

68250-4

68250-4

No. 68250-4-I

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION ONE

2017 JUN 19 PM 1:22
COURT OF APPEALS
STATE OF WASHINGTON

James A. Battle, Jr.

Appellant,

v.

STATE OF WASHINGTON,

Appellee.

STATEMENT OF ADDITIONAL GROUNDS, RAP 10.10

name: James A. Battle, Jr.
DOC# 749272, Unit H1-A944
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520-9504



from a distance measuring device requires a showing that the particular device was functioning properly and produced accurate results. Because the State produced no evidence that the distance measuring device here produced accurate results, its admission was error and an abuse of discretion. (See SA6-Brief & Exhibits herein attached).

Additional Ground 2

The trial attorney's performance fell below an objectionable standard thereby preventing Battle from reasonable client representation in violation of the 6th & 14th amendments to the U.S. Const. and Art I, Sec. 21 and 22, WA. Constitution were he failed to object to 404(b), evidence of prior wrongs and or bad acts solicited by the State's witness were she testified that Battle had committed other deliveries. Counsel's performance in his colloquy & closing remarks also prejudiced Battle, suggesting his client is prone to drug crimes thereby undermining his own defense strategy (See SA6-Brief, exhibits herein attached).

Additional Ground 3

Battle was sentenced in excess of the court's jurisdiction were his offender score was wrongly determined, he was sentenced outside of his standard range to include the states wrongful use of an attempted possession a misdemeanor and a dismissed charge. This court should correctly determine his true offender score of 5 and a correct sentence within Battle's correct sentencing range 20 to 60-Months under CrL 7.8. (See SAS-Brief & Exhibits herein attached.

Additional Ground 4



If there are additional grounds, a brief summary is attached to this statement.

DATED this 17th day of July, 20 12.

James A. Bette Jr.
(Appellant's Signature)

Bette, James A. Jr.
(Appellant's Printed Name)

Stafford Creek Correction Center
191 Constantine Way, Unit# H1-A74
Aberdeen, Washington 98520

In The Court Of Appeals Of The State Of Washington
For Division One

James A. Battle,
Petitioner,

v.o.
State of Washington,
Respondent.

No. 68250-4-I

Petitioner's Brief On
Statement Of Additional
Grounds, Pursuant To
RAP 10.10

COURT OF APPEALS
STATE OF WASHINGTON
JUL 19 PM 1:22

A. Introduction

The above petitioner does hereby file an informal brief on Statement of Additional Grounds for review, pursuant to RAP 10.10.

B. Additional Ground 1

1. The trial court abused its discretion by admitting testimony about the results of a measuring device without any showing of reliability.

Issue of Error

1. The issue in this first ground concerns the showing

of reliability necessary for a trial court to admit testimony about the results of a measuring device.

2. Because the State produced no evidence that the distance here produced accurate results, its omission was error and an abuse of discretion.

C. Additional Ground 2

1. The petitioner's trial attorney was ineffective in his representation while failing to object to 404(b) evidence by the States witness Jennifer Freely.

Issue of Error

1. Battle's counsel was ineffective in failing to object to the testimony of States witness when she stated facts, "she was confused about which incident or scenario," which would indicate to a jury that Battle was involved in other specific drug transactions, "Ben and Carol," incident.

2. Counsel further damaged Battle's defense in his closing argument by reciting, "Oh, I was talking about something else, some other incident," as stated by Freely. Counsel's statements only bolstered the witness' credibility and reinforced the 404(b) evidence, thereby showing his client was prone to drug transactions.

D. Additional Ground 3

1. Battle was sentenced in excess of the courts jurisdiction.

Issues of Error

1. Where petitioner objected, the trial court wrongly determined an offender score of 7, while the correct score should be 5 with a sentencing range for 20 to 60 months.

E. First Ground, Argument & Case Law

Pursuant to ER 103(a), error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected. In this State, ER 901(a) generally requires authentication or identification as a condition precedent to admissibility, and is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. This rule treats preliminary questions of authentication and identification as matters of conditional relevance under rule ER 104(b). The court should admit the evidence if sufficient proof is introduced to permit a reasonable juror to find in favor of its authenticity or identification. 5 J. Weinstein, Evidence ¶ 901(a)101 (1975). This rule is concerned only with proving authenticity, although, an authentic document may still be inadmissible under another rule. The court abused its discretion by admitting testimony about the results of a measuring device indicated by a depiction from Microsoft Road & Maps created by Mr. Grimm, without any showing of reliability. "Abuse of discretion exists when a

trial courts exercise of its discretion is manifestly unreasonable or based upon untenable grounds or reasons." State v. Magera, 164 Wn.2d 174, 181, 189 P.3d 126 (2008) (alteration in original) (quoting State v. Powell, 126 Wn.2d 244, 893 P.2d 615 (1995), State v. Bashaw 169 Wn.2d at 137-45 (holding, abuse of discretion by omitting the results of a rolling wheel measuring device with "no showing whatsoever that those results were accurate.") Id. at 143.

The trial court in petitioner's case, abused its discretion by omitting testimony about the results of a computer enhanced measurement created by the State's expert, Transportation Manager Mr. Gumm without any showing of reliability. See State v. Bashaw, 169 Wn.2d at 137-45. It is fundamental that evidence must be authenticated before it is admitted. See ER 901(a). This authentication requires that the proponent produce proof "sufficient to support a finding that the matter in question is what its proponent claims." Id. The party offering the evidence must make a prima facie showing of proof that is sufficient "to permit a reasonable juror to find in favor of authentication." State v. Payne, 117 Wn. App. 99, 106, 69 P.3d 889 (2003); See also Judicial Council Cmt. 901, cited in 5C Karl B. Tegeler, Wash. Practice: Evidence Law and Practice § 901.1 at 283 n.3 (5th ed. 2007). Conceptually, authentication is a process of establishing conditional relevance.

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See Judicial Council Cmt. 901, cited in 5C Tegland, *Supra*, § 901.1, at 283n.3; See also Robert H. Anonson, *The Law of Evidence in Washington* § 901.05(1), at 901-12 (4th ed. 2008) ("unless evidence is in fact what it purports to be, it is not relevant"). As observed in *Washington Practice*, "a photograph might be relevant, but only if it accurately depicts the subject," [an audio] recording might be relevant, but only if the sounds were recorded faithfully and the voices are accurately identified." 5C Tegland, *supra*, § 901.1, at 283. Likewise, a distance measurement may be relevant, but only if it is accurately measured; and proven reliable (*Bashaw*, *id.* at 143). In the petitioner's trial there were no actual measurements done; like in *Bashaw*, in fact the transportation manager printed a copy of an aerial view from a 2005 computer program, Microsoft Roads & Maps, then she drew a circumference around this depicted area. This roads & maps program has not been proven reliable or accurate, in fact, it is well established that even GPS systems are considerably off the mark, as is some highly sophisticated military computer systems, (drones & missiles) have been known to miss their intended targets. Ms. Grimm, is a Transportation Manager with the Board of Education, who assigns work to drivers, create bus routes, bus stops, et cetera, (she) over sees those, makes adjustments as needed.

Specifically, Ms. Grimm testified, " Q. What is your occupation? A. I'm the transportation manager for the Tukwila School District. VRP p. 39 II 20-22, herein attached as exhibit A. As the following excerpts from the record indicates her experience, unreliability of the evidence, and the facts of an outdated computer program and lack of actual measurements or even the whereabouts of the school bus route stop to the alleged location of the offense, and, unproven reliability of the actual measurements the enhancement should be vacated in accordance with State v. Bashaw, 169 Wn. 2d at 137-45. Essentially, this case should be applied to Bazles' case were he is on direct appeal, RAP 2.5, and the fact that his case was not final (facial invalidity) when Bashaw, was decided. Please, review verbatim report of proceedings, exhibit A, p. 39-48, attached.

Specifically,

Q Okay. It's fair to say that all of the measurements that you have done are using this particular computer program; is that correct?

A That's correct.

Q They are not actual measurements using a tape measure or -- how do I explain, one of those things with the wheel?

A Right.

Q You haven't done that as far as this area is concerned?

A No, I haven't

Q And it's also fair to say from Microsoft Maps that addresses do change; is that correct? That they are frequently updated? VRP p. 43-44, ¶ 21-25; ¶ 7-9, ex. A, herein.

Moreover,

Q And do you rely on this computer map program in your job as a transportation manager?

A I do, as far as determining the addresses, whether or not they were within the district or not.

Again,

Q Do you know where the Mountain View Apartments are?

A Not off the top of my head, no. p. 42, ¶ 9 + 13, ex. A, herein.

Specifically,

Q And ma'am, can you -- based on just looking at that map, can you tell where an apartment complex is?

A Based on just this map, no.

Q Okay. And did you do any sort of research as to where the Mountain View Apartments are located?

A No, I wasn't provided that information.

Q So, it's fair to say that you haven't measured, at least using this program, where the Mountain View Apartments were as opposed to where this bus stop was; is that correct?

A That's correct. ex. A, herein, VRP p. 42-43, ¶¶ 21-25; 1-7. In summary, Ms. Drimm printed a copy from her computer of the general area of Tutwila. She could not determine from her map where the actual sites for the bus stop or the location of the alleged offense, she did no actual measurements, but, relied on the scale indicated on the map. Essentially, there is no evidence whether this measuring device's results were accurate in this case. Bashaw, ed. at 143. Even though the Bashaw, enhancement used an actual rolling wheel, the Supreme Court held in Bashaw, concerned the showing of reliability necessary for admission of results of a measuring device. See 169 Wn.2d at 137-45, and held that the trial court abused its discretion by admitting the results of a rolling wheel measuring device with "no showing whatsoever that those results were accurate," ed. at 143. In a line of cases analogous to this one, the courts of this State have held that, under ER 901, speed measuring devices, such as radar devices, must be authenticated in order for their results to be admissible. See City of Bellevue v. Maciulski, 51 Wn. App. 855, 859-60, 756 P.2d 1320 (1988); see also City of Bellevue v. Hellenthal, 144 Wn.2d 425, 431-32, 289 P.3d 744 (2001). "Authentication of such devices requires a showing that the particular unit "was functioning properly and produced accurate results" at the time it was employed. Lightfoot, 75 Wn. App. at 221.

Finally, the rules of evidence, analogous case law, and common sense all dictate that before the State introduces evidence that will result in a mandatory penalty enhancement, the State must show that the evidence it relies upon is accurate. Simply, results of a mechanical device are not relevant, and therefore are inadmissible, until the party offering the results makes a prima facie showing that the device was functioning properly and produced accurate results. This is consistent with the rationale underlying the requirement of authentication. See 5C Teyland, *supra*, §901.1, at 283. As such, the Supreme Court held that the principle articulated in the context of speed measuring devices also applies to distance measuring devices: a showing that the device is functioning properly and producing accurate results is under ER 901(a), a prerequisite to admission of the results. In this case the trial court abused its discretion by admitting Mr. Dimm's testimony of the 303 yard radius, which is 909 feet arguably the evidence pales in light of Bashaw, rules of evidence, case law, and record reflected in exhibit A, herein provided as no measurements were done. Even the lead officers on the case failed to do any actual measurements relying on the State's exhibit No. 5 (Mr. Dimm's map). In sum, there is a reasonable possibility that ^{the} jury would have reached a different conclusion on the specific verdict if the improperly

admitted results had been excluded. Because the trial court abused its discretion and pursuant to opinion Battle was deprived of due process and a fair trial under the 10th and 14th amendments, article I, sec 21 + 22 of Washington Constitution. This court should grant review consistent with State v. Bashaw, 169 Wn. 2d at 137-45 and vacate the enhancement in this case. Because petitioner's judgment & sentence was yet not final when Bashaw (2010) was decided, petitioner still in the Court of Appeals retroactive application applies were the decision affects a substantial right of a constitutional magnitude. RAP 2.5, allows an issue to be raised for the first time on appeal which was not raised in the trial court for (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. Battle had a constitutional due process right under ER 90(a), and ER 103(a) also allows jurisdiction in this Court an error or ruling which admits or excludes evidence which affects a substantial right.

E. Second Ground Argument & Case Law

Ineffective Assistance

When an ineffective assistance claim is raised on appeal, the reviewing court may consider only facts within the record. State v. McFarland, 127 Wn. 2d 322, 335, 899 P. 2d 1251 (1995). Petitioner essentially.

argues that his defense was undermined by impermissible 404(b) evidence given by the testimony of Feely, who testified, "the incident that I don't remember is about a Ben and Carol incident." "And that's what the incident -- that his scenario that James was talking about all the time, the transaction that happened at the Ben and Carol Hotel. I don't remember no transaction at the Ben and Carol, so every time I was asked by the investigator, that is what I was referring to, that incident, that scenario." See ex. B herein, p. 69 ¶1-9, Feely-Cross.

Further,

Q But its fair to say that this investigator was there to interview you about this case, isn't that right?

A Right, but he did not bring up this scenario. Ex. B, herein, p. 69, ¶ 10-13.

Private investigator Jeffrey Porteous testified for the defense and stated that when he interviewed Feely, she said she did not know Battle or remember a drug deal. See ex. C, p. 2 of 4, second column, second paragraph (defense theory).

