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STATE OF WASHINGTON

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WASHINGTON STATE,	CLARK	COUNTY, SUPERIOR COURT
STATE OF WASHINGTON	)	
Plaintiff	)	No. 04-1-01856-1
v.	)	Motion to Vacate and Modify
ASHLEY WADE SICLOVAN,	)	Judgment and Sentence
Defendant.	)	

COMES NOW THE DEFENDANT, A. W. SICLOVAN, acting pro-se  
and moves the court for an order vacating and modifying his judgment and  
sentence

1. This motions legal authority is under CrR7.8 (b)(1,2,3,5

It includes state and federal constitutional violations.

U.S.CONST. AMEND. 4, 5, 14

WASH. ST. CONST. 1 § 3, 7, 9, 22

CrR 4.7 discovery violations / sanctions

CrR 8.3 (b) dismissal

Rules Of Professional Conduct R.P.C. 8.4

The defense is merely asking to make factual determinations  
for the appeal court. Their is good cause shown in the attached  
memorandum also legal authority. This motion sets forth facts  
that are proof the defendant did not receive a fair trial, was  
denied discovery, deceived by the state, misconduct accured  
in closing arguments, the state misrepresented himself, in

post trial hearings. The defense was denied the chance to have all his issues raised in the 6-22-05 In Camera Review. Their is newly discovered evidence to all the above and that the Officer recklessly with disregard for the truth placed misstatements in the search warrant affidavit.

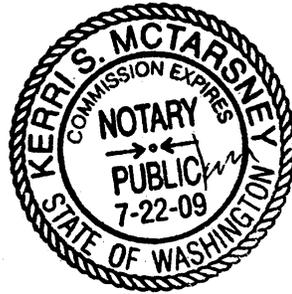
See memorandum in support of this motion with appendix A to x 217 pages

I, ASHLEY WADE SICLOVAN, PRO-se, swear under the laws of perjury of the state of Washington that the foregoing is true and correct to the best of my knowledge.

Signed on the 15 day of February, 2006  
Washington.

ASHLEY WADE SICLOVAN

Ashley Wade Siclovan  
Ashley Wade Siclovan



*Kerri S. Mctarsney*  
2/13/06  
Clallam Co.  
7-22-09

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clerks papers

These clerks papers can be found in the following appendixes.

( CP )	.....	APPENDIX
2	.....	E
24	.....	D
28	.....	F
37	.....	G
39	.....	H
73	.....	J
76	.....	K
78	.....	L
82	.....	M
89	.....	N
92	.....	P
93	.....	Q
95	.....	R
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70	.....	U
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VERBATIM REPORT OF PROCEEDINGS

**RP FOUND IN.....APPENDIX A**  
111.....  
138,139.....  
194,195.....  
210, 211, 212.....  
234.....  
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**RP 308 TO 935 FOUND IN.....appendix B**  
308.....  
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972, 973, 974.....  
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979...~~983,984,985,986~~.....  
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1136, 1137, 1138, 1139, 1140.....  
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1212, 1213.....  
1224, 1225, 1226, 1227, 1228, 1229,  
1239,1231, 1232, 1233.....  
1538, 1539.....

**APPENDIX A.....PRE-TRIAL**

**APPENDIX B.....TRIAL**

**APPENDIX C.....POST TRIAL**

**APPENDIX I.....**Can be found in the court record as an  
exhibit filed on 5/06/05 in the post trial  
motions hearing. Exhibit 17

**APPENDIX O.....**Is the contents of the 6/22/05 In-Camera  
review.

added to appendix c PAGE 969

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

STATE OF WASHINGTON	)	NO. 04-1-01856-1
Plaintiff /Respondent	)	MEMORANDUM / BRIEF IN
	)	SUPPORT OF MOTION TO
V.	)	VACATE JUDGMENT /MAKE
	)	ADDITIONAL FACT FINDINGS
ASHLEY WADE SICLOVAN,	)	
	)	
Defendant / Petitioner,	)	

IDENTITY

I, ASHLEY WADE SICLOVAN, pro-se, am the defendant in the above entitled matter. Giving me legal authority.

JURISDICTION

This court has proper jurisdiction of the defendant and subject matter.

ENDS OF JUSTICE

It would **not** serve the ends of justice to transfer this motion to the appeals court as a P.R.P.. This motion requires factual determinations that are the province of the trial court, see **STATE V. SMITH**, 80 Wn.App. 462, at 470 (1996)

1 To meet the ends of justice, it is crucial that this  
2 be resolved after full briefing and oral argument.

3  
4 RELIEF REQUESTED

5 a) Make factual determinations to assist appeal court.

6 b) Conduct a **FRANKS** / evidentiary hearing.

7 c) Exclude misstatements from the search warrant  
8 affidavit.

9 d) With consideration to newly discovered evidence and  
10 misstatements excluded, determine if search warrant  
11 affidavit contains probable cause.

12 e) With consideration to newly discovered evidence,  
13 reconsider staleness as to the information provided to  
14 obtain the search warrant.

15 f) Formally disclose Calvin Brown as the informant that  
16 provided the information found in the search warrant  
17 affidavit.

18 g) Formally disclose the information provided by the state  
19 on 2-22-05 about Calvin Brown being the informant.

20 h) With consideration to newly discovered evidence,  
21 reconsider post trial issue regarding discovery  
22 violations.

23 i) With consideration to newly discovered evidence  
24 reconsider post trial issue comments to jury that  
25 Calvin never existed at unit no. 49.

26 j) Shift burden to state to prove misconduct, discovery  
27 violations and ill intended remarks to jury did not effect  
outcome.

1 k) Conduct an In-Camera Review with the informant,  
2 Calvin Brown, to determine what info. he provided.

3 l) Grant defendant a new trial with all **BRADY** material  
4 Known to the state provided.  
5

6 OPENING STATEMENT

7 Their are two separate arguments that contain several  
8 issues within them ,that will be presented in this motion.  
9 If one is found to be frivolous it adds weight to the other,  
10 One is that the informant did not tell Officer Martin the lab  
11 was seen by him being placed in any storage unit. Two, the  
12 state deceived the jury by telling them Calvin Brown  
13 never existed at the storage unit.

14 If what the state said to the jury was true then the  
15 search warrant affidavit contains misstatements that could  
16 only of been placed intentionally with reckless disregard  
17 for the truth. If excluded probable cause would not exist,  
18 nor would the place to be searched be listed in the  
19 affidavit.

20 This would explain why the state went to such greate  
21 lengths to deceive the court and defense all through the  
22 proceedings. Even to the extent as to violate court orders,  
23 make up phone-tag story, object to the defense using discovery  
24 rules to prepare for post trial hearing, to hide the fact  
25 Calvin Brown never told Officer Martin the information  
26 in the affidavit.  
27

1           On the other hand, **if** Calvin Brown did provide some  
2 information that he has been to the storage unit and seen  
3 a lab being placed in it after he participated in a cook  
4 not to mention transporting the materials, one could not  
5 honestly make an inference that he has never existed at  
6 unit NO. 49.

7           If the search warrant affidavit does not contain  
8 misstatements then Calvin Brown did have interviews and gave  
9 statements to Van. P.D. , had invalvment with case. One  
10 would even imagine Posner "seen name in reports" and would  
11 not be "at a loss" every time the defense requested the  
12 information. If Calvin Brown really did provide all the info.  
13 in the affidavit, and this would be known to the state; that  
14 would make the whole "phone-tag" **story** a total deception  
15 played to the court. Why not include the court, In-Camera, the  
16 state waits until after post trial motions are decided  
17 without the deception reveled.

18           If the information that was finally provided on  
19 6-22-05 In-Camera is true, then the state possessed the  
20 discovery that was specifically requested.

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ISSUES

1  
2 1) Their is newly discovered evidence that the search  
3 warrant affidavit contained misstatements that if excluded  
4 no probable cause would exist. CrR 7.8 (b)(1) suprise,  
5 CrR (b)(2) newly discovered evidence, CrR (b)(3) misconduct  
6 CrR (b)(3) misrepresentation, CrR 7.8 (b)(5).

6 2) Their is newly discovered evidence that the information  
7 in the search warrant affidavit was stale. CrR 7.8 (b)(1)  
8 surprise, CrR 7.8 (b)(2) misrepresentation & misconduct of  
9 adverse party, CrR (b)(2) newly discovered evidence, CrR 7.8.

10 3) Their is newly discovered evidence that the state  
11 violated discovery rules in pre-trial. Court order state to  
12 E-mail investigators on 1-26-05 & 2-03-05. CrR 4.7 (7) (ii),  
13 CrR 7.8 (b) (1,2,3).

13 4) their is newly discovered evidence that the state  
14 misrepresented himself and committed misconduct when he  
15 deceived the defense and court saying, Calvin Brown has  
16 nothing to do with the case, hasn't seen his name once in any  
17 of the reports and there's no Calvin connected with the case  
18 on 1-26-05. CrR 7.8 (b) (1,2,3) .

18 5) Their is newly discovered evidence that the state  
19 deceived the court and defense when he made up a "phone-tag"  
20 story as excuse for not complying with court order.  
21 CrR 7.8 (b) (1,2,3).

21 6) Their is newly discovered evidence that the state  
22 deceived the court and the defense on 2-03-05 when he said  
23 he is not aware of how Calvin Brown has any relevance to  
24 this case whatsoever. CrR 7.8 (b) (1,2,3,)

25 7) Their is newly discovered evidence the state questioned  
26 a defense witness in a way to take advantage of the none  
27 disclosure of specifically requested information.

1 Asking Sandra Gray "whoever Calvin may be", Calvin never  
2 really existed in unit no. 49. this was misconduct when the  
3 state was aware he has. CrR 7.8 (b)(1,2,3).

4 8) Their is newly discovered evidence that the state  
5 committed misconduct when he made an inference to the jury  
6 in closing arguments that calvin "never existed". also  
7 making simuler comments "who's Calvin", "Do we know who  
8 Calvin is?, I don't think so."

9 9) Their is newly discovered evidence that the state  
10 falsified in his written response to the defense post trial  
11 motions. Page seven (7) of 4-26-05 response the state wrote  
12 "not in possession of", "never been in possession of" and "  
13 does not know of the existence of any statement by Calvin  
14 Brown to any investigator". CrR 7.8 (b)(1,2,3,)

15 10) The State committed misconduct and deceived the court  
16 when he said he has only heard the name "Calvin" in pre-trial.  
17 Not the full name. CrR 7.8 (b) (2,3) This in open court  
18 on 3-04-05.

19 11) It was misconduct for the state to object to the  
20 defense using discovery rules for post trial proseedings  
21 when he knows he has an ongoing obligation under CrR4.7 rules.  
22 This done on 3-04-05. CrR 7.8 (b)(2,3)

23 12) The state committed misconduct and violated discovery  
24 rules on 3-04-05 when he and Officer Martin refused to answer  
25 to question regarding if the pre-trial order to E-mail was  
26 carried out. CrR 7.8 (b) (1,2,3),

27 13) The state misrepresented himself when he again deceived  
the court and defense that their was "nothing period" in  
regards to any **BRADY** material connecting Calvin Brown to  
the unit. CrR 7.8 (b)(1,2,3,)

1        **14) Their is newly discovered evidence the state committed**  
2 on 5-26-05 at post trial hearings when he made argument that  
3 in closing arguments he was making inference to jury that  
4 Calvin Brown doesn't exist in regards to unit 49 , and that  
5 he had nothing to do with unit 49. This done while still  
6 withholding information from the court that with doing so  
7 makes the state the last arbitrater of justice.  
8 CrR 7.8 (b)(1,2,3,)

9        **15) Their is newly discovered evidence that the state**  
10 **misrepresented himself on 5-26-05, when the court directly**  
11 **asked him if he was representing to the court that their is**  
12 **no such statement from Calvin Brown that has been withheld.**  
13 **This is a continuation of the discovery violation, misconduct**  
14 **and BRADY violation. CrR 7.8 (b) (1,2,3,)**

15        **16) The defense was left with choice of waiving his state**  
16 **and federal constitutional rights of not being compelled to**  
17 **give evidence against himself. On 5-26-05, Due to the state's**  
18 **refusal to provide information, the court asked " Do you have**  
19 **proof otherwise?" When the defense carried all the burden**  
20 **to prove to the court Calvin Browns statement existed.**

21        U.S.C.A 5 , WASH. ST. CONST. 1 § 9

22        CrR 7.8 (b)(2,3,5)

23        **17) Their is newly discovered evidence that the defendant's**  
24 **due process rights were violated when no argument was given**  
25 **In-Camera on 6-22-05 as requested it be; the issue in regards**  
26 **to the state inference to the jury that Calvin doesn't exist**  
27 **in regards to unit no. 49.**

28        U.S.C.A. FOURTEEN , WASH ST. CONST. 1 § 22

29        CrR 7.8 (b)(1,2,5)

30        **18) The state committed misconduct when he deceived the**  
31 **court on 6-22-05 in the In-Camera review when he sied that he**  
32 **was asked to speak to the officers about any criminal**  
33 **invalvment. He knew vary well the order was for any**  
34 **statements or interviews with Van P.D.**

35        CrR 7.8 (b)(2,3,5)

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19) Their is newly discovered evidence of a **BRADY** violation took place. The state withheld information about Browns connection to storage unit no. 49 . This evidence was specifically requested.

U.S. CONST. AMEND. 6, 14  
WASH. ST. CONST. 1 § 22  
CrR 7.8 (b) (1,2,3)

Case history / quotes from record

I. PRE-TRIAL

1 On 2-19-04 officer Neil Martin of van. P.D. subscribed  
2 and Swore an affidavit for search before Honorable  
3 Judge Zimmerman. On page 5 of the affidavit it states,  
4 "The CRI has seen Sivlovan store chemicals and  
5 manufacturing equipment (to include reaction flasks)  
6 at the storage facility (#49) on at least two occasions  
7 in the past thirty days (from the date of my interview  
8 with the CRI)."  
9 Affidavit also states on page 6,  
10 "The CRI stated he/she believes Siclovan travels to  
11 the storage facility daily to retrieve the items he  
12 (Siclovan) needs to manufacture methamphetamine.  
13 After "cooking" the methamphetamine, Siclovan returns  
14 the used items and equipment to the storage unit (#49)".

14 SEE (APPENDIX D) also (CP 24 )

15 With those statements included, probable cause was  
16 found.

17 This information was also included in the "Affidavit  
18 in support of issuance of a summons." On page one it states,  
19 "The CRI reported that he had been to the storage unit  
20 and he observed Ashley Siclovan store chemicals  
21 glassware including reaction flasks and chemicals inside  
21 the storage unit".

22 SEE (appendix E ) , also ( CP 2 )

23 AT the time of suppression the defendant was represented  
24 by Goerge Brintnall, WSBA # 8090. He filed a motion including  
25 staleness also challenged the probable cause within the  
26 four corners of the affidavit.

26 see (APP. D) also, (CP 24 )  
27

1 01-03-05 States response

2 This response relies heavily on the information  
3 provided in the search warrant affidavit. It says:

4 "the defendant is known to travel to the storage  
unit on a daily basis". also,

5 "The CI has personally observed the defendant store  
6 materials at the unit".

7 see (APP. F )also ,(CP 28 )

8 01-03-05 Suppression hearing

9 HONERABLE ROGER A. BENNETT heard argument on the  
10 issues. The state argued the informant was present  
11 on two separate occasions when the defendant was going  
12 to the unit. Also, that the informant believed that the  
13 defendant was going to unit daily in his manufacturing  
14 enterprise. Making an inference that Judge Zimmerman  
could assume an ongoing enterprise existed.

15 see (APP. C-page 111 ) also, (RP 111 )

16 Judge Bennett based his decision on the totality  
17 of circumstances. The main circumstance mentioned  
was:

18 "The defendants practice was to return the  
glassware and other items to the storage unit."

19 see (APP. A-page 138)

20 1-26-05 PRE-TRIAL HEARING

21 The defendant proceeded pro-se on this day.

22 The first request made was for CALVIN BROWN'S interview.

23 The states response was:

24 "I don't know anything about a Calvin Brown."

25 "I know who Calvin Brown is, but there's no Calvin  
Brown connected with this case."

26 also,

"I don't know anything about a Calvin Brown.

27 I don't see the name Calvin Brown once in any of the  
reports".

see (APP. A- page 194, 195.)

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1-26-05 continue

The court then orders the state to send an e-mail inquiring about a statement from Calvin Brown that has to do with this case.

see, (APP. A-page 195 )  
2-03-05 MOTION HEARING

Again, defense requests statement from Calvin Brown, now, specifically naming Van P.D. and Reese Campbell as the interviewers.

The state responds as follows,

"I--I know who Mr. Brown is I've prosecuted Mr. Brown in the past, and Mr. Brown currently is in prison. I have absolutely-- and Mr. Siclovan brought this up last time before Your Hohor. I've been **playing phone-tag** with officer Martin to try to address any concerns about Calvin Brown, but the state still is not aware of how Calvin Brown has any relevance to this case whatsoever".

The court orders the state to E-mail, avoiding phone-tag.

see, (APP. A- page 211 )

Defense complained about information being filterd, and feels lucky he found out about Calvin's interview.

see, (APP. A- page 210, 211, 212 )

2-07-05 INTERVIEW WITH STATE WITNESS AND ST. INVESTIGATOR

Appendix H is states witness list listing Sandra Gray as a states witness.

The transcribed interview indicates, Tim Hammond was contacted by Quinn Posner in reference other individuals who may have had access to the storage

1 | unit.

2 | The response given to the investigator was,

3 | "Yes, Calvin, Calvin Brown I think. Im not  
4 | sure, it's Calvin".

5 | also,

6 | "Calvin had the code. I know that Calvin  
7 | had the key".

8 | see (APP. I-page 2, 7 )

9 | Thier witness is asked if she is aware of anybody that  
10 | would possess items that would be invalved in manufacture  
11 | of methamphetamines.

12 | answer,

13 | "oh. sure. Calvin..."

14 | The investigator is then told Siclovan abandond and  
15 | it was rented to Calvin. see (APP. I- page 8, 10 )

16 | 2-15-05 PRE-TRIAL MOTION HEARING

17 | The state informs the court he is **not** calling Sandra  
18 | Gray as a witness for the state. see, (APP. A- page  
19 | 234 )

20 | The defense attempts to raise pre-trial issues  
21 | regarding suppression. the state objects, stating the  
22 | defense has had 3.6. The defense response to objection,

23 | "Defense with counsel but not defendant  
24 | pro-se".

25 | The court ruled the suppression would not be reopend  
26 | unless there's reason to do so. see ) APP. A-page 241,242)

27 | 2-16-05 BEFORE TRIAL STARTS:

28 | Defense requests a one day continuance. The court  
29 | denied the motion stating,

30 | "I've got a full docket on Friday".

31 | see (APP. A- page 288)

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II. TRIAL

2-16-05 TESTIMONY FROM VAN. P.D. MARTIN

Officer Martin is asked by the state why he served the search warrant at that location. He answers:

"I had received information from a variety of sources. I felt I had probable cause".

see (APP. B- page 308 )

2-16-05 TESTIMONY FROM STORAGE MANAGER:

When asked how long Siclovan was not seen at unit before search she testifies,

"I didn't see him--all I remember is I didn't see the defendant the last couple weeks".

see (APP. B- page 493 )

The answer is even clearer when asked again,

"In February you didn't come around".

see (APP. B- page 504)

In pre-trial we just heard the state say he knows who Calvin Brown is and has no relevance to the case whatsoever. Now I will quote the state make an inference to the jury that Calvin Brown does not exist.

2-17-05

The state questions Sandra Gray, now a defense witness, he asked her,

"and that's because this Calvin never really existed in storage unit no. 49. did he?"

see (APP. B- page 750 )

The state later includes a statement within a question

"Whoever Calvin may be.."

see (APP. B- page 763 )



1 3-04-05 CONTINUED:

2 The defense can't even get an answer to "did the  
3 pre-trial order get carried out". not knowing if it was the  
4 state or Officer Martin that is to blame for  
5 withholding information.

6 The defense turns to the court and asks for a court  
7 order to compel Officer Martin to answer the simple  
8 question, "did the state E-mail you". This was also denied.

9 In the record you can see officer Martin did receive  
10 the letter and even sent a voice mail about it.

11 see (APP. C- page 983 )

12 The state defends having to answer the question  
13 regarding the pre-trial order vigorously. Saying the defense  
14 could have requested additional interviews.(ALL INTERVIEWS  
15 WERE REFUSED ALL THROUGHOUT PROCEEDINGS.)

16 Then he says the defendant could of done these things  
17 himself... but chose not to. see, (APP. C- page 984 )

18 the defendant did try himself, the court ordered  
19 this, what more was to be done. Also the defendant was denied  
20 bail or a chance to resolve the no bail hold.

21 The state claims,

22 "I think it is too late for the defendant to bring  
23 bring these things up and request Neil Martin  
24 answer questions..."

25 The state also says that Martin could of been asked on  
26 the stand. Why ask Martin ,on the stand in front of the jury  
27 if he received an E-mail from the state?

see (APP. C-page 984 to 986 ) also, (APP.L page 5 ) The state  
defends the fact Martin refuses to speak to defense.

1      3-04-05 MOTION HEARING CONTINUE:

2            The defense explains the need for discovery to be able  
3 to properly address his post trial issues. Even explains  
4 the issue itself is, not being provided discovery as  
5 it was requested in pre-trial. Even request court orders due  
6 to the resistance to produce the information from officer  
7 Martin and the state.

8            see (APP C- page 969 )

9            The state responds with  
10                    "The defendant is trying to utilize a pretrial  
                         rule in order to gain access to I really  
11                    don't know what in a post-conviction setting".  
                         see (APP C- page 973 )

12            In the need to prove the state and officer Martin have  
13 violated the pre-trial court order regarding the E-mail  
14 inquiring about a statement from Calvin Brown; was this order  
15 carried out? Officer Martin refused to talk to the defense  
16 even in pre-trial. see (APP. U ) BRINTNALL'S DECLARATION

17            In this declaration on page two Brintnall witnesses the  
18 refusal to even speak to this pro-se defendant.

19            The defense makes yet another attempt. A letter is sent  
20 to Martin explaining the defense is in need of some info. to  
21 aid the defense in proving issues in upcoming post  
22 trial hearing. On page two (2) question fourteen (14) was:

23                    " DID STATE E-MAIL YOU REQUESTING ANY  
24                    INFORMATION OF:  
25                    a) Any connection with Calvin Brown.  
                         b) Any interview of Brown.

26            Officer Martin refused to respond.

27

1     3-04-05 CONTINUE:

2             The court recognizes the defense is after anything  
3 that would connect Calvin Brown to the unit. the court  
4 also recognizes the defense theory presented to the jury.  
5 the state agreed anything connecting Calvin Brown would  
6 be **BRADY** material.

7             Posner says, "I am not aware of any such material"  
8             also,

9             "from what I am aware of and from what my officers  
10             have told me, there is none, there is nothing  
period..."

11             see (APP. C- page 972 to 979 )

12     4-01-05 SANDRA GRAY'S AFFIDAVIT:

13             Sandra Gray declares in an affidavit she felt the  
14 state was making impression Calvin did not exist.

15             see (APP. J )

16     4-05-05 DEFENDANT FILES POST TRIAL MOTION

17             fifteen (15) issues where filed in the form of a brief,  
18 two (2) of the issues within pertain to this motion before  
19 you.

20             1) The failure to provide the interview of Calvin  
21             Brown. see (APP. K- page 17 of 30 )

22             2) The state claiming Calvin Brown does not exist  
23             to the jury. see (APP. K- page 26, 27 of 30 )

24     4-26-05 STATES WRITTEN RESPONSE :

25             This is the first time the defense gets any part of  
26 the deception in writing, and the last time.

27

1 STATES WRITTEN RESPONSE:

2 Please turn to (APP. L- page 7 )

3 "Written and oral statements by Calvin Brown  
4 to DOC Officer Reese Campbell and/or Vancouver Police  
5 Department do not exist".

6 "once again, the defense asserts prosecutorial  
7 misconduct by claiming the state failed to disclose statement  
8 made by Calvin Brown. the state is **not in possession**, has  
9 **never been in possession** of, and does **not know of the**  
10 **existence of any statements** by Calvin Brown to any  
11 investigator".

12 In this response the state makes no comment about  
13 the other issue.

14 see (APP. L )

15 5-26-05 ORAL ARGUMENT IN POST TRIAL MOTIONS:

16 the defense gave argument that the comment to the  
17 jury that Calvin Brown does not exist effected the verdict.  
18 The defense also explains how he can accurately quote the  
19 state. see (APP. C- page 1104, 1105 )

20 later,

21 The defense gives his argument on his (issue # 8 )  
22 in the post trial motions. "The none disclosure of Calvin  
23 Brown's statement made to Van. P.D.".

24 see (APP. C- page 1110, 1111, 1112 )

25 The state response to the issues were,

26 As to the states comment to the jury that Calvin brown  
27 does not exist, he now says he ment to imply that Calvin  
Brown doesn't exist in regards to **unit no. 49.**

see (APP. C- page 1136 )

1 5-26-05 POST TRIAL CONTINUED:

2 Quotes from the state,

3 "Calvin brown doesn't exist in regards to unit  
no. 49".

4 also,

5 "I made argument that Calvin Brown had nothing  
to do with storage unit no. 49".

6 see (APP. C- page 1136, 1137 )

7 he admits to being asked twice by the court to  
8 inquire about Calvins statements. the says,

9 " I don't remember the context".

10 Then tells the court he did as instructed to do and  
11 reported back with,

12 "They had no knowledge of statements by Calvin  
13 Brown. That's what was asked by the defense, that's what  
the court requested I do, and that's what I did".

14 The court asked Posner directly ,

15 "You're representing to the court to your  
16 knowledge there is no such statement in the  
possession of the state".

17 Posner answers, " correct"

18 The defense is then asked if he has proof otherwise.  
see (APP. C- page 1138, 1139 )

19 The state again objects to the defense having  
20 suppression, arguing he should of done that when the issue  
21 arose in pre-trial. Then the court reminds the state of  
22 the 2-15-05 ruling,

23 COURT: " I recall telling him I'm not gonna give him  
24 a suppression hearing the day before trial and we've  
25 already had one".

26 see (APP. C- page 1139, 1140 )

27

1 | 6-02-05

2 | On this day the state filed a citation for special setting  
3 | requesting an "In-Camera Review of the relevance of Calvin  
4 | Brown's involvement in storage unit #49."

5 |       see(APP H )

6 | 6-20-05 MOTION HEARING:

7 |       The state gives the court information the defense  
8 | has struggled to prove even exists sense pre-trial. this  
9 | is given in the form of a declaration.

10 |       Posner explains to the court,

11 |                ""You've asked the--when you asked the question  
12 | regarding Calvin Brown's involvement, our response is  
13 | Calvin Brown-- as it was last winter, that Calvin Brown  
14 | is not involved with-- with the storage unit.".

14 |       see (APP. C- page 1212, 1213 )

15 | 6-22-05 IN-CAMERA REVIEW:

16 |       Before the in-camera review the defense gave the court  
17 | document and requested it to be included in the hearing  
18 | see (APP. N )

19 |       The defense trusted in the court to discuss the  
20 | following issues and comments in the hearing.

21 |       a) Any showing of Brown even existing to the jury  
22 |                would of changed outcome & verdict.

23 |       b) It was improper to not disclose facts when the  
24 |                defense demenstrated the need before trial.

25 |       c) State knew of the defense theory that was planned  
26 |                to demenstrate to the jury.

27 |       d) In closing and cross examination of Sandra Gray  
28 |                the state submitted to the jury Calvin didn't  
29 |                exist or have invalvment with the unit.

see (APP. N )

1 Under conclusion of this document page 4 of 4 the  
2 defense expresses how a clear showing that the informatoin  
3 was requested and useful to the defense that was presented  
4 at trial. (APP. N )

5 The comments the defense requested to be discussed  
6 during the In-camera review were not addressed.  
7 to see in the record that the defense made such a request,  
8 see (APP C- page 1229, 1230, 1231 )

9 The information provided by the state in regards to  
10 Calvin Brown being the CI, that provided the information  
11 found in the search warrant affidavit, see (APP. O )

12  
13 7-06-05 LETTER TO THE STATE:

14 The defense writes Posner and respectfully requests  
15 that he respond in writing as to his earlier statements,  
16 implying Calvin has no involvment with case or unit #49.  
17 no response was ever made.

18 see(APP. Q )

19 Now the defense is at a loss, wondering how the state  
20 can go from Brown having **no** invalvment in pre-trial, to  
21 never existing, to wanting to discuss ex-parte with  
22 the court Calvin's involvment.

23 this question was brought to the attention of Mr.  
24 brown himself. Before the trial a quasi-judicial officer  
25 repeatedly represented Calvin had no invalvment.  
26 Mr. Brown has never denied having an interview to the  
27 defence. Thats how it was known but the defense trusted

1 | the states integrity, believing in the system more then  
2 | Calvin Brown saying he had an interview with Van. P.D..

3 |         So Brown was asked "did you really have an interview  
4 | regarding the unit". His response was yes and he has  
5 | provided an affidavit with additional information.

6 |         calvin Brown has never seen Siclovan store materials  
7 | in that storage facility.

8 |         see (APP. S )

9 |         This affidavit is also found in the court file marked  
10 | as (CP 106 )

11 | 8-01-05 CALVIN'S AFFIDAVIT IS FILED WITH COURT:

12 |         When the defense asked the court to file the document  
13 | ,the state, who knows Mr. Brown personally says,

14 |                 "received a voice mail from Mr. Brown that's  
15 | been recorded, stating he was going to be sending this  
16 | affidavit and in addition to some other vulgarities, he's  
17 | left a-- a similar voice mail with numerous people :  
18 | Art Curtis..."

19 |         see (APP. C - page 1538, 1539 )

20 |                         Summary of case history

21 |         **In pre-trial the state was court ordered to E-mail the**  
22 | **investigators.**The defense gave specific request for Calvin  
23 | Browns interview & statement. The state say's their is no  
24 | connection and has not seen the name Calvin Brown anywhere  
25 | in the reports. **in trial**, the state submitted to jury Calvin  
26 | **never** existed at unit no. 49. **post trial** the state submitted  
27 | a written report to the court stating written and oral statement  
does not exist also does not know of the existence by Calvin  
Brown. Then **after** post trial the state tells the court In-Camera  
that their was.

1 **NEWLY DISCOVERED EVIDENCE**

2 Newly discovered evidence for CrR 7.8 (b) (2) must  
3 not of been able to be discovered without the use of due  
4 diligence before post trial motions.

5 The newly discovered evidence was first made apparent  
6 to the court on 6-22-05 when the state gave information In-  
7 Camera. The defense became aware of the information even  
8 later then that due to the fact a CD-ROM of the hearing  
9 can be found all through out the community of Vancouver,  
10 Washington. That is unexplainable and not even relevant to  
11 this motion. That information provided is relevant to the  
12 issues before you. The evidence is that, Calvin Brown did  
13 have invalvment with unit 49, has been to the unit, did give  
14 statements to Van P.D. about the unit, did have interviews  
15 with Van. P.D., the state did know about this information,  
16 even possessed the information that was specificly requested,  
17 willfully disregarded pre-trial/court orders, violated discovery  
18 rules.

19 **see, (APPENDIX O )**

20 Additional newly discovered evidence is a statement  
21 given by Calvin Brown. on 8-01-05

22 **see, (APPENDIX S )**

23 This affidavit gives evidence that the affiant was not  
24 told by the informant that he seen Siclovan place materials  
25 in the storage unit.

26 **EVIDENCE MUST BE SUCH THAT IT WOULD CHANGE OUTCOME**

27 This evidence that the state carried on a deception,  
would cause for sanctions to be imposed under,  
CrR 4.7 (7)(ii).

1 Those sanctions alone would of changed the out come of the  
2 trial, not to mention the direction of the investigation.  
3 This information would of cooberated the defense witness  
4 Sandra Gray, who was so vigerously impeached by the state.  
5 It would of been more believable that Brown occupied that unit  
6 if it was known to the jury that he told police he has been  
7 their. This information provided on 6-22-05 is newly  
8 discovered evidence that the state deceived the jury in  
9 closing arguments and that alone requires relief becouse  
10 the state made inference that Brown never existed at unit  
11 when he knew he has. This is evidence that the state could  
12 be subject to sanctions for misrepresenting himself,  
13 mismanagement, and ARBITRARY action.

14 Browns affidavit meets the first criteria also, This  
15 information would mean the search warrant affidavit did not  
16 contain P.C. .

17  
18 **MUST BE DISCOVERED SINCE POST TRIAL.**

19 The evidence meets this criteria:

20 The state did not reveal his deception untill the  
21 post trial hearing was over. 6-22-05

22 Calvin Browns affidavit also meets the criteria:

23 The affidavit is signed on 7-11-05 and filed with the  
24 court on 8-01-05 .

25 **EVIDENCE COULD OF NOT BEEN DISC. WITHOUT DUE DILIGENCE.**

26 The defense has outlined the great effort made to  
27 obtain information he knew existed in pre-trial. But was

1 left with no choice but to believe Posner who was seen as an  
2 officer of the court under the rules of professional conduct  
3 and would not lie to the defense, especially to the court.

4 You can see in the record that this pro-se defendant  
5 made a great effort on 3-04-05 to gain discovery to preparair  
6 for post trial motions. The state gave aggressive argument  
7 winning a denial of any assistance in getting the vary  
8 evidence that was being withheld. Also the defense did  
9 infact file two (2) issues in a timely manner with legal  
10 authority in post trial. Only to have the state represent to  
11 the court that it did not exist. This motions case history  
12 and the court record is a showing of a due diligent effort  
13 to obtain the information the state withheld.

14 The defense gives good cause for the reason Calvin  
15 Browns statement was not discovered before trial or post  
16 trial motion, and request that the following justify it's  
17 being submitted when it was. The state lead such a  
18 convincing deception that "Calvin Brown, has no relevance  
19 to case, that he has not seen his name anywhere in the  
20 reports, and no statement from Calvin exists." This pro-se  
21 defendant could not yell out **liar!** in court. This pro-se  
22 defendant was intimidated by this officer of the court  
23 and would not believe he would be so bold to deceive the court  
24 and violate the rules of professional conduct with such  
25 confidence. Even the defense believed Posner over the  
26 information Brown gave him before charges were filed.  
27 Can the defense be at fault for believing the deception?

1 The defense wrongfully chose to believe in the integrity  
2 of the state. With out the state making such factual  
3 statements that Brown had no involvement "whatsoever",  
4 other angles would of been explored. With the state making  
5 such sure and definite he had no involvement, why and how  
6 could a indigent defendant get funds to investigate an issue  
7 the court already ordered the state to explore? The state  
8 already shut down that avenue with his deception. It would  
9 of been a waist of funds from this great state to investigate  
10 what the state already explored, if it even was to be aproved  
11 to do so. In the interest of justice this affidavit should  
12 be accepted by the court.

13  
14 **THE EVIDENCE MUST BE MATERIAL AND ADMISSIBLE.**

15 This evidence meets this criteria:

16 The evidence that is provided in appendix O is  
17 material to the issue of the discovery violations, the  
18 **BRADY** violations, guilt ,and the defense presented at trial.  
19 The evidence is material to the issues presented in the post  
20 trial motions.

21 Browns affidavit is material to the issue of  
22 in the search warrant affidavit. that their was no probable  
23 cause in the affidavit, that Officer Martin obtained his  
24 information from the other source. This affidavit is material  
25 evidence the state can use to add weight to the argument  
26 that it was not misconduct to tell the jury Brown never  
27 existed at unit 49.

1 This evidence is material to prove state and federal  
2 constitution violations of this defendants rights.

3 **THIS EVIDENCE IS NOT MERELY CUMULATIVE OR IMPEACHING.**

4 Although this evidence does impeach the state, that is  
5 not it's only value. This evidence goes beyond merely  
6 cumulative or impeachment evidence. This is evidence of:

- 7 WASH. ST. CONST. 1 § 7, 9, 22 ,
- 8 U.S.C.A. CONST. AMEND 4, 5, 6, & 14 ,
- 9 DISCOVERY RULES CrR 4.7 ,
- 10 RULES OF PROFESSIONAL CONDUCT 3.4 , 8.4 ,
- 11 All these violations and more.

11 I believe The defence has met all five (5) parts of the test.  
12 State v. Davis, 25 Wn. App. 134, 138 (1980);  
13 State v. Williams, 96 Wn.2d 215,223 (1981).

14 **SEARCH WARRANT AFFIDAVIT**

15 Their is newly discovered evidence that Posner was  
16 being truthful to the jury when he said that Calvin never  
17 existed at unit no. 49, and was truthful to the court when  
18 he said Calvin Brown has nothing to do with this case  
19 "whatsoever". Because Calvin Brown, the Informant, really  
20 has not been to storage unit no. 49 and never did tell Officer  
21 Martin that he ever has been there.

22 **MISSTATEMENTS IN SEARCH WARRANT AFFIDAVIT.**

23 On page five of the affidavit for search (CP 24),  
24 Officer martin includes that the C.R.I. has seen Siclovan  
25 place materials in the unit on two (2) occasions. At no other  
26 place in the affidavit does it make any other reference to  
27 how he obtained the information of where to search.

