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No. 72990-0-I

(King County Superior Court No. 13-2-06921-1 SEA)

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COURT OF APPEALS  
DIVISION I  
OF THE STATE OF WASHINGTON

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THOMAS E. LUTZ,

Respondent,

vs.

WILLIAM P. RAETHER,

Appellant.

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**BRIEF OF APPELLANT**

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William P. Raether, *pro se*  
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Carnation, WA 98014

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## **INTRODUCTION**

Defendant and Appellant William P. Raether comes now before this court seeking reversal of the Judgment in favor of Plaintiff and Respondent Thomas E. Lutz. The Honorable Judge Nault of the King County District Court issued a no contact, anti-harassment order directing Plaintiff Lutz to stay away from Defendant Raether because Lutz was threatening Raether and was a menace to the community. Defendant Raether called the police a number of times to report actions by Lutz that the police might determine were violations of the anti-harassment order. In response to one of those complaints, Defendant Lutz was arrested while possessing a concealed handgun in his car—he was sitting on a handgun loaded with “cop killer” bullets. In order to get back at Raether, Plaintiff Lutz filed a Superior Court lawsuit against Defendant Raether alleging malicious prosecution based on calls to police. Incredibly, the trial court ruled in favor of Plaintiff Lutz, but in doing so made numerous errors requiring reversal to correct this miscarriage of justice against Defendant/Appellant Raether.

### **ASSIGNMENTS OF ERROR AND ISSUES RELATING TO ASSIGNMENTS OF ERROR**

**Assignment of Error No. 1:** Defendant Raether assigns error to the trial court’s issuing of the Finding of Facts, Conclusions of Law, and Order

(CP 470-474) , and the Judgment (CP 488-489) consistent therewith.

**Issues:**

1. Whether the findings of fact support the legal conclusions?
2. Whether the legal conclusions support liability for malicious prosecution—the only claim alleged?
3. Whether the claims based on incidents in 2008 and 2009 more than three years before the filing of the complaint are barred by statute of limitations?
4. Whether reversal is required due to appearance of partiality and unfairness by Judge Schapira?
5. Whether on remand the case should be assigned to a different judge—other than Judge Schapira, due to appearance of partiality and unfairness?

**Assignment of Error No. 2:** Defendant Raether assigns error to the following Findings in the Finding of Facts, Conclusions of Law, and Order (CP 470-474) , Findings of Facts 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, and 1.10., and also to Conclusions of Law 2.1, 2.2, 2.3, 2.4, and to the Judgment (CP 488-489) consistent therewith.

**Issues:**

6. Whether the findings of fact are supported by substantial evidence?

7. To the extent any Conclusions of Law are determined to be factual findings, whether they are supported by substantial evidence?

### STATEMENT OF THE CASE

**Background.** The background to this lawsuit occurred in 2008. Defendant and Appellant William P. Raether filed a Petition for an Order for Protection – Harassment against Plaintiff and Respondent Thomas E. Lutz in 2008. Def. Trial Ex. 54. The Petition included sworn testimony by Raether that Lutz used a vehicle to force Raether to stop his vehicle, then Lutz *threatened to kill Raether*, and punched Raether in the face breaking his sunglasses while yelling profanities. Def. Trial Ex. 54. The Honorable Judge Nault of the King County District Court heard the Petition and during the proceeding stated to Lutz that, “the allegation is that you not only followed him, you speed up, passed him, stopped your vehicle immediately in front of him, confronted him by punching him, repeatedly in the face breaking his sun glasses and attempting to do other malicious mischief against this person. . . . [Those allegations are] not counted by you sir. . . . That’s why I’m going to issue this order. . . . because of the serious nature of this assaultive behavior here I’m going to at this time make [the order] permanent [subject to modification in the future.]” Def. Trial Ex. 55 (Transcript of Proceeding 3/3/2008).

Judge Nault issued an Order for Protection – Harassment—an Anti-Harassment Order against Plaintiff Lutz. Def. Trial Ex. 79. Besides checking every box to restrain Lutz, Judge Nault added the following: “Respondent [Lutz] is restrained from contacting the Petitioner [Raether] directly or indirectly, through 3<sup>rd</sup> persons, by telephone, in writing or any form of communication.” Def. Trial Ex. 79. Judge Nault was so worried that on the expiration line he entered: “Permanent.”

**Procedure in This Lawsuit.** On February 27, 2013, Plaintiff Lutz filed this superior court lawsuit against Defendant Raether based on Defendant’s complaints to the police that Plaintiff was violating an anti-harassment order and Plaintiff’s subsequent arrest for those violations or alleged arrests. Clerk’s Papers (CP) 1-4. Defendant filed a motion for summary judgment because Plaintiff had not supported his Complaint with any facts, was not supported by the law, and was barred by affirmative defenses including statute of limitations. CP 40-41. Judge Cahan granted the motion in part dismissing claims of false arrest, and ordered Plaintiff to amend his complaint. CP 216. Plaintiff filed an Amended Complaint alleging multiple causes of action based on different events, but each cause of action based on malicious prosecution. Amended Complaint at 12-15, CP 228-231, 426 (Order).

The case proceeded to trial. Judge Schapira was assigned the day before trial. CP 452. Following trial, Judge Schapira prepared Findings of Facts, Conclusions of Law, and Order and held a hearing to allow the parties to comment thereon. CP 469. Defendant filed Objections to the Findings and Conclusions. CP 475-487. Judge Schapira entered, without change, the Findings of Facts, Conclusions of Law, and Order. CP 470-474. Judgment was subsequently entered. CP 488-489. Defendant timely appealed. CP 498-516. The Clerk's Papers were designated along with the Trial Exhibits. The oral arguments and testimony from the hearings and trial were transcribed in the Verbatim Report of Proceedings ("VRP").

## **ARGUMENT**

### **I. STANDARD OF REVIEW**

The standard of review is that the appellate court reviews "the trial court's decision following a bench trial to determine whether the findings are supported by substantial evidence and whether those findings support the conclusions of law." *Endicott v. Saul*, 142 Wn. App. 899, 909, 176 P.3d 560, 566 (2008). The appellate court will "review questions of law de novo." *Endicott* at 909. As stated in the Assignments of Error,

Defendant Raether assigns error to each and every one of the Findings of Fact in the Findings and Conclusions.

## II.

### **THE FINDINGS AND CONCLUSIONS ARE FLAWED: THE FINDINGS OF FACT DO NOT SUPPORT THE LEGAL CONCLUSIONS AND THE LEGAL CONCLUSIONS DO NOT SUPPORT LIABILITY FOR MALICIOUS PROSECUTION**

The first problem with the Findings and Conclusions is that there is no connection to the claims made by Lutz in the Amended Complaint. Plaintiff's claims were all for malicious prosecution, but the Findings and Conclusions never mention malicious prosecution, never mention the claims stated in the Amended Complaint, and do not tie the facts or law to the elements of malicious prosecution. As a result, the Findings and Conclusions do not come close to stating liability for malicious prosecution as a factual or legal matter. The Findings do not support the legal conclusion to the extent legal conclusions are actually made, and the legal conclusions do not support liability for the claims of malicious prosecution.

#### **A. Plaintiff's Claims are for Malicious Prosecution**

The trial court issued the Finding of Facts, Conclusions of Law, and Order ("Findings and Conclusions"). CP 470-474. A copy of the Findings and Conclusions is attached as Appendix A. The Findings and

Conclusions provide no connection to the actual claims raised by the Plaintiff—the claims are not mentioned or discussed. The elements of those claims are also not mentioned and the Findings and Conclusions are deficient in failing to make legal conclusions accordingly. The Amended Complaint is based entirely on the tort of malicious prosecution. Amended Complaint at 12-15, CP 228-231. The Amended Complaint lists six causes of action at pages 12-15, and each cause of action is entitled “Malicious Prosecution.” The first and sixth causes of action include additional factual statements in the title of the cause of action, but the only reading of the Amended Complaint is that Plaintiff Lutz was bringing claims for malicious prosecution based on six separate events.

Though without clarity, the Findings and Conclusions appear to base the liability for malicious prosecution on four allegedly “dismissed” cases as listed at Conclusion. App. A , CP 473. Yet, the findings do not explain what these cases were about or how and why Defendant Raether’s actions met the elements of malicious prosecution in each instance. The Findings and Conclusion do not provide a fair and reasonable discussion of the facts presented at trial related to the four cases. For example, the Findings and Conclusions never mention the highly relevant and unchallenged fact that on one of those cases Lutz was arrested while he was sitting on a concealed handgun in his van. Plf. Trial Ex. 6.

**B. The Findings and Conclusions Do Not Support Liability for Malicious Prosecution**

The Supreme Court has made it clear that, “malicious prosecution actions are not favored in the law.” *Hanson v. City of Snohomish*, 121 Wn. 2d 552, 557, 852 P.2d 295 (1993). The Supreme Court explained:

The reasons assigned for this attitude on the part of the courts are that it is to the best interest of society that those who offend against the law shall be promptly punished; ***that any citizen who has good reason to believe that the law has been violated shall have the right to take proper steps to cause the arrest of the offender;*** and that in taking such steps the citizen who acts in good faith shall not be subjected to damages merely because the accused is not convicted; yet, withal, that no [person] shall be charged with a crime, exposed to the danger of a conviction, and subjected to the expense, vexation, and ignominy of a public trial merely for the gratification of another's malice or ill will. *Peasley v. Puget Sound Tug & Barge Co.*, 13 Wn.2d 485, 496–97, 125 P.2d 681 (1942).

Hence, as has often been pointed out, the action has been hedged about by limitations more stringent than those surrounding actions based on almost any other conduct causing damage to another, and the courts have allowed recovery only when the requirements limiting it have been fully complied with.

52 Am.Jur.2d Malicious Prosecution § 5, at 188–89 (1970).

*Hanson* at 557-558 (footnotes omitted, emphasis added).

The *Hanson* court explained the elements of malicious prosecution as follows:

In order to maintain an action for malicious prosecution in this state, a plaintiff must plead and prove the following elements: (1) that the prosecution claimed to have been malicious was instituted or continued by the defendant; (2) that there was want of probable cause for the institution or continuation of the prosecution; (3) that

the proceedings were instituted or continued through malice; (4) that the proceedings terminated on the merits in favor of the plaintiff, or were abandoned; and (5) that the plaintiff suffered injury or damage as a result of the prosecution. Although all elements must be proved, malice and want of probable cause constitute the gist of a malicious prosecution action.

*Hanson* at 558 (footnotes omitted).

The Findings and Conclusions start from a flawed premise that the anti-harassment order is violated only when “harassment” occurs when in fact the anti-harassment order directs Lutz to have “no contact” with Defendant Raether. Finding 1.3 states: “The videos show no harassment at all.” App. A, CP 471. In comments at the end of trial, Judge Schapira explained: “Is that intimidation? No, it isn’t.” VRP Vol. V at page 475, lines 8-9 (11/6/2014, Afternoon Session). The court appeared through this Finding, this comment, and other statements to discount the strict nature of the Anti-Harassment Order, such as to conclude that it required more than improper contact. Defendant Raether obtained a valid no contact order against Lutz and had the right to make complaints to the police when Raether believed that Lutz had made contact with him. The Court took the position that Raether could only contact police when harassment occurred, not improper contact.

The elements of malicious prosecution are specifically addressed as follows. Again, the Findings and Conclusion provide no road map

describing the alleged arrests and prosecutions that are the basis of liability for malicious prosecution, so the analysis is necessarily general in that regard.

**Element One.** The Findings and Conclusions do not demonstrate that “the prosecution claimed to have been malicious was instituted or continued by the defendant.” The Findings and Conclusions do not state that Defendant Raether arrested Lutz or filed a criminal complaint against Lutz, nor could they—the County sheriff and Duvall-Carnation Police arrested Lutz and the County and City Prosecutors were responsible for filing criminal charges and prosecuting the case. The Findings and Conclusions do not show any involvement by Defendant Raether in those activities.

The Findings and Conclusions utilize vague and inconclusive factual statements with no connectivity to any actual arrests. Finding 1.2 states that Raether “has complained or tried to have charges filed against the plaintiff.” App. A, CP 471. That says nothing at all and shows no violation of the “instituted or continuing” element for any particular arrest. Finding 1.3 puts the burden on Defendant to disprove the elements, as does 1.6 and 1.10. App. A, CP 471-472. Finding 1.4 contains vague statements that Raether was not truthful, but does not provide any detail at all as to what was untruthful or how that led to any particular arrest. App.

A, CP 471. Conclusion 2.2 says that Raether repeatedly called police without a basis, but again this is not tied to any particular arrest, but rather is merely a vague non-specific allegation. App. A, CP 473. As explained below, Plaintiff admitted at trial that he was not arrested for the 2009 incident and it is not clear whether Plaintiff was arrested for other incidents. Besides, did the police arrest Lutz based solely on Raether's statements? Or, did the sheriffs have other information on which to base its arrests? Of course, one of those purported improper arrests was when Lutz was concealing a handgun by sitting on it in his car near the home of Mr. Raether and refused to obey police commands. Plf. Trial Ex. 6. The Findings and Conclusions do not support a legal conclusion of liability on element number one.

**Element Two.** The Findings and Conclusions fail to demonstrate that “there was want of probable cause for the institution or continuation of the prosecution.” The closest that the Findings and Conclusions come on this element is to state that: “The false claims and complaints were terminated or dismissed because of a failure of proof.” But, that is not the standard—the standard is want of probable cause. “Lack of probable cause *must be proved by the plaintiff as an essential element*. On the other hand, proof of probable cause is a complete defense to an action for malicious prosecution.” *Olsen v. Fullner*, 29 Wn. App. 676, 678, 630 P.2d

492 (1981). Nowhere in the Findings and Conclusions is there any discussion about whether there was lack of probable cause for each of the four cases that presumably were arrests, but in fact were not all arrests. Failure of proof could mean many things and is not the same as lack of probable cause. The Findings and Conclusions contain no facts or statements regarding the termination of the four cases and in one of those cases the evidence shows that Plaintiff Lutz was arrested while sitting on a concealed handgun in his car when stopped by the Duvall-Carnation Police. As explained below, Plaintiff admitted at trial that he was not arrested for the 2009 incident. The Findings and Conclusions do not support a legal conclusion of liability on element number two.

**Element Three.** The Findings and Conclusions fail to demonstrate “that the proceedings were instituted or continued through malice.” Defendant Raether obtained a valid anti-harassment order against Plaintiff Lutz. That order confirms that Lutz is a danger to Raether. The Findings and Conclusions fail to recognize actual and valid concerns held by Raether as validated in the anti-harassment order, which concerns are further validated when Lutz is arrested with a handgun near Raether’s home. Defendant Raether took the appropriate steps in calling the police and letting the police decide whether to arrest Lutz. The mere fact of calling the police repeatedly is not malice when an anti-harassment

order is in place. The Anti-Harassment Order establishes a just cause for contacting the police. Malice is defined as: “The intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will imply an evil intent.” Black’s Law Dictionary (5<sup>th</sup> Ed. 1979). Judge Schapira’s comments at the end of trial belie a finding of malice, wherein she noted that Defendant was a disabled veteran suffering from post-traumatic stress disorder and otherwise that Defendant complained to police due to sensitive nature and perceived concerns with no suggestion of ill will. VRP Vol. V (11/6/2014, Afternoon Session) at page 471-485 (all comments with none indicating ill will), at page 471, lines 1-6 (Raether a veteran), at page 475, lines 25-25 (“I think it’s because of your PTSD, your health-related issues”). Judge Schapira’s comments and findings fail to recognize the importance of an Anti-Harassment Order and set a horrible precedent for future victims by imposing liability for calling the police out of fear. The Findings and Conclusions do not support a legal conclusion of liability on element number three.

