IN THE SUPERIOR COURT, STATE OF WASHINGTON
IN AND FOR COUNTY SNOHOMISH COUNTY

STATE OF WASHINGTON, Plaintiff, vs. LORI SHAVLIK Defendant.	Case No. 13-1-00018-5 DECLARATION OF JOHN SCRIVNER, CFEI

I, John Scrivner, CFEI declare as follows under penalty of perjury of the State of Washington:

1. I am over the age of 18 years, am competent to make this declaration, and make the following statements based upon my personal knowledge.
2. I am a Certified Fire and Explosion Investigator, and I am the President of J. Scrivner Investigations, Inc. I have worked as an insurance claims and fire investigator from 1968 to the present time. In my career, I have investigated over 600 fires over 9000 insurance claims and accidents. I have also worked for Washington Water Power as a claims investigator. I was the investigator for over 50 fire scenes during Firestorm 1991. I am certified as an Associate of Risk Management and a Registered Professional

Adjuster. I continue to work as a fire and accident investigator, and as a loss appraiser. I also conduct investigations to ferret out workers compensation fraud.

3. I was the insurance adjuster who discovered the fraud by Dr. Clinton Cox in a fire case in Washington State, Mutual of Enumclaw v. Cox, 110 Wash.2d 643, 757 P.2d 499 (1988). In that case, I scoured over the burned debris and located "store-brand" golf clubs, when Dr. Cox had claimed the more expensive "pro-line" golf clubs on his Proof of Loss. The Washington Supreme Court upheld the insurance company's right under the policy to deny the entire claim for any intentional material misrepresentation, even if the amount of loss greatly exceeded the policy limits. Most of my current fire investigation cases involve working for insurance companies, so of course I have no tolerance for criminal acts or insurance fraud.

4. I also worked for the City of Spokane. I have qualified as an expert witness in Washington, Idaho, Montana, Oregon, and California State Courts, and in Federal Court. *A copy of my CV is attached hereto as Attachment A.*

5. I am familiar with the standard of care that applies to investigating fires in Washington State. In particular, any fire investigator is required to follow NFPA 921 and 1033 as the standard. I have reviewed the substantial materials and testimony provided in the criminal matter, the report provided by Gerald H. Williams, Ph.D., P.E.*;* plus photographs obtained by Ms. Shavik through a public records request, and I conducted

a site investigation at 1205 Avenue D, Unit A, Snohomish, WA on February 18, 2016. I also have reviewed and agreed with the findings and opinions as expressed in the February 4, 2016 report by Dale Mann, F-ABC, CFI and Douglas Barovsky, CEFI, P.E. of MDE Forensic Laboratories. (*Attachment B.*) I also agree with Dr. Williams' findings and opinions. (*Attachment C).*

6. I have been asked to provide my opinions as to the origin and cause of the February 4, 2010 fire at 1205 Avenue D, Unit A, Snohomish, Washington. In short, on a more likely than not basis to a reasonable degree of scientific certainty, I express the following opinions:

    (a) The origin of the smoldering fire was in the area surrounding the aluminum clothing dryer vent tube and the nearby dedicated dryer electrical outlet, which were located in the utility/laundry room in the rear of the building. The origin was not at the "mud plate," which is a 2" x 4" piece of wood that rests on the concrete foundation and is about 8 inches below the bottom of the dryer vent tube.

    (b) The fire could never be classified as incendiary ("arson") and cannot be classified now as incendiary under the only standard for giving an opinion as to the cause of a fire in Washington State (and in federal courts) , which is under NFPA 921. The fire has to be classified as "undetermined" under

NFPA 921. Dale Mann, CFEI, is "spot on" with regard to the very important issue.

(c) The governmental authorities caused spoliation of evidence the day of the fire, and more likely than not, the spoliation of evidence was intentional.

(d) There are several very plausible theories as to how this was an innocuous accidental fire, and the governmental authorities failed in their mandatory duties under NFPA 921 to take objective, thorough, and scientific steps to rule out accidental causes. Their failure to do this is inexcusable.

(e) The most likely cause was lint that had accumulated from the substantial use of newer brown terry cloth towels that were used by customers in the tanning salon, which had been heated through usage of the dryer the day before the fire, and then brought combustible items existing in the wall space to the point of combustion, which then smoldered, causing very light smoke particles.

(f) The photos show a substantial amount of brown lint in the flexible dryer vent hose, despite it being replaced with a new one by Ms. Shavlik's husband a few weeks before the fire. Unless the flexible hose were fully "accordioned," the hose would have gone in a serpentine form, and may have been pinched, blocking the free flow of hot air, and also allowing the

escape of any lint. On this point, the fact that lint is going out the dryer vent in the first place shows that the lint is going past the filter. The employees may not have been properly cleaning out the filter after each use.