1 This statement was necessary to obtain a warrant. Without it  
2 their would not be any showing of the place to be searched  
3 or how the info. was obtained. Also, their would be no  
4 showing of an ongoing enterprise existed. Calvin Brown  
5 was the infofmant that provided the information leading to  
6 the warrant. Yet, it comes now to the attention of the  
7 defense that he did not provide all the information.

8 see, (APP. O ) to see Calvin Brown is the C.R.I.  
9 see, (APP. S ) to see Calvin Brown's affidavit

10 It is believed by the defence that Officer Martin was  
11 truthful at trial when he testified to receiving information  
12 from a variety of sources

12 see, (APP. C- page 308 )

13 Meaning Calvin Brown was not the only informant and the  
14 magistrate was not able to make determination with out all  
15 the facts. If that misstatement is excluded you have no  
16 listed place to be searched. With the fact included that no  
17 place in the affidavit did Officer Martin inform the  
18 magistrate that Siclovan has not been seen at unit for  
19 three (3) weeks.

18 see, Bates testimony, (APP. B- page 493, & 504 )  
19 No warrant shall issue, but upon probable cause,  
20 supported by oath or affirmation, and particularly  
21 describing the place to be searched...

21 U.S. CONST. amend. 4 see, State v. Riley,  
22 846 P.2d 1365 (1993)

22 FRANKS HEARING

23 Defendant is entitled to an in-camera  
24 hearing on the truthfulness of informants  
25 information if defendant casts reasonable doubt  
26 on the veracity of material representations made  
27 by an affiant, all defendant must make is a  
minimal showing of inconsistancy.

State v. Salander, 827 P.2d 1090, citing,  
Franks v. Delaware, 438 U.S. 154 (1978)

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The defense believes more than a minimal showing has been made. Not only is the affiant's veracity at question here but the state's also.

The state will argue this is only a pre-trial issue, as he argued in the In-Camera review on 6-22-05. The defense disagrees with his interpretation of "preliminary" showing, the "pre" not to be mistaken for "pre"trial. The pre is the showing needed to be made before the court is to even consider the review/Franks hearing.

The defense also contends that he if the state did not deceive the court in post trial the court would of been able to address the issues pertaining to the affidavit on the same day, the court granted a second 3.6 hearing.

see, (APP. P )

Appendix (P) is the motion the defense filed when the court allowed a suppression hearing after the trial. The defense briefed the issues pertaining to the stalness and the misstatements in the affidavit for search. These issues were not cited with the authority to address them at the time.

Now their is good cause to do so.

If defendant makes substantial showing false statements knowingly and intentionally, or with reckless disregard for the truth was included... The FOURTH AMENDMENT requires that a hearing be held at defendants request.

State v. Jackson, 46 P.3d 257 citing, **FRANKS V. DELAWARE**, 438 U.S. 154 (1978)

For all the reasons above a hearing under **franks** is in need for justice and to give true facts to the appeal COURT.

1 SHOWING OF PREJUDICE

2 The misstatements that have been placed in the s.w.  
3 affidavit intentionally would not be harmless. It can be seen  
4 No other way other then actual prejudice at a  
5 constitutional level. Due to the fact the affidavit did not  
6 state how Officer Martin obtained the information other then  
7 Calvin Brown.

8 Prejudice in pre-trial

9 The defense suffered prejudice from the moment he took  
10 over the case on 1-26-05. Being deceived by the state as  
11 to Calvin Brown Having nothing to do with the case cut  
12 off many avenues and pre-trial procedures. The state later  
13 uses that to his advantage by telling the court he should  
14 of done it pre-trial see, appendix 0 .

15 PREJUDICE IN TRIAL

16 The defense was prejudiced in trial amounting to a  
17 due process violation. The misconduct the state performed in  
18 front of the jury effected the verdict by convincing the jury  
19 Calvin Brown don't exist and has never been to the unit  
20 49. The state was aware of the defense being presented at  
21 trial. To make inference to the jury he don't exist, then  
22 he is saying no defense exists. Also, the prejudice that  
23 the defense suffered in trial was the lacking credibility  
24 of witness Sandra Gray. The state prayed on that, using for  
25 his advantage of the information he kept from the defense  
26 and court. If the state would of given information requested,  
27 he would not <sup>of</sup> been able to act like it does not exist before  
the jury, or to be able to say Sandre Gray was lying when she

1 testified that Calvin's <sup>been</sup> to unit, and even existing. the  
2 jury believing Calvin not existing or never being at unit 49  
3 would effect outcome of trial.

4 PREJUDICE IN POST TRIAL

5 The prejudice that the defense suffered was the court  
6 gave the defense a choice that would mean giving up his  
7 fifth amendment rights to prove that the state was  
8 withholding information. The state misrepresented to the  
9 court that no statement existed ( RP 1139 ). Then the court  
10 asked the defense if he had proof otherwise (RP 1139 ).  
11 The court was not aware of the grief that placed on the  
12 defense and it wouldn't of even taken place if the state  
13 did not withhold the info.

14 Additional prejudice was the court was not able to  
15 include the withheld information when he denied to allow  
16 for additional discovery to prepare for the post trial motions  
17 ( RP 972 to 986 ). The defense suffered prejudice by not  
18 being able to prove his post trial motions.

19 The defense suffered prejudice when the state gave  
20 false information to the court in his written response to  
21 post trial motions. This deceived the court into believing  
22 no statement from Brown existed, also makes the defense look  
23 real silly chasing something that don't exist. When the  
24 whole time the state knew the truth.

25 The defense suffered the opportunity to argue for a  
26 new trial on the issue of the state telling the jury Calvin  
27 has never existed at the unit, the court may of granted  
relief if he was aware the state knew he has been their.

1 The defendant suffered great prejudice when he was  
2 denied having the argument included in the In-Camera  
3 review on 6-22-05. The defense requested the issue of the  
4 state submitting to jury Calvin don't exist. If this  
5 argument was made then the appeal court would have a record  
6 to review.

7 LEGAL ARGUMENT

8 The state has a continuing duty to disclose,  
9 State v. Brush, 32 Wn.App. 445 (1982)

10 In this case the state was at the belief he did not  
11 need to disclose evidence for post trial preparation (972) <sup>RP</sup>

12 THE INFORMANT'S PRIVILEGE DOES NOT APPLY ONCE  
13 THE INFORMANT'S IDENTITY HAS BEEN DISCOVERED  
14 BY THE PERSONS TO WHOM THE INFORMANT WOULD  
PREFER TO REMAIN ANONOYMOUS.

15 State v. Thetford, 109 Wn.2d 392 (1987)

16 The whole community that Brown has grown up in has the  
17 CD-ROM of the 6-22-05 In-Camera Review. It is no secrete  
18 he has worked as an informant. See affidavit,  
19 (appendix D ) page five (5). It reads: "the C.R.I. wants  
20 to remain confidential in fear of retaliation, and to  
21 continue on going investigations." Calvin Brown is a known  
22 informant every sense the Goddess Diana dropped the CD-ROM  
from the moon. (CD-ROM appendix O )

23 Secondly, their is no ongoing investigations.

24 see, ( RP 1538, 1539 ) The state <sup>said</sup> he has received  
25 voice mails from Brown, and Art Curtis including vulgarities.  
26 The relationship between the state and Brown has ended when  
27 Brown found out Martin lied in the affidavit (appendix S ).

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"Defendant must be notified of in camera hearing and be provided opportunity to be represented or submit questions"

State v. Smith, 101 Wn.2d 36 (1984)

Not all of the issues that the defense submitted before the in camera review on 6-22-05 were discussed. compare, appendix N, with appendix O

The denial of disclosure infringed on the constitutional right of the accused CrR 4.7 (f) (2).

U.S. CONST. AMEND. 14  
WASH. ST. CONST. 1 § 22

The state violated court orders invalving discovery. Their is no proof or showing the state carried out the order to make E-mail. order given on 2-03-05.

"Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by court". CrR 4.7 (7)(ii)

The state violated the rules of professional conduct all through the proceedings in the form of deceit and misrepresentation..

"It is professional misconduct for a lawyer to: RULE 8.4 (c),

c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation".

"Prosecuting attorney is an officer of the court whose duties extend not only to the court and to the public, but to the defendant as well". State v. Krausse, 519 P.2d 266

"Prosecuting attorney as a quasi-judicial officer has duty to see accused is given a fair trial. State v. Cook, 512 P.2d 747

In this case the state did not uphold that duty to the

1 court or the defendant by carrying on such a deception.  
2 If the state was at all concerned about his duty to see that  
3 the defendant was going to get a fair trial, he would of  
4 given the court the information about Brown in pre-trial.  
5 Like about the time he decided to drop his witness (Sandra  
6 Gray) because she connected his informant to the unit. The  
7 state did not preform his sworn duty to the court or the defense.

8 The state has continuing duty to disclose  
9 discoverable information in criminal prosecution  
10 State v. Greiff, 10 P.3d 390 (2000)

11 Once the state found out his witness made a conection  
12 of his informant to the specific discovery requests the  
13 defense made he should of informed the court of the  
14 situation. The state admits in the in camera review he was  
15 not sure of how the question was asked of him.

16 "Proper to hold camera hearing before denying  
17 disclosure."  
18 State v. Petrina, 871 P.2d 637

19 In this case the information connecting Calvin Brown  
20 to the unit was the defense. To with hold any of that  
21 connection would take from the ability to prepare for trial.

22 "The privilege is not absolute, however the court  
23 must balance the public interest of the free  
24 flow of the information, against the accused  
25 right to prepare his or her defense".

26 Roviaro v. U.S., 353 U.S. 53 at, 62 (1957)

State v. Harris, 91 Wash. 2d 145 , at 149 (1978)

27 In this case the state was made well aware of the  
28 preparation the defense was struggling to obtain. The state  
29 even took advantige of the withheald information. Even called  
30 the defense witness a liar at trial when she testified to  
31 truthful information he was aware of.

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"If disclosure of an informants identity is relevant and helpful to the defense... or is essential to a fair determint of a cause, the privilege must give way. In this situation the trial court *must* require disclosure. Roviaro, supra, at 60,61

"Failure to compel disclosure under these circumstances will deprive defendant of a fair trial".

State v. Harris, 91 Wash. 2d 145 at,149 (1978)

If you apply this state and federal case law to this case the privilege should of given way and the defense prepare his defense. Or at least not have the state benefit from the deprivation of material.

"Prosecutory misconduct focuses on it's asserted impropriety and substantial effect".

U.S. v. Yarbrough, 852 F.2d 1522 at,1539 (1988)

The state submitted to the jury Calvin never existed at unit no. 49, when he had knowledge that he has been their.

"We must review the potential for prejudicial effect in the context of the entire trial".

U.S. v. Young, 470 U.S. 1, at 16 (1985)

Their is more then a reasonable possibility that the evidence the state presented to the jury regarding Brown never existing at unit affected the outcome of the trial.

"In general, prosecutory misconduct requires new trial when there is substantial likelihood that misconduct affected jury verdict.

State v. Copeland, 922 P.2d 1304

It was misconduct to submit to the jury that Calvin has never existed at unit no. 49 when his confidential reports said he has been their. Also, knowing that the defense relied on the jury believing that.

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"Prosecutor must resolve doubts regarding disclosure of evidence in favor of sharing evidence with defendant".

State v. Dunivun, 829 P.2d 799

In this case the state should of at least included the court in the decision. Instead the state became the last arbitrator making his own ruling. The state chose to drop their own witness in an attempt to keep that favorable evidence from the jury. The evidence the state withheld from the court and the defense would also be good evidence to help build the credibility of defense witness Sandra Gray.

"If prosecutory misconduct is so flagrant that no instruction can cure it new trial is manditory remedy".

State v. Graham, 798 P.2d 314

In the case before you the extent of misconduct was unknown to the defense when the prosecutor told the jury Calvin never existed at unit no. 49. Due to the late disclosure to the court that he knew of him being at unit. So no resonable person would expect the defense to see the extent of misconduct at trial when he still was not aware the state had knowledge of the evidence he said does not exist. If the defense was aware the state possessed evidence Calvin Brown has been to the unit, the defence would of objected, would of even asked for a mistrial. At the least would of had a chance to rebute the statement.

"Reversal is required only if their is a substantial likelihood any improper statement affected the jury's verdict".

State v. Brown, 132 Wn.2d 529

"All allegedly improper remarks must be reviewed in the argument" Brown supra, at 561

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It is more likely than not that the remarks by the state affected the jury especially when they impeached the defense witness at the same time as deceived the jury of facts that were known to the state to be true.

Credibility of the defense witness on the issue of Brown was most important especially after that witness admitted being untruthful in the past. Her veracity on the issue of Brown existing at unit was critical to the defense.

"Not harmless error unless reviewing court can say beyond Reasonable doubt that a jury would reach same verdict with out error".  
State v. Austin, 59 Wa.App. 186

Can this court say beyond a reasonable doubt that if the jury heard the state say Brown has been to unit the verdict would be the same. Does this court believe Siclovan let the state make such comments if he knew Calvin's name really was in the states reports, and that the state was aware Sandra Gray was right, "that Calvin Does exist and has been to unit".

"In the furtherance of justice , requires a showing of govermental misconduct or arbitrary action which materially infringes on defendant's right to a fair trial".

State v. Boldt, 40 Wn.App. 798 (1985)

"Simple mismanagement is a sufficient basis to dismiss a case under subsection (b)".

State v. Frazier, 82 Wn.App. 576 (1996)  
CrR 8.3 (b)

"Where prosecution failed to comply with discovery rule and court orders, dismissal in interest of justice was proper".

State v. Dailey, 93 Wn.2d 454 (1980)

1 Their is a number of case laws in this state that have ended  
2 in dismissal for less mismanagement then this case before you.  
3 The court on it's own motion with hearing may dismiss CrR 8.3  
4 This defendant contends that the violations are at a  
5 constitutional magnitude. At this time this motion merely  
6 requests that the defendant be heard on the issues and make  
7 factual determinations for the appeal court.

8 State v. Smith, 80 Wn.App. 462

9 Then if good argument leads the court to see that the  
10 due process rights of the accused have been violated to then  
11 take appropriate action.

12 Brady v. Maryland, 373 U.S. 83 (1963)

13 U.S. CONST. AMEND. 6,14

14 WASH. ST. CONST. 1 § 22

15 CrR 4.7

16 CrR 7.8 (b) (1,2,3,5)

17 CrR 8.3 (b)

18 CONCLUSION

19 For all the reasons set forth in this motion I pray the  
20 court will give the defense a chance to argue the issues as  
21 the state was able to In-Camera on 6-22-05.

22 I ASHLEY WADE SICLOVAN, pro-se, swear under the laws of  
23 perjury of the STATE OF WASHINGTON that the foregoing is  
24 true and correct to the best of my knowledge.

25 DATED: 2-15-06

26 ASHLEY WADE SICLOVAN

Ashley Wade Siclovan, PRO-SE

# APPENDIX

## A

( R P ) PAGE 111 to 288  
VERBATIM REPORT OF PROCEEDINGS

1-03-05 to 2-16-05

PRE TRIAL HEARINGS

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

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	Superior Court
	)	No. 04-1-01856-1
v.	)	
	)	
ASHLEY WADE SICLOVAN,	)	Court of Appeals
	)	No. 33697-9-II
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for hearing in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, January 3, 2005, before the HONORABLE ROGER A. BENNETT, Judge.

APPEARANCES: Mr. Quinn Posner, Deputy Prosecuting Attorney, on behalf of the State of Washington; and

Mr. George Brintnall, Attorney at Law, on behalf of the Defendant.

*Linda Williams, Official Court Transcriber  
13321 P.E. Knapp Court  
Portland, Oregon 97236  
phone (503) 761-1240, fax (503) 762-8244*

1 present on I believe it was approximately three  
2 different instances of manufacture within the prior  
3 thirty days, where the defendant had manufactured  
4 methamphetamine on one of those occasions. Three  
5 ounces of methamphetamine was manufactured. That's  
6 a significant amount.

7 We have this -- the confidential informant  
8 stating that on two separate occasions the CI was  
9 present when the defendant was going to the storage  
10 unit and either picking up materials or depositing  
11 unused materials in the manufacture of  
12 methamphetamine.

13 We have information that the CI believed  
14 that the defendant was going to that storage unit  
15 on a daily basis in his methamphetamine  
16 manufacturing enterprise.

17 I think this shows -- this -- a judge, and  
18 Judge Zimmerman, could reasonably infer that this  
19 was an ongoing enterprise.

20 If this were a situation where the defendant  
21 was selling small amounts of methamphetamine out of  
22 that storage unit, I would agree that the  
23 information of thirty days old is probably stale  
24 when it comes to small saleable quantities.

25 However, we're dealing with an ongoing

1 there's a motive to be truthful. One can infer,  
2 then, greater likelihood that truthful information  
3 would be provided.

4 Based on the totality of the circumstances,  
5 the statement about the prior information provided  
6 by the informant and the motive that the informant  
7 had and the *U.S. v. Vantruska* presumption, I will  
8 find that a reasonable magistrate could -- doesn't  
9 mean that every reasonable magistrate would, but a  
10 reasonable magistrate could find probable cause,  
11 and that's the test.

12 As to staleness, I want to address that,  
13 what we have described here is an ongoing  
14 enterprise. There's an indication that on I think  
15 two or three occasions the informant had seen the  
16 defendant allegedly cooking methamphetamine, that  
17 the defendant's practice was to return the  
18 glassware and other items to this storage unit.

19 The very concept of a storage unit connotes  
20 an ongoing activity of storage. And really what I  
21 think may be the -- it's a little confusing here in  
22 some of the staleness cases is they're talking  
23 about a one-time offense, and whether or not there  
24 would continue to be evidence of that offense over  
25 a period of time in one location.

1           Well, the offense here is alleged to be  
2 possession, and police were not looking for an  
3 operation, an actual cooking operation, they were  
4 looking for the items used in that operation which  
5 were regularly, according to the affidavit, on a  
6 daily basis returned to that storage unit and kept  
7 there.

8           So that very nature of the offense provides  
9 us with an expansion of the staleness doctrine here  
10 when dealing with an ongoing enterprise. It's  
11 similar to the -- the drug -- the marijuana-grow  
12 situation where it's an ongoing enterprise that  
13 takes place over time.

14           There is evidence in the affidavit from  
15 which one could infer that it was a continuing  
16 situation and would continue for a reasonable  
17 period of time thereafter.

18           Because this warrant, then, was supported by  
19 probable cause and the information in the warrant  
20 was not unlawfully obtained, the motion to suppress  
21 evidence, which motion is directed to the warrant  
22 and underlying affidavit, is denied.

23           Now, we have a trial date; correct?

24           MR. BRINTNALL: Yes, Your Honor, the 24th.

25           THE COURT: Okay. Thank you. We'll be in

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

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	Superior Court
	)	No. 04-1-01856-1
v.	)	
	)	
ASHLEY WADE SICLOVAN,	)	Court of Appeals
	)	No. 33697-9-II
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for hearing in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, January 26, 2005, before the HONORABLE ROGER A. BENNETT, Judge.

APPEARANCES: Mr. Quinn Posner, Deputy Prosecuting Attorney, on behalf of the State of Washington; and  
Mr. George Brintnall, Attorney at Law, on behalf of the Defendant.

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13321 P.E. Knapp Court  
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phone (503) 761-1240, fax (503) 762-8244*

1 MR. BRINTNALL: The -- the tape was done, I  
2 think, the middle of last month.

3 THE COURT: Okay, that will be provided to you  
4 today.

5 MR. BRINTNALL: Okay.

6 THE COURT: Anything else?

7 THE DEFENDANT: As a matter of fact, as a part of  
8 discovery, I just wanted to -- I know there was --  
9 there was a interview, two witnesses, and signed  
10 statements and recording. I've seen and heard of  
11 Sandra Gray's.

12 And now there's another person interviewed  
13 about this -- this case, Calvin Brown, and I have  
14 not seen it nowhere in the record, and it may have  
15 evidence towards my innocence and that should be --

16 THE COURT: An --

17 THE DEFENDANT: -- handed over.

18 THE COURT: An interview with Calvin Brown?

19 THE DEFENDANT: Yeah, in this jail.

20 MR. POSNER: I have no -- I -- I don't know  
21 anything about a Calvin Brown. I know who Calvin  
22 Brown is, but there's no Calvin Brown connected  
23 with this case.

24 THE DEFENDANT: (To Mr. Posner:) If you check  
25 with the officers that were investigating this case

1 and see if they have any evidence that may help me.

2 MR. POSNER: I'm -- I'm not calling a Calvin  
3 Brown, I don't know anything about a Calvin Brown.  
4 I don't see the name Calvin Brown once in any of  
5 the reports.

6 THE COURT: Send an e-mail, please, to the  
7 officer inquiring as to whether or not there's any  
8 statement from a Calvin Brown that has to do with  
9 the case.

10 MR. POSNER: Okay.

11 MR. BRINTNALL: Thank you.

12 THE COURT: And then if there is, you'll need to  
13 make a determination whether that's discoverable.

14 Anything else?

15 MR. POSNER: That about covers it for me.

16 THE COURT: Standby counsel, anything else?

17 MR. BRINTNALL: No, Your Honor.

18 THE COURT: Thank you, we're in recess.

19 MR. BRINTNALL: Thank you.

20 MR. POSNER: Thank you, Your Honor.

21 *(Proceedings recessed this 26th day of January, 2005.)*

22

23

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25

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

STATE OF WASHINGTON, )  
 )  
 Plaintiff, ) Superior Court  
 ) No. 04-1-01856-1  
 v. )  
 )  
 ASHLEY WADE SICLOVAN, ) Court of Appeals  
 ) No. 33697-9-II  
 Defendant. )

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for hearing in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, February 3, 2005, before the HONORABLE ROGER A. BENNETT, Judge.

APPEARANCES: Mr. Quinn Posner, Deputy Prosecuting Attorney, on behalf of the State of Washington; and  
  
Mr. Ashley Siclovan, pro se; and George Brintnall, Attorney at Law, standby counsel for the Defendant.

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phone (503) 761-1240, fax (503) 762-8244*

1 Campbell is not involved.

2 THE COURT: Okay. Reese Campbell and who else?

3 THE DEFENDANT: And the Van PD, their -- the tag  
4 team. They came and they had interviews with --

5 THE COURT: Who's the other person?

6 MR. BRINTNALL: Calvin Brown.

7 THE DEFENDANT: Calvin Brown.

8 THE COURT: Calvin Brown?

9 THE DEFENDANT: (Indiscernible) a signed,  
10 sworn -- the statements -- unless  
11 (indiscernible) --

12 MR. BRINTNALL: Tell him who Calvin Brown is.

13 THE DEFENDANT: Calvin Brown is an inmate or a  
14 known person in the community as --

15 MR. POSNER: I -- I know who Mr. Brown is. I've  
16 prosecuted Mr. Brown in the past, and Mr. Brown  
17 currently is in prison. I have absolutely -- and  
18 Mr. Siclovan brought this up last time before Your  
19 Honor. I've been playing phone-tag with Officer  
20 Martin to try to address any concerns about Calvin  
21 Brown, but the State still is not aware of how  
22 Calvin Brown has any relevance to this case  
23 whatsoever.

24 THE COURT: All right, this -- this is my order.  
25 I'm going to ask that you contact Reese Campbell,

1 and I suggest e-mail, because that's usually --  
2 that avoids the phone-tag situation, or you could  
3 call also and see if there are any reports or  
4 investigations in his possession that you don't  
5 have that flowed from this search warrant.

6 MR. POSNER: Okay.

7 THE COURT: What else?

8 THE DEFENDANT: Basically any questioning that  
9 you may have -- or any evidence or information you  
10 may have gathered unless it's under privilege,  
11 through Reese Campbell and the investigating  
12 officers with, in particular, Reese Campbell or  
13 with Calvin Brown or anybody else.

14 'Cause I see the -- the -- I can tell  
15 (indiscernible) --

16 THE COURT: Your -- your request is too broad,  
17 you're saying any investigation by anybody else.  
18 He can't possibly --

19 THE DEFENDANT: I know that it's all --

20 THE COURT: -- answer that.

21 THE DEFENDANT: -- being filtered, I'm lucky I  
22 found out about Calvin Brown's interview.

23 MR. POSNER: And -- and so the Court's aware, I'm  
24 somewhat -- I'm -- obviously I'm more than willing  
25 to do these things, I'm just somewhat at a loss

1 because the defendant is requesting things that  
2 really isn't making much sense to the State,  
3 that from the information the State has, these  
4 requests have absolutely no relevance to his case  
5 whatsoever.

6 THE COURT: I'm -- every time he makes a request  
7 I'm repeating to you what I want you to do.

8 MR. POSNER: Sure.

9 THE COURT: So that --

10 MR. POSNER: I understand --

11 THE COURT: Hopefully you'll understand me.

12 THE DEFENDANT: And then I did have on the  
13 omnibus -- omnibus application No. 12, I did have  
14 the option reserved to secure witnesses, and --

15 THE COURT: Yes. Which witness?

16 THE DEFENDANT: The Sandy Gray.

17 THE COURT: Yeah, I've -- I've ordered that she  
18 not be released from her subpoena.

19 THE DEFENDANT: Okay. Thank you.

20 THE COURT: Anything else?

21 THE DEFENDANT: That's it.

22 THE COURT: Yes, Mr. Brintnall.

23 MR. BRINTNALL: Thank you, Your Honor. First of  
24 all, the Court directed me to find an expert and  
25 start with jail -- to jail medical about his facial

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

STATE OF WASHINGTON,            )  
                                          )  
                  Plaintiff,            )     Superior Court  
                                          )     No. 04-1-01856-1  
                  v.                    )  
                                          )  
ASHLEY WADE SICLOVAN,        )     Court of Appeals  
                                          )     No. 33697-9-II  
                  Defendant.         )

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for hearing in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, February 15, 2005, before the HONORABLE ROGER A. BENNETT, Judge.

APPEARANCES:            Mr. Quinn Posner, Deputy Prosecuting Attorney, on behalf of the State of Washington; and  
  
                                  Mr. Ashley Siclovan, pro se; and George Brintnall, Attorney at Law, standby counsel for the Defendant.

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phone (503) 761-1240, fax (503) 762-8244*

1       afternoon, we have three hours there. So can you  
2       get three or four witnesses on in the afternoon?

3           MR. POSNER: I should be able to get through  
4       those three by the end of the day, yes.

5           THE COURT: That's not my question. Can you --

6           MR. POSNER: Okay, in the afternoon.

7           THE COURT: -- get more in there?

8           MR. POSNER: I don't believe so. I initially did  
9       have four called for Wednesday, the fourth being  
10      Sandra Gray. I don't plan on calling Sandra Gray  
11      at this point. She is -- she is still under  
12      subpoena, as the Court ordered.

13          THE COURT: Uh-huh.

14          MR. POSNER: And my other -- the other three  
15      witnesses are Linda Pritchard of Clark County GIS,  
16      Jenny Johnson of the Vancouver School District, and  
17      Bruce Siggins of the crime lab. I had subpoenas  
18      for Thur- -- subpoenaed for Thursday morning.

19          THE COURT: All at 9:00?

20          MR. POSNER: Yes.

21          THE COURT: Well, that's good, because they  
22      probably won't take more than an hour between the  
23      three of them.

24                 That, then, would leave Mr. Siclovan to  
25      start his case, so I'll set his subpoenas at

1 MR. BRINTNALL: Why do you want to subpoena him?

2 THE DEFENDANT: (Conference with standby  
3 counsel.)

4 Well, Your Honor, actually during -- during  
5 the process of trial, if things come up that --  
6 that show of reasons for suppression of certain  
7 evidence --

8 THE COURT: Uh-huh.

9 THE DEFENDANT: -- would that be noted by the --  
10 by the counsel or by the -- by the courts?

11 I mean, even though we had a suppression  
12 hearing, but if there was things that just weren't  
13 investigated, if things came up during trial, would  
14 Your Honor note them and -- or even -- even would  
15 they be noted before the appeal courts?

16 THE COURT: I don't know. What does Alan  
17 Earhart -- is he -- does he have something to do  
18 with your guilt or innocence?

19 THE DEFENDANT: There -- that that was the K-9  
20 handler that sniffed the hallway and sniffed the  
21 door, and then they --

22 MR. BRINTNALL: (Inaudible.)

23 THE DEFENDANT: -- cut the lock off right at that  
24 moment.

25 MR. POSNER: The Defense has had a 3.6 on this

1 previously, Your Honor.

2 THE DEFENDANT: Defense with counsel --

3 THE COURT: Well, I'm --

4 THE DEFENDANT: -- but not defendant pro se.

5 THE COURT: I de- -- I'm not going to reopen the  
6 suppression --

7 THE DEFENDANT: No. I didn't ask for that.

8 THE COURT: -- unless there's a reason to do so.  
9 So I'm not gonna subpoena him to testify in the  
10 trial.

11 Patrick Moore, VPD, was present for an  
12 interview and statement of Sandra Gray.

13 THE DEFENDANT: Sandra Gray was -- did a written  
14 statement and was initially interviewed in  
15 February.

16 THE COURT: Okay.

17 THE DEFENDANT: She -- he was there, and I want  
18 more than just Neil -- Neil's version of it,  
19 Neil --

20 THE COURT: Well, why -- why is any statement  
21 of -- do you intend to offer any statement of  
22 Sandra Gray, Mr. Posner?

23 MR. POSNER: Not -- not in my -- not in my case  
24 in chief.

25 THE COURT: Okay. So you're not offering any

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

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	Superior Court
	)	No. 04-1-01856-1
v.	)	
	)	
ASHLEY WADE SICLOVAN,	)	Court of Appeals
	)	No. 33697-9-II
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for trial in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, February 16, 2005, before the HONORABLE ROGER A. BENNETT, Judge.

APPEARANCES: Mr. Quinn Posner, Deputy Prosecuting Attorney, on behalf of the State of Washington; and

Mr. Ashley Siclovan, pro se; and George Brintnall, Attorney at Law, standby counsel for the Defendant.

*Linda Williams, Official Court Transcriber  
13321 S.E. Knapp Court  
Portland, Oregon 97236  
phone (503) 761-1240, fax (503) 762-8244*

1 THE COURT: What is it?

2 THE DEFENDANT: -- inventory list?

3 MR. POSNER: The inventory.

4 THE DEFENDANT: That I've never been disclosed.

5 THE COURT: Yes.

6 MR. POSNER: I'd be happy to make a copy of that.

7 THE DEFENDANT: I'd even ask for a continuance  
8 till tomorrow, if we can pick the jury and then  
9 have a continuance till tomorrow --

10 THE COURT: What for?

11 THE DEFENDANT: -- for me to go over it.

12 THE COURT: For what reason?

13 THE DEFENDANT: For just like just one reason, I  
14 found that one little envelope, and there could be  
15 so much more. And to even just try to discover  
16 between what's there and on the pictures of what  
17 didn't make it to that list.

18 THE COURT: I -- I can't continue your case till  
19 tomorrow. I've got a full docket on Friday.

20 THE DEFENDANT: 'Cause I'm seeing the --

21 THE COURT: So if it appears to you that you --  
22 once we get into the trial that you've been  
23 prejudiced by late disclosure, then I'll rule on a  
24 motion to continue.

25 THE DEFENDANT: Okay, thank you.

# APPENDIX

## B

VERBATIM REPORT OF PROCEEDINGS

2-16-05 TO 2-18-05

RP PAGE 308 TO 935

TRIAL

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

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	Superior Court
	)	No. 04-1-01856-1
v.	)	
	)	
ASHLEY WADE SICLOVAN,	)	Court of Appeals
	)	No. 33697-9-II
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

Volume XIV-A



February 16, 2005

BEFORE: THE HONORABLE ROGER A. BENNETT, Judge

APPEARANCES: Mr. Quinn Posner, Deputy Prosecuting Attorney, on behalf of the State of Washington; and

Mr. Ashley Siclovan, pro se, and Mr. George Brintnall, Attorney at Law, standby counsel for the Defendant.

*Linda Williams, Official Court Transcriber  
13321 P.E. Knapp Court  
Portland, Oregon 97236-5491  
phone (503) 761-1240, fax (503) 762-8244*

1 THE COURT: Go ahead.

2 BY MR. POSNER: (Continuing)

3 Q. And since you are referring to your report, why is  
4 it that you refer to your report?

5 A. I refer to my report because it's a more accurate  
6 reflection of my memory on that date. It was prepared  
7 right after the incident.

8 Q. Okay.

9 A. (Pause; reviewing report.) On February 26th --  
10 or, excuse me, 22nd, 2004, I served a search warrant at  
11 the storage unit located at 5820 N.E. 8th Court, Unit  
12 No. 49.

13 Q. Okay. Now, why did you serve a search warrant in  
14 there?

15 A. I had received information from a variety of  
16 sources. I felt I had probable cause. I applied for  
17 an affidavit for a search warrant for that residence,  
18 which was reviewed by a judge and signed.

19 Q. Okay. And what were you looking for?

20 A. I was looking for items involved in the  
21 manufacture of methamphetamine.

22 Q. Okay. Now, when you served that search warrant on  
23 the 22nd, what was the condition of the -- was the --  
24 the unit secured?

25 A. Yes. On the -- on the date that I felt I had

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

STATE OF WASHINGTON, )  
 )  
 Plaintiff, ) Superior Court  
 ) No. 04-1-01856-1  
 v. )  
 )  
 ASHLEY WADE SICLOVAN, ) Court of Appeals  
 ) No. 33697-9-II  
 Defendant. )

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for trial in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, February 16, 2005, before the HONORABLE ROGER A. BENNETT, Judge.

APPEARANCES: Mr. Quinn Posner, Deputy Prosecuting Attorney, on behalf of the State of Washington; and  
  
Mr. Ashley Siclovan, pro se; and George Brintnall, Attorney at Law, standby counsel for the Defendant.

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13321 P.E. Knapp Court  
Portland, Oregon 97236  
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1 A. I didn't make a copy, I gave it to them.

2 Q. Okay. And (indiscernible) you don't have no copy  
3 of it to this date? I mean, on --

4 A. No, it's a different gate system.

5 Q. Uh-huh. Okay. Now, so you are testifying that  
6 you did not see Mr. Siclovan go into that unit in the  
7 month of February.

8 A. I don't know about that. I -- I didn't see him --  
9 all I remember is I didn't see the defendant the last  
10 couple weeks.

11 Q. Okay, the last couple weeks --

12 A. Before they came in, yeah.

13 Q. And they came in on --

14 A. I don't know the exact date, I just remember I  
15 hadn't seen --.

16 Q. Okay. Who was it that contacted you -- do you  
17 remember who it was that contacted you saying they  
18 wanted to come search?

19 A. Uh --

20 Q. (Indiscernible) Campbell, by chance?

21 A. What?

22 Q. Reese Campbell, does that help?

23 A. I just remember it was a police task force --

24 Q. Okay.

25 A. -- that called me.

1 Q. Thank you. Now, if -- if --

2 A. -- in the evening I would know about it.

3 Q. Now, could this have happened in -- in February  
4 (indiscernible), even after your suspicions?

5 A. (No audible response.)

6 Q. So, okay, you don't recall somebody going to unit  
7 49 (indiscernible) --

8 A. (Inaudible) time the code was punched in, I went  
9 out there to see who was punching in.

10 Q. Okay. And in February how many times did that  
11 happen; do you recall?

12 A. Well, in February you didn't come around --

13 Q. I didn't come around nowhere? Okay, thank you.

14 A. -- the -- the last couple -- well, the search was  
15 when? It -- it was the --

16 Q. 15th.

17 A. -- last couple weeks, and I believe that was in  
18 February, 'cause on here it shows that the eviction was  
19 in February.

20 THE COURT: Okay, Mr. Siclovan, five more  
21 questions and then -- (To Mr. Posner:) Do you have  
22 any redirect?

23 MR. POSNER: Brief, Your Honor.

24 THE COURT: Very brief? Okay.

25

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

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	Superior Court
	)	No. 04-1-01856-1
v.	)	
	)	
ASHLEY WADE SICLOVAN,	)	Court of Appeals
	)	No. 33697-9-II
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for trial in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, February 17, 2005, before the HONORABLE ROGER A. BENNETT, Judge.

APPEARANCES: Mr. Quinn Posner, Deputy Prosecuting Attorney, on behalf of the State of Washington; and

Mr. Ashley Siclovan, pro se; and George Brintnall, Attorney at Law, standby counsel for the Defendant.

*Linda Williams, Official Court Transcriber  
13321 P.E. Knapp Court  
Portland, Oregon 97236  
phone (503) 761-1240, fax (503) 762-8244*

1 THE WITNESS: -- with whatever they wanted to  
2 hear. I lied. I was saving my butt.

3 MR. POSNER: Okay.

4 BY MR. POSNER: (Continuing)

5 Q. Okay. So you were untruthful with the officers,  
6 then?

7 A. I was untruthful with the officers then, yes --

8 Q. Okay.

9 A. -- I was.

10 Q. And your story has continued to change, hasn't it?

11 A. Correct.

12 Q. Correct, okay.

13 A. Uh-huh.

14 Q. Now, when you were first speaking with the officer  
15 and making a statement, you never mentioned anything  
16 about this Calvin, did you?

