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No. 37160-3-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Christopher Morrell,

Appellant.

Spokane County Superior Court Cause No. 17-1-03903-0

The Honorable Judge Raymond F. Clary

Appellant's Reply Brief

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ARGUMENT..... 1

**I. **Ansbaugh’s tip did not have indicia of reliability
justifying a traffic stop..... 1****

II. **The cell phone searches were unconstitutional. 4**

 A. Police did not have probable cause to search the
 phones. 4

 B. The warrant did not particularly describe each phone. 6

III. **All three warrants were overbroad. 8**

 A. The warrant authorizing seizure of ‘all data’ from two
 cell phones was unconstitutionally overbroad. 8

 B. The warrant for each vehicle included authorization to
 seize numerous items for which police lacked probable
 cause..... 11

 C. The severability doctrine cannot be applied to these
 warrants. 12

**IV. **The State does not claim that the admission of
unlawfully seized evidence was harmless..... 17****

**V. **The trial court should not have incorporated “all
reports... as additional facts” into its findings..... 18****

CONCLUSION 20

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Groh v. Ramirez</i> , 540 U.S. 551, 124 S. Ct. 1284, 157 L. Ed. 2d 1068 (2004).....	8
<i>Riley v. California</i> , 573 U.S. 373, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014) (<i>Riley I</i>).....	4, 16
<i>United States v. Rosa</i> , 626 F.3d 56 (2d Cir. 2010)	9
<i>United States v. Sells</i> , 463 F.3d 1148 (10th Cir. 2006).....	13, 14, 17
<i>United States v. Williamson</i> , 1 F.3d 1134 (10th Cir. 1993).....	8

WASHINGTON STATE CASES

<i>City of Seattle v. Levesque</i> , 12 Wn.App.2d 687, 460 P.3d 205 (2020).....	17, 20
<i>In re Pullman</i> , 167 Wn.2d 205, 218 P.3d 913 (2009).....	18
<i>State v. Besola</i> , 184 Wn.2d 605, 359 P.3d 799 (2015)	10, 13
<i>State v. Fairley</i> , 12 Wn.App. 2d 315, 457 P.3d 1150, <i>review denied</i> , 195 Wn.2d 1027, 466 P.3d 777 (2020).....	4, 9
<i>State v. Higgins</i> , 136 Wn.App. 87, 147 P.3d 649 (2006).....	12
<i>State v. Jackson</i> , --- Wn.2d ---, 467 P.3d 97 (2020)	18
<i>State v. Keodara</i> , 191 Wn.App. 305, 364 P.3d 777 (2015)	9, 12, 13
<i>State v. McKee</i> , 3 Wn.App. 2d 11, 413 P.3d 1049, 1058, <i>review granted</i> , 191 Wn.2d 1012, 426 P.3d 749 (2018), and <i>rev'd and remanded</i> , 193 Wn.2d 271, 438 P.3d 528 (2019).....	10
<i>State v. McNeair</i> , 88 Wn.App. 331, 944 P.2d 1099 (1997).....	18
<i>State v. Perrone</i> , 119 Wn.2d 538, 834 P.2d 611 (1992). 7, 8, 12, 13, 15, 16	

<i>State v. Riley</i> , 121 Wn.2d 22, 846 P.2d 1365 (1993) (<i>Riley II</i>)	8, 10
<i>State v. Thein</i> , 138 Wn.2d 133, 977 P.2d 582 (1999).....	4, 5, 11, 12
<i>State v. Wible</i> , 113 Wn.App. 18, 51 P.3d 830 (2002).....	2
<i>State v. Z.U.E.</i> , 183 Wn.2d 610, 352 P.3d 796 (2015).....	1, 4

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. IV	7, 22
Wash. Const. art. I, §7.....	7, 22

OTHER AUTHORITIES

<i>Burns v. United States</i> , No. 17-CF-1347, Slip Op. (D.C. Aug. 20, 2020)	17
<i>In re Cauley</i> , 437 S.W.3d 650 (Tex. App. 2014).....	20
<i>People v. Coke</i> , 461 P.3d 508 (Colo. 2020).....	9
<i>People v. Thompson</i> , 178 A.D.3d 457, 116 N.Y.S.3d 2 (N.Y. App. Div. 2019).....	9

ARGUMENT

I. ANSBAUGH’S TIP DID NOT HAVE INDICIA OF RELIABILITY JUSTIFYING A TRAFFIC STOP.

Christopher Morrell was pulled over based on a tip provided by Ansbaugh. CP 175. Ansbaugh was unknown to Officer Lesser, and he was unable to corroborate anything she said other than “innocuous facts.” *State v. Z.U.E.*, 183 Wn.2d 610, 618-619, 352 P.3d 796 (2015). Under these circumstances, Lesser did not have reasonable suspicion warranting a traffic stop. *See* Appellant’s Opening Brief, pp. 7-10.

