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SUPREME COURT  
STATE OF WASHINGTON  
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BY SUSAN L. CARLSON  
CLERK

NO. 96819-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

MARVIN BRANHAM,

Petitioner.

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ON DISCRETIONARY REVIEW FROM  
THE COURT OF APPEALS, DIVISION II  
Court of Appeals No. 50449-9-II  
Clallam County Superior Court No. 15-1-00231-6

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ANSWER TO PETITION FOR REVIEW

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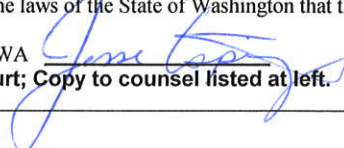
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This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications, or, if an email address appears to the left, electronically. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.  
DATED March 6, 2019, Port Angeles, WA   
**Original e-filed at the Supreme Court; Copy to counsel listed at left.**

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## I. IDENTITY OF RESPONDENT

The respondent is the State of Washington. The answer is filed by Clallam County Deputy Prosecuting Attorney Jesse Espinoza.

## II. COURT OF APPEALS DECISION

The State respectfully requests that this Court to deny review of the Court of Appeals unpublished decision affirming the conviction for Possession of Methamphetamine With Intent To Deliver in *State v. Branham*, No. 50449-9-II (January 3, 2019), a copy of which is attached to the petition for review.<sup>1</sup>

The Court of Appeals, in conformity with well-established principles held “the trial court did not err when it found that the information in the affidavit supporting the search warrant was not stale and that there was a nexus between the vehicle and the illegal activity.” *Id.* at 9.

## III. COUNTERSTATEMENT OF THE ISSUES

The question presented is whether this Court should decline to accept review because none of the criteria set forth in RAP 13.4(b) are met, because:

1. The Court of Appeals decision does not conflict with any decision of this Court or the Court of Appeals; and
2. The petition fails to present a significant question of law under the Constitution of the State of Washington and of the United States; and
3. The petition fails to present any issue of substantial public interest that should be determined by this Court?

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<sup>1</sup> See also *State v. Branham*, 2019 WL 92760 (Wn. App. 2019).

#### IV. STATEMENT OF THE CASE

On June 12, 2015, Clallam County Sheriff's Detective Brian Knutson applied for and was granted search warrants CCSO 15-538-BC and CCSO 15-539-BC. CP 60, 85. The search warrants were executed and about one pound of methamphetamine was found in Branham's vehicle. CP 30, 92. The State filed an information charging Branham with two counts of delivery of methamphetamine and one count of possession with intent to deliver methamphetamine. CP 91-92. Branham moved to suppress the evidence on the basis that there was no probable cause for the search warrants. CP 50.

The search warrants were based upon affidavits of probable cause submitted by Clallam County Sheriff's Department Detective Brian Knutson. Search warrant no. 15-538-BC (CP 60) authorized a search of Branham's trailer residence at 115 N. Lilac Ave., Port Angeles and was supported by Affidavit for Search Warrant no. 15-538-BC. CP 60-69. Search warrant no. 15-539-BC (CP 85) authorized a search of Branham's white Cadillac and was supported by Affidavit for Search Warrant no. 15-539-BC. CP 73-84. The affidavits for the warrants are identical (except for paragraph VI (CP 69, 81)) and set forth facts as stated below.

Detective Knutson utilized SOI 15-01 (hereinafter "informant") to conduct controlled buys of controlled substances. CP 74. The known informant was shown to have a history of reliability working with law enforcement. CP 74.

Det. Knutson stated that on March 20, 2015, he interviewed the informant regarding their personal knowledge of drug activity in the Sequim and Port Angeles area. CP 75. The informant provided the following information:

The informant stated that Branham was a methamphetamine dealer in Port Angeles, that the informant had known Branham for about 10 years, and that Branham had been dealing methamphetamine for about 3 or 4 years.

Branham gets his resupply of methamphetamine once every week.

The informant went with Branham on Feb. 13, 2015 to Emerald Queen Casino in Tacoma where Branham purchased \$15,000 worth of methamphetamine.

The informant told Det. Knutson that between Aug. 2014 and Feb. 2015, the informant went with Branham to Emerald Queen Casino about 10 times for Branham to get his resupply of methamphetamine.

The informant stated that Branham usually deals methamphetamine from his trailer at 116 N. Lilac Ave. in Port Angeles.

The informant stated that they saw Branham sell methamphetamine to somebody on Feb. 22, 2015. Branham receives EBT cards, firearms, and cars as a form of payment when Branham delivers methamphetamine.

Branham owns several vehicles including but not limited to a Blue GMC Yukon, a silver Isuzu rodeo, a white Toyota Truck, and red two door Jeep.

The informant stated that Branham usually has about one pound of methamphetamine on him at any given time.

CP 75-76.

