

87529-4

NO. 65130-7-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

In Re Personal Restraint Petition Of

NADDER BARON HAGHIGHI,

Petitioner.

RECEIVED
COURT OF APPEALS
DIVISION ONE
JUL 02 2010

STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION

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A. ISSUES PRESENTED

1. Whether this personal restraint petition should be dismissed where the change in the law that Haghghi claims warrants reconsideration of his suppression motion is not retroactively applicable to this case and even if it would apply, he has not established a constitutional violation or prejudice in this case, where the evidence was obtained via a valid search warrant and where absent the challenged evidence, overwhelming evidence supported the jury's verdicts.

2. Whether this personal restraint petition should be dismissed where two other claims mentioned by Haghghi are unsupported by legal authority or analysis.

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Haghghi was convicted of one count of theft in the first degree and seven counts of unlawful issuance of checks or drafts (UICD), all occurring between November 15, 2005, and January 3, 2006. Appendix A. He is being detained pursuant to those convictions. Haghghi received exceptional sentences on every count, the maximum term of 60 months for the seven counts of

UICD and 96 months on the theft in the first degree, all to run concurrently. Id.

Haghighi filed a direct appeal in this court, No. 61436-3-I. This Court affirmed convictions on all counts except Count 5, which was vacated based on instructional error. Appendix B. The mandate issued on September 25, 2009. Appendix C.

2. SUBSTANTIVE FACTS

The eight charges in this case all relate to bad checks presented by Haghighi to six victims, between November 15, 2005, and January 3, 2006. Appendix D. In each instance Haghighi represented himself to be a wealthy businessman and preyed on people who wanted to do business with him or wanted to help him when he claimed desperate need.

Haghighi opened a checking account at Washington Mutual Bank on September 1, 2005. 4RP 50, 52.¹ The account was closed on November 15, 2005. 4RP 54. The total amount deposited in that account over the entire time that it was open was

¹ The State has filed a motion to transfer two volumes of the record of proceedings from the closed appeal to this personal restraint petition, based on the volume of the relevant record. The two volumes are cited as follows: 4RP – 10/29/2007 (title page states 10/25); 5RP – 10/30/2007.

\$10,362.16 (and of that, \$9,000 was in the form of a check that was returned unpaid). Appendix E (admitted as Ex. 17 at trial).

On October 1, 2005, Haghighi opened two accounts with Allstate Bank, by making application with an Allstate agent. 4RP 8-11. Allstate Bank provides internet banking only. 4RP 6, 45. Haghighi provided a check as the initial deposit: a check for \$150,000 on Haghighi's Washington Mutual account. 4RP 12-13.

On October 5, 2005, Haghighi opened two more accounts with Allstate Bank. 4RP 22-23. These were joint accounts with his wife, Olga Kapitonoko. 4RP 23-24. Haghighi again provided a check as the initial deposit: this time a check for \$100,000 on his Washington Mutual account. 4RP 24-25.

Both checks used as initial deposits to Haghighi's Allstate Bank accounts were returned for insufficient funds. 4RP 16, 25. Allstate Bank sent letters to Haghighi on October 11 and October 17, 2005, informing him that the checks were returned and the funds withdrawn from his accounts. 4RP 18-21, 26-27. No other deposits were made to any of the accounts. 4RP 37.

Nevertheless, Haghighi wrote a very large number of checks on the two Allstate checking accounts. 4RP 40-43. Those checks

include the checks related to the charges that were brought in this case:

Counts 1 and 2, UICD: Payroll checks dated November 15, 2005, to Alexandr Kravchenko and Galina Kravchenko, each in the amount of \$3,150.26. 4RP 66-79. Both checks bounced. 4RP 70.

Count 3, UICD: A check for custom tailored suits dated November 23, 2005, to Kurt Riber, in the amount of \$40,244. 4RP 86-89. The check bounced. 4RP 89-90.

Counts 4 and 5, UICD: Two checks written on December 5, 2005, one for \$1400 costs for production of a commercial and one for \$2500 in cash, to Enhanced Visual Images, the business of Michael Dziak. 5RP 8-10. (Two payroll checks to Haghghi, from his own business and written on the Washington Mutual account, also were endorsed to Michael Dziak on the same day. 5RP 13.) All four checks were returned "account closed." 5RP 15.

Count 6, Theft 1: On December 16, 2005, Haghghi opened an account at Venture Bank in Kent, using as a deposit a payroll check to Haghghi from his own business. 4RP 109-110, 118. He convinced the bank manager to immediately give him \$4000 in cash, which is the gravamen of this charge of theft in the first degree. 4RP 110. The check was returned "account closed." 4RP 124.

Count 7, UICD: A check dated December 30, 2005, in exchange for \$500 cash and to pre-pay a business account at a service station, in the amount of \$1000. 4RP 144, 149-50. The check was not honored. 4RP 150.

Count 8, UICD: A check dated January 3, 2006, to be used in a joint real estate venture, in the amount of \$50,000. 4RP 152-54. It was returned without payment. 4RP 153-54.

C. ARGUMENT

An appellate court will grant substantive review of a personal restraint petition only when the petitioner makes a threshold showing of constitutional error from which he has suffered actual prejudice or nonconstitutional error which constitutes a fundamental defect that inherently resulted in a complete miscarriage of justice. In re Pers. Restraint of Cook, 114 Wn. 2d 802, 813, 792 P.2d 506 (1990). The petitioner may not renew an argument that was raised and rejected on direct appeal unless the interests of justice require relitigation of the issue. In re Pers. Restraint of Davis, 152 Wn.2d 647, 671, 101 P.3d 1 (2004). An intervening change in the applicable law may warrant review of an issue previously raised. Id. at 671 n.15. In a personal restraint petition, the petitioner bears the burden of showing prejudicial error. State v. Brune, 45 Wn. App. 354, 363, 725 P.2d 454 (1986), rev. denied, 110 Wn. 2d 1002 (1988). Bare allegations unsupported by citation to authority, references to the record, or persuasive reasoning cannot sustain this burden of proof. Brune, 45 Wn. App. at 363.

1. THE CLAIMED CHANGE IN THE LAW IS NOT APPLICABLE TO THIS CASE AND NO PREJUDICE HAS BEEN SHOWN.

Haghighi argues simply that State v. Winterstein, 167 Wn.2d 620, 220 P.3d 1226 (2009), is a change in the law that warrants reconsideration of the suppression issue in this case. This claim is without merit. While this Court in Haghighi's case did affirm the denial of the suppression motion by applying the inevitable discovery exception to the exclusionary rule, Haghighi has not established that the interests of justice require relitigation of the suppression issue in this case, where the rule would not apply retroactively to this case and the search was pursuant to a valid search warrant.

Any new rule adopted by Winterstein with respect to the inevitable discovery rule is not applicable in this collateral attack on convictions that were final when that case was decided. Moreover, the Court in Winterstein does not require application of an exclusionary rule in cases such as this, in which there is no violation of the Washington Constitution. Finally, Haghighi has not sustained his burden of establishing prejudice where other unchallenged bank records and the testimony of bank employees

and each of the victims established overwhelming evidence of his guilt independent of the challenged records.

a. Relevant Facts.

