

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,

Plaintiff

v.

KELLEY PONTIAC, INC.,
a corporation duly
incorporated under the laws
of the State of Maine,

Defendant

COMPLAINT
INJUNCTIVE RELIEF REQUESTED

INTRODUCTION

1. This action is brought pursuant to the Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1984), to temporarily and permanently enjoin Kelley Pontiac, Inc. from misrepresenting to consumers and lending institutions any facts relating to the financing of new cars.

JURISDICTION AND VENUE

2. Plaintiff State of Maine is a sovereign state and brings this action by and through its Attorney General, under the Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1984) and the powers vested in him by common law as the State's chief law enforcement officer.

3. Defendant Kelley Pontiac, Inc. ("Defendant") is a corporation incorporated under the laws of the State of Maine

and engaged in the business of selling new and used cars in Bangor, Maine.

4. This Court has jurisdiction over this action pursuant to 5 M.R.S.A. § 209 (Supp. 1984), 4 M.R.S.A. § 105 (Supp. 1984) and 14 M.R.S.A. § 6051(13) (1980).

5. Venue lies in Kennebec County pursuant to 5 M.R.S.A. § 209 (Supp. 1984).

CAUSE OF ACTION (MISREPRESENTATION)

6. The allegations contained in paragraphs 1 through 5 of this Complaint are realleged and incorporated herein by reference.

7. From on or about January, 1984 to the date of this Complaint, Defendant has assisted its new motor vehicle customers in obtaining loans from lending institutions including, but not limited to, Maine Savings Bank.

8. In arranging loans for a significant number of its customers from on or about January 1, 1984, to the date of this Complaint, Defendant has prepared two buyer's orders describing the sales transaction: one for the lending institution and one for the customer.

9. In the buyer's order prepared for the lending institution, Defendant has made misrepresentations regarding the terms of the sales transaction including, but not limited to, the following:

a. Defendant has misrepresented that certain customers paid a cash downpayment (in amounts ranging from \$894 to \$3,150) when, in fact, the customer had made no downpayment;

b. Defendant has misrepresented that certain customers traded in used cars of certain values, when, in fact, the customers had made no trade-in or had traded in vehicles valued at substantially less value than that represented by the Defendant; and

c. Defendant has misrepresented the "cash delivered price" of the new vehicle by adding the fictitious downpayment and/or trade-in to the actual "cash delivered price," or by otherwise falsely inflating the price of the new vehicle.

10. In the course of the transactions described in the preceding paragraph, Defendant has made a number of misrepresentations to its customers including, but not limited to, the following:

a. Defendant has misrepresented to certain customers that it could obtain from lending institutions financing on new motor vehicles for "no money down," when, in fact, Defendant had no ability to obtain such financing;

b. Defendant has misrepresented to certain customers that the information contained in the buyer's order provided to the customer was the same information contained in the buyer's order provided to the lending institution; and

c. Defendant has misrepresented to certain customers that it is customary practice among motor vehicle dealers to misrepresent facts of the sales transaction to lending institutions in order to secure financing, when, in fact, it is not customary practice in the industry to misrepresent such facts.

11. Defendant, by engaging in a pattern or practice of misrepresentation relating to the terms of financing for new motor vehicles as described in this Complaint, has committed an unfair and deceptive trade practice in violation of 5 M.R.S.A. §§ 206-213 (1979 & Supp. 1984).

RELIEF REQUESTED

WHEREFORE, Plaintiff, State of Maine, requests that this Court order the following relief:

1. Declare that Defendant's acts and practices, as described in this Complaint, constitute an unfair and deceptive trade practice, in violation of 5 M.R.S.A. § 207 (1979).

2. Preliminarily and permanently enjoin Defendant, its agents, employees or other persons acting for or on its behalf, from:

a. Misrepresenting to lending institutions any facts relating to sales transactions of Defendant's new or used motor vehicles;

b. Concealing from consumers the fact that Defendant is making material misrepresentations to lending institutions in order to obtain financing for the consumer;

c. Representing to any consumer that Defendant can arrange financing of a new or used vehicle for no money down, unless such financing is legitimately available to the consumer.

3. Order Defendant to pay restitution in the amount of any deficiencies assessed on loans which were obtained through Defendant's misrepresentations to its new car customers and the lending institution.

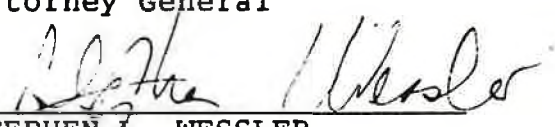
4. Order Defendant to pay the Department of the Attorney General the costs of this suit and investigation.


5. Order such further relief as the Court deems just and equitable.

DATED: *March 18, 1986*

Respectfully submitted,

JAMES E. TIERNEY
Attorney General


STEPHEN L. WESSLER
Assistant Attorney General
Chief, Consumer & Antitrust Division


LEANNE ROBBIN
Assistant Attorney General
Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661

Attorneys for Plaintiff

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. C V 86-143

STATE OF MAINE,

Plaintiff

v.

