

NO. 35604-0-II

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RAYMOND TIMOTHY HANKINS,

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR THURSTON COUNTY
CAUSE NO. 05-1-00183-0

HONORABLE RICHARD D. HICKS AND CHRIS WICKHAM,
Judges

RESPONDENT'S BRIEF

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A. STATEMENT OF THE ISSUES

1. whether the information constituting probable cause for the issuance of the search warrant was stale.

2. Whether the information supplied by the confidential informant satisfied the requirements of the Aguilar-Spinelli test.

3. Whether there was probable cause for the issuance of the warrant to search the property of the defendant.

4. Whether there was sufficient evidence for the jury to find it proved beyond a reasonable doubt that, in creating methamphetamine "ice", the defendant engaged in the manufacture of a controlled substance.

5. Whether the defendant was properly found guilty as an accomplice where there was no evidence of the involvement of any other person in the commission of the crime.

B. STATEMENT OF THE CASE

On Tuesday, January 25, 2005, at approximately 12:20 p.m., Thurston County Sheriff's Detective Eugene Duprey presented a telephonic affidavit to the Honorable Judge Susan Dubuisson requesting the issuance of a search warrant. The detective sought approval to search garbage bags located in a shed at 9502 Cullens Road SE in Yelm, Washington. The property at that

location was described as belonging to Robert Cullens, and Duane Cullens was named as the resident. CP 68. The detective requested to search for controlled substances and evidence of the manufacturing and distribution of controlled substances. CP 68.

In support of this warrant request, Detective DuPrey related information received from a confidential informant. The detective explained to the Judge that this informant had previously proved reliable, having assisted DuPrey in numerous successful investigations in 1999, making controlled buys and providing information which resulted in a number of arrests for illegal drug manufacturing. CP 70.

DuPrey detailed the following as information received from the confidential informant: In November, 2004, the informant had gone to the residence of Raymond Timothy Hankins at 15913 90th Avenue SE in Yelm. The informant observed the manufacture of methamphetamine taking place using the red phosphorus method. CP 69. The informant

then participated in the clean up of the lab. CP 69.

Later, a small blue pickup registered to Hankins had been driven to the Cullens' property at 9502 Cullens Road. There was a canopy on the truck at that time. In the back of the truck were garbage bags containing, in addition to other garbage, the remnants of the methamphetamine lab that the informant had helped clean up. CP 69.

Afterwards, the informant immediately tried to reach Detective DuPrey. However, through a series of miscommunications, the detective failed to meet up with the informant until mid-January, 2005. CP 69.

After receiving this information from the informant, DuPrey received consent from Duane Cullens to search the property on Cullens Road. CP 68. Duane Cullens showed DuPrey the truck which had been described. While garbage bags were not found on the truck, numerous garbage bags were observed in an open-ended shed on the property. CP 69.

DuPrey further related to the Judge that Duane Cullens had claimed he did not know where these garbage bags had come from and permitted DuPrey to look inside one. The detective observed several bottles of tinctured iodine, two empty boxes of pseudoephedrine, a three-foot rubber tube with a cloudy substance, and stained coffee filters. CP 69-70. Based on his training and experience, DuPrey recognized that these items were all related to the manufacture of methamphetamine. CP 70. Judge Dubuisson granted the request for a search warrant. CP 70.

At 6:25 p.m. on that same date of January 25, 2005, Detective DuPrey re-contacted Judge Dubuisson to again request a search warrant, this time for a search of the residence, garage, and a separate outbuilding on the property of Raymond Timothy Hankins at 15913 90th Avenue SE in Yelm, Washington. Once again, DuPrey explained he would be searching for controlled substances and evidence of the manufacture and/or distribution of controlled substances. CP 74. DuPrey

acknowledged that this request was related to the warrant issued earlier that day for the property on Cullens Road. CP 74.

