

NO. 35083-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

DAVID BROWN,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KITSAP COUNTY

The Honorable Leonard W. Costello, Judge

BRIEF OF APPELLANT

CATHERINE E. GLINSKI  
Attorney for Appellant

CATHERINE E. GLINSKI  
Attorney at Law  
P.O. Box 761  
Manchester, WA 98353  
(360) 876-2736

FILED  
COURT APPEALS  
06 DEC 26 AM 9:29  
STATE OF WASHINGTON  
BY [Signature] CLERK

PM 12/21/06

## **TABLE OF CONTENTS**

<b>A. ASSIGNMENTS OF ERROR .....</b>	<b>1</b>
ISSUES PERTAINING TO ASSIGNMENTS OF ERROR .....	1
<b>B. STATEMENT OF THE CASE.....</b>	<b>1</b>
1. PROCEDURAL HISTORY .....	1
2. SUBSTANTIVE FACTS.....	2
<b>C. ARGUMENT.....</b>	<b>7</b>
<b>THE WARRANT APPLICATION DID NOT DEMONSTRATE THE     RELIABILITY OF BICKLE’S ALLEGATIONS AND THEREFORE     DID NOT ESTABLISH PROBABLE CAUSE. ALL EVIDENCE     SEIZED PURSUANT TO THE UNLAWFULLY ISSUED WARRANT     SHOULD HAVE BEEN SUPPRESSED. ....</b>	<b>8</b>
<b>D. CONCLUSION .....</b>	<b>17</b>

## TABLE OF AUTHORITIES

### Washington Cases

<u>In re Detention of Petersen</u> , 145 Wn.2d 789, 42 P.3d 952 (2002) .....	9
<u>State v. Anderson</u> , 105 Wn. App. 223, 19 P.3d 1094 (2001).....	9
<u>State v. Chenoweth</u> , 127 Wn. App. 444, 111 P.3d 1217 (2005), <u>review granted</u> , 156 Wn.2d 1031 (2006).....	14
<u>State v. Cole</u> , 128 Wn.2d 262, 906 P.2d 925 (1995).....	15
<u>State v. Cord</u> , 103 Wn.2d 361, 693 P.2d 81 (1985).....	13
<u>State v. Duncan</u> , 81 Wn. App. 70, 912 P.2d 1090, <u>review denied</u> , 130 Wn.2d 1001 (1996).....	10, 11, 14, 16
<u>State v. Gunwall</u> , 106 Wn.2d 54, 720 P.2d 808 (1986).....	9
<u>State v. Hendrickson</u> , 129 Wn.2d 61, 917 P.2d 563 (1996).....	8
<u>State v. Jackson</u> , 102 Wn.2d 432, 688 P.2d 136 (1984).....	9, 12, 15, 17
<u>State v. Lair</u> , 95 Wn.2d 706, 630 P.2d 427 (1981).....	10, 12
<u>State v. Lane</u> , 56 Wn. App. 286, 786 P.2d 277 (1989).....	14
<u>State v. Maxwell</u> , 114 Wn.2d 761, 791 P.2d 222 (1990).....	8, 9
<u>State v. McCord</u> , 125 Wn. App. 888, 106 P.3d 832, <u>review denied</u> , 155 Wn.2d 1019 (2005).....	10
<u>State v. Rodriguez</u> , 53 Wn. App. 571, 769 P.2d 309 (1989).....	10
<u>State v. Seagull</u> , 95 Wn.2d 898, 632 P.2d 44 (1981).....	8, 9
<u>State v. Taylor</u> , 74 Wn. App. 111, 872 P.2d 53, <u>review denied</u> , 124 Wn.2d 1029 (1994) .....	14
<u>State v. Thein</u> , 138 Wn.2d 133, 977 P.2d 582 (1999) .....	8
<u>State v. Woodall</u> , 100 Wn.2d 74, 666 P.2d 364 (1983).....	11

**Federal Cases**

Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964) . 9

Franks v. Delaware, 438 U.S. 154, 57 L. Ed. 2d 667, 98 S. Ct. 2674 (1978)  
..... 13

Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637  
(1969)..... 9

United States v. Canieso, 470 F.2d 1224 (2nd Cir. 1972) ..... 15

**Statutes**

RCW 9.41.040(1)(a) ..... 2

**Other Authorities**

1 W. LaFave, Search & Seizure § 3.3(b) (1978)..... 11

1 W. LaFave, Search & Seizure §3.4(a), at 726-27 (2d ed. 1987) ..... 10

**Constitutional Provisions**

Const. art. 1, § 7..... 8, 16

U.S. Const. amend. 4 ..... 8

A. ASSIGNMENTS OF ERROR

1. The search warrant application failed to establish the reliability of the informant's allegations.

2. The court erroneously concluded that the informant's criminal history was not material to the probable cause determination.

