

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

FILED  
COURT OF APPEALS  
DIVISION II

STATE OF WASHINGTON )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 JUAN GOMEZ VASQUEZ )  
 (your name) )  
 )  
 Appellant. )

2013 APR 11 PM 12:05

STATE OF WASHINGTON

No. 43422-9-III

BY [Signature]  
DEPUTY

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, Juan Gomez Vasquez, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

Speedy trial violations

Additional Ground 2

The trial court error denying suppression of statements under 3.5. Violating MIRANDA RIGHTS CARD due process.

If there are additional grounds, a brief summary is attached to this statement.

Date: 4-9-13

Signature: [Signature]

Additional Ground 3.

Violation of failure to Challenge affidavit in Support of Search Warrant and failure to find Methamphetamine in Side the residence. The fact that the items should have been Supress under 3-6. of residence during a execution of Search warrant on September 7th 2011, also the arrest warrant was invalid because the house did not have narcotics Methamphetamine.

Additional Ground 4.

Lack of evidence to Convict of Delivery of Controlled Substance.

Additional Ground 5.  
Lost of Controlled Substance buy.

Additional Ground 6.

Lack of Criminal element, the actual Delivery, and the instruction to lesser included offense.

STATE V. JOHNSON, 90 Wn. App. 54, 950 P.2d 981 (1998) on appeal  
a conviction may be reversed if cumulative trial error reasonably materially  
affected the outcome of the case even if none of the errors individually warrant  
reversal.

under CR 8.3.(b) a trial court discretionary power to dismiss a Criminal  
prosecution in the furtherance of justice under showing of arbitrary action or governmental  
misconduct. Simple mismanagement constitutes misconduct. Even if the government action  
is not evil or dishonest.

If appellant makes at least a prima facie showing of actual prejudice  
on record that prejudice was actual part of the criminal trial but the  
the merits of the contentions can be determined. The Court should remand  
the appeal and reversal for a full hearing on the merits or for a reference  
hearing pursuant to RAP 16.11(a) and RAP 16.12,

If appellant fails to meet the threshold burden of showing actual prejudice  
arising from constitutional error or a fundamental defect resulting in a miscarriage  
of justice if the court is convinced, appellant has proven actual prejudicial  
error the court should reverse the trial conviction and sentence.

# SPEEDY TRIAL OBJECTIONS

Cr.R. RULE. 3.3. Cr.R.L.J.

Rule 3.3. (b), (i), (ii). 60 days after the commencement date specified in this rule or

time specified in subsection (b)(5) Allowable time after excluded period, if any period of time is excluded pursuant to section (c)

and (c) Commencement date. (1) initial commencement date. The initial commencement date shall be the date of arraignment as determined under

Cr.R.L.J. 4.1. (3) Objection to trial setting. A party who objects to the date set on the grounds that it is not within the time limits prescribed by this rule must, within 10 days after the notice mailed or otherwise given, move that the court set a trial date within those time limits.

Such motion shall be promptly note for any reason by the moving party in accordance with local procedures.

The defense counsel failure to file proper motions to address the objections during all continuances for trial is noted in the court file.

Under (f) Continuances or other delays may be granted as follows:

(1) Written Agreement. Upon written agreement of the parties which must be signed by "Defendant" or all "Defendants" the court may continue the trial to a specified date.

The appellant argues the fact that the (1) defense counsel violated due process of Speedy trial procedures under Rule 3.3. by failing to file the proper documents including the fact, the trial court and the court error to address the objections made by the defendant, is noted on court file the appellant Object to continued for trial, "Verbatim Report of Proceedings,"

(1)

Speedy trial Objections under 3.3.

Before Honorable, EDMUND MURPHY, dated on 26<sup>th</sup> day of October and the 13<sup>th</sup> day of December including 3-5-12 before Ronald Wilpepper.

### 3.3 Speedy trial Violations.

CHARGES SHOULD HAVE BEEN DISMISSED DUE TO THE VIOLATION OF MY CONSTITUTIONALLY PROTECTED RIGHT TO A FAIR AND SPEEDY TRIAL.

There were numerous Continuances granted over my Continued objections; the fact of whether defense Counsel or the prosecutor requested the majority of them is irrelevant, in seeking this prejudicial act.

Cr.R 3.3 (c)(4) A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment-arraignment.

Cr.R 3.3 (c)(2) - It shall be the responsibility of the court to ensure a trial in accordance within this rule to each person charged with a crime.

Cr.R 3.3 (i) A criminal charge not brought to trial within the time period provided by this rule shall be dismissed with prejudice.

WASHINGTON CRIMINAL COURT RULES, like Statutes, should be construed to foster the purpose for which they were enacted, In RE Mc Glothden, 99 Wn. 2d 515, 522, 633 P.2d 1330 (1983). The purpose behind Cr.R 3.3 is to provide "a prompt trial for the defendant once prosecution is initiated" STATE v. EDWARDS, 99 Wn. 2d 208, 216, 616 P.2d 620 (1980).

(2)

Speedy trial Objections under 3.3.

The State is primarily responsible for seeing that the defendant is tried in a timely manner, although the trial court is ultimately responsible for enforcing the speedy trial rule. STATE v. KINGVOGEL, 110 Wn. App. 750, 754, 43 P.2d 73 (2002) (citing STATE v. ROSS, 98 Wn. App. 1, 4, 981 P.2d 962 (1999)). In bringing the defendant to trial the prosecutor must uphold its duty in good faith and due diligence. The failure to comply with the speedy trial rule requires dismissal, whether or not the defendant can show prejudice or not, KINGVOGEL at 756, ROSS at 5.

"Criminal Charges must be dismissed with prejudice unless the accused is speedily brought to trial, CrR 3.3(i) STATE v. GREENWOOD, 120 Wn.2d 585 591, 845 P.2d 971 (1973).

Dismiss any criminal prosecution due to the arbitrary action or governmental misconduct, when there has been prejudice to the rights of the accused affect the rights of the accused right to a fair trial. CrR 8.3(b) STATE v. MICHIELLI, 132 Wn.2d 228, 244-45, 937 P.2d 587 (1997).

### THE STATE VIOLATED APPELLANTS STATE AND FEDERAL CONSTITUTIONAL RIGHT TO A FAIR AND SPEEDY TRIAL. VI ~~AMENDMENT~~ AMENDMENT. Article 1, Sect 22.

The right to a speedy trial ~~guaranteed~~ guaranteed under the Six Amendment of the U.S. Constitution, which was made applicable to the States, STATE v. STRIKER, 87 Wn.2d 870, 872, 557 P.2d 847 (1976) Citing KLUPTER v. NORTH CAROLINA, 386 U.S. 213, 18 L Ed 2d 1, 87 S.Ct. 988 (1967) attaches when an indictment or information is filed... STRIKER at 872 Citing U.S. v. MARION, 404 U.S. 307, 30 L Ed 2d 468, 92 S.Ct. 455 (1971).

(3)

Speedy trial objections under 3.3.

Prejudice should be assessed in the light of the interest of defendants which the speedy trial right was designed to protect. The Court has identified three such ~~right~~ interests: (i) to prevent oppressive pre-trial incarceration; (ii) to minimize anxiety and concerns of the accused and (iii) to limit the possibility that the defense will be impaired. BARKER at 533.

