

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

2013 MAR 11 PM 12:17

STATE OF WASHINGTON

BY [Signature]
DEPUTY

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

No. 43422-9-II

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

The Affidavit Declaration for Determination of Probable Cause; The fact that there is another CF #2 involved that was not disclosed before or after trial and that the appellant was driving a Bronco, while the testimony clearly states that the appellant was a passenger in side of a Van and took a bicycle ride during the alleged controlled buy.
Buckle v. FITZSIMMONS, 509 U.S. 259 (1993).
FRANKS v. Delaware, 438 U.S. 154, 57 L.Ed.2d 667, 98 S.Ct. 2674 (1978).

Additional Ground 2

The Affidavit in Support for the Search warrant was not challenge before the case went to trial the affidavit lack of probable cause and was not tested under the two (2) prong test Aguilar-Spinelli Article 1, §7, evaluating the probable cause of informant
Spinelli v. U.S. 393 U.S. 410, 21 L.Ed.2d 637, 89 S.Ct 584 (1969); Aguilar v. Texas, 378 U.S. 108
12 L.Ed.2d 723, 84 S.Ct. 1509 1964.
STATE v. MADDOX, 152 Wn.2d 499, 98 P.3d 1199 (2004).
STATE v. LYONS, 160 Wash. App. 100, 247 P.3d 797 (Div.3 2011).

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

Date: 3-7-13

Signature: [Signature]

"Argument"

On September 8th 2011, the appellant appeared in court

Affidavit / Determination for probable cause, in other words the Certification for probable cause,

On that Two piece document See (attached document for Exhibit).

I do apologize the appellant would like for the court to review the claim because it is very important. With respect for the court the appellant is making the point that justice has to be served but some of us are infant victims of miscarriage of justice.

Under Oath a Swore the and to the facts that are true and correct.

The affidavit / Determination for probable cause, contains fabricated material evidence,

On the document are two main issues).

- 1.) The affidavit was in fact prepared by Terry Lane #116708 Prece County prosecutor.
- 2.) The document is Knowledge under penalty of perjury, and Signed;
- 3.) The deputy prosecutor stated that "I am familiar with the police report and for investigation."

The Supreme Court STEPHEN BUCKLEY v. MICHAEL

FITZSIMMONS, 509 U.S. 259 (1993).

Courts can curtail the cost of prosecutorial blunders by cutting short the prosecutor or mitigating its effects out Court acts, cause injury deprivation of liberty, property and unlawful imprisonment. The prosecutor is to absolute immunity and the prosecutor must look to the Court in which the case pending to protect his interest by contrast "IF A CONSTITUTIONAL WRONG IS COMPLETE BEFORE THE CASE BEGINS"

"The prosecutor is entitled only to Qualified immunity."

Under due process Clause and Equal protection under Fourteenth Amendment and FIFTH Amendment U.S. Constitutional guarantee the right to due process of Law.

The fact that the evidence were materially fabricated intentionally and knowingly, so the Court in good faith certified the probable cause.

On the document clearly states the involvement of "Another Confidential informant and reliable hereafter referred to as CI #2"

The fabrication of the involvement of another Confidential informant.

That informant give clear statements, "CI #2 approached police and told them that, within the 3 day prior to August 30th 2011, he/she had been at 813 114th St South in Tacoma and seen Appellant in possession of a quantity of packaged Methamphetamine. CI #2 also related that Gomez-Vesquez was one of the residents at the address and had been in the distribution of Methamphetamine for several weeks from that location."

FRANKS v Delaware, 438 U.S. 154, 57 L. Ed. 2d 667, 98 S. Ct. 2674 (1978).

57 3/4 90 46 30 72 30 72

CH 1

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-03677-6

vs.

JUAN JOSE GOMEZ VASQUEZ,

DECLARATION FOR DETERMINATION OF PROBABLE CAUSE

Defendant.

755 S. Tacoma Ave. (402)

TERRY LANE, declares under penalty of perjury: Court of Appeals

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the TACOMA POLICE DEPARTMENT, incident number 11-2210634.

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the 5th day of August, 2011, a confidential and reliable informant (hereinafter referred to as CI#1) advised Tacoma Police that he/she had seen a person, later identified as co-defendant JUAN JOSE GOMEZ VASQUEZ, in possession of dealer quantities of methamphetamine packaged for sale, and that GOMEZ VASQUEZ had given him/her his phone number in order to arrange for drug purchases. CI#1 also stated that GOMEZ VASQUEZ worked in collaboration with someone named "Shelby," later identified as co-defendant SHELBY SUE GEORGE.

On August 10, 2011, CI#1 was searched by an officer for drugs, and none were found. The officer then gave CI#1 a sum of pre-recorded money. CI#1 then telephoned GOMEZ VASQUEZ and arranged to buy methamphetamine from him at an agreed upon location.

CI#1 went to the agreed upon location, and was kept under constant surveillance. A surveilling officer observed GEORGE exit the residence at 813-114th S. in Tacoma, WA, and meet up with CI#1 at the agreed upon location. CI#1 handed GEORGE the pre-recorded buy money, and, in exchange, GEORGE handed him/her suspected methamphetamine. They parted ways, and CI#1 returned to the officer and gave him the suspected methamphetamine. The substance field-tested positive for methamphetamine. Surveillance units followed GEORGE directly back to 813-114th St.

On August 18, 2011, CI#1 was searched by an officer for drugs, and none were found. The officer then gave CI#1 a sum of pre-recorded money. CI#1 then telephoned GOMEZ VASQUEZ and arranged to buy methamphetamine from him at an agreed upon location. CI#1 then telephoned GOMEZ VASQUEZ and arranged to buy methamphetamine from him at an agreed upon location.

CI#1 went to the agreed upon location, and was kept under constant surveillance. A short time later, GOMEZ VASQUEZ arrived at the agreed upon location, and he was driving a 1991 Ford Bronco automobile. He made contact with CI#1. CI#1 handed GOMEZ VASQUEZ the pre-recorded buy money, and, in exchange, GOMEZ VASQUEZ handed him/her suspected methamphetamine. They parted ways, and CI#1 returned to the officer and gave him the suspected methamphetamine. The substance field-tested positive for methamphetamine.

Surveillance officers followed GOMEZ VASQUEZ directly back to 813-114th St. S., where GOMEZ VASQUEZ then entered via the front door.

Another confidential and reliable informant, hereinafter referred to as CI#2, approached police and told them that, within the 3 days prior to August 30th, he/she had been at 813-114th St. S. and seen

DECLARATION FOR DETERMINATION OF PROBABLE CAUSE

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

There is no CI#2

included on the police report. This is perjury!

Scottie
Booth

vertical text on left margin: did the file and name

Trazodone Amitriptyline Gomez Vasquez Medication

11-1-03677-6

CH 1

check medical Records here at the Jail clinic or wallgreens -

GOMEZ VASQUEZ in possession of a quantity of packaged methamphetamine. CI#2 also related that GOMEZ VASQUEZ was one of the residents of that address, and had been involved in the distribution of methamphetamine for several weeks from that location.

On August 30th, the police obtained a search warrant for 813-114th St. S. Hearsay and no drugs.

On September 7, 2011, upon execution of the warrant, the police found GOMEZ VASQUEZ and two other persons in the southwest bedroom. Both of the other persons had warrants for their arrest, and they were placed under arrest.

GOMEZ VASQUEZ was fully advised of his constitutional rights after which he claimed that he was not a seller of drugs, but only a user. The police then advised him he was under arrest for delivering drugs, after which he admitted to selling heroin and methamphetamine. He further stated that he get a few grams of methamphetamine from his suppliers, and 20-21 grams of heroin. Police also found \$317 either in the residence or on GOMEZ VASQUEZ.

A search of the southwest bedroom located two prescription pill bottles, both with labels ripped off. The pills were identified through Drugs.com as ibuprofen, as well as the none-scheduled prescription medications Trazodone and Amitriptyline. In that same room, the police found documents and scribbles in GOMEZ VASQUEZ'S name. Crib Notes

A search of the center west bedroom, an officer found a handgun, magazines, ammunition, a scale and suspected marijuana (field-test positive). w/pot bag. is way under 40

While conducting surveillance on the residence on September 7th, officers noted that children were waiting for a school bus at 114th St. S. and Yakima. That's for trial if I do testify.

GOMEZ VASQUEZ has prior convictions for Taking of a Motor Vehicle without Owner's Permission (two counts), Attempting to Elude a Pursuing Police Vehicle, Assault in the Third Degree, Possession of Stolen Property in the Second Degree, and Controlled Substance convictions.

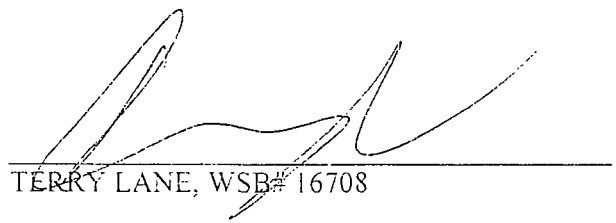
Defense counsel is hereby on notice of the State's intent to amend the charge of Unlawful Possession of Firearm in the Second Degree to First Degree, depending upon further investigation into the nature of GOMEZ VASQUEZ controlled substance convictions.

Defense counsel is hereby on notice of the State's intent to add school or school bus stop enhancements depending upon further investigation.

