NO. 45001-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

MICHAEL A. JONES,

Appellant.

STATE'S REPLY BRIEF

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B.

STATE'S RESPONSE TO APPELLANT'S ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The trial court did not err in failing to suppress evidence that was obtained through a search warrant; the magistrate who issued the search warrant had probable cause to believe that the Appellant and another person committed a burglary and that contraband would be found at the location that was searched.

2. The trial court did not violate the Appellant's constitutional right to a public trial when it conducted the peremptory challenge portion of the jury selection process at the front of an open courtroom; hence, there was no need to analyze factors enunciated in State v. Bone-Club, 128 Wash.2d 254, 906 P.2d 325 (1995).

C.

STATEMENT OF THE CASE

The State accepts the Appellant's Statement of the Case.

D.

ARGUMENT

1. The magistrate did not err in finding that there was probable cause to issue a search warrant.

a. Standard of review.

The issuance of a search warrant is reviewed under an abuse of discretion standard. State v. Maddox, 152 Wash.2d 499, 509, 98 P.3d 1199 (2004). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. State ex rel. Carroll v. Junker, 79 Wash.2d 12, 26 482 P.2d 775 (1971). In determining whether a search warrant is valid, a reviewing court considers whether the affidavit in support of the search warrant on its face contains sufficient facts to support a finding of probable cause.

"Probable cause is established when the affidavit sets forth facts sufficient to lead a reasonable person to conclude there is a probability the defendant is involved in criminal activity." State v. Young, 123 Wash.2d 173, 195, 867 P.2d 593 (1994), citing State v. Cord, 103 Wash.2d 361, 365-66, 693 P.2d (1985). When the sufficiency of a search warrant affidavit is reviewed, the affidavit must stand alone and cannot be supplemented with evidence or information presented during a subsequent

motion to suppress. State v. Blackshear, 44 Wash.App. 587, 590, 723 P.2d 15 (1986).

When a judge authorizes a search warrant, her determination is given great deference. State v. Cord, 103 Wash.2d at 366; accord, State v. Vickers, 148 Wash.2d 91, 108, 59 P.3d 58 (2002) (great deference is given to the probable cause determination of the issuing judge, and her discretion is reviewed only for abuse of discretion). Doubts about existence of probable cause are resolved in favor of the decision made by the judge who issued the search warrant. State v. Young, 123 Wash. 2d at 195. A warrant should not be viewed in a hypertechnical manner. State v. Garcia, 63 Wash.App. 868, 871, 824 P.2d 1220 (1992); State v. Partin, 88 Wash.2d 899, 904, 567 P.2d 1136 (1977) (an application for a search warrant should be judged in the light of common sense with doubts resolved in favor of the warrant). A judge who is asked to issue a warrant is entitled to draw reasonable inferences from the facts and circumstances relayed to him. State v. Maffeo, 31 Wash.App. 198, 642 P.2d 404 (1982).

b. **Standing to challenge the validity of the search.**

The State has reviewed the case law pertaining to what is necessary to establish standing to challenge the validity of a search warrant. Based on that review and the facts of this case, the State

concedes that Mr. Jones has standing to challenge the validity of the search warrant.

c. **The search warrant in this case complies with the Aguilar-Spinelli test.**

Washington courts apply the two-pronged Aguilar-Spinelli test to evaluate the validity of warrants issued where the existence of probable cause depends on an informant's tip. State v. Cole, 128 Wash.2d 262, 286-287, 906 P.2d 925 (1995); State v. Salina, 119 Wash.2d 192, 199-200, 829 P.2d 1068 (1992). This standard comes from Aguilar v. Texas, 378 U.S. 108 (1964), and Spinelli v. United States, 393 U.S. 410 (1969). Under this test, the State must prove (1) the informant's basis of knowledge and (2) the informant's veracity and reliability. State v. Tarter, 111 Wash.App. 336, 340 44 P.3d 899 (2002).

The amount of evidence necessary to establish the reliability prong of the Aguilar-Spinelli test depends upon whether the informant is a professional or a citizen informant. State v. Northness, 20 Wash.App. 551, 556-57, 582 P.2d 546 (1978) (Washington courts have drawn a distinction between a professional and a citizen informant and have relaxed the showing of reliability as to citizen informants); State v. Wilke, 55 Wash.App. 470, 778 P.2d 1054 (1989). Thus, the determination of credibility depends to some extent on whether the informant is truly a

citizen informant, i.e., an innocent victim or an uninvolved witness to criminal activity. State v. Payne, 54 Wash.App. 240, 244, 773 P.2d 122 (1989). Because a "citizen who is an eyewitness or a victim lacks the opportunity to establish a record of previous liability, . . . evidence of past reliability is no longer required in the case of citizen informants." State v. Northness, 20 Wash.App. at 556. However, "heightened demonstrations of credibility [are required] for citizen informants whose identities were known to police but not revealed to the magistrate." State v. Ibarra, 61 Wash.App. 695, 700, 812 P.2d 114 (1991).

