32406-1-III

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Court of Appeals
Division III
State of Washington

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOSE MARTINEZ II,

Appellant.

DIRECT APPEAL
FROM THE SUPERIOR COURT
OF WALLA WALLA COUNTY

RESPONDENT'S BRIEF

Respectfully submitted:

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TABLE OF CONTENTS

Page No.

I. **IDENTITY OF RESPONDENT** 1

II. **RELIEF REQUESTED** 1

III. **ISSUES** 1

IV. **STATEMENT OF THE CASE** 2

V. **ARGUMENT** 6

A. The Defendant Cannot Challenge the Law of the Case 6

B. Undisputed Findings Are Verities on Appeal 10

C. Credibility Determinations Will Not Be Disturbed on Review 14

D. The Issuing Magistrate Did Not Abuse His Discretion in Determining the Credibility of the Informant 14

VI. **CONCLUSION** 21

TABLE OF AUTHORITIES

State Cases

Page No.

Buck Mountain Owners' Ass'n, v. Prestwich, 174 Wn. App. 702, 308 P.3d 644 (2013) 14

Escamilla v. Tri–City Metro Drug Task Force, 100 Wn.App. 742, 999 P.2d 625 (2000) 17

Folsom v. County of Spokane, 111 Wn.2d 256, 759 P.2d 1196 (1988) 7

Greene v. Rothschild, 68 Wn.2d 1, 414 P.2d 1013 (1966) 8

Med. Consultants Northwest, Inc. v. State, 89 Wn.App. 39, 947 P.2d 784 (1997) 11

State v. Jansen, 15 Wn. App. 348, 549 P.2d 32 (1976) 4, 6, 7, 9, 10

State v. Lane, 56 Wn. App. 286, 786 P.2d 277 (1989) 14

State v. Levy, 156 Wn.2d 709, 132 P.3d 1076 (2006) 12

State v. Casto, 39 Wn. App. 229, 692 P.2d 890 (1984) 2, 14

State v. Chenoweth, 160 Wn. 2d 454, 158 P.3d 595 (2007) 16, 17

State v. Martinez, 161 Wn. App. 436, 253 P.3d 445 (2011) 2

State v. Neth, 165 Wn.2d 177, 196 P.3d 658 (2008) 7, 15

State v. O'Neill, 148 Wn.2d 564, 62 P.3d 489 (2003) 11

State v. Steenerson, 38 Wn. App. 722, 688 P.2d 544 (1984) 18, 20

State v. Taylor, 74 Wn. App. 111, 875 P.2d 53 (1994) 6

State v. Thein, 138 Wn.2d 133, 977 P.2d 582 (1999) 16

Tamosaitis v. Bechtel Nat., Inc., 182 Wn. App. 241,
327 P.3d 1309 (2014) 10

United States Supreme Court Cases

Page No.

Best v. District of Columbia, 291 U.S. 411, 54 S.Ct. 487,
78 L.Ed. 882 (1934) 11

Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317,
76 L.Ed.2d 527 (1983) 17

Padilla v. Kentucky, 559 U.S. 356, 130 S.Ct. 1473,
176 L.Ed.2d 284 (2010) 2

Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584,
21 L.Ed.2d 637 (1969) 16

Federal Case

United States v. Ludwig, 641 F.3d 1243 (10th Cir. 2011) 17

Court Rule

RAP 2.5.....7, 8

I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

Respondent asserts no error occurred in the trial and conviction of the Appellant.

III. ISSUES

1. May the Defendant challenge the Unpublished Opinion for the first time after remand, where the Opinion relied on good case law, and where the Defendant can show no change in law since the issuance of the Opinion?
2. May the Defendant challenge "undisputed" findings?
3. May the Defendant challenge the trial court's credibility determinations?
4. Did the magistrate abuse his discretion in issuing the warrant where it was alleged that the three controlled buys involved the Defendant's home in a short period of time and where the magistrate and the sergeant shared the same understanding of the meaning of the term "controlled buy"?

