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STATE OF WASHINGTON  
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SUPREME COURT NO. ~~99632-6~~

NO. 80687-4-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

CANDACE OSBORNE,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR WHATCOM COUNTY

The Honorable Raquel Montoya-Lewis, Judge

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PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Candace Osborne, appellant below, asks this Court to review the decision of the Court of Appeals referenced below.

B. COURT OF APPEALS DECISION

Osborne seeks review of the Court of Appeals decision in State v. Osborn, No. 80687-4-I (Slip Op. filed March 15, 2021). A copy of the slip opinion is attached as Appendix A.

C. REASONS WHY REVIEW SHOULD BE GRANTED

Review is warrant under RAP 13.4(b)(1) because the decision in State v. Osborne, supra, conflicts with Court's decision in State v. Vasquez, 178 Wn.2d 1, 309 P.3d 318 (2013), which held that a lack of contrary evidence is insufficient to prove the knowledge and intent elements of forgery beyond a reasonable doubt because it involved speculation and conjecture.

D. ISSUE PRESENTED

Osborne was charged with one count of second degree theft and five counts of forgery after she cashed five forged checks over an eight-day period totaling over \$4,700. The checks were from the account of "Pacific Granite Inc." CP 58-62. Paul Trubnikov owned the checks. Osborne was found guilty as charged by stipulated bench trial. With regard to the intent element applicable to all six charges and the

knowledge element applicable to the forgery charges, the trial court concluded *a lack of evidence* showing Osborne knew Trubnikov provided sufficient “evidence to overcome any reasonable doubt that Ms. Osborne intended to defraud Mr. Trubnikov and knew each of the checks was forged.” CP 92.

The Court of Appeals affirmed, finding;

There was sufficient evidence, both direct and circumstantial, and reasonable inferences that could be drawn therefrom, for the court to conclude beyond a reasonable doubt that Osborne had the intent both to deprive Trubnikov of his property, as required by RCW 9A.56.020(1)(a), and to defraud him, as required by RCW 9A.60.020.

Appendix at 7. The court reached this conclusion based on the lack of evidence that Osborne knew anyone at Pacific Granite or that she had performed any service that would warrant payment from Pacific Granite. Id. Does this decision conflict with Vasquez because it allows for a lack of contrary evidence to prove a necessary element through speculation and conjecture?

E. STATEMENT OF THE CASE

1. Procedural Facts

The Whatcom County Prosecutor charged Osborne with one count of second degree theft and five counts of forgery. CP 1-3. The prosecutor alleged that between February 8 and February 16, 2018, Osborne stole

checks owned by Paul Trubnikov and then forged and cashed five of them in an amount totaling over \$4,700. CP 4-5.

After Osborne failed in drug court, a stipulated bench trial was held before the Honorable Raquel Montoya-Lewis, Judge.<sup>1</sup> CP 13, 91-92; 1RP<sup>2</sup> 3-10. Osborne was found guilty as charged and sentenced to concurrent 90-day terms of incarceration for each count. CP 23-34, 91-92; 1RP 5-7; 2RP 8. Osborne appeals. CP 35-84.

## 2. Substantive Facts

The stipulated bench trial was based on a 33-page “police report”<sup>3</sup> submitted by the prosecution, and final arguments by the prosecutor and defense counsel. CP 37-70; 1RP 3-5. It appears the trial court may have also taken into account documents filed on March 9, 2018, which include the Information (CP 1-3), the Affidavit of Probable Cause Determination (CP 4-5), and the Determination of Probable Cause for Detention (CP 94). The 33-page report includes copies of five checks drawn on an account for

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<sup>1</sup> Counsel assumes Justice Montoya-Lewis will recuse herself from considering this petition per the Code of Judicial Conduct (CJC).

<sup>2</sup> There are two volume of verbatim report of proceeding referenced as follow: 1RP – October 3, 2019 (bench trial); and 2RP – October 24, 2019 (sentencing).

<sup>3</sup> A copy of the report is attached as Appendix B.

“Pacific Granite Inc” and made out to “Candace Osborne” in amounts ranging from “\$850.00” to “\$983.54.” CP 58-62.

The prosecutor argued that because Osborne was the girlfriend of Clinton Berry, the individual accused of actually stealing the checks, it showed she was guilty as charged. 1RP 3-4.

In response, defense counsel conceded the evidence was sufficient to show Osborn cashed the checks in question but argued there was insufficient evidence to find she knew the checks were stolen or forged at the time. 1RP 4-5.

The trial court, having considered the written record and closing arguments, began by stating it agreed with the parties that Osborne was guilty of the theft charge beyond a reasonable doubt, despite no such concession by the defense. 1RP 6.

The court next turned to the forgery charges, finding the issue was whether there was sufficient evidence to find she knew the checks were forged. 1RP 6. The court found the police report states Trubnikov claimed he did not write the checks to Osborne and that he “had no relationship with Ms. Osborne.” 1RP 7. The court concluded:

Based on that, the Court finds beyond a reasonable doubt that Ms. Osborne knew that these were not checks that were written to her, and chose to deposit them knowing they were not – that those checks were not checks that Mr. Trubnikov or anyone else had provided her for any reason.

1RP 7.

The court subsequently entered written findings of fact and conclusions of law. CP 91-92.<sup>4</sup> They include ten findings of fact, two of which are at issue here, Finding of Fact 8 and 10. CP 91-92. Finding of Fact 8 provides:

Mr. Trubnikov told police he did not give the checks to Ms. Osborne and that he did not know her. He also told police that the checks were stolen from his mailbox.

CP 91 (Appendix C).

Finding of Fact 10 provides:

[Defense counsel] argued on behalf of Ms. Osborne that the State failed to prove that Ms. Osborne knew the checks were forged; however, given that there is no evidence Ms. Osborne knew Mr. Trubnikov and came into the WECU to cash the checks in her own name, the Court finds that there is evidence to overcome any reasonable doubt that Ms. Osborne intended to defraud Mr. Trubnikov and knew each of the checks was forged.

CP 92 (Appendix C).

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<sup>4</sup> A copy of the court's written findings of fact and conclusions of law is attached as Appendix C.



F. ARGUMENTS

1. REVIEW IS WARRANTED BECAUSE THE COURT OF APPEALS DECISION CONFLICTS WITH THIS COURT'S DECISION IN VASQUEZ.

The prosecution chose to prosecute Osborne on the theft and forgery charges based on “a 33-page police report.” 1RP 3. The trial court may have also taken into account the Information, the Affidavit of Probable Cause Determination and the Determination of Probable Cause for Detention. RP 5. No other evidence was presented. RP 5. Based on this limited record the prosecution failed to present sufficient evidence to convict Osborne of any of the charged offenses and the Court of Appeals decision affirming her convictions conflicts with this Court decision in Vasquez. This Court should therefore grant review, reverse her convictions and dismiss them with prejudice.

Due process demands the prosecution prove all the elements of a criminal offense beyond a reasonable doubt. In re Winship, 397 U.S. 361, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. Const. amend. XIV; Const. art. I, § 3. In reviewing whether the prosecution has met this burden, the appellate court analyzes “whether, after viewing the evidence in the lightmost favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable

doubt.” Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). While inferences are drawn in the prosecution’s favor, these inferences must be reasonable and cannot be based on speculation or conjecture. Vasquez, 178 Wn.2d at 16.

(a) The evidence is insufficient to convict Osborne of Theft

The prosecution charged Osborne in Count One of second degree theft as follows:

On or about the 8<sup>th</sup> day of February, 2018, through the 16<sup>th</sup> day of February, 2018, in the County of Whatcom, State of Washington, the above-named Defendant, pursuant to a common scheme or plan, a continuing course of conduct and a continuing criminal impulse, did wrongfully obtain or exert unauthorized control over property, other than a firearm as defined in RCW 9A.41.010 or a motor vehicle, or services of another, to wit: U.S. Currency, of a value exceeding \$750, with intent to deprive such other of such property or services; contrary to the Revised Code of Washington 9A.56.040(1)(a) and 9A.56.020(1)(a), which violation is a Class C Felony.

CP 91-92.

“Theft” means “[t]o wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services.” RCW 9A.56.020(1)(a). In other words, a theft requires the “intent to steal.” See State v. Ager, 128 Wn.2d 85, 92, 904 P.2d 715, 719 (1995) (noting the

“good faith claim of title” defense to theft “negates the element of intent to steal[.]”).

As an initial matter, the trial court here summarily found Osborne guilty of the theft based on an assumption she had conceded guilt on that charge. 1RP 6. The record does not support the court’s assumption. Nothing in the record supports finding Osborne conceded she was guilty of theft. See CP 1-5; CP 94; Appendix B. The Court of Appeals declined to address this claim because it found the evidence was sufficient to convict. Appendix A at 8 n.1.

As Osborne’s counsel’s noted in closing remarks to the trial court, there was a lack of evidence about the circumstances under which Osborne came into possession of the checks and the lack of evidence regarding why she cashed them. 1RP 5. The trial court’s oral ruling failed to address the “intent to steal” element necessary to convict a person of theft, instead merely accepting a non-existent concession of guilt on that charge. 1RP 6. The court’s written findings and conclusions addresses the element in finding 10, when it concludes “Ms. Osborne intended to defraud Mr. Trubnikov[.]” CP 92. But as discussed below in the context of the forgery charges, there is no evidence in the record to support this finding. Trubnikov denied writing the checks to Osborne. CP 91 (Finding of Fact 5). But the checks do not contain Trubnikov’s name on them and

are instead labeled as an account for “Pacific Granite Inc.” CP 58-62. There is no evidence Osborne knew Trubnikov was associated with the account, or that she knew the checks she cashed were not made out and signed by a person authorized to write checks on the account. Nor is there any evidence that Osborne knew Trubnikov even existed, as his name does not appear on the checks. See Appendix B at 22-26 (photocopies of the checks Osborne cashed do not include Trubnikov’s name).

Similarly, there is no evidence about the circumstances that led to Osborne receiving or cashing the checks. There are numerous scenarios under which Osborne could have believed she was receiving the checks as legitimate compensation for something, whether it be for labor, materials or companionship.