(g) About three weeks before the fire, the employee Rebecca said that the dryer was not fully drying the clothes, which is an indicator that the dryer had an issue with the venting. A dryer can shut off when there is a blockage somewhere. Apparently Ms. Shavlik's husband brought a dryer from their other business location and installed it with a new dryer vent hose. The same problem of the serpentine flow of air and lint could reoccur, and the old dryer in fact may not have been the problem. The dryer that was put installed by the husband did not have metal foot pegs, so he used a purple sponge to level it. Most dryers have metal foot pegs that are adjustable so that the dryer does not rock or move, but apparently this one did not for some reason.

(h) The dryer vent was on the backside of the building in an area that was largely protected from the wind, so there was nothing to substantially "fan" the smoldering fire.

(i) So, light smoke would be produced, which would slowly enter the areas leased by Ms. Shavlik's tanning business. When the employee arrived at

approximately 8:55 a.m., some additional oxygen would be introduced into the area. The employee did not observe mass amounts of smoke, which is consistent with a smoldering fire with a relatively small amount of combustibles slowing producing light and fairly unnoticeable smoke particles near the front interior of the building. It is my understanding that the employee had her baby with her and called from inside the building, so that is another indicator that the smoke was very light; otherwise I would assume she would have immediately left with her baby.

7. It appears that the local authorities attempted to work backward from a supposed motive in order to implicate Ms. Shavlik. This method violates the most basic tenet of a fire investigator, which is to be truth seeker, not a case maker. Unfortunately, in my experience, this is a practice left over from the days of "arson investigators," which is in itself a biased phrase rather than the neutral and correct role as a "fire investigator."

8. Issues concerning supposed motive to commit arson are entirely irrelevant to determining the origin and cause of the fire. In fact, the recognized phenomenon of "expectation bias" can cause an investigator to see the evidence in a slanted fashion. When an "arson investigator" is informed of the supposed "red flags" before his or her investigation begins, and is expected to make a decision fairly quickly, a thorough and objective investigation is very hard to do. But this is precisely why NFPA has clear

guidelines as to when to classify a fire as "undetermined," pending additional investigation and testing.

9. Once a decision is made that arson occurred, it is my experience that the investigators develop "tunnel vision," and even when later presented with objective evidence, such as lab test results that do not support their theory, the arson investigator doggedly remains persuaded of the person's guilt. In my opinion, that is what has occurred here. In support of this belief, I saw a June 8, 2015 email from the prosecutor, where she wrote to Ron Simmons, where she wrote that he will get "giggidy fits" when he learns that Ms. Shavlik was "shopping around" for another criminal defense attorney. Mr. Sims replied "This is getting laughable." (*Attachment D).* This displays the animus and disrespect they felt about her. Being called an arsonist is not much different than being called a child molester. And yet, Mr. Sims was the State's chief fire investigator who testified at her first criminal trial about the cause and origin of the fire and squarely pointed the finger at Ms. Shavlik, despite her continual claims of innocence.

10. Worse, the area of origin was inexcusably altered by one of the authorities. The most basic and first duty of a fire investigator is to preserve the scene to the exact state it was at the time of the fire. Here, the first photos of the scene were taken by the fire department, and those photos are markedly different from the photos taken later, and the latter photos were exclusively used as part of the criminal prosecution against Ms.

Shavlik to support the fanciful theory that she had somehow used a metal container of "Goof Off" as an accelerant for this fire (and then left it there closed). The first photos clearly do not show the Goof Off container in the exact area that later photos depict the container. (*Attachment E).* The later photos taken by the police show the Goof Off can in the same area that the earlier photo did not have it. (*Attachment E).*This is fire scene spoliation at best, and planting of "evidence" at worst. And the theory that "mineral spirts" were poured on the sponge, and then placed underneath the Goof Off, on ghe mud plate, it ludicrous. The mud plate had no evidence of burning, and yet that is the supposed point of origin. And that is apart from the physical impossibility of Ms. Shavlik pulling out the dryer vent tube and inserting those items. She did have mineral spirits and other supplies for painting in that utility room, because she personally painted the entire commercial space. She may have had the Goof Off in the area. But the sponge and Goof Off were entirely natural in that that room.

11. It is my experience that fire departments routinely take photographs of fire scenes, so it was completely inexcusable for the prosecutor and police departments to fail to request those first set of photographs until Ms. Shavlik did a public records request in the summer of 2015 (well after her first criminal trial ended in a hung jury). Those photographs exonerate Ms. Shavlik, and of course should have been provided to her by Snohomish County well before her first trial. Moreover, the files indicate that the 28

fire department photos were "modified" later in the evening on February 4, 2010, which indicates that someone was looking at those photos on February 4, 2010. By that time the fire investigator had labeled the fire as arson, so of course those photos were relevant. One photo taken by the fire department shows the clock inside the building, and that time is different from when the fire department says the photo was taken. It appears as if there was tampering of the file properties of the digital fire department photos that were produced. This matter should be investigated further.

