

NO. 35979-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II



STATE OF WASHINGTON, Respondent

v.

RODNEY GLYNN CECIL, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE ROBERT A. LEWIS
CLARK COUNTY SUPERIOR COURT CAUSE NO. 06-1-01571-1

BRIEF OF RESPONDENT

Attorneys for Respondent:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

MICHAEL C. KINNIE, WSBA #7869
Senior Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (360) 397-2261

P.M. 12-10-07
FEDEX

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I. STATEMENT OF THE FACTS

Because of the nature of the issues raised by the defendant, the recitation of facts will be set forth in each of the argument sections.

II. RESPONSE TO ASSIGNMENTS OF ERROR NO. 1 AND 2

The first two assignments of error deal with the motion to suppress the search of the residence at 1216 West 19th Street, Vancouver, Washington, which occurred on April 19, 2005. Part of the claim deals with the findings of fact that were specifically entered by the court and the other part deals with the lack of probable cause to search.

The defense filed a Motion to Suppress (CP 4) which contained as appendices to it, the affidavits for search warrants and the search warrants together with the returns. A copy of the Motion to Suppress with the appendices is attached hereto and by this reference incorporated herein. A Motion to Suppress the evidence was heard on February 2, 2007.

Testimony was taken from some of the officers that were involved in the searches and the court had access to the affidavits in support of the search. After completion of that hearing, the court entered its Findings of Fact and Conclusions of Law on Defendant's Motion to Suppress. (CP 205). A copy of the Findings of Fact and Conclusions of Law is attached hereto and by this reference incorporated herein.

The defendant on page 18 of his brief indicates that his two areas of concern were that the affidavit for the search warrant did not establish probable cause and that the police exceeded the scope of the warrant when they seized items that were not mentioned in the warrant nor immediately recognizable as contraband or evidence of a crime.

On April 19, 2005, Vancouver Police executed a search warrant at a residence that was being rented by the defendant and also by Timothy Hyde. This residence was located at 1216 West 19th Street, Vancouver, Clark County, Washington. The purpose of the search warrant was to locate and arrest Timothy Hyde, Vicky Carstensen, and Dawn Jeantet. All three of them had outstanding felony warrants. While in the defendant's bedroom during the execution of the search warrant, a check was observed, face up, on a computer printer bearing the name of Gloria Elliott. Also observed in this room was a laptop computer and external thumb drive attached to the printer and some blank check stock paper. Suspecting fraudulent activity, the computer, thumb drive, check, and blank check stock were seized by the police.

Vancouver Police then did additional investigation and obtained a search warrant for the computer and thumb drive, which was executed on May 17, 2005. In the second search affidavit, the officer indicates that he contacted Gloria Elliott in regards to the evidence collected and being

held. She advised that a book of her U.S. Bank checks, U.S. Bank debit card, and her pin number were stolen from a glove box in her automobile a few weeks prior to the contact with her in May, 2005. She knew the defendant through an outpatient treatment program and, in fact, he had helped her move into a new residence on Evergreen Boulevard. She told the officers that she did not know anything about a check from Union Bank of California and that she indicated it had to be a fake check because she never had any activities with that bank or the amounts.

During the search, documents were found that contained the personal and/or financial information for Gloria Elliott, Jerry Hofmann, Barbara Larey, Gary Lass, and Cheryl Michaels. When contacted, all the victims indicated that the defendant did not have permission to possess their respective personal and/or financial information.

Also found during the search of the computer were copies of e-mails between a female and the defendant where the female provides to the defendant the names, addresses, social security numbers and credit card numbers for Jerry Hofmann and Gary Lass. Also found on the defendant's computer were documents showing online ordering of merchandise using credit card information of Jerry Hofmann, Barbara Larey, and Cheryl Michaels. Other documents found were such things as check templates, a three-page document which outlines details regarding

illegal activity such as getting other people's visa and mastercard numbers, obtaining out-of-state checks, using online mail orders, splitting profits and a sheet verifying e-mail addresses the defendant had used.

The gist of the defendant's claim that the search warrant affidavit did not establish probable cause dealt with the claim that the person being sought, Mr. Hyde, had only rented the basement and therefore the police could not search the rest of the residence. However, in reviewing the search warrant affidavit that was attached to the Motion to Suppress (CP 4), it indicates:

I checked the Clark County, Washington, Assessor's Office and learned that Ronald Russell was the listed owner of the residence. I contacted Ronald Russell at his residence and he stated that he was renting 1216 West 19th Street to Rodney Cecil and a male named "Tim" since December.

Later in the affidavit for the search warrant, a picture is shown to Mr. Russell who positively identifies the "Tim" as Timothy Hyde, the individual that the felony search warrant was being executed to find.

In State v. Alexander, 41 Wn. App. 152, 704 P.2d 618 (1985), it was established that separate search warrants are not needed to search a residence where a community living unit exists. A community living unit exists where several persons or families occupy a residence in common rather than individually. Alexander, 41 Wn. App. at 154-155. That a certain bedroom in a community living unit ordinarily is used by only one

of the tenants does not defeat application of the community living unit rule where that bedroom is not kept locked but is accessible to all of the tenants. Alexander, 41 Wn. App. at 155.

As stated in Alexander:

Here, there is no indication that defendant had sole and exclusive control over his bedroom, and the person named in the warrant could have concealed items anywhere within the residence, including the defendant's bedroom. Therefore, we adopt the "community living unit" rule and hold that officers' search of defendant's bedroom in this case was justified and did not exceed the scope of the search warrant.

- Alexander, 41 Wn. App. at 157.

It is a common rule that a search warrant affidavit is read as a whole, in a common sense, non-technical manner, and resolves all doubts in favor of the validity of the warrant. State v. Vickers, 148 Wn.2d 91, 108-109, 59 P.3d 58 (2002). Individual facts which, standing alone, would not support probable cause to issue a search warrant can ripen into probable cause when combined with other facts. Vickers, 148 Wn.2d at 110-111.

The Findings of Fact and Conclusions of Law on Defendant's Motion to Suppress (CP 205) at Finding of Fact Number 4 indicate that the owner of the residence, Ronald Russell, confirmed that he rented the residence in question to the defendant and to Timothy Hyde. It also

indicates that he identified Timothy Hyde from a photo that was shown to him by the officer. The State submits that the officers were justified in searching the entire residence for the individuals they were seeking.

While in a place where the officer had a right to be, he saw, in plain view, what appeared to him to be contraband. As indicated in Finding of Fact Number 9 entered by the court

9. Because of his contact with the defendant in the Clark County Drug Court Program, Sergeant Chylack was aware of the defendant's prior felony convictions for Identity Theft and Forgery. Sergeant Chylack was not aware of any connection between the defendant and the name of the person on the check, Gloria Elliott, and suspected that the defendant was involved in fraud related activities. The check, computer, and blank check stock were seized.

This finding made by the trial court after the suppression hearing then led to Conclusions of Law Number 7 which reads as follows:

7. This Court finds the testimony of Sergeant Chylack credible and persuasive. He entered the defendant's bedroom under lawful authority of a valid search warrant. He was looking for people in a room and in areas where people might be found. He was in the process of looking in the defendant's room when he observed, in plain view, a check to Gloria Elliott, face up, on a printer that was attached to a laptop computer. Gloria Elliott was not associated with the residence nor was she associated with the defendant. There was no reason why that check needed to be there. In addition, Sergeant Chylack observed blank check stock in plain view next to the computer. Based upon Sergeant Chylack's observations along with his knowledge of the defendant's criminal history, he had reason to believe,

and did believe, that he was observing evidence of a crime. Sergeant Chylack lawfully seized the check and blank check stock paper which were in plain view.

Under the plain view exception to the warrant requirement, a seizure is valid if: (1) the officer lawfully occupied the vantage point from which the evidence was discovered, (2) the officer immediately recognizing the incriminating nature of the object seized, and (3) the officer had a lawful right of access to the object itself. State v. Tzintzun-Jimenez, 72 Wn. App. 852, 856, 866 P.2d 667 (1994). It has been held that to satisfy the second prong (immediately recognized the incriminating nature of the object), the incriminating nature of the item must be immediately apparent, such that the officer can reasonably conclude that the item is contraband without further searching. State v. Hudson, 124 Wn.2d 107, 118, 874 P.2d 160 (1994). Here, the trial court found that during the search incident to a warrant, that the officer found incriminating materials in plain view. There is substantial evidence in the record sufficient to persuade a fair-minded, rational person of the truth of the finding that was entered by the court. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). The seizing of the check and the laptop computer with the attached external thumb drive together with the blank check paper and coupled with the officer's knowledge of the defendant's prior felony convictions for identity theft and forgery make the seizing of these objects

reasonable and subject to further investigation. Once that further investigation was completed (contact with Gloria Elliott), the justification for the second search is obvious. It does not appear that the defendant is questioning the second search warrant by way of this appeal.

As set forth in Coolidge v New Hampshire, 403 U.S. 443 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971):

What the “plain view” cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification – whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or for some other legitimate reason for being present, unconnected with a search directed against the accused – and permits the warrantless seizure.

- Coolidge v New Hampshire, supra, at 465-466.

The State submits that there was ample evidence to support probable cause which supported the trial court’s findings and conclusions.

III. RESPONSE TO ASSIGNMENT OF ERROR NO. 3

The third assignment of error raised by the defendant is a claim that the trial court commented on the evidence by allowing the State to elicit evidence that the police searched the defendant’s home and computer pursuant to judicially authorized warrants. The defendant, in his brief, makes mention of the jury hearing evidence of two search warrants

being judicially authorized and therefore that indicates to the jurors the belief by the judge that they were warranted.

There are a number of difficulties with this particular argument by the defendant. First of all is the citing to the report of proceedings that he does. In his brief on page 26, he indicates that the testimony at Report of Proceedings 112-113 and at 129 dealt with defense objections to allowing two officers to testify about the seizure of objects authorized by search warrant. In each of these areas of the report of proceedings, there is no objection made by the defense. There is no ruling made by the court.

Prior to the start of testimony was a motion in limine that addressed in some detail with the trial court this issue. This discussion began at RP 92 and continued through to the end of RP 94. There were two search warrants that were executed in this case. The State agreed that there was no relevance to the first search warrant being discussed with the jury at all and indicated that it would not reference that search because it “really had nothing to do with the defendant other than it was at his residence looking for three wanted individuals.” (PR 92, L.21-23). The defense agreed to this (RP 93) but also wanted them not to discuss the search warrant as it related to the search of the computer. Concerning this, this defense attorney indicated as follows:

MR. SOWDER (Defense Attorney): Well, I meant both, I mean, the idea that it gives a judicial imprimatur, it says this is an authorized search. In some ways I think it's a comment on the evidence, or is a comment on the evidence.

(RP 93, L.5-9)

The discussion with the trial court goes on and it is obvious that the court is having some difficulty in understanding just what the nature of the objection is. Nevertheless, a compromise is reached where the State agrees that it would be permissible to indicate that his computer was seized by a search warrant and leave it at that. (RP 94, L.10-15).

