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COURT OF APPEALS
DIVISION II

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NO. 37576-1-II
IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION II

STATE OF WASHINGTON
BY cm
DEPUTY

STATE OF WASHINGTON, Respondent

v.

DINO J. CONSTANCE, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE ROBERT A. LEWIS
CLARK COUNTY SUPERIOR COURT CAUSE NO. 07-1-00843-8

BRIEF OF RESPONDENT

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I. STATEMENT OF THE FACTS

The State accepts the statement of facts as set forth by the defendant.

II. RESPONSE TO ASSIGNMENT OF ERROR

The assignment of error raised by the defendant is a claim that the defendant's rights were violated by an interception order issued by a court of competent jurisdiction in that the application failed to show that the recordings were necessary.

The police in Clark County sought judicial authority to record conversations. The authority was granted after review by Judge Robert Harris of the Clark County Superior Court, and later extended by Judge John Wulle of Clark County Superior Court. The police then recorded the conversations as authorized.

As part of the defendant's filings in the Superior Court was a document designated as "Attachment to Defendant's Motion to Suppress Recorded Conversations". (CP 46). As part of that long document were the orders and applications dealing with this particular matter. Those orders and applications for authority to intercept and record communications or conversations have been

separated out here and attached hereto and incorporated by this reference as Appendix A.

The defense argued at the time of trial and also here on appeal that the interception orders violated the privacy act because the applications failed to show that the recordings were necessary.

Washington's privacy act, RCW 9.73, requires all parties to consent before a private conversation is recorded. RCW 9.73.030(1)(b). An exception exists to the mutual consent requirement for police investigating a felony at RCW 9.73.090(2). Under the exception, law enforcement can "intercept, transmit, or record a conversation when one party consents thereto and a Judge or magistrate authorized the interception, transmission, or recording upon a finding of probable cause to believe that the non-consenting party has committed, is engaged in, or is about to commit a felony. State v. Lopez, 70 Wn. App. 259, 263, 856 P.2d 390 (1993). Coupled with that statutory authority is the requirement that the police application for an intercept order must make a particularized showing of need under RCW 9.73.130(3). State v. Porter, 98 Wn. App. 631, 635, 990 P.2d 460 (1999).

The text of RCW 9.73.130 is as follows:

§ 9.73.130. Recording private communications –
Authorization – Application for, contents

Each application for an authorization to record communications or conversations pursuant to RCW 9.73.090 as now or hereafter amended shall be made in writing upon oath or affirmation and shall state:

(1) The authority of the applicant to make such application;

(2) The identity and qualifications of the investigative or law enforcement officers or agency for whom the authority to record a communication or conversation is sought and the identity of whoever authorized the application;

(3) A particular statement of the facts relied upon by the applicant to justify his belief that an authorization should be issued, including:

(a) The identity of the particular person, if known, committing the offense and whose communications or conversations are to be recorded;

(b) The details as to the particular offense that has been, is being, or is about to be committed;

(c) The particular type of communication or conversation to be recorded and a showing that there is probable cause to believe such communication will be communicated on the wire communication facility involved or at the particular place where the oral communication is to be recorded;

(d) The character and location of the particular wire communication facilities involved or the particular place where the oral communication is to be recorded;

(e) A statement of the period of time for which the recording is required to be maintained, if the character of the investigation is such that the authorization for recording should not automatically terminate when the described type of communication or conversation has been first obtained, a particular statement of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(f) A particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ;

(4) Where the application is for the renewal or extension of an authorization, a particular statement of facts showing the results thus far obtained from the recording, or a reasonable explanation of the failure to obtain such results;

(5) A complete statement of the facts concerning all previous applications, known to the individual authorizing and to the individual making the application, made to any court for authorization to record a wire or oral communication involving any of the same facilities or places specified in the application or involving any person whose communication is to be intercepted, and the action taken by the court on each application; and

(6) Such additional testimony or documentary evidence in support of the application as the judge may require.

The State submits that the documentation supplied to the Superior Court Judges for the authorization for the intercept clearly comports with the standards set in RCW 9.73.130. This matter was brought before the trial court on a couple of occasions. The second occasion occurred on February 13, 2008 and was the same as the argument in the Court of Appeals argument. The defense in arguing this, attempted to demonstrate that the defendant was not an “elusive, dangerous guy”. (RP 229, L14). The defense further claims that he was not a violent person and although the defense conceded that there were grounds for wiring of the officer (RP 230, L13-17) the wiring did not justify a subsequent recording. The defense further argued that it had not been demonstrated or shown any additional reasons why normal police investigations or normal methods could not be used. (RP 231-232).

The State set forth a response as follows:

MR. GOLIK (Deputy Prosecutor): In defense counsel’s oral argument, he kind of repeatedly said that they have to show that normal techniques were used and didn’t work and – and then counsel kind of puts “ands” in there instead of “ors” but the – the requirements are “ors,” either normal techniques were tried and failed, “or” normal techniques were considered and found likely to not work, “or” it’s too dangerous.

And in this – in this case, the thought process that’s laid out at section E in the necessity talks about both the

likelihood that normal techniques would be unlikely to work and also talks about the – the danger aspect of – of doing this without a recording.

The thought process considers the idea of just arresting the defendant, and as – as Your Honor pointed out in one of the exhibits the defendant had already been confronted by law enforcement about this and he – and he denied.

The – you know, so they – so they think about that and they – they find it unlikely that if they arrest he's just going to confess.

There's a section also where the detectives are explaining the necessity for the wire because of the – the – the need to move this case along quickly because there's an indication that the defendant is soliciting multiple people, Mr. Castellanos and also the Sprys, to kill his wife. So they need to – to have this done to – to complete the investigation.

They talk about the potential problems with Mr. Castellanos's testimony. They talk about his prior convictions and his criminal background and the need for an independent verification of Mr. Castellanos's statements.

They talk about the need to prove that the – the plan for his scheme originated in the defendant's not – mind, and not Mr. Castellanos's mind. And, in fact, that need has come to fruition as the Defense is raising an entrapment defense, so it's obviously good that the – the detectives were thinking about that.

Then they go on to talk about the – the – the security need, the – the danger need. They talk about the fact that, you know, the actual crime they're looking at is the defendant is planning to have his wife killed. You know, he's talking about planning to – to commit a murder.

-(RP 243, L10 – 245, L7)

After hearing the argument of counsel, the trial court made it's ruling denying the Motion to Suppress but touching on a few of the areas that were raised as concerns:

THE COURT: The statute and the cases are designed to protect privacy, not to protect a defendant's right to challenge the evidence, in other words, to try and make the State's case weaker, but to make sure that before authorization to either transmit or record – and the statute doesn't really make a lot of distinction between transmission and recording – that an affidavit is presented to a detached magistrate and he finds probable cause to believe that this isn't just simply a police agency that believes that in all cases where there's undercover things going on that there should be transmission and recording, that there has to be some factual basis to believe that in this particular case it would be appropriate, using the standards that are outlined in the statute, and that authorization by the judge is, in effect, a sort of a warrant and is entitled I this area to some of the same considerations that a warrant has, which is that I presume the other judge reviewed it and – and I should defer to them unless I find that they were clearly improper.

