

Supreme Court No. 93462-2

(CoA No. 47239-2-II)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

Ramsey Ray Shabeeb,

Petitioner.

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PETITION FOR REVIEW

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DAVID L. DONNAN  
Attorney for Petitioner

GARRETT K. WEST  
Licensed Legal Intern (ID#9650300)

WASHINGTON APPELLATE PROJECT  
1511 Third Ave., Suite 701  
Seattle, WA 98101  
(206) 587-2711

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**A. IDENTITY OF MOVING PARTY AND DECISION BELOW**

Petitioner Ramsey Shabeeb, the defendant and appellant below, asks this Court to accept review of the unpublished Court of Appeals opinion, No. 47239-2-II (issued June 14, 2016). A copy of the slip opinion is attached as Appendix A. A motion to publish was subsequently denied on July 5, 2016. A copy of the order is attached as Appendix B.

**B. ISSUES PRESENTED FOR REVIEW**

Both the United States Constitution and the Washington Constitution require the issuance of a search warrant to be based on probable cause. Should evidence be suppressed where: 1) a warrant was issued based on the alert of a K-9 trained to find a legal substance, 2) the defendant's observed behavior prior to arrest was innocuous, 3) the affiant did not directly observed an informant purchase drugs from the defendant, 4) the informant has not provided information in the past leading to a conviction, 5) the affiant listed a backpack exchange as indicative of probable cause that illicit material would be found in a car, and 6) the search warrant did not particularly order the backpack to be searched?

### C. STATEMENT OF THE CASE

On April 16, 2014, Detective Robert Latter arrested Ramsey Shabeeb for the delivery of a controlled substance in February 2014.<sup>1</sup> Probable cause for the arrest was based on a prior “controlled buy” attributed to Mr. Shabeeb two months prior.<sup>2</sup> Officer Latter reported that he drove an informant to a residence in Battle Ground to purchase heroin from a person the informant previously identified as Mr. Shabeeb.<sup>3</sup> The informant returned to the detective with a small amount of heroin.<sup>4</sup> The informant was observed “walk[ing] to the residence” but nothing indicates that any unit observed the informant purchase any narcotics from Mr. Shabeeb.<sup>5</sup> Nothing indicates that Mr. Shabeeb resides at the home.<sup>6</sup> Furthermore, there is no mention of any vehicle at that “controlled buy.”<sup>7</sup>

Detective Latter deemed the informant’s information reliable based on a previous “reliability buy” of heroin.<sup>8</sup> Nothing in the affidavit indicates that the informant purchased this from Shabeeb or that the informant’s purchases for police have led to *any* successful prosecutions.<sup>9</sup>

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<sup>1</sup> Appendix C at 1.

<sup>2</sup> *Id.* at 5-6.

<sup>3</sup> *Id.* at 6.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *See Id.*

<sup>7</sup> *See Id.* at 5-6.

<sup>8</sup> *Id.* at 6-7.

<sup>9</sup> *Id.* at 14-15.

Two months after the purported sale to the informant, on the date of Mr. Shabeeb's arrest, Detective Latter and others surveilled Mr. Shabeeb. They observed Mr. Shabeeb park a car at a local auto parts business. Mr. Shabeeb talked to a person in another vehicle through open windows. At some point, Shabeeb retrieved a backpack from the other car's trunk and placed it in his own trunk.<sup>10</sup>

Mr. Shabeeb entered the auto parts store, later returned to his car to work on the engine, and re-entered the store.<sup>11</sup> The other vehicle left the parking lot but then returned.<sup>12</sup> Mr. Shabeeb soon left in his car.<sup>13</sup> According to the detective, as Mr. Shabeeb passed a detective's vehicle, he "appeared to be staring inside," soon made a U-turn and drove to the lot where the detective was. Fearing Shabeeb knew he was being watched, the detective arrested him for the supposed drug buy in February.<sup>14</sup>

During a search incident to arrest, heroin was found in Mr. Shabeeb's pocket.<sup>15</sup> The car Shabeeb was driving was impounded and two days later a K-9 made an alert to the rear bumper.<sup>16</sup> The K-9 was trained to sniff for both illegal and legal substances, including cocaine,

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<sup>10</sup> Appendix C at 4.

<sup>11</sup> *Id.* at 4-5.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

crack, methamphetamine, and marijuana.<sup>17</sup> However, at the time of the K-9 alert, marijuana possession was legal in Washington.<sup>18</sup>

Detective Latter filed an affidavit for a search warrant of the vehicle on April 18, 2014.<sup>19</sup> He detailed his 10 years of experience and the events leading to Shabeeb's arrest. A search warrant was issued.<sup>20</sup> Detective Latter seized a backpack, cut off a padlock and found controlled substances inside.<sup>21</sup> Shabeeb moved to suppress all evidence seized based on the search warrant but was denied. He was found guilty of possession with intent to deliver a schedule III narcotic after a stipulated facts trial.

Mr. Shabeeb now seeks review in this Court pursuant to RAP 13.4(b)(1), (3) and (4).

#### **D. ARGUMENT**

This Court should review the opinion of the Court of Appeals, which concluded that the magistrate did not abuse his discretion in finding probable cause and issuing a search warrant for the car Shabeeb was driving<sup>22</sup> and that the officers did not exceed the scope of the warrant by searching the locked backpack pursuant to a lawful search warrant.<sup>23</sup>

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<sup>17</sup> Appendix C at 2.

<sup>18</sup> See RCW 69.50.413.

<sup>19</sup> Appendix C.

<sup>20</sup> Appendix D.

<sup>21</sup> Appendix E.

<sup>22</sup> Appendix A at 4.

<sup>23</sup> *Id.*



The Fourth Amendment protects people from unreasonable searches and seizures. U.S. Const. amend. IV. Article 1, Section 7 of the Washington Constitution further narrows the State's authority to search, ensuring that "no person shall be disturbed in his private affairs, or his home invaded, without authority of law." Const. art. I, §7. Because Washington's constitution provides greater protections of individual privacy, when presented with potential violations under the state and federal constitutions, Washington courts examine state law challenges first. *State v. VanNess*, 186 Wn.App. 148, 155, 344 P.3d 713 (2015).

A search warrant can be issued only if the affiant shows probable cause that the defendant is involved in criminal activity and that evidence of the criminal activity will be in the place to be searched. *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). The affidavit supporting the search warrant must "set forth sufficient facts to convince a reasonable person of the probability the defendant is engaged in criminal activity and that evidence of criminal activity can be found at the place to be searched." *State v. Lyons*, 174 Wn.2d 354, 359, 275 P.3d 314 (2012). There must be a "nexus between criminal activity and the item to be seized and between that item and the place to be searched." *State v. Neth*, 165 Wn.2d 177, 183, 196 P.3d 658 (2008).

**1. The search warrant was not supported by probable cause.**

The Court of Appeals erroneously found probable cause to support the issuance of a search warrant for the car Mr. Shabeeb was driving. The Court found: i) a nexus between criminal activity and the vehicle Shabeeb was driving because a K-9, “trained to alert on multiple narcotics, one of which is marijuana,”<sup>24</sup> made an alert on the vehicle;<sup>25</sup> ii) “reasonable suspicion of criminal activity”<sup>26</sup> because of Shabeeb’s innocuous behavior; iii) “reasonable suspicion of criminal activity” establishing a nexus with the car because of the informant’s affidavit and probable cause to arrest, the discovery of a controlled substance in his pocket, and the K-9 alert;<sup>27</sup> and iv) a nexus between the alleged purchase in February and the car driven in April.<sup>28</sup> Nevertheless, these findings are not supported and do not indicate that there was probable cause.

*i. An alert by a K-9, trained to detect the legal substance marijuana, did not support a nexus between illegal activity and the car.*

The K-9 unit’s alert did not support or establish a nexus between the car and illegal activity. While both the State and Court concede that a K-9 trained to alert for marijuana cannot support probable cause *alone*, the

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<sup>24</sup> Appendix A at 3.

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.* at 5-6.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 7.