DuPrey provided the Judge with further details that had been given by the confidential informant, including the following: At the time Hankins had left on a trip to Mexico, the informant had gone to Hankins' residence, and observed a red phosphorus methamphetamine lab in the bathroom. CP 75. There were iodine stains all over the walls of that room as a result of this manufacturing activity. The informant and others had worked for a week cleaning up the lab and trying to eliminate the iodine stains. CP 75. During this process, some of the meth lab sludge left over was put into the garage for storage. CP 75. Then, according to the informant, the bathroom walls were painted a maroon color. CP 77. Based on his training and experience, DuPrey told the Judge that methamphetamine manufacture by the red phosphorus method often causes the staining described by the informant. CP 77.

DuPrey related that, pursuant to the warrant issued earlier, officers had searched the garbage bags on the Cullens Road property. In one of the garbage bags, they found items related to the manufacture of methamphetamine, and also found a baggie with a substance that field-tested positive for methamphetamine. CP 74. They also found in that bag notes with Hankins' name on them and other documents indicating that one or more persons in custody at the Thurston County Jail's work-release program had claimed to be working at that property for a paint company run by Hankins. CP 74. Further, DuPrey informed the Judge that in a garbage bag next to the one containing the items related to methamphetamine manufacture, officers had found a number of paint containers, including one for a maroon paint. CP 74.

DuPrey further related that the blue pickup on the Cullens property was confirmed as belonging to Hankins. CP 75. According to DuPrey's recitation to the Judge, Duane Cullens had described how the garbage bags in the shed on the

Cullens property had earlier been in the back of the blue pickup truck. The truck had disappeared for a week and then had shown back at the property just a few days before DuPrey had conducted his search. CP 75. DuPrey also explained to the Judge that he had spoken to Robert Cullens and Timothy Cullens, and both had described Hankins as a frequent visitor, and had stated they had been suspicious of Hankins' activities. CP 75. Judge Dubuisson authorized the warrant for the search of Hankins' property. CP 78.

Later, samples taken from the items found in the garbage bags on the Cullens property were tested at the Washington State Patrol Crime Laboratory. The baggie with residue was confirmed to contain methamphetamine. Trial RP 15, 110. A chunky substance found in a coffee filter was determined to contain pseudoephedrine along with sugar and starch. It appeared to be the binding material from cold tablets after most of the pseudoephedrine had been removed. Trial RP 50-52, 104-105. Methamphetamine was found to be present

in another coffee filter from the garbage, and this filter appeared to be waste from the red phosphorus method of methamphetamine manufacture. Trial RP 52-53, 106-107.

A search was conducted at the defendant's property on 90th Avenue pursuant to the second search warrant. In the master bedroom, there was a document addressed to the defendant. Trial RP 62. Also in that room was a plastic straw containing residue that was found by the Crime Laboratory to contain methamphetamine. Trial RP 58, 109. In another bedroom of the residence, officers located a small baggie containing a powder residue. Testing at the Crime Laboratory determined that this baggie contained methamphetamine. Trial RP 62, 109.

In a freezer in the kitchen, officers found a glass jar containing a bi-layer liquid. Trial RP 56. Through testing at the Crime Laboratory, it was determined that this glass jar contained methamphetamine dissolved in acetone. Trial RP 107. When such a mixture is placed in a freezer,

methamphetamine crystals slowly grow. This results in a form of methamphetamine, called "ice", that is purer than methamphetamine powder. Trial RP 103. In the glass jar found in the freezer at the defendant's residence, this process of crystallization was taking place. Trial RP 108.

In a cabinet by the refrigerator was another container with a tri-layer liquid. Trial RP 57. Testing at the Crime Laboratory determined that there was also methamphetamine dissolved in acetone in this container. This was either the residue of crystallized methamphetamine already formed or methamphetamine which had not yet been put into the freezer for crystallization. Trial RP 108.

The defendant arrived home while the search of his residence was taking place. He was placed under arrest. A search of his person revealed a baggie of suspected methamphetamine. Testing at the Crime Laboratory confirmed that the baggie contained methamphetamine. Trail RP 26, 109.

