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No. 91827-9

THE SUPREME COURT OF WASHINGTON

CITY OF LAKEWOOD,

Respondent/Cross-Petitioner

v.

ROBERT W. WILLIS,

Petitioner/Cross-Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER ROBERT WILLIS

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ORIGINAL

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I. INTRODUCTION

Robert Willis was found guilty in Lakewood Municipal Court of violating LMC 09.4.020A, Begging in a Restricted Area [Begging Ordinance] for begging at an interstate off ramp intersection. The City of Lakewood has a city ordinance that is content based and is neither reasonable or viewpoint neutral, which prohibits begging in certain areas, during certain times or if they are under the influence. The ordinance does not prohibit other forms of solicitation and specifically targets individuals or organizations asking for charity. Willis appealed the conviction arguing that the ordinance violated his constitutional rights to free speech, due process, and equal protection. Solicitation and begging are protected forms of speech. The ordinance is facially content based and not a viewpoint neutral prohibition on speech, as it targets a specific form of speech as opposed to the behavior the ordinance attempts to protect against.

II. ASSIGNMENTS OF ERROR

1. Whether Willis can be convicted under an ordinance that criminalizes speech otherwise protected by the First Amendment?

A. Whether interstate highway off-ramp intersections are traditional public forums?

B. Whether the City of Lakewood created a limited public forum at the interstate highway off-ramp intersection where Willis was arrested by permitting multiple other forms of speech at this location, including political speech, public announcements and private solicitation advertisements?

2. Whether the Begging Ordinance violates Willis' First Amendment right to Freedom of Speech as it is content based and not a view point neutral or reasonable prohibition on speech?

A. Whether the Begging Ordinance is content neutral?

B. Whether the Begging Ordinance is viewpoint neutral?

C. Whether the Begging Ordinance is reasonable?

3. Whether Willis is entitled to a new trial based on the Court of Appeals Ruling?

III. STATEMENT OF THE CASE.

Robert Willis was charged in Lakewood Municipal Court with Begging in Restrictive Areas – LMC 9A.04.020A. *See* Exhibit 1, Amended Complaint, dated September 9, 2011.

The undisputed facts are that Willis was standing at the intersection of the northbound I-5 Exit to Gravelly Lake Drive SW in Lakewood, Washington. The police report narrative by Officer Vahle,

which was stipulated to for probable cause at arraignment states these facts:

“[Officer Vahle] located [Willis] standing at the intersection [of N/B I-5 Exit to Gravelly Lake Dr SW]. Willis’ back was to [the Officer] and he did not notice [the Officer’s] fully marked police vehicle park by the sidewalk behind him. Willis walked into the lane of travel holding a cardboard sign toward vehicles that were waiting to make a left turn. Willis’ sign claimed he was disabled and needed help.”

See Exhibit 2, Police Report, incident No. 112300412.1, dated August 29, 2011.

At trial, Officer Vahle testified that he reported to the “northbound I-5 exit to Gravelly Lake Drive.” See Report of Proceedings (hereinafter “RP”) at 22. Officer Vahle saw “an individual on the northbound ramp of I-5 at the intersection facing southbound towards traffic.” *Id.* Officer Vahle watched “that individual actually walk from the shoulder, across the fog line out to a car, so it was actually in the lane of travel, or in the exit lane.” RP 22-23. At no point does anyone testify that Willis stepped in front of traffic, impeded traffic or prevented any vehicles from moving. Nor did anyone testify that Willis was at an on-ramp or on I-5.

The City alleged this action put Willis in violation of Lakewood Municipal Code **09A.4.020A - Restrictive Areas**, which states:

Begging shall be deemed a violation of this section of the municipal code under the following conditions: (1) at on and off ramps leading to and from state intersections from any City

roadway or overpass; (2) at intersections of major/principal arterials (or islands on the principal arterials) in the City; (3) within twenty five (25) feet of an ATM machine, or financial institution; (4) within fifteen (15) feet of any (a) occupied handicapped parking space, (b) taxicab stand, or (c) bus stop, train station or in any public parking lot or structure or walkway dedicated to such parking lot or structure; (5) before sunrise or after sunset at any public transportation facility or on any public transportation vehicle or (6) while a person is under the influence of alcohol or controlled substances. (Ord. 532 § 1 (part), 2011.).

See also Exhibit 3, Jury Instructions, “to convict” and definition of “Restricted Areas”. “Begging” is defined as “asking for money or goods as a charity, whether by words, bodily gestures, signs or other means.” LMC 09A.4.020 (E).

Willis was found guilty at a jury trial. This appeal followed.

IV. ARGUMENT IN SUPPORT OF ASSIGNMENTS OF ERROR

1. The Lakewood Begging Ordinance violates Willis’ First Amendment right to Freedom of Speech because it is a content based prohibition on speech in a public forum.

A. Interstate highway off-ramp intersections are traditional public forums.

The state and federal constitutions allow regulation of protected speech in certain circumstances. *Bering v. Share*, 106 Wash.2d 212, 221—22, 721 P.2d 918 (1986), cert. dismissed, 479 U.S. 1050, 107 S.Ct. 940, 93 L.Ed.2d 990 (1987), *City of Seattle v. Huff*, 111 Wash.2d 923, 926, 767 P.2d 572, Wash., (1989). However, government interference with speech or expressive conduct is prohibited by the First Amendment. *State v.*

Halstien, 122 Wash.2d 109, 121, 857 P.2d 270 (1993). When the government restricts speech, the government must prove the constitutionality of its actions. *Greater New Orleans Broadcasting Assn., Inc. v. United States*, 527 U.S. 173, 183, 119 S.Ct. 1923, 144 L.Ed.2d 161 (1999).

The extent of permissible regulation depends on whether the speech takes place in a public or a private forum. *Huff*, 111 Wash.2d at 927, 767 P.2d 572. “[T]he First Amendment affords more protection to speech in a public forum, a place traditionally devoted to assembly and debate, and to channels of communication used by the public at large for assembly and speech.” *City of Seattle v. Ivan*, 71 Wash.App. 145, at 152, 856 P.2d 1116, (1993).

The traditional public forum includes those places such as parks, streets and sidewalks. *Collier v. City of Tacoma*, 121 Wash. 2d 737, 746-47, 854 P.2d 1046, 1050 (1993). Streets and parks are “held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” *Acorn v. City of Phoenix*, 798 F.2d 1260, 1264-66 (9th Cir. 1986) overruled on other issues by *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936 (9th Cir. 2011). Use of

streets and public places has, “from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.” *Id.*

The location and purpose of the property and the government’s subjective intent for building the property are considered when determining the nature of the property for forum analysis. *Jacobsen v. Bonine*, 123 F.3d 1272, 1273 (1997).

The intersection where Willis was arrested has a sidewalk, crosswalk and traffic signal accessible by everyone in the general public and is used as a thoroughfare for Gravelly Lake Drive. *See* Exhibit 2. The entirety of Willis’ illegal behavior consisted of him holding a sign asking for help at this intersection. Willis never blocked traffic, impeded traffic or interfered with traffic. Willis approached stopped cars from a sidewalk while holding a sign conveying his message. While the Court of Appeals repeatedly indicated that Willis was at an on-ramp, the record was very clear that Willis was at the intersection of the I-5 exit and Gravelly Lake Drive. *See* Court of Appeals Unpublished Opinion, *City of Lakewood v. Willis*, No. 45034-8-II (2015) at page 2,5,6. Willis never entered the highway and was not at the on-ramp for the highway.

Unlike interstate highways, the intersection of interstate off-ramps and city streets are traditional public forums, just as the intersections of other roads. Intersection off-ramps are distinguished from the actual

interstate because this is a traveler's first contact with the city or town. Billboards on the highway may advertise and entice travelers to the exits for Cities and Towns. Campaigners, employers, companies all solicit business as you enter the town or city from the highway. Judges, politicians, political initiatives, private sales are all allowed to place their signs at these intersections.

The City of Lakewood allows political signs, signs to promote a City-sponsored or promoted community fair, festival or events, private sales, tourist related business signs and WSDOT signs that allow companies to advertise gas, food, lodging, camping, recreation, tourist activities and 24 hour pharmacies at off-ramp intersections. LMC 18A.50.600, 625, 630, 640, 665; RCW 47.36.030 and 47.36.320; WAC 468-70-030; WAC 468-70-050. The only speech prohibited at this location is someone asking for a charitable donation.

B. Because the City of Lakewood permitted other forms of speech at the intersection it created a limited public forum.

If the Court determines that the intersection of interstate exit ramps and city streets are not public forums, the City of Lakewood created a limited public forum by opening the forum to every form of speech and solicitation except asking for a charitable donation.

A public forum may be created by government designation of a place or channel of communication for use by the public for speech, for use by certain speakers, or for the discussion of certain subjects.

Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 802, 105 S. Ct. 3439, 3449, 87 L. Ed. 2d 567 (1985). To determine whether the government intended to open the forum for public discourse, “the Court has looked to the policy and practice of the government, the nature of the property and its compatibility with expressive activity, and whether the forum was designed and dedicated to expressive activities....” *Id.*

Intersections of roads are traditional public forums, which would logically make the intersection of a highway and a local road also a public forum. In this case, the Court of Appeals determined that the intersections of interstate highway off-ramps and city roads are not public forums based on the nature and purpose of interstates. *See Unpublished Opinion at 5-6.* If this Court determines the nature of an interstate changes this traditional public forum to a non-public forum, the City of Lakewood created a limited public forum by permitting all other forms of speech, except a request for a charitable donation, at this location. . LMC 18A.50.600, et. al.

2. The Begging Ordinance is content based and not viewpoint neutral or reasonable.

A. The Begging Ordinance is not content neutral.

“Laws that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content based.” *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 643, 114 S.Ct. 2445, 2459-60, 129 L.Ed.2d 497 (1994). Ordinances that proscribe certain forms of solicitations while permitting other forms are content based since these laws are distinguishing between “good” forms of solicitations, such as selling girl scout cookies, and “bad” forms, such as begging. *Id.* In determining whether a restriction is content-neutral or content-based, the Supreme Court has held that “[g]overnment regulation of expressive activity is content neutral so long as it is ‘justified without reference to the content of the regulated speech.’ ” *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.Ct. 2746, 2753, 105 L.Ed.2d 661 (1989) (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293, 104 S.Ct. 3065, 3069, 82 L.Ed.2d 221 (1984)).

“A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.” *Rock Against Racism*, 491 U.S. at 791. However, “the mere assertion of a content-neutral purpose [is not]

enough to save a law which, on its face, discriminates based on content.” *Turner Broad. Sys., Inc.*, 512 U.S. at 642-43. “As a general rule, laws that by their terms distinguish favored speech on the basis of the ideas or views expressed are content based.” *Id.* at 643. A solicitation ordinance is content-based if either the main purpose in enacting it is to suppress or exalt speech of certain content, or it differentiates based on the content of speech on its face. *A.C.L.U. of Nevada v. City of Las Vegas*, 466 F.3d 784, 793 (9th Cir. 2006).

The City of Lakewood, in its Motion to Publish and in a Statement of Additional Authority cited the First Circuit decision *Thayer v. City of Worcester* and a United States District Court of Colorado decision *Browne v. City of Grand Junction*, arguing that this issue was similar to those in the present case. *Thayer v. City of Worcester*, 755 F.3d 60 (1st Cir. 2014); *Browne v. City of Grand Junction*, 2015 U.S. Dist. Lexis 42210 (D. Colo. Mar. 30, 2015) (dismissing in part challenge to local ordinance, but deferring consideration of constitutional challenge pending outcome of a petition for certiorari in *Thayer*). The statute in *Thayer* is similar to certain parts of Lakewood’s Begging Ordinance. However, the City’s reliance on the decisions in these cases was erroneous as the United States Supreme Court granted *certiorari* in *Thayer* and remanded to the United States Court of Appeals for the First Circuit for further consideration in

light of *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015), *Thayer v. City of Worcester, Mass.*, 135 S. Ct. 2887 (2015).

In *Town of Gilbert*, at 2228, the U.S. Supreme Court further articulated the proper analysis for determining content based restrictions on speech. The Court opined that:

A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of “animus toward the ideas contained” in the regulated speech. We have thus made clear that “ ‘[i]llicit legislative intent is not the *sine qua non* of a violation of the First Amendment,’ ” and a party opposing the government “need adduce ‘no evidence of an improper censorial motive.’ ” Although “a content-based purpose may be sufficient in certain circumstances to show that a regulation is content based, it is not necessary.” In other words, an innocuous justification cannot transform a facially content-based law into one that is content neutral.

(internal citations omitted).

The language in the Begging Ordinance is content based on its face. The ordinance specifically bans “begging,” which is a protected area of speech. The Court of Appeals was correct in its opinion that the code was content based. *See Unpublished Opinion* at 6.

B. The Begging Ordinance is not viewpoint neutral.

Where nonpublic forums are concerned, the U.S. Supreme Court said that “[i]mplicit in the concept of the nonpublic forum is the right to make distinctions in access on the basis of subject matter and speaker identity.” *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37,

46, 103 S.Ct. 948, 955, 74 L.Ed.2d 794 (1983). The Court explained that “[t]hese distinctions ... are inherent and inescapable in the process of limiting a nonpublic forum to activities compatible with the intended purpose of the property.” *Id.* If the forum is determined to be nonpublic, the restriction is constitutional if it is reasonable in light of the purposes of the forum and is viewpoint-neutral. *City of Seattle v. Mighty Movers, Inc.*, 152 Wash.2d 343, 350–51, 96 P.3d 979 (2004).

Viewpoint discrimination is content discrimination in which “the government targets not subject matter, but particular views taken by speakers on a subject.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). “The government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject.” *Cornelius*, 473 U.S. at 806, 105 S. Ct. at 3451.

The U.S. Supreme Court reinforced this sentiment in *Town of Gilbert*, stating that “Government discrimination among viewpoints—or the regulation of speech based on ‘the specific motivating ideology or the opinion or perspective of the speaker’—is a ‘more blatant’ and ‘egregious form of content discrimination.’” *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. at 2230 (quoting *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. at 829).

The fact that the Begging Ordinance targets all forms of begging does not make it viewpoint neutral. *Rosenberger*, 515 U.S. at 831, 115 S. Ct. at 2518. In *Rosenberger*, the Court found a government policy that denied funding to a student organization based on religion to be not viewpoint neutral even though the program at issue was neutral toward all religions. The Court opined that “exclusion of several views on that problem is just as offensive to the First Amendment as exclusion of only one.” *Id*; see also *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394, 113 S. Ct. 2141, 2147-48, 124 L. Ed. 2d 352 (1993) (Ordinance denying a church access to school premises for religious purposes was not viewpoint neutral despite prohibiting all religions).

The Begging Ordinance is explicitly on its face not viewpoint neutral. The ordinance specifically says you cannot ask for money or goods as a charity in certain areas of Lakewood. Only people asking for charity violate this code. A person could stand at this intersection with a sign that says “don’t give money to the homeless”, “don’t give money to Planned Parenthood”, or “don’t give money to charity” and not violate the law. A person may approach vehicles at this intersection under this ordinance and say the same things or have people sign petitions against these charitable organizations. However, the alternative cannot be said for people asking for charity.

The U.S. Supreme Court reinforced the opinion in *Cornelius* that “[t]he existence of reasonable grounds for limiting access to a nonpublic forum, however, will not save a regulation that is in reality a facade for viewpoint-based discrimination.” *Cornelius*, 473 U.S. at 811, 105 S. Ct. at 3453-54. The Court in *Town of Gilbert*, made it clear that “an innocuous justification cannot transform a facially content-based law into one that is content neutral.” *Town of Gilbert*, 13 S. Ct. at 2228.

Lakewood’s ordinance is both content based and not viewpoint neutral. The ordinance is content based because it targets charity as opposed to other forms of solicitation, but it is also not viewpoint neutral because it only prohibits people asking for charity and not the alternative.

C. The Begging Ordinance is not reasonable.

The State may not exclude speech where its distinction is not “reasonable in light of the purpose served by the forum,” *Cornelius, supra*, at 804–806, 105 S.Ct. at 3450–51; see also *Perry Ed. Assn., supra*, at 46, 49, 103 S.Ct., at 955, 957. The analysis for reasonableness “focuses on whether the limitation is consistent with preserving the property for the purpose to which it is dedicated.” *Brown v. California Dep’t of Transp.*, 321 F.3d 1217, 1222 (9th Cir. 2003). In *Brown*, the Court determined that a law that prohibited protest signs on interstate overpasses, but allowed American flags was unreasonable. *Id.* The court reasoned that the

proscribed dangers of the protest signs were just as likely a danger as the Flags. *Id.* *Brown* also found the law was not viewpoint neutral because it allowed the American Flag but not banners with messages of protest. *Id.*

Similarly, the dangers that the Begging Ordinance protects against are just as likely to occur based on the alternative, permitted forms of speech. Political signs, other signs soliciting business or garage sales, protestors, canvassers all can distract drivers and approach drivers at these intersections. Further, the law targets speech and not the conduct of the speaker near, in or adjacent to the street.

Why is a prohibition on signs or speech requesting help any more likely to prevent the dangers voiced by the City? There are already several more specific alternative methods in place that the City could have used which would accomplish the City's stated purpose without restricting selected speech.

The City has an ordinance which makes a person guilty of disorderly conduct "if he or she: ...(3) Intentionally obstructs vehicular or pedestrian travel or traffic without lawful authority." LMC 09A.8.010. The city also has ordinances which prohibit people from loitering or trespassing which could be used to affectively prevent the conduct. LMC 09A.11.020.