Defense counsel should have objected to this 404(b) evidence, but, he didn't and in his closing remarks he further undermined the defense theory were he stated, "she remembers telling Mr. Porteous that

that she didn't remember she said, "Oh, I was talking about something else, some other incident." "He is being tried for this incident." Ex. D, p. 22, ¶ 20-25; and Colloquy p. 59, ¶ 17-25; p. 60: ¶ 1-25; p. 61: ¶ 1-25; p. 62, ¶ 1-9. Defense Counsel's direct examination clearly indicates that Mr. Porteous interviewed Freely about the August 10, 2006 delivery and that he was very specific about what they discussed, who did what, and who the players were. With this knowledge, any testimony of any other transactions would be inadmissible under ER 404(b), quite specifically, see Ex. E, herein, p. 67: ¶ 18-25; p. 68-69, ¶ 1-25; 1-16.

The Sixth Amendment to the United States Constitution and article I, Sec. 22 of the Washington Constitution guarantees the right to effective assistance of counsel.

Defense Counsel undermined the defense of general denial by failing to object to this 404(b) evidence, his performance fell below objective standard by entertaining this evidence and not seeking a mistrial in the light of the overall prejudicial effect this evidence may have had on Battle, that, bolstered the State's case by suggesting that there were other drug transactions and Battle prone to drug crimes. Because the defense was general denial, that Battle did not participate in this drug transaction his prior bad acts, VUCSA convictions would be unduly prejudicial since he was on trial for a drug crime. November 6, 2007, Honorable James D. Cayce balanced the 12 prejudicial effect this

evidence would have in the case. See ex. F. p. 9, ¶ 13-25; p. 10-12, ¶¶ 1-25, 1-25, 1-10. The ^{Court} ruled that Battle's 404(b) evidence would be unduly prejudicial in light of his defense theory, the charged offense and the facts in the case. Defense counsel failed to provide effective assistance according to the legal standards. In *Strickland*, the United States Supreme Court set forth the prevailing standard under the Sixth Amendment for reversal of criminal convictions based on ineffective assistance of counsel. 466 U.S. 668. Under *Strickland*, ineffective assistance is a two-pronged inquiry: First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. Simply, Battle's counsel submitted a general denial defense, argued against 404(b) evidence against his client, the only leg to stand on, "he was not involved," only to allow testimony against his client that there were other transactions, "Benard Hotel transaction," completely thwarted the defense preventing Battle of effective assistance. Alongside other ~~two~~ testimonies that Officers Durlop and Lund testified; that he did not recall whether he recognized Battle "from that day," and Lund's testimony that "[m]ost of us knew who he was," ex. C p. 3, *3, herein. Secondly, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious

as to deprive the defendant of a fair trial, a trial whose result is reliable. Thomas, 109 Wn. 2d at 225-26 (quoting Strickland, 466 U.S. at 687); See also State v. Cienfuegos, 144 Wn. 2d 222, 226, 25 P. 3d 1011 (2001) ("Washington has adapted the Strickland test to determine whether a defendant had constitutionally sufficient representation."). Under this standard, performance is deficient if it falls "below an objective standard of reasonableness." Strickland, 466 U.S. at 688. The Supreme ^{Court} of Washington stated, they, "will not find ineffective assistance of counsel if 'the actions complained of go to the theory of the case or to trial tactics,'" (quoting State v. Renfro, 96 Wn. 2d 902, 909, 639 P. 2d 737 (1982)). In this case Counsel's tactics and failure to object to "other transactions," can not be described as reasonable. It was Counsel of Battle who pled general denial, "he didn't do it," then, sought to destroy the credibility of Freely through testimony of defense investigator, Porteous and closing arguments, (ex. D, p. 23, ¶ 1-6, herein), "Mr. Porteous testified that she didn't remember having any -- or didn't (sic) get -- was not involved any one transaction with Mr. Battle," now, to allow testimony of other wrongs, bad acts, or convictions would be damaging to the lone defense of his client, especially since the Court had balanced unfair prejudice to 404(b) evidence to other VUCSA's. Plainly, Counsel's deficient performance undermined the defense. It is highly likely except for this deficient performance that the outcome of the proceedings

Would have been different in light of Feeley's inconsistent testimony, Shine having the buy money in her shoe, the fact that the State agreed to a lesser included offense shows the States lack of faith in their prosecution of the delivery. See *Kylo*, 166 Wn.2d at 862.

While 404(b) provides in full: evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. This is what defense counsels performance allowed, was other bad acts, unchallenged to destroy the defense of his client thereby preventing a fair trial. 14th and 6th amend. U.S. Const.; Art. I, Sec 21 & 22 WA. Const.

Properly understood, then, ER 404(b) is a categorical bar to admission of evidence for the purpose of proving a persons character and showing that the person acted in conformity with that character. *Id.* ("In no case, ... regardless of its relevance or probativeness, may this evidence be admitted to prove that Bette acted in conformity therewith." Simply, mention of "other transactions" was irrelevant, inadmissible, and should have been objected too. Because of all the discussions about the "other transactions" it would be impossible to conclude that this evidence didn't taint Bette's trial. Washington Courts have developed a thorough analytical structure for the admission of evidence of a persons prior crimes, wrongs, or acts. To allow this evidence of Bette's other acts, wrongs, or convictions, "the trial court must (1) find by a preponderance of the evidence that the "Ben and Carol" misconduct even occurred, (2) identify

the purpose for which the evidence is sought to introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) Weigh the probative value against the prejudicial effect." *State v. Vy Thang*, 145 Wn.2d 630, 642, 41 P. 3d 1159 (2002) (citing *State v. Lough*, 125 Wn.2d 847, 853, 889 P.2d 487 (1995)). Importantly, the third and fourth elements ensure that the evidence does not run afoul of ER 402 or ER 403, respectively. The evidence of "other transactions" did run afoul of ER 402 and ER 403, the trial court's balance of unfair prejudice, the defense of general denial, "He didn't do it," and defense counsel fell below the constitutional standard by not objecting and further elaborating on the evidence of other wrongs, because Buttle's defense counsel was ineffective on a constitutional level this conviction should be reversed.

F. Third Round, Argument & Case Law

Generally, by motion under CrL 7.8, and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for (1) mistakes, (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.6; accordingly, RAP 7.2(c) allows, the trial court to hear and determine post judgment motions; yet, RAP 3.3(b) will allow the consolidation of a motion to modify a judgment. Moreover, RAP 16.4(a) provides that a petitioner may seek relief from a "restraint" that

Appellant, moves the Court by way of Third Ground, he argues that he was sentenced in excess of the trial Court's jurisdiction and misrepresentation of his offense score and criminal history. In State v. Mendoza, 165 Wn.2d 913, 205 P.3d 113 (2009), the Supreme Court held that a defendant must affirmatively acknowledge his criminal history before the State is relieved of its duty to prove criminal history by a preponderance of the evidence; mere acquiescence is insufficient. In State v. Bergstrom, 162 Wn.2d 87, 94, 169 P.3d 816 (2007), ruling that the defendant waives the right to challenge his criminal history ~~history~~ if he affirmatively agrees with State recitation and makes no specific objections. Under RCW 9A.640 (3), once the court vacates a record of conviction, the offender shall be released from all penalties and disabilities resulting from the offense. Similarly, "the double jeopardy clauses of the Fifth Amendment and article 1, section 9 of the state Constitution forbid multiple punishments for the same offense." State v. Lynch, 93 Wn. App. 716, 723, 970 P.2d 769 (1999) (citing State v. Hull, 83 Wn. App. 786, 792, 924 P.2d 375 (1996), review denied, 131 Wn.2d 1016 (1997)); see State v. Toney, 149 Wn. App. 787, 797, 205 P.3d 944 (2009) ("The Washington State Constitution prohibits the State from punishing a defendant twice for the same crime."). review denied, 168 Wn.2d 1027 (2010). A double jeopardy claim may be made for the first time on appeal. State v. Gackman, 154 Wn.2d 736, 746, 132 P.3d 136 (2006). Double jeopardy questions are thus reviewed de novo. State v. Freeman, 153 Wn.2d 765, 770, 108 P.3d 753 (2005).

See ex. D, herein, December 17, 2007, Battle was in sentencing proceedings, where defense counsel asked the State "prove up the offender score in his brief," ex. D, VRP, p. 3, ¶ 22-25. Because, the State did not have or prove "two convictions from Michigan," they were not included in the offender score, but, the J&B incorrectly denotes a score of 9, while it should have been 7. See ex. D, p. 9, ¶ 17-25 & judgment & sentence, Appendix A, p. 7, criminal history. Essentially, Battle made an objection to his criminal history and offender score, see ex. D, p. 7, ¶ 21-25, p. 8-10, ¶ 11-25. Because the trial essentially refused to entertain the objections and make specific findings on the correct score and criminal history this Court should vacate the J&B and make necessary corrections on the merits. See, ex. D, appendix B, J&B, 99-103136-5 SEA, p. B2, III. Judgment, the defendant was found ^{not} guilty of the offense in Section ~~4.4(b)~~ 98-C-06902-0 SEA and the Court dismissed Court I, Appendix B, p. B2. See also Appendix C, 98-C-06902-0 SEA, Court No. I. As the Court compares J&B Appen. B, 99-103136-5 SEA it is duly noted that Judge Armstrong dismissed Court I, 98-C-06902-0 SEA. This cause no. is clearly indicated on p. 7 of Appendix A, ex. D as a prior ^{score} conviction incorrectly used in Battle's offender in the current J&B. See ex. D, Appendix A, p. 7 (98-1069020, 11/05/1999). The offender score should be reduced to a score of 6 at this particular point. Yet, cause no. 99- 18 1-03136-5 SEA Battle was

arrested and charged with delivery of a controlled substance along with causes 98-C-06902-0 SEA and 99-1-01333-2 SEA and 99-103136-5 SEA, see ex. B, Appendix B.

See also ex. B, appendix D, Cert. Determination of Probable Cause, 99-1-03136-6 SEA. Subsequently, Battle went to trial on this delivery charge, were the jury was hung (deadlocked) the State chose not to retry Battle on this charge and this charge was dismissed at trial. Again, the Washington Const. bar against double jeopardy should apply and this cause also struck from the criminal history in this case, further decreasing the offender score by another point resulting in a score of 5 and true sentencing range 20 to 60 months. Accordingly, the J & S should be vacated and a sentencing hearing held to determine true offender score and criminal history.

H. Conclusion

For all of the above this Court, should vacate & remand to the sentencing court with further proceedings and oral arguments.

EXECUTED this 17th day of July, 2012.

James A. Battle Jr.
Battle, James A. Jr.

Exhibit A

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

STATE OF WASHINGTON,)
Plaintiff,) No. 07-1-00728-4
vs.) Court of Appeals No. 61013-9-I
JAMES BATTLE,)
Defendant.)

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FEB 22 2008

VERBATIM REPORT OF PROCEEDINGS

Nielsen, Broman & Koch, PLLC

Heard Before: The Honorable James D. Cayce
November 8th, 2007
9:00 a.m.

NORM MALENG REGIONAL JUSTICE CENTER
KENT, WASHINGTON

APPEARANCES:

Kathy Ungerman, on behalf of the Plaintiff;
George Sjursen, on behalf of the Defendant.

Reported by:

J. Dan Lavielle
Official Court Reporter

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P R O C E E D I N G S

(The following occurred in
the absence of the jury:)

THE COURT: Back on the record. There was something you had.

MR. SJURSEN: Yesterday, regarding the sidebar?

THE COURT: I thought so. Other than that issue that we're gonna bring up with the jurors.

MR. SJURSEN: Oh, well, your Honor, I think that I had noted an objection to the reading of the statement of the witness. Your Honor, the motion basically was to exclude the reading of the statement as I challenged the statement originally as she didn't actually write the statement, and the Court essentially overruled my objection. That was the gist of it.

THE COURT: Okay. She adopted it as her own, so it didn't really matter who wrote it, was my ruling. All right. Go get the jurors.

(The following occurred in
the presence of the jury:)

THE COURT: May be seated. Good morning. Before we get started again with witnesses, I wanted to inquire, when the jury was leaving last night, did

1 May I step in the hall to get him?

2 THE COURT: Yes. Remain standing, and raise
3 your right hand to be sworn.

4 (Witness sworn.)

5 THE COURT: You are under oath, have a seat.

6 Whereupon,

7 CHRISTINE GRIMM,

8 having been first duly sworn, was called as a witness
9 herein, and was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. UNGERMAN:

12 Q Good morning.

13 A Good morning.

14 Q Please state your name and spell your last
15 name for the record.

16 A Okay. My Christine is L. Grimm, G R I M M.

17 Q What is your business address?

18 A My business address 4640 South 144th Street,
19 Tukwila, Washington, 98168.

20 Q What is your occupation?

21 A I'm the transportation manager for the
22 Tukwila School District.

23 Q How long have you been so employed?

24 A I've been the transportation manager there
25 for three years.

1 Q What are your duties as a transportation
2 manager?

3 A I assign work to drivers, I create bus
4 routes, bus stops, et cetera, oversee those, make
5 adjustments as needed. I handle parent requests,
6 field trip requests, activity requests, some payroll.

7 Q How do you determine where to place a school
8 bus stop?

9 A Part of it is based on student population,
10 where a large population exists. Part of it based on
11 guidelines from the State from the Office of
12 Superintendent of Public Instruction. Things are
13 taken into consideration such as number of cars
14 traveling the roadway, speed, time of day, road
15 conditions, such as is there a shoulder or not,
16 crosswalks, et cetera.

