

No. 49593-7-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

MICHAEL WALTER WOOD,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 15-1-05119-1
The Honorable Gretchen Leanderson, Judge

OPENING BRIEF OF APPELLANT (CORRECTED)

STEPHANIE C. CUNNINGHAM
Attorney for Appellant
WSBA No. 26436

4616 25th Avenue NE, No. 552
Seattle, Washington 98105
Phone (206) 526-5001

TABLE OF CONTENTS

I.	ASSIGNMENTS OF ERROR	1
II.	ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR.....	1
III.	STATEMENT OF THE CASE.....	2
IV.	ARGUMENT & AUTHORITIES	7
V.	CONCLUSION	14

TABLE OF AUTHORITIES

CASES

<u>State v. Chamberlin</u> , 161 Wn.2d 30, 162 P.3d 389 (2007).....	7
<u>State v. Cole</u> , 128 Wn.2d 262, 906 P.2d 925 (1995)	8, 9
<u>State v. Dalton</u> , 73 Wn. App. 132, 868 P.2d 873 (1994)	8
<u>State v. G.M.V.</u> 135 Wn. App. 366, 144 P.3d 358 (2006)	10, 11
<u>State v. Goble</u> , 88 Wn. App. 503, 945 P.2d 263 (1997).....	8-9, 12-13
<u>State v. Helmka</u> , 86 Wn.2d 91, 542 P.2d 115 (1975).....	8
<u>State v. Ladson</u> , 138 Wn.2d 343, 979 P.2d 833 (1999)	14
<u>State v. Maddox</u> , 152 Wn.2d 499, 98 P.3d 1199 (2004)	7
<u>State v. McGovern</u> , 111 Wn. App. 495, 45 P.2d 624 (2002)	9, 10
<u>State v. Neeley</u> , 113 Wn. App. 100, 52 P.3d 539 (2002)	8
<u>State v. Smith</u> , 93 Wn.2d 329, 610 P.2d 869 (1980).....	8
<u>State v. Thein</u> , 138 Wn.2d 133, 977 P.2d 582 (1999)	9
<u>State v. Vickers</u> , 148 Wn.2d 91, 59 P.3d 58 (2002)	8
<u>State v. Young</u> , 123 Wn.2d 173, 867 P.2d 593 (1994)	7
<u>United States v. El-Alamin</u> , 574 F.3d 915 (8th Cir. 2009)	11-12
<u>United States v. Ramos</u> , 923 F.2d 1346 (9th Cir. 1991)	9

Wong Sun v. United States,
371 U.S. 491, 75 L. Ed. 2d 229, 103 S. Ct. 1319 (1983) 13-14

OTHER AUTHORITIES

U.S. Constitution, Amendment IV 8

Wash. Const. article I, section 7 8

I. ASSIGNMENTS OF ERROR

1. The trial court erred when it denied Michael Wood's CrR 3.6 motion to suppress.
2. The search of Michael Wood's residence violated the Fourth Amendment to the U.S. Constitution and article I, section 7 of the Washington Constitution because it was conducted without a valid search warrant.
3. The trial court erred when it found that the affidavit for a warrant to search Michael Wood's residence contained sufficient facts from which to infer that evidence of criminal activity would be found at Wood's residence.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Did the affidavit contained in the complaint for search warrant fail to establish probable cause to believe that evidence of criminal activity would be found inside Michael Wood's residence where the facts presented were that: (1) on an unknown date in the winter of 2015, Deputies observed Wood conduct a drug transaction in his car then return to his home; (2) on another unknown date in mid-December, Deputies observed Wood leave his residence and briefly meet another person in what resembled a drug

transaction; and (3) that Wood has a prior conviction for possession of a controlled substance? (Assignments of Error 1, 2, & 3)

2. Did the affidavit contained in the complaint for search warrant fail to establish probable cause to believe that evidence of criminal activity would be found inside Michael Wood's residence where there was no evidence that anyone had seen drugs inside Wood's home, no evidence that Wood had conducted a drug transaction inside his home, and no evidence that Wood had left from and returned to his home before and after a specific drug transaction? (Assignments of Error 1, 2, & 3)

III. STATEMENT OF THE CASE

On December 11, 2015, Pierce County Sheriff's Deputy Kory Shaffer applied for a warrant to search the home and vehicles of Michael Walter Wood. (CP 22-26) Deputy Shaffer submitted a complaint for search warrant to the Pierce County Superior Court (a copy of the application is attached in Appendix A). In the affidavit, Shaffer asserted that:

- In the "winter of 2015" a "reliable confidential informant" participated in a controlled purchase of methamphetamine from a man Shaffer later identified as Michael Wood.