The 33-page police report, Information, Affidavit of Probable Cause Determination and the Determination of Probable Cause for Detention fail to provide a factual basis to conclude Osborne intended to steal from Trubnikov. These materials simply show Osborne cashed five checks over eight days that were drawn on the Pacific Granite Inc. account without evidence of her intent at the time. Instead, the court had to engage in speculation and conjecture to make the finding. This was error because necessary findings cannot be based on speculation or conjecture. Vasquez, 178 Wn.2d at 16. This Court should therefore grant review, and

reverse and dismiss the theft charge with prejudice. State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998).

(b) The evidence is insufficient to convict Osborne of forgery

The prosecution charged Osborne with forgery in Count Two as follows:

On or about the 8<sup>th</sup> day of February, 2018, in the County of Whatcom, State of Washington, the above-named Defendant, with intent to injure or defraud, did falsely make, complete or alter a written instrument, and/or did possess utter, offer, dispose of, or put off as a true written instrument which she knew to be forged, said instrument being check number 6260; contrary to Revised Code of Washington 9A.60.020(1), which violation is a class C felony.

CP 2. The charging language for the forgery charges under counts Three through Six were identical except for the listed dates and check numbers.

Id.

(1) A person is guilty of forgery if, with intent to injure or defraud:

(a) He or she falsely makes, completes, or alters a written instrument or;

(b) He or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged.

RCW 9A.60.020 (emphasis added). In other words, to be convicted of forgery, the accused must both know the document is forged and have the same “intent to steal” required to be convicted of theft. See WPIC 130.03

(Pattern to-convict instruction for forgery sets for element “2” requiring knowledge the document is forged and element “3” requires finding an “intent to injure or defraud”).

Mere possession of a forged instrument is not sufficient to establish an intent to injure or defraud, and unexplained possession is not circumstantial evidence which alone is sufficient to support a conviction. Vasquez, 178 Wn.2d at 7. Rather, there must be some affirmative evidence the accused knew the document was forged. Id. at 8.

In Vasquez, Vianney Vasquez was detained by a store security guard for allegedly shoplifting some lotion. In a search incident to his detention, the security guard found a fake Social Security card and a fake permanent residence card. 178 Wn.2d at 4. Vasquez admitted purchasing the cards from a friend for \$50 each. Vasquez was arrested and charged with two counts of forgery. Id. at 5.

At trial, the prosecution presented evidence Vasquez had never been issued a Social Security card, there was no record of him being issued a permanent residence card, and the permanent residence card he did have did not have the security features present in authentic cards. Id.

A jury convicted Vasquez as charged. Id. at 6. His convictions were affirmed by the Court of Appeals, which reasoned there was enough evidence to infer Vasquez possessed the cards with intent to injure or

defraud, on the basis of “[w]hy else would Mr. Vasquez have them.” Id. at 6 (citing State v. Vasquez, 166 Wn. App. 50, 53, 269 P.3d 370 (2012)).

This Court reversed, noting “[t]he Court of Appeals applied the incorrect standard of review when it stated that “the evidence of intent to defraud [was] substantial when [it] consider[ed] the reasonable inferences available to the jury.” Id. at 7. The Court noted that under the Court of Appeals’ reasoning, the prosecution was unfairly relieved of its burden to prove every element of forgery beyond a reasonable doubt. Id. The Court went on to reason:

As various cases make clear, possession alone does not support an inference of intent. Second, although Vasquez might have acknowledged ownership of the forged cards, the evidence is equivocal as to whether Vasquez intended to defraud Englund by convincing him that the cards were genuine. Equivocal evidence cannot form the basis of an inference of intent to injure or defraud.

Id.

Osborne’s case is like Vasquez. Like the Court of Appeals in Vasquez, the trial court here unfairly relieved the prosecution of its burden to prove every element of forgery when it unreasonably inferred she had the intent to defraud Trubnikov and knew the checks were forged based on a lack of evidence to the contrary. See CP 92; Appendix B (Finding of Fact 10).

In this regard, the trial court's finding that Trubnikov "told police he did not give the checks to Ms. Osborne and that he did not know her" is not supported by the stipulated trial record. CP 91 (Finding of Fact 8). A close read of the stipulated trial record fails to provide any support for these findings, and therefore should be disregarded by this Court.

Similarly, in its Finding of Fact "10" the trial court concluded:

given that there is no evidence Ms. Osborne knew Mr. Trubnikov and came into the WECU to cash the checks in her own name, the Court finds that there is evidence to overcome any reasonable doubt that Ms. Osborne intended to defraud Mr. Trubnikov and knew each of the checks was forged.

CP 92. This is akin to the Court of Appeals reasoning in Vasquez. It essentially asks, 'why else would Osborne have cashed forged checks if not to steal from Trubnikov?' Such reasoning improperly shifted the burden to Osborne to prove she did not know the checks were forged and did not intend to steal from Trubnikov. This is error under Vasquez, and the Court of Appeals therefore should have also reversed and dismiss the forgery charges with prejudice. Hickman, 135 Wn.2d at 103. It's failure to do so conflicts with this Court's decision in Vasquez, and therefore review is warranted under RAP 13.4(b)(1)



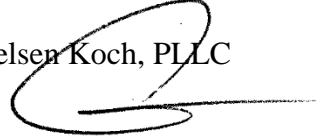
G. CONCLUSION

For the reasons stated, this Court should grant review.

DATED this 6<sup>th</sup> day of April 2021.

Respectfully submitted,

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## Appendix A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

v.

CANDACE MAE OSBORNE,

Appellant.

No. 80687-4-I

DIVISION ONE

UNPUBLISHED OPINION

SMITH, J. — Over an eight-day period, Candace Mae Osborne cashed five of Paul Trubnikov’s business checks, totaling over \$4,700. Osborne contended that she did not know the checks belonged to Trubnikov but that she believed the checks belonged to her boyfriend. Following a stipulated bench trial, the court found Osborne guilty of one count of second degree theft and five counts of forgery.

On appeal, Osborne contends that the evidence was insufficient for the court to find that she had the intent to deprive Trubnikov of his property or to defraud him, which the State was required to prove. Because the stipulated evidence, direct and circumstantial, provides for reasonable inferences that support the trial court’s findings and conclusions, we disagree. Accordingly, we affirm Osborne’s convictions.

FACTS

Trubnikov ordered checks for his business, Pacific Granite Inc., to be delivered through the mail to his home in Ferndale, Washington. However,

Trubnikov never received the checks.

Between February 8 and February 16, 2018, Osborne cashed five of the missing checks at Whatcom Educational Credit Union (WECU): February 8 for \$850.00; February 9 for \$920.00; February 13 for \$986.22; February 14 for \$984.54; and February 16 for \$983.54. WECU provided photographs of the individual who deposited or cashed the checks, and the woman in the photographs appeared to be the same woman in Osborne's driver's license photograph. The total amount of attempted fraud was \$4,724.30. The checks show various signatures, with the last check more clearly signed "Paul."

Around February 18, 2018, Trubnikov's wife was notified that Clinton Berry had cashed one of the missing checks in another jurisdiction, while carrying additional missing checks. Skagit County Sheriff's Department apprehended Berry, who was identified as Osborne's boyfriend, and Osborne. Deputy Steven Gonzales found checks on Osborne as well.

On February 22, 2018, Trubnikov reported to the Ferndale Police Department that his blank checks had been stolen from his residence mailbox. Trubnikov signed an affidavit of forgery for each cashed check, acknowledging that the checks were paid to Osborne. He stated that his signature was "subscribed/altered" by someone other than himself without his knowledge or permission. Police Officer Frank Spane investigated the fraud and confirmed with WECU that Osborne cashed four of Trubnikov's checks at the credit union's Ferndale branch and one check at the Birchwood branch in Bellingham. At the time, Skagit County Sheriff Deputy Gonzales notified Ferndale Police

Department that he was charging Berry with possession of stolen property in the second degree.

On March 9, 2018, the State charged Osborne with five counts of forgery and one count of theft in the second degree.

On May 8, 2019, Osborne submitted a drug court petition, wherein she agreed to complete treatment evaluation and the evaluation's recommended substance abuse treatment program. She waived her right to a jury trial and stipulated that, if she was terminated from drug court,

the law enforcement/investigative agency reports or declarations, witness statements, field test results, lab test results, or other expert testing or examinations such as fingerprint or handwriting comparisons, are admissible in the trial to the court and may be considered by the court in its determination of defendant's guilt in regards to each and every element of the charged offense(s).

The court granted Osborne's petition for drug court.

On May 23, 2019, Osborne was sanctioned for violation of the terms and conditions of drug court and committed to the Whatcom County Jail. On September 12, 2019, the court terminated Osborne from drug court due to noncompliance.

At the stipulated bench trial, the court concluded "beyond a reasonable doubt that Ms. Osborne knew that those were not checks that were written to her, and chose to deposit them knowing that they were not -- that those checks were not checks that Mr. Trubnikov or anyone else had provided to her for any reason."

Following the bench trial, the court entered, among other findings, the following findings of fact:

6. Ms. Osborne argued that she did not know the checks were forged and argued that her boyfriend at the time, Clinton Berry, had given the checks to her and she did not have any way to know that the checks were fraudulent.
7. When Mr. Berry was contacted by the police in Skagit County, he was found to be in possession of some of the checks stolen from Mr. Trubnikov. He was with Ms. Osborne.
8. Mr. Trubnikov told police he did not give the checks to Ms. Osborne and that he did not know her. He also told police that the checks were stolen from his mailbox.

....

10. Ms. Paige argued on behalf of Ms. Osborne that the State failed to prove that Ms. Osborne knew the checks to be forged; however, given that there is no evidence Ms. Osborne knew Mr. Trubnikov and came into the WECU to cash the checks in her own name, the Court finds that there is evidence to overcome any reasonable doubt that Ms. Osborne intended to defraud Mr. Trubnikov and knew each of the checks to be forged.

The court found Osborne guilty as charged. Osborne appeals.

#### ANALYSIS

Osborne challenges her convictions, contending the State failed to present sufficient evidence to support the court's conclusion that she had the intent to defraud Trubnikov or deprive him of his property. Because the stipulated evidence, including circumstantial evidence, and reasonable inferences therefrom support her convictions, we disagree.

