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I. STATEMENT OF THE FACTS

Because of the nature of the issues raised by the Appellant, the facts supporting the search warrant and the Findings of Fact and Conclusions of Law will be set forth in the argument section of the brief.

II. RESPONSE TO ASSIGNMENTS OF ERROR NOS. 1, 2, & 3

The first three assignments of error raised by the Appellant all deal with the court's rulings on a suppression motion that was brought by the defense. The first claim is that the trial court erred when it entered Findings of Fact on the defendant's Motion to Suppress because they were not supported by substantial evidence. The second issue was that the trial court erred when it denied the Motion to Suppress because of a claimed violation of the Knock and Announce rule. The third assignment of error is a claim that the trial court erred when it denied the Motion to Suppress because the search exceeded the scope of the search warrant. Because all three of these issues are so closely linked to the suppression hearing and the findings entered by the court, they will all be treated in one response by the State.

The suppression hearing began on March 14, 2008 in the Superior Court. It continued on and finished on March 19, 2008. Following the suppression hearing the court entered its Findings of Fact and Conclusions

of Law re: Defense Motion to Suppress. (CP 96). A copy of those Findings of Fact and Conclusions of Law are attached hereto and by this reference incorporated herein.

The State first called Detective Bryan Acee. He was the main affiant for the search warrant and had also been the author of a previous search warrant. A copy of the Search Warrant dated May 15, 2007; Affidavit in Support of Search Warrant, prepared by Detective Bryan Acee and dated May 15, 2007; and the Search Warrant Addendum dated May 16, 2007, together with the Affidavit in Support of the Search Warrant Addendum dated the same date were all attached to the State's Response to Defense Motion to Suppress. (CP 15). A copy of these documents attached to the State's Response to Defense Motion to Suppress are attached hereto and by this reference incorporated herein.

Detective Acee testified that on a prior search warrant of the defendant's home firearms had been found. (RP 16-17). In fact, in the affidavit for the search warrant in our case as part of the probable cause statement in the affidavit on page 2, Detective Acee indicates as follows:

On May 14, 2007, the Clark County Sheriff's Office Warrant Division requested CCAT [Career Criminal Apprehension Team] assistance in arresting the defendant. Although the defendant has only a misdemeanor arrest warrant for bail jump, apprehension responsibilities were referred to CCAT due to the defendant's history of firearm and methamphetamine possession.

Later, in the same probable cause statement the officer refers to this earlier search warrant that had been conducted on the defendant's residence:

On March 1, 2005, members of the Southwest Washington SWAT team and Vancouver Police Violent Crimes Unit executed a search warrant for fully automatic firearms and methamphetamine at the described premises. I authored that search warrant and was present during the execution. Four firearms and methamphetamine was (sic) located on the premises during the search. VCU detectives referred firearm and drug charges on Booker as a result of the search warrant.

During the testimony in the suppression hearing, Detective Acee discussed with the court the nature of the warrant to arrest the defendant. (RP 19). To execute this warrant, officers went to the residence. Prior to entry into the residence, the officers saw a male in the driveway and a number of cars in the driveway. (RP 22). The officers detained that individual and then proceeded to the door of the residence. The officer testified that they knocked and announced and that there was no response and then he indicated that a few seconds later, Sergeant Chylack, who was the team leader and ranking officer, told the officers they could make forced entry, but Detective Acee checked the front door and found it was unlocked, so no damage had to be done to the door. (RP 24-25). After the door was opened the officer testified as follows:

QUESTION (Deputy Prosecutor): Correct. Then what happens?

ANSWER (Detective Acee): Myself and the other officers enter the house, "Police with a search warrant," you know, "Get on the ground," and repeating things of that nature as-

QUESTION: Okay.

ANSWER: -- we flow into the house.

QUESTION: And what – and why – why were you saying those things or those commands or giving those commands?

ANSWER: That's our standard operating procedure, and that is so that in the confusion of the search warrant we do it the same way each time and that people within the house and in back rooms understand what this train is or this commotion is coming through the house.

It also gives persons inside the house clear instructions on who we are and what we want them to do. In this case, we're the police and we're telling everyone to get down on the ground.

QUESTION: Okay. Is it to control the scene?

ANSWER: Yes.

QUESTION: All right. So you said you were – who – who made – who was the first officer inside the house?

ANSWER: I was.

QUESTION: Do you remember who was behind you? I mean, obviously you don't have eyes in the back of your head, but do you – do you have a sense of who was behind you?

ANSWER: I believe it was Deputy Roccas with the United States Marshal's Service.

QUESTION: Okay. And then behind him? Was the other officers?

ANSWER: Yes.

QUESTION: All right. So the door swung in, you went inside, and you start announcing.

Did you see anybody inside the – the – inside the door, i.e., in the entryway or anywhere in the immediate front area of the house?

ANSWER: There was no one inside the house in that immediate area when I entered the house.

-(RP 26, L18 – 28, L5)

The officer further went on to testify that he and the others then entered the residence and did not see anyone on initial entry or going into various rooms. The officer indicated that they were specifically looking for people, in particular, the defendant. (RP 28-29).

The officer testified that, in searching for the defendant, he went into the master bedroom and observed in plain view a used methamphetamine pipe constructed of glass with residue, and bullets all over the room. (RP 30). He indicated later in his testimony that the bullets were of different caliber firearms and that the room was "really cluttered". He further remembered seeing one or two plastic baggies which he has normally seen in the drug investigation arena. (RP 32-33). He testified that

while he was doing the search he did not see anyone and that the methamphetamine pipe was in plain view on entry into the master bedroom. (RP 34).

Later in his testimony he indicated that other officers found people in the residence and that the defendant, himself, was found in the kitchen area. (RP 35-36). Three other people were found: the defendant's wife and two children. (RP 36-37).

Because of the plain view of the methamphetamine pipe, the search warrant addendum was requested and in executing that search warrant there was found a number of items including hundreds of rounds of ammunition, a second firearm, and baggies associated with the drug trade. (RP 52).

The next witness to testify was Corporal Neil Martin. Officer Martin worked for the Vancouver Police Department. (RP 107). He testified that he went inside the front door and he was the one who found the wife and children in the converted garage. (RP 112). He further testified that on initial entry into the residence that he saw no one. (RP 113).

Prior to making entry, they were told that they had been compromised. (RP 115). The Corporal was asked on cross examination

what was the significance of being compromised. He responded as follows:

ANSWER (Corporal Martin): Well, basically, once we're compromised, if the person is acting as a lookout or gives the signal to someone inside the residence, we don't want the people to – whoever we're serving the warrant on, we don't want them to run in, arm themselves or hide or anything else like that, so it's pretty significant if you're compromised when serving a search warrant.

-(RP 116, L7-13)

The prosecution also called during the suppression hearing Filli Matua, who is a Department of Corrections Fugitive Specialist. (RP 123). This officer was also involved in the search warrant, made entry through the front door, and actually found the defendant in the dining room/kitchen area of the residence. (RP 126). The officer indicated upon entry that he saw no one when they entered the residence. (RP 130-131). On cross examination he was asked about being compromised and what that meant. He responded as follows:

QUESTION (Defense Attorney): In your experience in the past, have you entered the house immediately upon a knock and announce?

ANSWER (Officer Matua): On the knock and announce?

QUESTION: Uh huh.

ANSWER: There have been times where we have been compromised during a flow up to the door. Wherefore once

we've been compromised, we tend to move a little bit quicker to the door.

QUESTION: Okay. Do you remember where you – what – whether you were compromised here?

ANSWER: I believe we were. We were compromised as soon as we got out of the truck or the raid van.

-(RP 133, L9-20)

The State also called Brian Ford, who worked for the Department of Corrections as a Community Corrections Specialist. He also testified that he's on the Interagency Fugitive Task Force with the Vancouver Police Department, US Marshal's, and Clark County Sheriff's Department. (RP 146). He indicated that his job at the execution of this search warrant was to gain entry into the residence. (RP 147). He testified that the group felt compromised and because of that the sergeant gave the order to breach the door. (RP 148). Upon entry into the residence he testified that he did not see anyone in the hallway or adjacent rooms to the hallway when he made entry. (RP 151).

