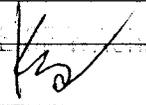


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**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON
BY: 
DEPUTY

STATE OF WASHINGTON, RESPONDENT

v.

JAMES LEE DYCHES, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Kathryn J. Nelson

No. 04-1-04463-6

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether the trial court erred in finding that defendant lacked standing to challenge the search warrant regarding count I where (1) the crime of manufacture of a controlled substance does not contain possession as an essential element and (2) defendant testified *in the suppression hearing* that he had moved out of the building in question two to three days prior to service of the search warrant? (Appellant's Assignment of Error No. 4.)

2. Whether the magistrate properly relied on informant information under Aguilar/Spinelli when the informant had provided information in the past that led to many arrests and convictions? (Appellant's Assignment of Error No. 1.)

3. Whether there is sufficient evidence to support convictions for (1) manufacture of methamphetamine (2) possession with intent to deliver methamphetamine and (3) possession of pseudoephedrine with intent to manufacture methamphetamine where police found numerous methamphetamine lab components, methamphetamine, and pseudoephedrine in a building rented by defendant from which an informant obtained methamphetamine and at which defendant was seen by police on at least two

occasions, one of which was immediately before the service of the search warrant? (Appellant's Assignment of Error No. 2.)

B. STATEMENT OF THE CASE.

1. Procedure

On September 21, 2004, the State charged JAMES LEE DYCHES, also known as JIMMY LEE DYCHES, ("defendant") with manufacture of a controlled substance – methamphetamine, count I; possession with intent to deliver a controlled substance – methamphetamine, count II; possession of ephedrine and/or pseudoephedrine with intent to manufacture methamphetamine, count III. CP 1-4. Via an amended information, the State added a sentencing enhancement alleging each crime was committed within 1,000 feet of a school route bus stop. CP 5-8.

The trial court conducted a 3.6 suppression hearing on August 10, 2005, when defendant challenged the validity of the search warrant. RP 9-52. The trial court ruled that defendant did not have standing to challenge the warrant. RP 51. The trial court also ruled that the magistrate signing the warrant did not abuse her discretion regarding the sufficiency of the affidavit in support of the warrant. RP 51. The trial court issued Findings and Conclusions on Admissibility of Evidence CrR 3.6. CP 258-262 (attached hereto as Appendix A). The complaint for search warrant (CP 87-90) and search warrant (CP 91-93) are attached hereto as Appendix B.

The jury returned verdicts of guilty as charged on all three counts, together with the school route bus stop sentencing enhancements. CP 210-15.

2. Facts

On June 24, 2004, Puyallup Police conducted an undercover operation to buy methamphetamine. RP 83. Using a Confidential Informant (“CI”) supervised by Detective Gill, police targeted a dealer from whom the CI could purchase methamphetamine. RP 84. However, when the CI made contact, that dealer was out of drugs. Id. An individual present, Patty, told the CI they could go make a buy from “Jimmy” down at “the shop”. RP 395. The CI got into a van with Patty and Bridgette and went down to the shop. Id. Detective Gill followed the van. RP 87. The CI waited in the van while Patty went inside. RP 395. Patty returned to the van in 5-10 minutes, and handed the methamphetamine to the CI. Id. When Patty came out of the building, defendant and another individual were right behind her. Id. The van returned to the original location where Detective Gill picked up the CI who handed over .4 grams of a substance that tested positive for methamphetamine. RP 95.

Defendant rented the building in question for \$200.00 for the stated purpose of storing collector cars inside. RP 154. The building was an old chicken house. RP 153, 155. That building was never intended to be used as living space. RP 165.

The property owner received many complaints about defendant's tenancy, due to late night traffic. RP 165. The owner was also concerned that defendant was living there when he was not supposed to be. RP 156, 165.

Detective Gill applied for a search warrant three days after the CI purchased the methamphetamine. RP 95. The warrant was served on July 1, 2004, at approximately 7:30 p.m. RP 96. Earlier that same morning the property owner told defendant to move out. RP 174.

Prior to serving the search warrant, police set up surveillance on the building to be searched, looking for any activity. RP 98. They observed a silver van at the building. Id. Police knew from their investigation that the van belonged to defendant. Id. Police saw defendant enter and leave the building a couple of times during the surveillance. RP 100. Eventually they saw defendant leave the premises. RP 99.

