a **firearm** in count(s) _____ RCW 9.94A.510(3).
 (b) While armed with a **deadly weapon** other than a firearm in count(s) _____ RCW 9.94A.510(4).
 (c) With a **sexual motivation** in count(s) _____ RCW 9.94A.835.
 (d) A V.U.C.S.A. offense committed in a **protected zone** in count(s) _____ RCW 69.50.435.
 (e) **Vehicular homicide** Violent traffic offense DUI Reckless Disregard.
 (f) **Vehicular homicide** by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
 (g) **Non-parental kidnapping** or unlawful imprisonment with a minor victim. RCW 9A.44.130.
 (h) **Domestic violence** offense as defined in RCW 10.99.020 for count(s) I & II.
 (i) Current offenses **encompassing the same criminal conduct** in this cause are count(s) _____ RCW 9.94A.589(1)(a).

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

Criminal history is attached in **Appendix B**.

One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	2	I			4 TO 12 MONTHS	5 YRS AND/OR \$10,000
Count						
Count						
Count						

Additional current offense sentencing data is attached in **Appendix C**.

2.5 EXCEPTIONAL SENTENCE (RCW 9.94A.535):

Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in **Appendix D**. The State did did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A**.

The Court **DISMISSES** Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
 Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
 Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 Date to be set.
 Defendant waives presence at future restitution hearing(s).
 Restitution is not ordered.

Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ _____, Court costs; Court costs are waived; (RCW 9.94A.030, 10.01.160)
 (b) \$100 DNA collection fee; DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);
 (c) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs;
 Recoupment is waived (RCW 9.94A.030); *waived*
 (d) \$ _____, Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA;
 VUCSA fine waived (RCW 69.50.430);
 (e) \$ _____, King County Interlocal Drug Fund; Drug Fund payment is waived;
 (RCW 9.94A.030)
 (f) \$ _____, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
 (g) \$ _____, Incarceration costs; Incarceration costs waived (RCW 9.94A.760(2));
 (h) \$ _____, Other costs for: 500.00

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500.00. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from the date of sentence or release from confinement to assure payment of financial obligations.

- Court Clerk's trust fees are waived.
 Interest is waived except with respect to restitution.

4.4 CONFINEMENT ONE YEAR OR LESS: Defendant shall serve a term of confinement as follows, commencing: immediately; [] (Date): _____ by _____ a.m./p.m.:

12 months/ days on count 4; _____ months/ days on count _____; _____ months/ days on count _____

This term shall be served:

- in the King County Jail or if applicable under RCW 9.94A.190(3) in the Department of Corrections.
- in King County Work/Education Release subject to conditions of conduct ordered this date.
- [] in King County Electronic Home Detention subject to conditions of conduct ordered this date.
- [] For burglary or residential burglary offense, before entering Electronic Home Detention, 21 days must be successfully completed in Work/Education Release.

[] The terms in Count(s) No. _____ are consecutive/ concurrent
This sentence shall run [] CONSECUTIVE CONCURRENT to the sentence(s) in cause Cr 11114

The sentence(s) herein shall run [] CONSECUTIVE [] CONCURRENT to any other term previously imposed and not referenced in this order.

Credit is given for 82 day(s) served [] days determined by the King County Jail solely for confinement under this cause number pursuant to RCW 9.94A.505(6). [] Jail term is satisfied; defendant shall be released under this cause.

ALTERNATIVE CONVERSION PURSUANT TO RCW 9.94A.680: _____ days of confinement are hereby converted to:

[] _____ days/ hours community service under the supervision of the Department of Corrections to be completed: [] on a schedule established by the defendant's Community Corrections Officer; or [] as follows: _____

[] Alternative conversion was not used because: [] Defendant's criminal history, [] Defendant's failure to appear, [] Other: _____

4.5 COMMUNITY [] SUPERVISION, for crimes committed before 7-1-2000, CUSTODY, for crimes committed on or after 7-1-2000, is ordered pursuant to RCW 9.94A.545 for a period of 12 months. The defendant shall report to the Department of Corrections within 72 hours of this date or of his/her release if now in custody; shall comply with all the rules, regulations and conditions of the Department for supervision of offenders (RCW 9.94A.720); shall comply with all affirmative acts required to monitor compliance; shall not possess any firearms or ammunition; and shall otherwise comply with terms set forth in this sentence.

