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NO. 53412-6-II

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

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM WITKOWSKI,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Michael Schwartz, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

I. IF THIS COURT FINDS EITHER OF THE WARRANTS WERE INVALID, WITKOWSKI'S CONVICTIONS CANNOT STAND.

In his opening brief, appellant William Witkowski explained that the drug and gun evidence used against him ultimately derived from the illegal search of his home conducted on October 26. Brief of Appellant (BOA) at 9-21. He explained that the two warrants sequentially executed in this case were tainted by the illegality of that illegal search. BOA at 19-21. In response, the State concedes that Witkowski's gun and drug convictions depend on the validity of both search warrants. Brief of Respondent (BOR) at 13-14. This Court should accept this concession.

Unfortunately, the State incorrectly states that Witkowski's "only challenge to the second search warrant on appeal is the claim that the second search warrant was the fruit of an invalid first search." BOR at 14. This is not so. Appellant has also challenged the validity of the second search warrant on the ground no judge signed it until several days after the search occurred and, thus, the officers searched without authority of law. BOA 21-25. If this Court agrees that the search warrant was invalid on this ground, the

State's concession that Witkowski's convictions cannot stand still applies. The evidence must be suppressed.

II. THE STATE CORRECTLY CONCEDES THAT ZURFLUH'S TESTIMONY ESTABLISHES HE ENTERED WITKOWSKI'S PROPERTY WITH THE INTENT TO INSPECT THE POWER POLE.

In his opening brief, appellant asserts Pierce County Sheriff Deputy Martin Zurfluh entered Witkowski's curtilage for the purposes of talking to the residents and looking for physical evidence of utility theft. BOR at 13-14. Appellant acknowledges the trial court found credible Zurfluh's testimony that he was not on the property to conduct a search.¹ BOA at 14, n. 12 (citing Appendix A at 6). However, he explained that this finding mischaracterized Zurfluh's testimony and was unsupported by the record. BOA at 14, n. 12. Zurfluh unequivocally stated one of his purposes for entering the premises was to inspect the power pole for evidence of utility theft. 1RP 18-19, 44, 48-49, 61.

In its response, the State correctly concedes the record shows deputies entered Witkowski's property intent on both talking to the residents and inspecting the power pole for evidence of utility theft. BOR 18-19. The State explains the trial court's findings and

¹ The State mistakenly claims this is an unchallenged finding of fact. BOR at 15. However, Witkowski assigned error to this finding, and he explicitly argued that it was unsupported by the record. BOA at 1, 14, n. 12.

conclusions focused on the absence of intent to conduct a “general search.” However, the State concedes Zurfluh’s testimony clearly establishes his purposes for seeking entry included inspecting the power pole for evidence of utility theft. This concession is well-taken given the record. As such, Witkowski asks this Court to read the trial court’s findings in light of this concession.

Despite its concession, that State appears to argue this Court is inevitably bound by all credibility determinations made by the trial court, including the trial court’s finding that Zurfluh’s testimony that the deputies were not at the property to search was credible. BOR at 15; CP 45. However, as the State acknowledges (BOR at 18-19), this finding mischaracterizes the record as it pertains to the search for evidence of utility theft at the utility pole. See, 1RP 18-19, 44, 48-49, 61. As such, the trial court’s credibility finding mischaracterized the evidence and is unsupported by the record, so this Court is not bound by it. See, e.g., Henderson v. Berryhill, 312 F. Supp. 3d 364, 369 (W.D.N.Y. 2018) (2018) (explaining it was not bound by a trial court’s credibility determination that mischaracterized evidence and was unsupported by the record).

III. FERRIER WARNINGS WERE REQUIRED BUT WERE NEVER GIVEN BEFORE OFFICERS INSPECTED THE POWER POLE.

Ferrier warnings must be provided “when police officers conduct a knock and talk for the purpose of obtaining consent to search a home, and thereby avoid the necessity of obtaining a warrant.” State v. Mayfield, 192 Wn.2d 871, 877, n. 1, 434 P.3d 58 (2019).² In his opening brief, appellant asserts Ferrier warnings were required because Zurfluh conducted a knock-and-talk for the purpose of obtaining consent to search for evidence of utility theft at the power pole, thereby avoiding the necessity of obtaining a warrant. BOA at 15-17.

