

18CV012725

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

WAKE COUNTY

FILED

STATE OF NORTH CAROLINA *ex rel.* )  
JOSHUA H. STEIN, Attorney General, )

2018 OCT 17 A 11:01

Plaintiff, )

*file*  
COMPLAINT

v. )

MOTION FOR TEMPORARY  
RESTRAINING ORDER

NICHOLAS KYLE DOWNEY, Individually, )  
ACTION TREE PROS, INC., JEREMY )

MOTION FOR PRELIMINARY  
INJUNCTION

RYAN BUGG, Individually, PREMIER )  
LANDSCAPING & LAWN CARE, LLC., )

TONY BRADLEY ANDERSON, )  
Individually, and TRICO TREE SERVICE, )

LLC, )

Defendants. )

**INTRODUCTION**

This is an action by the State of North Carolina to enforce its laws against price gouging during a state of emergency, and against unfair and deceptive trade practices, following Hurricane Florence.

Plaintiff State of North Carolina, *ex rel.* Joshua H. Stein, Attorney General (hereinafter the "State"), brings this action against defendants Nicholas ("Nick") Kyle Downey, individually; Action Tree Pros, Inc., Jeremy Ryan Bugg, individually; Premier Landscaping & Lawn Care, LLC' Tony Bradley ("Brad") Anderson, individually' and TRICO Tree Service, LLC (hereinafter collectively "defendants"). The State alleges that defendants (1) charged homeowners or their insurers excessive amounts for tree removal during the state of emergency existing in the wake of Hurricane Florence, and that defendant Downey (2) entered onto properties, or directed others to enter onto properties, to conduct tree removal services without approval and even after he was specifically ordered not to; (3) demanded payment for such unauthorized work; (4) gave quotes or

estimates for tree removal work in one or more “bait-and-switch” schemes to obtain approval to do work but then delivered invoices and demanded payment for amounts far in excess of the stated estimates; and (5) made various threats and other unfair and deceptive representations aimed at inducing homeowners or their agent to pay an inflated price to which they otherwise would not have agreed.

The State alleges that all of the defendants violated North Carolina’s prohibition on price gouging during a state of emergency, N.C. Gen. Stat. § 75-38, and that defendant Downey violated North Carolina’s Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1. The State seeks temporary, preliminary, and permanent injunctive relief against defendants, together with restitution for victims, civil penalties, attorneys’ fees, and other relief.

### **PARTIES**

1. The State of North Carolina, acting on the relation of its Attorney General, Joshua H. Stein, brings this action pursuant to authority granted by Chapters 55, 57, 75 and 114 of the North Carolina General Statutes.

2. On information and belief, defendant Nicholas (“Nick”) Kyle Downey resides at 833 U.S. Highway 41A North, Dixon, Kentucky. He engages in the tree cutting and removal business through Action Tree Pros, Inc. He previously engaged in the same business under the name Action Tree Service, LLC.

3. Defendant Action Tree Pros, Inc. is a Kentucky corporation, with its principal place of business at 312 1st St., Henderson, Kentucky. Upon information and belief, defendant Downey is the sole owner, and is managing agent, of Action Tree Pros, Inc. (Defendants Downey and Action Tree Pros, Inc. are together referred to as “defendant Downey” herein.)

4. On information and belief, defendant Jeremy Ryan Bugg resides at 3872 Ridgelane Drive, Henderson, Kentucky. He engages in the tree cutting and removal business through Premier Landscaping & Lawn Care, LLC.

5. Defendant Premier Landscaping & Lawn Care, LLC is a Kentucky limited liability company with its principal place of business at 3872 Ridgelane Drive, Henderson, Kentucky. Defendant Bugg is the sole owner, and is managing agent, of defendant Premier Landscaping & Lawn Care, LLC. (Defendants Bugg and Premier Landscaping & Lawn Care, LLC are together referred to as “defendant Bugg” herein.)

6. On information and belief, defendant Tony Bradley (“Brad”) Anderson resides at 5815 Brickhouse Road, Bahama, North Carolina. On information and belief, he engages in the tree cutting and removal business through TRICO Tree Service, LLC.

7. TRICO Tree Service, LLC is a North Carolina limited liability company with its principal place of business at 5815 Brickhouse Road, Bahama, North Carolina. Upon information and belief, defendant Anderson is the sole owner, and is managing agent, of defendant TRICO Tree Service, LLC. (Defendants Anderson and TRICO Tree Service, LLC are together referred to as “defendant Anderson” herein.)

8. On information and belief, and as shown more fully below, the defendants worked together, with defendant Downey dealing directly with the property owners or their property manager, as well as with the property insurers, as an actual or apparent principal. Downey in turn directed defendants Bugg and Anderson to specific properties to actually do the tree removal work.

#### **JURISDICTION AND VENUE**

9. The Court has subject matter jurisdiction pursuant to N.C. Gen. Stat. §§ 75-1.1 and 75-15 because the acts or practices alleged herein are in or affecting commerce in North Carolina,

and under N.C. Gen. Stat. §§ 55-15-02 and 57D-7-02 with respect to the registration requirements of the defendant foreign business entities.

10. The Court has personal jurisdiction over defendants because their acts or practices alleged herein occurred in the State of North Carolina.

11. Venue is proper in Wake County pursuant to the Attorney General's selection under N.C. Gen. Stat. § 75-14.

### **FACTUAL ALLEGATIONS**

12. On September 7, 2018, North Carolina Governor Roy Cooper declared a state of emergency because Hurricane Florence's approach from the Atlantic Ocean posed an "imminent threat" to North Carolina. The declaration, which covered the entire state, specifically noted that North Carolina's price gouging statute, N.C. Gen. Stat. § 75-38, was in effect. That declaration remains in effect as of the filing of this action, along with a more recent declaration related to Hurricane Michael. (The Declarations are attached as **State's Exhibit 1.**)

13. On information and belief, defendants Downey and Bugg traveled from Kentucky to coastal North Carolina in early to mid-September, 2018.

14. Neither of the defendant business entities from Kentucky, Action Tree Pros, Inc. and Premier Landscaping & Lawn Care, LLC, are registered with the North Carolina Secretary of State's Office to conduct business in North Carolina.

15. On Monday, September 17, 2018, defendant Downey contacted Sherry Kent, property manager for many residential rental properties in Wilmington, North Carolina. She agreed to meet with defendant Downey for the purpose of reviewing properties that needed tree removal work and getting estimates for the work. (The affidavit of Sherry Kent is attached as **State's Exhibit 2.**)

16. As they drove to various properties managed by Kent, she made clear to defendant Downey that she would need quotes or estimates for a given property before considering whether to authorize him to work on the property.

17. Defendant Downey did not provide any quotes or estimates for any of the properties under Kent's management, except he stated that the work at 930 Hunting Ridge Rd. would cost about \$5,000.00. Defendant Downey also stated that before he would do the work he needed payment for the \$1,000.00 deductible on the owner's insurance.

18. Kent reasonably relied on this quote or estimate for the tree removal work done at that property.

19. After verifying that defendant Downey had insurance coverage, Kent authorized him to do the work, paid him \$1,000.00 in cash, and asked for a receipt, which he stated he would email to her.

20. During the entire time period at issue in this Complaint, the only property that Kent gave Downey permission to provide tree services for was 930 Hunting Ridge Rd.

21. Out of Kent's presence and without her knowledge, defendant Downey subcontracted the work at 930 Hunting Ridge Rd. to defendant Anderson. Also out of Kent's presence, defendant Anderson told defendant Downey that he (Anderson) would do the work at 930 Hunting Ridge Rd. for \$4,500.00 but defendant Downey responded that defendant Anderson would get \$7,000.00 for the work.

22. After the work at 930 Hunting Ridge Rd. was completed on Tuesday, September 18, 2018, on Wednesday, September 19, 2018, defendant Downey emailed a \$10,565.00 invoice to Kent for that work. **(Attachment 2 to Kent Affidavit, State's Ex. 2)**

23. Defendant Downey informed Kent that he had also submitted the bill for 930 Hunting Ridge Rd. to the owner's insurance company.

24. On information and belief, defendant Downey did submit the \$10,565.00 invoice to the homeowner's insurer.

25. Upon information and belief, these demands for payment in the amount of \$10,565.00 for the tree removal services were made with the knowledge and intent to charge an unreasonably excessive price under the circumstances.

26. Kent immediately acted to terminate her business dealings with defendant Downey after learning that he had deceived her by submitting an invoice for \$10,565.00 for a job he said would cost about \$5,000.00.

27. When Kent received a text message from defendant Downey later that day, attempting to schedule a tree removal job for a property she managed at 3260 Camden Circle in Wilmington, she texted back four minutes after receiving this message, "Do not remove any trees."

**(Attachment 3 to Kent Affidavit, State's Ex. 2)**

28. On information and belief, the owner of 3260 Camden Circle had obtained an estimate from a contractor that removal of the tree should cost about \$3,800.00.

29. Kent went to meet with a local tree company at 3260 Camden Circle to get an estimate. When she arrived she discovered that defendant Downey had subcontracted the job to defendant Anderson and that they were almost done removing the tree.

30. After defendant Downey pressured Kent for the homeowner's phone number, Downey and the homeowner spoke and the latter paid the \$2,500.00 deductible directly to Downey by credit card over the phone. The homeowner was never given a quote or price for the job. Rather,

Downey told the homeowner that anything over the \$2,500.00 deductible would be paid by insurance and that Downey would handle the insurance claim.

31. Defendant Downey then submitted a bill to Kent for \$23,500.00 for the work at 3260 Camden Circle. **(Attachment 4 to Kent Affidavit, State's Ex. 2)**

32. Defendant Anderson later told Kent that he would have charged \$17,000.00 to remove the tree at 3260 Camden Circle instead of the \$23,500.00 that defendant Downey charged in the invoice he sent Kent.

33. Upon information and belief, the demand for payment in the amount of \$23,500.00 for these tree removal services was made with the knowledge and intent to charge an unreasonably excessive price under the circumstances.

34. On the afternoon of Thursday, September 20, 2018, defendant Downey sent a text message to Kent requesting phone numbers for two of Kent's other clients, and she responded four minutes later, "Please don't do any more properties." **(Attachment 5 to Kent Affidavit, State's Ex. 2)** Later that day, Kent received text messages from defendant Downey in which he attempted to schedule tree removal jobs for that afternoon and Sunday on properties she manages. She immediately sent him three texts in rapid fire succession: "Do not touch any of my trees," "Stay off of my properties. I will not pay you for any additional work," and "DO NOT GO ON ANY OF MY PROPERTIES TODAY OR SUNDAY I WILL CALL THE POLICE." **(Attachment 6 to Kent Affidavit, State's Ex. 2)** She blocked his phone numbers after he kept calling her over and over again.

35. Later that day, Kent's assistant received from defendant Downey an email requesting an appointment to do the tree work at 512 N. 10th Street. By email reply she directed him to cancel the appointment. Defendant Downey replied by email that he would call the police

to bring a complaint that he was not being paid for his work and warned Kent, “don’t force me to be an [expletive].” (**Attachment 7 to Kent Affidavit, State’s Ex. 2**)

36. On Saturday, September 22, 2018, defendant Downey sent Kent an email making further threats, including that he was “about to start writing reviews on your website and start making you my one focus i have.” (**Attachment 8 to Kent Affidavit, State’s Ex. 2**)

37. On Sunday, September 23, 2018, Kent was notified that a tree service was removing a tree that had fallen on a structure at 512 N. 10th Street, which is a property Kent manages for Avery Washington. (Avery Washington’s affidavit is attached as **State’s Exhibit 3.**)

38. Because Kent had not authorized anyone to do work at 512 N. 10th Street, she immediately went to the property and found that a crew from defendant Premier Landscaping & Lawn Care LLC was about halfway done with the removing the tree from the structure. Kent learned from someone on the crew that Defendant Bugg owned the company. She called him and he came to the scene. Defendant Bugg told Kent that defendant Downey had hired him for the work. Kent told defendant Bugg that defendant Downey was not authorized to provide services for the property.

39. Defendant Bugg later sent Kent a \$29,500.00 invoice for the tree work done at 512 N. 10th Street addressed to Washington and his insurer. (**Attachment 9 to Kent Affidavit, State’s Ex. 2**)

40. Upon information and belief, the demand for payment in the amount of \$29,500.00 for these tree removal services was made with the knowledge and intent to charge an unreasonably excessive price under the circumstances.

41. After being confronted by Kent about the exorbitant invoice, Defendant Bugg stated to her that he would withdraw the \$29,500.00 invoice and submit a new one that would be

closer to \$12,000.00. Upon information and belief, he has not yet submitted a new invoice to Kent, Washington, or Washington's insurer.

42. Washington, who never consented to the tree service being performed, later learned that the highest reasonable charge for this type of tree job would be around \$5,000.00.

43. After Washington received the invoice, he called Premier Landscaping & Lawn Care LLC to see if the \$29,500.00 figure could have resulted from a typo. A representative of Premier Landscaping & Lawn Care LLC said the invoice had the correct figure.

44. Kent later learned from Bugg that he and his company were hired by defendant Downey to remove the trees, and did remove trees, from the following properties in Wilmington that Kent manages, in addition to the 512 N. 10th St property: 318 Englewood Drive; 230 W. Bedford Rd; 513 Diane Drive; and 2110 Creecy Ave. Kent did not give defendants authority to work on these properties.

45. On information and belief, regarding a property not managed by Kent, on Thursday, September 20, 2018, defendant Downey represented to the homeowners of 1002 Hunting Ridge Rd. in Wilmington, Catherine Griego Van Blarcom and her husband, that he would remove a tree that had fallen on their home in exchange for their referring him to two or three potential tree service customers.

46. On information and belief, defendant Downey stated to the homeowners that, in exchange for these references, he would give them a "discount" in the amount of the \$2,500 deductible and that he would only collect monies if the insurance company approved the claim.

47. On information and belief, defendant Downey stated that he would handle the insurance claim and would send an invoice to the insurance company for \$4,500.00.

48. On information and belief, Van Blarcom told Downey to get authorization from the insurance company and then she would allow him to do the work.

49. On information and belief, based upon defendant Downey's representations, and after telling Downey that they would need to pay the deductible, Van Blarcom permitted defendant to do the tree removal.

