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Washington State
Supreme Court

97314-8

In the Supreme Court of the State of Washington

In Re the Personal Restraint of:

Anthony DeWayne Parker,
Petitioner.

Motion for Discretionary Review

COA #51180-1-II

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Washington State
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TABLE OF AUTHORITIES

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State V. McKee, 3 Wn. App. 11, 413 P.3d 1049, 1059 (2018)

A. IDENTITY OF PETITIONER

Anthony D. Parker asks this Court to accept review of the decision or the parts of the decision designated in Part B of this motion.

B. COURT OF APPEALS DECISION

The Court of Appeals decision entered on May 14, 2019 is in direct conflict with other lower court's opinions as well as this Court's opinions held in State v. Hinton; State v. Simpson; State v. McKee; State v. Perrone; and State v. Besola.

C. ASSIGNMENTS OF ERROR

1. Court of Appeals erred by concluding the Parker lacks standing to challenge the initial seizure of Holliday's cell phone that was taken on April 4, 2013 without a warrant, without consent, nor was obtained incident to arrest.
2. Court of Appeals erred by failing to suppress text messages and emails of Parker's that was taken from Holliday's cell phone as the product of an illegal seizure. See Appendix #3, Text Message and Email Account.
3. Court of Appeals erred by failing to suppress the evidence taken from Holliday's cell phone as the warrant

authorizing the search of her phone lacked Constitutional Particularity requirement.

D. ISSUES PRESENTED ON APPEAL

1. Did the Court of Appeals err by concluding that Parker lacked standing to challenge the initial seizure of Holliday's cell phone when it only analyzed the issue under the doctrine of Automatic Standing?

2. Did the Court of Appeals err by failing to suppress the text messages and emails taken from Holliday's cell phone when they are the product of an illegal seizure?

3. Did the Court of Appeals err by failing to suppress the evidence from Holliday's cell phone when the warrant lacks particularity as what is to be seized by giving the officer the discretion?

E. STATEMENT OF THE CASE

A jury convicted Anthony DeWayne Parker of multiple felony counts following a trial in Kitsap County Superior Court. CP 17-19. Parker appealed his convictions and sentence to the Washington State Court of Appeals and filed a Personal Restraint Petition (PRP), COA #51180-1-II that was consolidated with the direct appeal. Parker's direct appeal resulted in the judgement and sentence being affirmed. See Appendix #1, Court of Appeals Decision.

F. FACTS PERTAINING TO ISSUES RAISED ON APPEAL

In April, 2013, Officer Rauback observed Johanna Holliday get out of a vehicle and get into another vehicle with Travier Stevenson, and minutes later get out of the car with Stevenson and back into the car she arrived in with Crettol and drive away.

Officer Rauback followed Crettol and Holliday away from the area, and coordinated with patrol officers to stop the vehicle. Detective Heffernan responded to the location of the stop and stood by while Holliday and Crettol were removed from the car and detained. Heffernan escorted Holliday to a patrol vehicle and explained he was investigating a possible drug transaction that had just occurred.

Det. Heffernan asked Holliday how many pills she had gotten from Stevenson. Holliday said she had gotten one pill from Stevenson. Det. Heffernan asked where she put the pill. Holliday responded "inside my purse," which was sitting on the passenger seat of the vehicle. Without obtaining a "warrant to search the vehicle, Det. Heffernan went to the vehicle and withdrew the purse and cell phone from the front seat of the car. Det. Heffernan returned with the items to Holliday and took off her hand restraints. Holliday located the pill inside her purse and handed it over to the detective. Heffernan showed Holliday

the cell phone, which she verified was her phone, and she identified the number (360) 908-2471. Heffernan called the number, confirming the same, and took custody of the phone.

Because Holliday agreed to meet with detectives the following day regarding her criminal activities, she was released from detainment and allowed to drive away, even though she was in possession of a controlled substance Percocet pill. Despite not arresting Holliday or gaining her consent to keep the phone, detective maintained possession of her cell phone after releasing her.

Holliday did not show up on April 5th to interview with the police. A warrant was applied for on April 8, 2013 for the cell phone, the contents of which included Parker's email account and text messages from him. After the search of the cell phone, detective set up a sting to arrest Holliday. On April 12, 2013, detectives posing as a client met with Holliday at a motel where she was arrested. A second cell phone was seized. Holiday spoke with detectives later that day, making incriminating statements against Parker and saying that Parker had a firearm. A warrant was issued for Mr. Parker and the firearm, and Parker was arrested on April 13, 2013 on suspicion of Human Trafficking and possession of a firearm. See Appendix #2, Warrant, dated April 23, 2013, pp. 4-8 showing the above facts; see Appendix #2, Warrant, dated April 8, 2013 pp.

6-8 confirming the facts above. See also Appendix #3, text messages seized as a product of this search warrant admitted as evidence during Parker's trial.

The warrants permitted seizure of "everything" on both cell phones without any limitation. See also Appendix #2 pg. 8, of both search warrants, which state:

"All information stored on the above described cellular phone that can be extracted through a forensic examination, or other means including, but not limited to images, videos, contacts, conspirator phone numbers/addresses, text messages, email messages, ledgers, financial transaction information, electronic documents, or any other stored information relating to human trafficking, promoting prostitution and/or prostitution."

In sum, at no point during the traffic stop on April 4, 2013, was Holliday detained for prostitution or sex crimes. Holliday did not acknowledge to the detective that she was prostituting, nor was she asked if she was in the area of the suspected drug transaction for prostitution. Neither Holliday nor Stevenson were arrested on drug charges. Thus, the seizure of the phone on April 4th could not have been incident to an arrest. In addition, the seizure of the other cell phone on April 12, 2013, incident to Holliday's arrest, and her giving statements of other crimes involving Parker was the direct result from the initial illegal seizure of the cell phone on April 4th.

1. ARGUMENT

The Court erred by concluding Parker lacked standing to challenge the unlawful seizure of Holliday's cell phone on April 4, 2013. Citing Jones:

A person may rely on the automatic standing doctrine only if the challenged police action produced the evidence sought to be used against him." To assert automatic standing a defendant (1) must be charged with an offense that involves possession as an essential element; (2) must be in possession of the subject matter at the time of the search or seizure.

State v. Jones, 146 Wn.2d 328, 332, 45 P.3d 1062 (2002).

On April 4, 2013, Ms. Holliday was detained for a possible drug transaction. Detective went to the car to remove Holliday's purse and cell phone. He removed the drugs out of the purse and told Holliday he was keeping her phone. This was done without her consent, without a warrant, nor was the cell phone obtained incident to arrest because Holliday was released from her detainment and was allowed to drive away even though she was in possession of drugs. On April 8th, a warrant was applied for which showed Parker's text messages and email, officers set up a sting and arrested Holliday on April 12th. Holliday was interviewed by detectives and spoke very extensively about a firearm of Parker's. A warrant was applied for Parker and the firearm. See Appendix #2, Search Warrant Dated April 23rd, pp 4-7.

Without the illegal seizure of the phone on April 4th, which led to Holliday's arrest on the 12th and giving statements about Parker, the officer would not have had evidence that Parker had a firearm at that particular time. There was no other evidence that linked Parker to a

firearm, independent of the evidence from the cell phone that allegedly linked Parker to prostitution and Human Trafficking.

When an unconstitutional search or searches occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed. State v. Magneson, 107 Wn.App. at 227, 26 P.3d 986 (2001).

If police are not required to obtain a warrant under Article 1, Section 7 of the Washington State Constitution before seizing cell phones as evidence from non-arrested individuals, then there is no limitation on the State, and any person is subject to this intrusion, whether criminal activity is suspected or not. The resulting trespass into private affairs of Washington citizens is precisely what Art. 1, Sec. 7 is intended to prevent.

The police may seize an individual's phone pursuant to a lawful search incident to arrest to prevent the destruction of evidence. State v. Valdez, 167 Wn.2d 761, 766, 224 P.3d 751 (2004). However, Holliday was not arrested on April 4, nor was there a warrant, nor consent to seize her phone.

In Flores, the Appellate Court addressed the issue of whether police officers have probable cause to search or seize items from a non-arrested individual. State v. Flores, 2015 WL 3915782 (Wash. App. Div. 3, 2015). The

court held that "where the suspect was not arrested," probable cause to search did not justify search of the vehicle.

Also, the court held that Jones had standing to challenge the search of a non-arrested individual's belongings. State v. Jones, 146 Wn.2d at 339.

Reversal of the firearm is required. (1) Parker was charged with an offense that involves possession. (2) Parker was in possession of subject matter at the time of the search and seizure, which arose from the illegal seizure of Holliday's cell phone on April 4, 2013.

Article 1, Section 7 of the Washington State Constitution requires exclusion of evidence seized during an illegal search or seizure. State v. Gaines, 154 Wn.2d 711, 716-717, 116 P.3d 993 (2005). To prevent the government from benefiting from such unlawful activity, Art. 1. Sec. 7. also requires suppression of evidence derived from an illegal search or seizure under the "fruit of the poisonous tree" doctrine. State v. O'Bremsk, 70 Wn.2d 425, 428, 423 P.2d 530 (1967).

The court erred in concluding Parker lacks standing to challenge the seizure of the phone itself.

However, Carter held that a defendant who lacks automatic standing may still possess a legitimate expectation of privacy in the place searched or the thing

seized, and on that basis be able to challenge the search or seizure. State v. Carter, 127 Wash.2d 836, 841, 904 P.2d 290 (1995).

In Evans, the Supreme Court held that a privacy interest could exist in an item the defendant did not own. State v. Evans, 159 Wn.2d at 406-09, 150 P.3d 105 (2007).

If a defendant is able to establish a legitimate expectation of privacy in the area searched or property seized, then he has satisfied the Standing Under the Fourth Amendment Analysis and does not need to rely on automatic standing. State v. Kypreos, 110 Wn.App. 612, 622, 39 P.3d 371 (2002):

The Court erred when it concluded Parker cannot challenge the unlawful seizure of April 4th citing grounds that he was not in possession of the phone when it was seized.

Even though the phone did not initially belong to Parker, his private affairs such as his emails, email account and text messages were stored inside. See Appendix #3. Parker used Holliday's phone to check his emails by going into his email account. This shows Parker had constructive possession of the phone.

Possession may be "Actual or Constructive to support a criminal charge." State v. Jones, 146 Wn.2d 328, 332, 45 P.3d 1062 (2002).

In Hinton, the court stated, in the absence of express consent from the phone owner, however, the sender of a text message should be allowed to stand in the shoes of the phone owner for purposes of challenging the search of the phone. State v. Hinton, 179 Wn.2d 881, 319 P.3d 9 (2014).

Under the decision in Simpson, Parker has standing to challenge the legality of the police seizure of that cell phone and has the right to invoke all the privacy interest that an individual properly in possession of the property could assert. Simpson, 95 Wash.2d at 182. "Denying protection to a defendant who meets the doctrine's requirements allows the invasion of a constitutionally protected interest to be insulated from judicial scrutiny by a technical rule of 'standing.' The inability to assert such an interest threatens all of Washington's citizens, since no other means of deterring illegal searches and seizures is readily available." Id. at 180. State v. Simpson, 95 Wash.2d 170, 622 P.2d 1199 (1980).

Article 1, Section 7 does not use the words "reasonable or unreasonable." Instead it requires 'authority of law' before the State may pry into the private affairs of individuals. Our Constitution protects legitimate expectations of privacy: "those privacy interests which citizens of this state have held, and should be entitled to hold safe from government trespass

absent a warrant." State v. Myrick, 102 Wn.2d 506, 511, p.2d 151; (1984).

In this case, there is no evidence that Holliday consented to the seizure of her phone. Like detective Heffernan stated in the warrant dated April 8th, pg. 7, he "took the phone." Without a warrant, and without conforming to an exception to the warrant requirement, detective Heffernan illegally seized Holliday's phone. Because there is no evidence Holliday consented to the seizure, Parker should have standing to challenge it. Likewise, because the phone was seized without a warrant, an exception, or consent, any evidence derived from the illegal seizure of April 4th, 2013, including Parker's text messages, Parker's email account with BackPage ad's of Holliday, her statement incriminating Parker for multiple offenses, and Parker's arrest along with a firearm, becomes fruit of the poisonous tree, and the conviction must be overturned.

2. THE WARRANTS AUTHORIZING THE SEARCHES OF THE CELL PHONES LACK CONSTITUTIONALLY REQUIRED PARTICULARITY

The Fourth Amendment to the Constitution of the United States clearly states that warrants must particularly describe the things to be seized. The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and

prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant. In other words, the warrant must be specific enough to describe the perimeters of the search. Stated another way, the description must inform the officer of the limits of the search. More succinctly, the Constitution prohibits seizures under the unbridled authority of a general warrant. State v. Salinas, 18 Wn.App. 458, 569 P.2d 75 (1977).

"The advent of devices such as cell phones that store vast amounts of personal information makes the particularity requirement of the Fourth Amendment that much more important." McKee, 413 P.3d at 1056. "A warrant that implicates materials protected by the First Amendment requires a heightened degree of particularity." McKee, 413 P.3d at 1056 (citing State v. Perrone, 119 Wn.2d 538, 545, 834 P.2d 611 (1992)). The particularity requirement in such cases must be "accorded the most scrupulous exactitude." McKee, 413 P.3d at 1056 (citing Stanford v. Texas, 379 U.S. 476, 483, 85 S.Ct. 506, 13 L.Ed.2d 431 (1965)).

The Fourth Amendment, as applied to the states through the Fourteenth Amendment, imposes two express requirements on the government. Kentucky v. King, 563 U.S. 452, 459, 131 S.Ct. 1849, 179 L.Ed.2d 865 (2011). "First, all searches

and seizures must be reasonable. Second, a warrant may not be issued unless probable cause is properly established and the scope of the authorized search is set out with particularity." King, 563 U.S. at 459; see State v. Besola, 184 Wn.2d 605, 359 P.3d 799 (2015).

In McKee, Division One of the Court recently examined the particularity requirement in regards to warrants authorizing the search of cell phones. In McKee, police were seeking evidence that related to crimes of sexual exploitation of a minor and dealing in depictions of minors engaged in sexually explicit conduct on the defendant's cell phone. McKee, 413 P.3d at 1053. The warrant listed the crimes being investigated and their accompanying statutes. McKee, 413 P.3d at 1053. The warrant then described what evidence was authorized to be seized. The warrant allowed the police to obtain everything from the cell phone without limitation:

'Images, video, documents, text messages, contacts, audio recordings, call logs, calendars, notes, tasks, data/internet usage, any and all identifying data, and any other electronic data from the cell phone showing evidence of the above listed crimes.'

State v. McKee, 413 P.3d at 1053.

On appeal, McKee challenged the warrant on grounds that it lacked particularity. The Court agreed and reversed his convictions. McKee, 413 P.3d at 1059. The

Court held that the warrant was invalid as "the 'Items Wanted' portion of the warrant was overbroad and allowed the police to search and seize lawful data when the warrant could have been made more particular." McKee, 413 P.3d at 1057. In analyzing the level of particularity required for the warrant to be valid, the Court considered "whether the warrant could have been more specific considering the information known to police officers at the time the warrant was issued." McKee, 413 P.3d at 1058 (citing Perrone, 199 Wn.2d at 553). The Court held that the warrant was lacking in particularity because it "allowed the police to search general categories of data on the cell phone with no objective standard or guidance to the police executing the warrant." McKee, 413 P.3d at 1058-59.

The warrants in Parker's case suffer from the same flaws that rendered the warrant in McKee invalid. The warrants in Parker's case, like the warrant in McKee, authorized police to search everything on the cell phone without limitation:

"All information stored on the above-described cellular phone that can be extracted through a forensic examination, or other means including, but not limited to images, videos, contacts, conspirator phone numbers, addresses, text messages, email messages, ledgers, financial transaction information, electronic documents, or any other stored information related to human trafficking, promoting prostitution or prostitution."

See Appendix #2, p. 8.

Both search warrants contain identically broad language. Indistinguishable to the warrant in McKee that lacked sufficient particularity, the warrants in Parker's case also lacked the necessary particularity to authorize a lawful search of the phones. The warrants fail to identify Parker as the suspect being investigated, and authorize the police to seize data completely unrelated to any conversation between Holliday and Parker, including conversation with other individuals.

The scope of the warrant could have been limited to only include communications between Holliday and Parker. The failure to do so impermissibly leaves the scope of the warrant up to the discretion of officers. As in McKee, the warrants here provide insufficient particularity as to what is to be seized. Although the warrants "cite the crimes being investigated, that alone is not sufficient to narrow the warrants to the point the particularity requirement is satisfied." McKee, 413 P.3d at 1057 (citing State v. Besola, 184 Wn.2d 605, 359 P.3d 799 (2015)).

Furthermore, many of the materials mentioned in the warrants are subject to First Amendment protections, such as text messages, email messages, images, and videos. Given that these materials are included in the items to be seized, the State must satisfy heightened particularity requirements. McKee, 413 P.3d at 1056 (citing Perrone, 119

Wn.2d at 545). The deficiencies in the warrants outlined above would be insufficient to satisfy the particularity requirement even without heightened scrutiny applied to materials implicating First Amendment rights because the warrant failed to establish any limits on the scope of materials authorized to search on both phones. McKee, 413 P.3d at 1058-59. Both warrants are insufficiently particular and unconstitutional. State v. McKee, 3 Wn.App 11, 413 P.3d 1049, 1059 (2018)(quoting Groh v. Ramirez, 540 U.S. 551, 559, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004)).

3. REMEDY

When the language of the search warrant leaves to the police discretion regarding the items to be seized, it violates the particularity requirement of the Fourth Amendment. McKee, 413 P.3d at 1059. The remedy for an unlawful search without particularity requires suppression because the search violates the particularity requirement of the Fourth Amendment.

CONCLUSION

Mr. Parker respectfully requests this Court reverse and remand for suppression of evidence and dismissal of the charges. The initial seizure of Holliday's cell phone on April 4, 2013, was unlawful because it was done without a warrant, without consent, and was not incident to a lawful

arrest. For this reason, any evidence seized from that phone is fruit of the poisonous tree and admitting it was error. State v. Hinton, 179 Wn.2d at 882.

Furthermore, the warrants for both phones were unconstitutionally overbroad in violation of the particularity requirement. For this reason as well, this Court must reverse and remand for suppression of evidence and dismissal of the charges.

Lory D. Parker

6-6-19 Date

APPENDIX #1

May 14, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY DEWAYNE PARKER,

Appellant/Petitioner.

No. 51180-1-II
(Consolidated with 51560-1-II)

UNPUBLISHED OPINION

SUTTON, J. — Anthony Dewayne Parker timely appeals the trial court’s reference hearing order denying his motion to suppress and dismissing his remaining personal restraint petition (PRP) claim of illegal search and seizure. Parker filed another PRP in March 2018 which this court consolidated with his direct appeal.

In his direct appeal and PRP, Parker argues that the trial court erred when it concluded at the reference hearing below that he lacked standing to challenge the seizure of J.H.’s cell phones and when it failed to suppress his text messages on the cell phones and other evidence. He also argues that if his text messages and other tainted evidence had been properly suppressed, the outcome of the trial would have changed. He further argues that the search warrants for the cell phones lacked specificity or particularity. He asks this court to reverse and remand to the trial court to suppress the text messages and dismiss his convictions.

We hold that the trial court did not err when it concluded at the reference hearing that Parker did not have standing to challenge the seizure of the cell phones. Because he lacks standing, all of his direct appeal and PRP claims fail. We affirm and dismiss the March 2018 PRP.

FACTS

I. PROCEDURAL FACTS

A jury found Parker guilty of multiple felonies with special allegations of deliberate cruelty and domestic violence involving the victim, J.H., who worked for him as a prostitute. He was convicted of first degree human trafficking, first degree promoting prostitution, four counts of second degree assault, first degree burglary, first degree kidnapping, fourth degree assault, first degree unlawful possession of a firearm, and witness tampering. Parker appealed his judgment and sentence and filed a PRP that was consolidated with the direct appeal. We affirmed his judgment and sentence and dismissed all of his PRP claims except the one related to an illegal search and seizure of J.H.'s cell phones. *State v. Parker*, 190 Wn. App. 1037, 2015 WL 6126551 (2015) (*Parker I*).

As to the remaining PRP claim, Parker argued below that the State illegally searched and seized J.H.'s cell phones.¹ *Parker I*, 190 Wn. App. at *11, n.75. We remanded the case for a reference hearing in light of *State v. Hinton*.² *Parker I*, 190 Wn. App. at *11-12.

Parker moved to suppress the text messages between him and the victim and other evidence which were on her cell phones. He argued that “[o]ther than the testimony of J.H. at trial,

¹ The first cell phone owned by J.H. was seized on April 4, 2013. The second cell phone owned by J.H. was seized on April 12, 2013.

² 179 Wn.2d 862, 319 P.3d 9 (2014).

buttressed by the emails from [another witness], there was no evidence of Parker's charges for human trafficking and prostitution." Clerk's Papers (CP) at 245.

On January 30, 2017, the trial court held a reference hearing and entered findings of fact.³ The trial court found that Parker asserted a privacy interest in the text messages recovered from J.H.'s cell phones. The police obtained J.H.'s two cell phones, verified her phone number, and then obtained search warrants for her phones, but did not search the phones before they obtained the warrants. The trial court found that the text messages on J.H.'s cell phones were admitted at trial and that no other evidence was obtained from the cell phones. The trial court further found that the testimony and exhibits admitted at trial supported Parker's convictions.

On March 31, 2017, after reviewing the trial court's findings of fact, we remanded to the trial court to decide the following issue on the merits in the reference hearing:

[T]he superior court shall make its determination on the merits of Parker's claim that there was an illegal search and seizure of the cell phone of another that underlies his claim for relief. Pursuant to RAP 16.12 and the other Rules of Appellate Procedure, the court shall make its findings and conclusions with respect to that claim. In sum, the superior court shall make a full determination on the merits of this claim based on this revised instruction.

CP at 441.