The trial court entered findings as to undisputed facts, which are not challenged by Haghghi. Appendix F. King County Superior Court Judge Shaffer approved a search warrant for bank records pertaining to Haghghi's Allstate Bank account. Id. At that point, several victims had identified Haghghi via photo montage and had provided copies of the fraudulent checks and other correspondence from Haghghi. Id.

Allstate Bank's office is located in Illinois. Id. Detective Kaufman faxed the signed warrant to the operations manager at Allstate Bank and eventually received records relating to the Allstate Bank accounts of Haghghi. Id.

The trial court's conclusions of law note that Haghghi was not claiming that probable cause was lacking. Id. The court nevertheless found that there was "ample probable cause" to issue the warrant. Id. The court found that because the search warrant was obtained, there was no violation of Haghghi's constitutional privacy rights or of due process. Id.

b. Any New Rule Adopted By Winterstein With Respect To Inevitable Discovery Is Not Applicable In This Collateral Attack.

The decision in Winterstein was filed on December 3, 2009, after the mandate was issued in this case. 167 Wn.2d 620. Any new rule announced in that case would not be applied retroactively to this case on collateral review.

In Teague v. Lane, 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989), the United States Supreme Court set forth the formulation for determining the retroactive application of new rules. In Teague, a plurality of the Court held that, with few exceptions, a new rule of criminal procedure will not be applied retroactively to cases on collateral review. 489 U.S. at 305. The principles set forth in Teague v. Lane were unanimously applied in Penry v. Lynaugh, 492 U.S. 302, 329-30, 109 S. Ct. 2934, 106 L. Ed. 2d 256 (1989), and have been repeatedly applied by the Court. See e.g. Schriro v. Summerlin, 542 U.S. 348, 124 S. Ct. 2519, 159 L. Ed. 2d 442 (2004) (new rule requiring jury to decide aggravating circumstances in capital case not retroactive); Lambrix v. Singletary, 520 U.S. 518, 117 S. Ct. 1517, 137 L. Ed. 2d 771 (1997) (new rule regarding the "weighing" of aggravating and mitigating factors in capital case not retroactive). Washington courts have

adopted the retroactivity standard set forth in Teague and its progeny. See State v. Hanson, 151 Wn.2d 783, 91 P.3d 888 (2004); In re Pers. Restraint of St. Pierre, 118 Wn.2d 321, 324-27, 823 P.2d 492 (1992) (noting that "we have attempted from the outset to stay in step with the federal retroactivity analysis.")

Pursuant to Teague, when a court's decision results in a new rule, that rule applies to all cases pending on direct review. Summerlin, 542 U.S. at 351. As to convictions that were already final when the new rule was announced, new substantive rules, such as interpretations of criminal statutes, generally apply retroactively. Id. at 351-52. In contrast, new rules of procedure do not apply retroactively unless the new rule constitutes a "watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding." Id. at 352 (citing Teague, 489 U.S. at 311). In order to fall within this narrow category the rule must be one "without which the likelihood of an accurate conviction is *seriously* diminished." Id. (emphasis in original) (citing Teague, 489 U.S. at 313).

As defined by the Supreme Court in Teague, a case announces a "new rule" when it:

imposes a new obligation on the States or the Federal Government. To put it differently, a cases announces a new rule if the result was not *dictated* by precedent existing at the time the defendant's conviction became final.

489 U.S. at 301. A rule is "dictated" by existing precedent when the application of that precedent is "apparent to all reasonable jurists."

Lambrix v. Singletary, 520 U.S. at 527-28 (1997).

A rule is substantive if it alters the range of conduct or the class of persons that the law punishes. Summerlin, 542 U.S. at 353. A rule is procedural if it regulates the manner of determining the defendant's culpability. Id. In Summerlin, the Supreme Court held that the new rule set forth in Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), that a jury rather than a judge must decide the existence of aggravating circumstances in a capital case, is properly classified as procedural. Summerlin, 542 U.S. at 353-54.

The Court's statement in Winterstein that it was rejecting application of the inevitable discovery doctrine as a matter of State constitutional law would be a new procedural rule that would not apply retroactively to convictions already final. It is a new rule because it was not dictated by existing precedent, as the decisions of the Courts of Appeal applying the inevitable discovery rule

illustrate. E.g. State v. Avila-Avina, 99 Wn. App. 9, 17, 991 P.2d 720 (2000); State v. Reyes, 98 Wn. App. 923, 930, 993 P.2d 921 (2000). It is a procedural rule because it relates to the manner of proof at trial, it does not change the elements of the crimes at issue.

“Final” for purposes of retroactivity analysis means “a case in which a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.” St. Pierre, 118 Wn.2d at 327 (quoting Griffith v. Kentucky, 479 U.S. 314, 321 n. 6, 107 S. Ct. 708, 93 L. Ed. 2d 649 (1987)). The mandate in this case issued on September 25, 2009. Appendix C. Because these convictions were final when Winterstein was filed, any new rule announced in it is not applicable here.

c. The Statements In Winterstein Relating To Inevitable Discovery Are Inapplicable Here.

Haghighi also has not shown how the purported rejection of the inevitable discovery exception to the exclusionary rule in Winterstein is significant to his case, in which the challenge was simply to the location at which a valid search warrant was presented to the bank officer with authority to produce records.

The statements in Winterstein relating to inevitable discovery appear to be dictum. Winterstein, 167 Wn.2d at 638 (J. Johnson, concurring). See State v. Morales, 154 Wn. App. 26, 48, 225 P.3d 311 (2010) (arguable whether statement is dictum or a holding); but see State v. Riley, 154 Wn. App. 433, 472, 225 P.3d 462 (2010) (J. Dwyer, dissenting) (describing decision as rejecting the doctrine). Language that is dictum has no precedential value. Amalgamated Transit Union Local 587 v. State, 142 Wn.2d 183, 262, 11 P.3d 762 (2000).

Further, even the majority in Winterstein approved the Supreme Court's prior holding in State v. Bonds, that the exclusionary rule should not be applied when police action in another state did not violate the Washington Constitution. See Winterstein, 167 Wn.2d at 632-33, approving State v. Bonds, 98 Wn. 2d 1, 10-15, 653 P.2d 1024 (1982). Haghghi has not shown why the exception approved by Bonds would not apply to his case.

The Allstate Bank records were properly seized pursuant to a lawful warrant. There has been no challenge to the sufficiency of the affidavit supporting the warrant in this case, or the authority of the judge to issue the warrant. The trial court found that there was

ample probable cause to issue the warrant, that Judge Shaffer had authority to issue it, and that it was valid on its face. Appendix F.

Illinois law is irrelevant to the rights of Haghghi. He is being prosecuted in Washington and his case is governed by the rules of this state and by the United States Constitution. Absent a showing that those rules were violated, he has no basis to challenge the records obtained. He may not vicariously assert the rights of Allstate Bank, the person who would have the benefit of any limitations imposed by Illinois law. See Rakas v. Illinois, 439 U.S. 128, 133-34, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978); State v. Francisco, 107 Wn. App. 247, 252, 26 P.3d 1008 (2001), rev. denied, 145 Wn.2d 1019 (2002). While Allstate Bank could have challenged the authority of the warrant under Illinois law, it did not do so.