V Violation of due process

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: September 8, 2011
PLACE: TACOMA, WA


TERRY LANE, WSB# 16708

~~There is no evidence to show that...~~

DECLARATION FOR DETERMINATION OF PROBABLE CAUSE -2

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

See Back

the CI# is not any of the documents only CI# 931

Money on Gomez Vasquez See Police Report

The Facts are clear in this document Affidavit/declaration for probable cause, RCW 9A.76.175. Making a false or misleading statement to a public servant, and RCW 42.20.040. FALSE report.

"Material Statement" means a written or oral statement. Terry Lane #16708 prosecuting attorney investigated the report (Tacoma police incident report), and on Sept 8th 2011, Submitted the document to Certify the Probable Cause,

STATE v. Thomas, 103 Wn. App. 800. Section 32 and 33, Chapter 285, Laws of 1995,

The document mentions the full facts of another Confidential and reliable informant known as "CI #2" whom was not in existence, there was no other CI #2 on any other report, at all.

The other issue is that the appellant was driving a 1991 Ford Bronco when during the trial, Both Gordon and Buchanan Tacoma police officers testified that the appellant was in Side of a Blue Van as a passenger.

"The other man was drinking and Gordon said, both that man and Santana" were drinking. RP 230, 268.

Buchanan testified that, from where he was several blocks away, he NOTICE GOMEZVASQUEZ ride up the street on a bike and then, a few minutes later, saw him go back. RP 185, 201.

They have already lost track of the "Bronco" RP 270-271.

There is no appellant near in Side a Bronco, TERRY LANE fabricated the Driving of the Bronco, and the involvement of a CI #2, there was no other CI #2 and the Probable Cause was fabricated.

The affidavit is in fact misrepesented and negligent

Maple v. Illinois, 360 U.S. 264 (1959) - prosecutor knowingly use of perjured informant testimony violated due process; HAYES v. Brown, 399 F.3d 972 (9th Cir. 2005) - prosecutor violated due process by knowingly using informant's false testimony.

The results of the search warrant execution was negative, the Tacoma police department primary item was Contraband of Methamphetamine as stated by their reliable and credible informant.

The Affidavit/Declaration for Determination of Probable Cause was misrepresented and recklessly disregard for the truth see FRANKS v. Delaware, 438 U.S. 154 (1978) at 171

"allegations of negligence or innocent mistake are insufficient."

But this allegations are not innocent mistakes, allegations are in fact negligence because clearly states "Another confidential informant known as CI#12" is the full knowledge of another person giving and providing information in fact that is reckless and not innocent because also further more clearly states:

"within prior 3 days to August 30th he/she been at the residence 813 114th St South in Tacoma."

It is in fact giving the day, place and location the omission are ~~material~~ not innocent, but Material.

Under FRANKS There must be allegations of deliberate falsehood or of reckless disregard for the truth, the affidavit is in fact pointing out the prosecutor that is no claim to be false.

The Affidavit is not clear about how the CI#2 got in there the purpose of been inside the residence and the Knowledge and Credibility was not tested, the appellant contends that affidavit does not sufficiently describe how the CI#2 knew the substance was methamphetamine or how he/she came to know how Methamphetamine is packaged or ingested. The fabrication of that portion of that Affidavit became to the light of the Court.

The appellant infact tried to challenge this issued by filing Motion letters but the Court would not acknowledge not one document to prevent to end up in trial. 10-31-2011, 2-28-2012. The appellant was not heard nor schedule for readdress the issues on this Criminal matter the court error and prejudice the appellant. The fact that "CI#2" was ever produced.

The Affidavit/Controlled Substance, "The Complaint for Search Warrant" was also in question.

The affidavit lack of probable cause, and is not tested under Aguilar-Spinelli.

Spinelli v. US, 393 U.S. 410, 21 L Ed 2d 637, 89 S Ct 584 (1969);
Aguilar v. TEXAS, 378 U.S. 108, 12 L Ed 2d 723, 84 S Ct 1509 (1964).

The two (2) prongs of the Aguilar-Spinelli test have independent status and both must be showing in other to establish probable cause.

- 1) The affidavit is not detailed enough to enable the Magistrate to issue a warrant,
- 2) The affidavit only contains information by Kevin Gordon CI,
- 3) There is not one statement about police investigations other than Gordon.

Agreement Between Pierce County Prosecutor's Office
AND Kevin A Gordon,

Under the agreement (See attached document) the informant Gordon fail to make and complete his agreement on number (7.)

Successfully perform (2) two reliability purchases and/or operations, 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 fact that Kevin Gordon was under Contract.

The affidavit/complaint for Search warrant was not included for the magistrate to enable the doubts in the affidavit's omissions,

(8.) The Contract was to participate in narcotics purchases resulting in the arrest for felony narcotics charges of three (3) one ounce level.

The Contract was intact violated by the informant because, Gordon only provided (1) one third of the requirement, and that also these information was not included in support of the Search warrant affidavit,

(10.) Upon request, Submit to and pass a polygraph examination concerning his initial statement or subsequent information

The polygraph test was not included in support of the affidavit either.

Kevin A. Gordon was "Coerced" to testify and coach by the prosecutor under RCW 9A 36.070. The Tacoma Police and prosecutors attorney threaten Kevin A. Gordon that he need it to testify or his agreement between Pierce County prosecutors office would be void

also see RCW 9A 04 110. Gordon admitted that, without the "deals" he was facing, 10 years just one case of his cases R.P. 251.

Buchanan testified that Gordon was "on contract" R.P. 181. This is official misconduct with intent to obtain a benefit or to deprive another person of a lawful right, under 9A 80.010.

The Tacoma Police department and prosecutors office, in fact bribed the State witness Kevin A. Gordon, influence the testimony of a person basically Gordon was intimidated by prosecutor and Buchanan, under RCW 9A 72.090.

Gordon testified on cross-examination, he conceded that the potential was for 20 years on the other case for which he got a "DEAL" R.P. 262.

not only was Coerced but Bribed witnesses, 9A 72.090. This is official misconduct under RCW 9A 80.010 (2), (b), and failure of duty by Public officers RCW 42 20.100.

Gordon need it to required to set up people for "FELONY" narcotic charges of three Sepeak deals. Under the Contracts with police R.P. 264.

Gordon agreed he would be "in trouble with the prosecutor" if the testimony was different R.P. 277 and R.P. 274.

Gordon was Coerced and Bribed by official misconduct. The fact that Gordon was given deals to get off his own Criminal Charges. Gordon admitted at trial that he was willing to do almost anything to stay out of prison, R.P. 285.

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

KL

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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

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



Additional Ground 3.

The Court error denying the Cr.R. 3.5. Suppression hearing to suppress the statements made not voluntarily. MIRANDA RIGHTS CARD was not issue nor waived, there is no evidence to the waiver under MIRANDA v. ARIZONA, 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602 (1966). Violation of due process of Miranda Rights Card. there is no evidence to the Miranda Rights Card and that is the only way to prove that the appellant was aware of that waiver. including the fact that the appellant was tired and intoxicated during the encounter. therefore the suppression should be reversed.

Additional Ground 4.

the Court error for failure to submit entire element of crime to jury, when properly presented requested is made, is treated as structural and is reversible error. with out regard to harm. US. v. GARDIN, 515 U.S. 506, 132 L.Ed.2d 444, 115 S.Ct. 2310 (1995). the fact that the state prosecutor failure to show beyond reasonable doubt that the actual "transfer", exchange, transaction took place no evidence before the jury that the delivery occurred. NO actual police work to support that infact that element ~~was~~ was met. other then the word of Criminal informant Gardin CI #931, whom signed a contract with pence county prosecutor.

Additional Ground 5.

the Court error and defense counsel to sanction the prosecution for Violations of Cr.R. 4.5. Cr.R. 4.7, and PCLR of Superior Court, based on moving trial dates with out appellants authorization the documents were noted. "Objecting for Continuance".

Additional Ground 6.

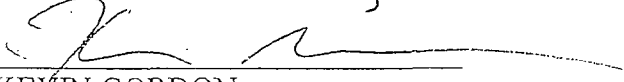
The Court error Denying Motion for arrest of judgement and Motion for new trial Cr. 7.4, ~~and~~ Cr.R. 7.5. on the basis of 11 females in the jury trial and Misprosecutorial Misconduct. POWERS v. OHIO, 499 U.S. 400, 113 L.Ed.2d 411, 111 S.Ct. 1364 (1991) white Criminal defendant held to true standing to raise equal protection objection to prosecutor's alleging race based exercise of peremptory challenges to exclude black prospective jurors. Violation of Six Amend the right to a fair trial to a jury of a peers race, and gender. the appellant suffer from the right to face jury of peers race and gender.

Additional Ground 7.

the fact that the controlled buy was lost and Tacoma police lost the Control of the buy including the fact that Gardin the informant was under Agreement with pence county attorneys office, Gardin only need it to provide buys on random people to get out trouble him self, the main fact Gardin have motive to lie and he knew how to make buys before hand to avoid prison sentence.

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.