Court erroneously concluded that “a magistrate may consider a K-9 alert as *one factor* in determining if probable cause exists” even when that “K-9 was trained to alert on ... [legal] marijuana” (emphasis inserted).<sup>29</sup> However, a K-9 trained to alert for a legal substance that gives an alert has no probative value for determining probable cause. As a result, the K-9 alert neither individually established nor added to the likelihood of probable cause.

One of the necessary elements to establish probable cause is whether a reasonable person, given the evidence presented, would believe that the item sought is *contraband*. *State v. Goble*, 88 Wn.App. 503, 945 P.2d 263 (1997). Absent a sufficient basis in fact from which to conclude evidence of *illegal* activity will likely be found at the place to be searched, a reasonable nexus cannot be established as a matter of law. *State v. Thein*, 138 Wn.2d 133, 977 P.2d 582 (1999). Washington police dogs were trained to detect different substances, including marijuana, but are unable to communicate what they detect.<sup>30</sup> They can detect even miniscule amounts of substances but cannot communicate *how* miniscule of an amount is present.<sup>31</sup> As a result, a dog that cannot distinguish

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<sup>29</sup> Appendix A at 7.

<sup>30</sup> Memorandum from Pam Loginsky, Staff Attorney, Wash. Ass’n of Prosecuting Atty’s, to Washington Prosecuting Attorneys, (Dec. 4 2012) (available at <https://fortress.wa.gov/cjtc/www/images/I-502%20and%20Canine%20Alerts.pdf>).

<sup>31</sup> *Id.*

between legal and illegal objects and cannot detect how much of a legal substance they smell cannot form a lawful basis for probable cause.

Determining the use of a K-9 that can detect legal and illegal substances as adding to probable cause would lead to absurd results. For example, what if the dog was able to smell and alert to both alcohol *and* methamphetamine?<sup>32</sup> Would the K-9's alert still establish probable cause? What if the K-9 could alert to heroin and *cheese*? Could that establish probable cause? The answer must be "no" to truly give meaning to the Fourth Amendment and Article 1, Section 7 of the Washington Constitution, which affords more privacy rights than the U.S. Constitution.<sup>33</sup>

The Court also erroneously concluded that because "there was no evidence that any marijuana was present"<sup>34</sup> *after* the search was complete, there was probable cause and that search was proper. However, relying on evidence obtained *ex post facto* in order to establish that probable cause existed *prior* to a search instead necessitates the conclusion of the exact opposite, that there was no such probable cause to begin with.

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<sup>32</sup> Assuming the subject of the search was over 21 years of age.

<sup>33</sup> See *State v. VanNess*, 186 Wash. App. 148, 155, 344 P.3d 713, 717 (2015) (stating that the Washington Constitution affords more privacy rights than the Federal Constitution).

<sup>34</sup> Appendix A at 7.

ii. *Mr. Shabeeb's innocuous and lawfully consistent behavior did not support a "reasonable suspicion of criminal activity."*

Mr. Shabeeb's observed behavior on the date of his arrest was consistent with legal activity and "potentially innocuous."<sup>35</sup> Innocuous conduct that is equally consistent with lawful and unlawful activity does not create probable cause to search. *Neth*, 165 Wn.2d at 185. Therefore, the facts fail to raise any suspicion that Ms. Shabeeb's vehicle contained narcotics. Mr. Shabeeb was observed parking his vehicle at a local auto parts business,<sup>36</sup> which is consistent with legal behavior. He "appeared to converse" with another driver "through their open windows for a time,"<sup>37</sup> which was consistent with seeing a friend<sup>38</sup> and innocuous. He appeared to take a backpack from the other driver, which was consistent with a friend stopping by to return his backpack to him<sup>39</sup> and was thus innocuous. Similarly, entering and exiting an auto shop and working on one's car engine is also consistent with legal activity.

*State v. Neth* contained more facts tending to support a finding of probable cause than the facts of Mr. Shabeeb's arrest, although the Washington Supreme Court found that the facts in *Neth* were consistent

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<sup>35</sup> Appendix A at 6.

<sup>36</sup> Appendix C at 4.

<sup>37</sup> *Id.* at 4.

<sup>38</sup> Appendix A at 6.

<sup>39</sup> *Id.*

with legal activity and did not establish a nexus between the criminal activity and the defendant's car. *Neth*, 165 Wn.2d at 179. In *Neth*, a trooper stopped the defendant for speeding. Following a series of events, the trooper obtained a search warrant to look for narcotics. *Id.* The search warrant application's affidavit listed the defendant's nervous behavior, his possession of plastic bags, possession of large amounts of cash purportedly used for rent, and his criminal history to support the warrant. *Id.* at 183-4. The Washington Supreme Court reversed, finding that although the facts taken together were odd, all the circumstances were consistent with legal activity and thus did not establish a nexus between the criminal activity and the defendant's car. *Id.* at 184-86.

Just as in *Neth*, Mr. Shabeeb's behavior on the date of his arrest was consistent with legal activity. The officers did not even see any plastic baggies, which are a "hallmark of an illicit drug exchange. *Neth*, 165 Wn.2d at 185 (citing *People v. McRay*, 416 N.E.2d 1015 (N.Y. 1980)). Instead they saw a backpack, which does not carry the same criminal undertones. The officers also did not see an exchange between Mr. Shabeeb and the other driver. The Court explained in *Neth*, "[s]ome factual similarity between the past crime and the current charged offense must be shown before the criminal history can significantly contribute to probable cause." *Id.* at 186. However, unlike in *Neth*, Mr. Shabeeb did

not have a criminal history involving drug offenses so there are no such similarities. Lastly, the police here used a K-9 that was trained to alert for *legal* substances. As such, there were even fewer facts on the date of Mr. Shabeeb's arrest that could have supported a finding of probable cause that in *Neth*.

Even the Court found this activity "potentially innocuous."<sup>40</sup>

Because Mr. Shabeeb's conduct on the date of his arrest was innocuous and consistent with lawful activity, *Neth*, 165 Wn.2d at 185, it did not support a "reasonable suspicion of criminal activity."<sup>41</sup>

iii. *No "reasonable suspicion of criminal activity" was established on the date of Shabeeb's arrest sufficient to establish a nexus between such activity and the car.*

Reasonable suspicion of criminal activity was not established on the day Shabeeb was arrested by: 1) an informant claiming to have purchased heroin from Shabeeb *months* before his arrest,<sup>42</sup> which established "probable cause to arrest Shabeeb";<sup>43</sup> or 2) the discovery of heroin in his pocket in a search incident to arrest. Nor could the K-9 alert support the conclusion of "reasonable suspicion"<sup>44</sup> because, as indicated above, a K-9 trained to alert for *legal* substances does not support finding

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<sup>40</sup> Appendix A at 6.

<sup>41</sup> *Id.* at 5.

<sup>42</sup> Appendix C at 5-6.

<sup>43</sup> *Id.* at 6.

<sup>44</sup> Appendix A at 6.

probable cause. Indeed, none of these factors, independently or cumulatively, provide sufficient support for the affiant to establish the existence of a nexus between criminal activity and the car Mr. Shabeeb was driving. Thus, there was no probable cause.

- a. An informant's supposed purchase of heroin in February, 2014 did not support a reasonable suspicion of criminal activity on April 16, 2014.

An informant's previous supposed purchase of controlled substances from Mr. Shabeeb does not support a finding that there was a reasonable suspicion of criminal activity months later. The probable cause to arrest Mr. Shabeeb in April 2014 was purportedly based on an informant's "controlled buy" two months prior, sometime in February 2014.<sup>45</sup> The affidavit indicated that Officer Latter had driven an informant to a residence in Battle Ground to purchase heroin from a person the informant previously identified as Mr. Shabeeb and that the informant returned with a small amount of heroin.<sup>46</sup>

The only evidence in the record tying Mr. Shabeeb to a supposed prior purchase is the word the informant. Indeed, although the informant was observed "walk[ing] to the residence," nothing indicates that any officer observed a purchase of any narcotics from Mr. Shabeeb.<sup>47</sup> Nothing

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<sup>45</sup> Appendix C at 5-6.

<sup>46</sup> *Id.* at 6.

