

54287-7

54287-7

78919-7

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON)

Respondent,)

v.)

Mitchell VARNELL)

(your name))

Appellant.)

No. COA-54287-7-I

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

PROVIDED TO ZEPHYRHILLS C.I.
ON 9-2-05 FOR MAILING.

I, Mitchell VARNELL, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

Grounds and brief Summary HEREOF Attached.

ATTACHMENTS TO THIS STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW,
EXHIBIT A, EXHIBIT B, EXHIBIT C, PAGES 26-46, 94-95, ~~389~~ 389-401

Additional Ground 2

SAME AS ABOVE

If there are additional grounds, a brief summary is attached to this statement.

Date: September 2, 2005

Signature: Mitchell VarneLL

LAW OFFICES OF
NIELSEN, BROMAN & KOCH, P.L.L.C.

ERIC J. NIELSEN
ERIC BROMAN
DAVID B. KOCH

1908 E MADISON ST.
SEATTLE, WASHINGTON 98122
Voice (206) 623-2373 · Fax (206) 623-2488
WWW.NWAATTORNEY.NET

CHRISTOPHER H. GIBSON
DANA M. LIND
JENNIFER L. DOBSON
OF COUNSEL
K. CAROLYN RAMAMURTI

August 2, 2005

Mitchell Varnell 168302
Zephyrhills Correction Institution
2739 Gall Blvd.
Zephyrhills, FL 33541-

RE: *State v. Varnell*, COA No. 54287-7-I

Dear Mr. Varnell:

Enclosed is a letter from the Court of Appeals informing you of your right to file a Statement of Additional Grounds for review. The letter should be self-explanatory. If you decide you want to file a Statement of Additional Grounds, you can fill out the enclosed form, or you can file something that more closely resembles a brief, with citations to the record and to legal authority. In order to exhaust any federal issues, you would need to cite the U.S. Constitution and appropriate federal case law and argue those issues in a traditional brief format.

The Statement of Additional Grounds for Review is due 30 days after you receive our brief, or 30 days after you receive the transcripts if you have requested transcripts. If you file a Statement of Additional Grounds, the original should be sent to the Court of Appeals with a copy to the prosecutor and a copy to our office. When you send the original to the Court, you should also send a letter showing "proof of service," which states that you mailed a copy to the prosecutor and to our office. Be sure to sign and date the letter and the Statement.

Sincerely,



Eric Broman
Attorney at Law

Enclosure

2005-08-02 11:11:16

Ground - ONE

Counselors were ineffective for failing to investigate, present and argue video and its corresponding sound recordings in defendant's Motion to Suppress Motion and Hearing.

Facts + Argument to Support:

The Appellant was charged and convicted before jury of (5) Counts of Solicitation to commit First Degree Murder. The significant evidentiary bases of these charges in this trial were provided in the form of wire interception and recordings of oral communications, and video & its corresponding sound recordings between the Appellant and Under Cover Det. Terry Warten of the Snohomish County Sheriff's Office. The Applications for Orderseeking Authorization for the Interception And Recording of Conversations Pursuant to RCW 9A.73.090, were all (4 in total) sought by Det. Brad Pince of the Snohomish County Sheriff's Office. And all Orders of Authorizations to Applications, were Entered by Judge Castleberry, Snohomish County Magistrate.

Appellant Claims that both his Counselors (James White + Harvey Chamberlin) were ineffective for failing to investigate, present and argue that the video and corresponding sound

As to, as illegal and unauthorized Evidence which needed to be suppressed in his Motion to Suppress and hearing. Because this issue is Substantially established in the record on Appeal to show Counselors' inadequate performance regarding such, relates the following:

Appellant asserts he has a Constitutional right to expect his Counselors' to know the law. See *Frazer v. U.S.*, 18 F.3d 778 (9th Cir. 1994) ("It is the client's right to expect that his "Lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation on the client's behalf.") *Frazer Id.*, at 785. Appellant further asserts under this notion that Counselors first reasonable analysis and strategy should have been the analysis of whether the obtained evidence in this case shows any illegality in its procurement. Here the record shows both Counselors made this analysis or attempted to make such analysis on the day before trial, some (17) months after Appellant's initial arrest on these charges. See (Trial Transcript, July 7, 2003, page 36-39) And because Counselors didn't think this area was important, is also why illegally and unauthorized evidence was allowed to be submitted in this Appellant's trial, which in its absence probably would have resulted in Not guilty verdicts for the Appellant.

Counselors could have easily shown that under

CONTINUATION OF GRIEVANCE/APPEAL

Appellant alleges that because both Counselors failed to know the law, properly investigate, and present issue warranting the suppression of the video and corresponding sound recording of the February 16, 2002 meeting between himself and Det. Warren as illegal and unauthorized evidence, caused this Appellant to be prejudiced by its effects on his jurors and that had the jurors not seen and heard this evidence there would have been a reasonable probability the jury would have found this Appellant not guilty.

Ground - Two

Counselors' were ineffective in failing to properly investigate, prepare and argue Appellant's Motion to Suppress submitted before the trial court.

Appellant asserts that above mentioned inadequate performance as to the lack of preparation is incorporated hereto along with these facts and argument to show Counselors' inadequate performance of presenting argument regarding the "barebone" application for Orderseeking Authorization for interception and recording of conversation pursuant to RCW 9.73.090.

CONTINUATION OF GRIEVANCE/APPEAL

Appellant asserts that Counselor James White, in his Motion to Suppress hearing did in fact raise a very important issue regarding the application as being insufficient for authorization before Judge Castleberry. The argument failed because Counselor did not deliver critical grounds before Judge Kresc to provide suppression, even though Judge Kresc expressed her concerns why there wasn't any showing the officers didn't collaborate. Karen Varnell's statement with "Mr. Olson or Mr. Stivala". (Trial Transcript, July 8, 2003, page 78, lines 3-5) And it was Judge Kresc's next statement that Appellant relies on the show Counselors' ineffectiveness. Judge Kresc went on to state that "even if you took all that out of the affidavit it would still have considerable concern in terms of doing something in a timely fashion." (Id., lines 6-9). This apparently because of the affidavit signed by Mr. Olson disavowing Karen Varnell's statements relating to his alleged statements, which was attached to Appellant's Motion to Suppress.

Counselor White could have if he had given it reasonable thought to his argument that in light of Mr. Olson's refuting Karen's allegations, there was the matter that this witness may have been biased against the defendant due to the long, bitter contentious divorce proceedings had between them as stated in the application. Further Counselor could have shown Judge Kresc that Mary Wilson also could have been a biased witness in this matter, as the Appellant prior had been allegedly very abusive to her husband, as stated in her statement Declaration made on February 11, 2002. SEE

CONTINUATION OF GRIEVANCE/APEAL

(Exhibit #94-95) Det. Brad Pince received this information prior to the Application, and this particular point is not related in it, also there is no showing that Judge Castleberry received this "Declaration" for review in the probable cause determination. Counselor White could have shown Judge Krese that in light of Mr. Olson Affidavit, that the Snohomish Sheriff's Office should have corroborated Mary Wilson's statements with those of Ron White who Mary alleges was present on the second alleged solicitation of her. And lastly Counselor White should have pointed out the fact that the Snohomish Sheriff's Office was establishing probable cause and that Judge Castleberry failed to see, upon illegally obtained post-it notes that belonged to Mitchell Varnell, and that Mary Wilson did not have permission to take. Counselor White failed to present these important facts before Judge Krese to show that Judge Castleberry in authorizing these Applications without requiring Det. Pince to make a better showing that other normal investigative techniques were tried before asking for this intrusion into a private person's protected privacy, it abdicated his statutorily mandated responsibility in this process. In fact there was no specific expression on behalf of Det. Pince in these Applications that these "wire intercepts" were the "only means" of proving whether these charges are being committed, to warrant heedlessly dismissing more traditional methods of investigative procedures. In fact Counselor White could have established for Judge Krese, that Det. Pince in fact on the

CONTINUATION OF GRIEVANCE/APPEAL

Appellant's day of arrest (July 16, 2022), immediately had both Ron White and Mr. Olson in for questioning regarding their knowledge regarding these Solicitations Charges. (See Exhibit # Attachments A+B) And of Particular Note Counselors could have established that on this day, Ron White in his taped interview before Detectives, stated that it was he and not the Appellant that started the "Whole Mexican Mafia Hitmen for 50,000⁰⁰ Rumor. (SEE Ron White's taped Statement on 2-16-02 Listed in the Discovery)

Had Counselor White presented these facts and related to the trial Court that Judge Castleberry had a statutory responsibility, as well as from the U.S. Supreme Court that "If these procedures were not to be routinely employed as the initial step in criminal investigation. Rather, the Application must state and the Court must find that normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be dangerous" see United States v. Giordano, 94 S. Ct. 1820, 1826-27; (RCW 9.73.130 (3)(F), And that because Judge Castleberry did not make these findings and the Applications did not contain any showing that normal investigative techniques were tried and or failed, that these orders from Judge Castleberry based on the Applications and Lack of finding did not meet the threshold for establishing Probable Cause for these intercepted Evidence to be submitted in this Appellant's trial. Nor do they meet

CONTINUATION OF GRIEVANCE/APPEAL

Procedural due process requirement of the Legislative will as expressed in the plain understanding Intent of RCW-9.73.130(3)(f). The Court here is not to second guess the plain meaning of RCW 9.73.130(3)(f), where this statute requires "[a] particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and have failed..." means exactly that which must be contained in the application. Because if this is not the legislative intent by the plain meaning of these words, then it is to the Legislature to clarify such by amending this statute, not the Court by judicial infringement of the legislative authority.

Thus Appellant asserts had Counselors given more thought and preparation in their presentation of this critical issue, such as those given above, there would be a reasonable probability this argument would have been persuasive to show Judge Krese this applications were approved improperly by Judge Castleberry and that because of this, the evidence obtained pursuant to those applications must be suppressed. And that once this evidence was suppressed, the outcome of these charges would have been different than the five verdicts of guilt entered against this Appellant.

****Important Note:** (Judge Castleberry's Orders

CONTINUATION OF GRIEVANCE/APPEAL

All authorizing the interceptions in this case, all recognize the statutory requirement of RCW 9.73.130(3)(f) that the Applications themselves made a showing of normal investigative techniques and procedures; ^{used} when in fact, the Applications did not contain any show that normal investigative techniques and procedure were even attempted. See Exhibits # 39, 27, 389 of orders ("(d) intercept and recording of the expected conversations would reasonably be expected to substantially aid and corroborate normal investigative techniques."))

* Point was under the "totality of the Circumstances Test", these facts show there was no Probable Cause Established and No Expression that there were "No other means readily available for obtaining such information" in the Applications As Required. RCW 9.73.

040
(1)(c)

Grand-Three: Whether the trial Court denied Appellant his Constitutional right to a fair trial and his Sixth Amendment rights to Counsel.

Appellant asserts he was denied his Constitutional right to a fair trial and his Sixth Amendment rights to Counsel in the process by the trial Court. Appellant was incarcerated some 17 months before his trial date finally came. It clearly established in the pre-trial record of Counselors numerous requests for continuances for many various reasons. Appellant believes one such reason was based on Counselors' inability to adequately communicate with the

CONTINUATION OF GRIEVANCE/APPEAL

Appellant to his alleged disposition. This situation resulted in many confrontations between the appellant and his Counselors, and in particular severity with Counselor Harvey Chamberlin. What the trial Court, Judge Krese were not aware of until (3) days before his trial was that Appellant had many medical issues that were not being addressed at the jail, Counselors' ~~ignorance~~ ^{ignorance} created this non-productive environment between him and his counselors. The trial Court and Counselors all took note of these particulars in the pre-trial hearing had on July 4, 2003. There in that hearing Judge Krese actually entered an order of the Court requiring the jail to dispense the Appellant's medication timely and consistently. Even under order of the Court, the Appellant failed to receive his medications timely, properly and at times not at all. On July 7, 2003, Judge Krese took direct testimony that the jail's medical department could not confirm whether the appellant received his medications as ordered by the Court. See Trial-Transcript, 7-7-2003, pg 40, Lines 3-25

The Appellant complained throughout with his attorneys about these medications as well as during these pre-trial hearings. Because of Counselors late understanding about the effects of the Appellant not receiving these medication in a timely manner and sometimes not at all, it became apparent to them that once the appellant began

CONTINUATION OF GRIEVANCE/APPEAL

Receiving them, he was an entirely different person. Counselor White, described the Appellant before as "confused", "unable to keep his train of thought in any way at all or participate in this trial." See Trial-Transcript, 7-7-2003, Pg. 9, Lines 2-4. Counselor Chamberlin, related that when the Appellant is off his medications, he's (Appellant) an "extremely difficult person", "obsessive/compulsive". Id. at pg. 17, Lines 11-18. Counselor Chamberlin even attempted to try and explain why there was friction between him and the Appellant because his lack of understanding the Appellants condition and medications, and his lack of "patience" he had with the Appellant. Id.

