

62415-6

62415-6

NO. 62415-6-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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CHRISTOPHER T. BAKKEN,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

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APPEAL FROM KING COUNTY SUPERIOR COURT

THE HONORABLE DOUGLAS McBROOM

=====

**BRIEF OF APPELLANT**

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## I. ASSIGNMENT OF ERROR

### A. Assignment of Error.

1. The trial court erred in denying the defendant's motion to suppress evidence seized from his property in Sammamish, Washington, based on lack of probable cause.

2. The trial court erred in denying the defendant's motion to suppress evidence seized from his residence in Seattle, Washington, based on lack of probable cause.

### B. Issues Pertaining to Assignment of Error.

1. Whether probable cause was established by the affidavit in support of search warrant, such that a valid search could be made of the defendant's property in Sammamish, Washington.

2. Whether probable cause was established by the affidavit in support of search warrant, such that a valid search could be made of the defendant's residence in Seattle, Washington.

3. Whether the trial court erred in denying the defendant's motions to suppress the evidence seized from the above locations?

## II. STATEMENT OF THE CASE

### A. Statement of Facts.

This case involves evidence obtained as a result of two searches of two separate properties of the defendant, conducted pursuant to one affidavit for search warrant, which is attached hereto as Attachment A. There was no trial testimony as a stipulated facts trial was conducted.

The sole issues on appeal are whether the two search warrants at issue established probable cause to search the properties of the defendant and whether the trial court erred in denying the defendant's CrR 3.6 motions to suppress.

B. Statement of Proceedings

The defendant in this case was charged by Amended Information with Manufacturing Marijuana, Possession of a Controlled Substance, Cocaine, with intent to deliver, and Possession of a controlled substance, marijuana, with intent to deliver, all in violation of RCW Chapter 69.50.401. (CP 10-12)

The case was assigned for trial and on August 7, 2008, the court heard argument and ruled on the defendant's two motions to suppress that had been filed, seeking to suppress the evidence obtained as a result of the execution of two search warrants on a Sammamish property that he then owned and his Seattle residence. The court denied the motions to suppress. (CP 13-15; 19-21)

As a result of the court's rulings denying the motions to suppress, the defendant waived his right to a jury trial and agreed to a stipulated trial, at which time he was found guilty as charged in the Amended Information. (CP 16-18) He was sentenced to a total of 16 months of incarceration based on his convictions.

### III. ARGUMENT

A. The search warrants were not supported by probable cause. Applicable law.

A search warrant must be supported by probable cause that criminal activity is occurring or that contraband exists at a certain location. State v. Kuhlman, 128 Wn.App. 1012 (2005). Probable cause is established where an affidavit supporting a search warrant provides sufficient facts such that a reasonable person would conclude that there is a probability that the defendant is engaged in criminal activity. State v. Vickers, 148 Wn.2d 91, 108 (2002). Where a search warrant is issued, the defendant bears the burden of establishing that the search was unreasonable. State v. Hopkins, 113 Wn.App. 954 (2002).

Where information from an informant is utilized to establish probable cause, Washington

follows the two prong Aguilar-Spinelli test to evaluate whether probable cause is established. State v. Jackson, 102 Wn.2d 432, 443 (1984). The magistrate must make an independent determination that the informant had a basis of knowledge and the veracity to provide the tip. In order to satisfy the basis of knowledge prong, 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. The informant satisfies the basis of knowledge prong where the informant declares he personally observed the facts or is passing along firsthand information. Jackson at 437.

In order to satisfy the veracity prong the affidavit must set forth some of the underlying circumstances from which the officer concluded that the informant was reliable or his information reliable. Courts have relaxed the

showing of reliability when the informant is a concerned citizen. State v. Mickle, 53 Wn.App. 39, 42 (1988).

If the informant's tip fails under either prong, probable cause may be established by independent police investigation that corroborates the tip to such an extent that it supports the missing elements of the Aguilar-Spinelli test. Jackson, at 438. The police investigation must corroborate the informant's suggestions of criminal activity and not merely verify innocuous details, commonly known or public facts, or predictable events.

B. There was no probable cause to search the Sammamish property. The trial court erred in denying the motion to suppress.

In denying the motion to suppress as to the Sammamish property, the court entered the following challenged Written Findings of Facts and Conclusions of Law Pursuant to CrR 3.6 Motin to Suppress:

FINDINGS OF FACT.

- 1) The court incorporates the facts contained in the affidavit for search warrant submitted as Pretrial defense exhibit 1...And having made those Findings of Fact, the court now enters the following:

CONCLUSIONS OF LAW...

