

No. 97018-1

COA # 77749-1-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TROY DARRIN MEYERS,

Petitioner/Appellant.

ON REVIEW FROM
THE COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION ONE, AND THE
SUPERIOR COURT OF THE STATE OF WASHINGTON,
CLARK COUNTY,
the Honorable Judge Daniel Stahnke, (trial)

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Troy Meyers, the appellant below, asks the Court to review a portion of the decision referred to in section B.

B. COURT OF APPEALS DECISION

Petitioner seeks review of a portion of the decision of the court of appeals, Division One, in State v. Meyers, __ Wn. App. 3d __ (2018 WL 4215619), issued September 4, 2018, as amended by Order on February 26, 2019. The opinion is attached hereto as Appendix A. The Order is attached as Appendix B.

C. ISSUES PRESENTED FOR REVIEW

1. Does an officer engage in material misstatements in swearing out an affidavit for a warrant for the home of a suspect, Troy Meyers, based on a "controlled buy" by an unnamed confidential informant where the officer knows but does not tell the magistrate
 - a. that the informant was actually the suspect's former roommate,
 - b. that the informant had recently been kicked out of the home by Meyer's himself,
 - c. that the informant's boyfriend, who had also lived there, had been kicked out by Meyers, too,
 - d. that the informant had then enlisted the help of another to approach authorities in order to become an informant specifically against Meyers, and
 - e. that the informant was searched in a way the searching officer would later admit left open the real possibility the informant could have secreted drugs on her person during the "buy?"
2. Does an officer engage in material omissions and misrepresentations by writing the affidavit and describing

the informant as a citizen informer who has a drug past of her own but is coming forward against Meyers as a community member out of concern for the impact of drugs on the community when the officer admittedly knows that the informant was also a former roommate of Meyers who had been evicted by Meyers, along with her boyfriend, and had then sought out authorities to become an informant against Meyers?

D. OTHER ISSUES SUPPORTING REVIEW

3. Should review be granted on all of the issues raised by the Petitioner in his Statement of Additional Grounds for Review?

E. STATEMENT OF THE CASE

Petitioner Troy Meyers was convicted of possession of methamphetamine with intent to deliver in a protected "school bus route stop" zone and of possession of cocaine based on evidence which was gathered as a result of a search warrant for Meyers' residence. CP 106-109.

From early on in the proceedings, there was evidence of concerns about the sufficiency of the affidavit supporting the warrant, based on the reliability of the informant and the propriety of the alleged "controlled buy." RP¹ 554. For the bulk of pretrial proceedings, the state was refusing to indicate the identity of the confidential informant but when the case came up for omnibus, counsel noted that the informant's identity was clear to everyone from the contents of the affidavit. RP 20-21. Counsel then stated that, based on his belief of who the informant was, it appeared the officer who had sworn out the affidavit had failed to

¹The bulk of the transcript volumes are chronologically paginated and referred to as "RP." See Appellant's Opening Brief ("AOB" at 3 n.1).

include important information and possibly misstated/misrepresented crucial facts. RP 20-21. In the later motion to suppress, counsel argued that these were material omissions and false statements in the warrant were directly relevant to probable cause. CP 15-16.

The affidavit for the warrant application is attached hereto as Appendix C. It provided, in relevant part, that the "CI states he/she has known" Meyers for 9 months had "has purchased Methamphetamine" from him "2 to three times a week." CP38-39. It also stated, "[d]uring the CI's friendship/relationship with [Meyers], the CI stated he/she has made over 50 purchases. . . [w]hen asked, CI stated every time he/she has contacted" Meyers he was able to get methamphetamine." CP 38. Regarding the controlled buy, the officer declared *inter alia* that the CI was searched and there were no drugs, money and/or contraband located. CP 38-39.

Regarding the CI's reliability and motive, the officer averred:

Since May 2014, Detectives . . have been working with a confidential reliable informant, whom I will refer to as a CI. This CI is providing this information out of a community interest and frustration with the suspect's drug dealing activities. The CI has demonstrated his/her knowledge of controlled substances, specifically Methamphetamine by detailing his/her own involvement (8 plus years) with controlled substance[s], answering questions concerning controlled substances and performing (2) controlled narcotics buys under the direction of your Affiant.

CP 38-41. The affidavit was signed in May of 2014. CP41.

At the hearing on the motion to suppress, Vancouver Police Department Officer, Erik Jennings, one of the officers who worked on the case admitted that the informant had approached a Department of

Corrections officer saying Meyers was selling methamphetamine. RP 182-84.

The officer also admitted that he knew that the informant was a drug addict, felon, and "convicted thief" who had been convicted of attempting to elude police. RP 215-17. And he conceded that he knew the informant who had approached in order to incriminate Meyers had not only been Meyers' roommate - not just a member of the "community" - but also had been evicted from the home by Meyers himself recently. RP 215-17. The officer also knew that the informant had not been kicked out alone but had instead been living there with a boyfriend, who had also been evicted by Meyers at the same time as the informant. RP 217.

The officer admitted that he had known this information and had not put it in the warrant affidavit. RP 218. He further conceded that all of this information could have been relevant to the informant having a motive to lie or worse, set Meyers up. RP 218.

Rob Campbell, the DOC officer who also worked with and was the go-between who called police after being contacted by the informant, recalled being aware of a "sort of animosity issue" between the informant and her boyfriend and Meyers. RP 236. Indeed, he testified, the boyfriend also came forward to become an informant against Meyers. RP 236-37. The boyfriend had such an "issue" with Meyers, however, that the decision had been made to have the woman serve as the informant, instead of the boyfriend, because the woman still could get "in" with Meyers as compared with the animosity between Meyers

and the boyfriend. RP 236-37.

Officer Campbell recalled that the boyfriend accused Meyers of having physically injured him. RP 236-37.

Also at the hearing, the female detective who conducted the search of the informant prior to the "controlled buy" described her procedure and admitted she did not have the woman take off her bra or underwear, just sort of "pull out" the garments. RP 147-48. The detective did not have the informant show anything was secreted between her legs and conducted no body cavity search or view. RP 147-49. The detective was aware of the use of a "squat and cough" procedure used to determine if drugs were secreted but did not use it. RP 221-23.

Ultimately, she conceded someone with drugs in their body cavity could make it through her pre-"controlled buy" search with those drugs never being found. RP 221-23.

The suppression hearing proceedings were stretched out and, after this point, the informant's identity was revealed by the state and counsel then asked for discovery. RP 252. Six weeks later, that resulted in counsel uncovering that the police were paying the informant, which the officer had not revealed in the affidavit. RP 269. Counsel pointed out this again misstated the motive for being an informant, because the affidavit had indicated she was a concerned community member. RP 305-306.

The court ultimately denied suppression in writing sometime later. RP 357; CP 106, 109, 423. In denying the motion to suppress, the

trial judge found that the detective who swore out the affidavit knew the CI had living with and kicked out of the home recently by Meyers but thought it was without “animosity,” so concluded “the omission is not material or intentional.” CP 114-15. It also found that it was not an “omission” to fail to tell the magistrate that the detective was going to pay the informant for services. CP 114-15. It later denied a motion to reopen. RP 438-40, 457.

F. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. OMITTING FROM THE AFFIDAVIT THE CRUCIAL FACTS THAT THE INFORMANT WAS NOT FULLY SEARCHED AND WAS RECENT FORMER ROOMMATE WHO APPROACHED POLICE SPECIFICALLY TO BE AN “INFORMANT” AGAINST PETITIONER AND INSTEAD IMPLYING THAT THE INFORMANT WAS A COMMUNITY MEMBER ACTING OUT OF “COMMUNITY CONCERN” WERE MATERIAL OMISSIONS AND MISSTATEMENTS MADE WITH DELIBERATE OR RECKLESS DISREGARD FOR THE TRUTH, AS WAS OMITTING THE FACT THAT SHE WAS NOT FULLY SEARCHED PRIOR TO THE CONTROLLED BUY

Both the state’s Article 1, section 7, and the federal Fourth Amendment warrant clause limit the state’s authority to granting a warrant by requiring that any such warrant must be issued based only on “probable cause.” State v. Vickers, 148 Wn.2d 91, 108, 59 P.3d 58 (2002); see Brinegar v. United States, 338 U.S. 160, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949). This Court has noted that there is a balancing done as part of determining probable cause, so that the court reviewing a warrant application and affidavit engages in a “fact-based determination that represents a compromise between the competing interests of enforcing the law and protecting the individual’s right to privacy.” State v. Neth,

165 Wn.2d 177, 182, 196 P.3d 658 (2008).

Where, as here, the affidavit in support of a search warrant relies on information gathered through a “confidential informant,” the affidavit must be sufficient so that the reviewing magistrate may properly evaluate the informant’s credibility, not just rely on the officer’s declarations that the reliability exists. See State v. Casto 39 Wn. App. 229, 232-33, 692 P.2d 890 (1984). In addition, the affidavit must contain sufficient information about the underlying circumstances so that the magistrate reviewing the application for the warrant can determine first, that the informant is actually credible, and second, that the informant had the actual “basis of knowledge” to support their claims. Vickers, 148 Wn.2d at 112.

Notably, the magistrate must have independence from the officer’s subjective belief; the affidavit must show “facts and circumstances” from which the magistrate reviewing it “can, *independently of the officer seeking the warrant*, evaluate the informant’s basis of knowledge and personal credibility or veracity.” Casto, 39 Wn. App. at 232-33 (emphasis added). Further, “[c]onclusory assertions” by the officer that the informant was reliable are not enough. Id.

As a result, both this Court and the U.S. Supreme Court have held that it is crucial that the officer’s affidavit must contain sufficient information and further must neither contain false statements nor suffer from material omissions. Franks v. Delaware, 438 U.S.154, 155-56, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978); State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985), abrogated in part on other grounds by, Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed.2d 177 (2004). If the

accused makes a preliminary showing that the affidavit has false statements or there are material omissions made in deliberate or reckless disregard for the truth, the trial court is required to conduct an evidentiary hearing and, if the allegations are proven, to consider the affidavit without its errors to see if it was sufficient to support the determination of probable cause. Cord, 103 Wn.2d at 367.-

This Court has held that only "material" falsehoods and omissions made "recklessly or intentionally" will invalidate a warrant. See State v. Clark, 143 Wn.2d 731, 751, 24 P.3d 1006 (2001), cert. denied, 534 U.S. 1000, 122 S. Ct. 475, 151 L. Ed.2d 389 (2001). But in Clark, the Court also said a reckless mistake is shown - rather than one which is merely innocent or negligent - if the officer who swore out the affidavit had himself "serious doubts" about what the affidavit said, as shown either by his actions in pausing during the process or if there are facts which would lead one to have such potential concerns. Clark, 143 Wn.2d at 751. Here, the court of appeals relied on Officer Jennings' declaration that, while he knew of the eviction by Meyers of the informant and her boyfriend, the officer did not think or was unaware that there was "ill will" between her and Meyers. App. A at 10. Division One relied on that apparent subjective declaration as supporting the decision that the affidavit was not fatally, constitutionally, flawed for failing to inform the magistrate of this very significant potential motive to lie on the part of the informant. And the court reached this conclusion despite the evidence from the other officer involved in the operation, who was clear that the existence of animosity was so strong between the informant's boyfriend (who also

sought to work as an informant against Meyers) that the boyfriend said Meyers had *physically injured him*. RP234-37.

Notably, at the trial court level, the judge did not ask if the omissions or errors were done with reckless disregard for the truth, instead just focusing on whether they were deliberate. CP 109-116.

This Court should grant review under RAP 13.4(b)(3). The rights to be free from governmental intrusion into our private affairs is one of the most fundamental rights citizens cherish. See, e.g., State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). The "Aguilar-Spinelli" test used in Washington requires the affidavit to established both the basis of the informant's knowledge and their reliability and credibility. See State v. Jackson, 102 Wn.2d 432, 433, 688 P.2d 136 (1984). *Each* of these prongs must be met otherwise there is not sufficient probable cause to support a warrant. Jackson, 102 Wn.2d at 435-36. The officer's affidavit is the sole source of the information presented to the magistrate who is deciding whether the endorse having the government intrude into someone's private affairs. See Cord, 130 Wn.2d at 367.

The court of appeals decision effectively defers to the subjective and self-interested declaration of the officer accused of excluding and misstating crucial facts relevant to credibility of his "confidential informant." But that officer admitted he knew of an important fact which he conceded could be very relevant to the informant's credibility and kept it from the magistrate by excluding it from the affidavit because he assumed it had not had an effect. RP 215-17.

Further, this Court has established that the test is not subjective,

and "serious doubts" as to the truth of information in an affidavit can be shown by the affiant officer's conduct of engaging in "deliberation" about the truthfulness, or "the existence of obvious reasons to doubt the veracity" of the informant. Clark, 143 Wn.2d at 751. The court of appeals decision here glosses over the very real and obvious reasons to doubt the informant which were excluded from the magistrate's purview - that she had been living in the home with Meyers and that he had kicked her out, along with her boyfriend, just before she had then contacted her friend to get her hooked up with the authorities so she could become an informant against Meyers.

In addition, the lower appellate court does not address the very significant mistaken impression that the officer's omissions and misstatements allowed the affidavit to create in the magistrate's mind below. The affidavit indicates a lack of *any* motive other than societal good by indicating that the informant was acting as a concerned "community member," providing the information out of a "community interest and frustration with the suspect's drug dealing activities." CP 39-40. The affidavit gave the clear indication that the informant was acting only in the interest of her community, repulsed by the drug dealing going on, a reformed addict was trying to better her neighborhood and clean things up. CP 39-40.

But the officer knew at the time he swore out the affidavit that the informant was not just a "community member" with no relationship to Meyers other than having bought drugs from him in the past. RP 115-17. Further, in this state we require a heightened showing of reliability for an

unnamed informant precisely because of the fear that person may be providing information "colored by self interest." State v. Ibarra, 61 Wn. App. 695, 699, 812 P.2d 114 (1991). And it is now recognized that false informant activity has been a major cause of wrongful convictions in the past. See Jessica A. Roth, *Informant Witnesses and the Risk of Wrongful Convictions*, 53 Am. Crim. L. Rev. 737 (2016).

There is no question that a reviewing court will usually give some deference to the magistrate's ruling, but that deference is not without bounds. State v. Maxwell, 114 Wn.2d 761, 770, 791 P.2d 223 (1990). The determination of whether probable cause was established is a legal conclusion, reviewed de novo. Neth, 165 Wn.2d at 182. The informant was unnamed and thus not cloaked with the "named informant" presumption of reliability. The officer who swore out the affidavit excluded crucial information he admitted was relevant to credibility, including that the informant had sought out police specifically to target Meyers just after he had kicked her out of his house, where she had lived. He thus prevented the magistrate from having necessary information in order to properly decide whether to permit the government to invade the privacy of a citizen - in a case where the searching officer admitted drugs could have made it through her pre-controlled buy search.