KELLEY PONTIAC, INC.,
a corporation duly
incorporated under the
laws of the State of Maine

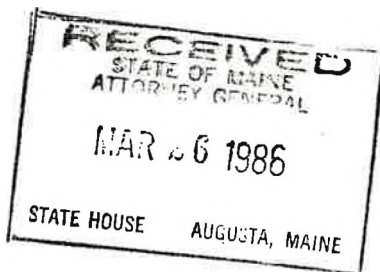
Defendant

CONSENT DECREE

Plaintiff, State of Maine, having filed its Complaint on March 18, 1986, and Plaintiff and Defendant, by their respective authorized agents, having consented to the entry of this Consent Decree and Order ("Order") without trial or adjudication of any issue of fact or law;

Now, therefore, before the taking of any testimony and without trial or adjudication on any issue of fact or law, and upon consent of the parties hereto, is hereby ORDERED and DECREED as follows:

1. This Court has jurisdiction over the subject matter of this action, and the Complaint states a claim upon which relief may be granted against Defendant under 5 M.R.S.A. § 209 (Supp. 1985).



REC'D & FILED
PEARL VALERIE PAGE

MAR 18 1986

CLERK OF COURTS


2. Defendant, its agents, employees, assigns, or other persons acting for Defendant or under its control, are permanently enjoined from:

A. Misrepresenting to any lending institution the terms of the sale of a motor vehicle, including, but not limited to: (i) misrepresenting that certain customers have paid a cash down payment, when, in fact, the customer has made no down payment; (ii) misrepresenting that certain customers have traded in used cars of certain value, when, in fact, the customers have made no trade-in or have traded in vehicles valued at less than the value represented by the Defendant; and (iii) misrepresenting the "cash delivered price" of any new vehicle by adding a fictitious down payment an/or trade-in to the actual "cash delivered price" or by otherwise falsely inflating the price of the new vehicle;

B. Misrepresenting to any customer the terms of the sale of a motor vehicle, including, but not limited to: (i) misrepresenting that Defendant can obtain from lending institutions financing on a new motor vehicle for the customer for "no money down," when, in fact, Defendant cannot obtain such financing for the customer unless Defendant misrepresents the terms of the sale to the lending institution; (ii) representing that it is customary practice among motor vehicle dealers to misrepresent facts

of the sales transaction to lending institutions in order to secure financing when, in fact, it is not industry practice to make such misrepresentations; and (iii) misrepresenting to the customer that Defendant will allow a certain amount for the customer's used car trade-in, when, in fact, the trade-in value will be added to the actual cash delivered price of the new car in order to obtain financing from the lending institution.

DATED: *March 18, 1986*


LEANNE ROBBIN
Assistant Attorney General
Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661

FOR KELLEY PONTIAC, INC.:

DATED: March 10, 1986


RICHARD L. KELLEY, Clerk

ORDER

This settlement is hereby approved, and judgment shall be entered in accordance with the above agreement.

DATED: *March 24, 1986*


JUSTICE, SUPERIOR COURT

REC'D & FILED
PEARL VALERIE PAGE

MAR 18 1986

DISTRICT THREE
DIVISION OF SO. PENOBSCOT
CRIMINAL DOCKET NO. 85-CR-12397

MOTION FOR INSPECTION PRIOR
TO TRIAL PURSUANT TO
M.R.Crim.P. 17(c)

WHEREFORE, the State requests that this Court direct Defendant to produce the documents specified in this Motion before the Court prior to January 30, 1986.

Leanne Robbin
LEANNE ROBBIN
Assistant Attorney General
Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661

STATE OF MAINE
DISTRICT COURT

DISTRICT THREE
DIVISION OF SOUTHERN PENOBSCOT
CRIMINAL DOCKET NO. 85-CR-12397

STATE OF MAINE,)	
)	
Plaintiff)	
)	
v.	)	MEMORANDUM OF STATE OF MAINE
	)	IN SUPPORT OF THE STATE'S
KELLEY PONTIAC, INC.,	)	MOTION FOR INSPECTION PRIOR
	)	TO TRIAL PURSUANT TO
Defendant	)	M.D.C.CRIM.R. 17(c)

The State of Maine has moved pursuant to M.D.C.Crim.R. 17(c) for this Court to direct that the retail buyer's orders, Monroney stickers and dealer price stickers designated in paragraphs 1 through 3 of the subpoenas addressed to Richard Kelley and Custodian of the Records, Kelley Pontiac, Inc. and attached hereto as Exhibits A and B, be produced before this Court prior to the date of trial for the purpose of permitting inspection of those materials by attorneys for the State.

In interpreting the corresponding federal rule for the production of documents prior to trial (Fed.Crim.R 17(c)), the federal courts have required the prosecution to show four factors:

- I. That the documents are evidentiary and relevant;
- II. That they are not otherwise procurable by the party reasonably in advance of trial by exercise of due diligence;

III. That the party cannot properly prepare for trial without such production and inspection in advance of trial and that failure to obtain such production may tend unreasonably to delay the trial;

IV. That the application is made in good faith and is not intended as a general fishing expedition.

U.S. v. Iozia, 17 F.R.D. 335, 338 (D.C. N.Y. 1952); see U.S. v. Nixon, 418 U.S. 683, 699 (1974), Cluchey & Seitzinger, 1 Maine Criminal Practice § 17.4 at 17-10 (1985).

The Complaint in this matter alleges that Defendant, Kelley Pontiac, Inc., made false entries in the retail buyer's orders submitted to Maine Savings Bank, for the purpose of defrauding the bank. Upon information and belief, Defendant filled out two retail buyer's orders in each transaction named in the Complaint: (1) the customer's copy, which accurately represents the transaction, including the amount of trade-in, the amount of down payment and the cash delivered price; and (2) the retail buyer's order submitted to Maine Savings Bank, which misrepresents the trade-in value, cash down payment and cash delivered price.


