

NO. 49625-9

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

HAFID TAHRAOUI, Appellant

v.

FRANKLIN BROWN, et al., Respondents

BRIEF OF RESPONDENTS

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I. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

- A. Should the trial court's summary judgment dismissal of Plaintiff's malicious prosecution claim be affirmed when the Defendant officers filed police reports in which they made a full and fair disclosure in good faith to the Pierce County Prosecutor's Office of all material facts known to them concerning their investigation into Eric Pate's report that Plaintiff had committed theft of a trailer hitch, and the Prosecutor's Office thereafter filed a criminal charge against the Plaintiff?
- B. Did the trial court correctly grant the Defendants' costs for the jury demand filing fee of \$250 and statutory attorney fees of \$200 when such costs are authorized pursuant to CR 54(d) and RCW 4.84.030?

II. STATEMENT OF THE CASE

A. Statement of Facts

Defendants Franklin Brown, Rustin Wilder, and Montgomery Minion are deputy sheriffs with the Pierce County Sheriff's Department.¹ In 2008, they filed police reports concerning Eric Pate's allegation that Tahraoui had stolen Pate's trailer hitch.

¹ Pierce County and Deputy William Foster are also Defendants, but Plaintiff failed to raise argument concerning these two Defendants either before the trial court or this Court.

1. Deputy Brown's Police Report

In 2008, Deputy Franklin Brown was a patrol deputy stationed at the Sheriff Department's Mountain Detachment, which encompassed a patrol area of about 700 square miles. CP 23. On May 11, 2008, Deputy Brown was dispatched to Eric Pate's residence. CP 24. Pate reported that a suspect named "Hafid" had stolen a \$500 aluminum trailer hitch at Pate's yard sale, and "Hafid" wanted \$100 before he would return the hitch back to Pate. CP 24, 31. Brown confirmed through a later records check that "Hafid" was Plaintiff Hafid Tahraoui. CP 27. Brown had no prior knowledge of Pate or Tahraoui prior to responding to this call. CP 24, 28.

Pate reported that Tahraoui took Pate's trailer hitch after specifically being told it was not for sale. CP 24. Pate's wife, Shawna Fore, told Brown that she saw Tahraoui take the hitch away. CP 25. Thereafter, Brown phoned Tahraoui at a number provided by Pate. CP 25. Tahraoui did not deny having the hitch. At some point during the course of the conversation, Tahraoui dared Brown to find him in order to get the hitch back, and Tahraoui then hung up. CP 25. The following is the narrative portion of Brown's police report, which he filed on May 12, 2008, arising from his investigation into Pate's report²:

² A copy of this and all other police reports at issue can be found at CP 136-149 and at Appendix A to this brief.

On May 11, 2008 at around 1200 hours, I contacted V/Pate at his residence regarding the theft of his trailer hitch. Pate told me around 1200 hours, yesterday, SV/Hafid had come over to the residence to look at a forklift Pate was selling. Pate was having an estate sale and ran an ad in the local newspapers.

After discussing the purchase of the forklift, Hafid asked Pate how much he wanted for his aluminum trailer hitch. Pate told him it wasn't for sale. Hafid then looked over the other items Pate was selling. Pate said Hafid then left and he noticed the trailer hitch was missing. Pate then spoke with W/Fore. Fore said she watched Hafid put the hitch into the trunk of his vehicle along with some other items before he left.

Pate called Hafid earlier this morning and asked Hafid to return the hitch. Hafid told Pate, "It's not convenient for him to return it at this time, but he would get back with him later." After further discussion over the hitch being returned, Hafid stated he took the hitch because he was short changed at the estate sale and he figured this was a fair compromise. Pate explained the hitch was not for sale and he wanted it back.

I then spoke with Fore. She stated she was pulling into the driveway when she noticed Hafid placing the hitch into the trunk of his vehicle. She said the hitch was sticking out the top of a white bucket he was carrying.

I called Hafid and left a message for him to call me back. He returned my call and asked if I was serious about seeking a warrant for his arrest if he didn't return the item. I told him I was, and that Pate would rather have his property returned. Hafid then dared me to find him and get the property back. He then hung up.

On May 12, 2008 at around 1115 hours, I received a phone call at the D10 office from Pate. He stated Hafid had called twice this morning wanting to make arrangements to return the hitch. He also wanted to make sure Pate wasn't going to have him arrested for taking the item. Hafid asked that I call him to ensure he wasn't going to be arrested.

I called Hafid and asked him if he was going to return the item. He stated he had not made arrangements with Pate, and that I had no idea what I was talking about. He told me he didn't steal the item and that the situation is between him and Pate. Hafid then asked me if I was going to seek a warrant for

his arrest. I informed him Pate wanted his property back more than seeking his arrest. Hafid then told me he was currently barricading himself in his home because he feared I was coming to arrest him.

CP 139; Appendix A.

2. Lieutenant Rustin Wilder

Rustin Wilder is a Lieutenant with the Pierce County Sheriff's Department. Wilder's duties involve supervisory responsibilities over the department's budget, administration, buildings and personnel. CP 37. On May 12, 2008, Wilder was notified that a complaint had been lodged against Brown by Tahraoui. CP 38. Ordinarily, such a complaint would be referred a patrol deputy's sergeant, but Brown's sergeant was not available. CP 38. Wilder therefore returned Tahraoui's call himself. CP 38.

Tahraoui stated to Wilder that Brown was attempting to get Tahraoui to return a trailer hitch to an individual named Eric Pate, and that Brown had threatened to get a warrant and arrest Tahraoui concerning the matter. CP 38. Tahraoui alleged that Brown was acting corruptly in this instance because Pate was a personal friend of Brown's. CP 38. Tahraoui alleged that Brown was working on behalf of Pate in this matter instead of for the Sheriff. CP 38.

Wilder verified that Brown was dispatched to Pate's call while working his normal shift. CP 39. Wilder also verified that Brown and Pate

had no previous knowledge of each other prior to the dispatch call. CP 26, 39. Wilder called Tahraoui back and told him there was no connection between Deputy Brown and Pate. CP 40. Wilder was also of the view that probable cause existed for a charge of theft against Plaintiff based on the information gathered by Brown, and he advised Tahraoui that Tahraoui was subject to arrest.³ CP 40. Wilder filed a police report documenting his phone contact with Tahraoui, his investigation into Tahraoui's corruption allegation against Brown, and his conclusion that Plaintiff's allegation was not substantiated. *See* CP 140-41; Appendix A.

3. Montgomery Minion

In 2008, Deputy Montgomery Minion was the investigative deputy stationed at the Mountain Detachment. CP 45. His duties included performing follow-up investigations on various patrol deputy cases. CP 45-46. On May 12, 2008, Minion was assigned this case for follow-up investigation. CP 46. He tried to contact Tahraoui at his business address, but was not successful. CP 46. Minion wrote and filed a police report documenting this effort. CP 142-144; Appendix A.

On May 23, 2008, Minion called Tahraoui to try to get his side of the story, as well as to advise Tahraoui that Minion was preparing to send the case file to the Prosecutor's Office for a charging determination. CP 46.

³ Plaintiff was in fact never arrested in this case. CP 73.

Tahraoui called back and told his side of the story to Minion, which included Tahraoui's assertion that he purchased the trailer hitch at the yard sale from Pate's father, Shelly. CP 146. On May 23, 2008, Minion wrote and filed a police report containing Plaintiff's side of the story as follows:

On 5-23-08 at 1000 hours I called Hafid to attempt to get his side of the story as well as advise him that I was preparing to send the case file to the Prosecutor's Office to file charges. After leaving a message I began to work on the charging sheet for the prosecutor when I received a telephone call from Hafid.

Hafid asked me if I would record our conversation and I told him that I could not and would not do so. He then told me that he would like to tell his side of the story about the taking of the hitch.

Hafid told me on 05-09-08 he responded to an ad in the paper regarding a sale of a generator. Hafid contacted the victim, Eric Pate, and paid him \$200.00 for the generator. They began to talk about other items that Pate had for sale and Pate told Hafid that he had a forklift for sale. Hafid told me he then followed Pate to his residence to look at the forklift. Upon viewing the lift Hafid said he was interested in purchasing the machine. Pate wanted \$500.00 down on the lift to hold it for Hafid until the next day. Hafid told him that he did not have the money at that time but would return the next day to get the lift. Hafid told me that he then noticed that Pate was having a large garage sale in the yard of his residence and Pate had told him that the bank was foreclosing on his home and he was selling everything so that he could move to Colorado. Pate told Hafid that everything must go in the sale or it was going to be thrown away. Hafid said that he then perused the sale and purchased approximately \$350.00 worth of tools and other items.