The court of appeals erred in holding that there were no material omissions and misstatements in the affidavit and in upholding the search. Absent the misstatements and omissions, there was insufficient support to provide probable cause for the search, despite Division One's declaration to the contrary. See App. A at 11. That declaration focuses

solely on the exclusion of evidence of the eviction and payment to the informant as if they were the only issue. But again the court of appeals did not address that the magistrate was misled to believe the informant was just an uninterested community member acting out of community spirit. And it did not discuss the searching officer's testimony, either. Id.

This Court should grant review under RAP 13.4(b)(3), based on the constitutional issues involved. On review, this Court should hold that there were such omissions and misstatements and of the officer below vitiated the validity of the warrant affidavit, which was then insufficient to support probable cause.

G. OTHER ISSUES PRESENTED FOR REVIEW

2. REVIEW SHOULD ALSO BE GRANTED ON ALL THE ISSUES PETITIONER RAISED PRO SE

Petitioner filed a pro se RAP 10.10 Statement of Additional Grounds for Review ("SAG") in the Court of Appeals. See App. A at 12-13. This Court has not yet resolved the issue of how a Petitioner who has filed a SAG should seek review of that SAG in such circumstances.

In State v. Brett, 126 Wn.2d 136, 206, 892 P.2d 29 (1995), cert. denied, 516 U.S. 1121 (1996), this Court held that it would not address arguments parties tried to incorporate by reference from other cases. However, this Court has not disapproved of incorporation by reference of arguments raised pro se when counsel has not been appointed on those issues pursuant to RAP 10.10. Thus, to comply with RAP 13.7(b) and raise all issues in this Petition without making any representations about their relative merit as required by the WSBA Rules of Professional conduct,

incorporated herein by reference are the arguments Mr. Meyers raised in his RAP 10.10 SAG. This Court should grant review on those issues as well.

H. CONCLUSION

For the reasons stated herein, this Court should grant review.

DATED this 28th day of March, 2019.

Respectfully submitted,



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CERTIFICATE OF SERVICE BY MAIL/EFILING

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Petition for Review to opposing counsel at Clark County Prosecutor's Office via email at prosecutor@clark.wa.us, and caused a true and correct copy of the same to be sent to appellant by deposit in U.S. mail, with first-class postage prepaid at the following address: Troy Meyers, DOC 934752, Stafford Creek CC, 191 Constantine Way, Aberdeen, WA. 98520.

DATED this 28th day of March, 2019.



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APPENDIX A

2018 WL 4215619

Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED OPINION, SEE WA R GEN GR 14.1

Court of Appeals of Washington, Division 1.

STATE of Washington, Respondent,
v.
Troy Darrin MEYERS, Appellant.

No. 77749-1-I

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FILED: September 4, 2018

Appeal from Clark Superior Court, 14-1-01069-9, Honorable Suzan Clark, Judge.

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UNPUBLISHED OPINION

Schindler, J.

*1 The court found Troy Darrin Meyers guilty of unlawful possession of methamphetamine with intent to deliver and unlawful possession of cocaine. Meyers seeks reversal of the convictions, arguing the court erred in denying his motion to suppress the evidence seized from his house. Meyers contends the affidavit in support of the search warrant did not support finding probable cause to issue the search warrant. Meyers also contends the court erred by imposing

discretionary legal financial obligations. Because the affidavit supports probable cause to issue the search warrant, we affirm the convictions. But we remand to consider the ability to pay the discretionary \$2,000 drug enforcement fund fee and upon submission of a verified petition of indigency, the \$100 crime laboratory fee.

FACTS

In 2014, an informant contacted Department of Corrections (DOC) probation officer Rob Campbell about Troy Darrin Meyers selling drugs. DOC Officer Campbell had worked with the informant for several years. The informant told Campbell that because she did not get along with Meyers, he should talk to Patrick Lenhart and Adrienne Woods.

In April, Campbell met with Lenhart and Woods. Campbell contacted Vancouver Police Department East Precinct Neighborhood Response Team Detective Erik Jennings. Detective Jennings met with Campbell, Lenhart, and Woods. Woods agreed to work with the police to conduct a “controlled buy” of methamphetamine from Meyers. Woods requested her identity and the information she provided remain confidential.

On May 21, Woods called Meyers to arrange to meet him at his house to buy methamphetamine. The police searched Woods to ensure she did not have “money and contraband.” Detective Jennings gave Woods the prerecorded “buy money.” A number of other officers also participated in the controlled buy. During the approximate 10 minutes she was in Meyers’ house, Woods sent text messages to Detective Jennings. After Woods left the house, she met Detective Jennings and handed him a “baggie” with a white crystalline substance. Detective Jennings confirmed the white substance was methamphetamine.

On May 23, 2014, Detective Jennings submitted an affidavit in support of the request for a warrant to search Meyers’ residence for evidence of possession of methamphetamine with intent to deliver. The affidavit refers to Woods as the “CI.”¹ Detective Jennings describes the relationship between the CI and Meyers and Woods’ previous purchases of methamphetamine.

[T]he CI stated he/she has known a white male subject identified as Troy Meyers for approximately 9 months. During this time period, the CI stated he/she has purchased Methamphetamine from [Meyers] 2 to 3 times a week. During the CI’s friendship/ relationship with [Meyers], the CI stated he/she has made over 50 purchases of Methamphetamine from [Meyers], When asked, CI stated every time he/she has contacted [Meyers], he always had or was able to

obtain Methamphetamine. The CI told me he/she has been present on numerous occasions when [Meyers] has sold Methamphetamine to others. During this interview, your affiant obtained a photo of Troy Darrin Meyers and showed it to the CI. The CI identified [Meyers] as the person he/she has purchased Methamphetamine from.

¹ Confidential informant.

***2** The affidavit describes the May 21 controlled buy of methamphetamine from Meyers.

Within the past 72 hours (May 21 - May 23, 2014) your affiant contacted, [sic] At this time, the CI stated he/she was ready to set up a deal with [Meyers]. We then made arrangements to meet. Detective Ruth and I met with the CI and transported him/her to the Vancouver West Police Precinct, 2800 NE Stapleton Rd. At this time, the CI was searched. There were no drugs, money and/or contraband located. I then had the CI telephone [Meyers] on his cell phone (360-281-1568).

Following contact and as the two exchanged text messages, the CI made arrangements to purchase an undisclosed amount of methamphetamine. Arrangements were then made for the CI to travel to [Meyers]'s home, 9810 NE St., to conduct the transaction.

I provided the CI with pre-recorded buy money, after which I and other NRT² Detectives maintained watch over the CI until he/she's arrival at [Meyers]'s residence. The CI approached the front door of 9810 NE 67th St and was observed entering the residence. After a few minutes the CI was observed exiting the front door. The CI was again kept under surveillance until he/she was contacted by law enforcement. Upon meeting up, the CI immediately turned over a clear plastic baggie, with what appeared to be a small quantity of a white crystal substance, which appeared to be Methamphetamine.

Again the CI was searched and there were no drugs, money and/or contraband located.

The CI stated he/she purchased the Methamphetamine from [Meyers], The CI stated he/she handed the money to [Meyers] who provided him/her with the Methamphetamine, which he produced from a black fire resistant lock box in his bedroom.

The CI stated there were additional methamphetamine in the residence as well as a digital scale, packaging material (plastic baggies) and a drug "snort" plate.

² Neighborhood response team.

The affidavit states the CI also told Detective Jennings that Meyers' girlfriend Virginia lives at the house and that Meyers owns the Chevrolet truck and the bus parked in front of the house.

The affidavit states, "This CI is providing this information out of a community interest and frustration with the suspect's drug dealing activities." The affidavit states the CI has used drugs for more than eight years and has two felony convictions, one gross misdemeanor conviction, and three misdemeanor convictions.

