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IN THE WASHINGTON STATE COURT OF APPEALS  
DIVISION TWO

State of Washington,	)	
Respondent,	)	
	)	C.O.A.# 33914-5-II
	)	STATEMENT OF ADDITIONAL
V.	)	GROUND RAP 10.10
	)	
	)	
James L. Dyches,	)	
Petitioner.	)	

Comes Now, James L. Dyches, Petitioner, pro-se, in the above captioned cause number seeks review of his STATEMENT OF ADDITIONAL GROUNDS under RAP 10.10.

I. ISSUES PRESENTED FOR REVIEW:

GROUND ONE

- 1). WHETHER OR NOT THE PETITIONER'S SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S CONSTITUTION, WERE VIOLATED BY INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL?
  - a). Did Counsel fail to pursue Speedy Trial Violation Claim?
  - b). Did Counsel fail to Move the Court for a "Franks Hearing" to Attack the Validity of the Search Warrant?
  - c). Did Counsel fail to Object throughout the entire Trial?
  - d). Did Counsel fail to Move the Court for a Mistrial when there was Jury Misconduct?

GROUND TWO

- 2). DID COMMISSIONER SHMIDT OF THE WASHINGTON STATE COURT OF APPEALS DIVISION TWO ABUSE HIS DISCRETION WHEN HE DENIED THE PETITIONER'S PRO-SE MOTION TO SUPPLEMENT THE RECORD OF PROCEEDINGS?

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1 The petitioner's trial counsel was aware of the  
2 "Speedy Trial Violation" but he did not litigate. The  
3 record is silent to this respect. U.S. v. Mala, 7 F.3d  
4 1058 (1st Cir. 1993); Trial counsel's failure to litigate  
5 violation of speedy trial act may constitute ineffective  
6 assistance; and Brady v. Maryland, 373 U.S. 83, 10 L.Ed.  
7 2d 215, 83 S.Ct. 1194 (1963), and a motion for speedy  
8 trial, constituted ineffective assistance of counsel.

9 When counsel failed to preserve the issue of "Speedy  
10 Trail Violation" he denied the petitioner a just result  
11 for grounds on direct appeal. This was clearly ineffective  
12 of the trial counsel for not doing so. Government of Virgin  
13 Islands v. Forte, 865 F.2d 59 (3rd Cir. 1989); Trial  
14 counsel's ineffectiveness at trial by failing to preserve  
15 error, denied defendant just result on appeal, amounted  
16 to ineffective assistance of counsel.

17 b). Trial Counsel failed to move the Court for a "Franks  
18 Hearing" to attack the Validity of the Search  
19 Warrant.

20 No where on the Complaint for Search Warrant does  
21 it exclusively state that the petitioner James L. Dyches  
22 either directly sold meth to the confidential informant  
23 or indirectly sold anything to the confidential informant  
24 and that this complaint for search warrant was very mis-  
25 leading to the point of being deceptive. (See Appendix-  
26 A,2).

27 Trial counsel's failure to attack the validity caused  
irreversible damage to the entire trial. There can be  
no strategic reason for not attacking the search warrant  
when clearly the "Franks Hearing" would have at least  
given the petitioner additional grounds for a dismissal.

See: Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674,  
57 L.Ed.2d 677 (1978). The Franks hearing allows the  
defendant to attack the validity of a warrant upon a  
substantial preliminary showing that (1) the affiant(s)  
deliberately or with reckless disregard for the truth  
include a false statement in the warrant affidavits and  
(2) the false statement was material to the finding of  
probable cause. Franks, 438 U.S. at 155-56.

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1 All the statements that were included in the Complaint  
2 for Search Warrant were false and the petitioner has  
3 claimed actual innocents. If the petitioner's trial counsel  
4 would have challenged the search warrant with a "Franks"  
5 Hearing the outcome of the trial would have most  
likely been different.

6 The Court in Kimmelman v. Morrison, 477 U.S. 365,  
7 374, 91 L.Ed.2d 306, 106 S.Ct. 2574, 2582 (1986), stated  
8 that "the essence of an ineffective assistance claim is  
9 that counsel's unprofessional errors so upset the  
10 adversarial balance between defense and prosecution that  
11 the trial was rendered unfair and the verdict rendered  
12 suspect."

13 The petitioner has a right to effective assistance  
14 of counsel guaranteed by the Sixth and Fourteenth Amend-  
15 ments of the U.S. Constitution. (For any criminal proceed-  
16 ings). The petitioner, did not receive Constitutionally  
17 adequate counsel at the trial level.

18 c). Trial Counsel Failed to Object throughout the Entire  
19 Trial.

20 The petitioner does claim that in fact his trial  
21 counsel failed to object throughout the entire trial.  
22 This can be demonstrated in the following Records of Trial  
23 Proceedings (hereinafter RP) (See Appendix-B: RP.137;  
24 RP.138; RP.151; RP.175; RP.185; RP.186; RP.193; RP.196;  
25 RP.199; RP.200; RP.202; RP.203; RP.204; RP.205; RP.206;  
26 RP.207; RP.208; RP.209; RP.213-215; RP.220; RP.246; RP.257;  
27 RP.259-262; RP.221).

All of the above mentioned "RP" the trial counsel stated  
"no objection", the trial counsel's statement on RP.221:  
Im not sure the best way to do this. I have no objections  
to any of the exhibits that Mr. Trinen is going--

Under Strickland an objection is obviously not  
necessary to preserve a claim of ineffective assistance  
based on failure to object, rather, the question is  
whether, considering the entire record, the failure to  
object rendered counsel's performance both sub-standard  
and prejudicial.

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S.O.A.G.

(4)

1 Counsel's deficient performance throughout the trial  
2 and counsel's failure to state specific grounds for  
3 objections did constitute ineffective assistance of  
4 counsel.

5 See Vela v. Estelle, 708 F.2d 954 (5th Cir. 1983)  
6 Defense counsel's failure to state specific grounds for  
7 objections and preserve issue for review on direct appeal,  
8 constitutes ineffective assistance.

9 **d). Trial Counsel Failed to Move the Court for a**  
10 **Mistrial when there was Jury Misconduct.**

11 Trail Counsel was aware of one of the Jurist conduct  
12 during the coarse of the Trial, where as this Jurist had  
13 stated to one of the other Jurist that she could not help  
14 but to go by the crime scene. This remark was over heard  
15 in the elevator up to the court room, in the presence  
16 of Mr. Oliver (Counsel) and the petitioner James L. Dyches.