The customers' copies of the retail buyer's orders are relevant and evidentiary in this case, in that they relate to the alterations made in the bank's copy of the same documents. In addition, because Frederick N. Bagley, Jr. and Lynda Garnett have not retained their copies of the retail buyer's order and because the bank never received the customer's copy of the buyer's order, the State cannot reasonably procure these

documents, other than from the Defendant. Finally, since the central issue in this case is whether the Defendant made false entries in the buyer's orders submitted to the bank, the State will not be able to prepare properly for trial without reviewing the customer's copy of the retail buyer's orders in advance of trial.

The Monroney sticker and dealer price sticker are also relevant and evidentiary, in that the State alleges that Defendant has falsified the "cash delivered price" of each vehicle in the transactions described in the Complaint, and the price stickers will demonstrate Defendant's actual offering price of the vehicles. The production of the stickers is, therefore, necessary to the State's preparation and will avoid unnecessary delay at trial.

For these reasons, the State of Maine requests that this Court grant the State's Motion for Inspection Prior to January 30, 1986, the date of trial.

DATED: December 23, 1985


LEANNE ROBBIN
Assistant Attorney General
Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661

STATE OF MAINE
MAINE DISTRICT COURT

DISTRICT THREE
DIVISION OF SO. PENOBSCOT
CRIMINAL DOCKET NO. 85-CR-12397

SUBPOENA TO PRODUCE DOCUMENTS

STATE OF MAINE V. KELLEY PONTIAC, INC.

TO: Custodian of the Records
Kelley Pontiac, Inc.
699 Broadway
Bangor, Maine 04401

You are hereby commanded to appear in the District Court of the State of Maine in the County of Penobscot at the District Court in Bangor, Maine, on the 30th day of January, 1986, at 8:30 a.m. to testify in the case of State of Maine v. Kelley Pontiac, Inc. and to bring with you the following documents:

1. All documents relating to the sale by Kelley Pontiac, Inc. of a 1984 Pontiac Fiero, VIN IG2AF37R4EP279609, to Frederick N. Bagley, Jr., including, but not limited to all retail buyer's orders, Monroney sticker, dealer price sticker, receipts and invoices;

2. All documents relating to Kelley Pontiac, Inc.'s sale of a 1984 Pontiac J2000, to Lynda Garnett on or about June 29, 1984, including, but not limited to all retail buyer's orders, receipts, invoices, Monroney sticker and dealer price sticker;

3. All documents relating to Kelley Pontiac, Inc.'s sale of a 1984 Pontiac J-2000, VIN IG2AB2700E7239907, to Leni Curtis, including, but not limited to, all retail buyer's orders, Monroney sticker, dealer price sticker, invoices and receipts.

This subpoena is issued on application of the State of Maine.

DATED: 12/23/85

Mary Rudd James
NOTARY PUBLIC

**MY COMMISSION EXPIRES
DECEMBER 9, 1989**

STATE OF MAINE
PENOBSCOT, SS.

On the _____ day of January, 1986, I summoned the within named _____ to appear within directed by reading to him aloud this subpoena in his presence and hearing.

FEES:

Travel _____ Miles, \$ _____.

Service _____.

STATE OF MAINE
MAINE DISTRICT COURT

DISTRICT THREE
DIVISION OF SO. PENOBSCOT
CRIMINAL DOCKET NO. 85-CR-12397

STATE OF MAINE)	
)	
v.	)	MOTION FOR ORDER TO PERMIT THE
	)	STATE TO INSPECT DOCUMENTS
KELLEY PONTIAC, INC.,	)	PURSUANT TO M.R.CRIM.P. 16A
)	
Defendant)	

Pursuant to Rule 16A(d) of the Maine Rules of Criminal Procedure, the State of Maine requests this Court to order Defendant to permit the attorney for the State of Maine to inspect and copy all documents which are within the Defendant's possession or control and which Defendant intends to introduce as evidence in chief at the trial including, but not limited to, the following:

1. All documents relating to Defendant's sale of a 1984 Pontiac Fiero, VIN IG2AF37R4EP279609, to Frederick N. Bagley, Jr., including retail buyer's orders, receipts, invoices, Monroney stickers and dealer price stickers.

2. All documents relating to Defendant's sale of a Pontiac Sunbird 2000 to Lynda Garnett on or about June 29, 1984 including, but not limited to, retail buyer's orders, receipts, invoices, dealer price stickers, and Monroney stickers.

3. All documents relating to Defendant's sale of a 1984 Pontiac J2000, VIN 1G2AB2700E7239907, to Leni Curtis including, but not limited to, retail buyer's orders, receipts, invoices, dealer price stickers, and Monroney stickers.

The reasons for the State's request are as follows:

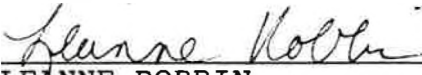
1. The central issue in this case is the Defendant's alteration of certain documents submitted to Maine Savings Bank;

2. The State needs to examine all documents in the control of Defendant which Defendant intends to submit at trial in order that the State may be fully prepared as to the content of the transactions described in each count in the Complaint; and

3. The granting of this Motion for discovery will avoid any delay and surprise at trial.

WHEREFORE, for the foregoing reasons, the State requests that this Court order the Defendant to permit the attorney for the State to inspect and copy any book, paper, document, photograph or tangible object which is within the Defendant's possession or control and which the Defendant intends to introduce as evidence in chief at the trial.

