

DISTRICT COURT OF WASHINGTON STATE
FOR GRANT COUNTY

STATE OF WASHINGTON,) NO. EPC033031
 Respondent,)
v.) MOTION TO COMPEL DEFENDANT TO
) UNLOCK CELL PHONE
GAVIN DAVID SEIM)
 Appellant,)
)

COMES NOW the State of Washington, by and through Marc F. Fedorak, Deputy Prosecuting Attorney, and requests the court order the defendant Gavin David Seim to unlock the iphone 7 which was lawfully seized from his person pursuant to a search incident to arrest and is subject to a lawfully issued search warrant; and the State agrees to an in camera review of the contents of the iphone 7 to determine whether the evidence is discoverable.

The above motion is based on the files and records herein, and the following memorandum of law.

I. ISSUE PRESENTED

Whether compelling Mr. Seim to unlock his iphone 7 would violate the Fifth Amendment where the State knows with reasonable particularity that Mr. Seim has the pass code to open his iphone 7, and the State further knows with reasonable particularity that Mr. Seim used the iphone 7 to capture video footage of the incident for which he was arrested?

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II. SHORT ANSWER

Compelling Mr. Seim to unlock his iphone 7 would not violate the Fifth Amendment where the State knows with reasonable particularity that Mr. Seim has the pass code to open his iphone 7, and the State further knows with reasonable particularity that Mr. Seim used the iphone 7 to capture video footage of the incident for which he was arrested.

III. FACTS

The following facts are a brief summary of the facts included in Officer Canady's and Sergeant Froewiss' attached police reports regarding the incident relevant to the above cause.

On August 17, 2017, Officer Patrick Canady of the Ephrata Police Department conducted a traffic stop on a vehicle for an observed equipment violation. The stop took place in the parking lot of the Walmart in Ephrata, Washington. During the course of the traffic stop Gavin David Seim rushed over to the scene and proceeded to hold up a black iphone 7 and aggressively issue commands at Officer Canady.

Mr. Seim confronted Officer Canady about how he parked during the stop. Officer Canady advised Mr. Seim multiple times to step back and return to his vehicle. Mr. Seim refused. Mr. Seim demanded that Officer Canady "move [his] vehicle, stop blocking the aisle, stop harassing people and leave now." Mr. Seim acted in an "aggressive" manner and Officer Canady considered "the demands as threats that if [Officer Canady] did not do what [Mr. Seim] was requesting, something was going to happen to [Officer Canady]." Officer Canady continued to instruct Mr. Seim to return to his vehicle for the safety of others. Mr. Seim continued to refuse.

Eventually during the traffic stop, Mr. Seim walked up to Officer Canady's patrol vehicle and held his iphone 7 towards the inside of the vehicle. Present inside the patrol vehicle were a department issued loaded rifle and shotgun, and a can of pepper spray. The vehicle was running at the time. Officer Canady ordered Mr. Seim to step back. Mr. Seim continued to confront Officer Canady about "harassing and collecting," and did so while displaying an "aggressive demeanor." Officer Canady then entered the patrol vehicle and Mr. Seim continued to confront Officer Canady and hover around the vehicle.

Ephrata Police Department Sergeant Troy Froewiss responded pursuant to Officer Canady's request. Upon arrival Sergeant Froewiss accompanied Officer Canady to arrest Mr. Seim. The officers attempted to make contact with Mr. Seim inside his vehicle and stated Mr. Seim was under arrest but Mr. Seim refused to open his door. Sergeant Froewiss told Mr. Seim he would be charged with resisting arrest if he did not comply and eventually Mr. Seim exited his vehicle.

At the time of arrest, Mr. Seim was holding his iphone 7 and Officer Canady seized it incident to the arrest. Mr. Seim requested Sergeant Froewiss call his mother to pick up his vehicle. Mr. Seim requested Sergeant Froewiss use his phone and instructed Sergeant Froewiss as to how to make the call from the phone. Once the call was made Sergeant Froewiss put the call on speaker and Mr. Seim spoke to his mother from the phone.

In his report, Officer Canady referenced other similar incidents, including one in which Mr. Seim verbalized a threat. During another traffic stop Mr. Seim interfered and stated, "Stop doing what you're doing or else." During these other incidents Mr. Seim held up a cell phone and a video recording subsequently appeared on Mr. Seim's website or

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Facebook page. Sergeant Froewiss also noted he has viewed videos Mr. Seim has posted online where he has video recorded traffic stops.