3. With regard to the property located at... Sammamish, the court upholds the warrant's validity for the following reasons:
  - a. The court agrees with the defendant that the reliability of the confidential informant's information is not completely established by the information provided to police.
  - b. The court agrees with the defendant that much of the information that is corroborated by police investigation contains innocuous facts including the ownership of the defendant's homes and cars.
  - c. However, the court finds that the police investigation that included smelling the odor of marijuana coming from the house from outside provided sufficient corroboration for reliability and that standing alone it would be sufficient to uphold a basis for probable cause.
  - d. Further, the court finds that the police were not trespassing on the defendant's property when they smelled marijuana as there is no reasonable expectation of privacy in the smell of one's house in this situation where the defendant's property was not fenced in to prevent person's from coming right up to the front door.

In this appeal, the defendant/appellant challenges Conclusions of Law c. and d. above, which concluded that probable cause existed to search the Sammamish property, and denied the defendant's motion to suppress evidence that was seized from that location. The court totally based its decision on the following excerpts from the attached Affidavit for Search Warrant, which was used as the basis to obtain search warrants for both properties.

I am familiar with the smell of both growing and processed marijuana from these arrests..as well as from training classes in which marijuana was introduced to familiarize officers with the odor. On 71907, myself and King County Detective Mark Christianson went to Bakken's house located at...Sammamish, in an attempt to get a "sniff" of growing marijuana... Detective Christianson and I walked directly up the driveway of the residence towards the front steps leading to the door. As I walked up the first of several steps leading to the front door, I could immediately smell what I recognized to be the distinct order of growing marijuana. I asked Detective Christianson if he smelled anything and he replied "I smell marijuana". I then leaned down, and smelled a lower story window next the left side of the front door, and could

smell the distinct odor of growing marijuana. Detective Christianson and I then left the residence via the walkway and driveway that we had approached it from.

In this instance, the officers went to the property, without a search warrant, specifically to conduct a "sniff" for marijuana. They entered Mr. Bakken's property, went down a long driveway to the front door of his residence, with the sole intent of obtaining a smell of marijuana, which in their mind would allow them to enter and search Mr. Bakken's property. They had a preconceived plan that they would "smell" marijuana as part of their warrantless "sniff" intrusion. It is not surprising, therefore, for them to both conclude that they smelled marijuana.

The experience and training of the affiant is set forth in the Affidavit for Search Warrant. Although such foundation is laid as to the second officer who supposedly stated that he smelled marijuana, and even though the affidavit seems,

at times, to be written by two separate police officers, only one signed the affidavit.

This court should rule that, standing alone, an alleged sniff of marijuana odor is not enough to meet the strict requirements of probable cause as required by both the United States and Washington constitutions.

The trial court properly discounted the information provided by the alleged informant, whose information did not meet the Aguilar-Spinelli requirements.

It is the defendant's position that the officers trespassed in order to get to a point on the defendant's property where they could allegedly smell marijuana. They were on Mr. Bakken's property only for purposes of seeking to further a criminal investigation and were not legitimately on the property such as a postman, or other delivery person that had reason to be on the property. In order to get to the point where they could allegedly smell marijuana, they had to

traverse a long driveway, about 75-80 feet from the street. Thus, the sniff of marijuana was only as a result of a prior violation of Mr. Bakken's constitutional right to be free from unreasonable searches and seizures, as protected by the state and federal constitutions.

No probable cause supported the issuance of the search warrant as to the Sammamish property and all evidence seized therefrom must be suppressed.

- C. There was no probable cause to search the Seattle residence of the defendant. The trial court erred in denying the motion to suppress.

As to the Seattle property, the court entered the following Findings and Conclusions of Law:

4. With regard to the property located at... Seattle Washington the court upholds the warrant's validity for the following reasons:
- a. The court agrees with the defendant that the reliability of the confidential informant's information is not completely established by the information proved to police.

- b. The court agrees with the defendant that much of the information that is corroborated by police investigation contains innocuous facts including the ownership of the defendant's homes and cars.
- c. However, the court finds that the corroborating evidence obtained from the smelling marijuana at the first location, the fact that the building manager of the second location, who is a citizen informant, also informs police about a fresh marijuana smell coming from the defendant's apartment, and the police officers' training and experience where person's running a marijuana grow often keep evidence of such information in their residence even though the grow is in another location, together with the informant's information provides a sufficient basis for probable cause.
- d. The court specifically finds that this case is distinguishable from State v. Thein, 138 Wn.2d 133 (1999), because police provide specific information that pertains to this property in addition to their own training and experience.

Probable cause as to each property must be evaluated independently. State v. Thein, 138 Wn.2d 133 (1999).

It is submitted that challenged Conclusions of Law c. and d., were made in error, not supported by the record, and are contrary to

applicable law. It is submitted that the arguments on the search of Mr. Bakken's residence pursuant to the same search warrant are even more compelling, such that this court should rule in his favor on this part of the appeal.

As to the Seattle property, the court's Conclusions of Law are contradictory and confusing.