Other items were found at the defendant's residence consistent with the manufacture of methamphetamine. These items included hot plate burners, glass jars, tubing, coffee filters, hydrogen peroxide, muriatic acid, and red flares containing red phosphorus. Trial RP 56, 65-71, 110-113.

On August 24, 2005, the defendant was charged by Information in Thurston County Superior Court Cause No. 05-1-00183-0 with one count of the unlawful manufacture of a controlled substance, to wit: methamphetamine, as a principle or accomplice. CP 3. A hearing was held on February 6, 2006, pursuant to CrR 3.6, before the Honorable Judge Chris Wickham. The defendant challenged the legality of the second search warrant, which authorized the search of the defendant's residence.

In addressing the issues raised at this hearing, the court accepted the stipulation of the parties that there was not sufficient reliability shown for information Duprey cited referring to a

purchase of iodine by the defendant. Therefore, the court excluded that information when considering whether the affidavit provided probable cause for the search warrant. The court also considered the criminal history of the confidential informant, which had not been disclosed to the issuing magistrate, when considering the issue of probable cause. Otherwise, the court determined the issues at this hearing on the basis of DuPrey's telephonic affidavits. 2-6-06 Hearing RP 19-20.

The court ruled that the information the informant provided concerning evidence of methamphetamine manufacture at Hankins' residence was not stale. The court further found that there was a sufficient showing that the informant was reliable, based on both DuPrey's description of past investigations in which the informant had provided reliable information, and on independent corroboration through DuPrey's investigation. Finally, the court found that there was probable cause to support Judge Dubuisson's decision to

authorize the issuance of this search warrant. 2-6-06 Hearing RP 57-62. Written Findings of Fact and Conclusions of Law for this hearing were entered on March 8, 2006. CP 96-131.

A jury trial was held in this matter during the period of October 23-24, 2006. The defendant was convicted as charged. On November 7, 2006, the trial court denied a motion to arrest judgment. 11-7-06 Hearing RP 3-5.

C. ARGUMENT

1. Considering the totality of the circumstances set forth in the affidavits of Detective DuPrey, the information constituting probable cause for a search of the defendant's property was not stale.

In mid-January, 2005, the confidential informant in this case provided Detective DuPrey with a description of how the informant had assisted in breaking down a methamphetamine lab at the defendant's residence in November, 2004, and then had helped clean up the lab site. During the clean-up, waste from this red phosphorus methamphetamine lab was stored in the defendant's garage. CP 75. The informant also told DuPrey

that other waste from this methamphetamine lab had been transported to the property of Duane Cullens in the canopy of a small blue pickup truck owned by the defendant, and that this waste material was still on the Cullens property. CP 69.

When DuPrey and other officers went to the Cullens property, Duane Cullens pointed out the truck belonging to the defendant. CP 69, 75. The officers observed numerous garbage bags in an open-sided shed. CP 69. Cullens told DuPrey that those garbage bags had originally been inside the canopy of the defendant's truck. CP 75. According to Cullens, the truck had disappeared for about a week, and had then had been dropped off at the property a few days earlier. CP 75.

Inside the garbage bags were various notes with the defendant's name on them. CP 74. Also in the garbage bags were items consistent with being the waste from a red phosphorus methamphetamine lab. CP 70. Finally, the confidential informant had stated that maroon paint was used in the clean-up, and maroon paint

was found in this garbage. CP 74, 77.

At the CrR 3.6 hearing in this case, the trial court concluded that the above information was not stale, and therefore reasonably provided a basis for concluding that evidence of methamphetamine manufacturing could still be found on the defendant's property. Finding of Fact 2.3; Conclusion of Law 3.2 and 3.3 at CP 96. The defendant contends on appeal that the trial court erred in ruling that the informant's information was not stale.

A determination of whether the probable cause in a search warrant affidavit is stale depends on the nature of the criminal activity, the length of the activity, and the nature of the property to be seized. State v. Maddox, 152 Wn.2d 499, 506, 98 P.3d 1199 (2004). The court should look at the totality of the circumstances and apply common sense as the test for staleness. The passage of time is only one factor. The information is not stale for purposes of probable cause if the facts and circumstances in the affidavit support a

common sense determination that there is evidence of criminal activity at the location to be searched. Maddox, 152 Wn.2d at 505-506.

