

November 17, 2009

39013-2

CERTIFICATE OF SERVICE  
I certify that I mailed  
copies of SAC  
Deane Marshall  
Blaine B. Dind  
signed

FILED  
COURT OF APPEALS  
DIVISION II

# Defendants Statement of Fact and Supporting Documents.

09 NOV 20 PM 12:23

STATE OF WASHINGTON  
BY           
DEPUTY

This Court daily hears the appeals of many people who claim they are innocent. The thing that separates my appeal from others is that my claims are supported by court record and ancillary documentation.

On April 11, 2008 my wife Dawn Marie Stephenson requested that I accompany her to Deserie Adams house to pick up something. I was worried about Dawn as she was very high on methamphetamine. We had also been arguing about her drug use and having undesirable individuals in the motel room. Dawn's drug use was a huge point of contention between us as I had been drug free for over 3 months, had just completed an inpatient drug treatment and was giving clean drug screens as a part of my DOSA sentence.

When you are married and in love you desperately want to believe what ever your mate tells you.

When we arrived at Deserie's house my wife went around back opened the door and told me to come in. I entered the residence and was standing in the front entry way inside the door. I asked Dawn what we are doing there? And where her friend was? Dawn kept telling me "just a minute" "just a minute"! Shortly after this Angel Powell came to the back door. She asked my wife what we were doing there? and then quickly became hostile telling us to Get the blank out of there!

Dawn walked out the front door and told me to follow her. I repeatedly kept asking her (Dawn) what had just happened? She (Dawn) just kept telling me "To never mind, we need to get out of here".

While walking, Dawn and I were walking and we were contacted by the police and arrested. A subsequent search found that I had NO stolen property on my person. Dawn had my H & R Block master card that had my income taxes on it, and Dawn's Quest card. In addition she had a Rainer Pacific Debit/Check card, a Merlyns card and a money tree card, all belonging to Cynthia, stab the victim.

The fact that I did not know I had participated in a criminal trespass, let alone a burglary, was kept from the jury by the misconduct of the prosecutor, Mr. Jesse Williams

### ERROR I - Refusal To Disclose Evidence Favorable To My Defense.

Prosecutor Jesse Williams refused to provide in discovery to the defense a time stamped and dated photograph which showed an individual, (Dawn Stephenson) using the stolen credit device two days prior to the alleged burglary.

Mr. Williams at first stated that he had provided ALL discovery to the defense (see pg 1 & 3 of Order on Omnibus Hearing, Attachment 1). Mr. Williams stated that he had "Not with-held any exculpatory evidence" (Attachment # 2 - March 2nd, 2009 response

to W.S.B.A complaint). Mr. Williams a month later, stated that it was "not until after trial that I learned Mr. Davis supposedly did not have a copy of page 2 of the document at issue." He also stated "It is unclear to me why Mr. Davis seems to think that page 2 of the officers Declaration contained a photograph." (see attachment 3 pg. 3) It is interesting and noteworthy that he also offers the statement "... I was assigned this case in August 2008."

Mr. Williams again changes his story in his July 1<sup>st</sup> 2009 Bar complaint response Mr. Williams states;

I believe I discovered the photograph on the day of trial. It had apparently been overlooked by myself and the prior deputy prosecutor."

(See attachment #4, pg. 2)

Mr. Williams attempts to dissemble stating that the picture "Depicted a female accessing an account different from the two access devices found on Stephenson's person." (see attachment #4, pg. 2). This was a false statement. The picture was of Stephenson and it was provided by the victims advocates department of the prosecutors office. Bank records show the VISA Debit card of Stahl was used by Stephenson at least a full two days before charges were filed on my person for its theft!

Mr. Williams further misstates

"They stole an access device and were caught on camera accessing Stahl's account."

Mr. Williams response to the WSBA has gone from, "I was not the original deputy prosecutor." Even demurring to the existence of a picture at all.

Mr. Williams "unequivocal" statement that "The state had no exculpatory evidence" to "it was not until after trial that I learned Mr. Davis did not have a copy of page 2 of the Document at issue." The picture is of Dawn Stephenson using the victims credit card at an ATM machine."