First of all, the court found that the informant, again, did not meet the strict Aguilar-Spinelli standards, thus adding nothing to the equation. However, later on, in Conclusion of Law c., it relies on the informant which it earlier found to be unreliable by using it as a basis to establish probable cause. Pursuant to the Aguilar and Spinelli cases, if an informant is found to be unreliable, as was done by the trial court in this case, the information from that informant should not therefore be able to be used to establish probable cause, as was done erroneously in this instance by the trial

court. Even if the information from the informant were considered, there was nothing that the informant provided as to this residence that would support probable cause.

The court should also rule that the trial court ruled that the trial court erred in relying on the statements of the building manager for two reasons. First, there is nothing in the record to support any conclusion by this citizen that she could identify the odor of marijuana. There is nothing about her training and experience in detecting the smell of marijuana, either marijuana that is growing or that was burned. Thus, the trial court erred in relying on the alleged statements of the building manager.

Secondly, there was no time frame as to the when the building manager supposedly smelled marijuana at Mr. Bakken's door. It could have been anytime and, minimally, was stale information that could not be used.

Additionally, on this issue, the officer's own investigation contradicted the apartment manager's alleged statements. The officers went to the door of Mr. Bakken's apartment: "Detective Christianson and I went to apartment number 606, in an attempt to get a "sniff" of marijuana. We did not get a sniff at this time." Thus, as to Mr. Bakken's apartment, there was smell of marijuana, and there was no corroboration of any criminal activity specific to that location. There simply was no probable cause and Conclusions of Law c. and d. were in error and should be reversed by this court.

It should be noted that as to the Seattle property, the informant stated that Mr. Bakken lived there and sold cocaine from that residence. He made no mention of selling marijuana from the apartment.

In State v. Thein, supra, the Washington Supreme Court emphatically stated that just because there is evidence that someone is a drug

dealer, that, without more, this does not give rise to probable cause to search the residence of the known drug dealer. The court stated that "probable cause requires a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched", citing State v. Goble, 88 Wn.App. 503 (1997). The State in that case argued unsuccessfully that a per se rule should be adopted that once it is determined that a person is a drug dealer, then a finding of probable cause to search that person's residence should automatically follow. The court stated that "We conclude that, standing alone, an officer's belief that grow operators hide evidence at other premises under their control does not authorize a warrant to search those places...Most courts...require that a nexus between the items to be seized and the place to be searched must be established by specific

facts; an officer's general conclusions are not enough."

In this instance, there were no specific facts to support probable cause to search the Yale Avenue address/residence of Mr. Bakken. The officers did not smell marijuana. They conducted no surveillance to support any claim that drug trafficking was occurring at that location, such as a lot of persons coming and going at all hours of the day and night. The search warrant is 10 pages long. Of the 10 pages, only pages 5 and 6 contain specific information about the investigation relevant to these two properties. The specific information as to the Yale Avenue property is innocuous information, such as verification that Mr. Bakken lived there. Pages 8 and 9 of the affidavit is boilerplate information about what marijuana grow operators typically do, such as being solitary persons, having large amounts of cash, having firearms and other weapons to protect their proceeds and

crops, and stating, that is common, for them to store contraband, proceeds, and records in their residences. There is no specific information as to Mr. Bakken, that is the informant, even if one were to assume, arguendo, that the two prongs of the Aguilar-Spinelli test were met, never said that Mr. Bakken sold marijuana from his apartment, never said that he kept records there, or proceeds there, and provided no recent firsthand information that was incorporated into the affidavit.

The affidavit in this instance, is nothing more than boilerplate information that has nothing to do with this specific case. This is exactly the type of affidavit that our Supreme Court, in State v. Thein, said was insufficient to establish probable cause. "We reiterate that probable cause to believe that a man has committed a crime...does not necessarily give rise to probable cause to search his home...the rule the State proposes would broaden to an

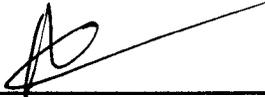
intolerable degree the strict requirement that probable cause to search a certain location must be based on a factual basis between the evidence sought and the place to be searched", citing State v. Olson, 73 Wn.App. 348, 357 (1994).

Similarly, in this instance, there is no specific information in this boilerplate affidavit that would support probable cause as to the Seattle property. The trial court erred in denying the CrR 3.6 motion to suppress. This court should reverse this erroneous decision.

IV. CONCLUSION

For the reasons set forth herein, and in the record on appeal, it is respectfully requested that the court of appeals reverse the trial court and that it rule that the two motions to suppress should have been granted.

Dated this 21st day of August, 2009.