The CI has intimate knowledge of the drug subculture including drug use and distribution. The CI has demonstrated his/her knowledge of controlled substances, specifically Methamphetamine by detailing his/her own involvement (8 plus years) with controlled substance.

On May 23, a Clark County district court judge found probable cause to issue a warrant to search Meyers' residence for evidence of the crime of possession of a controlled substance with intent to deliver.

On May 28, the East Precinct Neighborhood Response Team executed the search warrant. Before executing the search warrant, the police detained Meyers. Meyers waived his Miranda³ rights. Meyers said he used cocaine and sold methamphetamine to supplement his income. Meyers admitted he "obtain[ed]" a quarter pound of methamphetamine approximately every three weeks. Meyers said there would be one to two ounces of methamphetamine and possibly some cocaine inside a black safe on his bed. The police found a large quantity of methamphetamine in small plastic bags, a small amount of cocaine, a small amount of crack cocaine, and OxyContin in the black safe and a digital scale and cash nearby. The police also found methamphetamine in a concealed compartment in the master bedroom bathroom closet.

³ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed. 2d 694 (1966).

***3** The State charged Meyers with possession of a controlled substance with intent to deliver methamphetamine and unlawful possession of cocaine.

Meyers filed a motion to suppress the statements he made to the police and several motions to suppress the evidence seized from his house.

The court held a hearing on the CrR 3.5 and CrR 3.6 motions on January 14 and April 24, 2015. Meyers asserted the search warrant was overbroad. Meyers challenged the controlled buy and argued the affidavit did not support finding the CI reliable. Meyers argued the police did not conduct an adequate search of the informant. Meyers argued the search warrant was invalid

because Detective Jennings did not disclose material information.

At the hearing on January 14, the State identified the CI as Adrienne Woods and provided the informant file to the defense. The court admitted the informant file into evidence as an exhibit. A number of witnesses testified at the hearing, including DOC Officer Campbell, Detective Jennings, and Meyers.

On August 4, 2015, the court entered findings of fact and conclusions of law on the CrR 3.5 and CrR 3.6 motions. The court found Meyers knowingly, intelligently, and voluntarily waived his Miranda rights and his statements were admissible. The court denied the CrR 3.6 motion to suppress the evidence seized by the police. The court entered a seven-page decision on the CrR 3.6 motion.

Two months after entry of the CrR 3.6 findings of fact and conclusions of law, Meyers filed a “Motion to Reopen Evidence in Suppression Hearing Based upon Invalid Search Warrant[,] Unlawful Traffic Stop[,] Unlawful Arrest[,] Unlawful Search of Person[,] Unlawful Search of Vehicle and Motion for Ruling on Lawfulness of Seizure of Money.” The court granted the motion to rule on the legality of seizing money from Meyers when he was arrested. The court ruled, “I cannot find that there’s a sufficient nexus, and I am going to suppress the money seized from his wallet.” The court denied the motion to reopen the evidentiary hearing.

Meyers stipulated to a bench trial. The court found that “[o]n May 28, 2014,” Meyers “knowingly and unlawfully possessed methamphetamine ... with the intent to deliver the methamphetamine to another within 1000 feet of a school bus stop” and “knowingly and unlawfully possessed cocaine.”

ANALYSIS

Meyers seeks reversal of the convictions. Meyers asserts the court erred in denying his motion to suppress the evidence the police seized from his house. Meyers asserts the affidavit in support of the search warrant does not establish probable cause. Meyers contends the affidavit does not establish that Woods is reliable and absent the material misrepresentations and omissions, the affidavit does not support probable cause to issue the warrant.

The Fourth Amendment to the United States Constitution provides, “[N]o warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” Article I, section 7 of the Washington

Constitution provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.”

*4 A search warrant may issue only on a determination of probable cause. State v. Jackson, 150 Wn.2d 251, 264, 76 P.3d 217 (2003). Probable cause exists when the affidavit in support of the search warrant “sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime may be found at a certain location.” Jackson, 150 Wn.2d at 264.

Veracity of the Informant

Meyers contends the affidavit does not establish probable cause based on the information from Woods. Washington courts use the two-prong test in Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L.Ed. 2d 723 (1964),⁴ and Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L.Ed. 2d 637 (1969),⁵ to evaluate the existence of probable cause based on information from a confidential informant. State v. Jackson, 102 Wn.2d 432, 435-43, 688 P.2d 136 (1984). The two-prong test addresses the informant’s (1) “basis of knowledge” and (2) “veracity.” State v. Vickers, 148 Wn.2d 91, 112, 59 P.3d 58 (2002).

[T]o create probable cause for a search warrant to issue: (1) the officer’s affidavit must set forth some of the underlying circumstances from which the informant drew his conclusion so that a magistrate can independently evaluate the reliability of the manner in which the informant acquired his information; and (2) the affidavit must set forth some of the underlying circumstances from which the officer concluded the informant was credible or his information reliable.

Jackson, 102 Wn.2d at 435.

⁴ Abrogated by Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317, 76 L.Ed. 2d 527 (1983).

⁵ Abrogated by Gates, 462 U.S. 213.

The affidavit of Detective Jennings sets forth facts and circumstances that allowed the magistrate to independently evaluate reliability and showed the information Woods provided was reliable. The affidavit states Woods admitted she used drugs and purchased

methamphetamine from Meyers more than 50 times in the previous nine months. Where a person admits self-incriminating activity to the police, we presume the statement is true. State v. Chenoweth, 160 Wn.2d 454, 483, 158 P.3d 595 (2007) (“Statements against penal interest are intrinsically reliable because a person is unlikely to make a self-incriminating admission unless it is true.”).

The affidavit states Woods identified the specific location of the methamphetamine in Meyers’ locked bedroom safe and confirmed additional methamphetamine, a digital scale, packaging material, and a drug “snort” plate were present in the residence. See State v. Casto, 39 Wn. App. 229, 234, 692 P.2d 890 (1984) (Where the informant “ ‘goes in empty and comes out full,’ his assertion that drugs were available is proven, and his reliability confirmed.” Probable cause may exist where the informant “can also assert that more drugs are present, or where their presence can be presumed.”).

The affidavit states Woods also provided accurate information about Meyers’ girlfriend Virginia and the vehicles Meyers owned.

The CI stated [Meyers] lives at the residence with his girlfriend, “Virginia”. The CI stated [Meyers] owns a “lowered” white Chevy truck parked in the driveway and a large black tour style bus, parked on the street in front of the residence. I later drove by the residence and obtained the license plate of the white Chevy truck parked in the driveway: Washington “B62684K” and the black tour style bus parked on the street: “ALJ0759”.

*5 Detective Jennings states, “[T]hese vehicles are both registered to Troy Darrin Meyers. I also found police contacts regarding the Chevy truck and discovered the name Virginia Wall.”

The affidavit set forth independent and corroborated facts to allow the magistrate to independently evaluate the reliability of Woods and the circumstances to conclude Woods and the information were credible.

As Meyers concedes, a properly executed controlled buy can establish both the basis of the knowledge prong and the veracity prong. Casto, 39 Wn. App. at 234. The affidavit supports finding a properly executed controlled buy.

Meyers challenges the finding that police “kept Woods under constant visual surveillance” as she approached and then left Meyers’ house.

We determine whether substantial evidence supports the trial court’s findings of fact and whether those findings support the conclusions of law. State v. Garvin, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. State v. Levy, 156 Wn.2d 709, 733, 132 P.3d 1076

(2006). Unchallenged findings are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). We review conclusions of law pertaining to the suppression of evidence de novo. Levy, 156 Wn.2d at 733.

