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Division II  
State of Washington  
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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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**STATE OF WASHINGTON,**

Respondent,

vs.

**DAVID W. HAUG,**

Appellant.

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Appeal from the Superior Court of Washington for Lewis County

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**Respondent's Brief**

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## I. ISSUES

- A. Did the trial court err when it ruled Officer Nelson had probable cause to arrest Haug, thereby making the inventory search at the jail lawful?
- B. Did the trial court err by imposing the filing fee and the DNA fee?

## II. STATEMENT OF THE CASE

On approximately December 7, 2017, City of Toledo Police Officer Nelson saw a notice on the police station white board instructing officers the owner of the residence located at 512 St. Helens, Judith, had informed the police that no persons were allowed or authorized on the property after December 7, 2017. RP 8-10; CP 8-9. The property, according to the owner, was in the process of being sold. RP 10. Officer Nelson contacted and spoke to his chief about the information on the white board and was informed the information was correct, and no person was allowed at the property after December 7, 2017. RP 10; CP 9.

On December 13, 2017, Officer Nelson was on patrol and observed a red, compact car in front of 512 St. Helens. RP 10-11. Officer Nelson recognized the red car as belonging to Haug. RP 11. As Officer Nelson walked up to the residence, Haug walked out the front door. RP 11; CP 9. Haug asked Officer Nelson if he could help Officer Nelson. *Id.* Officer Nelson inquired what Haug was doing at

the residence. *Id.* Haug informed Officer Nelson he lived at the residence. *Id.*

Officer Nelson informed Haug he needed to leave the property because nobody was allowed on the property. RP 11. Haug told Officer Nelson he had not been given an eviction notice. RP 11; CP 9. Officer Nelson was not sure if the matter would be a criminal matter or a civil matter and told Haug that he would attempt to contact the property owner to clarify the information. RP 11. Officer Nelson attempted to contact the property owner but was unsuccessful. RP 11; CP 9.

Haug informed Officer Nelson he was at the residence to pick up a few things. RP 12; CP 9. Officer Nelson informed Haug he would need to leave the property because the only information Officer Nelson had was no one was allowed on the property. RP 12.

Officer Nelson subsequently spoke with Judith and her daughter, Megan Littleton. RP 13, 26; CP 9. Judith told Officer Nelson she had gone through the process to have an eviction notice done. RP 13; CP 9-10. Judith informed Officer Nelson she served Haug with a notice of intent to evict on October 30<sup>th</sup>, advising Haug he had to be out of the property by November 30<sup>th</sup>.

RP 13-14. Judith stated she had posted the eviction notice on the front door stating Haug had to be out the 30<sup>th</sup>. RP 14; CP 9-10. Judith further informed Officer Nelson she told Haug he was allowed to remain on the property until December 7<sup>th</sup> because Haug needed the extra time to vacate the house and there was also an issue regarding CPS. RP *Id.* Judith and Megan also advised they were having issues getting Haug off the property and Haug had sent a text message stating he was not leaving the property. RP 27-28; CP 9. Haug stated in the text, he was not moving out, they were going to have to take him to court. RP 28-29.

After speaking with his supervisor and the Prosecutor's Office, Officer Nelson believed he had probable cause to arrest Haug for Residential Burglary. RP 16-17. Officer Nelson located Haug in Toledo, placed him under arrest for Residential Burglary, and searched Haug incident to arrest. RP 17; CP 10. Officer Nelson located a spoon with residue on it. *Id.* Haug was searched at the jail and staff advised when Haug's property was inventoried, they discovered an unopened pack of suboxone in Haug's wallet. *Id.*

The State charged Haug with one count of Possession of a Controlled Substance, to wit: Suboxone. CP 1-2. Haug filed a motion and memorandum to suppress pursuant to CrR 3.6. CP 5-7.

The State filed a response brief. CP 31-34. A hearing was conducted and the State prevailed. RP 1-487; CP 8-11. There was a stipulated bench trial and Haug was found guilty as charged. CP 12-14. The trial court sentenced Haug to 45 days in custody and stayed the sentence pending this appeal. CP 15-23, 24. Haug timely appeals. CP 25.

The State will supplement the facts as necessary in its argument section below.