"To determine whether sufficient evidence supports a conviction, we view the evidence in the light most favorable to the State, and determine whether any rational fact finder could have found the elements of the crime beyond a reasonable doubt." State v. Stewart, 12 Wn. App. 2d 236, 239, 457 P.3d 1213 (2020). In challenging the sufficiency of the evidence, the defendant "admit[s] the truth of the State's evidence and all reasonable inferences that can be drawn

from it.” Stewart, 12 Wn. App. 2d at 240.

“[F]ollowing a bench trial, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law.” Stewart, 12 Wn. App. 2d at 240 (alteration in original) (quoting State v. Homan, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014)). “Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the finding’s truth.” Stewart, 12 Wn. App. 2d at 240. “We consider unchallenged findings of fact verities on appeal, and we review conclusions of law de novo.” Stewart, 12 Wn. App. 2d at 240.

As an initial matter, Osborne challenges findings of fact 8 and 10. In finding of fact 8, the court found that Trubnikov told police that he did not give the checks to Osborne, that he did not know her, and that the checks were stolen from his mailbox. The evidence supports the court’s finding. Specifically, Trubnikov told Office Spane that, despite ordering checks to be delivered to his mailbox, he never received them, and Trubnikov reported the checks stolen. Trubnikov also signed an affidavit of forgery, contending that the checks to Osborne were cashed without his permission. The court reasonably inferred from these facts that Trubnikov did not know Osborne, that he did not give her the checks, and that the checks were stolen from his mailbox. And Osborne presented no evidence to support a different conclusion. Therefore, we conclude that finding of fact 8 was supported by sufficient evidence to persuade a fair-minded, rational juror of its truth.

Finding of fact 10 is a mixed finding of fact and conclusion of law. There,

the court determined that “there is evidence to overcome any reasonable doubt that Ms. Osborne intended to defraud Mr. Trubnikov and knew each of the checks to be forged.” The last sentence states the court’s conclusion of law regarding the intent element of forgery charges, i.e., that the State presented evidence beyond a reasonable doubt that Osborne intended to defraud Trubnikov. But “[w]here a conclusion of law is erroneously labeled as a finding of fact, we review it de novo as a conclusion of law.” State v. Z.U.E., 178 Wn. App. 769, 779 n.2, 315 P.3d 1158 (2014), aff’d, 183 Wn.2d 610, 352 P.3d 796 (2015). Therefore, we review finding of fact 10 de novo, assessing whether the findings of fact support the conclusion that Osborne had the intent required to be convicted of theft in the second degree and forgery.

An individual is guilty of theft in the second degree, if they commit theft of “[p]roperty or services which exceed(s) seven hundred fifty dollars in value but does not exceed five thousand dollars in value.” RCW 9A.56.040(1)(a). And “[t]heft’ means: (a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive [them] of such property of services.” RCW 9A.56.020(1). Under RCW 9A.60.020, “[a] person is guilty of forgery if, with intent to injure or defraud: . . . [they] falsely make[ ], complete[ ], or alter[ ] a written instrument or; . . . [they] possess[ ], utter[ ], offer[ ], dispose[ ] of, or put[ ] off as true a written instrument which [they] know[ ] to be forged.” RCW 9A.60.020.

“When intent is an element of the crime, ‘intent to commit a crime may be inferred if the defendant’s conduct and surrounding facts and circumstances



plainly indicate such an intent as a matter of logical probability.” State v. Vasquez, 178 Wn.2d 1, 8, 309 P.3d 318 (2013) (quoting State v. Woods, 63 Wn. App. 588, 591, 821 P.2d 1235 (1991)). Although “[p]ossession alone is not sufficient to infer intent to injure or defraud in forgery cases, . . . possession together with ‘slight corroborating evidence’ might be.” Vasquez, 178 Wn.2d at 8 (quoting State v. Esquivel, 71 Wn. App. 868, 870, 863 P.2d 113 (1993)).

There was sufficient evidence, both direct and circumstantial, and reasonable inferences that could be drawn therefrom, for the court to conclude beyond a reasonable doubt that Osborne had the intent both to deprive Trubnikov of his property, as required by RCW 9A.56.020(1)(a), and to defraud him, as required by RCW 9A.60.020. The checks clearly state that they belong to Pacific Granite, which supports the inference that Osborne knew the checks did not belong to Berry. Additionally, this fact and other evidence support the inference that she knew she was not authorized to deposit the checks. Specifically, there was no evidence that Osborne knew anyone at Pacific Granite, and Trubnikov did not know her and did not sign the deposited checks. No one from Pacific Granite wrote the checks to her, and she had rendered no service to Pacific Granite that required payment. Thus, the reasonable inference is that she knew she was using the property without permission and that she used the checks as if they were a true written instrument, despite knowing that neither she nor Berry had authority to sign the checks. These reasonable inferences, taken from the stipulated evidence of Osborne’s conduct and the surrounding facts and circumstances, plainly indicate, as a matter of logical probability, that Osborne

had the intent to defraud Trubnikov and the intent to deprive him of his property. Therefore, we conclude that the trial court did not err when it concluded that the State presented evidence sufficient to prove beyond a reasonable doubt that Osborne had the requisite intent for each crime.<sup>1</sup>

Osborne relies extensively on Vasquez for its proposition that intent may not be inferred based on “naked possession.” See 178 Wn.2d at 8. In Vasquez, the State charged Vianney Vasquez with forgery after he was found in possession of forged social security cards. 178 Wn.2d at 4. After trial, a jury found Vasquez guilty, and on appeal, the court concluded that the State provided sufficient evidence of Vasquez’s intent because “[w]hy else would Mr. Vasquez have” the forged cards. Vasquez, 178 Wn.2d at 6; State v. Vasquez, 166 Wn. App. 50, 53, 269 P.3d 370 (2012), rev’d, 178 Wn.2d 1. Our Supreme Court concluded that the evidence, including Vasquez’s interaction with a security guard following a shoplifting incident, was insufficient to find that Vasquez had the requisite intent because the court cannot “draw inferences of intent based on mere possession.” Vasquez, 178 Wn.2d at 8, 15-16. The court reversed the Court of Appeal’s decision and vacated Vasquez’s conviction. Vasquez, 178 Wn.2d at 18. Here, Osborne not only possessed the checks but cashed them, receiving the payment therefrom and using the money without the knowledge or permission of Pacific Granite or Trubnikov. Accordingly, Osborne’s assertion that

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<sup>1</sup> Because we conclude that there was sufficient evidence for the court to find that Osborne had the requisite intent to defraud Trubnikov and to deprive him of his property, we do not address Osborne’s contention that the trial court erred in concluding that she had conceded to the second degree theft charge.

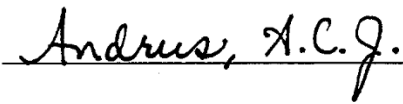
No. 80687-4-1/9

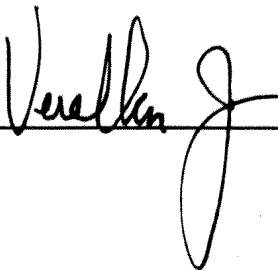
Vasquez controls the outcome here is not persuasive.

We affirm.

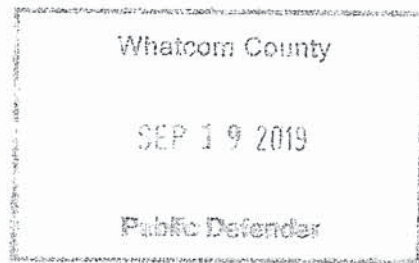
 \_\_\_\_\_

WE CONCUR:

 \_\_\_\_\_

 \_\_\_\_\_

## Appendix B



CANDACE OSBORNE

18-1-00332-37

STIPULATED BENCH TRIAL  
SEPTEMBER 19, 2019 @ 2:30

Ferndale Police Department  
CASE SUMMARY / PROBABLE CAUSE

Page 1 of 1

Offense /Event description	Date	Event Number		
Forgery - 5 counts Theft in the Second Degree	02/26/2018	18F1664		
Court	<input type="checkbox"/> District	<input checked="" type="checkbox"/> Superior	<input type="checkbox"/> Juvenile	<input type="checkbox"/> Municipal
Suspect admitted offense	Crime Partner admitted offense	Crime partner admitted and named suspect as participant		
Injuries received by victim				
Medical attention required	at scene	Location	Date and time of arrest	

Arrestee: CANDACE M. OSBORNE 11/09/1998  
4756 S Golf Course Dr.  
Blaine, WA. 98230

Victim: Paul Trubnikov  
2149 Robyn Dr.  
Ferndale, WA. 98248

Victim: Peoples Bank - Ferndale, WA.

Victim: (WECU)Whatcom Educational CU  
Ferndale, WA./Bellingham, WA.

This incident occurred within Whatcom County, WA.

On February 22, 2018 at about 1251 hrs. (V)-PAUL TRUBNIKOV reported to the Ferndale Police Department that his blank checks from (V)-PEOPLES BANK were stolen from his residence mail box after he ordered them a few weeks prior. (V)-TRUBNIKOV stated that 5 of the checks were cashed at (V)-WECU by (A)-CANDACE OSBORNE. (V)-TRUBNIKOV signed an Affidavit of Forgery for the cashed checks totaling \$4724.30 and he provided copies of the cashed checks made payable to (A)OSBORNE.

Officer Spane confirmed from (V)-WECU Fraud Department EVAN CHAPIN 4 of these checks were cashed by (A)-OSBORNE at the Ferndale Branch and 1 of the checks were cashed at the Birchwood Branch in Bellingham.

Skagit County Sheriff Deputy Gonzalez notified Ferndale Police Department Sergeant John Vanderyacht that he was charging (A)OSBORNE'S boyfriend CLINTON BERRY for PSP 2<sup>nd</sup> Degree after being found to be in possession of some of the stolen checks from (V)TRUBNIKOV. Deputy Gonzalez also advised that on the day CLINTON BERRY was contacted he was with (A)OSBORNE.

Probable Cause exists for the arrest of (A) CANDACE OSBORNE for 5 counts of RCW 9A.60.020 Forgery and RCW 9A.56.040 Theft in the Second Degree.

