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Court of Appeals
Division II
State of Washington

NO. 49572-4-II

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

STATE OF WASHINGTON, Respondent

v.

JESSE MICHAEL IRWIN, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.16-1-01530-1

BRIEF OF RESPONDENT

Attorneys for Respondent:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

KELLY M. RYAN, WSBA #50215
Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (360) 397-2261

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. The search warrant was properly issued and the evidence obtained therefrom was properly admitted.**
- II. The search warrant was not impermissibly overbroad.**

STATEMENT OF THE CASE

The State charged Jesse Irwin (hereafter 'Irwin') with possession of a controlled substance – methamphetamine for an incident occurring on July 14, 2016. CP 4-5.

Battle Ground Police Officer Clint Fraser performed a traffic stop on a gold full size Ford van driven by Irwin at 8:09 AM, because he saw Irwin driving the van without a seatbelt on. RP 153-154; CP 17. Officer Fraser ultimately applied for a warrant to search Fraser's vehicle, and included the following information in his affidavit. RP 168. CP 16-21.

As Officer Fraser approached the van after it had stopped, he observed a female passenger in the front passenger seat, two bicycles, two large automotive subwoofer speaker boxes, a car stereo, a tool box, an electronic tablet, a laptop, and a variety of other items. CP 17-18. Officer Fraser noted that the items were suspicious to him. CP 17. He was suspicious of the bicycles, because they were BMX style bikes and Irwin and his passenger appeared too old to ride bikes of this style. CP 17-18.

Based on his training and experience, all the items in the van were consistent with items often taken in auto prowls or thefts. CP 18.

Upon contacting Irwin, Officer Fraser asked for Irwin's license, registration, and insurance. CP 18. Irwin said he was on his way to court, and Irwin was not wearing a shirt. CP 18. Irwin looked around and found a black men's leather wallet. CP 18. He pulled out something that might have been an ID card and said "that's not me" and briefly showed Officer Fraser the card. CP 18. However, it was too fast for Officer Fraser to see who was pictured on the card, apart from that it was a man. CP 18. Officer Fraser asked who was on the ID card, and Irwin said, "Oh, that's my friend." CP 18. Irwin continued to look for his wallet and then said he must not have it with him. CP 18. Irwin said the van belonged to his friend Brian, and was able to find an expired insurance card and a registration form. CP 18. Irwin gave Officer Fraser his name and date of birth. CP 18.

Officer Fraser checked Irwin's information and discovered Irwin's license was suspended in the first degree, and there was a warrant for Irwin's arrest for theft in the third degree. CP 18. Officer Fraser also saw that Irwin had previously been convicted of criminal impersonation in the first degree. CP 18.

Officer Fraser then asked Irwin to step out of the van. CP 18. Once outside of the van, Officer Fraser observed that Irwin was not wearing any

clothes, except for a shirt he was holding over himself. CP 18. Irwin then put on his clothing and was placed in handcuffs by Officer Fraser. CP 18. Officer Fraser advised Irwin of his constitutional rights, and Irwin stated he understood and would speak with Officer Fraser. CP 18. Officer Fraser asked Irwin for consent to search the van, because of the strange items and to make sure they were not stolen. CP 18. Irwin said nothing was stolen and it was all his. CP 18. Officer Fraser gave Irwin his *Ferrier* warnings, and Irwin agreed to a voluntary search of his van. CP 18.

Officer Fraser returned to Irwin's van and contacted the passenger. CP 18. Officer Fraser noticed the passenger had very constricted pupils and no top teeth. CP 18. The passenger provided her ID card that identified her as Shelby Cahill, and dispatch confirmed that she had a prior conviction for possession of a controlled substance with intent to deliver. CP 18-19.

Cahill stepped out of the vehicle and was asked if she had any weapons or drugs on her person. CP 19. She said she just had a knife in her pocket. CP 19. She was also asked if anything in the vehicle belonged to her, and she said a backpack, jacket, sweatshirt, hat, and one of the bikes. CP 19. The backpack was on the seat behind her, and she said there were no drugs or weapons in it. CP 19. Officer Fraser asked if he could check it, and she agreed. CP 19.

