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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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

NO. 349292-III

STATE OF WASHINGTON,
Respondent,

vs.

JESUS MARTINEZ,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR ADAMS COUNTY
CAUSE NO. 16-1-00048-7

BRIEF OF RESPONDENT



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I. RESPONSE TO ASSIGNMENTS OF ERROR

The Trial Court correctly analyzed the search warrant and attached affidavit under applicable law and found probable cause.

II. ISSUES PRESENTED

Whether the Trial Court correctly ruled that an informant had sufficient knowledge and veracity to support the issuance of a search warrant.

III. STATEMENT OF THE CASE

A. Facts Surrounding Issuance of Search Warrant.

On April 27, 2016, Officer David Maulen, of the City of Othello Police Department, applied for a search warrant with the Honorable Adams County District Court Judge Gary Brueher. CP 31 (Attachment A).¹ Officer Maulen declared under penalty of perjury in his Affidavit that on April 26, 2017, he observed a hand-to-hand drug buy at the Pik-A-Pop gas station in the city of Othello, State of Washington. *Id.* He contacted the purchaser of the buy, Russell M. Richardson, who admitted to buying \$7 worth of Methamphetamine from the driver of a silver pickup truck. *Id.*

¹ The issue in the case surrounds the “four corners” of the search warrant granted by the Honorable Judge Brueher. The statement of the case is derived entirely from the Affidavit for Search Warrant prepared by Officer Maulen, except where noted otherwise.

Officer Jamie Mendoza, of the City of Othello Police Department, stopped the driver of the silver pickup truck a few blocks away from the Pik-A-Pop. *Id.* The driver of the pickup truck, Raul O. Gonzalez, was detained by Officer Mendoza. *Id.* Also detained were Mr. Gonzalez's passengers, Erasmo Gutierrez and Eyvette V. Cano. *Id.* Sergeant Josh Silva, of the City of Othello Police Department, observed Mr. Gonzalez making movements in the gravel behind his back. *Id.* The gravel behind where Mr. Gonzalez was sitting was searched and a plastic baggie was found that was tested and presumptively found to contain Methamphetamine. *Id.* Mr. Gonzalez was placed under arrest. *Id.* His pickup truck was impounded pending a search warrant being obtained. *Id.*

While Mr. Gonzalez was being transported to the police station by Officer Mendoza, Mr. Gonzalez said he wished to speak with officers about the incident. *Id.* At the Othello Police Station Mr. Gonzalez was interviewed by Officer Maulen. Mr. Gonzalez admitted to selling Methamphetamine to Mr. Richardson. *Id.* He told Officer Maulen that there was more Methamphetamine in his pickup, hidden in the 4x4 gear shift box and that there were two

Methamphetamine pipes in a plastic container in the bed of the pickup. *Id.*

Mr. Gonzalez told Officer Maulen that he obtained the Methamphetamine from his friend, the Appellant, Jesse (Jesus) Martinez, who is also known as "Panther." *Id.* He said he obtained the Methamphetamine that day at Mr. Martinez's home. *Id.* He said Mr. Martinez removed about half an ounce of Methamphetamine from his pocket and gave Mr. Gonzalez \$40 worth. *Id.*

Mr. Gonzalez said he has known Mr. Martinez for a long time and met him for the first time when he was purchasing Methamphetamine from Mr. Martinez. *Id.* Mr. Gonzalez described Mr. Martinez's house as being white in color, with several solar powered garden lamps, and an older red car parked on the driveway. *Id.* He said Mr. Martinez lives there with his wife and one of his teenage boys. *Id.* Mr. Gonzalez also said that Mr. Martinez drives a white Chevrolet Impala. *Id.*

Officer Maulen also is familiar with Mr. Martinez. He knows Mr. Martinez goes by the name "Panther" and drives a white Chevrolet Impala. *Id.* Officer Maulen had obtained this knowledge during another similar narcotics investigation involving Mr.

Martinez. Id. Officer Maulen had knowledge that Mr. Martinez was delivering Methamphetamine. Id.

On April 27, 2017, Officer Maulen obtained a search warrant for Mr. Gonzalez's Dodge Dakota pickup. Id. He located the \$7 cash that Mr. Gonzalez said he got from Mr. Richardson, in exchange for some Methamphetamine. Id. Officer Maulen located the Methamphetamine hidden underneath the 4x4 gear shift box and two pipes inside a plastic container in the bed of the pickup. Id. Also located was another baggie containing Methamphetamine on the back seat of the pickup. Id.