17 Q Do you maintain data on where you create
18 these school bus stops?

19 A We keep copies of the routes in the computer,
20 they are also posted on the school district web site,
21 which is public access. And then we also keep copies.

22 Q Handing you what's already been marked and
23 admitted as State's Exhibit 5, do you recognize that
24 item?

25 A Yes, I do. This is a map that I created

1 measuring distance from where the Metro stop was
2 located on South 144th Street and where one of our bus
3 stops was located on 37th Avenue South.

4 Q With the Court's permission, would you feel
5 comfortable stepping off the stand and then pointing
6 to -- or actually, just pointing on the screen to the
7 area where there is a school bus stop located?

8 A I believe there is a school stop bus stop
9 located here on 37th Avenue at approximately South
10 142nd Street.

11 Q Is that where that pushpin appears to be
12 located --

13 A Yes.

14 Q -- on the print-out? Okay. And can I have
15 you use this black marker to come down here and put an
16 "X" on the actual paper to document that location.
17 Okay. Thank you. Tell me about the -- is there a
18 scale on this map?

19 A Yes, there is. If you look right here, it
20 denotes 303 yards from this location, going out, where
21 the circle is.

22 Q And is that -- where did you obtain this map
23 from?

24 A This is from Microsoft Streets and Trips,
25 2005.

1 Q And do you rely on this computer map program
2 in your job as a transportation manager?

3 A I do, as far as determining the addresses,
4 whether or not they were within the district or not.

5 MS. UNGERMAN: Thank you. Nothing further.

6 THE COURT: Thank you. Cross?

7 CROSS EXAMINATION

8 BY MR. SJURSEN:

9 Q Do you know where the Mountain View
10 Apartments are?

11 A Do you have the address?

12 Q Just off --

13 A Not off the top of my head, no.

14 Q So it's fair to say you're not familiar with
15 that, at least off the top of your head?

16 A Correct.

17 Q Okay.

18 MR. SJURSEN: If may approach the witness,
19 your Honor?

20 THE COURT: Yes.

21 Q And ma'am, can you -- based on just looking
22 at that map, can you tell where an apartment complex
23 is?

24 A Based on just this map, no.

25 Q Okay. And did you do any sort of research as

1 to where the Mountain View Apartments are located?

2 A No, I was not provided that information.

3 Q So it's fair to say that you haven't
4 measured, at least using this program, where the
5 Mountain View Apartments were as opposed to have where
6 this bus stop was; is that correct?

7 A That's correct.

8 Q Okay. You said that there is an old bus
9 stop. Does that mean that, at one point, there was a
10 bus stop there and it's no longer a bus stop?

11 A Correct. When road construction was done on
12 South 144th Street, the Metro stop where it existed
13 was moved further west.

14 Q Okay. Do you know what date that bus stop
15 was in use?

16 A No.

17 Q Okay. Do you know what date the new stop
18 has been in use since?

19 A No, I can only approximate within the last
20 year, year and a half.

21 Q Okay. It's fair to say that all of the
22 measurements that you have done are using this
23 particular computer program; is that correct?

24 A That's correct.

25 Q They are not actual measurements using a tape

1 measure or -- how do I explain, one of those things
2 with the wheel?

3 A Right.

4 Q You haven't done that as far as this area is
5 concerned?

6 A No, I haven't

7 Q And it's also fair to say from Microsoft Maps
8 that addresses do change; is that correct? That they
9 are frequently updated?

10 MS. UNGERMAN: Objection, beyond the scope.

11 THE COURT: If she can answer the question,
12 I'll allow it.

13 A Can you repeat the question?

14 Q Okay. Let me rephrase it. What I'm asking,
15 ma'am, is isn't it true that with this Maps program
16 that there are different versions?

17 A There may be different versions, but I'm not
18 aware of them.

19 Q Okay. Do you know which version you used on
20 this particular --

21 A 2005.

22 Q 2005. Okay. And to your knowledge, has any
23 of this -- any addresses or anything else been updated
24 into that program?

25 A Since that date, when that version was

1 created?

2 Q Yes.

3 A I don't know.

4 MR. SJURSEN: Could we mark this.

5 THE CLERK: Defendant's Exhibit 7 has been
6 marked for identification.

7 Q Would you mind putting that on the -- this
8 isn't my equipment, so -- and if you wouldn't mind, I
9 don't know if you have the marker that was given to
10 you.

11 MR. SJURSEN: If I may approach the witness
12 again, your Honor?

13 THE COURT: And I'm sorry, what number was
14 that exhibit?

15 MR. SJURSEN: That was No. 7.

16 Q Ma'am, do you notice on there a indication of
17 where the new bus stop is?

18 A Yes, it's westbound on 37th Avenue South,
19 it's still along 144th Street.

20 Q Okay. But you haven't done any sort of
21 measurements, and again, I asked you -- you didn't
22 know exactly when that bus stop went into effect; is
23 that correct?

24 A No, that's correct.

25 Q And did you do any measurements regarding

1 that bus stop?

2 A I believe that I did. When the radius circle
3 is drawn, it does create a notation on the map.
4 Unfortunately, sometimes the headers for the stop
5 locations, or these locations, cover it up.

6 Q I see. Okay.

7 MR. SJURSEN: Thank you. If I may approach,
8 your Honor. I have no further questions of the
9 witness. Thank you, ma'am.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY MS. UNGERMAN:

13 Q I'm placing Exhibit No. 5 back on the screen.
14 Now, I'm not interested in where the Metro bus stops
15 are. Is the X that you documented earlier for a
16 school bus stop?

17 A Yes, it is.

18 MS. UNGERMAN: Thank you. Nothing further.

19 THE COURT: Additional cross?

20 MR. SJURSEN: Just one last question.

21 RECROSS EXAMINATION

22 BY MR. SJURSEN:

23 Q But again, you don't know the exact dates of
24 when that was a school bus stop; is that correct?

25 A No, I don't. There was construction on that

1 roadway approximately one to two years ago.

2 MR. SJURSEN: Thank you.

3 THE COURT: Anything further?

4 MS. UNGERMAN: Yes.

5 REDIRECT EXAMINATION

6 BY MS. UNGERMAN:

7 Q The "X" that marks the school bus stop
8 location, how long has that school bus stop been in
9 existence?

10 A May I look at my notes?

11 Q Sure.

12 A This bus stop has been there for at least the
13 three years that I've been employed with the school
14 district.

15 Q That bus stop was in existence on August 10th
16 of 2006?

17 A Yes.

18 MS. UNGERMAN: Thank you. Nothing further.

19 THE COURT: Anything else?

20 RECROSS EXAMINATION

21 BY MR. SJURSEN:

22 Q Didn't you just testify that you didn't know
23 exactly when that was a bus stop?

24 MS. UNGERMAN: Objection, defense counsel is
25 talking about the Metro bus stop, not the school bus

1 stop.

2 THE COURT: I will allow the question,
3 overruled.

4 A I was referring to the Metro bus stop, not
5 the actual school bus stop.

6 Q Okay. And the two are different, is that
7 what your testimony --

8 A Yes, they are different.

9 Q Okay. And how much different are they?

10 A They are different in that the Metro bus stop
11 is provided by King County Metro. The school bus stop
12 is actually a stop at an apartment where a student
13 resides.

14 Q I see. And have you located the exact place
15 of that bus stop on this map?

16 A As exacting as I can be with a black "X".

17 MR. SJURSEN: Thank you. I have no further
18 questions.

19 THE COURT: Anything further?

20 MS. UNGERMAN: No, thank you.

21 THE COURT: Thank you. You can step down.

22 MS. UNGERMAN: At this time, the State rests
23 our case in chief.

24 THE COURT: You have a witness coming at

25 2:00?

1 Q Is that true?

2 A Correct.

3 Q Okay. And do you recall about how far that
4 was from the bus stop?

5 A It's the next block over. The bus stop is
6 located on 144th and the Mountain View Apartments
7 are 142nd.

8 Q Okay. And the first person that you talked
9 to when you were walking up the street was Mr. Battle?

10 A Yes.

11 Q Okay. But didn't you talk to some other
12 individuals, as well?

13 A No, they attempted to talk to me.

14 Q But you had been burned by them, is that the
15 reason?

16 A Correct.

17 Q If my investigator were to testify that you
18 told him that you didn't remember --

19 MS. UNGERMAN: Objection, improper.

20 THE COURT: Sustained, as to the form of the
21 question.

22 MR. SJURSEN: Okay. I'll rephrase it.

23 Q If someone were to say that you had said on
24 previous statements that you didn't remember anything,
25 would that be false?

1 Q For your own safety; isn't that right?

2 A Yes.

3 Q Because you were working as a confidential
4 informant?

5 A Yes.

6 Q Okay. Now, you said that you were real
7 nervous -- you were real nervous about writing the
8 statement so you had the officer write it for you; is
9 that right?

10 A Yes, I was shaking.

11 Q Okay. All right. And was it -- were you
12 nervous because you were working for the police and
13 you didn't want to mess it up, make a mistake?

14 A No.

15 Q That wouldn't be the case?

16 A No.

17 Q Were you nervous about buying crack cocaine?

18 A No.

19 Q Okay. But you're just -- you said you were
20 nervous?

21 A Yes.

22 Q Okay. The Mountain View Apartments, this is
23 where you say this transaction took place; is that
24 right?

25 A Yes.

1 A It would be false. I don't know how to --
2 the incident that I don't remember is about a Ben and
3 Carol incident. And that's what the incident -- that
4 his scenario that James was talking about all the
5 time, the transaction that happened at the Ben and
6 Carol Hotel. I don't remember no transaction at the
7 Ben and Carol, so every time I was asked by the
8 investigator, that is what I was referring to, that
9 incident, that scenario.

10 Q But it's fair to say that this investigator
11 was there to interview you about this case; isn't that
12 right?

13 A Right, but he did not bring up this scenario.

14 Q I see. You testified earlier that you can't
15 remember about how much time this took; is that right?

16 A Correct.

17 Q Okay. And it's fair to say that at the bus
18 stop, at least at the bus stop, Mr. Battle never gave
19 you crack; is that right?

20 A That's correct.

21 Q And Mr. Battle never actually handed you any
22 crack; is that correct?

23 A That's correct.

24 Q And the crack that you received was from Mr.
25 Gordon; is that right?

1 A That's correct.

2 Q And it's also true that Ms. Shine was also
3 present in the area; isn't that right?

4 A As my statement, yes.

5 MR. SJURSEN: If I may just have a moment,
6 your Honor?

7 THE COURT: Yes.

8 Q Isn't it true that Mr. Gordon, or at least
9 the gentleman in the White Sox hat, gave the money to
10 Ms. Shine?

11 A I can't say.

12 Q Is it possible?

13 A Anything is possible.

14 Q All right. Did you ever see Mr. Battle with
15 any of the money?

16 A Did I ever see --

17 Q You never saw him with any of the money;
18 isn't that correct?

19 A That's correct.

20 Q Okay.

21 MR. SJURSEN: I have no further questions.
22 Thank you.

23 THE COURT: Redirect?

24 REDIRECT EXAMINATION

25 BY MS. UNGERMAN:

Exhibit B

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KING

RECEIVED
MAR 16 2007

3 -----
4 STATE OF WASHINGTON,)

5 Plaintiff,) No. 07-1-00728-4 KNT

6 vs.) Court of Appeals No. 61013-9-I

7 JAMES BATTLE,)

8 Defendant.)

COPY

9 -----
10 VERBATIM REPORT OF PROCEEDINGS
11 -----

12 Heard Before: The Honorable James D. Cayce

13 November 13th, 2007

14 9:00 a.m.

15
16 KING COUNTY REGIONAL JUSTICE CENTER

17 KENT, WASHINGTON
18

19 APPEARANCES:

20 Kathy Ungerman, on behalf of the State of Washington;

21 George Sjursen, on behalf of the Defendant.
22

23 Whereupon,

24 the following proceedings

25 were had and done, to wit:

1 Michael P. Townsend, RPR
Official Court Reporter
King County Superior Court
206-296-9166

P R O C E E D I N G S

(The following occurred in
the presence of the jury:)

THE COURT: And we're back on the record on
State versus Battle.

MR. SJURSEN: Your Honor, my motion in
limine is to ask for -- to advise -- admonish
the State not to mention the evidence regarding
the witness tampering charge, since it has
already been dismissed.

MS. UNGERMAN: No objection.

MR. SJURSEN: Okay.

THE COURT: Motion is granted. So are you
intending to say anything like, "That charge has
been resolved," or, "It has been dismissed"?
Because we did tell them that there was that
charge.

MS. UNGERMAN: I think that the Court should
just say that that count has been dismissed.

MR. SJURSEN: I'm fine with that.

THE COURT: "The witness tampering count has
been dismissed"?

MS. UNGERMAN: Yes.