In its response, the State concedes officers conducted a knock-and-talk procedure to talk to Berven about the alleged utility theft. BOR at 19. It concedes Zurfluh also intended to enter the property for the purpose of inspecting the power pole for physical evidence without a warrant. BOR at 18-19. It also concedes no Ferrier warnings were given before officers inspected the power pole area. BOR 22. Yet, the State suggests Ferrier warnings were not necessary because officers did not “intrude into the home itself,” did not conduct the knock-and-talk to avoid getting a warrant,

² Ferrier challenges are reviewed de novo. State v. Budd, 185 Wn.2d 566, 571-73, 374 P.3d 137 (2016).

and did not seek to conduct an “unrestricted consensual” search. BOR at 20. For reasons set forth below, these arguments should be rejected.

The State suggests that Ferrier does not apply when officers enter the closed curtilage of a home. BOR at 20. The State cites no authority to support this proposition. Indeed, case law establishes the contrary. Closed curtilage is considered part of the home, and it receives the same heightened protections from unconstitutional searches. E.g., Florida v. Jardines, 569 U.S. 1, 6-7, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013); State v. Ross, 141 Wn.2d 304, 312, 4 P.3d 130 (2000). Hence, the locked gated at Witkowski’s home functioned the same as the door to his house, and Ferrier applied. See, BOA at 11-13 (discussing this in further detail).

The State also argues Ferrier warnings were not required because Zurfluh did not employ the knock-and-talk to avoid getting a search warrant. The facts simply do not support this. The State acknowledges officers did not have a warrant when they sought consent to enter Witkowski’s property. BOR 1. The State concedes one of Zurfluh’s purposes in conducting the knock-and-talk was to gain entry to the property for the purpose of inspecting

the power pole to search for evidence of utility theft. BOR 18-19. Thus, Zurfluh sought to conduct a search and thereby avoid the need to obtain a warrant. This is a classic situation in which Ferrier warnings are required.³ Mayfield, 192 Wn.2d at 877.

Finally, the State claims Ferrier warnings were not required because officers did not seek an “unrestricted consensual search” BOR 19. The gist of the State’s argument appears to be that if officers employ a knock-and-talk with mixed motives -- one of those motives being to talk to the residents to obtain information and the another to search for specific evidence in a specific area -- then Ferrier warnings are not required. To support this argument, the State relies on State v. Khounvichai, 149 Wn.2d 557, 69 P.3d 862 (2003). BR at 20-21. However, Khounvichai does not support the State’s position.

Khounvichai reiterates when police seek consent to enter a home with the intention of conducting a search for evidence, Ferrier warnings are required before they may enter the property.

³ The State also posits that the fact Zurfluh obtained a search warrant on October 29, three days after the knock-and-talk, demonstrates he did not attempt to avoid the warrant requirement on October 26. This makes no sense. The fact that Zurfluh eventually obtained a warrant on October 29 does not erase the fact he avoided getting one October 26. On that day, Zurfluh showed up at Witkowski’s residence warrantless, and he used a knock-and- talk to gain access to the premises where he intended to look for evidence of power theft.

Khounvichai, 149 Wn.2d at 564. In Khounvichai, two officers were responding to a malicious mischief report, and knocked on the door of the address provided by the complainant. Id. at 559-60. When a woman answered, they asked her whether the suspect was at home. Id. She told the officers that the suspect was her grandson and was at home. Id. The officers then asked if they could enter to talk to him. Id. She answered yes and waved the officers deeper into the house to talk with her grandson. Id. Once in the house, a series of events occurred, and officer's ultimately found evidence supporting drug charges against Khounvichai. Id.

On appeal, Khounvichai argued the evidence should have been suppressed on the ground the officers were required to give Ferrier warnings before entering the home. Id. at 561. The Supreme Court rejected this argument. Id. at 562-66. It explained the Ferrier rule was adopted out of a concern that citizens may be unaware that a warrant to search is required or, if aware, may be too intimidated by an officer's presence in the home to deny, limit, or revoke their consent. Id. at 564. It emphasized that Ferrier warnings target searches and not merely contacts between the police and individuals. Id. It reasoned "when police seek to conduct a warrantless search of the home, the Ferrier warnings

achieve their purpose; when police officers seek entry to question a resident, the home is merely incidental to the purpose.” Id.