The trial court then entered the following conclusions of law:

Hinton makes clear that a defendant has a privacy interest in the text messages sent to another person's phone, but its analysis does not extend to the privacy interest in the phone itself. To challenge seizure of either phone, Parker must establish that he has standing to challenge the seizure. Under *State v. Jones*, 146 Wn.2d 328, 332, 45 P.3d 1062 (2002), to claim automatic standing, a defendant (1) must be charged with an offense that involves possession as an essential element; and (2) must be in possession of the subject matter at the time of the search

³ Parker does not challenge any of these findings on appeal. Thus, they are verities on appeal. *State v. Rankin*, 151 Wn.2d 689, 709, 92 P.3d 202 (2004).

or seizure. Because Parker meets neither of these requirements, he lacks standing to challenge the seizure of [J.H.]'s phones.

Because Parker lacks standing to challenge the seizure of either [of the cell phones], Parker may only challenge the search of the phones. The challenge to the search of the phones, which resulted in the discovery of his texts, fails as a warrant based upon probable cause was properly obtained for the . . . phones on April 8, 2013[,] and April 23, 2013[,] respectively, before the search of the phones was conducted. Parker's contention that the warrant application for the ZTE [cell phone] was insufficient is without merit, as the affidavit submitted by the detective was not based on generalizations, it provided extensive factual information, was specific as to the information being sought, and explicitly tied the criminal activity to the phone sought to be searched. Because the police did not search either of the phones prior to properly obtaining a warrant, Parker's privacy rights under *Hinton* were not violated by the search of the [cell phones], and any other evidence obtained by the search of the ZTE phone is not suppressed as fruit of the poisonous tree.

CP at 442-43.

The trial court denied Parker relief and ordered the following:

[T]he evidence obtained pursuant to search within [J.H.]'s cell phones is not suppressed based upon Parker's claim that his privacy rights were violated by the illegal search and seizure of another's cell phone. Further, to the extent that this Court is called upon to determine Parker's PRP based upon his claim of illegal search and seizure, the PRP is hereby **DENIED**.

CP at 443.

II. APPEAL AND PRP

Parker timely appeals the trial court's reference hearing order denying his motion to suppress and dismissing his remaining PRP claim of illegal search and seizure. Parker filed another PRP in March 2018 which this court consolidated with his direct appeal.

ANALYSIS

I. LEGAL PRINCIPLES

We review constitutional issues de novo. *State v. Gresham*, 173 Wn.2d 405, 419, 269 P.3d 207 (2012). When a trial court denies a motion to suppress, we review the court's conclusions of law de novo. *State v. Winterstein*, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009). Whether Parker has a privacy interest in the text messages he sent to and which were retained on J.H.'s cell phones is a mixed question of law and fact because it requires this court to apply legal principles to a particularized set of factual circumstances. See *In re Det. of Anderson*, 166 Wn.2d 543, 555, 211 P.3d 994 (2009). "Analytically, resolving a mixed question of law and fact requires establishing the relevant facts, determining the applicable law, and then applying that law to the facts." *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 403, 858 P.2d 494 (1993). For mixed questions of law and fact, unchallenged factual findings are verities on appeal and we review the application of those facts to the law de novo. *In re Det. of Anderson*, 166 Wn.2d at 555.

A PRP is not a substitute for direct appeal and the availability of collateral relief is limited. *In re Pers. Restraint of St. Pierre*, 118 Wn.2d 321, 328-29, 823 P.2d 492 (1992). To be entitled to relief, Parker must show either a constitutional violation that resulted in actual and substantial prejudice or a nonconstitutional error that constituted a fundamental defect that inherently resulted in a complete miscarriage of justice. *In re Pers. Restraint of Lui*, 188 Wn.2d 525, 539, 397 P.3d 90 (2017). "Actual and substantial prejudice, which 'must be determined in light of the totality of circumstances,' exists if the error 'so infected petitioner's entire trial that the resulting conviction violates due process.'" *In re Pers. Restraint of Crow*, 187 Wn. App. 414, 421, 349 P.3d 902 (2015) (quoting *In re Pers. Restraint of Music*, 104 Wn.2d 189, 191, 704 P.2d 144 (1985)).

We have three options when reviewing a PRP: “(1) dismiss the petition, (2) transfer the petition to a superior court for a full determination on the merits or a reference hearing, or (3) grant the petition.” *In re Pers. Restraint of Yates*, 177 Wn.2d 1, 17, 296 P.3d 872 (2013). A reference hearing is appropriate where the merits of the petitioner’s contentions cannot be determined solely on the record because there are disputed material issues of fact. RAP 16.11(b); *In re Pers. Restraint of Reise*, 146 Wn. App. 772, 780, 192 P.3d 949 (2008).

II. STANDING

As to his direct appeal and PRP claims, Parker argues that the trial court erred by concluding that he lacked standing to challenge the seizure of J.H.’s cell phones. Parker claims that the physical seizures of the two cell phones constituted a “meaningful interference in [his] possessory interest in the text messages” on the phones. Br. of Appellant at 9. The State argues that because Parker lacked any privacy interest in J.H.’s phones themselves, he lacks standing to challenge the seizure of her phones, and the trial court did not err. We agree with the State that Parker lacks standing and thus, all of his claims fail.

Washington’s Constitution states that “[n]o person shall be disturbed in his private affairs . . . without authority of law.” CONST. art. I, § 7. Article I, section 7 encompasses the privacy expectations protected by the Fourth Amendment to the United States Constitution and, in some cases, may provide greater protection than the Fourth Amendment because its protections are not confined to the subjective privacy expectations of citizens. *State v. Myrick*, 102 Wn.2d 506, 510-11, 688 P.2d 151 (1984). Under article I, section 7, in its protection of “private affairs,” “a search occurs when the government disturbs ‘those privacy interests which citizens of this state *have held*,

and should be entitled to hold, safe from governmental trespass absent a warrant.” Hinton, 179 Wn.2d at 868 (quoting Myrick, 102 Wn.2d at 511).

“The ‘authority of law’ required by article I, section 7 is a valid warrant unless the State shows that a search or seizure falls within one of the jealously guarded and carefully drawn exceptions to the warrant requirement.” *Hinton, 179 Wn.2d at 868-89.* Rights protected by the Fourth Amendment and article I, section 7 are personal rights that may be enforced by exclusion of evidence “‘only at the instance of one whose own protection was infringed by the search and seizure.’” *Rakas v. Illinois, 439 U.S. 128, 138, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978)* (quoting *Simmons v. United States, 390 U.S. 377, 389, 88 S. Ct. 967, 19 L. Ed. 2d 1247 (1968)*); *State v. Jones, 146 Wn.2d 328, 332, 45 P.3d 1062 (2002).*

“A person may rely on the automatic standing doctrine only if the challenged police action produced the evidence sought to be used against him.” *Jones, 146 Wn.2d at 332.* “To assert automatic standing a defendant (1) must be charged with an offense that involves possession as an essential element; and (2) must be in possession of the subject matter at the time of the search or seizure.” *Jones, 146 Wn.2d at 332.*

Under *Jones*, Parker cannot meet the elements for automatic standing to challenge the seizure of J.H.’s phones as he was not in possession of her phones at the time they were seized or searched. *Jones, 146 Wn.2d at 332.* Because Parker cannot meet the elements for standing, his

No. 51180-1-II

claim of standing fails. Accordingly, we decline to consider Parker's additional claims. We hold that the trial court did not err by denying his motion to suppress and dismissing his remaining PRP claim of illegal search and seizure. We affirm and dismiss his March 2018 PRP.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.




SUTTON, J.

We concur:



MELNICK, P.J.



CRUSER, J.

APPENDIX # 2 SEARCH WARRANTS

IN THE KITSAP COUNTY SUPERIOR COURT

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STATE OF WASHINGTON,

Plaintiff,

v.

BLACK ZTE CELLULAR PHONE MODEL Z431, S/N) 322423142390, BEING STORED IN THE BREMERTON POLICE DEPARTMENT'S SECURE EVIDENCE LOCKER IN THE CITY OF BREMERTON, COUNTY OF KITSAP, STATE OF WASHINGTON,

Defendant.

) No. 20130160

) COMPLAINT FOR SEARCH
) WARRANT FOR FRUITS /
) INSTRUMENTALITIES AND / OR
) EVIDENCE OF THE CRIME OF RCW
) 9A.40.100 Human Trafficking, RCW
) 9A.88.080 Promoting Prostitution and/or
) RCW 9A.88.030 Prostitution

RECEIVED AND FILED
APR - 8 2013
DAVID W. PETERSON
KITSAP COUNTY CLERK

I, DETECTIVE RYAN HEFFERNAN, being first duly sworn upon oath, depose and say

I am a duly appointed, qualified, and acting detective assigned to the Bremerton Police Department's Special Operations Group (SOG), and am charged with responsibility for the investigation of criminal activity occurring within Kitsap County. I have probable cause to believe, and do, in fact, believe, that in violation of the laws of the State of Washington with respect to RCW 9A.40.100 Human Trafficking, RCW 9A.88.080 Promoting Prostitution and/or RCW 9A.88.030 Prostitution, evidence and/or fruits and/or instrumentalities of said offense(s) are presently being kept, stored or possessed, and can be located and seized in the above-described cellular phone. My belief being based upon information acquired through personal interviews with witnesses and other law enforcement officers, review of reports and personal observations, said information being as further described herein-

I have been employed as a police officer by the City of Bremerton Police Department since July 2006. I have been a SOG Detective since September 2011. Prior to becoming a police officer, I served as an Assistant Attorney General for the State of Alaska. I received a BA with honors from Lafayette College (1998), and a JD from Rutgers School of Law (2002).

In July 2006, I attended 720 hours of training at the Washington State Criminal Justice Training Center in Burien, Washington. There, I received 14-hours of basic narcotics training.



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1 The training included instruction in drug and drug paraphernalia identification, as well as
2 identifying impairment indicators associated with specific drug use. Instruction pertained to each
3 of the seven categories of drugs: depressants, stimulants, hallucinogens, phencyclidine and
4 narcotic analgesics.

5 In February of 2010 I attended an 80-hour basic drug enforcement class presented by the
6 Drug Enforcement Administration. The training included, but was not limited to the following:
7 pharmacology/drug ID, electronic narcotics' investigation, criminal interdiction, tactical entries
8 and surveillance procedures

9 In September 2010 I attended a 24-hour methamphetamine investigations course
10 presented by the Midwest Counterdrug Training Center. The training pertained to
11 methamphetamine lab identification, and considerations for writing and executing
12 methamphetamine related search warrants.

13 In November 2012, I attended 20 hours of training through the California Narcotics
14 Officers Association (CNOA). The course topics included instruction on informant management,
15 search and seizure issues, controlled buy and buy-bust operations, and undercover officer
16 survival.

17 During my law enforcement career, I have participated in multiple narcotics
18 investigations, which have resulted in arrests and seizures of various controlled substances
19 including Marijuana, Cocaine, Methamphetamine, Black Tar Heroin, Ecstasy, Molly and
20 Ketamine. Through these investigations and discussions with other experienced law enforcement
21 agents, I have become familiar with the methods of packaging illegal narcotics, values of illegal
22 narcotics, and terms associated with the manufacture, distribution and use of these substances. I
23 have been an affiant for approximately 25 narcotics related search warrants, and participated in
24 the execution of narcotics related search warrants that have resulted in arrests, and the discovery
25 of illegal narcotics and items related to the use, packaging, distribution, and manufacturing of
26 these substances.

27 In addition to narcotics related crimes, I have participated in investigations pertaining to
28 prostitution. Through the course of these investigations, I have interviewed numerous prostitutes
29 and pimps. I have found through my training and experience that these investigations often
30 overlap with drug investigations. Specifically, I have learned that those individuals who promote
31

COMPLAINT FOR SEARCH WARRANT; Page 2



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1 prostitution, commonly referred to as pimps, sometimes use drugs as a means to maintain control
2 over prostitutes. It is common for those individuals who promote prostitution to pay prostitutes
3 with drugs, and withhold drugs when they are dissatisfied with performance. Pimps will often
4 utilize well established prostitutes to mentor new prostitutes, and facilitate their transition into the
5 illicit activity. I also know that pimps and prostitutes will often utilize internet websites such as
6 tnboard.com and backpage.com to advertise for prostitution. Pimps and prostitutes will often use
7 their cellular phones to post ads on these websites, and communicate with clients and each other
8 about their illicit activities.

9 I also know that people engaged in prostitution perform their services either in a fixed
10 location that they designate, such as a motel room, or in a location determined by the client. This
11 distinction is commonly referred to as an "in" or "out" call. Because of the inherent dangers
12 associated with prostitution, pimps or their agents will often drive prostitutes to out calls and
13 remain in the area during the encounter. This practice provides a degree of perceived protection
14 for the prostitute, and allows the pimp to immediately be paid for the service. In addition to
15 driving their prostitutes to specific locations for out calls, I know from my training and
16 experience that pimps often use their vehicles as a private meeting locations to discuss their
17 criminal business enterprises, which often extend beyond promoting prostitution.

18 This affidavit is made in support of an application for a search warrant for the cellular
19 telephone described as follows:

20 **BLACK ZTE CELLULAR PHONE MODEL Z431, S/N 322423142390, BEING STORED IN**
21 **THE BREMERTON POLICE DEPARTMENT'S SECURE EVIDENCE LOCKER IN THE CITY OF**
22 **BREMERTON, COUNTY OF KITSAP, STATE OF WASHINGTON**

23 PROBABLE CAUSE: Over the course of the past several months, SOG detectives have
24 investigated a human trafficking operation led by Anthony D Parker (6/15/79) and his former
25 girlfriend, Lorena A Llamas (5/31/84). Llamas has been incarcerated in Kitsap County Jail since
26 November 17, 2012. While there, Llamas has groomed inmates to work as prostitutes, and sent
27 them out to work for Parker. Detectives identified one of these prostitutes as Johanna Holliday.
28 Holliday used her black ZTE cellular phone model Z431, S/N 322423142390 (hereinafter
29 referred to as the "Phone") to communicate with Llamas, Parker and clients about prostitution
30 activities. Holliday may have also used the Phone to advertise prostitution services on
31

COMPLAINT FOR SEARCH WARRANT; Page 3



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1 backpage.com between December 2012 and April 2013. As set forth below, there is probable
2 cause to believe that evidence of human trafficking, promoting prostitution and/or prostitution
3 will be found in the Phone, which is currently ~~be~~ stored in the Bremerton Police Department's
4 secure evidence room.

5 Over the past several months, detectives reviewed jail phone calls that Llamas made to
6 Parker and Holliday. All of the calls to Holliday were made to (360) 908-2471, the number
7 associated with the Phone. The number is listed for Holliday in the jail's intimate record
8 database. Holliday confirmed that the number is associated with the Phone. I have called the
9 Phone, and confirmed that the number matches it.

10 During jail calls, Holliday openly discusses her prostitution activities with Llamas.
11 Holliday tells Llamas that she (Holliday) is staying at Parker's residence, "posting" and taking
12 calls. I know from my training and experience that the term posting refers to placing
13 advertisements for prostitution on various websites. Through my investigation, I learned that
14 Holliday posts ads on backpage.com.

15 In one instance, Holliday tells Llamas that that she (Holliday) had intercourse with a
16 customer after giving him a hand-job with lotion. Holliday acquired a rash, and had to go to the
17 store with Parker to buy medicated douche. In another phone call, Holliday discusses her
18 relationship with an Asian prostitute working for Parker. Holliday states that Parker views her
19 (Holliday) as the "top bitch" and instructed her (Holliday) to "check the Asian bitch." I reviewed
20 a backpage.com ad featuring Holliday and an Asian female, who I identified through a review of
21 available police databases as Rancia J Camacho (5/19/86). The ad states, "two girl special -sexy
22 blonde and hot Asian!!" Detectives interviewed Camacho, who confirmed that Holliday worked
23 as a prostitute. Camacho told detectives that she forwarded her photos to Holliday's Phone, which
24 Holliday then posted on backpage.com. Camacho believed that Holliday used the Phone to post
25 the ads. The backpage.com ad featuring Camacho and Holliday lists Parker's phone number;
26 however the majority of Holliday's ads list the number associated with her Phone.

27 On 1/23/13, Parker tells Llamas that he assaulted "Baby Doll." Through the course of my
28 investigation, I learned that Baby Doll is a moniker used by Holliday. Parker says that Holliday
29 has been "stealing shit . . . money and drugs." Parker states that Holliday "ain't going anywhere
30 unless she wants her other eye shut up." Llamas asks Parker if he (Parker) already hit Holliday,
31



1 and then says something like, "Of course you did." During a phone call on 2/2/13, Holliday
2 describes the assault in detail. Holliday tells Llamas that Parker picked her up by the hair, threw
3 her against a wall, ripped out a chunk of her hair and gave her a black eye. Holliday says that she
4 "pissed herself twice" during the assault. I later spoke with a witness, who corroborated
5 Holliday's account of events.

6 On or around 2/11/13 Parker was arrested for burglary and an outstanding DOC warrant.
7 He (Parker) immediately calls Holliday on the Phone, and tells her, "You need to follow my
8 orders . . . what the fuck I tell you from right now until I get the fuck out of here in three days."
9 Parker also cautions Holliday that that "[her] money better be right when [he] gets out." Parker
10 instructs Holliday to help with his bail saying, "Take that little bit of chump change that you
11 fucking got and give it to Jaccet." I know that Jaccet is the moniker used by Tyler F Williams
12 (1/26/76), a well-known local gang member. When Holliday starts to sob, Parker says, "I don't
13 want to hear any crying bitch. . . . stop crying nigga, I want someone to be making fucking
14 moves." During telephone calls during this time period with Llamas, Holliday says that Parker
15 keeps all of her money, and she (Holliday) is taking the opportunity while Parker is in jail to
16 make money for herself.

17 On 2/12/13, Holliday speaks with Llamas, and says that she cannot talk because she
18 (Holliday) is in the middle of a call. At the same time, Detective Rauback drove by Holliday's
19 residence, and observed a male, later identified as Jonathan Miller, talking on his cell phone in
20 the yard. Detective Rauback had observed Miller parked in the area earlier. I later contacted
21 Miller, who confirmed that he had been at the residence to meet with Holliday. Miller, who
22 recognized Holliday from a photo, told me that he had found Holliday's advertisement on
23 backpage.com, and called her by phone to arrange for an erotic massage.

24 On 2/19/13, detectives posed as a potential customer, and sent Holliday a text message to
25 the Phone asking if she was available for a call. Holliday, who had recently posted a new ad on
26 backpage.com, corresponded with detectives to arrange a meeting. Detectives asked Holliday to
27 meet at a local hotel. Holliday refused, stating that she does not do hotels. Holliday stated that she
28 wanted to meet at a house. Holliday eventually stopped communicating with detectives.
29 Following the failed meeting, Holliday continued to post new ads on backpage.com with the same
30 phone number.

31

COMPLAINT FOR SEARCH WARRANT; Page 5



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1 On 2/22/13, detectives applied for a search warrant for Holliday's backpage.com ads.
2 Kitsap County Superior Court Judge Jennifer Forbes issued the warrant. Detectives obtained the
3 customer, and billing information underlying the ads which lists both Parker and Holliday's
4 phone numbers as well as various addresses associated with both subjects.

5 On 3/13/13, detectives applied for a search warrant for Holliday's phone records related to
6 the number (360) 908-2471. Kitsap County Superior Court Judge Jennifer Forbes issued the
7 warrant, which was served on AT&T on or around 3/14/13. As of this date, AT&T has not
8 responded to the warrant.

9 On 4/3/13, Parker was placed into custody on an outstanding DOC warrant. Parker calls
10 the Phone numerous times, and gives Holliday instructions on what she needs to do while he is in
11 custody. Holliday discusses some of her clients, and money that she is making through
12 prostitution and saving for Parker. Parkers tells Holliday, "I need you to do what the fuck I say to
13 a T . . . Just do what you're supposed to do and stack." I know from my training and experience
14 that "stack" means to save money. Parker talks about using the money to purchase a vehicle, and
15 pay off debt that he owes for bail from a prior arrest. Parker also tells Holliday to take "Monster"
16 from underneath the mattress, and put him in a duffle-bag in the shed. I know from conversations
17 with Jaccet associates that Parker is in possession of a handgun, which was stolen and recently
18 returned to him. I believe that "Monster" is a reference to the gun.

19 On 4/4/13 at approximately 1900, Detective Rauback advised me that he had observed
20 Holliday and Alisia Crettol meeting with Travier Stevenson (AKA Little Jaccet). Stevenson is a
21 gang member who uses, and sells Percocet pills. Detective Rauback observed Holliday meet
22 briefly with Stevenson inside a Ford P/U truck WA license A37747M. The vehicle is registered to
23 Stevenson's girlfriend, Janee Morgan. Holliday then returned to Crettol's vehicle, a blue Ford
24 Escort WA license AEH1175. The meeting occurred in the area of the A&C Tavern on Perry
25 Ave. Detective Rauback followed Crettol away from the area, and coordinated with patrol
26 officers to stop the vehicle in the area of 16th St and Warren Ave.

27 I responded to the location of the stop, and stood by while Holliday and Crettol were
28 detained in properly fitting, and double-locked restraints. I escorted Holliday to a patrol vehicle,
29 and explained that I was investigating a possible drug transaction that had just occurred as well as
30 other crimes related to prostitution. I read Holliday her Miranda rights from a department issued
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COMPLAINT FOR SEARCH WARRANT; Page 6



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1 card. Holliday acknowledged her rights, and agreed to speak with me.

2 I asked Holliday how many pills she had just gotten from Stevenson. Holliday was
3 hesitant to answer, and mumbled something that I could not understand. I told Holliday that an
4 undercover detective had observed the transaction, and asked her again how many pills she had
5 gotten from Stevenson. Holliday told me that she had gotten one pill from him. I asked Holliday
6 where she had put the pill. Holliday told me that she had put it inside her purse, which was sitting
7 in the passenger seat of the vehicle. I asked Holliday for consent to retrieve the pill, and she
8 agreed to same. It should be noted that Crettol also agreed to a search of the vehicle, and
9 confirmed that the purse belonged to Holliday. I went to the vehicle, and withdrew the purse as
10 well as the Phone from the passenger seat. Crettol was present, and confirmed that the Phone
11 belonged to Holliday.

12 I returned with the items to Holliday, and took off her hand restraints. Holliday located
13 the pill – small, round blue pill marked A 215 – inside her purse as well as a crumpled up piece of
14 foil. Holliday handed both items over to me. I know from my training and experience that pill
15 users will often smoke pills on foil as a means to bypass the chemical binders in the pills,
16 resulting in an immediate and intense high. I showed Holliday the Phone located on the passenger
17 seat. Holliday told me that it was her Phone, and identified the number as (360) 908-2471. I
18 called the number, confirming same. I took custody of the Phone.

