

No. 34154-2

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

STATE OF WASHINGTON, Respondent

v.

JON SOUZA, Appellant

APPEAL FROM THE SUPERIOR COURT
OF FERRY COUNTY

THE HONORABLE JUDGE PATRICK MONASMITH

THE HONORABLE JUDGE ALLEN C. NIELSON

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

A. The trial court erred when it entered finding of fact 1.4 in pertinent part:

Detective Culp activated his emergency lights and increased speed to overtake the defendant's vehicle. The detective soon contacted the defendant after the pick up sped into the hospital parking lot and made a quick stop. Detective Culp approached the vehicle and observed only one occupant, namely the defendant. Drawing his service weapon, Detective Culp ordered the defendant to show his hands. CP 129.

B. The trial court erred when it entered Conclusion of Law 2.3: that although the arresting officer did not have probable cause or an articulable suspicion that drugs were in the vehicle, because the dog "sniff" was in a public area, was not intrusive it provided adequate probable cause for issuance of a search warrant. CP 57.

C. The trial court erred when it entered Conclusion of Law 2.3 that the positive sit response by the K-9 was adequate probable cause for issuance of a search warrant. CP 57.

D. The trial court erred when it entered Conclusion of Law A: That Canine Isko had been trained to alert to marijuana, heroin,

methamphetamine, crack cocaine and ecstasy, but even though he could not distinguish between marijuana and other drugs, the likelihood the alert was to an illegal drug was supported by other relevant facts in the affidavit for a search warrant. (CP 113).

- E. The trial court erred when it denied the defendant's motion to suppress items recovered from the glove box of the vehicle.

ISSUES RELATED TO ASSIGNMENTS OF ERROR

- A. Is a police officer's use of a trained K-9 to sniff for controlled substances inside a vehicle a violation of Washington State Constitutional Article 1, § 7?
- B. Were the facts as stated in the affidavit for the search warrant sufficient to establish probable cause to issue a warrant to search the vehicle?
- C. Did the trial court err when it denied the motion to suppress the items removed from the defendant's vehicle?

II. STATEMENT OF FACTS

In the early evening of August 8, 2015, Jon Souza drove his pick up truck in Republic, Washington. RP 59;83. Parked in his patrol car and using his radar, Sgt. Culp ("Culp") clocked Mr. Souza

driving 35 mph in a 25 mph zone. RP 84. Culp did not activate his patrol lights because there was no safe place for vehicles to pull off the roadway. RP 85. Instead, he pulled out to follow Mr. Souza after another car, about two to three car lengths behind Mr. Souza, passed by him. RP 85. When he reached the crest of the hill, he did not see Mr. Souza's truck. RP 85. He took a detour and saw Mr. Souza's truck turning onto another street. RP 85. Culp activated his emergency lights. RP 85. Culp testified that Mr. Souza promptly drove into a hospital parking lot and stopped¹. RP 86. Although the officer had not turned on his emergency lights for most of the time and was some distance behind Mr. Souza, he suspected that Mr. Souza had tried to get away from him. He pulled in behind him to conduct a traffic stop for speeding. RP 86.

Without drawing his service weapon², Culp ordered Mr. Souza to put his hands out through the window. RP 86. He handcuffed him, frisked him for weapons and set him on the push bar of the patrol car. RP 87.

¹ The trial court entered finding of fact 1.4: that Mr. Souza "sped" into the hospital parking lot and stopped quickly. This finding is substantiated by the record.

² The trial court entered finding of fact 1.4: that Culp drew his service weapon, but this is not substantiated by the record.

With Mr. Souza's permission, Culp located Mr. Souza's license in his backpack on the passenger seat. RP 88. Mr. Souza said his license was suspended and he did not have insurance. He had purchased the truck earlier in the spring, but had no registration. RP 88.

Prior to reading Mr. Souza his *Miranda* rights Culp asked him why he was "trying to get away from me." RP 53;87. Mr. Souza said he did not try to get away. CP 24. Culp asked if there were any drugs in the truck. RP 54;61. Culp initially explained that he always asks about drugs because:

I always ask – if there's any drugs in the car. If they're – if they have marijuana in the car then my dog's trained on marijuana, so – would be no reason to get a search warrant for the car. If he did alert.