- Within the previous 72 hours, a reliable confidential informant participated in a controlled purchase of methamphetamine from Wood. That transaction occurred in a public parking lot, and Wood was observed arriving in a red Kia Rondo, bearing Washington license ATY-1464.
- At the conclusion of that transaction, surveillance units followed Wood and observed several other interactions inside the Kia that resembled drug transactions.
- Surveillance units then followed Wood to a mobile home located at 8527 31st Avenue Court South #34 in Lakewood, Washington. They observed Wood park his Kia in the driveway and walk in through the front door of the mobile home.
- Deputy Shaffer personally observed the Kia and another vehicle, a Toyota Tercel, bearing Washington license ATX-8958, parked in the driveway of the mobile home.
- At some point during the course of the investigation, Deputy Shaffer observed Wood leaving the residence driving a Toyota Tercel. Wood drove to a public parking lot and parked, and Shaffer “observed an individual get into the passenger seat of the vehicle. While watching the vehicle [Shaffer] was able to see [Wood] holding U.S. currency in his hand. Within a few minutes the individual got out and [Wood] left the parking lot.” Shaffer stated that “through my training and experience investigating narcotics this is a common type of meet for individuals selling narcotics.”
- Department of Licensing records list Wood’s residence as 8527 31st Avenue Court South #34 in Lakewood, Washington.
- Wood has prior convictions for unlawful possession of a controlled substance.

(CP 22-26) Shaffer concluded by stating; “Based upon the above

information, your Affiant believes that a search of the described residence will produce evidence of the previously described Unlawful Possession of Controlled Substance crime. Your Affiant respectfully requests permission to search the described person, properties and vehicles.” (CP 26) A Pierce County judge signed the search warrant on December 11, 2015. (CP 28-29, 30)

On December 21, 2015, Deputy Shaffer followed Wood as he left his residence in the Kia, and initiated contact with him in a nearby parking lot. (1RP 88, 90-91)¹ After informing Wood of his Miranda rights, Shaffer and Wood discussed the investigation and the search warrant. (1RP 92) According to Shaffer, Wood said his bedroom was located in the back of the mobile home, and that there were drugs in the room and an unloaded firearm on the bed. (1RP 93)

Deputies then executed the search warrant, and did indeed find an unloaded firearm and several bags containing what they suspected were controlled substances. (1RP 100, 109; 2RP 187, 192) Deputies also found “crib notes,” rubber bands, Ziploc baggies, and digital scales. (1RP 108, 110; 2RP 188, 189, 191-92,

¹ The transcripts labeled volumes I through III will be referred to by their volume number (#RP). The remaining transcripts will be referred to by the date of the proceeding.

198) According to the Deputies, these are items commonly used by people engaged in the sale of illegal substances. (2RP 189, 197, 198-99) Deputies also found a full prescription pill bottle inside the Kia. (2RP 200)

The firearm was tested and determined to be operable. (2RP 255, 259) The substances were tested and determined to be hydrocodone, methamphetamine, cocaine, and heroine. (2RP 270, 274, 278, 281, 282, 293) Finally, measurements showed that Wood's mobile home was within 1000 feet of several designated school bus stops. (2RP 241, 243-44, 245, 300-01)

The State charged Wood by Amended Information with four counts of unlawful possession of a controlled substance with intent to deliver (RCW 69.50.401). (CP 46-48) The State further alleged that Wood committed these offenses within 1000 feet of a school bus route stop (RCW 69.50.435) and while armed with a firearm (RCW 9.94A.530, .533). (CP 46-48) The State also charged Wood with one count of unlawful possession of a firearm (RCW 9.41.040). (CP 48)

Before trial, Wood moved to suppress the fruits of the search, arguing that the search warrant affidavit failed to establish that evidence related to the suspected criminal activity would be

found inside the residence. (CP 7-12; 06/30/16 RP 8-9) In its oral ruling, the court found that it was “a really, really close question,” but there was “just enough there to connect” the criminal activity to the residence. (06/30/16 RP 11-12) In its written findings and conclusions, the court gave the following “reasons for admissibility of the evidence:”