But the trial court after these discussions and own observations, was please to see the Appellant was or seemed to more responsive to the Court proceedings as well as seemed to be getting along better with Counselors. see Trial-Transcripts, 7,7-2003, pg. 42-45. This Appellant appreciates the Courts assistance in resolving his medication problems, but this only should have established for the Court as well as Counselors, that now that the Appellant has been placed in a position to understand the trial proceedings and assist his Counselors during, also has the right to be able to properly assist in the preparation of his trial, which he was not with his Counselors, because of not being properly administered his medications. In Appellant's hearing on his motion for New trial Counselor

CONTINUATION OF GRIEVANCE/APPEAL

White confirms that before trial, Attorney Harvey Chamberlain was in fact "Nasty" towards the Appellant. And that during all those times of trying to prepare for trial, these meetings were "90 percent or more was simply unproductive." See Trial-Transcripts, Feb. 27, 2004, pgs 8-14. This Appellant had very important issues he wanted delved into, and because of his lack regularly receiving his medications, his attempts of bringing them forward were delivered or received as confusing and therefore unimportant. These issues included the calling of medical witnesses (personal both medical & psychiatric), fact he was selling his property to settle divorce decree to wife (ex), see Trial-Transcript, July 10, 2003, pg. 266, lines 21-22 ("He said that he couldn't talk because he was -- had a realtor coming over..."); Trial-Transcript, July 9, 2003, pg. 150, lines 8 ("The house had been sold..."). These and others counselors couldn't fathom before were critical in explaining this Appellant committed these offenses. Both the trial court and counselors should have taken into consideration at that time (July 7, 2003), that this defendant had just then been able to assist in his defense to these charges and that proceeding on with the trial was not the appropriate step to take in light of the revelations that in all these past months, there was no reasonable participation on behalf of the defendant, in discussing and planning a acceptable defense to his liking with counselors assistance. Thus had the Trial Court and Counselors taken this

CONTINUATION OF GRIEVANCE/APPEAL

Very important realization into account and demanded a post-ponement of the trial, this appellant would have been better able to express his views more understandable to Counselors, and Counselors wouldn't have been so inclined to ignore or dismiss them, because everyone's frustrations levels wouldn't exist. And would have been able to assist Counselors present a far better and accurate defense that would have shown this appellant is completely innocent of these offenses.

Ground - Four

Counselors were ineffective in failing to object and cause to be excluded in Appellant's trial illegally obtained evidence.

Appellant asserts that both Counselors, James White, and Harvey Chamberlin were ineffective in failing to object and bring to the Court's attention the illegally obtained photos of the State's Exhibit's 11-A & 11-B that were entered as evidence in Appellant's trial. Exhibit 11-A was a photo depicting the Appellant's Inlaws home and a layout 11-B was a photo containing the images of Karen Varnell, and Karen's

CONTINUATION OF GRIEVANCE/APPEAL

Mother, Father and brother. The State entered these two pieces of evidence in trial and before the jury to show planning on behalf of the Appellant. Also these pieces of evidence were entered to allude to the proposition that these were the photo the Appellant were allegedly to give to Det. Warren. Even though they were simply a family photo from better times in his marriage to his Ex-wife and inlaws. And the Exhibit 11-A was from a prior consideration on behalf of the buy the property well before the inlaws moved into this property. But because of the incriminating factor these items now presented, Counselors should have objected to them ever coming in and discussed by the witness. Karen Varnell's previous testimony before these items were discussed and entered established (3) important facts establishing this Appellants right to have them excluded. (1) Karen Varnell previously testified that upon completion of her divorce with the Appellant that he was awarded by the court all property assets. See Tr.T, July 9, 2003, pg. 144, lines 5-9; (2) That she herself went to the Appellants Home and business and took this property without his permission. See Tr.T. July 9, 2003, pg. 150^{1st}, lines 1-25, 1-24; and (3) That Karen then delivered them to Det. Brad Price of the Snohomish Sheriffs Office. See Tr.T. Id., pg. 153, lines 12-17. Fact is Counselors knew that there was never a search warrant issued to search the Appellants home or business in these matters, further

18

CONTINUATION OF GRIEVANCE/APPEAL

More if there had been, this evidence was not found by officers acting under such warrant. Also Det. Pince in receiving these items surely inquired as to where they came from, if not surely Karen Varnell did. Thus Det. Pince knew they were obtained illegally, but never the less passed them on to the prosecuting attorney in this case. The Appellant was having his possessions being moved and stored and as Karen Varnell stated the boys rooms had not been totally cleaned out and that there were some belongings in the kitchen and office still needing to be taken. This out of the entire house. As these belongings did not belong to Karen Varnell and the fact that Mitchell Varnell had made these arrangements to have his property taken and stored by others, other than Karen Varnell and was completed by those which completely cleaned this property out, even after Karen's taking. The important fact is Appellant never gave his ex-wife permission to remove anything from that property, only to his movers.

Ground - FIVE

Counselors' were ineffective in failing to argue before the trial court and preserve for appeal judgment of acquittal, where Counselors argued state failed to PROVE Element Necessary for Convictions.

Appellant asserts that his Counselors' were ineffective where at the close of submission of all the evidence in this case, they didn't petition the trial court for an judgment of acquittal based on the fact that the state had failed to prove beyond a reasonable doubt the Appellants guilt, because it failed to establish the necessary element of "intent" required for an conviction. At the close of submission of evidence in this case, Counselor Chamberlin again showed his ineffectiveness in trying to persuade the trial court into allowing a substitute instruction to be read to the jury regarding the Appellant's "intent". (See Trial Transcript, July 14, 2003, pgs. 528-535.) Counselor Chamberlin argued for support showing that in state v. Duke, that the court there in defining this "intent" as requiring an showing of "your intent that the crime be committed." (Id., Tr-T, pg, 531, lines 1-8) This request was subsequently denied. Appellant asserts that with Dukes, Id., support as showing the state had failed to show and overcome the Appellants statements (testimony) that he did not

CONTINUATION OF GRIEVANCE/APEAL

17
intend these acts to be committed, but instead to set this alleged Hit man up to gain favor and possible reconciliation with his Ex-wife, should have been submitted to the Court as a judgment for Acquittal. This Entire Surveillance process was to have Appellant provide "photographs", "partial payment" and information as to how Appellant "wants Karen Vainell to be killed." This process did not provide these expected results. And it didn't materialize, because this Appellant didn't "intend" this to be the case.

There was no one better than Judge Krese at that time to understand the essential requirements requiring proving all elements to support a conviction. This issue of "intent" should have been submitted to Judge Krese to decide on Not for the jury in the first place. And had Judge Krese not sided with the Appellant under his judgment of Acquittal request, Counselors could have voiced their disagreement with the Courts ruling and preserved this critical issue for review in light of the holding in State v. Duke.

Appellant states that had Counselors raised this issue of intent as a judgment of Acquittal instead of a jury instruction, he would have been acquitted. Or if denied and Counselor preserved objection too, this appellate Court would have reversed the trial Courts denial. Cf. U.S. v. Polk, 118 F.3d 286 (To obtain "Solicitation" conviction, government must show that the defendant intended that another person, and that defendant induced or otherwise endeavored to persuade other person or person to commit that crime.)

Ground - Six

Counselors were ineffective for failing to preserve for Appellate Review denial of Motion to Suppress.

Appellant asserts that in order for his denial of Motion to Suppress to be assigned as error in this Appeal upon the decision alone, would have had to be objected to by his Counselors. And because the Denial decision was not objected to and preserved as error, the Appellant was denied the opportunity to have this Appellate Court review the trial Courts decision based on the presented merits relating to the Applications insufficiency argument. And that had Counselors preserved this denial, this Appellate ^{Court} would reasonably have overturned the trial Courts denial.

Ground - Seven

Counselors' were ineffective in waiving "Frank's" violations by Det. Brad Pince without consulting Appellant which negated part of his defense.

Appellant testified at trial that upon arriving at

CONTINUATION OF GRIEVANCE/APPEAL

the "Cook Book" restaurant that once he had identified the alleged hit man, that he changed his mind about meeting this person and indicated as much through hand gestures indicating he didn't wish to meet with him. (See Trial-Transcripts July 14, 2003, pg. 474, Lines 10-20)

Prior in trial it was established that video of this meeting was running before the Appellant arrive to meet Det. Warren. (See Trial-Transcript, July 11, 2003, pg. 371, Lines 19-25, 1-5, pg. 372) But what was shown in trial was the Edited copy of the three video recordings, which only provided video recordings beginning and showing the Appellant and Det. Warren in the parking lot already together and not the beginning allowing the jury to see the Appellants hand gestures to Det. Warren indicating he did not wish to meet with him. Counselor White first noted the absence of the beginning of the meeting shown on the video while questioning Det. Pince on the stand. (See Trial-Transcripts, July 11, 2003, pg. 368, Lines 4-19) It was earlier stated that this footage on the original recordings were not supplied to the court, or defense. Only the Edited portions. (See Trial-Transcript, July 10, 2003, pg. 343, Lines 15-25, 1-21, pg. 344) Counselor's in waiving viewing of the original video recordings showing Appellant walking up to the Cook Book restaurant and waving off the detective inside would have established for the jury Appellant's testimony of not wanting to

CONTINUATION OF GRIEVANCE/APPEAL

be involved in this meeting prejudiced this Appellant in not being able to support his testimony. Counsel NEVER inquired of the Appellantⁱⁿ this decision. Judge Krese even agreed that the Appellant had a right to see the originals (Id., pg. 344, Lines 13-16) Due to the incredible story regarding the need to use three different recording (video) devices and the admitted editing that was done, the "best" evidence in this situation was the original captured video to determine the sequence of events. It's unfathomable that these defense Counselors ~~accepted~~^{the} offered conflicting positions that the video was recording before the meeting and yet there is no video of the beginning events. Had Counselors asked the appellant about whether he wanted to review these original recordings he would have said yes and further would have wanted Counselors to emphasize video to jury of him gesturing to the Det. Warren that he wanted nothing to do with him. And once this fact was before the jury, Appellant is reasonably sure there would have been a different outcome in his verdicts.

Ground - Eight

Counselors' were ineffective in handling Appellant's trial as established by Counselor on Motion for New trial.

Appellant asserts that his Counselors' of trial were ineffective and was so established as in the Appellant's Hearing on Motion for New trial. Counselor White's admission that he discussed with the Appellant potential ineffective claims about his case is clearly verified in the transcript of the hearing. His answer as to why these specific issues were chosen is to put. Because upon questioning by Attorney Muenster as to Counselor White's hand written list, its obvious by the responses of Counselor White, these were in fact critical areas that Mitchell Varnell had stressed to him as to be pursued. Counselor White's Elaborations on this list clearly shows these were Not Noted areas a New Attorney would look at, but instead indepth reasonings he tried to use to cover both himself and Mr. Harvey Chamberlain in being ineffective. Thus Appellant believes both Counselors' were in fact established as ineffective in the handling of Appellant's trial and that the trial Court Errored in denying his Motion for New Trial.

UNNOTARIZED OATH

I hereby declare, under penalty of perjury, pursuant to s92.525 Fla. Stat., that I have read the foregoing instrument, and that the facts and matters stated herein are true and correct.

9-2-05
Date

Mitchell Vannell

PROVIDED TO ZEPHYRHILLS C.I.
ON 9-2-05 FOR MAILING.

M.B.
Zephyrhills Correctional Institution
2739 Gall Blvd.
Zephyrhills, Fl. 33541-9701

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded to the Law Office of NIELSEN, Broman + Koch P.C. at 1908 E. Madison Street, Seattle, WA. 98122 And. Snohomish County* by U.S. Mail this 2nd of Sept. 2005 by placing in the hands of Institutional Mail Handlers per Fl. Rules of Criminal Procedure 9.420 (a)(2).

Mitchell Vannell

* Courthouse
Prosecutors office
3000 Rockefeller Ave
Everett, Wash. 98201

Exhibit A

FOLLOW-UP

PAGE 1 OF 1

SNOHOMISH COUNTY SHERIFF'S OFFICE		INCIDENT CLASSIFICATION Solicitation to Commit Murder		REPORT NUMBER SO02-3092	
NAME OF ORIGINAL VICTIM(S)				REPORT DATE 02-19-02	
TYPE OF ORIGINAL REPORT		DATE	RECLASSIFY TO	CONNECTING REPORT NUMBERS	
PROPERTY CHANGES:	ACTION	ADDITIONAL LOSS	ACTION	ADDITIONAL RECOVERED	TOTAL RECOVERED
				<input type="checkbox"/> COMPUTER USED <input type="checkbox"/> DRUG RELATED <input type="checkbox"/> ALCOHOL RELATED	

Incident:

February 16, 2002/

1740 hours/ I am called at home by Sgt. Stich. He requests my assistance on a murder for hire case and asks that I respond to the Courthouse.