Subsequent to the iphone 7's seizure, Officer Canady placed the phone into evidence at the Ephrata Police Department. There the evidence was handled by evidence custodian Heather Rhodes. A search warrant was issued by the Grant County Superior Court and the iphone 7 was then sent to Detective Kyle Cox of the Grant County Sheriff's Office to attempt a forensic search. He was unable to conduct the search because he found it must first be opened using a pass code, which an iphone 7 owner can program into the phone. Subsequently, another search warrant was issued by the Grant County Superior Court and the iphone 7 was sent to a private company to attempt to unlock the phone. The attempt was unsuccessful and the iphone 7 was returned to the Ephrata Police Department.

IV. ARGUMENT

Certain obligations are placed on a criminal defendant with regard to providing access to discoverable material to the plaintiff. CrRLJ 4.7(b). For instance, "Except as otherwise provided by protective orders or as to matters not subject to disclosure, the defendant shall, upon written demand, disclose to the prosecuting authority . . . any books, papers, documents, photographs, or tangible objects which the defendant intends to use in the hearing or trial . . ." Furthermore according to CrRLJ 4.7(e)(1), "Upon a showing of materiality and if the request is reasonable, the court in its discretion may require disclosure of the relevant material and information not covered [elsewhere in CrRLJ 4.7]." An order may be conditional so as to avoid unnecessary embarrassment. CrRLJ 4.7(e)(2). Furthermore, discovery may be regulated through use of a review of the evidence in camera and excision to limit disclosure to only

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material evidence. CrRLJ 4.7(g)(5), (6).

Both the Washington State and Federal constitutions limit what evidence the court can compel a defendant to produce. The Fifth Amendment of the Constitution of the United States provides in part, “No person shall . . . be compelled in any criminal case to be a witness against himself” Article I, Section 9 of the Constitution of Washington State provides, “No person shall be compelled in any criminal case to give evidence against himself” Washington State courts have given both provisions the same interpretation. *State v. Mendes*, 180 Wn.2d 188, 322 P.3d 791 (2014); *State v. Unga*, 165 Wn.2d 95, 196 P.3d 645 (2008); *State v. Foster*, 91 Wn.2d 466, 589 P.2d 789 (1979). The issue this court must decide is whether the constitutional right applies where the State asks the defendant to unlock a cell phone.

When production of evidence does concede the existence, custody, and authenticity of that evidence, the Fifth Amendment privilege against self-incrimination applies because that production constitute compelled testimony. However, the “foregone conclusion” doctrine is an exception. *Fisher v. United States*, 425 U.S. 391, 96 S. Ct. 1569, 48 L. Ed.2d 39 (1976). Under this doctrine, the Fifth Amendment does not protect an act of production when any potentially testimonial component of the act of production, such as the existence, custody, and authenticity of evidence, is a “foregone conclusion” that adds little or nothing to the sum total of the State’s information.” *Id.* at 411. For the rule to apply, the State must be able to “describe with reasonable particularity” the documents or evidence it seeks to compel. *United States v. Hubbell*, 530 U.S. 27, 30, 120 S. Ct. 2037, 147 L. Ed.2d 24 (2000).

The Supreme Court of the United States has not ruled on the application of the “foregone conclusion” doctrine with respect to compelled decryption of cell phones. In the 9th Circuit the Court of Appeals has applied the “reasonable particularity” standard of the “foregone conclusion” doctrine to compelled documents but has not addressed encrypted technology. *Doe v. United States (In re Grand Jury Subpoena)*, 383 F.3d 905 (9th Cir. 2004). However, in other jurisdictions two theories of the application of the “foregone conclusion” doctrine have emerged. One theory requires the State to show knowledge with reasonable particularity that (1) the pass code exists, (2) the pass code is within the defendant’s possession or control, and (3) the pass code is authentic. See *Massachusetts v. Gelfatt*, 468 Mass. 512, 11 N.E.3d 605, 614-615 (2014); and *United States v. Fricosu*, 841 F. Supp.2d 1232, 1237 (D. Colo. 2012). An alternative application examines whether there has been an additional showing as to knowledge with reasonable particularity (1) of the existence of evidence on the phone, (2) the evidence is within the possession of the defendant, and (3) the evidence is authentic. *United States v. Apple Mac Pro Computer*, 851 F.3d 238, 248 (3rd Cir. 2017).