On cross examination Officer Ford is asked whether or not they were compromised and what that meant. He testified as follows:

QUESTION (Defense Attorney): And about how long is that waiting period in general?

ANSWER (Officer Ford): It just varies, I mean, depending upon the situation. I mean, if we're compromised, it can be sooner than later. Depending on what kind of warrant it is;

also the Violent Crime Unit. (RP 158-159). On this particular search warrant he was the supervising sergeant in charge. He told the judge that he considered that the team had been compromised by coming in contact with the person in the yard. (RP 161). He indicated that because of being compromised, the actions at the front door were speeded up:

QUESTION (Deputy Prosecutor): What happened once you arrived at the front door?

ANSWER (Sergeant Chylack): The front door? Just (indiscernible) knock and announce, you know, it's usually "Police, with a search warrant".

QUESTION: Uh huh.

ANSWER: We didn't wait long. I said right after he knocked and announced and if we didn't hear – if I don't hear anybody coming through the door, since we were compromised, I went to Acee, "Go ahead and hit it", which meant use the ram –

QUESTION: Uh huh.

ANSWER: - and that would be Brian Ford.

And before he did that, he checked the knob, it was unlocked, and then we made entry.

-(RP 162, L3-16)

Sergeant Chylack indicated that upon initial entry into the residence, that he saw no one. (RP 165).

On cross examination, questions were asked of the Sergeant concerning being compromised and the procedures if one is compromised.

The Sergeant responded as follows:

QUESTION (Defense Attorney): Officer, what do you remember about the waiting, the amount of time the team waited before entering the house after the knock and announce?

ANSWER (Sergeant Chylack): After we knocked. It wasn't that long because I – because when that was – if – if we're – if we're compromised, how we work, we have different standard operating procedures. And there's no actual time, but we (indiscernible) if it's a huge house, you'd wait a few, you know, a little longer for someone to get from one end of the house to the other.

But if you're compromised like we were 'cause there was someone in – in the driveway, it's just a knock and announce, if you don't hear anybody coming to the door, I actually give the command pretty quick, you know, within seconds after the knock and announce.

QUESTION: So that's pretty quick.

ANSWER: Yeah.

-(RP 170, L4-20)

The defense maintained that the police officers conducted an unlawful search because they did not wait a reasonable time after knocking and announcing their purpose before entering the residence. RCW 10.31.040, the Knock and Announce Rule, provides that police are required to knock, announce their identity and purpose, and wait a

reasonable length of time for the occupants to voluntarily admit them. State v. Cardenas, 146 Wn.2d 400, 411, 47 P.3d 127, 57 P.3d 1156 (2002); State v. Johnson, 94 Wn. App. 882, 889, 974 P.2s 855 (1999). After a reasonable wait, the police are allowed to make a forcible entry. RCW 10.31.040; Johnson, 94 Wn. App. at 890. Whether an officer waited a reasonable time before entering a residence depends upon the circumstances of each case. State v. Richards, 136 Wn.2d 361, 374, 962 P.2d 118 (1998). The appellate court will defer to the trial court's resolution of this issue because the trial court is best equipped to evaluate contradictory testimony. Johnson, 94 Wn. App. at 889-890.

Determining whether the officers waited an appropriate period before entering, the trial court must consider the purposes of the knock and announce rule: (1) to reduce the potential for violence to both occupants and police; (2) to prevent unnecessary destruction of property; (3) to protect the occupant's right to privacy. State v. Cardenas, 146 Wn.2d at 411. Strict compliance with the knock and announce rule is required absent exigent circumstances. Exigent circumstances include reasonable police suspicions that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime. Richards v. Wisconsin, 520 U.S. 385, 394, 117 S. Ct. 1416, 137 L. Ed. 2d 615 (1997).

A reasonable belief that a suspect possesses a weapon has excused compliance with the knock and announce rule in the State of Washington. State v. Schmidt, 48 Wn. App. 639, 644, 740 P.2d 351 (1987) (citing annot., Sufficiency of Showing of Reasonable Belief of Danger to Officers or Others Excusing Compliance with “Knock and Announce” requirement – State Criminal Cases, 17 A.L.R. 4th 301, 306 (1982); State v. Cardenas, 146 Wn.2d at 412 (one exigency was that the officers reasonably believed that the suspects were armed)).

The State submits that the officers found themselves in a compromised position with a defendant and residence where firearms had previously been discovered. And, as found in Finding of Fact number three, the defendant had a reputation within the local drug subculture as a “taxer” – someone who collects on past due drug debts. (Findings of Fact, CP 96, Page 2, L10-12). Because of that, the officers’ reactions at the front door were reasonable under the circumstances. The presences or absence of exigent circumstances sufficient to constitute an exception to the knock and wait rule is a factual determination to be made by the trial court. State v. Carson, 21 Wn. App. 318, 584 P.2d 990 (1978); State v. Young, 76 Wn.2d 212, 217, 455 P.2d 595 (1969); State v. Edwards, 20 Wn. App. 648, 581 P.2d 154 (1978). Here, the officers reasonably believed that they were compromised and that the suspect potentially could be armed. Entry

was gained without any property destruction, which is also one of the factors that the court is to consider.

The court's findings of fact on the suppression hearing are all supported by the testimony and evidence that was produced at the time of the suppression hearing. All indications from the officers involved would indicate that this was an attempt to reduce the potential for violence against both police and possible occupants. Because of the nature of the circumstances here, there was no destruction of property. And finally, it was to protect the occupants' rights to privacy, the officers having previously obtained the search warrant, had the right to conduct the search for the body of the defendant and were properly doing so without necessarily invading the privacy of the people in the residence. This juggling act of competing concerns is extremely important in the State of Washington and has definite constitutional underpinnings. The State agrees with much of the discussion raised by the Appellant in his brief. However, the State disagrees that the officers did not face exigent circumstances in this situation. As the case law has firmly set forth, exigent circumstances allow the officers to vary from the strict compliance with the knock and announce rule.

The third area raised by the defendant is a claim that the officers exceeded the scope of the search warrant. This claim is based on a belief

that the records in this matter show that there was contact with individuals in the home at the door and thus there was no reason to conduct a search from bedroom to bedroom because the defendant was in custody. An arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within. Peyton v. New York, 445 U.S. 573, 603, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980).

As all the officers testified in our case, they met no one in the initial entry into the home nor in searching of the bedrooms did they find anyone. When they broke up into their two-man teams, once they had gained entry, the search of the master bedroom, done by Detective Acee and his partner, saw the drug paraphernalia in plain view. He was not searching for drugs or other types of contraband, but was searching for the defendant. Once the defendant was apprehended in the home, all searching ceased, and a second search warrant (the addendum) was requested. It was only after that second search warrant was granted that the search uncovering the drugs and stolen merchandise was completed. There is absolutely no indication in this record to support a proposition that the police were doing anything but executing a search warrant and sweeping the house to locate and arrest the defendant. Apparently, the defense wants the appellate court to go behind the findings of fact and indicate that the

defendant was located at the door when it was opened. (Brief of Appellant page 30-31). Yet, there is nothing indicating or justifying this position.

The court balanced the evidence, facts, and testimony and concluded that the testimony of the officers was more logical and reasonable. Given that, there is no excessive search being done. The police were in the process of trying to find the defendant who was somewhere in the family home.

III. RESPONSE TO ASSIGNMENT OF ERROR NO. 4

The fourth assignment of error raised by the defendant is a claim that there was insufficient evidence to support the conviction for possession of methamphetamine.