50. On information and belief, unbeknownst to Van Blarcom at the time, Premier Landscaping & Lawn Care, Inc. performed the actual work, which involved a crew of five men working for about 60 to 90 minutes.

~~51.~~ On information and belief, defendant Downey ultimately sent an invoice to the property owners' insurance company for \$15,300.02.

52. On information and belief, this invoice represented that the property owners paid defendant Downey \$2,500.00 in cash for the deductible and that the balance of \$12,800.02 was due from the insurance company.

53. On information and belief, the homeowners reported to their insurance company that they had not paid a cash deductible to defendant Downey and had not agreed to a total charge of \$15,300.02 for the job.

54. On information and belief, the demands for payments in the amounts of \$15,300.02 or \$12,800.02 for these tree removal services was made with the knowledge and intent to charge an unreasonably excessive price under the circumstances.

55. The tree removal services described in the preceding paragraphs were used as a direct result of an emergency and were used to preserve and protect the property owners' property, life, safety and/or economic well-being.

**CLAIMS FOR RELIEF**

**CLAIM I**

**PRICE GOUGING**

**N.C. GEN. STAT. §§ 75-38 and 75-1.1**

56. The demand for payment of \$29,500.00 by defendant Bugg, acting in concert with defendant Downey, for the tree removal work done at 512 N. 10th Street was done with the knowledge and intent of these defendants to charge for necessary services at an unreasonably excessive price under the circumstances, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1.

57. The demands by defendant Downey, acting in concert with defendant Anderson, for payment of \$10,565.00 for the work done at the 930 Hunting Ridge Rd. and of \$23,500.00 for the work done at 3260 Camden Circle were made with the knowledge and intent of these defendants to charge for necessary services at an unreasonably excessive price under the circumstances, in violation N.C. Gen. Stat. §§ 75-38 and 75-1.1.

58. The demand for payment of \$15,300.02 by defendant Downey, acting in concert with defendant Bugg, for the tree removal work done at 1002 Hunting Ridge Rd was done with the knowledge and intent of these defendants to charge for necessary services at an unreasonably excessive price under the circumstances, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1.

**CLAIM II**

**UNFAIR AND DECEPTIVE TRADE PRACTICES**

**N.C. GEN. STAT. § 75-1.1**

59. Each act by defendant Downey of performing—or directing others to perform—tree removal services on the above-described properties when he had no authority to do so, as well as after he had been specifically instructed not to, constitutes an unfair or deceptive act or practice in violation of N.C. Gen. Stat. § 75-1.1 *et seq.*

60. The “bait-and-switch” plans or schemes by which defendant Downey (1) lured Kent to agree to allow him to perform tree removal services at 930 Hunting Ridge Rd. for \$5,000.00,

then demanded payment for \$10,565.00, and (2) lured Van Blarcom with a \$4,500 estimate, then later submitted an invoice for \$15,300.02, constitute unfair or deceptive acts or practices, in violation of N.C. Gen. Stat. § 75-1.1.

61. Each of defendant Downey's threats and other unfair or deceptive representations aimed at inducing the owners or their agent to pay an inflated price, which they would otherwise not agree to, constitutes an unfair or deceptive act or practice, in violation of N.C. Gen. Stat. § 75-1.1.

62. Each submission of an invoice to a property owner, owner's agent or insurer by defendants Downey and Bugg for an amount that was not authorized or agreed to by the owner or owner's agent for tree work done, constitutes an unfair or deceptive act or practice in violation of N.C. Gen. Stat. § 75-1.1.

63. The failure of defendant Bugg to withdraw his demand for payment for tree work done at 512 N. 10th Street after he learned that he had no authority to enter on that property or to do that work, constitutes an unfair or deceptive act or practice in violation of N.C. Gen. Stat. § 75-1.1.

**CLAIM III**  
**FAILURE TO REGISTER AS FOREIGN CORPORATION OR LLC**  
**N.C. GEN. STAT. §§ 55-15-01 and 57D-2-24**

64. Defendant Action Tree Pros, Inc. conducted business in North Carolina without registering with the North Carolina Secretary of State as a foreign corporation, in violation of N.C. Gen Stat. § 55-15-01.

65. Premier Landscaping & Lawn Care, LLC conducted business in North Carolina without registering with the North Carolina Secretary of State as a foreign LLC, in violation of N.C. Gen Stat. § 57D-2-24.

**REQUEST FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY  
INJUNCTION UNDER N.C. GEN. STAT. § 75-14**

66. In light of the evidence that defendants engaged in price gouging and/or unfair and deceptive practices as set forth in this complaint and the attached affidavits, the State requests that defendants, and persons acting under their direction or control or with their approval, be enjoined immediately as set forth in detail in paragraphs 68-69 of this complaint.

67. Unless defendants are restrained and enjoined, they will continue to violate North Carolina law and financially harm citizens of North Carolina.

68. Further underscoring the need for immediate relief is that defendant Downey was convicted in Kentucky in 2017 for felony Intimidating a Participant in the Legal Process and felony Tampering with a Witness (in connection with convictions for assault, wanton endangerment, and unlawful imprisonment). (Certified copy of the criminal records is attached as **State's Exhibit 4**) These recent convictions are relevant because defendant Downey, who is currently on probation for these crimes, attempted to intimidate Kent in this case in the course of his business dealings. Permitting defendant Downey to continue operating his business in North Carolina would present a threat to the North Carolina public.

**PRAYER FOR RELIEF**

**WHEREFORE, THE STATE PRAYS THE COURT** for the following relief:

69. That defendants Downey, Action Tree Pros, Inc., Bugg, and Premier Landscaping & Lawn Care, LLC, together with their agents, employees, representatives, subcontractors, successors and assigns, and any persons acting in concert with these defendants, be temporarily restrained, under N.C. Gen. Stat. § 75-14, from

- i. engaging in unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1, including but not limited to the acts and practices listed above;

- ii. engaging in price gouging in violation of N.C. Gen. Stat. § 75-38;
- iii. advertising, offering, soliciting, or entering into contracts, or receiving payment for any tree or bush trimming or removal services, debris removal, or storm damage recovery or restoration services in North Carolina;
- iv. performing or providing any tree or bush trimming or removal services, debris removal, or storm damage recovery or restoration services in North Carolina;
- v. destroying, removing, transferring, erasing, or otherwise disposing of any business or financial records relating to defendants' businesses, including but not limited to any business or financial records relating to monies obtained from any North Carolina consumer; and
- vi. transferring, withdrawing, concealing, disposing, or encumbering any of defendants' assets without permission of the Court.

70. That defendants Anderson and TRICO Tree Service, LLC, together with their agents, employees, representatives, subcontractors, successors and assigns, and any persons acting in concert with these defendants, be temporarily restrained, under N.C. Gen. Stat. § 75-14, from

- i. engaging in price gouging, including serving as a subcontractor for necessary services with the knowledge and intent that the charge for such work will be at an unreasonably excessive price under the circumstances, and/or receiving payment for necessary services with the knowledge and intent that the amount of such payment is an unreasonably excessive price under the circumstances, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1;
- ii. destroying, removing, transferring, erasing, or otherwise disposing of any business or financial records relating to defendants' businesses, including but

not limited to any business or financial records relating to monies obtained from any North Carolina consumer; and

- iii. transferring, withdrawing, concealing, disposing, or encumbering any of defendants' assets without permission of the Court.

71. That defendants be required, under N.C. Gen. Stat. § 75-14, to produce the following records no later than three days prior to the preliminary injunction hearing or within ten days of entry of a temporary restraining order, whichever is sooner:

- i. A verified list of the names and addresses of all North Carolina consumers to whom defendants, or those acting under their direction or control or with his approval, has provided products or services since September 7, 2018, together with an individualized accounting of all payments received from each such consumer.
- ii. The name and address of every bank at which defendants maintain deposit, checking, or other accounts, along with the account number for each such account, a statement of the current balance in each such account, and a copy of the bank statement(s) for each such account that covers the period August 7 through October 15, 2018.
- iii. A current balance sheet and the most recent profit and loss statement for each business defendants, or those acting under their direction or control or with their approval, operate in North Carolina or which provide products or services to North Carolina consumers.

72. That the Court schedule a hearing to determine whether the Temporary Restraining Order, or some reasonable modification thereof, should not be continued in the form of a Preliminary Injunction pending the final adjudication of this cause;

73. That upon final adjudication of this cause, the terms of the Preliminary Injunction continue in the form of a Permanent Injunction, pursuant to N.C. Gen. Stat. § 75-14;

74. That defendants be ordered, pursuant to N.C. Gen. Stat. § 75-15.1 to pay restitution to all consumers and insurers who suffered injury due to defendants' unlawful acts and practices set forth above;

75. That defendants be ordered to disgorge all amounts they or their agents, employees, representatives, subcontractors, successors and assigns have received, or in the future do receive, in connection with the tree work set forth above, under N.C. Gen. Stat. § 75-14;

76. That the Court, pursuant to N.C. Gen. Stat. § 75-15.1, cancel all express, implied or constructive contracts between defendants, acting as contractors or subcontractors, and the owners of the properties described above, including that the Court extinguish any and all statutory or common law *quantum meruit* rights of defendants against all property owners and/or their insurers for the above-noted tree work;

77. That the defendants be ordered to pay civil penalties of \$5,000.00 for each instance of price gouging and each unfair and deceptive trade practice found by the Court, pursuant to N.C. Gen. Stat. § 75-15.2;

78. That defendants Action Tree Pros, Inc. and Premier Landscaping & Lawn Care, LLC be ordered to pay all fines, penalties, fees and taxes owing in connection with their respective violations of N.C. Gen Stat. §§ 55-15-01 and 57D-2-24;

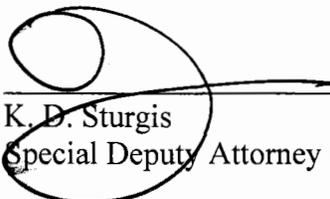
79. That defendants be ordered to reimburse the State for attorneys' fees and litigation expenses in this action, pursuant to N.C. Gen. Stat. § 75-16.1;

80. That the costs of this action be taxed to defendants; and

81. That the State be granted such other and further relief as to the Court seems just and appropriate.

Respectfully submitted, this the 17th day of October, 2018.

JOSHUA H. STEIN  
ATTORNEY GENERAL



---

K. D. Sturgis  
Special Deputy Attorney General

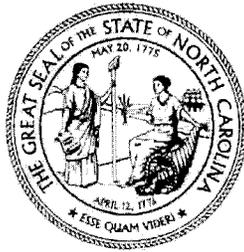
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602  
Telephone: (919) 716 6000  
Facsimile: (919) 716 6050  
State Bar No. 9486  
[ksturgis@ncdoj.gov](mailto:ksturgis@ncdoj.gov)



---

Daniel T. Wilkes  
Assistant Attorney General

N.C. Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602  
Phone: (919) 716-6000  
Facsimile: (919) 716-6050  
N.C. State Bar No. 46500  
[dwilkes@ncdoj.gov](mailto:dwilkes@ncdoj.gov)



# State of North Carolina

**ROY COOPER**  
GOVERNOR

September 7, 2018

EXECUTIVE ORDER NO. 51

## DECLARATION OF A STATE OF EMERGENCY

BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

**WHEREAS**, the State of North Carolina is under imminent threat from Tropical Storm Florence, which has the potential to make landfall next week; and

**WHEREAS**, it is expected that the people of North Carolina in the storm's path will be exposed to a substantial risk of injury or death; and

**WHEREAS**, it is expected that the tropical storm will cause significant damage to public and private property and may seriously disrupt essential utility services and systems; and

**WHEREAS**, the potential impacts from Tropical Storm Florence constitute a state of emergency as defined in N.C. Gen. Stat. § 166A-19.3(19); and

**WHEREAS**, certain measures are necessary to ensure the protection and safety of North Carolina residents and coordinate the emergency response among state and local entities and officials; and

**WHEREAS**, N.C. Gen. Stat. §§ 166A-19.10 and 166A-19.20 authorize the Governor to declare a state of emergency and exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies.

**NOW, THEREFORE**, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

### Section 1.

I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19), exists in the State of North Carolina.

The emergency area, as defined in N.C. Gen. Stat. §§ 166A-19.3(7) and 166A-19.20(b), is the State of North Carolina. ("the Emergency Area").

### Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan ("the Plan").

**EXHIBIT**

tabbles

1

**Section 3.**

I delegate to Erik A. Hooks, the Secretary of the North Carolina Department of Public Safety, or his designee, all power and authority granted to and required of me by Article 1A of Chapter 166A of the North Carolina General Statutes for the purpose of implementing the Plan and deploying the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina.

**Section 4.**

Further, Secretary Hooks, as Chief Coordinating Officer for the State of North Carolina, shall exercise the powers prescribed in N.C. Gen. Stat. § 143B-602.

**Section 5.**

I further direct Secretary Hooks or his designee to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

**Section 6.**

I hereby order that this declaration be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the state of emergency would prevent or impede this; and (3) distributed to others as necessary to ensure proper implementation of this declaration.

**Section 7.**

This declaration does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C. Gen. Stat. § 166A-19.30(c).

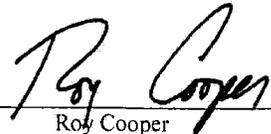
**Section 8.**

Pursuant to N.C. Gen. Stat. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C. Gen. Stat. §§ 75-37 and 75-38 in the Emergency Area.

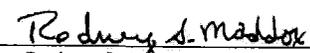
**Section 9.**

This declaration is effective immediately and shall remain in effect until rescinded.

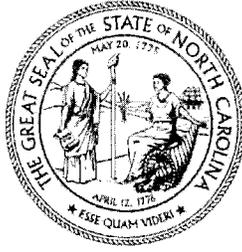
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 7th day of September in the year of our Lord two thousand and eighteen.