The United States Supreme Court discussed four factors which Courts should access in determining whether a defendant has been deprived of his right to a Speedy trial: (1) Length of delay, (2) The reason for delay, (3) The defendant's assertion of his rights, and (4) Prejudice to the defendant. BARKER v. WINGO, 407 U.S. 514, 530, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972).

DICKEY v. FLORIDA, 398 U.S. 30, 37 (1970) The duty of the charging authority is to provide a prompt trial.

SMITH v. HOONEY, 1969, p. 378. A defendant's right to a Speedy trial, which can be forfeited by failure to invoke it before trial.

The appellant objected to all continuances and to re-schedule trial dates as noted on Court Record by defense counsel.

The Const. Right to speedy trial attaches when a charge is filed or an arrest is made, whichever occurs earlier. U.S. v. LOUD HAWK, 474 U.S. 307, 310-11, 88 L. Ed. 2d 640, 615, 106 S. Ct. 648 (1986); U.S. v. McDonald, 456 U.S. 1, 7, 71 L. Ed. 2d 696, 703 S. Ct. 1497 (1982); DILLINGHAM v. U.S., 423 U.S. 64, 65, 46 L. Ed. 2d 205, 207, 96 S. Ct. 303 (1975); U.S. v. MARION, 404 U.S. 307, 320, 30 L. Ed. 2d 468, 479, 92 S. Ct. 455 (1971); STATE v. FLADEBO, 113 Wn. 2d 388, 393, 779 P.2d 707 (1989); STATE v. CHRISTENSEN, 75 Wn. 2d 678, 686-88, 453 P.2d 644 (1969).

(3A)

SPEEDY Trial Objections under 3:3:

WHITE J. CONCURRING; STATE v. POULOS, 31 Wn. App. 241, 243, 640 P.2d 735, review denied, 97 Wn.2d 1018 (1982);

STATE v. ROLAX, 3 Wn. App. 653, 656, 497 P.2d 158 (1970), review denied 78 Wn.2d 996 (1971). BAKER, at 530; FLADEBO, at 393. MOORE v. ARIZONA, 414 U.S. 25, 26, 38 L. Ed. 2d 183, 185, 94 S.Ct. 188 (1973).

The V Amend. U.S. Constitution protects against Self-incrimination and since the easiest way to solve a crime is to get a Confession, there is a trick and rich body of law that governs police conduct during interrogations. Much of this law was well established before 1984, a hundred years, earlier. In HOPT v. UTAH, the Supreme Court held and ruled that a Confession is not admissible if it is obtained by operating on the hopes or fears of the accused, and in doing so deprives him of the free dom of will or Self-Control necessary to make a voluntary Statement.

In Bram v. U.S., Said that a Statement must be free and Voluntary, not extracted by any sort of threats or Violence or promises, 1960 BLACK BURN v. ALABAMA, Court held and ruled Coercion can be mental as well as physical in reviewing whether a Confession was psychologically coerced,

The fact that the officer did not have an information or Statement Signed by the appellant, and officer did not write an actual report to the incident and the other fact is that the officer Never Seized a MIRANDA RIGHTS CARD Signed by appellant including the issue about the assign assignment of "I and R."

The fact the due process of MIRANDA procedure were in violation by it self and Officer, there is no evidence to MIRANDA RIGHTS CARDS from appellant nor the rest of people that were located at the residence. also the appellant was not aware of what was going on during the execution of the Search warrant.



Speedy trial Objection under 3.3.



# THE COURT ERROR DENYING SUPPRESSION OF STATEMENTS UNDER V and XIV

MIRANDA v. ARIZONA, 384 U.S. 436, 16 LEd2d 694, 86 S.Ct. 1602 (1966).

The court error denying the suppression of statements during 3.S., the fact is that during trial the officers testified and stated two different statements and appellant was under dress stress.

Testimony by James Buchanan. 3.S.

Q: "So you say he was kind of half asleep or a little bit incoherent?"

A: Correct (R.P. 57)

Q: "When you say incoherent and kind of out of it, could you clarify that?"

Was he, like you say, half asleep? Was he falling asleep?

A: NO, he wasn't falling asleep, but, to me, it appeared like somebody who may have been high. (R.P. 57).

Q: So he appeared he may have been high?

A: Correct. (R.P. 57)

Q: Given that he was potentially high, did you feel comfortable that he was telling you was, indeed, true or was that something that you were going to have to find out later?

A: It was something I was going to find out later, (R.P. 57)

U.S. v. LOPEZ, 437 F.3d 1059 (10th Cir. 2006) The government bears the burden of showing, by a preponderance of the evidence, that a confession is voluntary.

JOCKS V. TAVERNIER, 316 F.3d 124 (2nd Cir 2003) The appropriate remedy for violations of MIRANDA rights is exclusion of the evidence at trial.

The appellant is testing the MIRANDA Confession, (1) There is no direct evidence as to the actual MIRANDA RIGHTS CAR (2) The due process of the MIRANDA procedures are violation based on the fact there was no document signed or waived before the last

Testimony by Officer Smith.

Q: You were assigned to I and R. What does that stand for?

A: Yes "I and R" is interview and Rights" R.P. 36 3.5

Q: Okay. Interview and rights.

A: Or, I'm sorry. Identify and rights, not "interview" R.P. 36 3.5

Testimony by Buchanan. R.P. 49 3.5

Q: Now you indicated that there was an officer by the name of Kenneth Smith?

A: Yes Sir

Q: Did you assign him his duties for that day?

A: Yes. His duties were "I and R" His job was to read the search warrant, advise people of their rights, and also to assist in "interviewing" people. R.P. 49(3.5)

Buchanan was the case manager of the investigation and in fact assigned officer Smith to secure MIRANDA Procedures according to Smith assigned due process. Officer Smith and Buchanan have a search warrant and arrest warrant the officers executed the search warrant first which items that were found inside the house were Amended on 3-6-12.

The fact that the prosecution file on 3-6-12, in open Court Amended information charging appellant of one count of Unlawful Delivery of Controlled Substance allegedly happened on August 18<sup>th</sup> 2011, outside the residence. The fact that the prosecution Amended information dismissing all items found inside the residence were the warrant was executed, were the Statements should have not entered or have the Court advised the Statements once the Amended information was entered.

The Court error in allowing the prosecution to Suppress Statements under 3.5, and not Suppress all items inside the residence under 3.6. If the Amended information was to and only for the incident August 18<sup>th</sup> 2011, the Court shouldn't allowed prior bad acts under 404(b).

The prosecution need it to re-MIRANDIZED appellant and re-question, the appellant after the information was Amended, the execution of the Search warrant was irrelevant to the investigation once the information was amended 3-6-12.

The fact that officer Smith did not follow proper procedures to secured the appellants testimony, Statements, and/or Confession under MIRANDA due process rights to afford the appellants the right to his 7<sup>th</sup> Amend U.S. Const.

Kenneth Smith" testimony. 3.5

Q: So he was being argumentative and disrespected to you guys when you were just basically having him sit there, right? You hadn't even identified him yet?

A: Correct. (RP. 40 3.5)

The fact that he was questioned by Behanen before appellant was MIRANDIZED,

Q: And then you stated that you weren't present or you don't know if he had any contact with officers Buchman; is that right?

A: I know he had contact with him, but not while I was there, not while I was standing next to him.

The Police report states that "officer Krause and I (Buchman) interviewed appellant, initially claimed that he was a "consumer".

