

NO. 49593-7-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

MICHAEL WALTER WOOD, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Gretchen Leanderson

No. 15-1-05119-1

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

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B. STATEMENT OF THE CASE.

1. Procedure

Defendant was charged with four counts of unlawful possession of a controlled substance with intent to deliver (UDCS) and one count of unlawful possession of a firearm. CP 46-48. Count I was for intent to deliver

methamphetamine, Count II was for intent to deliver heroin, Count III was for intent to deliver cocaine, and Count IV was for intent to deliver hydrocodone/dihydrocodeinone. *Id.* Each count had a firearm enhancement and a school bus stop enhancement. *Id.*

Defendant made a pretrial motion to suppress the evidence found at his residence pursuant to a search warrant. CP 7-12. The controlled substances related to Counts I-III and the firearm were found at defendant's residence in his self-identified bedroom while the controlled substance for Count IV was found in defendant's car. CP 72-81 (FoF VII, XII).¹ The trial court denied defendant's motion. CP 30-34.

The court found defendant guilty of all counts. CP 72-81. For Counts I-III all enhancements were proven beyond a reasonable doubt. *Id.* For Count IV only, the court found the firearm enhancement and school bus stop enhancement were not proven. *Id.*

2. Facts

In winter 2015, a confidential informant (C/I) began to work with the Pierce County Sheriff's Department. CP 30-34 (FoF 4).² C/I made two reliability buys, following the proper procedure. *Id.* C/I identified defendant as the source of the drugs and told deputies that defendant drove a red Kia SUV. CP 30-34 (FoF 5). Defendant's identity was confirmed by C/I from a

¹ (FoF #) refers to the trial court's Findings of Fact and the specific finding number. (CoL #) refers to the trial court's Conclusions of Law and the specific conclusion number.

² Findings of Fact from the suppression hearing (CP 30-34) use Aramaic numerals, while the Findings of Fact from the bench trial (CP 72-81) use Roman numerals.

photograph. *Id.* No earlier than December 8, 2015, C/I made a controlled buy of methamphetamine from defendant. CP 30-34 (FoF 6). Police kept constant surveillance during the buy. *Id.* A deputy saw a red Kia Ronda pull into a public parking lot and park near C/I. CP 30-34 (FoF 7). Defendant was observed exiting his car, contacting C/I, and returning to his car a few minutes later. *Id.* Kory Shaffer, the lead deputy, and C/I met after the controlled buy. CP 13-29 (Attachment A). C/I turned over the methamphetamine and had no money on him/her. *Id.*

Defendant sold drugs to other individuals after the controlled buy. Deputies observed defendant meeting several different people in different public parking lots throughout Pierce County. CP 30-34 (FoF 8). Each time, defendant would park, an individual would enter the vehicle, and then exit within a few minutes. *Id.* Schaffer recognized this as a common type of meet for individuals selling drugs. *Id.*

After observing these drug deliveries, surveillance units followed defendant to a mobile home in Lakewood, Washington. CP 30-34 (FoF 9). Defendant was observed entering the front door of the mobile home. *Id.* By checking with the Department of Licensing, it was determined the mobile home was defendant's registered address. CP 30-34 (FoF 12).

Schaffer subsequently conducted numerous hours of surveillance on defendant's home. CP 30-34 (FoF 10). On at least one occasion, Schaffer saw defendant leave the mobile home, enter a Toyota Tercel and drive to a Fred Meyer's parking lot. CP 72-81 (FoF XVI). There, Schaffer saw an

individual enter the car and saw defendant holding US currency in his hand. CP 30-34 (FoF 10). After a short time, the individual exited the car and left. *Id.* Defendant did not leave his vehicle or go into the store. *Id.* This behavior was again consistent with the sale of drugs. *Id.*

Shaffer ran a criminal history check on defendant prior to obtaining a search warrant. CP 30-34 (FoF 11). It showed defendant has thirteen prior felony convictions, including three felony convictions for unlawful possession of a controlled substance. *Id.* Based upon the totality of the information gathered by Shaffer, he wrote an affidavit to search the mobile home, and defendant's two cars. CP 13-29 (Attachment A). Defendant's registered address was the mobile home and both cars were registered in defendant's name. *Id.* A search warrant was subsequently issued by a Pierce County Judge on December 11, 2015. CP 13-29 (Attachment B).

