

69799-4

69799-4

COA No. 69799-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

AMY CAROL TAYLOR,

Appellant.

2010 JUN 23 PM 4:45
COURT OF APPEALS
STATE OF WASHINGTON

ON APPEAL FROM THE SUPERIOR COURT
OF SNOHOMISH COUNTY

The Honorable Thomas J. Wynne

APPELLANT'S OPENING BRIEF

OLIVER R. DAVIS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR 1

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 3

C. STATEMENT OF THE CASE 4

 1. Vehicle stop and Motion to Suppress 4

 2. Entry of Judgment 7

D. ARGUMENT 7

 1. THE DRUG EVIDENCE WAS THE FRUIT OF AN ILLEGAL SEIZURE. 7

 a. Ms. Taylor was detained when Deputy Dusevoir approached and ran her license information, requiring the Deputy to have “reasonable suspicion.” 7

 b. There was no reasonable suspicion. 13

 c. The drug evidence must be suppressed and the charges based thereon dismissed. 15

 2. THE SEARCH WARRANT ALSO LACKED PROBABLE CAUSE BECAUSE IT WAS BASED ON AN ILLEGAL DOG SNIFF SEARCH, AND ALTERNATIVELY BECAUSE THE K-9 AFFIDAVIT WAS INADEQUATE 17

 a. Summary. 17

 b. A search warrant must be supported by probable cause. 17

 c. The warrant affidavit failed to establish probable cause because it was based on the illegal dog sniff of the truck. 18

 d. Even if the dog sniff was not an illegal search, The search warrant affidavit failed to establish probable cause based on the k-9 dog sniff. 22

 e. Absent the dog sniff “alert,” the search warrant affidavit failed to establish probable cause. 24

f. Since the warrant lacked probable cause, the methamphetamine must be suppressed. 25

3. THE TWIN DRUG POSSESSION
CONVICTIONS VIOLATE DOUBLE
JEOPARDY. 27

a. The defendant's two convictions for possession violate Double Jeopardy. 28

b. Remedy. 29

E. CONCLUSION 29

TABLE OF AUTHORITIES

WASHINGTON CASES

<u>State v. Adel</u> , 136 Wn.2d 629, 965 P.2d 1072 (1998)	28,29
<u>State v. Aranguren</u> , 42 Wn. App. 452, 711 P.2d 1096 (1985)	7
<u>State v. Armenta</u> , 134 Wn.2d 1, 948 P.2d 1280 (1997).	14
<u>State v. Belanger</u> , 36 Wn. App. 818, 677 P.2d 781 (1984)	12
<u>State v. Boyce</u> , 44 Wn. App. 724, 723 P.2d 28 (1986).	19
<u>State v. Brown</u> , 154 Wn.2d 787, 117 P.3d 336 (2005).	11
<u>State v. Chenoweth</u> , 127 Wn. App. 444, 111 P.3d 1217 (2005) .	28
<u>State v. Coyne</u> , 99 Wn. App. 566 (2000)	11
<u>State v. DeArman</u> , 92 Wn. App. 630, 962 P.2d 850 (1998), <u>review denied</u> , 137 Wn.2d 1032 (1999).	19
<u>State v. DeArman</u> , 54 Wn. App. 621, 774 P.2d 1247 (1989)	9
<u>State v. Duncan</u> , 146 Wn.2d 166, 43 P.3d 513 (2002)	15
<u>State v. Ellwood</u> , 52 Wn. App. 70, 757 P.2d 547 (1988)	11
<u>State v. Ferrier</u> , 136 Wn.2d 103, 960 P.2d 927 (1998)	20
<u>State v. Friederick</u> , 34 Wn. App. 537, 663 P.2d 122 (1983). . . .	9
<u>State v. Gaines</u> , 154 Wn.2d 711, 116 P.3d 993 (2005)	26
<u>State v. Gantt</u> , 163 Wn. App. 133, 257 P.3d 682 (2011), <u>review denied</u> , 173 Wn.2d 1011 (2012)	9
<u>State v. Glover</u> , 116 Wn.2d 509, 806 P.2d 760 (1991).	15
<u>State v. Guloy</u> , 104 Wn.2d 412, 705 P.2d 1182 (1985)	16
<u>State v. Hall</u> , 168 Wn.2d 726, 230 P.3d 1048 (2010)	29

State v. Hartzell, 153 Wn. App. 137, 221 P.3d 928 (2009), review granted, cause remanded for reconsideration in light of State v. Williams–Walker, 167 Wn.2d 889, 225 P.3d 913 (2010), 168 Wn.2d 1027, 230 P.3d 1054 (2010) 20,21

State v. Harrington, 167 Wn.2d 656, 222 P.3d 92 (2009) 12

State v. Houser, 95 Wn.2d 143, 622 P.2d 1218 (1980) 27

State v. Hudson, 124 Wn.2d 107, 874 P.2d 160 (1994) 13

State v. Huft, 106 Wn.2d 206, 720 P.2d 838 (1986). 18

State v. Kennedy, 107 Wn.2d 1, 726 P.2d 445 (1986) 13,14,15

State v. Larson, 93 Wn.2d 638, 611 P.2d 771 (1980) 14

State v. Mendez, 137 Wn.2d 208, 970 P.2d 722 (1999) 21

State v. Neth, 165 Wn.2d 177, 196 P.3d 658 (2008) 24

State v. Parker, 139 Wn.2d 486, 987 P.2d 73 (1999). 7

State v. Ladson, 138 Wn.2d 343, 979 P.2d 833 (1999). 7

State v. Larson, 93 Wn.2d 638, 611 P.2d 771 (1980) 10

State v. Parker, 139 Wn.2d 486, 987 P.2d 73 (1999) 21

State v. Rankin, 108 Wn. App. 948, 33 P.3d 1090 (2001), reversed on other grounds, 151 Wn.2d 689, 92 P.3d 202 (2004). 9

State v. Schlieker, 115 Wn. App. 264, 62 P.3d 520 (2003). . . 16,26

State v. Simpson, 95 Wn.2d 170, 622 P.2d 1199 (1980) 20

State v. Smith, ___ Wn.2d ___, ___ P.3d ___ (2013 WL 2445048) (June 6, 2013) 26

State v. Smith, 165 Wn. App. 296, 266 P.3d 250 (2011) 16

<u>State v. Spotted Elk</u> , 109 Wn. App. 253, 34 P.3d 906 (2001)	26
<u>State v. Thorn</u> , 129 Wn.2d 347, 917 P.2d 108 (1996).	9
<u>State v. Tyler</u> , ___ Wn.2d ___, ___ P.3d ___ (2013 WL 2367952)	27
<u>State v. Valdez</u> , 167 Wn.2d 761, 224 P.3d 751 (2009).	16
<u>State v. Veltri</u> , 136 Wn. App. 818, 150 P.3d 1178 (2007)	15
<u>State v. Vickers</u> , 148 Wn.2d 91, 59 P.3d 58 (2002).	18
<u>State v. Westling</u> , 145 Wn.2d 607, 40 P.3d 669 (2002)	28
<u>State v. Winterstein</u> , 167 Wn.2d 620, 220 P.3d 1226 (2009) ...	27
<u>State v. Young</u> , 135 Wn.2d 498, 957 P.2d 681 (1998). ...	9,10,13
<u>State v. Young</u> , 123 Wn.2d 173, 867 P.2d 593 (1994)	19
 <u>STATUTES AND COURT RULES</u>	
RCW 69.50.4013	28
WAC 139-05-915	22
 <u>TREATISES</u>	
Robert C. Bird, <u>An Examination of the Training and Reliability of the Narcotics Detection Dog</u> , 85 Ky. L.J. 405	23
 <u>UNITED STATES COURT OF APPEALS CASES</u>	
<u>United States v. Lalor</u> , 996 F.2d 1578 (4th Cir. 1993)	14
<u>United States v. Trayer</u> , 898 F.2d 805 (D.C. Cir. 1990)	23
 <u>UNITED STATES SUPREME COURT CASES</u>	
<u>Chapman v. California</u> , 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967)	

<u>Illinois v. Caballes</u> , 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005)	18
<u>Bell v. United States</u> , 349 U.S. 81, 75 S.Ct. 620, 99 L.Ed. 905 (1955).	29
<u>Brown v. Texas</u> , 443 U.S. 47, 99 S.Ct. 2637, 2641, 61 L.Ed.2d 357 (1979)	14
<u>Chapman v. California</u> , 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967)	
<u>California v. Hodari D.</u> , 499 U.S. 621, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991).	13,14
<u>Coolidge v. New Hampshire</u> , 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971)	18
<u>United States v. Mendenhall</u> , 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980)	7
<u>Murray v. United States</u> , 487 U.S. 533, 108 S.Ct. 2529, 101 L.Ed.2d 472 (1988)	26
<u>Segura v. United States</u> , 468 U.S. 796, 104 S.Ct. 3380, 82 L.Ed.2d 599, 615 (1984)	16
<u>Terry v. Ohio</u> , 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)	7,14
<u>CONSTITUTIONAL PROVISIONS</u>	
United States Constitution, Fourth Amendment	7,8,13,17,18
Wash. Const. Art. 1, section 7	7,8,13,17,18
Wash. Const. art. I, sec. 9	28,29
U.S. Const. amend. 5	28,29

A. ASSIGNMENTS OF ERROR

1. In Ms. Taylor's trial on two charges of methamphetamine possession, the drug evidence located by a search warrant executed on the truck she had been driving should have been suppressed.

2. The trial court erred in concluding that Ms. Taylor was not seized by Deputy Dusevoir.

3. The trial court erred in concluding that the K-9 dog sniff applied to the truck Ms. Taylor was driving was not a search.

4. The trial court erred in concluding that the dog sniff was legally justified.

5. The trial court erred in concluding that the K-9 team affidavit established the dog's reliability.

6. The trial court erred in concluding that the truck was lawfully impounded.

7. The trial court erred in entering judgment on two counts of conviction for possession of methamphetamine.

8. The trial court erred in entering CrR 3.6 Finding of Fact 20, stating that the vehicle was impounded.

9. The trial court erred in entering CrR 3.6 Finding of Fact 21, stating that the search warrant was supported by an affidavit regarding the K-9's training and certifications.

10. The trial court erred in entering CrR 3.6 Conclusion of Law 2, holding that there was no seizure of Ms. Taylor by Deputy Dusevoir.

11. The trial court erred in entering CrR 3.6 Conclusion of Law 3, holding that there was a valid arrest of the defendant on ground that there was a warrant for her arrest.

12. The trial court erred in entering CrR 3.6 Conclusion of Law 4, holding that the defendant's prior police contacts and conduct between the seats and in dropping something justified the K-9 dog sniff search.

13. The trial court erred in entering CrR 3.6 Conclusion of Law 5, holding that "the dog sniff outside the vehicle was not a search and it was not a seizure."

14. The trial court erred in entering CrR 3.6 Conclusion of Law 6, holding that the "K-9's affidavit was sufficient to properly establish the reliability of his skills in detecting controlled substances and his alerting on the vehicle."

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was the drug evidence seized pursuant to a search warrant that was not supported by probable cause?

2. Did the trial court err in concluding that Ms. Taylor was not seized by Deputy Dusevoir, where she was not reasonably free to leave the scene when the Deputy approached her, challenged whether she was legal to drive, and ran her license information for a warrants check?

3. Did the trial court err in concluding that the K-9 dog sniff applied to the truck Ms. Taylor was driving was not a search, where it intruded upon her private affairs?

4. Did the trial court err in concluding that the dog sniff was legally justified, where it was a search conducted without authority of law?

5. Did the trial court err in concluding that the K-9 team affidavit established the dog's reliability, where the affidavit failed to specify that the dog was reliable, and instead merely provided the raw total of his successful alerts?

6. Did the trial court err in finding that the truck was impounded, where the Deputy did not follow any proper impoundment procedure?

7. Did the trial court err in entering judgment on two counts of conviction for possession of methamphetamine, where the possession of the controlled substance was one unit of prosecution for purposes of Double Jeopardy?

C. STATEMENT OF THE CASE

1. Vehicle stop and Motion to Suppress. Amy Taylor was charged with two counts of possession of methamphetamine, based on the presence of the substance in two different plastic containers in the passenger cab of the truck she was driving. CP 1-3; CP 80-81. The drugs were located by means of a search warrant that was obtained and executed five days after the vehicle stop, by Deputy Dusevoir of the Snohomish County Sheriff's Office.

At the CrR 3.6 hearing, Dusevoir stated that on the night of September 2-3, 2012 at 1:12 a.m., he heard a Marysville police officer advise over the radio that he was conducting a traffic stop. The officer indicated that a second vehicle, a small Chevrolet truck, had turned into a large gravel area off the road, in the vicinity of the traffic stop. CP 1; 9/28/12RP at 4-5.

Arriving on the scene, Deputy Dusevoir pulled his patrol car up behind the truck, which was in a large gravel driveway area, about 75 feet away from the location of the Marysville officer's stop.

The Deputy activated his rear strobe lights, exited, and approached the truck at the driver's side door. CP 1-2; 9/28/12RP at 4-5. He testified that he believed he recognized the driver as someone who had prior law enforcement contacts, including one in which a large amount of methamphetamine was recovered. CP 1; 9/28/12RP at 15-16. Ms. Taylor told Deputy Dusevoir that she thought the Marysville police car had wanted her to pull over as well. 9/28/12RP at 16.

Deputy Dusevior then questioned Ms. Taylor to determine if she was "legal" or had a valid drivers license. CP 1; 9/28/12RP at 4-5, 17. The trial court found that Ms. Taylor voluntarily "handed over her driver's license to the [Deputy]." CP 2 (CrR 3.6 finding 9); CP 3 (CrR 3.6 conclusion of law 2) 9/28/12RP at 7-8. The passenger seat was occupied by another woman, Ms. G., who the Deputy later allowed to leave the scene. CP 1.

After learning the driver's name was Amy Carol Taylor, and running her license card's information over his radio, Deputy Dusevoir was informed by dispatch that Ms. Taylor had an outstanding arrest warrant. CP 1; 9/28/12RP at 7. When Dusevoir took Ms. Taylor by the arm to escort her from the truck, she resisted, and then seemed to be secreting or putting something in

between the driver's seat and the front passenger seat. 9/28/12RP at 8-9. Once taken out of the truck, Ms. Taylor continued to resist, and appeared to drop something from her hand, grind it into the gravel with her foot, and then kick it away (nothing was located in a later search). CP 1; 9/28/12RP at 9-10.

Deputy Dusevoir took Ms. Taylor into custody pursuant to the warrant, and placed her in his patrol car; he then requested a canine unit. CP 2 (CrR 3.6 findings 15, 17, 18). The Marysville K-9 officer, Johnson, and dog Brody arrived, and the dog "alerted on the vehicle," according to the Deputy. CP 2. The trial court found that the truck was then "impounded." CP 2 (CrR 3.6 finding 20). Deputy Dusevoir sought a search warrant, which was granted and then executed five days later. CP 97-100 (affidavit for search warrant); CP 101-02 (affidavit attachments of K-9 officer); see CP 73-102 (State's response to motion to suppress); CP 94 (search warrant).

Methamphetamine powder was located in the passenger cab area of the pick-up truck, consisting of 3.38 grams in a plastic container located between the front seats of the vehicle, and 27.78 grams in a plastic container located in a bag behind the front seats. CP 2-3; 9/28/12RP at 10, 18; 12/13/12RP at 59-60, 62-63; CP 55.

The trial court rejected Ms. Taylor's motion to suppress the fruits of the warrant, concluding that she voluntarily handed the Deputy her drivers license, that she was not seized, that the later drug dog sniff was justified but was not a search, and that the supporting affidavit of the K-9 officer showed the dog to be reliable for purposes of probable cause. CP 2-3; CP 73-102 (Appendix A) (State's Response and State's Search Warrant and Affidavits)

2. Entry of Judgment. Following the verdicts of guilty, the trial court entered judgment on both methamphetamine possession counts. CP 17-27, 80-81. Ms. Taylor was sentenced to two 60-day terms, a period less than that sought by the prosecutor; the trial court also released Amy from custody pending the present direct appeal to this Court. CP 17-27, 80-81, 100.

