

A-1

MEMORANDUM

From: Lynell A. Denham,

F.C.I
P.O. Box 800
Herlong, CA.

To: Richard D. Johnson
Court Administrator - Clerk

FILED ASB/MT
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C.
20091029 11:11:00

Subject: Article III Relief... 28 USC - 2201

RE: "Future Harm," Emergency Review, Relief...

This memorandum, is in association with King County, Superior Court #17-1-06567-2 SEA

please, inform the reviewing panel, that, the relief sought attached, hereto is, not a challenge to the superior courts, judgement that was forwarded to this appellate court, referenced to # 17-1-06567-2 SEA.

Rather, the enclosed is referenced to Kinkland police detective Allan O'Neill, who fabricated evidence, and committed "extrinsic fraud" to cause the judgement of the court. He is the "adverse party" This is not a "de facto" appeal. SEE - E I

E1

A-2

- *ROOKER V. FIDELITY TRUST CO.*, 263 U.S. 413 (1923)
- *FELDMAN*, 460 U.S. 462 (1983)
- *WOOD V. MCFEEN*, 644 F.2d 797, 801 (9th Cir 1981)
- *BARNOW V. HUNTON*, 99 U.S. (9 Otto) 80, 99 U.S. 80- (1878)
- *KOUGASIAN*, 359 F.3d 1136, 1140, (9th Cir 2004)
- *MALDONADO*, 370 F.3d At 950

THESE CASES, ALLOW THIS COURT TO ADJUDICATE THE MERITS OF MY CLAIMS. TO "SET ASIDE" THE SUPERIOR COURT'S JUDGEMENT BECAUSE THE "ADVERSE PARTY," DET. ALAN O'NEILL, CAUSED THE JUDGEMENT TO BE LODGED THROUGH HIS "EXTRINSIC FRAUD." *KOUGASIAN*, (359 F.3d 1141); (359 F.3d 1142), 78 MONTH SENTENCE!

THE COURT'S JUDGEMENT, AND DET. O'NEILL'S ACTIONS ARE NOT "INEXTRICABLY INTERTWINED," NOR IS IT BEING CLAIMED *NOEL*, 341 F.3d At 1166.

I'VE BEEN IN CUSTODY, SINCE 4-26-17! ...

XX
X

Ref. King cnty
Superior Court #
17-1-06567-2 SEA.

pg. 1

Memorandum

From: Lynell Avery Denham, (petitioner)

To: Div. I Reviewing panel,

Subject: R.C.W. 9A.52.030. Burglary 2nd degree,
R.C.W. 9A.082.050. Trafficking 1st degree,
Det. Allan O'Neill, #337, Kirkland, P.D.

RE: Declaratory Relief, Injunctive Relief, Article III.
Emergency - discretionary review, prior to 1-23-19
urgently requested. "Irreparable harm," impending...

FILED
CLERK
COURT OF APPEALS
STATE OF WASHINGTON
2018 NOV 29 AM 11:38

A review, of document # 100, will quickly, and effectively, allow this court to discover, the relevant, issues and merits, of the circumstances, cited; to determine that the above criminal statutes, fraudulently attributed to me through fabricated evidence; are in fact invalid, and are un-constitutional, on their face; which will allow this panel, to make a determination that the relief, being requested, should be granted, as a "matter of law," statutes, and the prima facie documentation, adduced. Nothing is conclusory here. This is not an attempt for a "de facto," appeal, on a challenge to the judgement, of the court. SEE =

E-1

A-2

E-1 X X
 X

- *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923)
- *Feldman*, 460 U.S. 462 (1983)
- *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir 1981)
- *Barrow v. Hunton*, 99 U.S. (9 Otto) 80, 99 U.S. 80- (1878)
- *Kougasian*, 359 F.3d 1136, 1140, (9th Cir 2004)
- *Maldonado*, 370 F.3d at 950

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I'VE BEEN IN CUSTODY, SINCE 4-26-17!

pg. 2

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fact

Det. Allan O'Neill, in investigating a jewelry store burglary, later learned from a Seattle police detective, that his informant, knew of an Edwin Jue, of Ed's Jewelers, who had purchased a 5.29 ct. loose diamond, on 11-19-16, from Andy Le, of Thien Phuc Jewelers, located in Seattle. The stone was taken in a burglary, between 11-11-16 and 11-14-16. No arrests were made.

Andy Le, informed Det. O'Neill, that the petitioner, sold the stone, to him on 11-19-16; whereby the petitioner, produced valid "ID," a receipt, for the diamond, & the documentation; that was provided to the petitioner, by the person, who, sold him the diamond. Mr. Le, also provided Det. O'Neill, with the document, he created, titled "not stolen." He informed Det. O'Neill, the petitioner's "ID" was xerox, to this document; and that the petitioner signed his name, to this document, and certified it pursuant to federal statute 28 USC 1746.

Det. O'Neill, learned of these facts on 12-17-16. Despite these exculpatory, & exonerating facts,

XX
X

pg. 3

ON 12-22-16, he did in fact submit --
SEARCH WARRANT, # 16-1201 to SEATTLE Superior
Court Hon. Ken Schubert, factually asserting
that there was probable cause for my
arrest, for the crimes of:

- A. R.C.W. 9A.52.030. Burglary, 2nd degree
- B. R.C.W. 9A.56.030. Theft 1st degree
- C. R.C.W. 9A.082.050. Trafficking stolen property.

He then, on 10-3-17 referred Kingland case
16-44500, referenced to his investigation,
to the King county prosecutors office, for
the filing, of criminal charges, against me
for:

- A. R.C.W. 9A.52.030. Burglary 2nd degree,
- B. R.C.W. 9A.56.030. Theft 1st degree
- C. R.C.W. 9A.082.050. Trafficking in stolen property.
- D. R.C.W. 9A.48.070. Malicious Mischief 1st degree^{1.}

^{1.} This charge was inexplicably included...

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X

pg. 4

The detective, "bootstrapped," the additional charges, into his complaint, based on the grounds, that a burglary had occurred in association with the diamond, that I sold to Andy Le² on 11-19-16; who "inturned" sold it to:

- Edwin Jue, (ASIAN) of Ed's Jewelers, who sold to;
- Bryan Chrey, (white) of Chrey Jewelers, who sold to;
- Mark Miceli, (white) of Chamaty Diamond, Inc.

NONE OF THESE JEWELERS, WERE CHARGED OR CONVICTED. JUST I. AN Afro-AMERICAN IN THE ABSENCE, OF EVIDENCE, THAT I WAS TRAFFICKING IN STOLEN PROPERTY ON 11-19-16; ON THAT I BURGLARIZED, THE ESTABLISHMENT, WHERE THE DIAMOND CAME FROM. ON OR ABOUT 11-11-16, 11-14-16. Equal protection violation, 14th Amend
SEE. PAGE, 7

2. Andy Le, is (ASIAN)

X
X

PS.5

NO elements of burglary. NO:

- fingerprints
- physical evidence
- Tangible evidence
- eyewitness accounts
- surveillance
- informants
- D.NoA.
- law enforcement observations
- party admissions

Det. Allan O'Neill, and the King County prosecutor's office, is not in possession of any evidence or information, that I perpetrated said acts. as of said dates. and when Det. O'Neill submitted his affidavits on 12-22-16, and on 10-3-16

Pg. 7
Pg. B.B.

X
X
X

To establish a discriminatory effect in a race

claim the claimant "must show that similarly

situated individuals of a different race were not

prosecuted" see

Lee v. City of Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001)

Andy Ke (Asian) buyer, of stolen 5.29 ct. diamond

Edwin Jue (Asian) buyer, of stolen 5.29 ct. diamond

Bryan Carey, (white) buyer, of stolen 5.29 ct. diamond

Mark Miceli, (white) buyer, of stolen 5.29 ct. diamond

Kyrell A. Jenham (African American) buyer of stolen

5.29 ct. diamond was arrested & convicted, then

sentenced to 78 months. The others were 'not'!

Note:

A prima facie showing has been made here

The 5.29 carat diamond was stolen from the

Tallinn Jewellery designs store

Its actions are un-distinguished from all the

others who bought and sold the diamond

This does not justify be arrested, or convicted

Item # 1

Where the language of a **statute** is plain and unambiguous, the Court ascertains the statute's meaning from the **statute** itself. *Lewis v. State, Dept. of Licensing*, 157 Wn.2d 446, 465, 139 P.3d 1078 (2006). While the **statute** in question does not define conversation, the term "conversation" has a plain meaning. To determine the plain meaning of an undefined word, the Court may look to its dictionary definition. *Armantrout v. Carlson*, 166 Wn.2d 931, 214 P.3d 914 (2009); *Garrison v. Washington State Nursing Bd.*, 87 Wn.2d 195, 196, 550 P.2d 7 (1976). If not otherwise defined by **statute**, the ordinary meaning includes the dictionary definition. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002); *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 11 P.3d 762 (2000).

Dictionary definitions of the word "conversation" are clear and consistent. A conversation is an "informal interchange of thoughts, information, etc., by spoken words; oral communication between persons; talk; colloquy," or "an instance of this." Random House Dictionary (2010). It is the "informal interchange of thoughts, information, etc., by spoken words; oral communication between persons; talk; colloquy." Webster's New Universal Unabridged Dictionary (1996). Conversation is "an informal exchange of news and ideas between two or more people." Compact Oxford English Dictionary (3rd Rev. Ed. 2008).

It is evident from these definitions that the mere transmittal of a recorded message is not a conversation. The prerecorded call did not initiate a spoken exchange between two or more people.

Plaintiff asserts that such an interpretation eviscerates the **statute** and nullifies its purpose of protecting Washington citizens and businesses from automated solicitation calls. However, as noted by Talbots, a distinction may be made between prerecorded calls that initiate conversation and those that simply convey information without interaction with the recipient. The **statute** prohibits the use of automatic dialing announcing devices to contact persons and play recordings in the hopes of initiating a conversation with a live operator (e.g., to make a sales pitch). While calls that play tapes and then simply hang up (as here) would be disruptive to those who do not wish to receive them, they do not consummate a transaction or present the risks attendant to high-pressure sales tactics after the recording is completed. It is therefore logical that the legislature would be most concerned with those calls that combined the use of automated dialing messages with the risks posed by conversation with a live solicitor seeking to consummate a sales transaction over the telephone.

Regardless of the intended purpose of the legislation, the Court may not add language to a clear **statute**, even if it believes the Legislature intended something else but failed to express it adequately. See *Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155 (2006); *Kilian v. Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002).

Item #2

a. Substantive due process

The Fourteenth Amendment to the United States Constitution prohibits the governmental deprivation of "life, liberty, and property, without due process of law." U.S. Const. amend XIV, § 1. If a **statute** abridges a fundamental right, strict scrutiny applies and the **statute** is invalid unless it is "narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993). Courts have held that sex offender registration and notification statutes do not implicate fundamental rights. See e.g., *Doe v. Tandeske*, 361 F.3d 594, 597 (9th Cir. 2004) (individuals convicted of serious sex offenses do not have a fundamental right to be free from sex offender registration requirements); *Juvenile Male*, 670 F.3d at 1012 (juvenile's challenge to federal sex offender registration and notification requirements did not involve fundamental right); *United States v. Ambert*, 561 F.3d 1202, 1209 (11th Cir. 2009) (holding that the right of a sex offender to refuse subsequent registration of his or her personal information with Florida law enforcement and prevent publication of this information on the state's sex offender website is not a right that is "deeply rooted in this Nation's history and tradition"); *Does v. Munoz*, 507 F.3d 961, 965-66 (6th Cir. 2007) (holding that juvenile sex offenders' interest in private records was not a fundamental right). Thus, rational basis review applies, and for the reasons discussed above with respect to plaintiff's equal protection claim, the **statute** survives constitutional scrutiny. King County's motion for summary judgment should be granted as to plaintiff's substantive due process claim.

b. Procedural due process

Item # 3

When interpreting state law, federal courts are bound by decisions of the state's highest court. In the absence of such a decision, a federal court must predict how the highest state court would decide the issue using intermediate appellate court decisions, decisions from other jurisdictions, statutes, treatises, and restatements as guidance. However, where there is no convincing evidence that the state supreme court would decide differently, a federal court is obligated to follow the decisions of the state's intermediate appellate courts. *Lewis v. Tel. Employees Credit Union*, 87 F.3d 1537, 1545 (9th Cir. 1996) (internal quotations and citations omitted).

B. E

Item # 4

A. Substantial Compliance with RCW 4.96.020

Before Plaintiffs may sue the District for tort violations, they must first file a claim for damages. RCW 4.96.010(1). To file a claim for damages, Plaintiffs must follow the requirements outlined in RCW 4.96.020, which include, among other things, filing a form that "describes the conduct and circumstances that brought about the injury or damages", describes the injury or damages, and states the amount of damages claimed. RCW 4.96.020(3)(a)(ii), (iii), (vi). The Legislature requires courts to liberally construe these requirements and directs that "substantial compliance will be deemed satisfactory." RCW 4.96.020(5). "Substantial compliance" is met when parties follow a statute in a way that satisfies the "intent for which the statute was adopted." *Lee v. Metro Parks Tacoma*, 183 Wash. App. 961, 968, 335 P.3d 1014, 1017 (2014) (quoting *Banner Realty, Inc. v. Dep't of Revenue*, 48 Wn. App. 274, 278, 738 P.2d 279 (1987)). "The purpose of claim filing statutes is to 'allow government entities time to investigate, evaluate, and settle claims.'" *Id.* at 968 (quoting *Medina v. Public Utility District No. 1 of Benton County*, 147 Wn.2d 303, 310, 53 P.3d 993 (2002)). Notably, claim filing statutes "were not meant to be 'gotcha' statutes." *Garza v. City of Yakima*, No. 13-CV-3031-TOR, 2014 U.S. Dist. LEXIS 74958, 2014 WL 2452815, at *5 (E.D. Wash. June 2, 2014) (citations omitted). They "require[] notice to the government, but eliminate[] the barnacles of judicial bureaucracy." *Id.*

~~EX-F-W-11~~

Document #100

1. Federal Definition of "Burglary of a Dwelling"

According to 2003 Ninth Circuit precedent, the federal definition of "burglary of a dwelling" is "the Taylor [generic] definition of burglary, with the narrowing qualification that the burglary occur in a dwelling." *U.S. v. Wenner*, 351 F.3d 969, 973 (9th Cir. 2003)). Accordingly, the definition of "burglary of a dwelling" is: an unlawful or unprivileged entry into, or remaining in, a building or other structure *constituting a dwelling*, with the intent to commit a crime. "Building" or "structure" has been interpreted to mean "a structure designed for occupancy that is intended for use in one place." *U.S. v. Grisel*, 488 F.3d 844, 848 (9th Cir. 2007). This federal definition of "burglary of a dwelling" includes a person's residential house. *Reina-Rodriguez v. U.S.*, 655 F.3d 1182 (9th Cir. 2011). "Non-buildings adapted for overnight accommodation," do not *categorically* meet this definition (i.e. automobiles, booths, tents, boats, and railway cars), though in some circumstances these structures could be adapted for accommodation and might qualify as a building. *Grisel*, 488 F.3d at 851 (9th Cir. 2007).

3. Washington State Definition of Second Degree Burglary

The statute of conviction, Burglary in the Second Degree, provides that a person is guilty of the crime if, "with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building *other than* a vehicle or a dwelling." RCW 9A.52.030 (emphasis added). State law definitions of building and dwelling are broader than the federal definitions. "Building" includes "its ordinary meaning" and:

any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale, or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building. RCW 9A.04.110(5). Dwelling is defined as: "any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging." RCW 9A.04.110(7). The state definition of building actually includes dwellings, and "dwelling" under state law covers places "movable or temporary" such as fenced areas, railway cars, or a cargo container, whereas the federal definition categorically does not include those items.

As the Washington statutory definition of Second Degree Burglary includes burglaries of buildings which are non-dwellings, the Washington Second Degree Burglary statute does not categorically meet the definition of "burglary of a dwelling." The Ninth Circuit has previously so held in reviewing Washington's burglary statutes. In *U.S. v. Wenner*, 351 F.3d 969 (9th Cir. 2003), the court held that residential burglary under Washington state law was not a categorical crime of violence; and in 2006, *Guerrero-Velasquez* held that where second degree burglary is an inferior degree [as opposed to a lesser included] of residential burglary, it likewise is not a categorical crime of violence. *U.S. v. Guerrero-Velasquez*, 434 F.3d 1193, 1196 n. 3 (9th Cir. 2006).

Doc. # 100

EX. MC. #1

WESTLAW

State v. Michielli
Court of Appeals of Washington, Division 3, Panel Two. May 23, 1996. 81 Wash.App. 773 916 P.2d 458 (Approx 7 pages)

1 Affirmed But Criticized by State v. Michielli, Wash., May 29, 1997

View Washington Reports version

81 Wash.App. 773
Court of Appeals of Washington,
Division 3,
Panel Two.

The STATE of Washington, Appellant,
v.
Joseph R. MICHELLE, Respondent.

Nos. 13895-0-III, 14432-1-III
May 23, 1996.

Synopsis

*

Defendant was charged with trafficking in stolen property and two counts of second-degree theft. The Superior Court, Spokane County, Kathleen O'Connor, J., dismissed trafficking counts and one of the theft counts. State appealed. The Court of Appeals, Thompson, J., held that: (1) conduct alleged by state was part of common scheme or plan which did not support charges for both theft and trafficking, and (2) defendant was properly charged with two counts of theft.

Affirmed in part and reversed in part.

Sweeney, C.J., dissented in part and concurred in part with separate opinion.

West Headnotes (6)

Change View

- 1 Criminal Law  Preliminary proceedings
Dismissal of criminal prosecution on court's own motion is reviewed for abuse of discretion. CrR 8.3(b).
- 2 Criminal Law  Discretion of Lower Court
Trial court abuses its discretion when its decision is exercised on untenable grounds, or for untenable reasons, or is manifestly unreasonable.
- 3 Receiving Stolen Goods  Nature and elements in general
Crime of "trafficking" envisions person who steals and then sells to middleman who, in turn, buys stolen property with intent to resell it to third person; it suggests at least a two-party transaction and reflects legislative intent to punish those who knowingly deal in property stolen by others. West's RCWA 9A.82.050.
- 2 Cases that cite this headnote
- 4 Criminal Law  Liberal or strict construction; rule of lenity
Ambiguous statute is construed strictly against state and in favor of accused.
- 5 Criminal Law  Larceny offenses
Evidence that defendant took three items from prior occupant of residence he was renting and that defendant pawned items on three different days at two different pawn shops did not support bringing of charges for both theft and trafficking in stolen property; under purported facts of case, only one single offense was committed, as there was one continuous act or transaction of removing property from residence to pawn shop. West's RCWA 9A.82.050.

*

*

SEE, ALSO last page!

Doc # 100

EX. MC. # 2

2 Cases that cite this headnote

- 6 Criminal Law  Larceny offenses
 Defendant was properly charged with two counts of theft even though he allegedly took items from same owner at same place; items were taken on different days.

Attorneys and Law Firms

**459 774 Kevin M. Korsmo, Deputy Pros. Atty., Spokane, for appellant-respondent.

Julie A. Twyford, Spokane, for respondent-petitioner.

Opinion

THOMPSON, Judge.

Joseph R. Michielli was charged with three counts of trafficking in stolen property and two counts of second-degree theft. The State has appealed the trial court's dismissal of the three trafficking counts and one of the theft counts. (No. 13895-0-III) Mr. Michielli has petitioned for discretionary review of the denial of his motion to continue trial on the remaining theft count. **775 No. 14432-2-III) We affirm the dismissal of the three trafficking counts. The dismissal of the theft count is reversed.

FACTS

On July 9, 1993, an information was filed charging Mr. Michielli with one count of second-degree theft in connection with his unlawful taking of a rifle left by a prior occupant of the residence he was renting. (Count I) The State alleged that Mr. Michielli pawned the rifle, but when confronted by its owner, Tad Malmoe, he repurchased and returned it. Mr. Michielli was arraigned on July 26 and trial was set for November 1.

When Mr. Michielli decided not to enter a guilty plea, the State moved to amend the information. The amended information added three counts of first-degree trafficking in stolen property (Counts II, IV, V) and an additional count of second-degree theft (Count III). The added theft charge related to Mr. Michielli's alleged taking of a fish-finder several days after the rifle was taken. One of the trafficking counts related to the pawning of the rifle, another related to the pawning of the fish-finder, and the third related to the pawning of a scanner. The fish-finder and scanner also belonged to Mr. Malmoe and had been stored at the residence occupied by Mr. Michielli. The three items were allegedly pawned on three different days at two different pawn shops. The pawn loan value of the three items totaled \$155.