Additional evidence after issuance of the warrant was adduced at the bench trial. On December 21, Shaffer set up surveillance on defendant's home and saw him drive the Kia Ronda. CP 72-81 (FoF III). He followed defendant to a Greater Lakes facility in Lakewood in Pierce County. CP 72-81 (FoF III-IV). There, Shaffer and Detective Robert Shaw spoke with defendant. CP 72-81 (FoF VI). Upon making contact with him, defendant was arrested. 1RP 92, 2RP 204³. After being arrested and *Mirandized*⁴,

³ The verbatim reports of proceedings are contained in six volumes. The trial volumes are referenced by volume number and have consecutive pagination. All other volumes are referred by date and have separate pagination.

⁴ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

defendant informed the detectives there was a .357 magnum revolver on the bed in his bedroom and specified which bedroom was his. CP 72-81 (FoF VI). Defendant also told them they would find methamphetamine, cocaine, and heroin in the bedroom. CP 72-81 (FoF VII).

A search was subsequently conducted at defendant's home and on his cars. CP 72-81 (FoF VIII). In defendant's bedroom was the firearm about which defendant told the detectives. CP 72-81 (FoF IX). It was not covered by any objects or in any type of box or safe. *Id.* A single .38 millimeter cartridge was within 6-8 inches of the gun. *Id.* Four additional .38 millimeter rounds were in a backpack on defendant's bed approximately one foot from the gun. *Id.* A working digital scale, baggies, and DSHS paperwork in defendant's name were also on defendant's bed. *Id.*

During trial, Shaw testified that a .38 cartridge can be fired from a .357 magnum revolver and a cartridge could be loaded into the revolver in under 30 seconds. *Id.* Steven Mell, a forensic investigator, successfully test fired the revolver. CP 72-81 (FoF XIX).

On the desk in the bedroom were two working scales and a crib note. CP 72-81 (FoF X). Crib notes are a street term used by drug dealers to keep track of who owes them money and to whom their dealer owes money. 1RP 115. In front of the desk on the floor were additional crib notes. *Id.* Also on the floor was what appeared to be methamphetamine in a blue bag. *Id.*

In a cabinet in the closet of the bedroom, Shaffer found \$2,095 in cash, what appeared to be heroin, cocaine, methamphetamine, and

additional baggies. CP 72-81 (FoF XI). All of this was found within four feet of the bed. *Id.* The cash was found in and among the drugs and baggies. *Id.* It was broken into a variety of denominations making it easier for a drug dealer to make change. *Id.*

Maureen Dudschus of the Washington State Patrol crime lab tested each of the substances found at the home. CP 72-81 (FoF XVII). She determined the substances found were methamphetamine, heroin, and cocaine. *Id.* In total, there was 295.5 grams of methamphetamine, 98.3 grams of heroin, and 7.4 grams of cocaine found in the home. *Id.*

During the search of the Kia Ronda a prescription pill bottle was found containing 61 suspected hydrocodone pills. CP 72-81 (FoF XII). These were later tested by Dudschus and determined they were hydrocodone, also known as dihydrocodeinone, pills. CP 72-81 (FoF XVII).

Based upon his training and experience, Shaffer was able to determine the value of the drugs found at the home. CP 72-81 (FoF XVIII). He testified that methamphetamine is commonly sold for \$20-25 per 1/2 gram, cocaine for \$50 per 1/2 gram, heroin for \$10-15 per 1/10 of a gram, and hydrocodone pills have a street value of \$1 per milligram. *Id.* The total value of the controlled substances found exceeds \$17,000. *Id.*

Prior to trial, a crime analyst with the Pierce County Sheriff's Department determined there are three potential school bus stops within 1,000 feet of the home. CP 72-81 (FoF XX). All three bus stops were active

on the day of the search and were serviced by public schools, as confirmed by an employee of the Clover Park School District. CP 72-81 (FoF XXI).

