

NO. 33647-2-II

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

STATE OF WASHINGTON, Respondent, v. REYES RIOS RUIZ and JESUS DAVID BUELNA VALDEZ, Appellant.
FROM THE SUPERIOR COURT FOR CLARK COUNTY THE HONORABLE JOHN F. NICHOLS CLARK COUNTY SUPERIOR COURT CAUSE NO. 05-1-01065-7 and 05-1-01064-9
BRIEF OF RESPONDENT

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STATE OF WASHINGTON
COURT APPEALS
JUN 11 2006
BY: [Signature]

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TABLE OF CONTENTS

I. STATEMENT OF THE CASE1

II. RESPONSE TO ASSIGNMENTS OF ERROR DEALING WITH THE
SEARCH INCIDENT TO ARRESTS IN THIS CASE2

III. RESPONSE TO ASSIGNMENT OF ERROR NO. 4 (RUIZ ONLY).....16

IV. CONCLUSION.....17

TABLE OF AUTHORITIES

Cases

<u>Boursaw</u> , 94 Wn.App., <u>supra</u>	14
<u>Johnson</u> , 128 Wn.2d at 453 (quoting 3 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment sec. 7.1(c) , at 16-17 (2d ed. 1987)).....	7
<u>Johnston</u> , <u>supra</u> at 288.....	6
<u>New York v. Belton</u> , 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981)	2
<u>Smith</u> , 119 Wn.2d at 684.....	13
<u>State v. Boursaw</u> , 94 Wn.App. 629, 976 P.2d 130 (1999).....	4, 6
<u>State v. Bradley</u> , 105 Wn.App. 30, 18 P.3d 602 (2001)	3
<u>State v. Chelly</u> , 94 Wn.App. 254, 970 P.2d 376 (1999).....	4
<u>State v. Davis</u> , 79 Wn.App. 355, 901 P.2d 1094 (1995).....	4
<u>State v. Johnson</u> , 128 Wn.2d 431, 447, 909 P.2d 293 (1996)	2
<u>State v. Johnson</u> , 128 Wn.2d 431, 909 P.2d 293 (1995)	4
<u>State v. Johnson</u> , 65 Wn.App. 716, 829 P.2d 796 (1992).....	4
<u>State v. Johnston</u> , 107 Wn.App. 280, 28 P.3d 775 (2001).....	3
<u>State v. Mitzlaff</u> , 80 Wn.App. 184, 907 P.2d 328 (1995)	5
<u>State v. Perea</u> , 85 Wn.App. 339, 932 P.2d 1258 (1997).....	5

<u>State v. Porter</u> , 102 Wn.App. 327, 6 P.3d 1245 (2000).....	5
<u>State v. Smith</u> , 119 Wn.2d 675, 681, 835 P.2d 1025 (1992).....	12
<u>State v. Stroud</u> , 106 Wn.2d 144, 720 P.2d 436 (1986)	3
<u>State v. Vrieling</u> , 97 Wn.App. 152, 983 P.2d 1150 (1999).....	4
<u>State v. Whalen</u> , 131 Wn.App. 58, 126 P.3d 55 (2005).....	16
<u>State v. Wheless</u> , 103 Wn.App. 749, 14 P.3d 184 (2000).....	5
<u>Stroud</u> , <i>supra</i> at 152).....	3
<u>United States v. Chadwick</u> , 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977)	13, 14
<u>United States v. Fleming</u> , 677 F.2d 602, 607, (7 th Circuit 1982)....	12
<u>United States v. Turner</u> , 926 F.2d 883, 887 (9 th Circuit 1991).....	12
<u>United States v. Vasey</u> , 834 F.2d 782 (9 th Circuit, 1987)	13

I. **STATEMENT OF THE CASE**

These two appeals have been consolidated because of the nature of the allegations and the fact that Buelna Valdez was the driver and Reyes Ruiz was the passenger in a vehicle that was stopped by law enforcement.

Four documents that were entered completely set out the nature of the facts in this particular case. Those documents are attached hereto and by this reference incorporated herein. The documents are as follows:

Findings of Fact and Conclusions of Law on CrR 3.5/3.6 Hearing (Ruiz, CP 34; Valdez, CP 37).

Findings of Fact and Conclusions of Law on Non-Jury Trial (Ruiz and Valdez, CP 48).

Stipulated Facts on Non-Jury Trial (Ruiz, CP 45; Valdez, CP 55).

Stipulation Regarding Evidence on Non-Jury Trial (Ruiz, CP 43; Valdez, CP 46).

The State submits that these documents, and their references, fully set forth the facts necessary for determination of the issues raised on these consolidated appeals.

II. RESPONSE TO ASSIGNMENTS OF ERROR DEALING WITH THE SEARCH INCIDENT TO ARRESTS IN THIS CASE

For defendant Ruiz, this is Assignment of Error No. 3 and for defendant Valdez, this is Assignment of Error Issues No. 1 and 2.

No one is disputing the accuracy of the Findings of Fact that have been entered in these cases. The defendant Valdez has assigned as error Conclusions of Law that were reached from those Findings of Facts, but has not contested the actual findings themselves. In our case, the driver, Valdez, was arrested on a lawful warrant after his vehicle had been stopped and it was determined that he did not have a driver's license. Incident to a valid arrest, law enforcement officers may conduct a warrantless search of the arrestee's person and the passenger compartment of the vehicle that he is in at the time of the arrest. State v. Johnson, 128 Wn.2d 431, 447, 909 P.2d 293 (1996).

In New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981) the United States Supreme Court held as a "bright line" rule that when an arrestee is occupying the passenger compartment of a car at the time of arrest, he might grab a weapon

or destroy evidence located anywhere within the entire compartment. Thus, the police may search the entire compartment incident to his arrest. State v. Stroud, 106 Wn.2d 144, 720 P.2d 436 (1986) followed the Belton decision except as it relates to locked containers. Stroud explained that the extent of the search of the passenger compartment of a suspect's vehicle deals with the areas that are within the suspect's immediate control at the time of or immediately prior to the suspect being arrested. Stroud, supra at 152).

Division II in State v. Johnston, 107 Wn.App. 280, 28 P.3d 775 (2001) gave examples of what was meant by some of the terminology used in Stroud and the cases that had followed it in our state. The central issue was whether or not the driver, or passenger, had "immediate control" of the compartment. (Johnston at 285-286). The Johnston case provided the following examples:

"Three cases, including Belton and Stroud, exemplify when an arrestee has ready access to a passenger compartment. In Belton, the arrestees were inside the passenger compartment when they were arrested. In Stroud, one of the arrestees was standing 'in the swing of the open passenger door' and the other arrestee was 'a couple of feet away'. In State v. Bradley, 105 Wn.App. 30, 18 P.3d 602 (2001), the arrestee was leaning into his car as officers drove up. He walked away, leaving the driver's door 'somewhat ajar'. He was arrested 10-12

feet away and would not go down to the ground when told to do that. At the moment of arrest in all three cases, the arrestee had ready access to, and thus was in 'immediate control' of, the passenger compartment of his vehicle." Johnston at p. 286.