<sup>47</sup> *Id.*



in the affidavit indicates that Mr. Shabeeb resides at the home where the heroin was purchased.<sup>48</sup> Nothing indicates that anyone observed the vehicle Mr. Shabeeb later drove at the purported purchase, further eroding any nexus between the any criminal activity and Mr. Shabeeb's car.<sup>49</sup> Furthermore, nothing in the affidavit indicates that the informant's purchase to establish his "credibility" included Shabeeb or that this informant's purchases for police have led to *any* successful prosecutions.<sup>50</sup>

Neither the informant claiming to have purchased heroin from Shabeeb<sup>51</sup> months prior his arrest nor the "probable cause to arrest" established by that incident indicates a reasonable suspicion of criminal activity on April 16, 2014. Thus, the previous incident did not provide sufficient support for the affiant to establish the existence of a nexus between criminal activity and the car Mr. Shabeeb was driving.

- b. The discovery of controlled substances in his pocket does not support a nexus between criminal activity and the car itself.

Although the discovery of heroin in Shabeeb's pocket in the search incident to arrest may provide a nexus of criminal activity with his *clothing*, it does not establish a nexus with the *car* he was driving. There must be a "nexus between criminal activity and the item to be seized and

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<sup>48</sup> Appendix C.

<sup>49</sup> *Id.* at 5-6.

<sup>50</sup> *Id.* at 14-15.

<sup>51</sup> Appendix A at 6.

between that item and the place to be searched.” *State v. Neth*, 165 Wn.2d at 183. Nevertheless, the connection between the controlled substances and the car was far too attenuated. As a result, the affiant did not establish a nexus between criminal activity and the car.

Because none of the factors relied on by the Court of Appeals, independently or cumulatively, provides sufficient support for the affiant to establish the existence of a nexus between criminal activity and the car Mr. Shabeeb was driving on the date he was arrested, there was no probable cause and the warrant was unlawful.

*iv. The affidavit did not establish a nexus between the alleged drug buy in February and the car Shabeeb was driving in April.*

The Court agreed that the affidavit showing “Shabeeb had engaged in a drug transaction elsewhere” may not be sufficient alone to establish probable cause to search his car. However, the court found that the combination of different factors supported probable cause. Nevertheless, the affiant could not establish a nexus between the alleged February drug buy and the car Shabeeb was driving in April due to either Shabeeb’s innocuous behavior on the date of his arrest or the K-9 alert. As indicated above, Mr. Shabeeb’s conduct on the date of his arrest was innocuous. Also indicated above, a K-9 trained to alert for legal substances cannot support establishing probable cause.

Nor could the affiant establish a nexus between the alleged February purchase and the car based on Detective Latter's experience in narcotics investigation. Probable cause requires a reasonable person, given the evidence presented, to believe that the item sought was contraband. *Goble*, 88 Wn.App. at 509. Absent a reliable basis then from which to conclude evidence of illegal narcotics would be found in the place searched, a reasonable nexus was not established. *State v. Thein*, 138 Wn.2d at 147. Even the detective's "experience and training" cannot fill the gap because:

[a] conclusory assertion in an affidavit that drug traffickers commonly store a portion of their drug inventory and paraphernalia in their residences [is] insufficient to establish a nexus between evidence of illegal drug activity and the place to be searched, absent any statements actually tying the defendant's home to suspected criminal activity.

*State v. Davis*, 182 Wn.App. 625, 633, 331 P.3d 115 (2014). Similarly, conclusory assertions that drug dealers commonly store narcotics in items likely to be found in a vehicle is not enough to establish a nexus between evidence of illegal activity and the vehicle.

Although the court found that "Latter's affidavit showed a direct connection between Shabeeb's car and criminal activity," no such "direct connection" is established anywhere in the affidavit.<sup>52</sup> As a result, neither

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<sup>52</sup> Appendix C.

Mr. Shabeeb's conduct, the K-9 alert, nor Detective Latter's experience, either independently or cumulatively, could establish a nexus between the prior purchase and the car. As a result, there was no probable cause.

- v. *The search warrant affidavit did not establish either the reliability of the informant's information or the informant's reliability.*

Neither the reliability of the informant's information nor the reliability of the informant was adequately established in the affidavit.

When a search warrant application is based on information from a confidential informant, under the *Aguilar-Spinelli*<sup>53</sup> standard, the supporting affidavit must contain information supporting *both* 1) the reliability of the informant's information; and 2) the informant's reliability. *See State v. Ollivier*, 178 Wn.2d 813, 849-50, 312 P.3d 1 (2013). However, neither was established by the affidavit.

The reliability of the criminal informant's information was never adequately established. The reliability of the information provided by a criminal informant must be established by a showing that his or her assertions are based on direct personal observation: "In every case, the informant's information must go beyond mere unsupported conclusion... that illegal activities are occurring or will occur." *State v. White*, 10 Wn.App. 273, 277, 518 P.2d 245 (1973). Nevertheless, this case only has

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<sup>53</sup> *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964); *Spinelli v. United States*, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969).

“a mere unsupported conclusion,” *Id.* Here, there was no independent showing that the informant based his or her assertions on direct person observations. The affidavit simply indicates that the detective met the informant, drove him or her to a home in Battle Ground to purchase heroin, and that the detective *believed* that he or she purchased the heroin from Mr. Shabeeb inside.<sup>54</sup> Indeed, the affidavit does not indicate that the informant was seen purchasing drugs from Shabeeb and therefore it cannot be attributed to him.<sup>55</sup> The informant’s information amounted only to an unsupported conclusion of criminal activity attributed to Mr. Shabeeb.

Furthermore, the affidavit does not support the informant’s reliability or credibility. The Court cites to *State v. Marcum*, for the principle that the informant’s track record may establish the informant’s reliability. 149 Wn.App. 894, 906, 205 P.3d 969 (2009). However, there is no evidence in the record that the informant even has a track record. Indeed, the affidavit only indicates that the informant has been involved in two buys for the police, one of which is actually in the case at hand. One previous buy for the police does not sufficiently establish a track record.

As the Court also rightly pointed out, reliability is sufficiently shown if the informant has previously given information that has led to a

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<sup>54</sup> See Appendix C at 5-6.

<sup>55</sup> *Id.*

conviction. *State v Woodall*, 100 Wn.2d 74, 76-78, 666 P.2d 364 (1983).

However, there is no evidence in the record that the informant's information led to previous convictions. Indeed, the informant has only led to the *arrest* in the case at hand. An arrest is not a conviction and it does not in itself support the informant's reliability.

The affidavit only establishes that the informant had a criminal record, "has knowledge of the drug trade from previous involvement in the drug subculture," that he or she had previously provided some information corroborated through "other sources," and that the informant had made an unconnected drug buy for the police months prior.<sup>56</sup> Furthermore, there is no evidence that the informant has led to any other arrest or conviction and is therefore insufficient to establish the informant's reliability.

Although it is true that the informant's criminal record does not contain crimes of dishonesty, the absence of such convictions does not render the informant reliable. The fact that the informant wanted *possible* favorable treatment on a drug charge also does not sufficiently support a finding of reliability. As such, the affidavit did not contain information supporting *either* the reliability of the information or the informant's reliability, although both are required under *Aguilar-Spinelli*.<sup>57</sup>

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<sup>56</sup> Appendix C at 7.

<sup>57</sup> *Aguilar v. Texas*, 378 U.S. at 84; *Spinelli v. United States*, 393 U.S. at 89.

**2. The search warrant did not provide authority to seize and search Mr. Shabeeb's backpack.**

The warrant did not expressly reference the backpack in the car Shabeeb was driving. The lock on the backpack indicated that the owner has a heightened expectation of privacy and the magistrate needed to directly authorize the search of the backpack or issue a separate warrant.

The Fourth Amendment requires search warrants to “particularly describe” both the place to be searched and the items to be seized. U.S. Const. amend. IV; *State v. Rivera*, 76 Wn.App. 519, 522, 888 P.2d 740 (1995). Washington’s constitution provides greater protections of individual privacy. Indeed, Article 1, Section 7 of the Washington Constitution further narrows the State’s authority to search, ensuring that “no person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Const. art. I, §7.