The Police report contradicts the testimony by both police officers there is no time to when Buchman interviewed appellant nor time when Smith read his MIRANDA RIGHTS CARD.

Due process of MIRANDA RIGHTS Procedure under IV and XXV apply to this matter the legal fact that Smith was assigned to "I and R" including the fact that was order by case manager of the investigation, (1) TO Secure the Statements, (2) To make sure to follow all MIRANDA Procedures under Equal opportunity and due process of law. According to U.S. Constitution.

Q: And you say General report. Did you generate a report from this incident.

A: NO, I did not. R.P. 41 3.5 Smith.

Q: Did you have any of these individuals Sign Advancement of rights forms?

A: NO. R.P. 41 3.5 Smith.

The fact that there is no direct evidence to MIRANDA RIGHTS CARD, (1) no time, (2) no signature, (3) involving more than 1 person, (3A) including the fact that Smith's assignment was to MIRANDAZED every body at the scene.

The fact that Smith did not generate a report as to the fact he was assigned to MIRANDIZED everyone located at the residence.

Smith stated; A: "Because that's not it, it's an afterthought. It's not the form that I read him. The form I read to him is in that book. I have a certain procedure that I use when I read that form, and if those two questions aren't answered yes and yes, then I have another procedure that I use for documentation of anything other than to answer ~~yes~~ yes and yes. - R.P. 43 3.5.

The fact that Smith did not document no Statement, MIRANDA RIGHTS CARD Signed by any person located at the residence and the fact that officer Smith did not use any procedure to document anything. Officer Buchanan assigned officer Smith to "I and R," to Seized Statements.

The Statements were made illegally but there is no time no documents nor signatures by no body that was located inside the residence including the fact that information was Amended on 3-6-12 on the facts that occurred dated on August 18<sup>th</sup> 2001,

MARTINEZ v. CITY OF OXNARD, 270 F.3d 852 (9<sup>th</sup> Cir 2002)

A 5<sup>th</sup> Amend. Violation occurs when a police officer coerces self-incrimination statements from a suspect in custody.

Buchanan (R.P. 50 3.5.) and R.P. 51 (3.5.)

A: MOST drug dealers that are selling kilos will say, I don't sell a few ounces or a few grams. Everybody tries to minimize. No body wants to look like Tony Montana.

GHEENT v. WOODFORD, 279 F.3d 1121 (9<sup>th</sup> Cir 2002). violated defendant's due process rights. It is a (5) Violation to question an individual.

HILL v. ANDERSON, 300 F.3d 679 (6th Cir 2002), Confession is involuntary if there is (1) Police coercion or overreaching which (2) over bore the accused's will and (3) Caused the Confession.

U.S. v. BUTLER, 249 F.3d 1094 (9th Cir 2000). Because of the inherently coercive nature of custodial interrogation, a person must be advised of his MIRANDA Rights, prior to questioning.

The fact that Two (2) officers did not Sealed the testimony nor MIRANDA RIGHTS CARD signed by appellant leaves a great open area of doubt that there was evidence to the waiver or knowledge of that waiver including the fact that the waiver was in fact involun-  
teral.

U.S. v. WHITEHEAD, 200 F.3d 634 (9th Cir 2000) Regardless whether the MIRANDA warnings have actually been given, comment on the defendant's exercise of his right to remain silent following arrest is unconstitutional.

U.S. v. ~~HURT~~ HURST, 228 F.3d 751 (6th Cir 2000) Interrogation triggers the need to give the MIRANDA warnings.

HENRY v. KERNAN, 197 F.3d 1021 (9th Cir 1999). Post-MIRANDA Confessions which are found to be involuntary may not be admitted for any purposes, including impeachment.

DICKERSON v. U.S., 530 U.S. 428, 147 LEd2d 405, 120 S.Ct. 2326 (2000) (1) Due process test for evaluating voluntariness of defendant's Confession requires inquiry into whether defendant's will was ~~overborne~~ overborne by the circumstances surrounding the giving of confession. (2) MIRANDA requirements, being Constitutionally based, could not be overruled by Statute.

The issue here is that (1) The fact the officer Smith was assigned to "I and R" and no documents were Sealed.

(2) Officer Smith, did not endorse police report, (3) the fact he did not document anyone's MIRANDA RIGHTS CARD, (3A) there is no document signed by appellant, the fact that there is a due process to conduct to obtain statements, interviews, testimony ect... for issues like similar in this case, just like there is no video, audio, pictures, nor direct evidence to prove their testimony.

The appellant is arguing the fact that anyone can take the stand and produce testimony and no one have no knowledge of their veracity of the recollections of the knowledge only because they are the police officers and the court consider testimony circumstantial evidence; the fact is that: FOR EXAMPLE

POLICE OFFICERS, could take the stand and tell the court that they witnessed the testimony, they witnessed the entire investigation without one piece of evidence,

EXAMPLE,

MY NAME is Officer "John Doe" I was at the scene of these investigations and I was assigned to "T and R", I read everyone's MIRANDA RIGHTS located at the residence, but I did not write any report nor secured MIRANDA RIGHTS CARD, nor statements at the County Jail.

The trial court error denying the suppression of statements of appellant, under V and XVI due process of Law.

## THE AFFIDAVIT SEARCH WARRANT.

The affidavit search warrant was not tested under the (2) two prong test Aguilar - Spinelli,

The Tacoma police executed a search warrant before the arrest warrant, the appellant argues that on 3-6-12, The prosecution moved and Amended Information to one Count of Delivery of Controlled Substances that allegedly occurred on August 18<sup>th</sup> 2011.

The prosecution itself dismissed all items that were seized during the execution of the search warrant on Sep 7<sup>th</sup> 11, the fact that all seized items and including the entire search warrant should have not have been part of the trial because the arrest warrant was issued August 18<sup>th</sup> 2011.

### CHALLENGING THE AFFIDAVIT

The Tacoma Police officer, on August 30<sup>th</sup> 2011, Buchanan filed a Complaint for Controlled of Substances, which complaint lack insufficient evidence and probable cause including the fact that fails to detail and informed the magistrate of relevant information by Kevin Gordon/et.

(1) The Tacoma Police officer Buchanan fail to produce the truck record of the informant or documents of reliable controlled buys, (2) Buchanan never investigated the residence nor the owner of the residence, (3) Buchanan fail to establish before the magistrate the veracity of informant.

The affidavit in Support of Search warrant, fails to mention the agreement between the prosecutors office and Kevin Gordon, also the affidavit fails to give more detail about the residence and the fact that the affidavit itself fails to give details of the allegedly controlled buys dated August 18<sup>th</sup> 2011.

During trial Kevin Gordon Stated that he Was only at the residence one time, (page 279 6-9 RP.) Kevin Gordon was asked

Q: Did you go inside of his house prior to August 18<sup>th</sup> and stash some methamphetamine inside of the house?



A: NO, I did not. ~~That~~ that's the first time, too, that I was there.

On August 10<sup>th</sup> 2011, he was at the residence, Kevin Gordon was informing Buchanan about activity in side the residence, (on page 26, 7-21.)

Pre-trial motions 3.S. including,  
On page 26) 17-19.

"However, they were there on a search warrant, and in reviewing the warrant."

"There are some issues in the warrant that could make it invalid."

