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DIVISION II

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STATE OF WASHINGTON
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NO. 37363-7-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Plaintiff-Respondent

v.

COREY ALAN RUNYON,

Defendant-Appellant.

BRIEF OF APPELLANT

F. James Mayhew
Attorney at Law
401 W. 13th Street
Vancouver, WA 98660
360-699-6317
Attorney for Appellant
WSBA #20129

Plm 10/03/06.

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I. ASSIGNMENTS OF ERROR

A. Assignment of Error No. 1.

The Trial Court erred in determining that the Search Warrant allowed the search of the cargo trailer.

B. Assignment of Error No. 2.

The Trial Court erred in determining that the Search Warrant included any probable cause for the search of the cargo trailer.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Whether Mr. Runyon is entitled to a new trial based upon the Trial Court denying Defendant's Motion to Suppress the evidence obtained from the cargo trailer that encompassed the search of all vehicles on the property (Assignment of Error No. 1.)

B. Whether Mr. Runyon's right to be protected from unlawful searches and seizures was violated when the Search Warrant failed to include any probable cause for the search of the cargo trailer (Assignment of Error No. 2.)

III. STATEMENT OF THE CASE

Mr. Corey Runyon, Defendant-Appellant, was found guilty on July 31, 2007 of: Count I, Manufacture of Controlled Substance (Methamphetamine); Count II, Possession of Stolen Property in the First Degree; Count III, Possession of a Controlled Substance (Methamphetamine); Count IV, Possession of Stolen Property in the Second Degree. (CP 88-91). A special jury verdict found that Mr. Runyon committed the manufacture of methamphetamine within a thousand feet of a school bus route stop. (CP 92). After a four-day trial, the jury found Mr. Runyon guilty of all four counts in the Third Amended Information. The conviction for Manufacture of Methamphetamines was based mainly on the seizure of a flask which contained a liquid sample consisting of iodine and methamphetamine. (RP 662, lines 13-16). The age of the liquid in the beaker was unknown by the State's expert (RP 700, lines 9-10 and (RP 701, lines 22-24). Some other lab equipment was seized from the large auto repair shop operated by Mr. Runyon. (RP 697, lines 1-17). The jury found Mr. Runyon guilty of Possession of Stolen Property in the First Degree for a partially dismantled Harley Davidson motorcycle (RP 113, lines 14- 23). The jury found Mr. Runyon guilty of Possession of Methamphetamine consisting of a baggy found on the floor of Mr.

Runyon's repair shop. This baggy contained trace amounts of Methamphetamine. (RP 655, lines 21-25). (RP 656, lines 1-4). On the last count, the jury found Corey Runyon guilty of Possession of Stolen Property in the Second Degree for possession of a bank check card that belonged to Jason Barber. (RP 400, lines 7-18).

Trooper Gardiner testified at trial that he searched a cargo trailer (Trial Exhibit List No. 1), and it is unknown whether the cargo trailer was locked or not. Inside the cargo trailer, Trooper Gardiner searched a box containing personal papers of Corey Runyon. (RP 338, lines 14-19). Found within the personal papers of Corey Runyon was an expired bank check card belonging to Jason Barber. (RP 338, lines 14-25). The Property/Evidence Form, pg. 1, which is attached to CP 46, Ex. A, states that the cargo trailer was seized at 4:18 a.m. on June 9, 2006. (RP 339, lines 1-3). This seizure of the cargo trailer and the check card contained within it occurred prior to the execution of the second Search Warrant. (CP 46, Ex. A Property/Evidence Form pg. 1 of 3; Ex. B Property/Evidence Form pg. 3 of 3). The cargo trailer was seized at 4:18 a.m. while the second Search Warrant was issued at 8:00 a.m. on the same day. (CP 46, Ex. B).

On June 25, 2007, Defendant filed a Motion to Suppress and Motion to Disclose Informant. (CP 46). In his motion, Mr. Runyon contests the search of the cargo trailer because there was no authority to search the cargo trailer and there was no probable cause to believe items relating to methamphetamine were to be found within. (CP 46, page 9). The Property/Evidence form lists items #3 (2 pipes), #4 (a citation and Bill of Sale to Corey Runyon), and #6 (check card issued to Jason Barber) were seized from the cargo trailer. (CP 46, Ex. A, p. 1 and Ex. B, p. 2-3).