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Antonio Salazar, WSBA #6273  
Salazar Law Office  
Attorneys for appellant,  
CHRISTOPHER THOMAS BAKKEN

KING COUNTY DISTRICT COURT, BELLEVUE DIVISION

STATE OF WASHINGTON ) NO.  
 ) SS.  
COUNTY OF KING ) AFFIDAVIT FOR SEARCH WARRANT

The undersigned by oath states:

- (X) Evidence of the crime of Violation of the Uniform Controlled Substance Act, Possession of Marijuana and or Manufacturing of Marijuana a violation of RCW 69.50.401, and Money Laundering. ( R.C.W. 9A.83.020 )
- (X) Contraband, the fruits of the crime, or things otherwise criminally possessed, and
- ( ) Weapons or other things by means of which a crime has been committed or reasonably appears to be committed, and
- ( ) A person for whose detention there is probable cause, or who is unlawfully restrained

is/are located in, on, or about the following described premises, vehicles or person:

RESIDENCES:

The residence located at 22908 SE 37<sup>th</sup> Street, Sammamish, Washington 98075 County of King, State of Washington.

This appears to be a multi-story residence. The residence is light tan in color with a dark tan trim. The residence has a two door front doorway that is red in color. The doors have glass inserts in them. The residence has the numbers 22908 in a frame next to one of the two garage doors that are on front of the residence. The residence also has a brick multi-story chimney on the front of the residence.

Premises: The apartment residence located at 526 Yale Avenue North, apartment number 606, City of Seattle, County of King, State of Washington.

The residence is located in the Union Bay apartment complex on the Southeast corner of Mercer and Yale Avenue North. The exterior of the apartment complex is cream and green in color and has what appears to be white, vinyl windows. The apartment complex is a secured building, accessed by two glass doors that face Yale Avenue North. The front door to apartment number 606 is light purple in color with an approximately 3 inch by 3 inch green number placard on the front door. The numbers 606 are on the placard in the color gold.

CASE DETECTIVE

My belief is based upon the following facts and circumstances:

Affidavit for Search WarrantX1

Attachment A

ORIGINAL

Your affiant states:

My name is Steven J. Oskierko I am a police officer for the City of Kirkland, currently assigned as a narcotics detective with the **Multi-Agency Eastside Narcotics Task Force**. I have been a police officer for almost 20 years. I have completed the 1096 hour Los Angeles Police Academy, and the 80 hour Law Enforcement Equivalency academy through the Washington State Criminal Justice Training Center (W.S.C.J.T.C.). I have completed over 400 hours of Narcotics / Narcotics related investigations training through specialized narcotics training from the Drug Enforcement Administration, the Federal Bureau of Investigation, the Washington State Criminal Justice Training Center, the Washington State Narcotics Officer's Association, the City of Kirkland, and from other local city, county, and state police agencies. I have been involved in more than 250 narcotics investigations, including cases related to the possession, sale, and distribution of heroin, cocaine, methamphetamine, LSD, and marijuana, as well as the manufacturing of marijuana. I have assisted in numerous other narcotics investigations in patrol and with the Eastside Narcotics Task Force, which include the manufacture of Marijuana. I have participated in more than 200 controlled substance related arrests, and I have participated in the service of several search warrants for controlled substances, PSP, Murder, Robbery, and Burglary. I am familiar with how narcotics, including marijuana, are normally produced. I have conversed with drug users and drug dealers about narcotics, both as a uniformed police officer and as an undercover narcotics detective. I have verified information received from drug users and dealers through independent sources such as police reports, other officers, confidential/reliable informants, and from evidence gathered during searches. Thus, I am familiar with the methods of drug users and dealers.

The above-described training included the identification of various controlled substances, the field testing of those controlled substances, the proper terminology that is used to identify and make reference to certain controlled substances, manufacturing/distribution of controlled substances, and techniques for conducting a controlled substance investigation.

I have been on the service of at least 50 marijuana grow search warrants/consent searches and have made over 100 marijuana related arrests. I am familiar with the smell of both growing and processed marijuana from these arrests and warrant services, as well as from training classes in which processed marijuana was introduced to familiarize officers with the odor.

I have been on the service of a number of marijuana search warrants/consent searches and have made a number of cocaine arrests while in patrol and as a narcotics investigator. I am familiar with the smell and appearance of marijuana from these arrests and warrant services as well as from training classes in which cocaine was introduced to familiarize officers with odor and appearance.

Based on my training, experience, participation in narcotics investigations, and undercover operations, and based on my conversations with other experienced narcotics officers with whom I associate, I know that drug traffickers maintain records, books, notes, ledgers, computer disks, money orders, and other papers relating to the transportation, ordering, possession, sale, and distribution of illegal drugs. The aforementioned documents are usually maintained in the suspect's residence, including its outbuildings and vehicles.

It is common for individuals involved in the manufacturing and distribution of illegal controlled substances, such as marijuana, to conceal contraband, proceeds of drug sales, and records of drug transactions on their persons, and in secure locations within their residences, outbuildings, and/or businesses, including bank safe deposit boxes and automobiles for ready access and concealment from law enforcement detection.

Individuals involved in the manufacturing and distribution of illegal drugs, such as marijuana, commonly maintain addresses and telephone numbers in books, ledgers, computer disks, or on

papers which reflect names, numbers, and addresses of associates in their drug trafficking organization.