In the backpack, Officer Fraser located a tin that contained two glass pipes that he recognized are used to smoke methamphetamine. CP 19. He saw a large amount of what appeared to be methamphetamine in the “bowl” of the largest pipe. CP 19. He also found a jar slightly smaller than his fist that contained a crystal substance he recognized as methamphetamine. CP 19. The amount in the jar far exceeded normal personal use, and weighed 34 grams. CP 19, 20. He also located a digital scale with white crystal flakes on it, and \$341 in cash. CP 19.

Officer Fraser placed Cahill under arrest and advised her of her constitutional rights. CP 19. She reiterated that the backpack was hers and that the only other things of hers in the van were the bike and a Bluetooth speaker near the center console. CP 19.

Officer Fraser returned to the van and opened the rear double passenger door. CP 19. He saw a black suitcase that appeared to be full of items, a car audio amplifier under the passenger bench seat, and another backpack full of items behind the driver seat. CP 19. He also saw two men’s wallets near the center console, and a bedspread covering up something in the back of the van. CP 19.

At this point, Irwin revoked his consent to search the van. CP 19. Officer Fraser asked Irwin what changed, and Irwin said it was because he didn’t know what was going on with Cahill. CP 19. Officer Fraser replied

that she was being arrested for drug possession, and asked about the other items in the van. CP 19. Irwin reiterated that everything was his except one of the bikes. CP 19-20. Officer Fraser reminded Irwin that he wanted to check to see if any of the property in the van wasn't Irwin's or if there were more drugs in the van. CP 20. Irwin went back and forth saying that Officer Fraser could examine some of the items, like the subwoofers and laptop, but didn't want Officer Fraser looking around the rest of the vehicle. CP 20.

Officer Fraser ended his contact with Irwin and decided to seize the van and apply for a warrant to search it. CP 20. He based his decision to apply for a warrant on: the amount and type of items being consistent with auto prowls, the suspicious wallet with someone else's identification, the unknown contents of the suitcase and the backpacks, the substantial amount of drugs found in Cahill's possession, and the criminal histories of Irwin and Cahill. CP 20. Officer Fraser sealed the van with evidence tape and requested the vehicle be towed. CP 20.

The proceeding information was what Officer Fraser submitted in his search warrant affidavit on July 15, 2016. CP 17-21. He believed there was probable cause that both Irwin and Cahill may have committed the following crimes: possession of stolen property, theft in the second degree, identity theft, possession of a controlled substance, and possession of drug

paraphernalia. CP 16. The warrant requested that all portions of the van be searched, including the exterior and interior. CP 16. The warrant also requested to search the van for the following property: controlled substances, drug paraphernalia, any items to show domain and control of the vehicle, access to any locked storage container that can be used to secure the sought after evidence, and any other items of evidence specifically relating to the above listed suspected crimes. CP 17.

A search warrant was authorized and signed by a judge on July 15, 2016. CP 86-87. The warrant authorized a search of the interior and exterior of the van for:

1. "Controlled substances to include, but not limited to methamphetamine, heroin, cocaine or prescription medications;
2. Drug paraphernalia to include, but not limited to smoking pipes, wrappers, plastic baggies, electronic or digital scales, or any device other device which may be used for the consumption or ingestion of drugs;
3. Any items to show domain and control of the vehicle to include but not limited to identification, mail, credit or bank cards, receipts of purchases with the defendant(s)'s names, paycheck stubs, or other papers including the defendant(s)'s name(s);
4. Access to any locked storage container which can be used for securing or concealing evidence sought;
5. Any other items of evidence specifically relating to the crime(s) of Theft II...Possession of Stolen Property...Identity Theft...Possession of a Controlled Substance... and Possession of Drug Paraphernalia."

CP 86-87. The subsequent search of the van revealed more drug paraphernalia and methamphetamine. RP 169. The drugs and paraphernalia were found in the backpack behind the driver's seat. RP 169.