If –if I don't ask if there's marijuana – car, then the dog alerts that – that doesn't mean there's illegal drugs in the car, or any drugs.If somebody tells me there's no drugs in the car and my dog alerts, then – pretty safe to say that there's illegal drugs in the car."

RP 53-54.

However, on cross examination Culp admitted that he does not ask about drugs on every single traffic stop, nor does he walk his canine, Isko, around every vehicle he stops. RP 60. He did not explain why he would investigate for drugs on some traffic stops but not others. RP 60.

Mr. Souza said there were no drugs in the truck. CP 124. The court later suppressed that statement because the question went beyond the scope of the traffic stop. CP 125.

Culp arrested Mr. Souza for driving with a suspended license in the third degree, and failure to transfer title. Then he advised him of his *Miranda* rights. RP 89-90; CP 124.

Officer Marcusson arrived on the scene. He conducted a second search of Mr. Souza's person, and placed him in his patrol car. RP 90. At Culp's direction, Marcusson detained Souza while Culp walked Isko around Mr. Souza's truck. RP 90.

Isko gave a "sit response" or alert at the driver's side door. RP 90. Culp had the vehicle towed and applied for a search warrant. RP 90.

With the above information, the search warrant affidavit averred Canine Isko was trained to detect even miniscule amounts of marijuana, heroin, methamphetamine, crack cocaine, cocaine and ecstasy. CP 59-60. The dog was limited as he could not communicate which of the substances he detected. CP 59-60. The dog had been certified prior to the effective date of I-502³ and

³ I-502 was effective in July 2014 and legalized possession of limited amounts of recreational marijuana. RCW

would alert to marijuana, regardless of amount. CP 59. The officer included Mr. Souza's statement there were no drugs in the car. CP 60.

After he received authorization, Culp searched the vehicle. CP 63. On the opposite side of the vehicle where the dog had alerted, inside the glove compartment, Culp found a box with three pipes commonly associated with smoking methamphetamine. RP 91;96. There was also a small Ziploc baggie with what was later determined to be methamphetamine. RP 91; 127.

Mr. Souza was charged with possession of a controlled substance other than marijuana RCW 69.50.4013; use of drug paraphernalia, RCW 69.50.412(1); driving with a suspended license in the third degree RCW 46.20.342(1)(c); and failure to transfer title within 45 days after delivery RCW 46.12.650(7). CP 16-17.

Suppression Hearings

Prior to the bench trial, the court held two suppression of evidence hearings. RP 6-33; 34-46. In the first suppression hearing the question to be resolved was whether using a trained canine dog to sniff around a vehicle amounted to an unlawful search. RP 16-17;21.

In making its ruling, the court noted “While appellate courts of this state have accepted review of cases to further clarify the law regarding a dog sniff, that has yet to occur.” CP 57. The court concluded that although the arresting officer did not have an articulable suspicion about controlled substances being present in Mr. Souza’s vehicle, the sniff was done in public, and was not nearly as intrusive as the search incident to arrest in *Valdez*. CP 57.

At the second suppression hearing, held six weeks later before a different judge, the motion for suppression was based on the insufficiency of the canine sniff to support the issuance of the search warrant. RP 34. The court upheld the warrant. RP 78.

THE COURT: Well, counsel, I -- I will deny the motion to suppress on this interesting question. It’s a -- a new one, a breaking one, or Ms. Loginsky [staff attorney for Washington Association of Prosecuting Attorneys] wouldn’t be dealing with it. And so he -- on this occasion Mr. Souza, his behavior is as Ms. Burke describes it here, evasive, I would say, and he -- when he -- was stopped he said no to any drugs, yet the dog alerted to something. I think that qualifies as some kind of -- potentially evasive or guilty knowledge on the part of Mr. Souza.