[] The court finds that chemical dependency contributed to this offense justifying treatment conditions imposed herein (RCW 9.94A.607).

Appendix F, Additional Conditions is attached and incorporated.

4.6 NO CONTACT: For the maximum term of 5 years, defendant shall have no contact with Stephanie Fisher - Lucia Romero

4.7 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, as ordered in Appendix G.

[] HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in Appendix G.

4.8 [] OFF-LIMITS ORDER: (known drug trafficker) Appendix I is an off limits order that is part of and incorporated by reference into this Judgment and Sentence.

4.9 [] SEX OFFENDER REGISTRATION: (sex offense conviction) Appendix J covering sex offender registration, is attached and incorporated by reference into this Judgment and Sentence.

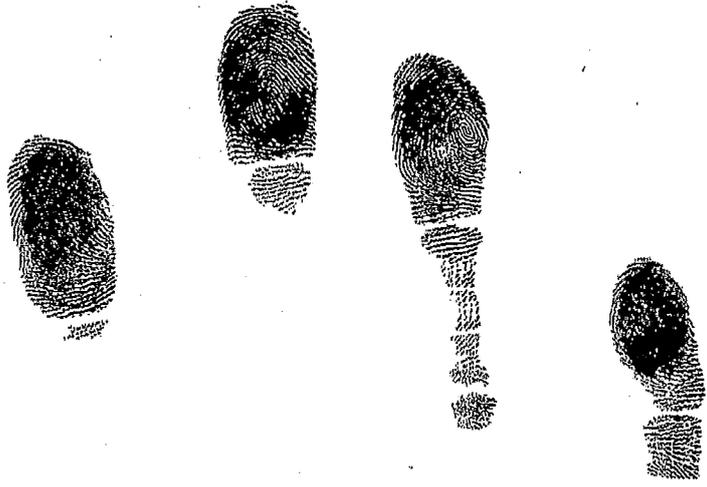
Date: 11/14/03

Judge P. Canova
JUDGE
Print Name: _____

Presented by:
[Signature]
Deputy Prosecuting Attorney, WSBA# 27209
Print Name: Jedrey C. Vembur

Approved as to form:
[Signature]
Attorney for Defendant, WSBA# 27243
Print Name: Patricia Pasion

FINGERPRINTS



RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE *Brian Ray Strickland*
DEFENDANT'S ADDRESS: 9925 28th Ave SW
Seattle WA 98146

BRIAN RAY STRICKLAND

DATED: 11/14/03
Judge D. Canoro
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK
BY: *Leslie Womack*
DEPUTY CLERK

<p>CERTIFICATE</p> <p>I, _____, CLERK OF THIS COURT, CERTIFY THAT THE ABOVE IS A TRUE COPY OF THE JUDGEMENT AND SENTENCE IN THIS ACTION ON RECORD IN MY OFFICE. DATED: _____</p> <p>_____ CLERK</p> <p>BY: _____ DEPUTY CLERK</p>	<p>OFFENDER IDENTIFICATION</p> <p>S.I.D. NO. WA18700213</p> <p>DOB: MARCH 21, 1979</p> <p>SEX: M</p> <p>RACE: W</p>
---	---

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

BRIAN R. STRICKLAND,

Defendant,

No. 03-1-02059-8 KNT

JUDGMENT AND SENTENCE,
(FELONY) - APPENDIX B,
CRIMINAL HISTORY

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
UPFA	06/23/2000	ADULT	991505642	KING
ASSLT 1	01/13/1995	JUVIE	948059841	KING

The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: 11/14/03

Steph P. Canove
JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

BRIAN R. STRICKLAND,

Defendant,

No. 03-1-02059-8 KNT

APPENDIX G
ORDER FOR BIOLOGICAL TESTING
AND COUNSELING

(1) **DNA IDENTIFICATION (RCW 43.43.754):**

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

(2) **HIV TESTING AND COUNSELING (RCW 70.24.340):**

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date:

11/14/03

Steph P. Canova

JUDGE, King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

BRIAN R. STRICKLAND,

Defendant,

No. 03-1-02059-8 KNT

JUDGMENT AND SENTENCE
APPENDIX H
COMMUNITY PLACEMENT OR
COMMUNITY CUSTODY

The Defendant shall comply with the following conditions of community placement or community custody pursuant to RCW 9.94A.700(4), (5):

- 1) Report to and be available for contact with the assigned community corrections officer as directed;
- 2) Work at Department of Corrections-approved education, employment, and/or community service;
- 3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- 4) Pay supervision fees as determined by the Department of Corrections;
- 5) Receive prior approval for living arrangements and residence location;
- 6) Not own, use, or possess a firearm or ammunition. (RCW 9.94A.720(2));
- 7) Notify community corrections officer of any change in address or employment; and
- 8) Remain within geographic boundary, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order.