The Supreme Court ultimately held no Ferrier warnings were required in Khounvichai because officers did not enter the house with the intent to seek evidence of a crime. The Court focused on the fact that officers were at the house merely to gain information only by talking to the occupant, not to search for evidence. Id. at 564- 65. With this distinction laid out, it explained “we do not find it prudent or necessary to require that police officers warn citizens of the right to refuse consent to search when they request entry into a home merely to question or gain information from an occupant.” Id. at 566 (emphasis added).

Here, Zurfluh did not merely seek to question or gain information from the occupants. He also sought to look at the power pole to search for evidence of utility theft. Thus, Khounvichai is distinguishable. If the purpose of Ferrier is to be achieved, Ferrier warnings must be given whenever officers use a knock-and-talk for the purposes of entering the home (or closed curtilage) to search for evidence. This is so regardless of whether the officer also has other motives.

In sum, Ferrier warnings were required here before officers entered the property to inspect the utility to pole for evidence of utility theft. No such warnings were given. Thus, officers did not have valid consent to enter the property.

IV. THE PLAIN VIEW DOCTRINE DOES NOT APPLY BECAUSE OFFICERS WERE NOT STANDING IN A PLACE WHERE THEY WERE LAWFULLY PERMITTED TO BE WHEN THEY VIEWED THE POWER POLE AND SURROUNDING AREA.

The State suggests the plain view doctrine applies here. BOR 23-24. For the plain view doctrine to apply, officers must be standing in a place they have a lawful right to be. In this case, the power pole could not be seen when standing at the gate due to an obstructing building. 3RP 550. Officers had to go deeper into the property to inspect it. 1RP 22, 49, 151; 3RP 280, 745. Thus, for the plain view doctrine apply here, the record needs to show that any consent Berven gave included consent to move away from the gate and deeper into the property for the purpose of inspecting the power pole.

The State posits that the scope of Berven's consent to enter the property to discuss the alleged utility theft impliedly included consent to go and look at the power pole for evidence. BOR at 1, 25. If the State's logic is accepted, however, then this Court must

conclude Zurfluh knew he was seeking permission to do more than just question Berven when he asked for consent to enter to discuss because it was logical that Zurfluh was also asking to inspect the power pole as part of the discussion. As such, Ferrier warnings were required before entering the property.

Alternatively, if this Court finds Zurfluh only asked for consent to enter the property for the limited purpose of discussing the alleged power theft with Berven (1RP 20), the scope of Berven's implied consent went no further than the area where this purpose could have been accomplished (i.e. just inside the gate).⁴ A consensual search may go no further than the limits for which the consent was given. State v. Reichenbach, 153 Wn.2d 126, 133, 101 P.3d 80 (2004). It may "go no further than the limits given in the consent, and any implied limitations may reduce the scope in duration, area, or intensity." Id. (emphasis added). The scope of an implied consent is "limited not only to a particular area but also to a specific purpose." Jardines, 569 U.S. at 9 (emphasis added); see also, State v. Cotten, 75 Wn. App. 669, 679, 879 P.2d 971 (1994) (discussing limitations on the scope of consent).

⁴ This is also discussed in appellant's opening brief. BOA at 17-19.

The State claims Witkowski cannot show the scope of Berven's consent excluded going to the power pole because Berven never expressly placed any limitation upon officers as they entered the curtilage.⁵ BOR 24. The State is wrong. Since this case involves implied consent, the scope of the consent was limited by the specific purpose Zurfluh stated when he asked for consent and limited to the area in which this purpose could be accomplished. Zurfluh asked Berven only for her consent to discuss the alleged power theft. 1RP 20-22. This could have been accomplished just inside the gate. As such, the scope of Berven's implied consent to enter the property to discuss the matter went no further than the area inside the gate – a location in which the power pole could not be seen in plain sight.

The State suggests Berven silently consented to broadening the scope of her consent to include inspecting the power pole when she walked with the officers as they headed to the power pole. Yet, Zurfluh never expressly asked Berven to consent to moving their conversation from the gate entry to the area with the power pole. He also never asked Berven to expand the scope of

⁵ The State's argument here underscores the importance of Ferrier warnings. Such warnings ensure the scope of consent is carefully identified so that officer do not exceed it.

her consent to include the specific purpose of inspecting the power pole. At most, this record established Berven acquiesced as the officers moved beyond the gate and deeper into the property for the purpose to inspect the utility pole. However, mere acquiescence does not constitute consent to search for evidence in one's home. State v. Schultz, 170 Wn.2d 746, 757, 248 P.3d 484, 489 (2011). As such, officers exceeded the scope of any implied consent Berven gave and were not in a lawful position when moved beyond the front gate and crossed the property to inspect the utility pole.

