

No. 33920-0-II

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON,

Respondent,

v.

CHAD ROBERT JENSEN.,

Appellant.

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PIERCE COUNTY SUPERIOR COURT  
APPELLANT'S OPENING BRIEF  
FILED  
MAY 22 2004  
CLERK OF COURT

PIERCE COUNTY SUPERIOR COURT

CAUSE NO. 04-1-01639-0

THE HONORABLE LINDA CJ LEE,  
and  
THE HONORABLE THOMAS J. FELNAGLE.

Presiding at the Trial Court.

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APPELLANT'S OPENING BRIEF

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## **I. ASSIGNMENTS OF ERROR**

1. The trial court was required to determine the legality of the stop, arrest, and search of Mr. Jensen and the vehicle.

2. The State failed to prove a lawful *Terry* stop occurred.

3. The State failed to prove that probable cause existed to arrest Mr. Jensen.

4. The record shows that Mr. Jensen was stopped at gunpoint not because of a missing license plate, but because Detective Jensen thought that Mr. Jensen could be involved in a property crime.

5. The information contained in the complaint for search warrant was stale.

6. The information contained in the complaint for search warrant was insufficient to establish a nexus between the alleged criminal acts and the place to be searched.

7. The information contained in the complaint for search warrant fails the *Aguilar-Spinelli* test.

## **II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Was the trial court required to decide whether Mr. Jensen was lawfully stopped, arrested, and searched once the defense raised the issue?

(Assignment of Error Number One).

2. Did the State prove a lawful *investigatory stop* was conducted where the only reason for stopping Mr. Jensen's vehicle was a missing license plate? (Assignment of Error Number Two).

3. Did the State prove that probable cause existed for the warrantless arrest and search where only a traffic code violation was committed? (Assignment of Error Number Three).

4. Was the stop of Mr. Jensen, and the subsequent search, pretextual where Detective Jensen pursued him for over two and one-half (2 ½) hours based not on a traffic code violation, but on the possibility of his involvement of a property crime? (Assignment of Error Number Four).

5. Did the search warrant affidavit establish probable cause where it failed to establish that criminal activity was occurring contemporaneous to the issuance of the warrant? (Assignment of Error Number Five).

6. Did the search warrant affidavit establish probable cause where the information contained therein failed to show that Mr. Jensen had committed crimes and that evidence from those crimes could be found on his father's property? (Assignment of Error Number Six).

7. Did the search warrant affidavit establish probable cause where

neither the informants' basis of knowledge nor their credibility was demonstrated in the affidavit? (Assignment of Error Number Seven).

### **III. STATEMENT OF THE CASE**

#### **1. Procedural History**

On April 2, 2004, Defendant/Appellant, Chad Robert Jensen, was charged by Information with four counts of Possessing Stolen Property in the First Degree, in violation of RCW 9A.56.140(1) and 9A.56.150(1), and one count of Unlawful Possession of a Controlled Substance, Methamphetamine, in violation of RCW 69.50.401 (d). CP 1-5 The stolen property allegedly possessed included a 1996 Chevrolet Truck (count 1), a Caterpillar Tractor (count 2), a Commercial Tractor Trailer (count (3), and Custom Wagons(count 4). CP 1-5. The charges arose from an arrest on March 30, 2004.

A hearing pursuant to CrR 3.6 was held on July 6, 2005, before the Honorable Linda CJ Lee, wherein the defense challenged the validity of the search warrant executed on March 31, 2004. Judge Lee ruled that the search warrant was valid, and the wagons seized pursuant to such warrant was admissible. RP 2 35-40.<sup>1</sup> Findings and Conclusions on Admissibility of

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Some of the RPs are not numbered. For purposes of this brief, appellant designates the following numbers to the RPs:

Evidence were filed on December 2, 2005.<sup>2</sup>

On August 15, 2005, the case was called for trial before the Honorable Thomas J. Felnagle. Prior to trial, defense counsel moved to suppress and dismiss based on a lack of probable cause to arrest and search and Mr. Jensen. RP I 3-11. Judge Felnagle accepted the State's representation that Judge Lee had already ruled on the suppression issues(s), and that Judge Felnagle was, therefore, barred from considering the defense motion. RP I 25, 21. The case proceeded to trial by jury.

At the close of the State's case the State moved to dismiss count one, Possession of Stolen Property in the First Degree - - the 1996 Chevrolet Truck - - for lack of evidence. The motion was granted. RP III 167. Defense counsel again brought a motion to suppress and dismiss based on the lack of probable cause. RP III 174. Judge Felnagle again declined to decide the motion. RP III

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RP 1 = 06-01-05	RP I = 08-15-05
RP 2 = 07-06-05	RP II = 08-16-05
RP 3 = 10-07-05	RP III = 08-17-05
RP 4 = 11-18-05	RP IV = 08-18-05
RP 5 = 12-02-05	

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Findings and Conclusions on Admissibility of Evidence CrR 3.6 are attached as Appendix A and incorporated by reference herein. A Supplemental Designation of Clerks' Papers to include Findings and Conclusions has been filed contemporaneous with Appellant's opening brief. The Finding and Conclusions were filed after the original Designation of Clerks' Papers.

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Also at the close of the State's case, the State moved to amend the Information to combine the remaining three counts of Possessing Stolen Property in the First Degree into a single count of Possessing Stolen Property in the First Degree. RP III 158. The trial court declined to grant the State's motion to amend, and Ordered the State to proceed under the original Information. RP III 165-167.

On August 18, 2005, the jury returned verdicts of guilty on three counts of Possessing Property in the First Degree, and a verdict of not guilty on the charge of Unlawful Possession of a Controlled Substance. RP IV 240; CP 146-149.

On October 7, 2005, the Court declined to adopt defense counsel's sentencing recommendation for DOSA, and instead imposed a high end standard range sentence of fifty-seven (57) months on each count, to run concurrent. CP 290-300; RP 3 29. A timely Notice of Appeal was filed on October 13, 2005. CP 301-313.

## **2. Summary of Trial Testimony**<sup>3</sup>

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Trial testimony pertaining to the charge of Unlawful Possession of a Controlled Substance, of which Mr. Jensen was acquitted, and trial testimony pertaining to count 1, which was dismissed, is omitted from appellant's opening brief.

Pierce County Sheriff's **Detective Jay Jensen** testified that on March 30, 2004, he was in the area of Puyallup where Mr. Jensen resides with his parents. From a distance of about five hundred to seven hundred fifty(500-750) feet Detective Jensen "observed a truck pulling a trailer with a tractor on the back pulling out of the driveway of the residence..." RP II 42, 67. Detective Jensen recognized the driver of the truck as Chad Jensen. He "noticed that the front of the truck itself had no license plate on it." RP I 43. Detective Jensen proceeded to follow the truck. He followed for "roughly two and a half, three hours." RP II 77. Detective Jensen called the Washington State Patrol on his cell phone to assist. The State Patrol responded by stopping the truck and ordering Mr. Jensen out at gunpoint. RP II 79.

Detective Jensen testified that at the time of the stop he did not know the truck, the trailer, or the CAT was stolen. The stop was based on "the fact that the truck was missing a front plate which is a - - it's a moving violation..." RP II 44, 80.<sup>4</sup>

After the vehicle was stopped by the Washington State Patrol officers, Detective Jensen contacted the driver, Chad Jensen, who was the sole

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Detective Jensen also testified that he did not know the names of the WSP officers who conducted the stop. No police officers, other than Detective Jensen, were called to testify. RP II 78.

occupant. RP II 46. The driver told Detective Jensen that a man, whose name he had at home, was the owner of the bobcat. Detective Jensen then searched the pickup truck. RP II 47, 56. He found no registration or ownership documents inside the truck. RP II 57-58. At some point Detective Jensen determined ownership of the truck and the tractor by their VIN numbers. Both the tractor and the trailer were later released to Joseph Kawaky. Detective Jensen was unable to contact the registered owner of the pickup truck. RP II 58-59.

Two license plates were found; one was located inside the truck, while the other was mounted on the back of the trailer that was hooked to the truck. RP II 60. Also located inside the cab of the truck was a set of keys. RP II 61.

The following day, on March 31, 2004, Detective Jensen served a search warrant on the residence of Chad Jensen and his parents. Several wagon were found inside an adjoining "garage/workshop" building on the property. RP II 63-64. The wagons were released to Art Uchimura.

**Joseph Kawaky** testified that on March 3, 2004, he noticed that his bobcat tractor and trailer were missing, and reported them stolen to the Jefferson County Sheriffs' Department. About a month later Mr. Kawaky was contacted by Detective Jensen to identify and recover the trailer and tractor.

According to Mr. Kawaky the value of the trailer was approximately \$6,000.; the value of the bobcat tractor was about \$31,000. RP II 118-120.

**Larry McPhail** testified that he is the chairman/manager of the Monroe Swap Meet. The swap meet is held annually, in the second week of October. RP II 122. On October 11<sup>th</sup> and 12<sup>th</sup> of 2003 both Chad Jensen and Art Uchimura rented booths at the swap meet. Their booths were about thirty-five(35) feet apart from one another. RP II 123.

**Arthur Uchimura** testified that he makes custom wagons, and sells them at various fairs and swap meets. In 2003 three wagons went missing after he showed them at the Monroe Swap Meet. RP II 138. In April of 2004, Mr. Uchimura was contacted by Detective Jensen to identify and recover the wagons. Mr. Uchimura estimated the value of the wagons at between \$600. \$1,400. each. RP II 141.