On October 27, 1993 the State's motion to amend the information was granted and trial was continued to January 17, 1994. On January 7, Mr. Michielli waived his speedy trial rights and trial was continued to March 7. In the interim, defense counsel moved for dismissal of Counts II through V, the counts added in the amended information. Following a hearing on March 1, the added counts were dismissed with prejudice conditioned upon Mr. Michielli's pleading guilty to Count I.

**460 On March 4, the State appealed the order of dismissal. **776 Mr. Michielli waived his right to a speedy trial on the theft count. Trial continuances were agreed to on several occasions. On October 18, defense counsel moved for a stay or continuance of trial during the pendency of the State's appeal. When the superior court denied the motion, Mr. Michielli sought discretionary review and an emergency stay of trial pending resolution of the State's appeal. We granted discretionary review and stayed the trial.

STATE'S APPEAL

No. 13895-0-III

Contentions. The State contends the trial court abused its discretion in dismissing the four charges added in the amended complaint. It contends CrR 8.3(b), the basis for the dismissals, applies only in extraordinary circumstances where a defendant's rights have been violated by governmental misconduct or mismanagement. It further contends the trial court erred in creating and enforcing its own plea arrangement.

In bringing his motion to dismiss, Mr. Michielli argued that the conduct alleged by the State was part of a common scheme or plan which did not support the bringing of five charges. He further argued the conduct alleged did not fit within the confines of the trafficking statute. On

appeal, Mr. Michielli contends there was evidence of arbitrary prosecutorial action when the four additional charges were filed.

1 2 **Trial Court Decision.** CrR 8.3(b) provides for dismissal of any criminal prosecution on the court's own motion "in the furtherance of justice." It requires that the reasons for dismissal be set forth in a written order. Dismissals pursuant to CrR 8.3(b) are reviewed for a abuse of discretion. *State v. Dailey*, 93 Wash.2d 454, 456, 610 P.2d 357 (1980). Discretion is abused when the trial court's decision is exercised on untenable grounds, or for untenable reasons, or is manifestly unreasonable. *State ex rel. Carroll v. Junke*, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

* 777 The written order states "the ends of justice will be met by dismissing Counts II, III, IV, V." However, the court's oral decision reflects more specific reasons for the dismissal—the alleged trafficking was done to facilitate the pawning; the three items of property were in Mr. Michielli's residence and he may have thought it was "sort of finders-keepers"; he picked up and paid for the pawn tickets; and the owner got all his property back. The court stated it was apparent that Mr. Michielli "got himself painted into [a] corner with regard to not wishing to plead guilty to the original charge" and therefore should be given an opportunity to "rethink his original misguided position."

* The trial court also considered whether the theft counts merged into the trafficking counts because the property was in the residence where Mr. Michielli lived and there was a question whether there was an independent taking, then an independent decision to traffic. Finally, the trial court addressed Mr. Michielli's contention that the prosecutor acted arbitrarily, noting that in the vast majority of burglary and theft cases the defendants attempt to pawn or sell the items they steal, but trafficking charges are not filed as a matter of course.

* **Trafficking Distinguished from Theft.** The offense of trafficking in stolen property, RCW 9A.82.050, is part of the Criminal Profiteering Act, RCW 9A.82. This Act was an amendment to the former racketeering act. A person is guilty of trafficking in stolen property in the first degree if he or she "knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others" or "knowingly traffics in stolen property...." RCW 9A.82.050. "Traffic" is defined to mean "to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person." RCW 9A.82.010(10).

* 3 4 The crime of trafficking envisions a person who "778 steals and then sells to a middleman (fence) who, in turn, buys the stolen property with the intent to resell it to a third person. It suggests at least a two- "778 party transaction and reflects legislative intent to punish those who knowingly deal in property stolen by others. There is no indication the Legislature intended to convert all second-degree thefts into first-degree felonies when the accused sells or pawns the items taken. *See, e.g., Florida v. Camp*, 579 So.2d 763 (Fla. Dist. Ct. App. 1991) (Florida anti-fencing statute intended to punish those who knowingly deal in property stolen by others; not intended to convert a third-degree felony into a second-degree felony merely because the thief sells the property rather than consumes it.). *But see State v. Strohm*, 75 Wash. App. 301, 879 P.2d 962 (1994), *review denied* 126 Wash.2d 1002, 891 P.2d 37 (1995).¹ An ambiguous statute is construed strictly against the State and in favor of the accused. *State v. Jackson*, 61 Wash. App. 86, 93, 809 P.2d 221 (1991).

* 5 **Same Course of Conduct.** Even if a single person could be charged or convicted of both theft and trafficking as to the same property, there would be only one single offense committed under the purported facts of this case because, as the trial court noted, there was one continuous act or transaction of removing property from the residence to the pawn shop. *Huffman v. Florida*, 642 So.2d 40 (Fla. Dist. Ct. App. 1994) (person cannot be convicted for grand theft and dealing in stolen property where the same stolen property involved in the same scheme or course of conduct is the subject of both counts); *Burrell v. Florida*, 601 So.2d 628 (Fla. Dist. Ct. App. 1992) (under Florida "779 statute, a defendant cannot be convicted for both second-degree grand theft and dealing in stolen property when one scheme or course of conduct is involved).

6 **Dismissal of Theft Charge.** The trial court's dismissal of the theft charge added to the amended complaint is reversed. Although the scanner, fish-finder, and rifle were taken from the same owner at the same place, they were taken on different days. The facts as alleged by the State support both theft charges.

EXe MC. # 4

Plea Agreement. As Mr. Michielli contends, the trial court has no authority to force a plea agreement on the defendant. The dismissal of the three trafficking charges is not dependent on Mr. Michielli's pleading guilty to the theft counts.

MICHIELLI'S REVIEW

No. 14432-1-III

Mr. Michielli's contention the trial court abused its discretion by denying his motion to continue was earlier resolved by the granting of a stay pending the State's appeal.

We affirm the dismissal of the three trafficking counts and reverse the dismissal of the theft count.

SWEENEY, C.J., and MUNSON, J., concur.

SWEENEY, Chief Judge, dissenting in part, concurring in part.

The trial court's order dismissing the three trafficking counts indicated the dismissal served "the ends of justice...." As best as I can discern from the court's oral opinion, the charges were dismissed pursuant to CrR 8.3(b) because:

1. Trafficking charges are not filed on a regular basis every time a theft charge is filed. The trafficking here was to facilitate the pawning of the items.
2. The gun, fish-finder and scanner were left in a "780 vacated residence. "[I]t isn't as if [Joseph R.] Michielli went out, went to somebody's home and stole this property."
3. Mr. Michielli "got himself painted into this corner with regard to not wishing to plead guilty to the original charge of second-degree theft which simply involved the weapon. Now [he's] got all these other charges facing him."
4. All the property was returned to the owner.
5. The pawn company has been paid off.
6. "Mr. Michielli should be given the opportunity to rethink his original misguided position on what his criminal culpability is for finding some rather expensive items in somebody's house and proceeding to pawn them...."

I dissent because I do not believe these reasons support dismissal in the furtherance of justice, as required by CrR 8.3(b), under our current case law.

A trial court's discretionary authority to dismiss a criminal prosecution is not unlimited. *State v. Whitney*, 98 Wash.2d 578, 637 P.2d 956 (1981); *State v. Bokk*, 40 Wash.App. 798, 700 P.2d 1188 (1985). Dismissal in the furtherance of justice is an extraordinary remedy. *State v. Cantrell*, 111 Wash.2d 385, 388, 758 P.2d 1 (1988); *State v. Laureano*, 101 Wash.2d 745, 762, 682 P.2d 889 (1984), *overruled on other grounds by State v. Brown*, 111 Wash.2d 124, 761 P.2d 588 (1988); *State v. Knapstad*, 41 Wash.App. 781, 788, 706 P.2d 238 (1985), *aff'd*, 107 Wash.2d 346, 729 P.2d 48 (1986).

To justify the dismissal of a prosecution, the record must show governmental misconduct or arbitrary action. *Laureano*, 101 Wash.2d at 762, 682 P.2d 889; *State v. Coleman*, 54 Wash.App. 742, 748, 775 P.2d 988, *review denied*, 113 Wash.2d 1017 (1989). The court may not substitute its judgment for that of the prosecutor. *Cantrell*, 111 Wash.2d at 390, 758 P.2d 1 (CrR 8.3(b) is designed to protect against arbitrary action or misconduct but does not grant the court the authority to substitute its judgment for that of the prosecutor).

"781 Mr. Michielli does not argue, nor does the record support a finding that the prosecutor's action in filing the three trafficking counts constituted misconduct. A defendant may be convicted of both theft and of trafficking the same stolen property. *State v. Strohm*, 75 Wash.App. 301, 310-11, 879 P.2d 962 (1994), *review denied*, 128 Wash.2d 1002, 891 P.2d 37 (1995). He does not argue that he was denied a fair trial. *Whitney*, 98 Wash.2d at 580, 637 P.2d 956. Because the record is devoid of any evidence of arbitrary action or governmental misconduct, I would reverse the decision of the trial court dismissing the trafficking offenses.

I agree with the majority that the court erred in dismissing the second degree theft count.

All Citations

Doc #100

EX. MC. #5

81 Wash.App. 773, 818 P.2d 458

Footnotes

1 Without citation to authority, *Strohm* at 310-11, 879 P.2d 982 states that "a person can be convicted of theft and of trafficking in the same property." However, the facts in *Strohm* reflect limitations on the court's broad statement. *Mr. Strohm paid others to steal motor vehicles. He then stripped off the parts, rebuilt other vehicles with the stolen parts, then sold the rebuilt vehicles. The defendant was convicted of one count of leading organized crime, seven counts of trafficking and one count of theft. The theft count at issue related to his giving another person the keys to a vehicle he did not own and making arrangements for that person to steal the vehicle from a dealership. After it was brought to him, the defendant personally stripped parts off of it with the intent to resell it. Thus, the Strohm facts fit the definition of trafficking and theft. The facts here do not.*

End of Document

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THE COURT OF APPEALS - DIV. I
STATE OF WASHINGTON

Lynell A. Denham
petitioner,

v.

State of Washington
Respondent,

NO.

Emergency Review for
Motion to vacate
78 month sentence;

Motion for declaratory
Relief;

Motion for Injunction
Relief...

I. Motion

COMES NOW, the petitioner, of record, Lynell A. Denham, pro se, moves this court for an order granting relief on all motions, at issue in this case, an order the dismissal of the 78 month term procured through "Extrinsic fraud," "selective enforcement," fabricating evidence. an order dismissing the case, because the R.C.W. Criminal statutes, attributed to the petitioner, are invalid on their face; inapplicable. and un-constitutional. 1st trafficking in stolen property, 2nd burglary.

pg. 2

An order granting "prospective" & "preliminary" injunctive relief, because the petitioner's "harms" are "imminent," "concrete," and are not "hypothetical," or "conjectural." He faces "future harms," which are not "speculative." His harms are "irreparable," and they stem from a pattern of continuous "past" harms. Det. Allan O'Neill...

These motions, are made pursuant to the Washington State Superior Court Rule(s)

- Cr.R. 8.3(b) State v. Michielli, 132 Wash. 2d 229, 239, 937 p. 2d 587 592 (1997)
- Cr.R. 7.8 - - - "personal restraint petition"

The other motions, are made pursuant to the United States Constitution's 14th Amend...

- Article III Title 28 - 2201...
- United States v. Agurs, 427 U.S. 97 (1976)
- Giglio v. United States, 405 U.S. 150 (1972)
- Mooney v. Holohan, 294 U.S. 103 (1935)
- Devereaux, 263 F.3d 1070, 1074 (9th Cir. 2001)

for a clear, and better understanding regarding the issues, discussed herein, refer to Document "6." The information therein, "document - 6" is supported by a limited number of official court documents, police reports... refer to appendice, for description of prima facie --- evidentiary documentation, that effectively, and efficiently, supports every claim, made with respect to the relief sought in each motion, in Association with King County Superior Court # 17-1-06567-2 SEA; that, the relief sought ARE - referenced to.

Appendice

- Kinkland P.D. Report - 11-14-16, Sgt. M. Vickers
- Det. Allan O'Neill, - 12-22-16 Affidavit # 16-1201
- Kinkland P.D. witness statement of Andy Le.
- R.C.W - 2nd° burglary statute...
- Defense Motion to dismiss
- King County prosecutor charging document

~~OO~~

pg. 4

- "Document 6," Citizen Complaint - O'Neill
- Supplements, A, B, C, E, - Memorandum of Law!
- Det. Allan O'Neill, 10-3-17, supplemental report
- Memorandum of Mitigating factors... "Lasnik"
- letter from attorney, Lisa Mulligan,
- Statutes - Comments
- State v. Michielli, ^{1.} 2nd degree trafficking in stolen property prosecution, R.C.W. 9A.82.050

^{1.} Note As of the date of 12-22-16, when Det. O'Neill, submitted his affidavit to Hon. Ken Schubert stating that I was trafficking... he had not amassed, any facts, or any information, outlined, or defined in the plain language, & the plain meaning, of this statute, was violated by me. As of 11-19-16 when I sold this item producing a receipt, "I.D," and the documentation, for the stone, that was bought by Andy LC, on 11-19-16, & sold on 11-19-16 by Andy LC to another. I WAS CHARGED!

pg. 5

The following documents, adduced will elucidate the "real-time" evidence, facts, and information that this Court needs to review; to quickly discern, and discovered the truth about the claims herein to grant the requested relief.

- Sgt. M. Vickers 11-14-16 police narrative...
- Kinkland P.D. witness statement of Andy Le.
- Det. Allan O'Neill, 12-22-16, Affidavit #16-1201
- Det. Allan O'Neill, 10-3-17, police narrative
- "Document 6" "Citizen Complaint"

Note: The other material, enclosed addressed to my assigned sentencing Judge. For my Federal Revocation. Robert S. Lasnik. Makes it clear that the issues, are straight-forward. He was not aware, of the detectives fraud, and fabricating evidence; causing both Judgements.

The other material, speaks for themselves, as a matter of law, & statute. Nothing more.



Pg 6

any other information, relied upon not in the search warrant at the time the affidavit was submitted cannot be considered as evidence, or probable cause. This is a fact.

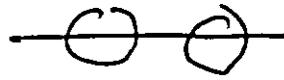
frank's does permit a court to purge the false statements and to sustain the warrant if the unpurged residue would justify it. But what will sustain the warrant must already be within it. see,

Baldwin v. Placer County, 418 F.3d 966 (9th Cir 2005)

pointing to evidence not cited in the warrant cannot sustain the warrant. see,

United States v. Davis, 714 F.2d. 896 899 (9th Cir 1983)

1. The detective also relies on the fact that an ANEA cell tower, the night of the burglary received a signal from the defendants telephone. This information was not within the affidavit, at the time of its procurement, and was not relied on as evidence for a judicial determination for the warrants issuance, and cannot thus be interped as evidence that was not before the judge, at the time the warrant was issued... ON 12-22-16.



Pg. 7

This information, alone does not establish that I "remained," or "entered," said establishment, in violation of R.C.W. 9A.52.030

This information, that some other person, was utilizing a telephone, subscribed to me, some 2.5 miles, away according to "T-Mobile" who testified in open court, does not single me out.

Moreover, the detective on 4-20-17, 119 days later (3 months 29 days) after he specifically informed - lied, to Hon. Ken Schubert, on 12-22-16 in Affidavit # 16-1201 that I committed the crimes of:

- Theft
- burglary
- trafficking...

Submitted to Superior Court, Susan Amini... requesting cell telephone, subscribed data. The warrant, was served upon "Metro pcs," & upon "T-Mobile," on 4-25-17. The data requested was received on 5-4-17, 123 days later, with respect to (12-22-16)...

~~OO~~

pg. 8

This information, is irrelevant in light of FRANKS v. DELAWARE...

This does not cure the fact, that on 12-22-16 Det. O'Neill, without:

- fingerprints
- D.N.A
- SURVEILLANCE
- Tangible evidence
- physical evidence
- EYEWITNESS ACCOUNTS
- PARTY ADMISSIONS
- informants;

informed Hon. Schubert, that there was probable cause, for my arrest, and to search my home. because tools, used to commit the listed crimes & stolen jewelry, would be located at my home. Nothing located!

~~OO~~

pg. 9

SEE - Det. O'Neill, 12-22-16, Affidavit #16-1201
to Hon. Ken Schubert;

- page 7 of 13 line 22-24 for this fact.

SEE - Det. O'Neill, 10-3-17 supplemental report
Narrative Report,

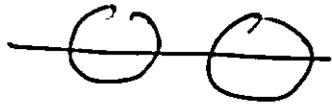
- page, EX-B3 line (u) where it is noted
that a "Dustin Joseph Toney," fingerprints
was located at crime scene.

SEE - ALSO page, EX-B7 lines * * *
where it is clearly noted on:

- 6-27-17 "No prints of value were located,"
- 8-17-17 "No identifiable D.N.A. located."
- SEE - EX - B7 last line * ;

where Det. Allan O'Neill, clearly noted that he
referred this case, to the King County pros.
office, to file the listed charges against me.

This rises to fabricating evidence. Literally! ...



pg. 10

Conclusion

1-23-19, is my scheduled release date from the federal prison, located in Hanlon, Calif. This sentence, arises out of herein discussed.

At the expiration of this sentence, revocation violation, my federal probation will be terminated. I, then face "future harm," based on the sole actions, of Det. O'Neill, as the prima facie evidence, adduced herein clearly demonstrates, without question or further discernment. 78 months is impending upon me in the absence of the declaratory relief, & injunctive relief, Article III.

I also have a D.O.S.A. sentence out of Pierce County. The sentence expires this - - - December of 2018. However, a detainer, has been lodged against me, because of the - - actions of Det. O'Neill whose impression on the mind of Dept. of Corr. that I violated.

~~OO~~

pg. 11

I therefore, ASK that this court correspond with pierce county superior court Judge Jerry Castello, in ASSOCIATION with my D.O.S.A. sentence, referenced to #27141025787, have the Dept. of Corr. warrant, rescinded.

I ALSO ASK this court, to have superior court chief judge, SEAN O'Donnell, AT SEATTLE present document "?" to the prosecuting Attorney(S) who prosecuted King County court #171065672 SEA, Kinkland P.D.# 16-44500, and have prosecution(S) answer either:

A. YES;

B. NO;

To the two simple questions outlined starting from "burglary" date 11-14-16, to "trafficking" date, 11-19-16, thru 12-22-16 date affidavit, was submitted; date WARRANT was procured, and on 10-3-17 when Det. O'Neill submitted his "certification for determination of probable cause" affidavit to file charges against me in the complete absence of evidence & information that I committed said acts.

OO

pg. 12

If the ANSWER be NO, OR NOT RESPONSIVE, AS IT WILL BE, I RESPECTFULLY ASK THIS COURT, ORDER THE DISMISSAL OF CASE # 171065672 SEA, AND ORDER MY RELEASE, AND COMMUNICATE THESE FACTS TO JUDGE' ROBERT S. LASNIK, WHO NOW DISCERNS THE TRUE FACTS, AS OF THE WARRANT PROCUREMENT DATE, 12-22-16, & THE DETECTIVES FILING DATE AS OF 10-3-17. IN THE ABSENCE OF EVIDENCE.

IF AN EVIDENTIARY HEARING BE NECESSARY, I ASK TO BE RELEASED FROM HERE, FEDERAL -- PRISON, AND MAKE AN APPEARANCE OUT OF CUSTODY. I HAVE NO "F.T.A.S.". I WILL -- MAKE AN APPEARANCE. JUDGE LASNIK, CAN VOUCH FOR ME THERE. ADJUDICATE PRIOR TO, 1-23-19.

SINCE, DET. O'NEILL CANNOT ANSWER "DOCUMENT?," THE PROSECUTOR'S OFFICE CAN DO IT FOR HIM BY BRINGING FORTH DET. O'NEILL'S EVIDENCE, AS OF.