And LMC 09A.4.010, addresses aggressive begging and any attendant risk, of intimidation or danger to members of the community. Case law allows prohibitions against threatening speech and permits laws that prevent aggressive begging.

3. Based on the Court of Appeals finding that the Begging Ordinance is not content neutral, Willis is entitled to a new trial.

The Court of Appeals determined that the Begging Ordinance was not content neutral, but that off ramps are not public forums. *See* Unpublished Opinion. The City charged Willis by Complaint with every prong of the Begging Ordinance and the Court instructed the Jury with a “to convict” instruction which included all the prongs of the Begging Ordinance. *See* Exhibit 3.

If this Court determines that the Begging Ordinance is viewpoint neutral and that off-ramps are not public forums, Willis was charged and the jury was instructed on every prong of the Begging Ordinance. Many of the prongs of the Begging Ordinance are public forums and therefore unconstitutional. This includes the prong that begging is illegal “at intersections of major/principal arterials (or islands on the principal arterials) in the City”. LMC 09.4.020A.(2).

Errors of law in jury instructions are reviewed de novo, and an instruction's erroneous statement of the applicable law is reversible error

where it prejudices a party. *State v. Wanrow*, 88 Wash.2d 221, 237, 559 P.2d 548 (1977). Prejudice means the outcome of the trial was affected. *Stiley v. Block*, 130 Wash.2d 486, 925 P.2d 194(1996). When the record discloses an error in an instruction given on behalf of the party in whose favor the verdict was returned, the error is presumed to have been prejudicial, and is grounds for reversal, unless it is harmless. *Wanrow*, 88 Wn.2d at 237. An error is only harmless if it in no way affected the final outcome of the case. *Id.*

Prior to the Court of Appeals finding the law to be content based, the exact location of Willis was not relevant. Under the unconstitutional law, Willis could be found guilty at either the off ramp or at the intersection. However, based on the Court of Appeals decision, there is a factual issue as to whether Willis is at the intersection or on the off ramp.

If this Court does not find the Begging Ordinance unconstitutional in its entirety, Willis is entitled to a new trial where the Court does not instruct the jury on the prongs of the Ordinance that are unconstitutional.

V. CONCLUSION

By placing a ban on begging, the Lakewood's Begging Ordinance prohibits constitutionally protected speech. The intersection of interstate highways and local streets are public forums. The City created a limited public forum by allowing all other forms of solicitation at this intersection

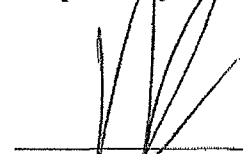
except solicitation for charity. The language of the Begging Ordinance is not content neutral as it specifically targets a constitutional protected form of speech. Further, the Begging Ordinance is not viewpoint neutral or reasonable.

The Begging Ordinance is unconstitutional and Willis' conviction must be vacated and dismissed.

If this Court determines that the Begging Ordinance is viewpoint neutral and that off-ramps are not public forums, Willis is entitled to a new trial where the Court instructs the jury on the prongs of the Ordinance that are constitutional.

DATED: December 4, 2015.

Respectfully Submitted,



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VI. APPENDIX

- Exhibit 1: Amended Complaint, dated September 9, 2011
- Exhibit 2: Police Report, incident No. 112300412.1, dated August 29, 2011.
- Exhibit 3: Jury Instructions, To Convict and Definition of Restricted Areas
- Exhibit 4: LMC 09A.4.020A, Begging in a Restricted Area
- Exhibit 5: Selected Chapters of Lakewood Municipal Code 18A.50.600, 625,630,640,665
- Exhibit 6: LMC 09A.8.010, Disorderly Conduct
- Exhibit 7: LMC 09A.11.020, Loitering

No. 91827-9

THE SUPREME COURT OF WASHINGTON

CITY OF LAKEWOOD,

Respondent/Cross-Petitioner

v.

ROBERT W. WILLIS,

Petitioner/Cross-Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER ROBERT WILLIS

Exhibit 1

IN THE MUNICIPAL COURT OF THE CITY OF LAKEWOOD
PIERCE COUNTY, STATE OF WASHINGTON

CITY OF LAKEWOOD,

Plaintiff,

No. CR 32174

AMENDED COMPLAINT

Vs.

WILLIS Robert Wayne
DOB: 11/6/1949,

Defendant.

COMES NOW, the Plaintiff, City of Lakewood, by and through the undersigned attorney and hereby alleges that contrary to the form, force and effect of the ordinances and/or statutes in each case made and provided and against the peace and dignity of the City of Lakewood, that the above-named defendant did commit the following offense(s) -

Count I

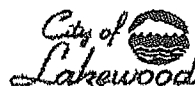
Begging In Restrictive Areas - LMC 9A.04.020A

On or about 8/18/2011, within the corporate boundaries of the City of Lakewood, State of Washington, the above-named defendant did beg (1) at on and off ramps leading to and from state intersections from any City roadway or overpass; and/or (2) at an intersection of major/principal arterials (or islands on the principal arterials) in the City; and/or (3) within twenty five (25) feet of an ATM machine, or financial institution; and/or (4) within fifteen (15) feet of any (a) occupied handicapped parking space, (b) taxicab stand, or (c) bus stop, train station or in any public parking lot or structure or walkway dedicated to such parking lot or structure; and/or (5) before sunrise or after sunset at any public transportation facility or on any public transportation vehicle; and/or (6) while a person is under the influence of alcohol or controlled substances; all contrary to Section 9A.04.020A of the Lakewood Municipal Code.

(Maximum Penalty—Ninety (90) days in jail or \$1,000 fine, or both pursuant to LMC 9A.04.030 and RCW 9A.20.021(3), plus restitution, assessments and court costs.)

The undersigned city attorney does certify, under penalty of perjury, that the city attorney has reasonable grounds to believe, and does believe that the above-named defendant committed

Criminal Complaint
Page 1 of 2



CITY OF LAKEWOOD
Legal Department
6000 Main Street
Lakewood, WA 98499
(253) 589-2489 FAX (253) 589-3774

the offense(s) described above, contrary to City Ordinance and law.

Dated this 4 day of September 2011.

- ☐ Heidi Ann Wachter, City Attorney, WSBA #18400
- ☐ Michael McKenzie, Asst. City Attorney, WSBA #23258
- ☐ Anita Booker-Hay, Asst. City Attorney, WSBA #23409
- ☒ Matthew S. Kaser, Assoc. City Attorney, WSBA# 32239

12/11/12

No. 91827-9

THE SUPREME COURT OF WASHINGTON

CITY OF LAKEWOOD,
Respondent/Cross-Petitioner

v.

ROBERT W. WILLIS,
Petitioner/Cross-Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER ROBERT WILLIS

Exhibit 2

CRIMINAL ☐ TRAFFIC ☒ NON-TRAFFIC

CR 32174

IN THE ☐ DISTRICT ☒ MUNICIPAL COURT OF LAKEWOOD / PIERCE CO.

WASHINGTON

☐ STATE OF WASHINGTON, PLAINTIFF VS. NAMED DEFENDANT☐ COUNTY OF PIERCE
☒ CITY/TOWN OF LAKEWOOD

11-230-0412

L.E.A. ORI #: WA0272300

COURT ORI #:

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON

DRIVER'S LICENSE NO. WILLIRW513QF		STATE WA	EXPIRES 11-2011	PHOTO I.D. MATCHED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
NAME: LAST WILLIS	FIRST ROBERT	MIDDLE W	CDL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
ADDRESS 12701 PACIFIC HWY SU #16				
CITY LAKEWOOD	STATE WA	ZIP CODE 98498	EMPLOYER	LOCATION
DATE OF BIRTH 11-06-49	RACE W	SEX M	HEIGHT 5-09	WEIGHT 210
RESIDENTIAL PHONE NO. (253) 588-3800 x216	CELL/PAGER NO.	WORK PHONE NO.		
VIOLATION DATE ON OR ABOUT	MONTH 08	DAY 18	YEAR 11	TIME 1047
AT LOCATION N/B I-5 EXIT TO GRAVELY LK SU				CITY/COUNTY OF PIERCE

DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND

VEHICLE LICENSE NO.	STATE	EXPIRES	VEH. YR.	MAKE	MODEL	STYLE	COLOR
TRAILER #1 LICENSE NO.	STATE	EXPIRES	TR. YR.	TRAILER #2 LICENSE NO.	STATE	EXPIRES	TR. YR.
OWNER/COMPANY IF OTHER THAN DRIVER							
ADDRESS							
CITY							
STATE							
ZIP CODE							
ACCIDENT NO	INJURY NR	PROPERTY DAMAGE R	IF	COMMERCIAL VEHICLE	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	HAZMAT YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	EXEMPT VEHICLE <input type="checkbox"/> NO <input checked="" type="checkbox"/>
				FARM YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	FIRE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES

#1 VIOLATION/STATUTE CODE RCW LMC 9A.4010 AGGRESSIVE BEGGING	<input type="checkbox"/> DV
#2 VIOLATION/STATUTE CODE	
MAYNICAL COURT SEP 01 2011	
<input checked="" type="checkbox"/> MANDATORY COURT APPEARANCE OR <input type="checkbox"/> BAIL FORFEITURE IN U.S. \$	
APPEARANCE DATE 08 30 11	TIME 1030 PM
MO. DY. YR.	RELATED #
DATE ISSUED 08/18/11	
<input checked="" type="checkbox"/> Served on Violator <input type="checkbox"/> Sent to Court for Mailing <input type="checkbox"/> Referred to Prosecutor	
I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I HAVE ISSUED THIS ON THE DATE AND AT THE LOCATION ABOVE, THAT I HAVE PROBABLE CAUSE TO BELIEVE THE ABOVE NAMED PERSON COMMITTED THE ABOVE OFFENSE(S). OFFICER: <i>[Signature]</i> OFFICER: 104073	

COMPLAINT / CITATION

CRG	PLEA	CNG	FINDINGS	FINE	SUSPENDED	SUB-TOTAL	FIND/JUDG DATE
1	G	NG	G NG D BF	\$	\$	\$	ABS. MLD TO OLY
2	G	NG	G NG D BF	\$	\$	\$	TO SERVE
OTHER COSTS \$							WITH DAYS SUP.
RECOMMENDED NON-EXTENSION OF SUSPENSION <input type="checkbox"/>				LICENSE SUR-RENDER DATE	TOTAL COSTS \$		CREDIT / TIME SVD

Lakewood Police Department Incident No. 112300412.1

Arrest Report

Page 1 of 3

PDA:	Homeland Security:	Subject:	Aggressive Begging Misd Arrest
IBR Disposition:	Arrest	Case Management Disposition:	
Forensics:		Reporting By/Date:	LD04073 - Vahle, Jeremy 8/18/2011 10:47:00
Case Report Status:	In-Progress	Reviewed By/Date:	

Incident No.
112300412.1

Related Cases:

Case Report Number	Agency
--------------------	--------

Non-Electronic Attachments

Attachment Type	Additional Distribution	Count
CIT - Citation (copy)		1

Location Address:	Gravelly Lake Dr Sw I5 Hw N	Location Name:	
City, State, Zip:	Lakewood, WA 98498	Cross Street:	
Contact Location:		City, State, Zip:	
Recovery Location:		City, State, Zip:	
CB/Grid/RD:	260 - LAKEWOOD	District/Sector:	LD01 - Lakewood (South Lakes)
Occurred From:	8/18/2011 10:47:00 Thursday	Occurred To:	
Notes:			

Offense Details: 090Z - All Other Offenses - Aggressive Begging

Offense Status:	Active	Reason:	
Changed By:	Vahle, Jeremy	Changed On:	8/28/2011 23:44:28
Domestic Violence:	No	Child Abuse:	
Completed:	Completed	Gang Related:	
Criminal Activity:		Crime Against:	
Location Type:	Street/Right of Way	Type of Security:	
Total No. of Units Entered:		Evidence Collected:	
Entrance Compromised:	Not Applicable		
Entry Method:			
Suspect Description:			
Suspect Actions:			
Notes:			

Arrestee A1: Willis, Robert W

PDA:

Aliases:	
----------	--

Call Source:		Assisted By:	LD06137 - McGettigan, Michael
Phone Report:		Notified:	
Insurance Letter:		Entered By:	LD04073 - Vahle, Jeremy
Entered On:	8/25/2011 08:48:10	Approved By:	
Approved On:		Exceptional Clearance:	
Adult/Juvenile Clearance:		Exceptional Clearance Date:	
Additional Distribution:		Other Distribution:	
Validation Processing	Distribution Date:	County Pros. Atty.	Juvenile
	By:	City Pros. Atty.	Military
		Other:	CPS
		DSHS	PreTrial
			Supervisor:

For Law Enforcement Use Only -- No Secondary Dissemination Allowed
Records has the authority to ensure correct agency, CB/Grid/RD, and District/Sector are incorporated in the report.

Printed: August 29, 2011 - 4:48 PM
Printed By: Vahle, Jeremy

Lakewood Police Department Arrest Report	Incident No. 2300412.1	Page 2 of 3
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DOB:	11/6/1949	Age:	61	Sex:	Male	Race:	White	Ethnicity:	Non-Hispanic
Height:	5' 9"	Weight:	210	Hair Color:	White	Eye Color:	Brown		
Address:	12701 Pacific Hwy SW #16			County:		Phone:	253-588-3800		
City, State Zip:	Lakewood, WA 98498			Country:		Business Phone:			
Other Address:						Other Phone:			
Resident:	Full - Time Resident			Occupation/Grade:		Employer/School:			
SSN:	531-48-2199			DOC No:		FBI No:			
State ID:				Local CH No:					
Driver License No:	WILLIRW513QF			Driver License State:	Washington	Driver License Country:			
Hair Length:	Short			Glasses:		Facial Hair:			
Hair Style:				Teeth:		Facial Shape:			
Hair Type:				Speech:		Complexion:			
Appearance:	Casual			Right/Left Handed:		Facial Feature Oddities:			
SMT:						Distinctive Features:			
Attire:	Civilian					Body Build:	MED - Medium		
Gangs:						Tribe Affiliation:			
Significant Trademarks:						Identifiers:			
Suspect Pretended to Be:				Modus Operandi:					
Place Of Birth:				Habitual Offender:					
Date/Time Arrested:	8/18/2011 10:55:00			Booked Location:					
Arrest Location:	Gravelly Lake Dr Sw 15 Hw N Lakewood, WA 98498			Released Location:	Gravelly Lake Dr Sw 15 Hw N Lakewood, WA 98498				
Arrest Offense:	090Z - All Other Offenses					Date/Time Released:	8/18/2011 11:07:00		
Arrest Type:	Summoned/Cited					Juvenile Disposition:			
Armed With:	Unarmed					Adult Present Name:			
Miranda Read:	No			Miranda Waived:	No	Detention Name:			
No. Warrants:				Multi. Clearance:	Not Applicable	Notified Name:			
Fingerprints:				Photos:	No	Previous Offender:			
Type of Injury:						Fire Dept Response:			
Hospital Taken To:				Medical Release Obtained:		Taken By:			
Attending Physician:				Hold Placed By:					

New Charges

Arrest #	Book/Cite	Charge Description -- RCW/Ordinance	Free Text Charge Description	Court	Bail	Count
00001	Cite		M - LMC 09A.4.010	Lakewood Municipal Court		1

Warrants

Arrest #	Warrant #	Free Text Charge Description	Agency	Court	Bail
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Arrest Notes:	
Probable Cause:	On 08-18-2011 at 1047hrs a citizen called in a complaint of a male begging for money and banging on car windows at the N/B I-5 Exit to Gravelly Lake Dr SW. I located a male matching the same description standing at the intersection. The male was later identified as Willis. Willis' back was to me and he did not notice my fully marked police vehicle park by the sidewalk behind him. Willis walked into the lane of travel holding a cardboard sign toward vehicles that were waiting to make a left turn. Willis' sign claimed

he was disabled and needed help. I issued Willis citation #CR 32174/Aggressive Begging and summoned him to appear in LMC on 08-30-2011 at 1030hrs.

Other Entity O1: Jensen, Chris

PDA:

Aliases:									
DOB:		Age:	00	Sex:	Unkn own	Race:	Unknown	Ethnicity:	Unknown
Height:		Weight:		Hair Color:		Eye Color:			
Address:						County:		Phone:	253-627-8965
City, State Zip:						Country:		Business Phone:	253-581-9600
Other Address:								Other Phone:	
Resident:	Unknown			Occupation/Grade:				Employer/School:	
SSN:				Driver License State:				Place Of Birth:	
Driver License No:				Driver License State:				Driver License Country:	
Attire:						Complexion:			
SMT:						Facial Hair:			
Entity Type:	Complainant			Reporting Statement Obtained:				Facial Shape:	
Entity Notes:	No additional info was provided. Unable to reach complainant by telephone.								

Investigative Information

Means:		Motive:	
Vehicle Activity:		Direction Vehicle Travelling:	

Synopsis: Male transient who has been warned on several occasions not to solicit for money at off-ramps is called in by a citizen as begging aggressively. Male is holding a cardboard sign and walking in the roadway when police arrive. Male is cited into LMC for Aggressive Begging and given a pamphlet about the new ordinance.