Prior to trial, Irwin moved to suppress the drugs found in his van arguing a lack of probable cause to issue the search warrant. CP 6-15; RP 14-17. The trial court denied the motion to suppress and ruled that there was sufficient probable cause for the issuance of the warrant. RP 25-26. The trial court reasoned that the issuing magistrate did not abuse its discretion in issuing the warrant. RP 22. The trial court found that based on the officer's training and experience the types of items seen in the vehicle were consistent with items often taken in auto prowls or thefts. RP 23. The trial court also stated that there was a connection between Irwin and Cahill that made the drugs found in Cahill's backpack important to the warrant, because Cahill and Irwin were in the vehicle traveling to court together. RP 23-24. The trial court also relied on the evidence of the wallet Irwin first grabbed that was not his and another wallet in the vehicle, because it was unusual and created suspicion on the part of the officer. RP 24. The trial court also stated that the officer's observation of the overlap between drug possession and property crimes created a nexus for criminal activity. RP 25.

At trial, evidence of the methamphetamine found in Irwin's backpack was admitted and presented to the jury. RP 170, 213, 218. The jury found Irwin guilty of one count of possession of a controlled substance – methamphetamine. RP 379; CP 40. This timely appeal follows.

ARGUMENT

I. The search warrant was properly issued and the evidence obtained therefrom was properly admitted.

Irwin claims the search warrant for his vehicle was improperly issued without probable cause. There was probable cause for the issuance of the warrant and the magistrate did not abuse its discretion in issuing the search warrant. Irwin's claim fails.

Washington Court Rules specifically authorize warrants to search for and seize evidence of a crime, contraband, the fruits of a crime, or things otherwise criminally possessed, weapons or other things by means of which a crime has been committed or reasonably appears about to be committed. CrR 2.3(b). Case law has held that search warrants are the favored means of police investigation, and supporting affidavits or testimony must be viewed in a manner which will encourage their continued use. *U.S. v. Harris*, 403 U.S. 573, 29 L. Ed. 2d 723 (1971); *U.S. v. Ventresca*, 380 U.S. 102, 108-09, 13 L. Ed. 2d 284, (1965). When a

search warrant is properly issued by a judge, the party attacking it has the burden of proving its invalidity. *State v. Fisher*, 96 Wn.2d 962, 639 P.2d 743, *cert. denied*, 457 U.S. 1137 (1982); *State v. Smith*, 50 Wn.2d 408, 314 P.2d 1024 (1957); *State v. Trasvina*, 16 Wn.App. 519, 557 P.2d 368 (1976).

A magistrate's determination that a warrant should issue is an exercise of judicial discretion that is reviewed for abuse of discretion. This determination should be given great deference by a reviewing court. *State v. Cole*, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). And further, doubt as to the existence of probable cause will be resolved in favor of the warrant. *State v. J-R Distributions, Inc.*, 111 Wn.2d 764, 774, 765 P.2d 281 (1988). In reviewing the search warrant affidavit and making a determination as to whether to authorize the search warrant, the magistrate is to operate in a common sense and realistic fashion and is entitled to draw common sense and reasonable inferences from the facts and circumstances set forth. *State v. Yokley*, 139 Wn.2d 581, 596, 989 P.2d 512 (1999).

In determining the validity of a search warrant, the court considers whether the affidavit, on its face, established probable cause. *State v. Perez*, 92 Wn.App. 1, 4, 963 P.2d 881 (1998). A search warrant may issue only upon a determination of probable cause, based upon facts and circumstances sufficient to establish a reasonable inference that criminal

activity is occurring or that contraband exists at a certain location. *State v. Cole*, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). An affidavit is sufficient to support probable cause if it contains information from which an ordinarily prudent person would conclude a crime has been committed and evidence of a crime can be found at the place to be searched. *Id.*

The standard of probable cause is governed by the probability, rather than a prima facie showing, of criminal activity. *In re Pers. Restraint of Yim*, 139 Wn.2d 581, 594-95, 989 P.2d 512 (1999) (quoting *State v. Seagull*, 95 Wn.2d 898, 907, 632 P.2d 44 (1981)). The determination of probable cause is given great deference. *Id.* (quoting *State v. Cole*, 128 Wn.2d 262, 286, 906 P.2d 925 (1995)). Affidavits are to be read as a whole, in a common sense, non-technical manner, with doubts resolved in favor of the warrant. *State v. Griffith*, 129 Wn.App. 482, 120 P.3d 610 (2005) (citing *State v. Castro*, 39 Wn.App. 229, 232, 692 P.2d 890 (1984)). The determination of probable cause is reviewed for an abuse of discretion. *Id.* (citing *State v. Estorga*, 60 Wn.App. 298, 303, 803 P.2d 813 (1991)).