The nature of the evidence for which the informant provided information is important here. The informant did not assert that methamphetamine that was the finished product of the manufacturing process would be at the defendant's property. If that had been the case, the State agrees the reasonable conclusion would have been that the methamphetamine would have been either used or distributed within the two-month period from November, 2004 to January, 2005. Rather, the informant asserted that waste from the manufacturing process would still be there. It was reasonable to conclude that there would be methamphetamine residue mixed in with that waste.

The informant also stated that other waste from the methamphetamine lab at the defendant's residence had been transferred to the Cullens property. The informant asserted the waste taken to the Cullens property was still at that

location. Prior to seeking the second warrant, officers found such lab waste on the Cullens property just as the informant had related. The passage of time had not caused the information about that lab waste to be stale.

In finding that evidence of a methamphetamine lab can be long-lasting, the trial court emphasized this distinction between lingering evidence of a prior methamphetamine lab and evidence showing that a methamphetamine lab was still ongoing.

. . . and so I'm not convinced that the fact that there was a delay of a month and a half or two months here between when it was in operation and when the deputy went on the property would necessarily make it stale, because I don't see that Judge Dubuisson had to find that the meth lab was in operation. She just had to find that there was evidence of it on the property.

2-6-06 Hearing at 35.

The defendant argues that the court's conclusion that evidence of a methamphetamine lab could be long-lasting lacked any evidentiary basis because of negative results in scientific testing for traces of methamphetamine in the master

bedroom and bathroom. However, that addresses only one type of such evidence. The court had before it evidence that as of January 25, 2005, waste material from the methamphetamine lab at the defendant's residence had still been discoverable by law enforcement acting with direction from the informant. That provided an evidentiary basis for the court's conclusion that evidence of this lab could be long-lasting.

The defendant argues that this informant did not provide information showing that a methamphetamine lab was ongoing contemporaneous with the date of January 25, 2005, when the search warrant was approved. However, that complaint misses the mark. The trial court found there was probable cause to believe that evidence of past methamphetamine manufacture was contemporaneously present on the property. 2-6-06 Hearing RP 60.

In considering whether information is stale, the court considers the totality of the circumstances. Maddox, 152 Wn.2d at 505-506. Here, that totality included not only the

information supplied by the informant, but also the corroboration by officers that apparent lab waste, reportedly from the defendant's residence, could still be located and seized as of January 25, 2005. Therefore, it was reasonable for the trial court to conclude that similar evidence of that same lab could be still be located on the defendant's property. Therefore, the information provided by DuPrey for issuance of the warrant to search the defendant's property was not stale.

2. The information supplied by the confidential informant in this case satisfied the requirements of the *Aguilar-Spinelli* test.

Information from an informant used to establish probable cause for the issuance of a search warrant must satisfy the two-prong Aguilar-Spinelli test derived from Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969) and Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964). First, the officer's affidavit must set forth some of the underlying circumstances from which the magistrate can independently evaluate the reliability of the

manner in which the informant acquired the information. This is often referred to as the "basis of knowledge" prong of the test. Second, the affidavit must set forth some of the underlying circumstances from which the officer concluded that the informant was credible or that his information was reliable. This is often referred to as the "veracity" prong of the test. State v. Jackson, 102 Wn.2d 432, 435-437, 688 P.2d 136 (1984).

The defendant argues that the information from the informant in this case failed to satisfy the "basis of knowledge" prong because the informant did not have first-hand knowledge of what was still stored at the defendant's residence as of January 25, 2005. However, the informant never claimed to have such knowledge. Rather, the informant described how waste from the methamphetamine lab at the defendant's residence was stored in the garage during the clean-up of that lab in November, 2004. The informant identified a clear basis of knowledge for that

information as she described having been involved in that clean-up at the defendant's residence.