On Mar. 25 and 26 in 2015, the informant conducted two successful controlled purchases of methamphetamine from Branham. CP 76–78. Each operation included a post and pre buy search and no contraband was found on the informant. *Id.* The informant was wearing an authorized wire on the Mar. 25 controlled buy and Det. Knutson heard Branham speaking during the transaction. CP 77. The informant asked, “How much for 120” and Branham responded “Half a gram.” CP 77. The informant told Det. Knutson that Branham weighed the methamphetamine on a digital scale. CP 77.

On June 12, 2015, the informant admitted to Det. Knutson to stealing two ounces of methamphetamine from Branham while at Branham’s trailer about 2 weeks prior. CP 79 (paragraph I). Det. Knutson asked the informant what kind of vehicle Branham was driving. The informant stated that Branham’s truck was stolen recently and Branham was driving a white Cadillac. CP 81. Det. Knutson saw a white Cadillac parked in front of Braham’s place of work on June 10, 2015. OPNET Det. Mike Grall also reported that on June 10, 2015, he saw Branham drive the white Cadillac from his work to his home at 116 N. Lical Ave. CP 81.

The information stated above and additional facts not outlined in this brief were provided in the application for the search warrants which were granted on June 12, 2015. CP 60, 85. The warrants were executed on June 16, 2015. CP 30. Officers found about one pound of methamphetamine in Branham’s Cadillac.

Branham moved to suppress the evidence on the basis that the search warrant was invalid because it was based in stale information and did not support the search of the vehicle. CP 50, 51–53.

The trial court denied the motion to suppress. CP 35. The trial court set forth relevant facts from the informant as follows:

1. The informant has known and been friends with Br. Branham for about 10 years.
2. Mr. Branham has dealt methamphetamine in Port Angeles for approximately three to four years.
3. Mr. Branham replenishes his methamphetamine supply every week.
4. Mr. Branham drives a vehicle to the Tacoma area to purchase methamphetamine.
5. Between August 2014 and February 2015, the informant accompanied Mr. Branham when he purchased methamphetamine about 10 times.
6. On February 13, 2015, the informant accompanied Mr. Branham in a white Ford truck when he purchases two pounds of methamphetamine worth \$15,000 in the Tacoma area.
7. Mr. Branham works in the automotive business and does not sell methamphetamine at work.
8. Mr. Branham owns several vehicles, including, but not limited to a blue GMC Yukon, a silver Isuzu Rodeo, a white Toyota Truck, and a red two-door Jeep.
9. Mr. Branham takes various items of value in exchange for methamphetamine, including vehicles.
10. On March 25, 2015, in Port Angeles, the informant paid \$120 for 2.9 grams of methamphetamine from Mr. Branham.
11. On March 26, 2015, in Port Angeles, the informant the informant paid \$60 for 1.2 grams of methamphetamine from Mr. Branham.
12. On March 29, 2015, in Port Angeles, the informant attempted to purchase methamphetamine from Mr. Branham. On March 29<sup>th</sup>, Mr. Branham said he didn't have any methamphetamine to sell. On April 9, 2015, Mr. Branham told the informant to "take a hit" of the methamphetamine Mr. Branham was smoking and the informant refused. The informant believed Mr. Branham refused to sell to him/her because he/she did not "take a hit" as directed. The informant explained it is not uncommon for drug dealers to refuse to sell to someone refusing to get high, due to lack of trust.



13. On June 12, 2015, the informant stated that about two weeks ago s/he stole two ounces of methamphetamine from Mr. Branham while at his trailer.
14. On June 12, 2015, the informant stated that Mr. Branham's white Toyota truck had been stolen and that Mr. Branham was currently driving a white Cadillac Fleetwood.

CP 35–36.

The court also set forth facts in the affidavit relevant to its analysis:

1. The informant had known Mr. Branham for about 10 years;
2. Mr. Branham had been selling methamphetamine over the course of 3–4 years;
3. Mr. Branham routinely uses a vehicle to drive to the Tacoma area to resupply his methamphetamine;
4. On April 9, 2015, Mr. Branham smoked methamphetamine in the presence of the informant and told the informant to “take a hit” of the methamphetamine; and
5. Mr. Branham had methamphetamine in his home as recently as May 30, 2015, when the informant stole two ounces of methamphetamine from him.

CP 37.

## V. ARGUMENT

### A. THE PETITIONER HAS NOT ESTABLISHED ANY OF THE CONSIDERATIONS GOVERNING ACCEPTANCE OF REVIEW SET FOR IN RAP 13.4(b).