This photograph I believe was exculpatory as it shows the stolen bank instrument being used a full two days before I was accused of stealing them. This fact is corroborated by Dawn Stephenson's testimony and the banks records showing the prior activity on the access device. When Mr. Williams finally provided a copy of this document he gave me a sheet of paper with the photo redacted. This was also not done until March 4 Feb 27, 2008 at my sentencing hearing after my conviction. This Brady Claim was made at my sentencing (Trial transcripts pg. 251, 252, 253 4.2 (See attachment # 5)) (Please note the prosecutors time and date of the FAX)

Mr. Williams story changes dependant on whom he is speaking with. Another argument given for his "Non-disclosure" was that he "was not the assigned deputy prosecutor in the case until August of 2008."

His statement is untruthful as shown by Attachment # 6 He is listed as the deputy prosecutor as early as May 29, 2008. He is listed as the deputy prosecutor on at least this many dates,

- " May 29, 2008." Scheduling Order (see attachment # 6)
- " June 5, 2008." Scheduling Order for competency hearing
- " July 9, 2008." Scheduling Order for competency hearing
- " September 17, 2008." Omnibus Hearing
- " October 9, 2008." Continuance
- " November 25, 2008." Continuance
- " December 20, 2008." Deputy Prosecutor at trial.

The time and date stamped page, with the photo redacted was passed on February 27, 2009 to the defense counsel. (see attachment # 5)

Mr. Williams provided the photograph in question (ATM) to the trial court as Exhibit # 1. To this date, except for a brief glance in court, I have not been given a **NON-REDACTED** copy of this exculpatory evidence.

### Issue # 2

Mr. Williams led Angel Powell's testimony on her direct examination. Mr. Williams led Angel Powell through a colloquy specific to elements of what constitutes Burglary, even at one point providing testimony to the jury while asking the witness to stipulate to his statements.  
(see transcripts pg 54, 55, 56)

This, in effect turned the prosecutor into an unsworn witness. In and by itself this is hardly noteworthy. When joined counsels claim that ~~the~~ he expressed an impermissible opinion of guilt and suppressed exculpatory evidence it becomes a systematic attack upon my due process right to receive a fair trial. These violations, combined were indeed sufficient to change the outcome of the trial.

In closing, it was not mere cumulative Due Process violations which led to this unjust conviction. Questioning the veracity of Dawn Stephenson caused fatal error with the final decision of the jury. Introduction of a Date and Time stamped photograph at an ATM machine showing the 48 hour earlier use of the bank instrument I was falsely accused of stealing likewise would have spoken clearly for my innocence. Although the disciplinary counsel for the WBA issued no consequences for D.A. Williams misconduct (see Exhibit #7) It is clear that his inactions also tilted the scales to an unjust guilty conviction.

That I have a criminal history should likewise not be used to confer guilt in the absence of a fair trial. This is the first criminal charge I have actually not been guilty of. If the pretrial safeguards had remained unviolated I believe that the jury would have reached an ~~innocent~~ innocent verdict in this case.

I thank you for your anticipated time and attention to this plea for justice.

Sincerely  
Ricky Dean Davis

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Rickey Davis

Defendant.

NO. 08-1-01805-1

ORDER ON OMNIBUS HEARING

CHARGE: Res. Prop. Theft 2(2)

TRIAL DATE: 10/8/08

OOB

THIS MATTER having come before the court for an Omnibus Hearing, the State represented by:

Jesse Williams

, and the defendant being present and represented by:

Joe Kim

1. Regarding PROSECUTOR'S OBLIGATIONS, THE DEPUTY PROSECUTING ATTORNEY STATES that at least seven days prior to this order:

The Prosecutor provided to defendant a complete list of the defendant's criminal convictions.

The Prosecutor has provided to defense all discovery in their possession or control, pursuant to CR 4.7(a);

The Prosecutor has contacted law enforcement agencies to request and/or obtain any additional supplemental police reports, forensic tests, and evidence and has made them available to defendant or defense counsel. The State is aware of the following reports, tests or evidence which has not been made available to the defendant: \_\_\_\_\_

Prosecutor has reviewed the discovery and criminal history and made an offer to the defense.

If prosecutor has not checked every box in this section, the court makes the following order:

2. Regarding DEFENSE ATTORNEY'S OBLIGATIONS, DEFENSE COUNSEL STATES that at least two days prior to this order:

Defense attorney has met with the defendant about this case.