OTHER SPECIAL CONDITIONS:

The defendant shall not consume any alcohol.

Defendant shall have no contact with: Stephanie Fisher + Luvni Romero

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

The defendant shall participate in the following crime-related treatment or counseling services: Obtain substance abuse eval + follow treatment recs
Enter + complete DVBI

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

Other conditions may be imposed by the court or Department during community custody.

Community Placement or Community Custody shall begin upon completion of the term(s) of confinement imposed herein or when the defendant is transferred to Community Custody in lieu of earned early release. The defendant shall remain under the supervision of the Department of Corrections and follow explicitly the instructions and conditions established by that agency. The Department may require the defendant to perform affirmative acts deemed appropriate to monitor compliance with the conditions [RCW 9.94A.720] and may issue warrants and/or detain defendants who violate a condition [RCW 9.94A.740].

Date: 11/14/03

Steph P. Canove
JUDGE

APPENDIX H

FILED
03 AUG -1 PM 3:46
KING COUNTY
SUPERIOR COURT CLERK
KENT. WA

WARRANT ISSUED
CHARGE COUNTY \$110.00

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

8	THE STATE OF WASHINGTON,)	
9)	
	Plaintiff,)	No. 03-1-02059-8 KNT
10	v.)	
)	INFORMATION
11	BRIAN RAY STRICKLAND)	
12)	
13	Defendant.)	

COUNT I

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse BRIAN RAY STRICKLAND of the crime of **Kidnapping in the Second Degree - Domestic Violence**, committed as follows:

That the defendant BRIAN RAY STRICKLAND in King County, Washington, on or about July 9, 2003, did intentionally abduct Stephanie Fisher, a human being;

Contrary to RCW 9A.40.030(1), and against the peace and dignity of the State of Washington.

COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse BRIAN RAY STRICKLAND of the crime of **Assault in the Fourth Degree - Domestic Violence**, based on a series of acts connected together with another crime charged herein, committed as follows:

That the defendant BRIAN RAY STRICKLAND in King County, Washington, on or about July 9, 2003, did intentionally assault Stephanie Fisher;

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

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Contrary to RCW 9A.36.041, and against the peace and dignity of the State of Washington.

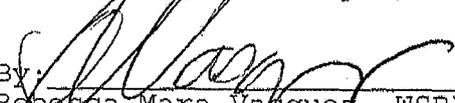
COUNT III

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse BRIAN RAY STRICKLAND of the crime of **Malicious Mischief in the Third Degree**, based on a series of acts connected together with another crime charged herein, committed as follows:

That the defendant BRIAN RAY STRICKLAND in King County, Washington, on or about July 9, 2003, did knowingly and maliciously cause physical damage to a car window, the property of Lucia Romero;

Contrary to RCW 9A.48.090, and against the peace and dignity of the State of Washington.

NORM MALENG
Prosecuting Attorney

By: 
Rebecca Mara Vasquez, WSBA #30322
Deputy Prosecuting Attorney

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

03-1-02059-8KNT

CAUSE NO.

CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

That Jesse Anderson is a(n) Detective with the King County Sheriff's Office and has reviewed the investigation conducted in the King County Sheriff's case number(s) 03-212796;

There is probable cause to believe that Brian Ray Strickland, DOB: 03-21-79 committed the crime(s) of Kidnapping, First Degree D.V., Felony Harassment & Malicious Mischief, Third Degree.

This belief is predicated on the following facts and circumstances:

Victim Stephanie Fisher provided me with the following information about the incident that occurred at the following three locations.

1. The Wah Long Palace restaurant, 15220 Ambaum Blvd SW, in the city of Burien, King County.
2. Along the street at SW 153rd & 4th Ave SW, in the city of Burien, King County.
3. Big Sister's Bingo parking lot, 2217 Renton-Maple Valley Highway, in the city of Renton, in King County.