19 Because Holliday was cooperative throughout the interview and agreed to meet with
20 detectives the following day to make a recorded statement regarding her criminal activities, she
21 was released from custody. I placed the Phone into a secure evidence locker with the intent to
22 either examine it with Holliday's consent the following day, or if necessary apply for a search
23 warrant. I placed the pill, and foil into evidence in accordance with department procedure.
24 Through a search of drugs.com, I identified the pill as 30 mg Oxycodone Hydrochloride, a
25 schedule II narcotic.

26 On 4/5/13, Holliday failed to show up for her interview. She has not contacted detectives,
27 and her whereabouts are unknown.

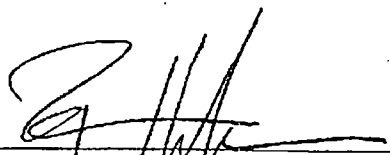
28 Based upon the foregoing, there is probable cause to believe that evidence of human
29 trafficking, promoting prostitution and/or prostitution will be found in Holliday's Phone. I
30 respectfully request that the court issue a search warrant allowing law enforcement to search and
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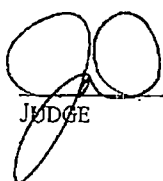
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seize the following information:

1. All information stored in the above-described cellular phone that can be extracted through a forensic examination, or other means including, but not limited to images, video, contacts, conspirator phone numbers/addresses, text messages, email messages, ledgers, financial transaction information, electronic documents, or any other stored information relating to human trafficking, promoting prostitution and/or prostitution.


DETECTIVE RYAN HEFFERNAN
Bremerton Police Department

SUBSCRIBED AND SWORN to before me this 8 day of April, 2013.



JUDGE

Distribution—Original (Court Clerk); 1 copy (Prosecutor), 1 copy (Detective)



Jan. H.

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RECEIVED AND FILED

APR 23 2013

DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE KITSAP COUNTY SUPERIOR COURT

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STATE OF WASHINGTON,

Plaintiff,

v.

BLACK MOTOROLA CELLULAR PHONE MODEL
WX430, S/N 80DF5CC1 BEING STORED IN THE
BREMERTON POLICE DEPARTMENT'S SECURE
EVIDENCE ROOM AS ITEM # "JH" UNDER CASE
NUMBER B13-001589 IN THE CITY OF
BREMERTON, COUNTY OF KITSAP, STATE OF
WASHINGTON,

Defendant.

)
) No. 20130179
)
) COMPLAINT FOR SEARCH
) WARRANT FOR FRUITS /
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) Prostitution 1st Degree and/or RCW
) 9A.88.030 Prostitution
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I, DETECTIVE RYAN HEFFERNAN, being first duly sworn upon oath, depose and say—
I am a duly appointed, qualified, and acting detective assigned to the Bremerton Police
Department's Special Operations Group (SOG), and am charged with responsibility for the
investigation of criminal activity occurring within Kitsap County. I have probable cause to
believe, and do, in fact, believe, that in violation of the laws of the State of Washington with
respect to RCW 9A.40.100 Human Trafficking 1st Degree, RCW 9A.88.080 Promoting
Prostitution 1st Degree and/or RCW 9A.88.030 Prostitution, evidence and/or fruits and/or
instrumentalities of said offense(s) are presently being kept, stored or possessed, and can be
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In July 2006, I attended 720 hours of training at the Washington State Criminal Justice
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COMPLAINT FOR SEARCH WARRANT; Page 1



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COMPLAINT FOR SEARCH WARRANT; Page 2



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17 criminal business enterprises, which often extend beyond promoting prostitution.

18 This affidavit is made in support of an application for a search warrant for the cellular
19 telephone described as follows:

20 **BLACK MOTOROLA CELLULAR PHONE MODEL WX430, S/N 80DF5CC1 BEING STORED IN**
21 **THE BREMERTON POLICE DEPARTMENT'S SECURE EVIDENCE ROOM AS ITEM # "JH" UNDER**
22 **CASE NUMBER B13-001589 IN THE CITY OF BREMERTON, COUNTY OF KITSAP, STATE OF**
23 **WASHINGTON**

24 **PROBABLE CAUSE:** Over the course of the last several months, SOG detectives have
25 investigated the criminal activities of Anthony Parker (AKA Baby Deuce). Parker has an
26 extensive criminal history including seven felony convictions, eleven gross misdemeanor
27 convictions, three misdemeanor convictions and four "classification unknown" convictions.
28 Through the course of the investigation, Detectives learned that Parker's former girlfriend,
29 Lorena Llamas (AKA Crazy), groomed women to work as prostitutes for Parker while she
30 (Llamas) was incarcerated in the Kitsap County jail. Detectives identified one of these prostitutes
31 as Johanna Holliday. Holliday has no felony convictions, and five gross misdemeanor convictions

COMPLAINT FOR SEARCH WARRANT; Page 3



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1 for the following: Theft 3rd degree, Minor in Possession/Consumption (three counts) and DUI. As
2 set forth below, Holliday used her black Motorola cellular phone model WX430, S/N 80FDSCC1
3 (hereinafter referred to as the "Phone") to communicate with Parker and clients about prostitution
4 activities. There is probable cause to believe that evidence of human trafficking, promoting
5 prostitution and/or prostitution will be found in the Phone, which is currently be stored in the
6 Bremerton Police Department's secure evidence room.

7 Through a review of jail phone calls as well as contact with confidential informants and
8 Jaccet associates, Detectives learned that Parker bailed Holliday out of jail in or around
9 December 2012, and since that time has been involved in a dating relationship with Holliday and
10 acted as her pimp. Detectives reviewed Holliday's ads for prostitution on backpage.com, which
11 list phone numbers and addresses associated with Parker. Detectives performed surveillance, and
12 confirmed that Holliday was living with Parker, and performing acts of prostitution at 1720 14th
13 St in Bremerton Washington. The residence is believed to be owned by a family member of
14 Llamas. Parker and Holliday have since moved to a residence at 703 S Summit Ave in
15 Bremerton, Washington.

16 On 4/4/13, detectives observed Holliday participate in a drug transaction with Parker's
17 associate, Travier Stevenson (AKA Little Jaccet). Detectives contacted Holliday on a traffic stop,
18 and developed probable cause to arrest her for possession of a schedule II drug, Percocet.
19 Holliday was in possession of a cellular phone, which detectives determined had been used to
20 post advertisements for prostitution on backpage.com as well as to communicate with Parker and
21 clients about prostitution. Detectives took of custody of the phone, and released Holliday.

22 On 4/8/13, detectives obtained a search warrant for Holliday's phone. Detectives
23 examined the phone, which contained numerous text messages - many to Parker - pertaining to
24 prostitution and drug activity. The phone also contained photos of Holliday that had been posted
25 on backpage.com.

26 Upon her release, Holliday obtained a new phone and continued to post advertisements
27 for prostitution on backpage.com listing the number (360) 551-9523. Detectives reviewed an
28 advertisement Holliday posted on April 11th, 2013 at approximately 1828 hours. In that
29 advertisement, Holliday posts six photographs of herself scantily-clad and in provocative poses.
30 Her "screen name" on this advertisement is "Baby Doll."

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COMPLAINT FOR SEARCH WARRANT; Page 4



Russell D. Hauge, Prosecuting Attorney
Adult Criminal and Administrative Divisions
614 Division Street, MS-35
Port Orchard, WA 98366-4681
(360) 337-7174; Fax (360) 337-4949

1 Using a texting application with a fictitious name and phone number, detectives
2 contacted Holliday at the new number, and inquired if she was available. Holliday told detectives
3 that she was available, advising that the cost was \$200 per hour. Holliday also provided pricing
4 information for two girls - "125 per person," for each half hour and "200 each" for an
5 hour. Holliday said that she was available to meet at the Oyster Bay Inn, and asked detectives to
6 "grab some condoms" and "lube. Detectives met with Holliday, and placed her into custody for
7 possession of a schedule II drug, Percocet, and an outstanding warrant. At the time of her arrest,
8 Holliday was in possession of the above-described Phone, which is the subject of this warrant.
9 Detectives believe that this is the Phone that she was using to respond to the backpage.com ad.

10 After being provided with her Miranda rights, Holliday agreed to speak with detectives.
11 Holliday provided a taped statement, detailing her relationship with Llamas and Parker. Holliday
12 confirmed that Parker has acted as her pimp and boyfriend since he bailed her out of jail
13 approximately four months ago. Since that time, Holliday has lived with Parker and maintained a
14 dating relationship with him. Holliday told detectives that Parker helped place her ads on
15 backpage.com, responded to customers and kept nearly all of the money she made through
16 prostitution. Parker saw it all as his money, and gave it out to Holliday as he saw fit. Although
17 Parker was initially nice to Holliday and courted her as his girlfriend, he later forced her to work
18 as a prostitute seven days a week, and left her alone for days at a time in the house demanding
19 that she not spend time with her friends and family. Holliday told detectives that she lost
20 everything she ever had - friends, family, possessions etc. over the last several months at the
21 hands of Parker.

22 Holliday told detectives that she was terrified to leave Parker, and was isolated with
23 nowhere else to go. When Holliday disobeyed Parker, he verbally abused her and often beat her
24 severely. Detectives have reviewed numerous jail phone calls in which Parker berates Holliday,
25 screaming, "You need to follow my orders . . . what the fuck I tell you from right now until I get
26 the fuck out of here in three days." Parker also cautions Holliday that that "[her] money better be
27 right when I get out." Parker instructs Holliday to help with his bail saying, "Take that little bit of
28 chump change that you fucking got and give it to Jaccet." I know that Jaccet is the moniker used
29 by Tyler Williams, the leader of the gang. When Holliday starts to sob, Parker says, "I don't want
30 to hear any crying bitch. . . . stop crying nigga; I want someone to be making fucking moves."
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1 In addition to verbal abuse and threats, Holliday recounted numerous instances in which
2 Parker assaulted, and imprisoned her in an effort to prevent her from leaving him. In one instance
3 in or around the middle January, Parker became infuriated that Holliday had been with Anthony
4 Flewellen, another Jaccet gang member and pimp. After scolding Holliday over the phone, Parker
5 located Holliday at Flewellen's apartment at 901 Pleasant Ave in Bremerton. Parker came to the
6 residence, and demanded to be let in. Jennifer Prerost, who was present at the residence with her
7 (Prerost's) young daughter, allowed Parker inside the residence over Holliday's protests. Holliday
8 huddled on the ground in Flewellen's locked bedroom. Parker came inside the residence, and
9 broke down the bedroom door. Parker picked Holliday up off the ground by the hair, threw her
10 against the wall and beat her face. Holliday was so terrified that she urinated in her pants. She
11 later discovered large clumps of her hair missing. Detectives spoke to Prerost, who independently
12 confirmed this account of events, telling detectives that it was one of the worst beatings she had
13 ever witnessed. Detectives have also reviewed jail telephone calls, in which Parker tells Llamas
14 that he beat Holliday for stealing from him. In addition, Detectives reviewed jail calls in which
15 Holliday describes this portion of the assault in great detail to Llamas, who appeared more
16 concerned about damage to the wall (Llamas mistakenly believed that the assault occurred in her
17 residence).

18 Holliday told detectives that Parker took her from Flewellen's residence against her will
19 to an unknown house on Houston Ave. Parker continued to beat Holliday about the head and face
20 while in the car, which caused her to temporarily black out. Parker told Holliday that he planned
21 to have his cousins tie her down, and torture her at the residence. Instead, Parker took Holliday
22 inside and retrieved a towel for her to clean the blood from her face. Parker then drove Holliday
23 back to 1720 14th St where he continued to abuse her for the next several hours.

24 At one point, Parker took a handgun and held it to Holliday's head asking if she was
25 ready to die. Parker made Holliday look down the chamber of the gun, which he pointed directly
26 at her face. Holliday broke down in tears as she told detectives that she was terrified for her life.
27 Parker eventually put the gun away, but continued to torment Holliday for the next several days,
28 periodically beating her and demanding that she continue to see clients despite having a black
29 eye, significant bruising and limited function of one of her arms.

30 Although this was the worst beating that Parker inflicted on Holliday, it was far from the
31



1 last. He continued to beat her, often for no reason, in an effort to maintain her as a prostitute
2 under his control. Parker assaulted Holliday as recently as 4/12/13, crushing her cheek against the
3 wall of their apartment with his fist. Parker applied such a degree of pressure that Holliday feared
4 he would break bones in her face. Holliday said that Parker treated her like a piece of property,
5 and made it clear that he could leave her at any time. He expected complete obedience from
6 Holliday, saying that she needed to always be on point, and Holliday lived in constant fear of
7 being assaulted, or possibly killed if she could not perform to his expectations.

8 Holliday spoke extensively about Parker's gun, which she described as a small handgun
9 with a large light on the barrel. Holliday, who is not familiar with guns, noted that it was similar
10 in appearance to a semi-automatic handgun carried by a detective. Holliday told detectives that
11 Parker referred to the gun as "Monster", and usually kept it hidden under his mattress. Holliday
12 confirmed that Parker took the gun to the couple's new residence on S Summit Ave. Holliday told
13 detectives that Parker asked her to move the gun from under the mattress to a bag in the garage.
14 Parker made the request in a phone call from the jail. Detectives reviewed the call which occurred
15 on or around 4/3/13 in which Parker tells Holliday to move "Monster" from under the mattress to
16 a duffel bag in the attached garage. Holliday told detectives that she followed Parker's
17 instructions, and placed the gun in a blue Victoria Secret clothing bag in the garage.

18 On 4/12/13 Detectives applied for a telephonic search warrant for Parker's residence. The
19 Honorable Kitsap County Judge Jennifer Forbes issued the warrant allowing law enforcement to
20 enter the residence to effectuate the arrest of Parker, and search for the firearm.

21 On 4/13/13 at approximately 1200, detectives and patrol officers went to the residence to
22 serve the warrant. Parker, who could be seen inside the residence, refused repeated demands to
23 exit. Because of the severity of the crimes and safety concerns associated with the handgun, the
24 SWAT team responded to the scene. Parker came out of the residence at approximately 1500, and
25 was placed into custody. During a search of the residence, detectives located a confirmed stolen
26 Taurus 45 caliber semi-automatic handgun S/N NBO91701 equipped with a light on the barrel in
27 a clothing bag in the garage.

28 Detectives believe that evidence contained within the above-described Phone will further
29 corroborate Holliday's criminal allegations. Holliday obtained the Phone after being placed into
30 custody by detectives on 4/4/13, and used the Phone to communicate with clients about
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1 prostitution. Parker called Holliday on the Phone at the time of her arrest, and presumably sent
2 Holliday text messages about prostitution, drugs and or other criminal activity as he had done on
3 her previous phone. Based upon the foregoing, there is probable cause to believe that evidence of
4 human trafficking 1st degree, promoting prostitution 1st degree and/or prostitution is currently
5 being stored in the above-described Phone.

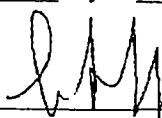
6 I respectfully request that the court issue a search warrant allowing law enforcement to
7 search and seize the following information from the Phone:

- 8 1. All information stored in the above-described cellular phone that can be extracted
9 through a forensic examination, or other means including, but not limited to images,
10 video, contacts, conspirator phone numbers/addresses, text messages, email messages,
11 ledgers, financial transaction information, electronic documents, or any other stored
12 information relating to human trafficking, promoting prostitution and/or prostitution.

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DETECTIVE RYAN HEFFERNAN
Bremerton Police Department

SUBSCRIBED AND SWORN to before me this 23 day of April


JUDGE STEVEN DIXON

Distribution-Original (Court Clerk); 1 copy (Prosecutor), 1 copy (Detective)



APPENDIX #3 private COMMUNICATION



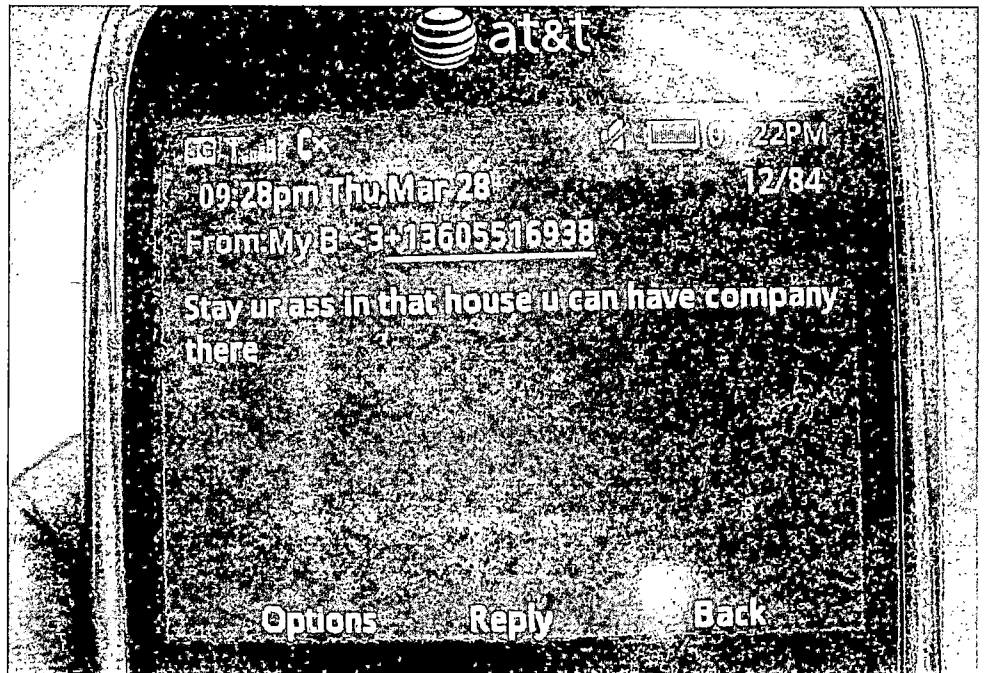
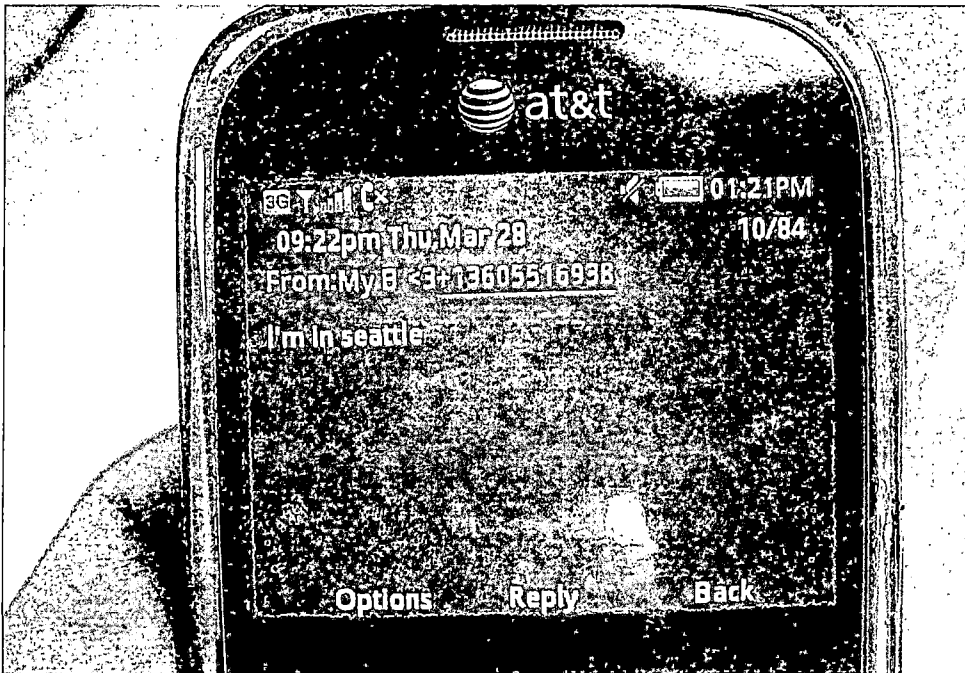
STATE Exhibit No. 11
 PLAINTIFF DEFENDANT
 PETITIONER RESPONDENT
 OTHER _____

