

Washington State Court of Appeals  
Division I  
STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

STATE OF WASHINGTON )  
)  
Respondent, )  
)  
v. )  
)  
Derek John Cartmell )  
(your name) )  
)  
Appellant. )

No. 70520-2-1

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

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

COURT OF APPEALS  
STATE OF WASHINGTON  
2014 FEB 1 PM 2:08  
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SDV1

Additional Ground 1

The trial court abused discretion in admitting evidence gained through faulty search warrant. Search was done prior to application of warrants. Defendant was never identified being at the scene of the crime. Trial court relied on cases where a positive identification of defendant was made. Judge abused his discretion by stating defendant was at the scene.

Additional Ground 2

Statements made by prosecution during closing Argument: there were numerous statements made by Mr. Carman (prosecution), that were not consistent with testimony throughout the trial, along with statements placing guilt on the defendant, without proper evidence to support his statements.

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

Date: 3-27-2014

Signature: Derek J. Cartmell  
Derek Cartmell  
RA14 U  
Airway Heights Correction's Center  
PO Box 2849  
Airway Heights WA 99007

## Additional Ground 1

The trial court abused discretion in admitting evidence gained through faulty search warrant. Search was done prior to application of warrants. Defendant was never identified being at the scene of the crime. Trial court relied on cases where a positive identification of defendant was made.

Suppression Hearing, May 3<sup>rd</sup>, 2013. Did Judge remain impartial during preliminary hearings?

May 3<sup>rd</sup>, 2013 page 34 Judge Hancock "In my judgment, after a thorough review of the file records and the case authorities, it is not necessary for the court to reach the issue of whether they were properly issued by the court because it is evident to the court from the record before the court that Mr. Cartmell abandoned these items."

May 3<sup>rd</sup>, 2013 page 35 State v. Serrano, 14 Wn. App. 462 (1975) "The officer asked what was in the defendant's hands. At that point the defendant threw the container on the ground."

May 3<sup>rd</sup>, 2013 page 36-37 State v. Kealey 80 Wn. App. 162 (1995) "The court noted that a person who abandons property loses any ownership interest in the property and relinquishes any reasonable expectation of privacy in it."

May 3<sup>rd</sup>, 2013 page 37-38 State v. Reynolds 144 Wn. 2d 282, (2001) page 38 "This was a case where the defendant had obviously threw a coat out of the car which the police officer had noted that was

The verbatim report of the trial consists of a consecutively-paginated volume referred to as RP...

The suppression hearing is referred to by date, and page...

in the car when the stop was initially made."

May 3<sup>rd</sup> 2012, page 38 Jude Hancock" this is a case where Mr. Cartmell voluntarily abandoned the items that were found in the vehicle." PG 39 "Derek Cartmell, was the one who was in the vehicle, abandoned it, ran away from the police officers, there by leaving these items in the vehicle." "and they were clearly abandoned by him in the vehicle." Page 39 "It would be singularly inappropriate to allow Mr. Cartmell under these circumstances to assert a privacy interest in these items where he abandoned them in this vehicle after fleeing from the police." PG 40 "He clearly abandoned them,"

Did the Judge properly rule during the suppression hearing? The three cases that were relied on there was a positive identification of the defendant. Serrano the officer saw the defendant throw the pill bottle. Kealey, the woman goes to the shoe store and claims the bag. Reynolds the officer saw the defendant and the coat. In my case officer Martin testified RP 89 "I thought that I would be able to, but I -- no". When asked by prosecution RP 89 "where you able to get a good enough look at the driver's face in order to recognize that face if you saw it again?"

RP 111 prosecution "About how much time were you able to see the front of the driver?" officer Martin "Each time he would look at me, He probably looked at me maybe three times."

The verbatim report of the trial consists of a consecutively-paginated volume referred to as RP -.

The suppression hearing is referred to by date, and page, 2 of 4

The physical description of the driver given by officer Martin who is trained and well experienced at being able to identify, recognize, give accurate descriptions of people, was: Officer Martin RP 88 "five-eight to five-ten, about 190, 200 pounds".

Trooper Martin got a good enough look at the perpetrator's face three times to say RP 89 "I thought that I would be able to, but I - - no." He also gave a physical description that drastically differs from me. My drivers license states 6'2" 230 pounds. Issued July 5<sup>th</sup>, 2012. The pursuing officer who is well trained in identification did not identify me at the scene.

The homeowner Dieter Hertling sees a man running up the hill. When asked by prosecution RP 121 "what color was hair?" Dieter Hertling "It was blond." On the drivers license it is listed as brown. The drivers license from exhibit #32 was issued July 5<sup>th</sup> 2012.

The court made rulings as if I was already guilty, therefore violating my right to a trial free from biased opinions and rulings.

Further grounds questioning the validation of the search warrants. "Affidavit for search warrant" states "that on or about May 26<sup>th</sup>, 2006 in Island county, a crime, to wit: Theft of a Motor Vehicle (RCW 9A.56.065) was committed against the property of Life Church, 1767 N.E. Regatta Drive, Oak Harbor, Island County WA and the following evidence is material to the investigation of said case;"

The actual "Search Warrant", states "there is probable cause to believe that on or about February

18, 2012, in Island County, Washington, a crime to wit: Theft of a Motor Vehicle (RCW 9A.56.065) was committed against the property of Timothy Shadduck at 916 5<sup>th</sup> Street, Camano Island WA and Marvin Walls at 231 Maple Street, Camano Island, Island county WA."

Both Affidavit's for Search Warrant's and actual Search Warrant's say the same dates along with same Victims. The search warrant's and Affidavit's list different victims, along with different dates. One Warrant is for "Phone" and one for "contents of a black and gray North Face back pack".

Both Affidavits and both Search Warrants were signed by Judge of the Superior Court of Island County, Vickie Churchill on November 6<sup>th</sup> 2012. The affidavits were both signed under the penalty of perjury by Detective Felici on November 6<sup>th</sup> 2012.

When asked during direct examination by Mr. Carmen RP158 "About how long after this incident did you conduct that search?" Answer by Detective Felici "It was within the next couple of days. I don't remember if it was the next day or -- but it was definitely within the next day or two." According to police reports and testimony of trooper Martini, homeowner Dieter Hertling, Detective Felici and Detective Wallace the incident occurred on November 1<sup>st</sup> 2012.

The verbatim report of the trial consists of a consecutively-paginated volume referred to as RP\_.

Copies of Affidavit for a search warrant and Search Warrant Enclosed.

Detective Felici testified to searching the back pack definitely the next day or two of the incident. That being the case all items gained by the search fall under "Fruit of the poisonous tree doctrine". All the evidence the jury did see and have access to.

It is clear that Judge Hancock abused his discretion when ruling at this particular hearing. The rulings made in this case were far from impartial. When a Judge makes statements that refer to the defendants guilt they are now forming a biased opinion towards the defendant. There were no attempts to recant statements implying guilt towards the defendant. The accumulation of hearsay, and prejudicial evidence provided to the jury is grounds for reversal.

Under Canon 2, which states rule 2 "A judge should perform the duties of Judicial office impartially, Competently, and diligently." Canon Rule 2.2 "Impartially and Fairness. A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." Due to the statements Judge Hancock made during suppression hearing I am requesting a reversal of conviction.

Respectfully Submitted By

Derek J. Cartmel

Derek J. Cartmel

RAIU

Airway Heights Corrections Center

Pobox 2049

Airway Heights, WA 99001

## Additional Ground 2

Statements made by prosecution during closing Argument: There were numerous statements made by Mr. Carmen (prosecution), that were not consistent with testimonies throughout the trial, along with statements placing guilt on the defendants.