- d. Even If The Allstate Bank Records Should Have Been Excluded, Haghghi Has Not Established Prejudice Where Other Overwhelming Evidence Established His Guilt.

The evidence challenged by Haghghi was records of account activity from Allstate Bank. Haghghi has not met his burden of showing that he was prejudiced by admission of those

records, where his crimes were proved by overwhelming evidence without those records.

For each charged count, a witness testified to receiving the relevant check from Haghghi and having the check returned unpaid. 4RP 66-79, 86-90, 109-10, 118, 124, 144-54; 5RP 8-15. His knowledge that he did not have the funds to cover the checks he wrote was established by many types of evidence: the repeated writing of bad checks, many for large amounts², over a period of two months, never covering any of the bad checks written with later payment; the small amount of money in the Washington Mutual Account and repeated depositing of large checks that were not honored and writing checks with insufficient funds to cover them on that account³; his evasive behavior, particularly as to the tailor, to whom he sent more misleading financial documents⁴, and as to the theft of \$4000 from Venture Bank, which he was immediately asked to return but never did⁵; and the checks he wrote on the Allstate

² The checks involved in count 8 was for \$50,000, the check involved in count 3 was for over \$40,000, the checks involved in counts 1, 2, and 6 each exceeded \$3000. 4RP 66-79, 86-89, 152-54, 109-10.

³ Appendix E (Ex. 17); 4RP 12-13, 16, 24-26.

⁴ 4RP 89-99.

⁵ 4RP 120-24, 129-34.

account after the Venture Bank manager told him his account was closed.⁶

Further, Allstate Bank employee Dolores Talbot testified that she personally opened one of the Allstate Bank accounts, receiving a \$100,000 check on the Washington Mutual account as the initial deposit. 4RP 8, 22-25. The Washington Mutual records, which have not been challenged, established that that account never could have come close to covering that check. Appendix E (Ex. 17). Talbot's testimony, independent of Allstate records, confirmed the obvious conclusion that Haghighi was writing checks that he knew could not be covered by the funds in his accounts.

2. Additional Matters Mentioned Should Be Rejected Because They Are Unsupported By Authority or Analysis.

Two additional matters are referenced in this petition but should be rejected because they are unsupported by reasoned argument or legal analysis.

The petition provided to the State in this case includes a form Personal Restraint Petition completed by Haghighi that includes in its title "Presentation of New Evidence." On the second

⁶ 4RP122-23, 144, 149-54 (Counts 7 and 8).

page of the handwritten brief attached, Haghghi refers to "some newly released information" and on the next page refers to a variety of documents purportedly attached to the petition. There is no explanation of the source of these documents or when they were obtained, and their authenticity is not verified.

Newly discovered evidence is grounds for relief in a personal restraint petition, if the defendant shows that the evidence: (1) will probably change the result of the trial; (2) was discovered after the trial; (3) could not have been discovered before the trial by the exercise of due diligence; (4) is material, and (5) is not merely cumulative or impeaching. In re Pers. Restraint of Lord, 123 Wn.2d 296, 319-20, 868 P.2d 835 (1994). Haghghi has made no argument specifically relating to any of these factors. He cannot rely solely on conclusory allegations. RAP 16.7(a)(2); In re Pers. Restraint of Williams, 111 Wn.2d 353, 364-65, 759 P.2d 436 (1988).

Notes attached to the petition indicate that many of the documents were available at the time of trial, as Haghghi appears to be noting that he brought them to the attention of his attorneys, who he believes did not appropriately use them in his defense.

Further, when claims are based on matters outside the appellate record, the petitioner must show that he has competent,

admissible evidence to support the claims. In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). Haghghi has not established the authenticity of the proffered records. For example, the appearance of his attached letter dated February 14, 2010, which asserts that Haghghi has \$150,000,000 available through a Swiss bank via cashiers check or wire transfer in Toronto on February 26, 2010, certainly suggests that it is not an official document of a bank prepared in 2010—the document was typewritten, has no business letterhead, and is full of grammatical and typographic errors.⁷

In the request for relief in the form Personal Restraint Petition, Haghghi also claims that he should not have been given an exceptional sentence. He presents no factual or legal reasoning to support that claim. The only references to his sentence in the supporting documents are to support his simple assertion that a different sentence would have been more appropriate.

Both of these matters are mentioned without providing supporting analysis and should be rejected on that basis.

⁷ If Haghghi does have \$150,000,000 in a Swiss bank, available for wire transfer, he should not qualify for appointed counsel.

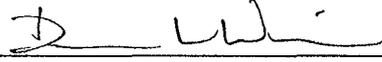
D. CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to dismiss the personal restraint petition.

DATED this 2nd day of July, 2010.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
DONNA L. WISE, WSBA #13224
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Office WSBA #91002

Appendix A

Appendix A

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	No. 06-1-10032-4 KNT
Plaintiff,)	
)	JUDGMENT AND SENTENCE
Vs.)	FELONY
)	
NADDER BARON HAGHIGHI)	
)	
Defendant,)	

I. HEARING

I.1 The defendant, the defendant's lawyer, CHARLES HAMILTON, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Olga Haghighi (def. wife)
and defendant's mother Enayeh Gerwick Haghighi

II. FINDINGS

There being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 10/30/2007 by jury verdict of:

Count No.: <u>I</u>	Crime: <u>UNLAWFUL ISSUANCE OF CHECKS OR DRAFTS</u>
RCW <u>9A.56.060(1),(4)</u>	Crime Code: <u>02704</u>
Date of Crime: <u>11/15/2005</u>	Incident No. _____

Count No.: <u>II</u>	Crime: <u>UNLAWFUL ISSUANCE OF CHECKS OR DRAFTS</u>
RCW <u>9A.56.060(1),(4)</u>	Crime Code: <u>02704</u>
Date of Crime: <u>11/15/2005</u>	Incident No. _____

Count No.: <u>III</u>	Crime: <u>UNLAWFUL ISSURANCE OF CHECKS OR DRAFTS</u>
RCW <u>9A.56.060(1),(4)</u>	Crime Code: <u>02704</u>
Date of Crime: <u>11/23/2005</u>	Incident No. _____

Count No.: <u>IV</u>	Crime: <u>UNLAWFUL ISSUANCE OF CHECKS OR DRAFTS</u>
RCW <u>9A.56.060(1),(4)</u>	Crime Code: <u>02704</u>
Date of Crime: <u>12/05/2005</u>	Incident No. _____

Additional current offenses are attached in Appendix A

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a firearm in count(s) _____ RCW 9.94A.510(3).
- (b) While armed with a deadly weapon other than a firearm in count(s) _____ RCW 9.94A.510(4).
- (c) With a sexual motivation in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A offense committed in a protected zone in count(s) _____ RCW 69.50.435.
- (e) Vehicular homicide Violent traffic offense DUI Reckless Disregard.
- (f) Vehicular homicide by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g) Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h) Domestic violence offense as defined in RCW 10.99.020 for count(s) _____.
- (i) Current offenses encompassing the same criminal conduct in this cause are count(s) _____ RCW 9.94A.589(1)(a).

