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Court of Appeals  
Division I  
State of Washington

NO. 73563-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

TIFFANY L. MARTIN,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY  
THE HONORABLE HOLLIS R. HILL

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**BRIEF OF RESPONDENT**

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**A. ISSUES PRESENTED**

1. An alternative-means crime is one in which proscribed criminal conduct may be committed by various distinct means, and the right to jury unanimity requires that sufficient evidence must support each means presented to the jury. But jury unanimity is not an issue if a criminal statute comprises only a single means; alternative means are not created simply by disjunctive language or by describing nuances of the same act, and a single use of the word “knowingly” before a group of verbs indicates a single means. The identity-theft statute states that no person “may knowingly obtain, possess, use or transfer” another person’s means of identification or financial information with criminal intent, and the legislature used all of those verbs as parts of the same “unlawful act.” Does the statute establish only a single means of committing identity theft, making jury unanimity a non-issue in this case?

2. Probable cause to issue a search warrant exists when an affidavit sets forth facts and circumstances sufficient to establish a reasonable inference that contraband or evidence of a crime can be found at the place to be searched, and a magistrate’s determination of probable cause is given great deference by reviewing courts. In Martin’s identity-theft case, the search warrant was based on an

affidavit establishing, among other things, that witnesses at a gas station had observed Martin's companion removing multiple wallets and purses from the trunk of a car and furtively emptying them into a plastic bin; police saw items indicative of vehicle prowling inside the car; and Martin and her companion had been arrested previously by the same police for virtually identical criminal activity. Martin never challenged the sufficiency of the search-warrant affidavit at trial, but she now claims that the police lacked probable cause to search. Has Martin failed to preserve this issue for appeal? Was the search warrant issued on sufficient probable cause?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

Defendant Tiffany Martin was charged by Second Amended Information with eight counts of Identity Theft in the Second Degree, all alleged to have occurred in King County, Washington, on or about April 4, 2014. CP 30-32. A jury convicted Martin as charged. CP 114-21. The trial court sentenced Martin to a prison-based drug offender sentencing alternative (DOSA) totaling 50 months. CP 153. Martin timely appealed. CP 216.

## 2. SUBSTANTIVE FACTS

Shortly before 1:00 in the morning on April 4, 2014, a witness called 911 from a gas station in Bellevue to report that a car was backed up to a garbage can and a man, with a female companion, was emptying multiple purses and wallets by sorting some contents into the trash and other contents into a plastic bin. RP 442, 695<sup>1</sup>. Bellevue police officers arrived about five minutes later. RP 443. As Officer Brian Schafer approached the gas station, he saw a man, whose clothing matched the witness's description, standing at the rear of the only car in the lot, with the trunk open and a plastic bin at his feet. RP 444, 451. By the time Officer Schafer arrived at the car, the bin at the man's feet was not there. RP 451.

The man was Jontel Jackson. RP 465. A woman in the back seat, later identified as Tiffany Martin, claimed her name was Alicia Staton. RP 451, 467, 662. Officer Jacob Childers recognized Jackson from a previous contact about two years earlier, when Jackson and Martin were together. RP 701. Officer Childers had served a search warrant on a car Jackson and Martin

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<sup>1</sup> The verbatim report of proceedings consists of eight sequentially numbered volumes: May 4, 2015 (RP 1-167); May 5, 2015 (RP 168-222); May 6, 2015 (RP 223-292); May 7, 2015 (RP 293-482); May 11, 2015 (RP 483-638); May 12, 2015 (RP 639-760); May 13, 2015 (761-854); June 10, 2015 (RP 855-878).

were in, and found large plastic tubs of stolen mail in the trunk, and stolen credit cards and financial information. Pretrial Exhibit 2 at 4-8 (Appendix A). Jackson had been convicted of possession of stolen mail, possession of a stolen vehicle, and multiple counts of identity theft.<sup>2</sup> Id. Now, at the gas station, Childers thought the woman claiming to be Staton was actually Martin, but he was not completely sure. RP 702.

Jackson told the officers that the car belonged to someone named Kevin, whom Jackson had known about a week. RP 453. Officers could see several cell phones, a screwdriver, a flashlight and a small club in the passenger area of the car. RP 461, 716. The officers recognized those items as tools of car prowling. RP 461-62, 716. The officers could see two plastic bins and multiple purses and bags in the open trunk. RP 463, 699.

Jackson declined to consent to a search of the car. RP 468. Martin and Jackson were released and walked off into the night, but the officers impounded the car to get a search warrant. RP 469-70. Officer Schafer obtained the warrant later the same day, and searched the car. RP 497-98. Inside, Schafer found a screwdriver,

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<sup>2</sup> The jury was not told the details of the prior case but only that Jackson and Martin had been together in 2012 when Officer Childers had "contact" with them. RP 701.

flashlight, pry bar and cell phones in the passenger area. RP 501, 505. He also found a wallet holding Jackson's identification, and another wallet holding Tiffany Martin's identification, which matched the woman claiming to be Alicia Staton. RP 502-03.

Schafer also found binders containing page upon page of other people's financial information, including social-security numbers, bank statements and credit cards. RP 506, 516-38. The purses in the trunk were empty. RP 508. The bins contained receipts from various people's credit-card purchases. RP 507.

One of the cell phones held outgoing text messages from someone who called herself Tiffany and gave lookout directions to a car prowler or burglar. RP 549-53. A surveillance video from a Nordstrom store on the previous day showed Martin and Jackson trying to buy items with a stolen credit card. RP 625, 728. Two women whose financial information was in the binders testified about having mail stolen and affirmed that they did not know Jackson or Martin. RP 599-608, 648-54. Martin stipulated that she did not have permission to "be in possession of" any identification or financial information of the other named victims. RP 729. All of the testifying officers identified Martin as the woman with Jackson at the gas station. RP 467, 668, 708.

Martin's defense was that the State could not prove that she was the woman with Jackson at the gas station. RP 805-31.

**C. ARGUMENT**

**1. MARTIN ENJOYED HER RIGHT TO A UNANIMOUS VERDICT BECAUSE IDENTITY THEFT IS NOT AN ALTERNATIVE MEANS CRIME.**

Martin first claims that her right to a unanimous jury verdict was violated because identity theft is an alternative-means crime and there was insufficient evidence to prove all the alleged alternatives. The argument falls flat because, quite simply, identity theft is not an alternative-means crime. Martin's fallback argument, that the "law of the case doctrine" somehow transformed identity theft into an alternative-means crime, is baseless.