  
\_\_\_\_\_  
Roy Cooper  
Governor

ATTEST:

  
\_\_\_\_\_  
Rodney S. Maddox  
Chief Deputy Secretary of State





# State of North Carolina

**ROY COOPER**  
GOVERNOR

October 10, 2018

**EXECUTIVE ORDER NO. 74**

## **DECLARATION OF A STATE OF EMERGENCY**

### **BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA**

**WHEREAS**, the State of North Carolina is under imminent threat from the remnants of Hurricane Michael (“Hurricane”); and

**WHEREAS**, the State of North Carolina remains under a state of emergency to assist with the recovery from Hurricane Florence; and

**WHEREAS**, it is expected that the Hurricane may cause significant damage to public and private property and seriously disrupt essential utility services and systems; and

**WHEREAS**, it is expected that North Carolinians in the storm’s path will be exposed to a substantial risk of injury or death; and

**WHEREAS**, the potential impacts from Hurricane Michael constitute a state of emergency as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19); and

**WHEREAS**, certain measures are necessary to ensure the protection and safety of North Carolina residents and coordinate the emergency response among state and local entities and officials; and

**WHEREAS**, N.C. Gen. Stat. §§ 166A-19.10 and 166A-19.20 authorize the Governor to declare a state of emergency and exercise the powers and duties set forth in the North Carolina Emergency Management Act to direct and aid in the response to, recovery from, and mitigation against emergencies.

**NOW, THEREFORE**, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

#### **Section 1.**

I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19), exists in the following counties in North Carolina: Alamance, Anson, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Chatham, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Martin, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Robeson, Rockingham, Sampson, Scotland, Stokes, Surry, Tyrrell, Vance, Wake, Warren, Washington, Wayne, Wilson, and Yadkin (“the Emergency Area”).

**Section 2.**

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan ("the Plan").

**Section 3.**

I delegate to Erik A. Hooks, the Secretary of the North Carolina Department of Public Safety, or his designee, all power and authority granted to and required of me by Article 1A of Chapter 166A of the North Carolina General Statutes for the purpose of implementing the Plan and deploying the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina.

**Section 4.**

Further, Secretary Hooks, as Chief Coordinating Officer for the State of North Carolina, shall exercise the powers prescribed in N.C. Gen. Stat. § 143B-602.

**Section 5.**

I further direct Secretary Hooks or his designee to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

**Section 6.**

I hereby order that this declaration be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the state of emergency would prevent or impede this; and (3) distributed to others as necessary to ensure proper implementation of this declaration.

**Section 7.**

This declaration does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C. Gen. Stat. § 166A-19.30(c).

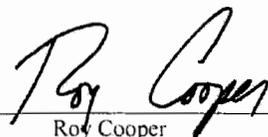
**Section 8.**

Pursuant to N.C. Gen. Stat. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C. Gen. Stat. §§ 75-37 and 75-38 in the Emergency Area.

**Section 9.**

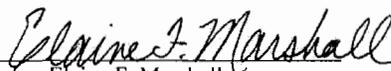
This declaration is effective immediately and shall remain in effect until rescinded.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 10<sup>th</sup> day of October in the year of our Lord two thousand and eighteen.



Roy Cooper  
Governor

ATTEST:



Elaine F. Marshall  
Secretary of State



STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
NO. \_\_\_\_\_

WAKE COUNTY

STATE OF NORTH CAROLINA *ex rel.* )  
 JOSHUA H. STEIN, Attorney General, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 NICHOLAS KYLE DOWNEY et al., )  
 )  
 Defendants. )  
 )  
 )  
 )

**AFFIDAVIT OF  
Sherry Ann Kent**

I, Sherry Ann Kent, being first duly sworn, depose and say:

1. I am an adult over eighteen years old and am competent to make this affidavit of my own free will, and state facts within my personal knowledge.

2. I am the owner of Shaw Real Estate, LLC, and, in that capacity, serve as a property manager for property owners in the Wilmington, North Carolina, area. I have owned this business for about 8 years and have worked in the property management business for about 18 years.

3. My former name is Sherry Kent Shaw.

4. In the aftermath of Hurricane Florence, I worked to obtain tree removal services for numerous properties that I manage. Many of the owners of these properties live out of town and rely upon me to find and engage service providers to do work on their properties. The owners (or their homeowner's insurance companies) are the ultimate payers for such services.

5. On Monday September 17, 2018, Nicholas Downey, the owner of Action Tree Pros, Inc., contacted me to ask whether I needed tree removal services for my client properties owners. I did not know Downey or his business beforehand, and his outreach to me was unsolicited. He was very pleasant to deal with, at first.

6. I later learned that Action Tree Pros, Inc was the business previously known as Action Tree Service LLC.



7. That same day (Monday), Downey and I drove together to several of the properties I manage in order to survey the damage. I made it clear to Downey that I needed quotes or estimates for the work to be done on each property before authorizing the work.

8. Downey told me that he could do the tree removal work (and place a tarp on the structure) at one of these properties, 930 Hunting Ridge Rd. in Wilmington, for around \$5,000.00. Downey said that if a crane was needed, it would cost an additional \$1,000.00 per hour, but no crane was ever used. Based on Downey's representation that the job would cost approximately \$5,000.00, and after receiving proof of liability insurance via email, I gave Downey permission to do the work at 930 Hunting Ridge Rd. (A true and accurate copy of the insurance information he provided me is attached as Attachment 1.)

9. The job at 930 Hunting Ridge Rd. was the only job I gave permission for Downey and Action Tree Pros to do and the only one he gave me a quote or estimate for. To my knowledge, none of my homeowners gave Downey permission to work on their properties or, for that matter, for him to contract with subcontractors to do so.

10. It is my practice to require a company doing this type of work to be properly insured, and I relied upon Downey's representation that Action Tree Pros was.

11. Downey said that although the homeowner's insurance would cover the work at 930 Hunting Ridge Rd., he needed the owner to pay him the \$1,000.00 deductible. I therefore gave Downey \$1,000.00 in cash and was reimbursed by the homeowner.

12. The work was done the following day, Tuesday, September 18, 2018, by TRICO Tree Service, a Raleigh company owned by Brad Anderson. I did not give permission to Downey or Action Tree Pros, Inc, to subcontract the work to anyone and did not give TRICO permission to enter the premises or do the work.

13. On the morning of Wednesday, September 19, 2018, Downey emailed me the receipt for the \$1,000 deductible payment. (A true and accurate copy of that email is attached as Attachment 2.) I did not have access to my email at the time, so my assistant, who did have access, sent me screen shots of the

documents Downey sent. In addition to the receipt reflecting payment of the \$1,000.00, Downey's email contained an invoice for \$10,565.00 that he said he sent to the owner's insurance company.

14. I was stunned when I saw the \$10,565.00 charge given that Downey had told me that the job would cost about \$5,000.00. I could not believe that he charged such a high amount, an amount never agreed to by the homeowner or myself. I therefore contacted Downey and accused him of price gouging. Downey denied he was and said that he knew how to handle insurance claims.

15. The 930 Hunting Ridge Rd. job was the only job Downey gave me a quote for and which I gave him permission to work on. I would never agree for work to be done on the properties I manage without first getting quoted a price, and I took Downey at his word that the 930 Hunting Ridge Rd job would cost about \$5,000.

16. On Wednesday, September 19, 2018, at 11:46 AM, I received a text message from Downey, via his Action Tree Pros, Inc, phone number (270-594-5984), indicating that he was going to perform a tree removal job at 12:00 PM that day at the property I manage at 3260 Camden Circle in Wilmington. Four minutes after receiving this message, I texted back at 11:50 AM: "Do not remove any trees." (A true and accurate copy of this text message exchange is contained in Attachment 3.)

17. The homeowner at 3260 Camden Circle had received word from a tree service in the neighborhood at the time that the work should cost \$3,800.00.

18. Thinking that Downey had obeyed my explicit direction not to remove any trees, I went to 3260 Camden Circle to get a quote from a local tree removal service. I was very surprised to find a crew at 3260 Camden Circle that had been sent by Downey nearing completion of the job. The company doing the work was TRICO Tree Service. Neither I nor the homeowner gave Downey, Anderson, or their respective companies' permission to begin work on the property. In fact, I had explicitly told Downey not to do so when he had sent me the text saying work would begin at 12:00 PM that day.

19. That afternoon (September 19), Downey called me over and over again, and sent numerous texts and emails to try to get me to have the owner pay Downey the \$2,500.00 insurance deductible. I

eventually gave Downey's number to the owner, and after they spoke the owner paid the \$2,500.00 deductible to Downey over the phone via credit card.

20. I learned that Downey had submitted an invoice for \$23,000.00 to the owner's insurer, and he also sent the invoice to me. (A true and accurate copy of the invoice is attached as Attachment 4.)

21. The next day, on Thursday, September 20, 2018, at 1:31 PM Downey texted me from his (270) 853-4784 phone number, "I need Avery Washington number and owner of ivocet dr." I texted back four minutes later, at 1:35 PM, "Please don't do any more properties. The owner Avery is out of the country and ibis court is doing it herself." (A true and accurate copy of this text message exchange is contained in Attachment 5)

22. Later that Thursday, at 3:37 PM, I received texts from Downey's other phone number (270-594-5984) indicating that he was scheduled to arrive to do two more jobs on my properties later that day and on Sunday. I immediately texted back three messages: at 3:38 PM, "Do not touch any of my trees"; at 3:39 PM, "Stay off of my properties. I will not pay you for any additional work"; and at 3:40 PM, "DO NOT GO ON ANY OF MY PROPERTIES TODAY OR SUNDAY I WILL CALL THE POLICE." (A true and accurate copy of this text message exchange is contained in Attachment 6.)

23. I eventually blocked Downey's phone numbers because he kept calling over and over again.

24. Later that day, my assistant received from Downey an email requesting an appointment to do the tree work at 512 N. 10th Street. By email reply she directed him to cancel the appointment. At 6:26 PM that evening, Downey sent me the following threatening email: "If I don't receive payment or info for some of these jobs I'm going to the police for theft of services charges, you are being extremely unprofessional don't force me to be an asshole. Just get me the info for jobs we have done." (A true and accurate copy of this email message exchange is contained in Attachment 7.)

25. On Saturday, September 22, 2018, at 12:57 PM, Downey sent me an email making further threats, stating: "i need some info for work that has been completed i need a phone call asap im about to start writing reviews on your website and start making you my one focus i have a lot of money out right

now on this work and i need some communication.” (A true and accurate copy of this email exchange is contained in Attachment 8.)

26. On Sunday, September 23, 2018, I met the insurance adjuster for the 3260 Camden Circle job and told him that I did not have an agreement with Downey, his company, or his subcontractors to remove the tree.

27. There, I also spoke to Brad Anderson of TRICO Tree Service, who did the work at 930 Hunting Ridge Rd. and 3260 Camden Circle. Anderson told me that removing the tree at 3260 Camden Circle cost \$17,000.00 but Downey charged \$23,000.00. Anderson also said that he was going to charge \$4,500.00 for the 930 Hunting Ridge Rd. job but was told by Downey that Downey would pay him \$7,000.00. As noted above, Downey ultimately charged \$10,565.00 for that job despite his telling me that it would cost around \$5,000.00.

28. Anderson wanted my help because, he said, he did not trust Downey and was concerned that Downey was not going to pay him for the work that TRICO Tree Service had completed.

29. Anderson also told me that Downey sent him to some of the other properties that I manage. I had not given Downey or anyone else permission to work on those properties.

30. At my request, Anderson then went to the home I manage for Avery Washington at 512 N. 10th St. in Wilmington, where a large tree had fallen onto a structure, to survey the damage.

31. Anderson called me to tell me that another crew was already there working on the tree removal.

32. When I arrived at 512 N. 10th St., I discovered that a tree removal company, Premier Landscaping & Lawn Care, LLC, was already halfway through the job. I learned from a worker there that the owner of this company was Jeremy Bugg.

33. When Bugg eventually arrived at 512 N. 10th St., he told me that Downey had instructed him to remove the tree there. I had no knowledge that anyone would be working on that job and, from my understanding, neither did Washington. I did not halt work on the job given that it was halfway completed.

34. Bugg showed me a text message he received from Downey directing Bugg to remove the tree at 512 N. 10th St. as well as several other of the properties I manage that I showed Downey on Monday. I did not grant Downey permission to do work or subcontract work on any of those properties.

35. Premier Landscaping & Lawn Care later presented me with a \$29,500 invoice for the 512 N. 10th St. tree removal, which was addressed to Washington and his insurer and I forwarded to Washington. (A true and accurate copy of the invoice is contained in Attachment 9.) When I confronted Bugg about the extremely high invoice, he said that Downey had told him that the job involved a "\$50,000.00 tree." Bugg agreed to issue a new invoice with a lower charge, which he said would be closer to \$12,000.00. I am yet to receive a revised invoice from him.

36. Later that Sunday, Anderson and Bugg met me at my office to discuss what was going on. I explained to them that I had not given Downey or anyone else permission to do any tree removal jobs on the properties that I manage, except for the job at 930 Hunting Ridge Rd. I showed Anderson and Bugg the text messages described above in which I explicitly told Downey not to remove any trees from my properties as well as an email I sent cancelling Downey's appointment request. I also showed them the threatening emails from Downey stating that he was going to target my company if I did not give him information on homeowners.

37. I learned from Bugg that he and his company were hired by Downey to remove the trees from the following properties in Wilmington, NC, that I manage, in addition to the 512 N. 10th St property: 318 Englewood Drive; 230 W. Bedford Rd.; 513 Diane Drive; and 2110 Creecy Ave. Downey, Bugg, Anderson, and their respective companies had no authority to go on these properties or do any work on them.

38. Downey also sent Bugg to multiple other properties I manage in Wilmington, NC, to attempt to remove trees, but I had those trees removed by local contractors. Those addresses are the following: 4902 Franklin Ave.; 5402 Ibis Ct.; 209 Beasley Rd.; and 101 Lullwater Dr.

39. Bugg provided me with text messages showing that Downey instructed him to do tree removal work on various of my properties. (A true and accurate copy of these text messages are contained

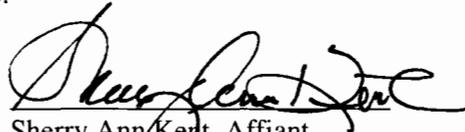
in Attachment 10.) In a separate text message Bugg provided me with, Downey urged Bugg to remember all the work they do because, "For instance, putting a \$12 tarp on a house nets you over \$500." (A true and accurate copy of this text message is contained in Attachment 11.)

