



# SPRINGFIELD POLICE DEPARTMENT



## FELONY PROBABLE CAUSE STATEMENT

Date: 11/12/2014 Case #: SPD141008039695

I, KEVIN SWECKARD, knowing that false statements on this form are punishable by law state as follows:

1. I have probable cause to believe that KELLY A GREEN, White/Male, DOB 07/06/1972, committed one or more criminal offenses.
2. The following crime(s) happened on 2012/06/01 00:01 - 2014/10/03 00:01 at 3301 S STATE HIGHWAY FF HWY in Springfield, Greene County, Missouri.
3. The facts supporting this belief are as follows:

10/08/2014 Cpl. Kevin Sweckard was given the assignment of contacting city Environmental Services employee Errin Kemper. Cpl. Sweckard met with Kemper and began to accumulate facts from him concerning a possible long term theft situation at the Southwest Water Treatment Plant.

Cpl. Sweckard learned from Kemper that Kemper found records dating back 2-3 years documenting that employees had purchased herbicides that control broadleaf plants in grass stands. These purchases were billed to the city using a credit card that he referred to as a "P Card." Kemper stated the herbicides that were purchased were never authorized by the city and that there was no reason that employees of the power plant would need to purchase such herbicides. Kemper had been accumulating billing papers, employee interviews, and other records for the last few weeks. Kemper stated that he had developed information that Kelly A. Green, the water plant manager, was involved in applying the herbicides to his personal farm property located near Bolivar Missouri during the two year time frame. Kemper stated that during his internal investigation, he learned from employee Philip Costa that Costa had been to Green's farm in Polk County on several occasions and Costa had witnessed spray equipment and containers matching the purchased herbicide containers at the city power plant.

Kemper stated that Kelly A. Green resigned in a letter after being served a discipline letter notifying him of a hearing on 10/01/2014. Kemper stated that during his investigation he also learned that Scott Foley, a subordinate employee under Kelly Green's supervision, had obtained training and been certified on purchasing and applying the type of herbicide in question. This training and certification was never authorized by the city and Kemper believed that Foley obtained this certification in order to apply the herbicide to Green's farm land in Polk County. Kemper said that Foley resigned in a letter from his position on 10/03/2014 after being informed of his upcoming disciplinary hearing.

On 10/14/2014 Cpl. Sweckard met with Phil Costa at HQ. Costa stated that he had worked for the City of Springfield for approx. 6 years and that the last 3 years he reported to plant manager Kelly Green as his direct supervisor. Costa stated that he agreed to drive his personal truck to Green's

farm in Polk County beginning approx. 2.5 years ago on a Saturday to do farm labor (fence building, row clearing, rounding up cows, etc) and it continued for months. Costa said that Green would pay him "like \$75 dollars" to work on his Polk County personally owned farm from "sunrise to sunset."

Costa stated that he when he would clear tree lines by cutting trees down, he would use Green's saws the "first couple of times." After that Costa stated that he was told by Green to "bring a couple of saws down." He stated that he would bring the two city owned chain saws from the maintenance building at the plant to Green's farm because Green told him to. Costa stated that he arranged to have the city owned chain saws maintained and/or sharpened "at first (we) used Carpenter's, \$5 per chain, for the first year or so."

Costa stated that the two chain saws that were owned by the city were on-site for the occasional storm damaged trees and blow downs. It was rare that Costa needed them for legitimate work on the city 300 acres that he was responsible for. Cpl. Sweckard asked Costa what percentage of work was done at Green's farm as compared to legitimate work with the chain saws on city owned property he responded "90% farm and 10% (city)." Cpl. Sweckard found that Costa had used a city P-Card to log \$1667.01 in chain saw expenses from 06/20/2012 – 05/23/2014 on the document I obtained from Errin Kemper labeled "Purchases related to Chain Saws."

When Green told Costa to get the chain saws from the plant and bring them to the private farm to work, Costa told Green it wasn't right. Green told Costa "it's just chain saws, it's alright." Costa was asked if Green ever told him not to tell anyone about the city chain saw use, he said "Yep, like a 'this is between me and you' type of conversation." Costa stated that he guessed that he took city owned chain saws to do work on Green's farm approx. 20 times in the last two years.