Evidence is sufficient to support a conviction if, after viewing all the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-222, 616 P.2d 628 (1980). When a defendant challenges the sufficiency of evidence in a criminal case, the appellate court draws all reasonable inferences from the evidence in favor of the State and interprets all reasonable inferences from the evidence strongly against the defendant. State v. Partin, 88 Wn.2d 899, 906-907, 567 P.2d 1136 (1977). Circumstantial evidence is no less reliable than direct evidence. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The claim by the Appellant in his brief is that there was not proper chain of command or identity of the pipe seen by Detective Acee in the bedroom and the pipe that was tested at the crime lab. (Brief of Appellant, pages 33-34). The claim is that there is speculation here that the seized pipe was the same one that was turned over later on.

However, when we review the evidence at the time of trial, Detective Acee testified that he and Deputy Roccas made entry in the hallway and went to the master bedroom area looking for the defendant.

ANSWER (Detective Acee): When I entered the master bedroom, I didn't encounter anyone in there, but next to the bed on a shelf in a – in a candle that had been burnt out a little bit, I saw a glass pipe that I recognized to be used for methamphetamine smoking.

QUESTION (Deputy Prosecutor): Okay. Did you observe anything else that's pertinent to this case?

ANSWER: Yes, I observed a – a number of used plastic baggies about the floor area next to the bed.

-(RP 382, L16-24)

The officer went on in his direct examination to enter various diagrams and photographs. One of the photographs was the area in the master bedroom where the pipe was found. "This is a photograph of the shelf to the left of the bed where I found the methamphetamine pipe". (RP 393, L5-6). The photo, Exhibit No. 3, was admitted without objection. (RP 393). He was also shown what was marked as Plaintiff's No. 9 and was

asked to look inside and whether or not he could recognize what it contained. The officer indicated as follows:

QUESTION (Deputy Prosecutor): Okay. And how do you recognize that?

ANSWER (Detective Acee): This is the methamphetamine pipe that I saw in the master bedroom in the candle on the –

QUESTION: Okay.

ANSWER: - shelf next to the bed.

QUESTION: Okay. And what happened to this pipe once it was – once you located it?

ANSWER: We seized it, we turned it in to Vancouver Police Evidence, and then we had it sent up to the crime lab so that the substance could be tested by a scientist at the crime lab.

-(RP 394, L2-12)

The officer went on to indicate that it got to court that day being transported by Officer Matua, who is another officer assigned to his unit and who had picked it up from the evidence office and brought it to court on the day of testimony. (RP 395). Detective Acee testified that he in fact opened the bag there in the courtroom, (RP 395) and the following question and answers took place after that:

QUESTION (Deputy Prosecutor): And is that pipe in substantially the same condition today as when you saw it back in – on March 6 – I'm sorry, May 16th, 2007?

ANSWER (Detective Acee): Yes, more or less. It looks like a swab's been run through it to collect something, but, yes.

QUESTION: Okay. All right. Please place it back into the bag.

ANSWER: (Witness complying).

QUESTION: Hand you what's been marked as Plaintiff's No. 10. Do you recognize that, sir?

ANSWER: I do.

QUESTION: What is that?

ANSWER: This is a – also a Vancouver Police evidence bag, and it contains some of the used plastic baggies that I saw around the master bedroom that I referred to earlier.

QUESTION: Okay. And do you know what happened to – to the bags once you located them?

ANSWER: They were collected and placed in the evidence bag and turned in to Vancouver Police evidence.

QUESTION: Okay. When did you lay eyes on those bags today?

ANSWER: When Officer Matua delivered them here to the courtroom.

QUESTION: All right. And was the bag sealed when – when you took possession of them today?

ANSWER: Yes it was.

QUESTION: All right. Obviously it's not sealed right now. Who opened it?

ANSWER: I did.

QUESTION: All right. Oh, I forgot to ask, do you remember if these bags are in the same condition today as when they were discovered or located back on May 16, 2007?

ANSWER: Yes they are.

The methamphetamine pipe was later admitted into evidence after the forensic scientist had testified about it. (RP 521). That witness was John Dunn, who works for the Washington State Patrol Crime Laboratory as a Forensic Scientist. (RP 491). After preliminary questioning, the forensic scientist indicated that he identified the object as the pipe that he had tested. (RP 507-508). He gave an opinion based on reasonable probabilities that the material contained methamphetamine. (RP 509). On direct examination, he further reiterated that there was no doubt in his mind that it was methamphetamine. (RP 510).

The nature of the argument for sufficiency of the evidence deals with a claimed lack of nexus between Detective Acee and Exhibit No. 9. The State submits that there is ample evidence and testimony in this record to support the admission of the object and the identification of it by the officer, which was done in the presence of the jury, and that same object then tested and found to contain the controlled substance. The State submits that it has met its burden concerning the nexus between the detective and the controlled substance.

IV. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 10 day of Dec., 2008.

Respectfully submitted:

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@Ag

FILED
APR 11 2008
Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

v.

JACK DOUGLAS BOOKER,

Defendant.

No. 07-1-00903-5

FINDINGS OF FACT AND CONCLUSIONS
OF LAW RE: DEFENSE MOTION TO
SUPPRESS

THIS MATTER having come regularly before the above-entitled Court; State of Washington represented by Kasey Vu, Deputy Prosecuting Attorney and the Defendant being present and represented by his attorney, Antoine Tissot, and the Court having held a CrR 3.6 hearing on March 14 and March 19, 2008, and the Court further having heard during that time testimony from witnesses for the State and Defense, and the Court further having admitted several exhibits for purposes of the CrR 3.6 hearing, and after argument of counsel, hereby makes its:

FINDINGS OF FACT

1. The police arrived at the residence of Defendant Jack Booker, located at 5810 NE 94th Avenue in Vancouver, Clark County, Washington, on the afternoon of May 16, 2007, to serve an arrest warrant on him. The police had obtained a warrant to search this residence for Defendant, based on an outstanding no-bail warrant issued by the Clark County District Court. A copy of the affidavit and search warrant was admitted at the 3.6 hearing as Exhibit 1.

FINDINGS AND CONCLUSIONS
RE: Defense Motion to Suppress – Page 1 of 6

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1 2. Upon arrival, the police encountered an adult male in the driveway in front of the
2 house next to several vehicles and trailers. The police announced themselves to the male by
3 yelling out to him, directed him to the ground, and detained him. The male was not Defendant.
4 The police proceeded toward the front door of the residence.

5 3. The police believed that their approach to the residence had been compromised,
6 due to the unexpected encounter with the male in the driveway. Detective Bryan Acee was the
7 lead officer, and has had previous contacts with Defendant. Detective Acee previously had
8 obtained and served a search warrant at this same residence a year or so ago. During the
9 service of that warrant, the police located a number firearms and ammunition. ~~One or more of~~
10 ~~the firearms turned out to have been reported stolen.~~ Detective Acee also had information from *KTV*
11 police informants that Defendant has a reputation within the local drug subculture as a "taxer" – *A*
12 someone who collects on past due drug debts. Detective Acee had conducted surveillance on
13 Defendant's residence on previous occasions, and had observed multiple persons frequent the
14 residence.

15 4. At the front door, Detective Acee knocked, and yelled out words to the effect,
16 "Vancouver Police, search warrant, we demand entry." After several seconds with no response
17 from inside the house, Sergeant Mike Chylack gave the order to breach the door. Detective
18 Acee checked the door knob, and found that it was unlocked. Detective Acee then opened the
19 front door and entered the house. The other officers behind him also followed him into the
20 house. The short duration of time between the knock and announce and the entry into the
21 residence was reasonable, based on the facts of this case, as recited above.

22 5. Upon entry into the house, the officers announced themselves by yelling words to
23 the effect, "Police, search warrant, get on the ground." The police did not see or encounter any
24 persons in the front portion of the house (entryway and living room). As the police made initial
25 entry into the house, they broke off into pairs to clear the house and search it for Defendant and
26 locate any other occupants. *or anything that might be a threat to the officers*
27 Detective Acee and United States Deputy Marshall Leland Rakoz *KTV*
A

1 proceeded down the hallway to the right, to clear the bedrooms along the hallway. One of the
2 bedrooms was later determined to be the master bedroom (and Defendant's bedroom). DOC
3 Officers Fili Matua and Brian Ford headed straight ahead toward the kitchen and dining area.
4 Corporal Neil Martin and another officer headed toward the left side of the house into the garage
5 that had been converted into additional living space.