Without citation to the record, Respondent asserts that Lesser found Mr. Morrell “in an area and a time close to Ms. Ansbaugh’s arrest.” Brief of Respondent, p. 20. This claim is unsupported.

The trial court did not make any findings regarding the time and location of either the stop or Ansbaugh’s arrest. CP 175. The court determined only that Lesser located Mr. Morrell “[s]ubsequent to” the officer’s conversation with Ansbaugh. CP 175.

Lesser did not say how far Mr. Morrell was from where he’d arrested Ansbaugh.¹ RP (6/13/19) 5-27. Nor did he say how much time passed between Ansbaugh’s arrest and his encounter with Mr. Morrell,

¹ He testified that he stopped Mr. Morrell “at Augusta and Green,” but he never told the court where Ansbaugh had been arrested. RP (6/13/19) 12.

other than to say that he “ended up observing” the Monte Carlo while still on patrol. RP (6/13/19) 10. The timing and location of the traffic stop did not contribute to a finding of reasonable suspicion.

Respondent also points to Ansbaugh’s possession of heroin as corroborating evidence. Resp. Brief, p. 20. But her possession of heroin does not imply that she obtained it from any specific person. Lesser’s observations about Ansbaugh’s criminal activity do not support the stop.

Nor does the record establish Ansbaugh’s reliability. The mere fact that an informant is “named and identified”² does not make her tip reliable. *Id.*, at 620. Even a “named but otherwise unknown citizen informant is *not* presumed to be reliable and a report from such an informant may not independently justify a warrantless investigative stop.” *Id.*, at 628 (Gordon-McCloud, J., concurring). Furthermore, Ansbaugh did not voluntarily give her name to police: she was under arrest and could not choose to withhold her identity. This is not a case involving a named citizen informant who came forward voluntarily. *Cf. State v. Wible*, 113 Wn.App. 18, 24, 51 P.3d 830 (2002).

In addition, Ansbaugh had a motive to lie. As Officer Lesser testified, “it would be common for us to allow someone to be released that night in hopes that they would work with us to help get the next bigger

² See Brief of Respondent, p. 18.

dealer in the chain.” RP (6/13/19) 21.

Ansbaugh may well have believed that she’d avoid jail that night if she came up with a name to tell police. Her status as an arrestee did not “make[] it more likely that she was telling the truth;”³ instead, it gave her at least some incentive to lie.

This motive also explains why she would “ma[k]e the report of her own volition without interrogation by the arresting officers.” Resp. Brief, p. 19. Her spontaneous accusation against Mr. Morrell suggests she was impatient to gain some immediate benefit such as her release that night.

If, as Respondent suggests, Ansbaugh had a rational desire to obtain “a favorable plea deal” at a later date and to avoid “an additional criminal charge” for lying to police, she would have been better served by remaining silent. Brief of Respondent, p. 18. She could have waited until she had a chance to talk to counsel, who could negotiate directly with the prosecutor. It is more likely that the chance of immediate release loomed large compared to the distant possibility of future consequences that might stem from giving false information.

Ansbaugh’s familiarity with Mr. Morrell’s nickname and the car he drives did not make her accusation reliable. Resp. Brief, p. 19. A person can make false allegations against a neighbor, family member, or friend,

³ Brief of Respondent, p. 18.

and may even have greater incentive to do so because of the relationship. Ansbaugh's information did not provide a reasonable suspicion to stop Mr. Morrell. *Z.U.E.*, 183 Wn.2d at 618, 624-625. The conviction must be reversed, the evidence suppressed, and the case remanded. *Id.*

II. THE CELL PHONE SEARCHES WERE UNCONSTITUTIONAL.

A. Police did not have probable cause to search the phones.

Police did not have any specific facts justifying a search of the two cell phones found in the Monte Carlo. Opening Brief, pp. 10-15. Instead, the officers relied on “nothing more than generalizations regarding the common habits of drug dealers.” *State v. Thein*, 138 Wn.2d 133, 148, 977 P.2d 582 (1999); *see* CP 52, 53.