But more to the point, here, the legalization of marijuana is a partial legalization. And so there are still many other kinds of possession, large amounts or unregulated amounts or -- by young people, as Ms. Burke pointed out, that are criminal. And so that would account for part of the sniffs of marijuana by a drug dog -- namely illegal possession.

But even more important than all that is in this society at this time people drive and they're on methamphetamine, they're on heroin, they're on all kinds of drugs that these dogs -- presumably that's what they alert on, are the -- the drugs that are being used. And so, statistically, if you will, if you want to look at probable cause that way, there's a good chance, a likelihood that it's either illegal marijuana or another drug, a hard drug of some kind, that the dog alerted to.

And that to me means that the dog's sniff is still legitimate evidence to support probable cause, together with these other couple or two or three things here that would suggest that some guilty knowledge, evasive driving, what-not--.
RP 46-47. (Emphasis added).

The matter proceeded to a bench trial. RP 80. The court dismissed the failure to transfer vehicle title for insufficient evidence. CP 127-132. The court found Mr. Souza guilty of possession of a controlled substance, possession of drug paraphernalia, and driving with a suspended license. Mr. Souza makes this timely appeal. CP 143.

III. ARGUMENT

A. The Use of A Canine To Sniff For Drugs Constitutes A Warrantless Search That Violates Washington State Constitution Article 1 § 7.

Using a canine to sniff for drugs constitutes a warrantless search, implicating Article 1, § 7 for two reasons: first, it employs a means of obtaining private information which is not available through the senses of law enforcement officers and second, it

allows law enforcement to intrude into areas constitutionally protected from searches absent a warrant.

Article 1, § 7 of the Washington Constitution protects a citizen's home and his private affairs from warrantless searches: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Where police unreasonably intrude into a person's private affairs and conduct a search, Article 1 §7 is implicated, requiring the search be done under a warrant, or fall within one of the carefully drawn exceptions to the warrant requirement. *State v. Young*, 123 Wn.2d 173, 181, 867 P.2d 593 (1994).

1. Means Employed and Nature of the Property Analysis

Under Washington law, it is *not* a "search" if a police officer, lawfully present at the vantage point, can detect something by utilization of one or more of *his* senses. *State v. Young*, 123 Wn.2d at 182 (quoting 1 W.LaFare, *Search and Seizure* § 2.2, at 240 (1978)(emphasis added). In *Young*, the Court reasoned that the intrusiveness of the means used and the nature of the property observed were factors in considering whether the surveillance constituted a search and whether it was unconstitutionally intrusive. *Young*, 123 Wn.2d at 182-183.

There, police lawfully positioned themselves on the street and simply directed an infrared thermal device at a home to detect heat distribution patterns. *Id.* at 183. The device enabled officers to “see” inside the walls of the home. The Court found the means used, which went well beyond what the natural senses would yield, was a particularly intrusive means of observation that exceeded established surveillance limits. *Id.* Similarly, the Court found the surveillance unconstitutionally intruded into an area that Young had not left exposed to public view, the inside of his home. *Id.* at 183. The information acquired through the infrared thermal device included information “to which a person is entitled to keep from disclosure absent a warrant” and fell within the “private affairs” language of Const. art. 1, § 7. *Id.* at 184.

The *Dearman* Court extended *Young*. There, using a trained narcotics dog to detect whether marijuana was growing in a defendant’s garage constituted a search and necessitated a search warrant. *State v. Dearman*, 92 Wn.App. 630, 634-35, 962 P.2d 850 (1998). Similar to the infrared thermal device, the narcotics dog was used to expose information “that could not have been obtained without the ‘device’ and which officers were unable to detect by using one or more of their senses.” *Id.* at 635. Because of the

means used and the nature of the property, a search warrant was necessary.

