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KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED

CASE NUMBER: 18-1-00255-5 SEA

## SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 18-1-00255-5 SEA  
 )  
 PHILLIP SCOTT NUMRICH, ) INFORMATION  
 )  
 )  
 Defendant. )  
 )  
 )

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse PHILLIP SCOTT NUMRICH of the following crime[s]: **Manslaughter In The Second Degree, Violation of Labor Safety Regulation with Death Resulting**, committed as follows:

**Count 1 Manslaughter In The Second Degree**

That the defendant PHILLIP SCOTT NUMRICH in King County, Washington, on or about January 26, 2016, with criminal negligence did cause the death of Harold Felton, a human being, who died on or about January 26, 2016;

Contrary to RCW 9A.32.070, and against the peace and dignity of the State of Washington.

### Count 2 Violation of Labor Safety Regulation with Death Resulting

That the defendant PHILLIP SCOTT NUMRICH in King County, Washington, on or about January 26, 2016, was an employer, and did willfully and knowingly violate the requirements of RCW 49.17.060, and a safety or health standard promulgated under RCW Chapter 49, and a rule or regulation governing the safety or health conditions of employment adopted by the Department of Labor and Industries, to-wit: WAC 296-155-657, WAC 296-155-655 and that violation caused the death of one of its employees, to-wit: Harold Felton;

INFORMATION - 1

**Daniel T. Satterberg**, Prosecuting Attorney  
CRIMINAL DIVISION  
W554 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104-2385  
(206) 477-3733 FAX (206) 296-9009

Contrary to RCW 49.17.190 (3), and against the peace and dignity of the State of Washington.

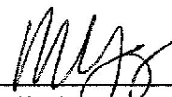
DANIEL T. SATTERBERG  
Prosecuting Attorney

By:



Patrick H. Hinds, WSBA #34049  
Senior Deputy Prosecuting Attorney

By:



Melinda J. Young, WSBA #24504  
Senior Deputy Prosecuting Attorney

CAUSE NO. 18-1-00255-5 SEA

PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR  
CONDITIONS OF RELEASE

The State incorporates by reference the Certification for Determination of Probable Cause prepared by Mark Joseph of the WA State Department of Labor and Industries for case number 317939264.

The State requests bail set in the amount of \$20,000 as the defendant is likely to commit a violent crime and may interfere in the administration of justice. Despite Alki Construction going out of business, the defendant has started a new business with a very similar name and continues to be the owner and operator of a sewer business. Alki Sewer has a website that states Phil Numrich is the proprietor and that it is currently in business. "Yelp," a workplace review website, has reviews from as recent as May 2017 indicating the defendant is still in business. Because his workplace safety measures were so grossly inadequate in this case, causing the death of the victim, his continued operation of a similar business puts other workers at risk.

The State also requests no contact with Maximillion Henry, Jenna Felton, Lucy Felton, Bruce Felton and Pamela Felton. The defendant knows all of these witnesses very well and knew Mr. Henry was speaking to Labor and Industry investigators, continuing to call Mr. Henry to inquire about the investigation. Given the close personal relationship the defendant had previously had with all of these witnesses, and that the defendant contacted Mr. Henry when he learned he was speaking to investigators this year, there is a risk he will obstruct with the administration of justice.

Signed and dated by me this 5th day of January, 2018.



Patrick H. Hinds, WSBA #34049  
Senior Deputy Prosecuting Attorney



Melinda J. Young, WSBA 24505  
Senior Deputy Prosecuting Attorney

## CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

I, MARK JOSEPH, am a Certified Safety and Health Officer with the Washington State Department of Labor and Industries ("WSDLI") based out of Bellingham Washington. I am authorized under RCW 49.17 to conduct investigation of workplaces for safety violations, and may under section .070 of the same title and chapter require the attendance and testimony of witnesses and the production of evidence under oath. As such, I have reviewed investigation documents for WSDLI Inspection No. 317939264. I have also conducted an additional investigation in conjunction with the Washington State Office of the Attorney General.