### **III. ARGUMENT**

#### **A. THE TRIAL COURT CORRECTLY DENIED HAUG'S MOTION TO SUPPRESS THE EVIDENCE.**

Haug argues the trial court incorrectly denied his motion to suppress the suboxone discovered during the inventory of his wallet at the Lewis County Jail after he was arrested and booked into jail for Residential Burglary. Brief of Appellant 9-21. Haug asserts Officer Nelson lacked probable cause to arrest Haug and the trial court erred when it determined otherwise. *Id.* The trial court appropriately ruled Officer Nelson relied upon named, credible and therefore, reliable, citizen informants and had probable cause to arrest Haug. Further, there was substantial evidence to support all the findings of fact Haug has challenged. This court should find the

motion challenging the search was correctly denied and sustain the conviction.

### **1. Standard Of Review.**

When an appellant challenges a trial court's denial of a motion to suppress, the reviewing court determines whether there is substantial evidence to support the challenged findings of fact and whether those findings support the trial court's conclusions of law. *State v. Campbell*, 166 Wn. App. 464, 469, 272 P.3d 859 (2011). Findings of fact entered by a trial court after a suppression hearing will be reviewed by the appellate court only if the appellant has assigned error to the fact. *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Findings of fact not assigned error are considered verities on appeal. *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005).

A trial court's conclusions of law are reviewed de novo, with deference to the trial court on issues of weight and credibility. *State v. Sadler*, 147 Wn. App. 97, 123, 193 P.3d 1108 (2008).

### **2. There Was Substantial Evidence Presented To Sustain The Challenged Findings Of Fact.**

Haug asserts the trial court erred by entering the following findings of fact: 2, 7, and 8. CP 8-10. Yet, in Haug's brief he does not specifically address the lack of evidence to support each

finding. See Brief of Appellant. The State will address finding of fact alleged errors individually here.

Officer Nelson testified on approximately December 7, 2017, he saw a notice on the police station white board stating the owner of 512 St. Helens, had informed the police no persons were allowed or authorized on the property after December 7, 2017. RP 9-10. Officer Nelson also testified he contacted his chief about the information on the white board and was informed the information was correct, that no person was allowed at the property after December 7, 2017. RP 10. This testimony supports finding of fact 2. CP 8-9. The only information contained within the finding of fact Officer Nelson did not directly testify about is the Chief of Police's name, John Brockmueller.

Findings of fact 7 and 8 are supported by the following testimony from Officer Nelson,

I was able to make contact with them on the 14th. The daughter of the owner of the property actually contacted the police department with a complaint that she had received a text message from Mr. Haug the same day or the day before -- I can't recall, but it's in my report -- and advised that he was refusing to leave the property, and I advised her of the incident that happened the day before.

She was on speaker with Judith, the owner, as well, and I could hear her in the background speaking. I advised her of the situation, asked her if she was

willing to press charges for the burglary. She advised she would.

I asked her if she had done an eviction notice, and she advised that she did go through the process to have an eviction notice done. She advised me the date that she did it was on -- I believe she gave him a letter of intent to evict him on October 30th. Required him -- it advised him -- and handed the eviction letter to him and advised him that he was to be out of the property by November 30th. I asked her if she served the eviction notice on him, and she said that she had posted it to the front door to advise him that he was to be out of the property by the 30th.

Asked her if he was allowed to remain on the property after that at any point. She said that she gave him a week extra and advised him to be out on December 7th, because apparently someone called CPS on him over the living conditions in the house and the child that was living in the house, and he was upset and advised her that he needed an extra week to get out of the house.

RP 13-14; CP 9-10.

All the evidence outlined above is sufficient for this Court to find substantial evidence to support the challenged findings of fact.

**3. The Fourth Amendment And Article One, Section Seven, Protect Citizens From Warrantless Searches And Seizures By Police.**

The Washington State Constitution guarantees its citizens the right to not be disturbed in their private affairs except under the authority of the law. Const. art. I, § 7. People have a right to not have government unreasonably intrude on one's private affairs.

