No. 80653-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

vs.

LORETTA LYNN ERIKSEN, Petitioner.

RESPONDENT'S BRIEF

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1. The Tribal Officer had authority to stop and detain a non-tribal member off the reservation when the contact began on the reservation.

2. Officer McSwain made a valid citizen's arrest.

C. SUBSTANTIVE AND PROCEDURAL FACTS

Officer Mike McSwain, Lummi Law & Order, was on duty and routine patrol on August 10, 2005. (Report Of Proceedings, page 5) At approximately 1:34 am, Officer McSwain was traveling eastbound on Slater Road when he observed a vehicle traveling westbound. RP 5. As the vehicle was approaching, it had its high beams on. RP 5. Officer McSwain flashed his lights to indicate the vehicle needed to switch to the low beams. RP 5. The vehicle ignored Officer McSwain's signal to dim its high beams. RP 5. The vehicle then drifted across the center line approaching Office McSwain's vehicle head on. RP 8. Officer McSwain was forced to take evasive action by swerving his patrol car to the right shoulder of the road. RP 8. The vehicle came within a couple of feet of his police vehicle. RP 8. Following standard police procedure, Officer McSwain immediately activated his blue emergency lights, turned around

and pursued the vehicle westbound on Slater Road. RP 9. The Officer then observed a second vehicle following the first one. RP 8-9. The Officer turned around and positioned his car behind the two vehicles he had just observed with his emergency lights on. RP 9. He caught up to the vehicles just as they came to the intersection of Elder and Slater Roads. RP 10. Both vehicles reacted to the Officer's emergency lights by pulling off Slater Road into the parking lot of a convenience store. RP 10. As the vehicles left Slater Road, they also left the Lummi Reservation. The second vehicle continued around behind the market where he could no longer see it while the first vehicle came to a stop at the gas pumps. RP 10. Officer McSwain observed the passenger exit the vehicle while the driver got into the passenger seat. RP 12. Officer McSwain commanded the driver and passenger to place their hands where he could see them and immediately called for backup assistance. RP 13. The driver was identified as LORETTA LYNN ERIKSEN. RP 5. In speaking to Ms. Eriksen, Officer McSwain observed her to have a very strong odor of intoxicants coming from her person. RP 15. Her eyes were bloodshot and watery. RP 15. Her speech was slightly slurred. RP 15. She was having difficulty keeping her balance and walking. RP 17. When Officer McSwain asked Ms. Eriksen to stop and face him, she began to sway back and forth. RP 17. Officer McSwain also observed that Ms. Eriksen was not

a tribal member so he requested a deputy to respond in order to take over the investigation. RP 15. He advised Ms. Eriksen that she was not free to go. RP 17. A deputy responded to the scene and took over the investigation which resulted in Ms. Eriksen's arrest for DUI. RP 50.

Ms. Eriksen filed a motion to suppress/dismiss the case for lack of jurisdiction in the district court. Judge David Grant heard the motion which included testimony from Officer McSwain and oral argument from both parties. The court held that Officer McSwain was justified in stopping Ms. Eriksen off the reservation when the initial contact and pursuit began on the reservation and denied Ms. Eriksen's motion. RP 71-72. Judge Grant found that there has been a dispute between the Lummi Tribe and Whatcom County Public Works for years as to the northern most boundary of the Lummi reservation. RP 70. Judge Grant found that the entirety of Slater Road was within the Lummi reservation as testified to by Officer McSwain.[1] RP 71. Further, he found that Ms. Eriksen failed to dim her headlights and drove across the centerline such that Officer McSwain felt he had to take evasive action which all occurred on the

[1] Petitioner has not assigned error to any findings made by Judge Grant in the District Court. Unchallenged findings of fact are verities on appeal and an appellate court "will review only those facts to which error has been assigned." State v. Hill, 123 Wash.2d 641, 647, 870 P.2d 313 (1994).

reservation. RP 72. Ms. Eriksen filed a Motion for Reconsideration which was denied.

D. ARGUMENT

1. The Tribal Officer Had Authority to Stop and Detain a Non-Tribal Member off the Reservation When the Contact Began on the Reservation.