IV. STATEMENT OF THE CASE

In 2008, the Defendant Jose Martinez II was charged with three VUCSA counts with school zone enhancements: possessing cocaine with intent to deliver and two counts of delivery by complicity. CP 11-16, 47-48. He pled guilty. CP 65-66.

On appeal, the Defendant challenged his guilty plea under *Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010). CP 62-69. The conviction was reversed and remanded for trial. CP 62-69; *See State v. Martinez*, 161 Wn. App. 436, 253 P.3d 445 (2011).

A jury convicted the Defendant of two VUCSA counts with school zone enhancements. CP 72-73.

In his second appeal, the Defendant argued inter alia that he received ineffective assistance of counsel, because his second attorney did not argue the suppression motion (challenging the search warrant) filed by his original counsel. CP 85-97. On this issue, the facts were "unsettled." CP 90. The Court of Appeals noted that a properly conducted controlled buy makes an informant a credible source of information. CP 90 (citing *State v. Casto*, 39 Wn. App. 229, 234-35, 692 P.2d 890 (1984)). But the court felt that the informant's reliability could not be determined on this

record, because the warrant did not describe how the controlled buys were conducted. CP 90-91. The opinion indicated that an issuing magistrate could take judicial notice of facts based on his experience and knowledge, and this could be established if the magistrate testified at the suppression hearing. CP 91 (citing *State v. Jansen*, 15 Wn. App. 348, 350-51, 549 P.2d 32, *review denied* 87 Wn.2d 1015 (1976)). The Court of Appeals affirmed the convictions, but directed the trial court to hold a suppression hearing. CP 91, 97.

On remand, the Defendant challenged the Court of Appeals' ruling permitting the issuing magistrate to testify. CP 99. ("The Court should not allow a magistrate to expound on facts taken on 'judicial notice' without a proper recording of the facts relied upon.") "In essence, it appears Division Three is asking this Court whether it is permissible to go outside the four corners of the affidavit and allow the Magistrate to testify as to his/her understanding of the term 'controlled buy' to establish probable cause to cure an inadequate affidavit." CP 103. "There is nothing in CrR 2.3(c) that indicates that a court can take 'judicial notice' of special facts without preserving for the record what those special facts include." CP 104. "[T]he issuing magistrate would not be allowed to testify as to his taking judicial notice of any facts without a recorded or

transcribed summary of the facts relied upon." CP 105.

The prosecutor relied upon the authority of the unpublished opinion and *State v. Jansen*, 15 Wn. App. 348, 350-51, 549 P.2d 32, *review denied* 87 Wn.2d 1015 (1976) referenced therein. CP 29.

At the suppression hearing, the prosecutor explained that the particular judge and officer used the term "controlled buy" "if not on a daily basis [] at least a regular basis, and know what that term means, it is a term of art." RP 16.

The issuing magistrate Judge John Knowlton testified that he became a lawyer in 1973, and did a substantial amount of criminal defense work. RP 7. He has reviewed warrant applications as a judge since 1982. RP 5, 7. He has seen the term "controlled buy" in hundreds of warrants. RP 5-6. Most of the applications for search warrants would include several paragraphs describing the process of a controlled buy. RP 7. He understood and understands the term to mean that police search a cooperating informant, provide the informant with money, and surveil the informant "to the maximum extent possible" until police are able to search the informant again for drugs and money. RP 6, 8. *See also* CP 162-63 (undisputed fact #4).

The affiant in the affidavit supporting the warrant, Sergeant Gary

Bolster, testified that he has been employed with the sheriff's office since 1990 and has been a detective sergeant since 2006 with a specialty of working in narcotics. RP 20. He has been writing affidavits for search warrants since 1993, mainly around controlled buys. RP 21. Initially he would define the term "controlled buy" in affidavits for search warrants, but transitioned away from this practice, because the meaning of the term has been constant for "each and every" case. RP 21-23. He explained that in a controlled buy, police meet the informant, search the informant to make sure the informant is not carrying either money or drugs, give the informant money to purchase narcotics, sometimes equip the informant with an audio recording device, surveil the informant to and from the purchase location, and search the informant again for money or drugs. RP 22. *See also* CP 162 (undisputed fact #3).