Even so, the Supreme Court has held that even if nothing is known about an informant, the facts and circumstances surrounding the furnishing of the information can support a reasonable inference that the informant is telling the truth. State v. Lair, 95 Wash.2d 706, 710, 630 P.2d 427 (1981). Where an informant's identity is known to the police but not to the magistrate, the informant may be deemed credible even if the affidavit fails to explain why he or she wishes to remain anonymous. State v. Cole, 128 Wash.2d at 288.

The Appellant asserts that the search warrant affidavit in this case is deficient because it "did not establish the reliability of the confidential informants." Appellant's Brief at 14. The Appellant relies primarily on State v. Woodall, 100 Wash.2d 74, 666 P.2d 364 (1983) in arguing that the

affidavit only provides conclusory statements regarding the reliability of the informants. Appellant's Brief at 14-17. In this instance, the Appellant has mischaracterized the status of the informants. Different rules apply for credibility determinations "depending upon whether the informant is (1) a "criminal" or professional informant, or (2) a private citizen." Northness, 20 Wash.App. at 555. Because the informants in this case are citizen informants, evidence of past reliability is not required to uphold a search warrant. United States v. Harris, 403 U.S. 573, 91 S.Ct. 2075, 29 L.Ed. 2d 723 (1971); State v. Chatmon, 9 WashApp. 741 748, 515 P.2d 530 (1973). Law enforcement knew the names of the informant, but their names were not included in search warrant affidavit because the citizen informants were fearful of retaliation. Since the affidavit indicates that the citizen informants were nothing other than uninvolved witnesses, the necessary showing of credibility is relaxed. However, under Ibarra some showing of credibility is required. This relaxed standard is met because the informants had provided reliable information in the past and because they feared retaliation. Consequently, the specter of an anonymous troublemaker is not present.

In the end, the Appellant has missed the mark in claiming that the search warrant affidavit is deficient due to a lack of reliability. A search warrant affidavit that contains information from citizen informants who

are known to law enforcement can pass muster even when there is little information in the affidavit that addresses the reliability prong of Aguilar-Spinelli. The information in this search warrant affidavit contains a heightened demonstration of credibility. The citizen informants here provided statements to law enforcement that were consistent with each other. This consistency diminishes the likelihood that law enforcement received mendacious information or that the informants were motivated by self-interest. Hence, the reliability prong of Aguilar-Spinelli has been met.

The Appellant also claims that the knowledge prong of the Aguilar-Spinelli test has not been met. Appellant's Brief at 17-18. In essence, the Appellant argues that the citizen informants did not have direct knowledge of the critical information that they relayed to law enforcement. The Appellant believes that the hearsay statements of the informants do not provide a sufficient basis of knowledge. Appellant's Brief at 18. Hearsay, however, can provide a sufficient basis of knowledge. State v. Jackson, 102 Wash.2d 432, 437-438, 688 P.2d 136 (1984). In this instance, one confidential citizen was able to corroborate the information provided to law enforcement by the victim, Brian Settlemyre. The second confidential citizen informed law enforcement that the defendant, Michael Jones, was relaying his knowledge about what

was stolen, was letting people know that his family was close to the victims, and was bragging about the burglary. This information came from at least two other people that Michael Jones had contacted. Significantly, the information provided by this confidential citizen included specific information about the defendant trying to sell an item that was similar to an item stolen from the Settlemyre residence. This single piece of information corroborates the truthfulness of what was told to the confidential citizen. While the information provided to law enforcement by the confidential citizens was hearsay, this information in conjunction with the other statements in the search warrant affidavit provided the necessary basis of knowledge to satisfy the knowledge prong of the Aguilar-Spinelli test.

Based in large measure on the information provided by the confidential citizens, law enforcement possessed the following knowledge that was relayed to the magistrate.

> *Tina Falkner and Mike Jones have been staying at 5151 Hemlock St., Raymond, WA 98577.
> *Mike Jones is a family friend to the Settlemyre's and has been to their residence on many occasions.
> *Tina Falkner was recently observed planning a burglary near the golf course [which is close to the Settlemyre residence that was in fact burglarized].
> *Mike Jones has recently been bragging about committing the burglary.
> *Mike Jones has been trying to sell items possibly taken from the Settlemyre residence.

*Tina Falkner and Mike Jones are known drug users and known drug users are often involved in burglaries and theft.
*Tina Falkner has previously been involved in theft.

See Appendix A, Search Warrant and Affidavit for Search Warrant.

While none of this information standing alone would satisfy the knowledge prong of Aguilar-Spinelli, a magistrate could make a reasonable inference from the totality of this information that contraband would be found at 5151 Hemlock Street in Raymond, WA, where Michael Jones and Tina Falkner had been staying.