Once defendant left the premises, police moved in to serve the warrant. RP 102. The door they entered had a padlock on it. RP 107. Officers found a methamphetamine lab boxed up inside the building. RP 109, 112. Officers found: Ace brand toluene, which is used in the washing phase of the cooking process (RP 198-99); red devil lye, which is used in the third stage between the wash and the extraction (RP 200-01); rock salt, which is used in the gassing phase, the final phase of the cook (RP 201-202); several glass jars (RP 207, 222, 228, 235); a glass jug with

rock salt in the bottom which converts it to an HCL generator, (RP 220, 222); pseudoephedrine, the main ingredient in methamphetamine (RP 214, 243); acetone, used in the final phase of cleaning up the methamphetamine after it's been gassed off (RP 213); a single burner hot plate, which is used to speed up the process in cooking the ephedrine (RP 216); orange rubber tubing connected to a brass fitting, which is used in the gassing off phase (RP 218, 223); muriatic acid, which is also used in the gassing off phase (RP 206-07 and 229); many funnels, which are used to siphon the various layers of liquid that are part of the methamphetamine manufacturing process (RP 206, 209, 210, 215, 228); chemical resistant gloves and filterized gas mask, which are used due to the highly toxic nature of manufacturing methamphetamine (RP 208, 233-34); used coffee filters which are used to filter the product when transferring liquid from one container to another (RP 223-24); and lithium batteries, which are stripped so that the lithium can be used to make the methamphetamine (RP 243).

Police also found a 5-10 gallon water tank with a modified valve that could have been used to store anhydrous ammonia as well as a metal cylinder that was pressurized with a valve that also could have stored anhydrous ammonia, which is used in the process of cooking methamphetamine. RP 225-26.

One of the jars found with the components of the lab contained a white powder that tested positive for methamphetamine. RP 298. A baggie of brown powder was found in the arm of a chair (an old car seat)

in the make-shift living area of the building. RP 260. The brown powder tested positive for methamphetamine. RP 294. The brown substance on one of the coffee filters tested positive for ephedrine. RP 134. A baggie containing a white powder substance was found in the building. RP 259. It tested positive for caffeine. RP 302-03. Caffeine is commonly used by methamphetamine cooks to cut (or dilute) the product so they get more yield. RP 318.

The building defendant rented that was found to contain the above items was within 700-800 feet of a school bus stop. RP 343, 411.

Defendant stipulated that he is knowledgeable about the manufacture of methamphetamine via the Birch reduction method. RP 415.

The jury found defendant guilty as charged. CP 210-215.

C. ARGUMENT.

1. DEFENDANT LACKS STANDING TO CHALLENGE THE SEARCH WARRANT AS IT PERTAINS TO HIS MANUFACTURING CONVICTION (COUNT I).

A defendant seeking suppression of seized evidence has the burden of establishing the requisite privacy interest. State v. Picard, 90 Wn. App. 890, 896, 954 P.2d 336 (1998). When reviewing a denial of a motion to suppress, an appellate court reviews the factual findings to see if they support the conclusions of law. State v. Dempsey, 88 Wn. App. 918, 921,

947 P.2d 265 (1997). An appellate court reviews only those findings to which error has been assigned; unchallenged findings of fact are verities upon appeal. State v. Hill, 123 Wn.2d 641, 644, 647, 870 P.2d 313 (1994). As to challenged factual findings, the court reviews the record to see if there is substantial evidence to support the challenged facts; if there is, then those findings are also binding upon the appellate court. Id. Substantial evidence exists when there is a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the finding. Hill, 123 Wn.2d at 644. Credibility determinations are for the trier of fact and are not subject to appellate review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). The trial court's conclusions of law are reviewed de novo. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999).

Here, defendant assigns error to the Findings as to Disputed Facts. Brief of Appellant ("BOA") at 1. However, defendant does not assert that there is a lack of evidence supporting these findings nor does he analyze in any fashion how they are in error. BOA at 12-13. As such, this court should find that they are verities.

Article 1, section 7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." This provision is violated when the State unreasonably intrudes upon a person's private affairs. State v. Boland, 115 Wn.2d 571, 577, 800 P.2d 1112 (1990).

Although automatic standing has been the subject of some controversy, and has been abandoned by the U.S. Supreme Court, it “still maintains a presence in Washington.” State v. Jones, 146 Wn.2d 328, 331-332, 45 P.3d 1062 (2002). A person may rely on the automatic standing doctrine only if the challenged police action produced the evidence sought to be used against him. State v. Williams, 142 Wn.2d 17, 23, 11 P.3d 714 (2000). To assert automatic standing, a defendant (1) must be charged with an offense that involves possession as an essential element; and (2) must be in possession of the subject matter at the time of the search and seizure. State v. Simpson, 95 Wn.2d 170, 181, 622 P.2d 1199 (1980). Furthermore, there must be a direct relationship between the challenged police action and the evidence used against the defendant. Jones, 146 Wn.2d at 334.

Pertaining to a defendant’s ability to challenge the validity of a search, the automatic standing rule has no application where there is no conflict in the exercise of defendant’s Fourth and Fifth Amendment rights. Williams, 142 Wn.2d at 23. Moreover, the automatic standing rule may not be used where the defendant is not faced with “the risk that statements made at the suppression hearing will later be used to incriminate him albeit under the guise of impeachment.” Id. Automatic standing is not a vehicle to collaterally attack every police search that results in a seizure of contraband or evidence of a crime. Id.