#### **IV ARGUMENT**

**THE TRIAL COURT COMMITTED REVERSIBLE ERROR OF CONSTITUTIONAL MAGNITUDE WHEN IT REFUSED TO DECIDE MR. JENSEN'S MOTION TO SUPPRESS AND DISMISS, AND FAILED TO REQUIRE THE STATE TO PROVE THE ARREST WAS LAWFUL.**

##### ***Introduction***

Article 1, Section 7 of the Washington Constitution provides: "No

person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Wash. Const. Article I, Section 7.

The Fourth Amendment to the Federal Constitution provides

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.  
U.S. Const. Amend. IV.

The federal constitution provides the minimum protection against unreasonable searches and seizures; greater protection may be available under the Washington constitution. *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808(1986). Although differences are generally examined with reference to the six *Gunwall* factors, no *Gunwall* analysis is necessary where established principles of State constitutional jurisprudence apply. *State v. White*, 135 Wn.2d 761 at 769, 958 P.2d 962(1998). The Supreme Court has stated that “it is by now axiomatic that article I, section 7 provides greater protection to an individual’s right of privacy than that guaranteed by the Fourth Amendment.” *State v. Parker*, 139 Wn.2d 486 at 493, 987 P.2d 73 (1999).

Under both constitutional provisions, and “[a]s a general rule, warrantless searches and seizures are *per se* unreasonable” that are presumed to be unconstitutional. *State v. Hendrickson*, 129 Wn.2d 61, 70, 917 P.2d

563(1996). See also *Parker* at 494; *State v. Wheless*, 103 Wn.App. 749,14 P.3d 184(2000). Courts have outlined a small number of narrowly drawn and jealously guarded exceptions to the warrant requirement. *Parker, supra; Wheless, supra*. As noted by our State Supreme Court: “Exceptions to the warrant requirement fall into several broad categories: consent, exigent circumstances, searches incident to a valid arrest, inventory searches, plain view, and Terry investigative stops.” (Citations omitted). *State v. Ladson*, 138 Wash.2d 343,979 P.2d 833(1999).

The law is well settled in Washington that where the State asserts an exception, it bears the heavy burden of producing facts to support the exception. *Parker, supra; State v. Johnston*, 107 Wn.App.280 at 284,28 P.3d 775(2001).

**1) *The trial court abdicated its legal obligation to decide Mr. Jensen’s Motion to Suppress and Dismiss.***

Criminal Rule 3.6 provides the mechanism through which Washington courts safeguard the citizenry’s right to be free from disturbance of their private affairs under Article I, Section 7. CrR 3.6 reads as follows:

**(a) Pleadings.** Motions to suppress physical, oral or identification evidence, other than motion pursuant to rule 3.5, shall be in writing supported by an affidavit or document setting forth the facts the moving party anticipates will be elicited at a hearing, and a memorandum of authorities in support of the motion. Opposing

counsel may be ordered to serve and file a memorandum of authorities in opposition to the motion. The court shall determine whether an evidentiary hearing is required based upon the moving papers. If the court determines that no evidentiary hearing is required, the court shall enter a written order setting forth its reasons.

**(b) Hearing.** If an evidentiary hearing is conducted, at its conclusion the court shall enter written findings of fact and conclusions of law.

The rule requires the defendant to challenge the admissibility of the evidence; the trial court is then charged with entering written findings and conclusions following an evidentiary hearing.

The law in Washington is well established that “[u]ntil an arrest has been shown to be lawful, any evidence derived from the arrest must be suppressed because possibly “infected” by an illegal arrest.” *State v. Nogueira*, 32 Wash.App. 954,955,650 P.2d 1145(1982). *State v. Byers*, 88 Wash.2d 1, 559 P.2d 1334(1977); See also *Won Sun v. United States*, 371 U.S. 471, 9 L.Ed.2d 441,83 S.Ct. 407(1963).

In *State v. Nogueira*, a prosecution for taking a motor vehicle without permission and second degree criminal trespass, the defendant objected to the admissibility of evidence on the ground that the state had not established the arrest was lawful. The objection came during trial. Division One rejected the State’s argument that, because the suppression motion was not noted prior to trial, the motion was waived.

In Mr. Jensen's case, the State not only misrepresented to the trial court that it was barred from deciding Mr. Jensen's Motion to Suppress and Dismiss, because Judge Lee had already decided the issue(s), but it also claimed the defense motion was somehow waived. RP I 11; RP III 178.

The record shows, however, that defense counsel repeatedly attempted to raise the motion. For example, as soon as the case was sent to Judge Felnagle, and prior to the jury receiving any trial testimony, a lengthy colloquy occurred. Judge Felnagle apparently had accepted the State's assertion that the motion had already been decided:

**THE COURT:** Why would it be suppressed when Judge Lee ruled it's not going to be suppressed?

**MR. DINWIDDIE:** I'm saying - - he's talking about, why didn't we do that motion earlier.

**THE COURT:** I see.

**MR. DINWIDDIE:** I'm saying, you don't do that motion earlier, because the first motion you have to do is to suppress the search warrant, because that's the same information - -

**THE COURT:** All right.

**MR. DINWIDDIE:** - - and so you win the search warrant motion, you

automatically win the arrest motion, because based upon the identical, same information.

**THE COURT:** But, the small problem I see is that you lost the search warrant motion, and, therefore, your whole premise for going the next step is void; is it not?

**MR. DINWIDDIE:** No. I think the Court can examine **as it relates to the arrest** and say - -

**THE COURT:** Mr. Dinwiddie, that would be asking the Court to, in effect, have the possibility of me making a ruling entirely different than Judge Lee, which is exactly what we want to avoid, right? Why would we even countenance the idea of me redoing Judge Lee's work with the possibility that I might come up with a different result?

**MR. DINWIDDIE:** Because I think it's appropriate for me to raise these issues at every step of the proceeding.

**THE COURT:** I don't deny that, but I am looking for a little more analysis that it's appropriate to raise the issue.

**MR. DINWIDDIE:** I think you can look at it from the arrest point of view. I think you can examine the evidence anew to see if there's **probable cause for the arrest**. I think you can look at the evidence, and I think you can

look at the information and say, well, Judge Lee said it was okay to search; I'm looking now at the evidence that they used to make the arrest, and that's not okay. Are they inconsistent with each other? Yes, but, is it correct? And I suggest to the Court it is correct. It's the right decision. (Emphasis added.)

**THE COURT:** Okay. RP I 14-16.

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During trial, defense counsel again attempted to challenge the search and seizure. The colloquy went thusly:

**MR. DINWIDDIE:** I'm going to have a motion to dismiss at the end of the State's case. The motion to dismiss at this stage is based upon the fact - - and I know what we're talking about is Counts now 2 and 3, which is - - and Count 5, moving to dismiss as to the bobcat, as to the trailer, and as to the methamphetamine.

The reason that we're asking that this be dismissed is based upon the proposition that **we do not have a lawful arrest**. Based upon the testimony that came out in this case and applying the *State v. O'Cain* which is 108 Wn.App. 542,31 P.3d 733, a 2001, Division I case and the case of *State v. McChord*, which is a 2005 case, and I again apologize to the Court, I do not

have a Washington Appellate cite, though it is a Division 3 case, and I believe I previously provided the Court with a copy of that.

The proposition is, first taking the O'Cain case, the law in the State of Washington is now that before you can stop a person and do an **investigatory stop**, based upon a report that has been provided to you by some form of a police dispatch or information, that source of the information has to be identified, and the State has to be able to demonstrate that that source complies with Aguillar and Spinelli and that the person that input that information into the system did it accurately. It's significant, particularly in this case, that there's some substantial connections between the reported theft of the bobcat and the trailer and the arrest of Mr. Jensen and the search of his vehicle.

Now McChord makes it clear that under Washington law, you have to get past - - even in a civilian or citizen informant, you have to get past the veracity prong and the basis of knowledge prong. Now, we know that at the time - - based on the testimony that came into this court, at the time that Mr. Jensen was stopped there was not probable cause to believe that he had committed any crime, and at best it was a **pretext stop** based upon some license plate information. Over my objection, the Court admitted three license plates into evidence in this case. However, there is no proof that these license

plates are evidence of any offense. That was never tied up. They're just license plates that the officer seized. No one has come and testified that this Exhibit No. 6 License Plate, is somehow evidence of a theft. No one has offered any evidence that License Plate No. 7 is in any way related to any sort of theft or criminal activity. The same argument as to License Plate No. 8. So what we do not have is we do not have any evidence to support a finding under the McChord doctrine that there was **probable cause** to believe that the stop could be made. At best - - at the very best, what we have is no front license plate, and that's it. And that make it pretty clear that this is a pretext stop because Detective Jensen pursued Mr. Jensen for a period of three hours over 60 miles over a missing front license plate, and we know that we have a question that was asked, and I think a reasonable inference can be made that Mr. - - Detective Jensen was after Defendant Jensen for anything that he could find because he admitted that when he walked up to the vehicle he did not know it was stolen. He admitted that when he walked up to the vehicle, he didn't know the bobcat was stolen. He admitted that when he walked up to the vehicle, he didn't know that the trailer was stolen. He didn't know any of that until he searched without a warrant for vehicle identification numbers. That's a search. And that's a search that has to be supported by probable cause and further had

to be supported by a warrant. There's no proof, no knowledge that the officer had at the time of the stop that any of that property was stolen. The later confirmation that it was stolen is precisely what McChord says doesn't matter - - excuse me, O'Cain says doesn't matter.