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):
 Criminal history is attached in **Appendix B**.
 One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	22 21	I	22 TO 29		22 TO 29 MONTHS	5 YEARS AND/OR \$10,000
Count II	22 21	I	22 TO 29		22 TO 29 MONTHS	5 YEARS AND/OR \$10,000
Count III	22 21	I	22 TO 29		22 TO 29 MONTHS	5 YEARS AND/OR \$10,000
Count IV	22 21	I	22 TO 29		22 TO 29 MONTHS	5 YEARS AND/OR \$10,000

Additional current offense sentencing data is attached in **Appendix C**.

2.5 **EXCEPTIONAL SENTENCE (RCW 9.94A.535):**

Substantial and compelling reasons exist which justify a sentence above below the standard range for Count(s) I - VIII. Findings of Fact and Conclusions of Law are attached in Appendix D. The State did did not recommend a similar sentence.

to be filed under separate cover.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A**.

[] The Court DISMISSES Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
- Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
- Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 - Date to be set.
 - Defendant waives presence at future restitution hearing(s).
- Restitution is not ordered.

Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ _____, Court costs; Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b) \$100 DNA collection fee; DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);
- (c) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs; Recoupment is waived (RCW 9.94A.030);
- (d) \$ _____, Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA; VUCSA fine waived (RCW 69.50.430);
- (e) \$ _____, King County Interlocal Drug Fund; Drug Fund payment is waived; (RCW 9.94A.030)
- (f) \$ _____, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
- (g) \$ _____, Incarceration costs; Incarceration costs waived (RCW 9.94A.760(2));
- (h) \$ _____, Other costs for: _____

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500 + Restitution. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. **The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied.** Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

- Court Clerk's trust fees are waived.
- Interest is waived except with respect to restitution.

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: immediately; (Date): _____ by _____m.

60 months/days on count I; 60 months/days on count III; 60 months/day on count V
60 months/days on count II; 60 months/days on count IV; 96 months/day on count VII

The above terms for counts I - VIII are consecutive concurrent 60 months on Cr. VII
60 months on Cr. VI

The above terms shall run CONSECUTIVE CONCURRENT to cause No.(s) _____

The above terms shall run CONSECUTIVE CONCURRENT to any previously imposed sentence not referred to in this order.

In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: _____

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 96 months.

Credit is given for 444 days served days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6).

4.5 NO CONTACT: For the maximum term of 5 years, defendant shall have no contact with Aleksandar & Galina Kivchenko, Kurt Ribar and Wall Street
clothing, Mike Dziak and Enhanced Visual Images, Philip Baskaron
X No contact for 10 years with Venture Bank in Kent

4.6 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.

HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.7 (a) COMMUNITY PLACEMENT pursuant to RCW 9.94A.700, for qualifying crimes committed before 7-1-2000, is ordered for _____ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] APPENDIX H for Community Placement conditions is attached and incorporated herein.

(b) COMMUNITY CUSTODY pursuant to RCW 9.94.710 for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. APPENDIX H for Community Custody Conditions and APPENDIX J for sex offender registration is attached and incorporated herein.

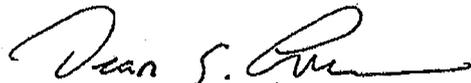
- (c) **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:
- Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
 - Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
 - Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
 - Crime Against Person, RCW 9.94A.411 - 9 to 18 months
 - Felony Violation of RCW 69.50/52 - 9 to 12 months
- or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.
- APPENDIX H for Community Custody conditions is attached and incorporated herein.
 - APPENDIX J for sex offender registration is attached and incorporated herein.

4.8 **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.700. Appendix H for Community Custody Conditions is attached and incorporated herein.

4.9 **ARMED CRIME COMPLIANCE, RCW 9.94A.475, .480.** The State's plea/sentencing agreement is attached as follows:

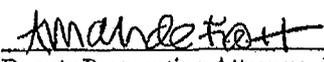
The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: March 7, 2008



 JUDGE
 Print Name: Dean S. Lum

Presented by:



 Deputy Prosecuting Attorney, WSBA# 34041
 Print Name: Amanda Fratt

Approved as to form:

 Attorney for Defendant, WSBA #
 Print Name: _____

FINGERPRINTS



BEST AVAILABLE IMAGE POSSIBLE.

RIGHT HAND
FINGERPRINTS OF:

NADDER BARON HAGHIGHI

DEFENDANT'S SIGNATURE:

DEFENDANT'S ADDRESS:

Ballman Ctr 98007
219 148th St. SW

DATED: 02 07 08

JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK

BY:
DEPUTY CLERK

CERTIFICATE

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

CLERK

BY: _____
DEPUTY CLERK

OFFENDER IDENTIFICATION

S.I.D. NO.

DOB: MARCH 22, 1962

SEX: M

RACE: W

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

NADDER BARON HAGHIGHI

Defendant,

)
)
) No. 06-1-10032-4 KNT
)
) JUDGMENT AND SENTENCE
) (FELONY) - APPENDIX A
) ADDITIONAL CURRENT OFFENSES
)
)
)

2.1 The defendant is also convicted of these additional current offenses:

Count No.: V Crime: UNLAWFUL ISSURANCE OF CHECKS OR DRAFTS
RCW 9A.56.060(1),(4) Crime Code 02704
Date Of Crime 12/03/2005 Incident No. _____

Count No.: VI Crime: THEFT IN THE FIRST DEGREE
RCW 9A.56.030(1)(A) AND 9A.56.020(1)(A)(B) Crime Code 02504
Date Of Crime 12/16/2005 Incident No. _____

Count No.: VII Crime: UNLAWFUL ISSUANCE OF CHECKS OR DRAFTS
RCW 9A.56.060(1),(4) Crime Code 02704
Date Of Crime 12/30/2005 Incident No. _____

Count No.: VIII Crime: UNLAWFUL ISSUANCE OF CHECKS OR DRAFTS
RCW 9A.56.060(1),(4) Crime Code 02704
Date Of Crime 01/03/2006 Incident No. _____

Date: March 7, 2008



JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

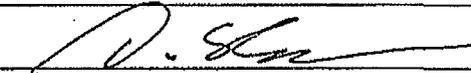
STATE OF WASHINGTON,)	
)	
Plaintiff,)	No. 06-1-10032-4 KNT
)	
vs.)	JUDGMENT AND SENTENCE,
)	(FELONY) - APPENDIX B,
NADDER BARON HAGHIGHI,)	CRIMINAL HISTORY
)	
Defendant,)	

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
THEFT 1° (Not a firearm)	01/31/2003	ADULT	011014069	SNOHOMISH CO.
UIBC	01/31/2003	ADULT	011014069	SNOHOMISH CO.
UIBC	01/31/2003	ADULT	011014069	SNOHOMISH CO.
UIBC	01/31/2003	ADULT	011014069	SNOHOMISH CO.
UIBC	11/01/1996	ADULT	951037425	KING COUNTY
UIBC	05/26/1994	ADULT	941006241	PIERCE COUNTY
UIBC	05/26/1994	ADULT	941007574	PIERCE COUNTY
THEFT 1° (Not a firearm)	06/30/1995	ADULT	941036871	KING COUNTY
THEFT 1° (Not a firearm)	06/30/1995	ADULT	941036871	KING COUNTY
FORGERY	06/30/1995	ADULT	941036871	KING COUNTY
FORGERY	06/30/1995	ADULT	941036871	KING COUNTY
GRAND THEFT	01/28/1988	ADULT	168632	SANTA BARBARA CO., CA
NSF CHECK	06/30/1985	ADULT	C-56946	ORANGE CO., CA
FORGERY	06/30/1985	ADULT	C-56946	ORANGE CO., CA
FORGERY	06/30/1985	ADULT	C-56946	ORANGE CO., CA

[] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: March 7, 2008



 JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

NADDER BARON HAGHIGHI

Defendant,

No. 06-1-10032-4 KNT

JUDGMENT AND SENTENCE
(FELONY) - APPENDIX C,
ADDITIONAL CURRENT OFFENSE(S)
SENTENCING DATA

2.3 SENTENCING DATA: Additional current offense(s) sentencing information is as follows:

Count	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
V	22 21	I	22 TO 29		22 TO 29 MONTHS	5 YEARS AND/OR \$10,000
VI	22 21	II	43 TO 57		43 TO 57 MONTHS	10 YEARS AND/OR \$20,000
VII	22 21	I	22 TO 29		22 TO 29 MONTHS	5 YEARS AND/OR \$10,000
VIII	22 21	I	22 TO 29		22 TO 29 MONTHS	5 YEARS AND/OR \$10,000

[] The following real and material facts were considered by the court pursuant to RCW 9.94A.530(2):

Date: March 7, 2008



Judge, King County Superior Court

14506825

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

NADDER BARON HAGHIGHI

Defendant,

No. 06-1-10032-4 KNT

APPENDIX G
ORDER FOR BIOLOGICAL TESTING
AND COUNSELING

(1) DNA IDENTIFICATION (RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

(2) HIV TESTING AND COUNSELING (RCW 70.24.340):

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: March 7, 2008



JUDGE, King County Superior Court

Appendix B

Appendix B

ORIGINAL

FILED

2009 DEC -1 PM 2: 56

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

COPY TO COUNTY JAIL DEC - 1 2009

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 06-1-10032-4 KNT

vs.

NADDER BARON HAGHIGHI,

Defendant.

Order Vacating Count 5 Per Appellate
Decision And Correcting Defendant's
Offender Score

THIS MATTER having come on regularly before the undersigned judge of the above-entitled court upon the motion of the State of Washington, plaintiff, for an order to vacate Count 5 (Unlawful Issuance of Bank Checks) per the instructions of the Division I Court of Appeals as stated in COA Docket No. 61436-3 in the above entitled cause, and the court being fully advised in the premises; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Count 5 is vacated, and as a result the defendant's offender score is calculated as 20 points on each count for which he was properly sentenced (Counts 1, 2, 3, 4, 6, 7, and 8). All other provisions of the defendant's sentence remain as written in the Judgment and Sentence dated March 7, 2008.

DONE IN OPEN COURT this 30 day of ~~October~~ ^{November} ~~2009~~ ^{DEC}, 2009.


JUDGE DEAN LUM

Order Vacating Count 5 Per Appellate Decision And
Modifying Defendant's Offender Score - 1

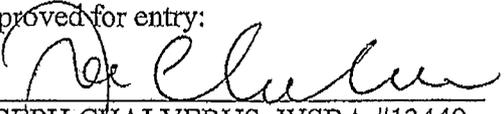
Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9010, FAX (206) 296-9009

1 Presented by:



2
3 DAVID SEAVER, WSBA #30390
Senior Deputy Prosecuting Attorney

4 Approved for entry:



5
6 JOSEPH CHALVERUS, WSBA #13449
Attorney for Defendant

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Order Vacating Count 5 Per Appellate Decision And
Modifying Defendant's Offender Score - 2

Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9010, FAX (206) 296-9009

Appendix C

Appendix C

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

COPIED TO COUNTY JAB OCT - 5 2009

FILED
KING COUNTY, WASHINGTON
OCT 5 2009
SUPERIOR COURT CLERK

STATE OF WASHINGTON,)
)
 Respondent,)
 v.)
 NADDER BARON HAGHIGHI,)
)
 Appellant.)

No. 61436-3-1
MANDATE
King County
Superior Court No. 06-1-10032-4 KNT
Court Action Required

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on August 17, 2009, became the decision terminating review of this court in the above entitled case on September 25, 2009. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

c: Casey Grannis, NBK
Donna L. Wise, KC
Hon. Dean Lum

Court Action Required: The sentencing court or criminal presiding judge is to place this matter on the next available motion calendar for action consistent with the opinion.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 25th day of September, 2009

RICHARD D. JOHNSON
Court Administrator/Clerk of the Court of Appeals, State of Washington, Division I.

Appendix D

Appendix D

FILED
KING COUNTY, WASHINGTON
OCT 23 2007
SUPERIOR COURT CLERK
SUNG KIM
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)
)
) Plaintiff,)
)
) v.) No. 06-1-10032-4 KNT
)
) NADDER BARON HAGHIGHI,) SECOND AMENDED INFORMATION
)
)
)
)
) Defendant.)

COUNT I

I, Daniel T. Satterberg, Interim Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse NADDER BARON HAGHIGHI of the crime of **Unlawful Issuance of Checks or Drafts**, committed as follows:

That the defendant NADDER BARON HAGHIGHI in King County, Washington, on or about November 15, 2005, with intent to defraud did make, draw, utter and deliver to another a check or draft on a bank or other depository for the payment of money in an amount exceeding \$250, said check or draft being as follows, to-wit: check number 50003, made out to Aleksandr Kravchenko, drawn on the defendant's Allstate Bank account ending in 5346, in the amount of \$3,150.25, the defendant knowing at the time of such drawing and delivery that he had not sufficient funds in and credit with said bank or depository to meet such check or draft in full upon its presentation;

Contrary to RCW 9A.56.060(1), (4), and against the peace and dignity of the State of Washington.

COUNT II

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse NADDER BARON HAGHIGHI of the crime of **Unlawful Issuance of Checks or Drafts**, a crime of the same or similar character and based on the same conduct as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

SECOND AMENDED INFORMATION - 1

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

1 That the defendant NADDER BARON HAGHIGHI in King County, Washington, on or
2 about November 15, 2005, with intent to defraud did make, draw, utter and deliver to another a
3 check or draft on a bank or other depository for the payment of money in an amount exceeding \$250,
4 said check or draft being as follows, to-wit: check number 50004, made out to Galina Kravchenko,
5 drawn on the defendant's Allstate Bank account ending in 5346, in the amount of \$3,150.25, the
6 defendant knowing at the time of such drawing and delivery that he had not sufficient funds in and
7 credit with said bank or depository to meet such check or draft in full upon its presentation;

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Contrary to RCW 9A.56.060(1), (4), and against the peace and dignity of the State of
Washington.