On Saturday 05-10-08 Hafid said that he returned to Pate's residence at around 1000 hours and was interested in purchasing the forklift. Eric was not available as he was helping other customers at the time. Hafid said that he then looked at a trailer that was in the yard and noticed that the hitch was on the deck of the trailer. Also on the trailer were several

items that were for sale. Several other customers were looking at the items on the trailer including the hitch. Hafid said that Pate's father, Shelly⁴, [a]sked if he needed any help and Hafid told him that he wanted to purchase some of the items on the trailer. Shelly then got a box for Hafid and Hafid said that he loaded several items to include the trailer hitch. Shelly told Hafid that he could have the whole box of items for \$70.00. Hafid said that he purchased the item fair and square. Hafid then gave Shelly \$70.00 and placed the items in his vehicle. Shelly told Hafid that he was having difficulty making change as he did not have correct denominations. Hafid said that he then gave Shelly one hundred dollars in \$20.00 bills and in return got a \$100.00 bill.

Hafid then continued shopping the sale and found a vacuum cleaner that he purchased for \$30.00 from Shelly. As he was loading the vacuum cleaner, Eric's wife Shawna saw the vacuum cleaner and told them that the vacuum was not for sale. Hafid said that he then returned the vacuum cleaner and exchanged moneys with Shelly again for the amount that he paid for the vacuum. Hafid then left the sale and returned home.

Upon returning home he went through his money again and counted it up to see how much he spent. Hafid said upon counting his cash he noticed that he was short by \$100.00. Hafid said that he then called Pate and asked him to check around for the \$100.00 bill that he received from Shelly because he thought that he may have exchanged it with Shelly on accident. Pate told Hafid that there was no \$100.00 bill around and that any problem with the money would have to be dealt with through Shelly since he was the one exchanging the cash. Hafid said that he knew that Shelly had somehow short-changed him at the sale but he was not going to make a big deal out of it.

On Sunday 05-11-08, Hafid received a phone call from Pate claiming that he stole the trailer hitch. Hafid denied doing so and told Pate that he had purchased the hitch and it was sold to him by Shelly. Pate told Hafid that he needed to return the hitch to him as soon as possible and [then] Hafid told Pate that he was busy and not available to return the hitch at that time.

⁴ In his First Amended Complaint, Pate alleges that Shelly was Pate's step-father instead of father. CP'86.

Hafid then told me that Pate threatened to call the police if he failed to return the hitch. Several more phone calls were exchanged that morning and finally Pate told Hafid that he was calling the police.

About one hour later Hafid said that he got a phone call from Deputy Brown. He indicated that Deputy Brown did not want to hear his side of the story and only wanted him to return the hitch. Hafid said that he was upset that Brown did nothing to listen to the facts of the case and so he told Brown that he was going to return the hitch only if he could be found. Hafid told me that he had made contact with both Brown and Pate several times in relation to this hitch. I told Hafid that the stories by Pate, Brown, and Lt. Wilder were much different from his and that I was still going to have to submit the case to the prosecutor for charging. I told Hafid that if he had simply returned the item then the case would have gone away. Hafid then agreed to my statement and informed me that he was going to make arrangements to return the hitch to Pate. Hafid told me that he would however need more time to return the hitch. I then told Hafid that he had 24 hours to make arrangement with Pate to return the hitch. If he failed to do so he would be held accountable and the case would be submitted for charging. Hafid agreed to do so.

I attempted to contact Pate to advise him of the situation and left a message on his voice mail to have him call me about the situation to interview Shelly and Shawna as well as make sure that Hafid returns the hitch.

CP 145-47.

Minion had not heard from either Tahraoui or Pate that the hitch had been returned. CP 49. Minion submitted the case file to the Prosecutor's Office for a charging decision on or about May 26, 2008. CP 49-50. To do this, Minion gave the Prosecutor's Office a charging sheet for incident number 081320486 and a copy of each police report filed to date under this number, which included: (1) Deputy Brown's report; (2) Lieutenant

Wilder's report; (3) Minion's first report, in which he describe his unsuccessful efforts to find Tahraoui; and (4) Minion's second report in which Tahraoui gave his side of the story concerning the trailer hitch. CP 50.

Minion could not confirm Shelly's identity because Tahraoui did not provide Shelly's last name. CP 49. Minion tried to contact Shelly through Pate, but Pate did not return Minion's calls. CP 50.

On July 30, 2008, Minion filed his third and final report in which he closed his investigation because Pate did not return Minion's calls and had disconnected his phone:

I have attempted several times over the past two months to contact the victim, Charles Pate in regard to this case. He refuses to return my calls and is believed to be living out of state at this time. This case is closed because of lack of victim cooperation.

After conducting a lengthy investigation into this theft I had made arrangements to have the suspect return the stolen hitch to the victim. I then tried to contact Pate several times by telephone. The only number that I had listed for Pate was his cellular phone. I left several voice messages for Pate in hopes of contacting him. Pate refused to return my phone calls. The last time that I called Pate's cellular phone number I was advised per recording that the number was no longer in service and had been disconnected. I am therefore closing this case pending [an] exceptional due to the lack of interest by the victim. I am unable to contact Pate in person as he now resides in Colorado.

CP 148-49; Appendix A.

4. Criminal Charges Filed Against Plaintiff

Seven months elapsed after Minion filed his final police report before a charging decision was made by the Pierce County Prosecutor's Office. Deputy prosecutors assigned to the Misdemeanor Unit of the Prosecutor's Office collectively review upwards of two thousand police reports per year for the purpose of making misdemeanor charging decisions. CP 64. When a deputy prosecutor makes a charging decision with regard to a particular incident number, he or she has access to the police reports filed under that incident number, including any and all supplemental reports filed. CP 64.

On February 26, 2009, a deputy prosecutor in the Misdemeanor Unit filed a criminal complaint charging Tahraoui with third degree theft arising out of the trailer hitch incident. CP 78-79. The deputy prosecutor also filed a declaration affirming familiarity with the police report and/or investigation conducted by the police in this case. CP 80.

On March 10, 2009, Tahraoui was arraigned in Pierce County District Court on the misdemeanor theft charge. CP 73, 81. On May 5, 2009, the deputy prosecutor elected not to pursue the case, and the court dismiss the case at a pre-trial hearing. CP 75-76. Plaintiff made only two court appearances. CP 77. Plaintiff was never taken into custody on this matter, or otherwise arrested. CP 73.

B. Statement of Procedure

In 2011, Tahraoui filed suit in the Pierce County Superior Court alleging malicious prosecution and other state and federal causes of action. The Defendants removed the case to federal district court where Tahraoui was allowed to file a First Amended Complaint.

The federal district court dismissed all of Plaintiff's federal claims on Defendants' Rule 12(b)(6) motion. The Plaintiff appealed, and the Ninth Circuit affirmed in an unpublished opinion. *See Tahraoui v. Brown*, 539 Fed. Appx. 734 (2013).

In March 2013, the Pierce County Superior Court on remand dismissed Plaintiff's remaining state law claims on Defendants' Rule 12(c) motion for judgment on the pleadings.⁵ In an unpublished decision, the Court of Appeals affirmed in all respects except with regard to Plaintiff's malicious prosecution allegation, finding that Plaintiff had asserted adequate facts within his First Amended Complaint to withstand a Rule 12(c) challenge for judgment on the pleadings. *See Tahraoui v. Brown*, 185 Wn. App. 1051 (2015)(unpublished).

The malicious prosecution claim was remanded back to the Pierce County Superior Court. In October 2015, the superior court issued a case

⁵ The Defendants' 2013 Rule 12(c) challenge did not concern matters outside the pleadings and was not converted into a motion for summary judgment.

scheduling order setting deadlines, including a deadline of February 29, 2016, for either side to file a demand for a jury. CP 175. On February 25, 2016, the Defendants filed a demand for a twelve-person jury; and in so doing, they paid the requisite superior court jury demand filing fee of \$250.00. CP 155-56, 177.

On September 30, 2016, the Honorable Jack Nevin granted the Defendants' motion for summary judgment. CP 153-54. On October 10, 2016, Defendants timely filed a cost bill requesting \$250 for the jury demand filing fee and \$200 for statutory attorney fees for a total of \$450. CP 155-56. The court granted the Defendants' request. CP 161-62. Plaintiff filed a notice of appeal.