-(RP 254, L 15 – 255, L11)

The trial judge went on to discuss other aspects of the possible alternatives to the recording:

The information indicates that Mr. Constance [the Defendant] was alleged to have contacted some individuals to solicit a serious violent crime, and that

when confronted about that he indicated that not only denied that that had occurred but also denied that or indicated that the people who were accusing him had problems, that they had motive, reasons to be lying about him.

Then another person comes in and says, he solicited me on a separate occasion, and the person that's making this report is someone's who's veracity could also be challenged.

And so the police considered whether it would be a good idea to just simply go with a he, he said sort of thing or whether there should be some way to try to independently verify whether any of the three people accusing Mr. Constance were, in fact, telling the truth, and they perceived that the best way to do that or one way to do that would be to conduct an investigation where they didn't have to rely on the word of any of the accusers, and that one of the accusers could make a contact with Mr. Constance and Mr. Constance would either make additional incriminating statements that could be verified by third parties or would not make such statements, which would perhaps indicate that the three people were, including Mr. Castellanos, were not telling the truth.

That's a perfectly acceptable way to proceed.

-(RP 255, L19 – 256, L24)

The judge touched on the nature of the attempted violent acts that were being solicited (murder) and noted that “there was more than the normal danger involved”. (RP 257, L10).

The court then summarizes this entire issue as follows:

Now, whether that was right or wrong, whether it would have borne out, is not the test. The test is whether probable cause or reasonable grounds are stated in the affidavit so that the magistrate authorizing it could say those things were present, and I find that they were.

-(RP 257, L11-16)

A judge issuing an intercept order has considerable discretion to determine whether the statutory safeguards have been satisfied. State v. Cisneros, 63 Wn. App. 724, 728-729, 821 P.2d 1262 (1992). The Court of Appeals does not review the sufficiency of the application de novo. Cisneros, 63 Wn. App. at 729. Rather, the appellate court will affirm if the facts set forth in the application are minimally adequate to support the court's determination. Cisneros, 63 Wn. App. at 729.

The showing required of law enforcement under RCW 9.73.130(3)(f) is not one of absolute necessity. But police must either "try or give serious consideration to other methods and explain it to the issuing judge why those other methods are inadequate in a particular case". State v. Manning, 81 Wn. App. 714, 720, 915 P.2d 1162 (1996); State v. Johnson, 125 Wn. App. 443, 456, 105 P.3d 85 (2005).

State v. Johnson, supra, was a murder case where the defense had argued that there had been an insufficient showing of other

methods prior to intercepts. The Court of Appeals in Johnson

indicated as follows:

In this case, the application contains more than boiler plate recitals – it reflects consideration of other techniques and informs the court of the likelihood of their inadequacies. The application establishes that attempting to illicit information from Johnson through police interviews would be futile because she was not forthcoming regarding her involvement in the case... Additionally, the application establishes that normal investigative techniques to locate and seize items related to the crime would likely fail because Johnson had worked with Mr. Correia to conceal and destroy any evidence linking her to the murder... In light of the fact that we determine whether the facts supporting an application to record and minimally adequate to support the court's determination, the application was sufficient to support the order authorizing the interception and recording of Johnson's conversation. See Cisneros, 63 Wn. App. at 729.

-(State v. Johnson, 125 Wn. App. at 456)

As part of our Appendix A, on page 10, is the Necessity for Recording. In that section the officer indicates that the normal investigative techniques would be unlikely to succeed if tried and would be too dangerous to attempt. He first notes that the defendant had solicited a gentleman, while sharing a jail cell, by the name of Castellanos. The idea of arresting the defendant in hopes that he would admit to hiring a hit man to murder his ex-wife was unlikely. Further, the officer indicates that even if he did divulge his desire to

have his ex-wife murdered, that alone would not support a prosecution for solicitation. The officer further indicates that the defendant had demonstrated that he was soliciting at least one individual and may be soliciting other individuals to murder his ex-wife. For this reason, the officer believed that time was of the essence as the defendant was out of jail and may be soliciting other people to commit the murder. The officer refers to statements made by Castellanos and the sworn testimony made under oath by Jordan and Michael Spry to support this belief. The officer refers to other documentation that was attached to his application (the State has not attached those to this appendices because of the voluminous nature of the documents. They are previously supplied elsewhere in the Court of Appeals record).

Further, the officer indicates that there are significant problems with Mr. Castellanos' testimony in that he has a substantial criminal history. The officer indicates that although the information does comport with previous sworn statements by Jordan and Michael Spry, who testified in court that the defendant tried to hire them to kill the alleged victim, Koncos, the solicitation of Mr. Castellanos would be a separate crime. It was felt that there would need to be

corroborating evidence to assist in ascertaining the accuracy of the statements because of the criminal record.

The officer further indicates that given Mr. Castellanos' background and potential issues with his criminal history, that a recording of the conversations may be appropriate and helpful to prove that the scheme originated in the mind of the defendant, that he was not entrapped into committing the crime.

The officer further raised issues in his application for authority to intercept that this would be an unsafe position for the detective posing as a "hit man" to meet with the defendant without audio and video capability so that the situation could be monitored to ensure the ability to quickly respond if anything went wrong. The undercover officer would not always be in close proximity to the cover protection teams. The only way to monitor the safety of the officer was through a transmitted conversation. The officer indicates that this case itself demonstrates that the suspect has a violent history and is planning the murder of his former spouse. Therefore, the use of monitored conversations would allow fellow officers to quickly respond to any changes in conversation and to be able to listen for help sign or arrest signals. (Application for Authority, page 11).

The defense in the appellant's brief refers to much of this as nothing more than boiler plate. The State submits that that is a gross misunderstanding of the nature of not only what was being addressed with the issuing court, but also the necessity needed for the application. The recitation here is similar to the recitation in the Johnson case referred to above. The application reflected consideration of other techniques and informs the court of the likelihood of their inadequacies. This was sufficient in the Johnson case and should be here also.

As previously indicated, in discussing the requirements of RCW 9.73.130(3)(f), the court noted in State v. Knight, 54 Wn. App. 143, 150-151, 772 P.2d 1042 (1989) the issuing judge has considerable discretion to determine whether the statutory safeguards have been satisfied. The reviewing court's role is not to review the application's sufficiency de novo, but to decide if the facts set forth in the application were minimally adequate to support the determination that was made. United States v. Scibelli, 549 F.2d 222, 226 (First Circuit) cert. denied 431 U.S. 960, 53 L. Ed.2d 278, 97 S. Ct. 2687 (1977).

In our case, the application reflects consideration of other techniques and adequately informed the court of the likelihood of

their inadequacies. The statutory requirements have been met and the trial court exercised its discretion in denying the Motion to Suppress and allowing this information to be used.

III. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 5 day of May, 2009.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By:


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

APPENDIX A

STATE OF WASHINGTON
SUPERIOR COURT OF CLARK COUNTY

507-5635

IN THE MATTER OF)	No.
AUTHORIZATION TO INTERCEPT)	
AND RECORD COMMUNICATIONS)	ORDER AUTHORIZING INTERCEPTION AND
OR CONVERSATIONS PURSUANT TO)	RECORDING OF COMMUNICATIONS OR
RCW 9.73.090)	CONVERSATIONS PURSUANT TO
)	RCW 9.73.090
)	
)	
)	
)	
)	

1

2 TO: Vancouver Police Detective Bryan Acee, Clark County Sheriff Detective John O'Mara, Washington

3 State Patrol Detective John Hess and members of the Clark County Sheriff's Major Crimes Unit,

4 Southwest Washington interagency Career Criminal Apprehension Team and Clark Skamania Drug

5 Task Force:

6

7 WHEREAS, sworn application having being made before me by Detective Bryan ACEE, a

8 commissioned law enforcement officer of the Vancouver Police Department, and full consideration having

9 been given to the matters set forth therein, the court hereby FINDS:

- 10 (a) There is probable cause to believe that Dino J. CONSTANCE has committed, and will further
- 11 commit the felony crime of Criminal Solicitation to commit Murder in the First Degree, in
- 12 violation of RCW sections 9A.28.030/9A.28.040 and Criminal Conspiracy, in violation of
- 13 RCW section 9A.28.040;
- 14 (b) There is probable cause to believe that communications or conversations relating to Criminal
- 15 Solicitation to commit Murder in the First Degree and Criminal Conspiracy will take place
- 16 and will be obtained as evidence through interception and recording as hereafter authorized;
- 17 (c) Ricci Dewayne CASTELLANOS and Detective John HESS have given consent to
- 18 interception and recording of conversations and/or communications between themselves and
- 19 the defendant, Dino CONSTANCE;
- 20 (d) Normal investigative techniques reasonably appear to be unlikely to succeed if tried and
- 21 reasonably appear to be too dangerous to employ;

ORDER AUTHORIZING INTERCEPTION
AND RECORDING OF COMMUNICATIONS
OR CONVERSATIONS PURSUANT TO
RCW 9.73.090

Detective Bryan Acee
C-CAT Task Force
Vancouver Police Dept.
P.O. Box 1995
Vancouver, WA 98668-1995

STATE OF WASHINGTON
SUPERIOR COURT OF CLARK COUNTY

1 NOW THEREFORE,

2 IT IS HEREBY ORDERED that Detectives Bryan ACEE, John O'MARA, John HESS and
3 members of the Clark County Sheriff Major Crimes Unit, Southwest Washington interagency Career
4 Criminal Apprehension Team and Clark Skamania Drug Task Force are authorized to intercept and
5 record by any device or instrument the communications or conversations of Dino CONSTANCE,
6 with Ricci Dewayne CASTELLANOS and/or Detective John HESS, concerning commission of the
7 felony Criminal Solicitation to commit Murder in the First Degree in violation of RCW sections
8 9A.28.030/9A.28.040 and Criminal Conspiracy, in violation of RCW section 9A.28.040. These authorizations
9 are to record conversations that may take place between any of the parties including Dino CONSTANCE,
10 Ricci Dewayne CASTELLANOS and/or Detective John HESS, on a telephone, number (206) 337-2138, or in
11 person between them as may occur at a location within Clark County, including at a McDonalds parking lot
12 located at Highway 99 and 134th Street, within Clark County, Washington. expected to occur beginning
13 on or after April 20, 2007, at 1:00 pm and conclude on April 27, 2007 at 1:00 pm.

14 IT IS FURTHER ORDERED that this authorization is effective April 20, 2007, at 1:00 pm and
15 conclude on April 27, 2007 at 1:00 pm, or upon completion of the authorized communications or conversations,
16 whichever occurs first.

17
18 SIGNED this 20 day of April, 2007, at 12:18 p.m./p.m.

19
20
21 
22 Superior Court Judge
23 County of Clark
24 State of Washington

STATE OF WASHINGTON
SUPERIOR COURT OF CLARK COUNTY

1 **BASIS FOR FACTS CONTAINED IN THIS APPLICATION:**

2
3 I make this application, in part, based on personal knowledge derived from my participation in
4 this investigation and, in part, based upon information from the following sources:

- 5
6 • Oral and written reports about this investigation, which I have reviewed;
7 • A review of available documentation concerning the named defendant;
8 • Summaries of conversations I've had with other peace officers concerning the defendant;
9 • Summaries of conversations with family and associates of the named defendant;
10 • Training I have received concerning violent crimes and electronic surveillance; and
11 • Statements of cooperating individuals

12
13 Except as otherwise noted, the information set forth in this affidavit has been provided to me by detectives
14 with the Clark County Sheriff's Office Major Crimes Unit (CCSO/MCU), the interagency Career
15 Criminal Apprehension Team (CCAT) and/or the Clark-Skamania Drug Task Force (DTF). Unless
16 otherwise noted, whenever in this affidavit I assert that a statement was made, the information was
17 provided by another law enforcement officer (who may have had either direct or hearsay knowledge of the
18 statement) to whom I have spoken or whose report I have read and reviewed.

19
20 **STATEMENT OF PROBABLE CAUSE:**

21
22 There is probable cause to believe that Dino CONSTANCE has committed, and will further
23 commit, the felony crime of Criminal Solicitation to commit Murder in the First Degree, in violation of
24 RCW 9A.28.030/RCW 9A.28.040, and Criminal Conspiracy, in violation of RCW 9A.28.040, and that
25 interception and recording of the communications or conversations of CONSTANCE should be
26 authorized for the following reasons:

STATE OF WASHINGTON
SUPERIOR COURT OF CLARK COUNTY

1 (a) Background:

2 On April 10, 2007, Michael K. SPRY and Jordan P. SPRY gave sworn testimony under oath in
3 Clark County Superior Court Judge James Rulli's courtroom as witnesses, regarding their observations in
4 an on-going domestic violence and family non-support dispute between Dino CONSTANCE and Jean
5 KONCOS. Michael SPRY and Jordan SPRY (father/son) testified independently that they were former
6 roommates of CONSTANCE and that CONSTANCE had offered to pay them \$10,000 dollars to kill his
7 ex-wife, Jean KONCOS. The testimony in that matter was recorded as part of the video and audio record
8 in the courtroom. I have personally viewed the video testimony and observed the statements made therein.
9 A CD copy of the video testimony has been attached hereto and incorporated as **Exhibit No. 1.**

10 On April 13, 2007, CONSTANCE was arrested and incarcerated in the Clark County jail for
11 family non-support violations. He was housed in the reception pod of the jail. CONSTANCE's jail cell
12 was located in pod number G-2 and his cellmates at the time were Ricci Dewayne CASTELLANOS
13 and Roy Leon BRADLEY.