  
Officer Frank Spane 4F109



City of Ferndale Police Department

Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

18F01664 THEFT

HEADER

Primary

Author: SPANE, FRANK

Appvd:  
2F113

Location: 2149 ROBYN DR Apt Unit No:

Incident Date: Feb 22, 2018 12:51 PM

Date Reported: Feb 22, 2018 12:51 PM

Case Offenses:

9A.56.040 - Theft in the 2nd degree

9A.60.020 - Forgery

Press Summary:

Theft.



City of Ferndale Police Department

Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

18F01664 THEFT

ASSOCIATES

Primary Author: SPANE, FRANK Rpt Date: Feb 22, 2018 12:51 PM Appvd: 2F113

S1 OSBORNE, CANDACE M DOB: Nov 09, 1998 Age: 19 Sex: F Race: W Ht: 602 Wt: 125  
Drivers: OSBORCM023QZ Lic. St: WA Eyes: HAZ Hair: Blond  
Res Address: 3580 HAYNIE RD, CUSTER, WA 98230  
Bus Address: , WA  
Res Phone: Bus Phone:  
Cell Phone: Ethnicity: Not Of Hispanic Origin  
Arrest Type: Armed with:

S2 BERRY, CLINTON EUGENE DOB: Mar 15, 1987 Age: 30 Sex: M Race: W Ht: 510 Wt: 175  
Drivers: BERRYCE130DN Lic. St: WA Eyes: BLU Hair: Brown  
Res Address: 2419 ALABAMA ST, BELLINGHAM, WA 98226  
Bus Address: , WA  
Res Phone: (360) 220-8931 Bus Phone:  
Cell Phone: Ethnicity: Not Of Hispanic Origin  
Arrest Type: Armed with:

V1 TRUBNIKOV, PAVEL DOB: Oct 29, 1970 Age: 47 Sex: M Race: W Ht: 0 Wt:  
Drivers: TRUBNP\*303P9 Lic. St: WA Eyes: HAZ Hair:  
Res Address: 2149 ROBYN DR, FERNDAL, WA 98248  
Bus Address:  
Res Phone: (360) 312-1221 Bus Phone:  
Cell Phone: Ethnicity: Not Of Hispanic Origin  
Arrest Type: Armed with:

V2 PEOPLES BANK, 1895 MAIN ST DOB: Age: Sex: Race: Ht: 0 Wt:  
Drivers: Lic. St: Eyes: Hair:  
Res Address: 1895 MAIN ST POB 3108, FERNDAL, WA 98248  
Bus Address: 1895 MAIN ST / PO BOX 3108, FERNDAL, WA 98248  
Res Phone: (360) 380-1014 Bus Phone: (360) 380-1014  
Cell Phone: Ethnicity:  
Arrest Type: Armed with:

V3 WHATCOM EDUCATIONAL CREDIT UNION, 5659 BARRETT RD DOB: Age: Sex: Race: Ht: Wt:  
Drivers: Lic. St: Eyes: Hair:  
Res Address:  
Bus Address:  
Res Phone: Bus Phone: (360) 384-4679  
Cell Phone: Ethnicity:





**City of Ferndale Police Department**  
*Longarm Case Report*

*Investigator:*  
**KENNERLEY,  
CARL**

*Arrest Type:*

*Armed with:*

---



City of Ferndale Police Department

Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

18F01664 THEFT

NARRATIVE

Primary

Author: SPANE, FRANK

Rpt Date: Feb 22, 2018 12:51 PM

Appvd:  
2F113

On February 22, 2018 at about 1251 hrs. I was dispatched to the station regarding a theft of checks.

Upon arrival, I contacted PAVEL TRUBNIKOV (V1). He said that a couple of weeks ago he was expecting an order of new blank checks from PEOPLES BANK (R1) being mailed to his house, but he never received the checks.

PAVEL TRUBNIKOV (V1) said that about 4 days ago his wife was contacted by a Police Officer from Ferndale Police Department advising that Officer or Deputy Garcia in Mount Vernon relayed that a CLINTON BERRY (S2) cashed a check in their jurisdiction. PAVEL TRUBNIKOV (V1) didn't know which agency Officer Garcia was with. PAVEL TRUBNIKOV (V1) said that he thinks that CLINTON BERRY (S2) was in jail now possibly related to cashing his check.

PAVEL TRUBNIKOV (V1) signed an Affidavit of Forgery at PEOPLES BANK (R1) with copies of 5 checks listed and attached. All of these checks were cashed at WECU and made payable to a CANDACE OSBORNE (S1). The account number listed on the check associated with CANDACE OSBORNE (S1) was 350029.

02/08/2018 - Check number 6260 for \$850.00  
02/09/2018 - Check number 6263 for \$920.00  
02/13/2018 - Check number 6352 for \$986.22  
02/14/2018 - Check number 6291 for \$984.54  
02/16/2016 - Check number 6312 for \$983.54

I'm waiting on further information from WHATCOM EDUCATIONAL CREDIT UNION (R1) to determine which branch these checks were cashed at.

Enclosure:

Affidavit of Forgery and copies of 5 checks.



City of Ferndale Police Department  
 Longarm Case Report

Investigator:  
 KENNERLEY,  
 CARL

18F01664 THEFT

PROPERTY

Primary Author: SPANE, FRANK Rpt Date: Feb 22, 2018 12:51 PM Appvd: 2F113

**Stolen** Article: Negotiable Instruments (Checks/Documents of Value)  
 Description: CHECKS  
 Serial #: 507700369 1st Color: Recovered:  
 Impounded:  
 Brand: BANK Notified:  
 Model: PEOPLES BANK Value: \$15.00 Owner: TRUBNIKOV, PAVEL

Features:

**Counterfeited/Forged** Article: Negotiable Instruments (Checks/Documents of Value)  
 Description: CHECKS  
 Serial #: 1st Color: Recovered:  
 Impounded:  
 Brand: US Notified:  
 Model: CURRENCY Value: \$4,724.30 Owner: TRUBNIKOV, PAVEL

Features:

6



City of Ferndale Police Department  
Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

18F01664 THEFT

HEADER

Follow-Up

Author: SPANE, FRANK

Appvd:  
2F113

Location: 2149 ROBYN DR Apt Unit No:

Incident Date: Feb 22, 2018 12:51 PM

Date Reported: Feb 22, 2018 4:30 PM

Case Offenses:

9A.56.040 - Theft in the 2nd degree

9A.60.020 - Forgery



City of Ferndale Police Department  
Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

18F01664 THEFT

NARRATIVE

Follow-Up

Author: SPANE, FRANK

Rpt Date: Feb 22, 2018 4:30 PM

Appvd:  
2F113

I received a phone call from Evan CHAPIN of WHATCOM EDUCATIONAL CREDIT UNION (R1). He advised that 4 of the checks were cashed at the Ferndale Branch of WHATCOM EDUCATIONAL CREDIT UNION (R1) and one was at the Birchwood Branch.

The check that was cashed at the Birchwood Branch was for \$920.00, check number 6263.

Evan CHAPIN advised that they will get us surveillance video.

Since I will be on my days off and there are several jurisdictions, please forward to Detective Pike for review.



City of Ferndale Police Department  
Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

18F01664 THEFT

HEADER

Follow-Up

Author: SPANE, FRANK

Appvd:  
2F117

Location: 2149 ROBYN DR Apt Unit No:

Incident Date: Feb 22, 2018 12:51 PM

Date Reported: Feb 23, 2018 11:38 AM

Case Offenses:

9A.56.040 - Theft in the 2nd degree

9A.60.020 - Forgery



City of Ferndale Police Department

Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

18F01664 THEFT

ASSOCIATES

Follow-Up

Author: SPANE, FRANK

Rpt Date: Feb 23, 2018 11:38 AM

Appvd:  
2F117

R1 REILLY, SHAWN THOMAS      DOB: Aug 06, 1972    Age: 45    Sex:    Race: W    Ht: 608    Wt:250  
M

Drivers: REILLST281NF

Lic. St: WA

Eyes: BRO

Hair: Brown

Res Address: 1815 MAIN ST , FERNDAL, WA 98248

Bus Address: , WA

Res Phone: (360) 510-8148

Bus Phone:

Cell Phone:

Ethnicity: Not Of Hispanic Origin

Arrest Type:

Armed with:



City of Ferndale Police Department

Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

18F01664 THEFT

NARRATIVE

Follow-Up

Author: SPANE, FRANK

Rpt Date: Feb 23, 2018 11:38 AM

Appvd:  
2F117

On February 22, 2018 I received an email from WHATCOM EDUCATIONAL CREDIT UNION (V3) Fraud Specialist Evan CHAPIN with 5 photographs showing the suspect CANDACE OSBORNE (S1) at the time of all the Forgeries at WHATCOM EDUCATIONAL CREDIT UNION (V3). I added the surveillance photographs to this report and I added a Washington State Drivers License photograph for comparison. Evan CHAPIN also listed the checks and where they were cashed, along with the Tellers names for each transactions. I added the email to this report.

On February 23, 2016 I was advised via email by Sgt. Vanderyacht that he emailed Skagit County Sheriff Deputy Gonzalez advising him that the checks that were in CLINTON BERRY'S (S2) possession have been reported stolen. Deputy Gonzalez responded with an email advising that he adding an additional charge against CLINTON BERRY (S2) for PSP 2nd for the stolen checks in this case. Deputy Gonzalez also stated in his email that on the day CLINTON BERRY (S2) was contacted, his girlfriend CANDACE OSBORNE (S1) was with him.

I completed a Probable Cause Statement for CANDACE OSBORNE (S1) on the charges of Forgery and Theft in the Second Degree both of these charges occurred within Whatcom County Washington.

Forward to the Whatcom County Prosecutors Office and a copy of this report to Deputy Gonzalez at the Skagit County Sheriff's Department.

Enclosure:

Emails from Sgt. Vanderyaght

Drivers License Photograph of CANDACE OSBORNE (S1) were entered into this report.  
5 surveillance photographs of CANDACE OSBORNE (S1) were entered into this report.