III. ARGUMENT

A. **The Superior Court's Dismissal Should Be Affirmed Because the Defendant Officers Made a Good Faith, Full and Fair Disclosure of All Material Facts Known to Them to the Prosecutor.**

"The standard of review of an order of summary judgment is de novo, and the appellate court performs the same inquiry as the trial court." *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002).

Summary judgment is appropriate if the pleadings and evidence, viewed in a light most favorable to the nonmoving party, show there is no genuine issue of material fact and the moving party is entitled to judgment

as a matter of law. *Landberg v. Carlson*, 108 Wn. App. 749, 757, 33 P.3d 406, rev. denied 146 Wn.2d 1008 (2001). All facts and reasonable inferences are viewed in the light most favorable to the nonmoving party. *Atherton Condo. Apartment–Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). If the moving party satisfies its burden on summary judgment, the nonmoving party must present evidence that demonstrates that material facts are in dispute. *Atherton*, 115 Wn.2d at 516. A material fact is one upon which the outcome of the litigation depends. *In re Estate of Black*, 153 Wn.2d 152, 160, 102 P.2d 152 (2004). If the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to his case, then the trial court should grant the motion. *Hines v. Data Line Sys., Inc.*, 114 Wn.2d 127, 148, 787 P.2d 8 (1990).

To maintain an action for malicious prosecution, a plaintiff must prove each of the following five elements: (1) that the prosecution claimed to have been malicious was instituted or continued by the defendant; (2) that there was want of probable cause for the institution or continuation of the prosecution; (3) that the proceedings were instituted or continued through malice; (4) that the proceedings terminated on the merits in favor of the plaintiff, or were abandoned; and (5) that the plaintiff suffered injury or damage as a result of the prosecution. *Bender v. Seattle*, 99 Wn.2d 582,

593, 664 P.2d 492 (1983).

Under Washington law, a defendant can establish probable cause, the second element above, as a matter of law to defeat a malicious prosecution claim when the defendant shows he or she made to the prosecutor "a full and fair disclosure, in good faith, of all material facts known to [him or her]," and thereafter the prosecutor elected to file a criminal charge against the plaintiff. *Bender*, 99 Wn.2d at 593 (citing *Peasley v. Puget Sound Tug & Barge Co.*, 13 Wn.2d 485, 499-500, 125 P.2d 681 (1942)). The defendant bears the burden of establishing this defense. *Creelman v. Svenning*, 1 Wn. App. 402, 405, 461 P.2d 557 (1969). "Full and fair disclosure in good faith of all known material facts by the defendant to the prosecuting attorney establishes probable cause as a matter of law and is a complete defense to a malicious prosecution action." *Creelman*, 1 Wn. App. at 405; see also *Rodriguez v. Moses Lake*, 158 Wn. App. 724, 730, 243 P.3d 552 (2010); *Olsen v. Fullner*, 29 Wn. App. 676, 678, 630 P.2d 492 (1981). A full and fair disclosure requires communication to the prosecutor of all material facts, but it does not require disclosure of minor details that are collateral to the material facts. *Brooks v. Bolde*, 11 Wn.2d 37, 42, 118 P.2d 193 (1941).

In this case, there is no dispute as to precisely what the Defendants disclosed to the prosecutor. The Sheriff's Department requires its deputies

to prepare, write, and file their police reports electronically. CP 99. Once a report is approved into the electronic system, the report is preserved in an official form and made available to authorized agencies such as the Prosecutor's Office. CP 64, 99-101. The Defendants' five police reports were filed and approved into the system as follows: May 12, 2008 (Brown, Wilder), May 23, 2008 (Minion's first two reports), and July 30, 2008 (Minion's final report). CP 100. The deputy prosecutor who filed the misdemeanor theft charge had access to these reports and acknowledged familiarity with the investigation in a declaration filed in court. CP 64, 79-80.

In their police reports, the Defendant deputies made a full and fair disclosure in good faith to the prosecutor of all material facts known to them concerning the investigation into Pate's allegation that Tahraoui had stolen the trailer hitch. The police reports demonstrate two differing versions of the trailer hitch incident: one as reported by Pate, and the other by Tahraoui. The facts known by the deputies evolved over time. At each juncture, however, the deputies wrote and filed police reports that contained the material facts known to them.

For example, Deputy Brown's report shows that Pate made three key factual assertions to Brown: (1) that Tahraoui took the trailer hitch at a yard sale without Pate's permission after specifically being told by Pate that the

hitch was not for sale, (2) that Pate's wife reported she had seen Plaintiff take the hitch, and (3) that Tahraoui told Pate he had taken the hitch because he believed he had been short-changed at the yard sale. CP 139. Brown also reported his telephone call with Tahraoui in which Tahraoui dared Brown to find him in order to get the hitch back. CP 139.

Deputy Wilder's report recounts Wilder's phone contact with Plaintiff in response to Plaintiff's unfounded allegations that Brown was acting corruptly on behalf of Brown's "friend" Pate. CP 141. Plaintiff acknowledged in his deposition that he had no evidence to support his claim that Brown was acting corruptly. CP 128.⁶

Deputy Minion's report of May 23, 2008, provides Tahraoui account of purchasing the hitch from Shelly, Pate's father. CP 146-47. Minion also reported calling Pate, and leaving a message that he wanted to interview Shelly and Pate's wife. CP 147.

Minion's final report of July 30, 2008, indicates he made multiple calls to Pate in an attempt to find and interview Shelly, but Pate did not return the phone calls and had his number disconnected. CP 148-49. Minion

⁶ Q: Did you have any evidence that Deputy Brown was working for Eric Pate?

A: He was – he was just a – he said he was acting. He was acting. Seems to me like he's like – he's his buddy or something. **No, I had no evidence for that**, but it's just the way how – the speed how these things did go and the way how—must have a reason how – I know.

CP 128 (emphasis added).

made it clear in his report that he was closing his investigation due to lack of cooperation from Pate. CP 148. Pate never made himself available for questioning by Minion. Consequently, Shelly's identity or involvement was never confirmed, despite Minion's efforts. CP 50.

The disclosure of Pate's allegations, Plaintiff's account concerning Shelly's role, and Minion's multiple but unsuccessful attempts to contact Pate and interview Shelly reflect that the deputies made a good faith, full and fair disclosure to the prosecutor of all material facts that were within their knowledge. The trial court correctly concluded that the Defendants met their burden of showing that a full and fair disclosure was made in this case.

Plaintiff asserts that the trial court erred because Plaintiff provided facts disputing the existence of probable cause for the underlying theft prosecution. He argues that because he disputed probable cause, a material fact existed to preclude summary judgment. This argument should be rejected. It is true that a plaintiff who raises a malicious prosecution claim has the burden of proving at trial the lack of probable cause for the filing of a criminal charge. However, the Plaintiff confuses this "probable cause" *element* with the *defense* at issue, *i.e.*, whether the Defendants made to the prosecutor a full and fair disclosure in good faith of all material facts known to them prior to the prosecutor's decision to file the criminal charge. Under

Washington law, where such a disclosure is made, probable cause is deemed to exist *as a matter of law* to defeat a malicious prosecution charge in its entirety. *See e.g., Rodriguez*, 158 Wn. App. at 730.

Plaintiff expresses his opinion that the Defendants did not spend adequate time investigating the theft claim, and he uses this opinion as a basis for arguing the deputies did not act in good faith. In raising this argument, Plaintiff misconstrues the good faith, full and fair disclosure standard. This defense requires that a defendant fully communicate or disclose in good faith all material facts within his or her knowledge. The good faith requirement pertains to making this full disclosure.

This principle is illustrated by the court's reasoning in *Bender v. City of Seattle*, 99 Wn.2d 582, 664 P.2d 492 (1983). In *Bender*, the court determined that a detective failed to establish he made a full and fair disclosure to the prosecutor. The court reached this conclusion because the record contained specific facts material to the criminal defendant's defense that the detective affirmatively knew but failed to disclose to the prosecutor.

In *Bender*, a burglary suspect named Johnson told detectives that Bender, a jewelry store owner, had knowingly bought two stolen diamond rings from him. Bender was criminally charged with grand larceny by possession. He raised the defense that he did not know the rings were stolen and was subsequently acquitted. Bender then raised a malicious

prosecution lawsuit against the detective who investigated the case.