Irwin argues that the trial court erred when it upheld the search warrant for his van, because the search warrant lacked sufficient probable cause. However, there was sufficient probable cause for the trial court to uphold the issuance of the search warrant and the magistrate did not abuse

its discretion in issuing it. When Officer Fraser first approached Irwin's vehicle he observed items that immediately raised his suspicions. The laptop, tablet, car stereo, car speaker boxes, tools, and BMX bikes were all items that were commonly found in auto prowls and thefts, based on his training and experience. CP 17-18. Furthermore, Irwin was unable to provide Officer Fraser with any ID, and said that the wallet and ID in his possession was not his. CP 18. Officer Fraser later observed two wallets in the van. CP 19. This is all additional evidence of possible thefts. Dispatch also advised Officer Fraser that Irwin had an active warrant for theft in the third degree, which again, is more evidence that Irwin was possibly engaged in criminal activity. CP 18. Even with just this evidence presented to the magistrate it provided sufficient probable cause to justify the search of the van. However, there was even more evidence that further supports the issuance of the warrant in this case.

The substantial amount of drugs found in Cahill's bag that was in the van is evidence that further supported the issuance of the search warrant. The backpack that Cahill claimed was hers contained evidence of selling methamphetamine, because it contained 34 grams of methamphetamine, a digital scale, and \$341 in cash. CP 19, 20. Based on Officer Fraser's training and experience, the amount of methamphetamine found was not consistent with personal use and it appeared Cahill was

dealing the methamphetamine. CP 19. At the point this evidence was discovered, it was not clear the connection between Cahill and Irwin. However, Irwin was completely naked while driving to court with Cahill, which is a strong inference that they are more than mere acquaintances. CP 18. The connection between the two was relied upon by the trial court in upholding the warrant. RP 23-24. Furthermore, Officer Irwin believed that based on the large amount of drugs he suspected the van likely contained more drugs. CP 20. This evidence further supported the issuance of the warrant to search the van for additional drugs.

Considering the drugs found in Cahill's backpack when determining probable cause is not improper "guilt by association" as Irwin argues. Irwin cites to *State v. Parker*, 139 Wn.2d 486, 987 P.2d 73 (1999), for the proposition that personal belongings of a passenger cannot be searched as part of a vehicle search. However, *Parker* is wholly inapplicable to Irwin's case, because it dealt with the search of a vehicle pursuant to the search incident to arrest exception to the warrant requirement. 139 Wn.2d at 489. *Parker* held that the search incident to arrest exception does not automatically extend to private affairs of other persons not under arrest. *Id.* The only issue before this Court is the validity of the search warrant. Therefore, *Parker* does not control and certainly does not stand for the proposition that amount of drugs found in Cahill's

backpack cannot be considered when determining probable cause to issue a search warrant. The amount of drugs and the connection between Cahill and Irwin supported the probable cause to issue the warrant.

Irwin also cites to *State v. Thein*, 138 Wn.2d 133, 136, 977 P.2d 582 (1999), for the proposition that generalized statements in a search warrant affidavit about the habits of drug dealers, alone, are insufficient to establish probable cause. While correct, the facts in *Thein* are markedly different from Irwin's case and do not support reversing Irwin's conviction. In *Thein*, a warrant to search Thein's home was authorized based on two probable cause affidavits. *Id.* at 139. The affidavits contained statements from witnesses that Thein supplied marijuana, and the warrants also contained generalized statements from officers about the habits of drug dealers (they keep drugs at their home, they keep records at their home, and they keep large sums of money at their homes). *Id.* at 136-39. There was no evidence directly linking Thein to any drugs, nor was there direct evidence of what Thein kept at his home. *Id.* The Court held that the generalized statements in these affidavits, alone, were insufficient to establish probable cause to search the home. *Id.* at 148. The Court went on to say that common sense and experience can inform the inferences reasonably drawn from the facts, but that "broad generalizations do not alone establish probable cause." *Id.* at 148-49.