U.S. Const. amend IV. Article One, section seven, of the Washington State Constitution protects the privacy rights of the citizens of Washington State. The right to privacy in Washington State is broader than the right under the Fourth Amendment of the United States Constitution. Const. art. I, § 7; *State v. Eisfeldt*, 163 Wn.2d 628, 634-35, 185 P.3d 580 (2008). Washington State places a greater emphasis on privacy and recognizes individuals have a right to privacy with no express limitations. Const. art. I, § 7; *State v. Ladson*, 138 Wn.2d 343, 348, 979 P.2d 833 (1999). A warrantless “seizure is considered per se unconstitutional unless it falls within one of the exceptions to the warrant requirement.” *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004) (citation omitted).

A seizure becomes a custodial arrest when an officer restricts a person to the point where a reasonable person would believe he or she is under arrest. *State v. Belieu*, 112 Wn.2d 587, 599, 773 P.2d 46 (1989). The determination of a custodial arrest is an objective standard. *Belieu*, 112 Wn.2d at 773. A custodial arrest must be supported by probable cause that a crime has been committed by the arrestee. *State v. Lund*, 70 Wn. App. 437, 444, 853 P.2d 1379 (1993). A police officer has probable cause to make

a warrantless arrest when that “officer is aware of facts or circumstances, based on reasonably trustworthy information, sufficient to cause a reasonable officer to believe a crime has been committed.” *State v. Gaddy*, 152 Wn.2d 64, 70, 93 P.3d 872 (2004).

Separately, both the state and federal constitutions permit warrantless arrests when the officer has probable cause that a suspect who is in a public place has committed a misdemeanor in the officer’s presence. See RCW 10.31.100; *Carroll v. United States*, 267 U.S. 132, 156, 45 S. Ct. 280, 69 L. Ed. 543 (1925). If a police officer lacks probable cause to arrest a person, the arrest is constitutionally invalid rendering any evidence seized tainted and inadmissible. 3 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 5.1(a), at 4-5 (4th ed. 2004).

Probable cause is not proof beyond a reasonable doubt. *State v. Neeley*, 113 Wn. App. 100, 107, 52 P.3d 539 (2002). A reviewing “court’s probable cause determination is grounded on a practical, nontechnical review of the total facts of the case under consideration.” *Neeley*, 113 Wn. App. at 107 (citations omitted). If an arrest is supported by probable cause the arrest is not made unlawful because the officer subjectively relied upon a different

offense from the one in which probable cause actually existed. *State v. Huff*, 64 Wn. App. 641, 646, 826 P.2d 698 (1992).

**a. The citizen informants had personal knowledge and were credible.**

The *Aguilar-Spinelli* test<sup>1</sup> applies when an officer relies upon information received from an informant for probable cause to arrest a suspect. *State v. McCord*, 125 Wn. App. 888, 894, 106 P.3d 832 (2005). To satisfy the two prongs of the *Aguilar-Spinelli* test there must be facts to establish the (1) basis of knowledge and (2) reliability of the informant. *State v. Jackson*, 102 Wn.2d 432, 436-37, 688 P.2d 136 (1984). If the informant has personal, firsthand knowledge, that is sufficient to satisfy the basis of knowledge prong. *McCord*, 125 Wn. App. at 893.

In regards to veracity prong, it can be satisfied “by establishing the facts and circumstances surrounding the furnishing of the information support an inference the informant is telling the truth.” *Id.* It can also be established by a simple showing of the informant’s credibility. *Id.*

A citizen informant who is known to the police is presumptively reliable. *State v. Howerton*, 187 Wn. App. 357, 366,

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<sup>1</sup> See *Spinelli v. United States*, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed.2d 637 (1969); *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed.2d 723 (1964).

348 P.3d 781 (2015). This is in part because the known citizen informant is acting with the intent to aid police out of concern either for his or her own safety or concern for society and therefore is presumed to be more reliable than a compensated criminal informant. *Howerton*, 187 Wn. App. at 366-67.

If an informant's tip fails either prong, or both, than police still have the ability to corroborate their informant's information and establish probable cause through an independent police investigation. *Jackson*, 102 Wn.2d at 438. The investigation cannot simply verify publicly known information or innocuous facts to support the veracity of the informant, as this will fail. *Jackson*, 102 Wn.2d at 438. The independent investigation "should point to suspicious activity, probative indications of criminal activity along the lines suggested by the informant." *Id.*

The informants in this matter were not merely unknown informants, but the named citizen informants, and one was the actual victim of the crime. The information originally provided was not in relation to the allegation of any crime occurring there when the information was provided, but to inform officers regarding that no one was allowed to be at the property located at 512 St. Helens in Toledo after December 7, 2017. RP 9-10. It was the property

owner, Judith, who provided the information. RP 9-10. Megan Littleton, Judith's daughter, also confirmed no one was supposed to be at the residence. RP 13-4, 26.