Ms. Taylor appeals. CP 5-16.

D. ARGUMENT

1. THE DRUG EVIDENCE WAS THE FRUIT OF AN ILLEGAL SEIZURE.

a. Ms. Taylor was detained when Deputy Dusevoir approached and ran her license information, requiring the Deputy to have "reasonable suspicion." The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution prohibit unreasonable searches

and seizures. Terry v. Ohio, 392 U.S. 1, 16-19, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); State v. Parker, 139 Wn.2d 486, 527, 987 P.2d 73 (1999). Warrantless searches and seizures of a person by law enforcement are per se unreasonable and violate these constitutional protections. State v. Ladson, 138 Wn.2d 343, 350-51, 979 P.2d 833 (1999).¹

A seizure of a person occurs if, "in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." State v. Aranguren, 42 Wn. App. 452, 455, 711 P.2d 1096 (1985) (citing United States v. Mendenhall, 446 U.S. 544, 554, 100 S.Ct. 1870, 1877, 64 L.Ed.2d 497 (1980)). The Washington Supreme Court has said that a seizure occurs under article I, section 7 when, considering all the circumstances, an individual's freedom of movement is restrained and the individual would not believe he or she is free to leave, or decline a request, due to an officer's display

¹Article I, section 7 of the Washington Constitution states that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." Wash. Const., art. 1, § 7. The Fourth Amendment to the federal constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]

U.S. Const. amend. 4.

of authority, a determination that is made by objectively looking at the actions of the law enforcement officer. State v. Young, 135 Wn.2d 498, 501, 957 P.2d 681 (1998). If a person as a result of those circumstances reasonably would feel she is being required by the officer to remain where she is, she has been seized. State v. Friederick, 34 Wn. App. 537, 541, 663 P.2d 122 (1983).

Ms. Taylor was subjected to a seizure of her person when Deputy Dusevoir pulled up behind her in the middle of the night, activated lights on his patrol car, and approached her and checked her driver and warrant status.² A reasonable person in her position, as a result of the Deputy's conduct, would not feel free to drive her truck away, even during the earlier junctures in the encounter. State v. Gantt, 163 Wn. App. 133, 141–42, 257 P.3d 682 (2011), review denied, 173 Wn.2d 1011 (2012) (defendant in van was seized when officer activated patrol car lights); State v. DeArman, 54 Wn. App. 621, 620-26, 774 P.2d 1247 (1989) (pulling up behind car, and activating lights, was seizure); State v. Larson,

² The question whether a seizure has occurred during a citizen-police encounter is a mixed question of law and fact. State v. Rankin, 108 Wn. App. 948, 954, 33 P.3d 1090 (2001), reversed on other grounds, 151 Wn.2d 689, 92 P.3d 202 (2004). On review of a suppression motion, the Washinton appellate courts defer to the trial court's non-erroneous factual findings, but the issue whether the supported facts amount to a "seizure" of the defendant by the police is a question of law, which is examined de novo. State v. Thorn, 129 Wn.2d 347, 351, 917 P.2d 108 (1996).

93 Wn.2d 638, 645, 611 P.2d 771 (1980) (similar). Notably, at the time the deputy pulled up behind Ms. Taylor, she apparently believed she had been signaled that she was required to stop by the first patrol car. See State v. Young, 135 Wn.2d 498, 501, 512, 957 P.2d 681 (1998) (arrival and interaction by additional officers may ripen social contact into detention).³

Deputy Dusevoir's conduct before, and at the time of running Ms. Taylor's license information, continued the seizure of her person and escalated its intrusiveness. When the deputy challenged Ms. Taylor as to whether she was driving 'legally' with a valid license, and then used the drivers license card she gave him to check her legality -- and also to run her information for warrants -- a reasonable person would not feel free to leave. Checking a person's name and drivers license to see if the license is valid is an investigative detention. State v. Rankin, 151 Wn.2d 689, 695, 92 P.3d 202 (2004).

³ The prosecutor argued briefly that the interaction between Deputy Dusevoir and Ms. Taylor was a community-caretaking contact. CP 74-77. The trial court appeared to reject this contention when it determined that "the facts in this case should be properly analyzed under a Terry analysis." CP 3 (CrR 3.6 Conclusion of Law 1). In any event, the interaction between the Deputy and Ms. Taylor, including the running of her information for driver legality and warrants, far exceeded any social contact for community care-taking purposes. State v. DeArman, 54 Wn. App. at 621-24 (once officer realized car that had been stopped was not disabled, the justification for stopping the motorist ceased).

Under the Supreme Court's Rankin case law and its progeny, the detention in those circumstances arises not by the physical handing-over of the license card to the officer; rather, it is the law enforcement officer's request that the person identify themselves as a driver, and the officer's running of that person's information through a dispatch check, that creates a seizure. State v. Brown, 154 Wn.2d 787, 788-89, 796-98 and n. 7, 117 P.3d 336 (2005). However, in this case certainly, the retention of a drivers license card as part of running the person's information was further or additional conduct also establishing a seizure. See State v. Coyne, 99 Wn. App. 566, 572, 995 P.2d 78 (2000) (seizure occurred when officer retained license card to run driver information including for warrants check); see also State v. Ellwood, 52 Wn. App. 70, 73, 757 P.2d 547 (1988) (telling citizen to wait is a seizure).

At CrR 3.6 argument below, the State urged the trial court to rely on the fact that Ms. Taylor handed her driver's license card to the deputy voluntarily. 9/28/12RP at 26 (arguing, "There doesn't need to be reasonable suspicion. He is allowed to say, 'Hey, are you valid? Are you willing to give me your ID?' "). The trial court emphasized in its findings and conclusions that Ms. Taylor

voluntarily handed the deputy her license when he asked if she was driving legally, along with finding as fact that the deputy did not walk away with the card. CP 2-3.

However, Rankin and Brown make clear that it is immaterial that the deputy in this case did not "demand" that the license be handed over, or that he did not force Ms. Taylor to do so. Deputy Dusevoir was a law enforcement officer who had pulled up behind Ms. Taylor's car and then questioned whether she was legal to drive. When she responded by giving him her license card, he took the card and ran its information through a check via dispatch to determine her legality, and to run an arrest warrants check. Ms. Taylor was detained, certainly, during that time. She reasonably would not feel free to drive away while the deputy was holding her license card and conducting the multi-records check, irregardless of whether he spoke on the radio while standing right there at her car, or whether he had walked a distance away. This was not a social contact. Cf. State v. Harrington, 167 Wn.2d 656, 664-65, 222 P.3d 92 (2009) (officer's act of conversing with pedestrian did not ripen into detention); State v. Belanger, 36 Wn. App. 818, 820, 677 P.2d 781 (1984) (approaching pedestrian and conversing in the public square was not detention).

Finally, there was a detention under the Fourth Amendment.

The “purely objective” definition of “seizure” that our Supreme Court articulated for purposes of the state constitution in State v. Young, supra, 135 Wn.2d at 501, 512, contrasts with the Fourth Amendment’s seizure test, which does contain a subjective element in assessing whether a person was free to leave the officer’s presence. See California v. Hodari D., 499 U.S. 621, 626, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991). Here, under all the circumstances, Ms. Taylor would feel that she should not drive the truck away, while Deputy Dusevoir held her drivers license and communicated with dispatch over the radio. A Fourth Amendment seizure was effected, and reasonable suspicion of unlawful activity was required. U.S. Const. amend. 4.

b. There was no reasonable suspicion. Ms. Taylor was detained, and that detention was required to be supported by reasonable suspicion. State v. Hudson, 124 Wn.2d 107, 112, 874 P.2d 160 (1994) (citing State v. Kennedy, 107 Wn.2d 1, 6, 726 P.2d 445 (1986)); U.S. Const. amend. 4; Wash. Const. art. 1, § 7. This means “a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity.” State v. Larson, 93 Wn.2d 638, 644, 611 P.2d 771 (1980) (citing Brown v. Texas, 443

U.S. 47, 51, 99 S.Ct. 2637, 2641, 61 L.Ed.2d 357 (1979)); see also Kennedy, 107 Wn.2d at 5. Under the Fourth Amendment and Article I, § 7, the facts relied on by the detaining officer must be objective, meaning "specific and articulable," rather than premised on a hunch Terry v. Ohio, 392 U.S. at 21; State v. Armenta, 134 Wn.2d 1, 20, 948 P.2d 1280 (1997). The amount of articulable suspicion that is necessary to support an investigative detention is "a substantial possibility" that criminal conduct is occurring. State v. Kennedy, 107 Wn.2d at 6.

Ms. Taylor's detention was illegal under the foregoing standards. Her "prior contacts" with police do not amount to reasonable suspicion. In some cases, certainly, past information about a suspect may be pertinent to corroborate suspicions of specified current activity, and establish reasonable suspicion. See, e.g., United States v. Lalor, 996 F.2d 1578, 1581 (4th Cir. 1993) (suspect's cocaine arrest five days earlier corroborated claims of informants of alleged continued trafficking activity). However, here, absent more, Deputy Dusevoir's knowledge Ms. Taylor's prior police contacts did not justify his detention of her, where there was no suspicion she was then involved in any criminal activity, simply by virtue of having pulled over to the side of the road. State v.

Duncan, 146 Wn.2d 166, 179, 43 P.3d 513 (2002); Kennedy, 107 Wn.2d at 6.

General suspicions that Ms. Taylor was a bad person who might likely be up to something at some point are not enough to warrant the detention. Notably, although the deputy was motivated by the safety of the Marysville officer, nothing corroborated any safety concerns. In fact, Ms. Taylor told Deputy Dusevoir that she only pulled off the road because she thought the Marysville police officer wanted her to do so. 9/28/12RP at 16. Yet she nonetheless continued to be detained, without any facts establishing suspicion or danger, thus improperly. State v. Veltri, 136 Wn. App. 818, 821-22, 150 P.3d 1178 (2007) (continuance of police contact improper absent reasonable suspicion). The totality of facts in this case did not create any reasonable articulable suspicion of current criminal activity. State v. Glover, 116 Wn.2d 509, 514, 806 P.2d 760 (1991).

c. The drug evidence must be suppressed and the charges based thereon dismissed. Evidence will be excluded as fruit of an illegal seizure unless the illegality is not the “but for” cause of the discovery of the evidence, and suppression is required where the challenged evidence is in some sense the product of

illegal governmental activity. Segura v. United States, 468 U.S. 796, 104 S.Ct. 3380, 82 L.Ed.2d 599, 615 (1984). Further, where the proffered probable cause statement supporting a search warrant relied on illegally obtained evidence, the search pursuant to the warrant is illegal. State v. Schlieker, 115 Wn. App. 264, 266–67, 62 P.3d 520 (2003).

Here, Deputy Dusevoir arrested Ms. Taylor upon learning of her warrant status. CP 2 (CrR 3.6 findings). Any additional facts including the facts supporting the later search warrant arose subsequent to that warrant arrest, which did not authorize a search of the truck incident to arrest. See n. 4, infra; State v. Valdez, 167 Wn.2d 761, 768, 777, 224 P.3d 751 (2009). Admission of the illegally obtained drug evidence at trial in this methamphetamine possession case was constitutional error, requiring reversal. Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); State v. Smith, 165 Wn. App. 296, 316, 266 P.3d 250 (2011) (citing State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985)).

2. THE SEARCH WARRANT ALSO LACKED PROBABLE CAUSE BECAUSE IT WAS BASED ON AN ILLEGAL DOG SNIFF SEARCH, AND ALTERNATIVELY BECAUSE

THE K-9 AFFIDAVIT WAS INADEQUATE.

a. **Summary.** The dog sniff procedure applied to the Chevy truck was an invasion into Ms. Taylor's private affairs, conducted without the required authority of law in the form of a warrant, under the state constitution, art. 1, § 7. The later-obtained search warrant was inadequate to establish probable cause, absent the illegal dog sniff "alert" information. There was no warrant exception.⁴

Further, even if the dog sniff "alert" information was a constitutionally proper basis of support for the later search warrant, the warrant affidavit nonetheless failed to establish probable cause, where there was no showing of the reliability of the K-9 unit. U.S. Const. amend. 14; Wash. Const. art. 1, § 7.

b. **A search warrant must be supported by probable cause.** The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington State Constitution protect individuals from unreasonable searches and seizures. U.S. Const. amend. 14; Wash. Const. art. 1, § 7. Deputy Dusevoir's search

⁴ A warrantless search of an automobile is permissible under the "search incident to arrest" exception only when that search is necessary to preserve officer safety or prevent destruction of the crime of arrest - circumstances that do not apply here, where the defendant is both in custody inside the arresting officer's patrol car, and the arrest was based on an outstanding warrant. State v. Valdez, 167 Wn.2d 761, 768, 777, 224 P.3d 751 (2009); see CP 2 (CrR 3.6 Findings of fact 10, 11, 17).

warrant, which was executed five days after the arrest, was therefore required to have been issued based only upon probable cause. Coolidge v. New Hampshire, 403 U.S. 443, 454–55, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971); State v. Vickers, 148 Wn.2d 91, 108, 112, 59 P.3d 58 (2002). Probable cause to issue a warrant is established if the supporting affidavit sets forth facts sufficient for a reasonable person to conclude the defendant probably is involved in criminal activity and evidence of that crime is in the place to be searched. State v. Huff, 106 Wn.2d 206, 209, 720 P.2d 838 (1986).

c. The warrant affidavit failed to establish probable cause because it was based on the illegal dog sniff of the truck. While the United States Supreme Court has ruled that a dog sniff of the exterior of a car does not violate the Fourth Amendment, Illinois v. Caballes, 543 U.S. 405, 409, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005), the Washington Supreme Court has not addressed whether a dog sniff constitutes a search under article I, section 7 of the Washington Constitution. See State v. Neth, 165 Wn.2d 177, 181, 196 P.3d 658 (2008) (granting review on question but deciding case on alternate grounds).

However, the Supreme Court's decisions and decisions of

the Court of Appeals have effectively indicated that a dog sniff of the sort conducted in this case will violate article I, section 7. See State v. Young, 123 Wn.2d 173, 188, 867 P.2d 593 (1994) (ruling that the use of a thermal detection device outside a home constituted a search in violation of art. I, sec. 7, while rejecting State's argument that a thermal imaging detection device is similar to dog sniff). Relying on Young, this Court of Appeals in State v. DeArman, determined that a dog sniff of the outside of a house constituted a search which violated art. I, § 7:

Like an infrared thermal detection device, using a narcotics dog goes beyond merely enhancing natural human senses and, in effect, allows officers to "see through the walls of the home. . . . It is true that a trained narcotics dog is less intrusive than an infrared thermal detection Device. But the dog "does expose information that could not have been obtained without the "device."

State v. DeArman, 92 Wn. App. 630, 635, 962 P.2d 850 (1998), (internal citations omitted), review denied, 137 Wn.2d 1032 (1999).

In a decision preceding DeArman, this Court held that a canine sniff of the outside of a safety deposit box was not a search and did not violate art. I sec. 7 because the defendant did not have an expectation of privacy in the safety deposit box. State v. Boyce, 44 Wn. App. 724, 730, 723 P.2d 28 (1986). But that decision is flawed to the extent it focuses on a "reasonable expectation of

privacy.” The Washington Supreme Court has held that article I, section 7 has broader application than does the Fourth Amendment as it “clearly recognizes an individual's right to privacy with no express limitations.” State v. Simpson, 95 Wn.2d 170, 178, 622 P.2d 1199 (1980); see also State v. Ferrier, 136 Wn.2d 103, 110, 960 P.2d 927 (1998) (Article I, section 7 clearly recognizes an individual's right to privacy with no express limitations). Ms. Taylor believes the dog sniff in this case implicated the protections of the Washington Constitution.