The fact that Buchanan was there to arrest appellant instead they executed the search warrant in a residence that (1) appellant was not a resident, (2) the appellant have not been investigated as to being a resident of the residence, (3) the appellant was not ever seen with Kevin Gordon in side the residence.

Kevin Gordon provided information to Buchanan. Starting on or prior of August 30<sup>th</sup> 2011, was inside the residence and observed a subject by Street name Santana in possession of packaged Methamphetamine for distribution, that information was challenged during trial, the Tacoma police did not found illegal narcotics Methamphetamine nor heroin or drug paraphernalia nor marked money. The only thing was found was a bag of Marijuana.

Under Article 1, Section 7, State Constitution and 4<sup>th</sup> Amend U.S. Constitution requires probable cause before the issuance of the search warrant.

Good reason for the issuance of a search warrant does not necessarily mean proof of criminal activity but merely probable cause to believe it may have occurred. BECK v. OHIO, 379 U.S. 89, 131 Ed. 2d 142, 85 S.Ct. 223.

The fact that another officer complete the reliable controlled buys of controlled substances other than Buchanan, and no information to this controlled buys were offer before the magistrate, also Buchanan was not for sure that the Kevin Gordon was a reliable informant.

Buchanan fails to establish reliable information under RCW 9A.72.085 as required under Rule CrR 2.3 Search and Seizure. To procure thorough full information before magistrate before issuing search warrant.

Buchanan also included only testimony that was pass on by a person with motive and legal interest against him (Kevin Gordon).

The fact that the fruits of poisonous tree were not suppressed under 3.6, and MOTION OF limine was intact violated.

The prosecution Amended information on 3-6-12, which were evidence that were excluded, according to Rule 404(b) items that were irrelevant to the trial and 403. HIZEY v. CARPENER, 119 Wash. 2d 251, 269, 830 P.2d 646 (1992) evidence of defendant's actions occurring after complaint was filed properly excluded as misleading and confusing.

The fact that the trial error and defense counsel was ineffective to assist appellant and to make objections to irrelevant evidence that came in the light of the jury (1) The Scale, (2) The Pills, (3) The marijuana, all of those were irrelevant and inflammatory and prejudicial to the appellant the information was Amended on 3-6-12, one Count of Unlawful Delivery of Controlled of Substance, that was dated August 18<sup>th</sup> 2011,

TOT v. U.S., US. 1943, 63 S.Ct. 1241, 319 U.S. 463, 87 L.Ed. 1519.  
Fact or group of facts evidence of the existence of the ultimate fact on which guilt is predicated.

Defendant's due process rights are implicated when his purported conviction rests on anything less than a finding of guilt as to all the elements of the crime. *U.S. v. Alferachic, C.A. 9 (ARIZ.) 2006, 433 F.3d 1148.*

The main issue here is that, the prosecution open the door to the search of the residence and open the door to the results of the search including the items that came in the light of the unbiased jury.

### ANALYSIS

The information was amended, not one item that was found inside the residence was suppressed under 3.6., (2) The unbiased jury was tainted by items that were inflammatory and prejudicial to the appellant.

The fact that Buchanan did not mention that the Kevin Gordon provided information stating that the residence had drugs package for distribution. *U.S. v. HARRIS, 403 U.S. 573, 29 L. Ed. 2d. 723 91 S. Ct. 2075 (1971)* whether of revealed or unrevealed informant, before search.

*STATE v. HUFF, 106 Wn.2d 206 (1986)* Affidavit states that Confidential informant told police defendant was growing marijuana no basis of knowledge or reliability. The fact that Buchanan did not conclude the reliability controlled buys to make sure Gordon was in fact reliable.

The legal profession ~~of~~ often follows ABA Standards, and the Supreme Court routinely cites them as guidance in determining best practices or ethical rules, these new standards contain ten factors that prosecutors should consider in "deciding whether to offer a Cooperator Significant benefits, including limit on Criminal liability, immunity, or a recommendation for reduction of sentence" those factors include whether "The Cooperator has biases or personal motives that might result in false, incomplete, or misleading information whether leniency or immunity for the Criminal activity of the Cooperator is warranted by the goals of the investigation and

public interest, interests and whether providing leniency or other benefits would be seen as offensive by the public or cause a reasonable juror to doubt the veracity of the Cooperator's testimony.

Looking at the Agreement between Pierce County prosecutor's office and Kevin Gordon (confidential informant), the terms were violated and not followed causing violation of due process under V and XIV Amend. U.S. Constitution due process and Equal protection

"document attached."

(6) Promptly provide a complete and truthful statement to OFFICER DON WALKINSHAW OR OFFICER K.P.

The document clearly stated two (2) officers that were not part of the involvement under appellants investigation. Buchanan not one time provided documents that Gordon was reliable.

(7) Successfully perform (2) Two reliability purchases and operations as directed by the "aforementioned officers" meaning officer Walkinshaw and K.P., also to merit his information.

Buchanan's affidavit in support of search warrant failure to provide these information before the magistrate. Buchanan have no basis of knowledge of Gordon been credible and reliable.

(8) The deal was to provide three three (3) ~~one~~ one ounce level or higher illegal narcotics dealers.

Buchanan testify to one quarter ounce bag, during trial.

(10) Upon request, submit to and pass a polygraph examination concerning his initial statement or subsequent information only to mentioned officers. The contact was between Kevin Gordon and Officer K.P. and Walkinshaw.

AGREEMENT BETWEEN PIERCE COUNTY PROSECUTOR'S OFFICE  
AND KEVIN GORDON *Confidential Informant #931*  
10-1-02130-4

This document is an agreement between the Pierce County Prosecutor's Office and KEVIN GORDON by which KEVIN GORDON will provide information, act under the supervision of the Tacoma Police Department and actively participate as directed, in any controlled substances investigation and prosecution as a result of information provided by KEVIN GORDON.

The Pierce County Prosecutor's Office and KEVIN GORDON hereby agree that:

1. This agreement is the sole agreement between the parties to the agreement;
2. This agreement shall not be modified by either party without the signed written agreement of both parties;
3. Neither the Tacoma Police Department, Officer Don Walkinshaw, Officer K.P. Smith, nor officers working in his capacity possesses the authority to modify this agreement.

KEVIN GORDON hereby agrees to:

1. Contact Officer Don Walkinshaw (253-606-1813) or Officer K.P. Smith (253-255-8268) or their designees immediately upon release from custody, and call a minimum of once a day while working with the Tacoma Police Department.
2. Immediately advise Officer Don Walkinshaw or Officer K.P. Smith or their designees of address and telephone number, as well as any changes in address and telephone number;
3. Appear in person at any location chosen by Officer Don Walkinshaw or Officer K.P. Smith or their designees within two (2) hours of the request to appear by either of those officers;
4. Refrain from violating any municipal, county, state, or federal law, except as directed by Officer Don Walkinshaw or Officer K.P. Smith or their designees under the terms of this agreement;
5. Promptly appear for all scheduled court dates, whether directed to appear as a witness or as a defendant;
6. Promptly provide a complete and truthful statement to Officer Don Walkinshaw or Officer K.P. Smith or their designees concerning any and all knowledge of person(s) involved in the distribution of controlled substances in the Western United States of America, further agreeing that any information he has already provided to them has been truthful to the best of his knowledge;
7. Successfully perform (2) two reliability purchases and or operation(s), as directed by the aforementioned officers, that would merit his information credible, that are made in addition to any other purchases made pursuant to this contract, the term "reliability purchases" meaning controlled substances purchases made for the purpose of establishing reliability of KEVIN GORDON as an informant;

AGREEMENT BETWEEN PIERCE COUNTY PROSECUTOR'S OFFICE  
AND KEVIN GORDON

*Page 1*

*K.C.*

8. As directed by the aforementioned officers, arrange for and/or participate in narcotics purchases resulting in the arrest for felony narcotics charges of three (3) one ounce level or higher illegal narcotics dealers, and/or provide information which results in the arrest of each of these separate individuals and/or groups for a violation of the Uniform Controlled Substance Act; such purchases of controlled substance to include but not limited to heroin, cocaine and/or methamphetamine from each individual or group may be divided up into multiple buys of smaller quantities as directed by the aforementioned officer's action in good faith; the purchases described in the sub-paragraph are in addition to the purchases described above in sub-paragraph.

