

1
2
3
4 IN THE COURT OF APPEALS, DIVISION -1
5 FOR WASHINGTON STATE
6

7 Marlow Todd Eggum, Appellant,

Case No. 72020-1-1

8 v.

OPENING BRIEF OF APPELLANT

9
10 Washington State, Respondent.
11

12
13 BRIEF OVERVIEW OF APPEAL
14

15
16 On or about 3-15-2011 to 4-21-2011 the Whatcom County
17 Sheriff's Office (WCSO) and Assistant Attorney General (AAG)
18 intentionally violated multiple orders of the court prohibiting
19 them from either releasing or destroying property belonging
20 to the appellant and being held by the WCSO under court orders.

21
22 A confidential email dated 3-11-2011 inarguably shows
23 that AAG John Hillman and WCSO deputy John Allaire had
24 every intention of violating the multiple orders of the court if
25 they were denied their motion on 3-15-2011, After being denied
26 their motion on 3-15-2011 the AAG and sheriff's deputy then
27 proceeded to violate the standing orders of the court from
28 9-24-2007, 10-18-2007 and 4-21-2008, to include the ruling
on 3-15-2011, See Ex-9,

1 The confidential 3-11-2011 email explicitly references
2 the 9-24-2007, 10-18-2007 and 4-21-2008 orders prohibiting
3 them from either releasing or destroying the property being held.
4 Then four days later on 3-15-2011 the court denies their motion
5 for an order allowing them to destroy the property, with the
6 court electing to leave the standing orders in effect. There
7 are now four judgments, decrees, orders or processes of the
8 court that exist. The AAG and WESO deputy then depart
9 the courtroom after the 3-15-2011 hearing and intentionally
10 violate the multiple orders of the court by destroying the
11 property.

12 RCW 7.21.010(b) defines "contempt of court" as being
13 the intentional disobedience of any lawful judgment, decree,
14 order or process of the court. Given the 3-11-2011 email and
15 the actions immediately following the 3-15-2011 hearing it is
16 inarguable to suggest that the AAG and WESO deputy are
17 not in contempt of the court.

18
19 During "oral argument" on 9-26-2014 under this cause,
20 Commissioner Mary Neel asked AAG John Hillman to identify
21 the orders that were allegedly violated on 3-15-2011, and
22 also identify who (if anybody) had violated them. Here
23 Commissioner Neel is asking the AAG to identify the pro-
24 hibitions referenced in the confidential 3-11-2011 email.

25 AAG John Hillman correctly testifies that the 9-24-07
26 and 10-18-2007 orders prohibited the WESO from releasing
27 or destroying the property being held on 3-15-2011 until
28 further order of the court.

1 The AAG then testifies that immediately following the
2 3-15-2011 hearing that he and the WESO proceeded to
3 release and destroy the property in direct violation of
4 the court's multiple orders. In fact, immediately following
5 the 3-15-2011 hearing the AAG writes a letter of authority
6 contravening the orders of the court by authorizing the
7 destruction of the protected property. See Ex-10.

8
9 Between the 3-11-2011 email and the 3-15-2011 hearing
10 the WESO and AAG are acutely aware that they are pro-
11 hibited from leaving the courtroom and destroying the pro-
12 perty being held under court order(s). Then they depart
13 the courtroom and proceed to intentionally disobey the
14 orders of the court on 9-24-2007, 10-18-2007 and 3-15-2011.

15 Given the legal definition of contempt of court how could
16 their actions not be the intentional disobedience of any
17 judgment, decree, order or process of the court, stated in
18 the simplest of terms, in order to prove that they are
19 not in contempt of court the WESO and AAG must provide
20 a "Further order of the court" dated on 3-15-2011. They
21 were denied their motion so that's an impossibility.

22 The State's defense to the contempt allegation(s) is
23 that a 5-06-2005 order authorized them to release and/w
24 destroy the property being held under court order. This argu-
25 ment was considered and rejected on 9-24-2007 therefore
26 it doesn't authorize the release or destruction of anything.
27 If this argument were true the property would have been
28 released on 9-24-2007 when it was presented.

1 If this 5-06-2005 expired order authorized the WASO to
2 release or destroy the property seized in 2006, then this
3 argument would have certainly been presented to the court,
4 And in fact it was (twice) presented and rejected on 9-24-07
5 and 3-15-2011 at RP(9-24-07)2 and RP(3-15-11)105. See
6 exhibits 5-6,

7
8 On 9-24-2007 the judge ruled that the distribution of
9 property being divided by the court had been completed within
10 10-days as ordered, therefore Gray had already received her
11 share of the property. Therefore the WASO had completed their
12 duty under that order. See RP(9-24-2007)17, 18 at Ex-5.

13 On 8-28-2015 under this cause, Judge Garrett ruled that
14 (1) the distribution authority portion of the 5-06-2005 order
15 expired 10-days after it was entered and therefore did not
16 authorize distribution or release of any property on 3-15-2011,
17 and (2) the order only pertained to a group of movables then
18 "being held by" the sheriff on that 5-06-2005 date. These
19 verbal rulings are evidenced in the written order itself.

20
21 The 3-11-2011 confidential email serves as a smoking gun
22 because the two contemptors discuss violating the very orders
23 they are accused of violating. Then four days after the email
24 was written the court expressly prohibits them from either
25 releasing or destroying the property, so it becomes impossible
26 to argue that contempt has not occurred. The contempt is
27 proven unless the accused contemptors can produce a signed
28 court order entered by the court on 3-15-2011.

The appellant files the contempt motions under the 05-1-0104-3 and 05-1-00486-5 causes. Judge Garrett will hear the contempt motion under the 2005 cause, while Judge Whig will hear the contempt motion under the 2005 cause.

While the contempt in both courts addresses the contempt occurring on or about 3-15-2011, Judge Whig will address the ARG's contempt under the 2005 cause, while Judge Garrett will address the WSD's contempt under the 2005 cause.

During two remanded contempt of court hearings held on 3-05-2015 and 3-17-2015, Judge Whig rules there's no basis to hold a contempt shall cause hearing because any contempt by the ARG would have been under the 2005 cause for violation of the 9-24-2007 and 10-18-2007 orders. This ruling is nothing more than a "punt" to Garrett's court and doesn't address the contempt occurring on or about 3-15-2011 in his court (addressed infra).

Judge Garrett then "punts" or defers both contempt motions to the U.S. District Court where the appellant has a lawsuit pending. The U.S. District Court dismisses the appellant's lawsuit on the basis it is a state law text and needed to be filed in the adjacent country's superior court. Therefore the contempt occurring on or about 3-15-2011 had not been ruled on. At this juncture Commissioner Noel ruled the matter was remanded back to Judge Garrett for a ruling on the contempt allegations under both causes (WSD + ARG on or about 3-15-2011).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

On 8-28-2015, Judge Garrett makes the following ruling; "The court finds that Judge Muris's 9-24-2007 and 10-18-2007 orders contained a condition precedent that a lawsuit must be filed to address ownership issues, and since ownership was not been resolved by filing of a civil lawsuit, there is no basis to issue a show cause order regarding contempt in this matter. There is no basis to determine that contempt was occurred".

Judge Garrett misunderstands what the order prohibit, and she also intentionally ignores the message of the 3-11-11 email because it inarguably proves the contempt. The excessive ruling above is nothing more than an attempt to not expose the country to any potential liability that would attach to the contempt. These type of rulings are the reason why the applicant sought a remand to a disinterested county.

In reference to the "condition precedent" mentioned in the ruling above; Judge Muris's order was that the WESD was to retain possession of the property and not release or dispose of it until after a civil lawsuit was filed and ownership determined. And the court could not order disposal of the property until after the civil trial was held.

Therefore, if there has been no lawsuit filed and no trial held, the WESD is prohibited from disposing of the property until that has occurred, since there hasn't been a lawsuit filed (because of pending appeals) the WESD is in contempt if they are no longer in possession of the property. They should still be in possession of the property because the court hasn't issued them an order authorizing disposal.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Judge Murin's VRP ruling states: "And the court will not
2 order disposal of the property until after a civil lawsuit has
3 been filed and all parties have had an opportunity to be heard,
4 and the court reserves ruling on the disposition of the property
5 until after a lawsuit is filed and a trial held". This ruling
6 requires the WESO to obtain a "further order" of the court
7 if they wish to release the property to anyone, or dispose of
8 it. See RP(9-24-2007)23+25 at exhibit-5.

9
10 On 3-15-2011, AAG John Hillman and WESO deputy
11 John Allgire sought the required "further order of the court"
12 that might arguably allow them to release and/or destroy
13 the property, and the court denied their motion because
14 (1) a lawsuit had not been filed, and (2) a trial had
15 not determined ownership, and (3) the return of property
16 was currently under appeal. On 3-15-2011 the trial court
17 expressly forbid the release or destruction of the property
18 in question, firmly leaving the prior orders in place.

19 On 3-15-2011 the court did not authorize the WESO or
20 AAG to violate the 9-24-2007 and 10-18-2007 orders, and
21 in order to suggest otherwise the appellate court would have
22 to produce either a vacated order or amended order dated
23 3-15-2011 that authorizes the WESO to release or dispose
24 of the property. This cannot be done.

25 Judge Garrett's ruling is nonsensical on its face. She
26 has the cart in front of the horse. The "condition precedent"
27 must be satisfied before anything can be done with the
28 property, not after!

The condition precedent referred in Garris's excessive ruling must be satisfied before the court will issue an order allowing the WSO to do anything with the property, not after! It appears as if Garris cannot understand the difference between before and after.

If the property being held under court order has been released or destroyed and the "condition precedent" has not been satisfied then the WSO is in contempt of court for not retaining possession of the property as ordered.

Judge Garris has ruled "there is no basis to determine that contempt has occurred", if this is true she must produce a court order signed by Judge Whing on 3-15-11 where he authorizes the WSO to dispose of the property, and Whing cannot enter an order to this effect until after a civil lawsuit has concluded. Judge Garris's ruling is nothing more than an attempt to circumvent the contempt issue. Her ruling is obstructive in nature.

Let me state this even more clearly for the appellate court; The 10-18-2007 order applies to all parties, not just Eggen. So before the WSO can release property to anybody, including Gray, she must start a lawsuit in order to prove during trial that this property is hers. This shifts the burden back to the state to prove that Gray filed a lawsuit. Again, Gray cannot realistically file a lawsuit because she already received her share of the property within 10 days of the 5-06-2005 order being entered.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 The confidential 3-11-2011 email unarguably proves the
2 contempt of court on or about 3-15-2011, because it serves
3 as a "smoking gun" that must be dealt with by the
4 appellate court,

5
6 "Contempt of court is defined by statute and includes the
7 intentional disobedience of a lawful court order, RCW 7.21.010,
8 in determining whether the facts support a finding of contempt,
9 the court must strictly construe the order alleged to have been
10 violated, and the facts must constitute a plain violation of the
11 order," see Marriage of Humphreys, 79 Wn.App. 596 at 599,
12 903 P.2d 1012 (1995), "like any decision granting or denying
13 a motion for relief from a judgment, a decision on a motion
14 for contempt is reviewed for an abuse of discretion," see
15 Marriage of Williams, 156 Wn.App. 22 at 28, 232 P.3d 573
16 (2010) cited at Marriage of MacKenzie, 2014 Wash. App.
17 LEXIS 2071,

18 The orders clearly state that (1) the W660 is to retain
19 possession of the property and (2) not release or dispose of it
20 (3) until further order of the court and (4) the court will
21 not order release or disposal of the property until after a
22 lawsuit is filed and a trial has determined ownership,

23 Pursuant to Humphreys, Williams and MacKenzie, the
24 appellate court must strictly construe these orders, and
25 the appellate court must review the trial court's ruling
26 for an abuse of discretion,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BACKGROUND OF CASE

1. Eggum and Gray were married from 1992 to 2003 with the parties separating in 2001.

2. From 1995 until their separation in 2001 (i.e. 7-4/5) Eggum filmed Gray having extramarital sex with over One Hundred Films being produced.

