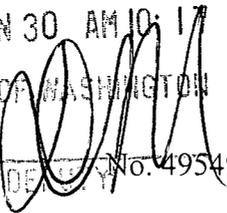


FILED
COURT OF APPEALS
DIVISION II

2017 JUN 30 AM 10:17

STATE OF WASHINGTON

BY  No. 49549-0-II

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

STATE OF WASHINGTON, Respondent

v.

KATHLEEN L. NICKS, Appellant

APPEAL FROM THE ORDER OF THE SUPERIOR COURT
OF THE STATE OF WASHINGTON FOR
WAHKIAKUM COUNTY

RESPONDENT'S BRIEF

Daniel H. Bigelow
WSBA No. 21227
Prosecuting Attorney
P.O. Box 397
Wahkiakum County Courthouse
Cathlamet, WA 98612
(360)795-3652

TABLE OF CONTENTS

	<u>PAGE</u>
I. Response to Assignments of Error	1
II. Response to Issues Pertaining to Assignments of Error.....	1
III. Facts.....	2
IV. The Existence of Probable Cause.....	6
V. Staleness.....	14
VI. Dominion and Control/Constructive Possession.....	16
VII. Indigency.....	22
VIII. Conclusion.....	24

TABLE OF AUTHORITIES

TABLE OF CASES

Cases

<u>State v. Bohannon</u> , 62 Wash.App. 462, 470, 814 P.2d 694 (1991)	14
<u>State v. Cantabrana</u> , 83 Wn.App. 204, 921 P.2d 572 (1996).....	21
<u>State v. Chambers</u> , 88 Wn. App. 640, 945 P.2d 1172 (1997).....	8
<u>State v. Chenoweth</u> , 127 Wash. App. 444, 455, 111 P.3d 1217, 1223 (2005) <u>affd.</u> 160 Wash. 2d 454, 158 P.3d 595 (2007).....	8
<u>State v. Cole</u> , 128 Wn.2d 262, 286, 906 P.2d 925 (1995)	6, 7
<u>State v. Cord</u> , 103 Wn.2d 361, 366, 693 P.2d 81, 84-85 (1985).....	7
<u>State v. Gentry</u> , 125 Wn.2d 570; 597, 888 P.2d 1105 (1995).....	19
<u>State v. George</u> , 146 Wn.App. 906, 193 P.3d 693 (2008) 18, 19, 20	
<u>State v. Graham</u> , 130 Wn.2d 771, 725, 927 P.2d 227 (1996). 13, 15	
<u>State v. Green</u> , 94 Wn.2d 216, 221, 616 P.2d 628 (1980).....	19, 21
<u>State v. Lundy</u> , 176 Wash. App. 96, 308 P.3d 755, 758 (2013) ...	23
<u>State v. Lyons</u> , 174 Wash. 2d 354, 357, 275 P.3d 314, 315 (2012)	16
<u>State v. Maddox</u> , 152 Wn.2d 499, 505-06, 98 P.3d 1199, 1202 (2004).....	15
<u>State v. Mathews</u> , 4 Wn. App. 653, 656, 484 P.2d 942 (1971)	19
<u>State v. Maxwell</u> , 114 Wn.2d 761, 769, 791 P.2d 223 (1990).....	7
<u>State v. McReynolds</u> , 104 Wn.App. 560, 17 P.3d 608 (2000)11, 12, 13, 15	
<u>State v. Neth</u> , 165 Wn.2d 177, 182, 196 P.3d 658, 661 (2008)	7
<u>State v. Olson</u> , 32 Wn. App. 555, 557, 648 P.2d 476 (1982)	8
<u>State v. Partin</u> , 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977).....	21
<u>State v. Patterson</u> , 83 Wn.2d 49, 58, 515 P.2d 496 (1973).....	6
<u>State v. Perrone</u> , 119 Wn.2d 538, 549, 834 P.2d 611, 617 (1992) 7, 8	
<u>State v. Petty</u> , 48 Wash.App. 615, 621, 740 P.2d 879 (1987)	14
<u>State v. Riley</u> , 34 Wash.App. 529, 534, 663 P.2d 145 (1983).....	14
<u>State v. Salinas</u> , 119 Wash. 2d 192, 201, 829 P.2d 1068, 1074 (1992).....	22
<u>State v. Smith</u> , 93 Wn.2d 329, 352, 610 P.2d 869 (1980)	6

State v. Spruell, 57 Wn.App. 383, 788 P.2d 21 (1990) 18, 19, 20
State v. Stenson, 132 Wn.2d 668, 692, 940 P.2d 1239 (1997) 8
State v. Thein, 138 Wn.2d 133, 977 P.2d 582 (1999)... 9, 10, 11, 12
State v. Theroff, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95
Wn.2d 385, 622 P.2d 1240 (1980)..... 22
State v. Vickers, 148 Wn.2d 91, 109, 59 P.3d 58 (2002) 9
State v. Young, 123 Wn.2d 173, 195, 867 P.2d 593 (1994)..... 7, 9
United States v. Spears, 965 F.2d 262, 277 (7th Cir. 1992) 8

I. RESPONSE TO ASSIGNMENTS OF ERROR

1. The trial court correctly decided the defense's motion to suppress.
2. The search warrant affidavit contained probable cause to search the defendant's home.
3. The court's order was proper and suppression of the evidence herein would have been inappropriate.
4. Sufficient evidence existed to convict the defendant on all counts.
5. Sufficient evidence existed to convict the defendant on all counts.

II. RESPONSE TO ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The defense poses the question, "Did the trial court err when it denied the motion to suppress where the warrant lacked probable cause..." This begs the question. The existence of

probable cause is the matter in dispute and cannot be assumed as a premise of the argument. In fact, probable cause existed.

2. Evidence of dominion and control over drugs and contraband found in the defendant's bedroom was sufficient.

III. FACTS

¶

The issues the defense raises in this arise from two separate sources of information. The issue of probable cause must be decided using only information contained within the four corners of the application for the search warrant in this case; therefore, that application and its exhibits are reproduced herein as Appendix A. Briefly, on January 28, 2015, one Brian Tills attempted to sell a woman at Ms. Nicks's residence who met Ms. Nicks's description some equipment. This woman went inside the house, came back out with a check, offered Mr. Tills a view of a driver's license he paid no attention to, and accepted the equipment in exchange for the check. But the check bounced. Mr. Tills reported this to the

police on January 30 and the Wahkiakum County Sheriff's Office investigated. Turns out the check was one reported stolen from a Tiffany Ames of Kelso, WA, in June of 2014, along with the other contents of her purse, including Ms. Ames's driver's license, checkbook, and Social Security card. The police prepared a search warrant on January 30.

Upon service of the warrant the following day, the officers found numerous items of obvious contraband, including methamphetamine and also including identification and payment instruments belonging to many other people not connected to Ms. Nicks. When the officers began to see such items turning up, they requested and received an addendum to the original warrant to seek other such items. RP 28-29. The validity of this warrant is not contested, and the fruits of this warrant were the basis for the three felony and two misdemeanor counts that were eventually levied against the defendant.

At trial, the jury learned that the warrant was served on January 31, 2015. RP 170-171. The defendant had lived in that

home with her children for more than five years. RP 228. When the police searched her bedroom, RP 231, she came into the bedroom to watch and comment on the items discovered. RP 174. Among the items discovered in her bedroom, in her desk and by her bed, were the following items that were the basis of the charges in this case:

- A Wilcox and Flegel fuel card that could be used to access the credit of Jerry DeBriae Logging, Inc., if one also had the PIN number. RP 129-30. The card had been issued to a DeBriae employee who did not turn it back in when he left employment. RP 130-131.
- A Washington State driver's license that was supposed to have been issued to Lisa Williams, but never made it to her in the mail. RP 142-3. Her mailbox is on a country road in a rural area. RP 143.
- A glass smoking device containing methamphetamine. RP 155.
- The driver's license and social security card of Brandi Kuning, who lost them in a vehicle prowling in the city of Kelso in the summer of 2014.

