

NO. 34591-2-III

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

STATE OF WASHINGTON,

Respondent,

v.

TIPASA UULIATA,

Appellant.

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

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT

To justify an intrusion into an individual's private affairs, a warrant application must provide the court with specific, reliable information to find probable cause that evidence of illegal activity will be found at a particular place on a particular date. Detective Frank Randall submitted an affidavit that failed in two regards. First, he did not provide the dates on which drug dealing was believed to have occurred in the residence and provided no other information that evidence of drug dealing would still be present in the residence. Second, he provided almost no information about the confidential informant who approached him about the residence. The court nonetheless issued a warrant.

Randall knew that guns might be in the home. Yet, the warrant did not authorize the seizure of firearms. While executing the warrant, the police seized eight firearms. Although they were seized without a warrant, the court allowed evidence of the firearms to be admitted at trial.

As a result, Tipasa Uiliata was convicted of possessing controlled substances with intent to distribute and unlawful possession of three firearms based on evidence seized after police executed the

warrant. Because the warrant was insufficient in these three regards, the convictions should be reversed and the evidence suppressed.

The convictions should also be reversed because the court held an *in camera* hearing without recording it. The hearing concerned whether to disclose the identity of the confidential informant. Without a record, Uiliata cannot challenge the court's ruling.

Alternatively, the sentencing enhancements for possessing with intent to distribute within 1,000 feet of a school bus route should be dismissed because the government presented insufficient evidence that a stop existed at the time of the possession, was within 1,000 feet of the site of the offenses, and was for "school buses" as that term is defined in the statute.

B. ASSIGNMENTS OF ERROR

1. The affidavit in support of the warrant application was stale.¹
2. The affidavit in support of the warrant application contained insufficient information about the confidential source.
3. The firearms were unlawfully seized and should have been suppressed.

¹ Copies of the affidavit and warrant are attached as an appendix.

4. The *in camera* hearing at which the court questioned the confidential informant was not recorded, denying Uiliata his right to appeal.

5. The evidence was insufficient to prove counts I and II were committed within 1,000 feet of a school bus route stop.

6. The judgment and sentence contains two scrivener's errors.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. An affidavit filed in support of a search warrant must contain sufficient information for a judge to find probable cause of criminal activity and that evidence of criminal activity can be found at the place to be searched. The information must show the evidence will probably be found on the date of the search. Was the affidavit stale when it failed to specify the dates on which prior drug deals occurred and did not contain other information showing evidence of drug dealing was likely to be present at the time of the search, such that the reviewing judge had insufficient information to determine probable cause?

2. When a warrant application depends on an informant's tip, it must demonstrate the basis of the informant's information and the informant's credibility. Was the affidavit insufficient because it failed to state where or how the confidential informant acquired his

information and contained only conclusory statements that the affiant found the confidential informant credible?

3. A search warrant must insure the invasion of privacy is no greater than necessary by restricting the search to items for which the issuing judge has found probable cause of criminal activity. Although the police were aware firearms might be present at the residence, the warrant does not list firearms among the items that could be seized. Should the court have suppressed the eight seized firearms where they were not authorized to be seized by warrant and no exception to the warrant requirement applies?

4. An *in camera* hearing must be recorded and the record sealed for review. Did the failure to record an *in camera* hearing on the need for the government to disclose the confidential informant deny Uiliata his right to appeal, requiring reversal and remand for a new hearing on the record?

5. The State alleged counts I and II were committed within 1,000 feet of a school bus route stop. Is the evidence insufficient where the State failed to prove the bus route stop existed on the date of the offenses?

6. Is the evidence insufficient where the State failed to prove the stop was within 1,000 feet of the site of the offenses?

7. Is the evidence insufficient where the State failed to prove the stop was used by a school bus as that term is defined in the statute?

8. Should the Court remand for the trial court to correct clerical errors in the judgment and sentence?

D. STATEMENT OF THE CASE

Detective Frank Randall of the Klickitat County Sheriff's Office was contacted by a "concerned citizen" who wanted to provide Randall with "local drug information" and was eager to "do some controlled buys." CP 21. Sometime between March 20 and 24, 2016, Randall asked this informant to make two controlled purchases of drugs from the residence of Roger Neal at 1021 Dallesport Road. CP 21-22. Randall provided the informant with recorded money for the purchase, and then sent the informant into the residence. *Id.* Randall could not see or hear the confidential informant once he went into the residence. *Id.* Five to ten minutes later, the informant emerged, met Randall at an undisclosed location, and produced small quantities of methamphetamine. *Id.*; RP 145-46. The informant told Randall that, in

addition to Roger Neal, Tipasa Uiliata was at the residence during the informant's purchases. CP 22.

On March 24, Randall applied for a search warrant for 1021 Dallesport Road. CP 21-24. In the application, Randall provided little information on the confidential informant. *See id.* His affidavit states:

On or about the week of March 13-19, 2016, I was contacted by a concerned citizen wanting to provide me with local drug information and possible do some controlled buys. The concerned citizen provided me with information that I knew to be true and had for most of their adult life been exposed to drugs in Klickitat County and surrounding areas. There was no doubt in my mind that the concerned citizen's knowledge and information was good. I signed the concerned citizen up as a Confidential Reliable Informant (CRI) based on my interview of the subject. The CRI was given a number of CRI 20-10 and will further be referred to by that number.

CP 21. Randall's affidavit then recited that the confidential informant assisted with the two controlled drug purchases "on our about the week of March 20-24, 2016," that Tipasa Uiliata is a fugitive from Oregon "considered to be armed and dangerous," and that "a search warrant is warranted right away to protect the citizens." CP 21-22. Randall also provided his law enforcement experience and general understanding of controlled substance dealing. CP 22-23.

Judge Rick Hansen issued a warrant authorizing a search of 1021 Dallesport Road, including all rooms, storage areas, surrounding

grounds, trash areas, garages and outbuildings. CP 25. The warrant authorized the seizure of particular property, including controlled substances, but did not specifically include firearms. CP 25-26.

On March 25, a dozen police officers searched 1021 Dallesport Road, seized Neal and several others, including Uiliata, who was outside the residence, and seized dozens of items, including eight firearms, personal paperwork and photographs, digital scales, Ziploc bags, heroin and methamphetamine. CP 27-30; RP 148-66, 170-71, 176-84, 188-89, 194.

Uiliata was charged with two counts of possession with intent to deliver controlled substances (one count relating to the heroin and the other to the methamphetamine) and three counts of unlawful possession of a firearm. CP 1-14, 39-42.

Before trial, he moved to suppress the evidence because the warrant was stale as to the dates provided and lacked particularity for the firearms seized. CP 15-30; RP 6-14. The motion was denied. RP 9, 12, 14.

Uiliata also moved to disclose the identity of the confidential informant. CP 73-81. The court granted an *in camera* hearing, at which the government would present the informant to the court for

questioning without Uiliata or his attorney present. CP 90; RP 21-31. The hearing was held on June 14, 2016. RP 32-47. It was not recorded. Decl. of Pamela Bell, Skamania Court Administrator ¶¶ 1-4; Decl. of Mary Jo Hanson, [Klickitat County] Court Administrator, ¶¶ 1-4; *see* RP 45-47.² On June 20, with Uiliata present and in open court, the court ruled that Uiliata “has not met it’s [sic] burden to show that the informant privilege should be pierced.” RP 45-47; CP 91-93 (findings of fact and conclusions of law).

