

No. 35604-0-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,  
Respondent,

v.

RAYMOND TIMOTHY HANKINS,  
Appellant.

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BRIEF OF APPELLANT RAYMOND TIMOTHY HANKINS

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G. Saxon Rodgers  
Washington State Bar No. 5798  
Attorney for Appellant

Ditlevson Rodgers Dixon, P.S.  
324 West Bay Dr NW, Ste. 201  
Olympia, WA 98502  
(360) 352-8311

01/17/17  
STATE OF WASHINGTON  
COURT OF APPEALS, DIVISION II  
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K. H.

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## **I. INTRODUCTION**

The appeal in this case addresses issues from a Motion to Suppress that was held before the Honorable Chris Wickham, Judge of Thurston County Superior Court, on February 6, 2006, as well as a Motion to Reconsider the suppression hearing decision, which was subsequently denied by Judge Wickham. (The Report of Proceedings for the suppression hearing will be designated herein as Motion Report of Proceedings (MRP).)

The remaining issues in this appeal are directly related to the underlying jury trial. This trial was held before the Honorable Richard D. Hicks on October 23 – 24, 2006. (The Report of Proceedings for the jury trial will be designated RP, as is normally required.)

Hankins' Motion to Arrest Judgment was heard on November 7, 2006. (The Report of Proceedings for this hearing is a total of six pages, and will be designated MAJRP, pages one through six.)

The charge of manufacturing methamphetamine that was tried at the jury trial in October of 2006, arose from evidence collected at the time the search warrant was executed on January 25, 2005.

## **II. ASSIGNMENTS OF ERROR**

### **A. Assignments of Error (AOE)**

1. The trial court erred in denying Hankins' Motion to Suppress Evidence. CP 96-98.

2. The Court erred in issuing Finding of Fact 2.3, which reads,

“Evidence of methamphetamine labs is long-lived. A lapse of a month or two between when the confidential informant went to the property and when the warrant was sought did not render the information stale, given the nature of the evidence in this case.” CP 97.

3. The Court erred in issuing Conclusion of Law 3.1, which reads,

“The veracity and reliability prongs of the Aguilar-Spinelli test are satisfied by the confidential informant in this case.” CP 97.

4. The Court erred in issuing Conclusion of Law 3.2, which reads as follows: “The informant’s information was not stale.” CP 97.

5. The Court erred in issuing Conclusion of Law 3.3, which reads as follows:

“The face of the Detective Duprey’s second application for a search warrant, according great deference to the issuing magistrate, contained sufficient facts to provide probable cause to believe that evidence of the crime of manufacturing methamphetamine would be found in and around the defendant’s residence on January 25, 2005.” CP 97.

6. The trial court erred in denying Hankins’ Motion for Reconsideration to Suppress Evidence. CP 147-148.

7. The trial court erred in denying Hankins’ Motion to Arrest Judgment, because previously manufactured methamphetamine, mixed with acetone, does not constitute “manufacturing” of methamphetamine. MAJRP 3-4.

8. The trial court erred in denying Hankins’ Motion to Arrest Judgment, because there was no evidence presented that

Hankins was an accomplice “with another person.” MAJRP 4-5.

**B. Issues Pertaining to Assignments of Error**

1. Did the trial court err when it ruled that confidential information given to police was “contemporaneous,” or “not stale”? (AOE 1, 2, 4, 5, and 6)
2. Did the trial court err when it ruled that confidential information given to police met the Aguilar-Spinelli test? (AOE 1, 3, 4, 5, and 6)
3. Did the trial court err when it ruled that evidence of methamphetamine labs is long-lived? (AOE 2, 6.)
4. Did the trial court err when it ruled that the search warrant affidavit was valid on its face? (AOE 1, 6)
5. Did the trial court err in ruling that methamphetamine mixed with acetone constitutes “manufacturing” of methamphetamine? (AOE 7.)

6. Did the trial court err in ruling that Hankins could be convicted as an “accomplice” with no evidence that Hankins acted in concert or complicity “with another person”? (AOE 8.)

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

A. **Search warrant.** Timothy Raymond Hankins was arrested and charged with one count of manufacturing methamphetamine. The charge was filed subsequent to the execution of a search warrant issued on January 25, 2005.

On January 19, 2005, Detective Eugene Duprey of the Thurston County Sheriff’s Office, was contacted by a confidential informant (CI) named Kim Gautreaux. CP 69. The CI had been incarcerated in the Thurston County Jail continuously since December 15, 2004. CP 132-3. There is no possibility that the CI was anywhere but the Thurston County jail between December 15, 2004 and May 1, 2005. RP 130-131. The CI could not have possibly have been to Hankins’ residence after December 15, 2004 and through May 1, 2005.

The CI claimed that she had first-hand knowledge that evidence of a methamphetamine laboratory once located at Hankins' residence would be found on the property of a person named Dwayne Cullens. CP 68-9. The CI also claimed there were paint cans in Hankins' garage with evidence of the November methamphetamine lab. CP 75. The CI provided this information on January 19, 2005. MRP 69, RP 45. Dwayne Cullens did not reside at Hankins' residence, but did live in the City of Yelm, Washington. RP 29-30. This methamphetamine lab supposedly existed in November of 2004. CP 69. The CI had an extensive criminal record, (MRP 91-93), and was trying to get out of jail.

Acting on the CI's tip, Duprey and other police officers went to the property of Duane Cullens. CP 68. They met with Cullens who told them they could search his property and a shed next door, which was half on his property, and half on his brother's property. CP 68. Detectives ultimately found evidence of manufacturing methamphetamine in some garbage

bags on the joint property of Dwayne and Bob Cullens.

Dwayne Cullens told police he did not know where the garbage bags came from, but thought some of the property belonged to someone named Amber Anderson. CP 69.

There were some documents in the garbage that referred to Hankins or his residence, as well as other people. CP 74.

There was also a “property” bag from the County Jail with Kim Gautreaux’s name on it. CP 39. This bag was most likely put in the garbage sometime when the CI was on work release, as it could not be placed there if she was in custody. The collected evidence was dusted for fingerprints. No latent fingerprints of value were recovered. RP 43.

Kim Gautreaux had access to Hankins’ residence the 10 days she was on work release, December 5, 2004, to December 15, 2004. CP 69. Hankins was out of the country while the CI had access to his residence. CP 75.

At the time of the suppression hearing, it was unknown how and when the garbage got to the Cullens property. (During

the trial, Brandon Adair testified that Kim Gautreaux took the garbage to Cullens' house while she was on work release. Mr. Adair was with Gautreaux when this occurred. This information was not known or presented to Judge Wickham at the suppression hearing.) There was evidence that a truck belonging to Hankins had been to the property. CP 75. Dwayne Cullens told police that the truck, which was at the residence at the time the warrant was obtained, had come and gone from the property. CP 75. Cullens told police the truck had been returned to the property about one week earlier. Cullens provided no information as to any garbage being in the truck when it returned a week earlier.