3. These films were produced for public consumption, and during this lengthy 7-year production period Gray signed multiple modeling release agreements (contracts) where she relinquished her privacy interests to Eggum and his adult entertainment company (AVP Entertainment Group).

4. These movies were produced with every intention of marketing them, selling them and trading them. Eggum operated a business on the internet selling them. See RP (10-14-2010) 124, 133 at Ex-11.

5. Gray is seen in the introduction portion of the films holding up a published magazine, showing an advertisement offering the movies for sale through Eggum's entertainment website. See RP (10-14-2010) 133; This videotaped evidence unarguably establishes that Gray had relinquished her privacy and marketing interests to Eggum. See Ex-11.

6. From 2001 until July of 2003, Gray repeatedly rejected one party's offers to have any movies of her removed from the market. See exhibit-1. This becomes relevant, Ex-1

7. Esqum "retained the marketing rights" to his movies which he continued to market and sell on AVP Entertainment.

8. After repeatedly rejecting over fifty offers to have any movies depicting her in them removed from the market, Gray learned in open-court that Esqum could legally continue to sell the movies. Gray now regrets having consented to the rejection of these multiple offers over a lengthy 3 1/2 year period. See further email at Ex-12.

9. In November of 2004 the WSO will seize a small handful of movies from the appellants residence during an unrelated arrest. The prosecution admits after-the-fact that the seized-movies were unrelated to the stalking crime being charged, stated another simpler way: the movie sales are not stalking.

10. The prosecutor also admits that (1) he doesn't have statute authority to seize or retain possession of the movies, because (2) they are unrelated to the stalking charge, and (3) he does not have any right of forfeiture over the property. This is the quintessential example of what constitutes an unlawful search and seizure.

11. The criminal court tosses the unlawfully seized movies to the District Court even though the divorce had concluded in July of 2003 (and the property was seized in November of 2004, seventeen months after losing jurisdiction over the parties). The appellant challenges the court's asserted authority to toss the property from one court to another.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. On 5-06-2005 the divorce court judge incorrectly rules that Gray never rejected her share of these movies, and using community property law as his authority he is now going to make a "division of the property". As the court can see, Gray walked away from her share of the property on 5-27-2003, therefore the order which is about to be entered is based on a false premise. See exhibit-1.

13. The ruling entered on 5-06-2005 is succinctly summed up by appellate attorney Dana Lind on behalf of the Court of Appeals: "These videos (seized in 2004 i.d. at 9) were awarded to Gray during a 5-06-2005 dissolution proceeding. However, the judge ruled any imagery still retained by Eggom remained his property, although the judge prohibited him from disseminating it". See BOA8 at exhibit-3.

14. Summarizing that ruling even further: Gray is awarded everything that was seized in 2004 and being held by the W&SD on that date (i.e. 5-06-2005) and Eggom is awarded any and all imagery that he still retains which wasn't seized. Hereafter they are respectively referred to as Group-W and Group-H (W-wife, H-husband).

15. In the 5-06-2005 order the judge makes the following award as part of that division: "Gray is awarded as sole owner, the property being held by the W&SD including the following: all copies of the videotape, all originals, all prints of other images made from those videos which depict Gray. These items are now Gray's property and her property only". See paragraph 4 on page 3.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

16. In the aforementioned ruling the appellate court need only refer to the underlined words "being held by" the W&S on 5-06-2005. The co-ordinance of the order itself basically elicits that Gray doesn't have to share her portion of the award if there are multiple copies of the same movie (which there are).

17. At section 4.2(1) the order reiterates: "Gray is hereby awarded any and all property held by the W&S that contain images of herself. They shall be delivered to her within 10 days." Again, please note this order only pertains to the property being held by the W&S on 5-06-2005 to 5-16-2005.

18. During this "division of property" hearing the appellant elicits his part of that division as cited in d. at 13 by appellate attorney Jane Lind; "So we're making a division of the property here, and Gray is getting as her share of the award whatever margin she receives from the W&S today, is hers? And whatever I retain is mine?" The judge rules, "Sure, whatever is yours, but you can't disassemble it. You can look at it all day if you want but you can't give it to anybody else." See RP(5-06-05) 15, 16 of exhibit-2.

19. Equum than clerks: "I believe this order should make some sort of mention that the margin that I retain is mine". The judge rules, "His yours, it goes without saying, that's part of this division." See RP(5-06-05) 22 of exhibit-2.

15. Equum than clerks: "I believe this order should make some sort of mention that the margin that I retain is mine". The judge rules, "His yours, it goes without saying, that's part of this division." See RP(5-06-05) 22 of exhibit-2.

1 20. The colloquy at RP(5-06-2005)15,16,22 affirms appellate
2 attorney Dana Lind's summation of the 5-06-2005 ruling at
3 BDA-8, cited i.d. at 13. On 5-06-2005 a "division of property"
4 occurred with Eggum being awarded all the imagery that he
5 retained possession of after this date. The word "divide"
6 means to split into parts with each person getting their
7 piece of the pie.

8
9 21. On 5-06-2005 Gray is awarded and receives Group-W and
10 Eggum is awarded Group-H which is comprised of all the
11 imagery that he retains possession of which wasn't seized
12 in November of 2004.

13 22. The Whatcom County Prosecuting Attorneys Office (WCPAO)
14 and WBSD were displeased with the division of property and
15 Eggum being awarded all the imagery that he retained poss-
16 ession of, and in June or July of 2006 the WBSD seized
17 a small group of movies from Eggum's residence. These 25
18 movies would have been part of Group-H awarded to the
19 appellant on 5-06-2005 at RP15,16,22. See Exhibits 2-3.

20
21 23. These 25 movies were seized more than a year after the
22 division of property, and more than a year after WBSD deputy
23 Ray Oaks delivered Group-W to Gray.

24
25 24. These movies were seized in the summer of 2006, and in
26 the fall or winter of 2006 the appellant purchased a sex
27 tape of the senior prosecutor's wife to ensure that the
28 unlawfully seized property was eventually returned. This
act is going to become problematic for the WCPAO.

1 25. On 9-20-2007 the appellant motions for return of his
2 property and Judge Mura orders that all property seized in
3 June or July of 2006 from Eggson's residence be returned
4 to him immediately. Had the WCPAD complied with this
5 order it would not be faced with the dilemma of choosing
6 whether to return Eggson's property now or seeing the
7 "collateral tape" serving as a "replacement film", Exh-4.

8
9 26. On 9-24-2007 the WCPAD motions the court to rescind
10 the 9-20-2007 order. The ruling(s) made on 9-24-2007
11 serve as the basis of the 10-18-2007 order, therefore the
12 appellate court is going to have to closely examine the
13 VRP on this date. (discussed / examined infra)

14 27. At the conclusion of the 9-24-2007 hearing Judge Mura
15 made the following VRP ruling: "At this point in time, and
16 that for the WCPAD to be able to dispose of it they can
17 only dispose of it upon further order of this court. And the
18 court will not order disposal of the property until all
19 persons who have a potential interest are joined as parties
20 and then the court can consider who has ownership rights
21 of the property and dispose of it accordingly". See RP
22 (9-24-2007) 23 at exhibit-5.

23 28. The ruling continues: "I will order that the property
24 remain in the custody of the WCPAD until a lawsuit is
25 started, and you can start a lawsuit to gain possession
26 in a civil case". See RP(9-24-2007) 25, Exhibit-5.

1 29. The 9-24-2007 ruling(s) entered on 10-18-2007 state that;
2 "The court reserves ruling upon distribution of any property
3 held by the WOSO (i.e. seized in 2006 as part of Group-H)
4 under cause number 05-1-01094-3 until a civil action is
5 filed and all interested parties have an opportunity to be
6 heard". Parenthesis added for clarity. See exhibit-7.

7
8 30. Judge Murai's clerk clarifies his orders in April of 2008:
9 "I conferred with the WOSO and I instructed them that
10 no property is to be distributed to anyone without a court
11 order". The word "anyone" includes Gray, therefore the
12 order reads no property is to be distributed to Gray with-
13 out the further order of the court. See exhibit-8.

14 31. Pursuant to caselaw supra at Humphreys, the appellate
15 court must strictly construe the order alleged to have been
16 violated. In the rulings above (i.d. at 27-30) the court
17 must focus on the "key words" which are underlined and
18 follow: "only dispose of it upon further order" and "the court
19 will not order disposal until" and "remain in the custody of"
20 and "court reserves ruling upon" and "no property is to be
21 distributed to anyone until further order". And the key
22 word or phrase is "until after a lawsuit is started".

23
24 32. On 3-15-2011 the AAG and WOSO sought an order of the
25 court that would allow them to release the property to Gray
26 or destroy it before a lawsuit was filed, and the court
27 denied their motion leaving the aforementioned prior orders
28 firmly in place. Therefore, did the AAG commit contempt
of court by violating these orders i.d. at 31?

1 33. The answer as to whether contempt of court has occurred
2 is quite simple to ascertain; on 3-15-2011 did the AAG
3 and WESO deport the courtroom with a "Further order" of
4 the court authorizing them to release and/or destroy the
5 property? If the WCPAD cannot produce a court order which
6 is "signed and dated" by Judge Ubrigg on 3-15-2011, then
7 they are in contempt. it's that simple.

8
9 34. The WCPAD should refrain from presenting the 5-06-05
10 order as a defense to the contempt, because that order is
11 not a "Further order" of the court, it is a "prior order" of
12 the court. And that argument was considered & rejected
13 on 9-24-2007 and forms the basis of the 10-18-2007 order.
14 Additionally, the "distribution authorization" of the order
15 expired on 5-16-2005 and did not authorize release of
16 anything on 3-15-2011.

17
18 APPELLANT'S RESPONSE TO STATE'S DEFENSE

19
20
21 35. The state's defense to the contempt of court allegation
22 is that on 3-15-2011 that the 5-06-2005 order authorized
23 them to release the property to Gray in violation of the
24 court's orders on 9-24-2007 and 10-18-2007.

25
26 36. At RP (9-24-2007) 17, 18 Judge Muzik asks WESO deputy
27 Raymond Oaks when he had completed delivery of Group W
28 to Gray and he responds that it was sometime in 2005,
meaning between 5-06-2005 and 5-16-2005. See exh-5.

1 37. The significance of Judge Mura's question is to determine
2 if the WESD had completed the distribution of Group-W
3 within 10 days of 5-06-2005 as ordered, thereby rendering
4 that "distribution authority" as satisfied. But the appellate
5 court needs to recognize that the property now in possession
6 of the WESD isn't Group-W, but a portion of Group-H.

7
8 38. On 4-24-2007 Judge Mura ruled the distribution auth-
9 ority of the 5-06-2005 had been satisfied and then expired
10 ten days later on 5-16-2005. On 8-28-2015 Judge Gerlitt
11 also ruled that the 5-06-2005 order expired on 5-16-2005
12 and therefore did not authorize anything in 2011.