On July 18, 2007, the State filed a Response to Defendant's Motion to Suppress. (CP 51). The State argues that the police did not exceed the scope of the warrant by searching the cargo trailer. The State concedes that the warrant does not specifically list the cargo trailer as an item to be searched but the warrant does include vehicles registered to or operated by Defendant. (CP 51, p.10,11). The State supports the argument that the search inside the cargo trailer was valid because the Affiant included in her Affidavit that the informant knew Mr. Runyon to hide methamphetamine underneath the undercarriages of the abandoned vehicles surrounding his shop and motor home. Therefore, the State argues that a sufficient basis existed to search the cargo trailer as it could have contained methamphetamine. (CP 51, p. 11).

On July 19, 2007, this suppression hearing was held before the Trial Judge. The Trial Judge ruled that the cargo trailer was a vehicle and fell within the scope of the warrant. (RP 218, lines 2-25). The search of the cargo trailer and the evidence of the check card were properly seized. (RP 219, lines 1-5).

On February 6, 2008, Findings of Fact and Conclusions of Law for the suppression hearing were filed. (CP 93). The Findings of Fact reiterate that the officers did not exceed the scope of their search by searching the inside of the cargo trailer. (CP 93, page 2). The police properly searched the cargo trailer for methamphetamine. In the Conclusions of Law, the Court found that the police did not exceed the scope of the Search Warrant by searching the cargo trailer on the property. The Search Warrant authorized the police to search for items of evidence located in vehicles on the property. The definition of “vehicles” includes “trailers” in the sense that they pertain to conveyance and transportation on roads and highways. (CP 93, page 3).

Sentencing was scheduled for February 6, 2008 before the Honorable John P. Wulle. Mr. Runyon’s motion to recuse Judge John P. Wulle for sentencing was granted by the Court. (CP 94). Mr. Runyon states in his Motion for Recusal that “Defendant observed the judge

having, what he would characterize, friendly hallway conversations with the witnesses.” (CP 94). Mr. Runyon did not call any witnesses so the judge’s conversations were with the State’s witnesses.

On February 6, 2008, the Honorable Diane M. Woolard sentenced Corey Runyon to 134 months on Count I for Manufacture of Methamphetamine, with an Offender Score of 6. The standard range was 100-120 months with a 24 month school bus stop zone enhancement for a total range of 124 to 144 months. The maximum range was determined as 20 years and \$50,000 based on the school bus stop zone enhancement and/or second drug conviction. (CP 100). (RP 913, lines 2-11). The remaining three convictions ran concurrent with the Manufacture of Methamphetamine. (CP 100).

On June 9, 2006, officers from the Clark/Skamania Drug Task Force, a Clark County SWAT Team, and the Clark County Sheriff’s Office, served a Search Warrant (CP 46, Ex. A) on the property located at 20801 NE 10th Avenue, Ridgefield, Clark County, Washington. This fenced in two acres was part of a larger parcel of five acres owned by Mr. Runyon’s mother, Ms. Robin Oviatt. She lived next door to the parcel used by Mr. Runyon. (CP 51, Ex. 3). (RP 161, lines 19-25). Around two dozen vehicles were located on the property at the time the Search

Warrant was executed. (Trial Exhibit List, No. 26). (RP 162, lines 1-25). These vehicles were in various stages of disrepair. A 26-foot motor home and cargo trailer were also located on the property. A large blue shop building dominated the property. The property looks like a junkyard/wrecking yard.

The first Search Warrant allowed the police to search for evidence of Methamphetamine. (CP 46, Ex. A). The first Search Warrant described the location of the area to be searched including a motor home and “any vehicles registered to or operated by the occupants of the afore-described property, AND any outbuildings, garages, sheds or the like, located on the afore-described property” for methamphetamine and records relating to methamphetamine. (CP 46, Ex. A). The date and time for execution of this warrant was June 9, 2006 at 4:18 a.m. (CP 46, Ex. A, pg. 3 of Search Warrant).

