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DEC 31 2009  
CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON

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

STATE OF WASHINGTON,

Respondent,

v.

LARRY D. EVERETT,

Appellant.

No.: 39193-7-II

STATE'S "GANT/McCORMICK  
CONCESSION" ON APPEAL

H. Steward Menefee, Grays Harbor County Prosecuting Attorney, representing Respondent State of Washington, by and through William A. Leraas, Deputy Prosecuting Attorney, submits this response in light of the United States Supreme Court's holding in Arizona v. Gant, \_\_\_ U.S. \_\_\_, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), and the ruling in State v. McCormick, 152 Wn.App. 536, 216 P.3d 475 (2009).

Respondent concedes that pursuant to the Gant and McCormick cases cited above, the search of Appellant's vehicle performed "incident to arrest" in this case was improper. Id. Under McCormick, supra., Gant applies to cases not yet final. This case is not yet final and therefore Gant applies here. Accordingly, because all of the evidence supporting Appellant's conviction was obtained through that now improper search, Respondent agrees that this case

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should be remanded for vacation of the conviction(s) and dismissal of the charge(s).

RESPECTFULLY submitted this \_\_\_\_\_ day of December, 2009.

H. STEWARD MENELEE  
Prosecuting Attorney  
for Grays Harbor County

BY: \_\_\_\_\_  
WILLIAM A. LERAAS  
Deputy Prosecuting Attorney  
WSBA #15489

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**DECLARATION OF MAILING**

**DECLARATION**

I, Laura A. Harwick, hereby declare as follows:

On the 29<sup>th</sup> day of December, 2009, I mailed a copy of the State's "Gant/McCormick Concession" on Appeal to Attorney for Appellant, Eric Nielsen, Nielsen, Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122 and to Appellant, Larry Everett, 915 Clark Road, Aberdeen, WA 98520 by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 29<sup>th</sup> day of December, 2009, in Montesano, Washington.

*Laura A Harwick*