**Element Four.** The Findings and Conclusions do not provide any facts supporting a conclusion that: “the proceedings terminated *on the merits* in favor of the plaintiff, or were abandoned.” The Findings contain no information at all about arrests related to specific cases, whether there

was a prosecution, or about the termination of those cases, so the reference to “dismissed” in the list of cases in the Conclusions is unsupported. The mere fact that the four cases were “dismissed” does not demonstrate termination *on the merits* and also does not demonstrate abandonment. There are no facts at all about the terminations. The prosecutions may have been deferred or Lutz may have agreed to certain conditions. The 2010 incident, discussed below as Incident 3, was dismissed “without prejudice.” Appendix E, CP 483. The Findings and Conclusions do not support a legal conclusion of liability on element number four.

**Element Five.** The Findings and Conclusions do not support the fifth element, that: “the plaintiff suffered injury or damage *as a result of* the prosecution” referring to the alleged Defendant caused prosecution. This element includes the basic requirement of causation. The Findings and Conclusions contain no factual findings at all about causation or quantification of damages. The courts have described causation as follows:

Proximate cause consists of cause in fact and legal causation. Cause in fact, or but for causation, refers to the physical connection between an act and an injury. On the other hand, legal causation is grounded in the determination of how far the consequences of a defendant's act should extend, and focuses on whether the connection between the defendant's act and the result is too remote or inconsequential to impose liability. Legal causation is a question of law. The determination of legal liability

depends on mixed considerations of logic, common sense, justice, policy, and precedent.

*M.H. v. Corp. of Catholic Archbishop of Seattle*, 162 Wn. App. 183, 194, 252 P.3d 914, 920 (2011) (quotations and citations omitted). The Findings and Conclusions contain no discussion of causation and whether any of the alleged harms are connected to actions by Defendant Raether. The Findings and Conclusions state vaguely that Defendant should pay for “some of the following losses” and then lists nine items without any discussion of causation. CP 473. For example, the items list loss of silver and loss of truck tools without any link to Raether’s actions. The items list six items related to the arrest on March 3, 2010, items 3, 5, 6, 7, 8, and 9, but that arrest was precipitated because Plaintiff Lutz was carrying a concealed handgun. The Findings and Conclusions do not support a legal conclusion of liability on element number five.

In summary, the Findings and Conclusions are inadequate to support the Judgment against Defendant Raether. The courts have said: “A trial court must make findings of fact and conclusions of law sufficient to suggest the factual basis for the ultimate conclusions.” *Lawrence v. Lawrence*, 105 Wn. App. 683, 686, 20 P.3d 972, 974 (2001). This Court should reverse the Judgment against Defendant Raether.

### III.

#### THE FIRST TWO INCIDENTS ARE OUTSIDE THE STATUTE OF LIMITATIONS

A further reason to reject the liability finding is that the first two asserted incidents were outside of the three year statute of limitations applicable to malicious prosecution. *Stansfield v. Douglas County*, 146 Wn. 2d 116, 120, 43 P.3d 498, 500 (2002). Defendant raised the statute of limitations defense in answering the complaint (CP 41), and renewed the defense at trial. VRP Vol. III at page 258, lines 6-12 (11/5/2014, Afternoon Session). At that point in the trial, Judge Schapira said to Plaintiff, “you didn’t file your lawsuit until 2013. I’m not sure you’re allowed to bring up something from ’08, but --.” Raether interrupted and said: “Statute of limitations.” Judge Schapira responded: “That’s correct.” Thus, Judge Schapira was well aware of that statute of limitations was an issue, and even seemed to agree that at least the 2008 incident was barred. Yet, the Findings and Conclusions cite to the 2008 case and a 2009 case, which are more than three years prior to the filing of the original complaint on February 27, 2013. Findings and Conclusions, App. A at Conclusions 2.4(1) and 2.4(2) CP 473; Amended Complaint, CP 228-231. The Findings and Conclusions are legally wrong in failing to recognize the

statute of limitations, and this Court must reverse the Judgment accordingly.

#### IV.

#### **THE FINDINGS OF FACT ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE**

The Findings of Fact in the Findings and Conclusions are not supported by substantial evidence and this Court should reverse the trial court. The reasons are as follows.

Though without clarity, the Findings and Conclusions appear to base the liability for malicious prosecution on four “dismissed” cases as listed at Conclusion 2.4. App. A , CP 473. Yet, the findings do not explain what these cases were about or how and why Defendant Raether’s actions met the elements of malicious prosecution.

#### **A. Incident 1: Assault on Raether in 2008**

Incident 1 is the same 2008 incident that resulted in the Anti-Harassment Order issued by Judge Nault against Plaintiff Lutz. Plf. Trial Ex. 1 (08-00169); Findings App. A at Conclusion 2.4(1). The number, 08-00169, refers to a police report, not to a criminal case. A copy of Plaintiff’s Trial Exhibit 1 is attached as Appendix B. That incident is outside the statute of limitations. In addition, in issuing the Anti-

Harassment Order, Judge Nault specifically found, based on the facts presented, that Plaintiff Lutz committed unlawful harassment: “the court finds that the respondent [Lutz] committed unlawful harassment, as defined in RCW 10.14.080.” Def. Trial Ex. 80. The statutory requirements under RCW 10.14.080 make a finding that Lutz committed unlawful harassment equivalent to a finding of probable cause. That precludes a finding of malicious harassment.

Furthermore, with respect to Incident 1, Plaintiff Lutz essentially admitted under oath at trial that he did in fact assault Defendant, thus confirming the truth of what Raether told the police—there was no false report. VRP Vol. III at page 243, lines 4-25 (11/5/2014, Afternoon Session). At that point in the trial, Defendant asked Lutz: “So your statement is, is that you never did attack me and you never scratched my -- . . . .” Lutz interrupted and said: “I confronted you that day and your glasses got broke.” Raether asked: “How did my glasses get broke?” Lutz responded: “I hate to say this, Mr. Raether, but I reached up and I went just like that. Did I touch your face? No. *Did I break the law that day? Yes. I broke the law because I touched your glasses.*” VRP Vol. III at page 243, lines 4-25 (11/5/2014, Afternoon Session). But, when Mr. Raether sought to press Lutz on these facts, and to show that Lutz was the one lying about the incident, Judge Schapira cut off Defendant Raether,

she said: “Mr. Raether, I hate to keep saying this to you, that matter has been adjudicated.” VRP Vol. III at page 243, lines 20-21.

A few moments later, Judge Schapira said: “I don’t want to hear more about what happened that day. That has been adjudicated. . . . What is it you want this court to do about this case? I’m not going to rule on what happened on 2/18 or 2/19/2008. I am going to rule on whether or not you have been calling in a harassing and vexing way, not based on your inner thoughts, but based on what happened.” VRP Vol. III at page 244, lines 7-25 (11/5/2014, Afternoon Session). Judge Schapira makes some statements (pages 245-248) and then ends with: “So, if you want to keep talking about February of 2008, I won’t interrupt you again. I’m only telling you I’m not going to be talking about February of 2008.” VRP Vol. III at page 248, lines 4-6 (11/5/2014, Afternoon Session). Yet, Judge Schapira cites to the 2008 incident in the Conclusions apparently finding liability for Defendant’s conduct. App. A. at Conclusion 2.4(1). Judge Schapira’s statements indicate that she is not focused on whether Defendant made false statements to police in the 2008 incident—the only ground for malicious prosecution. Instead, she is basing her Findings on a general perception that Defendant was trying to “make his [Lutz] life very difficult.” VRP Vol. III at page 248, line 2 (11/5/2014, Afternoon Session). That is not the standard—Defendant has an absolute right to

make truthful complaints to law enforcement regardless of how “difficult” the resulting police action is against Plaintiff. Unfortunately, Judge Schapira simply was frustrated by pro se Defendant’s presentation stating: “I’m going to tell you this once and I’m probably going to tell it to you again, when tomorrow comes at three o’clock we’re going to close this case. Okay. Come hell or high water. Okay. We’re going to be done and I’m going to make my ruling.” VRP Vol. III at page 245, lines 6-10 (11/5/2014, Afternoon Session).

**B. Incident 2: Ames Lake Road 2009**

Incident 2 is a 2009 incident in which Raether accused Lutz of giving him the middle finger when their vehicles passed near Ames Lake. Plf. Trial Ex. 5 (09-017310); Findings App. A at Conclusion 2.4(2). The number, 09-017310, refers to a police report, not to a criminal case. A copy of Plaintiff’s Trial Exhibit 5 is attached as Appendix C. That incident is outside the statute of limitations. Plaintiff’s Trial Exhibit 5 does not show any arrest or prosecution, and in the report, Plaintiff admitted that he was on Ames Lake Road and does not deny giving the middle finger to Raether. The police officer’s statement amounts to a finding of probable cause: “Following my interviews with Raether and Lutz, I concluded that a violation of Anti Harassment Order 087-00912 did occur . . . .” Page 3 of Incident Report, Plf. Trial Ex. 5.

In addition, Plaintiff Lutz admitted under oath at trial that he was not arrested or prosecuted for the Ames Lake incident:

Q. (By Mr. Raether) Would you please state again which 911 calls you are concentrating on as far as knowing – well, you state “alleging” in your documents, that you’re alleging that they’re false, they were falsely made against you. Would you state which ones those are?

A. I found out that I was incorrect on one. I thought it was the Ames Lake incident that I went to court for. But when I went through all my court documents, I found out that it was [a different alleged incident.]

VRP Vol. III at page 257, lines 7-14 (11/5/2014, Afternoon Session).

There are no other facts presented that tie an arrest to Incident 2. Yet, the Findings and Conclusions cite to this incident apparently as a ground for malicious prosecution. Substantial evidence does not support a finding of malicious harassment on Incident 2.

**C. Incident 3: Calling Raether a “Prick” at Shell in 2010**

Incident 3 is the 2010 incident in which Raether accused Lutz of calling him a “Prick” when they encountered each other in Carnation at the Shell gas station. Plf. Trial Ex. 6 (10-00144c); Findings App. A at Conclusion 2.4(3). The number, 09-017310, refers to a police report, not to a criminal case. A copy of Plaintiff’s Trial Exhibit 6 is attached as Appendix D. A copy of the King County District Court Docket in Case No. CR008617C CNP along with Certification for Determination of

Probable Cause is attached as Appendix E. CP 482-487. Importantly, Defendant Lutz never testified at trial or offered any other evidence to show that he did not make the statement to Defendant at the Shell gas station. That is the incident in which Plaintiff Lutz was arrested while sitting on a concealed handgun. App. D, Plf. Trial Ex. 6. As stated by the officer in the police report:

It was a Smith and Wesson 9mm semi automatic handgun. The magazine was locked in place and fully loaded. I later saw that the first round in the chamber was encased in a full metal jacket. The rest of the rounds were a combination of full metal jackets and hydro shocks, also known on the street as “cop killers” due to their ability to penetrate body armor. [Lutz] later volunteered, “I call that first round the mercy bullet because it just goes right through a person without really doing any damage. The rest of them mean business!”

App. D, Plf. Trial Ex. 6, page 3 of Incident Report; *see also* App. E, CP 485-487 (Certification for Determination of Probable Cause). At his arraignment on the charge of violating the anti-harassment order, the Honorable Judge Jacke of the King County District Court reviewed the police officer prepared Certification for Determination of Probable Cause and then concluded:

COURT FINDS PROBABLE CAUSE

COURT FINDS DEF IS A SUBSTANTIAL DANGER TO  
COMMUNITY, SETS BAIL AT \$50,000 BONDABLE

CP 482; CP 485-487 (Certification for Determination of Probable Cause). That precludes a finding of malicious harassment: “On the other hand, proof of probable cause is a complete defense to an action for malicious prosecution.” *Olsen v. Fullner*, 29 Wn. App. 676, 678, 630 P.2d 492 (1981). In addition, the record shows that the case was dismissed “without prejudice” (CP 483), which is not a termination “on the merits” as required for malicious prosecution. *Hanson v. City of Snohomish*, 121 Wn. 2d at 557. There is not substantial evidence in the record supporting findings that Defendant Raether is liable for malicious prosecution for Incident 3.

**D. Incident 4: Lutz Sent Rather Letter April 2013**

Incident 4 is an April 2013 incident in which Raether accused Lutz of contacting him by sending him a letter. Plf. Trial Ex. 7 (13-091857); Findings App. A at Conclusion 2.4(4). The number, 09-017310, refers to a police report, not to a criminal case. A copy of Plaintiff’s Trial Exhibit 7 is attached as Appendix F. Plaintiff’s Trial Exhibit 7 does not show any arrest or prosecution, but only a recommendation by the police officer. Critically, Plaintiff Lutz testified under oath at trial that he was not arrested for Incident 4: “And on Exhibit 7, that was not an arrest, but I was referred to court through a King County police report . . . .” VRP Vol. II at page 98, lines 23-24 (11/5/2014, Morning Session). Otherwise, there

was no evidence presented of a prosecution, and if there was a prosecution, then there is no evidence to show that the prosecution was based on Raether's complaint.

The Anti-Harassment Order prohibits any contact "in writing" with no exception for court documents. Def. Ex. 80. While a qualification could have been added for court documents, it was not. Thus, Defendant Raether had a good faith belief in making a complaint to police when receiving an envelope from Plaintiff Lutz and not knowing the contents. VRP Vol. V at page 482, lines 8-10 (11/6/2014, Afternoon Session) ("the reason I called the police when the documents were delivered on the lawsuit, because the police requested me to"). Plaintiff admitted at trial that it was the police that didn't know what to do: "King County police apparently didn't know how to treat this thing [complaints that Lutz was sending mail to Raether] in the beginning, so they kept referring charges on me." VRP Vol. II at page 99, lines 23-25 (11/5/2014, Morning Session).

Regardless, there is no showing that Defendant Raether *made any false statement to the police*—he told them truthfully that he received an envelope from Plaintiff Lutz. App. F, Plf. Trial Ex. 7. In the police report, the officer confirms that, "The letter was sent by Lutz . . .", and it was the officer that recommended a charge of violating the anti-

harassment order. App. F, Plf. Trial Ex. 7. These facts belie the findings including that Defendant Raether “misled” the police, called police “without basis”, etc.

In addition, the facts at trial show at best that Judge Cahan did tell Defendant that Plaintiff was allowed to send Defendant court papers. But, Judge Cahan informed Defendant on May 23, 2014, *which was after Incident 4 occurred in April 2014*. VRP Vol. II (11/5/2014, Morning Session) at page 113 (court hearing audio played 5/23/2014), at page 120 (Judge Cahan says sending court documents is allowed). Judge Schapira’s Finding 1.8 criticizes Defendant for making complaints about receiving court papers from Lutz, including saying that “he has been told numerous times by Judge Cahan and the undersigned judge.” App. A. There is nothing in the Findings or in the record supporting that Plaintiff was arrested for Incident 4 in April 2014 or arrested for any other complaint related to court papers. At best, Plaintiff was claiming malicious prosecution for Defendant’s complaint in April 2014 related to receiving mail from Lutz, which turned out to be court papers. Plf. Trial Ex. 7, App. F. But, Defendant was not on notice until May of 2014 that he was not supposed to complain according to Judge Cahan. The Findings imply that Defendant did not follow the Court’s directive, but even if that could be tied to malicious prosecution as without just cause, that directive happened

after the alleged incident. There is not substantial evidence in the record supporting findings that Defendant Raether is liable for malicious prosecution for Incident 4.