**a. Additional Relevant Procedural Facts.**

The jury was instructed that:

A person commits the crime of identity theft in the second degree when, with intent to commit or aid or abet any crime, he or she knowingly obtains, possesses, uses or transfers a means of identification or financial information of another person, living or dead, knowing that the means of identification or financial information belongs to another person.

CP 134. The "to-convict" instructions for each of the eight counts stated in relevant part: "(1) That on or about April 4, 2014, the defendant knowingly obtained, possessed, or transferred a means

of identification or financial information” of each named victim. CP 135-43. The instructions defined “possession,” but no definitions for “obtain” or “transfer” were given. CP 122-49.

In closing argument, the prosecutor told the jury that the case “ultimately boils down to ... the defendant’s knowledge that she was in possession of this personal and financial information.” RP 782. The prosecutor said that the first element of each of the counts “relates to the idea of possession” and “[w]as the defendant in possession of these items?” RP 785. She then directed the jury to the instruction defining possession. Id. For each individual count, the prosecutor discussed each victim’s financial information being “in the possession of the defendant” in the binders. RP 788-91. The prosecutor noted that even in count seven, where the evidence showed the defendant and Jackson had attempted to use a credit card at Nordstrom, the element of possession was met by “several pages in evidence” of the victim’s “Nordstrom account information that was found up inside the binder.” RP 790-91.

The prosecutor’s closing was aided by a computer slide show that stated the first element of ID Theft as “knowingly obtained, possessed, or used” another’s identification or financial

information. CP 62, 88, 95, 110. The verb “transferred” was not included. Id.

b. Identity Theft Is Not An Alternative Means Crime.

Criminal defendants have the right to a unanimous jury verdict. Wash. CONST. art. I, § 21; State v. Sandholm, 184 Wn.2d 726, 732, 364 P.3d 87 (2015) (no alternative means in the “affected by” provisions of the DUI<sup>3</sup> statute). In alternative-means cases, where the criminal offense can be committed in more than one way, an expression of jury unanimity is not required if each alternative means presented to the jury is supported by sufficient evidence. Sandholm, 184 Wn.2d at 732. If one or more of the alternative means is not supported by substantial evidence, the verdict will stand only if the reviewing court can determine that the “verdict was based on only one of the alternative means and that substantial evidence supported that alternative means.” State v. Howard, 127 Wn. App. 862, 872, 113 P.3d 511 (2005).

But if the criminal statute does not create alternative means, there is no unanimity issue and the analysis ends. Sandholm, 184 Wn.2d at 732. Determining which statutes create alternative

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<sup>3</sup> Driving Under the Influence.

means crimes is left to judicial interpretation, beginning by analyzing the language of the criminal statute at issue. Id.

Our supreme court disapproves of recognizing alternative-means crimes based simply on the use of the disjunctive “or.” Id. at 734. A defendant “may not simply point to an instruction or statute that is phrased in the disjunctive in order to trigger a substantial evidence review of her conviction.” State v. Smith, 159 Wn.2d 778, 783, 154 P.3d 873 (2007). Nor do definitional statutes create alternative means. Sandholm, 184 Wn.2d at 734. A statute divided into subparts is more likely to be found to designate alternative means. State v. Lindsey, 177 Wn. App. 233, 241, 311 P.3d 61 (2013), review denied, 180 Wn.2d 1022 (2014). But not even that is dispositive. Sandholm, 184 Wn.2d at 734.

“Rather, the statutory analysis focuses on whether each alleged alternative describes ‘*distinct acts* that amount to the same crime.’” Id. (quoting State v. Peterson, 168 Wn.2d 763, 770, 230 P.3d 588 (2010) (failure to register not alternative-means crime)) (emphasis in original). “The more varied the criminal conduct, the more likely the statute describes alternative means.” Sandholm 184 Wn.2d at 734. But when the statute “describes minor nuances inhering in the same act, the more likely the various ‘alternatives’

are merely facets of the same criminal conduct.” Id. And where a disputed instruction involves alternatives that may be characterized as “means within a means,” the constitutional right to a unanimous jury verdict is not implicated and the alternative means doctrine does not apply. Smith, 159 Wn.2d at 783.

RCW 9.35.020(1) states that no person “may *knowingly obtain, possess, use, or transfer* a means of identification or financial information of another person.” (italics added). Martin’s claim fails because her assertion that the four verbs in the statute create alternative means is wholly unsupported by the law. Martin’s unanimity rights simply were not implicated here.

Our supreme court recently analyzed a similarly structured statute and rejected an argument quite similar to Martin’s in State v. Owens,<sup>4</sup> which controls here. In Owens, the court addressed the statute criminalizing first-degree trafficking in stolen property, which provides that a person who “knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or who knowingly traffics in stolen property, is guilty of trafficking in stolen property in the first degree.” RCW 9A.82.050(1). Owens argued that the eight different verbs

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<sup>4</sup> 180 Wn.2d 90, 323 P.3d 1030 (2014).

articulated eight alternative means for committing the crime. 180 Wn.2d at 97.

Relying on the placement of the word “knowingly” in two different positions in the list of verbs, the court concluded that the statute articulated only two alternative means, not eight. *Id.* at 97-99 (citing *Lindsey*, 177 Wn. App. at 241 (where the word “knowingly” clearly relates to a series of verbs, its placement suggests only one means is intended)).<sup>5</sup> Such is the case with the identity-theft statute here, where the single use of the word “knowingly” precedes all four verbs, “obtain, possess, use, or transfer.”

Moreover, the supreme court in *Owens* also noted that the first seven verbs of the trafficking statute were so closely related that they did not really address distinct acts:

For example, it would be hard to imagine a single act of stealing whereby a person “organizes” the theft but does not “plan” it. Likewise, it would be difficult to imagine a situation whereby a person “directs” the theft but does not “manage” it. Any one act of stealing often involves more than one of these terms. Thus, these terms are merely different ways of committing one act, specifically stealing. Consistent with

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<sup>5</sup> In *Lindsey*, Division Two of the Court of Appeals interpreted the stolen-property trafficking statute as comprising only two alternative means, in part because of the placement of “knowingly.” Division One had previously characterized the statute as having eight alternatives. *State v. Strohm*, 75 Wn. App. 301, 307, 879 P.2d 962 (1994). In *Owens*, the supreme court resolved the issue by approving of *Lindsey*’s analysis. 180 Wn.2d at 98-99.

Peterson, where the various acts of moving without giving proper notice were too similar to constitute distinct alternative means, an individual's conduct under RCW 9A.82.050(1) does not vary significantly between the seven terms listed in the first clause, but does vary significantly between the two clauses. We hold that RCW 9A.82.050(1) describes only two alternative means of trafficking in stolen property.