THE COURT: I recall that you were going to
have me read something at a certain point. Did

1 and that's based on the testimony of the officer
2 for her to work off that charge? What happens?
3 Well, she doesn't have the rap thrown out. She
4 has to get two buys. Now, that statement that
5 she gave, she didn't write it, it was the
6 officer's statement. And she testified that she
7 was nervous. On cross examination, I asked her
8 specifically, "Were you nervous because you were
9 working for the police?" "No, I wasn't nervous
10 because you were working for the police." "Were
11 you nervous because you were involved in a crack
12 cocaine deal?" "No, I wasn't nervous." She
13 never explained why she was nervous. I would
14 explain to you, ladies and gentlemen, because
15 she had this hanging over her head, this
16 charge, and she had to perform, in order to
17 perform, she needed to testify truthfully. At
18 least testify in the sense that they needed to
19 put the finger on my client. That's what
20 happened, ladies and gentlemen. So even if you
21 believe -- you may have a belief that she might
22 be telling you the truth, is there a reasonable
23 doubt that she may not be telling the truth?
24 Now, as far as the consistency of her testimony,
25 think about the times that she said she didn't

1 remember. That happened, and I would submit
2 quite a bit. At these key points she remembers.
3 I asked her directly on cross examination if she
4 remembers whether or not she was involved with
5 Ms. Feely, or when this happened, she couldn't
6 remember. But somehow she can remember
7 specifically that my client was involved. Now,
8 there is also the testimony of the defense
9 witness, the one witness that I chose to call.
10 The investigator, who was working for the
11 defense. The police are working for the State.
12 We have an investigator to go on and interview
13 this witness. We interviewed this witness
14 twice, or Mr. Porteous did. I asked him on
15 direct examination, "Do you remember whether or
16 not you showed her this police report?" He
17 said, quite candidly, that he did not. But that
18 was his normal practice. And Ms. Feely, when I
19 asked her on cross examination whether or not
20 she remembers telling Mr. Porteous that she
21 didn't remember she said, "Oh, I was talking
22 about something else, some other incident." He
23 is being tried for this incident. But what I
24 would point out, and what I suggest was not
25 contradicted by any of the State's evidence, was

1 the fact that Mr. Porteous testified that she
2 didn't remember having any -- or didn't get --
3 was not involved any one transaction with Mr.
4 Battle. That's what Mr. Porteous testified to.
5 That's contradicting what Ms. Feely said on the
6 stand. So let me ask you this: Is it a
7 reasonable doubt? Is there a reasonable
8 possibility that she may not be telling the
9 truth? That her memory might not be so good.
10 That she may get confused about who was
11 involved? Remember when she testified that
12 there were several other people that came up to
13 her, but she had been burned by them before?
14 And she also testified about Ms. Shine and her
15 involvement? Could it be possible that Ms.
16 Shine and Mr. Gordon and Ms. Feely were the
17 three involved in this transaction? And I would
18 submit to you, there is a very reasonable chance
19 and that is likely what happened.

20 Now, as far as the accomplice instruction,
21 the State has gone over that instruction with
22 you. And that's instruction No. 11. They have
23 gone over a definition that a person acts as an
24 accomplice when they solicit, command, encourage
25 and request another person to commit a crime,

1 aids or agrees to aid another person in planning
2 or committing the crime. There is no evidence
3 that was testified to of any conversation
4 between Mr. Gordon and Mr. Battle. But more
5 importantly, from this instruction, it says, "A
6 person who is ready, present at the scene, and
7 ready to assist by his or her presence is aiding
8 in the commission of the crime. However, more
9 than mere presence and knowledge of criminal
10 activity of another must be shown to establish
11 the person present is an accomplice." So just
12 because Mr. Battle happened to be standing
13 there, happened to be where this alleged
14 transaction took place, doesn't mean that he is
15 automatically an accomplice. He could maybe know
16 that something was going on, but was he involved
17 in it? And more importantly, was the fact -- or
18 was his involvement proved beyond a reasonable
19 doubt? I would suggest, ladies and gentlemen,
20 just by the facts alone, by what was testified
21 to, that there is a reasonable possibility that
22 that is not the case.

23 Now, we talked about the officers -- or at
24 least my colleague talked about the officers and
25 their testimony. I would suggest to you, ladies

1 MR. SJURSEN: No, your Honor.

2 THE COURT: Then we'll re-type this one. And
3 we'll get that together and be ready to go this
4 afternoon.

5 MR. SJURSEN: Your Honor, if I could just
6 file the new one, the one that's uncited.

7 THE COURT: Yeah, that's fine. I mean, it'll
8 be part of the record because the ones I did -- this
9 will be one of the ones I read, so I'm not rejecting
10 it.

11 MR. SJURSEN: Right.

12 THE COURT: Okay.

13 (Recess taken.)

14 THE COURT: Please be seated. Ready for the
15 jurors?

16 MS. UNGERMAN: Not quite yet. Your Honor,
17 defense counsel is going to present the testimony of
18 the defense investigator, Jeff Forteous. And I would
19 like to inquire, at this point, exactly what his
20 testimony is being offered to prove.

21 MR. SJURSEN: And we've had discussions
22 outside the courtroom about this, and first of all, I
23 just want to let the Court know that Ms. Ungerman
24 needed a chance to speak with Mr. Porteous. My
25 questions to Mr. Porteous are very limited. The

1 question would be, did he interview her, and just
2 for the record, he interviewed her twice: Once in
3 late June, when he was working with Mr. Piper, and
4 then again last month, which was October. Apparently,
5 Ms. Feely told him that she didn't remember the
6 incident, in fact, she said she didn't know James
7 Battle, my understanding of what exactly what was
8 said. And then when -- he acknowledged that he
9 specifically remembered going over the dates, but that
10 he did present himself as the defense investigator.
11 The second time, the reason he was there, obviously,
12 was because of the witness tampering charge at the
13 time. So I sent him back a second time, and I
14 inherited Mr. Porteous as an investigator. The second
15 time he came back and she told him that she didn't
16 remember doing any sort of transactions with the
17 defendant. She did remember having -- doing
18 transactions with Ms. Shine. I instructed him, and my
19 intention would not be to elicit that testimony, the
20 part about Ms. Shine, because she has already stated
21 that, and I would concede that, I wouldn't be
22 impeaching, and counsel has -- I'll turn it over to
23 her, she let me know -- well, I won't speak for the
24 State.

25 MS. UNGERMAN: Your Honor, during Ms.

1 Feely's testimony, she testified that she was
2 contacted by the defense investigator, and she
3 admitted that she told him she couldn't remember.
4 So based on Evidence Rule 6.13, the State moves to
5 exclude this witness and impeachment is already
6 complete.

7 THE COURT: Well, she said they were asking
8 about a different incident altogether. So you have to
9 lay a foundation that he was asking questions that
10 would relate to this. And knowing Mr. Battle is the
11 one, that certainly is admissible, although I don't
12 know that she said she knew him by name. Maybe that's
13 all it is. I recognize a lot of people I know fairly
14 well that I don't know their names, I don't know. But
15 beyond that, presumably, you will be able to lay a
16 foundation that he keyed her into this particular
17 incident, not some other incident. She did say there
18 was another incident she was involved in and she
19 didn't remember.

20 MR. SJURSEN: Well, and I will say this, if I
21 were to ask him about this other incident, I asked him
22 about this outside the court, his response is he
23 didn't know what incident she was talking about.

24 THE COURT: Right, he wasn't there. And she
25 also testified that Mr. Battle, when he talked to her,

1 he was referring to this other incident and she
2 didn't know what it was. You know, I think you can
3 have can have him testify to that, that's all fair
4 game for cross.

5 MR. SJURSEN: Cross examination as to whether
6 or not he identified what --

7 THE COURT: What he was supposed to be
8 talking to her about, so that she could honestly
9 answer the question, if she did that.

10 MR. SJURSEN: Okay. There is one other
11 issue, your Honor, sorry. I submitted two other
12 instructions along with the instruction to which
13 counsel graciously provided to the Court. I was
14 concerned that there is an instruction, I believe it's
15 WPIC 1.55 that deals with lesser included. I
16 submitted WPIC 4.11, which is an explanation of the
17 lesser included. I also added WPIC 3.01, which is an
18 instruction regarding two separate counts, and that's
19 my only concern is, I believe, that 1.55 I haven't
20 been able to obtain that as of yet.

21 THE COURT: You both submitted 4.11, I think
22 they are a little different, one must be older than
23 the other, it could be.

24 MR. SJURSEN: Additionally, your Honor, I
25 will concede, I took mine out of the law library

Exhibit C

1 Q Do you specifically remember whether or not
2 you showed her her statement or let her know which
3 incident you were talking about?

4 A I don't believe I showed her her statement,
5 but I believe, in the first interview in June, that I
6 did have the information, the narrative, that's
7 written by a detective that just tells the story of
8 the incident from the prosecution's point of view.
9 I think I had that with me.

10 Q Okay. But you do not remember specifically
11 if you showed that to her?

12 A No.

13 Q Do you think it's likely that you showed it
14 to her?

15 A Well, if she asked to see it, I might have
16 shown it to her, but I would have no motive to show it
17 to her.

18 Q Okay. Is there -- let me ask you this: Is
19 there -- did you -- do you think you identified which
20 incident you were talking about?

21 A Sure. There was only one incident I was
22 talking about. I would have told her that I was there
23 to interview her about a James Battle, who had been
24 charged X, Y, Z on such and such a date, on such and
25 such a year. Yes, I would have said that as I say to

1 all of the people that I interview in case work.

2 Q Do you recall what Ms. Feely responded when
3 you asked her questions?

4 A Sure. And we're talking about the June
5 interview now?

6 Q Yes.

7 A She said she didn't know Mr. Battle.

8 Q Okay. Do you remember whether she said she
9 remembered the incident?

10 A I think -- no, I don't. I don't have a clear
11 memory of that, and I don't have my notes in front of
12 me, but I think if I can -- if you want me to go on?
13 No? Okay.

14 Q Well, go ahead.

15 MS. UNGERMAN: Your Honor, the State objects
16 to speculation.

17 THE COURT: Sustained.

18 Q Do you recall speaking to her a second time?

19 A I do.

20 Q Okay. And can you describe what happened
21 with that interview?

22 A Sure.

23 Q How you presented yourself?

24 A Right. Again, I ID'd myself, and she
25 remembered me. I told her why I was there, to again,

1 ask her some questions about what she might remember
2 about Mr. Battle and the charges that were -- the
3 incidents he was charged with on such and such a date,
4 and this -- and we discussed briefly the different
5 people that were involved in the incident in addition
6 to Mr. Battle. And she -- very clearly, we're talking
7 about a dope deal, and she said that she had no memory
8 of Mr. James Battle dealing dope to her, or having her
9 deal dope to him. She had no memory of anything like
10 that.

11 Q And you're sure that's what she said?

12 A Yes.

13 Q Is there any doubt in your mind that you were
14 talking about this incident?

15 A No.

16 MR. SJURSEN: I have no further questions.

17 THE COURT: Thank you. Cross?

18 MS. UNGERMAN: No questions.

19 THE COURT: Thank you. You can step down.

20 Next witness?

21 MR. SJURSEN: The defense rests.

22 THE COURT: And any rebuttal witnesses?

23 MS. UNGERMAN: No, your Honor.

24 THE COURT: Both sides now have rested and
25 we'll take some time to get the jury instructions

1 together. So we will be in recess until we can do
2 that, and I will let you know shortly if we are going
3 to proceed this afternoon, and I'll instruct you on
4 the law, and hear argument, or set it over until
5 Tuesday. As soon as we know that, I'll let you know.

6 THE BAILIFF: All rise for the jury.

7 (The following occurred in
8 the absence of the jury:)

9 THE COURT: All right. Be seated.

10 MR. SJURSEN: If I may just make a brief
11 record, your Honor? I'll let the Court know that we
12 did not call Ms. Shine. Basically, the reason being
13 that her attorney had spoken to her and indicated that
14 she would be taking the Fifth Amendment.

15 THE COURT: Okay.

16 MR. SJURSEN: The subpoena was until Tuesday,
17 but we have elected just to fold our case at this
18 point.

19 THE COURT: All right. So let's try to
20 finish these up. I don't know for sure that we'll
21 have time this afternoon, but we might as well try.
22 Which instruction you are indicating you were not
23 sure?

24 MR. SJURSEN: 1.55 I believe. I believe it
25 requires a little tailoring because it's broadly

Exhibit D

Westlaw.

Page 1

Not Reported in P.3d, 147 Wash.App. 1021, 2008 WL 4838842 (Wash.App. Div. 1)
 (Cite as: 2008 WL 4838842 (Wash.App. Div. 1))

H
 NOTE: UNPUBLISHED OPINION, SEE RCWA
 2.06.040

Court of Appeals of Washington,
 Division 1.
 STATE of Washington, Respondent,
 v.
 James BATTLE, Appellant.

No. 61013-9-I.
 Nov. 10, 2008.

Appeal from King County Superior Court; Honorable James D. Cayce, J.
 Nielsen Broman Koch PLLC, Attorney at Law, Andrew Peter Zinner, Nielsen, Broman & Koch, PLLC, Seattle, WA, for Appellant.

James Arthur Battle, pro se.

Prosecuting Atty King County, King Co Pros/App Unit Supervisor, Kathy K. Ungerman, King County Prosecuting Attorneys Office, Seattle, WA, for Respondent.

SCHINDLER, C.J., AGID, J., DWYER, A.C.J.

UNPUBLISHED OPINION
 PER CURIAM.