The statements contained in the affidavit in this case are not broad generalizations as argued by Irwin. Unlike in *Thein*, Officer Fraser observed direct evidence of criminal activity in the place to be searched: the large amount of methamphetamine in Cahill's backpack. Irwin's suspicious behavior with multiple wallets and an ID that were not his, along with the unusual assortment of items in the van, further supported the probability that the van contained evidence of property crimes. It is a reasonable inference based on common sense and experience that the van potentially contained evidence of criminal activity. This inference is based on evidence and facts directly observed by Officer Fraser, not on broad generalizations alone. Therefore, there was probable cause to issue the warrant.

“Probable cause exists if the affidavit supporting the warrant describes facts and circumstances sufficient to establish a reasonable inference that a person is involved in criminal activity and that evidence of the criminal activity can be found at the place to be searched.” *State v. Martines*, 184 Wn.2d 83, 90, 355 P.3d 1111 (2015) (citing *Thein*, 138 Wn.2d at 140 and *State v. Kalakosky*, 121 Wn.2d 525, 536, 852 P.2d 1064 (1993)).

Officer Fraser clearly had probable cause and the issuing magistrate properly used its discretion and issued a search warrant for the

van. There was a reasonable inference that Irwin was involved in criminal activity. All that is required for the issuance of a warrant is a probability of criminal activity. *In re Pers. Restraint of Yim*, 139 Wn.2d at 594-95 (internal citations omitted). That probability was present in Officer Fraser's affidavit based on the amount and type of items being consistent with auto prowls, the suspicious wallet with someone else's identification, Irwin's suspicious behavior with the wallet, the substantial amount of drugs, scale, and money found in Cahill's possession, and the criminal histories of Irwin and Cahill. CP 20. Because the search warrant was supported by probable cause, the issuing magistrate did not abuse its discretion in issuing it.

II. The search warrant was not impermissibly overbroad.

Irwin claims that the search warrant for his vehicle is also invalid because it was overbroad. Irwin argues that the search warrant failed to set out objective standards to instruct officers on which items to seize. However, the search warrant provided sufficient specificity on items to search for seizure. Therefore, the warrant was not overbroad. Irwin's claim fails.

A warrant can be overbroad for two reasons: "it fails to describe with particularity items for which probable cause exists"; or "it describes, particularly or otherwise, items for which probable cause does not exist."

State v. Temple, 170 Wn.App. 156, 162, 285 P.3d 149 (2012); quoting *State v. Maddox*, 116 Wn.App. 796, 805, 67 P.3d 1135 (2003) (footnote omitted). When a search warrant is challenged on particularity grounds it is reviewed de novo. *State v. Chambers*, 88 Wn.App. 640, 643, 945 P.2d 1172 (1997); citing *State v. Perrone*, 119 Wn.2d 538, 549, 834 P.2d 611 (1992).

The particularity requirements of a warrant are met “if the warrant describes the property with reasonable particularity under the circumstances.” *Chambers*, 88 Wn.App. at 643; citing *Perrone*, 119 Wn.2d at 546-47. The level of particularity depends on the nature of the materials sought and the circumstances of each case. *Perrone*, 119 Wn.2d at 547; quoting *State v. Olson*, 32 Wn.App. 555, 557, 648 P.2d 476 (1982) (internal citations omitted). “Search warrants are to be tested and interpreted in a common sense, practical manner, rather than in a hypertechnical sense.” *Perrone*, 119 Wn.2d at 549; citing *United States v. Turner*, 770 F.2d 1508, 1510 (9th Cir. 1985), *cert. denied*, 475 U.S. 1026, 106 S.Ct. 1224 (1986).

A description of the items to be searched for is valid if it is as specific as possible based on the circumstances and the nature of the activity under investigation. *Perrone*, 119 Wn.2d at 547; citing *United States v. Blum*, 753 F.2d 999, 1001 (11th Cir. 1986). Using generic terms

or general descriptions is not a per se violation of the particularity requirement. *Perrone*, 119 Wn.2d at 547; citing *United States v. Blakeney*, 942 F.2d 1001, 1027 (6th Cir. 1991), *cert. denied*, 502 U.S. 1008, 112 S.Ct. 646 (1991).