The officer's subsequent confirmation that the vehicle was stolen does not save the search. Now, based on that, we again cited to the Court this morning cases involving search. For some reason it seem like every case that I like has a name that I can't pronounce, this is also the same. State v. Noguera, 32 Wn.App. 954 at 956. I cited in my brief in support of my motion for the missing witness instruction, however, the case has another point also. The other point to that case is that any evidence contained subsequent to an unlawful arrest is tainted and must be suppressed.

The same theory is set forth in the Russell case. In the Russell case you'll find that same illegal seizure information cited at Page 90 where it talks about the illegalities and missing witnesses and you wouldn't call a witness, so we look at the whole factor here. We don't have a police officer that's testified that he had probable cause to make the stop. Because Detective Jensen didn't make the stop, somebody else did. Who? We don't know. We don't know who it was. What information did that officer has in his mind? What did

he know that would give him the lawful right to pull his weapon and order Mr. Jensen out of his vehicle? Nothing. Not a thing. Even the officer with the information doesn't have enough for probable cause. Therefore, as to the bobcat, the trailer, and the methamphetamines found during the search, were illegally obtained, therefore taints the arrest; therefore, dismissal is mandatory as to those three counts leaving only for trial the issue of the wagons. Thank you.(Emphasis added.)

**THE COURT:** Thank you. Mr. Adair.

**MR. ADAIR:** Your Honor, I'm mystified. This is a 3.6 issue. This is a matter that should have been set for a hearing before the trial. This Court knows as well as the State and Mr. Dinwiddie that the testimony given to this jury would not be the same as the testimony given in a 3.6 hearing. When I - - the Court continuously sustained objections when I tried to bring out the basis for the stop. That would not have happened in a 3.6 hearing. It's simply nonsense to bring this up at this point. The evidence - - the State is simply not ready to argue a 3.6 hearing in the middle of trial based upon what occurred in the trial. The testimony would not be the same. I don't know if it's trial tactics or what, but I brought up before this trial started, if the Court will recall, the 3.6 issue, and at that time Mr. Dinwiddie made some comments to the Court

and the Court apparently agreed with Mr. Dinwiddie; there was no necessity for one. I don't know if the Court recalls that colloquy or not, but this is simply a 3.6 issue that should have been heard earlier. It's not relevant now.

**THE COURT:** Anything more, Mr. Dinwiddie?

**MR. DINWIDDIE:** Very briefly. He testified quite clearly under oath that he did not know those items were stolen, and that would have been the same testimony in the 3.6. Did not know they were stolen. Thank you.

**THE COURT:** Well, I thought, actually, Detective Jensen did a very good job of resisting the urge of telling the jury all the things that he did know from sources that would have been a hearsay source in front of the jury, and the State's absolutely right. If this were explored in the realm of a 3.6 hearing, we would have a completely different set of testimony coming out. And the defense can't use their declining to set a 3.6 hearing as a substitute for what we now have as an imperfect record with regard to the 3.6 issue and the State would have, if put on notice, been able to marshal a whole bunch of different evidence for that. But to take what was allowable at trial and say that's the parameters on which to make a decision on a motion to suppress is fundamentally unfair, and even if it weren't, there's an insufficient showing that there was any kind of pretextual stop at all, even based on the record in

front of the jury, so the motions to dismiss are denied.

**MR. DINWIDDIE:** I would like to make one correction for the record. We didn't decline a 3.6. What happened was we filed the briefs and wanted to argue this matter and the State said it had already been decided by Judge Lee and we conceded that the same background applied and we filed the motions in the case.

RP III 174-181.

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As demonstrated by the record, defense counsel was in a Catch-22 situation. He could not have elicited additional facts pertaining to the search and seizure without risking prejudicing Mr. Jensen in front of the jury. Because the trial court refused to decide the issues, trial counsel was also unable to fully develop the record in a hearing outside the presence of the jury. Furthermore, once the unlawful search and seizure issues were raised by the defense, the burden fell upon the State to prove the warrantless arrest and search were lawful, and to develop the record accordingly.

The record below does not support a claim that the State did not receive actual notice of the suppression/unlawful arrest issues. The complaint that defense counsel failed to properly note the motion and to submit the supporting

documents as required by CrR 3.6 is specious. Firstly, a written Motion and Memorandum to Suppress and Dismiss, that was entirely separate from the Motion to Suppress based on the defective warrant, was filed on 08-09-05. CP 73-74. CP 50-72..(Defendant's Motion to Suppress and Dismiss and Memorandum in Support of Motion are attached as Appendix B and incorporated by reference herein.) Secondly, a Memorandum of Authorities in Support of Defendant's Motion for Release Forthwith, which alerted the State to a probable cause challenge, was filed on April 2, 2004. CP 6-7. (Defendant's Memorandum of Authorities in Support of Defendant's Motion for Release Forthwith is attached as Appendix D and incorporated by reference herein.) Thirdly, verbal notice that the defense was challenging the legality of the arrest and search, apart from the search warrant, was given to the State throughout the proceedings.

There is simply no legal authority that would bar the defense from raising the search and seizure issues; nor does legal authority exist that would have precluded Judge Felnagle from deciding the issues, that were separate and distinct from the challenge to the search warrant heard by Judge Lee. Had Judge Felnagle checked the record closer, he would have discovered that Judge Lee decided only the warrant issue. Instead, he relied on the State's

misrepresentations, from which the State should not now be permitted to benefit. Judge Felnagle was required to decide whether the seizure/arrest was lawful **prior** to admitting inculpatory evidence pursuant to well established case law including *State v. Nogueira*, *Supra*, and CrR 3.6.

Finally, Mr. Jensen's search and seizure claim is reviewable under RAP 2.5(a) because the error is "manifest" and is "truly of constitutional magnitude." *State v. Conteras*, 92 Wash.App. 307,966 P.2d 915(1988).

**2) There was not a sufficient factual foundation to support an investigatory stop.**

Probable cause to arrest is distinguishable from a *Terry* stop. Under the Fourth Amendment, a seizure must be reasonable. Therefore, police may briefly detain a person in order to investigate his or her activities, when they have a well-founded suspicion, not amounting to probable cause that the person was engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1,20 L.Ed. 2d 889,88 S.Ct. 1868(1968); *State v. White*,97 Wn.2d 92,105,640 P.2d 1061(1982); *State v. Gluck*, 83 Wn.2d 424,426,518 P.2d 703(1974); *State v. Freeman*, 17 Wn.App. 377,380,563 P.2d 1283(1977). Such an investigative stop must be based on specific and articulable, objective facts. *State v. Tocki*, 32 Wn.App. 457,460,648 P.2d 99(1982) citing *State v. White*, at 97; *State v. O'Cain*, 108 Wash.App. 542,31 P.3d 733(2001).

In Washington, the officer must have a well-founded suspicion, based on objective facts, that the person is connected to potential or actual criminal activity.” State v. Kennedy, 107 Wn.2d 1,7,726 P.2d 445(1986). The “preferred” definition of “articulable suspicion” in Washington is “a substantial possibility that criminal conduct **has occurred or is about to occur.**” Kennedy, 107 Wn.2d at 6, 726 P.2d 445(emphasis added).

The test applied to determine whether an officer had a reasonable suspicion that an individual is engaged in criminal activity involves consideration of the totality of the circumstances. State v. Randall, 73 Wn.App. 225,229,868 P.2d 207(1994). Washington Courts have acknowledged that circumstances that appear innocuous to an average person may appear incriminating to a police officer in light of past experience, and that the officer is not required to ignore that experience. *See e.g.* State v. Samsel, 39 Wn.App. 564,570-574,694 P.2d 670(1985). However,

Although the nature of the totality of the circumstances test makes it possible for individually innocuous facts to add up to reasonable suspicion, it is “impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation.”

United State v. Wood, 106 F.3d 942,948 (10<sup>th</sup> Cir. 1997)(quoting Karnes v. Skrutski, 62 F.3d 485, 496 (3d Cir.1995)).

In the case at bar, Detective Jensen testified that the reason Mr. Jensen was stopped was that the truck he was driving was missing a front plate. He added that he had “previous contact with Chad Jensen.” RP II 44. He did not know the truck, the CAT, or the trailer were stolen at that time. RP II 80-81. He did not know if anything was stolen until he obtained the VIN numbers, which was after Mr. Jensen was seized. RP II 80. While a missing license plate is sufficient to stop for a traffic code violation, it is not sufficient to conduct a Terry investigative stop. The State failed to show the necessary “well-founded suspicion, based on objective facts” that Mr. Jensen was engaged in any type of criminal activity. State v. Kennedy, *Supra* at 7.

**3) There was not a sufficient factual foundation to establish probable cause to arrest Mr. Jensen and search the vehicle.**

No arrest may be made except upon probable cause. U.S. Const. Amend 4; Wash. Const. art.1 § 7. The Supreme Court has said that “probable cause” to support a warrantless arrest exists where the facts and circumstances within the arresting officer’s knowledge and of which the officer has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed. Probable cause is not a technical inquiry. A bare suspicion of criminal activity, however, will not give an officer probable cause to arrest. State v. Terravona, 105 Wn.2d 643,716

P.2d 295(1986) (emphasis added, notes omitted). This standard is “well settled.” State v. Knighten, 109 Wn.2d 896,899,748 P.2d 1118(1988).