In the footnotes concerning the preceding quote, the court gives further examples of appropriate arrests and searches. State v. Vrieling, 97 Wn.App. 152, 983 P.2d 1150 (1999), the defendant had ready access to the living quarters of a motor home from the passenger compartment. State v. Johnson, 128 Wn.2d 431, 909 P.2d 293 (1995), the defendant had ready access to the "sleeper in the cab of the tractor-trailer". State v. Boursaw, 94 Wn.App. 629, 976 P.2d 130 (1999), the area beneath the ashtray (which had to be removed) was within the reach of the occupants of the automobile. State v. Chelly, 94 Wn.App. 254, 970 P.2d 376 (1999), the defendant had ready access to the passenger compartment where the drugs and a firearm were found. State v. Davis, 79 Wn.App. 355, 901 P.2d 1094 (1995), the defendant had ready access to an unlocked cooler which was located in the cargo area of a van. State v. Johnson, 65 Wn.App. 716, 829 P.2d 796 (1992), the defendant had ready access to a jacket, containing cocaine in the backseat of a car.

Division II in Johnston then goes on to describe situations where the arrestee does not have “immediate control” of the passenger compartment. In State v. Wheless, 103 Wn.App. 749, 14 P.3d 184 (2000), the arrestee had parked his pickup truck 50-75 feet away from a tavern. The defendant had gone into the tavern where he was arrested. Because he lacked access to the truck’s passenger compartment at the time of his arrest, officers could not search that compartment incident to his arrest. State v. Mitzlaff, 80 Wn.App. 184, 907 P.2d 328 (1995), it was an improper search where the officers searched the engine compartment of an automobile because the engine area “is not accessible without exiting the vehicle”, and not “within the arrestee’s immediate control”. Mitzlaff, at 188. In State v. Porter, 102 Wn.App. 327, 6 P.3d 1245 (2000), the arrestee was walking his dog about 300 feet from where his van was parked. She was arrested on an outstanding warrant and taken back to where his van was parked. Because she lacked access to the van’s passenger compartment at the time of the arrest, officers could not search that compartment incident to her arrest. In State v. Perea, 85 Wn.App. 339, 932 P.2d 1258 (1997), the arrestee had exited and locked his vehicle. He was then arrested a few feet away. Because he did not have

access to the car's passenger compartment at the time of the arrest, the officers could not search that compartment incident to his arrest.

Division II in analyzing these various situations, looked at the facts of the case that they were deciding and ruled as follows:

“In the present case, Johnston and Welling got out of their car, closed its doors, and went into the store. When they left the store after an unknown period of time, they walked past the car, apparently putting the two officers between them and it. They were arrested ‘in the immediate vicinity’ of their car, but the record did not show how far away they were. It follows that the record does not show ready access to, or ‘immediate control’ of, the car’s passenger compartment; that the facts needed to invoke the search—incident exception have not been proved; and that the search—incident exception does not justify the search of the Silver Fox.” Johnston, supra at 288.

Both defendants, citing language in State v. Boursaw, 94 Wn.App. 629, 976 P.2d 130 (1999) argue that in a search of a vehicle incident to arrest of an occupant, an officer may not search the entire passenger compartment, but only that portion of the passenger compartment which is within the actual physical reach of the arrestee at the moment of arrest or immediately prior thereto, which has been referred to as the “wingspan” or “lunge area”. This argument is based on a misapprehension of the law as applied in

Boursaw. The appellate court in Boursaw, itself, actually answers a similar contention as follows:

“The scope of a valid search incident to arrest extends to those objects in the control of the arrestee at the time of arrest. See, Smith, 119 Wn.2d at 681 (determining that a fanny pack in the control of the suspect immediately prior to the arrest, but in control of the officer for 17 minutes before the search was within the scope of a search incident to arrest). “An object is . . . within the control of an arrestee for the purposes of a search incident to an arrest as long as the object was within the arrestee’s reach immediately prior to, or at the moment of, the arrest.” 119 Wn.2d at 682-683. Stroud explicitly allows the search of a passenger compartment of an automobile incident to the arrest of an occupant. 106 Wn.2d at 152. The Washington Supreme Court noted the rule suggested by Professor LaFave for automobiles: ‘a passenger compartment includes all space reachable without exiting the vehicle, without regard to the likelihood in the particular case that such a reaching was possible.’ Johnson, 128 Wn.2d at 453 (quoting 3 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* sec. 7.1(c) , at 16-17 (2d ed. 1987)). “ Boursaw, p. 635.

Although the drugs found in Boursaw happened to be found hidden behind an ashtray in the dashboard in the front of the vehicle, the language noted above makes clear that Boursaw does not stand for the proposition that the area which could be lawfully searched was limited to the area within actual physical reach of an arrested driver from his position in the driver’s seat. In Boursaw,

the officers could have lawfully searched the rear seat area which could not be reached by a person while seated in the driver's seat.

Under Stroud, the scope of a search of a vehicle incident to arrest of an occupant is defined by the entire passenger compartment and any locked containers within it, not by a subjective determination of whether the arrestee might actually have been able to reach the area in a given case.

In our case, on May 10, 2005, at approximately 9:45 p.m. Deputy Tom Dennison of the Clark County Sheriff's Department observed a 1995 Chevy Lumina minivan turning northbound onto NE 15th Avenue from the parking lot of an apartment complex. Deputy Dennison noticed that the driver's side headlight on the vehicle was not working. Deputy Dennison stopped the vehicle, which bore Idaho license plates, and contacted the driver. The driver produced a Washington State Identification which identified him as Jesus David Buelna Valdez.

Deputy Dennison asked Valdez if he had a driver's license. Valdez replied that he did not. Deputy Dennison explained why he had stopped Valdez and asked where he was coming from. Valdez replied "Fourth Plain." When asked, Valdez did not give a specific address. Since Dennison had just seen the vehicle leave the

apartment parking lot, he asked again where Valdez was coming from. This time Valdez replied "Las Vegas."

Deputy Dennison returned to his vehicle and contacted dispatch for a records check of the Defendant using the information on Valdez' identification card. He was notified by dispatch that there was a felony warrant for a person with that name. At that time, Deputy Boyle arrived at the scene.