3. The court below should have suppressed evidence seized pursuant to the unlawfully issued warrant.

Issues pertaining to assignments of error

1. Where the warrant application failed to demonstrate the informant's veracity and the police investigation failed to corroborate appellant's involvement in criminal activity, did the state fail to establish probable cause to search appellant's house?

2. Where the search warrant application was based solely on uncorroborated allegations by an informant, was the informant's extensive history of crimes of dishonesty material to the informant's veracity and thus the probable cause determination?

3. Where the search warrant was not supported by probable cause, must the evidence seized pursuant to the warrant be suppressed?

B. STATEMENT OF THE CASE

1. Procedural History

On May 20, 2004, the Kitsap County Prosecuting Attorney charged appellant David Brown with unlawful possession of a firearm in the first degree. CP 1; RCW 9.41.040(1)(a). The information was amended three times, ultimately charging four counts of first degree unlawful possession of a firearm. CP 7-9, 98-102, 114-17. Brown moved to suppress evidence seized pursuant to an unlawfully issued search warrant. CP 14. The Honorable Leonard W. Costello denied the motion and the parties submitted the case to the court for a verdict on stipulated facts. CP 120. The Honorable Theodore Spearman found Brown guilty and imposed standard range sentences. CP 123, 150-51. Brown filed this timely appeal. CP 158.

2. Substantive Facts

Shortly after 11:00 p.m. on May 14, 2004, Paul Bickle was arrested fleeing from a construction site, where he had been in the process of removing an exterior window of the house. CP 63-64. Bickle was suspected of numerous similar burglaries in the area in which appliances had been stolen from houses under construction. CP 64.

At the time of his arrest, Bickle had in his possession a business card from a storage facility with a unit number and gate code written on the back. CP 65. Detectives searched the storage unit pursuant to a warrant and, rather than evidence related to the suspected burglaries, they

found tool sets and equipment which would be used in an automotive shop. CP 74. The detectives talked to Bickle and, based on information he provided, applied for search warrants for a residence on Fircrest Drive and two additional storage units. CP 71-88.

Kitsap County Sheriff's Detective Ronald Trogdon testified in support of the warrant application. Trogdon told the court that Bickle had asked to speak to detectives about his arrest, wanting to know what could be done for him based on information he could give them. The detectives told him it would depend on the scope of information he provided and what the prosecutor felt about it. CP 74, 84.

After Bickle was read his Miranda rights and waived them, he told detectives that he had obtained the tools in the storage unit from David Brown, who said he had stolen them from a shop in Kent. CP 75. Bickle told Trogdon that Brown lived on Fircrest Drive in Port Orchard. CP 77. Bickle said Brown had asked him to store the tools in his storage unit, and in exchange, Brown would supply Bickle with methamphetamine. CP 78. Bickle said he and a friend rented a U-Haul truck and picked up the tools from Brown's residence. CP 78-79.

Bickle told Trogdon that Brown had been his methamphetamine supplier for some time and that he had been at Brown's residence on several occasions. He added that he had seen firearms, including AK47s

and semi-automatic handguns, at Brown's house. CP 79-80. Although Bickle did not say he had seen firearms the last time he was at Brown's house, he said he saw them numerous times in the past month or two. CP 80.

Trogon testified that Bickle also told him Brown rented two storage units at Port Orchard Self Storage. CP 80-81. Bickle claimed he had been at those storage units and had seen numerous firearms there. CP 81. He told Trogon that Brown had offered to sell him appliances from construction sites which he was storing in the units. CP 81. Bickle also told Trogon that Brown had instructed him to go to the new construction site to steal appliances, which resulted in Bickle's arrest. CP 82.