The State concedes that defendant has automatic standing under Washington law to challenge the validity of the search warrant only as it pertains to counts II and III, because each of these offenses have possession as an element. However, count I, the manufacturing charge does not contain possession as an element and automatic standing would therefore not be applicable to evidence admitted on that count. It should be noted that defendant testified in the pretrial hearing that he had moved out of the building two to three days before the warrant was served. RP 29-30. He did not testify at trial. Therefore, the items found and seized as a result of the search warrant were properly admitted at trial as to count I, regardless of the validity of the warrant.

2. THE MAGISTRATE PROPERLY RELIED ON
INFORMANT INFORMATION UNDER
AGUILAR-SPINELLI.

When a search warrant has been properly issued by a judge, the party attacking the warrant has the burden of proving its invalidity. State v. Fisher, 96 Wn.2d 962, 639 P.2d 743 (1982). A judge's determination that a warrant should issue is an exercise of discretion that is reviewed for abuse of discretion and should be given great deference by the reviewing court. State v. Cole, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). See also State v. Young, 123 Wn.2d 173, 195, 867 P.2d 593 (1994) ("Generally, the probable cause determination of the issuing judge is given great deference."). Doubts as to the existence of probable cause will be

resolved in favor of the warrant. State v. J-R Distributions, Inc., 111 Wn.2d 764, 774, 765 P.2d 281 (1988). Hyper-technical interpretations should be avoided when reviewing search warrant affidavits. State v. Feeman, 47 Wn. App. 870, 737 P.2d 704 (1987). The magistrate is entitled to draw common sense and reasonable inferences from the facts and circumstances set forth in the affidavit. State v. Yokley, 139 Wn.2d 581, 596, 989 P.2d 512 (1999); State v. Helmka, 86 Wn.2d 91, 93, 542 P.2d 115 (1975).

In order to obtain a search warrant based upon information provided by an informant, the State must satisfy a two-prong test. Under Aguilar-Spinelli, the reviewing court examines (1) the informant's basis of knowledge and (2) the informant's credibility. State v. Jackson, 102 Wn.2d 432, 443, 688 P.2d 136 (1984), State v. Partin, 88 Wn.2d 899, 903, 567 P.2d 1136 (1977). If the informant's tip fails under either or both prongs of the test, the missing elements can still be supported by an independent police investigation. Jackson, 102 Wn.2d at 438.

In the instant case, the affidavit contains information provided by a confidential informant. Defendant asserts that there are insufficient facts in the affidavit to show that the informant was reliable. BOA at 18. While it is true that the mere statement that an informant is credible is conclusory and therefore insufficient, defendant acknowledges that “it is almost universally held to be sufficient if information has been given which has led to **arrests and convictions.**” BOA at 17 [emphasis added],

citing State v. Woodall, 100 Wn.2d 74, 76, 666 P.2d 364 (1983).² The affidavit in the present case contains those required facts:

Confidential and reliably [sic] informant number 03-02 has assisted police on many occasions with the investigation of narcotic cases. The CI has assisted police with investigations that have led to the **arrest and conviction of many narcotic dealers**. The CI has provided police with information on methods of use, packaging, and transporting of narcotics and items used to manufacture methamphetamine.

CP 88-90 [emphasis added]. This information sufficiently establishes the informant's reliability because it indicates that the informant has provided information that has led not only to the arrest, but also the conviction of *many* narcotics dealers. The informant's report to the detective was further corroborated by the direct observations of officers who followed the informant and conducted surveillance. CP 88-90.

Here, the informant's report was reliable because the majority of the information he provided was observed first-hand and the informant has assisted officers numerous times on narcotics investigations and provided officers with information on the manufacturing, packaging and transporting of methamphetamine.

The informant did rely on a middleman, Patty, to contact defendant and purchase the narcotics. However, when an informant arranges to

² See State v. Fisher, 96 Wn.2d 962, 639 P.2d 743 (1982) (holding that statement by the affiant that the informant had given the affiant true and correct information in the past was sufficient.)

purchase drugs from an unknown source, through a middleman, and the middleman is observed by police leaving the informant, entering the defendant's location, and returning to the informant delivering narcotics, police do not need to establish the middleman's veracity. State v. Mejia, 111 Wn.2d 892, 766 P.2d 454 (1989). Here, Patty told the informant to wait in the car while she went into the building. RP 395. She exited the building and defendant came out with her. Id. She returned to the car and handed methamphetamine to the informant. Id. That is sufficient information to supply probable cause to search the building.

The State strongly contends this was a valid search warrant. However, assuming arguendo that the warrant is invalid for some reason, the contraband found as a result of this search was still properly admissible as to count I, the manufacturing charge. As discussed above, defendant did not have automatic standing with regard to count I because it does not involve an offense involving possession. Further, defendant's pretrial testimony was that he had moved out of the building two to three days prior to service of the search warrant. RP 29-30. Therefore, should this Court invalidate the warrant, it would only require reversal of counts II and III, but would not effect count I.

3. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT A CONVICTION FOR MANUFACTURING OF METHAMPHETAMINE, POSSESSION WITH INTENT TO DELIVER METHAMPHETAMINE, AND POSSESSION OF PSEUDOEPHEDRINE WITH INTENT TO MANUFACTURE METHAMPHETAMINE.

Defendant alleges that there is insufficient evidence of constructive possession and that there was insufficient evidence to establish that (1) defendant was manufacturing methamphetamine; (2) defendant possessed a controlled substance with intent to deliver; or (3) possessing pseudoephedrine with intent to manufacture methamphetamine. BOA at 20. This argument is with merit given the overwhelming evidence in this case.

The applicable standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993); State v. Rempel, 114 Wn.2d 77, 82-83, 785 P.2d 1134 (1990) (citing State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980) and Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). Also, a challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. State v. Barrington, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), review denied, 111 Wn.2d 1033 (1988) (citing State v. Holbrook, 66 Wn.2d 278, 401 P.2d 971 (1965));

State v. Turner, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). In considering this evidence, "[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal." State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)(citing State v. Casbeer, 48 Wn. App. 539, 542, 740 P.2d 335, review denied, 109 Wn.2d 1008 (1987)).

The written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility. The differences in the testimony of witnesses create the need for such credibility determinations; these should be made by the trier of fact, who is best able to observe the witnesses and evaluate their testimony as it is given. State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985). Therefore, when the State has produced evidence of all the elements of a crime, the decision of the trier of fact should be upheld.

In this case the State had to prove that the defendant manufactured methamphetamine. RCW 69.50.401(a). "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance." State v. Todd, 101 Wn. App. 945, 952, 6 P.3d 86 (2000) (citing RCW 69.50.101(p)). Where the State

presents evidence of methamphetamine lab *components* and can link those components to the defendant the evidence is sufficient to establish defendant's guilt of manufacturing. Todd, 101 Wn. App. at 952.

A defendant may be shown to be in constructive possession of a controlled substance when he "has dominion and control over either the drugs or the premises upon which the drugs were found." State v. Mathews, 4 Wn. App. 653, 656, 484 P.2d 942 (1971). This dominion and control need not be exclusive. See State v. Tadeo-Mares, 86 Wn. App. 813, 816, 939 P.2d 220 (1997). A court considers whether a person has dominion and control over an item by considering the totality of the circumstances. State v. Partin, 88 Wn.2d 899, 906, 567 P.2d 1136 (1977). When a person has dominion and control over a premises, it creates a rebuttable presumption that the person has dominion and control over items on the premises. State v. Cantabrana, 83 Wn. App. 204, 208, 921 P.2d 572 (1996).

In the instant case there is substantial evidence in the record to show defendant had dominion and control over the wooden building where the methamphetamine lab was located. Defendant had rented the building for \$200.00, purportedly to store collector cars in. RP 154. He was seen coming out of the building on June 25, 2004, when Detective Gill arranged a controlled buy of methamphetamine through the CI. CP 88-90; RP 95, 395-96. The middleman, Patty, told the CI that she could get drugs from Jimmy down at "the shop". RP 395.

Miscellaneous documents and papers linked defendant not only to the lab, but also the other end of the building that appeared to be rustic living quarters. RP 247-272. In the living quarters area, there was an address book with defendant's name inside. RP 250-51. The address book contained the addresses of five different Walgreens locations. RP 252. Walgreens is a very common source of pseudoephedrine tablets for individuals cooking methamphetamine. RP 252. State law now limits the amount that can be purchased from one location, so cooks must travel to a number of stores to get supplies. RP 253. In the other end of the building, near the boxes containing the lab, was another box that contained many documents with defendant's name on them. RP 269-272. A jury could easily infer dominion and control over the entire building based on this evidence. Additionally, as officers were setting up to serve the warrant, they did surveillance on the property and saw defendant's vehicle there. RP 98-101. They saw defendant going in and out of the building several times just prior to serving the warrant. Id. There was no evidence any one else had access to the building or that anyone else had items stored in the building, other than defendant.

In the boxes located near defendant's personal papers and documents, police found toluene, red devil lye, rock salt, many glass jars, many funnels, muriatic acid, acetone, pseudoephedrine tablets, the main ingredient in methamphetamine, a hot plate, rubber tubing, used coffee filters, twisted up pieces of aluminum foil, plastic weed sprayer container,

chemical resistant gloves, filterized gas mask, lithium batteries. RP 198-235. Each and every one of these items is used in the manufacture of methamphetamine using the Birch reduction method. RP 198-235, 313. Defendant stipulated that he possesses the knowledge to make methamphetamine by this method. RP 415.

