

NO. 33920-0

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

STATE OF WASHINGTON, RESPONDENT

v.

CHAD ROBERT JENSEN, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Linda Lee
And
The Honorable Thomas J. Felnagle

No. 04-1-01639-0

BRIEF OF RESPONDENT

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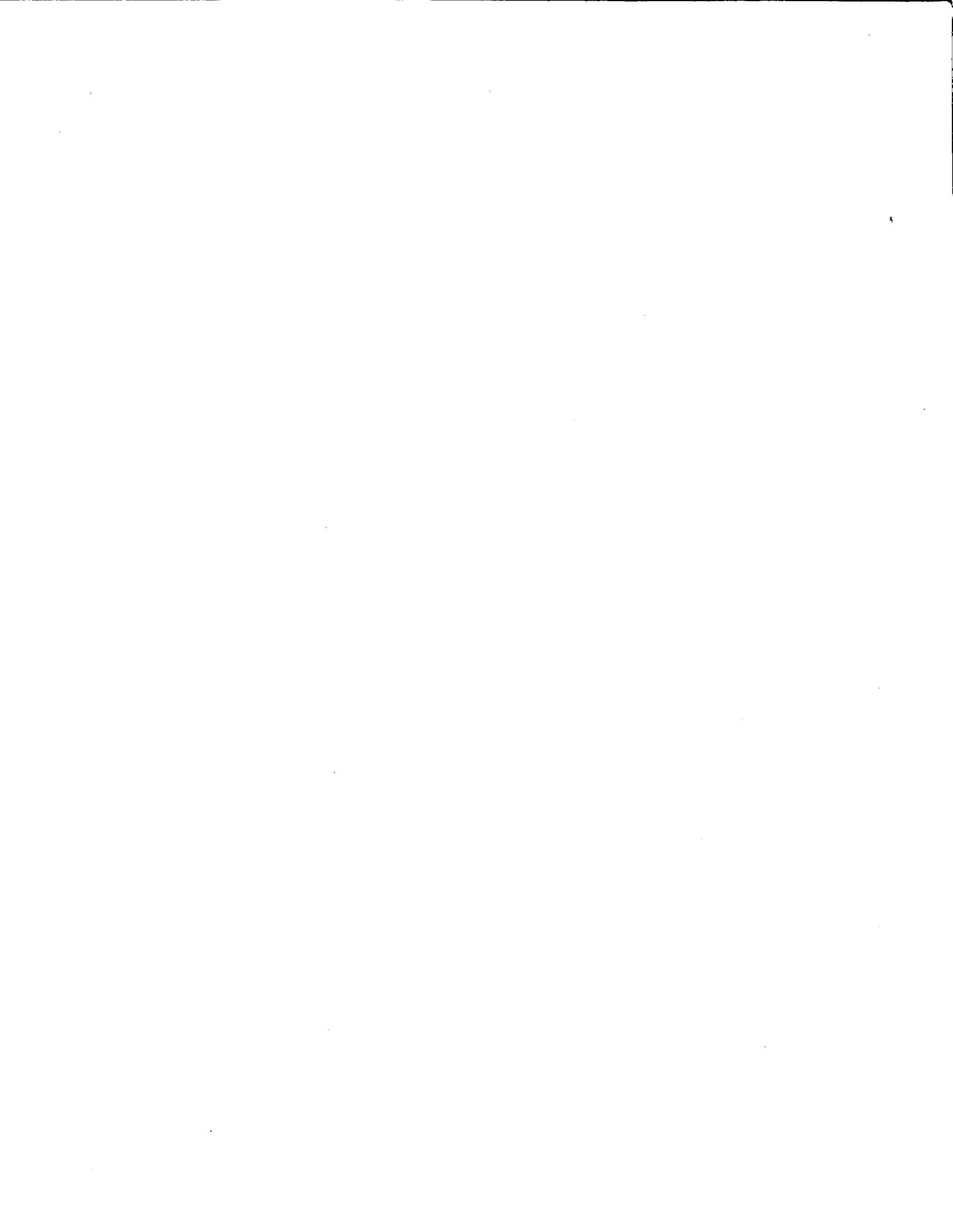
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tractor (Count II), a Commercial Tractor Trailer (Count III), and Custom Wagons (Count IV). CP 1-5.