This is really a repeat of the argument regarding staleness, which has been addressed above. The "basis of knowledge" prong of the Aguilar-Spinelli test is satisfied here.

As regards the "veracity" prong, DuPrey stated in his affidavit that in 1999 this informant had assisted him in numerous investigations, engaging in controlled buys and providing information that resulted in several "lab arrests". CP 70. The defendant argues that this evidence of the informant's credibility cannot satisfy the "veracity" prong because it had occurred about six years before. No authority is provided in support of the claim that such a time gap precludes such evidence from showing the credibility of the informant.

This type of evidence is held to establish credibility because it shows a "track record" of providing reliable information. State v. Wolken, 103 Wn.2d 823, 321, 700 P.2d 319 (1985). Such a

track record does not cease to exist simply because of the passage of time.

The defendant also argues the informant's credibility would have been discredited if the court had been informed of her crimes of dishonesty, including making a false statement to a public servant, in 2000. Thus, the defendant inconsistently argues that the passage of time would nullify evidence of the informant's reliability, but would not nullify the negative impact of a similarly dated conviction for dishonesty.

In attacking the trial court's conclusion that the informant was shown to be reliable, the defendant ignores DuPrey's independent corroboration. Independent police investigatory work can corroborate an informant's tip, and in this way strengthen a showing that the informant is reliable. Jackson, 102 Wn.2d at 438.

In this case, the trial court found that the information supplied by the informant was corroborated by DuPrey's observations in executing

the first search warrant and by the statements made by members of the Cullens family. Finding of Fact No. 2.1 at CP 97. No error has been assigned to this Finding of Fact and so it is a verity on appeal. State v. Levy, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006). There was corroboration that what appeared to be methamphetamine lab waste had come to the Cullens property in a vehicle owned by the defendant and mixed in with that lab waste were notes with the defendant's name on them. While this corroboration did not directly address the claim that some of the lab waste had been placed into the defendant's garage, it is appropriate to conclude that when an informant is right about some material things, she is more probably right about other, unverified facts. Jackson, 102 Wn.2d at 444.

For the reasons set forth above, the trial court correctly found that both prongs of the Aguilar-Spinelli test had been satisfied by the informant in this case.

3. The affidavits of Detective DuPrey provided probable cause for the

authorization of a warrant to search the defendant's property.

The trial court concluded that Detective DuPrey's second application for a search warrant provided probable cause to believe that evidence of the crime of manufacturing methamphetamine would be found in and around the defendant's residence. Conclusion of Law No. 3.3 at CP 97. The defendant contends on appeal that there was insufficient probable cause to support the issuance of the warrant to search the property of the defendant. The decision of the issuing magistrate that the affidavit is sufficient must be given great deference by the reviewing court. State v. Seagull, 95 Wn.2d 898, 907, 632 P.2d 44 (1981). If there is an adequate showing, under oath, of circumstances going beyond suspicion and mere personal belief that criminal activity has taken place, and showing that evidence thereof will be found in the premises to be searched, the warrant should be held good. Seagull, 95 Wn.2d at 907.

Search warrant affidavits should be

considered in a common sense, practical manner, rather than in a hypertechnical manner. An issuing magistrate is entitled to draw common sense and reasonable inferences from the facts and circumstances set forth therein. In re Personal Restraint of Yim, 139 Wn.2d 581, 596-597, 989 P.2d 512 (1999).

The defendant argues there was insufficient probable cause because the informant's information did not satisfy the Aguilar-Spinelli test. That argument has already been addressed above.

The defendant also contends there was insufficient probable cause because the information supplied by the informant was stale by the date of the issuance of the warrant, which was January 25, 2005. That argument has also been addressed previously in this Respondent's brief.

Third, the defendant contends that probable cause was lacking because neither the information supplied by the informant nor the independent investigation by Detective DuPrey warranted a conclusion that criminal activity was ongoing at

the defendant's residence as of January 25, 2005. However, the trial court did not find probable cause on that basis. As noted above, probable cause can be based upon evidence that criminal activity did occur previously, and that evidence of that crime will be found at the place to be searched. Seagull, 95 Wn.2d at 907. There is no requirement that the probable cause also show that the criminal activity is still ongoing.