DATED: Dec. 23, 1985


LEANNE ROBBIN
Assistant Attorney General
Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661

STATE OF MAINE
MAINE DISTRICT COURT

DISTRICT THREE
DIVISION OF SO. PENOBSCOT
CRIMINAL ACTION
DOCKET NO. 85-CR-12397

STATE OF MAINE,)	
)	
Plaintiff)	
)	
v.	)	SUPPLEMENTAL MEMORANDUM IN
	)	SUPPORT OF THE STATE'S MOTION
KELLEY PONTIAC, INC.,	)	FOR INSPECTION PRIOR TO TRIAL
	)	PURSUANT TO M.R.Crim.P. 17(c)
Defendant)	

INTRODUCTION

On December 23, 1985, the State moved this Court, pursuant to Rule 17(c) of the Maine Rules of Criminal Procedure, to order representatives of the corporate Defendant, Kelley Pontiac, Inc., to produce prior to trial the documents specified in the State's subpoena. This Memorandum will respond to the issues of whether production would violate Defendant Kelley Pontiac, Inc.'s Fourth and Fifth Amendment rights and whether the State is impermissably using Rule 17 as a discovery device.

ARGUMENT

A. THE FIFTH AMENDMENT DOES NOT PROTECT CORPORATE DOCUMENTS FROM COMPULSORY PRODUCTION IN A CRIMINAL PROCEEDING.

It is well settled that the Fifth Amendment privilege against self-incrimination protects natural persons, not corporations:

The constitutional privilege against self-incrimination is essentially a personal one, applying only to natural individuals. It grows out of the high sentiment and regard of our jurisprudence for conducting criminal trials and investigatory proceedings upon a plane of dignity, humanity and impartiality. It is designed to prevent the use of legal process to force from the lips of the accused individual the evidence necessary to convict him or to force him to produce and authenticate any personal documents or effects that might incriminate him.

United States v. White, 322 U.S. 694, 698 (1944). Since the privilege against self-incrimination is personal in nature and cannot be utilized by or on behalf of an organization, id. at 699, corporate Defendant Kelley Pontiac, Inc. has no standing to assert the Fifth Amendment against the production of documents requested by the State in its subpoenas addressed to the Defendant's clerk and custodian of records.

1. THE FIFTH AMENDMENT DOES NOT PROTECT THE CUSTODIAN OF RECORDS FROM THE PRODUCTION OF CORPORATE DOCUMENTS.

Moreover, the custodian of the corporate documents cannot claim a personal privilege against self-incrimination for the production of the corporation's documents:

In view of the inescapable fact that an artificial entity can only act to produce its records through its individual officers or agents, recognition of the individual's claim of privilege with respect to the financial records of the organization would substantially undermine the unchallenged rule that the organization itself is not entitled to claim any Fifth Amendment privilege, and largely frustrate legitimate governmental regulation of such organizations.

Bellis v. United States, 417 U.S. 85, 90 (1974). For this

reason, neither the clerk nor the custodian of the records, acting in their capacities as representatives of the corporation, can refuse to produce the corporate documents requested in the subpoena on the basis that those documents may tend to incriminate them personally.

B. THE STATE'S SUBPOENA DOES NOT VIOLATE DEFENDANT'S FOURTH AMENDMENT RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE.

The State's request of certain documents pursuant to the subpoena does not constitute an unreasonable search and seizure. As Justice Hughes stated:

[T]here is no unreasonable search and seizure when a writ, suitably specific and properly limited in its scope, calls for the production of documents which, as against their lawful owner to whom the writ is directed, the party procuring its issuance is entitled to have produced.

Wilson v. United States, 221 U.S. 361, 376 (1911). Therefore, so long as the subpoena or court order is "definite and reasonable in its requirements," id., it is not objectionable on Fourth Amendment grounds. See also Andresen v. State of Maryland, 427 U.S. 463, 480 (1976). Because the State has requested documents relating only to the three transactions described in the criminal complaint, the terms of the subpoena are "definite and reasonable" and do not violate the corporate Defendant's right against unreasonable search and seizure.

C. THE STATE IS NOT USING RULE 17(c) OF THE MAINE RULES OF CRIMINAL PROCEDURE AS A DISCOVERY DEVICE.

Defendant's allegation that the State is impermissably using Rule 17(c) as a discovery device is without merit. See Defendant's Memorandum at 2-3. Black's Law Dictionary defines "discovery" as follows:

In a general sense, the ascertainment of that which was previously unknown; the disclosure or coming to light of what was previously hidden; the acquisition of notice or knowledge of given acts or facts.

Black's Law Dictionary at 552 (West 5th ed. 1979). The State is not requesting information or evidence through subpoena which was previously unknown to it. Rather, the State has subpoenaed documents which it knows exists and intends to use at trial. Furthermore, the State has requested production prior to trial simply to expedite matters in sorting through and marking the requested documents. The State's request is therefore appropriate under Rule 17(c) and is not intended to circumvent available discovery procedures.^{1/}

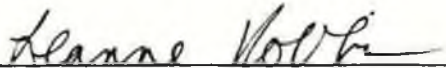
CONCLUSION

By reason of the foregoing and for the reasons stated in the State's Memorandum dated December 23, 1985, this Court should order Defendant Kelley Pontiac, Inc. to produce the

^{1/} Defendant is incorrect in its assertion that the State is using the subpoena under 17(c) to gain advantage in a civil matter. See Defendant's Memorandum at 4. There is no civil action pending by the State against the Defendant and, moreover, the State has not yet concluded whether such an action would be appropriate. Furthermore, counsel for the State is offended by Defendant's unfounded assertion that counsel would violate the Code of Professional Responsibility, M.Bar.R.3.6(d), by using a criminal subpoena to gain advantage in a civil matter.

documents specified in the State's subpoena prior to trial pursuant to Rule 17(c) of the Maine Rules of Criminal Procedure.