On June 1, 2005, defendant moved to dismiss pursuant to CrR 8.3(b), claiming prosecutorial mismanagement. CP 15-17; RP (06/01/05) 5-6. The court denied the motion, holding that the allegations did not, “rise to the level demonstrating the kind of mismanagement and/or prejudice to the defendant that would justify dismissal.” RP (06/01/05) 7.

On July 6, 2005, the parties held the 3.5 and 3.6 hearing before the Honorable Linda CJ Lee. RP (07/06/05) 3. Defendant moved to suppress the results of the search pursuant to a search warrant issued March 31, 2004. CP 9-14, 18-30; RP (07/06/05) 3-4. Defendant argued that the information contained within the Complaint for Search Warrant was stale, that it did not establish a nexus between the items searched for and the place to be searched, and that the informant’s statements did not conform to the Aguilar-Spinelli² test. RP (07/06/05) 13-23. The court ruled that the allegation contained in the Complaint for Search Warrant, taken as a whole, supplied sufficient evidence from which a reasonable person could conclude that the times sought were at the location to be searched. RP (07/06/05) 36. The parties stipulated to the admission of statements defendant made to the arresting officer. RP (07/06/05) 40-42. The court

² Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964); Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969).



entered Findings and Conclusions on Admissibility of Evidence. CrR 3.6 on December 2, 2005. CP 318-27 (Appendix A).

Jury trial commenced on August 15, 2005, before the Honorable Thomas Felnagle. RP (08/15/05) 1. Prior to testimony, defendant again brought a motion to suppress and dismiss, contending that defendant's arrest was unlawful. RP (08/15/05) 7. Defendant specifically argued that, "we have a bad search warrant that's the basis for a bad arrest, . . . the officers couldn't have known it was stolen property . . ." RP (08/15/05) 7. The court ruled that, despite the State's argument to the contrary, defendant's motion to suppress was timely brought. RP (08/15/05) 17. However, the court held that there was no basis for granting the motion, "given the fact that Judge Lee has already ruled that the search warrant was valid." RP (08/15/05) 17.

The State moved to amend the information to combine Counts II, III, and IV, and to dismiss Count I at the close of its case-in-chief. RP (08/17/05) 158. The court declined the motion to combine the counts, and accepted the dismissal on Count I. RP (08/17/05) 167-68.

Defendant then moved to dismiss Counts II, III, and V, arguing again that defendant's arrest was unlawful because it was a pretextual stop, based on the testimony adduced at trial. RP (08/17/05) 174-78. The court denied the motion to dismiss, holding that it cannot base a CrR 3.6 ruling on trial testimony. RP (08/17/05) 180. The court stated that, "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.” RP (08/17/05) 180. Defendant argued that he did brief the issue for a 3.6 hearing, but the court reminded defendant the briefing was on the search warrant, not on the question of a pretextual arrest. RP (08/17/05) 180. Defendant rested without calling any witnesses. RP (08/17/05) 183.

On August 18, 2005, the jury returned guilty verdicts on Counts II, III, and IV, and a not guilty verdict on Count V. CP 146-49; RP 183 (08/18/05) 240. The State requested high end, standard range sentences of 57 months one for Counts II and III, combined and one on Count IV. RP (10/07/05) 5. Defendant argued for a Drug Offender Sentencing Alternative (DOSA) sentence or, alternatively, a low end, standard range sentence. RP (10/07/05) 26. The court imposed the high end sentence of 57 months, to run consecutive to all prior convictions, stating, “I can’t take somebody with 13 or 14 points on property crimes and justify a DOSA.” CP 290-300; RP (10/07/05) 29.