12. Moreover, this fire is not consistent with an accelerant being used. First, there was no evidence collected of any accelerants in the remaining nearby combustibles, or in the burned debris. A lab test could readily verify if accelerants were used, even in the burned remains. In fact, the lab tests later confirmed that the sponge had no accelerants (because it was intended to be used to stabilize the dryer).. Also, there is no evidence that there was any "quick burning" that would have been caused by an accelerant. And why would an arsonist leave a metal container of Goof Off in the area of origin when he could have simply doused the area rather than leave a container that would not have been fully consumed in the fire. Of course, Goof Off is used to remove gum and other things from materials and has an entirely natural function in a laundry room.

13. There was also no evidence of any delayed ignition device. In fact, Mr. Sims never identified any ignition source, other than the speculating that it was an "open flame," which is not allowed under NFPA 921.

14. In viewing the photos, the dedicated dryer electrical outlet appears damaged to me, and there is no evidence that a competent electrical expert examined it to see if it was a cause of the fire ignition. The dryer itself may have caused some electrical overloading because of the lint issue. The heated vent dryer tube was very close to the outlet. The heated dryer tube was also less than an inch away from the vertical wood stud, which could cause the outlet to heat up.

15. In sum, under NFPA 921, I am classifying this fire as undetermined, and the governmental authorities prevented finding the precise accident cause of the faire because of spoliation. The electrical outlet appears damaged to me, and there is no evidence that a competent electrical expert examined it to see if it was a cause of the ignition. The dryer itself may have caused some electrical overloading because of the lint issue. There never was any basis for anyone to classify this fire as incendiary under NFPA 921.

16. Finally, part of why a fire investigator should divorce himself from issues concerning motive is that often "red flags' are in fact "red herrings." Issues concerning motive can easily be turned around. For instance, the investigators tried to show that this tanning

business was losing money. Although Ms. Shavlik never made an insurance claim, this line of questioning pursues two common misconceptions by many fire investigators—that a person "profits" from an insurance claim and that a person is likely to torch their possessions when they have financial distress. Insurance policies are written so that a person cannot profit from a loss. At best, persons receive the market value of their items destroyed (the garage sale or "Craigslist" value). A person having financial distress could as easily sell their stuff rather than elect to become a felon. In my experience, most people have debt of some sort, but that doesn't mean most people will torch everything, including sentimental items, just to pay some bills. Here, it is my understanding that Ms. Shavlik had owned a tanning business for many years, and that she had recently opened this location as one of two places that customers could go. By focusing on revenue for just the newly opened location, the prosecution skewed the financial picture of Ms. Shavlik. I also understand that she had substantial retirement funds and that her husband had a stable job as well. She appears to me to be a typical wife and mother and a hard working woman who had operated a business she enjoyed for many years.

17. Moreover, with regard to her business personal property that would have been destroyed in the fire, had it developed and destroyed everything, she would have only received the actual cash value (used condition) for those items. If she had a

replacement cost coverage on her insurance policy, she would had to actually purchased new items before her insurer would then reimburse her for the additional amount she paid above the actual cash value.

18. I understand that there was a dispute between Ms. Shavlik and the property manager, who attempted to unilaterally increase the rent by $1,000 in January 2010, even though the first year of the lease had not been reached. A meeting was apparently arranged for February 9, 2010 to resolve the dispute.

19. Moreover, the landlord of the building would have received any money for any damage to the building for the repairs (or the contractor directly). The policy is written so that the "rightful owner" of the damaged property (real or personal) is reimbursed. There is no profit to be made in fires.

20. The stakes are very high in fire investigations, because an innocent person could be faced with arson or murder charges. Ty Willingham was executed in Texas for a fire that resulted in the death of his children. Post-execution tests confirmed that he was an innocent man. There are many myths about fire causes that have been disproven by testing. Some of these myths include supposed pour patterns, which have been shown to be caused by radiant heat from an adjoining burning object (or other innocuous means), and "concrete spalling" (where is was supposed that an arsonist poured gas on concrete, causing it to "spall," but later tests showed that the spalling was caused by

direct exposure to heat, and if in fact an accelerant were there, it would protect the concrete); multiple origins of a fire (which were shown by testing to be caused during flashover where multiple points were ignited); and other myths. I set up a website called "ArsonInjustice," because I have seen firsthand the devastation that occurs to persons falsely accused of arson. I believe that Ms. Shavlik was one of those persons.

21. The junk science and demonization of Amanda Knox in her criminal trial in Italy is not an isolated event.

DATED at Snohomish, Washington this 19th day of February, 2016.

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JOHN SCRIVNER, CFEI