During the search for methamphetamine, the police found a liter beaker inside the auto repair shop that contained iodine and methamphetamine. Other items were discovered inside the repair shop that may or may not have been used to manufacture methamphetamine because no residue of methamphetamine or its by-products were discovered on the lab equipment. These items were found in separate

areas of the auto repair shop. No fingerprints of Mr. Runyon were found on any lab equipment.

During the initial search of the auto repair shop, a Harley Davidson motorcycle was found inside the shop that was semi-disassembled. The police alleged that the VIN number of the Harley Davidson motorcycle was in plain view. (RP 136, lines 19-25). (Trial Exhibit List, No. 7). The plain view discovery of the VIN number of the stolen Harley Davidson motorcycle initiated the process for the second Search Warrant.

On June 9, 2006,¹ District Court Judge Vernon Schreiber, issued a second warrant at 8:00 a.m. (CP 46, Ex. B) to search for items relating to possession of stolen property in the first degree. The search on the second warrant was conducted on June 9, 2006 around 8:30 a.m. This warrant allows for the search of the same area as the first warrant but not for seizure of any items. The areas to be searched included the motor home and “any vehicles registered or operated by the occupants of the afore-described property AND any outbuildings, garages, sheds or the like, located on the afore-described property”, and all papers, documents and bills and other records relating to their criminal scheme of possessing stolen property. (CP 46, Ex. B).

¹ June 2, 2006 is the date stated that Judge Schreiber signed the second Search Warrant.

On August 24, 2006, the State filed the original Information against Mr. Runyon. The three charges in this Information were one count of Manufacturing of a Controlled Substance (methamphetamine) with enhancements that the offense occurred within a thousand feet of the perimeter of the school grounds and a second enhancement that the current offense is a second or subsequent offense which doubles the maximum prison term and fine under RCW 69.50.408; Possession of Stolen Property in the First Degree (Harley Davidson motorcycle); and Possession of a Controlled Substance (methamphetamine). (CP 7).

On September 22, 2006, the State filed an Amended Information which was identical to the original Information with the added language that Mr. Runyon was on community placement at the time these charges were brought. (CP 12).

On January 12, 2007, the State filed a Second Amended Information. The Second Amended Information was identical to the previous Information with an added charge of Possession of Stolen Property in the Second Degree for possession of a stolen access device (bank check card issued to Jason Barber). (CP 28).

On January 29, 2008, the State filed a Third Amended Information against Mr. Runyon.² The Third Amended Information was identical to the previous Information with a revision changing that the enhancement occurred within a thousand feet of a school perimeter to a thousand feet within a school bus stop zone. Mr. Runyon objected to the revisions in the Third Amended Information during trial but was overruled by the Court. (RP 397, lines 8-25; and RP 398, lines 1-12).

On February 6, 2008, Mr. Runyon's Motion for New Trial or Arrest of Judgment was denied by the Honorable Diane Woolard.³

On February 6, 2008, Defendant filed a Notice of Appeal which follows. (CP 101).

IV. ARGUMENT

ISSUE NO. 1

Mr. Runyon is entitled to a new trial based upon the Trial Court's failure to suppress the bank check card obtained during the illegal search of the cargo trailer.

² This Third Amended Information was filed during trial which began on January 28, 2008.

³ Mr. Runyon made this motion on February 6, 2008. It is assumed that this motion was denied although there is no documentation to support this.

The Trial Court's admission of evidence pertaining to the search of the cargo trailer violated Article I, Section 7 of the Washington State Constitution, which states: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law". The Washington State Constitution protects citizens of this state from unlawful searches and seizures. An unlawful search and seizure can occur when the state exceeds its authority of the Search Warrant. State v. Johnson, 104 Wash.App. 489, 17 P.3d 3 (2001).