The issue of nature of the property and use of the canine sniff has been addressed in numerous older appellate cases. In *Stanphill*, the Court found the canine sniff did not violate the defendant's privacy rights, where the nature of the property was a package at a federal post office. *State v. Stanphill*, 53 Wn.App. 623, 631, 769 P.2d 861 (1989). In *Boyce*, a warrant was not required for a canine sniff of a safety deposit box at a bank. *State v. Boyce*, 44 Wn.App. 724, 730, 723 P.2d 28 (1986). And in *Wolohan*, the Court held that whether a canine sniff was a search would depend on the circumstances. *State v. Wolohan*, 23 Wn.App. 813, 820, 598 P.2d 421 (1979). There, the defendant had no reasonable expectation of privacy in a package that was sent by common carrier. *Id.* at 729. In each instance, the defendant voluntarily placed the property into the public arena, with no reasonable expectation of privacy once it left his control.

In the most recent decision on canine sniff searches, Court of Appeals Division I held that a canine sniff of air outside a vehicle was not a search. *State v. Hartzell*, 153 Wn.App. 137, 221 P.3d 928 (2009). There, police wanted to find the gun used to shoot a bullet

through the passenger door of a car. The canine jumped up on the car door and sniffed the air coming from the open window. The dog went about 100 yards away and located the handgun near the shoulder of the road. *Id.* at 927.

The Court concluded that the defendant had no reasonable expectation of privacy in the air coming from the open window: the defendant was not in the car at the time and the sniff was only minimally intrusive. *Id.* at 930.

Hartzell overlooks both prongs of the analysis laid out in *Young* and *Dearman*. First, the means used was not an officer's senses. Rather, as in *Dearman*, the canine's ability to smell served as an enhancement device to expose information not available to the officers through ordinary means.

Second, the nature of the property prong is unclear in the analysis. It is possible the justification in *Hartzell* was that the officers were not looking for a weapon *inside* of the car, but used the canine to track the weapon somewhere *outside* of the car. The Washington Supreme Court clarified *Hartzell* in so far as concluding the canine sniff of air outside of a car window is not a search because a suspect has no reasonable expectation of privacy in air outside the car window. *State v. Mecham*, -- P.3d --, 186 Wn.2d

128, 2016 WL 4736809 *9 (2016).

The trial court here wrestled with the *Hartzell* ruling:

THE COURT: Are you suggesting that... --that that drug dog can go anywhere, at any time, on any car, in any place, in a public place, and if it alerts on it, then the officer can go get a warrant. Because it's not a search.

RP 10.

The trial court's concern is well taken and was addressed in

Wolohan:

While the issue is not before us, we entertain grave doubts whether the above rationale would permit a similar search in a public waiting room or of carry-on luggage, parcels or other effects on or near the person. Obviously, such a search would invade a person's legitimate expectation of privacy.

Wolohan, 23 Wn.App. at 820 n.5.

Where an individual has not relinquished control of his property into the public domain, such as a safety deposit box, or a UPS package, the individual maintains a legitimate expectation of privacy in his possessions.

Hartzell also overlooks the long held "right to be free from unreasonable governmental intrusion into one's 'private affairs' [which] encompasses automobiles and their contents." *State v. Parker*, 139 Wn.2d 486, 494, 987 P.2d 73 (1999); *State v. Gibbons*, 118 Wash.171, 187-88, 203 P.390 (1922). The constitutional guarantee of freedom from governmental intrusion into one's private affairs protects the reasonable expectation of privacy of any

individual who moves his vehicle anywhere outside of his garage.

Mr. Souza had a constitutional right to be free from unreasonable governmental intrusion into his automobile and its contents. The officer could not enter and search the vehicle without a warrant, consent, or an exigent circumstance. So instead, he used the canine to obtain information about the contents of the vehicle that was otherwise legally unavailable to him. Using the canine goes beyond mere surveillance: as in using thermal infrared devices in *Young*, it is an active effort to obtain information about the contents of the vehicle. Mr. Souza did not open his private affairs to the public when he drove his truck out of his garage nor did he expose the contents of his vehicle to public view.