1830 hours/ I arrive at the Courthouse.

1900 hours/ On the request of Detective Pince, I enter the interview room where he and the suspect, Mitch Varnell, are at. Pince takes photographs of Varnell and Varnell removes his clothing. I place his clothing and possessions in evidence bags, and mark them accordingly.

2100 hours/ I accompany Detective Heitzman on an interview with a witness in this case, Ronald White. We talk with White and Heitzman takes a taped statement from him.

End of report.

OFFICER NAME/NUMBER Detective Gregg Rinta/1166			APPROVED BY <i>[Signature]</i> 7		
IBR CLEARANCE : (ONE)		COPIES MADE FOR:		DATA ENTRY	
<input type="checkbox"/> ARR/A	<input type="checkbox"/> EXC/A	<input type="checkbox"/> PA	<input type="checkbox"/> CPS	<input type="checkbox"/> JUV	<input type="checkbox"/> COURT: CAS / EVG / SOUTH / EVT
<input type="checkbox"/> ARR/J	<input type="checkbox"/> EXC/J	<input type="checkbox"/> PAT	<input type="checkbox"/> DSHS	<input type="checkbox"/> MH	<input type="checkbox"/> DET: PREC / CTH / SPEC
<input type="checkbox"/> INSUFF / CLO	<input type="checkbox"/> OTHER / CLO	<input type="checkbox"/> UNF	<input type="checkbox"/> OTHER:		

REPORT NUMBER

Exhibit B

SNOHOMISH COUNTY SUPPLEMENTAL REPORT
Snohomish County Sheriff

ORIGINAL

Incident Classification 1 Death investigation, murder		<input checked="" type="checkbox"/> Attempted	Offense Code DIMUR	Incident Classification 2	<input type="checkbox"/> Attempted	Offense Code	
Incident Classification 3		<input type="checkbox"/> Attempted	Offense Code	Type of Report Domestic Violence			
Address/Location of Incident 1216 BROADWAY, Everett, WA 98201				Premise Type/Name		Code	
Officer Assault/Safety	Responding To	Type of Assignment		<input type="checkbox"/> Force	Reporting Area	Beat	
Occurred On or From (Date/Time/DOW) 02/16/2002 17:30 Saturday		Occurred To (Date/Time/DOW)		Reported On (Date/Time/DOW) 02/12/2002 Tuesday			
Persons/Businesses							
No. W-1	Non-Disc. <input checked="" type="checkbox"/>	Name (Last, First, Middle) OLSON, JOHN C			Race W	Ethnicity Non-Hispanic	Sex F
DOB/Age 09/05/1957 44	Height	Weight	Hair	Eyes	Residential Status Full Time Resident		
Street Address 14021 162 PL NE, Arlington, WA 98223				Residence Phone (360) 435-4130		Business Phone	
Known Suspects/Subjects							
No. SK-1	Name (Last, First, Middle) VARNELL, MITCHELL LEE				Race W	Ethnicity Non-Hispanic	Sex M
DOB/Age 06/21/1961 40	Height	Weight	Hair	Eyes			
Street Address 13510 JORDAN TRAILS ROAD, Arlington, WA 98223				Residence Phone (360) 435-7100		Business Phone	
Narrative							

On Saturday, 16 February 2002 at 1730 hours, I received a telephone call at my residence from Sgt. S. Stich. He asked me to respond to the Everett Court House and assist with a follow-up investigation. An arrest had been made in a conspiracy to commit murder investigation involving Mitchell Varnell. Mr. Varnell was attempting to hire someone to kill his ex-wife Karen. Regional Task Force Detective Terry Warren played the role of hit man. I arrived at the office at 1836 hours and was directed to the Laundromat parking lot on the north side of the Cook Book Restaurant, located at 1216 Broadway. I was to follow the Varnell vehicle as it was towed to the vehicle evidence storage bay at the Sheriff's South Precinct. Before we left for the South Precinct at 1945 hours, Sgt. Stich brought me the vehicle keys. Mr. Varnell vehicle is a white Ford 4-door, dually, 4 wheel drive, Washington license A15580F. The vehicle mileage was 28763. The vehicle had no front license plate. Matt, of Hansen's Towing, towed the pick-up to the South Precinct, arriving at 2015 hours. I confirmed that all three-passenger doors were locked, and then I locked the driver door. I placed red evidence tape on all four doors and on both lift doors of the pick-up bed lock box. I dated and initialed the seals. I also placed a warning, printed on a paper bag, on the windshield of the pick-up. That warning contained the case number, date, and Det. Pince's name. I cleared the South Precinct at 2034 hours and returned to my office. I gave the vehicle keys to Det. Pince. Det. Pince and I then left to contact a witness. At 2229 hours Det. Pince and I contacted witness John C. Olson. Det. Pince wrote Mr. Olson's brief statement for him at his request.

dw

Status						
Officer Name/Number Ward, J W-1099			Unit	Approved By/Number	Date 6	
Clearance <input type="checkbox"/> Arr/A <input type="checkbox"/> Arr/J	<input type="checkbox"/> Unfounded <input type="checkbox"/> Exc/A <input type="checkbox"/> Exc/J	Distribution <input type="checkbox"/> PA <input type="checkbox"/> ADMIN	<input type="checkbox"/> DOC <input type="checkbox"/> CPS <input type="checkbox"/> DSHS	<input type="checkbox"/> HD <input type="checkbox"/> JUV <input type="checkbox"/> MH	<input type="checkbox"/> TRAF <input type="checkbox"/> DET <input type="checkbox"/> PAT	<input type="checkbox"/> PROACT <input type="checkbox"/> Court <input type="checkbox"/> Other
Logged						Date 1
<input type="checkbox"/> Entered RMS		<input type="checkbox"/> Entered WACIS/NCIC		<input type="checkbox"/> Cleared WACIS/NCIC		
Date	Initials	Date	Initials	Date	Initials	

SUPPLEMENTAL REPORT

Exhibit C

MISC.

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

IN THE MATTER OF
AUTHORIZATION TO INTERCEPT AND
RECORD COMMUNICATIONS OR
CONVERSATIONS PURSUANT TO
RCW 9.73.090

No.

ORDER AUTHORIZING INTERCEPT
AND RECORDINGS

To: DET. BRAD PINCE, DET. DAVE HEITZMAN and members of the Snohomish County
Sheriff's Office Investigation Division:

WHEREAS sworn application having been made by DET. BRAD PINCE,
a commissioned law enforcement officer of the Snohomish County Sheriff's Office, and full
consideration having been given to the matters set forth therein, the court hereby finds:

(a) That there is probable cause to believe that MITCHELL VARNELL has
committed, and is about to commit the felony crimes of SOLICITATION TO COMMIT MURDER

(b) There is probable cause to believe that conversations or communications relating to
the said offense will take place and will be obtained as evidence through interception and
recordings as herein set forth;

(c) DET. TERRY WARREN, one party to the expected
conversations or communications, has given consent to intercept and recording of the same;

(d) Intercept and recording of the expected conversations would reasonably be expected to substantially aid and corroborate normal investigative techniques.

Now, Therefore, It is Hereby Ordered that DET. BRAD POICE, DET. DAVE HEITZMAN and members of the Snohomish County Sheriff's Office Investigation Division, together with the necessary technical assistance are authorized to intercept and record the communications or conversations of DET. JERRY WARREN and MITCHELL VARNELL, occurring between 5P^{2/15/02}.m. and 5P.m. on 02-22-02,

~~2002.~~

15 Feb 2004

JUDGE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

APPLICATION FOR ORDERSEEKING
AUTHORIZATION FOR THE INTERCEPTION AFFIDAVIT OF
AND RECORDING OF CONVERSATIONS DETECTIVE BRAD PINCE
PURSUANT TO RCW 9.73.090

STATE OF WASHINGTON

COUNTY OF SNOHOMISH

I, Detective Brad Pince of the Snohomish County Sheriff's Office, being first duly sworn on oath, deposes and says:

1. Affiant is Detective Brad Pince, # 1125, a full time, fully commissioned, Deputy Sheriff, who has been employed by the Snohomish County Sheriff's Office for 20 years. Your Affiant has been assigned a Detective in the Investigations Division of the Sheriff's Office for the past 17 years. For the last 12 years, Your Affiant has been assigned to the Major Crimes Unit where his caseload consists of Felony Assaults, Robberies, and Homicides. Your Affiant has received several hundred hours of specialized training in investigative techniques and has authored and served many search warrants in reference to his investigations and many of those cases have resulted in felony charges and convictions.
2. On 02-12-02 the Arlington Police Department contacted the Snohomish County Sheriff's Office, Major Crimes Unit and spoke to Sgt. Stich. Sgt. Stich was told that Arlington police had information from a local resident that her ex-husband was offering to pay \$50,000.00 to have her killed. Sgt. Stich assigned the investigation to your Affiant and my partner, Det. D. Heitzman.

On 02-12-02 at approximately 1325 hours, I met with Sgt. Erlandson # 1610, of the Arlington Police Department. Erlandson verbally identified the persons involved in this incident as follows:

Victim/Complainant Karen Sue Varnell, dob 08-13-59
 18006 Country Club Dr.
 Arlington, WA 98223 Ph # 360-474-1460

Suspect Mitchell Lee Varnell, dob 06-21-61
 13510 Jordan Trails Rd.
 Arlington, WA 98223

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

Witness Mary E. Wilson, dob 06-14-73

Witness John C. Olsen, dob 09-05-57

Sgt. Erlandson explained that Karen and Mitchell Varnell have recently completed a long and bitter divorce process and that Karen was awarded a cash settlement and custody of two minor children. He stated that there is a current, valid, no contact order in effect, which limits Mitchell's contact with Karen and the children. He said that Karen has reported many violations of that order by Mitchell. He explained that on 02-04-02 Karen Varnell came to the Arlington Police Department and provided a written statement about a conversation she just had with witness, John Olson. Varnell explained that Olson lives near Mitchell and that she knew him from the neighborhood. She said that he stopped at her home that afternoon and warned her that her ex-husband had recently offered to pay \$50,000.00 to have her killed. Olson told Karen that he heard this from his girlfriend's son, Joshua Stivala. Olson apparently told Karen that he heard of this offer from Joshua and that Joshua turned down the offer. Karen Varnell provided a two page written statement about her conversation with John Olson.

NOT TRUE

*Jake
Joshua
carrying a desert
eagle 352 mag*

Sgt. Erlandson stated that Arlington Police did not contact Olson or Stivala about Karen's claims.

Erlandson then explained that on 02-11-02 Karen Varnell again called the Arlington Police to report yet another threat on her life. Varnell provided at a 4 page written statement about the new threat. In her statement Varnell explained that on 02-11-02 at approximately 2 PM, she found a note on her front door that said "Karen I need to talk to you. Please call me 425-377-1150 - Mary. Varnell said that she called the number and learned that Mary was her ex-husband's secretary, Mary Wilson. Mary Wilson told Varnell that she was worried for her (Varnell's) safety, as Mitch had twice offered her \$50,000.00 to kill Karen. Wilson went on to explain that she also found notes written by Mitchell Varnell that she believes outline his plans to kill Karen.

see 14

Karen Varnell stated that she contacted her civil attorney, Cory Rein and that he went with her to meet Mary Wilson. Mary Wilson provided a 2 page typed declaration about the two offers Mitchell Varnell made to her about killing Karen and about the notes she found detailing his plans. Wilson turned over the notes to Rein.

see 19/14

Erlandson went on to explain that he took the threats against Karen Varnell very seriously. He said that Arlington Police recently investigated an unrelated burglary where Mitchell Varnell is the prime suspect. He stated that the victim's in that burglary were involved in a business deal with Varnell's Land Excavation business. He said there is a dispute over money owed and that there is a legal battle on going between Mitchell Varnell and Chris & Kelly Smith. He said that

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

Chris Smith is also an Arlington Firefighter who works 24-hour schedules. He explained that on 01-12-01, Chris Smith was at work and his wife and kids were home alone. When Mrs. Smith woke up that morning she found that someone had entered her residence during the night and had written messages all over the house with a marking pen. Those messages included threats to come back and rape Mrs. Smith, kill their dog, talked about how nice their kids looked while sleeping, and stated that their shouldn't be anymore problems. The burglary case has been documented under the Arlington Police case number 01-3737.

Erlandson said that the Arlington Police obtained a search warrant for Mitchell Varnell's residence in reference to the burglary investigation and on 12-03-01 it was served. While serving the warrant, they located approximately \$150,000.00 cash that Varnell was keeping in a safe inside his home. Erlandson said that other than the on-going and current dispute with Mitchell there was no other evidence tying him to the burglary. He did say that Karen Varnell was shown photographs of the hand written messages on the Smith's walls and she recognized the writing as Mitchell's. He stated that the case was submitted to the Snohomish County Prosecutor's office for charging.