Based upon my review and additional investigation, I declare that the following is true and correct:

Inspection records created by WSDLI show that on January 26, 2016, Harold Felton, an employee of Alki Construction LLC ("Alki"), was completing work replacing a side sewer at a residential home in West Seattle. While Felton finished work in the 8-10 foot deep trench, a cave-in of soil covered him entirely and he perished. The WSDLI conducted an initial investigation into Alki because of Felton's death. In August of 2017, I was assigned to conduct an additional investigation of Alki, a Washington State Limited Liability Company based in Seattle, WA, and its owner Phillip Numrich. Inspection records and records from the Washington Secretary of State show that Numrich owns, operates, and manages Alki and has done so since its inception. He is the sole owner, operator, and manager of Alki.

On August 28, 2017, I interviewed Jenna Felton, Lucy Felton, Bruce Felton, and Pamela Felton, who are Harold Felton's widow, sister, father, and mother respectively. Jenna, Lucy, Bruce and Pamela all stated that, when Felton was 21 years old, he suffered a severe traumatic brain injury, which required major surgery and an extended recovery, including re-learning to speak and walk, among other ordinary life activities. After recovery and rehabilitation, Lucy stated that Harold Felton continued to have short-term memory issues. Felton's family also confirmed that Numrich was a long-time friend of Felton's, was present when he suffered his brain injury, and was aware of the nature and extent of Felton's continuing issues.

Inspection records created by WSDLI show homeowners at 3039 36<sup>th</sup> Ave SW Seattle, WA 98126 (hereinafter "Subject Premises"), hired Alki/Numrich to replace their home's side sewer pipe. Alki uses a "trenchless" sewer replacement technology wherein two trenches are dug where the sewer exits the home's concrete foundation and the other where the sewer connects to city's main sewer in the street. The old sewer is disconnected from the homes foundation and at the street, and a large cable is threaded through the old sewer line. On one end, the operator connects a large cable to the tip of a steel cone, and the other end of the cable is connected to a large hydraulic pulling machine. The operator then connects a new plastic sewer line to the back of the cone, engages the pulling machine, which simultaneously splits open the old sewer while pulling the new plastic sewer in its place. Once the new sewer is laid in place, workers

must enter the trenches and re-connect the new sewer to the home and the city's service connection. Felton was killed by the cave-in during this re-connection process.

Inspection records created by WSDLI show Alki/Numrich commenced work at the Subject Premise on or about January 16, 2016. Numrich and Felton dug one trench at the back corner of the home ("back trench") and another where the old sewer connected to the city's service ("front trench"). The back trench was approximately 8-10 feet deep, 21 inches wide, and six feet long. Because of some worker absences and equipment failure, Numrich put work on hold until January 26, 2016. Leaving a trench open for this long increases the risk of a collapse or cave-in.

Washington law and WSDLI regulations (WAC 296-155-657) require employers to design and implement protective systems for all trenches deeper than four (4) feet to prevent cave-in hazards to workers. Because trenches may vary in dimensions, employers determine how to shore each individual trench by consulting the shoring system's Tabulated Data ("Tab Data"). Alki used an aluminum hydraulic shoring system (tradename "SpeedShore") to shore the back trench.

WSDLI regulations and SpeedShore Tab Data require an employer to determine the soil type or types in which the excavation is made using a recognized soil classification method. Different soil types are more stable or less stable when excavated and require more shoring if they are a less stable soil type and less shoring if they are a more stable soil type. The initial WSDLI investigation confirmed that the soil type at the Subject Premises was "Type C" soil, which is the least stable type of soil and which requires the most rigorous shoring standard per WSDLI regulations and SpeedShore's Tab Data.

In addition, Washington law and WSDLI regulations (WAC 296-155-655) require that a "competent person" inspect any trenches, the adjacent areas, and the protective systems in the trench for evidence of situations that could result in cave-ins. "Competent person" is a legal term defined in the WACs. WAC 296-155-650 defines a "competent person" as someone "who can identify existing or predictable hazards in the surroundings that are unsanitary, hazardous, or dangerous to employees." The provision also requires that the "competent person" be someone who has the "authorization or authority by the nature of their position to take prompt corrective measures to eliminate them." Inspections by the "competent person" must be made daily prior to the start of any work in the trench and must be repeated after every rainstorm or other hazard increasing occurrence. If the "competent person" sees evidence of a situation that could result in a possible cave-in or other hazard, they must remove any employees from the trench until necessary precautions have been taken to ensure their safety. Numrich was the only "competent person" at the Subject Premises during the entire project and on the day when Harold Felton was killed.