Defense counsel acknowledged that there were no disputed facts. CP 161-64. The trial court found the evidence was admissible after determining that the judge who signed the warrant and the sergeant who wrote the affidavit for the warrant had a shared understanding of the term "controlled buy." CP 161-64. The Defendant appeals from this ruling. CP 165.

V. ARGUMENT

A. THE DEFENDANT CANNOT CHALLENGE THE LAW OF THE CASE.

The apparent question raised by the Defendant below and in this appeal is: what was the purpose of remand? The Defendant argues that Court of Appeals remanded for the superior court to decide a question of law, namely whether the trial court may take testimony on the affidavit. CP 100, 103; Appellant's Opening Brief (AOB) at 1,3. Of course, the Court of Appeals did not remand on a purely legal question. The remand was for the lower court to settle the record and, based on new facts, decide the suppression issue. CP 90 ("the facts are unsettled"); CP 91 ("hold a suppression hearing"). And this is what it did.

The Defendant hangs his hat on language describing "conflicting authority" between what the unpublished opinion describes as "dicta" in one case and what is clearly an on-point holding in another case. CP 91-92, *citing State v. Taylor*, 74 Wn. App. 111, 122, 875 P.2d 53 (1994) and *State v. Jansen*, 15 Wn. App. 348, 549 P.2d 32, *review denied*, 87 Wn.2d 1015 (1976). The point the Court of Appeals made is that while recent dicta in *Taylor* might suggest there are no exceptions to the four corners rule, *State v. Jansen* proves otherwise. There the *Jansen* court said the

trial court should have permitted the State to present evidence that the term "controlled buy" is a term of art which both the magistrate and sergeant understand. Washington follows the rule which permits inquiry into information upon which the magistrate relied. CP 146.

The Defendant has argued that if the unpublished opinion means what it says, then the Court should reconsider. Appellant's Response to State's Motion on the Merits at 3, *citing* RAP 2.5(c)(2). He argues that *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008) conflicts with *State v. Jansen*, 15 Wn. App. 348, 350-51, 549 P.2d 32, *review denied* 87 Wn.2d 1015 (1976), and asks that the Court decline to follow *Jansen*. AOB at 12-13.

First, such a challenge (to the unpublished decision of the Court of Appeals) should have been brought in a motion for reconsideration or in a petition for review to the Supreme Court. But the Defendant did not petition for review. Therefore, the unpublished opinion (CP 87-97) is the law of the case. Where there has been a determination of the applicable law in a prior appeal, the law of the case doctrine ordinarily precludes re-deciding the same legal issues in a subsequent appeal. *Folsom v. County of Spokane*, 111 Wn.2d 256, 263-64, 759 P.2d 1196 (1988). This Court has already decided the proper methods to be employed in a suppression

hearing and remanded for that purpose. The Defendant's challenge is not a proper topic for appeal.

The law of the case can be authoritatively overruled if the holding is clearly erroneous and if its application works a manifest injustice on one party with no corresponding injustice to the other party. *Greene v. Rothschild*, 68 Wn.2d 1, 10, 414 P.2d 1013 (1966); *see also* RAP 2.5(c)(2) (where justice would best be served and where the law has changed). This standard is not met. No new or conflicting decision has issued since December 2013 when the unpublished opinion was filed. The unpublished opinion relied upon a published case which is good law. It is, therefore, not clearly erroneous. The term of art, "controlled buy," is well understood by magistrates and has not evolved. That criminal justice professionals should depend upon terms of art does not work a manifest injustice on the Defendant. However, failure to recognize the shared understanding of this term of art so as to reverse a hard fought conviction would work a manifest injustice on the State.

Second, *Neth* does not conflict with *Jansen.* Defendant's pinpoint cite at *State v. Neth*, 165 Wn.2d at 182 is a mere summary recitation of standards. There was no need to address this particular standard in greater depth, because the *Neth* case did not regard any issue regarding

information proffered that would have been outside the four corners of the affidavit.