**E. Additional Argument About Unsupported Findings and Conclusions**

As an initial matter, substantial evidence does not support the Conclusions in which the Court appears to pick the above four incidents as a basis for malicious prosecution. In the discussion of Incident 2 on Ames Lake Road, Defendant Raether had a highly relevant question for Plaintiff:

Q. (By Mr. Raether) Would you please state again which 911 calls you are concentrating on as far as knowing – well, you state “alleging” in your documents, that you’re alleging that they’re false, they were falsely made against you. Would you state which ones those are?

VRP Vol. III at page 257, lines 7-14 (11/5/2014, Afternoon Session). In Incident 2, it was discussed how the Plaintiff explained that he was not arrested on the Ames Lake Road matter. Plaintiff Lutz then tried to answer the question and provide the incidents: “I’ll give you those dates and the timeline that everything happened here.” VRP page 257, lines 20-21. Then, there was the discussion about the 2008 case and Judge Schapira agreed it was barred by the statute of limitations. VRP page 258. Then, Judge Schapira asked Plaintiff to continue: “What are the others [the other incidents]?” But, then Judge Schapira cut off the answer and offered

to allow Plaintiff to come back the next day: “Well, I’ll tell you what, why don’t you prepare your answer for tomorrow. You can get yourself all organized, all of the different dates. Okay.” VRP Vol. III at page 258, lines 15-17 (11/5/2014, Afternoon Session). She added: “So perhaps when we get started at nine o’clock [the next day], one of the first things you’ll talk about are all the instances that you’re actually talking about. . . . Not the ones that you don’t like, but the ones you’re actually talking about in the lawsuit.” VRP page 259, lines 4-9. Yet, when the next day came, Judge Schapira first brought up the issue, but then never required Plaintiff to comply. She said: “you’re going to tell us the individual instances or situations that are the heart of the matter. . . . that you’re – actually want us to focus on? Lutz: Right.” VRP Vol. IV at page 278, lines 8-12 (11/6/2014, Morning Session). But, Judge Schapira never followed up on her request. See VRP Vol. IV at pages 278-285 (11/6/2014, Morning Session). The Court requested the specific instances because Plaintiff Lutz had yet to identify specific false complaints by Defendant resulting in arrest and prosecution. Instead, during the first day of trial, Plaintiff had only managed to prove that Defendant had called the police and complained many times. Yet, despite never obtaining the clear evidence, the Court went forward and found in favor of Plaintiff. Yet, it is clear from Judge Schapira’s comments and Findings and Conclusions that she

based liability on a general sense that Defendant made too many complaints without any specificity that a certain false complaint led to an arrest and prosecution. *See* VRP Vol. V at pages 468-486 (11/6/2014, Afternoon Session).

The following are additional points demonstrating the unsupported nature of the Findings of Fact at Appendix A 1-3, CP 470-472.

#### Findings of Fact

1.1 The finding states that Defendant misled the Court and police, which is denied and not supported by any substantial evidence, but that statement does not support the malicious prosecution claims raised by Plaintiff. Defendant has never misled the Court, police dispatchers and responding officers about alleged acts of contact with the Plaintiff, Thomas Lutz, for the purpose of harassing or causing him to be stopped and arrested. For reasons herein, the facts do not support this finding.

1.2 The finding seems to raise a concern that Mr. Raether's complaints to police were "based on his word and statements alone," and also 1.3 that "defendant is the only witness to back up his numerous claims." Of course the complaints were based on his statement alone—that is the case is a large number of complaints of violations of anti-harassment orders. That does not prove anything—it is not Defendant's burden to disprove Plaintiff's allegations. Defendant pointed to the videos

of the events to show what Defendant observed, but the videos were not given full consideration by the police, agencies, and the Court. Def. Trial Exs. 51, 52, and 53. Defendant did call 911 to make a factually record of contact from Lutz and his associates and Defendant thought that was what he was supposed to do under the 2008 anti-harassment order against Mr. Lutz. Defendant Exhibit 59 is the transcript of Lutz' attempt to get an anti-harassment order against Raether which failed. Exhibit 59 shows that the judge in that case told Lutz that the judge would not “prohibit people from calling the police, fire department, code enforcement, and animal cruelty agencies or the dog catcher . . . .” Defendant's complaints were never directed at Mr. Lutz, so Raether was not harassing him. It was up to the police to decide what to do with the complaints—Raether had no control over that action.

1.3 The finding says that the videos show no harassment at all, but no facts are provided to explain that statement. The issue is contact—any contact is harassment. Judge Schapira clearly was impatient and displeased with Defendant's presentation of evidence. Raether tried to show on the DVDs provided as Defendant Trial Exhibits 51, 52, and 53 that Raether was telling the truth. The Exhibit 51 video used in Court shows Schultz and Lutz in the black jeep in front of Raether's home and shows the roar of the unmuffled engine, which proves the tires are

spinning purposely to intimidate and alarm and contact Raether. It also shows the same jeep driving at a proper speed and that was to show the ownership thru plate number and that it had no mud flaps on oversized tires. And the 3<sup>rd</sup> video clip shows the same jeep with Lutz speaking to Raether as they drove by. These videos are relevant and yet Judge Schapira says in Finding 1.3 that: “Defendant played the video for over a half-an-hour despite its clear lack of relevance” and refers to a video clip as, “Another pointless video . . . .” Finally, this Finding refers to an alleged false report of fishtailing and harassing acts, but none of the arrests in Incidents 1-4 involved fishtailing—so there is no evidence that what the Court found was false even resulted in an arrest.

1.4 This finding claims that Plaintiff’s witness testified that Raether was not truthful in the four incidents in written or oral statements to police. The transcript of the testimony does not support this finding. Mr. Estepa testified only to witnessing a May 2008 event, not the February 2008 event that was listed as Incident 1 in the Findings and Conclusions. VRP Vol. II at pages 49-91 (11/5/2014, Morning Session). And, Ms. Haag only testified regarding one event—the February 2008 event. VRP Vol. IV at pages 285-345 (11/6/2014, Morning Session). There is no way to interpret the testimony of those witnesses as covering four incidents.

This Finding is an important one because the witnesses are non-parties, though connected to Lutz, yet the Finding is completely wrong.

1.5 This finding points out the obvious that Defendant Raether is upset and fearful. Of course he is fearful, he had to be in the courtroom with Plaintiff Lutz who threatened to kill him. Mr. Raether had to endure listening to testimony that he believed was untruthful, so of course his frustration might show. Otherwise, Raether is aware that Lutz drives around the neighborhood with a loaded gun in his car—who would not be fearful. The transcript reflects no angry outbursts by Defendant.

1.6 This Finding complains that constant filming is not for the purpose of preserving the record which the Court seems to use to support maliciousness. But, Mr. Raether heard otherwise from a District Court judge. Lutz tried to get his own anti-harassment order against Raether, and Lutz complained about Raether filming him, and the Judge told Lutz: “Judge: . . . Ok so what harm is there[?] I suspect that he, he’s suspecting you of some illegal or improper conduct . . . so all he’s trying to do is document it. [So] what adverse impact has occurred to you because he films you[?] Lutz: Uh none because of the filming.” Lutz admitted that the filming caused no harm. Yet, Judge Schapira declares the exact opposite and declares that mere filming is intimidation. Substantial evidence does not support this finding.

1.7 This Finding says that Plaintiff is not a risk to Raether and that Plaintiff has not contacted Raether. Substantial facts do not support this finding. Plaintiff admitted to illegally assaulting Defendant by knocking off Defendant's sunglasses in February 2008. VRP Vol. III at page 243, lines 4-25 (11/5/2014, Afternoon Session). The Anti-Harassment Order found harassment i.e. that Lutz punched Raether in the face. Def. Trial Ex. 79. Judge Jacke *found probable cause* that Lutz violated the anti-harassment order in 2010. App. E. The anti-harassment order prohibits Lutz from contacting Raether "in writing" and it is not disputed that the letter was sent, yet Judge Schapira finds no contact. That is not supportable. Numerous other facts discussed above and presented at trial prove the opposite.

1.8 This Finding states that Raether called police repeatedly claiming that the discovery responses were a violation of the anti-harassment order. The facts don't support this finding. The Court only found liability for one event based on delivery of "a writing", Incident 4, and in that situation Raether told the truth that he had received a writing, and the police officer determined that it was a violation. The facts in the record don't support that Defendant Raether was told numerous times that discovery responses were not a violation, or the facts don't show that these communications occurred prior to Raether complaints to police.

Specifically, the Finding states that: “The complaints persisted despite the fact that . . . he has been told numerous times by . . . the undersigned judge.” But, Judge Schapira was not assigned until the day before trial (CP 452), *so any warning by her was long after the complaints to which she refers!* As discussed above under Incident 4, Judge Cahan statement was after Incident 4.

1.9 This Finding is not relevant to any of the Incidents, or any other arrest, and is otherwise quite startling. Defendant complained about Plaintiff sending letters to City and County officials which called out Defendant, but there were no calls to police by Defendant on those issues. There is no record and no evidence that Mr. Raether has ever been arrested or charged with any crime including the crime of false statements to the police. If the police had any suspicion that Defendant Raether was making false statement, then surely the police would act to have him charged. Instead, Mr. Raether has not taken matters into his own hands and has relied upon the police, prosecutors, and court system to sort out what to do with Mr. Lutz. It was Plaintiff Lutz, not Mr. Raether, that violently attacked Mr. Raether as found by Judge Nault. It was Plaintiff Lutz, not Mr. Raether, that despite the no contact order called Mr. Raether a “prick” and was arrested while driving in the area with a concealed

handgun loaded with “cop killer” bullets—to which Judge Jacke based her finding that Lutz was a “substantial danger to community.”

1.10 This Finding shows that Judge Schapira was not even handed in this case. Raether was issued an Anti-Harassment Order against the Plaintiff Lutz which confirms that Raether has grounds to be concerned about him. Yet, this remark seems to completely ignore that reasonable fear.

The following are additional points demonstrating the unsupported nature of the Conclusions of Law especially to the extent that they are deemed findings at Appendix A, CP 472-474.

#### Conclusions of Law

2.1 No comment required.

2.2 Defendant does not agree. The complaints were to the sheriffs and police and not to Mr. Lutz, so these facts do not show that I harassed Lutz because I could not control the police action. So, my actions did not harass plaintiff. Lutz should have brought this action against the police and sheriffs if he thinks they acted unreasonably. Discussed above are the facts that show I had a reasonable basis for my complaints. The issue with the postal employee did not harm Lutz.

2.3 Plaintiff was not specific as to what incidents resulted in arrests and Plaintiff did not testify as to the facts regarding the conclusion

of the cases. The 2010 incident, for example, was dismissed without prejudice which is not a termination for lack of proof.

2.4 The \$1,000 was not proven by competent evidence. Not by testimony or exhibits tied to the incidents. An important point is that Defendant was not the cause of any damages he claimed because the police acted totally independently and are they are responsible for their own actions if unreasonable.

## V.

### **REVERSAL AND ASSIGNMENT TO A NEW JUDGE IS REQUIRED DUE TO APPEARANCE OF PARTIALITY AND BIAS BY JUDGE SCHAPIRA**

Defendant was entitled to an impartial and fair judge, which Judge Schapira was not.

Due process, the appearance of fairness, and Canon 3(D)(1) of the Code of Judicial Conduct require disqualification of a judge who is biased against a party or whose impartiality may be reasonably questioned. A judicial proceeding is valid only if it has an appearance of impartiality, such that a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing.

*State v. Ra*, 144 Wn. App. 688, 704-05 (2008). Judge Schapira's comments during the proceeding indicated an improper disrespect to Defendant and showed partiality and bias.

Judge Schapira seemed to admit bias at the end of trial. Judge Schapira's comments at the end of trial were very personal about her view of Defendant's personal problems and her speculation about the cause therefor. VRP Vol. V (11/6/2014, Afternoon Session) at page 471-485 (all comments), at page 475, lines 25-25 ("I think it's because of your PTSD, your health-related issues"). After her ruling, Defendant stated for the record his objection to Judge Schapira statements about him, and then made a motion that Judge Schapira was biased and requesting a new judge. VRP Vol. V (11/6/2014, Afternoon Session) at page 485, lines 22-23, at page 486, lines 17-18. Judge Schapira responded:

I – okay. I'm never going to be your judge again, but I am going to finish this case. So I don't believe I started off biased, and I don't think I'm biased currently . . . .

VRP Vol. V (11/6/2014, Afternoon Session) at page 486, lines 19-22. Her statement that she had not "started off biased" implies that she became biased—that is not cured by her weak addition stating "I don't think I'm biased currently." It clearly appears that she admitted biased and tried to fix it, but even then she made no clear statement that she was not biased. Plus, she stated clearly that: "I'm never going to be your judge again" which indicates some type of agreement that she should not judge the case or otherwise has some personal problem with Defendant Raether.

Judge Schapira did many things during trial that seemed to unfairly favor Plaintiff and otherwise indicated a personal dislike of Defendant. In Argument IV.E, above it was discussed how Judge Schapira cut off Plaintiff Lutz from having to answer the important question about the incidents upon which he was basing his claims, and Judge Schapira helped him out by offering to allow Plaintiff to come back the next day: “Well, I’ll tell you what, why don’t you prepare your answer for tomorrow. You can get yourself all organized, all of the different dates. Okay.” VRP Vol. III at page 258, lines 15-17 (11/5/2014, Afternoon Session). Then, as described above, she went forward the next day without requiring Plaintiff to answer the question. Yet in comparison to being helpful, when Defendant presented his videos as Exhibits and asked whether Judge Schapira would like to see the videos, she replied: “Well, you know I don’t have time to do that, so I wasn’t planning to.” VRP Vol. V at page 447, lines 21-25, at page 448, lines 1-8 (11/6/2014, Afternoon Session). Also, as described above in Argument IV.A., Judge Schapira told Defendant that he was going to finish by three o’clock, “Come hell or high water,” and that “We’re going to be done and I’m going to make my ruling.” VRP Vol. III at page 245, lines 6-10 (11/5/2014, Afternoon Session). She did in fact cut off Defendant Raether in mid-sentence at

three o'clock as she promised. VRP Vol. V at page 445, lines 19-20 (11/6/2014, Afternoon Session).

In the middle of trial, Judge Schapira argued with Defendant about what the evidence showed and accepted Plaintiff's testimony as fact before hearing all the evidence. First, Judge Schapira showed her displeasure with Defendant's cross-examination, but that is not a reason to take sides as she did when she said to Raether: "I hope during the next round of questions we're going to not be talking about things that are of no help to the Court." VRP Vol. II at page 140, lines 6-8 (11/5/2014, Morning Session). After Defendant tried to explain his purpose for the questions, Judge Schapira lectured Defendant and stated her acceptance of Plaintiff's testimony on its face: "He's not stalking you, and he said he's not surveilling you. You asked if he saw you on October 29<sup>th</sup>, and he told you he didn't see you but he saw your truck." VRP Vol. V at page 445, lines 19-20 (11/6/2014, Afternoon Session).