City of Ferndale Police Department  
Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

18F01664 THEFT

PROPERTY

---

Follow-Up Author: SPANE, FRANK Rpt Date: Feb 23, 2018 11:38 AM Appvd:  
2F117

---

Found / Seized Article: Recordings-Audio Visual (Records/DVD/Tapes)  
Description: DVD  
Serial #: 1st Color: Recovered:  
Brand: DVD - VERBATIM Impounded: Feb 27 2018 10:10 AM  
Model: SURVEILLANCE Value: Notified:  
Location: 360 Owner:  
Features:

---



City of Ferndale Police Department  
Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

18F01664 THEFT

HEADER

Photo Log

Author: SPANE, FRANK

Appvd:  
2F117

Location: 2149 ROBYN DR Apt Unit No:

Incident Date: Feb 22, 2018 12:51 PM

Date Reported: Feb 26, 2018 10:00 AM

Case Offenses:

9A.56.040 - Theft in the 2nd degree

9A.60.020 - Forgery



City of Ferndale Police Department

Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

18F01664 THEFT

NARRATIVE

Photo Log

Author: SPANE, FRANK

Rpt Date: Feb 26, 2018 10:00 AM

Appvd:  
2F117

Photo Log;

- 1). Drivers License Photo of CANDACE OSBORNE (S1).
- 2). Surveillance Photo from 02/08/2018 at the Ferndale Branch of WHATCOM EDUCATIONAL CREDIT UNION (V3)
- 3). Surveillance Photo from 02/09/2018 at the Bellingham Birchwood Branch of WHATCOM EDUCATIONAL CREDIT UNION (V3)
- 4). Surveillance Photo from 02/13/2018 at the Ferndale Branch of WHATCOM EDUCATIONAL CREDIT UNION (V3)
- 5). Surveillance Photo from 02/14/2018 at the Ferndale Branch of WHATCOM EDUCATIONAL CREDIT UNION (V3)
- 6). Surveillance Photo from 02/16/2018 at the Ferndale Branch of WHATCOM EDUCATIONAL CREDIT UNION (V3)



City of Ferndale Police Department  
Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

18F01664 THEFT

HEADER

Follow-Up

Author: SPANE, FRANK

Appvd:  
2F117

Location: 2149 ROBYN DR Apt Unit No:

Incident Date: Feb 22, 2018 12:51 PM

Date Reported: Feb 27, 2018 11:20 AM

Case Offenses:

9A.56.040 - Theft in the 2nd degree

9A.60.020 - Forgery



City of Ferndale Police Department

Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

18F01664 THEFT

NARRATIVE

Follow-Up

Author: SPANE, FRANK

Rpt Date: Feb 27, 2018 11:20 AM

Appvd:  
2F117

On February 26, 2017 a DVD of the WHATCOM EDUCATIONAL CREDIT UNION (V3) surveillance for all of the transactions with CANDACE OSBORNE (S1) was dropped off at the station. Records Supervisor Ronaye Tylor placed it in my in box. On February 27, 2018 at about 1010 hrs. I placed the DVD into evidence. A business card from WHATCOM EDUCATIONAL CREDIT UNION (V3) Security Specialist SHAWN REILLY was left with the DVD.

On February 27, 2018 at about 1120 hrs., EVAN CHAPIN sent me an email explaining the estimated losses for WHATCOM EDUCATIONAL CREDIT UNION (V3) and PEOPLES BANK (V2). I included the email with this report.

WHATCOM EDUCATIONAL CREDIT UNION (V3) losses - \$1133.57  
PEOPLES BANK (V2) losses - \$2756.22

This is a copy of the portion of EVAN CHAPIN'S email that show the losses:  
Yes. We received return check notices for the \$984.54 check and \$983.54 check. We were able to offset part of the total loss with funds that were already in the account from other deposits totaling \$834.51. This brought the total loss of the first check down to \$150.03. Adding the \$983.54 check to that, we had a total loss of \$1133.57. The remaining checks would be considered a loss for People's because they did not advise us of the return in the requisite time. The total balance of those checks is \$2756.22, which I imagine is People's Banks loss amount unless they managed to mitigate the loss another way. The total amount of attempted fraud is \$4724.30. After we took the \$834.51 from her account to put towards our loss amount, I believe the total loss for both us and People's would be approximately \$3889.79. Please let me know if you have any questions.

Forward to WCPA.

Enclosure:

Copy of email from WHATCOM EDUCATIONAL CREDIT UNION (V3) EVAN CHAPIN.



City of Ferndale Police Department

CAD Report

Entered: Feb 22, 2018 12:52:00PM
Dispatched: Feb 22, 2018 01:01:00PM
Enroute: Feb 22, 2018 01:01:00PM
On Scene: Feb 22, 2018 01:05:00PM
Closed: Feb 22, 2018 02:49:00PM

Incident Op ID: WC911
Dispatch Op ID: WC974

Initial Type: THEFT2
Disposition: R
Police Block: FP0200

Final Type:
Officer: FP109

Location: 2220 MAIN ST

Name: PAUL TRUBNIKOV
Address:
Phone: 360-319-8787

Table with 5 columns: Time, Operator, Type, Unit, Text. Contains incident log entries from 12:52:57PM to 02:48:57PM.

BF 1664

Frank Spane

---

**From:** Evan <Evan@wecu.com>  
**Sent:** Thursday, February 22, 2018 4:58 PM  
**To:** Frank Spane  
**Subject:** WECU  
**Attachments:** 2-8-18 Ferndale Candace Osborne 350029.jpg; 2-9-18 Birchwood Candace Osborne 350029.jpg; 2-13-18 Ferndale Candace Osborne 350029.jpg; 2-14-18 Ferndale Candace Osborne 350029.jpg; 2-16-18 Ferndale Candace Osborne 350029.jpg

Hello Officer,

Here is what I have so far. The deposits occurred with the following tellers on these days.

2/16/18--- Ferndale Ty Pearson--- \$983.54 -1:50:31  
2/14/18--- Ferndale Ty Pearson--- \$984.54 -3:21:18  
2/13/18--- Ferndale Ty Pearson--- \$986.22 -9:57:48  
2/9/18--- Birchwood Raquel Macmillan--- \$920.00 -4:36:25  
2/8/18--- Ferndale Darla Valich--- \$850.00 -2:40:53

Total fraud amount: \$4724.30

Potential loss for WECU: \$150.03 currently. We will know on Monday if amount becomes \$1133.57. The remainder are outside of the window to dispute.

I've also attached stills from each of the check deposits. We will have more sent to you once footage has been pulled.

Please let me know if you need anything else.

Thank you,

Evan  
Fraud Specialist  
Whatcom Educational Credit Union  
(360)676-1168 EXT: 7951

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us immediately at (800) 525-8703 and ask to speak to the sender of this communication. Also, please notify the sender immediately via e-mail that you have received the communication in error.

18F 1664

**Frank Spane**

---

**From:** John VanderYacht  
**Sent:** Sunday, February 25, 2018 9:22 AM  
**To:** Frank Spane  
**Subject:** FW: Clinton Berry: 18F1664

For your information

**From:** Steven R. Gonzales [mailto:steveng@co.skagit.wa.us]  
**Sent:** Saturday, February 24, 2018 5:33 PM  
**To:** John VanderYacht <jvanderyacht@ferndalepd.org>  
**Subject:** RE: Clinton Berry: 18F1664

Hello,

Good info, I added this additional information to the case. I referred the additional charge of PSP 2<sup>nd</sup> against Berry.

Clinton Berry is still confined in our Jail. The day he was contacted he was hanging out with his girlfriend Candace Osborne and friend Jeremy Coulam.

Thanks Deputy Gonzales U49  
Skagit County Sheriff's Office  
Office 360- 416-1911  
Fax 360-416-1924  
18-02241

**From:** John VanderYacht [mailto:jvanderyacht@ferndalepd.org]  
**Sent:** Friday, February 23, 2018 11:34 AM  
**To:** Steven R. Gonzales  
**Subject:** Clinton Berry: 18F1664

Dep Gonzalez,

The checks in the possession of Clinton Berry when you arrested him have been reported stolen. The case number for that theft is 18F1664. Once that case is complete I will have a copy of it faxed to you for your information. Several checks were fraudulently cashed here as well so we just need to complete the follow up on that. I apologize for the delay in getting back to you regarding this matter. Please let me know if there is anything I can do to be of assistance to your case.

Thank you,

John



13  
18F 566 1664

Peoples Bank

**Affidavit of Forged / Unauthorized Instrument or Altered Item**

STATE OF Washington )  
 ) SS:  
COUNTY OF Whatcom )

I, Pavel Trubnikov, being first duly sworn, depose and say:

THAT I reside at: 2149 Robyn Dr Ferndale, WA 98248	County of: Whatcom
	State of: Washington

THAT my signature/endorsement was subscribed to an item(s) described as follows:

Check #	Date	Payee	Amount	Drawee Bank
6260	02/08/2018	Candace Osborne	\$850.00	Peoples Bank
6263	02/09/2018	Candace Osborne	\$920.00	Peoples Bank
6352	02/13/2018	Candace Osborne	\$986.22	Peoples Bank
6291	02/14/2018	Candace Osborne	\$984.54	Peoples Bank
6312	02/16/2018	Candace Osborne	\$983.54	Peoples Bank

THAT my signature/endorsement was subscribed/altered by someone other than myself without my knowledge or permission. I have not received, nor do I intend to receive any benefit from the unauthorized use of my signature/endorsement:

THAT I do hereby authorize Peoples Bank to proceed in whatever course they deem necessary in the resolution of this matter, and if necessary I will testify in their behalf in the prosecution of those person or persons whosoever, as a result of this action:

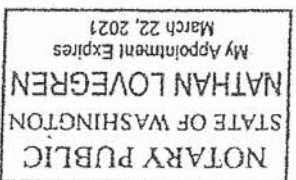
THAT I hereby affirm that all statements given to Peoples Bank herein or in connection with the Bank's investigation of this matter, are true and factual, to the best of my knowledge.

I HAVE READ AND UNDERSTAND THE FOREGOING, AND I AFFIX MY SIGNATURE HERETO FREELY AND OF MY OWN WILL AND CHOOSING:

Pavel Trubnikov  
Signature

Subscribed and sworn to before me, a notary public, this 22 day of February 2018.