In 1855, the Lummi Indian Tribe and the United States entered into the Treaty of Point Elliott, Jan. 22, 1855, 12 Stat. 927, hereafter "Treaty." Many issues concerning the Tribe's relationship with the state and federal government have been resolved. An Indian tribe's power to punish members who commit crimes within Indian country is a fundamental attribute of the tribe's sovereignty. United States v. Wheeler, 435 U.S. 313, 323, 55 L. Ed. 2d 303, 98 S. Ct. 1079 (1979) (tribe's power of self-governance includes inherent power to prescribe laws for their members and to punish infractions of those laws). This power was not taken away by the adoption of Public Law 280. Native Village of Venetie I.R.A. Council v. Alaska, 944 F.2d 548, 560-61 (9th Cir. 1991).

An Indian tribe has authority to enact a civil traffic code, including speed limits, which it can enforce against tribal members while the State may not enforce its civil traffic regulations against tribal members driving on public roads within reservation. Confederated Tribes of Colville Reservation v. Washington, 938 F.2d 146, 149 (9th Cir. 1991), *cert.*

denied, 503 U.S. 997 (1992) A tribe's inherent power to try and punish non-Indian violators of tribal laws was surrendered when they submitted to the sovereignty of the United States. Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 55 L. Ed. 2d 209, 98 S. Ct. 1011 (1978) (Indian tribal courts do not have inherent jurisdiction to try and punish non-tribal members who commit crimes on their land). The Supreme Court held in 1990 that a tribe could not exercise criminal jurisdiction over a non-member Indian. Duro v. Reina, 495 U.S. 676, 109 L. Ed. 2d 693, 110 S. Ct. 2053 (1990) (tribes retain their power of self-governance). However, Congress legislatively abrogated this case, *see* Public Law 102-137, 105 Stat. 646, codified at 25 U.S.C. §1301(2). Federal common law recognizes the inherent tribal power to prosecute tribal members and non-member Indians for criminal conduct. U.S. v. Lara, 541 U.S. 193, 210, 124 S.Ct. 1628, 639 (U.S.,2004) (The Constitution authorizes Congress to permit tribes, as an exercise of their inherent tribal authority, to prosecute nonmember Indians).

Tribal law enforcement authorities also have the power to restrain non-Indians who disturb public order on the reservation and, if necessary to eject them. Duro at 2065-66. An Indian tribe may employ police officers to aid in enforcement of tribal law and in the exercise of its exclusion power. Ortiz-Barraza v. United States, 512 F.2d 1176, 1179 (9th

Cir. 1975). Tribal police officers have the power to investigate any on-reservation violations of state and federal law, where the exclusion of the non-Indian offended might be contemplated. Ortiz-Barraza, 512 F.2d at 1180. Where jurisdiction to try and punish an offender rests outside the tribe, tribal officers may exercise their power to detain the offender and transport him to the proper authorities. Duro, 110 S. Ct. at 2065-66.; Oliphant at 1020 (Indian authorities to "promptly deliver up any non-Indian offender, rather that try and punish him themselves").

It is clear from historical case law, that tribes possess all the original attributes of sovereignty that have not been expressly taken away by treaty provision or statute and which are not inconsistent with the tribe's dependent status. Tribal authority has repeatedly been described by the Supreme Court as "unique aggregations possessing attributes of sovereignty over both their members and their territory". Worcester v. Georgia, 6 Pet. 515, 557, 8 L.Ed. 483 (1832). They are a separate people possessing the power of regulating their internal and social relations. United States v. Mazurie, 419 U.S. 544, 557, 95 S. Ct. 710, 717-18 (U.S. Wyo. 1975).

Lummi tribal officers are not cross-deputized by the Whatcom County Sheriff's Department or the Washington State Patrol. Additionally, the tribal police department has not entered into a mutual aid

agreement with the Whatcom County Sheriff or the Washington State Patrol. Thus, tribal officers are unable to act in fresh pursuit under RCW 10.93.120 because the statute only authorizes peace officers who have "authority under Washington law to make an arrest" to proceed in fresh pursuit. Also, Lummi tribal officers are unable to act in fresh pursuit under RCW 10.89.010 because the statute only authorizes such pursuit by a member of a "duly authorized state, county or municipal peace unit of another state of the United States who enters this state in fresh pursuit...." Lummi Tribal police are not duly authorized by any state governmental unit.