In her closing comments, Judge Schapira went outside the testimony and brought up off-the-record statements Defendant made to court staff. VRP Vol. V (11/6/2014, Afternoon Session) at page 471, line 4. Judge Schapira speculated on Defendant's health problems and mental state, including referencing his PTSD; none of which was testified to. VRP Vol. V (11/6/2014, Afternoon Session) at page 472, lines 1-25, at

page 475, lines 25-25 (“I think it’s because of your PTSD, your health-related issues, a certain amount of isolation that I’m hearing about.”).

For all these reasons and the tenor throughout trial, the Judgment should be reversed due to Judge Schapira’s partiality and biased toward Defendant. Otherwise, if the Court reverses the trial court for other reasons, then this Court should order assignment to a new judge as occurred in *State v. Ra*. Besides, Judge Schapira indicated she would never be Raether’s judge again anyway, so ordering reassignment is appropriate.

## CONCLUSION

Malicious prosecution is a serious charge. Defendant will be stuck with this Judgment the rest of his life if this Court does not intervene and reverse the trial court. Defendant respectfully requests that this Court thoroughly review this appeal despite the small amount awarded in the Judgment. This appeal is about fairness and justice. This appeal is about the trial court not following the law. The trial court erred in finding liability for malicious prosecution against Defendant and Appellant

William P. Raether. This Court must correct that error and reverse the decision and judgment of the trial court.

RESPECTFULLY submitted this 7<sup>th</sup> day of July, 2015.

By:   
William P. Raether, *pro se*  
6610 329<sup>th</sup> Ave NE  
Carnation, WA 98014

**DECLARATION OF SERVICE**

I, William P. Raether, declare:

I am a citizen of the United States, a resident of the State of Washington. On July 7, 2015, I caused a true and correct copy of the foregoing document to be served on the following person via U.S. Mail and I arranged for the court reporter to provide a copy of the Verbatim Report of Proceedings to the following person as well:

Thomas E. Lutz  
P.O. Box 1062  
Carnation, WA 98014

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 7<sup>th</sup> day of July, 2015 at Bellevue, Washington.

  
\_\_\_\_\_  
William P. Raether

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2015 JUL -8 AM 10:15

## **Appendix A**



- 1 1.2. The many times Mr. Raether has complained or tried to have charges filed against the  
2 plaintiff since the entry of the anti-harassment order (03/03/2008), it was based on his  
3 word and statements alone.
- 4 1.3. The defendant is the only witness to back up his numerous claims over a six year  
5 history of complaints. The videos show no harassment at all. One video used at trial  
6 showed hunters (supposedly fish and game officers) shooting birds on a private property  
7 completely unrelated to the plaintiff. Defendant played the video for over half-an-hour  
8 despite its clear lack of relevance. Another pointless video shows a vehicle driving by  
9 at a normal rate of speed in one direction and later returning on the street where the  
10 parties both live. Defendant called police alleging a violation of the court order, falsely  
11 alleging fishtailing and harassing acts
- 12 1.4. The plaintiff, on the other hand, had witnesses that testified Mr. Raether was not truthful  
13 in his statements that he either signed or told to the police dispatch or officers on four  
14 different occasions. They (Ms. Karen Haag and Mr. Hilton Estepa) confirmed Mr.  
15 Raether's anger with many neighbors and Mr. Lutz's efforts to avoid confrontation.
- 16 1.5. The defendant is clearly upset and fearful at one moment, and angry the next, even in  
17 Court, with no provocation.
- 18 1.6. The constant filming by the defendant of the plaintiff is not for the purpose of  
19 preserving a record. The real purpose for his filming is to intimidate others and to  
20 confirm his unreasonable view of neighbors sharing a common road.
- 21 1.7. The plaintiff is not a risk to Mr. Raether and has not contacted him, directly or  
22 indirectly.
- 23

1 1.8. Mr. Raether called sheriffs and complained repeatedly to this Court that mailing  
2 discovery responses to Mr. Raether was a violation of the anti-harassment order. The  
3 complaints persisted despite the fact that 1) it is not a violation of the anti-harassment  
4 order, and 2) he has been told this numerous times by Judge Cahan and the undersigned  
5 judge.

6 1.9. Mr. Raether often complained to sheriffs and to this Court about plaintiff's protest signs  
7 on his truck and near the grocery store in Carnation. The subject of the protest was  
8 seeking a chance to speak to the City Council publicly. Mr. Raether has little or no  
9 respect for other people's rights to live undisturbed, to seek lawful redress of  
10 grievances, and to protest quietly.

11 1.10. In contrast to defendant's perception, it is not all about him.

## 12 II. CONCLUSIONS OF LAW

13 2.1. Mr. Raether was not able to prove the lawsuit was frivolous, and Summary Judgment  
14 was Denied.

15 2.2. Mr. Raether has abused the anti-harassment order he was granted by Judge Nault by  
16 repeatedly calling the police, without a basis, to maliciously and unreasonably harass  
17 the plaintiff and people he knows. He believes unreasonably that the postal employee  
18 who filled out the return receipt on certified mail had violated federal law and the court  
19 order (and filed a complaint to that effect).

20 2.3. The false claims and complaints were terminated or dismissed because of a failure of  
21 proof. Mr. Raether's subjective reports and complaints are objectively unreasonable  
22 and designed to cause plaintiff and others harm.  
23

1 2.4. By the manipulation of the police and court system, the defendant has cost the plaintiff  
2 great financial loss with defendant's statements and charges filed in Court. The Court  
3 finds the defendant accountable for his actions by paying compensatory damages for  
4 some of the following losses:

- 5 1. Lawyer fees for the dismissed case in the North East District Court resulting  
6 from Carnation/Duvall police report 08-00169 (Exhibit - 1).
- 7 2. Lawyer fees for the dismissed case in the King County Superior Court  
8 resulting from King County police report 09-017310 (Exhibit - 5).
- 9 3. Lawyer fees for the dismissed case in the North East District Court resulting  
10 from Carnation/Duvall police report 10-00144c (Exhibit - 6).
- 11 4. Lawyer fees for the dismissed case in the North East District Court resulting  
12 from King County police report 13-091857 (Exhibit - 7).
- 13 5. Money paid to All City Bail bond (Exhibit - 9).
- 14 6. Five days in jail after the arrest on 03/03/2010 by the Carnation/Duvall  
15 police.
- 16 7. Money paid to Mac Towing after the arrest on 03/03/2010 by the  
17 Carnation/Duvall police (Exhibit - 11).
- 18 8. Loss of silver jewelry after the arrest on 03/03/2010 by the Carnation/Duvall  
19 police (Exhibit - 12).
- 20 9. Loss of Heavy truck tools after the arrest on 03/03/2010 by the  
21 Carnation/Duvall police.  
22  
23

### III. ORDER

FINDING OF FACTS AND CONCLUSIONS OF LAW

Carol A. Schapira, Judge  
King County Superior Court  
516 3<sup>rd</sup> Avenue, W-331  
Seattle, WA 98104

1 **IT IS HEREBY ORDERED, ADJUDGED and DECREED THAT:**

2 The Court orders defendant to pay plaintiff \$1,000.00 for the loss of value of silver the  
3 plaintiff sold to post bail, attorney's fees in the dismissed cases, and commercial and emotional  
4 damages from false accusations.

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7 Dated 11/20/14

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**THE HONORABLE CAROL A. SCHAPIRA,  
KING COUNTY SUPERIOR COURT JUDGE**

**FINDING OF FACTS AND CONCLUSIONS OF LAW**

Carol A. Schapira, Judge  
King County Superior Court  
516 3<sup>rd</sup> Avenue, W-331  
Seattle, WA 98104

## **Appendix B**

02/18/08  
16:52

DUVALL POLICE DEPARTMENT

Incident Report

Incident: 08-00169C

Page: 1026  
2

EMMONS - 06289  
TURNER - 00519

Officer: D Turner 00519  
Date/Time Stamp: Mon Feb 18 16:15:36 PST 2008

- 1. Witness information - Enter all Witness(s) names in the Law Incident Involvements
- 2. Additional suspects - Enter all Suspect(s) names in the Law Incident Involvements
- 3. Describe property taken; show make, model, serial numbers and individual values, where taken from, etc.
- 4. Property damaged; describe with dollar loss
- 5. Statements; from whom, and taken by
- 6. Evidence/Photos - Enter all Evidence in the Law Incident Involvements
- 7. Latents
- 8. Casualties or death; nature of injuries, attending physician, where treated, etc.
- 10. Narrative; describe/reconstruct incident, crime scene

Start report below line:

=====

2. Lutz, Thomas Eugene, DOB:02/20/52

10. On 02/18/08 at around 1100 hrs, while working as a police officer for the Duvall Police Department, I responded with Ofc Emmons to 3600 Tolt Ave Ne for a reported assault that had already occurred. While en route Redmond dispatch stated the victim Raether was at the front desk of Eastside Fire and Rescue, Station 85. He had given a suspect description of a W/M about 50 yoa or older in an orange Chevy van. I advised that I would make contact with Raether try to get a better suspect description and a possible direction of travel.

When I arrived Raether was standing outside. He said the suspect had punched him on left side of his face after grabbing Raether's sunglasses. Raether said this happened while he was sitting in his vehicle on Tolt Ave in the City limits of Carnation.

Ofc Emmons arrived and took a written statement from Raether. While Raether was giving his written statement I did an area check for the suspect vehicle near and around Raether's residence.

Raether stated the incident began near his driveway at 6610 329 Ave NE. I began N/B on 329 Ave NE and proceeded E/B on NE 70 St. Sgt Daugherty met me at the driveway of 33409 NE 70 St. When we followed the driveway we located a reddish-orange Chevy Astro Van parked at the top of the driveway.

As Sgt Daugherty and I exited our vehicles we were contacted by a W/M fitting the description of the suspect. He identified himself verbally as Lutz, Thomas Eugene, DOB: 02/20/52. He immediately asked if we were here because of Raether. I asked if he could tell us what happened today. Lutz stated he wanted Raether arrested for assault. I asked him what happened and he explained that while he was driving in town he saw Raether's vehicle headed toward him. He said Raether was going S/B as he was going N/B. As they passed each other Raether held up his hand in the form of a gun and pointed at Lutz as if shooting him. Lutz said he became upset because of past incidents with Raether threatening to shoot him. Lutz said he turned around, passed Raether's vehicle and stopped on the shoulder of Tolt Ave. Lutz said when Raether pulled in behind him, Lutz exited his vehicle and confronted Raether. Lutz explained that he grabbed Raether's sunglasses off his face and told him to leave him alone. Lutz got back in his car and left the area.

At this time I gave Lutz a Department Explanation of Rights form. I had Lutz read the rights form out loud and initial each right as he read them.

02/24/08  
15:19

DUVALL POLICE DEPARTMENT  
Incident Report

Incident: 08-00169C Page: 1132  
1

Incident Number: 08-00169C When Reported: 11:01:47 02/18/08  
File Number: 08-123 Occurred Between: 11:01:44 02/18/08  
Nature: Assault And: 11:01:47 02/18/08  
Offense: 041E Assault 4th Degree

Where Occurred:  
Addr: 3600 TOLT AVE; OUTSIDE FIRE STATIO Area: DC Duvall PD, Carnation  
City: CARNATION St: WA Zip: 98014  
Contact: WILLIAM RATHER - FIR

Involvements:

Description	Relationship
LUTZ, THOMAS EUGENE 02/20/52 W /M 33409 NE 70 ST, CARNATION, WA, 98014	SUSPECT H TEL: ( ) - W TEL: ( ) -
RAETHER, WILLIAM PHILLIP 09/16/55 W /F 6610 329 AVE NE, CARNATION, WA, 98014	VICTIM H TEL: (425)333-6443 W TEL: ( ) -
HAAG, KAREN SUSANN 09/06/51 W /F 33409 NE 70 ST, CARNATION, WA, 98014	WITNESS 1 H TEL: ( ) - W TEL: ( ) -

Op. no	Item	Brand	Model	Value
27172	Video	FUJI FILM	6 HRS	0.00
27137	Sunglasses	FOSTERGRANT		0.00

Disposition: ACT Active

Disp. Date: 02/18/08

Synopsis:

17:31:58 02/18/2008 - B Emmons  
D816 Police responded to an assault not in progress. Police arrived, spoke with both parties. The issue was resolved.

  
Responsible Officer: B Emmons

Supervisor

Officer: B.R. Emmons #06289  
Date/Time Stamp: Tue Feb 19 08:04:29 PST 2008

- 1. Witness information - Enter all Witness(s) names in the Law Incident Involvements
- 2. Additional suspects - Enter all Suspect(s) names in the Law Incident Involvements
- 3. Describe property taken; show make, model, serial numbers and individual values, where taken from, etc.
- 4. Property damaged; describe with dollar loss
- 5. Statements; from whom, and taken by
- 6. Evidence/Photos - Enter all Evidence in the Law Incident Involvements
- 7. Latents
- 8. Casualties or death; nature of injuries, attending physician, where treated, etc.
- 10. Narrative; describe/reconstruct incident, crime scene

Start report below line:

```

=====
VICTIM:      RAETHER, William P.      09.16.55
SUSPECT:     LUTZ, Thomas E.         02.20.52
WITNESS:     HAAG, Karen S.       09.06.57
=====

```

ON 02.18.08 AT AROUND 1100 hours, I was employed as a Police Officer for the City of Carnation. Redmond dispatched my self and Officer Turner to an assault in Carnation that was not in progress.

around 1110 hours, I arrived at the Carnation Fire Station located at the 3600 block of Tolt Av NE. I contacted RAETHER inside the waiting area. He appeared shaken and unsteady. His faced was flushed and he was breathing heavily. I asked him if he wanted medical assistance. He declined. I took pictures of RAETHER's face and hands. I could detect no sign of injury.

RAETHER provided me a written statement. He said while he was driving S/B on Tolt Av. near Pete's Bar and Grill, he saw an orange van belonging to a person he has been having problems with, driving N/B in his direction. He does not know the driver's name, just recognized him. He went to grab his video camera in an attempt to get the license plate off of the vehicle. The orange van went by him and he recognized HAAG in the passenger seat. The orange van, being driven by LUTZ, made a U-turn. The orange van tailgated him and then pulled around his vehicle and cut him off near the 4200 block of Tolt Av. As RAETHER was trying to push the record button on his camera, LUTZ approached him saying, "I am going to kill you, you fucked with the wrong person this time, and you are going to die fucker!" RAETHER tried to distract him and asked him why he was trying to steal some cloths he had left out for the retarded children by his gate. LUTZ continued to yell at him and scratched his sunglasses off his face. LUTZ punched RAETHER in the face, striking him on the right side of his face. LUTZ then departed saying, "You are going to die fucker." RAETHER then got his camera started and followed LUTZ's orange van. He pulled into the Fire station and called 911 using the emergency phone.

RAETHER expounded upon his story saying that he is afraid for his family's safety and feels as if he is being persecuted by his neighbors and King County. He lives at his residence, with his wife, whom is currently not living there. RAETHER said she left because she feels unsafe living at their house. He said

02/24/08  
11:24

DUVALL POLICE DEPARTMENT  
Incident Report

Incident: 08-00169C Page: 1132  
3

a couple different County Attorneys have it in for him. He says Guardian One, a King County helicopter, hovers 100 feet over house once a week, harassing him. He feels his neighbors are trying to get him to leave his property. RAETHER say's that he sleeps with his AR-15 at night because he is so worried.