EXHIBIT 1

1 OF 3

- Defense attorney has received a plea offer from the State.
- Defense attorney has reviewed the discovery and the criminal history.
- Defense attorney has given discovery to prosecutor

If defense attorney has not checked every box in this section, the court makes the following order:

\_\_\_\_\_

\_\_\_\_\_

3. Regarding DISCOVERY: The parties agree that Discovery is COMPLETE / NOT COMPLETE IN THE FOLLOWING RESPECTS: \_\_\_\_\_

DISCOVERY must be completed by: \_\_\_\_\_

4. Regarding GENERAL NATURE OF DEFENSE:

The Defense states that the general nature of the defense is:

- General Denial  Consent
- Alibi  Diminished Capacity
- Insanity  Self-defense
- Other (specify) \_\_\_\_\_

5. Regarding CUSTODIAL STATEMENTS by defendant, the parties agree that:

- No custodial statements will be offered in the State's case in chief, or in rebuttal. *None are known. If any, State will work to admit after CRBS hearing.*
- The statements of defendant will be offered in the State's case in rebuttal only.
- The statements referred to in the State's discovery will be offered and:
  - May be admitted into evidence without a pre-trial hearing, by stipulation of the parties.
  - A 3.5 conference is required and is estimated to require \_\_\_\_\_ (min/hr) and is set for \_\_\_\_\_.

6. Regarding PRIOR CRIMINAL CONVICTIONS OF THE DEFENDANT, the parties agree that if defendant testifies at trial:

- If the defendant testifies at trial, the prior record of convictions contained in the State's discovery  will  will not be (stipulated to) by the defendant with the following exceptions: \_\_\_\_\_

There are no prior known convictions at this time. State will advise defendant promptly if it learns of prior convictions.

7. Regarding SUPPRESSION OF PHYSICAL EVIDENCE OR IDENTIFICATION, the parties agree that:

- No motion to suppress physical evidence or identification will be filed.

Or, THE COURT ORDERS THAT:

- Defendant's written motion to suppress shall be filed by \_\_\_\_\_. The State's response shall be filed by \_\_\_\_\_. Testimony will/will not be required.
- State's written motion to suppress shall be filed by \_\_\_\_\_. The Defendant's

EXHIBIT 2  
2 OF 3

response shall be filed by \_\_\_\_\_ . Testimony will/will not be required.

8. Regarding OTHER PRE-TRIAL MOTIONS: No additional motions are anticipated, except:

Briefing schedule: Affidavits and briefs of the moving party must be served and filed by: \_\_\_\_\_

Responsive Brief must be served and filed by: \_\_\_\_\_

The hearing will last about \_\_\_\_\_ (min/hr)

9. Regarding TRIAL

a. The trial will be  jury [ ] non-jury, and will last about 2 days.

b. Is an interpreter needed:  No [ ] Yes. Language: \_\_\_\_\_ (If an interpreter is needed, State will call interpreter services at ext. 6091)

10. Regarding WITNESSES:

There will be out-of-state witnesses [ ] yes  no. *none known*

A child competency or child hearsay hearing is needed [ ] yes  no.

State:

All witnesses have been disclosed.

[ ] A Witness List has been filed.

A witness list must be filed by: 2 weeks before trial

Defense:

[ ] All witnesses have been disclosed.

[ ] A Witness List has been filed.

A witness list must be filed by: 2 weeks before trial

11. Other

[ ] Defendant needs a competency examination.

[ ] Defendant is applying for drug court.

[ ] Defendant is seeking an evaluation which may necessitate a continuance.

12. The Court sets a Status Conference for \_\_\_\_\_ (date) for the purpose of:

13. Other orders: \_\_\_\_\_

Dated 2-11-11 2011.

Defendant: [Signature]

Judge: [Signature]

Defendant's Attorney/Bar # 33634

Prosecuting Attorney/Bar # 35543

930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402

March 2, 2009

Office of Disciplinary Counsel  
Washington State Bar Association  
1325 Fourth Avenue, Suite 600  
Seattle, Washington 98101

To whom it may concern,

This is in response to a grievance, 09-00262, that was filed against me by Ricky Davis. I am a deputy prosecutor with the Pierce County Prosecuting Attorney's Office. I was the deputy prosecutor assigned to handle *State of Washington v. Ricky Dean Davis*, 08-1-01805-1. The charges in the case were one count of residential burglary and two counts of second degree theft. The case went to trial in December 2008 and the jury found Mr. Davis guilty of the charged offenses.