Witnesses Lucia Romero, Vanessa Carson and Norman Kloehn witnessed the incidents at the Burien locations. They provided Deputies Jeanne Schneider and Jason Milne with statements. At the time of the deputies investigation Strickland wasn't identified as the suspect and Fisher wasn't located. I later identified Strickland as Fisher's boyfriend and Fisher positively identified him as the suspect when I showed her a photo line-up.

Fisher was dating Brian Strickland for about one year. They lived together on and off. On 07-08-03 Fisher told Strickland that she wants to end their intimate relationship. Strickland was angry with Fisher for breaking up with him. Later that evening Fisher went with her friends Lucia Romero and Vanessa Carson to the Wah Long Palace Restaurant where they met up with Fisher's friend Norman Kloehn to celebrate his birthday. Strickland went to the Wah Long at about 12:20am on 07-09-03 and contacted Fisher and Kloehn in the bar. Fisher said she didn't tell Strickland where he could find her but that he just showed up since Fisher frequents Wah Long regularly. Strickland came up to Kloehn and asked him if Fisher had been "slutting around again." Strickland then grabbed Fisher by her neck and ripped off her two gold necklaces. He then lifted her up and threw her on the ground. Fisher then left with Carson and Romero. Romero started to drive them home w/b on SW 153 st, with Fisher in the front passenger seat and Carson in the back seat. Suddenly, Strickland drove behind them in a brown El Camino type vehicle. Strickland then pulled around in front of them and forced them to stop. Strickland jumped out of his vehicle and jumped on the

Certification for Determination
of Probable Cause

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

1 hood of Romero's car. He was screaming at Fisher to get out of the car.
2 Strickland then started circling the car, kicking at it. Fisher was
3 screaming at Strickland to calm down. Strickland kicked at the passenger
4 window several times before it broke. Romero said that she grabbed a hold of
5 Fisher to try and keep her in the vehicle. At some point during the
6 struggle, Strickland reached inside of Romero's vehicle and took the keys out
7 of the ignition. He threw them over into the barbed wire fenced area to
8 United Rentals, 420 SW 152 st. The suspect then grabbed Fisher and forced
9 her into his El Camino. They sped off s/b on 6 Av SW.

10
11 The deputies were called to the scene for a report of a male beating on
12 a car. When they arrived they found Romero's gold 1986 Honda Accord WA. Lic.
13 204NEM unoccupied and partially blocking. They noticed the front passenger
14 window was broken. They then contacted Romero, Carson and Kloehn in front of
15 Wah Long who provided them statements. They identified Fisher as the victim.
16 They said they don't know Strickland's name but they identified him as
17 Fisher's ex-boyfriend. They described him as a white male, 20's or 30's,
18 medium build with a shaved head. He was wearing a blue pullover or zip-up.

19
20 While the deputies were conducting their investigation, Kloehn received
21 a cell phone call from Fisher. She told him that she was "beat up" but that
22 she was otherwise okay and that she was going to try to find a ride home.
23 She said that she didn't want to talk to the police and hung up before he
24 could get more information. Kloehn said that the phone number that came up
25 said "private" so he didn't know where she called from.

The deputies located Fisher's address in the King County Sheriff's
Office IRIS computer system and had Seattle Police and Deputy Pugh make an
attempt to locate Fisher at her home. Deputy Pugh was able to speak with her
relatives there. They told him that Fisher had already talked to them and
had arranged a ride home from a bingo hall. However, Fisher said that she
wouldn't come home as long as the police were there. Fisher told her family
that she didn't trust the police and that she thought the police would arrest
her on her outstanding warrant. Fisher said that she had two black eyes and
a bloody nose, but that she was not going to go to the hospital. Fisher said
that she would only return a phone call from the police on her pager and she
gave the number 206/222-8120. Deputy Milne paged Fisher but she didn't
return his call.

Deputy Schneider took photographs of the damage to the vehicle. Kloehn
was able to climb the fenced storage area to United Rentals. He could not
find Romero's keys. Carson pointed out some areas on the windows of the car
where she believed Strickland had touched. Schneider dusted the areas and
lifted fingerprints, placing them on five print cards. Schneider noticed
there were shoeprints on the hood from where Strickland jumped on it. The
shoe pattern indicated that Strickland was probably wearing flat-soled tennis

Certification for Determination
of Probable Cause

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
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1 shoes or sneakers with a zigzag pattern. Neither Fisher or Strickland were
2 found that night.