- A. 12-22-16 WARRANT
- B. 10-3-17 FILE DATE

DATE 11-17-18

Respectfully Submitted
Spull Berhan
28 USC 1746

{418 F.3d 971} The County invokes a fundamental case on the Fourth Amendment, *Franks v. Delaware*, 438 U.S. 154, 57 L. Ed. 2d 667, 98 S. Ct. 2674 (1978). *Franks* does permit a court to purge the false statements and to sustain the warrant if the unpurged residue would justify it. But what will sustain the warrant must already be within it. The County is pointing to evidence not cited in the warrant. That evidence cannot sustain the warrant. See *United States v. Davis*, 714 F.2d 896, 899 (9th Cir. 1983) (under *Franks*, "the fact that probable cause did exist and could have been established by a truthful affidavit does not cure the error.").

?

1.?

"Document Question?"

Document question, consists of A series, of specific questions, comments, and is limited to the crimes, of burglary, and the crime, of trafficking in stolen property. Statutes, for the two (2), listed crimes, are cited herein.

• Synopsis: Burglary, & Trafficking

on 12-22-16, Det. Allan O'Neill, submitted his search warrant, Affidavit #16-1201, to the Hon. Ken Schubert, and to the King County prosecutor's office, for review. factually - - - assenting, that there was probable cause for the petitioner (Lynell Denham's) arrest for these crimes, that occurred, on, on about - - 11-11-16; - 11-14-16 (burglary) 11-19-16 (trafficking)

• Question: I

upon, receiving, Det. O'Neill's, Affidavit of 12-22-16 to Hon. Ken Schubert; and upon receiving - the detectives, Affidavit of 10-3-17. for the filing of criminal charges; did he, on the information, within either of

?

2. ?

these official documents, convey, or produce, or provide any kind of factual information, or evidence, to Hon. Ken Schubert, or to King County prosecutors, that the petitioner, Lynell Avery Denham, on or about 11-15-16, 11-19-16 did with the:

"intent" to commit a crime against a -- person therein, he "entered" or "remained" unlawfully in a building other than a vehicle, or "dwelling," R.C.W. 9A.52.030. ? ;

A. YES

B. NO

• Question: 2

• Did Lynell Avery Denham, on or about 11-15-16 11-19-16, "knowingly trafficked in stolen property, knowing that the property was stolen," R.C.W. 9A.82.050. ?

C. YES

D. NO

?

3. ?

Comments:

AS AN AID, to this panel, regarding these circumstances, Counsel, Kevin McCabe, noted in his declaration, for appellate counsel to argue:

- "Erroneous rulings of law"
- "insufficiency of evidence"
- "prosecutorial misconduct"^{1.}
- "ineffective assistance of counsel"

1. SUSAN HARRISON, was made fully aware, by myself, that she did not have a case, on evidence. I did in fact provide her, with documentary evidence, during a limited -- proceeding, before presiding chief Judge Hon. SEAN O'Donnell. She should produce this packet.

Harrison, on the record, stated she would like the "record to reflect that Mr. Denham has handed me a packet." The packet, -- consist of the evidence, & facts cited herein!

pg. A •

Real-time chronology of historical facts & events of Det. Allan O'Neill's investigation of Mallinak Design Jewelers

- 11-14-16 Assisted Sgt. Vickers at crime scene (burglary)
- 11-29-16 Assigned to case as lead investigator
- 12-1-16 Det. O'Neill, contacted by Det. Magan, regarding (GEM)
- 12-5-16 Det. O'Neill, received email from Frank Mallinak
- 12-6-16 Det. O'Neill, contacted "A.F.I.S." to check print status
- 12-7-16 Det. O'Neill, received call from Det. Magan, regarding (GEM)
- 12-8-16 Det. O'Neill, went to Mallinak's store
- Det. O'Neill, went to Ed's Jewels, per Det. Magan's "tip."
- Det. O'Neill, contacted Andy Le, regarding stone/GEM
- Det. O'Neill, contacted Bryan Chrey regarding (GEM)
- Det. O'Neill, conducted criminal records check on me
- Det. O'Neill, contacted P. Robinson, my federal probation offc.
- Det. O'Neill, contacted I. Dillingham, my state probation, offc.
- Det. O'Neill, again contacted Jeweler Bryan Chrey
- Det. O'Neill, searched pawning activity involving me.
- 12-8-16 Det. O'Neill, placed holds on items pawned by me.
- 12-14-16 Det. O'Neill, went to Porcello Jeweler, where I sold items
- 12-15-16 Det. O'Neill, again went to Mallinak's store
- 12-15-16 Det. O'Neill, called Mark Kasin's pawnshop
- 12-15-16 Det. O'Neill, received photo of Range Rover from I. Dillingham,
- 12-21-16 Det. O'Neill, met with Mark Miceli, buyer of (GEM)
- 12-22-16 Det. O'Neill, submitted affidavit, then procured warrant
- 12-29-16 Det. O'Neill, and others executed warrant at my home

EX. M.V. # 1

OfficerID: mavickers, Narrative - Sergeant Vickers

Case Number 16-44500
Burglary 2nd Degree
Malicious Mischief 1st Degree
Theft 1st Degree
Date: 11/14/16
M. Vickers #386

On 11/14/16 at 1056 hours I was dispatched to Mallinak Design Jeweler, at 6523 132nd Ave NE, Kirkland, WA to investigate a burglary. When I arrived, I met and spoke to Frank Mallinak (377/62) who is the owner of the business. Mallinak told me his business was broken into over the weekend and his safe was broken into. Mallinak told me the business closed on Friday (11/11/16) at 1800 hours and was closed over the weekend. Mallinak stated he arrived at work around 0945 hours and discovered the burglary. Mallinak showed me his lunch room, which is directly behind the display counters and customer area. The safe was open and the drawers from the safe were laying on the floor. The side of the safe had a large hole drilled in the side of it but the hole did not go through the side wall of the safe. There was another hole which was approximately a 1/2 inch in diameter and it went through the side of the safe and into one of the locking pegs on the door. The dial on the safe was damaged and pieces of the dial were laying on the floor. There was a proximity alarm on the safe and the alarm wire was cut. The alarm box on the wall which was above the refrigerator was open and several wires were cut. Several items from a shelf and from the top of the refrigerator were knocked over onto the floor. There was an open bottle of Captain Morgan Spiced Rum was laying on the floor. Mallinak showed me his alarm panel and the door was flipped down and he stated the door was shut on the panel when they closed Friday.

Mallinak then showed me his work room and polishing room which are behind the lunch room. The bottle cap from the rum bottle was laying on the floor near the door between the hallway and the work room. There was a small safe on the floor in the work room which was not disturbed. The rear door to the business leads to a utility room. The rear door to the business was cut in half underneath the door lock and the door was pushed open. There was a metal security bar on the inside of the rear door which was still in place to prevent the door from being opened. The rear door was cut laterally below the metal bar and door locks. The door knob and dead bolt locks were still locked. Nothing in the polishing and work rooms appeared to have been disturbed. Mallinak Design Jeweler is in a strip mall with several other businesses on the south side of the Bridal Trails Shopping Center. The utility room behind the business is used by the property manager and contractors. The utility room has telephone lines and power boxes for the other businesses in the shopping center. The rear door in the utility room leads outside to an alley behind the shopping center. There was a lock box with a key to the utility room on the utility room door. The lock box and key were still on the door. There was no damage to the lock box but there was glue in the door lock to the utility room. The shopping center maintenance workers stated they noticed the glue in the door lock last Thursday (11/10/16) and they called a lock smith to fix the lock. There were no signs of damage to the rear utility room door. I went back into the utility room and there was a ladder on the wall which leads to a roof door hatch. I climbed the ladder and the roof hatch was not locked or latched. I pushed the hatch open without moving anything and gained access to the roof. The hatch can be locked on top of the roof with a pad lock but there was no lock on top of the hatch or in the area. I went back outside to the rear alley and there was a gas meter next to the utility room door. There were two pipes which ran up the outside the building toward the roof. There were several scuff marks on the meter and on the side of the building along the pipes towards the roof. It appears the suspects climbed the up the building to the roof by using the pipes for support. The suspects then entered the roof access hatch to gain entry into the utility room.

I called the King County Regional Automated Fingerprint Identification System office and requested they respond to the business to assist with processing the scene. I took digital photographs of the business showing the point of entry, damage to the property and the areas disturbed by the suspects. King County Sheriff Identification Technicians responded and processed the scene. Identification Technician Jeffrey Broderson stated they removed several latent prints from the safe, alarm boxes on the wall and rear door to the business. I gave them the Kirkland Police Department case number for their records. The latent prints were retained by the identification technicians and they will submit them for processing.

* Detectives O'Neil and Ishmael responded to the scene and assisted in the investigation. The detectives checked with other businesses for surveillance footage of the area and completed a witness check.

Frank Mallinak stated his alarm system was installed by White Alarm Systems and the system is monitored by Grand Central Station call center. Mallinak provided me with an e-mail he requested from the call center. The motion alarm in the polishing room was activated at 2322 hours on 11/11/16 and the work room alarm was activated at 0140 hours on 11/12/16. Mallinak stated the call center will call him first if there are two activations but he did not receive a call because the activations were more than two hours apart. Mallinak has made a request for White Alarm System to respond to re-connect his alarm to see if any codes were used on his alarm system. I checked with NORCOM and there were no alarms calls to the business around the times mentioned earlier.

Mallinak stated the shopping center changed management companies on October 15, 2016. He stated the old management company was Urban Renaissance and the new management company is Retail Opportunity Investment Corporation.

Frank Mallinak stated he had only two other employees over the past few years and he does not suspect they were involved. Mallinak stated the bottle of Captain Morgan Spiced Rum was on a shelf in the lunch room and the bottle was three quarters full. It appears the rum was drunk by the suspects. I took possession of the rum bottle and the bottle cap.

Mallinak provided a list of property taken from the safe which included \$59,915 worth of customer's merchandise, \$92,264 worth of store merchandise and over \$4600 in currency. Mallinak provided a list of the merchandise taken and photographs of some of the jewelry taken.

Mallinak was provided my business card with the case number for his records. I checked the rear alley behind the Mallinak's

EX. M.V. #2

Page: 226 of 226

business and I located a white latex glove along the south curb. The glove did not have a lot of debris on the glove. I took digital photographs of the glove and I placed it in an evidence envelope.

I transported the bottle of rum and the latex glove to the Kirkland Police Department. I wrapped the bottle of rum in a piece of brown paper and I placed the bottle in an evidence box. The box was labeled, sealed and initialed. The bottle of rum was entered into the property records system and assigned property tag number 1644500EV386-001. The box with the bottle of rum was placed in evidence locker #29 for submission to the KPD property room. The latex glove was still wet and I placed the latex glove on top of the evidence envelope and it was placed in temporary evidence locker #007 on 11/14/16 at 1535 hours. I locked the temporary evidence locker and I retained the key. I placed the temporary evidence locker key in my assigned property locker and the key will remain locked in my locker until I return to work on 11/17/16.

The digital photographs were uploaded to the Kirkland Police Department records system under the case number 16-44500.

On 11/17/16 at 1010 hours I took a photograph of temporary locker #007 which was still locked and I had possession of the key. I unlocked the temporary locker and removed the white latex glove. I took a digital photograph of the latex glove. The latex glove was dry and it was placed in an evidence envelope. The evidence envelope was labeled, sealed and initialed. The latex glove was entered into the property records system and assigned property tag number 1644500EV386-002. The evidence envelope with the latex glove was placed in evidence locker/slot #23 for submission to the KPD property room.

N/F.

OfficerID: mavickers, Case Summary

Unknown suspects made entry to a service room behind the business (Mallinak Designs Jewelers) through an unlocked roof access door. The suspects then cut through the bottom half of the interior door underneath the lock with a saw to gain entry into the business. The suspects disabled the alarm system and then drilled a hole into the side of the safe to force it open. The suspects took over \$100,000 in jewelry. The scene was processed and latent prints were recovered and items were recovered with possible DNA evidence.

EX. D1

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SUPERIOR COURT, KING COUNTY, WASHINGTON

STATE OF WASHINGTON)

) ss.

NO: 16-1201 SW

COUNTY OF KING)

AFFIDAVIT FOR SEARCH WARRANT

KIRKLAND POLICE CASE 16-44500

The undersigned on oath states: I believe that:

Evidence of the crime(s) of:

RCW 9A.52.030 Burglary 2nd Degree

RCW 9A.56.030 Theft 1st Degree

RCW 9A.082.050 Trafficking in Stolen Property 1st Degree /

Contraband, the fruits of a crime, or things otherwise criminally possessed, and

Weapons, or other things by which a crime has been committed or reasonably appears about to be committed, and

A person for whose arrest there is probable cause, or who is unlawfully restrained

Is/are located in, on, or about the following premises:

- 1 1. 10312 Golden Given RD E, Tacoma, Pierce County, WA 98445, 1.09 acre parcel, to
2 include the primary residence, all outbuildings, and temporary or other structures,
3 on said property;
- 4 2. The person of Lynell A. Denham, DOB 07/18/1964;
- 5 3. Cellular phone belonging to Lynell A. Denham, DOB 07/18/1964 and / or assigned
6 to phone numbers 253.449.6615 and 253.677.0772;
- 7 4. Light colored, 2008 Range Rover vehicle, bearing WA license plate number
8 BCX8267, VIN: SALSF25418A144329.

9 My belief is based upon the following facts and circumstances:

10 **Detective O'Neill Training & Experience:**

11 Your Affiant, I, Detective Allan O'Neill, being first duly sworn on oath, deposes and says: I have
12 been a sworn police officer in the State of Washington since 1997. I have worked as a sworn
13 officer with the Arlington Police Department and I am now employed as a sworn police officer
14 with the City of Kirkland. I am currently assigned to the Investigation Division as a Detective.
15 Through my experience in these positions I have been assigned a variety of investigations to
16 include VUCSA, Child Exploitation, MV Theft, MV Prowl, Burglary, Robbery, Identity Theft,
17 Forgery, Possession of Stolen Property, Trafficking of Stolen Property, Assault, Sexual Assault,
18 Rape, Harassment, etc. I have completed the Washington State Basic Law Enforcement
19 Academy through the Washington State Criminal Justice Training Center (WSCJTC). I have
20 received specialized training in the following fields: police training officer academy (PTO),
21 hostage negotiations (CJTC), auto theft investigations (WATPA/WSATI), interview and
22 interrogation (CJTC), basic investigations training (CJTC), child interviewing and interrogation
23 (CJTC) and RSO coordinator training.

24 **THE INVESTIGATION**

25 On 11/14/16, Frank Mallinak the owner of Mallinak Design Jeweler, 6523 132nd Ave NE,
26 Kirkland, WA called the Kirkland Police Department to report that his store had been burglarized.
27 Mallinak stated that sometime over the weekend someone forced entry into his business and

1 broke into his safe. Mallinak reported that the business closed on Friday (11/11/16) at 1800 hours
2 and was closed over the weekend. He stated he arrived at work at 11/14/16 around 0945 hours
3 and discovered the burglary.

4
5 Mallinak showed me the damage to the store and the safe. The safe was open and the drawers
6 from the safe were laying on the floor. The side of the safe had a large hole drilled in the side of
7 it but the hole did not go through the side wall of the safe. There was another hole which was
8 approximately a 1/2 inch in diameter and it went through the side of the safe and into one of the
9 locking pegs on the door. The dial on the safe was damaged and pieces of the dial were laying
10 on the floor. There was a proximity alarm on the safe and the alarm wire was cut. The alarm
11 box on the wall which was above the refrigerator was open and several wires were cut.

12 The rear door to the business was cut in half underneath the door lock and the door was pushed
13 open. There was a metal security bar on the inside of the rear door which was still in place to
14 prevent the door from being opened. The rear door was cut laterally below the metal bar and
15 door locks. The door knob and dead bolt locks were still locked.

16 Mallinak Design Jewelers is in a strip mall with several other businesses on the south side of the
17 Bridal Trails Shopping Center. The utility room behind the business is used by the property
18 manager and contractors. The rear door in the utility room leads outside to an alley behind the
19 shopping center. There was glue in the door lock to the utility room. The shopping center
20 maintenance workers stated they noticed the glue in the door lock last Thursday (11/10/16) and
21 they called a lock smith to fix the lock. The roof hatch can be locked on top of the roof with a
22 pad lock but there was no lock on top of the hatch or in the area. In the rear alley there is a gas
23 meter next to the utility room door. There were two pipes which ran up the outside the building
24 toward the roof. There were several scuff marks on the meter and on the side of the building
25 along the pipes towards the roof. It appears the suspect(s) climbed up the building to the roof by
26 using the pipes for support. The suspect(s) then entered the roof access hatch to gain entry into
27 the utility room and then cut the back door to Mallinak's business.

1 Mallinak provided a list of property taken from the safe. The list included more than 600 pieces
2 of jewelry and loose stones. The estimated wholesale value was approximately \$250,000. Six
3 of the pieces were certified GIA stones. One such GIA stone was a 5.29ct round diamond cert#
4 2185021160. This diamond had just returned from being certified and the original GIA report
5 had been stored in the safe with the diamond. Both the diamond and GIA certified paperwork
6 were stolen from the safe.

7 On 12/01/016 at about 1915 hours, Detective Magan with the Seattle Police Department
8 contacted me with a possible lead on someone trying to sell "loose stones". His informant stated
9 that the stones were taken in the last two weeks. I provided a detailed list of the stolen items to
10 Detective Magan.

11
12 On 12/07/16, Detective Magan called and verified that the 5.29ct diamond with the GIA number
13 2185021160 taken from Mallinak's shop had been sold to Ed's Jewelry located at 4th and Pike in
14 Seattle. The information that Detective Magan had received was that the diamond was bought
15 at the Jewelry store and then sold to another party. I conducted some research and located an
16 Ed's Jeweler's, 1424 4th Ave #203, Seattle, WA 98101. The business license for that store was
17 listed to Edwin Jue (President) and Shawna Wang (Secretary).

18 At about 1425 hours, I took a copy of the GIA paperwork for the 5.29ct diamond to Ed's Jewelers
19 which was now on the 4th floor of the building. I contacted Jue at the store and provided him a
20 copy of the GIA report. He told me that he purchased the diamond on 11/19/16 from Andy Le,
21 who he has conducted business with in the past. Jue provided me with a receipt that listed the
22 date, the name Andy Le and that he paid \$30,000. Jue stated that on 11/20/16, he sold the
23 diamond to Chrey Jewelers that is located in Bremerton. Jue did not have any paperwork for the
24 sale of the diamond.

25 I contacted Andy Le, who is the owner of Thien Phuoc Jewelry, 7101 MLK Jr Way, Seattle, WA.
26 Le stated that on or about November 15th or 16th of this year, a bald, middle-aged, thin African-
27 American man, offered to sell him an expensive diamond that was in his possession for \$50,000.

EX. D5

1 He stated the male told him that he wanted to sell the diamond because he was in need of
2 emergency money to financially support his father. Le stated that the male showed him a receipt
3 for how he obtained the diamond and also a certified appraisal of the diamond.

4
5 Le said he told the male that he did not have that large amount of money, but he felt badly for him
6 given the story about his father. Le offered to sell the diamond for him to another jewelry dealer
7 who he thought would have the money to purchase the diamond. He stated that the paperwork
8 that he presented, appeared credible.

9 Le stated that the male agreed to his proposal and Le contacted Ed's Jewelry. Ed agreed to
10 purchase the diamond for \$29,000 and Le relayed the information to the male. Le stated that
11 since it was near the close of business on this day, he asked the male to come back with the
12 diamond in a couple days. The male told Le that he would come back and Le asked the male for
13 his identification. The male provided Le with his Washington State Identification Card and Le
14 stated the picture on the ID matched the male. Le made a copy of the ID card and then had the
15 male sign the copy of the ID that the diamond was not stolen. Le emailed me a copy of the WA
16 ID card which listed the male as Lynell A. Denham, DOB 07/18/1964, address of 10312 Golden
17 Given RD E, Tacoma, WA 98445.

18 Le stated that on or about November 19th, Denham returned to his store with the diamond to
19 complete the transaction. Le stated that the male was wearing a large aquamarine necklace
20 around his neck. Mallinak had an aquamarine stone taken from his store. Le stated that Denham
21 asked him to increase the offer to \$30,000 so that he could pay him for his time. Le said he then
22 took the diamond over to Ed's Jewelry and Ed provided him with \$30,000 in cash for the
23 diamond. After Ed gave him the money, Le provided \$29,000 in cash to the man.

24 Le stated that he wrote down Denham's phone number when he called him. He said he has caller
25 identification on his phone and Denham's name popped up on his caller identification system
26 when Denham called him. Le stated that Denham approached him again several days after the
27

1 diamond transaction. He said Denham brought a box of jewelry to his store and asked if he wanted
2 to purchase the jewelry. Le told Denham no and he has not spoken to him since that date.