COUNT III

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse
NADDER BARON HAGHIGHI of the crime of **Unlawful Issuance of Checks or Drafts**, a crime of
the same or similar character and based on the same conduct as another crime charged herein, which
crimes were part of a common scheme or plan and which crimes were so closely connected in
respect to time, place and occasion that it would be difficult to separate proof of one charge from
proof of the other, committed as follows:

That the defendant NADDER BARON HAGHIGHI in King County, Washington, on or
about November 23, 2005, with intent to defraud did make, draw, utter and deliver to another a
check or draft on a bank or other depository for the payment of money in an amount exceeding \$250,
said check or draft being as follows, to-wit: check number 248, made out to Wall Street Clothiers,
for \$40,244.25, drawn on the defendant's Allstate Bank account ending in 5635, the defendant
knowing at the time of such drawing and delivery that he had not sufficient funds in and credit with
said bank or depository to meet such check or draft in full upon its presentation;

Contrary to RCW 9A.56.060(1), (4), and against the peace and dignity of the State of
Washington.

COUNT IV

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse
NADDER BARON HAGHIGHI of the crime of **Unlawful Issuance of Checks or Drafts**, a crime of
the same or similar character and based on the same conduct as another crime charged herein, which
crimes were part of a common scheme or plan and which crimes were so closely connected in
respect to time, place and occasion that it would be difficult to separate proof of one charge from
proof of the other, committed as follows:

That the defendant NADDER BARON HAGHIGHI in King County, Washington, on or
about December 5, 2005, with intent to defraud did make, draw, utter and deliver to another a check
or draft on a bank or other depository for the payment of money in an amount exceeding \$250, said
check or draft being as follows, to-wit: check number 234, made out to Enhanced Visual Images, for
\$1,400, drawn on the defendant's Allstate Bank account ending in 5346, the defendant knowing at
the time of such drawing and delivery that he had not sufficient funds in and credit with said bank or
depository to meet such check or draft in full upon its presentation;

SECOND AMENDED INFORMATION - 2

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

1 Contrary to RCW 9A.56.060(1), (4), and against the peace and dignity of the State of
2 Washington.

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COUNT V

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse
NADDER BARON HAGHIGHI of the crime of **Unlawful Issuance of Checks or Drafts**, a crime of
the same or similar character and based on the same conduct as another crime charged herein, which
crimes were part of a common scheme or plan and which crimes were so closely connected in
respect to time, place and occasion that it would be difficult to separate proof of one charge from
proof of the other, committed as follows:

That the defendant NADDER BARON HAGHIGHI in King County, Washington, on or
about December 5, 2005, with intent to defraud did make, draw, utter and deliver to another a check
or draft on a bank or other depository for the payment of money in an amount exceeding \$250, said
check or draft being as follows, to-wit: check number 235, made out to Enhanced Visual Images, for
\$2,500, drawn on the defendant's Allstate Bank account ending in 5346, the defendant knowing at
the time of such drawing and delivery that he had not sufficient funds in and credit with said bank or
depository to meet such check or draft in full upon its presentation;

Contrary to RCW 9A.56.060(1), (4), and against the peace and dignity of the State of
Washington.

COUNT VI

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse
NADDER BARON HAGHIGHI of the crime of **Theft in the First Degree**, a crime of the same or
similar character and based on the same conduct as another crime charged herein, which crimes were
part of a common scheme or plan and which crimes were so closely connected in respect to time,
place and occasion that it would be difficult to separate proof of one charge from proof of the other,
committed as follows:

That the defendant NADDER BARON HAGHIGHI in King County, Washington, on or
about December 16, 2005, with intent to deprive another of property, to-wit: U.S. currency, having a
value in excess of \$1,500, did obtain control over such property belonging to Venture Bank, by color
and aid of deception, and, did exert unauthorized control over such property;

Contrary to RCW 9A.56.030(1)(a) and 9A.56.020(1)(a)(b), and against the peace and dignity
of the State of Washington.

COUNT VII

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse
NADDER BARON HAGHIGHI of the crime of **Unlawful Issuance of Checks or Drafts**, a crime of
the same or similar character and based on the same conduct as another crime charged herein, which
crimes were part of a common scheme or plan and which crimes were so closely connected in
respect to time, place and occasion that it would be difficult to separate proof of one charge from
proof of the other, committed as follows:

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

SECOND AMENDED INFORMATION - 3

1 That the defendant NADDER BARON HAGHIGHI in King County, Washington, on or
2 about December 30, 2005, with intent to defraud did make, draw, utter and deliver to another a check
3 or draft on a bank or other depository for the payment of money in an amount exceeding \$250, said
4 check or draft being as follows, to-wit: check number 243, made out to AM/PM for \$1,000, drawn
on the defendant's Allstate Bank account ending in 5346, the defendant knowing at the time of such
drawing and delivery that he had not sufficient funds in and credit with said bank or depository to
meet such check or draft in full upon its presentation;

5 Contrary to RCW 9A.56.060(1), (4), and against the peace and dignity of the State of
6 Washington.

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COUNT VIII

7 And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse
8 NADDER BARON HAGHIGHI of the crime of **Unlawful Issuance of Checks or Drafts**, a crime of
9 the same or similar character and based on the same conduct as another crime charged herein, which
10 crimes were part of a common scheme or plan and which crimes were so closely connected in
11 respect to time, place and occasion that it would be difficult to separate proof of one charge from
12 proof of the other, committed as follows:

11 That the defendant NADDER BARON HAGHIGHI in King County, Washington, on or
12 about January 3, 2006, with intent to defraud did make, draw, utter and deliver to another a check or
13 draft on a bank or other depository for the payment of money in an amount exceeding \$250, said
14 check or draft being as follows, to-wit: check number 249 made out to Philip Baskaron for \$50,000,
15 drawn on the defendant's Allstate Bank account ending in 5346, the defendant knowing at the time of
16 such drawing and delivery that he had not sufficient funds in and credit with said bank or depository
17 to meet such check or draft in full upon its presentation;

18 Contrary to RCW 9A.56.060(1), (4), and against the peace and dignity of the State of
19 Washington.

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23
NORM MALENG
Prosecuting Attorney
DANIEL T. SATTERBERG
Interim Prosecuting Attorney

By: Amanda S. Froh
Amanda S. Froh, WSBA #34045
Deputy Prosecuting Attorney

Appendix E

Appendix E

17

STATE EXHIBIT

06-1-10072-4

State of Washington

vs-

Nader Hashemi

FILED

KING COUNTY, WASHINGTON

OCT 29 2007

SUPERIOR COURT CLERK
SUNG KIM
DEPUTY

17

05-17774

This Statement Covers
From: 09/01/05
Through: 09/12/05

Your Gold Checking Detail Information

BARON N. HAGHIGHI Account Number: 188-453418-2
Washington Mutual Bank, FA

Exciting news! If you have a qualifying Washington Mutual Visa® Check Card or ATM card, it will be replaced by a Washington Mutual Debit MasterCard® or ATM card. No card is accepted at more locations worldwide than MasterCard! Look for more details in the coming months.

Your Account at a Glance

Beginning Balance	\$0.00
Checks Paid	\$0.00
Other Withdrawals	-\$863.97
Deposits	+\$1,423.16
Ending Balance	\$559.19

Your Overdraft Limit as of the statement end date is \$100.00. Please note that this may be changed at any time without notice. See reverse for more information. As of the statement end date, the fee for any Non-Sufficient Funds transaction, whether paid or returned, was \$27.00.