Inherent tribal sovereignty as a basis for tribal police authority was analyzed in State v. Schmuck, 121 Wash. 2d 373, 850 P.2d 1332 (1993):

> In analyzing issues of Indian sovereignty, "[i]t must always be remembered that the various Indian tribes were once independent and sovereign nations...." *McClanahan v. Arizona State Tax Comm'n,* 411 U.S. 164, 172, 93 S.Ct. 1257, 1262, 36 L.Ed.2d 129 (1973). However, when Indian tribes were incorporated into United States territory and accepted protection by the federal government, they necessarily lost some of their sovereign powers:
>
> The sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to complete defeasance. But until Congress acts, the tribes retain their existing sovereign powers. In sum, Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.

Schmuck, 121 Wash.2d 373, 380, 850 P.2d 1332, 1335 (Wash., 1993)

In deciding whether a tribal officer could stop a non-tribal member within the reservation, Schmuck makes clear that tribal police have sovereign authority to stop and detain motorists who commit traffic infractions on public roadways running through the reservation. This Court spoke in broad language when holding that a tribal officer could stop *any* motorist on the reservation:

> Fundamental to enforcing any traffic code is the authority by tribal officers to stop vehicles violating that code on roads within a reservation. In this case, Officer Bailey was exercising the Tribe's authority to enforce its traffic code when he observed the speeding pickup truck and pursued it through the streets of the Reservation. When he first saw the truck, he had no means of ascertaining whether the driver was an Indian. Only by stopping the vehicle could he determine whether the driver was a tribal member, subject to the jurisdiction of the Tribe's traffic code. The alternative would put tribal officers in the impossible position of being unable to stop any driver for fear they would make an unlawful stop of a non-Indian. Such a result would seriously undercut the Tribe's ability to enforce tribal law and would render the traffic code virtually meaningless. It would also run contrary to the "well-established federal 'policy of furthering Indian self-government.' Santa Clara Pueblo v. Martinez, 436 U.S. 49, 62, 56 L. Ed. 2d 106, 98 S. Ct. 1670, 1679 (1978) (*quoting* Morton v. Mancari, 417 U.S. 535, 551, 41 L. Ed. 2d 290, 94 S. Ct. 2474, 2483 (1974)).
>
> We hold Suquamish Tribal Officer Bailey had the requisite authority to stop Schmuck to investigate a possible violation of the Suquamish traffic code and to determine if Schmuck was an Indian, subject to the code's jurisdiction.

Schmuck, 121 Wn.2d at 382-83. (Emphasis added.)

As this Court points out in Schmuck, the Suquamish Tribal Officer could not tell whether a driver on the reservation was a tribal or non-tribal member without stopping the vehicle. If the tribal officer was not given the authority to stop *any* vehicle, it would essentially render the traffic code meaningless. Without the authority to stop and detain any driver who has presented a clear threat to community members would hamper the Tribe's ability to protect the welfare of its own tribal members. Id. at 392-93.

The same can be said for the case at bar. Officer McSwain was trying to stop a vehicle he believed was possibly a drunk driver while patrolling the reservation. Similar to Schmuck, Officer McSwain could not ascertain whether he had jurisdiction over the driver without contacting the vehicle and confirming whether the driver was a tribal member or not. The only difference in Ms. Eriksen's case is that by the time the driver stopped, she was off the reservation. If a tribal officer is not allowed to pursue a potentially drunk driver past the reservation boundary because the possibility exists the driver may not be a tribal member, then anyone and everyone could attempt to make it across the boundary line in order to escape being stopped and prosecuted. If Officer McSwain must allow a suspected drunk driver to cross the reservation boundary, the safety and

welfare of anyone who happens to be on a public roadway just outside of the reservation is at risk. The person just over the boundary line could be a tribal member in which case, Officer McSwain is being limited in his ability to protect the welfare of a tribal member. The person could also be a non-tribal member but the same policy concerns exist. The health and welfare of the general public is at risk.