On that same date, Officer Maulen interviewed Erasmo Gutierrez and Eyvette V. Cano. Id. Ms. Cano stated that she had been with Mr. Gutierrez and Mr. Gonzalez playing pool when Mr. Gonzalez left. Id. She stated she believed Mr. Gonzalez went to buy Methamphetamine from "Panther", Mr. Martinez. Id. She stated Mr. Martinez lives in a house with several solar powered garden lamps. Id.

Officer Maulen re-interviewed Mr. Gonzalez who stated he had been playing pool with Mr. Gutierrez and Ms. Cano, but left to go to Mr. Martinez's house to buy Methamphetamine. Id.

The Honorable Judge Gary Brueher granted Officer Maulen's search warrant on that same date. *Id.* The search warrant was for the residence located at 659 S. Kaylee Rd. Othello, WA. *Id.* The warrant described the property as:

A white single family home with blue trim on the east side of Kaylee Rd. The front door faces west and is white in color with a brown cross. There are two windows in the front of the home. One of the two windows has a Seattle Seahawks poster on it. The driveway is on the south side of the home with a parked older model red car. The backyard is chain linked (sic) fenced and there is a detached shed on the north side of the home. There are several small black solar powered garden lights on the front lawn. Out on the front by the curb there is a black mailbox with black and white numbers "659."

Id.

On April 28, 2017, the search warrant was executed on the above house. CP 1. The Appellant; his wife, Yolanda Martinez; their son, Jesus A. Martinez; and John Long were located in the residence. *Id.* Cocaine and Methamphetamine were located in the residence. *Id.*

On April 29, 2016, Mr. Martinez was charged with Possession with Intent to Deliver a Controlled Substance, Cocaine, Possession with Intent to Deliver a Controlled Substance,

Methamphetamine, and Unlawful Possession of a Firearm in the Second Degree. CP 5.

B. Motion to Suppress Hearing.

On October 31, 2016, Mr. Martinez moved to suppress the evidence obtained from the search warrant of his house. CP 27. Mr. Martinez requested a Franks hearing and argued lack of probable cause for the search warrant under the Aguilar-Spinelli test. Franks v. Delaware, 438 U.S. 1354, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1987); Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964); Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969). *Id.*

The Court heard oral argument on Mr. Martinez's motion and entered written Findings of Fact and Conclusions of Law on December 12, 2016. CP 44.² The Trial Court entered findings in line with Officer Maulen's Affidavit, as set forth above. *Id.* The Trial Court entered Conclusions of Law and denied Mr. Martinez's Franks hearing request. The Trial Court denied the Franks hearing because none of Mr. Gonzalez's prior crimes involved dishonesty. *Id.* The Trial Court further found that Mr. Gonzalez was a named

² The Designation of Clerk's Papers listed CP 44 as Motion – Deny Franks Hearing. According to the Adams County Clerk's Office this document was misidentified and is in fact the Findings of Fact and Conclusions of Law Re: Defendant's 3.6 Motion & Request for *Franks* Hearing filed on December 12, 2016.

information, who made statements against his penal interest and had a heightened reason to be truthful. *Id.* Finally, the Trial Court found that probable cause did exist for the issuance of the search warrant. *Id.*

Mr. Martinez waived his right to a jury, entered stipulated facts with the trial court, and was found guilty of Possession with Intent to Deliver, Methamphetamine, and Unlawful Possession of a Firearm in the Second Degree. CP 45.

On December 12, 2016, Mr. Martinez filed a Notice of Appeal.

IV. ARGUMENT

The Trial Court Was Correct In Finding The Information From the Informant Sufficiently Reliable to Uphold The Search Warrant.

The Appellant contends that the Trial Court erred in its analysis of the Aguilar-Spinelli test. The Appellant's contention is misplaced. "A magistrate's determination that probable cause exists to issue a warrant is entitled to considerable deference by appellate courts." State v. Taylor, 74 Wn. App. 111, 116, 872 P.2d 53 (1994) (*citing* State v. Mak, 105 Wn.2d 692, 718 P.2d 407, *cert. denied*, 479 U.S. 995, 107 S.Ct. 599, 93 L.Ed.2d 599 (1986); State v. Jackson, 102 Wn.2d 432, 688 P.2d 136 (1984)). "When a search

warrant's validity is challenged, doubts will be resolved in favor of the warrant." *Id.* (citing Mak, 105 Wn.2d at 714).