The court determined the detective failed to establish he made a full disclosure to the prosecutor because he did not disclose he had investigated but found no supporting evidence of Johnson's claim of making prior sales of stolen property to Bender. In addition, the detective failed to disclose that Bender produced, immediately upon request, records concerning: (1) the purchase of the rings from Johnson, and (2) documents showing his store's statutory compliance with reporting requirements. *Bender* illustrates that the nondisclosure of specific material facts will preclude a defendant from showing he or she made a full and fair disclosure in good faith to the prosecutor.

Plaintiff has failed to show the non-disclosure of any material facts that were within the officers' knowledge. Instead, Plaintiff largely provides only his own opinions and conclusions as to what the officers should or should not have done, and how their investigation was otherwise inadequate in his view. An adverse party may not rest upon the mere allegations or denials of a pleading, but instead "must set forth specific facts showing that there is a genuine issue for trial." CR 56(e). Unsupported argumentative assertions are not sufficient to defeat summary judgment. *Vacova Co. v. Farrell*, 62 Wn. App. 386, 395, 814 P.2d 255 (1991). In this case, Plaintiff has not set forth specific facts concerning any genuine issue for trial, and

summary judgment was therefore appropriate.

Plaintiff also raises the allegation that Brown and Wilder "refused" to hear his side of the story. To the extent Plaintiff is attempting to allege a nondisclosure on Brown's or Wilder's part concerning Plaintiff's side of the story, it is undisputed that Plaintiff's account was in fact fully disclosed to the prosecutor in Minion's report. CP 146-47. If one compares Plaintiff's statements as reported by Minion with Plaintiff's statements as they appear in his First Amended Complaint, it is clear that the two are in largely in accord concerning the exchange with Shelly. *See* CP 85-86, 147. Plaintiff has not shown that the officers failed to disclose any material fact that was within their knowledge.

Plaintiff also asserts that Brown "deliberately failed" to ask or examine Shelly about his involvement. To the extent Plaintiff is arguing a nondisclosure of fact, his argument should be rejected. It is undisputed that Brown was not made aware of Shelly existence during the course of Brown's investigation. CP 27-28. In fact, Pate did not mention Shelly, nor did Pate say he authorized anyone at the yard sale to take money on his behalf.⁷ CP 27-28.

Plaintiff also argues that Brown "did not disclose to the prosecutor

⁷ It should be noted that Plaintiff never named Pate as a defendant to this case, even though Pate accused Tahraoui of theft and did not disclose to the officers any involvement Shelly may have had concerning the alleged sale of the hitch.

that his finding was based only on Pate's claim." Plaintiff once again fails to show the nondisclosure of any fact. Brown's report speaks for itself and reflects all the sources of his information, including statements by Pate, Pate's wife Shawna, and from Plaintiff himself. CP 139.

Plaintiff alleges Minion was obligated to report that probable cause did not exist to believe Tahraoui committed a theft after Tahraoui provided his side of the story concerning Shelly. Plaintiff cannot show the nondisclosure of any material fact. It is undisputed that Plaintiff did not provide a last name for Shelly, and Pate did not return Minion's phone calls before having his number disconnected. CP 49-50. Consequently, Minion could not confirm Shelly's existence, let alone any involvement he may have had in this matter. Plaintiff's assertion that Shelly sold him the hitch was never verified, and Pate never recanted his original statements.

Finally, Plaintiff argues Wilder and Brown were somehow biased against him, and he implies that both officers had some vague, unsubstantiated "malice" toward him. Once again, these vague assertions are insufficient to create an issue of material fact. The question of "malice" in a malicious prosecution is immaterial where, as here, the defendants have shown probable cause as a matter of law through a full and fair disclosure of material fact to the prosecutor. *See e.g. Peasley*, 13 Wn.2d at 499 (the issue of malice becomes immaterial if defendants show probable cause as a

matter of law). Plaintiff has failed to bring forth any evidence that the officers withheld any material facts that were within their knowledge. The superior court's order of dismissal should be affirmed.

B. The Superior Court Correctly Granted Costs.

The Plaintiff argues the trial court did not have authority to assess costs for either the \$250 jury demand filing fee or the \$200 in statutory attorney fees. Plaintiff's arguments should be rejected.

A prevailing party in superior court "shall be entitled to his or her costs and disbursements." RCW 4.84.030. "Costs and disbursements shall be fixed and allowed as provided in RCW 4.84 or by any other applicable statute." CR 54(d). A prevailing party is entitled to recover as costs expenses arising from "filing fees." RCW 4.84.010(1). Under PCLR 38(b), a party in a civil case must file a jury demand to preserve the right to a jury trial. A party making a demand for a twelve-person jury "shall pay . . . a fee of two hundred fifty dollars." RCW 36.18.016(3)(a). "No case will be set for trial by jury unless the jury fee has been paid or waived by court order and all other requirements of statutes or court rules have been satisfied." PCLR 38(a). The Defendants paid this \$250 fee in order to file their Jury Demand with the superior court clerk. CP 155-56. The trial court properly authorized this filing fee as part of Defendants' costs.

The superior court also acted properly in authorizing as costs \$200

in statutory attorney fees. A prevailing party in superior court is entitled to receive as costs statutory attorney fees in the amount of \$200. RCW 4.84.010(6); RCW 4.84.080. The court's order with regard to costs should be affirmed.

Plaintiff argues without authority that Defendants did not submit a timely request for costs. This argument should be rejected. The court granted summary judgment on September 30, 2016. CP 153. A prevailing party may file a cost bill within 10 days after the entry of judgment. CR 54(d). Defendant Pierce County timely filed its cost bill on October 10, 2016. CP 155. Plaintiff's argument concerning the granting of costs should be rejected.

IV. CONCLUSION

The Defendants respectfully request that the court affirm the trial court's order granting summary judgment dismissal of Plaintiff's malicious prosecution claim. The trial court's award of costs should also be affirmed.

DATED this 9th day of June, 2017.

MARK LINDQUIST, Prosecuting Attorney
s/ DONNA MASUMOTO
DONNA MASUMOTO, WSBA # 19700
Pierce County Prosecutor / Civil
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160
Ph: 253-798-4289 / Fax: 253-798-6713
E-mail: dmasumo@co.pierce.wa.us
Attorneys for Respondents

CERTIFICATE OF SERVICE

On June 9, 2017, I hereby certify that I electronically filed with the Clerk of the Court and delivered a true and accurate copy of the foregoing Respondents' Brief to the following party by electronic mail:

Hafid Tahraoui: hafid 1416@yahoo.com

s/ DEBRA BOND

DEBRA BOND

Legal Assistant

Pierce County Prosecutor's Office

Civil Division, Suite 301

955 Tacoma Avenue South

Tacoma, WA 98402-2160

Ph: 253-798-6083 / Fax: 253-798-6713

NO. 49625-9

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

HAFID TAHRAOUI, Appellant

v.

FRANKLIN BROWN, et al., Respondents

APPENDIX

MARK LINDQUIST
Prosecuting Attorney

By
DONNA MASUMOTO
Deputy Prosecuting Attorney
Attorneys for Respondents

955 Tacoma Avenue South
Suite 301
Tacoma, WA 98402
PH: (253) 798-4289

Table of Contents

APPENDIX A APP 1-14

CERTIFICATE OF SERVICE

On June 9, 2017, I hereby certify that I electronically filed with the Clerk of the Court and delivered a true and accurate copy of the foregoing Appendix to the following party by electronic mail, pursuant to the agreement of the parties:

Hafid Tahraoui
Email: hafid1416@yahoo.com

s/ DEBRA BOND

DEBRA BOND, Legal Assistant
Pierce County Prosecutor's Office
Civil Division, Suite 301
955 Tacoma Avenue South
Tacoma, WA 98402-2160
Ph: 253-798-6083/Fax: 253-798-6713

081320

PDA:	Homeland Security:	Subject: Theft
IBR Disposition: Active	Case Management Disposition:	
Forensics:	Reporting By/Date: 92-027 - Brown, Franklin 5/11/2008 12:00:00	
Case Report Status: Approved	Reviewed By/Date: 89-026 - Hausner, Nicholas 5/12/2008 14:13:17	

Incident No.
081320486.1

Related Cases:

Case Report Number:	Agency:
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Non-Electronic Attachments

Attachment Type	Additional Distribution	Count
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10/3/2016 14166

Location Address: 30208 22ND Av E	Location Name:
City, State, Zip: Roy, WA 98580	Cross Street:
Contact Location:	City, State, Zip:
CB/Grid/RD: 672 - PIERCE COUNTY	District/Sector: PC10 - Pierce County (Mtn. Detach.)
Occurred From: 5/10/2008 12:00:00 Saturday	Occurred To:
Notes:	