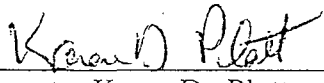
DATED THIS 29th day of July, 2011



KEVIN GORDON,

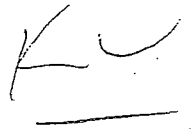


Attorney for KEVIN GORDON



Prosecutor Karen D. Platt

AGREEMENT BETWEEN PIERCE COUNTY PROSECUTOR'S OFFICE
AND KEVIN GORDON



12-2-11

Kevin A. Gordon

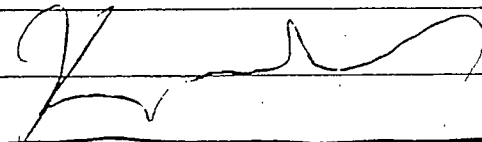
10-1-02410-7

10-1-02130-4

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

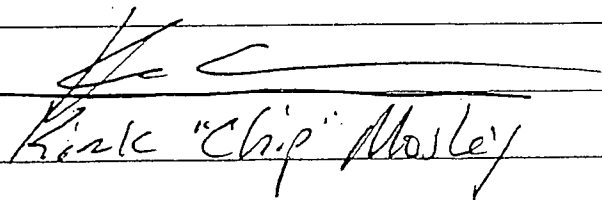
Kevin Gordon hereby agrees to:
(18.) Comply with all terms and
conditions of DOC supervision imposed
under cause number 07-1-65670-5

Date: 12/2/2011



Kevin Gordon

Date: 12/2/2011



Kirk "Chip" Mosley

The affidavit itself is insufficient to warrant probable cause, the informant was providing information to get out from going to prison. Also on October 18 officers gave Gordon \$300 pre-recorded "buy" money and a scale which later turned out to be broken (R.P.) 225-28.

The appellant obtained through civil forfeiture for the US currency that was seized \$317.00 during the execution of the search warrant the appellant included a copy of the money stated given to Gordon (see attached document.)

There were (14) bills in 20" that equals "280",

The fact that the appellant request the money used in the buy, the defense counsel failed to challenge the fact that there was no mark money before the jury and that was a violation of discovery.

The warrant affidavit was invalid because Supporting affidavit lacked evidence of nexus between the Out Side buildings and Storage areas for contraband to be searched

Green Street v. County of San Bernardino, 41 F.3d 1306, 1309 (9th Cir. 1994). warrant invalid because Supporting affidavit's statements that police knew known drug offender at location of drug activity and at target of search warrant insufficient nexus between the contraband and place to be searched,

The affidavit clearly states "That your affiant's beliefs based upon the following facts and circumstances:"

The affiant was contacted by a confidential and reliable informant regarding a subject he/she observed possessing a quantity of Methamphetamine.

Case No: 112210634

List type: wanted

Name: BUCHANAN
Agency: TACOMA PD
Phone:
E-Mail:

Investigator

Name:
Agency:
Phone:
E-Mail:

Supervisor

Date: 8/18/2011 2:03:59 PM
Notes:

Serial Numbers

\$20 GJ14102569B
\$20 EK82577378A
\$20 GE09918204C
\$20 GH38887864A
\$20 EF87662898A
\$20 IL31305819C
\$20 GJ95295946B
\$20 EE06333023E
\$20 EB62605635F
\$20 GA91192402A
\$20 GK20849498C
\$20 GF65911781D
\$20 GJ16398547B
\$20 EG16928962D

Total Bills : 14
Total Amount : 280

"ANALYSING" THE SEARCH WARRANT AFFIDAVIT

- 1.) Comes Now Officer J. Buchman #1131, who being first duly sworn on oath complains, deposes and says: That he has probable cause to believe and in fact does believe that, in violation of laws of State of Washington RCW. 69.50.401, Controlled Substances, as defined by law are being used, manufactured, sold, bartered, exchanged, administered, dispensed, delivered, distributed, produced, possessed, given away, furnished or otherwise disposed of or kept, in and about and upon certain premises within Pierce County, Washington, designed and described as follows, to-wit:
 1. The residence 813 114th St S. Tacoma, WA 98444. The residence is a single story wood frame construction residence that is red in color with white trim. The address numbers 813 are clearly posted in red on white background to the right of the front door that faces South. The search is to include any outbuildings and storage area. The search is also to include any persons found on or associated with said property are to be detained, searched and identified. The search is to include any vehicles on the property.
- 3.) 2.) The person known as Gomez Varquez, also AKA "Santana" date of birth 09/15/1975, standing approximately 5'7" tall weighing approximately 170 pounds.
- 4.) Your affiant will be searching for evidence of narcotics usage and/or trafficking in violation of RCW. 69.50, including but not limited to: controlled substances, narcotics paraphernalia, addresses, telephone numbers of co-conspirators, books, records, receipts, photographs of assets and/or co-conspirators, documents showing dominion and control, money, and dangerous weapons used by narcotics traffickers.
- 5.) That your affiant's belief is based upon the following facts and circumstances.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

COMPLAINT FOR SEARCH WARRANT
(CONTROLLED SUBSTANCES)

STATE OF WASHINGTON)
ss) No.
COUNTY OF PIERCE)

COMES NOW Officer J. Buchanan #131, who being first duly sworn on oath complains, deposes and says: That he has probable cause to believe and in fact does believe that, in violation of laws of the State of Washington RCW 69.50.401, controlled substances, as defined by law are being used, manufactured, sold, bartered, exchanged, administered, dispensed, delivered, distributed, produced, possessed, given away, furnished or otherwise disposed of or kept, in, about and upon certain premises within Pierce County, Washington, designated and described as follows, to-wit:

1. The residence 813 114th St S Tacoma, WA 98444. The residence is a single story wood frame construction residence that is red in color with white trim. The address numbers 813 are clearly posted in red on a white background to the right of the front door that faces South. The search is to include any outbuildings and storage areas. The search is also to include any persons found on or associated with said property are to be detained, searched and identified. The search is to include any vehicles on the property.
2. The person known as Gomez Vasquez, Juan J AKA "Santana" date of birth 09/15/1975, standing approximately 5'7" tall and weighing approximately 170 pounds.

Your affiant will be searching for evidence of narcotics usage and/or trafficking in violation of RCW 69.50, including but not limited to: controlled substances, narcotics paraphernalia, addresses, telephone numbers of co-conspirators, books, records, receipts, photographs of assets and/or co-conspirators, documents showing dominion and control, money, and dangerous weapons used by narcotics traffickers.

That your affiant's belief is based upon the following facts and circumstances:

Your affiant was contacted by a confidential and reliable informant regarding a subject he/she observed possessing a quantity of methamphetamine. Within the past 72 hours, the informant was at the residence clearly marked with the address numbers 813 114th St S in Tacoma. The informant was inside the residence described as a single story wood frame construction residence that is red with white trim. While at this location, he/she observed a quantity of packaged narcotics methamphetamine inside the residence and in the possession of one of the residents a subject known by the informant as street name "Santana" described as a hispanic male approximately 30-35 years of age. This subject was identified by Officer Smith as Gomez Vasquez, Juan J date of birth 09/15/1975 who was within 15 feet of Gomez Vasquez during the investigation.

Your affiant investigated the location in question. The residence addressed 813 114th St S in Tacoma was pointed out to your affiant by the informant. Your affiant had been told by the informant that he/she has known "Drew" (Andrew M Johns) to be one of the residents of the address and to be involved in the distribution of methamphetamine for several weeks now from this location. Your affiant conducted a records check of Gomez Vasquez, Jose J 09/15/1975 the records check shows that Johns has multiple arrests for UPCS and UPCS with intent. Your affiant conducted surveillance at the location and witnessed Gomez Vasquez in WA 200YWU (registered to a 1991 Ford Bronco in the name of Antonia Pestmone at 1115 116th St S Apt 4 in Tacoma). Gomez Vasquez appeared to be moving something around in the back seat. Through your affiant's training and experience your affiant knows drug traffickers to conceal narcotics and profits in vehicles.

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

6.) Your affiant was contacted by a Confidential and reliable informant regarding a Subject he/she observed possessing a quantity of methamphetamine. Within the past 72 hours, The informant was at the residence clearly marked with the address number 813 114th St S. in Tacoma. The informant was inside the residence described as a single story wood frame construction residence that is red with white trim. While at this location, he/she observed a quantity of package narcotics methamphetamine inside the residence and in the possession of one of the residence a Subject known by the informant as street name "Santana" described as a hispanic male approximately 30-35, years of age. This Subject was identified by Officer Smith as Gomez Vasquez, Juan J date 09/15/75 who was within 15 feet of Gomez Vasquez during the investigation.

7) Your affiant investigated the location in question. The residence address 813 114th St S. in Tacoma was pointed out to your affiant by the informant. Your affiant had been told by the informant that he/she has known "Drew" (Andrew M. Johns), to be one of the residents of the address and to be involved in the distribution of methamphetamine for several weeks now from this location. Your affiant conducted a records check of Gomez Vasquez, Jose 09/15/75 the record check shows that "Johns" have multiple arrest for UPCS and UPCS with intent. Your affiant conducted surveillance at the location and witnessed Gomez Vasquez in WA 200 YWU (registered to a 1991 Ford Bronco in the name of Antonia Pestmore at 1115 116th St S Apt 4 in Tacoma. Gomez Vasquez appeared to be moving something around in the back seat. Through your affiant's training and experience your affiant knows drug traffickers to conceal narcotics. 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 investigation.

8.) 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 Dept. 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.

1.) The affiant is not detail about the appellant, 2.) The affiant don't mentioned how the confidential and reliable informant was doing inside the residence, 3.) There is no probable cause to search all out buildings and storage-areas, 4.) Officer Smith identified "Santana" as Gomez Vasquez by been 15 feet, 5.) There is a question with narcotics traffickers, 6.) There is not enough evidence to create probable cause.