17 This action or in action cause irreversible prejudice  
18 to the defendant. How can a juror be un-bias and compose  
19 them self in a manner that could be construed as not  
20 doing what was asked of them? The Judge had told all of  
21 the jurors not to go by the crime scene, but the juror  
22 disobeyed the Judges statement and went a head and did  
23 go by the crime scene anyway.

24 Trial counsel was aware of this misconduct and was  
25 so confident that his client would be found not guilty  
26 that he did not move the court under his clients objection.  
27 So what happened next after his client was found guilty,  
is Mr. Oliver filed "Motion and Declaration for Order  
Authorizing the Defendant to Seek Review at Public Expense  
and Providing for Appointment of Attorney on Appeal,"  
and in this Motion under the Declaration issue 3) Juror  
misconduct, was now raised. (See Appendix-C). See  
Davidson v.U.S., 951 F.Supp. 555 (W.D.Pa. 1996); Trial  
counsel, who was aware of "juror misconduct" and failed  
to advise trial Court that "juror" had started its  
deliberation prior to the close of evidence, constitutes  
ineffective assistance of counsel.



1 to establish a "colorable need."

2 Additionally, according to Young, 70 Wn.App. 528  
3 530, 830 P.2d 399 (1993); "an indigent defendant is not  
4 required to show that an appeal has probable merit in  
5 order to be entitled to representation at the public  
6 expense and a "verbatim report transcribed." The courts  
7 rational in Giles was never construed to mean that a  
8 criminal defendant had to establish a particularized  
9 factual showing to be entitled to a record of sufficient  
10 completeness.

11 The petitioner contends that in his previous argued  
12 ground of ineffective assistance of counsel, that in fact  
13 the juror misconduct claim that without a complete record  
14 of proceedings he could not know which jurist was the  
15 one that did commit juror misconduct.

16 So therefore, abuse of discretion had actual been  
17 committed by the Commissioner Shmidt, because he was aware  
18 of the Motion/Petition that was filed and failed to  
19 recognize the importance in these "Records of Proceedings"  
20 additionally, the petitioner had wrote his defense counsel  
21 in the form of a letter and asked for the documents that  
22 were needed to adequately argue his statement of additional  
23 grounds. (See Appendix-E).

24 For the Courts convenience here is a copy of the  
25 ruling signed by Commissioner Schmidt that denied the  
26 petitioner's Motion/Petition to Supplement the Record.  
27 (See Appendix- F).

This argument about "abuse of discretion" does have  
merit and that without the complete record of proceedings  
the petitioner's Fourth Amendments to the U.S. Const-  
itution of due process were violated by the Commissioner  
actions or in actions. A rubber stamp denying the  
petitioner's request and not quoting any case law that  
is required on any ruling is purely a violation.

### III. CONCLUSION:

Petitioner's counsel was deficient and ineffective  
through his own omissions, his actions, and his inaction  
on behalf of his client. All of which lack any bearing

S.O.A.G.

1 on trial strategy. He failed to bring the State's case  
2 to meaningful adversarial testing, by failing to pursue  
3 "Speedy Trial Violation, failing to move the Court for  
4 a "Franks Hearing", by failing to "Object Throughout the  
5 Entire Trial", and failing to "Move The Court for a Mis-  
6 trial when there was Jury Misconduct," thus violating the  
petitioner's Constitutional right to effective assistance  
of trial counsel.

7 Petitioner's trial counsel, did not object to  
8 violations, even though he has complete knowledge of law.  
9 Because of this, the petitioner should not be penalized,  
who did not know the law.

10 The petitioner has shown in a number of records of  
11 proceedings and attached appendices that he in fact was  
12 not effectively represented and that the actions of his  
13 trial counsel caused a cumulative , and a domino effect  
through out the trial of violations.

14 Commissioner's Schmidt's actions also caused prejudice  
15 to the petitioner. That if not for his actions the  
16 petitioner would have been able to better argue the  
17 "juror misconduct" and because of the "abuse of discretion"  
18 the petitioner was unduly put in precarious situation  
19 by no fault of his own and the petitioner contends that  
violation of this nature has caused irreversible damage.

20 Overburdened State Courts and their inadequate  
21 analysis of fact and law, does not extinguish the  
22 petitioner's issues and their merits. These merits lay  
with facts of the case, and the record, not on baseless  
assumptions.

23 All of these above constitution violations did effect  
24 the outcome of the trial, prejudicing the petitioner.  
25 Without them the results of the trial would have been  
different.

26 /////  
27 //



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APPENDIX-A, 1

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**SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY**

STATE OF WASHINGTON,  
Plaintiff

Cause No. 04-1-044163-6

vs.

**ORDER CONTINUING TRIAL**

Jimmy Dykes  
Defendant

This motion for continuance is brought by  state  <sup>defense counsel</sup> defendant  court.  
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or  
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or  
 for administrative necessity.

Reasons: defense counsel just got case needs time to prepare & held on other matters

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

**IT IS HEREBY ORDERED** the Defendant shall be present and report to:

	DATE	TIME	COURT ROOM	ID NUMBER
<input checked="" type="checkbox"/> OMNIBUS HEARING <input type="checkbox"/> STATUS CONFERENCE HEARING SET FOR:	<u>1-20-05</u>	<u>8:30</u>	<u>CD-550</u>	<u>1308787</u>
THE CURRENT TRIAL DATE OF: <u>12-16-04</u>	IS CONTINUED TO: <u>2-17-05</u> <u>2-22-05</u> @ 8:30 am Room <u>CD-211A</u>			

Expiration date is: 1-20-05 (Defendant's presence not required) TET days remaining: 30

DONE IN OPEN COURT this 16<sup>th</sup> day of December 2003.

Present in Court - Decline to Sign  
 Defendant: [Signature] Judge: [Signature]  
 Attorney for Defendant/Bar # 23613 Prosecuting Attorney/Bar # 30928

I am fluent in the \_\_\_\_\_ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Pierce County, Washington  
Interpreter/Certified/Qualified

**SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY**

STATE OF WASHINGTON, )  
 Plaintiff )  
 vs. )  
Dyches, James Lee )  
Dyches, Jimmy )  
 Defendant )

Cause No. 04-1-04463-6

**ORDER CONTINUING TRIAL**

This motion for continuance is brought by  state  defendant  court.

on agreement of the parties pursuant to CrR 3.3(f)(1) or

is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or

for administrative necessity.