Offense Details: 2309 - Theft - From Yards

Domestic Violence: No	Child Abuse:	Gang Related:	Juvenile:
Completed: Completed	Crime Against: PR	Hate/Bias: None (No Bias)	Using:
Criminal Activity:	Type of Security:	Tools:	
Location Type: Single Family Residence	Evidence Collected:		
Total No. of Units Entered:			
Entry Method:			
Notes:			

Suspect S1: Tahraoui, Hafid

Verified: Yes

PDA:

Aliases:	DOB: [REDACTED]	Age: [REDACTED]	Sex: Male	Race: Unknown	Ethnicity: [REDACTED]
Height: [REDACTED]	Weight: [REDACTED]	Hair Color: Brown	Eye Color: [REDACTED]	Phone: [REDACTED]	Supress Phone: [REDACTED]
Address: [REDACTED]	City, State Zip: [REDACTED]	Other Address:	Occupation/Grade:	Employer/School:	FBI No:
Resident: Unknown	SSN:	State ID:	Local CH No:	Driver License State: [REDACTED]	Driver License Country: [REDACTED]
Driver License No:	Hair Length:	Hair Style:	Glasses:	Racial Hair: Beard - Scraggly	Facial Shape:

Call Source: Dispatched	Assisted By:
Phone Report:	Notified:
Insurance Letter:	Entered By: 92-027 - Brown, Franklin
Entered On: 5/11/2008 13:48:35	Approved By: E203948 - Buck, Laurie
Approved On: 5/12/2008 14:14:20	Exceptional Clearance:
Adult/ Juvenile Clearance:	Exceptional Clearance Date:
Additional Distribution: Prosecutor - Felony	Other Distribution:

Validation Processing	Distribution Date:	By:	County Pros. Atty:	Juvenile Military	Other DSHS	CPS PreTrial	Supervisor:
<p>For Law Enforcement Use Only - No Secondary Dissemination Allowed</p> <p>Records has the authority to ensure correct agency, CB/Grid/RD, and District/Sector are incorporated in the report.</p>							
						<p>Printed: March 11, 2009 - 12:50 PM Printed By: Erdahl, Jacque</p>	

Exhibit A. APP 1

[CP 136]

Hair Type:	Speech:	Complexion:
Appearance:	Right/Left Handed:	Facial Feature Oddities:
SMT:		Distinctive Features:
Attire:		Body Build:
Gangs:		Tribe Affiliation:
Significant Trademarks:		Identifiers:
Suspect Pretended to Be:	Modus Operandi:	
Place of Birth:	Habitual Offender:	Custody Status:
Type of Injury:	Fire Dept Response:	Hospital Taken To:
Medical Release Obtained:	Taken By:	Attending Physician:
Hold Placed By:	Suspect Offense:	
Suspect Notes:		

Victim V1: Pate, Charles Eric

PDA:

Aliases:	DOB: [REDACTED]	Age: 40	Sex: Male	Race: White	Ethnicity: Non-Hispanic
Height:	Weight:	Hair Color:	Eye Color:	Phone: [REDACTED]	
Address: [REDACTED] E	County:	City, State Zip: Roy, WA 98580	Country:	Business Phone:	Other Phone:
Other Address:	Resident: Full - Time Resident	Occupation/Grade: self	Employer/School:	Place of Birth:	
SSN:	Driver License No:	Driver License State:	Driver License Country:	Complexion:	Facial Hair:
Attire:	SMT:	Victim Of: 2309 - Theft - From Yards	Facial Shape:	Weapon Used:	
Victim Type: Individual	Circumstances:	Injury:	Testify:	Reporting Statement Obtained:	Fire Dept Response:
Type of Injury:	Hospital Taken To:	Medical Release Obtained:	Hold Placed By:	Taken By:	
Attending Physician:					

Victim Offender Relationships

Offender:	Relationship:
S1 - Tahraoui, Hafid	Victim Was Acquaintance

Law Enforcement Officer Killed or Assaulted Information	Type:	Justifiable Homicide Circumstances:
	Assignment:	
	Activity:	

Victim Notes:

Witness W1: Fore, Shawna F

PDA:

Aliases:	DOB: [REDACTED]	Age: [REDACTED]	Sex: Female	Race: White	Ethnicity: Non-Hispanic
Height:	Weight:	Hair Color:	Eye Color:	Phone: [REDACTED]	
Address: 30208 22ND Av E	County:				

0134

City, State Zip:	Roy, WA 98580	Country:		Business Phone:	
Other Address:				Other Phone:	
Resident:		Occupation/Grade:		Employer/School:	
SSN:				Place Of Birth:	
Driver License No:		Driver License State:		Driver License Country:	
Attire:				Complexion:	
SMT:				Facial Hair:	
Testify:				Facial Shape:	
Witness Notes:					

10/3/2016 14166

Property Item No. 1/1: 20411 - Vehicle Parts - Hitch

Other Common Item:		Photographed:	
Description:	14 inch drop hitch alum w/ 2-5/16 ball adapt.	Fingerprinted:	
Quantity:	1	Contents Sampled:	
Finding Location:		Owner:	V1 - Pate, Charles Eric
Status:	S - Stolen/Etc. (Bribed/Defrauded/Embezzled/Ransomed, etc., Includes Identity Theft)	Value:	500
Recovered Date:		Make/Brand:	
Recovered Value:		Model:	
Field Tested:		Serial No.:	
Field Test Results:		OAN:	
Property Disposition:		Insurance Company:	
Disposition Location:		Policy No.:	
Vehicle Information:			
License:		Locked:	
License State:		Keys in Vehicle:	
License Country:	USA	Delinquent Payment:	
Vehicle Year:		Victim Consent:	
Make:		Drivable:	
Model:		Estimated Damage:	
Vehicle Style:		Damage:	
Primary Vehicle Color:		Damaged Area:	
Secondary Vehicle Color:		Tow Company:	
VIN:		Tow Consent:	
Special Features:		Hold Requested By:	
Drug Information:			
Drug Type:		Drug Measure:	
Drug Quantity:		Drug Measure Type:	
Jewelry Information:			
Metal Color:		Total # of Stones:	
Metal Type:		Inscription:	
Stone Color:		Generally Worn By:	
Firearm Information:			
Caliber:		Length:	
Gauge:		Finish:	
Action:		Grips:	
Importer:		Stock:	
Property Notes:			

Enter	Date	Time	WACIC	LESA	Initial	Release Info.	Date	Time	Release No.	Release Authority
Clear						Owner Notified			Operators Name	

Investigative Information

Means:	Motive:
Vehicle Activity:	Direction Vehicle Traveling:

Synopsis: SV came to the residence to purchase some items. While doing so, he took the trailer hitch and put it into the trunk of his vehicle after he had been told it was not for sale.

Narrative: On May 11, 2008 at around 1200 hours, I contacted V/Pate at his residence regarding the theft of his trailer hitch. Pate told me around 1200 hours, yesterday, SV/Hafid had come over to the residence to look at a forklift Pate was selling-Pate was having an estate sale and ran an add in the local news papers.

After discussing the purchase of the forklift, Hafid asked Pate how much he wanted for his aluminum trailer hitch. Pate told him it wasn't for sale. Hafid then looked over the other items Pate was selling. Pate said Hafid then left and he noticed the trailer hitch was missing. Pate then spoke with W/Fore. Fore said she watched Hafid put the hitch into the trunk of his vehicle along with some other items before he left.

Pate called Hafid earlier this morning and asked Hafid to return the hitch. Hafid told Pate, "It's not convenient for him to return it at this time, but he would get back with him later." After further discussion over the hitch being returned, Hafid stated he took the hitch because he was shorted change at the estate sale and he figured this was a fair compromise. Pate explained the hitch was not for sale and he wanted it back.

I then spoke with Fore. She stated she was pulling into the driveway when she noticed Hafid placing the hitch into the trunk of his vehicle. She said the hitch was sticking out the top of a white bucket he was carrying.

I called Hafid and left a message for him to call me back. He returned my call and asked if I was serious about seeking a warrant for his arrest if he didn't return the item. I told him I was, and that Pate would rather have his property returned. Hafid then dared me to find him and get the property back. He then hung up.

On May 12, 2008 at around 1115 hours, I received a phone call at the D10 office from Pate. He stated Hafid had called twice this morning wanting to make arrangements to return the hitch. He also wanted to make sure Pate wasn't going to have him arrested for taking the item. Hafid asked that I call him to ensure he wasn't going to be arrested.