6 6. While inside the master bedroom, Detective Acee saw in plain view on a shelf
7 next to the bed a used glass pipe. The glass pipe appeared to contain an off-white crystal
8 substance. Through his training and experience, Detective Acee recognized the pipe as an item
9 that is commonly used to smoke drugs, particularly Methamphetamine, and the crystal
10 substance inside the pipe appeared to be consistent with the appearance of Methamphetamine.
11 Detective Acee later conducted a field test on the pipe, and obtained a positive response for the
12 presence of Methamphetamine. He also saw a number of small plastic baggies and
13 ammunition on the floor. Detective Acee recognized the small plastic baggies as items
14 commonly used to hold or store Methamphetamine. No persons were located in the master
15 bedroom.

16 7. While Detective Acee and Deputy Marshall Rakoz were clearing the hallway and
17 master bedroom, the other officers did the same in the other areas of the house. DOC Officers
18 Matua and Ford located Defendant in the kitchen and dining area. Defendant was not located in
19 the immediate area inside the front door. In the converted garage on the left side of house,
20 Corporal Martin located Defendant's wife, daughter, and grandchild. All persons were
21 consolidated in the living room. No other persons were located inside the house.

22 8. After Defendant was brought to the living room, Detective Acee attempted to
23 obtain his consent to search the rest of his residence for drugs, firearms, and other contraband,
24 based on his observation of the used glass smoking pipe, plastic baggies, and ammunition in
25 the master bedroom. Defendant refused to give consent. Detective Acee then applied for and
26 obtained a second warrant to search Defendant's residence, this time for Methamphetamine
27

1 and drug paraphernalia. A copy of the second affidavit and search warrant was admitted at the
2 3.6 Hearing as Exhibit 2. During the service of the second search warrant, the police located
3 inside the master bedroom small used plastic baggies with residue, two firearms, several
4 hundred rounds of ammunition, a collapsible baton, and mail addressed to Defendant.

5 9. While the other officers were inside the residence, Detective Gordon Conroy
6 positioned himself in the driveway area outside the house as containment, and to provide
7 outside security. Detective Conroy observed in open view, the license plate of a utility trailer
8 parked in the driveway. The license plate on the trailer was visible to the naked eye from
9 several feet away, and did not require any manipulation. Detective Conroy ran the license plate
10 of the trailer, and discovered that the trailer had been reported stolen. He passed this
11 information on to Detective Acee.

12 10. After Defendant was located and brought to the living room, Detective Acee
13 proceeded to question Defendant about the evidence that the police had located. Prior to
14 asking him questions, Detective Acee advised Defendant of his Constitutional Rights under
15 Miranda.¹ Defendant acknowledged understanding his rights, waived them, and agreed to talk
16 to Detective Acee. Defendant admitted that he and his wife stayed in the master bedroom. He
17 stated that he found the Meth pipe "down the street" and brought it home so "some kid playing
18 didn't find it." He acknowledged that he knew the pipe was the kind that is used to smoke
19 Methamphetamine. When asked about the stolen trailer, Defendant stated that an unnamed
20 friend had dropped it off a few days ago, and he had been using it, and loaned it out for others
21 to use. Defendant's admissions to Detective Acee were voluntary and made without coercion or
22 threats.

23 11. At the 3.6 hearing, the Court viewed the video and audio recording of what
24 appears to show the arrival of the police onto Defendant's property, and the knock and
25

26 ¹ Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966).
27

1 announce at the front door. This tape was admitted as Exhibit 3. This video cassette recording
2 appears to be from Defendant's surveillance system. Defendant had sole custody and control
3 of the video cassette tape for seven months, before turning it over to the State in December.

4 12. ^{There was testimony re. the location of one camera} The taped recording is of little value to the Court. There was no evidence offered
5 ^{There was testimony that the tape was unaltered} regarding the recording system or process that was used to create the tape, nor was there
6 testimony to establish the tape's chain of custody to ensure its integrity or protection from
7 tampering or alteration. It is unknown what has been done to the tape for the seven months
8 prior to Defendant relinquishing the tape. In this case, the Court finds live testimony from
9 witnesses more helpful.

10 Based on the foregoing findings of fact, the Court makes its:

11 CONCLUSIONS OF LAW

12 1. The Court has jurisdiction over the subject matter of this action and over the
13 parties hereto.

14 2. The police complied with the requirements of the knock and announce statute,
15 RCW 10.31.040. The short duration of the time between the knock and announce, and the
16 entry into the residence was justified by the officers' belief that they had been compromised by
17 the unexpected encounter with the male in the driveway in front of the house. This was further
18 supported by the knowledge of the police regarding Defendant's history with firearms, reputation
19 in the drug community, and numerous visitors to the property through prior surveillance by the
20 police.

21 3. The sweep of the residence was lawful. The police was lawfully on the premises
22 under the authority of a valid warrant to search for Defendant. The police was executing the
23 warrant when they swept the house to locate and arrest Defendant.

24 4. The discovery of the contraband in Defendant's bedroom was lawful. This was a
25 classic example of plain view discovery. The police observed pipe and plastic baggies during
26 the execution of the search warrant to locate and arrest Defendant, and they recognized
27 immediately upon discovery that the items were evidence of a crime.

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FILED

MAR 13 2008

Sherry W. Parker, Clerk, Clark Co.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK**

STATE OF WASHINGTON,

Plaintiff,

v.

JACK DOUGLAS BOOKER,

Defendant.

No. 07-1-00903-5

**STATE'S RESPONSE TO DEFENSE
MOTION TO SUPPRESS**

I. FACTS¹

During the afternoon of May 16, 2007, officers from the Southwest Washington Career Criminal Apprehension Team (CCAT)² and Vancouver Police Department's Neighborhood Response Team (NRT) served a warrant at Defendant Booker's residence, located at 5810 NE 94th Avenue in Vancouver, Clark County, Washington. The police had obtained a warrant to search Defendant's residence to locate and arrest him, based on an outstanding no-bail arrest warrant issued by the Clark County District

¹ The facts are derived from police reports and information provided by the respective officers. The State will call these officers as witnesses at the hearing. The State anticipates the officers' testimonies will be consistent with the facts as presented here.

² CCAT is a multi-agency organization comprised of members from Vancouver Police Department, Clark County Sheriff's Office, and Washington Department of Corrections. The United States Marshalls will also lend assistance when there is a need.

**STATE'S RESPONSE TO DEFENSE MOTION TO
SUPPRESS - 1**

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

32

1 Court on March 30, 2007, when Defendant failed to appear in court on a pending DUI
2 charge. See Appendix 1 (Search Warrant and Affidavit).

3 As the officers arrived and came onto the property, they encountered an adult
4 male in the driveway in front of the house. There were several vehicles and/or trailers
5 parked in the front driveway area of the residence. The male was not Defendant, and
6 was detained in the driveway by one officer, while the rest of the officers proceeded
7 toward the front door. Detective Bryan Acee was the lead officer, and can recognize
8 Defendant by sight, based on previous contacts. Detective Acee was aware that the
9 police had previously served a warrant at this same residence, and had located a
10 number firearms and ammunition. One or more of the firearms turned out to have been
11 reported stolen.

12 At the front door, Detective Acee knocked on it, and yelled out words to the
13 effect, "Vancouver Police, search warrant, we demand entry." After several seconds
14 with no response from inside the house, Sergeant Mike Chylack gave the order to
15 breach the door. Detective Acee checked the door knob, and found that it was
16 unlocked. Detective Acee then opened the front door and entered the house. The
17 other officers behind him also followed him into the house.

18 Simultaneous to their entry into the house, the officers yelled into the house,
19 words to the effect, "Police, search warrant, get on the ground." The police did not see
20 or encounter any persons in the front portion of the house (entryway and living room).
21 As the police made initial entry into the house, they broke off into pairs to clear the
22 house and search it for Defendant and locate any other other occupants. Detective
23 Acee and United States Deputy Marshall Leland Rakoz proceeded down the hallway to
24 the right, toward what was later determined to be the master bedroom. Corporal Neil
25 Martin and another officer headed toward the left side of the house into the garage that
26 had been converted into additional living space. DOC Officers Fili Matua and Brian
27 Ford headed straight ahead toward the kitchen and dining area.

