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Division II
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NO. 49926-6-II

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

DANNY RAY POTTS,

Appellant.

RESPONDENT'S BRIEF

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Rules

CrR 2.3(c)2

ER 40116

I. ISSUE

1. Did the complaint and affidavit for search warrant include the facts necessary to establish the basis of knowledge and veracity of the confidential informant?
2. Was the information in the complaint and affidavit for search warrant stale?
3. Did the Appellant receive ineffective assistance of counsel by failing to preserve the issue relating to the confidential informant's basis of knowledge and veracity?
4. Did the trial court err when it held that the law enforcement officers complied with the "knock and announce" rule under RCW 10.31.040?
5. Did the State present sufficient evidence that the Appellant possessed a controlled substance with intent to deliver?
6. Did the trial court abuse its discretion by admitting exhibit 20A?
7. Should this Court exercise its discretion and deny a request for appellate costs?

II. SHORT ANSWER

1. Yes. The complaint and affidavit for search warrant contained the facts necessary to establish the confidential informant's basis of knowledge and veracity.
2. No. The search warrant was not stale.
3. No. The Appellant did not receive ineffective assistance of counsel.
4. No. The trial court properly held that the law enforcement officers complied with the "knock and announce" rule.
5. Yes. The State presented sufficient evidence to support the Appellant's conviction for possession of a controlled substance with intent to deliver.

6. No. The trial court did not abuse its discretion when it admitted exhibit 20A.
7. Yes. The State simply defers to the Court on this issue.

III. FACTS

The State agrees, for the most part, with the factual and procedural history as set forth by the Appellant. Where appropriate, the State's brief will point to specific facts in the record regarding the issues before the Court.

IV. ARGUMENT

A. THE COMPLAINT AND AFFIDAVIT FOR SEARCH WARRANT CONTAINED THE FACTS NECESSARY TO ESTABLISH THE CONFIDENTIAL INFORMANT'S BASIS OF KNOWLEDGE AND VERACITY.

a. Standard of Review

Article I, section 7 of the Washington Constitution requires that the issuance of a search warrant be based upon of a determination of probable cause. *State v. Vickers*, 148 Wn.2d 91, 108 (2002); CrR 2.3(c). "Probable cause is established when an affidavit supporting a search warrant provides sufficient facts for a reasonable person to conclude there is a probability the defendant is involved in the criminal activity." *Vickers*, 148 Wn.2d at 108; *State v. Clay*, 7 Wn. App. 631, 637 (1972). Whether probable cause is established is a legal conclusion that is subject to de novo review. *State v.*

Chamberlin, 161 Wn.2d 30, 40 (2007). Great deference is given to the magistrate's determination of probable cause, and will only be disturbed if its decision to issue a warrant was based upon an abuse of discretion. *Vickers*, 148 Wn.2d at 108. "The [issuing judge] is entitled to make reasonable inferences from the facts and circumstances set out in the affidavit." *State v. Emery*, 161 Wn. App. 172, 202 (2011). "Doubts concerning the existence of probable cause are generally resolved in favor of issuing the search warrant." *Vickers*, 148 Wn.2d at 108-09.

For an informant's tip (as detailed in an affidavit) to create probable cause for a search warrant to issue: (1) the officer's affidavit must set forth some of the underlying circumstances from which the informant drew his conclusion so that a magistrate can independently evaluate the reliability of the manner in which the informant acquired his information; and (2) the affidavit must set forth some of the underlying circumstances from which the officer concluded that the informant was credible or his information was credible.

State v. Jackson, 102 Wn.2d 432, 435 (1984) (citing *Aguilar v. Texas*, 378 U.S. 108, 114, 84 S.Ct. 1509, 1514, 12 L.Ed.2d 723 (1964) and *Spinelli v. United States*, 393 U.S. 410, 413, 89 S.Ct. 584, 587, 21 L.Ed.2d 637 (1969)). In other words, the warrant affidavit "must demonstrate the informant's (1) 'basis of knowledge' and (2) 'veracity.'" *State v. Taylor*, 74 Wn. App. 111, 116 (1994) (quoting *Jackson*, 102 Wn.2d at 437).