The court found the police and Woods were in contact throughout the controlled buy.

Detective Jennings and other officers kept Woods under constant visual surveillance as she approached and departed Meyers' residence. Woods entered Meyers['] residence and stayed inside approximately 10 minutes. Detective Jennings received multiple text messages from Woods while she was inside. The officers maintained visual surveillance of the residence and Woods as she exited and returned to the vehicle. Woods turned a plastic bag of methamphetamine to the officers and she was searched by Detective Gabriel who told Detective Jennings she located no drugs, cash, or weapons on Woods' person.^[6]

⁶ Emphasis added.

Substantial evidence supports the challenged findings. Detective Jennings and two other officers participated in the controlled buy. Detective Jennings stated he parked about two blocks away from the house. Detective Jennings testified he did not see Woods the entire time but he was in contact with the other officers by radio to ensure “[s]he was observed the entire time.” While Woods was inside the house for approximately 10 minutes, she sent text messages to Detective Jennings. After she left Meyers' house, she walked down the street to the previously agreed upon meeting point. Detective Jennings testified the other officers observed Woods after she left the house until he met Woods at the meeting point.

Material Misrepresentations and Omissions

Meyers challenges the court's finding that omissions in the affidavit were not material. Material falsehoods that are intentionally included in the affidavit or with reckless disregard for the truth, or deliberate or reckless omissions of material information from the warrant may invalidate the search warrant. State v. Ollivier, 178 Wn.2d 813, 847, 312 P.3d 1 (2013). In Chenoweth, the Washington Supreme Court held that under article I, section 7, only material falsehoods or omissions made “recklessly or intentionally” invalidate a warrant. Chenoweth, 160 Wn.2d at 478-79.

*6 A misstatement or omission must be both (1) reckless or intentional and (2) material. State v. Gentry, 125 Wn.2d 570, 604, 888 P.2d 1105 (1995). Negligence or innocent mistakes are insufficient to invalidate the warrant. State v. Clark, 143 Wn.2d 731, 751, 24 P.3d 1006 (2001). Recklessness is shown where the warrant affiant entertained “ ‘serious doubts’ ” as to the truth of facts or statements made in the affidavit. Clark, 143 Wn.2d at 751⁷ (quoting State v. O’Connor, 39 Wn. App. 113, 117, 692 P.2d 208 (1984)). “Such ‘serious doubts’ are ‘shown by (1) actual deliberation on the part of the affiant, or (2) the existence of obvious reasons to doubt the veracity of the informant or the accuracy of his reports.’ ” Clark, 143 Wn.2d at 751 (quoting O’Connor, 39 Wn. App. at 117).

⁷ Internal quotation marks omitted.

If the defendant establishes material misrepresentation or omissions, “then the material misrepresentation must be stricken or the omitted material must be included and the sufficiency of the affidavit then assessed as so modified.” Ollivier, 178 Wn.2d at 847. If at that point the affidavit fails to support a finding of probable cause, “the warrant will be held void and evidence obtained when the warrant was executed must be suppressed.” Ollivier, 178 Wn.2d at 847. “The determination whether the qualifying information amounts to probable cause is a legal question that is reviewed de novo.” Ollivier, 178 Wn.2d at 848.

Meyers challenges Detective Jennings statement that before the controlled buy, “the CI was searched. There were no drugs, money and/or contraband located.” Meyers asserts the statement is a material misrepresentation or omission because Detective Jennings did not state he was not personally present during the search. The court found:

DETECTIVE JENNINGS NOT PRESENT FOR SEARCH OF CI

Detective Jennings had personal knowledge that the CI was searched. The court finds that any omission as to whether Detective Jennings was personally present during the search is not material.

Substantial evidence supports the finding that “any omission as to whether Detective Jennings was personally present during the search is not material.” The record establishes Detective Jennings directed and had personal knowledge of the search. Detective Jennings testified that on the day of the controlled buy, a search of Woods “was conducted” at the precinct by Detective Julie Gabriel. Detective Jennings stated, “When that search was completed, I was informed Ms. Woods had no drugs on her, no money, no weapons.” After the controlled buy, Detective Jennings drove Woods back to the precinct and Detective Gabriel searched Woods again and found “nothing.” The unchallenged findings state:

Detective Jennings testified that Detective Julie Gabriel searched the informant, Adrienne Woods before and after the controlled buy that formed the basis for probable cause to arrest Meyers and that Gabriel indicated to him that Woods had no drugs, cash or weapons on her person.^[8]

⁸ We also note the court rejected the argument that Woods “hid methamphetamine in her vagina” as not credible. The unchallenged findings state:

Meyers argues that law enforcement failed to conduct a sufficient search of the informant. He supplies no authority for the contention that searches prior to a controlled buy should include a search of the genital area and of the vagina or other body cavities.

....

To follow Meyers’ argument to its logical conclusion, the court must believe that Woods hid methamphetamine in her vagina and retrieved the methamphetamine from her vagina inside Meyers’ residence or after exiting, while at the same time sending multiple texts to Detective Jennings. She would have to somehow have known the amount of methamphetamine she was purchasing in advance so that she could produce methamphetamine from her vagina consistent with the amount of cash Detective Jennings supplied to her and she would have to dispose of the cash provided for the purchase.

*7 Meyers argues the court erred in finding the failure to include information about Meyers’ “eviction” of Woods from his house and the payment to Woods of \$100 on May 29 were not material and intentional omissions of fact. The findings state:

A. CI’S EVICTION FROM MEYERS’ RESIDENCE

Detective Jennings testified that he knew Woods had been kicked out of the Meyers residence but did not think there was any animosity between Woods and Meyers. The court finds this omission is not material or intentional.

B. CI PAID FOR HER SERVICES

The evidence in the record shows that Detective Jennings paid Woods \$100 on May 29, 2014, well after the search warrant was served on May 28, 2014. (Defense Exhibit 8) No evidence in the record indicates that Woods was giving [sic] any consideration or benefit prior to the buy, thus the payment afterwards, absent any evidence of an agreement to pay Woods for her services does not constitute an omission.

The testimony showed Woods and Lenhart lived at Meyers’ house for nine months. After Meyers and Lenhart had a dispute, Lenhart and Woods moved out. But Meyers and Woods continued to have a good relationship. Detective Jennings testified that he knew Woods and Lenhart had been “kicked out of the house” but said, “There was no indication of animosity.... [T]here was no ill will that I was told about between [Woods] and Mr. Meyers.” The unchallenged findings state, “Detective Jennings ... knew that Woods had been kicked out of Meyers’ residence, but did not believe there was any animosity between Woods and Meyers.”

There is no dispute that Detective Jennings “paid Woods \$100 on May 29, 2014.” The record

supports the finding that there was no evidence to indicate that “Woods was giv[en] any consideration or benefit prior to the buy.”

Even if we assume failure to include information about the “eviction” and payment are material omissions, the affidavit supports probable cause to issue the search warrant. To establish probable cause, the facts need only show “the probability of criminal activity, not a prima facie showing of it.” State v. Maddox, 152 Wn.2d 499, 505, 98 P.3d 1199 (2004).

Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime can be found at the place to be searched.

State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999).

Meyers also contends the court erred by failing to enter a finding on the omission of the Oregon criminal convictions in the affidavit in support of the search warrant. The record establishes Meyers did not present evidence about the Oregon criminal convictions during the CrR 3.6 hearing. For the first time in the motion to reopen the CrR 3.6 suppression hearing, Meyers argued a criminal history report showed that in addition to the convictions in the affidavit, Woods had Oregon convictions. The court responded, “I actually looked up her criminal history, so I’m familiar with it.”