Costa stated that he knew that someone had been buying selective type herbicides and storing them in the "white barn." The "white barn" is a metal storage facility located on the "North Farm" north of the treatment plant. The storage facility had a locked door and only he, Scott Foley and Kelly Green had keys to the lock, according to Costa. Costa stated that he had no reason to buy selective herbicides on the city property and that he was only responsible for using non-selective herbicides while employed at the plant. He stated that there was no reason that he would buy non-selective herbicides like the herbicides stored at the "white barn." Costa stated that he arrived at the white barn on one occasion and witnessed Scott Foley place two larger (possibly 25 gallon drums) onto a city owned trailer and strap them down. Foley was pulling the city owned trailer with a city owned truck and when Costa asked what he was doing, Foley firmly said "don't ask." Foley then drove the city truck and trailer with the two drums of selective herbicide north on the West Bypass (Costa didn't know his directions well and originally stated south, but corrected to north). Costa was convinced that they were not going to the city property as Foley was driving the total wrong direction when he drove onto West Bypass from FR 156. Costa stated that he saw this in the summer of 2013. Costa stated that he thought Foley was taking the herbicides he said "to the ranch (in Bolivar)." Costa stated that he noticed that the broadleaf weeds were curling up and dying as though they had been recently sprayed with a selective herbicide while working on Green's farm. He did see containers of selective herbicides on Green's property when he worked on it, but couldn't testify as to where they came from as a person can buy them at any agriculture supply store.

In conclusion, Costa stated that he never used, was asked to use, and never purchased any of the selective herbicides (Trooper, Remedy, etc) and that he was the person who was responsible for maintaining the 300 acre city land surrounding the city water plant. Costa stated that he never used any of the herbicides currently stored inside the white barn and that he stores his necessary

herbicides, etc in his "oil barn." Cpl. Sweckard asked Costa if Scott Foley ever had any reason to treat the city 300 acres with herbicides and Costa stated that Scott Foley was the solid waste manager. Costa said that Foley was responsible for distributing the semi-solid and solid waste materials produced from treating the raw sewage that was piped into the plant for treatment.

Cpl. Sweckard contacted the Recorder of Deeds Office in Polk County Missouri. It was learned that Kelly and Mary Green purchased an 80 acre parcel of land 04/15/2011 and another 73.19 acre parcel was purchased by Green on 06/27/2011. On 10/07/2014 Kelly Green sold the 153.19 acres to two separate parties.

Cpl. Sweckard reviewed the billing statements that Errin Kemper had supplied to him. Kemper had broken down the billing to three different descriptions:

1. Equipment Purchases
2. Herbicide Purchases
3. Expenses related to chain saws

In reviewing those statements, Cpl. Sweckard learned that Scott Foley had purchased \$17,483.53 worth of Herbicides as documented in that document between 04/04/2012 – 05/05/2014. Cpl. Sweckard calculated these sums by taking the total documented at the bottom of each statement and subtracting anyone else's (mainly Phil Costa) totals that may have been in the total sum listed on the document.

On 10/22/2014 Cpl. Sweckard interviewed Scott Foley at HQ. Foley stated that he started at the city on August 29, 2005 as a Bio-solids coordinator. He stated that he held that position until he recently ended his employment at the city. Foley stated that his job description included distributing the solid waste from that was produced during the sewage water treatment at the plant to area private farming fields. He also oversaw the maintenance of the fleet of trucks that was used for that work. Foley stated that he possessed and used a "P-card" and was authorized to use that card to purchase paper products for the office and "PM" for his equipment (PM=Preventative Maintenance

Foley stated that Green was promoted to plant manager approx. 3 years ago. Foley stated that Green was the interim plant manager prior to his actual official promotion. Foley stated that Green also ordered Phil Costa to perform tasks on the city farm, but Foley didn't know exactly what those tasks were. Foley stated that both he and Costa received task assignments from Green and they followed them per "Merit Rules." Foley stated that he understood that the farmer on the city farm lease was supposed to control weeds, trimming and mowing as the contract stated, to the best of his knowledge.

Cpl. Sweckard then asked Foley if he had ever purchased herbicides with his P-card and he stated that he had. He stated that he had purchased Trooper, Grazon and Remedy in a liquid form. He stated that he purchased these herbicides to spray onto the city farms. Cpl. Sweckard confronted Foley and asked him why he needed to purchase those type of herbicides if the farmer on the lease was responsible for weed control on the city farm. He then replied "Kelly Green told me to purchase these cause he wanted, the story he told me that the previous assistant director of environmental services (Ed Molter) wanted those city farms to be brought back up to where they were." Foley stated that Green had a plan to eliminate locust trees and weeds from the city farm "in conjunction with M&T." I asked him what he meant by "in conjunction with" and he said "they used M&T's equipment, to the best of my knowledge."