The sole issue in this appeal is whether Probable Cause existed when the Honorable Judge Brueher issued a search warrant for the Defendant's house. Both the Fourth Amendment to the United States Constitution and Article I, Section 7 of the Washington State Constitution require a finding of Probable Cause by a neutral magistrate before law enforcement are able to obtain a search warrant to enter someone's property. State v. Knox, 86 Wn. App. 831, 838, 939 P.2d 710 (1997). Probable cause is an objective standard by which the reasonableness of an arrest is measured. State v. Graham, 130 Wn.2d 711, 724, 927 P.2d 227 (1996). Probable cause is determined by the "totality-of-the-circumstances" in which "the magistrate makes a practical, commonsense decision as to whether, given all the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place." State v. Woodall, 100 Wn.2d 74, 79 n. 2, 666 P.2d 364 (1983) (citing Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)).

Although rejected by the U.S. Supreme Court for Fourth Amendment Analysis, Washington State still applies the two part

Aguilar-Spinelli test for warrants based upon information from informants. State v. McPherson, 40 Wn. App. 298, 300, 698 P.2d 563 (1985).

For an informant's tip (as detailed in an affidavit) to create probable cause for a search warrant to issue: (1) the officer's affidavit must set forth some of the underlying circumstances from which the informant drew his conclusion so that a magistrate can independently evaluate the reliability of the manner in which the informant acquired his information; and (2) the affidavit must set forth some of the underlying circumstances from which the officer concluded that the informant was credible or his information reliable.

Id. (quoting State v. Jackson, 102 Wn.2d 432, 435, 688 P.2d 136 (1984)).

Under the *Aguilar-Spinelli* test, the reliability of an informant is established by showing "underlying circumstances from which the informant drew his conclusion so that a magistrate can independently evaluate the reliability of the manner in which the informant acquired his information [basis of knowledge prong] and ... underlying circumstances from which the officer concluded that the informant was credible or his information reliable [veracity prong]."

State v. Smith, 110 Wn.2d 658, 663, 756 P.2d 722 (1988) (quoting Jackson, 102 Wn.2d at 435). The information provided by Mr. Gonzalez meets both of these two prongs.

A. Reliability of the Informant's Information

The Appellant contends that the State cannot meet the first part of this prong because the State cannot provide any background as to the informant's reputation and history of providing accurate information to law enforcement. Appellant's Brief at 7. The Appellant applies the wrong legal standard for this case.

Informants usually fall into four categories: (1) an informant who remains wholly anonymous, even to the police, (2) an informant whose identity is known to the police, but not revealed to the magistrate, (3) an informant whose identity (name and address) is disclosed to the magistrate, and (4) an eyewitness to a crime who summons the police and who is not identified because the exigencies are such that ascertaining the identity and background of the witness would be unreasonable.

State v. Ibarra, 61 Wn. App. 695, 699, 812 P.2d 114 (1991) (*citing* State v. Northness, 20 Wn. App. 551, 555, 582 P.2d 546 (1978)).

The Ibarra court held that the analysis the Appellant seeks this court to apply to this case applies to the second group listed above. See Ibarra, 61 Wn. App. at 699. The informant in this case is part of the third group. The Appellant's analysis is therefore inapplicable.

In this case, the informant was identified to the magistrate. The question is not, as the Appellant contends, whether he has a

“track record” of providing reliable information. The issue for the magistrate to determine is whether the Affidavit sets forth a sufficient basis to find the source informant's informant to be reliable. Smith, 110 Wn.2d at 663. **“Information that the informant personally saw the facts asserted and is passing on firsthand information satisfies the basis of knowledge prong.”** State v. McCord, 125 Wn. App. 888, 893, 106 P.3d 832 (2005) (citing State v. Duncan, 81 Wn. App. 70, 76, 912 P.2d 1090 (1996) (review denied, 130 Wn.2d 1001, 925 P.2d 988 (1996))) (*Emphasis Added*).