The court did not abuse its discretion in declining to reopen the suppression hearing or err in denying the motion to suppress. State v. Luvane, 127 Wn.2d 690, 711, 903 P.2d 960 (1995)

Legal Financial Obligations

*8 Meyers contends the court erred by imposing legal financial obligations (LFOs) without considering his ability to pay. The court imposed the \$500 victim assessment fee, a \$2,000 drug enforcement fund fee, the \$100 DNA⁹ fee, the \$200 criminal filing fee, and a \$100 crime laboratory fee.

⁹ Deoxyribonucleic acid.

In State v. Blazina, 182 Wn.2d 827, 837-38, 344 P.3d 680 (2015), the Washington Supreme Court held RCW 10.01.160(3) mandates the sentencing court to engage in an individualized

inquiry into the defendant's present and future ability to pay discretionary LFOs.

The court did not err by imposing the mandatory DNA, victim assessment, and criminal filing fees. State v. Shelton, 194 Wn. App. 660, 673-74, 378 P.3d 230 (2016), review denied, 187 Wn.2d 1002, 386 P.3d 1088 (2017); State v. Gonzales, 198 Wn. App. 151, 154-55, 392 P.3d 1158, review denied, 188 Wn.2d 1022, 398 P.3d 1140 (2017).

But the court erred by imposing the \$2,000 drug enforcement fund fee without engaging in an inquiry about Meyers' present and future ability to pay. The conclusory statement that "the defendant is presently indigent but is anticipated to be able to pay financial obligations in the future" does not meet the mandate to engage in an individualized inquiry about the present and future ability to pay. Blazina, 182 Wn.2d at 837-38.

RCW 69.50.430(2) mandates a \$2,000 fine for an adult offender convicted of a second or subsequent violation of specified provisions of the Uniform Controlled Substances Act, chapter 69.50 RCW, and "[u]nless the court finds the adult offender to be indigent, this additional fine may not be suspended or deferred by the court."¹⁰

¹⁰ Emphasis added.

RCW 43.43.690(1) addresses imposition of the laboratory fee. RCW 43.43.690(1) states:

When an adult offender has been adjudged guilty of violating any criminal statute of this state and a crime laboratory analysis was performed by a state crime laboratory, in addition to any other disposition, penalty, or fine imposed, the court shall levy a crime laboratory analysis fee of one hundred dollars for each offense for which the person was convicted.

But RCW 43.43.690(1) expressly states, "Upon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay the fee."¹¹

¹¹ Emphasis added.

On remand, the court shall engage in an inquiry on the present and future ability of Meyers to pay the \$2,000 drug enforcement fund fee. If Meyers submits a verified petition, the court shall also determine whether to suspend all or part of the \$100 crime laboratory fee.

Statement of Additional Grounds

Meyers raises a number of issues in his statement of additional grounds.¹² Contrary to his assertion, the record shows the State provided a certified copy of the affidavit in support of the search warrant and we granted his motion to supplement the record with the hospital records.

¹² The other arguments Meyers makes are adequately addressed in the brief on appeal. RAP 10.10(a).

Meyers argues the statements he made to the police were not voluntary. The unchallenged findings do not support his argument. State v. Gasteazoro-Paniagua, 173 Wn. App. 751, 755, 294 P.3d 857 (2013) (unchallenged findings of fact following a CrR 3.5 hearing are verities on appeal). Citing Bailey v. United States, 568 U.S. 186, 133 S. Ct. 1031, 185 L.Ed. 2d 19 (2013), Meyers argues he was unlawfully detained while the police executed the search warrant. Unlike in the case he cites, there was probable cause to arrest Meyers. See Bailey, 568 U.S. at 200-01.

*9 Meyers claims the judge was biased. Meyers cannot show that a reasonable person who knows and understands all the relevant facts would conclude he did not receive a fair, impartial, and neutral hearing. State v. Gamble, 168 Wn.2d 161, 187, 255 P.3d 973 (2010).

Meyers contends the convictions constitute the same criminal conduct. We review the determination of what constitutes the same criminal conduct for abuse of discretion. State v. Johnson, 180 Wn. App. 92, 100, 320 P.3d 197 (2014). Possession of methamphetamine with intent to deliver and unlawful possession of cocaine do not constitute the same criminal conduct. State v. Hernandez, 95 Wn. App. 480, 484-85, 976 P.2d 165 (1999). Meyers asserts his prior felony convictions wash out because his 2005 driving with a suspended license conviction is unconstitutional. The record shows Meyers did not meet his burden of establishing the prior conviction is unconstitutional. In re Pers. Restraint of Williams, 111 Wn.2d 353, 368, 759 P.2d 436 (1988).

We affirm the convictions but remand for an individualized inquiry into the ability of Meyers to pay the \$2,000 drug enforcement fund fee and if he submits a verified petition, the \$100 crime laboratory fee.

WE CONCUR:

Trickey, J.

Becker, J.

All Citations

Not Reported in Pac. Rptr., 2018 WL 4215619

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APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,)	No. 77749-1-1
)	
Respondent,)	
)	ORDER GRANTING MOTION
v.)	FOR RECONSIDERATION IN PART
)	AND AMENDING OPINION
TROY DARRIN MEYERS,)	
)	
Appellant.)	

Appellant Troy Darrin Meyers filed a motion to reconsider the opinion filed on September 4, 2018 and strike the \$500 victim penalty assessment, the \$200 criminal filing fee, the \$2,000 drug enforcement fund fee, the \$100 DNA¹ fee, and the \$100 crime laboratory fee. Meyers cites the 2018 amendments to the legal financial obligation statutes, Laws of 2018, chapter 269, and State v. Ramirez, 191 Wn.2d 732, 426 P.3d 714 (2018). The State filed an answer. A majority of the panel has determined that reconsideration should be granted in part and the opinion filed on September 4, 2018 amended as follows:

The first paragraph on page 17 shall be amended as follows:

In 2018, the Washington State Legislature amended the legal financial obligation statutes. LAWS OF 2018, ch. 269. In State v. Ramirez, 191 Wn.2d 732, 747, 426 P.3d 714 (2018), the Washington Supreme Court held the 2018 amendments to the legal financial obligation statutes apply to

¹ Deoxyribonucleic acid.

cases "pending on direct review and thus not final when the amendments were enacted." The State concedes the 2018 amendments apply to Meyers.

As amended, the criminal filing fee statute states:

Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, an adult defendant in a criminal case shall be liable for a fee of two hundred dollars, except this fee shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3) (a) through (c).

RCW 36.18.020(2)(h).

The amended DNA collection fee statute states, in pertinent part:

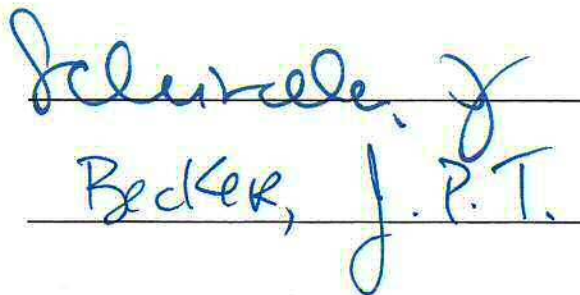
Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars unless the state has previously collected the offender's DNA as a result of a prior conviction.

RCW 43.43.7541.

The legislature did not amend the victim penalty assessment statute, RCW 7.68.035.

On remand, the court shall determine whether Meyers is indigent and whether to impose the \$2,000 drug enforcement fund fee and the \$200 criminal filing fee. The court shall also determine whether Meyers has previously submitted a DNA sample as a result of a prior conviction and if Meyers submits a verified petition, whether to impose the \$100 crime laboratory fee.