After the police went through the garbage, based on the garbage evidence, they requested a second warrant on the same day. CP 73-78. The same Judge (Sue Dubuisson) issued a second warrant for the residence of Hankins, based on the garbage evidence at Cullens' property.

When the police executed the second warrant on January 25, 2005, it was at Hankins' residence. There was no active methamphetamine laboratory on the premises. There certainly was evidence of methamphetamine on the premises, which is not an issue in this case. Hankins was never charged with the crime of possession of methamphetamine in the trial court.

**B. Manufacturing Charge.** Police served and executed on the second search warrant at Hankins' residence on January 25, 2005. Hankins was charged with manufacturing methamphetamine on January 25, 2005. CP 3. Hankins was never charged with manufacturing methamphetamine in November or December of 2004. CP 3.

Evidence was collected on January 25, 2005, from Hankins' residence. There was no active methamphetamine laboratory existing on the premises at the time the search warrant was executed. The detectives collected two glass containers, each containing methamphetamine mixed with

acetone. Ex 39 and 41. One container was found in the freezer, and one container was found in the pantry in the kitchen.

Thurston County toxicity officials appeared on the scene on January 26, 2005. A number of samples were taken from the interior walls and ceiling of the master bathroom. The samples were tested for the presence of methamphetamine residue. The results of the tests were negative for methamphetamine residue. CP 142-146. This evidence was presented to Judge Wickham at the Motion for Reconsideration of the decision denying the initial Motion to Suppress. This toxicity test evidence was not presented by either party at the trial. This evidence is only important as it relates to the suppression hearing, not whether there was or wasn't evidence of "manufacturing" at the residence on January 25, 2005.

The trial record reflects that no one was at home when the warrant was executed on January 25, 2005. Mr. Hankins drove up to the residence during the execution of the search warrant. Hankins had some methamphetamine in his pocket, for which

he was never charged. RP 26. Mr. Hankins was arrested on January 25, 2005, and released on bail immediately.

There is no evidence in the record that Mr. Hankins manufactured methamphetamine on January 25, 2005, with another person. Mr. Hankins was convicted as an accomplice for manufacturing methamphetamine on January 25, 2005. The jury was instructed as to accomplice liability only, not principal and/or accomplice liability. CP 162.

#### **IV. ARGUMENT**

##### **A. THE TRIAL COURT ERRED WHEN IT RULED THAT THE CI INFORMATION WAS CONTEMPORANEOUS OR “NOT STALE”.**

It is axiomatic that the information contained in an affidavit for search warrant be contemporaneous. State v. Higby, 26 Wn. App. 457 (1980). The magistrate must be supplied with “a substantial basis for determining the existence of probable cause.” State v. Huft, 106 Wn. 2d 206, 212; 720 P.2d 838 (1986). There is no information that indicates when the garbage viewed by police was actually brought to the

Cullens property. There is no evidence in the Criminal Rule 3.6 hearing as to who brought the garbage to Cullens' residence. In Judge Wickham's oral opinion, he is mistaken to the extent he assumes that the garbage was brought to Cullens' property at a time close in proximity to obtaining the search warrant on January 25, 2005. See MRP 61. There is no evidence in the record that indicates when the garbage was removed from Hankins' truck and put in the shed on the Cullens' property.

The evidence of methamphetamine manufacture in January, 2005, according to the CI, was that the physical evidence was place on another person's property in November of 2004. This claim is not *contemporaneous information* that there would be actual evidence of manufacturing methamphetamine at Hankins' residence on January 25, 2005.

Judge Wickham in his colloquy with counsel regarding the issue of staleness, stated:

“I will have to look at the cases on that, because it flies in the face of common sense that officers should not be permitted to get a search warrant when they have good

reason to believe that there is evidence of a meth lab, even though it hasn't been operational for a couple of months." MRP 36, lines 12-18.

Defense counsel responded:

"MR. RODGERS: I respectfully don't think that is what the law is." MRP 36.

"THE COURT: And that is why I need to look at the cases." MRP 36.

Hankins was never charged with manufacturing methamphetamine based on the evidence recovered from the Cullens property on January 25, 2005. It is not possible that the CI had any contemporaneous information based on first-hand knowledge, on or about January 25, 2005, because she was in jail. The CI provided no information that the alleged methamphetamine lab evidence in paint cans at the Hankins residence, was from any alleged methamphetamine lab that was contemporaneous with the January 19, 2005 disclosure. CP 75. In fact, no evidence was recovered in the garage of the Hankins residence at the time the search warrant was executed, i.e. evidence of manufacturing methamphetamine in paint cans.

What occurred in this case is precisely why the “staleness” issue is important. For example, if a drug dealer does a controlled buy in his residence to a CI, and the police recover evidence from the buy, i.e. the drugs, this is evidence that a controlled buy took place on a given date. As a general proposition, this evidence by itself is too “stale” to assume a suspect has drugs in his possession, to obtain a search warrant for his residence two months later.

The assumption that a methamphetamine lab, or evidence of a methamphetamine lab, is still on the premises, as presumed by Judge Wickham, is not supported by evidence in this record, nor by applicable case law. As demonstrated, the evidence of methamphetamine lab contamination or residue, did not exist. CP 142-146. While this lack of methamphetamine residue evidence begs the question in the initial inquiry, once the Judge premises his entire decision on a Finding of Fact with no record evidence, it must fail. This is why the “offer of proof” evidence was not initially provided to the Court.

For the foregoing reasons, the Court should find that the information from the CI to police was not contemporaneous. The evidence that was recovered from Hankins' residence in January of 2005, was not contemporaneous with the CI's knowledge from November of 2004. The lack of contemporaneous knowledge means that the information was stale.

**B. THE TRIAL COURT ERRED WHEN IT RULED THAT THE AGUILAR-SPINELLI TEST WAS MET.**

As the Court is well aware, CI information must meet a two-pronged test. See Aguilar v. Texas, 378 U.S. 108 (1964) and Spinelli v. United States, 393 U.S. 410 (1969). The two-pronged test consists of: (1) the basis for the informant's knowledge and (2) the informant's veracity and reliability. An affidavit is deficient if either prong is not satisfied. State v. Duncan, 81 Wn. App. 70, 76; 912 P.2d 1090 (1996).

In this case, the facts regarding the CI information arguably do not meet either of the prongs. The CI's history with

affiant Duprey was from 1999, some five years earlier. MRP 69. There is a required heightened demonstration of reliability for informants whose identities were known to the police, but not revealed to the magistrate. State v. Mickle, 53 Wn. App. 39, 765 P.2d 331 (1988). The CI was an admitted methamphetamine user and cook. The CI had access to Hankins' house while he was out of the country.