In the Affidavit, Mr. Gonzalez relayed firsthand knowledge of criminal activity occurring at the Appellant's house. Mr. Gonzalez said he got the Methamphetamine from the Appellant at the Appellant's house. CP 31 (Attachment A). Mr. Gonzalez said that the Appellant had over half an ounce of Methamphetamine when he gave Mr. Gonzalez \$40 worth. *Id.* He described accurately what the Appellant's house looked like: white house with solar powered garden lights and an old red car in the driveway. *Id.* He knew that the Appellant goes by the name “Panther.” *Id.* He knew the Appellant drove a white Chevrolet Impala. *Id.* He described how the Appellant lived with his wife and teenage son. *Id.* He stated he

had known the Appellant for a long time through his purchasing of Methamphetamine from him. *Id.*

Mr. Gonzalez's accounts were further corroborated by Ms. Cano who said that Mr. Gonzalez left her to go get Methamphetamine from the Appellant, who she knew as "Panther." *Id.* She also described the Appellant's house similarly to Mr. Gonzalez. *Id.*

Officer Maulen also corroborated Mr. Gonzalez, because he knew the Appellant went by the name "Panther," that he drove a white Chevrolet Impala, and was known to be involved in dealing drugs. *Id.* All of this information was conveyed to the magistrate prior to his authorization of the search warrant.

The magistrate "is entitled to draw commonsense and reasonable inferences from the facts and circumstances set forth" in the affidavit. *Smith*, 110 Wn.2d at 663 (*citing State v. Helmka*, 86 Wn.2d 91, 93, 542 P.2d 115 (1975)). "[a]ffidavits for search warrants must be tested in a commonsense manner rather than hypertechnically as long as the basic *Aguilar/Spinelli* requirements are met." *Id.* (*quoting State v. Fisher*, 96 Wn.2d 962, 965, 639 P.2d 743 (1982)). The magistrate clearly found Mr. Gonzalez's basis of

knowledge credible. The Trial Court likewise found Mr. Gonzalez's basis of knowledge credible.

The Appellant complains that the Affidavit did not address the informant's criminal history. This argument was flatly rejected by the Trial Court. RP at 10. The Trial Court noted that none of Mr. Gonzalez's criminal history consisted of crimes of dishonesty. *Id.* This claim has also been firmly rejected by the Appellate Courts. (see State v. Lane, 56 Wn. App. 286, 295, 786 P.2d 277 (1989) ("Given our common experience that a person who is in a position to set up a controlled buy often has had prior contact with the criminal justice system, we hold the magistrate was not misled. Thus, we need not decide whether the informant's criminal record was deliberately or recklessly omitted.); State v. Taylor, 74 Wn. App. 111, 118, 872 P.2d 53 (1994) (Holding that a deliberate or reckless omission of criminal history was **not material** to a finding of probable cause.)) (*Emphasis Added*).

The Appellant also contends that Officer Maulen should have done more to verify the information from Mr. Gonzalez. The Appellant cites no authority for this claim that law enforcement must do more to verify information. The Court should reject this argument, much like the Trial Court did.

The Appellant contends that the information from Mr. Gonzalez was insufficient to show that illegally activity occurred inside the Appellant's residence. The Appellant relies on a hypertechnical reading of the Affidavit in which Mr. Gonzalez stated he obtained the Methamphetamine at the Appellant's house not inside the house. The Trial Court rejected this argument and the case law above has rejected such a hypertechnical reading of Affidavits. CP 44; Smith, 110 Wn.2d at 663. (*quoting State v. Fisher*, 96 Wn.2d 962, 965, 639 P.2d 743 (1982)).

The Appellant contends that the informant did not state his ability to recognize Methamphetamine. This argument is unavailing, since Mr. Gonzalez stated he went to the Appellant's house to get Methamphetamine, that he sold Methamphetamine to Mr. Richardson, that he hid the Methamphetamine in his pickup, and that he has been purchased Methamphetamine from the Appellant for a long time. Significantly, the baggie found behind Mr. Gonzalez tested presumptively positive for methamphetamine. There is sufficient basis to leave the magistrate to conclude that Mr. Gonzalez knows what Methamphetamine looks like.