At trial, Detective Randall testified to the controlled buys conducted by the confidential informant, without revealing his identity and without testimony from the informant. RP 139-47. Uiliata was convicted as charged, including on enhancements for each of the possession counts occurring within 1,000 feet of a school bus route stop. CP 124-30. The court sentenced Uiliata to 144 months’ confinement. CP 263-73.

² A RAP 9.11 motion has been filed contemporaneously to add the declarations from the Court Administrators for the Klickitat and Skamania County courts to the record in this appeal. The motion and declarations are also attached as an appendix.

E. ARGUMENT

1. The affidavit for a search warrant provided insufficient information about the timing and about the confidential informant.

The Washington Constitution commands that, “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Const. art. I, § 7. The Fourth Amendment likewise protects individuals from intrusions into their persons and property. U.S. Const. amend. IV.³ The police violated these provisions by seeking a warrant on insufficient information; the resulting search and seizure were unconstitutional.

a. A neutral and detached magistrate reviews a warrant application for probable cause.

A warrant to search a home can only be issued for probable cause. U.S. Const. amend. IV; Wash. Const. art. I, § 7. “The warrant must be supported by an affidavit that particularly identifies the place to be searched and items to be seized.” *State v. Lyons*, 174 Wn.2d 354,

³ “The privacy protections of article I, section 7 are more extensive than those provided under the Fourth Amendment.” *State v. Valdez*, 167 Wn.2d 761, 772, 224 P.3d 751 (2009). Unlike the Fourth Amendment, “article I, section 7 is not grounded in notions of reasonableness.” *State v. Snapp*, 174 Wn.2d 177, 194, 275 P.3d 289 (2012). Rather, the inquiry is (1) “whether the state action constitutes a disturbance of one’s private affairs,” and if so, (2) “whether authority of law justifies the intrusion.” *Valdez*, 167 Wn.2d at 772.

359, 275 P.3d 314 (2012). An affidavit establishes probable cause only if it sets forth “sufficient facts to convince a reasonable person of the probability the defendant is engaged in criminal activity and that evidence of criminal activity can be found at the place to be searched.” *Id.* Because the determination of probable cause must be made by a neutral and detached magistrate, and not by “police officers in the field,” the grounds must be set forth specifically enough that the magistrate can independently judge the truthfulness of the conclusions reached in the affidavit. *Id.* at 359-60.

On review, appellate courts demand that the magistrate perform her neutral and detached function, and not serve merely as a rubber stamp for the police. *Aguilar v. Texas*, 378 U.S. 108, 111, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964).

- b. The affidavit provided no means for the magistrate to ascertain whether drugs were likely to be possessed for distribution in the house on March 24 when the warrant was issued.

The facts set forth in the affidavit must support the conclusion that the evidence is probably at the premises to be searched at the time the warrant is issued. *Lyons*, 174 Wn.2d at 360 (citing *State v. Partin*, 88 Wn.2d 899, 903, 567 P.2d 1136 (1977)). “[I]nformation that is not sufficiently grounded in fact is inherently unreliable and frustrates the

detached and independent evaluative function of the magistrate.” *State v. Thein*, 138 Wn. 2d 133, 146-47, 977 P.2d 582 (1999).

With respect to dates and times, the affidavit must be specific enough that the magistrate can determine whether it is probable that a search would reveal the suspected criminal activity or evidence. *Lyons*, 174 Wn.2d at 360-61. Whether an affidavit is stale depends upon the time between the known criminal activity and the affidavit and the scope of the suspected activity. *Id.* at 361. “It should go without saying that the magistrate cannot determine whether observations recited in the affidavit are stale unless the magistrate knows the date of those observations.” *Id.*

The affidavit in this case set forth information pertaining to the two controlled buys that Detective Randall conducted with the confidential informant. But the affidavit did not indicate the date or dates on which the two buys occurred. *See* CP 21-24; *Lyons*, 174 Wn.2d at 361 (when informant observed criminal activity and when affiant received the information are critical for determining staleness). It does not specify whether the two buys occurred on the same day or on different days. CP 21-24. It simply attested that the buys occurred “on or about the week of March 20-24, 2016.” CP 21-22. The

reviewing magistrate, Judge Rick Hansen, could not perform his constitutionally prescribed function to evaluate the affidavit for probable cause without the pertinent dates. *See State v. Jackson*, 102 Wn.2d 432, 436-37, 688 P.2d 136 (1984); *Lyons*, 174 Wn.2d at 361-62.

In this case, law enforcement suspected simple drug dealing. CP 21-26. Quantities of drugs may be sold, used or otherwise disposed of within a short period of time. *See State v. Hatcher*, 3 Wn. App. 441, 447, 475 P.2d 802 (1970) (noting State's position that narcotics evidence is easily disposable); *State v. Johnson*, 94 Wn. App. 882, 887-89, 974 P.2d 855 (1999) (noting possibility of quick destruction of drugs and related evidence). Further, as the police attested here, drugs and supplies are frequently moved by those selling them. CP 22-23. Thus, four days is a substantial, material passage of time when one is searching for evidence of simple drug dealing. In contrast, evidence of a marijuana grow operation, for instance, would be difficult, costly and time-consuming to dismantle; thus probable cause could be found over a much longer period. *Lyons*, 174 Wn.2d at 361 (probable cause might exist for marijuana grow operation after "passage of a substantial amount of time").

Moreover, the affidavit in no manner indicates that drugs were likely to be present at the residence on March 24 when the warrant issued or March 25 when it was executed. *See* CP 21-24; *Lyons*, 174 Wn.2d at 361-62 (affidavit missing critical timing information could still establish probable cause if recency can be inferred from other facts and circumstances in the affidavit). For example, the confidential informant did not indicate he saw drugs other than the small quantities he purchased and necessarily took with him. “Probable cause cannot be made out by conclusory affidavits.” *State v. Helmka*, 86 Wn.2d 91, 92, 542 P.2d 115 (1975).

Because the affidavit does not specify when the drugs were observed at the residence, it did not establish probable cause. *See Lyons*, 174 Wn.2d at 360-62, 368.

- c. The affidavit also provided inadequate information on the source of the confidential informant’s information and his veracity.

When a warrant application depends on an informant’s tip, the affidavit must demonstrate (1) the basis of the informant’s information and (2) the informant’s credibility. *Jackson*, 102 Wn.2d at 433; *Spinelli v. United States*, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637

(1969); *Aguilar v. State of Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964).

If an affidavit is based upon information from a confidential informant, “the affidavit must contain background facts to support a reasonable inference that the information is credible and without motive to falsify.” *State v. Cole*, 128 Wn.2d 262, 287-88, 906 P.2d 925 (1995).