17 A. I don't remember what I mentioned. I mentioned  
18 what they were leading me to say.

19 Q. Okay. And that's because this Calvin never really  
20 existed in storage unit No. 49, did he?

21 A. No, actually, Calvin did exist in unit No. 49 and  
22 in the same unit. He had a storage unit in the same  
23 hall.

24 Q. Okay. So now you're saying -- you've been  
25 untruthful with the officers, and now you're saying --

1 were in love with the defendant at the time; correct?

2 A. Oh, I don't know if I was in love at that time, I  
3 mean --

4 Q. Okay. And you were -- and you implicated him at  
5 the time, didn't you?

6 A. I implicated him? No, they implicated him. I  
7 just went with it.

8 Q. Okay. Now, this Calvin that you've been talking  
9 about, you stated that after the defendant moved out of  
10 this storage unit, out of storage unit 49, that you  
11 went over there, didn't you?

12 A. Which defendant? What are we --

13 Q. When the defendant, Ashley Siclovan, after you --  
14 you broke up, that you had gone back to the unit after  
15 you provided it to Calvin, whoever Calvin may be,  
16 didn't you?

17 A. No. Actually, you're wrong, I didn't say that. I  
18 said that I -- I didn't know that Ashley moved out, I  
19 had no idea that Ashley moved out of that unit until I  
20 went to pick up the stuff --

21 Q. Okay.

22 A. -- from --

23 Q. So you did go back there after Ashley, as you say,  
24 moved out of the unit, didn't you?

25 A. Out of the big one or the little one?

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

STATE OF WASHINGTON,            )  
                                          )  
          Plaintiff,                ) Superior Court  
                                          ) No. 04-1-01856-1  
          v.                            )  
                                          )  
ASHLEY WADE SICLOVAN,        ) Court of Appeals  
                                          ) No. 33697-9-II  
          Defendant.                )

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for trial in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, February 18, 2005, before the HONORABLE ROGER A. BENNETT, Judge.

APPEARANCES:            Mr. Michael Vaughn, Deputy  
                                  Prosecuting Attorney, on behalf of  
                                  the State of Washington; and  
  
                                  Mr. Ashley Siclovan, pro se, and Mr.  
                                  George Brintnall, Attorney at Law,  
                                  standby counsel for the Defendant.

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phone (503) 761-1240, fax (503) 762-8244*

1 anything like that, but soddi defense: some other  
2 dude did it.

3 His defense is some other dude did it,  
4 Calvin did it. Who's Calvin? What does Calvin do?  
5 Bev Bates was up here. You heard -- Sandra Gray  
6 was up here. You heard Sandra Gray's story.  
7 Sandra Gray told you that she and the defendant  
8 broke up. We have dates when this occurred.

9 Defendant relies quite a bit on the time  
10 line. I didn't see a time line, I never heard one  
11 date about when the breakup occurred. The only  
12 thing I heard being elicited was, Do you remember  
13 Valentine's Day? That's all. There was no time  
14 line involved here.

15 Sandra Gray testified that she and the  
16 defendant broke up and that she rented the storage  
17 unit to Calvin. Do we know who Calvin is? I don't  
18 think so.

19 Sandra Gray also testified that she had  
20 Calvin take the defendant's personal effects, his  
21 photo albums, take 'em to the storage unit. That's  
22 how the defendant's stuff got there.

23 Well, she also testified that Calvin gave  
24 her two \$20 bills. However, I want you to recall  
25 what else Sandra Gray said. Sandra Gray said she

1       couldn't even really remember what happened  
2       yesterday, much less a year ago, yet she's able to  
3       tell you those are the photo albums?

4               Oh, yeah, he gave me two \$20 bills for the  
5       \$40. She stated she couldn't even remember what  
6       happened the day before, but she remembers the  
7       denominations of the currency that was given to  
8       her.

9               Ladies and gentlemen, I submit to you that  
10       Calvin never existed, that those -- what Sandra  
11       Gray testified to never took place. You can  
12       determine that by Ms. Gray's credibility. I don't  
13       think I need to go into the statements that Ms.  
14       Gray made a year ago, that she made last December,  
15       that she made last month and she made yesterday,  
16       because she told you the statements she has made  
17       throughout the entire process have been falsehoods.

18               By that statement alone, you can toss out --

19       MR. SICLOVAN: Objection.

20       MR. POSNER: -- Sandra Gray's entire --

21       MR. SICLOVAN: Objection, I don't believe she  
22       made a statement that every single statement she's  
23       made in the testimony was falsified, only one.

24       THE COURT: Sustained.

25       MR. POSNER: I submit to you --

# APPENDIX

# C

VERBATIM REPORT OF PROCEEDINGS

( RP ( 972 TO 1539 )

POST TRIAL PROCEEDINGS

3-04-05 TO 8-01-05

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

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	Superior Court
	)	No. 04-1-01856-1
v.	)	
	)	
ASHLEY WADE SICLOVAN,	)	Court of Appeals
	)	No. 33697-9-II
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for trial in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, March 4, 2005, before the HONORABLE ROGER A. BENNETT, Judge.

APPEARANCES: Mr. Quinn Posner, Deputy Prosecuting Attorney, on behalf of the State of Washington; and

Mr. Ashley Siclovan, pro se, and Mr. George Brintnall, Attorney at Law, standby counsel for the Defendant.

*Linda Williams, Official Court Transcriber  
13321 P.E. Knapp Court  
Portland, Oregon 97236  
phone (503) 761-1240, fax (503) 762-8244*

1 MR. SICLOVAN: For me to prepare for that fully  
2 there's a lot I need to get done, and I need some  
3 court orders, some pretrial --

4 THE COURT: Now, the -- the next issue is your  
5 discovery requests. Have you had a chance to look  
6 at these, Mr. Posner?

7 MR. POSNER: I've -- I have read through them,  
8 and quickly --

9 THE COURT: Do you --

10 MR. POSNER: -- yes, Your Honor.

11 THE COURT: Do you object to them?

12 MR. POSNER: Well, Your Honor, in -- in brief --  
13 the limited time I've had to read through --  
14 initially I received the brief that is in regards  
15 to -- addresses rules 4.5 and 4.7. Purpose is  
16 subject of discovery materials -- or subject of  
17 discovery materials to preparation of post-trial  
18 motion.

19 Your Honor, these are -- I don't think --  
20 the discovery requested is in regards to banking  
21 information for a Calvin Brown. I don't see how  
22 these have any relevance whatsoever to what has  
23 occurred in the trial, what this trial was about.

24 The defendant has made -- even prior to --  
25 prior to the trial made claims that a Calvin

1 Brown -- or, not Calvin Brown, but Calvin is all.  
2 There -- this is the first I've heard of actually a  
3 Calvin Brown being involved, but that Calvin was  
4 somehow involved, there has been -- the -- the  
5 State simply has no evidence regarding anyone named  
6 Calvin involved with the storage unit.

7 The Court requested that I speak to the two  
8 investigators, Reese Campbell and Neil Martin. I  
9 spoke to both those investigators and reported back  
10 to Your Honor in this court on the record that they  
11 had no further information, there was no  
12 investigation of -- of a Calvin regarding coming  
13 from this storage unit.

14 These are all -- I believe that Rule 4.5 and  
15 4.7 are in regards to pretrial discovery. I don't  
16 think there's any authority nor does the defendant  
17 state any authority for utilizing these rules in  
18 post-trial -- in a post-trial discovery motion.

19 So I guess I -- I would object, one, that  
20 there is simply no relevance, and, two, that the  
21 defendant is trying to utilize a pretrial rule in  
22 order to gain access to I really don't know what in  
23 a post-conviction setting.

24 Then in regards to the second --

25 THE COURT: Here -- here is the status of the

1 evidence, that --

2 MR. POSNER: Okay.

3 THE COURT: -- there was testimony that Ms. Brown  
4 had informally leased this storage unit to someone  
5 named Calvin Brown for \$40. And he -- looks like  
6 what you're after is there anything connecting  
7 Calvin Brown to this storage unit.

8 MR. SICLOVAN: Yes, sir.

9 THE COURT: That would corroborate that  
10 testimony.

11 MR. SICLOVAN: The fact that there was, and it  
12 was suppressed from me by the State and the  
13 investigators.

14 THE COURT: Well, what was it?

15 MR. SICLOVAN: There was -- okay, the interview  
16 with Sandra Gray on 2/24, after, just after the  
17 raid, where she gave incriminating statements about  
18 me and -- and her and the police and nobody  
19 expected me to ever talk to her about that, because  
20 there -- it was against my interest by she telling  
21 me.

22 Also in the invest- -- that day, after the  
23 trial, I had a post-trial interview with her, and I  
24 asked her, because the State mentioned, Oh, does  
25 Calvin Brown even exist? And -- and she said,

1 now, your theory, again, is Calvin Brown leased the  
2 thing and that Calvin Brown is just as likely as  
3 you to be responsible.

4 MR. SICLOVAN: It was the State's witness's  
5 theory. It was the State's witness that -- I've  
6 seen the transcript -- transcripts from the State's  
7 witness, that's what brang the theory and the whole  
8 defense.

9 THE COURT: I understand. So, yes, anything that  
10 links Cal- -- anything that links Calvin Brown to  
11 this storage unit at the relevant time period would  
12 be discoverable --

13 MR. SICLOVAN: Yes.

14 THE COURT: -- and would be **Brady** material, it's  
15 called, and should have been provided to you.

16 MR. POSNER: And I agree.

17 THE COURT: So now --

18 MR. SICLOVAN: Especially when the State --

19 THE COURT: -- you --

20 MR. SICLOVAN: -- is claiming it didn't exist.

21 THE COURT: Is the State aware of any such  
22 material?

23 MR. POSNER: I am not aware of any such material.  
24 I've questioned both Neil Martin, Officer Neil  
25 Martin of the Vancouver Police and Reese Campbell

1 of the Department of Corrections. Those are the  
2 two individuals to -- that I'm aware of that  
3 investigated or searched either storage unit.

4 Mr. Siclovan stated either of those two  
5 individuals would have information regarding  
6 Calvin. The Court requested that I speak to them.  
7 I spoke to them. They both have denied to me that  
8 there is any information from those units regarding  
9 Calvin Brown.

10 There is -- this is why I've been somewhat  
11 at a loss as what is -- what is going on, because  
12 there's simply, in -- from what I am aware of and  
13 from what my officers have told me, there is none,  
14 there is nothing in regards to Calvin or Calvin  
15 Brown, nothing, period, I mean we don't have  
16 anything to offer. The defendant has reviewed  
17 everything --

18 THE COURT: Now, the --

19 MR. POSNER: -- we have.

20 THE COURT: Now, the next step past that would be  
21 are you aware of any investigation listing Calvin  
22 Brown as a victim of some sort of identity theft or  
23 anything --

24 MR. POSNER: No, I am not. I haven't -- I  
25 haven't looked and pulled intakes of general

1 of investigation pertaining if he just claimed he  
2 didn't even know the last name?

3 THE COURT: I'm not sure how the -- I didn't --  
4 the name did come up at trial, but I'm not sure  
5 how.

6 MR. SICLOVAN: You ordered him -- you ordered him  
7 to e-mail them officers without -- (To Mr. Posner:)  
8 What, just e-mail with just Calvin?

9 MR. POSNER: Your Honor, I'm aware of who Calvin  
10 Brown is. The defendant --

11 MR. SICLOVAN: (Inaudible.)

12 MR. POSNER: -- the entire time pretrial was  
13 using the name Calvin. The only time the last name  
14 Brown came up, if I recall correctly, was during  
15 trial.

16 When I spoke to officers, I said Calvin, a  
17 person named Calvin; I'm assuming he's probably  
18 talking about Calvin Brown. That's what I said to  
19 officers, I said, That anyone named Calvin.  
20 Officers know who Calvin Brown is, everyone knows  
21 who Calvin Brown is in the drug unit, Your Honor.

22 They -- the -- from what they've told me,  
23 there's nothing that -- nothing was located in  
24 reference to anyone named Calvin, much less Calvin  
25 Brown.

1 One's the -- the most extensive one that I've just  
2 completed my research on, but I still need  
3 affidavits to back it up. It's more of proof to  
4 back it up, and I've spent that much time on it.  
5 That's just one issue.

6 And, actually, I need more discovery to back  
7 up my whole issue, and it's discovery that I was  
8 denied in pretrial motions by the State and the  
9 investigators. It was suppressed by them. And  
10 I'll be able to prove that, and I need more  
11 information and I actually need court orders to be  
12 able to obtain some of that information and point  
13 out some of the suppression by the State and the  
14 investigators.

15 And some of these come out in trial that  
16 even shows more misconduct by the investigators.

17 THE COURT: Yeah, the rule is 7.4, and provides a  
18 judgment may be arrested on the motion of the  
19 defendant for the following causes: lack of  
20 jurisdiction; the indictment or information does  
21 not charge a crime or insufficiency of proof of a  
22 material element.

23 So unless those are -- are alleged, it would  
24 not be an arrest of judgment.

25 There's Rule 7.5, new trial. The Court on

1 THE COURT: Okay.

2 MR. POSNER: -- in regards to Calvin Brown, and  
3 he's told me no.

4 THE COURT: I deny the motion for discovery other  
5 than as discussed.

6 MR. POSNER: Thank you.

7 THE COURT: Anything else today?

8 MR. BRINTNALL: I don't think so, Your Honor.

9 MR. SICLOVAN: Could we order Mr. Martin to  
10 compel with that letter (sic) (indiscernible)?

11 MR. POSNER: There was -- there was an additional  
12 motion from the Defense, Your Honor. There was two  
13 questions, one requesting extension beyond the ten-  
14 day period, we've covered that.

15 Two, the Defense has requested order to  
16 compel Officer Martin of VPD to answer to questions  
17 1 through 14 in attached letter to him dated  
18 2/27/05.

19 Officer Martin left me a voice mail  
20 yesterday stating he's received a letter in the  
21 mail from the defendant requesting that he answer a  
22 series of questions. And it looks like on the  
23 final page of this most recent motion from the  
24 defendant or request to have the -- the officer  
25 answer these questions, it's a list of these

1 questions.

2           Once again, Your Honor, I -- I'm having a  
3 hard time with the relevance of a lot of these  
4 things. These are -- a lot of this stuff, or all  
5 of it, Your Honor, was discoverable prior to the  
6 trial. The State has turned over all discovery to  
7 the Defense. The Defense could have investigated  
8 this stuff through the use of an investigator,  
9 could have requested additional interviews.

10           I don't know, there -- maybe there was other  
11 things the Defense or the defendant himself could  
12 have done, but they chose not to. If an  
13 investigator would have helped them, they certainly  
14 could have requested of the Court an investigator  
15 sooner than a week before trial.

16           This -- this case has been pending since  
17 October. There was plenty of time, October into  
18 mid-February when trial began the defendant could  
19 have investigated these things.

20           If he believed that Calvin Brown was  
21 associated with this unit or that evidence was  
22 discovered suggesting Calvin Brown was responsible,  
23 the defendant could have requested an investigator  
24 to look into those things. He -- he did not do so.

25           And I think it is too late for the defendant

1 to bring these things up and request Neil Martin  
2 answer these questions, when the defendant  
3 certainly could have crossed Neil Martin while on  
4 the stand, could have interviewed Neil Martin and  
5 asked these questions.

6 I -- I'm just -- I'm at a bit of a loss,  
7 Your Honor. And so I would -- I would request that  
8 for those reasons that the defendant (sic) would  
9 deny the defendant's request to have Officer Martin  
10 respond to these questions.

11 MR. SICLOVAN: (Inaudible and indiscernible.)

12 THE COURT: Motion denied.

13 MR. SICLOVAN: Can I have -- I have a response --

14 MR. POSNER: Thank you, Your Honor.

15 MR. SICLOVAN: -- response, Your Honor? Can I  
16 get a moment to explain it? Your Honor, this is  
17 about the due process. Now, whether it's pretrial  
18 or post-trial, my accusations is if these -- if  
19 these things were not -- if these things were --  
20 were not destroyed, obtained in this order, then  
21 they would have very well have proven everything,  
22 they would have proven that Calvin Brown exists,  
23 they would have proven other people had dominion  
24 and control.

25 And just as much as the State had evidence

1 of me, there was evidence of other people. Now,  
2 there's clearly, there's pictures in there, I've  
3 got a picture here of -- of financial records which  
4 the --

5 THE COURT: Okay, didn't we go through this,  
6 what -- what items were destroyed and what weren't?  
7 Wasn't that discussed at trial?

8 MR. POSNER: We had conversation of quite a few  
9 things that was -- that the defendant even  
10 questioned Officer Martin while on the stand --

11 MR. SICLOVAN: Does that --

12 MR. POSNER: -- in cross.

13 MR. SICLOVAN: Does that totally end it, end the  
14 issue on post-trial -- or post-trial motions for --  
15 for dismissal and for a new trial.

16 THE COURT: Yeah.

17 MR. SICLOVAN: This is at issue --

18 THE COURT: Motion denied. Anything else?

19 MR. POSNER: No, Your Honor. I'll prepare the  
20 findings of facts and conclusions of law and have  
21 them submitted to Your Honor by beginning of next  
22 week.

23 THE COURT: Thank you. We'll be in recess.

24 MR. POSNER: Thank you.

25 *(Proceedings recessed this 4th day of March, 2005.)*

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

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	Superior Court
	)	No. 04-1-01856-1
v.	)	
	)	
ASHLEY WADE SICLOVAN,	)	Court of Appeals
	)	No. 33697-9-II
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for hearing in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, May 26, 2005, before the HONORABLE ROGER A. BENNETT, Judge.

APPEARANCES: Mr. Quinn Posner, Deputy Prosecuting Attorney, on behalf of the State of Washington; and

Mr. Ashley Siclovan, pro se, and Mr. George Brintnall, Attorney at Law, standby counsel for the Defendant.

*Linda Williams, Official Court Transcriber  
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phone (503) 761-1240, fax (503) 762-8244*

1 I was blamin' somebody else. I was not blamin'  
2 somebody else, I only brang ev- -- testimony that  
3 there was a third renter. Nobody even blamed that  
4 person for anything, just said that he was the  
5 third party renter and demonstrated dominion and  
6 control.

7 And I -- my defense was unwitting. For him  
8 to say the defense was just blaming somebody else  
9 after saying guilty people do that was misconduct  
10 and put an impression in the jury's mind to alter  
11 the outcome of the trial.

12 The State committed misconduct by claiming  
13 Calvin does not exist when he knows he does. The  
14 State knew very well he does exist, and he said so  
15 in pretrial, where he said, Yeah, I know Cal Brown,  
16 he -- I prosecuted him. Then -- then to say he  
17 doesn't exist as a judicial officer, the jury got  
18 the impression that maybe this person doesn't even  
19 exist. Well, he give that impression, and he does  
20 very well exist, and he should have went from there  
21 and let the evidence speak for itself.

22 THE COURT: What do I have to show me that he  
23 made an argument that Calvin doesn't exist?

24 MR. SICLOVAN: He said in the closing, and I can  
25 quote him:

1 "I submit to you --"

2 "Submit" means to make a claim.

3 "-- that Calvin Brown doesn't even exist."

4 It's in my motion in the --

5 THE COURT: That's your --

6 MR. SICLOVAN: -- minutes.

7 THE COURT: That's your memory of the closing;  
8 right?

9 MR. SICLOVAN: Oh, I got a transcript -- I quote  
10 it word for word. I got it transcribed and I can  
11 tell you the minutes.

12 THE COURT: You had it transcribed by whom?

13 MR. SICLOVAN: Well, I can tell you the minutes  
14 and the -- the Court can reflect the record.

15 THE COURT: Okay, so you reviewed the tape?

16 MR. SICLOVAN: Yeah, CD-ROM. All my -- all my  
17 motions are based upon the record, and I have  
18 minutes for everything. I have --

19 THE COURT: Okay, I do know that you've obtained  
20 the record.

21 MR. SICLOVAN: Uh-huh. Every single thing I been  
22 saying is -- is -- I got minutes to it. You --  
23 have you ever seen my motion?

24 THE COURT: Next issue.

25 MR. SICLOVAN: (Pause; reviewing documents.)

1           Again, they didn't preserve -- they didn't  
2 even weigh the whole bag of -- of byproduct, they  
3 only have a little sample of it. And the -- and  
4 the -- and this chemist found traces of  
5 pseudoephedrine that's been there, but if they took  
6 the whole bag, and they didn't even weigh the whole  
7 bag until (indiscernible) was there, the chemist  
8 could have probably said, Oh, there's only like a  
9 half gram there, he would have even said that it's  
10 not likely anybody intended to manufacture with it  
11 again.

12           So there's just no showing that that small  
13 amount of pseudoephedrine that was already used to  
14 make Count One and Three possible was intended to  
15 make Count One and Two possible in the future by  
16 manufacturing using it again.

17           There's no indication that anybody even knew  
18 that it was possible. There was no testimony of  
19 that and no evidence of it.

20           THE COURT: Next issue.

21           MR. SICLOVAN: Okay, now, the -- the State -- or  
22 the -- the Defense asked for a interview of Calvin  
23 that was -- of Calvin Brown and -- and Reese  
24 Campbell. The State said that he -- the State was  
25 instructed to e-mail the -- the investigators and

1 ask about this statement. He said he did.

2 There -- there's no record of it, no showing of --  
3 of the e-mail or just his words verbal on the  
4 record saying, Oh, I checked with 'em and there was  
5 no statement.

6 Yet after the trial on March 4th --

7 THE COURT: What statement by whom?

8 MR. SICLOVAN: With Calvin Brown and Reese  
9 Campbell. Now -- now, that statement, the Court  
10 ordered him to find out about it by e-mail --

11 THE COURT: Statement by -- by whom?

12 MR. SICLOVAN: Calvin.

13 THE COURT: To whom?

14 MR. SICLOVAN: To Reese Campbell. And -- and --  
15 and the Van PD. Now, I asked for the statement and  
16 the State was ordered to check on that, and he --  
17 twice. Once (inaudible) told him to e-mail it for  
18 no more phone tag. He said he did that and found  
19 none.

20 Now, that statement's probably with the  
21 printout sheet tucked away somewhere, yet after --  
22 after the trial, and I have the minutes for this,  
23 Mr. Posner says, I've never heard of Calvin Brown's  
24 last name, I only heard of Calvin. And that's  
25 minutes -- the minutes 13:23:37 of February -- or

1 March 4th. He indicates that he never heard  
2 Calvin's full name, so how did he carry out the  
3 order to go get this -- this -- to find out if  
4 there was one, if he said he's never heard Calvin's  
5 last name till trial?

6 So how did he go to Reese Campbell and get  
7 this -- this -- the statement that I know to  
8 exist -- either -- either one, either he didn't  
9 or -- or -- or -- or he did it and then they didn't  
10 disclose it. 'Cause before trial says, yeah, he  
11 knows Calvin Brown, and you said, Well, go get it.

12 THE COURT: Okay, next issue.

13 MR. SICLOVAN: (Pause; reviewing documents.)  
14 That's -- that's it.

15 THE COURT: I'm sorry, I didn't hear you.

16 MR. SICLOVAN: Other than the fact that I think I  
17 was prejudiced by not having my own suppression  
18 hearing, that's about it.

19 When I demonstrate --

20 THE COURT: I want to talk to you about this --  
21 this waiver of counsel issue. You -- you had an  
22 attorney. You asked to be your own attorney. I  
23 allowed you to be your own attorney. Now  
24 apparently you're claiming I failed to follow  
25 through with **State v. Christiansen**. Isn't that at

1 flash --

2 MR. POSNER: Yes.

3 THE COURT: -- around the corner. That they've  
4 opened up and are viewing the contents of No. 49.

5 Now, so one inference is that they opened up  
6 and took pictures in 49 without a warrant.

7 MR. POSNER: Yes.

8 THE COURT: Although the pictures that I have  
9 here are dated the 17th. So here we got another  
10 conundrum or an enigma, and that is we've got --  
11 what was her name again?

12 MR. POSNER: Beverly Bates.

13 THE COURT: -- Beverly Bates's testimony  
14 conflicts with the police officers' testimony and  
15 the photographs on their face could also be  
16 inferred to contradict their testimony.

17 This -- this, of course, was developed --  
18 well, he had these long before (indicating), but  
19 Beverly Bates's testimony came at trial.

20 So -- I'll get back to that issue in here.  
21 Maybe there's a factual issue.

22 Now, how about -- here's -- here's -- did  
23 you say, quote, "Calvin -- maybe Calvin doesn't  
24 exist?" in your closing?

25 MR. POSNER: In order to supplement that, Your

1 Honor, in my review of the record I argued that  
2 Calvin Brown -- that I submit Calvin Brown doesn't  
3 exist in regards to storage unit No. 49. I made  
4 the argument that Calvin Brown had nothing to do  
5 with storage unit No. 49. That was the -- the  
6 intent of the argument, that this is something that  
7 was -- that was manufactured by the Defense.

8 THE COURT: Okay, now let's go to the issue of  
9 Count Two, Possession of Pseudoephedrine with  
10 Intent to Manufacture Methamphetamine.

11 MR. POSNER: Yes.

12 THE COURT: Defendant's argument is there was no  
13 evidence that the pseudoephedrine that was  
14 discovered was in a state such that it could be  
15 used to manufacture methamphetamine, which I  
16 suppose goes to the issue of intent to manufacture.  
17 What's your response on that argument?

18 MR. POSNER: Detective Hess specifically  
19 testified and I asked him in regards to the  
20 pseudoephedrine if this was in the process of being  
21 manufactured, was this something that was left over  
22 from manufacture, and he said the pseudoephedrine  
23 that was discovered -- I don't -- I don't recall if  
24 it was suspended in liquid or where it exactly was,  
25 but he specifically stated in testimony that the

1 pseudoephedrine that was located was in the process  
2 of being manufactured. And that's a --

3 THE COURT: As opposed to being a byproduct of  
4 already --

5 MR. POSNER: Correct.

6 THE COURT: -- manufactured --

7 MR. POSNER: Correct. I recall specifically  
8 asking that of Detective Hess, because obviously  
9 that -- that's important to get in for the intent  
10 element. He said that there was -- that was in one  
11 point of the process, not -- that it was intended  
12 to produce methamphetamine.

13 THE COURT: Go on to the issue of some statement  
14 that was requested relating to Calvin Brown giving  
15 a statement to Reese Campbell.

16 MR. POSNER: The Court asked me, I believe, twice  
17 to contact Reese Campbell and Officer Martin to see  
18 if there were statements made by Calvin Brown  
19 regarding unit No. 49. I don't remember the  
20 context.

21 I e-mailed both of those -- or I e-mailed  
22 Officer Martin and spoke to Reese Campbell and I  
23 reported back to the Court as the Court instructed  
24 that they had no knowledge of statements by Calvin  
25 Brown. That's what was asked by the Defense,

1 that's what the Court requested I do, and that's  
2 what I did.

3 THE COURT: Okay, you're representing to the  
4 Court to your knowledge there is no such statement  
5 in the possession of the State.

6 MR. POSNER: Correct.

7 THE COURT: Do you have proof otherwise?

8 MR. SICLOVAN: No, sir. I -- I -- I expected  
9 that there would be truthful statements from the  
10 DOC officer, but we found out that the DOC Officer  
11 Reese Campbell was untruthful, and I've  
12 demonstrated that with documentation proving that  
13 his veracity is not -- is definitely discreditable,  
14 and he's lied to the Court already.

15 THE COURT: Mr. Posner, the defendant has asked  
16 to reopen the suppression issues. What's your  
17 response on that issue?

18 MR. POSNER: I would request that the Court deny  
19 the motion to reopen the suppression issues. Any  
20 evidence or any concerns the Defense had, that's  
21 something that could have been addressed in the  
22 earlier 3.6.

23 If anything came up during trial which could  
24 lead, potentially lead to a 3.6, well, that was  
25 something the Defense could have requested at that

1 time, to continue the remainder of the trial so  
2 that a 3.6 could be held or certainly the Defense  
3 could have impeached witnesses with that  
4 information.

5 They choose -- chose to do neither, they  
6 cannot now come after the fact, over three months  
7 after the defendant was convicted of these charges,  
8 and request a 3.6 hearing, Your Honor.

9 MR. SICLOVAN: I requested 3.6 before trial  
10 started.

11 THE COURT: Do you recall that?

12 MR. POSNER: I don't recall a 3.6 prior. I --

13 MR. SICLOVAN: Ahh.

14 MR. POSNER: I'm going off my memory several  
15 months ago --

16 THE COURT: I recall telling him I'm not --

17 MR. POSNER: -- (inaudible; voices overlapping).

18 THE COURT: -- gonna give him a suppression  
19 hearing the day before trial and we've already had  
20 one.

21 MR. POSNER: Yes.

22 THE COURT: And he's talking about an inventory  
23 list of items destroyed.

24 MR. POSNER: There was the inventory list -- to  
25 the State's knowledge, that was provided. In the

1 the destruction.

2 THE COURT: Well, now, wait a minute. Here's --  
3 they go in there, they find this lab. They say,  
4 Well, okay, how can we prove who has a lab? Well,  
5 look, here's a letter addressed to Ashley Siclovan.  
6 That's circumstantial evidence that it's Ashley  
7 Siclovan's operation.

8 Oh, here's a letter addressed to Calvin  
9 Brown. Let's throw that one away.

10 MR. POSNER: Well, it -- I -- I don't think just  
11 because --

12 THE COURT: It doesn't inculcate --

13 MR. SICLOVAN: And he's an informant.

14 THE COURT: -- Ashley Siclovan.

15 MR. POSNER: It doesn't -- if you have -- the  
16 Supreme Court does not place on officers the duty  
17 to recognize or to formulate potential defenses  
18 for -- for a defendant.

19 What the officers do is they take everything  
20 that they have found, and in this situation, there  
21 was a large amount of evidence pointing directly at  
22 Mr. Siclovan. If there is a piece of jail mail  
23 that says Calvin Brown -- we don't know that that  
24 actually existed. But for the sake of argument, if  
25 that's there, I don't think that's -- that that

1 would say to the officers that that is materially  
2 or that the exculpatory value of that envelope is  
3 apparent --

4 THE COURT: They --

5 MR. POSNER: -- at the time.

6 THE COURT: Because they didn't know that down  
7 the road someone's gonna point at --

8 MR. POSNER: Correct.

9 THE COURT: -- Calvin Brown.

10 MR. POSNER: Correct.

11 MR. SICLOVAN: He was an informant.

12 MR. POSNER: I -- I think that could fall into  
13 the potentially useful category, at which time the  
14 defendant has the burden of showing that the  
15 officers acted in bad faith.

16 MR. SICLOVAN: Well, it's good faith to check  
17 their informants.

18 THE COURT: Okay, what else?

19 MR. POSNER: Well -- in regards to destroyed  
20 evidence? That's -- that's where we are. As I  
21 said, I don't recall seeing an evidence list of  
22 everything that was destroyed. Everything was  
23 photographed, and that was provided to the  
24 defendant. That's how the defendant knows that  
25 there was a yellow envelope in there.

1 THE COURT: Well, this really kind of -- and --  
2 and apologize to the fine law enforcement in the  
3 audience here, but you're rewarding real  
4 incompetent behavior by the officers if they --  
5 gosh, we didn't realize that had any evidentiary  
6 value. Right?

7 MR. POSNER: That -- well --

8 MR. SICLOVAN: (Inaudible.)

9 MR. POSNER: That's the nature --

10 THE COURT: Mr. Siclovan sees it.

11 MR. SICLOVAN: (Inaudible.)

12 MR. POSNER: That's the nature of the law at this  
13 point.

14 MR. SICLOVAN: **State v. James**, law enforcement  
15 and -- and investigators, said they have the --  
16 have the duty to preserve material. And there's no  
17 excuse, there's no -- there's no excuse for it,  
18 except for bad faith, which I most definitely  
19 demonstrate in the protection of informants.

20 THE COURT: Thank you. This is my ruling. I  
21 deny all motions with the following exception.  
22 Specifically on the failure to preserve evidence, I  
23 find that defendant has failed to make a showing  
24 that items that were destroyed had apparent benefit  
25 or evidentiary value or materiality for the

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

STATE OF WASHINGTON,            )  
                                          )  
                  Plaintiff,            ) Superior Court  
                                          ) No. 04-1-01856-1  
                  v.                    )  
                                          )  
ASHLEY WADE SICLOVAN,        ) Court of Appeals  
                                          ) No. 33697-9-II  
                  Defendant.        )

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for hearing in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, June 20, 2005, before the HONORABLE ROGER A. BENNETT, Judge.

APPEARANCES:            Mr. Quinn Posner, Deputy Prosecuting Attorney, on behalf of the State of Washington; and

Mr. Ashley Siclovan, pro se, and Mr. George Brintnall, Attorney at Law, standby counsel for the Defendant.

*Linda Williams, Official Court Transcriber  
13321 P.E. Knapp Court  
Portland, Oregon 97236  
phone (503) 761-1240, fax (503) 762-8244*

1 MR. BRINTNALL: (Pause; reviewing file.)

2 THE COURT: Have you filed a motion to suppress?

3 MR. SICLOVAN: I was startin' it last night. I  
4 just --

5 THE COURT: For the hearing Wednesday?

6 MR. SICLOVAN: Yeah, I'm gonna come Wednesday.

7 MR. POSNER: You had set that hearing for July  
8 21st, Your Honor, the hearing on Wednesday was in  
9 regard -- I had a motion for an in-camera review --

10 THE COURT: Well, wait a minute, so our motion,  
11 our suppression motion isn't till July?

12 MR. POSNER: July 21st is when --

13 MR. SICLOVAN: (Indiscernible.)

14 MR. POSNER: -- you set that.

15 THE COURT: Oh, all right. So what are we doing  
16 Wednesday?

17 MR. POSNER: I -- I could actually -- it was a  
18 motion for -- I was requesting an in-camera review  
19 on some information regarding Calvin Brown that I  
20 would like to hand to the Court in the form of a  
21 declaration, and for the Court to determine if that  
22 should be --

23 You've asked the -- when you asked the  
24 question regarding Calvin Brown's involvement, our  
25 response is Calvin Brown -- as it was last winter,

1 that Calvin Brown is not involved with -- with the  
2 storage unit.

3 There is some information that I would like  
4 to hand the Court in the form of a declaration and  
5 the Court to make a determination if it needs to be  
6 turned over to the Defense or not.

7 THE COURT: Well, I thought we had a hearing  
8 scheduled for Wednesday.

9 MR. POSNER: Yes. And it was just on this  
10 matter.

11 THE COURT: Well, I don't -- we don't -- usually  
12 don't have a court hearing for an in-camera review.

13 MR. POSNER: I know, but this is a special  
14 situation, Your Honor. If I could just hand the  
15 declaration to Your Honor and -- and --

16 THE COURT: Yeah.

17 MR. POSNER: -- if you'd make a determination.

18 THE COURT: I'm ruling, then, on Wednesday.

19 MR. POSNER: What's that?

20 THE COURT: You want me to make a ruling on your  
21 request then.

22 MR. POSNER: If you could, I would appreciate it.

23 THE COURT: (Inaudible) request in that paper  
24 you're gonna hand me? I don't know what you're --

25 MR. POSNER: Yes.

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

STATE OF WASHINGTON,            )  
                                          )  
                  Plaintiff,        )     Superior Court  
                                          )     No. 04-1-01856-1  
          v.                            )  
                                          )  
ASHLEY WADE SICLOVAN,        )     Court of Appeals  
                                          )     No. 33697-9-II  
                  Defendant.        )

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for hearing in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, June 22, 2005, before the HONORABLE ROGER A. BENNETT, Judge.

APPEARANCES:            Mr. Quinn Posner, Deputy Prosecuting Attorney, on behalf of the State of Washington; and  
  
                              Mr. Ashley Siclovan, pro se, and Mr. George Brintnall, Attorney at Law, standby counsel for the Defendant.

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P R O C E E D I N G S :

(The following proceedings took place 06/22/05:)

1 THE COURT: Ms. Gray, could you come up here,  
2 please. Are you on probation or supervision for  
3 anything?  
4

5 MS. GRAY: I am now.  
6

7 THE COURT: And what for?  
8

9 MS. GRAY: For possession.  
10

11 THE COURT: Possession of a controlled substance?  
12

13 MS. GRAY: Correct.  
14

15 THE COURT: Is there a condition in your sentence  
16 of no contact with convicted felons?  
17

18 MS. GRAY: You actually are the one that did my  
19 judgment and sentence, and I just looked at it  
20 yesterday with the supervisor, my probation  
21 officer, and, yes, you did say -- you -- you note  
22 the x on the "convicted felon."  
23

24 THE COURT: All right. Well, I know you've been  
25 having a lot of contact with Mr. Siclovan because  
you've been doing all his running for him and  
picking up tapes and all that sort of stuff.

MS. GRAY: May I say something about this?

THE COURT: Yeah, go ahead, but I'm just -- I  
just wanted to make sure you knew that you could be  
committing a PV by doing that. Go ahead.

1 MS. GRAY: Yes. (Indiscernible) -- you know,  
2 what it all boils down to, Judge, is I love him  
3 more than life, and I'm here right now because of  
4 all the support he's given me. When I didn't feel  
5 like goin' to treatment, when I wanted to give up,  
6 he's the one that told me to go.