The affiant's statement is that Buchanan investigated the location and witnessed Gomez Vasquez in a 1991 Ford Bronco moving "something" in the back seat. Innocent behavior is confused with illegal activity. Buchanan is not giving a specific information about what Gomez Vasquez is moving in the back seat. "could be moving tools, cleaning the Bronco, fixing tail light wire, ect."

moving "Something" is not giving enough detail about what "Something" could be, there is not a clear fact that what Buchanan witnessed was illegal narcotics.

The fact that the involvement of another "Officer Smith" was out 15 feet from appellant and 1.) The officer don't describe or detail about how he identified the Subject as Gomez Vasquez, 2.) The "Officer Smith" did not supply that he was at 15 feet in support the affidavit, 3.) Buchanan did not have a picture or how the "Officer Smith" identified the appellant as Gomez Vasquez.

The residence" owner was never identified, The residence' roommates were not identified no one else was investigated but the appellant.

The fact the "Officer Smith" did not included his testimony in support of the affidavit is insufficient to warrant Probable Cause,

The fact that out buildings and Storage area and Vehicles have nothing to do with the investigation because there was no evidence that out buildings and Storage areas including Vehicles were part of any drug activity.

GORDON mentioned that he observed a Subject in Side the residence in possession of Methamphetamine, and Buchanan made it sound like the residence was a Pharmacy "Controlled Substances"

In paragraph (4) under analysis of the Search warrant affidavit:

YOUR affiant will be Searching for evidence of narcotics usage and/or trafficking in violation of RCW 69.50 including but not limited to: "Controlled Substances". The fact that Gordon only observed Methamphetamine only, that should have been the Search warrant affidavit detail for it only.

Within the past 72 hours." The detail about the informant been at residence, is not clear what the informant was doing.

1.) There is no explanation about what the informant doing inside the house, 2.) Why the informant was there, 3.) how he the informant only saw the methamphetamine.

"Credibility" "Identity Known by Police", When a search warrant is based on information provided by a citizen informant whose identity is known to the police but not revealed to the magistrate, the supporting affidavit must set forth sufficient information to create an inference that the informant is telling the truth. The information must substantially decrease the possibility that the informant is an anonymous troublemaker, is involved in the criminal activity, or is motivated by self-interest.

I.) One way to satisfy this standard is for the affidavit to include 1.) a description of the ~~informant~~ informant and (2) an explanation of the informant's purpose for being at the scene of the crime and the informant's desire to remain anonymous.

The fact that Gordon ^{allegedly} ~~allegedly~~ concluded a controlled buy on August 18th officers dropped Gordon off about a block away from the meet location "RP 267.

There Police dropped off Gordon off at "meet location", (RP 184, 275-28) 56th and Portland.

The affidavit not one statement about a Van and beer dropped off at 56th and Portland.

There is a long ways to one location to another, the affidavit on page (2), The informant participated in two (2) controlled buys.

1.) The informant again only the informant knows where to purchase Controlled Substances. 2.) There is no disclosure were the locations were or what locations where the Tacoma Police pointing out 3.) The Tacoma followed the informant to at unknown location entered the unknown location. After a few minutes later exiting the location.

The affidavit is not detail about the location time where he was followed at no facts to the location, no facts to whom this location where and the fact that the affidavit lack of probable cause,

The magistrate was not provided with locations were the informant purchased the narcotics, no time where this two (2) Controlled buys occurred,

The affiant's investigation was that he witnessed the appellant in a 1991 Ford Berce, and appeared to be moving "Something" in the back seat.

The only evidence that the affiant offered in support in the affidavit was "he witness the appellant moving "Something".

The magistrate should have more than "Something". The fact that there was another officer who was within 15 feet of appellant during the investigation. Again is not clear where the officer Smith was located at doing to identify the appellant.

TWO (2) OFFICER AT THE RESIDENCE BUT NOT ONE OBSERVED NARCOTICS.

The only person that saw anything was the informant, the fact that the Officer Smith did not included in support of the affidavit. Officer Smith's testimony. The Magistrate acted in good faith and issued the warrant.

the alleged controlled buy was done August 18th 2011, the question is why the officers did not include that information in the support of the affidavit, the fact that the Gordon drove around town and told the officer that he was coming from the house in question.

"The Tacoma Police Officers lost the controlled buy."

FOR EXAMPLE

"HERE IS THE MONEY GO AND GET DRUGS"

"Here is the drugs I got this from Santana personally." NO Video, NO audio, NO Pictures, NO witnesses to the actual transaction.

Buchanan admitted he never saw Gordon get into any car or van. (RP 202.)

The fact that not one statement was disclosed to the magistrate for support of the affidavit search warrant.

Our Supreme Court has rejected the "totality" of the circumstances approach adopted by the US Supreme Court in *Illinois v. Gates*, 462 U.S. 213, 76 L. Ed. 2d 527, 103 S.Ct. 2317 (1983). Under article 1, Section 7 of the WA State Const. the right to be free from unreasonable governmental intrusions is still protected by the stricter showing of probable cause required under the 2-prong *Aguilar-Spinelli* test. Appellant that even if we assume that the informant is a citizen informant, the affidavit lacks sufficient specificity to establish the informant's veracity. See *STATE v. NORTHESS*, 20 Wn. App. 551, 557, 582 P.2d 546 (1978).

Informants usually fall into two categories (1) an informant who remains wholly anonymous, even to the police, (2) an informant whose identity

is known to the police, but not revealed to the magistrate, (3) an informant whose identity (name and address) is disclosed to the magistrate, and (4) an eyewitness to a crime who summons the police and who is not identified because the exigencies are such that ascertaining the identity and background of the witness would be unreasonable.

The fact that it was Officer WALKINSHAW, not Buchanan who was believed to have conducted "reliability" buys with Gordon, (RP 196-97).

FRANKS v Delaware, 438 U.S. 154 (1978) (Police reckless disregard for truth in warrant application will invalidate warrant).

Buchanan was not for sure if Gordon was "reliable" and if Gordon ever done something negative.

The affidavit is not detailed with that information nor Buchanan have knowledge if infact was "reliable" because Buchanan never tested his "veracity", "Knowledge" and "Credibility", another officer done the test and like Gordon mentioned. "He claimed, however, that he had done unsuccessful "deals" before and had not gotten in trouble for that" RP 282, 284.

"Your affiant's belief is based upon the following "facts" and "Circumstances".

1.) The fact that the affiant was not sure about Gordon been reliable. 2.) The fact that there was no methamphetamine in the residence nor in any body's possession.

1.) The Circumstances are that the affiant obtained information from a Criminal drug user that he was looking at long time in prison, 2.) The Circumstances are also that the affiant did not conduct any self investigation to make sure of all information was infact true.

Northness, 20 Wn. App. at 555. Here, the informant falls into the second category and is referred to as a "Confidential Informant".

Different rules are applied for establishing the credibility of a Confidential Informant, depending on whether the informant is a professional informant or a private citizen. STATE v. Franklin, 49 Wn. App. 106, 108, 741 P.2d 83, review denied, 109 Wn.2d 1018 (1987). This is true, in part, because when a citizen informant supplies information to the police, it is unlikely that the police will be able to demonstrate the citizen's veracity by his or her "track record" for supplying information. See Jackson, 102 Wn.2d at 437. Additionally, when information is provided by an identified citizen informant, the danger that the information is merely a casual rumor or the product of an anonymous trouble maker is minimized, and the information is less likely to be colored by self-interest.

Northness, 20 Wn. App. at 557. Consequently, the State's burden of demonstrating the identified citizen's "credibility" is generally relaxed.

Franklin, 49 Wn. App. at 108. However, the concern that the information may be coming from an "anonymous trouble maker" remains when the citizen informant is unidentified. NORTHNESS, 20 Wn. App. at 557. Citing United STATES v. Daresburg, 520 F.2d 985 (5th Cir. 1975).

Therefore, the State's burden of demonstrating the credibility of a citizen informant is not necessarily lightened when the informant remains unidentified to the magistrate. See STATE v. HUFFT, 106 Wn.2d 206, 211, 720 P.2d 838 (1986); STATE v. Rodriguez, 53 Wn. App. 571-574-75, 769 P.2d 309 (1989); STATE v. NORTHNESS.

The affidavit in support of the search warrants, the identity was not disclose to Magistrate for reliability to the issuing of the warrant. Because this raises grave concerns of the informants reliability, Washington cases have required heightened demonstration of credibility for citizen informants whose identities were known to the police but not revealed to the magistrate.

Rodriguez 53 Wn. App. at 575-76, "in fact, anonymity of a citizen informant may be one factor for finding no showing of reliability." Franklin at 110 Cite STATE v. Beckler, 46 Wn. App. 587, 731 P.2d 548 (1987)

Because suspicious circumstances greatly diminish the presumption of reliability of the informants, Rodriguez, 53 Wn. App., there must be enough additional information in the affidavit to support an inference that the unidentified or confidential informant is telling the truth.

STATE v. PARTIN, 88 Wn.2d 899, 904, 567 P.2d 1136 (1977). The support for issuance of a search warrant is sufficient if, on reading the affidavit, an ordinary person would understand that a violation existed and was continuing at the time of the application.