The unpublished opinion in our case relied on *State v. Jansen*, 15 Wn. App. 348, 549 P.2d 32, *review denied* 87 Wn.2d 1015 (1976). It is a case that is directly on point. There as here, the defendant Jansen challenged the warrant by challenging the reliability of the informant. *State v. Jansen*, 15 Wn. App. at 350. The state responded that the trial judge could have taken judicial notice of the commonly understood meaning of the term "controlled buy" in order to assess the reliability of the informant. *Id.* The state offered to call the magistrate to prove that the term had a commonly understood meaning. *Id.*

> ... The trial judge concluded, however, that he could not permit such testimony. We disagree.
>
> While there is authority that the courts cannot go beyond the four corners of the affidavit, *United State v. Damitz*, 495 F.2d 50 (9th Cir. 1974), Washington follows the rule which permits inquiry into the sworn recorded or summarized testimony, if any, upon which the issuing magistrate relied.
>
> ....
>
> An inquiry beyond the affidavit or affidavits permits making use of matters within the field of judicial notice and includes a consideration of the experience and special knowledge of the magistrate and of the police officers who applied for the search warrant. *Cf. Dean v. Maryland*, 205 Md. 274, 107 A.2d 88 (1954).
>
> We conclude that the trial judge should have permitted the State to make its offer of proof that

> "controlled buy" is a term of art understood by both the magistrate and the officer and that, in the context of the affidavit, convincingly demonstrated the reliability of the informant.

State v. Jansen, 15 Wn. App. at 350-51.

Based on this authority, the Court of Appeals remanded to determine an "unresolved factual question that first must be answered by the trial court." CP 91.

Unlike *State v. Jansen*, *State v. Neth* is simply not on point. There is no credible argument to be made that the Court should decline to follow the reasoned and on-point analysis of *Jansen* in favor of *Neth* where the issue does not arise and no analysis is made.

B. UNDISPUTED FINDINGS ARE VERITIES ON APPEAL.

The Defendant assigned error to every "undisputed" fact and finding except for the very first. AOB at 2-3. The only argument on these assignments of error is offered in footnotes. AOB at 15 n.1, 16 n.2. Parties are advised to make their argument in the body of their brief, not their footnotes. *Tamosaitis v. Bechtel Nat., Inc.*, 182 Wn. App. 241, 327 P.3d 1309, 1313 n.2 (2014), *citing State v. Harris,* 164 Wn. App. 377, 389 n. 7, 263 P.3d 1276 (2011); *State v. N.E.,* 70 Wn. App. 602, 606 n. 3, 854

P.2d 672 (1993); *State v. Johnson,* 69 Wn. App. 189, 194 n. 4, 847 P.2d 960 (1993).

The Defendant challenges "undisputed facts." AOB at 2-3. Because the Defendant did not call any witnesses, the State's witnesses' testimony is uncontroverted. There are no competing statements to resolve. Because defense signed off on these findings as being undisputed, they are akin to stipulated findings, only held to a lesser standard. The findings in a suppression hearing are not elements of the crime such that a waiver would automatically result in a conviction and such that the Defendant's explicit waiver would be required. What the Defendant has explicitly agreed to on the record cannot be challenged now. "The power of the court to act upon facts conceded by counsel is as plain as its power to act upon evidence produced." *Best v. District of Columbia,* 291 U.S. 411, 415, 54 S.Ct. 487, 489, 78 L.Ed. 882 (1934) (citing *Oscanyan v. Arms Co.,* 103 U.S. 261, 263, 13 Otto 261, 26. L.Ed. 539 (U.S.N.Y.1880)).

They are verities on appeal. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003) (undisputed facts are verities on appeal); *Med. Consultants Northwest, Inc. v. State,* 89 Wn.App. 39, 44, 947 P.2d 784 (1997) (quoting *State ex rel. Carroll v. Gatter,* 43 Wn.2d 153, 155, 260

P.2d 360 (1953)), *review denied,* 136 Wn.2d 1002 (1998) ("when a case is submitted to the trial court upon stipulated facts, neither party will be heard to suggest on appeal that the facts were other than as stipulated. Relief from a stipulation may be had only in the trial court.").