Additionally, an officer “must have probable cause to arrest before commencing a warrantless search.” State v. O’Neill, 104 Wn.App.850,861,17 P.3d 682(2001). Probable cause to arrest cannot be based on evidence obtained after an arrest. “An arrest cannot be justified by the fruits of the search.” State v. McKenna, 91 Wn.App. 554,958 P.2d 1017(1998), citing Smith v. Ohio, 404 U.S. 541, 543,110 S. Ct. 1288, 108 L.Ed. 2d 464(1990)(“justify[ing] the arrest by the search and at the same time...the search by the arrest, ‘just will not do.’”) (alterations in original) (quoting Johnson v. United States, 333 U.S. 10,16-17,68 S.Ct. 367,92 L.Ed. 436(1948)).

Furthermore, where the police rely on information obtained through a dispatch, the State must prove that the dispatch itself “was based on sufficient factual foundation to justify the stop,” or the arrest or search. State v. O’Cain, *supra* at 543. “If the issuing agency lacks probable cause, then the arresting officer will also lack probable cause.” O’Cain, 108 Wash.App. at 550, citing Whitaley v. Worden, Wyo.State Penitentiary, 401 U.S. 560,91 S.Ct. 1031,28 L.Ed. 2d 306(1971).

In Mr. Jensen’s case the WSP officers, at Detective Jensen’s request,

stopped Mr. Jensen's vehicle and pulled him out at gunpoint based, not on the knowledge that any crime had been committed, but on a missing license plate. Mr. Jensen was under "arrest" at this point, pursuant to the legal definition of that term. Even if Detective Jensen had testified to information pertaining to the license plate on the trailer obtained via dispatch, which he did not, such information would have been insufficient to establish probable cause absent an independent factual foundation by dispatch to justify the stop.<sup>5</sup> Both the seizure/arrest of Mr. Jensen and the subsequent search, which produced VIN Numbers, license plates and keys, were unlawful.

**4) The record shows that the traffic stop of Mr. Jensen's vehicle was pretextual.**

Under the guise of his authority to enforce the traffic code, Detective Jensen stopped Chad Jensen for an unrelated criminal investigation, in violation of Mr. Jensen's privacy rights protected under Wash. Const. art. 1, § 7. Such pretextual stops are specifically prohibited under *State v. Ladson*, 138 Wn.2d 343,348,979 P.2d 833(1999).

The *Ladson* Court held that Wash. Const.art.1, § 7 independently applies to the same legal issue present in this case, namely warrantless stops of automobiles for the purpose of investigation. *Ladson*, 138 Wn.2d at 348;

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When Detective Jensen was questioned on direct about information pertaining to the license plate on the trailer the defense objections were properly sustained. RP II 44.

accord Seattle v. Mesiani, 110 Wn.2d 454,457,755 P.2d 775(1988). Once the Supreme Court has determined tht the state constitution independently applies to a specific legal issue, it is unnecessary to repeat the otherwise required six-part analysis established in State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808(1986).

In State v. Ladson, the Supreme Court reversed the Court of Appeals and reinstated the trial court's suppression order. Ladson involved a police officer and a county sheriff detective on proactive gang patrol. The officers saw Richard Fogle and Thomas Ladson, both African-American, driving by in a car. They recognized Fogle from an unsubstantiated street rumor that he was involved in drugs. The officers tailed the car looking for a legal reason to make a stop. After several blocks, they pulled it over for expired license plate tabs. The officers discovered that Fogle had a suspended driver's license and arrested him. They ordered Ladson out of the car and searched it incident to arrest. The officers also searched Ladson's jacket which was in the passenger's seat and found a small handgun. They arrested and searched Ladson discovering several baggies of marijuana. Ladson was charged with unlawful possession of a controlled substance and possession of a firearm. Id. at 345-347.

The Court determined that the essence of a “pretextual stop is that the police are pulling over a citizen, not to enforce the traffic code, but to conduct a criminal investigation.” Ladson, Wn.2d at 349. Consequently, “the reasonable articulable suspicion that a traffic infraction has occurred which justifies an exception to the warrant requirement for an ordinary traffic stop does not justify a stop for criminal investigation.” Id.

The Court concluded that “the citizens of Washington have held, and are entitled to hold, a constitutionally protected interest against warrantless traffic stops or seizures on a mere pretext to dispense with the warrant requirement.” Id. at 358. The Court instructed that when determining whether a stop is pretextual courts “should consider the totality of the circumstances, including both the subjective intent of the officer as well as the objective reasonableness of the officer’s behavior.” Id. at 358-359.

In requiring both a subjective and objective test, the Ladson Court emphasized that applying only an objective test may not fully answer the critical inquiry of whether an officer conducted a pretextual stop. Id. at 359. The Court explicitly disapproved State v. Chapin, 75 Wn.App. 460,464,879 P.2d 300(1994), insofar as it held that the test for pretext is only objective. Id. The Court concluded that “our constitution requires we look beyond the formal

justification for the stop to the actual one. In the case of pretext, the actual reason for the stop is inherently unreasonable, otherwise the use of the pretext would be unnecessary.” *Id.* at 353.

Accordingly, the Court held that when “an unconstitutional search of seizure occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed.” *Id.* at 359. citing *State v. Kennedy*, 107 Wn.2d 1,7,726 P.2d 445(1986); *State v. Larson*. 03 Wn.2d 638,645,611 P.2d 711(1980).

This issue has been similarly resolved by Division III in the cases of *State v. DeSantiago*, 97 Wash.App. 446,983 P.2d 1173(1999), and *State v. Rainey*, 107 Wash.App. 129,28 P.3d 10(2001), *review denied* 145 Wn.2d 1028(2002). Both cases involved reversal of convictions and suppression of evidence seized during a warrantless search.

In *State v. DeSantiago*, 97 Wash.App. 446,983 P.2d 1173(1999), the Court reversed a conviction, ruling that a traffic stop made by a Pasco police officer was pretextual. In *DeSantiago*, while an officer was watching an apartment complex known as a narcotics hot spot, he saw a car pull up to the building and the driver went into an apartment for a few minutes and then drove away. The officer followed the driver for about ten blocks suspecting

that he had bought drugs. When the driver made an improper left turn, the officer stopped him and checked his identification. The driver had a suspended license and an outstanding warrant. The officer cited the driver for the infraction, arrested him, and searched him and the vehicle finding methamphetamine and a handgun. The defendant was convicted of unlawful possession of a controlled substance and unlawful possession of a firearm. *Id.* at 448-449.

Applying the standard required by *Ladson*, the court examined whether the officer's subjective motive for stopping the defendant **invalidated an otherwise objectively valid traffic stop**. *Id.* at 451. The court pointed out there is "a fundamental difference between the detention of a citizen for the purpose of discovering evidence of crimes and a community caretaking stop aimed at enforcing the traffic code." *Id.* at 451. The court concluded that the officer "subjectively intended to engage in a pretextual stop," which tainted the arrest and subsequent search, and therefore the evidence seized following the traffic stop should have been suppressed. *Id.* at 453.

In Mr. Jensen's case, like in *Ladson* and *DeSantiago*, Detective Jensen's motive for stopping Mr. Jensen was not based on a traffic code violation, but rather to continue a criminal investigation. Mr. Jensen was first

spotted in the driveway of his home, which certainly leads to a reasonable inference that Detective Jensen was watching him at his home. The detective's real motive is evidenced by the fact that he followed and pursued Mr. Jensen for two and one-half to three (2 ½ - 3) hours over a distance of more than sixty(60) miles before having him stopped by WSP officers at gunpoint. Detective Jensen's motive is further evidenced by the complaint for search warrant he prepared the day after he arrested Mr. Jensen, which detailed two(2) years of his ongoing investigation of Mr. Jensen. (See Appendix C). Clearly Mr. Jensen was considered a suspect in an ongoing criminal investigation conducted by Detective Jensen. Rather than apply for a proper arrest and search warrant Detective Jensen arrested Mr. Jensen at gunpoint and conducted a subsequent search which led to Mr. Jensen's arrest on the present charges. The arrest then led to the application for the search warrant of Mr. Jensen's home the following day. The stop was pretextual and must not be condoned by the high Courts.

**B. THE TRIAL COURT COMMITTED REVERSIBLE OF CONSTITUTIONAL MAGNITUDE WHEN IT REFUSED TO SUPPRESS THE EVIDENCE SEIZED PURSUANT TO THE SEARCH WARRANT BECAUSE THE FACTS SET FORTH IN THE WARRANT AFFIDAVIT WERE INSUFFICIENT TO ESTABLISH PROBABLE CAUSE.**

### ***Standard of Review***

A motion to suppress is reviewed by determining whether substantial evidence exists to support the trial court's findings, and whether those findings then support the trial court's conclusions of law. State v. Jacobs, 121 Wash.App. 669,89 P.3d 232(2004), rev'd on other grounds, No. 75436-5, 2005 WL 1580601 (Wash.2005). The validity of a search warrant is reviewed for abuse of discretion by the issuing magistrate. *Id.* at 676. Abuse of discretion occurs where a decision is manifestly unreasonable, or exercised on untenable grounds or for untenable reasons. Richards v. Overlake Hosp. Med. Ctr., 59 Wn.App.266,271 796 P.2d 737(1900), review denied, 116 Wn.2d 1014(1991). The determination of whether facts set out in an affidavit are sufficient to conclude that probable cause exists is a question of law reviewed de novo. State v. Nusbaum, 126 Wash.App. 160,167,107 P.3d 768(2005).

The Findings of Fact and Conclusions of Law on Admissibility of Evidence in Mr. Jensen's case are completely improper as to form, and were correctly objectd to as such by defense counsel. RP 5 4-5. Specifically, the sole factual finding made was that the facts contained in the complaint for search warrant were "true." (See Appendix A.) All other factual findings, were merely vague recitations of the complaint for search warrant, and were

incorrectly listed as Conclusions of Law.