In an effort to confirm whether Valdez was the wanted person, Deputy Dennison obtained from dispatch a social security number and a list of several tattoos listed on the warrant for the wanted person. The social security matched that on the identification, and the listed tattoos also matched Valdez. At 8:05 p.m., Deputy Dennison placed Valdez under arrest for the outstanding warrant, handcuffed him and put him in the back of his patrol car. He told Valdez that he was going to search the vehicle.

Deputy Dennison had the male passenger in the vehicle get out. He began searching the passenger compartment of the vehicle. He located some plastic panels under the dash which were loose and appeared to have been tampered with by the removal of screws and plastic fasteners. The presence of the loose panels together with Valdez' inconsistent statements about

where he was coming from prompted Deputy Dennison to suspect that drugs may be concealed in the vehicle, so he asked that a narcotics detection dog be sent to the scene. Deputy Ellithorpe and canine Eiko arrived at approximately 8:20 p.m.

The vehicle was a minivan containing three rows of seats. Two front bucket style seats with a walk space between them allowed access to the rear passenger area. In the rear passenger area the second row of seats consisted of three seats and behind that two additional seats abreast. All of the seats in the rear passenger area had fold down seat backs. There were blankets, clothing, and empty drink containers and food wrappers strewn about the interior of the vehicle.

Deputy Ellithorpe assessed the vehicle and noted the loose dash panels. He also noted that the door panels appeared to have also been tampered with. Eiko is a certified narcotics detection dog. Ellithorpe and Eiko conducted an exterior and interior check of the vehicle. Eiko alerted on the inside wall on the driver's side of the rear passenger compartment, next to the seat. Deputy Ellithorpe looked at the area and noticed a loose plastic cup holder panel which appeared to have been tampered with. He lifted the plastic cup holder and observed a sheet of vehicle insulation that

appeared to have been loosely set in the opening. He lifted the sheet of insulation and observed two packages, each approximately 4" wide, 3" tall and 8" long. The packages appeared to be vacuum sealed, wrapped in clear plastic wrap, with a strip of "Velcro" tape attached. Deputy Ellithorpe felt the packages and believed the contents to be a crystalline substance.

The officers removed the packages, and Dennison cut in to a package. The packages were wrapped in multiple layers of plastic wrap, vacuum packaging, carbon paper, and a layer of axle grease. A field test indicated that the contents contained methamphetamine.

Deputy Dennison then arrested the passenger, who was identified as defendant Reyes Rios Ruiz. Both Ruiz and Valdez were transported to the precinct station. Deputy Dennison seized the vehicle and had it sealed and towed to a storage yard. He obtained a search warrant to conduct a further search of the vehicle, which was executed on May 12, 2005. In that search, an insurance card and Idaho vehicle registration in the name of one Jose Gonzales were found in the front of the vehicle, and two live rounds of ammunition and one spent casing were also found. No additional drugs or drug paraphernalia were found in the vehicle.

The two packages of crystalline substance were sent to the Washington State Patrol Crime lab where they were tested and weighed by Forensic Scientist Jason Dunn. One of the packages contained 449 grams of methamphetamine, the other 448 grams (1 lb.= 454 grams).

Search incident to arrest is valid under the Fourth Amendment if:

1. The object searched was within the arrestee's control when he was arrested; and
2. If the events occurring after the arrest but before the search did not render the search unreasonable.

State v. Smith, 119 Wn.2d 675, 681, 835 P.2d 1025 (1992);
United States v. Turner, 926 F.2d 883, 887 (9th Circuit 1991);
United States v. Fleming, 677 F.2d 602, 607, (7th Circuit 1982).

The second aspect of this is that the events occurring at the time of the arrest but before the search did not render the search unreasonable. The question there is the amount of time and what was being done during the period between arrest and search. The Findings of Fact that were entered in this matter demonstrate a delay of approximately 17 minutes between the time of the arrest and the time that the police dog arrives to further determine the status of the vehicle. Courts have held that a significant delay

between the arrest and the search renders the search unreasonable because it is no longer contemporaneous with the arrest. So for example, in United States v. Chadwick, 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977), it was held that a delay of more than an hour was too long. Likewise in United States v. Vasey, 834 F.2d 782 (9th Circuit, 1987), it was found that a delay of 30 to 45 minutes was unreasonable.

This question of the timing of the search after arrest is very fact specific. The State submits that it largely depends on what's being done during that particular period of time. For example, in the Vasey case, the police had stopped the defendant for speeding and then arrested him pursuant to a warrant . He refused the officer's request to search his car and the officers went ahead with a physical impounding of the car and then, following local police procedures entered it to inventory the contents. This took approximately 30 to 45 minutes after the arrest and the 9th Circuit considered that this was not contemporaneous with the arrest because of the physical impounding of the car (Vasey, 834 F.2d at 785-787). A delay caused by unnecessary, time consuming activities unrelated to the securing of the suspect and the scene may be unreasonable. Smith, 119 Wn.2d at 684. Another

example of this was the United States v. Chadwick, supra case where the agents had found a footlocker and gained control of the locker and approximately an hour after they had already arrested and taken away the defendant, decided to search it as incident to the arrest. The Supreme Court said that this was unreasonable under the circumstances.

Our case is similar to Boursaw, 94 Wn.App., supra where the police called a canine unit after they had already started the search and found drug paraphernalia. The court reasoned that the delay in the dog arriving at the scene was not unreasonable under the circumstances of that particular case.

“The State’s reasoning is persuasive. We will not preclude police officers from requesting assistance to secure the scene and perform searches incident to arrest. A single officer arresting several intoxicated and unruly individuals must be allowed to request assistance to search the arrestees in a vehicle which they occupied, but this assistance is required to secure the scene. Boursaw argues that Oswalt had already secured the scene when the dog search and the search behind the ashtray were performed. This case turns, therefore, on what constitute activities related to ‘the securing of a suspect and the scene’ and at what point is the scene sufficiently secured. Smith, 119 Wn.2d at 684.

Considering that Stroud explicitly allows a search of an automobile incident to arrest after the suspect is handcuffed and in the patrol car, see Stroud, 106 Wn.2d at 152, one may conclude that the scene is

not secured simply by an officer's exercise of control over the arrestee. Moreover, if we follow Boursaw's argument that the scene was secured in this case when Oswald performed the initial search, we might preclude a second officer from immediately searching as an added precaution, the same area already searched by her fellow officer.

We find that because the delay was only ten minutes and Boursaw was at the scene, the dog search and the search behind the ashtray were not beyond the duration of a search incident to arrest. The dog search and the search behind the ashtray may be viewed not as a second independent search but as a continuation of Oswald's search. Our holding is limited to the facts of this case, and delays caused by a request for assistance might be unreasonable under differing circumstances." Boursaw at 634-635.