Case No. 13-1-00597-1

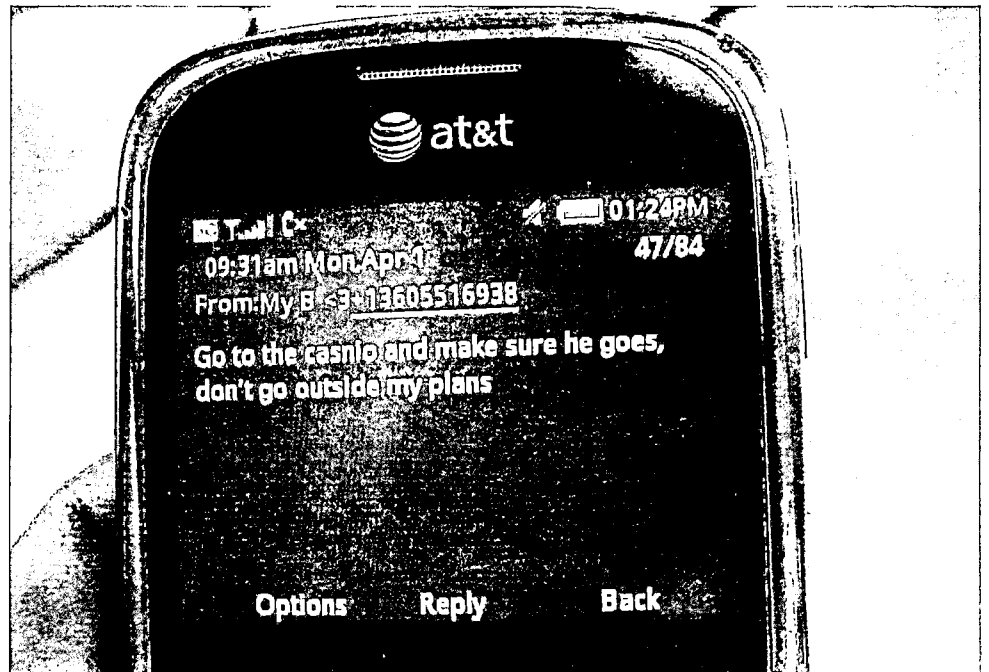
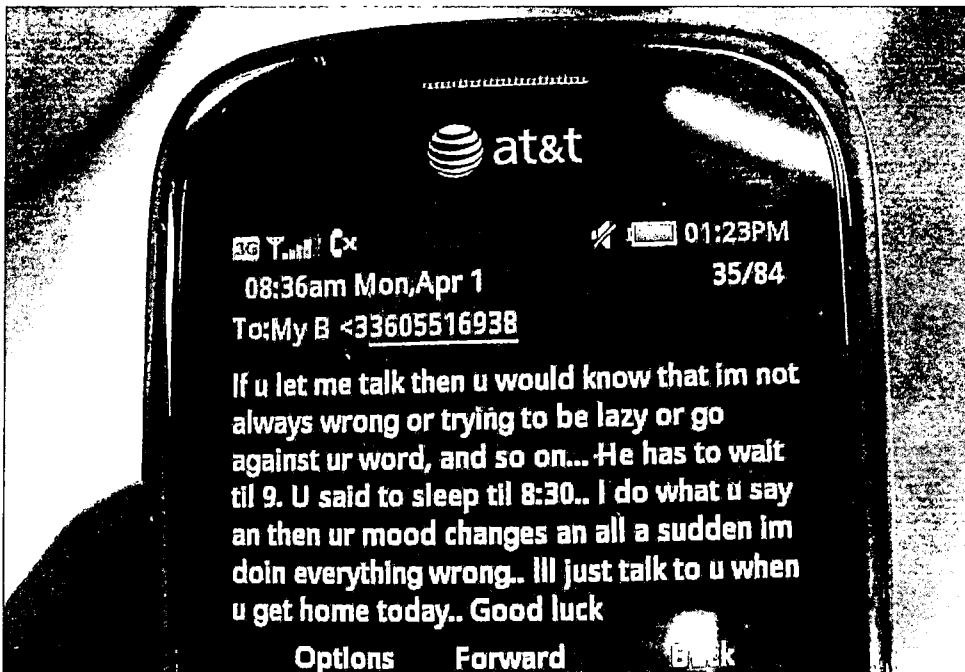
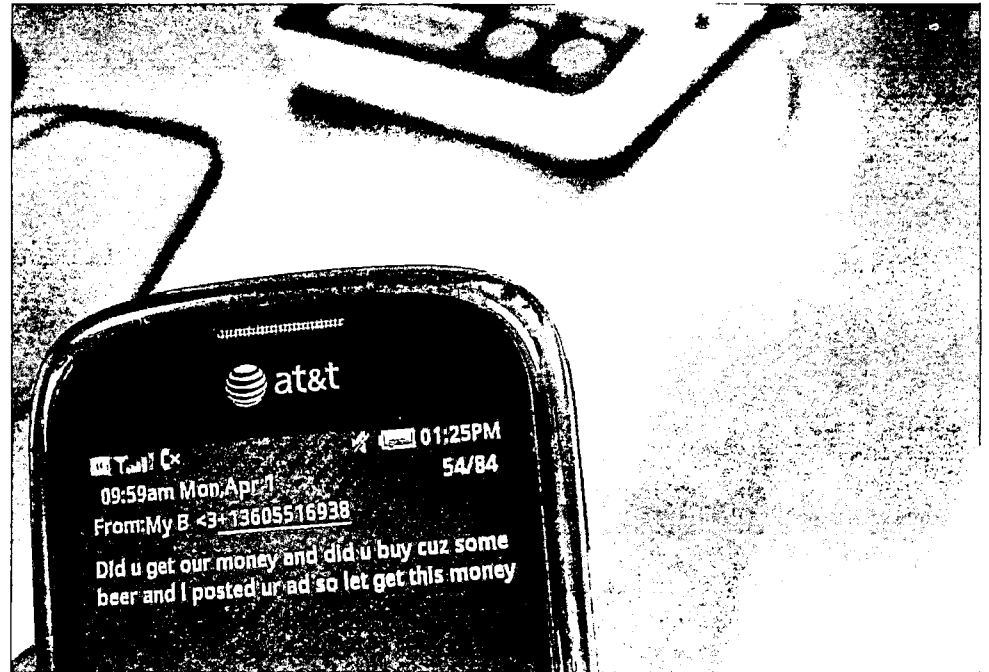
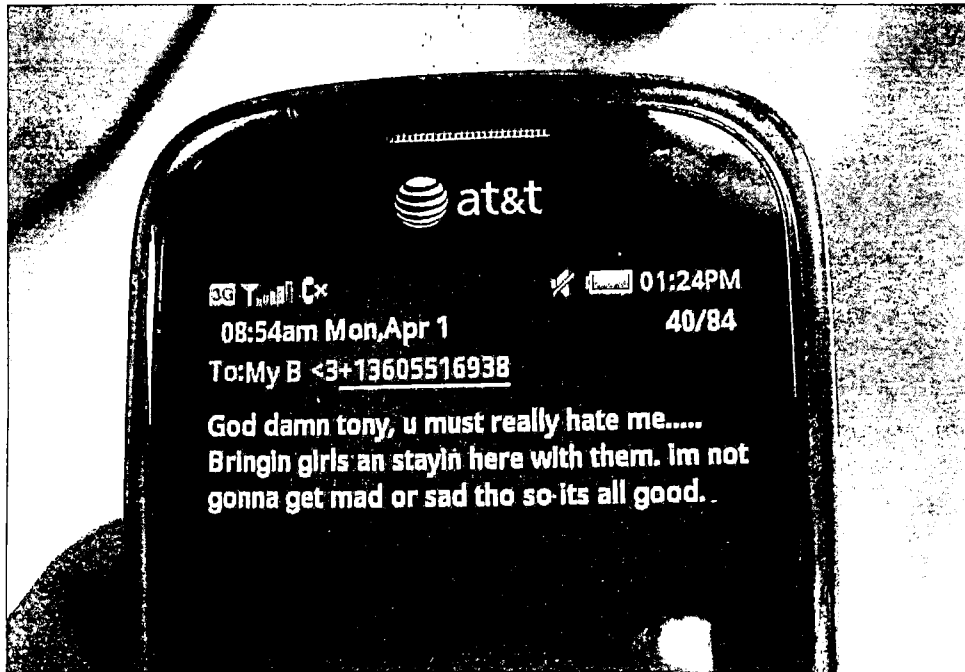
State of Washington vs. Anthony D Parker

Admitted Refused
 Withdrawn Not Offered

Date of Court's Ruling: 19 NOV 2013



Messages To AND from PARKER



B13-1389

6:10 PM

◀ kpage.com: Move Ad to T ▶

Your ad has successfully been moved to the top of the listings!

To EDIT/DELETE your posting, click the following link:

<http://tac.backpage.com/post/11894445/56ec0a34>

If nothing happens when you click this link, please copy the link above and paste it into your web browser.

DON'T DELETE THIS EMAIL - you might need this link to enhance, edit or delete your post in the future.

6:14 PM

le • h • t t y • w i t h • a

Protection is a must with bj/fs

Sent via my LG Marquee from Boost Mobile

"Mr. John"

<navyjohn1992@hotmail.com> wrote:

>And what are your rules with condoms?

>
>
>
>
>

-----Original Message-----

PARKER EMAIL
Account being use

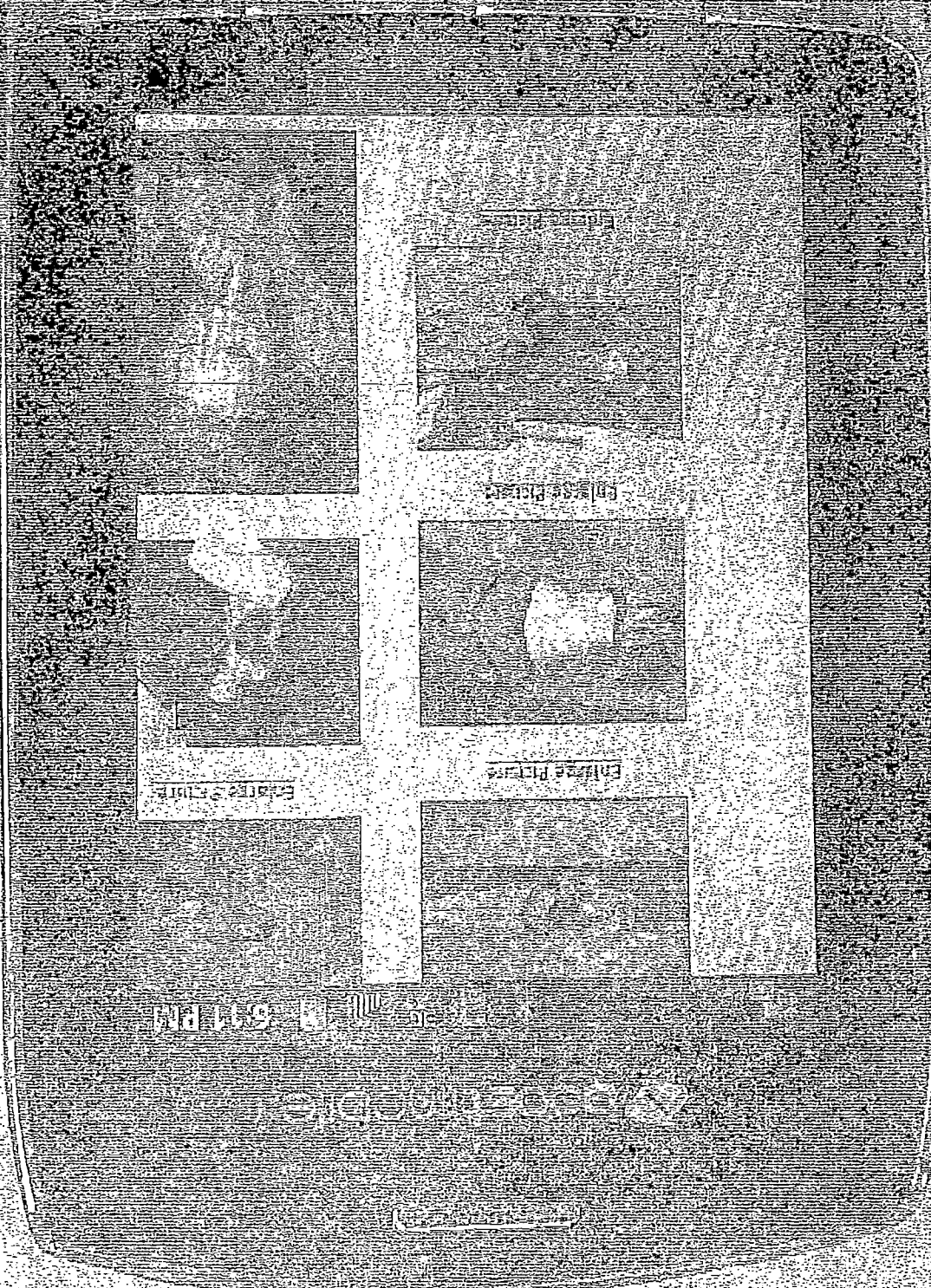
From: Tpabc77@gmail.com to speak through

Sent: 19 Jan 2013 02:18:55 GMT text

To: Mr. John

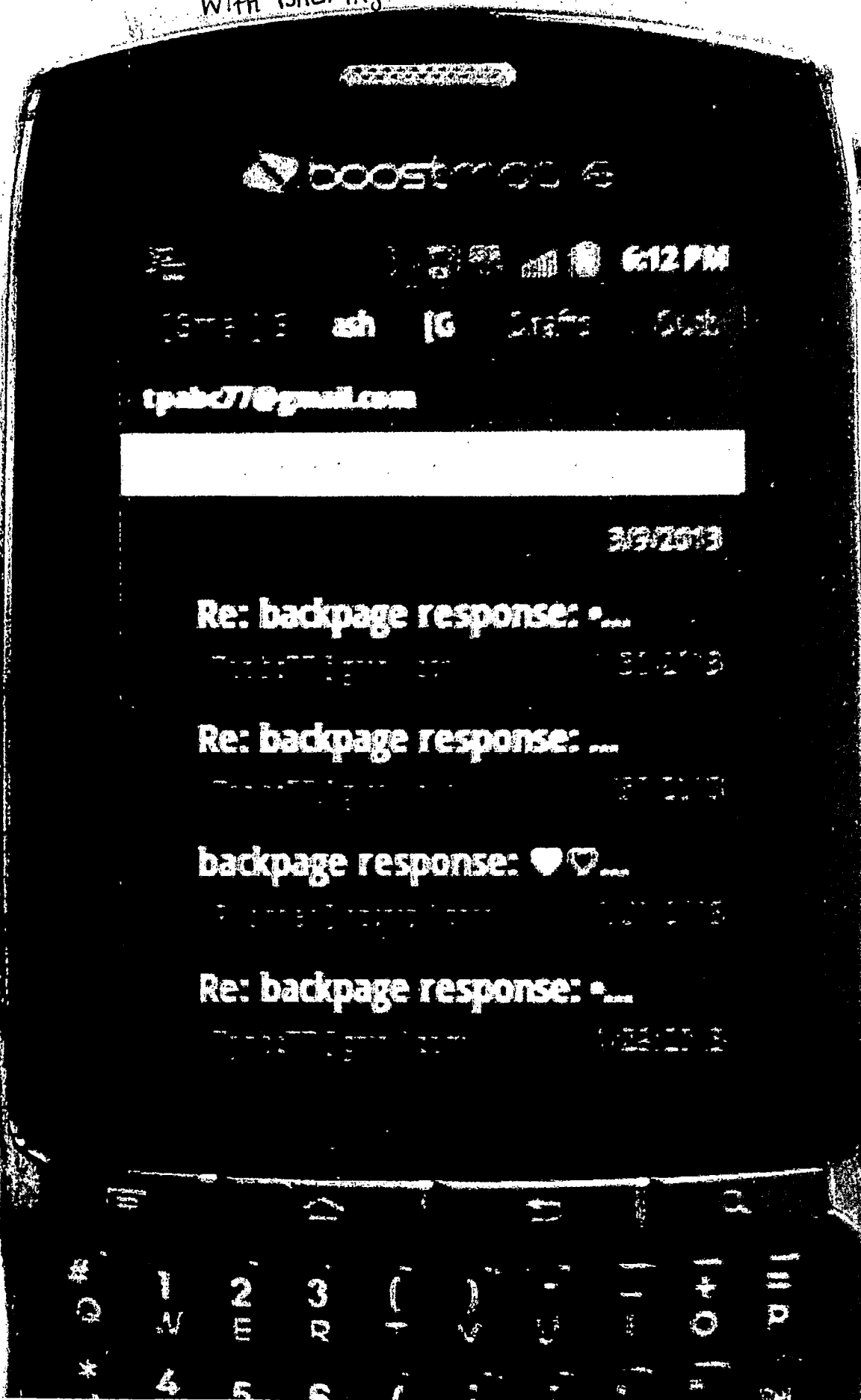
Subject: Re: backpage response: °° | i t
le • h • t t y • w i t h • a • b • d y °...

Picture of Holiday on PARKER'S
EMAIL Account with BACKPAGE



PARKER EMAIL ACCOUNT: tpabc77@gmail.com
WITH BACKPAGE

B13-1589

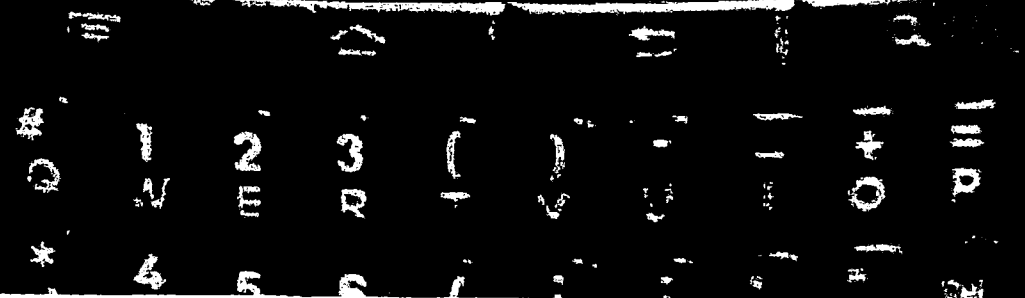


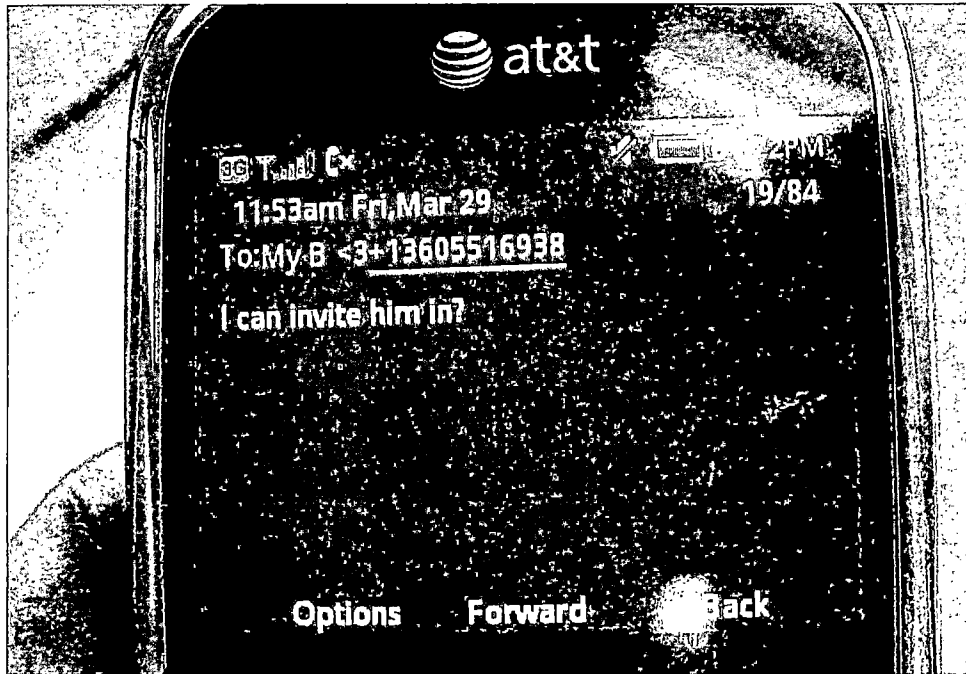
Here →

Boost Mobile
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tpabc77@gmail.com

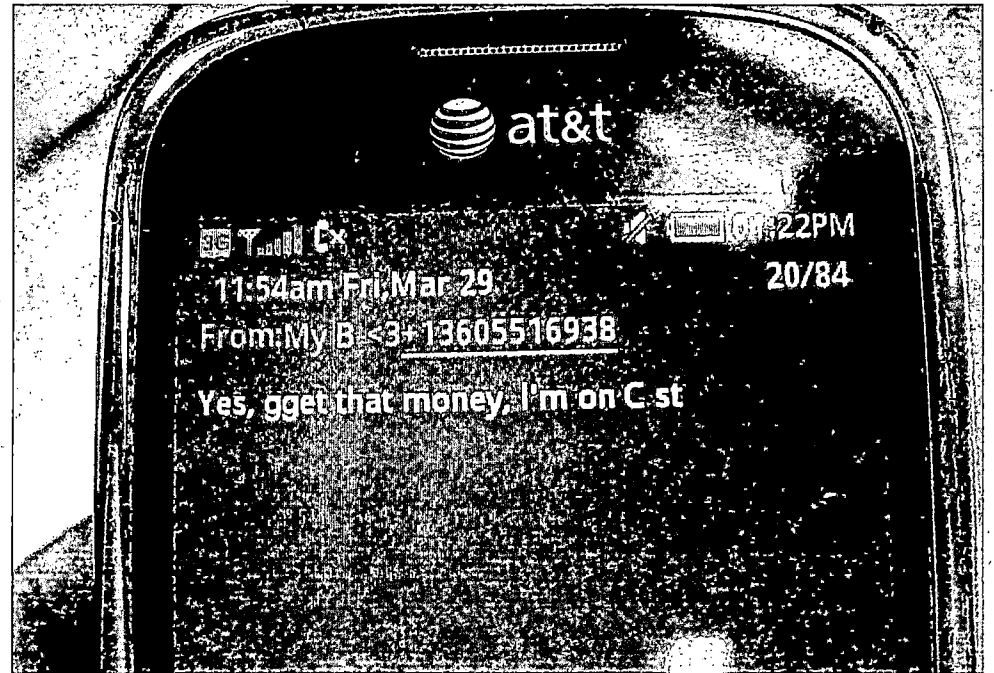
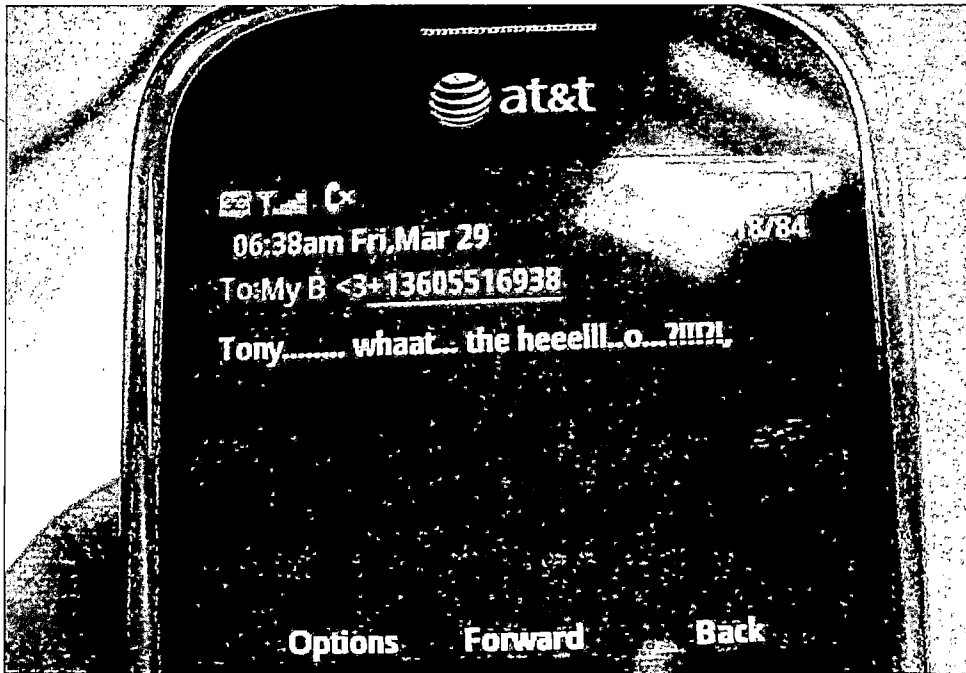
[Redacted]