Sgt. Erlandson turned over to the written statements from Karen Varnell and was told by affiant that the Snohomish County Sheriff's office would be taking over the investigation. Erlandson agreed to provide all written reports from Arlington Police Department in reference to Mitchell Varnell.

On 02-12-02 approximately 1345 hours, Cory Rien called the Snohomish County Sheriff's Office and spoke to Detective J. Scharf of the Major Crimes Unit. He told Scharf that he had a statement and some notes in reference to a murder for hire plot unfolding against his client, Karen Varnell. At approximately 1430 hours, your Affiant met with Cory Rein at his office and obtained a two page typed declaration signed by May Wilson. Rein stated that it is a statement he obtained from Wilson about being offered money to kill Karen Varnell. Attached to the Declaration were 5 pages of hand written notes. Rein said that the attached notes are enlarged copies of the "post-it notes" described in Wilson's declaration. Rein then handed me an envelope containing the original notes he received from Wilson. Copies of those notes are attached. *Mary*

On 02-12-02 at approximately 1615 hours, Karen Varnell met with Affiant and Det. Heitzman at the Snohomish County Sheriff's Office. She provided a tape-recorded statement about her relationship with Mitchell Varnell, details of his past physical assaults on her as well as threats he made to her about killing her. She described Mitchell Varnell as a needing to be in control of everything and that when the Courts settled her divorce; they took his most prized possessions (his children and his money) and gave them to her. She explained that she was granted full custody of their two boys and that Mitchell was ordered to give her \$300,000.00 cash and pay \$1600.00 a month in child support. She stated that he could not pay her the money he owes without selling some of his property and toys. She said that he would much rather see her dead than have to pay her or let *not true*

③

30

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

her continue to have custody of the boys. She said that in the past he has talked to her about how easy it would be to kill someone and get away with it if your alibi was set up properly. She said that she saw the written messages on the Smith's walls and she knows it was Mitchell's handwriting. Karen stated that in January she spoke to Mitchell by telephone and confronted him about the Smith Burglary. He first denied it but when she told him she saw the writing and it was his handwriting, She said that he then stated "Oh well they deserved it." When asked about her conversation with John Olson, Varnell stated that he was very worried about getting involved in her dispute with Mitchell, as they were still neighbors. She also said that she did not think Joshua Stivala would ever cooperate with the police and would instead warn Mitchell if police contacted him. At this time, neither John Olson nor Joshua Stivala has been contacted by SCSO Detectives.

~~NOT TRUE~~

~~not true~~

On 02-13-02 at approximately 1225 hours, Affiant and Det Heitzman met with Mary Wilson. She provided a tape-recorded statement about her history with Mitchell Varnell and about his offers to pay her to kill Karen Varnell. She indicated that she went to work for Varnell in August of 2001, as Varnell's secretary. She said that she took care of his company business as well as some of his personal business. She stated that she works out of Varnell's home and that Varnell has many time talked to her about his divorce problems. She stated that in the beginning, Varnell complained about his wife frequently but also talked about wanting her to come back to him. Wilson said that over the past month or so, Varnell quit talking about getting back together with Karen and now only refers to her as his "problem" and needing to "get rid of his problem". She said that it was near the end of January when Varnell saw her handgun, which she carries in a backpack. She said he wanted to see it and asked to borrow it for a while. She said that he also asked to buy the gun from her and that was when he first offered her money to kill Karen. She said she told him no and changed the subject. Wilson said that very next day; she was out in Varnell's shop talking to him and another one of Varnell's employees (Ron White). She said that Varnell again said that she could make \$50,000.00 by killing Karen. Varnell said that Ron White mentioned that they (meaning her and Ron White) would not do that. Wilson said that was the last time Varnell offered her money to kill Karen, but that she then found the hand written notes that in her mind, clearly outlines Varnell's plans to kill Karen. She said that she first left the notes alone but on Friday (02-08-02) she saw the notes were still in the same place and she took them.

~~NOT TRUE~~

~~NOT TRUE~~
she initiated

~~she offered~~

~~NOT TRUE~~

?

Wilson stated that she is not going to work for Varnell anymore but that he has been out of town fishing and doesn't know she is quitting.

Wilson was asked if she was willing to have a conversation with Mitchell Varnell tape-recorded while she questioned him about his offer to pay to have Karen killed. She agreed to assist SCSO with this investigation and is willing to call Varnell and engage him in a discussion about his offer and attempt to introduce

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

him to an undercover SCSO Detective who she will say is interested in killing Karen Varnell for the money.

3. Affiant believes that Mitchell Varnell has engaged in solicitation to commit murder in the first degree. Affiant believes both Karen Varnell and Mary Wilson are credible, but that corroborating evidence would be important in a courtroom setting.

Further, pursuant to RCW 9.73.090

- (1) (a) There are reasonable grounds to believe that the crime of solicitation has been committed.
- (b) There are reasonable grounds that through this order evidence may be obtained essential to the prosecution of the case.
- © Detectives have considered other investigative techniques:
 - I. There is no reasonable belief that direct contact with the defendant will result in anything but a denial.
 - II. The critical witnesses have already been interviewed and more corroborating evidence is essential to prove that the threat is real and that the crime has occurred.
 - III. Time is of the essence, since having been so far turned down, Mitchell Varnell may well be approaching others.
 - IV. There are no other technique available to corroborate the statements of the witnesses.

The Investigative Plan is to:

- 1) Have Mary Wilson contact Mitchell Varnell by phone, and offer to introduce him to someone willing to kill Karen Varnell. This phone call would be recorded, pursuant to this order on a micro cassette tape recorder using a DynaMetric Telephone Logger Patch. Detectives will attempt to complete this call on this day 02-14-02. Mary Wilson has agreed to make such a call, and to have it recorded. It is possible that more than one call will be required, and authorization is requested to allow this to occur from 02-14-02 to 02-22-02. No previous authorization or application has been sought or granted in this investigation.
- 2) The person Mary Wilson will offer to introduce Mitchell Varnell to, will be Snohomish County Sheriff's Deputy Terry Warren, currently assigned as an undercover detective to Snohomish County Regional Drug Task Force. Warren has been a police officer for over 10 years, has a "scruffy" appearance, and has conducted over a hundred undercover investigations with the Task Force.
- 3) Detectives envision at least one phone call between Warren and Mitchell Varnell. Applicant seeks authorization to record those calls as well, using micro cassette tape recorder DynaMetric Telephone Logger Patch. More than one call may be necessary. Warren consents to the recording. Warren will seek to set up an in person meeting with Mitchell Varnell, to take place as soon as possible. A separate order may be sought to record that meeting.

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

The first phone call by Mary Wilson will originate from her residence, which is located in unincorporated Snohomish County, near Lake Stevens and the telephone number of (425) 377-1150 and will take place on February 14, 2002.

Detectives Brad Pince and Dave Heitzman have both been trained in the use and operations of micro cassette tape recorder DynaMetric Telephone Logger Patch.

New Information:

On 02-14-02 the above information was presented to Judge Castleberry of the Snohomish County Superior Court. Judge Castleberry then authorized Affiant to record telephone conversations between Mary Wilson and Mitchell Varnell.

On 02-14-02 at approximately 1540 hours, Affiant and Det. Heitzman met with Mary Wilson at her Snohomish County home. The DynaMetric Telephone Logger Patch was attached to a Sheriff's Office telephone and both were plugged into Wilson's telephone jack located inside her residence. The Logger patch was also connected to a standard micro cassette tape recorder and the equipment was tested.

At approximately 1545 hours, Det. Terry Warren of the Snohomish County Sheriff's Office arrived at our location. Mary Wilson was briefed on the per-arranged scenario we wanted her to follow. At approximately 1556 hours, Wilson called the telephone number 360-435-7100, the telephone number belonging to Mitchell Varnell. The recording equipment was activated and Varnell answered his telephone. The telephone conversation between Wilson and Mitchell lasted until 1620 hours and was successfully recorded.

During the recorded conversation, Wilson was able to convince Varnell that she recently met an individual named Mike who could be trusted, was capable, and willing to take care of "The Problem" (Varnell's wife). Varnell asked Wilson several questions about Mike and told her that he was interested in talking to this person, but was worried about talking to him by telephone. During the conversation, Varnell never denied wanting Karen Varnell killed and he never said that he was just joking or was not serious when he made the offer to Wilson. Instead he talked about how serious a step this would be and how if it went bad he and all those involved would be in serious trouble. At one point in the conversation he suggested to Wilson that she go ahead and have her friend Mike call him but then warned her to distance herself from any further involvement. The telephone conversation ended and the tape has been secured as evidence.

scared/stress

On 02-14-02 at approximately 1715 hours, Detective Terry Warran purchased a new cellular telephone service through Cingular Wireless and purchased a Nokia cellular telephone for that account. The telephone number for the new account is 425-220-5785. Det. Warran also has a Digital tape recorder that has an earpiece attachment. Det.

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

Warran has been trained in the use of the digital recorder and has used it in many of his investigations. Det. Warran states that the digital recorder is capable of recording any phone calls made from a Nokia cellular telephone.

Affiant believes that Mitchell Varnell has engaged in solicitation to commit murder in the first degree. Affiant believes both Karen Varnell and Mary Wilson are credible, but that corroborating evidence would be important in a courtroom setting. Affiant believes that the recorded conversation between Mary Wilson and Mitchell Varnell has greatly improved chances of this case being charged in Snohomish County Superior Court. Affiant believes that further recorded conversations between Det. Warran and Mitchell Varnell would further corroborate the information provided by witnesses.

Further, pursuant to RCW 9.73.090

- (2) (a) There are reasonable grounds to believe that the crime of solicitation has been committed.
 - (b) There are reasonable grounds that through this order evidence may be obtained essential to the prosecution of the case.
- © Detectives have considered other investigative techniques:
- V. There is no reasonable belief that direct contact with the defendant will result in anything but a denial.
 - VI. The critical witnesses have already been interviewed and more corroborating evidence is essential to prove that the threat is real and that the crime has occurred.
 - VII. Time is of the essence, since having been so far turned down, Mitchell Varnell may well be approaching others.
 - VIII. There are no other technique available to corroborate the statements of the witnesses.

The new investigative plan is to have Det. Warren call Mitchell Varnell and see if he is willing to discuss plans to have Karen Varnell killed. If the talks progress it is believed that eventually a face to face meeting between Varnell and Warren will take place, and would probably lead to additional incriminating statements from Varnell.

The telephone call from Det. Warran to Mitchell Varnell will take place on 02-14-02 at approximately 2200 hours. Det. Warren will call from his cellular telephone number 425-220-5785 and he will be in the Snohomish County Courthouse when the call is made.

SECOND NEW INFORMATION

Note: This will be the third affidavit requesting authorization to record conversations in reference to SCSO case # SP 02-03092, A solicitation for murder investigation.

On 02-14-02 at approximately 2100 hours, Affiant presented the second affidavit above to Snohomish county Superior Court Judge Castleberry and he authorized Affiant to

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

record a telephone conversation between Detective Terry Warren and Mitchell Varnell. At approximately 2250 hours, Det Warren and Det. Thomas of the Task Force arrived at the Sheriff's Office located on the fourth floor of the Snohomish County Courthouse. Your Affiant, Det. Heitzman, and Sgt. Stich all from the SCSO Major Crimes Unit were also present. All parties listened to the recorded conversation between Mary Wilson and Mitchell Varnell, which took place earlier in the day. Det. Warren set up the recording equipment. Det. Warren was using a Nokia cellular telephone along with a new Cingular Wireless pre-paid account that had been purchased and activated that day specifically for this investigation. The telephone number associated to that account is 425-220-5785.

On 02-14-02 at approximately 2330 hours, Det Warren activated the recording devise and called the telephone number 360-435-7100, which is the telephone number for Mitchell Varnell. Mitchell Varnell answered the phone and Det. Warren talked to Varnell for approximately 16 minutes with the call ending at 2346 hours. The entire conversation was recorded; however there were equipment problems which made Varnell's portion of the conversation difficult to hear. Det. Warren prepared the following, brief, typed summery of his conversation with Varnell:

I introduced myself to Mitch, we exchanged greetings, and I said we had a mutual friend. He said Mary Wilson. I told him that I understand that he has a job for me. He told me that he didn't want to talk over the phone and wanted me to give him a number of a hard line so that we could talk. I told him that I didn't want to say anything over the phone either, but I wanted to know if he could afford it. He said he could. I also told him that I wanted to know if he was cool. He said he was and he said he wondered if I could keep things quiet because he did. I told him that only two people know and that's it. He and I.

He was concerned about the phone and asked if I was calling from a hard line. I told him that I was calling from a cell phone and that it was safer. He told me that the police did a search warrant on his house and kicked the door in, pointed guns at him, and arrested him for nothing. (He said one of the officers told him to be careful what he says over the phone, and that's why he didn't want to talk on his home phone. We talked about his cell phone and he didn't want the phone number coming back on his bill. I told him that it was a pre-paid cell phone and there was no way to trace it, and that I would be throwing it away when I was done.