7 And everything that I am has been because  
8 he's been beside me. And, I mean, I have, you  
9 know, my probation, the supervisor of my probation  
10 officer said that if it was up to him he would tell  
11 me go, you know, just do whatever, but he can't  
12 override the judge's ruling.

13 And, you know, if I mess up, it's only me  
14 that would have to pay, and him. And I really -- I  
15 mean, I don't -- I don't have contact with anybody,  
16 I'm doing everything that I'm supposed to. I'm in  
17 treatment. I'm in a shelter. I'm doing very well.

18 THE COURT: Who is your PO?

19 MS. GRAY: Jennifer Thomas.

20 THE COURT: Are you telling me Jennifer Thomas  
21 said if it was up to her she'd take the  
22 condition --

23 MS. GRAY: No, her supervisor said that.

24 THE COURT: What did Jennifer say about that,  
25 anything?

1 MS. GRAY: Jennifer? I -- I talk -- called and  
2 talked to Jennifer on the phone, she told me to  
3 come in and talk to her.

4 When I came in to talk to her, she had to go  
5 out on the field and she left -- and she left word  
6 with her supervisor to talk to me, and I went in  
7 and talked to him.

8 And he explained to me that he cannot  
9 override your ruling, that the only -- the only  
10 thing that he has -- has any say-so over is if I  
11 was to get -- you know, if -- if I get violated and  
12 then they have the say-so over what happens to me  
13 as far as a violation.

14 THE COURT: Oh, so is yours an OAA sentence?

15 MS. GRAY: I'm the lowest -- I don't know what  
16 that means, but I'm the lowest level.

17 THE COURT: You're being supervised -- well --

18 MS. GRAY: (Inaudible.)

19 THE COURT: -- if you're violated, it stays in  
20 the administrative system rather than the courts?

21 MS. GRAY: Yeah.

22 THE COURT: You sure?

23 MS. GRAY: I just did the day reporting, finished  
24 the day reporting.

25 THE COURT: Why, did you have a PV, or was that

1 part of your sentence?

2 MS. GRAY: It was -- no, because I started to get  
3 off track and I didn't go to treatment and --  
4 and --

5 THE COURT: All right.

6 MS. GRAY: -- got back on track and --

7 THE COURT: Tell you what, then, I -- if you're  
8 telling me the truth about what the --

9 MS. GRAY: Absolutely.

10 THE COURT: -- supervisor said, get a letter from  
11 him and maybe I'll reconsider that condition.

12 MS. GRAY: Okay. I will do that --

13 THE COURT: In the meantime, don't violate your  
14 sentence.

15 MS. GRAY: Okay. I will go right there. I will  
16 go right there and do it.

17 THE COURT: Okay.

18 MS. GRAY: Okay. Is it okay if I sit in on this?

19 THE COURT: You can sit in court and watch what's  
20 going on.

21 MS. GRAY: Okay. Thank you.

22 THE COURT: Uh-huh.

23 *(Pause in proceedings.)*

24 THE COURT: Is Mr. Siclovan here yet?

25 UNIDENTIFIED: Yes, he is, he's in the room.

1 THE COURT: So we're waiting for Mr. Brintnall,  
2 is that it?

3 UNIDENTIFIED: He's out there too.

4 THE COURT: Okay. I'm ready.

5 CUSTODY OFFICER: Do you want him up here or sit  
6 down?

7 THE COURT: I want him at counsel table.

8 *(Pause in proceedings; Mr. Siclovan enters courtroom.)*

9 MR. SICLOVAN: No, it's gonna be ex parte until  
10 we disclose it.

11 MR. POSNER: Your Honor, I have no idea what --  
12 what's been handed up.

13 THE COURT: I'm not on his case yet. (Discussion  
14 with clerk.)

15 Okay, are we on the record now?

16 THE CLERK: We are still on the record.

17 THE COURT: We'll move, then, to **State v. Ashley**  
18 **Wade Siclovan**, 04-1-1856-1. I'll read this  
19 document here. (Pause; reviewing document.)

20 MR. SICLOVAN: (Addressing questions to Mr.  
21 Posner.)

22 MR. POSNER: (No response to Mr. Siclovan.)

23 THE COURT: (Continuing to review document.) (To  
24 Mr. Posner:) Take a look at this.

25 MR. POSNER: (Pause; reviewing document.)

1 MR. SICLOVAN: I have other documents for you --

2 THE COURT: And while you're doing that, what is  
3 the purpose of this hearing? Refresh my  
4 recollection.

5 MR. POSNER: We were going to continue the -- the  
6 remainder of the bail hearing from Monday, Your  
7 Honor, and also you were reviewing a document that  
8 I handed up to you on Monday.

9 MR. SICLOVAN: The in-camera review.

10 MR. BRINTNALL: About Calvin Brown.

11 MR. SICLOVAN: Yeah, there's a -- the State's  
12 claiming there is no relevancy to Calvin Brown and  
13 the unit.

14 THE COURT: He's reading.

15 MR. POSNER: (Pause; reviewing document.)

16 MR. SICLOVAN: It's relevant and admissible.

17 MR. BRINTNALL: Everything's relevant.

18 (Continuing off the record discussion between Mr.  
19 Siclovan and standby counsel.)

20 MR. POSNER: (Handing document back to the  
21 Court.)

22 THE COURT: What exactly are you asking for, Mr.  
23 Siclovan?

24 MR. SICLOVAN: For those to be reviewed in-camera  
25 along with the relevancy --

1 THE COURT: For what to be reviewed in-camera?

2 MR. SICLOVAN: To see if there's any -- the --  
3 what the -- what the State is viewing under in-  
4 camera, if that would affect or match up to any of  
5 my theories that were in pretrial, and those were  
6 what I tried to demonstrate in pretrial, I tried to  
7 get any information, and the Court ordered him any  
8 information or any -- any interviews with Calvin  
9 Brown and -- and Reese Campbell.

10 THE COURT: Okay, you want me to look at your  
11 theories here, plus what the State's given me, in-  
12 camera --

13 MR. SICLOVAN: Cross.

14 THE COURT: -- an in-camera investigation  
15 inspection and to determine whether or not what?

16 MR. SICLOVAN: That should be disclosed --

17 THE COURT: Mr. -- Mr. Brown is a witness or not?

18 MR. SICLOVAN: That that should be disclosed to  
19 me, what he's serving in-camera?

20 THE COURT: Uh-huh.

21 MR. SICLOVAN: Should be disclosed to me if I  
22 touch on any of those bases in pretrial. Those are  
23 theories and things I demonstrated in pretrial that  
24 I -- I had beliefs or and I tried to get  
25 information of, and if that report he has has any

1 connection to any of those theories that I tried in  
2 pretrial, then there was discovery violations.

3 And they would -- and if -- if anything in  
4 that in-camera review would affect the outcome of  
5 the trial.

6 THE COURT: All right. Well, I'll do an in-  
7 camera review, and in doing that I'm going to have  
8 to in-camera review with the prosecutor on your  
9 response to this.

10 MR. SICLOVAN: Uh-huh.

11 THE COURT: So -- is that door soundproof? Can  
12 we conduct court in here and them not hear what's  
13 going on?

14 THE CLERK: There's nothing -- there's no one  
15 (inaudible).

16 THE COURT: No, I mean, if I put Mr. Siclovan and  
17 his lawyer in there and close the door, then.

18 THE CLERK: Uh-huh.

19 THE COURT: Okay.

20 THE CLERK: I don't think it would.

21 MR. BRINTNALL: I don't think it is, Your Honor,  
22 but --

23 THE COURT: Let's find out. Okay, if I speak in  
24 a voice like this, will you -- you can hear me.  
25 Okay, now raise your -- go like this. All right,

1 I --

2 THE CLERK: I can just hear a muffled voice.

3 THE COURT: Okay. And I'll have you stand up  
4 here, so please step in there and --

5 MR. SICLOVAN: Yes, sir.

6 THE COURT: -- discuss your motion.

7 MR. SICLOVAN: Yes, sir.

8 THE COURT: How about the officers, do you care  
9 about them being in on this?

10 MR. POSNER: I don't see why the officers  
11 would -- would pass that information on.

12 THE COURT: Okay. I'm -- all of the officers  
13 here and the clerk and myself and the prosecutor in  
14 an in-camera review, but I am going to make a  
15 record of it. How would that work? Do you have a  
16 separate CD you put in?

17 THE CLERK: I believe -- yes, there's  
18 (inaudible).

19 THE COURT: Okay, go ahead and do that.

20 THE CLERK: Go off the record?

21 THE COURT: Yes. So we'll make -- let me know  
22 when you've got the new CD on.

23 *(In-camera review; not designated.)*

24 THE COURT: Last week or earlier this week, I  
25 guess, sometime in the recent past, the prosecuting

1 attorney provided me with a summary of information  
2 in camera, and "in camera" meaning behind closed  
3 door inspection.

4 And Mr. Siclovan has brought a motion here  
5 setting forth various theories of the defense, most  
6 of them focusing on Calvin Brown. Calvin Brown's  
7 name came up in the trial, as he was implicated by  
8 Mr. Siclovan's witness, Ms. Gray, with having  
9 access to the storage unit where the meth lab was  
10 found and possibly it therefore being Mr. Brown's  
11 meth lab instead of Mr. Siclovan's, which was the  
12 State's theory.

13 I have reviewed his motion and all his  
14 theories. I've reviewed the information provided  
15 in camera and heard argument from the prosecutor.

16 The definition of relevant evidence is under  
17 Evidence Rule 401, and that is evidence having a  
18 tendency to make a fact of consequence to the  
19 action more likely than not.

20 My conclusion is that from an evidentiary  
21 standpoint the information provided to me by Mr.  
22 Posner is not relevant. It does not have a  
23 tendency to make a fact of consequence more likely  
24 than not, and would not be of value to the Defense  
25 in the presentation of their case, and therefore I

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

STATE OF WASHINGTON,            )  
                                          )  
                  Plaintiff,            )     Superior Court  
                                          )     No. 04-1-01856-1  
                  v.                    )  
                                          )  
ASHLEY WADE SICLOVAN,        )     Court of Appeals  
                                          )     No. 33697-9-II  
                  Defendant.         )

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for hearing in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, August 1, 2005, before the HONORABLE ROGER A. BENNETT, Judge.

APPEARANCES:            Mr. Quinn Posner, Deputy Prosecuting Attorney, on behalf of the State of Washington; and  
  
                              Mr. Ashley Siclovan, pro se, and Mr. George Brintnall, Attorney at Law, standby counsel for the Defendant.

*Linda Williams, Official Court Transcriber  
13321 P.E. Knapp Court  
Portland, Oregon 97236  
phone (503) 761-1240, fax (503) 762-8244*

1 after twenty-four, twenty-five?

2 THE COURT: Twenty hours.

3 MR. SICLOVAN: Thank you, sir.

4 Your Honor, there's one more thing. I'd  
5 like to enter somethin' into the -- the record --

6 THE COURT: Yes.

7 MR. SICLOVAN: -- before I get sentenced. We'll  
8 probably go through (indiscernible). It's -- I  
9 have the original, I'd like to get copies of it.  
10 It's an affidavit that goes with my motion for  
11 reconsideration that I filed the other day.

12 I'm sure Your Honor probably gonna not  
13 let -- let me have argument on it or -- or even  
14 make a ruling on it, but -- but I'd like to enter  
15 this affidavit that goes with it. It's from Calvin  
16 Brown.

17 MR. POSNER: Your Honor, I've received a voice  
18 mail.

19 MR. SICLOVAN: (To Mr. Brintnall:) Can you hand  
20 that to her?

21 MR. POSNER: I think we're all aware of what --  
22 what's -- what has occurred with this, but I've  
23 received a voice mail from Mr. Brown that's been  
24 recorded, stating he was going to be sending this  
25 affidavit and in addition to some other

1 vulgarities, he's left a -- a similar voice mail  
2 with numerous people: Art Curtis --

3 MR. SICLOVAN: Yeah, he's upset about the officer  
4 lyin' about him.

5 MR. POSNER: So --.

6 MR. SICLOVAN: Okay.

7 THE COURT: Are you submitting this affidavit,  
8 then?

9 MR. SICLOVAN: Yes.

10 THE COURT: You want a copy back, is that what  
11 you said?

12 MR. SICLOVAN: Please. Or let it say on the  
13 record --

14 THE COURT: Sandy.

15 MR. SICLOVAN: -- (inaudible).

16 MR. POSNER: And if I could have --

17 THE COURT: A copy of that, two copies, one for  
18 each --

19 MR. SICLOVAN: (Inaudible.)

20 THE COURT: -- each party, file the original.

21 MR. SICLOVAN: Could I -- could I put it with my  
22 motion to reconsider, just staple it with it? I  
23 could refile that.

24 *(Proceedings recessed this 1st day of August, 2005.)*

# APPENDIX

## D

( CP 24 ) DEF. MOTION TO SUPPRESS  
SEARCH WARRANT AFFIDAVIT IS  
ATTACHED.

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**FILED**

DEC 28 2004

JoAnne McBride, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON  
FOR CLARK COUNTY

STATE OF WASHINGTON,	)	
Plaintiff,	)	
vs.	)	NO.: 04-1-01856-1
	)	
ASHLEY WADE SICLOVAN,	)	DEFENDANT'S MOTION
Defendant,	)	TO SUPPRESS
_____	)	

1. RELIEF REQUESTED: The Defendant, by and through his attorneys, hereby requests that this Court suppress evidence arising from the seizure of the Defendant that gives rise to this action.

2. GROUND: The grounds for this motion is CrR 3.6.

3. BASIS: This motion is based upon the records and files herein and the declaration of the Defendant's attorney, subjoined below.

DATED this 28th day of December, 2004.

*George L W Brintnall*  
 \_\_\_\_\_  
 GEORGE L W BRINTNALL, WSBA # 8090  
 Of Attorneys for Defendant

24

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**Declaration of George L W Brintnall**

3 1. I am one of the attorneys for the Defendant in this matter and make this declaration in  
4 support of the Defendant's motion to suppress evidence herein.

5 2. I have reviewed the police reports and the affidavit in support of the search warrant in  
6 this matter. The issues in this case are contained within the "four corners of the  
7 affidavit" and the defendant's motion to suppress will be entirely related to the issues  
8 presented therein. A copy of the affidavit in support of the search warrant is attached  
9 hereto and incorporated herein by this reference.

10 3. On February 15, 2004, at the request of a probation officer, Officer Neil Martin  
11 assisted him in conducting a "probation search" of a storage locker rented by  
12 defendant at National Storage Center ( previously known as "Lockaway Storage"),  
13 5820 N.E. 8<sup>th</sup> Court, Vancouver, Washington. That locker was numbered "6001."  
14 The only evidence of "contraband" that was found in that locker was a capped syringe.  
15 However, Officer Martin had other information from a "Confidential Reliable  
16 Informant" (CRI) that defendant was allegedly also renting another storage locker,  
17 Unit # 49, and using it to store items used in the manufacture of methamphetamine.  
18 While at the storage facility, Officer Martin also had a Clark County Sheriff's Deputy,  
19 Alan Earhart, and his trained narcotics canine, "Akbar," search for any other evidence  
20 of drugs in the area of Unit 49 and the hallway in front of it. According to the affidavit  
21 of Officer Martin, Akbar "alerted" only on the door of Unit 49. Officer Martin cut off  
22 the lock that was on the unit door and replaced it with a lock to which he had a key,  
23 then placed evidence tape over the door in two places to further prevent entry into the  
24 unit until he could return.

25 4. Four days later, on February 19<sup>th</sup>, 2004, Officer Martin presented the affidavit in  
26 support of the search warrant to Judge Zimmerman, but did not execute the warrant  
27 until February 22. The items seized as a result of the execution of that warrant are  
28 what the defendant seeks to suppress by this motion.

1 Standing: The first question presented in this case is whether or not the defendant has  
2 "standing" to challenge a search warrant that was executed on the storage locker that  
3 was rented in someone else's name, in this case, in the name of "Sandra Gray." There  
4 is case law to the effect that, if a defendant is charged with a possessory crime and was  
5 in "possession" of the items seized at the time of the search, then the defendant is

1 accorded “automatic standing” to challenge the search warrant. St. v. Jones, 146  
2 Wn.2d.328, 45 P.3d.1062 (2002). In this case, the defendant is variously charged with  
3 “manufacture” or “possession” of either a controlled substance or the chemical  
4 precursors thereto, which fulfills the first requirement for automatic standing under  
5 Jones. As to the defendant’s “possession” of the items seized, it seems obvious that  
6 the State is claiming that defendant is in possession of the items seized and cannot be  
7 allowed to rely upon whose name was the principal renter to assert that defendant  
8 doesn’t have standing to challenge the search warrant. Furthermore, the affidavit, at  
9 page 5, bottom, specifically states that the CRI told Officer Martin that defendant was  
10 using the storage locker to hide defendant’s manufacturing equipment and surplus  
11 chemicals and had seen the defendant put things in the locker on at least two  
12 occasions. Since the item searched was a storage locker, it does not have the same  
13 kinds of activities associated with it as, for instance, a house would have to show  
14 possession. It is entirely possible that someone may be in “possession” of a storage  
15 locker, even though the owner would not have much to do with it on a daily basis and  
16 would not be likely to be there when a search warrant is served. It is also of note that  
17 the affidavit shows that the State had “focused” on the defendant, listing his name  
18 first, even though it knew that the registered renter of the locker was “Sandra Gray,”  
19 who has not been charged with anything in relation to this case. For all these reasons,  
20 defendant has satisfied the second requirement of Jones, and has standing to challenge  
21 this search warrant.

22 6. Use of trained canine: Although the use of a trained canine to sniff the outside of a  
23 safe deposit box has been ruled not to be a “search” under the Washington  
24 Constitution, St.v. Boyce, 44 Wn.App.724, 723 P.2d.28 (1986), it seems that this case  
25 is closer to the situation where officers use a dog’s senses to do what they cannot do  
26 with their own senses. St.v. Dearman, 92 Wn.App.630, 962 P.2d.850, rev. den. 137  
27 Wn.2d.1032, 980 P.2d.1286 (1998). That case looked at a reasonable person’s  
28 expectation of privacy in determining whether or not the police officers’ use of a  
trained dog to sniff the defendant’s garage door, when the officers could not smell any  
illegal substances using their own noses. In the instant case, the doors, gates, locks,  
and other security devices that are associated with a storage facility is evidence that a  
reasonable person would **not** expect that the police would be running a trained canine  
up and down the aisle in front of that person’s storage locker, without some further  
justification. The officer’s affidavit merely states that the CRI told him about the  
allegations that defendant was using Sandra Gray’s locker ( Unit # 49) to store  
chemicals over a month before this date. The problem with this “fact” is that it is  
“stale” and, even if true then, could well have been outdated a month later, allowing  
the dog to “detect” the mere residue of something that might or might not be illegal [ It

1 should be noted in Officer Martin's rendition of "Akbar's" qualifications as a trained  
2 narcotic detection dog, bottom of page 6 to top of page 7, he nowhere states exactly  
3 what Akbar has been trained to detect and how long the smells that Akbar detects can  
4 be found at the same place, leaving the magistrate to "guess" that Akbar is reacting to  
5 a "current" smell, which the magistrate may not do, as a disinterested arbiter of the  
6 facts supporting probable cause in the affidavit ]. Since it cannot be known what  
7 Akbar actually smelled or how old it was, it provides no support for probable cause in  
8 this instance.

7. Staleness: It is apparent from the affidavit of Officer Martin that he got the information  
8 from the CRI between January 13 and 15, 2004, over a month before he went before  
9 Judge Zimmerman for the warrant. Furthermore, it states that the CRI had seen the  
10 defendant making "meth" using this storage locker in the month prior to the CRI  
11 giving this information to Officer Martin, meaning that it was at least two months old  
12 when it was given. Officer Martin does state that the CRI told him that the CRI had  
13 seen the defendant using the locker to store chemicals within thirty (30) days of the  
14 presentment of the affidavit to Judge Zimmerman, but Officer Martin's affidavit does  
15 not say when this communication occurred [ bottom of page 5 to top of page 6].  
16 Without more detail, this is merely a self-serving assertion that does not overcome the  
17 general "staleness" of the original information. As stated above, the use of the  
18 narcotic detection dog outside the storage locker does not aid the State in showing that  
19 probable cause could be found, since it is not certain what the dog was reacting to.  
20 St.v. Bohannon, 62 Wn.App.462, 814 P.2d.694 (1991); St.v. Young, 62 Wn.App.895,  
21 802 P.2d.829, opinion mod. on recon. 62 Wn.App.895,817 P.2d.412 (1991)[ test is  
22 "common sense" as to whether or not property will still be on the premises at the time  
23 the warrant is issued, not the actual date on which actual activity was observed ].

17 8. Information of a Confidential Reliable Informant: Under the so-called Aguilar-Spinelli  
18 test used in Washington, the State must establish **both** the basis of the CRI's  
19 knowledge, as well as the credibility of the informant. St.v. Cole, 128 Wn.2d.262, 906  
20 P.2d.925(1995). For the purposes of this argument, the defendant concedes that the  
21 affidavit of Officer Martin does establish the CRI's basis of knowledge, largely  
22 because the CRI has prior convictions for drug offenses and crimes of dishonesty.  
23 However, the credibility of the CRI is suspect for a number of reasons set forth in the  
24 affidavit. Officer Martin merely states that the CRI has, in the past, provided  
25 information "on numerous criminal investigations in which a quantity of controlled  
26 substances...were found." This bald assertion is not sufficient to show the CRI's  
27 credibility, especially, given the CRI's prior convictions for dishonesty and the CRI's  
28 stated purpose in providing information to get "consideration" for a pending felony

1 controlled substance violation [ affidavit of Officer Martin, page 5, bottom of second  
2 paragraph ]. St.v. Fisher, 28 Wn.App.890, 626 P.2d.1020 (1981), reversed 96  
3 Wn.2d.962,639P.2d.743, cert. den. 102 S.Ct.2967, 73 L.Ed.2d.1355, 457 U.S.1137 [  
4 merely stating that the CRI's information had proved "true and correct" is not  
5 sufficient, since it does not give the magistrate underlying facts upon which to  
6 independently assess the CRI's credibility ]. It is possible for the State to corroborate  
7 the credibility of the CRI by independent investigation, but any facts used to  
8 corroborate the CRI's credibility cannot be of an innocuous or public nature.  
9 St.v.Crawley, 61 Wn.App.29, 808 P.2d.773 (199 ). In this case, the only "corroborating"  
10 evidence that the Judge had before him was the use of the trained canine, with all of  
11 the attendant problems that I have already described above and need not be repeated  
12 here.

9. For all of the above reasons, the defendant requests that this Court suppress all the  
10 State's evidence arising from the search warrant dated February 19, 2004, in this  
11 matter. Since the State will not be able to proceed without this evidence, the  
12 defendant also requests that the Court enter an Order dismissing this matter with  
13 prejudice.

14 I declare, under penalty of perjury under the laws of the State of Washington that the  
15 foregoing is true and correct to the best of my knowledge.

16 12-28-04

George L W Brintnall

17 Date Signed

George L W Brintnall, Declarant

18 Vancouver, Washington

19 Place Signed

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IN THE DISTRICT COURT OF CLARK COUNTY  
STATE OF WASHINGTON

STATE OF WASHINGTON,  
Plaintiff,

AFFIDAVIT FOR  
SEARCH WARRANT

vs.

ASHLEY WADE SICLOVAN, DOB: 07/27/1974  
SANDRA JANE GRAY, DOB: 02/06/1968  
Defendant(s)

**COPY**

STATE OF WASHINGTON )

:ss

COUNTY OF CLARK )

I, Officer Neil T. Martin, being first duly sworn upon oath, hereby depose and say that I have good and sufficient reason to believe that the following goods, to wit:

- 1) Methamphetamine a substance controlled by the Uniform Controlled Substance Act and RCW 69.50.401.
- 2) Methamphetamine manufacturing equipment, including but not limited to chemical and other glassware, heating mantles, reaction flasks, precursor chemicals (as defined by the Revised Codes of Washington), solvents, acids and any other items used in the manufacture of methamphetamine.
- 3) Methamphetamine processing and distribution equipment including but not limited to scales, plastic baggies, aluminum foil, paper wrappers, cellophane packaging material and other packaging material.
- 4) Paraphernalia used in the ingestion of controlled substances consisting of but not limited to pipes, syringes and foil.
- 5) Photographs, including still photos, negatives, video tapes, films, undeveloped film and the contents therein, and slides, in particular, photographs of co-conspirators, of assets, and/or controlled substances, in particular marijuana.
- 6) Photographs of the crimes scene and recovered evidence and to develop any photographs taken of the crime scene, including still photos, video cassette recordings and to develop any undeveloped film located.
- 7) Personal property, including but not limited to mail, in order to establish dominion and control of the storage unit, as well as to confirm the identity of the defendant(s).

- 8) Financial records listing income and expenses related to the manufacture and distribution of controlled substances, customer lists, and address books, telephone books and lists, cash transaction records, maps, and notes with telephone numbers and customer names.
- 9) Proceeds from narcotics trafficking including but not limited to: Cash, U.S. currency, wire transfer records, money orders, cashiers checks, jewelry, precious metals, bank records, check books, brokerage account information, safety deposit box keys and records, deed and titles to vehicles and real property, as well as other indications of wealth accumulated as a result of criminal activity.
- 10) Firearms and other dangerous weapons.
- 11) Stolen property.
- 12) Latent (Finger) Prints

The above item(s) are on this date, February 19, 2004, in the unlawful possession of the above named defendant(s) in the following storage unit: The real property known as 5820 NE 8<sup>th</sup> Court, Building #A, Storage Unit #49 (also known as the National Storage Centers), Vancouver, Clark County, State of Washington. I have personally observed this storage facility and know it to be fenced. The fence has barbwire attached to the top of it, in an effort to keep unauthorized persons out of the storage facility. The entrance to the storage unit is controlled by a gate on the northeast corner of the property. The property is composed of several large storage buildings (all of which are alphabetically numbered). Building A is located in the northeast corner of the property. Building #A is the first storage building on the left (east) as you enter the complex through the above mentioned gate. A large numeral "A" is located on the north side of the building. Building #A is painted tan in color with white in color trim the exterior doors are painted green in color. From the north side of Building #A, one would walk south to the fifth (5<sup>th</sup>) green in color exterior door. This green in color exterior door faces west. Above this green in color exterior door is an attached white in color plate with the black in color numerals 49-60 inscribed in it. Upon entering the storage facility through this green in color door, Storage Unit #49 is the first door on the left (northwest) corner of the interior hallway. The door is white in color and faces to the south. A white in color plate is attached to the front of the door with the numeral 49 (black numbers) inscribed on it

AND

Also to be searched are all other parts therein, and to search any trash containers, safes and storage containers found within the storage unit.

I am informed and aware of this based upon the following:

I am employed as a sworn police officer for the City of Vancouver assigned to the Patrol Division. I have over nine (9) years experience as a law enforcement officer, including over three years of law enforcement experience in the United States Air Force, four years of experience with the Oregon State Police and two years of experience with the Vancouver Police Department. During my tenure with the Oregon State Police I spent two years assigned to the Tillamook County Drug Task Force. I am a police officer eligible to make a request for a search warrant and I am trained in crime investigation, preservation

of evidence, search and seizure (as well as other police operations.) I have received formal training in the identification of controlled substances such as marijuana, cocaine, methamphetamine, and heroin, as well as the means, methods, and manners of drug distribution by narcotics dealers. I have participated in numerous narcotics investigations and have been involved in the execution of numerous search warrants. I have personally been involved in the arrest and interview of several persons for controlled substances crimes.

I have received formal training pertinent to narcotics investigations through both the Oregon Department of Police Standards Safety and Training (DPSST) and the Washington State Criminal Justice Training Commission. I have also attended and completed the Basic Drug Enforcement Administration Methamphetamine Laboratory Site Safety School and am certified as a Clandestine Lab Site Safety Officer in the States of Oregon and Washington. In my capacity as a Methamphetamine Laboratory Site Safety Officer, I attend yearly re-certification training. I have also attended and successfully completed an Advanced Methamphetamine Lab Site Safety School in the State of Washington. I have been involved with the processing (clean up) of at least ten (10) methamphetamine laboratories in the State of Oregon, and I have assisted with at least six (6) criminal investigations (including four search warrants) involving the processing of methamphetamine laboratories in the Vancouver/Clark County area.

Further, over the past five-(5) years, I have personally been involved in several interviews of individuals who were involved in the manufacture, sale and use of controlled substances. Through these interviews as well as the training I have received, I am aware of drug dealers/users habits, traits, and their various methods of operation.

I know from training and experience that narcotics dealers will accept stolen property as well as money, jewelry, and precious metals in trade for controlled substances as well as cash and other items of value. I am also aware that narcotics users will commit other crimes to obtain either money or property of value to be exchanged for narcotics. It has been my personal experience to recover quantities of stolen property from the residences of narcotics traffickers. Also used in this criminal enterprise are items commonly referred to as drug notes. These notes are kept on pieces of paper, phone books, computer disks, computer hard drives, note pads, and other items used for storing written information. Your affiant has located narcotics information on computer drives as well as small scraps of paper, notebooks, telephone books, and other items.

Based on my training and experience, as well as the combined knowledge and experience of other police officers known to me, I know it is a common practice for narcotics dealers/users to maintain an inventory of controlled substances in their residences, vehicles, outbuildings, storage units and other locations which may be away from their immediate control (commonly know as "stash houses"). "Stash Houses" are used in an effort to conceal/hide controlled substances from Law Enforcement and other drug dealers/users. Drug dealers/users will commonly maintain records relating to their trafficking of controlled substances in their residences, outbuildings, storage units or vehicles.

During the execution of narcotics related search warrants in which I have been involved, firearms have been located. Narcotic traffickers/users maintain firearms to protect themselves and their drugs and money from theft and from seizure by the law enforcement community.

I know based upon my training and experience that human fingerprints may be left on objects and that these latent fingerprints have unique characteristics to each person and that these characteristics (prints) can be analyzed for the purpose of identification.

Based upon my training and experience, I know that common items used in the manufacture and sale of controlled substances (to include but not limited to: scales, packaging materials, and drug records) are commonly kept items (even after the drugs have been sold, stored at another location, or destroyed). These items are commonly kept due to their cost and the fact that written records (which can be stored on computer databases) are needed in order to run the drug business in an efficient, orderly, cost effective manner.

I also know based upon my training and experience that glassware (especially chemical glassware) is a commonly kept item and I have found both chemicals and glassware at clandestine methamphetamine laboratories even when methamphetamine is not being "cooked". These items are commonly kept so the manufacturers of the methamphetamine can have the items (cooking utensils) they need to make the methamphetamine at a later date.

That based upon my training and experience as well as interviews with manufacturers of methamphetamine that the chemicals such as, Pseudo/Ephedrine, Iodine, Iodine Crystals, Red Phosphorous, Solvents, and alcohol (such as methanol and ethanol) are commonly kept chemicals due to the increasing difficulty of obtaining them. I also know that person(s) involved in the manufacture of methamphetamine are likely to "stockpile" chemicals so they have the "ingredients" needed to cook the methamphetamine. I have personally been involved in warrants where the "stockpiling" of chemicals was found.

And my knowledge from professional experience that after a person "cooks" methamphetamine there will often times be a residual amount of the item cooked, or of some of the ingredients (precursors and other chemicals/solvents used in the manufacture of methamphetamine) left inside the glassware. I know this residue (found in/on the glassware and other manufacturing equipment to include hoses) can be tested by Washington State Patrol Crime Laboratory personnel to confirm the presence of the controlled substance methamphetamine as well as precursor and other chemicals used to manufacture methamphetamine.

These same individuals also use pipes, straws, and hypodermic needles and as ways to ingest cocaine, methamphetamine and other controlled substances. I also know these individuals will store and/or distribute the illegal narcotics through the use of small plastic baggies, plastic containers, and other devices designed for that purpose or not, and will use scales and other weighing devices to measure amounts of narcotics for sale. Your affiant while executing search warrants has located the above items.

It is known to your affiant from training and experience that individuals involved in this type of criminal activity will hide illegal narcotics in various places. Your affiant has located narcotics hidden in rafters, crawl spaces, safes, attics, closets, in out buildings, under beds, between bed mattresses, in cars, under drawers, behind dresser drawers, inside shoes, in appliances, on tables, under furniture and in small containers including but not limited to film canisters, eye glass cases, cigarette boxes as well as on persons.

Your affiant is aware through training and actual experience that individuals involved in the consumption/ingestion of illegal narcotics will sometimes photograph themselves and others taking part in the consumption. Your affiant has located still photographs as well as video tapes of individuals consuming these illegal narcotics.

- Your affiant also knows that photographing the crime scene as well as the evidence recovered is critical to showing the court the items location at the time of recovery.

In this official capacity, your affiant has learned that the equipment and chemicals used to manufacture methamphetamine are being stored within the above described storage unit in the County of Clark, based upon the following:

Within the last month, I have been in contact with a Confidential Reliable Informant, hereinafter referred to as a CRI. The CRI wishes to remain confidential for fear of retaliation from other controlled substance users and for the purpose of continuing other on going investigations in which this person is providing information upon which would be jeopardized is his/her identity were to become known. Checking CRI'S criminal history revealed he/she has been arrested for and convicted of various controlled substance offenses. He/She has also been arrested for and convicted of crimes of dishonesty including Theft and Burglary and he/she is a convicted felon. The CRI has agreed to provide information about and purchase controlled substances from area dealers because he/she wants consideration reference a pending Felony controlled substance violation.

During my conversations with the CRI he/she has demonstrated that he/she is familiar with the manufacture, appearance, odor, use, effects, packaging, price, and sale of methamphetamine. The CRI told me he/she has seen methamphetamine manufactured on numerous occasions. In my conversations with the CRI, I have found him/her to be knowledgeable in the type and quantity of chemical ingredients used in the manufacture of methamphetamine. He/she is also familiar with the lab equipment needed in order to successfully make methamphetamine. In addition, The CRI has provided information on numerous criminal investigations in which a quantity of controlled substances (including methamphetamine) were found.

Between the dates of January 13, 2004 and January 15, 2004, I made contact with the CRI for the purpose of obtaining information on a person known to the CRI as Ashley Wade Siclovan, DOB: 07/27/1974. The CRI told me he/she has known Siclovan for several months and knows him (Siclovan) to be a "meth cook" (manufacturer of methamphetamine). The CRI stated he/she has observed Siclovan cook methamphetamine on at least three (3) occasions in the last thirty days (encompassing the months of December 2003 and January 2004). He/She advised the "cook" (production of methamphetamine) took place within Clark County at an undisclosed location. On two of the three occasions, the CRI said Siclovan successfully produced methamphetamine. The CRI estimated one of the batches of methamphetamine to weigh about three ounces. The CRI stated Siclovan was in possession of Iodine that looked like "BB's" for an air gun. I have seized this type of commercial grade Iodine during a previous (unrelated) search warrant and know it to exist in this form. The CRI also stated he/she knows Siclovan to get Pseudo/Ephedrine from various sources, the majority of which are persons who steal it from local stores in exchange for the finished product (methamphetamine). The CRI was not sure where Siclovan gets his Red Phosphorous but thought he (Siclovan) may get it from an unidentified source in the Portland, Oregon area.

In addition, the CRI knows Siclovan to be on probation and said he (Siclovan) hides his manufacturing equipment as well as surplus chemicals at a storage unit (#49) in Hazel Dell. The CRI identified this storage facility as the National Storage Centers Complex. He/she said the storage facility is located behind the Les Schwab Tire store off of Hwy 99. The CRI has seen Siclovan store chemicals and manufacturing equipment (to include reaction flasks) at the storage facility (#49) on at least two occasions

in the past thirty days (from the date of my interview with the CRI). The CRI stated he/she believes Siclovan travels to the storage facility daily to retrieve the items he (Siclovan) needs to manufacture methamphetamine. After "cooking" the methamphetamine, Siclovan returns the unused items and equipment to the storage unit (#49). The CRI told me Siclovan has two storage units at this location. One of the units is rented under his name and the other (#49) is rented under the name of Sandra J. Gray. The CRI knows Siclovan to store the manufacturing equipment and chemicals in #49 (Sandra Gray's storage unit), in an effort to hide them from his (Siclovan's) probation officer and law enforcement.

The CRI knows Siclovan to trade the methamphetamine he makes for money and property and has been present when this type of transaction (cash and/or property for drugs) takes place. The CRI also knows Ashley Siclovan to use the controlled substance methamphetamine and has seen him (Siclovan) smoke/ingest it with a glass pipe.

I have contacted Washington State Department of Corrections Officer Rees Campbell reference this investigation. DOC Officer Campbell told me he contacted the manager of the storage facility and identified her as Beve Bates. Bates told Officer Campbell that both Ashley Siclovan and Sandra Gray rent storage units from National Storage Centers. She (Bates) identified Unit #49 as being rented to Sandra J. Gray.

On February 15, 2004, your affiant, DOC Officer Rees Campbell and Clark County Sheriff's Office Deputy Alan Earhart as well as his canine partner "Akbar" traveled to the National Storage Centers located at the above address. At this location, DOC Officer Campbell conducted a probation check of Siclovan's storage locker. A syringe was located during the probationary search of this (Siclovan's) storage locker.