V. THE RELEVANT FACTS PRESENTED IN THE SEARCH WARRANT AFFIDAVIT WERE AUGMENTED BY THE ILLEGAL ENTRY AND SEARCH.

The State suggests that the information in the search warrant affidavit that was obtained while officers were illegally on the property on October 26 did not taint the subsequent issuance of the search warrant. BOR at 26-28. However, without the facts and circumstances from October 26, the information in the affidavit was too stale to support probable cause.

“A search warrant may issue only upon a determination of probable cause, based upon facts and circumstances sufficient to establish a reasonable inference that criminal activity is occurring or

that contraband exists at a certain location.” State v. Cole, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). Some length of time naturally passes between observations of suspected criminal activity and the presentation of an affidavit to an issuing magistrate or judge. State v. Lyons, 174 Wn.2d 354, 360, 275 P.3d 314 (2012). But when the passage of time is so prolonged that it is no longer probable that a search will uncover evidence of criminal activity, the information underlying the affidavit is deemed stale. Id.

Information is stale for purposes of probable cause if the facts and circumstances in the affidavit “do not 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, 98 P.3d 1199 (2004). The facts or circumstances must support the reasonable probability that the criminal activity is occurring at or about the time the warrant was issued. State v. Higby, 26 Wn. App. 457, 460, 613 P.2d 1192 (1980). “Staleness ... involves not only duration but the probability that the items sought in connection with the suspected criminal activity will be on the premises at the time of the search.” State v. Perez, 92 Wn. App. 1, 9, 963 P.2d 881 (1998).

Without the facts and circumstances from the illegal search on October 26, the facts alleged in the search warrant affidavit did not support a reasonable probability that the stolen power meter remained on the property when the warrant was issued on October 27. The remaining information in the warrant established only that a power company employee saw a stolen power meter hooked up to Witkowski's power pole on October 5, 2015. When the employee returned that same day the meter had been removed. The affidavit provided no information as to relevant activity at the household or power usage on the stolen meter for the period between October 5 and 27.

Commonsense indicates the power meter was removed on October 5 because an occupant saw the power company employee discovered the stolen meter on the property, so they disconnected the stolen power meter and got rid of it. Commonsense does not support a notion that the useless meter was kept on the property for several weeks afterward. Thus, the information on from October 5 alone did not establish that it was probable that the stolen power meter was still on the property on October 27.

The added weight from the information officers obtained during their illegal enter on October 26 augmented the likelihood

that stolen property (including the meter) was at the property. Zurfluh needed the information discovered October 26 to freshen up the stale information. As such, the issuance of the first search warranted was tainted by the illegal entry and search conducted on October 26.

VI. WITKOWSKI'S CHALLENGE TO THE SEARCH BASED ON LAW ENFORCEMENT'S FAILURE TO PROCURE A SIGNED WRITTEN WARRANT IS REVIEWABLE UNDER RAP 2.5(a).

In his opening brief, Witkowski asserts his right against unreasonable searches under Washington Constitution Article. 1, section 7 was violated when police failed to procure a signed written warrant before conducting a search of his home for drugs and firearms.⁶ BOA at 21-25. In response, the State argues this issue was waived and review is not proper under RAP 2.5(a)(3). BOR at 29-35. As explained below, review is appropriate under RAP 2.5.

Manifest errors affecting a constitutional right may be raised for the first time on appeal. RAP 2.5(a)(3); State v. A.M., 194 Wn.2d 33, 38, 448 P.3d 35 (2019). Review under RAP 2.5(a)(3) depends on the answers to two questions: "(1) Has the party

⁶ This issue pertains only to the second search warrant.

claiming error shown the error is truly of a constitutional magnitude, and if so, (2) has the party demonstrated that the error is manifest?” State v. Kalebaugh, 183 Wn.2d 578, 583, 355 P.3d 253 (2015). Both questions are answered in the affirmative here.