The description of the items sought in a search must therefore be as specific as the circumstances and nature of the activity under investigation permit. *State v. Stenson*, 132 Wn.2d 668, 692, 940 P.2d 1239 (1977). Although the affidavit for the search warrant describes the backpack being placed in the trunk of the car,<sup>58</sup> the warrant does no mention that the

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<sup>58</sup> Appendix C at 4.

backpack can be searched.<sup>59</sup> The warrant indicates<sup>60</sup> many items that the detective wished to seize<sup>61</sup> but there is no mention of a backpack. Furthermore, because a heightened expectation of privacy exists between locked versus unlocked items, a warrant to open the locked backpack was necessary.

#### **E. CONCLUSION**

This Court should grant review because the published Court of Appeals opinion raises significant questions of constitutional law and affects the substantial public interest.

DATED this 4th day of August, 2016.

Respectfully submitted:

*s/ David L. Donnan*

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DAVID L. DONNAN (WSBA 19271)  
Washington Appellate Project (91052)  
Attorney for Appellant

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<sup>59</sup> Appendix D.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* (Heroin, records relating to ordering and possession, photographs, films, telephone records, etc.).



# **APPENDIX A**

June 14, 2016

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

**DIVISION II**

STATE OF WASHINGTON,  
  
Respondent,  
  
v.  
  
RAMSEY RAY SHABEEB,  
  
Appellant.

No. 47239-2-II

UNPUBLISHED OPINION

MAXA, J. – Ramsey Shabeeb appeals his conviction of unlawful possession of a controlled substance with intent to deliver and the trial court’s imposition of discretionary legal financial obligations (LFOs). The conviction arose from a search of Shabeeb’s car pursuant to a search warrant, during which officers discovered controlled substances in a locked backpack in the car’s trunk.

We hold that (1) probable cause supported issuance of the search warrant for Shabeeb’s car and (2) the locked backpack in the car’s trunk was within the scope of that warrant. We also decline to consider, under the specific facts of this case, whether the trial court erred in failing to assess Shabeeb’s future ability to pay his LFOs because he did not object below. Accordingly, we affirm Shabeeb’s conviction and sentence.

FACTS

*Stipulated Facts*

At trial, Shabeeb agreed to a trial based on stipulated facts. He stipulated that on April 16, 2014, Detective Robert Latter of the Clark-Vancouver Regional Drug Task Force (the Task Force) stopped Shabeeb's vehicle and arrested him for selling heroin to a confidential informant (CI) working for the Task Force. The Task Force officers saw Shabeeb place a backpack into the trunk of his car and obtained and executed a search warrant for the vehicle. The officers seized the backpack from the trunk, cut off the padlock securing it, and discovered controlled substances in it. The officers also seized a digital scale and a spiral notebook containing notations about collection of money.

*Facts from Search Warrant Application*

In his affidavit for a search warrant, Latter detailed his 10 years of experience working with narcotics investigations and arrests. He stated that he could identify marijuana, methamphetamine, heroin, and cocaine by sight and smell. And he stated that he confirmed these identifications in the past through field testing and state laboratory tests.

Latter described the events leading to Shabeeb's arrest. Latter employed a CI to purchase heroin in a controlled buy. He described the CI as reliable because of a prior heroin purchase the CI had made while working for the Task Force and as knowledgeable because of his previous involvement in the drug subculture. Latter explained that the CI was working for the Task Force because of a pending felony charge and that the CI had no prior felonies and three prior gross misdemeanors.

Latter then described further surveillance of Shabeeb. CP 12. Officers observed as Shabeeb parked at an auto parts store and then another car parked next to Shabeeb. Shabeeb talked with the driver of the other car for a time and then retrieved a backpack from the trunk of that car. Officers arrested Shabeeb after he drove away from the store based on probable cause to arrest developed at an earlier date. During a search incident to arrest, officers discovered a black substance wrapped in tin foil that later field tested positive for heroin.

Latter stated that after the police impounded Shabeeb's car, an officer used a K-9 dog to search the outside of the car. The K-9 was trained to identify cocaine, crack, marijuana, methamphetamine and heroin. The K-9 alerted to the presence of drugs at the rear bumper seam on the driver's side of Shabeeb's car.

Latter requested a warrant because he believed that searching Shabeeb's vehicle could uncover drug packaging materials, identification, controlled substances, and cell phones. A magistrate granted Latter's request and issued a search warrant. As noted above, the police seized controlled substances, a digital scale, and a transaction record from the backpack found in Shabeeb's trunk.

*Motion to Suppress Evidence*

Before his stipulated facts trial, Shabeeb filed a motion to suppress all evidence seized based on the search warrant. He challenged the magistrate's decision to issue a search warrant because the K-9 was trained to alert on five substances, one of which was marijuana. Shabeeb argued that because possession of small amounts of marijuana is lawful, the K-9's alert could not be used to establish probable cause. The trial court denied the motion to suppress, finding that the K-9's alert, along with other factors, could establish probable cause.

*Trial and Sentence*

Based on the stipulated facts, the trial court found Shabeeb guilty of unlawful possession of a controlled substance with intent to deliver. The trial court authorized a residential drug treatment program and referred Shabeeb to drug court. The drug court imposed three to six months of residential chemical dependency treatment, two years of community custody, and legal financial obligations of \$4,125.<sup>1</sup> The drug court checked a box stating that “the defendant is presently indigent but is anticipated to be able to pay financial obligations in the future. RCW 9.94A.753.” Clerk’s Papers (CP) at 78. But the drug court did not specifically assess Shabeeb’s ability to pay.

Shabeeb appeals his conviction and the imposition of LFOs.

ANALYSIS

A. VALIDITY OF SEARCH WARRANT

Shabeeb argues that the district court erred in issuing a search warrant because (1) Shabeeb’s behavior at the auto parts store did not create a reasonable suspicion of criminal activity; (2) the K-9 was trained to alert on marijuana, which eliminated the alert as a basis for probable cause; (3) there was no nexus between Shabeeb’s car and the CI’s earlier purchase of heroin from Shabeeb; and (4) the warrant failed to establish the CI’s reliability. We hold that the magistrate did not abuse his discretion in finding probable cause and issuing the search warrant.

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<sup>1</sup> At least \$900 is mandatory (victim assessment, criminal filing fee, crime lab fee, and DNA (deoxyribonucleic acid) collection fee) and Shabeeb agreed to pay \$600 for drug court, leaving a discretionary total of \$2,625.

1. Legal Principles

Under the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution, issuance of a search warrant must be based on probable cause. The affidavit supporting the search warrant application must “set forth sufficient facts to convince a reasonable person of the probability the defendant is engaged in criminal activity and that evidence of criminal activity can be found at the place to be searched.” *State v. Lyons*, 174 Wn.2d 354, 359, 275 P.3d 314 (2012). There must be a “nexus between criminal activity and the item to be seized and between that item and the place to be searched.” *State v. Neth*, 165 Wn.2d 177, 183, 196 P.3d 658 (2008). “Probable cause requires more than suspicion or conjecture, but it does not require certainty.” *State v. Chenoweth*, 160 Wn.2d 454, 476, 158 P.3d 595 (2007).

We review the validity of a search warrant for an abuse of discretion, giving great deference to the issuing magistrate. *Neth*, 165 Wn.2d at 182. We consider only the information within the four corners of the supporting affidavit. *Id.* Although we give deference to the magistrate, we review the trial court’s probable cause determination de novo. *Id.* We resolve all doubts in favor of the warrant’s validity. *Chenoweth*, 160 Wn.2d at 477.

2. Reasonable Suspicion

Shabeeb argues that police observations of him and the other vehicle at the auto parts store did not provide a reasonable suspicion of criminal activity. He claims that the behavior the police observed was consistent with legal activity and therefore there was an insufficient nexus between criminal activity and his car. We disagree.

Shabeeb relies on *Neth*. In that case, a trooper stopped Neth for speeding. Following a series of events, the trooper impounded the vehicle and obtained a search warrant to look for narcotics. *Neth*, 165 Wn.2d at 179. The search warrant application affidavit listed Neth's nervous and unusual behavior, his possession of plastic baggies and large amounts of cash, and his criminal history as support for the warrant. *Id.* at 183-84. The Supreme Court reversed, noting that possession of plastic baggies, nervousness, lack of identification, and criminal history are not enough to support a finding of probable cause. *Id.* at 185. It explained that "[s]ome factual similarity between the past crime and the currently charged offense must be shown before the criminal history can significantly contribute to probable cause." *Id.* at 186.