During the trial all the testimonies made by witnesses, police officers, detectives, and victims involved in the case no testimonies stated that it was in fact the defendant driving the truck. Officer Martin said, RP 89 "I thought that I would be able to, but I -- no!" That was his answer when asked by Mr. Carmen RP 89 "Were you able to get a good enough look at the driver's face in order to recognize that face if you saw it again?"

During closing Argument Mr. Carmen on RP 444 states "what we're looking for is neutral evidence of what actually happened and not the story of someone who, frankly, is looking to stay out of trouble."

Prosecution used his position of authority to persuade the jury that it was the defendant driving the truck. In IN RE GLASSMANN 175 Wn. 2d. 696, 286, P. 3d. 673 (2012) the court said ¶ "It is also well established that a prosecutor cannot use his or her position of power and prestige to sway the jury and may not express an individual opinion of the defendant's guilt, independent of the evidence actually in the

The verbatim report of the trial consists of a consecutively-paginated volume referred to as RP-\_\_.

case. The commentary on American Bar Association Standards for Criminal Justice std. 3-5.8 emphasizes:

The prosecutor's argument is likely to have significant persuasive force with the jury. Accordingly, the scope of argument must be consistent with the evidence and marked by the fairness that should characterize all of the prosecutor's conduct. Prosecutorial conduct in argument is a matter of special concern because of the possibility that the jury will give special weight to the prosecutor's arguments, not only because of the fact-finding facilities presumably available to the office." ¶ 22 "Likewise, many cases warn of the need for a prosecutor to avoid expressing a personal opinion of guilt." ¶ 23 "The case law and professional standards described above were available to the prosecutor and clearly warned against the conduct here. We hold that the prosecutor's misconduct, which permeated the state's closing argument, was flagrant and ill intentioned."

The closing argument by Mr. Carmen contains numerous statements claiming the defendant, Derek Cartmell as being the sole driver of the truck. There is no evidence placing the defendant in the drivers seat of the truck. The eye witness (officer Martin) gave a description that is drastically different from the defendant. Mr. Carmen has such a strong personal feeling that the defendant, Derek Cartmell is guilty of being the driver of the truck. He lacks the

IN RE GLASSMANN 175 Wn. 2d. 696, 286, P. 3d. 673 (2012).

supports flagrant prosecution misconduct

physical and testimonial evidence so he blatantly expresses his personal feelings of guilt multiple times throughout his closing Argument.

Here are some statements made to the jury that are not supported by evidence. RP 445 "And you care about that because the driver of that truck, Mr. Cartmell, proceeded to drift into the oncoming lane of traffic." RP 446 "Mr. Cartmell, is leaning over away from the steering wheel into the interior of the cab of the truck grabbing at items and throwing them out the driver's side window into the middle of the road." RP 446 "Mr. Cartmell is accelerating that truck up to speeds approximately 80 miles-an-hour." "Once those three cars pass, Mr. Cartmell moves his truck again to the left side into the on coming lane of traffic looking for a place to ditch that truck, ditch that stolen truck!"

RP 447 Mr. Carmen states "Trooper Martin tries to run down the driver Mr. Cartmell, as he's running away from the house and the truck. Can't do it. Doesn't get a great look at the driver." "What we have instead is all the stuff that Mr. Cartmell left in that truck." RP 448-9 "and instead of using a key to start the ignition, someone, Mr. Cartmell, had used a flat-headed screwdriver to do the same thing."

The statements made by the prosecution were intended to inflame the passions and prejudices of the jury. As it is said in

The Verbatim report of the trial consists of a consecutively paginated volume referred to as RP. -

IN RE GLASSMANN 175 Wn.2d 696, 286 P.3d 673

(2012) The court said ¶ 15 "The prosecutor should not use arguments calculated to inflame the passions or prejudices of the jury. American Bar Association, Standards for Criminal Justice std. 3-5.8(c) 2d ed. 1980); State v. Brett, 126 Wash. 2d 136, 179, 892 P.2d 29 (1995)."

It goes on and on, RP 451 "The question here is, who was the driver? Derek Cartmell was the driver. Derek Cartmell was the six-foot-ish tall man running away from the scene. Derek Cartmell was the man who put his fingerprint inside that truck. Derek Cartmell was the man who was using his own cell phone up until two to three minutes prior to being seen by Trooper Martin. Derek Cartmell was the driver of the truck. Derek Cartmell committed these crimes."

Trooper Martin never seen Derek Cartmell at the scene of the crime. Nobody testified to seeing Derek Cartmell making those text messages. All the statements made are opinions of the prosecuting attorney used to intentionally inflame the juror's emotions. Some text messages were read to portray the defendant as a womanizing racist. RP "I have no idea why everyone is treating me like a nigger today." There were no testimonial evidence or physical evidence placing that phone in the defendant's hands therefore it is hearsay evidence.

The verbatim report of the trial consists of a consecutively paginated volume referred to as RP -

RP 348 "I have no idea why everyone is treating me like a nigger"

RP 452 Instruction 12 is the same type of instruction for "attempting to elude." That on or about November 1, 2012, the defendant drove a motor vehicle. Derek Cartmell was the driver of that truck. "RP 453 "Ladies and gentlemen, once we understand that Derek Cartmell was the driver of that truck, there are no elements in contention."

With the possession of methamphetamine the prosecutor is relying on information with no facts to support his accusations. RP 454 "It's the methamphetamine, the little baggie of methamphetamine right here on the driver's floorboard inside the truck where Derek Cartmell was the only occupant. At his feet." RP 454 "It was put there by the driver of the truck. It was put there by Derek Cartmell." RP 455 "When Derek Cartmell drove Big Red into that house, he ran away and he didn't leave the insurance information he's supposed to, and that makes him guilty of hit and run."

RP 456 "So, ladies and gentle men, what we are left with is this: Derek Cartmell is the driver of that truck and as the driver of that truck he clearly committed all four of these crimes."

RP 463 "Too bad Derek couldn't make that appointment. He was too busy T-boning a house." There is over 40 statements made by the prosecution where the defendant is placed by name as being the driver or being the person who committed the crimes. Again I would like to reflect on INREG/ASSMANN

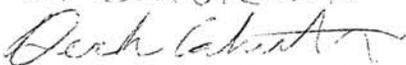
The verbatim report of the trial consists of a consecutively paginated volume referred to as RP\_.

175 Wn.2d, 696, 286 P.3d, 673 (2012) the court said ¶ 24 "more over the misconduct here was so pervasive that it could not have been cured by an instruction. "[T]he cumulative effect of repetitive prejudicial prosecutorial misconduct may be so flagrant that no instructions or series of instructions can erase their combined prejudicial effect".

Prosecution went beyond the evidence to assert his personal opinion of guilt. One particular statement that sticks out is on RP 486-487 "Ladies and gentlemen, this case walks like a duck, it swims like a duck, it quacks like a duck, Derek Cartmell is that duck and he is the driver of that truck. He did put that truck in the house". To my knowledge that statement came out of a John Grisham novel. I find it very unprofessional for a Washington State Deputy prosecuting Attorney referring to a defendant as wildlife.

A lot of the statements made by the prosecuting Attorney should of been stopped by the judge under Canon Rule 2.3 (c) "A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment against parties, witnesses, lawyers, or others."

Due to lack of discretion I Derek Cartmell respectfully request a reversal of conviction.

  
Derek S. Cartmell  
Airway Heights Corrections Center  
PO box 2049  
Airway Heights WA 99001

FILED  
ISLAND COUNTY CLERK

2013 MAY -3 AM 9:23

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR ISLAND COUNTY

SCANNED

State of Washington

Plaintiff(s)/Petitioner(s),

vs.  
Devak Cartmel

Defendant(s)/Respondent(s).