14 On April 14, 2007, at approximately 1300 hours, Clark County Sheriff Custody Officer Barbara
15 SCHUBACH interviewed jail inmate Ricci CASTELLANOS as part of a routine classification interview.
16 Inmates housed in the reception pod are interviewed before being housed in the general population.
17 During the interview, CASTELLANOS related his cellmate, Dino CONSTANCE, had solicited him to
18 murder his ex-wife. CASTELLANOS said CONSTANCE offered him five thousand dollars to murder his
19 ex-wife. CASTELLANOS reported CONSTANCE was upset with his ex-wife over some missing money
20 and the fact that his ex-wife had primary custody of their two and a half year old son. CASTELLANOS
21 did not request consideration, favoritism, transfer, or otherwise during the interview with Deputy
22 SCHBACH. CASTELLANOS said he would continue to converse with CONSTANCE and try to gain
23 additional intelligence. At the conclusion of the interview, Custody Officer SCHUBACH summoned
24 CCSO detectives to the jail for further investigation. Officer SCHUBACH then completed a detailed
25 report of her interview with CASTELLANOS. Officer SCHUBACH completed a one page report on her
26 interview with CONSTANCE and it has been attached hereto and incorporated as **Exhibit No. 2.**
27 Meanwhile, CASTELLANOS returned to his cell and wrote a three-page statement detailing his
28 conversation with CONSTANCE. CASTELLANOS pretended to be writing to his girlfriend, as
29 CONSTANCE was still in the cell with him. CATELLANOS' note abruptly ended when he was

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1 summoned to a ruse medical visit (at which time he would actually meet with CCSO detectives).

2 CASTELLANOS' three page note has been attached hereto and incorporated as Exhibit No. 3.

3 On April 14, 2007, at approximately 1700 hours, CASTELLANOS was escorted from his cell
4 by custody staff as part of a ruse in which CASTELLANOS was to report to the jail medical facility.
5 CCSO Major Crimes Unit Detectives John O'Mara and Eric O'Dell met with CASTELLANOS in a
6 secure area within the jail. Detectives O'Mara and O'Dell conducted a detailed, tape recorded,
7 interview of CASTELLANOS regarding his conversation with CONSTANCE. During the interview,
8 CASTELLANOS said CONSTANCE had stated, "I need someone to kill my ex." CASTELLANOS
9 indicated to CONSTANCE that he could have her killed, but it would cost him about fifteen thousand
10 dollars. CONSTANCE then negotiated the price down to three to five thousand dollars.

11 CASTELLANOS said he would accept the lesser amount. CASTELLANOS said CONSTANCE
12 questioned him about who would commit the murder and by what means they would do it.

13 CONSTANCE did not mention his ex-wife by name, but described her as being 5'10" in height, a
14 masseuse that advertises on Craig's List, the mother of his only child and said she lived in a four-plex
15 off Mill Plain Boulevard. CONSTANCE would later tell CASTELLANOS that his ex-wife's name
16 was "Jean KONCOS". Detective O'Mara told me KONCOS is 5'10", lives at a location off Mill Plain
17 Boulevard, has a two and a half year old child with CONSTANCE and that she is a masseuse, who
18 advertises her business on Craig's List.

19 CONSTANCE suggested CASTELLANOS could club KONCOS over the head and throw her
20 off the side of his boat. CONSTANCE said if they timed it right, the tide could carry her body thirty
21 miles away and "out to sea". CASTELLANOS pointed out that because CONSTANCE's ex-wife was
22 a larger lady, at 5'10", CASTELLANOS would need a second person to help him. CONSTANCE
23 suggested the second person not be a black man, because he did not want any "mistakes" made.
24 CONSTANCE indicated a white man should be utilized to do the job. At one point in the conversation,
25 CONSTANCE told CASTELLANOS that they would meet up the following week to prepare the final
26 details of the murder plan. CONSTANCE subsequently gave COSTELLANOS his cell phone number
27 and told him to call him in a few days. CONSTANCE suggested the two men use code names in the
28 future - CONSTANCE said he would use the name "Tim" and COSTELLANOS should use the name

4

**STATE OF WASHINGTON
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1 "Dewayne" (Dewayne is COSTELLANOS' real and true middle name). CONSTANCE told
2 COSTELLANOS he wanted to be a thousand miles away the day the murder happened.

3 COSTELLANOS said he believed CONSTANCE was very serious about having his ex-wife
4 killed and agreed to cooperate with law enforcement in hopes of saving the woman's life.
5 COSTELLANOS also indicated he would be grateful if authorities changed his post-conviction
6 sentence of work crew to community service. COSTELLANOS offered to wear a listening device in
7 future conversations with CONSTANCE.

8 Detectives O'Mara and O'Dell conducted a thorough interview of COSTELLANOS. At the
9 conclusion on the recorded interview, Detective O'Mara had the interview transcribed. The text of the
10 interview has been attached hereto as a ten page document and incorporated as **Exhibit No. 4**.
11 Detective O'Mara told me he believed COSTELLANOS' account of the incident to be truthful because
12 COSTELLANOS had specific knowledge and information pertaining to CONSTANCE's ex-wife.

13 On April 17, 2007, Detective O'Mara interviewed CONSTANCE's ex-wife, Jean KONCOS.
14 Detective O'Mara told me KONCOS was afraid of CONSTANCE and believed him capable of killing
15 her – or having her killed. KONCOS has been relocated to a safe-house at the direction of the Clark
16 County Sheriff's Office.

17 On April 18, 2007, COSTELLANOS called CONSTANCE's cell phone [360-798-1082] and
18 left a message for "Tim" (CONSTANCE's code name) and said, "This is Dewayne (COSTELLANOS'
19 code name) from earlier this weekend. It's a go for this Saturday. Give me a call back."

20 On April 20, 2007, Detective O'Mara spoke with COSTELLANOS and learned that
21 CONSTANCE had telephoned COSTELLANOS the day before (04/19/07). COSTELLANOS related
22 that CONSTANCE yelled at him because CONSTANCE had expected COSTELLANOS to call him
23 sooner. CONSTANCE told COSTELLANOS he had been bogged down with court. CONSTANCE
24 went on to say he had court with his wife the next day (04/20/07) and he would call him back as soon
25 as he got done with court.

26 I have reviewed a print out of COSTELLANOS' criminal history from the Washington State
27 Patrol. That criminal history printout indicates that COSTELLANOS has four prior felony
28 convictions, including for Theft in the Second Degree (1992), Theft in the Second Degree (1996),
29 Forgery (2000) and Possession of Stolen Property in the Second Degree (2004). Additionally,

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1 COSTELLANOS has several convictions for Driving Under the Influence, at least two convictions for
2 Assault in the Fourth Degree; False Reporting and being in Violation of a Domestic Violence
3 Protection Order. I verified COSTELLANOS' felony convictions via the Clark County Superior Court
4 SCOMIS computer system. All of these felony convictions appear to be in Clark County, Washington.

5 A review of Vancouver Police Department and Clark County Sheriff's Office records indicate
6 CONSTANCE has been listed as the suspect in five (5) separate domestic violence assaults with
7 KONCOS over the past three years (reference case numbers S04-133, S04-4782, S04-11942, S04-
8 12031 and V06-3067). The same database lists CONSTANCE as being in violation of a court issued
9 protection order with KONCOS on eleven (11) separate incidents over the past three years (reference
10 case numbers S04-15926, S05-5715, V05-8218, V05-14646, V05-15063, V05-15235, V06-3611, V06-
11 20514, V07-5256, V07-5560, and V07-6887). Vancouver police report number V07-7587, dated
12 March 27, 2007, indicates KONCOS telephoned VPD after speaking with Jordan SPRY. KONCOS
13 reported SPRY had told her CONSTANCE was trying to get someone to kill her. All of the reports
14 listed above have been attached hereto and incorporated as **Exhibit No. 5**.