In evaluating the statements made by Mr. Gonzalez, an identified informant, the magistrate had plenty of information to

conduct an independent evaluation of Mr. Gonzalez's basis of knowledge. The magistrate did conduct an independent evaluation and found Mr. Gonzalez's basis of knowledge compelling. Likewise, the Trial Court also looked at Mr. Gonzalez's basis of knowledge during the Appellant's Motion to Suppress. The Trial Court also found that Mr. Gonzalez had a strong basis of knowledge. In this case, neither the magistrate nor the Trial Court erred in their evaluation of Mr. Gonzalez. The Appellant seeks to apply the wrong standard to Mr. Gonzalez and create a higher threshold than the law requires. This Court should reject the Appellant's attempt to rewrite well-established law on the evaluation of an informant's basis of knowledge. The Trial Court did not error in denying the Appellant's Motion to Suppress.

B. Credibility of Informant

In addition to the magistrate being satisfied that the informant has a basis of knowledge regarding the information they are providing, the affidavit must also show the informant themselves is credible. State v. McCord, 125 Wn. App. at 893. The Appellant contends that Mr. Gonzalez is not credible. The Appellant is wrong in his assertion.

The credibility or the veracity of an informant must be established in order for the magistrate to find the informant is truthful.

The veracity prong is satisfied by showing the credibility of the informant or by establishing that the facts and circumstances surrounding the furnishing of the information support an inference the informant is telling the truth.

Id. (citing State v. Lair, 95 Wn.2d 706, 710, 630 P.2d 427 (1981)).

Veracity can be established two ways: a proven "track record" showing reliability of the informant or when the information is furnished under circumstances giving reasonable assurances of trustworthiness. Lair, 95 Wn.2d at 710.

In this case, Mr. Gonzalez has no "track record" so the magistrate had to determine whether reasonable assurances of trustworthiness exist. Mr. Gonzalez admitted to Officer Maulen that he purchased Methamphetamine from the Appellant. He also admitted to selling Methamphetamine to Mr. Richardson and to possessing more Methamphetamine in his pickup.

Since one who admits criminal activity to a police officer faces possible prosecution, it is generally held to be a reasonable inference that a statement raising such a possibility is a credible one.

Id. at 711 (citing 1 W. LaFave, Search and Seizure s 3.3, at 522-35 (1978)).

The Appellant contends this Court should ignore the established law that admission of criminal activity to law enforcement is reliable. The Appellant claims that Mr. Gonzalez's statements are not reliable because Mr. Gonzalez was seeking favorable treatment. Appellant's Brief pg. 8-9. But, there is no evidence before this Court that Mr. Gonzalez sought or received favorable treatment in exchanged for his information. The Appellant made the same argument to the Trial Court, which flatly rejected the assertion. "I make no finding as to whether he had a deal or didn't have a deal; it's not of record." RP 24.

Even if Mr. Gonzalez was seeking favorable treatment, this would only strengthen his credibility. The case law on leniency agreements is clear.

This, the reliability attached to admissions against penal interest may be greater in post arrest situations because the arrestee admitting the crime risk disfavor with the prosecution if he lies. Citing *State v. Bean*, supra, respondent contends that there must be a leniency agreement before the arrestee has any motive to be truthful. The *Bean* court found that the informant had a motive to be truthful because he had agreed to give information in exchange for a favorable

sentencing recommendation. However, the opinion does not announce adoption of a rule limiting consideration of arrestee veracity to those situations involving leniency agreements. Thus, we see no merit in respondent's contention that, absent a leniency agreement, *Bean* precludes using the arrest situation in the present as a factor supporting reliability. A leniency agreement may well provide an additional incentive to speak truthfully, but this does not mean that an arrest situation by itself has no effect on an informant's incentive to be truthful.

State v. O'Connor, 39 Wn. App. 113, 121-22, 692 P.2d 208 (1984),
review denied, 103 Wn.2d 1022 (1985) (*internal cites omitted*).

Finally, the amount and kind of detailed information given by an informant may also enhance his reliability. ...

The informant in the present case also gave a fairly detailed statement to the police which is set forth in the search warrant affidavit. Lance named a specific person at a specific residence. He recounted certain events occurring on the 27th of January and described by brand name certain items located at the above-mentioned residence. Such specific references, along with the other more general statements, support an inference of personal observation and make the possibility of fabrication and/or rumor less likely.