1. The search warrant affidavit established both the probability that defendant was involved in criminal activity and that evidence of that criminal activity would be found at his residence at 8527 31st Avenue Court So., #34 in Lakewood. It therefore establishes a nexus between the criminal activity and the item to be seized (controlled substances) and between the item to be seized and the place to be searched.
2. The fact the defendant was observed returning to the house following his sale of methamphetamine to the confidential informant is not enough. However those were not the only facts contained within the search warrant affidavit that establish the nexus to defendant's residence.
3. On at least one occasion, defendant was observed by Deputy Shaffer leaving his residence and driving to the Fred Meyer parking lot at 72nd and Pacific. Defendant was observed pulling into the parking lot, meeting with an individual who got into his vehicle and stayed for only a short time. During the time that the individual was in his vehicle, defendant was observed with cash in his hand. These observations combined with the observations made during the controlled purchase of methamphetamine using the informant and the surveillance following that controlled purchase are sufficient to establish the probability of criminal activity and that evidence of that criminal activity would be found at defendant's residence.

(CP 32-33; copy attached in Appendix B)

Following a bench trial, the court found Wood guilty on all five counts and aggravators. (3RP 349-52) Wood stipulated to his prior record and offender score. (CP 82-85) The trial court imposed a standard range sentence totaling 480 months of confinement. (10/21/16 RP 25-26; CP 94) The court imposed only mandatory legal financial obligations. (10/21/16 RP 26-27; CP 92) This appeal follows. (CP 102)

IV. ARGUMENT & AUTHORITIES

The trial court erred when it denied Wood's motion to suppress because Detective Shaffer's affidavit did not provide a sufficient basis to conclude that the evidence of the suspected crimes would be found inside Wood's residence.

Appellate courts generally review the issuance of a search warrant for an abuse of discretion. State v. Maddox, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004). Although deference is given to the probable cause determination of the issuing judge or magistrate, a reviewing trial court's assessment of probable cause is a legal conclusion reviewed *de novo*. State v. Chamberlin, 161 Wn.2d 30, 40-41, 162 P.3d 389 (2007); State v. Young, 123 Wn.2d 173, 195, 867 P.2d 593 (1994). When reviewing a trial court's ruling on a

motion to suppress evidence, the trial court's legal conclusions are also reviewed *de novo*. State v. Neeley, 113 Wn. App. 100, 106, 52 P.3d 539 (2002).

The warrant clause of the Fourth Amendment to the United States Constitution and article I, section 7 of our state constitution require that a trial court issue a search warrant only upon a determination of probable cause. State v. Vickers, 148 Wn.2d 91, 108, 59 P.3d 58 (2002); State v. Cole, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime can be found at the place to be searched. Cole, 128 Wn.2d at 286; State v. Dalton, 73 Wn. App. 132, 136, 868 P.2d 873 (1994). An application for a warrant must state the underlying facts and circumstances on which it is based in order to facilitate an independent and objective evaluation of the evidence by the issuing magistrate. State v. Smith, 93 Wn.2d 329, 352, 610 P.2d 869 (1980); State v. Helmka, 86 Wn.2d 91, 92-93, 542 P.2d 115 (1975).

“[P]robable cause requires a nexus between criminal activity and the item to be seized, and also a nexus between the item to be

seized and the place to be searched.” State v. Goble, 88 Wn. App. 503, 509, 945 P.2d 263 (1997) (citing WAYNE R. LAFAVE, SEARCH AND SEIZURE § 3.7(d), at 372 (3d ed.1996)). Accordingly, the warrant application must identify specific facts and circumstances from which the reviewing magistrate can draw the required inference that evidence of a crime will be found in the premises to be searched. State v. Thein, 138 Wn.2d 133, 147, 977 P.2d 582 (1999).

Probable cause to believe that an individual has committed a crime “is not by itself adequate to secure a search warrant for the suspect’s home.” United States v. Ramos, 923 F.2d 1346, 1351 (9th Cir. 1991) (overruled on other grounds by U.S. v. Ruiz, 257 F.3d 1030 (2001)); see also Cole, 128 Wn.2d at 286; Dalton, 73 Wn. App. at 136. A warrant to search for drugs in a particular place must be based on more than generalized notions of the supposed practices of drug dealers. Thein, 138 Wn.2d at 147. Rather, the warrant must contain specific facts tying the place to be searched to the crime. Thein, 138 Wn.2d at 147.

This Court found a sufficient nexus between defendant Christopher King’s criminal activity and his residence in State v. McGovern, 111 Wn. App. 495, 499-501, 45 P.2d 624 (2002).