Importantly, this Court's decision in State v. Hartzell, finding no intrusion into private affairs in a case involving a dog sniff, involved a fundamentally different police procedure than the present case. State v. Hartzell, 153 Wn. App. 137, 221 P.3d 928 (2009), review granted, cause remanded for reconsideration in light of State v. Williams–Walker, 167 Wn.2d 889, 225 P.3d 913 (2010), 168 Wn.2d 1027, 230 P.3d 1054 (2010). There, the defendant was arrested outside his vehicle following an earlier shooting from a car occupied by two persons, and statements to police by a witness the defendant was visiting; the defendant's car clearly had a bullet hole shot into it. Hartzell, 153 Wn. App. at 146. In a search incident to arrest of Hartzell, the police located ammunition in the car, and in

an attempt to locate the gun that shot at the car, a dog sniff tracking team led to the discovery of the gun some yards away on the ground. The Court ruled that the dog sniff was not an intrusion into Mr. Hartzell's private affairs. Hartzell, 153 Wn. App. at 146-48. The present case involves a warrant arrest and therefore does not involve an arrest giving rise to authority to search for evidence of the crime of arrest. See Valdez, supra. Further, the present case involves an intrusion into the private affairs Ms. Taylor was entitled to hold dear in the vehicle, not the use of a tracking dog to track from the car to a gun located outside the automobile.

Our Supreme Court has long held that the right to be free from unreasonable governmental intrusion into one's "private affairs" encompasses automobiles and their contents. See, e.g., State v. Parker, 139 Wn.2d 486, 494, 987 P.2d 73 (1999); State v. Mendez, 137 Wn.2d 208, 219, 970 P.2d 722 (1999). Ms. Taylor was removed from the vehicle she was driving and its contents were searched for by dog sniff, without a warrant. Since the police did not have a search warrant prior to the dog sniff, the intrusion into Ms. Taylor's private affairs was without authority of law.

d. Even if the dog sniff was not an illegal search, The search warrant affidavit failed to establish probable cause

based on the k-9 dog sniff. Ms. Taylor also challenged the warrant on ground that the warrant affidavit as to the K-9, provided by Marysville Police Sergeant Johnson, failed to establish the K-9 dog team's certification and reliability in detecting indications of drugs inside a vehicle, including failing to establish that the K-9 officer and the dog had shown reliability as a team. CP 113-16; CP 101-02.

The trial court ruled that this dog team had a history of "800 prior incidents in which the dog has made hits in which drugs have been present." 9/28/12RP at 39, see CP 3 (CrR 3.6 Conclusion of Law 6, finding that affidavit established the dog's reliability).

However, the affidavit was insufficient under WAC 139-05-915(3), (4) and (6) to establish the team's training and qualifications. Most crucially, probable cause was not established where the affidavit did not show Brody could reliably detect drugs when present, and refuse to alert when they are absent. Without this information, the animal's raw records of "800" successful alerts cannot support probable cause to justify a search. The affidavit fails to distinguish between (a) Brody's ability to alert when drugs are present, and (b) Brody's ability to refuse to alert when drugs are absent.

False negatives and false positives both affect a dog's overall reliability. Indeed they "are" that reliability, mathematically expressed. Thus it is literally impossible to assess reliability with any accuracy, without knowing both error rates. The search warrant affidavit's claims regarding Brody's success rate are completely meaningless. CP 101-02.

Further, drug dogs and K-9 teams are not inherently reliable and successful alerts, even a large number of them, do not establish that a given officer-identified behavior by the dog indicates the illegal presence of drugs, or even residue, reliably. Robert C. Bird, An Examination of the Training and Reliability of the Narcotics Detection Dog, 85 Ky. L.J. 405, 422 (claiming that "almost all erroneous alerts originate not from the dog, but from the handler's misinterpretation of the dog's signals"); United States v. Trayer, 898 F.2d 805, 809 (D.C. Cir. 1990) (noting, based on expert testimony of a police-dog trainer, that anything "less than scrupulously neutral procedures, which create at least the possibility of unconscious 'cuing,' may well jeopardize the reliability of dog sniffs"); see also Caballes, supra, 543 U.S. at 411-412 (Souter, J., dissenting) (noting that "[t]he infallible dog . . . is a creature of legal fiction").

Ultimately, absent a complete affidavit from the K-9 handler Maryville Officer Johnson that established Brody's actual reliability, Deputy Dusevoir's report that the dog "alerted" was an inadequate basis for finding probable cause.

e. Absent the dog sniff "alert," the search warrant affidavit failed to establish probable cause. The search warrant application describes the facts leading up to the search warrant application, describing the stop of the Chevy truck, the Deputy's recognition of Ms. Taylor, her conduct of seeming to retrieve or secrete, and/or drop some item which the Deputy did not see, and the K-9 dog's alert to the passenger door seam. CP 98-99.

Absent the dog sniff information, these facts were inadequate to support a search warrant. Even a person driving around an unfamiliar area who evades regarding his residence location, with a known prior drug *conviction*, carrying recognized drug packaging materials, and large amounts of cash, does not create under these facts probable cause to believe a drug crime is being committed. In State v. Neth, supra, 165 Wn.2d 177, the Supreme Court concluded that no probable cause was made out for a search warrant for controlled substances, where the defendant and his passenger made false statements about their

home being in the area, there were empty plastic bags on the defendant's person of the sort "that drug traffickers are known to use for carrying illegal drugs," the defendant had several thousand dollars in cash in the car, and the defendant was known to the officers, and had a prior conviction for possession of heroin. Neth, 165 Wn.2d at 184. The Court ruled that these facts – absent the K-9 drug dog's alert which the trial court had already excised from the application as unreliable -- did not establish probable cause that the defendant was involved in a drug crime, even considering a prior conviction for drugs. Neth, 165 Wn.2d at 184, 186.

The warrant in Ms. Taylor's case, absent the K-9 dog sniff assertions, established that a person with a past drug arrest was removed from a truck on a warrant, and might have tried to hide or throw something away. This did not establish probable cause and the search warrant was improperly issued. State v. Huft, 106 Wn.2d at 209. U.S. Const. amend. 4; Wash. Const. art. 1, § 7.

f. Since the warrant lacked probable cause, the methamphetamine must be suppressed. Where the cause supporting the warrant was legally insufficient, the search is illegal. State v. Schlieker, 115 Wn. App. 264, 266–67, 62 P.3d 520 (2003). Evidence that is obtained from an illegal search and

seizure is subject to suppression under the exclusionary rule. State v. Gaines, 154 Wn.2d 711, 716-17, 116 P.3d 993 (2005); State v. Spotted Elk, 109 Wn. App. 253, 262, 34 P.3d 906 (2001). Further, the search warrant affidavit's legally obtained information must establish probable cause to search, and absent adequate information about the k-9 dog's reliability in this case, there was no probable cause for the search warrant. U.S. Const. amend. 14; Wash. Const. art. 1, § 7.

Finally, there was no legal impoundment of the vehicle, and the search of the truck cannot be deemed an inventory search for purposes of any possible "independent source" contention, which requires that the subject evidence be gained in a way genuinely independent of the illegal search. State v. Smith, ___ Wn.2d ___, ___ P.3d ___ (2013 WL 2445048) (June 6, 2013) (citing State v. Gaines, 154 Wn.2d at 721; Murray v. United States, 487 U.S. 533, 108 S.Ct. 2529, 101 L.Ed.2d 472 (1988)); cf. State v. Winterstein, 167 Wn.2d 620, 220 P.3d 1226 (2009) ("inevitable discovery exception" to rule of suppression not cognizable under state constitution). If there is no probable cause to seize a vehicle and a reasonable alternative to impoundment exists, then it is illegal to impound. State v. Houser, 95 Wn.2d 143, 153, 622 P.2d 1218

(1980). Here, the truck that Ms. Taylor was driving had pulled safely off the roadway into a large gravel driveway area, and further, the deputy never inquired whether Ms. G., the passenger, could drive the vehicle away, despite the fact that the deputy knew she had a valid license, he having checked it. CP 98; State v. Tyler, ___ Wn.2d ___, ___ P.3d ___ (2013 WL 2367952) (May 30, 2013, at pp. 3-4) (inventory search requires valid impoundment following determination whether another could take vehicle, and whether vehicle would have posed safety hazard if not impounded).

Since the search warrant violated article I, section 7, and the Fourth Amendment for absence of probable cause, the items seized pursuant to it must be suppressed. Reversal of the two drug convictions is required. Chapman v. California, 386 U.S. at 24; State v. Smith, 165 Wn. App. at 316; State v. Guloy, 104 Wn.2d at 425.

3. THE TWIN DRUG POSSESSION CONVICTIONS VIOLATE DOUBLE JEOPARDY.

Ms. Taylor was convicted on two counts of RCW 69.50.4013 possession of a controlled substance based on the methamphetamine powder in a plastic container between or under the front seats of the truck, and in a plastic container behind the front seats. CP 71-72, CP 17-27; 12/13/12RP at 59-60, 62-63.

a. The defendant's two convictions for possession

violate Double Jeopardy. Under a given criminal statute, the "unit of prosecution" for the crime can be either an act, or a course of conduct. Ms. Taylor's simple possession of methamphetamine found in two plastic boxes in her truck, charged under RCW 69.50.4013, did not constitute multiple commissions of the crime. Wash. Const. art. I, sec. 9; U.S. Const. amend. 5. .

The unit of prosecution which is determined by looking to the language of the statute defining the crime. State v. Westling, 145 Wn.2d 607, 610, 40 P.3d 669 (2002) (citing State v. Adel, 136 Wn.2d 629, 634, 965 P.2d 1072 (1998)). The Washington Courts have concluded that the methamphetamine possession statute creates one unit of prosecution for possession of the same drug. State v. Chenoweth, 127 Wn. App. 444, 462, 111 P.3d 1217 (2005) (convictions for possession of methamphetamine in vials found on person and in house violated double jeopardy, issue whether each amount was from same or different "batch" immaterial as possession statute prohibits possession of substance, regardless of source).

Importantly, if the Legislature had not defined the unit of prosecution or its intent in this respect was unclear, under the rule

of lenity any ambiguity in the possession statute would have to be resolved against turning a single transaction into multiple offenses. Adel, 136 Wn.2d at 634; Bell v. United States, 349 U.S. 81, 84, 75 S.Ct. 620, 99 L.Ed. 905 (1955).

b. Remedy. In Ms. Taylor's case only one "unit of prosecution" of the crime of controlled substance possession was committed yet judgment was entered on two counts of conviction. Wash. Const. art. I, sec. 9; U.S. Const. amend. 5. The remedy for the Double Jeopardy error is to order vacation of the duplicative counts, and dismissal of the charge. State v. Hall, 168 Wn.2d 726, 737, 230 P.3d 1048 (2010)

E. CONCLUSION

Based on the foregoing, Amy Carol Taylor requests that this Court reverse the trial court's denial of her CrR 3.6 motion, and reverse her convictions, or in the alternative strike one of the two convictions for possession, and remand for resentencing.

Respectfully submitted this 28 day of June, 2013.



Oliver R. Davis WSBA no. 24560
Washington Appellate Project - 91052
Attorneys for Appellant

Appendix A

Filed in Open Court

9-28, 2012

SONYA KRASKI
COUNTY CLERK

By [Signature]
Deputy Clerk



CL15724102

SNOHOMISH COUNTY SUPERIOR COURT
STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Case No.: 11-1-00807-4

Plaintiff,

STATE'S RESPONSE TO DEFENDANT'S
MOTIONS TO SUPPRESS/DISMISS

vs.

Amy C. Taylor

Defendant.

COMES NOW, the STATE OF WASHINGTON, by and through Deputy Prosecuting Attorney,
Bob Langbehn, and moves the Court to DENY Defendant's Motions to Suppress and Dismiss.

STATEMENT OF FACTS

The State would rely on the attached sworn narrative as well as any live testimony presented by
the State.

ISSUES PRESENTED

- 1) Was there a reasonable basis to contact the defendant and later request her identification under a community caretaking standard, the defendant voluntarily handed over her license, and the detainment was brief in nature? YES
- 2) Does the current state of Washington case law support the notion that a canine sniff on the exterior of a vehicle is not a search? YES
- 3) Was the affidavit of the K9 officer sufficient to support the granting of a search warrant? YES

ORIGINAL

61

1 **AUTHORITY AND ARGUMENT**

2 **A. There Was a Reasonable Basis To Contact The Defendant And Request Her**
3 **Identification**

4 As a general rule, warrantless searches and seizures are per se unreasonable under the Fourth
5 amendment to the United States Constitution. *State v. Kinzy*, 141 Wn.2d 373, 384 (2000). There are a
6 “few jealously and carefully drawn” exceptions to the warrant requirement. *Id.* One such exception is the
7 *Terry*, stop. *Id.*, at 385, citing *Terry v. Ohio*, 392 U.S. 1 (1968). Another is searches incident to a valid
8 arrest. Finally, there is the community caretaking function.

9 In Washington, the community caretaking function exception to the warrant requirement
10 encompasses the search and seizure of automobiles, emergency aid, and routine checks on health and
11 safety. *State v. Moore*, 129 Wash. App. 870 (Division I, 2005). In the case of routine checks on health
12 and safety, the proper determination is whether an officer's encounter with a person is reasonable, a
13 determination based on balancing the individual's interest in freedom from police interference against the
14 public's interest in having the police officers perform a community caretaking function. *Id.* at 879
15 (citations omitted). A routine safety check must (1) be necessary and strictly relevant to the community
16 caretaking function, and (2) end when reasons for initiating an encounter are fully dispelled. *Id.* at 880
17 (citations omitted).

18 In the present case, Officer Shove of the Marysville PD had made a traffic stop on a vehicle. As
19 he made the stop, he broadcast that a second vehicle had pulled over and stopped with them. Deputy
20 Dusevoir responded with the initial concern that the other vehicle would attempt to interfere with Officer
21 Shove's investigation. As Officer Shove was the only unit on scene at the time, it was clearly reasonable
22 for Deputy Dusevoir to make contact to find out why the vehicle containing the defendant had stopped.

23 As Deputy Dusevoir approached the vehicle and made contact, he immediately recognized the
24 driver, the defendant Amy Taylor, and the passenger, Erin Graafstra. Both the defendant and her
25 passenger are well known among law enforcement. In fact, Deputy Dusevoir's last contact with the

1 defendant resulted in a search warrant and recovery of a large amount of methamphetamine and money.
2 Deputy Dusevoir informed the defendant that he was only there to assist Officer Shove and was not sure
3 if Officer Shove would need to make contact with them. Deputy Dusevoir asked the defendant "if she was
4 valid" to which she responded in the affirmative and voluntarily handed over her driver's license. The
5 defendant's name was run and an outstanding warrant was found.