As the police were discovering and cataloguing these items and other items that did not result in charges, Ms. Nicks went to the

bedroom to observe and comment. RP 221. When the police found something, she would then say that there was nothing else to be found, but the officers kept finding more items of probative value. Id. This eventually caused one of the searching officers, Deputy Mark Hake, to quietly shake his head. Id. Ms. Nicks turned to Dep. Hake and said, "What?" Dep. Hake, observing that Ms. Nicks lived in this home with her children, asked her what kind of example she was setting for them by stealing. RP 222. She responded, "What do you expect me to do?" and the deputy said he expected her to not steal. Id. Ms. Nicks replied that she was on disability and unable to work. Id. The deputy pointed out that if Ms. Nicks could steal, she could find a job; and, apparently having no reply to that, Ms. Nicks did not continue the conversation. Id.

At trial, Ms. Nicks attempted to shift blame onto others, such as her boyfriend Richard Trafelet, who had lived with her the past two weeks, and her own brother. RP 231 (Trafelet), 233 (brother). Notwithstanding, the jury convicted Ms. Nicks of possession of

methamphetamine, possession of stolen property in the second degree based on the DeBriac gas card, which was an access device; identity theft in the second degree for possession of Brandi Kuning's Social Security card, and two counts of possessing another's identification for the driver's licenses of Brandi Kuning and Lisa Williams. These are the convictions she now appeals.

IV. THE EXISTENCE OF PROBABLE CAUSE

Search warrants issue upon a magistrate's determination of probable cause. A court determining the existence of probable cause must consider whether the facts and circumstances are sufficient "to establish a reasonable inference that criminal activity is occurring or that contraband exists at a certain location." State v. Cole, 128 Wn.2d 262, 286, 906 P.2d 925 (1995) (citing State v. Smith, 93 Wn.2d 329, 352, 610 P.2d 869 (1980); State v. Patterson, 83 Wn.2d 49, 58, 515 P.2d 496 (1973)). The affidavit supporting the search warrant must set forth facts "sufficient for a

reasonable person to conclude the defendant probably is involved in criminal activity.” Cole, 128 Wn.2d at 286 (citing State v. Young, 123 Wn.2d 173, 195, 867 P.2d 593 (1994); State v. Maxwell, 114 Wn.2d 761, 769, 791 P.2d 223 (1990)). The court is to view the facts together with other facts, not in isolation. Cole, 128 Wn .2d at 286.

“Search warrants are to be tested and interpreted in a common sense, practical manner, rather than in a hypertechnical sense. See United States v. Turner, 770 F.2d 1508, 1510 (9th Cir.1985), cert. denied, 475 U.S. 1026, 106 S.Ct. 1224, 89 L.Ed.2d 334 (1986).” State v. Perrone, 119 Wn.2d 538, 549, 834 P.2d 611, 617 (1992). “Great deference is accorded the issuing magistrate's determination of probable cause.” State v. Cord, 103 Wn.2d 361, 366, 693 P.2d 81, 84-85 (1985). The court is to determine whether the issuing magistrate abused his or her discretion in issuing the warrant and to limit its review “to the four corners of the affidavit supporting probable cause.” State v. Neth, 165 Wn.2d 177, 182, 196 P.3d 658, 661 (2008).

In State v. Chambers, 88 Wn. App. 640, 945 P.2d 1172 (1997) the court stated:

We determine the validity of a search warrant on a case by case basis; the constitutional requirements are met if the warrant describes the property with reasonable particularity under the circumstances. Perrone, 119 Wn.2d at 546-47. The required degree of particularity depends upon the nature of the materials sought and the circumstances of each case. Perrone, 119 Wn.2d at 547; State v. Olson, 32 Wn. App. 555, 557, 648 P.2d 476 (1982). Courts are to evaluate search warrants in a commonsense, practical manner, rather than in a hypertechnical sense. Perrone, 119 Wn.2d at 549. Although the officers executing the warrant must be able to identify the things to be seized with reasonable certainty, United States v. Spears, 965 F.2d 262, 277 (7th Cir. 1992), “the facts that a warrant lists generic classifications... does not necessarily result in an impermissibly broad warrant.” State v. Stenson, 132 Wn.2d 668, 692, 940 P.2d 1239 (1997).

Any doubts this court has are to be resolved in favor of the warrant. State v. Chenoweth, 127 Wash. App. 444, 455, 111 P.3d 1217, 1223 (2005) aff'd, 160 Wash. 2d 454, 158 P.3d 595 (2007) . In affirming the Chenoweth decision, the Washington Supreme Court reaffirmed that “We generally give great deference to the

magistrate's determination of probable cause and view the supporting affidavit for a search warrant in common-sensical manner rather than hypertechnically. State v. Young, 123 Wn.2d 173, 195, 867 P.2d 593 (1994); see also State v. Vickers, 148 Wn.2d 91, 109, 59 P.3d 58 (2002) ...”

In this case, defendant Nicks went into her house, came out with a checkbook that had been stolen in Kelso along with some other items including a photo ID, and wrote a check which she handed to someone. The magistrate allowed a search of the house for the checkbook and other items from the Kelso theft.

Ms. Nicks attempts to draw parallels between this fact pattern and various cases in which the courts determined no probable cause existed.

State v. Thein, 138 Wn.2d 133, 977 P.2d 582 (1999), was a case in which the police found an illegal marijuana grow operation in a workshop on South Brandon Street, and attempted to parlay this into probable cause to search the defendant's private residence on Austin Street. Id., 138 Wn.2d at 140. The court rejected an

inference that because a person has marijuana at one place, that person must have it in other places as well just because a police officer says that generally that's the way things happen. Id., 138 Wn.2d at 146-7.¹ The nexus that was rejected in Thein was, "the defendant had drugs somewhere else, so we want to look for drugs here." The nexus in this case is, "the defendant had contraband here, and we want to go look for it." The Thein court would have allowed the Nicks search.

The defense attempts to liken the affiant in our case, who noted that checkbooks contain 25 checks, to the officer in Thein who swore that generally drug dealers who do the job as a profession have drugs in their place of residence. Any attorney who refers to the notion that there are multiple checks in a checkbook as an "unsupported contention" (Brief of Appellant, 17) must be too young to have worked with one – as more and more people are these days. But even then, the clue is in the word "book," which implies multiple pages, unless in this age of Kindle

¹ The State does note, however, that the officer in Thein was correct; Thein was convicted based upon evidence found in his home.

even that knowledge has become esoteric. In any event, the contention complained of is not “unsupported” as advertised, as the appellant notes: the officer cites his experience with checkbooks. Some people still use checkbooks; many people used to use them; there is no reason for a magistrate reading a warrant application in a common-sensical manner to assume a police officer doesn’t know checkbooks come with more than one check in them. Thus, again, Thein is no help to the appellant and does not inform the court’s analysis.

The defendant turns next to State v. McReynolds, 104 Wn.App. 560, 17 P.3d 603 (2000), for support. This case, like Thein, involves evidence that a person committed a crime somewhere else (the defendant was caught at the scene of a burglary), and that evidence, without more, being used to support a search of the person’s house. 104 Wn.App. at 565-566. Again, the court rejected a nexus based on a chain of reasoning that basically ran like this: the guy committed a crime, and this is where he

lives.² Thus, the McReynolds case's holding has nothing to offer the defense in this case, in which Ms. Nicks went into her house for contraband and came out with it.

Although its direct holding is unhelpful, the McReynolds court does offer some analysis of interest. It takes pains to note that Thein did not create a categorical rule denying a search of a suspect's home just because the crime being investigated took place outside the home. "[T]he Thein court observed that "the existence of probable cause is to be evaluated on a case-by-case basis." Thein, 138 Wn.2d at 149. In a footnote, the court noted that "under specific circumstances it may be reasonable to infer such items will likely be kept where the person lives." Id. at 149 n.4 (citing WAYNE R. LaFAVE, SEARCH AND SEIZURE § 3.7(d), at 381-85 (3d ed. 1996))." McReynolds, 104 Wash. App. at 569. After analysis, the McReynolds court urges "a more limited reading of the Thein holding, requiring that the court carefully examine the officer's affidavit to determine whether it establishes a

² Again, however, the State points out that the police were correct in McReynolds: probative evidence of the sort requested in the warrant was, in fact, discovered in the defendant's home.

reasonable inference that evidence of criminal activity could be found at the ... residence.” McReynolds, 104 Wash. App. At 570.