2. The Use of The Canine Exposes Private and Legal Information to Law Enforcement.

The United States Supreme Court held that using a thermal-imaging device to detect a marijuana grow in a home constituted an unlawful search. *Kyllo v. United States*, 533 U.S. 27, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001). The Court later wrote “Critical to that decision was the fact that the device was capable of detecting lawful activity- in that case, intimate details in a home, such as ‘at what hour each night the lady of the house takes her daily sauna

and bath.” *Illinois v. Caballes*, 543 U.S . 405, 409, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005). The Court was concerned that information involving lawful activity would remain private. *Id.* It held that a dog sniff conducted during a lawful traffic stop, that revealed no information other than the presence of contraband did not violate the Fourth Amendment. *Id.* at 410.

Similarly, the *Wolohan* Court wrote “A dog ‘s search is limited solely to illegal substances... nothing of an innocent but private nature and nothing of an incriminating nature other than the narcotics being sought can be discovered through the dog’s reaction to the odor of the narcotics.” *Wolohan*, 23 Wn.App. at 820 (internal citation omitted).

However, with the enactment of I-502, simple possession of one ounce or less of marijuana by an adult has been decriminalized. The affidavit in this case was very clear that Isko had been trained to detect marijuana, methamphetamine, heroin, crack cocaine and cocaine and ecstasy. Isko could not communicate which substance he was alerting to, nor could he communicate how much of the substance was present.

The result is that a canine search is no longer solely limited to contraband. This is the exact concern expressed in *Caballes*

and *Wolohan*. Innocent and lawful activity no longer remains private. The potential for narcotics dogs to expose non-contraband items invades the privacy rights of Washington citizens and should be a search under Article 1 § 7. The evidence should have been suppressed.

B. The Affidavit Was Insufficient To Establish Probable Cause For A Search Warrant

A judge may issue a search warrant only upon a showing of probable cause. *State v. Nelson*, 152 Wn.App. 755, 772, 219 P.3d 100 (2009). Probable cause requires a basis in fact and reasonably trustworthy information sufficient to establish an inference that the defendant is probably involved in criminal activity and evidence of the crime can be found at the place to be searched. *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). Probable cause must be based on more than suspicion and belief. *Thein*, 138 Wn.2d at 140.

In determining whether probable cause for issuance of a search warrant is established, the appellate court reviews the same evidence presented to the trial court and reviews the legal conclusion *de novo*. *State v. Chamberlin*, 161 Wn.2d 30, 41, 162 P.3d 389 (2007).

Here, the evidence presented could not establish probable cause for three reasons: First, the dog was trained to alert to both legal and illegal substances; Second, the affidavit provided no information about the accuracy of the dog's alerts or information about ongoing training; Third, the remaining information could not establish probable cause.

Isko was trained to alert to both legal and illegal substances. The dog could not communicate which type it was alerting to, and could not communicate whether the legal substance was outside the legal limit. Any information gleaned from the "alert" could not, by its nature be sufficient to establish an inference that the defendant was probably involved in criminal activity. The trial court had no basis from which to conclude:

But even more important than all that is in this society at this time people drive and they're on methamphetamine, they're on heroin, they're on all kinds of drugs that these dogs -- presumably that's what they alert on, are the -- the drugs that are being used. And so, statistically, if you will, if you want to look at probable cause that way, there's a good chance, a likelihood that it's either illegal marijuana or another drug, a hard drug of some kind, that the dog alerted to.

(emphasis added).

Second, the affidavit stated the *officer* had received 240 hours of Narcotics K9 handler training and that both he and the animal were certified as a narcotics K9 team. However, the affidavit offered no information about the length of time the dog had been in service, no information about ongoing maintenance training, no record of the actual rate of successful finds or false alerts. The affidavit provided insufficient information for the court to determine whether the dog's alleged alert was even reliable.

In a dissent opinion, citing to numerous federal cases, Justice Souter wrote:

The infallible dog, however, is a creature of legal fiction. Although the Supreme Court of Illinois did not get into the sniffing averages of drug dogs, their supposed infallibility is belied by judicial opinions describing well-trained animals sniffing and alerting with less than perfect accuracy, whether owing to errors by their handlers, the limitations of the dogs themselves, or even the pervasive contamination of currency by cocaine.

Caballes, 543 U.S. at 411-12.