3/9/2013
Re: backpage response: •...
3/9/2013
Re: backpage response: ...
3/9/2013
backpage response: ♥♥...
3/9/2013
Re: backpage response: •...
3/9/2013

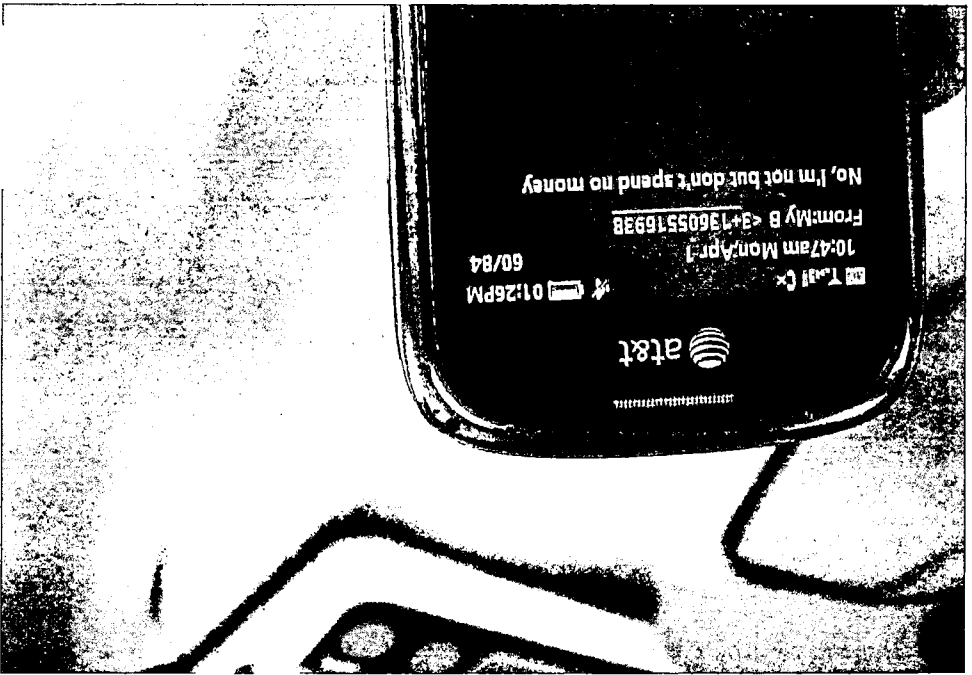
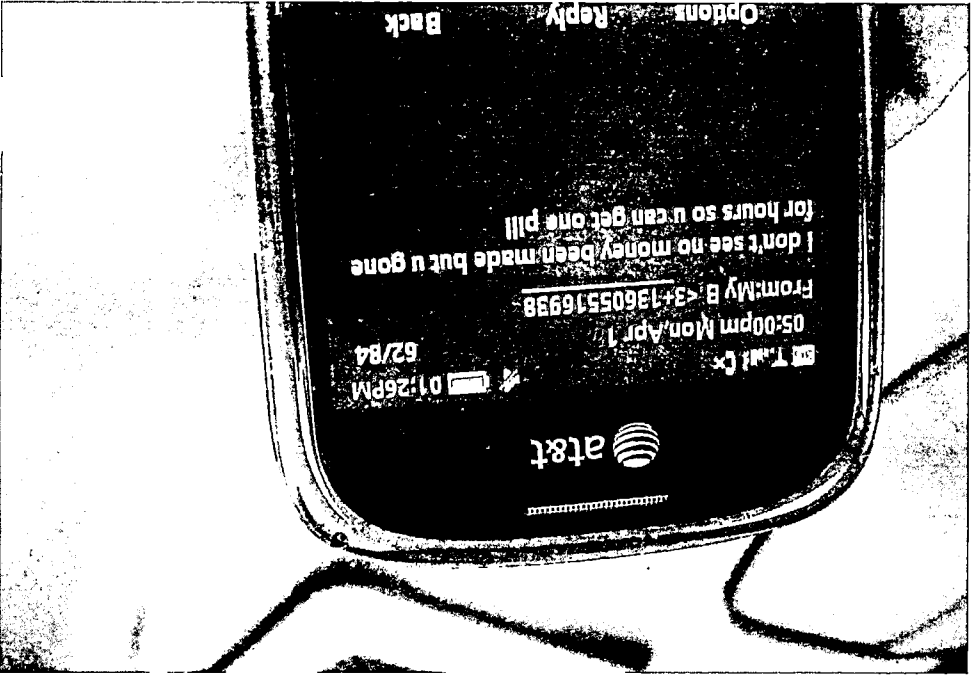
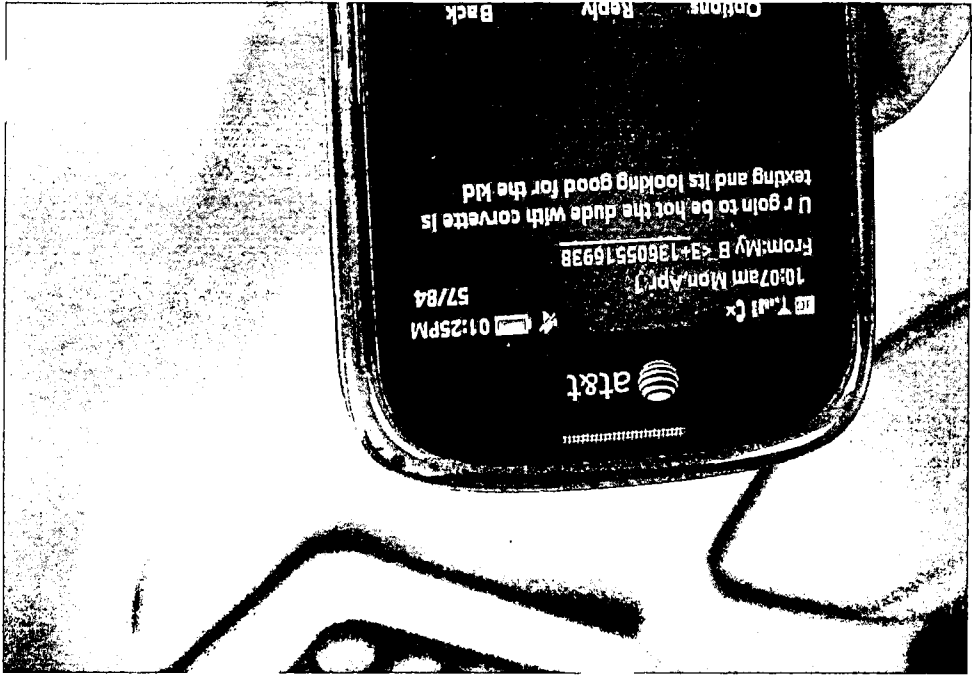
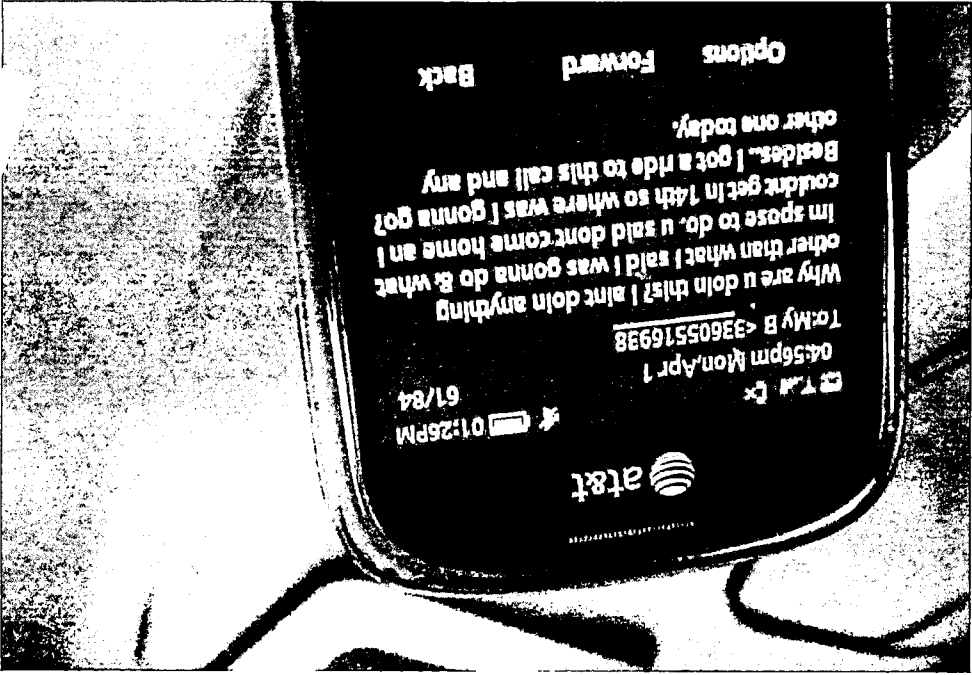




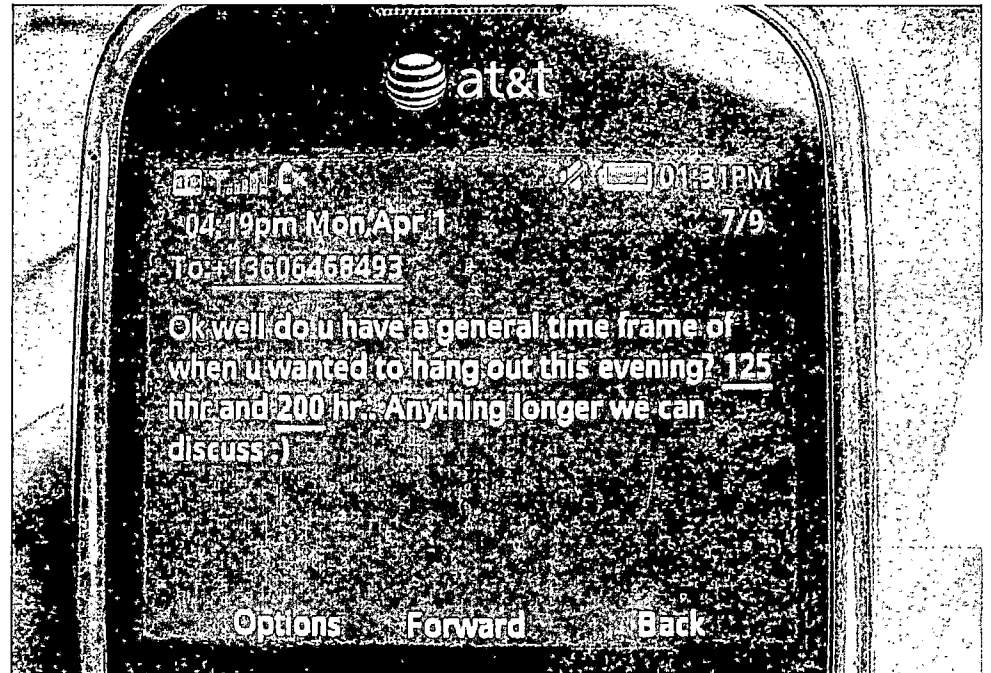
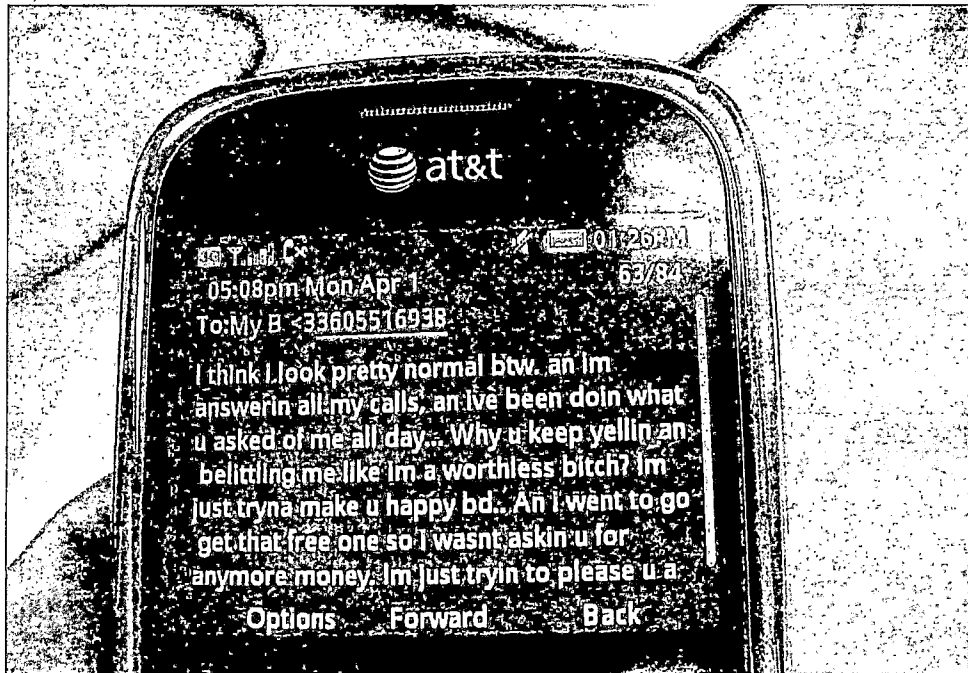
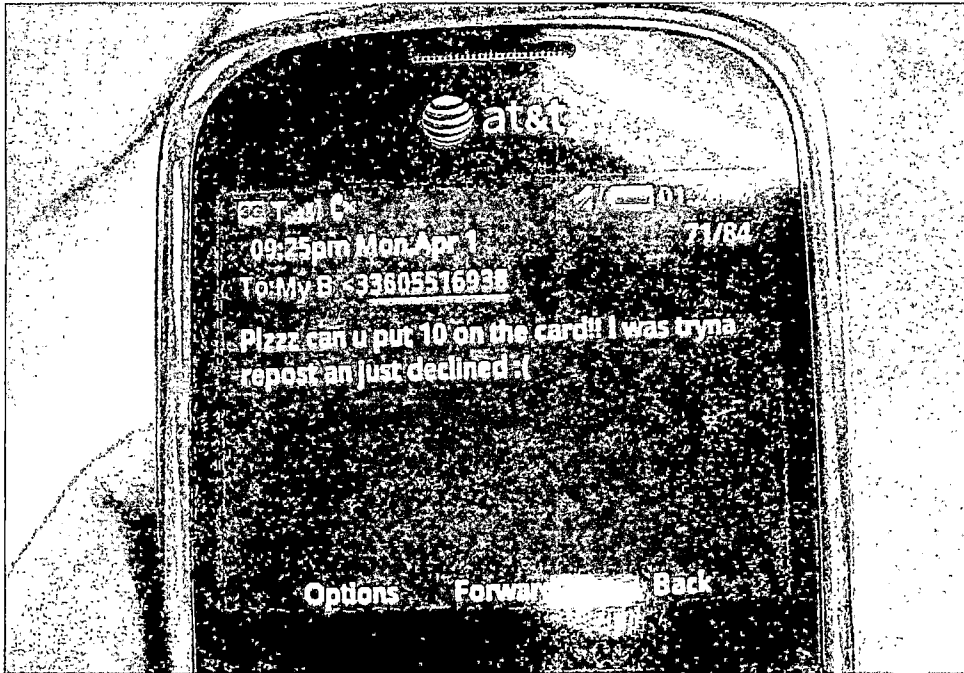
Text
Messages To And
From PARKER

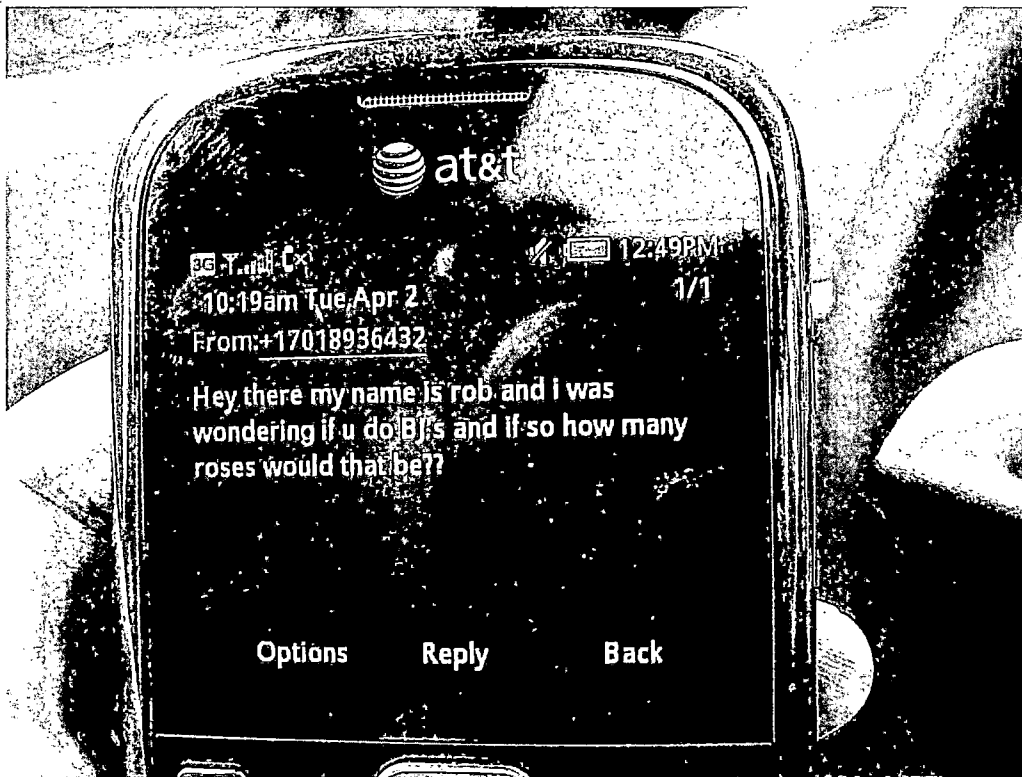
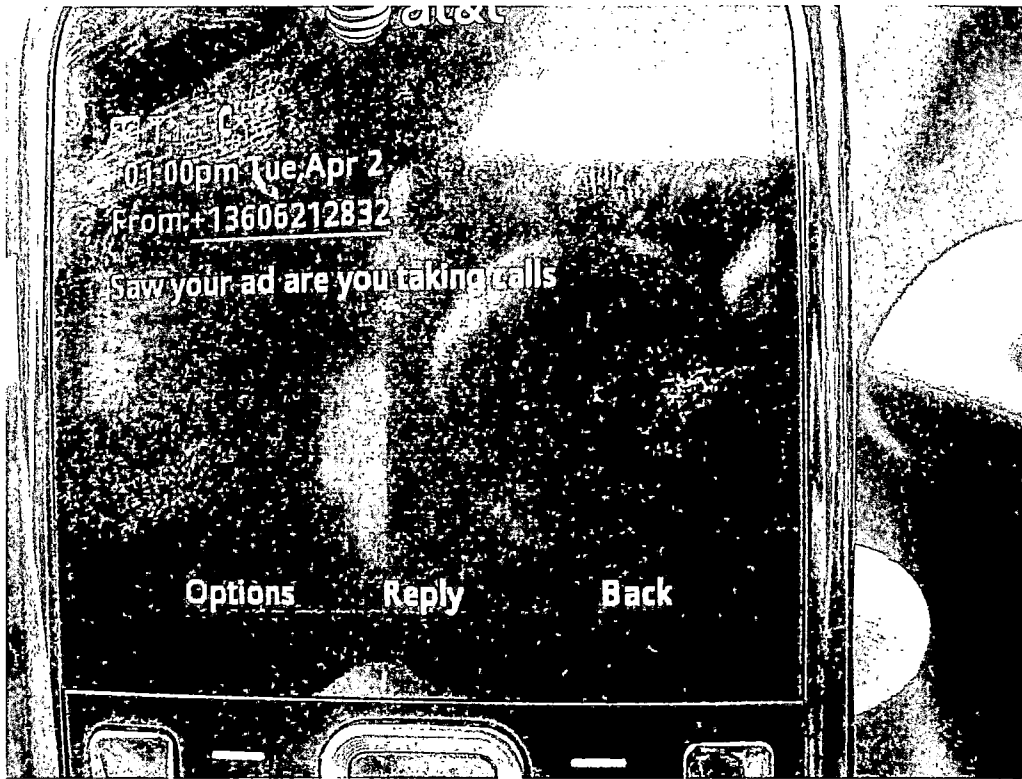