Reasons: Def. atty. new to case. New discovery to Def. atty.

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

**IT IS HEREBY ORDERED** the Defendant shall be present and report to:

	DATE	TIME	COURT ROOM	ID NUMBER
<input checked="" type="checkbox"/> OMNIBUS HEARING	<u>3/1/05</u>	<u>9:30</u>	<u>C22/SSD</u>	<u>1335291</u>
<input type="checkbox"/> STATUS CONFERENCE HEARING SET FOR:				
THE CURRENT TRIAL DATE OF: <u>2/17/05</u>	IS CONTINUED TO: <u>3/1/05 @ 8:30 am Room CDRJ 211A</u>			

Expiration date is: 4/10/05 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 17 day of Feb., 2005

Defendant doesn't waive Speedy  
 Defendant  
Jack 29984  
 Attorney for Defendant/Bar #

[Signature]  
 Judge  
[Signature]  
 Prosecuting Attorney/Bar # 30925

I am fluent in the \_\_\_\_\_ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington

Interpreter/Certified/Qualified

**SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY**

STATE OF WASHINGTON, )  
 Plaintiff )  
 vs. )  
Dyche, James L. )  
 Defendant )

Cause No. CR7D 04-1-04463-6

**ORDER CONTINUING TRIAL**

This motion for continuance is brought by  state  defendant  court.

upon agreement of the parties pursuant to CrR 3.3(f)(1) or

is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or

for administrative necessity.

Reasons:

*(State v. Campbell continuance granted)*  
*Def. counsel needs to interview the state's witnesses*  
*State working to arrange interviews need more time.*  
*Mr Dyche doesn't want continuance. Mr Oliver does*

RCW 10.48.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

**IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:**

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>3/9/05</u>	IS CONTINUED TO: <u>4/4/05 @ 8:30 am Room CR4 211A</u>			

Expiration date is: 4/4/05 (Defendant's presence not required) TFT days remaining: 39

DONE IN OPEN COURT this 9 day of Mar, 2005

Reboys signature  
 Defendant  
29984  
 Attorney for Defendant/Bar #

[Signature]  
 Judge  
30925  
 Prosecuting Attorney/Bar #

I am fluent in the \_\_\_\_\_ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
 Interpreter/Certified/Qualified  
 Pierce County, Washington

**SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY**

STATE OF WASHINGTON, )  
Plaintiff )

Cause No. 04-1-04463-6

vs. )

**ORDER CONTINUING TRIAL**

Dyches, James L. )  
Defendant )

This motion for continuance is brought by  state  defendant  court.  
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or  
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or  
 for administrative necessity.

Reasons: Defense to interview <sup>state's</sup> witnesses, file motions; state ordering school zone enforcement; supplemental witnesses to be subject.

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

**IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:**

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input checked="" type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>4-4-05</u>	IS CONTINUED TO: <u>5-24-05</u> @ 8:30 am Room <u>COPJ</u>			

Expiration date is: \_\_\_\_\_ (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 4 day of April, 2005.

Refuses to waive Speedy  
Defendant  
JAC 29984  
Attorney for Defendant/Bar #

TB. Chulutt  
Judge  
[Signature]  
Prosecuting Attorney/Bar # 30925

I am fluent in the \_\_\_\_\_ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Pierce County, Washington  
Interpreter/Certified/Qualified

1           like, and State's agreed to let it trail and it can run  
2           concurrent and he's not looking at going to jail for a  
3           longer period of time, so explain it to him Mr. Oliver.

4                   MR. OLIVER: I think that's an appropriate  
5           summary, Your Honor. Let's see if I can do it justice  
6           here. Okay, Your Honor, here's what I've done.

7                   THE COURT: Let's do it by cause number so  
8           the record will show what we're doing.

9                   MR. OLIVER: Absolutely, Your Honor. On  
10          cause 04-1-04463-6, which is the trial that Mr. Trinen  
11          and I were about to begin.

12                  THE COURT: Unlawful manufacturing of  
13          controlled substance.

14                  MR. OLIVER: That's correct, Your Honor.  
15          Mr. Dyches has refused signature, but he's in court  
16          here for the discussion regarding the court date. And  
17          you know I think I've made a record that he wants to  
18          move this thing forward, so I'll be handing that order  
19          continuing trial up.

20                  On the 03-1-06138-9 cause number, Mr. Dyches has  
21          signed off on the order continuing trial.

22                  THE COURT: He signed a waiver, too?

23                  MR. OLIVER: Well, he signed an order  
24          continuing trial. I can understand that--

25                  THE COURT: Use the form. You should have

1           a waiver of speedy trial form here and be applicable to  
2           that cause number.

3                     MR. OLIVER: Thank you, Your Honor. Looks  
4           like Mr. Trinen is going to grab a copy for me.

5                     MR. TRINEN: I can't figure out, because he  
6           missed his first arraignment date apparently a bench  
7           warrant issued-- here it is.

8                     THE COURT: Is this your signature on this  
9           waiver in this cause number, 03-1-06138-9, Mr. Dyches?  
10           That's the one that's-- what are you charged with  
11           there?

12                     MR. OLIVER: That's the elude case, Your  
13           Honor.

14                     THE COURT: Is that your signature on that  
15           waiver?

16                     THE DEFENDANT: Yes, sir.

17                     THE COURT: And you understand what you're  
18           doing and so on?

19                     THE DEFENDANT: Yes.

20                     THE COURT: Now I need two continuance  
21           orders, I think.

22                     MR. OLIVER: That's right.

23                     THE COURT: I've signed the orders.

24                             -Court adjourned-

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APPENDIX-A, 2

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**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 reliably 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 F. Gill

Detective Donald Gill, Puyallup Police Dept.

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

Lisa Warwick  
JUDGE

(19)



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 Wassurich  
SUPERIOR COURT JUDGE

\*\*\*\*\*

APPENDIX-B

\*\*\*\*\*

1 A. Yes. 4584.

2 Q. Showing you what's been marked as Plaintiff's  
3 Exhibit Number 81, do you recognize that?

4 A. That's Sample Set B.

5 Q. And when you look at those, I see that there's tape  
6 and markings on there. What is the tape for?

7 A. The red tape is stuff we put on indicating that it  
8 hasn't been tampered with. In this case, this one  
9 has been, I would assume by lab personnel that have  
10 removed the contents, tested it, put it back, and  
11 then resealed it with their tape.