Date	Description	Withdrawals (-)	Deposits (+)
09/01	Opening Deposit		\$0.01
09/02	Customer Deposit		\$362.16
09/06	Customer Withdrawal	\$150.00	
09/06	Customer Withdrawal	\$150.00	
09/07	Non Sufficient Funds Charge	\$27.00	
09/07	Non Sufficient Funds Charge	\$27.00	
09/08	Refund Overdraft Charge		\$54.00
09/08	Non Sufficient Funds Charge	\$27.00	
09/08	Non Sufficient Funds Charge	\$27.00	
09/09	Customer Deposit		\$1,000.00
09/09	FIRST PREMIER BK TELEPHONE 24042193	\$263.52	
09/11	POS RITE AID #51 31009 FACIFIC HWY SO FEDERAL WAY WA	\$102.90	
09/12	POS RITE AID #51 31009 FACIFIC HWY SO FEDERAL WAY WA	\$64.46	
09/12	VISA® ANTHONY WATERS 31 N 300 4th St 507 CRT	\$18.00	
09/12	Service Charge	\$7.00	
09/12	Refund Service Charge - Your account was not assessed a monthly service charge because you met the balance requirement.		\$7.00



05-17774

This Statement Covers

From: 09/01/05

Through: 09/12/05

Your Statement Savings Detail Information

BARON N. HAGHIGHI Account Number: 358-631348-2

Your Account at a Glance

Beginning Balance	\$0.00
Other Withdrawals	-\$3.00
Deposits	+\$3.01
Ending Balance	\$0.01

As of the statement end date, there are no Non-Sufficient Funds.
 This return together with prior returns was \$27.00.

Date	Description	Withdrawals (-)	Deposits (+)
09/01	Opening Deposit		\$0.01
09/12	Service Charge	\$3.00	
09/12	Refund Service Charge-Your account was not assessed a monthly service charge because you met the balance requirement.		\$3.00



05-17774

This Statement Covers
From: 09/13/05
Through: 10/12/05

Your Gold Checking Detail Information

BARON N. HAGHIGHI Account Number: 188-45341B-2
Washington Mutual Bank, FA

Exciting news! If you have a qualifying Washington Mutual Visa® Check Card or ATM card, it will be replaced by a Washington Mutual Debit MasterCard® or ATM card. No card is accepted at more locations worldwide than MasterCard! Look for more details in the coming months.

Your Account at a Glance

Beginning Balance	\$559.19
Checks Paid	-\$543.50
Other Withdrawals	-\$12,179.35
Deposits	+\$9,000.00
Ending Balance	-\$3,163.66

As of the statement end date, the fee for any Non-Sufficient Funds (NSF) charges, whether paid or returned, was \$27.00.

Date	Description	Withdrawals (-)	Deposits (+)
09/13	Customer Deposit		\$9,000.00
09/13	WEST TELEPHONE 425-960-9570	\$99.99	
09/14	Returned Deposited Item	\$2,500.00	
09/14	Returned Deposited Item Fee	\$5.00	
09/14	VISA-WMS WASTE MGM. WME866-834-2080 TX	\$96.36	
09/14	Non Sufficient Funds Charge	\$27.00	
09/14	Non Sufficient Funds Charge	\$27.00	
09/14	Non Sufficient Funds Charge	\$27.00	
09/14	Non Sufficient Funds Charge	\$27.00	
09/15	Non Sufficient Funds Charge	\$27.00	
09/15	Non Sufficient Funds Charge	\$27.00	
09/15	Non Sufficient Funds Charge	\$27.00	
09/16	Returned Deposited Item	\$9,000.00	
09/16	Returned Deposited Item Fee	\$5.00	
09/16	VISA-THRIFTY RENT-A-CAR BELLEVUE WA	\$250.00	
09/19	Overdraft Charge	\$27.00	
10/12	Service Charge	\$7.00	

Checks Paid

* Indicates check out of sequence

Check Number	Date	Amount Paid	Check Number	Date	Amount Paid
97	09/13	\$43.50	98	09/13	\$500.00



05-17774

This Statement Covers
From: 09/13/05
Through: 10/12/05

Your Statement Savings Detail Information

BARON N. HAGHIGHI Account Number: 359-631348-2

Your Account at a Glance

Beginning Balance	\$0.01
Other Withdrawals	-\$3.00
Deposits	\$0.00
Ending Balance	-\$2.99

As of the statement end date, the fee for a Non-Sufficient Funds transaction, whether paid or returned, was \$2.00.

Date	Description	Withdrawals (-)	Deposits (+)
10/12	Service Charge	\$3.00	



05-17774

This Statement Covers
 From: 10/13/05
 Through: 11/09/05

Your Gold Checking Detail Information

BARON N. HAGHIGHI Account Number: 188-453418-2
 Washington Mutual Bank, FA

Exciting news! If you have a qualifying Washington Mutual Visa® Check Card or ATM card, it will be replaced by a Washington Mutual Debit MasterCard® or ATM card. No card is accepted at more locations worldwide than MasterCard! Look for more details in the coming months.

Your Account at a Glance

Beginning Balance	- \$3,163.66
Checks Paid	\$0.00
Other Withdrawals	-\$7.00
Deposits	\$0.00
Ending Balance	-\$3,170.66

As of the statement end date, the fee for any Non-Sufficient Funds transaction, whether paid or returned, was \$27.00.

Date	Description	Withdrawals (-)	Deposits (+)
11/09	Service Charge	\$7.00	

Your Statement Savings Detail Information

BARON N. HAGHIGHI Account Number: 359-631348-2

Your Account at a Glance

Beginning Balance	-\$2.99
Other Withdrawals	-\$3.00
Deposits	+\$3.00
Ending Balance	-\$2.99

As of the statement end date, the fee for any Non-Sufficient Funds transaction, whether paid or returned, was \$27.00.

Date	Description	Withdrawals (-)	Deposits (+)
10/24	Refund Service Charge		\$3.00
11/09	Service Charge	\$3.00	



05-17774

This Statement Covers
From: 11/10/05
Through: 12/09/05

Your Gold Checking Detail Information

BARON N. HAGHIGHI Account Number: 188-453418-2
Washington Mutual Bank, FA

Your Account at a Glance

Beginning Balance	-\$3,170.66
Checks Paid	\$0.00
Other Withdrawals	\$0.00
Deposits	+\$3,170.66
Ending Balance	\$0.00

As of the statement end date, the fee for any Non-Sufficient Funds transaction, whether paid or returned, was \$27.00

Date	Description	Withdrawals (-)	Deposits (+)
11/15	Total Amount Due Washington Mutual		\$3,170.66

Your Statement Savings Detail Information

BARON N. HAGHIGHI Account Number: 359-631348-2

Your Account at a Glance

Beginning Balance	-\$2.99
Other Withdrawals	\$0.00
Deposits	+\$2.99
Ending Balance	\$0.00

As of the statement end date, the fee for any Non-Sufficient Funds transaction, whether paid or returned, was \$27.00

Date	Description	Withdrawals (-)	Deposits (+)
11/16	Refund Non Sufficient Funds Charge-loss		\$2.99
11/16	Total Amount Due Washington Mutual		\$0.00



Appendix F

Appendix F

ORIGINAL

FILED
KING COUNTY, WASHINGTON

APR 14 2008

SUPERIOR COURT CLERK
SLUNG KIM
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

NADDER BARON HAGHIGHI,

Defendant,

No. 06-1-10032-4 KNT

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON CrR 3.6
MOTION TO SUPPRESS PHYSICAL
EVIDENCE

A hearing on the admissibility of physical evidence was held on October 23 – 24, 2007, before the Honorable Judge Dean Lum. After considering the evidence submitted by the parties and hearing argument, to wit: written briefings and oral argument provided by both Counsel for the State Amanda Froh and Counsel for Defendant Charles Hamilton III, the court makes the following findings of fact and conclusions of law as required by CrR 3.6:

1. THE UNDISPUTED FACTS:

A. On February 27, 2006, King County Superior Court Judge Catherine Shaffer approved a search warrant for bank records pertaining to an Allstate Bank account in the name of Baron Haghighi based on an affidavit for probable cause written by Detective Robert Kaufmann of the Kent Police Department (see Attachment A of State's Response to Defendant's Motion to Suppress Evidence for a complete copy of the affidavit and warrant).