The error claimed by Witkowski is truly of a constitutional magnitude. Witkowski’s claim arises under article I, section 7, which provides: “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Witkowski asserts that without a signed written warrant, the officers were acting without authority of law when they expanded their search to encompass drugs and firearms. BOA at 21-25 (citing RCW 10.79.040(1)). As such, this claim implicates a constitutional right. See, Seattle v. Long, ___ Wn.App.2d ___, ___ P.3d ___ (2020) (recognizing Article 1, section 7 challenges are of constitutional magnitude).

Additionally, Witkowski has made a showing that the error was manifest. A manifest error is one that is practical and identifiable. A.M., 194 Wn.2d at 38. This “requires only that the defendant make a plausible showing that the error resulted in actual prejudice.” Id. at 39 (citations omitted). To make such a showing, the trial record need be sufficient to determine the merits

of the claim. State v. O'Hara, 167 Wn.2d 91, 99, 217 P.3d 756 (2009) (citations omitted). If the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown, and the error is not manifest. Id.

To establish an identifiable and practical error here, Witkowski need only make a plausible showing that there was not a signed written search warrant at the time the officers executed it. This establishes actual prejudice because without a signature affixed as required under CrR 2.3(c), the second warrant was not constitutionally valid at the time it was executed.⁷ See, BOA at 21-24; see also, State v. Villela, 194 Wn.2d 451, 458, 450 P.3d 170 (2019) (stating the “authority of law” required by article I, section 7 is a “valid” warrant unless a recognized exception applies).

The record here shows there was not a signed written warrant at any time during the search. It establishes the warrant was authorized telephonically and executed on October 29, 2015. 1 RP 75. However, the warrant itself states the judge did not sign it

⁷ As explained in Witkowski's opening brief (BOA at 21-24), officers must be acting under authority of law when searching someone's home. Wash Const. Art.1, §7. Officers are not acting under authority of law when they search a home ostensibly under the authority of a search warrant, but there is no signed written warrant. RCW 10.79.040(1); State v. Ettenhofer, 119 Wn. App. 300, 304-09, 79 P.3d 478 (2003). To be valid, the warrant must comply with CrR 2.3(c). Id.

until November 2, 2015. See, BOA at Appendix B (attaching a copy of the warrant).

In its response, the State suggests that Witkowski cannot show a manifest error because the factual record is “undeveloped.” BOR at 31. This is not so.

The State argues the error is not manifest because the record leaves open the theoretical possibility that someone may have affixed the judge’s signature per his authorization. BOR at 30-31. To support this, it points to the language found in CrR 2.3(c), which states in relevant part:

If the court finds that probable cause for the issuance of a warrant exists, it shall issue a warrant or direct an individual whom it authorizes for such purpose to affix the court's signature to a warrant identifying the property or person and naming or describing the person, place or thing to be searched. The court's authorization may be communicated by any reliable means.

The State suggests, since the rule provides that authorization may be communicated by any reliable means, a warrant need not have a signature affixed at the time it is executed. BOR at 30-31. It claims that if the judge simply tells the officer “he will sign the warrant” in the future this is sufficient to meet the signature requirements found in CrR 2.3(c). BOR 31-32.

The State misinterprets CrR 2.3(c)'s language and its meaning. The rule sets forth that a judge must either issue a warrant himself or direct an individual whom he or she authorizes to affix the court's signature. CrR 2.3(c). Authorization to affix the judge's signature may be communicated by any reliable means. However, this does not change the fact that officers must have a signed, written warrant when executing it. Ettenhofer, 119 Wn. App. at 305 (holding that a valid warrant requires the affixation of the authorizing court's signature on a written warrant).

Next, the State hypothesizes that perhaps the judge authorized someone to affix his signature, but the record is just not developed enough to show this. There are two obvious problems with this hypothesis. First, the plain language within the warrant belies the notion that there was a signature affixed upon it on October 29. The warrant specifically states, while the search warrant was telephonically authorized on October 29, it was not signed until November 2. Had there been a signature affixed on October 29, there would have been no need for the judge to sign the warrant on November 2.