Had the Defendant not signed off on these findings as undisputed, the challenge would fail on the merits. Findings of fact are reviewed for substantial evidence, i.e. evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006) (quoting *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999)).

The Defendant claims that the record does not support the finding that in a typical controlled buy, it is the informant rather than a police officer who arranges the purchase. AOB at 15, n.1. Both the judge and sergeant described that in a controlled buy, an *informant* makes the purchase. RP 6, 22. The buy is controlled by police observation and procedures. But it is the informant who meets with the target to complete the drug purchase. The Defendant argues that this does not mean that the informant *arranged* his purchase. Common sense tells us that of course the informant arranged the purchase. That is the whole point of using an informant. If police were sufficiently undercover to *arrange* the purchase,

they would also *make* the purchase. There would be no need for an informant at all. As in any common purchase, the party who receives the merchandise is the person who asked to purchase it. This is more certainly the case in an illicit drug sale, where the addition of more middle men would only make sellers more suspicious. A fair-minded, rational person would be persuaded on this evidence.

The Defendant claims that the record does not support the finding that the affidavit described the location of the controlled buy. AOB at 16, n.2. In fact, the affidavit describes that Lucky went down the alley to get cocaine from what police "believed [] was 737 N. 8th Ave." CP 151, l. 20. Other subsequent buys which occurred close in time and involved the same people were determined to involve this same residence. RP 151-52. In the second buy, Lucky sold the informant cocaine after retrieving it from 737 N. 8th Ave. CP 151. During this transaction, Angel joined Lucky and the informant and was privy to the drug sale. CP 152. Angel offered to sell the informant drugs at a later time. CP 152. In the third buy, the informant bought cocaine from Angel after Angel retrieved it from the Defendant. CP 152. Police observed the Defendant in a hand to hand exchange with Angel in the backyard of the Defendant's home, which is the 737 address. CP 152. The subsequent two sales confirm the

address in the first.

C. CREDIBILITY DETERMINATIONS WILL NOT BE DISTURBED ON REVIEW.

The Defendant challenges credibility determinations. AOB at 2-3. The superior court judge found the witnesses credible. CP 163, finding #1. A reviewing court defers to the finder of fact on credibility determinations and will not disturb those findings on appeal. *Buck Mountain Owners' Ass'n, v. Prestwich*, 174 Wn. App. 702, 713, 720, 308 P.3d 644 (2013). The challenge is frivolous.

D. THE ISSUING MAGISTRATE DID NOT ABUSE HIS DISCRETION IN DETERMINING THE CREDIBILITY OF THE INFORMANT.

The Defendant argues that veracity prong of the *Aguilar-Spinelli* test is not met. AOB at 14. However, the Defendant also acknowledges that "[u]nder proper circumstances, a properly conducted controlled buy can establish an informant's veracity. *State v. Lane*, 56 Wn. App. 286, 293, 786 P.2d 277 (1989); *see also State v. Casto*, 39 Wn. App. 229, 234-35, 692 P.2d 890 (1984)." AOB at 11. Because the acts described in the affidavit were observed by police in the context of controlled buys, the informant's veracity is not at issue. Everything at issue was observed by

police. The informant made no statements. Under these circumstances, the controlled buys establish the veracity prong.

The Defendant's challenge ignores the standard of review. While probable cause is a legal question, the review of a magistrate's decision to issue a search warrant is only for abuse of discretion, giving "great deference" to the issuing magistrate. *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). The affidavit should be evaluated in a commonsense manner, rather than hyper-technically. *Id.*