13 39. On 8-28-2015 Judge Gerlitt also ruled or acknowledged
14 that the 5-06-2005 order only pertained to the property
15 then "being held by" the WESD on that date. Therefore
16 when the order says "all the movies that contain images
17 of Gray in them" it is only referring to the group of
18 movies downstairs in the sheriff's office on that date,
19 in order to differentiate them from other movies that
20 were seized. Therefore, the 5-06-2005 order only pertains
21 to Group-W which was delivered by Oaks in accordance
22 with the order. Focus on the words "being held by".

23 40. If the appellate court needs to ascertain who owns
24 Group-H which was taken/seized in 2006, it needs to
25 read the VRP at RP(5-06-2005)16,17,22 or the BOA-8
26 at exhibits 2 & 3. Gray has already received her share
27 of the division so it cannot belong to her. And if the
28 WESD believes otherwise, argue it on 3-15-2011.

1 41. As of this date the State has had over a year under
2 this appeal to argue why RP(5-06-05)16,17,22 does not
3 award the appellant all the imagery which was retained
4 by him after the division. The state doesn't reference
5 the VRP in any of its briefs because it invalidates all
6 their defenses to the contempt,

7
8 42. During the 9-24-2007 hearing the aforementioned VRP
9 is read to WOSD deputy Oaks at RP12, see exhibit-5, so
10 the WOSD is well aware of the property division. And Oaks is
11 aware that he has already delivered Group-W to Gray, so
12 his argument falls on deaf ears. Judge Mura considers and
13 rejects this argument. Stated another way; if there was
14 any veracity to this argument the judge would have ordered
15 Oaks to deliver Group-H to Gray on this date, instead he
16 orders that the WOSD is prohibited from releasing them to
17 Gray until after a lawsuit is filed. The 10-18-2007 order
18 explicitly states; "The Court reserves ruling upon the
19 distribution until..."

20 43. Also please note that at RP(9-24-07)24 Judge Mura
21 rules; "From what I have heard from the state was it
22 seized as evidence in a case that is now finished". He
23 then states, "The state has no interest in keeping
24 ownership of the property because they don't own it",
25 stated another way, This property (Group-H) is unrelated
26 to the 2005 charges, because the 2005 stalking court
27 deals with a series of unlawful N.O.D. violations at
28 the appellant's worksite. The WOSD impounded Group H
under this cause because they had no authority to keep it,

1 44. If any of the State's argument (i.e. defense) is true, then
2 they will have ample opportunity to present it to the court
3 during the 3-15-2011 hearing, and in doing so, receive the
4 required "further order of the court" that is needed in order
5 for the WOSD to be able to dispose of it.

6
7 45. Four days prior to the hearing (on 3-11-2011) the AAG
8 emails the WOSD and states: "However, I seem to recall
9 (1) some sort of question about that order that was maybe
10 raised in another order or hearing, and (2) I got the impress-
11 ion that the sheriff's office or the prosecutor's office was a
12 little gun-shy about releasing them because of worries
13 about Egsum suing, etc", see exhibit-9.

14 46. This confidential 3-11-2011 email explicitly references the
15 9-24-2007 and 10-18-2007 orders that they are going to
16 violate four days later. I've underlined them because the
17 trial court apparently couldn't see them. Exh-9

18
19 47. On 3-15-2011, AAG, John Hillman reiterates the argument
20 presented during the 9-24-2007 hearing: "It's my understanding
21 that what the WOSD has in evidence (Group-H) are videotapes
22 that have Gray's image on them. And I meant to bring a
23 copy of the 5-06-2005 order where the judge said that any
24 media that has Gray's image on it is her property, and
25 that's what the WOSD has in evidence". See RP 105. Ex-6.

26 48. This is the same exact argument presented and rejected
27 by Judge Murrin on 9-24-2007 at RP 2 and forms the basis
28 of the 9-24-2007 and 10-18-2007 orders being entered.

1 49 The argument rejected by Mura at RP(9-24-2007)2
2 is identical to the argument rejected by Judge Urrig
3 at RP(3-15-2011)105. The argument is as invalid now,
4 as it was then. For argument's sake, if the argument is
5 somehow now valid, at the end of the hearing the judge
6 should give the AAG and WSO an order authorizing them
7 to dispose of the property. But he doesn't.

8
9 50. The AAG argues: "And if it's property that belongs to
10 Gray and the WSO is willing to give it to her, which I know
11 they are, I think they can release it to her and she can
12 dispose of it as she wishes. And if the state chooses to
13 do that and the sheriff's department chooses to do that,
14 we do so at our own peril". See RP(3-15-2011)105 at Ex-6.

15 51. This argument is rejected, and the property now being
16 held by the sheriff doesn't belong to Gray as the AAG
17 states, this property is a portion of Group-H. And the
18 WSO and AAG shouldn't be allowed to do as they wish
19 for a variety of reasons. The primary reason the WSO
20 should be concerned with is it puts the "replacement tape"
21 into play because it's being held as "collateral".

22 52. At RP(3-15-11)106, Judge Urrig points out that the
23 property in question is currently under appeal, therefore
24 he couldn't even consider authorizing the disposal of
25 property under appeal. Therefore, if the AAG leaves the
26 courtroom and destroys the property, he's destroying
27 property he knows is under appeal, in addition to violating
28 the 9-24-2007 and 10-15-2007 orders, Exhibit-6.

1 53. At RP(3-15-2011)107 Judge Uhrig rules: "I don't think
2 at this time that I'm willing to sign an order releasing the
3 property to him (the AAG) or anyone. I am aware of Judge
4 Snyder's ruling on 5-06-2005 concerning "division of property"
5 and I guess that's about as much as I want to say about
6 that, Exhibit-6.

7
8 54. In the ruling above take notice of two things: (1) Judge
9 Uhrig is declining to sign the AAG's proposed order that would
10 arguably allow him to release the property, and therefore the
11 prior orders remain the controlling law, and (2) the judge
12 uses the phrase "division of property". The word division
13 means to split into parts with each party receiving a share.
14 Here the judge recognizes RP(5-06-05) 15, 16, 22, + BOAS,

15 55. In sum of the 3-15-2011 ruling or order, the AAG and WESD
16 are denied the "further order" of the court as required by the
17 9-24-2007 and 10-18-2007 orders and they depart the courtroom
18 and proceed to destroy property under appeal in violation of
19 at least four orders (9-24-2007, 10-18-2007, 4-21-2008, 3-15-2011).

20
21 56. The state's defense to the contempt is that the 5-06-2005
22 order awarded Group W the property held by the WESD in 2006-11
23 and the order authorized them to either release or destroy
24 the property.

25 57. The "distribution authority" of the order expired on 5-16-05
26 and did not authorize release of anything in 2011, and the
27 order doesn't authorize disposal or destruction of anything.
28 And it only pertains to Group-W, which was delivered.

1 58. The confidential 3-11-2011 email establishes that the
2 WESO is aware of the multiple orders prohibiting them from
3 releasing or destroying the property until after a lawsuit
4 is filed and the court issues them a "further order" of
5 the court. And on 3-15-2011 they were denied the motion
6 for an order allowing them to destroy the property.

7
8 59. On 4-21-2011 the AAG writes a "letter of authority"
9 contravening the order of the court thirty-six days
10 earlier. Let me be perfectly clear here because the trial
11 court doesn't understand the law! not only does the AAG's
12 letter contravene the authority of the court on 3-15-2011,
13 it also contravenes the orders of the court on 8-24-2007,
14 10-18-2007 and 4-21-2008, see exhibit-10.

15 60. The elephant in the room should be obvious: If the
16 5-06-2005 order authorized the WESO to destroy or release the
17 property, then "why" is the WESO requesting a letter from
18 the AAG where he is assuming responsibility for violating
19 the multiple orders of the court.

20
21 61. In the AAG's "letter of authority contravening" the orders
22 of the court he states that he believes the 5-06-2005 order
23 awarded Gray all the imagery with his image on it, and
24 this incorrect interpretation is the same argument that he
25 presented on 3-15-2011 when his argument was rejected. It
26 is also the same argument presented and rejected during the
27 9-24-2007 hearing. In short, the AAG is not a Superior
28 Court Judge and he isn't authorized to execute court orders
(which is what is required for the WESO to release/destroy).

1 62.

2 It is presumed that the property being held by the WESO
3 was destroyed immediately after the 3-15-2011 hearing. An
4 email dated 3-18-2011 shows that the WESO deputy was
5 "fine with destroying the tapes" even though the judge had
6 just denied his motion to destroy the property. Here, the
7 deputy doesn't appear aware of the fact that the appellant
8 owns a "collateral tape" of the senior prosecutor's wife as
9 insurance that his property will eventually be returned.
10 See 3-18-2011 email at Ex-13.

11 63.

12 The State should also be cognizant of the tug-of-war
13 situation that it is creating. The unlawful contempt hasn't
14 destroyed any of the films that the appellant's business sells.
15 Therefore, upon release, the appellant is going to open up
16 an AVP Movie Rental Store in Podunk City and continue to
17 operate it until the WESO accounts for all the property that it
18 was ordered to retain possession of.

19 64.

20 The appellant currently operates his website business from
21 Podunk City Canada and on 5-26-2015 the trial court judge
22 entering the injunction order ruled that his order did not
23 apply to any of my business activities in Canada, including
24 opening a Movie Rental Store to compliment the website.
25 Therefore the appellant is only going to open up an AVP
26 Movie Rental Store in Podunk City as long as he can do
27 so legally, and it appears as if the court has already ruled
28 on that issue. If the WESO wishes to return or account
for the property, that'll go a long way towards not seeing
the appellant's business expand.

GARRET'S OBSTRUCTIVE RULING

65. Judge Garrett's rulings are nothing more than an attempt to obstruct the contempt proceedings as a courtesy to the WOPAD and WOSD. Garrett doesn't want to expose the county to any potential financial liability stemming from the contempt. Garrett serves the same Master as the WOSD and WOPAD therefore she is unfit to serve as an adjudicator in these proceedings. Her nonsensical rulings attest to that bias.

66. On 5-24-2007, 10-18-2007 and 4-21-2008, Judge Musa entered a series of orders directing the sheriff to retain custody of the property until after a lawsuit was filed and after the court authorized them to release the property. Those rulings contain a "condition precedent" that must be satisfied before the court will make a ruling on the property being held.

67. Two "condition precedents" must be satisfied before the WOSD can do anything with the property, because a lawsuit must be filed, and then the court must enter an order directing the WOSD who to release the property to.

68. Neither of these "two condition precedents" had been satisfied on 3-15-2011 therefore the WOSD should still retain possession of the property. If they destroy the property before the lawsuit is filed and the court orders the property released, they are in contempt.

69. If there is any doubt as to what the multiple orders prohibit the WOSD from doing, the AAG can present those questions to the court during their 3-15-2011 hearing. And at the conclusion of that hearing the judge denied the AAG's motion for an order allowing them to do what the standing orders prohibited (disposal of property).

70. N.F. Jackson's 4-21-2008 letter succinctly sums up the rulings, "I instructed the WOSD that no property is to be distributed to anyone without a court order". See Ex-8.

71. N.F. Jackson is Judge Mura's Judicial Assistant, and he is communicating the judge's ruling at the direction of the judge. And the call or email was made in order to ensure that the WOSD was not releasing property to Gray or her attorney. Therefore this ruling now reads: "No property is to be released to Gray without further order of this court". And "further order" of this court doesn't mean the previously rejected argument that the 5-06-2005 order authorized release. That's a "prior" order that's expired.