The problem is especially acute given the vast trove of information discoverable during a cell phone search. *See State v. Fairley*, 12 Wn.App. 2d 315, 321, 457 P.3d 1150, *review denied*, 195 Wn.2d 1027, 466 P.3d 777 (2020); *Riley v. California*, 573 U.S. 373, 393, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014) (*Riley I*). A cell phone search such as that authorized here “typically expose[s] to the government far *more* than the most exhaustive search of a house.” *Riley I*, 573 U.S. at 396. Cell phone searches are thus even more intrusive than the home search at issue in *Thein*.

Thein controls. Respondent attempts to distinguish *Thein* by suggesting that Officer Lesser had “many facts that, when viewed together

with his training and experience, establish the nexus required for probable cause.” Resp. Brief, p. 28. At best, these facts provided probable cause to believe Mr. Morrell was involved in drug distribution. Resp. Brief, pp. 28-29. The officers in *Thein* likewise had “many facts” showing that the defendant in that case was a drug dealer.⁴ *Thein*, 138 Wn.2d at 136-138. These facts included eyewitness accounts from multiple sources, including an informant. *Id.*, at 136-138.

Like Respondent, the State in *Thein* argued “that a nexus is established... where there is sufficient evidence to believe a suspect is probably involved in drug dealing” and is closely tied to the place to be searched. *Id.*, at 141. The *Thein* court rejected this reasoning, concluding that “a finding of probable cause must be grounded in fact.” *Id.*, at 146-147.

Any facts suggesting that Mr. Morrell distributed drugs would be insufficient to justify a search of his home. *Id.* They are likewise insufficient to a justify a search of the two cell phones. *Id.*

The result would likely be different if Ansbaugh told police that she texted or called Mr. Morrell to arrange a drug buy. Similarly, if she overheard Mr. Morrell arranging drug deals over the phone, that

⁴ Respondent argues that “police had only two pieces of evidence that linked the defendant” to his home. Resp. Brief, p. 27. But the issue in *Thein* was not whether the defendant was linked to the home; he did not claim that the evidence was insufficient to prove he occupied the property. *See Thein*, 138 Wn.2d 140.

information could have been included in the affidavit.

But such facts were absent from the search warrant application. CP 59-64. Instead, the only thing linking the phones to drug activity was Lesser's "training and experience." CP 53. His generalizations about what is "common" among drug dealers are insufficient to justify a highly intrusive phone search. *Id.* The cell phone search violated the Fourth Amendment and Wash. Const. art. I, §7. *Id.* Mr. Morrel's convictions must be reversed, the evidence suppressed, and the case remanded. *Id.*

B. The warrant did not particularly describe each phone.

Police had the two cell phones in their possession when they applied for a warrant. Despite this, they provided only generic descriptions that could apply to countless phones.⁵ These descriptions were insufficiently particular. Opening Brief, pp. 15-17; *State v. Perrone*, 119 Wn.2d 538, 545, 547, 834 P.2d 611 (1992).

The generic descriptions here are unlike language "identifying premises by street address, and vehicles by either make and license number or make and operator name." Resp. Brief, p. 22. A street address points to a specific property. A license number pertains to a specific vehicle. Language specifying a type of car driven by a particular person is

⁵ Respondent erroneously suggests that police provided the model number for the HTC phone. Brief of Respondent, p. 23. The designation CE2200 is not an HTC model number.

unlikely to describe multiple vehicles. By contrast, the non-specific description of each phone could apply to many iPhones and HTC phones.

Respondent suggests that further identifying information may not have been available, even though the police had the two phones in their possession. Resp. Brief, p. 23. This is unlikely. However, if a less generic description proved impossible based on each phone's physical characteristics, the warrant could have outlined specifics about when and where the phones were seized. The warrant might also have included the evidence number assigned to each phone when it was taken from the Monte Carlo.

Respondent concedes that the warrant could have included such details. Resp. Brief, p. 24. The State justifies the omission by pointing to Mr. Morrell's name in the warrant's caption and "the report number associated with the warrant." Resp. Brief, p. 24. Neither is sufficient to cure the particularity problem.

A suspect's name cannot substitute for a particularized description of property to be searched. Otherwise, listing the person's name would allow for a general description without the need for any specification. An officer who knew where Mr. Morrell lived would not be permitted to search his home absent a particularized description of the residence, even if his name were mentioned in the warrant. *See United States v. Williamson*, 1 F.3d 1134, 1136 (10th Cir. 1993). Similarly, when it comes to a

search of the phones found in his car, listing his name does not provide the particularized description required by the constitution.