DATED: Jan. 23, 1986


LEANNE ROBBIN
Assistant Attorney General
Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661

MAINE DISTRICT COURT

State of Maine

DISTRICT Three
DIVISION of Southern Penobscot
CRIM. DOCKET NO. _____

KELLEY PONTIAC, INC.
699 Broadway, Bangor, Maine

COMPLAINT FOR VIOLATION OF

Referred to _____) T. 17-A MRSA § 707(1)(A) CLASS E
(Residence _____) (Falsifying Private Records)

Steven R. Dunn, being duly sworn, deposes and says that on or about February 2, 1984, in the City of Bangor, Penobscot County, Maine, the above named defendant Kelley Pontiac, Inc., with the intent to defraud Maine Savings Bank, did make a false entry in the records of an organization, namely Kelley Pontiac, Inc., said records being the retail buyer's order for Leni Curtis, a copy of which is attached to this complaint as Exhibit A and incorporated in and made a part of Count I, the false entry being the trade-in value of \$2,413.00, the cash downpayment of \$1,000, and the cash delivered price of \$10,746.00, all in violation of 17-A M.R.S.A. § 707(1)(A) (1983).

COUNT II

That on or about June 27, 1984, in the City of Bangor, County of Penobscot, State of Maine, Kelley Pontiac, Inc., with the intent to defraud Maine Savings Bank, did make a false entry in the records of an organization, namely Kelley Pontiac, Inc., said records being the retail buyer's order for Frederick N. Bagley, Jr., a copy of which is attached to this complaint as Exhibit B and incorporated in and made part of Count II, the false entry being the cash downpayment of \$3,150 and the cash delivered price of \$14,400, all in violation of 17-A M.R.S.A. § 707(1)(A) (1983).

Sworn to before me, Dec. 4, 1985

Steven R. Dunn Complainant

Deputy Clerk Clerk of Court

DATE		DATE	
	Advised of Rights: Yes/No		Appealed: _____
	Arraigned: Yes/No		Appeal Bail: \$ _____
	Reading: Held/Waived		Bail Conditions: see over/attached
	Indigent: Yes/No		Judge: _____
	Plea: _____ Guilty		
	State's Att'y _____		P.C. Hearing: Held/Waived
	Def't's Att'y _____		P.C. Found: No/Yes—and bound over
	Retained/Assigned/Waived		to S.C. _____ County
	Trial Date: _____		P.C. Bail: \$ _____
	After N.G. plea and at Def's request,		Bail Conditions: see over/attached
	Ordered Transferred to S.C. _____		Judge: _____
	Bail: \$ _____		
	Bail Conditions: see over/attached		
	Trial Held: Yes/No		
	Finding: _____ guilty		
	Sentence: _____		

Judge: _____

For Further Court Action, See Attached

COUNT III

That on or about June 29, 1984, in the City of Bangor, County of Penobscot, State of Maine, Kelley Pontiac, Inc., with the intent to defraud Maine Savings Bank, did make a false entry in the records of an organization, namely Kelley Pontiac, Inc., said records being the retail buyer's order for Lynda Garnett, a copy of which is attached to this complaint as Exhibit C and incorporated in and made part of Count III, the false entry being the cash downpayment of \$1,260 and the cash delivered price of \$9,991, all in violation of 17-A M.R.S.A. § 707(1)(A) (1983).

**RETAIL BUYER'S
ORDER**

Social Security Number(s)

006-74-4274

Del. Date 2/3/84

Date of birth 6/15/62

Key No.

PURCHASER'S NAME (Print)

Steve Curtis

ADDRESS

30 Jefferson St. Bangor

ZIP CODE

04401

TEL. NO.

947-659

SALESMAN:

Bob

DATE

I hereby agree to purchase from you under terms and conditions specified below and on the reverse side hereof, the following

<input type="checkbox"/> USED	<input checked="" type="checkbox"/> NEW	MAKE	MODEL	YEAR	VIN OR SERIAL NO.	CO. OF	MILEAGE	<input type="checkbox"/> 4 DR	<input checked="" type="checkbox"/> 2 DR
		PONTIAC	2000	84	1G27A3220E723990	80			

USED CAR TRADED IN:

MAKE	MODEL	YEAR
PRICE	COLOR	TYPE
VIN OR SERIAL NO.	CYL	4 6 8

PRINCIPAL USE OF VEHICLE:

MECHANICAL DEFECTS, KNOWN:

TYPE OF DAMAGE, IF ANY KNOWN:

BALANCE OWED TO

CAMDEN NATIONAL

ADDRESS

CAMDEN, ME

USED VEHICLE ALLOWANCE

\$2,413

PAY-OFF OWED ON VEHICLE

\$1,688

NET ALLOWANCE (Right Col. No. 2)

\$7,000

OWNER'S STATEMENT

Previous Owner's Name

Street Address

State, Zip Code

WARRANTY

This vehicle has been inspected in accordance with Title 29, section 2122, and is in the condition and meets the standards required by that statute and the rules and regulations promulgated thereunder.

WARRANTY INFORMATION

If a dealer fails to perform his obligation under the warranty, the purchaser shall give the dealer written notice of such failure before the purchaser initiates a civil action in accordance with Title 10, MRSA, C. 215, Sec. 1456. The notice must be sent by registered mail to the dealer's last known business address.