In *Apple Mac Pro Computer*, the United States Court of Appeals held an order to a defendant in a child pornography case to provide a pass code to decrypt an iphone and hard drives did not violate the Fifth Amendment. *Id.* at 248. There was an adequate showing the devices were encrypted since investigators were not able to gain access during their search. *Id.* Also, evidence from the family member confirmed the defendant had a pass code that would allow access. *Id.* Therefore, there was an adequate showing the pass code was in the possession of the defendant and authentic. *Id.* There was an adequate showing the Government knew of the existence of evidence inside the devices. *Id.* There was evidence a family member had viewed

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photos from the defendant's hard drive. *Id.* In addition, investigators found photos from other parts of the iphone and hard drives. *Id.* The court found any additional information provided by the defendant's decryption of the iphone and hard drive "added little or nothing to the information already obtained by the Government." *Id.*

The court analysed the facts according to both possible applications of the "foregone conclusion" doctrine. However, in a footnote the court stated:

It is important to note that we are not concluding that the Government's knowledge of the content of the devices is necessarily the correct focus of the "foregone conclusion" inquiry in the context of a compelled decryption order. Instead, a very sound argument can be made that the foregone conclusion doctrine properly focuses on whether the Government already knows the testimony that is implicit in the act of production. In this case, the fact known to the government that is implicit in the act of providing the password for the devices is "I, John Doe, know the password for these devices." Based upon the testimony presented at the contempt proceeding, that fact is a foregone conclusion. However, because our review is limited to plain error, and no plain error was committed by the District Court in finding that the Government established that the contents of the encrypted hard drives are known to it, we need not decide here that the inquiry can be limited to the question of whether Doe's knowledge of the password itself is sufficient to support application of the foregone conclusion doctrine.

Id. at fn 7. Since the evidence sought is decryption or a mere pass code, reason suggests a court should focus the reasonable particularity examination on the pass code alone, not other evidence located in the cell phone or hard drive. However, for the purposes of this motion the State will consider both applications.

In the present case, no Fifth Amendment protection would exist under either application of the "foregone conclusion" doctrine. First, the facts show with reasonable particularity the State knows Mr. Seim can unlock his iphone 7. When Detective Cox attempted to conduct a forensic search he discovered the iphone 7 was pass code protected. The State knows the pass code exists. Officer Canady observed Mr. Seim using the iphone 7 to record the traffic stop and

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Mr. Seim instructed Sergeant Froewiss as to how to use the iphone 7. The State knows the defendant is in possession of the pass code. Finally, given Mr. Seim was able to operate the iphone 7 the State knows the pass code is authentic.

Second, the facts show with reasonable particularity the State knows evidence of the incident in question is on Mr. Seim's iphone 7. Mr. Seim's actions of yelling at Officer Canady running up to the patrol vehicle thereby distracting Officer Canady from the traffic stop constituted obstructing a law enforcement officer. The facts are clear that Mr. Seim was capturing video footage of the incident. Mr. Seim was holding the iphone 7 up in a manner in which someone would hold a camera to video record. Mr. Seim is well known to video record traffic stops and Officer Canady has personally observed Mr. Seim video record the stops. Therefore, the State knows the evidence is on the iphone 7. The iphone 7 was taken from Mr. Seim's hand incident to his arrest. Therefore, the State knows Mr. Seim was in possession of the evidence from his iphone 7 when he was arrested. The iphone 7 was taken from Mr. Seim contemporaneous to the incident. Since the iphone 7's seizure it has remained in the State's custody. Therefore, there was no opportunity for the evidence to be in any way altered or tampered with. The evidence is known to be authentic.

Compelling the defendant in this case to unlock his cell phone would provide little more information than that already known to the State. The State has already secured a search warrant to search for the video recording that was created by Mr. Seim with the lawfully seized iphone 7.

Such a requirement on Mr. Seim would not offend the Fifth Amendment any more than requiring a defendant to provide fingerprints, a DNA sample, or wear particular clothing. Courts have held a defendant may be required to perform those acts. *State v. Haugen*, 3 Wn. App. 572, 476 P.2d

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132 (1970); *State v. Bauman*, 77 Wn.2d 938, 468 P.2d 684 (1970). The order requested by the State would not violate Mr. Seim's rights under the Fifth Amendment.

V. CONCLUSION

The State requests the court order the defendant to unlock his cell phone; and the State agrees to condition disclosure of the phone's contents on an in camera inspection.

Respectfully submitted this 25th day of October, 2017.