On this same date (2/15/04), Deputy Earhart and I entered building #A, in an effort to find storage Unit #49 (Sandra Gray's storage unit and the same unit identified by the CRI as containing the laboratory equipment and chemicals). Upon locating the storage unit, and after advising Deputy Earhart of the information I had received from the CRI, he retrieved his patrol/narcotics detection dog "Akbar." Deputy Earhart deployed his canine on the far east side of the hallway (the furthest point from Unit #49) and gave him a search command. The dog sniffed storage units on both the north and south sides of the interior hallway prior to coming to Unit #49. Upon reaching Storage Unit #49, I watched the dog sniff the area of the door and then watched him (the dog) paw at the ground. Deputy Earhart told me "Akbar" alerted on Unit #49 which indicated the presence of controlled substances in the storage unit.

After the dog "alerted" on storage unit #49, Deputy Earhart conducted another exercise with "Akbar," then put the dog away in the patrol car. Deputy Earhart then provided me with the following information:

Deputy Earhart is a commissioned Law Enforcement Officer employed by the Clark County Sheriff's Office, Clark County, Washington as a Deputy Sheriff. He has worked for the Clark County Sheriff's Department since 1994. Prior to working for the Clark County Sheriff's Office, he worked for the Snohomish County Sheriffs Office from 1989-1994. He also served five (5) years in the United States Air Force (1984-1989) as a K-9 handler. His current assignment with the Sheriff's Office is as a K-9 handler partnered with "Akbar." Earhart has been a K-9 handler for the last two (2) years. Both Deputy Earhart and "Akbar" were certified per WAC (Washington Administrative Codes) in Patrol and Narcotics Detection in November 2003. Deputy Earhart said his dog is currently certified for narcotics detection and that this certification process includes both basic (180hrs) as well as monthly re-certification training. Deputy Earhart told me, "Akbar" is

trained in the detection of marijuana, methamphetamines, cocaine, and heroin. In addition, "Akbar" has met Clark County Sheriff's Office standards by trainer Deputy Ed Bylsma.

The lock was cut off of Unit #49 and a new lock to which your affiant has the keys was placed on the storage unit door securing it. Evidence Tape was then placed over the door in two locations to ensure that no one entered, placed or removed items from within the storage room. This tape was initialed and dated by your affiant. The manager (Beve Bates, DOB: 10/27/52) then placed an additional lock on the outside exterior (green in color) door preventing any one from entering the interior hallway to the storage units. Bates stated she would be changing Siclovan's entrance/security code so he could not enter the facility without her permission. DOC Officer Campbell requested Bates contact 911 if Siclovan showed up at the storage facility due to the fact Officer Campbell was going to violate Siclovan for a probation violation.

On February 18, 2004, your affiant learned that Ashley Wade Siclovan was arrested in Clark County for outstanding Superior Court Warrants (in Washington and Oregon). He is currently incarcerated at the Clark County Jail.

On February 19, 2004, I contacted Beve Bates (the storage unit manager) by telephone and she confirmed that no one (including Siclovan or Gray) has been inside Unit #49 or the interior hallway (units #49-60) since we (the police) secured it on Sunday, February 15, 2004.

Your affiant has conducted a criminal history check under the name Ashley Wade Siclovan, DOB: 7/27/74. Your affiant learned Ashley Wade Siclovan has been arrested and convicted in the past for violations of the Uniformed Controlled Substance Act involving the Manufacture/Delivery and/or Possession with Intent for the controlled substances of marijuana and methamphetamine. Further, your affiant learned Siclovan is on active probation in the State of Washington and he is listed as a convicted felon.

Your affiant also conducted a criminal history check on Sandra Jane Gray, DOB: 02/06/1968. Your affiant learned Sandra Gray has been arrested and convicted in the past for violations of the Uniformed Controlled Substance Act involving the Possession of a controlled substance in Schedule I or II (i.e. Heroin, Cocaine; Methamphetamine). Further, your affiant learned that Gray is also a convicted felon.

Based upon my training, knowledge and experience, and investigation of this case, the property to be seized if any is described as: any controlled substances, equipment and chemicals used in the manufacture of methamphetamine, any money or accounts, and/or other items of value including, but not limited to real property, which constitutes profits and/or proceeds which were used or intended to be used to facilitate prohibited conduct; any equipment including, but not limited to conveyances and weapons which constitutes proceeds and/or profits which were used or intended to be used or available to be used to facilitate prohibited conduct; any records and/or proceeds of the above constitutes profits, proceeds or instrumentality of the possession, manufacture and/or delivery of the controlled substance Methamphetamine and is subject to civil forfeiture.

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



\_\_\_\_\_  
Officer  
Vancouver Police Department

Subscribed and Sworn to before me this 19<sup>th</sup> day of February, 2004.



\_\_\_\_\_  
District Court Judge  
Clark County  
State of Washington

# APPENDIX

# E

( CP ) AFFIDAVIT IN SUPPORT OF SUMMONS  
( CP 02 )

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**FILED**

SEP 22 2004

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.

ASHLEY WADE SICLOVAN AKA ASHLEY  
WADE MEADOWS,

Defendant.

AFFIDAVIT IN SUPPORT OF  
ISSUANCE OF A SUMMONS

No. 04-1-01856-1

STATE OF WASHINGTON            )  
                                          : ss  
COUNTY OF CLARK            )

I am John P. Fairgrieve, Deputy Prosecuting Attorney for Clark County, Washington. In my official capacity I have reviewed multiple Vancouver Police Department case report numbers under Case Number 04003031. These reports were written by Officer Neil Martin. I have also reviewed Clark-Skamania Drug Task Force case report number 22003481 written by Detective Chuck Christensen. Finally, I have reviewed Washington State Patrol Crime Laboratory report written by Forensic Scientist Bruce Siggins under laboratory case number 504-000490. These reports reflect the following information:

Between January 13 and January 15, 2004, Officer Neil Martin indicates he received information from a confidential reliable informant that he or she had been to a storage locker, specifically unit 49 at 5820 NE 8th Court in Vancouver, Washington. The CRI reported that he had been to the storage unit and he had observed Ashley Siclovan store chemical glassware including reaction flasks and chemicals inside the storage unit. The CRI provided additional information about Siclovan cooking the controlled substance methamphetamine within Clark County, Washington.

1 The CRI told Officer Martin that the storage unit was in the name of Siclovan's girlfriend, Sandra  
2 Gray.

3 On February 15th Officer Martin was contacted by Department of Corrections Officer Rees  
4 Campbell who requested he assist him and DOC Officer Elizabeth Campbell with a probation search  
5 of Siclovan's storage unit. The storage unit was number 6001. Officers went to the storage facility  
6 and searched Mr. Siclovan's storage unit. Aside from one capped syringe, they did not find any  
7 other items of contraband.

8 At this point they requested a drug dog respond to the scene and Deputy Alan Earhart and  
9 his partner "Akbar" came to the scene to assist them. Akbar was then taken to the area around  
10 storage unit 49, Ms. Gray's unit. The dog sniffed in the area and then sniffed at unit 49. According  
11 to Deputy Earhart, the dog alerted on unit 49.

12 On February 19, 2004, Officer Martin presented an affidavit for a search warrant to search  
13 storage unit number 49 to District Court Judge Darvin Zimmerman. He signed the search warrant  
14 and on February 22, 2004, the search warrant was executed.

15 During the search of the storage unit, Officer Martin noticed a plastic baggie containing cat  
16 litter that had a piece of tubing or hose sticking out of it. Based upon his training and experience he  
17 believes the litter can be and is used by persons who manufacture methamphetamine in an attempt  
18 to conceal odors involved in the manufacture of methamphetamine. He also indicates twelve  
19 Rubbermaid type containers were located which contained miscellaneous chemicals and chemical  
20 equipment. He also indicates that two glass mantles or "hot plates" were located. Miscellaneous  
21 aspects of paperwork included photographs of Ashley Siclovan, a Clark Public Utilities bill addressed  
22 in the name of Ashley Siclovan, and miscellaneous other books including science books were  
23 located in the storage unit.

24 On February 24, 2004, Officer Martin interviewed Sandra Gray. Ms. Gray told Officer Martin  
25 that Ashley Siclovan had a small storage unit at the National Storage Centers at NE 8th Court in  
26 Vancouver, Washington. Ms. Gray indicated she offered to rent a larger storage unit for Mr.  
27 Siclovan when she learned that he had been kicked out of his residence. Ms. Gray said she got the  
28 storage unit, Number 49, for Siclovan to store his stuff. Ms. Gray thought she started renting the  
29 unit in December of 2003. She indicated she did not have a key for the storage unit but had been  
there on occasion with Mr. Siclovan. She said that Mr. Siclovan was the only one who had the keys  
to the unit.

Ms. Gray said she helped Mr. Siclovan move items into the storage unit. She said she had  
picked him up on the top of Brandt Road and helped him transport bins with locks on them to the  
storage unit. She indicated she was last at the storage unit about a month ago which would have

1 been in late January of 2004. On this occasion she saw Mr. Siclovan put two bins inside unit  
2 number 49. She indicated the bins looked like "clothes baskets with lids on them." She said she  
3 was not sure what was in the bins, but she said, "I'm not stupid. I know he dealt, you obviously  
4 know he sells drugs." Gray admitted being a methamphetamine user and stated, "I've gotten high  
5 with him," referring to Siclovan. When asked where she gets the methamphetamine from, she  
6 replied, "I don't pay for dope, he, Siclovan, gives it to me." She also indicated she has seen Mr.  
7 Siclovan buy spatulas and other kitchen items, including Tupperware containers, Corning ware, big  
8 plastic tubs and silver duct tape.

9 On February 27, 2004, Officer Martin indicates that detectives Christensen, Kasberg, and  
10 Sergeant Hamlan processed a methamphetamine laboratory seized from 5820 NE 8th Court on  
11 February 22nd. Officer Martin indicates that a total of 11 samples were taken from lab equipment  
12 and chemicals seized during the execution of the search warrant.

13 Bruce Siggins is a Forensic Scientist with the Washington State Crime Patrol Lab. In a  
14 report dated May 14, 2004, he indicates that he had received numerous items through the evidence  
15 system. The agency case number of his report is V043031 which is the same agency case number  
16 as Officer Martin's original report. Mr. Siggins' laboratory results are as follows:

17 He indicates sample E2 contains methamphetamine, iodine, chlorpheniramine, and  
18 phenylacetone.

19 He indicates phenylacetone is a byproduct consistent with a phosphorous/iodine method of  
20 synthesizing methamphetamine. He indicates chlorpheniramine is an antihistamine found in cold  
21 and allergy medications that may also contain Pseudoephedrine or ephedrine.

22 He indicates sample H1 contains red phosphorous, methamphetamine, phenylacetone, and  
23 two naphthalene compounds. He indicates the naphthalene compounds are byproducts consistent  
24 with phosphorous/iodine methods of synthesizing methamphetamine.

25 Mr. Siggins indicates sample H3 contains methamphetamine, iodine, and phenylacetone.

26 Mr. Siggins indicates that sample H4 contains methamphetamine and phenylacetone.

27 Mr. Siggins also indicates that sample J1 contains Pseudoephedrine, chlorpheniramine, a  
28 starch and/or a sugar. He indicates starches and sugars and other materials are used as tablet  
29 binders. He indicates that tablet binders are substances used to make a tablet hold together better  
and also be larger and easier to handle.

He also indicates that sample K1 contains Pseudoephedrine, a starch and/or a sugar.

Mr. Siggins indicates that ephedrine and Pseudoephedrine can be extracted from commonly  
available tablets. He indicates this is done by crushing the tablets and putting the powder in a liquid  
form such as methanol or water. This liquid is then filtered and the waste tablet binders are left in

1 the filter paper. The ephedrine and/or Pseudoephedrine are in the liquid, which is evaporated  
2 leaving behind solid ephedrine and/or Pseudoephedrine crystals.

3 Mr. Siggins indicates one method of methamphetamine synthesis involves combining red  
4 phosphorus, water and iodine with ephedrine or Pseudoephedrine. The purified ephedrine and/or  
5 Pseudoephedrine is combined with iodine, red phosphorous and water to make sure it's heated for a  
6 period of time and then allowed to cool. This reaction mixture is very basic at this point and must  
7 have other chemicals added to it to increase its base, usually lye. The methamphetamine is  
8 extracted from the mixture using an organic solvent such as toluene, ether, or coalman fuel. The  
9 solvent layer is separated out and hydrochloric acid gas can be bubbled through it, causing the  
10 methamphetamine to crystallize out of the liquid.

11 Mr. Siggins indicates samples J1 and K1 are consistent with a tablet extraction to obtain  
12 Pseudoephedrine. He indicates that sample H1 is consistent with red phosphorous that had been  
13 used to synthesize methamphetamine. He further indicates that samples E2 and H3 are consistent  
14 with the extraction of methamphetamine from a basified reaction mixture. Mr. Siggins finally  
15 indicates that based on the analysis of the items submitted, it can be concluded that  
16 methamphetamine has been synthesized using a red phosphorous and iodine method.

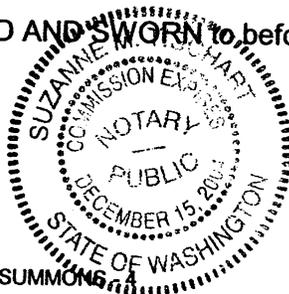
17 Based on the foregoing information the state asserts there is sufficient evidence to charge  
18 the defendant with Count 1 - Manufacturing a Controlled Substance, Methamphetamine; Count 2 -  
19 Unlawful Possession of Pseudoephedrine with Intent to Manufacture Methamphetamine; Count 3 -  
20 Unlawful Possession of a Controlled Substance, Methamphetamine; and Count 4 - Unlawful  
21 Possession of Drug Paraphernalia.

22 Based upon the above information your affiant believes that a Criminal Summons should  
23 issue to secure the appearance of the defendant before the court to answer to the above charges.  
24 Based upon the above, your affiant asks the court to issue a Criminal Summons to the defendant's  
25 last known address as shown below.

26 Further your affiant saith not.

27  
28  
29  
\_\_\_\_\_  
John P. Fairgrieve, WSBA #23107  
Deputy Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 20 day of September, 2004.



\_\_\_\_\_  
Suzanne S. Schart  
NOTARY PUBLIC in and for the State of  
Washington, residing at Vancouver, WA  
My commission expires 12-15-04

1  
2 The defendant is described as follows:

<b>DEFENDANT: ASHLEY WADE SICLOVAN AKA ASHLEY WADE MEADOWS</b>			
<b>RACE: W</b>	<b>SEX: M</b>	<b>DOB: 7/27/1974</b>	
<b>DOL: SICLO-AW-261M7 WA</b>		<b>SID: WA15634572</b>	
<b>HGT: 505</b>	<b>WGT: 150</b>	<b>EYES: BRO</b>	<b>HAIR: BRO</b>
<b>WA DOC: 745567</b>		<b>FBI: 29169WA7</b>	
<b>LAST KNOWN ADDRESS(ES): JIS – PMB 184, VANCOUVER WA 98685</b>			
<b>FORS - 10013 NE HAZEL DELL AVE, VANCOUVER WA 98685</b>			
<b>DOL – 748 G STREET, WASHOUGAL, WA 98671</b>			

# APPENDIX

## F

(CP 28 ) STATE'S RESPONSE TO DEFENSE  
MOTION TO SUPPRESS  
1-03-05

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**FILED**

JAN 03 2005

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.

ASHLEY WADE SICLOVAN,

Defendant.

No. 04-1-01856-1

STATE'S RESPONSE TO DEFENSE  
MOTION TO SUPPRESS

**I. ISSUE**

Whether District Court Judge Darvin Zimmerman abused his discretion in finding that the subject affidavit supported probable cause for issuance of a search warrant.

**II. FACTS**

See Affidavit.

**III. ARGUMENT**

A search warrant may be issued only upon a determination of probable cause. State v. Gore, 143 Wn 2d 288, 296, 21 P.3d 262 (2001). Probable cause exists where the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime may be found at a certain location. State v. Jackson, 150 Wn.2d 251, 264, 76 P.3d 217 (2003); State v. Vickers, 148 Wn.2d 91, 59 P.3d 58; State v. Thein, 138 Wn.2d 133, 977 P.2d 582 (1999). A judge's decision to

STATE'S RESPONSE TO DEFENSE MOTION TO  
SUPPRESS - 1

CLARK COUNTY PROSECUTING ATTORNEY  
1200 FRANKLIN STREET • PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(360) 397-2261 (OFFICE)  
(360) 397-2230 (FAX)

28

*Sta*

1 issue a warrant is reviewed for abuse of discretion, and great deference is accorded  
2 that decision. Vickers, 148 Wn.2d at 108. The affidavit is evaluated in a common  
3 sense manner, rather than hyper technically, and any doubts are resolved in favor of the  
4 warrant. Id.; State v. Helmka, 86 Wn.2d 91, 93, 542 P.2d 115 (1975); State v. Partin, 88  
5 Wn.2d 899, 904, 567 P.2d 1136 (1977). All doubts are resolved in favor of the warrant's  
6 validity. State v. Kalakosky, 121 Wn.2d 525, 531, 852 P.2d 1064 (1993).

7 The burden of proof as to a motion to suppress evidence is upon the movant.  
8 State v. Smith, 50 Wn.2d 408, 314 P.2d 1024, 312 P.2d 652 (1957); State v. Ditmar,  
9 132 Wash. 501, 232 P. 321 (1925).

### 10 11 **1. The Defendant Does not Have Standing to Challenge the Warrant**

12  
13 It is well settled that Article 1, Section 7 of the Washington Constitution provides  
14 greater protection to individual privacy rights than the Fourth Amendment. State v.  
15 Hendrickson, 129 Wn.2d 61, 69, 917 P.2d 563 (1996); State v. Stroud, 106 Wn.2d 144,  
16 148, 720 P.2d 436 (1986). Article 1, Section 7 provides that no person shall be  
17 disturbed in his private affairs, or his home invaded, without authority of law. This  
18 provision is violated when the State unreasonable intrudes upon a person's private  
19 affairs. State v. Boland, 115 Wn.2d 571, 577, 800 P.2d 1112 (1990); State v. Myrick,  
20 102 Wn.2d 506, 510, 688 P.2d 151 (1984). Capacity to claim the protection of the  
21 Fourth Amendment depends...upon whether the person who claims the protection...has  
22 a legitimate expectation of privacy in the invaded place. State v. Carter, 127 Wn.2d 836,  
23 842, 904 P.2d 290294 (1995) (citing Jones v. United States, 362 U.S. 257, 4 L. Ed. 2d  
24 697, 80 S. Ct. 725 (1960)).

25  
26 The Defendant seeking suppression of seized evidence has the burden of  
27 establishing the requisite privacy interest. Alderman v. United States, 394 U.S. 165,  
173, 89 S. Ct. 961, 11 L. Ed. 2d 176 (1969). One who brings a motion to suppress must

1 allege and establish that he himself was the victim of an invasion of privacy. United  
2 States v. Lyons, 992 F.2d 1029, 1031 (10<sup>th</sup> Cir. 1993). A defendant must prove his  
3 standing to challenge a search. State v. Picard, 90 Wn. App. 890, 896, 954 P.2d 336  
4 (1998). This burden of proof whether a defendant has standing never shifts to the  
5 government. United States v. Singleton, 987 F.2d 144 (9<sup>th</sup> Cir. 1993). If the defendant's  
6 evidence and the State's evidence leaves the court in a virtual equipoise as to whether  
7 the defendant has a valid privacy interest in the place searched or in the item seized,  
8 the Fourth Amendment analysis cannot further proceed. Id.

9 The evidence the defendant seeks to suppress was located in a storage unit  
10 rented by an individual other than the defendant. As such, the defendant would not  
11 ordinarily possess a privacy interest. However, as recently as May, 2002 our Supreme  
12 Court has recognized the automatic standing doctrine. State v. Jones, 146 Wn.2d 328,  
13 45 P.3d 1062 (2001). A person may rely on the automatic standing doctrine only if the  
14 challenged police action produced the evidence sought to be used against him. State v.  
15 Williams, 142 Wn.2d 17, 23, 11 P.3d 714 (2000). To assert automatic standing a  
16 defendant, (1) must be charged with an offense that involves possession as an  
17 essential element; and (2) must be in possession of the subject matter at the time of the  
18 search or seizure. State v. Simpson, 95 Wn.2d 170, 181, 622 P.2d 1199 (1980).  
19 Automatic standing does not apply if the crime charged does not involve possession as  
20 an essential element of the offense. State v. Carter, 127 Wn.2d 836, 842-843, 904 P.2d  
21 290 (1995). As such, if a defendant is charged with multiple crimes, standing for each  
22 offense must be determined separately.

23  
24 ***Count 1: Manufacture of a Controlled Substance***

25 Automatic standing does not apply if the crime charged does not involve  
26 possession as an essential element of the offense. Id. The elements for Manufacture of  
27 a Controlled Substance are:

- 1 (1) That between December 1, 2003 and February 15, 2004, the
- 2 defendant manufactured a controlled substance;
- 3 (2) That the defendant knew the substance manufactured was a controlled
- 4 substance; and
- 5 (3) That the acts occurred in the State of Washington.

6 WPIC 50.11

7 Clearly, "possession" is not an essential element of Manufacture of a Controlled  
8 Substance. As such, the defendant may not raise the automatic standing doctrine to  
9 challenge the warrant in regards to Count 1. Regardless of the court's determination of  
10 the effectiveness of the warrant, Count 1 remains due to lack of automatic standing.

11  
12 ***Counts 2, 3, and 4: Possession of Ephedrine of Pseudoephedrine with***  
13 ***Intent to Manufacture Methamphetamine, Possession of a Controlled Substance,***  
14 ***and Possession of Drug Paraphernalia.***

15 The State agrees "possession" is an essential element of counts 2-4. As such,  
16 the defendant may raise the automatic standing doctrine. However, the defendant must  
17 still meet the burden of proof required to establish the requisite privacy interest.

18 Before a defendant can challenge a warrantless search, he must, at a minimum,  
19 show that he has standing to contest the invasion of privacy. State v. Jacobs, 101 Wn.  
20 App. 80, 87, 2 P.3d 974 (2000) (citing State v. Jackson, 82 Wn. App. 594, 601-602, 918  
21 P.2d 945 (1996)). Standing depends not upon a property right in the invaded place but  
22 upon whether the person who claims the protection of the amendment has a legitimate  
23 expectation of privacy in the invaded place. Id., 101 Wn. App at 87 (quoting Rakas v.  
24 Illinois, 439 U.S. 128, 143, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978)). This determination  
25 involves a two-part inquiry: First, has the individual manifested a subjective expectation  
26 of privacy in the object of the challenged search? Second, is society willing to recognize  
27 that exception? Jacobs, 101 Wn. App. at 87. Merely showing that he was legitimately on

1 the property or a casual guest is not sufficient to establish a reasonable expectation of  
2 privacy. State v. Boot, 81 Wn. App. 546, 551, 915 P.2d 592 (1996).

3 Division II held in State v. Picard, that the defendant had no possessory or  
4 privacy interest in the place to be searched, his mother's bedroom, despite living in the  
5 residence, because he had no right to enter the room without permission. Jacobs, 101  
6 Wn. App. at 85. This is congruent to our present case. The defendant was not the party  
7 legally responsible for the storage unit. Sandra Gray legally rented the unit and only  
8 gave permission for the defendant to use the unit. This permission could be revoked or  
9 altered at any time. In order for the defendant to access the storage unit, two acts were  
10 required: (1) Gray was required to provide expressed permission on the rental lease; (2)  
11 Gray was required to provide the customized access code to the defendant which  
12 deactivates the alarm on the individual storage unit. Therefore, the defendant's ability to  
13 access the storage unit was subject to the permission and whim of Sandra Gray. As  
14 such, the defendant did not harbor an adequate reasonable expectation of privacy in the  
15 unit. At any moment, Gray could have revoked the defendant's permission and taken  
16 control of the defendant's possessions within the unit. The defendant lacks standing to  
17 challenge the warrant in regards to Counts 2-4.

18  
19 **2. Assuming the Court Finds Automatic Standing for Counts 2-4, the Use of  
the Trained Canine Was Not a Search**

20 Article 1, Section 7 provides that no person shall be disturbed in his private  
21 affairs, or his home invaded, without authority of law. The Constitution thus protects  
22 both a person's home and his or her private affairs from warrantless searches. State v.  
23 Dearman, 92 Wn. App. 630, 633, 963 P.2d 850, 852 (1998). The relevant inquiry in  
24 determining whether there has been a search under the Washington Constitution is  
25 "whether the State has unreasonably intruded into a person's private affairs". Id. If a  
26 search occurs, Article 1, Section 7 is implicated and police must get a warrant or the  
27 search must fall within one of the recognized exceptions to the warrant requirement.

1           State v. Dearman involved facts where police officers utilized a trained canine to  
2 obtain information from someone's private residence. The court held when a private  
3 residence is searched using sense-enhancing devices to obtain information that could  
4 not be obtained by the unaided observer, a search warrant is required. Id., at 637.  
5 However, our present situation does not involve a private residence. Rather, the subject  
6 of our trained canine sniff was a storage unit with an exterior easily accessible to many  
7 people.

8           As long as a canine sniffs an object from an area where the defendant does not  
9 have a reasonable expectation of privacy, and the canine sniff is minimally intrusive,  
10 then no search has occurred. State v. Boyce, 44 Wn. App. 724, 730, 723 P.2d 28, 31  
11 (1986). In Boyce, police received information the defendant was distributing heroin and  
12 that the main supply was stored in a bank safe deposit box. Armed with this information,  
13 officers brought a narcotics detection dog to the bank. The dog subsequently alerted to  
14 the presence of narcotics in the defendant's safe deposit box. The facts of the Boyce  
15 case indicated that: (1) the officers had permission to be in the vault area, (2) a person  
16 who has a safety deposit box does not have complete control over who will be in the  
17 vault area, (3) the court found that there was no seizure of Boyce's safety deposit box,  
18 and (4) a canine sniff of the air outside the safety deposit box was minimally intrusive.  
19 Id. Under these circumstances, the canine sniff was not a search under Article 1,  
20 Section 7 of the Washington Constitution. Id.

21           Our present facts are nearly identical to those found in Boyce. Utilizing the four  
22 factors set out in Boyce, we reach the same conclusion: (1) Officer Neal and Deputy  
23 Earhart received permission from the storage complex manager to access storage  
24 building A; (2) the defendant did not have complete control over who entered the  
25 hallway unit #49 occupied. Several other storage units occupied the same hallway just  
26 as several other safety deposit boxes occupied the same vault in Boyce. The defendant  
27 had no control over who was allowed in or out of that hallway as the manager, other  
lease holders, and permitted guests had complete access to that hallway; (3) the  
officers did not seize unit #49 or its contents; and (4) Deputy Earhart walked his dog,  
Akbar, from one end of the hall, to the other, beginning at the end furthest from unit #49.

1 Akbar sniffed each unit as they proceeded down the hall and subsequently alerted on  
2 unit #49. This is minimally intrusive as the canine merely sniffed the air being released  
3 from the unit. The officer's did not attempt to alter, damage, or otherwise allow the dog  
4 increased access to the odors within the unit. Further, the officers did not have any  
5 greater access or control over unit #49 than would any other individual walking in the  
6 hall or accessing their own alternative unit

7 The canine sniff was minimally intrusive and involved an area that does not  
8 establish a reasonable expectation of privacy. The storage unit does not rise to the level  
9 of protection afforded a private home. Therefore, the trained canine sniff was not a  
10 search.

11 **3. Assuming the Court Finds Automatic Standing For Counts 2-4, the**  
12 **Information Contained Within the Affidavit Was Not Stale**

13  
14 An affidavit in support of a search warrant must set forth sufficient facts and  
15 circumstances to establish a reasonable probability that criminal activity is occurring or  
16 is about to occur. State v. Higby, 26 Wn. App. 457, 460, 613 P.2d 1192 (1980). The  
17 amount of time between known criminal activity and the issuance of the warrant is only  
18 one factor and should be considered along with all the other circumstances, including  
19 the nature and scope of the suspected criminal activity. Id. Staleness, in other words,  
20 involves not only duration but the probability that the items sought in connection with the  
21 suspected criminal activity will be on the premises at the time of the search. State v.  
22 Perez, 92 Wn. App. 1, 11, 963 P.2d 881 (1998). The test for staleness of information in  
23 a search warrant is one of common sense State v. Riley, 34 Wn. App. 529, 534, 663  
24 P.2d 145 (1983).

25 In a case involving a suspected marijuana growing operation, Division I held a  
26 two week delay is sufficient to establish probable cause where an informant observed a  
27 significant growing operation. State v. Petty, 48 Wn. App. 615, 621, 740 P.2d 879, 883.  
In upholding the warrant, the court held "while two weeks may be too long where the

1 suspected criminal activity is the sale of small amounts of marijuana, it is sufficient to  
2 establish probable cause where an informant observes an "extensive growing  
3 operation". Id. The nature and the scope of the activity indicated to a reasonable  
4 probability that the illegality was still occurring two weeks after the informant's  
5 observation. Id.

6 In another marijuana grow operation case, Division III upheld a warrant when the  
7 affidavit referenced a tip six months earlier regarding a grow operation. State v. Payne,  
8 54 Wn. App. 240, 773 P.2d 122 (1989). A month after receiving the tip, deputies  
9 investigated the residence and discovered more information consistent with a marijuana  
10 grow operation Id., 54 Wn. App. at 246. The court held a marijuana grow is hardly a  
11 "now you see it, now you don't" event. Id. A magistrate may look at all circumstances,  
12 including the nature and scope of the suspected criminal activity. Id. The facts clearly  
13 indicated the criminal activity was ongoing and the issuing magistrate could reasonable  
14 infer the operation was continuing at the time. Id.

15 Similar to the above referenced cases, Officer Martin's affidavit referenced  
16 information obtained from a confidential informant (CI) that was approximately 30 days  
17 old. While 30 day old information would certainly be considered stale if it referenced  
18 small saleable quantities of methamphetamine, it most certainly is not stale in regards to  
19 the present case. The CI states the defendant conceals chemicals and equipment  
20 utilized in the manufacture of methamphetamine in storage unit #49. Affidavit p. 5.  
21 Further, the affidavit states the CI has observed the defendant manufacture  
22 methamphetamine on at least three occasions in the last 30 days. Affidavit p. 5. In  
23 describing the defendant's ability to manufacture, the affidavit states on one occasion,  
24 the defendant manufactured approximately three ounces of methamphetamine. Affidavit  
25 p. 5. Furthermore, the affidavit states the defendant is known to travel to the storage  
26 unit on a daily basis in order to retrieve materials from the unit while depositing unused  
27 items. Affidavit p. 6. The CI has personally observed the defendant store materials at  
the unit on at least two occasion in the last 30 days. Affidavit p. 5. This information

1 clearly establishes the defendant is involved in an ongoing manufacturing enterprise  
2 and that more likely than not, evidence of that enterprise would exist at the storage unit.

3 However, Officer Martin went one step further than required and confirmed the  
4 existence of contraband in the unit by arranging a trained canine sniff at the unit. While  
5 the state believes the information provided by the CI was not stale due to the nature of  
6 the information and crime involved, even information which is stale standing alone may  
7 still provide probable cause if it is confirmed by other recent information. State v.  
8 Hashman, 46 Wn. App. 211, 217, 729 P.2d 651 (1986). Our facts are directly analogous  
9 to those found in Petty and Payne. As a result, the affidavit contained sufficient probable  
10 cause and is not stale.

11  
12 **4. Assuming the Court Finds Automatic Standing for Counts 2-4, the**  
13 **Information Provided by the CI was Reliable.**

14  
15 When an affidavit in support of a search warrant contains hearsay information,  
16 the constitutional criteria for determining probable cause is measured by the two-prong  
17 Aguilar-Spinelli test. The first prong of the test seeks to evaluate the trustworthiness of  
18 the informant's conclusions based on the underlying circumstances and sources of his  
19 knowledge. The second prong tests veracity. It seeks to evaluate the truthfulness of the  
20 informant. Aguilar v. Texas, 378 U.S. 410, 21 L. Ed. 2d 723, 84 S. Ct. 1509 (1964);  
21 Spinelli v. United States, 393 U.S. 410, 21 L. Ed. 2d 637, 89 S. Ct. 584 (1969); State v.  
22 Partin, 88 Wn.2d 899, 903, 567 P.2d 1136 (1977). It is the second prong, the veracity  
23 of the confidential informant (CI), which is at issue here.

24 The veracity prong of the Aguilar-Spinelli test may be satisfied by: 1) establishing  
25 the informant's credibility, or 2) even if nothing is known about the informant, showing  
26 that facts and circumstances under which the information was furnished reasonably  
27 support an inference that the informant is telling the truth. State v. Lair, 95 Wn.2d 706,

1 710, 630 P.2d 427 (1981); State v. Johnson, 17 Wn. App. 153, 155, 561 P.2d 701  
2 (1977).

3 The most frequent way in which a hearsay informant's credibility is established is  
4 by a showing that the informant has previously supplied accurate, helpful information to  
5 law enforcement authorities. Lair, 95 Wn.2d at 710 (citing State v. Pate, 12 Wn. App.  
6 237, 529 P.2d 875 (1974)). The existence of a proven track record of reliability  
7 reasonably supports an inference that the informant is presently telling the truth. Id. In  
8 our situation, the CI utilized by Officer Martin has provided information on numerous  
9 criminal investigations which have located controlled substances. Affidavit p. 5.  
10 Information previously provided by the CI and confirmed to be accurate in a pursuing  
11 investigation confirms the CI's reliability. The information cited in the Affidavit does not  
12 attempt to establish the existence of drugs in the storage unit. It merely establishes the  
13 CI's reliability under Lair.

14 If the informant's track record is inadequate, it may be possible to satisfy the  
15 veracity prong by showing that the accusation was a declaration against the informant's  
16 penal interests. State v. Bean, 89 Wn.2d, 467, 572 P.2d 1102 (1978). Under the  
17 declaration against penal interest exception, the State can establish the veracity prong  
18 by showing that the informant who supplied the information was supplying information to  
19 obtain leniency. Id., at 471; State v. Estorga, 60 Wn. App. 298, 304, 803 P.2d 813; State  
20 v. O'Connor, 39 Wn. App. 113, 120, 692 P.2d 208 (1984). There need not be a formal  
21 leniency deal. O'Connor, 39 Wn. App. at 120. This type of information is reliable enough  
22 to establish veracity because of the informant's strong motive to tell the truth. Bean, 89  
23 Wn.2d at 471. After an informant has been arrested, but before a trial, the informant is  
24 risking disfavor with the police if he or she lies. Estorga, 60 Wn. App. at 304. An  
25 informant seeking leniency will know there is a dire risk of police retaliation should he or  
26 she not produce accurate information. O'Connor, 39 Wn. App. at 121. Here, Officer  
27 Martin's CI was seeking a favorable recommendation regarding pending drug charges.  
Affidavit p. 5. The informant's statements satisfy the veracity prong because the

1 statements were against the informant's penal interests made in hopes of mitigating  
2 potential drug charges.

3  
4 **IV. CONCLUSION**

5 Although the state asserts the defendant lacks standing to challenge the warrant,  
6 Judge Zimmerman did not abuse his discretion in finding probable cause existed where  
7 he was presented with the following facts:

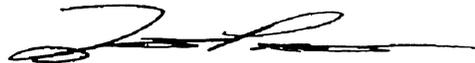
- 8 (1) Officer Neal and Deputy Earhart received permission from the storage  
9 complex manager to access storage building A.  
10 (2) The defendant did not have complete control over who entered the hallway  
11 unit #49 occupied.  
12 (3) Several other storage units occupied the same hallway.  
13 (3) The officers did not seize unit #49 or its contents.  
14 (4) Deputy Earhart walked his dog, Akbar, from one end of the hall, to the other,  
15 beginning at the end furthest from unit #49.  
16 (5) Akbar sniffed each unit as they proceeded down the hall and subsequently  
17 alerted on unit #49.  
18 (6) The CI witnessed the defendant manufacture methamphetamine on at least  
19 three prior occasions in the last 30 days.  
20 (7) The CI has witnessed the defendant manufacture approximately three ounces  
21 of methamphetamine in one batch.  
22 (8) The CI witnessed the defendant conceal methamphetamine manufacture  
23 materials at storage unit #49 on at least two occasions during the last 30 days.  
24 (9) The defendant is known to visit unit #49 on a daily basis to retrieve or deposit  
25 materials for the manufacture of methamphetamine.  
26 (10) The CI has provided information on numerous criminal investigations.  
27 (11) These investigations have ended in the discovery of controlled substances.

1 (12) The CI had pending felony controlled substance charges.

2 (13) The CI wished to gain consideration for those pending charges.

3  
4 DATED this 2nd day of January, 2005.

5 ARTHUR D. CURTIS  
6 Prosecuting Attorney

7  
8 

9 QUINN H. POSNER, WSBA #31463  
10 Deputy Prosecuting Attorney

# APPENDIX

# G

( CP 37 ) CLERK'S IN COURT RECORD  
1-26-05

**SCANNED**

**FILED**

**JAN 26 2005**

JoAnne McBride, Clerk, Clark Co.