12 Q. Okay. And so if you look at Sample Set B here has  
13 the tape, doesn't show any signs of having been  
14 opened?

15 A. No, looks like it's secure.

16 MR. TRINEN: I'm going to move to publish  
17 this to the jury and to admit.

18 MR. OLIVER: No objection.

19 MR. TRINEN: And I'm going to make the  
20 same motion with regard to Plaintiff's Exhibit  
21 number 80, 80 and 81, Your Honor.

22 MR. OLIVER: No objection, Your Honor.

23 THE COURT: I'll admit 80 and 81, and  
24 they may be published to the jury.

25 (Exhibits No. 80 and 81 admitted.)

1 BY MR. TRINEN:

2 Q. I'm just going to show this one to you because it  
3 does contain some stuff. This is 81, and the  
4 evidence tape is unbroken. So hold this up so they  
5 can see it. There's red evidence tape. Is that  
6 connected here?

7 A. No, that's -- that's obviously been breached.

8 Q. And has it subsequently been resealed?

9 A. Resealed, correct. That's not blue tape. We don't  
10 use --

11 Q. Do you know who does use blue tape?

12 A. I'm going to assume that's the State Patrol Lab.

13 Q. But you're not certain?

14 A. Not certain.

15 Q. Thank you. Just to make sure we're clear on this.  
16 Were you the person that put the property into  
17 evidence?

18 A. Yes, sir.

19 Q. Do you put any marks on the property when you do  
20 that, or was it already bagged and sealed?

21 A. The writing on the can's mine. The A and the B, I  
22 didn't write on there. But the rest of the writing  
23 there is mine.

24 Q. So I'm showing you what's been marked as Plaintiff's  
25 Exhibit Number 71. Do you recognize that?

1 AUGUST 11, 2005

2 MORNING SESSION

3 \* \* \* \* \*

4  
5 (The following proceedings were held  
6 out of the presence of the jury.)  
7

8 THE COURT: Is there anything we need to  
9 take up before we bring in the jury?

10 MR. TRINEN: Just real quickly. I've got  
11 a copy, it's a photocopy, small sheet of the diagram  
12 I was using with Detective Gill yesterday. It's  
13 been marked as Plaintiff's Exhibit Number 86, and  
14 I'm just asking to admit it for illustrative  
15 purposes so there's a copy of the diagram in the  
16 record.

17 MR. OLIVER: No objection, Your Honor.

18 THE COURT: Okay. We'll admit 86.

19 (Exhibit No. 86 admitted.)  
20

21 MR. TRINEN: Other than that, Mr. Jungers  
22 is here, and we're ready to proceed.

23 MR. OLIVER: That's correct, Your Honor.

24 THE COURT: Okay. Let's bring in the  
25 jury.

1 Q. So you don't know one way or the other?

2 A. As --

3 Q. Like, after you gave notice to Mr. Gaspar that he  
4 needed to move?

5 A. I gave notice to him that morning, and it was that  
6 evening that the police had been there, so there  
7 wasn't --

8 MR. TRINEN: Nothing further, Your Honor.

9 MR. OLIVER: Nothing further, Your Honor.

10 THE COURT: You're free to go.

11 THE WITNESS: Have a good day.

12 MR. TRINEN: And Your Honor, I would ask  
13 that we mark this as Plaintiff's Exhibit -- this  
14 would be Plaintiff's Exhibit Number 87, and I'm  
15 going to add Mr. Jungers' initials and date to the  
16 top.

17 Your Honor, Detective Gill is here, and we  
18 can proceed with his cross-examination.

19 THE COURT: You may re-take the stand.  
20 You've previously been sworn.

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Mr. Oliver, you may conduct  
23 your cross-examination.

24 MR. OLIVER: Thank you, Your Honor.

25 /////

1 Q. At this location?

2 A. At the shop?

3 Q. Yeah.

4 A. No. I don't believe anything else has occurred  
5 there since we've been down. Nothing I got any  
6 information on, no.

7 MR. OLIVER: Thank you.

8 THE COURT: Redirect.  
9

10 REDIRECT EXAMINATION

11 BY MR. TRINEN:

12 Q. You talked about the fact that you did not get into  
13 the vehicles in the garage or in the shed, coop?

14 A. Right.

15 Q. Why didn't you do that?

16 A. What we were looking for was already there.  
17 Sometimes the shop, vehicles inside there, I might  
18 have needed a warrant.

19 Q. Did you have a warrant for --

20 A. Not for the vehicles, no, I didn't.

21 MR. TRINEN: Nothing further, Your Honor.

22 MR. OLIVER: Nothing, Your Honor.

23 THE COURT: May this witness be excused?

24 MR. TRINEN: Subject to recall, please,  
25 Your Honor.

1 THE COURT: Okay. You may step down,  
2 subject to recall.

3 THE WITNESS: Okay.

4 MR. TRINEN: The State's witness would be  
5 Detective Pigman, Your Honor.

6 THE COURT: Okay.

7 MR. TRINEN: Your Honor, I need to ask  
8 for a recess after all.

9 THE COURT: Okay. Ladies and gentlemen  
10 of the jury, we're going to take a brief morning  
11 recess. Please remember not to discuss anything  
12 about this case, and do not allow anyone to discuss  
13 it in your presence. You may adjourn to the jury  
14 room.

15 (The following proceedings were held  
16 out of the presence of the jury.)

17  
18 MR. TRINEN: Your Honor, I had forgotten.  
19 Detective Pigman had requested that he have a chance  
20 to look over the photos before we get going. These  
21 are the originals. He doesn't have access to any.  
22 Mr. Oliver has no objection. He needs to take care  
23 of something downstairs, but I want to let you know  
24 what we're doing.

25 THE COURT: So you'll let me know when

1 illustrative purposes only.

2 MR. OLIVER: No objection, Your Honor.

3 THE COURT: I'll admit 88.

4 (Exhibit No. 88 admitted.)

5

6 BY MR. TRINEN:

7 Q. And then can you explain what you've drawn there?

8 A. This is the overall building. This was an entry  
9 door here that led into the garage. As I recall,  
10 there was a window here and here. I'm not sure  
11 about the back side. The windows were also covered  
12 up. (Indicating.)

13 Q. Okay.

14 A. And then this was the entry into the living area.  
15 The garage was bigger than the living area.  
16 (Indicating.)