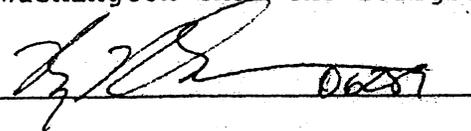
RAETHER then led me to the location of the assault. We found pieces of his sunglasses on the roadway where he said they would be. I collected the majority of the pieces and entered them in as evidence.

While I was taking a statement from RAETHER, Officer Turner was speaking with the suspect. We met at RAETHER's residence at around 1240 hours. Myself and Officer Turner spoke with SGT. Daugherty and determined that the case would be forwarded up to the prosecutors offices to determine fault. Both adults seem to be at odds with each other and have been chipping away at each other for some time now. Due to lack of independent witness's and physical evidence, no one was arrested. Both were cautioned to stay away from each other and to call the police to solve their disputes. RAETHERN said he was going to apply for an anti-harassment order.

I will contact RAETHER on 02.20.08 and take some more photos of his face.

END of REPORT

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

Signature  06257 Date 02/18/08 Duvall, WA.  
Supervisor \_\_\_\_\_

02/25/08  
15:25

DUVALL POLICE DEPARTMENT  
Incident Report

Incident: 08-00169C Page: 1132  
2

Officer: B.R. Emmons #06289  
Date/Time Stamp: Sun Feb 24 11:16:29 PST 2008

- 
1. Witness information - Enter all Witness(s) names in the Law Incident Involvements
  2. Additional suspects - Enter all Suspect(s) names in the Law Incident Involvements
  3. Describe property taken; show make, model, serial numbers and individual values, where taken from, etc.
  4. Property damaged; describe with dollar loss
  5. Statements; from whom, and taken by
  6. Evidence/Photos - Enter all Evidence in the Law Incident Involvements
  7. Latents
  8. Casualties or death; nature of injuries, attending physician, where treated, etc.
  10. Narrative; describe/reconstruct incident, crime scene

Start report below line:

=====

10. On 02.24.08 at around 0930 hours, I was employed as a Police Officer for the City of Carnation. I met RAETHERN at his residence so that I could look at his face for any bruising associated with the assault.

---

I took photos of RAETHERN's face, but I was unable to detect any signs of injury. RAETHERN said that he has been unable to leave his house, for more than a few hours a day, because he fears his neighbors might try to burn it down. He sleeps in his truck for certain times at night because he fears for his property and safety.

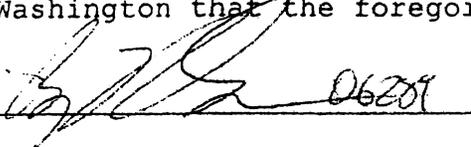
RAETHERN dropped off a VHS tape to the Carnation City Hall sometime on 02.19.08. It was placed in the box for our Police Department and then delivered to Duvall PD where it was placed into my in box. I viewed the tape on 02.24.08 and saw that the tape had very little evidentiary value. It showed that RAETHERN taped an orange colored van on the day of the assault. It shows the camera man driving around the orange van that "assaulted him and punched him in the nose." The tape has been placed into evidence. ✓

I told RAETHERN to call King County if he has any further issues.

Pending supervisor review, I suggest this case be forwarded up to the prosecutor.

END of REPORT.

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

Signature  #06289 Date 02.25.08 Duvall, WA.

Supervisor \_\_\_\_\_

02/18/08  
16:52

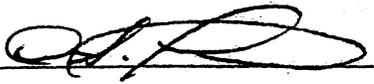
DUVALL POLICE DEPARTMENT  
Incident Report

Incident: 08-00169C Page: 1026  
3

After Lutz read his rights and signed that he understood them he wrote he did not want to make a statement without counsel. I had Lutz sign his statement and advised him that he could be charged through investigation for Assault Forth Degree, RCW 9A.36.041. Lutz said he understood and left while Sgt Daugherty was taking a written statement from witness Haag.

End of statement.

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

Signature  Date 2-18-08 Duvall, WA.

Supervisor \_\_\_\_\_



# CARNATION - DU Vall POLICE DEPARTMENT

Glenn E. Merryman,  
Chief of Police

VICTIM /  WITNESS STATEMENT

Date: 2-18-08 Time: 1200 Place: \_\_\_\_\_  
The following is the true and correct statement of:

KAREN S. HAAG 09-06-57  
First Middle Last Date of Birth

Address: 33409 NE 70<sup>th</sup> City: CARNATION State: WA Zip: 98014

Home Phone: 425-333-1925 Work Phone: \_\_\_\_\_

Employer / School: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

On 2-18-08 at about 1145 I was riding in the passenger seat of Tomas Lutz's van. We were in Carnation going N13 on SR 203 by Peter's Club and a girl I know with the last name "RATHER" driving a green & white older Ford truck, pass by us. As he passed, Rather put his hand up like a gun and pointed it at Tom and made a movement with his thumb as if he was shooting at Tom. He had a very mean look in his face. Tom turned around and followed Rather until the area between NAPA and RFL. Rather slowed down and Tom drove around him and stopped the van in front of Rather's truck. Tom went and confronted Rather which I could only see in the side mirror. Rather looked to be holding a video camera but I could not see what Tom was doing. Tom and Rather talked for a couple minutes and Tom came back to the van. Rather pulled around us and came up to the window and yelled at Tom that he (Tom) was going to jail. We then came home. I have known about Rather for many years and know that he has a very bad temper. Rather has also shot at my children and other vehicles driving by his house. What Rather did today was very threatening to me and I am scared of him.

I certify under penalty of perjury under the laws of the State of Washington that my statement is true and correct and maybe used in a court of law.

Signed: Karen Haag Witness: \_\_\_\_\_

Officer: Sgt DAUGHTERY Officer I.D. Number: 08727

# EXHIBIT - 1.C

9:58 FAX 2062960592 KCDC REDMOND

2/20/08

87-912

February 20, 2008  
Case #08-00169C

On the morning of February 18, 2008 at approximately 10:00 am, I was preparing to leave my home at 6610 239<sup>th</sup> Ave. NE, Carnation, WA 98014 to visit a friend near Duvall, WA and attain a burning permit from Carnation Fire Dept.

Earlier that morning I had placed a large plastic bag with items in it for a donation to NW Center for the Blind pickup on the roadside of my driveway gate. As I went to secure my house I noticed an orange Chevy van going south on 329<sup>th</sup> Ave. NE and as it passed my driveway it slowed and backed up and stopped. The driver was looking at the donation bag. I recognized the person as the same one that yelled at me while slowly passing my home several months ago saying, "You're going to die M\_FER."

I made a 911 report about it and a King County officer came, took a report, and told me he would find out whom it was and give me a case number and his name so I could seek a harassment order against him. I waited several days before I called the North Precinct and left a message but I never heard from the officer again. I debated for about 20 minutes whether I should call 911 but decided not to for I did not feel at that time there was an emergency.

I then left my home and took my video camera with me as usual for protection and as I left, I placed the donation bag just inside my gate. As I drove into Carnation heading south to the fire dept. I saw an orange van coming towards me among the traffic heading north on Hwy. 203. I recognized the driver as the same as earlier. I grabbed my video camera and pointed it at his van thru my windshield with my right hand to get the license number and his picture as we passed.

By the time I looked in my rear view mirror, approx. 30 seconds later, he had turned around and was speeding towards me. He came within inches of rear-ending my pickup truck. He then passed me and slammed on his brakes. I tried to avoid him by going on the shoulder and up on the curb but he sped up and cut me off. I tried to go around him on the left but he came back in front of me, slammed on his brakes, and came to a complete stop approx. 4 feet in front of me. There were several cars in the northbound lane. I could not move without causing an accident.

He immediately left his van and charged towards my open driver's side window yelling, "I'm going to kill you, M\_Fer, you're not going to F\_k with me like you F\_k with the rest of the community."

I again grabbed my video camera and pointed it at him and said, "stay away from me or you are going to prison." By this time, approx. 5 seconds later, he tore my sunglasses off my face and thru them in the road, hit me in the nose and right eye with his right fist screaming, "I'm going to kill you." I kept repeating, "You are going to prison, I'm calling the police."

## **Appendix C**

Detailed History for Police Event #K09017310 As of 6/10/2013 16:51:56

Output for: 80081

Priority:3 Type:VIOL - Court Order Viol  
 Location:6610 329TH AVE NE,KCS  
 LocCross:btwn NE 66TH ST and NE 70TH ST

Created:	01/22/2009 14:52:29	C101	88
Entered:	01/22/2009 14:55:57	C101	88
Dispatch:	01/22/2009 15:07:12	D153	52
Enroute:	01/22/2009 15:07:12	D153	52
Onscene:	01/22/2009 15:40:12	D153	52
Closed:	01/22/2009 16:29:01	D153	52

IC: PrimeUnit:2C56 FCR:236H0 Type:VIOL - Court Order Viol  
 Agency:KCS Group:NE District:C7 RA:C07013  Detail

14:52:29 CREATE Location:6610 329TH AVE NE,KCS Type:VIOL Name:RAETHER, WILLIAM P D/091655  
 Phone:425/333-6443 Group:NE PDist:C07013 TypeDesc:Court Order Viol LocCross:btwn NE  
 66TH ST and NE 70TH ST Priority:3 Response:1P Agency:KCS LocType:S Contact:Yes  
 14:52:29 ALI E911Phne:425/333-6443 E911Pilot:425/333-6443 E911Add:6610 329TH AVE NE,KCS  
 E911Subs:RAETHER WILLIAM E911Src:RESD  
 14:55:57 ENTRY Comment:OCC'D 3 HRS AGO WHILE DRIVING ON AMES LAKE RD AT HWY  
 203/C7...LISTED SUBJ MADE CONT W/RP AGAINST THE ANTI HARASSMENT ORDER.  
 RP WAITING AT LOC FOR CONT  
 14:55:57 SUBJ Age:56 DOB:022052 Name:LUTZ, THOMAS E  
 14:55:57 -PREMIS Comment:PPR  
 14:56:07 LOGM Message:010901222256005599 MessageType:Text Received:01/22/2009 14:54:15  
 Comment:ANTI HARAS ORDER  
 14:56:08 NOMORE  
 14:56:20 LOGM Message:010901222256005600 MessageType:HTML Received:01/22/2009 14:56:11  
 Comment:DOL FOR RP  
 14:56:32 LOGM Message:010901222256005601 MessageType:HTML Received:01/22/2009 14:56:24  
 Comment:DOL FOR OTHER HALF  
 15:02:01 HOLD  
 15:07:12 DISPER 2C67 Operator:01278 OperNames:WAYERSKI, KURTIS  
 15:07:12 -PRIU 2C67  
 15:25:17 BACKER 2C56 UnitID:2C67 Operator:05225 OperNames:MEYER, TIM  
 15:25:24 PRMPT 2C67  
 15:25:24 -PRIU 2C56  
 15:40:12 ARRIVE 2C56  
 16:13:11 ULA 2C56 Location:33409 NE 70TH ST,KCS  
 16:13:14 CHGLOC 2C56  
 16:19:05 ARRIVE 2C56  
 16:21:29 RFT 2C56 Comment:INQUIRY QL,A16982X,,,,,  
 16:21:37 LOGM 2C56 Message:010901230021000138 MessageType:HTML Received:01/22/2009 16:21:31  
 Comment:REG  
 16:29:01 CLEAR 2C56 FCR:236H0 DispoLevel:4  
 16:29:01 -PRIU 2C56  
 16:29:01 -CLEAR  
 16:29:01 CLOSE

CONTACT INFO:

--	--	--	--	--	--	--	--	--	--

Name	Phone	RPaddr	Contact	Fire/Aid	Rt/Coach	Box4
RAETHER, WILLIAM P D/091655	425/333-6443		Yes			

DO NOT DISCLOSE: <input type="checkbox"/>	<b>SHERIFF KING COUNTY</b>	<b>INCIDENT REPORT</b>		09-017310	Page 1	
Domestic Violence: <input type="checkbox"/>				236-H-0	District: C-7	
Reported: 1/22/2009	DOW: Thu	Time: 15:25	Incident Type: VIOLATION OF COURT ORDERS, (MIS	Initial FCR 236-H-0	Court	Juvenile <input type="checkbox"/>
Occ Between: 1/22/2009	DOW: Thu	Time: 12:15	And: 1/22/2009	DOW: Thu	Time: 12:30	LocationName:
Incident Location: NE AMES LAKE RD / CARNATION FARM RD			City: CARNATION	State: WA	Zip 98014	

<b>SUSPECTS/ARRESTED PERSONS SECTION</b>									
Association: <b>ARRESTED</b>		Last, First Middle <b>LUTZ, THOMAS EUGENE</b>			Interpreter Needed <input type="checkbox"/>	Booked <input type="checkbox"/>	Citation #	Co-Defendant #	
Address <b>33409 NE 70 ST</b>			City <b>CARNATION</b>		ST <b>WA</b>	Zip <b>98014</b>	Phone Numbers:		
Sex <b>M</b>	Race <b>W</b>	DOB <b>2/20/1952</b>	Height <b>5' 10"</b>	Weight <b>145</b>	Hair <b>BLK</b>	Glass'	Eyes <b>BRO</b>	Facial Hair <b>BEARD</b>	
Scars, Marks & Tatoos			Clothing		Gang		Set		
Occupation <b>JEWELRY SALES</b>		Employer <b>SELF</b>		OLN <b>LUTZ*TE480CO</b>	ST <b>WA</b>	SSN [REDACTED]	AFIS#:		
Charges Codes: 236-M VIOLATION OF COURT ORDERS, (MISDEMEANOR)				RCW( or Local Ord) Code - Description <b>RCW 10.14.120 - Violation of Anti Harassment Order</b>				Counts: <b>1</b>	

<b>VICTIMS, WITNESSES AND OTHER PERSONS SECTION</b>								
Association: <b>VICTIM</b>		Last, First Middle <b>RAETHER, WILLIAM PHILLIP</b>			Interpreter Needed <input type="checkbox"/>	Phone Numbers: Home 425/333-6443		
Address <b>6610 329 AV NE</b>			City <b>CARNATION</b>		ST <b>WA</b>	Zip <b>98014</b>		
Sex <b>M</b>	Race <b>W</b>	DOB <b>9/16/1955</b>	Height	Weight <b>195</b>	Hair <b>BLK</b>	Glass'	Eyes <b>GRN</b>	Facial Hair
Scars, Marks & Tatoos			Clothing		Gang		Set	
Occupation <b>SELF EMPLOYED</b>		Employer		OLN <b>RAETHWP450OW</b>	ST <b>WA</b>	SSN [REDACTED]	AFIS#:	

<b>REVIEW</b>			
Date Submitted: <b>1/26/2009</b>	Reporting Officer: <b>05225 Meyer, Timothy E</b>	Disposition: <b>INCIDENT REPORT - CITATION ISSUED/CHARGED BY INVE</b>	
Date Time Reviewed: <b>1/26/2009 15:01</b>	Reviewed By: <b>02421 Ellis, Don L</b>	CID Screener:	Event Processing Status: <b>Filed</b>
Date Assigned:	Investigator Assigned:		Date Status Last Changed: <b>1/27/2009 8:24:25 A</b>
<input type="checkbox"/> Aid Req <input type="checkbox"/> Weapons <input type="checkbox"/> Injury <input type="checkbox"/> Alcohol <input type="checkbox"/> Computer <input type="checkbox"/> Dom Viol <input type="checkbox"/> Drug <input type="checkbox"/> Juvenile <input type="checkbox"/> Gang			