15 A review of CONSTANCE's criminal history indicates he has sixteen (16) prior arrests in
16 Washington, Oregon and Colorado with convictions for Criminal Mischief in the First Degree (x2),
17 Violation of a Domestic Violence Protection Order, Prostitution, Disorderly Conduct, and DUI.

18
19 (b) Operational Plan:

20 CASTELLANOS will attempt to set up a meeting with CONSTANCE to introduce him to the
21 "hit-man" - who will actually be an undercover detective. Washington State Patrol (WSP) Detective
22 John HESS, is a member of the Clark-Skamania Drug Task Force. Detective HESS will be utilized as
23 an undercover officer in this investigation. CASTELLANOS will introduce CONSTANCE to
24 Detective HESS and represent HESS a professional "hit-man" from Seattle. COSTELLANOS will tell
25 CONSTANCE that HESS will murder CONSTANCE's ex-wife for \$5000 dollars. Detective HESS
26 may need to have telephone conversations with CONSTANCE to set up a person-to-person meeting.
27 During the phone conversation(s) and subsequent meeting(s), Detective HESS will talk with
28 CONSTANCE, seeking to learn more about his ex-wife and the manner in which CONSTANCE
29 would like her murdered. I am planning on the in-person meeting between HESS and CONSTANCE to

6

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1 take place within the McDonalds parking lot located at Highway 99 and 134th Street, within Clark
2 County, Washington. Detective HESS will make it extremely clear to CONSTANCE that he will kill
3 CONSTANCE's ex-wife in exchange for \$5,000 dollars. Detective HESS will also give CONSTANCE
4 a chance to back out of the deal. While meeting with CONSTANCE, Detective HESS will obtain a
5 description of CONSTANCE's ex-wife, her address, information pertaining to her daily routine and
6 information pertaining to how CONSTANCE might want her killed. CONSTANCE will believe HESS
7 is going to murder his ex-wife for five thousand dollars or other financial compensation.

8 Because this investigation involves a murder-for-hire plot between the suspect and an
9 undercover officer, it is anticipated that the suspect and the undercover officer will engage in lengthy
10 conversation about the plan and scheme to murder the suspect's ex-wife. During the meeting(s) and/or
11 phone conversations, Detective HESS and I will be intercepting and recording conversation with the
12 suspect. Because this is a joint operation between Clark County Sheriff Major Crimes Unit (MCU), the
13 interagency Career Criminal Apprehension Team (CCAT) and the Clark-Skamania Drug Task Force
14 (DTF), detectives within those teams/units may be assisting Detective HESS and I in intercepting and
15 recording conversations with the suspect. I also anticipate making a videotape of HESS' interactions
16 with the suspect. Once this portion of the operation begins, it will be a 24-hour investigation and the
17 personnel assisting Detectives HESS, O'MARA and I may change slightly, based on who is available
18 at the time. I anticipate the following MCU, CCAT and DTF detectives will be utilized in this
19 investigation:

20 CCSO Major Crimes Unit (MCU):

- 21 a) Detective O'Mara
- 22 b) Detective O'Dell
- 23 c) Detective Harper
- 24 d) Detective Buckner
- 25 e) Sergeant Trimble

26 Career Criminal Apprehension Team (CCAT):

- 27 a) Detective Acee (VPD)
- 28 b) Detective Conroy (CCSO)
- 29 c) Detective Lobdell (VPD)
- 30 d) Detective Matua (DOC)
- 31 e) Detective Ford (DOC)
- 32 f) Detective Anderson (PPB)
- 33 g) Deputy Rakoz (USMS)

STATE OF WASHINGTON
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- 1 h) Supervisor Wilcox (DOC)
2 i) Sergeant Chylack (VPD)
3 Drug Task Force:
4 a) Detective Hess (WSP)
5 b) Detective Gardner (CCSO)
6 c) Detective Hopkins (VPD)
7 d) Detective Nelson (CCSO)
8 e) Detective Brockus (CCSO)
9 f) Detetctive Boardman (CCSO)
10 g) Detective Whyckoff (SCSO)
11 h) Detective Billingsly (VPD)
12 i) Detective Hall (VPD)
13 j) Sergeant Lester (VPD)
14 k) Commander Warren (CCSO)
15 l) Investigator Brown (CCSO)
16 m) Investigator Shirron (CCSO)
17

18 Ricci CASTELLANOS, the jail informant, will be needed to introduce CONSTANCE to the
19 undercover officer. The meeting will likely be planned over one or more telephone conversations.
20 During the phone conversations, and subsequent meeting(s), between CASTELLANOS and
21 CONSTANCE, I anticipate the men will discuss the planned murder of the suspect's ex-wife and the
22 background, capabilities and/or methodology of the hired "hit-man". MCU, CCAT and DTF detectives
23 may assist me intercepting and recording conversations between CASTELLANOS and CONSTANCE.
24 I also anticipate making a videotape of the meeting(s) between CASTELLANOS and CONSTANCE.

25 The operational plan will be to arrest CONSTANCE after he meets with Detective HESS and
26 solicits the undercover officer to murder his ex-wife.

27 Detective HESS and CASTELLANOS have consented to audio and video interception and
28 recording of their communications and conversations with CONSTANCE.

29
30 (c) Locations to be Recorded:

31 The plan pertaining to the telephone calls will be to provide CASTELLANOS with a phone and
32 phone number controlled by the police. CASTELLANOS will provide that number to CONSTANCE and
33 tell him that the number is the cell number for the "hit man" (meaning Detective HESS). Detective HESS
34 will answer the call and converse with CONSTANCE. This phone number has already been arranged and

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1 is (206) 337-2138. We are using this number, with a Seattle prefix, as CASTELLANOS has already told
2 CONSTANCE that the "hit man" is from Seattle. The equipment to record the call will be operated at the
3 direction of detectives from DTF, MCU and CCAT. All telephone calls will take place in Clark County,
4 Washington.

5 It is anticipated that CONSTANCE will be using the telephone number listed above, or some other
6 number he utilizes to communicate with HESS or CASTELLANOS for the purposes of these
7 conversations. It is anticipated that any face-to-face conversations with CONSTANCE to discuss
8 arrangements for the murder of his ex-wife will occur in the McDonalds parking lot located at Highway
9 99 and 134th Street, within Clark County, Washington. Given the fluid nature of an investigation, and the
10 fact that the actual location of the meeting is dependent on agreement of CONSTANCE, this location may
11 change to another location in Clark County.

12 The plan as to direct recording of "in-person" contacts between the CASTELLANOS, HESS and
13 CONSTANCE are that a first meeting with the suspect will occur at a public location, located within
14 Clark County, Washington. It is anticipated that conversations will be intercepted and recorded between
15 the undercover officer (HESS) and CONSTANCE or CASTELLANOS and CONSTANCE during these
16 meetings on or after April 20, 2007. The conversations and meetings will allow CONSTANCE to plan the
17 entire operation with CASTELLANOS and the undercover officer.