“A lesser degree of precision may satisfy the particularity requirement when a warrant authorizes the search for contraband or inherently illicit property.” *Chambers*, 88 Wn.App. at 644; citing *State v. Clark*, 281 N.W. 2d 412, 416 (S.D. 1979). A search warrant for controlled substances will be upheld even if all that is described is the legal description of controlled substances. *See e.g., Chambers*, 88 Wn.App. at 641, 648 (search warrant upheld that authorized search for “any and all controlled substances” along with other items associated with using, making, and selling drugs); *State v. Christiansen*, 40 Wn.App. 249, 251, 254, 698 P.2d 1059 (1985) (search warrant upheld that authorized search for “all evidence and fruits of the crime(s) of manufacturing, delivering, or possessing controlled substances”); *Olson*, 32 Wn.App. at 558 (search warrant upheld that authorized search for “all illicit drugs and controlled substances”); *State v. Salinas*, 18 Wn.App. 455, 460, 569 P.2d 75 (1977) (search warrant upheld that authorized search for “controlled substance(s) known as scheduled and legend drugs”).

The search warrant in the present case was sufficiently detailed to meet the particularity requirement. The warrant authorized a search, in part, for:

1. “Controlled substances to include, but not limited to methamphetamine, heroin, cocaine or prescription medications;
2. Drug paraphernalia to include, but not limited to smoking pipes, wrappers, plastic baggies, electronic or digital scales, or any device other device which may be used for the consumption or ingestion of drugs.”

CP 86. This is the type of language that has repeatedly been found to be sufficiently descriptive to support search warrants for illegal drugs. The warrant here is even more descriptive than the valid warrants in *Chambers*, *Olson*, *Salinas*, and *Christiansen*, because it describes the specific drugs and drug paraphernalia to search for. This shows that the warrant was not overbroad and was therefore valid to search Irwin’s van for illegal drugs.

Irwin argues that *State v. Higgins*, 136 Wn.App. 87, 147 P.3d 649 (2006), supports his claim that the search warrant was overbroad. However, *Higgins* is distinguishable from Irwin’s case. *Higgins* held that a search warrant for “certain evidence of a crime, to-wit: ‘Assault 2 DV’” was impermissibly overbroad. *Id.* at 89, 94. The Court noted that since evidence of assault in the second degree could encompass a wide range of innocuous household items, the warrant referencing only the general crime

of assault in the second degree was overbroad. *Id.* at 93-94. This is unlike Irwin’s case, because the warrant here described the exact controlled substances and related items to search for, not just the general statutes for violations of the controlled substances act. *Higgins* explicitly noted that “an overbroad reference to the crime can be permitted, for instance, where the authorized search is limited to illicit items.” *Id.* at 93-94; citing *Chambers*, 88 Wn.App. at 645-46. The present warrant is not overbroad because it included more specifics than in *Higgins*. Furthermore, *Higgins* held that even general descriptions to controlled substance crimes are permissible. Irwin’s claim fails.

If this Court finds the portion of the warrant authorizing a search for “any other items of evidence specifically relating to [property crimes]” overbroad it does not invalidate the rest of the warrant. The State concedes that the general reference to items associated with property crimes is likely overbroad. However, it is not fatal to the portion of the warrant authorizing the search for illegal drugs, or to Irwin’s conviction.

Overbreadth in a warrant will invalidate the warrant only if the overbroad parts of the warrant cannot be severed. *State v. Temple*, 170 Wn.App. 156, 163, 285 P.3d 149 (2012). “‘Infirmity of part of a warrant requires the suppression of evidence seized pursuant to that part of the warrant’ but does not require suppression of anything seized pursuant to

valid parts of the warrant.” *Id.*; citing *Perrone*, 119 Wn.2d at 556. There are five factors to determine whether an invalid part of a warrant can be severed:

1. The warrant must lawfully have authorized entry into the premises;
2. The warrant must include one or more particularly described items for which there is probable cause;
3. The part of the warrant that includes particularly described items supported by probable cause must be significant when compared to the warrant as a whole;
4. The searching officers must have found and seized the disputed items while executing the valid part of the warrant;
5. The officers must not have conducted a general search, i.e., one in which they “flagrantly disregarded” the warrant’s scope.

Temple, 170 Wn.App. at 163; citing *State v. Maddox*, 116 Wn.App. 796, 807-809, 67 P.3d 1135 (2002). When analyzing the current case under these factors, the severability doctrine clearly applies.