In that case, a Washington State Patrol Trooper stopped King's car for speeding. As he walked up to the car, he saw marijuana in plain view on the front passenger seat. He arrested King, who told the trooper he had been at his residence after buying the marijuana but before the traffic stop. He said he purchased too much for personal use and intended to sell the rest. He refused consent to search his residence, but volunteered to the troopers, "there's stuff there that I don't want you to find." 111 Wn. App. at 497. In upholding the warrant to search King's residence, the Court concluded that the issuing magistrate was entitled to infer that King probably had marijuana in his house based on King's statement in conjunction with all the other circumstances. 111 Wn. App. at 501. Here, on the other hand, there were no statements from Wood or the confidential informant that, in conjunction with the other facts, would indicate there might be narcotics in Wood's residence.

Division 3 found a sufficient nexus in State v. G.M.V. 135 Wn. App. 366, 369, 144 P.3d 358 (2006). There, police watched G.M.V.'s boyfriend, Ivan Longoria, leave her house for a meeting with a confidential informant. They followed Longoria to the buy location and then back to the house. 135 Wn. App. at

369. Police obtained and executed a warrant to search G.M.V.'s house for evidence of drug dealing. Division 3 affirmed the search, stating: "The warrant was to search the place Mr. Longoria left from and returned to before and after he sold drugs. This was a nexus that established probable cause that Mr. Longoria had drugs in the house." 135 Wn. App. at 372.

But that is not what Deputies observed in this case. In mid-December, Deputies observed Wood engaged in a drug transaction with a confidential informant, and observed what they believed were drug transactions with several other individuals. (CP 24-25) The transactions all took place in Wood's car in a public parking lot. (CP 24) Deputies then observed Wood drive to his residence and go inside. (CP 25) Then, sometime during that vague time-period, Deputy Shaffer observed Wood leave his residence, drive to a public parking lot, and engage in a meeting that Shaffer believed resembled a drug transaction. (CP 25) Unlike the defendant in G.M.V., Wood was never seen leaving from and returning to his residence before *and* after a single drug transaction.

In United States v. El-Alamin, the Eighth Circuit held that an affidavit established probable cause to search Malik El-Alamin's

residence. 574 F.3d 915 (8th Cir. 2009). An officer witnessed El-Alamin participate in a controlled narcotics buy with a confidential informant and then return directly to his home after the transaction. Before the controlled buy, the confidential informant identified El-Alamin, disclosed that El-Alamin belonged to the Gangster Disciples street gang, and stated he made drug purchases in the past from El-Alamin at his residence. 574 F.3d at 924. The appeals court held that such information was sufficient to lead a prudent person to believe that there is a fair probability that contraband or evidence of a crime would be found in El-Alamin's residence. 574 F.3d at 924. Here, on the other hand, the informant did not state that he had ever seen or purchased drugs at Wood's residence, and the Deputies did not observe any potential drug transactions or unusual foot traffic at Wood's residence.

This case is instead very much like State v. Goble, *supra.*, where this Court held that a nexus did not exist between the defendant's drug activity and the search of his home because:

When the magistrate issued the warrant, he had no information that Goble had previously dealt drugs out of his house, rather than out of a different place (for example, a tavern, his car, or a public park). He had no information that Goble had previously stored drugs at his house, rather than in some other place (for example, in his car, at his place of employment, at a

friend's house, or buried in the woods). He had no information that Goble had previously transported drugs from PO Box 338 to the house, or that Goble had previously said he intended to do so. In sum, he had no information from which to infer, at the time he issued the warrant, that Goble would take the package from the post office to his house, or that the package would probably be found in the house when the warrant was executed.

88 Wn. App. at 512.

Similarly, the issuing judge had no information that Wood had previously dealt drugs out of his house, or that Wood had previously stored drugs at his house, and no information that Wood had previously transported drugs to or from his house. And Shaffer did not indicate whether drug dealers typically store drugs in their homes, so the issuing judge did not even have “generalized notions of the supposed practices of drug dealers” to rely upon in issuing the warrant. There is simply no information in the affidavit from which to infer that Wood kept drugs or items associated with drug dealing in his house, or that such evidence would probably be found in his house when the warrant was executed. The warrant was issued without sufficient probable cause, and the search of Wood’s home was therefore illegal.

All evidence obtained directly or indirectly through the exploitation of an illegal search must be suppressed. Wong Sun v.