GARTH DANO
Grant County Prosecuting Attorney



MARC F. FEDORAK, WSBA #36405
Deputy Prosecuting Attorney

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Ephrata Police Department

Prosecutor Report for Incident 17EP3116

RECEIVED
AUG 30 2017
GRANT COUNTY
PROSECUTING ATTORNEY

Nature: Traffic Vio/Haz

Address: 1399 NAT WASHINGTON WAY;
Walmart

Location:

EPHRATA WA 98823

Offense Codes: TOFF

Circumstances:

Received By: M36

How Received: Officer or Unit

Agency: EPPD

Responding Officers: Canady, Patrick

Responsible Officers: Canady, Patrick

Disposition: Active 08/17/17

When Reported: 13:31:06 08/17/17

Clearance: Officer Report to Follow

Occurred Between: 13:31:06 08/17/17 and 13:31:06 08/17/17

SUSPECTS:

Name: SEIM, GAVIN D.

Name Number: 68976

Race: W Sex: M

DOB: 01/17/85 Height: 5'11" Weight:160

Hair: BRO Eyes: GRN

Address: 810 L ST SE, EPHRATA, WA 98823

Home Phone: (509)951-4860 Work Phone: (509)951-4860

COMPLAINANT:

Name: EPHRATA POLICE DEPARTMENT

Name Number: EPD

Race:

Sex:

DOB: **/**/**

Height: ''

Weight:0

Hair:

Eyes:

Address: 121 ALDER ST SW, EPHRATA, WA 98823

Home Phone: (509)754-2491 Work Phone: (509)754-1294
fax

WITNESSES:

Name: EDWARDS McMULLEN, ELIZABETH E.

Name Number: 296720

Race: W

Sex: F

DOB: 08/02/83 Height: 5'01"

Weight:140

Hair: BRO

Eyes: BLU

Address: 9357 DODSON RD NW, EPHRATA, WA 98823

Home Phone: (509)488-4295 Work Phone: () -

Name: DOONAN, SEAN M.

Name Number: 389056

Race: Sex: DOB: 09/06/68 Height: ' " Weight:0 Hair: Eyes:

Address: 532 MERCYLN LN, ZILLAH, WA 98953

Home Phone: () - Work Phone: () -

INVOLVEMENTS

evmain	17EPE0466	08/17/17	evidence
evmain	17EPE0477	08/25/17	evidence
immisc	17EPM0943	08/21/17	Records Request
immisc	17EPM0999	08/30/17	Tracking
vhmain	166824	08/25/17	vehicle
nmmain	68976	08/17/17	Suspect
nmmain	296720	08/17/17	witness
nmmain	389056	08/17/17	witness
evmain	17EPE0466	08/17/17	Evidence Incident
evmain	17EPE0468	08/18/17	Evidence Incident
evmain	17EPE0477	08/25/17	Evidence Incident
nmmain	EPD	08/17/17	Complainant
jloffens	17J05759	08/17/17	Charged With
jloffens	17J05760	08/17/17	Charged With
cdcall	C17084667	08/17/17	Initiating Call
ctmain	EPC033031	08/30/17	Citation

CITATION INFORMATION:

Citation #: EPC033031

Date Issued: 00:00:00 08/17/17

Court: Ephrata Dist Crt

Speeds: Posted 0 Safe: 0 Actual: 0

Court Date: **:**:** */**/**

Vehicle #:

Bond Type:

Bond Amount: 0

Person Cited: SEIM, GAVIN D.

Name #: 68976

Race: W Sex: M DOB: Height: 5'11" Weight: 160 Hair: BRO Eyes: GRN
01/17/1985

Address: 810 L ST SE, EPHRATA, WA 98823

Home Telephone: (509)951-4860 -- Work Telephone: (509)951-4860

OFFENSE:	DESCRIPTION:	DISPOSITION:
9A.46.020	HARASSMENT	
9A.76.020	Obstructing a Law Enforcement Officer	

VEHICLE INFORMATION:

Owner ID Number: 68976	Vehicle Number: 166824	License Plate: B48820S		
VIN: 1GTHK23191F178565	State: WA	Expires: **/**/**		
Year: 2001	Model: SIERRA	Type: PTK	Color: BLU/	Doors: 0
Value: 0	Characteristics:			

NARRATIVE:

Law Enforcement

Investigation Narrative

Suspect: Seim, Gavin D. 1-17-85
Charge/RCW: Harassment 9A 46.020
Obstructing Law Enforcement Officer 9A 76.020
Citation: EPC033031
Custody Status: (X) Jail () Free

Narrative: On 8-17-17 at approx. 1331, I was working for the City of Ephrata. I was in full uniform and driving a fully marked patrol car with overhead lights, siren, push bumper and with decals on the side of the marked vehicle indicating I was the Ephrata Police Dept. I made a traffic stop with WA plate# B48411T in the parking lot of Walmart at 1399 Nat WA Way. The traffic stop was in the parking lot on the eastside of the garden center in the parking stalls next to the garden center fence which placed my patrol car behind and off to the left of the subject vehicle. This also placed my patrol car in the middle of the driving area between the parking stalls on the west side and the east side of the parking lot thus partially blocking the main drive through area of the parking lot. I contacted the driver, who was later identified as Elizabeth E. Edwards 8-23-83, reference a taillight violation (right brake light stopped working when the right turn signal was activated). Edward's vehicle license plate tabs were also expired on 8-6-17.