1 While inside the master bedroom, Detective Acee saw in plain view on a shelf
2 next to the bed a glass pipe and number of small plastic baggies. The glass pipe
3 appeared to contain an off-white crystal substance. Through his training and
4 experience, Detective Acee recognized the pipe as an item that is commonly used to
5 smoke drugs, particularly Methamphetamine, and the crystal substance inside the pipe
6 appeared to be consistent with the appearance of Methamphetamine.³ No persons
7 were located in the master bedroom.

8 While Detective Acee and Deputy Marshall Rakoz were clearing the hallway and
9 master bedroom, the other officers did the same in the other areas of the house. In the
10 converted garage on the left side of house, Corporal Martin located Defendant's wife,
11 daughter, and grandchild. Inside the kitchen and dining area, DOC Officers Matua and
12 Ford located Defendant. All persons were consolidated in the living room. No other
13 persons were located inside the house.

14 After Defendant was brought to the living room, Detective Acee attempted to
15 obtain his consent to search the rest of his residence for drugs and contraband, based
16 on his observation of the used glass smoking pipe and plastic baggies in the master
17 bedroom. Defendant refused to give consent. Detective Acee then applied for and
18 obtained a second warrant to search Defendant's residence, this time for
19 Methamphetamine and drug paraphernalia. See Appendix 2 (Search Warrant
20 Addendum and Affidavit). During the service of the second search warrant, the police
21 located inside the master bedroom small used plastic baggies with residue, two
22 firearms, several hundred rounds of ammunition, a collapsible baton, and mail
23 belonging to Defendant.

24 While the police were serving the first warrant (clearing the house and looking for
25 Defendant), Detective Gordon Conroy positioned himself in the driveway area outside
26 the house. Detective Conroy observed in open view, the license plate of a utility trailer
27

³ The substance inside the pipe later tested positive for the presence of Methamphetamine.

1 parked in the driveway. The license plate on the trailer was visible to the naked eye
2 from several feet away, and did not require any manipulation. Detective Conroy ran the
3 license plate of the trailer, and discovered that the trailer had been reported stolen.⁴ He
4 passed this information on to Detective Acee.

5 After Defendant was located and brought to the living room, Detective Acee
6 proceeded to question Defendant about the evidence that the police had located. Prior
7 to asking him questions, Detective Acee advised Defendant of his Constitutional Rights
8 under Miranda.⁵ Defendant acknowledged understanding his rights, and agreed to talk
9 to Detective Acee. Defendant admitted that he and his wife stayed in the master
10 bedroom. He stated that he found the Meth pipe "down the street" and brought it home
11 so "some kid playing didn't find it." He acknowledged that he knew the pipe was the
12 kind that is used to smoke Methamphetamine. When asked about the stolen trailer,
13 Defendant stated that an unnamed friend had dropped it off a few days ago, and he had
14 been using it, and loaned it out for others to use.

15 The State charged Defendant with one count of Possession of a Controlled
16 Substance – Methamphetamine, and one count of Second Degree Possession of Stolen
17 Property. Defendant has filed a motion to suppress evidence, claiming that the police
18 exceeded the scope of the initial search warrant.

19 20 **II. ISSUE**

21 Defendant has raised two pertinent issues in his motion to suppress:

- 22 1. Whether the police exceeded the scope in executing the search warrant in
23 this case.
- 24 2. Whether discovery of the stolen trailer in the driveway was fruit of the illegal
25 search.

26
27 ⁴ The owner of the trailer had reported the theft of the trailer on March 28, 2007, and estimated its value as being \$600.

⁵ Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966).

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III. ARGUMENT

1. *The police did not exceed the scope of the search warrant in executing it.*

The State agrees with Defendant's assertion that the police must execute a search warrant strictly within the bounds of the search warrant. State v. Cheatam, 112 Wn. App. 778, 783-84, 51 P. 3d 138 (2002), *affirmed*, 150 Wn.2d 626 (2003).

Furthermore, the determination of whether the police exceeded the scope of the warrant depends on a common sense reading of the warrant. Id. However, it is axiomatic that when a search warrant properly describes the things to be searched and seized, it also authorizes law enforcement officers to search inside any container in which the items could reasonably be found. State v. Simonson, 91 Wn. App. 874, 886-87, 960 P.2d 955 (1998) (citing Wayne LaFave, Search and Seizure § 10(d) at 670 (3d ed. 1996)).

In the current case, the warrant authorized the police to search the residence located at 5810 NE 94th Avenue, in Vancouver, Washington to locate the person known as Jack Douglas Booker, who is described as being a white adult male approximately 48 years old, being about 5 feet 11 inches in height, and weighing 200 pounds. When the police entered the residence to serve the warrant, they were presumably authorized to search any area inside the residence that could have held an adult male of this size. Contrary to Defendant's assertion, he was not located inside the front door in the entryway. In fact there was no one in the front portion of the house.

Detective Acee proceeded down the hallway to the right and toward the master bedroom in search of Defendant. Defendant was not located in the master bedroom. Defendant was located later by DOC Officers Matua and Ford in the kitchen and dining area, after Detective Acee had already proceeded down the hallway toward the master bedroom. Detective Acee's discovery of the Methamphetamine pipe and plastic baggies on the shelf inside the master bedroom was made during the course of serving the warrant, i.e. searching the master bedroom for Defendant. Detective Acee did not

1 look into any drawers or cabinets to discover the pipe and baggies. These items were
2 out in the open in the bedroom. With his training and experience, Detective Acee
3 recognized these items to be evidence of a crime related to illegal drugs. This was the
4 classic example of a plain view discovery of evidence.⁶ The police did not exceed the
5 scope of the search warrant.

6 Even assuming characterizing Detective Acee's visual inspection of the master
7 bedroom for Defendant as a warrantless search, it was lawful under the protective
8 sweep exception to the warrant requirement. Where there is an outstanding arrest
9 warrant for a person (not a search warrant), a peace officer, such as a commissioned
10 police officer, is charged with the authority to execute the arrest warrant. See CrR
11 2.2(d)(1). An arrest warrant issued by a magistrate or judge, authorized to issue such a
12 warrant, is valid through the State of Washington. RCW 10.31.060.

13 Warrantless searches and seizures inside a home are presumptively
14 unreasonable. Payton v. New York, 445 U.S. 573, 586, 100 S. Ct. 1371 (1980).
15 However, one of the few exceptions to this rule is the "protective sweep," as recognized
16 in Maryland v. Buie, 494 U.S. 325, 110 S. Ct. 1093 (1990); State v. Boyer, 124 Wn.
17 App. 593, 600, 102 P.3d 833 (2004). As explained in Boyer:

18 The concept of a protective sweep was adopted to justify the reasonable steps
19 taken by arresting officers to ensure their safety while making an arrest. []
20 Generally officers executing an arrest warrant may search the premises for the
21 subject of that warrant, but must call off the search as soon as the subject is
22 found. []. However, the risk of danger with in-home arrests justifies steps by the
23 officers "to assure themselves that the house in which a suspect is being, or has

24 ⁶ The elements of a "plain view" search historically included three requirements: (1) a prior justification for
25 intrusion; (2) inadvertent discovery of incriminating evidence; and (3) immediate knowledge by the officer
26 that he had evidence before him. State v. Chrisman, 100 Wn.2d 814, 819, 676 P.2d 419 (1994).
27 Inadvertent discovery is no longer required, under either the Federal or State Constitutions. Horton v.
California, 496 U.S. 128, 110 S. Ct. 2301 (1990); State v. Goodin, 67 Wn. App. 623, 627-28, 838 P.2d
135 (1992), *review denied*, 121 Wn.2d 1019 (1993). A plain view scenario involves three stages: 1) the
officer must view the item to be seized without intruding unlawfully on the defendant's privacy; 2) the
officer must reach the item without intruding unlawfully on the defendant's privacy; and 3) the officer must
seize the item without intruding unlawfully on the defendant's privacy and with probable cause to believe
the item is contraband or evidence of a crime. State v. Hoggatt, 108 Wn. App. 257, 270, 30 P.3d 488
(2001).