I called Hafid and asked him if he was going to return the item. He stated he had not made arrangements with Pate, and that I had no idea what I was talking about. He told me he didn't steal the item and that the situation is between him and Pate. Hafid then asked me if I was going to seek a warrant for his arrest. I informed him Pate wanted his property back more than seeking his arrest. Hafid then told me he was currently barricading himself in his home because he feared I was coming to arrest him.

Reviewed By:	Reviewed Date:
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**Pierce County Sheriff
Department Supplemental
Report**

Incident No. 081320486.2

Page 1 of 2

Original Supp.

PDA:	Homeland Security:	Subject:	Theft	Incident No. 081320486.2
IBR Disposition:	Active	Case Management Disposition:		
Forensics:		Reporting By/Date:	93-010 - Wilder, Rustin 5/12/2008 15:00:00	
Case Report Status:	Approved	Reviewed By/Date:	93-010 - Wilder, Rustin 5/12/2008 17:13:10	

Related Cases:

Case Report Number	Agency
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Non-Electronic Attachments

Attachment Type	Additional Distribution	Count
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Location Address:	30208 22ND Av E	Location Name:	
City, State, Zip:	Roy, WA 98580	Cross Street:	
Contact Location:		City, State, Zip:	
CB/Grid/RD:	672 - PIERCE COUNTY	District/Sector:	PC10 - Pierce County (Mtn. Detach.)
Occurred From:	5/10/2008 12:00:00 Saturday	Occurred To:	
Notes:			

Offense Details: 2309 - Theft - From Yards

Domestic Violence:	No	Child Abuse:		Gang Related:		Juvenile:	
Completed:	Completed	Crime Against:	PR	Hate/Bias:	None (No Bias)	Using:	
Criminal Activity:		Type of Security:		Tools:			
Location Type:	Single Family Residence	Evidence Collected:					
Total No. of Units Entered:							
Entry Method:							
Notes:							

Investigative Information

Means:		Motive:	
Vehicle Activity:		Direction Vehicle Traveling:	

Synopsis:	
-----------	--

Narrative:	On 5-12-08, I received an email message from Major Jenkins regarding a possible complaint from Hafid Tahraoosin, regarding Deputy F. Brown. The complaint alleged Deputy F. Brown was leveraging his position as a Deputy Sheriff to influence a civil situation between himself and "Erik," a personal friend of Deputy F. Brown's. The following narrative description speaks to the fact Hafid committed a theft and attempted extortion, which he tried to cover up and disguise through filing a complaint.
------------	--

Call Source:	Dispatched	Assisted By:	
Phone Report:		Notified:	
Insurance Letter:		Entered By:	93-010 - Wilder, Rustin
Entered On:	5/12/2008 17:10:44	Approved By:	E203963 - Aguilar, Sandra
Approved On:	5/12/2008 17:37:15	Exceptional Clearance:	
Adult/Juvenile Clearance:		Exceptional Clearance Date:	
Additional Distribution:		Other Distribution:	
Validation Processing	Distribution Date:	By: 100	County Pros. Atty.
	Indexed Date:	By:	Juvenile Military
			Other DSHS
			CPS Pre Trial
			Supervisor: pat

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Printed: May 12, 2008 - 5:37 PM
Printed By: Aguilar, Sandra

0137
14166
10/3/2016

I telephoned Hafid. He was upset and "pushy" on the telephone. He stated that Deputy F. Brown had left some strong voice mails on his telephone over the last two days in an attempt to make him give back a trailer hitch. Hafid stated Deputy F. Brown threatened to arrest him and get a warrant for him. Hafid stated that Deputy F. Brown was working for "Erik," his personal friend rather than the Sheriff. Hafid also said that he was being pushed to give back the hitch under the threat of arrest. Hafid was upset that Deputy F. Brown had obtained his date of birth and personal information. I tried to explain that he was doing his job by identifying all of the parties involved. Hafid raised his voice and stated that Deputy F. Brown must have "contacted the Kent Police Department" to get his information. I again tried to explain that it may not have been that difficult to ID him because of other investigative techniques. Hafid became more upset and stated that Deputy F. Brown had too much power and was abusing it.

I tried at least 4 times to explain to Hafid that there would be two sides to the story and that I would have a sergeant look into the situation. Hafid did not like this statement and would respond by raising his voice and insisting that there was corruption involved. I tried to explain that Deputy F. Brown was working at the time of the alleged sale. (Hafid never stated that he purchased the hitch or made a purchase) Again, he spoke over me and reasserted his previous position that Deputy F. Brown was corrupt. I had to finally raise my voice to insert myself into the conversation and make the point that the situation was going to be looked into.

I spoke with Deputy F. Brown by telephone. He explained the situation to me. Deputy F. Brown was dispatched to the call while working his normal shift. The victim and Deputy F. Brown did not have any previous knowledge of each other. Deputy F. Brown stated that Hafid purchased a few items at an Estate sale. As Hafid was loading items into his vehicle, he tried to pick up the trailer hitch. The victim told him that it was not for sale. (In fact, the hitch did not even belong to him but rather a friend) Hafid placed the first items in his vehicle and then went back, placed the hitch into a bucket and walked away with it. Deputy F. Brown stated that a witness watched Hafid walk away with the hitch without paying. Deputy F. Brown stated that he had several telephone calls with Hafid, some initiated by Hafid and some by Deputy F. Brown. During one of those conversations, Hafid essentially tried to bluff Deputy F. Brown into identifying him. Deputy F. Brown confronted Hafid with his correct personal information. This surprised and upset Hafid. Deputy F. Brown stated that he would be attempting to get a warrant through the prosecutor's office.

Deputy F. Brown told me that at one point Hafid had spoken with the victim and tried to sell the stolen hitch back to the victim for \$100. This was taken as an admission that Hafid had the hitch and was trying to extort money from the victim for recovery of the stolen property.

I telephoned Hafid and spoke to him about the hitch. I asked Hafid to come down to the South Hill Precinct and fill out a statement about his complaint. This was a ruse; I had every intention of detaining and arresting Hafid under the probable cause established by Deputy F. Brown. Hafid became suspicious and asked about a warrant and being arrested. I told him that there was no current warrant for his arrest related to this case. He asked if there might be a warrant later. I then advised him that a report was already being written and investigated, that there was no connection between Deputy F. Brown and the victim, that he had not been honest when relaying the events of the story and that he was now subject to arrest. Hafid became upset and started ranting about this "all being wrong" and that the police had too much power" he asked to record our conversation and I stated that he did not have my permission. (There was no indication that there would be consistency with the recording) I raised my voice to be heard and assertively outlined the reason and validity of the charges against Hafid for the theft. I also told him that his complaints against Deputy F. Brown were false statements and that Deputy F. Brown's statements could be collaborated while he could not. In fact, his own statements to me pointed towards his own guilt rather than his own innocence.

Reviewed By:

Reviewed Date:

**Pierce County Sheriff
Department Supplemental
Report**

Incident No. 081320486.3

810
14166
10/3/2016

PDA:	Homeland Security:	Subject: Theft	Original Supp.
IBR Disposition: Active	Case Management Disposition:	Reporting By/Date: 96-032 - Minion, Montgomery 5/22/2008 14:47:10	Incident No. 081320486.3
Forensics:	Reviewed By/Date: 89-026 - Hausner, Nicholas 5/23/2008 10:45:35		
Case Report Status: Approved			

Related Cases:

Case Report Number:	Agency:
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Non-Electronic Attachments

Attachment Type	Additional Distribution	Count
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Location Address: 30208 22ND Av E	Location Name:
City, State, Zip: Roy, WA 98580	Cross Street:
Contact Location:	City, State, Zip:
CB/Grid/RD: 672 - PIERCE COUNTY	District/Sector: PC10 - Pierce County (Mtn. Detach.)
Occurred From: 5/10/2008 12:00:00 Saturday	Occurred To:
Notes:	

Offense Details: 2309 - Theft - From Yards

Domestic Violence: No	Child Abuse:	Gang Related:	Juvenile:
Completed: Completed		Crime Against: PR	Hate/Bias: None (No Bias)
Criminal Activity:			Using:
Location Type: Single Family Residence	Type of Security:		Tools:
Total No. of Units Entered:	Evidence Collected:		
Entry Method:			
Notes:			

Suspect S1: Tahraoui, Abdulhafid

Verified: Yes

PDA:

Aliases:	DOB: [REDACTED]	Age: [REDACTED]	Sex: Male	Race: Unknown	Ethnicity: [REDACTED]
Height: [REDACTED]	Weight: 180	Hair Color: Brown		Eye Color: [REDACTED]	Phone: [REDACTED]
Address: [REDACTED]	County:			Business Phone: [REDACTED]	Other Phone: [REDACTED]
City, State Zip: [REDACTED]	Country:			Employer/School: [REDACTED]	FBI No: [REDACTED]
Other Address: [REDACTED]	Occupation/Grade: business man				
Resident: [REDACTED]	DOC No:				
SSN: [REDACTED]	Local CH No:				
State ID:	Driver License State:			Driver License Country:	

Call Source: Dispatched	Assisted By:					
Phone Report:	Notified:					
Insurance Letter:	Entered By: 96-032 - Minion, Montgomery					
Entered On: 5/22/2008 14:47:10	Approved By: E94510 - Wilson, Laura					
Approved On: 5/23/2008 11:13:30	Exceptional Clearance:					
Adult/Juvenile Clearance:	Exceptional Clearance Date:					
Additional Distribution:	Other Distribution:					
Validation Processing	Distribution Date: 5/23/08 By: [Signature]	County Pros. Atty.	Juvenile Military	Other DSHS	CPS Pre Trial	Supervisor: [Signature]
<p>For Law Enforcement Use Only - No Secondary Dissemination Allowed</p> <p>Records has the authority to ensure correct agency, CB/Grid/RD, and District/Sector are incorporated in the report.</p>						<p>Printed: May 23, 2008 - 11:13 AM</p> <p>Printed By: Wilson, Laura</p>

0130
14160

Hair Length:	Glasses:	Facial Hair:	Beard - Scraggly
Hair Style:	Teeth:	Facial Shape:	
Hair Type:	Speech:	Complexion:	
Appearance:	Right/Left Handed:	Facial Feature Oddities:	
SMT:		Distinctive Features:	
Attire:		Body Build:	
Gangs:		Tribe Affiliation:	
Significant Trademarks:		Identifiers:	
Suspect Pretended to Be:	Modus Operandi:		
Place of Birth:	Habitual Offender:	Custody Status:	
Type of Injury:	Fire Dept Response:	Hospital Taken To:	
Medical Release Obtained:	Taken By:	Attending Physician:	
Hold Placed By:	Suspect Offense:	2309 - Theft - From Yards	
Suspect Notes:			

10/3/2016

Other Entity O1: Barber, Fred

PDA:

Aliases:	DOB:	Age:	Sex:	Male	Race:	White	Ethnicity:
Height:	Weight:	Hair Color:		Eye Color:			
Address:	County:	Country:		Phone:			
City, State Zip:	Other Address:	Occupation/Grade:		Business Phone:			
Resident:	SSN:	Employer/School:		Other Phone:			
Driver License No:	Driver License State:	Place Of Birth:		Employer/School:			
Attire:	SMT:	Driver License Country:		Place Of Birth:			
Entity Type:	Reporting Statement Obtained:	Complexion:		Driver License Country:			
Entity Notes:	Landlord to the suspect.	Facial Hair:		Complexion:			
		Facial Shape:		Facial Hair:			

Investigative Information

Means:	Motive:
Vehicle Activity:	Direction Vehicle Traveling:

Synopsis: On 05-12-08 I was assigned this case for follow up investigation. Through my investigation I determined Tahraoui's full name and attempted to contacted him at his business address. I was unsuccessful in doing so and now am requesting a review of the case by the prosecutors office for charging.

Narrative: On 05-12-08 I was assigned this case for follow up investigation. Upon review of the case I noticed that the suspect, Hafid Tahraoui, had stolen a trailer hitch from the victim. Upon request to return the hitch Tahraoui failed to comply and the police were called. Deputy Brown responded to the call for service and spoke to the victim. After speaking to the victim, Brown attempted to speak to Tahraoui about the hitch. Tahraoui called Brown back and refused to return the hitch and told Brown that he needed to find Tahraoui in order to get the hitch back.
Brown did his research and found the full name and address to Tahraoui's business and personal information. Hafid was then contacted again and asked if he was going to return the hitch. When Hafid refused, Brown told Tahraoui the information that he had about him. This scared Hafid and he advised Brown that he was barricading himself inside his house.

On 05-12-08 Lt. Wilder called Hafid after receiving information from Major Jenkins regarding a complaint that was filed about Deputy Brown by Hafid. Wilders report advised that he spoke to Hafid about the situation and found that Deputy Brown was not doing anything wrong and that Hafid actually was the wrong doer. This angered Hafid and he made several statements of how the Pierce County Sheriff Department was corrupt and unjust.

On 05-22-08 Deputy Foster and I traveled to the address that Deputy Brown located on our computer data base, 7979 S. 180th St. Kent WA. Upon arrival at the location we entered the front office of "Specialty Wipers". When I asked if they new a man by the name of Hafid Tahraoui, I was told that he rented approximately 2500 square feet of warehouse located behind the business. I was then instructed that I could contact Hafid's business by going around the east side of the business building and then walking to the large roll up doors located on the southeast corner of the building. Foster and I did so and found that the doors were secured and it appeared that no one was at the location.

I then returned to Specialty Wipers and spoke to Fred Barber. Fred told me that he was the owner of the building and rented the space to Hafid. I then explained that I was conducting a criminal investigation of Hafid and asked if I could see the rental agreement that Hafid had filled out when he rented the space. I was hoping to get a good address for Hafid off of the agreement. Fred then took me to another location where the paperwork was located and showed me the agreement. Before leaving Hafid's business we noticed that there was a large white box truck parked in front of the door. Upon running the vehicle license plate we found that the truck was owned by Abdulhafid Tahraoui and listed an address of 4533 9th Ave NE in Seattle. Fred told us that he believed that this address was not Hafid's residence but the address to his former business. Abdulhafid's full name was also verified through his driver's status in D.O.L.

We were unable to contact Hafid at that time. I later contacted DPA Kevin Benton and explained the situation to him. Benton agreed to look at the case and advised that he would send Hafid a summons if charging was necessary. I also attempted to contact Hafid again and was unsuccessful in doing so. This case is now being submitted for review by the prosecutor's office.

Reviewed By:

Reviewed Date:

0140
14166
10/3/2016

Pierce County Sheriff
Department Supplemental
Report

Incident No. 081320486.4

Page 1 of 3

Original Supp.

0141

PDA:	Homeland Security:	Subject: Theft	Incident No. 081320486.4
IBR Disposition:	Active	Case Management Disposition:	
Forensics:		Reporting By/Date: 96-032 - Minion, Montgomery 5/23/2008 12:04:24	
Case Report Status:	Approved	Reviewed By/Date: 89-026 - Hausner, Nicholas 5/23/2008 16:13:40	

Related Cases:

Case Report Number	Agency
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Non-Electronic Attachments

Attachment Type	Additional Distribution	Count
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14166

Location Address:	30208 22ND Av E	Location Name:	
City, State, Zip:	Roy, WA 98580	Cross Street:	
Contact Location:		City, State, Zip:	
CB/Grid/RD:	672 - PIERCE COUNTY	District/Sector:	PC10 - Pierce County (Mtn. Detach.)
Occurred From:	5/10/2008 12:00:00 Saturday	Occurred To:	
Notes:			

10/3/2016

Offense Details: 2309 - Theft - From Yards

Domestic Violence:	No	Child Abuse:		Gang Related:		Juvenile:	
Completed:	Completed	Crime Against:	PR	Hate/Bias:	None (No Bias)	Using:	
Criminal Activity:		Type of Security:		Tools:			
Location Type:	Single Family Residence	Evidence Collected:					
Total No. of Units Entered:							
Entry Method:							
Notes:							

Suspect S1: Tahraoui, Abdulhafid

Verified: Yes

PDA:

Aliases:		DOB:	[REDACTED]	Age:	[REDACTED]	Sex:	Male	Race:	Unknown	Ethnicity:	Non-Hispanic
Height:	[REDACTED]	Weight:	[REDACTED]	Hair Color:	Brown	Eye Color:	Brown	Phone:	[REDACTED]	Business Phone:	[REDACTED]
Address:	[REDACTED]	County:		Country:		Other Phone:	[REDACTED]	Employer/School:	[REDACTED]	FBI No:	
City, State Zip:	[REDACTED]	Occupation/Grade:	business man	DOC No:		Local CH No:		Driver License State:		Driver License Country:	
Other Address:	[REDACTED]	SSN:	[REDACTED]	State ID:		Driver License No:					