72. On 3-15-2011 the AAG and WOSD were denied an order that would (arguably) allow them to release or destroy the property, therefore they are in contempt of court unless they can produce the judge's signature on the proposed order (that was denied).

73. The 3-11-2011 email shows the AAG and WOSD intended to violate the prior orders of the court if denied their motion on 3-15-2011, and the 3-18-2011 email shows they ignored the court's verbal rulings.

1 74. Judge Getsett's ruling intentionally and purposefully
2 misapprehends the meaning of "condition precedent".
3 The term requires that the "condition" be satisfied
4 prior to any subsequent action being taken (not after).
5 Getsett makes this excessive ruling in an attempt to not
6 expose the county to liability arising from the contempt.

7
8 75. Getsett's ruling attempts to determine an action and/or
9 discontinue further contempt proceedings, therefore it is
10 reviewable under RAP Rule 2.2(c)(3).

11 76. Pursuant to Humphreys cited supra (i.d. at page 5),
12 "intentional disobedience of multiple court orders is
13 contempt of court as defined by RCW 7.21.010" and the
14 court "must strictly construe the orders" allegedly being
15 violated.

16
17 77. Pursuant to *hee v. Parker*, 2010 Wash. App. LEXIS 1871,
18 "The record does not show that the superior court has entered
19 a final judgment disposing of the (contempt) issues raised in
20 hee's complaint. But we may also review any superior court
21 decision that "in effect determines the action or prevents
22 a final judgment or discontinues the action," RAP 2.2(c)(3).
23 "We consider, therefore, whether the trial court's denial
24 of hee (or Eggom's) motion prevents a final judgment or
25 discontinues the action,"

26 78. It becomes abundantly clear that Getsett's ruling or
27 rulings are an attempt to prevent a final judgment or an
28 attempt to discontinue the contempt proceedings because
she doesn't want to expose the county to liability.

1 79. The confidential 3-11-2011 email between the AAG
2 and the WESO deputy inarguably proves that they intended
3 to violate the prior standing orders of the court if they
4 were denied their motion on 3-15-2011. Therefore they
5 are in contempt;

6
7 80. The reviewing appellate court now bears the burden of
8 addressing the 3-11-2011 email which Judge Garrett refuses
9 to reference in any of her rulings (because it proves contempt).
10 Any ruling entered by the reviewing court should expressly
11 reference the contextual mens rea of the 3-11-2011 email
12 where the AAG and WESO discuss committing contempt of
13 court if denied their motion on 3-15-2011.

14
15 Submitted to the court on this 10th day of February 2016.

16
17 Xatarford Eggen

18
19 President, AVP Entertainment

Exhibits

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
141	04/25/2003	NTMTDK ACTION	EVALUATIONS AND TESTIMONY OF MR FREEDMAN FROM TRIAL NOTE FOR MOTION DOCKET ENTRY OF ORDER	05-16-2003D3
142	04/25/2003	AGOR COM05	AGREED ORDER COMPELLING DISCOVERY COMMISSIONER MARTHA V GROSS	
143	04/25/2003	MTHRG JDG03	MOTION HEARING JUDGE DAVID A NICHOLS, DEPT 3	
	04/25/2003	CTRN CTR03	COURT REPORTER NOTES COURT REPORTER LAURA PORTER	
144	04/25/2003	ORSTD COM05	ORDER SETTING TRIAL DATE DEPT 3 2ND SET COMMISSIONER MARTHA V GROSS	07-30-2003
145	05/02/2003	OR JDG03	VISITATION TRANSPORTATION ORDER JUDGE DAVID A NICHOLS, DEPT 3	
146	05/19/2003	MTAF	MOTION AND DECLARATION FOR AN ENTRY OF AN ORDER FOR THE RELEASE OF THE PARTIES PSYCHOLOGICAL EVALUATIONS TO THE RESPONDENT OR STRIKES THE EVALUATIONS & TESTIMONY OF MR FREEDMAN FROM	
147	05/19/2003	MTAF	MOTION AND AFFIDAVIT/DECLARATION FOR AN ORDER FOR AN EVALUATION OF THE PARTIES WITH MR STAAL	
148	05/19/2003	NTMTDK ACTION	NOTE FOR MOTION DOCKET MOTION STRIKING PSYCH EVALUATION	05-23-2003D3
149	05/19/2003	NTMTDK ACTION	NOTE FOR MOTION DOCKET COUNSELING EVALUATION W MR STAAL	05-23-2003D3
150	05/22/2003	LTR	SUBMITTED LETTER OF MR STAAL	
151	05/23/2003	MTHRG JDG03	MOTION HEARING JUDGE DAVID A NICHOLS, DEPT 3	
	05/23/2003	CTRN CTR03	COURT REPORTER NOTES COURT REPORTER LAURA PORTER	
152	05/23/2003	MTCM	MOTION/DECLARATION FOR AN ORDER TO SHOW CAUSE RE CONTEMPT	
153	05/23/2003	ORTSC ACTION JDG03	ORDER TO SHOW CAUSE SHOW CAUSE RE CONTEMPT JUDGE DAVID A NICHOLS, DEPT 3	06-06-2003D
154	05/23/2003	MTCM	MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND REQUEST FOR PRODUCTION AND FOR TERMS	
155	05/23/2003	NTMTDK ACTION ACTION	NOTE FOR MOTION DOCKET MOTION TO COMPEL OR EXCLUDE EVIDENCE	06-06-2003D3
156	05/27/2003	WV	DOCUMENTED DENIAL WAIVING PROPERTY RIGHTS	
157	05/27/2003	DCLR	DECLARATION OF RESPONDENT CONCERNING PROPERTY RIGHTS	
158	06/06/2003	HCNTPA	CONTINUED PLAINTIFF/PROG REQUESTED	
159	06/06/2003	NTMTDK ACTION	NOTE FOR MOTION DOCKET MOTION TO COMPEL	06-13-2003D3
160	06/06/2003	NTMTDK ACTION	NOTE FOR MOTION DOCKET MOTION TO COMPEL	06-13-2003D3

1 still submitting it to the Court. You had -- you had stated
2 that part of your ruling with regard to this order that she
3 had not participated and hadn't provided anything.

4 THE COURT: I didn't say she hadn't provided.
5 I said you had provided to the court no evidence of that.

6 MR. EGGUM: You are correct. I said I had
7 given no evidence that she had also participated or given
8 her consent in any way and this shows that she had, in fact,
9 given her consent, so you should look at it.

10 THE COURT: It doesn't help me make the
11 decision I need to make here, my decision who gets this
12 property, which of this property she gets and what property
13 you get, and what you and she may have agreed to many years
14 ago on a contract with someone else is irrelevant.

15 MR. EGGUM: Is it the Court's belief that the
16 property that's in question that was seized by the sheriff's
17 department is the entirety of the imagery?

18 THE COURT: No. It's only one property that
19 I have any authority over.

20 MR. EGGUM: Yes, and, and the -- that's
21 correct, so we're making a dissolution over the property
22 here and Janice is getting as part of her I guess award
23 whatever imagery she received from the sheriff's department
24 is hers and whatever I retain is mine?

25 THE COURT: Sure, whatever is yours, but you

2

1 can't disseminate to anybody. You can look at it all day if
2 you want but you can't give it to anybody else to use or
3 look it.

4 MR. EGGUM: I got my own in storage. It's
5 not even at the house, 75 copies.

6 THE COURT: I'm not ruling on that. All I'm
7 ruling on is this particular box of property or boxes or
8 whatever it is that's held by the sheriff, which part she
9 gets and which part you get.

10 MR. EGGUM: So, if Ms. Fasano comes at me, is
11 there -- it says in here I am in contempt of this Court on
12 this restraining order, she makes the allegation --

13 THE COURT: She has to prove it.

14 MR. EGGUM: She is going to have to prove it
15 because the problem that I find myself in is that if
16 Ms. Fasano makes the allegation, I'm arrested, I sit in jail
17 --

18 THE COURT: That's not the point here. The
19 point is does this order reflect what I said in court that
20 day.

21 MR. EGGUM: Well, on this date you also said
22 that her recourse if I violate this or that she makes the
23 allegations in a civil court, not in a criminal court,
24 meaning arrest, that's correct, I can't get arrested on
25 this.

1 up and they're brought before the Court and both parties
2 know what it's about and have a chance to respond to it. An
3 open motion just filed and floating around out there is not
4 going be heard until it's noted for hearing and specifically
5 noted for that particular motion.

6 MR. EGGUM: Okay.

7 MS. FASANO: I have the original.

8 THE COURT: There's a couple changes I want
9 to make on that and I'm going hand it to Mr. Eggum to look
10 at it and review.

11 MR. EGGUM: You can sign it.

12 THE COURT: I want you to look at the changes
13 I'm going to make here.

14 MR. EGGUM: Ms. Fasano can send me a copy of
15 that. I think you're just going to strike one line in
16 there.

17 THE COURT: I'm striking 3 lines here, and
18 I'm going to add something about the property will be
19 divided as per this inventory sheet.

20 MR. EGGUM: I believe this -- well, it should

21 -- I believe it should make some sort of mention that the
22 imagery that I retained is mine.

23 THE COURT: It's yours. It goes without
24 saying that's part of this.

25 MR. EGGUM: Well, sometimes things gets

1 misconstrued later on by Ms. Gray.

2 MS. FASANO: I want to make sure Mr. Eggum is
3 clear it is his to retain for his personal use only, not for
4 distribution to anyone. I'm not sure he gets that.

5 THE COURT: Well, that's -- that's the whole
6 crux of this Paragraph 2.

7 MR. EGGUM: I don't think Ms. Fasano
8 understands. I can keep it up at the storage. The storage
9 stuff has nothing to do with whether the property is sold.
10 These videotapes are duplicated and sold. I mean you copy
11 them off, you sell them, they go out the door.

12 THE COURT: Look, Mr. Eggum, one more time
13 I'll say this as simply as I can say it, if some other
14 person who is not in this courtroom today, whoever they may
15 be, has a copy of that tape and they choose to duplicate it
16 and sell it, this order does not apply to them.

17 MR. EGGUM: Yes, I'm aware of that.

18 THE COURT: If that person or any other
19 person comes to you and says I need a copy of this, will you
20 sell me one, you cannot do that under this order.

21 MR. EGGUM: Yes.

22 THE COURT: If they come to you and say we
23 want other images of Ms. Gray, you cannot give it to them
24 under the terms of this order. You, yourself, cannot
25 disseminate these anywhere to anyone under this order. You

Master Copy

During the course of their marriage, Eggum and Gray made a number of videotapes, mostly featuring Gray involved in sexually explicit activity with other individuals. 1RP 122-130; RP 75-76, 215-216. Throughout the dissolution proceeding and over the years, Eggum and Gray have fought over who should own the videos. RP 76, 201, 206, 328-329.

Under a 2004 cause number, Eggum pled guilty in 2005 to felony stalking of Gray. RP 264. One of the state's allegations was that Eggum left video jackets – with sexually explicit pictures of Gray – at places in Lynden, where Gray had been. RP 206, 208, 282-83, 317-318. While the case was pending, deputy prosecuting attorney Eric Richey obtained a search warrant for Eggum's home and police confiscated a number of sexually explicit videos featuring Gray. RP 207, 294-295, 303-304, 319.

 These videos were awarded Gray in 2005 in the dissolution proceeding. RP 245-46. However, the judge ruled any imagery still retained by Eggum remained his property, although the judge prohibited him from disseminating it. RP 246, 255, 671.