In *Neth*, the trial court excluded the dog sniff from the probable cause determination because the affidavit did not contain enough information to establish the dog's reliability. *State v. Neth*, 165 Wn.2d 177, 181, 196 P.3d 658 (2008). There, as here, absent information about the reliability of the dog's alerts, the affidavit did not and could not provide reasonably trustworthy information that

would amount to probable cause. As in *Neth*, the dog sniff should have been stricken from the probable cause determination.

Finally, if the sniff were removed from the affidavit, the remaining facts do not support a finding of probable cause. An affidavit is evaluated in a commonsense manner. *State v. Jackson*, 150 Wn.2d 251, 265, 76 P.3d 217 (2003). It must be based on more than mere suspicion or personal belief that evidence of a crime will be found on the premises searched. *Neth*, 165 Wn.2d at 182-183.

In *Neth*, after excising the dog sniff, the Court outlined the remaining facts to determine whether they justified a reasonable belief that evidence of a crime was in Neth's car. *Id.* at 183. There, the Court noted that the driver was overly nervous and yelling when the officer spoke with him; Neth was driving a car that he could not prove he owned or rented; he could not produce a registration or insurance document or transfer of ownership papers; he had no identification on him; there were inconsistent stories about where he lived and where his new house was; he said he had several thousands of dollars in cash in the car, but had no wallet; Neth had clear plastic bags that drug traffickers used to carry illegal drugs;

Neth was a convicted felon for delivery charges, including possession of heroin. *Id.* at 183-184.

The *Neth* Court acknowledged the facts were unusual and when taken together, seemed odd and somewhat suspicious. But, because they were consistent with legal activity and “very few have any reasonable connection to criminal activity” taken together, they did not rise to the level of probable cause that a crime was being committed. *Id.* at 185.

Here, these facts available to the judge when he issued the search warrant should lead this Court to the same conclusion as in *Neth*:

1. The officer clocked Mr. Souza driving 35 mph in a 25 mph zone. Mr. Souza continued to speed after he passed the officer’s patrol car.
2. The officer waited for another vehicle to go by, which was about 2 to 3 car lengths behind Mr. Souza’s truck, before he pulled out.
3. The officer did not turn on his emergency lights until he had crested the hill and Mr. Souza’s truck was on another street.
4. The officer suspected Mr. Souza was trying to evade him even though the officer’s emergency lights had not been activated.

5. After the emergency lights were activated Mr. Souza pulled into a parking lot.
6. Mr. Souza gave the officer permission to go into his backpack to retrieve his license.
7. Officer Culp asked Mr. Souza specifically if there were “any drugs” in the car and Mr. Souza said there were not.

Beyond the officer’s hunch that Mr. Souza might be trying to evade him for some reason other than the traffic (RP 86), nothing in the facts is sufficient to create probable cause to believe evidence of a crime would be found in the truck. In making its determination of probable cause, the trial court reasoned that because the officer suspected Mr. Souza was trying to evade him (even though Mr. Souza was already speeding and just continued on his way and stopped when the officer used his patrol car lights) it was statistically probable he had illicit drugs in the car. Such reasoning is the essence of finding probable cause on the basis of mere suspicion and personal belief.

Mr. Souza argues the facts recited in the affidavit, when taken together, did not create probable cause to search his vehicle for “any and all controlled substances and paraphernalia”, “address or phone books... with names of coconspirators”, books, records,

receipts, financial information about transactions, photographs of co-conspirators, narcotics, and assets; electronic data devices, including cell phones and computer systems. CP 61.

Mr. Souza asks this Court to reverse his conviction with instructions that evidence obtained under the warrant should be suppressed. This will end the State's case for the convictions except for driving with a suspended license.

IV. CONCLUSION

Mr. Souza respectfully asks the Court to reverse and remand with instructions for the trial court to suppress the evidence obtained because of the unlawful search.