Nor can reference to the report number supplement the description contained in the warrant. Resp. Brief, p. 24. The constitution “requires particularity in the warrant, not in the supporting documents.” *Groh v. Ramirez*, 540 U.S. 551, 557, 124 S. Ct. 1284, 157 L. Ed. 2d 1068 (2004). If police rely on supporting documents, they must physically attach the documents to the warrant and specifically incorporate them by reference. *State v. Riley*, 121 Wn.2d 22, 29, 846 P.2d 1365 (1993) (*Riley II*).

The cell phone warrant failed to particularly describe each phone. Mr. Morrell’s convictions must be reversed, the evidence suppressed, and the case remanded. *Perrone*, 119 Wn.2d at 545, 547.

III. ALL THREE WARRANTS WERE OVERBROAD.

The search warrants allowed seizure of information and items without probable cause. The warrants also failed to particularly describe the items to be seized. Much of the material was protected by the First Amendment. The warrants were overbroad. Opening Brief, pp. 17-23.

A. The warrant authorizing seizure of ‘all data’ from two cell phones was unconstitutionally overbroad.

The cell phone warrant was overbroad because it “allow[ed] for a ‘top to bottom search’” of each phone. *Fairley*, 12 Wn.App. 2d at 322.

The warrant authorized police to seize “[a]ll data that can be downloaded from this phone.” CP 56.

Furthermore, it did not “limit the search to information generated close in time to incidents for which the police had probable cause.” *State v. Keodara*, 191 Wn.App. 305, 316, 364 P.3d 777 (2015).⁶ Instead, the warrant permitted police to access files even if they were created a year or more prior to Mr. Morrell’s arrest. CP 56.

Accordingly, the warrant “lacked the requisite specificity to allow for a tailored search of [Mr. Morrell’s] electronic media.” *United States v. Rosa*, 626 F.3d 56, 62 (2d Cir. 2010); *see also State v. McKee*, 3 Wn.App. 2d 11, 29, 413 P.3d 1049, 1058, *review granted*, 191 Wn.2d 1012, 426 P.3d 749 (2018), and *rev’d and remanded on other grounds*, 193 Wn.2d 271, 438 P.3d 528 (2019).

Nor was the overbreadth problem solved by the warrant’s reference to ‘possession of a controlled substance’ as the crime under investigation.⁷ Resp. Brief, p. 31; *see State v. Besola*, 184 Wn.2d 605, 614, 359 P.3d 799 (2015). Instead, “[t]he warrant lists the crime under investigation

⁶ *See also People v. Thompson*, 178 A.D.3d 457, 458, 116 N.Y.S.3d 2 (N.Y. App. Div. 2019); *People v. Coke*, 461 P.3d 508, 516 (Colo. 2020).

⁷ Respondent also suggests that the warrant affidavit provided some limitation on the officer’s authority to search. Resp. Brief, p. 33. But Respondent does not claim that the affidavit was physically attached to the warrant and specifically incorporate by reference. *See Riley II*, 121 Wn.2d at 29.

and then *separately* lists the evidence that is material to that investigation.” *Id.* (emphasis added). As in *Besola*, the reference to the offense at the beginning of the warrant “did not modify or limit the evidence that officers could seize.” *Id.*, at 615. It did not cure the overbreadth problem. *Id.*

Respondent erroneously suggests that Mr. Morrell’s overbreadth challenge is limited to only a few items listed in the cell phone warrant. Resp. Brief, pp. 31, 40. This is false.

The challenge is to the authorization to search for and seize “[a]ll data” on each phone, and necessarily includes all of the examples listed in the warrant. Opening Brief, pp. 18-19. Respondent’s misunderstanding appears to stem from a paragraph addressing a few of “the comprehensive list of examples provided” in the warrant. Opening Brief, p. 18. The paragraph did not limit Mr. Morrell’s challenge; instead, it provided a few examples of the problematic language. Furthermore, even Respondent’s misreading of the opening brief ignores appellant’s reference to “evidence of communication,” which would cover categories 1, 2, 5, 6, 7, and 11 on the list of examples. Opening Brief, p. 18. Mr. Morrell challenges the authority to seize “[a]ll data;” it is not limited.

Police should not have received authorization to seize “[a]ll data” on the cell phones. CP 56. Because the cell phone warrant was unconstitutionally overbroad, all information obtained from the cell phones must be

suppressed. *Id.*

- B. The warrant for each vehicle included authorization to seize numerous items for which police lacked probable cause.