9. The purchases described in Paragraph 8 are in addition to the purchases described above in Paragraph 7;

\*10. Upon request, submit to and pass a polygraph examination concerning his initial statement or subsequent information if requested by either of the aforementioned officers;

11. Contact either of the aforementioned officers in person or telephonically as directed until the conclusion of the criminal and civil proceedings against all subjects who were arrested as a result of information provided by KEVIN GORDON;

12. Remain in Pierce County at all times during the investigation and court proceedings unless prior notification is given to and permission to leave is obtained from either of the aforementioned officer(s);

13. Continue to provide complete and truthful information throughout all investigations concerning all participants involved in the distribution of controlled substances;

14. Perform such tasks pertaining to the investigations as directed by either of the aforementioned officer, including but not limited to: wearing a wire device, introduction of an undercover officer, granting permission to record phone conversations;

15. Plead guilty under the original Information to the following felonies under Pierce County Superior Court Cause #10-1-02130-4 accompanied by its standard-ranges: *To Amended Inform*

a) Unlawful Delivery of a Controlled Substance, MDMA  
Standard range 60+ - 120 months + *24 months protected zone*

b) Unlawful Delivery of a Controlled Substance, MDMA  
Standard range 60+ - 120 months + *24 months protected zone*

c) Unlawful Delivery of a Controlled Substance, MDMA  
Standard range 60+ - 120 months + *24 months protected zone*

16. Testify truthfully in any hearing, proceeding, or trial resulting from the aforementioned investigation;

17. Waive all rights in regards to speedy sentencing, with the State recommending a personal recognizance release upon KEVIN GORDON's satisfaction of Paragraphs 16 (regarding the guilty plea), and agreement to work with the Tacoma Police Department for whatever time period is required to complete the active investigations, arrests, charging and prosecution of the individuals and/or groups mentioned in Subsection 8.

UPON THE CONDITION THAT KEVIN GORDON HAS PERFORMED THE PROMISES ENUMERATED ABOVE, THE PIERCE COUNTY PROSECUTOR'S OFFICE AGREES TO MAKE THE FOLLOWING ADDITIONAL 1 SENTENCING

AGREEMENT BETWEEN PIERCE COUNTY PROSECUTOR'S OFFICE AND KEVIN GORDON

*KL*

RECOMMENDATION FOR THE CASE LISTED ABOVE, KEVIN GORDON  
UNDERSTANDING THAT THE SENTENCING JUDGE NEED NOT FOLLOW

SUCH RECOMMENDATION:

Sentence of confinement recommendation to be based on compliance with the terms and conditions of this contract.

1 All other terms of the State's pre-contract offer of: \$200 court costs, \$500 CVPA, \$400 DAC recoupment, \$100 DNA sample, \$3,000 fine, 9-12 months of community custody, drug treatment; no use or possession of controlled substances; no association with drug users or sellers; forfeit all items in property room.

UPON THE CONDITION THAT KEVIN GORDON FAILS TO PERFORM ANY OF THE ABOVE PROMISES, THIS DOCUMENT WILL NO LONGER CONSTITUTE THE PIERCE COUNTY PROSECUTING ATTORNEY'S OFFICE'S RECOMMENDATION AND SUCH OFFICE WILL NO LONGER BE BOUND BY ANY AGREEMENT CONTAINED WITHIN THIS DOCUMENT.

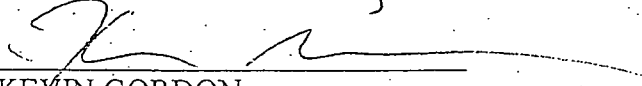
KEVIN GORDON FURTHER ACKNOWLEDGES AND UNDERSTANDS THAT:

1. Should the aforementioned officers be unavailable for an extended period of time, KEVIN GORDON will report to another member of the Tacoma Police Department, as designated by the aforementioned officers;
2. Any violation of the terms of this document will result in her immediate return to the Pierce County Detentions and Corrections Center, and that the Pierce County Prosecutor's Office will then proceed with sentencing without being bound by the above recommendation;
3. This contract does not bind the Immigration and Naturalization Service in any way or affect the ability of such service to deport KEVIN GORDON as a result of this conviction;
4. If there is authority to so deport KEVIN GORDON, she may be deported from the United States of America as a result of this conviction;
5. KEVIN GORDON fully understands each and every term of this document, the entire document having been written in his primary language of English, and that KEVIN GORDON does not have any further questions;
6. KEVIN GORDON's attorney, Kirk Mosley, or his attorney-designee with the consent of KEVIN GORDON, has fully informed KEVIN GORDON of the contents of this contract, its obligations, and all alternatives to entering this contract, including exercising right to a trial;
7. KEVIN GORDON's attorney, Kirk Mosley, or his attorney-designee with the consent of KEVIN GORDON, has fully reviewed the police reports in this case and has fully discussed with KEVIN GORDON the merits of the State's case and chance of successful prosecution;


AGREEMENT BETWEEN PIERCE COUNTY PROSECUTOR'S OFFICE  
AND KEVIN GORDON

8. Understanding the entire contents of this contract, KEVIN GORDON wishes to enter into this contract and accept its obligations, doing so of KEVIN GORDON's own free will, voluntarily, intelligently, and knowingly.

DATED THIS 29<sup>th</sup> day of July, 2011

  
\_\_\_\_\_  
KEVIN GORDON,

  
\_\_\_\_\_  
Attorney for KEVIN GORDON

  
\_\_\_\_\_  
Prosecutor Karen D. Platt

AGREEMENT BETWEEN PIERCE COUNTY PROSECUTOR'S OFFICE  
AND KEVIN GORDON

  
\_\_\_\_\_



12-2-11

Kevin A. Gordon

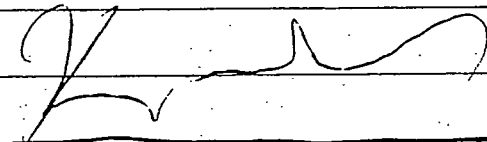
10-1-02410-7

10-1-02130-4

Addendum to contract between  
state and defendant signed  
on July 29, 2011.