C. ARGUMENT.

1. THERE WAS PROBABLE CAUSE TO SUPPORT THE ISSUANCE OF A SEARCH WARRANT FOR DEFENDANT'S RESIDENCE AS THE AFFIDAVIT ESTABLISHED A NEXUS BETWEEN THE CRIMINAL ACTIVITY, THE PLACE TO BE SEARCHED, AND THE ITEMS TO BE FOUND.

Probable cause for a search warrant is established if the affidavit sets forth sufficient facts to lead a reasonable person to conclude there is a probability that defendant is involved in criminal activity and the evidence of the criminal activity can be found at the place to be searched. *State v. Maddox*, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004). Probable cause to search requires (1) a nexus between the criminal activity and the item to be seized, and (2) a nexus between the item to be seized and the place to be searched. *State v. McGovern*, 111 Wn. App. 495, 499, 45 P.3d 624 (2002). A magistrate makes a practical, commonsense determination, based upon all the circumstances set forth in the affidavit and by drawing commonsense inferences. *State v. Maddox*, 152 Wn.2d at 509 (citing *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317 (1983)).

Common experience suggests that drug dealers must mix and measure the merchandise, protect it from competitors, and conceal evidence of their trade—such as drugs, drug paraphernalia, weapons, written records, and cash—in secure locations. For the vast majority of drug dealers, the most convenient location to secure items is the home. After

all, drug dealers don't tend to work out of office buildings. And no training is required to reach this commonsense conclusion.

United States v. Spencer, 530 F.3d 1003, 1007 (D.C. Cir. 2008).

Great deference is given to the issuing magistrate's determination of probable cause and any doubts are resolved in favor of the warrant's validity. *State v. Leupp*, 96 Wn. App. 324, 329, 980 P.2d 765 (1999). The review of a judge's decision to issue a search warrant is limited to the four corners of the affidavit. *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). However, an appellate court reviews *de novo* conclusions of law on whether probable cause was established. *State v. Chamberlin*, 161 Wn.2d 30, 40, 162 P.3d 389 (2007).

There are multiple factors a magistrate can consider when determining whether probable cause has been established. The experience and expertise of an officer can be taken into account. *State v. Maddox*, 152 Wn.2d at 511. Generalizations regarding the common habits of drug dealers can be used with other evidence where a factual nexus supported by specific facts is provided and are based on the affiant's experience. *State v. Thein*, 138 Wn.2d 133, 148, 977 P.2d 582 (1999). Prior convictions may be used when the prior conviction is for a crime of the same general nature. *State v. Clark*, 143 Wn.2d 731, 749, 24 P.3d 1006 (2001). Facts that individually would not support probable cause can do so when viewed together with other facts. *State v. Dunn*, 186 Wn. App. 889, 897, 348 P.3d 791 (2015).

A magistrate can draw a reasonable inference that evidence of drug deals, drugs themselves, and drug paraphernalia is likely to be found where the drug dealer lives. *United States v. Angulo-Lopez*, 791 F.2d 1934 (9th Cir. 1986). Probable cause can be met by showing *not only* that a drug dealer lives at a particular residence and drug dealers commonly keep drugs where they live, *but also* additional facts from which to reasonably infer that *this* drug dealer keeps drugs at *his or her* residence. *State v. McGovern*, 111 Wn. App. 495, 499-500, 45 P.3d 624 (2002) (emphasis in original). It is reasonable to suspect a drug dealer stores drugs in a home for which s/he owns a key. *United States v. Grossman*, 400 F.3d 212, 218 (4th Cir. 2005). The fact that a drug dealer goes to his or her home prior to or after a sale supports the inference the drug supply is probably located there. 2 Wayne R. LaFave, *Search And Seizure: A Treatise on the Fourth Amendment* § 3.7(d), at 528-530 (5th ed. 2012).