3 I conducted a records check on Denham. Denham had been arrested in Tacoma in 2014 for
4 burglary. In that burglary, Denham cut a hole in the roof of a building using a saw in an attempt
5 to gain access to the safe inside the jewelry store. He also had numerous burglary arrests and
6 federal arrests. Denham is on both Federal and State probation. I called and spoke to Patrick
7 Robinson with the Federal probation. He informed me that Denham was still living at 10312
8 Golden Given RDE, Tacoma, WA 98445 with, James C. Fisher. This is also Denham's address
9 that is listed on his WA State Identification card. Robinson stated that he has monthly face to
10 face meetings with Denham and he has been out to Denham's residence three times. Robinson
11 stated that he last visited Denham at his residence, 10312 Golden Given RD E, Tacoma, WA
12 98445 on 12/05/16.

13 I called Izetta Dillingham with DOC probation and she also stated that Denham lives at 10312
14 Golden Given RDE, Tacoma, WA 98445. Dillingham also stated that she went out to Denham's
15 residence and he had a new Range Rover and was wearing a huge blue stone gem necklace. This
16 is a similar piece of jewelry that was taken from the burglary. I conducted a records check on
17 vehicles registered to Denham's residence, 10312 Golden Given RDE, Tacoma, WA 98445. I
18 located a 2008 Range Rover registered to James C. Fisher. The VIN was listed as
19 SALSF25418A144329 and the license plate number was BCX8267. On 12/15/16, Dillingham
20 sent me photos of the Range Rover and I could see a paper plate with the dealership's name "All
21 Right Auto Sales." I called the owner, Joe, at All Right Auto Sales and he informed me that the
22 Range Rover was sold to James Fisher on 11/17/16. He stated that Fisher had \$9,000 cash and
23 financed the balance of \$12,300.

24 I searched pawning history for Denham using the Leadsonline program. The check showed that
25 on 11/14/16, Denham pawned a woman's 14kt yellow gold necklace to the Topkick Jewelry &
26 Loan, 13014 Pacific Ave S, Parkland, WA. This necklace matched one that was stolen from
27 Mallinak's store. On 11/21/16, Denham pawned a sapphire ring, a diamond band and a wedding
28 set at the Porcellos Jewelers, 10222 NE 8th St Bellevue WA. All of the jewelry items were stolen

EX. D7

1 from Mallinak's store. Mallinak had photos of the items and the sapphire ring was a custom
2 design. On 11/28/16, Denham pawned a woman's white gold 14kt, 4.20 grams; 1 blue/8 diamonds
3 ring at the Topkick Jewelry and Loan. This ring matched one that was stolen from Mallinak's
4 store. On 12/08/16, I sent holds to the Topkick Jewelry and Porcellos for the above listed items
5 Denham pawned.

6
7 On 12/14/16, I went to the Porcellos Jewelry and recovered the items that Denham had pawned.
8 Jason Porcello who was the owner of the business stated that Denham had other pieces of jewelry
9 that he wanted to sell to them and was going to come back in the future. Denham was seen
10 leaving in a light colored Range Rover with a temporary license plate in the window. Employee
11 Joseph Lennon completed the transaction and stated that Denham had called him and told him
12 that he had some loose diamonds and sapphires that he wanted to sell. Mallinak had several loose
13 stones taken from the burglary. Denham presented the same Washington State ID card that he
14 used to sell the diamond to Le. Lennon indicated that the ID matched Denham.

15 On 12/15/16, I called and spoke to Mark Kosin with Topkick Jewelry. Kosin told me that
16 Denham came in a couple of days ago to sell other items. Kosin stated that he told Denham that
17 there was a police hold on the items he pawned and they could not purchase any further items
18 from him. They provided Denham with my name and the police department I worked for. This
19 obviously alerted Denham that he was the subject of an investigation. Since that time, Denham
20 has not been to his scheduled meetings with his Federal and State Probation officers. There is
21 an active DOC warrant for his arrest for the probation violation.

22 Mallinak had hundreds of pieces of jewelry stolen and only a small number are known to be
23 recovered. It would be difficult to traffic/sell such a large quantity of jewelry quickly, thus it
24 would be reasonable to suspect that he is storing the jewelry at his residence. Both probation
25 agents, informed me that Denham's property contains the main house, a guest house, several
26 structures and numerous vehicles. All of these are places that Denham could hide the stolen
27 jewelry and tools used to commit the above listed crimes. Denham has provided the following
28 two cellular numbers to his probation officers: 253.449.6615 and 253.677.0772. Reviewing prior

1 arrests of Denham, he used two way radios to communicate with other suspects during the
2 commission of his crimes. With cellular phones being easier to obtain and Denham having two
3 cellular phones, I believe evidence of the above listed crimes may be on his cellular phones.

4
5 On 12/19/16, Dillingham informed me that a couple of DOC Officers were at Denham's
6 residence and believed Denham was in the residence.

7 **SUPPORTING INFORMATION**

8 Courts have recognized that the majority of Americans possess and use cellular telephones, and
9 that most of those keep the phones within their reach at all times. Cellular telephones are used
10 for, among other things, voice, text, email and SMS communications; accessing and posting to
11 social networking websites, surfing the internet, taking and storing photographs, creating and
12 storing documents, notes, music, mapping directions to places, etc. Courts have recognized that
13 these devices are essentially small computers with vast storage capacities. Information deleted
14 by the user can be recovered, years after deletion, upon examination of a cell phone's data.

15 Examples of this stored data include user-created or saved data, such as contact lists, messages
16 sent and received, images, audio and video files, personal calendars, notes, prescriptions, bank
17 statements, videos, documents, and images; as well as device-generated data, such as user
18 identity information, passwords, usage logs and information pertaining to the physical location
19 of the device over time. Examples of data stored in a phone that can reveal a person's location
20 at specific dates and times include metadata and EXIF tags associated with photographs; IP
21 addresses, which are associated with a geographic location; and geographic location associated
22 with the phone sending/receiving signals with cell towers and satellites. As such, a person's use
23 of the phone can reveal where a person has been at dates and times relevant to the crime(s) under
24 investigation; a person's activity at relevant dates and times, and/or places a person frequents at
25 which that person is likely to be found for arrest or at which the suspect stored or inadvertently
26 left evidence behind.

27 Whether some data on the phone is evidence may depend on other information stored on the
28 phone, and the application of an examiner's knowledge about how a cellular telephone operates.

EX. D9

1 Therefore, the context, location, and data surrounding information in the phone's data may be
2 necessary to understand whether evidence falls within the scope of the warrant. Due to the
3 potential for an extremely large volume of data contained within modern cellular telephones, and
4 that fact that evidence can be stored/located in unanticipated locations or formats, and can be
5 embedded in other items stored on the phone, investigators typically need to use specialized
6 equipment to make an exact copy of the device, then conduct a careful and time-consuming
7 search for the evidence authorized for seizure by a search warrant. For these reasons, I ask for
8 authority to seize and image the cell phone(s) described herein for later search pursuant to the
9 warrant issued in this matter.

10 **PLACES TO BE SEARCHED**

11 Based upon the above facts and circumstances I request that a search warrant be issued,
12 directing the search of 10312 Golden Given RD E, Tacoma, Pierce County, WA 98445, 1.09
13 acre parcel, to include the primary residence, all outbuildings, and temporary or other
14 structures on said property.

15 The obtainment of this information I believe will assist in identification of the individual(s)
16 engaged in activities in violation of RCW 9A.52.030 Burglary 2nd Degree; RCW 9A.56.030
17 Theft 1st Degree; RCW 9A.082.050 Trafficking in Stolen Property 1st Degree.

18 **ITEMS TO BE SEARCHED FOR**

19
20
21 From location #1 listed above (10312 Golden Given RD E, Tacoma, Pierce County, WA
22 98445) I am requesting permission to search for, and seize the following:
23 Evidence in whatever form of the above listed crime(s) including but not limited to:

- 24 a. Items and/or information that is/are evidence of, fruits of, pertain to, and/or was/is being
25 used in the commission of the listed crime(s);

EX. D10

1 b. Jewelry and precious stones. Such items will be held in safekeeping by the Kirkland

2 Police Department until such time that they can be reviewed by the victim in this case to

3 prove or disprove ownership;

4 c. Any and all tools that can be used to commit burglaries to include but not limited to:

5 > Drills

6 > Saws

7 > Pry bars

8 > Glues/locktight.

9 d. Items in whatever form evidencing dominion and control of the premises, place(s),

10 property, item(s), account(s), and/or person(s) searched;

11 e. The person of Lynell A. Denham, DOB 07/18/1964;

12 f. Cellular phones belonging to the person of Lynell A. Denham, DOB 07/18/1964 and /

13 or assigned to phone numbers 253.449.6615 and 253.677.0772;

14 g. Light colored 2008 Range Rover vehicle, bearing WA license plate number BCX8267,

15 VIN: SALSF25418A144329;

16 h. Any records regarding storage facilities/bank deposit boxes indicating other places where

17 stolen property could be stored off-site;

18 From location #2 listed above (The person of Lynell A. Denham, DOB 07/18/1964). I am

19 requesting permission to search for, seize the following:

20 Items and/or information that is/are evidence of, fruits of, pertain to, and/or was/is being used in

21 the commission of the listed crime(s);

22 a. Jewelry and precious stones. Such items will be held in safekeeping by the Kirkland

23 Police Department until such time that they can be reviewed by the victim in this case to

24 prove or disprove;

25 b. Cellular phone(s) belonging to Lynell A. Denham, DOB 07/18/1964 and / or assigned

26 to phone numbers 253.449.6615 and 253.677.0772;

27 c. Any records regarding storage facilities/bank deposit boxes indicating other places where

28 stolen property could be stored off-site;

EX. D II

1 From location #3 listed above (Cellular phone belonging to Lynell A. Denham, DOB
2 07/18/1964, and /, or assigned to phone numbers 253.449.6615 and 253.677.0772). I am
3 requesting permission to search for, seize and subsequently forensically examine the above-
4 described cellular telephones or digital device(s) for evidence of RCW 9A.52.030 Burglary 2nd
5 Degree; RCW 9A.56.030 Theft 1st Degree; and RCW 9A.082.050 Trafficking in Stolen
6 Property 1st Degree to include but not limited to the following:

- 7 > All information revealing the telephone number associated with the seized phone, its
8 service provider and all data used by a service provider to identify the phone, including
9 the phone's IMED, MAC and other unique identifiers;
- 10 > Evidence of use of the device between 11/10/16 to 12/21/16 to communicate with
11 criminal associates or others about or pertaining to the above-listed crime(s), via
12 incoming or outgoing calls, missed calls, chat sessions, instant messages, text messages,
13 voice memo, voice mail, SMS communications, internet usage, and the like;
- 14 > Photographs, images, videos, documents, and related data created, accessed, read,
15 modified, received, stored, sent, moved, deleted or otherwise manipulated between
16 11/10/16 to 12/21/16;
- 17 > Evidence of use of the device to conduct internet searches pertaining to Mallinak
18 Jewelers and or any other stores that buy and sell jewelry and precious stones;
- 19 > Information that can be used to calculate the position of the phone between 11/10/16 to
20 12/21/16, including location data; cell tower usage; GPS satellite data; GPS coordinates
21 for routes and destination queries between the above-listed dates; and images created,
22 accessed or modified between the above-listed dates, together with their metadata and
23 EXIF tags;
- 24 > Evidence tending to identify the subscriber of the device, the user of the device, and/or
25 the possessor of the device, and/or dominion and control of the device between 11/10/16
26 to 12/21/16;
- 27 > Any other information that is evidence of the above-listed crime(s).

EX. D12

1 From location #4 listed above (Light colored 2008 Range Rover vehicle, bearing WA license plate
2 number BCX8267, VIN: SALSF25418A144329) I am requesting permission to search for, and seize
3 the following:

4 Evidence in whatever form of the above listed crime(s) including but not limited to:

- 5
- 6 a. Items and/or information that is/are evidence of, fruits of, pertain to, and/or was/is being used in
7 the commission of the listed crime(s);
- 8 b. Jewelry and precious stones. Such items will be held in safekeeping by the Kirkland Police
9 Department until such time that they can be reviewed by the victim in this case to prove or
10 disprove ownership;
- 11 c. Any and all tools that can be used to commit burglaries to include but not limited to:
- 12 > Drills
 - 13 > Saws
 - 14 > Pry bars
 - 15 > Glues/locktight
- 16 d. Items in whatever form evidencing dominion and control of the premises, place(s),
17 property, item(s), account(s), and/or person(s) searched;
- 18 e. The person of Lynell A. Denham, DOB 07/18/1964;
- 19 f. Cellular phones belonging to the person of Lynell A. Denham, DOB 07/18/1964 and / or
20 assigned to phone numbers 253.449.6615 and 253.677.0772;
- 21 g. Any records regarding storage facilities/bank deposit boxes indicating other places where
22 stolen property could be stored off-site.

23 This affidavit is intended to show only that there is sufficient probable cause for the requested
24 warrant and does not set forth all of my knowledge about this matter.

25 [X] (Check if applicable) I also ask that the court find that notice to any person, including the
26 subscriber(s) and customer(s) to which the materials relate, of the existence of this warrant would
27 likely jeopardize the life or physical safety of an individual and/or jeopardize an ongoing criminal
28 investigation. The request for this finding is based on the following facts: My training and
experience has taught me that individuals engaged in stolen property trafficking will destroy or
hide evidence if they are tipped off that the police are investigating them.

EX. D13

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

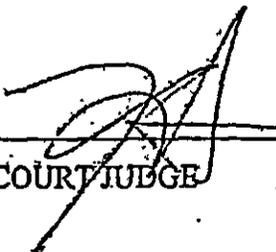
3 

4 AFFIANT

5 Kirkland Police Dept., Detective A. O'Neill #337

6 AGENCY, TITLE, PERSONNEL NUMBER

7 Subscribed and sworn to before me this 22 day of Dec., 2016.

8
9
10 Signature: 

11 SUPERIOR COURT JUDGE Ken Schubert

12
13 Printed Judge Name: _____

14 Issuance of Warrant Approved:

15 DANIEL T. SATTERBERG

16 King County Prosecuting Attorney

17 By: Gavriel Jacobs, WSBA #46394

18 Senior Deputy Prosecuting Attorney

19 Criminal Division

EX. LE, # 1

KIRKLAND POLICE DEPARTMENT
Page

WITNESS STATEMENT

CASE #: _____ DATE: December 17, 2016 TIME _____

PLACE: _____

STATEMENT OF: Andy Le

(ADDRESS)

(PHONE)

CONCERNING THE FACTS OF: _____

My name is Andy Le and I have been a self-employed repair and design jeweler since 1995. I have a business license with the Washington Department of Revenue and with the City of Seattle. I also have a reseller permit with the Washington State Department of Revenue. This permit authorizes me to re-sell or sell jewelry on behalf of a third party.

On or about November 15th or 16th of this year, a bald, middle-aged, thin African-American man approached me. He was well-dressed and well-spoken. He offered to sell me an expensive diamond that was in his possession for \$50,000. He told me that he wanted to sell the diamond because he was in need of emergency money to financially support his father. This man showed me a receipt for how he obtained the diamond. He also showed me a certified appraisal of the diamond.

I HAVE READ THIS STATEMENT OF 2 PAGES AND I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING STATEMENT IS TRUE AND CORRECT. I AM SIGNING OF MY OWN FREE WILL WITHOUT ANY FEAR, FORCE, THREAT, OR PROMISE OF FAVOR.

Witness _____

Signature Andy Le

Witness _____

EX. LE, #2

KIRKLAND POLICE DEPARTMENT
Page

WITNESS STATEMENT

CASE #: _____ DATE: December 17, 2016 TIME _____

PLACE: _____

STATEMENT OF: Andy Le

(NAME)

(ADDRESS)

(PHONE)

CONCERNING THE FACTS OF: _____

I told the man that I did not have access to such financial resources but I felt badly for him given the story that he provided me about his father. I offered to sell the diamond for him to another jewelry dealer who I thought would have access to the necessary resources to purchase the diamond. The paperwork that he presented to me appeared credible. He came across as credible as well.

He agreed with my proposal. I contacted Ed's Jewelry, a jeweler with whom I have previously engaged in business, and asked him if he would be interested in purchasing the diamond that this man had asked me to purchase. Ed told me that he would purchase the diamond for \$29,000. I then relayed to the man that Ed was willing to purchase the diamond for \$29,000 and the man accepted the offer. Since it was near the close of business on this day, I asked the man to come back with the diamond in a couple days if he wanted to proceed with the transaction. This man responded that he would come back. I asked the man for his driver's license so I could make a copy of it.

I HAVE READ THIS STATEMENT OF 2 PAGES AND I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING STATEMENT IS TRUE AND CORRECT. I AM SIGNING OF MY OWN FREE WILL WITHOUT ANY FEAR, FORCE, THREAT, OR PROMISE OF FAVOR.

Witness _____

Signature Andy Le

Witness _____

EX. LE, #3

KIRKLAND POLICE DEPARTMENT
Page

WITNESS STATEMENT

CASE #: _____ DATE: December 17, 2016 TIME _____

PLACE: _____

STATEMENT OF: Andy Le

(ADDRESS)

(PHONE)

CONCERNING THE FACTS OF: _____

The picture on the driver's license was of the man who walked into my store. He also certified under the federal statute for perjury by handwriting as much on the copy of the driver's license that I created. The name on the driver's license was Denham Lynell..

On or about November 19th, this man returned with the diamond to complete the transaction. He wore an aquamarine necklace around his neck this time. He asked me to increase the offer to \$30,000 so that he could pay me for my time. I then took the diamond over to Ed's Jewelry and Ed provided me with \$30,000 in cash for the diamond as Ed agreed to the extra \$1,000 so that I would be compensated for my time, I also gave Ed the certified appraisal that this man had provided me. After Ed gave me the money, I provided \$29,000 in cash to the man. In my experience with the jewelry industry, it is common for third parties to provide jewelers with jewelry to sell to another jeweler in exchange for compensation after the jewelry is sold. Nothing seemed out of ordinary about the man or what he was offering.

I HAVE READ THIS STATEMENT OF 2 PAGES AND I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING STATEMENT IS TRUE AND CORRECT. I AM SIGNING OF MY OWN FREE WILL WITHOUT ANY FEAR, FORCE, THREAT, OR PROMISE OF FAVOR.

Witness _____

Signature Andrew

Witness _____

EX. LE, #4

KIRKLAND POLICE DEPARTMENT
Page

WITNESS STATEMENT

CASE #: _____ DATE: December 17, 2016 TIME _____

PLACE: _____

STATEMENT OF: Andy Le
(NAME)

28
(PHONE)

CONCERNING THE FACTS OF: _____

I wrote down the man's phone number when he called me. I have caller identification on my phone and the name that popped up on my caller identification system when he called me matched the name on the driver's license.

The man approached me again several days after this transaction was completed. He brought a box of jewelry and asked if I would be interested in purchasing the jewelry. I explained to him that I did not have the resources to purchase the jewelry and all I purchase is scrap gold. I have not spoken with him since that date.

I HAVE READ THIS STATEMENT OF 2 PAGES AND I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING STATEMENT IS TRUE AND CORRECT. I AM SIGNING OF MY OWN FREE WILL WITHOUT ANY FEAR, FORCE, THREAT, OR PROMISE OF FAVOR.

Witness _____

Signature Andy Le

Witness _____

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

State of Washington,

Plaintiff,

vs.

Lynell Denham,

Defendant

) Case No.: 17-1-06567-2 SEA
)
) DEFENSE MOTIONS:
)
) For Franks Hearing and to Suppress
)
) To Dismiss Knapstad
)
) To Dismiss Equal Protection (selective
) prosecution)
)
) To Dismiss CrR 8.3(b)
)
)
)

MOTIONS

Comes now the accused, Lynell Denham, and by and through his attorney of record, Kevin McCabe, moves this Court for an order granting an evidentiary hearing on the warrants at issue in this case, an order suppressing evidence gained from those warrants, an order dismissing the charges in this case for want of prima facie evidence, an order dismissing the charges in this case for a violation of the equal protection of the law, (for unconstitutional selective prosecution) and an order dismissing the charges in this case for a violation of CrR 8.3(b). These motions are supported by the Constitution of the United States, the Constitution of the State of Washington, state and federal decisional law, and CrR 8.3(b).

STATEMENT OF THE CASE

On or about 11/14/16, Mr. Denham, an African American, made a good faith purchase of jewelry and gems from a private party for the purpose of resale at a profit. The private party appeared to have legitimate title to the merchandise and provided Mr. Denham with a valid receipt for the purchase and sale.