Shabeeb argues that his activities similarly were consistent with lawful behavior. He claims that the facts show that he was working on his car when a friend stopped by to help or check on him and return his backpack. Shabeeb notes that officers did not see plastic baggies or an exchange between Shabeeb and the driver. And Shabeeb did not have a criminal history that included drug offenses.

However, the warrant application showed more than these potentially innocuous facts. In addition to Latter's observations about the surveillance, he also explained in the application affidavit that a CI had purchased heroin from Shabeeb, that he had probable cause to arrest Shabeeb, that he arrested Shabeeb and discovered heroin in a search incident to arrest, and that a K-9 alerted on Shabeeb's vehicle. In light of these facts, Shabeeb's behavior at the auto parts store was suspicious enough to establish a nexus between criminal activity and Shabeeb's car.

3. K-9 Alert

Shabeeb argues that because the K-9 may have alerted on marijuana rather than the other five drugs it was trained to detect and because marijuana is legal to possess in certain quantities, there is little or no probative value that can be drawn from the alert on his car. He claims that without the alert, there was not a sufficient nexus between the place to be searched and illegal activity. We disagree.

The State concedes and we agree that since the decriminalization of marijuana, a K-9 alert *standing alone* no longer establishes probable cause when the K-9 was trained to alert on multiple narcotics, one of which is marijuana. However, a magistrate may consider a K-9 alert as one factor in determining if probable cause exists. This is particularly true where, as here, there was no evidence that any marijuana was present and there was evidence that other drugs for which the K-9 was trained were present.

Here, the K-9 alert was only one of many factors establishing probable cause. Therefore, the district court's consideration of the alert does not affect the validity of the probable cause determination.

4. Nexus Between Prior Purchase and Car

Shabeeb argues that Latter's affidavit failed to establish a nexus between Shabeeb's earlier sale to the CI and Shabeeb's car. He argues that this lack of correlation between the two eroded any potential probable cause and left the magistrate to rely on only Latter's experience rather than on facts demonstrating probable cause. We disagree.

Latter stopped Shabeeb's car and arrested him for the earlier sale to the CI. He searched Shabeeb incident to arrest and discovered heroin in his pocket. He also observed the interaction



and backpack exchange at the auto parts store. Combined with the K-9 alert and Latter's experience in narcotics investigations, this was sufficient to establish probable cause.

Shabeeb relies on *State v. Thein*, 138 Wn.2d 133, 977 P.2d 582 (1999). In that case, the police obtained a search warrant for Thein's residence even though Thein's prior drug transactions had occurred at a different location. *Id.* at 136-40. The Supreme Court reversed the conviction, holding that probable cause could not be established based on stereotypes about drug dealers without some showing of a nexus between Thein's criminal activity and his residence. *Id.* at 147.

As with the K-9 alert, the fact that Shabeeb had engaged in a drug transaction elsewhere may not be sufficient – standing alone – to support probable cause to search his car. But the prior drug transaction was only one of many factors establishing probable cause. Latter's affidavit showed a direct connection between Shabeeb's car and criminal activity. Therefore, the district court's consideration of the prior drug transaction does not affect the validity of the probable cause determination.

#### 5. CI's Reliability

Shabeeb argues that the search warrant affidavit fails to establish the CI's reliability. He argues that the affidavit does not indicate that the CI's prior purchase was from Shabeeb and therefore cannot be attributed to him.<sup>2</sup> He also argues that the affidavit fails to show that the

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<sup>2</sup> The State argues that we should not consider Shabeeb's argument on the CI's reliability because he did not make that argument in the trial court. We exercise our discretion under RAP 2.5(a) to address this argument.

information from the CI in other cases led to an arrest and conviction and therefore is insufficient to establish his reliability. We disagree.

When a search warrant application is based on information provided by a confidential informant, under the *Aguilar-Spinelli*<sup>3</sup> test, the supporting affidavit must contain information from which the court can determine (1) the reliability of the informant's information, i.e., the basis of the informant's knowledge, and (2) the credibility or veracity of the informant. *See State v. Ollivier*, 178 Wn.2d 813, 849-50, 312 P.3d 1 (2013). An informant's track record may establish the informant's reliability for purposes of a probable cause determination. *State v. Marcum*, 149 Wn. App. 894, 906, 205 P.3d 969 (2009); *see also State v. Woodall*, 100 Wn.2d 74, 76-78, 666 P.2d 364 (1983) (reliability is sufficiently shown if the informant has given information in the past that has led to a conviction); *State v. Fisher*, 96 Wn.2d 962, 965-66, 639 P.2d 743 (1982) (reliability sufficiently shown where information from informant about drug trafficking in past proved true and informant made two controlled buys).

Here, Latter's affidavit explained that he had used the CI for two drug purchases, one of which resulted in Shabeeb's arrest for delivery of heroin. Further, the affidavit stated that the CI gave the Task Force information in the past that the Task Force corroborated with other sources. It also explained that the CI was working with the Task Force for possible favorable treatment on a drug charge he was facing. Finally, the affidavit set out the CI's criminal record, which contained no crimes of dishonesty.

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<sup>3</sup> *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964); *Spinelli v. United States*, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969).

This information provided the magistrate with sufficient information to conclude that the CI was a reliable informant with a basis of knowledge in the narcotics trade. Accordingly, we hold that the probable cause determination is not invalid on this basis.

6. Conclusion

As noted above, we give deference to the magistrate issuing the warrant and resolve all doubts in favor of validity. *Chenoweth*, 160 Wn.2d at 477. Considering all the surrounding facts and Latter's extensive experience in narcotics investigations, we hold that the trial court did not err in affirming the validity of the magistrate's probable cause determination.

B. SCOPE OF SEARCH WARRANT

Shabeeb argues that the officers acted improperly in searching the padlocked backpack found in the trunk of his car because the warrant did not expressly reference the backpack. He claims that locking a backpack is an indication that the owner has a heightened expectation of privacy and therefore the magistrate either had to directly authorize the search of the backpack or require a separate warrant. We disagree.

The Fourth Amendment requires search warrants to "particularly describe" both the place to be searched and the items to be seized. The purpose of the particularity requirement is to prevent the State from engaging in exploratory rummaging in a person's belongings. *State v. Higgs*, 177 Wn. App 414, 425, 311 P.3d 1266 (2013). The description of the items sought in the search must be as specific as the circumstances and nature of activity under investigation permit. *State v. Stenson*, 132 Wn.2d 668, 692, 940 P.2d 1239 (1977).

Under a search warrant for a premises, personal effects of the owner may be searched if they are plausible repositories for the items named in the warrant. *State v. Hill*, 123 Wn.2d 641,

# **APPENDIX B**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,  
Respondent,  
v.  
RAMSEY RAY SHABEEB,  
Appellant.

No. 47239-2-II

ORDER DENYING MOTION TO PUBLISH

FILED APPEALS  
COURT OF APPEALS  
DIVISION II  
2016 JUL -5 AM 11:02  
STATE OF WASHINGTON  
BY [Signature] REPORTER

Respondent moves for publication of the court's opinion filed June 14, 2016 in this case.

Upon consideration, the Court denies the motion. Accordingly, it is

**SO ORDERED.**

PANEL: Jj. Maxa, Worswick, Bjorgen

DATED this 5th day of July, 2016.

FOR THE COURT:

Bjorgen, C.J.  
CHIEF JUDGE

David L. Donnan  
Washington Appellate Project  
1511 3rd Ave Ste 701  
Seattle, WA 98101-3647  
david@washapp.org

Aaron Bartlett  
Attorney at Law  
PO Box 5000  
1013 Franklin St  
Vancouver, WA 98666-5000  
aaron.bartlett@clark.wa.gov

# **APPENDIX C**

COPY

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

No.

Plaintiff,

AFFIDAVIT FOR SEARCH WARRANT

SHABEEB, Ramsey Ray

Defendant.