Defendant filed this timely notice of appeal. CP 301-13.

2. Facts

On March 30, 2004, at approximately 11:30 a.m., Pierce County Sheriff Detective Jay Jensen was working in the City of Puyallup near 2917 9th Street in Puyallup, Washington. RP (08/16/05) 42, 75. Detective Jensen knew that defendant and his parents lived at that address.

RP (08/16/05) 42. As he approached defendant's property, Detective Jensen saw defendant pulling out of the driveway in a truck pulling a tractor on a trailer behind it. RP (08/16/05) 42-43. Detective Jensen noticed that the truck was missing its front license plate, and he wrote down the license plate number of the trailer. RP (08/16/05) 43. Detective Jensen ran the trailer's plate through LESA records and, based on the information he received, he decided to stop defendant. RP (08/16/2005) 71, 94.

Detective Jensen lost sight of defendant in the time it took him to find a safe spot to turn around. RP (08/16/05) 45. He called the Washington State Patrol to assist with locating defendant. RP (08/16/05) 46. Detective Jensen headed toward I-90, searching for defendant. RP (08/16/05) 82. He drove to the top of Snoqualmie Pass before turning back toward Pierce County. RP (08/16/05) 77. As he was traveling back on I-90, Detective Jensen saw defendant driving in the opposite direction and looked for a place to turn around. RP (08/16/05) 77-78. Detective Jensen turned around and caught up to defendant as Washington State Patrol was initiating the stop. RP (08/16/05) 78. Approximately two and a half to three hours had elapsed from the time Detective Jensen saw

defendant until Washington State Patrol pulled him over³. RP (08/16/05) 77.

After Washington State Patrol stopped defendant, Detective Jensen verified that the truck, the trailer, and the tractor had been reported stolen. RP (08/16/05) 80. Defendant was the sole occupant of the truck, and when Detective Jensen asked him who owned the tractor, defendant responded, "some guy." RP (08/16/05) 47. Detective Jensen also found three baggies of white powder in the cab of the pickup truck. RP (08/16/05) 56. Detective Jensen could not find any ownership documentation in the truck, and had to determine ownership by VIN number. RP (08/16/05) 57-58.

Detective Jensen contacted Joseph Kawaky, the owner of the tractor and trailer, who came to identify the equipment at the scene. RP (08/16/05) 59, 113-15. Detective Jensen released the tractor and trailer to Mr. Kawaky and attempted to reach the owner of the truck, but was unsuccessful. RP (08/16/05) 59.

³ Washington State Patrol ordered defendant out of the truck at gun point, not for the license plate violation, but because the situation had "escalated beyond that," by the time of the stop. RP (08/16/05) 79. There was no testimony indicating why the troopers drew their firearms, but Detective Jensen, who was on the scene immediately and initiated the arrest, did not draw his gun. RP (08/16/05) 85.

Detective Jensen got a warrant to search defendant's residence and outlying buildings on the property, and served it the following day⁴. RP (08/16/05) 63. He found several wagons inside one of the outbuildings and contacted Art Uchimura to identify them. RP (08/16/05) 64-65. Detective Jensen released the wagons to Mr. Uchimura. RP (08/16/05) 65.

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY DENIED THE MOTION TO SUPPRESS WHERE THE SEARCH WARRANT WAS BASED ON SUFFICIENT FACTS TO ESTABLISH PROBABLE CAUSE.