Fourth, the defendant argues that DuPrey's affidavits were insufficient because they did not show that the defendant was the one operating the methamphetamine lab at his residence. Apparently, the claim here is that DuPrey's affidavit indicated the methamphetamine lab could not be attributed to the defendant because the defendant was out of the country at the time. However, that is not what the affidavit stated. Rather, according to DuPrey, the informant told him that she went to the defendant's residence when the defendant left for Mexico and observed a methamphetamine lab in the bathroom. According to

the informant, this lab had previously been ongoing long enough to have resulted in iodine stains up and down the bathroom walls. CP 75. Thus, this evidence did support a reasonable inference that the defendant had been involved with this lab at his residence before he left for Mexico.

More importantly, the sufficiency of the affidavit to support the issuance of the warrant was not dependant on a showing that the defendant was the one who had operated the lab at his residence. It was sufficient to present probable cause that a lab had been operated at that location and that evidence of the lab would likely still be there.

In support of his claim that DuPrey's affidavit had to establish a nexus between the defendant and the methamphetamine lab at his residence, the defendant cites State v. Perez, 92 Wn. App. 1, 963 P.2d 881 (1998). However, Perez does not provide any support for the defendant's argument.

In Perez, the probable cause concerned drug dealing by Perez, not a drug lab at the residence of Perez. Thus, to justify a search of Perez's residence, there needed to be shown a nexus between Perez's drug dealing and that location. Perez, 92 Wn. App. at 5-6. Here, however, the evidence was that a drug lab had been at the residence to be searched, and that remnants of that lab were still on that property. Therefore, the information in DuPrey's affidavit showed a nexus between the residence and the alleged criminal activity regardless of who had been operating the lab.

Thus, the defendant's arguments as to why there was insufficient probable cause are without merit. There has been no showing that the information relied upon by the trial court in issuing the search warrant for the defendant's property failed to justify a reasonably prudent belief that evidence of a methamphetamine lab would be found at that location.

4. Considering the evidence in the light most favorable to the State, there was sufficient

evidence for a rational juror to conclude that, in creating methamphetamine "ice", the defendant engaged in the manufacture of a controlled substance.

For purposes of the crime of manufacturing a controlled substance, the term "manufacture" is defined as follows:

"Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. . .

RCW 69.50.101(p). In a freezer in the defendant's kitchen, officers found a jar of methamphetamine dissolved in acetone. Trial RP 56, 106-107. In a cabinet by the refrigerator, the officers found another container of methamphetamine dissolved in acetone. Trial RP 57, 108.

In the jar in the freezer, a form of methamphetamine known as "ice" was in the process of being manufactured. Trial RP 108. When methamphetamine is dissolved in acetone, and the resulting mixture is kept in a refrigerator or

freezer, the methamphetamine becomes crystallized. In the process, impurities are eliminated, causing the crystallized methamphetamine to be much purer in quality as compared to the powder form. Trial RP 103. Creating "ice" consists of processing the methamphetamine for use in this crystallized form. Trial RP 121. However, while the methamphetamine is in the acetone, it is not available for use. To become usable, the methamphetamine crystals must first be recovered and dried. Trial RP 124. Once usable methamphetamine crystals have been produced, they can be illegally sold at a significantly higher price than that charged for methamphetamine powder. Trial RP 125.