6 In assessing whether a detention is too long in duration to be justified as an investigative stop, it
7 is appropriate to examine whether the police diligently pursued a means of investigation that was likely
8 to confirm or dispel their suspicions quickly, during which time it was necessary to detain the
9 defendant. *United States v. Sharpe*, 105 S.Ct. 1568, 1575 (1985). Additionally, pursuant to *State v.*
10 *Guzman-Cuellar*, "the scope of an investigatory stop may be enlarged or prolonged as required by the
11 circumstances if the stop confirms or arouses further suspicions." *State v. Guzman-Cuellar*, 47 Wn.App.
12 326, 332, 734 P.2d 966 (1987); see also *State v. Pressley*, 64 Wash.App. 591, 597, 825 P.2d 749 (1992).
13 Courts should not indulge in unrealistic second-guessing. *Id.* at 1575. A creative judge engaged in post
14 hoc evaluation of police conduct can almost always imagine some alternative means by which the
15 objectives of the police might have been accomplished. *People v. Gorak*, 196 Ca.App.3d 1032, 1038
16 (1988). However, the question is not simply whether some other alternative was available, but whether
17 the police acted unreasonably in failing to recognize or pursue it. *Id.*

18 In *Sharpe*, 105 S.Ct. 1568, The Court found a 20-minute detention was diligent and reasonable
19 when one officer waited for the arriver of another to assist. A police officer's subjective intent has no
20 relevance to the determination of custody. *State of Washington v. Ustimenko*, 137 Wash.App. 109, 115
21 (2007). Third, the United States Supreme Court found in *Berkemer v. McCarty*, 104 S. Ct. 3138, 3151-
22 52 (1984), that, "A policeman's unarticulated plan has no bearing on the question whether a suspect was
23 "in custody" at a particular time; the only relevant inquiry is how a reasonable man in the suspect's
24 position would have understood his situation."
25

1 The *Berkemer* court agrees that no reasonable person would feel free to ignore the visible and
2 audible signs of a police vehicle but stress that the pressures on the detained person must sufficiently
3 impair his free exercise in order to be warned of his Constitutional rights. *Id.* at 3149. The Court
4 concludes that a person temporarily detained are not in custody for the purposes of Miranda due to the
5 temporary nature of the detention. *Id.* at 3149-50.

6 A seizure for constitutional purposes occurs when an officer *retains* a suspect's ID or driver's
7 license and takes it with him to conduct a warrants check. *State v. Thomas*, 91 Wn. App.195, 955 P.2d
8 420, *review denied*, 136 Wn.2d 1030 (1998); *State v. Dudas*, 52 Wn. App.822, 834, 764 P.2d 1012,
9 *review denied* 112 Wn.2d 1011 (1989). So long as the officer does not remove the ID or license from the
10 individual's presence and the ID or license is returned to the individual while waiting for a warrant's
11 check to be performed, a seizure does not occur by a police officer's retention of the identification or
12 driver's license for the few minutes required to record the individual's name and birth date. *See State v.*
13 *Hansen*, 99 Wn. App. 575, 994 P.2d 855 (2000).

14 A seizure occurs if an officer demands, versus requests, identification. *See State v. Rankin*, 108
15 Wn. App. 948, 33 P.3d 1090 (2001), *reversed on other grounds*, 151 Wn.2d 689, 92 P.3d 202 (2004). In
16 reference to whether a seizure has occurred, the determination of whether an officer has required
17 identification is a question of fact. The words used by the officer are relevant, but not dispositive, in
18 determining whether the officer has required or merely requested identification. Other factors include but
19 are not limited to the officer's tone of voice and manner, the officer's position at the vehicle, and whether
20 the officer has made a show of force. The fact that a uniformed police officer has effected a traffic stop on
21 the vehicle may be taken into consideration, but this factor alone does not transform a permissible request
22 for identification into an impermissible demand.

23 In the instant case, Deputy Dusevoir asked the defendant if she was valid. In response to this
24 question, the defendant voluntarily handed over her license. This was not in response to a request, and
25 more importantly, not in response to a demand by the officer. However, even if the court were to find that

1 there was a request for her identification, considering the Deputy's previous recent experience with the
2 defendant, he was entirely justified in running her name to find out if she had a warrant for her arrest
3 under a simply Terry analysis. Furthermore, the license itself was never taken away from the defendant's
4 *presence*, therefore, no seizure had occurred.

5
6 **B. Washington Case Law Supports The Principle That A Canine Sniff On The**
7 **Exterior Of a Vehicle Is Not a Search.**

8 The Washington Constitution Article I, Section 7 protects a person's home and his private affairs
9 from warrantless searches: "No person shall be disturbed in his private affairs, or his home invaded,
10 without authority of law." Article I, Section 7 is not implicated if no search occurs. *State v. Young*, 123
11 Wash.2d 173, 181, 867 P.2d 593 (1994). To determine if there was a search, the court asks whether the
12 State unreasonably intruded into a person's "private affairs." *Young*, 123 Wash.2d at 181, 867 P.2d 593. If
13 it did, a warrant was required unless the circumstances fell into one of the recognized exceptions to the
14 warrant requirement. *Young*, 123 Wash.2d at 181, 867 P.2d 593.

15 The inquiry whether the State unreasonably intruded into a person's private affairs focuses on the
16 privacy interests that "citizens of this state have held, and should be entitled to hold, safe from
17 governmental trespass absent a warrant." *State v. Myrick*, 102 Wash.2d 506, 511, 688 P.2d 151 (1984). In
18 general, a search does not occur if a law enforcement officer is able to detect something using one or
19 more of his senses from a nonintrusive vantage point. *State v. Seagull*, 95 Wash.2d 898, 901, 632 P.2d 44
20 (1981). Such observation does not violate Washington's constitution because something voluntarily
21 exposed to the general public and observable without an enhancement device from a lawful vantage point
22 is not considered part of a person's private affairs. *Young*, 123 Wash.2d at 182, 867 P.2d 593. An
23 observation may constitute a search, however, if the officer substantially and unreasonably departs from a
24 lawful vantage point or uses a particularly intrusive method of viewing. *Young*, 123 Wash.2d at 182-83,
25 867 P.2d 593. What is reasonable is determined from the facts and circumstances of each case. *Seagull*,
95 Wash.2d at 903, 632 P.2d 44.

1 Whether or not a canine sniff is a search depends on the circumstances of the sniff itself. *State v.*
2 *Boyce*, 44 Wash.App. 724, 729, 723 P.2d 28 (1986). In *Boyce*, the court held that as long as the canine
3 “sniffs the object from an area where the defendant does not have a reasonable expectation of privacy,
4 and the canine sniff itself is minimally intrusive, then no search has occurred.” *Boyce*, 44 Wash.App. at
5 730, 723 P.2d 28. In general, a “search” does not occur, within the meaning of the state constitution, if a
6 law enforcement officer is able to detect something using one or more of his senses from a nonintrusive
7 vantage point; such observation does not violate the constitution because something voluntarily exposed
8 to the general public and observable without an enhancement device from a lawful vantage point is not
9 considered part of a person's private affairs. *State v. Hartzell*, 156 Wash.App. 918, 237 P.3d 928. For
10 instance, a defendant did not have reasonable expectation of privacy in air coming from open window of
11 vehicle, and therefore, canine sniff of air outside window of vehicle was not “search,” within meaning of
12 Washington constitution. *State v. Hartzell*, 156 Wash.App. 918, 237 P.3d 928

13 The United States Supreme Court has also held that a canine sniff on the exterior of a vehicle is
14 permissible and does not implicate the Fourth Amendment. *Illinois v. Caballes*, 543 U.S. 405, 125 S.Ct.
15 834 (2005). In *Caballes*, the Defendant was stopped for speeding. Within 10 minutes another Trooper had
16 responded to the scene with a narcotics detection canine, who subsequently alerted on the trunk of the
17 vehicle. A search of the trunk revealed marijuana, which ultimately led to the criminal conviction at issue
18 in the case. *Caballes*, 543 U.S. at 406. In *Caballes* the canine activity occurred while the Defendant was
19 being detained for the brief purpose of issuing a traffic infraction warning, whereas this case involves
20 canine activity that occurred after the Defendant was arrested for on an outstanding warrant. To the extent
21 *Caballes* dealt with whether the canine's activities exceeded the justified time or scope of the Defendant's
22 brief detention, the opinion is not relevant to this court's analysis. In this case the Defendant was already
23 under arrest when the narcotics-detection canine was called to the scene. Therefore there is no *Terry*
24 analysis to determine the justifiable duration or scope of the detention in this case.

25 *Caballes* is relevant to this case in its ultimate holding, in which the Court determined that “...the
use of a well-trained narcotics-detection dog--one that “does not expose noncontraband items that

1 otherwise would remain hidden from public view,” *Place*, 462 U.S., at 707, 103 S.Ct. 2637-during a
2 lawful traffic stop, generally does not implicate legitimate privacy interests.” *Caballes*, 543 U.S. at 409.
3 Specifically, the canine sniff of “the exterior of the [Defendant’s] car while he was lawfully seized for a
4 traffic violation. . . . does not rise to the level of a constitutionally cognizable infringement.” *Id.*

5 Whether the same holding applies under the more restrictive dictates of article 1, section 7 of the
6 Washington State Constitution is not a settled area of the law. *See, e.g., State v. Neth*, 165 Wash.2d 177,
7 181 (2008) (“...whether a dog sniff amounts to a search under article 1, section 7 of the Washington
8 Constitution has not yet been answered.”). However, the precedent of the U.S. Supreme Court (*see*
9 *Caballes*, 543 U.S. 403, discussed above) places the burden on the Defendant to show that a different
10 result is required under our State Constitution. The Defendant has failed to undertake the required
11 analysis to make such a showing. *See State v. Mierz*, 127 Wn.2d 460 (1995); *State v. Gumwall*, 106
12 Wash.2d 54 (1986).

13 Finally, it should also be noted that this same motion has been brought more recently in
14 Snohomish County Superior Court and defense’s requests have not been granted on this point of law.
15 While each Judge is not required to grant or deny the motion based upon this, it is worth pointing out that
16 the law on this fact has not changed since the filing of any of these motions.

17 In the present case, a canine was called to the scene after the defendant was already placed under
18 arrest for an outstanding warrant. During the arrest, the defendant not only made furtive movements
19 inside the car, but she dropped something to the ground and stepped on it with her foot. Based on upon
20 this, and the fact that Deputy Dusevoir had previously arrested the defendant for drug possession, he had
21 a reasonable suspicion which justified calling for a drug dog to come to the scene. Upon arrival, the
22 canine walked around the outside of the car and “alerted” on both the passenger door as well as the driver
23 side door where the defendant was sitting. A search warrant was obtained and controlled substances were
24 recovered.

25 Defense counsel’s only real analysis relies on the faith that the Court will take it upon itself to not
only overrule the US Supreme Court and break with the previous rulings in this County, but clarify the

1 exact issue the Washington Supreme Court has refused to address. The current state of the law is clear
2 that the canine sniff on the exterior of the vehicle, as was undertaken here, is not a search, was supported
3 by the facts, and the evidence seized upon application, receipt, and execution of the search warrant should
4 not be suppressed.

5
6 **C. The Affidavit of the K9 Officer Was Clearly Sufficient To Support The Granting of**
7 **the Search Warrant**


8 Canines, such as drug dogs, are a type of professional informant. Evidence collected pursuant to
9 a search warrant predicated upon a canine's alert, will be inadmissible if the issuing magistrate is not
10 provided with sufficient evidence of the drug dog's reliability. A conclusory statement that the dog was
11 "[t]rained to recognize the odor of illegal narcotics" is insufficient to establish reliability. State v. Neth,
12 165 Wn.2d 177, 196 P.3d 658 (2008). In the case above however, an attachment entitled "Canine and
13 Handler Resume" was provided along with the search warrant. This resume indicated not only indicated
14 the canine's training prior to being placed into the field, but includes that he was been involved in over
15 800 applications where controlled substances were present as well as the fact that the canine is currently
16 certified by the Pacific Northwest Police Detection Dog Association.

17 The standard for application and approval of a search warrant is probable cause. An officer who
18 requests a search warrant is required to include any training and experience they received in order to
19 become an officer, which is exactly what was included here. The notion that more is required because the
20 officer in question is a canine is not correct. More stringent standards are not required for a canine
21 affidavit. It should also be noted that whether the canine can "testify" is irrelevant as the handler is
22 subject to cross examination at trial. Clearly the procedures for application of the warrant were followed
23 and counsel's motion should be denied.

1 **CONCLUSION**

2 For the foregoing reasons, the State respectfully requests that the court DENY the defendant's
3 motions.

4
5 Respectfully Submitted this 27 Day of September , 2012.

6 
7 Bob Langbehn, WSBA# 37508
8 Deputy Prosecuting Attorney
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SNOHOMISH COUNTY SUPER. CRM ORIGINAL

COURT	<input checked="" type="checkbox"/> REFERRAL	<input type="checkbox"/> BOOKING	AGENCY: SNOHOMISH CO SO	DEPUTY/OFFICER/TROOPER: DANIEL DUSEVOIR 1468	CASE #: 10-16330
	<input checked="" type="checkbox"/> SUPERIOR	<input type="checkbox"/> JUVENILE	JUV#	REF#	

SUSPECT DATA	DISTRICT/MUNI COURT: <input type="checkbox"/> SOUTH; <input type="checkbox"/> EVERGREEN; <input type="checkbox"/> CASCADE; <input type="checkbox"/> EVERETT; <input type="checkbox"/> OTHER:		DATE AND TIME OF ARREST:	BOOKING / ADMISSION DATE/TIME: Hours	RELEASE DATE / TIME:	IDENTITY IN DOUBT? NO EXPLAIN:				
	NAME LAST TAYLOR		FIRST AMY		MIDDLE CAROL	DOB: 060178	Interpreter needed? NO Lang			
	SEX: F	RACE: W	HGT: 5'5	WGT: 145	HAIR: BRN	EYES: BRN	DRIVER'S L/N TAYLOAC223LA	STATE WA	CDL# NO	SSN# 537-86-5733
	LAST KNOWN ADDRESS 22716 121 DR NE				CITY ARLINGTON	STATE WA	ZIP: 98223			
	HOME PHONE:	OTHER PHONE:	ALIAS(S) / AKA(S)			GANG AFFILIATION				

PARENT/GUARDIAN (Juveniles only)	FATHER	ADDRESS:	CITY	ST.	ZIP:	HOME PHONE:
	MOTHER	ADDRESS	CITY	ST.	ZIP:	HOME PHONE
	STEP <input type="checkbox"/> MOTHER <input type="checkbox"/> FATHER	ADDRESS	CITY	ST	ZIP	HOME PHONE:
	GUARDIAN / FOSTER / DSHS	ADDRESS	CITY	ST	ZIP:	PHONE
	FATHER'S EMPLOYER:	WORK NUMBER	MOTHER'S EMPLOYER	WORK NUMBER		
	DETENTION NOTIFICATION (Youth Center Use Only)	PARENTS, GUARDIANS, CUSTODIANS NOTIFIED				HOW

VEH - INFO	VEHICLE LICENSE NO B18644C	STATE WA	EXPIRES 2-11	VEH YR. 1994	MAKE: CHEV	MODEL S-10	STYLE PU	COLOR BLUE
	TRAILER #1 LICENSE	STATE:	EXPIRES	TR YR	TRAILER #2 LICENSE	STATE:	EXPIRES:	TR YR:
	OWNER / COMPANY IF OTHER THAN DRIVER: MARSH, AMANDA		ADDRESS:			CITY	STATE:	ZIP
	ACCIDENT: NO	BAC READING	COMMERCIAL VEHICLE: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	HAZMAT <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	EXEMPT VEHICLE: <input type="checkbox"/> FARM <input type="checkbox"/> R V <input type="checkbox"/> FIRE <input type="checkbox"/> OTHER			

HEALTH & SAFETY	SUICIDAL? YES / NO EXPLAIN:	MENTAL ISSUES? YES / NO EXPLAIN
	DOES THE ARRESTEE HAVE ANY CHRONIC HEALTH PROBLEMS OR CONTAGIOUS DISEASES? YES / NO EXPLAIN	
	IS THE ARRESTEE INJURED AT THIS TIME? YES / NO EXPLAIN:	
	WAS THE ARRESTEE INVOLVED IN A METHAMPHETAMINE LAB OPERATION? YES / NO EXPLAIN:	