*1 A jury found James Battle guilty of delivery of cocaine in violation of the Uniform Controlled Substances Act, RCW 69.50.401. By special verdict, the jury also found that Battle was guilty of delivery of a controlled substance while within 1,000 feet of a school bus route stop. Battle contends he is entitled to reversal and a new trial based on ineffective assistance of counsel. Battle argues his attorney was ineffective in failing to object to testimony that the police officers in the buy-bust operation recognized him. Because defense counsel had a legitimate strategic reason not to object and

Battle cannot establish prejudice, his ineffective assistance of counsel claim fails. We also conclude that the issues Battle raises in his Statement of Additional Grounds are without merit, and affirm.

FACTS

In August 2006, Jennifer Feely agreed to act as a confidential informant for the Tukwila Police Department in a buy-bust operation. The police agreed to not charge Feely with misdemeanor prostitution if the buy-bust operation resulted in two convictions.

On August 10, Officer Eric Lund gave Feely \$40 in pre-recorded bills, told her to stay within certain boundaries, and instructed her on a "good-buy" signal. Officer Lund dropped Feely off in an area in Tukwila where the police officers could keep her under surveillance.

Feely went to a bus stop. She told the men who were waiting at the bus stop that she wanted to buy \$40 worth of crack. James Battle agreed to arrange a meeting between Feely and Robert Gordon to purchase crack cocaine. Feely and Battle walked together to the Mountain Views apartment complex and stopped in the breezeway area of the complex near the stairwell. In the breezeway, they met Gordon and Gordon's girlfriend, Tynne Shine. While in the breezeway, Gordon gave Feely three rocks and broke a fourth rock in half and gave half to Feely and the other half to Battle. Feely then put the rocks in her mouth.

After leaving the breezeway, Feely gave the "good-buy" sign and the officers arrested Feely, Battle, Gordon, and Shine. Feely gave Officer Lund three and half rocks of crack cocaine that she had purchased. In a written statement Feely described what had occurred.

The State charged Gordon and Battle with delivery of cocaine within 1,000 feet of a school bus route stop, resisting arrest, and tampering with a

Not Reported in P.3d, 147 Wash.App. 1021, 2008 WL 4838842 (Wash.App. Div. 1)
(Cite as: 2008 WL 4838842 (Wash.App. Div. 1))

witness. ^{FN1} Battle was tried on an accomplice liability theory. Battle filed a motion to exclude 404(b) evidence of prior crimes, wrongs, or bad acts.

FN1. The court later dismissed the tampering with a witness charge.

At trial, Feely testified about the buy-bust operation. Feely's statement to the police was marked for identification and used to refresh her recollection. Feely testified that she met Battle at the bus stop and he told her that he could arrange a meeting in a nearby apartment complex. Feely said that when they reached the stairwell, she gave the money to Battle and Gordon gave her three and a half rocks of crack cocaine. Feely stated that after they left the breezeway, they were all arrested. Feely testified that her statement to the police accurately documented what happened during the transaction.

*2 Sergeant Mark Dunlap testified that he saw Feely walk to the bus stop, make contact with Battle, and watched the two of them as they walked to the apartment complex. Sergeant Dunlap testified that they were joined by another male at the breezeway. Because they had their backs to Sergeant Dunlap, he said that he could not see what they were doing. After another female joined the group, they walked to a 7-Eleven parking lot. Sergeant Dunlap testified that he recognized Battle, but could not recall whether he recognized him from that day. Battle's attorney did not object to this testimony. Sergeant Dunlap testified that he identified Battle as an "[a]dult black male wearing a white T-shirt and long jean shorts" in his police report. Sergeant Richard Mitchell testified that he participated in the arrest and identified Battle.

Officer Lund also testified that he saw Feely make contact with Battle at the bus stop and watched Feely and Battle walk to the apartment complex. Officer Lund could not see them in the stairwell. Officer Lund identified Battle as the person Feely contacted at the bus stop, and said that on

the day of the arrest he did not have to describe Battle because "[m]ost of us knew who he was, so I said his name, and everybody pretty much knew who he was." Battle's attorney did not object to this testimony.

The defense theory at trial was that Feely was not a credible witness and that the State had not proven Battle's participation in the sale beyond a reasonable doubt. Private investigator Jeffrey Porteous testified for the defense and stated that when he interviewed Feely, she said she did not know Battle or remember a drug deal. *

The jury found Battle guilty of delivery of cocaine and by special verdict found that the delivery was within 1,000 feet of a school bus route stop. However, the jury found Battle not guilty of resisting arrest. The court imposed a sentence of 114 months. Battle appeals.

ANALYSIS

Ineffective Assistance of Counsel

Battle asserts that his counsel was ineffective in failing to object to the testimony that Officer Dunlap and Officer Lund knew Battle as improper 404(b) evidence. Battle contends the testimony undermined his theory that he did not participate in the drug transaction and raised the inference that Battle had prior drug arrests.

To establish ineffective assistance of counsel, Battle must show both deficient performance and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *In re T.A.H.-L.*, 123 Wn.App. 172, 97 P.3d 767 (2004). Counsel's performance is deficient if it falls below an objective standard of reasonableness. *State v. Stenson*, 132 Wn.2d 668, 705-06, 940 P.2d 1239 (1997). Prejudice occurs if, but for the deficient performance, there is a reasonable probability that the outcome of the proceedings would have been different. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). "A defendant must affirmatively prove prejudice, not simply show that 'the errors had some conceivable effect on the out-

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(Cite as: 2008 WL 4838842 (Wash.App. Div. 1))

come.’ “ *State v. Crawford*, 159 Wn.2d 86, 99, 147 P.3d 1288 (2006) (quoting *Strickland*, 466 U.S. at 693). If a defendant fails to satisfy either part of the test, the court need not inquire further. *State v. Hendrickson*, 129 Wn.2d 61, 78, 917 P.2d 563 (1996).

*3 There is a strong presumption that counsel's representation was effective, and courts should avoid the distorting effects of hindsight. *McFarland*, 127 Wn.2d at 335; *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 888, 828 P.2d 1086 (1992). An attorney's performance is not deficient if it can be characterized as legitimate trial strategy or tactics. *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002).

Battle contends that defense counsel was ineffective in failing to object to Sergeant Dunlap's testimony that he did not recall whether he recognized Battle “from that day,” and Officer Lund's testimony that “[m]ost of us knew who he was” as impermissible ER 404(b) evidence of prior bad acts. A criminal defendant may only be tried for charged offenses. *State v. Fernandez-Medina*, 141 Wn.2d 448, 453, 6 P.3d 1150 (2000). ER 404(b) provides, “Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Evidence of prior bad acts is not admissible to show a defendant is a “criminal type.” *State v. Brown*, 132 Wn.2d 529, 570, 940 P.2d 546 (1997).

Defense counsel's failure to object to the two statements does not fall below the objective standard of reasonableness. Objecting to these two statements would draw attention to the evidence that Battle sought to exclude. The attorney's failure to object can be described as a legitimate trial tactic.

Moreover, even if the failure to object did fall below the objective standard of reasonableness, it is

highly unlikely that but for counsel's error, there is a reasonable probability that the result would have been different. Feely testified that she contacted Battle and he was involved in the drug transaction. The police officers performing surveillance corroborated Feely's testimony and identified Battle as the person Feely made contact with. The testimony at trial established that the police and Feely identified Battle as involved in the drug transaction, both on the day of arrest and at trial.

In addition, the fact that the jury acquitted Battle on the resisting arrest charge shows that the jury did not convict Battle based on impermissible 404(b) evidence, but rather on the strength of the evidence at trial.

Statement of Additional Grounds

Battle raises several additional issues in his statement of additional grounds. First, Battle asserts that the trial court abused its discretion by admitting the written statement Feely gave the police because it was inconsistent with testimony at trial. Any inconsistencies in testimony go to the witness's credibility and not to admissibility. *State v. Woodward*, 32 Wn.App. 204, 208, 646 P.2d 135 (1982). “Credibility determinations are for the trier of fact and cannot be reviewed on appeal.” *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). We conclude the trial court did not abuse its discretion in admitting Feely's testimony and allowing the jury to make credibility determinations based on any inconsistency in the testimony.

*4 At Battle's request, the trial court gave the jury a lesser included instruction on possession of a controlled substance. When the court asked the defense whether it wanted to instruct the jury on the lesser included charge of possession of cocaine, Battle's attorney said that they did and noted for the record that Battle was “nodding his head yes.” Battle contends that the trial court erred by instructing the jury on the lesser included offense of possession of a controlled substance because possession of a controlled substance is not necessarily a lesser included offense of delivery of cocaine. Un-

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(Cite as: 2008 WL 4838842 (Wash.App. Div. 1))

der the doctrine of invited error, a party may not set up an error at trial and then challenge that error on appeal. *State v. Wakefield*, 130 Wn.2d 464, 475, 925 P.2d 183 (1996). "The invited error doctrine precludes review of any instructional error—even one of constitutional magnitude—where the challenged instruction is one that was proposed by the defendant." *State v. Doogan*, 82 Wn.App. 185, 188, 917 P.2d 155 (1996). We conclude that even if it was error to instruct the jury on the lesser included offense of possession of a controlled substance, it was invited error.

Battle asserts that the evidence at trial did not show that Battle delivered cocaine within 1,000 feet of a school bus route stop.^{FN2} When the defendant in a criminal case challenges the sufficiency of the evidence, "all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "Evidence is sufficient if, after reviewing it in the light most favorable to the State, 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Tilton*, 149 Wn.2d 775, 786, 72 P.3d 735 (2003) (quoting *State v. Joy*, 121 Wn.2d 333, 851 P.2d 654 (1993)).

FN2. Under RCW 69.50.435(1)(c), if a defendant delivers a controlled substance within 1,000 feet of a school bus route stop, he may be subject to imprisonment of up to twice the term otherwise authorized.

At trial, Officer Lund marked the location of the bus stop with a "B" on a map showing the apartment complex and school bus stop, and marked the location of the stairwell with an "S." Christine Grimm, the transportation manager for the Tukwila school district, identified the location of the school bus stop on the exhibit and testified that the Mountain View apartments were located within a 303 yard radius from the school bus route stop. Sufficient evidence establishes that Battle delivered cocaine within 1,000 feet of a school bus

route stop.

Finally, Battle asserts that the State violated his due process rights under *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963), by not designating Feely's statement to the police as a part of the record on appeal. Under *Brady*, "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Here, the State marked Feely's statement as an exhibit at trial and used it to refresh her memory, but the statement was not admitted. Battle's attorney did not object to the use of the statement at trial and the parts of the statement the State referred to it at trial are in the record. Because the relevant parts of the statement are part of the record on appeal, we conclude that Battle's due process rights under *Brady* were not violated.

*5 We affirm.

Wash.App. Div. 1, 2008.
State v. Battle
Not Reported in P.3d, 147 Wash.App. 1021, 2008 WL 4838842 (Wash.App. Div. 1)

END OF DOCUMENT

Exhibit E

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KING

3 -----
4 STATE OF WASHINGTON,)

5 Plaintiff,) No. 07-1-00728-4 KNT

6 vs.) Court of Appeals No. 61013-9-I

7 JAMES BATTLE,)

8 Defendant.)

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FEB 22 2008

Nelson, Broman & Koch, P.A.

9 -----
10 VERBATIM REPORT OF PROCEEDINGS

11 -----
12 Heard Before: The Honorable James D. Cayce

13 November 6th, 2007

14 9:00 a.m.

15
16 KING COUNTY REGIONAL JUSTICE CENTER

17 KENT, WASHINGTON

18
19 APPEARANCES:

20 Kathy Ungerman, on behalf of the State of Washington;

21 George Sjursen, on behalf of the Defendant.

22
23 Reported by:

24 J. Dan Lavielle

25 Official Court Reporter

P R O C E E D I N G S

(The following occurred in
the absence of the jury:)

THE COURT: Please be seated.

MS. UNGERMAN: This is the State of
Washington versus James Battle, case No. 07-1-00728-4,
Kent designation. Kathy Ungerman for the State; the
defendant is present, out of custody, with counsel
George Sjursen. The State is ready to proceed with
trial, and I believe defense is, too.

MR. SJURSEN: I'd like to put a couple of
things on the record. There was a witness that each
have attempted to secure timely, we attempted to serve
her at the address that we had for her, that was the
address in the police report and that ended up being
some sort of a home. I believe it's called Friends of
Youth up in Everett. I then executed a subpoena duces
tecum and had that served upon them. They had no
forwarding information for this witness. I asked the
State, and they apparently have no idea of where she
is and the only information I did receive is a phone
number for this witness' grandmother. My investigator
is trying to -- I've given that to my investigator to
try to locate her, but at this point I don't really --
we're without this witness and so I just want to make

1 only give that up if I intended to call the witness.

2 THE COURT: You can brief it for me. I'll
3 reserve.

4 MS. UNGERMAN: Thank you.

5 THE COURT: No. 5, defense exhibits. Do you
6 have anything?

7 MR. SJURSEN: Nothing.

8 THE COURT: Any 404 evidence with respect to
9 the CI?

10 MR. SJURSEN: Not that I'm aware of. There
11 are ER-609, but those are acknowledged.

12 THE COURT: Prohibited from offering anything
13 unless we have a sidebar outside the presence of the
14 jury.

15 MR. SJURSEN: Absolutely. Should that come
16 up, I'll request a sidebar.

17 THE COURT: Okay. After that, then, No. 7,
18 the defendant's prior VUCSA convictions.

19 MR. SJURSEN: If I may have a moment. The
20 State -- excuse me, the defense would object to that,
21 believing, of course, that the probative value of that
22 would be greatly outweighed by the prejudicial effect
23 of putting before the jury evidence of prior VUCSA
24 convictions. Mr. Battle is being tried to a single
25 incident, or single count of delivery of cocaine,

1 along with resisting and the school zone enhancement.
2 I don't see how Mr. Battle could get a fair trial if
3 this kind of information was provided to the jury.