Similarly, the citizens of the State of Washington are protected under the Fourth Amendment of the United States Constitution made applicable to the states through the Fourteenth Amendment of the United States Constitution. The Fourth Amendment provides, "No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized". U.S. Const. amend. IV. The purposes of the Search Warrant particularity requirement are the prevention of general searches, prevention of the seizure of objects under a mistaken assumption that they fall within the issuing magistrate's authorization, and prevention of the issuance of warrants on loose, vague or doubtful bases of fact. U.S. Const. amend. IV; State v. Perrone, 119 Wash.2d 538, 545, 834 P.2d 611

(1992).⁴ “[P]robable cause [to search], requires a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched”. State v. Johnson, 104 Wash.App. 489, 498, 17 P.2d 3 (2001), (citing State v. Thein, 138 Wash.2d 133, 140, 977 P.2d 582 (1999) (quoting State v. Goble, 88 Wash.App. 503, 509, 945 P.2d 263 (1997))). As a consequence, the Affidavit supporting a Search Warrant must contain facts which infer that the item to be seized is probably evidence of a crime, and that the item to be seized will probably be in the place to be searched when the search occurs. State v. Johnson, 104 Wash.App. 489, 498, 17 P.3d 3 (2001), (citing Thein, 138 Wash.2d at 140, 977 P.2d 582; State v. Cole, 128 Wash.2d 262, 286, 906 P.2d 925 (1995); State v. Dalton, 73 Wash.App. 132, 136, 868 P.2d 873 (1994)).

On July 19, 2007, the Trial Court held a suppression hearing. One of the issues determined by the Trial Court was whether the bank check card seized from the cargo trailer located on Runyon’s property was properly seized under the Search Warrant.

The first Search Warrant (for evidence of methamphetamine) allowed the search of “any vehicles registered to or operated by the

⁴ Citing 2 W. LaFave, *Search and Seizure* §4.6(a) at 234-36, (2d ed. 1987) (citing *Marron v. United States*, 275 U.S. 192, 48, S.Ct. 74, 72 L.Ed. 231 (1927); *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 51, S.Ct. 153, 75 L.Ed. 374 (1931).

occupants of the afore-described property AND any outbuildings, garages, sheds or the like, located on the afore-described property, . . .”⁵

There was no testimony supporting that the cargo trailer was registered to or operated by the occupants (Mr. Runyon) of the property. Moreover, there was no one at the property at the time of the search except the officers. (RP 321, lines 19-23).

A cargo trailer unattached to a vehicle is a stationary object. It cannot be moved by itself any more than a semi-trailer. In State v. Tyson, 33 Wash.App. 859, 658 P.2d 55 (1983), the Court determined that a semi-trailer was not a vehicle. (RCW 46.04.620⁶; RCW 46.04.130⁷; and RCW 46.04.670.

As defined in *Webster’s New World Dictionary, 3rd College Edition (1991)*, “operate” means “to be an action so as to produce an effect; act; function; work. (v.t.); and “to put or keep in action; work (a machine, etc.)”.⁸

⁵ CP 46, Ex. A.

⁶ “Trailer” includes every vehicle without motive power designed for being drawn by or used in conjunction with a motor vehicle constructed so that no appreciable part of its weight rests upon or is carried by such motor vehicle, but does not include a municipal transit vehicle, or any portion thereof.

⁷ “Combination of vehicles” means every combination of motor vehicle and motor vehicle, motor vehicle and trailer or motor vehicle and semitrailer.

⁸ At page 949.

The Trial Court gave a very broad definition of a vehicle. “In its broadest definition, I think that [vehicle] includes anything that moves down the highway. Well, guess what, it may not have its own engine, but a trailer is a vehicle in that sense of the word”. (RP 218, lines 15-19). The Trial Court ruled that the Search Warrant allowed the search of any vehicle found on the premises searched. (RP 218, lines 20-22). “They [police] checked them [vehicles/trailers] all out”. The Court further found that the search performed by the police under the Search Warrant was performed correctly within the confines of the warrant. “But then the actual search, it was within bounds”. (RP 219, lines 4-5). However, the Search Warrant does not state that all vehicles/trailers on the property shall be searched. From the photos and the record (Trial Exhibit List, No. 26), there were over twenty vehicles on the property.