This Court addressed a similar problem in Schmuck when it held that the Tribe's authority to stop and detain non-tribal members was not limited to the circumstances in which a citizen arrest would be valid:

> Finally, the State Patrol urges this court to base a tribal officer's authority to detain on a citizen's arrest theory. We decline their invitation. There would be a serious incongruity in allowing a limited sovereign such as the Suquamish Indian Tribe to exercise no more police authority than its tribal members could assert on their own. Such a result would seriously undercut a tribal officer's authority on the reservation and conflict with Congress' well-established policy of promoting tribal self-government. *See* Santa Clara Pueblo v. Martinez, 436 U.S. 49, 62, 56 L. Ed. 2d 106, 98 S. Ct. 1670 (1978). Potentially, DWI drivers would simply drive off or even refuse to stop if pulled over by a tribal officer with only a citizen's arrest capability.
>
> We conclude an Indian tribal officer has inherent authority to stop and detain a non-Indian who has allegedly violated state and tribal law while on the reservation until he or she can be turned over to state authorities for charging and prosecution.

Schmuck, 121 Wn.2d at 392. (Emphasis added.)

This sovereignty of necessity must include the authority to effectuate the stop outside the reservation where tribal police attempt to stop the motorist within the reservation. Tribal sovereignty is substantial. Case law shows that tribal police have been given a full level of authority when it comes to protecting and enforcing laws on the reservation. If the Schmuck decision is taken to its logical conclusion, then there is an inherent authority for tribal police to pursuing a person from the reservation where an incident has occurred and detaining that person off the reservation. If the court declines to recognize this natural extension of Schmuck, any motorist (tribal or non-tribal) who is observed by tribal police committing a crime on the reservation does so with immunity if he or she can make it to the reservation boundary. In effect, the court's decision will erect a barrier at the reservation boundary through which tribal police may never pass. Respondent urges this Court to continue the reasoning provided in Schmuck by finding that a Tribal Police Officer has jurisdiction to pursue and stop a motorist *off* the reservation when the motorist has committed a crime or traffic infraction *on* the reservation as witnessed by the Lummi Tribal officer.

A similar line of reasoning was analyzed in Settler v. Lameer, 507 F.2d 231 (1974). In the Settler case, the question presented was whether the Yakima Nation had the right to enforce tribal fishing regulations by

arrest and seizure at "usual and accustomed" fishing places which were located off the reservation. Id. at 238. In resolving the issue, the court found that:

> Having determined that the Yakima Nation by the Treaty of 1855 intended to retain not only their ancient fishing rights but also the power to regulate the exercise of those rights regardless of location, it would be inconsistent to narrowly limit the enforcement of those rights to arrest and seizure on the reservation. *The power to regulate is only meaningful when combined with the power to enforce.*

Id. (emphasis added). Although the Settler case dealt with Tribal Officers arresting tribal members off the reservation, the important wording regarding enforcement applies to the case at bar. This sovereignty of necessity must include the authority to effectuate a stop outside the reservation when tribal police originally attempt to stop a motorist or criminal within the reservation. Otherwise, Tribal officers will not only be left powerless outside the reservation but within the reservation boundaries as well.

Petitioner focuses almost solely on the argument that the tribe lacks jurisdiction to arrest and prosecute Ms. Eriksen. Respondent doesn't dispute this. Oliphant clearly held that tribal police cannot arrest a non-Indian or charge her in tribal court. However, Schmuck allows tribal police to stop and detain a non-Indian violator of state law until someone who is authorized to exercise the police powers of the state can take over

the investigation. The correct question here is whether the tribal officer can make a stop in order to determine whether he has authority to detain a violator. The only difference in the case at bar and Schmuck is that the stop takes place just across the reservation boundary. When the officer initiates pursuit within the reservation, he has authority to stop within the reservation regardless of whether he has arrest authority. He must stop the vehicle in order to determine whether the driver is a tribal member or not. Petitioner argues that the tribal officer loses *all* power to stop a vehicle once it crosses the reservation border. Petitioner has provided no authority that states the inherent sovereignty of the tribe does not allow the officer to pursue a tribal member off the reservation. That is because there is no act of Congress, treaty provision or a necessary implication of the tribe's dependent status that clearly indicates the tribe no longer has the right to pursue an offending tribal member across the reservation boundary. In fact, the treaty language used in Oliphant (and recited in Schmuck) is strong: "the tribe agrees not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial." Oliphant, 435 U.S. at 208, 98 S.Ct. at 1020. As a matter of public policy, tribal authority to pursue a tribal member should exist. Otherwise, tribal members would know that if they could cross the reservation boundary, they could escape lawful arrest and prosecution. That would not