STATE OF WASHINGTON)

COUNTY OF CLARK )

ss

I, Detective Latta, being first duly sworn upon oath, hereby depose and say that I have good and sufficient reason to believe that the following goods, to wit:

(1) Heroin, a substance controlled by the Uniform Controlled Substances Act of the State of Washington, and items used to facilitate the distribution and packaging of Heroin;

(2) Records relating to the ordering and possession of Heroin, including but not limited to handwritten notes;

(3) Photographs, including still photos, video tapes, films, and the contents therein, and in particular, photographs of co-conspirators and controlled substances in particular Heroin;

(4) Address and/or telephone books, telephone bills, and papers reflecting names, addresses, telephone numbers, of sources of supply;

(5) Records showing the identity of co-conspirators in this distribution operation, including but not limited to address and/or phone books, telephone bills, correspondence, handwritten notes, journals, calendars, receipts, and the like, to include cell phones and the SIM, ESN and IMEI numbers for the cellular phone(s), any passwords or access codes to access the electronic memory of the cellular phone, status of the account, and incoming and outgoing call detail records, said phones to

1 be seized and examined by the Clark County Sheriff's Office Computer Forensics Lab  
2 and or the Clark Vancouver Regional Drug Task Force.

3 (6) Paraphernalia for packaging, including but not limited to pipes, bongs,  
4 rolling papers and other items used in using marijuana. [Make necessary changes for  
5 other controlled substances]

6 (7) Photographs of the crime scene and to develop any photographs taken  
7 of the crime scene, including still photos and video cassette recordings and to develop  
8 any undeveloped film located in the vehicle.

9 Are on this 18th day of April, 2014 in the unlawful possession of the  
10 defendant(s) in:

11 A blue 1995 Audi A6 four door bearing Washington license plate APZ2638.  
12 The Vehicle Identification Number is WAUGA84A5SN045192.

13 I am informed and aware, based upon the following:

14 Your affiant is employed by the Clark County Sheriff's Office and has been for  
15 the last ten years. Your affiant is currently assigned to the Clark/Skamania Drug Task  
16 Force. During this employment your affiant has had over 720 hours of training in  
17 criminal investigation and other law enforcement topics. Your affiant has completed  
18 the 40 hour Clandestine Drug Laboratory Safety and Operations Course and the 80  
19 hour Drug Enforcement Administration Basic Narcotics Investigators Course. Your  
20 affiant has participated in several drug investigations and arrests, including having  
21 written or taken part in the service of a number of drug related warrants.

22 Your affiant has received training on the identification of controlled substances  
23 and can identify marihuana, methamphetamine, heroin and cocaine through sight and  
24 smell. Your affiant has personally seized these substances while participating in drug  
25 related arrests and investigations and has confirmed such as controlled substances  
26 through field tests and state laboratory examinations.

27 Additionally, In 1997 Charles Gardiner was commissioned as a Trooper with  
the Washington State Patrol. He is currently assigned to Clark County as a Narcotics



1 Canine Handler. During his tenure as a Trooper, he has initiated and participated in  
2 numerous narcotics related investigations. Trooper Gardiner has received training  
3 from the Washington State Patrol and the Washington State Criminal Justice Training  
4 Commission in narcotics identification and enforcement.

5 In September of 2001, Trooper Gardiner was selected and assigned to the  
6 Washington State Patrol Narcotics K-9 Unit as a Narcotics Canine Handler. In  
7 September of 2001, he attended the Washington State Department of Corrections  
8 Narcotics Canine Handler Training Class. This course consisted of more than 240  
9 hours of classroom and practical applications, which covered all specific areas  
10 required in the W.A.C.

11 Trooper Gardiner advises that the Washington Administrative Code (WAC  
12 139.05.915 [3b]) requires a narcotics dog handler to be trained in a minimum of 200  
13 hours of specific general detection training. Trooper Gardiner was assigned a canine  
14 named Molly who is a Golden Lab. Together they have completed the required WAC  
15 training as a team and during this process located in excess of 300 laboratory tested  
16 narcotic substances and training aids. The substances used for training included  
17 cocaine, crack, marijuana, methamphetamine, heroin and hashish. Molly is trained to  
18 alert on all these odors. Molly retired in August of 2009.

19 In June of 2009, Trooper Gardiner returned back to Narcotic Canine School to  
20 get a new partner. Trooper Gardiner was assigned a yellow Labrador Retriever  
21 named Corbin. Together they have completed the required WAC 139-05-915 [3b]  
22 training requirements as a certified team and during the process located in excess of  
23 100 laboratory tested narcotic substances and training aids. The narcotic substance  
24 used for training included cocaine, crack, marijuana, methamphetamine, and heroin.  
25 Corbin is trained to alert on all of these odors. While handling Corbin during the  
26 training period, Trooper Gardiner had 46 training applications with a total of 169 finds.  
27 During the training four other handlers worked Corbin and recorded 13 additional  
finds.

1 Trooper Gardiner advises that Corbin is a passive alert canine, which means  
2 that she gives a *sit response or a pin-point stare* after locating the specific area where  
3 the odor of narcotics is being emitted. This response is accepted by current narcotics  
4 canine standards. The handler is trained to watch for changes of behavior that are  
5 exhibited by the canine when an odor of narcotics is detected.

6 Trooper Gardiner is currently a member of the Washington State Police Canine  
7 Association (WSPCA) and the Oregon Canine Police Association. This organization  
8 facilitates further training for Canine handlers in the State of Washington and Oregon  
9 resulting in continuing and enhanced education for handlers. The WSPCA conducts  
10 testing for Washington State Team Accreditation on an annual basis for its members.  
11 To remain accredited a team must demonstrate their effectiveness in each area of  
12 training and exhibit control, smoothness and effectiveness in all phases of narcotics  
13 work and obedience. Corbin and Trooper Gardiner completed recertification on June  
14 7, 2011 by Washington State Patrol and have on-going monthly maintenance training  
15 with other canine handlers in Washington and Oregon.

16 On April 16, 2014 myself and other detectives assigned to the Clark Vancouver  
17 Regional Drug Task Force (CVRDTF) conducted a surveillance operation on a known  
18 heroin dealer identified as Ramsey Ray SHABEEB. I had previously developed  
19 probable cause for Ramsey's arrest for delivery of heroin to a Confidential and  
20 Reliable Informant (CRI) working for CVRDTF.

21 During the surveillance, detectives observed Ramsey park his vehicle in the  
22 parking lot of a local auto parts business. While parked, a blue Ford Focus vehicle  
23 arrived and parked next to Ramsey's vehicle. They appeared to converse through  
24 their open windows for a time before Ramsey exited his vehicle and retrieved what  
25 appeared to be a dark colored backpack from the trunk of the Ford Focus. He then  
26 placed the backpack in the trunk of his vehicle. The Ford Focus then left and we  
27 observed Ramsey as he went into the auto parts store and returned to begin working  
in the engine compartment of his vehicle.

1 He was then observed waiking back into the auto parts store and while inside  
2 the store the Ford Focus arrived back at the location and parked next to Ramsey's  
3 vehicle. Ramsey exited the store, entered his vehicle and then left the parking lot.

4 Ramsey exited the parking lot and began driving past the parking lot I was  
5 parked in. He drove slowly past my vehicle and appeared to be staring inside. He then  
6 pulled a U-turn and entered the parking lot where I was parked. He again drove slowly  
7 past my vehicle. Fearing that he now knew he was under observation, the decision  
8 was made to stop the vehicle and arrest Ramsey for the probable cause developed on  
9 an earlier date.

10 The vehicle stopped and Ramsey was placed under arrest. During a search  
11 incident to arrest, an amount of a black substance was located wrapped in tin foil in  
12 his left rear jeans pocket. This black substance later field tested positive for heroin.

13 Post Miranda warnings I asked Ramsey for consent to search his vehicle. He  
14 was advised that he could refuse consent, limit the scope of my search, or stop the  
15 search at any time. Ramsey said that the vehicle did not belong to him, so he did not  
16 want the vehicle searched. The vehicle was seized, secured with evidence tape, and  
17 towed to the CVRDTF secure warehouse. Ramsey was transported to the Clark  
18 County Jail where he was booked for one count of 69.50.401-PCS1.