In essence, this information should lead one to conclude that the citizen informants were not anonymous troublemakers. While more information about the informants could have been provided to the magistrate, the affidavit on its face is sufficient to justify the issuance of a search warrant. Moreover, this conclusion also is buttressed by the fact that a magistrate's decision must be accorded great deference and is reviewed only for an abuse of discretion. State v. Vickers, 148 Wash.2d at 108. Because there are sufficient facts for a rational decision maker to conclude that a basis of knowledge existed, the magistrate did not abuse her discretion in issuing the search warrant.

d. **The search warrant affidavit contained sufficient corroboration to establish probable cause.**

The Appellant also contends that the information provided by the informant lacks sufficient corroboration to establish probable cause. Appellant's Brief at 18-23. The Appellant cites a number of cases to support this assertion, e.g., State v. Rakosky, 79 Wash.App. 229, 901 P.2d 364 (1995) State v. Huft, 106 Wash.2d 206, 720.P.2d 838 (1986); State v. Cardenas, 146 Wash.2d 400, 47 P.3d 127 (2002); and State v. Neth, 165 Wash.2d 177, 196 P.3d 658 (2008). The upshot of these cases is that innocuous behavior, including efforts to secure one's residence and shield it from view, does not give rise to probable cause to search. In discussing the cases cited above, the Appellant analyzes each case in a hypertechnical manner and does not look to the totality of known suspicious circumstances to determine whether probable cause exists to search. State v. Sinclair, 11 Wash.App. 523, 531, 523 P.2d 1209 (1974).

For example, the act of covering one's windows in itself constitutes constitutionally protected behavior. Nevertheless, the fact that this action was taken shortly after police contact was initiated raises a modicum of suspicion. Similarly, when Mr. Jones talked to the police, he became nervous and gave answers that appeared to be less than candid. While acting nervous during a police contact certainly could be innocuous, engaging in furtive behavior and making false statements to law enforcement also can be considered in determining the existence of

probable cause. State v. Huff, 64 Wash.App. 641, 647, 826 P.2d 698 (1992); State v. Goodman, 42 Wash.App. 331, 338, 711 P.2d 1057 (1984) ("Improbable explanations and false answers to police questions . . . may give rise to probable cause"). Likewise, the fact that Mr. Jones had been in the victims' house does not ipso facto mean that he likely committed the burglary. Nonetheless, this fact is part of the pastiche from which probable cause to search can be found.

The magistrate made a probable cause determination in this case; this determination is accorded great deference and cannot be overturned absent an abuse of discretion. "All doubts are resolved in favor of the warrant." State v. Anderson, 105 Wash.App. 223, 228, 19 P.3d 1094 (2001). Because there are tenable grounds to support this finding when one looks at the totality of the information contained in the search warrant affidavit, the Appellant's argument should be rejected.

e. **There was a sufficient nexus between the criminal activity and the place to be searched.**

The Appellant's last substantive challenge to the search warrant asserts that there was an insufficient nexus between the criminal activity and the place to be searched. Appellant's Brief at 24-29. The Appellant relies on State v. Thein, 138 Wash.2d 133, 977 P.2d 582 (1999), in arguing that "[a] warrant to search for evidence in a particular place must

be based on more than generalized belief of the supposed practices of the type of criminal involved." Appellant's Brief at 24.

However, the general nexus requirement articulated in Thein has been refined by State v. McReynolds, 104 Wash.App. 560, 17 P.3d 608 (2000). The McReynold's court looked favorably upon an inquiry that addressed the type of crime, the nature of the missing items, the extent of the suspect's opportunity for concealment, and the normal inferences with regard to where a criminal would likely hide stolen property. A relevant consideration would include an assessment of the bulk and value of the missing items to determine whether they would likely be hidden at the alleged offender's residence. Another consideration would focus on whether the alleged offender had sufficient time to bring the stolen property to his residence before he/she was apprehended.

In applying these criteria to the present case, it is clear that Mr. Jones had time to take the stolen property to the temporary residence where he was staying. The size and quantity of the stolen items [see Appendix A, Search Warrant and Affidavit for Search Warrant] also indicates that it would have been difficult for Mr. Jones to store these items outside of his residence. Thus, a reasonable inference can be made that evidence of criminal activity could be found at 5151 Hemlock Street, Raymond, WA, where Mr. Jones and Tina Falkner temporarily were

living. By answering the relevant questions articulated in McReynolds, one should conclude that the nexus requirement has been met. For cases involving burglary, there does not have to be "a smoking gun" that connects the place where the stolen property was taken with the location where the requested search will occur. Hence, the argument of the Appellant regarding an insufficient nexus lacks merit.

f. **The new issues raised by the Appellant can be adjudicated by the Court of Appeals.**

Finally, the Appellant claims that he can raise search new and seizure issues for the first time on appeal. Appellant's Brief at 29-31. Although some of the issues raised by the Appellant in his brief were not argued at the trial court level, the Appellant's trial counsel did make a motion to suppress the evidence seized. Also, all of the facts necessary to adjudicate the new alleged errors are in the record since the arguments are limited to the search warrant affidavit. Therefore, pursuant to the holding in State v. Jones, 163 Wash.App. 354, 266 P.3d 886 (2001), the Appellant is entitled to have these new alleged errors adjudicated by the Court of Appeals.