Narrative: On 08-18-2011 at 1047hrs a citizen (C/Jensen) called in a complaint of a male begging for money and banging on car windows at the N/B I-5 Exit to Gravelly Lake Dr SW. The male was described as 50-60yrs old, 5'7"-5'10" tall, with gray hair, a light colored shirt, and gray pants. I arrived at 1055hrs and located a male matching the same description standing at the intersection. The male was later identified as A/Willis. Willis' back was to me and he did not notice my fully marked police vehicle park by the sidewalk behind him. Willis walked into the N/B lane of travel holding a cardboard sign. Willis was walking toward vehicles that were waiting to make a left turn. Willis' sign claimed he was disabled and needed help. I recognized Willis as someone I have warned in the past not to solicit for money from vehicles stopped on the roadway. Ofc McGettigan arrived to assist and he told me he has warned Willis about this offense as well. I issued Willis citation #CR 32174/Aggressive Begging and summoned him to appear in LMC on 08-30-2011 at 1030hrs.

Reviewed By:

Reviewed Date:

No. 91827-9

THE SUPREME COURT OF WASHINGTON

CITY OF LAKEWOOD,

Respondent/Cross-Petitioner

v.

ROBERT W. WILLIS,

Petitioner/Cross-Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER ROBERT WILLIS

Exhibit 3

INSTRUCTION NO. 5

To convict the defendant of the crime of Begging in Restricted Areas, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 18th day of August, 2011, the defendant did beg:
 - a. At on and off ramps leading to and from state intersections from any city roadway or overpass; or
 - b. At an intersection of major/principal arterials (or islands on the principal arterials) in the City; and
- (2) That the acts occurred in the City of Lakewood.

If you find from the evidence that any one of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. _____

Begging in a Restrictive area is defined as follows: Begging (1) At on and off ramps leading to and from state intersections from any city roadway or overpass; and/or (2) At an intersection of major/principal arterials (or islands on the principal arterials) in the City; and/or (3) Within twenty-five (25) feet of an ATM machine, or financial institution; and/or (4) Within fifteen (15) feet of any (a) Occupied handicapped parking space or (b) Taxi stand or (c) Bus stop, train station or (d) in any public parking lot or structure or walkway dedicated to such parking lot or structure, (5) Before sunrise or after sunset at any public transportation facility or on any public transportation vehicle; and/or (6) While a person is under the influence of alcohol or controlled substances.

No. 91827-9

THE SUPREME COURT OF WASHINGTON

CITY OF LAKEWOOD,

Respondent/Cross-Petitioner

v.

ROBERT W. WILLIS,

Petitioner/Cross-Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER ROBERT WILLIS

Exhibit 4

09A.4.000 - Aggressive Begging**Chapter 9A.04
Aggressive Begging****Sections:**

9A.04.010 Aggressive begging.

9A.04.020 Definitions.

9A.04.020A Restrictive Areas

9A.04.030 Violation.

09A.4.010 - Aggressive Begging

It is unlawful for any person to engage in aggressive begging in any public place in the City, as those terms are defined by this section. (Ord. 526 § 2 (part), 2010.)

09A.4.020 - Definitions

- A. Aggressive Begging means: (a) begging with intent to intimidate another person into giving money or goods by any means including repeated requests for money while approaching or following the person from whom funds are being requested; (b) continuing to solicit from a person or continuing to engage that person after the person has given a negative response to such soliciting; (c) soliciting from anyone who is waiting in line; (d) following a person with intent to solicit money or other things of value; (e) begging with use of false, misleading information, where the person knew or reasonably should have known of the falsity or misleading nature of the information; (f) (c) begging with or involving activities that are unsafe or dangerous to any person or property; (g) begging in a manner that exploits children; or (e) willfully providing or delivering, or attempting to provide or deliver unrequested or unsolicited services or products with a demand or exertion of pressure for payment in return.
- B. "Automated Teller Machine" means a machine, other than a telephone: (1) that is capable of being operated by a customer of a financial institution; (2) by which the customer may communicate with the financial institution a request to withdraw, deposit, transfer funds, make payment, or otherwise conduct financial business for the customer or for another person directly from the customer's account or from the customer's account under a line of credit previously authorized by the financial institution for the customer; and (3) the use of which may or may not involve personnel of a financial institution;
- C. Financial Institution means any banking corporation, credit union, foreign exchange office. For purposes of this section, it shall also include any check cashing business.
- D. Major/Principal Arterial Intersections are the intersections of the principal arterials identified in Lakewood Municipal Code 12A.09.022 .
- E. Begging means asking for money or goods as a charity, whether by words, bodily gestures, signs or other means.
- F. To intimidate means to coerce or frighten into submission or obedience or to engage in conduct which would make a reasonable person fearful or feel compelled.
- G. Public place means: (a) any public road, alley, lane, parking area, sidewalk, or other publicly-owned building, facility or structure; (b) any public playground, school ground, recreation ground, park, parkway, park drive, park path or rights-of-way open to the use of the public; or (c) any privately-owned property adapted to and fitted for vehicular or pedestrian travel that is in common use by the public with the consent, expressed or implied, of the owner or owners;
- H. "Public Transportation Facility" means a facility or designated location that is owned, operated, or maintained by a city, county, county transportation authority, public transportation benefit area, regional transit authority, or metropolitan municipal corporation within the state for the purpose of facilitating bus and other public transportation.

- I. Exploit means using in an unethical, selfish or abusive manner or in any other manner that seeks an unfair advantage; and
- J. On and Off Ramps refers to the areas commonly used to enter and exit public highways from any City roadway or overpass.
- K. "Public Transportation Vehicle" means any vehicle that is owned by a City, County, County Transportation Authority, Public Transportation Benefit Area, Regional Transit Authority, or Metropolitan Municipal Corporation within the State for the purpose of facilitating bus and other public transportation.

(Ord. 532 § 1 (part), 2011; Ord. 526 § 2 (part), 2010.)

09A.4.020A - Restrictive Areas

Begging shall be deemed a violation of this section of the municipal code under the following conditions: (1) at on and off ramps leading to and from state intersections from any City roadway or overpass; (2) at intersections of major/principal arterials (or islands on the principal arterials) in the City; (3) within twenty five (25) feet of an ATM machine, or financial institution; (4) within fifteen (15) feet of any (a) occupied handicapped parking space, (b) taxicab stand, or (c) bus stop, train station or in any public parking lot or structure or walkway dedicated to such parking lot or structure; (5) before sunrise or after sunset at any public transportation facility or on any public transportation vehicle or (6) while a person is under the influence of alcohol or controlled substances. (Ord. 532 § 1 (part), 2011.)

09A.4.030 - Violation

Violation of this section shall be a misdemeanor, punishable by a fine up to \$1000 or by a jail sentence of up to 90 days, or by both such fine and jail time. (Ord. 526 § 2 (part), 2010.)

No. 91827-9

THE SUPREME COURT OF WASHINGTON

CITY OF LAKEWOOD,

Respondent/Cross-Petitioner

v.

ROBERT W. WILLIS,

Petitioner/Cross-Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER ROBERT WILLIS

Exhibit 5

18A.50.600- Sign Regulations

18A.50.625- Sign Permit Exemptions

A. Exemption from the sign permit requirements of this Chapter shall not be deemed to grant authorization for any sign constructed, erected or located in any manner in violation of the provisions of this Chapter or any other laws or Ordinances of the City or the State of Washington.

B. A sign permit shall not be required for the following:

1. Professional nameplates not exceeding two (2) square feet of sign area.
2. Plaques, tablets, or inscriptions indicating the name of a building, date of erection, commemorative information, or historic designation provided it is:
 - a. non-illuminated; and
 - b. no more than two signs per site; and
 - c. a maximum twelve (12) square feet of sign area.
3. Signs owned and/or required by the State, City, or public utility entities indicating or warning of danger, aids to safety, traffic control, or traffic direction signs.
4. Tourist-related business signs associated with those highway tourist-related signs regulated by the Washington State Department of Transportation.
5. City sponsored or co-sponsored signs, banners, decorations or displays subject to approval of the Community Development Director. These signs, banners, and displays may be located on or over public rights-of-way with approval of the sign placement by the City Engineer.
6. Temporary signs for the purpose of announcing or promoting a City-sponsored or promoted community fair, festival, or event. Such decorations and signs may be displayed no more than fourteen (14) calendar days prior to and during the fair, festival, or event. All decorations and signs must be removed within five (5) calendar days following the end of the fair, festival or event. Temporary signs may be located on or over public rights-of-way with approval of the sign placement by the City Engineer.
7. Public art including sculptures, wall paintings, murals, collages, and other design features that do not incorporate advertising or identification.
8. "No soliciting," "no trespassing," tow-away zone," or indications of danger or warning signs less than four (4) square feet in sign face size.
9. Maintenance of a legal sign in accordance with this section.
10. Signs intended to notify the public of public meetings or hearings and official or legal notices required, issued, sponsored, or posted by any public agency or court.
11. Incidental signs, provided for in LMC 18A.50.640
12. Religious symbols, when not included in a sign.
13. Decorative flags in commercial zones, on private property, within the confines of parking lots, landscape areas and on building frontages, which do not incorporate advertising, logos, or business identification; provided, that each individual flag does not exceed eighteen (18) square feet in sign area.
14. Identification signs installed on and pertaining to structures or improvements such as phone booths, charitable donation containers, and recycling boxes. Signs may not exceed ten (10) percent of the area of the structure's facade or surface elevation upon which they are installed.
15. Building addresses with numbers and letters which comply with the requirements of the Uniform Building Code and the Uniform Fire Code.
16. Signs located inside of a building, painted on a window, or hanging inside of a window, provided that window signs shall be limited to forty (40) percent of the window area.
17. Strings of incandescent lights where the lights do not flash or blink in any way and do not unreasonably impact adjacent properties or street with excessive illumination or glare.
18. Reasonable seasonal and holiday decorations within the appropriate season. Such displays shall be removed within ten (10) calendar days following the end of such season or holiday.
19. Non-illuminated signs not exceeding four (4) square feet of sign area placed on lawns or

buildings or in windows and containing a noncommercial political, religious, or personal message (subject to LMC 18A.50.665).