17 Q. Okay. And so when you entered, what did you  
18 observe?

19 A. As I entered here, there was all kinds of machinery,  
20 tools. There was a vehicle, a truck, parked right  
21 in here, just a bunch of junk laying all over. It  
22 was mainly on this side, a bunch of junk.

23 Q. And then what was the lighting like in there?

24 A. It was pretty poor.

25 Q. Okay. Could you see without external or without

1           what's been marked as Plaintiff's Exhibit Number 9.

2           Do you recognize that?

3   A.    Yes, sir.

4   Q.    What is that?

5   A.    It's a foot locker, wooden foot locker.

6   Q.    And why was a photo taken of that?

7   A.    Based on the contents.

8   Q.    And what about the contents?

9   A.    They all appeared to be at some point associated  
10       with a meth lab.

11   Q.    Okay.  And does that accurately depict the scene at  
12       the time, other than it looks like you've got an  
13       item number near a glove in there?

14   A.    Yes.  I can tell you that's my hand and glove.  
15       That's my flashlight.  Has my number on it.

16                   MR. TRINEN:  At this time, Your Honor, I  
17       move to admit and publish to the jury Plaintiff's  
18       Exhibit Number 9.

19                   MR. OLIVER:  No objection, Your Honor.

20                   THE COURT:  Nine may be admitted.  You  
21       may publish.

22                   (Exhibit No. 9 admitted.)

23

24   BY MR. TRINEN:

25   Q.    Can you just show the jury -- do you know

1           that?

2    A.    Yes.

3    Q.    Please do so, then.

4    A.    That item was found in the foot locker on the left  
5           side compartment as you would face it.

6    Q.    Was that the same foot locker that was observed in  
7           the last photo or different one?

8    A.    Yes, the same one.

9    Q.    And this photo, does this accurately depict what you  
10           were observing there?

11   A.    Yes.

12                   MR. TRINEN:  So, at this time, Your  
13                   Honor, I move to admit and publish Plaintiff's  
14                   Exhibit Number 10.

15                   MR. OLIVER:  No objection, Your Honor.

16                   THE COURT:  Number 10 will be admitted.  
17                   It may be published.

18                   MR. TRINEN:  When you folks are done with  
19                   those, I'll send it around and take it over.

20                   (Exhibit No. 10 admitted.)

21

22  BY MR. TRINEN:

23  Q.    What's the significance of that?

24  A.    Toluene is used in the washing phase of the cooking  
25           process.  It's substituted.  It's a substitute for

1 ether. A lot of people use this. Ether is hard to  
2 come by, so they use it instead.

3 Q. Okay. Thank you. With something like a can of  
4 toluene, what do you do with that after you've  
5 identified it as an evidence item?

6 A. I hand carry it out to the processing location, and  
7 the processors would then do their testing. They  
8 would test it and fingerprint it.

9 Q. Was that toluene entered into evidence in the  
10 property room?

11 A. No. Due to its hazardous nature, they would take  
12 samples or may have taken samples, and then the can  
13 was destroyed.

14 Q. Okay. I'm showing you what's been marked as  
15 Plaintiff's Exhibit Number 11. Do you recognize  
16 that?

17 A. It's a container of Red Devil lye.

18 Q. And does that photo accurately depict what you found  
19 at the scene?

20 A. Yes, sir.

21 Q. And what's the significance -- actually, at this  
22 point, I'll move to admit and publish the photo to  
23 the jury, Your Honor.

24 MR. OLIVER: No objection.

25 THE COURT: I'll admit Exhibit 11. It

1 Q. Okay. And does that accurately depict it as you  
2 observed it?

3 A. Yes, sir.

4 MR. TRINEN: Move to admit and publish  
5 Plaintiff's Exhibit Number 12, Your Honor.

6 MR. OLIVER: No objection, Your Honor.

7 THE COURT: I'll admit 12, and it may be  
8 published.

9 (Exhibit No. 12 admitted.)

10

11 BY MR. TRINEN:

12 Q. What was the significance of the rock salt?

13 A. Rock salt is used in the gassing phase. You have to  
14 make what's called an HCL generator. In doing so,  
15 you use a pressurized container like a bug sprayer.  
16 You would put rock salt in there, and then you would  
17 put sulfuric acid, which can be substituted by  
18 muriatic acid, and it forms an HC, hydrochloride,  
19 hydrogen chloride gas generator. That's in the  
20 final stage of the cook.

21 Q. Thank you. I'm showing you what's been marked as  
22 Plaintiff's Exhibit Number 13, and do you recognize  
23 that?

24 A. Yes, sir. I do.

25 Q. What is that?

1 A. It's a glass jar.

2 Q. And does that photo accurately depict it as you  
3 found it?

4 A. Yes, sir.

5 Q. Now, with all of these photos, I see the individual  
6 items sitting out by themselves. Have you pulled  
7 them out of the box?

8 A. Yes, sir, I have. They were photographed in the  
9 box, and then, one by one, they're pulled out of the  
10 box.

11 Q. And what was the significance of the jar?

12 A. At this point, the jar was empty. Glass jars are  
13 commonly used as containers to do the  
14 methamphetamine cook and being associated with these  
15 other items. That was the only significance that I  
16 saw.

17 MR. TRINEN: Move to admit and publish  
18 Plaintiff's Exhibit Number 13.

19 MR. OLIVER: No objection, Your Honor.

20 THE COURT: I'll admit 13. It may be  
21 published.

22 (Exhibit No. 13 admitted.)

23

24 BY MR. TRINEN:

25 Q. I'm showing you Plaintiff's Exhibit Number 14. Do

1           you recognize that?

2    A.    Yes, sir, I do.

3    Q.    What is that?

4    A.    It's a Vlastic pickle jar, no lid on it.

5    Q.    And does that photo accurately depict it as you  
6           found it?

7    A.    No. This picture is taken outside. This is a  
8           picture that was probably taken by the processors or  
9           once they processed it, maybe for fingerprints.  
10           It's not inside.

11   Q.    Does the picture accurately depict the jar?

12   A.    Yes, it does.

13   Q.    Okay. And again, what was the significance of that?

14   A.    Again, glass jar used in the process of  
15           manufacturing methamphetamine. That one, I believe,  
16           is empty. It was used as a container and being  
17           associated with the other items. It was taken for  
18           processing of the fingerprints.

19                   MR. TRINEN: Thank you. Move to admit  
20                   and publish Plaintiff's Exhibit Number 14, Your  
21                   Honor.