Defendant argues that the lack of anhydrous ammonia amounts to insufficient evidence to sustain a conviction. BOA at 23. This argument fails for two reasons. First, as discussed above, evidence of the components of the lab is sufficient. Todd, 101 Wn. App. at 952. The State does not have to show that the entire process was undertaken by defendant. Mere preparation is sufficient. Id. Second, police located containers consistent with the storage of anhydrous ammonia. A 5-10 gallon water tank with a modified valve could have been pressurized to hold anhydrous ammonia. RP 225. There was also a pressurized metal cylinder equipped with a valve that could have contained the anhydrous ammonia as well. RP 226.

One of the jars contained a white powder that tested positive for methamphetamine. RP 298. Brown powder located in a baggie also tested positive for methamphetamine. RP 297. One of the coffee filters with brown residue tested positive for ephedrine. RP 134. A plastic jewelry bag found tested positive for methamphetamine. RP 135.

An expert testified that methamphetamine dealers will often cut their product to get a greater yield. RP 318. Powdered caffeine is

frequently used to do this. Id. Powered caffeine was located in the living quarters area of the building, RP 303. The jury could infer that defendant was intending to deliver his product by the fact that he possessed the substance dealers use to cut the product.

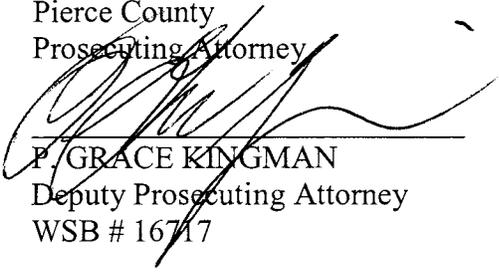
The State presented ample evidence for the jury to find defendant guilty of all three crimes charged. This court should affirm the jury's verdict.

D. CONCLUSION.

For the foregoing reasons, the State respectfully asks this Court to affirm defendant's convictions.

DATED: October 5, 2006.

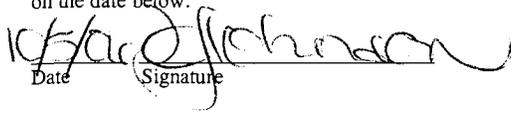
GERALD A. HORNE
Pierce County
Prosecuting Attorney


P. GRACE KINGMAN
Deputy Prosecuting Attorney
WSB # 16717

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

10/5/06
Date


Signature

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APPENDIX “A”

Findings and Conclusions on Admissibility of Evidence CrR 3.6



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-04463-6

vs.

JAMES LEE DYCHES,

FINDINGS AND CONCLUSIONS ON
ADMISSIBILITY OF EVIDENCE CrR
3.6

Defendant.

THIS MATTER having come on before the Honorable Kathryn Nelson on the 9th day of August, 2005, and the court having rendered an oral ruling thereon, the court herewith makes the following Findings and Conclusions as required by CrR 3.6.

THE UNDISPUTED FACTS

On 06-25-2004 Puyallup Police conducted an undercover operation to buy methamphetamine. The operation made use of a confidential informant who was supervised by Puyallup Detective Gill. The informant was to buy methamphetamine off a target subject at apartments in Edgewood. However, the dealer was out of methamphetamine at the time the informant arrived. A female known to the informant as "Patty" was present at the dealer's location. Patty indicated that she could get methamphetamine at another location that she referred to as the "Shop" which was located near the Sumner Cemetery.

Detective Gill approved the informant's going with Patty to the "shop" to buy methamphetamine. The informant entered a vehicle with Patty, and officers followed the vehicle

04-1-04463-6

1 to a location. There the officers observed Patty went into a building and came back out a couple
2 of minutes later. When Patty came back outside of the building, two men also walked out with
3 her. Patty and the occupants of her vehicle then returned to the original dealer's address.

4 The informant then returned to detective Gill. The informant had been searched and
5 provided with buy money prior to the transaction. Subsequent to the transaction the informant
6 provided Detective Gill with .4 grams of white powder that later tested positive for
7 methamphetamine. The informant was again searched and only a small amount of change was
8 found on his person.

9 The informant related to Detective Gill that when the original dealer advised he was out
10 of methamphetamine, Patty advised that she could obtain some for the informant and another
11 person at the "shop." Patty drove both the informant and the other buyer to the "shop." At the
12 shop, Patty told the informant and the other buyer to stay in the van. Patty then took their money
13 and walked around the south corner of the building. A few minutes later Patty came out. She
14 was followed by two men. One of the men was known to the informant as James Dyches. The
15 other was a white male with reddish hair that was unknown to the informant. The informant
16 related that he knows James Dyches to be a methamphetamine "cook" [manufacturer]. when
17 Patty got back in the van she handed the informant the white powdery substance that later tested
18 positive as methamphetamine.
19

20 Based upon the foregoing information, officers obtained a search warrant for the "shop"
21 location. That warrant was served on July 1,, 2004 officers served the warrant at the "shop" at
22 12215 Valley Avenue, E. in Sumner. In a search of the structure, officers found components of a
23 methamphetamine lab in one portion of the building. In another portion of the building, officers
24 found small amounts of methamphetamine and caffeine. Papers belonging to James Dyches
25

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1 were found in both portions of the building. James Dyches was seen leaving the scene
 2 immediately before officers entered the property, but the officers were unable to apprehend him.