No. 12-1-00250-0

Attachment to  
Defendant's Motion  
to suppress

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MO

DATED this 3 day of May, 2003.



(signature)

Margot Carter

(printed name)

20432

(address)

(city, state, zip code)/blank

VERIFIED



1 Your Affiant has been a Deputy Sheriff for the Island County Sheriff's Office for 15 years &  
2 months and has been assigned to the patrol / investigations division. Your Affiant was a patrol  
3 officer for the United States Navy Security Police for 4 years and a Reserve Police Officer for  
4 the Oak Harbor Police Department for 2 years. Your Affiant is currently assigned as a Detective,  
5 and has been involved in numerous investigations as a primary and secondary investigator  
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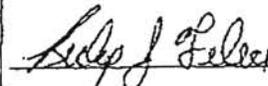
7 Your Affiant has investigated numerous criminal cases of various types to include burglary,  
8 fraud, forgery, identity theft, narcotics trafficking, sexual assaults and death investigations  
9 including homicide, natural and accidental deaths, and is familiar with crimes against persons  
10 and property and the elements and the equipment used in perpetrating these crimes. Your  
11 Affiant has attended both the 440 hours Washington State Criminal Justice Training Commission  
12 Basic Law Enforcement Academy as well as the 220-hour Reserve Police Officer Academy.  
13 Your Affiant's other training includes basic and advanced investigator training, interviewing and  
14 interrogation, marijuana identification and eradication, methamphetamine identification and  
15 manufacturing, criminal investigations, crime scene management training and numerous other  
16 law enforcement subjects:

17 On November 1, 2012 at approximately 0900 Trooper Martin of the Washington State  
18 patrol attempted to conduct a traffic stop on a maroon GMC pickup truck on West Beach Road.  
19 The driver failed to yield to Trooper Martin's emergency lights and martin pursued the vehicle.  
20 The pursuit ended when the driver lost control and struck a house near the intersection of West  
21 Beach Road and Hastie Lake Road. The driver fled on foot and was not taken into custody.  
22 Further investigation revealed that the truck had been stolen from the Life Church in Oak Harbor  
23 some time during the previous night. The church pastor Michael Hurley was contacted and he  
24 gave officers his permission to search the truck. Among the items found in the truck was a red  
25 Samsung brand cellular phone. Pastor Hurley stated that the cellular phone does not belong to  
26 him or anyone who regularly drives the truck. The cellular phone was apparently left in the  
27 vehicle by the fleeing suspect and the data stored on the phone may help identify the suspect.  
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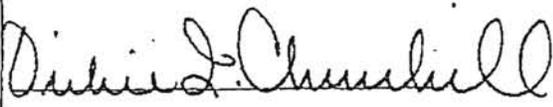
30 Your Affiant now requests a finding of Probable Cause for the issuance of a search warrant.

1  
2 I CERTIFY OR DECLARE UNDER THE PENALTY OF PERJURY UNDER THE  
3 LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND  
4 CORRECT.

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6 This Affidavit has been reviewed by the Island County Prosecutor's Office.

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9 \_\_\_\_\_  
10 Affiant

11 SUBSCRIBED AND SWORN TO before me this 6 day of NOV, 2012

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15 Judge of the Superior Court  
16 Island County, State of Washington

FILED

NOV 06 2012

DEBRA VAN PELT  
ISLAND COUNTY CLERK

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

2012 0000095

STATE OF WASHINGTON )

ss. SEARCH WARRANT

County of Island )

STATE OF WASHINGTON: To any Peace Officer

WHEREAS, upon the sworn affidavit heretofore made before me it appears to the undersigned Judge of the Superior Court for Island County that there is probable cause to believe that on or about February 18, 2012, in Island County, Washington, a crime, to wit:

Theft of a Motor Vehicle (RCW 9A.56.065)

Was committed against the against the property of Timothy Shaddock at 916 5<sup>th</sup> Street, Camano Island WA and Marvin Walls at 231 Maple Street, Camano Island, Island County WA and the following evidence is material to the investigation of said case;

Files, artifacts or information, including but not limited to, call records, contacts, e-mails, internet history, text messages (SMS) and Multi Media Messages (MMS) that would show ownership and/or dominion and control for the device.

WA and further that there is probable cause to believe evidence material to the investigation of said crime is presently concealed in, about, and upon a location hereinafter designated and described;

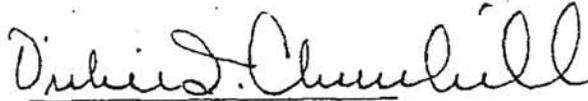
Phone is currently in the Island County Sheriff's Office property room.

NOW THEREFORE, in the name of the State of Washington, you are hereby commanded, with the necessary and proper assistance, to enter and search for the following:

1 Files, artifacts or information, including but not limited to, call records, contacts, e-mails, internet  
2 history, text messages (SMS) and Multi Media Messages (MMS) that would show ownership and/or  
3 dominion and control for the device.

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6 And if the same or any part thereof be found on such search, bring the same forthwith before me, to be  
7 disposed of according to law.

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9 GIVEN UNDER MY HAND this 6 day of NOV, 2012

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12 Duane J. Churchill  
13 Judge of the Superior Court  
14 Island County, State of Washington

15 A copy of this warrant shall be served upon the person or persons found in or on said premise and if no  
16 person is found in premise or place, a copy of this warrant shall be posted upon any conspicuous place in  
17 or on said premise or place.  
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1 Your Affiant has been a Deputy Sheriff for the Island County Sheriff's Office for 15 years 8  
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7 Your Affiant has investigated numerous criminal cases of various types to include burglary,  
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16 law enforcement subjects:

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20 The pursuit ended when the driver lost control and struck a house near the intersection of West  
21 Beach Road and Hastie Lake Road. The driver fled on foot and was not taken into custody.  
22 Further investigation revealed that the truck had been stolen from the Life Church in Oak Harbor  
23 some time during the previous night. The church pastor Michael Hurley was contacted and he  
24 gave officers his permission to search the truck. Among the items found in the truck was a black  
25 and gray colored, North Face brand back pack. Pastor Hurley stated that the back pack does not  
26 belong to him or anyone who regularly drives the truck. The back pack was apparently left in  
27 the vehicle by the fleeing suspect and the contents may help identify the suspect.  
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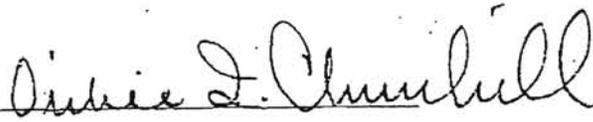
Your Affiant now requests a finding of Probable Cause for the issuance of a search warrant.