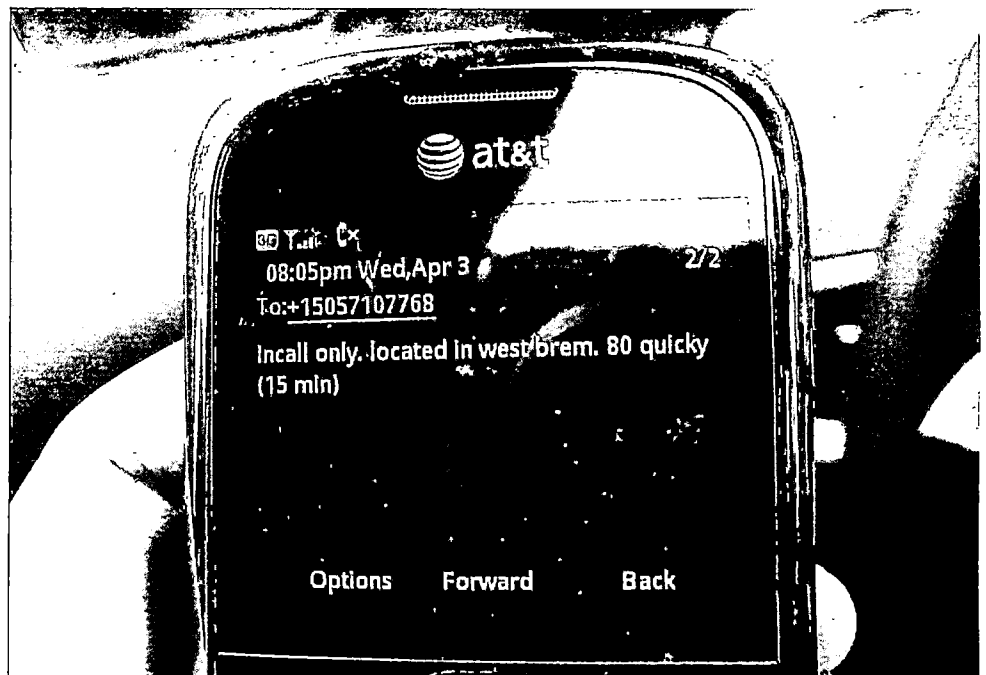
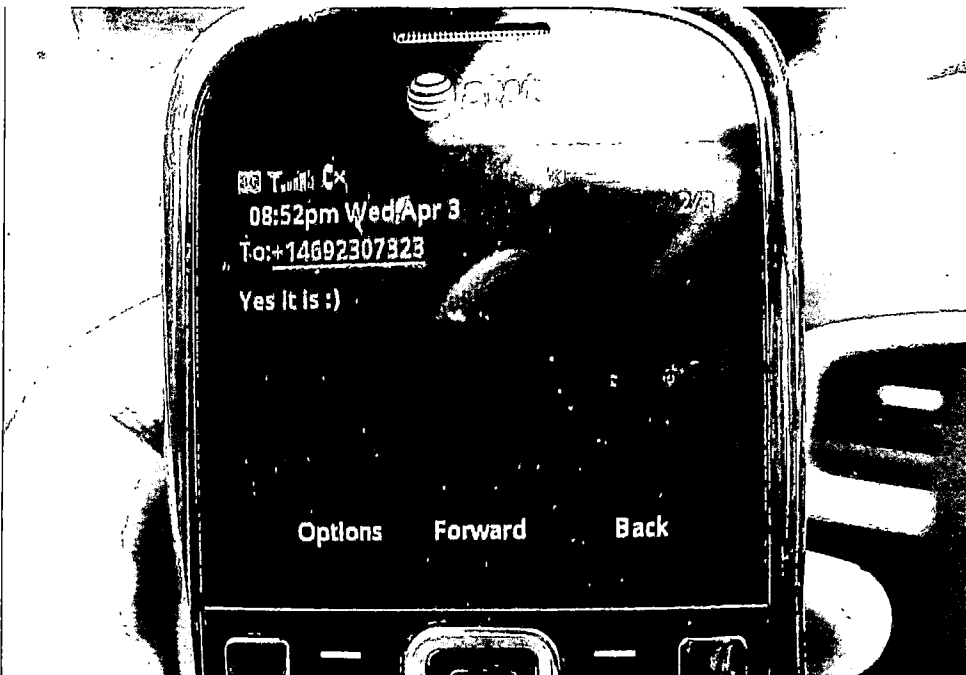
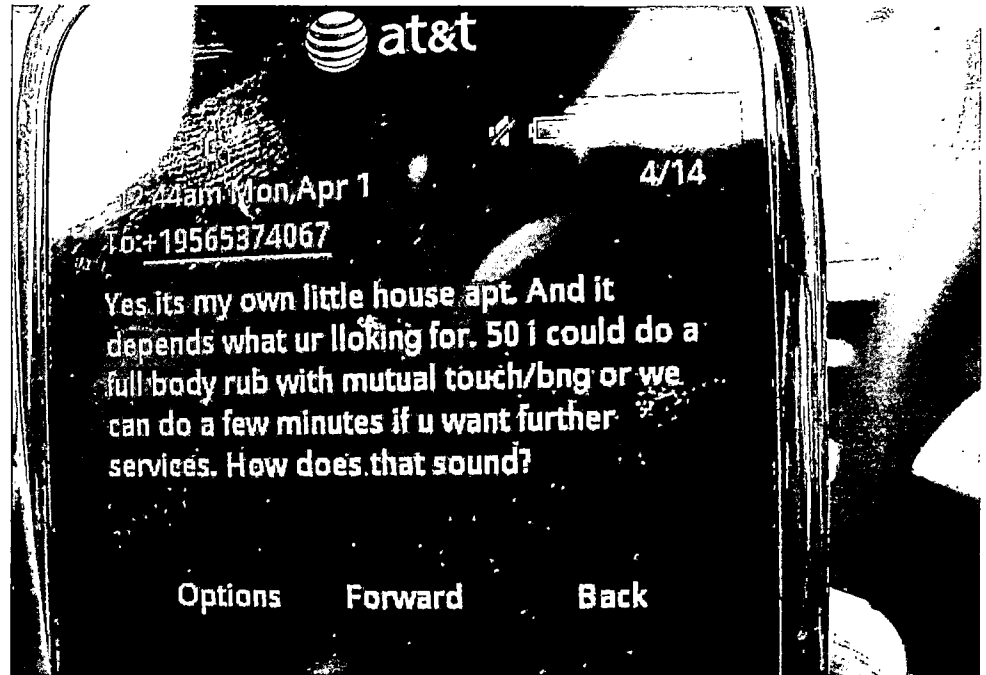
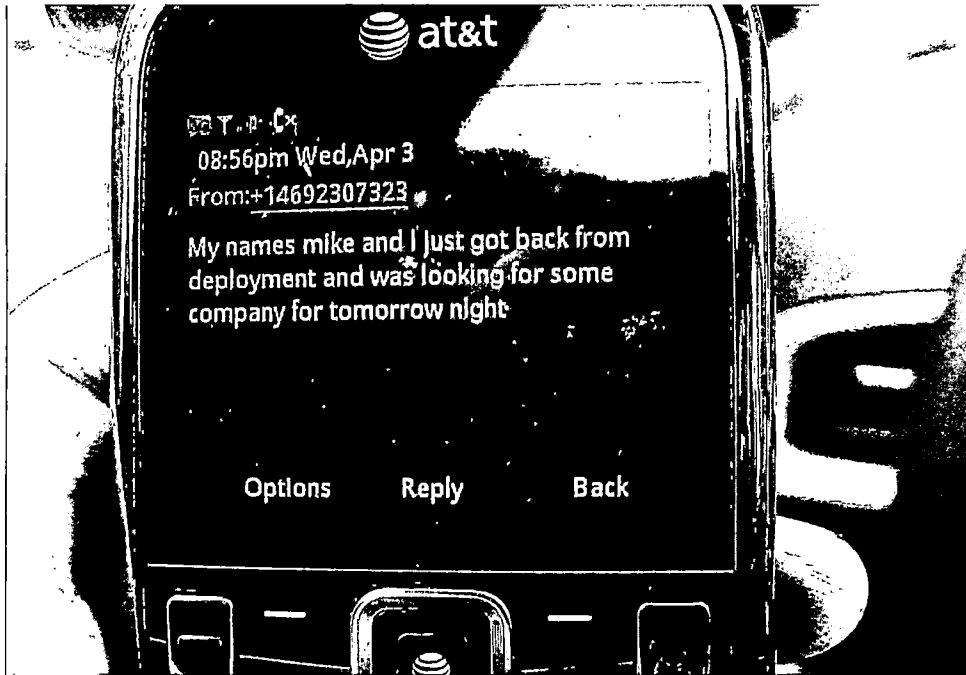
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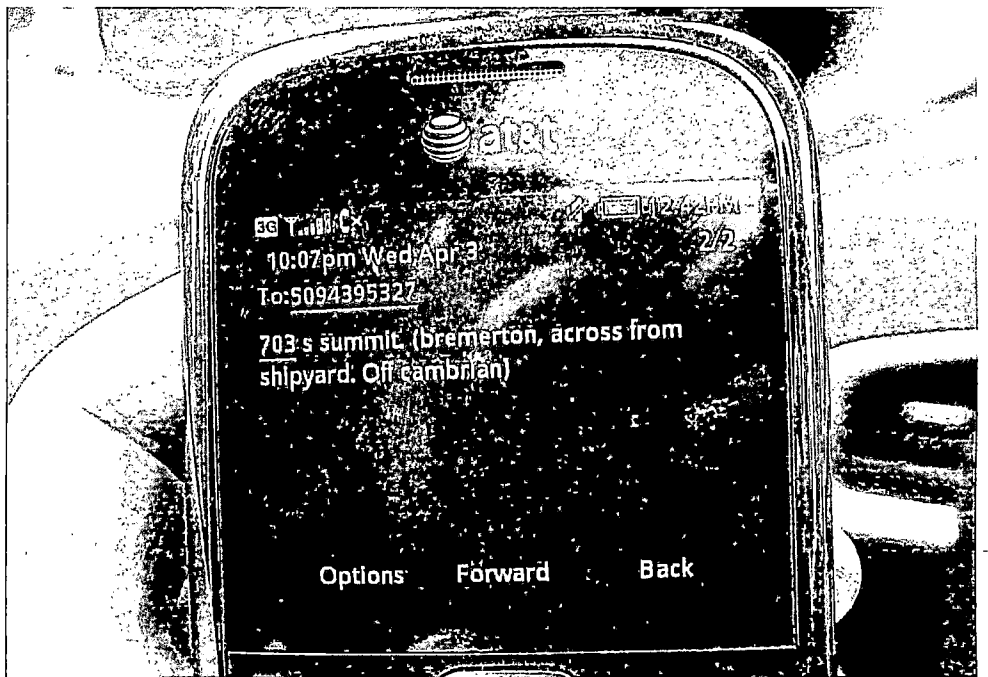
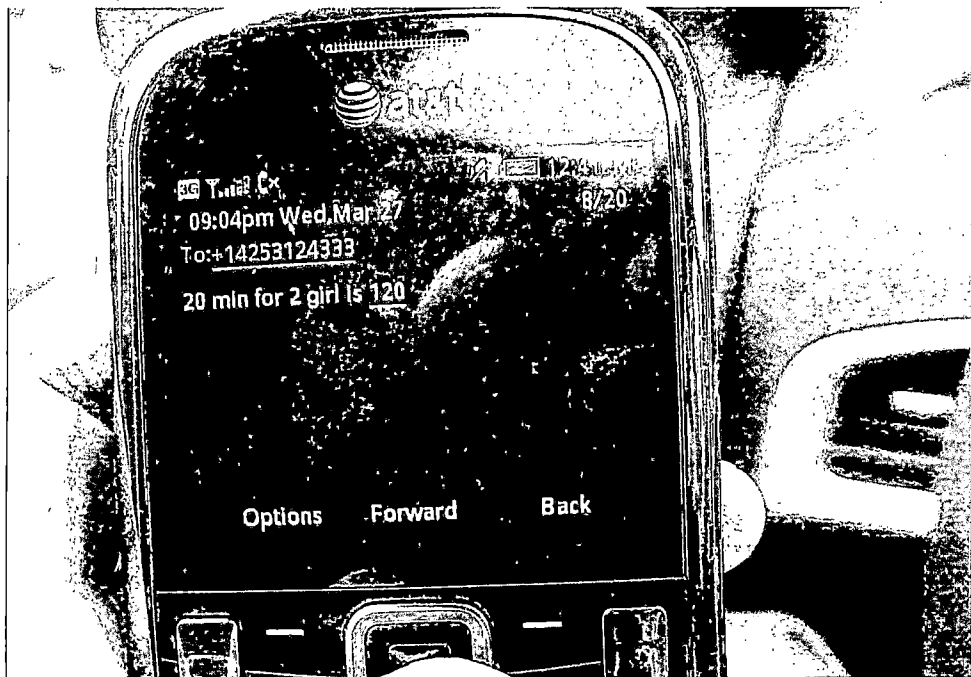
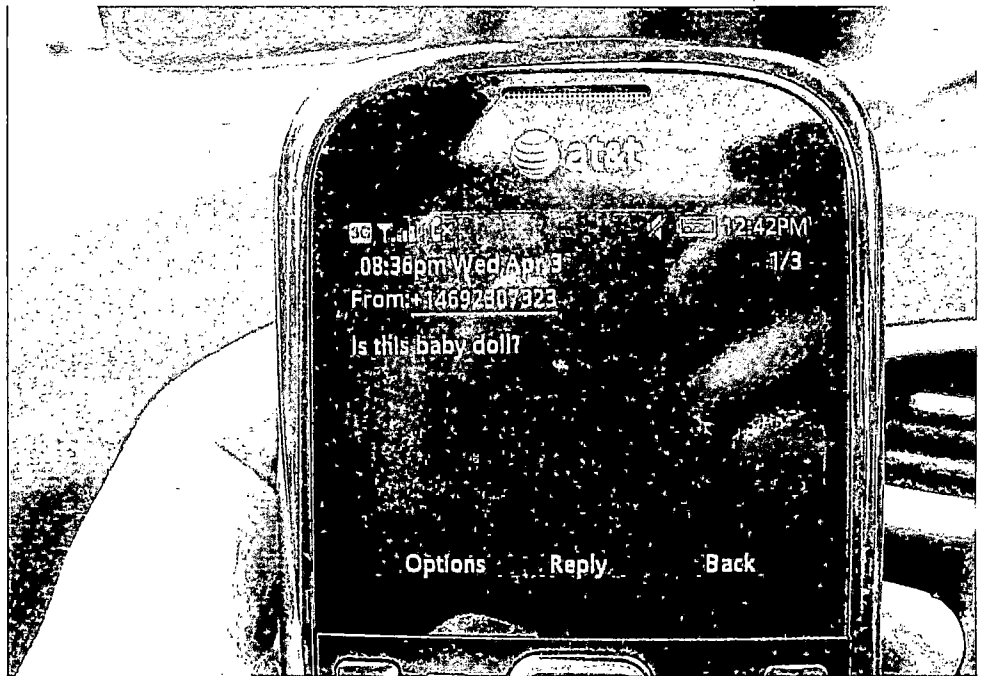
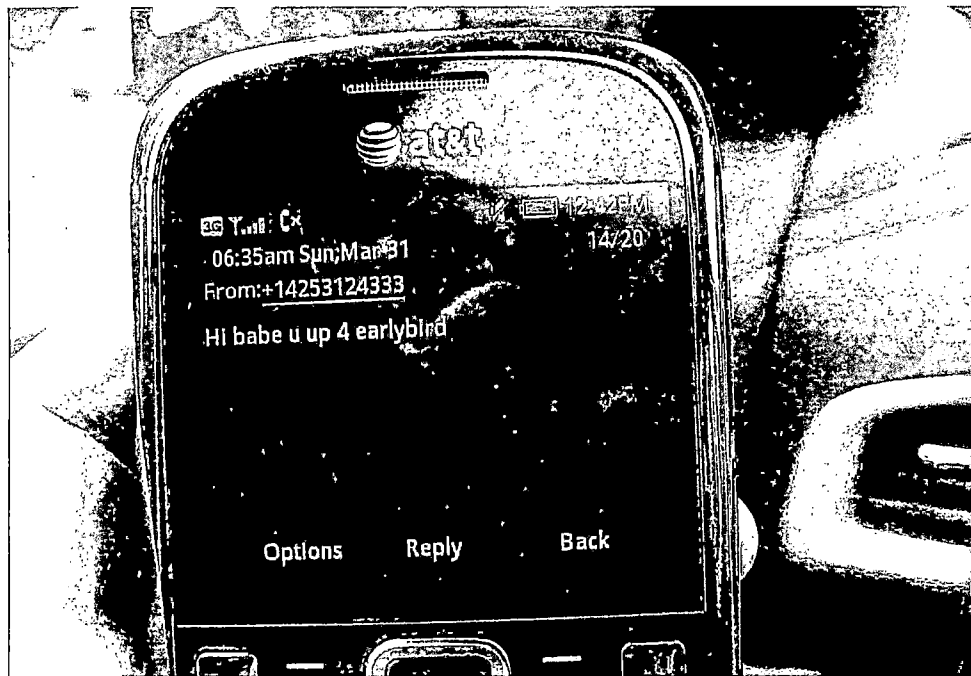