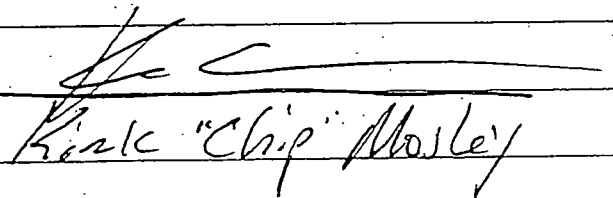
Kevin Gordon hereby agrees to:  
(18.) Comply with all terms and  
conditions of DOC supervision imposed  
under cause number 07-1-65670-5

Date: 12/2/2011



Kevin Gordon

Date: 12/2/2011



Buchanan did not included that information in his affidavit and also was not truthful to the magistrate. The actual affidavit on second page (2) The reliability Contested boys were not disclosed to the magistrate, the fact that the document was misrepresented and misled.

Under Chapter 9A 72: RCW 9A 72-010 (1) "Materially false statement" means any false statement oral or written, (2) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated; in this Chapter (c) it is a statement, declaration, verification, or outside the State of Washington, which is certified or declared to be true.

Buchanan was before Commissioner Stainer in Pierce County Superior Court under oath, (1) Committed Official misconduct under 9A 80-010, A public servant is guilty of official misconduct if, with intent to obtain a benefit or to "deprive" another person of a lawful right or privilege: RCW 9A 80-010 (b).

Buchanan filed an affidavit that contained false information under RCW 42 20-040. Knowingly made false and misleading statements in an official report or statement under the oath.

Buchanan Made a false and misleading report stating the involvement of another person Street name "Drew" Andrew M. Jones under RCW 9A 76-175 STATE v. THOMAS, 103 Wn. App. 800. See attached document, the facts and circumstances are misleading and false, the facts on the affidavit were not tested under Aguilar v. Texas, 378 U.S. 108, 12 L. Ed. 2d 723, 84 S.Ct. 1509 (1964) Spinelli v. U.S., 393 U.S. 410, 21 L. Ed. 637, 89 S.Ct. 584 (1969). U.S. v. Harris, 403 U.S. 573, 29 L. Ed. 2d 723, 91 S.Ct. 2075 (1971).

Buchanan "ONLY" provided Sexual ~~hand~~ hand information, "Affiant witnessed Gomez Vesques moving something in the back seat of 1991 Ford Bronco, is not clear or detailed to what appellant was moving in the back seat. at 434 Jackson, This issue is exactly the same the veracity "prong" is to evaluate knowledge and basis of veracity



It is your affiant's training and experience that persons involved in the trafficking of controlled substances go to great lengths to hide and protect narcotics in their possession. It is not uncommon to find narcotics in outbuildings, garages, storage-containers, vehicles, and on the person of a narcotics trafficker. Narcotics traffickers conceal weapons on their person and within the premises. Further, it is also common to find books, records, receipts, photographs, money, and paraphernalia related to the sales of controlled substances. These items are evidence and enhance further narcotics investigations.

The reliability of the confidential and reliable informant is based on the fact that he\she has participated in two (2) controlled reliability buys wherein the confidential and reliable informant purchased controlled substances at locations where he\she stated controlled substances could be purchased. On each occasion the confidential and reliable informant was searched for controlled substances with none being located. On each occasion, the confidential and reliable informant was supplied with funds from the Tacoma Police Department Special Investigations Narcotics Division, to make purchases of controlled substances. The confidential and reliable informant was then followed to the location of each reliability purchase and ~~observed entering the location~~. After a few minutes the confidential and reliable informant was observed exiting the location and was followed to a prearranged location. At this time the confidential and reliable informant produced the controlled substances purchased during each reliability buy. The confidential and reliable informant was again searched for controlled substances, with no additional controlled substances found other than those controlled substances that were purchased.

The reliability of the confidential and reliable informant is enhanced by the fact that he\she has been involved in the local drug scene for over 5 years and is familiar with the various controlled substances, to include Marijuana, Cocaine, Crack Cocaine, Black Tar Heroin, Ecstasy, methamphetamine, and Prescription Pills. The confidential and reliable informant has also displayed a working knowledge of the street prices of the various controlled substances, as well as normal packaging methods used for illicit street sales. The confidential and reliable informant has also provided information regarding drug trafficking and other criminal activity in the City of Tacoma, which has been proven to be true and correct by independent means.

Your affiant has been employed by the Tacoma Police Department for over six years, during that time your affiant has been involved in numerous (approximately 200) narcotics related arrests. Your affiant has been assigned to patrol since 2003 and Special Investigations Division since March 2009. Since being hired by the Tacoma Police Department your affiant has assisted in numerous "knock and talks" and assisted in serving search warrants for narcotics. Your affiant is currently assigned to the Special Investigations Division of the Tacoma Police Department and have been assigned to investigate the sale and distribution of illegal narcotics. In the course of your affiant's career your affiant has contacted numerous narcotics users and dealers and became familiar with packaging, pricing, and storage methods of narcotics. While attending the Basic Law Enforcement Academy your affiant received basic instruction regarding narcotic investigations relevant to patrol work. Your affiant also received additional specialized training in the enforcement of controlled substances. Specifically the identification of controlled substances, the common street packaging methods and related paraphernalia, and the common street trafficking methods of controlled substances, specifically rock cocaine, heroin, powdered cocaine, marijuana, MDMA (ecstasy), and prescription pills.

Based on your affiant's training, experience, and participation in controlled substance investigations and based upon my conversations with other experienced law enforcement agents with whom your affiant associated with and based upon my conversations with drug users and distributors, I know:

- 1) That drug traffickers maintain books, records, receipts, notes, ledgers, airline tickets, money orders and other papers relating to the transportation, ordering, possession, sale and distribution of drugs. The aforementioned items may be carried by the suspect, or in the suspect's vehicle, or be kept in the suspect's residence/house;

- 2) That individuals involved in the distribution of drugs more often than not maintain addresses, and/or telephone numbers in books or papers or in computers that reflect names, addresses and /or telephone numbers for drug customers and associates in their illegal drug organization;

Additionally, your affiant believes that the identity of the informant should remain confidential and that disclosure of his/her identity would expose him/her to retaliation by members of the criminal narcotics community and/or revelation of the informants identity would render him/her inoperative for any future investigation wherein he/she may be able to render assistance to the affiant.

~~J. Buchanan #131~~

SUBSCRIBED AND SWORN to before me this      day of      , 2011.

~~Judge/Commissioner~~

~~[Signature]~~

State v. Jackson 688 P.2d 136, 102 Wn.2d 432 the two (2) prong test for evaluation of existence of Probable Cause Aguilar at 114; Spinelli at 413. In Aguilar the Court dealt with an affidavit that stated:

~~Affidavit to~~ Affidavit have received reliable information from a credible person and do believe that heroin and other narcotics and narcotics paraphernalia are being kept at the above described premises for the purpose of sale and use contrary to provisions of law (at 109.) 378 at 109.

Good reason for the issuance of a search warrant does not necessarily mean proof of criminal activity but merely probable cause to believe it may have occurred. Beck v. Ohio, 379 U.S. 89, 13 L.Ed.2d 142, 85 S.Ct. 223 (1964). Suspicion, belief, any guess alone are not enough.

Nathanson v. U.S., 290 U.S. 41, 78 L.Ed. 159, 54 S.Ct. 11 (1933). The statements of an informant should be included.

Giordenello v. U.S., 357 U.S. 480, 21 Ed. 1503, 78 S.Ct. 1245 (1958).