3 On 07-10-03 I re-searched KCSO IRIS computer files and found that
4 Strickland is listed as Fisher's boyfriend. I assembled a booking photo
5 line-up with Strickland's photo.

6 On 07-10-03 at about 1:09pm I arrived at Fisher's home and contacted
7 her. I asked Fisher if Strickland is the subject who assaulted her. She
8 said yes. I confirmed this identification by showing Fisher the photo line-
9 up. She positively identified Strickland. Fisher said she is afraid of what
10 Strickland might do to her and that's why she didn't want to cooperate with
11 the police. I noticed that Fisher has a left black eye and a small cut by
12 her right eye. Fisher said her right foot hurts. I noticed the top of her
13 right foot is bruised. Fisher also showed me a large abrasion on her left
14 hip area she said was caused when Strickland dragged her from Romero's car.
15 I photographed Fisher's injuries. Fisher told me she is waiting for Kloehn
16 to pick her up and drive her to the Seattle Indian Health Board for an
17 examination. I had Fisher sign a medical records release form. Fisher said
18 Strickland left threatening messages on her voice mail saying he will kill
19 her if she talks with the police. Fisher gave me permission to listen to and
20 record her voice mail messages. Due to Fisher's fear of Strickland she
21 reluctantly provided me a recorded statement.

22 During the interview Fisher told me about what occurred in Burien, which
23 is consistent with the witnesses information. Fisher said she told
24 Strickland she doesn't want to go with him when he dragged her to his car.
25 Fisher said Strickland held onto her and wouldn't let her go when she tried
to flee. Fisher was afraid for her safety. Strickland began driving Fisher
to the city of Renton. While on the way he hit her numerous times in the
face and body. Strickland drove into the parking lot at Big Sister's Bingo
along the Renton/Maple Valley Highway where Fisher was able to get away from
him and run to a nearby apartment. Fisher then called a friend to pick her
up. Fisher said Strickland also threatened to kill her if she went to the
police.

On 07-10-03 at about 4:06pm I listened to and recorded the messages that
Strickland left on Fisher's voice mail. During the last message Strickland
left he was angry sounding and told Fisher he was going to "beat her ass."
This message was left just after Fisher ran from Strickland.

On 07-23-03 I made an attempt to arrest Strickland at his last known
address but as of this date Strickland's whereabouts are unknown. I sent
this case to the Prosecutor's Office for review.

Under penalty of perjury under the laws of the State of Washington,

Certification for Determination
of Probable Cause

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

1 I certify that the foregoing is true and correct. Signed and dated
2 By me this 24th day of July, 2003, at Kent, Washington.

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Certification for Determination
of Probable Cause

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

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CAUSE NO. 03-1-02059-8 KNT

PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR
CONDITIONS OF RELEASE

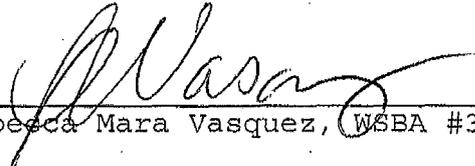
The State incorporates by reference the Certification for Determination of Probable Cause submitted by King County Detective Anderson under incident number 03-212796.

REQUEST FOR BAIL

The State requests bail in the amount of \$100,000 based on the facts of this incident and the defendant's criminal history. According to the Certification, the defendant accused Stephanie Fisher of "slutting around," grabbed her by the neck, ripped two necklaces off her neck and threw her to the ground. The defendant followed Fisher, who was a passenger in Lucia Romero's car. He jumped on Romero's vehicle, screamed at Fisher to get out the car, and kicked out the passenger window. He grabbed Fisher, dragged her to his car and forced her into his vehicle, driving her from Burien to Renton and hitting her numerous times. During the abduction Fisher suffered a black eye, a cut by her eye, a bruised foot, and a large abrasion on her hip area. Following the abduction, the defendant left a message on Fisher's voicemail threatening to beat her ass.

The defendant's criminal history includes convictions for Unlawful Possession of a Firearm (1999), Obstructing a Law Enforcement Officer (1997), and Assault in the First Degree while armed with a Firearm (1994).

The State requests a no-contact order with Stephanie Fisher (date of birth 1/7/78), a phone block with Ms. Fisher's number, and a no-contact order with Lucia Romero, Norman Kloehn, and Vanessa Carson.