2. THE MANNER IN WHICH PEREMPTORY CHALLENGES WERE EXERCISED DID NOT VIOLATE MR. JONES' RIGHT TO A PUBLIC TRIAL

Peremptory challenges in this case were all conducted in the open courtroom in the presence of the venire and any spectators who may have been present. Peremptory challenges were exercised at the Bailiff's table which was in plain view of the venire and spectators. However, the venire and any spectators would not have been able to hear what was transpiring. A written record of the actions taken in exercising peremptory challenges was recorded by the clerk.

The Appellant claims that the trial court violated his "right to a public trial in holding peremptory challenges in private." Appellant's Brief at 34. In particular, the Appellant cites State v. Wilson, 174 Wash.App. 328, 342-343, 346, 298 P.3d 148 (2013) and State v. Jones, 175 Wash.App. 87, 97-101, 303 P.2d 1084 (2013) to support his position. Wilson pertained to a bailiff who excused two jurors for illness-related reasons before voir dire began. Jones involved a court clerk who drew four juror names in private outside of the courtroom to determine which jurors would serve as alternates. Neither of these cases involves a factual situation that is similar to the present case. On the contrary, the most recent case that is directly on point is State v. Love, 176 Wash.App. 911,

915-920, 309 P.2d 1209 (2013). This case from Division III holds that the purported closure of parties' peremptory challenges during jury selection by a sidebar conference does not violate the public trial right under the State Constitution. The Appellant tries to attack the validity of Love because this case strikes at the gravamen of the Appellant's argument. The Appellant contends that Love should be ignored because it is dicta. Appellant's Brief at 41. Whether Love should be viewed on dicta is not really the salient issue, since Division II is not required to follow the jurisprudence of Division III.

The State asserts that the reasoning contained in Love is persuasive. In Love, Division III applied the "experience and logic" test articulated in State v. Sublett, 176 Wash.2d 58, 292 P.3d 715 (2012) to determine whether the peremptory challenge portion of the trial needed to be held in public.[1]

The Love court rejected any bright line rule and focused its analysis exclusively on the "experience and logic" test. In analyzing the "experience" prong, the Love court found that there is no evidence to suggest that historical practices required peremptory challenges to be

[1] Although no opinion gathered more than four votes in Sublett, eight of the nine justices who heard this case approved the "experience and logic" test.

made in public. Love, 176 Wash.App. at 918. The Love court concluded its analysis of the "experience" prong by stating:

> The history review confirms that in over 140 years of cause and peremptory challenges in this state, there is little evidence of the public exercise of such challenges, and some evidence that they are conducted privately. Our experience does not require that the exercise of these challenges be conducted in public.

Id. at 919.

The Love court cited State v. Thomas, 16 Wash.App. 1, 13, 553 P.2d 1357 (1976) as an example of a case where the "use of secret – written – peremptory jury challenges" was upheld. While the Appellant contends that Thomas has been superseded by recent public trial jurisprudence [Appellant's Brief at 42], the holding in Thomas has not been overruled; consequently, the Love court properly held that "Thomas is strong evidence that peremptory challenges can be conducted in private" [emphasis added]. Love, 176 Wash.App. at 918.

Similarly, the Love court found that the "logic" prong does not require peremptory challenges to be conducted in public. Id. The Love court noted that "[t]he purposes of the public trial right are to ensure a fair trial, to remind the officers of the court of the importance of their functions, to encourage witnesses to come forward, and to discourage perjury." Id., citing State v. Brightman, 155 Wash.2d 506, 514, 122 P.3d

150 (2005). The Love court declared that these purposes are not furthered when peremptory challenges are exercised; hence, the "logic" prong does not require that peremptory challenges must take place in public. Love, 176 Wash.App. at 919.

The Appellant attacks this conclusion by stating that the Love court is "simply wrong." Appellant's Brief at 43. The Appellant believes that public oversight of the peremptory challenges process inter alia will deter discriminatory removal of jurors. Id. Apparently, the Appellant believes that the litigants will act differently if their peremptory challenges are immediately made known to the public. This supposition is just that – a supposition. In addition, it is clear that the public does not have any way to contest immediately the exercise of peremptory challenges. Furthermore, if the venire were immediately made aware of who was peremptorily removed from jury service, the jurors who were selected might start thinking about the reasons for why certain prospective jurors were removed. Jurors also might take umbrage at a party who removed a particular prospective juror. These considerations might prevent jurors from focusing on the task at hand, viz., determining whether the defendant is guilty as charged.