40. I believe that my company is not the only one that Downey has targeted with his scheme.

41. I contacted Downey on Saturday, September 29, 2018, in hopes of resolving this matter before I reached out to the NC Attorney's Office, but he was uncooperative.

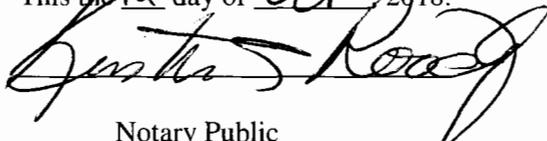
42. The attached documents are business records kept in the regular course of conducting my property management duties.

This the 12th of October, 2018.

  
Sherry Ann Kent, Affiant

Sworn to and subscribed before me

This the 12 day of Oct 2018.



Notary Public

My Commission Expires: 05/08/22





(<https://track.next-insurance.com/links?serial=65555>)

LIVE CERTIFICATE

● ACTIVE POLICY



**nick downey**

**Additional Insured  
Shaw Real Estate Llc**

Insurance carrier  
**State National Insurance Company, Inc.**

Hide details

View ACORD certificate

**Policy number**  
NXTATROX7U-00-GL

**Policy period**  
Sep 19, 2018 - Sep 19, 2019

**Type of insurance**  
General Liability

**Insured**  
nick downey

**Insured address**  
312 1st St

(<https://track.next-insurance.com/links?serial=65555>)

General Aggregate

\$1,000,000

Medical Expense

\$10,000

Products Completed

\$1,000,000

Rented Premises Damage

\$100,000

Per Occurrence

\$1,000,000

Personal Injury

\$1,000,000

Professional Liability

Deductible

\$500

General Aggregate

\$20,000

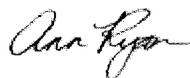
Per Occurrence

\$10,000

Insurer

State National Insurance Company, Inc.

Authorized by



[Terms of use \(/terms-of-use\)](#) | [Privacy policy \(/privacy-policy\)](#)

© 2018 Next Insurance Inc

**From:** Action Tree pros,Inc <[notifications@housecallpro.com](mailto:notifications@housecallpro.com)>

**Sent:** Tuesday, September 18, 2018 7:25 PM

**To:** Sherry Kent <[sherry@srellc.com](mailto:sherry@srellc.com)>

**Subject:** Receipt from Action Tree pros,Inc

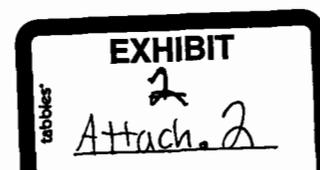


## Here's your receipt

**Invoice Number:** 5037  
**Service Date:**  
**Invoice Date:** Sep 18, 2018  
**Customer Name:** Shaw Real Estate Llc  
**Service Address:** 930 Hunting Ridge Road Wilmington, NC 28412

### Services

<b>Emergency Tree Removal</b>	\$8,850.00
Remove large pine blow over utilizing with proper rigging procedures and multiplying rigging device as per ANSI B30.9. Raise tree up and swing clearing roof line to a safe drop zone ensuring to mitigate damages.	
<b>Hazard Removal</b>	\$425.00
Hanger in backyard	
<b>Debris Removal</b>	\$625.00
Remove debris to curbside	



Temporary Roof Patch \$665.00

Install temporary barrier to mitigate further damage from roof leak. Water damage observed in attic and traveling further inside the dwelling. Interior damage caused from roof damage due to tree impacting. Materials included

---

Subtotal \$10,565.00

KY Service Tax \$0.00

---

**Amount Paid \$1,000.00**

Payment Method September 18, 2018

Cash 7:24pm

Thank you for your business.

(270) 285-3464 | [nick@actiontreepros.com](mailto:nick@actiontreepros.com)

[www.actiontreepros.com](http://www.actiontreepros.com)

312 1st St  
Henderson , KY 42420

[Terms & Conditions](#)





4:16  
(270) 594-5984  
Wed, Sep 19, 11:46 AM  
Hi Sherry, Nick  
Downey from Ac-  
tion Tree pros, Inc is  
scheduled to arrive  
Wed, Sep 19 be-  
tween  
12:00pm-12:15pm.  
See job details...  
[https://house-  
callapp.com/  
job\\_preview/](https://house-callapp.com/job_preview/)  
k129k8  
Text Message

4:16  
(270) 594-5984  
Wed, Sep 19 be-  
tween  
12:00pm-12:15pm.  
See job details...  
[https://house-  
callapp.com/  
job\\_preview/  
bk28k8](https://house-callapp.com/job_preview/bk28k8)  
Do not remove any  
trees  
From what?  
Text Message

4:18  
(270) 594-5984  
Wed, Sep 19, 11:46 AM  
Sherry, Nick  
Downey from Ac-  
tion Tree pros, Inc is  
scheduled to arrive  
Wed, Sep 19 be-  
tween  
12:00pm-12:15pm. 11:46 AM  
See job details...  
[https://house-  
callapp.com/  
job\\_preview/](https://house-callapp.com/job_preview/)  
k129k8  
Text Message

4:18  
(270) 594-5984  
Do not remove any  
trees 11:50 AM  
From what? 11:54 AM  
Thu, Sep 20, 3:37 PM  
Sherry, Nick  
Downey from Ac-  
tion Tree pros, Inc is  
scheduled to arrive  
Wed, Sep 20 be-  
tween  
12:00pm-12:15pm. 3:37 PM  
Text Message

EXHIBIT  
2  
Attach. 3

**From:** Action Tree pros,Inc [mailto:notifications@housecallpro.com]  
**Sent:** Thursday, September 20, 2018 7:56 PM  
**To:** Sherry Kent  
**Subject:** Receipt from Action Tree pros,Inc



## Here's your receipt

**Invoice Number:** 5043  
**Service Date:**  
**Invoice Date:** Sep 20, 2018  
**Customer Name:** Shaw Real Estate Llc  
**Service Address:** 3260 Camden Circle Wilmington, NC 28403

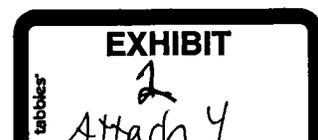
### Services

Tree Removal \$23,500.00

Remove extreamly large tree from on top of house utilizing crane and rigging using proper ANSI techniques

Subtotal \$23,500.00

KY Service Tax \$0.00



**Amount Paid**

**\$2,500.00**

**Payment Method**

Visa x5813

September 20, 2018

7:56pm

Thank you for your business.

(270) 285-3464 | [nick@actiontreepros.com](mailto:nick@actiontreepros.com)

[www.actiontreepros.com](http://www.actiontreepros.com)

312 1st St  
Henderson , KY 42420

[Terms & Conditions](#)



POWERED BY

 Housecall Pro

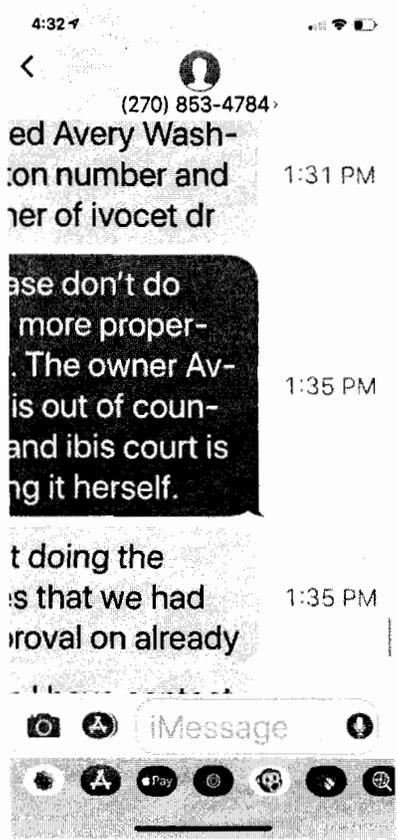
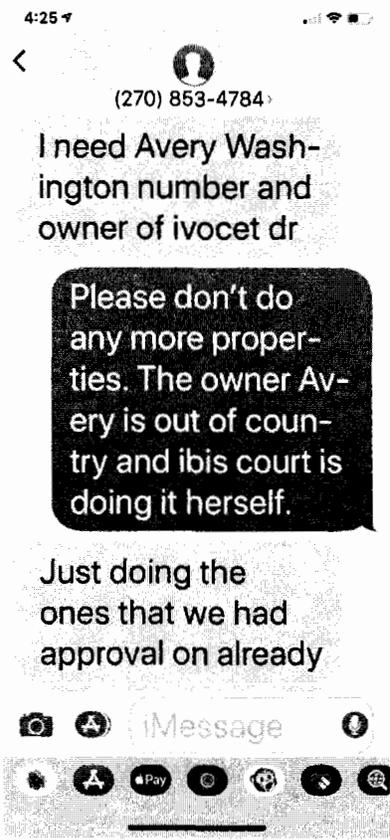


EXHIBIT  
2  
Attach 5

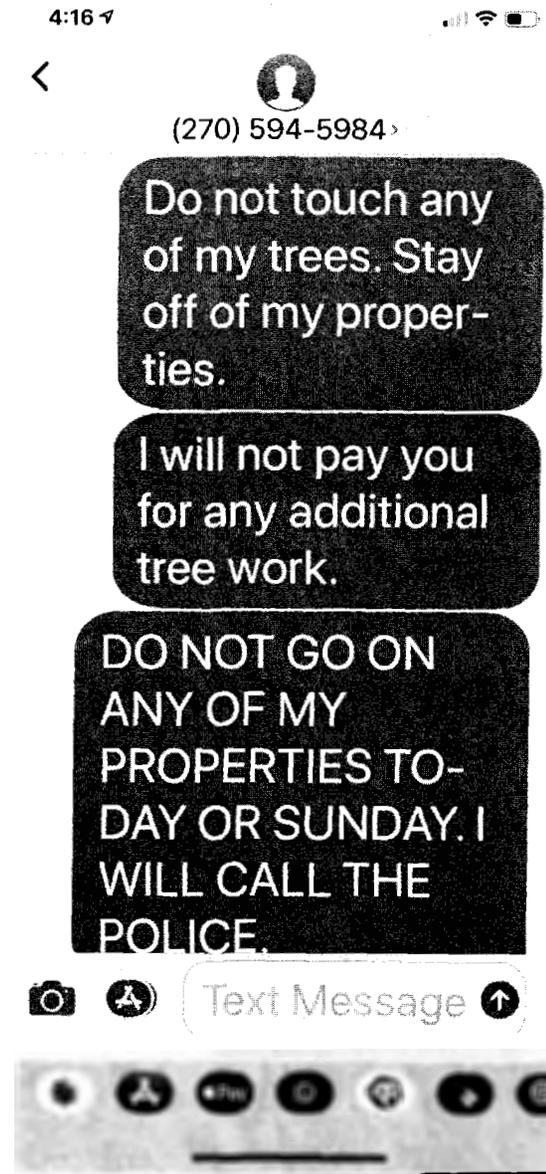
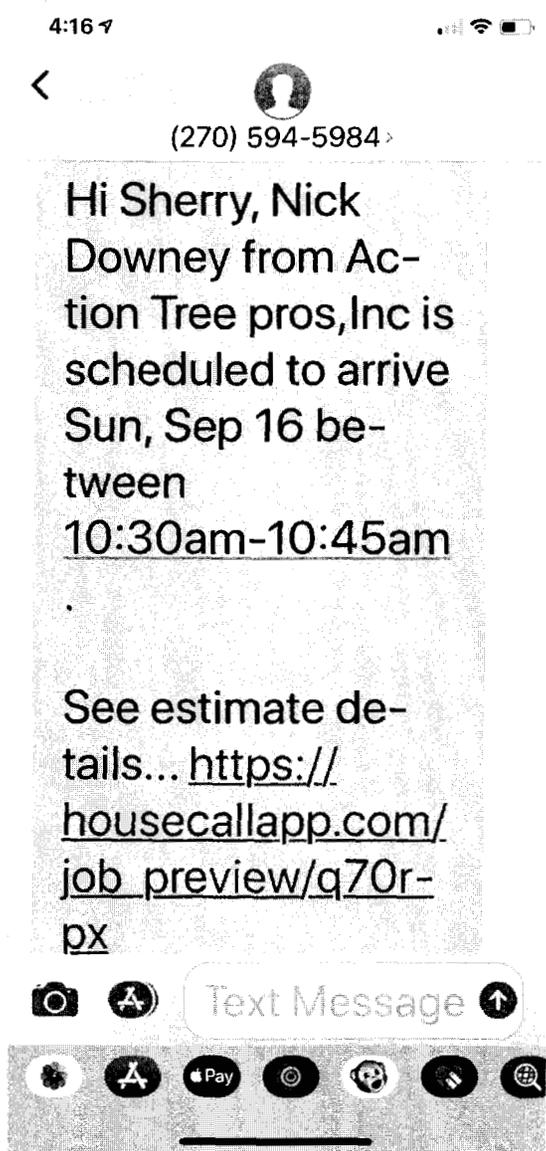
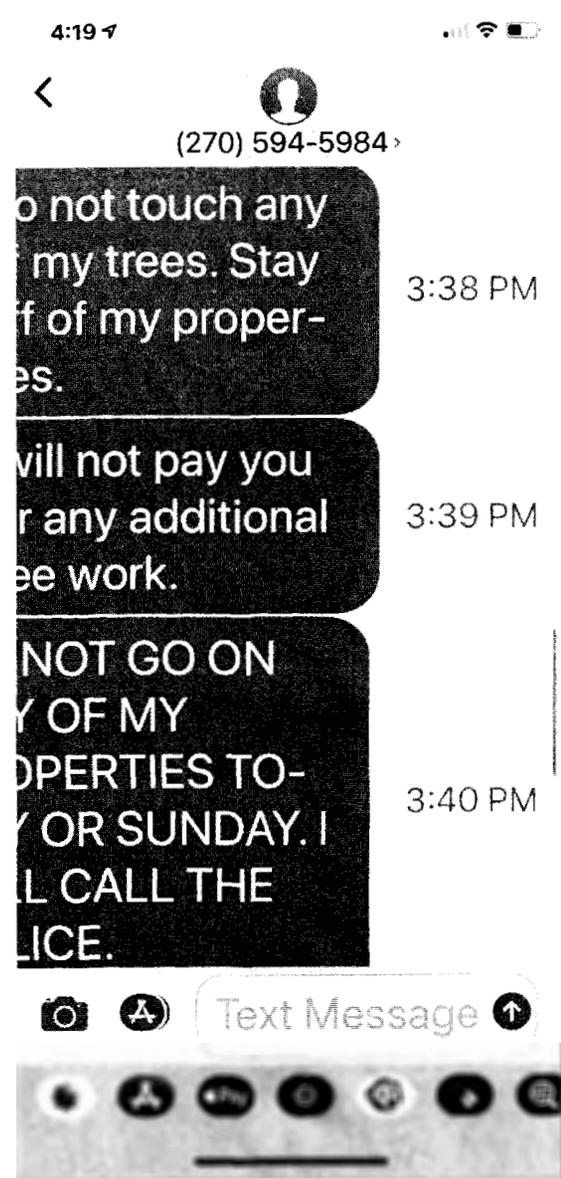
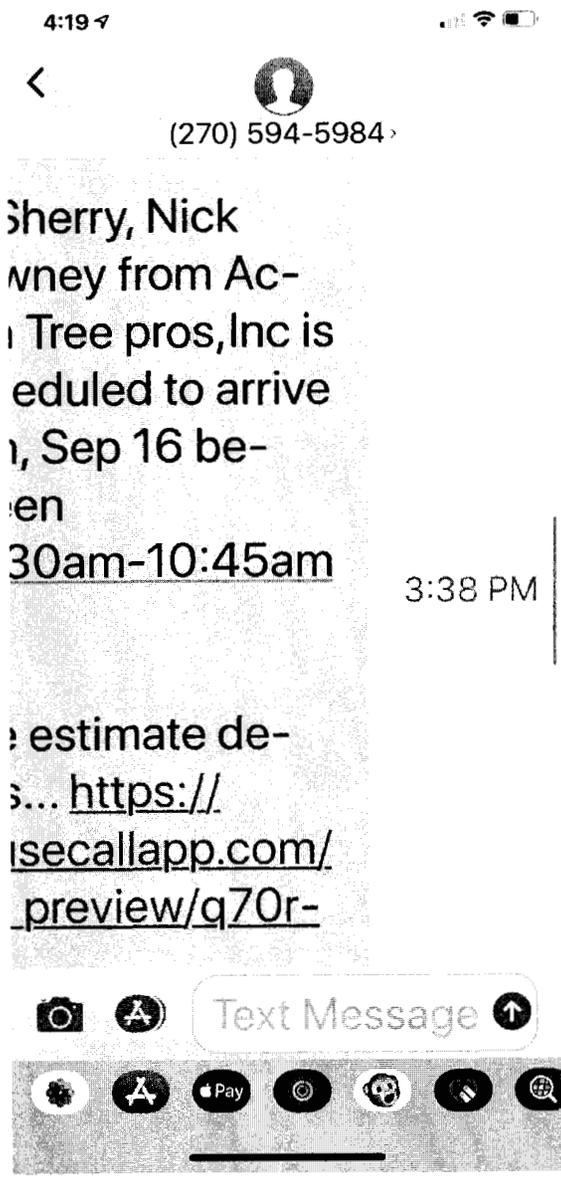
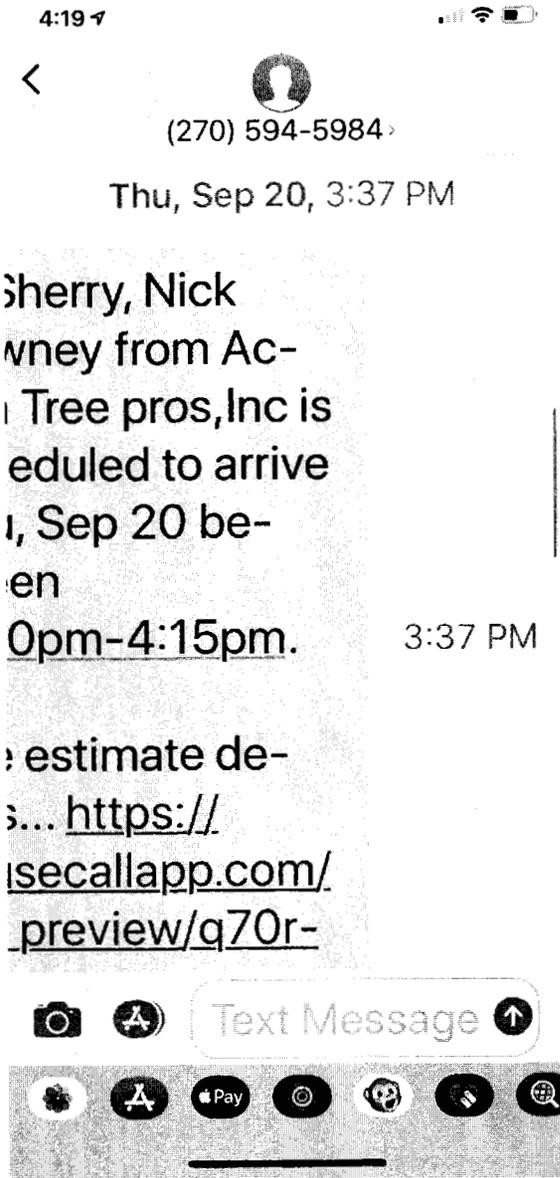