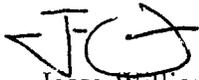
In Mr. Davis' grievance he simply states: "My complaint is on Mr. Williams for withholding exculpatory evidence in my favor until after trial was over even though I went on record before trial asking for it." I cannot respond to this allegation because Mr. Davis gives no specifics. I would never intentionally violate my obligations when it comes to providing discovery to a defendant. Although Mr. Davis cannot specifically identify what exculpatory evidence I allegedly withheld, I can unequivocally state that the State had no exculpatory evidence in its possession during this trial. To the best of my memory, Mr. Davis never went on the record claiming any sort of discovery violation.

I would also note that Mr. Davis was sentenced in this case on February 28, 2009. His allocution was quite lengthy but he did not raise the subject of this grievance at any point. In addition, I would also note that during the criminal proceedings in this case, Mr. Davis' attorney had significant concerns about his client's competency. Mr. Davis was sent to Western State Hospital before ultimately being found competent to stand trial.

In closing, I did not violate my obligations under the Rules of Professional Conduct. Davis received a fair trial and his grievance against me is without merit. I will of course be happy to provide a more thorough response if Mr. Davis provides a more specific accusation. Please do not hesitate to contact me with any further questions.

EXHIBIT 2  
1 OF 2

Sincerely,

A handwritten signature in black ink, appearing to be 'Jesse Williams', written over a printed name.

Jesse Williams

Pierce County Deputy Prosecutor, WSBA 35543

EXHIBIT 2  
1 OF 2

930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402

RECEIVED  
APR 21 2009  
WSBA OFFICE OF  
DISCIPLINARY COUNSEL

April 8, 2009

Office of Disciplinary Counsel  
Washington State Bar Association  
1325 Fourth Avenue, Suite 600  
Seattle, Washington 98101

To whom it may concern,

This is my second response to a grievance, 09-00262, that was filed against me by Ricky Davis. Mr. Davis' initial grievance did not specify the evidence that he alleged I withheld from him. He has now provided detail to his allegation. According to him, I withheld page 2 of a document entitled, "statement of arresting officer and preliminary finding of probable cause." The document was filled out by the police officer when he arrested Mr. Davis and booked him into the county jail. It was filed with the Pierce County Superior Court after a judicial finding of probable cause was made.

The Pierce County Prosecutor's Office numbers all discovery. The document at issue was numbered 30 through 32. I have included a copy of the document. This document was included in discovery that was provided to Mr. Davis' attorney on May 2, 2008. Copies of the discovery distribution declaration and discovery distribution receipt are included as well. I would note that at this time, I was not the deputy prosecutor assigned to handling this case. I was assigned this case in approximately August 2008.

It was not until after trial that I learned Mr. Davis supposedly did not have a copy of page 2 of the document at issue. I immediately provided a copy of this page 2 to defense counsel. As you can see, page 2 provides no information about the case. It is unclear to me why Mr. Davis seems to think that page 2 of the officer's declaration contained a photograph.

In closing, I again maintain that I would never intentionally violate my obligations when it comes to providing discovery to a defendant. I did not do so in this case. Please do not hesitate to contact me with any further questions.

Sincerely,



Jesse Williams  
Pierce County Deputy Prosecutor, WSBA 35543

EXHIBIT 3

and trial testimony that she had no involvement with Stahl's home prior to April 11. In total, I believe the photograph only worked to incriminate Davis.

It's worth noting that I chose not to raise the photograph issue at trial because (1) it was given to defense counsel just prior to trial beginning, and I therefore felt it was only equitable not to raise it; (2) I believed the case was solid from an evidentiary standpoint; (3) I could not say with absolute certainty that it was Stephenson; and (4) it was potentially inadmissible under ER 404(b) as other uncharged misconduct.

Lastly, I think it's worth noting that the subject of Davis' bar complaint, either the photograph or page 2 of the "statement of arresting officer and preliminary finding of probable cause," was never raised on the record before the trial judge. Davis does state that it was raised once at a very early stage of the criminal proceedings but I have no notes that can confirm that and it most certainly was before I was the assigned deputy prosecutor on the case. The issue of the photograph was discovered just prior to the commencement of the trial and it never was subsequently deemed by the defense an issue that needed the court's attention. I find that particularly telling because Davis personally addressed the court numerous times with issues that concerned him. Further, it should be noted that Davis has had two sentencing hearings, February 27 and May 27, 2009, and at neither hearing did Davis raise the issue or subject matter of this grievance. He did at both hearings address the court at length.