To be sure, the perceived harm asserted by the Appellant is ameliorated by the fact that a record is kept regarding how peremptory

challenges are exercised. Any member of the public has a right to examine how peremptory challenges are exercised if he/she so chooses. Therefore, the public is not left in the dark, since the written record of peremptory challenges can be reviewed. In short, the Appellant does not make a compelling case that the peremptory challenge process is inextricably linked to the public trial right. As noted in Love, the written juror record which is created "assures that all activities . . . [are] conducted aboveboard." Love, 176 Wash.App. at 920. Based on the cogent analysis in Love, the Appellant's argument under the "logic" prong fails.

Because the Appellant cannot satisfy the two prongs of the "experience and logic" test, the trial court did not erroneously close the courtroom by hearing preemptory challenges that were not within public earshot. Therefore, the Appellant's argument pertaining to what constitutes a courtroom closure is not dispositive. Appellant's Brief at 43-47. Likewise, the contention that the trial court must analyze the factors delineated in State v. Bone-Club, 128 Wash.2d 254, 906 P.2d 325 (1995), is misplaced. Appellant's Brief at 48-50. Since the trial court did not erroneously close the courtroom under the "experience and logic" test, no Bone-Club analysis is necessary. The process used for peremptory challenges in this case did not violate the Appellant's public trial right.

E.

CONCLUSION

For the foregoing reasons discussed above, the Court of Appeals should reject the Appellant's contentions regarding the validity of the search warrant and of the manner in which peremptory challenges were exercised. Because the magistrate had probable cause to issue the search warrant and because the Appellant's right to a public trial was not violated, the Court of Appeals should uphold Mr. Jones' convictions for bail jumping and unlawful possession/use of drug paraphernalia. This case should be remanded to the Pacific County Superior Court so that Mr. Jones can be retried on the count pertaining to possession of methamphetamine for which the jury was not able to reach a verdict.

Respectfully submitted this 23rd day of May, 2014.

David J. Burke

DAVID J. BURKE, WSBA #16163
Pacific County Prosecuting Attorney
P.O. Box 45
South Bend, WA 98586

APPENDIX 'A'

11/30/12

Evidence No. SW-12-696

In the State of Washington

Pacific County North District Court

FILED

OCT 31 2012

NORTH PACIFIC DISTRICT COURT

Before Elizabeth Penoyar, Judge/Commissioner

STATE OF WASHINGTON } SS.

PACIFIC COUNTY }

SEARCH WARRANT

STATE OF WASHINGTON: TO ANY PEACE OFFICER IN PACIFIC COUNTY:

WHEREAS, upon the sworn affidavit made and filed in the above entitled court, the undersigned judge finds that there is probable cause to believe that evidence of a crime, contraband, the fruits of crime, things otherwise criminally possessed, weapons and/or other things which have facilitated a crime or which are likely to facilitate a crime in the near future, located in, on, or about certain premises, vehicle(s) or person(s) within Pacific County, Washington, hereinafter designated and described:

NOW, THEREFORE, IN THE NAME OF THE STATE OF WASHINGTON, you are hereby commanded with the necessary and proper assistance to search for and seize the following property: (SPECIFY ITEMS SOUGHT)

- **See attachment #1 for full list of items**
- **Any items similar to those listed on attachment #1**
- Drugs and drug paraphernalia.

And all related records, documents, and/or papers that are located in, on, or about the premises, vehicle(s), and/or person(s) within Pacific County, Washington, designated and described as follows: (SPECIFY LOCATION, VEHICLE(S), AND/OR PERSON(S) TO BE SEARCHED)

- **5151 Hemlock St, Raymond, WA 98577. This is a two story house, yellow with white trim. There are two outbuildings next to the driveway on the property. Tax parcel #72031003003. It is owned by Charlotte Falkner. Tina L. Falkner, DOB 10/2/79 and Michael A. Jones, DOB 5/19/79 have been staying at this residence for the last couple weeks.**

Said property is to be safely kept and the return of this warrant shall be made within ten (10) days following issuance to the undersigned judge, showing all acts and things done thereunder, with a particular statement of all property seized. A copy of this warrant shall be served upon the person(s) found in actual or constructive possession of such property, and if no person is found in actual or constructive possession thereof, a copy of this warrant shall be conspicuously posted upon the premises or vehicle where the search took place.