In *Cole*, our Supreme Court found a warrant affidavit sufficient where it included sufficient information about the informant and the basis for his or her knowledge. The Court summarized the pertinent facts provided as follows:

In this case, the Gaddy affidavit included the following facts about the informant: (1) the informant lived in the neighborhood of the house that was the subject of the requested search; (2) the informant lived in that neighborhood for several years; (3) the informant worked in the community; (4) the informant had extended family who lived in the community; (5) the informant did not have a criminal record; (6) the informant came forward voluntarily; (7) the informant did not request compensation; and (8) Gaddy knew the informant’s identity. (Clerk’s Papers at 75.) According to the affidavit, the informant’s information was quite specific, describing appearances of automobiles and persons, their activities, and even the license plate numbers of the vehicles. (Clerk’s Papers at 75, 77.) The affidavit also described subsequent investigation by police officers that corroborated the information given by the informant, including the suspicious appearance of the residence, a

pattern of visitation to the residence consistent with drug-related activities, and a link between the vehicles reported by the informant and observed by officers and persons with prior convictions for narcotics violations. (Clerk's Papers at 75–80.)

Id. at 288.

In another case, the Court found the following information in the affidavit sufficient to support the informant's veracity:

Your affiant believes that the confidential informant is reliable for the following reasons: Informant has been known to your affiant for SIX months. He has completed FOUR controlled buys under your affiant's direction and supervision, in each instance purchasing controlled substances. Further, informant has been given information regarding drug trafficking which has been verified through other investigations conducted by the City-County Narcotics Unit. Informant has never provided your affiant with information which has been found to be false.

State v. Mejia, 111 Wn.2d 892, 894, 897, 766 P.2d 454 (1989).

None of the information present in *Cole* or *Mejia* is contained in the affidavit here. *See* CP 21-24. The affidavit provides no information pertaining to how the confidential informant garnered his information. *See State v. Ibarra*, 61 Wn. App. 695, 701-02, 812 P.2d 114 (1991) (affidavit insufficient where it supplies no factual, underlying information, does not indicate how informant gained

knowledge, and contains only self-serving statements). In other words, the magistrate could not test the basis of the informant's information.

Further, the affidavit provides only conclusory attestations of the informant's credibility. CP 21. Detective Randall attests, the informant "provided me with information that I knew to be true . . . There was no doubt in my mind that the concerned citizen's knowledge and information was good." *Id.* These unsupported conclusions are even more bare than the "generic recitation" found insufficient in *State v. Franklin*, 49 Wn. App. 106, 85-86, 741 P.2d 83 (1987) (finding insufficient the officer's "personal opinion that the informant was an upstanding citizen since the informant had no criminal record, was motivated by a desire to thwart crime, and requested anonymity because of fear of retribution").

Although the affidavit here also contains a recitation of two controlled buys conducted with the confidential informant, the dependability of those controlled buys relates directly to the veracity of the confidential informant. While the affiant explains the procedures he used to conduct the controlled buy, the confidential informant operated independent of the police and out-of-view when he went into the residence at 1021 Dallesport Road. The accuracy of the

information obtained in the controlled buy, therefore, depended on the veracity of the confidential informant. This critical information is missing from the affidavit supporting the warrant.

The warrant affidavit satisfies neither prong of *Aguilar-Spinelli*.

Although Uiliata did not raise this issue below, this Court should review it because the record is sufficient and contains all the factual information that would have been before the trial court in considering sufficiency under *Aguilar-Spinelli*. *State v. Contreras*, 92 Wn. App. 307, 311-14, 966 P.2d 915 (1998) (appeals court reviews suppression issue for the first time on appeal where the record is documentary and the same as what was before the trial court). Moreover, the error is manifest and constitutional, enabling review under RAP 2.5(a)(3). *State v. Swetz*, 160 Wn. App. 122, 127-28, 247 P.3d 802, 804 (2011). The error is manifest because the seized evidence was admitted at trial. *Id.* The error is also constitutional because it directly involves Uiliata's right to privacy. *See* U.S. Const. amend. IV; Const. art. I, § 7.

d. On either ground, the warrant is deficient and the evidence found during the resulting search must be suppressed.

When the affidavit presented to the magistrate fails to support a finding of probable cause, any resulting warrant was improperly issued

and the evidence obtained as a result of the subsequent search must be suppressed. *See e.g., Ibarra*, 61 Wn. App. at 703. The evidence seized must be suppressed for each of the above failings: the affidavit was stale and unspecific with regard to timing, the basis of the confidential informant's knowledge is not set forth, and the confidential informant's veracity is not supported.

2. The warrant did not authorize the police to seize firearms and no exception to the warrant requirement applies, requiring suppression of the firearms seized.

Although the warrant describes with particularity many items to be seized, that list does not include firearms. The police exceeded the scope of the warrant by seizing eight firearms during the search of 1021 Dallesport Road, and no exception to the warrant requirement applies.

a. A warrant must describe the items authorized for seizure with sufficient particularity.

“General, exploratory searches are unreasonable, unauthorized, and invalid.” *Thein*, 138 Wn.2d at 147 (citing *Helmka*, 86 Wn.2d at 93). The State acts without authority of law when it exceeds the scope of an otherwise valid search warrant. *See State v. Martines*, 184 Wn.2d 83, 94, 355 P.3d 1111 (2015).

A warrant serves to both limit the discretion of the executing police officers and to inform the people subject to the intrusion of the items the officers are authorized to seize. *State v. Riley*, 121 Wn.2d 22, 29, 846 P.2d 1365 (1993). Thus, warrants must describe the things to be seized with particularity. *Martines*, 184 Wn.2d at 92-93.

Precision is required where possible. *State v. Perrone*, 119 Wn.2d 538, 547, 834 P.2d 611 (1992) (“the use of a generic term or general description is constitutionally acceptable only when a more particular description of the items to be seized is not available at the time the warrant issues.”); *State v. Stenson*, 132 Wn.2d 668, 693, 940 P.2d 1239 (1997) (“where the precise identity of items sought cannot be determined when the warrant is issued, a generic or general description of items will be sufficient if probable cause is shown and a more specific description is impossible”).

- b. Although the police were aware firearms might be present, firearms are not listed among the items authorized to be seized.

Precision existed here—the warrant contained an extensive list of items authorized to be seized. *See Perrone*, 119 Wn.2d at 547; *Stenson*, 132 Wn.2d at 693. The warrant lists with particularity not only the areas to be searched, but also the items to be seized:

1. Search such premises, vehicles or persons as specifically described as follows:

The premises, including all rooms, storage areas, surrounding grounds, trash areas, garages and outbuildings assigned to or part of the residence and/or building located at 1021 Dallesport Road, Dallesport, Washington, County of Klickitat.

The residence and/or building is a single story family trailer house having a primarily color of white with a red covered porch.

There are two bumper-pull camp trailers located behind the residence, one is white in color and one is yellowish in color. There is a two-tone brown Chevrolet or GMC pickup parked under the carport, a black Ford Focus, a light blue S-10 pickup, and two other vehicles on blocks.

The residence and/or building is believed to be presently occupied by Roger Dale Neal, Jr and Tipasa Lesumi Uiliata.

2. Seize the following property, but not limited to:

Controlled substances, including but not limited to Cocaine (Methamphetamine) and/or derivatives of same, consisting in part of including, but not limited to drug paraphernalia, baggies, tinfoil wrappings, paper bindles, boxes, bottles, razor blades, mirrors, hypodermic syringes, and scales.