All of the factors a magistrate can consider when making a determination of probable cause are met. Shaffer made it clear in the affidavit that he has extensive experience with drug cases and the techniques of drug dealers. CP 13-29 (Attachment A). He is a certified member of the Pierce County Clandestine Laboratory Team. *Id.* Shaffer has received training for undercover and advanced narcotics investigations, concealed compartments and traps, clandestine lab operations, and drug and search warrant entry. 1RP 88. Shaffer has the requisite experience and expertise a

magistrate can use and consider when determining there was sufficient probable cause to issue a search warrant.

The generalizations in the affidavit regarding the habits of drug dealers are combined with more specific facts and Shaffer's experience. A known drug deal was observed during the controlled buy. CP 13-29 (Attachment A). Defendant was then seen behaving similarly in other locations. *Id.* Shaffer noted in his affidavit that based upon his training and experience, the actions taken by defendant are common for a drug delivery. *Id.* This alone establishes probable cause that a drug deal was occurring. As mentioned above, going to one's home after a drug delivery creates a reasonable inference that drugs are stored there. 2 Wayne R. LaFave, *Search And Seizure: A Treatise on the Fourth Amendment* § 3.7(d), at 528-530 (5th ed. 2012). Defendant went to his home after the deliveries.

Because defendant has prior convictions for unlawful possession of drugs, the magistrate can use such to determine defendant probably is possessing drugs here. *State v. Clark*, 143 Wn.2d at 749. Shaffer used defendant's previous convictions in his affidavit as support for the warrant. CP 13-29 (Attachment A). The totality of the evidence gathered and the individual factors when combined together demonstrate how the magistrate had probable cause to issue a warrant in this case.

State and federal courts have found probable cause exists when law enforcement is able to see an individual go to or from a home either before or after a drug delivery and when there is proof that the drug dealer owns

and controls the property. (e.g. *State v. G.M.V.*, 135 Wn. App. 366, 144 P.3d 358 (2006); *United States v. Hollis*, 490 F.3d 1149 (9th Cir. 2007)). The affidavit in *Hollis* is very similar to the affidavit here. Police conducted a controlled buy with a cooperating witness. *Hollis*, 490 F.3d at 1152. After the controlled buy, police followed defendant to an apartment. *Id.* The court found that because the affidavit rested primarily on the officers' observations of the controlled drug buy and defendant's subsequent movements to his apartment, the affidavit showed there was a fair probability drugs would be found there. *Hollis*, 490 F.3d at 1153 (*abrogation on other grounds recognized by United States v. Ramirez*, 714 F.3d 1134 (9th Cir. 2013)).

Here, the affidavit was based primarily on the officers' observations of both a controlled drug buy and defendant's subsequent movements. The affidavit specifically noted that during the controlled buy C/I was under constant surveillance. CP 13-29 (Attachment A). Shaffer personally followed defendant after the controlled buy. *Id.* Based upon his training and experience, he saw defendant conduct what appeared to be additional drug deliveries. *Id.* After conducting the deliveries, defendant went to his residence. *Id.* On a separate occasion, Shaffer followed defendant from his residence to what he perceived to be another drug delivery. CP 30-34 (FoF 10). Similar to *Hollis*, the affidavit focused primarily on the observations of the police. The affidavit made it clear defendant went from a controlled drug

buy, to uncontrolled drug buys, to his home. This is sufficient to show there was a fair probability drugs could be found in defendant's home.

In *G.M.V.*, 135 Wn. App. 366, 144 P.3d 358 (2006), the police saw defendant's boyfriend, Longoria, go from defendant's residence to a controlled drug buy. *G.M.V.*, 135 Wn. App. at 369. On one occasion the police saw Longoria go to the buy location from the house and back to the house. On a second occasion they only saw him return to the house. *Id.* The police subsequently obtained a search warrant for the house. *Id.* The court found that because the warrant had been to search the place where Longoria left from and returned to before and after selling drugs, there was a nexus to establish probable cause there were drugs in the house. *G.M.V.*, 135 Wn. App. at 372.