Dated this 25 day of October 2012

Elizabeth Penoyar

JUDGE/COMMISSIONER, State of Washington

North District Court for Pacific County

Attachment #1

1. lg. gold nugget necklace w/ heavy gold chain (1oz.) $2,000.00
2. Gold nugget earrings - dangle style ~~sm. lg. mus~~ $600.00
3. Sapphire necklace w/ diamonds ~~whales-tail~~ shape w/ sapphire in center $700.00
4. Sapphire heart-shaped stone w/ diamond necklace
5. " " " " " ring $450.00 earrings set (stud-style
6. 1/2 carat diamond stud earrings white gold. 1 carat total $1700.00
7. past present future diamond ring gold 1/2 carat $800. diamond wedding band set engagement
8. stone w/ cluster of 3 stones on one side - swirl-style setting. $1800.00
9. 14K gold opal necklace lg. opal swirl-style setting w/ chain. $250.00
10. Black Hills Gold opal necklace w/ leaves set to one side of stone. $200.00
11. very lg. leaf (unusual) Black Hills Gold bracelet. $1,000.00
12. Past present future diamond necklace $500.
13. very lg. amber set in sterling silver on heavy silver chain (unusual) $500.00
14. sapphire & diamond bracelet 14K gold link style $900.00
15. sterling silver & peridot bracelet link style (unusual $190.00
16. Tanzanite pendant on fine chain w/ diamonds (blue stone) around it. (square-shaped) $500 for both
17. Tanzanite ring square-shaped w/ diamonds white gold 14K. $1500.00
18. peridot pendant w/ diamonds (darker green

19. Mens Black Hills Gold ring $200.00

20 ~~Black Hills gold pendant tear drop $275.00 style set w/ 3 brown stones~~ found.

21. ~~Black Hills gold earrings tear-drop $250 style set w/ 3 brown stones~~

22. Turquoise cuff style silver bracelet one large stone. $100.00

23. sterling silver bracelet 1/2 in. wide $75.00 w/etching around the outside of it.

24. 14 K. amethyst drop style earrings w/ french clasp. $200.00

25. $200 petty cash ($100 bills)

26. smaller oval shaped Sapphire (not lab-created) white gold chain $1500 - set

27. oval shaped sapphire (not lab-created) earrings white gold french-style clasps

28 large solitaire pendant ring 14K $350.00

29. Ladies citizen watch $350.00

30. Ladies Invicta watch $300.00

31. Lg. opal on finer gold chain w/ blue older-stone underneath it - tear-drop style (Unusual. This necklace also has an unusual clasp on it. $200.00

32. Large (X-large!) Hawaiian Puka Shell necklace approx. 10 in. (unusual) $150

[redacted]

These items

Leopuld Rx 1TBR 1000 Range finder $419.00

Skil Worm Drive Circular Saw $190.00

Milwaukie 18V Lithium Ion Cordless Drill

Bowtech Sampson Infinity Bow w/ Case $350.
$1750.00

White(brand) Transit $575.00

Milwaukie Sawzall $150.00

Black + Decker Circular saw $40.00

Hobart 120 Handler wire feed-welder
$600.00

Black + Decker Drill $40.00

2 GE 2-way radios $75.00

Sig P-220 45 Cal. pistol $700.00

Winchester Model 70 25.06 $900.00

Marlin .22 LR Semi-automatic rifle $250.

Savage .22 mag. Bolt action rifle $275.0

Steinen 10x50 military marine binoculars
$1000.00

Minolta 10x50 binoculars $300.00

Olde Stihl Chain saw $1500.00

017 Stihl Chain saw $200.00

Stihl weedeater $250.00

10" Kicker Subwoofer Speaker $250

HR (brand) 12 gauge shotgun single shot
$150.0

Tap + Die set $20.00

4" Macita Angle grinde
$60.00

Add-on List for Stolen Items

Magellan GPS unit $400.00

2 stream-light flashlights $100.00

SOG Tech Bowie fixed blade knife $185.00

SOG folding knife Vulcan $190.00

Emerald square-cut 3 carat set w/diamonds 18 K. white gold $3,500.00

Antique Opal Tin foil costume pendant surrounded by crystals + earrings $400.00

3 silver Black Hills Gold rings $200.00

Approximately $1,000.00 worth of everyday jewelry.

SW-12-0240

FILED
OCT 31 2012
NORTH PACIFIC
DISTRICT COURT

Pacific County North District Court

Before Elizabeth Penoyar, Judge/Commissioner

STATE OF WASHINGTON
PACIFIC COUNTY } SS.

AFFIDAVIT for SEARCH WARRANT

Comes now Deputy Ryan P. Tully who being duly sworn, upon oath, complains, deposes and says:

That he has probable cause to believe and in fact does believe that evidence of a crime, or contraband, the fruits of crime, or things otherwise criminally possessed or weapons or other things by means of which a crime has been committed, particularly described as follows:

- See attachment #1 for full list of items
- Any items similar to those listed on attachment #1

and all related records, photos, videos, documents, and/or papers that are located in, on, or about certain premises within Pacific County, Washington, designated and described as follows:

- 5151 Hemlock St, Raymond, WA 98577. This is a two story house, yellow with white trim. There are two outbuildings next to the driveway on the property. Tax parcel #72031003003. It is owned by Charlotte Falkner. Tina L. Falkner, DOB 10/2/79 and Michael A. Jones, DOB 5/19/79 have been staying at this residence for the last couple weeks.

That affiant's belief is based upon the facts and circumstances as set forth in the numbered affidavits, written or typed statements, and/or attachments hereto, which are incorporated by this reference.