During the questioning of the witnesses then, the only search warrant being mentioned is the second one dealing with the seizing of the computer. Thus, on Report of Proceedings 112-113, the indication is as follows:

QUESTION (Deputy Prosecutor): What eventually happened with - - with the - - with the computer and all this - - the - - the items that were inside the bag?

ANSWER (Officer Harris): Based on what I saw, I applied for a search warrant for the - the computer and its contents.

QUESTION: And did you obtain one?

ANSWER: Yes, I did.

(RP 112, L.22 - 113, L.3)

At that point, the defense attorney says the following, "Object to that characterization as I did with the search warrant." (RP 113, L.4-5).

There is no discussion with the court nor does the court rule on any objection because this was not an objection.

This came up again on questioning of Officer Nichols as follows:

QUESTION (Deputy Prosecutor): And just a yes or no answer, officer. Did you execute a search warrant on this computer?

ANSWER (Officer Nichols): Yes, I did.

(RP 129, L.3-6)

At that time, there was no objection made by the defense.

The defendant, now on appeal, wants to claim that this is some type of comment on the veracity of the evidence by the judge. Yet, the court offered no opinion as credibility, sufficiency, or weight of any of this testimony. In some ways this is similar to the claim in State v. Swan, 114 Wn.2d 613, 790 P.2d 610 (1990) when the trial court indicated that it accepted one of the State's witnesses as an expert in her field. The Court of Appeals examined the claim that this was a comment on the evidence and held that it was not anything of the sort; it was just merely an indication of a threshold query that had been satisfied. The Supreme Court agreed indicating that a trial court must be allowed to rule as to the qualifications of expert witnesses and inform counsel of its decision.

The touch stone of error is whether or not the feelings of the trial court as to the truth value of the testimony of a witness has been communicated to the jury. State v. Gitchel, 5 Wn. App. 72, 486 P.2d 325 (1971).

The relevance of the testimony establishes for the jury how it was that the computer, its contents, and the other objects came into police possession and from where they were recovered. Yet, there is absolutely no showing in this record that in some way this is a comment by the trial court as to truthfulness or validity of any of the information or of the “criminality” of the defendant or any other objects that may touch upon prejudice to him. In fact, in front of the jury, there are no objections being made nor is it anything that is being brought to the jury’s attention.

It is interesting to note that the defendant in his brief then tries to couple this with the question and answer which was stricken and the jury was told to disregard which appeared at Report of Proceeding 125. The deputy prosecutor had asked one of the officers what his duties were on the “neighborhood response team” and the court felt that the answer went too far and was not necessary. The judge then instructed the jury to disregard this and the case proceeded on from there. A jury is presumed to follow the court’s instructions. State v. Pastrana, 94 Wn. App. 463, 480, 972 P.2d 557 (1999). Yet the defendant is asking the court to ignore

that and find that this coupled with the other matters “puts its imprimatur on officers’ actions and commented on the officers’ obvious belief that the defendant was guilty.” (Brief of Appellant, page 28). There simply is nothing in this record to support that type of allegation.

IV. RESPONSE TO ASSIGNMENT OF ERROR NO. 4

The fourth assignment of error raised by the defendant is a claim that there was insufficient evidence presented to the jury on the charge in count 1 of first degree trafficking in stolen property. The claim appears to be that the statute dealing with trafficking and stolen property does not concern “personal identification” and “financial identification” because these two items are not “property” even if the information is stolen.

After the defendant’s computer was seized, the items were turned over to Maggi Holbrook who works for the Vancouver Police Department. She testified that she is a Senior Computer Forensics Investigator and has been doing that work since July, 2000. (RP 130). She went through with the jury and had marked as exhibits the various items that she had recovered from the computer dealing with other identities. Hard copies were then made of those particular documents and they were then used with the victims individually.

Gloria Elliott Mendez testified that she knew the defendant because he had helped her move at one time. (RP 178-179). She was

shown Exhibit No. 1 which was the check that was found on the computer table. She testified that she had never given anyone permission to use her name nor was she familiar with the Bank of California. (RP 180). She was also shown Exhibit No. 7 which was an injury claim form to State Farm Insurance using her identification and other information. She indicated that she had never prepared any such type of documentation nor did she submit an injury claim to State Farm. (RP 181). She was also shown Exhibit No. 8 which was documentation purportedly to the Bank of America showing her name and other identifiers. She indicated that she had never done any of these acts and had never authorized anyone to do so. (RP 182).

Jerry Hofmann lives in Tigard, Oregon, and he does not know the defendant. (RP 186-187). He was shown Exhibit No. 9 which lists his phone number, address, social security number, credit card numbers and other identifying information. He indicated that he had to cancel a business credit card because of fraudulent use of that card. (RP 188). He indicated further that he had never given the defendant any permission to use his identification. (RP 191).

He was also shown Exhibit No. 10 which was an e-mail transaction showing a purchase using his name and other identifying information. He indicated that he had never authorized any type of purchase to be made by

the defendant. (RP 192-194). He was also shown Exhibit No. 11 which was another e-mail using his name and address for other purchases. Again, he denied that he had ever made such transactions. (RP 194-195).

The next witness was Barbara Larey. She indicated that she did not know the defendant. (RP 198). She was shown Exhibit No. 12 which was her visa card information and that it was used to make purchases and that she did not authorize anyone to do so. (RP 198-201). In fact, she had spoken to a representative on the phone for Candle Mart whom she purportedly made purchases from. She got all of the information and then reported it to the police as a fraudulent transaction. (RP 201). She was also shown Exhibit No. 13 which contained information about her credit card, address, and name. She had not authorized any purchases to be made using that information. (RP 203). She was also shown Exhibit No. 14 which again was her credit card, address and name and she had not authorized anyone to make any purchases using this information. (RP 204).

The next witness was Gary Lass who lives in Beaverton, Oregon, and does not know the defendant. (RP 208). He was shown Exhibit No. 15 which contains his name, address, social security number (off by one digit), and possibly his credit card numbers to make purchases which he had never authorized. (RP 209).

The next witness called was Cheryl Michaels who lives in Milwaukie, Oregon, and does not know the defendant. (RP 220). She was shown Exhibit No. 16 which was a visa debit card using her name and address and it had been used to buy something for \$338.00. She indicated that she had never authorized this internet transaction. (RP 221).

The prosecution also called Deborah Sprain. Ms. Sprain knows the defendant and in fact was a coconspirator with him in obtaining this information. (RP 249). She told the jury that the defendant gave her credit card numbers and using them she was able to buy pizza and other items and she was “to obtain credit cards from people to use so that he (the defendant) could put funds into our accounts and draw money out.” (RP 255, L.2-4). As part of her work with the defendant, she was to supply him with people’s names, phone numbers, addresses, social security numbers, birth dates, account numbers, pin numbers, and any other identifying information she could gather. (RP 255). She specifically remembered that she sent the defendant information concerning Jerry Hofmann and Gary Lass. (RP 261, 263-264).

The exhibit numbers referred to in the proceeding presentation (other than Exhibit No. 1) all dealt with information taken off of the defendant’s computer and testified to by Maggi Holbrook.

At the close of the State's case, the defense moved for a dismissal of Count 1 claiming that there was no proof of "stolen" property. (RP 290-292). There is no indication in that dismissal motion that they were disputing the concept that the identifiers and the other items were not "property". In fact, when the court was preparing its instructions to the jury (CP 142), not only was there no objection but the defense specifically requested a definition of "stolen property" to be given to the jury. (RP 304). That was done and it appeared in the instructions as No. 12A which reads as follows: "Stolen property" means property that has been obtained by theft, robbery, or extortion. (CP 142, Instruction No. 12A).

The court instructed the jury on the elements that had to be proven beyond a reasonable doubt as they related to Count 1 – Trafficking in Stolen Property in the First Degree. Instruction No. 11 reads as follows:

To convict the defendant of the crime of trafficking in stolen property in the first degree as charged in Count 1, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That between January 25, 2004 and May 31, 2005, the defendant trafficked in stolen property;
2. That the defendant knew that the property was stolen at the time;
3. That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

(CP 142, Instruction No. 11)

As previously indicated, the defense has requested and received the definition for stolen property. Clearly there is substantial evidence produced in the record to indicate that during the dates in question, the defendant was trafficking in stolen property, that he knew that the property was stolen, and that these acts occurred in the State of Washington.

Standard of review for sufficiency of the evidence claim is whether, after viewing evidence in a light most favorable to the State, any rational trier of fact could have found essential elements of the crime beyond a reasonable doubt. State v. Smith, 155 Wn.2d 496, 501, 120 P.3d 559 (2005); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. Smith, 155 Wn.2d at 501. The defendant specifically requested an instruction on the definition of stolen property. Now he is claiming that it is not property at all. The

State suggests that this may be an invited error. The doctrine of invited error prohibits a party from setting up an error at trial and then complaining of it on appeal. In Re Personal Restraint of Breedlove, 138 Wn.2d 298, 312, 979 P.2d 417 (1999). A copy of the Court's Instructions to the Jury (CP 142) is attached hereto and by this reference incorporated herein.

The defendant in his brief discusses a concept that the term "property" is not defined in the RCW's and therefore he should be allowed to use standard dictionary definitions. When he uses a standard dictionary definition, he indicates that the concept of property as it relates to personal identification and other intangibles like that may form personal and financial data but do not constitute the concept of property. (Brief of Appellant, page 32).

In fact, the RCW does have a definition for "property." RCW 9A.04.110(22) reads as follows:

"Property" means anything of value, whether tangible or intangible, real or personal;

The State submits that there was no need to instruct the jury on this concept because no one was disputing it at the trial court level. In fact, the only complaint being raised was the concept of "stolen" property as it

related to Count 1. If neither party objects to the instructions, they become the “law of the case”. State v. Hickman, 135 Wn.2d 97, 102, 954 P.2d 900 (1998).

The State has presented evidence in its case in chief which clearly demonstrates that this was stolen property, that it had value, and that it was of a personal nature. The State submits that there was sufficient evidence for this matter to go to the jury for its determination.

V. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 2 day of December, 2007.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By:


MICHAEL C. KINNIE, WSBA#7869
Senior Deputy Prosecuting Attorney

APPENDIX "A"
MOTION TO SUPPRESS

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FILED
SEP 25 2006
Anne McBride, Clerk, Clark Co.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK**

STATE OF WASHINGTON,)	No. 06-1-01571-1
Plaintiff,)	
v.)	MOTION TO SUPPRESS
RODNEY GLYNN CECIL,)	
Defendant.)	

IDENTITY OF MOVING PARTY: Defendant, RODNEY GLYNN CECIL, by and through his attorney, JAMES J. SOWDER.

RELIEF REQUESTED: Suppression of all evidence seized as the result of the execution of a search warrant on April 19, 2005 at 1216 W. 19th Street, Vancouver, Washington and the execution of a search warrant dated May 11, 2005 and executed on May 17, 2005. The May search warrant authorized the search of the defendant's laptop computer which was seized at the time of the execution of the search warrant at the residence referenced above.