3 THE DISPUTED FACTS

4 Whether James Dyches resided at the "shop" location.

5 FINDINGS AS TO DISPUTED FACTS

6 The "shop" location was a chicken coop that had been converted to a storage facility. It
 7 did not have running water or toilet facilities. Prior to the officers' service of the warrant Dyches
 8 had been storing a recreational vehicle in a parking place on the property. Dyches had also
 9 stayed in the recreational vehicle for a short while, until James Jungers the owner of the property,
 10 advised the intermediary tenant that Dyches could not reside on the property and would have to
 11 remove the recreational vehicle. Dyches then removed the vehicle.

12 James Jungers also testified that the storage facility was not fit for human habitation and
 13 that there was no agreement for Dyches to reside in the storage facility. That testimony was
 14 consistent with Dyches own testimony when he talked of there being no lighting or plumbing in
 15 the storage facility and that he had to go outside the storage facility and use an outhouse for a
 16 bathroom. Shortly before officers served the warrant, Jungers told Dyches that he could no
 17 longer store his belongings in the storage unit. Jungers made this decision based upon
 18 complaints he had from other tenants regarding Dyches.

19 REASONS FOR ADMISSIBILITY OR INADMISSIBILITY OF THE EVIDENCE

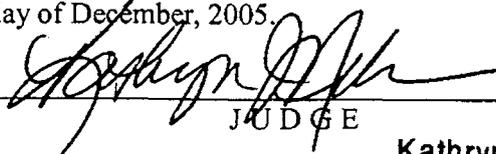
20 The court holds that the facts contained in the warrant provided sufficient probable cause
 21 to believe that the dealing of methamphetamine had occurred at the shop location. At 12215
 22 Valley Avenue E, in Sumner. The contents of the affidavit for probable cause sufficiently
 23 established the reliability of the informant.
 24
 25

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1 Moreover, the affidavit was carefully written to separate the informants observations
 2 from what the officer observed or inferred. The observations of the informant were sufficient to
 3 establish that he informant had direct personal knowledge of the things he claimed. The sole
 4 exception to the adequacy of the basis for the informant's personal knowledge is that the
 5 affidavit for probable cause does not lay out the basis for the informant's knowledge that James
 6 Dyches was a methamphetamine "cook." The omission is not fatal because even if the
 7 informant's claim that Dyches was a "cook" is omitted, there is probable cause to believe
 8 methamphetamine was delivered at the "shop" location.

9 The storage facility was not a residential facility. Dyches had no residential tenancy in
 10 the storage facility. Because Dyches tenancy was not residential, and because it was only by oral
 11 agreement with an intermediary to the owner James Jungers, Dyches tenancy was not subject to
 12 the landlord tenant act and could be terminated immediately by Jungers. Dyches tenancy in the
 13 storage unit was terminated by Jungers when Dyches was advised by Jungers to move out of the
 14 storage unit. Accordingly, Dyches had no standing to challenge the search of the storage unit.

15 DONE IN OPEN COURT this 9th day of December, 2005.

16 
 17 _____
 18 JUDGE Kathryn J. Nelson

18 Presented by: 
 19 _____
 20 STEPHEN D TRINEN
 21 Deputy Prosecuting Attorney
 22 WSB # 30925



04-1-04463-6

Approved as to Form:

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James Oliver
 Attorney for Defendant
 WSB # 29984

sdt

APPENDIX “B”

Complaint for Search Warrant & Search Warrant

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
COMPLAINT FOR SEARCH WARRANT
(EVIDENCE)**

STATE OF WASHINGTON))
County of Pierce)) SS. NO. _____

COMES NOW Detective Donald Gill, being first duly sworn under oath, deposes and says: That on or about the twenty fifth day of June, 2004, in or about the City of Puyallup, County of Pierce, Washington, a felony, to-wit, possession of controlled substances, possession of controlled substances with intent to deliver, manufacture of controlled substances was committed by the act, procurement or omission of another, and that the following evidence, to-wit:

1. Controlled substances, in particular METHAMPHETAMINE.
2. Books, records, receipts, notes ledgers, computers, computer equipment and other papers relating to the transportation, ordering, purchase, manufacture, and distribution of controlled substances, in particular METHAMPHETAMINE.
3. Address and/or telephone books and papers reflecting names, addresses, and/or telephone numbers, including, but not limited to, names of, addresses of, and/or telephone numbers of occupants who reside at the location.
4. Books, records, receipts, bank statements and records, money drafts, letters of credit, money order and cashier's check receipts, passbooks, bank checks and other items evidencing the obtaining, secreting transfer, and/or concealment, and/or expenditure of money for controlled substances and manufacture of controlled substances, in particular METHAMPHETAMINE.
5. Photographs, in particular, photographs of co-conspirators, of assets, and/or of controlled substances and manufacturing equipment, in particular METHAMPHETAMINE.
6. Narcotics paraphernalia, including materials for packaging, and weighing METHAMPHETAMINE, including, but not limited to, scales, baggies, and heat sealers.
7. Indicia of occupancy of the residence described in the Search Warrant, including, but not limited to, utility and telephone bills, canceled envelopes, and keys.
8. U.S. Currency.