only endanger public safety within the reservation, it would create a new and currently non-existent threat to public safety outside the reservation. Currently, tribal police can effectively prevent a drunk driver from leaving the reservation because everyone must stop for tribal authority. If the pursuit must stop at the border, all drivers have an incentive to elude tribal police to make it to the "other side." If there is authority to pursue a tribal member, then under Schmuck there is authority to pursue someone who may be a tribal member.

Generally, law enforcement officers lack the authority to make valid arrests outside of their appointed jurisdiction. State v. Barker, 143 Wash.2d 915, 921, 25 P.3d 423 (2001). In Barker, an Oregon State Police Officer noticed a vehicle driving at an excessive speed while in the state of Oregon. Id. at 918. The Officer attempted to stop the vehicle but the driver would not pull over. Id. The officer pursued the driver over the Columbia River and into the state of Washington where the driver eventually stopped. Id. This Court found that neither the common law nor statutory authority allowed for an out-of-state officer to arrest within Washington based solely upon probable cause. Id. at 922. The case at bar is distinguishable from the Barker case. In Barker, the officer had no arrest power in Washington. Here, Officer McSwain *may* have had the authority to arrest if the driver was a tribal member. As argued supra, a tribal police

officer has the authority to stop a tribal member off the reservation. Based on Schmuck, he has the ability to stop and detain anyone on the reservation. This differs from Barker where the officer had no authority whatsoever over the driver in Washington state. The tribal officer does have that authority where members are concerned and Schmuck necessarily means he has that authority where the identity and tribal status of the offender is not known to the officer.

2. Officer McSwain Made a Valid Citizen's Arrest.

This Court may affirm a lower court's ruling on any grounds adequately supported in the record. State v. Costich, 152 Wash.2d 463, 477, 98 P.3d 795, 802 (Wash.,2004). Any individual, including an officer, has the authority to make a citizen's arrest for a misdemeanor that is committed in his presence, provided the offense constitutes a breach of peace. State v. Malone, 106 Wn.2d 607, 609 (1986).

A breach of peace is "a public offense done by violence, or one causing or likely to cause an immediate disturbance of public order." Stone Machinery Co. v. Kessler, 1 Wash.App. 750, 754 (1970). Washington courts have not yet decided whether Driving While Under the Influence of Alcohol and/or Drugs constitutes a breach of the peace. While an automobile may not be a dangerous instrument per se, when it is being operated by someone under the influence of alcohol or drugs, it can

become a dangerous instrument and a public menace and should be considered a breach of peace. City of Waukesha v. Gorz, 166 Wis.2d 243, 249, 479 N.W.2d 221 (Wis.Ct.App.1991), *review denied*, 482 N.W.107 (Wis.1992). Other jurisdictions have also found DUI's to be a breach of the peace. *See e.g.*, Edwards v. State, 462 So.2d 581 (Fla. Dist. Ct. App. 1985), *review denied*, 475 So.2d 694 (1986); Commonwealth v. Howe, 405 Mass. 332, 540 N.E.2d 677, 678 (1989); State v. Rue, 72 N.M. 212, 382 P.2d 697, 700 (1963); State v. Jennings, 112 Ohio App. 455, 176 N.E.2d 304, 307 (1959); Romeo v. State, 577 S.W.2d 251, 253 (Tex. 1979).

The Malone court implicitly found that a breach of the peace had occurred by the Defendant's reckless driving in attempting to elude a pursuing Idaho police officer into Washington. Malone, 106 Wn.2d at 609. RCW 46.61.500(1) states: Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. Wanton and willful disregard may be inferred from the Defendant's driving. State v. Amurri, 51 Wn. App. 262, 265 (1988). Evidence of alcohol consumption is relevant to proving that charge. Id at 266. In the case at bar, there is evidence of reckless driving as testified by Officer McSwain:

Q: Okay. So would you state what brought your attention to the Defendant's car again?