During the initial WSDLI investigation, Numrich engaged in a voluntary interview with WSDLI, where he confirmed that he knew the soil at the Subject Premises



was "Type C." Numrich also indicated that he was very concerned with safety and was aware of the requirements in place for protection of workers in trenches.

On November 1, 2017, I interviewed Maximillion Henry, Felton's co-worker at Alki and the only other person who worked on the Subject Premises other than Numrich and Felton. Henry stated that Felton and he arrived at the Subject Premises on the morning of January 26, 2016. The trenches at the subject premises had been "open" (previously dug by Numrich and Felton, and left in that condition) for approximately ten days. Henry also reported that it is very unusual for a trench to be open more than 2-3 days, and that the longer a trench is "open" the less stable it becomes. Henry also stated that it had been raining for several days prior to January 26, 2016; a fact that I corroborated by examining regional atmospheric data and regional precipitation records. Soil saturated by water is less stable than when dry and, therefore, is more prone to collapse or cave-in.

Henry stated during his interview that the trenchless sewer replacement process vibrates the ground when the steel cone splits open the old sewer pipe and the vibrations further destabilize trenches dug during the sewer replacement process. Henry reported that the soil type in and around the Subject Premises was widely known in the sewer replacement industry to be Type C soil.

During his interview, Henry also indicated that Felton had a history of work accidents, which he became aware of after Felton's death. Henry stated that it was Numrich who had informed him of Felton's history of accidents. Henry also stated that Felton was often not aware of his surroundings, and that if Henry knew of his history of work accidents he "never would have had [Felton] helping me."

The WSDLI investigation and the Henry interview show the Subject Premises had two SpeedShore protective shores installed in the back trench. Henry reported during his interview that Numrich and Felton placed two shores in the back trench when they initially dug it. One of the shores was installed more than four feet above the bottom of the trench – which is prohibited by both WSDLI regulation and SpeedShore Tab Data. Both WSDLI regulation and SpeedShore Tab Data show the back trench required a minimum of four shores based upon the trench dimensions, and soil type alone. As a result, the shoring in place in the trench at the Subject Premises was wholly inadequate and, based on Numrich's status as the "competent person" and his statements during his interview that he was aware of trench safety issues, he should have known that the shoring was inadequate.

In his interview, Henry reported that Felton used a vibrating hand tool (tradename "Sawzall") while in the back trench for several minutes after the new sewer was positioned and while connecting it to the home's service. Numrich was present at the jobsite at the time and he and Henry noted both that Felton was using a vibrating tool in the trench and that doing so increased the risk of trench collapse. Numrich did not intervene to stop Felton from using the Sawzall. Instead, Numrich left the jobsite to buy

lunch for all three so that they could eat after Felton and Henry finished attached the sewer.

In his interview, Henry also indicated that Numrich was the “competent person” for the project at the Subject Premises. Neither Henry nor Felton had the requisite knowledge or authority. Henry was not sure whether Numrich inspected the back trench at the beginning of the day prior to Felton entering it to work. However, both the process of pulling the new sewer pipe into place and Felton’s use of the Sawzall tool in the trench vibrated the ground, which increase the risk of a cave-in. Numrich was well aware that the vibrations caused by either the use of vibrating tools or by the pipe replacement process itself would destabilize a trench because Numrich had told Henry this shortly after Henry started working for Alki. Despite this, Numrich did not re-inspect the back trench after either event. Instead he allowed Felton to continue working in the trench while he left the Subject Premises to buy lunch.

According to Henry, Felton was using the Sawzall in the back trench at approximately 10:30 am on January 26, 2016. About 15 minutes later, the trench collapsed, covering Felton and killing him.