The detectives verified through police reports and the owner that the tools found in Bickle's storage unit had been stolen from a business in Kent. CP 75-76, 83. They determined that Brown had two prior convictions which prohibited him from possessing firearms, and they verified that Brown rented two storage units. CP 80-81. Trogon did not verify that Brown lived at the address to be searched or that Brown was connected to the tool theft, the suspected burglaries, or the possession of firearms. CP 77.

In applying for the search warrants for Brown's residence and storage units, Trogon told the court that Bickle was currently charged

with second degree burglary. CP 83. Also, in his written application for a warrant to search the storage unit for which Bickle had the access code, Trogdon stated that he knew Bickle from a previous case “involving numerous thefts, burglaries and car prowls several years ago for which Paul Bickle was arrested and sent to prison.” CP 65. Neither the detective nor the prosecutor informed the court that Bickle had nine prior felony convictions for crimes of dishonesty. See CP 21, 39-40; 1RP 4.

The court found probable cause and issued search warrants for the Fircrest residence and the storage units at Port Orchard Self Storage. CP 86. When the warrants were executed, police located three shotguns and a rifle in a closet in the master bedroom. CP 124, 131. No assault rifles or handguns were found. Id. Following his arrest, Brown explained that he knew he had been forbidden from possessing firearms but he had written to ATF requesting that his rights be restored. CP 124.

Brown moved to suppress the evidence seized pursuant to the warrant. CP 14. He first argued that the police and prosecutor intentionally or recklessly omitted material information from the warrant application, because they failed to inform the court that Bickle had nine adult felony convictions for crimes of dishonesty. 1RP<sup>1</sup> 4. The state did not contest the criminal history or that the prior convictions were Kitsap

---

<sup>1</sup> The Verbatim Report of Proceedings is contained in four volumes, designated as follows: 1RP—1/23/06; 2RP—1/25/06; 3RP—2/6/06; 4RP—5/22/06 and 7/7/06.

County causes which the prosecutor's office knew about. 1RP 4. For the purposes of the suppression hearing, the state stipulated that the omission of Bickle's criminal history was either intentional or done with a reckless disregard for the truth. 1RP 6. It was the state's position, however, that the omitted evidence was not material to the court's probable cause determination. Id.

Brown also argued that the warrant application did not establish Bickle's reliability given his history of dishonesty, the fact that he was seeking leniency for his pending charges, and his motive for implicating Brown. 1RP 8-9. Moreover, the police corroborated only innocuous facts relating to Brown and did not corroborate any of Bickle's claims that Brown was involved in criminal activity. 1RP 10-14. Finally, Brown argued that the warrant was based on stale information, since Bickle claimed to have seen the guns one or two months earlier. 1RP 14-15.

The state responded that because Bickle was a named informant, he was presumed reliable. 1RP 18. The prosecutor also argued that the circumstances surrounding Bickle's statements supported his reliability, including that he made statements against his penal interests, that he had been Mirandized, and that he described the types of guns he had seen. 1RP 19-20. The state also believed it was significant that the police

verified Bickle's statement that the tools had been stolen from a business in Kent. 1RP 20.

The court denied Brown's motion to suppress. In an oral ruling, the court said it was persuaded Bickle was a citizen informant and agreed with the state that the fact he was named created a presumption of reliability. 2RP 2. Bickle was in custody at the time of his statements and had been Mirandized. Some of his statements were against his penal interests, and, while the statement that he saw guns in Brown's house was not against his penal interests, Bickle had an interest in telling the truth to help his situation. 2RP 2-3.

The court found the information was not stale because it was reasonable to believe that guns Bickle had seen one to two months previously would still be at the house. 2RP 3.

Finally, the court found that omission of the exact number and nature of Bickle's prior convictions was not material to the probable cause determination. 2RP 3-4. The issuing court was generally aware that Bickle had a criminal history involving crimes of dishonesty, including crimes for which he was sent to prison. 2RP 4. The court did not enter written findings of fact and conclusions of law to support its decision.

C. ARGUMENT

THE WARRANT APPLICATION DID NOT DEMONSTRATE THE RELIABILITY OF BICKLE'S ALLEGATIONS AND THEREFORE DID NOT ESTABLISH PROBABLE CAUSE. ALL EVIDENCE SEIZED PURSUANT TO THE UNLAWFULLY ISSUED WARRANT SHOULD HAVE BEEN SUPPRESSED.