To be proper under the Fourth Amendment, a search warrant requires three things: 1) it must be issued by a neutral and detached magistrate; 2) the proponent of the warrant must demonstrate to the magistrate their probable cause to believe that evidence sought will aid in the apprehension or conviction of a person regarding a particular offense; and, 3) that the warrant particularly describes the things to be seized and the places to be searched. Dalia v. United States, 441 U.S. 238, 255, 99 S. Ct. 1692, 60 L. Ed. 2d 177 (1979). In the trial court and on appeal,

⁴ Detective Jensen's reasonable belief that stolen items would be found at defendant's residence was based on facts set forth in the Complaint for Search Warrant and are attached to the court's Findings and Conclusions on Admissibility of Evidence CrR 3.6. See CP 318-27 (Appendix A).

defendant challenges the validity of the search warrant, alleging that the affidavit supporting the warrant was insufficient to establish probable cause. Defendant's claim is without merit.

- a. The affidavit supporting the warrant would convince a reasonable person that stolen property currently in defendant's possession could be found at his father's residence based on prior victims' recovery of stolen property at the same location.

The Fourth Amendment of the United States Constitution and article 1, section 7 of the Washington Constitution require that a search warrant be issued upon a determination of probable cause based upon "facts and circumstances sufficient to establish a reasonable inference that criminal activity is occurring or that contraband exists at a certain location." State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999) (citing State v. Smith, 93 Wn.2d 329, 352, 610 P.2d 869, cert. denied, 449 U.S. 873 (1980)). The affidavit supporting a search warrant establishes probable cause when it provides sufficient facts for a reasonable person to conclude there is a probability the defendant is involved in the criminal activity, but the affidavit must be based on more than suspicion or mere personal belief that evidence of the crime will be found on the premises searched. State v. Vickers, 148 Wn.2d 91, 108, 59 P.3d 58 (2002). Further, "[i]t is only the probability of criminal activity and not a prima facie showing of it which governs the standard of probable cause." State v. Seagull, 95 Wn.2d 898, 907, 632 P.2d 44 (1981).

A magistrate's decision to issue a warrant is an exercise of judicial discretion, which is reviewed for abuse of discretion. Id. The reviewing court accords great deference to the magistrate and views the supporting affidavit for a search warrant in the light of common sense. State v. Cole, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). Doubts concerning the existence of probable cause are generally resolved in favor of issuing the search warrant. Id.

The information supporting a warrant is considered "stale" if due to the time that elapsed from when the criminal activity occurred and the warrant is sought or served, it is unlikely that the items sought to be discovered would still be on the premises to be searched. The test for staleness of information contained in a search warrant affidavit is a common sense test of determining if the facts are sufficient to justify a conclusion by a neutral magistrate that the property sought is still on the person or premises to be searched. State v. Petty, 48 Wn. App. 615, 621, 740 P.2d 879 (1987); State v. Anderson, 41 Wn. App. 85, 95, 702 P.2d 481 (1985); State v. Riley, 34 Wn. App. 529, 534, 663 P.2d 145 (1983). If the facts and circumstances recited in the affidavit support the conclusion that there is continuing and contemporaneous possession of the property sought to be seized, then the information is not stale for purposes of probable cause. State v. Johnson, 17 Wn. App. 153, 156, 561 P.2d 701 (1977). There is no bright line rule that defines when a warrant is stale. If the affidavit makes an adequate showing which goes beyond suspicion and

mere personal belief that evidence of a criminal act will be found in the place to be searched, the warrant will be upheld. State v. Seagull, 95 Wn.2d 898, 907, 632 P.2d 44 (1981).

In the present case, the trial court properly denied defendant's motion to suppress the evidence seized as a result of the search warrant. While defendant has never identified the specific evidence to be suppressed, it appears from his appeal that he is arguing that Mr. Urchimura's custom wagons should be suppressed as the only items of evidence recovered as a result of the warrant. See Appellant's Brief at page 38-39. Additionally, when testifying as to the search of Larry Jensen's property, Detective Jensen limited his testimony to finding the wagons. RP (08/16/2006) 63-65.