The CI had an extensive criminal record which was not disclosed to the magistrate. MRP 19. Some of these crimes were crimes of dishonesty. CP 91-93. Gautreaux was convicted of making a false statement to a public servant in 2000. CP 91. It is unknown what impact this information may have had on the issuing magistrate, as it relates to the issue of the CI's credibility.

The CI's knowledge is based on a claim that she participated in a methamphetamine lab cleanup in November of 2004 at Hankins' residence. CP 69. It is not alleged that Hankins was physically involved with the cleanup, as he was

out of the country in Mexico at the time. CP 75. The CI claimed on January 19, 2005, that the police would find evidence of a methamphetamine lab in paint cans in Hankins' garage at his residence. CP 75. It must be remembered that the CI had been incarcerated steadily since December 15, 2004, (CP 132-133) and was trying to get out of jail January 19, 2005, when she talked to Detective Duprey.

It is clear that there was no contemporaneous information that the CI had provided credible information to police subsequent to 1999. Therefore, the credibility prong of the Aguilar-Spinelli test could not be met as the 1999 history is too stale. Gautreaux was convicted of making a false statement to a public servant in 2000. This was not disclosed to Judge Dubuisson.

It is further clear that the knowledge prong of Aguilar-Spinelli could not be met, as the CI had no discernible way to verify the existence of methamphetamine laboratory evidence at Hankins' residence in January of 2005. While the CI may have

been in Hankins' residence in November of 2004, there was no evidence of methamphetamine production at the Hankins residence between December 5 and December 15, 2004, when the CI had access to Hankins' residence. Therefore, this Court should rule that the Aguilar-Spinelli test was not met in this case, as the "knowledge" prong was not substantiated.

**C. THE TRIAL COURT ERRED WHEN IT RULED THAT EVIDENCE OF METHAMPHETAMINE LABS IS LONG-LIVED.**

At the conclusion of the suppression hearing in this case, Judge Wickham ruled by way of issuance of Finding of Fact 2.3, as follows:

"Evidence of methamphetamine labs is long-lived. A lapse of a month or two between when the confidential informant went to the property and when the warrant was sought did not render the information stale, given the nature of the evidence in this case." CP 97.

Finding of Fact 2.3 was made by the judge on his own. A review of the record will reveal that there is no evidence presented by expert testimony, or other testimony, on which to

base the Judge's ruling. It was never a fact issue in the initial hearing. In fact, the record made after the Judge's ruling shows the opposite to be true.

It must be remembered that the issue is whether or not the police would find evidence of a methamphetamine lab (or manufacturing of methamphetamine) on January 25, 2005, not for some other time period for which Hankins was not charged.

An offer of proof was tendered to Judge Wickham, to support the Motion for Reconsideration of the Order denying the Motion to Suppress. This offer of proof is designated as SUPPLEMENTAL AFFIDAVIT OF G. SAXON RODGERS, and was filed on May 26, 2006. CP 142-145.

Offer of Proof. The CI claimed that the methamphetamine laboratory she cleaned up at Hankins' residence in November of 2004, was located in the master bathroom. CP 74-75. The day after the search warrant was executed, Brad Zulewski, Sanitarian for Thurston County, went with another person to Hankins' residence. Samples were taken

from the master bathroom and bedroom, where the lab supposedly existed in November of 2004. CP 143. The samples of suspected methamphetamine residue were sent to a laboratory (Libbey Environmental) for testing. CP 143.

The lab test results, coupled with testimony from the lab technician, concluded that there was no trace evidence of methamphetamine from the alleged location of the methamphetamine lab. CP 143-146. This evidence clearly refutes Judge Wickham's Finding of Fact 2.3 that methamphetamine evidence is "long-lived."

Findings of Fact are verities if there is substantial evidence to support the findings. State v. Halstien, 122 Wn. 2d 109, 128, 857 P.2d 270 (1993). Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding. State v. Hill, 123 Wn. 2d 641, 644, 870 P.2d 313 (1994).

It is unknown where Judge Wickham came up with Finding of Fact 2.3. There is no evidence in the record to support this Finding. The offer of proof, made in support of the Motion for Reconsideration of the initial ruling, is clear evidence that the Judge's finding is incorrect. Substantial evidence does not exist. It is obvious that Judge Wickham's ruling is primarily predicated on Finding of Fact 2.3. The Orders of the trial court should be reversed, and the conviction should be overturned and dismissed with prejudice.

**D. THE TRIAL COURT ERRED WHEN IT RULED THAT THE SEARCH WARRANT AFFIDAVIT WAS VALID ON ITS FACE.**

Probable cause is not demonstrated on the face of the warrant. The issuing magistrate may draw common sense inferences from the facts and circumstances contained in the affidavit. U.S. v. Ventresca, 380 U.S. 102, 13 L. Ed. 2d 684, 85 S. Ct. 741 (1965). It is the task of the reviewing Court to determine whether probable cause existed at the time the warrant was issued. State v. Harris, 12 Wn. App. 481, at 483;

530 P.2d 646. (1975). Suspicion, guess and belief are not enough. State v. Anderson, 37 Wn. App. 157 (1984). If the affidavit is no more than a declaration of suspicion and belief, it is legally insufficient. State v. Harris, supra, at 484; (citing State v. Patterson, 83 Wn. 2d 49, 52: 515 P.2d 496 (1973)).

In determining the validity of a search warrant, the reviewing court considers whether the affidavit on its face contains sufficient facts for a finding of probable cause. State v. Perez, 92 Wn. App. 1, 963 P.2d 881 (1998). The face of the affidavit is reviewed de novo, and is to be evaluated in a commonsense, practical manner, and not in a hypertechnical way. State v. Perez, supra, at 4. There must be a nexus between the defendant Hankins and the residence which the warrant makes subject to search. State v. Perez, supra, at 4-5.

In Perez, a reliable CI claimed two weeks before the warrant was issued, that a cocaine dealer used the residence in question as a “safe house” from which cocaine was trafficked from Perez. A controlled buy from Felix was consummated. A

second “buy” was conducted at the same residence four days before the warrant was issued. Perez had access and control of the premises. The information and buys were contemporaneous, and the CI was reliable. No analogous facts exist in this case.

There are insufficient facts set forth in the affidavit to support an inference that Hankins had a methamphetamine lab, or remnants of a lab, in his home on January 25, 2005. The methamphetamine lab evidence alluded to by the CI was from an alleged lab in November of 2004 at Hankins’ residence, which was not attributable to Hankins, who was out of the country.

The following are the key factual assertions that relate to the issue of probable cause existing within the four corners of the document (search warrant affidavit) being challenged:

- 1) CI information about cleaning up a methamphetamine lab at Hankins residence was from November of 2004. The

information says the lab was processed by someone, while Hankins was out of the country.