WRITTEN FINDINGS OF FACT AND CONCLUSIONS
OF LAW PURSUANT TO CrR 3.6 - 1

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

1 B. At the time the warrant was sought, Detective Kaufmann was engaged in a multi-
2 jurisdictional investigation of the defendant's activities in King County, Washington, that
3 indicated the defendant committed the felony offenses of multiple counts of unlawful issuance of
4 bank checks and theft in the first degree in the State of Washington, involving multiple victims.
5 Several identified victims had identified the defendant by montage and had provided copies of
6 the fraudulent checks as well as other records and written correspondence passed from the
7 defendant to the victims.

8 C. Allstate Bank's offices are located in Vernon Hills, Illinois. There is no physical
9 branch of Allstate Bank located in the state of Washington.

10 D. On February 26, 2006, Detective Kaufmann faxed the signed warrant to Delores
11 Talbott, Operations Manager at Allstate Bank. That same afternoon, Ms. Talbott acknowledged
12 receipt of the warrant, which mandated that the search occur within ten days.

13 E. As a result of the warrant, Detective Kaufmann received two overnighted packets
14 of records pertaining to Allstate Bank accounts in the name of Baron Haghghi -- one packet was
15 received on March 17, 2006, and one on April 18, 2006, from Allstate Bank. The records
16 provided included account application information for four accounts in the defendant's name;
17 combined bank statements for the months of October 2005 through December 2005; digital
18 images of seventy-five returned checks for accounts *5346 and *5635; and copies of
19 correspondence.

20 F. The case was filed with the King County Prosecutor's Office several months later.
21 The defendant was charged with six counts of Unlawful Issuance of Bank Checks on November
22 14, 2006 (later amended to add more counts).

1 2. THE DISPUTED FACTS: For purposes of these findings, there are no disputed facts.

2
3 3. CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE EVIDENCE
4 SOUGHT TO BE SUPPRESSED:

5 A. The defendant does not challenge whether there was sufficient probable cause to
6 support the issuance of the warrant. Even if there were a challenge, the court finds that the
7 Affidavit of Probable Cause prepared by Detective Kaufmann of the Kent Police Department
8 provides ample probable cause to issue the warrant in this case.

9 B. There is no evidence that law enforcement engaged in any fraud, deceit, or ruse in
10 obtaining the materials sought by the warrant.

11 C. Judge Shaffer had jurisdiction to issue a search warrant for evidence pertaining to
12 a felony crime committed in Washington. Article IV, section 6 of the Washington State
13 Constitution does not say that process may not extend beyond the borders of the state. The
14 question is whether that warrant is enforceable in the state to which it is directed.

15 D. Because Judge Shaffer had authority to issue the warrant, and the warrant was
16 based on probable cause, the warrant was valid on its face. However, because the State of
17 Washington did not domesticate the warrant in Illinois through proper procedures, the warrant
18 was not legally enforceable in Illinois.

19 E. The court finds that there a seizure occurred with the faxing of the warrant to
20 Illinois.

21 F. The court finds that the search occurred in Illinois by bank employees as they
22 gathered the requested records, not in Washington once the documents were received by
23 Detective Kaufmann.

1 G. No constitutional due process or privacy violations occurred under either Article
2 I, section 7 of the Washington State Constitution or the Fourth Amendment. The defendant's
3 privacy rights were evaluated by a neutral magistrate upon the issuance of a warrant based on
4 probable cause. Because due process was afforded and because Article I, section 7 provides
5 greater protection than the Fourth Amendment, there were no violations of constitutional
6 magnitude that occurred in this case.

7 H. In the absence of a constitutional violation, the remedy appears to be suppression
8 of the records, consistent with State v. Canady, 116 Wn.2d 853, 809 P.2d 203 (1991).

9 I. Based on the record presented, the Court finds that there is abundant evidence that
10 all of the records provided by Allstate Bank pursuant to the search warrant would have been
11 gathered by the State through an independent source, and that the documents would have been
12 inevitably discovered. This is because, at the time the warrant was sought, the investigation by
13 Detective Kaufmann was mature: the defendant's identity was not at issue in any way; police had
14 in their possession documentation that would inevitably lead to the bank records, including
15 copies of the bounced checks with the bank and bank account numbers at issue listed; and there
16 was substantial evidence that this was an ongoing scheme or plan to defraud.

17 J. There is much more than a reasonable probability that the bank records would
18 have been discovered through an untainted source.

19 K. In applying the doctrine of inevitable discovery, the court finds that:

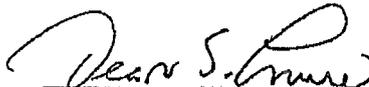
- 20 (1) Detective Kaufmann did not act unreasonably or in an effort to accelerate
21 the discovery of the evidence in question;
22
23

- 1 (2) proper and predictable investigatory procedures would have been utilized to
2 discover the evidence in question (specifically, a subpoena duces tecum
3 once the case had been filed in Superior Court); and
4 (3) those procedures would have inevitably resulted in the discovery of the
5 bank records in question.

6 L. The defendant's motion to suppress the bank records is denied.

7
8 In addition to the above written findings and conclusions, the court incorporates by
9 reference its oral findings and conclusions made on both October 23, 2007 and October 24, 2007.

10 Signed this 14 day of April, 2007.

11
12 
13 JUDGE DEAN LUM

14 Presented by:

15 
16 AMANDA FROH, WSBA #34045
17 Deputy Prosecuting Attorney

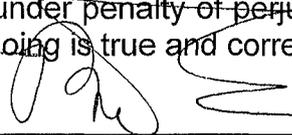
18 Approved as to form:

19 
20 CHARLES HAMILTON III, WSBA #5648
21 Attorney for Defendant
22
23

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to NADDER BARON HAGHIGHI, the petitioner, at #721125, McNeil Island Corrections Center, POB 881000, Steilacoom, WA 98388, containing a copy of the State's Response to Personal Restraint Petition, in PERSONAL RESTRAINT PETITION OF NADDER BARON HAGHIGHI, Cause No. 65130-7-I, in the Court of Appeals, Division I, for the State of Washington.

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



Name
Done in Seattle, Washington

Date

07-02-10

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DIVISION ONE

JUL 02 2010