19 On April 18, 2014, Trooper Gardiner arrived at the warehouse with his K-9  
20 partner Corbin. Trooper Gardiner used Corbin to search the outside area of Ramsey's  
21 vehicle. Trooper Gardiner indicated that Corbin alerted to the presence of narcotics  
22 inside the vehicle, alerting at the rear bumper seam on the driver's side. Trooper  
23 Gardner's WSP Canine Activity Report is attached to this affidavit as Appendix A.

24 The probable cause used to arrest Ramsey is as follows;

25 Detective Lutz and I met with a Confidential and Reliable informant (CRI)  
26 working for the Clark-Vancouver Regional Drug Task Force. Upon meeting with the  
27 CRI, I searched the CRI for drugs, money, or other contraband. Nothing was found. I  
then provided the CRI with money I had checked out form the DTF Drug Fund. I then

1 drove the CRI to a location in Battle Ground, WA. The CRI had placed a call earlier to  
2 purchase an amount of heroin from a person the CRI had previously identified as  
3 Ramsey R. Shabeeb. Upon arrival at the location I dropped the CRI off, who then  
4 went of the residence. Surveillance units in the area were able to observe the CRI  
5 walk to the residence..

6 After a short period of time the CRI walked back to the roadway outside the  
7 residence where I picked him up. The CRI handed me a small package of a  
8 substance tightly wrapped within a piece of a plastic shopping bag. The CRI identified  
9 this item as black tar heroin and the amount of heroin purchased was consistent with  
10 the amount of money paid. The CRI was again searched for drugs, money, or other  
11 contraband and nothing was located. The CRI was then released.

12 I later field tested a small amount of the suspected heroin, and the field test  
13 showed a color change consistent with a positive field test for heroin.

14 As to the informant's credibility, Sometime between February 8, 2014 and  
15 February 21, 2014, Detective Lutz and I met with the CRI to conduct a reliability buy of  
16 heroin. The CRI was searched for drugs, money, or other contraband and nothing  
17 was found. The CRI was then driven to a residence where he/she purchased an  
18 amount of heroin using money that I had previously checked out from the DTF Drug  
19 Fund. The CRI was kept under observation as he/she walked to the residence and  
20 made contact with the supplier. The CRI was then given an amount of heroin that was  
21 consistent with the amount of money that was paid. The CRI was then picked up by  
22 me. The CRI handed me a small amount of a substance inside a piece of a shopping  
23 bag that he/she identified as heroin. A subsequent field test of the item showed a  
24 positive result for heroin. The CRI was then searched again for drugs, money, or  
25 other contraband and nothing was found. This controlled purchase of heroin resulted  
26 in the informant becoming reliable.

1 As to the informant's basis of knowledge, the CRI has given information to the  
2 Drug Task Force that has been corroborated through other sources. The CRI has  
3 knowledge of the drug trade from previous involvement in the drug subculture.

4 As to the informant's motivation, the CRI is working for the Clark Vancouver  
5 Regional Drug Task Force for possible consideration of a pending felony charge.

6 As to the informant's criminal history, he/she has no felony convictions and  
7 three gross misdemeanor convictions for Malicious Mischief, Assault IV, and Reckless  
8 Driving.

9 As to the defendant's criminal history, Ramsey Shabeeb has two misdemeanor  
10 convictions for DWLS 3 and Disorderly Conduct. Michael Thompson has three felony  
11 convictions for Burglary 2, Controlled Substance Possession, and Community Custody  
12 Violation; two gross misdemeanor convictions for Theft 3 and Reckless Driving; one  
13 misdemeanor conviction for Hit and Run Unattended Vehicle. Leonard Langdon has  
14 two misdemeanor convictions, both for DWLS 3.

15 Based on my training, knowledge and experience, I know that drug dealers and  
16 transporters commonly utilize compartments and hides inside of vehicles to transport  
17 narcotics in an attempt to hide detection.

18 I know from my training knowledge and experience that persons involved in the  
19 delivery and/or transportation of illegal narcotics often have notebooks or notes with  
20 supplier's name and/or address. And it is more likely than not that the records of this  
21 activity will be found in a blue 1995 Audi A6 bearing Washington license plate  
22 APZ2638. The Vehicle Identification Number is WAUGA84A5SN045192.

23 I know from my training, knowledge and experience that persons involved in the  
24 delivery and/or transportation of illegal narcotics have packaging material including  
25 plastic baggies to hold the controlled substances, and have drug paraphernalia in their  
26 vehicle. And it is more likely than not these items will be found in a blue 1995 Audi A6  
27 bearing Washington license plate APZ2638. The Vehicle Identification Number is  
WAUGA84A5SN045192

1 I know from my training, knowledge and experience that most people in  
2 possession of controlled substances possess items of identification (including but not  
3 limited to driver's licenses, insurance cards, vehicle registrations, bills, and address  
4 books). I also know that these items are relevant to the identity of the possessor of  
5 the controlled substances, possessor of other items seized. It is therefore more likely  
6 than not that item of identification will be found in a blue 1995 Audi A6 bearing  
7 Washington license plate APZ2638. The Vehicle Identification Number is  
8 WAUGA84A5SN045192.

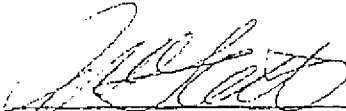
9 I know from my training, knowledge and experience that subjects  
10 involved in possession of controlled substances hide controlled substances in many  
11 places, including but not limited to, glove compartments, trunks and secret  
12 compartments. I am seeking to search all areas of the vehicle. I know from my  
13 training, knowledge and experience that cell phones, drug records, packaging  
14 material, bong, rolling papers and pipes are tools of the trade and instrumentality of  
15 the crime of possession of controlled substance. That I am seeking to seize these  
16 items.

17 I know from my training knowledge and experience people often communicate  
18 with each other by phone to include cellular phones. Cellular phones store information  
19 within the electronic memory. These records can be accessed directly on the cellular  
20 phone through the electronic memory which can be protected with security codes.  
21 Some cellular phones also function as a digital camera, taking pictures and storing the  
22 picture within the cellular phone memory or with the service provider.

23 Suspect(s) commonly use their phones before, during and after a crime. The  
24 history of phone calls with the phone company/carrier and in the electronic memory of  
25 a cellular phone is a useful aid in identifying additional suspects or witnesses. Call  
26 histories can confirm or refute statements by the suspect(s) and witnesses. Also,  
27 phone call records can establish a time line of contacts made by the suspect(s) and

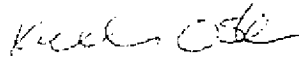
1 others. That I am seeking to seize those items and submit for analysis with a qualified  
2 examiner.

3 Based on the foregoing, I believe there is probable cause, therefore, your  
4 affiant requests this Search Warrant be issued pursuant to the State of Washington  
5 Criminal Rules for Courts of Limited Jurisdiction, Rule 2.3, Section (c), authorizing the  
6 search of the aforescribed vehicle for the above-described items and if any are  
7 found authorizing the seizure of the same as it appears that the above listed vehicle is  
8 involved in ongoing criminal enterprise involving the possession and delivery of the  
9 controlled substances.

10 

11 \_\_\_\_\_  
12 Detective Robert Latter  
13 Clark Vancouver Regional Drug Task Force

14 Subscribed and Sworn to before me this 18 day of april, 2014.

15 

16 \_\_\_\_\_  
17 District Court Judge  
18 Clark County  
19 State of Washington

# **APPENDIX D**



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IN THE DISTRICT COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,

SHABEEB, Ramsey Ray

Defendant.

No.

SEARCH WARRANT

THE PEOPLE OF THE STATE OF WASHINGTON, to any Sheriff,  
Police Officer, or Peace Officer in the County of Clark: Proof by written affidavit under  
oath, made in conformity with the State of Washington Criminal Rules for Courts of  
Limited Jurisdiction, Rule 2.3, having been made this day to me by Detective Latter of  
the Clark Vancouver Regional Drug Task Force, that there is probable cause for the  
issuance of a Search Warrant on the grounds set forth in the State of Washington  
Criminal Rules for Courts of Limited Jurisdiction, Rule 2.3, Section (c).