Individuals involved in the manufacturing and distribution of illegal controlled substances, such as marijuana, commonly keep paraphernalia for weighing, packaging, and distributing their illegal drugs. This paraphernalia includes, but is not limited to: scales, plastic bags, containers, pipes, as well as weapons for the protection of their illegal enterprise.

Individuals involved in the manufacturing and distribution of illegal drugs, such as marijuana, often keep these items on their person, and throughout their residence, including outbuildings, curtilage, and vehicles. These individuals almost always maintain amounts of money, financial instruments, jewelry, vehicles, and other valuables which are proceeds of drug transactions, and/or are intended to be used to facilitate drug transactions. All such items, in addition to being evidence of drug trafficking violations, are forfeitable under the law.

I also know that individuals involved in the manufacturing and distribution of illegal drugs, such as marijuana, often take or cause to be taken photographs and video recordings of themselves, their associates, their property, and their illegal product. Drug traffickers commonly maintain addresses or telephone numbers in books or papers, which reflect names, and addresses, or telephone numbers of their associates in the trafficking organization.

Controlled substance cultivators, manufacturers, processors, and traffickers, often use cellular telephones, telephonic pagers, telephone answering machines, voice mail systems and even computer generated electronic messaging systems ("E-mail") to communicate with suppliers, customers, and accomplices. These persons often "code" their messages to transmit information securely and avoid law enforcement detection. For instance, drug dealers often assign "codes" to their customers who can then "page" the dealer and enter their coded identity and/or a particular coded drug request. Telephonic pagers, answering machines, voice mail systems, computer systems, and some cellular telephones, store completed messages which officers can retrieve upon seizing a particular item. This stored information can be retrieved without intercepting the prior transmission.

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The knowledge I have acquired pertaining to marijuana grow operations, though training and experience, as well as the corporate knowledge and experience of other fellow law enforcement officers, indicate that certain factors are endemic to those types of crimes:

- Typically, the person who operates the growing operation is a solitary individual, suspicious of persons who might be interested in his/her activities.
- Marijuana growers must maintain on hand large amounts of cash in order to maintain and finance their on-going illicit business. They also often have firearms and other weapons for protection of their proceeds and crops.
- Marijuana growers may maintain books, records, receipts, notes, ledgers, airline tickets, money orders and other papers/documents related to growing, transportation, sale and distribution, or ordering of marijuana.

- It is common for marijuana growers to secret contraband, proceeds of sales and records of transactions in secure locations within their residences for ready access, and to conceal them from police.
- Persons involved in large scale marijuana growing operations often conceal within their residence caches of drugs, large amounts of cash, financial instruments, precious metals, jewelry, other items of value, and/or proceeds of drug transactions; and evidence of financial transactions relating to obtaining, transferring, secreting, or spending large sums of money made from engaging in drug trafficking activities.
- Marijuana growers frequently take, or cause to be taken, photographs of themselves, their associates, their property and their illegal product.
- Marijuana growers commonly maintain addresses and/or telephone numbers for their criminal associates in the trafficking enterprise.
- Very often, marijuana growers utilize a location that is remote or hidden from view, or go to a great deal of trouble to disguise a marijuana grow, in order to conceal their activities from the public and the police.
- Some of the ways used to conceal their activities are (but not limited to) fencing their property; using guard dogs; building several growing rooms within a large room, garage, shed or barn; placing some type of container or building underground to house the grow operation; covering windows so that no light escapes the growing area; using filtering systems to mask the strong odor of growing marijuana; and diverting power.
- Indoor grow requires the consumption of a large amount of electricity to operate lights, timers, and fans. This equipment can produce distinctive "buzzing" or humming noises when in operation.
- The operation of halide and sodium lights normally used to stimulate plant growth creates a great deal of heat and bright white-blue light.
- Indoor marijuana grow operations require a significant investment in equipment, potting soils, and fertilizer.
- Marijuana grow operations continue in operation for years, crop after crop, until the intervention of law enforcement.

**I have also learned from these investigations that rarely is finished marijuana product, packaging equipment and materials, or bulk cash and proceeds from sales of the marijuana recovered at the residence where the marijuana is grown. My experience and training also lead me to believe that there are locations outside of the grow houses that are used for processing and sales of the marijuana product, storage of proceeds, and housing documents pertaining to the organization that deals with the marijuana. These other locations tend to be where the grower resides. In this case, Bakken's apartment residence located at 526 Yale Avenue North, apartment number 606 in the City of Seattle, County of King, state of Washington.**

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INVESTIGATION— INTERVIEWS OF CI

In July of 2007, I was contacted by Kirkland Police Officer Dave Quiggle regarding a marijuana manufacturer operating out of the Sammamish area. Officer Quiggle advised me that he had received the information from a subject who had been arrested by Kirkland Police Officers for various charges. Officer Quiggle advised that the suspect wished to provide information to the Police for favorable consideration on his / her pending charges. Officer Quiggle advised that the suspect advised him that he / she has known a subject by the name of Christopher Thomas Bakken for several years, and that Bakken operates a marijuana grow in a residence in Issaquah, and sells large amounts of cocaine from his apartment located in Seattle. The suspect further advised that Bakken has a show quality 1968 Camaro that is stored at a location unknown to the suspect.