DO NOT DISCLOSE: <input type="checkbox"/>	<b>SHERIFF</b> KING COUNTY	<b>INCIDENT REPORT</b>	09-017310	Page 2
Domestic Violence: <input type="checkbox"/>			236-H-0	District: C-7

**VEHICLE SECTION**

<b>SUSPECT Vehicle</b>								
Vehicle Association	License	State	Year	Make	Model	Style	Color	
SUSPECT	A16982X	WA	1997	CHEVROLET	ASTRO VAN	MINIVAN	RED	
Features					VIN 1GCDM19WXVB191683			
Registered Owner Name <b>ANDERSON, MARGOT</b>				Registered Owner Address <b>408 SCHMID ST ENUMCLAW, WA</b>				
Legal Owner Name <b>ANDERSON, MARGOT</b>				Legal Owner Address <b>408 SCHMID ST ENUMCLAW, WA</b>				
Vehicle Disposition (If towed, list towing company, address)			Hold <b>No</b>	Reason For Hold				
Stolen Vehicle <input type="checkbox"/>	Divorce In Progress <input type="checkbox"/>	Payments Overdue <input type="checkbox"/>	Keys In Ignition <input type="checkbox"/>	Estimated Value	Radio Notified Clerk	Date	Time	
<input type="checkbox"/> HDB Complaint		<input type="checkbox"/> Doors Unlocked						
Recovered Vehicle Condition (damage, items stripped, etc.)				Other Agency/Case Number		Owner Notified By	Date	Time

**MO**

Suspect Trademarks: **VIOLATION OF ANTI-HARASSMENT ORDER**

Instrument: **HAND GESTURE / MIDDLE-FINGER!**

Entry Point: **N/A**

Entry Method: **N/A**

Premises Type <b>PUBLIC ROADWAY</b>	Locked <input type="checkbox"/>	Occupied <input type="checkbox"/>	Total Property Cost:
<input type="checkbox"/> Aid Req <input type="checkbox"/> Weapons <input type="checkbox"/> Injury <input type="checkbox"/> Alcohol <input type="checkbox"/> Computer <input type="checkbox"/> Dom Viol <input type="checkbox"/> Drug <input type="checkbox"/> Juvenile <input type="checkbox"/> Gang			

**Narrative:**

Thursday, January 22nd, 2009 at 1525 hours, in the County of King, I was dispatched to the RAETHER Residence; 6610 329th Ave NE to contact V-William Phillip RAETHER for a reported violation of King County Protection Order 087-00912. RAETHER is the petitioner in this order and A-Thomas Eugene LUTZ is the respondent. This is a 'Permanent' protection order that was confirmed valid before my arrival. The signature of the respondent is affixed at the bottom of the order confirming service, in Redmond District Court, on March 3rd, 2008 at 1030 hours. A copy of this order is included with this case report.

RAETHER greeted me in his driveway upon my arrival and stated that at approximately 1215 hours today he and his wife were traveling westbound NE Ames Lake Road, just west of the intersection Carnation Farms Road, in his 1976 Ford pickup. At that location he observed and orange Chevrolet Astro Van (WA license A16982X) being driven by LUTZ. RAETHER stated he recognized LUTZ based on his dark hair, obvious pony-tail and dark colored unkempt appearance. LUTZ is a welder and behind this van was a flatbed with welding equipment consistent with LUTZ'S occupation. As their vehicles passed RAEBURN witnessed LUTZ raise his right hand above the Astro Van's dashboard and extend his middle finger. RAETHER is confident LUTZ'S gesture was intentional and designed to offend him as the middle-finger remained extended for up to three seconds. A statement detailing RAEBURN'S observations is included with this case report.

Following my interview with RAEBURN, I drove a short distance to LUTZ's home located at 33409 70th Ave NE. As I crested the residence's driveway I observed a man, with a dark complexion, pony-tail and generally unkempt appearance. I addressed this person as "Tom Lutz" and he indicated in speech and action that he was that person. Parked behind LUTZ, next to an abandon school bus on the residence's eastern boundary, was parked an orange Chevrolet Astro Van, with flatbed trailer & welding equipment attached, as described by RAEBURN.

LUTZ was advised that he was not under and arrest and I was there only to investigate a possible order violation. LUTZ indicated affirmatively that he was aware of the Anti Harassment order in place between himself and RAEBURN. LUTZ offered me a brief history of the generally poor relationship between himself and RAEBURN before I refocused him on the events of this afternoon. LUTZ confirmed that he was traveling eastbound on NE Ames Lake Road at the approximate

DO NOT DISCLOSE! <input type="checkbox"/>		<b>INCIDENT REPORT</b>	09-017310	Page 3
Domestic Violence: <input type="checkbox"/>			236-H-0	District: C-7

time reported by RAEBURN. When I asked LUTZ if he may have extended his middle finger as an intentional gesture to offend RAEBURN he diverted his eyes to a pile of unsplit wood, never affirmatively said "no" to my question and returned to telling me about events that preceded today.

Following my interviews with RAEBURN and LUTZ, I concluded that a violation of Anti Harassment Order 087-00912 did occur at 1215 hours when LUTZ extended/displayed his middle finger for a period of no less than three seconds in an attempt to communicate, non-verbally, with RAEBURN, a protected party. This communication, although non-verbal, is prohibited per this order.

This case being forward to the King County Prosecutor charging Thomas Eugene Lutz with Violation of Anti Harassment Protection order 087-00912 under RCW 10.14.120.

<b>Additional Attachments/Reports Associated with this Incident/Follow-up Report:</b>		
Statement/Officer's Report	Thursday 01/22/09	Active
H/W Anti Harassment Order 087-000912	Friday 01/23/09	Active

Certification

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date and Place: \_\_\_\_\_ Signature/Agency: \_\_\_\_\_

**END OF REPORT**

		King County Sheriff's Office			CaseNbr: 09-017310			
					DateReportTaken: 1/22/2009	Time: 16:01		
Association Type: VICTIM	Name (Last, First, Middle): RAETHER, WILLIAM PHILLIP			Residence Phone: 425/333-6443		Business Phone:		
Address: 6610 329 AV NE	City: CARNATION	State: WA	Zip: 98014	Occupation: SELF EMPL	Race: W	Sex: M	DOB: 9/16/1955	
To: Case File	Via: Chain			Subject: Violation of Court Order				

Today, at 12:15 PM I William Phillip Raether, was traveling westbound on Ames Lake Road near Carnation Farm Road with my wife in our 1976 Ford Pickup. At that location I observed Thomas E Lutz traveling eastbound on the same road. I recognized this driver to be Lutz based on his pony tail, dark hair, mustache and generally unkept appearance that was consistent with our past contact. There is a permanent restraining order (087-00912) between myself and respondent Lutz that was issued to him on March 3rd, 2008 at 10:30 AM at the Redmond District Courthouse. Today, as Lutz passed me in his Red/Orange Chevy van pulling a flat-bed style trailer with welding equipment attached., Lutz made eye contact with me indicating he recognized me. Lutz raised his right hand above the dashboard and extended his middle finger for a duration of approximately three seconds. This ended my contact with Lutz. This statement is true and correct as dictated by me and taken by Deputy Meyer. I hereby authorize Deputy Meyer to sign my name to this statement if required.

Officer ID: 05225	Reporting Officers Name: Meyer, Timothy E	Unit: Recruits	SupervisorID:	SupervisorID:	ReviewedDate:
----------------------	--	-------------------	---------------	---------------	---------------

09-017310

002/004

ORIGINAL

RECEIVED  
CIVIL

03 MAR -5 AM 9:36

KING COUNTY SHERIFF

CERTIFICATION - State of Washington, County of King. The undersigned,  
duly authorized clerk of the King County District Court, Washington, hereby  
certifies that the document on which this stamp is imprinted is a true and  
correct copy of the original filed in the Court.

SIGNED: \_\_\_\_\_  
\_\_\_\_\_, Court Clerk

STATE OF WASHINGTON  
KING COUNTY DISTRICT COURT  
East Division, Issaquah Courthouse

Wm. P. Raether  
Petitioner (DOB) \_\_\_\_\_

vs.

Thomas E. Lutz  
Respondent (DOB) \_\_\_\_\_

NO. 087-00912

ORDER FOR PROTECTION -  
HARASSMENT (ORAH)

Court Address \_\_\_\_\_

Telephone Number: \_\_\_\_\_

(Clerk's action required)

**WARNING TO THE RESPONDENT:** Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 10.14 RCW and will subject a violator to arrest. Willful disobedience of the terms of this order may also be contempt of court and subject you to penalties under chapter 7.21 RCW.

- Full Faith and Credit: This order is issued to prevent violent or threatening acts of harassment. The court has jurisdiction over the parties, the minors and the subject matter. This order is issued in accordance with the Full Faith and Credit provisions of VAWA. 18 U.S.C. § 2265.
- Notice of this hearing was served on the respondent by  personal service  service by publication pursuant to court order  other \_\_\_\_\_
- Minors addressed in this order:

Name (First, Middle Initial, Last)	Age	Race	Sex

09-017310

3) LUTZ, THOMAS EUGENE

3-3-2009

ORIGINAL

Do Not Serve Or Show This Sheet To The Restrained Person

Court Clerks: Give this form to Law Enforcement. Do Not File in the court file. Case Number 087-000912

Domestic Violence Dissolution/Separation/Incapacity/Nonparental Custody/Paternity Antiharassment Sexual Assault

Law Enforcement information This completed form is required by law enforcement. This information is necessary to serve, enforce and enter your order into the state wide law enforcement computer. Fill in the following information as completely as possible. Type or Print Only. 063J 3.3.0K

Restrained Person's Information Name of Restrained Person (Last, First, Middle) LUTZ THOMAS E. KAREN THOMAS

Drives License or ID Number (specify type) LUTZTE48000 WA 13 Nickname Sex Race Birth date M W 2-20-52

Height Weight Eye Color Hair Color Skin Tone Build Relation to Protected Person 5'10" 150 BROWN BLK GRAY FAR OH MED. WA 12-150219

Last Known Address (Street, City, State, Zip) 70th PRIVATE RD CARNATION WA 98014 Home Phone Interpreter Required? Language: NO

Other Address (Street, City, State, Zip), if any: GLENNS SCR HND

Employer Employer's Address Work Hours: Phone: 8854606

Vehicle License Number Vehicle Make and Model Vehicle Color Vehicle Year CHEVY VAN ORANGE 905

Protected Person's Information Name of Protected Person (Last, First, Middle) RAETTER WILLIAM PHILLIP

Sex: MALE Race: WHITE Birth date: 9-16-55

If your information is not confidential, you must enter your address and phone number(s). Current Address (Street, City, State, Zip) 6610 32nd AVE CARNATION WA-98014 Phone 425-333-6443

If your information is confidential, you must provide the name, address and phone number of someone willing to be your "contact".

Contact Name Contact Address Contact Phone

(For SA Orders Only) Name and contact phone number of person filing petition on behalf of protected person:

Minor's Information table with columns for Name, Sex, Race, Birth date, Resides With, and Minor's Relationship to Protected/Restrained Person.

Hazard Information Weapons Guns/Rifles Knives Explosives Other Location of Weapons: Describe in detail: Vehicle On Person Residence

Current Status (For DV Orders Only) (circle) Are you and the restrained person living together right now? Yes No Does the restrained person know you are trying to get this order? Yes No Does the restrained person know he/she may be moved out of home? Yes No Is the restrained person likely to react violently when served? Yes No

Restrained Person's History Includes: Mental Health Problems (Commitment, Treatment, Suicide Attempt, Other) Assault Assault With Weapons Alcohol/Drug Abuse

See Reverse for Additional Information Prepared by:

WPF SA-1.040 LEIS (6/2006)

FILED FEB 20 2009 KCDC-East Division Redmond

09-017310

ORIGINAL

Based upon the petition, testimony, and case record, the court finds that the respondent committed unlawful harassment, as defined in RCW 10.14.080, and was not acting pursuant to any statutory authority, and **IT IS THEREFORE ORDERED THAT:**

<input checked="" type="checkbox"/>	Respondent is RESTRAINED from making any attempts to keep under surveillance petitioner and any minors named in the table above.
<input checked="" type="checkbox"/>	Respondent is RESTRAINED from making any attempts to contact petitioner and any minors named in the table above.
<input checked="" type="checkbox"/>	Respondent is RESTRAINED from entering or being within <u>200</u> (distance) of petitioner's <input type="checkbox"/> residence <input checked="" type="checkbox"/> place of employment <input type="checkbox"/> other: <u>on stopping in front of Petitioner's property at 1800 329th AVE NE</u>
<input type="checkbox"/>	The address is confidential <input type="checkbox"/> Petitioner waives confidentiality of the address which is: <u>CAUTION, WA</u>
<input type="checkbox"/>	Judgment is granted against respondent for fees and costs in the amount of \$ _____
<input checked="" type="checkbox"/>	Other: If both parties are in the same location, respondent shall leave. <u>Respondent is Restrained from contacting the Petitioner directly or indirectly, through 3rd persons, by telephone, in writing or any form of communication. Any persons stopping or interacting with going to or from Respondent's Home considered 3rd party contact</u>

IT IS FURTHER ORDERED that the clerk of court shall forward a copy of this order on or before the next judicial day to:

\_\_\_\_\_  
 \_\_\_\_\_ County Sheriff's Office  
 \_\_\_\_\_ Police Department,

WHERE PETITIONER LIVES and shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

The clerk of court  petitioner shall forward a copy of this order on or before the next judicial day to:

\_\_\_\_\_ County Sheriff's Office,  
 \_\_\_\_\_ Police Department, WHERE

RESPONDENT LIVES which shall personally serve the respondent with a copy of this order and shall promptly complete and return to this court proof of service.

OR  Petitioner has made private arrangements for service of this order.

OR  Respondent appeared; further service is not required.

OR  Respondent did not appear. The restraint provisions in this order are the same as those in the temporary order. The court is satisfied that the respondent was personally served with the temporary order. Further service is not required.

THIS ANTIHARASSMENT ORDER EXPIRES ON Permanent

If the duration of this order exceeds one year, the court finds that respondent is likely to resume unlawful harassment of the petitioner when the order expires.

DATED 3/3/08 at 10:30 Am

[Signature]  
JUDGE/COURT COMMISSIONER

I acknowledge receipt of a copy of this Order:  
[Signature]  
Petitioner Date

I acknowledge receipt of a copy of this Order:  
[Signature]  
Respondent Date

ORIGINAL

<b>SHERIFF</b> KING COUNTY	King County Sheriff's Office				CaseNbr: 09-017310			
					DateReportTaken: 1/22/2009		Time: 16:01	
Association Type: VICTIM	Name (Last, First, Middle): RAETHER, WILLIAM PHILLIP				Residence Phone: 425/333-6443		Business Phone:	
Address: 6610 329 AV NE	City: CARNATION	State: WA	Zip: 98014	Occupation: SELF EMPL	Race: W	Sex: M	DOB: 9/16/1955	
To: Case File	Via: Chain			Subject: Violation of Court Order				
Statement								

Today, at 12:15 PM I William Phillip Raether, was traveling westbound on Ames Lake Road near Carnation Farm Road with my wife in our 1976 Ford Pickup. At that location I observed Thomas E Lutz traveling eastbound on the same road. I recognized this driver to be Lutz based on his pony tail, dark hair, mustache and generally unkept appearance that was consistent with our past contact. There is a permanent restraining order (087-00912) between myself and respondent Lutz that was issued to him on March 3rd, 2008 at 10:30 AM at the Redmond District Courthouse. Today, as Lutz passed me in his Red/Orange Chevy van pulling a flat-bed style trailer with welding equipment attached., Lutz made eye contact with me indicating he recognized me. Lutz raised his right hand above the dashboard and extended his middle finger for a duration of approximately three seconds. This ended my contact with Lutz. This statement is true and correct as dictated by me and taken by Deputy Meyer. I hereby authorize Deputy Meyer to sign my name to this statement if required.