The State submits that the delay in our case was not unreasonable under the circumstances. Both defendants were still at the scene, the delay between initial discovery of some obvious tinkering with the interior of the car and the search was approximately 17 minutes. The use of the dog continued and aided the initial investigation to ultimately find the contraband hidden by the defendants in the vehicle. It was not unreasonable under the circumstances.

The State further submits that both of the prongs have been met. The search was reasonable under the circumstances, justified and was contemporaneous with the lawful arrest.

III. **RESPONSE TO ASSIGNMENT OF ERROR NO. 4**
(RUIZ ONLY)

The fourth assignment raised by defendant Ruiz only is a claim of insufficient evidence to convict him of possession of methamphetamine with intent to deliver. The argument appears to be that because of the allegation of an illegal search that his statements to the officers have to be suppressed.

The State has no problem with the case law cited. The entire argument hinges on the concept of an illegal search. As previously indicated in this brief, together with the attachments, the State submits that this was not an illegal search. The officers had the right and the authority to search the entire passenger compartment of the van. If this is correct, then the statements provided by defendant Ruiz, as set forth in the attached documentations, clearly establishes possession with intent to deliver.

In 2005, Division II discussed in some detail in State v. Whalen, 131 Wn.App. 58, 126 P.3d 55 (2005) the concept of possession with intent to deliver and the corpus delicti rule. The

independent evidence to establish the possession with intent to deliver must support a logical and reasonable inference of criminal activity and at least an additional factor suggestive of intent must be present. The State submits that the secretive transporting of two pounds of methamphetamine coupled with the packaging of the product with multiple layers of plastic wrap, vacuum packaging, carbon paper and a layer of axle grease, and further having in their possession in the vehicle evidence of other identity, would clearly lead to a conclusion that this was being done for purposes of distribution.

IV. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 3 day of July, 2006.

Respectfully submitted:

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APPENDIX "A"

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FILED
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JoAnne McBride, Clerk, Clark Co

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

STATE OF WASHINGTON,
Plaintiff,
v.
REYES RIOS RUIZ,
Defendant.

No. 05-1-01065-7

FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
CrR 3.5/3.6 Hearing

THIS MATTER having come duly and regularly before the Court on the 15th day of July, 2005 for hearing pursuant to CrR 3.5, and CrR 3.6 on Defendant's Motion to Suppress, Plaintiff State of Washington appearing by and through Philip A. Meyers, Deputy Prosecuting Attorney for Clark County, State of Washington, Defendant appearing in person and with his attorney Jason C. Bailes, and the parties having stipulated to the admission into evidence of a copy of the police investigation reports in Clark County Sheriff's Case No. S05-06664 and to the Court's consideration of said reports, and the Court having reviewed said reports and having heard and considered the testimony of witnesses, and other evidence presented, and the statements and

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1 arguments of counsel, makes the following:
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3 FINDINGS OF FACT

4 1. On May 10, 2005 at approximately 7:45 p.m. Clark County Sheriff's Detective
5 Tom Dennison, while on duty, observed a Chevrolet Lumina minivan leaving the parking
6 lot of an apartment complex and heading north on NE 15th Avenue in Hazel Dell, in
7 Clark County, Washington. As the vehicle passed him, Detective Dennison noticed that
8 the driver's side headlight on the vehicle was not working. Detective Dennison stopped
9 the vehicle in the parking lot of an apartment complex at 9211 NE 15th Avenue. The
10 vehicle had an Idaho license plate.
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13 2. The vehicle was occupied by two male subjects. Defendant Reyes Rios Ruiz
14 was seated in the front passenger seat. Detective Dennison contacted the driver of the
15 minivan, who presented a Washington State Identification card which identified him as
16 Jesus David Buelna Valdez. Detective Dennison asked Valdez if he had a driver's
17 license. Valdez stated that he did not. Detective Dennison explained why he had
18 stopped the vehicle and asked where Valdez was coming from. Valdez replied "Fourth
19 Plain". Detective Dennison asked for a specific address on Fourth Plain but Valdez
20 provided only a general area, not a specific address. Since Detective Dennison had just
21 observed the vehicle leaving an apartment complex a short distance away, he asked
22 again where Valdez was coming from. Valdez replied "Las Vegas".
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25 3. Detective Dennison returned to his patrol car and conducted a records check
26 through dispatch using the information on Valdez's ID card. He was notified by the
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1 dispatcher that there was an outstanding felony warrant for a person by the same name.
2 The dispatcher relayed to Detective Dennison a Social Security number and a
3 description of several tattoos for the person wanted on the warrant.

4 4. Deputy Sean Boyle arrived to assist at approximately 7:53 p.m. At that time,
5 Valdez was still seated in the driver's seat and Defendant Ruiz was still seated in the
6 front passenger seat. After Detective Dennison confirmed that Valdez had tattoos
7 matching those described on the warrant, he arrested Valdez, handcuffed him and
8 placed him in the rear of his patrol car. Detective Dennison informed Valdez that he
9 would be searching the van. Detective Dennison then asked the passenger, Defendant
10 Ruiz, to get out of the minivan.
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13 5. Detective Dennison and Deputy Boyle began to search the interior passenger
14 compartment of the minivan. They noticed that panels under the dashboard were loose,
15 and appeared to have been tampered with. Detective Dennison was aware that drugs
16 are sometimes hidden behind plastic panels in vehicles, and that panels are sometimes
17 loose from having been removed. Based upon the loose panels and Valdez's evasive
18 statements about where he was coming from, Detective Dennison called for a narcotics
19 detection dog to assist in the search. Deputy Brian Ellithorpe and his dog Eiko were
20 dispatched at 8:12 p.m., and arrived at the location of the stop at 8:20 p.m. When
21 Deputy Ellithorpe arrived he observed a subject in custody in a patrol car, and a second
22 subject standing a short distance away from the minivan.
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25 6. Eiko is a Washington certified narcotics detection dog. Deputy Ellithorpe first
26 assessed the vehicle himself, and noted not only that the dash and panels under it were
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1 loose, but that there were also loose panels in the front doors of the vehicle, and screws
2 and fasteners appeared to have been removed. Deputy Ellithorpe first took Eiko on a
3 sweep around the exterior of the vehicle, and then put Eiko inside the vehicle.