Virtually the exact same factual scenario occurred here. Officers saw defendant go to and from the mobile home before and after separate drug deliveries. CP 30-34 (FoF 9); CP 72-81 (XVI). After the controlled drug buy, police officers saw defendant park in the driveway of the mobile home, exit the vehicle, and enter the home. CP 13-29 (Attachment A). On a separate occasion, Shaffer saw defendant exit his home and go to a perceived drug buy. *Id.* Using the same logic as *G.M.V.* this is enough to establish probable cause that there were drugs in the home. Unlike in *G.M.V.*, police officers knew the mobile home here was owned by defendant. *Id.* This further increases the likelihood there would be drugs in

the mobile home as it is reasonable to suspect that a drug dealer stores drugs in their home. *United States v. Grossman*, 400 F.3d at 218 (4th Cir. 2005).

There is a stronger inference here than in *G.M.V.* that defendant stored drugs in his home. Defendant was seen conducting drugs deliveries on multiple dates and used multiple cars. CP 30-34 (FoF 7-8, 10). A drug dealer that conducts deals on multiple dates would need a consistent place with a large enough space to store his supply. Two cars also means it is unlikely defendant would be transferring drugs between the cars. Defendant's house would likely be the central hub for his drug business. He would likely be transferring drugs from his house to his cars. This creates a stronger inference defendant had drugs in his home than in *G.M.V.*

In *United States v. Garcia-Villalba*, 585 F.3d 1223 (9th Cir. 2009), DEA agents obtained a search warrant for a residence based upon information they gathered during a wiretap. 585 F.3d at 1226. The wiretap indicated that the residence was a stash house for drugs. *Id.* The DEA agents saw known drug dealers go to a residence immediately after hearing news of an impending drug transaction on the wiretap. *Id.* The court found there was a sufficient nexus to reasonably infer that the residence where known drug dealers went both before and after a known drug deal was where they stored drugs. *United States v. Garcia-Villalba*, 585 F.3d at 1234. This is because the known drug dealers traveled to the residence shortly after the commencement of a drug delivery was heard on the wiretap and the

affidavit contained extensive information about multiple drug transactions regarding the same individuals seen going to the residence. *Id.*

Defendant went to his mobile home shortly after conducting a series of drug deliveries and was seen leaving his home to conduct a drug delivery on a separate date. CP 30-34 (FoF 7-8, 10). Police officers saw defendant enter the home. CP 13-29 (Attachment A). They also knew defendant had previously been convicted for unlawful possession of a controlled substance. *Id.* Just like in ***Garcia-Villable***, police knew there was, or was going to be, a drug delivery, saw a known drug dealer enter the mobile home, and knew defendant had previously been convicted for drug possession. There was a sufficient nexus to reasonably infer there would be drugs at the home where defendant went before and after the drug deliveries.

As discussed earlier, a magistrate can draw a reasonable inference that evidence of drug deals, drugs themselves, and drug paraphernalia is likely to be found where the drug dealer lives. ***United States v. Angulo-Lopez***, 791 F.2d 1934 (9th Cir. 1986). There are many reasonable inferences that could be drawn by the magistrate based upon the affidavit. C/I told Shaffer defendant sold drugs throughout Pierce County. CP 13-29 (Attachment A). Police observed defendant selling drugs in different locations on different dates throughout the county. *Id.* A magistrate can draw a reasonable inference that in order for defendant to be able to store the quantity of drugs necessary to conduct a drug distribution enterprise of this scale, defendant must keep drugs at his residence. It is common sense

to assume a drug dealer uses their home to mix, measure, pack, and store drugs. *United States v. Spencer*, 530 F.3d 1003, 1007 (D.C. Cir. 2008). Somebody who sells a large quantity of drugs, like defendant, would clearly need a place to do such and the home is the most logical location. *Id.* A car would not be enough space for a large scale drug dealer to store and prepare drugs for deliveries of this quantity.