The Tacoma Police applied on August 30th 2011, for a search warrant the search warrant was executed on Sep 7th 2011, and the informant informed that 3 days prior the application of the warrant, found no narcotics.

The mere statement that an informant is credible is not sufficient (Agonles v. TEXAS, 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964)).

"The affiant stated that the informant has given him information proven to be true and correct in the past." While this is more than drawing the conclusion that the informant is credible and admittedly less than stating the facts as to why the past information has proven to be true and correct it still is a factual statement not a conclusion of the affiant.

See STATE v. THEIN, 138 Wash. 2d 133, 977 P.2d 582, the facts in this case have some similarity to the appellants at 585.

"ANALYSIS" of Thein's search warrant, The Division I reversed the officer's belief that the habituated habitual users of drugs keep drugs and paraphernalia in their home was mere speculation it was not sufficient to establish probable cause.

Here in this matter Gordon was at the residence and observed a person in possession of Methamphetamine.

The fact that "Gordon" only saw it not the affiant the affiant never included personal belief that there was drugs in the Residence it was GORDON who told the officer Buchanan, and including the fact that Officer Smith was some place identifying the appellant within 15 feet of undisclosed location, the fact that "Smith" did not observe the appellant in possession of any narcotics and the great deal that no officer witnessed the appellant in possession of any narcotics

The officers also did not see any "deal" take place (RP 202)

There was no illegal contraband found after the search to Methamphetamine.

US v. CORRAL-GASTELUM, 240 F.3d 1181 (9th Cir 2002)
US v. CERVANTES, 219 F.3d 882 (9th Cir 2000), Defendants mere proximity to drugs, her presence on property where it is located, and her association with person who controls it are insufficient to support conviction for possession.

The fact that the appellant have no ownership to the residence and the pills are part of his mental treatment, the marijuana and scale along with the gun and ammunition were located in another room belonging to the owner of the residence.

The owner of the residence was not investigated not even identified the fact that Buchanan and Smith did not investigate the residence alone and included the owner of the residence. The owner of the residence was not included in the affidavit, see Gebartoff 939 P.2d 706 at 708

The defense counsel fail to challenge the affidavit before trial and the affidavit is not set to warrant probable cause, the (confidential informant "GORDON") was not credible,

"It was Walkinshaw" not Buchanan who was believed to have conducted "reliable" buys with Gordon transactions RP-196-97).

"BUChaco could not say however whether there was any documentation of these reliable buys" (RP 197)."

This information was not provided in support the affidavit to obtain the search warrant, the fact that Buchanan have no reliable information to the fact of the informant was credible, the affidavit contains misleading information and is not innocent but Material because the fact that Buchanan with held information as to the informant been reliable and credible, fail to pass the two (2) prong test under Aguilar v. Texas, and US v. Spinelli, v. US.

Constitution. art 1, § 7, requires that, in evaluating the existence of probable cause in relation to informants' tips, the affidavit in support of the warrant must establish the basis of ~~informants~~ information and credibility of the informant.

SPINELLI v. US, 393 U.S. 410, 21 L.Ed.2d 637, 89 S.Ct. 584 (1969);

AGUIJAR v. TEXAS, 378 U.S. 108, 12 L.Ed.2d. 723, 84 S.Ct. 1509 (1964).

The (2) two prong test for evaluation of existence of probable cause Aguilar at 114, Spinelli at 413,

A magistrate requires an affidavit which informs him of the underlying circumstances which led the officers to conclude that the informant was credible and obtained information in a reliable way Spinelli at 412-16; Aguilar at 110-15.

"Buchanan witnessed Gomez Vasquez moving 'Something' in the back seat of a 1991 Ford Bronco."

The fact that Buchanan identified the owner of the Bronco, but did not identify the owner of the residence and the Blue Van along with the driver of the Blue Van.

There are major facts to the support for the ~~State~~ warrant, the Blue Van and the driver were not included in the affidavit for purposes of evidence to support the Probable Cause, the fact that the Buchanan never disclosed all relevant information to the Magistrate, because Buchanan knew him self that there was not enough information to support probable cause.

In Aguilar the Court dealt with an affidavit that State says:

Affiant 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 describe premises for the purpose of Sale and use contrary to provisions of law. Aguilar 378 U.S. at 109.

State v. Jackson, 688 P.2d 136 at 437-438!! 102 Wash.2d 432

basis of "Knowledge" and basis of "Veracity" evaluating the informant's "Track Record"

The fact that Buchanan did not have test the credibility of the informant/Gordon, before the application of the Search warrant,

US v. MORRISON, 991 F.2d 112 (4th Cir. 1993) Mere joint tenancy of residence in which narcotics are found is insufficient to prescribe possession to all occupants.

The Marijuana and Scale including the Gun with ammunition were located in another Room which Room's owner was never identified.

US v. PREMISES KNOWN AS RR NO. 1, 14 F.3d 864 (3rd Cir 1994) Mere possession of Cocaine on property for property owner's own personal use was insufficient, Standing alone, to Support civil forfeiture of the property.

US v. MYERS, 308 F.3d 251 (9th Cir. Arrest is not justified by what Subsequent Search discloses.

US v. BIZIER, 111 F.3d 214 (1st Cir. Evidence recovered after arrest may not form basis of probable Cause for that arrest.

The Tacoma Police executed a Search warrant and found pills that were part of appellants mental treatment and Marijuana that was under 23 grams, and the owners Gun and ammunition that belong to the owner of the residence, (the owner owns weapons permit)

On September 7th 2011, Buchanan executed a Search warrant at the home where Gordon had gone (RP 182). This information was not included in the affidavit for Probable Cause, and no Methamphetamine was ever found nor Methamphetamine paraphernalia.

U.S. v. EDWARDS, 242 F.3d 928 10th Cir. If Police learn information that destroys their probable cause to arrest a defendant, the arrest may become illegal.

STATE v. MADDUX, 152 Wn.2d 499, 98 P.3d 1199 (2004) at 1206
Maddux the Supreme Court reversed the Court of appeals decision based
and hold that the warrant issued to search Maddux's home was invalid
because probable cause was negated as to the primary item designated in
the search warrant: Methamphetamine.

The fact that Gordon observed Methamphetamine not other controlled
Substances the fact Beckman put more facts the warrant true the
fact that Beckman belief there was all Sources of controlled Substances
no evidence to any other drugs been in side the premises, out buildings,
Storage area, other than what Gordon observed.

The entire Tacoma Police Department not once intruded any drugs
that Gordon is talking about.

Article 1, Section 7, State Const. and IV Amend U.S. Const. requires to have
probable cause before the issuance of a warrant,

Maddux was under 2 yrs of investigation and the informant conducted 35
Controlled buys out that residence,

Gordon was at appellants residence only one time and that is his only word,
because there is no evidence that Gordon was at the residence at all, no
Pictures, no wire, no video, no audio, no bank money, no direct evidence that
what Gordon saw was credible, because the residence did not produce
Methamphetamine, nor paraphernalia Methamphetamine.

STATE v. THEIN, 977 P.2d 582, 138 Wn.2d 133, at 588, Most
Courts however, require that a nexus between the items to be seized and place to
be searched must be established by specific facts: an officer's general conclusions are
not enough and if the affidavit or testimony reveals nothing more than a
declaration of suspicion and belief it is legally insufficient.

The Tacoma Police learned that no person was in possession of Methamphetamine nor paraphernalia including in Side the residence their probable cause becomes stale, because the fact that Gordon only provided information to Buchanan,

The other fact is that Gordon on 18th of August got in Side of unidentified Van and drove around Town then Gordon only "Text" Buchanan what he was doing and the fact the GORDON got a ride from the same unidentified Van, there was no surveillance supervising Gordon's movements.

"The DRIVER OF THE VAN DROVE GORDON TO DROP HIM OFF THE Place at 112th RP 230, 272"

"GORDON HAD CALLED THE OFFICERS TO TELL THEM HE WAS GOING TO MEET THEM THERE, SO WHEN HE ARRIVED HE WALKED ACROSS THE STREET TOWARDS THEM AND THEN HOPPED INTO THEIR TRUCK. RP 931."

The main fact that the Tacoma Police Department did not witnessed the informant coming out the residence, there was not enough probable cause to issue the warrant,

(1) NO VIDEO, (2) NO AUDIO, (3) NO Surveillance that followed GORDON to the residence to make sure that he Gordon was in Side of the residence as Gordon stated.

All reality: no one in fact saw GORDON in Side the residence, or getting out the residence.

ANALYSIS of Incident Report.

The Tacoma police Report only mentions The Surveillance unit followed "Santana" who proceeded directly back to the residence."

The informant handed the methamphetamine to your affiant. Officer Jensen field tested the substances with positive results for methamphetamine. The informant was searched by Officer Jensen for any drugs and/or paraphernalia with none being found. Your affiant later placed the methamphetamine into property.

Surveillance units followed "Shelby" who proceeded directly back to 813 114th St S in Tacoma. Surveillance units lost sight of "Shelby" who was suspected of entering the residence. I showed Officer May a photo of Shelby Sue George DOB 06/17/1986 and Officer May identified her as "Shelby".

On 08-18-11, your affiant contacted the confidential and reliable informant for the purpose of a controlled narcotics purchase from "Santana". The informant was searched by your affiant for any drugs and/or paraphernalia with none being found. Your affiant also obtained an amount of U.S. currency from the Special Investigations narcotics investigative fund for use by the informant and recorded the serial numbers.