YOU ARE THEREFORE COMMANDED, that with the necessary and proper  
assistance to make a diligent search, good cause having been shown therefore, of the  
following described property, within 10 days of the issuance of this warrant:

A blue 1995 Audi A6 four door bearing Washington license plate APZ2638.  
The Vehicle Identification Number is WAUGA84A5SN045192 for the following goods:

(1) Heroin, a substance controlled by the Uniform Controlled Substances  
Act of the State of Washington, and items used to facilitate the distribution and  
packaging of Heroin;

(2) Records relating to the ordering and possession of Heroin, including but  
not limited to handwritten notes,

(3) Photographs, including still photos, video tapes, films, and the contents  
therein, and in particular, photographs of co-conspirators and controlled substances,  
in particular Heroin;

SEARCH WARRANT 1

*KLO* Judge's Initials

1 (4) Address and/or telephone books, telephone bills, and papers reflecting  
2 names, addresses, telephone numbers, of sources of supply;

3 (5) Records showing the identity of co-conspirators in this distribution  
4 operation, including but not limited to address and/or phone books, telephone bills,  
5 correspondence, handwritten notes, journals, calendars, receipts, and the like, to  
6 include cell phones and the SIM, ESN and IMEI numbers for the cellular phone(s), any  
7 passwords or access codes to access the electronic memory of the cellular phone,  
8 status of the account, and incoming and outgoing call detail records, said phones to  
9 be seized and examined by the Clark County Sheriff's Office Computer Forensics Lab  
10 and or the Clark Vancouver Regional Drug Task Force.

11 (6) Paraphernalia for packaging, including but not limited to pipes, bongs,  
12 rolling papers and other items used in using marijuana; [Make necessary changes for  
13 other controlled substances]

14 (7) Photographs of the crime scene and to develop any photographs taken  
15 of the crime scene, including still photos and video cassette recordings and to develop  
16 any undeveloped film located in the vehicle.

17 And if you find the same or any part thereof, then items of identification  
18 pertaining to the residency thereof, bring the same before the Honorable District Court  
19 Judge C. Fisher to be disposed of according to law.

20 GIVEN, under my hand this 4/10, 2014.

21  
22 This Search Warrant was issued: K. C. Fisher  
23 Time: 5:57 AM District Court Judge  
Clark County  
24 State of Washington

25 Date/Time Execution: 4/13/2014 @ 1807 hrs  
26 By: [Signature]  
27 Detective Laffer  
Clark Vancouver Regional DTF

2. Mr. Shabeeb was arrested in Clark County, Washington on 4/16/2014 pursuant to the probable cause described in Stipulated Fact #1. He was driving a vehicle just prior to his arrest.

3. Prior to his arrest, Officers of the CVRDTF observed as Mr. Shabeeb placed a backpack into the trunk of the vehicle he was driving.

4. On 4/18/2014 a search warrant was executed on the vehicle that Mr. Shabeeb was driving on 4/16/2014 just prior to his arrest.

5. A backpack secured with a padlock was found in the trunk of the vehicle.

6. The padlock was cut off the backpack and the backpack was opened.

7. Inside the backpack Officers of the CVRDTF discovered numerous small baggies each containing different shaped and colored pills as well as two suboxone sublingual strips, a Schedule III narcotic.

8. Specifically, the Officers of the CVRDTF discovered at least one acetaminophen 325 mg/oxycodone hydrochloride 5 mg pill a Schedule III narcotic, seven buprenorphine hydrochloride and naloxone hydrochloride 8 mg (base) / 2mg (base) pills a Schedule III narcotic, three quetiapine pills in different formulations, and one cyclobenzaprine hydrochloride pill. Additional pills that were discovered were not identified.

9. Also located in the backpack was a small spiral notebook with a couple of pages showing money that needed to be collected and a small, functioning digital scale, that appeared to have drug residue on it.

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# **APPENDIX E**

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**ORIGINAL**

**FILED**

**DEC 12 2014**

2:08  
Scott G. Weber, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

v.

RAMSEY SHABEEB,

Defendant

No. 14-1-00769-8

**STIPULATED FACTS**

The Defendant being personally present and represented by his trial attorney of record, Edward Dunkerly, and the Plaintiff being represented by Aaron Bartlett, Deputy Prosecuting Attorney for Clark County, State of Washington, stipulate to the facts to be presented to the Court for a stipulated facts trial, now enters the following:

**I. STIPULATED FACTS:**

1. On 4/16/2014 Detective Robert Latter of the Clark-Vancouver Regional Drug Task Force ("CVRDTF") had probable cause to arrest Ramsey Ray Shabeeb for the delivery of heroin to a confidential and reliable informant working for the CVRDTF.

STIPULATED FACTS - 1

CLARK COUNTY PROSECUTING ATTORNEY  
1200 FRANKLIN STREET • PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(360) 397-2261 (OFFICE)  
(360) 397-2239 (FAX)

JAB

2. Mr. Shabeeb was arrested in Clark County, Washington on 4/16/2014 pursuant to the probable cause described in Stipulated Fact #1. He was driving a vehicle just prior to his arrest.

3. Prior to his arrest, Officers of the CVRDTF observed as Mr. Shabeeb placed a backpack into the trunk of the vehicle he was driving.

4. On 4/18/2014 a search warrant was executed on the vehicle that Mr. Shabeeb was driving on 4/16/2014 just prior to his arrest.

5. A backpack secured with a padlock was found in the trunk of the vehicle.

6. The padlock was cut off the backpack and the backpack was opened.

7. Inside the backpack Officers of the CVRDTF discovered numerous small baggies each containing different shaped and colored pills as well as two suboxone sublingual strips, a Schedule III narcotic.

8. Specifically, the Officers of the CVRDTF discovered at least one acetaminophen 325 mg/oxycodone hydrochloride 5 mg pill a Schedule III narcotic, seven buprenorphine hydrochloride and naloxone hydrochloride 8 mg (base) / 2mg (base) pills a Schedule III narcotic, three quetiapine pills in different formulations, and one cyclobenzaprine hydrochloride pill. Additional pills that were discovered were not identified.

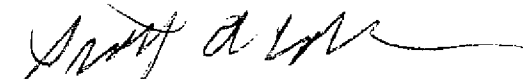
9. Also located in the backpack was a small spiral notebook with a couple of pages showing money that needed to be collected and a small, functioning digital scale, that appeared to have drug residue on it.

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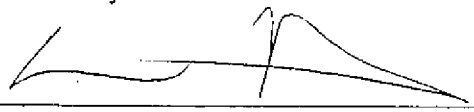
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10. Mr. Shabeeb did not have prescriptions for the pills that were found.
11. Mr. Shabeeb possessed these pills with the intent to deliver them to others.

Done in open court this 12 day of Dec, 2014.

  
\_\_\_\_\_  
THE HONORABLE SCOTT A. COLLIER  
JUDGE OF THE SUPERIOR COURT

Presented by:

  
\_\_\_\_\_  
AARON BARTLETT  
WSBA #39710  
Deputy Prosecuting Attorney

  
\_\_\_\_\_  
EDWARD DUNKERLY  
WSBA # 2424  
Attorney for Defendant

## DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 47239-2-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

respondent Aaron Bartlett, DPA  
[prosecutor@clark.wa.gov]  
Clark County Prosecutor's Office

petitioner

Attorney for other party



MARIA ANA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: August 4, 2016



# WASHINGTON APPELLATE PROJECT

**August 04, 2016 - 4:15 PM**

## Transmittal Letter

Document Uploaded: 5-472392-Petition for Review.pdf

Case Name: STATE V. RAMSEY SHABEEB

Court of Appeals Case Number: 47239-2

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers  Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion:

Answer/Reply to Motion:

Brief:

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)

Other:

### Comments:

No Comments were entered.

Sender Name: Maria A Riley - Email: [maria@washapp.org](mailto:maria@washapp.org)

A copy of this document has been emailed to the following addresses:

[prosecutor@clark.wa.gov](mailto:prosecutor@clark.wa.gov)