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

**IN COURT RECORD**

In re: State of Washington	vs Ashley Wade Siclovan
Atty: Quinn Posner	Atty: George Brintnall
Cause No.: 04 1 01856 1	Clerk: Sharon Ferguson
Judge: Bennett	Reporter: Video
Date: 01-26-05	Hearing Type: Motion Hearing

**PROCEEDINGS & DECISIONS**

- Quinn Posner is present representing the State of Washington and George Brintnall is present with his client, Ashley Siclovan.
- The Defendant requests to represent himself. The Court questions the Defendant and grants the motion. The Defendant requests to have standby counsel appointed. The Court appoints George Brintnall as standby counsel.
- The Defendant requests to have a medical evaluation regarding his twitch. The Court grants the Defendant's motion for jail staff to provide a medical evaluation regarding the Defendant's twitch. If the jail staff is unable to provide the needed evaluation the Court will authorize an evaluation by an outside source.
- The State has a photo album in evidence that belongs to the Defendant. The State questions the ability to use photos of the Defendant of when he has previously been in custody. The Court will not allow the use of photo's taken of the Defendant when he was in custody. The State will use other available photos.
- The Defendant requests to review the file and police records. The Court orders the State and Mr. Brintnall to review the police reports and to redact any addresses or phone numbers that may be listed in the report.
- The Defendant requests typed copies of all interviews. Mr. Brintnall has not received any copies of the interviews at this time. Mr. Posner will provide those to the Defense today.
- The Defendant requests information regarding a witness, Calvin Brown. The State has no knowledge of a Calvin Brown. The Court orders the State to e-mail the police officer involved in this case to see if he has any information regarding Mr. Brown.
- The trial date stands.

317  
g

# APPENDIX

## H

( CP 39 ) STATE'S WITNESS LIST  
1-26-05

**SCANNED**

**FILED**  
JAN 26 2005  
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.

ASHLEY WADE SICLOVAN,  
Defendant.

STATE'S WITNESS LIST

No. 04-1-01856-1

TO: The above-named defendant(s) and to your attorney(s) of record, George W Brintnall

You are hereby notified that the following individuals may be called by the State in the trial of the above-entitled matter:

- |                                                |                                                    |
|------------------------------------------------|----------------------------------------------------|
| 1. JOHN HESS<br>WASHINGTON STATE PATROL        | 2. NEIL MARTIN<br>VANCOUVER POLICE DEPARTMENT      |
| 3. BEVE BATES                                  | 4. SANDRA J GRAY                                   |
| 5. JENNY JOHNSON<br>VANCOUVER SCHOOL DISTRICT  | 6. LINDA PRITCHARD<br>CLARK COUNTY GIS AND MAPPING |
| 7. BRUCE SIGGINS WSP CRIME LAB<br>LAB# 504-490 |                                                    |

The State reserves the right to call any persons named in the police or medical reports. Additional witnesses, if any, will be disclosed as they become known to the State.

DATED: January 25, 2005

  
Quinn Posner, WSBA #31463  
Deputy Prosecuting Attorney

39  
J

# APPENDIX

## I

THIS DOCUMENT CAN BE FOUND IN THE  
COURT FILE AS AN EXHIBIT #17 FILED  
5-26-05 AT POST TRIAL HEARING.

STATE OF WASHINGTON V. ASHLEY SICLOVAN  
CAUSE NO.04-1-01856-1  
INTERVIEW OF SANDY GRAY  
FEBRUARY 7, 2005

TH: TIM HAMMOND  
SG: SANDY GRAY  
SA: SUSAN ANDERSEN

TH: This is Tim Hammond, Investigator to the Clark County Washington Prosecuting Attorney's Office. Today's date is February 7<sup>th</sup>. The current time is approximately 9:34 a.m. We are in the second floor conference room of the Prosecutor's Office. Present besides myself is Susan Andersen, also an employee with the Prosecuting Attorney's Office, and the subject of this interview will be Susan Gray. Correct? Excuse me.

~~SG:~~ Sandy Gray

~~TH:~~ Sorry, it's been a long morning already. Sandy, could you please spell your last name?

~~SG:~~ G-R-A-Y.

~~TH:~~ Okay, and do you see a tape recorder there in front of us?

~~SG:~~ Yes.

~~TH:~~ Do you give permission to be tape recorded?

~~SG:~~ Yes.

~~TH:~~ Okay, this is referred to the case, um..... State of Washington verses, let's take a look, Mr. Siclovan, is that correct?

~~SG:~~ I'm assuming so.

~~TH:~~ Okay, and do you know his first name?

~~SG:~~ Ashley.

TH: Ashley, okay, and my understanding is, well put it like this, do you recall that you and I had an interview sometime before, I believe it was in December.

SG: I don't remember the date, but I've talked to you before.

~~TH:~~ Okay, and I believe that was in the presence of your P.O. Is that correct.

~~SG:~~ Uh huh.

~~TH:~~ And that P.O.'s name would be Jennifer Gray, or Jennifer Thomas.

~~SG:~~ Jennifer Thomas.

TH: Everybody is Gray today. Alright. Um..... I was contacted by Prosecuting Attorney Quinn Posner, who indicated to me that, that there was some information that was raised referenced, referenced other individuals who may have access to that storage unit.

SG: Yes.

TH: Okay, when you and I talked, you that indicated that you thought there was somebody else, you couldn't remember the name at the time. Do you remember the individual's name?

SG: Calvin.

TH: Calvin?.....

SG: Calvin Brown I think. I'm not sure. It's Calvin.

TH: Okay, and we're talking about storage unit number 49. Is that correct?

SG: I can't remember the number, the bigger one.

TH: Okay, alright. I guess that's, I think that's were some of the confusion comes into play. There was a number of storage units involved, right?

SG: There's two.

TH: Okay, and one was a big one and one was a little one?

SG: Correct.

TH: Okay, um.... Who had rented both of them? Or who had rented them?

SG: Ashley had rented them. You can't get a discount on one of them if you get the.... There was a special going on. I do believe I said this to you before. You get one if you have a storage unit there and you are referred by another person or another person gets one, then you get a month free. So, I got the one in my name.

TH: Okay, which one, the big one or the little one

SG: The big one.

TH: Okay.

SG: So that we could get the big one for free for a month and then at the time we were going to move in together.

TH: Okay, so who got the little one?

SG: Ashley's is the little one.

TH: Okay, alright. I think that's were, there was some confusion. So, who had access to the large one?

SG: To the large one..... Ashley, Calvin, I, I don't remember when or what date it was that the um... breakup between me and Ashley happened, but I had gave, I had given him \$40 from Calvin to lease the big one. He was just going to take it. I didn't care. I told him to take Ashley's shit from me and just keep it. That's it. You know, he was going to take it over there...

TH: Right

SG: Whatever. So, the last I know, Calvin had the key, Calvin had the code, and Calvin's stuck with it. That's all I know.

TH: Okay. And the little one?

SG: And the little one. The lady from the storage unit, I had access to that one and so did Ashley. The lady from the storage unit called me and told me that I could come and get the stuff from the storage unit because it was after the big one had gotten raided and um... and she said that the stuff that was in the little Storage unit I could come get and the stuff that was in the big storage unit I had to wait until whoever said it was okay to come and get it. Which I don't know. Which none of it would belong to me and none of it belonged to Ashley. I don't know what it was in there, but she let me come and get everything out of the storage unit from the little one.

TH: Okay, the plastic storage bins that you and I had talked about the first time. Those were stored in which storage unit. The big one or the little one?

SG: I had. In the little one. I came and got all of Ashley's stuff. All Ashley's stuff was in the little one when I came and got it. All the storage.... All

the, the suitcase, the bins, the, um.... There's a suitcase, there's some bins, there was a ..... Thing with clothes in it. A long thing, I don't know what they're called. And just a bunch of personal other stuff.

~~TH:~~ Is it fair to say that you're irritated?

~~SG:~~ I'm irritated. I've had a really bad day. My son hasn't come home, and, I'm, yes, I am irritated.

~~TH:~~ Okay.

~~SG:~~ I'm very, I'm worried about my kid.

~~TH:~~ Okay, alright. Is it that you're irritated at me?

~~SG:~~ No. I'm irritated with my kid.

~~TH:~~ Your son?

~~SG:~~ Yes.

~~TH:~~ Okay, his the one that I saw the other day when you were at the PO's office?

~~SG:~~ I'm not sure. He's 15.

~~TH:~~ Okay, he usually comes with you when you go places?

~~SG:~~ No. That's my oldest.

TH: Okay, it must have been the other one. Okay. Um.... All I'm trying to do is get to the bottom line of who's stuff was where. Okay, and I know that that's probably confusing, because we've been over it a couple of times and I think you've been over it with other people a couple of times.

SG: Yeah, my PO, well no, only with you.

TH: Okay.

SG: And I've shown up at everyone of the hearings that um...., that um.... I was supposed to be testifying at and, but nobody contacted me and told me that I wasn't. I've showed up at everyone and nobody has talked to me. Nobody said that there was anything they needed to talk to me about. And then my PO called me and said the prosecutor has been calling me, you know.

~~TH:~~ Did you get the two messages I left for you on your cell phone?

SG: I don't listen to my messages on my cell phone because it's pre-paid. It's pre-paid minutes and it takes up all the minutes, and that's the only communication I have with my kids.

~~TH:~~ Okay, so how would a person get a hold of you then?

~~SG:~~ Mail.

~~TH:~~ Okay, that's easier than leaving a message on your cell phone?

~~SG:~~ Pretty much.

~~TH:~~ Okay, well let's do that then. Let me get an address where I can send stuff to you then, if that's necessary.

~~SG:~~ Okay. Um.... It ah.... 10804 NE Hwy 99, Space #45

~~TH:~~ Space #45, okay. Is that towards the front or the back of the park there?

~~SG:~~ Front.

~~TH:~~ The front, okay. And your cell phone is still the same number?

~~SG:~~ Yeah. Sorry if I'm \_\_\_\_\_. I'm really worried about my kid.

~~TH:~~ I understand. Um... let's just go. What is that cell phone number, so I don't have to...

~~SG:~~ 241-9884.

~~TH:~~ 9884. Are you still staying with your mother there? Is that the same...

~~SG:~~ No, I live in my own place.

~~TH:~~ It's the same....

~~SG:~~ It's the same.....

~~TH:~~ Park.

~~SG:~~ Park, yes.

~~TH:~~ Okay, alright. Cause your mother's is like kind of the middle, kind of middle, but towards the back.

~~SG:~~ It's at the end.

~~TH:~~ Well that's what I mean, but it's toward the back. Not where you come into the entrance, it's further.

~~SG:~~ Yeah.

~~TH:~~ Um....

~~SG:~~ I don't know how long I'm going to be there either because I hate it there. A bad place, so, but my PO \_\_\_\_\_ so.

~~TH:~~ Okay, alright, and that's .....

~~SG:~~ Jennifer Thomas.

~~TH:~~ ~~Thomas, okay, not Jennifer Gray. I guess not. Alright. And um....~~ Have you talked to the defense attorney or the defense investigator or anything since you and I spoke?

SG: I haven't talked to anybody.

TH: Okay.

SG: The quickest, the quickest, see, I think was the last, the last time that I showed up to court. The defense attorney got my phone number and stuff out in the hallway, but I haven't heard nothing. I mean, if he's left a message, I haven't gotten it from him either.

~~TH:~~ Okay, alright. So that would explain why, why you didn't get back to me. For that reason.

~~SG:~~ Yeah.

~~TH:~~ So, when Jennifer gets a hold of you, does she just call the cell phone too?

~~SG:~~ Jennifer calls the cell phone too, yeah, I just have happened to have answered it.

~~TH:~~ Okay, so it's whether or not you answer it more so than leave a message.

~~SG:~~ Yeah, if I have minutes.

~~TH:~~ Okay, then it's fine. I just want to make sure that I understand.

~~SG~~: Yeah, well I answer it if I have minutes.

~~TH~~: Okay.

~~SG~~: So that I....

~~TH~~: Otherwise you go through a voicemail. But you don't always have the minutes to check.

~~SG~~: Yes, exactly.

~~TH~~: Is that fair?

~~SG~~: Pretty much so.

~~TH~~: Okay, alright.

~~SG~~: If I miss the call, I don't, I don't check the messages just because I don't have the time or money to \_\_\_\_\_

TH: Um.... Do you have reason to believe, okay, that the charges that were placed against Mr. Siclovan, Ashley, do you have any reason to believe that they are not true.... Or not accurate?

SG: I don't think they're accurate no, but I'm not the law, you know. I just know that there's other people who had access to that. I know that Calvin had the code. I know that Calvin had the key, and um..... you know, and even, even though me and Ashley were fighting, you know, and things didn't happen the way I wanted them to. I don't think that, you know, I just don't think that this is a fair charge on him. I don't think it was his stuff. All his stuff, all his stuff that I knew, that he had was in that little storage unit that I picked up. You know. I don't know what was in the big one, but I know that it wasn't his. He was back with his wife. He wanted kids, you know, I don't see how he would, he would, I just, you know, I don't see, but I don't know. You know.... I just don't

TH: Okay, you knew him for how long?

SG: I don't know, probably a year?

TH: Okay, so a fairly short period of time.

SG: I know I loved him a lot.

TH: But, I mean as far as the time period of what you knew him.

SG: Yeah, yeah.

TH: Was fairly short.

SG: Yeah, yeah, fairly short, yeah.

TH: And it's fair to say that, did know everything, every single thing about him?

SG: Well there wasn't a lot to know about Ashley, but yeah, I mean.... You know he's pretty, pretty open book. You know, that I would see.

TH: Alright, that's all, I just wanted to narrow down, you said that there's a number of people who had access to the larger one. Who besides Calvin and Ashley.

SG: Calvin, Calvin is the last person I knew of who had a key and the code, but I know that Rob, Rob had access to it. At some point in time, I don't know, you know, when persay but I know he did have access to it at a point and time, because I had seen him go in and out of there with a..... with Ashley. I can't remember his last name. It started with an H. That's all I know. And then, I think, I think Calvin also, also had a storage unit also of his own. It was his own in that same hall, um... too, you know.

TH: Are you aware if that one got raided?

SG: I have no clue. I don't know.

TH: Are you aware of any other storage units in that area that got raided?

SG: No. I don't try to make a habit of knowing any of that kind of stuff...

TH: All I mean...

SG: But, yeah, I know...

TH: For that time period, you probably would have know right?

SG: No. sound (No)

TH: Are you aware of anybody in that group of individuals who would possess items that would be involved in the manufacture of Methamphetamine?

SG: Oh sure, Calvin, Rob, any of those people, probably. Some Mexicans, some Mexicans that Calvin knew.

TH: You saw them in that storage unit.

SG: Yeah, there are so many people in that storage unit. I mean there are so many people. I, Sherry Russell had a storage unit in that place, but it wasn't in her name, it was in somebody else's name, but she'd come in there. She didn't have, um, you know, access to making anything that was supposedly found in that unit or anything, but I mean I know Calvin and Rob. Calvin especially, I know did do that kind of stuff, so...

TH: Okay.

SG: I really, really, really, really....

TH: Okay.

~~SG:~~ I have to go see my PO and I still gotta go to juvie.

~~TH:~~ I gotcha, and I understand your appointment with your PO is at noon.

~~SG:~~ Is at noon, correct and I'm foot.

~~TH:~~ Right, so you got here early which is good.

~~SG:~~ Yes.

TH: So we'll get you out of here early. Is there anything else that you would like to add because what I don't want to have to do is to have to interview ya a third time.

SG: I don't mind if you interview me again. I'm really bad with remembering a lot of things. Sometimes it takes something to bring my memory up.

TH: What I'm trying to clearly understand is obviously, Ashley has a connection to both units. The big and the little, okay. And you've explained that you saw his stuff in the little unit.

SG: I pick his stuff.

TH: Right, right, and we also had talked previously I believe that he had had some items in the large unit. So at some point in time, he had access to that larger unit and he had stored some items in there and if I recall correctly, you helped, I think it was you helped him move some items out of the large into the small, is that correct?

~~SG: Something, yeah. He abandoned that unit when we got into a fight, you know.~~

TH: The big or the little.

SG: The bigger one.

TH: Okay, okay, so he abandoned it when you, when you and him got into a fight?

SG: That's correct.

TH: And, and, who took over basically ...the use of it?

SG: It was still in my, it was still in my name. That's when I, that's when I took the \$40 bucks from Calvin. Calvin wanted to use it, I didn't ask any questions, you know, I didn't care. I was going to let it go anyways. You know, because I didn't need it. And then that's....

TH: Okay, do you remember what time period that was?

SG: I don't.

TH: Okay, was it winter, summer, fall.

SG: I don't.

TH: Snowing, icy.

SG: If it wasn't snowing, it doesn't snow.

TH: Was it icy?

SG: Uh no, um..... I don't know. Maybe, I don't know. My birthday, my birthday was just yesterday, so it was probably somewhere in February

TH: So it was about February you figure?

SG: Yeah, but don't quote me. But I think so because of my birthday, yeah.

TH: Alright. Now my understanding is that there are times when there are individuals who will sometimes reside in the storage unit. Live in a storage unit.

SG: Oh gosh.

TH: Are you aware of that happening in this case?

SG: No.

TH: Okay, so nobody from your understanding kept any of these storage units as a residence?

SG: No.

TH: Okay. Are you aware of if anyone used any of the storage units as, well just say, a place of business?

SG: No.

TH: To, for example, sell whatever?

SG: No, not to my knowledge.

TH: Okay, or for example to use Methamphetamine while they are at the storage unit?

SG: No.

TH: Okay. Are you aware of anybody cooking Meth in any of the storage units?

SG: No.

TH: Okay, alright. Or storing any items that would be used to manufacture Methamphetamine in those storage units?

SG: No, no.

TH: Alright. Of the items, okay, so you said you believed that perhaps it was about February that you gave...

SG: Don't quote me, but I think so yeah.

TH: That's okay. Calvin access to that storage unit. Prior to that, did Calvin have access to that storage unit?

SG: Yeah, he could have, yeah. Easily, I mean he was, he was Ashley's friend, so...

TH: ~~Okay, well just because you, you think he's,~~ okay just because he's Ashley's friend, then he could of....

SG: No he did.

TH: Are you aware of if he did?

SG: Yeah he did. I know he did, because I've went there with him before.

TH: ~~Okay, okay~~; on how many occasions?

SG: I don't know.

TH: A lot?

SG: I don't know, a couple.

TH: Okay, do you recall what ...

SG: He had his storage unit in the same place, so...

TH: Okay, do you recall what he went there for?

SG: No, I don't.

TH: Okay, do you know where his storage unit was in conjunction with where that one was?

SG: No. I just know it was in the same hall.

TH: Okay, was it a large one or a small one?

SG: I don't know. It was in the same hall. I don't...

TH: Was yours a small one in the same hall as the large one.

SG: Mine was the large one of me and Ashley, so...

TH: Okay, because you said you had a large one and a small one.

SG: Yeah\_\_\_\_\_

TH: Were they in the same hall?

SG: No, the small, Ashley's was \_\_\_\_\_ in the beginning, down here and the bigger one was up here.

TH: Okay, alright, and you don't recall if the one that Calvin had was somewhere in between or not?

SG: No, just that it was in the same hall.

TH: Same hall?

SG: Same door. I know they used the same door to get in. Cause you have to get into the door, and then you get into the, all bunch, there's a variety of units.

TH: Okay, okay, so Calvin's was in the same hall as the large one that you \_\_\_\_\_ that Ashley had.

SG: Correct, correct.

TH: Okay, alright. So after you gave, after you got the \$40 from Calvin, did you ever enter that storage unit again? \_\_\_\_\_

SG: No.

TH: Okay, are you aware of anybody else who entered that storage unit besides Calvin?

SG: No.

TH: After you gave him the key?

SG: No.

TH: Okay. Are you aware if Ashley ever went to that storage unit afterwards?

SG: Ashley was gone as far as I know. He was with his wife. I don't know.

TH: Okay. Did he ever retrieve his stuff from the small-storage unit?

SG: I retrieved it. The lady from the storage unit called me and told me I could come get it.

TH: Okay, so you went and got everything. Cleared out that small one?

SG: Yes.

TH: Okay, and what ever happened to all that stuff?

SG: I don't even know. I don't even know what happened to it.

TH: Okay, did Ashley ever come and get his stuff from you?

SG: ~~Uh Uh~~ (no.)

TH: Okay.

SG: ~~It's just got,~~ I've moved and I've went to jail and you know.

TH: Okay.

SG: Disappeared.

TH: Okay, just went wherever.

SG: Yeah.

TH: Do you recall who might have possession of any of those items?

SG: No.

TH: Okay, alright. Do you, do you retain any of the items that were in the storage unit at this point?

SG: No, I've had to start all over from scratch. ~~My whole,~~ my whole apartment.

TH: Do you have any questions of me?

SG: ~~No, just,~~ no, if you need to get a hold of me just mail probably.

TH: I'll call you and then if I don't get a hold of you that way then, okay. Ms. Anderson do you have any questions?

SA: None.

TH: Okay.

~~SG:~~ And I need something from you stating I was here to go to my PO.

~~TH:~~ No problem. In fact, I'd give her a call if you'd like, how about that?

~~SG:~~ Okay, that would be great.

~~TH:~~ And I'll leave her a message, because I think she checks her voice mail.

~~SG:~~ Yeah, I think she listens to her messages.

~~TH:~~ Okay. I wish you luck, finding your son.

~~SG~~: Thank you.

~~TH~~: And I show current time as approximately 8, excuse me 9:52. Still the same date and you still see the tape recorder going?

~~SG~~: I do.

~~TH~~: And do you still give permission to be recorded?

~~SG~~: I do.

~~TH~~: Okay, thank you very much.

End of tape.

---

I, Suzanne Tischart, certify that the above transcribed interview of Sandy Gray was typed to the best of my knowledge as accurate and correct.

  
Suzanne Tischart, Legal Secretary 2  
Clark County Prosecuting Attorney's Office

# APPENDIX

## J

( CP 73 ) LETTER FROM SANDRA GRAY  
4-01-05

73

To: Superior Court Clark County  
P.o Box 5000  
Vancouver, WA  
98666

From: Sandra Gray  
10804 N.e Hwy 99 #C  
Vancouver, WA  
98686

Statement:

I had an interview at the VPD, on 2/24/04. The interview consisted of two subjects, one of them being the search of the storage unit. I was asked alot of questions about Ashley Siclovan. Officer Martin, and Officer Moore wanted any kind of information that I might know, about the unit. The other interview was about a checking account, that had belonged to Calvin Brown. They asked me questions about some checks and showed me some blank checks with a blue background, wanting to know if I had ever seen Ashley with anything like that. They showed me pictures, and asked me if I had ever seen them before. They stated they found evidence in the unit, indicating that Ashley vicitimized Calvin Brown, by putting checks into his account, The photographs they showed me was of a person at a teller/atm machine, and they asked me if I thought any of them looked familiar or like someone I knew.

The State is claiming, I made Calvin Brown up, and that he doesnt exist. Prior to the day of trial, I had made some notes about the past events, so that I could refer to them if needed, wanting to make sure that I would have all my facts in order. On 2/17/05, the day of the trial, I was in the hall waiting to be called to the witness stand, and finishing up my notes. A witness from the States team had came out from the court room, I asked him did he know if I could take my notes up to the stand with me and he said no.

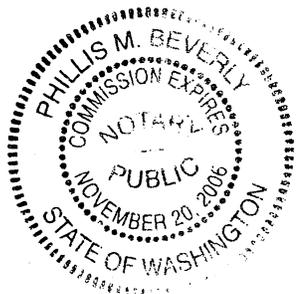
While on the stand, the fact that I was sick, as well as tired from a long night at the hospital with my son, I was manipulated and my weakness prayed on. I was asked about Calvin Brown, when I answered, I was told by Mr. Posner that I was making Calvin up, that there is no such person.

The State questioned me on 2/24/24, I was States witness, and I was interviewed by the states investigator. Both the State and the investigator know that Calvin Brown does exist.

I was also asked if I had talked to Ashley since the seizure, I thought the question meant within the last year as of the seizure. The State didnt give me a chance to fully answer, Looking like I had been talking to him since the trial. As a states witness, I was instructed by both, the State investigator and by my P.o, to have no contact with Mr. Siclovan, and I didnt... I never discussed in any way anything to do with this case or anything else. I was dropped as States witness the day before trial, and Ashley called me to the stand on his behalf, it was only then, that we started to talk.

I Sandra Gray sware that the information given, is true and correct, to the best of my knowledge.

Dated this <sup>15</sup>th day of March, 2005  
Signed *Sandra Gray*



*Signed & dated before me 3-15-05*  
*my Commission expires 11-20-06*  
*County - Clark Co.*  
*P.D. SJ324CF*

# APPENDIX

## K

( CP 76 ) MOTION FOR NEW TRIAL  
4-05-05

ISSUES PERTAINING TO THIS  
MOTION BEFORE YOU FOUND ON:  
17&18 of 30      also,  
26&27 of 30

RECEIVED

COPY ORIGINAL FILED APR 05 2005

APR 05 2005 Superior Court of Washington  
County of Clark  
Prosecutor's Office  
JoAnne McBride, Clerk, Clark Co.

STATE of WASHINGTON,  
Plaintiff/Respondant,  
VS.

NO: 04-1-01856-1

New Trial / Dismissal

ASHLEY WADE SICLOVAN,  
Defendant / Petitioner

1.) Grounds: CrR 7.5 (a) (1, 2, 3, 4, 6, 8)  
CrR 8.3 (B) Prosecutorial misconduct  
CrR 4-7 Discovery Violations / Sanctions  
Wash. Const. ART. 1 sect. 3, 22  
U.S.C.A. Const. Amend. 6 & 14

2.) Relief Requested: New Trial OR Dismissal  
of count 1, 2 and 3

3.) Basis: Based on Trial minutes, Police Reports  
warrant affidavit, pre-trial minutes,  
Brintnalls Affidavit, discovery requests prior to trial

4.) Date: This 5<sup>th</sup> day of April, 2005

pr-se Ashley Wade Siclovan  
Ashley Wade Siclovan

off motion

ISSUE  
# 1

Prosecuting attorney engaged in misconduct by submitting different document than earlier agreed up on with pro-se defendant.

Grounds: 7.5 (a) (2) misconduct

On 2-17-05, the 2nd day of trial the state disclosed a 3 page remake of the lab results.

A copy was given to standby council and defendant before lab technician testified. Mr. Posner said the new copy was for the jury. The new 3 page remake was much more simple and graphed out better for them. This document was to replace the 5-14-04 results, that has in bold dark print the names of Ashley W. Siclavan and Sandra J. Grey, listed as suspects.

I am referring to exhibit # 62

The only reason to furnish defendant with other copy was to deceive him as to which copy was going to jury as exhibit # 62.

It is professional misconduct for a lawyer to:

Engage in conduct involving dishonesty and deceit.

R.P.C. 8.4 (1)

Prosecuting attorney as a Quasi-Judicial officer, has duty to see accused is given a fair trial.

ST. VS. Cook, 512 P.2d 747

This put a negative impression in the jury's mind. A connection to the chemicals and defendant. More of a connection than any of the evidence presented at trial.

The closest the state proved Siclovam to the chemicals was him paying bill of the unit that the 'locked' boxes were in.

To connect him by report from agencies labeled at the top of the page, Vancouver Police department, and crime lab is an impression that changed outcome of verdict, had it not been submitted to jury on top of all 3 pages of report.

To warrant new trial error must be prejudicial, that is, must effect result of case and must be prejudicial to substantial right to party assigning it.

ST. VS. Oswald, 381 P.2d 617

I request oral argument so defense can

Show misconduct and prejudice caused.

Request court present exhibit # 62  
at new trial hearing.

ISSUE  
# 2

State and officer Martin impeded defense investigation of; destroyed evidence without preservation.

Grounds: CAR 7.5(a)(2) misconduct, (4) Surprise.  
7.5(a)(8) substantial justice not meet.  
CAR 4.7(h)(1) Investigation not to be impeded.  
4.7(h)(7)(i) failed to comply.  
4.7(h)(7)(ii) willful violation of order

On 2-10-05 officer Martin refused to answer any questions as to where evidence was, discription of destroyed evidence or if any was preserved for defense.

On 2-15-05 court ordered state to arrange interview of Martin.

Min: 10:35:23 02-15-05

This court order was not carried out or any attempt to by the State.

On 2-10-05 Martins refusal was supported by State informing defense he was not there to be interviewed.

This is stated on the record, and see Brintnalls affidavit attached.

Min. 10:35:08 02-15-05

State is fully aware Siclovian was not able to interview as the court ordered by stating so in his objection to Siclovians question to Martin on the stand.

Quote " There was no interview of the officer yesterday, or any."

Min. 10:18:09 02-17-05

This is a direct quote of the state on record.

This should be considered in the accumulation of errors that warrant new trial.

State VS. Coe, 684 P.2d 668 (1984)

Also

should add weight to the 'bad faith' claim the defense is making towards state and investigators in this case as to discovery violations and misconduct.

SSUR

#3

Member of prosecution staff instructed States witness to impede defenses investigation.

C.R.R. 7.5(a)(2) Prosecutorial misconduct

C.R.R. 4.7(h)(1) investigation not to be impeded.

On December 8<sup>th</sup>, 2004, States investigator Tim Hammond and Jennifer Thomas D.O.C. Officer of Sandra Gray, advised Sandra Gray to refrain from discussing case with opposing Counsel and defendant.

See Sandra Grays affidavit Dated 3-15-05.

On January 26<sup>th</sup> 2005 accused became Pro-se, so then on counsel being defendant.

For Sandra Gray, a States witness to be given this instruction by Corrections officer with authority over her, accompanied by State Official, would be considered intimidating.

C.R.R. 4.7(h)(1)

This States witness revealed information in interview that indicated she knew of other persons having access to unit.

Page 6 of 12 of transcript. State investigator eluded subject at that point.

This shows a willful attempt to suppress information relevant to meaningful defense.

This should be considered in the accumulation

of errors warranting new trial.

### Law

Prosecutory misconduct, instructing witness not to speak to defense ... warrants reversal only if defendant was prejudiced.

ST. vs. Hofstetter 878 P.2d 474

Prejudice that occurred

1.) Defendant did not learn of other investigation and questioning done on 2-24-04 by Martin.

2.) Did not learn of all the contents or existence of Sandra Grays supplemental report dated 2-24-04.

3.) Would have learned of 3rd party renting unit before 2-10-05 (6 days before trial).

SSVE  
# 4

State committed misconduct by instructing witness to not testify to dates.

Grounds: C.R. 7.5(a)(2) misconduct.  
C.R. 4.7(h)(1) investigation impeded.  
RPC 3.4(a) RPC 7.4(c)

States witness refused to testify to any dates on cross examination. Yet she would indicate dates of when asked of by the State.

Min. 15:42:40 02-16-05

State said testimony was for dates of unit activity to 2-15-04. Witness acknowledged and agreed to use of date.

Defendant attempted to see if witness could use her notes to refresh her memory, the state objected.

Min. 16:13:06 02-16-05

State tried to testify for witness and direct defense to evidence for answer to date of search. Defense stated disapproval of state interfering in examination.

There on witness refused to testify to date. Witness said she had the date of search "Documented at my office!"

Min. 16:14:19 02-16-05

After state made obvious disapproval of her answering to questions as to date of search. You can see body language communication on CD-ROM plus the conduct of States comments in objection, impeded defenses cross examination.

Witness contradicts herself by saying,  
"I just happen to throw everything that had to do with this case to take along here!"

Min. 16:26:45 02-16-05

When she earlier mentioned she had date documented on paperwork at office. It was untruthful, and due to states reaction to defenses question as to date searched.

ISSUE

# 5

Officer Martin falsified fact in police report as to who cut lock off unit # 49.

Grounds: CR 7.5 (a)(3) Newly discovered evidence.  
(4) Surprise  
(8) Justice has not been done.

Page 7 of 10 in  
Officer Martins report Dated 2-24-04, middle of  
page,

"I cut the lock off unit # 49, and a new lock was put on."

Bottom of page 10 of 10 Martin certifies under  
perjury to best of his knowledge True and  
Correct. RCW 9A.72.085

It was well within officer Martins knowledge  
if he cut lock off, or another persons not ever  
mentioned untill defense surprised at trial of his  
existence.

B. Bates testified to Deral Monty, the  
Maintenance man 'drilling' lock off.

Min. 16:16:30 02-16-05

## Showing of Prejudice

At time of 3.6 hearing defendant was represented by Mr. Brintnall. The 3.6 was on 4 corners of the warrant Affidavit. Our investigation was impeded by not being aware of Mr. Monty. If known of, we could have found out officer Martins reports are inaccurate in parts. Mr. Monty could have given information similar to Bates testimony of both units being searched same day as K-9 was there and before tape was put up on door.

Mr. Monty would have been material witness as to illegal search, and he was not disclosed to defense for that reason.

State and Federal constitution requires fundamental fairness and meaningful opportunity to present complete defense.

ST. VS. Burden, 17 P.3d1211

Law enforcement and investigatory agencies obligation is to insure every criminal trial is a search for truth, not an adversary game.

ST. vs. Wright, 557 P.2d 1, at 4  
US. vs. Perry, 471 F.2d 1057, at 1063

This game that was played was not noticed by defense until trial.

Surprise 7.5(a)(4)

Newly discovered 7.5(a)(3)

To obtain a new trial on newly discovered evidence defendant must demonstrate: (1) will probably change the results of the trial; (2) was discovered after the trial; (3) could not have been discovered before trial by the exercise of due diligence (4) is material; and (5) is not merely cumulative or impeaching; absence of any one of these five factors is grounds to deny a new trial

ST. V. Roche, 59 P.3d 682

issue  
#6

State and investigators did not disclose  
Photos Taken on 2-15-04

Grounds CRB 7.5(a)(2) misconduct,

(3) newly discovered evidence, (4) surprise  
CRB 4.7 (c)(1) specific request

4.7 (H)(7)(1) sanctions

RPC Rule 3.4(a) conceal material

If this issue is frivolous, then it indicates  
photos that have been disclosed are mislabeled  
as the date taken, being dated 2-22-04  
after warrant was issued.

Witness Bev. Bates photos were taken  
on the day K-9 dog was present (2-15-04),  
Day D.O.C. was searching 6001 (2-15-04), after  
maintenance man returned from drilling the lock  
off. All occurring on only one visit she recalls.

Bates indicates photos were taken by  
flashes in her well functioning camera and  
monitor.

min. 16:24:41 02-16-05

#49 She indicates taping of door to unit  
was after search and photos taken

min. 16:24:48 02-16-05

I request this to be investigated further.

No photos in discovery are marked 2-15-04

Issue  
# 7

Discovery Violator, non disclosure of Sandra Grays 2-24-04 interview until trial.

Grounds: C.R. 7.5(a)(2) Misconduct  
(4) Surprise

C.R. 4.7(a)(1)(i) substance of oral statement

4.7(a)(2)(iii) information indicating

4.7(h)(7)(i) sanctions

4.7(h)(7)(ii) willful violation

Facts to # of statements made

1<sup>st</sup>) 2-24-04: written statement and  
supplemental report.

Persons present: Vancouver P.D. Martin and Moore

2<sup>nd</sup>) 12-08-04: Recorded and Transcribed  
Note: Not Certified

Persons present: Prosecution investigator T. Hammond,  
D.O.C. officer Jennifer Thomas.

3<sup>rd</sup>) 2-07-05: Recorded and Transcribed  
Certified by S. Tischart

Persons present: Tim Hammond and Susan Anderson

When each where disclosed

1) 2-24-04 written statement disclosed in fall with

discovery packet to Brintnall. No supplemental report by Vancouver P.D. Martin.

2) 12-08-04: Recorded statement was disclosed to defense Council. Then transcribed for pro-se defendant upon court order on 1-26-05.

3) 02-07-05: Recorded statement was transcribed and disclosed to defendant at readiness hearing on 2-10-05.

State never acknowledged supplemental report.

On 2-10-05 at readiness hearing Dept. 6, State said:

Quote: "I have transcript of second interview of Sandra Gray."

Min. 13:43:10 02-10-05 Dept. 6

Readiness Hearing.

State referred to 12-08-04 interview and current 02-07-05 interview, never mentioning undisclosed interview.

Discovery violation 4.7(H)(7)(c)

At this time Sandra Gray was state witness.

Discovery violation 4.7(a)(1)(c)

The state used this report to entrap

defendant in issue of guilt.

Discovery 4.7(a)(2)(iii)

The defense will show prejudice in oral argument.  
And in other new trial issues.

This issue should be added to the accumulation  
of errors.

Accumulated evidentiary errors committed  
by trial court and violations of discovery  
rules by prosecutor necessitated new trial.  
ST. V. COE, (1984) 684 P.2D 668

# ISSUE

# 8 State and investigators committed misconduct by not disclosing Calvin Browns written and oral statement to D.O.C's Reese Campbell and V.P. D.

Grounds: CRR. 7.5(a)(2) prosecution misconduct  
CRR 4.7(d) specific request  
4.7(h)(7)(i) sanctions

Defense requested statement made to Reese Campbell of D.O.C. by Calvin Brown. Known by defense to exist.

1.) Special request:

Min. 13:27:23 01-26-05

State acknowledged full name of Calvin Brown.

Min. 13:27:34 01-26-05

Court orderd state to E-mail investigators and see if its discoverable.