4 7. The configuration of seats in the vehicle is shown in the photos which are
5 Exhibits Nos. 8711. There is a space between the driver's and passenger's front
6 seats which allows access to the rear passenger area of the minivan. Behind the two
7 front seats there is a second row of three seats, and behind that a third row of two
8 seats. Eiko alerted on a vent on the interior body panel on the driver's side, near the
9 second row of seats. Deputy Ellithorpe removed Eiko from the vehicle and began to
10 examine the panels in the area near the vent.
11

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13 8. The panels immediately around the vent were secure. Deputy Ellithorpe moved
14 toward the rear and located a molded plastic cup holder which was loose. The cup
15 holder was in a small section of panel over the rear wheel near the third row of seats.
16 The cup holder was not fastened or secured. Deputy Ellithorpe lifted the cup holder
17 and observed a piece of insulation underneath. The insulation was loose or unsecured,
18 and was in a location where insulation would not normally be installed. It appeared to
19 have been laid loosely in the opening. Deputy Ellithorpe lifted the piece of insulation
20 and observed two packages wrapped in plastic wrap, laying in the space under the
21 panel. Each of the packages was approximately 8 inches long, 3 inches thick, and 4
22 inches wide and appeared to be vacuum sealed bags wrapped in plastic wrap. Deputy
23 Ellithorpe noted that the contents of the packages felt like a granular or crystalline
24 substance.
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1 9. Deputy Ellithorpe removed the two packages and notified Detective Dennison
2 and Deputy Boyle. Detective Dennison arrested the passenger, Defendant Reyes Rios
3 Ruiz. Detective Dennison cut into one of the packages, and conducted a field test on
4 the contents. The result was a positive indication for methamphetamine.

5 10. Detective Shane Gardner is assigned to the Clark Skamania Drug Task Force.
6 He speaks fluent Spanish. He was summoned to the Precinct station to interview
7 Defendants Valdez and Ruiz. Detective Gardner first contacted Valdez. After speaking
8 with Valdez Detective Gardner spoke separately with Defendant Ruiz. Detective
9 Dennison was also present. Detective Gardner introduced himself and asked
10 Defendant Ruiz if he spoke English. Defendant shook his head in a negative response.
11 Detective Gardner asked Ruiz if he spoke Spanish and Ruiz replied in the affirmative.
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14 11. Detective Gardner read the Miranda warnings in Spanish to Defendant Ruiz from
15 a pre-printed card, pausing after each of the enumerated rights paragraphs on the card
16 to ask Defendant if he understood. After each of the rights, Defendant Ruiz stated
17 aloud that he understood. At the conclusion of the rights, Detective Gardner asked
18 Defendant, still in Spanish, if, having in mind the rights which had been read, he would
19 be willing to answer questions. Defendant Ruiz stated that he was willing to speak with
20 the officers.
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23 12. The Miranda rights which Detective Gardner read to Defendant Ruiz were in
24 proper form and complied with the requirements of Miranda v. Arizona and subsequent
25 cases.
26

27 13. Detective Gardner then questioned Defendant Ruiz about where he had been,

1 where he was going, and the methamphetamine found in the van and how it came to be
2 there. Although there were two or three questions to which Defendant Ruiz did not
3 respond, throughout the interview he answered most questions freely. He did not
4 request an attorney, refuse to answer questions or otherwise invoke his rights to remain
5 silent or have counsel. Defendant did not appear impaired by the influence of any drugs
6 or alcohol. His responses were coherent and demonstrated that he was in full
7 possession of his normal mental faculties and communications skills and fully
8 understood the rights which had been read to him.
9

10 14. No threats or promises were made to Defendant to induce him to answer
11 questions or waive his rights.
12

13 DISPUTED FACTS

14 There are no disputed facts.

15 Based upon the foregoing Findings of Fact, the Court enters the following:
16

17 CONCLUSIONS OF LAW

18 A. CrR 3.6 Motion to Suppress:

- 19 1. The Court has jurisdiction of the Defendant and the subject matter.
- 20 2. Detective Dennison's stop of the vehicle for a defective headlight infraction was a
21 valid traffic stop.
- 22 3. Detective Dennison was justified in further detaining the driver, Valdez and
23 conducting a records check using the information on Valdez's identification card, based
24 upon the fact that Valdez, who was driving the vehicle, did not present a license and
25 indicated that he did not have a license.
26
27

1 4. Detective Dennison lawfully arrested Valdez after being notified that there was a
2 warrant for his arrest, and verifying his identity as the wanted person.

3 5. Pursuant to State v. Stroud, 106 Wn.2d 144, 720 P.2d 436 (1986), State v.
4 Vrieling, 144 Wn.2d 489, 28 P.3d 762, (2001), and State v. Johnson, 128 Wn. 2d 431,
5 *as assisted by Deputy Ellithorpe* CPal
6 909 P.2d 293 (1996), Detective Dennison was lawfully permitted to conduct a
7 warrantless search of the passenger compartment of the vehicle driven by Valdez, as a
8 search incident to Valdez's arrest.

9 6. The passenger compartment includes all space reachable without exiting the
10 vehicle, and any unlocked containers therein. The search of the entire area to the rear
11 of the front seats, including the area near the loose cup holder, was therefore properly
12 within the scope of the warrantless search of the Defendant's vehicle incident to the
13 arrest of the driver, Valdez.

14 7. Because the cup holder was unsecured and could be lifted easily and without
15 force to expose the space underneath without breaking or removing any screw, lock or
16 fastener, the space under the cup holder was the equivalent of an unlocked glove box,
17 console or other unlocked space within the passenger compartment and was thus also
18 within the scope of the search of the vehicle incident to the driver's arrest. State v.
19 Boursaw, 94 Wn.App. 629, 635, 976 P.2d 130, (1999) State v. Vrieling, supra; State v.
20 Johnson, supra.

21 8. Detective Dennison was entitled to obtain the assistance of Deputy Boyle and
22 Deputy Ellithorpe and narcotics dog Eiko in conducting the search of the vehicle
23 incident to the arrest. State v. Boursaw, supra.

1 9. The methamphetamine was therefore seized as the product of a lawful
2 warrantless search of the vehicle incident to the arrest of the driver, Valdez, and the
3 Motion to Suppress should therefore be denied.

4 10. Upon discovery of the methamphetamine packages, there was probable cause to
5 arrest Defendant Ruiz, the passenger, for possession of the drugs.

6
7 B. CrR 3.5 Hearing:

8 10. Defendant was lawfully arrested and was in custody at the time Detective
9 Gardner contacted him at the Precinct station on May 10, 2005. The statements made
10 to Detective Gardner were therefore the product of custodial interrogation.

11 11. Prior to any custodial interrogation Defendant was informed of his Miranda rights
12 by Detective Gardner, who read them from a preprinted card. The form of the rights
13 given to Defendant Valdez was proper and complied with the requirements of Miranda
14 v. Arizona and subsequent case law.