Officer ID: 05225	Reporting Officers Name: Meyer, Timothy E	Unit: Recruits	SupervisorID:	SupervisorID:	ReviewedDate:
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## **Appendix D**

3-7-10

Plaintiff Exhibit 6

03/04/10  
17:40

DUVALL POLICE DEPARTMENT  
Incident Report

Incident: 10-00144C Page: 1177  
1

Incident Number: 10-00144C When Reported: 12:27:42 03/02/10  
File Number: 10-0147 Occurred Between: 12:26:56 03/02/10  
Nature: Viol Court Ordr And: 12:27:09 03/02/10  
Offense: 472 Court Order Violation

Where Occurred:  
Addr: 4333 TOLT AVE; SHELL STATION Area: DC Duvall PD, Carnation  
City: CARNATION St: WA Zip: 98014  
Contact: WILLIAM RAETHER

Involvements:

Description	Relationship
RAETHER, WILLIAM PHILLIP 09/16/55 W /M 6610 329 AVE NE, CARNATION, WA, 98014	Victim H TEL: (425)333-6443 W TEL: ( ) -
[REDACTED]	SUSPECT H TEL: ( ) - W TEL: ( ) -
[REDACTED] /	Vehicle

Prop. no	Item	Brand	Model	Value
33552	Pistol	Smith & Wesson	659	0.00
33553	Knife	PINNACLE		0.00
33554	AMMO MAG W/RDS	SMITH & WESSON		0.00

Disposition: ACT Active Disp. Date: 03/02/10

Synopsis:

D804: Citizen reported a violation of a harassment order that had just occurred. Officer then contacted the armed suspect and arrested him.

*L Batiot #06860*  
Responsible Officer: L Batiot

*Worman*  
Supervisor

03/04/10  
17:40

DUVALL POLICE DEPARTMENT  
Incident Report

Incident: 10-00144C Page: 2

1177  
2

Officer: L. BATIOOT #06860  
Date/Time Stamp: Wed Mar 03 09:15:10 PST 2010

- 
1. Witness information - Enter all Witness(s) names in the Law Incident Involvements
  2. Additional suspects - Enter all Suspect(s) names in the Law Incident Involvements
  3. Describe property taken; show make, model, serial numbers and individual values, where taken from, etc.
  4. Property damaged; describe with dollar loss
  5. Statements; from whom, and taken by
  6. Evidence/Photos - Enter all Evidence in the Law Incident Involvements
  7. Latents
  8. Casualties or death; nature of injuries, attending physician, where treated, etc.
  10. Narrative; describe/reconstruct incident, crime scene

Start report below line:

=====

10.

On March 2, 2010 at approximately 1226 hours I was on patrol in the City of Carnation. I was driving a fully marked Duvall-Carnation patrol vehicle and wearing a standard police uniform.

I was dispatched to a report of a protection order violation that had just occurred minutes earlier at 4333 Tolt Avenue in Carnation. Dispatch advised that the reporting party, William P. RAETHER (DOB 09/16/55) was the petitioner on a valid order against respondent William P. RAETHER (DOB 09/16/55).

RAETHER requested that an officer meet with him at his residence to take a report. I went to RAETHER'S residence located at 6610 329th Ave NE. I met with him at the end of his driveway and took a written statement.

RAETHER told me that at about 1214 hours today he had just been leaving the parking lot of the QFC Store in Carnation. As he left the parking lot to go NB, he heard a male voice yell, "PRICK!!" RAETHER said he recognized the voice as that of [REDACTED]. He turned to look out his driver's side window and saw [REDACTED] standing in front of the Shell gas station at 4333 Tolt Avenue. He saw that [REDACTED] was standing in an aggressive posture and staring at him. He told me that he also saw [REDACTED]'S [REDACTED] [REDACTED] van parked at the Shell Station.

RAETHER said he is afraid of [REDACTED]. He said he has knowledge that [REDACTED] has had access to numerous firearms in the past. He told me that [REDACTED] resides just up the road from him and has made repeated threats to kill him in the past. RAETHER said, "I'm just waiting for the rounds to start coming through my walls one night." He said he was scared for his wife's safety when he is out of town overnight and that at times in the past he and his wife have stayed elsewhere because of his fear of [REDACTED]. I asked him if he had seen [REDACTED] come home yet and he said he had not seen him drive by since he got home.

RAETHER said he took out the order on or about March 3, 2008, after [REDACTED]'S behavior escalated to him making death threats against RAETHER. I reviewed it and found it had been entered into the system as served as of March 3, 2008.

03/04/10  
17:40

DUVALL POLICE DEPARTMENT  
Incident Report

Incident: 10-00144C Page: 3  
1177

It also appears the order does not expire until March 03, 2099. There is probable cause to believe that [REDACTED] [REDACTED] (DOB [REDACTED]) did commit the following crime of Violation of a Harassment Order.

RAETHER said that he has reported all the threats [REDACTED] has made to him except one where [REDACTED] stood outside the Ixtapa Restaurant in Carnation and pretended to fire at him. I took RAETHER'S written statement. I also took a copy of the protection order.

I then left the residence. As I was driving back toward Carnation I passed a [REDACTED] [REDACTED] Van ([REDACTED]). The male in the driver seat appeared to match the description RAETHER had given me. I turned and conducted a stop on the vehicle in about the 32400 block of NE 70th Street.

I approached the [REDACTED] Van from the passenger side. I asked the male driver if he was [REDACTED] and he stated he was. He began to yell at me and reached down toward his seat. I drew my duty weapon and instructed him to keep his hands on the steering wheel. I requested an expedited response from other units. [REDACTED] again began to lower his hands toward his seat and I again told him to keep his hands on the steering wheel and he again moved them back as I instructed. He stated several times that I had better get a King County Deputy or State Patrol Officer there because I had "no jurisdiction here".

I asked [REDACTED] if there was a firearm in the vehicle and he told me there was. He told me, "I don't feel like small talk right now." He stated he wanted to reach down to get a phone to get a lawyer and I again told him not to move. He repeatedly kept stating he wanted to make a call at that moment and I told him not to move for both our safety. I informed him I would not ask any questions. I continued to attempt to diffuse the situation verbally while keeping my firearm at low ready until Officers EATON and WILKERSON arrived to assist. When they arrived I advised them there was a gun in the vehicle. We removed [REDACTED] from the van and WILKERSON advised he saw a gun on the driver's seat. Apparently [REDACTED] had been sitting on the gun.

We placed [REDACTED] in handcuffs. I advised him he was under arrest for violation of harassment no contact order. I advised him of the Miranda Warnings and advisement of right to counsel. I advised him I would not ask him any incriminating questions due to his statement during the stop that he wanted to call his attorney.

Officer WILKERSON advised there was a round in the chamber the gun that [REDACTED] had been sitting on. It was a Smith and Wesson 9mm semi automatic handgun. The magazine was locked in place and fully loaded. I later saw that the first round in the chamber was encased in a full metal jacket. The rest of the rounds were a combination of full metal jackets and hydro shocks, also known on the street as "cop killers" due to their ability to penetrate body armor. [REDACTED] later volunteered, "I call that first round the mercy bullet because it just goes right through a person without really doing any damage. The rest of them mean business!".

Throughout the trip to the Duvall Police Department and during the booking process, [REDACTED] ranted continually of his dislike of Sergeant DEBOCK and former Duvall Officer SMITH. He continued to talk of how he felt like he was always being "set up" by the Carnation Police and RAETHER. He repeatedly stated that, "This is just the thing I need to finally deal with Bill RAETHER." I reminded

03/04/10  
17:40

DUVALL POLICE DEPARTMENT  
Incident Report

1177  
Incident: 10-00144C Page: 4

█████ at least twice that I was not asking him any questions and that he did not need to speak to me. He acknowledged that he heard me, but kept making unsolicited statements. He continued to talk about how he was "freelance" drug agent and had numerous "busts" involving many kilos of cocaine. He talked about how he had single handedly curbed the local drug trade with his "under cover bounty hunter" work. I heard him talking to himself continuously while he was in the holding cell.

Commander HERT spoke with an official from the Department of Corrections. He told me that though ██████ had been on supervision, recent budget issues had caused him to be released from active status early. ██████ apparently has a valid CPL and is allowed to possess firearms despite allegations of assaulting an officer in 2008.

█████'S behavior and comments about his firearm caused me concern. Also his very recent violation of the anti harassment order, RAETHER'S concerns about ██████ harming him, and ██████'S known animosity toward law enforcement all caused me concern about his possession of a firearm at this time. WILKERSON unloaded the gun in ██████'S car. I then photographed it and took it for safekeeping. I also saw that there was a kitchen knife protruding from a bag in the upper, middle portion of the driver's area in the van. It had easily been within ██████'Z reach when he had been seated there. In light of all the above circumstances, I recommend a review of ██████'S ability to retain a CPL and possession of firearms. It is my opinion that if ██████ is allowed to continue to possess and conceal firearms that he poses an imminent threat to himself, RAETHER, law enforcement, and the rest of the community

Officer WILKERSON transported ██████ to the Issaquah Jail for booking for Violation of an Anti Harassment Court Order.

I requested a Criminal History for ██████ and did receive it. I reviewed the return and found several arrests listed for ██████, but no felony convictions. The return also showed that his fingerprint pattern was associated with numerous other law enforcement contacts beginning in 1971. In the report it appears that ██████ has used aliases including ██████ and ██████.

I faxed a certificate of Probable Cause to City Prosecutor Sandy MEADOWCROFT. I also issued Citation #█████ to ██████ through investigation.

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

Signature *[Handwritten Signature]* #06860 Date 3/4/2010 Duvall, WA.

Supervisor *[Handwritten Signature]*

05/18/11  
09:21

DUVALL POLICE DEPARTMENT  
Incident Report

Incident: 10-00144C Page: 118!

Officer: L. BATIOU #06860  
Date/Time Stamp: Wed May 18 09:19:41 PDT 2011

- 
1. Witness information - Enter all Witness(s) names in the Law Incident Involvements
  2. Additional suspects - Enter all Suspect(s) names in the Law Incident Involvements
  3. Describe property taken; show make, model, serial numbers and individual values, where taken from, etc.
  4. Property damaged; describe with dollar loss
  5. Statements; from whom, and taken by
  6. Evidence/Photos - Enter all Evidence in the Law Incident Involvements
  7. Latents
  8. Casualties or death; nature of injuries, attending physician, where treated, etc.
  10. Narrative; describe/reconstruct incident, crime scene

Start report below line:

=====

10.

On May 5th, 2011 the City of Carnation received two letters from [REDACTED]. I have attached copies of them to this report for information.

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

Signature L. Batiou #06860 Date 5/18/11 Duvall, WA.

Supervisor \_\_\_\_\_



# CARNATION - DUVAL POLICE DEPARTMENT

[  ] Victim / [ ] Witness Statement

Case # 10-001446  
File # 10-0117

Date: 3/2/10 Time: 1726 Place: 16160 329 Ave NE, Carnation, WA

The following is the true and correct statement of: William P. RATHER DOB: 9/16/55  
First M.I. Last

Address: 16160 329 Ave NE City: Carnation State: WA ZIP: 98014

Home: (425) 333-6443 Work: (-)

Employer / School: self employed minor City: Carnation State: WA ZIP: 98014

Today at about 1714 I was NIB on Tolt Ave. I had just turned out of the OFC. I heard a male scream "Prick!!!" I looked to my left & saw [REDACTED] standing there, about 20 feet from the front doors of the shell station. He was glaring at me. I had immediately recognized the voice as his. He was sort of in a hunched, leaning posture and he was obviously focused at me. I also saw his [REDACTED] van there. I am in fear of [REDACTED] I am currently the petitioner on an order with him as a respondent, and this is a permanent order. This statement is true & correct & was written for me by Ofc [REDACTED]

certify under the penalty of perjury under the laws of the State of Washington that my statement is true and correct and maybe used in a court of law.

signed: William P. Rather Witness: \_\_\_\_\_

Officer: Bob Ruff # I.D. #: 06860

## **Appendix E**

DEFENDANT  
LUTZ, THOMAS EUGENE  
PO BOX 1062  
CARNATION WA 98014

CASE: CR008617C CNP  
Criminal Non-Traffic  
Agency No.

Home Phone: 2066699817

AKA No aliases on file.

CHARGES

Violation Date: 03/02/2010	DV Plea	Finding
1 9A.46.040	VIO OF HARASSMENT NO CONT N Not Guilty	Dismissed W/O Pre

TEXT

S 03/03/2010 Case Filed on 03/03/2010 SRL

DEF 1 LUTZ, THOMAS EUGENE Added as Participant  
ARR JAIL Set for 03/03/2010 11:00 AM  
in Room IS1 with Judge LKJ

U FAXED: DEF BOOKED ON NEW VIOLATION  
FAXED: FRONT OF CITATION.

FAXED: COMPLAINT; CITY'S REQUEST TO SET BAIL AND/OR  
CONDITIONS OF RELEASE; CITATION; STATEMENTS; COPY OF  
ORDER.

IS1 JUDGE LINDA JACKE PRESIDING C: 105715 JMK  
PA: NOT PRESENT

DEF PRESENT IN-CUSTODY WITH COUNSEL, JOHN PRICE  
-DEFENDANT INDICATES THAT HE HAS PRIVATE ATTY, BUT PRIVATE  
ATTY IS NOT PRESENT FOR THIS HEARING

STATEMENT OF DEF RIGHTS AT ARRAIGNMENT SIGNED  
DEFENSE ACKNOWLEDGES RECEIPT OF COMPLAINT, WAIVES FORMAL  
READING, ENTERS NOT GUILTY PLEA - PLEA ACCEPTED BY COURT  
COURT REVIEWS CITY RECOMMENDATIONS  
DEFENSE REQUESTS DEF TO BE PR'D TO APPEAR AT NEXT HEARING  
COURT FINDS PROBABLE CAUSE  
COURT FINDS DEF IS A SUBSTANTIAL DANGER TO COMMUNITY, SETS  
BAIL AT \$50,000 BONDABLE  
DEFENSE REQUESTS TO LOWER BAIL TO \$30,000 - DENIED  
COURT ADVISES DEF THAT HE HAS AN ARRAIGNMENT DATE ON 3/8/10  
IN REDMOND FOR SAME CHARGE AS THIS CASE, HEARING NOTICE FOR  
ARRAIGNMENT DATE PROVIDED TO DEF IN COURT ROOM  
RELEASE PAPERWORK SIGNED BY DEF - GIVEN TO TRANSPORT OFFICER  
-COPY PROVIDED TO DEF, NEXT HEARING DATE/TIME ON  
PAPERWORK.