The suspect directed Officer Quiggle and Kirkland Officer Brown to the address of 22908 SE 37<sup>th</sup> Street, Sammamish, Washington, County of King. Bakken's Acura SUV bearing Washington license 371UIQ was parked in the driveway of the residence unoccupied. The suspect advised the Officers that there was a marijuana growing operation in the entire bottom floor of the residence. The suspect advised that no one lives full time in the residence, that Bakken pays someone unknown to the suspect to tend to the marijuana growing operation. The suspect further advised that Bakken has a friend who works at Puget Sound Energy, and that this friend had placed an electrical diversion in the house, to hide the fact that the residence was using excess electrical power to operate all of the growing equipment. An electrical diversion bypasses the electricity from being recorded on the exterior meter of the residence. The suspect further advised that Bakken keeps a white Ford pickup truck parked at the residence most of the time, so the residence appears to be occupied. The truck was not at the residence at the time the suspect pointed it out to Officers Quiggle and Brown.

At this time, the suspect directed Officers Quiggle and Brown to Bakken's apartment residence located at 526 Yale Avenue North, apartment number 606, in the city of Seattle. The suspect advised the Officers that Bakken lives at the apartment with his live in girlfriend Megan Garbin. The suspect further advised that Bakken always has a large amount of cocaine at the apartment, and sells cocaine from the apartment. Officer Quiggle advised that the apartment complex is a secure facility, which appeared to require a key card or master key to enter the lobby and access the apartments.

On 071707, I queried the King County Metro database for Bakken's residence located in Issaquah. The records indicated that Bakken bought the residence on 022806 for \$585,000.00. There was no other buyer listed for the property. An Accurint search indicated that Bakken has resided at 526 Yale Avenue North apartment 606 in Seattle since February of 2004. A third address was located that was associated with Bakken. The address is 2020 13<sup>th</sup> Avenue West in the city of Seattle. Accurint indicated that Bakken had possibly lived at this address from February 1991 to February 2004. A Department of licensing query of Bakken listed his current address at the Yale Avenue address. A Department of Licensing query for all vehicles registered to Bakken located the following:

ORIGINAL

2005 Acura bearing Washington license 371UIQ, registered to the Yale Avenue address.  
1990 Ford pickup truck bearing Washington license A91765N, registered to the Yale Avenue address.

1968 Chevrolet Camaro bearing Washington license CV18401 registered to the 13th Avenue West address.

On 071907, I contacted the Department of Employment Security to determine if Bakken was reporting income or a current job. The Department of Employment Security advised that " No wage records found with desired information ". The request had been for calendar year 2000 through the present.

On 071907, myself and King County Detective Mark Christianson went to Bakken's house located at 22908 SE 37<sup>th</sup> Street Sammamish, in an attempt to get a " sniff " of growing marijuana. At approximately 1430 hours, we arrived. I saw that Bakken's 1990 Ford pickup bearing Washington license A91765N was parked in the driveway. Detective Christianson and I walked directly up the driveway of the residence towards the front steps leading to the door. As I walked up the first of several steps leading to the front door, I could immediately smell what I recognized to be the distinct odor of growing marijuana. I asked Detective Christianson if he smelled anything and he replied " I smell marijuana". I then leaned down, and smelled a lower story window next the left side of the front door, and could smell the distinct odor of growing marijuana. Detective Christianson and I then left the residence via the walkway and driveway that we had approached it from.

On 072207, at approximately 1330 hours, I went to 22908 SE 37<sup>th</sup> Street in Sammamish. I observed Bakken's Acura bearing Washington license 371UIQ parked unoccupied in the driveway of the residence.

On 072407, myself and Detective Christianson went to Bakken's apartment at 526 Yale Avenue North. We spoke with management, who wished to remain anonymous regarding our conversation. I advised management that I was applying for a search warrant for an apartment in their complex, and asked for assistance in gaining entry to the building if I was granted the search warrant. The manager asked me if I could tell him / her what apartment we were going to be applying for a search warrant for. I advised that I could not disclose that information. The manager stated " can I guess which apartment?" I said sure to which the manager replied " number 606 " I asked the manager why he / she had guessed that apartment. The manager advised that he / she has received several complaints about the strong odor of marijuana coming from the apartment. The manager stated that he / she went to the apartment, and she stated that she could " easily smell marijuana coming from the apartment." I asked the manager how he / she was familiar with the smell of marijuana. The manager replied " I know what marijuana smells like." I asked the manager if it smelled like burning marijuana. The manager stated that it smelled " skunky like fresh marijuana." The manager advised that he / she has notified the Seattle Police Department about the smell on several occasions. I asked the manager if Seattle PD had responded to the apartment. The manager stated that he / she was unsure.