FACTS: Defendant and Co-Defendant are charged in Count 1 with Trafficking of Stolen Property in the First Degree, in Counts 2 and 3 with Identity Theft in the Second Degree. Defendant is charged solely in Counts 4 and 5 with Identity Theft in the Second Degree, in Counts 6, 7 and 8 with Forgery.

Attached as Exhibits A, B and C are copies of the Affidavit for Search Warrant for 1216 W. 19th Street, Vancouver, Washington, the Search Warrant and the Search Warrant Return, respectively.

B

1 Attached as Exhibits D, E, and F are copies of the Affidavit for Search Warrant for the
2 computer seized at the above-referenced residence, the Search Warrant and the Search Warrant
3 Return, respectively.

4 In reference to Exhibit A, it is a request by Vancouver Police Department Officer
5 Spencer Harris that he believes certain "wanted persons" are at the residence which is located
6 at 1216 W. 19th Street, Vancouver, Washington. The specifically wanted persons are Timothy
7 Allen Hyde, Vicky Marie Carstensen and Dawn Renee Jeanette. Officer Harris states there is a
8 felony warrant out for each. In his affidavit on the first page he makes reference to wanting to
9 seek personal property to establish and identify the defendants in paragraphs 2, 4 and 6, and
10 evidence that establishes dominion and control of the residence. He states on page two he
11 believes the above-referenced individuals are on April 12, 2005 at 1216 W. 19th Street. He
12 requests to search all rooms, storage rooms, the surrounding premises and all vehicles that can
13 be "connected" to the defendants." Officer Harris, at the bottom of page two, recites his
14 experience and training. At the top of page three, he says he was "made aware" of the wanted
15 subject living at the residence by the name of Vicky Carstensen and that she was living there with
16 a male by the name of "Tim". Officer Harris advises the issuing magistrate that on April 11, 2005
17 he and some other officers attempted a contact at the residence. He said he saw a person that
18 met the general description of Ms. Carstensen but could not identify as that person being Vicky
19 Carstensen He recalls telephone calls to the residence but no one would answer. He also reports
20 he checked the Vancouver Police EPR System for subjects known to have given the address as
21 their residence or that were "associated". The EPR System listed the names of Rodney Cecil and
22 Dawn Jeanette as documented in Vancouver Police Department Case No. 05-613. Officer Harris
23 does not tell the magistrate when such documentation was made, and what their alleged
24 association was to the residence.

25 Officer Harris reports he ran Rodney Cecil through the NCIC and learned that he has
26 reported to the Department of Licensing that his address was 1216 W. 19th Street, Vancouver,
27 Washington.

MOTION TO SUPPRESS - 2

*James J. Sowder - Attorney at Law
1600 Daniels Street - P.O. Box 27
Vancouver, Washington 98666-0027
Phone: (360) 695-4792 - Fax: 695-0227*

1 Without saying how, Officer Harris concludes Dawn Jeanette is Rodney Cecil's girlfriend.
2 He reports she had an active warrant out of Multnomah County, Oregon but he does not state
3 the date or what the warrant stems from.

4 In the Affidavit for the Search Warrant, Officer Harris states he checked the public
5 utilities records and it showed Lawrence Digman was responsible for the electrical service at that
6 residence. He said he could not locate him by name through the Department of Licensing or
7 Vancouver Police Department's EPR System. By checking the Assessor's office, Officer Harris
8 learned Ronald Russell was the owner of the residence. He reports he contacted Mr. Russell and
9 reports Mr. Russell told him that he was renting the residence to a man named Tim. He also
10 reports Mr. Russell advised him that Tim's girlfriend, Dawn, lived at the residence.

11 Officer Harris reports Mr. Russell told him that Dawn was approximately five feet and
12 three inches with a medium build and in her thirties and that Tim's list name was "Hittle". Officer
13 Harris reports he showed Mr. Russell a photograph of Mr. Hyde and he identified him as the
14 person that lived in the basement of the residence.

15 There is no reference as to how current the information from Mr. Russell was as to the
16 location as to Mr. Hittle's residency at the house. He only reports Mr. Russell said he had been
17 renting the residence to Rodney Cecil and a man named Tim since December.

18 Officer Harris then gives the criminal history of Mr. Hyde and Vicky Carstensen and asks
19 the Court to issue a search warrant. The Search Warrant requested allowed for the seizure of
20 Timothy Hyde and personal property to confirm his identity, Vicky Carstensen and personal
21 property to confirm her identity, and Dawn Renee Jeanette and personal property to confirm her
22 identity and personal property to establish dominion and control of the residence.

23 Officer Harris further requested, before the Court signed it, that they be allowed to search
24 all rooms and parts therein and to search all storage rooms, surrounding areas and all vehicles
25 parked nearby that can be connected to the defendants.

26 The Search Warrant was issued on April 13, 2005 at 5:15 pm and executed on April 19,
27 2005 at 8:55 pm.

MOTION TO SUPPRESS - 3

James J. Sowder - Attorney at Law
1600 Daniels Street - P.O. Box 27
Vancouver, Washington 98666-0027
Phone: (360) 695-4792 - Fax: 695-0227

1 **GROUNDS FOR RELIEF AND ARGUMENT:** Defendant's right to be free of
2 unlawful search and seizure as protected by Article 1, § 7 of the Constitution of the State of
3 Washington and the Fourth Amendment of the United States Constitution was violated.

4 The premises in analysis should be based on Article 1, § 1of the Washington State
5 Constitution which provides, "All political power is inherent in the people, and governments
6 derive their just powers from the consent of the governed, and are established to protect and
7 maintain individual rights."

8 The premise then of Article 1, Section 1 is to protect individual rights, which is the right
9 to be free of unlawful search and seizure and most specifically on the state constitution that no
10 person shall be disturbed in their private affairs without authority of the law.

11 All the officers have here are warrants for the arrest of Timothy Allen Hyde, Vicky Marie
12 Carstensen and Dawn Renee Jeanette. They know what these individuals look like because they
13 have mugshots available to them and in-fact showed them to Mr. Russell. There is no probable
14 cause in reading the Affidavit most favorable to the State to search for anything in the house
15 other than the above-named defendants with warrants out for their arrest. There is no probable
16 cause established to look for anything else other than the person. Defendant challenges whether
17 there was probable cause to issue a search warrant to search the residence for these individuals.

18 In reference to Vicky Carstensen, the only information supplied to the Court in as why
19 she would be there is some individual made him "aware" she might be living there. Officer Harris
20 does not state how he became so "aware" such as whether this was one individual or more and
21 the reliability and veracity of such individual or individuals as required by the Aguilar-Spinelli
22 lines of cases; Spinelli v United States, 393 US 410 (1969) and Aguilar v Texas, 378 US 108
23 (1964).

24 The references to the EPR Systems, which is the Electronic Police Reporting System
25 according to the best of Defendant's knowledge, and Officer Harris only states that someone by
26 the name of Dawn Jeanette is associated with the residence but he does not say how. What does
27 "associated" mean? Was she merely a guest of the residence when police officers came to the

MOTION TO SUPPRESS - 4

James J. Sowder - Attorney at Law
1600 Daniels Street • P.O. Box 27
Vancouver, Washington 98666-0027
Phone: (360) 695-4792 • Fax: 695-0227

1 residence at one point for a reason completely irrelevant to her and she gave the officers her
2 name? Officer Harris provided an insufficient basis for the issuance of a search warrant to show
3 what her connection would be based on the EPR reports. Officer Harris reports Mr. Russell said
4 "Dawn" lived there but apparently did not identify her by photographs. He did however, identify
5 Mr. Hyde as having lived there in December, 2004, but does not indicate when he last saw Mr.
6 Hyde at the residence.

7 Relevant Case Law

8 In State v. Broadnax, 98 Wn.2d 289 (1982), it was held that a warrant to search a
9 residence does not authorize the search of all persons present.

10 In State v. Klinger, 96 Wn. App. 619 (1999), the police, while serving an arrest warrant,
11 observed the defendant smoking a hand rolled cigarette in the house. The police smelled
12 marijuana and obtained a search warrant for the house and the outbuildings and seized drugs in
13 the shed behind the house. The Court held where there is probable cause to believe a defendant
14 possesses drugs with no evidence of trafficking, then a warrant to search the premises where
15 drugs were seen, does not extend to other buildings on the premises.

16 In State v. Thein, 138 Wn. 2d 133 (1999), the affidavit establishes the defendant is a drug
17 trafficker and the magistrate issues a warrant to search the defendant's home based on the
18 officer's experience and training that drug traffickers store drugs in their residence. The Court
19 held an officer's general conclusions and conclusionary predictions and inferences do not
20 establish the necessary specific underlying circumstances to establish evidence of illegal activity
21 to authorize the search of a home. The Court noted probable cause to believe a man has
22 committed a crime does not necessarily give rise to probable cause to search his home.

23 In State v. Goble, 88 Wn. App. 503 (1997), the Court held a telephonic declaration
24 claiming that following a valid search that drugs are in a package at the defendant's post office
25 box the magistrate issues a search of the defendant's home if he picks up a package and takes it
26 to his residence. The police observed the defendant take a package to his property and go into
27 his house. The police then serve the warrant and seize the drugs. The Court held that probable

1 cause requires a nexus between the items to be seized and the place to be searched at the time
2 the warrant issues, not based upon some future act. Here the magistrate had no reason to believe
3 drugs were in the house when they warrant was issued, thus the evidence was suppressed.

4 In State v. Jackson, 102 Wn.2d 432 (1984), the Court rejected Illinois v. Gates, 462 US
5 213 (1983) and returned to the Aguilar-Spinelli test which requires of proof of the veracity and
6 basis of an informant's knowledge.

7 In State v. Franklin, 49 Wn. App. 106 (1987), the affidavit for the search warrant states
8 the police received information from a confidential citizen informant who asked to remain
9 anonymous and who was an upstanding citizen with no criminal record. The Court held that did
10 not meet the reliability prong as the credibility of the informant was based entirely upon the
11 officer's conclusions without corroboration.

12 Defendant would testify when the police came to the residence they quickly apprehended
13 the people they had arrest warrants for and then proceeded to search the residence further. Any
14 such search would far exceed the scope of the Search Warrant.

15 The second search is based on the illegal first search and cannot be otherwise cured by
16 deleting the illegal search. The only reason the officers wanted to search the computer is because
17 they illegally seized it. They had no authority to seize it in the first search because they were only
18 there to seize the persons who had arrest warrants. Any other evidence that they claimed they
19 had seen was not in plain view and also would not lead to the inference the computer or any
20 other items in the house should be seized.

21 In State v. Hopkins, 113 Wn.App. 954 (2002), the police with an arrest warrant for the
22 defendant and a search warrant to search for the defendant including outbuildings and
23 documents, arrest the defendant. The police then go on to do a security check and a protective
24 sweep of a shed and find a methamphetamine lab. The Court held because the search warrant
25 was issued only on the basis of the arrest warrant, its scope is no greater than the arrest warrant.
26 To justify a protective sweep, the State has a burden of proving the sweep was reasonable for
27 security purposes, limited to a cursory visual inspection of places where persons may be hiding.