The state and federal constitutions protect individuals against unreasonable searches and seizures, and warrantless searches are generally condemned as unreasonable. State v. Hendrickson, 129 Wn.2d 61, 70, 917 P.2d 563 (1996); U.S. Const. amend. 4; Const. art. 1, § 7. In light of these constitutional protections, a search warrant may issue only on a showing of probable cause. State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). A search warrant application must specify the underlying facts so the magistrate can make a detached and independent assessment of the evidence to determine if probable cause exists. Id.

A search warrant application establishes probable cause to search only if it sets forth facts sufficient for a reasonable person to conclude that the defendant is probably involved in criminal activity. State v. Maxwell, 114 Wn.2d 761, 769, 791 P.2d 222 (1990). The application must adequately show circumstances that extend beyond suspicion and personal belief that evidence of a crime will be found on the premises to be searched. State v. Seagull, 95 Wn.2d 898, 907, 632 P.2d 44 (1981).

Probable cause must be based on facts and not mere conclusions. Thein, 138 Wn.2d at 140.

While deference is given to the magistrate's ruling and doubts are resolved in favor of the warrant's validity<sup>2</sup>, the deference accorded the magistrate is not boundless. Maxwell, 114 Wn.2d at 770. Reasonableness is the key in determining whether a search warrant should issue. State v. Gunwall, 106 Wn.2d 54, 73, 720 P.2d 808 (1986). The appellate court reviews *de novo* the information presented to the magistrate to determine whether there was probable cause. In re Detention of Petersen, 145 Wn.2d 789, 799-800, 42 P.3d 952 (2002). Review of the search warrant's validity is limited to the information before the magistrate when the warrant was issued. State v. Anderson, 105 Wn. App. 223, 229, 19 P.3d 1094 (2001). If the warrant application does not establish probable cause, evidence seized pursuant to the unlawful warrant must be suppressed. Id.

When, as in this case, the search warrant application is based on an informant's hearsay, Washington courts evaluate the warrant application using the two-pronged Aguilar-Spinelli<sup>3</sup> test. State v. Jackson, 102 Wn.2d 432, 688 P.2d 136 (1984). Under that test, probable cause exists only if the informant's (1) basis of knowledge and (2) veracity have been

---

<sup>2</sup> Seagull, 95 Wn.2d at 907.

<sup>3</sup> Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969); Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964).

demonstrated. Both prongs must be satisfied to support probable cause unless the substance of the tip is verified by independent police investigation. Jackson, 102 Wn.2d at 436-38.

Brown has never disputed that the warrant application established Bickle's basis of knowledge. His veracity was not established, however.

First, under the circumstances of this case, Bickle cannot be presumed reliable as a citizen informant. The court below found that because Bickle was named, he could be presumed reliable. 2RP 2. While the fact that an informant is named is one factor to consider in determining reliability, it is not alone determinative. State v. Lair, 95 Wn.2d 706, 712, 630 P.2d 427 (1981); State v. McCord, 125 Wn. App. 888, 106 P.3d 832, review denied, 155 Wn.2d 1019 (2005); State v. Duncan, 81 Wn. App. 70, 78, 912 P.2d 1090, review denied, 130 Wn.2d 1001 (1996).

[I]f the person giving the information to the police is identified by name but it appears that this person was a participant in the crime under investigation or has been implicated in another crime and is acting in the hope of gaining leniency, then the more strict rules regarding the showing of veracity applicable to an informer from the criminal milieu must be followed [and not the rules applying to a citizen-informer].

State v. Rodriguez, 53 Wn. App. 571, 576, 769 P.2d 309 (1989), (citing 1 Wayne R. LaFare, Search and Seizure §3.4(a), at 726-27 (2d ed. 1987)).

Here, although Bickle was identified to the court, it was clear that he had been implicated in a crime and was providing information in the hopes of

gaining leniency. He was told the advantage he would gain depended on the amount of information he provided. CP 74, 84. Any presumption of reliability which might flow from the fact that Bickle was identified to the court is diminished by the fact that he was acting out of self interest. Duncan, 81 Wn. App. at 78.