The cargo trailer was not attached to a vehicle nor registered to nor operated by Mr. Runyon. There is nothing in the record which otherwise contradicts this. Moreover, photographs of the cargo trailer show that the cargo trailer is not attached to a vehicle. (Trial Exhibit List, No. 1).

The cargo trailer was missing its VIN number tag but that does not mean that the cargo trailer was stolen. Moreover, at the time of his search, Officer Gardiner did not state his basis for his search of the cargo trailer.

Officer Gardiner did not state whether the cargo trailer was stolen or whether it was registered to or operated by Mr. Runyon. (RP 337, lines 3-24; (RP 338, lines 1-25; (RP 339, lines 1-9). The Search Warrant allows for the search of vehicles registered to the occupant [Mr. Runyon] or operated by him.

The police were authorized to search for methamphetamine under this first warrant. The State includes in oral argument at the suppression hearing that the informant stated methamphetamine could be hidden on the undercarriage of vehicles. The warrant did not allow for the search of all vehicles on the Runyon property or for the search of the undercarriage of all vehicles. However, the officers could have searched the undercarriage of all vehicles by crawling under a vehicle and not entering the vehicle, e.g., the cargo trailer. Nevertheless, in broadening the search to include the State's argument that the Search Warrant (through the Search Warrant Affidavit) contained the information that methamphetamine was hidden under the undercarriages of vehicles, the State still exceeded the scope of the search by entering each vehicle, whether registered to or operated by Mr. Runyon. There is no indication that the Search Warrant Affidavit was attached to the warrant at the premises nor does the Search Warrant

include the necessary language to incorporate the Search Warrant Affidavit into it.

The second Search Warrant authorizing the search for possession of stolen property is not a factor in this discussion because the cargo trailer had already been searched and seized (6/9/06 at 4:12 a.m. as evidenced by the property/evidence log. Nevertheless, the second warrant does not allow for the search of the inside of the cargo trailer.

The failure to suppress evidence which was obtained in violation of a person's Fourth Amendment rights is constitutional error and is presumed to be prejudicial. Tan Le, 103 Wash.App. 354, 367, 12 P.3d 653 (2000). The State has the burden of demonstrating the error is harmless. Id. The constitutional error is harmless only if the State shows, beyond a reasonable doubt, that any reasonable jury would have reached the same result without that error. State v. Brown, 147 Wash.2d 330, 341, 58 P.3d 889 (2002).

Mr. Runyon's Fourth Amendment rights were violated by the police when they made a thorough search inside the cargo trailer. The Search Warrant stated the limitations of the search were to any vehicle registered to or operated by the occupants. The police refused to be constrained by the limitations of this warrant. The cargo trailer did not

have a license plate or VIN number. Therefore, at the time of this search, the police had no information that this cargo trailer was registered to Mr. Runyon. This cargo trailer was not attached to any vehicle and therefore, the police had no reason to believe that it was operated by Mr. Runyon. The cargo trailer was on Mr. Runyon's property and therefore it was searched by the police without regard to the limitations of the warrant. Further, in compounding this violation of the Search Warrant, the Trial Court incorrectly interpreted the warrant to include the search of all vehicles and trailers located on the property.

The Trial Court failed to suppress the evidence of the bank check card discovered during the search of the cargo trailer. The first Search Warrant clearly confined the search to any vehicles registered to or operated by the occupants of the property. Warrants are viewed in a common sense, not hypertechnical, manner. State v. Partin, 88 Wash.2d 889, 904, 567 P.2d 1136 (1977). Moreover, the Trial Court failed to give any reasoning, legal or otherwise, how it came to the conclusion that the scope of the warrant was broadened to include the search of all vehicles on the property.

The State cannot show beyond a reasonable doubt that any reasonable jury would have convicted Mr. Runyon of Possession of Stolen

Property in the Second Degree if the tainted evidence of the bank check card was not introduced at trial. If the bank card had been correctly suppressed as tainted evidence at the suppression hearing, then no reasonable jury could have convicted Mr. Runyon of Possession of Stolen Property in the Second Degree.

The Trial Court's failure to suppress the bank check card as tainted evidence was constitutional error and prejudicial to Mr. Runyon, at trial.