Mr. Denham then went about the legitimate business of offering the merchandise for wholesale purchase to jewelers. Mr. Denham made absolutely no effort to conceal his activities. Actually, quite the reverse.

Mr. Denham provided his identification to Topkick Jewelry, Thien Phuoc Jewelry, and Porcello Jewelry. He identified himself to Joseph Lennon, the white male employee he dealt with at Porcello Jewelers. Similarly, he identified himself to Mark Kosich, the white male proprietor of Topkick Jewelry. Additionally, he provided Andy Le, the Asian male proprietor of Thien Phuoc Jewelry with both his receipt for purchase and sale and a certified appraisal for a diamond that he sold to Mr. Le, as well as his identification.

Also on 11/14/16, the Kirkland Police conducted an investigation into a burglary that occurred at Mallinak Jewelry on 11/11/16. The Kirkland Police contacted Frank Mallinak, a white male, and inspected the premises and collected fingerprints for AFIS analysis. The Kirkland Police also collected a partial bottle of rum, consumed by the unknown suspects during the burglary, for DNA analysis by the Washington State Patrol Crime Lab. Finally, the Kirkland Police recovered a headlamp cover from the scene.

During the course of their investigation, the Kirkland Police received information from the Seattle Police. An anonymous Seattle Police informant indicated that Ed's Jewelry in Seattle,

Washington was dealing in stolen gems. The informant stated that Ed's Jewelry had purchased a diamond taken in the Mallinak burglary.

The Kirkland Police then contacted Edwin Jue, a male of Asian ancestry, of Ed's Jewelry. Mr. Jue indicated he had purchased and subsequently sold the diamond in question. Mr. Jue indicated he purchased of the diamond from Andy Le of Thien Phuoc Jewelry on 11/19/16.. Mr. Jue indicated he sold the diamond to Bryan Chrey, a white male, of Chrey Jewelers in Bremerton, Washington on 11/20/16. Mr. Jue could not produce a receipt for the transaction.

The Kirkland Police contacted Mr. Le of Thien Phuoc Jewelry. Mr. Le confirmed that he had sold the diamond to Mr. Jue. Mr. Le did not have a receipt for this \$30,000.00 transaction. Mr. Le did state that he had obtained the diamond from Mr. Denham, that Mr. Denham had provided identification which he signed under penalty of perjury, that Mr. Denham showed him a receipt for how he had obtained the diamond, that Mr. Denham showed him a certified appraisal for the diamond, and that Mr. Denham appeared credible.

The Kirkland Police also contacted Bryan Chrey, a white male, of Chrey Jewelers. Mr. Chrey indicated that he had purchased the diamond from Mr. Jue. Mr. Chrey stated he had sold the diamond "on a note" to Mark Miceli, another white male, of Chamaty Jewelry for \$37,000.00. This note may, or may not, exist.

Chrey Jewelers is located in Bremerton, Washington. Chamaty Jewelry is located in Seattle, Washington. In the same building as Ed's Jewelry. On the same floor as Ed's Jewelry.

The Kirkland Police contacted Mr. Micheli. Mr. Micheli indicated he had bought the diamond and subsequently sold it. Mr. Micheli indicated he would try to obtain the diamond. Mr. Micheli eventually did obtain the diamond. He returned it on 12/21/18 – the day before the application for a warrant in this case.

In the meantime, the Kirkland Police received the fingerprint analysis from AFIS. Mr. Denham was excluded. The Kirkland Police did not submit the rum bottle for testing for another 6 months. The DNA tests did not identify anyone.

On 12/22/16, the Kirkland Police obtained a search warrant from the Hon. Ken Schubert of the King County Superior Court. The application for the warrant informed Judge Schubert of the transactions between Mr. Denham and Mr. Le, Porcello's Jewelry, and Topkick Jewelry. Similarly, it informed him of the transaction between Mr. Le and Mr. Jue. It also informed him of the transaction between Mr. Jue and Mr. Chrey. It also informed him that Mr. Denham had been convicted of an attempted burglary of a Tacoma jeweler in 2007.

The application for the warrant did not inform Judge Schubert that the AFIS tests had excluded Mr. Denham. Similarly, the application failed to mention the Kirkland Police had not submitted a ready source for DNA testing to the Washington State Patrol Crime Lab. The application also omitted the glaring lack of paperwork associated with the transactions of the diamond that occurred subsequent to the transaction between Mr. Denham and Mr. Le.¹ Mr. Chamaty's involvement was omitted altogether, and along with it, all reference to the fact that the diamond suspiciously wound up on the exact same floor of the exact same building as Mr. Jue's establishment.

The application also informed Judge Schubert that Mr. Denham's father had purchased a Range Rover on 11/17/16. It did not inform Judge Schubert, however, that Mr. Denham had not received funds from any source associated with the burglary sufficient to make that purchase on that date. And, of course, there was no reference to the fact that Mr. Denham was the only African-American involved.

¹ Aside from Mr. Denham's receipt, the application references only one other receipt. That is the receipt from Mr. Jue to Mr. Chrey.

LEGAL ANALYSIS

1. Franks

In *Franks v. Delaware*, 438 U.S. 154, 155–56, 98 S.Ct. 2674, 2676, 57 L.Ed.2d 667 (1978), the U.S. Supreme Court held that where:

The defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request.

Franks, at 155–56, 98 S.Ct. at 2676. The Franks test applies to material omissions, as well as misrepresentations. *State v. Garrison*, 118 Wn.2d 870, 872 (1992).

Here, the police either intentionally or recklessly omitted reference to exculpatory physical evidence in the form of fingerprints. Additionally, the police intentionally or recklessly omitted reference to potentially exculpatory evidence that they delayed testing in the form of DNA. The police also intentionally or recklessly omitted reference to the irregularity associated with the lack of paperwork associated with their named sources' transactions. Indeed, the police intentionally or recklessly omitted all reference to the Mr. Miceli's involvement and the fact that the diamond changed hands twice, but wound up back on the same floor of the same building after a trip across Puget Sound. Moreover, the police either intentionally or recklessly obscured the fact that there was no evidence Mr. Denham had gained \$9,000.00 in cash from the proceeds of his sales prior to his father's purchase of a Range Rover on 11/17/16. And, of course, the police either intentionally or recklessly omitted all reference to the fact that Mr. Denham was the only African American involved.

Judge Schubert was literally left with a whitewash. Mr. Denham was the only person involved who presented both legitimate receipts and his identification during his transactions. This is obscured by the omission of the fact that Mr. Le did not have a receipt for a \$30,000.00 transaction with Mr. Jue, that Mr. Jue did not have a receipt for a similar transaction with Mr. Chrey, and that all reference to the transaction between Mr. Chrey and Mr. Miceli and to Mr. Miceli's subsequent sale of the diamond was omitted. Moreover, while the police emphasized the fact that Mr. Denham's father purchased a Range Rover soon after the Mallinak burglary, they omitted reference to the fact that they had no evidence Mr. Denham had realized the profits necessary to finance such a transaction. Judge Schubert was given absolutely no indication that the physical evidence submitted for testing – the fingerprints from the burglary – excluded Mr. Denham. Likewise, the police kept the fact that they had delayed testing on a likely source of DNA traceable to the burglar or burglars. Perhaps worst of all, despite the irregularities in the dealings between the jewelers, the judge was never informed that none were black.

Had Judge Schubert known that exculpatory physical evidence existed, that testing was delayed on potentially exculpatory physical evidence, that there were irregularities in the receipts between the jewelers, and that there was no evidence the Range Rover was the purchased with funds derived from the stolen jewelry, might he have come to a different decision?

Of course he might have. Indeed, had he known that he was resting a warrant largely on a past conviction of an African American, he might well have demanded to know what was going on in what, by all appearances, was a private gentlemen's club.

2. Suppression

Regardless of the good faith of those who served the warrant, a Franks violation results in exclusion. As the Court noted in *United States v. Leon*, 468 U.S. 897; 104 S.Ct. 3405; 82 L.Ed.2d 677 (1984) when considering review in light of Franks violation:

Deference to the magistrate, however, is not boundless. It is clear, first, that the deference accorded to a magistrate's finding of probable cause does not preclude inquiry into the knowing or reckless falsity of the affidavit on which that determination was based.

United States v. Leon, 468 U.S. at 914.

Accordingly, the Defense respectfully asks that the Court grant an evidentiary hearing in this matter. The Defense contends that it has made the substantial showing of material omission required. The Defense argues that an evidentiary hearing in this case will disclose the invalidity of the search and result in suppression.

3. *Knapstad*

When it appears that the State will not be able to present a prima facie case of guilt at trial, the Court should dismiss the case prior to trial. *State v. Knapstad*, 107 Wn.2d 346 (1986). Here, there is no physical evidence linking Mr. Denham to the original burglary. There is no surveillance video, no dna, no clothing fibers, no fingerprints, no eyewitness testimony, and no hearsay or party admission. The only claims to evidence the State can claim are his open possession of jewelry that he had a receipt for, some commonplace tools located a county away, and a prior conviction that does not meet the signature test required for modus operandi. *State v. Coe*, 101 Wn.2d 772, 777 (1981). While circumstantial evidence may well be of the same value as direct evidence, circumstantial evidence is not superior to direct evidence.

Similarly, the crime of Trafficking in Stolen Property cannot be maintained. Certainly, Mr. Denham sold jewelry which later turned out to be stolen. However, he did so openly, he identified himself at every juncture, and he had a receipt for the merchandise. This is more than the professional jewelers in the case can state. Even taken in the light most favorable to the State with all inferences drawn in its favor, the evidence conclusively demonstrates that Mr. Denham lacked the mens rea required for conviction.

Accordingly, the Defense respectfully asks the Court to dismiss the information prior to trial. It does not appear that the State can prove the mens rea for Trafficking in Stolen Property and it does not appear that the State can prove any element of Burglary.

4. Equal Protection (selective enforcement)

Mr. Denham is an African-American male and thus a member of a suspect class. As such, he claims his rights under the Equal Protection Clause of the Fourteenth Amendment and the Special Privileges and Immunities Clause of the Washington State Constitution.

Even prior to Washington's statehood, the U.S. Supreme Court observed that a truly selective enforcement of the law offends equal protection:

Though the law itself be fair on its face, and impartial in appliance, . . . if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.

Yick Wo v. Hopkins, 118 U.S. 356, 373, 6 S.Ct. 1064, 1072, 30 L.Ed. 220 (1886).

The same Court would later refine this statement to indicate that:

The conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation. Even though the statistics in this case might imply a policy of selective enforcement, it was not stated that the selection was deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification. Therefore grounds supporting a finding of a denial of equal protection were not alleged.

Oyler v. Boles, 368 U.S. 448, 456, 82 S.Ct. 501, 506, 7 L.Ed.2d 446 (1962).

Mr. Denham specifically alleges that he has been selected for prosecution based on his race. In support of this proposition he notes that Mr. Kosich took possession of jewelry stolen from Mr. Mallinak, has not been prosecuted, and is white. Mr. Lennon took possession of jewelry stolen from Mr. Mallinak, has not been prosecuted, and is white. Mr. Le took possession of a jewel stolen from Mr. Mallinak, subsequently sold the jewel, has not been prosecuted, and is Asian. Mr. Jue took possession of a jewel stolen from Mr. Mallinak, subsequently sold the jewel, has not been prosecuted, and is Asian. Mr. Chrey took possession of a jewel stolen from Mr.

Mallinak, subsequently sold the jewel, has not been prosecuted, and is white. Mr. Miceli took possession of a jewel stolen from Mr. Mallinak, subsequently sold the jewel, was permitted to recover it, was permitted to return it, has not been prosecuted, and is white.

Accordingly, the Defense respectfully asks the Court to dismiss the charges against him for violating the equal protection of the law contrary to the United States Constitution and for granting a special privilege or immunity contrary to the Washington State Constitution.²

² For the purpose of potential future review, the Defense formally asserts that art 1, § 12 of the Washington State Constitution is more protective than the U.S. Constitution and that this is supported by the textual language of the state constitution, significant differences in the texts of parallel provisions of the federal and state constitutions, state constitutional and common law history, pre-existing state law, differences in structure between the federal and state constitutions, and matters of particular state interest or local concern.

5. CrR 8.3(b)

To merit dismissal under CrR 8.3(b), two things must be shown. First, there must be a showing of governmental misconduct or arbitrary action. Evil intent is not required – mere mismanagement will suffice. Second, there must be prejudice to the accused’s right to a fair trial. *State v. Michielli*, 132 Wash. 2d 229, 239, 937 P.2d 587, 592 (1997).

Here, the arbitrary action is patent. Despite clearly identifying himself to all involved and despite receipt clearly representing a good faith claim of title, Mr. Denham is the only person who has been charged. This is even more surprising when it is considered that the Seattle Police were clearly investigating Mr. Jue prior to and during the Kirkland Police investigation of the Mallinak case.

Prejudice is also patent in this case. Mr. Denham has been held in jail on these charges. He has not been at liberty while the others have been free to consult counsel and to discuss the case amongst themselves and to plan appropriate group strategies.³

Therefore, the Defense respectfully asks that the Court dismiss the charges against him pursuant to CrR 8.3(b). Both of the rule’s requirements have been met: there has been arbitrary governmental action and there has been prejudice to Mr. Denham’s right to a fair trial.

³ Upon his first visit to Mr. Jue, the Kirkland officer investigating the case had to retrieve him from a back room and admonish him not to call the other jewelers when he discovered Mr. Jue immediately telephoning Mr. Chrey.

CONCLUSION

For the reasons stated above, the Defense respectfully asks that the Court grant the relief requested.

Kevin McCabe #28821

EX. K.P. #1

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17 OCT 09 PM 2:33

KING COUNTY
SUPERIOR COURT CLERK
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CASE NUMBER: 17-1-06567-2 SEA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)	
)	
v.)	No. 17-1-06567-2 SEA
)	
LYNELL AVERY DENHAM,)	INFORMATION
)	
Defendant.)	
)	

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse LYNELL AVERY DENHAM of the following crime[s], which are of the same or similar character, and which are based on the same conduct or a series of acts connected together or constituting parts of a common scheme or plan: **Burglary In The Second Degree, Trafficking In Stolen Property In The First Degree**, committed as follows:

Count 1 Burglary In The Second Degree

That the defendant LYNELL AVERY DENHAM in King County, Washington, between November 11, 2016 and November 14, 2016, did enter and remain unlawfully in a building, located at 6523 132nd AVE NE, Kirkland, in said county and state, with intent to commit a crime against a person or property therein; *Heard say*

Contrary to RCW 9A.52.030, and against the peace and dignity of the State of Washington.

Count 2 Trafficking In Stolen Property In The First Degree

That the defendant LYNELL AVERY DENHAM in King County, Washington, between November 15, 2016 and November 19, 2016, did knowingly sell, transfer, distribute, dispense or otherwise dispose of stolen property belonging to Frank Charles Mallinak, to another person, or did knowingly buy, receive, possess or obtain control of such stolen property, with intent to sell, transfer, distribute, dispense or otherwise dispose of the property to another person; *Heard say*

INFORMATION - 1

Daniel T. Satterberg, Prosecuting Attorney
CRIMINAL DIVISION
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104
(206) 296-9000 FAX (206) 296-0955

UNITED STATES ATTORNEY

Lynell A. Denham,
U.S. CITIZEN -

v.

Det. Allan O'Neill,
Subject -

NO.

UNITED STATES
CITIZENS CIVIL RIGHTS
VIOLATION CRIMINAL
COMPLAINT.

INDUCTIVE RELIEF IS BEING
SOUGHT.

I, Lynell A. Denham, U.S. Citizen resident of the State of Washington, under the authority of the United States Constitution do file this Civil Rights Violation Complaint, and do accuse Det. Allan O'Neill of the Kinkland Police Dept. of the following crime(s), which are of the same or similar character, and which are based on the same conduct or a series of acts connected together or constituting parts of a common scheme or plan: Deprivation of rights - under color of law - 18 USC § 242.

Count 1. "Selective enforcement"

That Det. O'Neill, in King County, Washington, between November 29th 2016, and December 22nd 2016, did select me to be arrested, and incarcerated, only, and chose not to arrest or incarcerate others similarly situated, of a different race, who were not convicted, and sentenced to serve a lengthy term in prison,

Contrary to the U.S. Const. 4th - 14th Amend. and in violation of 18 USC § 242.

Count 2. "False Arrest"

That Det. O'Neill, in King County, Washington between December 22nd 2016, October 3rd 2017 did fabricate both his search warrant affidavit, and his detective "certification for determination of probable cause" affidavit, with material falsehoods that caused the petitioner's home to be flagrantly stormed, family members abused, caused the petitioner to be charged, convicted, and sentenced to 78 months in prison.

Contrary to the U.S. Const. 4th - 14th Amend. and in violation of 18 USC § 242.

Relevant Facts

On November, 14th 2016 Sgt. Vickers of the Kirkland Police Dept. was dispatched to Mallinax Designs Jewelers, located at 6523 132nd Ave. NE, Kirkland, to investigate a burglary. Det. Allan O'Neill was requested by Sgt. Vickers to assist with the burglary investigation.

Sgt. Vickers concluded that the suspects were "unknown." This is clearly noted in his narrative police report. Furthermore, no arrests were made.

Det. O'Neill was assigned as lead investigator, on November, 29th 2016, as outlined in his report, where he clearly noted, the same facts, in his report as Sgt. Vickers, regarding the suspect(s) being "unknown." Det. O'Neill's report, derives directly from Sgt. Vickers' report, and reiterates the same facts where no person is implicated as the burglar.

Det. O'Neill, collected, and gathered, all possible evidence, tangible, and biological, forwarding the suspected evidence to the crime-lab. On 12-20-17 O'Neill received the "AFIS" report. The prints lifted from the scene identified an authorized individual who was not a suspect, or a person of interest.

Shortly after the incident Det. O'Neill, was contacted by a Seattle police detective, Magan, who informed him that his informant knew where the stolen diamonds were taken. Det. O'Neill was led to Ed's Jewelers, located at 1424 4th Ave - Pike, Seattle, Wash.

Det. O'Neill, contacted the owner of the store Edwin Jue, who informed him that he purchased a 5.29 ct. diamond from Andy Le of Thien Phuoc Jewelers, located at 7101 MLK Jr. Way Seattle, Wash.

Det. O'Neill, requested the receipt for the transaction between Mr. Le, and Mr. Jue. Mr. Jue gave the detective O'Neill, the receipt that showed a \$30,000 dollar transaction between the two men.

Det. O'Neill, thereafter interviewed, Andy Le, of Thien Phuoc Jewelers. Andy Le specifically informed Det. O'Neill that I sold him the diamond for \$29,000. Mr. Le, further stated, that I produced the receipt for how I obtained the diamond. Le, further stated that the documentation for the diamond, was produced. Mr. Le also informed Det. O'Neill that I provided him with valid identification, and that I was "credible," including the paperwork. And that there was "nothing out of the ordinary about me, or what I was offering."

Mr. Le, informed Det. O'Neill, that he was satisfied with my proposition. Thereafter Xerox copied my identification to a document, titled "not stolen." I thereafter signed my name to this document then certified it by writing Federal statute, 28 USC 1746. Mr. Le paid me \$29,000 dollars, he was given the diamond, along with "GIA" certificate, that pertains to the diamond. Each jeweler, who bought this stone, had this same document. Mr. Andy Le, gave a written statement on a Kirkland police witness statement document, regarding me.

Det. O'Neill later learned that I sold other items to other merchants, by using a "leads online" program. These items were sold to me. I was provided with a receipt, for all items later learned to be stolen.

Det. O'Neill, did not receive any information at any juncture, of his investigation, from any person that I burglarized the jewelry store, or that I was knowingly "trafficking" in property knowing the property was stolen. No such information exists, or even existed. This is a fact.

Doc #6

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Det. O'Neill interviewed each buyer of the 5.29 ct. diamond, the diamond that I initially sold to Andy Le, of Thien phuc Jeweler. He interviewed:

- Andy Le, (ASIAN-MALE) of Thien phuc Jeweler's
- Edwin Jue, (ASIAN-MALE) of Ed's Jeweler's
- Bryan Chocy, (white-male) of Chocy Jeweler's
- Mark Miceli, (white-male) of Chamaty Diamond Co.

Det. O'Neill, NEVER ONCE attempted to interview me. Ample time allowed for him to make an inquiry after his interview with Andy Le. He chose not to.