I. QUALIFICATIONS

Your affiant's name is Ryan P. Tully. Your affiant is employed by the Pacific County Sheriff's Office and has been since August 2011. Your affiant was originally employed as a Community Corrections Officer with the Department of Corrections from November 2008 to August 2011. Your affiant is currently assigned as a patrol deputy for northern Pacific County.

Your affiant's training includes 720 hours of training at the Washington State Criminal Justice Training Commission's Basic Law Enforcement Academy completed in 2012. You Affiant was issued a Washington State Peace Officer's Certificate on January 10th, 2012. Your affiant received a Bachelor of Arts degree in Sociology from Western Washington University on June 15th, 2007

Included in this training but not limited to, your affiant received instruction regarding criminal investigation and evidence collection. As a Community Corrections Officer he worked with the

Sheriff's Office on cases involving drug investigations. He also supervised sex offenders on community supervision. As part of his duties as a Community Corrections Officer, he completed Pre-Sentence investigations for the courts for sex offender sentencing. Your affiant also has experience in burglary and theft investigations.

II. PROBABLE CAUSE

On 10/18/12 at approximately 1517 hours I was advised by Pacific County Dispatch of a burglary that had occurred at 3103 South Fork Rd, Raymond, WA 98577. I arrived at the residence at approximately 1547 hours. Upon arrival I was met by Brian and Trish Settlemyre who were standing in the driveway.

Trish was visibly upset and in tears. She stated that she had left the house at approximately 1000 hours to go to Chehalis. She said she returned at approximately 1500 hours. She tried to open the garage door with the remote. She said it did not open. She went into the garage and noticed drawers and cupboards opened and the door opener had been messed with.

Trish stated that she then went to the house and found the door to be kicked in, damaging the door jam. She went into the house and found her bedroom ransacked.

Brian then showed me his truck, which had been parked next to the garage. The passenger side window had been smashed with a tire rim. There was broken glass all over the seat and ground. Brian said he had a couple guns in the truck that were missing.

I went into the garage with Brian. He showed me where items were missing. From the garage he was missing the following items:

Stihl 066 chainsaw, Stihl 017 chainsaw, Stihl weedeater, Minolta 10x50 binoculars, Steiner 10x50 military marine binoculars, Black & Decker circular saw, Milwaukee sawzall, Whites brand transit, Bowtech Sampson Infinity bow, Miwaukee 18v lithium cordless drill, Skill worm drive circular saw, Leupold RX TBE 1000 range finder, Hobart 120 handler wire feed welder, 10" subwoofer speaker, Black & Decker drill, Herrington-Richardson 12 gauge shotgun, set of GE 2-way radios, and Savage 22 mag bolt action rifle.

I then went into the house with Brian and Trish. I could see a footprint on the door and pieces of the door jam on the floor. I noticed drawers on the bed in their bedroom. There was a gun rack with no guns. They there missing the following items from the house:

A large collection of jewelry, vehicle keys, $200 cash, Sig Sauer P220 .45 caliber semi-auto pistol, Winchester model 70 25.06 rifle, and Marlin 22 LR semi-auto rifle.

I photographed the damage and the state of the truck, garage, and house as it was found. I was able to lift a fingerprint from the pull cord handle to the garage door, which Brian suspect had been pulled. He figured it had been pulled, which is why the door didn't open for Trish. It was a partial print since the handle had writing on it.

I returned to the residence on 10/19/12. Trish provided me with a statement form that included the complete list of the stolen items. They did not have serial numbers for any of the items. Brian said he could identify most of the items as his due to certain characteristics and marks.

While I was at the residence, Brian received a call from a confidential citizen with information on the burglary. The caller informed Brian that they had heard Tina Falkner talking a couple weeks ago about ripping off a place near the golf course where there were a lot of guns. The person told Brian they wanted to remain anonymous.

I know Tina from previous contacts and know that she is in a relationship with Mike Jones. Brian stated that he is friends with Mike's dad and Mike has been in their home in the past. He and Trish both suspected the house was burglarized by someone who knew what they had and where it was since the house was not completely torn apart.

I asked Brian and Trish to get fingerprinted at Pacific County Jail so that I could send their prints to the crime lab with the print I lifted. They said they would.

On 10/20/12 Sgt Ron Davis and I made contact with the confidential citizen. This person informed us of the same information that had been relayed to Brian. This person asked to remain anonymous for fear of retaliation. He has also provided reliable information on another case. RT

After meeting with the confidential citizen, Sgt Davis and I went to 5151 Hemlock St, Raymond, WA 98577, the residence of Jim and Charlotte Falkner, to make contact with Tina. Sgt Davis knocked on the door and the door partially opened. We could both hear the TV on in the house. Nobody came to the door after multiple knocks.