We agreed to meet and he told me he lived in Arlington. I said I lived north but I didn't want to meet him in my back yard. I suggested Lynnwood or Everett, and he said that he had a bad back and didn't want to go too far from home. He said that he would go to Everett. I suggested the Everett Mall and he said the Cookbook Restaurant. He described where it was and then I asked him when. He became concerned again about the phone. I told him that my

not true

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

phone was good because it was pre-paid and that is what he should use. I said that I am in another business and if it's good for the Mexicans, then it's good for me, referring to the security of the cell phone. He said that he didn't want to have the time arranged over the phone just in case, and then there would be police at the restaurant waiting for him. I told him that I would not be happy with that.

He said that Saturday would be better for him because then he would want to get away for a couple days. I asked him when he would want the "job" done and he said "the sooner the better."

I asked him if he was going to bring some earnest money, and he said that he would bring information. I told him that it might be the only time I meet him for a while so that I could go away and then come back for the rest of my money. We then began talking as if I was going to be doing a lawn job for him, and I asked him if he could get me a picture of the yard. He said that he could get a picture of the yard and then said that he could get some numbers too. I then clarified that I meant that I wanted a picture of the job. He said that he could get me that. He talked about having problems with his lawn and how weeds have been growing and he has to make a decision whether he gets rid of the weeds (referring to his ex-wife.) He also referred to it as a pruning job.

We ended the conversation with him planning on calling me on my cell phone, which I gave him the number, on Saturday at 10:00 AM. I told him that I might be out of cell range at the time and he said to call him at his house and give him a time for him to call my cell phone.

Affiant believes that Mitchell Varnell has engaged in and is continuing to engage in solicitation to commit murder in the first degree. Affiant believes that further recorded conversations between Det. Warran and Mitchell Varnell would further corroborate the information provided by witnesses and will likely result in a planned face-to-face meeting between Warren and Varnell.

Further, pursuant to RCW 9.73.090

- (3) (a) There are reasonable grounds to believe that the crime of solicitation has been committed.
- (b) There are reasonable grounds that through this order evidence may be obtained essential to the prosecution of the case.
- (c) Detectives have considered other investigative techniques:
 - IX. There is no reasonable belief that if contacted by a known Police Officer, the defendant will do anything but deny the allegations.
 - X. The critical witnesses have already been interviewed and more corroborating evidence is essential to prove that the threat is real and that the crime has occurred.

he wanted a picture
I did not give one

I didn't call

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

- XI. Time is of the essence, since Mitchell Varnell is now pressuring Mary Wilson to return to work.
- XII. There are no other techniques available to corroborate the statements of the witnesses.

New Up-dated Investigative Plan:

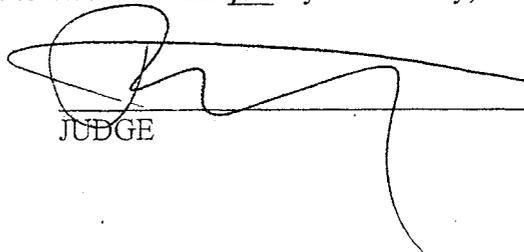
Affiant plans on having Det. Warren initiate a phone call from his new cellular telephone to Mitchell Varnell on 02-15-02 at approximately 1700 hours. That call will be made from the Snohomish County Sheriff's Office and Det. Warren will suggest that Varnell go to another telephone that he knows is safe (probably a pay phone) and return his call. It may require more than one brief call by Det. Warren to Mitchell Varnell to set up the secure call. Affiant expects Varnell to talk more freely on a telephone he believes cannot be monitored. Affiant expects Det. Warren to be able to gather further details about Varnell's willingness to pay to have Karen Varnell killed and will attempt to set up a face-to-face meeting with Varnell to discuss those details. Affiant wants to record all of the phone calls between Warren and Varnell using the same digital recorder used by Det. Warren for the 02-14-02, telephone call. Det. Warren will be using a different microphone system attached to the recorder and the equipment will be tested prior to any recordings. Det. Warren is trained and has used the recording equipment he will be using. Affiant expects to be requesting yet another court authorized recording order once the details and location information of the planned face-to-face meeting can be confirmed.

*I was to call
did not call*



DETECTIVE BRAD PINCE

Subscribed and sworn to before me this 15 day of February, 2002



JUDGE

Application approved:

John Addock
Deputy Prosecuting Attorney

J. ADDOCK #15714

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

IN THE MATTER OF
AUTHORIZATION TO INTERCEPT AND
RECORD COMMUNICATIONS OR
CONVERSATIONS PURSUANT TO
RCW 9.73.090

No.

ORDER AUTHORIZING INTERCEPT
AND RECORDINGS

To: Det. BRAD Pince, Det. DAVE Hertzman and members of the Snohomish County
Sheriff's Office Investigation Division:

WHEREAS sworn application having been made by Det. BRAD Pince,
a commissioned law enforcement officer of the Snohomish County Sheriff's Office, and full
consideration having been given to the matters set forth therein, the court hereby finds:

(a) That there is probable cause to believe that MITCHELL VARNELL has
committed, and is about to commit the felony crimes of SOLICITATION TO COMMIT MURDER

(b) There is probable cause to believe that conversations or communications relating to
the said offense will take place and will be obtained as evidence through interception and
recordings as herein set forth;

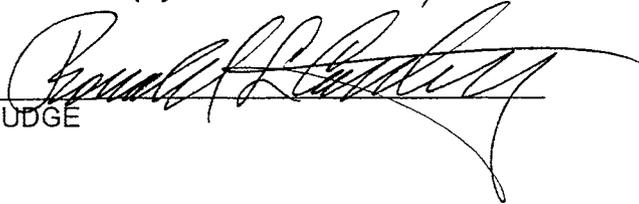
(c) Det. Terry WARREN, one party to the expected
conversations or communications, has given consent to intercept and recording of the same;

(d) Intercept and recording of the expected conversations would reasonably be expected to substantially aid and corroborate normal investigative techniques.

Now, Therefore, It is Hereby Ordered that DET. BRAD PINCE, DET. DAVE HEITZMAN and members of the Snohomish County Sheriff's Office Investigation Division, together with the necessary technical assistance are authorized to intercept and record the communications or conversations of DET. TERRY WARREN and MITCHELL VARVELL, occurring between 9 P.m. ^{2/14/02} and 5 P.m. on 2-21-02.

2002.

14 Feb 2004



JUDGE

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

Witness Mary E. Wilson, dob 06-14-73

Witness John C. Olsen, dob 09-05-57

Sgt. Erlandson explained that Karen and Mitchell Varnell have recently completed a long and bitter divorce process and that Karen was awarded a cash settlement and custody of two minor children. He stated that there is a current, valid, no contact order in effect, which limits Mitchell's contact with Karen and the children. He said that Karen has reported many violations of that order by Mitchell! He explained that on 02-04-02 Karen Varnell came to the Arlington Police Department and provided a written statement about a conversation she just had with witness, John Olson. Varnell explained that Olson lives near Mitchell and that she knew him from the neighborhood. She said that he stopped at her home that afternoon and warned her that her ex-husband had recently offered to pay \$50,000.00 to have her killed. Olson told Karen that he heard this from his girlfriend's son, Joshua Stivala. Olson apparently told Karen that he heard of this offer from Joshua and that Joshua turned down the offer. Karen Varnell provided a two page written statement about her conversation with John Olson.

untrue

Sgt. Erlandson stated that Arlington Police did not contact Olson or Stivala about Karen's claims.

Why not?

Erlandson then explained that on 02-11-02 Karen Varnell again called the Arlington Police to report yet another threat on her life. Varnell provided a 4 page written statement about the new threat. In her statement Varnell explained that on 02-11-02 at approximately 2 PM, she found a note on her front door that said "Karen I need to talk to you. Please call me 425-377-1150 - Mary. Varnell said that she called the number and learned that Mary was her ex-husband's secretary, Mary Wilson. Mary Wilson told Varnell that she was worried for her (Varnell's) safety, as Mitch had twice offered her \$50,000.00 to kill Karen. Wilson went on to explain that she also found notes written by Mitchell Varnell that she believes outline his plans to kill Karen.

*Karen already knew
Mary was my secretary*

*bull - untrue
- untrue*

Karen Varnell stated that she contacted her civil attorney, Cory Rein and that he went with her to meet Mary Wilson. Mary Wilson provided a 2 page typed declaration about the two offers Mitchell Varnell made to her about killing Karen and about the notes she found detailing his plans. Wilson turned over the notes to Rein.

Erlandson went on to explain that he took the threats against Karen Varnell very seriously. He said that Arlington Police recently investigated an unrelated burglary where Mitchell Varnell is the prime suspect. He stated that the victim's in that burglary were involved in a business deal with Varnell's Land Excavation business. He said there is a dispute over money owed and that there is a legal battle on going between Mitchell Varnell and Chris & Kelly Smith. He said that Chris Smith is also an Arlington Firefighter who works 24-hour schedules. He explained that on 01-12-01, Chris Smith was at work and his wife and kids were home alone. When Mrs. Smith woke up that morning she found that someone had entered her residence during the night and had written messages all over the house with a marking pen.

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

Those messages included threats to come back and rape Mrs. Smith, kill their dog, talked about how nice their kids looked while sleeping, and stated that their shouldn't be anymore problems. The burglary case has been documented under the Arlington Police case number 01-3737.

Erlandson said that the Arlington Police obtained a search warrant for Mitchell Varnell's residence in reference to the burglary investigation and on 12-03-01 it was served. While serving the warrant, they located approximately \$150,000.00 cash that Varnell was keeping in a safe inside his home. Erlandson said that other than the on-going and current dispute with Mitchell there was no other evidence tying him to the burglary. He did say that Karen Varnell was shown photographs of the hand written messages on the Smith's walls and she recognized the writing as Mitchell's. He stated that the case was submitted to the Snohomish County Prosecutor's office for charging. *NO way*

Sgt. Erlandson turned over to the written statements from Karen Varnell and was told by affiant that the Snohomish County Sheriff's office would be taking over the investigation. Erlandson agreed to provide all written reports from Arlington Police Department in reference to Mitchell Varnell.

On 02-12-02 approximately 1345 hours, Cory Rien called the Snohomish County Sheriff's Office and spoke to Detective J. Scharf of the Major Crimes Unit. He told Scharf that he had a statement and some notes in reference to a murder for hire plot unfolding against his client, Karen Varnell. At approximately 1430 hours, your Affiant met with Cory Rein at his office and obtained a two page typed declaration signed by May Wilson. Rein stated that it is a statement he obtained from Wilson about being offered money to kill Karen Varnell. Attached to the Declaration were 5 pages of hand written notes. Rein said that the attached notes are enlarged copies of the "post-it notes" described in Wilson's declaration. Rein then handed me an envelope containing the original notes he received from Wilson. Copies of those notes are attached. *NO PLOT*

On 02-12-02 at approximately 1615 hours, Karen Varnell met with Affiant and Det. Heitzman at the Snohomish County Sheriff's Office. She provided a tape-recorded statement about her relationship with Mitchell Varnell, details of his past physical assaults on her as well as threats he made to her about killing her. She described Mitchell Varnell as a needing to be in control of everything and that when the Courts settled her divorce; they took his most prized possessions (his children and his money) and gave them to her. She explained that she was granted full custody of their two boys and that Mitchell was ordered to give her \$300,000.00 cash and pay \$1600.00 a month in child support. She stated that he could not pay her the money he owes without selling some of his property and toys. She said that he would much rather see her dead than have to pay her or let her continue to have custody of the boys. She said that in the past he has talked to her about how easy it would be to kill someone and get away with it if your alibi was set up properly. She said that she saw the written messages on the Smith's walls and she knows it was Mitchell's handwriting. Karen stated that in January she spoke to Mitchell by telephone and confronted him about the Smith Burglary. He first denied it but when she told him she saw the writing and it was his handwriting, She said that he then stated "Oh well they deserved it." When asked about her conversation with John Olson, Varnell *untrue*
untrue - loan
untrue
untrue
How?
no call
why?

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

stated that he was very worried about getting involved in her dispute with Mitchell, as untrue they were still neighbors. She also said that she did not think Joshua Stivala would ever cooperate with the police and would instead warn Mitchell if police contacted bullshit made up him. At this time, neither John Olson nor Joshua Stivala has been contacted by SCSO Detectives.