In summary, we have a detailed statement against penal interest by a named informant. Significantly, this statement was given following *Miranda* warnings, thus establishing the arrestee/informant's awareness that his statements could be used against him in a

criminal prosecution. We contrast this situation with those situations where an informant's statement is ambiguous or made under circumstances not necessarily indicating the potential for self-incrimination or criminal prosecution.

Id. at 122-23 (*internal cites omitted*).

In this case, Mr. Gonzalez said he wanted to speak with Officer Maulen about the incident. CP 31 (Attachment A). This occurred at the police station, after Mr. Gonzalez was read his *Miranda* warnings. *Id.*; *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Mr. Gonzalez admitted to numerous felony acts against his penal interest.³ CP 31 (Attachment A). He gave detailed information about the Appellant, including the name he goes by, "Panther," the location of his house, an accurate description of his house, who all lived in the house, the red vehicle parked in the drive way, and that the Appellant drove a white Chevy Impala. *Id.* Officer Maulen further corroborates Mr. Gonzalez by his own knowledge of the Appellant, including that he does drive a white Chevy Impala, and goes by "Panther." *Id.* All of this accurate factual information shows the informants willingness to tell the truth.

³ The Appellant's attorney again claims that Mr. Gonzalez did this to curry favor with the State, but as the case law above states, this would only enhance his credibility. This is because someone who provides false information would not only fail to curry favor, but also risks harsher treatment at sentencing for lying to the state.

The Appellant contends that Officer Maulen should have done more to corroborate Mr. Gonzalez's information. The Appellant cites no legal authority that law enforcement is required to exhaust every avenue of corroboration. Officer Maulen found the information given by Mr. Gonzalez to be credible based upon his knowledge of the Appellant.

Mr. Gonzalez veracity for truthfulness in this case was well established by the Affidavit. He provided factual accurate information against his penal interests and against the Appellant. He provided this information after being read his *Miranda* rights. His information was corroborated by Office Maulen's personal knowledge of the Appellant and by Ms. Cano. All of this was known by the magistrate at the time of issuing the warrant. The magistrate found Mr. Gonzalez reliable and being truthful. The Trial Court affirmed the magistrate's issuance of the warrant and found Mr. Gonzalez veracity for truthfulness valid. This Court should also find a sufficient basis to find a Mr. Gonzalez reliable and being truthful.

V. CONCLUSION

The search warrant authorized by the Honorable Judge Gary Brueher was based upon information from a named informant. Mr. Gonzalez provided specific facts of criminal activity based upon his

firsthand observations of the criminal activity. This made his statements factually reliable. Mr. Gonzalez provided a detailed account of the Appellant, his home, who lives there, and what he drives. He made statements against his penal interest. He made these statements after being read *Miranda*. All of these things make him more truthful.

Mr. Gonzalez met the Aguilar-Spinelli test. The magistrate found that to be so in issuing the search warrant and the Trial Court specifically determined that as well. After weighting the test, the magistrate looked at the totality of the information contained in the Affidavit and found probable cause. The Trial Court also found that probable cause existed. Given the great deference that is given to the findings of the magistrate, this Court should uphold the search warrant and deny the Appellant's request.

The State respectfully requests this Court deny the Appellant's appeal. Pursuant to RAP 14.2 and General Orders of Division III, *In Re the Matter of Court Administration Order RE: Request to Deny Cost Award*, section 2, the Respondent further

requests this Court award statutory costs and attorney fees if it is the substantially prevailing party on review.⁴

DATED this 26 day of OCTOBER, 2017.

RANDY J. FLYCKT
Adams County Prosecuting Attorney

By: 
ROBERT A. LEHMAN, WSBA #47783
Senior Deputy Prosecuting Attorney

⁴ Pursuant to RAP 15.2(f) the Appellant is not indigent. The Appellant was not found indigent by the Trial Court and had privately retained counsel. Neither the Trial Court nor this Court found the Appellant indigent for purposes of this Appeal. The Appellant has not asked this Court to waive an award of cost based upon indigency, as required under section 2 of *In Re the Matter of Court Administration Order RE: Requests to Deny Cost Award*. The Court should grant the Respondent costs and attorney fees if it is the substantially prevailing party.