Now, therefore, it is hereby ORDERED that appellant's motion for reconsideration is granted in part and the opinion filed on September 4, 2018 amended as set forth in the order.


Becker, J.P.T.

APPENDIX C

V14-7971

CLARK COUNTY
SHERIFF'S DEPARTMENT

2014 MAY 29 A 8:59

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

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STATE OF WASHINGTON,

Plaintiff,

Meyers, Troy Darrin

01/22/1969

Defendant

No.

AFFIDAVIT FOR SEARCH WARRANT

STATE OF WASHINGTON)


:ss

COUNTY OF CLARK)

I, Detective Erik Jennings, being first duly sworn upon oath, hereby depose and say that I have good and sufficient reason to believe that the following items, evidence of the crime of Possession of a Controlled Substance with Intent to Deliver, RCW 69.50.401, to wit;

(1) Methamphetamine, a substance controlled by the Uniform Controlled Substances Act of the State of Washington and RCW 69.50.401.

(2) Records relating to the transportation, ordering, manufacturing, possession, sale, transfer and/or importation of controlled substances in particular, Methamphetamine, including but not limited to books, notebooks, ledgers, check book ledgers, handwritten notes, journals, calendars, receipts, electronic recording media.


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(3) Records showing the identity of co-conspirators in this distribution operation, including but not limited to address and/or phone books, telephone bills, notebooks, ledgers, check book ledgers, handwritten notes, journals, calendars, receipts, electronic recording media.

(4) Records which will indicate profits and/or proceeds of the illegal distribution operation of Methamphetamine, to include, but not limited to books, notebooks, ledgers, check book ledgers, handwritten notes, journals, calendars, receipts, electronic recording media.

(5) Photographs, including still photos, negatives, video tapes, films, undeveloped film and the contents therein, and slides, in particular, photographs of co-conspirators, of assets, and controlled substances, in particular Methamphetamine.

(6) Drug paraphernalia in violation of RCW 69.50.412 to include but not limited to items used in the consumption of controlled substances such as needles used to inject methamphetamine, pipes to smoke methamphetamine, snort tubes and straws used to ingest methamphetamine and packages and containers used to carry and/or conceal drugs, bindles and bindle material used to package, re-pack, store, conceal and weigh controlled substances for sale and several other types of drug paraphernalia too numerous to list.

(7) United States Currency


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(8) To photograph the locations searched and evidence seized.

(9) Cellular phones, and to forensically examine the electronic memory of cellular phones found, including contact information, incoming and outgoing call logs, incoming and outgoing text messages, photos and videos.

(10) Articles of personal property tending to establish the identity of persons in control of the premises, including but not limited to rent receipts, utility bills or receipts, canceled mail envelopes, keys, identification cards, and mortgage documents.

Are on this 23rd day of May, 2014 in the unlawful possession of the defendant in: **9810 NE 67th St, Vancouver, Clark County, Washington 98662**. The residence is described as a single story family dwelling made of wood framed construction and is tan in color with brown trim. The numbers "9810" are black in color and are affixed on the north wall face to the left (west) of the front door of the residence. The main entrance / door to the residence faces north and is accessible via the driveway.

AND

Also to be searched are all rooms, and all other parts therein, and to search any safes, trash containers, storage containers, and surrounding grounds and outbuildings located on the aforescribed property.


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I am informed and aware, based upon the following:

I, Officer Erik Jennings am employed as a Detective with the Vancouver Police Department. I have been employed with the Vancouver Police Department for 14 years and I have been assigned to the Neighborhood Response Team, hereafter referred to as NRT, since January 2012. NRT is an investigative unit that works to identify and target for prosecution violent fugitives, repeat offenders, high-risk parolee and probation offenders, and felons who have committed criminal acts within the Southwest Washington area. In this position, I participate in a number of varied investigations, including but not limited to Burglary, Auto Theft, Gangs, Narcotics, Forgery/Fraud, Robbery and Assault cases. In addition, I work on a regular basis with the Clark-Skamania Drug Task Force, State Parole/Probation and local and federal law enforcement agencies.

While employed as a police officer for the City of Vancouver, I have worked over 11 years in patrol. I further have been employed as a police officer with the Garden City Police Department, located in the State of Kansas, for a period of 4 years, in the capacity of a patrol officer. I am a graduate of the Kansas State Basic Law Enforcement Officer Academy and the Washington State Law Enforcement Equivalency Academy. During my time with Vancouver Police and Garden City Police I have conducted numerous persons and property crimes investigations, ranging from Class "A" felonies to misdemeanors. I have personally arrested numerous people for committing those crimes. I have also received over 2000 hours of additional varied criminal investigations training.

During my 18 years of Law Enforcement I have applied for and obtained search warrants related


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1 to narcotic violations and have assisted in the service of several search warrants. I have conducted
2 numerous searches during my service in patrol and as a Detective with the Neighborhood Response
3 Team. Those searches occurred incident to arrest, with consent and assisting on search warrant
4 searches. During the service of those searches I have recovered numerous articles of drug paraphernalia,
5 including marijuana smoking pipes; hypodermic syringes used to inject heroin and methamphetamine;
6 snort tubes and straws; bong; packages and containers used to carry and/or conceal illegal drugs;
7 bindles and bindle material used to package drugs for sale; roach clips; and several other types of drug
8 paraphernalia too numerous to list. During those searches and as a result of other narcotics
9 investigations I have recovered or been involved in the recovery of various types of illegal drugs such as
10 cocaine, in powder and "rock" form; methamphetamine; heroin, marijuana, both growing and harvested;
11 Ecstasy and various other controlled prescription drugs. The arrests and searches I have been involved in
12 have resulted in the seizure of various types of illegal drugs and associated paraphernalia.
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16 I know from my training knowledge and experience that persons involved in the distribution
17 of controlled substances commonly maintain records to assist them in their business activities. The
18 records are used to record credits and debits, profits and proceeds, and to reconcile profits and stock
19 on hand. Because the suspect mentioned above is involved in the distribution of controlled
20 substances, to wit: Methamphetamine, it is more likely than not that the records of this activity will be
21 found at 9810 NE 67th St, Vancouver, WA.
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23


24
25 I know from my training, knowledge and experience that persons involved in the distribution
26 of controlled substances almost always use packaging material including plastic baggies to hold the
27 controlled substances, repackage it in smaller quantities utilizing scales to sell to individual users and

1 these packaging materials will be found at the same location as the controlled substances. I also know
2 that subjects who distribute Methamphetamine will also frequently consume "meth" and will have
3 drug paraphernalia at their residence. Because the suspect mentioned above is involved in the
4 distribution of controlled substances it is more likely than not that packaging material and drug
5 paraphernalia will be found at 9810 NE 67th St, Vancouver, WA.
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8 I know from my training, knowledge and experience that most people involved in the
9 distribution and possession of controlled substances possess items of identification (including but not
10 limited to driver's licenses, rent receipts, bills, and address books). I also know that these items are
11 relevant to the identity of the possessor of the controlled substances, possessor of other items seized,
12 and occupants of the premises searched. It is therefore more likely than not that items of
13 identification will be found at 9810 NE 67th St, Vancouver, WA.
14

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16 I know from my training, knowledge and experience that subjects involved in
17 Methamphetamine distribution hide narcotics in many places, including but not limited to,
18 mattresses, inner walls, bathroom fans, secret compartments, outbuildings and adjoining structures. I
19 am seeking to search all areas of the premises. I know from my training, knowledge and experience
20 that pagers, drug records, packaging material, weapons (including rifles, shotguns, and handguns) are
21 tools of the trade and instrumentality of the crime of delivery and trafficking in narcotics and I am
22 seeking to seize these items.
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26 I know from my training, knowledge and experience that proceeds of the sales and/or
27 distribution of drugs are often found which include not only monies, but items taken in trade or


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1 purchased with monies earned through illicit activities, and although these items are subject to civil
2 forfeiture the evidentiary value in showing an ongoing conspiracy is invaluable.