United States, 371 U.S. 491, 501, 75 L. Ed. 2d 229, 103 S. Ct. 1319 (1983); State v. Ladson, 138 Wn.2d 343, 359, 979 P.2d 833 (1999). Therefore, all of the items recovered from Wood's residence during the search, and any evidence obtained as a direct result of that search, should have been suppressed.

V. CONCLUSION

All evidence seized from Wood's home during the search, including the various controlled substances and the firearm, should have been suppressed. And Wood's convictions on all charges related to these items should be reversed and dismissed.

DATED: May 1, 2017



STEPHANIE C. CUNNINGHAM

WSB #26436

Attorney for Michael W. Wood

CERTIFICATE OF MAILING

I certify that on 05/01/2017, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Michael W. Wood, DOC# 266610, Washington State Penitentiary, 1313 N 13th Ave., Walla Walla, WA 99362.



STEPHANIE C. CUNNINGHAM, WSBA #26436

APPENDIX A
COMPLAINT FOR SEARCH WARRANT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

COMPLAINT FOR SEARCH WARRANT
(CONTROLLED SUBSTANCE)

STATE OF WASHINGTON)
) SS No.
COUNTY OF PIERCE)

COMES NOW DEPUTY K. SHAFFER of the Pierce County Sheriff's Department, who being first duly sworn on oath complains, deposes, and says:

That he has probable cause to believe, and in fact does believe that within the last 72 hours in Pierce County, Washington, felonies to wit:

R.C.W. 69.50.401 Unlawful Delivery of a Controlled Substance
R.C.W. 69.50.401 Unlawful Possession of a Controlled Substance w/Intent to Deliver

These violations were committed by the act, procurement, or omission of another, and that the following evidence is material to the investigation:

- 1) Methamphetamine; and any other controlled substances
- 2) Books, records, receipts, notes, ledgers, and other papers relating to the manufacture, distribution, transportation, ordering, and/or purchasing of Methamphetamine or related chemicals;
- 3) Addresses and/or telephone numbers relating to the manufacture, distribution, transportation, ordering and/or purchasing of Methamphetamine or related chemicals;
- 4) Books, records, receipts, recipes, bank statements, recorded buy money, money drafts, letters of credit, passbooks, safes, lock boxes, safety deposit boxes, bank checks, and other items evidencing the obtaining, secreting, transfer and/or concealment, and/or expenditure of money;
- 5) Photographs of co-conspirators, assets, Methamphetamine or related chemicals, manufacturing operations, chemicals, and/or equipment
- 6) Illegal drug paraphernalia including syringes, pipes, packaging materials, and/or weighing equipment;
- 7) Indicia of occupancy, residency, and/or ownership of the premises described in the search warrant, including but not limited to utility bills, telephone bills, cancelled envelopes, registration certificates, and/or keys;
- 8) United States currency, stolen property, and other items evidencing and exchange for Methamphetamine and/or equipment;
- 9) Glassware/equipment used in the manufacture of Methamphetamine,
- 10) Precursors, reagents, chemicals, and solvents used in the manufacture of Methamphetamine;
- 11) Firearms, pistols, rifles, and/or any other dangerous weapon defined in Chapter 9.41 R.C.W. which are possessed, used or intended to for use, in furtherance of the violations listed above;

Such items are material to the investigation or prosecution of the above described felonies for the following reasons: evidence of the above criminal acts, those subjects involved in the above criminal acts and any other criminal acts that we have not yet discovered.

I. Description of Properties

Your Affiant verily believes that the above evidence is concealed in or about particular persons, residence and vehicles to-wit:

A single wide mobile home, yellow in color with brown trim, with an attached carport located at 8527 31st Ave Ct S. #34, Lakewood. The numbers, 8527, are posted in white above the attached carport. The main entry door has a white screen door located on the north side of the mobile home. The Pierce County parcel number for the property is 4306000400.

A 2008 Kia Rondo red in color, bearing Washington ATY-1464, registered to Michael W. Wood 8527 31st Ave Ct. S. Lakewood, Wa. 98409.

A 1989 Toyota Tercel blue in color, bearing Washington license ATX-8958, registered to Michael W. Wood 8527 31st Ave Ct. S. Lakewood, Wa. 98409.