The two vehicle warrants were also overbroad. They permitted police to seize books, disks, papers, and numerous other items protected by the First Amendment. CP 59-64, 66, 157-162, 164. Nothing in the warrant applications—not even generalizations about drug dealers—provided probable cause for these items. Opening Brief, pp. 20-23.

A probable cause finding “must be grounded in fact.” *Thein*, 138 Wn.2d at 147. Instead of pointing to facts justifying the warrants’ breadth, Respondent relies on “common sense.” Resp. Brief, pp. 36-37. For example, according to Respondent, common sense suggests that drug dealers keep “written financial records of [their] activity.” Resp. Brief, p. 36.

This is pure speculation, not common sense. The inferences Respondent seeks to draw are untethered from facts to an even greater degree than the generalizations at issue in *Thein*. In essence, the state suggests that an issuing magistrate may rely on personal expertise regarding the habits of drug dealers, even absent any generalizations submitted by the officer. The warrants authorizing police to search the two vehicles were unconstitutionally overbroad.⁸ *Perrone*, 119 Wn.2d at 551-552. All

⁸ In addition, the overbreadth problem is not solved by language that the items sought “are evidence of the commission... [of] an offense under the Uniform Controlled Substances Act,

evidence seized from the Monte Carlo and the Yukon must be suppressed.

Id.

C. The severability doctrine cannot be applied to these warrants.

The severability doctrine does not apply “[w]here a search warrant is found to be an unconstitutional general warrant.” *Id.* at 556. It is likewise inapplicable when the valid portion of a warrant is relatively insignificant compared to the scope of the warrant as a whole.⁹ *Id.*, at 557. In such cases, overbreadth “taints all items seized.” *Id.*

The cell phone warrant was a general warrant.¹⁰ It gave police authority to seize “[a]ll data that can be downloaded from [each] phone.” CP 56. Nothing limited police to evidence of the crime under investigation. *See Besola*, 184 Wn.2d at 614. Nor did the warrant restrict police to the days or weeks immediately preceding Mr. Morrell’s arrest; instead, officers were free to roam through years of texts, phone messages, browsing history, emails, and so forth. *Keodara*, 191 Wn.App. at 316. The severability doctrine does not apply. *Perrone*, 119 Wn.2d at 556-557.

RCW 69.50.” CP 63; *see Keodara*, 191 Wn.App. at 317 (citing *State v. Higgins*, 136 Wn.App. 87, 93, 147 P.3d 649 (2006)). The breadth of the statutory reference makes the language meaningless as a limitation on police authority. *Id.*

⁹ The focus is “on the warrant itself rather than upon an analysis of the items actually seized during the search.” *United States v. Sells*, 463 F.3d 1148, 1159 (10th Cir. 2006).

¹⁰ Furthermore, any valid portion of the warrant is relatively insignificant compared to the grant of authority to seize “[a]ll data that can be downloaded from [each] phone.” CP 56. Accordingly, the warrant cannot be severed even if it is not a general warrant. *Id.*, at 557

Likewise, the severability doctrine cannot apply to the vehicle warrants. Each warrant outlines multiple broad categories of materials for which police lacked probable cause. Each category includes numerous broad subcategories. Opening Brief, pp. 20-23. These broad descriptions were insufficiently particular to limit police discretion. Any valid portions of the warrant are “relatively insignificant.” *Id.*, at 557.

It is not useful to compare the number of permissible paragraphs against the number of overbroad paragraphs; instead, the contents of each paragraph should be examined. This is so because “[a] warrant's invalid portions, though numerically fewer than the valid portions, may be so broad and invasive that they contaminate the whole warrant.” *Sells*, 463 F.3d at 1160. For a stark example, compare paragraph 1 with paragraph 7. CP 62-63. The former is narrow and circumscribed, listing “controlled substances, in particular METHAMPHETAMINE AND HEROIN.” CP 62. The latter, by contrast, is broad and comprehensive, encompassing “books, records, receipts, bank statements and records, money drafts, letters of credit, money orders, and cashier’s checks, passbooks, [and] bank checks.”¹¹ CP 63.

As this example shows, valid portions of the vehicle warrants are

¹¹ This list was not limited to items likely to show criminal activity; instead, it included material “evidencing the obtaining, . . . transfer, . . . and/or expenditure of money.” CP 63.

relatively insignificant when compared to the whole. The severability doctrine cannot apply. *Id.*

The State's severability argument is hampered by its misunderstanding of Mr. Morrell's overbreadth claim.¹² Respondent erroneously suggests that Mr. Morrell "challenges probable cause for only four of the eleven items in the cell phone warrant."¹³ Resp. Brief, p. 40. This is false.