Call Source:	Dispatched	Assisted By:	
Phone Report:		Notified:	
Insurance Letter:		Entered By:	96-032 - Minion, Montgomery
Entered On:	5/23/2008 12:04:24	Approved By:	E09821 - Christman, Robin
Approved On:	5/23/2008 16:26:06	Exceptional Clearance:	
Adult/ Juvenile Clearance:		Exceptional Clearance Date:	
Additional Distribution:		Other Distribution:	
Validation Processing	Distribution Date: 5-23 By: 153	County Pros. Atty.	Juvenile
	Indexed Date: By: 160	City Pros. Atty.	Military
		Other	CPS
		DSHS	Pre Trial
			Supervisor: <i>lll</i>
For Law Enforcement Use Only - No Secondary Dissemination Allowed			Printed: May 23, 2008 - 4:26 PM
Records has the authority to ensure correct agency, CB/Grid/RD, and District/Sector are incorporated in the report.			Printed By: Christman, Robin

0142

14166

10/3/2016

Hair Length:	Glasses:	Facial Hair:
Hair Style:	Teeth:	Facial Shape:
Hair Type:	Speech:	Complexion:
Appearance:	Right/Left Handed:	Facial Feature Oddities:
SMT:		Distinctive Features:
Attire:		Body Build:
Gangs:		Tribe Affiliation:
Significant Trademarks:		Identifiers:
Suspect Pretended to Be:	Modus Operandi:	
Place of Birth:	Habitual Offender:	Custody Status:
Type of Injury:	Fire Dept Response Taken By:	Hospital Taken To:
Medical Release Obtained:		Attending Physician:
Hold Placed By:	Suspect Offense:	2309 - Theft - From Yards
Suspect Notes:		

Investigative Information

Means:	Motive:
Vehicle Activity:	Direction Vehicle Traveling:

Synopsis:	Hafid returned my call on the telephone and advised me of his side of the story. Hafid also agreed to return the hitch in order to avoid criminal charges.
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Narrative:	<p>On 05-23-08 at 1000 hours I called Hafid to attempt to get his side of the storey as well as advise him that I was preparing to send the case file to the Prosecutors office to file charges. After leaving a message I began to work on the charging sheet for the prosecutor when I received a telephone call from Hafid.</p> <p>Hafid asked me if I would record our conversation and I told him that I could not and would not do so. He then told me that he would like to tell his side of the story about the taking of the hitch.</p> <p>Hafid told me on 05-09-08 he responded to an add in the paper regarding a sale of a generator. Hafid contacted the victim, Eric Pate, and paid him \$200.00 for the generator. They began to talk about other items that Pate had for sale and Pate told Hafid that he had a fork lift for sale. Hafid told me he then followed Pate to his residence to look at the forklift. Upon viewing the lift Hafid said he was interested in purchasing the machine. Pate wanted \$500.00 down on the lift to hold it for Hafid until the next day. Hafid told him that he did not have the money at that time but would return the next day to get the lift. Hafid told me he then noticed that Pate was having a large garage sale in the yard of his residence and Pate had told him that the bank was fore closing on his home and he was selling everything so that he could move to Colorado. Pate told Hafid that everything must go in the sale or it was going to be thrown away. Hafid said that he then perused the sale and purchased approximately \$350.00 worth of tools and other items.</p> <p>On Saturday 05-10-08 Hafid said that he returned to Pate's residence at around 1000 hours and was interested in purchasing the fork lift. Eric was not available as he was helping other customers at the time. Hafid said that he then looked at a trailer that was in the yard and noticed that the hitch was on the deck of the trailer. Also on the trailer were several items that were for sale. Several other customers were looking at the items on the trailer including the hitch. Hafid said that Pate's father, Shelly. Asked if he needed any help and Hafid told him that he wanted to purchase some of the items on the trailer. Shelly then got a box for Hafid and Hafid said that he loaded several items to include the trailer hitch. Shelly told Hafid that he could have the whole box of items for \$70.00. Hafid said that he purchased the item fair and square. Hafid then gave Shelly \$70.00 and placed the items in his vehicle. Shelly told Hafid that he was having difficulty making change as he did not have correct denominations. Hafid said that he then gave Shelley one hundred dollars in \$20.00 bills and in return got a \$100.00 bill.</p> <p>Hafid then continued shopping the sale and found a vacuum cleaner that he purchased for \$30.00 from Shelly. As he was loading the vacuum cleaner Eric's wife Shawna saw the vacuum cleaner and told them that the vacuum was not for sale. Hafid said that he then returned the vacuum cleaner and exchanged moneys with Shelly again for the amount that he paid for the vacuum. Hafid then left the sale and returned home.</p>
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10/3/2016 14:16 0143

Upon returning home he went through his money again and counted it up to see how much he spent. Hafid said upon counting his cash he noticed that he was short by \$100.00. Hafid said that he then called Pate and asked him to check around for the \$100.00 bill that he received from Shelly because he thought that he may have exchanged it with Shelly on accident. Pate told Hafid that there was no \$100.00 bill around and that any problem with the money would have to be dealt with through Shelly since he was the one exchanging the cash. Hafid said that he knew that Shelly had somehow short changed him at the sale but he was not going to make a big deal out of it.

On Sunday 05-11-08 Hafid received a phone call from Pate claiming that he stole the trailer hitch. Hafid denied doing so and told Pate that he had purchased the hitch and it was sold to him by Shelley. Pate told Hafid that he needed to return the hitch to him as soon as possible and when Hafid told Pate that he was busy and not available to return the hitch at that time. Hafid then told me that Pate threatened to call the police if he failed to return the hitch. Several more phone calls were exchanged that morning and finally Pate told Hafid that he was calling the police.

About one hour later Hafid said that he got a phone call from Deputy Brown. He indicated that Deputy Brown did not want to hear his side of the story and only wanted him to return the hitch. Hafid said that he was upset that Brown did nothing to listen to the facts of the case and so he told Brown that he was going to return the hitch only if he could be found. Hafid told me that he had made contact with both Brown and Pate several times in relation to this hitch. I told Hafid that the stories by Pate, Brown, and Lt. Wilder were much different from his and that I was still going to have to submit the case to the prosecutor for charging. I told Hafid that if he had simply returned the item then the case would have gone away. Hafid then agreed to my statement and informed me that he was going to make arrangements to return the hitch to Pate. Hafid told me that he would however need more time to return the hitch. I then told Hafid that he had 24 hours to make arrangement with Pate to return the hitch. If he failed to do so he would be held accountable and the case would be submitted for charging. Hafid agreed to do so.

I attempted to contact Pate to advise him of the situation and left a message on his voice mail to have him call me about the situation to interview Shelly and Shawna as well as make sure that Hafid returns the hitch.

Reviewed By:		Reviewed Date:	
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0145

14166

10/3/2016

Pierce County Sheriff Department
Supplemental Report

Incident No. 081320486.5

Page 2 of 2

Narrative:

After conducting a lengthy investigation into this theft I had made arrangements to have the suspect return the stolen hitch to the victim. I then tried to contact Pate several times by telephone. The only number that I had listed for Pate was his cellular phone. I left several voice messages for Pate in hopes of contacting him. Pate refused to return my phone calls. The last time that I called Pate's cellular phone number I was advised per recording that the number was no longer in service and had been disconnected. I am therefore closing this case pending as exceptional due to the lack of interest by the victim. I am unable to contact Pate in person as he now resides in Colorado.

No Further.

Reviewed By:

Reviewed Date:

PIERCE COUNTY PROSECUTING ATTORNEY CIVIL DIVISION

June 09, 2017 - 2:31 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 49625-9
Appellate Court Case Title: Hafid Tahraoui, Appellant v. Franklin Brown, et al., Respondents
Superior Court Case Number: 11-2-11144-5

The following documents have been uploaded:

- 3-496259_Briefs_20170609142424D2122660_4698.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Tahraoui Respondents Brief.pdf
- 3-496259_Designation_of_Clerks_Papers_20170609142424D2122660_1994.pdf
This File Contains:
Designation of Clerks Papers - Modifier: Supplemental
The Original File Name was Taharoui Designation of CP 2017.pdf
- 3-496259_Other_20170609142424D2122660_8393.pdf
This File Contains:
Other - Appendix A
The Original File Name was Tahraoui App A.pdf

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