The warrant affidavit set forth sufficient facts for a reasonable person to conclude that there was a probability that the stolen wagons could be found on the property to be searched. Mr. McPhail reported that he operates the Munroe County Fair Swap-Meet. In October, 2003, one of his vendors, Mr. Uchimura, reported that merchandise had been stolen from his booth, specifically some custom wagons. CP 322. Mr. McPhail stated that defendant's booth was in close proximity to Mr. Uchimura's and that people had seen defendant loading unidentified items into his truck at 1:00 a.m. on the night of the theft. CP 322.

In March, 2003, the Pacific Police Department served a search warrant on several storage lockers in Pacific rented in defendant's name.

CP 323. Pacific police officers recovered a number of items, including several reported missing in Pierce County. CP 323. They did not, however, find Mr. Uchimura's wagons. See CP 323.

The affidavit also contained statements made by victims of previous thefts who had subsequently found their property at Larry Jensen's address. CP 321-22. The statements were not "stale" because they were not offered to suggest that the stolen items could be found via the warrant. Instead, they established a pattern showing that defendant used his father's residence to store stolen property, leading to the logical conclusion that, if a specific item of stolen property had not been found at the storage lockers, it could be found at Larry Jensen's residence.

The facts and circumstances recited in the affidavit support the conclusion that there had been continuing and contemporaneous possession of the property sought to be seized. The facts listed in the affidavit, while individually insufficient, taken as a whole provided sufficient evidence from which a reasonable person could conclude that the wagons were at Larry Jensen's residence.

The trial court reviewed the search warrant pursuant to defendant's motion to suppress. See RP (07/06/2005) 3. The parties submitted briefing and the court heard argument before denying defendant's motion to suppress. CP 9-14, 18-30, 50-72, 329-33; RP (07/06/2005) 37. The trial court found, "all of those allegations taken as a whole I think lead a reasonable person to conclude that the items that are being sought in the

search warrant would be located at the residence identified in the search warrant.” RP (07/06/2005) 37.

- b. The trial court properly denied the motion to suppress as defendant failed to show that the named citizen informants were unreliable under *Aguilar-Spinelli*.

Before a warrant can be issued based solely on a police informant's tip, the *Aguilar-Spinelli* test requires the State to establish both the informant's basis of knowledge and the informant's veracity. *State v. Jackson*, 102 Wn.2d 432, 437-38, 688 P.2d 136 (1984). The first prong of the test relates to the informant's basis of knowledge. *State v. Gaddy*, 152 Wn.2d 64, 72, 93 P.3d 872 (2004); *State v. Smith*, 102 Wn.2d 449, 455, 688 P.2d 146 (1984).

Here, two of the informants personally recovered stolen property from Mr. Larry Jensen's address. Mr. Macalister knew defendant was his employee, and knew that he recovered Mr. Weir's stolen property from defendant's father. CP 322 (Appendix A). Additionally, Ms. Lakin knew she saw her lawn mower at a yard sale at Larry Jensen's residence. CP 322 (Appendix A). When she confronted him, Mr. Jensen told her that the mower belonged to defendant, but he did not want any trouble with the police and gave it back to her. CP 322 (Appendix A). Finally, Mr. McPhail, as the manager of the Monroe County Fair Swap Meet, knew one of his vendors had merchandise stolen, and also that defendant's booth

was in close proximity of the victim's. CP 322 (Appendix A). Clearly each of these people had first-hand knowledge of the events they reported.

The second prong of the Aguilar-Spinelli test requires an examination of the credibility of the informant or the reliability of the informant's information. Gaddy, 152 Wn.2d at 72; Smith, 102 Wn.2d at 455. If the identity of the informant is known, the necessary showing of reliability is relaxed. Gaddy, 152 Wn.2d at 72. Citizen informants are deemed presumptively reliable. Id.