Detective Christianson and I went to apartment number 606, in an attempt to get a " sniff " of marijuana. We did not get a sniff at this time. After leaving Bakken's apartment hallway, we

went to the parking garage and observed Bakken's Acura bearing Washington license 371UIQ parked in the secure parking garage of the apartment complex.

The following is Detective Christianson's training and experience:

My name is Mark Christianson, and I have been employed as a Deputy the King County Sheriff's Office since May of 1988. I was assigned to the precinct #4 Pro-active Unit from September 1992 to October 1999. The primary duties of the Pro-active Unit are street level narcotics and vice. From December 1999 to January 2001 I was assigned to the King County Sheriff's Office Drug Enforcement Unit. The primary focus of that Unit was mid to upper level drug dealers. I am currently assigned to the Eastside Narcotics Task Force, a multi agency task force focusing on drug dealers/traffickers. My training consists of Precinct Level classes taught by detectives from our Drug Enforcement Unit, as well as a drug investigator class put on by the National Institute for Drug Enforcement Training. I have also successfully completed the asset forfeiture class offered by the Criminal Justice Training Commission and taken a class put on by the King County Prosecutors office. Further, I have taken the Criminal Investigations class offered by the Criminal Justus training commission. This class devoted a portion of the training to drug investigations.

I have attended the California Narcotics Associations' four day seminar covering various aspects of narcotics investigations, I have also attended a one day seminar on Rave/Club drugs put on by the Institute for Intergovernmental Research. I am currently a member of the King County Clandestine Lab Team, the focus of that team is primarily methamphetamine labs. In addition, I have been involved in the investigation of hundreds of narcotic related cases. Further, I have been involved in approximately 250 narcotics search warrants, involving cocaine, marijuana, heroin, and crack cocaine. I have also been trained in the use of narcotics field test kits.

. I am familiar with the smell of both growing and processed marijuana from these arrests and warrant services, as well as from training classes in which processed marijuana was introduced to familiarize officers with the odor.

I have been on the service of a number of marijuana search warrants/consent searches and have made a number of cocaine arrests while in patrol and as a narcotics investigator. I am familiar with the smell and appearance of marijuana from these arrests and warrant services as well as from training classes in which cocaine was introduced to familiarize officers with odor and appearance.

Based on my training, experience, participation in narcotics investigations, and undercover operations, and based on my conversations with other experienced narcotics officers with whom I associate, I know that drug traffickers maintain records, books, notes, ledgers, computer disks, money orders, and other papers relating to the transportation, ordering, possession, sale, and distribution of illegal drugs. The aforementioned documents are usually maintained in the suspect's residence, including its outbuildings and vehicles.

It is common for individuals involved in the manufacturing and distribution of illegal controlled substances, such as marijuana, to conceal contraband, proceeds of drug sales, and records of drug transactions on their persons, and in secure locations within their residences, outbuildings, and/or businesses, including bank safe deposit boxes and automobiles for ready access and concealment from law enforcement detection.

Individuals involved in the manufacturing and distribution of illegal drugs, such as marijuana, commonly maintain addresses and telephone numbers in books, ledgers, computer disks, or on

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papers which reflect names, numbers, and addresses of associates in their drug trafficking organization.

Individuals involved in the manufacturing and distribution of illegal controlled substances, such as marijuana, commonly keep paraphernalia for weighing, packaging, and distributing their illegal drugs. This paraphernalia includes, but is not limited to: scales, plastic bags, containers, pipes, as well as weapons for the protection of their illegal enterprise.

Individuals involved in the manufacturing and distribution of illegal drugs, such as marijuana, often keep these items on their person, and throughout their residence, including outbuildings, curtilage, and vehicles. These individuals almost always maintain amounts of money, financial instruments, jewelry, vehicles, and other valuables which are proceeds of drug transactions, and/or are intended to be used to facilitate drug transactions. All such items, in addition to being evidence of drug trafficking violations, are forfeitable under the law.

I also know that individuals involved in the manufacturing and distribution of illegal drugs, such as marijuana, often take or cause to be taken photographs and video recordings of themselves, their associates, their property, and their illegal product. Drug traffickers commonly maintain addresses or telephone numbers in books or papers, which reflect names, and addresses, or telephone numbers of their associates in the trafficking organization.

Controlled substance cultivators, manufacturers, processors, and traffickers, often use cellular telephones, telephonic pagers, telephone answering machines, voice mail systems and even computer generated electronic messaging systems ("E-mail") to communicate with suppliers, customers, and accomplices. These persons often "code" their messages to transmit information securely and avoid law enforcement detection. For instance, drug dealers often assign "codes" to their customers who can then "page" the dealer and enter their coded identity and/or a particular coded drug request. Telephonic pagers, answering machines, voice mail systems, computer systems, and some cellular telephones, store completed messages which officers can retrieve upon seizing a particular item. This stored information can be retrieved without intercepting the prior transmission.