Det. O'Neill, stated in his report that he conducted a records check on me, then learned that I had past arrest for burglary.

Det. O'Neill, conducted his last interview with Mark Miceli, on December, 21st 2016.

on December 22nd 2016, one day after the interview with MARK MICELI, Det. Allan O'Neill did in fact submit his SEARCH WARRANT Affidavit, # 16-1201, dated for 12-22-16 to deputy prosecuting Attorney GAVRIEL G. JACOBS # 46394 and to Seattle, King County Superior Court Judge - - - Ken Schubert, requesting a SEARCH WARRANT for my families home where I lived. O'Neill also apprised the Judge that there was probable cause for my arrest for the crimes of:

- RCW 9A.52.030 - burglary second degree;
- RCW 9A.56.030 - theft first degree;
- RCW 9A.082.050 - trafficking in stolen property 1st°

Det. O'Neill, named me to be seized, and arrested in the absence of:

- physical evidence
- D.N.A.
- fingerprints
- fibers
- surveillance - video
- police informants
- eye-witness accounts
- party admission

Most significantly Det. O'Neill, did not have any information that I was even in Kirkland, on the incident date(s). No information exists in his Affidavit # 16-1201, dated for 12-22-16, submitted to Judge Schubert, implicating me as the burglar or implicating me in a stolen property trafficking ring. There was no indication that I committed any of the crimes outlined on the face of any of O'Neill's Affidavits.

Det. O'Neill did not distinguish my course of conduct from the others, who all possessed merchandise from the burglary.

Det. O'Neill amassed, two facts about me throughout his entire investigation:

A. I had a criminal past for burglary

B. I sold seven (7) items from the burglary

This is the only factual information amassed about me when he procured a warrant. Nothing further. This is a fact.

In light of the two (2) facts amassed about me, and the lack of evidence, not linking me to crimes alleged by Det. O'Neill. O'Neill informed Judge Schubert, of the following to cause the warrant to issue:

- "It would be difficult to traffic - sell such a large quantity of jewelry quickly, thus it would be reasonable to suspect that he is storing the jewelry at his residence."
- "All of these are places that Denham could hide the stolen jewelry and tools to commit the above listed crimes."

My home was violently stormed, my family members were accosted by members of the Pierce County S.W.A.T. . . .

The allegations were fabricated, and defies logic, in the clear absence, of the volume of evidence that should have linked me to the crimes if they were true.

None of the jewelers, had their stores, or homes raided. or were arrested convicted, or sentenced. Just myself!

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During this period, I was on a three (3) year supervised release term. federal probation.

The U.S. Marshal took me into custody for revocation purposes, on 4-26-17

Judge Robert S. Lasnik, my 2008 presiding - - sentencing judge assigned to my 2008 case # C108248 RSL AND BRUCE F. MIYAKE, ASSIGNED A.U.S.A. were never informed that I committed burglary. U.S. probation officer Patrick Robinson's memorandum, alleged a violation for absconding and trafficking in stolen property. Nothing more.

There was never any allegation, of burglary. U.S. probation officer Robinson, was never told by Det. O'Neill, that I burglarized the jewelry store I've been convicted for.

During my appearances, before Judge Lasnik, no information was ever provided to Mr. Miyake, or to Judge Lasnik, regarding me being charged for the trafficking allegation. much less burglary. The detective was contacted by Bruce F. Miyake, for several long months after my initial detention on 4-26-17, and was informed, that no charges were filed. I was still remanded to custody.

DOC # 6

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The lawlessness, and tyranny perpetrated by Det. O'Neill caused the following effects:

- UN-REASONABLE SEARCH & DAMAGE OF HOME
- FRIGHT TO FAMILY & TO GUSS MEMBERS.
- UN-WARRANTED TWO (2) YEAR DEVOICATION VIOLATION
- FALSE ARREST & IMPRISONMENT FOR WELL OVER 1 YEAR BETWEEN THE FEDERAL DETENTION CENTER, AND THE KING COUNTY JAIL, FOR COURT PROCEEDINGS.
- CAUSED A CRIMINAL PROCEEDING TO BE INSTITUTED AGAINST ME WHERE I WAS FOUND GUILTY VIA "BENCH TRIAL" & SENTENCED TO 78 MONTHS BASED ON INFERENCE OF PREJUDICIAL EFFECT, AFTER THE INITIAL ILLEGALITY OF DET. O'NEILL'S VIOLATING 18 USC 242 - 18 USC 241, 4th & 14th AMEND. VIOLATIONS.
- CAUSED A "MALICIOUS PROSECUTION"
- INTENSED, INTENTIONAL INFLECTION OF EMOTIONAL STRESS

MATERIAL WITNESSES

- U.S. Probation Officer - Patrick Robinson,
- Attorney at Law - Lisa Mulligan, (Defendant's Attorney)
- A.U.S.A. Bruce F. Miyake,
- Judge Robert S. Lasnik,
- Jesse Canton, Office of Federal Defenders,
- King County Deputy Prosecutor, Gavriel G. Jacobs,

NOTE:

Mrs. Canton, was the attorney who represented me at the "initial appearance" Rule 32 proceeding before Magistrate Judge Donahue. Nothing about burglary was in the allegations. Just "trafficking stolen property."

With exception of Gavriel G. Jacobs, the other listed witnesses received the same information collectively, which entailed trafficking. U.S. Probation Robinson's memorandum, conveyed to federal personnel, and to Judge Lasnik, outlined trafficking allegations only, and no allegations, or evidence that I committed a burglary.

This is evidence, that Det. O'Neill lied about the burglary in his affidavit to Ken Schubert (Judge)...

Doc # 6

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At the request of Bruce F. Miyake Det. Allan O'Neill submitted his follow-up report pertaining to the burglary incident. CASE# 16-44500, on 6-12-17.

This report does not outline a single fact about me committing trafficking, or burglary. The King County prosecutor's office, even as of 6-12-17, did not file charges.

On 6-13-17, one day after Bruce F. Miyake did receive Det. O'Neill's report, he e-mailed my lawyer Lisa Mulligan, Devocation Attorney with an offer regarding the trafficking allegation.

Bruce F. Miyake emailed the following:

"Sorry about getting the discovery piece meal. I was wondering if Denham would be interested in a global resolution where he would plead guilty to state charges and we either forgo the supervised release allegation of trafficking and recommend any time run concurrent with the state time. Let me know if he is interested."

Note: This information alone is "telling" to the detectives allegations against me when he submitted his affidavit on 12-22-16, with lies.

Conclusion

For the foregoing reasons, and in the furtherance of Justice, I ASK that this office find that Det. Allan O'Neill, did in fact violate my family member and my rights in violation of 18 USC 242 AS clearly outlined with an offer of proof, with case law, and prima facie evidence including the accounts of federal officers, of the court who are all credible.

I ALSO ASK that the revocation violation that arose out of the deceit, & lawlessness of Det. O'Neill, be rescinded.

I ALSO ASK that the King county prosecutors office be contacted about Det. O'Neill's actions, regarding case # 16-44500, burglary investigation, that gives rise to:

- o King county court case # 17-1-06567-2 SEA, encouraging the prosecutors office to move to dismiss its information, indictment in the furtherance of Justice pursuant to C.R. 8.3(A) It is very clear what caused my harm.

Dated this 24 day of June 2018

Amell O'Neil

28 USC 1746

Supplement A.

Fabricated Evidence, U.S. Supreme Court

- United States v. Agurs, 427 U.S. 97 (1976)
- Giglio v. United States, 405 U.S. 150 (1972)
- Mooney v. Holohan, 294 U.S. 103 (1935)

Fabricated Evidence, 9th Circuit Appellate Court

- Devereaux v. Abbey, 263 F.3d 1070, 1074 (9th Cir 2001)
- Spencer v. Peters, 857 F.3d 789 (9th Cir 2017)¹
- Costanich, 627 F.3d 1101, 1111 (9th Cir 2010)

"[T]here is a clearly established constitutional due process right not to be subjected to criminal charges on the basis of false evidence that was deliberately fabricated by the government."

FACT

Note: The detective in this case attributed a series of crimes to the plaintiff, when he drafted, then submitted his affidavit # 16-1201, dated Jan 12-227, submitted to King County Superior Court Hon. Ken Schubert, stating that there was probable cause for my arrest for (theft), (burglary), and (trafficking in stolen property). No proof!!

In the absence of evidence, I've been charged...

¹ This is a Tacoma Judge's ruling that was reversed in favor of Washington state plaintiff. Hon. settle

Supplement B.

Judicial Deception, U.S. Supreme Court

- FRANKS V. DELAWARE, 438 U.S. 154 (1978)
- UNITED STATES V. LEON, 468 U.S. 897 (1984)
- ILLINOIS V. GATES, 462 U.S. 213 (1983)

Judicial Deception, 9th Circuit Appellate Court

- Baldwin v. Placer Cnty. 405 F.3d 778 (9th Cir 2005)
- Liston v. Cnty of Riverside, 120 F.3d 965 (9th Cir 1997)
- Chism v. Washington, 683 F. Supp 2d 1145 (9th Cir 2010)

1. "The Fourth Amendment... "It is no barrier at all if it can be evaded by a policeman concocting a story that he feeds a magistrate."

FACT

Det. Allan O'Neill #337 in this case at bar, stated the following lies:

A. "It would be difficult to traffic/sell such a large quantity of jewelry quickly, thus it would be reasonable to suspect that he is storing the jewelry at his residence."

B. "All of these are places that Denham could hide the stolen jewelry and tools used to commit the above listed crimes." Nothing was found!

Note: NO evidence supports any of the false statements!

Supplement C.

Selective enforcement, U.S. Supreme Court

- United States v. Armstrong, 517 U.S. 456 (1996);
- Yick Wo v. Hopkins, 118 U.S. 356 (1886);
- Oyler v. Boles, 368 U.S. 448 (1962).

Selective enforcement, 9th Circuit Appellate Court

- Lee v. City of Los Angeles, 250 F.3d 668 (9th Cir. 2000)
- Thornton v. City of St. Helens 425 F.3d 1158 (9th Cir. 2005)
- Lacey v. Maricopa City, 693 F.3d 386, 920 (9th Cir. 2012)

NOTE

"To avoid liability for selective enforcement, public officers should avoid basing their decisions to enforce laws against a person on "an unjustifiable standard such as race, religion, or other arbitrary classification."

FACT

"To establish a discriminatory effect in a race claim, the claimant "must show that similarly situated individuals of a different race were not prosecuted." The plaintiff, (black), arrested...

- Andy Le, (ASIAN) Not arrested
- Edwin Jue (ASIAN) Not arrested
- Bryan (Chrey, (white) Not arrested
- Mark Miceli, (white) Not arrested,
- Lynell Denham, (African American) arrested, convicted...

Supplement E.

Injunctive Relief, U.S. Supreme Court Article III

- City of Los Angeles v. Lyons, 461 U.S. 95 (1983)
- O'Shea v. Littleton, 414 U.S. 488 (1974)
- Lu Jan v. Deps. of Wildlife, 504 U.S. 555 (1992)

Note: A plaintiff must demonstrate constitutional standing separately for each form of relief requested. For injunctive relief, which is a prospective remedy, the threat of injury must be certainly impending and must be actual and imminent, not conjectural or hypothetical...

Injunctive Relief, 9th Circuit Appellate Court

- Hodgens-Dungin v. De La Vina, 199 F.3d 1037 (9th Cir 1999)
- Johnson v. Moore, 948 F.2d 517, 519 (9th Cir 1991)
- Andrews v. Cedvantes, 493 F.3d 1047 (9th Cir 2007)

Note: Plaintiff must show "real & immediate harm, threat of injury, and past exposure to illegal conduct does not in itself show a present controversy regarding injunctive relief... if unaccompanied by any continuing, present, adverse effects."
FACT

The plaintiff is currently serving a probation revocation term, as a result of the initial illegal conduct. Most importantly, he was sentenced to 78 months based on illegal conduct. He faces "future harm" to serve 78 months in state after...

Detective O'Neill Supplemental

Case Number 16-44500

Detective Allan O'Neill, #337

A. On 11/29/16, I was assigned this case for follow up.

B. On 11/14/16, Sgt. Vickers requested my assistance at a burglary scene that occurred at Mallinak Designs Jewelers, 6523 132nd Ave NE, Kirkland. I responded to the scene and contacted the owner Frank Mallinak. Mallinak reported that the business closed on 11/11/16 at 1800 hours and was closed over the weekend. He stated that he arrived at work at 11/14/16 around 0945 hours and discovered the burglary.

Mallinak showed us the damage to the store. The safe to the store is kept in a room in between the front showroom and back work area. The room has a one way window looking out into the showroom. You can only see out to the showroom. The safe was open and the drawers from the safe were scattered on floor. The left side of the safe had a large hole drilled in it, but the hole did not go through the side wall of the safe. There was another hole which was approximately a 1/2 inch in diameter and it went through the side of the safe and into one of the locking pegs on the door. The dial on the safe was damaged and pieces of the dial were on the floor. There was a proximity alarm on the safe and the alarm wire was cut. The alarm box on the wall which was above the refrigerator was open and several wires were cut.

The jewelry store is located in the Bridle Trails Shopping Center strip mall with several other businesses. There is an alley behind the jewelry store and there is a door that leads to a utility room behind the business that is used by the property manager and contractors. The lock to the outside door had glue or some type of lock tight sealant. Mallinak stated that maintenance workers noticed the glue in the door lock on 11/10/16 and a lock smith was called to repair the lock. A door that separates the utility room and the jewelry store was cut in half below the door lock and metal security bar. The bottom half of the door was then pushed open to gain access to the store.

The roof hatch that leads into the utility room was normally locked, but the lock was missing. In the rear alley there are two pipes next to the utility room door that run up the outside of the building to the roof. There were several scuff marks on the side of the building along the pipes towards the roof. It appeared that the suspect(s) climbed up the building to the roof by using the pipes for support. The suspect(s) then entered the roof access hatch to gain entry into the utility room and then cut the back door to Mallinak's business.

Mallinak provided a list of property taken from the safe. The list included more than 600 pieces of jewelry and loose stones. Mallinak estimated that the value of the stolen items was approximately \$250,000. Six of the pieces were certified GIA stones. One such GIA stone was a 5.29ct round diamond cert# 2185021160. This diamond had just returned from being certified and the original GIA report had been stored in the safe with the diamond. Both the diamond and GIA certified paperwork were stolen from the safe. The six certified GIA stones were entered into the system as being stolen.

C. On 12/01/16 at about 1915 hours, Detective Magan with the Seattle Police Department contacted me with a possible lead on someone trying to sell loose stones. His informant stated that the stones were taken in the last two weeks. I told him that I would reach out to Mallinak and get a detailed list of the items taken.

D. On 12/05/16, Mallinak emailed me an updated inventory loss for his store and itemized the loose stones on a separate inventory sheet. I sent the information to Detective Magan, who stated he was waiting for his source to get back to him.

E. On 12/06/16, I called AFIS to check on the status of the prints taken. I was informed that they had not yet been compared. I also began checking Leadsonline.

F. On 12/07/16, Detective Magan called and verified that the 5.29 diamond with the GIA number 2185021160 taken from Mallinak's shop had been sold to Ed's Jewelry located at 4th and Pike in Seattle. The information that Detective Magan had received was that the diamond was bought at the Jewelry store and then sold to another party. I conducted some research and located an Ed's Jeweler's, 1424 4th Ave #203, Seattle, WA 98101. The business license for that store was listed to Edwin Jue (President) and Shawna Wang (Secretary).

G. On 12/08/16, I went to Mallinak's store to pick up photocopies of the paperwork for the stolen jewelry to include the above listed 5.29 CT diamond. Mallinak informed me that they discovered that the suspect had cut the wiring to their air conditioner unit. Mallinak believed that was done to make sure the smoke from drilling into the safe would not circulate into the other rooms and set off the fire alarm. Mallinak also found a small plastic cap near the safe that did not belong to the store. I took the item into evidence.

- H. At about 1425 hours, I took the GIA paperwork for the 5.29ct diamond to Ed' Jewelers which was now on the 4th floor of the building. I first contacted Wang and provided her with the GIA paperwork for the diamond. I then asked for the paperwork on the purchase and sale of the diamond. Wang took the paperwork and said she would get Jue. Jue then came and asked me who sent me and how did I know they bought and sold the diamond. I again informed him that I was with the Kirkland Police Department. I told him that I have resources and information that that led to his jewelry store. Jue was very upset and mad that someone sold him a stolen diamond.
- I. Jue told me that he purchased the diamond on 11/19/16 from another jeweler that he has conducted business with in the past. He stated that person's name was Andy Le and owns a shop near Othello and Rainier Ave S in Seattle. I asked Jue to provide me with a copy of the paperwork for the purchase of the diamond. Jue went to the back and called Le about the diamond. He returned with a receipt that listed the date, Andy Le and that he paid \$30,000. He gave me Le's number and told me I could call him (206) 288-9666. Jue stated that he sold the diamond to Chrey Jewelers in Bremerton on 11/20/16. I asked Jue to provide me with the paperwork for the sale of the diamond. Jue again, left and went into the back and I heard him talking to someone. I heard the phone ring and saw "Chrey Jewelers" listed on the caller ID. I went to the back room and told Jue to stop calling the other jewelers and to just provide me with the information I requested. Jue apologized and was just upset that he was sold a stolen diamond. Jue did not have any paperwork for the sale of the diamond.
1. I contacted Andy Le via telephone, who is the owner of Thien Phuoc Jewelry, 7101 MLK Jr Way, Seattle, WA. Le stated that on or about November 15th or 16th of this year, a bald, middle-aged, thin African-American man, offered to sell him an expensive diamond that was in his possession for \$50,000. He stated the male told him that he wanted to sell the diamond because he was in need of emergency money to financially support his father. Le stated that the male showed him a receipt for how he obtained the diamond and also a certified appraisal of the diamond.
2. Le said he told the male that he did not have that large amount of money, but he felt badly for him given the story about his father. Le offered to sell the diamond for him to another jewelry dealer who he thought would have the money to purchase the diamond. He stated that the paperwork that he presented, appeared credible.
3. Le stated that the male agreed to his proposal and Le contacted Ed's Jewelry. Ed agreed to purchase the diamond for \$29,000 and Le relayed the information to the male. Le stated that since it was near the close of business on this day, he asked the male to come back with the diamond in a couple days. The male told Le that he would come back and Le asked the male for his identification. The male provided Le with his Washington State Identification card and Le stated the picture on the ID matched the male. Le made a copy of the ID card and then had the male sign the copy of the ID that the diamond was not stolen. Le emailed me a copy of the WA ID card which listed the male as Lynell A. Denham, DOB 07/18/1964, address of 10312 Golden Given RD E, Tacoma, WA 98445.
4. Le stated that on or about November 19th, Denham returned to his store with the diamond to complete the transaction. Le stated that the male was wearing a large aquamarine necklace around his neck. Mallinak had an aquamarine stone taken from his store. Le stated that Denham asked him to increase the offer to \$30,000 so that he could pay him for his time. Le said he then took the diamond over to Ed's Jewelry and Ed provided him with \$30,000 in cash for the diamond. After Ed gave him the money, Le provided \$29,000 in cash to the man.
5. Le stated that he wrote down Denham's phone number when he called him. He said he has caller identification on his phone and Denham's name popped up on his caller identification system when Denham called him. Le stated that Denham approached him again several days after the diamond transaction. He said Denham brought a box of jewelry to his store and asked if he wanted to purchase the jewelry. Le told Denham no and he has not spoken to him since that date. Le contacted his attorney who reviewed and authorized Le to provide me with a written statement. He stated that he did not have video surveillance for that day or a sales receipt.
- Jp. I called Bryan Chrey (206) 384-3090 with Chrey Jewelers and he informed me that they had sold the diamond on "note", but he should be able to get the diamond back. He stated that he would contact me next week. *Step*
- K. I conducted a records check on Denham. Denham had been arrested in Tacoma in 2014 for burglary. In that burglary, Denham cut a hole in the roof of a building using a saw in an attempt to gain access to the safe inside the jewelry store. He also had numerous burglary arrests and federal arrests. Denham is on both Federal and State probation. I called and spoke to Patrick Robinson with the Federal probation. He informed me that Denham was still living at 10312 Golden Given RD E, Tacoma, WA 98445 with, James C. Fisher. This is also Denham's address that is listed on his WA State Identification card. Robinson stated that he has monthly face to face meetings with Denham and he has been out to Denham's residence three times. Robinson stated that he last visited Denham at his residence, 10312 Golden Given RD E, Tacoma, WA 98445 on 12/05/16.
- L. I called Izetta Dillingham with DOC probation and she also stated that Denham lives at 10312 Golden Given RD E, Tacoma, WA 98445. Dillingham said that she went out to Denham's residence and he had a new Range Rover and was wearing a huge blue stone gem necklace. This is a similar piece of jewelry that was taken from the burglary. I conducted a records check on vehicles registered to Denham's residence, 10312 Golden Given RD E, Tacoma, WA 98445. I located a 2008 Range Rover, registered to James C. Fisher. The VIN was listed as SALSF25418A144329 and the license plate number was BCX8267.
- M. I called Chrey, to inquire about the diamond. Chrey told me that he sold the diamond on note to Mark with Chamaty Diamonds