22                   MR. OLIVER: No objection.

23                   THE COURT: I'll admit 14. It may be  
24                   published.

25                   (Exhibit No. 14 admitted.)

1 BY MR. TRINEN:

2 Q. Now, the items that we just went through, which I  
3 believe were your Item Numbers 3, 4, 5, 6 -- wait.  
4 Let's keep going. Here we are. Plaintiff's Exhibit  
5 Number 15. You recognize that?

6 A. Yes, sir, I do.

7 Q. What is that?

8 A. It's a plastic bag containing coffee filters.

9 Q. And does that photo accurately depict the filters?

10 A. Yes, sir. Yes.

11 Q. And what's the significance of that?

12 A. Coffee filters are used as filters for screening out  
13 the impurities or various liquids.

14 MR. TRINEN: At this time, move to admit  
15 and publish Plaintiff's Exhibit Number 15, Your  
16 Honor.

17 THE COURT: Any objection to 15?

18 MR. OLIVER: I'm sorry. No objection,  
19 Your Honor.

20 THE COURT: I'll admit 15. It may be  
21 published.

22 (Exhibit No. 15 admitted.)

23

24 BY MR. TRINEN:

25 Q. Showing you what's been marked as Plaintiff's

1 Exhibit Number 16. Do you recognize that?

2 A. Yes, sir. I do.

3 Q. And what is that?

4 A. It's a rubber funnel, a suction funnel.

5 Q. And what's the significance of that?

6 A. When you're manufacturing methamphetamine, there's a  
7 lot of times where you're working with bi- and  
8 trilayer liquids and you want to obtain a certain  
9 liquid out of that jar. So, you're taking this  
10 suction funnel and syphoning the liquid, the desired  
11 liquid that you want, out of it and putting it into  
12 another container for a different process.

13 MR. TRINEN: I'm going to move to admit  
14 and publish this to the jury.

15 MR. OLIVER: No objection, Your Honor.

16 THE COURT: I'll admit 16. It may be  
17 published.

18 (Exhibit No. 16 admitted.)

19

20 BY MR. TRINEN:

21 Q. I'm going to show you Plaintiff's Exhibit Number 17.

22 Do you recognize that?

23 A. Yes, sir, I do.

24 Q. What is that?

25 A. It's a gallon jug of Clean Strip muriatic acid.

1 Q. And does that photo accurately depict the jug?

2 A. Yes, it does.

3 Q. And what's the significance of that?

4 Before I do that, move to admit and publish,  
5 Your Honor.

6 MR. OLIVER: No objection, Your Honor.

7 THE COURT: I'll admit Number 17. It may  
8 be published to the jury.

9 (Exhibit No. 17 admitted.)

10

11 THE WITNESS: As I explained before, when  
12 you're in the gassing off stage and you're putting  
13 the rock salt in a pressurized container like a bug  
14 sprayer, sulfuric acid is added, which is drain  
15 cleaner. This can be substituted for that, and they  
16 use this instead of the sulfuric acid drain cleaner.

17 BY MR. TRINEN:

18 Q. Thank you. Showing you what's been marked as  
19 Plaintiff's Exhibit Number 18. Do you recognize  
20 that?

21 A. Yes, sir, I do.

22 Q. What is that?

23 A. It's a Kerr mason jar, glass mason jar.

24 Q. Does that photo accurately depict it?

25 A. Yes, it does.

1 Q. What's the significance of that jar?

2 A. Again, it was found with the other items associated  
3 with the methamphetamine lab.

4 Q. Did it contain anything?

5 A. It did. It contained a yellowish liquid.

6 MR. TRINEN: Move to admit and publish to  
7 the jury, Your Honor.

8 MR. OLIVER: No objection, Your Honor.

9 THE COURT: I'll admit Number 18. It may  
10 be published.

11 (Exhibit No. 18 admitted.)

12

13 BY MR. TRINEN:

14 Q. Showing you what's been marked as Plaintiff's  
15 Exhibit Number 19. Do you recognize that?

16 A. Yes, sir, I do.

17 Q. What is that?

18 A. It's a filterized gas mask.

19 Q. And does the photo accurately depict that?

20 A. Yes, sir, it does.

21 Q. What's the significance of that?

22 A. When you're dealing with meth labs, there's very  
23 toxic chemicals associated with that. We wear masks  
24 when we're processing it, and I imagine the guys  
25 cooking do the same.

1 Q. So was that one of your masks?

2 A. No, it wasn't.

3 Q. Is that an item that you found there?

4 A. Yes.

5 MR. TRINEN: Move to admit and publish  
6 Number 19, Your Honor.

7 MR. OLIVER: No objection.

8 THE COURT: Nineteen will be admitted and  
9 it may be published.

10 (Exhibit No. 19 admitted.)

11

12 BY MR. TRINEN:

13 Q. So showing you what's been marked as Plaintiff's  
14 Exhibit Number 20, do you recognize that?

15 A. Yes, sir, I do.

16 Q. What is that?

17 A. It's a red plastic funnel that looks like the top  
18 was cut off of it.

19 Q. And does that photo accurately depict it?

20 A. Yes, it does.

21 Q. What's the significance of that?

22 A. Funnels are used to pour one liquid into another  
23 container from one to another.

24 MR. TRINEN: Move to admit and publish to  
25 the jury, Your Honor, Number 20.

1 the jury.

2 BY MR. TRINEN:

3 Q. So, I'm showing you what's been marked as  
4 Plaintiff's Exhibit Number 23. Do you recognize  
5 that?

6 A. Yes, sir, I do.

7 Q. And what is that?

8 A. It's a can of Clean Strip acetone.

9 Q. And does that picture accurately depict it?

10 A. Yes, sir, it does.

11 MR. TRINEN: Move at this time to admit  
12 and publish to the jury, Your Honor.

13 MR. OLIVER: No objection, Your Honor.

14 THE COURT: I'll admit Exhibit 23, and it  
15 may be published.

16 (Exhibit No. 23 admitted.)