2. The CI information, on its face, does not meet the Aguilar-Spinelli test. (See previous argument.)

3. The CI information is not contemporaneous with the date of application, which was January 25, 2005. (See previous argument.)

4. The Crimestopper tip on January 19, 2005 has no substantiated validity within the affidavit, and is of no value to anything. (For example, any citizen who was angry with a Judge in our community, could call in a tip and claim that Judge so-and-so had a meth lab in his residence.) No warrant would ever issue, or survive judicial review, based on that kind of evidence.

5. Evidence recovered from garbage bag on Robert Cullens' property contained the documents set forth in Ex. 3. There is nothing in the garbage bag to link Hankins to operating a methamphetamine lab at his residence on January 25, 2005.

The only reasonable inferences from the evidence in the garbage bag would be:

- a) There appeared to be some chemicals used in operation of manufacturing methamphetamine;
- b) There are some documents that appear to be connected to people who had access to Hankins' residence;
- c) There is nothing in the garbage bag evidence that warrants a conclusion that criminal activity may be occurring on January 25, 2005;
- d) There is nothing in the garbage bag that inferentially suggests that Hankins was manufacturing methamphetamine on January 25, 2005;
- e) The garbage bag and contents have no known owner. There is no information about when and how the bag got to the location where it was seized. The garbage was not found in the blue Datsun truck or fire pit, where the CI said it would be.

When the information within the four corners of the document is scrutinized, probable cause for the issuance of a

warrant does not exist. Speculation and suspicion may or may not exist. Even if suspicion exists, as stated above, this is not sufficient for the issuance of a warrant for Hankins' residence. The fact that the affiant claimed that Hankins was resistant to warrantless searches of his home, should have given the magistrate cause to be careful, which apparently did not happen.

This Court should conclude that the affidavit for the search warrant was insufficient as a matter of law.

**E. THE TRIAL COURT ERRED WHEN IT RULED THAT ALREADY MANUFACTURED METHAMPHETAMINE MIXED WITH ACETONE CONSTITUTED "MANUFACTURING" OF METHAMPHETAMINE.**

The jury convicted Hankins of manufacturing methamphetamine. The evidence upon which the jury had to rely for conviction was two glass containers containing already manufactured methamphetamine, mixed with acetone. These containers are Exhibits 39 and 41.

Two witnesses testified about how methamphetamine is produced. Methamphetamine is generally processed in two

different ways. The processes are generally categorized as the “iodine/red dye” process, and the “lithium/ammonia” process. The two processes generically are three steps each. The steps are known as “extraction, cooking, and adding a base.”

Detective Duprey gave a general description of how police look for evidence of methamphetamine manufacturing. RP 16-19. The scientific processes of manufacturing methamphetamine were explained by Frank Boshears from the Washington State crime laboratory.

Boshears’ testimony is set forth, describing the two three-step processes in his direct examination. RP 102-103. The two processes of making methamphetamine were described; the lithium/ammonia method, and the iodine/red phosphorous method. RP 102-103.

The definition of “manufacturing” given to the jury was the standard WPIC which reads:

“Manufacture means the production, preparation, propagation, compounding, conversion, processing,

directly or indirectly, as well as the packaging or repackaging, of any controlled substance.” CP 160.

The evidence that Hankins was convicted of was possessing methamphetamine in a form known on the street as “ice.”

Boshears testified that “ice” was a preferred form of methamphetamine. RP 103.

Boshears testified that he is unable to determine when most of the methamphetamine he tested was manufactured. RP 114. Boshears stated that he could not render an opinion on when the methamphetamine had been placed in the acetone. RP 116. Boshears also testified as follows:

“It was finished methamphetamine dissolved in acetone.”

RP 116, line 23. (Emphasis added.)

Boshears further testified that the methamphetamine in acetone was “already methamphetamine hydrochloride” when it was mixed with the acetone. RP 117, line 8. Boshears further testified on cross-examination:

“Q. Okay. And that’s not creating methamphetamine from a bunch of stuff out of other chemicals; it’s changing the form of already created methamphetamine into a different form; isn’t that true?”

A. That’s correct.” (Emphasis added.) RP 117, lines 16-20.

Boshears further testified that putting already produced methamphetamine in acetone is for use, i.e. consumption. RP 117. He also testified that putting already manufactured methamphetamine in acetone did not substantively change the molecular structure of the already manufactured methamphetamine. RP 117-118.

The following colloquy between defense counsel and witness Boshears makes the point:

“Q: I think we’re on the same page, but I just want to make sure. The methamphetamine that was in the acetone was already produced somewhere, was it not?”

A: Yes, it was. (Emphasis added.)

.....

Q: Yes, and your testimony, if I understand it correct, was is that there’s no molecular substantive change in the methamphetamine by freezing it; isn’t that correct? (Emphasis added.)

A: That's correct.

Q: All right. And the process, whether it's frozen or unfrozen, the process for manufacturing methamphetamine that you've described is taking pseudoephedrine or ephedrine, mixing it with the acids and the third stage chemicals, however this—is that correct? Is that the basic process, generically?

A: Yes.

Q: Yes. And the process, whatever it was in this particular methamphetamine sample, had already occurred, had it not, prior to your analysis?

A: Yes, the methamphetamine had been manufactured. (Emphasis added). RP 122.

The legal definition of “manufacturing” a controlled substance needs to be looked at in the context of the purpose of enacting such a law. The Court obviously knows that the crime of possessing methamphetamine can be totally separate from “manufacturing” methamphetamine. A first time conviction for manufacturing methamphetamine carries a sentence of 51-68 months in prison. RCW 69.50.401 (a)(10(ii)). (Appendix A.) Conviction for possession of methamphetamine as a first offense carries a sentence of 0-6 months in the county jail.

RCW 69.50.401 (d). (Appendix B.) If you possess methamphetamine, you could be sentenced to no jail. If you manufacture methamphetamine you must serve a minimum of 51 months in prison, with no prior record.

The obvious disparity in sentencing for the two crimes is to punish severely those who choose to manufacture methamphetamine. This result in disparity of consequences should be carefully scrutinized by the legal system, i.e. the trial and appellate courts. Possession may occur when methamphetamine is manufactured, depending on the facts. However, mere possession of methamphetamine is not proof of manufacturing methamphetamine.

No lesser included offense of possession of methamphetamine was submitted to the jury. RP 150-166. Hankins had no defense to the charge of possession, had the State chosen to charge him with that offense.

Methamphetamine in acetone in Hankins' residence, if the search warrant is valid, constitutes the crime of possession.

The State chose to go for the “home run” by charging Hankins with “manufacturing”. Hankins accepted the challenge and put the State to its proof.