In closing, I again maintain that I would never intentionally violate my obligations when it comes to providing discovery to a defendant. I did not do so in this case. I believe this is amply reflected by my responses. I treasure my job and serve every day with the belief that while criminals should be punished harshly, justice dictates that they receive the fairest of runs throughout the criminal proceedings against them. I would encourage the state bar to contact my supervisors if they have any questions about my character. Please do not hesitate to contact me with any further questions.

Sincerely,



Jesse Williams

Pierce County Deputy Prosecutor, WSBA 35543

EXHIBIT 4  
30P 3

930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402

RECEIVED  
JUL 06 2009  
WSBA OFFICE OF  
DISCIPLINARY COUNSEL

July 1, 2009

Office of Disciplinary Counsel  
Washington State Bar Association  
1325 Fourth Avenue, Suite 600  
Seattle, Washington 98101

To whom it may concern,

This is my third response to a grievance, 09-00262, that was filed against me by Ricky Davis. To answer the questions posed by letter dated June 2, 2009, I think it best to summarize the testimony and evidence presented at trial. I want to emphasize at the outset that my memory regarding this case is somewhat limited. I handle a large number of cases, including those that go to trial, and so while I am confident in my memory of the Davis case, I cannot give 100 percent certainty to the details of it. What follows are the details as I best remember them.

According to the State's evidence, Cynthia Stahl was in the hospital for a protracted period and her daughter, Angel Powell, checked on her house in the interim. Powell lived next door. One day, Powell noticed the backdoor to Stahl's home was open. She did a cursory check inside and noticed nothing out of the ordinary.

Approximately two days later, on April 11, 2008, in the middle of the day, Powell again noticed the backdoor open. She walked inside to find Davis nervously looking out a window, serving as an apparent lookout, while his wife, Dawn Stephenson, was rooting through a pile of mail. Davis and Stephenson were strangers and had no right to be in the home. The two appeared shocked by Powell's presence. Powell demanded to know what the couple were doing but they ran out the front door of the home without saying a word. They were apprehended within minutes by law enforcement. In Stephenson's pocket were two of Stahl's access devices: one a bank card just issued to Stahl that came from the mail that Stephenson was rooting through; and the other a Mervyn's credit card left in a bedroom filing cabinet that Stephenson and/or Davis rifled through. There was also a paper in Stephenson's pocket that contained handwritten notations for Stahl's personal identifying information.

At the time of the incident, Davis was serving the community custody portion of a DOSA sentence. Davis' defense was that he was not serving as a lookout, he thought Stephenson had permission to be in the home, and he had no idea she was there to steal anything. He did however admit that he knew she was a methamphetamine addict, she

EXHIBIT 4  
1 OF 3

was high on methamphetamine that day, and had a history with identity-theft-related crimes. Stephenson testified consistent with Davis' defense.

Davis' grievance accuses me in passing of withholding a blurry ATM photograph that depicted a female, sometime in the middle of the night on April 9, using an access device belonging to Stahl. I remember the photograph but I cannot find it in my case file. The photograph was provided by a bank as part of restitution documentation collected by a victim advocate with our office. It was not part of the police reports and other documentation collected by law enforcement that are turned over to defense attorneys and relied on by prosecutors in preparing trial. Victim advocates in our office are generally responsible for handling all restitution-related matters. Deputy prosecutors are rarely involved in this process. I would note that the victim advocate for this case has since left the office and I am unable to ask her if she knows what happened to the photograph.

The photograph depicted a female accessing an account different from the two access devices found on Stephenson's person. It was obviously not for the Mervyn's credit card. As to the other credit card, Stahl testified that it had just been issued and it came from the mail that Powell saw Stephenson rooting through. Also, the photo was at night while the burglary and arrests occurred in the middle of the day. And there was no time for Stephenson and Davis to use the credit card between the time they were caught by Powell and then subsequently arrested.

I believe I discovered the photograph on the day of trial. It had apparently been overlooked by myself and the prior deputy prosecutor. The photograph appeared to be Stephenson but I could not be entirely confident of that. The conclusion I reached was that Stephenson, Davis, and/or an associate had been responsible for the pre-April 11 break-in at Stahl's home. They stole an access device and subsequently were caught on camera accessing Stahl's account. Davis and Stephenson, either aware or responsible for the prior incident, then returned on April 11 to obtain additional documentation and access devices to perpetuate further theft and fraud.