Owens, 180 Wn.2d at 99 (citing Peterson, 168 Wn.2d 763).

Here, too, the four verbs that describe identify theft do not address distinct acts. The verbs — obtain, possess, use, transfer — denote stages, nuances or facets of the same act. As with stolen-property trafficking in Owens, it would be difficult to imagine identity theft being committed by the use of a credit card number without obtaining and possessing the information. Thus, it does not matter which of the four verbs best describes Martin's involvement with the victims' financial data. All that matters for alternative-means analysis is that the jury unanimously found she did so knowingly and with the intent to commit a crime.

Martin points to the findings-and-intent statement of the identity-theft statute to argue that the legislature's designation of units of prosecution establishes alternative means. See RCW 9.35.001. Martin provides no authority to import unit-of-prosecution analysis into alternative-means and jury-unanimity analysis. But

more, this same intent statement actually highlights that there is only one means of committing identity theft.

The statute states:

The legislature finds that means of identification and financial information are personal and sensitive information such that *if unlawfully obtained, possessed, used, or transferred by others may result in significant harm to a person's privacy, financial security, and other interests.* The legislature finds that unscrupulous persons find *ever more clever ways, including identity theft, to improperly obtain, possess, use, and transfer* another person's means of identification or financial information. The legislature intends to penalize for *each unlawful act of improperly obtaining, possessing, using, or transferring* means of identification or financial information of an individual person.

RCW 9.35.001 (italics added).

In the first sentence, the legislature used the phrase “unlawfully obtained, possessed, used, or transferred” as a single compound action resulting in a single harm. In the second sentence, the legislature stated that there are “ever more clever ways” — plural — to “improperly obtain, possess, use, and transfer” identification or financial information — a singular result — indicating means within a single means. In the third sentence, the legislature used the phrase “improperly obtaining, possessing, using, or transferring” as a singular “unlawful act.” The legislature criminalized a single act that is described by multiple verbs. This is

not an alternative-means statute. The fact that someone can commit identity theft multiple times with the same credit card or by victimizing multiple people does not create alternative means.

Nonetheless, Martin asserts that the statutory interpretation for an unrelated legal issue in State v. Berry<sup>6</sup> “supports the conclusion” that the verbs in the statute “are statutory alternative means.” Appellant’s Opening Brief (AOB) at 13. But Berry does not say or suggest anything of the sort. Berry held that the evidence is sufficient to prove identity theft where a defendant obtains and possesses financial information without going so far as using it. 129 Wn. App. at 72. The court found that there “was no ambiguity” that “obtaining and possessing” another person’s identity was illegal. Id. at 70.

None of the analysis in Berry addresses alternative means. In fact, the court rejected Berry’s assertion that the court had previously commented “on the difference between ‘using’ a means of identification and ‘obtaining’ or ‘possessing’ a means of identification.” Id. at 71 (citing State v. Leyda, 122 Wn. App. 633, 637, 94 P.3d 397 (2004) aff’d in part, rev’d in part, 157 Wn.2d 335, 138 P.3d 610 (2006), overturned due to legislative action (June 12,

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<sup>6</sup> 129 Wn. App. 59, 117 P.3d 1162 (2005).

2008)). If anything, the holding in Berry supports the interpretation that the verbs in the identity-theft statute describe stages on a continuum of a single unlawful act rather than completely separate and distinct acts.

Martin also avers that because the State did not include the word “use” in the to-convict instructions, it “implicitly recognized” that the statute establishes alternative means. But there is a more logical explanation: the State’s case was entirely based on Martin’s *possession* of financial information, and the pattern jury instruction for Identity Theft in the Second Degree advises that “[i]n element (1), the phrase ‘obtained, possessed, or transferred’ is separately bracketed from the word ‘used.’” 11A Wash. Prac., Pattern Jury Instr. Crim. WPIC 131.06 (3d ed.). “The separate bracketing is intended to emphasize that, for cases in which the defendant is charged only with “use” of the designated items, jurors should not also be instructed with the other statutory terms.” Id. This note does not cite any cases, and certainly does not legally establish statutory alternative means. It is meant only as practical advice to

avoid jury confusion. The State did not imply anything by following the pattern instruction.<sup>7</sup>

Finally, Martin turns to State v. Lillard<sup>8</sup> to assert, it seems, that even if identity theft is not an alternative-means crime, the “law of the case doctrine” transformed the crime into an alternative-means offense in Martin’s case when the to-convict jury instructions included the four statutory verbs. Lillard does not apply here.

In Lillard, the defendant was charged with possession of stolen property under RCW 9A.56.150. 122 Wn. App. at 434. The court held that because the to-convict instructions had imported the definition of possession from RCW 9A.56.140 — “knowingly received, retained, possessed, concealed, or disposed of stolen property” — all the verbs in the definition became individual alternative means to be proven by the State. Id. at 434-35. But the court then concluded that the State had presented substantial evidence to support each verb because they all essentially described the same conduct — possession. Id. Lillard is inapposite here because Martin’s to-convict instructions did not

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<sup>7</sup> Besides, even if the pattern instruction’s bracketing did establish alternative means, there would be two: (1) “use” and (2) “obtain, possess or transfer.” That does not help Martin’s argument that “transfer” is its own means, and her jury was not instructed on “use.”

<sup>8</sup> 122 Wn. App. 422, 434, 93 P.3d 969 (2004).

import any additional unnecessary elements or definitions; they included only the language of the identity-theft statute itself.

Thus, Martin's logic is circular. When a statute does not create alternative means, then unanimity is not analyzed at all. Sandholm, 184 Wn.2d at 732. Thus, inclusion of the complete statute in the jury instructions does not trigger a sufficiency-of-evidence review. See Smith, 159 Wn.2d at 783. Yet Martin essentially asserts that under Lillard, our appellate courts have wasted their time and energy deciding whether a statute creates alternative means, because, under the "law of the case," alternative means are created from the very same language that has been determined *not* to express alternative means.