APPLICABLE WARRANTY

- ☐ Manufacturers Limited Warranty
- ☐ New Car Extended Warranty (to be attached)
- ☐ Used Car Warranty (to be attached)
- ☐ Vehicles Sold As Is - No Warranty
- ☐ Vehicle Not Inspectable—Sold for parts only

WHAT WILL BE DONE IF MECHANICAL DEFECT, WHERE, AND AT WHOSE EXPENSE:

All repairs in connection with warranty (with the exception of the new car limited warranty) must be completed at Kelley Pontiac Inc. 699 Broadway, Bangor, Maine 04401

B. ACCESSORIES	\$	
C. PROCESSING FEE		20.00
D. SUBTOTAL (A-B)	\$	10796.00
E. LESS TRADE-IN	\$	2413.00
F. NET DIFFERENCE	\$	8383.00
G. SALES TAX	\$	429.15
1. CASH PRICE (D+C+G)	\$	11225.15
2. LESS CASH DOWN PAYMENT \$		1000.00
3. LESS TRADE IN NET \$		2413.00
4. Total Down Paym. (2&3)	\$	3413.00
5. UNPAID BALANCE CASH PRICE (1-4)	\$	7812.15
6. <input checked="" type="checkbox"/> DOCUMENT FEE <input checked="" type="checkbox"/> TITLE FEE	\$	27.00
7. MECHANICAL BREAKDOWN INSURANCE	\$	7429.15
8. UNPAID BALANCE	\$	1679.00

DEALER'S STATEMENT

PREVIOUS OWNER'S NAME

STREET ADDRESS

CITY, STATE, ZIP CODE

PRINCIPAL USE OF VEHICLE

HOW ACQUIRED: TRADE-IN ☐ AUCTION ☐
REPOSSESSION ☐ OTHER ☐ (describe)

Mileage

MECHANICAL DEFECTS, KNOWN:

TYPE OF DAMAGE, IF ANY KNOWN:

I have read the matter on the back hereof and agree to it as a part of this order the same as if it were printed above my signature

PURCHASER'S SIGNATURE

DATE

ACCEPTED BY:

KELLEY PONTIAC INC.

BY:

(Name and Title)

(Dealer)

KELLEY PONTIAC Inc.

699 Broadway — Bangor, Maine 04401

Telephone 945-9448

EXHIBIT B

RETAIL BUYER'S ORDER

Social Security Number(s)

007-68-8700

Del. Date

Date of birth 9/10/11

Key No.

PURCHASER'S NAME (Print) Frederick M. BARRY JR

ADDRESS 100 Michigan St, Bangor, ME

ZIP CODE 04462

TEL. NO. 723-9454

SALESMAN

DATE

I hereby agree to purchase from you under terms and conditions specified below and on the reverse side hereof, the following

<input type="checkbox"/> NEW	<input type="checkbox"/> USED	MAKE Pontiac	YEAR 1987	MODEL Firebird	VIN OR SERIAL NO. 1G2AF37R4EP379607	COLOR	MILEAGE	<input type="checkbox"/> 4 Dr.	<input type="checkbox"/> 2 Dr.	<input type="checkbox"/> 4 cyl.	<input type="checkbox"/> 6 cyl.	<input type="checkbox"/> 8 cyl.
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USED CAR TRADED IN:

MAKE	MODEL	YEAR
MILEAGE	COLOR	TYPE
VIN OR SERIAL NO.	CYL	4 6 8

PRINCIPAL USE OF VEHICLE:

MECHANICAL DEFECTS, KNOWN:

TYPE OF DAMAGE, IF ANY KNOWN:

BALANCE OWED TO

ADDRESS

USED VEHICLE ALLOWANCE

PAY-OFF OWED ON VEHICLE

NET ALLOWANCE (Right Col. No. 3)

OWNER'S STATEMENT:

Previous Owner's Name

Street Address

City, State, Zip Code

WARRANTY

This vehicle has been inspected in accordance with Title 29, section 2122, and is in the condition and meets the standards required by that statute and the rules and regulations promulgated thereunder.

WARRANTY INFORMATION

If a dealer fails to perform his obligation under the warranty, the purchaser shall give the dealer written notice of such failure before the purchaser initiates a civil action in accordance with Title 10, MRSA, C. 215, Sec. 1456. The notice must be sent by registered mail to the dealer's last known business address

APPLICABLE WARRANTY

- ☐ Manufacturers Limited Warranty
- ☐ New Car Extended Warranty (to be attached)
- ☐ Used Car Warranty (to be attached)
- ☐ Vehicles Sold As Is - No Warranty
- ☐ Vehicle Not Inspectable—Sold for parts only

WHAT WILL BE DONE IF MECHANICAL DEFECT, WHERE, AND AT WHOSE EXPENSE:

All repairs in connection with warranty (with the exception of the new car limited warranty) must be completed at Kelley Pontiac Inc. 699 Broadway, Bangor, Maine 04401

A. CASH DELIVERED PRICE	\$ 14,400	00
B. ACCESSORIES	\$	
C. PROCESSING FEE		20 00
D. SUBTOTAL (A+B)	\$	
E. LESS: TRADE-IN	\$	
F. NET DIFFERENCE	\$ 14,400	00
G. SALES TAX	\$ 958	00
1. CASH PRICE (D+C+G)	\$ 15,358	00
2. LESS: CASH DOWN PAYMENT \$		
3. LESS: TRADE IN NET \$		3,150 00
4. Total, Down Payment (2&3)	\$ 11,970	00
5. UNPAID BALANCE OF CASH PRICE (1-4)	\$	
6. <input type="checkbox"/> DOCUMENT FEE <input type="checkbox"/> TITLE FEE	\$	27 00
7. MECHANICAL BREAKDOWN INSURANCE	\$ 1,997	00
8. UNPAID BALANCE	\$	

DEALER'S STATEMENT

PREVIOUS OWNER'S NAME: Pontiac Pontiac Div.