EXHIBIT  
2  
Attach 6

Text Action Tree Pros time stamped



**From:** Nick Downey [mailto:nick@actiontreepros.com]  
**Sent:** Thursday, September 20, 2018 6:26 PM  
**To:** Sherry Kent  
**Subject:** Re: Action Tree pros,Inc - Estimate Scheduled

If I don't receive payment or info for some of these jobs I'm going to the police for theft of services charges, you are being extremely unprofessional don't force me to be an asshole. Just get me the info for jobs we have done

Thanks

Nick Downey  
Chief Operating Officer  
Action Tree Pros, Inc  
270-285-3464

On Sep 20, 2018, at 3:50 PM, Sherry Kent <[sherry@srellc.com](mailto:sherry@srellc.com)> wrote:

Cancel this Service!

*Sherry Kent*

**Shaw Real Estate LLC**

**SRE LLC**

1724 Gardner Drive

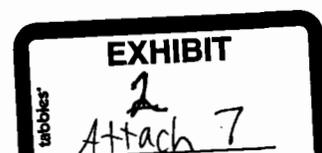
Wilmington, NC 28405

(910) 297-0800 Cell

Mail: PO Box 11225

Wilmington, NC 28404

[SRELLC.com](http://SRELLC.com)



The information contained in this transmission contains confidential information intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please reply to the sender that you received it in error, then delete it. Thank you for your cooperation.

---

**From:** Action Tree pros,Inc <[notifications@housecallpro.com](mailto:notifications@housecallpro.com)>

**Sent:** Thursday, September 20, 2018 3:37:52 PM

**To:** Sherry Kent

**Subject:** Action Tree pros,Inc - Estimate Scheduled



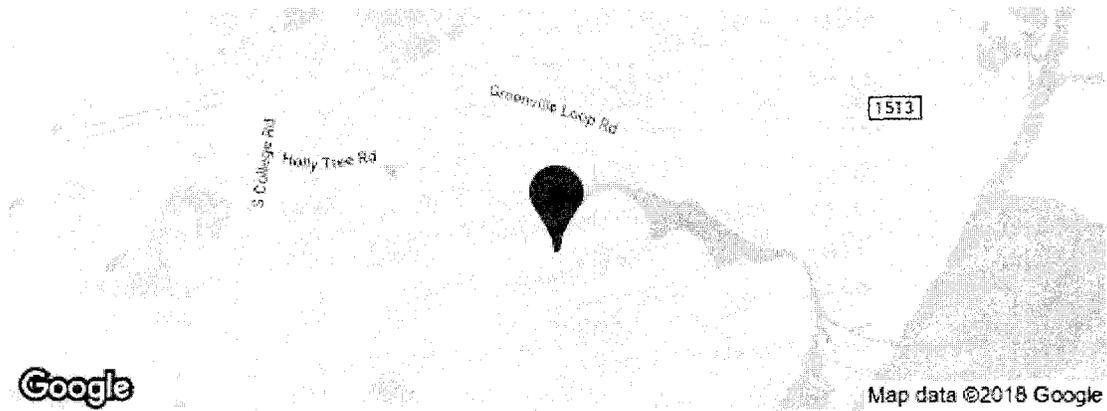
**Your estimate with Action Tree pros,Inc has been  
scheduled**

**When**

Thursday September 20, 2018 arriving between 4:00pm - 4:15pm

**Address**

5402 Ivocet Dr 120, Wilmington, NC 28409



## Services

### Tree - Emergency Tree Removal

Remove large pine uprooted hung up in neighbors tree and remove debris

### Emergency Tree Removal

Remove large storm damaged pine on top of fence in backyard and remove debris

### Debris Removal

Remove storm debris from yard

(270) 285-3464 | [nick@actiontreepros.com](mailto:nick@actiontreepros.com)

[www.actiontreepros.com](http://www.actiontreepros.com)

312 1st St  
Henderson , KY 42420

[Terms & Conditions](#)

**ACTION**  
**TREE PROS, INC.**

Free Estimates 270-255-3464

POWERED BY

 Housecall Pro

**From:** Nick downey [mailto:nick@actiontreepros.com]  
**Sent:** Saturday, September 22, 2018 12:57 PM  
**To:** Sherry Kent  
**Subject:** Re: Action Tree pros,Inc - Estimate Scheduled

i need some info for work that has been completed i need a phone call asap im about to start writing reviews on your website and start making you my one focus i have a lot of money out right now on this work and i need some communication

On Sep 20, 2018, at 2:50 PM, Sherry Kent <[sherry@srellc.com](mailto:sherry@srellc.com)> wrote:

Cancel this Service!

*Sherry Kent*

**Shaw Real Estate LLC  
SRE LLC**

1724 Gardner Drive  
Wilmington, NC 28405  
(910) 297-0800 Cell

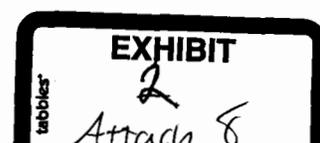
Mail: PO Box 11225  
Wilmington, NC 28404

[SRELLC.com](http://SRELLC.com)

The information contained in this transmission contains confidential information intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please reply to the sender that you received it in error, then delete it. Thank you for your cooperation.

---

**From:** Action Tree pros,Inc <[notifications@housecallpro.com](mailto:notifications@housecallpro.com)>  
**Sent:** Thursday, September 20, 2018 3:37:52 PM  
**To:** Sherry Kent  
**Subject:** Action Tree pros,Inc - Estimate Scheduled





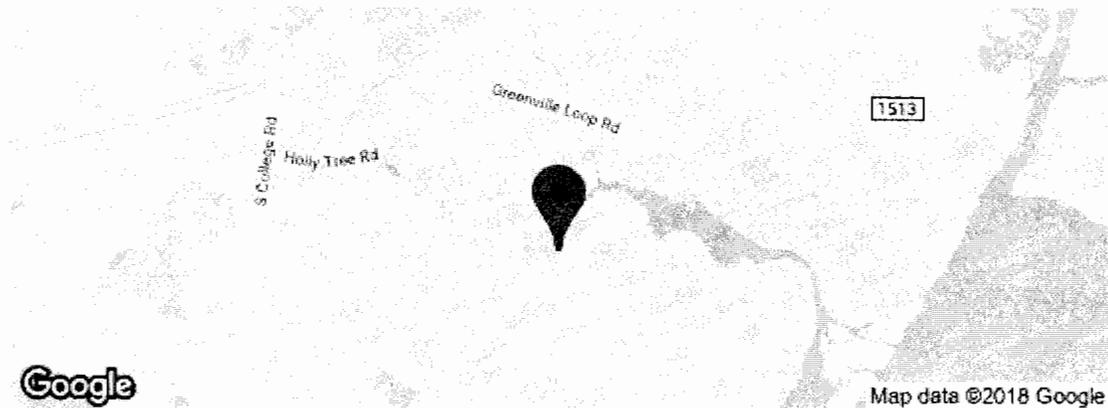
## Your estimate with Action Tree pros,Inc has been scheduled

### When

Thursday September 20, 2018 arriving between 4:00pm - 4:15pm

### Address

5402 Ivocet Dr 120, Wilmington, NC 28409



### Services

#### Tree - Emergency Tree Removal

Remove large pine uprooted hung up in neighbors tree and remove debris

#### Emergency Tree Removal

Remove large storm damaged pine on top of fence in backyard and remove debris

#### Debris Removal

Remove storm debris from yard

(270) 285-3464 | [nick@actiontreepros.com](mailto:nick@actiontreepros.com)

[www.actiontreepros.com](http://www.actiontreepros.com)

312 1st St  
Henderson , KY 42420

[Terms & Conditions](#)



POWERED BY

 Housecall Pro

2-420

27-400-177

Bill To:

Crane Shield  
Arlow, Wilmington  
NCPA - Claim # F-110633  
182 N. 13th Street  
Wilmington, NC 28404

Total

Due on receipt

Serviceid	Item	Description	Quantity	Rate	Amount
9/24/04	Labor	Tree damage due to wind and loss. Tree is located through the house and considered an emergency removal. Premier removed large tree located on the rear left side of house. Once removed and cut up debris was taken to the front by the street. Tree base was approximately 36 inches. Equipment used was a skid steer with grapple, Bucket truck, Crane (Bier), 2 climbers, and 9 men. Tree removal took two days to remove and clean up. Premier as well installed tarp to roof in order to protect home.		25,000.00	25,000.00

EXHIBIT

2

Attach 9



Sun, Sep 23, 10:02 AM

Check every address if there's stumps pull the stump if it needs tatted tarp it hangers take them down. Keep up with it everything we do we get paid for. For instance putting a \$12 tarp on a house nets you over \$500 stump measure how big it is from exposed root to exposed root and it is \$21/inch measure the root wad

We need to make sure every address is took care of TODAY so we can start on something else tommorrow



If we are planning on starting hoa tomorrow I would like to go a drive the properties today before we start so I can see what we will be doing

STATE OF NORTH CAROLINA  
WAKE COUNTY

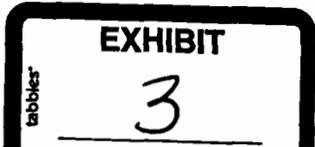
IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
NO. \_\_\_\_\_

STATE OF NORTH CAROLINA *ex rel.* )  
JOSHUA H. STEIN, Attorney General, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
NICHOLAS DOWNEY et al., )  
 )  
Defendants. )  
 )  
 )  
 )  
 )

**AFFIDAVIT OF  
Avery Washington**

I, Avery Washington, being first duly sworn, depose and say:

1. I am an adult over eighteen years old and am competent to make this affidavit of my own free will, and state facts within my personal knowledge.
2. I am an active duty member of the United States Marines Corps and presently hold the rank of Staff Sergeant.
3. I am a resident of Onslow County, and my primary residence is at 438 Chadwick Shores Drive in Sneads Ferry, North Carolina.
4. I own the property located at 512 N. 10th Street in Wilmington, North Carolina, part of which I rent out to others. On the property is a one-story house, behind which is a small, two-story dwelling that has a one-story addition connected by an open-air walk way.
5. On September 15, 2018, I was out of the country on pre-deployment leave.
6. On that day, the tenant at my property at 512 N. 10th Street, Anthony Carter, sent me a text message saying he needed to speak with me about something urgent.
7. I contacted my property manager, Sherry Kent Shaw, and asked her to give Carter a call. I also provided Carter with Shaw's phone number.