Appellant does not challenge that the “facts” listed in the findings and conclusions were substantially based on the information contained in the complaint for search warrant. (The complaint for search warrant is incorporated by reference into the Findings and Conclusions.) Rather, Mr. Jensen challenges the trial court’s conclusions of law that: (1) the facts contained in the complaint “taken as a whole are sufficient to establish probable cause,” (2) that the facts “establish that the items which were being sought would be found at the residence identified in the search warrant,” (3) that the “information was not stale,” and (4) that the information “satisfied both the Basis of Information and Reliability prongs of *Aguillar-Spinelli*.” (Conclusion of Law numbers (1), (2) ,(2) (c), and (3).)

1. ***The search warrant was based on stale information contained in the warrant affidavit.***

The facts and circumstances supporting a search warrant must establish that “the criminal activity was occurring at or about the time the warrant was issued.” *State v. Higby*, 26 Wn.App.457,460,613 P.2d 1192(1980). It is not enough that the criminal activity occurred some time in the past. *Id.* While the lapse of time between the criminal activity and the issuance and execution of the warrant is not the deciding factor, it is one circumstance among others to

be considered, “including the nature and scope of the suspected criminal activity.” Higby, 26 Wn.App. at 461.

In Higby, the affidavit supporting the warrant detailed a single purchase of a small quantity of marijuana from the defendant’s home two weeks earlier. The court found that while the affidavit constituted “past probable cause,” it did not constitute probable cause for the search two weeks later. Id.

By contrast, in State v. Petty, 48 Wn.App.615,740 P.2d 879, review denied 109 Wn.2d 1012(1987), the supporting affidavit also established a marijuana sale two weeks earlier. However, the informant had also seen a marijuana grow operation in the basement with grow lights. Given the nature and scope of the operation, the court held that there was a reasonable possibility that the activity was still occurring two weeks after the observation. Petty, 48 Wn.App. at 622.

For similar reasons, the court in State v. Hall, 53 Wn.App.296,766 P.2d 512, review denied, 112 Wn.2d 1016(1989), upheld a warrant supported by observations made two months earlier. The court held that the informant’s description of the marijuana grown operation, and the size of the plants at the time he observed them, established reasonable probability that the grow operation was still in existence. Hall, 53 Wn.App. at 300. See also, State v.

*Dobyns*, 55 Wn.App.609,621,779 P.2d 746, review denied, 113 Wn.2d 1029(1989) holding that observation of marijuana grow operation six weeks prior to issuance of warrant was not stale); *State v. Hett*, 31 Wn.App. 849,644 P.2d 1187, review denied, 97 Wn.2d 1027(1982) (finding probable cause where the informant had seen the defendant sell marijuana three days earlier and had arranged a buy for the day the search warrant was issued).

The foregoing cases illustrate the situations in which otherwise stale information may be used to support probable cause. In each case where a warrant was upheld, the “past probable cause” involved detailed and extensive on-going criminal activity that was still in process.. The magistrate issuing the search warrant thus could reasonably conclude that the activity was still occurring.

In the case at bar, pursuant to the trial court’s Findings and Conclusions, the conclusion that the facts contained in the complaint for search warrant were sufficient to establish probable cause for the search warrant to issue was based on the following factual findings (paraphrased):

- 1) [On June 17, 2002]<sup>6</sup> a person named Mr. Macalister told both

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The words contained in brackets are supplemental to the Findings and Conclusions, based on information contained in the search warrant complaint, without which the Findings and Conclusions are simply too vague from which to decipher any meaning.

Deputy Jensen and someone named Mr. Weir that he had retrieved items stolen from Mr. Weir. Mr. Macalister claimed to have retrieved the items from Mr. Jensen's father. Mr. Jensen lives with his father in the South Hill area. [Mr. Macalister believed a person named "Chad" was responsible for the theft.]"

2) On August 22, 2003, Deputy Jensen observed some items [in Mr. Jensen's truck bed during a traffic stop] which were not listed as stolen.

3. A woman named Pamela Lakin reported to the police that her lawnmower had been stolen in September of 2003. The lawnmower was later seen on Mr. Jensen's father's property. Mr. Jensen's father told Ms. Larkin that his son had [purchased] the lawnmower from someone.

4. [On October 16, 2003], Larry McPhail [who operates the Monroe County Fair Swap Meet] provided information to Detective Jensen [that property belonging to Arthur Uchimura was stolen at the swap meet, and that Chad Jensen had a booth at the swap meet near Mr. Uchimura's].

5. Some items recovered [from several storage lockers in the name of Chad Jensen] pursuant to a King County search warrant, on March 13, 2004, were previously reported as stolen.

6. Mr. Jensen was charged with possessing stolen property in this case.

The dates and events mentioned in the complaint for search warrant include the following:

<u>Date</u>	<u>Event</u>
06-17-02	Macalister provides information to Detective Jensen.
08-22-03	Deputy Jensen pulls Chad Jensen over for minor traffic infraction in Edgewood, Wa. Search of truck reveals <u>no</u> stolen items.
09-26-03	Pamela Lakin provides information to Detective Jensen.
10-16-03	Larry McPhail provides information to Detective Jensen.
10-27-03	Mr. Porco reports stolen lawn tractor and pressure washer to unidentified law enforcement.
03-13-04	King County warrant executed on storage lockers.
03-30-04	Chad Jensen arrested in this case.

The above dates of events span nearly a two-year period. The events occurring in 2002 through 2003 do not even constitute past criminal activity that can be linked to Chad Jensen with any certainty. If it could have, Detective Jensen would have secured a search warrant at the time. Moreover, the majority of these events are far too remote in time to support a common sense belief that any property stolen that long ago would be found in Chad Jensen's father's home. The 2004 events, while not as remote in time, are

nonetheless insufficient to establish probable cause for a search warrant on other grounds, including those listed below.

**2. An insufficient nexus existed between the criminal acts alleged to have taken place and the property that was searched.**

Before a search warrant issues, there must be an adequate showing under oath of “circumstances going beyond suspicion and mere personal belief that criminal acts have taken place and that evidence thereof will be found in the premises to be searched.” *State v. Seagull*, 95 Wn.2d 898, 907, 632 P.2d 44(1981) quoting *State v. Patterson*, 83 Wn.2d 49, 58, 515 P.2d 496(1973)); see also *State v. Rangitsch*, 40 Wn. App . 771, 780, 700 P.2d 382(1985).

Accordingly, probable cause requires a nexus between the criminal activity and the item to be searched. *State v. Thein*, 138 Wash.2d 133, 977 P.2d 582(1999).

In the instant case, the search warrant affidavit listed a host of circumstantial facts which failed to link Mr. Jensen to the crimes committed in any meaningful manner. Additionally, there was simply no reason to believe, based on those facts, that fruits of the crime(s) would have been found on Mr. Jensen’s father’s property. With respect to the listed events spanning a period of almost two years, no evidence other than the wagons was discovered in the place identified to be searched when this search warrant was

executed, according to Detective Jensen's testimony.

**3. The information contained in the warrant affidavit failed to establish probable cause under Aguilar-Spinelli.**

Where an informant's tip provides the basis for the claimed probable cause to issue a search warrant, the search warrant affidavit must fully and adequately establish both the basis of the informant's knowledge, and the credibility of the informant. *State v. Vickers*, 148 Wn. 2d 91,108,59 P.3d 58(2002); *State v. Jackson*, 102 Wn.2d 432,433,688 P.2d 136(1984); see *Spinelli v. United States*, 393 U.S. 410,89 S.Ct.584,21 L.Ed.2d 637(1969); *Aguilar v. Texas*, 378 U.S. 108,84 S.Ct.1509,12 L.Ed.2d 723(1964). These are the twin requirements of the Aguilar-Spinelli analysis for determining the constitutionality of an informant-based probable cause warrant. The two prongs thus require an affidavit to establish: (1) the "basis of the informant's information" and (2) "the credibility of the informant." *State v. Cole*, 128 Wash.2d 262,287,906 P.2d 925(1995).

The "basis of knowledge" prong requires that the informant have personal knowledge of the facts asserted. *State v. Casto*, 39 Wn.App. 229 at 233,692 P.2d 890(1984). A reviewing court must be able to ascertain the quality of the informant's sources. *U.S. v. Wagner*, 989 F.2d 69 at 73(2nd Cir.1993). This means that the court must be able to determine "the degree

to which his [or her] information is based on reliable means, such as first-hand observations or second-hand information from reliable sources, rather than on unreliable means such as rumor or innuendo.” Wagner, at 73. Absent a statement specifying the informant’s sources, the tip must contain enough detail of criminal activity to establish that it is based on “something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual’s general reputation.” Spinelli v. United States, *supra*, 393 U.S. at 416, 89 S.Ct. at 589 (1969).

Furthermore, the basis of knowledge prong requires the warrant affidavit to recite the manner in which the informant gathered his information. State v. Gunwall, 106 Wn.2d 54, 70-71, 720 P.2d 808(1986), citing State v. Lair, 95 Wn.2d 706, 709, 630 P.2d 427(1981). “To satisfy the ‘basis of knowledge’ prong, the informant must declare that he personally has seen the facts asserted and is passing on firsthand information.” Jackson, 102 Wn.2d at 437, 688 P.2d 136.