Judith was able to give Officer Nelson a detailed timeline of her interaction with Haug surrounding the notification and eviction process. RP 13-14. Judith told Officer Nelson she served Haug with a notice of intent to evict on October 30<sup>th</sup>, advising Haug he had to be out of the property by November 30<sup>th</sup>. RP 13-14. Judith stated she had posted the eviction notice on the front door stating Haug had to be out the 30<sup>th</sup>. RP 14. Judith told Officer Nelson she told Haug he was allowed to remain on the property until December 7<sup>th</sup> because of something about CPS and Haug needed an extra week to get out of the house. RP 14.

Judith and Megan were candid with Officer Nelson regarding the problems they were having getting Haug to vacate the residence. RP 26. Officer Nelson was informed by Judith and Megan they had received a text message from Haug stating, he was not moving out and they were going to have to take him to court. RP 27-28.

The named citizen informant, who is also the victim, in this matter was reliable. The uncontroverted testimony was that Judith

owned the property. RP 13, 31. There was nothing presented about Judith or Megan regarding a criminal history. See RP. Judith did freely provide information with the police and was helpful, but the implication she did such in a disingenuous way to promote her own ill-gotten gains is not supported by the record. See Brief of Appellant 14. This is simply not the case.

Officer Nelson is the person who came up with the idea to charge Haug with Burglary. RP 30. Judith and Megan simply agreed they would be willing to press charges. RP 13. Judith and Megan were the ones who supplied Officer Nelson with the information that no person, which included Haug, was allowed on the property. Judith and Megan further provided the detailed information regarding their eviction process and communications with Haug. This is sufficient to find both prongs of the *Aguilar-Spinelli* test met, as the citizen informants' reliability and basis of knowledge have been sufficiently established. Further, this Court should affirm the trial court, and its conclusions of law 3 and 4.

**b. Officer Nelson had probable cause to arrest Haug for Residential Burglary, Criminal Trespass in the First Degree, and Criminal Trespass in the Second Degree.**

Officer Nelson arrested Haug for Residential Burglary on December 14, 2017 after investigating finding Haug at 512 St.

Helens on December 13, 2017. RP 10-17. On the 13<sup>th</sup>, Officer Nelson arrived at 512 St. Helens to find Haug walking out of the residence. RP 11. Officer Nelson inquired what Haug was doing at the residence and Haug stated he lived there. *Id.* Officer Nelson explained the circumstances to Haug that no one had been given permission to be on the property. *Id.* Haug refuted he had been served any eviction paperwork and Officer Nelson attempted to further investigate. *Id.*

There was another person at the residence, who was also told to exit. RP 12. Officer Nelson once again asked Haug what Haug was doing at the residence. RP 12. Haug told Officer Nelson had had come up to the residence to pick up a few things and then leave. RP 12.

Officer Nelson directly contacted the owner of the property to verify no one was permitted in the residence. RP 13-14. Officer Nelson also received detailed information about the property owner's eviction notification and process of Haug. *Id.*

Haug appears to assert Officer Nelson's confusion regarding if the matter was civil or criminal is evidence the matter was actually a landlord tenant dispute and nothing more. Brief of Appellant 14-16. Officer Nelson acknowledged the night of the incident he was

unsure if the matter was a civil matter or a criminal matter based upon Haug's assertion he had the right to be there and Officer Nelson's inability to speak to Judith. RP 11. This was alleviated after Officer Nelson spoke to the owner and reviewed the case with his supervisor. Haug appears to demand application of a higher standard than probable cause for Officer Nelson's arrest of Haug to be lawful. See Brief of Appellant 12-21. The question is, could the police reasonably believe Haug has committed the crime of Residential Burglary? See *State v. Chelsey*, 158 Wn. App. 36, 41, 239 P.3d 1160 (2012).