Respectfully submitted this 19th day of October 2016,

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APPENDIX A

FILED

AUG 10 2015

IN THE SUPERIOR COURT OF THE STATE WASHINGTON
IN AND FOR THE COUNTY OF FERRY. FERRY COUNTY
DISTRICT COURT

STATE OF WASHINGTON }
County of Ferry }

NO. 15-2-0097

20150031

AFFIDAVIT FOR SEARCH WARRANT

Loren Culp, a Detective with the Republic Police Department, being first duly sworn on oath, hereby deposes and states that:

I have probable cause to believe that the crimes of Possession of a Controlled Substance (RCW 69.50.4013) has been committed in the City of Republic and that evidence of the crime can be found in the following vehicle:

Plate: B35915K
Make: 1986 Ford F250 color: Gray
Registered Owner: Fluke, Walt T.
VIN: 2FTEF25H2GCB49382
Driver: Souza, Jon Louis DOB: 8/20/1968

My belief is based on my training and experience, which includes the following:

I, Officer Loren Culp, your affiant, am a fully commissioned Police Officer with the Republic Police Department. I am currently assigned to Detective/Narcotics K-9 Patrol. I have been a police officer for a total of 5.5 years.

In my 5.5 years of law enforcement experience, I have arrested or participated in the arrest of many suspects of various crimes in the City of Republic, Ferry County. My training includes 720 hours of Basic Law Enforcement Academy, classes on crime investigation, narcotics detection and identification. I have completed the 240 hour Narcotics K9 Handler Academy with the State of Washington. My K9 partner Isko and I are currently certified as a Narcotics K9 Team with the State of Washington. I have written and executed search warrants and wire orders which have lead to felony arrests for drugs and other criminal activity. I have made multiple criminal arrests including narcotics and unlawful weapons possession. I have developed and worked with confidential informants that have resulted in numerous controlled buys and arrests. I have worked with the North Central Washington Narcotics Task Force in narcotics investigations and arrests of suspects in Ferry County.

Canine Isko, my K9 partner, was trained and initially certified prior to the effective date of Initiative 502. Canine Isko is trained to detect the presence of marijuana, heroin, methamphetamine, crack cocaine, cocaine and ecstasy. Canine Isko cannot communicate

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which of these substances he has detected. Canine Isko can detect minuscule amounts of these five substances. Canine Isko cannot communicate whether the detected substance is present as a residue or in measurable amounts. Despite these limitations, Canine Isko's alert provides probable cause to believe that evidence of a Violation of a Uniform Controlled Substance Act may be found in the vehicle when added to these additional facts:

My belief is based in part on the following facts and circumstances:

On 8/8/15 at 1930 hours I was on duty as a Detective for the Republic Police Dpt. I was in full uniform and in my fully marked police vehicle equipped with emergency lights and siren. I was stationary on South Clark at the south entrance to Perry Park. I was facing south. I saw a gray pickup, license B35915K, traveling north on Clark toward me. The pickup had a tool box visible along the rear driver's side bed rail. The vehicle appeared to be going well over the posted speed limit of 25 mph. My speed-measuring device confirmed the vehicle speed at 35 mph. The driver looked at me as he passed and I started to pull toward Clark Ave.

I waited for one vehicle that was following the gray pickup by 2-3 car lengths and then pulled onto Clark. The gray pickup increased its speed and went out of my sight. As I crested the hill and could see Clark Ave all the way up through town, the gray pickup was not in sight. I quickly went to Keller Street on 8th and saw the gray pickup turning onto Klondike from Keller. The distance the truck had gained from me made me believe the driver was trying to elude me and it was clear that the vehicle had been traveling at extreme speeds.

I activated my emergency lights and increased my speed to catch up to the pickup. I came around the corner by the Sheriff's Office and saw the pickup ahead of me behind a car. The vehicle turned into the hospital parking lot on Thornton Drive, went to a parking spot and stopped. I ordered the driver to show me his hands. He put his hands out the window. I told him to step out and I detained him. I frisked him for weapons. I had him sit on the push bar of my vehicle. I asked him for his license. He told me it was in his back pack on the front seat. I asked him for permission to retrieve it and he told me I could. I walked with him to the passenger side of the truck and he told me the license was in the front pocket of the backpack. I got it out and asked him why he was running from me and if there were any drugs in the vehicle. He said there were no drugs in the vehicle and he wasn't trying to get away. Sousa told me his license was suspended. Dispatch confirmed that he was suspended 3rd. Sousa did not have the vehicle registration and he did not have insurance. He told me that he became the owner of the truck earlier this spring. Dispatch told me the truck had been sold in 2011 and the registration had been expired since March of 2012.