Any way you argue it, the methamphetamine in the two glass containers with acetone was manufactured prior to when it was recovered. There is no law that provides changing the form of a controlled substance for use constitutes making the drug in the first instance.

People smoke marijuana in pipes. They smoke it in cigarette rolled papers. They eat it in cookies and brownies. They may or may not change the form of the drug, depending on how it is used. One can buy Kool-Aid in a dry form in a package. Kool-Aid is Kool-Aid. You can swallow it dry, put it in water and drink it, or put it in water and freeze it, making it a popsicle. The form for use may change, but there is no remanufacturing of the basic substance – Kool-Aid.

The definition of “manufacturing” a controlled substance is admittedly very wide open to interpretation. Either way, the

intent of the statute is clear – it is a serious crime to make methamphetamine.

The legislative intent in enacting the “manufacturing” statute has to mean making the controlled substance, not possessing it. When interpreting a statute, the fundamental duty of the court is to ascertain and carry out the intent of the legislature. State v. Chester 133 Wn. 2d 15, 21, 940 P.2d 1374 (1997). In criminal cases, the “rule of lenity” applies (even in methamphetamine cases): any ambiguity is to be construed in favor of the defendant. State v. Whatcom County, 92 Wn. 2d 35, 37-8, 593 P.2d 546 (1979).

Hankins submits that changing the form of already manufactured methamphetamine, without substantive molecular change in the drug, cannot as a matter of law constitute “manufacturing” methamphetamine. The evidence in the records clearly shows that Exhibits 39 and 41 contained methamphetamine that had been produced by one of the three-step manufacturing processes. The State’s own expert witness

so testified. When this methamphetamine mixed with acetone was manufactured is unknown. There is no evidence that it was manufactured on January 25, 2005, or that Hankins himself manufactured the methamphetamine – only that he possessed it.

The court should reverse the conviction for “manufacturing” methamphetamine, and remand for dismissal with prejudice.

**F. THE TRIAL COURT ERRED BY DENYING HANKINS’ MOTION FOR ARREST OF JUDGMENT, BECAUSE NO EVIDENCE EXISTS THAT HANKINS ACTED AS AN ACCOMPLICE.**

When the original INFORMATION was filed in this cause, Hankins was charged as both a principal and as an accomplice. CP 3. When the case was submitted to the jury, the jury was instructed that Hankins had to be an “accomplice” to be convicted. CP 162. The jury was also instructed as to what the word “accomplice” means for the purpose of their deliberations. CP 163. The “accomplice” instruction was the standard WPIC

instruction. CP 163. WPIC 10.51. The jury instruction reads, in pertinent part, as follows:

“A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either

(1) solicits, commands, encourages, or requests another person to commit the crime, or

(2) aids or agrees to aid another person in planning or committing the crime.” (Emphasis added) CP 163

Subsection (1) and (2) of the WPIC instruction both require proof beyond a reasonable doubt that the accused acted in concert with “another person.” There is no evidence in the record of the trial that Hankins acted in concert or aided “another person” in manufacturing methamphetamine. The legal question that exists is:

Can a person charged with being an accomplice to a crime, be convicted as an accomplice, when there is no evidence the accused acted in any fashion with “another person”?

The same issue can be framed as follows:

Can a person who is charged as being an accomplice to the commission of a crime, be convicted as a “principal”, when

there is no evidence that the accused acted in concert with any person?

The analysis begins with the long standing principle of law, that the instructions to the jury become the “law of the case.” There is abundant case law authority to support this legal principle. See State v. Ortega, 134 Wn. App. 617, 622, \_\_\_ P.3<sup>rd</sup> \_\_\_ (2006).

In Ortega, the Court cited State v. Hickman, 135 Wn. 2d 97, 954 P.2d 900 (1998). In Hickman, the trial court’s to-convict instruction included venue as an element. Even though venue is not an element of the crime, it became the law of the case as it was not objected to, and was submitted to the jury. State v. Hickman, *supra*, at 102.

In this case, the jury was not given the opportunity to deliberate and convict Hankins on the basis that he was the principal of the crime of manufacturing methamphetamine.

In the state of Washington, accomplice liability can be premised on the notion that a defendant need not participate in

each element of the crime, nor share the same mental state that is required of a principal. State v. Galisia, 63 Wn. App. 833, 840, 822 P.2d 308 (1992). This case was presented to the trial court in Hankins' Motion to Arrest Judgment. CP 173.

At the time that the Motion to Arrest Judgment was argued, the State argued to Judge Hicks the case of State v. Cleman, 18 Wn. App. 495, 586 P.2d 832 (1977). At the time Judge Hicks issued his ruling, he correctly stated that neither case was directly on point regarding accomplice liability.

MAJRP 4.

It is Hankins' position that neither case is directly dispositive of the issue. Hankins also submits that State v. Cleman, supra, does not support a direct holding that one charged only with accomplice liability, which requires acting with "another person," can be convicted as a principal. In State v. Cleman, supra, the issue before the Court was whether or not Shirley Cleman could be convicted as an accomplice, when her husband and co-defendant was acquitted as a principal. The

Court, in Cleman, held that an accomplice could be convicted, even though the principal was acquitted. In Cleman, the Court cited State v. Carothers, 84 Wn. 2d 256, 525 P.2d 731 (1974) and also State v. Taplin, 9 Wn. App. 545, 513 P.2d 549 (1973).

The issue in Cleman is not the same as the issue in this case. The Taplin case, which the Cleman opinion found to be more applicable, is not directly on point, either. There is some discussion in Judge Callow's concurring opinion that says, by way of dictum, that proof of accomplice liability may be achieved by proving the accused was the perpetrator. However, in Cleman, this assertion is unrelated to the ultimate issue before the Court, which is why it is probably dictum. In the Taplin case cited by the Cleman majority, the following language is set forth in the opinion:

“Taplin next assigns error to the instruction which was given on aiding and abetting, contending that there was no evidence to support it. *It is true that, if there is no proof that anyone else committed the offense, the giving of an aiding and abetting instruction may be prejudicial error.* (Emphasis added) State v. Nikolich, 137 Wash. 62, 241 P. 664 (1925). However, there was sufficient

evidence to warrant the giving of the instruction. Ms. Estill was in close proximity to the scene of the crime when it was committed, she was a passenger in the car in which the stolen property was probably transported, and she occupied the motel room in which the property was subsequently found. This establishes a prima facie case of burglary against her and justifies the giving of the instruction.” (Citations omitted).

State v. Taplin, 9 Wn. App. at 547.

In State v. Nikolich, supra, the Court states the following:

“Even though the accessory may be tried and convicted as principal either before or after the principal actor, he may not be convicted in the absence of proof that the one to whom he is charged as accessory actually committed the crime.”