b. Basis of Knowledge

“The first or ‘basis of knowledge’ prong requires that the informant have personal knowledge of the facts asserted to establish probable cause.” *State v. Casto*, 39 Wn. App. 229, 233 (1984). Here, the affidavit for search warrant states that within 72 hours of the writing of the affidavit, the confidential informant (“CI”) went into 288 26th Ave and observed approximately one-quarter ounce of methamphetamine that was packaged in a Ziploc style bag. The affidavit established that the CI had personal experience with methamphetamine, specifically what methamphetamine looks like, how it is typically packaged, and approximate weights based upon visual observations. The CI also informed Det. Libbey that the residence and methamphetamine was under the control of the Appellant. Finally, the CI reported seeing a methamphetamine pipe within the residence. The CI’s description of the pipe was consistent with Det. Libbey’s own experiences.

The affidavit “provides precisely the type of underlying factual data from which a magistrate could reasonably conclude that [methamphetamine] would be present.” *Casto*, 39 Wn. App. at 234. The CI knew what methamphetamine looked like, how it was packaged, and saw an approximate quantity within the Appellant’s residence. The basis of knowledge prong was clearly met.

c. Veracity

The magistrate must again receive factual data from which to determine the informant's present reliability. This is most commonly done by asserting an informant's "track record" for giving accurate information. An officer may swear that previous information given by this informant proved true and resulted in an arrest or conviction, or aided in an investigation.

Casto, 39 Wn. App. at 233 (citing *State v. Fisher*, 96 Wn.2d 962, 964, *cert. denied* 457 U.S. 1137, 102 S.Ct. 2967, 73 L.Ed.2d 1355 (1982) and *State v. Partin*, 88 Wn.2d 899, 903 (1977)).

Here, the affidavit for search warrant established the CI's veracity.

The affidavit informed the magistrate why the CI was working with law enforcement - exchange for leniency in a criminal matter. The affidavit also explained that the CI had previously provided information to law enforcement about the local distribution of controlled substances and that this information had been corroborated by other sources. The affidavit also informed the magistrate that the CI had previously performed a successful controlled buy and followed the detective's instructions as required. Finally, the affidavit details how the CI had previously provided information for two prior search warrants. Upon execution of these search warrants, the information provided by the CI was confirmed. Based upon the above information, the affidavit detailed that the CI had proven history or "track record" for being honest and providing reliable information.

B. THE SEARCH WARRANT WAS NOT STALE.

A search warrant affidavit or search warrant can be stale, and thus lack probable cause to search and seize evidence, in two ways: 1) “the passage of time is so prolonged” between an officer's or informant's observations of criminal activity and the presentation of the affidavit to the magistrate “that it is no longer probable that a search will reveal criminal activity”; or 2) a delay in the execution of the search warrant “may render the magistrate's probable cause determination stale.” *State v. Lyons*, 174 Wn.2d 354 (2012). Because “[c]ommon sense is the test for staleness of information in a search warrant affidavit . . . [t]he information is not stale for purposes of probable cause if the facts and circumstances in the affidavit support a commonsense determination that there is continuing and contemporaneous possession of the property intended to be seized.” *State v. Maddox*, 152 Wn.2d 499, 506 (2004).

In order to make a commonsense determination as to whether the information is stale, the magistrate shall look at the totality of the circumstances to include “the nature of the criminal activity, the length of the activity, and the nature of the property to be seized.” *Maddox*, 152 Wn.2d at 506; *Lyons*, 174 Wn.2d at 361 (“Among the factors for assessing staleness are the time between the known criminal activity and the nature and scope of the suspected activity.”). Consequently, “[t]he amount of time

between the known criminal activity and the issuance of the warrant is only one factor and should be considered along with all the other circumstances. . . .” *State v. Petty*, 48 Wn. App. 615, 621(1987); *State v. Hall*, 53 Wn. App. 296, 300 (1989) (“The tabulation of the number of days is not the deciding factor; rather, it is only one circumstance to be considered with all the others. . . .”). Evaluating the entire affidavit and making commonsense inferences from the information contained therein is important because, “[a]n affidavit lacking the timing of the necessary observations might still be sufficient if the magistrate can infer recency from other facts and circumstances in the affidavit.” *Lyons*, 174 Wn.2d at 361-62. Moreover, “even information which is stale standing alone may still provide probable cause if it is confirmed by other more recent information.” *Petty*, 48 Wn. App. at 622.