A: The fact that the defendant failed to dim her high beam lights as she was approaching.

Q: Okay. She had her high beams on when you saw her?

A: Yes sir.

Q: What did you do after you saw her high beams on?

A: Again, I signaled with my high beams, the typical flash as a reminder and the high beams did not dim at all.

. . .

Q: Okay. So what happened next?

A: As I slowed down to make the turn, the vehicle approached and as the vehicle approached it drifted across the center line into my lane of travel coming within a couple of feet of my vehicle. At that point, you know, I came to an immediate stop, getting ready to swerve in case it continued. The vehicle drifted back over into the appropriate lane of travel and that's when I observed that there was a second vehicle behind the car which I had not seen before.

Q: And so how, how far into your lane, if you remember, did the vehicle enter?

A: I would say because I was, I was actually drifting over to the far right side of the lane I would say that the vehicle came into the lane approximately a foot and a half to two feet and that's just a guesstimate. My concern was where the vehicle was in conjunction with my vehicle.

Q: So did you move your car intentionally to the fog line to avoid the defendant?

A: I was already, I was already almost at the fog line, I was slowing down because I have to make the turn.

Q: You performed a u-turn?

A: Yes I was.

Q: Okay. And what did you do next?

A: At that time, when I saw the other vehicle I immediately, you know I stopped. Both vehicles went past, I turned around and caught up to the vehicles as soon as I turned around or as I was turning, I turned my overhead lights on.

RP pages 8-9.

Given the facts as testified by Officer McSwain, the record supports that Ms. Eriksen's erratic driving was reckless and as such, can be considered a breach of the peace.

Further, Officer McSwain did not violate the "under color of office" doctrine. That doctrine "prohibits a law enforcement officer from using the indicia of his or her official position to collect evidence that a private citizen would be unable to gather." Hudson v. Commonwealth of Virginia, 266 Va. 371, 377, 585 S.E. 2d 583 (2003). In Virginia v. Gustke, 205 W.Va. 72, 516 S.E.2d 283 (1999), a city police officer had completed his shift and was driving his marked police cruiser outside the city limits on an interstate highway toward his home. The off-duty officer observed the erratic operation of a vehicle on the interstate and engaged his emergency lights and stopped the driver. Id. at 286. The off-duty officer

asked the driver for identification, but made no further investigation and did not collect any evidence of any kind. Id. The driver asserted that the off-duty police officer could not make a citizen's arrest because he acted under the "color of office" in that he was in uniform with his badge of authority and used his emergency equipment. Id. at 289. The Supreme Court of Appeals of West Virginia reviewed in detail the efficacy of a citizen's arrest by a police officer outside his jurisdiction. Citing case law from eighteen states holding such a police officer had authority as a private citizen to make a citizen's arrest, the court concluded that "this doctrine does not prevent officers from making an otherwise valid citizen's arrest just because they happen to be in uniform or otherwise clothed with the indicia of their position when making the arrest." Id. at 293. In the case at bar, Officer McSwain did use his emergency lights when contacting Ms. Eriksen. However, he did not collect any further evidence beyond observing the demeanor of the Appellant to be under the influence of alcohol. He found that she was not a tribal member and immediately called a deputy to take over the DUI investigation. Thus, he did not use the color of office to gather more evidence than he could have as a private citizen.

If this Court declines to uphold Officer McSwain's stop of Ms. Eriksen off the reservation, the State urges that it find he made a valid citizen's arrest.

E. CONCLUSION

Respondent respectfully requests that this Court deny Ms. Eriksen's appeal and affirm the trial court's decision denying his motion to vacate his sentence.

DATED this 3rd day of December, 2008.

Respectfully submitted,

ANN L. STODOLA, WSBA #29182
Attorney for Respondent
Appellate Deputy Prosecutor

CERTIFICATE

I certify that on this date I placed in the mail a properly stamped and addressed envelope, or caused to be delivered, a copy of the document to which this Certificate is attached to this Court and Petitioner's counsel, WILLIAM JOHNSTON, addressed as follows:

WILLIAM JOHNSTON
401 CENTRAL AVENUE
BELLINGHAM, WA 98225

Sydney A. Koss 12/3/2008
LEGAL ASSISTANT **DATE**