See Jones v. U.S., 362 U.S. 257, 4 L.Ed.2d 697, 80 S.Ct. 725, 78 A.L.R.2d 233 (1960) U.S. v. Ventresca, State v. Edwards, SWN App. 852, 490 P.2d 1337 (1971) State v. Poe, 74 Wn.2d 425, 445 P.2d 196 (1968) at page 429.

Looking at the affidavit State v. Patterson, 82 Wn.2d 49, at 62-63 is more detailed than the one from Officer Buchanan. Including the fact that the residence was not in possession of Methamphetamine. Also the Superior Court erred in admitting the fruits of the unlawful search STATE v. THOMAS, 91 Wash. App. 195, 201; Gramson, 118 Wn.2d 870 (1992) the fact the prosecutor amended information of events occurred on August 18<sup>th</sup> 2011; dismissing all items that were seized from the residence, Re M. bold T, 64 Wash. App. 505, 510, reasonably and with commonsense, resolving any doubts in favor of the warrant MARK, 105 Wn.2d 692 (1986) accused is entitled to challenge the validity of search warrant affidavit. The appellant told counsel to challenge the affidavit.

*State v. Gebartoff*, 87 Wn. App. 11, 939 P.2d 706, A search warrant lacks probable cause as required by the IV<sup>th</sup> Amend, if the affidavit under lying the warrant doesn't explicitly connect a crime to the place sought to be searched. The Tacoma police officer stated to "Search outside buildings" and all automobiles located outside the residence; however there were more residents living in the residence and the automobiles were also belongings to other residents.

"FOR EXAMPLE" Sample affidavit illustrates the point: That within the past 72 hours a reliable informant, known to the affiant, has visited the moon and observed green cheese, the informant is reliable in that he/she has given information regarding dairy products and their use in the past which has proven to be true and correct. The informant has made two controlled buys the informant was searched, given money, observed to enter and return from a residence with dairy products purchased from within. The informant stated that creatures who live on the moon are known to conceal cheese on their persons and in their vehicles, the informant further stated that one of the moon creatures, John Doe gains a major source of income from the sale of cheese and stolen moon rocks.

The affidavit is not well detailed by Buchanan, also fails to establish the purchased credible buys by Gordon. The fact is well established by Buchanan during trial that the controlled buys reliabilities were done by Officer Walkinshaw. The other issue is that the residence belong to other people and not to the appellant.

In *WALKEN*, 103 Wn. 2d 823, 823, 700 P.2d 319 (1985) The police conducted a investigation to corroborate the informant's tip. Buchanan not once investigated the allegations by Gordon. The issue in this search of the residence is a violation under 1, §7, IV<sup>th</sup> because the incident clearly stated that the allegations and conviction was dated August 18<sup>th</sup> 2011, outside the residence

*STATE v. CHENOWETH*, 160 Wn. 2d, 454, 158 P.3d 595 (2007) Omissions will invalidate a search warrant.

*State v. Raley*, 121 Wash. 2d 27, 28, 846 P.2d 1365 (1993) Describing the place to be searched and the person(s) or things to be seized.

*State v. Mitchell*, 132 Wash. 2d 229, 240, 937 P.2d 587, A.L.R. 5th 705 (1997) to support dismissal of evidence prejudice is caused by the action or misconduct. Evidence that is the product of an unlawful search and seizure *STATE v. THOMAS*, 91 Wash. App. 195, 201, 955 P.2d 420.

In *MADDOX* The Supreme Court reversed the Court of appeals decision and hold that the warrant issued to search "MADDOX" home was invalid because probable cause was negated as to the primary items described in the search warrant Methamphetamine *MADDOX*, 152 Wn. 2d 499, 98 P.3d 1199 (2004).

See *STATE v. LYONS*, 160 Wash. App. 100, 247 P.3d 797 (Div 3 2011) the trial court was not clear whether the informant call police or informed the officer.

The Tacoma Police Dept executed a search warrant before the arrest warrant in hope for the appellant to provide information to police officers *STATE v. McCORD*, 125 Wn. App. 888 (2005). In *HELMKA*, 86 Wash. 2d 91, 92-93 542 P.2d 115 (1975) Probable cause exist if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish activity and that evidence of crime can be found at the place to be searched. *Cole*, 128 Wash. P.2d 873 (1994) *STATE v. GOBLE*, 88 Wash. App. 503, 509 945 P.2d 263 (1997) Citing *Wayne R. LaFare*, Search and Seizure § 3.7(d) at 372 (3d ed. 1996)

(1) The track record was not provided before the magistrate, (2) Gordon have motive for not telling the truth (3) Buchanan never produce other evidence from appellant, (3A) Buchanan was not truthful about Gordon's involvement in the controlled buys. in *Spinelli* the veracity prong must be ~~estimated~~ evaluate the informant's track record, and benefits, see *McReynolds*, 104 Wash. App. 560 (2000). *THEIN*, 138 Wash. 2d 133 (1999). *Johnson v. U.S.* 333 U.S. 10, 14 (1948). In *NATHANSON v. U.S.* 290 U.S. 41 (1933) the court held insufficient an officer's affidavit *Sweain*. See *Jones v. U.S.*, 362 U.S. 257, 269 (1960).



The allegations were that the informant and Buchanan pre-arranged the controlled buys at one location then Gordon more from pre-arranged locations to other locations without Buchanan's supervision. STATE v. SANCHEZ, 74 Wn. App. 763 (1994) that the drug buy took place at a house. Sometime in the past doesn't mean that more drugs are necessarily present again.

The residence belong it to someone else and three other people. see EDWARDS v. AYES, 542 F.3d 759, 768, (9<sup>th</sup> Cir. 2008) evidence favorable to the accused and material to either guilt or punishment. Violates the Constitution. The Tacoma Police department violated the IV<sup>th</sup> Amend. U.S. Const. and article 1, Section 7, State WA Const. due process see ... NARDONE v. U.S., 308 U.S. 338, 308 U.S. 338, 308 U.S. 338, 60 S.Ct. 226 (1939).

Buchanan failure to inform the issuing magistrate of negative information about the informant's credibility. It is material under FRANKS and Suppression would be proper. PEOPLE v. CDBB, 1983 4<sup>th</sup> Dist 146 Cal. App. 3d 290, 194 Cal. R. ptr. 96, 99-99. Also the case is similar to THOMAS v. ST, 297 Ga. App. 262, 651 S.E. 2d 183 (2007). The affidavit had another complete St and number the affidavit was not incorporated.

The fact the Buchanan's affidavit is confusing and misrepresented by mentioning the name of another person "Drew" Andrew M. Johns. The fact is the last name is mentioned in the Tacoma police report. Both documents are not true and correct. The other issue is the appellant is entitled to challenge the validity of Search warrant MARK, 105 Wn. 2d 692, 718 P.2d 407 (1986) see U.S. v. Muldering, 120 F.3d 354, Conviction in circumstantial evidence case will be reversed if evidence points equally to theory of innocence and guilt.

ST v. NORTHNESS, 20 Wn. App. 551, 557, 582 P.2d 546 (1978) merely naming a person is an insufficient basis to determine reliability. Duncan, 81 Wash. App. at 78, See ST v. David C. Dick-Jose, NO: 39160-1-IT (2011) evidence sought was not found.