Here, in making commonsense inferences from the information provided in the search warrant affidavit, it was still probable that evidence of criminal activity would be found at the Appellant’s residence at the time the search warrant was executed. The gap in time between the last reported criminal activity in the affidavit and when the search warrant was executed

is minimal considering the criminal activity and the nature of the of the evidence sought.

The affidavit was filed and on November 6, 2015. The information detailed in the affidavit was gathered within 72 hours of November 6, 2015. The search warrant was approved by Judge Koss on November 6, 2015. The officers executed the search warrant on November 12, 2015. The Appellant simply misstates the timeframe when he states “ten to twelve days later.” A proper calculation shows that there was a minimum of 6 days and a maximum of nine days between the probable cause and the execution of the warrant. This is not an unreasonable delay. As a result, the information supporting the probable cause in the affidavit was not stale at the time the search warrant was issued and executed.

C. THE APPELLANT DID NOT RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL.

To establish ineffective assistance of counsel, a defendant must show that counsel’s performance was deficient and that prejudice resulted from that deficiency. *Strickland v. Washington*, 446 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Thomas*, 109 Wn.2d 222, 225 (1987). Thus, one claiming ineffective assistance must show that in light of the entire record, no legitimate strategic or tactical reasons support the challenged conduct. *State v. McFarland*, 127 Wn.2d 322, 335-36 (1995).

Prejudice is not established unless it can be shown that “there is a reasonable probability that, except for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 335.

Whether counsel is effective is determined by the following test: “[a]fter considering the entire record, can it be said that the accused was afforded an effective representation and a fair and impartial trial?” *State v. Jury*, 19 Wn. App. 256, 262 (1978) (citing *State v. Myers*, 86 Wn.2d 419, 424 (1976)). Moreover, “[t]his test places a weighty burden on the defendant to prove two things: first, considering the entire record, that he was denied effective representation, and second, that he was prejudiced thereby.” *Jury*, 19 Wn. App. at 263. The first prong of this two-part test requires the defendant to show “that his . . . lawyer failed to exercise the customary skills and diligence that a reasonably competent attorney would exercise under similar circumstances.” *State v. Visitacion*, 55 Wn. App. 166, 173 (1989) (citing *State v. Sardinia*, 42 Wn. App. 533, 539, *review denied*, 105 Wn.2d 1013 (1986)). The second prong requires the defendant to show “there is a reasonable probability that, but for the counsel’s errors, the result of the proceeding would have been different.” *Visitacion*, 55 Wn. App. at 173.

The Appellant has not established that he received ineffective assistance of counsel. As detailed above, the affidavit for search warrant

clearly established the CI's basis of knowledge and veracity. Therefore, the Appellant's trial counsel did not fail to exercise customary skills and diligence that a reasonably competent attorney would exercise under similar circumstances. Instead, the Appellant's trial counsel recognized that there was no issue to preserve.

D. THE TRIAL COURT PROPERLY HELD THAT THE LAW ENFORCEMENT OFFICERS COMPLIED WITH THE KNOCK AND ANNOUNCE RULE.

When executing a search warrant, prior to nonconsensual entry, police officers must (1) announce their identity, (2) announce their purpose, (3) demand admittance, (4) announce the purpose of their demand, and (5) be explicitly or implicitly denied admittance. *State v. Richards*, 136 Wn.2d 361, 369 (1998). "A police officer who identifies himself and announces that he has a search warrant has implicitly demanded admission." *State v. Johnson*, 94 Wn. App. 882, 889 (1999) (citing *State v. Lehman*, 40 Wn. App. 400, 404, *review denied*, 104 Wn.2d 1009 (1985)). To determine whether police officers have complied with the "knock and announce" rule, the trial court must determine if the purposes of the rule are effectuated: "(1) to reduce the potential for violence to both occupants and police; (2) to prevent unnecessary destruction of property; and (3) to protect the occupants' right to privacy." *Johnson*, 94 Wn. App. at 890 (citing *State v. Coyle*, 95 Wn.2d 1, 5 (1980)). Failure to comply with the "knock and

announce” rule results in an illegal entry and suppression of the evidence. *Coyle*, 95 Wn.2d at 14.