Eggum was sentenced to community custody on the 2004 case. RP 266, 449. Following Eggum's release, Gray complained to his community corrections officer – Melissa Hallmark – that

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FILED IN OPEN COURT
9-20-07
WHATCOM COUNTY CLERK

By _____ Deputy

SUPERIOR COURT FOR THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

WASHINGTON STATE, Plaintiff,

vs.

MARLOW TODD EGGUM, Defendant.

No. 05-1-01094-3

ORDER FOR
RETURN OF PROPERTY

Judge Steven J. Mura

It is herein ORDERED that the Whatcom County District Attorney's Office and / or the Whatcom County Sheriff's Office are ORDERED to deliver to the defendant Marlow Todd Eggum, the following,

- 1.) Any and all property seized by the Whatcom County Sheriff's Department from 300 South 17th Street Lynden Washington, on or about May - June 2006. *PROPERTY IS TO BE DELIVERED TO 205 REEDS LANE H.26 EVERSON, WA TO THE CUSTODY OF LORRAINE EGGUM.*
- 2.) A detailed itemized inventory list of all the property seized by the Sheriff's Department on the behalf of Whatcom County ~~District~~ *PROSECUTING* Attorney.
- 3.) ~~A copy of the Search Warrant & Seizure Warrant used by the District Attorney in said search & seizure.~~
- 4.) A copy of the probable cause statement & affidavit filed in support of said warrant(s).
- 5.) ~~The name and contact address of the Whatcom County Sheriff's Deputy(s) involved and used in said seizure.~~ *SJM*

Dated and ORDERED this 20 day of September 2007.


Judge Steven J. Mura

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.) NO. 05-1-01094-3
)
MARLOW EGGUM,)
)
 Defendant.)

VERBATIM REPORT OF PROCEEDINGS

September 24th, 2007

KENNETH E. QUINN
Official Court Reporter
Courthouse
Bellingham, Washington 98225
(360) 676-6748

Presented and rejected

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. RICHEY: Your Honor, thank you for hearing this matter. I'd ask that this matter be reconsidered or reviewed. I think there were some misunderstandings from the Thursday calendar and I'd like to present those and present some evidence from the detective. I also have an exhibit that I will hand forward at this time. I've given the defendant a copy of that as well.

THE COURT: Well, why don't you tell me what this is.

MR. RICHEY: Yes, Your Honor, I will. This is an order from Judge Snyder on the earlier divorce proceeding and in it there's a distribution of marital property. And in the order it's clear that any images of Janice Gray are to be returned to Janice Gray, not to the defendant. The defendant is not entitled under the distribution of property to have any images of Janice Gray.

YEARS LATER

Since our hearing on Thursday morning I learned that there were some things that the sheriff's office has in its possession that had images of Janice Gray. Anyway, at this point I'm going to ask that the court order that those items not be returned to the defendant.

And, in addition to that, there's some circumstances surrounding how the property came into

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the possession of the sheriff's office and I think that under anyone's common understanding of the law those items are not the defendant's. The defendant sold his home and those items were left in the home and the new owner of the home called up the sheriff's office and said, hey, what about all this property? And at that point the detective took possession of some of it.

So, like I said, under any common understanding of the law it would be abandoned property and property certainly not something that Mr. Eggum can claim ownership of. Again, I'd like to put forth all that evidence and ask to have a brief evidentiary hearing.

THE DEFENDANT: Your Honor, may I speak now?

THE COURT: Well, you may in relation to his request to put on evidence. We are not taking argument here yet. He's telling me what he intends to establish. So I can hear some of that but I'm not going to hear argument on the property until I address the issue of whether or not they can put some evidence on to address the issue.

THE DEFENDANT: Well, you tell me if I'm staying in line with what you want to hear.

To go on the record, I own and operate a website. It's a swinger website with adult activity on it. It's been in operation since 1995, through 2001, from 2001

1 through to 2005 and is currently active today. It's
2 just never stopped, never ceased, even though I'm
3 incarcerated.

4 I need to backtrack a minute here to give the
5 court some history of this case because I had an
6 illegal search of my property done by Eric Richey and
7 friends.

8 Back in November, 2004, I was arrested by this
9 Mr. Oaks, it's been awhile, but they served, they
10 arrested me at my house and served a search warrant on
11 my house in 2004. I was arrested for stalking. The
12 search warrant was to seize imagery out of my house.

13 Now, this is back in 2004 and this is historical.
14 In order to get a search warrant on a house on a
15 stalking case you have to be looking for binoculars,
16 night vision, whatever the stalker would wear. I don't
17 have what they would wear but some things that are
18 common. So there was no rhyme or reason to imagery.
19 They took my mother's photograph albums, my family
20 photograph, video tapes of Walt Disney stuff, eight
21 cartons. It had nothing to do with stalking and the
22 court had to give it back.

23 Now, I want to tell the court how that warrant
24 came to be. Lisa Fasano --

25 MR. RICHEY: Excuse me, Your Honor.

1 THE COURT: I'll let him put on evidence and I
2 will let you put on any evidence and I will resolve it,
3 if I can, within the confines of this criminal case.
4 You can proceed.

5 MR. RICHEY: State calls Detective Oaks.

6 RAYMOND OAKS, called as a witness, being
7 duly sworn, testified
as follows:

8 DIRECT EXAMINATION

9 BY MR. RICHEY:

10 Q Please state your name and spell your last name for the
11 record.

12 A Raymond Oaks, O-a-k-s.

13 Q Where do you work?

14 A At the Whatcom County Sheriff's Office.

15 Q How long have you worked there?

16 A Little over 13 years.

17 Q What's your current duty?

18 A I'm assigned to the detectives division. I am a deputy
19 sheriff.

20 Q How long have you been in the detectives division?

21 A About six years.

22 Q Back in 2004, were you involved in a search warrant
23 regarding the defendant's home?

24 A I was.

25 Q Did you receive some property from that home?

1 A I did.

2 Q Was that property put into evidence?

3 A It was.

4 Q Was that property disposed of?

5 A Yes, it was.

6 Q How was it disposed?

7 A There was an order that came down from the court that
8 delineated what was to be returned to who and the items
9 that were ordered to be released to Janice Gray were
10 released to her, and then the balance of the items were
11 released to Mr. Eggum.

12 Q Balance of the items, what are we talking about?

13 A Movies, DVDs, some pictures, documents, anything that
14 didn't have images of Janice Gray in them or, you know,
15 delineated as belonging to be returned to Janice.

16 Q You mentioned an order from the court, what order was
17 that?

18 A I think it was part of a restraining order that the
19 judge talked about what material was to go back to
20 Janice and what was to go to Marlow, and the images
21 containing Janice were to go back to her and having him
22 continue to have those would be a, basically had been a
23 continuance of the harassment because he used those to
24 harass her.

25 Q I'm going to show you what's been marked as Plaintiff's

1 Exhibit 1. Do you recognize this?

2 A I do.

3 Q What is that?

4 A That's an ex parte restraining order to show cause.

5 Q In that does that contain the language you're speaking

6 of of distribution of property?

7 A It does.

8 Q Attached to that is there another document?

9 A Yes, there is.

10 Q What's that second document that's attached?

11 A That is a document that is a typing of the hearing.

12 Q Is that an oral transcript?

13 A There we go. Thank you. Oral transcript of the

14 hearing.

15 Q Was that from the hearing that this document is

16 generated from?

17 A That's correct.

18 Q Where did you get that?

19 A It was sent to me by the law offices of Lisa Fasano, or

20 Elizabeth Fasano.

21 Q Did you provide copies of that to the State last week?

22 A I did.

23 MR. RICHEY: State moves to admit Plaintiff's

24 Exhibit 1.

25 THE COURT: Any objection to Exhibit 1, Mr. Eggum?

1 THE DEFENDANT: Yes, I do. It appears to be a
2 partial transcript. I'm looking at this and it says
3 here's the ruling and if you don't like this you can go
4 to the Court of Appeals with it. So this actually has
5 no subtext to it.

6 THE COURT: Any other objections?

7 THE DEFENDANT: Yeah, I do, because Mr. Richey has
8 entered this as evidence and this -- I believe this
9 ruling -- well, this ruling doesn't affect my property
10 rights whatsoever.

11 THE COURT: That goes to the weight, if any, I
12 will give to it. The first objection is overruled and
13 the other one I will wait. I haven't even seen this.
14 I will determine what weight if any it is to be given.

15 Q (By Mr. Richey) Did you later, after distributing that
16 property, receive some other property that may be
17 associated with the defendant?

18 A I did.

19 Q How did you receive that?

20 A I got a phone call from the new owner of the residence
21 there on 17th Street in Lynden, his name was Dan Myers.
22 He phoned me and said that he had bought the house,
23 that it had closed, and there was a bunch of abandoned
24 property there. He had already started remodeling the
25 home and tore the carpets out and asked me to come and

1 look at the items that were abandoned there.

2 I went to his house and he showed me a number of
3 items. One was a box of video tapes and another was
4 some floppy disks with information on them. And a
5 whole bunch of other stuff that I basically said I'm
6 not, it's your problem, you're going to have to dispose
7 of it. He asked me to take the items and he released
8 those to me.

9 Q You mentioned floppy disks and that contained what?

10 A The floppy disks of some of it are -- it's just Word
11 files of documents that were drafted relative to the
12 divorce and things like that. Also there was floppy
13 disks with graphic sexual images of Janice Gray, one of
14 them was actually a file that was similar to it,
15 basically a print out made to look like a VHS cover
16 with pornographic images of Janice on it that was used
17 to print out or was the same that was on a VHS cover
18 that was recovered in back of the Nut House Grill in a
19 prior investigation. Then on the video tapes, we
20 haven't gone through all of them yet but we have gone
21 through a majority of them, and they all have
22 pornographic images of Janice Gray on them engaged in
23 sex acts.

24 Q Now, does the sheriff's office have a policy about
25 returning property?

1 A Yes, they do.

2 Q Per the sheriff's office policy who would you return
3 this property to?

4 A Well, of course, assuming that the court would say
5 that, or the prosecuting attorney said that the trial
6 is over or doesn't have any use for it, it would be
7 distributed back to the owner of the property.

Really? →

8 Q In your opinion who is the owner?

9 A It would be Dan Myers, the person that released it to
10 me.

11 Q Also these items, they're obviously associated with
12 Marlow Eggum; is that correct?

13 A Yes. *(The judge calls him out on that statement)*

14 Q Now, if the court did not accept that these items
15 belonged to Dan Myers, who would you return the
16 property to and the images, also, of Janice Gray?

17 A I would return those to Janice Gray or Lisa Fasano.

18 Q Is that per order?

19 A Per the order, right. *(she got her share on 3-6-05)*
(see RPIS)

20 MR. RICHEY: Thank you. I have no further
21 questions at this time.

22 THE COURT: Mr. Eggum, do you have any questions
23 you want to ask the witness?

24 THE DEFENDANT: Yes.

25 / / / /

CROSS-EXAMINATION

BY THE DEFENDANT:

Q In 2004 you served a search warrant on my house. Can you tell me, did you speak to Janice Gray in the process of finding out where to look for certain property such as cubby holes?

A Yeah, I think she did say there were some cubby holes.

Q So, were you speaking to Janice Gray before the search warrant was issued?

A I believe so.

Q Were you speaking to Lisa Fasano before the search warrant was issued?

A You're talking quite awhile ago. I cannot recall if I had spoken to Lisa Fasano or not.