In the present case, the informants were victims of prior crimes. None of them were paid police informants, and each of them was named in the affidavit. Additionally, with the exception of Mr. McPhail, none of the citizens were actually acting as informants. Their statements came through Detective Jensen's prior investigations of thefts that were unrelated to the current matter or, in the case of Mr. Porco, a victim's police report. See CP 322-23 (Appendix A). From the affidavit, it would appear that Mr. McPhail was acting as an informant when he called Detective Jensen to report a crime which occurred in Monroe, Washington. CP 322 (Appendix A). However, because he was an unpaid, named, citizen informant, and he had first hand knowledge of the location of defendant's booth in relation to Mr. Uchimura's, Mr. McPhail's statements are also presumptively reliable.

Defendant has failed to show that the trial court committed error when it denied his motion to suppress because the warrant was based on

sufficient facts to establish probable cause, and the citizen informants had personal knowledge and were presumptively reliable.

2. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION WHETHER OR NOT TO HEAR ISSUES WHICH HAD ALREADY BEEN ADDRESSED BY ANOTHER SUPERIOR COURT JUDGE ON THE SAME CASE, AND THE SECOND MOTION ATTACKING THE STOP AS PRETEXTUAL WAS UNTIMELY ENTERED.

The rules of criminal procedure “shall be construed to secure simplicity in procedure, fairness in administration, effective justice, and the elimination of unjustifiable expense and delay.” CrR 1.2. “Motions to suppress physical, oral or identifiable 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.” CrR 3.6.

- a. The trial court properly exercised its discretion to refuse to hear an issue which had already been decided in a pretrial ruling by a judge who was no longer assigned to the case.

Defendant claims that the State misrepresented the fact that Judge Lee had already ruled that there was sufficient probable cause to make the search warrant valid. See Appellant’s Brief at 12. This was not a misrepresentation. See CP 318-27. Additionally, a review of the record clearly shows that defendant attempted to engage in forum shopping when

he attacked the legality of the stop in front of Judge Felnagle, based on the information contained in the search warrant, which Judge Lee had already found to be sufficient to establish probable cause.

The trial judge is ultimately the one who is responsible for the flow of evidence at trial; decisions as to whether to re-litigate motions made by a predecessor judge or to abide by them should be left to the sound discretion of the trial court. The court may decide that it is satisfied with the soundness of the prior decision and leave it in place. The court could also decide that the earlier ruling made by another judge was in error. To require a court to re-hear every pretrial ruling would render the system ineffective and would be a waste of judicial resources.

On August 9, 2005, defendant filed a motion to suppress evidence and dismiss in relation to his warrantless arrest. CP 73-74. However, the argument in support of this motion was entirely related to the search warrant issued after defendant's arrest. See CP 50-72. Defendant had already argued and lost his motion to suppress evidence based on the invalidity of the warrant to Judge Lee on July 6, 2005. See RP (07/06/2005) 4, 35. When he raised the issue in front of Judge Felnagle on August 15, 2005, defendant argued that, "we have a bad search warrant that's the basis of a bad arrest." RP (08/15/2005) 7. Defendant chose to argue in front of Judge Lee that the warrant was bad, and to reserve his argument for why the arrest was bad at a later date, but later based his arrest argument on the same grounds that Judge Lee had already ruled on.

See RP (08/15/2005) 13-16. Judge Felnagle, after receiving defendant's brief attacking the warrant and hearing oral argument, found that there was "no basis for it, given the fact that Judge Lee has already ruled that the search warrant was valid. And to suggest that this Court ought to re-examine that decision with the idea that I might find otherwise on a related, but somewhat different, matter is inappropriate." RP (08/15/2005) 17. The court correctly observed that defendant's forum shopping was inappropriate.

The State additionally challenged defendant's motion as untimely, and that defendant should have brought this motion at the earlier 3.6 hearing in front of Judge Lee. RP (08/15/2005) 11-12. The court disagreed with the State, finding that the motion was not untimely, but was inappropriate. RP (08/15/2005) 17. The record clearly shows that the court did not rely on assertions by the State.

Defendant's challenge to the arrest based on an invalid search warrant, when his challenge to the validity to the warrant had already been denied, was properly denied.