The informant then made contact with "Santana" using the phone number provided. During the contact a location for the anticipated narcotics transaction was agreed upon. Your Affiant, with the assistance of Officer Jensen, then proceeded with the informant to that location. Once there the informant was released while under the supervision and direction of your affiant and Special Investigations. The informant was kept under constant observation by Special Investigations.

A short time later a hispanic male, arrived at the location associated with WA License 200YWU (registered to a 1991 Ford Bronco in the name of Antonia Pesimone at 1115 116th St S Apt 4 in Tacoma. Upon his arrival the informant made contact with the hispanic male. After a short period of time the informant separated from the subject.

Your affiant and Officer Jensen then recontacted the informant. He/she stated that the subject he/she had contacted was "Santana". When the informant met with "Santana" he/ she handed "Santana" some prerecorded currency in exchange for an amount of methamphetamine, which "Santana" handed directly to him/her.

The informant handed the methamphetamine to your affiant. Officer Jensen field tested the substances with positive results for methamphetamine. The informant was searched by Officer Jensen for any drugs and/or paraphernalia with none being found. Your affiant later placed the methamphetamine into property.

Surveillance units followed "Santana" who proceeded directly back to 813 114th St S in Tacoma. Surveillance units advised that "Santana" entered the residence using the front door. I showed Officer Smith a photo of Gomez Vasquez, Juan J DOB 09/15/1975 and Officer Smith identified him as "Santana".

Your affiant was contacted by a confidential and reliable informant regarding a subject he/she observed possessing a quantity of methamphetamine. Within the past 72 hours (as of 08/30/11), the informant was at the residence clearly marked with the address numbers 813 114th St S in Tacoma. The informant was inside the residence described as a single story wood frame construction residence that is red with white trim. While at this location, he/she observed a quantity of packaged narcotics methamphetamine inside the residence and in the possession of one of the residents a subject known by the informant as street name "Santana" described as a hispanic male approximately 30-35 years of age. This subject was identified by Officer Smith as Gomez Vasquez, Juan J date of birth 09/15/1975 who was within 15 feet of Gomez Vasquez during the investigation.

Your affiant investigated the location in question. The residence addressed 813 114th St S in Tacoma was pointed out to your affiant by the informant. Your affiant had been told by the informant that he/she has known "Santana" (Gomez Vasquez, Juan) to be one of the residents of the address and to be involved in the distribution of methamphetamine for several weeks now from this location. Your affiant conducted a records check of Gomez Vasquez, Jose J 09/15/1975 the records check shows that Juan has multiple arrests for UPCS and UPCS with intent. Your affiant conducted surveillance at the location and witnessed Gomez Vasquez in WA 200YWU (registered to a 1991 Ford Bronco in the name of Antonia Pestmone at 1115 116th St S Apt 4 in Tacoma). Gomez Vasquez appeared to be moving something around

Handwritten notes on the left margin:
- 11/11/11
- free
- school
- mall

Handwritten notes on the right margin:
- with
- no drugs in the house

Handwritten note at the bottom left:
Submitted by Superior District

Handwritten note at the very bottom:
records check could be seen...

Surveillance unit followed "Santana" who proceeded directly back to 813 114th St S. Tacoma Surveillance units advised that "Santana" entered the residence using the front door. I showed officer Smith a photo of Gomez Vasquez, Juan J DOB 9-15-75 and Officer Smith identified him as "Santana". The fact that they follow the Bronco not the VAN, it contradicts the statements.

"I showed officer Smith a photo of Gomez Vasquez"
The documents states appellant was driving a Bronco, the testimony, appellant was a passenger in side of VAN.
Your Affiant and Officer Jensen then recontacted the informant.

"The Driver of the Van drove Gordon to drop him off at the Place on 112th RP 230, 272."

"GORDON had called the officers to tell them he was going to meet them there, so when he arrived he walked (RP. 231)."

"Gomez Vasquez eventually decided "Just to go home" (RP. 229)."

"Buchanan admitted he never saw Gordon get into any car or van. RP. 202."

How the Surveillance unit follows "Santana" when "the Van drove back Gordon to drop him off at the place on 112th. RP. 230, 272 the fact that Gordon was in side of a van and no body could see him

The report states "I SHOWED OFFICER SMITH a photo of GOMEZ VASQUEZ" officer Smith identified the appellant.

The testimony don't match with any documents testimony. no testimony to the fact that Gordon was witnessed to enter the residence or exited the location.

the appellant left in a Blue Van that was not identified nor the driver, the fact is that the Gordon was not followed by any surveillance back to the house there is a huge inconsistency with the testimony and the Tacoma police report including the affidavit,

The Magistrate was not aware of such misrepresentation of Material information the fact that the Tacoma police did not mention during testimony about following the appellant why they follow the appellant or how they follow the appellant when he was at home already,

The Surveillance followed the "Southern" whom proceed back to 813 114th St South after they made contact with Gordon,

HOW The Surveillance is going to follow the appellant after they received the drugs, when during testimony ~~the~~ Gordon the informant Call Buchanan where to meet, R P 231).

There was no officer that supervise Gordon and the fact that the Controlled buy was lost, the Tacoma Police failure to supervise the Controlled buy. Operation (1) The fact the Buchanan drop off Gordon Two Blocks, or one Block, (2) The fact the Buchanan did not witness Gordon going in side no Car or Vehicle (3) The fact that Buchanan never witnessed the Controlled buy, the actual transaction lacks of evidence to meet the element of Delivery.

There is 4 Criminal elements to Unlawful Delivery of Controlled Substance Methamphetamine. One of the main Criminal elements is the actual "Transfer, exchange, transaction, exchange money for drugs"; There is no facts to direct Substantial evidence, by (1)

Police work, Picture, video, audio, wire, (2) The fact that Buchanan never conducted a reliable controlled buys before Buchanan started the investigation

IT WAS WALKINSHAW, NOT BUCHANAN WHO BELIEVED TO HAVE CONDUCTED "RELIABILITY BUYS" WITH GORDON TRANSACTIONS RP-196-97.

The fact that Buchanan did not ever work with Walkinshaw there is no evidence in the residence to packaged Methamphetamine, there is no paraphernalia Methamphetamine,

Similar issue in Aguilar; Affiant has received reliable information from credible person and do believe that heroin and other narcotics and narcotics paraphernalia are being kept at the above describe premises for the purposes of sale and use contrary to provision of the law.
378 U.S. at 109 Aguilar,

Jackson 102 Wash 2d 432 at 441, also at 447. The fact the GORDON provided information to get out trouble and to avoid going to prison,

In April of 2010, Gordon was the focus of a police investigation of drug dealers. RP 221-22, 251, GORDON WAS CAUGHT. RP 223. He was offered and agreed to two different contracts settling multiple pending charges for crimes committed on several days in exchange for which he agreed to set up others for arrest as an "informant" RP 223.

And even after he had been caught in these two incidents, sometime in about June of 2011, he was again found with an ounce of Methamphetamine RP 253-54

the other issue in the affidavit were the affiant wrote. Some one alias name and street name, and the fact that the magistrate was not provided with "Multiple" UPCS and UPCS with intent.

"It is clear that the affidavit states that Gordon knew "Drew" (Andrew M. Johns) to be one of the residents in that location. Further more:

"Your affiant conducted a record check of Gomez Vasquez, Jose 09/15/75. The record check shows that (Johns) has multiple arrest for UPCS and UPCS with intent.

"Drew" Andrew M Johns is someone totally else, Buchanan could have been checking someone alias record.

This document is under oath and sworn before the magistrate, Buchanan submitted material information that was not addressed before the Magistrate,

FRANKS at 171 innocent mistakes. The fact is if the record check was for "Johns" and "Johns" has multiple drug charges are not innocent mistakes because the Tacoma police supervisor should have check the affidavit this is intentionally material omission that misrepresents the affidavit FRANKS mandates the suppression of evidence obtained on the basis of an affidavit containing knowingly false information and evidence obtained as a result of material omissions.

These is not a mis-type, or clerical error the entire street name "Drew", full name Andrew M Johns, and further recheck that "Johns" has multiple arrest. Buchanan was not either point out the right person or he was going about his own belief that "Johns" was the appellant.

An affidavit in support of a search warrant provides probable cause to justify the search if, when tested in a commonsense, not technical manner and with any doubts being resolved in favor of the warrant, a reasonable prudent person would understand from the facts and circumstances noted in it that crime had occurred and that the place to be searched would yield evidence of crime,

Under Rule 23 (c) Search and Seizure, The inventory shall be made in the presence of the person from whose possession or premises the property is taken in the presence of a test one person other than the officer.

Violation of due process, Just like due process to mirandized a arrestee the police obtained training about how to conduct searches and seizures to write reports, rules, policies, procedures, protocols, and law. The fact that the Miranda's Rights card was designed to used in proper procedures. Under *Miranda v. Arizona*, 384 US 436, 16 L. Ed. 2d 694, 86 S Ct 1602 (1966)

There is a procedure for everything, every Police officers knows of this rule Miranda the suspect if the suspect chooses to waive that right then there is a procedure to make sure that the person is aware of his rights. *US v. CAZARES*, 121 F.3d 1241 (9th Cir 1997). The burden is on the government to show that defendant was aware of his Miranda rights.