On 02-13-02 at approximately 1225 hours, Affiant and Det Heitzman met with Mary Wilson. She provided a tape-recorded statement about her history with Mitchell Varnell and about his offers to pay her to kill Karen Varnell. She indicated that she went to work for Varnell in August of 2001, as Varnell's secretary. She said that she took care of his company business as well as some of his personal business. She stated that she works out of Varnell's home and that Varnell has many time talked to her about his divorce problems. She stated that in the beginning, Varnell complained about his wife frequently but also talked about wanting her to come back to him. Wilson said that over the past month or so, Varnell quit talking about getting back together with Karen and now only refers to her as his "problem" and needing to "get rid of his problem". She said that it was near the end of January when Varnell saw she pulled it from her purse her handgun, which she carries in a backpack. She said he wanted to see it and asked to borrow it for a while. She said that he also asked to buy the gun from her and that twisted was when he first offered her money to kill Karen. She said she told him no and changed the subject. Wilson said that very next day; she was out in Varnell's shop talking to him and another one of Varnell's employees (Ron White). She said that untrue Varnell again said that she could make \$50,000.00 by killing Karen. ask ron Varnell said that Ron White mentioned that they (meaning her and Ron White) would not do that. Wilson said that was the last time Varnell offered her money to kill Karen, but that notes? karen? she then found the hand written notes that in her mind, clearly outlines Varnell's plans to kill Karen. She said that she first left the notes alone but on Friday (02-08-02) she saw the notes were still in the same place and she took them. From where

Wilson stated that she is not going to work for Varnell anymore but that he has been out of town fishing and doesn't know she is quitting. argument with mary's husband-I

Wilson was asked if she was willing to have a conversation with Mitchell Varnell tape-recorded while she questioned him about his offer to pay to have Karen killed. She agreed to assist SCSO with this investigation and is willing to call Varnell and engage him in a discussion about his offer and attempt to introduce him to an undercover SCSO Detective who she will say is interested in killing Karen Varnell for the money.

3. Affiant believes that Mitchell Varnell has engaged in solicitation to commit murder in the first degree. Affiant believes both Karen Varnell and Mary Wilson are credible, but that corroborating evidence would be important in a courtroom setting. Further, pursuant to RCW 9.73.090

(1) (a) There are reasonable grounds to believe that the crime of solicitation has been committed.

(b) There are reasonable grounds that through this order evidence may be obtained essential to the prosecution of the case.

© Detectives have considered other investigative techniques:

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

- I. There is no reasonable belief that direct contact with the defendant will result in anything but a denial.
- II. The critical witnesses have already been interviewed and more corroborating evidence is essential to prove that the threat is real and that the crime has occurred.
- III. Time is of the essence, since having been so far turned down, Mitchell Varnell may well be approaching others.
- IV. There are no other technique available to corroborate the statements of the witnesses.

The Investigative Plan is to:

- 1) Have Mary Wilson contact Mitchell Varnell by phone, and offer to introduce him to someone willing to kill Karen Varnell. This phone call would be recorded, pursuant to this order on a micro cassette tape recorder using a DynaMetric Telephone Logger Patch. Detectives will attempt to complete this call on this day 02-14-02. Mary Wilson has agreed to make such a call, and to have it recorded. It is possible that more than one call will be required, and authorization is requested to allow this to occur from 02-14-02 to 02-22-02. No previous authorization or application has been sought or granted in this investigation.
- 2) The person Mary Wilson will offer to introduce Mitchell Varnell to, will be Snohomish County Sheriff's Deputy Terry Warren, currently assigned as an undercover detective to Snohomish County Regional Drug Task Force. Warren has been a police officer for over 10 years, has a "scruffy" appearance, and has conducted over a hundred undercover investigations with the Task Force.
- 3) Detectives envision at least one phone call between Warren and Mitchell Varnell. Applicant seeks authorization to record those calls as well, using micro cassette tape recorder DynaMetric Telephone Logger Patch. More than one call may be necessary. Warren consents to the recording. Warren will seek to set up an in person meeting with Mitchell Varnell, to take place as soon as possible. A separate order may be sought to record that meeting. The first phone call by Mary Wilson will originate from her residence, which is located in unincorporated Snohomish County, near Lake Stevens and the telephone number of (425) 377-1150 and will take place on February 14, 2002.

Detectives Brad Pince and Dave Heitzman have both been trained in the use and operations of micro cassette tape recorder DynaMetric Telephone Logger Patch.

New Information:

On 02-14-02 the above information was presented to Judge Castleberry of the Snohomish County Superior Court. Judge Castleberry then authorized Affiant to record telephone conversations between Mary Wilson and Mitchell Varnell.

On 02-14-02 at approximately 1540 hours, Affiant and Det. Heitzman met with Mary Wilson at her Snohomish County home. The DynaMetric Telephone Logger Patch was attached to a Sheriff's Office telephone and both were plugged into Wilson's telephone jack located inside

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

her residence. The Logger patch was also connected to a standard micro cassette tape recorder and the equipment was tested.

At approximately 1545 hours, Det. Terry Warren of the Snohomish County Sheriff's Office arrived at our location. Mary Wilson was briefed on the per-arranged scenario we wanted her to follow. At approximately 1556 hours, Wilson called the telephone number 360-435-7100, the telephone number belonging to Mitchell Varnell. The recording equipment was activated and Varnell answered his telephone. The telephone conversation between Wilson and Mitchell lasted until 1620 hours and was successfully recorded.

During the recorded conversation, Wilson was able to convince Varnell that she recently met an individual named Mike who could be trusted, was capable, and willing to take care of "The Problem" (Varnell's wife). Varnell asked Wilson several questions about Mike and told her that he was interested in talking to this person, but was worried about talking to him by telephone. During the conversation, Varnell never denied wanting Karen Varnell killed and he never said that he was just joking or was not serious when he made the offer to Wilson. Instead he talked about how serious a step this would be and how if it went bad he and all those involved would be in serious trouble. At one point in the conversation he suggested to Wilson that she go ahead and have her friend Mike call him but then warned her to distance herself from any further involvement. The telephone conversation ended and the tape has been secured as evidence.

*- I had just
woken up.
Very Tired,
unmedicated
conferred
don't recall
conversation
specifics*

On 02-14-02 at approximately 1715 hours, Detective Terry Warran purchased a new cellular telephone service through Cingular Wireless and purchased a Nokia cellular telephone for that account. The telephone number for the new account is 425-220-5785. Det. Warran also has a Digital tape recorder that has an earpiece attachment. Det. Warran has been trained in the use of the digital recorder and has used it in many of his investigations. Det. Warran states that the digital recorder is capable of recording any phone calls made from a Nokia cellular telephone.

Affiant believes that Mitchell Varnell has engaged in solicitation to commit murder in the first degree. Affiant believes both Karen Varnell and Mary Wilson are credible, but that corroborating evidence would be important in a courtroom setting. Affiant believes that the recorded conversation between Mary Wilson and Mitchell Varnell has greatly improved chances of this case being charged in Snohomish County Superior Court. Affiant believes that further recorded conversations between Det. Warran and Mitchell Varnell would further corroborate the information provided by witnesses.

Further, pursuant to RCW 9.73.090

(2) (a) There are reasonable grounds to believe that the crime of solicitation has been committed.

(b) There are reasonable grounds that through this order evidence may be obtained essential to the prosecution of the case.

© Detectives have considered other investigative techniques:

V. There is no reasonable belief that direct contact with the defendant will result in anything but a denial.

VI. The critical witnesses have already been interviewed and more corroborating evidence is essential to prove that the threat is real and that the crime has occurred.

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

- VII. Time is of the essence, since having been so far turned down, Mitchell Varnell may well be approaching others.
- VIII. There are no other technique available to corroborate the statements of the witnesses.

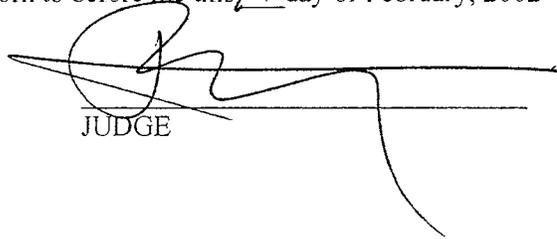
The new investigative plan is to have Det. Warren call Mitchell Varnell and see if he is willing to discuss plans to have Karen Varnell killed. If the talks progress it is believed that eventually a face to face meeting between Varnell and Warren will take place, and would probably lead to additional incriminating statements from Varnell.

The telephone call from Det. Warran to Mitchell Varnell will take place on 02-14-02 at approximately 2200 hours. Det. Warren will call from his cellular telephone number 425-220-5785 and he will be in the Snohomish County Courthouse when the call is made.



DETECTIVE BRAD PINCE

Subscribed and sworn to before me this 14 day of February, 2002



JUDGE

Application approved:

Approved By Telephone
John Addock 2/14/02
Deputy Prosecuting Attorney

DECLARATION OF MARY WILSON

I declare under penalty of perjury of the laws of the State of Washington that the following statement is true and correct:

My name is Mary Wilson. I am a resident of Snohomish County, Washington. I have been employed by Mitchell Varnell to work out of his home office in his business, Mitchell Excavating, Inc. I have been working for Mitchell Varnell since approximately August 2001. I have been Mitchell Varnell's personal secretary at his home at 13510 Jordan Trails Road. As part of my job I regularly paid his personal and business bills, helped him with his Labor & Industries claim, wrote letters for him, made phone calls for him, and helped him organize his office.

I own a handgun which I carry with me regularly. (I also have a CPL ^{CLWF} (concealed pistol license). Approximately 2 weeks ago while at Mitchell's home office, Mitchell saw my handgun. He picked it up, held it, and looked at it. While holding the gun he asked me if he could borrow it for "a few days." I didn't say much at the time. He then asked me if he could buy the gun from me. I said no. He asked me if I knew anyone who might sell him a handgun. He told me he had been trying to buy a handgun but hadn't had any success. During this conversation, Mitchell referred to his former wife Karen Varnell. He described her as his "problem." He asked me if I knew anyone who might be willing to "take care" of his "problem." Mitchell told me he had \$50,000 cash to pay someone to "take care" of Karen Varnell. I didn't really know what to make of his statements at the time, but my perception was that he was sincere with what he was saying. I took his statements seriously and I believe he was serious. I told him I wasn't interested and that I didn't know anyone who would be interested in helping him.

Within a day of the conversations described above, I was again at Mitchell Varnell's home office at Jordan Trails Road. While there Mitchell approached me again about Karen Varnell. He made a comment about the gun I carry, and said "Are you sure? \$50,000 to kill my wife?" His demeanor was like that of a salesman trying to sell me—or convince me—to do something. He was looking at me with a straight face waiting for a response as to whether I was interested. I tried to change the subject. I think I may have just told him that "no," I wasn't going to help and didn't know anyone who would.

ORIGINAL

94

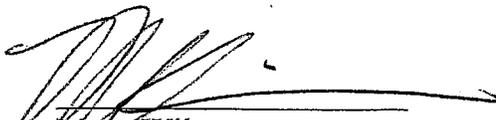
Mitchell regularly uses "Post-It" notes to leave notes to himself and notes to me. After the conversations described above took place, I found several "Post-It" notes stuck together. The notes were all in Mitchell's handwriting. The notes appeared to me to contain some sort of plan and, from the comments and statements Mitchell had just made to me, I believed the notes set forth Mitchell's plan to harm Karen Varnell. I gave the notes to Karen Varnell and told her what Mitchell had said to me. I did this because I felt she was in danger and that Mitchell might try to hurt or kill her. Mitchell does not know that I have seen the notes, nor does he know that I gave them to Karen Varnell. (I have attached to this affidavit true and identical copies (magnified in size) of Mitchell's notes.) - CORRECT

During my employment with Mitchell I was aware of much of what was going on in his divorce case. Mitchell made statements to me that he hoped for reconciliation with Karen Varnell. However, in the last 4 weeks or so Mitchell stopped talking of reconciliation. He began describing Karen Varnell as his "problem" and talked often of "getting rid of her." Mitchell has told me that he has a rifle at his home. He told me he can shoot an elk from a great distance, and how easily he could shoot his wife from a great distance.

I do not plan to return to work with Mitchell Varnell. He has acted inappropriate toward me and has made threats toward my husband. I am scared of Mr. Varnell and I am scared for his former wife, Karen Varnell.

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON THAT THE ABOVE STATEMENT IS TRUE AND CORRECT.

February 11, 2002


Mary Wilson

ORIGINAL

95

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

APPLICATION FOR ORDERSEEKING
AUTHORIZATION FOR THE INTERCEPTION AFFIDAVIT OF
AND RECORDING OF CONVERSATIONS DETECTIVE BRAD PINCE
PURSUANT TO RCW 9.73.090

STATE OF WASHINGTON

COUNTY OF SNOHOMISH

I, Detective Brad Pince of the Snohomish County Sheriff's Office, being first duly sworn on oath, deposes and says:

1. Affiant is Detective Brad Pince, # 1125, a full time, fully commissioned, Deputy Sheriff, who has been employed by the Snohomish County Sheriff's Office for 20 years. Your Affiant has been assigned a Detective in the Investigations Division of the Sheriff's Office for the past 17 years. For the last 12 years, Your Affiant has been assigned to the Major Crimes Unit where his caseload consists of Felony Assaults, Robberies, and Homicides. Your Affiant has received several hundred hours of specialized training in investigative techniques and has authored and served many search warrants in reference to his investigations and many of those cases have resulted in felony charges and convictions.
2. On 02-12-02 the Arlington Police Department contacted the Snohomish County Sheriff's Office, Major Crimes Unit and spoke to Sgt. Stich. Sgt. Stich was told that Arlington police had information from a local resident that her ex-husband was offering to pay \$50,000.00 to have her killed. Sgt. Stich assigned the investigation to your Affiant and my partner, Det. D. Heitzman.