4 THE COURT: His defense will be, "It wasn't
5 me, I didn't have anything to do with the drug
6 transaction"?

7 MR. SJURSEN: Right. Of course, if Mr.
8 Battle were to get on the stand, or testify, or
9 somehow open the door by saying, "I don't deal drugs,"
10 well, obviously, the State would be able to bring that
11 up. But assuming, if Mr. Battle were to exercise his
12 right not to testify, or not make any statement like
13 that, I don't think that that would be appropriate or
14 relevant and certainly would be prejudicial.

15 THE COURT: That's denied.

16 MS. UNGERMAN: Under Evidence Rule 404(b),
17 the Slade is allowed to use those conviction to show
18 knowledge. In this particular crime, the State is
19 required to prove beyond a reasonable doubt that the
20 defendant knew that the substance he was delivering
21 was crack cocaine, which is a controlled substance.
22 Those prior convictions involving cocaine go
23 specifically to that knowledge and therefore they are
24 admissible.

25 MR. SJURSEN: May I respond briefly? I would

1 note that there -- note that what the State is
2 alleging is, essentially, accomplice liability. They
3 are alleging that Mr. Battle was an accomplice. There
4 was actually no cocaine found on Mr. Battle, nor any
5 sort of buy money. They are alleging that he
6 assisting in facilitating a crack cocaine transaction
7 between the confidential informant and Mr. Gordon, who
8 was a co-defendant, who previously pled guilty to this
9 charge. So I'm not sure that the whole thing about
10 knowledge, knowing what crack cocaine is, if there is
11 no evidence that Mr. Battle even had crack cocaine.

12 THE COURT: The issue in this case appears he
13 didn't -- it's not that he didn't realize the
14 substance he was dealing with is illegal, it's that
15 he wasn't involved at all with whatever the substance
16 was. And certainly, if I exclude it, wouldn't you be
17 able to argue that if it was him, he didn't have
18 knowledge of what it was, and that it was a mistake?
19 That wouldn't be fair, either, if your argument is if
20 he is involved in the transaction, they can't make the
21 next step if I close the evidence. The State is
22 arguing that it's admissible, period, and the Court
23 has to admit it. I think that's a risky position to
24 take 403, I think I have to balance unfair prejudice.
25 I don't think it's absolutely admissible, I think I

1 have to make that analysis. And in this case, given
2 the nature of the defense and what you would be
3 limited to arguing, I do think it would be unfairly
4 prejudicial to allow that evidence to come in.
5 Certainly, lots of convictions without any kind of
6 evidence to prove knowledge. I may have seen a not
7 guilty verdict on a delivery case, but I don't recall
8 one, and I can't recall any where prior convictions
9 came in to prove knowledge. I don't think it's
10 necessary.

11 MS. UNGERMAN: Thank you, your Honor.

12 THE COURT: Then moving to page 6,
13 impeachment, reputation evidence. Anything there
14 that you're anticipating?

15 MR. SJURSEN: As far as the confidential
16 informant, no.

17 THE COURT: Or any other witness?

18 MR. SJURSEN: No, I don't intend to offer
19 any.

20 THE COURT: I'll grant the motion. If
21 something comes up, we'll need to address that.

22 MR. SJURSEN: Absolutely.

23 THE COURT: The last -- page 8, motion to
24 exclude evidence or argument concerning penalty other
25 than the instruction that I'll give at the end of the

Exhibit F

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

RECEIVED
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STATE OF WASHINGTON,)
Plaintiff,) No. 07-1-00728-4 KNT
vs.) Court of Appeals No. 61013-9-I
JAMES BATTLE,)
Defendant.)

COPY

VERBATIM REPORT OF PROCEEDINGS

Heard Before: The Honorable James D. Cayce
December 17th, 2007
8:30 a.m.

NORM MALENG REGIONAL JUSTICE CENTER
KENT, WASHINGTON

APPEARANCES:

Kathy Ungerman, on behalf of the Plaintiff;
George Sjursen, on behalf of the Defendant.

Whereupon,

The following proceedings
were had and done, to wit:

Michael P. Townsend, RPR
Official Court Reporter
King County Superior Court
206-296-9166

P R O C E E D I N G S

1
2 MR. SCHMITT: Good morning. This is State
3 versus James Battle, case No. 07-C-00728-4, Kent
4 designation. Kathy Ungerman for the State;
5 the defendant is present, in custody, with
6 counsel, George Sjursen. We are present for
7 sentencing. The jury found the defendant guilty
8 of delivery of cocaine with a school zone
9 enhancement. That verdict was November 13th of
10 2007. At this time, the defendant's offender
11 score is a nine, the seriousness level of this
12 crime is a two, the standard range is 60 to 120
13 months, with a maximum term and fine of ten
14 years and/or \$20,000. In addition, with the
15 enhancement, that adds 24 months consecutive.

16 In this case, the State's recommendation is
17 for the mid range, which is ninety months, plus
18 the consecutive 24 months school zone
19 enhancement, for a total of 114 months. This --
20 or this mid-range recommendation was put forward
21 for two reasons: First of all, the defendant
22 has an incredibly high offender score, when you
23 look at all of the felonies, plus the
24 non-felonies. To get to this particular
25 standard range, he only needed to qualify for

2
Michael P. Townsend, RPR
Official Court Reporter
King County Superior Court
206-296-9166

1 six offender score points. In this case, he
2 has nine. In addition, he has several
3 misdemeanors. So when looking up where the
4 defendant should fall on the range of 60 to 120
5 months, that would increase it past the
6 mid-point range, if we were starting at the
7 mid-point or using the mid-point as a starting
8 spot. However, in this particular case, there
9 was an extremely small amount of drugs present,
10 as your Honor knows from the trial, so that, I
11 think, brings it down back to the mid-point. So
12 based on the factors present of this case, the
13 defendant's offender score and criminal history,
14 which is not included in the 60 to 120-month
15 range set by the Legislature, the State believes
16 that a mid-range recommendation is appropriate.

17 The State also requests the Court impose the
18 victim penalty assessment, community custody,
19 and a requirement to obtain a substance abuse
20 evaluation and follow all treatment
21 recommendations, no alcohol or non-prescribed
22 drugs. And your Honor, defense counsel disputed
23 the -- not disputed, but asked that the State
24 prove up the offender score in his brief. And I
25 do not have the two convictions from Michigan,

1 however, I have -- I will pass forward the
2 judgment and sentences from King County. Would
3 you like me to read those into the record or may
4 I submit them as an exhibit?

5 THE COURT: Do you have any preference
6 either way?

7 MR. SJURSEN: If she wants to submit them as
8 an exhibits, that's fine.

9 THE COURT: Okay.

10 MS. UNGERMAN: Okay. I'm passing those
11 forward to the Court, they have already been
12 marked by the clerk. Your Honor, that concludes
13 the State's recommendation.

14 MR. SJURSEN: I would ask those be made part
15 of the record, your Honor.

16 THE COURT: Yes, they will be admitted.

17 MS. UNGERMAN: Thank you. And I actually
18 have one other thing. The second reason why the
19 defendant should get a mid-range recommendation
20 rather than a low-end range recommendation was
21 because during this trial, officers from Tukwila
22 Police Department were called to a disturbance
23 at a bar. And they arrived, and who did they
24 find but Mr. Battle. One of the officers was
25 actually on this case, and he told Mr. Battle,

1 also that it was a school zone enhancement, but
2 this allegedly took place in August, and there
3 was no school -- at least I would be very
4 surprised if there was school in August of 2006.
5 So being that as it may, the Court is tied by
6 what the range is, we would ask the Court to
7 impose the low end of the standard range, which
8 would be 84 months. That's 60 months with the
9 24-month enhancement, which obviously, as
10 counsel has pointed out, is a school zone.

11 THE COURT: And let me ask, it appears, I
12 would find that the judgment and sentences,
13 exhibits 1 through 7, are valid convictions.
14 Where does that put him in terms of his standard
15 range if you don't have those other two?

16 MS. UNGERMAN: He still 60 to 120 months.
17 Once a defendant reaches a six offender score,
18 it is all 60 to 120.

19 THE COURT: Six is the number?

20 MS. UNGERMAN: Yeah.

21 THE COURT: Is there anything you would like
22 to say personally before I impose sentence?

23 THE DEFENDANT: Yes, sir. I have here my
24 history, criminal history, and '99, I had two
25 possessions. And '98, I had one possession. I

1 was sentenced under -- I'm saying under the same
2 criminal conduct, they gave me three plea
3 bargains, I pled guilty to these three in
4 according to the RCW, the same criminal conduct,
5 they were all possession and supposedly counts
6 for one point, that's what I was speaking on.
7 On my criminal history, is also counted as one
8 point, these three here, the 99-1-03, 136-5, and
9 the two following, they counted as one point.
10 I did a motion to the Court and they sent me the
11 paper work back stating that it was the same
12 criminal conduct and that because it was a plea
13 agreement, that that was one point. On the
14 malicious mischief out of Michigan, this
15 malicious mischief is a comparable offense law
16 from out of state, this is a misdemeanor, I have
17 it in my file, it was ruled by court order to be
18 a misdemeanor, not a felony, is what I was
19 saying.

20 THE COURT: It is not counted here as
21 felony, the State hasn't proved it.

22 THE DEFENDANT: With my central file, there
23 was a order. I'm just saying I'm counting nine
24 adult felonies with this same criminal conduct
25 that's only one point. He was saying I was

1 found with seven. And I'm not trying to argue
2 it was one, I'm just saying that it is like four
3 points here that were in question. And it is in
4 my file, I already did a motion to the Court, it
5 is in my file, they were determined on --
6 malicious mischiefs, as a misdemeanor, and the
7 same criminal conduct, they gave me one point
8 for those three, that's all I'm saying. I
9 should have --

10 MR. SJURSEN: I think what he is saying,
11 your Honor, is that the defendant is asserting
12 that cause numbers 99-1-03136-5, 99-1-01332, and
13 98-1-06902-0 is -- he is arguing, of course,
14 that this should be treated as one point. I
15 think that's what he is articulating to the
16 Court.

17 THE COURT: So two points should be taken
18 off, but nobody has briefed this issue for me,
19 so that will be something that you will take up
20 with the Court of Appeals. It is not something
21 that has been addressed here in a way that I can
22 look at it. We have three more minutes to
23 finish your sentencing, if you want to bring it
24 on for reconsideration and brief it, or just
25 argue it to the Court of Appeals, that's fine.

1 But since counsel didn't bring it, I'm assuming
2 there is no validity to it, and I don't allow
3 hybrid representation.

4 MR. SJURSEN: I understand, your Honor.

5 THE COURT: All right. So you have got a
6 long history obviously, you need to get your
7 drug problem under control. I don't think the
8 bottom of the range is appropriate given all of
9 the history that you have got. I will impose
10 the State's requested 114, and that includes the
11 24 months; right?

12 MS. UNGERMAN: Correct, so it would be 90
13 months on the delivery, plus the 24-month
14 enhancement, for a total of 114 months.

15 THE COURT: Yes.

16 MR. SJURSEN: Your Honor, Mr. Battle has
17 indicated that he wishes to file a notice of
18 appeal. I would ask just briefly, your Honor,
19 that if I could have him sworn so I could ask
20 him briefly some questions, so we can you found
21 indigent.

22 THE COURT: I'm finding him indigent, I
23 don't have time for --

24 MR. SJURSEN: I have two or three questions.

25 THE COURT: We need to finish with the

FILED
07 DEC 17 PM 2:57
KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

PRESENTENCING STATEMENT & INFORMATION ATTACHED

CERTIFIED COPY TO COUNTY JAIL DEC 17 2007

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

Vs.

JAMES ARTHUR BATTLE,

Defendant,

No. 07-C-00728-4 KNT

JUDGMENT AND SENTENCE
FELONY

I. HEARING

I.1 The defendant, the defendant's lawyer, GEORGE SJURSEN, 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 11/13/2007 by jury verdict of:

Count No.: II Crime: VIOLATION OF THE UNIFORM CONTROLLED SUBSTANCES ACT-
DELIVER COCAINE

RCW 69.50.401(1).(2)(A)

Crime Code: 07319

Date of Crime: 08/10/2006

Incident No. 06-5618

Count No.: _____ Crime: _____

RCW _____

Crime Code: _____

Date of Crime: _____

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

APPENDIX A

A-1

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) I RCW 69.50.435.
- (e) **Vehicle homicide** Violent traffic offense DUI Reckless Disregard.
- (f) **Vehicle 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) 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 II	9	II	60+ to 120 months	24 months	60+ TO 120 MONTHS 84 to 144	10 YRS AND/OR \$20,000
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);
- (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: _____

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500. 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 or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

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

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): _____ by _____ m.

90 months/days on count II; _____ months/days on count _____; _____ months/day on count _____
_____ months/days on count _____; _____ months/days on count _____; _____ months/day on count _____

The above terms for counts _____ are consecutive / concurrent.