1  
2 I CERTIFY OR DECLARE UNDER THE PENALTY OF PERJURY UNDER THE  
3 LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND  
4 CORRECT.  
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6 This Affidavit has been reviewed by the Island County Prosecutor's Office.  
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9 \_\_\_\_\_  
10 Affiant

11 SUBSCRIBED AND SWORN TO before me this 6 day of Nov, 2012  
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15 Judge of the Superior Court  
16 Island County, State of Washington  
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FILED

NOV 06 2012

DEBRA VAN PELT  
ISLAND COUNTY CLERK

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

2012 0000096

STATE OF WASHINGTON )  
County of Island )

ss. SEARCH WARRANT

STATE OF WASHINGTON: To any Peace Officer

WHEREAS, upon the sworn affidavit heretofore made before me it appears to the undersigned Judge of the Superior Court for Island County that there is probable cause to believe that on or about February 18, 2012, in Island County, Washington, a crime, to wit:

**Theft of a Motor Vehicle (RCW 9A.56.065)**

Was committed against the property of Timothy Shadduck at 916 5<sup>th</sup> Street, Camano Island WA and Marvin Walls at 231 Maple Street, Camano Island, Island County WA and the following evidence is material to the investigation of said case;

**Contents of a black and gray North Face back pack**

WA and further that there is probable cause to believe evidence material to the investigation of said crime is presently concealed in, about, and upon a location hereinafter designated and described;

**Back pack is currently in the Island County Sheriff's Office property room.**

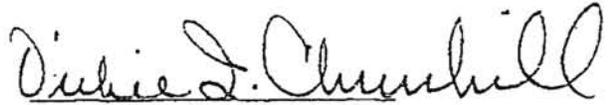
NOW THEREFORE, in the name of the State of Washington, you are hereby commanded, with the necessary and proper assistance, to enter and search for the following:

**Contents of a black and gray North Face back pack**

And if the same or any part thereof be found on such search, bring the same forthwith before me, to be disposed of according to law.

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GIVEN UNDER MY HAND this 6 day of NOV, 2012

  
Judge of the Superior Court  
Island County, State of Washington

A copy of this warrant shall be served upon the person or persons found in or on said premise and if no person is found in premise or place, a copy of this warrant shall be posted upon any conspicuous place in or on said premise or place.

2013 MAY -1 AM 9:44

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SCANNED

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

STATE OF WASHINGTON,

Plaintiff,

v.

DEREK CARTMELL,

Defendant.

NO. 12-1-00250-0

DEFENDANT'S MOTION AND  
MEMORANDUM TO SUPPRESS  
EVIDENCE

87  
KW

COMES NOW the defendant, Derek Cartmell, by and through his attorney of record, Margot L. Carter of Margot L. Carter, PLLC, and moves the court to suppress all evidence found as the result of the execution of the search warrants #2012 0000095 and 2012 0000096 as the affidavits for the search warrants and the warrants themselves are faulty in that the affidavits and the warrants identify two different and inaccurate dates upon which the crime allegedly occurred and the warrants identify the wrong alleged victims. Further, the warrants do not identify the item to be searched with enough specificity. If the court determines that the evidence gathered as a result of the first warrant is admissible, the defendant moves the court to prohibit the state from calling the

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1 Defendant's Department of Corrections Officer to identify the telephone number  
2 the defendant provide the corrections officer for his mother. If the court  
3 determines that the evidence gathered as a result of the second warrant is  
4 admissible, the defendant also moves the court to prohibit the state from using  
5 the Defendant's DOC identification at trial.  
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### 7 FACTS

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9 On November 1, 2012 Trooper Martin of the Washington State Patrol  
10 attempted to stop a maroon GMC truck on West Beach Road in Island County  
11 Washington. The driver failed to yield and Trooper Martin pursued the truck  
12 until the vehicle lost control and hit a house. The driver of the vehicle fled the  
13 truck. Trooper Martin gave chase but lost the driver and returned to the truck.  
14 While Trooper Martin was attempting to turn off the truck he observed several  
15 items in the truck including a back pack. Shortly thereafter the owner of the  
16 truck reported the truck stolen. The owner was contacted and came to the scene  
17 and identified the truck and what items in the truck were his. The other items  
18 were taken to the Sheriff's office and placed in evidence.  
19

20 Several days later Detective Felici wrote affidavits for Search Warrant  
21 for two of the items recovered from the vehicle. The first search warrant, 2012  
22 0000095, was for a cellular telephone and the second was for a black and gray  
23 North Face back pack. The affidavits and search warrants are attached to this  
24 motion for the court's review.  
25

26 One of the items found in the back pack was the defendant's DOC  
27 identification along with his driver's license, social security card and  
28 Washington Quest card.

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## ISSUES PRESENTED

Do the affidavits provide sufficient accurate information to establish probable cause for the issuance of the warrants when the affidavits provide the wrong date for the alleged crime and are very limited in their description of the item to be searched?

Do the search warrants adequately identify the items to be searched when they misidentified the crime scene from which the items were taken both by the date of the alleged offense and by the victims of the offense.

## ARGUMENT

The Fourth Amendment provides that no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. Const. amend. 4. The purposes of the search warrant particularity requirement are the prevention of general searches, prevention of the seizure of objects on the mistaken assumption that they fall within the issuing magistrate's authorization, and prevention of the issuance of warrants on loose, vague, or doubtful bases of fact. 2 W. LaFare, Search and Seizure § 4.6(a), at 234-36 (2d ed. 1987) (citing *Marron v. United States*, 275 U.S. 192, 48 S.Ct. 74, 72 L.Ed. 231 (1927); *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 51 S.Ct. 153, 75 L.Ed. 374 (1931)), *State v. Perrone*, 834 P.2d 611, 614- 615, 119 Wn.2d 538 (Wash. 1992).

While the lack of specificity in the search warrants in question do not raise a concern regarding a general search, they do raise issues as to preventing searches of objects on the mistaken assumption that they fall within the warrants authorization and prevention of the issuance of warrants on vague grounds.

1  
2 The particularity requirement eliminates chances that an executing officer  
3 will exceed the permissible scope of the search because of confusion or uncertainty.  
4 *State v. Gronlund*, 356 N.W.2d 144, 146 (N.D.1984), *Perrone* at 615. The fourth  
5 amendment to the United States Constitution requires that a search warrant describe  
6 with particularity the place to be searched and the person or things to be seized. The  
7 requirements of particularity are met if the substance to be seized is described with  
8 "reasonable particularity" which, in turn, is to be evaluated in light of "the rules of  
9 practicality, necessity and common sense." *State v. Withers*, 8 Wn.App. 123, 126, 504  
10 P.2d 1151(1972). See *United States v. Ventresca*, 380 U.S. 102, 108, 13 L.Ed.2d 684,  
11 85 S.Ct. 741 (1965).  
12

13 Where most search warrants are concerned, a description is valid if it is as  
14 specific as the circumstances and the nature of the activity under investigation  
15 permits. *United States v. Blum*, 753 F.2d 999, 1001 (11th Cir.1985); see *State v.*  
16 *Christiansen*, 40 Wash.App. 249, 254, 698 P.2d 1059 (1985) (search warrant for  
17 marijuana; "reasonable particularity" required to limit discretion of officers executing  
18 warrant). The use of a generic term or a general description is not per se a violation  
19 of the particularity requirement when the precise identity of goods cannot be  
20 determined when the warrant is issued. *Perrone* at 615; *People v. Smith*, 180  
21 Cal.App.3d 72, 89, 225 Cal.Rptr. 348, 358 (1986). However, courts have reasoned  
22 that the use of a generic term or general description is constitutionally acceptable  
23 only when a more particular description of the items to be seized or searched is not  
24 available at the time the warrant issues. *State v. Noll*, 116 Wis.2d 443, 451, 343  
25 N.W.2d 391, 395, cert. denied, 469 U.S. 837, 105 S.Ct. 133, 83 L.Ed.2d 73 (1984);  
26 *Smith*, 180 Cal.App.3d at 89, 225 Cal.Rptr. 348. Where a search warrant authorizing  
27 a search for materials protected by the First Amendment is concerned, the degree of  
28 particularity demanded is greater than in the case where the materials sought are not

1 offense or the victims identified in the search warrant it cannot provide sufficient  
2 probable cause to establish the need for the search warrant.