1 Here, there are no articulable facts warranting a reasonably prudent officer believing the area
2 to be swept harbored an individual posing a danger, thus the drugs were suppressed.

3 In State v. Anderson, 105 Wn. App. 223, (2003), the police observe a man watering
4 plants outside to see the defendant's home. The police determine his name was wanted on a
5 misdemeanor skateboard warrant. The police obtain a search warrant to search the defendant's
6 home and the police find drugs. The Court held the existence of a misdemeanor arrest warrant
7 and a belief the subject may be a guest in the third party's home is an insufficient legal authority
8 to enter a third party's home.

9 In State v. Nortlund, 113 Wn. App. 171 (2000), the Court held in analyzing a warrant
10 for seizure of a computer, the court must closely scrutinize the particularity and probable cause
11 requirements because of First Amendment concerns, noting State v. Berrone, 119 Wn.2d 538
12 (1992).

13 In Personal Restraint of Maxfield, 133 Wn.2d 332, a PUD employee volunteers to the
14 police that the defendant's power usage is high and after further investigation the police obtain
15 a warrant and seize drugs. The Court held there is a privacy interest in public power records. The
16 PUD employees lack statutory authority to disclose records to the police, thus the evidence was
17 suppressed. RCW 42.17.314 authorizes the police authority to demand power records only after
18 setting forth in writing a reasonable suspicion.

19 In State v. Rivera, 76 Wn. App. 519 (1995), the Court held a warrant that authorized the
20 search of any vehicle on the property violates the particularity requirement and is over broad.

21 In State v. Kelly, 52 Wn. App. 581 (1988), the Court held a warrant authorizing the
22 search of a house and a carport is insufficient to support the search of outbuildings. The Court
23 also held that where the affidavit supports probable cause to search outbuildings, it does not then
24 follow that probable cause exists to search the house.

25 In State v. Neidergang, 43 Wn. App. 656, a warrant authorized the search of a residence
26 and curtilage. The police seized drugs from a car parked in front of the residence. The Court held
27 the curtilage is the area in which extends the intimate activity associated with the sanctity of the

1 home and depends upon the circumstances including proximity to the home, use and expectations
2 of privacy. Here the parked car was not within the curtilage as it was set off from the residence
3 by the curb and anybody could have parked it there, thus the evidence was suppressed.

4 In State v. Higby, 26 Wn. App 457 (1980), an affidavit established one sale two weeks
5 prior to the application for warrant. The Court held the affidavit was stale and there is no
6 probable cause.

7 In State v. Larson, 29 Wn. App. 669 (1981), it was held that the affidavit failed to
8 establish reliability of an informant when it states no dates when "recent purchases" of drugs
9 were made, when it alleges that a named person was arrested for marijuana in his possession after
10 leaving defendant's residence within nothing indicating he did not have marijuana on his person
11 when he entered. The warrant was found to be fatally defective.

12 In State v. Rangitsch, 40 Wn. App. 771 (1985), the affidavit asserted that five days
13 previously the defendant appeared to be under the influence of drugs and a witness saw the
14 defendant shoot up. It also contained language that it was the officer's opinion that drug users
15 commonly have drugs in the homes and cars. This was held insufficient to establish probable
16 cause.

17 In State v. Crawley, 61 Wn. App. 29 (1991), the Court held that the good faith exception
18 to the probable cause requirement (adopted by the U. S. Supreme Court in United States v.
19 Leon, 82 L.Ed.2d 677 (1984)) has not been adopted in Washington. In accord is State v. Riley,
20 121 Wn.2d 22 (1993).

21 In State v. Dalton, 73 Wn. App. 132 (1994), the police had unconfirmed statements from
22 unidentified informants the defendant was trafficking drugs. The police also had a package of
23 marijuana addressed to the defendant's post office box with a return address from another
24 person. The Court found this is insufficient to support probable cause for a warrant. The Court
25 noted while there may have been sufficient evidence as the Court concluded the defendant was
26
27

1 about to possess marijuana from his post office box, probable cause to believe the defendant
2 committed a crime on the street does not necessarily rise to probable cause to search his home.

3 In State v. Ibarra, 61 Wn. App. 695 (1991), the affidavit states a citizen informer, known
4 to the police, but who's identity is not revealed to the magistrate, reports it is his or her civic duty
5 that he or she observed cocaine in the defendant's home. The informant had never used but
6 knows what cocaine looks like. The Court held that in reference to the credibility prong, the
7 State's burden of demonstrating an unidentified citizen informant's credibility is heightened due
8 to the danger than the informant is an anonymous trouble maker. Here, nothing established
9 credibility or explanation why the informant was at the crime scene. As to the basis of knowledge
10 prong, the affidavit failed to show who the informer gained knowledge, nor a description, nor
11 how the informer came by the information and the end result was insufficient.

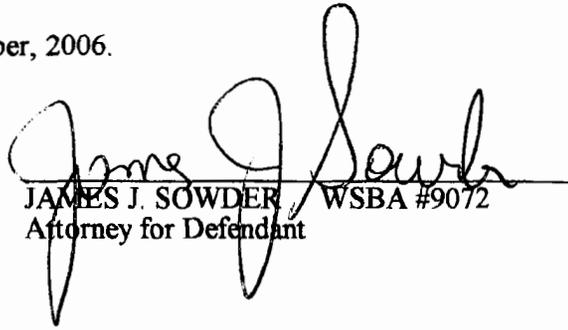
12 In State v. Woodall, 100 Wn.2d 74 (1983), the Court held that a "reliable informant who
13 has proven to be reliable in the past is a mere conclusion" which fails to meet veracity
14 requirements of Aguilar-Spinelli.

15 In State v. Worth, 37 Wn. App. 889 (1984), a warrant authorized search of the premises
16 and the person of the owner of the premises. The police served the warrant and arrested the
17 owner and searched the purse belonging to a non-owner occupant in which the police find a
18 bindle of cocaine. The Court held that the search of the purse exceeded the scope of the warrant.
19 The police may detain occupants not listed in the warrant and may, if justified, search for
20 weapons but may not be more intrusive.

21 In State v. Duncan, 81 Wn. App 70, the search warrant affidavit states that the suspects
22 girlfriend, after a domestic dispute, observes the suspect take marijuana from a storage unit. The
23 Court held that the girlfriend's veracity was not established in that the police did not check her
24 identity, address, employment, residence, family history and the police investigation collaborated
25 only innocuous facts rather than criminal activity.

1 Items which should be suppressed which are outside the scope of the search warrant of
2 the valid parts of the search warrant are: (1) a check on a scanner Officer Harris says was in plain
3 view in the name of Gloria Elloit, (2) the defendant's computer, (3) items described as check
4 "stock", (4) .22 caliber pistol, (5) any other personal property not immediately recognizable as
5 contraband used against the defendant.

6 DATED this 19 day of September, 2006.

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10 JAMES J. SOWDER, WSBA #9072
11 Attorney for Defendant
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05-126

District Court of Clark County
State of Washington

FILED

APR 20 2005

State of Washington
Plaintiff,

VS

DISTRICT COURT
CLARK COUNTY, WASH.

Affidavit for Search Warrant

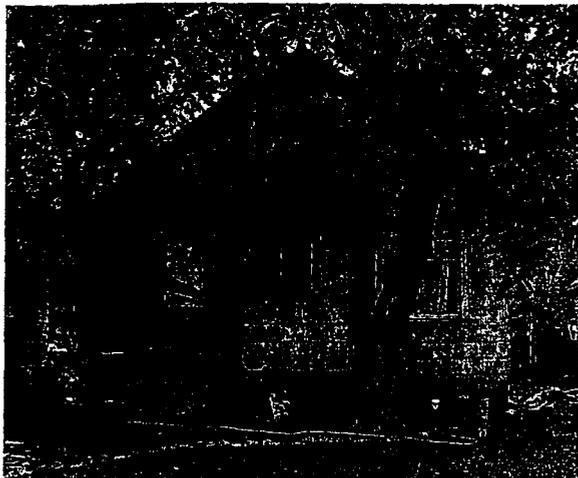
Hyde, Timothy A.
Carstensen, Vicky M.
Jeantet, Dawn R.
Defendant(s)

I, Spencer Harris, being first duly sworn upon oath, hereby depose and say that I have good and sufficient reason to believe that the following wanted persons and items:

- 1) The person of Timothy Allen Hyde, a white male, born December 8, 1961, and who is approximately 6'00 tall weighing approximately 160lbs, with brown hair and brown eyes. Hyde is currently wanted out of Clark County on a felony warrant conditional release violation with the original charge being conspiracy to delivery methamphetamine no bail warrant #021013341.
- 2) Personal property to establish and confirm the identity of the defendant.
- 3) The person of Vicky Marie Carstensen, a white female, born October 4, 1965, and who is approximately 5'2" tall weighing approximately 120lbs, with brown hair and blue eyes. Carstensen is currently wanted out of Clark County on a felony warrant failure to appear charge for possession of methamphetamine no bail warrant #051001534 with additional warrants on file.
- 4) Personal property to establish and confirm the identity of the defendant.
- 5) The person of Dawn Renee Jeantet, a white female, born December 5, 1970, and who is approximately 5'03" tall weighing approximately 140lbs, with brown hair and brown eyes. Jeantet is currently wanted out of Multnomah County on a felony Larceny Theft I warrant #DA2036348 with additional warrants.
- 6) Personal property to establish and confirm the identity of the defendant.
- 7) Personal property to establish dominion and control of the residence.

EXHIBIT A

The above persons and item(s) are on this date, April 12th, 2005 in the following residence described as a two story, wood constructed residence being green in color with green trim, having a brown front door facing south, with the numbers 1216 to the right of the front door on window trim, having the specific address of 1216 W 19th Street, City of Vancouver, Clark County, State of Washington, including the curtilage thereto. See below photo.



Also to be searched are all rooms, and all other parts therein, and to search any storage rooms, and surrounding grounds located on the premises, and all vehicles parked in the driveway, in front of the premises, or nearby or adjacent to the location provided that these vehicles can be connected to the defendants.

Your affiant is informed and aware of this based on the following: Your affiant is an Officer with the City of Vancouver Police Department and has been employed as such for the past five years. Previous to that I was employed as a Custody Officer with the Cowlitz County Corrections for two years. I am currently assigned to the Patrol Division. During my employment as a police officer, I have had over sixty hours of training in criminal investigation and other law enforcement topics. I have also had over 720 hours of training as part of the State of Washington Basic Law Enforcement Academy. I have arrested numerous wanted subjects for various felony and misdemeanor crimes. In addition, I have successfully written and served several search warrants.

In this official capacity, your affiant was made aware of a wanted subject living at the residence of 1216 W 19th St by the name of Vicky M. Carstensen dob 10-4-65. Vicky was said to living at this residence with a male named Tim.

On 4-11-05 myself and other officers attempted contact at the residence. While approaching the residence a white female stepped out the front door matching Carstensen's description, however because of the distance I was unable to determine if it was Carstensen or not. The female saw us and quickly walked back in to the residence.