ISSUE NO. 2

The Search Warrant lacked probable cause for the search of the cargo trailer and seizure of the bank check card.

The Fourth Amendment⁹ requires that an Affidavit which supports a warrant establish probable cause, i.e., it must contain “facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime can be found at the place to be searched”. State v. Nordlund, 113 Wash.App. 171, 178, 53 P.3d 520 (2002) (citing State v. Thein, 138 Wash.2d 133, 140, 977 P.2d 582 (1999); State v. Cole, 128 Wash.2d 262,

⁹ “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV.

286, 906 P.2d 925 (1995). The Fourth Amendment also contains a particularity requirement that prevents general searches and “issuance of warrants on loose, vague, or doubtful bases of fact”. Nordlund at 179-80, supra, (citing State v. Perrone, 119 Wash.2d 538, 545, 834 P.2d 611 (1992)). The particularity requirement for search warrants prevents general searches and the seizure of objects which are mistakenly believed to fall within the issuing magistrate’s authorization. State v. Chambers, 88 Wash.App. 640, 945 P.2d 1172 (1997). The Search Warrant must describe the things to be seized with reasonable particularity under the circumstances. State v. Perrone, 119 Wash.2d 538, 834 P.2d 611 (1992). The warrant limits the executing officer’s discretion to search and seize and also informs the person subject to the search what the officers may seize. State v. Riley, 121 Wash.2d 22, 846 P.2d 1365 (1993).

The first Search Warrant describes the location of the real property of Mr. Runyon. The warrant states that the search will include all methamphetamine substances and items related to methamphetamine sale and distribution, including records, etc.

The first Search Warrant allowed the search of the shop building, outbuildings, mobile home, sheds or the like of Mr. Runyon. There was no probable cause in the Search Warrant or the Search Warrant Affidavit

that provided a nexus between the cargo trailer and the items to be seized in the warrant. State v. Thein, 138 Wash.2d 133, 977 P.2d 582 (1999). Probable cause is lacking for the search of the cargo trailer. The Search Warrant was either overbroad or the officers exceeded the scope of the Search Warrant in searching every vehicle on Runyon's property and the cargo trailer.

There are three factors which are relevant in determining whether a warrant is overbroad: (1) Does probable cause exist to seize all items of a particular type described in the warrant?; (2) Does the warrant set out objective standards by which executing officers can differentiate items subject to seizure from those which are not?; and (3) Was the government able to describe the items more particularly in light of the information available to it at the time the warrant was issued?

State v. Higgins, 136 Wash.App. 87, 91-2, 147 P.3d 649 (2006) (citing United States v. Mann, 389 F.3d 869, 878 (9th Cir. 2004,) (quoting United States v. Spilotro, 800 F.2d 959 (9th Cir. 1986)).

The government was able to describe the items to be searched more particularly in light of the information available to it at the time the warrant was issued. Prior to issuing the first Search Warrant for methamphetamine, the State knew from the informant, which statements

were contained within the Affidavit, that Mr. Runyon may have hidden drugs on the undercarriages of the vehicles. (CP 51). The warrant failed to address or allow for the search of the undercarriage of vehicles in this search, much less search inside any vehicles (except those registered to or operated by Mr. Runyon) or cargo trailers. (CP 46, Ex. A). There was no authority in the first Search Warrant to search inside all vehicles much less the cargo trailer located on the property.

The State had a second chance to describe the areas to be searched with more particularity when the State obtained a second Search Warrant, four hours after initiating the search through the first warrant, requesting a search for possession of stolen property in the first degree. At that time, the State had the opportunity to broaden the search to all vehicles and the cargo trailer. In drafting the second warrant, the State chose not to broaden the search to particular items to be searched. The State reiterated the same areas and places to be searched as in the first warrant. The second warrant could have easily included more items to be searched rather than the specific description of any vehicles registered to or operated by the occupant.