Foley stated that he and Green trained for the test and received a license to purchase and apply herbicides and that Green thought it would be a good idea. Green told Foley that it would be a good idea so that they could use herbicides on the city farm and "private." Foley stated the city paid for the necessary classes at the Botanical Garden at Nathaniel Green Park that he and Green attended.

Foley stated that when he purchased herbicides he took them from the "white barn" in a city truck and this was ordered by Green. He stated that he didn't personally apply any of the herbicides but he found empty containers inside the white barn. Foley stated that Terry McConnell went with him to the agriculture store to buy the herbicides on one or two occasions and taught Foley about them. Foley stated that he was told what to buy from Green. Foley stated that "they planned on doing the farm this spring, but never got around to it. That's the reason it's sitting in the building." Foley stated that he purchased spray equipment to include Stihl backpack sprayers and that they were for city property.

Foley stated that he had a good friendship with Green. Foley then stated that he had personal knowledge that Green had used city purchased herbicides on his private farm located in Polk County Missouri. Foley thought the private farm belonging to Green was approx. 160 acres and that he was in the process of selling it when he last talked to Green 2-3 weeks prior. Foley said that he had heard that Green met with a Mr. Moore who worked at a MFA facility and set up herbicide applications on Green's farm. Foley stated that Marty Moore works at the city and Mr. Moore is her husband. Foley then told me that Green had personally told him that he brought herbicides from the city to his private farm. He stated that this occurred in 2014. I asked Foley how he reacted to Green telling him about this and Foley said he thought "That's on you. Wow. It's not like he...he's not poor...ya know. Internally I'm shocked a little bit." He then said "I have to worry about my job, we are friends, all that stuff is inter-twined." Foley said that Green "could be forceful, it was always his way." When I asked Foley if Green was forceful physically, he said "no, no." Foley said that Green "was like, 'if you're not up with this, I'll come after ya. And you know I will cause you have seen me do it in other instances where I've done that, in the plant.'" Foley said Green would "make my life hard." Foley said that he had thoughts of "going around him" and wondered how "that would come back on (me). I felt at time helpless or alone. Where do I turn to?" Foley said he had a lot of time to look back and patted his head saying "Geez, I'm stupid." He felt like Green manipulated him some.

When confronted with the fact that Foley had purchased several thousands of dollars worth of selective weed herbicides when it was the leasing farmer's duty to control weeds on the city farm, Foley stated that he didn't know why he was told to buy them and didn't know about any type of agreement that Green may or may not have had with the McConnells.

As the interview progressed, Foley told Cpl. Sweckard that he took a barrel of herbicide from Green's private farm back to the city farm white barn. He said that he did that because Green said "take care of it, get rid of it." Foley stated that the barrel was filled to about 30-40% of its capacity when he took it from Green's privately owned shed to the city owned white barn. Foley wasn't 100% sure, but he thought the barrel was green and he thought it was Trooper brand. Foley said that he drove his personal truck to Green farm and loaded the barrel into it. He then drove the barrel back to the white barn and loaded it inside the white barn. Cpl. Sweckard asked Foley if he asked Green about that he said "Mr Moore may know that's city chemicals, to get rid of it, to put it back into the white building." He stated that he moved this barrel after work in the evening of a weekday. Foley stated that when he went into Green's building to retrieve the barrel, he didn't see any others.

Foley stated that he could testify under oath that the barrel of herbicide that he took from Green's personal barn to the city barn was indeed city property because of what Green had told him to do and his own personal memory as to the type, brand and look of the barrel.

Foley was asked if Green had made the statement that he had used city owned herbicides on his private farm before or after he was told to retrieve this barrel, Foley said the statement was made first.

Foley was asked about the statement that Costa had made regarding witnessing Foley load two barrels of herbicide onto a city trailer attached to a city truck and drive north on West Bypass after saying "Don't ask." Foley became nervous and said "I may have taken them to Kelly's." When pressed Foley said "I took them up there."