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4 I know from my training, knowledge and experience, and investigation of this case, the
5 property to be seized is described as: any controlled substances, any money or accounts, and/or other
6 items of value including, but not limited to real property, which constitutes profits and/or proceeds
7 which were used or intended to be used to facilitate prohibited conduct; any equipment including, but
8 not limited to conveyances and weapons which constitutes proceeds and/or profits which were used
9 or intended to be used or available to be used to facilitate prohibited conduct; any records and/or
10 proceeds of the above, constitutes profits, proceeds, and/or instrumentality of delivery, and
11 possession of the controlled substance Methamphetamine and is subject to civil forfeiture.
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15 I know from my training, knowledge and experience it is common for drug dealers to use their
16 cell phone to promote their drug dealing business. Many times drug dealers will communicate over
17 text message and exchange text messages that are related to buying or selling drugs. Many cell
18 phones have built in cameras. While searching cell phones belonging to drug dealers I have learned
19 that drug dealers will often photograph themselves with drugs or proceeds of drug sales. Cell phones
20 contain an electronic memory that store the information mentioned above.
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23
24 **In this official capacity,**

25 When I first questioned Confidential Reliable Informant (herein referred to as CI), the CI stated he/she
26 has known a white male subject identified as Troy Meyers for approximately 9 months. During this
27 time period, the CI stated he/she has purchased Methamphetamine from Troy 2 to 3 times a week.

1 During the CI's friendship/relationship with Troy, the CI stated he/she has made over 50 purchases of
2 Methamphetamine from Troy. When asked, CI stated every time he/she has contacted Troy, he
3 always had or was able to obtain Methamphetamine. The CI told me he/she has been present on
4 numerous occasions when Troy has sold Methamphetamine to others. During this interview, your
5 affiant obtained a photo of Troy Darrin Meyers and showed it to the CI. The CI identified Troy as the
6 person he/she has purchased Methamphetamine from.
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9 Within the past 72 hours (May 21 – May 23, 2014) your affiant contacted. At this time, the CI stated
10 he/she was ready to set up a deal with Troy. We then made arrangements to meet. Detective Ruth and
11 I met with the CI and transported him/her to the Vancouver West Police Precinct, 2800 NE Stapleton Rd.
12 At this time, the CI was searched. There were no drugs, money and/or contraband located. I then had
13 the CI telephone Troy on his cell phone (360-281-1568).
14

15
16 Following contact and as the two exchanged text messages, the CI made arrangements to purchase an
17 undisclosed amount of methamphetamine. Arrangements were then made for the CI to travel to Troy's
18 home, 9810 NE St., to conduct the transaction.
19

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21 I provided the CI with pre-recorded buy money, after which I and other NRT Detectives maintained
22 watch over the CI until he / she's arrival at Troy's residence. The CI approached the front door of 9810
23 NE 67th St and was observed entering the residence. After a few minutes the CI was observed exiting
24 the front door. The CI was again kept under surveillance until he/she was contacted by law
25 enforcement. Upon meeting up, the CI immediately turned over a clear plastic baggie, with what
26 appeared to be a small quantity of a white crystal substance, which appeared to be Methamphetamine.
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Again the CI was searched and there were no drugs, money and/or contraband located.

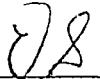
The CI stated he/she purchased the Methamphetamine from Troy. The CI stated he/she handed the money to Troy who provided him/her with the Methamphetamine, which he produced from a black fire resistant lock box in his bedroom.

The CI stated there were additional methamphetamine in the residence as well as a digital scale, packaging material (plastic baggies) and a drug "snort" plate.

I later tested the substance purchased, using a "NIK- U" narcotics field identification kit and received a positive indication for the presence of methamphetamine. I submitted the substance into VPD evidence.

The CI stated Troy lives at the residence with his girlfriend, "Virginia". The CI stated Troy owns a "lowered" white Chevy truck parked in the driveway and a large black tour style bus, parked on the street in front of the residence. I later drove by the residence and obtained the license plate of the white Chevy truck parked in the driveway: Washington "B62684K" and the black tour style bus parked on the street: "ALJ0759". I found these vehicles are both registered to Troy Darrin Meyers. I also found police contacts regarding the Chevy truck and discovered the name Virginia Wall.

As to the informant's credibility and basis of knowledge


Judge's Initials

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Since May 2014, Detectives with the Neighborhood Response Team (NRT) have been working with a confidential reliable informant, whom I will refer to as CI. This CI is providing this information out of a community interest and frustration with the suspect's drug dealing activities. The CI has intimate knowledge of the drug subculture including drug use and distribution. The CI has demonstrated his/her knowledge of controlled substances, specifically Methamphetamine by detailing his/her own involvement (8 plus years) with controlled substance, answering questions concerning controlled substances and performing (2) controlled narcotics buys under the direction of your Affiant. The CI was searched for narcotics, US currency and weapons with negative results before the controlled buys. The CI was provided with US currency to purchase the controlled substance. The CI was kept under surveillance by the Neighborhood Response Team Detectives during the controlled buy. The CI successfully purchased, in each operation, a controlled substance which was consistent with the amount of US currency provided.

I desire to keep said CRI confidential because the CRI has requested me to do so and it is my experience that such informants suffer physical, social and emotional retribution when their identities are revealed. Furthermore, it is my experience that to reveal the identity of such informants seriously impairs their usefulness to law enforcement in the future and dissuades other citizens from disclosing confidential information about criminal activities to law enforcement officers.


Judge's Initials

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As to the informant's criminal history:

The CI's criminal history lists 2 Felonies: Controlled Substance Possession w/o a prescription and Attempt to Elude. In addition, the CI has 1 Gross Misdemeanor and 3 Misdemeanor convictions for crimes related to theft and driving with a suspended / revoked license.

Debtors ? - arrests

As to the defendant's criminal history:

Troy Darrin Meyers, 01/22/1969 lists four Felony convictions: Burglary II and Violations of the Uniform Controlled Substance Act (Possession with Intent, Possession x 2). In addition, Troy has 5 Gross Misdemeanor and 3 Misdemeanor convictions for crimes related to Assault, Possession of Stolen Property and Disorderly Conduct. Troy's criminal history further reflects 5 unclassified findings related to probation / supervision violations.

Based on the foregoing, I believe there is probable cause and I pray the court for issuance of a Search Warrant authorizing the search of the aforescribed residence and curtilage for the above-described items and if any are found authorizing the seizure of the same as it appears that the above listed residence is involved in an ongoing criminal enterprise involving the delivery of the controlled substance Methamphetamine.

Erik Jennings #1299

Detective Erik Jennings
Vancouver Police Department

Subscribed and sworn to before me this 5 day of May, 2014.

[Signature]

District Court Judge
Clark County
State of Washington

RUSSELL SELK LAW OFFICE

March 28, 2019 - 3:55 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 77749-1
Appellate Court Case Title: State of Washington, Respondent v Troy Darrin Meyers, Appellant
Superior Court Case Number: 14-1-01069-9

The following documents have been uploaded:

- 777491_Petition_for_Review_20190328155425D1009642_9535.pdf
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