We attempted contact at the residence for at least ten minutes but no one would answer the door or the phone.

I later checked Vancouver Police EPR system and checked known subjects to have given this address as their residence or associated. During the search I came up with the following names, Rodney Cecil and Dawn Jeantet. This is documented in Vancouver case #05-613.

I checked Rodney Cecil through NCIC as learned that he reported to Washington DOL his address of 1216 W 19th St. A check of Dawn Jeantet, Rodney's girlfriend, showed an active felony Larceny warrant out of Multnomah County for her arrest under warrant #DA2036348.

A check of the Public Utilities Records by the Clark County Sheriff's Office Records Division shows that Lawrence Digman is currently responsible for electrical service to 1216 W 19th ST, Vancouver, WA. However I could not locate a subject by that name through a DOL check or Vancouver Police EPR.

I checked the Clark County Washington assessor's office and learned that Ronald Russell was the listed owner of the residence. I contacted Ronald Russell at his residence and he stated that he was renting 1216 W 19th St to Rodney Cecil and a male named "Tim" since December. Ronald also stated Rodney's girlfriend, "Dawn", lived at the residence.

I asked Ronald the physical and age of Dawn and he stated she was approximately 5'3", medium build, in her thirties. I asked Ronald if he knew Tim's last name and he stated, "Timothy Hittle". A check through NCIC showed Hittle as an aka for Timothy A. Hyde. I showed Ronald a booking photo of Hyde and he stated that was the person who was renting the basement of his house since December 2004 and also confirmed that was the person he knew as Timothy Hittle.

An NCIC check of Timothy Hyde criminal history via Clark County Sheriff's Office Records Division, reveals that he has convictions for manufacturing/delivery controlled substance, Theft I, taking a motor vehicle without permission, and ten gross misdemeanor convictions.

An NCIC check of Vicky Carstensen criminal history via the Clark County Sheriff's Office Records Division reveals felony convictions for Burglary II, Forgery, Burglary II, Assault II, and seven gross misdemeanor convictions.

Based on the foregoing facts, your affiant asks the court for the issuance of a search warrant for the above described place for the items listed.



Officer Spencer Harris
Vancouver Police Department

SUBSCRIBED AND SWORN TO BEFORE ME ON

4/12/05 - 5:15 PM



Judge of the District Court

-- Clark County --

State of Washington

05-126

**District Court of Clark County
State of Washington**

FILED

APR 20 2005

DISTRICT COURT
CLARK COUNTY, WASH.

**State of Washington
Plaintiff,**

VS

**Hyde, Timothy A.
Carstensen, Vicky M.
Jeantet, Dawn R.
Defendant(s)**

SEARCH WARRANT

- 1) The person of Timothy Allen Hyde, a white male, born December 8, 1961, and who is approximately 6'00 tall weighing approximately 160lbs, with brown hair and brown eyes. Hyde is currently wanted out of Clark County on a felony warrant conditional release violation with the original charge being conspiracy to delivery methamphetamine no bail warrant #021013341.
- 2) Personal property to establish and confirm the identity of the defendant.
- 3) The person of Vicky Marie Carstensen, a white female, born October 4, 1965, and who is approximately 5'2" tall weighing approximately 120lbs, with brown hair and blue eyes. Carstensen is currently wanted out of Clark County on a felony warrant failure to appear charge for possession of methamphetamine no bail warrant #051001534 with additional warrants on file.
- 4) Personal property to establish and confirm the identity of the defendant.
- 5) The person of Dawn Renee Jeantet, a white female, born December 5, 1970, and who is approximately 5'03" tall weighing approximately 140lbs, with brown hair and brown eyes. Jeantet is currently wanted out of Multnomah County on a felony Larceny Theft I warrant #DA2036348 with additional warrants.
- 6) Personal property to establish and confirm the identity of the defendant.
- 7) Personal property to establish dominion and control of the residence.

The above persons and item(s) are on this date, April 12th, 2005 in the following residence described as a two story, wood constructed residence being green in color with green trim, having a brown front door facing south, with the numbers 1216 to the right of the front door on window trim, having the specific address of 1216 W. 19th Street, City of Vancouver, Clark County, State of Washington, including the curtilage thereto.

EXHIBIT B



Also to be searched are all rooms, and all other parts therein, and to search any storage rooms, and surrounding grounds located on the premises, and all vehicles parked in the driveway, in front of the premises, or nearby or adjacent to the location provided that these vehicles can be connected to the defendants.

And if you find same, or any part thereof, then bring same and items of identification to identify the owner thereof before the Honorable District Court Judge DT Schriber to be disposed of according to law.

This Search Warrant was issued 4/13/05 at 5:15 PM

by the Honorable Judge DT Schriber

Date and time of execution: 4-19-05 2055

By Spencer Harris

05-126

State of Washington
District Court of Clark County

State of Washington,
Plaintiff,

Vs.

Hyde, Timothy A.
Carstensen, Vicky M.
Jeantet, Dawn R.
Defendants

FILED

APR 20 2005

DISTRICT COURT
CLARK COUNTY, WASH.

Search Warrant Return

I, Officer Spencer Harris of the Vancouver Police Department, executed a Search warrant on April 19th, 2005 at 8:55pm, which was issued by Judge Vernon Schreiber on April 12th, 2005 at 5:15pm which directed that: a two story wood constructed residence being green in color with green trim, having a brown front door facing south, with the numbers 1216 to the right of the front door on the window trim, having the specific address of 1216 W. 19th Street, City of Vancouver, Clark County, State of Washington, including the curtilage thereto.

Be searched and the attached items seized. Identified as items 1-17.

In executing said warrant, I have returned same and property seized before the Honorable Vernon Schreiber on April 20th, 2005 at 3:30pm.

Signed



Officer Spencer Harris
Vancouver Police Department

EXHIBIT C

VANCOUVER POLICE DEPARTMENT
PROPERTY INTAKE-SUBMISSION FORM

F - FOUND K - SAFEKEEPING E - EVIDENCE

Case Number: _____

Item # <u>1</u>	Prop Type	Qty.	NCIC	Article Type <u>FIREARM</u>
Brand <u>Rohm</u>	Model		Serial Number <u>719577</u>	
Owner Applied Number		Color		Value \$
Caliber <u>22</u>	Action Type <u>REVOLVER</u>	Drug Weight	Drug Weight Type OZ LB GR KG	

Description or Identifiers
SZ WALL cabinet by MARTIN
BASEMENT Released to VED ALI @ SCENE

Item # <u>2</u>	Prop Type	Qty.	NCIC	Article Type <u>DRUG PAR</u>
Brand	Model		Serial Number	
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description or Identifiers
TABLE in basement by MARTIN
SCALE below baggies

Item # <u>3</u>	Prop Type	Qty.	NCIC	Article Type <u>DRUGS</u>
Brand	Model		Serial Number	
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight <u>3.7</u>	Drug Weight Type <u>(OZ)</u> LB <u>(GR)</u> KG	

Description or Identifiers
baggie w/ white crystal material, located with
DRUG PAR by MARTIN
Test pos as math by McHann

Item # <u>4</u>	Prop Type	Qty.	NCIC	Article Type <u>RESIDENT ID</u>
Brand	Model		Serial Number	
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description or Identifiers
WA. ID CARD for HYDE, Timothy A
located in brown briefcase next to DRUGS and PARA
in basement by MARTIN

VANCOUVER POLICE DEPARTMENT
PROPERTY INTAKE-SUBMISSION FORM

F - FOUND K - KEEPING E - EVIDENCE

Case Number: _____

Item # <u>5</u>	Prop Type	Qty.	NCIC	Article Type <u>printed check</u>
Brand		Model		Serial Number
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	
Description or Identifiers <u>printed check bearing name of Gilbert A. Elliot</u> <u>from printer in Cecil's bedroom by Sgt. Chylack</u>				
Item # <u>6</u>	Prop Type	Qty.	NCIC	Article Type <u>Res ID</u>
Brand		Model		Serial Number
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	
Description or Identifiers <u>Res ID for 1400 from SW bedroom by Nichols</u>				
Item # <u>7</u>	Prop Type	Qty.	NCIC	Article Type <u>check book</u>
Brand		Model		Serial Number
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	
Description or Identifiers <u>blank check book from SW bedroom near computer</u> <u>by Nichols</u>				
Item # <u>8</u>	Prop Type	Qty.	NCIC	Article Type <u>computer</u>
Brand <u>Dell</u>		Model <u>P40L</u>		Serial Number <u>CN-26M199-12961-292-7497</u>
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	
Description or Identifiers <u>Dell Laptop from SW bedroom by Nichols with</u> <u>Scan disc external media</u>				

VANCOUVER POLICE DEPARTMENT
PROPERTY INTAKE-SUBMISSION FORM

F - FOUND K - KEEPING E - EVIDENCE

Case Number: _____

Item # 9	Prop Type E	Qty.	NCIC	Article Type CD
Brand		Model		Serial Number
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	
Description of Identifiers CDs w/ Digital Photos				

Item # 10	Prop Type E	Qty.	NCIC	Article Type A\$ in USC
Brand		Model		Serial Number
Owner Applied Number		Color		Value \$ 195
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description of Identifiers \$195 in USC TAKE FROM THE WALLET OF TIM HYDE BY ORZ HARRIS.				
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Item # 11	Prop Type E	Qty. 3	NCIC	Article Type QUEST CARDS
Brand		Model		Serial Number
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description of Identifiers FROM THE WALLET OF TIM HYDE BY ORZ HARRIS				
---	--	--	--	--

Item # 12	Prop Type E	Qty.	NCIC	Article Type DRUG PAR.
Brand		Model		Serial Number
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description of Identifiers BAGGIES w/ crystal residue 3 return to FROM THE DRESS SHIRT POCKET OF VERA MCLAUGHLIN FOUND BY HARRIS				
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VANCOUVER POLICE DEPARTMENT
PROPERTY INTAKE-SUBMISSION FORM

F - FOUND K - KEEPING E - EVIDENCE

Case Number: _____

Item # 13	Prop Type E	Qty.	NCIC	Article Type Drugs
Brand			Model	Serial Number
Owner Applied Number			Color	Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description or Identifiers
 4 white pills from the right
 shirt pocket of Kevin McLaughlin by Harris

Item # 14	Prop Type E	Qty.	NCIC	Article Type Drugs
Brand			Model	Serial Number
Owner Applied Number			Color	Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description or Identifiers
 Small plastic baggie of suspected marijuana found
 in the left shirt pocket of Kevin McLaughlin by
 Harris

Item # 15	Prop Type E	Qty.	NCIC	Article Type Drugs
Brand			Model	Serial Number
Owner Applied Number			Color	Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description or Identifiers
 Baggie of white crystal found in the upstairs
 bedroom by Harris. Frank tested pos. by
 OIR McLaughlin

Item # 16	Prop Type E	Qty. 2	NCIC	Article Type Glass Pipes
Brand			Model	Serial Number
Owner Applied Number			Color	Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description or Identifiers
 Located in the upstairs bedroom by Harris

VANCOUVER POLICE DEPARTMENT
PROPERTY INTAKE-SUBMISSION FORM

F - FOUND K - SAFEKEEPING E - EVIDENCE

Case Number: _____

Item # 17	Prop Type E	Qty.	NCIC	Article Type Metal PIPE
Brand		Model		Serial Number
Owner Applied Number		Color Blue		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description of Identifiers

Found in the upstairs bedroom by the
ceiling wall

Item #	Prop Type	Qty.	NCIC	Article Type
Brand		Model		Serial Number
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description of Identifiers

Item #	Prop Type	Qty.	NCIC	Article Type
Brand		Model		Serial Number
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description of Identifiers

Item #	Prop Type	Qty.	NCIC	Article Type
Brand		Model		Serial Number
Owner Applied Number		Color		Value \$
Caliber	Action Type	Drug Weight	Drug Weight Type OZ LB GR KG	

Description of Identifiers

05-162

V05-7533

District Court of Clark County
State of Washington

State of Washington
Plaintiff,

Affidavit for Search Warrant

FILED
MAY 20 2005
DISTRICT COURT
CLARK COUNTY, WASH.