In the present matter, the trial court properly found that the detectives executing the search warrant complied with the “knock and announce” rule. Det. Libbey testified that he knocked and announced three separate times prior to the entry. After each announcement, Det. Libbey heard movements inside of the residence; however, no one came to the door to allow access to the residence. Prior to the entry, Det. Libbey yelled for the occupants of the residence to step away from the door. These facts were corroborated by Det. Durbin and Sgt. Langlois, namely that Det. Libbey knocked and announced several times “Longview Police, search warrant, come to the door.” After each announcement, no one came to the door. After Det. Durbin struck the door frame (not the actual door) a few times with the ram, the Appellant unlocked the door and allowed the detectives to enter. The attempted use of force to enter the residence was used only after Det. Libbey knocked and announced multiple times and was not permitted to enter.

The Appellant’s argument relies upon contradictory testimony and...nothing else. The trial court listened to the testimony from all parties, and concluded that during each of Det. Libbey’s three knock and announce attempts, he announced law enforcement identity, announced law

enforcement's purpose, demanded admittance, announced the purpose of their demand, and was implicitly denied admittance. The fact that the Appellant opened the door after Det. Durbin struck the door frame with the ram does not contradict the trial court's findings and conclusions. The Appellant is asking this Court to simply take the Appellant and his witness's word over the detectives and supplement its opinion in lieu of the trial court.

E. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUPPORT THE APPELLANT'S CONVICTION FOR POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER.

The standard of review for sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the necessary facts to be proven beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221 (1980). Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638 (1980). For purposes of a challenge to the sufficiency of the evidence, the appellant admits the truth of the State's evidence. *State v. Jones*, 63 Wn. App. 703, 707-08, *review denied*, 118 Wn.2d 1028 (1992). All reasonable inferences must be drawn in the State's favor and interpreted most strongly against the defendant. *State v. Joy*, 121 Wn.2d 333, 338-39 (1993). A reviewing court need not itself be convinced beyond a reasonable doubt, *Jones*, 63 Wn. App. at 708, and must defer to the trier of fact on

issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, *review denied*, 119 Wn.2d 1011 (1992).

Washington case law forbids the inference of an intent to deliver based on “bare possession of a controlled substance, absent other facts and circumstances.” *State v. Harris*, 14, Wn. App. 414, 418 (1975), *review denied*, 86 Wn.2d 1010 (1976). However, Washington cases have found an intent to deliver from the possession of a quantity of narcotics and at least one additional factor. For example, in *State v. Llamas-Villa*, 67 Wn. App. 448 (1992), possession of cocaine, heroin, and \$3,200, combined with an officer's observations of deals supported the inference of intent. In *State v. Mejia*, 111 Wn.2d 892 (1989), held that 1 1/2 pounds of cocaine combined with an informant's tip and a controlled buy supported an inference of intent to deliver. In *State v. Lane*, 56 Wn. App. 286 (1989), an ounce of cocaine, together with large amounts of cash and scales supported an intent to deliver, where the court specifically noted that cocaine is commonly sold by the 1/8 ounce. *State v. Simpson*, 22 Wn. App. 572 (1979), held possession of cocaine, uncut heroin, lactose for cutting, and balloons for packaging supported an inference of intent to deliver. The *Harris* court found that possession of five one-pound bags of marijuana and scales evidenced intent to deliver.

The State presented overwhelming evidence to sustain the Appellant's conviction for possession of a controlled substance with intent to deliver. The Appellant mischaracterizes this case as one simply involving weight. This case involved weight, drug trafficking paraphernalia, a confession and a large sum of money.

The weight of the methamphetamine as presented to the jury was 13.5 grams (or one ounce if the jury believed the Appellant's witness Ms. Rickards). The State presented to the jury that a typical user amount of methamphetamine was approximately one gram or less. 2RP at 286; 3RP at 415. So, the starting point of this analysis is that the Appellant was in possession of up to thirteen times the typical user amount of methamphetamine.

The Appellant was also found in possession of numerous plastic baggies. The detectives noted that there were different type of bags, all commonly associated with drug trafficking. Det. Durbin located sandwich style bags that was identical to the one holding the controlled substances found in the toilet. 2RP at 298. He located smaller plastic bags consistent with drug trafficking. 2RP at 302-03. He then found more baggies consistent with drug trafficking. 2RP at 303. And then he found more plastic bags consistent with drug trafficking. 2RP at 303. Finally, he found an additional set of plastic bags consistent with drug trafficking. 2RP at 304.