Sgt Davis and I left the residence but stayed in the area. A short time later I observed Mike's truck arrive at the residence. Sgt Davis and I made contact with him at his truck. Mike appeared very nervous and told us that two people appeared to be fighting down the road. He seemed to be trying to get us to leave.

I told Mike we were trying to contact Tina, but that nobody was answering the door. Mike said that he had just tried to call the home phone and there was no answer, so Tina was not home. Sgt Davis asked him why he still came to the house then. Mike did not have an excuse. Mike then asked if we were doing a warrant sweep. Sgt Davis informed him that we wanted to talk to Tina about the recent burglary.

Mike stated that there was no way that Tina was involved in the burglary since they had both been at her parents' residence all day the day of the burglary. Mike said that Brian is like his uncle and he would never steal from him. Mike stated multiple times that he does not steal. Mike also stated that he has been calling around trying to found out information on who committed the burglary.

Mike stated that Tina was possibly at Jeremy Graham's residence in South Bend visiting her kids. Mike left, but Sgt Davis and I stayed in the area. I contacted South Bend Officer Garrett

Spencer and asked him to check if Tina was at Jeremy's residence. Officer Spencer contacted me a short time later. He stated that Janelle Shores stated that Tina had not been there and she was probably in Old Willapa.

Later that evening, Sgt Davis made phone contact with Tina's dad, Jim Falkner. Jim and Charlotte are camping in Winthrop, WA and have been there for at least a couple weeks. Sgt Davis asked Jim if Tina had permission to stay at their residence. Jim stated that she and Mike both have permission to stay there.

On 10/23/12 Trish met with me at the Pacific County Sheriff's Office. She provided me with a new list of stolen items (see attachment #1). It was detailed with approximate values for each item. It included items that were not on the original statement.

On the evening of 10/23/12, Sgt Davis contacted me by phone. He said he had gone to the Falkner residence. He said Mike's truck was in the driveway. He said all the lights were on in the house. All of the windows were now covered with sheets, which had not been covered before. He said the door to the enclosed porch now had a lock, which had not previously. Sgt Davis said he knocked multiple times and received no answer.

On 10/24/12 I received a call from a confidential citizen. He has previously provided info. to PCSO that has proved to be reliable. The citizen asked to remain anonymous for fear of retaliation. The citizen informed me that they heard from at least two people that Mike was going around town bragging about the burglary. Mike was telling people that he knew about the guns and other items because his family is close to Brian's. The citizen also informed me that Mike tried to sell an item to them that is similar to one stolen from the Settlemyre residence.

Later in the day on 10/24/12 I drove by the Falkner residence. Mike's truck was parked in the driveway.

III. AFFIANT'S KNOWLEDGE

As a result of your affiant's training and experience and the experience of other law enforcement officers involved in this case and the foregoing facts set out in this case, your affiant knows:

- Tina Falkner and Mike Jones have been staying at 5151 Hemlock St, Raymond, WA 98577.
- Mike Jones is a family friend to the Settlemyre's and has been to their residence on many occasions.
- Tina Falkner was recently observed planning a burglary near the golf course.
- Mike Jones has recently heard bragging about committing the burglary.
- Mike Jones has been trying to sell items possibly taken from the Settlemyre residence.
- Tina Falkner and Mike Jones are known drug users and known drug users are often involved in burglaries and theft.
- Tina Falkner has previously been involved in theft.

IV. AFFIANT'S REQUEST

Your affiant therefore requests a search warrant for:

- See attachment #1 for full list of items
- Any items similar to those listed on attachment #1

From:

- 5151 Hemlock St, Raymond, WA 98577. This is a two story house, yellow with white trim. There are two outbuildings next to the driveway on the property. Tax parcel #72031003003. It is owned by Charlotte Falkner. Tina L. Falkner, DOB 10/2/79 and Michael A. Jones, DOB 5/19/79 have been staying at this residence for the last couple weeks.

BASED ON THE ABOVE your affiant is requesting a search warrant for the above described property, for evidence of a crime.

I certify under penalty of perjury under the Laws of the State of Washington that the foregoing declaration is true and correct.

A copy of the warrant and a receipt for the property taken shall be given to the person from whom or from whose property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at the place where the property is found. A copy of the associated search warrant is attached hereto and is incorporated by reference herein as appendix "A".

If approved, this warrant shall be served within the next ten days.

Ryan Tully 10/25/12
Deputy Ryan P. Tully 1P70

SUBSCRIBED AND SWORN to before me this 25 day of October 2012.

Judge/Commissioner, State of Washington

PACIFIC COUNTY PROSECUTOR

May 23, 2014 - 9:48 AM

Transmittal Letter

Document Uploaded: 450011-Reply Brief.pdf

Case Name: State of Washington vs. Michael Jones
Court of Appeals Case Number: 45001-1

Is this a Personal Restraint Petition? Yes ■ No

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Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

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Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

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Comments:

State's Reply Brief

Sender Name: Brandi Huber - Email: bhuber@co.pacific.wa.us

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