Officer Marcuson arrived on scene. I told Sousa that he was under arrest for DWLS 3rd and read him his rights from my Miranda Card word for word. He said he did not want to talk to me. Officer Marcuson searched Sousa and put him in his patrol vehicle for transport to the Jail. I asked Officer Marcuson to stand by while I walked my Narcotics

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K9 partner Isko around the truck. Isko alerted to the odor of narcotics and gave a sit response at the driver's side door. Officer Marcuson transported Sousa to Jail.

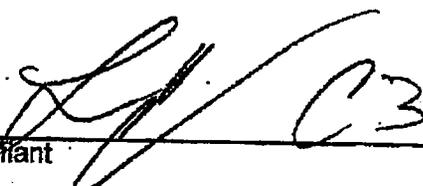
I called dispatch and asked them to send a tow and that I was applying for a search warrant. The vehicle is currently secured in the City impound garage.

Items to be seized:

Evidence of the crime or things otherwise criminally possessed, consisting of but not limited to:

- a) Any and all controlled substances and paraphernalia located inside of the vehicle: to include safes, bags, purses, luggage, all storage compartments, boxes and hidden storage compartments.
- b) Address and/or telephone books and papers listing names, addresses and/or telephone numbers of co-conspirators and any persons who may be involved in illegal possessing and trafficking of illegal narcotics.
- c) Books, records, receipts, cash in particular; prerecorded funds, bank statements and records, money drafts, letters of credit, money order and cashier checks receipts, passbooks, bank checks and assets and the obtaining, secreting, transfer, concealment and/or expenditure of money, safe deposit box records and/or keys.
- d) Electronic data processing and storage devices, cell phones, computers and computer systems including central processing units; internal and peripheral storage devices such as fixed disks, external hard disks, floppy disk drives and diskettes, tape drives and tapes, optical storage devices or other memory storage devices; peripheral input/output devices such as keyboards, printers, video display monitors, optical readers, and related communication, operating logs and documentation, software, and instruction manuals.
- e) Photographs, in particular, photographs of co-conspirators in addition, assets, narcotics.
- f) Any and all other material evidence of violation of RCW 69.50.4013, to include but not limited to drug paraphernalia for packaging, weighing, distributing, manufacturing, and using narcotics such as scales, baggies, smoking devices, cutting agents, cutting devices, sniffers and inhalers.

WHEREFORE, the affiant prays that a Search Warrant be issued for the purposes of searching the above-described vehicle for the purpose of seizing the evidence described and items illegally possessed.



Affiant

Officer Loren Culp
Republic Police Department

Sworn And Subscribed On:

Date _____
Time _____

Judge/Commissioner



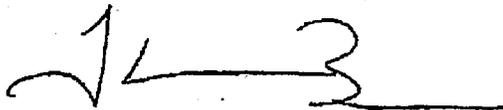
WHEREFORE, the affiant prays that a Search Warrant be issued for the purposes of searching the above-described vehicle for the purpose of seizing the evidence described and items illegally possessed.

Affiant _____

Officer Loren Culp
Republic Police Department

Sworn And Subscribed On:

Date 8 August 2010
Time 9:34 PM



Judge/Commissioner

*FILE FAX AS ORIGINAL TO

SEARCH WARRANT AFFIDAVIT

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CERTIFICATE OF SERVICE

I, Marie Trombley, do hereby certify under penalty of perjury under the laws of the State of Washington, that on October 19, 2016, I served by USPS, first class, postage prepaid a true and correct copy of the Brief of Appellant to:

Jon Souza
553 A Aladdin Rd.
Colville, WA 99141

Kathryn Isabel Burke
Ferry County Prosecutor's Office
350 E. Delaware Ave Stop 11
Republic, WA 99166-9747

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