20. Gravestones or other memorial displays associated with cemeteries and mausoleums.

21. Vehicle signs painted or adhered directly and permanently on the vehicle, such as vinyl letters and logos, adhered magnetically, or inside a vehicle window, subject to the requirements of LMC.18A.50.630, General Sign Standards.

22. Public transit buses and taxis bearing rental advertising, subject to the requirements of LMC.18A.50.630, General Sign Standards.

23. Public Service directional signs, subject to the requirements of LMC.18A.50.630.

24. On-site directional signs that do not contain a business name or advertising.

(Ord. 534 § 5, 2011; Ord. 264 § 1 (part), 2001.)

18A.50.630- General Provisions

The provisions of this section apply within all zone districts citywide and include rules for signs that may be approved to benefit the general public interest as well as general rules for the placement and maintenance of all signs.

A. Public Service Directional Signs. Non-advertising and non-promotional directional or informational signs of a public or quasi-public nature, such as religious, educational, medical and emergency facilities, citizen recognition signs, neighborhood welcome signs, signs indicating scenic or historic points of interest may be erected or maintained by an official or civic body. Tourist related highway business signs are subject to WSDOT rules and are not included here as public service directional signs. Public service directional signs may be located in any zone with the approval of the Community Development Director if all of the following standards are met:

1. The sign shall not exceed a nine (9) square foot sign face.
2. Such signs shall be directional or informational in nature only (no advertising other than name of the use and location allowed).
3. Signs are of a consistent size, color and style as established by the City.
4. No more than four (4) such signs for each use or occupancy shall be approved.
5. Such a sign shall meet all other applicable provisions of this section.
6. These signs may be located within the public rights-of-way with approval of the sign placement by the City Engineer.
7. Signs shall be located on arterial streets nearest the location unless otherwise approved by the Community Development Director.

B. Maintenance of Signs. All signs, including signs heretofore installed, shall be maintained in a constant state of security, safety, and repair. Signs which are allowed to fall into a state of disrepair to the extent they are unsightly, broken, or hazardous may be declared a nuisance by the Community Development Director and abated pursuant to LMC 18A.02.460, Enforcement.

C. No permanent sign shall be constructed, erected, or retained unless the sign and sign structure is constructed, erected, and maintained so as to be able to withstand the wind, seismic, and other regulations as specified in the Uniform Building Code or other applicable regulations.

D. Fire Safety Obstructing Signs. No sign or sign structure shall be constructed in such a manner or at such a location that it will obstruct access to any fire escape or other means of ingress or egress from a building or any exit corridor, exit hallway, or exit doorway. No sign or supporting structure shall cover, wholly or partially, any window or doorway in any manner that will substantially limit access to the building in case of fire.

E. Visibility. No sign or sign structure shall be placed or erected in any place or manner where by reason of its position it will obstruct the visibility of any vehicular, mobile, or pedestrian traffic or be hazardous to motorists' ingress and egress from parking areas.

F. Illumination. Illumination from or upon any sign shall be shaded, shielded, directed or reduced so as to avoid undue brightness, glare, reflection of light skyward, or onto private or public property in the surrounding area and so as not to unreasonably distract pedestrians and motorists. Illumination in excess of that which is reasonably necessary to make the sign visible from an adjacent street shall be prohibited.

G. Placement.

1. A sign shall not be affixed to a tree, shrub, rock or other natural object.
2. No unauthorized sign may be affixed to a utility pole, or other public structure.

3. Signs shall not be mounted on any portion of the roof or extend above the roof line unless mounted on a parapet wall. Signs shall not extend above the top edge of the parapet wall.
4. No sign shall project into a vehicular public way or be less than nine (9) feet above a pedestrian way.
5. No sign together with any supporting framework shall extend to a height above the maximum building height allowed in a zone.
6. Signs shall not cover architectural details such as, but not limited to, arches, sills, moldings, cornices, and transom windows.
7. Signs shall not obstruct traffic signals. The issuance of a sign permit as regulated by this code shall not relieve the permit holder from fully complying with the State of Washington or any other law governing the obstruction of any authorized traffic sign, signal or device.
8. Signs shall not obstruct vision clearance as determined by the City Engineer.
9. Signs shall not be placed within the public right-of-way except as specifically allowed in this section. No person, organization, or agency shall place any signs, indicators, advertisements, stakes, posts or any other foreign object or objects within a public street or the right-of-way of any public street in the City of Lakewood without the express permission, in writing, of the City Engineer. Any such objects now upon the public rights-of-way are hereby declared illegal, except for those now in place with written permission of the City Engineer and except for mailboxes or newspaper delivery tubes placed on the public right-of-way, with the approval of the City Engineer.
10. Unauthorized signs in the public right-of-way that the City Engineer determines to be located so as to present a hazard to the public health or safety may be immediately removed without prior notice.
11. Signs in or on vehicles, as allowed in LMC 18A.50.625.B.21-22, shall be subject to the following requirements:
 - a. Graphics and letters identifying a business or its principal product, painted or adhered directly and permanently on the vehicle, such as vinyl letters and logos, adhered magnetically, placed inside a window, or otherwise securely mounted to a vehicle which is routinely operated in the normal course of business for delivery, pickup, or transportation.
 - b. Signs permanently adhered on rental vehicles, such as U-haul rental trucks, identifying the name of the rental company,
 - c. Private "for sale" signs placed in the windows of vehicles being sold by their owners, and
 - d. Signs depicting the price and model year of vehicles for sale at motor vehicle sales lots.

H. Identification. Any sign constructed or erected after the effective date of this Chapter that identifies a business must contain within its text an identification of the business name in the English language in order to aid public safety and emergency responses in locating the advertised business.

I. Transmission Lines - Clearance. Horizontal and vertical clearance of signs or sign structures from power and communication transmission lines shall not be less than twelve (12) feet.

J. Flagpoles. No flagpole shall extend to a height above the maximum building height allowed in the zone. A flagpole greater than six (6) feet in height shall require a building permit. All flagpoles shall be set back eight (8) feet from all property lines. Flagpoles greater than twenty-five (25) feet in height shall be set back an additional foot for each foot in height above twenty-five (25) feet.

K. Entrance and Exit Signs. Entrance and exit signs and/or other similarly worded directional signs, used for the purpose of controlling traffic, shall be limited to the following:

1. One (1) sign per entrance or exit.
2. Sign height shall not exceed thirty (30) inches.
3. Sign width shall not exceed sixteen (16) inches.
4. The maximum area of a sign face shall be four (4) square feet.

5. Advertisements shall not constitute more than twenty-five (25) percent of the total face area of the sign, and shall not distract the reader from the primary directional and traffic control function of the sign.

L. Bus Shelter Signs. To support the provision of transit bus shelters in Lakewood, signs are permitted when provided in conjunction with the City-approved Pierce Transit Lakewood Bus Shelter Program, subject to the following requirements:

1. A bus shelter sign is an accessory sign that is structurally integrated into a bus shelter approved for design, construction, and location by Pierce Transit and the City of Lakewood.

- a. The maximum sign area is forty-eight (48) square feet for the entire shelter structure.
- b. Sign setback requirements are waived.
- c. Sign separation requirements are waived.
- d. Bus shelter signage is exclusive of signage limits of the lot on which it is located.
- e. A sign permit for a bus shelter sign may be issued where a nonconforming freestanding sign exists on the lot.

2. Signage shall only be permitted on shelters in accordance with the City-approved Pierce Transit Lakewood Bus Shelter Program.

M. Address Number Signs. Address number signs shall be provided for all properties as required by LMC 15A.14.030.Z

(Ord. 536 § 1, 2011; Ord. 534 § 6, 2011; Ord. 483 § 28, 2008; Ord. 264 § 1 (part), 2001.)

18A.50.640- Provisions for Signs That are Permanent or Continuous Displays

A. Table 18A.50.640 presents the dimensional standards and permit requirements by zone district for signs that are permanently installed or otherwise permitted for display without time restriction.