SUSPECT DATA	NUMBER OF CO-SUSPECTS:	NAMES:
--------------	------------------------	--------

OFFENSE DATA	OFFENSE LOCATION: 9400 84TH ST NE	CITY: LAKE STEVENS	STATE WA	DATE AND TIME OF OFFENSE 09-03-10 0113			
	ARREST LOCATION (IF DIFFERENT)	WERE DRUGS INVOLVED IN THIS INCIDENT? YES IF YES, LIST DRUG(S) TYPE: METH, ETC.		WAS ALCOHOL INVOLVED IN THIS INCIDENT? NO EXPLAIN:			
	CHARGE: (i.e. Assault 4')	COURT OF RECORD	CLASS	WARRANT ARREST	RCW, Municipal or County Code (I. E. 9A.36.041)	Warrant or Citation #	Bail
	1 <input type="checkbox"/> DV <input type="checkbox"/> MANUFACTURE/DELIVER CON. SUBS	SUP	FEL	<input type="checkbox"/>	RCW 69.50.401.A		\$10,000
	2 <input type="checkbox"/> DV <input type="checkbox"/> POSS LEGEND DRUG W/INTENT TO SELL	SUP	FEL	<input type="checkbox"/>	RCW 69.41.030.F		\$5,000

VICTIM / TRAFFIC	NOTIFY ON RELEASE? YES / NO	IF UNABLE TO CONTACT, NOTIFY 911? YES / NO	IF DV, REQUEST N C ORDER? YES / NO	FIREARMS IN HOME? YES / NO	PRIOR UNREPORTED VIOLENCE? YES / NO	CHILDREN PRESENT? AGES:
	VICTIM NAME: LAST	FIRST	MIDDLE	DATE OF BIRTH	PHONE:	ALT. PHONE
	VICTIM'S ADDRESS			CITY	STATE	ZIP
	SUSPECT RELATIONSHIP TO VICTIM:		EMERGENCY / ALTERNATE CONTACT		EMERGENCY / ALTERNATE CONTACT PHONE	
	GUARDIAN NAME AND PHONE NUMBER (IF VICTIM IS A MINOR):			NEXT OF KIN - NAME AND PHONE NUMBER (IF VICTIM IS DECEASED):		

5

SNOHOMISH COUNTY SUPERFORM ORIGINAL

Suspect's Name: **TAYLOR AMY**

Case #: **10-16330**

SUSPECTS	TOTAL CASH \$1790.00	TO JAIL PROPERTY:			
	PROPERTY IMPOUNDED TO EVIDENCE cash, stolen property, narcotics, docs, etc	OTHER PROPERTY			
	SEIZED FIREARM FOR FORFEITURE? YES / NO EXPLAIN.				
OBJECTIONS TO RELEASE	WILL LIKELY FAIL TO APPEAR FOR FURTHER PROCEEDINGS: YES / NO EXPLAIN:		WILL INTIMIDATE OR INTERFERE WITH ADMINISTRATION OF JUSTICE: YES / NO EXPLAIN.		
	DETENTION REQUIRED TO PROTECT ARRESTEE FROM HIMSELF/HIMSELF: YES / NO EXPLAIN		COMMITTED A CRIME WHILE ANOTHER CASE IS PENDING: YES / NO EXPLAIN		
	DESCRIBE RELATION TO VIC:	ASSAULTIVE YES / NO EXPLAIN	PHYSICAL INJURY TO VICTIM / WITNESS / OFFICER: YES / NO EXPLAIN		
	WEAPONS INVOLVED? YES / NO EXPLAIN		DANGER / THREAT TO COMMUNITY IF RELEASED? YES / NO EXPLAIN		
	U S CITIZEN? YES / NO	OTHER (FTA, LACK OF COMMUNITY TIES, ETC)			
PHYSICAL EVIDENCE	CONTROLLED SUBSTANCE WEIGHED AND FIELD TESTED? YES		TYPES & AMOUNTS (WEIGHTS) METHAMPHETAMINE 108g + NUMEROUS PRESC/SCHEDULE DRUGS		
	VEHICLE INFORMATION STOLEN VEH REPORT ATTACHED? YES / NO		SOURCE OF VALUE	VEH YEAR	VEH MAKE
	FAIR MARKET VALUE: \$		VEH MODEL:		
	PROPERTY (Stolen, Recovered, Damaged, Etc):				FAIR MARKET VALUE \$
	PROPERTY CONTINUED:				SOURCE OF VALUE:

Synopsis / PC for Arrest
(Include all elements of the crimes, date of violation, and location of crimes)

Amy C. Taylor and Erin E. Graafstra were contacted at 9400 84th St NE in Lake Stevens, WA. Taylor was arrested for a warrant. Narcotics K9 alerted to the vehicle and it was impounded to the SCSO North Precinct pending a search warrant. At the time of the contact, there was no PC to arrest Graafstra and she walked away.

09-09-10 I served a search warrant on the vehicle and located 108g of suspected methamphetamine (NIK field test presumptive positive), dozens of schedule (*) drugs including: Florinol (*3), Floricet (*3), Ambien (*4), Lorazepam (*4), generic Percocet (*2), Clonazepam (*4), Diazepam (*4), Oxycodone (*2), generic Vicotin (*3), Morphine (*2), and Methadone (*2). The narcotics were mostly packaged in small amounts and in clear baggies. A package of small baggies, two bags of rubber bands (drug packaging materials), two digital scales, a calculator, and \$1790.00 in cash were also located.

In addition, the following drug paraphernalia was located inside the vehicle: five glass smoking pipes with suspected methamphetamine residue, tin foil with burn marks, and apparent bong materials (cup and tube).

In a yellow computer bag identified by Graafstra as her property, I located a stolen HP Presario laptop computer (Skagit CN 10-5557).

All items located inside the cab of the vehicle during the search warrant were well within reach of both occupants.

I certify or declare under the penalty of perjury under the laws of the State of Washington that the forgoing statement is true and correct. (RCW 9A.72.085)

OFFICER'S NAME: D. DUARVO, R PER # 1468 CONTACT #: 425-751-7822 TRANSPORT OFFICER: —

OFFICER'S SIGNATURE: D. DUARVO - 1468 LK STEVENSON / WA 10-26-10 PRECINCT / STATION: N.P.
Location signed: City / State Date

IBR CLEARANCE: (ONE)	COPIES MADE FOR:	DATA ENTRY	Approved By
<input checked="" type="checkbox"/> ARR/A	<input type="checkbox"/> PA	<input type="checkbox"/> DET. PREC / CTH / SPEC	SGT SWANSON
<input type="checkbox"/> ARR/J	<input type="checkbox"/> PAT	<input type="checkbox"/> MH	
<input type="checkbox"/> EXC/A	<input type="checkbox"/> CPS	<input type="checkbox"/> OTHER	
<input type="checkbox"/> EXC/J	<input type="checkbox"/> DSMS		
<input type="checkbox"/> UNF			

11

STAT OF WASHINGTON UNIFORM INCIDENT REPORT ORIGINAL

SNOHOMISH COUNTY SHERIFF'S OFFICE		<input type="checkbox"/> Officer Safety <input type="checkbox"/> Officer Assault		Responding to: 1 Assignment 1		Reporting Area		Report Number SO 10-16330					
Type of Report		<input type="checkbox"/> Persons <input type="checkbox"/> Property <input type="checkbox"/> Information		<input type="checkbox"/> Vehicle <input checked="" type="checkbox"/> Arrest <input type="checkbox"/> Phone Report		<input type="checkbox"/> Juvenile <input type="checkbox"/> Child Abuse <input type="checkbox"/> Domestic Violence		<input type="checkbox"/> Hate/Bias <input type="checkbox"/> Gang Related <input type="checkbox"/> Other					
Incident Classification VUCSA, POSSESSION OF STOLEN PROPERTY		Offense Codes		A C		A C		A C					
Address/Location of Incident: 9400 84 ST NE, LAKE STEVENS				Premise Type/Name STREET				Code 2					
REPORTED ON		OCCURRED ON OR FROM				OCCURRED TO							
Month	Day	Year	Time	DOW	Month	Day	Year	Time	DOW				
9	3	2010	0113										
Add'l on Supplemental:		CODES				TYPE VICTIM CODES							
<input checked="" type="checkbox"/> Persons <input type="checkbox"/> Vehicles <input type="checkbox"/> Collision Report		V - Victim W - Witness O - Others B - Victim Business		C - Complainant G - Parent/Guardian D - Deceased RO - Registered Owner		I - Individual B - Business F - Financial		G - Government R - Religious S - Society/Public					
P - Police O - Other U - Unknown													
No.	Non-Disc.	NAME (Last, First, Middle)			Race 3	Eth 3	Sex	DOB	AGE	HGT	WGT	HAIR	EYES
V-1	<input type="checkbox"/>	MARQUARDT, JOEL GERARD					M	12-11-62					
Street Address		Apt #		City		State		ZIP		Res. Status: 4			
22261 CRIDDLE LANE				BIG LAKE		WA		98274					
Residence Phone:		Business Phone:		Employment/Occupation/School		Type Victim 5		Type Injury 6		Victim of OFNS#		Relationship 7	
3604200219													
No.	Non-Disc.	NAME (Last, First, Middle)			Race 3	Eth 3	Sex	DOB	AGE	HGT	WGT	HAIR	EYES
O-1	<input type="checkbox"/>	ROMERO, DANIKA ERIN					F	07-16-80		6'	190		BRN
Street Address		Apt #		City		State		ZIP		Res. Status: 4			
5115 WOODLAWN AVE				EVERETT		WA		98203					
Residence Phone:		Business Phone:		Employment/Occupation/School		Type Victim 5		Type Injury 6		Victim of OFNS#		Relationship 7	
No. of Suspects/Arrested Persons in this Incident:				Suspect Codes: A - Arrest, R - Runaway, S - Suspect, M - Missing, I - Institutional (Mental/Detox), X - Other									
No.	NAME (Last, First, Middle)			Race 3	Eth 3	Sex	DOB	AGE	HGT	WGT	HAIR	EYES	
S-1	GRAAFSTRA, ERIN EILEEN			W	N	F	02-14-78		6'	170	BRN	GRN	
Alias Name(s)		Identifiers											
Street Address		Apt #		City		State		ZIP		Res. Status:		Residence Phone:	
8510 212 ST NE #K133				ARLINGTON		WA		98223					
Employment / Occupation / School		Business Phone		SSN		Driver's Lic/D Card No.		State:					
				533117912		GRAAFEE225CM		WA					
IBR Arrest Offense No.	Booked / Where		Booking #		Charges		Citation/Warrant		Bail				
					1. _____		_____		_____				
Arrest Date	Location of Arrest.												
Affiliation	On View Arrest <input type="checkbox"/>	Crtd <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Statement: <input checked="" type="checkbox"/> Oral <input type="checkbox"/> Written	Charges <input type="checkbox"/> Admcd <input type="checkbox"/> Denied	Arrestee Armed with		Identification No.		Mub Clear <input type="checkbox"/>				
Juvenile Parent/Guardian Notified <input type="checkbox"/> Yes <input type="checkbox"/> No	Name/Relationship of Person Notified			Date/Time Notified		Notified by		Disposition of Juvenile <input type="checkbox"/> H <input type="checkbox"/> R 8					
VEHICLE CODES:		<input type="checkbox"/> Located <input type="checkbox"/> Impounded <input type="checkbox"/> Recovered #		<input type="checkbox"/> Seized/Narc <input type="checkbox"/> Abandoned		<input type="checkbox"/> Damaged/Vandalized <input type="checkbox"/> Other		<input type="checkbox"/> Victim's Vehicle <input checked="" type="checkbox"/> Suspect's Vehicle		<input type="checkbox"/> Hold For who:			
No.	License Number	State	Vin / Hvl# No.	Year	Make	Model	Style						
V-1	B18644C	WA	1GCCS19Z2R8238073	1994	CHEVROLET	S10	PU						
Color	Special Features / Description		Value \$	Driver is: <input type="checkbox"/> R/O <input checked="" type="checkbox"/> Person # S-2		Registered Owner's name							
BLUE						MARSH, AMANDA							
Vehicle Disposition <input type="checkbox"/> Left at Scene <input type="checkbox"/> Driven Away <input checked="" type="checkbox"/> Impounded		Tow Company/Address/Phone		Registered Owner's Address									
		RELEASED TO RO		15817 77 AVE NE ARLINGTON, WA									
Locked	Keys in Vehicle	Delinquent Payment	Victim Consent	Theft Ins.	Drive able	Damage to Vehicle	Specify damage by shading damaged area <input type="checkbox"/> Top <input type="checkbox"/> Underside	7 5 3 1 8 6 4 2		Damage Est. \$			
<p>MAKING FALSE REPORTS TO PUBLIC OFFICERS: (1) A PERSON COMMITS THE CRIME OF MAKING A FALSE REPORT IF HE/SHE WILLFULLY MAKES ANY UNTRUE, MISLEADING OR EXAGGERATED STATEMENT IN ANY REPORT TO A POLICE OR FIRE DEPT. (2) MAKING A FALSE REPORT IS A MISDEMEANOR. IF PROPERTY CRIME: I DID NOT GIVE ANYONE PERMISSION TO ENTER MY PREMISES AND/OR TAKE/REMOVE/DAMAGE MY PROPERTY/VEHICLE. IF FOUND PROPERTY, I HAVE BEEN ADVISED OF CHAPTER 63 OF THE R.C.W. AND () I DO () I DO NOT WISH TO CLAIM THE PROPERTY IF THE TRUE OWNER CANNOT BE FOUND.</p> <p>() I ACCEPT LIABILITY FOR TOWING AND STORAGE IF IT IS RECOVERED AND I AM NOT IMMEDIATELY AVAILABLE TO CLAIM IT.</p> <p>() THE NAMED JUVENILE IS PRESENTLY A RUNAWAY</p> <p>() THE NAMED PERSON IS PRESENTLY MISSING</p> <p>() I AGREE TO HOLD HARMLESS AND DEFEND SNOHOMISH COUNTY FROM ANY AND ALL CLAIMS RESULTING FROM THE RELEASE OF THE VEHICLE TO ME.</p> <p>() I RELEASED PROPERTY TO _____</p> <p>() I HAVE READ, UNDERSTAND AND AGREE TO THE ABOVE (Signature of person/date) _____</p>													
Officer Name/Number DAN DUSEVOIR 1468				Court code		Approved by <i>[Signature]</i>		Assigned					
IBR Clearance: (one) <input checked="" type="checkbox"/> ARR/A <input type="checkbox"/> ARR/J <input type="checkbox"/> EXC/A <input type="checkbox"/> EXC/J <input type="checkbox"/> INSUFF/CLO <input type="checkbox"/> OTHER/CLO <input type="checkbox"/> UNF				Codes made for: <input type="checkbox"/> PA <input type="checkbox"/> CPS <input type="checkbox"/> JUV <input type="checkbox"/> Court <input type="checkbox"/> PAT <input type="checkbox"/> DSHS <input type="checkbox"/> MH <input checked="" type="checkbox"/> Detectives <i>[Signature]</i> <input type="checkbox"/> Other: _____				DATA ENTRY REV / 12-8-03					