Q Do you recall if Lisa Fasano was on line with Mr. Eggum at the time that the search warrant was delivered?

A I'm sorry, what was the question?

Q Do you recall, would you know if Lisa Fasano was on line at Mr. Eggum's website, the business, at the same time that the Whatcom County Sheriff's Department served that warrant to ensure that Mr. Eggum was home and could be searched?

A I don't know any of that.

Q I'm kind of here on short notice. Were you present in the courtroom when Mr. Snyder made his ruling that we

Just became aware here
can't deny it in 2011

1 looked at here in the transcript, in the oral
2 transcript?
3 A No, I was not.
4 Q You were not?
5 A No.
6 Q Are you aware that as part of Judge Snyder's ruling he
7 took the property from a criminal court into a divorce
8 court, from one court to another like a hot potato, if
9 you will, and said I'm going to go ahead and divide
10 this property as a marital asset 50-50? The property
11 that is retained by the court at that time was going to
12 go to Janice and anything that remained would be
13 Mr. Eggum's? Were you aware of that?
14 A I'm not aware of anything at all.
15 Q Do you know of any other way he could divide it in a
16 divorce court?
17 A I do not know.
18 Q Are you aware of the transcripts from February 7th,
19 10th and 23rd in front of Judge Uhrig with regard to
20 this property?
21 A I don't believe I have seen those.
22 Q You were present in court that day?
23 A I don't believe so.
24 Q You weren't?
25 A You're talking awhile ago, though.

1 Q Judge Uhrig in speaking about the property rights, I'm
2 asking you if you recall this. He stated the former
3 boyfriend of Paris Hilton --

4 THE COURT: He says he doesn't remember, he wasn't
5 at the hearing so he can't recall what the judge said
6 to establish what was said at the hearing. You can't
7 testify through this witness. You have to establish he
8 was there before you can ask him if he heard something.
9 Okay?

10 Q (By the defendant) Did anybody from the Whatcom County
11 Sheriff's Department contact Dan Myers as he was moving
12 into my residence which he purchased?

13 A You mean the day he moved in?

14 Q At any time. Did anybody from the Whatcom County
15 Sheriff's Department contact Dan Myers who was moving
16 into my residence at any time regarding property that
17 could be found or found there?

18 A Yeah, I talked to him.

19 Q You talked to him?

20 A Uh-huh.

21 Q What did you ask him?

22 A I asked him or I told him that we had done a search
23 warrant and if there were some things there that
24 involved what we were looking for that he could give me
25 a call.

1 Q Pornography?
2 A I think it was just about anything.
3 Q Anything including pornography. Who had asked you to
4 do that? Who had authorized you to do that? Did the
5 court authorize you to do that, Judge Mura or Eric
6 Richey?
7 A I'm sorry, authorized me to do what? To talk to him?
8 Q Who asked you or authorized you to go to Dan Myers and
9 ask him to return property belonging to Mr. Eggum to
10 you?
11 A I don't -- I'm not really understanding the question.
12 I don't need authorization to go and talk to somebody.
13 Q So you did that on your own?
14 A Yes.
15 Q You're stating that Eric Richey did not ask you to do
16 that?
17 A I don't believe so.
18 Q Janice Gray did not ask you to do that?
19 A I do not believe so.
20 Q Lisa Fasano did not ask you to do that?
21 A I do not believe so.
22 Q Craig Chambers did not ask you? So you pretty much
23 took that upon yourself to do that?
24 A I believe so.
25 Q Then the property that you found which I am claiming

→
No, you don't.
But you do
need to talk
to him.
I mean to
a source.
because that's
the idea.
- 1/2/76

1 here to be mine, did you make any attempt to give that
2 back to me?

→ 3 A No, it's not your property.

4 Q Well, I beg to differ. It is my property.

5 A I understand that.

6 Q It's chattel; it's my property. The house is one
7 thing, that's real estate. This is chattel; it's my
8 property. Are you aware, Mr. Oaks, of a pending
9 lawsuit against Whatcom County for the seizure of that
10 property?

11 A I am not.

12 THE COURT: I'm sorry, I didn't hear the question.

13 THE DEFENDANT: I asked if he is aware of a
14 pending lawsuit I have against Whatcom County regarding
15 this property that was taken on November the 4th.

16 THE WITNESS: I'm not aware of one.

17 Q (By the defendant) The court had ordered, Judge Uhrig
18 had ordered that all the property be returned to
19 Mr. Eggum that wasn't in conflict or wasn't a problem
20 with it. And I come down to the Whatcom County
21 Sheriff's Department to pick up quite a bit of that
22 property, I wanted to actually take it all. Do you
23 recall having said to the defendant that --

24 THE COURT: To the defendant?

25 THE DEFENDANT: I'm the defendant. He was

1 speaking to me, Your Honor.

2 THE COURT: The record won't say who the defendant
3 is so you need to use me or Mr. Eggum, whatever you
4 wish.

5 Q (By the defendant) When I was picking up the property
6 I wanted to take the remainder of that property. Do
7 you recall saying to me that you weren't releasing it
8 because Eric Richey had told you that under no
9 circumstances was I to get that property even though
10 Judge Uhrig had ordered that it be returned to me?

11 A No, I don't recall saying that. In fact, I don't think
12 I did say that. No.

13 THE DEFENDANT: I was called on short notice on
14 this and I only had about five minutes without being
15 prepared or told.

16 THE COURT: Let me ask a question here so I can
17 understand what we are doing here.

18 Detective, you executed a search warrant, as I
19 understand your testimony.

20 THE WITNESS: Correct.

21 THE COURT: And items were seized pursuant to that
22 warrant.

23 THE WITNESS: That's correct.

24 THE COURT: And you say there was a later court
25 order that ordered how that seized property or to whom

1 that seized property was to be delivered.

2 THE WITNESS: Correct.

3 THE COURT: Some of it was ordered to be delivered
4 to Mr. Eggum, some of it to Miss Gray.

5 THE WITNESS: Correct.

6 THE COURT: And you then complied with that order
7 and distributed in accordance with the court order; is
8 that correct?

9 THE WITNESS: Yes, sir.

10 THE COURT: And that warrant was with regard to
11 the harassment case that was filed against Mr. Eggum?

12 THE WITNESS: I believe so. I believe so. There
13 was actually two things going on there. Lynden
14 actually had an arrest warrant out for him so he got
15 arrested. And I believe in with two separate -- I
16 think it was part of an ongoing harassment, in Lynden
17 and in the county, it was going. They had P.C. for his
18 arrest for some type of harassment, I can't remember
19 what it was, I'm sorry. Then we got a search warrant
20 and searched the residence and seized the items that
21 he's talking about from November 2004.

22 THE COURT: The search warrant that was a part of
23 the investigation that was ongoing, that property was
24 returned when to either Mr. Eggum or Miss Gray? When
25 did you complete the distribution of that property?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE WITNESS: That's a good question. I want to say it was sometime in 2005. I didn't bring the release documents with me that were actually signed for those because they weren't part of what the action is today. That stuff is all gone. We have none of that.

THE COURT: That's what I'm trying to understand. So then you distributed property in accordance with the court order to either Mr. Eggum or to Miss Gray.

THE WITNESS: That's correct.

THE COURT: Then you say you got a call from this Mr. Myers and this call from Mr. Myers was after this criminal case?

THE WITNESS: Yes.

THE COURT: And when was it that you seized or went out and picked up property that Mr. Myers called you about?

THE WITNESS: Mr. Myers wanted me to take the stuff on, I have July 3rd, 2006 is when he released it to me.

THE COURT: And that was after the completion of this case?

THE WITNESS: I believe so.

MR. RICHEY: Your Honor, maybe I can clarify a little bit. If it's helpful to the court, there was another pending investigation going on at that time, in

Really → their identity what it is because it was been changed it's false

5

1 fact, a pending case when Mr. Myers had contacted Ray
2 Oaks about the property in the house.

3 THE COURT: Pending criminal case?

4 MR. RICHEY: Yes, Your Honor. There were
5 additional charges of stalking that came from the
6 defendant being arrested by DOC officers and that's
7 what the defendant pled guilty to last, I believe,
8 December. Excuse me, January.

9 THE DEFENDANT: That's false. He just stated I
10 was in custody in Whatcom County in May when Dan Myers,
11 the buyer of my residence, called back. He didn't
12 call, he didn't initiate the call, he's calling back.
13 Ray Oaks had already spoken to Dan Myers. So it was in
14 June of 2006, I'm in custody when he calls back Ray
15 Oaks and says yeah, I found some stuff you wanted to
16 know about and here, I've got it. That's when Oaks
17 goes up and takes the property and seizes it. And I
18 believe -- I don't know the law but I believe that that
19 would require a seizure warrant because I don't believe
20 the Whatcom County Sheriff's Department or the State is
21 entitled to go up and take property like that. It's
22 the same as a search warrant or seizure warrant.
23 They're a little bit different.

24 That property, and I think this is where the case
25 history --

1 THE COURT: I don't want a bunch of argument. I'm
2 trying to pin down the facts, if I can, before we get
3 to argument.

4 So the State is representing there was a pending
5 investigation on a harassment. Were the items seized
6 at the request of Mr. Myers, were those in connection
7 with those new charges?

8 MR. RICHEY: They were investigated for that, yes,
9 Your Honor. They're being looked at. We are talking
10 about a number of documents and photographs and things.
11 So, yes, I think they were being looked at for that.

12 THE COURT: For charges that were pending.

13 MR. RICHEY: Yes.

14 THE COURT: And those pending charges for which
15 the new seized items or new obtained items, we'll call
16 it, were held, that was the investigation you say where
17 there was a plea last December?

18 MR. RICHEY: Yes.

19 THE COURT: So the evidence or the items that are
20 currently being held by the sheriff's office are being
21 held pursuant to that case which is now over?

22 MR. RICHEY: I'd say yes.

23 THE COURT: Okay.

24 MR. RICHEY: And, Your Honor, I know this is a
25 complicated set of facts for you but I will tell you it

1 was complicated for all of us. We have a series of
2 events that continued and a collection of evidence
3 continuously after the case is ended, new evidence and
4 new things and new charges would be filed and more
5 evidence would be forthcoming and things like that. It
6 kind of went on and on throughout this whole case.
7 It's just kind of a continuous flow.

8 Yes, I would agree with your assessment of the
9 facts. It was a pending matter at the time that Dan
10 Myers gave these items to Detective Oaks. Detective
11 Oaks, is that your recollection?

12 THE WITNESS: You know, the timing, again, is
13 still -- I remember he called me, he wanted me to take
14 the stuff, I took it. And the timing and all that
15 stuff, you know, ^(he, like) you're probably closer to that than
16 me.

17 THE DEFENDANT: May I speak and clarify it as
18 well? I think I can put it in a quick nutshell for
19 you.

20 THE COURT: Okay.

21 THE DEFENDANT: November in Lynden court the
22 tapes, the movie rights, the website rights, were
23 offered to Janice Gray, my ex-wife. They were declined
24 in the court by Tario and Associates and everybody --
25 we worked out the deal that was struck that day and I

1 do have it in writing. Mr. Eggum, in exchange for a
2 plea in municipal court, Mr. Eggum, taking these down
3 the road and making lots of money, don't bother Janice
4 Gray anymore. I took the plea. The victim's advocate
5 was present there and they screamed bloody murder and
6 at that point Lisa Fasano started to, I guess, attack
7 me because Lisa Fasano is my wife's attorney and
8 advised her she doesn't have to worry about the
9 website. Come to find out she did have to worry about
10 the website because I'm legally entitled to run it. So
11 this is an ongoing problem that I have with conflict
12 with the prosecuting attorney's office.