Second, any notion that the judge's signature was affixed to the warrant at the time it was executed is contradicted by officer

Zurfluh's testimony as to the standard procedure for that jurisdiction. He explained the process as follows: an officer calls the judge, the officer reads the warrant affidavit, the judge approves the warrant, the warrant is served, and later the officer has the judge sign the warrant when it is filed. 1RP 74-75. Missing from this is the important step of procuring a signature before the search. Based on this record, the error is identifiable and Witkowski has made a plausible showing that the error resulted in actual prejudice. BOA at 21-25. As such review under is appropriate under RAP 2.5(a)(3).

Should this Court disagree, Witkowski asks this Court to exercise its discretion under RAP 2.5(a) as recognized in State v. Blazina, 182 Wn.2d 827, 834, 344 P.3d 660 (2015). Blazina recognizes that RAP 2.5(a) grants appellate courts discretion to accept review of claimed errors not appealed as a matter of right. Id. (citing State v. Russell, 171 Wn.2d 118, 122, 249 P.3d 604 (2011)). Discretionary review is important here given the degree of intrusion into private affairs at issue. As the Washington Supreme Court recognized well over a half century ago:

The rights of individuals as guaranteed by our constitution, are not to be lightly considered. The framers of our constitutions, Federal and state,

realized that laws affecting the liberty of men must be safeguarded since the wisdom of the ages has taught that unrestrained official conduct in respect to depriving men of their liberties would soon amount to a total loss of those liberties. Where procedure relating to arrest and search is provided, it must be strictly followed.

State v. Miles, 29 Wn.2d 921, 926, 190 P.2d 740, 743 (1948)
(emphasis added).

The record here shows that unless this Court provides some authoritative guidance, law enforcement in this jurisdiction will continue to search the homes of Washington citizens without first procuring signed written warrants in contradiction to CrR 2.3(c). Zurfluh testified officers routinely conduct searches of citizen's homes and private affairs without first procuring signed written warrants. The State's response indicates it is under the impression CrR 2.3's requirements are satisfied if a judge simply says he will sign the warrant at some time in the future. Given this, review is necessary to clarify that a judge's signature is required on a search warrant before law enforcement may execute it.

Next, the State incorrectly claims that Ettenhofer is no longer good law, citing State v. Olliver, 178 Wn.2d 813, 312 P.3d 1 (2013). BOR at 33. This is not so. In Olliver, the defendant challenged the validity of the search warrant based on alleged noncompliance with

CrR 2.3(d). The rule requires that police provide a copy of the valid warrant and a receipt for the property. Olliver said police did not comply because they gave him a written copy of the warrant at the end of the search rather than before the search. The Supreme Court found no error because the rule does not specify when during the search a copy of the warrant must be provided. Olliver, 178 Wn.2d at 851-52.

Unlike the defendant in Ettenhofer, Olliver was presented with a written warrant which was presumably signed.⁸ Olliver, 178 Wn.2d at 820-21. Thus, the Supreme Court was never presented with the question at issue in Ettenhofer: whether a search is constitutionally valid when conducted without a signed written warrant at the time of the search. Ettenhofer, 119 Wn. App. at 305-09. As such, Olliver did not abrogate this Court's holding in Ettenhofer.

Finally, the State argues, even if review is granted, Witkowski cannot show prejudice because CrR 2.3(c) is only a ministerial rule. However, this Court has held otherwise. It concluded in Ettenhofer that Washington's constitution provides

⁸ Because the issue raised in Olliver did not turn on whether there was a signature, the Supreme Court did not specify whether the warrant was signed when setting out the facts. Olliver, 178 Wn.2d at 820-21, 851-52.

that a person's private affairs may not be intruded upon by law enforcement without a signed written warrant or some other exception.⁹ Ettenhofer, 119 Wn. App. at 302, 308. The failure to do so here was not merely a ministerial mistake – it was a violation of Witkowski's constitutional rights under our State constitution. Hence, the remedy is to suppress the evidence obtained. Id. at 309.

B. CONCLUSION

For reasons stated above and those stated in appellant's opening brief, Witkowski respectfully asks this court to reverse his convictions.

DATED this 11th day of May, 2020.

Respectfully submitted,

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⁹ Notably, the case relied upon by the State analyzed the issue of prejudice only in the context of the Fourth Amendment. State v. Temple, 170 Wn App. 156, 162, 285 P.3d 149, 152 (2012).

NIELSEN KOCH P.L.L.C.

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