The McReynolds court’s reminder that the affiant is entitled to reasonable inferences is particularly applicable to this case, in which the appellant wishes the court to reject such reasonable inferences as that checkbooks have more than one page, that things stolen together with similar utility to a criminal (checks and ID) might still be together after they are stolen, and that even if a checkbook’s last check were gone the remaining stolen property and remains of the checkbook could still be at the last place they were seen. E.g., Appellant’s Brief at 20. The appellant’s desire for this court to hold as a matter of law that the innocent inference controls over the guilty one is directly contradicted by the courts: “probable cause is not negated merely because it is possible to imagine an innocent explanation for observed activities.” State v. Graham, 130 Wn.2d 771, 725, 927 P.2d 227 (1996). In other words, if the affidavit “establishes a reasonable inference that evidence... could be found,” in the words of McReynolds, supra,

the fact that another inference could also be made does not negate probable cause.

V. STALENESS

Ms. Nicks's staleness argument rests on a pair of basic problems. The first is that it ignores its own boilerplate case law introduction, which correctly notes the relatively inchoate nature of the staleness test.

Common sense is the test for staleness of information in a search warrant affidavit. State v. Petty, 48 Wash.App. 615, 621, 740 P.2d 879 (1987) (citing State v. Riley, 34 Wash.App. 529, 534, 663 P.2d 145 (1983)). The information is not stale for purposes of probable cause if the facts and circumstances in the affidavit support a commonsense determination that there is continuing and contemporaneous possession of the property intended to be seized. State v. Bohannon, 62 Wash.App. 462, 470, 814 P.2d 694 (1991)... In evaluating whether the facts underlying a search warrant are stale, the court looks at the totality of circumstances. See Bohannon, 62 Wash.App. at 470, 814 P.2d 694.

State v. Maddox, 152 Wn.2d 499, 505-06, 98 P.3d 1199, 1202 (2004) (en banc).

Despite citing similar case law regarding the totality of the circumstances and the importance of common sense, Ms. Nicks erroneously turns to a single fact as all-important: the fact that the checkbook she used the day before the warrant was prepared, was stolen from its true owner seven months previously. Appellant's Brief at 22. Appellant backs this up with an unsupported factual argument that paper is ephemeral and might not exist after seven months – an argument that is odd considering that every library in the state contains books more than a century old, but one that need not be considered because the innocent inference does not negate the guilty one. McReynolds, supra; Graham, supra.

The appellant makes another fundamental error, however, that means even if the precedent it cited indicated, not that the totality of the circumstances must be viewed with common sense, but that the only test of staleness was a mechanical comparison of the date of the crime and the date on today's page on the day-to-day calendar, this warrant must still be upheld. If State v. Lyons,

174 Wash. 2d 354, 357, 275 P.3d 314, 315 (2012) really stood for that – and it doesn’t – the warrant is not stale because Ms. Nicks defrauded an individual using that very checkbook (and in the very place to be searched) the previous day. Reading the law as mechanically as the appellant does in its brief at 22 – “The critical time for establishing probable cause is when the criminal activity is observed” – a single day had gone by before the warrant was prepared, and the warrant was served the day after it was completed. Even the appellant makes no argument that at most, two days, makes for staleness in this case.

VI. DOMINION AND CONTROL/CONSTRUCTIVE POSSESSION

Ms. Nicks lived in a house at 2 Middle Valley Road.³ RP 169. She had lived there with her children for over five years. RP 228. Her father owns the place. RP 170. The bedroom in which

³ And, to the State’s best knowledge, still lives there.

the contraband was discovered had her possessions and medication in it. RP 173-5, RP 193. She admitted that it was her bedroom. RP 231. She used the desk in which much of the contraband at issue was discovered. RP 237. Ms. Nicks felt sufficiently at home in the bedroom that she insisted on being present in that room – and only that room – when it was being searched. RP 174. Mr. Trafelet, on the other hand, had no strong association with that house – the police, who tried to keep track of the comings and goings at the Nicks home, had been unaware he had ever been resident there. RP 203. Ms. Nicks testified he had moved in only two weeks before the warrant was served. RP 230. Furthermore, Ms. Nicks expressed familiarity with the items of contraband being taken from her bedroom, protesting after each incriminating item was discovered that there was “nothing more to be found.” RP 221. She also advised the officer that she stole because she was on disability and unable to work. RP 222.

This is the factual basis upon which the appellant now claims the evidence is legally insufficient to prove she had

dominion and control – over her own bedroom in her own home. And to back up this claim, the defense cites State v. Spruell, 57 Wn.App. 383, 788 P.2d 21 (1990), a case in which the court found insufficient evidence to convict one Mr. Hill, who was a guest in Spruell’s apartment kitchen standing next to some drugs when police knocked down the door. Spruell, 57 Wn.App. at 384. The Spruell court applied the following rule: “[W]here the evidence is insufficient to establish dominion and control of the premises, mere proximity to the drugs and evidence of momentary handling is not enough to support a finding of constructive possession.” State v. Spruell, 57 Wash. App. 383, 388, 788 P.2d 21, 24 (1990) (emphasis added). As this is a case in which there is solid evidence of dominion and control of the premises, Spruell has nothing to teach us.

The defense attempts to bolster its argument with citation to another case in which the defendant had neither dominion nor control over the area in which the contraband was found: State v. George, 146 Wn.App. 906, 193 P.3d 693 (2008). The George

court properly outlines the law, noting “Constructive possession is proved when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs were found.” State v. Mathews, 4 Wn. App. 653, 656, 484 P.2d 942 (1971) (citing Callahan, 77 Wn.2d 27). George, 146 Wash. App. at 920. The George court goes on, trenchantly observing as follows: “Sufficient evidence supports a jury's determination of guilt if, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). All reasonable inferences are drawn in favor of the verdict and interpreted most strongly against the defendant. State v. Gentry, 125 Wn.2d 570, 597, 888 P.2d 1105 (1995).” George, 146 Wash. App. at 919.

Despite these unhelpful reminders, the defense grasps at George because the appellant prevailed – but, like Hill in the Spruell case, George was not in his own place. George was a passenger in the back seat of someone else's car, and the owner

was driving it at the time. Id. at 912. The court noted this distinction at 921, and repeated the Spruell rule: “[T]he rule is that *where the evidence is insufficient to establish dominion and control of the premises*, mere proximity to the drugs and evidence of momentary handling is not enough to support a finding of constructive possession.” Id. at 906 (emphasis added).

The appellant also argues that because “the State did not rule out the ownership of the drugs by other persons who had access to the room,” Ms. Nicks is not guilty. Appellant’s brief at 29. No authority is cited for this proposition because authority directly contradicts it. “Exclusive control by the defendant is not required to establish possession; more than one defendant may be in possession of the same prohibited item.” George, supra, 146 Wn.App. at 920, citing State v. Turner, 103 Wn. App. 515, 522, 13 P.3d 234 (2000).

The defense then segues into an argument that – if the State is getting this right – the fact that the State raised sufficient evidence of dominion and control to shift the burden onto the

defense to prove Ms. Nicks had no dominion or control over the stolen property at issue herein pursuant to State v. Cantabrana, 83 Wn.App. 204, 921 P.2d 572 (1996), does not mean that the State has proved its case beyond a reasonable doubt. The State doubts this makes analytical sense, but the argument's factual base only holds the weight of this argument because the defense does not mention that the appellant acknowledged familiarity with each item of contraband found in her bedroom (all the while protesting that nothing more would be found) and complained that she had to steal instead of work because she was disabled. RP 221-222.