The whole point of alternative-means statutory interpretation is to determine whether a unanimity right is implicated when a jury is instructed on the complete statutory descriptions of proscribed conduct. See Sandholm, 184 Wn.2d at 730 (jury instructed on both "affected by" subsections of DUI statute); Owens, 180 Wn.2d at 90 (jury instructed on all statutory verbs of trafficking).<sup>9</sup> Nonetheless,

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<sup>9</sup> The supreme court in Owens did not directly say how the jury was instructed (perhaps deeming it obvious, given the issue), but the unpublished court of appeals opinion explicitly said the jury was instructed on "all eight" of the verbs in the trafficking statute. State v. Owens, 174 Wn. App. 1052 (2013), rev'd, 180 Wn.2d 90, 323 P.3d 1030 (2014) (cited here for factual history only).

by Martin's logic, Lillard trumps because the State somehow "assume[d] the burden" of proving "each of the means" as additional "elements." AOB at 16. How can the State assume "each of the means" of a crime if there is only one means? The law-of-the-case doctrine does not conjure alternative means out of the language of a single-means statute.<sup>10</sup>

As a final note, even if this Court were somehow to find that the verbs in the identity-theft statute did comprise alternative means, the verdicts should stand because there is no conceivable way the jury in Martin's case found her guilty of identity theft except by her possession of the victims' financial information in the binders. See Howard, 127 Wn. App. at 872 (verdict stands if court

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<sup>10</sup> Lillard's creation of alternative means via "law of the case" conflicts with our current jurisprudence on alternative means. The holding in Lillard on the imported definition was made with very little analysis, in a section at the end of the opinion titled "Lillard's additional pro se challenges." 122 Wn. App. at 433. The Lillard court summarily concluded the existence of alternative means based on State v. Hickman, which was not about alternative means but about venue becoming an element under "law of the case." Id. at 434-35 (citing Hickman, 135 Wn.2d 97, 102, 954 P.2d 900 (1998)). Even the Lillard court itself noted that the definitional verbs in RCW 9A.56.140(1) did not describe distinct conduct. If anything, their inclusion in place of the word "possessed" in the to-convict instruction merely expressed nuances or means within the single criminal act of possession. The inclusion of the definition of "possession" in the to-convict instruction did not legislate a new means into RCW 9A.56.150(1) (which proscribed a single act – possession of stolen property over a certain value). Lillard's unanimity right was not implicated by uncertainty over which verb best described his possession of stolen property. "Only if the *statute* creates alternative means do we then proceed to analyze an alleged unanimity issue." Sandholm, 184 Wn.2d at 732 (italics added). See also Smith, 159 Wn.2d at 783 (instructions that involve "means within a means," do not implicate unanimity).

“can determine that the verdict was based on only one of the alternative means and that substantial evidence supported that alternative means”). In this case, the State’s entire case focused exclusively and conspicuously on the *possession* of the financial information in Martin’s binders, as illustrated in the previous section of this brief.

That said, the analysis in this case begins and ends with the simple fact that identity theft is not an alternative-means crime. Martin’s unanimity argument fails.

**2. THE VEHICLE SEARCH WAS LAWFULLY PERMITTED BY A VALID WARRANT BASED ON AMPLE PROBABLE CAUSE.**

Next, Martin alleges an illegal search of the vehicle, which revealed the voluminous evidence of identity theft. She almost completely ignores the fact that the police obtained a search warrant — which Martin did not challenge at the trial court. Martin waived this argument by failing to raise it below, but it nevertheless fails because the search warrant was based on ample probable cause that the car contained contraband and evidence of a crime.

a. Additional Relevant Facts.

To obtain a search warrant for the car, Officer Schafer submitted an Affidavit For Search Warrant to Judge Ketu Shah of

King County District Court, which the judge signed on April 4, 2014. Pretrial Exhibit 2 at 4-8 (Appendix A). The affidavit outlined the officer's training and experience with crimes such as identity theft and car prowling, and detailed the witnesses' and officers' observations of Jackson, Martin and the vehicle. Id.

The affidavit summarized statements of named witnesses who saw Jackson emptying purses while looking around furtively. Id. The affidavit included the officers' observations of multiple purses and plastic bins in the trunk and tools indicative of car prowling in the passenger area. Id. The affidavit also included detailed information about Jackson and Martin's 2012 arrest in Bellevue. Id.

At trial, Martin did not challenge the search-warrant affidavit. In her written Motion to Suppress, Martin challenged the "warrantless search and seizure of the occupants of the black 2000 Audi, and subsequent impoundment of the car." CP 272. The motion contended that Jackson was arrested without probable cause and Martin was illegally detained, thus the car was illegally impounded. CP 276-79. She also accused the officers of conducting an illegal, warrantless search prior to impounding the car. CP 280-83.

At the CrR 3.6 hearing, during which officers Schafer and Childers testified, Martin argued that “the car was seized without probable cause for the seizure” because “it just doesn’t make sense” that the officers had “probable cause to arrest the car” but not Jackson and Martin. RP 130-31. Martin contended that the officers’ testimony pointed to a case of “driving while black” and that “at the point that the car was seized there were not enough facts for probable cause.” RP 139-41.

The trial court’s written findings and conclusions did not address the search warrant or the affidavit. CP 209-15. The court concluded (1) that Jackson and Martin were lawfully detained; and (2) that the vehicle was “lawfully seized to be impounded for the execution of a search warrant.” CP 214. The Clerk’s Minutes of the trial summarize the “Defense 3.6 Motion” as the “warrantless search and seizure of the occupants of the black Audi and impoundment of the car,” which was “Denied.” CP 246.

b. Martin Waived This Issue By Not Raising It At Trial.

A party’s failure to raise an issue at trial waives the issue on appeal unless the party can show the presence of a manifest error affecting a constitutional right. State v. Robinson, 171 Wn.2d 292,

304, 253 P.3d 84 (2011). See also RAP 2.5(a) (court may refuse to consider claimed errors not raised in the trial court). “No procedural principle is more familiar than that a constitutional right, or a right of any other sort, may be forfeited in criminal cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.” State v. Stoddard, 192 Wn. App. 222, 226, 366 P.3d 474 (2016) (citing United States v. Olano, 507 U.S. 725, 731, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993); Yakus v. United States, 321 U.S. 414, 444, 64 S. Ct. 660, 88 L. Ed. 834 (1944)).

“The purpose underlying our insistence on issue preservation is to encourage ‘the efficient use of judicial resources.’” Robinson, 171 Wn.2d at 304 (quoting State v. Scott, 110 Wn.2d 682, 685, 757 P.2d 492 (1988)). The rule serves that goal “by enabling trial courts to correct mistakes and thereby obviate the needless expense of appellate review and further trials, facilitates appellate review by ensuring that a complete record of the issues will be available, and prevents adversarial unfairness by ensuring that the prevailing party is not deprived of victory by claimed errors that he had no opportunity to address.” Stoddard, 192 Wn. App. at 227 (citing State v. Strine, 176 Wn.2d 742, 749-50,

293 P.3d 1177 (2013)). There is great potential for abuse when a party does not raise an issue below because a party so situated could simply lie back, not allowing the trial court to avoid the potential prejudice, gamble on the verdict, and then seek a new trial on appeal. State v. Emery, 174 Wn.2d 741, 762, 278 P.3d 653 (2012).