While I was out with Edwards, I observed a truck I recognized as belonging to Gavin Seim parked on the far east parking stalls of the same parking lot. I asked Sgt. Froewiss to respond to my location as Seim was at my location. I requested Sgt. Froewiss respond because Seim had made several contacts with me in the past and the contacts were getting more frequent. Seim has a history of confronting Law Enforcement while using his cell phone to record the confrontation. Seim often disseminates these videos on social media and/or YouTube after he edits them. I have watched Seim's videos in the past and he has advised in his videos that he will not listen to the police and will not go by the state's gun laws and restrictions. (See final paragraph reference past contacts and some details) I saw Gavin D. Seim 1-17-85 walk around the vehicle I had stopped from the right rear of the vehicle to the driver's side. Edwards asked me if the male was Gavin Seim.

Seim was standing approximately 2-5 feet from the rear of the vehicle I had stopped. Seim was holding a black cellphone and accusing me of harassing and collecting from the public. Seim was also confronting me about the way I had parked in the parking lot. I advised Seim multiple times to step back and go to his vehicle which he refused. Seim demanded that I move my vehicle, stop blocking the aisle, stop harassing people and leave now. At first, I did not know how to take this from Seim. I have had multiple contacts with Seim in the past. I felt very uncomfortable with his aggressive demeanor and his demands which I had not seen from Seim before. I took the demands as threats that if I did not do what he was requesting, something was going to happen to me. I advised Seim that I would not and told him to go to his vehicle. I instructed him to go to his car was for his safety, the safety of the people in the vehicle I had stopped, and for my own safety. Seim still refused to comply. I requested dispatch advise Sgt. Froewiss to expedite his response. Seim was very agitated and much more aggressive than I had ever observed in the past contacts I have had with him.

I stepped towards the front of the driver's door of the vehicle I had stopped to monitor Edwards, her passengers and Seim. Seim walked towards the passenger's side of my patrol car while Edwards was looking for her insurance. I watched Seim walk to the driver's side of my vehicle. The driver's side window of my vehicle was rolled down all the way as the weather for the day was approximately 80 degrees. I watched Seim lean into the driver's side window with him holding his cellphone close to himself. Being my vehicle was running, the driver's side door and window were not secure, my department issued rifle and shotgun were loaded, a can of pepper spray was accessible, the keys were in the ignition and with the motor running I felt very uncomfortable and unsure what Seim was going to do. I once again instructed Seim to step back.

I advised Edwards to give me a moment to deal with Seim. Seim was taking my full focus from the traffic stop and placed it onto himself at this time because of his aggressive demeanor. I approached Seim and he went to the passenger's side of my vehicle where the front fender and the door meet. Seim was confronting me about how I was harassing and collecting. I advised him that he was talking to the officer that helped his father plow out his business when it was plowed in with snow. I also advised him that I was the same officer that solved his father's burglary. Seim did not want to argue about what I have done for others but rather what I'm doing to others.

I entered my car and rolled up the front passenger window which, was half way down. Seim was standing at the passenger's window, wanting it rolled down. Seim then went to my driver's side while still confronting me. Seim was moving all around like a fly on a hot griddle. I advised Seim that I would be taking his phone as evidence. Seim told me I couldn't do that. I rolled my driver's side window up. Seim continued to confront me and I told him to back up. Seim went to his vehicle continuously stating that I was harassing and collecting. I took down Edwards' information and was unable to run her name through DOL. I re-contacted Edwards and gave her driver's license and registration back. I apologized to Edwards and told her that I needed to end this traffic stop so I could fully focus on Mr. Seim.

Sgt. Froewiss arrived and I advised him of what was going on. He asked me if there was probable cause to arrest Seim. I advised him there was probable cause to arrest Seim for Harassment and Obstructing a Law Enforcement Officer. Sgt. Froewiss and I walked to Seim's vehicle and made contact with him on the driver's side. Seim had the driver's side window rolled up. I asked Seim to step out of the vehicle, Seim asked; what for? I advised him that he was under arrest for Harassment and Obstructing a Law Enforcement Officer. Seim stopped me and told me to wait so he could start up his cell so he could record. Seim began to record on his cellphone and he unlocked the door.