Zone Districts	Sign Standards ¹					
	Sign Type	Number Allowed	Min. / Max. Sign Size	Maximum Total Area	Maximum Height	Permi Rqd?
Residential (All R, MR, and MF Zones)						
Subdivision	Monument	1 per primary entrance	0 sf. / 32 sf.		7'	Y
Each residential lot	All	1 per street frontage	0 sf. / 4 sf.	4 sf.	3' for picket	N
MF with more than 6 units	Monument	1 per primary entrance	0 sf. / 32 sf.		7'	Y
Schools, churches and other permitted non-residential	Monument	1 per primary entrance	0 / 32 sf.		7'	Y
	Wall ²	Number limited by Total Area	0 / 50 sf.	5% of façade up to 50 sf		Y
Commercial / Industrial						
All (excluding Freeway)						
	Monument (by frontage)					Y
	50' or less	1	16 sf. / 24 sf.	24 sf.	7'	Y
	More than 50'	Number limited by Total Area	24 sf. / 40 sf.	24 sf. plus 0.17 for each frontage foot over 50 sf.	7'	Y
		A monument sign shall be separated from any other monument sign on the same property by a minimum 200'				

	Pole (by frontage)						
	Less than 250'	None					
	250' to 500'	1 in trade for any 2 permitted Monument	24 sf. / 40 sf.		20'	Y	
	Over 500'		24 sf. /48 sf.		20'	Y	
	Wall ²		200 per sign or group	10% of facade		Y	
	Window		40% of the window area on each wall.			N	
	Sale / Lease	1 per street frontage	16 sf. for ARC, TOC, NC; 32 sf. for others		10'	Y	
	Incidental	See Note #3 below					N
	Portable	See Subsection #C.4 below					N
Freeway⁴ (Select TOC, C1, C2, IBP, I1)							
	Pole/Monument- Surface Street frontage	Same as Non-Freeway Commercial / Industrial				Y	
	Pole- Freeway Frontage	1 additional pole sign per freeway frontage. Min 60 l.f. surface street frontage req'd.	60 s.f. min/ 200 s.f. max. Must be within 50' of freeway r.o.w.)	1 sq. ft. per lineal foot arterial frontage (min. 60 linear feet of surface street frontage to qualify for freeway pole sign)	35' w/in 50' of freeway	Y	

	Wall ² , Window, Sale / Lease, Incidental, Portable	Same as Non-Freeway Commercial / Industrial
Open Space, Public, and Institutional (OSR1, OSR2, P1)	The Director shall review any request for signs in these districts and consider the type, size and location of the proposed signage in respect to the type and intensity of the use, and make a determination to approve, deny or modify the proposed sign(s) consistent with the intent of this chapter and the applicable zone district regulations.	

B. Notes for Figure 18A.50.640

1. The following abbreviations are used in the Table:

Min. / Max. = Minimum / Maximum; sf = square foot or feet; Y = Yes; N = No; Rqd. = Required; r.o.w. = right-of-way.

2. Wall sign includes Projecting, Canopy, Awning, and Marquee signs.

3. Incidental signs are defined in LMC 18A.50.680. Incidental signs shall not be readily visible or legible from a public right-of-way. Incidental signs shall not individually exceed two (2) square feet or, cumulatively, one-half of one (1/2 of 1) percent of the building facade; provided, said size limitation shall not apply to signs providing directions, warnings or information when, established, authorized, or maintained by a public agency.

4. Freeway Commercial / Industrial: TOC, C1, C2, IBP, NC2 and I1 zoning districts which abut I-5, SR 512, Tacoma Mall Boulevard, or the BNSF rail-road right-of-way in Tillicum .

C. Additional requirements and explanations for specific Sign Types and situations:

1. Wall signs shall not project more that 18 (eighteen) inches from the façade of the supporting structure.

2. Projecting signs shall not extend more than 6 (six) feet from the attached building.

3. Freestanding signage for landlocked parcels.

a. For purposes of this section:

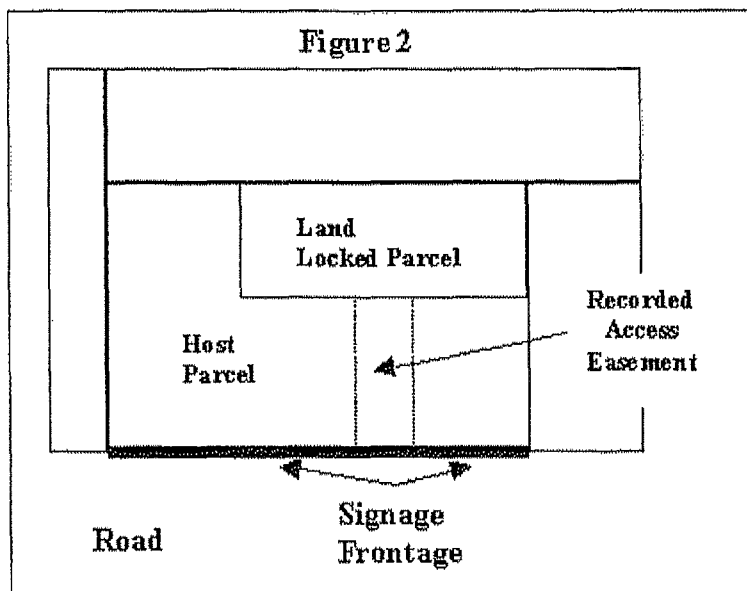
(1) A landlocked parcel is a parcel which does not have frontage on a public street and access to the parcel is provided through an adjacent parcel via a recorded access easement, or is a parcel that has less than 30 (thirty) feet on a public street and may or may not have access on that street.

(2) A host parcel is the parcel which provides the access to a landlocked parcel, via an easement.

b. A host parcel may share its allocation of freestanding signage with the landlocked parcel. The host parcel is under no obligation to grant the landlocked parcel use of its property for an easement or to grant part of its signage allotment.

c. Freestanding signage for the landlocked parcel shall be placed adjacent to the recorded access easement and shall only advertise those businesses located on the landlocked parcel and/or the host parcel.

d. In the case of landlocked parcels utilizing a host parcel for signage, the signage for the landlocked parcel shall not be considered to be off-premise signage.



[Added]

4. Standards for Portable Signs Intended for Continuous Display:

Any business may display one portable sign, either a freestanding sign such as an A-Frame or a T-Frame, or a banner, on a continuous basis under the terms of this subsection. Portable signs permitted under this subsection are in addition to any permanent or temporary signs otherwise permitted by this Chapter. No permit is required if the portable sign complies with the following standards:

- a. The sign must be located on private property on which the business is located (with the permission of the property owner) and shall not be located within the public right-of-way. On-site portable signs that are not generally visible from the public right-of-way or property are not considered signs under this Chapter.
- b. The sign shall not block critical sight distances for the adjacent roadway, or for vehicles entering or exiting the roadway to or from a lawfully established driveway.
- c. The sign may not block any pedestrian way. A minimum of 48 (forty-eight) inches clearance shall be provided.
- d. The sign shall not block or interfere with any vehicular circulation, maneuvering or parking areas.
- e. The maximum size for an A-Frame or T-Frame sign displayed under this subsection shall be 36 (thirty-six) inches wide and 48 (forty-eight) inches high.
- f. The maximum size of a banner allowed under this subsection shall be 40 (forty) square feet.
- g. Banners shall be displayed against a building wall, and shall be maintained in good condition. Torn, faded, dirty, dingy, or shredded banners shall be removed immediately. Banners displayed on a continuous basis are in addition to the allotment of permanent wall signs for the business.
- h. Freestanding portable signs shall be separated from each other by a minimum of 50 (fifty) feet.
- i. Only one portable sign per business may be displayed on a permanent basis under the terms of this section. A business may display a freestanding portable sign (A-Frame/ T-Frame) or a banner, but not both, under the terms of this subsection. For the purposes of this subsection, separate business entities occupying one tenant space shall be considered a single business. Additional portable signs may only be displayed on a temporary basis subject to the provisions of Section 18A.50.665, *Signs for Temporary Display*.

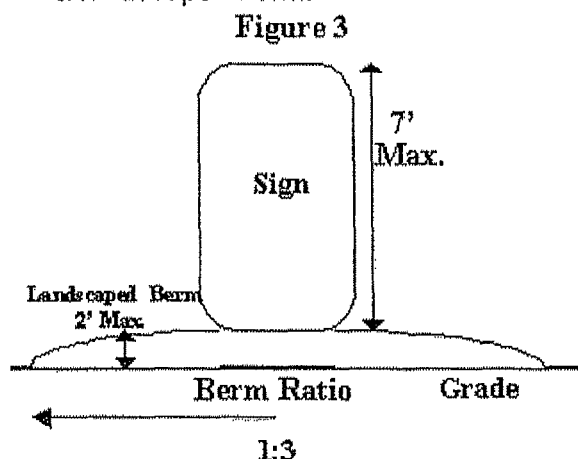
j. Freestanding portable signs permitted under this section shall be displayed only during regular business hours when the business is open, and shall be removed during those times when the business is closed.

k. No balloons, streamers, stringer pennants, festoons, or other similar devices are permitted in conjunction with signs displayed under this subsection. Such devices may be allowed on a temporary basis as permitted under Section 18A.50.665, *Signs for Temporary Display*.

l. Preference shall be given to conventional, non-portable signs lawfully erected and intended for display on a permanent basis. Signs displayed under this subsection shall be subject to all applicable standards and provisions of this Chapter.