17

18 BY MR. TRINEN:

19 Q. And what's the significance of the acetone?

20 A. Acetone is used in the very final phase of cleaning  
21 up the meth after it's been gassed off.

22 Q. Showing you what's been marked as Plaintiff's  
23 Exhibit Number 24, do you recognize that?

24 A. Yes, sir.

25 Q. And what is that?

1 A. It's a pill bottle.  
2 Q. And does that picture accurately depict it?  
3 A. Yes, sir.  
4 Q. And what's the significance of that?  
5 A. Can I refer to my notes?  
6 Q. Absolutely. Just let us know when you're doing  
7 that.  
8 A. Sure.  
9 Q. That's great.  
10 A. That's an L & K International brand pseudoephedrine  
11 tablets, cold tablets.  
12 Q. What's the significant of that?  
13 A. Cold tablets are the main ingredient for  
14 manufacturing meth.  
15 Q. Is it any kind of cold tablets or do they need  
16 specific components?  
17 A. They have to contain pseudoephedrine or ephedrine.

18 MR. TRINEN: Thank you. Move to admit  
19 and publish to the jury.

20 MR. OLIVER: No objection, Your Honor.

21 THE COURT: Twenty-four may be admitted,  
22 and it may be published.

23 (Exhibit No. 24 admitted.)

24 /////

25 /////

1 BY MR. TRINEN:

2 Q. Showing you what's been marked as Plaintiff's  
3 Exhibit Number 25. Do you recognize that?

4 A. I'd have to refer to my notes on that. I believe  
5 it's a funnel, but I'd have to make sure.

6 Q. Okay. Would you refer to your notes, then, if that  
7 would help you?

8 A. Yes. That's what it is: A plastic funnel with the  
9 end of it cut off.

10 Q. Okay. And does that picture accurately depict it?

11 A. Yes, sir, it does.

12 Q. What's the significance of that?

13 A. Again, that -- funnels are used to transfer liquid  
14 from one container to another. Why the end was cut  
15 off, I'm not sure.

16 MR. TRINEN: Move to admit and publish to  
17 the jury, Your Honor.

18 MR. OLIVER: No objection.

19 MR. TRINEN: Number 25.

20 THE COURT: I'll admit 25, and it may be  
21 published.

22 (Exhibit No. 25 admitted.)

23

24 BY MR. TRINEN:

25 Q. I'm showing you what's been marked as Plaintiff's

1 A. (Witness complying.)

2 MR. TRINEN: Thank you. Go ahead and  
3 have a seat again. At this time, I move to admit  
4 and publish Exhibit Number 28, Your Honor.

5 MR. OLIVER: No objection, Your Honor.

6 THE COURT: I'll admit 28. It may be  
7 published.

8 (Exhibit No. 28 admitted.)

9

10 BY MR. TRINEN:

11 Q. Showing you what's been marked Plaintiff's Exhibit  
12 Number 29, do you recognize that?

13 A. Yes, sir.

14 Q. What is that?

15 A. This is one of the items that was in the cardboard  
16 box. It's a glass jug, I believe, to be used as an  
17 HCL generator.

18 Q. Does that accurately depict that item?

19 A. Yes.

20 MR. TRINEN: Move to admit and publish  
21 Plaintiff's Exhibit Number 29, Your Honor.

22 MR. OLIVER: No objection, Your Honor.

23 THE COURT: I'll admit 29.

24 (Exhibit No. 29 admitted.)

25

1 just another diagram of the room, and --

2 A. (Witness complying.)

3 Q. That's good enough --

4 A. Okay.

5 Q. -- I think, for now. Can you point to the jury,  
6 show them where 49 -- well, first of all, does that  
7 accurately depict the scene at the time?

8 A. Yes, sir, it does.

9 MR. TRINEN: At this time, I would move  
10 to admit and publish to the jury, Your Honor.

11 MR. OLIVER: Is this still part of the  
12 set that we agreed to?

13 THE COURT: No. This is 64.

14 MR. OLIVER: No objection, then.

15 THE COURT: I'll admit 64.

16 (Exhibit Number 64 admitted.)

17

18 BY MR. TRINEN:

19 Q. So, can you hold that up for the jury so they can  
20 see it?

21 A. (Witness complying.)

22 Q. And what is that again?

23 A. This is a drawer containing some stereo equipment  
24 here, speaker, and black leather purse.

25 Q. And can you just mark up there on the chart

1 observed that?

2 A. Like the seat was here, and the foot locker --

3 (Indicating.)

4 Q. Okay. Does that photo accurately depict that?

5 A. Yes, it does.

6 MR. TRINEN: At this time, Your Honor,  
7 I'd move to admit and publish Plaintiff's Exhibit  
8 Number 67.

9 MR. OLIVER: No objection, Your Honor.

10 THE COURT: Sixty-seven will be admitted.

11 (Exhibit Number 67 admitted.)

12

13 BY MR. TRINEN:

14 Q. Now I'm showing you what's been marked as  
15 Plaintiff's Exhibit Number 77. Do you recognize  
16 that?

17 A. That's the plastic bag containing the gel caps.

18 Q. Is there an item number on there?

19 A. It's Item Number 52.

20 MR. TRINEN: Okay. Thank you. Move to  
21 admit Plaintiff's Exhibit Number 77, Your Honor.

22 MR. OLIVER: No objection, Your Honor.

23 THE COURT: Seventy-seven will be  
24 admitted.

25 (Exhibit Number 77 admitted.)

1 BY MR. TRINEN:

2 Q. I'm showing you what's been marked Plaintiff's  
3 Exhibit Number 68, which contains Item Number 53.

4 Do you recognize that?

5 A. Yes, sir, I do.

6 Q. And what is that?

7 A. It's a small Ziplock baggy containing a brownish  
8 powdery substance.

9 Q. And where did you find that?

10 A. It was in the armrest of the seat. If you're  
11 sitting in the seat, it would have been on the  
12 right-hand side.

13 Q. Does that photo accurately depict the baggy that you  
14 found?

15 A. Yes, sir, it does.

16 MR. TRINEN: I would move to admit  
17 Plaintiff's Exhibit Number 68 and publish to the  
18 jury, Your Honor.

19 MR. OLIVER: No objection.

20 THE COURT: Sixty-eight will be admitted.

21 (Exhibit Number 68 admitted.)

22

23 BY MR. TRINEN:

24 Q. Can you mark on the chart for the jury where the  
25 chair was and the car seat's arm?

1 A. You can snort it; you can eat it; you can inject it  
2 with a syringe. Any way you can get it in the blood  
3 stream, that will do it.