STREET ADDRESS: 45 Williams St

CITY, STATE, ZIP CODE: Bangor, ME 04401

PRINCIPAL USE OF VEHICLE:

HOW ACQUIRED: TRADE-IN ☐ AUCTION ☐ REPOSSESSION ☐ OTHER ☐ (describe)

Mileage:

MECHANICAL DEFECTS, KNOWN:

TYPE OF DAMAGE, IF ANY KNOWN:

I have read the matter on the back hereof and agree to it as a part of this order the same as if it were printed above my signature.

PURCHASER'S SIGNATURE

DATE

ACCEPTED BY: KELLEY PONTIAC INC.

(Dealer)

BY:

(Name and Title)

KELLEY PONTIAC INC.

699 Broadway — Bangor, Maine 04401

Telephone 945-9448

EXHIBIT C

RETAIL BUYER'S ORDER

Social Security Number(s) _____

☐ Locate _____

Del. Date _____

Date of birth 8/17/50

Key No. _____

PURCHASER'S NAME (Print) Yvonne M. Garrett

ADDRESS D-ED 1 Box 219 Old Town, Me.

ZIP CODE 04468

TEL. NO. _____

SALESMAN: _____

DATE 6/28/84

I hereby agree to purchase from you under terms and conditions specified below and on the reverse side hereof, the following:

☐ NEW ☐ USED ☐ 4 Dr. ☐ 2 Dr. ☐ 4 cyl. ☐ 6 cyl.

USED CAR TRADED IN:

MAKE Pontiac YEAR 76 MODEL LeMans VIN OR SERIAL NO. 1G3AB-16284-1012781 COLOR Blue MILEAGE 14,75

TYPE 4 CYL 6 CYL 8

PRINCIPAL USE OF VEHICLE: _____

MECHANICAL DEFECTS, KNOWN: _____

TYPE OF DAMAGE, IF ANY KNOWN: _____

BALANCE OWED TO

ADDRESS _____

USED VEHICLE ALLOWANCE \$ 900

PAY-OFF OWED ON VEHICLE \$ 0

NET ALLOWANCE (Right Col. No. 3)

OWNER'S STATEMENT

Previous Owner's Name: _____

Street Address: _____

City, State, Zip Code: _____

WARRANTY

This vehicle has been inspected in accordance with Title 29, section 2122, and is in the condition and meets the standards required by that statute and the rules and regulations promulgated thereunder.

WARRANTY INFORMATION

If a dealer fails to perform his obligation under the warranty, the purchaser shall give the dealer written notice of such failure before the purchaser initiates a civil action in accordance with Title 10, MRSA, C. 215, Sec. 1456. The notice must be sent by registered mail to the dealer's last known business address.

APPLICABLE WARRANTY

- ☐ Manufacturers Limited Warranty
- ☐ New Car Extended Warranty (to be attached)
- ☐ Used Car Warranty (to be attached)
- ☐ Vehicles Sold As Is - No Warranty
- ☐ Vehicle Not Inspectable—Sold for parts only

WHAT WILL BE DONE IF MECHANICAL DEFECT, WHERE, AND AT WHOSE EXPENSE:

All repairs in connection with warranty (with the exception of the new car limited warranty) must be completed at Kelley Pontiac Inc. 699 Broadway, Bangor, Maine 04401

A. CASH DELIVERED PRICE	\$	
B. ACCESSORIES	\$	
C. PROCESSING FEE		20.00
D. SUBTOTAL (A+B)	\$	990.00
E. LESS: TRADE-IN	\$	900.00
F. NET DIFFERENCE	\$	90.00
G. SALES TAX	\$	14.75
1. CASH PRICE (D+C+G)	\$	104.75
2. LESS: CASH DOWN PAYMENT \$150		
3. LESS: TRADE IN NET \$		
4. Total, Down Payment (2&3)	\$	150.00
5. UNPAID BALANCE OF CASH PRICE (1-4)	\$	
6. <input type="checkbox"/> DOCUMENT FEE <input type="checkbox"/> TITLE FEE	\$	7.00
7. MECHANICAL BREAKDOWN INSURANCE	\$	
8. UNPAID BALANCE	\$	

DEALER'S STATEMENT

PREVIOUS OWNER'S NAME: Yvonne M. Garrett

STREET ADDRESS: Box 219 Old Town, Me.

CITY, STATE, ZIP CODE: 04468

PRINCIPAL USE OF VEHICLE: _____

HOW ACQUIRED: TRADE-IN ☐ AUCTION ☐ REPOSSESSION ☐ OTHER ☐ (describe)

Mileage: 14,75

MECHANICAL DEFECTS, KNOWN: _____

TYPE OF DAMAGE, IF ANY KNOWN: _____

I have read the matter on the back hereof and agree to it as a part of this order the same as if it were printed above my signature.

PURCHASER'S SIGNATURE Yvonne M. Garrett

DATE _____

ACCEPTED BY: _____

KELLEY PONTIAC INC.