Seim stepped out of the vehicle, I took his cellphone from his hand and placed it on the driver's seat. Seim was handcuffed (gauged to fit and double locked) and I escorted him to my patrol car where he was searched and placed into the back seat. Seim's wallet was taken off of him and placed into my vehicle. Sgt. Froewiss had Seim's cellphone and handed it to me. The cellphone was placed into my vehicle. Seim was transported to the Grant County Jail. While enroute to the jail, Seim continuously called me a thug, a robber, a thief, and a bad cop. Seim continuously demanded to know if I believed in God and that all my wrong doings will affect me. Seim was booked for Harassment and Obstructing a Law Enforcement officer under Citation # EPC033031. I made a copy of the Citation was left at the jail. Seim was advised that he was being booked for Harassment and

Obstructing a Law Enforcement Officer. He was also advised the right to an attorney.

I cleared the jail and went back to the Ephrata PD. I logged the cellphone into evidence and realized that I had forgotten to give Seim his copy of the citation. A short time later, I was advised that Seim had already been released from the jail. Seim's copy was later mailed to him certified mail.

On 8-25-17 at 0550, I reported for duty at the Ephrata PD. I received a copy of the incident from Walmart security. It showed the following:

At 1323, Seim pull into the Walmart parking through the middle eastside entrance. Seim drives to the Tire and Lube center and parks his vehicle, where he walks into Walmart

At 1330, I was behind Edwards' vehicle making a traffic stop with my overhead lights on. The vehicle pulls in the parking lot, east of the garden center.

At 1330, Seim exits out of the store through the same entrance door he had walked into.

At 1331, I exit my marked patrol car.

At 1331, Seim walks to his vehicle and enters it at 1331. Seim's vehicle was facing north and he backs out of his parking space. Seim accelerates rapidly and a large amount of exhaust come out of the right side tail pipe. Seim makes a u-turn in the parking and drives south through the parking where I'm conducting a traffic stop. Seim slows down almost to a stop. His vehicle is almost across the whole driving portion of the parking lot. Seim turns left (East) and parks his vehicle in the parking stalls in the far east side of the parking lot. Seim exits his vehicle and walks towards my traffic stop.

At 1332, Seim walks around my patrol car from the front and to the driver's side. Seim, while holding his camera, leans in towards the driver's side window with his camera. Seim steps back up quickly and then begins to start pointing with his left hand. Seim walks to the back of the patrol car and to the passenger's side of the patrol car until he is out of view.

At 1333, I walk back to my patrol car, open the driver's side door and speak to Seim. Seim is still out of the picture. I get back into my patrol car and shut the door. Seim walks around my patrol car from the passenger's side to the back of the patrol car and to the driver's side. Seim is approximately 5 feet from the driver's side door, squatting down while holding his cellphone at me with his right hand. Seim walks to the rear of my patrol car and to the passenger's side flailing both his arms and then he is out of the picture.

At 1335, I get out of my patrol car as Sgt Froewiss arrives at my location. I walk back and make contact with him. We stand there for a brief moment. I walked towards Edwards' (Out of picture) and Sgt. Froewiss follows.

At 1336, The driver and the children exit the vehicle and walk towards the front of Walmart.

At 1337, Seim is escorted to the right rear door of my patrol car and searched

At 1338, Seim was placed into the back of my patrol car while Sgt. Froewiss stands with Seim

At 1340, I was contacted by a witness, Sean M. Doonan 9-6-68. I walk back to my patrol car and obtained a written statement. I re-contact him. I hand him the statement and he walks back to the main parking lot of Walmart.

At 1343, I get back into my patrol car then get back out and contact Seim while I place his seat belt on him. I get back into my patrol car and transport Seim to the Grant County Jail at 1344.

At 1344, Sgt. Froewiss clears and parks just a little south of the parking lot.

At 1347, A vehicle pulls up and parks by Sgt. Froewiss. Sgt. Froewiss is contacted by two subjects.

At 1352, Seim's vehicle is moved to Sgt. Froewiss's location

At 1353, The first vehicle that parked by Sgt. Froewiss's patrol car and Seim's vehicle leave the parking lot.