The above terms shall run [] CONSECUTIVE [] CONCURRENT to cause No.(s) _____

The above terms shall run [] CONSECUTIVE [] CONCURRENT to any previously imposed sentence not referred to in this order.

[] In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special ~~WEAPON~~ finding(s) in section 2.1: 24 months (school bus zone)
consecutive

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

[] The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 114 months.

Credit is given for [] _____ days served [] days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6).

4.5 **NO CONTACT:** For the maximum term of _____ years, defendant shall have no contact with _____

4.6 **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.

4.7 (a) [] **COMMUNITY PLACEMENT** pursuant to RCW 9.94A.700, for **qualifying crimes committed before 7-1-2000**, is ordered for _____ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] APPENDIX H for Community Placement conditions is attached and incorporated herein.

(b) [] **COMMUNITY CUSTODY** pursuant to RCW 9.94.710 for any **SEX OFFENSE committed after 6-5-96 but before 7-1-2000**, is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. APPENDIX H for Community Custody Conditions and APPENDIX J for sex offender registration is attached and incorporated herein.

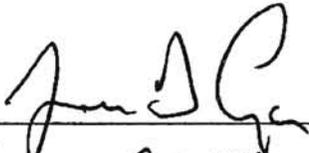
- (c) **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:
- Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
 - Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
 - Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
 - Crime Against Person, RCW 9.94A.411 - 9 to 18 months
 - Felony Violation of RCW 69.50/52 - 9 to 12 months
- or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer.
 Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.
 APPENDIX H for Community Custody conditions is attached and incorporated herein.
 APPENDIX J for sex offender registration is attached and incorporated herein.

4.8 **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, 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.700. Appendix H for Community Custody Conditions is attached and incorporated herein.

4.9 **ARMED CRIME COMPLIANCE, RCW 9.94A.475, .480.** 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.

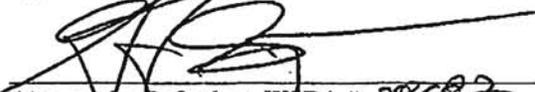
Date: 12/17/07


 JUDGE
 Print Name: CAYCE

Presented by:


 Deputy Prosecuting Attorney, WSBA# 32798
 Print Name: Katy Ungerman

Approved as to form:


 Attorney for Defendant, WSBA # 28082
 Print Name: George Sursen

FINGERPRINTS

BEST IMAGE POSSIBLE



RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE
DEFENDANT'S ADDRESS:

James A Battle
DOC

JAMES A BATTLE

DATED: 12-17-07
[Signature]
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK
BY: *[Signature]*
DEPUTY CLERK

CERTIFICATE

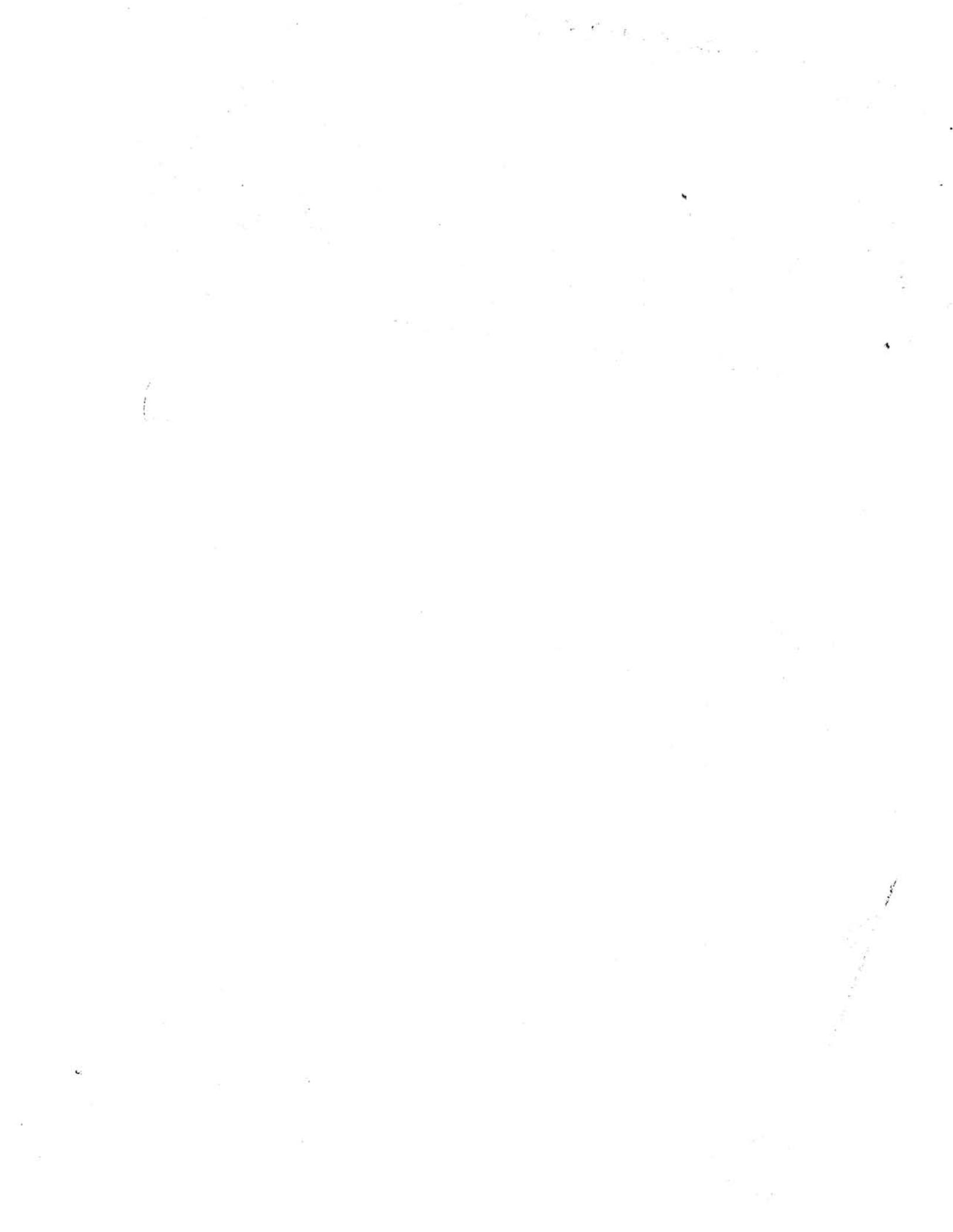
OFFENDER IDENTIFICATION

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: _____

S.I.D. NO. WA18125159
DOB: MARCH 25, 1965
SEX: M
RACE: B

CLERK

BY: _____
DEPUTY CLERK



SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JAMES ARTHUR BATTLE,

Defendant,

No. 07-C-00728-4 KNT

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

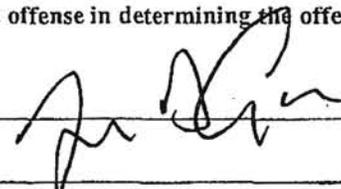
2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
CONT SUBS VIOL-SECT (A)	04/01/2002	ADULT	021021723	KING CO
CONT SUBS VIOL-SECT (A)	01/08/2003	ADULT	021091446	KING CO
CONT SUBS VIOL-SECT (D)	11/05/1999	ADULT	991031365	KING CO
CONT SUBS VIOL-SECT	11/05/1999	ADULT	991013332	KING CO
CONT SUBST VIOLA A: MFG/DLVR/POSS	11/05/1999	ADULT	981069020	KING CO
CONT SUBST VIOLA A: MFG/DLVR/POSS	01/02/1998	ADULT	971094387	KING CO
CONT SUBST VIOLA A: MFG/DLVR/POSS	04/04/1997	ADULT	961082224	KING CO
MALICIOUS MISCHIEF 1	02/24/1993	ADULT	925951100	GRAND RAPIDS, MI
BURGLARY 2ND DEGREE	02/24/1993	ADULT	925951100	GRAND RAPIDS, MI

7DC

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

Date: 12/17/07



JUDGE, KING COUNTY SUPERIOR COURT

DOCUMENT ISSUED

PRESENTING STATEMENT & INFORMATION ATTACHED

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON)
)
 Plaintiff,)
)
 v.)
)
 JAMES BATTLE)
)
 Defendant.)

No. 99-103136-5 SEA

JUDGMENT AND SENTENCE

NOV 12 8:29 AM '99
 KING COUNTY
 CLERK

I. HEARING

- 1.1 The defendant, the defendant's lawyer, JOHANNA BENDER, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Jacqueline Williams Battle
- 1.2 The state has moved for dismissal of count(s) I

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): 10-11-99 by plea of:

Count No.: <u>II</u>	Crime: <u>VUCSA- POSSESSION OF COCAINE</u>
RCW <u>69.50.401 D</u>	Crime Code <u>07346</u>
Date of Crime <u>04-09-99</u>	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):

99-9-16781-9
 CRIM
 DIS
 NUBG
 JAG
 DUST
 C/B
 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) **Vehicle Homicide** Violent Offense (D.W.I. and/or reckless) or Nonviolent (disregard safety of others)
- 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): VUCSA Possession 98-G-06902-0 SEA
VUCSA Possession 99-1-01333-2 SEA

Appendix B-A

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

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(a) ATT MFG/DEL	03-19-92	ADULT		MICHIGAN
(b) STLN PROP/CONCEAL	11-23-92	ADULT		MICHIGAN
(c) MAL DEST OF BLDG	02-04-93	ADULT		MICHIGAN
(d) ENTERING OCCUPIED DWELLING W/INTENT	02-04-93	ADULT		MICHIGAN

- 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) II

2.4 **SENTENCING DATA:**

SENTENCING DATA	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENT	TOTAL STANDARD RANGE	MAXIMUM TERM
Count I	7	II			22 TO 29 MONTHS	5 YRS AND/OR \$10,000
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) I

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) \$ _____, 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: trust account and interest fee are waived until the defendant's release from custody

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. : _____ 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.

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4.4

1999 EXPANDED SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE (D.O.S.A.):

The Court finds the defendant eligible pursuant to RCW 9.94A.120(6)(a), as amended by CH 197, 1999 LAWS, eff. 7-25-99; that the defendant and the community will benefit from use of D.O.S.A.; waives imposition of sentence within the standard range and sentences the defendant as follows:

The court finds the defendant is chemically dependent

(a) **TOTAL CONFINEMENT**, RCW 9.94A.120(6)(b): The defendant is sentenced to the following term(s) of commitment in the custody of the DEPT. OF CORRECTIONS to commence immediately not later than _____ at _____ P.M.

12.75 months on Count No. II; _____ months on Count No. _____

_____ months on Count No. _____; _____ months on Count No. _____

_____ months on Count No. _____; _____ months on Count No. _____

(b) The terms imposed herein shall be served concurrently.

The term(s) imposed herein shall run concurrent/~~consecutively~~ with cause No(s) 98-C-06902-0 SEA and 99-1-01333-2 SEA

The term(s) imposed herein shall run consecutive to any previously imposed commitment not referred to in this Judgment.

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause. RCW 9.94A.120(15). The time shall be compiled by the JAIL unless specifically set by the court as follows: 154 days

(d) The above term(s) of confinement represent one half of the midpoint of the standard range.

(e) While incarcerated in the Department of Corrections the defendant shall undergo a comprehensive substance abuse assessment and receive, within available resources, appropriate treatment services.

4.5

COMMUNITY CUSTODY: The court further imposes 12.75 months, the remainder(s) of the midpoint(s) of the standard range(s), as a term of community custody during which time the court orders the following mandatory statutory requirements:

- (1) The defendant shall not own, use or possess any firearm or ammunition. RCW 9.94A.120(14).
- (2) The defendant shall not use illegal controlled substances and shall submit to urinalysis or other testing to monitor compliance. RCW 9.94A.120 (6)(b)(ii), and (iii)
- (3) The defendant shall complete appropriate substance abuse treatment in a program approved by D.S.H.S., Division of Alcohol and substance abuse. RCW 9.94A.120(6)(b)(i)

The court further imposes the following non-mandatory conditions of Community Custody (if checked):

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- 4. (X) The defendant shall not use any alcohol or controlled substances without prescription and undergo testing to monitor compliance.
- 5. () devote time to a specific employment or training
- 6. () remain within prescribed geographical boundaries and notify the court of the community corrections officer before any change in the offender's address or employment.
- 7. (X) report as directed to a community correction officer
- 8. (X) pay all court ordered legal financial obligations
- 9. () perform community service work
- 10. () stay out of designated areas as follows: _____
- 11. () other conditions set forth in Appendix F

4.6 **NON-COMPLIANCE RCW 9.94A.120(b)(c)(e):** If the defendant fails to complete the Department's special drug offender sentencing alternative program or is administratively terminated from the program, he/she shall be reclassified by the Department to serve the balance of the unexpired term of sentence. If the defendant fails to comply with the conditions of supervision as defined by the Department, he/she shall be sanctioned. Sanctions may include reclassification by the Department to serve the balance of the unexpired term of sentence

4.7 **BLOOD TESTING** (Prostitution offense or drug offense associated with the use of hypodermic needles): Appendix G, covering blood testing and counseling, is attached and incorporated by reference into this Judgment and Sentence.