Evidence of conspiracy including books, ledgers, accounts payable and receivable, buy-owe sheets, contracts, letters and memoranda of agreement between the conspirators, telephone records, phone books, address books and other personal property tending to establish a conspiracy.

Items or articles of personal property tending to show the identity of person (s) in ownership dominion or control of said premises and/or vehicles (s) including but not limited to keys, canceled mail envelopes, rental agreements and receipts, utility and telephone bills, telephone/address books, photographs, gas receipts, insurance papers, notices from governmental agencies, and the like.

Financial records of person (s) in control of the premises including tax returns, bank accounts, loan applications, income and expense records, safe deposit keys and records, property acquisitions and notes.

3. Safely keep the property seized and make a return of such warrant to the undersigned judge within five days following execution of the warrant, with a particular statement of all property seized. A copy of this warrant shall be given to the person from whom or whose premises the property is taken, together with a receipt for such property. If no such person is present, a copy of this warrant and receipt may be posted at the place where the property is found.

CP 25-26. Notably, the warrant does not authorize the police to seize any firearms or weapons. *Id.*

Contrary to the State's argument below, the police were aware that firearms might be present. *Compare* RP 11-12 (argument in response to motion to suppress) *with* CP 22 (affidavit: "Based on the two controlled buys, the fugitive (Uiliata, who to [sic] be considered armed and dangerous by McNab), and . . ."); CP 23 (in affidavit, Randall discusses weapons as commonly present in his experience). A precise description of the weapons to be seized was possible and required. *Stenson*, 132 Wn.2d at 693. Yet, despite the officer's knowledge and despite the particularity of the other items described in the warrant, firearms were not listed among the items authorized to be seized.

Because the firearms were not listed in the warrant, the police had to have another justification for the warrantless seizure. *United States v. Wright*, 667 F.2d 793, 797 (9th Cir. 1982) (lawful presence

does not create an ability in law enforcement to engage in exploratory rummaging).

The State argued below that the items could be seized under the plain view exception to the warrant requirement. RP 11-12. This argument should have failed, however. Contraband or stolen property discovered during a search for other specific items listed in a valid warrant may be seized under the plain view exception only if three criteria are satisfied. *E.g.*, *State v. Adame*, 37 Wn. App. 94, 100-01, 678 P.2d 1299 (1984). First, the intrusion must be justified by a valid warrant or other basis. Second, the contraband must have been discovered inadvertently. And third, the officers must know immediately that the unlisted item is contraband. *Id.*

It could not have been immediately known to the officers executing the warrant that the firearms were “contraband.” Clearly, individuals have the right to own guns. U.S. Const. amend. II; Const. art. I, § 24. Thus, the officers would have to immediately know the owner of the firearm was prohibited from such possession. The police believed Uiliata was a “wanted fugitive . . . out of Oregon” due to probation violations. CP 22, 32. The State cursorily argued below that “Law enforcement knew the defendant was a convicted felon and his

possession of the any [sic] firearms was contraband and subject to immediate seizure.” CP 36. But the State did not show the officers knew the details of Oregon’s prohibition on firearm possession, the duration of any such requirement, whether Uiliata remained under any prohibition that restricted his constitutional right to possess a gun, and whether his rights had been restored.

Because the guns were not immediately recognizable as contraband, the plain view exception to the warrant requirement does not apply.

c. The eight seized firearms should be suppressed.

Because no firearms were authorized to be seized by warrant and because no exception to the warrant requirement applies, the firearms should have been suppressed. The firearms convictions should be reversed and remanded.

3. Because there is no record of the *in camera* hearing on the confidential informant, the matter must be remanded for a new hearing.

Criminal Rule 4.7(h)(6) requires a record be made of *in camera* proceedings, and that it be sealed and preserved for appellate review.

The rule provides:

In camera proceedings: Upon request of any person, the court may permit any showing of cause for denial or

regulation of disclosure, or portion of such showing, to be made in camera. A record shall be made of such proceedings. If the court enters an order granting relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

CrR 4.7(h)(6); *cf. State v. Casal*, 103 Wn.2d 812, 821, 699 P.2d 1234 (1985) (“A transcript of the [*in camera*] hearing must be made and sealed for possible appellate review.”).

In *State v. Selander*, this Court had no record on appeal of an *in camera* hearing. 65 Wn. App. 134, 135, 827 P.2d 1090 (1992). There, the trial court determined it needed to question the undisclosed informant in a warrant affidavit to decide the defendant’s challenge to the veracity of the affidavit. *Id.* at 136, 138. The trial court held an *in camera* “meeting” with the informant, which was not recorded. *Id.*

This Court noted that Selander was entitled to appellate review of the *in camera* hearing. *Id.* at 140. Meaningful appellate review requires this Court to examine the record of the hearing. *Id.* The Court could not determine from the trial court’s written findings whether the record supported those findings. *Id.* This Court, therefore, could not conduct a meaningful review of Mr. Selander’s challenge to the confidential informant.

The *Selander* court vacated the conviction and remanded for a new *in camera* hearing. 65 Wn. App. at 140. The same result is compelled here. On Uiliata's motion to compel the identity of the confidential informant, the trial court determined it needed further information. CP 73-81, 90. On June 14, the court held an *in camera* hearing in Skamania County at which the confidential informant was interviewed. RP 45; CP 91-93. The court ruled that Uiliata had not met his burden to show that the informant privilege should be pierced. RP 45; CP 91-93. But, the hearing was not recorded and no minutes have been located.⁴ Neither the written order nor the oral ruling, issued in open court six days after the hearing, detail the evidence presented. RP 45; CP 91-93.

As in *Selander*, Uiliata cannot challenge the trial court's basis for denying disclosure of the confidential informant because no record exists of the *in camera* hearing. 65 Wn. App. at 138-40; *accord State v. Uthoff*, 45 Wn. App. 261, 268-270, 724 P.2d 1103 (1986) (appellate

⁴ The docket for this cause number reflects no event on June 14, 2016 and there are no minutes for the June 14 hearing. *See* Supp. CP ____ (superior court docket). As the declarations attached to the appendix show, the Skamania County and Klickitat County superior courts could not locate a record of the June 14 *in camera* hearing, which was apparently held in the judge's chambers. *See* Decl. of Pamela Bell; Decl. of Mary Jo Hanson.

court relies on transcript from *in camera* hearing to review trial court's denial of motion to disclose confidential informant's identity). Therefore, as in *Selander*, the convictions should be vacated and the matter remanded for a new *in camera* hearing that is recorded and sealed for subsequent review.

4. The evidence is insufficient to prove the possession was committed within 1,000 feet of a school bus route, requiring dismissal of the enhancements.

The school bus route enhancement to counts I and II must be stricken and the aggravators dismissed because the State failed to present sufficient evidence to prove the elements beyond a reasonable doubt. The State failed to show any bus route stop that existed on the date of the offenses, the distance between the site of the offense and the stops, or that the vehicles utilizing the stops met the statutory definition for a school bus.

- a. To prove the aggravator alleged, the State must present sufficient evidence that the offense was committed within 1,000 feet of a school bus route stop.

The State must prove beyond a reasonable doubt any fact that increases punishment, except prior convictions. *Blakely v. Washington*, 542 U.S. 296, 300-01, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed.