Evidence is sufficient if a rational trier of fact could find each element of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980) (plurality opinion). "When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. State v. Partin, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). A claim of insufficiency admits the truth of the

State's evidence and all inferences that reasonably can be drawn therefrom. State v. Theroff, 25 Wn. App. 590, 593, 608 P.2d 1254, aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980).” State v. Salinas, 119 Wash. 2d 192, 201, 829 P.2d 1068, 1074 (1992).

This being the law, it is fruitless for the appellant to elide information leading to the reasonable inference that Ms. Nicks was personally aware of the items in her room and the use to which they were put. Ms. Nicks tried to establish unwitting possession, and the jury received an unwitting possession instruction – the jury’s verdict indicates the jury rejected the notion.

VII. INDIGENCY

Deputy Mark Hake put it best at trial when he noted that if Ms. Nicks was strong enough to steal, she was strong enough to work. RP 222. It is always interesting for this court to see role reversals, no doubt, but on this issue it is the defense’s job to try to get this court to despair of the defendant, while it is for the State to

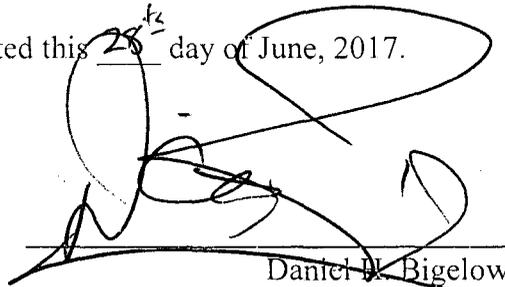
suggest reasons to hold out hope for the future. The court has seen on this record an enterprising and intelligent defendant whose mind, if turned to societally acceptable ends, could easily encompass a job that could recompense society for her crimes.

The State further points out that the financial obligations under which Ms. Nicks will be burdened come with one significant caveat that works to her advantage: Washington does not run debtors' prisons. State v. Lundy, 176 Wash. App. 96, 308 P.3d 755, 758 (2013). If the appellant is unable to pay her debts, she will not suffer as a result, because no contempt action against her will stand. Ms. Nicks may be disabled, but she has a college education and is working towards her bachelor's degree. RP 62. The State suggests that foreclosing any hope of repaying her debt to society now also forecloses the discretion of future judges in the event of a change in Ms. Nicks's fortunes. This court should exercise its discretion in line with these considerations.

VIII. CONCLUSION

When the defendant walks out of a house with property that was stolen as a part of a set, there is sufficient evidence for a warrant for contraband when the search is executed two days later. When the defendant is in her bedroom in her home of five years, sitting next to a desk she used every day, professing knowledge of every item that the police find, there is sufficient evidence she possessed it. This court should affirm.

Respectfully submitted this ~~28~~^{28th} day of June, 2017.



Daniel W. Bigelow
Prosecuting Attorney
Attorney for Respondent
WSBA No. 21227

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FILED

IN AND FOR THE COUNTY OF WAHKIAKUM COUNTY

15 FEB -2 AM 10:15

KAY B. HOLLAND, CLERK
WAHKIAKUM COUNTY, WA

STATE OF WASHINGTON,)
)
Plaintiff,)
)
vs.)
)
Kathleen L. Nicks)
DOB: 12-09-1973)
Defendant.)

CAUSE No.

AFFIDAVIT AND COMPLAINT
FOR SEARCH WARRANT

BY [Signature] DEPUTY

STATE OF WASHINGTON,)
)
COUNTY OF WAHKIAKUM)

.ss

I, Michael E. Balch, being first duly sworn, on oath, (personally appearing)/(by telephone) deposes and says to the Judge whose signature appears below, on this 30th day of January, 2015, that he has reason to believe that at the following described location, in Skamokawa, Washington, and further described as:

The Kathleen L. Nicks residence, a single story, double-wide mobile home with a detached garage, located at 2 Middle Valley Rd, Skamokawa, Washington 98647

there is now located certain property which is

- Evidence of a crime
- Fruits of a crime
- contraband
- Criminally possessed
- a thing by means of which a crime has been committed,
- a thing by means of which a crime reasonably appears about to be committed
-

Exhibit "A"

**AFFIDAVIT AND COMPLAINT FOR SEARCH
WARRANT**

ORIGINAL

K
27

NAMELY:

1-book of bank checks, with the name "Tiffany Ames" printed on them as well as "360-749-1541" and the address 100 Fishers Lane Kelso, WA 98626, with the account number "70790480," from Fibre Federal credit union.

1-Mighty-Quip Diesel Generator

1-200 psi Dewalt Electric Air Compressor

1-Honda 2" Trash Pump with hose kit

1-3,100 PSI Pressure Washer

1-EU 8500 Watt Honda gas Generator

Bill of sale from Mighty-Quip

Driver's license of Tiffany Ames

Social Security cards for Tiffany Ames, Remington Ames, and Clayton Gownoug.

And which is

[x] kept in violation of the laws of the State of Washington, to-wit: RCW 9A.56.160 Possession of Stolen Property 2nd Degree, and RCW 9A.56.030 Theft in the First Degree, and RCW 9.35.020 Identity Theft in the First Degree.

[x] subject to seizure under the laws of the State of Washington, to-wit: CrR2.3/CrRLJ 2.3, and RCW 9A.56.150 Possession Stolen Property in the First Degree, and RCW 10.79.015 [3] OTHER GROUNDS FOR ISSUANCE OF A SEARCH WARRANT (EVIDENCE OF ANY FELONY)

And the facts tending to establish the grounds for issuance of a search warrant are as follows:

I, Michael E. Balch, am a law-enforcement officer for the Wahkiakum County Sheriff's Office and have been so employed for the past 30 years. I have attended and successfully completed the Washington State Criminal Justice Training Commission's Basic Law-Enforcement Academy in Burien, Washington. I have had over 1500 hours of continuing education in law-enforcement and am a certified police officer in the State of Washington. I have successfully investigated and solved numerous felony crimes in Wahkiakum County, Washington.

On 1-30-2015, at approximately 13:15hrs, dispatch received a call from a Brian Tills who stated that he was trying to get property back from an individual who had purchased it with a fraudulent check. He requested contact with a deputy. Sgt. Gary Howell and I met with Tills at the Skamokawa General Store parking lot at approximately 13:46hrs and he explained what was going on. He told us that he had sold some equipment to a Tiffany Ames on 1-28-2015, and today his boss called him and said that the check is fraudulent. The amount of check was \$5,450.00. Tills explained to me that he was at an address on Middle Valley Road and had made the sale. I asked him the specific address and he did not know. All he could do was show me a cell phone photograph of the residence. From the photograph he showed me of the location, it was immediately recognizable as 2 Middle Valley Road, Skamokawa, Washington. I recognized the intersection of Middle Valley and East Valley Road and the residence behind it. I have