15 12. After being advised of those rights, Defendant knowingly, intelligently and
16 voluntarily waived those rights and the statements made to Detective Gardner are the
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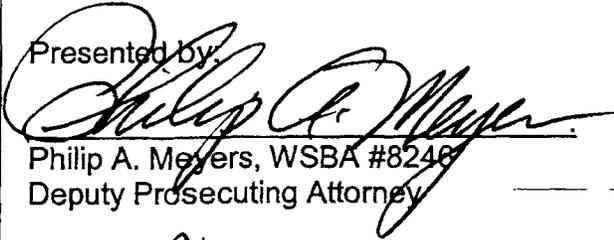
1 product of that waiver and are therefore admissible as evidence at trial in the above
2 cause.

3 DONE in open Court this 19 day of July, 2005.

4 

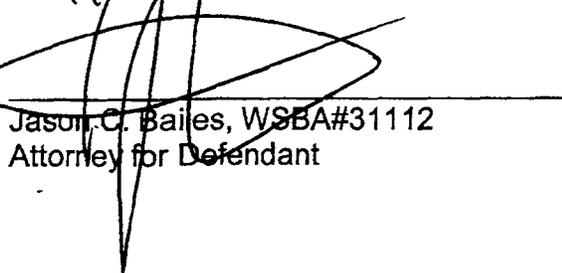
5
6 JOHN F. NICHOLS
7 JUDGE OF THE SUPERIOR COURT

8 Presented by:

9 

10 Philip A. Meyers, WSBA #8246
11 Deputy Prosecuting Attorney

12 Copy received, approved for entry
13 this 19 day of July, 2005.

14 
15 Jason C. Bailes, WSBA#31112
16 Attorney for Defendant

APPENDIX "B"

7

FILED

JUL 10 2005

JoAnne M. ... Co

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

STATE OF WASHINGTON,
Plaintiff,
v.
REYES RIOS RUIZ,
Defendant.

No. 05-1-01065-7

FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
NON-JURY TRIAL

THIS MATTER having come duly and regularly before the Court on the 18th day of July, 2005 for trial, Plaintiff State of Washington appearing by and through Philip A. Meyers, Deputy Prosecuting Attorney for Clark County, State of Washington, Defendant appearing in person and with his attorney Jason C. Bailes, Defendant having previously entered a knowing, intelligent and voluntary written waiver of his right to trial by a jury, and a knowing, intelligent and voluntary waiver of his right to hear and confront witnesses against him and of his right to call witnesses on his own behalf and to compel their attendance, and the Defendant and the Plaintiff further having stipulated and agreed to the admission into evidence of a copy of police investigation reports, including copies of evidence and photos, prepared by the investigating officers of the Clark

21

1 County Sheriff's Department in Case No. S05-06664, to the Crime Laboratory report
2 number 505-001061 dated 7/14/05, the Stipulation of Facts, and to the Clark County
3 Assessment and GIS aerial photo, and the parties further having stipulated to the
4 incorporation into evidence at trial of the testimony of the witnesses and evidence at the
5 hearing on Motion to Suppress and CrR 3.5 Hearing held herein on July 15, 2005, and
6 the parties having stipulated to the Court's entry of Findings of Fact and Conclusions of
7 Law based upon said stipulations and evidence, and the Court, having heard and
8 considered the testimony of said witnesses, police reports and exhibits entered into
9 evidence, and the statements and arguments of counsel, now finds the following facts to
10 have been proven beyond a reasonable doubt:
11
12

13
14 FINDINGS OF FACT

15 1. On May 10, 2005 at approximately 7:45 p.m. Detective Tom Dennison of the
16 Clark County Sheriff's Department observed a Chevrolet Lumina minivan turning north
17 onto NE 15th Avenue from an apartment complex parking lot in the Hazel Dell area of
18 Clark County, Washington. He observed that one of the vehicle's headlights was not
19 working. Detective Dennison stopped the vehicle. The driver was Defendant Jesus
20 David Buelna Valdez. The only other occupant of the vehicle was Defendant Reyes
21 Rios Ruiz, who was sitting in the front passenger seat.
22

23
24 2. Detective Dennison contacted Defendant Valdez, who presented his Washington
25 State Identification card. Defendant Valdez stated he did not have a driver's license.
26 Detective Dennison conducted a records check and learned that there was an
27

1 outstanding warrant for Defendant Valdez. Detective Dennison arrested Defendant
2 Valdez, handcuffed him and placed him in the back of the patrol car.

3 3. Deputy Sean Boyle arrived to assist Dennison. Dennison told Defendant Ruiz to
4 step out of the vehicle. Detective Dennison and Deputy Boyle began to search the
5 vehicle incident to the arrest of Defendant Valdez.

6
7 4. Detective Dennison noticed that there were loose panels under the dash in the
8 vehicle which appeared to have been tampered with. Detective Dennison summoned
9 the assistance of Deputy Ellithorpe and his K-9 Eiko. Eiko is certified under the
10 Washington Administrative Code as a trained narcotics detection dog.

11
12 5. Deputy Ellithorpe also examined the vehicle and saw that there were loose
13 panels under the dash and that the dash panel itself appeared to be out of place. He
14 also noted that there were also loose panels in the front doors from which screws and
15 fasteners had been removed. Deputy Ellithorpe directed K-9 Eiko in a search of the
16 vehicle. Eiko alerted on a vent in the side panel inside rear passenger area of the
17 vehicle on the driver's side. Deputy Ellithorpe searched the area where Eiko had
18 *traced it back to the beginning of the 3rd row and*
19 alerted, and found a molded plastic cup holder which had been unfastened and which
20 was sitting loosely in place. Deputy Ellithorpe lifted the cup holder and found a piece of
21 insulation underneath. The insulation had also been unsecured from its original location
22 and was sitting loosely in the opening. Deputy Ellithorpe lifted the piece of insulation
23 and found two packages wrapped in plastic wrap. Each package was approximately 8
24 inches long, 4 inches wide and 3 inches thick.