Cecil, Rodney G
7-01-62
1216 W 19th St
Vancouver, WA. 98660

Defendant,

I, Officer Spencer Harris, ID # 1300, being first duly sworn upon oath, hereby depose and say that I have good and sufficient reason to believe that the following goods to wit;

- 1) Evidence of the crime of Forgery, RCW 9A.60.020 including but not limited to the following; financial or record documents indicating the personal information belonging to Gloria-A. Elliott, to include date of birth, social security number, address, as well as other names of possible victims of forgery contained with in the computer and its system.
- 2) Evidence of financial records or documents of any nature showing personal profit from the noted fraud activity; and any evidence indicative of the source of stolen property that is in violation of state statues and to have said items forensically examined at a later dated by investigators assigned to the Vancouver Police Computer Forensic Unit and any other items of evidence related to the crime of Forgery, Financial Fraud-manufacturing of payment instruments and to seize the said items and make return to the magistrate.
- 3) Blank templates used to manufacture fraudulent checks and identification.
- 4) Any documentation of ownership of the computer and information held within it's hard drive and or memory.

EXHIBIT D

The above item(s) are on this date, May 11, 2005, in the possession of the above named defendants computer described as a Dell Laptop computer bearing serial #CN-06M199-12961-292-7497 and an external media storage device attached to computer, this computer is currently in the control of the City of Vancouver Police Department, being stored at 300 East 13th Street, City of Vancouver, State of Washington.

Affiant Information:

Your affiant is informed and aware of this based on the following: Your affiant is an Officer with the City of Vancouver Police Department and has been employed as such for the past five years. Previous to that I was employed as a Custody Officer with the Cowlitz County Corrections for two years. I am currently assigned to the Patrol Division Neighborhood Response Team. During my employment as a police officer, I have had over 100 hours of training in criminal investigation and other law enforcement topics to include but not limited to forgery, fraud, and identity theft. I have also had over 720 hours of training as part of the State of Washington Basic Law Enforcement Academy. I have arrested numerous subjects for forgery, theft, identity theft, and various other property crimes.

I know based on training and personal experience in using computer systems in my capacity as a police officer and based on conversations with other persons who have detailed knowledge of computer systems, that persons who use computers often save information or create documents to storage devices. I know from my personal experience and talking to investigators who have been involved in similar investigations that examination of seized computer systems revealed data or information that connected system/storage devices to criminal activity.

Based on my training and my experience in working fraud and/or theft investigations as a police officer, I am aware of the fact that computer systems can be used to commit economic crimes involving the online transfer of money through bank accounts, counterfeiting of checks, identification and other official documents. These documents can be created through the use of computer software programs. The computer systems can also store information in internal or external storage devices such as fixed disks, hard disks, floppy disks, tape drives, or other memory storage devices.

I know from training and experience as a police officer that suspects who commit crimes related to forgery and fraud often times use such forged and/or counterfeit documents to purchase goods or services for financial gain. These goods and services can include but not be limited to such items as food, vehicles, personal property, or motel-hotel accommodations. These items are then retained by the suspect for personal use, sold for cash, or traded for illegal drugs. Receipts from such purchases can sometimes be found on the persons of suspects engaged in this activity or at the residences of persons or in the vehicles of the persons associated with this activity.

I know from my training and experience that person involved in crimes of fraud, identity theft and credit card fraud keep bank records, receipts, credit card applications, credit cards, and other financial records in paper form and in computer storage devices. I know that all these records can show deposits made and purchases and withdrawals made. I know that these financial records are of evidentiary value and can show if a person is living above their income level. I know from my training and experience that pay stubs and ledgers are of evidentiary value as they can also show if a person is living above their income level.

PROBABLE CAUSE INFORMATION:

My investigation in this case revealed the following:

On April 19, 2005 at 2055hrs, a search warrant was executed at the residence of 1216 W 19th Street which was written for three wanted subjects with felony warrants believed to be residing at 1216 W 19th Street.

This residence is rented by Rodney C. Cecil and while inside the residence a check was seen on a scanner in plain view with the name of Gloria A. Elliott. This check showed the payor of the check to be "Union Bank of California" written to Gloria A. Elliott 3510 E Evergreen Blvd Vancouver, WA 98661 written for the amount of \$2569.00. The check and scanner was observed inside Cecil's bedroom.

During the execution of the warrant the check and a Dell Laptop computer bearing serial #CN-06M199-12961-292-7497 was taken for further investigation. This computer was found attached to the scanner which had the check on it.

On 5-4-05 I contacted Gloria Elliott in regards to follow up for evidence collected at the above stated search warrant. I asked Gloria if any checks or personal information had been stolen lately. Gloria advised that a book of her US Bank checks, US Bank debit card, and her pin number were stolen from the glove box of her red 1986 Ford Mustang a few weeks ago. I asked Gloria if she knew a Rodney Cecil. She advised she knew "Rod" and that he had actually helped her move to her new address of 3510 E Evergreen Blvd by using his Blazer. Gloria advised she met Rod through Task where they were in intensive outpatient treatment two to three days a week together. Gloria advised she hasn't seen Rodney for approx three weeks. Gloria then gave me the physicals of Rodney and the location of his residence.

Gloria advised she hadn't called police to report the theft and only called her bank to report it.

I asked Gloria if she had every received a check from a Union Bank of California and she stated "no". I advised Gloria that we had recovered a Union Bank of California check for \$2569.00 written to Gloria S. Elliott 3510 E Evergreen Blvd Vancouver, WA 98661. Gloria stated that it had to be a fake check and that she had never had any knowledge of a Union Bank of California.

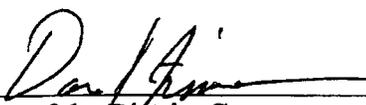
I believe that there will be further fraudulent documentation in the name Gloria A. Elliot on the computer as well as documents that include more possible victims of check forgery.

Based on the foregoing facts, your Affiant asks the court for the issuance of a search warrant for the above-described computer for the items listed and, if any of the above listed items are found, authorize seizure of same.



Affiant, Officer Spencer Harris, Vancouver Police Department

Subscribed and sworn to before me this 11 day of May, 2004.



Judge of the District Court
Clark County
State of Washington

District Court of Clark County
State of Washington

State of Washington
Plaintiff,

VS

Cecil, Rodney G
Defendant,

FILED

MAY 20 2005

DISTRICT COURT
CLARK COUNTY, WASH.

SEARCH WARRANT

State of Washington,
Clark County,

The people of the State of Washington, to any Sheriff, Police Officer, or Peace Officer in Clark County: Proof by written affidavit, under oath, made in conformity with the State of Washington Criminal Rules for Justice Court, rule 2.3, having been made to me this day by Spencer Harris of the Vancouver Police Dept, that there is probable cause for the issuance of a search warrant on the grounds set forth in the State of Washington Criminal Rules for Justice Court, rule 2.3, Section (c).

The above item(s) are on this date, May 11, 2005, in the possession of the above named defendants computer described as a Dell Laptop computer bearing serial #CN-06M199-12961-292-7497 and an external media storage device attached to computer, this computer is currently in the control of the City of Vancouver Police Department, being stored at 300 East 13th Street, City of Vancouver, State of Washington.

- 1) Evidence of the crime of Forgery, RCW 9A. 60.020 including but not limited to the following; financial or record documents indicating the personal information belonging to Gloria A. Elliott, to include date of birth, social security number, address, as well as other names of possible victims of forgery contained with in the computer and its system.
- 2) Evidence of financial records or documents of any nature showing personal profit from the noted fraud activity; and any evidence indicative of the source of stolen property that is in violation of state statues and to have said items forensically examined at a later dated by investigators assigned to the Vancouver Police Computer Forensic Unit and any other items of evidence related to the crime of Forgery, Financial Fraud—manufacturing of payment instruments and to seize the said items and make return to the magistrate.

EXHIBIT E

- 3) Blank templates used to manufacture fraudulent checks and identification.
- 4) Any documentation of ownership of the computer and information held within it's hard drive and or memory.

And if you find same, or any part thereof, then bring same and items of identification to identify the owner thereof before the Honorable District Court Judge O. Zimmerman to be disposed of according to law.

This Search Warrant was issued 5/11/05 at 7:02 PM

by the Honorable Judge D. J. [Signature]

Date and time of execution: 5/11/05 1513

By J. N. [Signature] . B10

05-162

**District Court of Clark County
State of Washington**

**State of Washington
plaintiff,**

VS

**Cecil, Rodney G
07-01-62
1216 W 19th St.
Vancouver, WA 98664
Defendant(s)**

**FILED
MAY 20 2005
DISTRICT COURT
CLARK COUNTY, WASH.**

Search Warrant Return

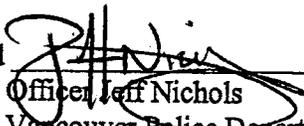
I, Officer Jeff Nichols, of the Vancouver Police Department, executed a search warrant on May 17th at 1513 hours, which was issued by Judge D. Zimmerman on May 11th 2005 at 1902 hours, which directed that:

1. Dell Laptop computer SN#CN-06M199-12961-292-7497
2. External Storage media

be searched and the following items seized:

To be determined during investigative search of internal data by Vancouver Police Computer Forensic Unit.

In executing said warrant, I have returned same, residence identification and property before the Honorable Judge _____ on _____ at _____ hours.

Signed 

Officer Jeff Nichols
Vancouver Police Department

EXHIBIT F

APPENDIX "B"

**FINDING OF FACT AND CONCLUSIONS OF LAW
ON DEFENDANT'S MOTION TO SUPPRESS**

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FILED

FEB 23 2007

Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

v.

RODNEY GLYNN CECIL,

Defendant.