Defendant wrongfully compares this case to *State v. Goble*, 88 Wn. App. 503, 945 P.2d 263 (1997). *See* Brf. of App. at 12-13. In *Goble*, police received information from a confidential informant that defendant would receive narcotics in the mail at a P.O. Box. 88 Wn. App. at 504-505. When a package addressed to defendant arrived at the airport and a drug dog alerted to the presence of drugs, police sought a warrant for both the package and defendant's home. *Id.* at 505-506. A warrant for both was subsequently issued. *Id.* at 507. This Court found the warrant was invalid because there was no information that defendant had previously stored drugs at his house or had previously transported drugs from the P.O. Box to his house. *Id.* at 512. Further, the court found this was an anticipatory warrant where the magistrate had no information about if defendant would take the package to his house or some other place. *Id.* at 513.

Here, the magistrate had more information than in *Goble*. Unlike in *Goble*, Shaffer was able to provide information showing a high probability there were drugs at the residence. As previously mentioned, defendant was seen going to drug deals from the mobile home and immediately returning

to the mobile home after completing drug deals. CP 13-29 (Attachment A). This indicates defendant likely transported drugs from his residence to his sales. It also likely indicates defendant bringing money collected from the sales back to the residence, especially since Shaffer saw defendant with cash following the sales. *Id.* Both of these provide more information than the mere speculation the magistrate had in *Goble*. The magistrate had all of the above information which indicated to him how there was probable cause drugs would be at the home. This was not an anticipatory warrant, but was based upon facts and a nexus between defendant's illegal activities and his residence. The trial court's motion to suppress and defendant's four convictions should be affirmed.

2. THE WARRANT ALLOWED THE OFFICERS TO SEARCH FOR THE RECORDED BUY MONEY AND THE DRUGS FOUND WERE SEEN IN PLAIN VIEW WHILE CONDUCTING THE VALID SEARCH FOR THE RECORDED BUY MONEY.

An appeals court can affirm the judgement of the trial court on any ground supported by the evidence. *State v. Morales*, 173 Wn.2d 560, 580, 269 P.3d 263 (2012) (quoting *State v. Carroll*, 81 Wn.2d 95, 101, 500 P.2d 115 (1972)). The warrant also authorized the police to search for recorded buy money. CP 13-29 (Attachment B). It was known there would be recorded buy money at the residence based upon C/I buying drugs from defendant with recorded buy money. CP 13-29 (Attachment A). This Court can uphold the validity of the search warrant on that basis alone.

Under a search warrant for a premise, the personal effects of the owner may be searched if they are a plausible place to store the objects named in the warrant. *State v. Hill*, 123 Wn.2d 641, 643, 870 P.2d 313 (1994). It is not necessary for the warrant to list with particularity such places where the items described in the warrant may be hidden. 2 Wayne R. LaFare, *Search And Seizure: A Treatise on the Fourth Amendment* § 4.10(b)), at 946 (5th ed. 2012).

It is well-established that under certain circumstances police may seize evidence in plain view without a warrant. *Coolidge v. New Hampshire*, 403 U.S. 443, 465, 91 S. Ct. 2022 (1971). For plain view to apply an officer must: (1) have a prior justification for the search; (2) inadvertently discover the incriminating evidence; and (3) immediately recognize the evidence as illegal. *State v. Bustamante-Davila*, 138 Wn.2d 964, 982, 983 P.2d 590 (1999).

Shaffer knew there would be recorded buy money at defendant's residence. C/I returned to Shaffer following the controlled buy without the recorded buy money. CP 13-29 (Attachment A). This means that the recorded buy money would be with defendant. The search warrant allowed for the search of recorded buy money in defendant's home. CP 13-29 (Attachment B). \$2,095 in cash was found in defendant's closet during the search. 1RP 137. A closet would be a plausible area for a person to store money. The money was amongst the drugs found. *Id.* All three requirements for the admissibility of evidence found in plain view are met: (1) deputies

had a prior justification to search for the money and were permitted to do so; (2) they discovered the drugs while conducting a search for the money; and (3) based upon their training and experience, they immediately could recognize the drugs as contraband. The discovery of the drugs while searching for the recorded buy money falls under the plain view exception. Therefore, this court should affirm defendant's four convictions.