**Peoples Bank**  
*A higher level of service.*



[Signature]  
Notary Public in and for the  
State of Washington  
Residing at Ferndale  
My commission expires March 22, 2021

18F 1664

PACIFIC GRANITE INC  
2148 ROBYN DR  
FERNDAL, WA 98248

6260  
98-492/1251  
107  
FD FRANKFORTH

Date 02-08-18

Pay to the Order of Candace Osborne \$ 850.00

Eight hundred Fifty Dollars 00 Dollars

Peoples Bank

Ferndale Office  
1-800-584-8859  
www.peoplesbank-wa.com

For Comp

*[Signature]*

⑆ 125104425⑆ 5077⑆ 003639⑆ 6260

Date:02/12/2018 Account:5077003639 Amount:\$850.00 Serial:6260 HostTranCode:481 TranCode:0 TR:125104425  
Sequence:8689875100 OnUs:Y CaptureSite:004 Run:0004 CaptureSequence:0000000000000000

350029

Deposit To The Credit Of  
Within Named Payee  
Absence Of  
Endorsement Guaranteed  
Whatcom Educational Credit Union

18F 1664

PACIFIC GRANITE INC  
2140 ROBYN DR  
FERNDALE, WA 98248

6263  
98-442/1261  
107

02-09-18 Date

Pay to the Order of Candace Osborne \$ 920.00  
 Nine hundred twenty Dollars / 00 Dollars

Peoples Bank  
 Ferndale Office  
 1-800-584-8859  
 www.peoplesbank-wa.com

For Camp

125404425150770003639\* 6263

Date:02/13/2018 Account:5077003639 Amount:\$920.00 Serial:6263 HostTranCode:481 TranCode:0 TR:125104425  
 Sequence:3915016450 OnUs:Y CaptureSite:004 Run:0003 CaptureSequence:0000000000000000

35002958

Deposit To The Credit Of  
 Within Named Payee  
 Absence Of  
 Endorsement Guaranteed  
 Whatcom Educational Credit Union

350029

18F 1664

**PACIFIC GRANITE INC**  
2149 ROBYN DR  
FERNDALE, WA 98248

6352  
98-442/1251  
107  
FRALDARDOR+

02-13-18 Date

Pay to the Order of Candace Osborne \$ 986.22

Nine hundred eighty six dollars  $\frac{22}{100}$  Dollars

**Peoples Bank**  
Ferndale Office  
1-800-584-8859  
www.peoplesbank-wa.com

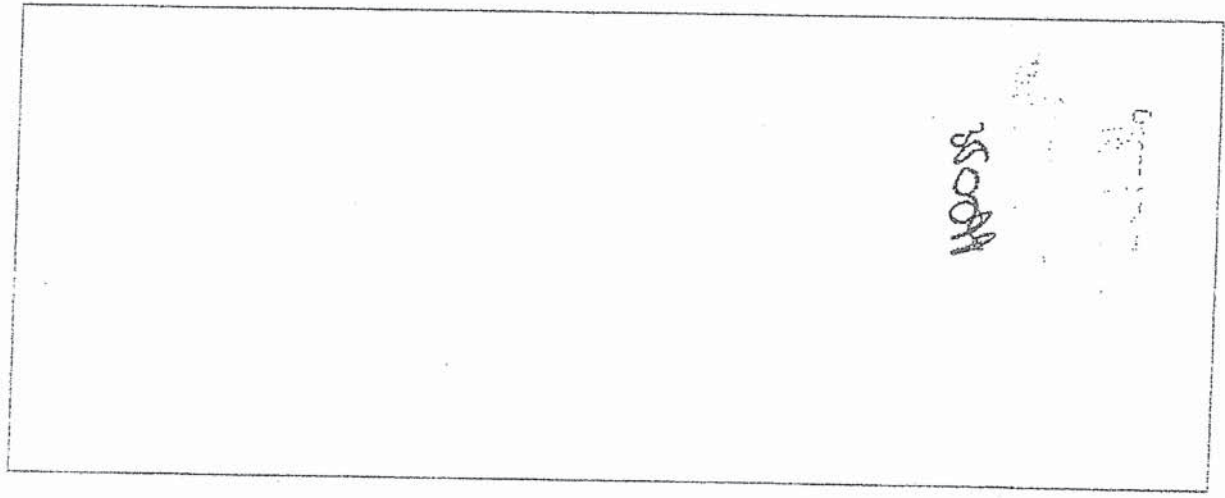
For \_\_\_\_\_

*[Signature]*

⑆ 225104425⑆ 5077⑆ 003639⑆ 6352

REGALD

Date:02/15/2018 Account:5077003639 Amount:\$986.22 Serial:6352 HostTranCode:481 TranCode:0 TR:125104425  
Sequence:8693532650 OnUs:Y CaptureSite:004 Run:0002 CaptureSequence:0000000000000000



18008

187/664

**PACIFIC GRANITE INC**  
2149 ROBYN DR  
FERNDALE, WA 98248

6291  
BR-442/1251  
107  
FRALGARDNY

02-14-18 Date

Pay to the Order of Candace Osborne \$ 984.54

Nine hundred eighty four dollars /54 Dollars

Peoples Bank

Ferndale Office  
1-800-534-8859  
www.peoplesbank-wa.com

For [Signature]

⑆ 125604425⑆ 5077⑆ 003639⑆ 6291

Date:02/20/2018 Account:5077003639 Amount:\$984.54 Serial:6291 HostTranCode:481 TranCode:0 TR:125104425  
Sequence:3917606040 OnUs:Y CaptureSite:004 Run:0010 CaptureSequence:0000000000000000

Deposit To The Credit Of  
Within Named Payee  
Absence Of  
Endorsement Guaranteed  
Whatcom Educational Credit Union  
1520

18F1664

PACIFIC GRANITE INC  
2149 ROBYN DR  
FERDALE, WA 98248

02-10-18 Date

6312  
98-442/1251  
107  
FRALCASH-POST

Pay to the Order of Candace Osborne \$ 983.54  
Nine hundred eighty three dollars 54/100 Dollars

Peoples Bank  
Ferndale Office  
1-800-584-8859  
www.peoplesbank-wa.com

For \_\_\_\_\_

⑆ 251044251⑆ 5077003639⑆ 6312

Signature: [Handwritten Signature]

Date:02/21/2018 Account:5077003639 Amount:\$983.54 Serial:6312 HostTranCode:481 TranCode:0 TR:125104425  
Sequence:8697368130 OnUs:Y CaptureSite:004 Run:0003 CaptureSequence:0000000000000000

Deposit To The Credit Of  
Within Named Payee  
Absence Of  
Endorsement Guaranteed  
Whatcom Educational Credit Union  
350000

18F1664

Frank Spane

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From: Evan <Evan@wecu.com>  
Sent: Tuesday, February 27, 2018 11:20 AM  
To: Frank Spane  
Subject: RE: WECU

Hello Officer Spane,

Yes. We received return check notices for the \$984.54 check and \$983.54 check. We were able to offset part of the total loss with funds that were already in the account from other deposits totaling \$834.51. This brought the total loss of the first check down to \$150.03. Adding the \$983.54 check to that, we had a total loss of \$1133.57. The remaining checks would be considered a loss for People's because they did not advise us of the return in the requisite time. The total balance of those checks is \$2756.22, which I imagine is People's Banks loss amount unless they managed to mitigate the loss another way. The total amount of attempted fraud is \$4724.30. After we took the \$834.51 from her account to put towards our loss amount, I believe the total loss for both us and People's would be approximately \$3889.79. Please let me know if you have any questions.

Thank you,

Evan  
Fraud Specialist  
Whatcom Educational Credit Union  
(360)676-1168 EXT: 7951

From: Frank Spane [mailto:fspane@ferndalepd.org]  
Sent: Monday, February 26, 2018 2:29 PM  
To: Evan <Evan@wecu.com>  
Subject: [External] RE: WECU

Ferndale Police Case # 18F1664.

Also, could you itemize in simple terms how you got the loss amount? I will add exact numbers to the report but I need to know how much money Candace walked away with, and how much WECU is out and how much Peoples Bank is out.