No. 06-1-01571-1

~~STATE'S PROPOSED~~ FINDINGS
OF FACT AND CONCLUSIONS
OF LAW ON DEFENDANT'S
MOTION TO SUPPRESS

rd,

THIS MATTER, having come duly and regularly before the Court on the 2nd day of February, 2007 for hearing pursuant to CrR 3.6 on Defendant's Motion to Suppress, Plaintiff State of Washington appearing by and through Gene A. Pearce, Deputy Prosecuting Attorney, Defendant appearing in person and with his attorney James J. Sowder, and the Court having heard and considered the testimony of witnesses, evidence presented, and the statements and arguments of counsel, makes the following:

FINDINGS OF FACT

1. On April 12, 2005 Vancouver police officer Spencer Harris submitted an affidavit for a search warrant to search for three subjects, Vickie Carstensen, Dawn Jeantet, and Timothy Hyde, at 1216 W. 19th Street, Vancouver, Clark County,

~~STATE'S PROPOSED~~ FINDINGS
OF FACT AND CONCLUSIONS
OF LAW ON DEFENDANT'S
MOTION TO SUPPRESS – Page 1 of 6

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

SR
SM

1 Washington. Officer Harris indicated that these three individuals had outstanding felony
2 warrants for their arrest. Clark County District Court Judge Vernon Schreiber
3 authorized the warrant.

4 2. As it relates to Vickie Carstensen, Officer Harris indicated in the affidavit that
5 he was "made aware" that she was living at the residence but does not identify the
6 source of that information. He also states that he saw a woman who "resembled"
7 Carstensen when he went to the residence on April 11, 2005.

8 3. As it relates to Dawn Jeantet, Officer Harris indicates in the affidavit that he
9 checked other Vancouver police reports that lists her address as the target address and
10 that she was the girlfriend of the defendant. However, Officer Harris does not articulate
11 the specifics of this information and how it was obtained.

12 4. As it relates to Timothy Hyde, Officer Harris indicates in the affidavit that he
13 spoke with the owner of the target residence, Ronald Russell, who confirmed that he
14 rents the residence to the defendant and to Timothy Hyde. Mr. Russell also identified
15 Timothy Hyde from a photo that was shown to him by Officer Harris.

16 5. There was information that Vancouver Police Officer Acee conducted a prior
17 search of the target residence the day prior to Officer Harris submitting his affidavit to
18 Judge Schreiber. Officer Acee also submitted his report of his search less than twenty
19 four hours prior to Officer Harris submitting his affidavit to Judge Schreiber. Officer
20 Harris did not work with Officer Bryan Acee during that time and does not recall ever
21 talking to Officer Acee about his prior search.

22 6. There was information that Vancouver Police Sergeant Mike Chylack, Clark
23 County Drug Court liaison, was at the target residence approximately two weeks prior to
24 the search to conduct a compliance check of the defendant, who was a participant in
25 the Clark County Drug Court program. Sgt. Chylack indicated that he was only in the
26

27 ~~STATE'S PROPOSED FINDINGS~~
OF FACT AND CONCLUSIONS
OF LAW ON DEFENDANT'S
MOTION TO SUPPRESS – Page 2 of 6

CLARK COUNTY PROSECUTING ATTORNEY
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VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

1 defendant's room and was unaware of who else may have been in the residence. Even
2 though Sgt. Chylack indicates that he told Officer Harris about this prior compliance
3 check, Officer Harris does not recall talking to him about it.

4 7. On April 19, 2005 Vancouver Police executed the search warrant at 1216 W .
5 19th Street, Vancouver, Clark County, Washington.

6 8. Upon execution of the search warrant, Sgt. Chylack went into the defendant's
7 bedroom looking for any of the three wanted persons. While in the bedroom Sgt .
8 Chylack observed a check ^{what appeared to be} to Gloria Elliott laying face up on a printer that was *ok*
9 connected to a laptop computer with an attached external thumb-drive. Also observed
10 next to the computer was blank check stock paper. Sgt. Chylack was able to observe
11 these items without having to manipulate them.

12 9. Because of his contact with the defendant in the Clark County Drug Court
13 program, Sgt. Chylack was aware of the defendant's prior felony convictions for Identity
14 Theft and Forgery. He ~~was also aware of the people with whom the defendant~~ *ok*
15 ~~associated.~~ Sgt. Chylack was not aware of any connection between the defendant and
16 the name of the person on the check, Gloria Elliott, ^{and} Suspect ^{ed} ~~that~~ that the defendant was *ok*
17 involved in fraud related activities. ^{The} check, computer, and blank check stock were *ok*
18 seized.

19 10. As a participant of the drug court program the defendant signed a contract
20 that permitted a search of his residence when requested by a drug court officer. There
21 is no evidence that Sgt. Chylack requested to search defendant's residence pursuant to
22 the drug court contract.

23 11. Vancouver Police submitted an affidavit and obtained a search warrant for
24 the laptop computer and attached external thumb-drive. ~~The defendant did not~~ *ok*
25 ~~challenge this second affidavit or search warrant.~~

26
27 ~~STATE'S PROPOSED FINDINGS~~
OF FACT AND CONCLUSIONS
OF LAW ON DEFENDANT'S
MOTION TO SUPPRESS – Page 3 of 6

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VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

DISPUTED FACTS

1. The check-like document was not immediately recognizable as contraband. The court ~~concludes~~^{finds} that it was for the reasons stated in Conclusion of Law No. 7 and Finding of Fact No. 9.

RR.

CONCLUSIONS OF LAW

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1. The Court has proper venue and jurisdiction to hear the above-entitled matter.
2. The affidavit submitted by Officer Harris did not support probable cause to search for Vickie Carstensen nor Dawn Jeantet. However, since the owner of the residence indicated that he did rent to Timothy Hyde and he was able to identify him from viewing a photograph, probable cause was established to search for Timothy Hyde.
3. The search of defendant's bedroom was not a drug court search as Sgt. Chylack did not request to search the bedroom pursuant to the drug court contract.
4. In regard to any *Franks v. Delaware* issue, there is no evidence that Officer Harris deliberately made any misrepresentations or omissions nor did he recklessly disregard the possibility that material information existed. There is no evidence that Officer Harris would have found Officer Acee's report nor is he expected to check for a report every minute up to the presentation of the affidavit. As far as the earlier drug court compliance check by Sgt. Chylack, it was made clear that Sgt. Chylack was only in defendant's bedroom and that he was not aware if anyone else was in the residence. His information would not negate probable cause. There is no basis on *Franks v. Delaware* grounds to void the search.
5. The search warrant to search for Timothy Hyde at 1216 W. 19th Street, Vancouver, Clark County, Washington was valid and lawful.
6. A plain view search is an exception to the search warrant requirement under the Fourth Amendment to the United States constitution and Article I, Section 7 of the Washington constitution.
7. This Court finds the testimony of Sgt. Chylack credible and persuasive. He entered the defendant's bedroom under lawful authority of a valid search warrant. He

~~STATE'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW ON DEFENDANT'S MOTION TO SUPPRESS~~ - Page 4 of 6

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

1 was looking for people in a room and in areas where people might be found. He was in
2 the process of looking in the defendant's room when he observed, in plain view, a check
3 to Gloria Elliott, face up, on a printer that was attached to a laptop computer. Gloria
4 Elliott was not associated with the residence nor was she associated with the
5 defendant. There was no reason why that check needed to be there. In addition, Sgt.
6 Chylack observed blank check stock in plain view next to the computer. Based upon
7 Sgt. Chylack's observations along with his knowledge of the defendant's criminal
8 history, he had reason to believe, and did believe, that he was observing evidence of a
9 crime. Sgt. Chylack lawfully seized the check and blank check stock paper which were
10 in plain view.

11 8. Since the printer containing the check was attached to the laptop computer it
12 would be logical and reasonable to assume that the printed check information came
13 directly from the computer. Therefore, there was probable cause for the warrantless
14 and temporary seizure of the computer until a search warrant could be obtained. This
15 court rules that the defendant's privacy rights regarding the computer were not severely
16 impacted when the computer was temporarily seized until a search warrant was
17 obtained. The reviewing magistrate found probable cause to search the laptop
18 computer.

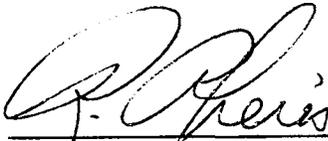
19 9. Because the search warrant to look for Timothy Hyde was valid and Sgt.
20 Chylack was lawfully in an area where the seized items were observed in plain view, the
21 "mere evidence" issue raised in Defendant's second amended motion to suppress is
22 irrelevant.

23 10. Defendant's motion to suppress is denied.

24 DONE IN OPEN COURT this 23rd day of February, 2007.

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27 ~~STATE'S PROPOSED~~ FINDINGS
OF FACT AND CONCLUSIONS
OF LAW ON DEFENDANT'S
MOTION TO SUPPRESS - Page 5 of 6

CLARK COUNTY PROSECUTING ATTORNEY
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(360) 397-2261 (OFFICE)
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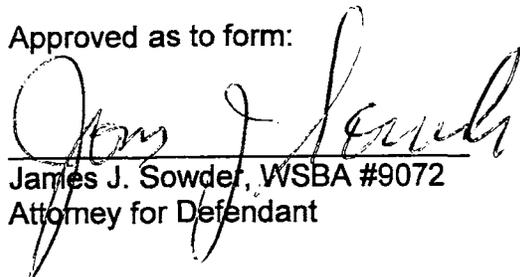


THE HONORABLE ROBERT A. LEWIS
JUDGE OF THE SUPERIOR COURT

PRESENTED BY:


Gene A. Pearce, WSBA #32792

Approved as to form:


James J. Sowder, WSBA #9072
Attorney for Defendant

~~STATE'S PROPOSED FINDINGS~~
OF FACT AND CONCLUSIONS
OF LAW ON DEFENDANT'S
MOTION TO SUPPRESS – Page 6 of 6

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

APPENDIX "C"

COURT'S INSTRUCTIONS TO THE JURY

33

FILED

FEB 06 2007

3:00 pm

Sherry W. Parker, Clerk, Clark Co.

Elizabeth Miller - deputy clerk

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

STATE OF WASHINGTON,

Plaintiff,

v.

RODNEY GLYNN CECIL,

Defendant.

No. 06-1-01571-1

COURT'S INSTRUCTIONS TO THE JURY

Robert H. Stary

SUPERIOR COURT JUDGE

6 February 2007

DATE

62

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses, stipulations, and the exhibits that I have admitted, during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

INSTRUCTION NO. 2

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

INSTRUCTION NO. 3

The defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

INSTRUCTION NO. 4

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 5

The defendant is not compelled to testify, and the fact that the defendant has not testified cannot be used to infer guilt or prejudice him in any way.

INSTRUCTION 6

Traffic means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense or otherwise dispose of the property of another person.

INSTRUCTION NO. 7

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

INSTRUCTION NO. 8

A person knows or acts knowingly or with knowledge when he or she is aware of a fact, circumstance or result which is described by law as being a crime, whether or not the person is aware that the fact, circumstance or result is a crime.

If a person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by law as being a crime, the jury is permitted but not required to find that he or she acted with knowledge.

Acting knowingly or with knowledge also is established if a person acts intentionally.