As soon as I discovered it, I brought it to the attention of Davis' attorney, Jeffrey Kim WSBA # 33634. I respect Mr. Kim and believe him to be an excellent attorney. Mr. Kim then discussed the matter with Davis. At no point did either Mr. Kim or Davis find the issue necessitated addressing on the record in front of the trial judge. Nor did either Mr. Kim or Davis ask for a continuance to investigate this matter; I surely would have been agreeable to such.

I do not want to speak for Mr. Kim, but an educated guess would tell me that he chose in part not to mention the photograph at trial because it contradicted the story he was being told by Stephenson. Mr. Kim made a tactical decision to stake the defense solely on Stephenson's testimony; Davis did not testify, presumably because of a long criminal history that included multiple offenses admissible under ER 609. If the jury believed that Stephenson was depicted in the photograph, and therefore involved with the pre-April 11 break-in, it made it less plausible that Davis had no idea what his wife was up to on April 11. Likewise, the photograph would have contradicted her pretrial interview statements

EXHIBIT 4  
2 OF 3

3 IC

# PROBABLE CAUSE

IN THE  SUPERIOR COURT OF THE STATE OF WASHINGTON  
 JUVENILE COURT OF THE STATE OF WASHINGTON  
 DISTRICT COURT OF THE STATE OF WASHINGTON  
 MUNICIPAL COURT OF THE CITY OF TACOMA  
 MUNICIPAL COURT OF THE CITY OF \_\_\_\_\_

## STATEMENT OF ARRESTING OFFICER and PRELIMINARY FINDING OF PROBABLE CAUSE

STATE OF WASHINGTON )  
 ) ss. NO. \_\_\_\_\_  
 County of Pierce )

(Type or Print)

Comes now (Name) TIMOTHY R. CABER,  
 (Agency) TACOMA POLICE DEPARTMENT; Law Enforcement Officer, and states  
 that the following person was arrested by this officer at the following time and place:

Name: DAVIS, RICKY DEAN;  
 DOB 7-31-61; Sex M; Race W;  
 Date and time of arrest 4/11/08 1336  
 Place of arrest 1700 BLK S. 92ND ST TACOMA  
 Incident No. 081020621  
 Listed Booking Charges RESIDENTIAL BURGLARY

The above individual was arrested for the listed charges based upon the following facts and circumstances:

ARRESTEE WAS OBSERVED INSIDE THE VICTIM'S RESIDENCE AT 9413 S. ASH ST #B BY W11, WHO IS ALSO THE VICTIM'S DAUGHTER. ~~RE~~ AFTER I CONTACTED ARRESTEE AT THE 21700 BLOCK OF S 92ND ST, WITNESS POSITIVELY ID'D ARRESTEE AS HAVING BEEN INSIDE VICTIM'S APARTMENT.

Incident No. 081020621, Page No. 1

EXHIBIT 5  
 1 OF 3

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Ann.

(Continued)

Jeff  
Kim

*Trc 24*

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

4/11/08 Tacoma Washington  
(Date and Place)

*Tammy P. Kim*  
(Signature)

Incident No 081020621, page No. 2

EXHIBIT 5  
2 OF 3

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PRELIMINARY FINDING RE: PROBABLE CAUSE

The undersigned judge, having examined the statement of the arresting officer attached hereto, FINDS:

PROBABLE CAUSE EXISTS AT THIS TIME

1) There is probable cause to believe that one or more of the crimes listed as Booking Charges, to-wit: Residential Burglary or other crimes in lieu of or in addition thereto, were committed; 2) There is probable cause to believe that the named individual committed such crimes.

This finding is subject to review at the arraignment or the preliminary appearance of the named individual in court.

Based upon the above findings, the custody personnel normally used by the arresting law enforcement agency are authorized to hold the named arrested individual in custody upon the normal booking conditions set in such offenses. The named arrested individual shall be brought before (or ordered to appear at if released) the appropriate court during normal court hours for arraignment or preliminary appearance as required by the Washington Rules of Court.

PROBABLE CAUSE DOES NOT EXIST AT THIS TIME

Probable cause not existing at this time, the custody personnel normally used by the arresting law enforcement agency are directed to release any hold upon the defendant based upon the listed booking charges and release the defendant if there are no other warrants or holds. If other warrants or holds exist, the defendant shall be held only upon the conditions thereon.

This finding does not preclude the prosecuting agency from filing formal charges at a later time.