2d 435 (2000); *In re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

On a challenge to the sufficiency of the evidence, this Court must reverse and dismiss a sentencing enhancement if, after viewing the evidence in the light most favorable to the prosecution, no rational trier of fact could have found all the essential elements beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *State v. Drum*, 168 Wn.2d 23, 34-35, 225 P.3d 237 (2010).

The State alleged that counts I and II—possession with intent to distribute—were committed within 1,000 feet of a school bus route stop. CP 39-42; RCW 69.50.435(1)(c). Therefore, the State had to prove beyond a reasonable doubt that Uiliata possessed the controlled substances within 1,000 feet of a school bus route stop. *State v. Stubbs*, 170 Wn.2d 117, 123, 240 P.3d 143 (2010).

- b. There was no evidence of any school bus route stop on the date of the offenses.

Because the enhancement is based on possession within the defined limits, the school bus route stop must have existed at the time

of the possession. *See State v. Bodine*, No. 47906-1-II, 196 Wn. App. 1013, 2016 WL 5417398, *2 (Sept. 27, 2016).⁵

The State's witness testified only that a bus stop existed on the date of his testimony. Mike Murphy, the director of transportation for the Lyle School District testified on July 6, 2016 using the present tense. RP 197-98. In other words, he testified as to school bus route stops that existed on July 6, 2016:

Q And, you were asked by Det. Randall to determine a few things. Can you tell the jury what you were asked to do?

A I was asked to see if we had a couple bus stops within the range of the area of the bust.

Q And, when you say range of the area, -- what -- what do you mean? A school bus route stop?

A It's within 1,000 feet of a bus stop.

Q Okay. And -- now, in terms of 1021 Dallesport Road, were you able to determine the two closest bus stops?

A The two closest bus stops, one is on Williams Street and the other one is on -- Cypress.

RP 198.

⁵ This unpublished decision is cited as persuasive authority pursuant to GR 14.1. Pursuant to that rule, unpublished opinions are not binding or precedential and are entitled to such persuasive value as the Court deems appropriate.

The State presented no evidence to show that those same school bus route stops, or any others, existed on March 25, 2016, the date of the possession offenses. The evidence was insufficient. *See Bodine*, 2016 WL 5417398, at *2 (reversing school bus route stop enhancement for insufficient evidence where no evidence showed the presence of a stop at the time of the offense).

- c. There was no evidence the school bus route stop was within 1,000 feet of the site of the offenses.

The enhancement applies only if the possession occurs within 1,000 feet of the bus route stop. RCW 69.50.435(1)(c); *State v. Clayton*, 84 Wn. App. 318, 322, 927 P.2d 258 (1996). Therefore, even if the State satisfactorily proved a bus stop existed on the date of the offense, it also had to show that the stop was within 1,000 feet of the location of the offense. *Clayton*, 84 Wn. App. at 321-22.

Here, the controlled substances were shown to have been possessed in the front bedroom of the house at 1021 Dallesport Road. RP 148-54, 157-59, 180-81. The State's evidence, accordingly, must show that bedroom to be within 1,000 feet of the bus route stop. *Clayton*, 84 Wn. App. at 321-22 (where crime was committed in bedroom of a house, measurement must be conducted to that site). The State's witness, however, only measured the feet from the address 1021

Dallesport Road—the property line, not the house. RP 201-02, 208. No evidence showed the distance from the property line to the front bedroom of the home.⁶ As this Court held in *Clayton*, a measurement to the property line is insufficient where the offense occurred within a particular location on the property, not on its border with the street. 84 Wn. App. at 322.

Consequently, the State failed to present sufficient evidence of the facts supporting the enhancement because no evidence showed the distance from the stop to the site of the possession. *Clayton*, 84 Wn. App. at 322; *State v. Jones*, 140 Wn. App. 431, 437-38, 166 P.3d 782 (2007) (“Because there were no direct measurements between the school bus stop and the home, no measurements of the driveway or the house’s bedroom, and no evidence showing the angle of the street intersection, the actual distance is unclear” and the sentence enhancement is reversed.).

⁶ For example, Exhibit 16, a drawing of the home, specifically states it is “not to scale” and Exhibit 17, a drawing of the area, also does not indicate distances. *See also* RP 195-96 (Randall’s testimony as he marks street names on exhibit).

- d. There was no evidence that the route stop was for a school bus as defined in the statute.

The statute provides a specific definition of the term “school bus.” RCW 69.50.435(6)(b).

“School bus” means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students such as transportation of students through a municipal transportation system.

RCW 69.50.435(6)(b).

The school district director of transportation simply testified using the words “school bus.” RP 197-99. The State did not ask the witness whether the school district owned and operated the buses or whether they were operated under contract or otherwise with any school district in the state for the transportation of students. *See* RCW 69.50.435(6)(b). The State did not show that the buses utilizing the stop had seating capacity of more than ten persons including the driver, that they were regularly used to transport students to and from school or in connection with school activities, or that they met the requirements of the school bus specifications manual published by the

superintendent. WAC 392-142-100(4); WAC 392-143-010; WPIC 50.63 (School bus – definition).

The State bore the burden to prove the enhancement beyond a reasonable doubt, yet it failed to produce any evidence as to the type of vehicle that utilized the school bus route stops identified by the director of transportation. The evidence, accordingly, was insufficient.

- e. Any of these three insufficiencies requires reversal of the enhancements, dismissal of the aggravator, and remand for resentencing.

The evidence of the school bus route stop was insufficient on three independent grounds: there was no evidence the stops existed on the date of the offenses, the distance was not measured from the site of the offenses, and there was no evidence that the buses utilizing the stop were “school buses” as that term is defined in the statute.

Any one of these grounds is enough to require the enhancements to be stricken and the aggravators dismissed, necessitating remand for resentencing. *E.g.*, *Jackson*, 443 U.S. at 319; *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980); *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969), *reversed on other grounds by Alabama v. Smith*, 490 U.S. 794, 109 S. Ct. 2201, 104 L. Ed. 2d 865 (1989).

5. The Court should remand for correction of two scrivener's errors.

The judgment and sentence contains two scrivener's errors that should be corrected on remand. First, the judgment and sentence provides the wrong statutory citation for the unlawful possession of a firearm offenses. CP 263-64. The judgment lists RCW 6.41.040 but the correct provision is RCW 9.41.040.

Second, the judgment indicates the offenses were committed while Uiliata was on community placement or community custody. CP 264. However, the sentencing court specifically found the offenses were not committed while on supervision. RP 334.

The Court should remand with instructions to correct these clerical errors.

F. CONCLUSION

The Court should reverse and remand to suppress all the evidence seized as the result of a stale and insufficient warrant application, or the firearms seized because the warrant did not authorize seizure of firearms. Alternatively, the court should reverse and remand for a new *in camera* hearing with a record preserved for appellate review.

If the Court nonetheless affirms the convictions, the two sentencing enhancements should be dismissed for insufficient evidence and the two clerical errors in the judgment and sentence should be corrected.

DATED this 15th day of May, 2017.

Respectfully submitted,

s/ Marla L. Zink
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APPENDIX A

On or about the same week of March 20-24, 2016, I again went to 1021 Dallesport Road to conduct a controlled buy on Neal. I had received information that a wanted fugitive (Tipasa Lesumi Uiliata) for controlled substance deliveries out of Oregon was also staying at this residence. I had confirmed with CRI 20-10 that Uiliata was at the residence during the first controlled buy.