The issue here is the Gordon was bias because he have a motive to be bias. U.S. v. JACKSON-Randolph, 282 F.3d 369 6th Cir.)  
witness credibility is the relationship between a party and witness which might lead the witness to slant, unconsciously or otherwise his testimony in favor or against a party.

The fact is the affidavit is not sufficient to warrant probable cause and the fact that there was no methamphetamine as stated by Gordon, his credibility is in question. Nathanson, 41 U.S. 290, 78 L. Ed. 159, 54 S.Ct. 11 (1933). If the statements of an informant are included in the affidavit or complaint for the search warrant, probable cause means that the issuing magistrate should have before him a substantial and intelligent basis for crediting the report of the informant where the informant's identity is unrevealed the suppressing documents or testimony.

ST v. Patterson, 83 Wn.2d 49, 515 P.2d 496 (1973). In the Bible EXODUS, 20:16, You shall not bear false witness against your Neighbor 9th Commandment.

The main facts about Gordon's Controlled buy was intact in question and the buy was lost, including the fact to proof beyond reasonable doubt one of the elements as to Delivery.

The issue with the lost of the Controlled buy was lost in the process (1) the pre-arrange location was 56th and Portland Avenue (2) the fact the Buchanan did not witness Gordon been inside the Van nor other location, (3) the Police report is inconsistent with the testimony by Buchanan.

The issue here is clear that the Controlled buy was pre-arranged to location on 56th and Portland not to get in someone's car and drive around town in side of identified location nor under supervision.

The Tacoma police report is way different than the testimony by Buchanan. The fact that Gordon got in side of unidentified Van and driver then was left alone for a period of time in side the Blue Van and then move to another location with out the Supervision of Buchanan then from there Gordon Stated he was at the residence with appellant.

(1) The fact that Tacoma Police did not witness Gordon going in side the residence, (2) the fact that Gordon got in the Blue Van and was giving a ride back to where Buchanan was located, (3) there is no evidence that the drugs came from appellant or the residence.

The Tacoma Police failure to supervise the C.I./Gordon, and the jury should have been instructed of Criminal element, the actual (transaction) or transfer of the money and drugs. Gordon testified that on 56<sup>th</sup> and portland he traded money to the appellant and during that time the fact that Gordon waited in side the Blue Van with another person while the appellant went for a bicycle ride, (1) The appellant have no drugs, (2) the fact that Gordon did not see appellant with drugs during the changing locations from 56<sup>th</sup> and portland, then parking lot then to the residence.

(1) The Controlled buy was lost, (2) The actual transaction is invention, (3) there is no evidence to proof that Gordon in fact obtained the drugs from the appellant. A requirement that the testimony of a purchaser of a Controlled Substance be corroborated in order to support a conviction for the sale of such a substance would be contrary to the legislative policy.

ST v. Warrnock, 7 Wn. App. 621, 501 P.2d 625, review denied 81 Wn. 2d 1009 (1972).

Buchanan failed to produce video, audio, wire, text, and even testimony that the Gordon in fact was in side the residence weighting Controlled Substances, and that the appellant was the one in fact give him the Subs  
stances.

ST v. Campos, 100 Wn. App. 218, 998 P.2d 893 (2000) review denied, 142 Wn.2d 1006, 34 P.3d 1232 (2000).

ST v. Hutchins, 73 Wn. App. 211, 868 P.2d 196 (1994).

ST v. Ramirez, 62 Wn. App. 301, 814 P.2d 227 (1991) review denied 118 Wn.2d 1010, 824 P.2d 490 (1992).

ST v. Johnson, 59 Wn. App. 867, 802 P.2d 137 (1990) rev'd on other grounds, 119 Wn.2d 143, 829 P.2d 1078 (1992).

ST v. Campbell, 59 Wn. App. 61, 785 P.2d 750 (1990).

The Controlled by lack of proof of transfer, and Criminal element is inquestion Gordon move to a two different locations and another time which the third time was inside the Blue Van by him self with another driver and the fact is Buchanan did not surveillance the house, the Van nor witnessed Gordon been inside the residence.

Gordon told Buchanan that he observed a person in possession of Methamphetamine inside the residence and after the execution of the Search warrant the Tacoma police did not find no Methamphetamine Gordon's Credibility is inquestion, so the actual transfer is also inquestion.

Evidence can be admitted under ER 404(b) only if the trial Court finds the evidence serves a legitimate purpose, is relevant to prove an element of the crime charged, and, on balance, the probative value of the evidence outweighs its prejudicial effect. ST v. Lough, 125 Wn.2d 847, 853, 899 P.2d 487 (1995). In doubtful cases, the evidence should be excluded. ST v. Smith, 160 Wn.2d 772, 776, 775 P.2d 951 (1986). The prosecution excluded all items that were found inside the residence, (1) Pills, (2) Marijuana, (3) Gun, also the appellant was not ever charged with scale.

ST v. Hernandez, 85 Wn. App. 672, 675, 935 P.2d 623 (1997) The testimony of a person who receives delivery, corroborated by a witness to the transaction, is sufficient to establish that a delivery occurred.

ST v. Eddie A., 40 Wn. App. 717, 720, 700 P.2d 751 (1985). Buchanan never witnessed the transaction of any narcotics, nor other officer.

The Controlled buy due process is in violation (1) There is no evidence to the actual transaction, (2) There is too many changes of places without the Tacoma police supervision, (3) NO body witnessed Gordon going in side the residence, (3A) the fact that Gordon got a ride from unidentified Van and Driver. The Controlled buy was lost and never confirmed by any police investigation. Similar to ST v. Martinez, 123 Wn. App. 841, 99 P.3d 418 (2004).

### Evidence Sufficient

ST v. Goodman, 150 Wn.2d 774, 83 P.3d 410 (2004). Scale, additional baggies, and vials was sufficient to allow a rational jury to convict defendant.

ST v. Huff, 119 Wn. App. 367, 80 P.3d 633 (2003). State met the burden of proving beyond a reasonable doubt, the police observed the drug transactions, which were audio taped, and informant testified.

Buchanan failed to prove that the Gordon was at the residence and that the drugs came from appellant.

### Jury Instructions

ST v. McClann, 69 Wn. App. 885, 850 P.2d 1377, review denied 122 Wn.2d 1021, 863 P.2d 1353 (1993) Trial Court committed reversible error by failing to give requested lesser included offense instructions.

The Conclusions in this Criminal matter, the Tacoma police, did not witness any transaction of any drugs also the fact that the prosecution talked about the items found inside residence that were later dismissed on 3-6-12 by Amending information to one count of a Delivery of Controlled Substance dated on August 19th 2011.

The fact is the prosecution should have not been allowed to taint the unbiased jury with items that were not part of Count of Delivery of Methamphetamine, The Search of the residence invalidated the entire investigation because the fact Gordon stated that he observed methamphetamine inside the residence.

The Court error allowing the prosecution speak on evidence that were outside the Court and Criminal elements, the fact is the Court error to instruct jury of lesser included offense, the affidavit is not presented right according to Aguilar-Spinelli,

Suppression of all items found inside the residence should have done and the outcome could have been more favorable to the appellant, there is lack of Criminal elements and there is issues on Search warrant  
1. The appellant asking the Court With respect to review all documents and plea agreement by Gordon and Affidavit in support of Search warrant that lacks of probable cause.

Jury

4-9-13.

Juan Gomez Vasquez 761317  
191 Constantine way  
Aberdeen, WA. 98520