- b. The court properly refused to hear defendant's argument that the arrest was based on a pretextual stop because the argument was untimely raised.

The denial of a motion to dismiss criminal charges is reviewed for manifest abuse of discretion. State v. Woods, 143 Wn.2d 561, 582, 23 P.3d 1046 (2001). "Dismissals are an extraordinary remedy available only

when there is arbitrary prosecutorial action or governmental misconduct, including mismanagement, that prejudices the defendants and materially affects their right to a fair trial.” Id. at 715. A trial court abuses its discretion when its decision is manifestly unreasonable or rests upon untenable grounds or reasons. State v. Cunningham, 96 Wn.2d 31, 34, 633 P.2d 886 (1981). Untenable decisions are those decisions where no reasonable person would adopt the view of the court. Id. at 34.

In the present case, defendant moved to dismiss Counts II, III, and IV, claiming his arrest resulted from a pretextual stop for the first time at trial. As discussed above, defendant’s pretrial motions had attacked the validity of the search warrant. Defendant never claimed the stop was pretextual until after the State had rested. See CP 73-74; RP 174-78. The court denied defendant’s motion, stating:

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 . . .

RP (08/17/2005) 180.

The court’s decision was reasonable, given that defendant had ample opportunity to claim the stop was pretextual prior to trial, when the State could have presented evidence relating to Detective Jensen’s knowledge without being constrained by the trial rules of evidence.

Clearly the court did not abuse its discretion in denying defendant's motion to dismiss.

- c. The limited record reflects that Detective Jensen and the Washington State Patrol had a reasonable and articulable suspicion to stop defendant and that his arrest was lawful.

A police officer may conduct an investigative stop based on less evidence than is needed for probable cause to make an arrest. State v. Glover, 116 Wn.2d 509, 519, 806 P.2d 760 (1991) (citing Terry v. Ohio, 392 U.S. 1, 25-26, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)). A brief investigative stop is permissible whenever the police officer has a reasonable suspicion, grounded in specific and articulable facts, that the person stopped has been, or is about to be, involved in a crime. United States v. Hensley, 469 U.S. 221, 227, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985). In evaluating the reasonableness of an investigative stop, the court considers the totality of the circumstances presented to the investigating officer, including the officer's training and experience. Glover, 116 Wn.2d at 514. An officer's knowledge of a defendant's recent criminal activity is also a valid reason for detention. See State v. Perea, 85 Wn. App. 339, 342-43, 932 P.2d 1258 (1997) (The officer's seven-day-old knowledge of Perea's suspended license was an articulable fact that warranted the defendant's detention).

Probable cause to arrest exists when 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 to believe that the defendant has committed an offense. State v. Terrovona, 105 Wn.2d 632, 643, 716 P.2d 295 (1986). In deciding whether police officers have probable cause to arrest, courts take into account the collective knowledge of the arresting officers. State v. Nall, 117 Wn. App. 647, 650, 72 P.3d 200 (2003). The officer's knowledge need not be recent. See Perea, 85 Wn. App. at 343 (holding that week-old information about the defendant's suspended license was recent enough for the officer to form probable cause to arrest at the moment the officer first saw him). The "fellow officer" rule allows the arresting officer to rely on what other officers or police agencies know. State v. Mance, 82 Wn. App. 539, 542, 918 P.2d 527 (1996).

At trial, Detective Jensen testified that the truck defendant was driving was missing a front license plate. RP (08/16/2005) 43. Detective Jensen ran the license plate of the trailer defendant was pulling. RP (08/16/2005) 43. LESA records provided the registration information on the trailer, and, based on the information received, Detective Jensen decided to stop defendant. RP (08/16/2005) 71, 94. Detective Jensen called Washington State Patrol to assist with locating defendant, and State troopers found and stopped defendant approximately two to three hours later. RP (08/16/2005) 46, 77. Detective Jensen did not know for a fact that the truck, trailer, or the tractor was stolen before defendant was stopped, but he did know that the vehicles did not have their proper license

plates on them. RP (08/16/2005) 80. After the stop, Detective Jensen was able to get the VIN numbers for the truck and equipment. RP (08/16/2005) 58-57, 80.