State v. Nikolich, supra, at page 67.

The Court went on to say that if a person is charged as an accessory before the fact, it would be absolutely necessary to prove the party guilty who actually committed the underlying felony, before proof of accessory liability exists, though charged as principals in the indictment. State v. Nikolich, supra, at p. 67.

The problem with all of the cases cited or referenced, including State v. Carothers, 84 Wn. 2d 256, 525 P.2d 731 (1974), and State v. Frazier, 76 Wn. 2d 373 (1969), is that the issues are distinguishable. None of the cases cited are the same as the instant case. The other cases deal with issues where the defendants were apparently charged only as principals, or, in the alternative, as either a principal or accomplice.

In Hankins' case, he was charged both as a principal and as an accomplice. However, for reasons only the State can answer, which are outside the record and transcripts, the case was submitted solely on accomplice liability theory. As stated previously, the jury instructions become the law of the case. State v. Ortega, *supra*. It is not a question of whether there was some evidence of a principal acting in concert with Hankins, nor is it a question of some evidence of a second person acting as principal, where the principal was acquitted and the accomplice was convicted. See State v. Cleman, *supra*. There is simply no proof that Mr. Hankins acted as an accomplice with "another

person” as required by the elements instruction submitted to the jury. CP 163.

The Court should reverse, with prejudice, Hankins’ conviction for manufacture of methamphetamine.

## **VI. CONCLUSION**

In conclusion, if the Court rules that any of the issues raised by Hankins are valid, reversal with prejudice of the underlying conviction is mandated. There is no basis for remanding the case for a new trial.

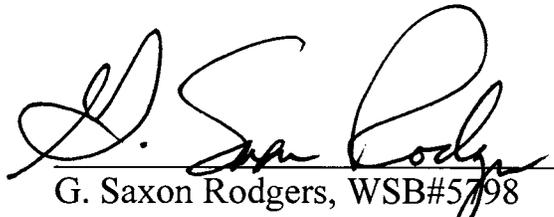
The evidence obtained on January 25, 2005, pursuant to the search warrant should have been suppressed for the following reasons: (1) the underlying affidavit for the search warrant is defective on its face; (2) the Aguilar-Spinelli was not met; (3) the information from the CI regarding methamphetamine manufacturing in November of 2004 was stale; and (4) the trial court’s premise that evidence of manufacturing methamphetamine is “long-lived” is unfounded.

In addition, the appellate court should rule that putting manufactured methamphetamine in acetone, does not constitute “manufacturing” methamphetamine as a matter of law.

Finally, the Court should rule that there is insufficient proof, as a matter of fact and law, that Hankins acted as an accomplice with “another person.”

If the Court finds in Hankins’ favor on any or all of the above issues, the conviction must be reversed and dismissed with prejudice.

Respectfully submitted this 15<sup>th</sup> day of March, 2007.

  
G. Saxon Rodgers, WSB#5798  
Attorney for Appellant

**MANUFACTURE METHAMPHETAMINE - FIRST CONVICTION OR NOT IN A PROTECTED ZONE  
WITHOUT SERIOUS VIOLENT OR SEX OFFENSES IN OFFENDER'S HISTORY**

(RCW 69.50.401(a)(1)(ii) CLASS B DRUG -

*For offenses occurring after June 30, 2003 (RCW 9.94A.517)*

*(If sexual motivation finding/verdict, use form on page III-14)*

**I. OFFENDER SCORING (RCW 9.94A.525(12))**

**ADULT HISTORY:**

Enter number of felony drug convictions for Manufacture of Methamphetamine ..... x 3 = \_\_\_\_\_  
 Enter number of felony drug convictions (as defined by RCW 9.94A.030)\* ..... x 1 = \_\_\_\_\_  
 Enter number of other felony convictions ..... x 1 = \_\_\_\_\_

**JUVENILE HISTORY:**

Enter number of felony drug convictions for Manufacture of Methamphetamine ..... x 2 = \_\_\_\_\_  
 Enter number of felony drug dispositions (as defined by RCW 9.94A.030)\* ..... x ½ = \_\_\_\_\_  
 Enter number of serious violent and violent felony dispositions ..... x 1 = \_\_\_\_\_  
 Enter number of nonviolent felony dispositions ..... x ½ = \_\_\_\_\_

**OTHER CURRENT OFFENSES:** (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of felony drug convictions for Manufacture of Methamphetamine ..... x 3 = \_\_\_\_\_  
 Enter number of other felony drug convictions (as defined by RCW 9.94A.030)\* ..... x 1 = \_\_\_\_\_  
 Enter number of other felony convictions ..... x 1 = \_\_\_\_\_

**STATUS:** Was the offender on community placement on the date the current offense was committed? (if yes), + 1 = \_\_\_\_\_

**Total the last column to get the Offender Score**  
 (Round down to the nearest whole number)

**II. DRUG GRID SENTENCE RANGES**

Offender Score	0 to 2	3 to 5	6 to 9
Standard Range Level III	51 to 68 months	68+ to 100 months	100+ to 120 months

- A. For current offenses occurring after June 30, 2002 but before July 1, 2003, please reference the 2002 sentencing manual for applicable scoring rules. For current offenses occurring prior to July 1, 2002, please reference the 2001 sentencing manual.
- B. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-5 or III-6 to calculate the enhanced sentence.
- C. Add 18 months to the entire standard sentence range with a finding that the offense was committed in a county jail or state correctional facility (RCW 9.94A.510).
- D. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 9 to 12 months, or to the period of earned release, whichever is longer (RCW 9.94A.715)\* \*\*.
- E. For sentence ranges for anticipatory drug offenses, see page III - 269.
- F. Statutory maximum sentence for first conviction under RCW 69.50 is 120 months (ten years) (RCW 69.50.401).

\*The Washington State Court of Appeals ruled that although solicitations to commit violations of 69.50 are not considered drug offenses as defined in 9.94A.030, they do score as a drug offense. See *State v. Howell*, 102 Wn. App. 288, 6 P.3d 1201 (2000).

\*\*The Supreme Court clarified that solicitations to commit violations of the Uniform Controlled Substances Act (RCW 69.50) are not "drug offenses" and are not subject to the community custody requirement for drug offenses, under RCW 9.94A.715. See *In re Hopkins*, 137 Wn.2d 897 (1999).