In the course of my investigation, I reviewed the analysis of Erich Smith, trenching technical expert for WSDLI. Smith stated, based upon his experience, the SpeedShore Tab Data and WSDLI regulations, the soil type and conditions at the Subject Premise, and the trench dimensions, that a minimum of four shores should have been used on the long edge the back trench. I also reviewed the analysis of Gary Hicks, regional sales manager for SpeedShore. Hicks stated that four shores would be required on the long edge of the back trench and additionally that each of the four vertical sides of the trench should have been shored to make the trench safe for workers. In other words, the two short sides at either end of the trench should have been shored. Such additional shoring on the ends of a trench is referred to in the industry as “end shoring”. Henry stated during his interview that Alki/Numrich did not own end shoring, and that Henry was not familiar with it or and had never been trained in its use.

On November 17, 2017, an interview was conducted with Gregory Sobole, who is a 14-year firefighter with the Seattle Fire Department (SFD). Sobole is a member of the SFD technical rescue company (Rescue 1, Ladder 7, Aid 14). The technical rescue company responds to specialized incidents such as trench rescues. Sobole has responded to several actual trench cave-ins where he has successfully rescued workers. He also performs annual training with the technical rescue company in trench rescue, with includes hazard identification in trenches. Sobole has taught non-technical rescue company firefighters in basic trench rescue disciplines for ten (10) years. Sobole responded to the Subject Premises, and directly participated in the attempted rescue of Felton by climbing into the back trench during rescue efforts. Based upon his experience and education, Sobole stated that the back trench was not properly shored and was not a safe area to work in. Sobole also noted that there were a number of factors that made the trench more dangers, including the facts that the soil was saturated and had been previously disturbed.



Based on the foregoing, there is evidence that Numrich, as owner of Alki, knowingly failed to properly shore the back trench at the Subject Premise in accordance with WSDLI regulations or with SpeedShore manufacture's Tab Data. In failing to do so, Numrich ignored aggravating factors such as soil saturation, the extended duration the trench was open, and the use of vibrating tools in the back trench. In addition, Numrich, as the "competent person" in charge of safety at the jobsite failed to inspect the trench for hazards as required and failed to remove Felton from the trench until precautions had been taken to ensure his safety. In this context, Numrich's conduct substantially deviated from any known or recognized safety standard and from the standard of care that any reasonable person would exercise in the same situation. Felton died as a result of Numrich's criminal negligence.

Based on all of the above, there is probable cause to believe that Phillip Numrich committed the crime of Manslaughter in the Second Degree within King County in the State of Washington. There is also probable cause to believe that Phillip Numrich committed the crime of Violation of Labor Safety Regulation with Death Resulting within King County in the State of Washington in violation of RCW 49.17.190.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to the best of my knowledge. Signed and dated by me this 5<sup>th</sup> day of JANUARY 2018, at Bellingham, Washington.



Mark Joseph, Certified Safety Health Officer  
Washington State Department of Labor & Industries