Each of these types of bags were photographed, secured as evidence, and presented to the jury.

Sgt. Langlois corroborated Det. Durbin's testimony through Exhibit 26A. Sgt. Langlois identified this exhibit as a plastic bag contained "a variety of smaller bags." 3RP at 338. Each of these types of bags were consistent with the types of bags commonly associated with drug trafficking. 3RP at 339. The amount of bags (or packaging material) was also consistent with drug trafficking. 3RP at 339. In addition to the packaging material, Det. Durbin located a digital scale with residue. Det. Durbin, Sgt. Langlois, and Det. Libbey all identified a digital scale as a necessary tool for the drug trafficking trade. The fact that it had residue on it was evidence that it had been used to weigh out controlled substances.

The Appellant was also confessed to trafficking controlled substances out of the residence. Upon initial contact with Det. Libbey, the Appellant stated that all of the controlled substance found within the residence belonged to him. 3RP at 428-29. This statement was made spontaneously by the Appellant, without being asked a specific question by Det. Libbey. The Appellant then informed Det. Libbey that the detectives must have been at his residence because they had drug deliveries on him. 3RP at 429. Again, this statement from the Appellant was unsolicited. The Appellant stated numerous times over the course of his contact with Det.

Libbey that he was the sole individual responsible for the drug trafficking activities that had occurred out of his residence. 3RP at 430. Supporting this fact was the amount of methamphetamine, heroin and packaging materials found in the residence, and the fact that the Appellant was in possession of \$600 cash.

Based upon this evidence – weight, packaging materials, confession and money – the State presented sufficient evidence to sustain the Appellant’s conviction for possession of a controlled substance with intent to deliver.

F. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT ADMITTED EXHIBIT 20A INTO EVIDENCE.

Evidence is relevant when it has any “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” ER 401; *State v. Neslund*, 50 Wn. App. 531, 536, *review denied*, 110 Wn.2d 1025 (1988); *State v. Christian*, 26 Wn. App. 542, 550 (1980) (evidence is relevant if it logically tends to prove a material fact in issue), *aff’d*, 95 Wn.2d 655, 628 P.2d 806 (1981). The admission or refusal of evidence lies largely within the sound discretion of the trial court and will be reversed only upon a showing of abuse of discretion. *State v. Markle*, 118 Wn. 2d 424, 438 (1992); *State v. Lynch*, 58 Wn. App. 83,

87, *review denied*, 115 Wn.2d 1020 (1990). A trial court's relevancy determinations, including its balancing of probative value against unfair prejudicial effects, are matters within the trial court's discretion and should be overturned only if no reasonable person could take the view adopted by the trial court. *State v. Russell*, 125 Wn.2d 24, 78 (1994); *State v. Hudlow*, 99 Wn.2d 1, 17 (1983); *State v. Castellanos*, 132 Wn.2d 94, 97 (1997). A trial judge, not an appellate court, is in the best position to evaluate the dynamics of a jury trial and therefore the prejudicial effect of a piece of evidence. *State v. Taylor*, 60 Wn.2d 32, 40 (1962).

“Generally, a chemical analysis is not vital to uphold a conviction for possession of a controlled substance.” *State v. Colquitt*, 133 Wn. App. 789, 796, (2006); *see also State v. Hernandez*, 85 Wn. App. 672, 675 (1997) (circumstantial evidence and lay testimony may be sufficient to establish the identity of a drug in a criminal case) (citing *In re Reismiller*, 101 Wn.2d 291, 294 (1984) and *State v. Eddie A.*, 40 Wn. App. 717, 720 (1985)). “Circumstantial evidence establishing identification may include...lay-experience based familiarity through prior use, trading or law enforcement.” *United States v. Dominguez*, 992 F.2d 678, 681 (7th Cir.) *cert. denied*, 510 U.S. 891, 114 S.Ct. 250, 126 L.Ed.2d 203 (1993). When determining whether enough circumstantial evidence exists, courts have previously looked at a non-exhaustive list of factors, including:

1. Testimony by witnesses who have a significant amount of experience with the drug in question, so that their identification of the drug as the same as the drug in their past experience is highly credible.
2. Corroborating testimony by officers or other experts as to the identification of the substance.
3. References made to the drug by the defendant and others, either by the drug's name or a slang term commonly used to connote the drug.
4. Prior involvement by the defendant in drug trafficking.
5. Behavior characteristic of use or possession of the particular controlled substance.
6. Sensory identification of the substance if the substance is sufficiently unique.