> A search warrant is entitled to a presumption of validity. *State v. Wolken,* 103 Wash.2d 823, 827–28, 700 P.2d 319 (1985) (recognizing that a defendant is entitled to go beyond the face of the search warrant affidavits only in limited circumstances). The decision to issue a search warrant is highly discretionary. *State v. Cole,* 128 Wash.2d 262, 286, 906 P.2d 925 (1995). We generally give great deference to the magistrate's determination of probable cause and view the supporting affidavit for a search warrant in a commonsensical manner rather than hypertechnically. *State v. Young,* 123 Wash.2d 173, 195, 867 P.2d 593 (1994); *see also State v. Vickers,* 148 Wash.2d 91, 109, 59 P.3d 58 (2002) (incorrect date in warrant affidavit was an immaterial scrivener's error); *In re Pers. Restraints of Yim,* 139 Wash.2d 581, 989 P.2d 512 (1999) (failure to expressly state that suspect did not possess an explosive's license, an essential element of the crime, did not invalidate warrant). Accordingly, we generally resolve doubts concerning the existence of probable cause in favor of the validity of the search warrant. *Vickers,* 148 Wash.2d at 108–09, 59 P.3d 58. Shifting focus from the reasonableness of the magistrate's probable cause determination to the reasonableness of the affiant's investigation would permit

> an end run around the deliberately deferential standard of review that a reviewing court applies to search warrants.

State v. Chenoweth, 160 Wn. 2d 454, 477, 158 P.3d 595 (2007). This lenient standard is appropriate because police officers, not lawyers, draft affidavits in a crucial phase of an investigation under the urgent necessity of obtaining evidence before it is removed or destroyed. *State v. Chenoweth*, 160 Wn.2d at 477, *quoting State v. Patterson*, 80 Wn.2d 49, 57-58, 515 P.2d 496 (1973).

"Probable cause exists where there are facts and circumstances sufficient to establish a reasonable ***inference*** that the defendant is involved in criminal activity and that evidence of the criminal activity can be found at the place to be searched." *State v. Thein,* 138 Wn.2d 133, 140, 977 P.2d 582 (1999) (emphasis added). The state's burden in proving probable cause does not even rise to the level of a prima facie showing.

> [W]e do not retreat from the established propositions that only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause; that affidavits of probable cause are tested by much less rigorous standards than those governing the admissibility of evidence at trial; that in judging probable cause issuing magistrates are not to be confined by niggardly limitations or by restrictions on the use of their common sense; and that their determination of probable cause should be paid great deference by reviewing courts.

Spinelli v. United States, 393 U.S. 410, 419, 89 S.Ct. 584, 590, 21 L.Ed.2d

637 (1969) (citations omitted). Circumstantial evidence is sufficient to establish probable cause. *Escamilla v. Tri–City Metro Drug Task Force*, 100 Wn.App. 742, 751, 999 P.2d 625, 631 (2000).

Probable cause only requires "a fair probability that contraband or evidence of a crime will be found," not certainty or even a preponderance of the evidence. *Illinois v. Gates*, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983). "A tolerance for factual inaccuracy is inherent to the concept to probable cause." *State v. Chenoweth*, 160 Wn.2d at 475.

> [P]robable cause doesn't require an officer's suspicion about the presence of contraband to be "more likely true than false." *Texas v. Brown,* 460 U.S. 730, 742, 103 S.Ct. 1535, 75 L.Ed.2d 502 (1983); *United States v. Padilla,* 819 F.2d 952, 962 (10th Cir.1987); *see also United States v. Garcia,* 179 F.3d 265, 269 (5th Cir.1999) ("[T]he requisite 'fair probability' is something more than a bare suspicion, but need not reach the fifty percent mark."); *United States v. Limares,* 269 F.3d 794, 798 (7th Cir.2001) (" '[P]robable cause' is something less than a preponderance."); *United States v. Donnelly,* 475 F.3d 946, 954 (8th Cir.2007) ("Probable cause ... does not require ... evidence demonstrating that it is more likely than not that the suspect committed a crime.") (quotations omitted).

United States v. Ludwig, 641 F.3d 1243, 1252 (10th Cir.), *cert. denied*, 132 S. Ct. 306 (2011).