At 1353, Video Ends

On 8-25-17 at approximately 1125, I applied for a search warrant for Seim's black phone to recover the video of the incident at Walmart on 8-17-17. I made contact with Judge Estudillo who swore me in and read my search warrant affidavit. I received a warrant from Judge Estudillo which allowed to search Seim's black phone for the video where Seim confronts Officer Canady at Walmart parking lot at approximately 1330.

On 8-25-17, I went to the Grant County Sheriff's office and made contact with Detective Kyle Cox. I had spoken to Cox earlier in the morning who advised me he was trained to look into and retrieve information from cellphones. I took a copy of the warrant and Seim's cellphone to Detective Cox. Cox logged, photographed and attempted to look into the phone but was unable to get into the phone because it was locked with a password.

The following dates are days that Seim has confronted me:
On 12-18-14 on Basin St SW and 1st Ave SW while on a traffic stop with my overhead lights on. An unknown vehicle parks directly behind my patrol vehicle while I'm out of my car. With my overhead lights flashing, I could not see who or what was going on in the car behind me. From the outside of my car, I turned my spotlight on that vehicle. I could see it was Seim in his car. I left the spot light on Seim while I made contact with my subject vehicle. I saw Seim drive past me and park in front of the subject vehicle. Seim gets out of his car, walks almost up to the front bumper of the subject vehicle, holding his cell phone out as if he was recording. I asked Seim if I could help him and he advises he is observing. I asked Seim to return to his car and Seim refused. I instructed Seim to go back to his car explaining to him that he did not know what was in the vehicle I was out with. Seim walked back to his vehicle. (In the video Seim posted on YouTube, he edits out the part when he goes back to his vehicle). After the subject vehicle leaves, Seim confronts me and demands that I do not shine any light at anyone. At one time, Seim gives me an ultimatum to stop doing what I'm doing or else.

On 8-23-15 on Nat Washington Way and A St SE on a traffic stop where Seim pulled

up on the other side of the street with his vehicle and shinned his high beams and fog lights at my patrol car driver's window making me unable to see. I turned my spotlight on his vehicle to see what he was doing. While on the stop, Seim demanded that I turned my spot light off. I asked him to turn his lights off first and Seim refused.

On 8-2-17 on 5th Ave SE and C St SE on a traffic stop. I had stopped a vehicle for no working taillights and expired tabs. While on the stop, I see Seim drive west on 5th Ave SE and make a u-turn in the middle of 5th Ave SE. I saw Seim drive past me and park just behind me and across the street from my location. Seim asked me if I was harassing people. I told him no that he Seim was harassing me. Seim asked me what I was stopping the subject for. I advised him it was a traffic violation. As I was walking back to my patrol car, Seim asked me if I was doing any good or giving the locals trouble. I told him that he was giving me trouble.

Seim got out of his truck and was approaching my patrol car while I was in it. Seim asked if he could ask a question and I told him I would answer one question. Seim asked me what I had stopped this guy for and I told Seim it was for expired tabs. Seim said the subject was parked in front of his own house. I advised Seim that he did not know that. (The subject did not live there) Seim was confronting me about the stop. I began to drive off as Soap Lake PD advised me of a subject that would be coming to Ephrata from Soap Lake. Seim was running next to the driver's side of my vehicle that had its window. Seim was demanding that he ask and I answer more than one question. I stopped and told Seim that I answered his question and I was nice. I also stopped because he was running next to my car approximately 3 feet. I began to drive off again and Seim continued to run next to my car. Seim tells me to stop harassing. I advised of the same.

I later watched the video of the confrontation which Seim posted on YouTube. Seim in his video said that Ephrata was a small town and he was going to go look for me, as he is driving around looking for me. Seim drives through the parking lot of the Ephrata PD and said my car was in the parking lot. My car and I were on the northside of Ephrata looking for a subject driving in his vehicle from Soap Lake.

On 8-17-17 (today) while on a traffic stop in the Walmart parking lot, Seim confronts me again but in a much more aggressive way.

RCW 9A.72.085 "I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct."

Date: 8-30-17
Reporting Officer: P. R. Canady
Agency: Ephrata PD

Supplemental Narrative:

Name: Froewiss, Troy

Date: 17:19:07 08/17/17

SUPPLEMENTAL OFFICER'S REPORT

On 08/17/17 at approximately 1332 hrs, I was on uniformed patrol for the Ephrata Police Department driving a fully marked patrol vehicle. I was working with Officer P. Canady and knew he was on a traffic stop in the Walmart parking lot, located at 1399 Nat Washington Way. Canady contacted me on the Ephrata tactical channel and requested I responded to his location.