3  
4 The search warrants list the items to be searched as "Phone is currently in  
5 the Island County Sheriff's Office property room" and "Back is currently in Island  
6 County Sheriff's Office property room." The second search warrant does provide  
7 that the evidence material to the investigation is "contents of a black and gray North  
8 Face back pack". Nowhere in either warrant does it indicate what type of phone  
9 or anything more specific about the back pack. It is highly unlikely that there is or was  
10 only one phone in the property room at the time of this search warrant. Further, the  
11 serial number for the telephone or at least its make or model could easily have been  
12 included in the warrant. This is not a case where the item to be searched was not able to  
13 be more specifically identified. The affidavits for these search warrants and the Search  
14 Warrants themselves were and are flawed to the point that they do not meet  
15 constitutional muster and the evidence gained from these search warrants should be  
16 suppressed.

17  
18 If the court determines that the evidence found in the back pack is admissible,  
19 the defendant requests that the court exclude the testimony of Helen Desmond, the  
20 defendant's Parole Officer under ER403 as unduly prejudicial especially as the State  
21 can easily produce the defendant's mother to testify regarding her telephone number as  
22 she lives in Anacortes, Washington.

23 If the court determines that the evidence found in the back pack is admissible,  
24 the defendant requests that the court exclude the Defendant's DOC identification as  
25 evidence under ER 403 as it is both cumulative of the other evidence available to the  
26 State, like the defendant's driver's license and social security card, and its probative  
27 value is substantially outweighed by its prejudicial nature.  
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CONCLUSION

For the foregoing reasons, and authorities cited, all the evidence found in the back pack and the phone should be suppressed.

DATED this 30<sup>th</sup> day of April, 2013.



Margot L. Carter, WSBA #20432  
Margot L. Carter, PLLC  
Attorney for Defendant

1 they are, and the Court has to deal with those. I'm  
2 sure Detective Felici would like to do it over again and  
3 we all understand that. I'm sure that if Judge  
4 Churchill were aware of these circumstances, she would  
5 have done things differently. In any event, they are  
6 what they are.

7           In my judgment, after a thorough review of  
8 the file records and the case authorities, it is not  
9 necessary for the Court to reach the issue of whether  
10 these were proper affidavits for warrants and whether  
11 they were properly issued by the Court because it is  
12 evident to the Court from the record before the Court  
13 that Mr. Cartmell abandoned these items.

14           That means that there was no search in  
15 connection with the backpack and the cell phone because  
16 they were abandoned. I need to go through the analysis  
17 here.

18           Before doing that, I want to say that  
19 Detective Felici followed a good practice, the  
20 appropriate practice, which was to seek and obtain  
21 warrants for these items. It is always better to ask  
22 for a warrant, if it is possible to do so, where there  
23 are no exigent circumstances or something of that nature  
24 that would obviate the need for a warrant. If it's  
25 possible to get a warrant, law enforcement officials

1 should get a warrant and that's what Detective Felici  
2 did in this case. He's to be commended for that, as  
3 opposed to simply assuming that he took possession of  
4 these items after abandonment and, therefore, there was  
5 -- there would be no search involved of these items.  
6 But he did the right thing and sought warrants and  
7 obtained warrants for these items. That's the  
8 appropriate procedure, regardless of whether it later  
9 turns out there was no necessity for the seeking of and  
10 obtaining warrants.

11 In the case of *State v. Serrano*, 14 Wn. App.  
12 462, a 1975 case, the court was dealing with the  
13 prosecution for possession of controlled substances. At  
14 issue was the admissibility of a translucent container  
15 found to contain several methamphetamine and LSD pills.  
16 In this case, the defendant, when exiting a vehicle  
17 after a stop, withdrew the container from his pocket and  
18 attempted to conceal it by switching it from hand to  
19 hand behind his back. The officer asked what was in the  
20 defendant's hands. At that point the defendant threw  
21 the container on the ground. The officer recovered the  
22 container and the subsequent chemical analysis revealed  
23 its contents to be methamphetamine and LSD, which both  
24 are controlled substances, obviously. Convictions for  
25 possession of controlled substances were affirmed on

1 appeal.

2           The court held, in effect, that an officer  
3 may validly seize an object which is discarded by its  
4 possessor even though he does not have probable cause to  
5 search the person in that connection.

6           So this was essentially a situation where  
7 the defendant had abandoned the property in question by  
8 throwing it on the ground.

9           In the case of *State v. Kealey*, K-E-A-L-E-Y,  
10 80 Wn. App. 162, a 1995 case, the court was dealing with  
11 an issue of whether evidence should be suppressed. This  
12 was a case in which the personnel at the department  
13 store found a purse that had been left at the store.  
14 The purse was turned over to the police. The defendant  
15 had misplaced her purse in the department store. If I  
16 recall the facts correctly in this case, the personnel  
17 of the store had noted that there was possible  
18 contraband in the purse, and the police conducted a  
19 warrantless search of the purse for identification. The  
20 trial court actually suppressed the evidence seized from  
21 the warrantless search of the defendant's purse and  
22 subsequent sting operation that resulted in the  
23 defendant's arrest. The court of appeals reversed the  
24 suppression order and ruled that regardless of the  
25 police officer's prior knowledge that the purse

1 contained contraband, the warrantless search of the  
2 purse for identification was valid. During the course  
3 of its ruling, the court of appeals noted that the  
4 common law distinguished among property that is  
5 abandoned, lost, or misplaced. Property is abandoned  
6 when the owner intentionally relinquishes possession and  
7 rights in the property. Property is lost when the owner  
8 has parted with possession unwittingly and no longer  
9 knows its location. Property is mislaid when the owner  
10 intentionally puts it in a particular place and then  
11 forgets and leaves it.

12           And the court indicated that for purposes of  
13 this case, the *Kealey* case, the court saw no meaningful  
14 distinction between lost and mislaid property. This is  
15 at page 171 and 172 that this discussion occurs,  
16 80 Wn. App. The court noted that a person who abandons  
17 property loses any ownership interest in the property  
18 and relinquishes any reasonable expectation of privacy  
19 in it. That's in contrast to lost or mislaid property.

20           In what is perhaps the leading Washington  
21 Supreme Court case regarding these matters, we have  
22 *State v. Reynolds*, R-E-Y-N-O-L-D-S, 144 Wn.2d 282. This  
23 is a 2001 case. This was a prosecution for unlawful  
24 possession of a controlled substance. The defendant  
25 alleged that he had a reasonable expectation of privacy

1 in a voluntarily abandoned coat that was found to  
2 contain controlled substances and was the basis of the  
3 charge. The trial court refused to suppress that  
4 evidence and the court of appeals affirmed, as did the  
5 supreme court.

6 This was a case where the defendant had --  
7 obviously threw a coat out of the car which the police  
8 officer had noted that was in the car when the stop was  
9 initially made, if I remember the facts correctly, and  
10 the court stated at page 288 that, "where a defendant  
11 abandoned property and that property was subsequently  
12 searched, the defendant may assert a constitutionally  
13 protected privacy interest only upon a showing that he  
14 or she involuntarily abandoned the property in response  
15 to illegal police conduct. To establish that the  
16 abandonment of the searched property was involuntary, a  
17 defendant must therefore show two elements; first,  
18 unlawful police conduct, and, secondly, a causal nexus  
19 between the unlawful conduct and the abandonment."

20 Obviously, there was no police misconduct  
21 whatsoever in the present case, and, rather, this is a  
22 case where Mr. Cartmell voluntarily abandoned the items  
23 that were found in the vehicle. The record before the  
24 Court clearly shows that there is a substantial basis to  
25 believe and probable cause to believe that the

1 defendant, Derek Cartmell, was the one who was in the  
2 vehicle, abandoned it, ran away from the police  
3 officers, thereby leaving these items in the vehicle.  
4 These are items that are identified as his items;  
5 namely, the driver's license, the Social Security card,  
6 the DOC offender card, and the Washington Quest card.  
7 So there is certainly substantial evidence to believe  
8 that Mr. Cartmell was the one who left these items in  
9 the vehicle when he fled from the police after the  
10 efforts by the police to stop him and they were clearly  
11 abandoned by him in the vehicle.