(16)

9. Digital pagers and electronic personal directories used for the distribution of controlled substances, in particular METHAMPHETAMINE.

10. Glassware, chemicals, solvents, and other equipment used for the manufacture of controlled substances, in particular METHAMPHETAMINE.

The above items are material to the investigation or prosecution of the above described felony for the following reasons: All of the above items are evidence of an attempt, or of a conspiracy to commit an offense under the Uniform Controlled Substances Act, R.C.W. 69.50, in violation of R.C.W. 69.50.401. The items are also evidence of the possession, sale, manufacture and/or distribution of controlled substances, specifically METHAMPHETAMINE and are an offense under the Uniform Controlled Substances Act.

The affiant verily believes that the above evidence is concealed in or about a particular place to-wit:

ADDRESS/LOCATION

A brown in color, wood framed house with brown asphalt shingles. The house appears to have been refurbished for use as a storage structure. There is no front door and entry is made by large sliding wood doors locked by an outside pad lock located on the south end of the structure. All windows of the structure have been boarded up and broken out. There are no identifying numbers or letters attached to the structure/home but the structure/home is located on the property of 12215 Valley Avenue East, Sumner Washington.

PROBABLE CAUSE STATEMENT

COMES NOW DETECTIVE DONALD GILL, being first duly sworn under oath, deposes and says:

Your Affiant is currently assigned to the Investigations Division of the Puyallup Police Department. He is a 25-year veteran police officer, including one-year experience with Military Police, two years in Military Police Investigations, eleven years with the Sumner Police Department and fourteen years with Puyallup Police Department. Your Affiant has 5 Years experience in narcotic and general investigations. During that time he investigated many complex narcotic and general cases involving evidence processing, construction of search warrants, multiple interviews and deceptive suspect interviews.

Your Affiant has successfully completed Basic Law Enforcement Course at Fort McClellan Alabama, United States Army Military Police Investigation School, Washington State Criminal Justice Training Commission Basic Law Enforcement Academy and various training courses pertaining to law enforcement and police investigations. Your Affiant is a trained and active member of the Puyallup Police Clandestine lab team. Your Affiant is a former Field Training Officer and a Washington State Criminal Justice Training Commission Instructor for Cops on Bikes.

FACTS:

(17)

On June 25, 2004, at approximately 1700 hours your Affiant met with confidential and reliable police informant number 03-02. The CI (confidential informant) stated that he/she had been offered methamphetamine by an approximately 40YOA white male that is only identified as "Scott".

Confidential and reliable informant number 03-02 has assisted police on many occasions with the investigation of narcotic cases. The CI has assisted police with investigations that have led to the arrest and conviction of many narcotic dealers. The CI has provided police with information on methods of use, packaging, and transporting of narcotics and items used to manufacture methamphetamine.

The CI told me that Scott drives a Dodge Ram van and lives in the Edgewood area just at the top of the North Hill. The CI stated that he/she met Scott at the East Valley Apartments several days earlier. The CI stated that Scott offered the CI methamphetamine and told the CI that anytime he/she needed "shit", a term in the drug world for methamphetamine, to contact him and the CI could buy methamphetamine. The CI stated that he/she has noticed Scott in the area of the East Valley Apartments in the afternoon and evening for the past several days.

The CI was searched for weapons, drugs and money and only a small amount of change was found. The CI was provided with \$40.00 in pre-marked buy funds. I drove the CI, in an un-marked police vehicle, to the East Valley Apartments located at 11015 East Valley Avenue in North Puyallup. Detective Clark was following and would watch from a distance. As we arrived at the East Valley Apartments the CI pointed out a 1983 Dodge Van, gray in color bearing Washington license plate 879FVM. The CI stated the van belonged to Scott. The CI got out of the car and contacted a group of persons on the Northeast corner of the apartments. After several minutes I noticed two females, one known as Patty and the other as Bridgette. The two females along with the CI were standing near the van and looked as though they were about to leave. The CI called me by cell phone and told me that Scott was out of methamphetamine and that he was going with the two women to a place near the Sumner Cemetery nicknamed "the shop". The CI stated that they were going to buy methamphetamine there.