REPORT NUMBER
SO 10-16330

STAT OF WASHINGTON UNIFORM INCIDENT REPORT ORIGINAL

SNOHOMISH COUNTY SHERIFF'S OFFICE		<input type="checkbox"/> Officer Safety <input type="checkbox"/> Officer Assault		Respon. to: 1	Assignment: 1	Reporting Area	Report Number SO 10-16330
Type of Report <input type="checkbox"/> Persons <input type="checkbox"/> Property <input type="checkbox"/> Information		<input type="checkbox"/> Vehicle <input checked="" type="checkbox"/> Arrest <input type="checkbox"/> Phone Report		<input type="checkbox"/> Juvenile <input type="checkbox"/> Child Abuse <input type="checkbox"/> Domestic Violence		<input type="checkbox"/> Hate/Bias <input type="checkbox"/> Gang Related <input type="checkbox"/> Other	
Incident Classification YUCSA, POSSESSION OF STOLEN PROPERTY		Offense Codes		A C	A C	A C	A C
Address/Location of Incident 9400 84 ST NE, LAKE STEVENS				Premise Type/Name STREET		Code 2	
REPORTED ON		OCCURRED ON OR FROM				OCCURRED TO	
Month 9	Day 3	Year 2010	Time 0113	DOW	Month	Day	Year
Add'l on Supplemental: <input checked="" type="checkbox"/> Persons <input type="checkbox"/> Vehicles <input type="checkbox"/> Collision Report		CODES V - Victim W - Witness O - Others B - Victim Business		C - Complainant G - Parent/Guardian D - Deceased RO - Registered Owner		TYPE VICTIM CODES I - Individual B - Business F - Financial	
No V-1	Non-Disc <input type="checkbox"/>	NAME (Last, First, Middle) MARQUARDT, JOEL GERARD		Race 3	Eth 3	Sex M	DOB 12-11-62
Street Address 22261 CRIDDLE LANE		Apt #	City BIG LAKE	State WA	ZIP 98274	Res. Status: 4	
Residence Phone: 3604200219		Business Phone:		Employment/Occupation/School	Type Victim 5	Type Injury 6	Victim of OFNS# OFNDR#
No O-1	Non-Disc <input type="checkbox"/>	NAME (Last, First, Middle) ROMERO, DANIKA ERIN		Race 3	Eth 3	Sex F	DOB 07-16-80
Street Address 5115 WOODLAWN AVE		Apt #	City EVERETT	State WA	ZIP 98203	Res. Status: 4	
Residence Phone:		Business Phone:		Employment/Occupation/School	Type Victim 5	Type Injury 6	Victim of OFNS# OFNDR#
No. of Suspects/Arrested Persons in this Incident:				Suspect Codes: A - Arrest, R - Runaway, S - Suspect, M - Missing, I - Institutional (Mental/Detox), X - Other			
No S-2	NAME (Last, First, Middle) TAYLOR, AMY CAROL		Race 3 W	Eth 3 N	Sex F	DOB 06-01-78	AGE 5'5
Alias Name(s)		Identifiers					
Street Address 22716 121 DR NE		Apt #	City ARLINGTON	State WA	ZIP 98223	Res. Status:	
Employment / Occupation / School		Business Phone		SSN 537865733	Driver's Lic/D Card No TAYLOAC223LA		State WA
IBR Arrest Offense No.	Booked / Where		Booking #		Charges		Crabon/Warrant
Arrest Date:		Location of Arrest:		Arrestee Armed with		Identification No.	
Affiliation		On View Arrest <input type="checkbox"/>	Cited <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Statement <input checked="" type="checkbox"/> Oral <input type="checkbox"/> Written	Charges <input type="checkbox"/> Admitted <input type="checkbox"/> Denied	Multi Clear <input type="checkbox"/>	
Juvenile Parent/Guardian Notified <input type="checkbox"/> Yes <input type="checkbox"/> No		Name/Relationship of Person Notified		Date/Time Notified		Notified by	
Disposition of Juvenile <input type="checkbox"/> H <input type="checkbox"/> R 8							
VEHICLE CODES: <input type="checkbox"/> Stolen # <input type="checkbox"/> Recovered #		<input type="checkbox"/> Located <input type="checkbox"/> Impounded <input checked="" type="checkbox"/> Evidence / Impounded		<input type="checkbox"/> Seized/Narc <input type="checkbox"/> Abandoned		<input type="checkbox"/> Damaged/Vandalized <input type="checkbox"/> Other	
<input type="checkbox"/> Victim's Vehicle <input checked="" type="checkbox"/> Suspect's Vehicle		<input type="checkbox"/> Hold For who:					
No V-1	License Number B18644C	State WA	Vin / Hull No. 1GCCS19Z2R8238073	Year 1994	Make CHEVROLET	Model S10	Style PU
Color BLUE		Special Features / Description		Value \$		Driver is: <input type="checkbox"/> R/D <input checked="" type="checkbox"/> Person # S-2	
Registered Owner's name MARSH, AMANDA		Registered Owner's Address 15817 77 AVE NE ARLINGTON, WA					
Vehicle Disposition <input type="checkbox"/> Left at Scene <input type="checkbox"/> Driven Away <input checked="" type="checkbox"/> Impounded		Tow Company/Address/Phone RELEASED TO RO					
Locked	Keys in Vehicle	Delinquent Payment	Victim Consent	Theft Ins.	Drive able	Damage to Vehicle	Specify damage by Shading damaged area <input type="checkbox"/> Top <input type="checkbox"/> Underside
7 5 3 1		8 6 4 2		Damage Est. \$			
<p>MAKING FALSE REPORTS TO PUBLIC OFFICERS: (1) A PERSON COMMITS THE CRIME OF MAKING A FALSE REPORT IF HE/SHE WILLFULLY MAKES ANY UNTRUE, MISLEADING OR EXAGGERATED STATEMENT IN ANY REPORT TO A POLICE OR FIRE DEPT. (2) MAKING A FALSE REPORT IS A MISDEMEANOR. IF PROPERTY CRIME: I DID NOT GIVE ANYONE PERMISSION TO ENTER MY PREMISES AND/OR TAKE/REMOVE/DAMAGE MY PROPERTY/VEHICLE. IF FOUND PROPERTY, I HAVE BEEN ADVISED OF CHAPTER 63 OF THE R.C.W. AND () I DO () I DO NOT WISH TO CLAIM THE PROPERTY IF THE TRUE OWNER CANNOT BE FOUND</p> <p>() I ACCEPT LIABILITY FOR TOWING AND STORAGE IF IT IS RECOVERED AND I AM NOT IMMEDIATELY AVAILABLE TO CLAIM IT.</p> <p>() THE NAMED JUVENILE IS PRESENTLY A RUNAWAY</p> <p>() THE NAMED PERSON IS PRESENTLY MISSING</p> <p>() I AGREE TO HOLD HARMLESS AND DEFEND SNOHOMISH COUNTY FROM ANY AND ALL CLAIMS RESULTING FROM THE RELEASE OF THE VEHICLE TO ME.</p> <p>() I RELEASED PROPERTY TO _____</p> <p>() I HAVE READ, UNDERSTAND AND AGREE TO THE ABOVE (Signature of person/date) _____</p>							
Officer Name/Number DAN DUSEVOIR 1468		Court code		Approved by <i>[Signature]</i>		Assigned	
IBR Clearance: (one) <input checked="" type="checkbox"/> ARR/A <input type="checkbox"/> ARR/J <input type="checkbox"/> EXC/A <input type="checkbox"/> EXC/J <input type="checkbox"/> INSUFF/CLO <input type="checkbox"/> OTHER/CLO <input type="checkbox"/> UNF		Copies made for: <input type="checkbox"/> PA <input type="checkbox"/> CPS <input type="checkbox"/> JUV <input type="checkbox"/> Court <input type="checkbox"/> PAT <input type="checkbox"/> DSHS <input type="checkbox"/> M: <input checked="" type="checkbox"/> Detectives <input type="checkbox"/> Other		DATA ENTRY REV / 12-8-03			

REPORT NUMBER
SO 10-16330

16

NARRATIVE

ORIGINAL PAGE 1 OF 8

AGENCY NAME SNOHOMISH COUNTY SHERIFF'S OFFICE	INCIDENT CLASSIFICATION VUCSA/PSP	INCIDENT NUMBER SO 10-16330
NAME OF ORIGINAL VICTIM(S)		REPORT DATE

Initial Stop

On 09-03-10 around 0112 hours I was in the area of 528 and Hwy 9 when I heard a Marysville Officer Pete Shove make a traffic stop with a warrant subject in the area of 9400 84th St NE. As he made the stop, he broadcast that a second vehicle had pulled over and stopped with them.

I responded to Officer Shove's location to assist. My initial concern was that the occupants of the other vehicle were intending to interfere with Officer Shove's investigation. I had no additional information at the time of my arrival.

When I arrived on scene I saw that the vehicle on the traffic stop was parked directly in front of Officer Shove's patrol car. Approximately 25 yards east of the stop location, was a blue Chevrolet S-10, with a large amount of property in the back. I pulled in directly behind the pickup and activated my rear facing flashing lights.

I approached the pickup, WA B18644C, and made contact with the occupants around 0112 hours. I immediately recognized the driver, Amy Taylor, and the passenger, Erin Graafstra. Taylor and Graafstra are well known among area Deputies and Officers from prior VUCSA contacts. My last contact with Taylor and Graafstra was a traffic stop which resulted in a successful search warrant, and the recovery of a large amount of methamphetamine and cash.

Upon contact, Taylor told me that she didn't know what was going on, and thought that the Marysville Officer was trying to stop them as well. I advised her that I was merely there to assist, and did not know if they wanted to speak with her. I asked her if she was valid. She told me that she was and handed me a Washington driver license.

I ran Taylor and Graafstra over the radio. The dispatcher advised me that Graafstra was clear and current, but Taylor had a warrant for theft.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

OFFICER NAME/NUMBER D. DUBOIS 1468			APPROVED BY 		
IBR CLEARANCE : <input type="checkbox"/> ARR/A <input type="checkbox"/> EXC/A <input type="checkbox"/> INSUFF/ CLO <input type="checkbox"/> ARR/J <input type="checkbox"/> EXC/J <input type="checkbox"/> OTHER/ CLO <input type="checkbox"/> UNF	COPIES MADE FOR <input type="checkbox"/> PA <input type="checkbox"/> CPS <input type="checkbox"/> JUV <input type="checkbox"/> PA <input type="checkbox"/> DSHS <input type="checkbox"/> MH	<input type="checkbox"/> COURT. <input type="checkbox"/> DET. <input type="checkbox"/> OTHER	CAS / EVC / SOUTH / EVT PREC / CTR / SIU	DATA ENTRY	

7

NARRATIVE

ORIGINAL

AGENCY NAME SNOHOMISH COUNTY SHERIFF'S OFFICE	INCIDENT CLASSIFICATION VUCSA/PSP	INCIDENT NUMBER SO 10-16330
NAME OF ORIGINAL VICTIM(S)		REPORT DATE

I told Taylor that she had a warrant and advised her that she was under arrest. In her left hand I could see that she was holding her wallet and a small sized folder containing vehicle information. Her seatbelt was already off. I opened her door and took hold of her left wrist. She immediately tensed up and began twisting her body to the right. It appeared to me that she was trying to get rid of something that she was holding, or attempting to retrieve something between the seats. I immediately pulled her from the vehicle and took control of her hands but she remained tensed up, and had balled her fists. I told her to drop the wallet and folder but she continued to hold her grip. I pulled the wallet and folder from her hands and dropped them to the ground. As I cuffed Taylor, she suddenly opened her hands and appeared to drop something, but lighting conditions were poor and I did not see what fell. She then confirmed my suspicion by grinding her foot in the gravel and then kicking something away. I searched Taylor, and put her in the back seat of my patrol car.

Marysville Officer Bartl was with me and around 0125 hours I asked him if K9 Sgt. Johnson was available to apply his narcotic canine to the vehicle. Officer Bartl called Sgt. Johnson on the phone and advised me that he was en route.

I later searched the area near the pickup for approximately 30 minutes but the thick gravel on the road we were on made the search difficult, and I was unable to locate anything.

I Mirandized Taylor. She told me she understood her rights and wanted to talk to me. Taylor stated that she borrowed the pickup from Amanda Marsh in the morning of 09-01-10. **Taylor told me that she was moving, and stated that she owned everything in the bed, but nothing in the cab was hers.**

I asked Taylor if there were any narcotics in the truck and she immediately said, "No," with no apparent thought or consideration. I felt that her answer was suspicious since, according to her, nothing in the cab was hers, but the area behind the seats was filled with bags and boxes. It seemed to me that a more appropriate answer would have been "I don't know".

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

OFFICER NAME/NUMBER <i>Subler 1468</i>			APPROVED BY 		
ICR CLEARANCE <input type="checkbox"/> ARR/A <input type="checkbox"/> EXC/A <input type="checkbox"/> INSUFF/ CLO <input type="checkbox"/> ARR/J <input type="checkbox"/> EXC/J <input type="checkbox"/> OTHER/ CLO <input type="checkbox"/> <input type="checkbox"/> UNF	COPIES MADE FOR <input type="checkbox"/> PA <input type="checkbox"/> CPS <input type="checkbox"/> JUV <input type="checkbox"/> COURT <input type="checkbox"/> PA <input type="checkbox"/> DSHS <input type="checkbox"/> MH <input type="checkbox"/> DET.			CAS / EVG / SOUTH / EVT PREC / CTR / SIU	DATA ENTRY

2

NARRATIVE

AGENCY NAME SNOHOMISH COUNTY SHERIFF'S OFFICE	INCIDENT CLASSIFICATION VUCSA/PSP	INCIDENT NUMBER SO 10-16330
NAME OF ORIGINAL VICTIM(S)		REPORT DATE

I asked Graafstra to step out of the passenger seat and she did. I patted her down for my safety. I asked her if anything in the vehicle was hers. She pointed to a yellow satchel (computer bag), a black backpack, and a gray bag, and stated that they were hers. I asked her if there were narcotics in the vehicle. Graafstra told me that she had been picked up minutes earlier and had no information or knowledge regarding what was inside the truck.

Around 0130 hours, K9 Sgt. Johnson arrived on scene with narcotic canine Brody and applied. After the application, he told me that Brody alerted to the vehicle around the passenger door seam, and that the alert was consistent with past alerts where narcotics have been located. See attachments "A" and "B" for additional information from Sgt. Johnson.

Graafstra asked me if she was free to leave and I told her that she was. She asked if she could take her bags and I told her she couldn't take the bags because it would affect the integrity of the search, but she was free to leave.

Minutes later, Graafstra walked away.

Taylor was booked for her warrant.

Mary's Tow responded to the location for the evidence impound. I watched the tow driver as he opened the driver door and secured the seat belt to the steering wheel for towing purposes, and then shut the door. At no other time did he access the cab of the pickup. At 0222 I followed the tow to the North Precinct. Upon arrival at 0234 I secured the vehicle in the storage bay. I secured the doors using evidence tape bearing my initials.

Search Warrant Service

On 09-08-10 I secured a search warrant for the pickup and served it around 2200 hours. One of the first items I located was a yellow computer bag, which I opened. Inside was an HP Presario notebook computer bearing serial number 2CE0051LFD. I ran the serial via dispatch and it returned stolen from Skagit County (see attached

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

OFFICER NAME/NUMBER D. DUSEVOIC 1468		APPROVED BY	
IBR CLEARANCE <input type="checkbox"/> ARR/A <input type="checkbox"/> EXC/A <input type="checkbox"/> INSUFF/ CLO <input type="checkbox"/> ARR/J <input type="checkbox"/> EXC/J <input type="checkbox"/> OTHER/ CLO <input type="checkbox"/> <input type="checkbox"/> UNF	COPIES MADE FOR <input type="checkbox"/> PA <input type="checkbox"/> CPS <input type="checkbox"/> JUV <input type="checkbox"/> PA <input type="checkbox"/> DSHS <input type="checkbox"/> MH	COURT: CAS / EVG / SOUTH / EVT DET: PREC / CTH / SIU OTHER:	DATA ENTRY

9

NARRATIVE

AGENCY NAME SNOHOMISH COUNTY SHERIFF'S OFFICE	INCIDENT CLASSIFICATION VUCSA/PSP	INCIDENT NUMBER SO 10-16330
NAME OF ORIGINAL VICTIM(S)		REPORT DATE

Skagit County Sheriff's Office report 10-5557). I immediately stopped my search and re-sealed the vehicle to amend the warrant.

On 09-09-10 around 2045 hours I secured the amended warrant and continued the search. See the attachment labeled "Search Notes" for an easy to read list of the items located during the search.

The yellow computer bag also contained a notebook/ledger. Based on my training and experience, I recognized the notebook as a drug sales ledger. There were no documents inside the bag to identify ownership. There was, however, a cardboard store display hanger for a set of microfiber rags. No rags were attached.

The next bag searched was the black backpack. It was on the passenger floorboard. Inside I located four microfiber rags matching the display hanger from the yellow computer bag, a "Black n' Red" notebook/ledger containing letters from Amy Taylor to Robert Simpson, indicating that she was not staying "clean", a dental retainer molded to a distinctive set of teeth, and a black card holder containing a large number of gift cards/merchandise return cards, and Graafstra's driver license - linking her to the stolen laptop computer.