Rebecca Mara Vasquez, WSBA #30322

Prosecuting Attorney Case
Summary and Request for Bail
and/or Conditions of Release - 1

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

APPENDIX I

2

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

BRIAN R. STRICKLAND

Defendant.

No. 99-1-50564-2 KNT 00 JUN 26 AM 7:23

JUDGMENT AND SENTENCE
KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

PRESENTENCING STATEMENT & INFORMATION ATTACHED
 COPY TO SENTENCING GUIDELINES COMMISSION
 JUN 26 2000
 JUN 26 2000

I. HEARING

1.1 The defendant, the defendant's lawyer, DAVID L CHRISTIE, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

1.2 The state has moved for dismissal of count(s) _____

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report(s) and case record to date, and there being no reason why judgment should not be pronounced, the court finds:

1 CURRENT OFFENSE(S): The defendant was found guilty on (date): 04/21/2000 by plea of:

Count No.: I Crime: UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE

RCW 9.41.040 Crime Code 00524

Date of Crime 08/23/1999 Incident No. _____

Count No.: _____ Crime: _____

RCW _____ Crime Code _____

Date of Crime _____ Incident No. _____

Count No.: _____ Crime: _____

RCW _____ Crime Code _____

Date of Crime _____ Incident No. _____

Additional current offenses are attached in Appendix A.

SPECIAL VERDICT/FINDING(S):

C/PRD
CUST
CASH
JUDG
DISB
CRIM
ACCTG
EXH

(a) A special verdict/finding for being armed with a **Firearm** was rendered on Count(s): _____

(b) A special verdict/finding for being armed with a **Deadly Weapon** other than a **Firearm** was rendered on Count(s): _____

(c) A special verdict/finding was rendered that the defendant committed the crimes(s) with a **sexual motivation** in Count(s): _____

(d) A special verdict/finding was rendered for **Violation of the Uniform Controlled Substances Act** offense taking place
 in a school zone in a school on a school bus in a school bus route stop zone in a public park in public transit vehicle in a public transit stop shelter in Count(s): _____

(e) **Vehicular Homicide** Violent Offense (D.W.I. and/or reckless) or Nonviolent (disregard safety of others)

(f) Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score (RCW 9.94A.400(1)(a)) are: _____

2.2 OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

24
POSTED

2.3 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(a) ASLT 1	08/14/97	JUV.	948059841	KING
(b)				
(c)				
(d)				

- Additional criminal history is attached in Appendix B.
- Prior convictions (offenses committed before July 1, 1986) served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)(c)):
- One point added for offense(s) committed while under community placement for count(s)

2.4 SENTENCING DATA:

SENTENCING DATA	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENT	TOTAL STANDARD RANGE	MAXIMUM TERM
Count I	1	VII			21 TO 27 MONTHS	10 YRS AND/OR \$20,000
Count						
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE:

- Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____ Findings of Fact and Conclusions of Law are attached in Appendix D. The State did did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

- The Court DISMISSES Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
- Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.142(2), sets forth those circumstances in attached Appendix E.
- Restitution to be determined at future hearing on (Date) _____ at _____ m. Date to be set.
- Defendant waives presence at future restitution hearing(s).
- Defendant shall pay Victim Penalty Assessments pursuant to RCW 7.68.035 in the amount of \$100 if all crime(s) date prior to 6-6-96 and \$500 if any crime date in the Judgment is after 6-5-96.
- Restitution is not ordered.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ 753.50 Court costs; Court costs are waived;
- (b) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs, 2015 Smith Tower, Seattle, WA 98104; Recoupment is waived (RCW 10.01.160);
- (c) \$ _____, Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA; VUCSA fine waived (RCW 69.50.430);
- (d) \$ _____, King County Interlocal Drug Fund; Drug Fund payment is waived;
- (e) \$ _____, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
- (f) \$ _____, Incarceration costs; Incarceration costs waived (9.94A.145(2));
- (g) \$ _____, Other cost for: _____

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 753.50. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:

- Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer. _____
- The Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from date of sentence or release from confinement to assure payment of financial obligations.

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: Immediately, (Date): 6/30/00 by 9:00 A.m.