## SUPERFORM

CCN NUMBER		B/A NUMBER		PCN NUMBER	
AGENCY <input type="checkbox"/> UNINCORPORATED KING		CITY OF		17-319939264	
DAJD <input type="checkbox"/> KCCF <input type="checkbox"/> RJC <input checked="" type="checkbox"/> MISDEMEANOR		FELONY		CASE NUMBER	
				INCIDENT NUMBER	
DATE OF ARREST / TIME		BOOKING DATE / TIME		ARREST LOCATION	
NAME (LAST, FIRST, MIDDLE / JR., SR., 1 <sup>ST</sup> , 2 <sup>ND</sup> )		ALIAS, NICKNAMES			
NUMRICH, PHILLIP		UNK			
IDENTITY IN DOUBT? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		DOB 5-19-77		SEX M RACE WH HGT 6'2 WGT 200 EYES blu HAIR SKIN TONE	
SCARS, MARKS, TATTOOS, DEFORMITIES		UNK		ARMED / DANGEROUS? YES <input type="checkbox"/> NO <input type="checkbox"/>	
LAST KNOWN ADDRESS CITY STATE ZIP		RESIDENCE PHONE		BUSINESS PHONE CITIZENSHIP	
4101 SW 106 <sup>TH</sup> ST., SEATTLE, WA 98146		(206) 446-1410		(206) 446-1410	
OCCUPATION		EMPLOYER, SCHOOL, (ADDRESS, SHOP / UNION NUMBER)		SOCIAL SECURITY #	
CONTRACTOR		N/A			
DRIVER'S LICENSE #		STATE		AFIS #	
[REDACTED]				FBI #	
VEHICLE LICENSE #		STATE		YEAR MAKE MODEL	
				VEHICLE LOCATION TOW COMPANY	
EMERGENCY CONTACT PERSON		RELATIONSHIP		ADDRESS CITY STATE PHONE #	
1) OFFENSE		RCW / ORD #		COURT / CAU #	
<input type="checkbox"/> DV Manslaughter		9A.32.070			
2) OFFENSE		RCW / ORD #		COURT / CAU #	
<input type="checkbox"/> DV					
3) OFFENSE		RCW / ORD #		COURT / CAU #	
<input type="checkbox"/> DV V					
4) OFFENSE		RCW / ORD #		COURT / CAU #	
<input type="checkbox"/> DV					
DATE & TIME OF VIOLATION		CRIMINAL TRAFFIC CITATION ATTACHED		ACCOMPLICES	
		YES <input type="checkbox"/> NO <input type="checkbox"/>			
LIST VALUABLE ITEMS OR PROPERTY LEFT FOR ARRESTEE AT JAIL					
LIST VALUABLE ITEMS OR PROPERTY ENTERED INTO EVIDENCE ( IF YES DESCRIBE BELOW ) ( SIMPLE DESCRIPTION, IDENTIFYING MARKS, SERIAL # )					
YES <input type="checkbox"/> NO <input type="checkbox"/>					
TOTAL CASH OF ARRESTEE		WAS CASH TAKEN INTO EVIDENCE		SIGNATURE OF JAIL STAFF RECEIVING ITEMS	
\$		YES <input type="checkbox"/> NO <input type="checkbox"/> AMOUNT \$			
ARRESTING OFFICER(S) SERIAL #		TRANSPORTING OFFICER(S) SERIAL #		SUPERVISOR SIGNATURE / SERIAL #	
N/A		N/A			
SUPERFORM COMPLETED BY (SIGNATURE / SERIAL #)		CONTACT FOR ADDITIONAL INFO (NAME, SERIAL #, PHONE #)			
Mark Joseph		MARK JOSEPH, (360)647-7286			
MISDEMEANOR AND FELONY BOOKINGS: Complete both sides. UNLESS BOOKED BY CITATION OBJECTION TO RELEASE: ( MISDEMEANOR OR FELONY ) IS ON THE REVERSE SIDE.					
SUPERIOR FILING INFO		IN CUSTODY		COURT CAUSE NUMBER (STAMP OR WRITE)	
<input type="checkbox"/> AT LARGE		<input type="checkbox"/> OUT ON BOUND			
COURT / DISTRICT COURT #		DIST. CT. BONDS \$		BOND REQUESTED \$	
				SUPERIOR COURT DATE	
				WARRANT NUMBER	
WARRANT DATE		OFF CODE OFFENSE		AMOUNT OF BAIL	
				\$	
POLICE AGENCY ISSUING		COURT		FELONY MISD. <input type="checkbox"/> BENCH ARREST <input type="checkbox"/>	
				WARRANT RELEASED TO: ( SERIAL, UNIT, DATE, TIME )	
PERSON APPROVING		SEAKING - LOCAL ONLY		NCIC WILL EXTRADITE FROM	
		WACIC - STATE WIDE		OR, ID, MT, WY, CA, NV, UT	
		<input type="checkbox"/>		CO, AZ, NM, HI, AK <input type="checkbox"/>	
		<input type="checkbox"/>		<input type="checkbox"/>	
E CCN		DOE		C DOC	
N WAC		TOE		E TOC	
R NIC		OP		A OP	
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