This Court should decline to consider Martin's challenge to the search of the vehicle because she did not raise this challenge at trial. Her attack at trial on the police officers' justification for detaining Jackson and Martin and impounding the vehicle did not address the sufficiency of Officer Schafer's affidavit in establishing probable cause for a warrant to search the car. The trial court was given no opportunity to address the search warrant documents, draw a conclusion about their sufficiency, and correct any error by suppressing the evidence. This situation epitomizes the reasons for our courts' strict adherence to the rules of issue preservation.

c. The Vehicle Was Legally Searched With A Properly Issued Search Warrant.

A search warrant may be issued only upon a determination of probable cause. State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). "Probable cause exists if the affidavit in support of the

warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime can be found at the place to be searched.” Id. A search warrant enjoys a presumption of validity. State v. Chenoweth, 160 Wn.2d 454, 477, 158 P.3d 595 (2007). Review is usually limited to the four corners of the affidavit supporting probable cause. State v. Neth, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). The issuing magistrate’s determination of probable cause is reviewed for abuse of discretion and is given great deference by the reviewing court. State v. Maddox, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004). All doubts are resolved in favor of the warrant’s validity. Id.

In determining probable cause, the magistrate makes a practical, commonsense decision, taking into account all the circumstances set forth in the affidavit and drawing commonsense inferences. Id. at 509-10 (citing Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)). Facts that, standing alone, would not support probable cause can do so when viewed together with other facts. State v. Garcia, 63 Wn. App. 868, 875, 824 P.2d 1220 (1992). Probable cause requires a probability of criminal activity, not a prima facie showing of criminal activity.

Maddox, 152 Wn.2d at 510. Common sense is “the ultimate yardstick” of probable cause. Id. at 512.

Here, District Court Judge Shah had overwhelming evidence from Officer Schafer’s sworn affidavit to find probable cause and issue the warrant: Jackson and his female companion were seen emptying purses into a plastic bin — basically identical circumstances to the previous arrest and conviction — and officers could see the purses and bins in open view in the trunk. The officers also saw other evidence of vehicle prowling — tools of the trade — in open view. The probable cause for the search warrant in this case is not even a close call. The search of the vehicle was entirely legal.

Martin almost completely ignores the existence of the search warrant. She did not designate the search warrant documents for the record.<sup>11</sup> Her arguments draw from the testimony of the officers in the CrR 3.6 hearing, even though review is limited to the four corners of Officer Schafer’s affidavit. And the two cases she relies upon to allege a lack of probable cause are about warrantless searches. See State v. Ozuna, 80 Wn. App. 684, 686-89, 911 P.2d

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<sup>11</sup> The State filed a Supplemental Designation of Clerk’s Papers and Exhibits that designated Pretrial Exhibit 2 — the search warrant. The State also asked the trial court to file Martin’s Motion To Suppress after the fact so it could be designated for the record here. See CP 311-12.

395 (1996) (warrantless search of unattended car); State v. Cuzick, 21 Wn. App. 501, 502-05, 585 P.2d 485 (1978) (warrantless search of car and suitcase). Even so, those cases do not help Martin here.

In Ozuna, a police officer responded to a report of two suspected vehicle-prowlers running away. 80 Wn. App. at 686. The officer found no one around, but saw a parked car that was registered to Ozuna, a known criminal. Id. The officer saw an “expensive-looking” briefcase and attaché case in the front seat, so he opened the car door and looked at a name tag on a gym bag in the back seat, then called the owner who confirmed the bag had been stolen from his vehicle. Id. at 686-87. Ozuna was subsequently charged with possession of stolen property. Id. at 687.

The court in Ozuna found the officer lacked probable cause for a warrantless search — which was ostensibly based on an exigency exception — because none of the items seen in the car had been reported stolen prior to the search, the person who called 911 had not reported anything stolen, and the connection between the car and the mystery car prowlers was tenuous at best. Id. at 689. The court also noted that there was no exigency to support a warrantless search. Id. at 690. In short, the police had simply

picked a car and searched it without anything to suggest that it, or anything inside it, was involved in a crime.

In Cuzick, an officer was called to the home of Cuzick's wife and arrested Cuzick for violating a no-contact order. 21 Wn. App. at 502. The wife advised the officer that Cuzick always carried a sawed-off shotgun in his car. Id. Cuzick denied having any guns and consented to a search of the car. Id. at 503. The officer looked in a suitcase and found a revolver. Id. The police did not learn until later that Cuzick was a convicted felon who could not lawfully possess guns. When they did, the police impounded the vehicle and searched it again, finding another handgun. Id.

The Cuzick court found no valid exception for the warrantless searches, in part because there was no "probable cause to believe the automobile contained contraband or evidence of a crime" to support the first search.<sup>12</sup> Id. at 504. A sawed-off shotgun was not necessarily illegal in Washington and the officer did not yet know that Cuzick was a felon, so in short, the officer searched Cuzick's car without anything to suggest that it, or anything inside it, was involved in a crime.

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<sup>12</sup> The court held consent was inapplicable because the search of the suitcase exceeded the scope of Cuzick's consent. Id. at 505.

The evidence in support of the warrant in Martin's case was a far cry from Ozuna and Cuzick. The officers had spoken to named witnesses who saw Jackson engaging in behavior — furtively emptying purses and wallets from the trunk of a car at 1:00 a.m. at a lonely suburban gas station — that even standing alone provided probable cause to believe the car held evidence of possession of stolen property. The officers corroborated the witness reports by seeing the purses — along with plastic bins that matched the witness accounts and Jackson's previous property crimes — inside the vehicle in Jackson's immediate possession. The officers also had seen, in open view, evidence of vehicle prowling or burglary — the combination of a flashlight, screwdriver, and club, which were properly viewed in the context of all the other evidence, the officers' training and experience, and their knowledge of the suspects' history.

In short, the evidence here overwhelmingly supported a commonsense inference that Jackson and Martin had been prowling vehicles and were now harvesting the fruits of their crimes from the stolen purses and wallets. This was probable cause to believe that the vehicle would contain evidence of a crime or contraband. There is no way Martin can show that Judge Shah

abused his discretion in issuing a warrant. A court abuses its discretion only when it takes a position no reasonable person would take. Pub. Util. Dist. No. 1 of Okanogan County v. State, 182 Wn.2d 519, 531, 342 P.3d 308 (2015).