DATED this 12<sup>th</sup> day of April, 20 08  
TIME 2:01 pm

David B. Ledenburg  
JUDGE

Incident No. 081020621, page No. 3

EXHIBIT 5  
3 OF 3

**IN THE SUPERIOR COURT FOR PIERCE COUNTY WASHINGTON**

State of Washington,  
Plaintiff

vs.

Ricky Davis

Defendant

NO. 08-1-01805-1

SCHEDULING ORDER

**IT IS HEREBY ORDERED that:**

1. The following court dates are set for the defendant:

Approval No	Hearing Type	Date	Time	Courtroom
	<input type="checkbox"/> Pretrial Conference	,20__	AM/PM	
	<input type="checkbox"/> Omnibus Hearing	,20__	8:30 AM	
	<input type="checkbox"/> Status Conference	,20__	8:30 AM	CDPJ
	<input type="checkbox"/> Motion (Describe):	,20__	AM/PM	CDPJ
	<input type="checkbox"/> TRIAL	,20__	8:30 AM	CDPJ
	<input checked="" type="checkbox"/> Competency Hrg	6-5, 2008	1:30 AM/PM	CDPJ
	<input type="checkbox"/>	,20__	AM/PM	

2. Moving papers due: \_\_\_\_\_ Responsive brief due: \_\_\_\_\_
3. The defendant shall be present at these hearings and report to the courtroom indicated at **930 Tacoma Avenue South, County-City Building, Tacoma, Washington, 98402**

**FAILURE TO APPEAR WILL RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.**

4.  DAC; Defendant will be represented by Department of Assigned Counsel.  
 Retained Attorney; Defendant will hire their own attorney or, if indigent, be Screened (interviewed) for Department of Assigned Counsel Appointment.

Dated May 29, 2008.

Copied Received:  
Ricky Davis  
Defendant

[Signature]  
Attorney for Defendant/Bar # 33634

[Signature]  
JUDGE  
[Signature]  
Prosecuting Attorney/Bar # 35543



# WSBA

## OFFICE OF DISCIPLINARY COUNSEL

Erica Temple  
Disciplinary Counsel

direct line: (206) 727-8328  
fax: (206) 727-8325

July 23, 2009

Ricky Davis  
#632353  
M Unit A-33L  
Airway Heights Corrections Center  
P.O. Box 2049  
Airway Heights, WA 99001-2049

Re: Grievance of Ricky Davis against Jesse Williams  
WSBA File No. 09-00262

Dear Mr. Davis:

This letter is to advise you that we have completed our investigation of your grievance against lawyer Jesse Williams and to advise you of our decision. The purpose of our review has been to determine whether sufficient evidence exists on which to base a disciplinary proceeding. Under the Rules for Enforcement of Lawyer Conduct (ELC), a lawyer may be disciplined only on a showing by a clear preponderance of the evidence that the lawyer violated the Rules of Professional Conduct (RPC). This standard of proof is more stringent than the standard applied in civil cases.

Based on the information we have received, insufficient evidence exists to prove unethical conduct by Williams by a clear preponderance of the evidence in this matter. Therefore, we are dismissing the grievance. Our decision to dismiss the grievance is based on a review of your original grievance received on February 12, 2009, William's March 2, 2009 response, your March 27, 2009 comments, William's April 21, 2009 response, William's July 6, 2009 supplemental response, and your July 20, 2009 response. We also reviewed documents filed in Pierce County Superior Court, No. 08-1-01805-1, and interviewed Jeffrey Kim.

You were a defendant in Pierce County Superior Court. Williams was one of the deputy prosecuting attorneys assigned to your case. You believe that Williams failed to provide your counsel with certain documents as part of discovery.

On April 14, 2008, you were charged in Pierce County Superior Court with two counts of Theft in the Second Degree and one count of Residential Burglary. The public defender assigned to

your case was Jeffrey Kim. Your jury trial was held in December 2008. You were convicted on all counts and sentenced on February 27, 2009.

You state that Williams failed to provide a document as part of discovery, described as the second page of an officer's declaration of probable cause. Williams states that his office numbers all discovery. Page two of the officer's probable cause declaration relating to your arrest was numbered page 31. William's records show that a copy of this page was provided to your attorney on May 2, 2008. We reviewed this page, and it appears that there is no information about your case on the page, other than the officer's signature.