Min. 13:27:49 01-26-05

2.) 2-3-05 discovery hearing,

Court ordered to check Reese Campbell

Min. 10:29:18 02-03-05

On 2-10-05 readiness hearing states claims for record:

"Contacted Vancouver P.D. and D.O.C.'s Reese Campbell, all evidence discoverable and info they have is in report and turned over."

Min. 13:43:45 02-10-05

No statement was disclosed.

After trial on 3-04-05 state claimed to have never heard Calvins last name till trial.

Meaning he couldn't have carried out court order to ask D.O.C. for statement.

This statement was never claimed under privilege as it properly should have, instead of acting as if it never existed.

SSUR  
# 9

Officer Martin did not disclose other investigation that involved exhibit # 58 (not entered), blue background, Check stock.

Grounds: C.R. 7.5 (a) (3) Newly discovered evidence  
7.5 (a) (8) Justice not met.  
C.R. 4.7 (c) (1) Specified search and seizure  
4.7 (h) (7) (i) Sanction

Defense requested information on any other investigations pertaining to Unit # 49, in Pre-trial.

Officer Martin never disclosed fact that he interrogated Sandra Gray on 2-24-04 about other crimes connected to search of Storage unit.

Officer had arrangement of photos showing a male at A.T.M. machines and check-out stands, allegedly victimizing Calvin Brown.

Evidence from storage unit was focus. Officer asked if she recognized blue back-ground Check-Stock that was used to victimize Calvin Brown.

This information was not disclosed to defense even when asking Martin what importance check-

- stock had and if he investigated it at all.

Officer said nothing in relation to item preserved from destruction.

No relevance was found to this item due to the non disclosure of facts at trial.

Items not admitted.

Min. 02:40:44 2-16-05

See Sandra Gray Affidavit.

JUR  
# 10

Defendant proceeded pro-se without being informed of the seriousness of the charges or possible penalty at the colloquy.

Grounds: CrR 7.5 (a)(4) surprise

(8) substantial justice has not been met.

U.S.C.A. Const. Amend.

On 1-26-05 Siclován requested to proceed pro-se because he wanted to present a more extensive defense.

No mention in colloquy was made as the nature and classification of the charges against Siclován or the maximum penalty upon conviction.

At a minimum, the colloquy "should consist of informing the defendant of the nature and classification of the charge, the maximum penalty upon conviction"

State vs. Bvelna, 922 P.2d 1371 (1996)

Because Siclován was not advised and the record does not indicate he was aware of the nature or possible penalties leaves him uninformed and not an intelligent waiver.

Schrader vs. Grange ins. (1996)

83 Wn. App. 622, 922 P.2d 818

City of Bellevue vs. AcReg, 661 P.2d 957

### Surprise

Defendant was surprised to find out after trial count 1 & 2 are class 'B' felonys. Not class 'C'.

Also

A maximum penalty is more than a year in jail on all three counts.

### Requests

Court properly advise Mr. Siclovian of the penalties and seriousness of charges and give new trial.

ISSUE

11

State committed misconduct in closing by submitting impeachment only evidence as elements of crime.

Grounds: C.R.R. 7.5 (a) (2, 6)

State said, "Sandra Gray testified that the defendant provided her with meth."

Also

Written on screen in large print was the same.

Sandra Gray didn't testify to that. She denied it.

A supplemental report was also a discovery violation, not given to defendant until trial, then misused.

Defence objected,

Min. 11:02:29 02-18-05

Court gave limited instructions.

Min. 11:10:58 02-18-05

Error admission of evidence is ground for new trial, only when evidence at issue was specifically objected to at trial in timely manner.

C.R.R. 7.5(a)(6)

St. VS. Carlson, 812 P.2d 536

ISSUE

# 12 State committed misconduct in closing rebuttal by saying,

"She told you the statements she has made through out the entire process have been false ones."

Grounds: C.R.R. 7.5(a)(2,6,8)

Prosecuter included her testimony she made under oath "yesterday" in this statement.

State attempted to tell jury that Sandra Gray admitted falsifying in trial,

Quoting Posner:

Min. 13:07:00 02-18-05

I don't think I need to go into the statements, that Mrs. Gray made a year ago, that she made last December, that she made last month and she made yesterday, because she told you the statements she has made were throughout the entire process have been false.

The state included 'yesterday' as in her testimony at trial.

Sandra Gray states:

"First statement was totally a lie; the other two were towards the truth."

Min. 15:10:20 02-17-05

State again testified for Sandra Gray as to facts she did not testify to. After already doing so and jury receiving limited instructions in closing.

If prosecutorial misconduct is so flagrant that no instruction can cure it, new trial is mandatory remedy.

St. vs. Graham, 798 P.2d 314

The state even comments in closing that the defendant blames somebody else as a defense.

"Some other dude did it."

Or

"Calvin did it."

Min. 13:04:45 02-18-05

1.) Defense never testified at trial,  
especially to that fact.

2.) Defense was 'unwitting' not blaming  
"Some dude!"

A states witness (at time of interview 02-07-05)  
stated she rented unit out to 3<sup>rd</sup> party.

State dropped witness attempting to keep  
that from jury.

Defense called witness to allow jury to hear  
that, "Calvin did it."

ISSUE

F13 State committed misconduct by claiming  
Calvin does not exist, when he knows he does.

26 of 30

Grounds: C.R.R. 7.5 (a) (2)

State submitted to jury that Calvin never existed.  
Min. 13:06:55 02-18-05

Submit = To make a claim.

State made claim and misled jury to think Calvin don't exist.

State in Pre-Trial:

"I know who Mr. Brown is, I prosecuted him and he is now in prison."

Min. 10:29:18 02-03-05

Also

States full name of Calvin Brown in other hearing.

Min. 13:27:34 01-26-05

A Criminal defendants right to a fair trial is denied when the prosecutor makes improper comments and there is a substantial likelihood that the comments affected the jury's verdict.

St VS. Reed 684 P.2d699

ISSUE

= 14 State claimed Sandra testified to renting unit for Siclován in closing.

Grounds: CRR. 7.5 (a) (2)

Sandra Gray did not testify to renting unit for Siclován.

She testified to renting it for both Siclován and herself.

State misled jury to think she testified to renting it for only Siclován.

Again submitting testimony to jury that never occurred.

Attorney may not mislead jury in summarizing evidence during closing

St. vs. Thompson 870 P.2d 1022

ISSUE

# 15

State committed misconduct in Rebutal argument by saying defendant attacked Bev. Bates.

Grounds: 7.5(a) (2,6)

State: "The defendant attacks Bev. Bates, clearly Bev. Bates is nervous."

min. 13:09:10 02-18-05

Objected To by defence,

AT NO TIME did defendant attack Bev. Bates or her credibility.

In Sullivan closing he stated she was credible.

This comment put a negative impression to character of defendant. To attack credibility of such a credible person would cause jury to question my motive.

IT is professional misconduct To:  
Engage in conduct involving deceit.  
RPC 8.4 (c)

Application of the cumulative error doctrine is limited to instances when there have been several trial errors that standing alone may not be sufficient to justify reversal but when combined may deny defence a fair trial.

St. vs. Coe, 684 P.2d 668 (1984)

For all the reasons within, a new trial is warranted.

I Swear under penalty and purgery the foregoing is true and correct.

Dated: This 5<sup>th</sup> day of April, 2005

pro-se ASHLEY WADE SICLOVAN  
X Ashley Wade Siclovan

# APPENDIX

# L

( CP 78 ) STATE'S RESPONSE TO DEFENSE MOTION  
FOR NEW TRIAL  
4-26-05

**SCANNED**

**FILED**

APR 26 2005

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.

ASHLEY WADE SICLOVAN,

Defendant.

No. 04-1-01856-1

STATE'S RESPONSE TO DEFENSE  
MOTION TO DISMISS, NEW TRIAL,  
AND ARREST OF JUDGMENT

**I. STATEMENT OF FACTS**

On February 18, 2005, the Defendant was convicted of Possession of Pseudoephedrine with Intent to Manufacture Methamphetamine, Manufacture of a Controlled Substance -Methamphetamine, and Possession of a Controlled Substance - Methamphetamine. Sentencing was set for March 17, 2005, and the Defendant requested an extension of the 10 day time limit under rule 7.5 in order to file a motion requesting a new trial. The court granted the request on February 24, 2005, and sentencing was subsequently set for April 1, 2005. On April 1, 2005, the Defendant requested another extension. The court granted the extension and set argument and sentencing for May 6, 2005.

**II. ISSUE**

Whether arrest of judgment under CrR 7.4, a new trial under CrR 7.5, or dismissal of all charges should be granted.

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### III. ARGUMENT

#### 1. The Defendant does not satisfy Grounds for a New Trial under CrR 7.5.

The court on motion of a defendant may grant a new trial for any one of the following causes when it affirmatively appears that a substantial right of the defendant was materially affected:

- (1) Receipt by the jury of any evidence, paper, document or book not allowed by the court;
- (2) Misconduct of the prosecution or jury;
- (3) Newly discovered evidence material for the defendant, which the defendant could not have discovered with reasonable diligence and produced at the trial;
- (4) Accident or surprise;
- (5) Irregularities in the proceedings of the court, jury or prosecution, or any order of the court, or abuse of discretion, by which the defendant was prevented from having a fair trial;
- (6) Error of law occurring at the trial and objected to at the time by the defendant;
- (7) That the verdict or decision is contrary to law and the evidence;
- (8) That substantial justice has not been done.

CrR 7.5. .

#### 1. Misconduct of the Prosecution or Jury.

The defense makes numerous claims of prosecutorial misconduct. In an attempt to clarify these claims and form some sort of order to the argument, this response will list each claim separately and respond:

1) *Prosecutorial misconduct did not occur when the Washington State Patrol Crime Laboratory Report was offered and admitted into evidence.*

According to the defendant, there was a stipulation between the parties to offer and admit a separate three page report authored by Bruce Siggins. The state asserts no agreement existed. Bruce Siggins, the forensic scientist called as a state's expert witness, produced copies of his own case notes for use while testifying. A copy of these was made for the state and defense. The three page report provided to the defendant was merely a copy of Siggins' notes and was not in any way intended to be a

1 replacement for Siggins' actual report which was offered and admitted without objection  
2 by the defense. Prosecutorial misconduct did not occur.

3 2) *Prosecutorial misconduct did not occur via withholding of an evidence inventory*  
4 *list.*

5 CrR 4.7 states the following:

6 (a) Prosecutors Obligations.

7 (1) Except as otherwise provided by protective orders or as to matters not subject to  
8 disclosure, the prosecuting attorney shall disclose to the defendant the following  
9 material and information within the prosecuting attorney's possession or control no later  
10 than the omnibus hearing:

11 (i) the names and addresses of persons whom the prosecuting attorney  
12 intends to call as witnesses at the hearing or trial, together with any written or recorded  
13 statements and the substance of any oral statements of such witnesses;

14 (ii) any written or recorded statements and the substance of any oral  
15 statements made by the defendant, or made by a codefendant if the trial is to be a joint  
16 one;

17 (iii) when authorized by the court, those portions of grand jury minutes  
18 containing testimony of the defendant, relevant testimony of persons whom the  
19 prosecuting attorney intends to call as witnesses at the hearing or trial, and any relevant  
20 testimony that has not been transcribed;

21 (iv) any reports or statements of experts made in connection with the particular  
22 case, including results of physical or mental examinations and scientific tests,  
23 experiments, or comparisons;

24 (v) any books, papers, documents, photographs, or tangible objects, which the  
25 prosecuting attorney intends to use in the hearing or trial or which were obtained from or  
26 belonged to the defendant; and

27 (vi) any record or prior criminal convictions known to the prosecuting attorney of  
the defendant and of persons whom the prosecuting attorney intends to call as  
witnesses at the hearing or trial.

(2) The prosecuting attorney shall disclose to the defendant:

1 (i) any electronic surveillance, including wiretapping, of the defendant's  
2 premises or conversations to which the defendant was a party and any record thereof;

3 (ii) any expert witnesses whom the prosecuting attorney will call at the hearing  
4 or trial, the subject of their testimony, and any reports they have submitted to the  
5 prosecuting attorney;

6 (iii) any information which the prosecuting attorney has indicating entrapment of  
7 the defendant.

8 (3) Except as is otherwise provided as to protective orders, the prosecuting attorney  
9 shall disclose to defendant's counsel any material or information within the prosecuting  
10 attorney's knowledge which tends to negate defendant's guilt as to the offense charged.

11 (4) The prosecuting attorney's obligation under this section is limited to material and  
12 information within the knowledge, possession or control of members of the prosecuting  
13 attorney's staff.

14 While the state asserts all evidence lists in the possession of the state were  
15 provided to the defense, the evidence list in question does not fall into any of the  
16 sections addressed by CrR 4.7. Additionally, the defendant viewed the evidence  
17 personally while being provided photos of all items seized. Nondisclosure of an  
18 evidence list is immaterial when the defendant has viewed all of the evidence. The  
19 prosecution has an obligation to turn over to the defense evidence in its possession or  
20 knowledge that is both favorable to the defendant and material to guilt or punishment.  
21 State v. Carr, 120 Wn. App. 1017; 2004 Wash. App. LEXIS 858 (2004). (Citing  
22 Pennsylvania v. Ritchie, 480 U.S. 39, 57, 107 S. Ct. 989, 94 L. Ed. 2d 40 (1987); United  
23 States v. Bagley, 473 U.S. 667, 674, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985); Brady v.  
24 Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)). This rule is based  
25 on the constitutional requirement of due process. Bagley, 473 U.S. at 675. A  
26 subsequent evidence list inventory is not favorable or material to the guilt or punishment  
27 of the defendant. Therefore, assuming no evidence lists were disclosed, the defendant  
is not prejudiced as he was able to view all evidence and photos which are material to  
the defendant's guilt or punishment.

1 Secondly, the defense requested a continuance at the start of trial. The court  
2 denied the motion, indicating if prejudice is demonstrated during the trial, the motion  
3 would be reconsidered. The defense did not renew its motion to continue at any time  
4 during the trial. As a result, the defense waived any objection and accepted the court's  
5 denial of the motion to continue. Prosecutorial misconduct did not occur.

6 3) *Prosecution staff did not instruct the state's witnesses to impede any defense  
7 investigation.*

8 On December 8, 2004 an interview took place between Investigator Tim  
9 Hammond of the Clark County Prosecuting Attorney's Office and Sandra Gray. Gray's  
10 DOC Officer, Jennifer Thomas, was present. The defense submits an affidavit drafted  
11 by Gray asserting she was told not to speak to the defense. Upon review of the  
12 transcript, which was provided to the defense as part of discovery and upon order of the  
13 court, such a claim is not supported. Affidavits drafted by Hammond and Thomas  
14 confirm this claim is inaccurate. See affidavits attached. Further, the defense does not  
15 offer any support other than an affidavit submitted by Gray who has admitted to altering  
16 her version of events over time.

17 Statements made by Gray to Officer Martin on February 24, 2004, were provided  
18 in the form of a report and a signed, sworn statement in initial discovery. No prejudice  
19 occurred to the defendant as these allegations are without merit.

20 Any assertion by the defendant that he did not learn of a potential third party  
21 subleasing the storage unit from Gray until February 10, 2005, is false. The state  
22 interviewed Gray on February 7, 2005, after learning of the defendant's defense from  
23 standby counsel that an individual named Calvin had access. Therefore, the defense  
24 knew of Calvin's potential existence prior to February 10, 2005.

25 4) *Prosecutorial misconduct did not occur by impeding the defense investigation  
26 when Officer Martin refused to answer questions as to where evidence was located, the  
27 description of destroyed evidence, or what was preserved.*

Under CrR 4.7(a)(1)(i) there is no affirmative obligation that requires the State to  
arrange witness interviews. State v. Hofstetter, 75 Wn. App. 390, 397, 878 P.2d 474,  
review denied, 125 Wn.2d 1012, 889 P.2d 499 (1994). The State is only required to

1 disclose the names, addresses, and written and oral statements of the witnesses to the  
2 defense. CrR 4.7(a)(1)(i). The defendant has no absolute right to interview potential  
3 State witnesses. State v. Wilson, 2001 Wash. App. (Wash. Ct. App., Nov. 7, 2001).  
4 Review granted by State v. Wilson, 146 Wn.2d 1008, 52 P.3d 520 (2002), affirmed by  
5 State v. Irons, 2003 Wash. LEXIS 201 (Wash., Mar 13, 2003).

6 On February 15, 2005 the defense moved the court, without notice to the state,  
7 to order an interview of Officer Martin. The court responded by stating arrangements  
8 could be made on the morning of trial. The record reflects the defense then failed to  
9 request the interview on the morning of trial. Therefore, the defense elected to begin  
10 trial without interviewing Officer Martin.

11 5) *Prosecutorial misconduct did not occur by instructing a witness to not testify  
12 to specific dates.*

13 According to the defense, a state's witness, presumably Beverly Bates, refused  
14 to testify to any specific dates on cross examination at the direction of the state. This  
15 claim is categorically without merit. The defense offers nothing in support of its claim  
16 aside from speculation. The defense had an opportunity to impeach this witness if her  
17 memory was not clear, but it did not. The defense cannot now claim the state urged the  
18 witness to be deceitful.

19 6) *Prosecutorial misconduct did not occur as no photos were taken by Beverly  
20 Bates on February 15, 2004.*

21 During testimony, Ms. Bates indicated she viewed a monitor connected to a  
22 video camera. Ms. Bates did not state she took photographs on February 15, 2004. The  
23 state is not in possession of, has never been in possession of, and does not know of the  
24 existence of any photographs taken by Ms. Bates on February 15, 2004.

25 7) *All interviews of Sandra Gray were disclosed to the defense.*

26 The defense asserts there is an undisclosed interview of Sandra Gray. This is  
27 untrue. Three interviews occurred and copies of all were provided to the defense. The  
first was Officer Martin's initial interview in February, 2004, which was provided in  
discovery. Subsequently, interviews on December 8, 2004 and February 7, 2005 were  
transcribed, certified, copied, and immediately turned over to the defense.

1 8) *Written and oral statements by Calvin Brown to DOC Officer Reese Campbell*  
2 *and/or Vancouver Police Department do not exist.*

3 Once again, the defense asserts prosecutorial misconduct by claiming the state  
4 failed to disclose statements made by Calvin Brown. The state is not in possession of,  
5 has never been in possession of, and does not know of the existence of any statements  
6 by Calvin Brown to any investigator. Further, the defense does not offer any support for  
7 said claims.

8 9) *Prosecutorial misconduct did not occur in closing.*

9 The defense claims misconduct occurred from statements made in closing  
10 argument. Unless prosecutorial misconduct is flagrant and ill-intentioned, and the  
11 prejudice resulting therefrom so marked and enduring that corrective instructions or  
12 admonitions could not neutralize its effect, any objection to such conduct is waived by  
13 failure to make an adequate timely objection and request a curative instruction. State v.  
14 Swan, 114 Wn.2d 613, 661, 790 P.2d 610 (1990). Prejudicial error does not occur until  
15 it is clear that the prosecutor is not arguing an inference from the evidence, but is  
16 expressing a personal opinion. Id., 114 Wn.2d at 664. Prosecutorial misconduct does  
17 not necessarily constitute prejudicial error. State v. Carr, 13 Wn. App. 704, 709, 537  
18 P.2d 844, 849 (1975). A new trial should be granted only if the defendant's right to a  
19 fair trial was prejudiced. Id.

20 The state argued in closing that Sandra Gray's version of events was not believable  
21 and that she was changing her story throughout the process. Gray herself admitted she  
22 was untruthful in prior interviews. The state argued such and made an inference Gray  
23 was untruthful while testifying. The defense objected and the court instructed the jury to  
24 disregard the statement. In this situation, the state was merely making an inference  
25 regarding the witness' veracity. The court then made a curative instruction following  
26 objection by the defense for the jury to disregard the statement. Thus, the matter does  
27 not rise to prejudice.

Second, the state asserted the defense was claiming another individual was  
responsible. The defense claims this was not the defense and urges this amounts to  
prosecutorial misconduct. The defense produced three witnesses, each of whom

1 testified directly that either "Calvin" took control of the storage unit, or that the defendant  
2 moved out several weeks prior to the search warrant execution. The reason for such a  
3 defense is to claim the defendant was not responsible. Further, the defendant states on  
4 page 26 of 30 in his brief that the defense called a particular witness to allow the jury to  
5 hear that "Calvin did it." Clearly, no prosecutorial misconduct occurred.

6 Third, the state argued Gray rented the unit for the defendant. The defense argues  
7 this again amounts to misconduct as it is a misleading summation of evidence. This  
8 argument does not hold water. Once again, the state may make a reasonable inference  
9 under Swan. The facts show this argument to be reasonable as Gray testified she never  
10 once placed any of her own property in the unit.

11 Fourth, statements by Gray that the defendant provided her with methamphetamine  
12 were introduced in order to impeach Gray. During closing, the state made an initial  
13 claim that this was one of many factors proving the knowledge element in manufacture  
14 of methamphetamine. At that point, the defense properly objected and the court  
15 provided a curative instruction for the jury. However, this comment was not so flagrant  
16 and ill-intentioned that it evinces an enduring and resulting prejudice that could not have  
17 been neutralized by an admonition to the jury. State v. Hoffman, 116 Wn.2d 51, 93, 804  
18 P.2d 577 (1991). This statement was one small claim, quickly rehabilitated by the court,  
19 amongst strong, substantial, and overwhelming evidence against the defendant. This  
20 statement does not rise to the level of prejudice requiring a new trial. The defendant  
21 received a fair trial.

22 2. Newly discovered evidence material for the defendant, which the defendant could  
23 not have discovered with reasonable diligence and produced at the trial.

24 The party asserting that newly discovered evidence justifies granting the  
25 defendant a new trial must demonstrate five things:

- 26 (1) the evidence must be such that the results will probably change if a new  
27 trial were granted;
- (2) the evidence must have been discovered since the trial;
- (3) the evidence could not have been discovered before the trial by exercising  
due diligence;

1 (4) the evidence must be material and admissible; and

2 (5) the evidence cannot be merely cumulative and impeaching.

3 State v. Davis, 25 Wn. App. 134, 138, 605 P.2d 359 (1980); State v. Williams, 96  
4 Wn.2d 215, 223, 634 P.2d 868 (1981).

5 The defense claims the loss of gate security codes, printed and provided to DOC  
6 Officer Reese Campbell, mandates a new trial. However, this claim does not satisfy the  
7 five elements set out above. No support is given to any of the elements by the  
8 defendant.

9 First, when analyzed, it is clear the result of the trial would not be changed. Beverly  
10 Bates, the complex resident manager, testified the defendant had not been at the facility  
11 for at least two weeks prior to service of the search warrant. This is the time period the  
12 defendant claims he did not visit the unit and had moved out of it. Therefore, the jury  
13 was able to hear the defendant was not at the unit, which supported defense witnesses'  
14 testimony. Second, the rule requires the evidence be discovered since trial. This  
15 evidence, as claimed by the defense, was discovered during trial. The defense had the  
16 option to request a continuance or new trial at that time. Instead, the defense chose to  
17 go forward and not even attempt to interview or impeach officers regarding the location  
18 of the paperwork. The first two elements are not met and a new trial is not warranted.

19 3. Destruction of evidence pursuant to court order does not authorize a new trial  
20 under CrR 7.5.

21 Under both the state and federal constitutions, due process in criminal prosecution  
22 requires fundamental fairness and a meaningful opportunity to present a complete  
23 defense. State v. Wittenbarger, 124 Wn.2d 467, 474, 880 P.2d 517 (1994) (citing  
24 California v. Trombetta, 467 U.S. 479, 104 S. Ct. 2528, 81 L. Ed. 2d 413 (1984)) To  
25 comport with due process, the prosecution has a duty not only to disclose **material**  
26 **exculpatory evidence**, but it also has a related duty to preserve the evidence.  
27 Wittenbarger, 124 Wn.2d at 475. If the evidence meets the standard as materially  
evidentiary, criminal charges against the defendant must be dismissed if the state fails  
to preserve it. State v. Copeland, 130 Wn.2d 244, 279, 922 P.2d 1304 (1996).  
Evidence is materially exculpatory only if it meets a two-fold test:

1 (1) Its exculpatory value must have been **apparent** before the evidence was  
2 destroyed, and

3 (2) The nature of the evidence leaves the defendant unable to obtain comparable  
4 evidence by other reasonably available means.

5 Wittenbarger, 124 Wn.2d at 475 (emphasis added).

6 If the evidence does not meet this test and is only “potentially useful” to the  
7 defense, failure to preserve the evidence does not constitute a denial of due process  
8 unless the criminal defendant can show bad faith on the part of the state. Id., at 477  
9 (citing Arizona v. Youngblood, 488 U.S. 51, 58, 109 S. Ct. 333, 102 L. Ed. 2d 281  
10 (1988)). The court is not willing to impose on the police an undifferentiated and absolute  
11 duty to retain and to preserve all material that might be of a conceivable evidentiary  
12 significance in a particular prosecution. Wittenbarger, 124 Wn.2d 475. A showing that  
13 the evidence might have exonerated the defendant is not enough. Id. The presence or  
14 absence of bad faith by the police for purposes of the due process clause must  
15 necessarily turn on the officer’s knowledge of the exculpatory value of the evidence at  
16 the time it was lost or destroyed. Youngblood, 488 U.S. at 56.

17 In our situation, Officer Martin has testified contaminated evidence was  
18 destroyed and all evidence that connected the methamphetamine lab to any suspect  
19 was retained. As such, all materially exculpatory evidence that was apparent at the  
20 time of the destruction order was retained. Therefore, the destroyed evidence is only  
21 potentially useful and it is incumbent of the defendant to show that officers acted in bad  
22 faith. Youngblood, 488 U.S. at 58; see Wittenbarger, 124 Wn.2d at 478. The defense  
23 fails to do so. Additionally, the defense fails to establish this standard regarding the  
24 security gate code print outs. The defense does not show the exculpatory value of the  
25 codes was apparent at the time of its loss. As such, the defense must demonstrate bad  
26 faith on the part of the DOC officers as well. The defense does not meet this burden as  
27 the reports from DOC Officer’s Reese Campbell and Elizabeth Campbell clearly  
demonstrate an innocent misplacement of the documents. Absent this showing by the  
defense, a finding of bad faith cannot be made, thus no due process violation.

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**2. A proper colloquy was administered to the defendant.**

Whether there has been an intelligent waiver of counsel is an *ad hoc* determination which depends on the particular facts and circumstances of the case, including the background, experience and conduct of the accused. State v. Hahn, 106 Wn.2d 885, 901 726 P.2d 25, 34 (1986) (citing Johnson v. Zerbst, 304 U.S. 458, 464, 82 L. Ed. 1461, 58 S. Ct. 1019 (1938)). This determination is within the discretion of the trial court. State v. Kolocotronis, 73 Wn.2d 92, 102, 436 P.2d 774 (1968). The burden of proof is on the defendant asserting that his right to counsel was not competently and intelligently waived. Hahn, 106 Wn.2d at 901 (citing In re Wilken v. Squier, 50 Wn.2d 58, 61, 306 P.2d 746 (1957); State v. Jessing, 44 Wn.2d 458, 461, 268 P.2d 639 (1954)). A trial court must establish that a defendant, in choosing to proceed pro se, makes a knowing and intelligent waiver of his constitutional right to the assistance of counsel. State v. Bebb, 108 Wn.2d 515, 525, 740 P.2d 829 (1987); City of Bellevue v. Acrey, 103 Wn.2d 203, 209, 691 P.2d 957 (1984). A defendant should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open. State v. Buelna, 83 Wn. App. 658, 660, 922 P.2d 1371 (1996).

The defendant claims his situation is similar to the Buelna case. However, in Buelna, the defendant stated at least three times he did not understand the charges. In our situation, the defendant continuously stated he understood the charges. Review of the record shows a colloquy approximately ten minutes in length in which the court questions the defendant and clarifies the defendant understands what exactly will occur. The defendant is clear in his assertion he understands the nature of the proceedings. The court also confirms the defendant's experience with the court system. The defendant is known to be quite familiar with the court system as he had a lengthy criminal history of nine, has represented himself in district court, conducted his own Personal Restraint Petition, and has testified in Superior Court. The defendant also clarifies his understanding of the gravity of the proceedings by stating "This is a big issue, 9 points, a manufacture case." 1/20/05 14:59.04.

1 Further, the defense rejected the states offers while represented by counsel. It  
2 was relayed to the defense the standard range was 100-120 months for Possession of  
3 Pseudoephedrine with Intent to Manufacture Methamphetamine, 60-120 months for  
4 Manufacture of a Controlled Substance – Methamphetamine, and 12-24 months for  
5 Possession of a Controlled Substance – Methamphetamine. Clearly, the defendant was  
6 aware of the standard ranges as indicated by earlier state offers. Balancing all factors it  
7 is clear the defendant made a knowing, understanding, and intelligent waiver of counsel  
and elected to represent himself pro se.

8 **3. There was sufficient evidence for the jury to find all elements of the**  
9 **charges proven beyond a reasonable doubt.**

10 The defendant argues there was insufficient evidence to find the knowledge element  
11 of count one and the intent element of count two. In reviewing the sufficiency of the  
12 evidence, a court examines whether any rational trier of fact could have found the  
13 essential elements of the crime beyond a reasonable doubt, viewing the evidence in the  
14 light most favorable to the State. State v. Kleist, 126 Wn. 2d 432, 435, 895 P.2d 398  
15 (1995). A challenge to the sufficiency of the evidence admits the truth of the State's  
16 evidence and all inferences that can reasonably be drawn therefrom. Id. Circumstantial  
17 evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634,  
18 638, 618 P.2d 99 (1980). In determining whether the necessary quantum of proof  
19 exists, the reviewing court need not be convinced of the defendant's guilt beyond a  
20 reasonable doubt, only that substantial evidence supports the state's case. State v.  
Fiser, 99 Wn.App 714, 718, 995 P.2d 107, review denied, 141 Wn.2d 1023 (2000).

21 Manufacture means the production, preparation, propagation, compounding,  
22 conversion, processing of a controlled substance, either directly or indirectly or by  
23 extraction from substances of natural origin, or independently by means of chemical  
24 synthesis...

25 RCW 69.50.101(p)

26 When the prosecution offers evidence of methamphetamine lab components and  
27 can link those components to the defendant, the evidence is sufficient to convict the  
defendant of manufacturing. State v. Todd, 101 Wn.App. 945, 952, 6 P.3d 86 (2000).

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1 The state argued these elements were easily established due to the nature of the  
2 crime. When a methamphetamine lab is located and an expert concludes all of the  
3 necessary precursors and equipment are available in addition to methamphetamine  
4 discovered in the components, there is only one conclusion. Whoever was  
5 manufacturing methamphetamine had to know what was being created. There simply is  
6 no other conclusion. Similarly, when pseudoephedrine is located in a  
7 methamphetamine lab, a jury can easily conclude the pseudoephedrine is being kept  
8 with intent to manufacture methamphetamine. Detective John Hess testified as a  
9 qualified expert that the pseudoephedrine located in the lab was in the process of being  
10 manufactured. Whoever began that process could only intend to come to one result –  
11 the manufacture of methamphetamine.

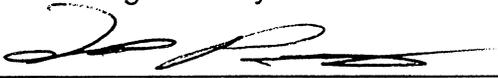
12 The defendant was connected to the methamphetamine lab components due to  
13 large amounts of personal property located in and amongst the equipment. In the light  
14 most favorable to the state, the above represents (just as the jury found) the actions of  
15 the defendant were knowingly and with intent.

16 **IV. CONCLUSION**

17 The defense fails to meet any requirements of CrR 7.4, 7.5, or 8.3. The defense  
18 attempts a “shotgun” type of approach and makes wild accusations regarding the state’s  
19 case. The credibility of the defendant is questionable due to his inherent bias in these  
20 proceedings. Due to the defendant’s inability to establish grounds for either a new trial,  
21 arrest of judgment, or dismissal the state respectfully requests denial of the defendant’s  
22 motion.

23 DATED this 25th day of April, 2005.

24 ARTHUR D. CURTIS  
25 Prosecuting Attorney

26   
27 QUINN H. POSNER, WSBA #31463  
Deputy Prosecuting Attorney

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# APPENDIX

## M

( CP 82 ) CITATION (SPECIAL SET)  
6-02-05

FILED

JUN 01 2005

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,

CITATION  
(SPECIAL SET)

v.

ASHLEY WADE SICLOVAN,  
Defendant.

No. 04-1-01856-1

TO: The above-named defendant and your attorney:  
George W Brintnall

YOU ARE HEREBY NOTIFIED to appear in the Superior Court of the State of Washington, before the Honorable Roger A. Bennett, Judge of the Superior Court, in the assigned courtroom, at 3:00 p.m. on Wednesday, June 22, 2005, for a hearing re: Motion to Request an In Camera Review of the Relevance of Calvin Brown's Involvement in Storage Unit #49.

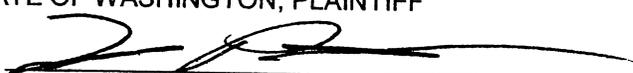
DATED this 31 day of May, 2005.

STATE OF WASHINGTON )

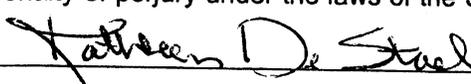
STATE OF WASHINGTON, PLAINTIFF

COUNTY OF CLARK )

:ss

BY:   
Quinn H. Posner, WSBA #31463  
Deputy Prosecuting Attorney

On 6/1, 2005, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the attorneys of records for plaintiff(s) defendant(s) containing a copy of the document to which this affidavit is attached. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.



Date: 6/1, 2005.  
Place: Vancouver, Washington

# APPENDIX

## N

( CP 89 ) DECLARATION OF FACTS AND DEFENSE  
THEORY TO CALVIN BROWN'S INVOLVMENT  
TO CASE

6-22-05

**SCANNED**

**FILED**

JUN 22 2005

JoAnne McBride, Clerk, Clark Co

SUPERIOR COURT of Washington  
COUNTY of Clark

State of Washington,  
Plaintiff / Respondant,  
vs.  
ASHLEY Wade Siclovan,  
Defendant / Petitioner,

NO: 04-1-01856-1

Declaration of Facts  
and Defence Theory  
To Calvin Browns  
invalment To Case

The foregoing is in Responce To States MOTION  
FOR incamera Review.

Request

Request COURT To view These facts and Theory as  
To The prejudice caused by STATE failing To disclose  
any invalment of Calvin Brown.

a) Any showing of BROWN even existing To The  
Jury would of changed outcome & Verdict.

b) IT was improper To not disclose facts when  
Defence demenstrated The need before trial.

c) State New of The defence Theory That  
was planed To demenstrate To Jury.

d) in Closing and cross exam. of S. GRAY  
State 'submitted' To Jury Calvin Brown dont  
exist OR have invalment To Unit #419.

Request Full disclosure and New TRIAL.

Facts and Theorays

1) Calvin Brown Provided information To investigate  
about contents of unit and other investigation.

2) Personal info. , Bank records of Calvin Brown when found in unit #49.

3) Police believed Siclován victimized Brown

4) Police questioned S. Gray on 2-24-04 about contents of unit and froved account of Brown. Due To fact Records of such crime when found in unit.

5) 2-24-04 , Gray was shown pictures of suspect at ATM machines, suspecting them To be Siclován and matching Records found.

a) Gray was shown Photos

B) Gray was shown Blue Background Blank Business checks.

6) This investigation was NOT disclosed even upon specific request in Pre Trial.

7) investigators believed siclován was in possession of Blank checks and records in unit #49 after victimizing Brown.

8) investigators contacted Brown in March & April of 2004 at C.C. Jail for interviews.

9) substance of interview was his account and lab located in unit #49.

10) Investigators realized Brown was involved in victimizing own account.

11) Investigators realized Blank checks and Records of account when NOT Siclován's

12) at Trial Martin Sied Blank checks

Exhibit 58 were not relevant.

13) Martin gave no reason at Trial of why he saved Business checks from destruction.

14) Calvin Brown had personal effects in unit.

16) Calvin Brown had fingerprints in unit. Reason no prints were disclosed.

17) Misc. papers in bin A & B where records that triggered 2nd investigation and interview of Brown.

18) The interview of Brown with Reese Campbell will show on jail interview room log sheet.

19) Calvin Brown provided a written statement subject being contents of unit and of his knowledge of frauded Bank account.

20) The statement was specifically requested by defence before Trial.

21) An incamera review should of been requested by state in pre-Trial.

22) The conclusion to Browns account is relevant to this case and is connected to reward for information provided to investigators.

23) Calvin Brown also provided information as to location and activities that lead to arrest in April 2004 in Oregon state.

24) 4-19-04, Siclovian's probation was violated. Calvin Brown helped locate him.

25) This information was provided to R. Campbell during interview about account and lab.

26) The defence suspects Brown also provided information before search.

### Conclusion

The state now reveals info. of a connection to C. Brown. Defence made a clear showing of the need for any such info. Any info. would of been usefull given the defence strategy presented at trial.

The info. The state possesses should be disclosed.

Court should reconider obtaining Calvin Browns account file and see Blue Back ground bussness checks and items such as Sphudoephedrin and equipment seen in photos wher purchased by that account.