1 just been, arrested is not harboring other persons who are dangerous and who
2 could unexpectedly launch an attack." *Id.* Consequently, "as an incident to the
3 arrest the officers could, as a precautionary matter and without probable cause or
reasonable suspicion, look in closets and other spaces immediately adjoining the
place of arrest from which an attack could be immediately launched." *Id.* at 334.

4 124 Wn. App. at 600-01.

5 In the present case, even assuming the police did not have a search warrant to
6 look for Defendant, and were only acting on the authority of the arrest warrant,
7 Detective Acee would have been justified in visually checking the interior of the master
8 bedroom – both to look for Defendant, and as a protective sweep to ensure officer
9 safety. This is especially true in this case, where Detective Acee had first-hand
10 knowledge of the discovery of multiple firearms at the same residence on a previous
11 search warrant. In addition, the police had already encountered an adult male in the
12 driveway in front of the house, and did not know who else was inside the residence.
13 These facts clearly justify a protective sweep of the residence to ensure officer safety.
14 As previously pointed out, the discovery of evidence in plain view during the course of
15 lawful police conduct (the protective sweep here) would therefore, be lawful.

16 *2. The discovery of the stolen trailer in the driveway was not the fruit of illegal*
17 *police conduct.*

18 "The presence of an officer within the curtilage of a residence does not
19 automatically amount to an unconstitutional invasion of privacy. Rather, it must be
20 determined under the facts of each case just how private the particular observation
21 point actually was." State v. Seagull, 95 Wn.2d 898, 902, 632 P.2d 44 (1981).
22 Furthermore, detection by a law enforcement officer of something by utilizing one or
23 more of his senses while lawfully present at the vantage point where those senses are
24 used, does not constitute a "search" within the meaning of the Fourth Amendment. *Id.*
25 at 901 (citing 1 W. LaFare, *Search and Seizure* § 2.2, at 240 (1978)). Finally, there is no
26 protected privacy interest in the information contained in DOL records regarding vehicle
27 and drivers licenses. State v. McKinney, 148 Wn.2d 20, 32, 60 P.3d 46 (2002).

1 In this case, Detective Conroy was part of the team that was serving the warrant
2 at Defendant's residence. As the team came onto the property and contacted the adult
3 male in the front driveway area, Detective Conroy stayed outside with him, while the
4 rest of the team proceeded to the front door. He remained outside for the duration of
5 the service of the search warrant.⁷ Hence, Detective Conroy was lawfully in the
6 driveway leading to Defendant's house. It was during this time that he noticed the
7 license plates of the various vehicles in the driveway, including the trailer, and checked
8 their status. Detective Conroy received information from Dispatch that the trailer had
9 been reported stolen. This occurred while Detective Acee and the other officers were
10 inside the residence dealing with Defendant and the other occupants.

11 Defendant's assertion that the police unlawfully delayed his transport to jail after
12 his arrest is completely without merit. The only reason that Defendant was not
13 transported immediately to jail after his arrest, was because Detective Acee was
14 preparing his paperwork to apply for a second search warrant of the residence to look
15 for Methamphetamine and drug paraphernalia. Even if there was a delay in transporting
16 Defendant to jail after his arrest, it is of no consequence. As already indicated, the
17 discovery of the status of the stolen trailer was accomplished before the beginning of
18 this delay. Furthermore, Detective Conroy is expected to testify that the license plate
19 on the trailer was displayed in such a manner and location that he would have been
20 able to see it from the public roadway, without having to come onto Defendant's
21 property.

22 23 **IV. CONCLUSION**

24 The police was legally in Defendant's residence to execute a search warrant, to
25 look for and arrest Defendant for an outstanding arrest warrant. Defendant was not
26 immediately located upon entry into the residence. Detective Acee was simply
27

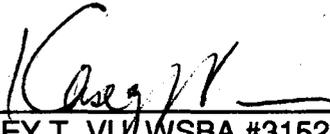
⁷ Defendant has not challenged the validity of the arrest warrant, initial search warrant, or second search warrant. These warrants are presumed valid.

1 executing the warrant when he went into Defendant's bedroom. Alternatively, Detective
2 Acee was conducting a protective sweep for officer safety. In either case, the discovery
3 of the items of drug paraphernalia was achieved in plain view. The police did not
4 exceed the scope of the search warrant. Detective Conroy was lawfully on Defendant's
5 property when he observed the license plate on the trailer in the driveway and called it
6 in. This was done during the time that Detective Acee and the other officers were
7 dealing with Defendant and his family inside the house. There was no illegal delay in
8 transporting Defendant to jail after his arrest.

9 Based on the foregoing, the State respectfully requests that Defendant's motion
10 be denied.

11
12 DATED this 15th day of March, 2008.

13
14 ARTHUR D. CURTIS
15 Prosecuting Attorney

16
17 
18 KASEY T. VU WSBA #31528
19 Deputy Prosecuting Attorney

DISTRICT COURT FOR CLARK COUNTY
STATE OF WASHINGTON

V07-10172

STATE OF WASHINGTON,
Plaintiff

v.

JACK DOUGLAS BOOKER
aka: "Jack Daniel Booker"
Defendant

SEARCH WARRANT

1 The people of the State of Washington, to any Sheriff, Police Officer, or Peace Officer in Clark County: Proof by written affidavit,
2 under oath, made in conformity with the State of Washington Criminal Rules for Courts of Limited Jurisdiction, rule 2.3, having
3 been made to me this day by Vancouver Police Detective Bryan Acee, of the Career Criminal Apprehension Team, that there is
4 probable cause for the issuance of a search warrant on the grounds set forth in the State of Washington Criminal Rules for Courts of
5 Limited Jurisdiction, rule 2.3, Section (c).
6

7
8 You are therefore commanded, with the necessary and proper assistance, to make a diligent search, good cause having been shown
9 therefore, of the following described property, within 10 days of the issuance of this warrant:
10

11 LOCATION TO BE SEARCHED:

12
13 The premises located at **5810 NE 94th Avenue, Vancouver, Washington**; further described as a single story
14 home with green colored siding and green and tan trim, the numbers "5810" being posted on the mailbox in
15 front of the residence; to include all rooms, attics, basements, and other parts therein, the surrounding
16 grounds, and any shops, garages, storage areas, or outbuildings where the defendant may be hiding.
17

18 FOR THE FOLLOWING PERSON / PROPERTY:

- 19
20 a) the person known as **Jack Douglas BOOKER**, a white male adult approximately 48 years old, having date
21 of birth 06/16/1958, being about 5'11" in height and 200 lbs. in weight, and believed to be currently
22 residing at the above described premises;
23
24 b) *should the defendant not be at the described location when the warrant is served:* documentation that
25 tends to lead to the whereabouts of the defendant, to include, but not limited to personal calendars,
26 appointment books, telephone books, address books, notes, notebooks, photographs, phone messages,
27 credit card receipts, credit card billing statements, bank receipts, check receipts, telephone statements, hotel
28 or motel receipts, room keys, business cards, travel itinerary, restaurant receipts, airplane tickets or mail
29 addressed to the defendant.
30

31 **AND TO SEIZE THEM IF FOUND** and bring them forthwith before the Court according to law.
32
33

34 This Search Warrant was issued this 15th day of May, 2007, at 1:15 am/pm.

35
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37 By the Honorable [Signature]
38 Judge of the District Court
39 County of Clark
40 State of Washington

SEARCH WARRANT EXECUTION: DATE: 5-16-07 HOUR: 1410 BY: [Signature] #3831

Appendix 1

DISTRICT COURT OF CLARK COUNTY
STATE OF WASHINGTON
SEARCH WARRANT AFFIDAVIT

STATE OF WASHINGTON,)
Plaintiff)

V.)