8. Later on September 15, Shaw sent me two photos of a tree that had fallen down on the two-story structure and its addition. (**Attachment 1 to Washington Affidavit**)

9. I then called Shaw on the phone while she was visiting my property to survey the situation with a tree removal service. She did not mention the name of the service. Shaw and I did not discuss any prices. We ended the call with the next step being that she would get me quotes for the tree removal. I never did receive a quote.

10. I did not discuss with anyone the possibility that Action Tree Pros Inc., Premier Landscaping & Lawncare LLC, or any other particular company would do tree removal work on my property. I did not consent to either of those companies, or any other company, doing tree removal work on my property.

11. I returned to Sneads Ferry on September 24, 2018.

12. On September 25, 2018, I discovered, for the first time, that Premier Landscaping & Lawncare LLC had removed the tree on my property. I was informed of this fact by Shaw, who said Premier Landscaping & Lawncare LLC was charging \$30,000.00 for the work. I asked Shaw for an itemized invoice.

13. On September 27, 2018, Shaw emailed me an invoice dated September 18, 2018, from Premier Landscaping & Lawncare LLC charging \$29,500.00 for the tree removal. (**Attachment 2 to Washington Affidavit**)

14. When I saw the invoice, I was very surprised and irritated. I do not see how the tree removal could possibly cost that much.

15. From my discussion with co-workers who worked in the tree removal industry prior to joining the military, my understanding is that the highest reasonable charge for this type of tree job was around \$5,000.00.

16. Shaw told me that the highest estimate she received for the job was \$12,000.00.

17. After I received the invoice, I wanted to give Premier Landscaping & Lawncare LLC the benefit of the doubt and therefore considered the possibility that the \$29,500.00 figure could have resulted from a typo. I called the number on the invoice and confirmed that the person who answered worked for Premier Landscaping & Lawncare LLC. I did not receive his name. I told him that I wanted to verify that the figure on the invoice was correct. He responded that it was correct.

18. I told the representative of Premier Landscaping & Lawncare LLC that I never consented to have the work on my property done, received no quote for the job, and was not informed that the work was being done until after it was already completed.

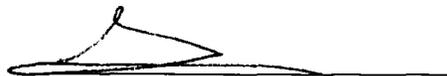
19. It is my practice in situations where I have to hire services for my homes to first get multiple firm quotes before deciding whose services to use.

20. I have not yet paid the invoice.

21. I have met with my homeowner's insurance adjuster and my claim is pending.

22. I am scheduled to deploy overseas on October 6, 2018.

This the 4th of October, 2018.

  
Avery Washington, Affiant

Sworn to and subscribed before me

This the 4 day of October, 2018.

  
Notary Public



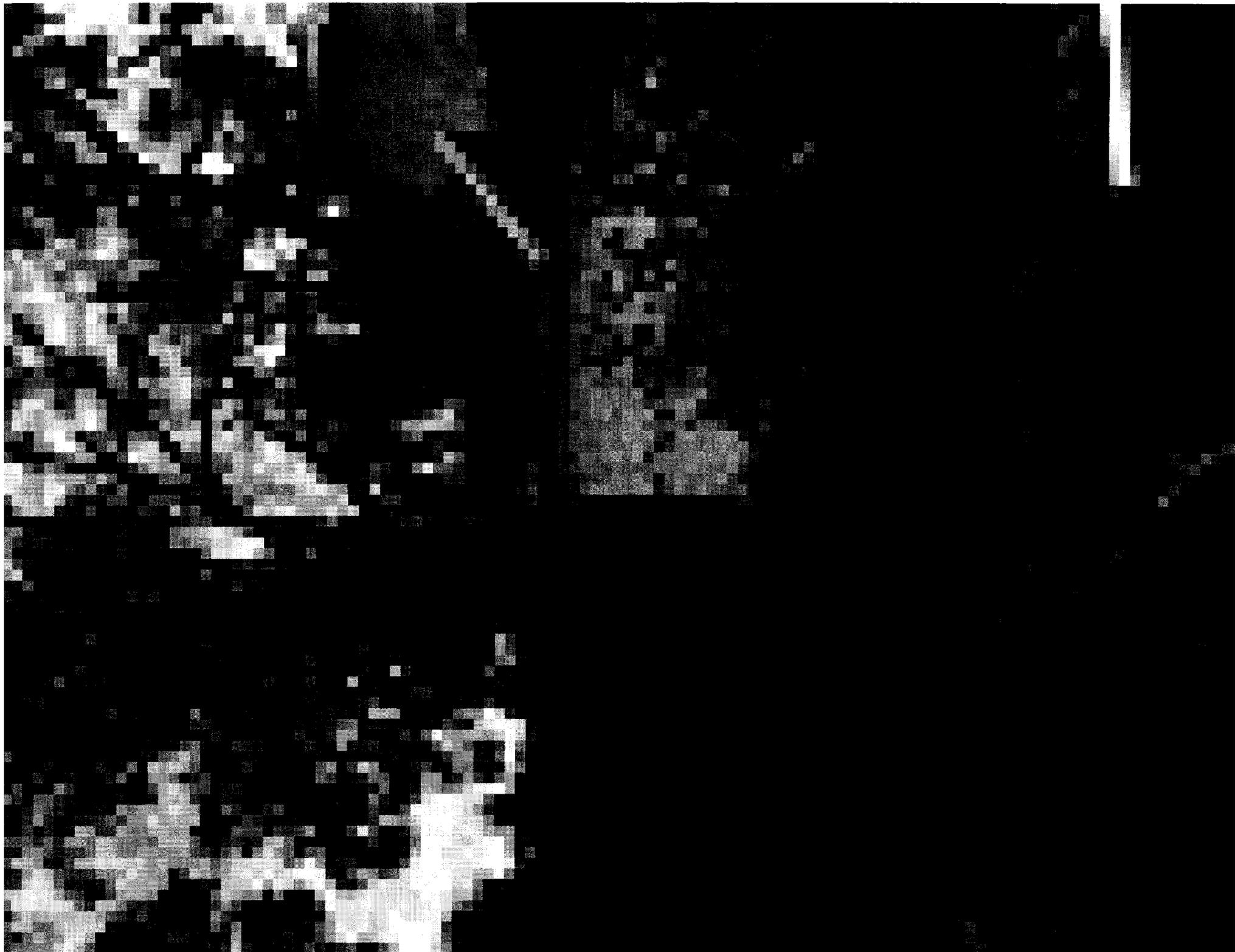
My Commission Expires: 23 February 2021



EXHIBIT  
3

Attach. 1

bbkles



State of North Carolina  
 Department of Justice  
 Division of Investigation  
 1225 10th Street  
 Raleigh, NC 27603

Inventory	Item	Description	Quantity	Date
1	Labor	<p>               Tree damage due to wind and hail. Tree is located through the house and considered an emergency removal. Pruner removed large tree located on the left side of house. One removed and cut up into approximately 24 inches. Equipment used was a chainsaw, and 3 men. Tree removed with two days to roof in order to prevent home.             </p>		2/20/10

EXHIBIT  
 3

Jefferson Circuit Court **DAVID L. NICHOLSON**

Division

Criminal Division

CLERK

6-6-16 @ 11:30 AM  
8-1-16 @ 9:00 PM  
10-16-16 @ 9:30 PM  
12-12-16 @ 9:30 PM

COM'L OF KY.

VS.

Danielle Yanneli  
Sgt  
~~Det~~ Jimmy Johnson

**16CR1439**

Filed On: 05/31/2016

COM'L OF KY

Division  
Jefferson Circuit  
Court Division  
SEVEN (7)

VS.

NICHOLAS K DOWNEY

Neil Kay

~~3-21-17 @ 9:00 PM~~  
~~5-19-17 @ 9:00 SE Done~~  
7-31-17 @ 9:00 SE



PROPERTY BOND

POSTED: 01/19/2016

RELEASED: 08/02/2017

DIST CT BOND: 10,000 / (role prop. 50% POSTED) / (N.C. 2017 + NEW)

Offen: 2 div 5 + drug law

CERTIFIED COPY OF RECORD  
OF JEFFERSON CIRCUIT COURT  
*David L. Nicholson*  
DAVID L. NICHOLSON, CLERK  
BY *[Signature]* D.C.  
(EXTRACT)

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

ORDER GRANTING PRETRIAL DIVERSION  
OF A CLASS D FELONY

NICHOLAS K. DOWNEY

DEFENDANT

\*\* \*\* \* \* \* \* \*

**The Court makes the following findings of fact:**

1. The defendant, NICHOLAS K. DOWNEY, appearing in court this day with counsel, Hon. Neil Roy, is charged with one count of: Tampering with a Witness and Intimidating a Participant in the Legal Process, Class D felonies. The Defendant is also charged with one count of: Assault 4<sup>th</sup> Degree Domestic Violence, Wanton Endangerment 2<sup>nd</sup> Degree, Unlawful Imprisonment 2<sup>nd</sup> Degree and Violation of a Pre-trial Order of Release, Class A Misdemeanors. He has applied to the Commonwealth and to the Court for Pretrial Diversion. He has not participated in a diversion program in the last five (5) years.

2. The defendant has not had a felony conviction in the ten (10) years prior to commission of the current offense, nor has he been on probation or parole or released from felony incarceration within the ten (10) years prior to commission of the current offense.

3. The defendant has freely, knowingly, voluntarily and intelligently entered  a plea of guilty or  a plea pursuant to North Carolina v. Alford.

4. The defendant is eligible for probation, parole or conditional discharge under KRS 532.045, as well as early release under KRS 189A.010(8) and KRS 189A.120(2).

5. The defendant has waived the right to a speedy trial or disposition of the charge against him/her.

6. The Commonwealth  has secured a criminal history of the defendant  has interviewed the victim and/or the victim's family, and  has made a written recommendation to the Court in response to the application for Pretrial Diversion.

7. The defendant acknowledges that because of his/her status, if, during the diversionary period, he/she commits another felony or possesses a firearm, he/she **can be charged as a Persistent Felony Offender (PFO) and/or can be charged with Possession of a Firearm or Handgun by a Convicted Felon.** Sentences for subsequent offenses will run consecutive to the sentence for this diverted conviction.

8. The Commonwealth has recommended Pretrial Diversion.

A. With the voluntary agreement of the defendant, the Commonwealth urges the Court to impose the following terms and conditions of diversion:

1. The period of Pretrial Diversion shall be 2 years diverted for 2yrs. (Shall not exceed five (5) years without agreement of defendant. The duration of the diversion program shall not be less than the time to make restitution in full.)

2. The diversion is to be  unsupervised  supervised. A monthly supervision fee of \$ \_\_\_\_\_ shall be paid to Probation and Parole. (\$25 recommended: No less than \$10)

W/A

3. Restitution totals the amount of \$ \_\_\_\_\_ plus \_\_\_\_\_% per annum interest to be paid at a minimum monthly rate of \_\_\_\_\_.

4. Probation & Parole shall conduct home visits. **The defendant shall not have access to a handgun or firearm during the pendency of the diversion agreement.**

5. The defendant shall obey all rules and regulations imposed by Probation & Parole.

6. As required by KRS 533.030(1), the defendant shall not commit another offense during the period of the Pretrial Diversion. Specifically, the defendant shall have no violation of the Penal Code or the Controlled Substances Act, or any other criminal law.

7. The defendant shall remain drug and alcohol free and be subject to random testing.

8. Other: No contact with the victim, Tosha Downey and the Defendant must complete a substance abuse evaluation and comply with all the recommendations of treatment.

B. The Commonwealth recommends 2 years as the appropriate sentence to be imposed in the event the defendant fails to successfully complete the terms and conditions of the Pretrial Diversion.

C. Counsel has explained to the defendant the terms and conditions of the Pretrial Diversion recommended by the Commonwealth. The defendant has agreed to the terms and conditions and has freely, voluntarily, intelligently, and knowingly entered into the agreement with the Commonwealth.

**NOW THEREFORE BE IT ORDERED:**

1. The Court grants the Motion for Pretrial Diversion of a Class D Felony.
2. The Court imposes the following terms and conditions of Pretrial Diversion.
  - A. The period of Pretrial Diversion shall be 2. (Shall not exceed five (5) years without agreement of the defendant except the duration of the diversion program shall not be less than the time to make full restitution.)
  - B. The penalty imposed is 2 years.

- C. The diversion is to be  unsupervised  supervised. A monthly supervision fee of \$ shall be paid to Probation and Parole. (\$25 recommended: No less than \$10)
- D. The defendant shall not have access to a handgun or firearm during the pendency of the Pretrial Diversion.
- E. Restitution totals the amount of \$ \_\_\_\_\_ plus \_\_\_\_\_% per annum interest to be paid at a minimum monthly rate of \_\_\_\_\_.
- F. Probation & Parole shall conduct home visits.
- G. The defendant shall obey all rules and regulations imposed by Probation & Parole.
- H. As required by KRS 533.030(1), the defendant shall not commit another offense during the period of the Pretrial Diversion. Specifically, the defendant shall have no violation of the Penal Code or the Controlled Substances Act, or any other criminal law.