Michael W. Wood, white male, 09-03-59

II. Affiant's Training and Experience

Your Affiant, Deputy Kory Shaffer, is a Deputy Sheriff employed by the Pierce County Sheriff's Department. He has been so employed for the last 15 years. Before working for the Pierce County Sheriff's Department your Affiant worked for the Thurston County Sheriff's Department for 4 years. Your Affiant is currently assigned to the Special Investigations Unit. Your Affiant has completed the following courses of instruction related to various aspects of criminal investigations:

- Basic Law Enforcement Academy
- Cadre Clandestine Laboratory Operations
- FBI Interviewing Techniques
- FBI Hostage Negotiations
- High Risk Warrant Service & Hostage Rescue Techniques
- Drug Warrant Entry Class
- Narcotics Warrant Service
- Undercover Drug Investigations
- Drug Enforcement for Patrol Officers
- WMD Incident Command
- WMD Haz Mat Technician
- WMD Response Training

Your Affiant is a certified member of the Pierce County Clandestine Laboratory Team and has been the case officer, Affiant, and/or assisted in numerous Superior Court narcotics and evidence search warrants for illicit substances, documents, and various forms of evidence. These search warrants have resulted in criminal charges being filed.

III. Probable Cause to Search Properties

Your Affiant's belief is based upon the following facts and circumstances:

In the winter of 2015 a reliable confidential informant, C/I, agreed to work with the Pierce County Sheriff's Department. In order to establish his/her credibility, the C/I made two "reliability" buys. In each of these purchases, he/she identified a source of illegal drugs. The C/I was searched prior to these buys, and in both cases, he/she had no money or drugs in his/her possession. The C/I was then given money for the anticipated buy. In each case, we watched him/her go to into and out of the buy location and back to us. He/she then gave us the controlled substances that he/she had purchased. He/she was searched again after each buy and we did not find any drugs or money in his/her possession.

During the initial debriefing of the C/I, the C/I provided information about a source of narcotics. The source was a white male by the name of "Mike" who sold narcotics throughout the Pierce County area. The C/I also provided information that "Mike" drives a red Kia SUV.

Through the initial stages of the investigation I was able to identify "Mike" as Michael W. Wood 09-03-59. The C/I confirmed "Mike's" identity through a photograph.

Within the past seventy two hours the C/I, while under constant surveillance of the Pierce County Sheriff's Department Special Investigations Unit, has made a controlled buy of methamphetamine from Michael W. Wood. Prior to the buy the C/I was searched. I retained the C/I's money and no narcotics were located. I provided the C/I with prerecorded buy money. The C/I told me Michael agreed to meet in a public parking lot.

While under constant surveillance the C/I arrived in the parking lot.

Detective Rayner, who is familiar with the investigation, observed a red Kia Rondo, bearing Washington license ATY-1464, pull into the parking lot and park near the C/I. He told me he observed Michael get out and contact the C/I. Within a few minutes Michael got back in his Kia and left the parking lot.

Surveillance units followed the Kia as it left the parking lot.

While under constant surveillance I met with the C/I at a predetermined location. The C/I turned over the suspected methamphetamine. The C/I was searched and no money or narcotics were located. The C/I told me Michael handed him/her the methamphetamine and he/she handed him the money.

I field tested the methamphetamine which showed positive.

I later booked the narcotics into evidence at the University Place Precinct.

After leaving the C/I I was informed by surveillance units they were still following the Kia. I assisted with the surveillance.

While following Michael I observed him meet several individuals in public parking lots. I observed him pull into these parking lots and park. After parking an individual would get into the passenger seat of the Kia and within a few minutes the individual would get out and then Michael would leave the parking lot. Through my training and experience working narcotic investigations this is a common type of meet for individuals selling narcotics.

After surveilling Michael meet several individuals in public parking lots, surveillance units followed him to a residence located at 8527 31st Ave Ct S. #34 Lakewood.

Detective Darby, who is familiar with the case, observed Michael park his Kia in the driveway and walk in through the front door of the mobile home.

Over the course of this investigation I have observed the Kia Rondo, bearing Washington license ATY-1464, parked in the driveway at 8527 31st Ave Ct. S. and a Toyota Tercel, bearing Washington license ATX-8958, also parked in the driveway. I have seen these vehicles parked in the driveway on numerous occasions in the early morning, afternoon and late evening times.

I have done numerous hours of surveillance on the residence and also have observed Michael leave the residence driving the Toyota Tercel. I followed him driving the Toyota to the Fred Meyers parking lot located at 72nd St and Pacific Ave. Michael pulled into the parking lot and parked. I observed an individual get into the passenger seat of the vehicle. While watching the vehicle I was able to see Michael holding U.S. currency in his hand. Within a few minutes the individual got out and Michael left the parking lot. Again through my training and experience investigating narcotics this is a common type of meet for individuals selling narcotics.