Buchanan conceded that it appeared Gomez Verquez was "fired", possibly "high" when the officers spoke to him after Gomez Verquez had been read his rights (RP 206.)

If Buchanan knew he was either "fired or possibly high" the fact that the person is not aware of what was going on and he is not aware of anything. Specially if he is fired or high there is no telling what the appellant was thinking, saying, or even has knowledge of the situation. medical attention would be the first thing to make sure appellant know facts and circumstances.

The analysis of a "Miranda" Rights Card is never been tested under the V Amend. The fact that law enforcement some don't use the Rights Card anymore, it is a hard proof for ~~and~~ an individual to get Statements Supressed because the light is more in the prosecution and that's not fair. every procedure, rule, Police, and proper procedure ~~do~~ to conduct a "Miranda" procedure is to read the individuals rights and if the arrestee waive that Right to remain silent then The "MIRANDA'S RIGHTS CARD" Should have the arrestee's Signature and The Rights Card Should be place in evidence so that later on in Situations like this Case.

The Police training teaches in how to do a "MIRANDA" Procedure and if that due process is not done correct according to Police procedures then anything after it should be held improper and violation of both V, and XIV due process right and equal protection.

Just like Chain of Command with anything else Court procedures, Evidence Rules, Police rules, and due process of all procedures. There is the legal issue no Judge, no prosecutor, no juror, no body but the officer and defendant are the only ones to know what was stated or who say what. There is a procedure the "MIRANDA ~~RIGHTS~~ RIGHTS CARD" Tape recorded, Video recorded, and other ways to secure the incriminated evidence.

LILLY v. VIRGINIA, 527 U.S. 116, 144 L.Ed.2d 117, 119 S.Ct 1887 (1999)
"UnTested Confession" Violated defendant's Confrontation Clause right.

US 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.

The Tacoma Police Officers did not Complied with the "MIRANDA RIGHTS CARD DUE PROCEESS".

There is a proper procedure to make sure the "MIRANDA" Rights CARD is actually Knowledge and the waiver is Voluntary.

US. v. TWILLEY, 222 F.3d 1092 (9th Cir 2000). There is no good faith exception to the exclusionary rule for police who do not act in accordance with government laws.

The reason for due process is to avoid police misconduct and hat to Curved mismanagement of Police procedures, the requirements to obtain a Voluntary Statements from the defendant is to have the Rights Card signed and acknowledged by the arrested individual, if the defendant is under influence of any drug or alcohol then the waiver was not ~~voluntary~~, Voluntary.

Buchanan conceded that it appeared Gomez Vasquez was TIRED, possibly HIGH when the officers spoke to him after Gomez Vasquez had been read his rights (RP 206).

The fact is that if the appellant was tired or possibly under influence of any drugs or alcohol the STATEMENTS were not clearly and knowingly Voluntary.

MIRANDA v. ARIZONA, 384 US 436, 16 L Ed 2d 694, 86 S. Ct 1602 (1966). A person being arrested must be told that he/she has the right to remain silent.

US v. CAZARES, 121 F.3d 1241 (9th Cir 1997) (RP 206). defendant was aware of his MIRANDA rights, "Gomez Vasquez appeared to be tired or possibly high. Violation of due process right

US v. BUTLER, 249 F.3d 1094 (9th Cir 2001) Because of the inherently Coercive nature of Custodial interrogation, a person must be advised of his MIRANDA rights, prior to questioning.

DICKERSON v. U.S. 530 US 428, 147 L.Ed2 405, 120 S.Ct. 2326 (2000) 1) Due process test for evaluating voluntariness of defendant's confession requires inquiry into whether defendant will was overborne by the circumstances surrounding the giving of confession. 2) MIRANDA requirements, being constitutionally based, could not be overruled by statute.

The appellant's Sixth Amendment violation occurs when the officers have a search warrant and arrest warrant without the presence of counsel, to question an accused person of committing crimes. The court error denying the suppression of statements 1) because there is a strong possibility that the appellant was tired and possibly high the fact that those facts are mentioned by Buchanan RP (206) the statements are not voluntarily made.
Voluntarily

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

MARTINEZ v. CITY OF OXNARD, 270 F.3d 852 (9th Cir 2001) A Fifth Amendment violation occurs when a police officer coerces self-incriminating statements from a suspect in custody.

~~The Tacoma Police Officers knew that appellant was under some drugs and probably tired (RP 206)~~

Those are enough grounds for violation of MIRANDA DUE PROCESS

GHEENT v. WOODFORD, 279 F.3d 1121 (9th Cir 2002) (1) State court's admission of testimony in violation of MIRANDA violated defendant's due process rights. (2) It is a violation of MIRANDA to question an individual who is in custody after he has requested counsel.

YICK WO V. HOPKINS, 118 US 356, 30 LEd 220, 96 SCT-1064
(1886) Case in which the Supreme Court coined the term "Evil eye
and an uneven hand"

US V. NYHLUIS, 211 F.3d 1340 (1st Cir 2000) Law enforcement
techniques that are shocking to the universal sense of Justice mandated
by the due process clause violate the Constitution.

NORTH CAROLINA V. PEARCE, 395 US 711, 23 LEd2d 656, 89
SCT 2072 (1969) The Supreme Court coined the phrase "Pro-
secutorial Vindictiveness."

The appellant was deprived of due process of Law,
and violation of IV and VI Amendment when the Tacoma Police
officers knew that the appellant was "drunk and intoxicated"
instead of offering medical assistance the officers coerce the appellant
to incriminate him self,

The fact that there is no statements made by appellant and
signed, the fact that there is no MIRANDA RIGHTS CARD
before the Court that was knowingly waived by appellant, the
Tacoma Police department have a procedure to follow, rules, Policies,
the fact that the "MIRANDA RIGHTS CARD" was designed
~~was~~ to prove that the rights were intact giving and that the person
is aware of such right and the waiver is Volunteered by signing it,
the CARD, The fact that there is no Card, violates the due process
of Law. The Suppression of the Statement should be reversed and
Suppressed. Guarantee by ~~XIV~~^{XV}th Amendment the due process right
of Law and the IVth Amendment the right to be free from self
incrimination with out due process and VIth the due process right to
have Counsel at all times of proceedings of Law and Court.

The appellant made objections to Continuances and it is noted that from record 10-26-11 the appellant object to Continuance under CrR 4.7 Rules of Discovery (7) Sanctions. 4.5 CrR

The appellant object all Continuances, the prosecutor was trying to push the hearing over because there was issues with discovery the Judge appeared that he was more lenient for the State than the appellant.

The appellant asked his Counsel to make some motions for Sanction the State for not complying with discovery Rules under CrR 4.7(7); and CrR 4.5

10-26-11, 12-13-11, 3-5-12, 1-11-12, 1-26-12, 2-02-12, 3-01-12, all these Continuances were objected and Defense Counsel did not motion for any Sanctions under CrR 4.7(7). The rule is no later than "obvious hearing" present all evidence and witnesses every thing to prepare for trial within 60 days from the date the charges were filed. all documents attached to show the court.

all documents were signed "Objecting to Continuance".

Under PCLR 40. (B), Superior Court Rules, Continuance of trial date. A request to change the trial date to a date more than 30 days before or after the original trial date shall be made by "MOTION" and will not be granted unless the "MOTION" is supported by a showing of "good cause". The new trial date shall not be selected without first consulting with the judicial department's judicial assistant in order to accommodate the court's calendar. If a "MOTION" to change the trial date is made after the deadline to adjust trial date, the "MOTION" will not be "GRANTED" except under extraordinary circumstances where there is no alternative means of preventing a "substantial injustice".

A continuance may be granted subject to such conditions as justice requires. If an attorney moves for a continuance of the trial date under this Subsection, the "MOTION" shall not be "CONSIDERED" unless it is SIGNED by BOTH the ATTORNEY and THE CLIENT or it contains a "Certification" from the attorney that the Client has been advised of the MOTION to ~~Continue~~ Continue the trial as well as the basis for the MOTION and that the Client "agrees" with the MOTION to Continue.

- 1.) The fact that appellant was not willing for continuance,
- 2.) The fact that the court review court file to assure that the appellant signed "Objecting to Continuance,"
- 3.) The court error not reviewing the record, and it is noted that the appellant in fact had conflict of interest,

The fact there is no motions supporting enough argument after the prosecutor getting more time to hope for a plea deal & the appellant was clear with defense counsel that there were not going to be any plea deals, because the case did not have merits and the entire case was fabricated by the informant/ Kevin A. Graden, the State prosecutor and the Tacoma police dept, allowed for the case to go wrong there is no police work at all except for the only work of executing the search warrant. Which resulted in a negative search, there was no evidence of Street illegal narcotics, other than Medication pills (Trazedone) and (Amtripline) along with medical Marijuana 23gms, way under one ounce.

The same rule PCLR 40, (9) and PCLR 3, (9) Change of trial date
(1) a MOTION to Continue a case already on the trial calendar shall be in writing, supported by an affidavit or declaration under penalty of perjury

Showing sufficient grounds there. If a MOTION for continuance is granted, the Court may impose terms and conditions on the moving party and may set a new trial date. The MOVING party shall present a written order for entry.

Under this L R " the appellant made a clear Objection to the continuance, and the Court did not impose any terms and conditions it was noted on record that the appellant Objected not once but more than three times and the Court ignored. defense counsel would not file motions to Sanction the opposing party for abusing the discretion of the Court,

The prosecutor prejudice the appellant by Violating all (PCLR) Pierce County Local Rules of Superior Court.