25
26 6. Deputy Ellithorpe removed the packages and notified Detective Dennison and
27

2/10/00

1 Deputy Boyle. Defendant Reyes Rios Ruiz was then placed under arrest. Detective
2 Dennison cut open one of the packages and found that it contained a crystalline
3 substance which appeared to be methamphetamine. The methamphetamine in the
4 packages was wrapped in multiple layers of plastic wrap, with layers of axle grease,
5 carbon paper, and vacuum sealed plastic in between the layers of plastic wrap.
6

7 7. Both Defendants were transported to the Clark County Sheriff's West Precinct
8 station. Detective Shane Gardner was summoned to the Precinct station to interview
9 Defendants Valdez and Ruiz. Detective Gardner is assigned to the Clark Skamania
10 Drug Task Force and speaks fluent Spanish. He first contacted Defendant Valdez and
11 then spoke with Defendant Ruiz. Detective Gardner asked Ruiz if he spoke English and
12 Defendant shook his head in the negative. Detective Gardner asked Ruiz in Spanish if
13 he spoke Spanish, Defendant Ruiz replied that he did. Detective Gardner then read
14 Defendant Ruiz his Miranda rights and warnings in Spanish.
15

16 8. After being advised of his Miranda rights, Defendant Ruiz agreed to answer
17 questions. He told Detective Gardner that he grew up on Mexico, and had been in the
18 United States approximately nine months. He stated that he had recently moved to Las
19 Vegas and currently lived there. He stated he did not know his street address in Las
20 Vegas. Defendant Ruiz said he had known "Jesus" referring to Defendant Valdez, for
21 about two months. He first said that he had met Valdez in Las Vegas, but then said that
22 he had met Valdez in Phoenix, where Ruiz had lived previously. Defendant Ruiz said
23 he had no friends ~~or~~ ^{of} family in Vancouver, and the only person he knew in Vancouver
24 was Valdez, whom he knew had family and friends in Vancouver. When asked why he
25
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27

1 had come on the trip to Vancouver, he stated that he came along to keep Valdez
2 company. Detective Gardner asked Defendant Ruiz if he knew why he had been
3 arrested. Ruiz replied that 1 to 2 pounds of methamphetamine had been found in their
4 van. In response to further questions, Defendant Ruiz stated that the
5 methamphetamine was both his and Valdez's, and that they had gotten it in Las Vegas.
6 When asked who they had obtained it from Ruiz stated that he did not know the name
7 of the person. Detective Gardner asked Defendant Ruiz why they had brought the 2
8 pounds of methamphetamine to Vancouver. Defendant Ruiz said that he thought it
9 would be easy to sell in Vancouver. He said he did not know how much they were
10 going to sell it for. Detective Gardner again asked Defendant Ruiz why he had come
11 along on the trip, and specifically if it was to help protect the load of drugs. Defendant
12 Ruiz replied that it was for that purpose.
13

14
15 9. Detective Dennison placed the packages of methamphetamine into the evidence
16 system. The packages were sent to the Washington State Patrol Crime Lab in Kelso,
17 Washington, where the contents were weighed and tested by Forensic Scientist Jason
18 Dunn. Mr. Dunn found that the crystalline substance in each package was
19 methamphetamine, more specifically methamphetamine hydrochloride. The
20 methamphetamine in one of the packages weighed 448 grams. The other package
21 contained 449 grams.
22

23
24 10. The location where Detective Dennison stopped the Defendant's vehicle was in a
25 parking lot at 9211 NE 15th Avenue. At that time a Vancouver School District school
26 bus route stop was located at 9211 NE 15th Avenue, substantially less than one
27

1 thousand feet (1000') away from the location where Defendant was stopped. The
2 location where Defendant was in possession of methamphetamine in the van was
3 probably no more than 100 to 200 feet from the school bus route stop on NE 15th
4 Avenue.

5 Based upon the foregoing Findings of Fact, the Court enters the following

6 CONCLUSIONS OF LAW

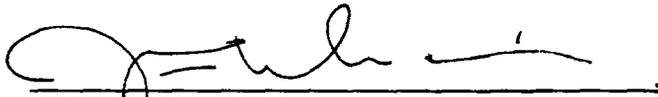
- 7
- 8 1. The Court has jurisdiction of the Defendant and the subject matter.
 - 9 2. The crystalline substance in the packages is methamphetamine hydrochloride.
 - 10 3. At the time he was stopped and contacted by Detective Dennison on the evening
11 of May 10, 2005, Defendant possessed the two packages of methamphetamine
12 hydrochloride which were hidden in the minivan.
 - 13 4. At that time, Defendant intended to sell and deliver the methamphetamine
14 hydrochloride to another person or persons.
 - 15 5. The Defendant is therefore guilty of the crime of Possession of a Controlled
16 Substance, Methamphetamine Hydrochloride, with Intent to Deliver, in violation of RCW
17 69.50.401(1) & (2)(c) as charged in Count I of the Amended Information.
 - 18 6. The crime was committed in Clark County, in the State of Washington.
 - 19 7. Defendant committed the crime of Possession of a Controlled Substance
20 Methamphetamine Hydrochloride with Intent to Deliver, within one thousand feet (1000')
21 of a regular school bus route stop, in violation of RCW 69.50.435(1)(b) as charged in
22 the Amended Information.
 - 23 8. By using the minivan to conceal and transport the controlled substance for the
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1 purpose of sale and delivery, the current offense was a felony crime in the commission
2 of which a motor vehicle was used under the provisions of RCW 46.20.285.

3 9. The Court further finds that the current offense involved an actual or attempted
4 sale or transfer of a controlled substance in quantities substantially greater than for
5 personal use, and the crime of Possession of a Controlled Substance
6 Methamphetamine Hydrochloride, with Intent to Deliver, committed by the Defendant as
7 charged in Count I of the Amended Information was therefore a major violation of the
8 Uniform Controlled Substances Act which was more onerous than the typical offense of
9 the same statutory definition.
10

11 10. Judgment and Sentence should be entered accordingly.

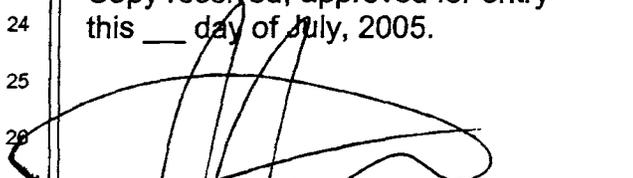
12 DONE in open Court this 15 day of July, 2005.

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16 
17 JOHN E. NICHOLS
18 JUDGE OF THE SUPERIOR COURT

19 Presented by:

20
21 
22 Philip A. Meyers, WSBA #8246
23 Deputy Prosecuting Attorney

24 Copy received, approved for entry
25 this ___ day of July, 2005.

26
27 
Jason C. Bailes, WSBA#31112
Attorney for Defendant

FINDINGS OF FACT, CONCLUSIONS OF LAW
ON NON-JURY TRIAL - Page 7 of 7

CLARK COUNTY PROSECUTING ATTORNEY
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(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

APPENDIX "C"

3

FILED

JUL 19 2005

JoAnne McBride, Clerk, Clark C

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

STATE OF WASHINGTON,
Plaintiff,
v.
REYES RIOS RUIZ,
Defendant.