**AFFIDAVIT AND COMPLAINT FOR SEARCH
WARRANT**

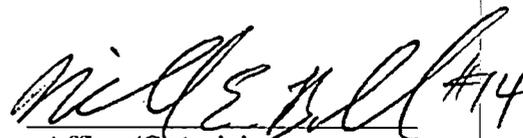
been to this residence multiple times in the last several months and know that Kathleen "Katie" Nicks and her children live here. I have included the photograph and labeled it as "Exhibit A" for identification. He explained to me that he is an employee of Mighty-Quip Industries and he had contacted the people at this address and asked them if they needed a diesel and gas generator and a few other items that he had for sale and they were interested. When the woman wrote the check for the property he dropped it off and assisted them in putting it in their detached garage. I asked if he obtained the identification of the woman who wrote the check and he told me that he did ask to see it, but did not look at it that closely. He was able to describe the woman that called herself Tiffany for me as being a white woman, around 40 years old and 504 inches tall with dirty blonde/brown hair, about shoulder length. Sgt. Howell told Tills that we would need more information and asked him to follow us back to the Wahkiakum County Sheriff's Office. At the sheriff's office I was able to download the photographs on Till's cellphone and print them out. He also had a cell phone picture of the bill of sale for the 5 items he sold to Tiffany. Those items were; 1-Mighty-Quip Diesel Generator, 1-200 psi Dewalt Electric Air Compressor, 1-Honda 2" trash pump with hose kit, 1-3100 psi pressure washer, and 1-Honda EU 8500 Watt gas Generator. Tills wanted me to talk with his boss who had more information on the fraudulent check. His boss's name is Harlan Wheeler. I called Wheeler and he told me that he could get me a copy of the check. He said he was the owner of the business, "Mighty-Quip." He also told me that the check that his employee was given was stolen out of Kelso, and that Kelso Police had the report. Wheeler had the bank fax me a copy of the fraudulent bank check, along-with an affidavit of forgery. I have attached a copy of the fax sent to me by Tracy Dillehay of Fibre Federal Credit Union and labeled it "Exhibit B" for identification. I also contacted Kelso, WA Police and talked with Officer Ken Hochhalter. Hochhalter was the officer that took the initial report of a vehicle prowler from Tiffany Ames in June 2014. See Kelso PD report#14-1881 attached. Inside the report it has a list of items taken including a purse with a wallet, driver's license, social security cards and 1 check book belonging to Tiffany Ames. Also, 1 bag of essential oils. Because the check received by the bank was number 3012, I believe the other numbered checks will be around this same number. My experience is that a book of bank checks or drafts comes in groups of 25. Today, Officer Hochhalter took another statement from Tiffany Ames stating that she did not write this check for \$5,450.00. See statement attached as faxed to me by Officer Hochhalter. Brian Tills completed a written statement for me before leaving the sheriff's office and I have included it with this affidavit and labeled it "Exhibit C" for identification. In Till's statement he explained that after his boss called him about the check today he went back out to the residence in Skamokawa. He contacted the same two teenage boys that helped him unload the property two days ago and asked them if he could speak to Tiffany. "They said they didn't know any Tiffany." He asked to speak to their parents and was told that they were asleep. He asked if the equipment was still in the garage and the kids did not know. Brian Tills also sent me a photograph he took of the garage with the red door he put the items inside. See photograph attached as exhibit D for identification. It is my understanding that Kathleen Nicks has at least 1 teenage son and a daughter, approximately 12-14 years of age. I have met Kathleen Nicks on multiple occasions and have even taken a missing persons report very recently from her and know her description to be consistent with the description given to me by Tills. I know her to

**AFFIDAVIT AND COMPLAINT FOR SEARCH
WARRANT**

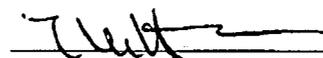
reside at 2 Middle Valley Road in Skamokawa, WA. Her criminal history includes convictions for forgery and theft and unlawful possession of a firearm, along-with Taking motor vehicle without permission. I do not know Brian Tills or Harlan Wheeler. However, I have ran criminal history requests for both subjects and Tills has only traffic offenses in his past. Wheeler has only a felony "Fleeing" conviction and a Gross Misdemeanor conviction for Hit and Run along with traffic offenses. I do not find any other offenses which might question his truthfulness. I also looked at the fraudulent check and how it was signed. I then looked at a Wahkiakum Property release form signed by Nicks on 1-8-2015. The "a" in Tiffany and the "s" in Ames appear similar to the signature that appears on the property release form. I have included a copy of the property release form as Exhibit E for identification. I have also attached the cell phone photograph of the bill of sale as exhibit F.

That affiant complaint further deposes and says that in view of the foregoing information, he has probable cause for the issuance of a search warrant as provided by CrR 2.3 and JCrR 2.10 and the laws of the State of Washington, and this complainant prays that a search warrant may issue to any peace officer of the State of Washington, and that the items referred to heretofore above may be brought before a Judge and disposed of according to law, and that a return of said warrant be made within 3 days, as provided by law.

Complainant further deposes and says that he is a (peace officer) of the State of Washington.


Affiant/Complainant

SUBSCRIBED AND SWORN before me this 30th day of Jan., 2015.
 TELEPHONIC STATEMENT SWORN TO before and recorded by me on the _____ day of _____, 19____, and transcribed on this _____ day of _____ 19____.


(JUDGE)(COURT COMMISSIONER)
of the Superior Court of the State of
Washington in and for Wahkiakum County

**AFFIDAVIT AND COMPLAINT FOR SEARCH
WARRANT**

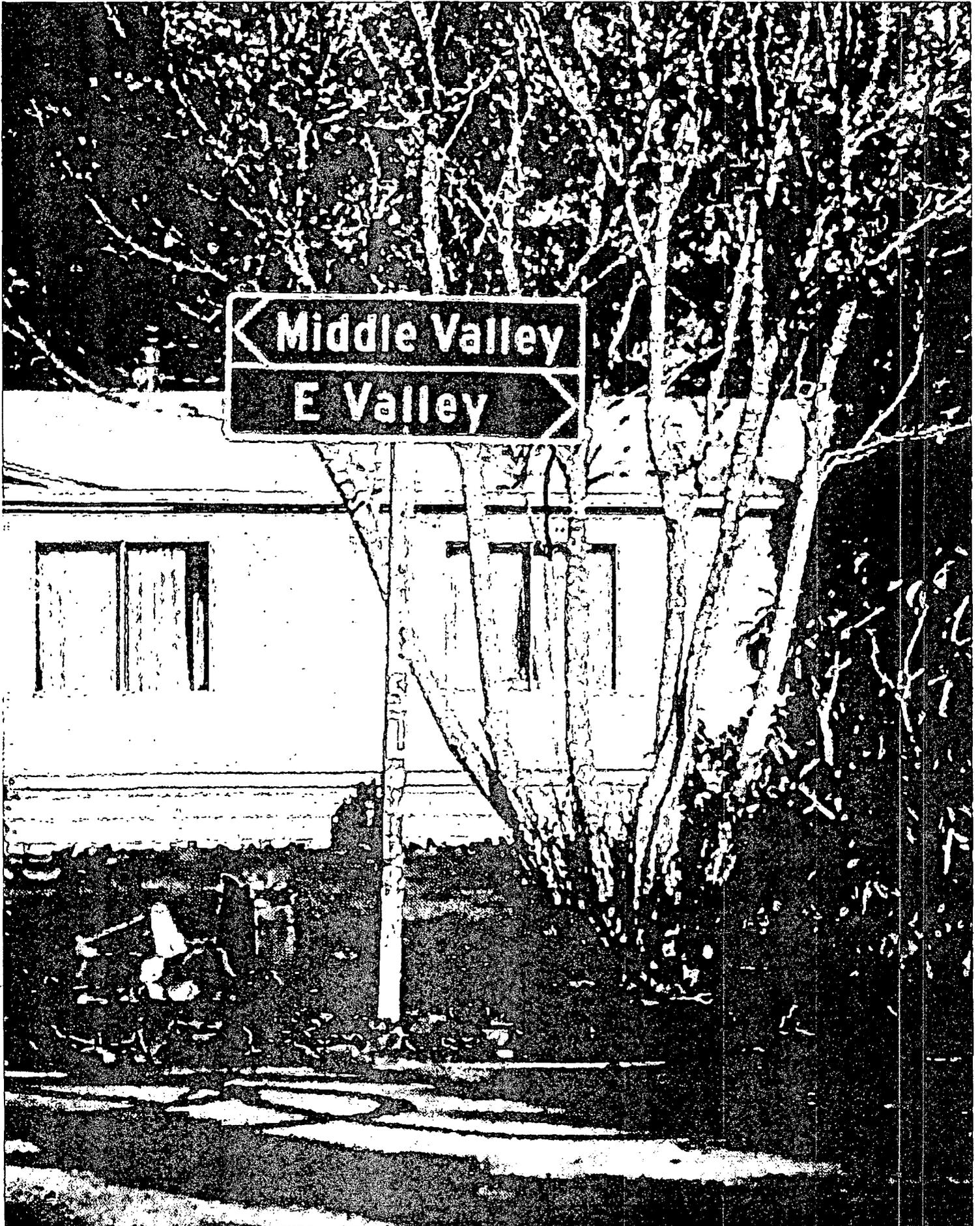


Exhibit A



PO Box 1234
822 Commerce Avenue
Longview, Washington 98632
Phone 360-423-8750
Fax: 360-414-4243

Fax

Date: 1-30-15

Page(s) including cover: 3

To: Detective Balch

Attention: _____

From: Tracy Dillehay @ Fibre Federal C.U.