To satisfy the credibility or veracity prong, the magistrate must receive factual information from which to determine the informant’s *present* reliability. Casto, 39 Wn.App. at 233. The veracity prong may be established through a strong showing of an informant’s proven “track record.” Jackson at

437. A statement that the informant is credible is not sufficient. State v. Fisher, 96 Wn.2d 962 at 965, 639 P.2d 743, cert. denied 457 U.S. 1137, 102 S.Ct. 2967, 73 L.Ed.2d 1355(1982). Neither is an assertion that the informant has proven reliable in the past. State v. Woodall, 100 Wash.2d 74 at 76, 666 P.2d 364(1983). Such conclusory assertions force the issuing magistrate to rely “upon the factual determination of the arresting officer that the informer is sufficiently reliable, and not upon his own independent judicial determination.” 1 W. LaFave, *Search and Seizure Section 3.3*, at 516-17(1978) quoted in Woodall, *supra*, at 78.

The two prongs of Aguilar-Spinelli are analytically distinct; a strong showing on one prong does not overcome a deficiency in the other prong. Jackson, at 441. If the informant’s tip fails to satisfy either prong, independent police investigation may corroborate the relevant information to the extent that it supports the missing elements. Jackson, at 438. The corroboration must be more than just of innocuous details. State v. Young, 123 Wash. 2d 173, 867 P.2d 593(1994). Young, *Supra*. A search based on information that fails Aguilar-Spinelli violates Article 1, Section 7 of the Washington Constitution. Jackson, at 443-45. Any evidence obtained from such a search must be suppressed.

In Mr. Jensen's case, numerous informants provided the basis for the complaint for search warrant, including Jack Macalister, Pamela Lakin (via a police report), Larry McPhail, and Detective Jensen. Based on the complaint prepared, the issuing magistrate could not have determined the degree to which each informant's information was based on first-hand rather than second-hand information, speculation, or innuendo. For example, Jack Macalister allegedly told Detective Jensen "that he believed he knew who had stolen the items related to [Mr. Weir's] case and that he would get them back." Mr. Macalister "believed a person he identified only as "Chad" was the person responsible..." Pamela Lakin told Detective Jensen that she saw her stolen lawnmower in the yard of Mr. Jensen's father's home, and that Mr. Jensen's father told her that his son had purchased the lawnmower. Larry McPhail, the swap meet manager, offered only that Chad Jensen had been present in the vicinity where some items were stolen.(See Appendix C.). Conjecture and speculation are the actual basis for each person's beliefs. At no time had any of the informants seen Mr. Jensen take anything or in possession of any property without permission. The basis of knowledge prong of the *Aguilar-Spinelli* test is not satisfied.

Furthermore, the complaint states no facts that would have allowed the

issuing magistrate to conclude the informants were credible and presently reliable. Neither prong of Aguilar-Spinelli can be demonstrated here, and probable cause was lacking to issue the search warrant.

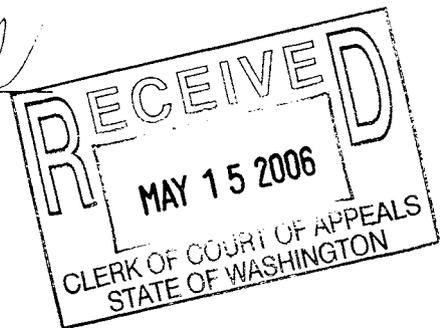
### III. CONCLUSION

For all of the foregoing reasons and conclusions, Mr. Jensen respectfully requests that this Court reverse and dismiss his convictions for three counts of Possessing Stolen Property.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of May, 2006.

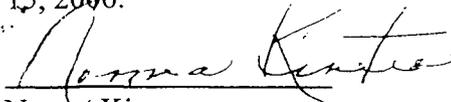


Seri L. Arnold  
WSBA # 18760  
Attorney for Appellant



### CERTIFICATE OF SERVICE

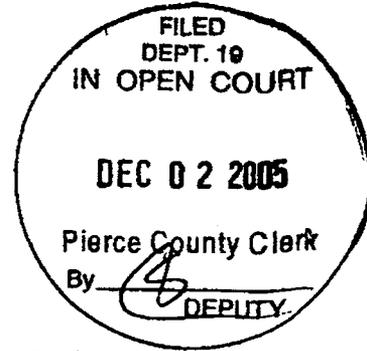
The undersigned certifies that on May 15, 2006 she hand delivered to the Pierce County Prosecutor's Office, County-City Building, 930 Tacoma Ave. South, Tacoma, WA. 98402, and by U.S. mail to appellant, Chad Robert Jensen, DOC # 709989, Stafford Creek Corrections Center, 191 Constantine Way, Aberdeen, WA., 98520, true and correct copies of this Opening Brief. 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 May 15, 2006.



Norma Kinter

**APPENDIX A**

**Findings and Conclusions Re: 3.6 Hearing**



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-01639-0

vs.

CHAD ROBERT JENSEN,

FINDINGS AND CONCLUSIONS ON  
ADMISSIBILITY OF EVIDENCE CrR  
3.6

Defendant.

THIS MATTER having come on before the Honorable Linda CJ Lee on the 6<sup>th</sup> day of July, 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.

FINDINGS OF FACT

The court has reviewed the facts contained in the attached Complaint for Search Warrant dated March 31, 2004 and accepts them as true. It also incorporates the complaint by reference.

CONCLUSIONS OF LAW

- (1) The facts contained in the Complaint For Search Warrant dated March 31, 2004, taken as a whole, are sufficient to establish probable cause for the search warrant to issue.
- (2) Further, the court specifically finds that the following facts establish that the items which were being sought would be found at the residence identified in the search warrant.

1 (a) The information provided to Deputy Jensen by Mr. Macalister and Mr. Weir which  
2 indicated that the defendant lived in the South Hill area with his dad, Larry, and that the items  
3 which had been stolen from Mr. Weir were retrieved by Mr. Macalister from the father of the  
4 defendant.

5 (b) The encounter between Deputy Jensen and the defendant on August 22, 2003 where  
6 Deputy Jensen observed in plain view various items which at that time were not <sup>listed as</sup> stolen. This  
7 included the bolt cutters.

8 (c) The written statement of Pamela Lakin in her police report about the stolen lawn  
9 mower and the location, specifically 2817 South 9<sup>th</sup> Street Southwest in Puyallup, where she saw  
10 the stolen law mower and was told by homeowner Larry Jensen, the father of Chad Jensen, that  
11 his son had gotten that lawn mower. The court further finds that information was not stale.

12 (d) The information obtained from Larry McPhail regarding the items belonging to  
13 Arthur Uchimura which were stolen from the Monroe county Fair Swap Meet.

14 (e) The items that were recovered pursuant to a King County search warrant executed on  
15 or about March 13, 2004 wherein various stolen items were recovered including items that were  
16 stolen from Pierce County.

17 (f) The contact of Deputy Jensen with the defendant on March 30, 2004 while the  
18 defendant was driving a reported stolen pickup truck and a reported stolen trailer with altered  
19 plates and carrying a reported stolen Cat tractor.

20 (3) The information provided in the Complaint for Search warrant satisfied both the Basis of  
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Information and Reliability prongs of Aguillar-Spinelli.

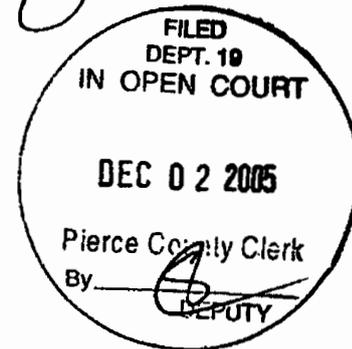
(4) The defendant has failed to sustain his burden of proof that the search warrant was not supported by probable cause and the defendant's motion to suppress is therefore denied.

DONE IN OPEN COURT this 2 day of December, 2005 nunc pro tunc to July 6, 2005.

*[Handwritten Signature]*  
\_\_\_\_\_  
JUDGE

Presented by:

*[Handwritten Signature: Jerry R. Adair]*  
\_\_\_\_\_  
JERRY R. ADAIR  
Deputy Prosecuting Attorney  
WSB # 10628



Approved as to Form: *[Handwritten Signature]*

~~THOMAS DOUGLAS DINWIDDIE~~  
\_\_\_\_\_  
THOMAS DOUGLAS DINWIDDIE  
Attorney for Defendant  
WSB # 6790

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**APPENDIX B**

**Defendant's Motion and Memorandum to Suppress and Dismiss (dated 08-09-05)**



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IN COUNTY CLERK'S OFFICE

A.M. AUG - 9 2005 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
DEPUTY

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

STATE OF WASHINGTON,

Plaintiff,

NO. 04-1-01639-0

v.

CHAD ROBERT JENSEN,

Defendant.

DEFENDANT'S MOTION TO SUPPRESS  
AND DISMISS

COMES NOW, the defendant, Chad Jensen, by and through his attorney of record,  
Thomas D. Dinwiddie and moves the Court for an order suppressing the evidence obtained at the  
time of his arrest. This motion is based on the Court's records and files herein, the exhibits  
included here with, and the memorandum of authorities.

DATED this 9 day of August, 2005.

  
THOMAS D. DINWIDDIE WSBA# 6790  
Attorney for Defendant

THOMAS D. DINWIDDIE  
902 South 10<sup>th</sup> St.  
Tacoma, WA 98405  
(253) 272-2206

DEFENDANT'S MOTION TO  
SUPPRESS AND DISMISS

**ORIGINAL**

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**CERTIFICATE OF SERVICE**

I, LISA D. HOLLIS, certify as follows:

I am employed in the County of Pierce, State of Washington, I am over the age of 18 and not a party to the within action. My business and place of employment is THOMAS D. DINWIDDIE, 902 South 10<sup>th</sup> Street, Tacoma, Washington 98405.