I asked Canady if he needed me to respond with a code response (lights and or sirens) and he did not answer. I advised MACC of Canady's request and asked them to inquire over the primary frequency if he needed a code response. Canady did not answer and I responded code with my overhead lights activated and used my siren when necessary.

It should be noted; the radio reception at Walmart is very spotty, I was not sure whether Canady was not answering me because he was dealing with some type of serious situation or if his radio was simply not receiving my traffic.

I arrived approximately one minute later and parked behind Canady's vehicle. I observed a Chevrolet truck parked to the right of Canady's vehicle which I immediately recognized as belonging to Gavin D. Seim (01/17/85). I know of Seim to regularly film law enforcement contacts with citizens and have watched videos Seim has posted online showing this. I have also watched videos Seim has posted online where he isn't simply standing to the side making comments while filming but harasses and interferes with Canady and other officers while they are on contacts or traffic stops.

I exited my patrol vehicle and approached Canady as he spoke with the driver of the vehicle he stopped. Canady apologized to the driver about what took place and advised her she can enter Walmart. The female driver also apologized to him about what took place and Canady turned towards me.

I asked him to tell me what happened and he told me while he was conducting this traffic stop, Seim interfered. Canady told me Seim was actually leaning into his vehicle at one point and taking his attention away from the stop. Canady said he told Seim at least twice to return to his vehicle and Seim did not comply. Canady said Seim was filming the incident.

I asked Canady if he has probable cause (PC) to arrest Seim. Canady said he has probable cause to arrest Seim for Harassment and Obstructing a Public Servant. I told Canady, if you have PC then make the arrest.

Canady approached the driver's side door of Seim's vehicle and the window was rolled up. Canady knocked on the window and Seim did not respond. Canady attempted to open the door and it was locked. Canady again knocked on the window and told Seim to step out of the vehicle. Seim rolled the window down approximately 6 inches and said something to Canady. Canady told Seim to step out of the vehicle and he did not comply. Canady told Seim he is under arrest and again told him to step out of the vehicle, without compliance.

I advised Seim; If you do not exit the vehicle, you will also be arrested for Resisting Arrest. Seim repeated what I said in the form of a question and I

again told him if he did not comply he will be arrested for Resisting Arrest. Seim exited the vehicle and Canady placed him in custody. I took possession of Seim's cellular phone.

Canady escorted Seim to the rear of his patrol vehicle and searched him incident to his arrest. Seim was seated in the back seat of Canady's patrol vehicle on the passenger side. I asked Seim if he would like me to secure his truck or leave it as is. Seim asked if he could call someone to pick it up. I told him he could and asked if he wanted me to handle his phone or use my own phone. Seim told me to use his phone.

I followed Seim's instructions on navigating his phone and called the number he told me to call, then placed the phone on speaker. Seim spoke with who he said is his mother. Seim told his mother he is under arrest and asked her to make arrangements for his truck to be picked up. Seim told his mother to tell everyone to call the Ephrata Police Department (EPD). (It should be noted, just minutes after the arrest, EPD clerical staff started to get bombarded with harassing phone calls from all over the country which went on for two days).

Canady pointed to a male subject who was later identified to me as Sean M. Doonan (09/06/68). Canady told me Doonan witnessed the incident and is filling out a written statement. Canady advised me to contact Doonan to obtain the statement. Canady transported Seim to the Grant County Jail while I contacted Doonan.

As I was speaking with Doonan, a male and female approached me. The male was filming me with a tablet. I later determined the male and female to be Seim's parents. Seim's father asked me numerous questions about the arrest to which I advised him to do a public records request. After approximately 2 minutes, I told the father I was finished speaking with him and I walked back to where Doonan was standing.

Doonan completed the statement which he signed in my presence. Doonan told me he observed the traffic stop and did not see that the officer did anything wrong. Doonan said if he thought the officer did do something wrong, he would tell me. Doonan said the male (Seim) was yelling and screaming at the officer. I thanked Doonan and I cleared. I later gave Canady the written statement which is attached to his report.

At approximately 1830 hrs, I contacted EPD Officer C. Eckhart and requested he contact the violator of the vehicle Canady had stopped. I asked Eckhart to have the driver fill out a written statement. On 08/21/17, upon returning to work from my days off, I received an e-mail from Eckhart advising me he obtained a written statement from the violator and forwarded it to Canady.

RCW 9A.72.085 "I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct."

Date: Mon Aug 21 11:19:01 PDT 2017
Reporting Officer: Sgt. T. Froewiss #206
Agency: Ephrata PD