RE: Forgery: Tiffany Ames

Comments: _____

CONFIDENTIAL

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and discard the material.

Exhibit B



Affidavit of Forgery

State of Washington

County of Cowlitz

I, Tiffany Ames, being first duly sworn upon oath, do hereby swear and affirm as follow:

That I have been informed that what purports to be my signature appears on the following check(s) OR drafts(s) as the maker or endorser:

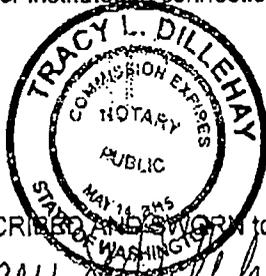
<u>Check Number</u>	<u>Date on Item</u>	<u>Payee</u>	<u>Amount</u>
3012	1-28-2015	Mishly Quip industrial llc	5450.00

That I did not sign the checks(s) or drafts(s) listed above either as maker or endorser.

That the signature that appears on the instrument(s) described above is not my signature, but is instead a forgery made without my knowledge and without my approval.

That I did not participate in the negotiation of the check or draft, nor did I receive any benefit directly or indirectly, and that no part of the money was applied to any use or purpose on my behalf.

I agree to testify, declare, depose or certify to the truth of any case now pending or that may be hereafter instituted in connection with the matter contained in this affidavit.



Tiffany Ames

SUBSCRIBED AND SWORN to before me this 29th day of January

Tracy Dillehay
Notary Public



KELSO POLICE DEPARTMENT

Andrew O. Hamilton
Chief of Police

Darr Kirk
Captain

Fax Cover Sheet

Date: 1/30/15

To: Det. Balch / Waukegan City

Fax #: (360) 795-3145

From: P. Stevens

Title: Records Specialist

Total pages sent including cover sheet: 3

Summary: 14-1881

(per your request)

NOTICE: The information contained in this facsimile message is privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by the telephone and return the original message to us at the address printed above via the U. S. Postal Service.

KELSO POLICE DEPARTMENT

201 S. Pacific Avenue • P.O. Box 935 • Kelso, WA 98626 • (360) 423-1270

CITIZEN CRIME REPORT: DO NOT WRITE IN SHADED BOXES - Crime and Case # to be filled in by KPD Employees

Case #	Case #	Time Reported: 0800
--------	--------	---------------------

Type of Crime Reported: _____

(1) Date of Crime: 6/23/14 (2) Time of Crime: 2:20 PM (3) Location of Crime: 100 Fishers Lane (driveaway)

(4) Reporting Person or Victim: James J. Tiffany Race: W Sex: F Birth Date: 7/24/80

(8) Victim Address: 100 Fishers Lane, Kelso, WA 98626 (9) Victim Phone: (360) 747-3183

IF VICTIM OF CRIME IS A BUSINESS, LIST THE BUSINESS NAME AND ADDRESS:

(10) Business Name: _____ (11) Owner: _____ (12) Type of Business: _____

(13) Business Address: _____ (14) Business Phone: _____

(15) DESCRIBE PROPERTY DAMAGED OR STOLEN:

QTY	ITEM	BRAND	MODEL/STYLE	SERIAL #	COLOR	IDENTIFYING MARKS OR DAMAGE	VALUE
1	med. purse		leather looking		Red		
1	wallet						
1	drivers lic		WA	(victims)			
3	social sec					Victim and 3ans (3 copies)	
1	med book						
1 bag	assured 616						\$300

(16) DESCRIBE WHAT HAPPENED: unidentified persons entered a vehicle parked, unsecured, and unlocked at driveway of 102 Fishers lane. Subjects stole victims purse from inside vehicle.

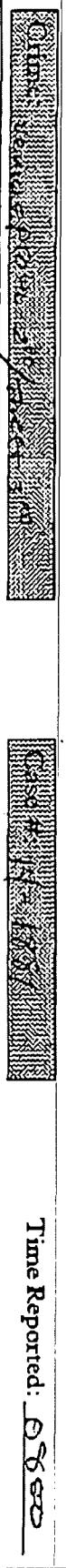
There are no suspects or leads at this time.

Victim will contact her banks and credit bureau to report theft of items that may be used for identity theft.

K. D. Wheeler
KELSO PD EMPLOYEE
DATE OF REPORT: 6/28/14
W. P. [Signature]
VICTIM/REPORTING PERSON'S SIGNATURE

KELSO POLICE DEPARTMENT
201 S. Pacific Avenue • P.O. Box 935 • Kelso, WA 98626 • (360) 423-1270

CITIZEN CRIME REPORT: DO NOT WRITE IN SHADED BOXES - Crime and Case # to be filled in by KPD Employees



Time Reported: 0600

Type of Crime Reported:

(1) Date of Crime: 1/22-1/23/14 (2) Time of Crime: overnight (3) Location of Crime: 100 FISHERS LANE KELSO

(4) Reporting Person or Victim: AMES, TERRY A. (5) Race: W (6) Sex: F (7) Birth Date: 7-24-50

(8) Victim Address: 100 FOSTERS LANE, KELSO, WA 98626 (9) Victim Phone: 360-741-3183

IF VICTIM OF CRIME IS A BUSINESS, LIST THE BUSINESS NAME AND ADDRESS:

(10) Business Name: (11) Owner: (12) Type of Business:

(13) Business Address: (14) Business Phone:

(15) DESCRIBE PROPERTY DAMAGED OR STOLEN:

QTY	ITEM	BRAND	MODEL/STYLE	SERIAL #	COLOR	IDENTIFYING MARKS OR DAMAGE	VALUE	
	MEDICINA							
	DRIVERS LIC#		WA					
	RED WALKER							
3	Sec'd Soc					Clifton Downing Reporting		
	BAKED CARDS	FIBER FEDERAL						
	AGUL BOOK							
LICENSE	ST	YR	VEHICLE MAKE	MODEL	COLOR	WIN	DAMAGE	VALUE
987YDC	WA	2007	Ford	Escape	silver	1FMYU02192KAT0044		

(16) DESCRIBE WHAT HAPPENED: UNIDENTIFIED PERSONS ENTERED UNLICENSED VEHICLE AND STOLE ITEMS

Including Victims Poss

No suspects or leads

K. Hoathanger
KELSO PD EMPLOYEE
DATE OF REPORT: 01-28-14
VICTIM/REPORTING PERSON'S SIGNATURE: [Signature]



KELSO POLICE DEPARTMENT

Andrew O. Hamilton
Chief of Police

Fax Cover Sheet

Date: 01/30/15

To: Detective Mike Balch

Fax #: 360-795-3145

From: Ken Hochhalter

Title: Patrol

Total pages sent including cover sheet: 4

Summary:

NOTICE: The information contained in this facsimile message is privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by the telephone and return the original message to us at the address printed above via the U. S. Postal Service.

Form Dated 03/10

0 0 0 11 11 0 29960 11 0 3012 323380766 70790480 5,450.00 0 01/29/2015

3012

88-8876-3233

346 *Jan 29 2015*

TIFFANY AMES
 (860) 749-1541
 100 FISHERS LANE
 KELSO, WA 98626

PAY to the order of *Ms. Ames*

Ms. Ames - Equip. (Industrial US\$ 5450.00)

Ms. Ames

FIBRE FEDERAL
 WWW.FIBREC.COM

Ms. Ames Equipment

⑆323380766⑆ 70⑆79048⑆0⑆3012⑆

DEBITED TO THE ACCOUNT OF
 WITHIN NAMED PAYEE
 LACK OF ENDORSEMENT GUARANTEED
 WELLS FARGO BANK, N.A.
 AU 01839



Affidavit of Forgery

State of Washington

County of Cowlitz

I, Tiffany Ames, being first duly sworn upon oath, do hereby swear and affirm as follow:

That I have been informed that what purports to be my signature appears on the following check(s) OR drafts(s) as the maker or endorser:

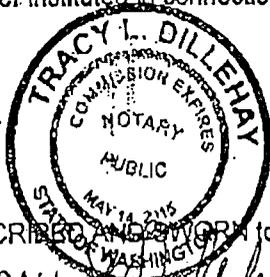
<u>Check Number</u>	<u>Date on Item</u>	<u>Payee</u>	<u>Amount</u>
3012	1-28-2015	Mishly Quip industrial llc	5450.00

That I did not sign the checks(s) or drafts(s) listed above either as maker or endorser.