I ran a criminal history check on Michael W. Wood 09-03-59 and it revealed he had twenty nine convictions to include thirteen felony convictions. Three of the felony convictions are for unlawful possession of a controlled substance and two of the felony convictions are for the unlawful possession of a firearm.

I also contacted the Department of Licensing and they revealed and confirmed Michael W. Wood 09-03-59 provided the address of 8527 31st Ave Ct S. Lakewood, Wa. 98499.

The affidavit in this matter involves a confidential investigation in which investigative techniques used by narcotics officers are being divulged. The premature disclosure of this information could cause the loss of informant cooperation, or the change in the method of operation used by the suspects. Therefore the affiant believes that the successful conclusion of this investigation could be hampered, should the order and affidavit, incorporated here by this reference, not be sealed by the court in the file.

There is great potential for this case to expose other suspects involved in this lucrative

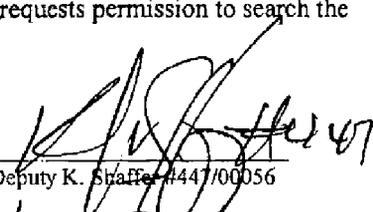
narcotics ring in other parts of Pierce County including potential suppliers, organizers, dealers and those profiting from these crimes.

The sealing of these documents would allow the investigating officers to conceal the methods in which they are gathering information, evidence, and additional informants and or witnesses.

Therefore, the affiant requests that the court seal the affidavit and order in the court file at this time until at least June 11th 2016 or upon conclusion of this investigation.

V. Conclusion

Based upon the above information, your Affiant believes that a search of the described residence will produce evidence of the previously described Unlawful Possession of Controlled Substance crime. Your Affiant respectfully requests permission to search the described person, properties and vehicles.


Deputy K. Staffer #447/00056

SUBSCRIBED AND SWORN TO BEFORE ME this 11 day of October, 2015.


Judge

APPENDIX B

FINDINGS OF FACT AND CONCLUSIONS OF LAW CRR 3.6

0287



13129

7/26/2016

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, <div style="text-align: center;">Plaintiff,</div> <div style="text-align: center;">vs.</div> MICHAEL WALTER WOOD, <div style="text-align: center;">Defendant.</div>		CAUSE NO.: 15-1-05119-1 FINDINGS AND CONCLUSIONS ON ADMISSIBILITY OF EVIDENCE CrR 3.6
--	--	--

THIS MATTER having come on before the Honorable Kitty Ann VanDoorninck on the 30th day of June, 2016, and the court having rendered an oral ruling thereon, the court herewith makes the following Findings and Conclusions as required by CrR 3.6.

THE UNDISPUTED FACTS

1. On December 11, 2015, Deputy Kory Shaffer with the Pierce County Sheriff's Department obtained a search warrant for a residence located at 8527 31st Avenue Court So., #34 in Lakewood, WA.
2. The search warrant also authorized a search of a red Kia Rondo (WA license plate ATY 1464, registered to defendant, Michael Wood) and a blue Toyota Tercel (WA license plate ATX 8958, also registered to defendant).
3. The warrant was served ten days later on December 21, 2015.
4. The probable cause in support of the requested search warrant was based in part on information provided by a reliable confidential informant who began working with the

0089

15129

7/26/2016

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

sheriff's department in the winter of 2015. The informant's reliability was established by two "reliability" buys during which time he/she identified a source of illegal drugs and was searched prior to the buys with no money or drugs found in his/her possession. The informant was then given money for the buy and in each case was watched going into and out of the buy location. Following the transaction, the informant turned over controlled substances that he/she had purchased and was searched again with no drugs or money found in his/her possession

- 5. The informant identified the defendant as a source of narcotics and told deputies that defendant drove a red Kia SUV. The informant confirmed defendant's identity through a photograph.
- 6. Within 72 hours prior to Deputy Shaffer obtaining the warrant for defendant's residence and vehicles, the informant made a controlled buy of methamphetamine from defendant. The buy occurred in a public parking lot while the informant was kept under constant surveillance.
- 7. Deputy Rayner, who was conducting surveillance, observed a red Kia Rondo pull into the parking lot and park near the informant. Rayner observed the defendant get out, contact the informant and get back into the Kia a few minutes later. Surveillance units followed defendant's vehicle.
- 8. After searching the informant and obtaining the methamphetamine he/she had purchased from defendant, Deputy Shaffer joined the other surveillance units and observed defendant meet several individuals in public parking lots. Shaffer watched as the defendant parked and individuals would get into the passenger seat of the Kia and get out

1 within a few minutes. Shaffer recognized this as a common type of meet for individuals
2 selling narcotics.