The State relied on this "ice" manufacture to show that the defendant was engaged in the manufacture of methamphetamine as of January 25, 2005, when the defendant's residence was searched pursuant to the warrant. After the trial, the defendant sought an arrest of judgment, arguing that the evidence was insufficient to show the manufacture of methamphetamine because the

creation of "ice" could not constitute such manufacture. The trial court disagreed. The court noted the broad nature of the definition of "manufacture" in this context, which includes processing and preparing a controlled substance. The court ruled that the jury could reasonably have found, therefore, that the formation of "ice" constituted the processing or preparation of methamphetamine into a more pure form, and therefore was methamphetamine manufacture under this definition. 11-7-06 Hearing at 3-4.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it is enough to permit a rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). A claim of insufficiency requires that all reasonable inferences from the evidence be drawn in favor of the State and interpreted most strongly against the defendant. State v. Salinas,

119 Wn.2d 192, 201, 829 P.2d 1068 (1992).
Credibility determinations are for the trier of
fact and are not subject to review. State v.
Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

It is also the function of the fact finder, and
not the appellate court, to discount theories
which are determined to be unreasonable in the
light of the evidence. State v. Bencivenga, 137
Wn.2d 703, 709, 974 P.2d 832 (1999).
Circumstantial evidence is accorded equal weight
with direct evidence. State v. Delmarter, 94
Wn.2d 634, 638, 618 P.2d 99 (1980).

The defendant contends on appeal that the
trial court erred in finding that there was
sufficient evidence of manufacturing
methamphetamine in this case. The defendant
acknowledges the broad nature of the definition of
manufacturing in RCW 69.50.101(p). However, he
argues that the court should nevertheless adopt a
strict interpretation of this definition because
that is called for by the rule of lenity in the
case of an ambiguous statute. The problem is that

the defendant makes no showing that this statutory definition is ambiguous.

In interpreting a statute, this court is required to give effect to the legislature's intent and purpose. To do so, the court must first look to the plain meaning of the statute. When the statute is plain and unambiguous, that meaning must be derived from the wording of the statute. The meaning of nontechnical terms can be derived from a dictionary. State v. Cromwell, 157 Wn.2d 529,534, 140 P.3d 593 (2006).

The trial court found that, considering the evidence in the light most favorable to the State, there was sufficient evidence for the jury to have found it proved beyond a reasonable doubt that the defendant had manufactured methamphetamine by either processing or preparing the substance for use in a more pure form. 11-7-06 Hearing RP 3-4.

The term "prepare" is defined as follows:

1. To make ready in advance for a particular purpose, event, or occasion. 2. To put together or make by combining various elements or ingredients. 3. To fit out. . . .

WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY

929 (1988). The evidence was that the creation of methamphetamine "ice", by mixing the methamphetamine with acetone, made the controlled substance purer and therefore more desirable and more expensive. Thus, this methamphetamine was thereby fit into such a state as to be particularly adapted to use by those who desired the drug, and therefore the jury could have reasonably found that the creation of "ice" was a particular method of preparing the methamphetamine for use.

The term "process" is defined as follows:

1. To put through the steps of a prescribed procedure. 2. To prepare, treat, or convert by subjecting to a special process. . . .

WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 938 (1988). The steps of creating "ice" constituted a prescribed procedure which converted powder methamphetamine to a crystallized form, thereby preparing a purer form of the drug. Therefore, a reasonable juror could also have found it proved that the defendant had manufactured methamphetamine by processing the

substance in this way.

There is nothing ambiguous about the statutory definition of "manufacture" in RCW 69.50.101(p). Applying the plain meaning of this broad definition, there was sufficient evidence of the manufacture of methamphetamine by the defendant to support the conviction in this case.

6. The jury having found it proved that the crime was committed, there was substantial evidence for the jury to find that the defendant was a participant in the commission of that crime, and so his criminal liability for that crime is appropriate, regardless of whether it is expressed in terms of liability as an accomplice or a principal.

In this case, the jury was instructed that, in order to prove the charge of the unlawful manufacture of a controlled substance, the State had to prove the following elements beyond a reasonable doubt: (1) that on or about the 25th day of January, 2005, the defendant was an accomplice to the manufacture of a controlled substance; (2) that the defendant knew the substance manufactured was a controlled substance, methamphetamine; and (3) that the acts occurred in the State of Washington. Instruction No. 10 in

Court's Instructions to the Jury at CP 150-166.

The defendant argues that this instruction was error because the evidence could only support the theory that the defendant, as a principal, manufactured methamphetamine. According to the defendant's argument, since there was no evidence someone else acted as a principal in the commission of this crime, there was not sufficient evidence to convict the defendant as an accomplice.