The defense counsel was ineffective and prejudice the appellant including the fact that defense counsel was aware of the Objections to all continuances, the appellant was indigent and had no way to access the Court properly the fact is that most of Appellants Motions were not acknowledged and deprive the appellant to prove his case,

if the Court could have look at the motions and grant a hearing which it should have to address the issues at hand, even if the motions could have been denied, but a list answered according to law, the out come of this Criminal trial could have end up in a different outcome, probable the appellant wouldn't have gone this far. if the Court have had the time to address the Motions and noted on the record.

The appellant was deprived of his legal constitutions, and due process of Law.

2B3
1/16

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)

Cause No. 11-1-03677-6

vs.)

ORDER CONTINUING TRIAL

Juan Gomez Vasquez,)
Defendant)

Case Age 47 Prior Continuances 0

This motion for continuance is brought by state defendant court.

upon agreement of the parties pursuant to CrR 3.3(f)(1) or

is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or

for administrative necessity.

Reasons: Additional discovery coming (photographs) ~~discussing~~ the need additional time to prepare case for trial

RCW 10.46:085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

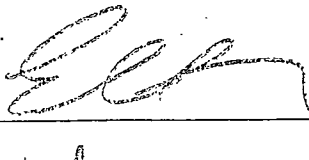
IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input checked="" type="checkbox"/> Trial Hearing	11/7/11	9:00am	770	22
THE CURRENT TRIAL DATE OF: <u>11/1/11</u>	IS CONTINUED TO: <u>12/13/11</u> @ 8:30 am Room <u>260</u>			

Expiration date is: 1/11/12 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 26th day of Oct, 2011.

(Objection to continuance)
Defendant


Judge

Attorney for Defendant/Bar # 32074

Prosecuting Attorney/Bar # 36545

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington
Interpreter/Certified/Qualified Court Reporter

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Juan Manuel Vasquez

Defendant.

NO. 11-1-53677-6

ORDER ON OMNIBUS HEARING

CHARGE: IRAC (v2)

100A.20, Poss of Legend Drug (v2)

TRIAL DATE: 11/11

OOR

THIS MATTER having come before the court for an Omnibus Hearing, the State represented by:

Debrae Curtis, and the defendant being present and represented by:

Jeff Kim

1. Regarding PROSECUTOR'S OBLIGATIONS, THE DEPUTY PROSECUTING ATTORNEY STATES that at least seven days prior to this order:

- The Prosecutor provided to defendant a complete list of the defendant's criminal convictions.
- The Prosecutor has provided to defense all discovery in their possession or control, pursuant to CR 4.7(a);
- The Prosecutor has contacted law enforcement agencies to request and/or obtain any additional supplemental police reports, forensic tests, and evidence and has made them available to defendant or defense counsel. The State is aware of the following reports, tests or evidence which has not been made available to the defendant: Drug test results and photographs
- Prosecutor has reviewed the discovery and criminal history and made an offer to the defense.

If prosecutor has not checked every box in this section, the court makes the following order:

2. Regarding DEFENSE ATTORNEY'S OBLIGATIONS, DEFENSE COUNSEL STATES that at least two days prior to this order:

- Defense attorney has met with the defendant about this case.

Defense attorney has received a plea offer from the State.

Defense attorney has reviewed the discovery and the criminal history.

Defense attorney has given discovery to prosecutor

If defense attorney has not checked every box in this section, the court makes the following order:

3. Regarding DISCOVERY: The parties agree that Discovery is COMPLETE/NOT COMPLETE IN THE FOLLOWING RESPECTS: Paragraphs requested by State Attorney

Drug test results

DISCOVERY must be completed by: _____

4. Regarding GENERAL NATURE OF DEFENSE:

The Defense states that the general nature of the defense is:

General Denial

Consent

Alibi

Diminished Capacity

Insanity

Self-defense

Other (specify) _____

5. Regarding CUSTODIAL STATEMENTS by defendant, the parties agree that:

No custodial statements will be offered in the State's case in chief, or in rebuttal.

The statements of defendant will be offered in the State's case in rebuttal only.

The statements referred to in the State's discovery will be offered and:

May be admitted into evidence without a pre-trial hearing, by stipulation of the parties.

A 3.5 conference is required and is estimated to require 1 (min/hr) and is set for

day of trial.

6. Regarding PRIOR CRIMINAL CONVICTIONS OF THE DEFENDANT, the parties agree that if defendant testifies at trial:

If the defendant testifies at trial, the prior record of convictions contained in the State's discovery

will will not be (stipulated to) by the defendant with the following exceptions:

There are no prior known convictions at this time. State will advise defendant promptly if it learns of prior convictions.

7. Regarding SUPPRESSION OF PHYSICAL EVIDENCE OR IDENTIFICATION, the parties agree that:

No motion to suppress physical evidence or identification will be filed.

Or, THE COURT ORDERS THAT:

Defendant's written motion to suppress shall be filed by 2 weeks prior to trial. The State's response shall be filed by 1 week prior to trial. Testimony will/will not be required.

State's written motion to suppress shall be filed by _____. The Defendant's

response shall be filed by _____ . Testimony will/will not be required.

8. Regarding OTHER PRE-TRIAL MOTIONS: No additional motions are anticipated, except:

Motion in Limine

Briefing schedule: Affidavits and briefs of the moving party must be served and filed by: _____

Responsive Brief must be served and filed by: _____

The hearing will last about _____ (min/hr)

9. Regarding TRIAL

a. The trial will be jury non-jury, and will last about 4-5 days.

b. Is an interpreter needed: No Yes. Language: _____ (If an interpreter is needed, State will call interpreter services at ext. 6091)

10. Regarding WITNESSES:

There will be out-of-state witnesses yes no.

A child competency or child hearsay hearing is needed yes no.

State:

All witnesses have been disclosed.

A Witness List has been filed.

A witness list must be filed by: 2 weeks prior to trial

Defense:

All witnesses have been disclosed.

A Witness List has been filed.

A witness list must be filed by: 2 weeks prior to trial

11. Other

Defendant needs a competency examination.

Defendant is applying for drug court.

Defendant is seeking an evaluation which may necessitate a continuance.

12. The Court sets a Status Conference for _____ (date) for the purpose of:

13. Other orders: _____

Dated Oct. 26 20 11.

* Objects to signing
Defendant *

[Signature]
Judge

[Signature]
Defendant's Attorney/Bar # 33031

[Signature]
Prosecuting Attorney/Bar # 26215

1/c

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)
vs.)
Juan Carlos Vasquez,)
Defendant)

Cause No. 11-1-03677-6

ORDER CONTINUING TRIAL

Case Age 96 Prior Continuances 1

This motion for continuance is brought by state defendant court.
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity.

Reasons: State also in need of trial; missing documents; defense counsel needs more time to brief for trial or search for evidence

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/>				
THE CURRENT TRIAL DATE OF: <u>12/13/11</u>	IS CONTINUED TO: <u>1/26/12 @ 8:30 am Room 2601</u>			

Expiration date is: 2/25/12 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 13th day of Dec, 2011

[Signature]
Defendant
[Signature]
Attorney for Defendant/Bar #

[Signature]
Judge
[Signature]
Prosecuting Attorney/Bar # 251008

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington
Interpreter/Certified/Qualified Court Reporter

11c

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)
vs.)
Juan Gomez Vasquez,)
Defendant)

Cause No. 11-1-03677-6

ORDER CONTINUING TRIAL

Case Age 179 Prior Continuances 4

This motion for continuance is brought by state defendant Court.
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity.
Reasons: No witnesses available.

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/>				
THE CURRENT TRIAL DATE OF: <u>3/5/12</u>	IS CONTINUED TO: <u>3/6/12 @ 8:30 am Room 260</u>			

Expiration date is: 3/6/12 (Defendant's presence not required) TFT days remaining: 25

DONE IN OPEN COURT this 5 day of March, 2012

~~Present~~ Refused to sign
Defendant

Albany H. Stal
Judge

[Signature]
Attorney for Defendant/Bar # 22634

[Signature]
Prosecuting Attorney/Bar # 32045

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington
Interpreter/Certified/Qualified Court Reporter

The right to have a Jury of peers and gender.
The right to due process under Fourteenth Amend. U.S. Constitution the right to have a "Jury of your peers" and the right to afford a fair trial, and Six Amendment. U.S. Const.

The appellant argued that issue during sentencing that the appellant have "11 female Jurors," all white females.

POWERS v. OHIO, 499 U.S. 400, 113 L.Ed2d 411, 111 S.Ct. 1364 (1991). White Criminal defendant held to have standing to raise equal protection objection to prosecutors allegedly race based exercise of peremptory challenges to exclude ~~black~~ Black perspective Jurors.

The fact that the appellant made an objection that the jury was based all females, but one, male juror.

The fact that the appellant have only one male juror is a violation of due process and the court should not have allowed.

The court was noted and have knowledge of such issue because appellant clearly told the judge that was not fair to have a jury violating the Six Amend and fourteenth amendment of fair to have a fair trial and due process before the deprivation of liberty.

There was intact motion of Arrest of Judgment and Motion for New trial. the Six Amendment guarantee the right to a fair trial and due process of law of equal protection affording a jury of peers to a defendant race and gender.