Foley said that he did take two barrels of herbicide to Green's farm as he was directed. He stated that he said "Don't ask" to Costa because it was an "inside joke." He said it was a joke between them because they each knew Green made people do things that were not right.

Foley stated that he took the two full barrels to the metal barn on Green's property that was next to his mobile home where he lived. Foley stated that he didn't remember what brand name the barrels were but that they were selective herbicides. Foley said that he probably bought the two barrels on his own P-Card. Foley was then asked if he took other herbicides to Green's farm and he stated that he took smaller containers. He stated that he took boxed 2.5 gallon containers of herbicide to Green's farm when Green asked him to. He stated that he used the city owned white Tahoe that has regular license plates to transport the 2.5 gallon containers to Green's farm "a couple of times." In comparing Foley's statement to the "Herbicide Purchases" list of purchases made by Foley in 2014, Cpl. Sweckard estimated the two stolen barrels of selective herbicides (Trooper-Grazon) to cost \$1,594.96. Cpl. Sweckard used a logged purchase made by Foley at Nixa hardware on 05/15/2014 for Trooper P&D -30 gallons at the individual cost of \$797.48 (x2). Cpl. Sweckard then estimated the boxed herbicides and made two trips with one box per trip. In using the same "Herbicide Purchases" log, Cpl. Sweckard used a purchase made by Foley on 06/26/2013 at Nixa Hardware for a 2.5 gallon Trooper P&D at the cost of \$82.00 (x2). This brought the grand total of herbicides purchased by Foley and then taken to Green's private farm by Foley to \$1758.96.

I asked Foley who reviews his P-card purchases and he said he did a weekly report and Green approved it. He wasn't sure if Green then forwarded them to Errin Kemper or Jim Abbott.

Foley ended the interview by telling me that nothing happen on the city farm without Green's direct knowledge and approval. He said that he was the liaison between M&T farms and the city but that Green knew everything. Foley stated that when Green told him to do something, he didn't feel like he had a choice.

On 10/31/2014 Cpl. Sweckard received an email from Foley and it stated that Foley purchased some herbicides for Kelly Green at his instruction on August 30 at Nixa Hardware, to replace some of the city purchased herbicides that he had personally used. He used his personal credit card by phone. Foley stated that he still had that receipt. Foley stated that Green wanted him to do this because Green was becoming concerned that the people spraying his property could trace the lot number back to a city purchase. Green instructed Foley to put the herbicides back in the white building.

Cpl. Sweckard met with David Moore at HQ. Moore is employed at MFA and specializes in herbicide application on farm properties. Moore stated that he was asked to meet with Green so that he could tour Green's private farm in Polk County and use his expertise to establish weed control there. Moore is married to Marty Moore, a southwest treatment plant employee, and was introduced to Green through Marty. Moore stated that he drove his assigned MFA truck with Green to Green's farm on 07/31/2014. While at the farm he noticed that there was a substantial weed problem throughout the property and he stated that it didn't appear as though there had been any herbicide applications for weed control in recent years. Moore stated that there was only about 110 acres that would be eligible for weed control practices (herbicide applications) because they were open fields and the other acres of the farm were hardwood forests. When Moore recommended Grazon to Green, Green replied that he had "a whole bunch of Trooper P + D." David stated that he didn't recommend Trooper for applications near trees, but it would work in open fields. David stated that when using either Grazon or Trooper one would apply 30 gallons for land parcels between 60-120 acres. Moore stated that he recommended two applications per year to "get started" with one per year after that for maintenance.

Moore stated that Price Watson is an MFA employee and has a side business of applying herbicides to private land for landowners. Moore believed that Price Watson had one of his employees spray herbicides at the Green farm. Moore stated that he gave Green the contact information for Price Watson when Green asked for someone to apply herbicides at his farm. Moore stated that Green never inquired about pricing.

Moore stated that Green showed him where he planned to build a house on the private farm and Moore was surprised when I told him that Green sold the property recently. Moore stated that Green lived in a mobile home on the farm when he toured it. Moore said "he (Green) didn't act like he was leaving it at all."