12           Then, finally, we have *State v. Evans*,  
13 120 Wn. App. 211, a 2005 case. This was a case where  
14 the defendant had disavowed ownership of an item in  
15 response to police questioning, and the court held under  
16 those circumstances the defendant had abandoned any  
17 privacy interest in the item. This was a case that  
18 involved a prosecution for unlawful manufacture of a  
19 controlled substance, methamphetamine, and unlawful  
20 possession of methamphetamine, and, again, this was a  
21 situation where the defendant had disavowed any  
22 information about the items in question; therefore, he  
23 had no expectation of privacy in those items.

24           It would be singularly inappropriate to  
25 allow Mr. Cartmell under these circumstances to assert a

1 privacy interest in these items where he abandoned them  
2 in this vehicle after fleeing from the police after the  
3 stop of the vehicle which there is strong evidence to  
4 believe he had stolen.

5           It remains to be seen what the jury verdict  
6 would be in this case -- and the case will be tried to  
7 the jury, of course -- but based on the information  
8 before the Court right now, there is certainly evidence  
9 to show that Mr. Cartmell had stolen the vehicle, was  
10 attempted to be stopped by the police, fled the police  
11 after abandoning the vehicle and all of this property,  
12 and it would be highly inappropriate to say that he had  
13 some lingering privacy interest in these items under  
14 these circumstances. He clearly abandoned them.  
15 Therefore, there was no search of these items. Mr.  
16 Cartmell had no reasonable expectation of privacy under  
17 these circumstances and, therefore, there was no search.  
18 So it would be improper for the Court to suppress the  
19 evidence. I deny the motion to suppress.

20           Moving on to the issue of the matter of the  
21 admissibility of the DOC card, as I mentioned before in  
22 my decision on the motion to suppress, there is also  
23 this statement on the card that says "offender," so  
24 that's also a matter that should be dealt with in some  
25 manner in this connection.

1 across the driveway off the little embankment, looked  
2 back at me as I was going up the hill, and then the last  
3 time I was able to see his face is when he was up on the  
4 above street going away from me.

5 Q. Were you able to get a good enough look at the  
6 driver's face in order to recognize that face if you saw  
7 it again?

8 A. I thought that I would be able to, but I -- no.

9 Q. How far behind the driver were you when you  
10 started trying to chase him down on foot?

11 A. There was probably at least 75 feet between us.

12 Q. And were you able to close that gap on foot at  
13 all?

14 A. No.

15 Q. How far did you chase the driver on foot?

16 A. He exited here. I chased up to about right in  
17 here, and then he was -- when he hit this road up here,  
18 he went this way and that's the last time I saw him.

19 Q. So the driver went around -- I guess it would be  
20 the northeast side of the house?

21 A. Actually, that would be the southwest side 'cause  
22 he ran this way. Actually -- yeah. No, you're right.  
23 Correct. You're right. I'm looking at it backwards.  
24 So he exited towards the east, which would be the  
25 northeast side of the house here, crossed over the

1 recognize.

2 Q. Did you get enough of a look to be able to give  
3 any kind of a physical description, height, weight,  
4 anything like that?

5 A. No. I -- you know, other than just probably my  
6 size. That's about it. You know, and longer hair.

7 Q. About how tall are you?

8 A. I'm six-two.

9 Q. So would you say -- were you in any position to  
10 see if this person might have been taller than you,  
11 little shorter than you?

12 A. No.

13 Q. And the State Patrol, the trooper, was chasing  
14 after him on foot?

15 A. Correct.

16 Q. And then as you went over to the other window,  
17 did you get any better view of the guy that was getting  
18 chased?

19 A. No. That's probably when I got the best view of  
20 where I could, you know, define some hair, was on the  
21 side of the house.

22 Q. What color was the hair?

23 A. It was blond. Kind of -- looked like it was  
24 almost dyed.

25 Q. About how far would you say this guy was when you

1 THE COURT: It's admitted.

2 (PLAINTIFF'S EXHIBIT NUMBER 31 WAS  
3 ADMITTED.)

4 Q. Detective Felici, you mentioned that once you  
5 were done with your search of the truck, that you seized  
6 the backpack in order to do a more thorough search of  
7 the backpack. You said you wanted to get a warrant for  
8 that?

9 A. Yes.

10 Q. Did you do so?

11 A. Yes.

12 Q. Were you able to get access to the backpack to  
13 conduct a search of the backpack?

14 A. Yes.

15 Q. About how long after this incident did you  
16 conduct that search?

17 A. It was within the next couple of days. I don't  
18 remember if it was the next day or -- but it was  
19 definitely within the next day or two.

20 Q. And did you have to go through any special  
21 procedures to get access to the backpack once you had  
22 your warrant?

23 A. The backpack had been currently secured in  
24 evidence so I met with Detective Farr in the evidence  
25 room and he retrieved it from its storage location and

1 this case, when we look through the facts of this case,  
2 you need to bear in mind that what we're looking for is  
3 credible evidence. What we're looking for is  
4 corroborated evidence. What we're looking for is  
5 neutral evidence of what actually happened and not the  
6 story of someone who, frankly, is looking to stay out of  
7 trouble.

8           So what happened on the morning of  
9 November the 1st, 2012? Trooper Martin testified that  
10 he was on duty, in uniform, in a marked patrol vehicle  
11 just before 9:00 in the morning up on Crosby Road, which  
12 is this road here, near Golf Course Road, right about  
13 here, traveling westbound in his marked patrol vehicle  
14 with lights and siren equipped, and he observed a red  
15 maroon truck, which Pastor Hurley eventually referred to  
16 as Big Red, traveling in excess of the speed limit, one  
17 passenger in the truck.

18           Trooper Martin moved over to the shoulder  
19 with the u-turn, turned his lights on expecting that  
20 truck to pull over and get his speeding ticket. Now,  
21 most drivers are going to pull over when a patrol  
22 vehicle turns his emergency lights. They're not going  
23 to be happy about it. They'll grumble about it. They  
24 might dispute the fact that they were speeding with the  
25 patrol officer, but what they're not going to do is

1 careen for five miles down this road all the way down to  
2 Hastie Lake at speeds that hit as high as a hundred  
3 miles an hour. But that's what this driver did.

4           When Trooper Martin got his u-turn completed  
5 and went to look for the truck, it had already moved  
6 into these S-turns, and the next time Trooper Martin saw  
7 it, it was coming through the second of those turns in  
8 the S-turns fast enough that it was already fishtailing.  
9 It crested a hill, went down a hill towards the water,  
10 made this left-hand turn onto what becomes West Beach  
11 Road down along the waterfront. Again, 100 miles an  
12 hour through a residential area.

13           Continued up past this lake and up this hill  
14 and the other side of the lake to Sandusky Road about  
15 halfway up the road where, Trooper Martin testified, you  
16 can see pretty well if you're going up the hill, but  
17 it's a blind spot if you're going down. And you care  
18 about that because the driver of that truck,  
19 Mr. Cartmell, proceeded to drift into the oncoming lane  
20 of traffic and then attempts to make a left-hand turn  
21 onto Sandusky Road, which he was going too fast to be  
22 able to perform. So in order to keep from crashing, he  
23 had to fight that truck, get it back on the road and go  
24 back up that hill, which he did until he hit Even Down  
25 about up in here, where he again, at the crest of the

1 hill, in a bit of a blind spot, drifted over into the  
2 wrong lane of traffic and tried to make a left-hand turn  
3 which he was still going too fast to perform.