I notified Detective Clark that the CI was leaving in the suspect vehicle, the van, and we had to follow. The van left with the two women and the CI. Detectives followed closely and watched as the van turned into a gravel driveway marked by a mailbox with the address of 12215 Valley Avenue East just outside of Sumner. I watched the van stop in front of a Brown house that looked like it had been re-modeled for storage. The driver of the van got out and went into the house. After about 10 minutes Patty came out of the structure and got back into the van. Patty was followed out by two men that went to a silver van.

Patty and the CI left the address and returned to the East Valley Apartments with Detectives following. The CI then walked back to me and got into my car. The CI provided to me .4 grams of white powder that later tested positive for

methamphetamine. The CI was searched for weapons, drugs and money and only the small amount of change was found.

The CI told me that he had met with Scott and was told that he had no more methamphetamine. Patty stated that she could get some at "the shop" and offered to drive the CI and another customer, Bridgette, to "the shop" and purchase some methamphetamine. The CI agreed and called me.

The CI stated that when they arrived at "the shop" Patty told him/her and Bridgette to stay in the van and she would be right back. The CI stated that he/she then gave the \$40.00 pre-marked buy money to Patty. The CI stated that Patty went around to the South side of the building and disappeared into the house.

The CI stated that when Patty came out of the house she was followed by a white male, 30 YOA with reddish brown hair that was cut in a crew cut fashion. The second man that came out was identified as Jimmy Dykes. The CI stated that he recognized Dykes and knows that he is a methamphetamine cook.

The CI stated that when Patty got into the van she handed him/her a small plastic baggie containing a white powdery substance. This is the same bag that the CI gave to me at the East Valley Apartments that later tested to be .4 grams of methamphetamine.

I asked about the CI about "the shop". The CI stated that he/she had heard of it before and heard methamphetamine is sold there.

The CI description of the incident matched what detectives had witnessed.

Based upon the above, your affiant requests the court issue a search warrant for:

ADDRESS/LOCATION

A brown in color, wood framed house with brown asphalt shingles. The house appears to have been refurbished for use as a storage structure. There is no front door and entry is made by large sliding wood doors locked by an outside pad lock located on the south end of the structure. All windows of the structure have been boarded up and broken out. There are no identifying numbers or letters attached to the structure/home but the structure/home is located on the property of 12215 Valley Avenue East, Sumner Washington.

By: Donald Gill

Detective Donald Gill, Puyallup Police Dept.

SUBSCRIBED AND SWORN to before me this 28th day of June, 2004.

Lisa Worswick
JUDGE

5. Photographs, in particular, photographs of co-conspirators, of assets, and/or of controlled substances and manufacturing equipment, in particular METHAMPHETAMINE.

6. Narcotics paraphernalia, including materials for packaging, and weighing METHAMPHETAMINE, including, but not limited to, scales, baggies, and heat sealers.

7. Indicia of occupancy of the residence described in the Search Warrant, including, but not limited to, utility and telephone bills, canceled envelopes, and keys.

8. U.S. Currency.

9. Digital pagers and electronic personal directories used for the distribution of controlled substances, in particular METHAMPHETAMINE.

10. Glassware, chemicals, solvents, and other equipment used for the manufacture of controlled substances, in particular METHAMPHETAMINE.

The above items are material to the investigation or prosecution of the above described felony for the following reasons: All of the above items are evidence of an attempt, or of a conspiracy to commit an offense under the Uniform Controlled Substances Act, R.C.W. 69.50, in violation of R.C.W. 69.50.401. The items are also evidence of the possession, sale, and/or distribution of controlled substances, specifically METHAMPHETAMINE and are an offense under the Uniform Controlled Substances Act.

The affiant verily believes that the above evidence is concealed in or about particular house or place to-wit:

ADDRESS/LOCATION

A brown in color, wood framed house with brown asphalt shingles. The house appears to have been refurbished for use as a storage structure. There is no front door and entry is made by large sliding wood doors locked by an outside pad lock located on the south end of the structure.

(7-1)

All windows of the structure have been boarded up and broken out. There are no identifying numbers or letters attached to the structure/home but the structure/home is located on the property of 12215 Valley Avenue East, Sumner Washington.

THEREFORE, in the name of the State of Washington, you are commanded that within 10 days from this date, with necessary and proper assistance to enter and/or search the said residence unit, person, place or thing and then and there, diligently search for said evidence, and any other, and if same, or evidence material to the investigation or prosecution of said felony or any part thereof, be found on such search, bring the same forthwith before me, to be disposed of according to law.

A copy of this warrant shall be served upon the person or persons found in or on said residence or place and if no person is found in or on said residence or place, a copy of this warrant shall be posted upon any conspicuous place in or on said residence, place, or thing, and a copy of this warrant and inventory shall be returned to the undersigned judge or his agent promptly after execution.

GIVEN UNDER MY HAND THIS TWENTY EIGHTH DAY OF JUNE, 2004.

Lisa Wosniak
SUPERIOR COURT JUDGE