Prior to going to 1021 Dallesport Road for the second control buy, I searched CRI 20-10's person and vehicle for any monies and/or controlled substances and found none. I then gave CRI 20-10 \$20.00 in recorded buy money in which to purchase the controlled substance.

I made arrangements with Detective MacNab again to assist and he set up prior to our arrival where he could see the residence. I followed CRI 20-10 to 1021 Dallesport Road at which time MacNab took over observing. As I drove by the residence, I observed a juvenile male in the front yard. I advised MacNab that I would just drive around the area since he had visual on the residence.

CRI 20-10 was in the residence approximately five minutes and exited. I followed CRI 20-10 to the same meeting location we had used before. CRI 20-10 handed me a small plastic bag containing a white crystal substance. MacNab and I were able to observe CRI 20-10 the entire time except for when he was inside the residence itself. CRI 20-10's person and/or vehicle was searched for any further monies and/or controlled substance and none was found. CRI 20-10 advised that both Neal and Uiliata were at the residence during the second buy.

I later returned to the office and tested the white crystal substance utilizing a NIK test kit "U" and it tested presumptive positive for methamphetamine. I have been trained to perform such tests and have performed many such tests in the past. The white crystal substance was then sealed up and sent to the WSP Crime Laboratory for further testing.

Based on the two controlled buys, the fugitive (Uiliata, who to be considered armed and dangerous by MacNab), and the juvenile male that I believe to be Neal's 6 year-old son Bryson) present while controlled substances and being used and/or sold, a search warrant is warranted right away to protect the citizens.

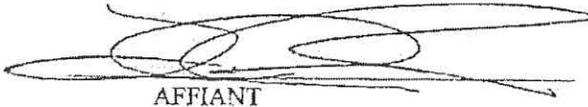
I have been a deputy with the Klickitat County Sheriff's Office for over 19 1/2 years. I have attended and successfully completed the Washington State Basic Law Enforcement Academy. I have served as a narcotic's detective and a narcotic's dog handler while with the Klickitat I have been a Klickitat County Deputy for the past 19 1/2 years. I have attended the Washington State Law Enforcement Academy, and successfully completed it. I have also worked drug investigations with the Klickitat County Narcotics Division. During this time, I was assigned a detective position. I'm currently assigned to detectives and working narcotics investigations. During this time I have investigated illicit controlled substances traffic in Klickitat County and the surrounding areas. I have had formal training and extensive experience in controlled substances investigations and I'm familiar with the manner in which controlled substances are packaged, marketed and consumed in this area. I have received training in the identification of most types of controlled substances by sight and odor. I am also aware that not all drug dealers keep their drugs stored at one location. Through my training I know that some drug dealers will use several locations to store their drugs. I have learned through training that drug dealers will use one residence for a front

and deal out of another residence. I know drug dealers will use one location for storing their records and another for storing the drugs. This is so that if a search warrant occurs at one location, it will not result in the loss of all of the product and/or the proceeds. This also helps cover up the complicity of the operation. The reason for a secondary location is to reduce the chances of there being any loss of the product and/or proceeds. Through training and experience, I also know drug dealers use various vehicles to facilitate their ongoing criminal enterprise. The reason for this is to frustrate law enforcement's ability to determine who is going where, and when. The vehicles used are both containers and movers of controlled substances and will often contain cash, records, and weapons. The weapons are present for safety purposes. I believe this is a crime that by its nature involves a conspiracy of actors. In order to prove the conspiracy to deliver, as well as the delivery, I need the records of this ongoing business. I also need all the information about all the parties who are involved in this business. I have made several arrests for controlled substances violation. In the course of my current duties, I have become familiar with the ordinary meaning of narcotic slang and jargon, and I'm familiar with the manner and techniques of traffickers in controlled substances as practiced locally. Through my training and experience I know that most illegal drug dealers keep records of their narcotic sales, customer lists, and normally other dealer and suppliers' phone numbers. This information is kept either in a ledger, notes on pieces of paper, computers, computer disks, etc. Also through my training and experience I have found that illegal drug dealers will hide their assets in safe deposit boxes, bank accounts, real estate notes, and hidden cash or precious metals and jewelry.

I have also attended schools put on by the State of Washington and/or DEA on many aspects of controlled substances. I have attended a methamphetamine workshop conducted by the Bureau of Justice in June of 1999. In October of 2000, I attended a two-week narcotic dog handler course in Stanwood, Washington. Master Dog Trainer, Fred Heflers, taught this course. At this course, I was trained on drug interdiction of vehicles and how to handle Klickitat County's Narcotic Detection Dog, Bo. In May of 2001, Bo and I attended a weeklong seminar in Vancouver, British Columbia for narcotic dogs and their handlers. I received extensive training in drug interdiction and drug recognition. Bo and I were certified by the Pacific Northwest Narcotic Detection Dog Association. Bo has since passed on and I am no longer a dog handler. I currently attended the Washington State Narcotics Investigators Association (WSNIA). I have been the Klickitat County Sheriff's Office narcotic's detective for almost a year and have conducted numerous drug investigations.

That affiant's belief is based upon the facts and circumstances as set forth in the numbered attachments hereto, which are incorporated herein by this reference.

That affiant's belief is based upon the facts and circumstances as set forth in the numbered attachments hereto, which are incorporated herein by this reference.



AFFIANT

SUBSCRIBED AND SWORN:

Date: 3-24-2016

Rich L. Hansen

JUDGE

APPENDIX B

Items or articles of personal property tending to show the identity of person (s) in ownership dominion or control of said premises and/or vehicles (s) including but not limited to keys, canceled mail envelopes, rental agreements and receipts, utility and telephone bills, telephone/address books, photographs, gas receipts, insurance papers, notices from governmental agencies, and the like.

Financial records of person (s) in control of the premises including tax returns, bank accounts, loan applications, income and expense records, safe deposit keys and records, property acquisitions and notes.

Computer equipment, programs, storage disks and printouts, evidencing the distribution of controlled substances, the expenditure of currency or currency equivalents.

3. Safely keep the property seized and make a return of such warrant to the undersigned judge within five days following execution of the warrant, with a particular statement of all property seized. A copy of this warrant shall be given to the person from whom or whose premises the property is taken, together with a receipt for such property. If no such person is present, a copy of this warrant and receipt may be posted at the place where the property is found.

This warrant to be served within ten (10) days of issuance.

DATED: 3-24-2016 at 8:40 PM, 2016

Glenn J. Hansen
JUDGE

APPENDIX C

-THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,	)	No. 34591-2-III
Respondent,)	
)	
v.	)	MOTION TO
	)	SUPPLEMENT RECORD
TIPASA UILIATA,	)	ON APPEAL PURSUANT
Appellant.	)	TO RAP 9.11
_____)	

I. IDENTITY OF MOVING PARTY AND RELIEF REQUESTED

Appellant, Tipasa Uiliata, requests this Court permit the supplementing of the record on appeal pursuant to RAP 9.11 with declarations from the superior court regarding the lack of a record for the June 14, 2016 *in camera* hearing. Supplementation of the record with these declarations will facilitate a decision on the merits of the issues presented for review.