There were also notes, apparently written by Graafstra, tying her to the suspect vehicle beyond her initial statements. On one note, "Amanda wants title transfer" and "Tires for short box", is written in Graafstra's handwriting.

The grey bag/purse that Graafstra had also identified was on the front passenger seat. Inside the bag were a calculator, three cell phones, twelve house keys, seven car keys, and a purple women's wallet containing Graafstra's driver license, bank cards, more gift cards, a man's gold ring, and \$1790.00 in cash.

Behind the seats of the pickup were several bags and a large black trunk. The trunk was later identified as Taylor's.

A brown backpack contained men's clothing and no identifying paperwork. No evidentiary value.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

OFFICER NAME/NUMBER DDUSV612 1460		APPROVED BY	
IBR CLEARANCE <input type="checkbox"/> ARR/A <input type="checkbox"/> EXC/A <input type="checkbox"/> INSUFF/ CLO <input type="checkbox"/> ARR/J <input type="checkbox"/> EXC/J <input type="checkbox"/> OTHER/ CLO <input type="checkbox"/> UNF	COPIES MADE FOR <input type="checkbox"/> PA <input type="checkbox"/> CPS <input type="checkbox"/> JUV <input type="checkbox"/> PA <input type="checkbox"/> DSHB <input type="checkbox"/> MH	COURT: <input type="checkbox"/> CAS / EVG / SOUTH / EVT <input type="checkbox"/> DET. <input type="checkbox"/> PREC / CTH / SIU <input type="checkbox"/> OTHER:	DATA ENTRY

10

NARRATIVE

ORIGINAL

AGENCY NAME SNOHOMISH COUNTY SHERIFF'S OFFICE	INCIDENT CLASSIFICATION VUCSA/PSP	INCIDENT NUMBER SO 10-16330
NAME OF ORIGINAL VICTIM(S)		REPORT DATE

A black "Promaster" bag had a large amount of diabetes related medication which appeared to have been left there by the intended patient, Lance Forgey.

A purple "LeSportSac" backpack, found on top of the black trunk, contained a large amount of drug paraphernalia, a digital scale with suspected methamphetamine residue, empty baggies, and a lg baggie of suspected methamphetamine.

I have been trained in the proper use and application of the Narcotic Identification Kit (NIK) system. Following the NIK manufacturer's training and instruction, I performed field test "U", for the presumptive positive identification of methamphetamine. I obtained, through visual color identification (blue), a positive reaction for the presence of methamphetamine.

In the front pocket of the green computer bag located between the seat backs and the black trunk, I found a green pen housing with suspected narcotics residue inside. In the main part of the bag, there was an HP Presario laptop computer S/N 2CE91909M0, nearly identical to the one in Graafstra's bag. I turned the laptop on and located the user name "Jacob". I contacted Hewlett Packard and they are attempting to contact the owner.

The next bag, also on top of Taylor's black trunk, is listed as the small blue "AWP" bag. The bag contained medications prescribed to Danika Romero, a butane lighter, two bags of rubber bands, a stack of plastic baggies (similar to the ones found in the purple backpack), additional drug paraphernalia, and a plastic container. The plastic container contained a digital scale with suspected methamphetamine residue, a plastic spoon, two glass smoking pipes with white and black (burned) residue, a lighter, numerous pills, and four baggies containing 104g of suspected methamphetamine.

Following the NIK manufacturer's training and instruction, I performed field test "U", for the presumptive positive identification of methamphetamine. I obtained, through visual color identification (blue), a positive reaction for the presence of methamphetamine.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

OFFICER NAME/NUMBER D. DUSEVOIC 461				APPROVED BY			
ICR CLEARANCE: <input type="checkbox"/> ARR/A <input type="checkbox"/> EXC/A <input type="checkbox"/> INSUFF/ CLO <input type="checkbox"/> ARR/J <input type="checkbox"/> EXC/J <input type="checkbox"/> OTHER/ CLO <input type="checkbox"/> <input type="checkbox"/> UNF	COPIES MADE FOR: <input type="checkbox"/> PA <input type="checkbox"/> CPS <input type="checkbox"/> JLV <input type="checkbox"/> PA <input type="checkbox"/> DSHS <input type="checkbox"/> MH	<input type="checkbox"/> COURT <input type="checkbox"/> DET. <input type="checkbox"/> OTHER	CAS / EVG / SOUTH / EVT PREC / CTH / SIU	DATA ENTRY			

11

NARRATIVE

ORIGINAL

AGENCY NAME SNOHOMISH COUNTY SHERIFF'S OFFICE	INCIDENT CLASSIFICATION VUCSA/PSP	INCIDENT NUMBER SO 10-16330
NAME OF ORIGINAL VICTIM(S)		REPORT DATE

The black trunk located in the cab directly behind the seats contained notebooks, women's clothing, mail, and numerous court documents belonging to Amy C. Taylor.

The black shoulder bag located behind the seats contained drug paraphernalia, numerous pills, a PUD letter addressed to Amanda Marsh, a personal letter addressed to Amy Taylor, a flashlight, notepad, iPod, a black women's wallet, and a pink Clinique makeup bag. The wallet contained a vehicle registration belonging to Brandon Welsh (Graafstra's former boyfriend), paperwork belonging to Amy Taylor, and Michael Torgesen's business card. Torgesen is Taylor's attorney, according to notes found in the black trunk. The pink Clinique bag contained numerous pills inside an unlabeled prescription bottle, a toothbrush, and a vibrator. The toothbrush and vibrator have been booked for DNA processing.

Directly under the seatbelt gap in the seat, where Taylor appeared to drop something during her arrest, I located a white plastic container. Inside the container were three pills and a baggy with 3g of suspected methamphetamine.

Following the NIK manufacturer's training and instruction, I performed field test "U", for the presumptive positive identification of methamphetamine. I obtained, through visual color identification (blue), a positive reaction for the presence of methamphetamine.

Follow up

On 09-10-10 I contacted poison control operator Dale Pressnall. Based on the size, shape, color, and markings, Pressnall presumptively identified the following pills located in the vehicle:

1. Black Satchel
 - a. 5 Florinol (**Schedule 3 drug**)
 - b. 10 unknown capsules
2. Clinique Bag
 - a. 5 Loperamide Hydrochloride Tablets 2 mg
 - b. 2 Excedrin
 - c. 4 Doxycaline 100 mg (**Prescription**)

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

OFFICER NAME/NUMBER DOUSEVON 1464		APPROVED BY	
IBR CLEARANCE <input type="checkbox"/> ARR/A <input type="checkbox"/> ARR/J	<input type="checkbox"/> EXC/A <input type="checkbox"/> EXC/J	<input type="checkbox"/> INSUFF/ CLO <input type="checkbox"/> OTHER/ CLO <input type="checkbox"/> UNF	COPIES MADE FOR: <input type="checkbox"/> PA <input type="checkbox"/> PA
<input type="checkbox"/> CPS <input type="checkbox"/> DSMS	<input type="checkbox"/> JUV <input type="checkbox"/> MH	<input type="checkbox"/> COURT. <input type="checkbox"/> DET.	<input type="checkbox"/> OTHER:
CAS / EVG / SOUTH / EVT PREC / CTH / SIU		DATA ENTRY	

12

ORIGINAL

NARRATIVE

AGENCY NAME SNOHOMISH COUNTY SHERIFF'S OFFICE	INCIDENT CLASSIFICATION VUCSA/PSP	INCIDENT NUMBER SO 10-16330
NAME OF ORIGINAL VICTIM(S)		REPORT DATE

- 3. Black Purse (found in the black satchel)
 - a. 2 Naproxen 500 mg (**Prescription**)
 - b. 6 Floricet (**Schedule 3 drug**)
 - c. 1 Extra Strength Tylenol
 - d. 9 Ambien (**Schedule 4 drug**)
 - e. 3 unknown
- 4. Blue "AWP" Bag
 - a. 10 Haloperidol 5mg (**Prescription**)
 - b. Methocarbamol Prescription Bottle (Romero)
 - i. 5 Methocarbamol 750 mg (**Prescription**)
 - ii. 9 Methocarbamol 500 mg (**Prescription**)
 - iii. 1 Ibuprofen 600 mg
 - c. Ibuprofen Prescription Bottle (Romero)
 - i. 7 Ibuprofen 600 mg
 - d. Tramadol Prescription Bottle (Romero)
 - i. 10 Tramadol 50 mg
 - ii. 8 Lorazepam .5 mg (**Schedule 4 drug**)
- 5. Plastic Container
 - a. 5 Generic Percocet (**Schedule 2 drug**)
 - b. 3 Methocarbamol 500 mg (**Prescription**)
 - c. 26.5 Cionazepam (**Schedule 4 drug**)
 - d. 2 Diazepam 5 mg (**Schedule 4 drug**)
 - e. 5 Oxycodone 5 mg (**Schedule 2 drug**)
 - f. 2 Generic extra strength Vicotin (**Schedule 3 drug**)
 - g. 15 Morphine (**Schedule 2 drug**)
 - h. 4 Loratadine 10 mg
 - i. 1 Unknown
 - j. 1 Empty capsule
- 6. White Plastic Container (Dropped by Taylor)
 - a. 1 Methadone 10 mg (**Schedule 2 drug**)
 - b. 2 Morphine (**Schedule 2 drug**)

The vehicle was released to Amanda Marsh (the registered owner) with the return of service attached.

I made several attempts to contact Graafstra at her residence and her mother's residence. She called in on 09-17-10 and I spoke with her. I advised her that I needed to give her a notice of seizure for the cash, and she told me that she won the money in two recent jackpots

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

OFFICER NAME/NUMBER DAKSEJG 1462		APPROVED BY	
IBR CLEARANCE () ARR/A () EXC/A () INSUFF/ CLO () ARR/J () EXC/J () OTHER/ CLO	COPIES MADE FOR () PA () CPS () JUV () PA () DSHS () MH	() COURT. () DET. CAS / EVG / SOUTH / EVT PREC / CTH / SIU	DATA ENTRY

13

NARRATIVE ORIGINAL

AGENCY NAME SNOHOMISH COUNTY SHERIFF'S OFFICE	INCIDENT CLASSIFICATION VUCSA, PSP	INCIDENT NUMBER SO 10-16330
NAME OF ORIGINAL VICTIM(S) State of Washington, Joel Marquardt		REPORT DATE

at the casino. I asked her who owned the laptop in the yellow computer bag and she told me that it was hers. I asked her where she got the laptop and she told me she purchased it from a storage unit auction, but could not recall where it was. Graafstra told me that she had receipts for the computer and the casino winnings and would meet with me later in the evening to provide those, and handle the notice of seizure. Graafstra never called back. I provided the notice of seizure via certified mail. Postal Service receipts are attached.

Numerous attempts to contact Lance Forgey and Danika Romero for follow up interviews have gone unanswered.

Recommendation

Forward to Prosecutor for review

Attachments

- Search Warrant
- Evidence Report
- Seizure
- Photocopies
- Associated Names
- CAD
- Search Notes
- Skagit Burglary Report
- Tow/Impound
- Photos

Duce

Duce

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

OFFICER NAME/NUMBER <i>Ducevoic 1468</i>				APPROVED BY			
ICR CLEARANCE : <input type="checkbox"/> ARR/A <input type="checkbox"/> EXC/A <input type="checkbox"/> INSUFF/ CLO <input type="checkbox"/> ARR/J <input type="checkbox"/> EXC/J <input type="checkbox"/> UNF	COPIES MADE FOR <input type="checkbox"/> PA <input type="checkbox"/> CPS <input type="checkbox"/> JUV <input type="checkbox"/> PA <input type="checkbox"/> DSHS <input type="checkbox"/> MH	COURT: <input type="checkbox"/> DET: <input type="checkbox"/> OTHER:	CAS / EVG / SOUTH / EVT PREC / CTH / SIU	DATA ENTRY			

14

CASCADE DIVISION DISTRICT COURT

STATE OF WASHINGTON)
COUNTY OF SNOHOMISH)

NO. _____

SEARCH WARRANT

TO ANY PEACE OFFICER IN THE STATE OF WASHINGTON:

Upon the sworn complaint before me, it appears that there is probable cause to believe that the crime(s) of **POSSESSION STOLEN PROPERTY**, has been committed; or reasonably appears about to be committed; or a person for whose arrest there is probable cause; or who is unlawfully restrained are concealed in or on certain premises, vehicle, or persons within Snohomish County, Washington.

This search warrant incorporates by reference the affidavit of probable cause for search warrant.

YOU ARE COMMANDED TO:

1. **Search, within ten (10) days of this date, the premises, vehicles, persons, or items listed below:**
 - A) The entire vehicle, a BLUE 1994 CHEVROLET S10 bearing Washington State license plate # B18644C and VIN # 1GCCS19Z2R8238073, to include any locked or unlocked containers found therein. The vehicle is currently located in a secured vehicle bay at the Snohomish County Sheriff's Office North precinct. The address at the North Precinct is 15100 40th Ave NE, Marysville, WA 98270.
2. **Seize, if located, the following property or person(s):**
 - A) Any property identified as being stolen.
3. **Promptly return this warrant to me or the clerk of this court. The return must include an inventory of all property seized.**
4. **A copy of this warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at the place where the property is found.**

Date: _____

Judge or Commissioner

Printed Name

5

CASCADE DISTRICT COURT

STATE OF WASHINGTON)
COUNTY OF SNOHOMISH)

NO: _____

ADDENDUM FOR SEARCH WARRANT

This addendum incorporates by reference the affiant's prior training, experience, and other facts set forth regarding warrant #CAT 92.

AFFIANT'S BELIEF IS BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

On 09-08-10 at 2200 hours while on duty in Snohomish County Washington, I served a search warrant on a BLUE 1994 CHEVROLET S10 bearing Washington State license plate # B18644C and VIN # 1GCCS19Z2R8238073, to include any locked or unlocked containers found therein. The vehicle was and is located in a secured vehicle bay at the Snohomish County Sheriff's Office North precinct. The address at the North Precinct is 15100 40th Ave NE, Marysville, WA 98270. The vehicle was impounded as evidence reference SO10-16330. The vehicle was taken from Amy Taylor (driver) and Erin Graafstra (passenger) by Deputy Dusevoir on 09-03-10 and taken to the SCSO North Precinct pending the search warrant.

Inside the vehicle I located a yellow satchel, previously identified as belonging to Erin Graafstra. Inside the satchel was a Hewlett Packard Presario notebook bearing serial number 2CE0051LFD. I ran the serial number via dispatch and it returned listed as one of several items stolen from Skagit County burglary (10-05557).

Because I located this laptop inside the suspect vehicle, and it has been confirmed as stolen property I am requesting an addendum to my search warrant to include evidence of the crime of possession of stolen property.

I NOW BELIEVE THAT EVIDENCE OF THE CRIME OF POSSESSION OF STOLEN PROPERTY WILL BE LOCATED INSIDE THE VEHICLE.

I believe that probable cause exists to search and / or seize...

- 1) All property identified as being stolen within the BLUE 1994 CHEVROLET S10 bearing Washington State license plate # B18644C and VIN # 1GCCS19Z2R8238073

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 09 day of September, 2010 @ 0017 hrs.

D. Dusevoir - 1468
Daniel Dusevoir

Snohomish County Sheriff's Office / Deputy / #1468
Agency, Title, and Personnel Number

Issuance of Warrant Approved:

Langbehn, Bob Bar #37508 @ 0800hrs. this 09th day of September, 2010.
Deputy Prosecuting Attorney

Subscribed and Sworn before me this 09th day of September, 2010.