On the date set forth below, I served the document(s) described as DEFENDANT'S MOTION TO SUPPRESS AND DISMISS on the interested parties in this action in the manner described below and addressed as follows:

Jerry Ray Adair  
Pierce County Prosecutors Office  
930 Tacoma Ave S Rm 946  
Tacoma, WA 98402-2102

Attorney for Plaintiff

U.S. Mail Postage Prepaid

Fax \_\_\_\_\_

Legal Messenger

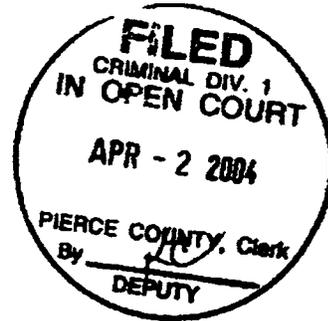
Hand Delivered

DATED this 9<sup>th</sup> day of August, 2005, at Tacoma, Washington.

Lisa D. Hollis  
LISA D. HOLLIS, Paralegal

DEFENDANT'S MOTION  
TO SUPPRESS EVIDENCE

THOMAS D. DINWIDDIE  
902 South 10<sup>th</sup> St.  
Tacoma, WA 98405  
(253) 272-2206



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

STATE OF WASHINGTON,

Plaintiff,

v.

CHAD JENSEN

Defendant.

NO. 04-1-01639-0

MEMORANDUM OF AUTHORITIES IN  
SUPPORT OF DEFENDANT'S MOTION FOR  
RELEASE FORTHWITH

I. FACTS

The defendant, Chad Jensen, was arrested and booked into jail on March 30, 2004 at 1650 hrs. He was then taken before the court for a preliminary hearing on March 31, 2004. The prosecutor handed to Judge Grant an unsworn copy of a police report or other document for the court to read. The prosecutor was not placed under oath nor was any evidence presented to the court under oath alleging or setting forth facts from which the court could conclude that a crime had been committed by Mr. Jensen. The court found probable cause and imposed \$55,000 bail.

II. ARGUMENT

CrR 3.2.1 (a) and (b) require that a probable cause determination be made no later than 48 hours following the persons arrest. Probable cause is determined in the same manner as provided for a warrant of arrest in CrR 2.2 (a). Probable cause can only be found based upon an affidavit, or a document as provided in RCW 98.72.0 85, which relates to declarations, or sworn testimony establishing the grounds for issuing the warrant. Under CrR 3.2 if the court does not find or a

MEMORANDUM OF AUTHORITIES IN  
SUPPORT OF DEFENDANT'S MOTION  
FOR RELEASE FORTHWITH

ORIGINAL

THOMAS D. DINWIDDIE  
902 South 10<sup>th</sup> St.  
Tacoma, WA 98405  
(253) 272-2206

**CERTIFICATE OF SERVICE**

I, LISA D. HOLLIS, certify as follows:

I am employed in the County of Pierce, State of Washington, I am over the age of 18 and not a party to the within action. My business and place of employment is THOMAS D. DINWIDDIE, 902 South 10<sup>th</sup> Street, Tacoma, Washington 98405.

On the date set forth below, I served the document(s) described as MEMORANDUM OF AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS EVIDENCE AND DISMISS on the interested parties in this action in the manner described below and addressed as follows:

Jerry Ray Adair  
Pierce County Prosecutors Office  
930 Tacoma Ave S Rm 946  
Tacoma, WA 98402-2102

Attorney for Plaintiff

- U.S. Mail Postage Prepaid
- Fax \_\_\_\_\_
- Legal Messenger
- Hand Delivered

DATED this 9<sup>th</sup> day of August, 2005, at Tacoma, Washington.

*Lisa D. Hollis*  
\_\_\_\_\_  
LISA D. HOLLIS, Paralegal

MEMORANDUM OF AUTHORITIES  
IN SUPPORT OF DEFENDANT'S MOTION  
TO SUPPRESS EVIDENCE AND DISMISS

THOMAS D. DINWIDDIE  
902 South 10<sup>th</sup> St.  
Tacoma, WA 98405  
(253) 272-2206

**APPENDIX C**

**Complaint for Search Warrant and Search Warrant**

FILED  
IN COUNTY CLERK'S OFFICE

APR 01 2004 AM

STATE OF WASHINGTON  
PIERCE COUNTY  
COUNTY OF PIERCE  
DEPUTY

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

COMPLAINT FOR SEARCH WARRANT  
(EVIDENCE)

04-1 07238 9  
NO.

ss:

COMES NOW Detective Jay P. Jensen, being first duly sworn, under oath, deposes and says:

That, on or about 31 Day of March, 2004 in Pierce County, Washington, a felony, to-wit: RCW 9A.56.150 Possession of Stolen Property in the first degree-- Other than a firearms was committed by the act, procurement or omission of another, that the following evidence, to-wit:

- 1). Items reported stolen PCSO Case number 03-1920381 (See Attachment 3)
- 2). MI-T-M Corp Pressure Washer,
- 3). UCHIMURA WAGONS brand Custom Wagons
- 4). Papers, receipts, phone records and other items showing intent to transfer stolen property.
- 5). Cab door for a CAT tractor
- 6). Peddle cars (Mercedes Benz Replica Cars)
- 7). Wheels, (12 X 8.00 -6 Treaded Burris Tires Mounted on wheels)
- 8). Portable power tools, air compressors, paint sprayers and other general construction tools.
- 9). Large Bolt Cutter with aprox 36." overall length
- 10). Receipts for rental storage units located in the City of Pacific as well as other, as yet unknown locations.
- 11). Any and all vehicles to determine ownership.

is material to the investigation or prosecution of the above described felony for the following reasons:

John Deere Mower reported stolen in past, wagons and parts reported stolen in Monroe Washington sometime between 11 and 12 October, peddle cars and other tools listed above have all been reported stolen within Pierce County over the last several weeks, all using the same MD of Cutting a Large chain or lock with a cutting type tool. Receipts showing dominion and control of storage units used to store listed stolen property.

that the affiant verily believes that the above evidence is concealed in or about a particular house or place, to-wit: The residence located at 2817 9th Street SW, Puyallup Washington, any and all out buildings, vehicles registered to residents of listed address, vehicles located at address to include 1993, LONGC utility Trailer VIN number leaus0818pt111981, 1982 Ford Bronco WA License Number, 150PZQ, 1980 ITASCA Motor Home VIN number CPL3293315189, 1989 home made utility trailer, 1986 ITASCA motor home VIN number lwbb15y0gf306260, 1977 Chevy Van, 1973 Ford Bronco, 2002 Home Made Utility Trailer, 1986 Chevy Flat Bed truck, 1999 Dodge Dakota Pickup, 1990 Red Chevy Pickup, 1995 Dodge Dayton 2 dr.

in said county and state; that the affiant's belief is based upon the following facts and circumstances: On or about the 17<sup>th</sup> of June, 2002 while investigating a Burglary, Pierce County Case Number 02-168 0165, I contacted the victim, Mr. David Wier, and Mr. Jack Macalister, who owns a tree trimming service that had been doing work for Mr. Wier.



17537 6/23/2885 88814

## Complaint for Search Warrant Page 2 of 3

Mr. Macalister told Mr. Weir and myself that he believed he knew who had stolen the items related to the above case and that he would get them back. Mr. Weir agreed, that if the stolen items were returned, he wouldn't pursue the matter any further.

Mr Macalister said he believed a person he identified only as "Chad" was the person responsible as "Chad" had worked for him on a daily hire basis, cleaning up fallen tree debris. Mr. Macalister informed me that "Chad" drove a Red Dodge pickup like the one witnesses had seen in the yard during the burglary, and that "Chad" lived in the South Hill area with his dad "Larry". Later that same day, Mr. Macalister stated he had contacted "Larry" and recovered the listed stolen property.

On or about 8-22-03 at or about 2300 hours, Deputy Bryan Cline and myself contacted Suspect Chad R. Jensen, a W/M, 5'08", 160 lbs driving a Red Dodge Dakota Pickup Truck and pulling a white utility trailer, for a minor traffic infraction, in the area of the 4600 block of 110th AVE E in the city of Edgewood. A routine records check shows Suspect Jensen to be a convicted Felon, Convicted 6 times of various charges related to Stolen Property.

In the open bed of the truck, in plain view I observed several power tools, air compressors and a paint sprayer. Lying on the back seat of the truck I noted a large set of bolt cutters. At the time, none of the items were listed as stolen via a records check.

(Attachment 1) On 9-26-03 I was advised by Victim Pamela Lakin Via Police Report Number 032671123 that she had been the victim of a lawn mower theft on or about the middle of September, 2003. That the lawn mower which had been stolen was identifiable to her by specific, non-standard parts her husband had installed on the mower to include a replacement screw on the engine cover, which had been lost when it was disassembled in her garage.

Victim Lakin further stated that while out "Yard-saleing" in the Puyallup area, she and her children both spotted their stolen mower at a yard-sale located at 2817 9th Street Southwest in the city of Puyallup Washington. Lakin stated the Lawn Mower had a sale tag of \$300.00 on it and was missing the catcher bag. Lakin stated when they confronted Mr. Larry Jensen, the homeowner and father of Chad Jensen, he said he didn't want any trouble with the police and that they could have it, he even arranged to have it delivered to their house. He claimed his son had purchased it at a gas station from "Some Guy" who needed gas money.