JACK DOUGLAS BOOKER)
aka: "Jack Daniel Booker")

Defendant)

AFFIDAVIT IN SUPPORT OF
SEARCH WARRANT

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I, Detective Bryan Acee, first duly sworn upon oath, hereby depose and say that I have good and sufficient reason to believe the persons and/or property described below and sought pursuant to this Search Warrant are presently at the location set forth herein. Wherefore, Affiant requests that this Search Warrant be issued pursuant to Washington State law.

LOCATION TO BE SEARCHED:

The premises located at 5810 NE 94th Avenue, Vancouver, Washington; further described as a single story home with green colored siding and green and tan trim, the numbers "5810" being posted on the mailbox in front of the residence; to include all rooms, attics, basements, and other parts therein, the surrounding grounds, and any shops, garages, storage areas, or outbuildings where the defendant may be hiding.

FOR THE FOLLOWING PERSON / PROPERTY:

- a) the person known as **Jack Douglas BOOKER**, a white male adult approximately 48 years old, having date of birth 06/16/1958, being about 5'11" in height and 200 lbs. in weight, and believed to be currently residing at the above described premises;
- b) *should the defendant not be at the described location when the warrant is served:* documentation that tends to lead to the whereabouts of the defendant, to include, but not limited to personal calendars, appointment books, telephone books, address books, notes, notebooks, photographs, phone messages, credit card receipts, credit card billing statements, bank receipts, check receipts, telephone statements, hotel or motel receipts, room keys, business cards, travel itinerary, restaurant receipts, airplane tickets or mail addressed to the defendant.

**DISTRICT COURT OF CLARK COUNTY
STATE OF WASHINGTON
SEARCH WARRANT AFFIDAVIT**

EXPERTISE OF AFFIANT:

I have been a law enforcement officer for nine years and am employed as a police detective with the Vancouver Police Department. I am currently assigned to the interagency Career Criminal Apprehension Team, hereafter referred to as CCAT. CCAT is a task force that works to identify and target for prosecution violent fugitives, repeat offenders, and felons who have committed criminal acts within the Southwest Washington area. Prior to becoming a police officer with VPD, I worked for the California Highway Patrol as an officer and detective. My investigative assignments include auto theft detail, narcotic interdiction and assignment to the Southern California Outlaw Motorcycle Gang Task Force (SCOMGTF). While assigned to SCOMGTF, I worked complex felony investigations, to include firearms and explosives trafficking, criminal conspiracy, high-level narcotic distribution networks, multi-member vehicle theft rings and fugitive investigations involving members of national and international outlaw motorcycle gangs.

I am a graduate of the United States Drug Enforcement Administration's Narcotic Investigator School and have received in excess of 400 hours of formal training in the area of complex felony investigations from the United States Drug Enforcement Administration, United States Marshals Service, Federal Bureau of Investigation, Bureau of Alcohol, Tobacco, Firearms and Explosives, California Highway Patrol, California Department of Corrections, San Diego County Sheriff's Department, Los Angeles County Sheriff's Department, Los Angeles Police Department, Santa Ana Police Department, California Narcotic Officers Association, California Gang Investigators Association, California Gang Task Force and International Outlaw Motorcycle Gang Investigators Association.

PROBABLE CAUSE STATEMENT:

On May 14, 2007, the Clark County Sheriff's Warrants Division requested CCAT assistance in arresting the defendant. Although the defendant has only a misdemeanor arrest warrant for bail jump, apprehension responsibilities were referred to CCAT due to the defendant's history of firearm and methamphetamine possession.

Pertaining to the application of this search warrant, I have verified Jack Douglas BOOKER has an active District Court arrest warrant for Failure to Appear on a Gross Misdemeanor with an original charge of DUI. The arrest warrant was issued March 30, 2007, bearing warrant number 54641, with no-bail.

BOOKER has prior convictions for possession of marijuana, depositing an unwholesome substance, driving under the influence, driving with no valid operator's license, driving with a suspended license and bail jump.

On March 1, 2005, members of the Southwest Washington SWAT team and Vancouver Police Violent Crimes Unit executed a search warrant for fully automatic firearms and methamphetamine at the described premises. I authored that search warrant and was present during the execution. Four firearms and methamphetamine was located on the premises during the search. VCU detectives referred firearm and drug charges on BOOKER as a result of the search warrant.

Your affiant believes BOOKER to live at the described premises based on the following facts:

- Public utility records indicate BOOKER lives at the described premises;
- Official police records indicate BOOKER lives at the described premises;
- District Court records indicate BOOKER lives at the described premises;
- BOOKER's current driver's license lists the described premise as his residence;
- BOOKER has two vehicles registered to him at the described premises;
- BOOKER receives mail at the described premises.

V07-10

DISTRICT COURT OF CLARK COUNTY
STATE OF WASHINGTON
SEARCH WARRANT AFFIDAVIT

1 My training and experience indicates persons often leave evidence of their daily schedules, activities, travel
2 patterns, appointments, planned outings, meetings, and social or business interactions in the normal course of living
3 within their premises. Furthermore, personal calendars, appointment books, telephone books, address books, notes,
4 notebooks, mail, photographs, phone messages, credit card receipts, credit card billing statements, bank receipts,
5 check receipts, telephone statements, hotel or motel receipts, room keys, business cards, travel itinerary, restaurant
6 receipts, airplane tickets and/or other notations pertaining to the defendant's current whereabouts may be located in
7 the described premises. Such information would aid law enforcement officers in discovering the defendant's current
8 location. Should the defendant not be at the described location when the warrant is served, your affiant requests
9 officers be permitted to search the premises for items that may document, record or depict the defendant's current
10 whereabouts.

11
12 I observed the described premises and obtained the description set forth in this affidavit and the attached search
13 warrant.

14
15 Therefore, based on my training, experience, and the above facts, I believe I have probable cause to believe the
16 above-described person and/or property, or a portion thereof, will be at the described premises when the warrant is
17 served.

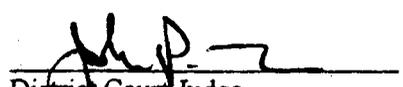
18
19 I hereby request a search warrant be issued for the seizure of said persons and/or property, from said premises at
20 any time of the day, good cause being shown therefore, and the same be brought before this magistrate or retained
21 subject to the order of the Court.



Detective Bryan Acee #1383
Vancouver Police Department
Career Criminal Apprehension Team

5-15-07
Date

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30 Sworn to and subscribed before me on this 15th day of May, 2007.

31
32
33 
34 District Court Judge
35 County of Clark
36 State of Washington

STATE OF WASHINGTON,
Plaintiff

V.

JACK DOUGLAS BOOKER
aka: "Jack Daniel Booker"
Defendant

SEARCH WARRANT
ADDENDUM

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The people of the State of Washington, to any Sheriff, Police Officer, or Peace Officer in Clark County: Proof by written affidavit, under oath, made in conformity with the State of Washington Criminal Rules for Courts of Limited Jurisdiction, rule 2.3, having been made to me this day by Vancouver Police Detective Bryan Acee, of the Career Criminal Apprehension Team, that there is probable cause for the issuance of a search warrant on the grounds set forth in the State of Washington Criminal Rules for Courts of Limited Jurisdiction, rule 2.3, Section (c).

You are therefore commanded, with the necessary and proper assistance, to make a diligent search, good cause having been shown therefore, of the following described property, within 10 days of the issuance of this warrant:

LOCATION TO BE SEARCHED:

The premises located at **5810 NE 94th Avenue, Vancouver, Washington**; further described as a single story home with green colored siding and green and tan trim, the numbers "5810" being posted on the mailbox in front of the residence; to include all rooms, attics, basements, and other parts therein, the surrounding grounds, and any shops, garages, storage areas, trash containers or outbuildings.