On 02-12-02 at approximately 1325 hours, I met with Sgt. Erlandson # 1610, of the Arlington Police Department. Erlandson verbally identified the persons involved in this incident as follows:

Victim/Complainant Karen Sue Varnell, dob 08-13-59
 18006 Country Club Dr.
 Arlington, WA 98223 Ph # 360-474-1460

Suspect Mitchell Lee Varnell, dob 06-21-61
 13510 Jordan Trails Rd.
 Arlington, WA 98223

390

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

Witness Mary E. Wilson, dob 06-14-73

Witness John C. Olsen, dob 09-05-57

Sgt. Erlandson explained that Karen and Mitchell Varnell have recently completed a long and bitter divorce process and that Karen was awarded a cash settlement and custody of two minor children. He stated that there is a current, valid, no contact order in effect, which limits Mitchell's contact with Karen and the children. He said that Karen has reported many violations of that order by Mitchell. He explained that on 02-04-02 Karen Varnell came to the Arlington Police Department and provided a written statement about a conversation she just had with witness, John Olson. Varnell explained that Olson lives near Mitchell and that she knew him from the neighborhood. She said that he stopped at her home that afternoon and warned her that her ex-husband had recently offered to pay \$50,000.00 to have her killed. Olson told Karen that he heard this from his girlfriend's son, Joshua Stivala. Olson apparently told Karen that he heard of this offer from Joshua and that Joshua turned down the offer. Karen Varnell provided a two page written statement about her conversation with John Olson.

Sgt. Erlandson stated that Arlington Police did not contact Olson or Stivala about Karen's claims.

Erlandson then explained that on 02-11-02 Karen Varnell again called the Arlington Police to report yet another threat on her life. Varnell provided at a 4 page written statement about the new threat. In her statement Varnell explained that on 02-11-02 at approximately 2 PM, she found a note on her front door that said "Karen I need to talk to you. Please call me 425-377-1150 - Mary. Varnell said that she called the number and learned that Mary was her ex-husband's secretary, Mary Wilson. Mary Wilson told Varnell that she was worried for her (Varnell's) safety, as Mitch had twice offered her \$50,000.00 to kill Karen. Wilson went on to explain that she also found notes written by Mitchell Varnell that she believes outline his plans to kill Karen.

Karen Varnell stated that she contacted her civil attorney, Cory Rein and that he went with her to meet Mary Wilson. Mary Wilson provided a 2 page typed declaration about the two offers Mitchell Varnell made to her about killing Karen and about the notes she found detailing his plans. Wilson turned over the notes to Rein.

Erlandson went on to explain that he took the threats against Karen Varnell very seriously. He said that Arlington Police recently investigated an unrelated burglary where Mitchell Varnell is the prime suspect. He stated that the victim's in that burglary were involved in a business deal with Varnell's Land Excavation business. He said there is a dispute over money owed and that there is a legal battle on going between Mitchell Varnell and Chris & Kelly Smith. He said that

391

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

Chris Smith is also an Arlington Firefighter who works 24-hour schedules. He explained that on 01-12-01, Chris Smith was at work and his wife and kids were home alone. When Mrs. Smith woke up that morning she found that someone had entered her residence during the night and had written messages all over the house with a marking pen. Those messages included threats to come back and rape Mrs. Smith, kill their dog, talked about how nice their kids looked while sleeping, and stated that their shouldn't be anymore problems. The burglary case has been documented under the Arlington Police case number 01-3737.

Erlandson said that the Arlington Police obtained a search warrant for Mitchell Varnell's residence in reference to the burglary investigation and on 12-03-01 it was served. While serving the warrant, they located approximately \$150,000.00 cash that Varnell was keeping in a safe inside his home. Erlandson said that other than the on-going and current dispute with Mitchell there was no other evidence tying him to the burglary. He did say that Karen Varnell was shown photographs of the hand written messages on the Smith's walls and she recognized the writing as Mitchell's. He stated that the case was submitted to the Snohomish County Prosecutor's office for charging.

Sgt. Erlandson turned over to the written statements from Karen Varnell and was told by affiant that the Snohomish County Sheriff's office would be taking over the investigation. Erlandson agreed to provide all written reports from Arlington Police Department in reference to Mitchell Varnell.

On 02-12-02 approximately 1345 hours, Cory Rien called the Snohomish County Sheriff's Office and spoke to Detective J. Scharf of the Major Crimes Unit. He told Scharf that he had a statement and some notes in reference to a murder for hire plot unfolding against his client, Karen Varnell. At approximately 1430 hours, your Affiant met with Cory Rein at his office and obtained a two page typed declaration signed by May Wilson. Rein stated that it is a statement he obtained from Wilson about being offered money to kill Karen Varnell. Attached to the Declaration were 5 pages of hand written notes. Rein said that the attached notes are enlarged copies of the "post-it notes" described in Wilson's declaration. Rein then handed me an envelope containing the original notes he received from Wilson. Copies of those notes are attached.

On 02-12-02 at approximately 1615 hours, Karen Varnell met with Affiant and Det. Heitzman at the Snohomish County Sheriff's Office. She provided a tape-recorded statement about her relationship with Mitchell Varnell, details of his past physical assaults on her as well as threats he made to her about killing her. She described Mitchell Varnell as a needing to be in control of everything and that when the Courts settled her divorce; they took his most prized possessions (his children and his money) and gave them to her. She explained that she was granted full custody of their two boys and that Mitchell was ordered to give her \$300,000.00 cash and pay \$1600.00 a month in child support. She stated that he could not pay her the money he owes without selling some of his property and toys. She said that he would much rather see her dead than have to pay her or let

392

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

her continue to have custody of the boys. She said that in the past he has talked to her about how easy it would be to kill someone and get away with it if your alibi was set up properly. She said that she saw the written messages on the Smith's walls and she knows it was Mitchell's handwriting. Karen stated that in January she spoke to Mitchell by telephone and confronted him about the Smith Burglary. He first denied it but when she told him she saw the writing and it was his handwriting, She said that he then stated "Oh well they deserved it." When asked about her conversation with John Olson, Varnell stated that he was very worried about getting involved in her dispute with Mitchell, as they were still neighbors. She also said that she did not think Joshua Stivala would ever cooperate with the police and would instead warn Mitchell if police contacted him. At this time, neither John Olson nor Joshua Stivala has been contacted by SCSO Detectives.

On 02-13-02 at approximately 1225 hours, Affiant and Det Heitzman met with Mary Wilson. She provided a tape-recorded statement about her history with Mitchell Varnell and about his offers to pay her to kill Karen Varnell. She indicated that she went to work for Varnell in August of 2001, as Varnell's secretary. She said that she took care of his company business as well as some of his personal business. She stated that she works out of Varnell's home and that Varnell has many time talked to her about his divorce problems. She stated that in the beginning, Varnell complained about his wife frequently but also talked about wanting her to come back to him. Wilson said that over the past month or so, Varnell quit talking about getting back together with Karen and now only refers to her as his "problem" and needing to "get rid of his problem". She said that it was near the end of January when Varnell saw her handgun, which she carries in a backpack. She said he wanted to see it and asked to borrow it for a while. She said that he also asked to buy the gun from her and that was when he first offered her money to kill Karen. She said she told him no and changed the subject. Wilson said that very next day; she was out in Varnell's shop talking to him and another one of Varnell's employees (Ron White). She said that Varnell again said that she could make \$50,000.00 by killing Karen. Varnell said that Ron White mentioned that they (meaning her and Ron White) would not do that. Wilson said that was the last time Varnell offered her money to kill Karen, but that she then found the hand written notes that in her mind, clearly outlines Varnell's plans to kill Karen. She said that she first left the notes alone but on Friday (02-08-02) she saw the notes were still in the same place and she took them.

Wilson stated that she is not going to work for Varnell anymore but that he has been out of town fishing and doesn't know she is quitting.

Wilson was asked if she was willing to have a conversation with Mitchell Varnell tape-recorded while she questioned him about his offer to pay to have Karen killed. She agreed to assist SCSO with this investigation and is willing to call Varnell and engage him in a discussion about his offer and attempt to introduce

393

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

him to an undercover SCSO Detective who she will say is interested in killing Karen Varnell for the money.

3. Affiant believes that Mitchell Varnell has engaged in solicitation to commit murder in the first degree. Affiant believes both Karen Varnell and Mary Wilson are credible, but that corroborating evidence would be important in a courtroom setting.

Further, pursuant to RCW 9.73.090

- (1) (a) There are reasonable grounds to believe that the crime of solicitation has been committed.
- (b) There are reasonable grounds that through this order evidence may be obtained essential to the prosecution of the case.
- © Detectives have considered other investigative techniques:
- I. There is no reasonable belief that direct contact with the defendant will result in anything but a denial.
 - II. The critical witnesses have already been interviewed and more corroborating evidence is essential to prove that the threat is real and that the crime has occurred.
 - III. Time is of the essence, since having been so far turned down, Mitchell Varnell may well be approaching others.
 - IV. There are no other technique available to corroborate the statements of the witnesses.

The Investigative Plan is to:

- 1) Have Mary Wilson contact Mitchell Varnell by phone, and offer to introduce him to someone willing to kill Karen Varnell. This phone call would be recorded, pursuant to this order on a micro cassette tape recorder using a DynaMetric Telephone Logger Patch. Detectives will attempt to complete this call on this day 02-14-02. Mary Wilson has agreed to make such a call, and to have it recorded. It is possible that more than one call will be required, and authorization is requested to allow this to occur from 02-14-02 to 02-22-02. No previous authorization or application has been sought or granted in this investigation.
- 2) The person Mary Wilson will offer to introduce Mitchell Varnell to, will be Snohomish County Sheriff's Deputy Terry Warren, currently assigned as an undercover detective to Snohomish County Regional Drug Task Force. Warren has been a police officer for over 10 years, has a "scruffy" appearance, and has conducted over a hundred undercover investigations with the Task Force.
- 3) Detectives envision at least one phone call between Warren and Mitchell Varnell. Applicant seeks authorization to record those calls as well, using micro cassette tape recorder DynaMetric Telephone Logger Patch. More than one call may be necessary. Warren consents to the recording. Warren will seek to set up an in person meeting with Mitchell Varnell, to take place as soon as possible. A separate order may be sought to record that meeting.

394

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

The first phone call by Mary Wilson will originate from her residence, which is located in unincorporated Snohomish County, near Lake Stevens and the telephone number of (425) 377-1150 and will take place on February 14, 2002.

Detectives Brad Pince and Dave Heitzman have both been trained in the use and operations of micro cassette tape recorder DynaMetric Telephone Logger Patch.

New Information:

On 02-14-02 the above information was presented to Judge Castleberry of the Snohomish County Superior Court. Judge Castleberry then authorized Affiant to record telephone conversations between Mary Wilson and Mitchell Varnell.

On 02-14-02 at approximately 1540 hours, Affiant and Det. Heitzman met with Mary Wilson at her Snohomish County home. The DynaMetric Telephone Logger Patch was attached to a Sheriff's Office telephone and both were plugged into Wilson's telephone jack located inside her residence. The Logger patch was also connected to a standard micro cassette tape recorder and the equipment was tested.

At approximately 1545 hours, Det. Terry Warren of the Snohomish County Sheriff's Office arrived at our location. Mary Wilson was briefed on the per-arranged scenario we wanted her to follow. At approximately 1556 hours, Wilson called the telephone number 360-435-7100, the telephone number belonging to Mitchell Varnell. The recording equipment was activated and Varnell answered his telephone. The telephone conversation between Wilson and Mitchell lasted until 1620 hours and was successfully recorded.

During the recorded conversation, Wilson was able to convince Varnell that she recently met an individual named Mike who could be trusted, was capable, and willing to take care of "The Problem" (Varnell's wife). Varnell asked Wilson several questions about Mike and told her that he was interested in talking to this person, but was worried about talking to him by telephone. During the conversation, Varnell never denied wanting Karen Varnell killed and he never said that he was just joking or was not serious when he made the offer to Wilson. Instead he talked about how serious a step this would be and how if it went bad he and all those involved would be in serious trouble. At one point in the conversation he suggested to Wilson that she go ahead and have her friend Mike call him but then warned her to distance herself from any further involvement. The telephone conversation ended and the tape has been secured as evidence.

On 02-14-02 at approximately 1715 hours, Detective Terry Warran purchased a new cellular telephone service through Cingular Wireless and purchased a Nokia cellular telephone for that account. The telephone number for the new account is 425-220-5785. Det. Warran also has a Digital tape recorder that has an earpiece attachment. Det.