4 He again fought for control of that truck,  
5 again saved the turn -- or saved his control of the  
6 truck, got it back on the road and started moving again  
7 southbound on West Beach Road. As he continued down  
8 West Beach Road you reach Fort Nugent Road. You pass  
9 out of the 40 mile-an-hour zone into a 50 mile-an-hour  
10 zone, and here is where the truck starts to swerve, and  
11 it starts to swerve because the driver of the truck,  
12 Mr. Cartmell, is leaning over away from the steering  
13 wheel into the interior of the cab of the truck grabbing  
14 at items and throwing them out the driver's side window  
15 into the middle of the road. Happily, there are no cars  
16 on the road, but that's about to change, because as they  
17 pass Fort Nugent Road and continue south down this hill,  
18 at least three cars pass going the opposite direction,  
19 and Mr. Cartmell is accelerating that truck up to speeds  
20 approximately 80 miles-an-hour.

21 Once those three cars pass, Mr. Cartmell  
22 moves his truck again to the left side into the oncoming  
23 lane of traffic looking for a place to ditch that truck,  
24 ditch that stolen truck. He can't find a good place to  
25 do it until he hits Hastie Lake down here at the bottom,

1 tries to make his third ill-fated left-hand turn,  
2 commits to it, and misses the road entirely and instead  
3 he ends up rolling up the front yard of Dieter Hertling  
4 into Dieter Hertling's house. Thankfully, the house is  
5 brick so he doesn't end up in Dieter Hertling's living  
6 room because that's where Dieter Hertling was having  
7 coffee with his wife when he hears boom and the house  
8 shakes like an earthquake, but it wasn't an earthquake.  
9 It was a pickup truck.

10 Trooper Martin tries to run down the driver,  
11 Mr. Cartmell, as he's running away from the house and  
12 the truck. Can't do it. Doesn't get a great look at  
13 the driver, but he describes him "as taller than me,"  
14 says Trooper Martin who is five-foot-eight, and "a  
15 little heavier than me," says Trooper Martin, who's 180  
16 pounds.

17 Mr. Hertling doesn't get a good look at him  
18 'cause he's running away from him, but he says maybe my  
19 height, six-foot-two. Okay. Blondish hair, kind of  
20 long, shoulder length. That's the best physical  
21 description we get of the driver, but it is far, far  
22 from the only evidence we have to tell us who that  
23 person was driving that car.

24 What we have instead is all the stuff that  
25 Mr. Cartmell left in that car. A backpack; his

1 backpack, by his own admission. A phone, red Samsung  
2 phone loose in the truck. His phone by his own  
3 admission. His wallet. His identification cards. His  
4 wallet. His driver's license. Another identification.  
5 Social Security card. Quest card with his signature on  
6 the back. A fingerprint on the passenger side door on  
7 the inside of the passenger side door.

8           What happens next? The officers secure the  
9 truck, search the truck. Trooper Martin looks around at  
10 the truck to see if he can't see anything unusual about  
11 the truck, and he sees two things. He sees that the  
12 passenger side door has been drilled. The lock has been  
13 drilled to allow someone to open that door without a  
14 key. Bear this in mind. That's the passenger side door  
15 of the truck, and the fingerprint that belongs to Derek  
16 Cartmell is found on the inside of the passenger door of  
17 that truck.

18           Trooper Martin also observed that the  
19 steering column for that truck has been punched, that  
20 is, the ignition ring of the steering column has been  
21 taken off. There should be a little black piece of  
22 plastic on that steering column that you're looking at  
23 in a GMC truck and there is not in that picture because  
24 it had been broken off, and instead of using a key to  
25 start the ignition, someone, Mr. Cartmell, had used a

1 flat-headed screwdriver to do the same thing.

2 Also in the truck are little baggies, two  
3 little baggies, one containing methamphetamine. Pipes.  
4 A police scanner. That baggie right there.

5 This is our evidence, ladies and gentlemen.  
6 It doesn't come from the mouth of a particular witness,  
7 certainly not from the mouth of a witness who has a  
8 vested interest in the result of this trial. It comes  
9 from bags. It comes from photographs. It comes from a  
10 state trooper who was driving 100 miles an hour on West  
11 Beach Road radioing in for help. It comes from multiple  
12 sources.

13 We know that Trooper Martin, for instance,  
14 was wearing his uniform, not only because Trooper Martin  
15 told us that, but because Mr. Hurley saw him in his  
16 uniform and Mr. Hertling saw him in his uniform.

17 We know the baggies were found in the  
18 driver's compartment of the truck because we have a  
19 picture of them. We know the wallet was found in the  
20 backpack because multiple officers saw it. We have  
21 corroborated evidence of this information. Unlike the  
22 claim that Derek Cartmell was dropping off a student who  
23 was absent at school.

24 So what does this mean? What does this  
25 evidence mean to us? How does this evidence help us

1 was the man who put his fingerprint inside the truck.  
2 Derek Cartmell was the man who was using his own cell  
3 phone up until two to three minutes prior to being seen  
4 by Trooper Martin. Derek Cartmell was the driver of  
5 that car.

6 And, clearly, when the driver of the truck  
7 committed these crimes and when Derek Cartmell was the  
8 driver of the truck, Derek Cartmell committed these  
9 crimes.

10 Instruction 12 is the same type of  
11 instruction. It's the to-convict instruction for  
12 attempting to elude. "That on or about November 1,  
13 2012, the defendant drove a motor vehicle. Derek  
14 Cartmell was the driver of that truck. Two, that the  
15 defendant was signaled to stop by a uniformed police  
16 officer by hand, voice, emergency light, or siren. That  
17 uniformed officer would be Trooper Martin, and he  
18 attempted to stop that vehicle, that truck, with his  
19 lights and his siren; that the signaling officer's  
20 vehicle was equipped with lights and sirens or he  
21 couldn't turn them on; that the defendant willfully  
22 failed or refused to immediately bring the vehicle to a  
23 stop after being signaled. He never willingly brought  
24 that vehicle to a stop. The house did that five miles  
25 after Trooper Martin turned on his emergency lights.

1           That while attempting to elude a pursuing  
2 police vehicle the defendant drove his vehicle in a  
3 reckless manner. There is a definition of reckless in  
4 your instructions. It's to drive in a heedless manner.  
5 Pick your reckless driving: Speed, wrong lane of  
6 traffic, swerving, left-hand turn that you're going too  
7 fast to perform, fishtailing through an S-curve, driving  
8 on the wrong lane of traffic while other cars are going  
9 that direction, crashing into a house. Take your pick.  
10 And that it happened in the state of Washington.

11           Ladies and gentlemen, once we understand  
12 that Derek Cartmell was the driver of that truck, there  
13 are no elements in contention.

14           Instruction 14 is for Count III which is  
15 Possession of a Controlled Substance. There's only two  
16 elements: That on or about November 1, 2012, the  
17 defendant possessed a controlled substance and, two,  
18 that it happened in the state of Washington. There is a  
19 specific definition for possession, and that is  
20 Instruction Number 22. Possession can mean having a  
21 substance -- means having a substance in one's custody  
22 or control. It may be either actual or construct --  
23 actual construction -- actual possession is having it in  
24 your hand, in your pocket, in your control, in your  
25 physical possession.