II. RELEVANT FACTS

Mr. Uiliata appeals from his convictions and sentence for two counts of possession of a controlled substance with intent to deliver and three counts of unlawful possession of a firearm. CP 274-86.

Motion to Supplement Record
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Prior to trial, Mr. Uiliata moved to disclose the identity of the confidential informant set forth in the warrant affidavit and used to conduct controlled buys in the residence ultimately searched pursuant to the warrant. CP 73-81. The court granted an *in camera* hearing, at which the government would present the informant to the court for questioning without Uiliata or his attorney present. CP 90; RP 21-31. The hearing was held in Skamania County before Judge Altman on June 14, 2016. RP 32-47. On June 20, with Uiliata present and in open court, the court ruled Uiliata “has not met it’s [sic] burden to show that the informant privilege should be pierced.” RP 45-47; CP 91-93 (findings of fact and conclusions of law).

The undersigned counsel could not locate a docket entry or minutes for the *in camera* hearing. After communicating with the Skamania County Superior Court Administrator and the Klickitat County Superior Court Administrator, it appears that there is no recording of the *in camera* hearing. The email exchange with the court administrators is attached as an appendix to this motion. Also attached are the declarations of Pamela Bell, Skamania County Superior Court

Administrator, and Mary Jo Hanson, Klickitat County Superior Court Administrator, which Mr. Uiliata seeks to add to the record pursuant to RAP 9.11.

III. ARGUMENT IN SUPPORT OF MOTION

RAP 9.11 provides,

The appellate court may direct that additional evidence on the merits of the case be taken before the decision of a case on review if: (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

Further, RAP 1.2 calls for the Court to liberally interpret its rules in order to promote justice and facilitate the decision of cases on the merits.

Weeks v. Chief of Wash. State Patrol, 96 Wn.2d 893, 639 P.2d 732 (1982).

It can be difficult to prove the absence of a record. There are no minutes reflecting the June 14, 2016 hearing and there is no docket entry

showing it occurred in this case. However, the transcript from June 20 does reflect the court's summary verifying the hearing occurred. RP 45-47. The attached declarations, fill the necessary gap: they demonstrate court officials searched for a record of the June 14 hearing and were unable to locate one. These additional facts will assist the court in fairly resolving whether remand is necessary for a new *in camera* hearing. See *State v. Selander*, 65 Wn. App. 134, 135, 827 P.2d 1090 (1992) (remanding due to lack of record of *in camera* hearing). Thus, the first two factors of RAP 9.11 are satisfied. See *Wash. Fed. of State Empl. v. State*, 99 Wn.2d 878, 885-87, 665 P.2d 1337 (1983) (granting RAP 9.11 motion to supplement with evidence created after initiation of the litigation where necessary to fairly resolve the issues on review).

It is also equitable to excuse Mr. Uiliata's failure to produce this record to the trial court. RAP 9.11(a)(3). Mr. Uiliata and his attorney were not present for the *in camera* hearing. See RP 21-31, 45-47. The criminal rules create a mandatory duty to record *in camera* hearings. CrR 4.7(h)(6). The lack of record was not known until the records were assembled and reviewed for appeal.

The remaining factors under RAP 9.11 also counsel in favor of supplementing the record. *See* RAP 9.11(a)(4)-(6). This matter is already on direct review and the opening brief is being filed contemporaneously; it raises several issues in addition to the failure to record the *in camera* hearing. It is efficient and equitable for this Court to decide the issues on appeal together. *See Wash. Fed.*, 99 Wn.2d at 886 (considering judicial economy in granting RAP 9.11 motion). A single direct appeals process is preferable to a piecemeal approach where Mr. Uiliata would be forced to seek some kind of remedy before the trial court instead of supplementing the record on appeal. *See* RAP 1.2(a) (favoring decision of cases on the merits).

IV. CONCLUSION

For the reasons stated Mr. Uiliata asks this Court to permit the supplementing of the record on appeal pursuant to RAP 9.11.

DATED this 15th day of May, 2017.

Respectfully submitted,

§ Marla L. Link, WSBA 39042
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APPENDIX

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Appendix C	Emails

APPENDIX

APPENDIX A

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

STATE OF WASHINGTON	)	Klickitat Co. No.
Respondent,	)	16-1-00039-0
	)	COA No. 34591-2-III
)	
v.	)	DECLARATION OF
	)	PAMELA BELL,
	)	SKAMANIA
TIPASA UILIATA,	)	COURT ADMINISTRATOR
Appellant.)	

I, Pamela Bell, do declare and, if called as a witness, would so testify that:

1. I am the Court Administrator for Skamania County Superior Court.
2. I was contacted by Ann Joyce of the Washington Appellate Project on April 24, 2017 about a record of a June 14, 2016 hearing in the above-captioned case.
3. I could not locate any record of this hearing. I looked up both the case number and date and could not find any record.
4. I also emailed with defense attorney Chris Lanz. He advised that he was not present for the hearing, which he believes was held in chambers and was not recorded.

The foregoing is true and correct to the best of my knowledge.

DATED this 2nd day of May, 2017



Pamela Bell, Court Administrator
Skamania County Superior Court

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

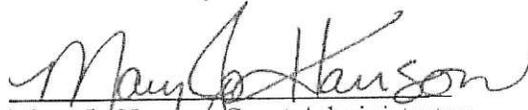
STATE OF WASHINGTON	)	Klickitat Co. No.
Respondent,	)	16-1-00039-0
	)	COA No. 34591-2-III
v.)	
TIPASA ULIATA,	)	DECLARATION OF
Appellant.	)	MARY JO HANSON,
	)	COURT ADMINISTRATOR

I, Mary Jo Hanson, do declare and, if called as a witness, would so testify that:

1. I am the Court Administrator for Klickitat County.
2. I was contacted by Pamela Bell of the Skamania County Superior Court on or about April 24, 2017 about a record of a June 14, 2016 hearing in the above-captioned case.
3. I searched all areas that might reasonably contain documentation of the June 14 2016 hearing and found nothing.
4. I also spoke with Chief Criminal Deputy Cristi Koffler. We determined that a hearing was held in Skamania County with Judge Altman. No record of this hearing was provided to Klickitat County.

The foregoing is true and correct to the best of my knowledge.

DATED this 2 day of May, 2017


Mary Jo Hanson, Court Administrator
Klickitat County Superior Court

APPENDIX C

Marla Zink

From: Ann Joyce
Sent: Tuesday, April 25, 2017 9:02 AM
To: Marla Zink
Subject: FW: Tipasa Uiliata, 16-1-00039-0

-----Original Message-----

From: Pam Bell [mailto:bell@co.skamania.wa.us]
Sent: Tuesday, April 25, 2017 8:35 AM
To: Ann Joyce <ann@washapp.org>
Subject: FW: Tipasa Uiliata, 16-1-00039-0

Hi Ann,
Here is what I received from the Defense attorney in the case(Christopher Lanz). It sounds as though there was a meeting in the Judges chambers that was not recorded.