21 months on Count I _____ months on Count _____ months on Count _____
_____ months on Count _____ months on Count _____ months on Count _____

ENHANCEMENT time due to special deadly weapon/firearm finding of _____ months is included for Counts _____

The terms in Count(s) _____ are concurrent/consecutive.
The sentence herein shall run concurrently/consecutively with the sentence in cause number(s) _____
_____ but consecutive to any other cause not referred to in this Judgment.

Credit is given for 8 days served days as determined by the King County Jail solely for conviction under this cause number pursuant to RCW 9.94A.120(15).

4.5 NO CONTACT: For the maximum term of _____ years, defendant shall have no contact with _____
Violation of this no contact order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest; any assault or reckless endangerment that is a violation of this order is a felony.

4.6 BLOOD TESTING: (sex offense, violent offense, prostitution offense, drug offense associated with the use of hypodermic needles) Appendix G is a blood testing and counseling order that is part of and incorporated by reference into this Judgment and Sentence.

4.7 COMMUNITY PLACEMENT, RCW 9.94A.120(9): Community Placement is ordered for any of the following eligible offenses: any "sex offense", any "serious violent offense", second degree assault, any offense with a deadly weapon finding, any CH. 69.50 or 69.52 RCW offense, for the maximum period of time authorized by law. All standard and mandatory statutory conditions of community placement are ordered.
 Appendix H (for additional nonmandatory conditions) is attached and incorporated herein.

4.8 WORK ETHIC CAMP: The court finds that the defendant is eligible for work ethic camp and is likely to qualify under RCW 9.94A.137 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the Department shall convert the period of work ethic camp confinement at a rate of one day of work ethic camp to three days of total standard confinement and the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.120(9)(b).
 Appendix K for additional special conditions, RCW 9.94A.120(9)(c), is attached and incorporated herein.

4.9 SEX OFFENDER REGISTRATION (sex offender crime conviction): Appendix J is attached and incorporated by reference into this Judgment and Sentence.

4.10 ARMED CRIME COMPLIANCE, RCW 9.94A.103,105. The state's plea/sentencing agreement is attached as follows:

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 6/23/00

Judge Philip J. Hubbard
Print Name: _____

Presented by: [Signature]
Deputy Prosecuting Attorney, Office WSBA ID #91002
Print Name: Edmund Allen 22059

Approved as to form: [Signature]
Attorney for Defendant, WSBA-#
Print Name: David M. Christie
WSBA 17645

FINGERPRINTS



RIGHT HAND
FINGERPRINTS OF:

BRIAN RAY STRICKLAND

DEFENDANT'S SIGNATURE: *Brian Strickland*
DEFENDANT'S ADDRESS: 1011 SW 119th Seattle WA 98146

DATED: 6/23/00
Philip J. Sullivan
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY:
PAUL L. SHERFEY, SUPERIOR COURT CLERK
BY: _____
DEPUTY CLERK

CERTIFICATE

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

CLERK

BY: _____
DEPUTY CLERK

OFFENDER IDENTIFICATION

S.I.D. NO.
DATE OF BIRTH: MARCH 21, 1979
SEX: M
RACE: W

CERTIFICATION OF SERVICE

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Michael Kahrs, at the following address: 5215 Ballard Ave. NW, Suite 2, Seattle, WA 98107, the attorney for petitioner, containing a copy of the State's Supplemental Brief in In re Charles Weber, No. 85992-2, in the Supreme Court of the State of Washington.

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

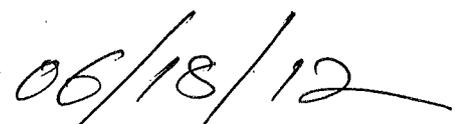
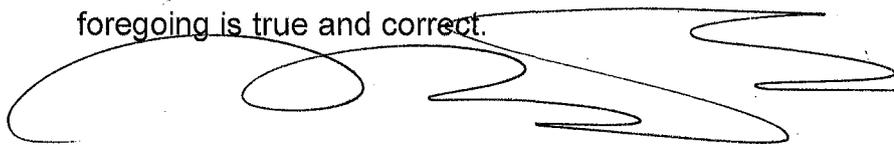


Name
Done in Seattle, Washington

Date

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Todd Maybrown, at the following address: Allen, Hansen & Maybrown, 600 University St., Suite 3020, Seattle, WA 98101, the attorney for amicus WACDL, containing a copy of the State's Supplemental Brief in In re Charles Weber, No. 85992-2, in the Supreme Court of the State of Washington.

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



Name
Done in Seattle, Washington

Date