18 There may be numerous recorded phone calls between HESS and CONSTANCE or
19 CASTELLANOS and CONSTANCE to finalize the plan. On or after April 20, 2007, conversations will
20 be intercepted and recorded at subsequent meeting sites located within Clark County, Washington, and
21 possibly during transit between the sites. The undercover officer and/or CASTELLANOS will be
22 wearing a body wire (recording device) during any meeting(s) with CONSTANCE. Telephone
23 conversations between CASTELLANOS and CONSTANCE or HESS and CONSTANCE will be
24 intercepted and recorded via DTF phone -recording equipment.

25
26 (d) Duration of Investigation:

27 Completion of this phase of the investigation will require several telephone calls and/or meetings
28 between the undercover officer, CASTELLANOS and CONSTANCE to assess the willingness of the
29 undercover officer to participate in the murder, set up the actual plan to kill CONSTANCE's ex-wife, and

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1 to carrying out the actual scheme. At a minimum this will take three days to complete. However, as often
2 happens when working with criminals, plans can change. Additionally, if the investigation does not
3 proceed as planned, much time and effort will be required to coordinate with MCU, CCAT, DTF
4 detectives, the victim, the numerous investigators required for an operation of this type, and the suspect.
5 For these reasons, seven days are being requested for this operation. Seven days of authority allows
6 officers to have contingency plans in the event that the operation does not take place as anticipated. Seven
7 days is the maximum allotted time allowed pursuant to RCW 9.73.090. I am requesting this authorization
8 begin on April 20, 2007, at 1:00 pm and conclude on April 27, 2007, at 1:00 pm.

9
10 (e) Necessity for Recording

11 Normal investigative techniques are unlikely to succeed if tried and are too dangerous to try.
12 CASTELLANOS was in contact with CONSTANCE as the two shared a jail cell over the weekend.
13 Outside the above described investigative operation, involving the murder of CONSTANCE's ex-wife,
14 CONSTANCE has not requested to meet CASTELLANOS' "hit-man". The idea of arresting
15 CONSTANCE in hopes he will admit his intent to hire a hit-man to murder his ex-wife is unlikely.
16 Even if CONSTANCE did divulge his desire to have his ex-wife murdered, that alone may not support
17 his prosecution for Solicitation to Commit Murder in the First Degree and Criminal Conspiracy. In the
18 meantime, as CONSTANCE has demonstrated, he may be soliciting other individuals to murder his
19 ex-wife. I believe time is of the essence, as CONSTANCE is out of jail and may be soliciting another
20 person, or persons, to murder his wife. The statements made by COSTELLANOS and the sworn
21 testimony made under oath by Jordan and Michael SPRY support my belief. Additionally,
22 CONSTANCE has demonstrated a propensity toward violence, as detailed in the many police reports
23 attached herein (Exhibit No. 5).

24 An additional, but significant problem occurs with CASTELLANOS' testimony. His felony
25 criminal history is of a nature that they will be disclosed to a jury during any trial. Although his
26 information corresponds with the statements of Jordan and Michael SPRY, who testified in court that
27 CONSTANCE tried to hire them to kill KONCUS, any solicitation of CASTELLANOS is a separate
28 crime. Because of the nature of CASTELLANOS' criminal background, independent verification of

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1 his statements is necessary to help prove he was solicited. A recording of statements between
2 CASTELLANOS and CONSTANCE will be the best way to verify CASTELLANOS statements.

3 Further, because of the nature of the crime, a recording of all of the conversations is
4 appropriate and helpful to prove that the scheme originates in the mind of CONSTANCE and that he is
5 not entrapped into committing the crime. Given CASTELLANO'S background and potential issues
6 with his criminal history being placed in front of a jury, a recording will be the best way to ensure that
7 he has not overstepped his role and entrapped CONSTANCE.

8 It would be unsafe for Detective HESS to meet with CONSTANCE without audio and video
9 capability so that other investigators can monitor the meetings and ensure the ability to respond
10 quickly if anything goes wrong. Because of the inherent danger of undercover work, it is essential that
11 the conversations be monitored. The undercover officer will not always be in close proximity to close
12 cover protection teams. The only way to monitor the safety of the officer is through the use of
13 transmitted conversation. Usually undercover operations involve a single officer and the suspect(s); in
14 this case the suspect has demonstrated a violent history and is planning the murder of his former
15 spouse. The use of the monitored conversation will allow fellow officers to quickly respond to any
16 changes in conversation and be able to listen for help signs or arrest signals.

17 The investigative plan described above, if successful, is anticipated to result in the arrest and
18 prosecution of a habitual domestic violence offender and violent ex-con. Interception of conversations
19 with this suspect would be critical to a later evaluation of who made which statements and the
20 knowledge and intentional participation of the suspect in the above listed and described crime. The
21 undercover officer will not be in a position to be able to take notes, so he will have to rely on the
22 recording to later clearly provide evidence of the suspect's statements and willing participation in the
23 criminal scheme.

24 CONSTANCE's interactions with his ex-wife and his criminal history show him to be an active
25 and elusive criminal who has been engaged in criminal activity for quite some time. He is therefore not
26 likely to speak about his criminal activity or to participate in the planned murder of his ex-wife if he
27 thinks non-participant witnesses are in a position to overhear his conversations. For these reasons,
28 transmission and recording of the conversations is necessary.

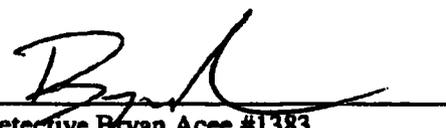
STATE OF WASHINGTON
SUPERIOR COURT OF CLARK COUNTY

1 PRIOR APPLICATIONS:

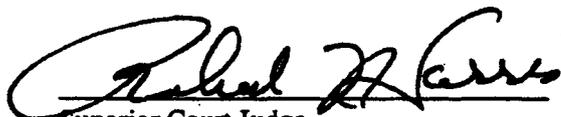
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3 I know of no previous applications involving the same persons named herein, whose
4 communications or conversations are to be recorded.

5 CONCLUSION:

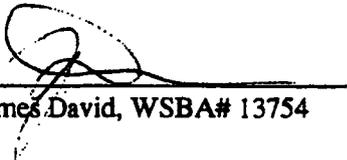
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7 Based upon my training, experience and the information contained in this application and the
8 attached exhibits, I believe that communications or conversations concerning the felony crime of Criminal
9 Solicitation to commit Murder in the First Degree, in violation of RCW 9A.28.030/RCW 9A.28.040, and
10 Criminal Conspiracy, in violation of RCW 9A.28.040, will occur during the time intervening between
11 April 20, 2007, at 1:00 pm and April 27, 2007 at 1:00 pm., involving Dino CONSTANCE, Ricci
12 COSTELLANOS and Detective John HESS; that those communications or conversations will be
13 evidence of the above listed crimes; and that interception and recording of those communications or
14 conversations by any device or instrument should be authorized commencing April 20, 2007, at 1:00 pm
15 and conclude on April 27, 2007 at 1:00 pm.