First, the warrant here lawfully gave the officers entry into the van and the containers located within it. This factor looks at the duration and intensity of the search and not the intrusion itself. *Maddox*, 116 Wn.App. at 807. Here, the officers located drugs in Irwin’s backpack while properly searching the van for those drugs. While officers were looking for other items of property crimes, they did not go beyond the scope of searching for drugs when they searched the backpack in the van. It is logical to search a backpack within a vehicle for illegal drugs, especially in light of

the fact that a large amount of drugs had already been found in a backpack in the van. Therefore, the first factor is satisfied here.

Second, the warrant included particularly described items, namely the illegal substances and drug paraphernalia. As stated previously, the language in the warrant here properly described drugs and paraphernalia to search for. In *Maddox*, language in the warrant authorizing a search for drugs, evidence of drug dealings, and books and records relating to drug dealing was valid, where the inclusion of books and records generally was not. *Id.* at 809. This is almost the exact same scenario as the present case, and as such the second factor is also satisfied.

Third, the part of the warrant authorizing the search for evidence of drug crimes is a significant part of the warrant. Of the five sections of the warrant, four sections are directly related to searching for evidence of drug crimes. CP 86-87. Furthermore, the portion of the warrant listing out the evidence of drug crimes being sought after is extremely detailed. Thus, the third factor is satisfied.

Fourth, the officers found and seized the drugs and drug paraphernalia from Irwin's backpack while executing the valid part of the search warrant. The drugs in this case were found in Irwin's backpack while the officers were presumably searching for evidence of drug crimes, again, especially in light of the large amount of drugs found in the other

backpack in the van. RP 169. This shows that the drugs were found during a search of the van for, in significant part, other drugs. The fourth factor is satisfied.

Fifth, Officer Fraser in this case did not conduct a general search. A search violates this factor if it grossly exceeded the scope authorized in the warrant. *United States v. Medlin*, 842 F.2d 1194, 1199 (10th Cir. 1988). Here, the warrant was limited to searching all portions of the van Irwin was driving, which is extremely reasonable when officers have probable cause to suspect drugs are contained in a vehicle. The backpack was located in the van, and as such it was found during a search properly within the scope authorized by the warrant. The fifth factor is satisfied, and the severability doctrine applies.

The present case is extremely similar to *Maddox*, where the Court held that the severability doctrine applied to a search warrant for drugs. 116 Wn.App. at 810. The warrant in *Maddox* authorized a warrant to search a house for methamphetamine; paraphernalia used for packaging, weighing, and distributing methamphetamine; and currency, books, and records. *Id.* at 799-800. Evidence of distributing illegal drugs was found and Maddox was convicted for possession with intent to deliver. *Id.* at 801-802. The Court found that the portion of the warrant authorizing a search for books and records was overbroad. *Id.* at 806. However, the

court did not suppress the drug evidence and did not overturn the conviction, because the severability doctrine applied. *Id.* at 809-810. The Court held that: the warrant was valid to search for drugs; the inclusion of books and records unrelated to crime went to the duration of the search not the search itself; the searching for drugs was a significant part of the warrant; and none of the miscellaneous papers seized were used at trial. *Id.* Here, the portion of the warrant to search for drugs was valid because it was supported by probable cause and was sufficiently particular. It also was a significant part of the warrant, and if any items related to the generalized property crimes were seized, they were not introduced at trial. RP 153-197. This is almost the exact same scenario as in *Maddox*, and as such, the doctrine of severability applies and the evidence of methamphetamine should not be suppressed.

The search warrant in this case properly described evidence of drug crimes to be searched for. These portions of the warrant are severable from the overbroad provision authorizing a search for property crimes. As such, the warrant was valid to search for drug crimes and the methamphetamine evidence found in Irwin's backpack was admissible. His claim fails.

CONCLUSION

Irwin has failed to meet his burden that the search warrant was not supported by probable cause. Furthermore, the search warrant was not impermissibly overbroad. Irwin has not shown any error which requires reversal. The State respectfully requests this Court affirm Irwin's conviction.

DATED this 31 day of October, 2017.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By:


KELLY M. RYAN, WSBA #50215
Deputy Prosecuting Attorney
OID# 91127

CLARK COUNTY PROSECUTING ATTORNEY

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