4.8 **OFF-LIMITS ORDER:** The defendant, having been found to be a known drug trafficker, shall neither enter nor remain in the protected against drug trafficking area(s) as described in Appendix I during the term of community supervision. Appendix I is attached and incorporated by reference into this Judgment and Sentence.

4.9 **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.

Date: Nov 5, 1999

Judge: *Annunzio Annunzio*
 Print Name: _____

Presented by: *[Signature]* #28289
 Deputy Prosecuting Attorney, WSBA Office ID No. 91002
 Print Name: Erin H. Becker

Approved as to form:
[Signature] #26040
 Attorney for Defendant, WSBA ID No.
 Print Name: Jessica Sunde

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WUCSA OVER 21

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 98-C-06902-0 SEA

Vs.

JUDGMENT AND SENTENCE
ON RESENTENCING

JAMES A BATTLE

Defendant,

FILED
MAR 12 AM 8:29
KING COUNTY
COURT CLERK
SEATTLE, WA.

PRESENTING STATEMENT INFORMATION ATTACHED
COMMITMENT ISSUED MAR 12 2001

I. HEARING

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

DOSA SENTENCE VACATED; REMANDED FOR RESENTENCING

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 10/11/1999 by plea of:

Count No.: I Crime: VIOLATION OF THE UNIFORM CONTROLLED SUBSTANCES ACT: POSSESSION OF COCAINE

RCW 69.50.401 (D)

Crime Code: 17346

Date of Crime: 08/11/1998

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 or FINDING(S):

(a) [] While armed with a firearm in count(s) _____ RCW 9.94A.310(3).

(b) [] While armed with a deadly weapon other than a firearm in count(s) _____ RCW 9.94A.310(4).

(c) [] With a sexual motivation in count(s) _____ RCW 9.94A.127.

(d) [] A V.U.C.S.A. offense committed in a protected zone in count(s) _____ RCW 69.50.435.

vehicular homicide [] Violent offense (DUI or Reckless Driving) [] Non-violent.

vehicular homicide by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.310(7).

non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.130.

domestic violence offense as defined in RCW 10.99.020 for count(s) _____.

Current offenses encompassing the same criminal conduct in this cause are count(s) _____ RCW 9.94A.400(1)(a).

OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): 99-1-01333-2 SEA: VUCSA POSSESSION AND 99-1-03136-5 SEA: VUCSA POSSESSION

APPROV
CUST
GASH
JUDG
ACCTG
EXH

Rev 7/00 - jmw

Appendix C

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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) ATTEMPT: MFG/DEL	03/19/92	ADULT	91-56296FH	MICHIGAN
(b) BREAKING AND ENTERING OCCUPIED DWELLING W/ INT	02/04/93	ADULT	9259511FHB	MICHIGAN
(c) DRUG POSSESSION	04/04/97	ADULT	961082224	KING CO
(d) VUCSA: DELIVERY	01/02/98	ADULT	971094387	KING CO

[] Additional criminal history is attached in Appendix B.
[] Prior convictions counted as one offense in determining the offender score (RCW 9.94A.360(5)) are: _____

[X] One point added for offense(s) committed while under community placement for count(s) I

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	7	II	22 TO 29		22 TO 29 MONTHS	5 YRS AND/OR \$10,000
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 restitution hearing on (Date) _____ at _____ m. [] Date to be set.
[] Defendant waives presence at future restitution hearing(s).

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:

waived

- (a) [] \$_____, Court costs; [] Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b) [] \$_____, Recoupment for attorney's fees to King County Public Defense Programs; [] Recoupment is waived (RCW 9.94A.030);
- (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; (RCW 9.94A.030)
- (e) [] \$_____, State Crime Laboratory Fee; [] Laboratory fee waived (RCW 43.43.690);
- (f) [] \$_____, Incarceration costs; [] Incarceration costs waived (RCW 9.94A.145(2));
- (g) [] \$_____, Other costs for: _____

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500. 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; [X] 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.

Interest & Trust fees waived.



Court recommends jail/prison time be served in King County Jail.

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; [X] (Date): April 20, 2001 by 12:00 noon.
_____m.

22 months on Count I _____ months on Count _____ months on Count _____
_____ months on Count _____ months on Count _____ months on Count _____

The above terms for counts _____ are concurrent/consecutive.

The above terms shall run concurrent/consecutive with cause No.(s) KC → 99-1-01333-2 SEA
99-1-03136-5 SEA

The above terms shall run consecutive to any previously imposed sentence not referred to in this order.

[] In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: _____

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause.
(Use this section only for crimes committed after 6-10-98)

[] The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above.
(Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is _____ months.

Credit is given for 12 3/4 months days served [X] days as determined by the King County Jail, AND DOC solely for conviction under this cause number pursuant to RCW 9.94A120(17).
AND DOC on this cause number.

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

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.

→ credit for time on Community Custody from release, toward community placement.

4.7 (a) [X] COMMUNITY PLACEMENT pursuant to RCW 9.94A.120(9), for qualifying crimes committed before 7-1-2000, is ordered for 12 months or for the period of earned early release awarded pursuant to RCW 9.94A.150 whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 7-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.440 not otherwise described above.] APPENDIX H for Community Placement conditions is attached and incorporated herein.

(b) [] COMMUNITY CUSTODY pursuant to RCW 9.94.120(10) for any SEX OFFENSE committed after 6-6-96 but before 7-1-2000, is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.150 whichever is longer. Appendix H for Community Custody Conditions and Appendix J for sex offender registration is attached and incorporated herein.



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(c) **COMMUNITY CUSTODY** pursuant to RCW 9.94A.120(11) for qualified crimes committed after 6-30-2000 is ordered for the following established range:

- Sex Offense, RCW 9.94A.030(36) - 36 to 48 months
- Serious Violent Offense, RCW 9.94A.030(34) - 24 to 48 months
- Violent Offense, RCW 9.94A.030(41) - 18 to 36 months
- Crime Against Person, RCW 9.94A.440 - 9 to 18 months
- Felony Violation of RCW 69.50/52 - 9 to 12 months

or for the entire period of earned early release awarded under RCW 9.94A.150, whichever is longer. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.205.

APPENDIX H for Community Custody conditions is attached and incorporated herein.

APPENDIX J for sex offender registration is attached and incorporated herein.

4.8 **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, 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 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 H** for Community Custody Conditions is attached and incorporated herein.

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

Date: 3/9/01

Sharon A. Armstrong
JUDGE
Print Name: _____

Presented by: [Signature]
Deputy Prosecuting Attorney, WSBA# 17973
Print Name: _____

Approved as to form: [Signature] 25401
Attorney for Defendant, WSBA #
Print Name: Kim Gordon



FINGERPRINTS



RIGHT HAND
FINGERPRINTS OF:

KEITH THOMAS WATKINS

DATED: MAR 09 2001
Sharon S. Armstrong
JUDGE, KING COUNTY SUPERIOR COURT
SHARON S. ARMSTRONG

DEFENDANT'S SIGNATURE: James A. Ballard Jr
DEFENDANT'S ADDRESS: 7208 Larry Pine Cp
Rd., Marysville, WA 98271

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

CERTIFICATE

I, Sharta Sanders,
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: MAR 09 2001

Sharta Sanders
CLERK

BY: _____
DEPUTY CLERK

OFFENDER IDENTIFICATION

S.I.D. NO. WA11271499
DATE OF BIRTH: JUNE 3, 1956
SEX: M
RACE: W



SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,) No. 99-1-01333-2 SEA
)
 vs.) JUDGMENT AND SENTENCE
) APPENDIX H
 JAMES A BATTLE) COMMUNITY PLACEMENT / COMMUNITY
) CUSTODY
 Defendant,)

The Defendant shall comply with the following conditions of community placement or community custody pursuant to RCW 9.94A.120(9)(b); RCW 9.94A.120(10); RCW 9.94A.120(11); or RCW 9.94A.137 for Work Ethic Camp approved offenders:

- 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; and
- 6) Not own, use, or possess a firearm or ammunition. (RCW 9.94A.120(16))
- 7) Notify community corrections officer of any change in address or employment;
- 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: _____
- 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: _____
- The defendant shall comply with the following crime-related prohibitions: _____
- Attend NA at least 2 times per week
- Submit to random U.A.'s at request of CCO
- _____
- _____

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.120(15)] and may issue warrants and/or detain defendants who violate a condition [RCW 9.94A.207].

Date: 3/9/01

Armon S. Armstrong
JUDGE





SEATTLE
POLICE
DEPARTMENT

CAUSE NO. 99 1 00136 5SEA

**CERTIFICATION FOR DETERMINATION
OF PROBABLE CAUSE - NARCOTICS**

INCIDENT NUMBER 99-138851
UNIT FILE NUMBER

That Police Officer C. Zylak #6183 of the Seattle Police Department believes that there is probable cause that Battle, James A committed the crime(s) of Violation of the Uniformed Controlled Substances Act on 04-09-99 at 1730 hrs within the City of Seattle, County of King, State of Washington by delivering crack cocaine, a controlled substance.

This belief is predicated on the following facts and circumstances:

On 04-09-99 at approx. 1730 hrs S/ Battle was observed getting off a bus at N 85th and Aurora Av N. Battle was wearing a dark knit cap with white lines on it, a dark blue nylon jacket with light blue sleeves, and dark blue nylon pants. Battle walked past UC Off. Zylak, nodded his head and asked 'What's up?', and then asked 'what you need?' UC Zylak believed BATTLE was asking if UC Zylak was looking for narcotics. UC Zylak stated he was looking for two for thirty, which is a term for 2 rocks of cocaine for \$30.00. BATTLE replied 'I can help you out', and asked if UC Zylak had a room. UC Zylak directed BATTLE to his car which was parked in the lot of the Emerald Inn and BATTLE got into the front passenger seat. UC Zylak asked BATTLE if he had two for thirty and BATTLE said 'this ain't goin down in the lot, man, what is this a sting?' UC Zylak asked what BATTLE meant and BATTLE said 'Man you have to move the car around the block if we are going to do this thing.' UC Zylak then moved the car to the Jack and the Box lot in the 900 block of Aurora. BATTLE asked UC Zylak to stop the car at the rear of the lot. BATTLE said ' Man why are you trying to move back to Aurora, look Man I'm from Seattle and thats how they do these stings. BATTLE then produce a Carmex lip balm container from the right front area of his pants and dumped two white 'rocks' into his right hand which UC Zylak suspected to be rock cocaine. BATTLE then took one \$20.00 (H65369661A) and one \$10.00 (D80873501A) from UC Zylak and put the Carmex container back in his right front pant area. BATTLE said 'you better be careful out here Man, you'll get robbed'. BATTLE then got out of UC Zylak's vehicle and started walking WB through the Jack and the Box drive thru. UC Zylak gave a good buy sign and BATTLE was taken into custody in the 8500 block of Nesbitt Av N. Search incident to arrest Offc. D. Hery recovered a Carmex container from BATTLE's right front pant area and observed it to contain several white 'rocks' suspected cocaine. The \$20.00 and the \$10.00 (H65369661A, D80873501A) were recovered at the scene, as BATTLE was observed throwing them to the ground as arresting Officers approached. UC Zylak identified BATTLE as the suspect who sold him the suspected crack cocaine from two polaroid photographs taken after the arrest. UC Zylak field tested the suspected cocaine BATTLE sold to him which field tested positive for cocaine and found it to weigh approx. 0.1 gram. Off. Henry field tested the suspected rock cocaine recovered from BATTLE on arrest which field tested positive for the presence of cocaine and found it to weigh approx. 0.8 grams. The narcotics transaction and arrest of BATTLE occured in Seattle Police S.O.D.A. zone #2.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to best of my knowledge and belief. Signed and dated by me this 9th day of April, 1999, at Seattle, Washington.

Appendix D

C. Zylak #6183

ORIGINAL

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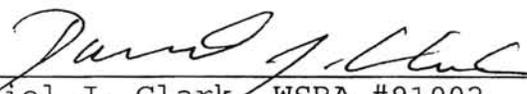
CAUSE NO. 99-1-03136-5 SEA

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 signed under penalty of perjury concerning Seattle Police Department incident number 99-138851, with the following addition: according to the Seattle Public School District, this transaction occurred within 1000 feet of a designated school bus stop located at the corner of 85th Street and Aurora Avenue North.

REQUEST FOR BAIL

The State requests bail set in the amount of \$20,000 due to the nature of the charges and defendant's criminal history which includes two prior Violation of the Uniform Controlled Substances Act (VUCSA) VIII charges (1997) (1997), one Attempted VUCSA Possession charge (1997), and two pending VUCSA Possession charges (99-1-01333-2 SEA).


Daniel J. Clark, WSBA #91002



Certificate of Service

I am the appellant/petitioner, James A. Battle, Jr., as I declare under the penalty of perjury and the laws of the State of Washington that I served a copy of my Statement of Additional Grounds, RAP 10.10 by U.S. Mail to the following persons, as the 'mail box' rule applies to pro se, for inmates I did mail these documents through Legal Mail at the inmate officers station:

VIA U.S. Mail

Deborah A. Dwyer
King County Prns. DC.
516 3rd Ave, Ste. W554
Seattle, WA. 98104-2362

Andrew P. Zinner
Nielsen, Broman & Koch P.L.L.C.
Attorneys at Law
1908 East Madison Street
Seattle, WA. 98122

Respectfully Submitted this 17th day of July, 2012

James A. Battle, Jr.
Battle, James A. Jr.