(Dealer)

BY: _____

(Name and Title)

OVER

STATE OF MAINE
MAINE DISTRICT COURT

DISTRICT THREE
DIVISION OF SO. PENOBSCOT
CRIMINAL ACTION
DOCKET NO. 85-CR-12397

STATE OF MAINE,
Plaintiff
v.
KELLEY PONTIAC, INC.,
Defendant

**SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF THE STATE'S MOTION
FOR INSPECTION PRIOR TO TRIAL
PURSUANT TO M.R.Crim.P. 17(c)**

INTRODUCTION

On December 23, 1985, the State moved this Court, pursuant to Rule 17(c) of the Maine Rules of Criminal Procedure, to order representatives of the corporate Defendant, Kelley Pontiac, Inc., to produce prior to trial the documents specified in the State's subpoena. This Memorandum will respond to the issues of whether production would violate Defendant Kelley Pontiac, Inc.'s Fourth and Fifth Amendment rights and whether the State is impermissibly using Rule 17 as a discovery device.

ARGUMENT

A. THE FIFTH AMENDMENT DOES NOT PROTECT CORPORATE DOCUMENTS FROM COMPULSORY PRODUCTION IN A CRIMINAL PROCEEDING.

It is well settled that the Fifth Amendment privilege against self-incrimination protects natural persons, not corporations:

The constitutional privilege against self-incrimination is essentially a personal one, applying only to natural individuals. It grows out of the high sentiment and regard of our jurisprudence for conducting criminal trials and investigatory proceedings upon a plane of dignity, humanity and impartiality. It is designed to prevent the use of legal process to force from the lips of the accused individual the evidence necessary to convict him or to force him to produce and authenticate any personal documents or effects that might incriminate him.

United States v. White, 322 U.S. 694, 698 (1944). Since the privilege against self-incrimination is personal in nature and cannot be utilized by or on behalf of an organization, id. at 699, corporate Defendant Kelley Pontiac, Inc. has no standing to assert the Fifth Amendment against the production of documents requested by the State in its subpoenas addressed to the Defendant's clerk and custodian of records.

1. THE FIFTH AMENDMENT DOES NOT PROTECT THE CUSTODIAN OF RECORDS FROM THE PRODUCTION OF CORPORATE DOCUMENTS.

Moreover, the custodian of the corporate documents cannot claim a personal privilege against self-incrimination for the production of the corporation's documents:

In view of the inescapable fact that an artificial entity can only act to produce its records through its individual officers or agents, recognition of the individual's claim of privilege with respect to the financial records of the organization would substantially undermine the unchallenged rule that the organization itself is not entitled to claim any Fifth Amendment privilege, and largely frustrate legitimate governmental regulation of such organizations.

Bellis v. United States, 417 U.S. 85, 90 (1974). For this

reason, neither the clerk nor the custodian of the records, acting in their capacities as representatives of the corporation, can refuse to produce the corporate documents requested in the subpoena on the basis that those documents may tend to incriminate them personally.

B. THE STATE'S SUBPOENA DOES NOT VIOLATE DEFENDANT'S FOURTH AMENDMENT RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE.

The State's request of certain documents pursuant to the subpoena does not constitute an unreasonable search and seizure. As Justice Hughes stated:

[T]here is no unreasonable search and seizure when a writ, suitably specific and properly limited in its scope, calls for the production of documents which, as against their lawful owner to whom the writ is directed, the party procuring its issuance is entitled to have produced.

Wilson v. United States, 221 U.S. 361, 376 (1911). Therefore, so long as the subpoena or court order is "definite and reasonable in its requirements," id., it is not objectionable on Fourth Amendment grounds. See also Andresen v. State of Maryland, 427 U.S. 463, 480 (1976). Because the State has requested documents relating only to the three transactions described in the criminal complaint, the terms of the subpoena are "definite and reasonable" and do not violate the corporate Defendant's right against unreasonable search and seizure.

C. THE STATE IS NOT USING RULE 17(c) OF THE MAINE RULES OF CRIMINAL PROCEDURE AS A DISCOVERY DEVICE.

Defendant's allegation that the State is impermissably using Rule 17(c) as a discovery device is without merit. See Defendant's Memorandum at 2-3. Black's Law Dictionary defines "discovery" as follows:

In a general sense, the ascertainment of that which was previously unknown; the disclosure or coming to light of what was previously hidden; the acquisition of notice or knowledge of given acts or facts.

Black's Law Dictionary at 552 (West 5th ed. 1979). The State is not requesting information or evidence through subpoena which was previously unknown to it. Rather, the State has subpoenaed documents which it knows exists and intends to use at trial. Furthermore, the State has requested production prior to trial simply to expedite matters in sorting through and marking the requested documents. The State's request is therefore appropriate under Rule 17(c) and is not intended to circumvent available discovery procedures.^{1/}

CONCLUSION

By reason of the foregoing and for the reasons stated in the State's Memorandum dated December 23, 1985, this Court should order Defendant Kelley Pontiac, Inc. to produce the

^{1/} Defendant is incorrect in its assertion that the State is using the subpoena under 17(c) to gain advantage in a civil matter. See Defendant's Memorandum at 4. There is no civil action pending by the State against the Defendant and, moreover, the State has not yet concluded whether such an action would be appropriate. Furthermore, counsel for the State is offended by Defendant's unfounded assertion that counsel would violate the Code of Professional Responsibility, M.Bar.R.3.6(d), by using a criminal subpoena to gain advantage in a civil matter.

documents specified in the State's subpoena prior to trial pursuant to Rule 17(c) of the Maine Rules of Criminal Procedure.

DATED: Jan. 23, 1986

Leanne Robbin
LEANNE ROBBIN
Assistant Attorney General
Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661