S PTR JAIL Set for 03/16/2010 06:30 PM  
in Room RE2 with Judge MJF

Defendant Arraigned on Charge 1  
Plea/Response of Not Guilty Entered on Charge 1

U ADDRESS UPDATED TO PO BOX FOR MAILING PURPOSES

S ARR JAIL: Held

U 03/04/2010 FILED - ISSAQUAH DIVISION PAPERWORK DATED 3/3/10 SXH

TIME OF HEARING CHANGED TO 5:45 FOR IN CUSTODY CALENDAR

S PTR JAIL Rescheduled to 03/16/2010 05:45 PM

in Room RE2 with Judge MJF

03/12/2010 BON 1 ALL CITY BAIL BONDS Added as Participant JMK

CASE: CR008617C CNP  
Criminal Non-Traffic  
Agency No.

DEFENDANT  
LUTZ, THOMAS EUGENE

TEXT - Continued

S 03/12/2010 10071107380 Appearance Bond Posted for DEF 1 50,000.00 JMK  
Posted by: ALL CITY BAIL BONDS

U 03/16/2010 FILED - CRIMINAL WITNESS LIST GDC  
S PTR JAIL: Held KLK  
U RE2/KLK  
JUDGE PRO TEM JOHANN BENDER PRESIDING FOR JUDGE FINKLE  
CITY PRESENT REPRESENTED BY COUNSEL, SANDY MEADOWCROFT  
DEF PRESENT REPRESENTED BY COUNSEL, PETER CAMIEL  
AGREED MOTION TO CONTINUE OFF THE RECORD  
PTO COMPLETED- SET FOR CALL  
COPY OF PRE-TRIAL ORDER TO PARTIES

S 03/17/2010 PCN added to case KXL  
03/19/2010 OTH CALLN Set for 04/29/2010 01:30 PM KLK  
in Room RE2 with Judge MJF

U FILED- NOTICE OF APPEARANCE PAF  
S ATY 1 CAMIEL, PETER A. Added as Participant

U 03/25/2010 FILED - PLAINTIFF'S RESPONSE TO REQUEST FOR DISCOVERY AND GDC  
DEMAND FOR DISCOVERY

04/23/2010 SCREEN PRINT TO BONDING CO NOTIFYING OF HEARING CPD  
S 04/29/2010 OTH CALLN: Not Held, Hearing Canceled EDN  
MOT DIS: Held  
U RE2/1:42/EDN  
JUDGE MICHAEL J. FINKLE PRESIDING  
CITY PRESENT REPRESENTED BY COUNSEL, SANDRA MEADOWCROFT  
DEF PRESENT WITH COUNSEL, PETER CAMIEL  
CITY MOTION TO DISMISS WITHOUT PREJUDICE - GRANTED

S Charge 1 Dismissed W/O Prejudice : City's Mtn-Other  
Case Heard Before Judge FINKLE, MICHAEL J

05/03/2010 Appearance Bond \$50 1519993 Exonerated 50,000.00  
U BOND EXONERATION LETTER MAILED TO ALL CITY BAIL BONDS  
S Case Disposition of CL Entered

U 12/09/2014 WILLIAM RAETHER AT FRONT COUNTER/ID SHOWN/ REQUESTING COPY MAC  
OF DOCKET (CERTIFIED) AND COPY OF PC STATEMENT. BOTH GIVEN  
TO MR. RAETHER.

ADDITIONAL CASE DATA

Case Disposition  
Disposition: Closed

Date: 05/03/2010

Parties

Attorney	CAMIEL, PETER A.	
Bondsman	ALL CITY BAIL BONDS	CORPORATE OFFICE

Docket continued on next page

DD7020SX MAC  
12/09/2014 10:27 AM

KING COUNTY DISTRICT COURT  
D O C K E T

PAGE: 3

DEFENDANT  
LUTZ, THOMAS EUGENE

CASE: CR008617C CNP  
Criminal Non-Traffic  
Agency No.

ADDITIONAL CASE DATA - Continued

Personal Description

Sex: M Race: W DOB: 02/20/1952  
Dr.Lic.No.: LUTZ\*TE480C0 State: WA Expires: 1999  
Employer:  
Height: 5 11 Weight: 140 Eyes: BRO Hair: BRO

Hearing Summary

Held IN-CUSTODY ARR ON 03/03/2010 AT 11:00 AM IN ROOM IS1 WITH LKJ  
Held IN-CUSTODY PRETRIAL ON 03/16/2010 AT 05:45 PM IN ROOM RE2 WITH MJF  
Held ON 04/29/2010 AT 01:30 PM IN ROOM RE2 WITH MJF

End of docket report for this case

CERTIFICATION - State of Washington, County of King.  
The undersigned, duly authorized clerk of the King County  
District Court, Washington, hereby certifies that the  
document on which this stamp is imprinted is a true and  
correct copy of the original filed in the Court.

Signed

M. Case 12/9/14  
Court Clerk

03/02/2010 TUE 17:51 FAX 425 788 1159 DUVALL CARNATION POLICE --- SANDY MEADOWCROFT

002/007

Certification for Determination of Probable Cause

That Lori K. BATHOT is a Commissioned Peace Officer with in the State of Washington and has reviewed the investigation conducted by the Duvall Police Department under case # 10-00144C.

I have been a Certified Peace Officer in the State of Washington since January of 1998. I have worked for several years as a detective and am currently working as a patrol officer for the cities of Duvall and Carnation. I have assisted in investigations involving homicides and other deaths, sexual assaults, drug cases, and a number of other investigations.

There is probable cause to believe that Thomas E. LUTZ (DOB 02/20/1952) did commit the following crime of Violation of a Harassment Order.

On March 2, 2010 at approximately 1226 hours I was on patrol in the City of Carnation. I was driving a fully marked Duvall-Carnation patrol vehicle and wearing a standard police uniform.

I was dispatched to a report of a protection order violation that had just occurred minutes earlier at 4333 Tolt Avenue in Carnation. Dispatch advised that the reporting party, William P. RAETHER (DOB 09/16/55) was the petitioner on a valid order against respondent (William P. RAETHER (DOB 09/16/55).

RAETHER requested that an officer meet with him at his residence to take a report. I went to RAETHER'S residence located at 6610 329<sup>th</sup> Ave NE. I met with him at the end of his driveway and took a written statement.

RAETHER told me that at about 1214 hours today he had just been leaving the parking lot of the QFC Store in Carnation. As he left the parking lot to go NB, he heard a male voice yell, "PRICK!!" RAETHER said he recognized the voice as that of LUTZ. He turned to look out his driver's side window and saw LUTZ standing in front of the Shell gas station at 4333 Tolt Avenue. He saw that LUTZ was standing in an aggressive posture and staring at him. He told me that he also saw LUTZ'S Red Chevy Astro van parked at the Shell Station.

RAETHER said he is afraid of LUTZ. He said he has knowledge that LUTZ has had access to numerous firearms in the past. He told me that LUTZ resides just up the road from him. RAETHER said, "I'm just waiting for the rounds to start coming through my walls one night." He said he was scared for his wife's safety when he is out of town overnight and that at times in the past he and his wife have stayed elsewhere because of his fear of LUTZ. I asked him if he had seen LUTZ come home yet and he said he had not seen him drive by. I took RAETHER'S written statement.

I also took a copy of the protection order. RAETHER said he took out the order on or about March 3, 2008, after LUTZ'S behavior escalated to him making death threats

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against RAETHER. I reviewed it and found it had been entered into the system as served as of March 3, 2008.

RAETHER said that he has reported all the threats except one where LUTZ stood outside the Ixtapa Restaurant in Carnation and pretended to fire at him. It also appears the order does not expire until March 03, 2099.

I then left the residence. As I was driving back toward Carnation I passed a red Chevy Astro Van. The male in the driver seat appeared to match the description RAETHER had given me. I turned and conducted a stop on the vehicle in about the 32400 block of NE 70<sup>th</sup> Street.

I approached the Astro Van from the passenger side. I asked the male driver if he was LUTZ and he stated he was. He began to yell at me and reached down toward his seat. I drew my duty weapon and instructed him to keep his hands on the steering wheel. I requested an expedited response from other units. LUTZ again began to lower his hands toward his seat and I again told him to keep his hands on the steering wheel and he again moved them back as I instructed. He stated several times that I had better get a King County Deputy or State Patrol Officer there because I had "no jurisdiction here".

I asked RAETHER if there was a firearm in the vehicle and he told me there was. He told me, "I don't feel like small talk right now." He stated he wanted to reach down to get a phone to get a lawyer and I again told him not to move. He repeatedly kept stating he wanted to make a call at that moment and I told him not to move for both our safety. I informed him I would not ask any questions. I continued to attempt to diffuse the situation verbally while keeping my firearm at low ready until Officers EATON and WILKERSON arrived to assist. When they arrived I advised them there was a gun in the vehicle. We removed LUTZ from the van and WILKERSON advised he saw a gun on the driver's seat.

We placed LUTZ in handcuffs. I advised him he was under arrest for violation of harassment no contact order. I advised him of the Miranda Warnings and advisement of right to counsel. I advised him I would not ask him any incriminating questions due to his statement during the stop that he wanted to call his attorney.

Officer WILKERSON advised there was a round in the chamber the gun that LUTZ had been sitting on. It was a Smith and Wesson 9mm semi automatic handgun. The magazine was locked in place and fully loaded. I later saw that the first round in the chamber was encased in a full metal jacket. The rest of the rounds were a combination of full metal jackets and hydro shocks, also known on the street as "cop killers" due to their ability to penetrate body armor. LUTZ later volunteered, "I call that first round the mercy bullet because it just goes right through a person without really doing any damage. The rest of them mean business!"

Throughout the trip to the Duval Police Department and during the booking process, LUTZ ranted continually of his dislike of Sergeant DEBOCK and former Duval Officer

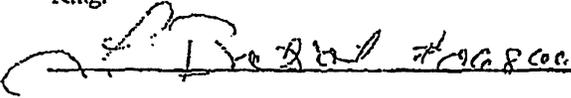
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SMITH. He continued to talk of how he felt like he was always being "set up" by the Carnation Police and RAETHER. He also continued to talk about how he was "freelance" drug agent and had numerous "busts" involving many kilos of cocaine. I heard him taking to himself continuously while he was in the holding cell.

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

Signed and dated by me this 2<sup>nd</sup> day of march, 2010, at Duvall, Washington, County of King.

  
\_\_\_\_\_

Officer Lori K. BAFIOT Serial #06860 Badge #D804

## **Appendix F**

Reported: 4/26/2013	DOW: Fri	Time: 13:33	Incident Type: VIOLATION OF COURT ORDERS, (MI	Initial FCR 236-H-0	Court	Juvenile <input type="checkbox"/>
Occ Between: 4/26/2013	DOW: Fri	Time: 13:33	And: 4/26/2013	DOW: Fri	Time:	LocationName:
Incident Location: 6610 329 AV NE			City: CARNATION		State: WA	Zip 98014

**SUSPECTS/ARRESTED PERSONS SECTION**

Association: <b>ARRESTED</b>	Last, First Middle LUTZ, THOMAS EUGENE			Interpreter Needed <input type="checkbox"/>	Booked <input type="checkbox"/>	Citation #	Co-Defendant #	
Address 33409 NE 70 ST		City CARNATION		ST WA	Zip 98014	Phone Numbers:		
Sex M	Race W	DOB 2/20/1952	Height 5' 10"	Weight 145	Hair BLK	Glass' 	Eyes BRO	Facial Hair BEARD
Scars, Marks & Tatoos			Clothing		Gang		Set	
Occupation JEWELRY SALES		Employer SELF		OLN LUTZ*TE480CO	ST WA	SSN [REDACTED]	AFIS#:	
Charges Codes: 236-M VIOLATION OF COURT ORDERS, (MISDEMEANOR)			RCW( or Local Ord) Code - Description 10.14.170 - violation of antiharassment order			Counts: 1		

**VICTIMS, WITNESSES AND OTHER PERSONS SECTION**

Association: <b>VICTIM</b>	Last, First Middle RAETHER, WILLIAM PHILLIP			Interpreter Needed <input type="checkbox"/>	Phone Numbers: Home 425/333-6443			
Address 6610 329 AV NE		City CARNATION		ST WA	Zip 98014			
Sex M	Race W	DOB 9/16/1955	Height 	Weight 195	Hair BLK	Glass' 	Eyes GRN	Facial Hair
Scars, Marks & Tatoos			Clothing		Gang		Set	
Occupation DISABLED		Employer		OLN RAETHWP450OW	ST WA	SSN [REDACTED]	AFIS#:	
Additional Alias': Last Name		First Name		MI	Moniker BILL			

**REVIEW**

Date Submitted: 4/26/2013	Reporting Officer: 07234 Capelouto, Sam I	Disposition: INCIDENT REPORT - CITATION ISSUED/CHARGED BY INV	
Date Time Reviewed: 4/27/2013 10:58	Reviewed By: 06465 Gray, James S	CID Screener:	Event Processing Status: Filed
Date Assigned:	Investigator Assigned:	Date Status Last Changed: 5/2/2013 2:00:45 PM	

- Aid Req  Weapons  Injury  Alcohol  Computer  Dom Viol  Drug  Juvenile  Gang

DO NOT DISCLOSE: <input type="checkbox"/>	<b>SHERIFF</b> <b>KING COUNTY</b>	<b>INCIDENT REPORT</b>	13-091857	Page 2
Domestic Violence: <input type="checkbox"/>			236-H-0	District: C-7
<b>MO</b>				

Suspect Trademarks: **RESPONDANT MAILED LETTER TO PETITIONER**

Instrument: **HANDS/MAIL**

Entry Point: **MAILBOX**

Entry Method: **MAIL**

Premises Type <b>LETTER</b>	Locked <input type="checkbox"/>	Occupied <input type="checkbox"/>	Total Property Cost:
<input type="checkbox"/> Aid Req <input type="checkbox"/> Weapons <input type="checkbox"/> Injury <input type="checkbox"/> Alcohol <input type="checkbox"/> Computer <input type="checkbox"/> Dom Viol <input type="checkbox"/> Drug <input type="checkbox"/> Juvenile <input type="checkbox"/> Gang			

**Narrative:**

On 04/24/13, 1333 hours, I was dispatched to a violation of a court order. V/Raether, William states a certified letter was sent to him via mail, violating an existing court order that he has against S/Lutz, Thomas.

I contacted Data 29, confirming a good/served order. The anti-harassment order (087-00912) against Lutz, Thomas, was issued out of East Division Issaquah court on 03/03/2008 and expires on 03/03/2099. It shows served/signed in court on that day by Lutz. The order states in effect that Lutz shall have no contact with petitioner by any means whatsoever.

Raether gave me a copy of the certified letter he received today. The letter was sent by Lutz stating which police cases and reports he will be using in court against him.

I gave Raether a DVPA form and placed the letter as attachment with case along with copy of order faxed by data. I forwarded a copy of case to prosecuter with a recomended charge of violation of antiharassment protection order, RCW 10.14.170.

**Additional Attachments/Reports Associated with this Incident/Follow-up Report:**

hw letter and envelope	Friday 04/26/13	Active
hw court order	Friday 04/26/13	Active

Certification

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date and Place: \_\_\_\_\_ Signature/Agency: \_\_\_\_\_

**END OF REPORT**