395

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

Warran has been trained in the use of the digital recorder and has used it in many of his investigations. Det. Warran states that the digital recorder is capable of recording any phone calls made from a Nokia cellular telephone.

Affiant believes that Mitchell Varnell has engaged in solicitation to commit murder in the first degree. Affiant believes both Karen Varnell and Mary Wilson are credible, but that corroborating evidence would be important in a courtroom setting. Affiant believes that the recorded conversation between Mary Wilson and Mitchell Varnell has greatly improved chances of this case being charged in Snohomish County Superior Court. Affiant believes that further recorded conversations between Det. Warran and Mitchell Varnell would further corroborate the information provided by witnesses.

Further, pursuant to RCW 9.73.090

- (2) (a) There are reasonable grounds to believe that the crime of solicitation has been committed.
- (b) There are reasonable grounds that through this order evidence may be obtained essential to the prosecution of the case.
- © Detectives have considered other investigative techniques:
 - V. There is no reasonable belief that direct contact with the defendant will result in anything but a denial.
 - VI. The critical witnesses have already been interviewed and more corroborating evidence is essential to prove that the threat is real and that the crime has occurred.
 - VII. Time is of the essence, since having been so far turned down, Mitchell Varnell may well be approaching others.
 - VIII. There are no other technique available to corroborate the statements of the witnesses.

The new investigative plan is to have Det. Warren call Mitchell Varnell and see if he is willing to discuss plans to have Karen Varnell killed. If the talks progress it is believed that eventually a face to face meeting between Varnell and Warren will take place, and would probably lead to additional incriminating statements from Varnell.

The telephone call from Det. Warran to Mitchell Varnell will take place on 02-14-02 at approximately 2200 hours. Det. Warren will call from his cellular telephone number 425-220-5785 and he will be in the Snohomish County Courthouse when the call is made.

SECOND NEW INFORMATION

Note: This will be the third affidavit requesting authorization to record conversations in reference to SCSO case # SP 02-03092, A solicitation for murder investigation.

On 02-14-02 at approximately 2100 hours, Affiant presented the second affidavit above to Snohomish county Superior Court Judge Castleberry and he authorized Affiant to

396

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

record a telephone conversation between Detective Terry Warren and Mitchell Varnell. At approximately 2250 hours, Det Warren and Det. Thomas of the Task Force arrived at the Sheriff's Office located on the fourth floor of the Snohomish County Courthouse. Your Affiant, Det. Heitzman, and Sgt. Stich all from the SCSO Major Crimes Unit were also present. All parties listened to the recorded conversation between Mary Wilson and Mitchell Varnell, which took place earlier in the day. Det. Warren set up the recording equipment. Det. Warren was using a Nokia cellular telephone along with a new Cingular Wireless pre-paid account that had been purchased and activated that day specifically for this investigation. The telephone number associated to that account is 425-220-5785.

On 02-14-02 at approximately 2330 hours, Det Warren activated the recording devise and called the telephone number 360-435-7100, which is the telephone number for Mitchell Varnell. Mitchell Varnell answered the phone and Det. Warren talked to Varnell for approximately 16 minutes with the call ending at 2346 hours. The entire conversation was recorded; however there were equipment problems which made Varnell's portion of the conversation difficult to hear. Det. Warren prepared the following, brief, typed summery of his conversation with Varnell:

I introduced myself to Mitch, we exchanged greetings, and I said we had a mutual friend. He said Mary Wilson. I told him that I understand that he has a job for me. He told me that he didn't want to talk over the phone and wanted me to give him a number of a hard line so that we could talk. I told him that I didn't want to say anything over the phone either, but I wanted to know if he could afford it. He said he could. I also told him that I wanted to know if he was cool. He said he was and he said he wondered if I could keep things quiet because he did. I told him that only two people know and that's it. He and I.

He was concerned about the phone and asked if I was calling from a hard line. I told him that I was calling from a cell phone and that it was safer. He told me that the police did a search warrant on his house and kicked the door in, pointed guns at him, and arrested him for nothing. He said one of the officers told him to be careful what he says over the phone, and that's why he didn't want to talk on his home phone. We talked about his cell phone and he didn't want the phone number coming back on his bill. I told him that it was a pre-paid cell phone and there was no way to trace it, and that I would be throwing it away when I was done.

We agreed to meet and he told me he lived in Arlington. I said I lived north but I didn't want to meet him in my back yard. I suggested Lynnwood or Everett, and he said that he had a bad back and didn't want to go too far from home. He said that he would go to Everett. I suggested the Everett Mall and he said the Cookbook Restaurant. He described where it was and then I asked him when. He became concerned again about the phone. I told him that my

397

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

phone was good because it was pre-paid and that is what he should use. I said that I am in another business and if it's good for the Mexicans, then it's good for me, referring to the security of the cell phone. He said that he didn't want to have the time arranged over the phone just in case, and then there would be police at the restaurant waiting for him. I told him that I would not be happy with that.

He said that Saturday would be better for him because then he would want to get away for a couple days. I asked him when he would want the "job" done and he said "the sooner the better."

I asked him if he was going to bring some earnest money, and he said that he would bring information. I told him that it might be the only time I meet him for a while so that I could go away and then come back for the rest of my money. We then began talking as if I was going to be doing a lawn job for him, and I asked him if he could get me a picture of the yard. He said that he could get a picture of the yard and then said that he could get some numbers too. I then clarified that I meant that I wanted a picture of the job. He said that he could get me that. He talked about having problems with his lawn and how weeds have been growing and he has to make a decision whether he gets rid of the weeds (referring to his ex-wife.) He also referred to it as a pruning job.

We ended the conversation with him planning on calling me on my cell phone, which I gave him the number, on Saturday at 10:00 AM. I told him that I might be out of cell range at the time and he said to call him at his house and give him a time for him to call my cell phone.

Affiant believes that Mitchell Varnell has engaged in and is continuing to engage in solicitation to commit murder in the first degree. Affiant believes that further recorded conversations between Det. Warran and Mitchell Varnell would further corroborate the information provided by witnesses and will likely result in a planned face-to-face meeting between Warren and Varnell.

Further, pursuant to RCW 9.73.090

- (3) (a) There are reasonable grounds to believe that the crime of solicitation has been committed.
- (b) There are reasonable grounds that through this order evidence may be obtained essential to the prosecution of the case.
- (c) Detectives have considered other investigative techniques:
 - IX. There is no reasonable belief that if contacted by a known Police Officer, the defendant will do anything but deny the allegations.
 - X. The critical witnesses have already been interviewed and more corroborating evidence is essential to prove that the threat is real and that the crime has occurred.

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

- XI. Time is of the essence, since Mitchell Varnell is now pressuring Mary Wilson to return to work.
- XII. There are no other techniques available to corroborate the statements of the witnesses.

New Up-dated Investigative Plan:

Affiant plans on having Det. Warren initiate a phone call from his new cellular telephone to Mitchell Varnell on 02-15-02 at approximately 1700 hours. That call will be made from the Snohomish County Sheriff's Office and Det. Warren will suggest that Varnell go to another telephone that he knows is safe (probably a pay phone) and return his call. It may require more than one brief call by Det. Warren to Mitchell Varnell to set up the secure call. Affiant expects Varnell to talk more freely on a telephone he believes cannot be monitored. Affiant expects Det. Warren to be able to gather further details about Varnell's willingness to pay to have Karen Varnell killed and will attempt to set up a face-to-face meeting with Varnell to discuss those details. Affiant wants to record all of the phone calls between Warren and Varnell using the same digital recorder used by Det. Warren for the 02-14-02, telephone call. Det. Warren will be using a different microphone system attached to the recorder and the equipment will be tested prior to any recordings. Det. Warren is trained and has used the recording equipment he will be using. Affiant expects to be requesting yet another court authorized recording order once the details and location information of the planned face-to-face meeting can be confirmed.

THIRD NEW INFORMATION:

This is the fourth request for authorization to record conversations in reference to this investigation.

On 02-15-02 at approximately 1400 hours, the above affidavit was presented to Snohomish County Superior Court Judge Castleberry and he authorized affiant to record phone conversations between Det. Terry Warren and Mitchell Varnell.

On 02-15-02 at approximately 1800 hours, Det. Warren and Det. Vargas arrived at the Courthouse. Det. Warren set up the recording equipment and it was tested. At approximately 1812 hours, Det. Warren activated the recording equipment and called the telephone number 360-345-7100, the number for Mitchell Varnell. There was no answer at the other end and Det. Warren left a voice mail message, asking Varnell to get to a safe phone and call him back.

At approximately 1916 hours, Det Warren again activated the recording equipment and placed a second call to Varnell. This time Varnell answered and Det. Warren spoke to him for approximately two minutes. The call ended at approximately 1918 hours and was successfully recorded. Det. Warren completed a typed summery in reference to the two phone calls recorded and that summery is as follows:

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

On 02-15-02, I called Varnell at about 1815 hrs, to try to get him to go to a phone that he felt secure using, to talk to me about meeting and discussing the murder of his wife. I called 360-435-7100. The answering machine came on and I left him a message to call me from another phone when he gets this message.

I called again at 1915 hrs, and Varnell answered. He told me that he just got home and he got my message but he didn't have time to call me back. He said that someone is coming over to talk about some real estate. I told him that I have too much going on in the morning to receive his call, and for him to call me later tonight. He said that he had to go to his mother's house to pick up a camera and then he was going out for a while in Snohomish. He said he would call me later.

On 02-16-02 at approximately 1300 hours, Det. Warren spoke to Mitchell Varnell by telephone. Warren was out of County at the time and the conversation was not recorded. Varnell told Det. Warren that he had left home this morning and had forgotten Warren's telephone number and that was why he had not called. Mitchell Varnell suggested to Det. Warren that he meet with him (Varnell) at an Excavating jobsite north of Arlington. Det Warren suggested that they meet at the location Varnell suggested during the first telephone call, The Cookbook Restaurant, located in north Everett. The address for the Cookbook is 1216 Broadway, Everett, WA.

Affiant believes that Mitchell Varnell has engaged in and is continuing to engage in solicitation to commit murder in the first degree. Affiant believes that further recorded conversations between Det. Warren and Mitchell Varnell would further corroborate the information provided by witnesses. Affiant believes that during this face-to-face meeting, Mitchell Varnell will provide details of his request to have Karen Varnell killed as well as photographs and identification information about Karen Varnell. It is also expected that Varnell will provide a down payment for murder.

Further, pursuant to RCW 9.73.090

- (4) (a) There are reasonable grounds to believe that the crime of solicitation has been committed.
- (b) There are reasonable grounds that through this order evidence may be obtained essential to the prosecution of the case.
- (c) Detectives have considered other investigative techniques:
 - XIII. There is no reasonable belief that if contacted by a known Police Officer, the defendant will do anything but deny the allegations.
 - XIV. The critical witnesses have already been interviewed and more corroborating evidence is essential to prove that the threat is real and that the crime has occurred.
 - XV. Time is of the essence, since Mitchell Varnell is now pressuring Mary Wilson to return to work.
 - XVI. There are no other techniques available to corroborate the statements of the witnesses.

Investigative plan.

400

AFFIDAVIT FOR AUTHORIZATION TO RECORD PHONE CALLS

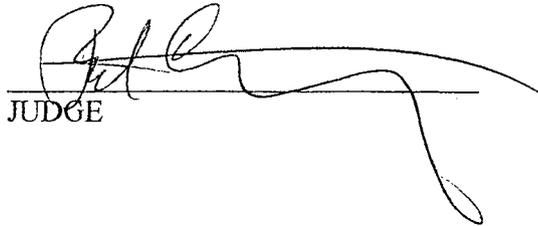
Affiant plans on have Det. Warren wearing a hidden microphone, which would be connected to a transmitter. Det. Warren will go into the Cookbook Restaurant located at 1216 Broadway, Everett, WA, at approximately 1600 hours on 02-16-02. Det. Warren will attempt to engage in a conversation with Mitchell Varnell and obtain identification information as well as photographs of Karen Varnell. Det. Warren will ask Varnell to provide as many details as he can about how he wants Karen Varnell to be killed. Det. Warren will attempt to negotiate a full price for the murder and will attempt to get Varnell to make a partial payment towards that job. Affiant, along with Det. Thomas and Sgt Kassa of the Drug Task Force will be near by monitoring and recording the conversation between Warren and Varnell. The recording device will be a digital recorder used by the Drug Task Force. Det. Thomas has been trained and is knowledgeable about the use of the digital recorder. When the conversation is complete and Det. Warren can safely leave the area, Mitchell Varnell will be arrested by a rescue/take down team that will be standing by.

Affiant believes there is probable cause to arrest Mitchell Varnell for Solicitation to commit First Degree Murder.



DETECTIVE BRAD PINCE

Subscribed and sworn to before me this 16 day of February, 2002



JUDGE

Application approved:

By P Hone
John Adcock
Deputy Prosecuting Attorney