The Defendant argues that one cannot tell from the affidavit

whether the same informant is used in each controlled buy described or why the informant was present. AOB at 14. This is incorrect. The informant was clearly present to purchase drugs. The affidavit refers to the informant as the "SOI" or "source of intelligence/information." The language in the affidavit uses the definite article "the" before "SOI," indicating a single, constant informant. CP 149-56. Sometimes affidavits refer to an informant as a "CI" or "criminal informant" or "confidential informant." The term "SOI," as compared with "CI," suggests or connotes that the informant has no criminal history.

The Defendant argues that under *State v. Steenerson*, 38 Wn. App. 722, 688 P.2d 544 (1984), one should be able to tell from the affidavit whether it was the informant or the police who arranged the controlled buy. AOB at 14-15. This is a misreading of *State v. Steenerson*. The specific language in that case discusses whether an informant's ***statements*** are reliable ***if made while not under supervision***. *State v. Steenerson*, 38 Wn. App. at 726 ("the fact that the informant was given money and sent by the police to a particular place to meet a suspect and returned with contraband, all while under close surveillance, may suggest cooperation of the informant but by itself indicates very little about the informant's credibility as a reporter of facts while not under supervision.") In this

case, there were no informant statements, much less any statements made while not under supervision. Therefore, the question has no relevance here. Nor is there any "lack of veracity" to "cure." AOB at 15.

The Defendant argues that the sellers, Luciano "Lucky" Castorena and Angel Gonzalez, had no association with the Defendant's property. AOB at 15. This argument is not consistent with the facts in the affidavit. Both sellers retrieved the drugs from the Defendant's home immediately before each transaction. On February 20, 2008, the seller Castorena disappeared in the direction of 737 N. 8th Avenue before returning with cocaine to sell. CP 151-52. The Defendant and his wife owned and resided at the residence on 737 N 8th Avenue. CP 153. On February 28, 2008, the seller Castorena went into the Defendant's house and again returned with the cocaine to sell. CP 151-52. At that time, Castorena appeared to be associated with Gonzalez who offered to sell the informant methamphetamine. CP 152-53. And on April 17, 2008, the seller Gonzalez went to the Defendant's backyard where he spoke with an older gentleman who went into the residence, came back outside, and made a hand to hand exchange with Gonzalez before Gonzalez returned to the informant with cocaine. CP 152.

The Defendant argues that because police were not certain of the

house Castorena entered in the first controlled buy, that this buy "does not further a belief that contraband would be discovered on Mr. Martinez's property." AOB at 17. This argument disregards the standard of review both as to commonsense evaluations and consideration of "all the circumstances set forth in the affidavit." *State v. Steenerson*, 38 Wn. App. at 725. The court does not review this one buy in isolation, but together with the other buys and information in the affidavit. Police observed three controlled buys close in time and location. Each required the seller retreat to the same residence to collect the drugs. The first two buys were from a single buyer within eight days of each other with police confirming in the second buy that the residence was the Defendant's address. The third buy was related to the second, because the second seller approached the informant together with the first seller. This second seller then obtained the drugs directly from the Defendant in his backyard.

The Defendant argues that police only observed the third controlled buy. AOB at 16. This is not a commonsense evaluation of the affidavit. A controlled buy is defined in part by "continuous [police] surveillance of the informant from the time he/she left the police to meet with the drug dealer and then return[ed] to the police." CP 162. Every act described is one that occurs outside, i.e. where police could observe.

Therefore, the commonsense interpretation of the affidavit is that every act described therein is an act which police observed. That is the meaning of a controlled buy.

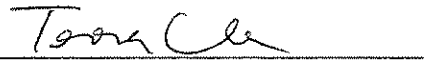
The issuing magistrate did not abuse his discretion in issuing the warrant and the superior court did not abuse its discretion in so finding.

VI. CONCLUSION

Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction.

DATED: November 7, 2014.

Respectfully submitted:



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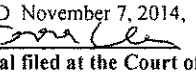
Kristina M. Nichols <wa.appeals@gmail.com> Jose Martinez, WDOC # 326692 Tri-Cities Work Release 524 W. Bruneau Kennewick, WA 99336	A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED November 7, 2014, Pasco, WA  **Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201**