13 THE COURT: I can cut through all this at this
14 point. I can cut through all of it.

15 Within the confines of the criminal case, I am
16 not, with the individuals here, in a position to be
17 able to say who has the right to this property. The
18 property that's currently been held by the sheriff's
19 office was given to the sheriff's office by this
20 Mr. Myers. I don't know if Mr. Myers is claiming
21 ownership of the property as abandoned property that
22 you left in the home when it was sold and he acquired
23 title. I don't know if Miss Gray is claiming
24 ownership. I know that you're claiming ownership. But
25 there are three individuals here who may have an

1st part of ruling
also see RP 25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ownership interest in the property and I can't resolve that with only one of those parties here. So I'm not going to order -- what I'm going to order is that the sheriff's office retain possession of the items that it has and not dispose of those.

THE DEFENDANT: Thank you.

THE COURT: At this point in time. And that for the sheriff's office to be able to dispose of it they can dispose it only upon further order of the court. And the court will not order disposal of the property until all persons who have a potential interest in the property are joined as parties and then the court can consider, this court or another court, can consider who has the ownership rights of the property and dispose of it accordingly.

THE DEFENDANT: Your Honor, I'd like to point this out to the court. We are talking about property, physical property, a cassette, let's call it Movie A, we are arguing about Movie A. Say Mr. Richey has Movie A, will Mr. Richey argue about Movie B?

THE COURT: Mr. Richey has no interest in the property.

THE DEFENDANT: Apparently he does.

THE COURT: He is arguing that the sheriff's office should not turn it over and I'm saying the

5

1
2
3
4
5
6

county doesn't have any interest in this property.

THE DEFENDANT: It shouldn't.

THE COURT: It doesn't because what I have heard from the State was it was seized as evidence in a case that's now finished. So the State has no interest in keeping ownership of the property because they don't own it. But either you, Mr. Myers or Miss Gray, from what I have heard today, may have an ownership claim in this property and I am not going to order it, until they're brought in as parties and everybody has a chance to make their claim, and if they don't show up then they're not making a claim to the property and I can take care of it accordingly.

THE DEFENDANT: How will I prepare for this?

THE COURT: How long are you going to be incarcerated?

THE DEFENDANT: I'd like to stay here to start a lawsuit.

THE COURT: Mr. Eggum, I can't do it within the confines of a criminal case. Somebody needs to file a suit to claim ownership of the property.

THE DEFENDANT: How can I do that?

THE COURT: I can't join people in a civil action within a criminal case. This is a criminal case that you're coming in on. And there are people who have an

5

2nd part of ruling

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ownership interest and I can't have a civil lawsuit within the confines of a criminal case. So, when are you due to be released from DOC?

THE DEFENDANT: Like 20 months from now. So is that property to be retained?

THE COURT: I will order that the property remain in the custody of the sheriff until a lawsuit is started. You can start a lawsuit to gain possession in a civil case.

THE DEFENDANT: I don't know if I can have the ability mentally to do that.

THE COURT: Then that's fine, you don't start a lawsuit. Or Mr. Myers can start a lawsuit and join you and Miss Gray, or Miss Gray can start a lawsuit and join you and Mr. Myers. Somebody has to start a lawsuit. All I'm saying here within the confines of the criminal case, and, Mr. Richey, you're to present an order, that the sheriff's office will not dispose of the property that they have.

THE DEFENDANT: I'd like that to be a joint order.

THE COURT: Until further of the court.

THE DEFENDANT: I'd like that to be a joint order so the wording can be correct.

THE COURT: The State can go ahead and prepare that order and get Mr. Eggum's signature on it and then

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I will enter it. He can bring an order over to you in
the jail. We'll hold the property until it's resolved.

5

1 - o 0 o -

2 MARCH 15, 2011

3 - o 0 o -

4 THE CLERK: State of Washington versus Marlow
5 Todd Eggum.

6 THE COURT: Morning.

7 MR. HILLMAN: Good morning, Your Honor.

8 MR. SUBIN: Good morning, Your Honor.

9 THE COURT: I have been presented with some
10 proposed Findings and Conclusions and exceptional
11 sentence.

12 MR. HILLMAN: I do, Your Honor. I am handing
13 those forward. I believe Mr. Subin has approved
14 those as to form?

15 MR. SUBIN: I signed off on those. Although
16 I believe our objections were noted for the record
17 at sentencing.

18 THE COURT: Certainly. Approved as to form
19 only. They seem adequate and accurate to me.
20 Approved as to form. I'll sign them.

21 MR. SUBIN: The other issue was the return of
22 property that is being held by the Whatcom County
23 sheriff. And all I have to say about that is that
24 Mr. Eggum would like any property that belongs to
25 him returned to him as soon as possible. The

Previously rejected at
RP(9-24-07)Z

1 videotapes were not part of the trial. Mr. Eggum
2 would like his property returned.

3 MR. HILLMAN: And, Your Honor, John Hillman
4 for the State, and my understanding is that what the
5 sheriff's office has in evidence are videotapes that
6 have Janice Gray's image on them. And I meant to
7 bring a copy, but I know it's a part of the court
8 record in this case but there was an order entered
9 as part of the divorce, um, where the judge in that
10 case said that any media that has Janice Gray's
11 image on it is her property and that's what the
12 sheriff's department has in evidence.

13 I prepared a blank order but, um, honestly, I
14 don't know that there is a need for one or what real
15 jurisdiction this criminal court has over the
16 property that the sheriff's department has, as that
17 was never admitted at the trial or made a part of
18 the court record in this case. And if it's property
19 that belongs to Janice Gray and the sheriff's
20 department is willing to give it to her, which I
21 know that they are, and I think they can return it
22 to her and she can dispose of it as she wishes. And
23 if the State chooses to do that and the sheriff's
24 department chooses to do that, we do so at our own
25 peril. If there is a future need for that evidence

1 in a future proceeding, but I think that there has
2 already been a ruling by a different court that that
3 property is the property of Janice Gray and if the
4 sheriff's department choses to release it to her,
5 they can do that.

6 THE COURT: Okay. Anything further?

7 MR. SUBIN: No, Your Honor.

8 THE COURT: I am aware of that order. I
9 think I had been discussing that order even before
10 this charge was filed with Mr. Eggum in some other
11 proceedings, and he has filed numerous, what do we
12 call them, jail kites under some of the other cause
13 numbers making a similar request challenging, among
14 other things, the validity of the search warrant or
15 one of the search warrants that gave rise to the
16 seizure of some of these or, perhaps, even all of
17 these videos. I don't know that much detail about
18 them. And his claim of an illegal search warrant
19 goes to some other issues that I thought most
20 appropriately dealt with by the Court of Appeals
21 because a lot of those issues I believe merged into
22 the judgment on the other matter, so those or this
23 issue or aspect of this issue I believe had been
24 transferred to the Court of Appeals in what would
25 amount to I guess the equivalent of some sort of a

denies AAG's motion
admits knowledge of RP 15, 16, 22, 23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PRP or something. I am not sure just what the status of that is right now.

But I don't think at this time I'm willing to sign an order releasing that property to him. I am aware of Judge Snyder's order concerning the division of property in the dissolution, and I guess that's about as much as I need to say. I am not even sure what, if any, property was seized or is held by the State under this cause number, in particular vis-a-vie that which may have been held under another cause number, previously, and, then, the question being would it still remain in the sheriff's custody under the other cause number or other filing number, and I don't have any of that information so I am not prepared to sign an order. Although, I understand that this issue will perhaps persist until some resolution is attained. But I don't think I'm prepared to make an order on this issue today.

MR. HILLMAN: Your Honor, I have one question. I know during the course of the trial the State had proposed some fairly detailed orders reflecting Your Honor's rulings on all the pretrial motions that we argued and I thought that Your Honor had said that you had entered those, um, and I don't

1 have access -- I haven't looked at the court file
2 and I don't have access to Whatcom County's
3 electronic record, but I looked on the statewide
4 one, which isn't always accurate, and it didn't list
5 those and I wondered if the court could tell me if
6 those were entered or not. These would be the Order
7 Denying Motion to Suppress Letters, Order Denying
8 Motion to Suppress Letters on First Amendment
9 Grounds, Order Denying Defendant's Motion to Recuse,
10 I think an Order on Admissibility of Prior Bad Acts,
11 Motions in Limine.

12 THE COURT: What I'll try to do is see if
13 they had been scanned.

14 MR. HILLMAN: I could check that myself, but
15 I was wondering if the court knew. Mr. Subin, do
16 you have one? I do have originals or --

17 MR. SUBIN: Duplicate originals.

18 MR. HILLMAN: Of all those.

19 THE COURT: I'm willing to do that. I
20 believe I signed them all but if there is some sort
21 of a glitch and perhaps they didn't get filed or
22 scanned.

23 MR. SUBIN: I remember dealing with this
24 issue but I don't know whether they were filed or
25 scanned.

1 MR. HILLMAN: And the State did want to make
2 sure they were, if that was the court's intent to
3 sign them, that the record for appeal is complete.
4 THE COURT: Let me go ahead and go with the
5 duplicate originals.
6 MR. HILLMAN: Okay.
7 THE COURT: I think that's the best way to
8 approach it. And for the record, those are simply
9 duplicates of the order that you previously
10 submitted?
11 MR. HILLMAN: Okay.
12 THE COURT: Is that correct?
13 MR. HILLMAN: Yes, they are.
14 THE COURT: And I do remember looking at them
15 and I remember signing them, but I cannot say --
16 it's sort of a lengthy file here.
17 MR. SUBIN: And it looks like 1, 2, 3, 4, 5,
18 6 separate documents we are handing up, Your Honor.
19 THE COURT: Okay. I'll go ahead and sign
20 them just to be sure. I need a signature on that
21 one there.
22 Okay. I believe I have resigned the orders.
23 THE CLERK: Are these separate ones?
24 MR. HILLMAN: Is there already one in there?
25 THE COURT: Oh, we have a duplicate. That's

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

why there is an extra.

MR. HILLMAN: Thank you, Your Honor.

MR. SUBIN: Thank you, Your Honor.

THE COURT: Have a good day.

(Hearing is adjourned).



FILED IN OPEN COURT
10-18-2007
WHATCOM COUNTY CLERK

By M
Deputy

ORIGINAL

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47
49

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,)
)
Plaintiff.)
)
vs.)
)
MARLOW TODD EGGUM,)
)
Defendant.)

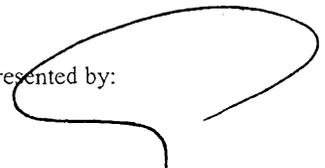
No. 05-1-01094-3
ORDER REGARDING SEIZED PROPERTY

THIS MATTER coming on regularly for hearing this 18th day of October, 2007 on the defendant's motion for an order regarding seized property, the Court having heard argument of Counsel and being otherwise fully advised in the premises makes the following Order:

IT IS HEREBY ORDERED, ADJUDGED & DECREED that the Court reserves ruling upon distribution of any property held by the Sheriff's Office under cause number 05-1-01094-3 until a civil action is filed and all interested parties have an opportunity to be heard.

DONE IN OPEN COURT this 18 day of October, 2007.