Still, Martin proffers that because the officers had not seen confirmed “contraband” inside the car before searching it, then they lacked probable cause that the car contained contraband. But probable cause here did not require absolute proof that the purses or other items were contraband — only a *probability* that the car held contraband *or evidence of a crime*. The witness statements and observation of the purses alone gave probable cause that the purses were contraband and evidence. Martin further ignores the “evidence of a crime” part of the equation to argue that the officers did not have “probable cause to believe the car contained contraband or was used in the commission of a felony.” This misstates the law, and it also ignores the facts. All of the facts presented to the judge for the warrant, when taken together, added up to an easy conclusion that the vehicle contained both evidence of crimes and contraband.

Martin fails to show how Officer Schafer’s affidavit of probable cause was insufficient for Judge Shah to issue a lawful

warrant to search the vehicle that yielded the evidence in this case.

Her challenge to the admission of the evidence fails.

**D. CONCLUSION**

For all the foregoing reasons, the State respectfully asks this Court to affirm Martin's judgment and sentence.

DATED this 9<sup>th</sup> day of May, 2016.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
IAN ITH, WSBA #45250  
Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

**APPENDIX A**  
**(Pretrial Exhibit 2 – Search Warrant)**

14-J-02370-3  
State Exhibit **2**

DT VS Tiffany  
MARTIN

TRIAL

Filed Bellevue Courthouse

APR 04 2014

KING COUNTY DISTRICT COURT BELLEVUE DIVISION

STATE OF WASHINGTON )

NO. W-BEP00003271

COUNTY OF KING )

) ss

SEARCH WARRANT

TO ANY PEACE OFFICER IN THE STATE OF WASHINGTON:

Upon the sworn complaint made before me there is probable cause to believe that the crime(s) of:

1. Possession of Stolen Property 2<sup>nd</sup>
2. Identity Theft 2<sup>nd</sup>

RCW 9A.56.160

RCW 9.35.020

have been committed and that evidence of that crime; or contraband, the fruits of crime, or things otherwise criminally possessed; or weapons or other things by means of which a crime has been committed or reasonably appears about to be committed; or a person for whose arrest there is probable cause, or who is unlawfully restrained in/are concealed in or on certain premises, vehicles or person.

YOU ARE COMMANDED TO:

1. Search, within 10 days of this date, the premises, vehicle or person described as follows:

**Vehicle:**

1. Black-colored 2000 Audi A8 four door, V.I.N. WAUFL54D9YN004457, currently located in Bellevue Police Evidence Garage. The vehicle currently bears Washington license ANV0108. Washington Department of Licensing records show the registered owner listed as Kevin Wuhrman, who lives at 16418 SE Newport Way. The search of the vehicle includes all locked and unlocked containers inside and on the vehicle, as well as electronic devices to include but not limited to cell phones and laptops.

Search Warrant  
Page 1 of 2

ROUTING: WHITE -Court File, YELLOW - Police File, PINK-Judge's Copy

2. Seize, if located, the following property:

**Property:**

- A. All cell phones, computer and computer accessories, including laptop computers, desktop computers and monitors, electronic storage devices including portable storage devices, and magnetic and electronic data storage media, digital cameras, and digital images, which may show evidence of trafficking stolen property.
- B. Purses, wallets, backpacks, and similar items, which may contain victim identification and/or access devices and personal documentation.
- C. Receipts or transaction records of retail purchases using credit / debit cards
- D. Credit Cards, Debit Cards, driver's licenses and other identification cards bearing the names of persons other than Jontel K. Jackson or Alicia Staton.
- E. Plastic containers and other packages containing stolen mail or personal items.
- F. Any and all deemed stolen property belonging to yet unidentified victims.
- G. Any items and/or documents showing dominion and control.
- H. Prowl/burglary tools, such as screwdriver's, "window-punch" hammers, shaved keys, and other items that can be used to break car windows and pry open locked containers / doors.

3. Promptly return this warrant to me or the clerk of this court; the return must include an inventory of all property seized.

A copy of the warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at the place where the property is found.

Date/Time 4/4/14 5<sup>05</sup> p.m.

Judge *Ketan Shah*

KETAN SHAH

Printed or Typed Name of Judge



Affidavit for Search Warrant (Continuation)

**My belief is based on the following facts and circumstances:**

My name is Brian Schafer. I am a Police Officer employed by the City of Bellevue Police Department. I have been a police officer for just under six years. I have been assigned to the Patrol Section for five years, and for the last six months have been assigned to the Special Enforcement Team which has an emphasis on property crimes, to include burglaries, vehicle thefts and prowls, identity theft, trafficking of stolen property, etc. Through the course of these investigations there are often drug related offenses discovered to be occurring concurrently. As a patrol officer and member of the Bellevue SET team I have been involved in more than 400 criminal investigations, with a majority of cases involving theft of stolen vehicles, possession of stolen vehicles, trafficking in stolen property, possession of stolen property, burglary, vehicle prowling, and other crimes frequently associated with auto-related and property-related crimes, including possession and distribution of narcotics, firearms violations, identify theft, and fraud. It is my experience that suspects who conduct burglaries or prowl vehicles will often keep much of what they have just taken from a victim, and transport it in a vehicle to another location where it will be sorted out. Along with the items that have been taken it is common to find tools to assist in the criminal activity, to include shaved keys, punches, pry tools, screwdrivers, flashlights, and gloves. I have also attended training on investigating and recovering stolen property and vehicles. Many suspects involved in these criminal investigations have been arrested as a result during my nearly six years of employment as a Police Officer.

On 4/4/2014 at approximately 00:57 hours while working as a uniformed patrol officer I heard a call dispatched at 3670 150<sup>th</sup> Ave SE, the Eastgate Shell Station. The reporting party, Diana James, stated that there was a questionable subject in a black four door sedan with tinted windows, parked on the north side of the Shell station. James further stated that there were a lot of purses and wallets with him, adding that it looked to her like they had been stolen. He was dumping the contents of the purses into a plastic container. James described the male as a white male adult in his 20's, about 5'09", 165 pounds, with dark hair, a gray baseball hat, tan long sleeve shirt and blue jeans. There was a female with him wearing a "camo" sweatshirt. I determined to add myself to the call.