This reasoning runs afoul of what the Washington Supreme Court has referred to as the "emptiness of any distinction between principal and accomplice liability." State v. McDonald, 138 Wn.2d 680, 688, 981 P.2d 443 (1999). It is clearly established that a person who merely aids another in the commission of a crime can be convicted as a principal. McDonald, 138 Wn.2d at 688. It would contradict the emptiness of the distinction between principal and accomplice, referred to above, if a principal who aids himself in the commission of the crime could not be

convicted as an accomplice. See State v. Taplin, 9 Wn. App. 545, 552, 513 P.2d 549 (1973) (Callow, J., concurring).

In support of his position, the defendant cites State v. Nikolich, 137 Wash. 62, 241 P. 664 (1925) for the proposition that it can be prejudicial error to give an accomplice instruction if there is no evidence that someone else committed the crime. However, State v. Nikolich is distinguishable. The point made in Nicholich was that a person cannot be an accomplice to a crime that never happened. Thus, if the only evidence against a defendant is that he aided and abetted, it must also be proved that there was an actual crime committed which was aided by that defendant's actions. State v. Barry, 43 Wn.2d 807, 814, 264 P.2d 233 (1953).

In the present case, as discussed previously, there is substantial evidence that the crime of manufacturing methamphetamine was committed. Moreover, there is substantial evidence of the defendant's participation in the commission of the

crime. The problem claimed by the defendant in this case is that the evidence shows too much involvement by the defendant in the crime, in that if he is guilty of the offense it is most likely as a principal. That is a different issue from the one considered by the State Supreme Court in Nicholich, supra.

In the present case, the jury having found it proved that the crime occurred, the evidence was sufficient for the jury to conclude that the defendant was a participant in the commission of the crime, whether by personally creating methamphetamine "ice" or by allowing it to be created in his residence. As the defense argues, there was no evidence of anyone else who could have been responsible. Therefore, criminal responsibility for the offense is appropriate, since the defendant was clearly found to be a participant. That was a sufficient basis to find the defendant guilty as an accomplice, without the evidence having clarified if his actual involvement was that of a principle or accomplice.

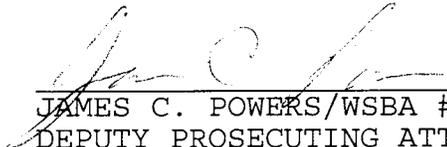
See McDonald, 138 Wn.2d at 688.

D. CONCLUSION

For the reasons set forth above, the State respectfully requests that the defendant's conviction for the unlawful manufacture of methamphetamine, and the resulting Judgment and Sentence, be affirmed.

DATED this 14th day of June, 2007.

Respectfully submitted,



JAMES C. POWERS/WSBA #12791
DEPUTY PROSECUTING ATTORNEY

STATE OF WASHINGTON

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NO. 35604-0-II

STATE OF WASHINGTON IN THE COURT OF APPEALS
BY _____ OF THE STATE OF WASHINGTON
DEPUTY

STATE OF WASHINGTON,)
Respondent) DECLARATION OF
) MAILING
v.)
)
RAYMOND TIMOTHY HANKINS,)
Appellant)

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

James C. Powers declares and affirms:

I am a Senior Deputy Prosecuting Attorney in the
Office of Prosecuting Attorney of Thurston County;
that on the 14th day of June, 2007, I caused to be
mailed to appellant's attorney, G. Saxon Rodgers,
a copy of the Respondent's Brief, addressing said
envelope as follows:

G. Saxon Rodgers,
Attorney at Law
324 West Bay Dr. NW, Suite 201
Olympia, WA 98502

I certify (or declare) under penalty of perjury
under the laws of the State of Washington that the
foregoing is true and correct to the best of my
knowledge.

DATED this 14 day of June, 2007 at Olympia, WA.



James C. Powers/WSBA #12791
Senior Deputy Prosecuting Attorney