Thanks – Frank Spane

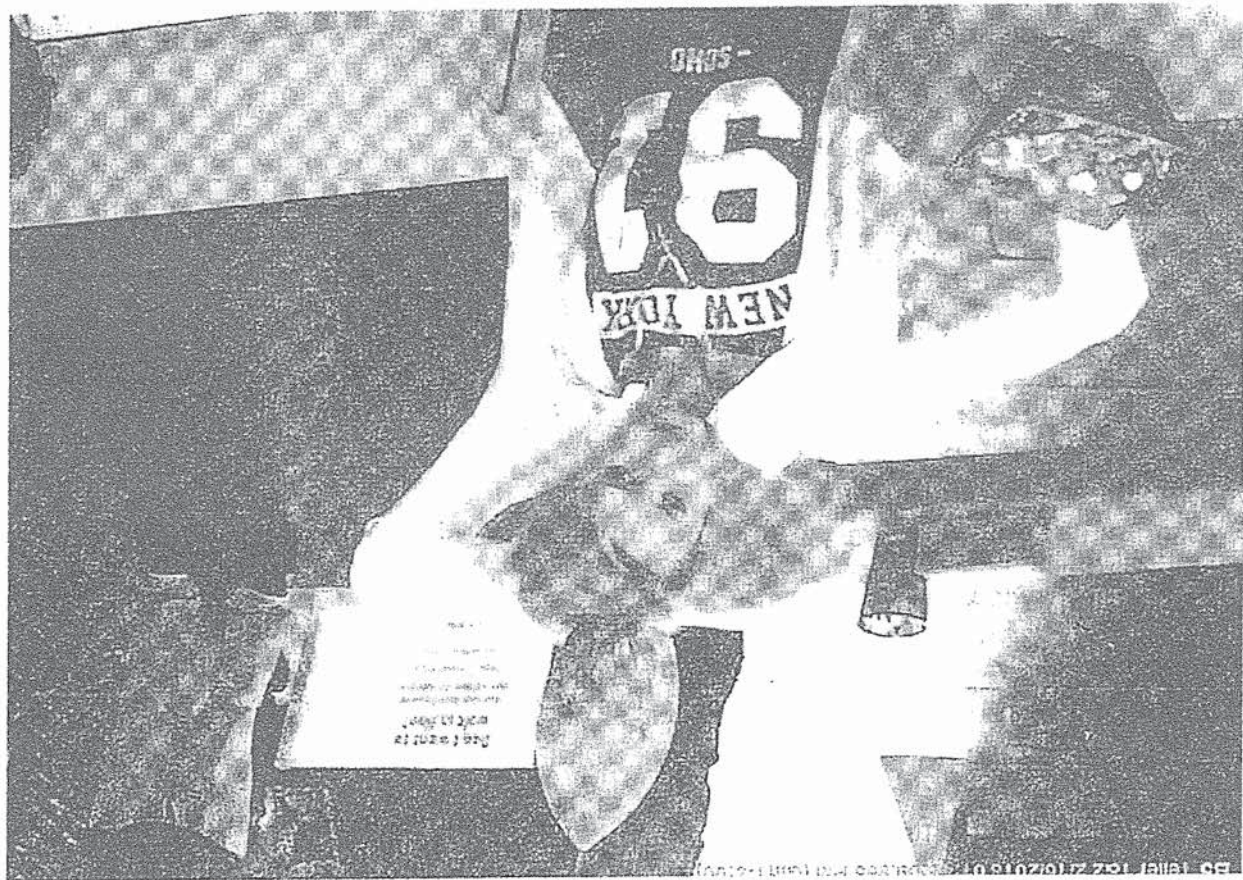
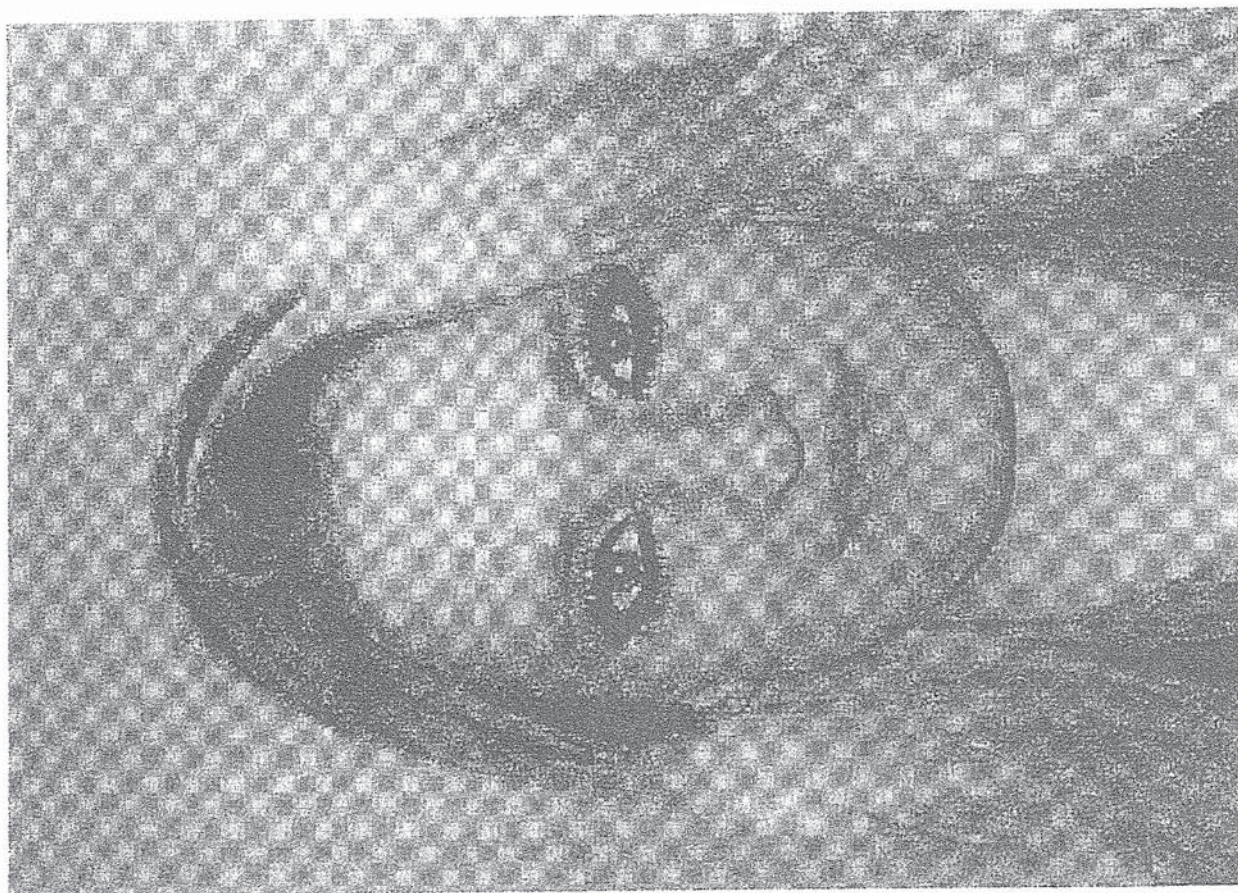
From: Evan [mailto:Evan@wecu.com]  
Sent: Monday, February 26, 2018 1:50 PM  
To: Frank Spane <fspane@ferndalepd.org>  
Subject: WECU

Hello Officer,

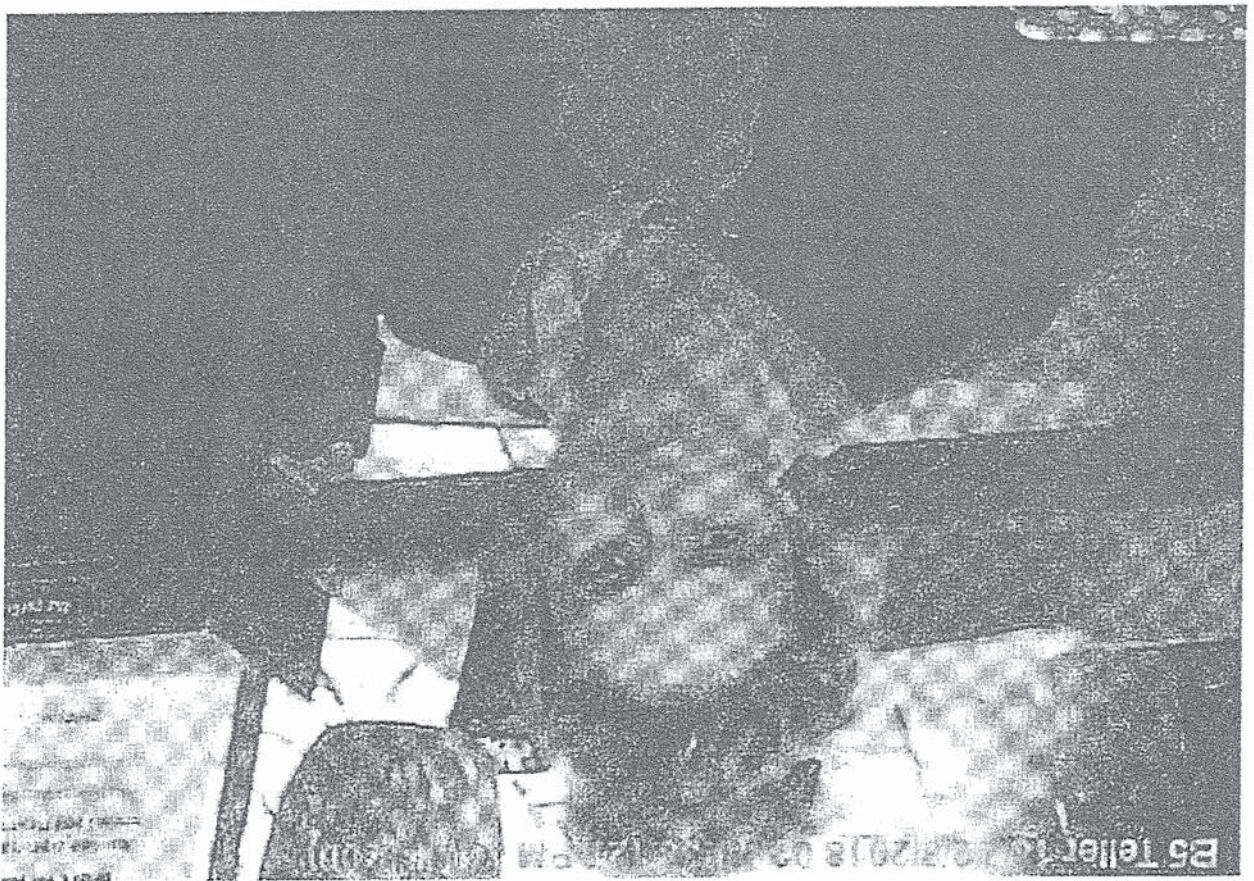
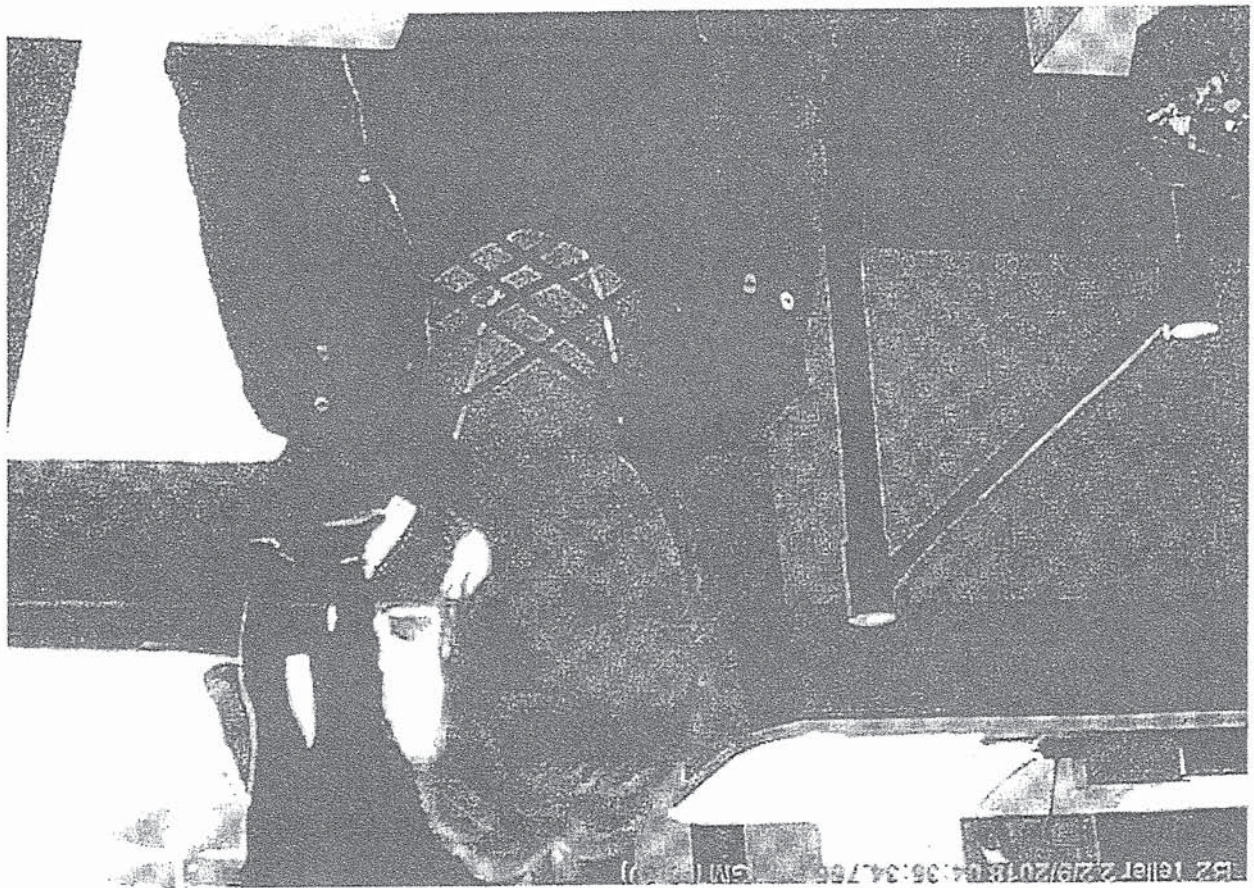
This is Evan from WECU. I am contacting you to advise you that WECU's total loss amount for the stolen Pacific Granite inc. checks case is \$1,133.57. Also, would it be possible for me to get the case number for our records?