Defendant claims that his arrest was unlawful because the initial stop was based on a pretext. Defendant's argument is without merit. While Detective Jensen could not state how he knew defendant was driving a stolen truck at trial without violating hearsay rules of evidence, it was clear from the limited record that Detective Jensen and the Washington State Patrol had a reasonable and articulable suspicion to stop defendant. Once Detective Jensen was able to positively identify the truck, trailer, and bobcat tractor as stolen, and defendant was not the legal owner, he had probable cause to arrest defendant for possession of stolen property.

The court denied defendant's motion to suppress, first on procedural grounds, and second on the merits, stating, "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." RP (08/17/2005) 180. Detective Jensen had a reasonable and articulable suspicion to stop defendant, and probable cause to arrest him.

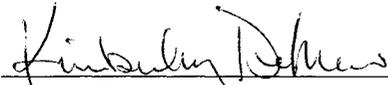
D. CONCLUSION.

For the reasons stated above, the State respectfully requests that the Court affirm defendant's convictions.

DATED: July 20, 2006

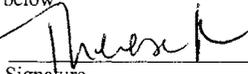
GERALD A. HORNE
Pierce County
Prosecuting Attorney


TODD A. CAMPBELL
Deputy Prosecuting Attorney
WSB # 21457


Kimberley DeMarco
Rule 9 Legal Intern

Certificate of Service:

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

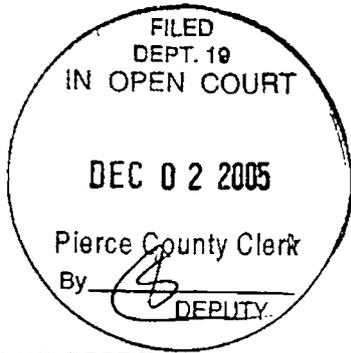
7/20/06 
Date Signature

FILED
CLERK OF SUPERIOR COURT
JUL 20 2006
TACOMA, WASH.
KJD

APPENDIX “A”

Findings and Conclusions on Admissibility of Evidence CrR 3.6

Appendix A



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 6th 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 ^{stolen} 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 9th 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

FILED
DEPT. 10
IN OPEN COURT

DEC 02 2005

Pierce County Clerk
By *[Handwritten Signature]*
DEPUTY

Approved as to Form: *[Handwritten Signature]*

~~*[Handwritten Signature]*~~

THOMAS DOUGLAS DINWIDDIE
Attorney for Defendant
WSB # 6790

jra

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FILED IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN COUNTY CLERK'S OFFICE IN AND FOR THE COUNTY OF PIERCE

AM APR 01 2004 P.M.
STATE OF WASHINGTON
PIERCE COUNTY CLERK)
JOHN STOCK, County Deputy)
BY _____ OF PIERCE)

COMPLAINT FOR SEARCH WARRANT
(EVIDENCE)

04-1 07238 9
NO.

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 firearm 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 MO 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 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 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 17th 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 6/23/2005 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 there 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 there 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 Uchimura 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. Uchimura'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.

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 Akland
JUDGE

(W)

IN COUNTY FILED
CLERK'S OFFICE

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

AM APR 01 2004 P.M.

COMPLAINT FOR SEARCH WARRANT
(EVIDENCE)

STATE OF WASHINGTON
PIERCE COUNTY, WASHINGTON
COUNTY OF PIERCE
BY _____)
COUNTY CLERK)
DEPUTY)

04-1 07238 9
NO.

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Chad Jensen PCSD 134

SUBSCRIBED AND SWORN to before me this *31* day of *March* 20*04*.

Stephanie Alford
JUDGE

(20)