Judge or Commissioner

(26)

FILED

SEP 08 2010

CASCADE DIVISION DISTRICT COURT

District Court
Cascade Division

STATE OF WASHINGTON)
COUNTY OF SNOHOMISH)

NO. CAT-92

SEARCH WARRANT

TO ANY PEACE OFFICER IN THE STATE OF WASHINGTON:

Upon the sworn complaint before me, it appears that there is probable cause to believe that the crime of VUCSA, Possession of a Controlled Substance has been committed; or reasonably appears about to be committed; or a person for whose arrest there is probable cause; or who is unlawfully restrained are concealed in or on certain premises, vehicle, or persons within Snohomish County, Washington.

This search warrant incorporates by reference the affidavit of probable cause for search warrant.

YOU ARE COMMANDED TO:

1. Search, within ten (10) days of this date, the premises, vehicles, persons, or items listed below.


The entire vehicle, a BLUE 1994 CHEVROLET S10 bearing Washington State license plate # B18644C and VIN # 1GCCS19Z2R8238073, to include any locked or unlocked containers found therein. The vehicle is currently located in a secured vehicle bay at the Snohomish County Sheriff's Office North precinct. The address at the North Precinct is 15100 40th Ave NE, Marysville, WA 98270.

2. Seize, if located, the following property or person(s):

Evidence listed for the crime(s) above, including, but not limited to: Latent finger prints, any property not identified as belonging to the registered owner of the vehicle, all controlled substances and illegal drugs, found individually or together with the vessels in which they are contained, or were manufactured with including narcotic paraphernalia, plastic baggies, smoking pipes, screens, needles, caps, cotton balls, cotton swabs, spoons, straws, lighters. Any paperwork indicating dominion and control of the vehicle, including, but not limited to: vehicle registrations, bills of sales, transfers of titles, insurance paperwork, pay stubs, mail, driver's licenses, identifications, check books, receipts, notes, letters, pawn slips or any other item deemed beneficial in aiding the investigation of the crimes listed above.

3. Promptly return this warrant to me or the clerk of this court. The return must include an inventory of all property seized.
4. A copy of this warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at the place where the property is found.

Dated: 9/8/2010


Judge or Commissioner
Jay F. Wiseman
Printed Name

CASADE DIVISION DISTRICT COURT

STATE OF WASHINGTON)

NO. CA-92

ss.

COUNTY OF SNOHOMISH)

AFFIDAVIT FOR SEARCH WARRANT

The undersigned on oath states:

That Affiant believes that:

- Evidence of the crime of, POSSESSION OF A CONTROLLED SUBSTANCE
- Contraband, the fruits of a crime, or things otherwise criminally possessed, and
- Weapons or other things by means of which a crime has been committed or reasonably appears about to be committed, and
- A person for whose arrest there is probable cause, or who is unlawfully restrained

are located in, on, or about the following described premises, container, vehicle or person:

The entire vehicle, a BLUE 1994 CHEVROLET S10 bearing Washington State license plate # B18644C and VIN # 1GCCS19Z2R8238073, to include any locked or unlocked containers found therein. The vehicle is currently located in a secured vehicle bay at the Snohomish County Sheriff's Office North precinct. The address at the North Precinct is 15100 40th Ave NE, Marysville, WA 98270.

MY BELIEF, IN PART, IS BASED ON THE FOLLOWING TRAINING, KNOWLEDGE, AND EXPERIENCE

I began my education at Western Oregon University and graduated in 2006 with a Bachelor of Arts Degree in Psychology. During this time I completed my major course work as required by the University and worked as an Intern with the Oregon State Police. I assisted in various investigations ranging from sex crimes to homicide investigations, and helped with an evidence warehouse move. During this time I was exposed to the basic principles of criminal investigation, evidence collection and interviewing techniques of witnesses and suspects.

In June 2006 I was hired as a full time, fully commissioned Police Officer for the Snohomish County Sheriff's Office. I attended the Basic Law Enforcement Academy in Burien, WA and received in excess of 720 hours of professional Law Enforcement education. I have been trained in the collection of DNA at crime scenes, and successfully completed the three day interview and interrogation course taught by John E. Reid and Associates.

During my law enforcement career I have been trained in criminal investigations pertaining to property crimes, evidence collection, and narcotics violations. I have assisted in the investigation of several "Chop Shops," (illegal vehicle wrecking operations, mostly associated with stolen vehicles) and illegal wrecking yard cases. I have experience with VIN replacement and other discrepancies such as color or year when compared to DOL records. I have also recovered many stolen vehicles where the vehicle itself has been spray painted or damaged intentionally to deface or remove identifying marks, emblems or wording. I have been involved in many theft, burglary, and drug cases during which evidence and confessions obtained by me have been successfully used to found fruitful cases and convictions.

I am certified in the use of the NIK Field Test to identify types of dangerous drugs. I have experience in investigating and assisting in investigations involving: possession and sales of cocaine, heroin, methamphetamine, marijuana, and other dangerous drugs. I have training and experience in the investigation of

28

CAT-92

narcotics from highly experienced deputies. Through my training and experience, I have become familiar with the appearance of these drugs and their related paraphernalia. I have assisted in the service of search warrants for dangerous drugs that have proven to be fruitful.

THE AFFIANT'S BELIEF IS BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

On 09-03-10 around 0112 hours I was in the area of 528 and Hwy 9 when I heard a Marysville Officer Pete Shove make a traffic stop with a warrant subject in the area of 9400 84th St NE. As he made the stop, he broadcast that a second vehicle had pulled over and stopped with them.

I responded to Officer Shove's location to assist. My initial concern was that the occupants of the other vehicle were intending to interfere with Officer Shove's investigation. I had no additional information at the time of my arrival.

When I arrived on scene I saw that the vehicle on the traffic stop was parked directly in front of Officer Shove's patrol car. Approximately 25 yards east of the stop location, was a blue Chevrolet S-10, with a large amount of property in the back. I pulled in directly behind the pickup and activated my rear facing flashing lights.

I approached the pickup, WA B18644C, and made contact with the occupants around 0112 hours. I immediately recognized the driver, Amy Taylor, and the passenger, Erin Graafstra. Taylor and Graafstra are well known among area Deputies and Officers from prior VUCSA contacts. My last contact with Taylor and Graafstra was a traffic stop which resulted in a successful search warrant, and the recovery of a large amount of methamphetamine and cash.

Upon contact, Taylor told me that she didn't know what was going on, and thought that the Marysville Officer was trying to stop them as well. I advised her that I was merely there to assist, and did not know if they wanted to speak with her. I asked her if she was valid. She told me that she was and handed me a Washington driver license.

I ran Taylor and Graafstra over the radio. The dispatcher advised me that Graafstra was clear and current, but Taylor had a warrant for theft.

I told Taylor that she had a warrant and advised her that she was under arrest. In her left hand I could see that she was holding her wallet and a small sized folder containing vehicle information. Her seatbelt was already off. I opened her door and took hold of her left wrist. She immediately tensed up and began twisting her body to the right. It appeared to me that she was trying to get rid of something that she was holding, or attempting to retrieve something between the seats. I immediately pulled her from the vehicle and took control of her hands but she remained tensed up, and had balled her fists. I told her to drop the wallet and folder but she continued to hold her grip. I pulled the wallet and folder from her hands and dropped them to the ground. As I cuffed Taylor, she suddenly opened her hands and appeared to drop something, but lighting conditions were poor and I did not see what fell. She then confirmed my suspicion by grinding her foot in the gravel and then kicking something away. I searched Taylor, and put her in the back seat of my patrol car.

Marysville Officer Bartl was with me and around 0125 hours I asked him if K9 Sgt. Johnson was available to apply his narcotic canine to the vehicle. Officer Bartl called Sgt. Johnson on the phone and advised me that he was en route.

CAT 92

I later searched the area near the pickup for approximately 30 minutes but the thick gravel on the road we were on made the search difficult, and I was unable to locate anything.

I Mirandized Taylor. She told me she understood her rights and wanted to talk to me. Taylor stated that she borrowed the pickup from Amanda Marsh in the morning of 09-01-10. Taylor told me that she was moving, and stated that she owned everything in the bed, but nothing in the cab was hers.

I asked Taylor if there were any narcotics in the truck and she immediately said, "No," with no apparent thought or consideration. I felt that her answer was suspicious since, according to her, nothing in the cab was hers, but the area behind the seats was filled with bags and boxes. It seemed to me that a more appropriate answer would have been "I don't know".

I asked Graafstra to step out of the passenger seat and she did. I patted her down for my safety. I asked her if anything in the vehicle was hers. She pointed to a yellow satchel, a black backpack, and a gray bag, and stated that they were hers. I asked her if there were narcotics in the vehicle. Graafstra told me that she had been picked up minutes earlier and had no information or knowledge regarding what was inside the truck.

Around 0130 hours, K9 Sgt. Johnson arrived on scene with narcotic canine Brody and applied. After the application, he told me that Brody alerted to the vehicle around the passenger door seam, and that the alert was consistent with past alerts where narcotics have been located. See attachments "A" and "B" for additional information from Sgt. Johnson.

Graafstra asked me if she was free to leave and I told her that she was. She asked if she could take her bags and I told her she couldn't take the bags because it would affect the integrity of the search, but she was free to leave. Minutes later, Graafstra walked away.

Taylor was booked for her warrant.

Mary's Tow responded to the location for the evidence impound. I watched the tow driver as he opened the driver door and secured the seat belt to the steering wheel for towing purposes, and then shut the door. At no other time did he access the cab of the pickup. At 0222 I followed the tow to the North Precinct. Upon arrival at 0234 I secured the vehicle in the storage bay. I secured the doors using evidence tape bearing my initials.

Based on the investigation, witness statements and deputy observations, it is my belief that the 1994 Chevrolet S-10 now contains illegal narcotics. Based on the totality of circumstances, I am requesting a search warrant for the entire vehicle, to include any locked or unlocked containers therein.

I believe a diligent search of the entire suspect vehicle (located at the North Precinct is 15100 40th Ave NE, Marysville, WA 98270); a BLUE 1994 CHEVROLET S-10 bearing Washington State license plate # B18644C and VIN # 1GCCS19Z2R8238073, to include any locked or unlocked containers found therein will result in the recovery of Marijuana, Cocaine, Heroin or Methamphetamine, and will aid greatly in gathering evidence for VUCSA.

I certify (Or declare) under penalty of perjury under the Laws of the State of Washington, that the foregoing is true and correct.

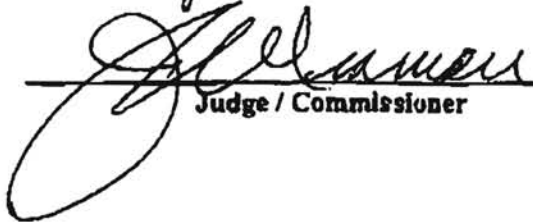
D. DUROVOIR 1/6/10 9-B-10
Affiant

AFFIDAVIT FOR SEARCH WARRANT PAGE 4 OF 4

CAT-92

SNOWDEN MISH CO. SO. DEPUTY ATFB
Agency, Title and Personnel Number

Subscribed and Sworn to before me this 8TH day of September 2010



Judge / Commissioner

Issuance of Warrant Approved:

Randall W. Yates BAR 08-305
Deputy Prosecuting Attorney

ATTACHMENT "A"

CAT-92

Canine and Handler Resume

Affiant has been a police officer with the City of Marysville for 11 years. Affiant graduated from the basic law enforcement academy with training in narcotics investigation and recognition. Affiant has attended 40 hours of Field Officer Training and is a current Field Training Officer. Affiant has been trained by a certified instructor in the use of the Becton Dickson NIK field test system, have used it many times with a 100% accuracy rate confirmed by Washington State Crime Laboratories. Affiant has also attended a 4 week narcotic detection canine program with canine Brody under the direction of trainer Fred Helfers a master canine trainer with over 20 years experience in Narcotic Detection Dog Training. Affiant is also a member of the Marysville Police Department Entry Team specializing in the service of high risk narcotic related search warrants.

"PSD Brody"

K9 Brody has successfully completed a 14 week course of training for the detection of odors emanating from Marijuana, Cocaine, Heroin and Methamphetamine. This course of training was conducted at Cedarhome Kennels, Stanwood Washington; under the direction of trainer Fred Helfers. Further, K9 Brody and his handler Officer Johnson successfully completed a 4 week Detection Dog Handler course conducted at Cedarhome Kennels. K9 Brody is a 7 1/2 year old, chocolate Labrador Retriever.

K9 Brody is trained to give an aggressive alert to the presence odors emanating from controlled substances. This alert is described as a change of behavior, characterized by a tail flag, mouth closure, intensive sniffing and / or focusing on a specific area. This alert phase manifests itself by culminating into a specific alert where K9 Brody will aggressively scratch and / or bite at the source of the odor.

K9 Brody and her handler Officer Johnson have performed over 800 applications where controlled substances were discovered and / or the odor of controlled substances was present.

Brody is certified yearly by the Pacific Northwest Police Detection Dog Association. Brody's last certification was on May 21st 2010.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. (RCW 9A.72.085)

Sergeant J. Johnson #8041

9-3-2010

Signature *[Handwritten Signature]*
Officer Name & Number

Date 9-3-2010
Marysville, Washington

ATTACHMENT "B"

CH-92

I Sergeant J. Johnson am a fully commissioned Police sergeant assigned to the Marysville Police Department, Patrol Division/Narcotic K9 Handler. On the above date and time my assignment on this day was as patrol sergeant. I was wearing an authorized Marysville Police Department patrol uniform complete with patches and badge, and riding in a fully marked Marysville Police Department patrol car equipped with emergency lights, siren and decals.

On 9-3-2010 at about 0130 hours I was contacted by Officer Bartl regarding a traffic stop he was on with SCSO Deputy Dusevoir in the 9400 block of 84th St NE. Officer Bartl said that one of the occupants of the vehicle Amy C. Taylor was taken into custody on a warrant. Officer Bartl also stated that Taylor was clear grinding something into the gravel with her foot while she was being contacted. Officer Bartl also stated the second subject in the vehicle was Erin E. Graafstra. I recognized Graafstra's name from several VUCSA related contacts in the past. Officer Bartl then asked me to apply trained narcotic canine Brody to the vehicle.

I arrived on scene at about 0135 hours and saw the blue 1994 Chevrolet S-10 pickup Washington License B18644C in front of Deputy Dusevoir's patrol car. I confirmed that it was the vehicle involved and applied trained narcotic canine Brody to the vehicle. Brody started sniffing the passenger side rear corner of the vehicle and then continued down the passenger side. When Brody reached the passenger side door he demonstrated a change of behavior consisting of mouth closure and intense sniffing. Brody then continued down the passenger side to the front of the vehicle. When Brody reached the driver's side door he again demonstrated a change of behavior consisting of mouth closure and intense sniffing and then continued down the driver's side to the back of the vehicle. As Brody was sniffing down the passenger side he again demonstrated a change of behavior consisting of mouth closure and intense sniffing followed by a specific alert consisting of aggressive scratching on the passenger side door seam. This alert is consistent with past alerts where narcotic odors were present and narcotics have been located. I then advised Deputy Dusevoir of the positive alert and the location.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. (RCW 9A.72.085)

Sergeant J. Johnson #0041

9-3-2010

Signature J. Johnson
Officer Name & Number

Date 9-3-2010
Marysville, Washington

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 69799-4-I
)	
AMY TAYLOR,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28TH DAY OF JUNE, 2013, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | | | |
|-----|---|-------------------|-------------------------------------|
| [X] | SETH FINE, DPA
SNOHOMISH COUNTY PROSECUTOR'S OFFICE
3000 ROCKEFELLER
EVERETT, WA 98201 | (X)
()
() | U.S. MAIL
HAND DELIVERY
_____ |
| [X] | AMY TAYLOR
4718 140 TH ST NW
MARYSVILLE, WA 98271 | (X)
()
() | U.S. MAIL
HAND DELIVERY
_____ |

SIGNED IN SEATTLE, WASHINGTON, THIS 28TH DAY OF JUNE, 2013.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
☎(206) 587-2711