The most common way to satisfy the veracity prong is to evaluate the informant's "track record," i.e. whether he or she has provided accurate, helpful information to the police a number of times in the past. State v. Woodall, 100 Wn.2d 74, 76, 666 P.2d 364 (1983); see also 1 W. LaFave, Search & Seizure § 3.3(b) (1978). The warrant application fails to establish Bickle's reliability on this basis as well. Trogdon testified that Bickle provided truthful information that the tools located in Bickle's storage unit had been stolen from a business in Kent. Although the detective was able to verify that the tools had in fact been stolen, he did not verify Bickle's claim that he obtained the tools from Brown or that Brown had stolen them. Thus, Trogdon could not say whether Bickle's accusations were accurate. This single instance of partially-verified information can hardly be considered a track record sufficient to establish Bickle's reliability.

If the informant lacks an adequate track record, it may be possible to satisfy the veracity prong by showing that the accusation against the

defendant was a declaration against the informant's penal interests. Jackson, 102 Wn.2d at 437. Here, however, Bickle's accusation that Brown had guns in his possession did not implicate Bickle's penal interests in any way. Bickle did make other statements which were against his penal interests, such as his admission that he received and stored stolen property for Brown, that he purchased methamphetamine from Brown, and that he committed the crime for which he was arrested at Brown's direction. While these statements may be intrinsically reliable because they implicate Bickle, they are not relevant to whether Brown had firearms in his possession, the offense for which the warrant was issued. Thus, they are not the kind of statements against penal interests that would support an inference that Bickle was telling the truth about the alleged criminal activity. See Lair, 95 Wn.2d at 711 (reasonable to infer that statements raising possibility of prosecution are credible).

The state argued below that the fact that Bickle provided details about the types of guns he saw demonstrates his veracity. 1RP 20. But the detailed nature of the tip establishes only the informant's basis of knowledge, not his reliability. See Jackson, 102 Wn.2d at 441 ("A liar could allege firsthand knowledge in great detail as easily as could a truthful speaker."). In any event, Bickle's tip could hardly be called detailed. Although he said he saw assault-type rifles and semiautomatic

handguns, he did not say how many firearms he saw or where within the house he saw them.

Next, material information omitted from the warrant application further preponderates against a finding of veracity. Under the Fourth Amendment, an omission of fact from a warrant application may invalidate the warrant if the omission was (1) material and (2) made intentionally or with reckless disregard for the truth. Franks v. Delaware, 438 U.S. 154, 155-56, 57 L. Ed. 2d 667, 98 S. Ct. 2674 (1978); State v. Cord, 103 Wn.2d 361, 366-67, 693 P.2d 81 (1985). Material facts intentionally or recklessly omitted must be added to the warrant application. If the supplemented application then fails to support a finding of probable cause, the warrant is void and the evidence obtained will be excluded. Franks at 155-56; Cord at 366-67.

Here, the state stipulated that Bickle's complete criminal history was either intentionally or recklessly omitted from the warrant application. IRP 6. Because the informant's credibility must be established for probable cause to exist, Bickle's history of crimes of dishonesty is material to the probable cause determination. The fact that an informant has a criminal history may not be material in some cases. For example, an informant who sets up a controlled purchase of drugs would be expected to have had previous drug-related contacts with the criminal justice

system. See e.g. State v. Taylor, 74 Wn. App. 111, 118-19, 872 P.2d 53, review denied, 124 Wn.2d 1029 (1994); State v. Lane, 56 Wn. App. 286, 295, 786 P.2d 277 (1989). But where, as here, the court is being asked to issue a warrant based solely on the uncorroborated claims of the informant that the defendant is engaged in criminal activity, a lengthy history of crimes of dishonesty is material to the informant's veracity and thus the determination of probable cause.

The court below determined that the state's omission was not material because the issuing court was generally aware that Bickle had been to prison for crimes of dishonesty, and the precise number and nature of his prior convictions was unimportant. 2RP 3-4. If Bickle had only two or three prior convictions, the court's reasoning might be sound. The sheer number of crimes of dishonesty, however, is much more telling than the non-specific information presented to the issuing court. Because an informant's tip does not establish probable cause unless the informant is shown to be credible, an extensive history of crimes of dishonesty is material. See State v. Chenoweth, 127 Wn. App. 444, 111 P.3d 1217 (2005) (undisputed that informant's full criminal history, prior work as paid informant, compensation for information provided, and prior dealings with prosecutor were material to warrant determination), review granted, 156 Wn.2d 1031 (2006); Duncan, 81 Wn. App. at 76 (police must present

issuing magistrate with sufficient facts to determine informant's credibility or reliability).