I. The defendant shall remain drug and alcohol free and be subject to random testing.

J. Other I shall complete drug treatment. No PC  
The defendant can work out of state (on short notice) during the diversionary period & wear TR supervision to Dixon ~~County~~ Kentucky in Webster County. + Court costs within 90 days.

3. If the defendant successfully completes Pretrial Diversion, the charge will be designated as Dismissed-Diverted.

Ⓢ I may associate with convicted felons at work, but not socially.

4. During the Pretrial Diversion, the Court may (a) revoke or modify any condition; (b) change the period of supervision; or (c) discharge the defendant from supervision.

5. If the Court finds the defendant fails to successfully complete Pretrial Diversion, the Court shall impose a sentence equal to the penalty recommended by the prosecutor.

Entered: 7-31-17 Audra E. Gule Judge

DAVID M. HEDGECOCK  
 BY: MM  
 AUG 21 2017

I understand the above conditions and agree to enter Pretrial Diversion in lieu of defending myself in further proceedings.

[Signature] \_\_\_\_\_ Date (Defense Attorney) 3/21/17 Date

Approved: [Signature] \_\_\_\_\_ Date 3/21/2017 Prosecuting Attorney Date

Distribution: Defendant  
 Commonwealth Attorney  
 Probation & Parole (If supervision is ordered by Court in paragraph 2 (B))

NO. 16CR1439

JEFFERSON CIRCUIT COURT

JUDGE AUDRA J. ECKERLE

DIVISION SEVEN

COMMONWEALTH OF KENTUCKY

PLAINTIFF

vs.

**JUDGMENT ON PLEA OF GUILTY**

NICHOLAS K. DOWNEY

DEFENDANT

\*\*\* \*\*

At a hearing on March 21, 2017, Mr. Neil Roy appeared with Defendant, Nicholas Downey, and Assistant Commonwealth's Attorney, Ms. Danielle Yannelli, appeared for the Commonwealth.

By agreement of the Commonwealth and upon advice of counsel, Defendant entered a guilty plea, pursuant to North Carolina vs. Alford, to one count of Tampering with a Witness; one count of Intimidating a Participant in the Legal Process; one count of Assault IV (Domestic Violence/Minor Injury); one count of Wanton Endangerment II; one count of Unlawful Imprisonment II; and one count of Violation of a Pretrial Order of Release. The Court found that Defendant knowingly and voluntarily entered the plea and that there was a factual basis for it. The Court accepted Defendant's guilty plea.

The Commonwealth recommended a sentence of two years for one count of Tampering with a Witness; two years for one count of Intimidating a Participant in the Legal Process; 12 months for one count of Assault IV (Domestic Violence/Minor Injury); 12 months for one count of Wanton Endangerment II; 12 months for one count of Unlawful Imprisonment II; and 12 months for one count of Violation of a Pretrial Order of Release; all to run concurrently for a total sentence of two years. The Commonwealth further

recommends that the two year sentence be diverted for two years. The Commonwealth agrees for Defendant to be able to work out of state during the diversionary period. Defendant agrees to complete a substance abuse evaluation and comply with all recommendations.

Entry of the judgment imposing sentence will occur after a presentence investigation and report. A sentencing hearing shall be held on May 19, 2017 at 9:00 a.m. The Division of Probation and Parole shall prepare a written presentence investigation report.

Defendant's bond shall remain the same pending sentencing.

Defendant shall have no contact with the victim, Tosha Downey.

/s/  
AUDRA J. ECKERLE, JUDGE  
Jefferson Circuit Court

March 21, 2017

cc: Ms. Danielle Yannelli  
Assistant Commonwealth's Attorney

Mr. Neil P. Roy  
539 W. Market Street  
3<sup>rd</sup> Floor  
Louisville, Kentucky 40202  
*Counsel for Defendant*

Division of Probation and Parole



COMMONWEALTH'S OFFER  
ON A PLEA OF GUILTY

Case No. 16CR1439

Court: Circuit Division Seven

County: Jefferson

COMMONWEALTH OF KENTUCKY  
VS.

FILED  
JEFFERSON CIRCUIT COURT  
MAR 21 2017  
DAVID L. NICHOLSON, CLERK  
BY [Signature] D.C.

→ pursuant to  
North Carolina v. Atford

PLAINTIFF

NICHOLAS K. DOWNNEY

DEFENDANT

1. **Charges and Penalties**

1 ~ TAMPERING WITH A WITNESS UOR Code: 51203-0  
1 TO 5 YEARS

2 ~ INTIMIDATING A PARTICIPANT IN THE LEGAL PROCESS UOR Code: 51201-0  
1 TO 5 YEARS

3 ~ ASSAULT IN THE FOURTH DEGREE (DOMESTIC/MINOR INJURY) UOR Code: 00798-0  
UP TO 12 MONTHS &/OR UP TO \$500 FINE

4 ~ WANTON ENDANGERMENT IN THE SECOND DEGREE UOR Code: 00441-0  
UP TO 12 MONTHS &/OR UP TO \$500 FINE

5 ~ UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE UOR Code: 02606-0  
UP TO 12 MONTHS &/OR UP TO \$500 FINE

6 ~ VIOLATION OF A PRE-TRIAL ORDER OF RELEASE UOR Code: 01152-0  
UP TO 12 MONTHS &/OR UP TO \$500 FINE

2. **Amended Charges (if any):**

3. **Reason(s) for amended charge(s) and UOR Code(s) (if applicable):**

4. **Facts of the case:**

On or about January 12, 2016 in Jefferson County, the Defendant physically assaulted the victim, Tasha Downey. While the victim was trying to leave, the Defendant grabbed her arm and threw her on the bed. The Victim tried to scream for help but the Defendant covered her mouth causing her to nearly pass out. The Defendant told the victim that he would kill her if she tried to scream or call for help again. During the incident, the Defendant pulled the phone off of the wall to prevent the victim from calling for help. The Defendant continued to cover the victim's mouth and nose stating that he was going to kill her. The

Defendant also told the victim that an EPO is just a piece of paper and that he would find her and kill her. The victim experienced pain due to the incident. The victim and the Defendant were married and have two children together.

On or about January 13, 2016, the Defendant was arraigned and ordered to have no contact with the victim, Tosha Downey. While incarcerated the Defendant called the victim several times. The Defendant told the victim that she needed to come to court and lie about what happened or he's going to go to prison. The Defendant also told the victim not to come to court.

**5. Recommendations of a Plea of Guilty (Plea Agreement):**

1: ~ TAMPERING WITH A WITNESS – 2 years diverted for 2 years

2: ~ INTIMIDATING A PARTICIPANT IN THE LEGAL PROCESS – 2 years diverted for 2 years

3: ~ ASSAULT IN THE FOURTH DEGREE (DOMESTIC/MINOR INJURY) – 12 months diverted for 2 years

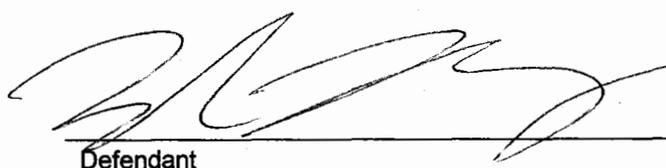
4: ~ WANTON ENDANGERMENT IN THE SECOND DEGREE – 12 months diverted for 2 years

5: ~ UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE – 12 months diverted for 2 years

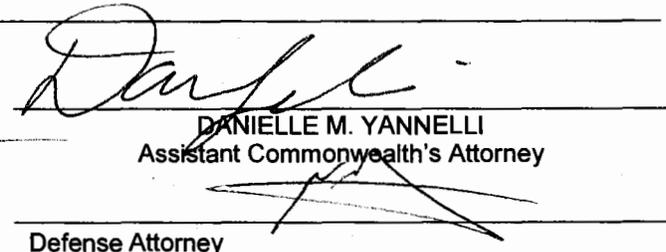
6: ~ VIOLATION OF A PRE-TRIAL ORDER OF RELEASE – 12 months diverted for 2 years

All charges are to run concurrently for a total sentence of 2 years diverted for 2 years. Diversion is to be supervised. The Defendant may work out of state during the diversionary period. The Defendant must complete a substance abuse evaluation and must comply with all recommendations for treatment. The Defendant is to comply with all the conditions of his diversion. The Defendant is to have no contact with the victim, Tosha Downey.

6. Offered this 21<sup>st</sup> day of March, 2017.

  
\_\_\_\_\_

Defendant

  
\_\_\_\_\_

DANIELLE M. YANNELLI  
Assistant Commonwealth's Attorney

Defense Attorney

\_\_\_\_\_  
Prosecuting Witness

\_\_\_\_\_  
Prosecuting Witness

\_\_\_\_\_  
Police Officer

\_\_\_\_\_  
Police Officer

AOC-491  
Rev. 7-12  
Page 1 of 2

Doc. Code: EGP



Commonwealth of Kentucky  
Court of Justice [www.courts.ky.gov](http://www.courts.ky.gov)

RCr 8.08, 8.10; KRS 532.050(1)

**MOTION TO ENTER  
GUILTY PLEA**

Case No. 16CR1439

Court: Circuit Division Seven

County: Jefferson

FILED  
JEFFERSON CIRCUIT COURT  
MAR 21 2017  
BY DAVID L. NICHOLSON, CLERK  
D.C.

COMMONWEALTH OF KENTUCKY

VS.

NICHOLAS K. DOWNEY

Pursuant to  
North Carolina v. Alford

PLAINTIFF

DEFENDANT

Comes the Defendant, in person and with aid of counsel, and respectfully moves this Court to allow him/her to withdraw his/her former plea of "NOT GUILTY" and enter a plea of "GUILTY" as set forth below. In support of this motion, the Defendant states as follows:

1. My full name is Nicholas K. Downey, <sup>ple</sup>DOB: 03/26/1985, SS#: XXX-XX-7196  
Current Address: 833 U.S. Highway 41A North, Dixon, KY 42409 ~~42420~~

I am the same person named in the indictment. (270) 285-3464

2. My judgment is not now impaired by drugs, alcohol or medication.
3. I have reviewed a copy of the indictment and told my attorney all the facts known to me concerning my charges. I believe he/she is fully informed about my case. We have fully discussed, and I understand, the charges and any possible defenses to them.
4. I understand that I may plead "NOT GUILTY" or "GUILTY" to any charge against me.
5. I further understand the Constitution guarantees to me the following rights:
  - (a) The right not to testify against myself;
  - (b) The right to a speedy and public trial by jury at which I would be represented by counsel and the Commonwealth would have to prove my guilt beyond a reasonable doubt;
  - (c) The right to confront and cross-examine all witnesses called to testify against me;
  - (d) The right to produce any evidence, including attendance of witnesses, in my favor;
  - (e) The right to appeal my case to a higher court.

I understand that if I plead "GUILTY," I waive these rights.

5. I understand that if I plead "GUILTY," the Court may impose any punishment within the range provided by law and that although it may consider the Commonwealth's recommendation, the Court may reject it. The legal penalty ranges are set forth on the attached "Commonwealth's Offer on a Plea of Guilty (AOC-491.1)" which I have reviewed and signed.
6. I understand that if the Court rejects the plea agreement, it must so inform me. If this occurs, I may either persist in my guilty plea and possibly receive harsher treatment than I bargained for or I may withdraw my guilty plea and proceed to trial. I further understand the Court shall not impose a sentence for a felony, other than a capital offense, without first ordering a presentence investigation. The Court will consider a written report of the presentence investigation before it informs me whether it will accept the plea agreement.
7. In return for my guilty plea, the Commonwealth has agreed to recommend to the Court the sentence(s) set forth in the attached "Commonwealth's Offer on a Plea of Guilty." Other than that recommendation, no one, including

my attorney, has promised me any other benefit in return for my guilty plea nor has anyone forced or threatened me to plead "GUILTY."

8. Because I am **GUILTY**, and make no claim of innocence, I wish to plead "**GUILTY**" in reliance on the attached "Commonwealth's Offer on a Plea of Guilty."

9. I declare my plea of "**GUILTY**" is freely, knowingly, intelligently and voluntarily made; that I have been represented by counsel; that my attorney has fully explained my constitutional rights to me, as well as the charges against me and any defenses to them; and that I understand the nature of this proceeding and all matters contained in this document.

10. I understand that if I am convicted of a methamphetamine related offense or offense related to anhydrous ammonia found in KRS Chapter 218A, 250 or 514, it shall be unlawful for me to possess ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers, or salts of optical isomers until five years following my conviction, discharge from incarceration or release from probation, shock probation, parole, or other form of conditional discharge, whichever is later. KRS 218A.1446.

11. I understand that because of my conviction here today, I may be subject to greater/enhanced penalties if found guilty and/or convicted of any future criminal offenses. I understand that if I am not a United States citizen, I may be subject to deportation pursuant to the laws and regulations governing the United States Immigration and Naturalization Service. I understand the complete terms of this plea and all the obligations imposed upon me by its terms.

Signed in open court in the presence of my attorney this 21<sup>st</sup> day of March, 2017.



Defendant' Signature

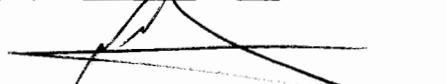
**CERTIFICATE OF COUNSEL**

1. To the best of my knowledge and belief, the defendant understands the allegations contained in the indictment and/or any amendments thereto. I have fully discussed with the defendant the charges and any possible defenses to them and I believe that he/she fully understands the charges and possible defenses. I have reviewed with defendant the attached "Commonwealth's Offer on a Plea of Guilty" and the foregoing "Motion to Enter a Plea of Guilty," and I believe he/she understands these documents.

2. To the best of my knowledge and belief, his/her plea of "**GUILTY**" is made freely, knowingly, intelligently and voluntarily. I have fully explained the defendant's constitutional rights to him/her and I believe that he/she understands them.

3. The plea of "**GUILTY**" as offered by the defendant is consistent with my advice to him/her, and I recommend to the Court that his/her plea be accepted.