I arrived in the area of the call driving southbound on 150<sup>th</sup> Ave SE. As I looked left I saw the described male standing at the rear of the vehicle, with a rectangular container at his feet, though the color was hard to discern. I saw the male look at me, and noticed he was wearing the described clothing, though he appeared to be a light skinned black male. The trunk of the vehicle was open as was the driver's door. Officer Childers had arrived in the area just prior to me and stated he saw them digging in around in the backseat.

I went around the south side of the gas station due to C-curbing, briefly losing sight of the vehicle and the male, and when I again was able to see the vehicle, the rectangular container was not on the ground at the rear of the vehicle, and the trunk and driver's door

Affidavit for Search Warrant

Page 2 of 5

ROUTING: WHITE -Court File, YELLOW - Police File, PINK-Judge's Copy

Affidavit for Search Warrant (Continuation)

was still open. A female in a camouflage jacket was seen in the back seat through the window.

I contacted the male and told him why we were called to the scene, and then asked him who the vehicle belonged to. He stated, "Kevin", though he'd only known Kevin for about a week. He didn't know Kevin's last name or a phone number for Kevin, only that he lived nearby. I looked into the open trunk and immediately noticed three purses. One was a brown purse sitting on top of a pile of stuff and what appeared to be an opaque rectangular container. There was also a pink purse, and backpack, along with a possible polka dotted over dark background purse.

I asked the male if he had any identification, and he said it was in the car. He then began scanning the parking lot to the east where there were no units, and adjusted his pants in a "hiking them up" manner. From previous experience these two actions combined within a second or two of each other are consistent with someone who is about flee the scene or begin a fight with the contacting officers. I grabbed the male by his left arm and told him to put his hands behind his back. He complied at this point, and was handcuffed. I told him he was not under arrest, but being detained until we determined if a crime had been committed. I conducted a pat down frisk but did not locate any weapons. He was told to have a seat on the curb nearby, and again complied.

He was recognized and identified by Officer Childers as Jontel (Kemone) Jackson. Officer Childers advised me he had previously filed a case (Bellevue PD # 12-7957) on Jackson after serving a search warrant on a vehicle occupied by him. As a result of that search warrant evidence was located that connected him with numerous car prowls and identity theft/PSP victims. Also in that case, Jontel Jackson and a female co-conspirator (Tiffany Lynn Martin) were found in possession of large plastic tubs of stolen mail in the trunk, stolen credit cards, and were determined to have used the stolen access devices and financial information at retailers, including T-Mobile. The defendant was charged in King County Superior Court 12-C-04407-1 SEA and pled guilty to crimes including Possession of Stolen Mail, Possession of a Stolen Vehicle, and multiple counts of Identity Theft 2<sup>nd</sup> Degree.

The female in the back seat of the vehicle verbally identified herself as Alicia Staton.

I went into the gas station to contact the reporting party, Diana James, and her friend who was also a witness, Penny Nelson. James told me that they had pulled into the parking lot, and while doing so, noticed the male who we now had detained pulling a wallet out of a "big baggy bag". While he was doing it, he was "looking around to see if anyone was watching him". He tossed the contents of the purse and the wallet into the container at his feet. As they parked next to the gas pump she saw two or three more purses come out of the trunk, and then go into the container. Sometimes papers or something would be pulled out of the purse and thrown into the nearby garbage can, but the purse would go into the container. James saw a purple bag, a fuchsia purse, a white and gold purse, and a backpack as well.

Affidavit for Search Warrant

Page 3 of 5

ROUTING: WHITE -Court File, YELLOW - Police File, PINK-Judge's Copy

Affidavit for Search Warrant (Continuation)

Nelson told me a similar story, adding that every time he pulled a new purse out, he would look around again to see if anyone was watching. As the male pulled out the last purse before the police arrived he noticed Nelson watching him and then kept looking at her. Nelson saw what she remembered as four different purses, also describing a white and gold purse and a purple purse. She also added that when the police were driving into the parking lot from the south (where we had lost sight of him from behind the building) he quickly grabbed the container on the ground and put it in the trunk. She then saw him try to put a lid on it and possibly attempt to close the trunk, but couldn't get it to close.

I went back out to the vehicle. I looked through the windows into the seating area, and into the open driver's door. In the driver's door there was a flashlight and a screwdriver, a cell phone, and a fashioned club of sorts concealed under the seat. There appeared to be another cell phone concealed under a jacket in the center console. Officer Childers had also located a knife within reach of Staton that he secured, and noticed another two or three knives on the center console. On the right front seat was another cell phone, and a pink rectangular wallet on the floor board, with another flashlight in the door panel of the front passenger door.

In the back seat was another large purse that appeared full at Staton's feet next to a large butane lighter, as well as an empty black purse and laptop bag on the right rear seat, as well as a cell phone on the center seat, and a bright pink rectangular wallet on the headrest area of the back seat in the center, under an opaque lid for a large plastic container.

Jackson and Staton were both run through WACIC/NCIC via NORCOM. Staton came back clear. Jackson came back clear, though he was a convicted felon and DOC active, most recently for the aforementioned convictions of Identity Theft and Possession of a stolen vehicle. A search through the Linx database showed Jackson has been contacted on numerous occasions for vehicle prowling and possession of stolen property, to include vehicles. A phone number was obtained for the registered owner of the vehicle, but he did not answer the phone.

Jackson and Staton were asked for their consent to search the vehicle, and they declined.

Based on my training and experience, the activity described by both witnesses, as well as the activity I briefly viewed, along with the visible prowling/burglary tools, the three cell phones, five or more purses, and two wallets visible throughout the vehicle, and Jackson's previous contacts and convictions for identity theft, I believed there would be evidence of Identity Theft and Possession of Stolen Property inside the vehicle.

I believe there is probable cause to search, and request authorization to search the vehicle described as a black-colored 2000 Audi A8 four door, V.I.N. WAUFL54D9YN004457, currently located in Bellevue Police Evidence Garage bearing Washington license plate ANV0108, for evidence of the crimes Possession of Stolen Property and Identity Theft. I

Affidavit for Search Warrant

Page 4 of 5

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Affidavit for Search Warrant (Continuation)

am also seeking documents of dominion and control to establish whether or not the registered owner of the vehicle knowingly allowed his vehicle to be used to commit the suspected crimes.

The search shall include all locked and unlocked areas of the vehicle and all locked or unlocked items found within the vehicle. The search shall also extend to any electronic devices found within the vehicle; the exterior of these devices shall be inspected, and serial numbers run against police reports, as well as WACIC and NCIC to determine whether they have been reported stolen; further, the files within these devices shall be inspected in an attempt to determine their true owner(s).