On December 14, 2018 Officer Nelson had probable cause to arrest Haug for Residential Burglary. RCW 9A.52.025; *Neeley*, 113 Wn. App. at 107. "A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle." RCW 9A.52.025(1). A review of the total facts, in a nontechnical and practical manner would support a finding that based on the circumstances and facts Officer Nelson was aware of at the time, based upon trustworthy information from Judith and Megan, it would be sufficient to cause a reasonable officer to

believe Haug had committed Residential Burglary. *Gaddy*, 152 Wn.2d at 70; *Neeley*, 113 Wn. App. at 107.

Officer Nelson had trustworthy information that no one was allowed at the property, therefore in the residence, of 512 St. Helens. Officer Nelson personally spoke to the property owner and confirmed Haug was not permitted on the property and had been provided the eviction notice. Officer Nelson witnessed Haug come from inside the residence, admittedly to take items from the property. This is sufficient for probable cause that Haug entered the residence of 512 St. Helens unlawfully, with the intent to commit a crime therein, theft.

Further, even if there is not sufficient probable cause for Residential Burglary, there was sufficient probable cause for Criminal Trespass in the First Degree and Criminal Trespass in the Second Degree, therefore, the arrest was still lawful. *Huff*, 64 Wn. App. at 646. "A person is guilty of criminal trespass in the first degree if he or she knowingly enters or remains unlawfully in a building." RCW 9A.52.070(1). While, to commit Criminal Trespass in the Second Degree, a person is guilty "if he or she knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree."

RCW 9A.52.080(1). These would be misdemeanors (or a gross misdemeanor) committed in the officer's presence, therefore, Officer Nelson may arrest Haug for his criminal conduct because Officer Nelson directly witnessed it. RCW 10.31.100.

The credible information Officer Nelson possessed was Haug had been informed and knew he was not allowed on the property. This is supported by Haug being at the property to just pick up a few items. Haug knowingly entered the building unlawfully, or at a minimum the premises. The trial court's finding there was probable cause to arrest Haug proper, its conclusions of law 2 and 5 were correct, and this Court should affirm.

**c. The subsequent search of Haug's property at the Lewis County Jail, which yielded the suboxone in Haug's wallet was a lawful inventory of his items pursuant to the booking process at the jail.**

Haug was lawfully arrested for Residential Burglary, as argued above, and transported by Officer Nelson to the Lewis County Jail. RP 17. Once at the jail, Haug was processed by jail staff as part of the booking process, including an inventory of his property. *Id.* Jail staff discovered an unopened pack of suboxone, a controlled substance, inside Haug's wallet. *Id.*

An inventory search may be made of a person who is booked into jail on a non-bailable offense. Inventories are not conducted for the purpose of discovering crime or evidence related to a crime. *State v. Houser*, 95 Wn.2d 143, 153, 148, 622 P.2d 1218 (1980). “The criteria governing the propriety of inventories is largely unrelated to the justification for other exceptions to the warrant requirement.” *Houser*, 95 Wn.2d at 154. There are three principle justifications for conducting an inventory; 1) to protect the owner’s property, 2) to protect the police against false claims of theft by the owner, and 3) to protect the police from potential danger. *State v. White*, 135 Wn.2d 761, 769-70, 958 P.2d 982 (1998).

The search the jail conducted of Haug protected it and Haug. It protected the jail from false claims of the theft by Haug. It also protected Haug by making a complete list of what was contained in his property. Unfortunately for Haug, what was contained in his property was an unlawfully possessed controlled substance, suboxone. The trial court correctly denied Haug’s motion to suppress and entered the conclusion of law 6. This Court should affirm the trial court’s conclusion of law, its denial of the motion to suppress, and Haug’s conviction.