Colquitt, 133 Wn. App. at 801 (citing *State v. Watson*, 231 Neb. 507, 514-17, 437 N.W.2d 142 (1989)).

In the present matter, the Appellant argues that trial court abused its discretion when it admitted Exhibit 20A into evidence because the State had not presented sufficient foundation, through a chemical analysis, to show that the untested bag of crystalline substance was methamphetamine. The Appellant is essentially arguing that the State did not present sufficient evidence to prove the untested bag of crystalline substance was methamphetamine to sustain a conviction for possession of a controlled substance, and therefore, the trial court abused its discretion when it admitted Exhibit 20A into evidence. This is not the correct standard. Simply put, the Court does not review the admission of evidence during the trial

based upon whether after the trial there was sufficient evidence to sustain a conviction.

Given their training and experience, Det. Durbin and Sgt. Langlois are more than qualified to identify suspected methamphetamine. They are both able to recognize methamphetamine by sight (2RP at 285; 3RP at 327), the manner in which it's typically packaged (2RP at 285-86; 3RP at 327) and common items associated with methamphetamine (2RP at 286-287). The manner in which the crystalline substance was packaged was identical to methamphetamine that was tested, including the fact that it was found in the same large zip-lock bag. The location of where it was found was also consistent – namely that there had been an attempt to flush it down the toilet (along with the heroin found in the same toilet).

Additionally, as noted by the Appellant's trial counsel, the jury had already heard two different witnesses testify that Det. Durbin had located a large zip-lock bag that contained two smaller bags of a white crystalline substance. 3RP at 373. The jury had also been shown a photograph that had been previously admitted into evidence that showed the large zip-lock and the two smaller bags. 2RP at 299-306.

Finally, the Appellant's own witness, Ms. Rickards, testified that the zip-lock bag contained one ounce of methamphetamine. 4RP at 570-71. The State showed her the bags of crystalline substance and she confirmed it was

one ounce of methamphetamine. 4RP at 571-72. She had direct knowledge of this due to the fact that she had purchased it herself. 4RP at 572. Thus, she corroborated the detectives' observations and opinions. Had the trial court sustained the Appellant's initial objection, the State would have been able to admit the untested bag as soon as Ms. Rickards identified the contents.

Exhibit 20A was a large zip-lock back that contained two smaller bags of a white crystalline substance. One of these bags was weighed and tested by a forensic scientist and concluded that the white crystalline substance was 13.6 grams of methamphetamine. The trial court overruled the Appellant's trial counsel's objection based upon a reasonable view of the evidence as a whole. The trial court recognized that enough circumstantial evidence had been presented to support an argument that the untested bag contained methamphetamine. "Generally evidence that is discovered that has—that's relevant is admissible." 3RP at 377-378.

The trial court did not abuse its discretion when it admitted Exhibit 20A into evidence.

G. THE STATE DEFERS TO THIS COURT WHETHER IT SHOULD EXERCISE ITS DISCRETION IN REGARDS TO APPELLATE COSTS.

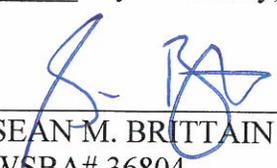
The imposition of appellate costs is within the sound discretion of this Court. The State takes no position on this issue and simply defers to the Court.

V. CONCLUSION

The affidavit for search warrant properly established the CI's basis of knowledge and veracity. The information in the affidavit for search warrant was not stale. The Appellant did not receive ineffective assistance of counsel. The trial court properly found that the detectives complied with the "knock and announce rule" when they executed the search warrant. The State presented sufficient evidence to support the Appellant's conviction for possession of a controlled substance with intent to deliver. The trial court did not abuse its discretion when it admitted Exhibit 20A into evidence. The Court should use its discretion in regards to appellate costs.

The State requests this Court affirm the appellant's convictions.

Respectfully submitted this 26 day of January, 2018.



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CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on Jan 26th, 2018.


Michelle Sasser

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

January 29, 2018 - 9:42 AM

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