JUDGE STEVE J MURA

Presented by: 
ERIC J. RICHEY, WSBA #22860
Deputy Prosecuting Attorney

ALAN CHALFIE, WSBA #91001
Attorney for Defendant

113
Whatcom County Prosecuting Attorney
311 Grand Avenue, Suite #201
Bellingham, WA 98225
(360) 676-6784
(360) 738-2532 Fax



**Whatcom County
Superior Court**
311 Grand Avenue
Bellingham, Washington 98225
(360) 676-7688



N.F. Jackson
Whatcom County Clerk
Superior Court Administrator
nfjackson@whatcomcounty.us
FAX (360) 676-6693

April 21, 2008

Marlow Todd Eggum #879587
McNeil Island Corrections
P.O. Box 88-1000
Steilacoom, Washington 98388

Re: *Your Letter of April 16, 2008*

Mr. Eggum,

Re: 05-1-01094-3

Your **Motion** for Order 1) Returning Property, 2) Protecting Property, 3) Award for Loss of Property, your **EXHIBIT A**, Transcript Ruling From May 6, 2005, **Note for Motion Docket and Declaration of Service** were filed on March 20, 2008. They were given to an assistant to schedule for hearing. Unfortunately they were never scheduled nor indexed in the case, until today. Copies of the file-marked pleadings and a page from the index indicating that they were docketed are enclosed.

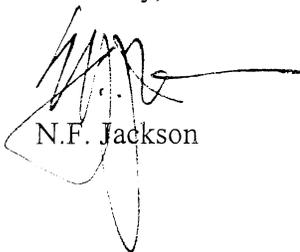
I have instructed that the motion be heard on Wednesday, May 7, 2008 at 9:00 AM, before Judge Mura. Your Proposed **Order Regarding Property Inventory Receipt and Order Protecting Property** will be presented for judicial consideration at the hearing. Your proposed **Order for Transport** was presented to Judge Mura today. He declined the transport request, but directed us to arrange a telephonic appearance. Arrangements have been made. You will be brought to Mr. Joiner's office for the hearing. We will call that number from the courtroom.

The Sheriff's Office indicated to me today that the requested inventory is within days of being completed. We will forward the inventory as soon as it is available.

After receiving your correspondence of March 18, 2008, I conferred with the property custodian at the Sheriff's Office. It was reported to me that none of the property has been given to anyone. I instructed them that no property is to be distributed to anyone without a court order.

We state again that the court file does not contain a document indexed as "Withdrawal of Count III" on December 6, 2007 or later. Your correspondence does not contain any correspondence of or near that date.

Sincerely,


N.F. Jackson

8

From: John Allgire
To: Hillman, John (ATG)
Subject: RE: Eggum
Date: Friday, March 18, 2011 11:58:57 AM

I am off with a broken rib and bruised liver - I still check my emails and am avail by phone.

360 739 7152 Cell (that works at my house)
360 393 4172 Home phone (preferred for first attempt)

>>> "Hillman, John (ATG)" <JohnH5@ATG.WA.GOV> 03/18/11 11:44 AM >>>
Hi John--are you in today? Wanted to talk to you about the Eggum videos.

-----Original Message-----

From: John Allgire [mailto:jallgire@co.whatcom.wa.us]
Sent: Saturday, March 12, 2011 11:48 AM
To: Hillman, John (ATG)
Subject: Re: Eggum

The issue being brought up by eggum is the fact that some of the videos were "obtained" "given" or "turned over" to the sheriff's office after the initial divorce thingy was made. Eggums argument is an end run about how at the time he said something stupid about what i have is mine... well he left some of those videos in the house when it was sold (he was in jail) and janice found em and turned em over and then the new owner of the house turned more over to Oaks. The point becomes Eggum thinks they were "stolen" from him after he had what he had. The wording of the order indicated a finite amount or at least ruled on the small amount the Sheriff'sOffice originally had and eggum wants to fight out that the other stuff is his.

If any of that makes sense.... clearly the position of the sheriffs office is ... eggum has used any video with janice on it as a weapon and like a weapon used to hurt someone no matter what a civil court ordered the criminal court wouldn't release the weapon back to the suspect after being found guilty.

A modified non-finite order indicating anything with Janice's image on it belongs to janice regardless of how it was obtained... ie given to us or turned over or discovered...? I don't know. As far as the Sheriff's Office destroying we would prefer Janice get's it in an order and we can definately help her destroy it as it is her property.

I hope this makes sense. I will be in training 1/2 monday, all tuesday, and all wednesday. But as you can see I check my emails over my weekend.

John

>>> "Hillman, John (ATG)" <JohnH5@ATG.WA.GOV> 03/11/11 10:54 AM >>>
Hi John-are you in today? We have a hearing on Eggum on Tuesday to address the videos. I'm trying to wrap my brain around it today after putting it out of my brain for the past 3 months.

In my opinion, the divorce court order clearly states that any videos

date
see
next
page

that contain Janice's image are Janice's property, which to me means that these videos can be released to her to do with as she wishes.

However, I seem to recall (1) some sort of question about that order that was maybe raised in another order or hearing, and (2) I got the impression that either your office or the prosecutor's office was a little gun-shy about releasing them b/c of worries about Eggum suing, etc. Maybe I'm wrong on both of those counts. I'm going to call Randy Watts and see what he thinks.

I think what I'm going to do is just ask Judge Uhrig to reiterate that the divorce court order controls and there's nothing in the criminal case that prohibits the sheriff's office from releasing the videos to their owner, Janice, if that's what the sheriff's office wants to do. Obviously the prosecuting authority in this case, me, would approve of your office doing that.

Any thoughts on all this?

Also-presuming that we get this all okay'd and Janice would prefer that these things just be destroyed, could your office destroy them (incinerator?) at Janice's request, or would you just release them to her to destroy?

John Hillman
Assistant Attorney General
(206) 389-2026

This statement affirms the AAG and his office
at the time of the order (and previous) with
prohibition, there has been no release of the
property. Any subsequent release of the property
would be in violation of the order. The order
is 3-15-2013.

Statement of [unclear]



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

800 Fifth Avenue #2000 • Seattle WA 98104-3188

April 21, 2011

John Allgire
Whatcom County Sheriff's Office
311 Grand Avenue
Bellingham, WA 98225

Re: #08A19889
State v. Marlow Todd Eggum

Detective Allgire:

Please accept this letter as authority from the prosecuting authority (the Attorney General's Office) to release to Janice Gray videotapes in the Sheriff's Office possession that were seized as part of the investigation in 04A-23893 and held also as part of the investigation in 08A-19889. These videotapes contain images of Janice Gray. Pursuant to an order of the court as part of the divorce proceedings in *Eggum v. Eggum*, the court awarded to Janice Gray any videotapes that contain her image (see attached order). The videotapes were not used as evidence in the criminal trial in *State v. Eggum* (Whatcom County Superior Court 09-1-00486-5). The State has no need for the Sheriff's Office to hold the tapes as evidence. Ms. Gray has advised the State that she would like the tapes returned to her so that she may destroy them.

I have discussed this matter with counsel for the Sheriff's Office, Mr. Randall Watts, and he concurs that the tapes may be released to Ms. Gray and/or destroyed at Ms. Gray's request. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

JOHN C. HILLMAN
Assistant Attorney General
(206) 389-2026
johnh5@atg.wa.gov

JCH:dj

Attachment

Letter authorizing release of the tapes where Atty Gen's previously requested comment as his authority to authorize authority of the court

Apparently Watts is concerned that the court's order is not clear as to whether evidence that is not used in the trial of the state should be returned to the state or destroyed



Pages from Public consumption

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

and some of its witnesses want to say that these videos were things that were made in private between Mr. Eggum and his wife. And that he is threatening to disclose something which they both understood would be kept private. That's what the State wants to tell the jury. That's not accurate.

The truth is that they were made, they made these videos with every intention of sharing them, selling them, trading them, getting together with other couples to engage in these kinds of things, so for him to take videos which he had operated a business selling these videos on the Internet and, otherwise, and she was well aware that he was going to be doing that. That's a lot different than her participating in the production of videos which are going to be available on the Internet and other various places is a lot different than her -- than him threatening to disclose videos which were made privately. And we intend to show the jury that these videos were not made for their private consumption, but made with the intent they be shared, traded, sold, et cetera. And that the couple, the family, Mr. Eggum and his wife, when they were still married, derived some income from the sale of these videos. The family did. The two

Prior public dissemination
relinquishes right to privacy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Janice Gray, I suppose. And I think, you know, all I am saying here today is if she opens the door on her direct testimony, that I ought to be able to respond to that as I see appropriate. If she doesn't say she was forced to make it, then I have no reason to show the videos to try to establish that she wasn't forced to make them.

If she admits, yeah, I knew they were going to be traded and sold, et cetera, then I have no reason to show the portion of the video where she is holding up a magazine advertising the video for sale on the video. You know, if she gets up and says I didn't know they were going to be sold, this was for my own use, and I didn't think anybody else would ever see this, I think at that point I am entitled to show the video where she is holding a magazine trying to sell and trade the videos to refute her direct testimony.

THE COURT: That may be similar to a situation involving a letter or some other document where if that circumstance did arise then it may be the case that a relevant portion of the video would be shown or could be shown. But that would bring in the entire video.

MR. SUBIN: You are right. As I said

Subj: Re: Grennan-Readiness Hearing
Date: 9/10/03 8:45:05 AM Pacific Daylight Time
From: admin@rdbutlerlaw.com
To: Toddeggum@aol.com

Todd,

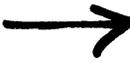
So, that is the deal. ~~You get to~~ close out all your pending court matters, ~~go and sell your videos and make a lot of money just do not contact Janice in any way and you will do fine.~~ I assume we can make this an alford plea so that you do not agree that you are guilty but are accepting the plea deal because it is too good to pass up...

I will be in court either way, think about it and let me know.

From: Hillman, John (ATG)
To: "Pauline Rose"; "Janice Gray"
Subject: RE: Eggum
Date: Friday, March 18, 2011 1:50:33 PM

3 days after then...

Yikes--unfortunately Detective Allgire suffered a serious injury during training. He's going to be fine, but he is laid up and won't be at work for several weeks.



He is fine w/ destroying the video tapes, however he won't be back at work to do it for several weeks.

He's also going to be out-of-town last week of March.

So . . . I realize it's later rather than sooner, but how about we shoot for first week of April (or thereabouts) to do this?

-----Original Message-----

From: Pauline Rose [<mailto:PRose@co.whatcom.wa.us>]
Sent: Friday, March 18, 2011 8:00 AM
To: Hillman, John (ATG); John Allgire
Subject: Eggum

Good Morning Gentlemen-

Just heard from Janice and her boss is gone Wednesday next week so she really needs to stay at work that day- however she can come any other day-

Thanks
P

72020-1-1

DECLARATION OF MAILING

GR 3.1

I, Malcolm Todd Eggen on the below date, placed in the U.S. Mail, postage prepaid, two envelope(s) addressed to the below listed individual(s):

Whatcom Co. Prosecutor Office

c/o Hilary Thomas

311 Grand Ave

Bellingham WA 98225

AAU John Hillman

Attorney General's Office

800 - 5th Ave. Suite 2000

Seattle WA 98104

RECEIVED
FEBRUARY 16 11:56 AM
FBI - SEATTLE

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correctional Complex ("CRCC"), 1301 N. Ephrata Avenue, Post Office Box 769, Connell, WA 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents.

1. Opening Brief of Appellant BOA
2. Exhibits
3. _____
4. _____
5. _____
6. _____

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED this 10 day of February, 2016, at Connell WA.

Signature Malcolm Todd Eggen