**B. THE RECORD SUPPORTS HAUG'S ASSERTION HE IS INDIGENT PER SE, THEREFORE, THE STATE CONCEDES THE LEGAL FINANCIAL OBLIGATIONS WERE IMPROPERLY IMPOSED.**

Haug asserts he was indigent at the time of sentencing and therefore this Court must, pursuant to the 2018 legislative amendments to the legal financial obligation statutes enacted under Engrossed Second Substitute House Bill 1783, eliminate all discretionary legal financial obligations and the DNA fee. Brief of Appellant 21-24. While the legal financial obligation reforms eliminate interest, the DNA fee for previously convicted defendants who have had the sample already taken, and many other useful reforms in regards to eliminating fees for indigent defendants, all indigent defendants are not created equal. Laws of 2018, ch. 269 §§ 1, 2, 3, 4, 5, 17, 18, 20; RCW 10.01.160(3); RCW 10.101.010. Only indigent defendants who fall into the category of indigent “per se” status pursuant to RCW 10.01.160(3) and RCW 10.101.010(3)(a)-(c) qualify to eliminate all discretionary legal financial obligations. The record supports, and the State concedes, Haug meets the criteria of indigent “per se.”

The 2018 amendments apply to defendants whose appeals were pending — i.e., their cases were not yet final — when the amendment was enacted. *State v. Ramirez*, 191 Wn.2d 732, 747-

49, 426 P.3d 714 (2018). Therefore, Haug receives the benefit of the amendments that apply to him.

Pursuant to RCW 43.43.7541, effective June 7, 2018, and retroactively applied to Haug, the imposition of the DNA-collection fee is required “unless the state has previously collected the offender’s DNA as a result of a prior conviction.” The State’s records show Haug’s DNA was previously collected and is on file with the Washington State Patrol Crime Lab.<sup>2</sup> The State respectfully asks this Court to remand this case to the superior court to amend the judgment and sentence to strike the imposition of the \$100 DNA fee.

Haug is indigent because at the date of sentencing he had no income, no assets, and \$26,000 in debt. CP 26-28. Haug told the trial court he did “odd jobs” to support himself. RP 54. Per the statutory amendments of 2018, the filing fee is no longer a nondiscretionary legal financial obligation if a defendant qualifies for indigency under RCW 10.101.010(3)(a)-(c). RCW 36.18.020(h). Further, only if a defendant is indigent “per se” under RCW 10.101.010(3)(a)-(c) shall the sentencing court not order a

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<sup>2</sup> The State acknowledges the record on appeal is lacking this information, but the undersigned deputy prosecutor can attest if this case is remanded to strike the fee, this information would be put into the trial record.

defendant to pay costs. RCW 10.01.160(3).

(3) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level;

RCW 10.101.010(3)(a)-(c).

Therefore, the State concedes this Court should remand this matter back to the trial court to strike the DNA fee and the \$200 filing fee.

#### **IV. CONCLUSION**

The trial court properly denied Haug's motion to suppress the suboxone located in his wallet located during the inventory of his items at the Lewis County Jail after his lawful arrest. Officer Nelson had probable cause to arrest Haug for Residential Burglary, as he had first-hand information from reliable citizen informants.

Further, the trial court's findings of fact are supported by substantial evidence. The State concedes Haug was indigent at the time of sentencing and therefore the filing fee should be stricken. Further, Haug had previously had his DNA taken therefore the DNA fee should also be stricken from the judgment and sentence. This Court should affirm the trial court's ruling denying the motion to suppress and Haug's conviction.

RESPECTFULLY submitted this 18<sup>th</sup> day of December,  
2018.

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



by: \_\_\_\_\_  
SARA I. BEIGH, WSBA 35564  
Attorney for Plaintiff

# Appendix A

Findings of Fact and Conclusions of Law



FILED  
Lewis County Superior Court  
Clerk's Office

MAR 07 2018

Scott Tinney, Clerk

By \_\_\_\_\_, Deputy

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IN THE SUPERIOR COURT OF STATE OF WASHINGTON FOR LEWIS  
COUNTY

STATE OF WASHINGTON, Plaintiff, vs.	No: <sup>17</sup> <del>18</del> -1-00867-21
DAVID WILLIAM HAUG, Defendant	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW FOLLOWING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE.</b>

On February 14, 2018, a suppression hearing pursuant to CrR 3.6 was held in this Court before the Honorable J. Andrew Toynbee. The Defendant was present with his attorney of record, Donald Blair. The State was represented by Deputy Prosecuting Attorney Joel DeFazio. The Court considered the testimony of Officer Coleman Nelson of the Toledo Police Department and the Defendant. The Court made the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Officer Coleman Nelson is a police officer with the Toledo Police Department.
2. On December 7, 2017 Officer Nelson saw a notice on the whiteboard in the Toledo Police Department that stated no persons were allowed at 512 St.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW. Page 1 of 4

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Helens after December 7, 2017. That same day, Officer Nelson confirmed the information on the whiteboard with Toledo Police Chief John Brockmueller and was told the residence was in the process of being sold and not persons were allowed on the property.