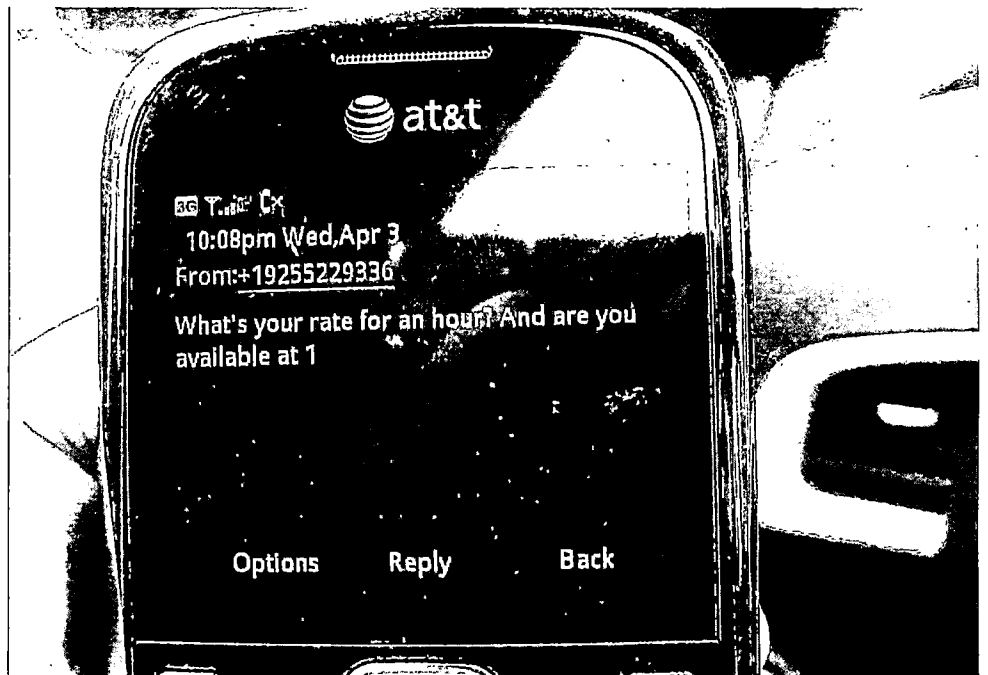
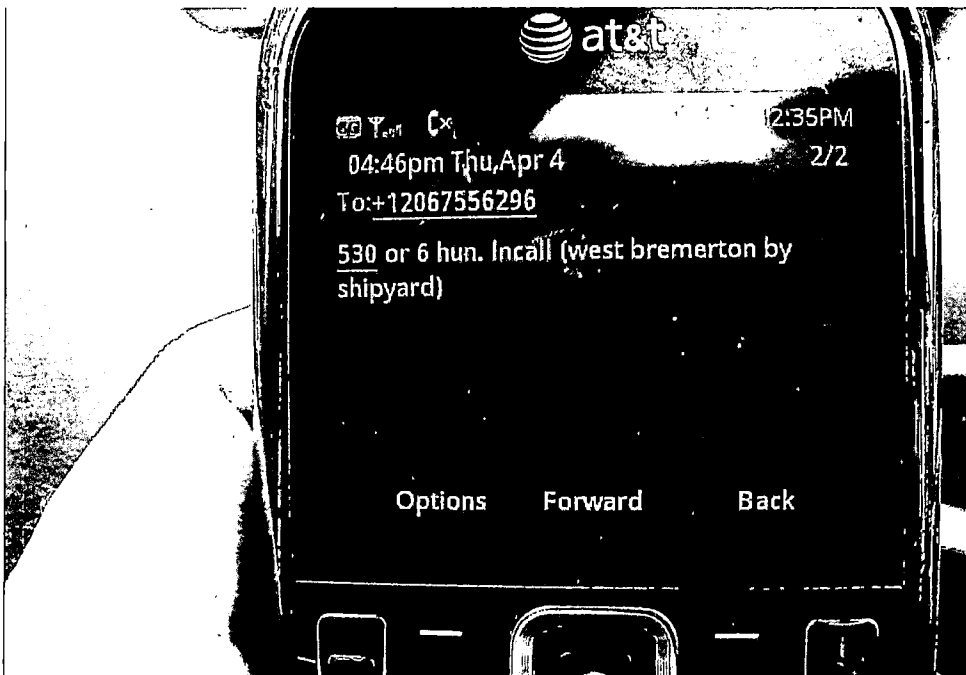
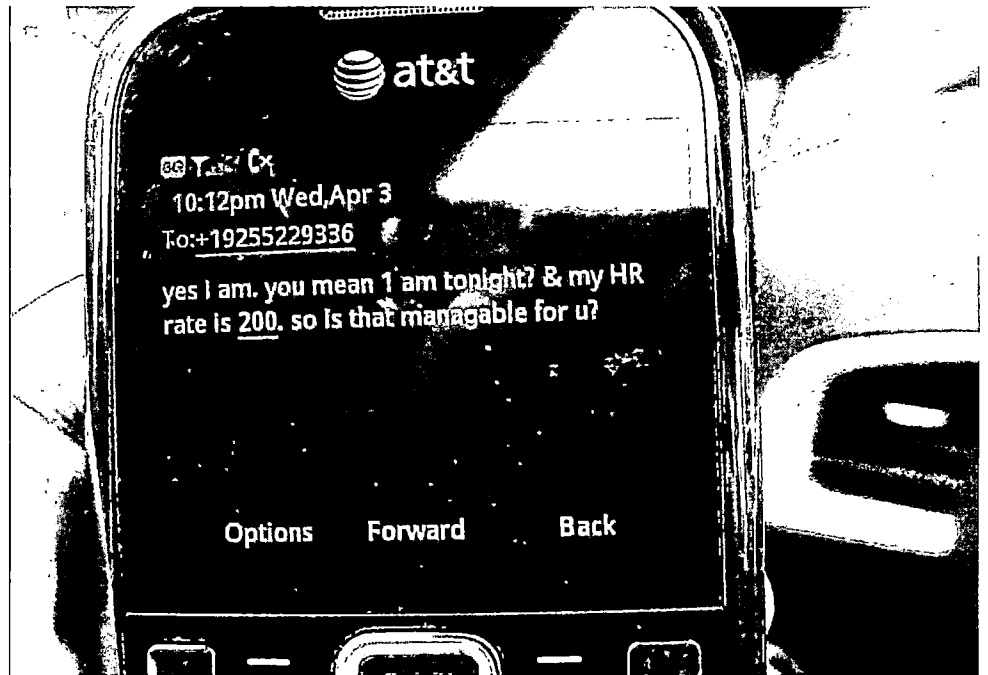
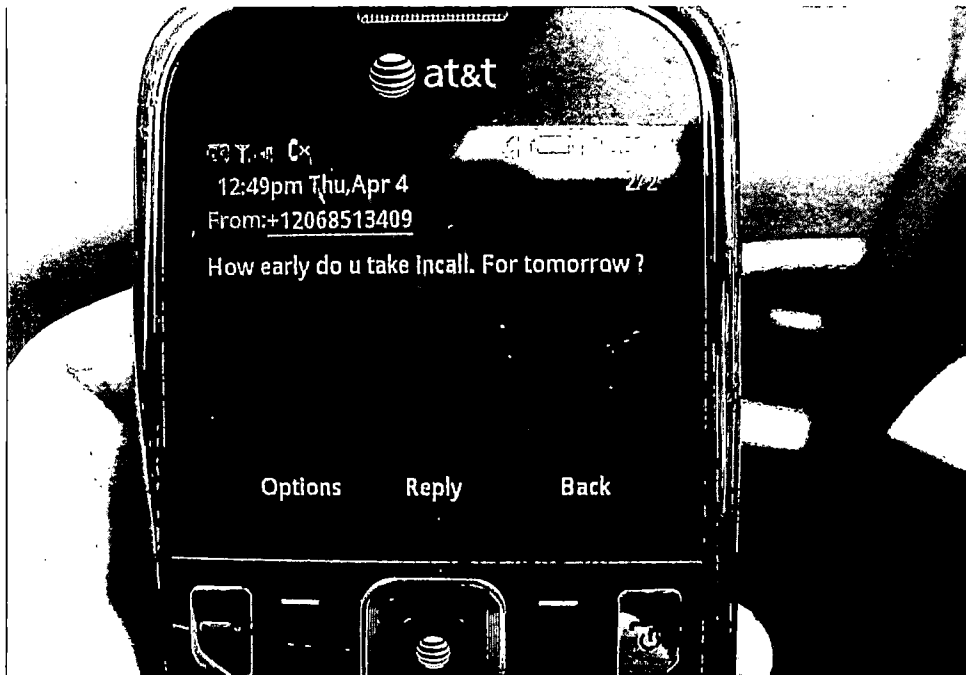
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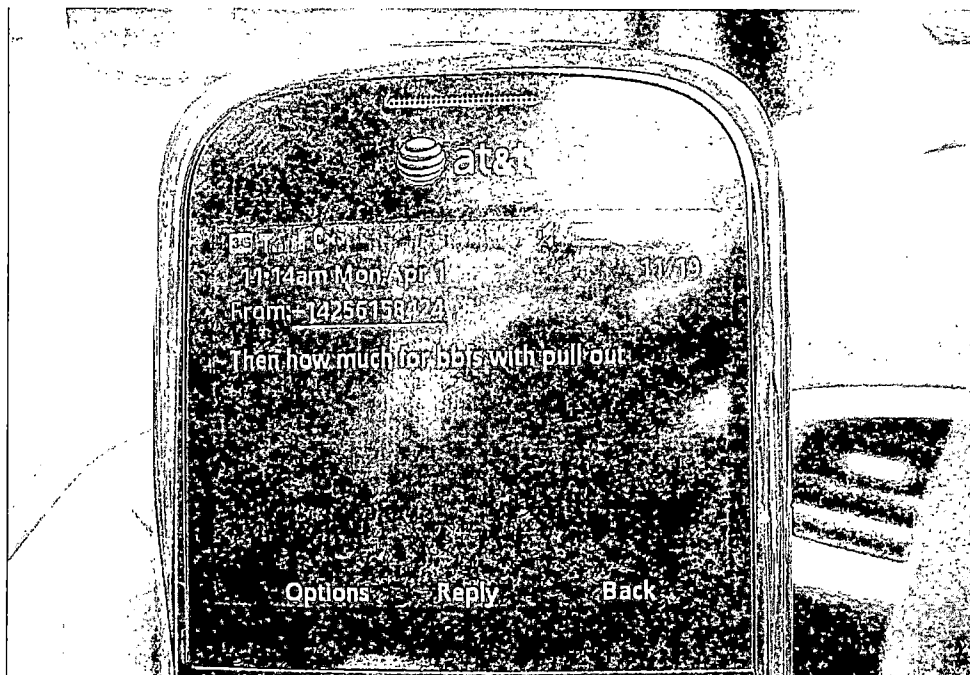
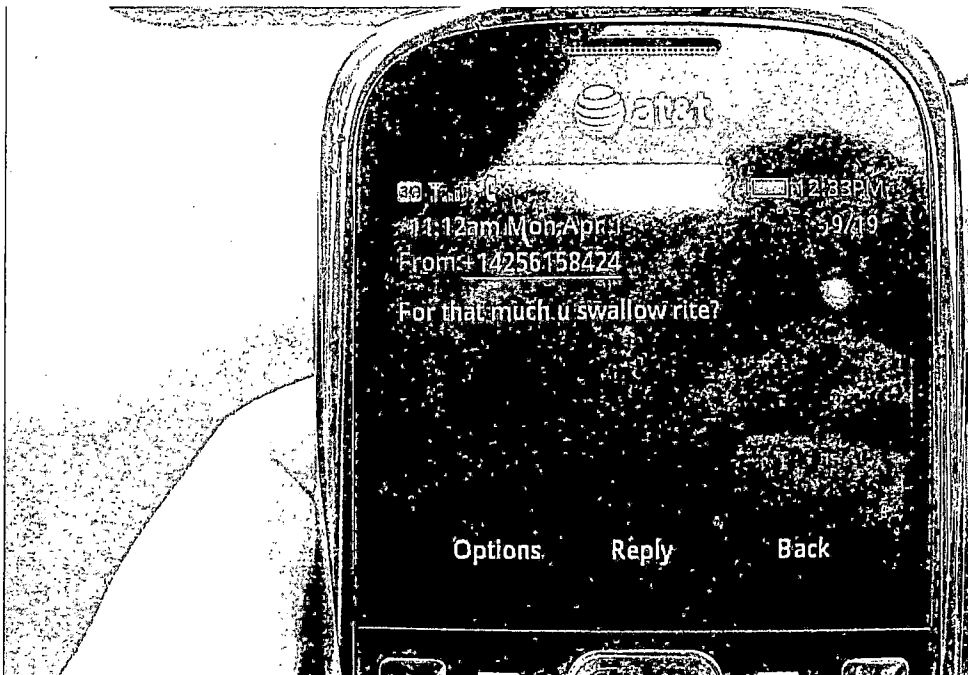
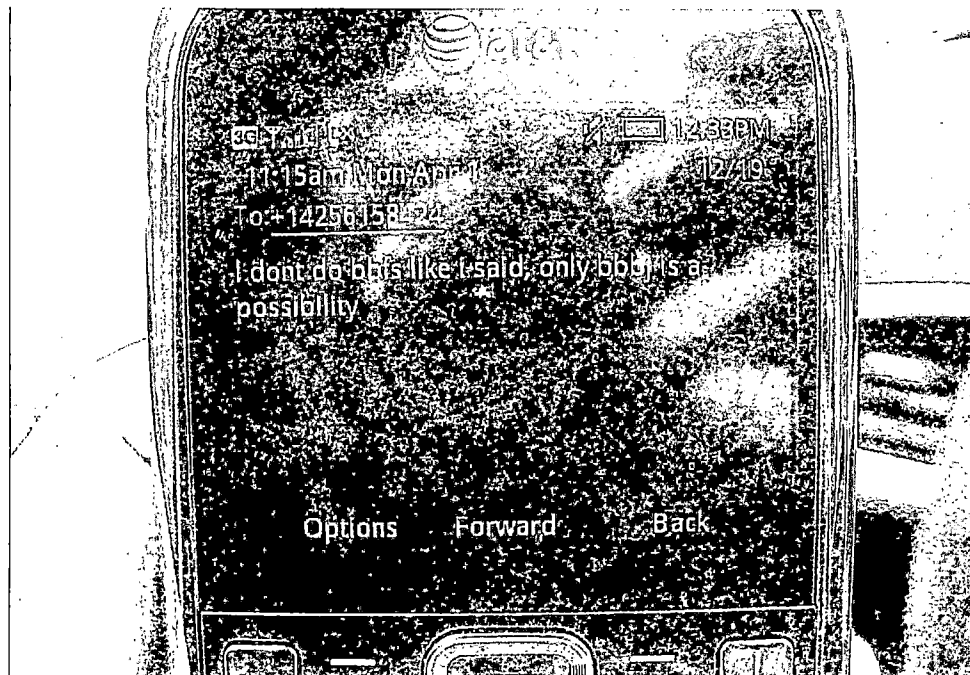
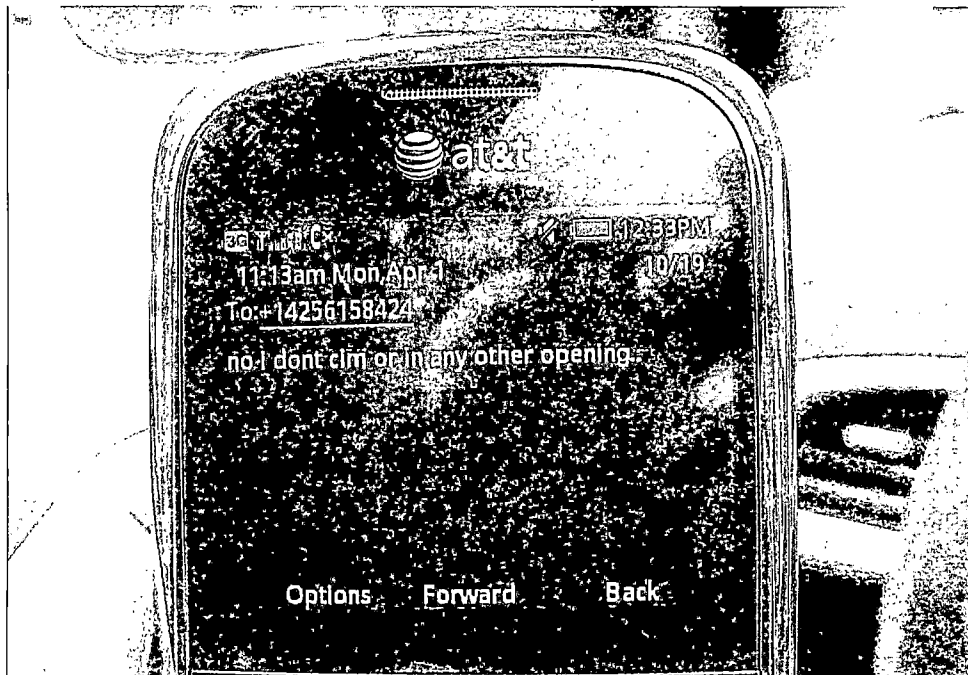


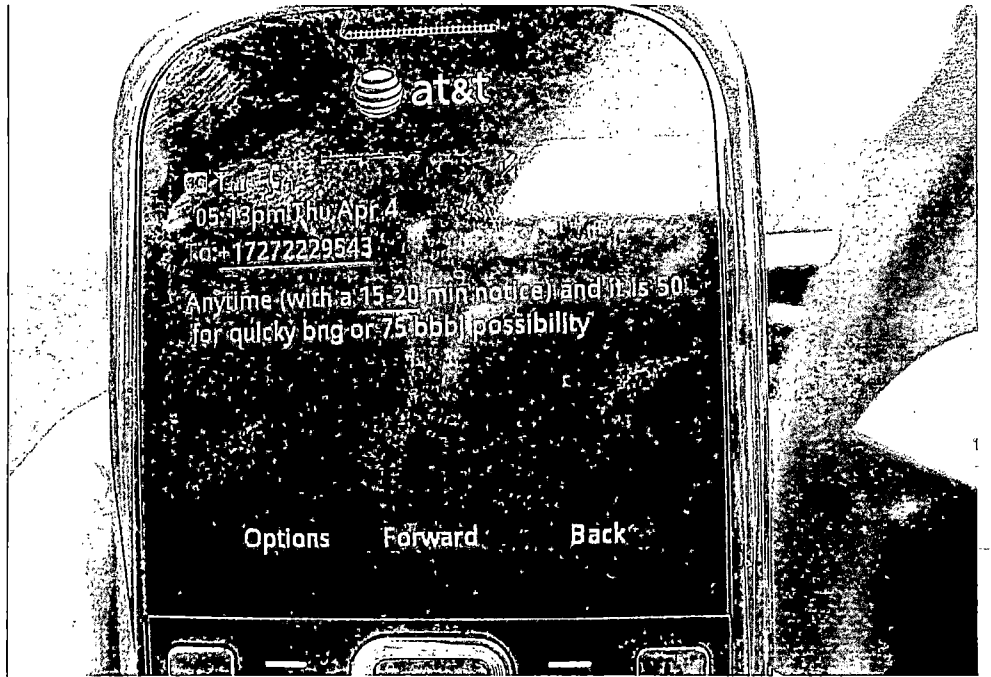
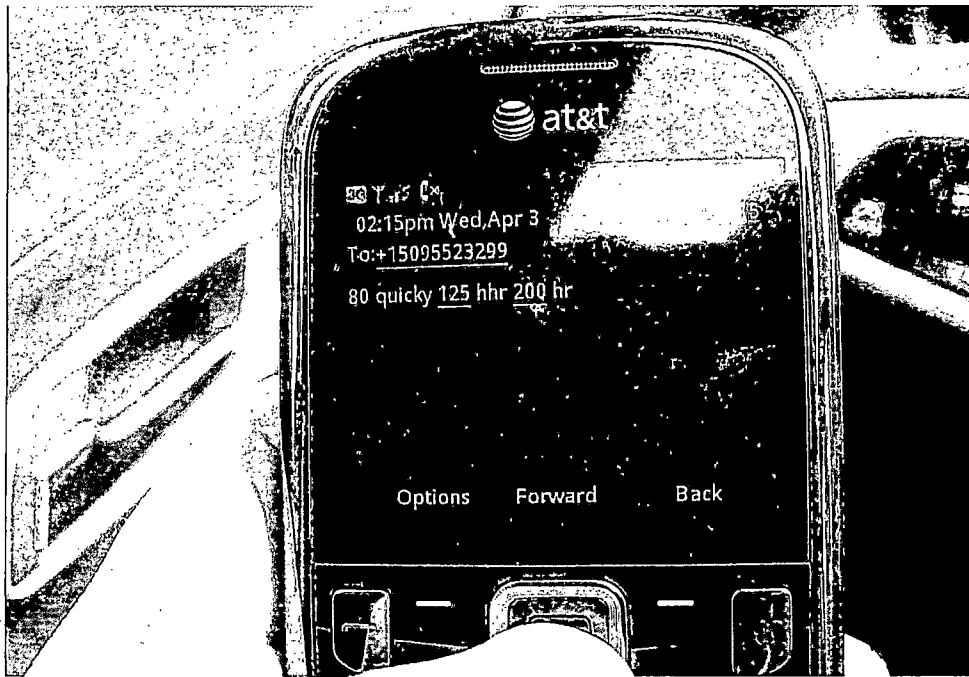
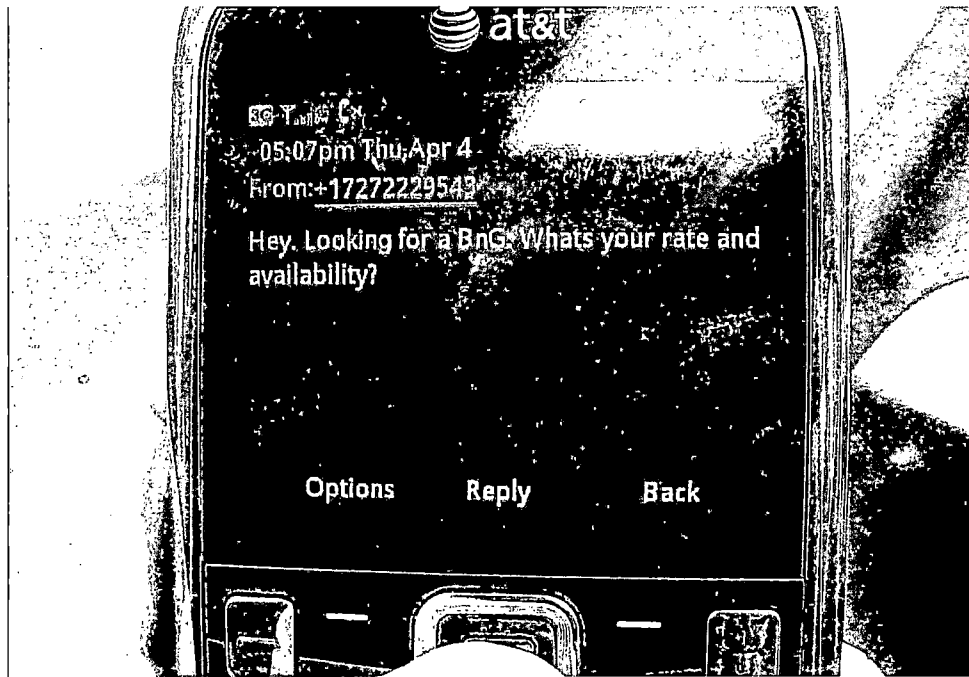


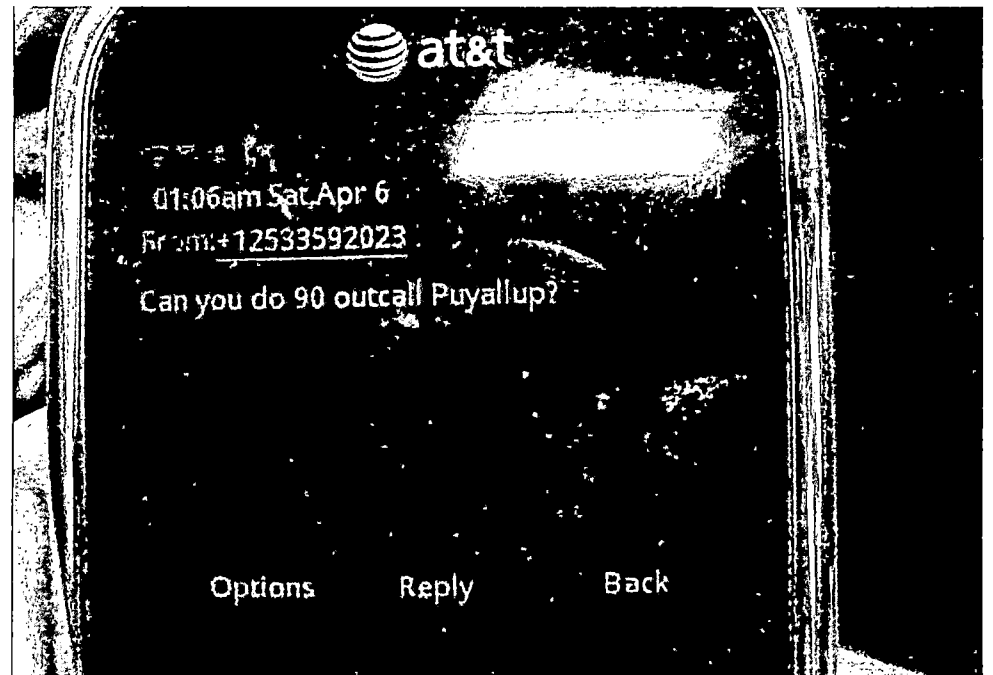
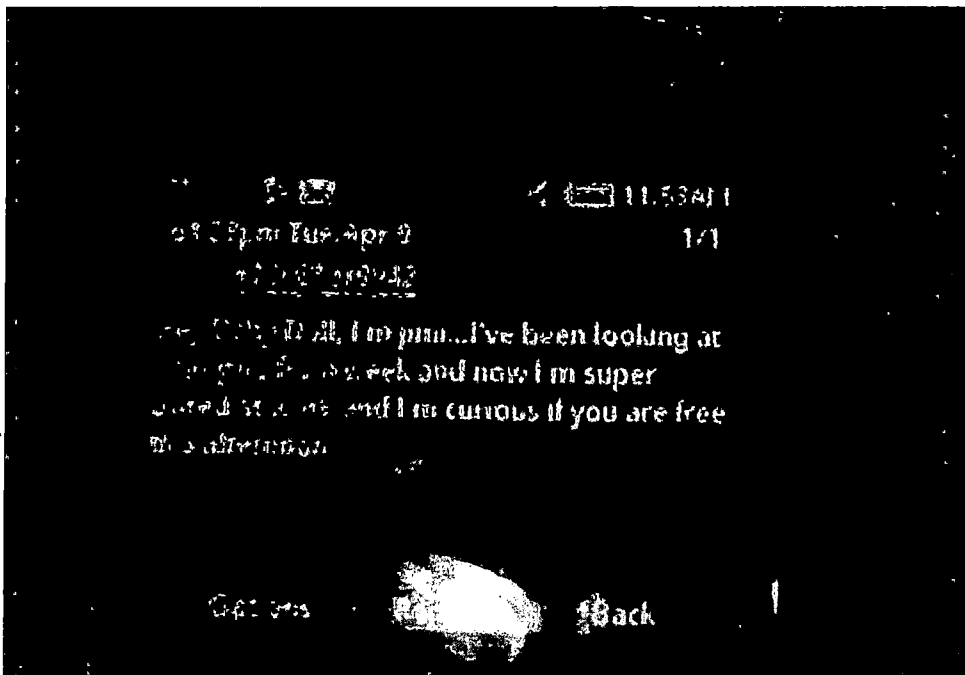
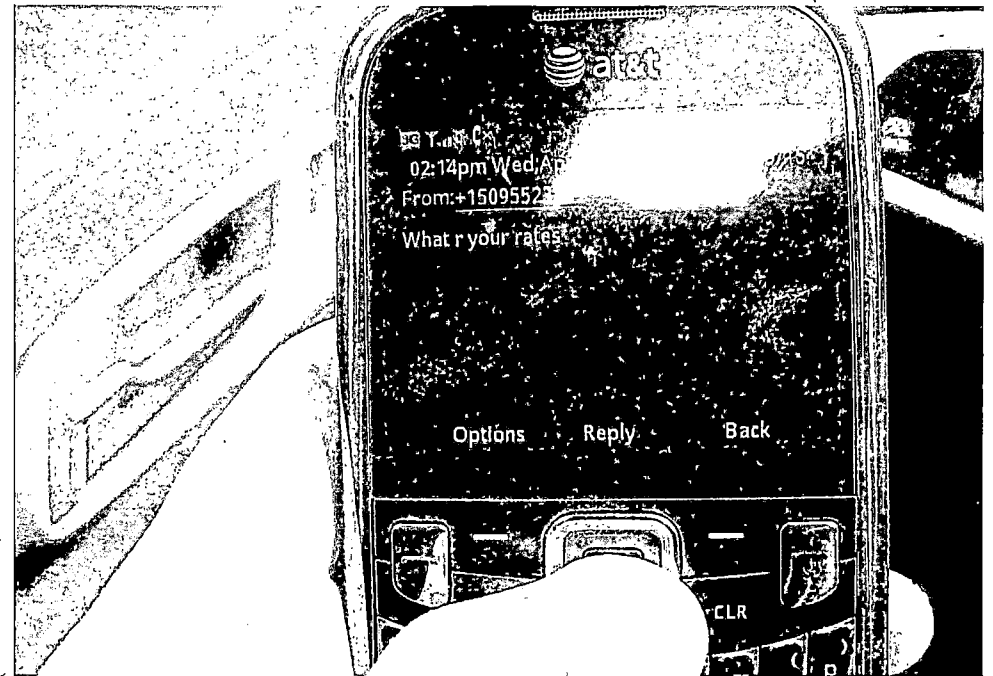
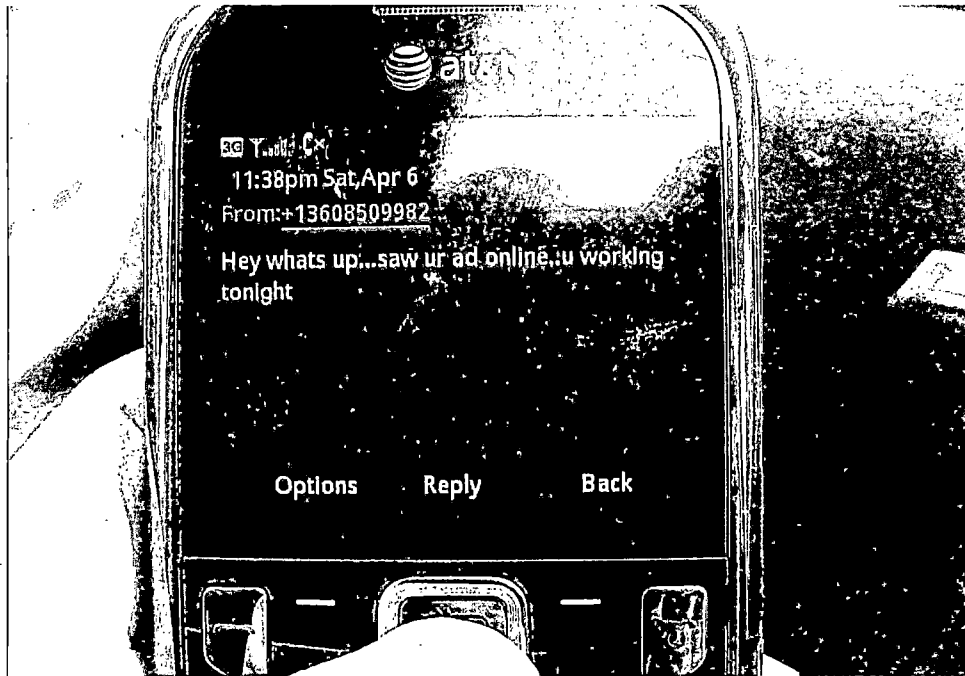