Thank you,

Evan

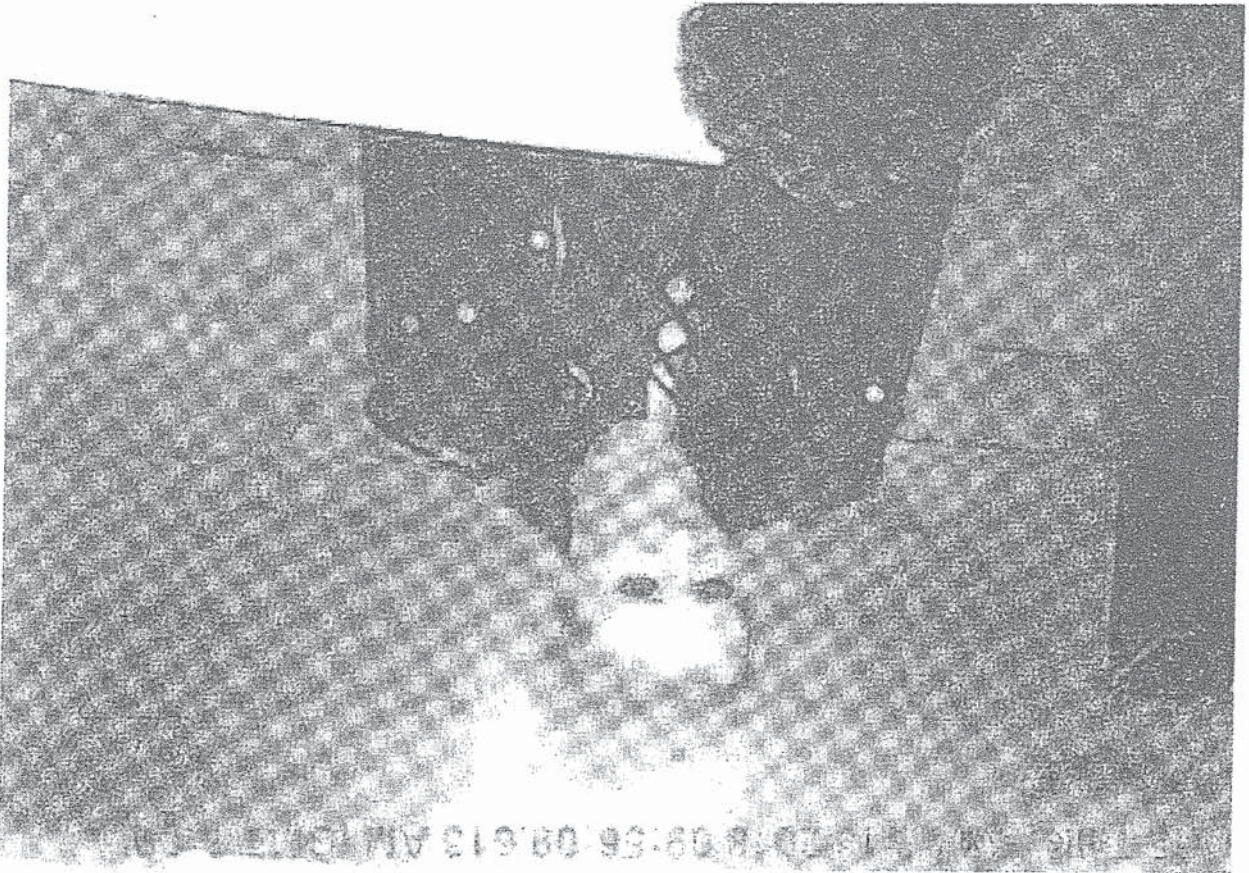








BB Teller 384 2/14/2018 09:20:34.857 PM (GMT-8:00)



BB Teller 384 2/14/2018 09:20:34.857 PM (GMT-8:00)



City of Ferndale Police Department  
Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

**18F01664 THEFT**

**HEADER**

**Follow-Up**

*Author:* SPANE, FRANK

*Appvd:*  
2F113

*Location:* 2149 ROBYN DR *Apt Unit No:*

*Incident Date:* Feb 22, 2018 12:51 PM

*Date Reported:* Mar 05, 2018 3:50 PM

**Case Offenses:**

9A.56.030 - Theft in the 1st degree

9A.60.020 - Forgery



City of Ferndale Police Department

Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

18F01664 THEFT

NARRATIVE

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Follow-Up

Author: SPANE, FRANK

Rpt Date: Mar 05, 2018 3:50 PM

Appvd:  
2F113

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On March 5, 2018 at about 1507 hrs WCSO Deputy Kurt DEVRIES was on follow up in Birch Bay and he contacted CANDACE OSBORNE (S1). Deputy DEVRIES was advised of the Probable Cause for CANDACE OSBORNE (S1) and she was taken into custody. Deputy DEVRIES transported CANDACE OSBORNE (S1) to the Whatcom County Jail where she was booked on these charges and an unrelated warrant.

FPD Records faxed a copy of the Probable Cause to the Jail.



City of Ferndale Police Department  
Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

**18F01664 THEFT**

**HEADER**

---

Follow-Up

Author: SPANE, FRANK

Appvd:  
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Location: 2149 ROBYN DR Apt Unit No:

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City of Ferndale Police Department  
Longarm Case Report

Investigator:  
KENNERLEY,  
CARL

18F01664 THEFT

NARRATIVE

Follow-Up

Author: SPANE, FRANK

Rpt Date: Mar 06, 2018 12:50 PM

Appvd:  
2F113

On March 6, 2018, I amended the Probable Cause by changing the charge of Theft in the Second Degree to Theft in the First Degree. I faxed the updated Probable Cause Statement to Whatcom County Jail, attn: Deputy Epps. He advised that he would forward to the Prosecutor for court this afternoon.

On March 6, 2016 at about 1011 hrs. WHATCOM EDUCATIONAL CREDIT UNION (V3) Fraud Specialist Evan CHAPIN notified me via email that CANDACE OSBORNE'S (S1) sister transferred the money into the WHATCOM EDUCATIONAL CREDIT UNION (V3) account and covered the losses at her mothers request. CANDACE OSBORNE (S1) Mother Karen WINBORN is also on the account so she instructed her daughter to transfer because they locked her account.

WHATCOM EDUCATIONAL CREDIT UNION (V3) does not have any balance owed for this Theft, but PEOPLES BANK (V2) is still a victim of the Theft.

Forward to WCPA.

Enclosure:  
Updated PC.

**NIELSEN KOCH P.L.L.C.**

**April 06, 2021 - 10:52 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division I  
**Appellate Court Case Number:** 80687-4  
**Appellate Court Case Title:** State of Washington, Respondent v. Candace Mae Osborne, Appellant  
**Superior Court Case Number:** 18-1-00332-9

**The following documents have been uploaded:**

- 806874\_Petition\_for\_Review\_20210406105057D1751607\_9206.pdf  
This File Contains:  
Petition for Review  
*The Original File Name was PFR 80687-4-I.pdf*

**A copy of the uploaded files will be sent to:**

- Appellate\_Division@co.whatcom.wa.us
- CGarcia@co.whatcom.wa.us
- kthulin@co.whatcom.wa.us

**Comments:**

Copy mailed to: Candace Osborne, 6774 Noon Rd Everson, WA 98247-

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Sender Name: John Sloane - Email: Sloanej@nwattorney.net

**Filing on Behalf of:** Christopher Gibson - Email: gibsonc@nwattorney.net (Alternate Email: )

Address:  
1908 E. Madison Street  
Seattle, WA, 98122  
Phone: (206) 623-2373

**Note: The Filing Id is 20210406105057D1751607**