INSTRUCTION 9

The term "means of identification" means information or an item that is not describing finances or credit but is personal to or identifiable with an individual or other person, including: a current or former name of the person, telephone number, an electronic address, or identifier of the individual or a member of his or her family, including the ancestor of the person; information relating to a change in name, address, telephone number, or electronic address or identifier of the individual or his or her family; a social security, driver's license, or tax identification number of the individual or a member of his or her family; and other information that could be used to identify the person, including unique biometric data.

INSTRUCTION / d

The term "financial information" means any of the following information identifiable to the individual that concerns the amount and conditions of an individual's assets, liabilities, or credit: account numbers and balances; transactional information concerning an account; and Codes, passwords, social security numbers, tax identification numbers, driver's license or permit numbers, state identicard numbers issued by the department of licensing, and other information held for the purpose of account access or transaction initiation.

INSTRUCTION NO. 11

To convict the defendant of the crime of trafficking in stolen property in the first degree as charged in Count 1, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That between January 25, 2004 and May 31, 2005, the defendant trafficked in stolen property;
2. That the defendant knew that the property was stolen at the time;
3. That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 12

Theft means to wrongfully obtain or exert unauthorized control over the property or services of another, or the value thereof, with intent to deprive that person of such property or services.

INSTRUCTION NO. 12A

“Stolen property” means property that has been obtained by theft, robbery, or extortion.

INSTRUCTION NO. 13

A person commits the crime of Identity Theft in the Second Degree when he or she knowingly obtains, possesses, uses or transfers a means of identification or the financial information of another person, living or dead, with the intent to commit, or to aid or abet any crime.

To convict the defendant of the crime of Identity Theft in the Second Degree as charged in Count 2, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That between April 18, 2005 and May 17, 2005, the Defendant knowingly obtained, possessed, used, or transferred a means of identification or financial information of another person, to-wit: Jerry Hofmann, whether that person is living or dead;
2. That the Defendant did so with the intent to commit, or to aid or abet any crime;
3. That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 15

To convict the defendant of the crime of Identity Theft in the Second Degree as charged in Count 3, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That between April 17, 2005 and May 17, 2005, the Defendant knowingly obtained, possessed, used, or transferred a means of identification or financial information of another person, to-wit: Gary Lass, whether that person is living or dead;
2. That the Defendant did so with the intent to commit, or to aid or abet any crime;
3. That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 16

To convict the defendant of the crime of Identity Theft in the Second Degree as charged in Count 4, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That between January 25, 2004 and May 17, 2005, the Defendant knowingly obtained, possessed, used, or transferred a means of identification or financial information of another person, to-wit: Barbara Lary, whether that person is living or dead;
2. That the Defendant did so with the intent to commit, or to aid or abet any crime;
3. That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 17

To convict the defendant of the crime of Identity Theft in the Second Degree as charged in Count 5, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That between January 25, 2004 and May 14, 2005, the Defendant knowingly obtained, possessed, used, or transferred a means of identification or financial information of another person, to-wit: Cheryl Michaels, whether that person is living or dead;
2. That the Defendant did so with the intent to commit, or to aid or abet any crime;
3. That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 18

A person commits the crime of forgery when, with intent to injure or defraud, he falsely makes, completes or alters a written instrument or offers, disposes of or puts off as true, a written instrument which he or she knows to be forged.

INSTRUCTION NO. 19

To convict the defendant of the crime of forgery as charged in Count 6, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That between April 14, 2005 and May 17, 2005, the defendant falsely made or completed or altered a written instrument, to wit: Bank of America check dated April 14, 2005, in the amount of \$1,650.98, made payable to Gloria A. Elliott;

(2) That the defendant acted with intent to injure or defraud; and

(3) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 20

To convict the defendant of the crime of forgery as charged in Count 7, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That between April 16, 2005 and May 17, 2005, the defendant falsely made or completed or altered a written instrument, to wit: Union Bank of California check dated April 16, 2005, in the amount of \$2,569.00, made payable to Gloria A. Elliott;

(2) That the defendant acted with intent to injure or defraud; and

(3) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 21

To convict the defendant of the crime of forgery as charged in Count 8, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That between April 17, 2005 and May 17, 2005, the defendant falsely made or completed or altered a written instrument, to wit: Check No. 69813435, dated April 17, 2005, in the amount of \$1,474.00, made payable to Gloria A. Elliott;

(2) That the defendant acted with intent to injure or defraud; and

(3) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 22

Written instrument means any paper, document or other instrument containing written or printed matter or its equivalent.

INSTRUCTION NO. 23

Falsely make means to make or draw a complete or incomplete written instrument which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, the maker did not authorize the making or drawing thereof.

INSTRUCTION NO. 24

Falsely complete means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it.

INSTRUCTION NO. 25

Falsefully alter means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner.

INSTRUCTION NO. 26e

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and verdict forms for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form(s) to express your decision. The presiding juror must sign the verdict form(s) and notify the bailiff. The bailiff will bring you into court to declare your verdict.

INSTRUCTION NO. 27

If you find the defendant guilty of Trafficking in Stolen Property in the First Degree, you must now determine whether any of the following aggravating circumstances exist:

- (1) At the time of the act, the current offense was a major economic offense or series of offenses, so identified by a consideration of the current offense involved multiple victims or multiple incidents per victim.
- (2) At the time of the act, the current offense was a major economic offense or series of offenses, so identified by a consideration of the current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time.

The State has the burden of proving the existence of an aggravating circumstance beyond a reasonable doubt. In order for you to find that there is an aggravating circumstance in this case, you must unanimously agree that the aggravating circumstance has been proved beyond a reasonable doubt.

INSTRUCTION NO. 28

You will also be given special verdict forms for the crime of Trafficking in Stolen Property charged in count 1. If you find the defendant not guilty of this crime, do not use the special verdict forms. If you find the defendant guilty of this crime, you will then use the special verdict forms and fill in the blank with the answer "yes" or "no" according to the decision you reach. In order to answer the special verdict forms "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer.

APPENDIX "D"

SECOND AMENDED INFORMATION

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FILED

FEB 05 2007

Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,
Plaintiff,
v.
RODNEY GLYNN CECIL
Defendant.

SECOND AMENDED INFORMATION

No. 06-1-01571-1
(VPD 05-7533)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

COUNT 01 - TRAFFICKING IN STOLEN PROPERTY IN THE FIRST DEGREE - 9A.08.020(3)/9A.82.050(1)

That he, RODNEY GLYNN CECIL, in the County of Clark, State of Washington, between January 25, 2004 and ~~May 31~~, 2005 did knowingly traffic in stolen property, to wit: personal identification and financial identification; contrary to Revised Code of Washington 9A.82.050.

Further, the State of Washington notifies the Defendant that it is seeking a sentence above the standard sentencing range based upon the following aggravating circumstance(s):

The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

- (i) The current offense involved multiple victims or multiple incidents per victim; or
- (iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; RCW 9.94A.535(3)(d).

COUNT 02 - IDENTITY THEFT IN THE SECOND DEGREE - 9A.08.020(3)/9.35.020(3)

That he, RODNEY GLYNN CECIL, in the County of Clark, State of Washington, between April 18, 2005 and May 17, 2005 did knowingly obtain, possess, use or transfer a means of identification or financial information of another person, to-wit: Jerry Hoffman, with the intent to commit or to aid the commission of any crime; contrary to Revised Code of Washington 9.35.020(3).

COUNT 03 - IDENTITY THEFT IN THE SECOND DEGREE - 9A.08.020(3)/9.35.020(3)

That he, RODNEY GLYNN CECIL, together and each of them, in the County of Clark, State of Washington, between April 17, 2005 and May 17, 2005 did knowingly obtain, possess, use or transfer a means of identification or financial information of another person, to-wit: Gary Lass, with the intent to commit or to aid the commission of any crime; contrary to Revised Code of Washington 9.35.020(3).

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1 **COUNT 04 - IDENTITY THEFT IN THE SECOND DEGREE - 9.35.020(3)**

2 That he, RODNEY GLYNN CECIL, in the County of Clark, State of Washington, between
3 January 25, 2004 and May 17, 2005 did knowingly obtain, possess, use or transfer a means of
4 identification or financial information of another person, to-wit: Barbara Larry, with the intent to
commit or to aid the commission of any crime; contrary to Revised Code of Washington
9.35.020(3).

5 **COUNT 05 - IDENTITY THEFT IN THE SECOND DEGREE - 9.35.020(3)**

6 That he, RODNEY GLYNN CECIL, in the County of Clark, State of Washington, between
7 January 25, 2004 and May 14, 2005 did knowingly obtain, possess, use or transfer a means of
8 identification or financial information of another person, to-wit: Cheryl Michaels, with the intent to
commit or to aid the commission of any crime; contrary to Revised Code of Washington
9.35.020(3).

9 **COUNT 06 - FORGERY - 9A.60.020/9A.60.020(1)(a)(b)**

10 That he, RODNEY GLYNN CECIL, in the County of Clark, State of Washington, between April
11 14, 2005 and May 17, 2005 with intent to injure or defraud did falsely make, complete or alter a
12 written instrument described as follows, to-wit: Bank of America check dated April 14, 2005, in
the amount of \$1,650.98, made payable to Gloria A. Elliott, contrary to Revised Code of
Washington 9A.60.020 (1)(a) and/or (1)(b).

13 **COUNT 07 - FORGERY - 9A.60.020/9A.60.020(1)(a)(b)**

14 That he, RODNEY GLYNN CECIL, in the County of Clark, State of Washington, between April
15 16, 2005 and May 17, 2005 with intent to injure or defraud did falsely make, complete or alter a
16 written instrument described as follows, to-wit: Union Bank of California check dated April 16,
2005, in the amount of \$2,569.00, made payable to Gloria A. Elliott, contrary to Revised Code of
Washington 9A.60.020 (1)(a) and/or (1)(b).

17 **COUNT 08 - FORGERY - 9A.60.020/9A.60.020(1)(a)(b)**

18 That he, RODNEY GLYNN CECIL, in the County of Clark, State of Washington, between April
19 17, 2005 and May 17, 2005 with intent to injure or defraud did falsely make, complete or alter a
20 written instrument described as follows, to-wit: Check No 69813435, dated April 17, 2005, in
the amount of \$1,474.00, made payable to Gloria A. Elliott, contrary to Revised Code of
Washington 9A.60.020 (1)(a) and/or (1)(b).

21 ARTHUR D. CURTIS
22 Prosecuting Attorney in and for
Clark County, Washington

23 Date: February 5, 2007

24 BY: 
Gene A. Pearce, WSBA #32792
25 Deputy Prosecuting Attorney

DEFENDANT: RODNEY GLYNN CECIL			
RACE: W	SEX: M	DOB: 7/1/1962	
DOL: CECILRG385MA WA		SID: WA22493718	
HGT: 602	WGT: 200	EYES: BLU	HAIR: RED
WA DOC: 885931		FBI: 454611KA2	
LAST KNOWN ADDRESS(ES):			

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JIS - 316 SE 98TH, VANCOUVER WA 98664
FORS - 316 SE 98TH, VANCOUVER WA 98684
DOL - 1216 W 19TH ST, VANCOUVER WA 98660