No. 05-1-01065-7

STIPULATED FACTS ON
NON-JURY TRIAL

COME NOW Plaintiff State of Washington, appearing by and through Philip A. Meyers, Deputy Prosecuting Attorney for Clark County, and Defendant Reyes Rios Ruiz, in person and with his attorney Jason C. Bailes, Defendant having previously entered a knowing, intelligent and voluntary written waiver of his right to trial by a jury, and of his right to hear and confront witnesses against him and of his right to call witnesses on his own behalf and to compel their attendance, and the Defendant and the Plaintiff stipulate to the following undisputed facts:

1. That Forensic Scientist Jason Dunn of the Washington State Patrol Crime Laboratory, if called to testify, would state that the methamphetamine in each of the two

20

1 packages he tested in Laboratory Report No. 505-001061 is methamphetamine
2 hydrochloride, a salt of methamphetamine;

3 2. That Jenny Johnson would testify that she is an employee of the Vancouver
4 School District, that she is familiar with the School District records regarding locations of
5 school bus route stops designated by the School District as they existed on May 10,
6 2005, and that the Vancouver School District had previously designated a school bus
7 route stop at 9211 NE 15th Avenue, in Clark County, Washington which was in effect on
8 that date and thereafter, and that the location of said route stop is accurately shown on
9 the copy of Clark County Mapping and GIS aerial photo dated May 13, 2005 and
10 labeled Clark County PA Case # PF2005-2505;
11

12 3. That Linda Pritchard would testify that she is an employee of the Clark County
13 Department of Assessment and GIS, and that she is familiar with the operation and
14 operating principles of the Clark County GIS mapping system, that the copy of a Clark
15 County Assessment and GIS aerial photo labeled Clark County PA Case # PF2005-
16 2505 is an accurate aerial photo of the location at 9211 NE 15th Avenue in Clark
17 County, Washington, and that the circle on the photo represents a radius of one
18 thousand feet (1000') around a Vancouver School Bus route stop designated on the
19 photo at that address, and that the parking lot of an apartment complex in which
20 Detective Dennison stopped the Defendant's vehicle on the evening of May 10, 2005 is
21 substantially less than 1000' away from the school bus route stop.
22

23 4. That 448 grams of methamphetamine is approximately one pound, and that
24 approximately two pounds of methamphetamine is a quantity substantially greater than
25
26
27

1 for personal use.

2
3 DATED this 19 day of July, 2005.

4
5
6 Philip A. Meyers, WSBA #8248
7 Deputy Prosecuting Attorney
8 Attorney for Plaintiff

9
10 Jason C. Bailes, WSBA #31112
11 Attorney for Defendant

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108 Reyes Rios Ruiz
109 Defendant

APPENDIX "D"

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FILED
JUL 19 2005
JoAnne McBride, Clerk, Clerk C-

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

STATE OF WASHINGTON,
Plaintiff,
v:
REYES RIOS RUIZ,
Defendant.

No. 05-1-01065-7

STIPULATION REGARDING
EVIDENCE ON NON-JURY TRIAL

COME NOW Plaintiff State of Washington appearing by and through Philip A. Meyers, Deputy Prosecuting Attorney for Clark County, and Defendant REYES RIOS RUIZ, in person and with his attorney Jason C. Bailes, Defendant having previously entered a knowing, intelligent and voluntary written waiver of his right to trial by a jury, and of his right to hear and confront witnesses against him and of his right to call witnesses on his own behalf and to compel their attendance, and the Defendant and the Plaintiff stipulate and agree as follows:

1. That trial of the above entitled Cause may be heard by the Court sitting without a jury;
2. That the following may be admitted into evidence and may be considered by the

19

1 Court at trial and the Court may enter its Findings of Fact and Conclusions of Law
2 based upon such evidence:

3 (a) Testimony of witnesses and exhibits admitted into evidence at the hearing
4 on Motion to Suppress and CrR 3.5 Hearing heard by the Court on July 15, 2005;

5 (b) The written Stipulation of Facts, with attachments, submitted by the
6 parties;

7 (c) A copy of the police reports in Clark County Sheriff's Office case Number
8 S05-06664, and attached photocopies of evidence attached thereto;

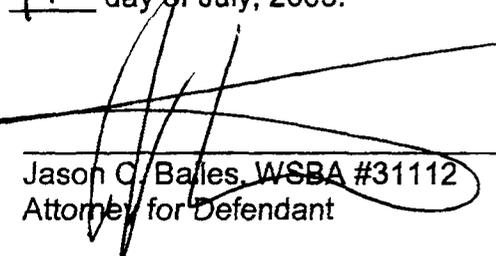
9 (d) A copy of the Washington State Patrol Crime Laboratory report signed by
10 Forensic Scientist Jason Dunn, dated 7/14/05 bearing Lab No. 505-001061.

11 (e) A copy of the Clark County Department of Assessment and GIS aerial
12 photo map dated May 13, 2005, labeled PA Case #PF 2005-2505.

13 3. That the Court may resolve all questions of fact and enter its Findings of Fact
14 and Conclusions of Law as to the charges and allegations in the Amended Information
15 based upon the foregoing evidence without the necessity of further testimony or other
16 evidence.
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20 DATED this 19th day of July, 2005.

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23 
24 Philip A. Meyers, WSBA #8246
25 Deputy Prosecuting Attorney
26 Attorney for Plaintiff

27 
Jason C. Bailes, WSBA #31112
Attorney for Defendant

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29 Reyes Rios Ruiz
30 Defendant

IN THE COURT OF APPEALS
DIVISION II

FILED
COURT OF APPEALS
U.S. MAIL
JUL 11 2006
TACOMA, WA
BY _____

STATE OF WASHINGTON,
Respondent,

No. 33647-2-II

v.

Clark Co. Cause No. 05-1-01065-7
and 05-1-01064-9

REYES RIOS RUIZ and JESUS
DAVID BUELNA VALDEZ,
Appellants.

DECLARATION OF TRANSMISSION
BY MAILING

STATE OF WASHINGTON)

: ss

COUNTY OF CLARK)

On July 5, 2006, I deposited in the mails of the United States of America properly stamped and addressed envelopes directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

DATED this 5th day of July, 2006.

TO:	Reyes Rios Ruiz DOC #885057 c/o Larch Corrections Center 15314 NE Dole Valley Road Yacolt, WA 98675-9531	Mary Kay High Attorney at Law 109 Tacoma Avenue N Tacoma, WA 98403-2631
	David Ponzoha, Clerk Court Of Appeals, Division II 950 Broadway, Suite 300 Tacoma, WA 98402-4454	Anne M. Cruser Attorney at Law PO Box 1670 Kalama, WA 98625
	Jesus David Buelna-Valdez DOC #833080 c/o Airway Heights Corrections Center 11919 West Sprague Avenue Airway Heights, WA 99001-1899	

DOCUMENTS: BRIEF OF RESPONDENT

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Charles D. Shepard
Date: July 5, 2006.
Place: Vancouver, Washington.