That the signature that appears on the instrument(s) described above is not my signature, but is instead a forgery made without my knowledge and without my approval.

That I did not participate in the negotiation of the check or draft, nor did I receive any benefit directly or indirectly, and that no part of the money was applied to any use or purpose on my behalf.

I agree to testify, declare, depose or certify to the truth of any case now pending or that may be hereafter instituted in connection with the matter contained in this affidavit.



Tiffany Ames

SUBSCRIBED AND SWORN to before me this 29th day of January

Tracy Dillehay

Notary Public

KELSO POLICE DEPARTMENT STATEMENT

15-289.
14-1881

Ames, Tiffany Ann 7/24/80
Name (Last, First, Middle) Date of Birth

100 Fishers lane, Kelso, WA 98626
Address

360-747-3183 / 360-425-5494
Home Phone Work Phone

Incident Report Number

1/30/15 / 2:30 pm
Date Time

KPD

Location of statement

I Tiffany Ames voluntarily make this statement in connection with a criminal investigation. I certify under penalty of perjury that the facts contained herein are true.

I, Tiffany Ames received a call from fibre Federal asking about the words I had written in a check for furniture for \$3400.00. I let her know I did not write that check and it was from checkbook stolen from my purse back in June 2014. She said she was going to write an affidavit of forgery and that I needed to file a new police report for forgery. I picked up a copy of the check that was written and the affidavit. I got a hold of the owner of Mighty Dimp - Harlan Wheeler (260)165-1899. He was going to have his driver call the police. While I was writing this statement, Officer Balch called and coordinated with Officer Hochhalter of KPD. All paper evidence was given to Officer Hochhalter who will fax info to Officer Balch of Cathlamet.

I have read the foregoing statement and certify under penalty of perjury under the laws of the State of Washington that the foregoing statement is true and correct. (RCW 9A.72.085.)


Signature

AZ OLN# D05887579

(exp. 2039)

Delinoyman

WAHKIAKUM COUNTY SHERIFF

VOLUNTARY STATEMENT

Page # 1 of 2 pages

DATE 1-30, 20 15, TIME 14:40 P. PLACE WCSO

I, Brian Scott Tills, am _____ years old. Date of birth 2-15-1974

Address 3119 W Stella Ln, Phoenix, AZ 85017 Home Phone 602-478-1490 SOS# _____

I am giving this statement to Mike Balch ID# 14, who has identified

him/her self as a Detective

he/she has duly warned me that I have the following rights:

Statement of Miranda Rights

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. YOU HAVE THE RIGHT AT THIS TIME TO AN ATTORNEY.
3. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
4. YOU HAVE THE RIGHT TO TALK TO AN ATTORNEY BEFORE ANSWERING ANY QUESTIONS.
5. YOU HAVE THE RIGHT TO HAVE AN ATTORNEY PRESENT DURING THE QUESTIONING.
6. IF YOU CANNOT AFFORD AN ATTORNEY, ONE WILL BE APPOINTED FOR YOU WITHOUT COST, BEFORE OR DURING QUESTIONING, IF YOU SO DESIRE.
7. DO YOU UNDERSTAND THESE RIGHTS?
8. IF YOU ARE UNDER THE AGE OF 18, ANYTHING YOU SAY CAN BE USED AGAINST YOU IN A JUVENILE COURT PROSECUTION FOR A JUVENILE OFFENSE AND CAN ALSO BE USED AGAINST YOU IN AN ADULT COURT CRIMINAL PROSECUTION IF THE JUVENILE COURT DECIDES THAT YOU ARE TO BE TRIED AS AN ADULT.

I HAVE READ OR HAVE HAD READ TO ME THE ABOVE EXPLANATION OF MY CONSTITUTIONAL RIGHTS AND I UNDERSTAND THOSE RIGHTS.

SUBJECT'S SIGNATURE _____

I have read the above statement of my rights and I understand each of those rights, and having these rights in mind, I waive them and willingly make a statement.

Signature

X I saw some people outside and asked them if they know anyone that could use brand new Honda, Dewalt power equipment. The date was on 1/25/15 around 1pm. They said they could use it. A lady by the name of Tiffany said her mom could use some of it and so could they. Tiffany went inside the house and called her mom. She came out 15 minutes or so later and told me her mom was transferring money into her acct. to buy the equipment. She then went back in the house to make sure the money was transferred. She came back out with a check and made it out to Mighty-Grip Industries for the power equipment for \$5450. I wrote out the bill of sale and had her sign it as well. I unloaded the power equipment into their garage and left. I dropped the equipment on Middle Valley Rd on the corner

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify (OR DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Dated at Cathlamet WA, this 30 day of Jan, 20 15
City State

WITNESS: Mike Balch #14

WITNESS: Exhibit C

B. Tills
Signature of person giving voluntary statement

WAHKIAKUM COUNTY SHERIFF

VOLUNTARY STATEMENT

Page # 2 of 2 page:

DATE 1-30, 2015 TIME _____ M. PLACE WCSO

I, Brian S. Tills, am _____ years old. Date of birth _____

Address _____ Home Phone _____ SOS# _____

I am giving this statement to _____ ID# _____, who has identified

him/her self as a _____

he/she has duly warned me that I have the following rights:

Statement of Miranda Rights

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. YOU HAVE THE RIGHT AT THIS TIME TO AN ATTORNEY.
3. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
4. YOU HAVE THE RIGHT TO TALK TO AN ATTORNEY BEFORE ANSWERING ANY QUESTIONS.
5. YOU HAVE THE RIGHT TO HAVE AN ATTORNEY PRESENT DURING THE QUESTIONING.
6. IF YOU CANNOT AFFORD AN ATTORNEY, ONE WILL BE APPOINTED FOR YOU WITHOUT COST, BEFORE OR DURING QUESTIONING, IF YOU SO DESIRE.
7. DO YOU UNDERSTAND THESE RIGHTS?
8. IF YOU ARE UNDER THE AGE OF 18, ANYTHING YOU SAY CAN BE USED AGAINST YOU IN A JUVENILE COURT PROSECUTION FOR A JUVENILE OFFENSE AND CAN ALSO BE USED AGAINST YOU IN AN ADULT COURT CRIMINAL PROSECUTION IF THE JUVENILE COURT DECIDES THAT YOU ARE TO BE TRIED AS AN ADULT.

I HAVE READ OR HAVE HAD READ TO ME THE ABOVE EXPLANATION OF MY CONSTITUTIONAL RIGHTS AND I UNDERSTAND THOSE RIGHTS.

SUBJECT'S SIGNATURE _____

I have read the above statement of my rights and I understand each of those rights, and having these rights in mind, I waive them and willingly make a statement.

in Skanokawa. The lady who signed the check that was by
Tiffany was around 5'4" with dirty blond brown hair. There were a total of
6 people outside while I was there. Today on 1/30/2015 my boss showed
with me there was a check issue and to talk to them, I went back to the
house and knocked on the door. 2 teenagers came out and I asked if
Tiffany was there, they said they didn't know any Tiffany. They helped
unload the truck on the 1/20/15. ~~When~~ I asked if anyone else was
there and they said their parents were asleep. I asked if the equipment
was still in the garage and they said they didn't know. After that
I left.