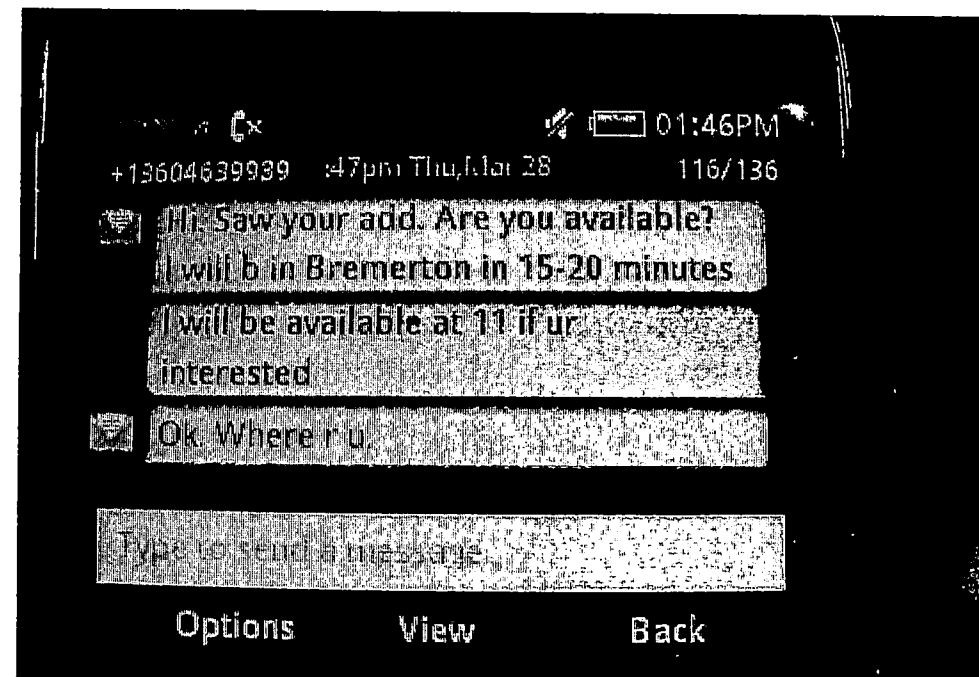
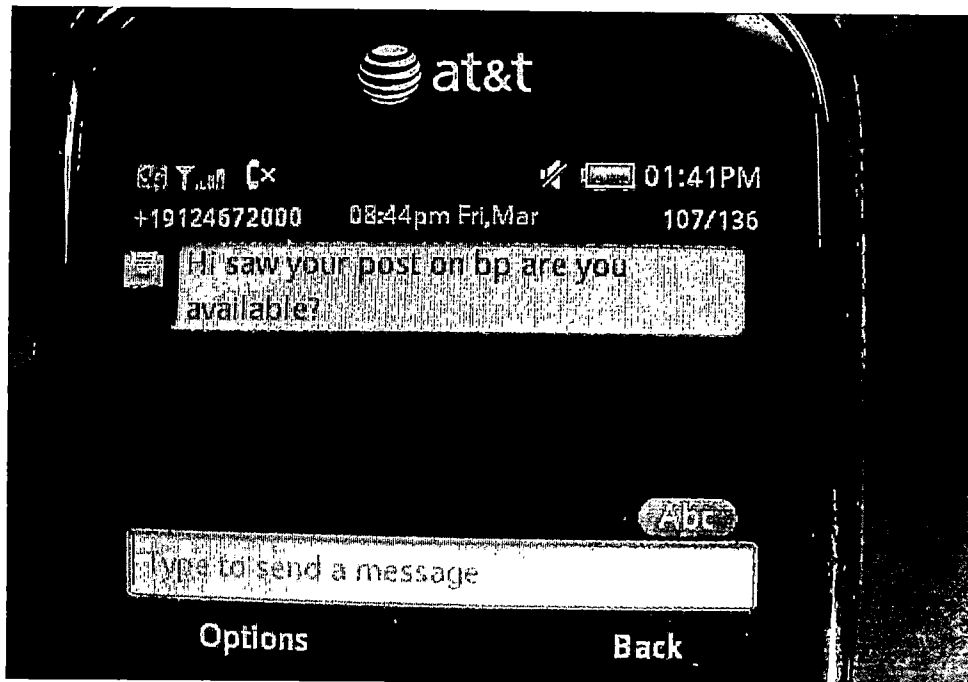
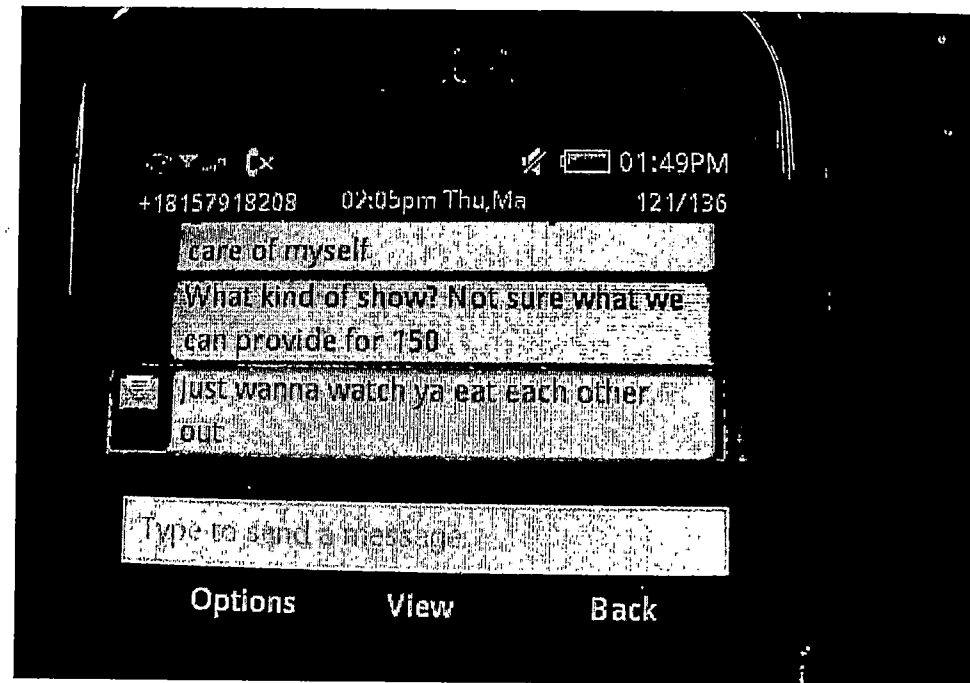
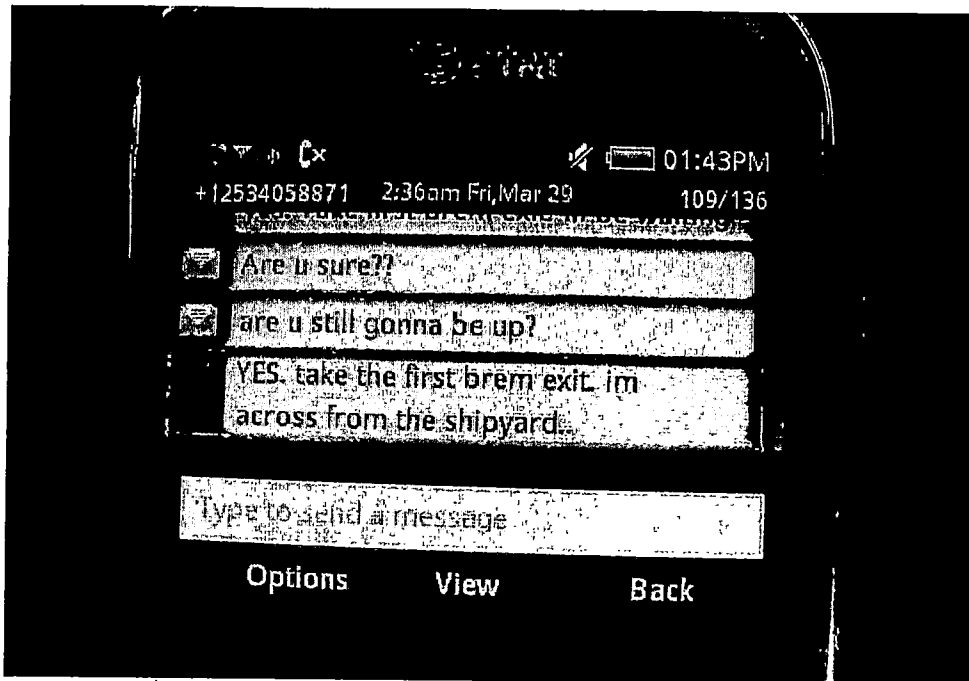


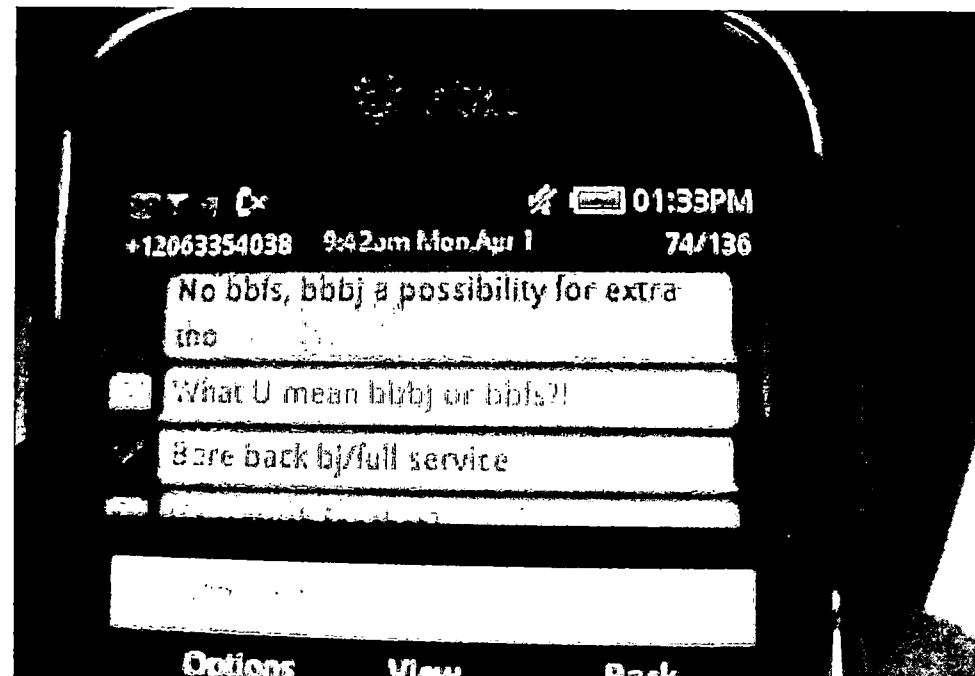
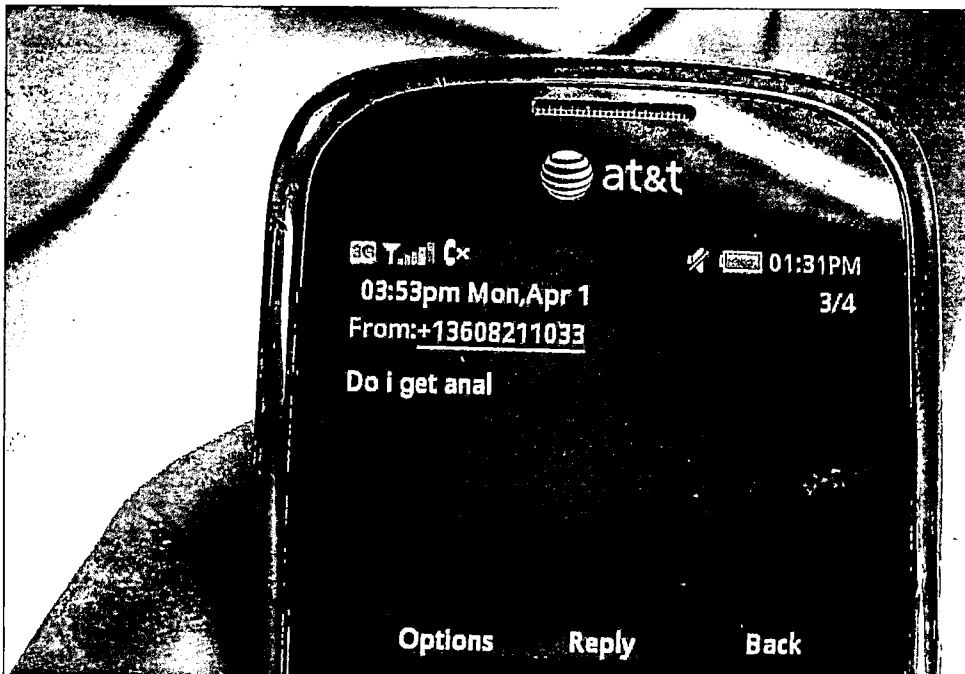
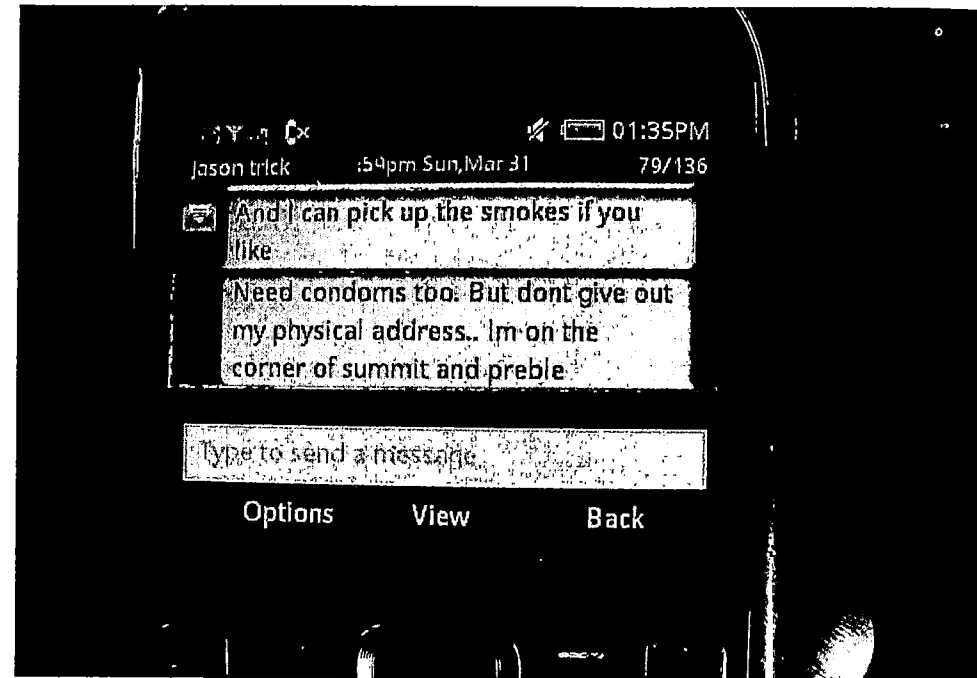
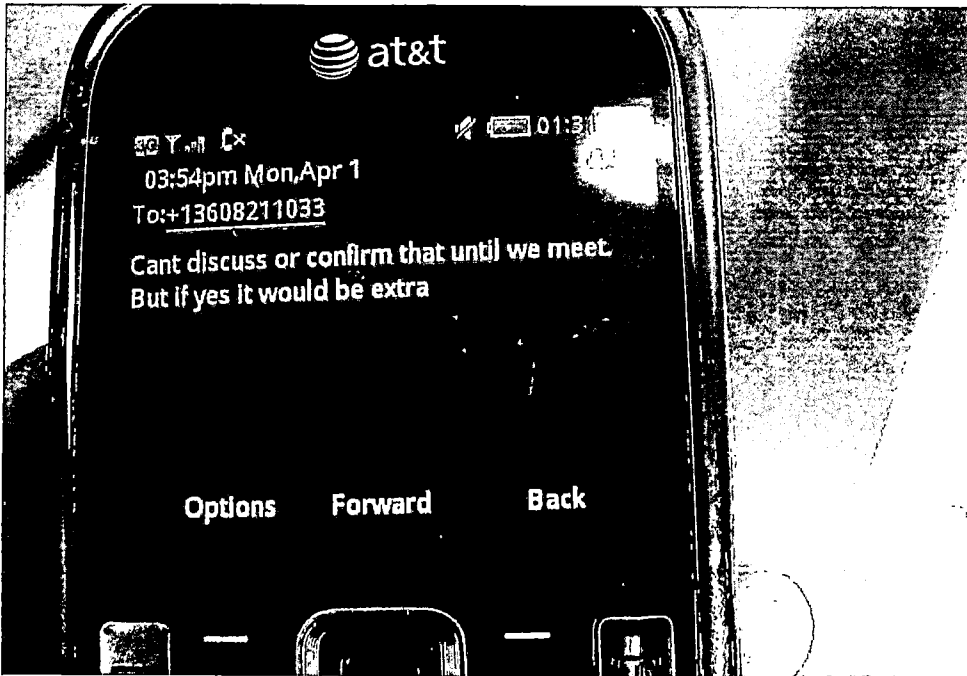












6:12 PM

eyed • [b] [e] [a] [u] [t]...

Call me 360-908-2471

Sent via my LG Marquee from Boost Mobile

jessecowboys@gmail.com wrote:

>From: jessecowboys@gmail.com

>Hello, would love to hang out some time and play a game of pool. How do I go about making this happen?

>jes

>To view this posting, please click the following link:

>http://seattle.backpage.com/

facebook

The password you entered is incorrect. Please try again.

Already have an account?



Tony Parker

tparker77@gmail.com

PARKER'S E
ACCOUNT

boost mobile

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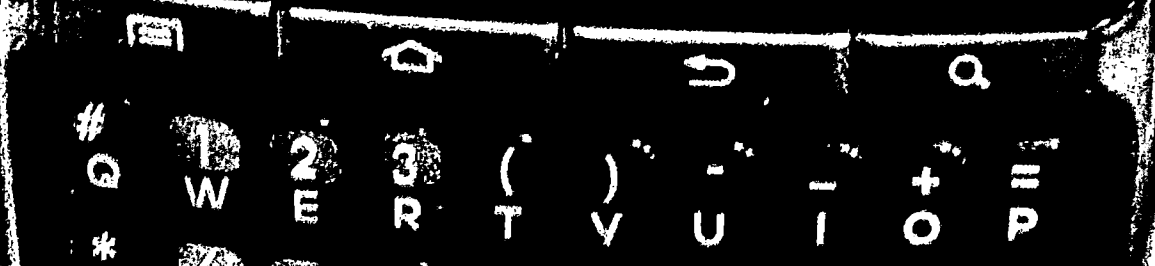
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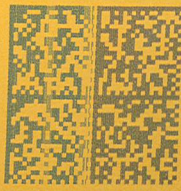
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