**SENTENCING OPTIONS** - See page III-268

• *The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules.*

**MANUFACTURE METHAMPHETAMINE - FIRST CONVICTION OR NOT IN A PROTECTED ZONE  
WITHOUT SERIOUS VIOLENT OR SEX OFFENSES IN OFFENDER'S HISTORY**

(RCW 69.50.401(a)(1)(ii) CLASS B DRUG –  
For offenses occurring after June 30, 2003 (RCW 9.94A.517)  
(If sexual motivation finding/verdict, use form on page III-14)

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**ADULT HISTORY:**

Enter number of felony drug convictions for Manufacture of Methamphetamine ..... \_\_\_\_\_ x 3 = \_\_\_\_\_  
 Enter number of felony drug convictions (as defined by RCW 9.94A.030)\* ..... \_\_\_\_\_ x 1 = \_\_\_\_\_  
 Enter number of other felony convictions..... \_\_\_\_\_ x 1 = \_\_\_\_\_

**JUVENILE HISTORY:**

Enter number of felony drug convictions for Manufacture of Methamphetamine ..... \_\_\_\_\_ x 2 = \_\_\_\_\_  
 Enter number of felony drug dispositions (as defined by RCW 9.94A.030)\* ..... \_\_\_\_\_ x ½ = \_\_\_\_\_  
 Enter number of serious violent and violent felony dispositions ..... \_\_\_\_\_ x 1 = \_\_\_\_\_  
 Enter number of nonviolent felony dispositions..... \_\_\_\_\_ x ½ = \_\_\_\_\_

**OTHER CURRENT OFFENSES:** (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of felony drug convictions for Manufacture of Methamphetamine ..... \_\_\_\_\_ x 3 = \_\_\_\_\_  
 Enter number of other felony drug convictions (as defined by RCW 9.94A.030)\* ..... \_\_\_\_\_ x 1 = \_\_\_\_\_  
 Enter number of other felony convictions..... \_\_\_\_\_ x 1 = \_\_\_\_\_

**STATUS:** Was the offender on community placement on the date the current offense was committed? (if yes), + 1 = \_\_\_\_\_  
 Total the last column to get the **Offender Score**  
 (Round down to the nearest whole number)

**II. DRUG GRID SENTENCE RANGES**

Offender Score	0 to 2	3 to 5	6 to 8
Standard Range Level III	51 to 68 months	68+ to 100 months	100+ to 120 months

- A. For current offenses occurring after June 30, 2002 but before July 1, 2003, please reference the 2002 sentencing manual for applicable scoring rules. For current offenses occurring prior to July 1, 2002, please reference the 2001 sentencing manual.
- B. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-5 or III-6 to calculate the enhanced sentence.
- C. Add 18 months to the entire standard sentence range with a finding that the offense was committed in a county jail or state correctional facility (RCW 9.94A.510).
- D. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 9 to 12 months, or to the period of earned release, whichever is longer (RCW 9.94A.715)\* \*\*.
- E. For sentence ranges for anticipatory drug offenses, see page III - 269.
- F. Statutory maximum sentence for first conviction under RCW 69.50 is 120 months (ten years) (RCW 69.50.401).

\*The Washington State Court of Appeals ruled that although solicitations to commit violations of 69.50 are not considered drug offenses as defined in 9.94A.030, they do score as a drug offense. See *State v. Howell*, 102 Wn. App. 288, 6 P.3d 1201 (2000).  
 \*\*The Supreme Court clarified that solicitations to commit violations of the Uniform Controlled Substances Act (RCW 69.50) are not "drug offenses" and are not subject to the community custody requirement for drug offenses, under RCW 9.94A.715. See *In re Hopkins*, 137 Wn.2d 897 (1999).

**SENTENCING OPTIONS - See page III-268**

• *The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules.*

**MANUFACTURE METHAMPHETAMINE - FIRST CONVICTION OR NOT IN A PROTECTED ZONE  
WITHOUT SERIOUS VIOLENT OR SEX OFFENSES IN OFFENDER'S HISTORY**

(RCW 69.50.401(a)(1)(ii) CLASS B DRUG –  
For offenses occurring after June 30, 2003 (RCW 9.94A.517)  
(If sexual motivation finding/verdict, use form on page III-14)

**I. OFFENDER SCORING (RCW 9.94A.525(12))**

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 Enter number of felony drug convictions (as defined by RCW 9.94A.030)\* ..... x 1 = \_\_\_\_\_  
 Enter number of other felony convictions..... x 1 = \_\_\_\_\_

**JUVENILE HISTORY:**

Enter number of felony drug convictions for Manufacture of Methamphetamine ..... x 2 = \_\_\_\_\_  
 Enter number of felony drug dispositions (as defined by RCW 9.94A.030)\* ..... x ½ = \_\_\_\_\_  
 Enter number of serious violent and violent felony dispositions ..... x 1 = \_\_\_\_\_  
 Enter number of nonviolent felony dispositions..... x ½ = \_\_\_\_\_

**OTHER CURRENT OFFENSES:** (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of felony drug convictions for Manufacture of Methamphetamine ..... x 3 = \_\_\_\_\_  
 Enter number of other felony drug convictions (as defined by RCW 9.94A.030)\* ..... x 1 = \_\_\_\_\_  
 Enter number of other felony convictions..... x 1 = \_\_\_\_\_

**STATUS:** Was the offender on community placement on the date the current offense was committed? (if yes), + 1 = \_\_\_\_\_

Total the last column to get the **Offender Score**  
(Round down to the nearest whole number)

**II. DRUG GRID SENTENCE RANGES**

Offender Score	0 to 2	3 to 5	6 to 9
Standard Range Level III	51 to 68 months	68+ to 100 months	100+ to 120 months

- A. For current offenses occurring after June 30, 2002 but before July 1, 2003, please reference the 2002 sentencing manual for applicable scoring rules. For current offenses occurring prior to July 1, 2002, please reference the 2001 sentencing manual.
- B. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-5 or III-6 to calculate the enhanced sentence.
- C. Add 18 months to the entire standard sentence range with a finding that the offense was committed in a county jail or state correctional facility (RCW 9.94A.510).
- D. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 9 to 12 months, or to the period of earned release, whichever is longer (RCW 9.94A.715)\* \*\*.
- E. For sentence ranges for anticipatory drug offenses, see page III - 269.
- F. Statutory maximum sentence for first conviction under RCW 69.50 is 120 months (ten years) (RCW 69.50.401).

\*The Washington State Court of Appeals ruled that although solicitations to commit violations of 69.50 are not considered drug offenses as defined in 9.94A.030, they do score as a drug offense. See *State v. Howell*, 102 Wn. App. 288, 6 P.3d 1201 (2000).

\*\*The Supreme Court clarified that solicitations to commit violations of the Uniform Controlled Substances Act (RCW 69.50) are not "drug offenses" and are not subject to the community custody requirement for drug offenses, under RCW 9.94A.715. See *In re Hopkins*, 137 Wn.2d 897 (1999).