On 11/4/2014 Cpl. Sweckard spoke with Price Watson via telephone. During the conversation with Watson Cpl. Sweckard learned that Watson was hired by Green to apply 30 gallons of Trooper herbicide to Green's 52 acres on 08/09/2014. Watson stated that Green already had several 2 ½ gallon boxed containers of Trooper on hand at the farm when he arrived with the spray equipment. Watson didn't know where the boxes of Trooper came from but he told me that someone would have to possess a specific license in order to purchase the restricted herbicide Trooper. Watson stated that Green paid with personal check #1925 in the amount of \$442.00. Watson stated that he didn't supply any herbicides, only spray equipment and labor.

On 11/13/2014 Cpl. Sweckard received two folders from my Sgt. David Meyer. One folder, a brown clasp style folder, was reportedly located in Kelly Green's desk drawer after Green left employment. It was located while an employee was cleaning Kelly Green's former office. Inside the folder was an aerial map of a piece of property and it was labeled "Green Ranch." It also labeled the Owner Name as "Kelly and Mary Green 4230 W. Colby Springfield MO 65802." The folder contained a USDA Natural Resources Conservation Service survey that was prepared on 05/11/2011.

Cpl. Sweckard also obtained a manila folder that was reported to be located inside a desk drawer from Scott Foley's former office. It was discovered the same way that Green's folder was discovered. The pages inside that folder were loose and the first page (top) was an aerial map of the very same piece of property that was labeled as "Green Ranch" in the brown clasp folder from

Green's desk drawer. Cpl. Sweckard noticed that the aerial map had handwritten numbers on it in the middle of open fields depicted on the map. The total number of fields identified with the numbers written in each field was 13. It was found that the pages were soil Sample Analysis Reports that were completed by the SW Wastewater Treatment Plant and they were dated 02/06/2013. They reports had "Creek Farms Section 1-Creek Farms Section 13" labeled on them in numerical order (13 reports for 13 samples). The lab reports and the aerial photo of Green's report both had matching 13 numbers and were all in the same folder with no other documents.

On 11/13/2014 Sgt. David Meyer and Cpl. Sweckard met with Jim Burks at the treatment plant. Jim Burks is the Lab Manager/Supervisor at the plant. Cpl. Sweckard showed Burks the 13 Sample Analysis Reports that were located in Scott Foley's desk drawer. Burks looked at the reports and claimed that the lab requests for such a large amount of testing would have not been approved by him if he was asked. Burks took one of the paper reports (Creek Farms Section 1) and was asked to estimate the cost of the analysis listed on the report. Burks used a pen and hand wrote his estimations of each of the test results listed on the page. The prices he wrote next to each test totaled \$345.00 and Cpl. Sweckard used the lesser price when Burks noted ranges like \$150-\$175 for a particular test. Burks stated that if an employee brought a soil sample to him and asked for an analysis he would do that as a courtesy. He then said that he would never authorize or test such a large group of samples (13) without authorization from "city hall."

Burks called his support staff and asked them to determine who brought the 13 samples to the lab. A short time later, Burks learned that the samples were collected by Scott Foley and Terry McConnell and delivered to the lab by Scott Foley. Burks stated that he was angry at the fact that he knew nothing about the 13 samples being tested and he told me that he "felt different" about the case than he did before. Cpl Sweckard asked Burks what he meant by that and he said he was "hoping" that no criminal acts occurred at the plant, but that this situation with the lab reports made him feel like it was criminal. When \$345 is multiplied by 13 (number of samples tested) it totals \$4,485.00.

On 11/13/2014 obtained a receipt that Scott Foley handed over through his attorney. The receipt was dated 08/20/2014 at 2:53 pm. It had a header that read "PO Box 1560 Nixa MO 65714 (417)725-3512" on it. Cpl. Sweckard confirmed that this phone number was for Nixa Hardware. The receipt had "12 ea 68.86 Trooper P=D 2.5 GAL" printed on it with a total purchase price of \$826.32. There was no tax listed. The credit card used ended with 7037. The receipt had "Acct: Scott Foley 2206 N. Ramsey Springfield MO 65803" printed at the bottom. This is the receipt that Scott Foley stated he obtained when he picked up the herbicides listed when ordered to do so by Kelly Green. Foley stated that Green bought the herbicides using his own credit card to "replace" herbicides that were taken from the white barn to Green's farm. Green told Foley to deliver the herbicides to the white barn when the city began to investigate them. When you multiply 2.5 gallons by 12 it equals 30 gallons.

The facts contained above are true.

	981	Corporal
Signature	DSN	Title