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17
18 
19 Detective Bryan Acee #1383
20 Vancouver Police Department
21 Career Criminal Apprehension Team
22

23 SUBSCRIBED and SWORN to before me this 20 day of April, 2007, at 12:18 a.m./p.m.

24
25 
26 Superior Court Judge
27 County of Clark
28 State of Washington
29

30
31 Application approved by:

32 
James David, WSBA# 13754

**STATE OF WASHINGTON
SUPERIOR COURT OF CLARK COUNTY**

IN THE MATTER OF) No.
AUTHORIZATION TO INTERCEPT)
AND RECORD COMMUNICATIONS) APPLICATION FOR AUTHORITY TO
OR CONVERSATIONS PURSUANT TO) INTERCEPT AND RECORD
RCW 9.73.090) COMMUNICATIONS OR CONVERSATIONS
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2 STATE OF WASHINGTON)
3) ss.
4 COUNTY OF CLARK)
5

6 I, **Detective John O'Mara**, being first duly sworn on oath, depose and say:
7

8 I have been a law enforcement officer for twenty one years and am employed as a detective
9 with the Clark County Sheriff's Department. I am currently assigned to the Major Crimes Unit as a
10 Homicide Detective. In addition to Homicide Investigations we also conduct investigations of crimes
11 that would usually entail numerous hours of investigation and follow up, including, but not limited to:
12 Rape; Major Assaults; Major Frauds; Any Major investigations involving the Clark County Jail, such
13 as suicides or allegations of assault to prisoners by Custody Officers. I am also part of a Regional
14 Major Crimes Team that includes Detectives from various departments within Clark County that, from
15 time to time, assist with major investigations regarding officer involved shootings and Homicides.
16 Over the past twenty one years, I have received training in the use of communication intercepts, body
17 wires, audio and video surveillance and electronic tracking. I have received extensive training in all
18 aspects of Law Enforcement techniques, to include surveillance and undercover operations; search
19 warrants; task forces; interviewing; and over 2,000 hours of training at various levels. The Vancouver
20 Police Department and Clark County Sheriff's Office possess various electronic instruments that may
21 capture audio and video transmission and recordings and they will be utilized for this case. I make this
22 application by authority of RCW 9.73.090. This application is an addendum to the original application.

ADDENDUM TO THE ORIGINAL
APPLICATION FOR AUTHORITY
TO INTERCEPT AND RECORD
COMMUNICATIONS OR CONVERSATIONS
PURSUANT TO RCW 9.73.090

Detective John O'Mara
Major Crimes Unit
Clark County Sheriff's Dept.
P.O. Box 410
Vancouver, WA 98666

STATE OF WASHINGTON
SUPERIOR COURT OF CLARK COUNTY

1 REQUEST FOR EXTENSION TO THE SEVEN DAY LIMIT:

2
3 I am attaching and incorporating by reference an APPLICATION FOR AUTHORITY TO
4 INTERCEPT AND RECORD COMMUNICATIONS OR CONVERSATIONS which was prepared
5 and entered on April 20, 2007. As a result of such application, an ORDER AUTHORIZING
6 INTERCEPTION AND RECORDING OF COMMUNICATIONS OR CONVERSATIONS
7 PURSUANT TO RCW 9.73.090 entered on that date. At this time, I am requesting the court sign an
8 additional ORDER AUTHORIZING INTERCEPTION AND RECORDING OF
9 COMMUNICATIONS OR CONVERSATIONS PURSUANT TO RCW 9.73.090 to extend the
10 authority granted by the first Order. I do so in part, based on personal knowledge derived from my
11 participation in this investigation. I submit the following information to show cause why I am
12 requesting an extension of Seven Days to the original application.

13 On April 20th, 2007, Judge Harris approved an Application for Authority to Intercept and
14 Record Communications or Conversations and an Order Authorizing Interception and Recording of
15 Communications or Conversations Pursuant to RCW 9.73.090.

16 Also on April 20th, 2007, I, Detective John O'Mara, with the Clark County Sheriff's
17 Department Major Crimes Unit, based on the aforementioned Order, contacted the CI in this case,
18 witness Ricci Dewayne Castellanos, and advised him that he could now call the defendant in this
19 case, Dino Constance, as Constance had instructed. I gave Ricci Castellanos a phone number, (206)
20 337-2138, that had been set up to be utilized for the purpose of recording any conversations with
21 defendant Dino Constance. I instructed Ricci Castellanos to tell Dino Constance to call the phone
22 number in order to speak directly to someone that Castellanos had contacted at the request of

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1 **Constance** in regard to the Criminal Solicitation agreement he had entered into with **Castellanos** while
2 they were both housed in the same jail cell while incarcerated at the Clark County Jail, as noted in the
3 original application. The phone number would have put **Constance** in direct contact with our
4 undercover operative, **Detective John Hess**, who would be posing as the "hit man", and would have
5 created documentation and recordings of the call itself and any further contact or correspondence
6 through use of the phone number and/or through meetings while wearing a "wire".

7 On April 21st, 2007, **Detective Bryan Acee**, along with other Detectives in his unit, conducted
8 surveillance on the home of **Dino Constance** for several hours. They took reference photographs of
9 his home and vehicles and waited to see if **Constance** would leave, in order to get an idea of his
10 activities and locations frequented for purposes of setting up a meet with the undercover, **Detective**
11 **Hess**. That same morning I, **Detective John O'Mara**, along with **Detective Eric O'Dell**, made
12 contact with the CI, **Ricci Castellanos**, picking him up at his residence and bringing him to the
13 Vancouver Police Department Central Precinct for a meeting with **Detective O'Dell** and I, and the
14 undercover operative, **Detective John Hess**. The meeting was to plan what **Castellanos** would say to
15 **Constance** in order to set up a meet with the undercover operative, **Detective Hess**.

16 However, during our meeting I learned from **Castellanos** that he had spoken with **Dino**
17 **Constance** on Friday, April 20th, 2007, for about 20 minutes. **Castellanos** stated that **Constance** told
18 him he wanted to wait for two Thursday's from now to set up the "hit" with the person (**Detective John**
19 **Hess**) that **Castellanos** solicited on behalf of **Constance**. (It should be noted that I, **Detective John**
20 **O'Mara**, later learned a possible correlation with the significance of waiting two Thursdays. I
21 discovered that **Constance** has visitation every other Thursday with his son, the child he has in
22 common with victim **Jean Koncos**. His next visitation is set up for two Thursdays from now, or May

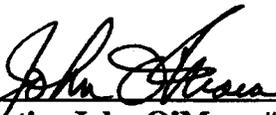
STATE OF WASHINGTON
SUPERIOR COURT OF CLARK COUNTY

1 3rd. It is felt that **Constance** will use this Supervised visit as a possible alibi and have the "hit man",
2 undercover **Detective John Hess**, perform the "hit" that day, during the hours of visitation.)
3 **Castellanos** told me that **Constance** said that things are "too hot now" and told **Castellanos** that the
4 Judge (Judge Rulli in Family Court) is putting too much heat on him because of statements/testimony
5 made in court about threats made by **Constance** toward the target/victim, **Jean Koncos**. **Castellanos**
6 said **Constance** told him to call him back in about one and one half weeks to set up the meeting in
7 order to "get this done".