3. DEFENDANT DOES NOT CHALLENGE THE SEARCH OF HIS CARS AND SUCH A SEARCH IS SEVERABLE FROM THE SEARCH OF DEFENDANT'S HOME, INDEPENDENTLY SUPPORTING DEFENDANT'S CONVICTION ON COUNT IV.

Defendant does not challenge the validity of the search warrant or the trial court's determination of its validity as it relates to the Kia Ronda and the Toyota Tercel. Rather, defendant makes it clear he is only challenging the search of his residence. *See* Brf. of App. at 14. Defendant does not challenge any Findings of Fact from either the suppression hearing or bench trial. Unchallenged findings of fact are verities on appeal. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Nor does defendant claim his conviction for items obtained in the car should be reversed, but only his convictions related to the items found in the home. *See* Brf. of App. at 14. Unchallenged conclusions of law become the law of the case. *State v. Moore*, 73 Wn. App. 805, 811, 871 P.2d 1086 (1994). As defendant does not challenge the trial court's conclusions regarding the validity of the

search of the cars, any evidence arising from the search of the vehicles was valid and any convictions arising from such should be affirmed.

Regardless, under the severability doctrine, the portions of the warrant relating to the search of defendant's cars are valid. Under the severability doctrine, infirmity of part of a search warrant requires suppression of evidence only from the invalid part of a warrant. *State v. Perrone*, 119 Wn.2d 538, 556, 834 P.2d 611 (1992). However, suppression of evidence is not required for the valid parts of the warrant. *Id.* Five requirements must be met for the doctrine to apply: (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; and (5) the officers must not have conducted a general search, i.e., a search in which they flagrantly disregarded the warrant's scope. *State v. Maddox*, 116 Wn. App. 796, 67 P.3d 1135 (2003).

The five requirements are met here: (1) the warrant clearly authorized entry to the Kia Ronda; (2) the warrant listed eleven particularized items to be seized; (3) the cars were two of the three places to be searched in the warrant and are a significant part of the warrant; (4) officers found the items while conducting a valid search of the Kia Ronda;

and (5) officers were acting within the scope of the warrant at the time the items were seized. CP 13-29 (Attachment B); CP 72-81 (FoF VIII, XII). Because all five requirements are met, this Court should affirm defendant's conviction arising from the search of the cars.

In the glove box of the Kia Ronda, were 61 pills determined to be hydrocodone. CP 72-81 (FoF XII, XVII). Possession of the pills was charged as Count IV. CP 46-48. Defendant was convicted as charged. CP 72-81 (CoL III). On this count, defendant was sentenced separately and to a different period of confinement than the other counts. CP 86-101. Hence, even if the search of defendant's residence and convictions arising from the evidence contained therein is reversed, defendant's conviction on Count IV and subsequent sentence should be affirmed.

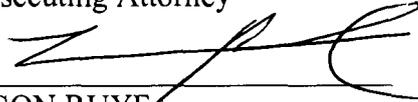
D. CONCLUSION.

This Court should affirm the validity of the search warrant for defendant's residence and vehicles. The affidavit established a sufficient nexus between defendant, his home and cars, and the items to be seized. The affiant made it clear he has experience and expertise for drug investigations, defendant was seen going to and from his residence immediately before and after a drug delivery, and he had prior convictions for possession of a controlled substance. Even if there was not probable cause to search defendant's home for drugs, the drugs were found in plain

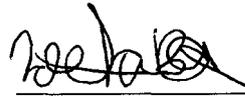
view when searching for the recorded buy money, something known to be in defendant's home and included in the search warrant. In the alternative, defendant does not challenge the validity of the search of his vehicle and there was sufficient probable cause to search defendant's vehicle in which he was seen conducting drug deals. Thus, Count IV should be affirmed. Because the affidavit established sufficient probable cause, all four of defendant's convictions should be affirmed.

RESPECTFULLY SUBMITTED: May 16, 2017.

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Certificate of Service:

The undersigned certifies that on this day she delivered by US mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

5.16.17 Therese Kar
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

May 16, 2017 - 1:20 PM

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