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The knowledge I have acquired pertaining to marijuana grow operations, though training and experience, as well as the corporate knowledge and experience of other fellow law enforcement officers, indicate that certain factors are endemic to those types of crimes:

- Typically, the person who operates the growing operation is a solitary individual, suspicious of persons who might be interested in his/her activities.
- Marijuana growers must maintain on hand large amounts of cash in order to maintain and finance their on-going illicit business. They also often have firearms and other weapons for protection of their proceeds and crops.

- Marijuana growers may maintain books, records, receipts, notes, ledgers, airline tickets, money orders and other papers/documents related to growing, transportation, sale and distribution, or ordering of marijuana.
- It is common for marijuana growers to secret contraband, proceeds of sales and records of transactions in secure locations within their residences for ready access, and to conceal them from police.
- Persons involved in large scale marijuana growing operations often conceal within their residence caches of drugs, large amounts of cash, financial instruments, precious metals, jewelry, other items of value, and/or proceeds of drug transactions; and evidence of financial transactions relating to obtaining, transferring, secreting, or spending large sums of money made from engaging in drug trafficking activities.
- Marijuana growers frequently take, or cause to be taken, photographs of themselves, their associates, their property and their illegal product.
- Marijuana growers commonly maintain addresses and/or telephone numbers for their criminal associates in the trafficking enterprise.
- Very often, marijuana growers utilize a location that is remote or hidden from view, or go to a great deal of trouble to disguise a marijuana grow, in order to conceal their activities from the public and the police.
- Some of the ways used to conceal their activities are (but not limited to) fencing their property; using guard dogs; building several growing rooms within a large room, garage, shed or barn; placing some type of container or building underground to house the grow operation; covering windows so that no light escapes the growing area; using filtering systems to mask the strong odor of growing marijuana; and diverting power.
- Indoor grow requires the consumption of a large amount of electricity to operate lights, timers, and fans. This equipment can produce distinctive "buzzing" or humming noises when in operation.
- The operation of halide and sodium lights normally used to stimulate plant growth creates a great deal of heat and bright white-blue light.
- Indoor marijuana grow operations require a significant investment in equipment, potting soils, and fertilizer.
- Marijuana grow operations continue in operation for years, crop after crop, until the intervention of law enforcement.

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**Based on the foregoing facts, it is my belief that the violation of V.U.C.S.A RCW 69.50.401; Manufacturing of Marijuana, Possession of Marijuana, and Possession of Marijuana with Intent to Deliver is currently occurring at:**

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**Premises: 22908 SE 37<sup>th</sup> Street, Sammamish, County of King, and State of Washington 98075.**

**This appears to be a multi-story residence. The residence is light tan in color with a dark tan trim. The residence has a two door front doorway that is red in color. The doors have glass inserts in them. The residence has the numbers 22908 in a frame next to one of the two garage doors that are on front of the residence. The residence also has a brick multi-story chimney on the front of the residence.**

**Premises: The apartment residence located at 526 Yale Avenue North, apartment number 606, City of Seattle, County of King, State of Washington.**

**The residence is located in the Union Bay apartment complex on the Southeast corner of Mercer and Yale Avenue North. The exterior of the apartment complex is cream and green in color and has what appears to be white, vinyl windows. The apartment complex is a secured building, accessed by two glass doors that face Yale Avenue North. The front door to apartment number 606 is light purple in color with an approximately 3 inch by 3 inch green number placard on the front door. The numbers 606 are on the placard in the color gold.**

**This is including all ground storage areas, containers, surrounding grounds, trash areas, garages, and outbuildings assigned to or in part of the residences at these locations.**

  
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**AFFIANT**

KIRKLAND PD DETECTIVE D-16 / 28,  
**AGENCY, TITLE, PERSONNEL NUMBER**

Subscribed and Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
**JUDGE**

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

CHRISTOPHER T. BAKKEN, )  
 )  
Appellant, )  
 ) NO. 62415-6-I  
vs. )  
 ) CERTIFICATE OF SERVICE  
STATE OF WASHINGTON, ) BY MAILING  
 )  
Respondent. )  
 )  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)

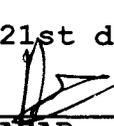
I, Antonio Salazar, am the attorney for the appellant.

I certify that on AUGUST 21, 2009, I served a copy of Brief of Appellant on the parties named herein by depositing in the United States mail, first class, postage prepaid, an envelope containing a true copy of said document.

King County Prosecuting Attorney  
Appellate Division  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104

Christopher Bakken  
2211 South Starlake Road #21-304  
Federal Way, Washington 98003

Dated this 21st day of August, 2009.

  
\_\_\_\_\_  
ANTONIO SALAZAR

FILED  
2009 AUG 21 AM 8:39  
COURT OF APPELLATES  
STATE OF WASHINGTON