8 For fear of causing **Constance** to become suspicious, and thereby jeopardizing the operation,
9 we did not feel it would be in our best interest and for **Castellanos**' safety, to have **Castellanos** call
10 **Constance** based on the previous day's conversation. There was a real possibility of **Constance**
11 becoming "wise" and/or "suspicious" of **Castellanos** if he did not follow **Constance's** instructions.
12 Therefore it was determined that we would not have **Castellanos** call **Constance** at this time for fear
13 of jeopardizing the operation and putting **Castellanos** and/or the undercover operative, in jeopardy. It
14 was then decided that we would attempt an "accidental" meet, in order to keep **Constance** from
15 becoming suspicious of **Castellanos**. **Detective Bryan Acee** and other Detectives from his unit would
16 set up surveillance on **Constance** while **Castellanos** and **Detective Hess** were fitted with "wires" and
17 be prepared for immediate deployment. **Detective Acee** would then contact us as soon as **Constance**
18 went to a public place, such as a grocery store, so that **Castellanos** and **Detective Hess** could enter the
19 same establishment and make it appear as though it were a chance meeting. They would then engage
20 **Constance** into conversation with **Castellanos** introducing **Detective Hess** as the contact person
21 reference the solicitation by **Constance** as referred to in the original Order.

STATE OF WASHINGTON
SUPERIOR COURT OF CLARK COUNTY

1 Due to difficulties in man power, scheduling, and other active cases, and not wanting to
2 jeopardize the operation by causing Constance to become suspicious of Castellanos, which would
3 then also place Castellanos and undercover operative Detective John Hess in possible jeopardy, it
4 was determined that we would not be able to set the operation/plan into motion until Tuesday, May 1,
5 2007. Because of this, we respectfully submit to the court a request the court grant another 7 day time
6 period for us to continue our investigation.

7
8
9
10 
11 Detective John O'Mara #3804
12 Clark County Sheriff's Department
13 Major Crimes Unit

14 SUBSCRIBED and SWORN to before me this 1ST MAY day of ~~April~~, 2007, at 0945 ~~a.m./p.m.~~

15
16 
17 Superior Court Judge
18 County of Clark
19 State of Washington
20

21
22 Application approved by:

23 
24 James David, WSBA# 13754
25 Senior Deputy Prosecuting Attorney
26 Major Crimes Unit
27 Clark County Prosecuting Attorney's Office

STATE OF WASHINGTON
SUPERIOR COURT OF CLARK COUNTY

IN THE MATTER OF) No.
AUTHORIZATION TO INTERCEPT)
AND RECORD COMMUNICATIONS) ORDER AUTHORIZING INTERCEPTION AND
OR CONVERSATIONS PURSUANT TO) RECORDING OF COMMUNICATIONS OR
RCW 9.73.090) CONVERSATIONS PURSUANT TO
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TO: Vancouver Police Detective Bryan Acee, Clark County Sheriff Detective John O'Mara, Washington State Patrol Detective John Hess and members of the Clark County Sheriff's Major Crimes Unit, Southwest Washington interagency Career Criminal Apprehension Team and Clark Skamania Drug Task Force:

WHEREAS, sworn application having being made before me by John O'Mara a commissioned law enforcement officer of the Clark County Sheriff's Department, and full consideration having been given to the matters set forth therein, the court hereby FINDS:

- (a) There is probable cause to believe that Dino J. CONSTANCE has committed, and will further commit the felony crime of Criminal Solicitation to commit Murder in the First Degree, in violation of RCW sections 9A.28.030/9A.28.040 and Criminal Conspiracy, in violation of RCW section 9A.28.040;
- (b) There is probable cause to believe that communications or conversations relating to Criminal Solicitation to commit Murder in the First Degree and Criminal Conspiracy will take place and will be obtained as evidence through interception and recording as hereafter authorized;
- (c) Ricci Dewayne CASTELLANOS and Detective John HESS have given consent to interception and recording of conversations and/or communications between themselves and the defendant, Dino CONSTANCE;
- (d) Normal investigative techniques reasonably appear to be unlikely to succeed if tried and reasonably appear to be too dangerous to employ;

ORDER AUTHORIZING INTERCEPTION
AND RECORDING OF COMMUNICATIONS
OR CONVERSATIONS PURSUANT TO
RCW 9.73.090

Detective Bryan Acee
C-CAT Task Force
Vancouver Police Dept.
P.O. Box 1995
Vancouver, WA 98668-1995

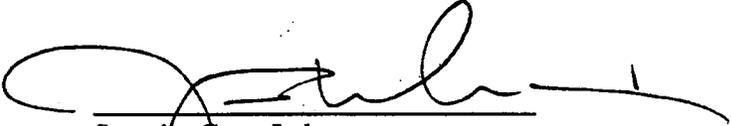
STATE OF WASHINGTON
SUPERIOR COURT OF CLARK COUNTY

1 NOW THEREFORE,

2 IT IS HEREBY ORDERED that Detectives Bryan ACEE, John O'MARA, John HESS and
3 members of the Clark County Sheriff Major Crimes Unit, Southwest Washington interagency Career
4 Criminal Apprehension Team and Clark Skamania Drug Task Force are authorized to intercept and
5 record by any device or instrument the communications or conversations of Dino CONSTANCE,
6 with Ricci Dewayne CASTELLANOS and/or Detective John HESS, concerning commission of the
7 felony Criminal Solicitation to commit Murder in the First Degree in violation of RCW sections
8 9A.28.030/9A.28.040 and Criminal Conspiracy, in violation of RCW section 9A.28.040. These authorizations
9 are to record conversations that may take place between any of the parties including Dino CONSTANCE,
10 Ricci Dewayne CASTELLANOS and/or Detective John HESS, on a telephone, number (206) 337-2138, or in
11 person between them as may occur at a location within Clark County, including at a McDonalds parking lot
12 located at Highway 99 and 134th Street, within Clark County, Washington. expected to occur beginning
13 on or after May 1, 2007 at 12:00 pm and conclude on May 8th 2007 at 0945 ~~am~~/pm.

14 IT IS FURTHER ORDERED that this authorization is effective, May 1, 2007 at 0945 ~~am~~/pm and
15 conclude on May 8, 2007 at 0945 ~~am~~/pm, or upon completion of the authorized communications or
16 conversations, whichever occurs first.

17
18 SIGNED this 1 day of May, 2007, at 9:45 ~~a.m.~~/p.m.

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Superior Court Judge
County of Clark
State of Washington

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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DEPUTY

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

STATE OF WASHINGTON,
Respondent,

v.

DINO J. CONSTANCE,
Appellant.

No. 37576-1-II

Clark Co. No. 07-1-00843-8

DECLARATION OF
TRANSMISSION BY MAILING

STATE OF WASHINGTON)

: ss

COUNTY OF CLARK)

On May 6, 2009, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

TO:	David Ponzoha, Clerk Court of Appeals, Division II 950 Broadway, Suite 300 Tacoma, WA 98402-4454	Andrew Peter Zinner Attorney at Law 1908 E Madison St Seattle WA 98122-2842
	Dino J. Constance DOC# 317289 Clallam Bay Corrections Center 1830 Eagle Crest Way Clallam Bay, WA 98326-9723	

DOCUMENTS: Brief of Respondent

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

Jennifer Casey
Date: May 6, 2009.
Place: Vancouver, Washington.