FOR THE FOLLOWING PROPERTY:

- a) controlled substances, including methamphetamine, methamphetamine residue and compounds containing derivatives of methamphetamine, a violation of RCW 69.50.401;
- b) paraphernalia used to facilitate the consumption of methamphetamine, to include, but not limited to glass smoking pipes, hypodermic needles, snorting tubes or straws, scales, measuring devices, plastic baggies, cellophane or paper bindles;
- c) any and all safes, storage boxes, containers, file cabinets, or similar containers that could contain or conceal narcotics AND forcibly open said container in absence of key or combination;
- d) any evidence of ownership, dominion or control over the premises to be searched, including keys, mail, mail envelopes, magazines and other items of correspondence, photographs, utility bills, telephone bills, rental agreements, grant deeds, property tax records, exemplars of original handwriting, and the lifting of fingerprints;

AND TO SEIZE THEM IF FOUND and bring them forthwith before the Court according to law.

This Search Warrant was issued this 16 day of May, 2007, at 3:30 am/pm.

By the Honorable [Signature]
Judge of the Clark County District Court
State of Washington

cmr 6/5/07

SEARCH WARRANT EXECUTION: DATE: 5-16-07 HOUR: 1520 BY: [Signature] #1383

Appendix 2

V07-10172

DISTRICT COURT OF CLARK COUNTY
STATE OF WASHINGTON
SEARCH WARRANT AFFIDAVIT

STATE OF WASHINGTON,
Plaintiff

v.

JACK DOUGLAS BOOKER
aka: "Jack Daniel Booker"

Defendant

AFFIDAVIT IN SUPPORT OF
SEARCH WARRANT

ADDENDUM

I, Detective Bryan Acee, first duly sworn upon oath, hereby depose and say that I have good and sufficient reason to believe the persons and/or property described below and sought pursuant to this Search Warrant are presently at the location set forth herein. Wherefore, Affiant requests that this Search Warrant be issued pursuant to Washington State law.

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DISTRICT COURT OF CLARK COUNTY
STATE OF WASHINGTON
SEARCH WARRANT AFFIDAVIT

1 **EXPERTISE OF AFFIANT:**

2
3 I have been a law enforcement officer for nine years and am employed as a police detective with the Vancouver
4 Police Department. I am currently assigned to the interagency Career Criminal Apprehension Team, hereafter
5 referred to as CCAT. CCAT is a task force that works to identify and target for prosecution violent fugitives,
6 repeat offenders, and felons who have committed criminal acts within the Southwest Washington area. Prior to
7 becoming a police officer with VPD, I worked for the California Highway Patrol as an officer and detective. My
8 investigative assignments include auto theft detail, narcotic interdiction and assignment to the Southern California
9 Outlaw Motorcycle Gang Task Force (SCOMGTF). While assigned to SCOMGTF, I worked complex felony
10 investigations, to include firearms and explosives trafficking, criminal conspiracy, high-level narcotic distribution
11 networks, multi-member vehicle theft rings and fugitive investigations involving members of national and
12 international outlaw motorcycle gangs.

13
14 I am a graduate of the United States Drug Enforcement Administration's Narcotic Investigator School and have
15 received in excess of 400 hours of formal training in the area of complex felony investigations from the United
16 States Drug Enforcement Administration, United States Marshals Service, Federal Bureau of Investigation, Bureau
17 of Alcohol, Tobacco, Firearms and Explosives, California Highway Patrol, California Department of Corrections,
18 San Diego County Sheriff's Department, Los Angeles County Sheriff's Department, Los Angeles Police
19 Department, Santa Ana Police Department, California Narcotic Officers Association, California Gang Investigators
20 Association, California Gang Task Force and International Outlaw Motorcycle Gang Investigators Association.

21
22 I have also received on the job training from other experienced officers, detectives, and agents from federal,
23 state, and local agencies, who have been recognized in the courts as experts in the investigation of organized crime
24 and narcotics. I have interviewed numerous individuals involved in the use, sales, possession, cultivation,
25 possession for sales, distribution, transportation, and processing of controlled substances. During these
26 experiences, I have become knowledgeable in the various aspects in which these offenders commit their crimes. I
27 have participated in undercover investigations, moving surveillance operations, and hundreds of complex felony
28 investigations. I am a former member of the California Narcotic Officer's Association and have taught several
29 gang and narcotic investigative courses to other law enforcement officers. I have previously qualified as an expert
30 witness in the area of drug recognition, narcotic possession for sales, and narcotic transportation for sales.

31
32
33 **PROBABLE CAUSE STATEMENT:**

34
35 Your affiant is the detective who authored and obtained the attached search warrant for the described premises. The
36 original search warrant granted officers judicial authorization to search the described premises for the defendant, a
37 person for whom a valid arrest warrant has been issued. The original search warrant is attached hereto and
38 incorporated herein.

39
40 On May 16, 2007, at 1410 hours, detectives with the interagency Career Criminal Apprehension Team and
41 Vancouver Police Neighborhood Response Team executed the original search warrant at the described premises.
42 While searching the interior of the house for the defendant, Deputy U.S. Marshal Rakoz and I entered the master
43 bedroom. The defendant was not located in the bedroom, however I noticed a used glass smoking pipe on a shelf
44 near the bed. The pipe was in plain view and contained an amount of crystalline substance - which I recognized to
45 be methamphetamine. A field test on the substance within the pipe tested positive for methamphetamine via NIK
46 testing. I also noted several small, used, plastic baggies scattered about the master bedroom floor. I noticed a couple
47 of the baggies to contain a faint white powder substance. I suspect the substance within the baggies is
48 methamphetamine residue.

V07-10172

DISTRICT COURT OF CLARK COUNTY
STATE OF WASHINGTON
SEARCH WARRANT AFFIDAVIT

1 Based on the presence of methamphetamine in the bedroom, I believe additional quantities of methamphetamine
2 and drug paraphernalia will be located within the described premises.
3

4 While securing the perimeter of the described premises, Detective Conroy discovered a stolen utility trailer (WA:
5 4303-RF) parked in the driveway.
6

7 Based on my training and experience, I know methamphetamine is often sold in a powder or crystal-like form and
8 packaged in small plastic baggies at the 'street level'; that persons who possess methamphetamine will possess the
9 above described paraphernalia, and will commonly have said contraband on hand, secreted at their premises, to
10 include stashing such contraband in attached, or unattached structures around the described premises, or on their
11 person or in their vehicle, in order to satisfy their own habits.
12

13 I know from my training and experience that persons involved in the consumption of controlled substances use
14 packaging material, including plastic baggies, to hold the controlled substances. I also know that subjects who use
15 controlled substances will also frequently have drug paraphernalia at their residence.
16

17 I know from my training and experience that subjects involved in the consumption of controlled substances hide
18 drugs in many places; including but not limited to, safes, lock boxes, vaults, inner walls, secret compartments,
19 bathroom utilities, mattresses, vehicles, vehicle parts, outbuildings and adjoining structures. I am seeking to search
20 all areas of the premises, but know from experience that suspect(s) may not cooperate with officers. Should the
21 defendant and/or other suspects fail to provide officers will key or combination to said containers, officers will
22 utilize a cutting device to access said containers.
23

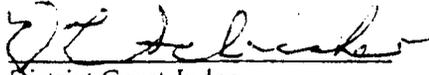
24 Your affiant has personally observed the residence at 5818 NE 137th Avenue, Vancouver, and obtained the
25 description set forth in this affidavit and the attached search warrant.
26

27 Therefore, based on my training, experience, and the above facts, I believe I have probable cause to believe the
28 above-described property, or a portion thereof, will be at the described premises when the warrant is served. I
29 hereby request a search warrant be issued for the seizure of said property, from said premises at any time of the day,
30 good cause being shown therefore, and the same be brought before this magistrate or retained subject to the order of
31 the Court.
32

33 
34 _____
35 Detective Bryan Acee #1383
36 Vancouver Police Department
37 Career Criminal Apprehension Team
38

39 5-16-07
40 Date

41 Sworn to and subscribed before me on this 16 day of May, 2007.

42 
43 _____
44 District Court Judge
45 County of Clark
46 State of Washington
47
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