*[Signature]*  
Affiant  
BPD, Ofc 8447  
Agency, Title and Personnel Number

Subscribed and sworn to before me this 4<sup>th</sup> day of April, 20 14

*[Signature]*  
Judge

Application for Search Warrant Approved:  
DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By: Peter D. Lewicki, WSBA# 39273  
Deputy Prosecuting Attorney  
Economic Crimes Unit – Criminal Division

Filed Bellevue Courthouse

APR 04 2014

KING COUNTY DISTRICT COURT BELLEVUE DIVISION

STATE OF WASHINGTON )

NO. W-BEP00003271

COUNTY OF KING )

) ss

SEARCH WARRANT

TO ANY PEACE OFFICER IN THE STATE OF WASHINGTON:

Upon the sworn complaint made before me there is probable cause to believe that the crime(s) of:

1. Possession of Stolen Property 2<sup>nd</sup>
2. Identity Theft 2<sup>nd</sup>

RCW 9A.56.160

RCW 9.35.020

have been committed and that evidence of that crime; or contraband, the fruits of crime, or things otherwise criminally possessed; or weapons or other things by means of which a crime has been committed or reasonably appears about to be committed; or a person for whose arrest there is probable cause, or who is unlawfully restrained in/are concealed in or on certain premises, vehicles or person.

YOU ARE COMMANDED TO:

1. Search, within 10 days of this date, the premises, vehicle or person described as follows:

**Vehicle:**

1. Black-colored 2000 Audi A8 four door, V.I.N. WAUFL54D9YN004457, currently located in Bellevue Police Evidence Garage. The vehicle currently bears Washington license ANV0108. Washington Department of Licensing records show the registered owner listed as Kevin Wuhrman, who lives at 16418 SE Newport Way. The search of the vehicle includes all locked and unlocked containers inside and on the vehicle, as well as electronic devices to include but not limited to cell phones and laptops.

Search Warrant  
Page 1 of 2

ROUTING: WHITE -Court File, YELLOW - Police File, PINK-Judge's Copy

2. Seize, if located, the following property:

**Property:**

- A. All cell phones, computer and computer accessories, including laptop computers, desktop computers and monitors, electronic storage devices including portable storage devices, and magnetic and electronic data storage media, digital cameras, and digital images, which may show evidence of trafficking stolen property.
- B. Purses, wallets, backpacks, and similar items, which may contain victim identification and/or access devices and personal documentation.
- C. Receipts or transaction records of retail purchases using credit / debit cards
- D. Credit Cards, Debit Cards, driver's licenses and other identification cards bearing the names of persons other than Jontel K. Jackson or Alicia Staton.
- E. Plastic containers and other packages containing stolen mail or personal items.
- F. Any and all deemed stolen property belonging to yet unidentified victims.
- G. Any items and/or documents showing dominion and control.
- H. Prowl/burglary tools, such as screwdriver's, "window-punch" hammers, shaved keys, and other items that can be used to break car windows and pry open locked containers / doors.

3. Promptly return this warrant to me or the clerk of this court; the return must include an inventory of all property seized.

A copy of the warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at the place where the property is found.

Date/Time 4/4/14 5<sup>05</sup> p.m.

Judge *Ketan Shah*

KETAN SHAH

Printed or Typed Name of Judge

Search Warrant  
Page 2 of 2

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Bellevue COURT FOR KING COUNTY

STATE OF WASHINGTON ) NO. W-BEP 00003271  
 )  
COUNTY OF KING ) INVENTORY AND RETURN OF SEARCH WARRANT

1. I received a search warrant for the premises, vehicle or person specifically described as follows:

Black Audi A8 VIN WAUFL54D9YU00457 bearing  
plate (WA) ANVO108

2. On the 4th day of April, 2014, I made a diligent search of the above-described premises, vehicle or person and found and seized the items listed below in Item 7.

3. Name(s) of person(s) present when the property was seized:

Ofc Peasey

4. The inventory was made in the presence of:

The person(s) named in (3) from whose possession the property was taken.

Others: \_\_\_\_\_

5. Name of person served with a copy or description of place where copy is posted:

inside or on driver's seat

6. Place where property is now stored: BPD evidence

(Continued on next page)

Inventory and Return  
Page 1 of 2

DISTRIBUTION: WHITE - Court File; YELLOW - Police File; PINK - Left at Premises Searched







**SEARCH WARRANT  
EVIDENCE RECORD AND WORKSHEET**

Date 4-4-2014 Offense JD Theft Search Warrant # W-BEP00003271 Case # 14-15763  
psp

Location of Premises Searched APV 0108

Item No.	Object	Location	Gathered By	Time
BSS-1	Phone LG	L/F Door pocket	447	2200
BSS-2	Screwdriver / Flashlight	"	447	"
BSS-3	Black wallet / Tan wallet	L/F Seat in back jacket	"	"
BSS-4	Samsung Phone	On center console	"	"
BSS-5	2 Cigs out of glove box	Glove box	"	"
BSS-6	2 Garmin GPS	Glove box	"	"
BSS-7	3400 Gift card	R/F Door pocket	"	"
BSS-8	Flashlight	"	"	"
BSS-9	Pink wallet	R/F floor board	"	"
BSS-10	Ignition	Glove box	"	"
BSS-11	Crow bar	R/F under seat	"	"
BSS-12	Nokia Phone	Back seat center seat	"	"
BSS-13	Black bag - <del>have returned</del>	L/R floor board	LOFT in car	"
BSS-14	Dodge FOB with white bands	R/F back seat pocket	"	"
BSS-15	Black Michael Kors bag	R/R seat	LOFT in car	"
BSS-16	Laptop bag / black	R/R seat	"	"
BSS-17	Receipts / iPod / Gift cards	Clear bin in trunk	"	"
BSS-18	Black binder	<del>Back</del> Seat back pocket	"	"
		in center	"	"

att in car  
att in car

1681L

14-C-02370-3 SEA

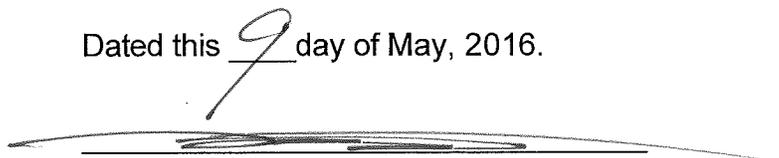
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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Maureen Cyr, the attorney for the appellant, at Maureen@washapp.org, containing a copy of the BRIEF OF RESPONDENT in State v. Tiffany L Martin, Cause No. 73563-2, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 9 day of May, 2016.

  
Name:  
Done in Seattle, Washington