However, you believe that there was another document, also the second page of a police officer's probable cause declaration, which was improperly withheld from you. This page contained a photo of a woman using an access device at an ATM machine. You saw this page in William's file on the day of your trial.

Williams states that on the day that your trial began, he discovered the photograph in his file that had been, "overlooked by myself and the prior deputy prosecutor." Williams states that this photograph was provided by a bank as part of restitution documentation collected by a victim advocate with his office. It was not part of the original police reports and other documentation in your case. Williams states that as soon as he discovered it, he brought the issue to the attention of your attorney. He states that Kim discussed the issue with you and did not address the issue on the record to the trial judge, or ask for a continuance.

The basic facts of your case were as follows: Cynthia Stahl was away from her home for a protracted period of time. Her daughter Angela Powell checked on the home and noticed the backdoor open, but did not notice anything out of the ordinary. Approximately two days later, on April 11, 2008, Powell found the door open again. She observed you in the home acting as an apparent lookout, and your wife, Dawn Stephenson rooting through a pile of mail. You and Stephenson were strangers to Stahl and had no right to be at the home. Police were called, apprehended both of you minutes later, and found a bank card and Mervyn's card on Stephenson's person.

Your defense at trial was that you thought Stephenson had permission to be in the home, and that you had no idea she was there to steal anything.

The photograph that Williams did not originally turn over depicted a woman that appeared to be Stephenson but Williams states that it was unclear. The unidentified woman was using an access device, belonging to Stahl, at an ATM machine on the night of April 9, 2009. Presumably this was stolen from the home on the first date that Powell found the door open.

Williams contends that the photograph was not exculpatory in nature, and in fact could have been used by him to contradict the defense theory of the case. Williams also states that he did not introduce the photograph at trial because he had just provided it to the defense, did not believe it would further add to his already strong case, was not absolutely sure the photograph actually depicted your codefendant, and may not have been admissible anyway.

Kim did not believe that Williams intentionally withheld this piece of evidence. However, Kim opined that because he was made aware of the photograph shortly before trial, he was caught off guard and was unsure if it could have been considered exculpatory.

RPC 3.8(d) states that a prosecutor in a criminal case shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense.

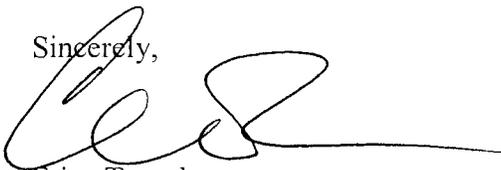
Criminal Rule 4.7(a)(4) extends the prosecuting attorney's discovery obligations to material and information within the knowledge, possession or control of members of the prosecuting attorney's staff. A prosecutor is not charged with constructive notice of all of his county's records, but is required to disclose information within the knowledge, possession or control of members of his staff. *State v. Frederick*, 32 Wash.App. 624, 648 P.2d 925 (1982), review granted, remanded, 100 Wash.2d 550, 674 P.2d 136.

In this case, we do not believe that we could prove, by a clear preponderance of the evidence, that Williams knew of the existence of the photograph and intentionally withheld it from the defense. We also do not believe we could prove, beyond a clear preponderance of the evidence, that the photograph was exculpatory.

However, we believe that a photograph that may depict an accused co-defendant in possession of stolen property belonging to the same victim two days prior to the date of your arrest might have been used to frame your defense in a different light, and so could possibly have been considered exculpatory. A prosecutor must disclose relevant evidence if it is reasonably possible that the evidence will be used during any phase of the trial. *State v. Cole*, 117 Wash.App. 870, 73 P.3d 411 (2003), review denied 151 Wash.2d 1005, 87 P.3d 1185. A prosecutor must resolve doubts regarding disclosure in favor of sharing the evidence with the defense. *Id.*

As discussed above, from the available evidence, we share the concern you have expressed about the conduct of lawyer Williams. We wish to emphasize to Williams that he is ultimately responsible for ensuring that any evidence, whatever the source, that could be considered exculpatory must be provided to the defense in a timely manner, and that the Criminal Rule extends this obligation to all members of his staff. Although this letter is not a finding of misconduct or discipline, we wish to put Williams on notice that, in the future, care should be taken to try to avoid this type of situation. Although we are dismissing this matter, we believe that good cause exists for long-term retention of the file materials and we will oppose any request by Williams for destruction of the file under ELC 3.6(b) until five years from the date of this letter.

Sincerely,



Erica Temple  
Disciplinary Counsel