I declare, under penaltty of perjury that the foregoing is true and correct to best of my knowledge.

Ashley S. Loran  
Ashley Loran

Dated This 21<sup>st</sup> day of June, 2005

# APPENDIX

# O

6-22-05 IN-CAMERA REVIEW

REGARDING RELEVANCE OF CALVIN BROWN'S  
INVOLVEMENT IN STORAGE UNIT # 49.

In Camera Review

The following is a discussion between Deputy Prosecuting Attorney QUINN H. POSNER, WSBA #31463 and Honorable, ROGER A. BENNETT Superior court Judge on June 22, 2005.

**B : BENNETT**

**P : POSNER**

**B :** This is STATE OF WASHINGTON VS. ASHLEY WADE SICLOVAN, 04-1-1856-1. This is an, In Camera hearing, and although there are persons present besides the prosecutor and myself, all persons here are adjointed and restrained from disclosing the conversation that we have here on the record.

The record will be sealed and only held by myself and only released upon determination to do so.

The Defendant, Mr. Siclovan has revealed some theorys he has about a person named Calvin Brown. Calvin Browns name came u well at least the name Calvin, who later referred to Calvin Brown in the trial, that we've already had, and in affect, Mr. Siclovan and his witness Ms. Gray were pointing the finger at Mr. Brown suggesting that, he in fact was the person who was operating the meth lab out of the storage unit thats storage unit #49-correct?

**P :** Yes, your Honer.

**B :** And the testimony was, that Calvin Brown had purchessed the access code and a key, I believe to get into #49 during a time when the defendant Mr. Siclovan was in jail, and there for a theory being that it was Mr. Browns lab, other then Mr. Siclovans.

1 P : Im sorry your honer, I dont think that Mr. Siclovan  
2 was in custody in early Febuary he had moved everything out  
3 of the storage unit, per the testimony at trial, but I dont  
4 believe he was actually in custody.

5 B : There was some point where he was acually in custody,  
6 right?

7 P : He mentioned about being in custody, but I think  
8 that was sometime before-

9 B : In any event his theory was, it was Browns, but not  
10 his own.

11 PROSECUTER MR. POSNER PROVIDED ME WITH INFORMATION, THAT  
12 CALVIN BROWN IN FACT WAS THE INFORMANT, WHO PROVIDED INFORMATION  
13 THAT LED TO THE ISSUANCE OF THE SEARCH WARRANT.

14 P : Correct

15 b : Mr. Siclovan has posted that in his document here,  
16 and he also goes on and on about some bank records of Calvin  
17 Brown that were in unit #49 that were not recoverd apparently  
18 or if they were recoverd, they were destroyed by police, so  
19 if his theory is that Calvin Brown had access to this storage  
20 unit the fact that Calvin Brown, provided information to the  
21 police about the contents there of would seem to be cooberative  
22 of that. Whats your position on that?

23 P : Your Honer, my attention at this point is we are post  
24 trial, Mr. Siclovans been convicted, he percedurely has not  
25 met his burden in order to reveal a confidential informant,  
26 and I believe... Im sorry, Im at a loss for the court rule  
27 at this point, but I believe under court rule, these are all

1 P : pre-trial motions he waived any motion by not filing  
2 this pre-trial, its now after trial, where he doesnt like  
3 the results that he begins, he begins to explore these other  
4 avenues, and wants to find out more information about  
5 Calvin Brown, He's simply never asked to have the confidential  
6 informant revealed, and has, as the courts aware defense  
7 has a heavy burden to establish pre-trial in order to even  
8 have an In Camera review.

9 B : He'll say that he did ask for this pre-trial.

10 P : He didnt-

11 B : He asked to know, what Calvin Brown or any other persons  
12 involvment was pre-trial.

13 P : Yes, and I-the reason why I brought this to the  
14 courts attention and submitted that declaration is when the  
15 question was asked of me, from the court, to go speak with  
16 officers, I believed it was any criminal invalvment I  
17 could'nt at that time, reveal the CI, as it had'nt been  
18 requested. When the court asked me the question, not on  
19 Monday, but the prior hearing, it was that, did Calvin Brown  
20 have any involvment. At that piont, I felt like the questions  
21 been asked differently, then I believe it was last January,  
22 which is why I wanted to submit this with the court, because  
23 clearly, I want to be completely truthful and honest with  
24 the court, but at this point, it seems to me that Mr. Siclovan  
25 the whole process following trial is just been, throw out  
26 everything I possibly can, and see what I can get back.  
27

1 P : He simply has'nt proceedgerly - he's not done  
2 anything properly, when it comes to revealing the identity  
3 of the CI, and he's made absolutely no showing what so  
4 ever, how based off of the case law, in regards to whether  
5 or not a CI should be revealed and at that point, if he  
6 did establish at, thats when the In Camera would be  
7 nessesary, at that point, for the court to make that  
8 determination, but Mr. Siclovan has simply just had a shot  
9 gun approuch at everything here. There was testimony from  
10 the states own witness, that they had not seen Mr. Siclovan  
11 for a number of weeks prior to the warrent being served,  
12 Which supported his theory of the case. At this point, I  
13 don't think its nessessary to reveal the identity of the  
14 confidential informant. Quite simply, Mr. Siclovan is  
15 trying to just, as I said, "shock and approach" and hope  
16 that something lands for him.

17 I dont think that precidgerly, anythings been done  
18 properly, these were motions that were proper, pre-trial  
19 not after conviction, once he's decided he does'nt like  
20 the results, so- it's my position that the identity of the  
21 CI should not be revealed.

22 B : If you characterize this as **BRADY** type evidence  
23 I think he is, he's saying he should have revealed that  
24 Calvin Brown was the informant becouse that cooberates  
25 his defense, that could be brought post trial, could'nt it?

26 P : I think if there were evidence that, or the  
27 officers had evidence, known evidence of Calvin Brown

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P : being involved criminally, if he were responsible for the lab that was in the storage unit I believe that if the court may recall from 3.6 hearing that we had in last December, the information that was going from Calvin Brown occurred in early January, I believe, well- before any testimony stated that Calvin Brown had left the storage unit, Calvin Brown stated, or Mr. Siclovans defense stated, that it was towards the end of January, they moved everything out of storage unit #49, and under the search warrent affidavit and what we heard during the 3.6 hearing, I believe that information from Calvin Brown, was provided by officers in earlier, mid January, well before the time that information was provided, Mr. Siclovan was still in that storage unit as far as that concerned, I dont think that its premature

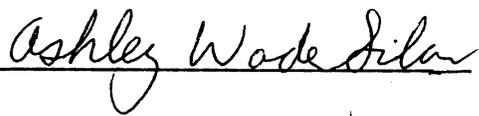
B : Anything else that you want to say?

P : No, Your Honer.

B : Okey, would you ask them to come back in ?

---

The above five page transcription is hearing on a **CD-ROM**. the cd-rom can and has been found all throughout Vancouver U.S.A. .  
I, Ashley Siclovan, declare, under penalty of perjury under the laws of Washington, the above transcribed hearing was typed to the best of my knowledge as accurate and correct.

Ashley Wade Siclovan  


# APPENDIX

## P

( CP 92 ) MOTION OF DEFENDANT TO SUPPRESS  
7-06-05

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9 IN THE SUPERIOR COURT IN THE STATE OF WASHINGTON  
10 FOR THE COUNTY OF CLARK

11 STATE OF WASHINGTON,  
12 Plaintiff / Respondant,

13 vs.

14 ASHLEY WADE SICKOVAN,  
15 Defendant / Petitioner,

NO: 04-1-101856-1

MOTION To Suppress  
CRP 3.6

16  
17 Relief Requested:

- 18 1) suppress all evidence found in unit 49,  
19 2) Exclude Misstatements in warrent affidavit.  
20 3) find information in Affidavit stale.

21  
22 Grounds:

23 Wash. R.G.W.A. Const. art. 1. sec. 7  
24 U.S.C.A. const. amend. 4

25 Basis:

26 TRIAL MINUTES, Police Reports, Searchwarrant  
Affidavit.

1 On 2-15-04 The lock was cut off Unit #49 at  
2 5820 N.E. 8<sup>th</sup> COURT, Vanc. Wash.; A storage facility.

3 Those present at facility were:

4 Van. P.D.: Martin

5 D.O.C. officers: E. Campbell, R Campbell

6 K-9 handler: Earhart

7 on sight manager: Bates

8 maintenance man: Monty

9 On this day The unit was also entered and searched.

10 No search warrant was applied for until officers  
11 found out Siclovan would NOT be caught on storage

12 property due to fact he was jailed on 2-17-04.

13 On 2-19-04 officer Martin applied for search  
14 warrant and omitted misstatements. Without these  
15 misstatements the affidavit would not amount to P.C.

16 The officers and D.O.C. never intended on applying  
17 for a warrant. Siclovan was expected to arrive  
18 at the facility.

19 Their was no ongoing enterprise. It was known  
20 Siclovan was not frequenting unit for some time

21 making the information stale. A document is  
22 in possession of D.O.C. that shows time and dates

23 unit was entered. This document proves staleness  
24 and indicates unit was opened before warrant  
25 was issued.  
26

# I. ISSUE

## Illegal Search.

1) Exigent Circumstances: There was NO REPORT of any exception to the warrant requirement.

State bears the burden of proving a warrantless search falls within one of the exceptions.

STATE V. SMITH 55 P.3d 686

In Siclovans case the Affidavit and Martins Reports leads one to believe a lock was cut off, then another immediately replacing the current renters lock.

2) D.O.C. Authority: D.O.C. had no authority to search unit in Grays Name. Although they may have believed unit was Siclovans.

3) Plain View: This doctrine does not apply to this case. Martin never reports opening unit door to view contents before placing own lock on.

Additionally, manufacture equipment was in locked bins, NOT plain view from legal vantage point.

Detectives observations of contraband in storage unit from adjoining unit through preexisting hole, did not constitute search.

State v. Bobic 996 P.2d 610, at 611

if the court rules the threshold of unit door was legal vantage point, no items were in plain view.  
vantage

4) Subsequent warrant: after invalid warrantless search does not validate warrantless search.  
U.S. v. Johnson 256 F.3d 895

After the unlawful search officer Martin applied for a warrant. An addition to the application  
Page 2

"Also to be searched are all parts therein, and to search... storage containers found within"  
also #7 page 1,

Martin applied for, personal mail to prove dominion and control. Martin observed Siclovans personal mail "inside" shoe box right as you enter door. This request made as product of 2-15-04 search.

In the warrant affidavit Martin does not include Calvin Brown (the CI) describing "storage containers". The containers were observed before warrant was requested.

In Siclovans case the affiant is same as one that conducted prior warrantless search.

State v. Bean 572 P.2d 1102 (1978), does not mirror this case.

## II. ISSUE

### Misstatements in the Affidavit.

Pro-se defendant made clear showing PRIOR to trial that he wished to address 3.6 issues.

Defence requests to address this issue.

1) Page 5 bottem warrent affidavit, MARTIN SWEARS

The magistrate Calvin Brown (C.I), has seen Siclován<sup>"</sup> STORE chemicals and equipment at The Storage facility (#49) on "at least two occasions".

On 1-26-05 Quinn Posner swears under oath

" I dont know anything about a Calvin Brown . . .

There is no Calvin Brown connected with

This case." also,

Posner Repeats,

" I dont know anything about a Calvin Brown." 1-26-05

Who is NOT being TRUTHFUL?

A) Martin was never told information by Calvin Brown  
And has no involvement OR

B) Martin was TRUTHFUL in the affidavit and a  
Brady violation has accrued.

If Posner has NOT lied in pretrial OR failed to  
claim privilege then officer Martin never had a  
(C.I.) and recieved his info. by other means.

2) in camera inspection

The defence respectfully Requests an in camera  
inspection of Calvin Brown (The C.I.) To determine  
if Martin omitted facts statements, that amounted to  
Probable cause.

If so, To Remove misstatements and Review  
Remaining parts for P.C.

3) Legal authority:

A) If defendant makes substantial showing false statements knowingly and intelligently, or with reckless disregard for TRUTH was included... The Fourth Amendment requires that a hearing be held at defendant's request.

State v. Jackson 46 P.3d 257

B) franks v. Delaware, 438 U.S. 154 (1978)

III. ISSUE

Information stale, NO ENTERPRISE existed

PRIOR TO TRIAL, defence team was misled into believing the storage facility has NOT, and could NOT, provide a computer print out indicating time and dates unit was entered.

This print out would show if unit was entered on daily basis.

This print out would show the (C.I.) "Belief" that siclovran travels to unit daily.

warrant Affidavit pg. 6 Top

With the C.I. merely having "belief" siclovran travels to unit daily, the print out is material proof of that belief.

That document is detrimental to states case.

a) indicates info is stale

B) shows time and date officers entered unit.

1 This document does exist and is in possession of by  
2 D.D.C. R. Campbell falsifies in 4-7-05 special  
3 Report To COURT, claiming to of placed document  
4 on top of Siclovans file. Then was lost as  
5 file was transferred to new P.O. Siclovans  
6 file was already transferred 26 days prior to  
7 him obtaining possession of it.

8 This document was detrimental to States case.

9 also

10 In trial at 16:45:45 02-16-05 Beve Bates falsely  
11 testified under oath that surveillance camera  
12 does NOT record, when in fact it does.

13 This recording would be detrimental to States  
14 case and show no daily travel by Siclovans  
15 was occurring, thus no continuing enterprise.

16 THE TEST FOR STALeness of information in a  
17 search warrant is one of common sense.

18 State v. Riley, 663 P.2d 145 (1983)

19 Apply common sense to why State and others  
20 that desire the courts to notice continuing enterprise  
21 NOT enter the print out directly into evidence  
22 and include video imaging of the defendant entering  
23 unit on daily basis?

24 Unless print out does not cooperate Calvins  
25 "Belief" that Siclovans travels to unit on daily  
26 bases.

The failure to bring before the Tribunal some document when either the party or opponent claims that the facts would thereby be elucidated indicates that the party fears to do so, and this fear is "evidence" that the document if brought would have exposed unfavorable facts to the party.

British Columbia Breweries v. King Co. 135 P.2d 876 (1918)

Documentation and video imaging was needed to back Calvin's near "belief" that Sidovan traveled to unit on daily basis. page 6 top of affidavit

### CONCLUSION & REQUESTS

- 1) Suppress all evidence due to unlawful search.
- 2) exclude misstatements affidavit omitted in warrant affidavit
- 3) conduct FRANKS hearing
- 4) have in camera review of Calvin BROWN (The C.I.)
- 5) deem all info. in affidavit stale.

I declare, under penalty of perjury under the laws of Washington State that the foregoing is true and correct to the best of my knowledge.

Dated: 7-1-05

Ashley W. Sidovan

Ashley Wade Sidovan

PRO-se

# APPENDIX

## Q

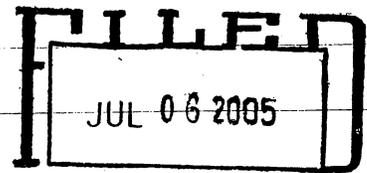
( CP 93 ) COPY OF LETTER TO QUINN POSNER  
FROM DEFENDANT  
7-06-05

**SCANNED**

Quin H. Posner WSBA # 31463  
Dept. Prosecuting Attorney  
1013 Franklin Street  
Vancouver, Washington, 98666

fr: Ashley Wade Siclován  
Po Box 1147  
Vancouver, Washington, 98666

Date: June 29<sup>th</sup>, 2005



In Re: 04-1-01856-1

JoAnne McBride, Clerk, Clark Co.

on 6-6-05 I requested a taped interview of Bev. Bates. I appreciated your prompt response in writing, explaining you were not aware of any such tape. That was proper. I formally apologize for falsely accusing you of violating discovery rules.

I am requesting you also give me a written response to my PRE-TRIAL request for information about Calvin Brown's interviews with Vancouver P.D. and Reese Campbell. You denied he had any involvement with the unit, you were unaware of interviews.

I requested you claim them privileged or disclose them on 1-26-05 Court order you to check and see if they were discoverable.

It would have been proper to claim privilege and ask for in-camera review at that time, not after trial.

This is a Brady violation. unless again I am mistaken and it does not exist and he has no involvement.

Calvin Browns involvement is:

- 1) He admits seeing lab used 3 times
- 2) He has been to unit 49 2 times
- 3) He described contents inside locked bins.

This all presented in search warrant affidavit. Due to fact Calvin Brown provided the information in the search warrant affidavit that information about Calvin Brown being at unit and existing would of

Changed outcome of TRIAL.

This information was Requested  
FOR in PRE-TRIAL.

BUT, if you swear under oath  
Calvin BROWN is NOT invalved with Unit  
49, I have been left with no choice  
other Then To believe you, YOU ARE  
a judicial officer under Rules of  
PROfessional conduct and would NOT lie.

I only Request such a Responce  
in wairiting To go with my MOTION  
FOR Reconciliation and if needed P.R.P.  
To The higher COURT.

My Request:

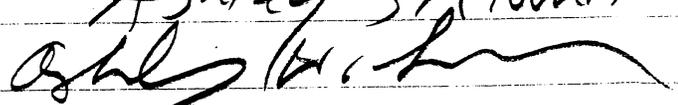
Written Responce To 1-26-05,  
2-03-05 PRE-TRIAL discovery Request  
FOR BROWNS INTERVIEWS and statements To  
Campbell and V.P.D.

I apologize FOR such "wild accusations",  
and "Shark like attacks".

LT is only a desperate attempt  
To get a fair TRIAL with JURY  
hearing Calvin Brown does exist and  
has been To Unit 49.

Thank you.

Dated: 6-29-05

Ashley Sirlouan  
  
PR-52

# APPENDIX

## R

( CP 95 ) MOTION TO RECONSIDER, NEW TRIAL  
OR DISMISSAL.

7-12-05

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9 IN THE SUPERIOR COURT IN THE STATE OF WASHINGTON  
10 FOR THE COUNTY OF CLARK

11 STATE OF WASHINGTON,  
12 Plaintiff / Respondant,  
13 VS.

Motion To Reconcider  
New Trial OR dismissal

14 Ashley Wade Siclovam,  
15 Defendant / Petitioner,

NO: 04-1-01856-1

- 16  
17 Grounds: CRR 7.5 (a) (2) PROSECUTORIAL MISCONDUCT  
18 CRR 7.5 (a) (8) SUBSTANTIAL JUSTICE NOT MET  
19 CRR 8.3 Dismissal  
20 CRR 4.7 (7) (i) discovery violation / Sanctions  
21 Wash. Const. Art. 1 sect. 22  
22 U.S.C.A. Const. Amend. 14  
23

24 Request: 1) Give defence equal opportunity To  
25 argue Relevancy of Calvin Brown, as State  
26 was given opportunity in camera.

1  
2 2) Allow defence To make showing of PRE-TRIAL  
3 Request for information. That would of changed outcome  
4 of Trial, if not suppressed by STATE.

5 3) Request court Reconsider the issue within  
6 The NEW TRIAL motion with consideration To The  
7 fact Calvin Brown did have involvement  
8 with unit 49, Been To Unit 49 and has had  
9 interviews with Van. P.D. and Reese Campbell That  
10 The COURT ORDERD, Posner in PRE-TRIAL To  
11 "see if discoverable" and Report back To The court.

### 12 ISSUE

13  
14 A Brady violation has accrued and Siclován was  
15 NOT given a fair Trial. The STATE finally admits  
16 To having knowledge of Calvin Brown's involvement  
17 and interviews with Van. P.D. This was specifically  
18 Requested and favorable To The defence.

19  
20 Numerous requests were made PRE-TRIAL  
21 and Post Trial.

### 22 Reflection of Record

23  
24 PRE-TRIAL showing:

25 1) ON 1-26-05 minutes 13:27:12  
26

1 Siclovan: " I know That There was an interview with  
2 Two witnesses... another person was interviewed about  
3 This case, Calvin Brown. and I have not seen it  
4 anywhere on record. It may have evidence towards  
5 my innocence, an interview with Calvin Brown."

6 Posner: "I DON'T KNOW ANYTHING ABOUT A  
7 CALVIN BROWN, I MEAN I KNOW WHO CALVIN  
8 BROWN IS, BUT THERE IS NO CALVIN BROWN  
9 CONNECTED WITH THIS CASE."  
10

11 " I DON'T KNOW ANYTHING ABOUT A  
12 CALVIN BROWN."

13 Court: at 13:27:47, 1-26-05,

14 " Send an E-mail to the officers please, inquiring  
15 if there's any statement from a Calvin Brown... if there  
16 is then we can make a determination on whether or  
17 not it's discoverable."  
18

19 2) ON 02-03-05, minutes 10:28:30

20 Siclovan: Can they check with Reese Campbell there's  
21 interviews of Calvin Brown and Van P.D. I mentioned  
22 last time.  
23

24 Court: "Do you have any statements from Reese Campbell  
25 or someone else?"  
26

Posner totally evades the court's question by

1 Posner: Reese Campbell I believe is Mr. Siclovans  
2 Probation officer Your Honor, he conducted the search  
3 and the gathering of information.

4 In that response the state evades the issue  
5 of statements, Calvin Brown and Van. P.D.

6 Siclovans: Reese Campbell and Van. P.D., they tag teamed  
7 and they had interviews with Calvin Brown...  
8 UNLESS THEY ARE BEING HELD PRIVILEGED  
9 I want them.

10  
11 Posner: "I know who Calvin Brown is, I've prosecuted  
12 Mr. Brown in the past."

13  
14 "I HAVE ABSOLUTELY NO, And Mr.  
15 Siclovans brought this up last time, Your Honor,  
16 I've been playing phone tag with officer Martin  
17 to try to address any concerns with Calvin Brown,  
18 BUT THE STATE IS STILL NOT AWARE OF  
19 how Calvin Brown has any relevance to this case,  
20 WHAT SO EVER".

21  
22  
23 Court: 10:29:25 02:03:05

24 "This is my order, I'm going to ask that  
25 you contact Reese Campbell, and I suggest  
26 E-mail because that's easier, to avoid the

Phone Tag:"

Posner: "Im MORE Then willing To do These Things, Im JUST some what at a loss, The defendant is Requesting Things, That isnT Really making sence To The state. FROM The information The state has These Requests have ABSOLUTELY NO Relavence To This case what so ever.

Readiness hearing: 02-10-05 at, 13:43:45

Posner:

" contacted Van. P.D. and D.O.C's Reese Campbell, all evidence discoverable and info. They have is in REPORT and Turned over."

The responce by The state on 2-10-05 did not make any showing That The court order was carried out.

Willful violation by council of a court order issued persuant thereto may subject council To appropriate sanctions by The court.

CRR 4.7 (7) (ii)

IT would of been proper To hold an in camera Review of Calvin Browns invalument allowing The court To determine if discoverable, as The court orderd on 01-26-05 13:27:45

The state IN PRE-TRIAL Took all discretion

OUT OF THE COURTS HANDS.

1 The STATE on his own decided FOR THE COURT  
2 and the defence TO NOT allow THE JURY TO  
3 hear Calvin BROWN admits being at unit #49  
4 after a cook.

5 MISCONDUCT AT TRIAL

6 IN CLOSING STARTING AT 13:05:00 02-18-05

7 POSNER STATES I BLAME SOME OTHER DOOD AND ASKS  
8 WHO IS CALVIN? THE STATE KNEW VERY WELL  
9 WHO CALVIN IS AND THAT HE HAS BEEN TO THE  
10 UNIT 49.

11 POSNER: "SOME OTHER DOOD, THAT IS HIS DEFENCE  
12 THAT SOME OTHER DOOD DID IT, CALVIN DID IT,  
13 WHO'S CALVIN?" MINUTES 13:05:00 02-18-05

14 POSNER:

15 "SHE RENTED THE UNIT TO CALVIN, DO WE  
16 KNOW WHO CALVIN IS? I DONT THINK SO"

17 MIN. 13:05:30 02-18-05

18 POSNER:

19 "I SUBMIT TO YOU THAT CALVIN NEVER  
20 EXISTED." MIN. 13:07:00 02-18-05

21 LATER, AT NEW TRIAL HEARING STATE CLAIMED  
22 HE SAID, "CALVIN NEVER EXISTED AT UNIT 49."

1 either way said, The STATE knew very well  
2 Calvin Brown existed and even existed at  
3 Unit 49 as it states in The search WARRANT  
4 Affidavit page Page 5 Bottom.

5 That whole line of argument and approach  
6 was misleading.

7 Submit = To make a claim.

8 The state claimed To The Jury Calvin did NOT  
9 exist.

10  
11 A criminal defendants right to a fair trial  
12 is denied when The PROSECUTOR makes improper  
13 comments and there is a substantial  
14 likelihood that The comments affected the  
15 Jurys verdict.  
16

17 ST. V. Reed 684 P.2d 699

18 MOTION FOR NEW TRIAL Page 26 of 30 Issue 13

19 In POST TRIAL

20  
21 The defence made a request for information to  
22 help prepare Post Trial motions. The STATE continued  
23 The deceit, BUT takes a new approach by claiming  
24 he never heard of any request of Calvin Brown  
25 only Calvin. Meaning he never carried out  
26 COURT orders given in PRE-TRIAL.

Posner: 03-04-05 13:32:35

"The defendant has made even prior to the trial or not made claims that Calvin Brown, Calvin is all, THIS IS THE FIRST IVE HEARD ACTUALLY OF CALVIN BROWN BEING INVOLVED. but its that Calvin was somehow involved. There's been - The state simply has no evidence regarding anyone named Calvin involved with the storage unit."

"The court requested that I speak to the two investigators, Reese Campbell and Neil Martin, I spoke to both those investigators and reported back."

### Showing of Prejudice

If the jury would of heard Calvin Brown does exist and has been to unit 49 the credibility of Sandra Gray would of been greater.

The jury was not allowed to include this information in their decision due to the prosecution deciding for themselves it was not discoverable when Honorable Roger A. Bennett ordered him to return information to then allow the court to determine if discoverable

13:27:34 01-26-05

## STATE'S ARGUMENT

1 The state will argue I should of made more  
2 of a showing To Reveal The (CI) Calvin Brown  
3 in Pre-Trial. The defence did specifically Request  
4 Calvin Browns involvement as The record indicates  
5 in This motion. also The clear court orders.  
6

### Brady Violation

8 Suppression by The prosecution of evidence  
9 favorable To an accused upon Request violates  
10 due process.  
11

12 Brady v. Maryland, 373 U.S. 83

13 Seattle v. Fetting 519 P.2d 1002

14 Due process clause of the fourteenth amend.  
15 was violated when The prosecution failed To  
16 disclose evidence which if made available  
17 would Tend To exculpate The accused  
18

19 Where prosecutory misconduct is involved a  
20 conviction must be set aside if There is ANY  
21 Reasonable likelihood of undisclosed Testimony could  
22 of affected The Jury's decision.  
23

24 U.S. v. Agurs, 427 US 97, at 103

25 If The defendant made a pretrial request  
26 for specific evidence, The Test focuses on

Whether the suppressed evidence might have affected the outcome.

AGURS SUPRA, at 104

### Conclusion

The suppressed facts of Calvin Brown being to Unit 49 would of changed outcome of Trial. The State waited UNTIL after Trial to allow court to join the judicial decisions pertaining to discovery.

The prosecution lied to the court in the response to Defendants motion for new trial, claiming to NOT be aware of any statements.

### Requests

1.) new trial

2) I ask the court to review the record and see just how bad we got sucked

By Quinn Posner a Quasi-judicial officer under the rules of professional conduct.

I swear under penalty of perjury the foregoing is true and correct to the best of my knowledge

Dated July 10<sup>th</sup>, 2005

  
Ashley W. Siskman  
PRO-SE

# APPENDIX

## S

( CP 106 ) STATEMENT FROM CALVIN BROWN  
8-01-05

04-1-6 56-1

07-11-2005

04-1-01856-1

TO WHOM IT MAY CONCERN:

**SCANNED**

This statement was written and prepared by calvin j brown on his own free will. I CALVIN J BROWN HAVE NEVER SEEN ASHLEY WADE SICLOVAN ENTER OR STORE CHEMICALS OR PRODUCTS USED IN THE MANUFACTURE OF METHAMPHETAMINE, IN A STORAGE UNIT KNOWN AS NATIONAL STORAGE UNIT LOCATED AT 5820 ne 8th ct vancouver wa 98665. this statement is true and correct to the best knowledge. sincerely,  
CALVIN J BROWN 731947



Notary Public  
State of Washington  
KYLE R. SHAWHAN  
My Appointment Expires Oct 29, 2007

Kyle R. Shawhan  
AUBURN, WA.  
KING COUNTY

**FILED**  
AUG 01 2005  
JoAnne McBride, Clerk, Clark Co.

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# APPENDIX

# T

( CP 120 ) FINDINGS OF FACT AND CONCLUSIONS  
OF LAW RE: NEW TRIAL MOTION  
8-11-05

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

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
ASHLEY WADE SICLOVAN,  
  
Defendant,

No. 04-1-01856-1

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW RE: CrR 7.5  
NEW TRIAL MOTION

THIS MATTER, came on for 7.5 Motion for New Trial before the undersigned Judge of the above-entitled Court on \_\_\_\_\_, 2005, the State appeared by and through Quinn H. Posner, Clark County, WA Deputy Prosecuting Attorney, and the Defendant appeared pro-se and through stand-by counsel, George Brintnall. The court, having heard oral argument of counsel, having considered the testimony at hearing, and otherwise being fully informed, NOW THEREFORE, makes the following:

**I. FINDINGS OF FACT**

1. Issue #1 cited in defendant's April 5, 2005 motion (page 4 of 30) for new trial is not supported by fact and without merit.
2. Issue #3 cited in defendant's April 5, 2005 motion (page 6 of 30) for new trial is not supported by fact and without merit.

- 1 3. Issue #4 cited in defendant's April 5, 2005 motion (page 8 of 30) for new trial is not  
2 supported by fact and without merit.
- 3 4. Issue #5 cited in defendant's April 5, 2005 motion (page 10 of 30) for new trial is not  
4 supported by fact and without merit.
- 5 5. Issue #6 cited in defendant's April 5, 2005 motion (page 13 of 30) for new trial is not  
6 supported by fact and without merit.
- 7 6. Issue #7 cited in defendant's April 5, 2005 motion (page 14 of 30) for new trial is not  
8 supported by fact and without merit.
- 9 7. Issue #8 cited in defendant's April 5, 2005 motion (page 17 of 30) for new trial is not  
10 supported by fact and without merit.
- 11 8. Issue #9 cited in defendant's April 5, 2005 motion (page 19 of 30) for new trial is not  
12 supported by fact and without merit.
- 13 9. Issue #13 cited in defendant's April 5, 2005 motion (page 26 of 30) for new trial is without  
14 merit.
- 15 10. Issue #14 cited in defendant's April 5, 2005 motion (page 28 of 30) for new trial is without  
16 merit.
- 17 11. Issue #15 cited in defendant's April 5, 2005 motion (page 26 of 30) for new trial is without  
18 merit.
- 19 12. Defendant was advised of his standard range by previous defense counsel.
- 20 13. Defendant was aware of his standard range upon electing to proceed pro se.
- 21 14. During the 1/26/05 colloquy given by another judge, defendant stated "this is a big issue, 9  
22 points, a manufacture case."
- 23 15. On a subsequent colloquy administered by the trial court, the defendant cited his extensive  
24 familiarity with the court system and previous pro se representation.
- 25 16. In two separate colloquies, the defendant was urged not to proceed pro se and was fully  
26 informed of the potential pitfalls.

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17. Stand-by counsel was assigned to assist the defendant in his pro se defense.

18. The court administered a proper curative instruction regarding impeachment evidence argued in closing.

19. Issues #1, 2, and 3 cited in defendant's April 5, 2005 motion (page 1-22 of 22) for new trial are not supported by fact and without merit.

**II. CONCLUSIONS OF LAW AND JUDGMENT**

1. This court has proper jurisdiction of the Defendant and subject matter.

2. Misconduct of the prosecution did not occur requiring a new trial.

3. Newly discovered evidence does not exist requiring a new trial.

4. The defense was not surprised under rule CrR 7.5 requiring a new trial.

5. The defendant received a proper colloquy and was fully informed of the risk regarding proceeding pro se.

6. The comment in closing relating to impeachment evidence was cured by a proper curative instruction to the jury.

On the basis of the above Findings of Fact and Conclusions of Law the court denies the Defendant's motion to suppress under CrR 7.5.

DATED this \_\_\_\_ day of August, 2005.

\_\_\_\_\_  
Honorable Roger Bennett

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Presented by:  
ARTHUR D. CURTIS  
Prosecuting Attorney for Clark County



Quinn H. Posner, WSBA# 31463  
Deputy Prosecuting Attorney

Copy received:

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Ashley W. Siclovan  
Pro Se Defendant

# APPENDIX

## U

( CP 70 ) Declaration of G.W. Brintnall

3-30-05

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JoAnne McBride, Clerk, Clark Co

SUPERIOR COURT OF WASHINGTON  
FOR CLARK COUNTY

STATE OF WASHINGTON, )  
Plaintiff, )  
vs. )  
ASHLEY WADE SICLOVAN, )  
Defendant, )  
\_\_\_\_\_ )

NO.: 04-1-01856-1

DECLARATION OF  
GEORGE L W BRINTNALL

1. My name is George L W Brintnall and I was the court-appointed attorney for the defendant in this matter, until the Court ruled that the defendant could represent himself, after which I remained connected to the case as "stand-by counsel" for the defendant. I make this declaration in support of the defendant's motion for a new trial.
2. I did not see an itemized inventory list from the prosecution until the first day of trial. Before that, I had only received a copy of the rough draft of the inventory list that was composed by the officers that did the original search of the storage locker involved in this case ("Unit # 49"). I remember the Court also looking through the discovery that I had received to verify that I had not received the itemized list and did not find it.
3. I did not see the supplemental report that was done on "Sandra Gray" until the first day of trial. In that report, she mentions for the first time her claim that the defendant was supplying her with drugs and that she bought "cold pills" for him one time, but that they were the "wrong kind."

1 4. In the police reports of Officer Neil Martin, he states that he cut the lock off the  
2 storage unit as part of the search of Unit 49, pursuant to the search warrant. Since  
3 Officer Martin made this statement as part of his official duties and I had no reason to  
4 believe otherwise, I took it at face value. I did not learn that this statement was  
5 incorrect, until Beverly Bates, the site manager, testified, that she had had the lock cut  
6 off by her maintenance man. Since that statement was made during the trial, the  
7 defendant had no time to seek further information from the maintenance man as to  
8 what happened during the search of the storage locker or even when it occurred.

9 5. At the readiness hearing on February 10, 2005, the Court had directed the State to  
10 make Officer Martin available to the defendant before the trial date. The only  
11 opportunity that the defendant had to question Officer Martin directly, to my  
12 knowledge, was when the defendant was allowed to review the evidence that the  
13 officers had seized, during the trial. At that time, Officer Martin refused to answer any  
14 questions posed to him by the defendant and further stated that the only reason that he  
15 was there was to allow the defendant to view the seized evidence.

16 6. During the pretrial discovery, the prosecutor played a taped interview with Beverly  
17 Bates, the site manager. To the best of my recollection, at no point during that taped  
18 interview do I remember Ms. Bates stating that the officers executing the warrant only  
19 came to the site to look in the storage locker connected with the defendant once.  
20 Therefore, it came as a complete surprise to me and the defendant when she so  
21 testified to that fact at trial.

22 I declare, under penalty of perjury under the laws of the State of Washington that the  
23 foregoing is true and correct to the best of my knowledge and recollection.

24 March 25, 2005  
25 Date Signed

26 George L W Brintnall  
27 GEORGE L W BRINTNALL  
28 Declarant

29 Vancouver, Washington  
30 Place Signed

# APPENDIX

## V

( CP 66 ) LETTER TO NEIL MARTIN  
2-27-05

To: Neil Martin  
Van. P.D. PSN # 1326  
605 E. Evergreen  
Vanc. Wash. 98661 Fax (696-8176)

fr: Ashley Wade Sidelvan  
C.C.J. C-1-2 # 113054  
P.O. Box 1147  
Vanc. Wash. 98666-1147

Date: 2-27-05

in Re: case # 04003031  
course # 04-1-01856-1

I am in need of some information from you pertaining to the above course. It is my understanding a 2-19-04 order of destruction was signed.

- 1) When was that order carried out
- 2) By who?
- 3) When?
- 4) Where?
- 5) Is there an inventory list of items destroyed?
- 6) Pictures of items before destroyed?
- 7) Was there any items destroyed that were not contaminated?

- 8) Who determined extent of contamination?
- 9) Was items and list of items checked and approved by superior officer before destruction?
- 10) Was anybody notified before destruction?
- 11) Did you know location of Siglowan or Gray at time of destruction?
- 12) Did you attempt to notify before destruction?
- 13) Provide a copy of service in regards to the destruction order, who served, when, and a complete list of items and description.

in addition:

- 14) Did state e-mail you requesting any information of:
  - a) Any connection with Calvin Brown
  - b) any interview of Brown
  - c) any other crime investigated other than manufacture with connection to unit.

Please answer to these questions that are material to my post trial motions. If you choose not to consider the inference of justice

Ashley W. Siglowan  
Ashley W. Siglowan 2-27-05