3 9. Following these transactions, surveillance units followed defendant to the residence at
4 8527 31st Avenue Court So., #34 in Lakewood. Detective Darby watched as defendant
5 walked in through the front door of the residence.

6 10. Prior to obtaining the search warrant, Deputy Shaffer conducted numerous hours of
7 surveillance on defendant's residence and on one occasion observed defendant leave the
8 residence driving a Toyota Tercel (WA license ATX 8958). Shaffer followed defendant
9 to a parking lot and 72nd and Pacific, watched defendant pull into the parking lot, saw an
10 individual get into the passenger seat of the Tercel and saw defendant holding US
11 currency in his hand. Within a few minutes, the individual got out and defendant left the
12 parking lot.

13 11. Deputy Shaffer ran a criminal history check on defendant and learned that he has thirteen
14 felony convictions. Three of those convictions were for unlawful possession of a
15 controlled substance.

16 12. Deputy Shaffer contacted the Department of Licensing and confirmed that defendant's
17 address of record is 8527 31st Avenue Court So., Lakewood.

18 REASONS FOR ADMISSIBILITY OR INADMISSIBILITY OF THE EVIDENCE

19 1. The search warrant affidavit established both the probability that defendant was involved
20 in criminal activity and that evidence of that criminal activity would be found at his
21 residence at 8527 31st Avenue Court So., #34 in Lakewood. It therefore establishes a
22 nexus between the criminal activity and the item to be seized (controlled substances) and
23 between the item to be seized and the place to be searched.
24
25

0289

13129

7/26/2016

0290

13129

7/26/2016

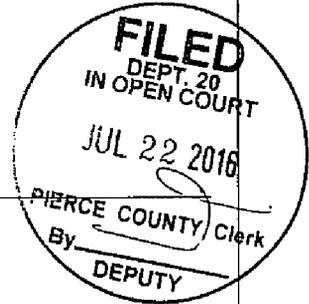
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- 2. The fact the defendant was observed returning to the house following his sale of methamphetamine to the confidential informant is not enough. However those were not the only facts contained within the search warrant affidavit that establish the nexus to defendant's residence.
- 3. On at least one occasion, defendant was observed by Deputy Shaffer leaving his residence and driving to the Fred Meyer parking lot at 72nd and Pacific. Defendant was observed pulling into the parking lot, meeting with an individual who got into his vehicle and stayed for only a short time. During the time that the individual was in his vehicle, defendant was observed with cash in his hand. These observations combined with the observations made during the controlled purchase of methamphetamine using the informant and the surveillance following that controlled purchase are sufficient to establish the probability of criminal activity and that evidence of that criminal activity would be found at defendant's residence.
- 4. In making this determination, the Court takes into consideration Deputy Shaffer's training and experience and the fact that the observations of defendant's activities were consistent with sales of narcotics. The Court also takes into consideration the fact that defendant had a criminal history which included previous convictions for controlled substances.
- 5. Since the search warrant was based on probable cause, all evidence obtained as a result of that warrant is admissible against defendant at trial.

DONE IN OPEN COURT this 20th day of July, 2016.



 JUDGE
 Kitty-Ann van Doorninck



Presented by:

1
2 Dione J. Hauger
3 Dione J. Hauger, WSB #25104
4 Deputy Prosecuting Attorney

5 Approved as to Form:

6 [Signature]
7 Dana Ryan, WSB #
8 Attorney for Defendant
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

0297

13129

7/26/2016

CUNNINGHAM LAW OFFICE
May 01, 2017 - 10:27 AM
Transmittal Letter

Document Uploaded: 4-495937-Amended Appellant's Brief.pdf

Case Name: State v. Michael W. Wood

Court of Appeals Case Number: 49593-7

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Amended Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

Corrections made to factual statements in Issue number 1 (p. 1) and in argument section (p. 11).

Sender Name: S C Cunningham - Email: sccattorney@yahoo.com

A copy of this document has been emailed to the following addresses:

pcpatcecf@co.pierce.wa.us