**SENTENCING OPTIONS - See page III-268**

• *The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules.*

**POSSESSION OF A CONTROLLED SUBSTANCE THAT IS A NARCOTIC FROM SCHEDULE III-V OR A  
NONNARCOTIC FROM SCHEDULE I-V(EXCEPT PHENCYCLIDINE OR FLUNITRAZEPAM) (e.g., Methamphetamine  
and Marijuana)**

(RCW 69.50.401(d))

CLASS C - NONVIOLENT

*For offenses occurring after June 30, 2003 (RCW 9.94A.517)*

*(If sexual motivation finding/verdict, use form on page III-13)*

**I. OFFENDER SCORING (RCW 9.94A.525(7))**

**ADULT HISTORY:**

Enter number of felony convictions..... \_\_\_\_\_ x 1 = \_\_\_\_\_

**JUVENILE HISTORY:**

Enter number of serious violent and violent felony dispositions..... \_\_\_\_\_ x 1 = \_\_\_\_\_

Enter number of nonviolent felony dispositions..... \_\_\_\_\_ x ½ = \_\_\_\_\_

**OTHER CURRENT OFFENSES:** (Other current offenses which do not encompass the same conduct count in offender score)

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**STATUS:** Was the offender on community placement on the date the current offense was committed? (if yes), + 1 = \_\_\_\_\_

Total the last column to get the Offender Score  
(Round down to the nearest whole number)

**II. DRUG GRID SENTENCE RANGES**

Offender Score	0 to 2	3 to 5	6 to 8
Standard Range Level I	0 to 6 months	6+ to 18 months	12+ to 24 months

- A. For current offenses occurring after June 30, 2002 but before July 1, 2003, please reference the 2002 sentencing manual for applicable scoring rules. For current offenses occurring prior to July 1, 2002, please reference the 2001 sentencing manual.
- B. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 9 to 12 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).
- C. Add 12 months to the entire standard sentence range with a finding that the offense was committed in a county jail or state correctional facility (RCW 9.94A.510).
- D. A \$1,000 mandatory fine shall be imposed (\$2,000 for a subsequent conviction), unless indigent (RCW 69.50.430).
- E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-5 or III-6 to calculate the enhanced sentence.
- F. For sentence ranges for anticipatory drug offenses, see page III-269.
- G. Statutory maximum sentence is 60 months (five years) (RCW 9A.20.021).

\*The Washington State Court of Appeals ruled that although solicitations to commit violations of 69.50 are not considered drug offenses as defined in 9.94A.030, they do score as a drug offense. See *State v. Howell*, 102 Wn. App. 288, 6 P.3d 1201 (2000).

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Enter number of nonviolent felony dispositions..... \_\_\_\_\_ x ½ = \_\_\_\_\_

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**STATUS:** Was the offender on community placement on the date the current offense was committed? (if yes), + 1 = \_\_\_\_\_

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- D. A \$1,000 mandatory fine shall be imposed (\$2,000 for a subsequent conviction), unless indigent (RCW 69.50.430).
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**III. SENTENCING OPTIONS- -See page III-268**

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**POSSESSION OF A CONTROLLED SUBSTANCE THAT IS A NARCOTIC FROM SCHEDULE III-V OR A NONNARCOTIC FROM SCHEDULE I-V (EXCEPT PHENCYCLIDINE OR FLUNITRAZEPAM) (e.g., Methamphetamine and Marijuana)**

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CLASS C - NONVIOLENT

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Enter number of serious violent and violent felony dispositions..... \_\_\_\_\_ x 1 = \_\_\_\_\_

Enter number of nonviolent felony dispositions..... \_\_\_\_\_ x ½ = \_\_\_\_\_

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**II. DRUG GRID SENTENCE RANGES**

Offender Score	0 to 2	3 to 5	6 to 8
Standard Range Level I	0 to 6 months	6+ to 18 months	12+ to 24 months

- A. For current offenses occurring after June 30, 2002 but before July 1, 2003, please reference the 2002 sentencing manual for applicable scoring rules. For current offenses occurring prior to July 1, 2002, please reference the 2001 sentencing manual.
- B. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 9 to 12 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).
- C. Add 12 months to the entire standard sentence range with a finding that the offense was committed in a county jail or state correctional facility (RCW 9.94A.510).
- D. A \$1,000 mandatory fine shall be imposed (\$2,000 for a subsequent conviction), unless indigent (RCW 69.50.430).
- E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-5 or III-6 to calculate the enhanced sentence.
- F. For sentence ranges for anticipatory drug offenses, see page III-269.
- G. Statutory maximum sentence is 60 months (five years) (RCW 9A.20.021).

\*The Washington State Court of Appeals ruled that although solicitations to commit violations of 69.50 are not considered drug offenses as defined in 9.94A.030, they do score as a drug offense. See *State v. Howell*, 102 Wn. App. 288, 6 P.3d 1201 (2000).

\*\*The Supreme Court clarified that solicitations to commit violations of the Uniform Controlled Substances Act (RCW 69.50) are not "drug offenses" and are not subject to the community custody requirement for drug offenses, under RCW 9.94A.715. See *In re Hopkins*, 137 Wn.2d 897 (1999).

**III. SENTENCING OPTIONS--See page III-268**

- *The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules*

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COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 )  
 vs. )  
 )  
 RAYMOND T. HANKINS, )  
 )  
 Appellant. )  
 \_\_\_\_\_ )

NO. 35604-0-II

AFFIDAVIT OF  
SERVICE OF  
APPELLANT'S BRIEF

STATE OF WASHINGTON )  
 ) ss.  
County of Thurston )

CATHERINE HITCHMAN, being first duly sworn on oath, deposes  
and states:

That I am now and at all times herein mentioned was a citizen of the  
United States, a resident of the State of Washington, and over the age of  
eighteen (18) years and not a party to or interested in the above-entitled  
matter.

I certify that on the 16<sup>th</sup> day of March, 2007, I served a copy of the  
Brief of Appellant Raymond Timothy Hankins on the Thurston County

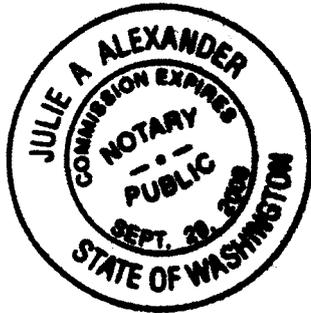
ORIGINAL

Prosecuting Attorney by depositing a copy with ABC-LMI, Inc., on March 16, 2007.

I further certify that I served a copy by mail on the Defendant/Appellant, Raymond Timothy Hankins, by depositing said brief in the U.S. Mail on March 20, 2007, directed to Mr. Hankins at the Larch Corrections Center in Yacolt, Washington.

Catherine Hitchman  
Catherine Hitchman

SIGNED AND SWORN to before me this 20th day of March, 2007.



Julie Alexander  
Notary Public in and for the State of  
Washington, residing at Shelton  
My commission expires 9-28-08