4 Q. Showing you what's been marked as Plaintiff's  
5 Exhibit Number 76. Do you recognize that?

6 A. I'm going to have to refer to my notes to --

7 Q. Please do so.

8 A. This is a plastic bag containing a brown, powdery  
9 substance that was found inside Item 49, the purse.

10 Q. So this is the one that I indicated earlier tested  
11 for caffeine?

12 A. Yes.

13 Q. Would you just put a 51 up there, also, just so  
14 there's -- it's there for the jury?

15 A. (Witness complying.)

16 MR. TRINEN: So I'm going to move to  
17 admit Plaintiff's Exhibit Number 76, Your Honor.

18 THE WITNESS: Fifty-one.

19 MR. TRINEN: Yeah, fifty-one.

20 MR. OLIVER: No objection.

21 THE COURT: Seventy-six will be admitted.

22 (Exhibit Number 76 admitted.)

23

24 BY MR. TRINEN:

25 Q. Now I'm showing you what's been marked as

1 Plaintiff's Exhibit Number 78. Do you recognize  
2 that?

3 A. This is the brown, powder substance contained in a  
4 plastic Ziplock baggy.

5 Q. And what's the item number on that?

6 A. Fifty-three.

7 Q. So is that the baggy that you found in the arm of  
8 the chair?

9 A. Yes, sir, it is.

10 MR. TRINEN: At this time, Your Honor,  
11 move to admit Plaintiff's Exhibit Number 78.

12 MR. OLIVER: No objections, Your Honor.

13 THE COURT: Seventy-eight will be  
14 admitted.

15 (Exhibit Number 78 admitted.)

16  
17 BY MR. TRINEN:

18 Q. Now, I'm going to go back to a couple things we  
19 talked about earlier real quick. This is  
20 Plaintiff's Exhibit Number 61, which was previously  
21 admitted and shows Item Number 48. And again,  
22 what's in that photo?

23 A. It's a package containing five pseudoephedrine  
24 tablets.

25 Q. Okay. And I'm handing you Plaintiff's Exhibit

1 Number 74. Do you recognize that?

2 A. Yes, I do. The number match -- it is 48 with this.

3 Q. Is that the blister pack that was in this photo?

4 A. Yes, sir, it is.

5 MR. TRINEN: At this time, I move to  
6 admit Plaintiff's Exhibit Number 74.

7 MR. OLIVER: No objection, Your Honor.

8 THE COURT: Why did I write down 61?

9 MR. TRINEN: Oh, 61 is the photograph.

10 THE COURT: Okay. So 74. I'll admit 74.

11 (Exhibit Number 74 admitted.)

12

13 BY MR. TRINEN:

14 Q. And I'm showing you two photos, Plaintiff's Exhibits  
15 Number 62 and Plaintiff's Exhibit Number 43, both of  
16 those which depict Item Number 34. Do you recognize  
17 that?

18 A. Yes, sir, I do.

19 Q. Okay. Now I'm handing you what's been marked as  
20 Plaintiff's Exhibit Number 73. Do you recognize  
21 that?

22 A. Yes, sir, I do.

23 Q. Okay. And what is that?

24 A. This is Item 34.

25 Q. So is that the same item depicted in these two

1 photos?

2 A. Yes. This one is depicted coming out of the  
3 backpack, and this one is on the processing table  
4 where you can see the fingerprints and pH test and  
5 field test.

6 MR. TRINEN: Thank you. At this time,  
7 Your Honor, State moves to admit Plaintiff's Exhibit  
8 Number 73.

9 MR. OLIVER: No objection, Your Honor.

10 THE COURT: Seventy-three will be  
11 admitted.

12 (Exhibit Number 73 admitted.)

13  
14 BY MR. TRINEN:

15 Q. Just to make sure there's no confusion, these last  
16 two items that I put into tangible objects, the  
17 blister pack and the mason jar, those actually came  
18 from down here, correct? (Indicating.)

19 A. Yes, sir.

20 Q. Showing you what have previously been marked as  
21 Plaintiff's Exhibits 83 and 81. Do you recognize  
22 those?

23 A. I recognize cans like this. This is what we put our  
24 samples in. If we're taking samples of a liquid, we  
25 take two samples. There would be one Sample A, one

1 MR. OLIVER: I don't mean to interrupt,  
2 Mr. Trinen, but maybe we could --

3 MR. TRINEN: Speed things up.

4 MR. OLIVER: I don't mean to rush you,  
5 but there might be a way to expedite this, if we can  
6 take a couple of minutes, I'm sure. I'm not going  
7 to object to these things unless something comes out  
8 of left field, and it might kind of speed things up.

9 THE COURT: Well, yes, you can take a  
10 moment. Do you need me to excuse the jury?

11 MR. OLIVER: I don't think so.

12 THE COURT: Okay.

13 MR. OLIVER: I'm not sure the best way to  
14 do this. I have no objections to any of the  
15 exhibits that Mr. Trinen is going to --

16 MR. TRINEN: I'll read off the numbers,  
17 Your Honor. Number 30, 31, 32, 33, 34, 35, 36, 37,  
18 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50,  
19 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63.

20 THE COURT: Whereas Exhibits 30 through  
21 63 have been offered by Mr. Trinen and have not been  
22 objected to by the defense, I'm going to admit  
23 Exhibits 30 through 63, and I will allow them to be  
24 published to the jury as the prosecutor may wish.

25 MR. TRINEN: Thank you, Mr. Oliver. That

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STATE OF WASHINGTON --  
COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 JAMES L. DYCHES )  
 )  
 Petitioner. )

No: 33914-5-II

**CERTIFICATE OF SERVICE**

I, JAMES L. DYCHES, Petitioner in the above entitled cause, under the penalty of perjury, do hereby certify that on the date noted below, I sent copies of:

- (1) CERTIFICATE OF SERVICE BY U.S. MAIL
- (2) STATEMENT OF ADDITIONAL GROUNDS RAP 10.10

To: WASHINGTON STATE COURT OF  
APPEALS DIVISION TWO  
950 BROADWAY, SUITE 300  
TACOMA, WA. 98402-4454

KATHLEEN PROCTOR  
PIERCE CO. DEPUTY PROS. ATTY.  
930 TACOMA AVE. S., RM. 946  
TACOMA, WA. 98402-2171

By processing as *Legal Mail*, with first-class postage affixed thereto, at the Airway Heights Correction Center, P.O. Box 1809, Airway Heights, WA 99001-1809.

Dated this 27 day of NOVEMBER, 2006.

Respectfully Submitted,

James L. Dyches  
Petitioner

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