On 10-16-03 I was contacted by phone by a Mr. Larry McPhail who operates the Monroe County Fair Swap-meet. Mr. McPhail stated that one of his vendors Mr. Arthur Uchisura had reported several thousands of dollars worth of stock had been stolen during the swap-meet on October 11-12, 2003. He further stated that Mr. Uchisura's booth was in very close proximity to a booth run by Chad Jensen of Puyallup. Witnesses in Monroe reported seeing the suspect, Chad Jensen load several unidentified items into his trailer and depart the Fair Grounds around 1:00 AM on October 12th 2003, and return 3 or 4 hours later.

On 10-27-03, Mr. Porco, of Edgewood Washington reported that his John Deere Lawn Tractor had been stolen and on 10-29-03 he reported that someone had cut the chain on his pressure washer and stolen it. The markings left from the tool used to cut the chain are very distinct and appear, to the naked eye, to match those from the other burglaries in the area.

(40)

Complaint for Search Warrant Page 3 of 3

On or about 03-13-04, the Pacific Police Department served a King County Search Warrant on several storage lockers in Pacific, rented in the name of Chad Jensen.

Items recovered in the warrant include a Campbell Housfeld brand air compressor, matching one reported stolen between 3-1-04 and 3-14-04, PCSD Case number 040750875, a Craftsman Brand riding mower, model number 917.270913 matching one reported stolen between 11-1-03 and 2-8-04 PCSD case number 040390762, (See Attachment 2), and serial numbered speakers reported stolen under Pierce County Case number 03-1920381.

On 3-30-04 I, with assistance from the Washington State Patrol, and a Kent Police Detective, located the suspect, Chad Jensen driving a reported stolen pickup truck, pulling a reported stolen trailer with altered plates, and carrying a reported stolen CAT tractor on Interstate 90 at milepost 35. Suspect was arrested for possession of these items at that time.

Additionally, there have been several burglaries reported throughout Pierce County which have had chains or locks cut by force and large numbers of items stolen. The majority of these Burglaries follow the same pattern of locks or chains being cut, items carried off in the direction of an opposite street and tracks ending near a road where several tire tracks are located on the shoulder of the roadway.

Your affiant is a Detective with the Pierce County Sheriff's Department, currently assigned to investigate general crime in the city of Edgewood Washington. He has been a member of the Sheriff's department for 8 years and 2 months.

Jay Jensen PCSD 134

SUBSCRIBED AND SWORN to before me this 31 day of March 2004.

Stephanie Alford  
JUDGE

(W)

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

FILED  
PIERCE COUNTY CLERK'S OFFICE  
APR 01 2004 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

SEARCH WARRANT  
(Evidence)

STATE OF WASHINGTON )  
COUNTY OF PIERCE )

ss:

NO.

DA : 07238-9

THE STATE OF WASHINGTON TO THE SHERIFF OR DEPUTY PEACE OFFICER OF SAID COUNTY:

WHEREAS, Detective Jay P. Jensen has this day made complaint on oath to the undersigned one of the judges of the above entitled court in and for said county that on or about the 31 day of March, 2004 in Pierce County, Washington, a felony, to-wit: Possession of Stolen Property, was committed by the act, procurement or omission of another and that the following evidence, to-wit:

- 1). Items reported stolen PCSO Case number 03-1920381 (See Attachment 3)
- 2). MI-T-M Corp Pressure Washer,
- 3). UCHIMURA WAGONS brand Custom Wagons
- 4). Papers, receipts, phone records and other items showing intent to transfer stolen property.
- 5). Cab door for a CAT Tractor
- 6). Peddle cars (Mercedes Benz Replica Cars)
- 7). Wheels, (12 X 8.00 -6 Treaded Burris Tires Mounted on wheels)
- 8). Portable power tools, air compressors, paint sprayers and other general construction tools.
- 9). Large Bolt Cutter with aprox 36 " overall length
- 10). Receipts for rental storage units located in the City of Pacific as well as other, as yet unknown locations.
- 11). Any and all vehicles to determine ownership.

is material to the investigation or prosecution of the above described felony and that the said Detective Jensen verily believes said evidence is concealed in or about a particular house, person, place or thing; THEREFORE, in the name of the State of Washington, you are commanded that within ten days from this date, with necessary and proper assistance, you enter into and/or search the said house, person, place or thing, to-wit: The residence located at 2817 9<sup>th</sup> Street SW, Puyallup Washington, any and all out buildings, vehicles registered to residents of listed address, vehicles located at address to include 1993, LOWGC utility Trailer VIN number lcaus0818pt111981, 1982 Ford Bronco WA License Number, 150PZQ, 1980 ITASCA Motor Home VIN number CPL3293315189, 1989 home made utility trailer, 1986 ITASCA motor home VIN number 1wbbb15y0gf306260, 1977 Chevy Van, 1973 Ford Bronco, 2002 Home Made Utility Trailer, 1986 Chevy Flat Bed truck, 1999 Dodge Dakota Pickup, 1990 Red Chevy Pickup, 1995 Dodge Dayton 2 dr.

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

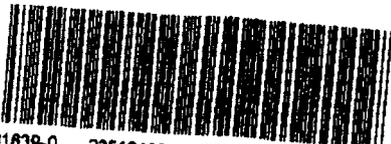
GIVEN UNDER MY HAND this 31 day of March 2004

*Stephane A. [Signature]*

*(P)*

**APPENDIX D**

**Defendant's Memorandum of Authorities in Support of  
Defendant's Motion for Release Forthwith (dated 04-02-04)**



04-1-01639-0 23518433 MMATH 08-10-05

FILED  
IN COUNTY CLERK'S OFFICE

A.M. AUG - 9 2005 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

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

STATE OF WASHINGTON,

Plaintiff,

v.

CHAD ROBERT JENSEN,

Defendant.

NO. 04-1-01639-0

MEMORANDUM OF AUTHORITIES IN  
SUPPORT OF DEFENDANT'S MOTION  
TO SUPPRESS EVIDENCE AND DISMISS

FACTS

The defendant was arrested without an arrest warrant in the vicinity of Snoqualmie Pass. It appears according to the police reports that some time had been spent following Mr. Jensen. At the time of the arrest the police officers were relying upon information received from persons whose veracity had not been confirmed. That information was placed in a warrant for the purpose of searching Mr. Jensen's property. That information did not support a search pursuant to Article I § 7 of the Washington State Constitution. The warrant and Judge Lee's findings are attached hereto.

ARGUMENT

Warrantless searches and arrests are per se unreasonable. Washington recognizes the Aguilar - Spinelli test to establish probable cause for the issuance of a warrant. The same requirements exist for a warrantless arrest plus an additional exigent circumstance must be shown or that the person committed a felony in the presence of the officer. Those facts do not exist in this case. There was no showing in this case that the two prongs of Aguilar - Spinelli had been

MEMORANDUM OF AUTHORITIES  
IN SUPPORT OF DEFENDANT'S MOTION  
TO SUPPRESS EVIDENCE AND DISMISS

**ORIGINAL**

THOMAS D. DINWIDDIE  
902 South 10<sup>th</sup> St.  
Tacoma, WA 98405  
(253) 272-2206

1 met. *State v. McCord*, 125 Wash. App. 888, 106 P.3d 832 (2005). In that there was not  
 2 sufficient information to corroborate the veracity prong of the Aguilar - Spinelli test it was an  
 3 unlawful seizure. *State v. Duncan*, 81 Wash. App. 70, 912 P.2d 1090 (1996). The information  
 4 provided from the police bulletin is not sufficient to provide probable cause in that it cannot be  
 5 known who reported the information as to stolen property or whether or not the information had  
 6 been properly entered into the system. Particularly, in light of the fact that the information that  
 7 was provided was stale and could not be sufficient to provide probable cause the warrant clearly is  
 8 not sufficient for probable cause for a warrantless arrest. Even a police bulletin or information  
 9 from the dispatch indicating a vehicle has been reported stolen does not provide reasonable  
 10 suspicion for an investigatory stop. Subsequent corroboration of the fact the vehicle was stolen  
 11 also will not save a warrantless arrest. *State v. O'Cain*, 108 Wash. App. 542, 31 P.3d 733 (2001),  
 12 and *State v. Mance*, 82 Wash. App. 539, 918 P.2d 527 (1996) have held that the information  
 13 provided to law enforcement by dispatch or by police bulletins do not provide probable cause for  
 14 a warrantless arrest. The search warrant which had been issued in this case does not provide  
 15 probable cause for a warrantless arrest or search. Upon reviewing the warrant and the decision  
 16 rendered by Judge Lee and the memorandum of authorities submitted by the defendant, it is clear  
 17 that the Aguilar - Spinelli test was not met and therefore that bad warrant cannot provide a basis  
 18 for this arrest. The invalid warrant cannot be used as a basis for a probable cause arrest in  
 19 Washington. Washington does not recognize a good faith exception for a search warrant,  
 20 therefore suppression is required. *State v. Nall*, 117 Wash. App. 647, 72 P.3d 200 (2003).

#### 21 CONCLUSION

22 In that this arrest was not supported by probable cause all evidence obtained must be  
 23 suppressed and this matter dismissed.

24 DATED this 9 day of August, 2005.

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 27   
 THOMAS D. DINWIDDIE WSBA# 6790  
 Attorney for Defendant

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 MEMORANDUM OF AUTHORITIES  
 IN SUPPORT OF DEFENDANT'S MOTION  
 TO SUPPRESS EVIDENCE AND DISMISS

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