3. On December 13, 2017 Officer Nelson went to the residence at 512 St. Helens Street in Toledo, Washington. David Haug, the Defendant, exited the residence through the front door and contacted Officer Nelson.
4. Officer Nelson was informed by Haug that Haug lived at the residence and was picking up his belongings.
5. Haug told Officer Nelson he never got an eviction notice. Haug told Officer Nelson he was told the notice was posted on the front door but he never saw it.
6. Officer Nelson attempted to contact the homeowner by phone, but he was unable to reach her. He left a voicemail asking her to call him back.
7. On December 14, 2017 Officer Nelson received a phone call from the homeowner's daughter, Megan Littleton, who advised that they were having problems getting Haug, who was a former tenant, out of the residence and they wanted to pursue burglary charges against him. The homeowner, Judy Rogers, who was with Ms. Littleton during the phone call, also told Officer Nelson she wanted to pursue charges.
8. Ms. Littleton told Officer Nelson she had gotten an eviction order for the property and she handed Haug an eviction letter that instructed Haug to

FINDINGS OF FACT,  
CONCLUSIONS OF LAW. Page 2 of 4

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vacate the premises the last day of November 2017. Ms. Littleton also told Officer Nelson she taped the eviction notice to the front door of the residence. Ms. Littleton told Officer Nelson she had agreed to give Haug until December 7, 2017 to move out.

9. Later that same day, Officer Nelson was able to locate Haug and placed him under arrest for burglary. Haug was searched and a spoon with an unknown type of residue was found in his back pocket.

10. Haug was transported to the Lewis County Jail and booked for the burglary charge, a felony.

11. During an inventory of Haug's belongings at the jail, suboxone strips were located in his wallet.

12. There was no evidence indicating whether Haug had the ability to post bail.

13. Haug had paid rent for December, along with paying the utility bills for December.

**CONCLUSIONS OF LAW**

1. The Court has jurisdiction over the Defendant and the present subject matter.
2. Officer Nelson relied on information that was provided by his department, a fellow officer, and by the homeowner and the homeowner's daughter. It was reasonable for Officer Nelson to rely on this information.
3. The homeowner and the homeowner's daughter are named citizens that came forward and cooperated. No evidence was provided about their criminal history or anything else that would undermine their credibility. As citizens who

FINDINGS OF FACT,  
CONCLUSIONS OF LAW. Page 3 of 4

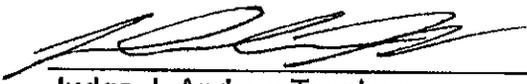
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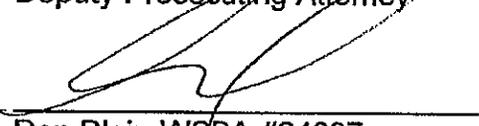
are named and came forward and cooperated and would be available to testify at a trial, there is a presumption that the information they provided is believable and reliable.

4. The source of information relied upon by Officer Nelson met both prongs of *Aguilar-Spinelli*.
5. There was probable cause for criminal trespass in the second degree, criminal trespass in the first degree, and because of the statutory inference of an intent to commit a crime when someone unlawfully enters a residence, residential burglary. Any one of these offenses provided a basis for arrest and would be a basis to search Haug's person.
6. The inventory search of the Defendant at the jail was lawful.
7. The Defendant's motion to suppress evidence is denied.

Dated this 7 day of March, 2018.

  
\_\_\_\_\_  
Judge J. Andrew Toynbee

  
\_\_\_\_\_  
Joel DeFazio, WSBA #48141  
Deputy Prosecuting Attorney

  
\_\_\_\_\_  
Don Blair, WSBA #24637  
Attorney for Defendant

**LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE**

**December 18, 2018 - 11:18 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51566-1  
**Appellate Court Case Title:** State of Washington, Respondent v. David W. Haug, Appellant  
**Superior Court Case Number:** 17-1-00867-7

**The following documents have been uploaded:**

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