Because Bickle's full criminal history was both material and intentionally or recklessly omitted from the warrant application, that information should be inserted when determining whether the warrant application supports a finding of probable cause. Either with or without the omitted facts, however, the warrant fails to establish Bickle's veracity, as discussed above. The added information that Bickle has an extensive history of crimes of dishonesty confirms that deficiency.

Finally, Bickle's accusation was not sufficiently corroborated to compensate for the failure to establish his veracity. Independent police investigation corroborating the informant's tip may be sufficient to cure a deficiency in either prong of the test for probable cause. State v. Cole, 128 Wn.2d 262, 287, 906 P.2d 925 (1995). But the police must corroborate more than public or innocuous facts. Id. Rather, the corroborating evidence must point to criminal activity along the lines suggested by the informant. Jackson, 102 Wn.2d at 438 (quoting United States v. Canieso, 470 F.2d 1224, 1231 (2nd Cir. 1972)).

Here, the police corroborated no information pointing to suspicious or criminal activity on Brown's part. While the detectives corroborated that Bickle had access to stolen tools and equipment, there was no

corroboration for Bickle's claim that he obtained the stolen goods from Brown or that Brown was in any way connected to the theft. The detectives corroborated that Brown rented two storage units, but that alone is an innocuous fact. See Duncan, 81 Wn. App. at 77. Bickle's claim that Brown stored guns in the storage units was completely uncorroborated. The information Bickle provided showed only that he knew Brown, not that Brown was involved in criminal activity. Id. As to Bickle's accusation that Brown stored guns at the Fircrest residence, the detectives did not even corroborate that Brown lived at that address. CP 77. The police investigation in this case does not supply the missing veracity element because it did not corroborate suspicious activity along the lines suggested by the informant.

The warrant application in this case did not establish the reliability of Bickle's allegations that Brown was in unlawful possession of firearms. As our Supreme Court has recognized,

Const. art. 1, § 7 confers upon the citizenry of this state a right to be free from unreasonable governmental intrusions. This constitutional right can be protected only if the affidavit informs the magistrate of the underlying circumstances which led the officer to conclude that the informant was credible and obtained the information in a reliable way. Only in this way can the magistrate make the properly independent judgment about the persuasiveness of the facts relied upon by the officer to show probable cause.

Jackson, 102 Wn.2d at 443. The issuing judge did not have enough information to determine that the informant Trogdon relied upon was credible, and thus the warrant application fails to establish probable cause to believe firearms would be found in Brown's house. All evidence seized pursuant to the unlawfully issued warrant should have been suppressed. Since that evidence was necessary to prove the charges against Brown, his convictions should be reversed and the charges dismissed.

D. CONCLUSION

The warrant application failed to demonstrate the informant's veracity and therefore failed to establish probable cause. Evidence seized pursuant to the unlawfully issued warrant must be suppressed, Brown's convictions must be reversed, and the charges against him must be dismissed.

DATED this 21<sup>st</sup> day of December, 2006.

Respectfully submitted,

  
CATHERINE E. GLINSKI  
WSBA No. 20260  
Attorney for Appellant

Certification of Service by Mail

Today I deposited in the mails of the United States of America, postage prepaid, properly stamped and addressed envelopes containing copies of the Brief of Appellant in *State v. David M. Brown*, Cause No. 35083-1-II, directed to:

Randall Avery Sutton  
Kitsap County Prosecutor's Office  
614 Division Street, MS-35  
Port Orchard, WA 98366

David M. Brown  
DOC# 275533  
Coyote Ridge Corrections Center  
P.O. Box 709  
Connell, WA 99326

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



Catherine E. Glinski  
Done in Port Orchard, WA  
December 21, 2006

FILED  
COURT CLERK  
06 DEC 26 AM 9:29  
STATE OF WASHINGTON  
BY  DEPUTY