Signature

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify (OR DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Dated at Cathlamet WA this 30 day of Jan, 2015
City State

WITNESS: Mike E. Hill #14

WITNESS: _____

Brian S. Tills
Signature of person giving voluntary statement

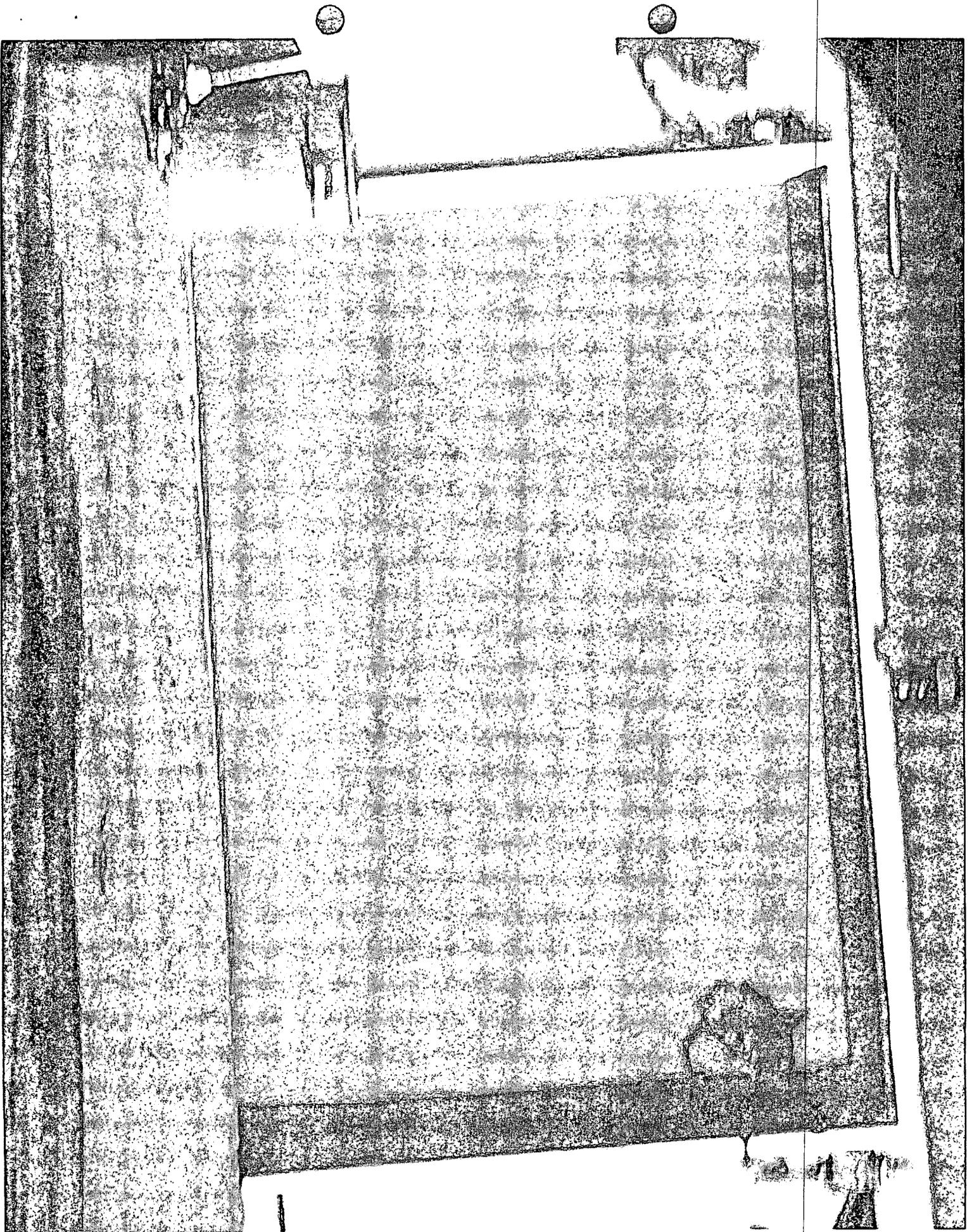


Exhibit D



Wahkiakum County
Sheriff's Office

Corrections
Department

Property Release Form

I km authorize the Wahkiakum County Sheriff's Office to release:
All of my Property

The following itemized list of property

Mail, wallet, belt, carton of cigarettes,
hat, various card (debit, memberships, IDs),
ring.

To: KATH NICKS SISTER.
(Name, Address & Phone # of Person Authorized to Receive Property)

I understand that in accordance with RCW 63.42.050 if this property is not claimed by me or my authorized representative within 60 days of my release or transfer from Wahkiakum County Jail, it will be considered as abandoned property and disposed of under the guidelines of RCW 63.42.040.

X Jan Eubler
(Inmate's Signature & Date)

X Brian Wood 1.08.15
(Corrections Staff Witness & Date)

I acknowledge receipt of the above property

X Kath Nicks
(Recipient's Signature & Date)

X Gary Howell
(Corrections Staff Witness & Date)

Exhibit E

100-101013
 Kelse
 340-749-1571
 98026

Fort Wayne, IN 46822
 800-336-2979 / 260-454-2
 www.mighty-quip.com

QTY	DESCRIPTION	DATE OF MANUF.	UNIT COST
1	Mighty-Quip Diesel Generator open enclosed welder	2015	5450
	EL2500 or EL4000 Mighty-Quip Gas Generator		
	155 PSI Pontoon Air Compressor w/Honda engine		
	125 gal Dewalt Wheelbarrow Air Compressor		
1	200 gal Dewalt Electric Air Compressor		FM
	Mighty-Quip Wheelbarrow Air Compressor w/Honda engine		
	Mighty-Quip Wheelbarrow Air Compressor		
1	Honda 2" Trash Pump with hose kit		FM
	Mighty-Quip 3" Trash Pump		
1	3000 PSI Pressure Washer		FM
1	EL 5500 w/ Honda Gas Generator		FM

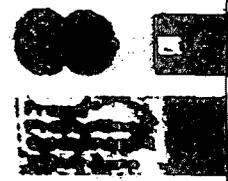
SPECIAL INSTRUCTIONS

1 year transferrable warranty on each piece

SUBTOTAL 5450
 TAX —
 TOTAL 5450

OFFICE USE ONLY

~~Credit Card Number _____
 Expiration Date _____ CHARGE AMOUNT \$ _____
 APPROVAL # _____ TRANSACTION # _____
 NOT SUBJECT TO CANCELLATION 3/1~~



Payment specifications and prices are acceptable and that I am liable for a twenty percent (20%) restocking fee plus return shipping and handling fee. This account requires legal action for collection. Buyer must pay and a twenty percent (20%) restocking fee shall be paid by buyer. This is a service charge of one-half percent per month or 6% per annum.
THIS ORDER IS NOT SUBJECT TO RETURN OR CANCELLATION
 Payment is required. I hereby waive my seventy-two (72) hour right of rescission on all products.

Brian Tills
 Driver (Print Name)

 Signature

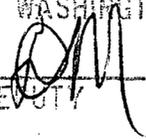


Exhibit F

FILED
COURT OF APPEALS
DIVISION II

2017 JUN 30 AM 10:17

STATE OF WASHINGTON

BY 
DEPUTY

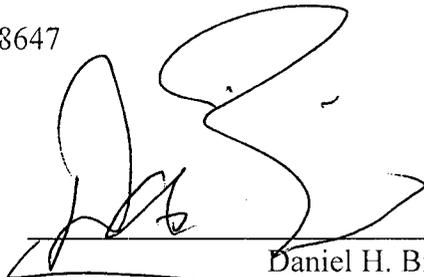
CERTIFICATE

I certify that I mailed a copy of the foregoing Respondent's Brief to the following addresses, postage prepaid, on June 28, 2017.

David C. Ponzoha
Washington State Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

Peter B. Tiller
The Tiller Law Firm
Corner of Rock and Pine
P.O. Box 58
Centralia, WA 98531

Kathleen Nicks
P.O. Box 221
Skamokawa, WA 98647



Daniel H. Bigelow
Prosecuting Attorney
Attorney for Respondent
WSBA No. 21227