RAP 13.4(b) sets forth the considerations governing this Court's

acceptance of review:

A petition for review will be accepted by the Supreme Court only:

If the decision of the Court of Appeals is in conflict with a decision by the Supreme Court; or

If the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals; or

If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

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**1. The Court of Appeals opinion is consistent with prior decisions of the Court of Appeals and Washington State Supreme Court and *State v. Higby* does not apply to the facts of this case.**

Branham suggests in his petition that the decision conflicts with *State v. Higby*, 26 Wn. App. 457, 460, 613 P.2d 1192 (1980). Br. of Petitioner, at 7–8. *Higby* is distinguishable from the facts of this case and does not support Branham’s argument.

In *Higby*, the Court held that the search warrant was invalid on the basis that “[a] single observation of possible marijuana activity 6 months in the past, combined with one small marijuana sale 2 weeks in the past and observations of marginally suspicious activity at unspecified times is insufficient to establish a reasonable belief that marijuana will be found on the premises at the time of the search.” *Higby*, at 462–63.

*Higby* lies at the other end of the spectrum from the instant case where the affidavit for the search warrant shows that Branham was engaged in long term continuous and voluminous methamphetamine dealing. Branham’s drug dealing activity spanned over three to four years and included multiple buys, multiple long distance re-supply trips, and involved large amounts of methamphetamine. *Higby* does not apply to these facts.

**2. The Court of Appeals cited to facts establishing that the search warrant of Branham’s vehicle was not stale and that there was a sufficient nexus between Branham’s drug activity and Branham’s white Cadillac.**

In addition to the passage of time, staleness depends on the nature and scope of the alleged criminal activity, the length of the activity, and the type of property to be seized. *State v. Maddox*, 152 Wn.2d 499, 506, 98 P.3d 1199 (2004) (cited in *State v. Branham*, No. 50449-9-II (January 3, 2019) at 7).

The Court of Appeals found that the trial court correctly considered the nature and scope of the alleged criminal activity because Branham’s dealing was not an isolated event, but was a “*continuing* activity that Branham had been engaged in *for three or four years.*” *State v. Branham*, No. 50449-9-II (January 3, 2019) at 7 (emphasis added).

The Court of Appeals also pointed out that there are sufficient facts to show a nexus between Branham’s drug activity and the vehicle Branham was currently driving, the white Cadillac. The Court of Appeals noted that Branham had been involved in drug dealing for three to four years and usually transported his drug supply between Tacoma and his home on a weekly basis. These facts allow a court to reasonably infer that there was nexus between the white Cadillac, which Branham was currently driving after his truck was stolen, and his drug activity. Moreover, all doubts are to be resolved in favor of the warrant. *State v. Chenoweth*, 160 Wn.2d 454, 477, 158 P.3d 595 (2007); *State v. Maddox*, 152 Wn.2d 499, 505–06, 98 P.3d 1199 (2004).

Branham essentially disagrees with the Court of Appeals in regards to what is reasonable and ignores that the trial court is required to employ a common

sense, non-hyper technical approach and is permitted to make reasonable inferences. *See Chenoweth*, 160 Wn.2d at 477; *Maddox*, 152 Wn.2d at 505; *State v. Emery*, 161 Wn. App. 172, 202, 253 P.3d 413 (2011) (alteration in original) (quoting *Maddox*, at 505).

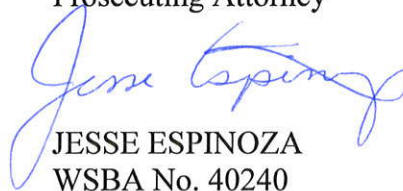
## VI. CONCLUSION

Branham presents no authority which conflicts with a decision by the Washington State Supreme Court or Court of Appeals. Braham's Petition does not present a significant question of law under the Washington State or U.S. Constitutions as all applicable principles are well settled matters. Branham's petition also fails to present any issue of substantial public interest. Therefore, Branham has not established any of the criteria set forth under RAP 13.4(b).

For the foregoing reasons, the State respectfully requests that the Court deny Branham's Petition for Review.

DATED March 6, 2019.

Respectfully submitted,  
MARK B. NICHOLS  
Prosecuting Attorney



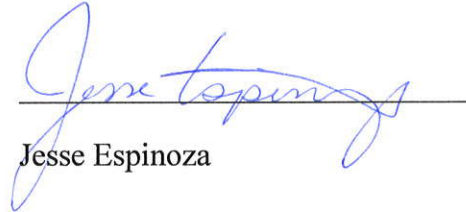
JESSE ESPINOZA  
WSBA No. 40240  
Deputy Prosecuting Attorney

**CERTIFICATE OF DELIVERY**

Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically to Catherine E. Glinski on March 6, 2019.

MARK B. NICHOLS, Prosecutor

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Jesse Espinoza

**CLALLAM COUNTY DEPUTY PROSECUTING ATTORN**

**March 06, 2019 - 3:28 PM**

**Transmittal Information**

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**Appellate Court Case Title:** State of Washington v. Marvin E. Branham  
**Superior Court Case Number:** 15-1-00231-6

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