- No for \$37,000. Chamaty Diamonds is in the same building and floor as Ed's Jewelers. Chrey believed that Mark sold the diamond and he did not know to who. I called and left a message for Mark to call.
- No I searched pawning history for Denham using the Leadsonline program. The check showed that on 11/14/16, Denham pawned a woman's 14kt yellow gold necklace to the Topkick Jewelry & Loan, 13014 Pacific Ave S, Parkland, WA. This necklace matched one that was stolen from Mallinak's store. On 11/21/16, Denham pawned a sapphire ring, a diamond band and a wedding set at the Porcello Jewelers, 10222 NE 8th St Bellevue WA. Mallinak had photos of the sapphire ring which was a custom design. On 11/28/16, Denham pawned a woman's white gold 14kt, 4.20 grams; 1blue/8 diamond ring at the Topkick Jewelry and Loan. This ring matched one that was stolen from Mallinak's store.
- Do On 12/08/16, I sent holds to the Topkick Jewelry and Porcello for the above listed items Denham pawned.
- po On 12/14/16, I went to the Porcello Jewelry and recovered the items that Denham had pawned. Owner, Jason Porcello stated that Denham had other pieces of jewelry that he wanted to sell to them and was going to come back in the future. Denham was seen leaving in a light colored Range Rover with a temporary license plate in the window. Employee Joseph Lennon completed the transaction. Lennon stated that on 11/21/16 at about 1615 hours a male came into the store wanting to sell a sapphire ring, a diamond band and a diamond wedding set. The male told him that the sapphire ring was his mothers who had passed away. The male showed Lennon his Washington State ID card that had the name Lynell A. Denham. DOB 07/18/1964 on it. Lennon stated that the photo on the ID matched him and he photocopied the ID. This was the same Washington State ID card that Denham used to sell the diamond to Le. They completed the transaction and Denham was paid \$2500.00 for the stolen jewelry. Lennon stated that Denham had called the store a couple of times and one time told him that he had some loose diamonds and sapphires that he wanted to sell. Mallinak had several loose stones taken from the burglary. Lennon stated that on 11/23/16, Denham returned to the store and wanted to buy something for his father. Lennon stated that Denham even put him on the phone with a male that stated he did not need anything and that his son was always trying to buy him things.
- Qe On 12/14/16, I spoke to Mark Miceli with Chamaty Diamonds INC. Miceli stated that he sold the diamond and did not have any paperwork for the sale. I informed him that the diamond was stolen and he needed to locate the person that he sold it to. Miceli stated that he would get back to me.
- Ro On 12/15/16, I went to Mallinak's Jewelry store and showed Frank Mallinak the two rings (3ct oval sapphire and 18 = .05ct diamond) and wedding set that Denham had pawned to Porcello Jewelry. He identified the two rings as being one of his customer's (Sandy Anuras) taken from the burglary in his store. Mallinak also identified the wedding set as one of his customer's (Linda Scott) taken in the burglary. I took photographs of the rings and returned them to Mallinak. A Kirkland Property Release form was completed and signed by Mallinak.
- Se On 12/15/16, I called and spoke to Mark Kosin with Topkick Jewelry. Kosin told me that Denham came in a couple of days ago to sell other items. Kosin stated that he told Denham that there was a police hold on the items he pawned and they could not purchase any further items from him. They provided Denham with my name and the police department I worked for. This obviously alerted Denham that he was the subject of an investigation. Since that time, Denham did not go to his scheduled meetings with his federal and state probation officers. I was advised that active DOC and Federal warrants would be entered into the system for his arrest for the probation violations.
- To On 12/15/16, Dillingham sent me photos of the Range Rover and I could see a paper plate with the dealership's name "All Right Auto Sales." I called the owner, Joe, at All Right Auto Sales and he informed me that the Range Rover was sold to James Fisher on 11/17/16. He stated that Fisher had \$9,000 cash and financed the balance of \$12,300. Wayne Bozell was the salesperson who sold Fisher the vehicle.
- Uo On 12/20/17, I received the AFIS report for the latent lifts that had been located at the burglary scene. A latent located on the electrical panel box in the maintenance room returned to Dustin Joseph Toney, DOB 05/20/79. A records check showed that Toney was employed at the Evergreen Power Systems that conduct electrical work. No prints from Toney were located inside Mallinak Jewelers.
- Vo On 12/21/16, Mark Miceli with Chamaty Diamonds came to the Kirkland Police Department with the 5.29 carat diamond, GIA #2185021160 that was taken from the burglary and pawned by Denham. Miceli informed me that he had purchased the diamond from a dealer that he has conducted business with in the past. He also indicated that the dealer had presented him with all of the GIA paperwork for the diamond. I explained to him that the paperwork was stolen along with the diamond. He informed me that the paperwork and diamond should have not been keep together. Miceli told me that prior to coming to the Kirkland Police Department, he took the diamond to Mallinak who verified its authenticity. I confirmed this with Mallinak. Miceli turned over the diamond and GIA paperwork. He signed a property room form and was given a copy. I photographed the diamond and GIA paperwork. The diamond and paperwork were placed into evidence and stored in a safe in the property room. Miceli had to leave and did not have time to provide me with a written statement. I emailed him and statement form and requested that he complete and return it to me.
- Wo Mallinak had hundreds of pieces of jewelry stolen and only a small number are known to be recovered. It would be difficult to traffic/sell such a large quantity of jewelry quickly, thus I believed that Denham was storing the jewelry at his residence, 10312 Golden Given RD E, Tacoma, WA 98445. Both probation agents, informed me that Denham's property contains the main house, a guest

EX. B4

All house, several structures and numerous vehicles. All of these are places that Denham could hide the stolen jewelry and burglary tools. Denham has provided the following two cellular numbers to his probation officers: 253.449.6615 and 253.677.0772. Reviewing prior arrests of Denham, he used two way radios to communicate with other suspects during the commission of his crimes. With cellular phones being easier to obtain and Denham listing two cellular phone numbers, it was my belief that Denham may have evidence of the listed crimes on his cellular phones.

I contacted Deputy Richards with the Pierce County Sheriff's Office Pro Act Team to advise them about the criminal activity and active warrant on Denham. Deputy Richards researched Denham and Fisher's criminal history and determined that a SWAT team clearing would be necessary to execute a search warrant. Deputy Richards stated that their SWAT team would be willing to clear the property if I obtain a search warrant.

X Based on the above listed information, I wrote a search warrant and affidavit to search 10312 Golden Given RD E, Tacoma, Pierce County, WA 98445, 1.09 acre parcel, to include the primary residence, all outbuildings, and temporary or other structures, on said property for:

Y -Lynell A. Denham, DOB 07/18/1964;
-Cellular phone belonging to Lynell A. Denham, DOB 07/18/1964 and / or assigned to phone numbers 253.449.6615 and 253.677.0772;
-Light colored, 2008 Range Rover vehicle, bearing WA license plate number BCX8267, VIN: SALSF25418A144329.

The warrant was reviewed by King County Prosecutor Gavriel Jacobs. On 12/22/16, I took the warrant to King Superior Court Judge Ken Schubert. Judge Schubert signed the warrant at 0940 hours. The warrant was assigned number 16-1201.

Z On 12/29/16 at 0400 hours, I attended the Pierce County Sheriff's Office search warrant briefing at the Parkland Fire Station. The residence was to be cleared by the Pierce County SWAT team and once cleared turned over to the Kirkland Detectives. Pierce County Deputies Richards, Eldridge, Folden and Marrs also assisted with the search of Denham's residence.

At about 0530 hours, I was instructed that SWAT had completed the clearing of the property. Denham was not located on the property. James Fisher was located in the main house. Dorothy Bell and her son Jade Haslem were located in a separate building on the property by Pierce County Deputy SWAT member Gary Nicholson. Bell told Deputy Nicholson, "I bet you are looking for Lynell, what did he steal now?"

Kearen Tucker, DOB 02/07/61, was located sleeping in a travel trailer on the property. Detective Carlson and Detective Slominski interviewed Tucker. Tucker agreed to have the interview recorded. Tucker stated that she knew Denham was involved with stolen jewelry and saw him in possession of the jewelry a couple days after Veterans Day. Tucker stated that she knows Denham in the past has sold jewelry to a Jewelry store on Portland Ave between 38th and 43rd Street. She described the store as being in a strip mall next to a medical center. (refer to her recorded statement for further).

I contacted Fisher and interviewed him in Deputy Richards's vehicle that was parked in front of the residence. Fisher had been placed in flex cuffs by the SWAT team. Deputy Richards removed the flex cuffs. I informed Fisher that we had a search warrant to search his residence for jewelry and Denham. Fisher claimed he knew nothing about jewelry being in his home. He also stated that Denham left a couple of weeks ago and he has not been in contact with him. I asked him if he could call Denham and he told me that Denham contacts him. It was obvious that Fisher was not being honest with me.

I informed Fisher that he was not under arrest, but wanted him to understand that he may be considered an accomplice. I read Fisher his Constitutional Rights from my pocket card and he stated that he understood. I then asked Fisher directly if he knew where Denham was and he stated that he did not know. Fisher informed me that a couple of weeks ago, Denham told him that he was tired of DOC and the UAs and he was leaving. I then asked him directly if he knew about the jewelry and he stated no. I told him that I knew Denham gave him \$9000 cash to pay for a Range Rover that he placed in his (Fisher's) name. Fisher acknowledged that occurred. I told him that I also knew the money was proceeds from selling the stolen jewelry which would make him an accomplice. Fisher replied, "You can't prove that." I then asked him if he recalled talking to a jewelry store employee because Denham wanted to buy him some jewelry. Fisher stated that he remembered that and said Denham was always trying to buy him things. I told him that it was strange that Denham did not have a job, but was able to provide him with \$9000 cash. Fisher stated that Denham was a very resourceful man and it was not uncommon for him to have 9-10 thousand dollars cash. It was evident that Fisher was not going to provide the location of Denham or the jewelry. Fisher agreed to check and see if any of his 30 plus registered vehicles were missing. After checking a couple drawers of keys and a key box, he told me that none of his cars were missing.

During the search, documentation for the purchase of the Range Rover vehicle was located and confirmed that \$9000 was used as a down payment for the vehicle. The paperwork showed that the vehicle was purchased on 11/17/2016 at the All Right Auto Sales in Federal Way. State Farm insurance paperwork was also located that listed Denham as being insured on the Range Rover. The vehicle (2008 Range Rover vehicle, bearing WA license plate number BCX8267) was located on the listed property and searched for evidence. The vehicle was then seized and towed to the Kirkland Police Department. The vehicle was sealed with evidence tape and stored in a secured pen at the Kirkland Police Department.

Cpl. Crocker located two brand new head lamps with the tags still attached. The head lamps have an elastic band with a light on them

17-1-06567-2 SEA

Denham_L 0097

that is worn on a person's head. This allows a person to see in the dark while keeping their hands free. The head lamps are commonly used as burglary tools and were seized. Upon further examination of the head lamps, I discovered that the plastic cap that Mallinak located in store was actually the on and off dial for a head lamp. The dial was an exact match of the dials on the two headlamps that were seized. It is possible that the dial fell off the suspect's head lamp, making the head lamp non-functional. The suspect would then have to purchase a new head lamp.

I located drawings and schematics of safes in Denham's bedroom.

Deputy Eldridge located an elongated card board box that contained drawings of various safes.

I provided Fisher with a copy of the warrant and return of service. He was very irate and wanted to know who was going to pay for the damages. Deputy Richards provided him with the Pierce County Sheriff's number.

Refer to Pierce County Sheriff incident report number 1636400082 for further information about the SWAT entry and supplemental reports from the Pierce County Deputies.

On 12/29/16, at about 0950 hours, I contacted Kosin at the Topkick Jewelers. Kosin provided me with the ring and bag of necklace clasps. He informed me that they did not have an entry for clasps and he just labeled it as a necklace. I examined the ring and it had Mallinak's stamp on it. Kosin stated that Denham always came into the store acting like they were good friends. I told Kosin in the future not to tell people that there are police holds on stolen items. Kosin replied that he did not want to buy any more items from Denham and he had to tell him so he would leave the store. I told him that he could have told Denham that he was flagged and could not buy from him anymore. He did not need to give Denham my information. Kosin stated that Denham would have continued to ask him questions and not leave the store. Kosin stated that he gave Denham all of the information from the Leadsonline hold which included my name, department and case number. He said after he provided Denham with this information, Denham stated, "I will be contacting my attorney." Kosin provided me with a written statement and copies of the pawn slips. I took possession of the clasps and ring and gave Kosin a Kirkland Police Department Property form receipt.

I located a Jewelry store at 4314 E. Portland Ave Ste 2 called the Punlerpich Jewelry. It was located in a strip mall next to a clinic just like Tucker described as the place Denham sold jewelry to in the past. The store was closed.

I contacted Mallinak and he confirmed that the ring and clasps were taken from the burglary. I placed the ring and clasps into evidence.

On 12/29/16 at 1237 hours, I called and spoke to Larry Mattos with Ashton Gems. His number was located during the search of Denham's room. Mattos did not remember Denham's name, but stated that he would check their records and call me back if he located anything.

On 12/30/16, Cpl. Crocker informed me that she completed a Notice of Seizure and Intended Forfeiture Involved in Felony Crime on the 2008 Land Rover Range Rover and initiated the process for forfeiture (refer to her report for further).

On 01/02/17, I called and spoke to Wayne Bozell with All Right Auto Sales. Bozell stated that on 11/17/16, a male came into the dealership and stated his name was Lynell Denham. Denham was interested in buying the 2008 Range Rover that the dealership had for sale. Lynell told him that his credit was not good, but he had \$9000.00 cash to put as a down payment. Bozell stated that Denham told him that his father would come in later to fill out all of the paperwork. Bozell stated that Lynell's father, James Fisher came in later and purchased the vehicle. Bozell did not know how the vehicle was paid for, because the finance department handled that portion. I emailed Bozell two photos labeled A and B. Photo A was Lynell Denham's WAID photo and Photo B was James Fisher's WADOL photo. Bozell was able to identify both Denham and Fisher. I wrote a statement for Bozell and read it to him over the phone. He agreed with the statement.

No cellular phones belonging to Denham or with the above listed numbers were located on the premises during the execution of the residential search warrant. Denham was not on the premises and had gone into hiding. He also failed to show for his scheduled probation meetings and an arrest warrant for Escape from Community Custody was issued.

On 01/04/17, I sent the plastic headlamp dial to AFIS to exam.

On 01/18/17, AFIS completed their examination on the plastic headlamp dial and no prints of value were located. AFIS preserved the dial for DNA and it will be sent to the Washington State Patrol Crime Lab for DNA examination.

On 01/26/17, Denham pawned a gold necklace for \$2000 at the Bellevue Rare Coins. The necklace was not one that was taken from this burglary. This showed that Denham was still in the area and pawning jewelry. Bellevue Rare Coins provided me with a flash drive that contained a copy of the video surveillance of the transaction. It clearly showed Denham in the store pawning the necklace.

Mallinak had requested to take custody of the 5.29 carat diamond, GIA #2185021160 so he could return it to the owner. I contacted King County prosecutor Gabriel Jacobs and he indicated that the diamond could be returned as long as photos were taken. On 02/07/17, Mallinak came to the Kirkland Police Department. Evidence Tech Tiffany Borges removed the diamond from the Kirkland Police Department Evidence safe and accompanied me to the front lobby where we met Mallinak. We then all went into a Kirkland

lobby interview room. I presented Mallinak with the diamond and he examined and confirmed it was the 5.29 carat diamond, GIA #2185021160 stolen from his store. I took photographs of the diamond and GIA paperwork and released them to Mallinak. A property release was completed and signed by Mallinak.

The 5.29 carat diamond, GIA #2185021160 was cleared out of the system as being stolen by Kirkland Records.

On 02/16/17, Evidence Technician Karen Olson informed me that the Range Rover needed to be moved from the outside secured pen to the inside secured evidence bay. Olson requested that I drive the vehicle to the inside bay. I then got into the Range Rover vehicle while Technician Olson watched and started the vehicle's engine. I observed that the vehicle was equipped with a GPS system. I did not access the GPS and parked the Range Rover in the inside secured bay. My training and experience have taught me that some GPS systems keep a memory of addresses that have been searched or driven to. On 03/20/17 at 1300 hours, I called the service department at the Bellevue Land Rover and they confirmed that at a minimum the GPS system in that year of Range Rover would store the last location searched.

I conducted a public records search on phone number 253.449.6615 and 253.677.0772. The check showed that the service provider for 253.449.6615 was Metro PCS and the service provider for number 253.677.0772 was Verizon Wireless. Denham had provided these phone numbers to his probation officers. He also provided the number 253.449.6615 to the Porcello Jewelers and the number 253.677.0772 to the TopKick pawn store when he pawned the stolen jewelry to the stores. I sent preservation letters to both Metro PCS and Verizon.

Verizon sent me an advisement that 253.677.0772 was assigned to T-Mobile.

On 03/21/17, Denham returned to the Bellevue Rare coins and attempted to pawn 4-5 diamond gold rings. Denham did not like the appraisal and left the shop with the rings. The Bellevue Police were called after Denham left the store. Bellevue Rare Coins provided me with a flash drive that contained a copy of the video surveillance of the transaction. The surveillance again clearly showed Denham in the store. This time Fisher was in the store with Denham.

I wrote an addendum to warrant number 16-1201 to search the GPS unit in the Range Rover and also the phone records for Denham's cellular numbers (253.449.6615, Metro PCS) and (253.677.0772, T-Mobile). The warrant was reviewed by King County Prosecutor Gavrriel Jacobs.

On 04/11/17, Denham was arrested in the City of Shoreline by the King County Sheriff's Office on his arrest warrant and was booked into the King County Jail. Denham had been staying at a motel in Shoreline (refer to King County case C17017782 for further). Later that day, the motel staff called the police to report a suspicious item in Denham's room that they believed might be a bomb. King County Deputies entered the room and saw on the bed a large amount of specific keys, latex gloves and an odd briefcase with electric relays inside.

It was believed that the device might be used to short out alarm systems. The item along with a schematic was seized and sent to the FBI to be examined (Refer to King County case C17017841 for further).

On 04/17/17, I went to the King County Jail to interview Denham. Denham refused to talk to me.

On 04/20/17, I took the affidavit addendum and warrants to the King County Superior Court. Superior Court Judge Susan Amini signed the Affidavit and warrants at 1335 hours.

On 04/25/17, I served the warrants to Metro PCS and T-Mobile via email.

On 04/25/17, I served the warrant on the Range Rover GPS unit. There was no saved GPS history in the GPS unit. It appeared that it was never used or deleted. I left a return of service in the vehicle.

On 05/04/17, I received the information from T-Mobile and Metro PCS that I requested in the search warrant. The information included the call records, tower locations that the phone utilized and the dates and times of the calls.

I reviewed the phone records for 253.449.6615, Metro PCS. The subscriber name on the number was Lynell Denham with an address of 10312 Golden Given Rd E Tacoma WA, 98445-3168. The account was activated on 10/03/16 and terminated on 02/03/17. This showed that the phone was registered to Denham during the time frame of the burglary. There were over 1200 phone records listed from 11/10/16 - 02/02/17. Out of those records only three were recorded to be in the City of Kirkland and utilized the tower located at NE 70th St & 132nd Ave in Kirkland. This tower is located approximately 550 feet from Mallinak Jewelers. One call was placed on 11/11/16 at 23:53:41 hours to number 206.293.4636. Mallinak Jewelers received two alarms on 11/11/16 at 23:22:35 & 23:26:06 hours. The other two call records were placed on 11/12/16. At 14:22:22 hours Denham's phone received a call from number 206.293.4636. At 14:42:47 hours a call was made from Denham's phone to number 253.861.2161. Mallinak Jewelers received an additional alarm on 11/12/16 at 01:40:54 hours. These records show that Denham's phone was utilized in Kirkland during the time frame of the burglary. I compared the times and dates that Denham pawned the stolen jewelry to the phone records for number 253.449.6615. The records showed that Denham's phone was used near the location of every store Denham pawned stolen jewelry at during the time frames indicated by witnesses.