There was no justification for the police to search and seize the bank card found within a box within the closed doors of a cargo trailer on

the Runyon property. The State may argue that stolen property discovered during a search for other specific items listed in a valid warrant may be seized under the plain view doctrine as long as certain criteria are met. State v. Adame, 37 Wash.App. 94, 100, 678 P.2d 1299 (1984) (citing State v. Daugherty, 94 Wash.2d 263, 267, 616 P.2d 649 (1980), cert. denied 450 U.S. 958, 101 S.Ct. 1417, 67 L.Ed.2d 382 (1981) et. al.). The three prong test will justify seizure of stolen property: (1) If there is prior justification for the intrusion; (2) Incriminating evidence must have been discovered inadvertently; and (3) The officers must know immediately that they have incriminating evidence before them. State v. Adame, 37 Wash.App. 94, 100, 678 P.2d 1299 (1984).

The police had authority to search for methamphetamine on Mr. Runyon's property within the limits described in the warrant. There was no prior justification or authority for the search of the cargo trailer contained anywhere within the warrant, and thus any incriminating evidence must have been obtained illegally. The discovery of the bank card belonging to Jason Barber inside a box, behind the closed doors, inside of the cargo trailer, could not be characterized as plain view. The searching officer could not determine whether the bank check card was stolen at the time of seizure. The bank check card was neither contraband

nor inherently an illegal item. Moreover, there was no methamphetamine found inside the cargo trailer. There is no indication in the record that the undercarriage of the cargo trailer was searched, much less the undercarriages of any vehicle. The search of the cargo trailer and its contents was a general search outside the scope of the Search Warrant.

V. CONCLUSION

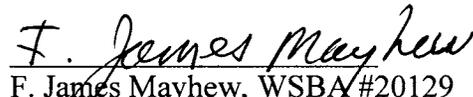
The first Search Warrant limited the officers' search to any vehicles registered to or operated by Mr. Runyon. The cargo trailer was neither registered to nor operated by Mr. Runyon. This warrant limited the search for methamphetamines and related documents to any outbuildings, garages, sheds or the like, located on the afore-described property. Neither of these definitions includes a cargo trailer. The Trial Court's expansion of the Search Warrant to all vehicles, which resulted in the denial of Mr. Runyon's suppression motion for search of the cargo trailer, was prejudicial error requiring reversal of Mr. Runyon's conviction and a remand to the Trial Court.

In the first Search Warrant and its Affidavit , there was no bases that brought forth any probable cause for the search of the cargo trailer. The argument that the State used to broaden the search is that the affiant

understood from the informant that methamphetamine may be hidden underneath the undercarriages of vehicles. For the sake of argument in allowing for this tenuous expansion of the warrant, the search of a box located inside the cargo trailer with closed doors, does not rise to the level of probable cause for the search of the cargo trailer. Moreover, the second warrant gave no further authority or specificity than the first warrant to broaden the search to all vehicles and trailers. There was no nexus between the methamphetamine and the inside of the cargo trailer.

If this Court determines that the search of the cargo trailer and the seizure of the bank check card were lawful under the warrant, then the Search Warrant fails as overly broad.

Respectfully submitted this 3 day of October, 2008.


F. James Mayhew, WSBA #20129
401 W. 13th Street
Vancouver, WA 98660
360-699-6317
Attorney for Appellant

CM

CERTIFICATE OF MAILING

I hereby declare that I served copies of the BRIEF OF APPELLANT signed on October 3, 2008 by appellant's attorney, on the following attorney on the date noted below, by mailing to said attorney(s) a true copy thereof, contained in a sealed envelope, addressed to said attorney at his last known address as indicated, and deposited in the Post Office at Vancouver, Washington, on said day, and I also served said documents via facsimile to the number noted below.

Michael C. Kinnie
Deputy Prosecuting Attorney
PO Box 5000
Vancouver, Washington 98666

David C. Ponzoha
Court Clerk
Washington State Court of Appeals
Division Two
950 Broadway, Suite 300
Tacoma, WA 98402-4454

Corey Runyon
DOC #855279
McNeil Island Correction Center
D-403-1
PO Box 881000
Steilacoom, WA 98388-1000

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

Executed at Vancouver, Washington this 3rd day of October, 2008.

F. James Mayhew
F. James Mayhew, WSBA #20129