1           Constructive possession occurs when there is  
2 no actual physical possession, but there is dominion and  
3 control over a substance. That is, it's in your desk  
4 drawer. It's in a place that you have control over.  
5 And you have access to it and you can keep other people  
6 away from it. That's what we're talking about here.  
7 It's the methamphetamine, the little baggie of  
8 methamphetamine right here on the driver's floorboard  
9 inside the truck where Derek Cartmell was the only  
10 occupant. At his feet. It's not Pastor Hurley's  
11 methamphetamine. He told us that. It hadn't been  
12 dropped there by anyone doing any investigation. It  
13 wasn't accidentally included in the search because it  
14 fell out of somebody's pocket. It was put there by the  
15 driver of the truck. It was put there by Derek  
16 Cartmell. And he was the only one with access to the  
17 truck up to the point where it hit a house and he ran  
18 away. But up to that point, he's the person with  
19 dominion and control over the truck, the truck's  
20 contents, and that methamphetamine, and that puts him in  
21 possession of methamphetamine and that's all that needs  
22 to be proved in this case. And that it happened in the  
23 state of Washington.

24           The last to-convict instruction is for hit  
25 and run, and that is Number 16. It spills over two

1 pages. That on or about November 1st the defendant was  
2 the driver of the vehicle. That the defendant's vehicle  
3 collided with property adjacent to any public highway.  
4 That would be the house. That the defendant knew he had  
5 been involved in an accident. Hard to miss this. He  
6 drove into a house. He jumped out of the truck while,  
7 according to Mr. Hertling, there was steam coming out of  
8 the truck that hit the house. You can't not know you  
9 hit a house. That the defendant failed to satisfy his  
10 obligation to fulfill both of the following duties, and  
11 those duties are pretty self-explanatory once you go  
12 through the paragraphs of the legalese and you either  
13 have to find the person that owns the property and give  
14 him your insurance card or you have to leave a note that  
15 says, I'm very sorry, I just ran a truck into your  
16 house, give me call, and I'll give you my insurance  
17 information.

18 I asked Mr. Hertling if he got any insurance  
19 from the guy that was running away from his house and he  
20 laughed at me and said no. That really shouldn't  
21 surprise anyone.

22 When Derek Cartmell drove Big Red into that  
23 house, he ran away and he didn't leave the insurance  
24 information he's supposed to, and that makes him guilty  
25 of hit and run.

1           So, ladies and gentlemen, what we are left  
2 with is this: Derek Cartmell is the driver of that  
3 truck and as the driver of that truck he clearly  
4 committed all four of these crimes. So the only  
5 question for you is, was Derek Cartmell the driver of  
6 that truck? How much evidence do we have that it was  
7 Derek Cartmell behind the wheel, Derek Cartmell that  
8 jumped out of that truck, and Derek Cartmell that ran  
9 away?

10           Well, we have a lot, actually, considering  
11 the eyewitnesses only saw the driver's back. We have  
12 the wallet with the identification cards. Those  
13 identification cards are surprisingly useful. First of  
14 all, they're very important identification cards. This  
15 isn't like a Home Depot membership card we're finding in  
16 his wallet. It's a driver's license. It's a driver's  
17 license with not just Derek Cartmell's name on it. Sex,  
18 male; height, six-foot-two, weight 225. And a picture.  
19 A picture taken in July of 2012, just four months before  
20 this happened. A picture that looks surprisingly like  
21 the defendant with a couple of exceptions. One, this  
22 picture doesn't have a goatee; two, this picture has  
23 wetted-down, light brown longish hair.

24           Now, the defendant would have you believe  
25 that at the time that this was going on he had cut his

1 because I can't make you want me. So please just be my  
2 friend. You will always have my love and I will never  
3 change. You're the one who got away that I fell so in  
4 love with." And it goes on. Derek's apparently the  
5 best sex she's ever had. Note, she calls him by name.  
6 And she'd like to meet up one more time. Too bad Derek  
7 couldn't make that appointment. He was too busy  
8 T-boning a house.

9           That's not a text message that Vic sends to  
10 someone that she doesn't think is Derek. "I take it  
11 you're all good with what I said in my text." And then  
12 he responds to her, "I'm hurt." 4:30 in the morning.  
13 "I was driving down the road when I got your text.  
14 Could not believe it." He calls her a nice and  
15 endearing nickname. And doesn't ring any warning bells  
16 for her. Apparently it's entirely appropriate but  
17 that's not something that someone that's not Derek would  
18 know. Because she invites him over. Again, "call me.  
19 I need to talk to you." The last four are in his house  
20 because they came in after 9:00 and were not read and  
21 the report confirms they were not read.

22           But the important thing here is that Vic  
23 thinks this conversation is with Derek Cartmell and  
24 there's a reason she thinks that because the  
25 conversation was with Derek Cartmell. It's with Derek

1 Reality is smudges. And that's why the standard is not  
2 absolute certainty. In a case like this where  
3 admittedly the evidence is circumstantial, there's no  
4 such thing as absolute certainty.

5           What we're looking for is beyond a  
6 reasonable doubt. And in case anyone is concerned,  
7 Instruction 4, second paragraph, the law does not  
8 distinguish between direct and circumstantial evidence  
9 in terms of their weight or value in finding the facts  
10 of this case. One is not necessarily more or less  
11 valuable than the other. Just because the case is  
12 circumstantial, doesn't mean it's not true.

13           Just because we have a smudge in a white  
14 area doesn't mean we don't have 15 points of comparison  
15 on that fingerprint that says it's Derek Cartmell. Just  
16 because we didn't take 200 fingerprints and compare  
17 them, doesn't mean the one that we did take doesn't  
18 match. When the fingerprint matches, Derek Cartmell was  
19 in that truck. There's no space in that truck for  
20 additional people. There's only one in that truck.  
21 It's pretty crammed. One person, one phone, one wallet,  
22 one fingerprint, one Derek Cartmell, and they all come  
23 together.

24           Ladies and gentlemen, this case walks like a  
25 duck, it swims like a duck, it quacks like a duck, Derek

1 Cartmell is that duck and he is the driver of that  
2 truck. He did put that truck in the house. And you  
3 should find him guilty on all charges. Thank you.

4 THE COURT: At this time I'd like to address  
5 a few comments to our alternate juror, Mr. Atienza.  
6 Sir, at the outset of the trial you were selected as an  
7 alternate juror in case one of the jurors became unable  
8 to serve on the jury. I am now able to temporarily  
9 excuse you as the alternate juror from further service  
10 in the case.

11 I do need to advise you that you are now  
12 temporarily excused. You are not, however, fully  
13 released from the case. You could be recalled for  
14 further service if one of the deliberating jurors  
15 becomes unable to serve. Accordingly, my previous  
16 instructions regarding your activities outside the  
17 courtroom still apply to you, and they will continue to  
18 apply to you until the full jury has completed its  
19 deliberations and has been discharged from the case.

20 To repeat those instructions, do not discuss  
21 the case with anyone. If your family, friends, or  
22 anyone else asks you about the case, you are to explain  
23 that you are not allowed to talk about it. Do not read  
24 any reports that might appear in the media about the  
25 case. Do not consult reference materials, the Internet,

Respectfully submitted on this 27<sup>th</sup> day of  
March, 2014

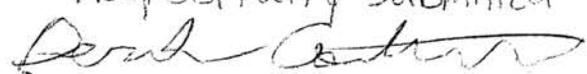
  
Derek Cartmell

Declaration of service  
By mailing

I, Derek Cartmell, do hereby declare  
that I have served a copy of  
Statement of additional Grounds for  
Review:

The Court of Appeals of the state  
of Washington Division I  
One Union Square  
600 University Street  
Seattle WA 98101-4170

I certify under penalty of perjury under  
the laws of Washington that on this  
27<sup>th</sup> day of March 2014 I deposited  
with the R unit officer Station, processed  
as Legal Mail, with first-class postage  
affixed thereto, at the Airway Heights  
Correctional center, Airway Heights, Washington  
99001

Respectfully Submitted  
  
Derek Cartmell