5. Landscaped berm and decorative block edged berm alternatives for a monument sign.

a. Landscaped berms or decorative block edged berms of 2 (two) feet or less in height shall not be included in the height calculations of a ground sign. Berms of more than 2 (two) feet in height shall be counted toward the sign height calculation. Landscaped berms shall have a slope ratio of not more than 1:3 height-to-width, from the center of the berm to be considered a landscaped berm.



[Added]

6. Major Commercial or Employment Centers within the NC1, NC2, CBD, TOC, C1, C2, IBP, I1 and I2 zoning districts.

a. A major commercial center or employment center is an integrated development with contiguous ownership larger than 10 (ten) acres in size. Contiguous properties under separate control, but which function as an integrated center and when combined are larger than 10 (ten) acres in size, may be considered a major center.

b. Major commercial and employment centers may vary from the development standards of this section by obtaining approval of an Integrated Sign Plan for the center.

(1) The sign plan for the center shall be reviewed either separately or as part of the conditional use permit for the project.

(2) In approving the sign plan for the center, the Hearing Examiner shall make a finding that the sign plan is proportionate to the intensity of the major commercial or employment center and consistent with the intent of this code.

(Ord. 534 § 7, 2011; Ord. 264 § 1 (part), 2001.)

18A.50.665- Signs for Temporary Display

A. Signs for temporary display are allowed according to the standards and permit requirements of Table 18A.50.665 below. There are five (5) activity categories of temporary signs: Real Estate/Development, Political, Special Event, Private Sales and Temporary Use.

Temporary Sign Standards						
Temporary Sign Activity		Number Allowed	Max Size per Sign (sq. feet)	Max Height (feet)	Other Provisions	Per
Apply to all Zones						
Real Estate / Development						
	Construction	4	32		Permit expires with project completion; signs may be freestanding or attached to site fencing or walls; signs shall be on-premises only. Total area allowance is 128 sf per site.	Con of Bu Pe
	Subdivision & Condominium	4	16 for 8 or fewer lots / units; 32 for more than 8	7	Only one on-premise sign per street frontage; permit expires within 2 years of preliminary plat approval or sale of 75% of lots / units. No off-premise placement. Total area allowance is 128 sf per site.	Con (Prelir P
	Residential Sale or Rent	1 per street frontage	4 for 'R'; 8 for 'MR/MF'; 12 for other zones	4 in 'R' zones; 7 in other zones	Display only while property is actively for sale, rent, or lease; No off-premise display except for Open House (below).	I
	Residential Open House (Off-Premise)	4	4	3	Allowed only for single-family dwellings for sale. Display shall be only on open house days.	I
Political						
					Signs placed in the public right-of-way shall not impede public	

			4 per sign or aggregated display		circulation or create a hazard to circulation and shall not be located within a vision clearance area. Signs may be placed on fences, buildings, or other structures, in windows, or on pickets. Signs may be placed on private property only with the permission of the property owner or occupant. Display is limited to 60 days before and 10 days after an election.
Special Events					
	Grand Opening; business closing		Poster / banner: 32 A-frame, T-frame or picket signs: 6	A-frame, T-frame or picket signs: 4	One 30-day display period per new business or organization opening or business closing. Two Incidental signs / devices are also allowed. Total sign face area shall not exceed eighty (80) square feet.
	City-sponsored Community Events	Signs, banners, or displays as approval by the Community Development Director.			Displays may be located on or over public rights-of-way with approval of the sign placement by the City Engineer
	Non-Profit Events	1 per arterial frontage (minimum 1)	Poster / banner: 32 A-frame, T-frame or picket signs: 6	A-frame, T-frame or picket signs: 4	Applicant must meet definition of Non-Profit Community Organization in LMC 18A.50.680 Definitions. Maximum of one 15-day event per calendar quarter. Total sign face area shall not exceed eighty (80) square feet.

Private Sales (Garage / Estate)						
	Residential Uses Only	1 on- premise; 4 off- premise	4 per sign face	3	Display only on days of sale and not to exceed 12 continuous days in any 90-day period. A-frame, T-frame or picket style freestanding sign only; signs shall be located within ½ mile of the sale site, except that (1) sign may be placed at the nearest arterial street; signs may be placed on private property only with the permission of the owner or occupant.	1
Temporary Use						
			50		Only issued in association with and as a condition of a Temporary Use permit; not issued if another temporary sign permit is active; on-premise only; total allowed area not exceed 50 square feet. (Also see LMC 18A.10.520)	Con: (Temp Use I

B. Notes for Table 18A.50.665

1. Temporary use sign permits shall not be issued for detached or attached dwellings.
2. Failure to comply with the conditions in this Chapter and the issued permit shall result in immediate enforcement pursuant to LMC 18A.02.460, Enforcement. In addition, the subject applicant, business, and location shall be ineligible for a temporary sign permit for a period of one (1) year.
3. Attachments to a temporary sign, including lighting, shall be prohibited
4. Alteration of required landscaping in any manner shall be prohibited.
5. Up to two (2) of the following types of devices and displays may be permitted as accessory to one (1) or more temporary signs if such devices are included in the special event temporary sign permit:

- a. Streamers.**
- b. Stringer pennants.**
- c. Strings of twirlers or propellers.**
- d. Balloons.**

(Ord. 534 § 12, 2011; Ord. 317 § 10, 2003; Ord. 307 § 25, 2001; Ord. 264 § 1 (part), 2001.)

No. 91827-9

THE SUPREME COURT OF WASHINGTON

CITY OF LAKEWOOD,

Respondent/Cross-Petitioner

v.

ROBERT W. WILLIS,

Petitioner/Cross-Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER ROBERT WILLIS

Exhibit 6

09A.8.010- Disorderly Conduct

A. A person is guilty of disorderly conduct if he or she:

1. Fights or encourages others to fight in any public place within the city;
2. Willfully annoys, molests, bothers, insults, offers an affront to another person and thereby intentionally creates the risk of assault;
3. Intentionally obstructs vehicular or pedestrian travel or traffic without lawful authority;
4. Intentionally disrupts any lawful assembly or meeting of persons without lawful authority; or
5. Urinates or defecates in any place open to the public view.

B. Disorderly conduct is a misdemeanor.

(Ord. 526 § 2 (part), 2010.)

No. 91827-9

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v.

ROBERT W. WILLIS,

Petitioner/Cross-Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER ROBERT WILLIS

Exhibit 7

09A.11.000 - Loitering

CHAPTER 9A.11
Loitering

Sections:

9A.11.010 Definitions.

9A.11.020 Order to disperse.

09A.11.010 - Definitions

- A. "Loitering" means remaining idle in essentially one location and includes the concept of spending time idly, to be dilatory, to linger, to stay, to saunter, to delay, to stand around, and also includes the colloquial expression hanging around."
- B. "Public place" means any place to which the general public has access and a right to resort for business, entertainment, or other lawful purpose but does not necessarily mean a place devoted solely to the uses of the public. It also includes the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.

(Ord. 526 § 2 (part), 2010.)

09A.11.020 - Order to Disperse

- A. It is unlawful for any person to loiter, loaf, wander, stand or remain idle either alone and/or in consort with others in a public place in such a manner so as to:
 - 1. Obstruct any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians;
 - 2. Commit in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevent the free and uninterrupted ingress, egress and regress, therein, thereon and thereto.
- B. When any person causes or commits any of the conditions enumerated in subsection A of this Section, a police officer or any law enforcement officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such orders is guilty of a violation of this Chapter.

(Ord. 526 § 2 (part), 2010.)

CERTIFICATE OF SERVICE

I certify that on the 4th day of December, 2015, I caused a copy of this Brief to be served on the following in the manner stated below:

Matthew S. Kaser
6000 Main Street
Lakewood, WA 98499-5027

Via DELIVERY BY ELECTRONIC MAIL TO
mkaser@cityoflakewood.us

By: _____

David Iannotti

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STATE OF WASHINGTON
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CERTIFICATE OF SERVICE

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mkaser@cityoflakewood.us per agreement

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By: _____


David Iannotti

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Cc: david@sbmhlaw.com
Subject: 91827-9, City of Lakewood v. Robert Willis - Supplemental Brief

Good afternoon,
Attached please find the Supplemental Brief and Appendix of Robert Willis, cause number 91827-9, City of Lakewood v. Robert Willis, for electronic filing. I also included an updated proof of service that we are serving the prosecutor by email and by hand delivery.

Thank you for all your help,

David

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