Pamela Bell
Skamania County Superior Court Administrator

-----Original Message-----

From: Chris Lanz [mailto:chrislanz16@yahoo.com]
Sent: Tuesday, April 25, 2017 7:29 AM
To: Pam Bell
Subject: RE: Tipasa Uiliata, 16-1-00039-0

Pam,

I was not present. I was under the belief the CI was going to see Judge in chambers in Goldendale, but this other plan was devised without my input. I believe there was no record made of the in-chambers interview.

Chris

On Tue, 4/25/17, Pam Bell <bell@co.skamania.wa.us> wrote:

Subject: RE: Tipasa Uiliata, 16-1-00039-0
To: "Chris Lanz" <chrislanz16@yahoo.com>
Date: Tuesday, April 25, 2017, 7:13 AM

Ok, we are not able to locate any recording and the case is now on appeal. The appellate attorney is asking for that hearing to be transcribed but we have no record of it. Can you tell me if the prosecutor and yourself were present in chambers

From: Chris Lanz [chrislanz16@yahoo.com]
Sent: Tuesday, April 25, 2017 6:20 AM
To: Pam Bell
Subject: Re:
Tipasa Uiliata, 16-1-00039-0

Pam,

I recall

Judge Altman had ordered the Klickitat County Sheriff's Office to produce the CI for the in-camera review. Someone brought the CI to Judge's chambers in Stevenson. He talked with the CI. Later, on the record in Goldendale, Judge announced he interviewed the CI and found that the CI's identity need not be disclosed.

Chris

From: Pam Bell <bell@co.skamania.wa.us>
To: Chris Lanz <chrislanz16@yahoo.com>
Sent: Monday, April 24, 2017 4:09 PM
Subject: FW: Tipasa Uiliata, 16-1-00039-0

Hi Chris,
Do

you have any memory of this? I am unable to find a record of this in Skamania County. I can pull up the docket from that date and this case was not on it nor do I have any recordings for the day from this case number. I am not sure why we would hear a Klickitat County case here?

Thanks,

Pamela Bell
Skamania County
Superior Court Administrator

From: Ann Joyce [mailto:ann@washapp.org]
Sent: Monday, April 24, 2017 3:46 PM
To: Mary Hanson; Pam Bell
Subject: RE: Tipasa Uiliata, 16-1-00039-0

Thank you for your diligent efforts.
So ... there was no record made of the hearing? It was not reported or recorded in any matter?

Thank you

Ann

From: Mary Hanson [mailto:maryh@klickitatcounty.org]
Sent: Monday, April 24, 2017 3:38 PM
To: Pam Bell <bell@co.skamania.wa.us<mailto:bell@co.skamania.wa.us>>
Cc: Ann Joyce <ann@washapp.org<mailto:ann@washapp.org>>
Subject: Re: Tipasa Uiliata, 16-1-00039-0

Hello,
This is
Mary Jo Hanson, Klickitat County Court Administrator. I have searched all areas that may have contained documentation of this hearing and to date, have found nothing.
After discussion with the Chief Criminal Deputy Cristi Koffler, it was determined that the hearing was held in Skamania County with Judge Altman, present were Klickitat County prosecutor David Wall, Defense attorney Christopher Lanz, and CI handler Frank Randle. It is unknown to either Mrs. Koffler or myself as to whether the CI was present and what was discussed.
There was no record provided to Klickitat County.

Mary Jo Hanson
Klickitat County Superior Court
Administrator
205 S. Columbus, Rm 206
Goldendale, WA 98620
(509)
773-5755

On Mon, Apr 24, 2017 at 10:24 AM, Pam Bell <bell@co.skamania.wa.us<mailto:bell@co.skamania.wa.us>> wrote:
Hi Ann,
I do not have
any record of this hearing. It is possible a telephonic hearing was done from Skamania County because the Judge was here that week but that would still have been recorded on the Klickitat County record. I have looked up both this case number and the date and I do not see any recordings here. Have you spoken to Klickitat County yet?

Pamela Bell
Skamania County Superior Court Administrator

From: Ann
Joyce [mailto:ann@washapp.org<mailto:ann@washapp.org>]
Sent: Monday, April 24, 2017 9:40 AM
To: Pam Bell
Subject: FW:
Tipasa Uiliata, 16-1-00039-0

Good morning Pam
Please see the
email string below ...

Can you please
assist in ordering this record?

Thanks very much

Ann Joyce
Office Manager
Washington Appellate Project

From: Paula Diaz [mailto:diaz@co.skamania.wa.us]
Sent: Friday, April 21, 2017 2:27 PM
To: Ann Joyce <ann@washapp.org<mailto:ann@washapp.org>>
Subject: RE: Tipasa Uiliata, 16-1-00039-0

Hello Ann,

I believe Pam Bell (Court Admin) will be able to assist with this..
She is on vacation
until Monday, please email her then.

Thank you!

From: Ann Joyce [mailto:ann@washapp.org]
Sent: Friday, April 21, 2017 2:11 PM
To: Paula Diaz
Cc: Cristi
Koffler
Subject: Tipasa Uiliata,
16-1-00039-0

Hi Paula
Hi Cristi

I am
hoping you can help me figure something out ...

We represent Mr. Uiliata on
appeal

Klickitat County No.
16-1-00039-0
CoA No. 34591-2-III

In reviewing the prepared
record, it was learned that an in-camera hearing was held in Skamania County (before the Honorable Brian Altman
and/or the Honorable Randall C. Krog) on 6/14/16.
There are no corresponding minutes in the trial court file. I need to order a transcript of the hearing but first need to
confirm that it was recorded.
Once I have that confirmation, I can go ahead and order transcription of the recording .. I don't have start and stop
times (as there are no minutes) but hopefully other descriptive information will be sufficient.

Thanks for your help

Ann Joyce
Office Manager
Washington
Appellate Project

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE**

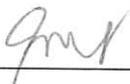
STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.	)	NO. 34591-2-III
)	
TIPASA UILIATA,)	
)	
APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, NINA ARRANZA RILEY, STATE THAT ON THE 15TH DAY OF MAY, 2017, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] DAVID QUESNEL, DPA [davidq@klickitatcounty.org] KLUCKITAT COUNTY PROSECUTOR'S OFFICE 205 S COLUMBUS AVE. STOP 18 GOLDENDALE, WA 98620	() () (X) ()	U.S. MAIL HAND DELIVERY E-SERVICE VIA COA PORTAL
[X] TIPASA UILIATA 392391 COYOTE RIDGE CORRECTIONS CENTER PO BOX 769 CONNELL, WA 99326	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 15TH DAY OF MAY, 2017.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
☎(206) 587-2711

WASHINGTON APPELLATE PROJECT

May 15, 2017 - 4:24 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 34591-2
Appellate Court Case Title: State of Washington v. Tipasa Lesumi Uiliata
Superior Court Case Number: 16-1-00039-0

The following documents have been uploaded:

- 345912_Briefs_20170515162323D3531345_2542.pdf
This File Contains:
Briefs - Appellants
The Original File Name was washapp.org_20170515_161810.pdf

A copy of the uploaded files will be sent to:

- wapofficemail@washapp.org
- marla@washapp.org
- davidq@klickitatcounty.org
- paapeals@klickitatcounty.org
- greg@washapp.org

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org

Filing on Behalf of: Marla Leslie Zink - Email: marla@washapp.org (Alternate Email: wapofficemail@washapp.org)

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