Signed by me in open court in the presence of the Defendant this 21<sup>st</sup> day of March, 2017.



Attorney for Defendant

N.C.  
v.  
A/Rod

→ pursuant to N.C. v. A/Rod

DO J EY, NICHOLAS K

JUVENILE OFFENDER

Bk Dt: 01/12/2016 12:45 DOB: 03/26/1985

Inmate #: 00607310

KSP 206 (REV 2/1/06)

Booking #: 201601124

Y 0568000

COURT

OFFENDER / VIOLATOR	AGENCY <b>Louisville Metro</b>		NAME (L-F-M) SKIP A SPACE BETWEEN NAMES <b>Downey, Nicholas K</b>		ATTN: <input type="checkbox"/>	HOME PHONE	
	ALIAS		ADDRESS (RFD/STREET/APT. NO., ETC.) <b>6796 Cairo Liles Rd</b>		KENTUCKY RESIDENT STATUS F. <input checked="" type="checkbox"/> FULL TIME P. <input type="checkbox"/> PART TIME N. <input type="checkbox"/> NON RESIDENT		
	CITY <b>Henderson</b>		STATE: <b>KY</b>	ZIP: <b>42430</b>	MARITAL STATUS <b>Divorced</b>		
	I.D. TYPE/STATE	I.D. NUMBER	S.S. NUMBER <b>225-61-7196</b>		VICTIM'S RELATIONSHIP TO OFFENDER <b>Ex-Spouse</b>		
	DATE OF BIRTH <b>03/26/85</b>	SEX <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE <input checked="" type="checkbox"/> WHITE <input type="checkbox"/> BLACK <input type="checkbox"/> AM. INDIAN OR ALASKAN <input type="checkbox"/> ASIAN		ETHNIC ORIGIN <input type="checkbox"/> HISPANIC <input checked="" type="checkbox"/> NON HISPANIC		
	PLACE OF EMPLOYMENT / OCCUPATION		CITY	STATE	HEIGHT <b>5'10"</b>	WEIGHT <b>220</b>	HAIR COLOR <b>Bro</b>

VEHICLE	VEH. MAKE	VEH. TYPE	VEH. YEAR	COLOR TOP/BOTTOM	ALCOHOL/DRUG INVOLVEMENT (SPECIFY) <input type="checkbox"/> NO <input type="checkbox"/> YES <input checked="" type="checkbox"/> UNK		
	REG. STATE	REG. YEAR	REGISTRATION NO.	VEHICLE IDENTIFIERS	MPH	IN MPH ZONE	VOL. KEY

DATE / TIME	VIOLATION DATE	VIOLATION TIME	EXACT LOCATION OF VIOLATION / ARREST <b>100 E. Jefferson St</b>			B.A. RESULTS	
	DATE OF ARREST <b>01/12/16</b>	TIME OF ARREST <b>11:00</b>	MILES	DIRECTION	CITY <b>Louisville</b>	COUNTY OF VIOLATION <b>Jefferson</b>	SECTOR <b>3</b>

VIOLATION CODE	ASCF	STATUTE / ORD.	CHARGES	#	PLEA	FIND-ING	FINAL VIOLATION CODE	DISPN. CODE	FINE	COSTS	FEE	JAIL / PRISON	PROB. TIME
00798		508.030	Assault 4th DV	1									
00441		508.070	WE 2nd	2									
52606		509.030	Un. Imp.	3									
51201		504.040	IWLP	4									

COURT	COURT DATE	COURT TIME <input type="checkbox"/> AM <input type="checkbox"/> PM	PAYABLE <input type="checkbox"/>	COURT LOCATION <b>Arrested</b>	COURT CASE NO.	DISPN. DATE	TRIAL <input type="checkbox"/> B <input type="checkbox"/> J <input type="checkbox"/> N	CLERKS INITIALS
-------	------------	---	----------------------------------	-----------------------------------	----------------	-------------	---	-----------------

POST-ARREST COMPLAINT **\*Summary\***

Victim states above subject picked her up and slammed her on the bed and floor causing pain to her arms and legs. Subject covered victim's mouth and nose to prevent her from screaming for help to the point where she nearly passed out. Victim attempted to leave to get away from the assault but subject threw her back on the bed preventing her from leaving. Subject pulled the phone off of the wall and took victim's cell phone so she could not call for help.

**WVS Activated**

CDL	CDL LICENSE <input type="checkbox"/> No <input type="checkbox"/> Yes	PLACARDED HAZARDOUS VEHICLE <input type="checkbox"/> No <input type="checkbox"/> Yes	YEAR <b>16</b>
	COMMERCIAL VEHICLE <input type="checkbox"/> No <input type="checkbox"/> Yes	CDL CLASS <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C	

CASE	NAME OF WITNESS <b>Tosha L. Downey (2/26/16)</b>	ADDRESS <b>6796 Cairo Liles Rd. Henderson, KY</b>	CONTROL NUMBER <b>2110649</b>
	NAME OF WITNESS <b>Victim</b>	ADDRESS	
	CASE NO. <b>80-16-004158</b>		
	CARRIED FOR UCR BY CONTRIBUTOR: <input type="checkbox"/>	<input checked="" type="checkbox"/> IN-CAR VIDEO <input type="checkbox"/> FINGER PRINTS <input type="checkbox"/> EVIDENCE HELD <input checked="" type="checkbox"/> PHOTOS	
OFFICER'S SIGNATURE <b>X.W. Keeling</b>	BADGE / I.D. NUMBER <b>7787</b>	ASSIGNMENT <b>124D</b>	TYPE <b>2</b>

AOC-E-035 WarCode: WA  
Rev. 01-08  
Commonwealth of Kentucky  
Court of Justice  
RCr 2.05: RCr2.06



Case Number:  
County: JEFFERSON  
Court: DISTRICT COURT  
Warrant Number: E05610002427145  
Generated: 3/6/2016 5:04:30PM

# SERVED

## Warrant of Arrest Complaint Warrant

Page 1 of 1

Plaintiff. COMMONWEALTH VS. Nicholas R Downey Defendant

**TO ALL PEACE OFFICERS IN THE COMMONWEALTH OF KENTUCKY:** You are commanded to arrest the person named below and bring him/her forthwith before the JEFFERSON COUNTY - DISTRICT COURT. If Court is not in session, you shall deliver him/her to the Jailer of JEFFERSON County.

Nicholas R Downey  
6796 Cairo Liles RD  
HENDERSON, KY 42420

Gender	Race	Date of Birth	Height	Weight	Operator License#	State
M	WHITE	March 26, 1985	5'10	220		

to answer charges that he/she committed the offense(s) of:

Chg#	UOR Code	KRS	Type	Description	ASCF	Counts	Disp Dt	Disp
1	01152	431.064	M	VIOLATION OF CONDITIONS OF RELEASE	N/A	1		
2	51203	524.050	F	TAMPERING WITH WITNESS	N/A	1		

The defendant may post bail in the amount of \$ , secured by

The defendant may not give bail.

### Complaint

The Affiant, Det. Jimmie Johnson LMPD-7689 (LOUISVILLE METRO POLICE DEPT 7689) , states that during 1/15/2016 thru 1/19/2016 in JEFFERSON County, Kentucky, the above named defendant unlawfully: knowing that the victim(Tosha Downey) is a witness in a criminal proceeding against the deft (16-F-000424)attempted to induce to absent herself from the court proceeding and knowingly made false statement and practiced fraud or deceit with the intent to affect the testimony of the witness. Deft was incarcerated at LMDC when deft phoned victim on multiple occasions in violation of conditions of release through District Court Case #16-F-000424. Deft was incarcerated on charges of Assault 4th(DV), WE2nd, UI2nd, Intimidating a Participant in Legal Process and Contempt of Court where Ms Downey is the victim. Deft told victim during one of these phone calls victim needs to come to court and lie about what happened or he's going to prison. Deft also told victim "I know I'm probably going to get in trouble talking to you." Deft also told victim to either not come to court or tell them something else and told victim if "you don't come to court they won't have a case." Deft was arraigned in District Court on 01/13/2016 and was ordered by the court to have no contact or communication with victim. Deft is victim's husband.

### EXECUTION

Served By: JEFFERSON, JEFFERSON COUNTY SHERIFF DEPT., Other. Ebel, Eric. on 03/07/2016

Electronically signed by District Court Judge S.Collins on 3/4/2016 at 6:49:36PM.

Agency Local Code:

Date printed: Sunday, March 6, 2016

Assistant County Attorney D Mulhall-RAW

**THE COMMONWEALTH OF KENTUCKY**  
**Jefferson Circuit Court, Criminal Division**

**16CR1439-7**

MAY Term, 2016

THE COMMONWEALTH OF KENTUCKY

Against

NICHOLAS K. DOWNEY

TAMPERING WITH A WITNESS

KRS 524.050 CLASS D FELONY 1 TO 5 YEARS

KRS 534.030 FINE OF \$1000 - \$10,000 OR DOUBLE THE  
DEFENDANT'S GAIN, WHICHEVER IS GREATER

UOR 51203

**ONE COUNT**

INTIMIDATING A PARTICIPANT IN THE LEGAL  
PROCESS

KRS 524.040 CLASS D FELONY 1 TO 5 YEARS

KRS 534.030 FINE OF \$1000 - \$10,000 OR DOUBLE THE  
DEFENDANT'S GAIN, WHICHEVER IS GREATER

UOR 51201

**ONE COUNT**

ASSAULT IV

KRS 508.030 CLASS A MISDEMEANOR

UP TO 12 MONTHS AND/OR UP TO \$500 FINE

UOR 00798

**ONE COUNT**

WANTON ENDANGERMENT II

KRS 508.070 CLASS A MISDEMEANOR

UP TO 12 MONTHS AND/OR UP TO \$500 FINE

UOR 00441

**ONE COUNT**

UNLAWFUL IMPRISONMENT II

KRS 509.030 CLASS A MISDEMEANOR

UP TO 12 MONTHS AND/OR UP TO \$500 FINE

UOR 02606

**ONE COUNT**

VIOLATION OF A PRE-TRIAL ORDER OF  
RELEASE

KRS 431.064 CLASS A MISDEMEANOR

UP TO 12 MONTHS AND/OR UP TO \$500 FINE

UOR 01152

**ONE COUNT**

The Grand Jurors of the County of Jefferson, in the name and by the authority of the Commonwealth of Kentucky, charge:

COUNT ONE

That between the 15<sup>th</sup> day of January, 2016 and the 19<sup>th</sup> day of January, 2016, in Jefferson County, Kentucky, the above named defendant, NICHOLAS K. DOWNEY, committed the offense of Tampering With a Witness, when knowing that Tosha Downey is or may be called as a witness in an official proceeding,

- a) he induced or attempted to induce Tosha Downey to absent herself or otherwise avoid appearing or testifying at the official proceeding with intent to influence the outcome thereby; OR
- b) he knowingly made any false statement or practiced any fraud or deceit with intent to affect the testimony of the witness.

COUNT TWO

That on or about the 12<sup>th</sup> day of January, 2016, in Jefferson County, Kentucky, the above named defendant, NICHOLAS K. DOWNEY, committed the offense of Intimidating a Participant in the Legal Process when, by use of physical force or a threat directed to Tosha Downey, who he believed to be a participant in the legal process, he,

- a) influenced, or attempted to influence the testimony, vote, decision, or opinion of that person;  
AND/OR
- b) induced or attempted to induce said Tosha Downey, to avoid legal process summoning her to testify;  
AND/OR
- c) induced or attempted to induce said Tosha Downey, to absent herself from an official proceeding to which she has been legally summoned;  
AND/OR

d) induced or attempted to induce, said Tosha Downey to withhold a record, document, or other object from an official proceeding;

AND/OR

e) induced or attempted to induce, said Tosha Downey, to alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

AND/OR

f) hindered, delayed, or prevented the communication to a law enforcement officer or judge of information relating to the possible commission of an offense or a violation of conditions of probation, parole, or release pending judicial proceedings.

COUNT THREE

That on or about the 12<sup>th</sup> day of January, 2016, in Jefferson County, Kentucky, the above named defendant, NICHOLAS K. DOWNEY, committed the offense of Assault in the Fourth Degree when he:

(a) intentionally or wantonly caused physical injury to Tosha Downey; OR

(b) with recklessness caused physical injury to Tosha Downey, by means of a deadly weapon or dangerous instrument.

COUNT FOUR

That on or about the 12<sup>th</sup> day of January, 2016, in Jefferson County, Kentucky, the above named defendant, NICHOLAS K. DOWNEY, committed the offense of Wanton Endangerment in the Second Degree by wantonly engaging in conduct which created a substantial danger of physical injury to Tosha Downey when he covered the victim's mouth and nose preventing her from being able to breathe.

COUNT FIVE

That on or about the 12<sup>th</sup> day of January, 2016, in Jefferson County, Kentucky, the above named defendant, NICHOLAS K. DOWNEY, committed the offense of Unlawful Imprisonment in the Second Degree when he knowingly and unlawfully restrained Tosha Downey.

COUNT SIX

That between the 15<sup>th</sup> day of January, 2016 and the 19<sup>th</sup> day of January, 2016, in Jefferson County, Kentucky, the above named defendant, NICHOLAS K. DOWNEY, committed the offense of Violation of a Pre-Trial Order of Release not to threaten to commit or commit acts of domestic violence and prohibiting him from harassing, annoying, telephoning, contacting or otherwise communicating with Tosha Downey.

AGAINST THE PEACE AND DIGNITY OF THE COMMONWEALTH OF KENTUCKY

A TRUE BILL

*Hester E. Sabsefski*  
FOREPERSON

Wit: Det. Jimmy Johnson, LMPD  
Off. William Keeling

DANIELLE M. YANNELLI/lb  
Assigned Assistant Commonwealth's Attorney

May 31 2016  
RECEIVED FROM THE Foreman of the Grand  
Jury in their presence and filed in open Court.  
ATTEST: DAVID L. NICHOLSON, Clerk  
By DM. Gordon D.C.

TRUE BILL COUNTS- 1-6

FILED IN CLERK'S OFFICE  
DAVID L. NICHOLSON, CLERK  
MAY 31 2016  
*DLS*  
BY \_\_\_\_\_  
DEPUTY CLERK