EX. B7

There were also several records that showed calls were placed near the Punlerpich Jewelry store.

I reviewed the phone records for 253.677.0772, T-Mobile. The subscriber name on the number was James Fisher with an address of 10312 Golden Given Rd E Tacoma WA, 98445-3168. The account was activated on 12/20/15. There were no records of calls being placed or received in the City of Kirkland from this number.

I reviewed Denham's jail call recordings while he was incarcerated at the King County Jail. The majority of the calls that Denham placed were to Fisher. In those calls he discussed with Fisher about a storage unit that they needed to pay the bill for. Denham did not disclose the location of the storage unit on the phone, but told Fisher the gate number was 11686146# and he believed it was unit number G1167.

At the request of Assistant United States Attorney, Bruce F. Miyake this report was submitted to him on 06/12/17 with the understanding that the case was still an active investigation and this supplemental report was a preliminary report and not complete.

On 06/13/17, Le's attorney dropped off the original photocopy of Denham's ID that Denham signed when he sold Le the stolen diamond. It was placed into evidence.

* On 06/27/17, I received the AFIS report for the bottle and no prints of value were located. I contacted Beverly at the Washington State Patrol Crime Laboratory DNA section. She had previously instructed me to first send the bottle and cap to AFIS. Beverly now instructed me to send the cap and bottle to the lab for DNA examination. I completed the DNA examination paperwork to have the items processed.

On 06/27/17, I contacted Josh Michaels with the FBI and he indicated that he would check with the lab and have them expedite the examination on the briefcase.

On 07/05/17, I sent in a request to the Washington State Patrol Crime Laboratory to examine the bottle (EV386-001) and plastic cap (EV337-002) recovered at the crime scene.

On 07/13/17, I received copies of Denham's phone calls while he was in Federal Custody from the USAWA. I reviewed the calls and it was apparent that Denham knew we would be reviewing the calls. In the calls, Denham mainly talked to Fisher and made threats to sue me and also to "shut down" Miyake. He was upset that the Range Rover vehicle had been seized and stated "You don't care about my family, I don't care about your family. When I sue your asses individually. I already got something for Detective O'Neill. He messed up and will be sued". On a June 5th call, Denham told Fisher over the phone that trafficking stolen charges were going to be filed. He told Fisher not to worry, because they have to prove he knew it was stolen. Denham goes on to tell Fisher that trafficking is a very difficult charge to prove. Denham also talked to Fisher about needing money for an attorney due to his assets being tied up (refer to jail recordings for further).

* On 08/17/17, I received the lab results for the bottle and plastic cap with no identifiable DNA located.

On 09/14/17, per my request, the Tacoma Police Department sent a detective to the Punlerpich Jewelry. They were not able to obtain any information from the employee, due to no records being kept. They also did not have any video surveillance.

On 10/02/17, I called Mallinak to request copies of the replacement and repair costs of damages to his store. Mallinak emailed me copies of the invoices. With tax, delivery and labor the safe cost \$5479.38 to replace and the door repair was \$2079.61. He stated that the alarm system had to be completely replaced. The itemized bill for the alarm system was \$9709.90. The copies of the invoices were added to the case.

* This case was referred to the King County Prosecutor's Office to file the charges of RCW 9A.52.030 Burglary 2nd Degree, RCW 9A.56.030 Theft 1st Degree, RCW 9A.082.050 Trafficking in Stolen Property 1st Degree and RCW 9A.48.070 Malicious Mischief 1st Degree.

Case Assigned: 11/29/16

Case Completed: 10/03/17

Case Disposition: Filed

Hon. Robert S. Lasnik.

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Mitigating factors for summary Judgement, & for Injunctive Relief...

The actions of Det. Allan O'Neill, are "telling" of "extrinsic fraud," and fabricating evidence thru, the dates outlined:

- 11-14-16, Det. O'Neill, requested to assist at crime scene
- 11-29-16, Det. O'Neill, assigned as case lead detective
- 12-22-16, submitted affidavit, procured warrant
- 12-29-16, executed search warrant at family home
- 6-12-17, submitted report to Bruce F. Miyake
- NOTE • 10-3-17, referred case to King county prosecutions office, for "charging."

- A. R.C.W. 9A.52.030 - Burglary 2nd degree
- B. R.C.W. 9A.56.030 - Theft, 1st degree
- C. R.C.W. 9A.082.050 - Trafficking in stolen property, 1st degree
- D. R.C.W. 9A.48.070 - Malicious Mischief, 1st degree

see - exhibit - B-7 veru bottom paragraph to confirm.

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The historical chronology, of these dated events are referenced, & confined, within the "four corners," of Det. Allan O'Neill's, personally prepared, Affidavit(s), & supplemental report(s):

- A. 12-22-16, SEARCH WARRANT Affidavit # 16-1201
- B. 6-12-17, "incomplete" supplemental report
- C. 10-3-17, "complete" supplemental report

The information, cited therein, these documents, discussed herein, clearly elucidates, all events starting from the 11-14-16, burglary investigation, thru the "initial appearance," I made before Judge - Donahue, in Seattle District Court, on 4-26-17. And thru, the several appearances, that I made - before you, in regards to the allegations of:

- "Absconding,"
- "Trafficking in stolen property."

These were the only allegations. Nothing more!

I. These reports derive its information, from Sgt. M. Vickers, 11-14-16 report with respect to the burglary incident.

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The "truth table," to this entire matter, lay, in, all documents, discussed herein. Nothing else.

Most importantly, All of Det. Allan O'Neill's, "hunches," & his assertions, about me, are no more, than hypothetical, conjectural, and are false. And are conclusory. As a "matter of law." State & federal. Therefore, exposing his literal deceit, "extrinsic fraud," and his fabricating, and forwarding knowingly false evidence, to prosecutors knowing, I would be convicted... "MENS REA"? Det. O'Neill, is the "Adverse party".

The District Court & the State Court, Judgments, lodged against me, is not the fault, of either Court, or either prosecutor, or either Jurisdiction. There's nothing "de facto," here.

Rather, it is, the fault, of Det. Allan O'Neill, who committed, Criminal "extrinsic fraud," upon both Courts; who lodged concurrent, Judgments, against me. 78 month sentence, and, a 24 month sentence, inextricably intertwined. And, are both indivisible, from the other; because, both sentences, derive directly from the lawlessness, of Det. Allan O'Neill.

pg. 4

- SEE - *ROOKER V. FIDELITY TRUST CO.*, 263 U.S. 413 (1923);
- *FELDMAN*, 460 U.S. 462 (1983);
- *VOSSBRINCK V. ACCREDITED HOME LENDERS, INC.* - - -
- 773 F.3d 423, 427-28 (2d cir. 2014) (per curiam);
- *KOUKASIAN*, 359 F.3d 1136, 1140 (9th cir. 2004);
- *MALDONADO*, 370 F.3d at 950.

MOREOVER, "DEVOICATION OF SUPERVISED RELEASE must be based on verified facts." SEE -

- *UNITED STATES V. MARTIN*, 984 F.2d 308 (9th cir. 1993)

"EXTRINSIC FRAUD" IS FABRICATING FALSE EVIDENCE, ARE NOT, VERIFIED FACTS. FOR EITHER COURT TO CONVICT, OR DEVOKE... THE CHARGES HERE ARE: -

- "TOTALLY DEVOID OF EVIDENTIARY SUPPORT." SEE -
- *DOUGLAS V. BUDEN*, 412 U.S. 430 (1973)

Both sentences must be summarily vacated prior to 1-23-19, to prevent current, & "future -

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"Harm." SEE - L.A. Coliseum, 634 F.2d At 1201;

O'SHEA V. Littleton, 414 U.S. 488 (1974);

• City of Los Angeles V. Lyons, 461 U.S. 95 (1983)

I AM, in fact serving A current sentence, for both Jurisdictions, whose sentences, are concurrent, to the other, and the difference of the other term, 78 month will have to be served at the expiration of the 24 month term.

These circumstances, are current; "future harms."

Fraud Exposed

After Det. O'Neill's, investigation of the Jewelry store burglary, on 11-14-16, where he assisted, at the request, of Kinkland P.D. Sgt. M. Vickers, and, was thereafter, assigned to the case, as lead, investigating detective, on 11-29-16, he inexplicably procured a state, search warrant, on 12-22-16.

He submitted, his Affidavit, assigned #16-1201 dated, 12-22-16, informing Hon. Ken Schubert,

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that there was probable cause for my arrest for the listed crimes, on the face of his Affidavit, #161201. This Affidavit, is groundless, fictitious, and, does not offer, outline, any underlying facts, of any kind, as to how I perpetrated said crimes, as of the date, when he submitted his Affidavit. SEE. EX. D1 #

In ex of his incomplete, investigatory supplement report, he noted "at the request of Assistant - - - United States Attorney, Bruce F. Miyake this report was submitted to him on 06/12/17." "This case is still an active investigation and my supplemental report is a preliminary report and not complete. SEE. EX. I.C.M.P #1

on 6-13-17, one day after receiving, and reviewing, Det. O'Neill's, report. Mr. Miyake, "emailed" Counsel Lisa Mulligan, offering a proposition for me to plea to "trafficking"... SEE. EX. L.M.I # Nothing about burglary, or any, other crimes, were even mentioned. This is, the only information, sent to Mr. Miyake.

It makes no sense, for Det. O'Neill, to have still been investigating, the case, on me beyond 06/12-17.

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He had already concluded that I committed the crimes, listed on the face of his Affidavit dated, 12-22-16, executed on 12-29-16, at my family home, where nothing pertaining to his investigation, was located, or discovered.

He had already interviewed all Jewelers, and had retrieved some of the items, back from the Jewelers. Why would he still be actively investigating? What would there be to investigate? "Fishing expedition." "Stall tactic."

In Det. O'Neill's, supplemental report, he outlines on 12/20/17, he received the "AFIS" report for the "latent lifts", that had been located at the burglary scene. The prints belonged to a "Dustin Joseph Toney" . . . SEE, EX. B3, paragraph (U).

He also outlines, on 6/27/17, he received prints of "NO VALUE" . . . SEE, EX. B7 6th paragraph *.

He then outlines, on 8/17/17, he received the "D.N.A." data, from the lab, stating "no identifiable "D.N.A." located." . . . SEE, EX. B7 10th paragraph *.

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He then outlines, in this same report, that he referred this case to the King County prosecutor's office to file the charges against me for:; see, ex-B7 13th paragraph. *

- A. R.C.W. 9A.52.030, burglary 2nd degree;
- B. R.C.W. 9A.56.030, Theft 1st degree;
- C. R.C.W. 9A.082.050, Trafficking in stolen property 1st^o
- D. R.C.W. 9A.48.070, Malicious Mischief 1st degree

This is impossible! on 12-22-16, to state, that I committed said crimes; then on

- 12-20-17;
- 6-27-17;
- 8-17-17;

to state, nearly a year later, that the D.N.A, fingerprints, and lab results, identifies another; and, the other results are of no value. This is fraud, fabricating evidence. 18 USC-242!

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Det. O'Neill, hadn't amassed any facts, about me when he informed U.S.P.O. Patrick Robinson, that I committed the acts, outlined on the face of his Affidavit. He lied, & manipulated a Federal officer, of this court, essentially causing a malicious prosecution...

These facts, are "telling" that he, did not have any facts, on 12-22-16, when he submitted his Affidavit, to Hon. Ken Schubert, feigning, that I committed crimes, when there is no evidence. And when he, in his report, of 10-3-17. Almost a year later admits, to facts regarding "D.N.A," results; "Fingerprint," results, and other people.

This also explains, why Mr. Miyake, could never provide you with a straight & forward, - - - answer, as to the state changing me. and - - when a case, was being manufactured.

Not faulting you, but you continued to deny my repeated request, to be release, on the account that Det. O'Neill, continued, to feign, that he was still investigating, when he, hadn't in fact, had nothing to investigate.

pg. 10

He was "shamming," & fleecing this court, and Mr. Miyake, and Counsel, Lisa Mulligan. The entire time, I painstakingly, was demanded to custody, because I had not been charged.

I contacted this court, outlining all the reasons, "why I should be released today..."

on the account of O'Neill's fraud, my request was denied. 'Det. O'Neill, is at fault!' Not this court! Det. O'Neill, caused a 4th amendment pretrial/detention violation. And now an "unjust imprisonment." I must, now be released.

Conclusion

I again, and now, ask this court, if it will order my release. I have painstakingly pleaded my case, with hours & hours, of hard, and cumbersome, research and writing. Finding myself, reiterating the pleadings, over & over, in each filing. It must end.

Date 11-3-18

Respectfully submitted
Lucretia Paul
28 USC 1746

EX. LM, # 1

THE LAW OFFICE OF LISA MULLIGAN, LLC

1300 HOGE BUILDING, 705 SECOND AVENUE, SEATTLE WA 98104
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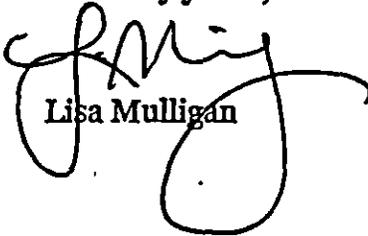
June 26, 2017

Dear Lynell,

Here are the documents you requested as well as another document I received from the Government. Please let me know if there is anything else I can provide. Our evidentiary hearing has been rescheduled to November 28, 2017 at 9 am (the October date we discussed was no longer available). I will check with the prosecutor for an update in a month or so – and of course, I will let you know asap if I hear something new.

Also, the prosecutor sent me an email on June 13th that I forgot to mention to you before – he wrote: *"Sorry about getting the discovery piece meal. I was wondering if Denham would be interested in a global resolution where he would plead guilty to state charges and we either forgo the supervised release allegation of trafficking and recommend any time run concurrent with the state time. Let me know if he is interested."* I assume that you are not interested, but please tell me if I'm wrong about that.

Sincerely yours,


Lisa Mulligan

Statutes

Watts argues that without specific Sentencing Guideline commentary examples directly on point, the rule of lenity should apply. "The rule of lenity is a canon of statutory construction that requires courts to construe ambiguous criminal statutes narrowly in favor of the accused." United States v. Wright, 607 F.3d 708, 716 (11th Cir. 2010) (William Pryor, J., joined by

The rule of lenity certainly does not need to be employed, to discern the plain meaning, and the plain language, of Washington, state's burglary statute, and the trafficking in stolen property statute.

There's nothing ambiguous, about these narrowly defined statutes. they mean what they mean.

Det. O'Neill, cannot legislate, or tailor, the definition, or meaning of established criminal statutes; governed under R.C.W. to describe a "course of conduct" that never occurred. This is what he in fact did on 12-22-16 when he submitted his certification for determination of probable cause affidavit for a search warrant, and on 10-3-17 to the King County prosecutors office; offering no evidence, no information, no proof, at any juncture of his entire investigation, that I perpetrated crimes of burglary or trafficking in stolen property as of the dates, outlined:

11-11-16-11-14-16 for the burglary

11-15-16-11-19-16 for the trafficking

Statutes

The criminal law should not be a series of traps for the unwary. To that end, the Due Process Clause demands that criminal statutes describe each particular offense with sufficient definiteness to "give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden." *United States v. Harriss*, 347 U.S. 612, 617, 98 L. Ed. 989, 74 S. Ct. 808 (1954). A statute must give fair warning. "in language that the common world will understand, of what the law intends to do if a certain line is passed." *McBoyle v. United States*, 283 U.S. 25, 27, 75 L. Ed. 816, 51 S. Ct. 340 (1931). "The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." *Harriss*, 347 U.S. at 617.

Det. Allan O'Neill, in his 12-22-16 affidavit, outlines that he has been a "sworn police officer" since 1997., and further outlines, the various kinds, of training that he has received as a "sworn police officer"; including his experience in investigating a number, of various crimes, including burglary, trafficking in - stolen property, and theft. See exhibit F. lines 16-17.

Despite these claims, the detective intentionally failed to meet the demands of the Due Process, to "describe" each particular offense with sufficient definiteness. He instead fabricated a lie, when he informed Hon. Ken Schubert, on 12-22-16, and the King County, Prosecutors office on 10-3-17; and U.S.P.O. Patrick Robinson, and others that I perpetrated the listed crimes, outlined on his affidavit. The fact that he edited the criminal statutes, on the face of his affidavit, he would have had to have known, or should have known that my "actual course of conduct" did not clash with the language, of the statutes, because he knew that he lacked evidence, when he submitted his affidavits.

I am being held criminally responsible for conduct, that never occurred.

The detectives training and his experience is immaterial, and is irrelevant, when "extrinsic fraud", and fabricated evidence is his only evidence.

Fraud, and deceit, is not evidence.

Statutes

Aside from what the 2013 amendment revealed about Congressional intent, there are good reasons to interpret the former statute as we do. We normally resolve "ambiguity concerning the ambit of criminal statutes . . . in favor of lenity." *Jones v. United States*, 529 U.S. 848, 858, 120 S. Ct. 1904, 146 L. Ed. 2d 902 (2000) (quoting *Rewis v. United States*, 401 U.S. 808, 812, 91 S. Ct. 1056, 28 L. Ed. 2d 493 (1971)). This canon of construction serves the policy of giving "fair warning . . . to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear." *United States v. Bass*, 404 U.S. 336, 348, 92 S. Ct. 515, 30 L. Ed. 2d 488 (1971) (quoting *McBoyle v. United States*, 283 U.S. 25, 27, 51 S. Ct. 340, 75 L. Ed. 816 (1931)). In addition, "because of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal activity." *Id.*

Det. O'Neill, is a 20 year veteran law enforcement official whose, boasted about his training, and his experience; but yet is incapable of obviously understating the common language, of the criminal statutes, with respect to criminal activity... Legislatures and not courts should define criminal activity.

As for the detective, he is neither the court, or the legislature, but yet has defined my daily 'course of conduct' as criminal with regards to the diamond that I sold on 11-19-16, whereby I had a receipt, and the documentation for the stone. He lied to the prosecutors office and informed that I was trafficking in stolen property, and that I was involved with the burglary in association with the diamond, despite the fact that he had not produced any evidence of -- anykind to support his position that I committed said acts.

He simply, "bootstrapped" the crimes to my criminal past; without ever proving that I first, stole the diamond, second sold the diamond knowing that the diamond, was stolen...

This entire matter has to be revisited, via some sort of evidentiary hearing. I respectfully ask this court to formally discern this matter with integrity. Anytime that there is absolutely no kind of evidence, a case such as this; something is wrong!

I have provide enough evidence to this court for it to be satisfied that the detective is a liar, and has fabricated evidence. If this is not true, why is there no evidence, of trafficking, or burglary?

The *Younger* abstention doctrine also does not apply because this case fits squarely within the irreparable harm exception. See *World Famous Drinking Emporium, Inc. v. City of Tempe*, 820 F.2d 1079, 1082 (9th Cir. 1987) (holding that an exception to abstention applies "under extraordinary circumstances where the danger of irreparable loss is both great and immediate").

"It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Hernandez* {882 F.3d 767} v. *Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). Deprivation of physical liberty by detention constitutes irreparable harm. *Id.* We have applied the irreparable harm exception when "full vindication of the right necessarily requires intervention before trial." *Mannes v. Gillespie*, 967 F.2d 1310, 1312 (9th Cir. 1992). Here, the petitioner has been incarcerated for over six months without a constitutionally adequate bail hearing. His case easily falls within the irreparable harm exception to *Younger*.³

The fact that this court ran the 24month sentence concurrent to the 78month sentence, that arose out of "extrinsic fraud" on the part of Det.O'Neill, it should be very clear that my circumstances, are similar to the circumstances hereto.

January, 23rd 2019 is impending upon me, to be released from this sentence; to be sent to state prison for crimes that I never committed based on prima facie evidence, and the language of the statute.

I candidly, and respectfully assert that this court knows that this is a "sham" case. I ask this court to do the right thing.

The detective has defrauded the court, and has wasted its time by having punish me for crimes that I never committed.

Therefore, I ask that this court vacate both sentences; if there is a need for any evidentiary hearings, I ask that I be released, and given a court date. I have no problem with coming to court. I just ask not, to be incarcerated any longer; unlawfully, on the account of Det. -- O'Neill.