Appellant's challenge is to every provision of the cell phone warrant. Mr. Morrell objects to the language authorizing police to seize "[a]ll data" from each phone, including the list of examples provided in the warrant. CP 56. Indeed, Appellant's primary concern is with the authorization allowing seizure of "evidence of communication."¹⁴ Opening Brief, p. 18.

Respondent is also incorrect in claiming that Mr. Morrell "does not challenge" either warrant under the particularity requirement. Resp. Brief, p. 40. An overbreadth challenge is a challenge to both the probable cause and particularity requirements, which are "closely intertwined." *Perrone*,

¹² In addition, much of the State's argument on severability assumes that Respondent has correctly analyzed the overbreadth issues. Resp. Brief, pp. 39-40. This confidence is unwarranted. In addition, if Respondent is correct about the overbreadth arguments, then severability is not an issue.

¹³ See also Brief of Respondent, p. 40 ("Only a third of the cell phone warrant is challenged.")

¹⁴ This phrase is found in the paragraph of Appellant's Opening Brief that appears to be the source of Respondent's misunderstanding, as explained above. "Evidence of communication" covers items 1, 2, 5, 6, 7, and 11 of the warrant's outline of examples included in the authorization to seize "[a]ll data." CP 56.

119 Wn.2d at 545.

Here, as Mr. Morrell pointed out in his opening brief, “First Amendment concerns demand a close examination of the cell phone warrant to ensure compliance with the probable cause *and particularity* requirements.” Opening Brief, p. 19 (emphasis added). The warrant was insufficiently particular: it permitted police to rummage through “[a]ll data” on each phone. CP 56. It made no effort to more particularly describe the evidence that officers could search for and seize. This failure is especially problematic because of the vast quantity of data contained on cell phones. *See Riley I*, 573 U.S. at 393-398.

Likewise, Mr. Morrell argues that each vehicle warrant “is subject to close scrutiny to ensure compliance with the probable cause *and particularity* requirements.” Opening Brief, p. 22 (emphasis added). As with the cell phone warrant, the vehicle warrants permitted police to hunt through any documents, electronic media, financial records, and other protected material for items that had nothing to do with the crime under investigation. CP 62-63. Police lacked probable cause for these items, and the warrant did not describe them with sufficient particularity to ensure that only relevant material would be seized.

Mr. Morrell challenges both “closely intertwined” requirements: probable cause and particularity. *Perrone*, 119 Wn.2d at 545. The warrants

are overbroad because they are deficient as to both probable cause and particularity. The overbreadth problem requires suppression of all evidence seized by police.

Respondent advocates in favor of severability but does not identify any evidence that was properly seized. Resp. Brief, pp. 38-42. Without citation to authority, Respondent implies that Mr. Morrell bears the burden of identifying specific evidence that should have been suppressed under an overbroad warrant.¹⁵ Resp. Brief, pp. 40-41.

Where no authority is cited, this court should presume that Respondent has found none after diligent search. *See City of Seattle v. Levesque*, 12 Wn.App.2d 687, 697, 460 P.3d 205 (2020).

When the State seeks to admit evidence obtained pursuant to an overbroad warrant, it should bear the burden of proving all the elements required to establish severability. *See Burns v. United States*, No. 17-CF-1347, Slip Op. at *14 (D.C. Aug. 20, 2020) (“[T]he government cannot show that the warrants... satisfied” the elements required for severance).

The severability doctrine does not apply to any of the warrants in this case. *Perrone*, 119 Wn.2d at 556-557. The convictions must be reversed, the evidence suppressed, and the case remanded for dismissal. *Id.*

¹⁵ In fact, the severability issue focuses on the language of the warrant itself, rather than examination of the items actually seized. *United States v. Sells*, 463 F.3d 1148, 1159 (10th Cir. 2006).

IV. THE STATE DOES NOT CLAIM THAT THE ADMISSION OF UNLAWFULLY SEIZED EVIDENCE WAS HARMLESS.

The State bears the burden of showing that constitutional error is harmless beyond a reasonable doubt. *State v. Jackson*, --- Wn.2d ---, ___, 467 P.3d 97 (2020). The State makes no attempt to meet this burden.

At trial, the State introduced records seized from the two cell phones, including text messages. RP (10/8/19) 107-121. The prosecutor relied on the phones' contents in closing argument. RP (10/9/19) 262, 270-272, 282-283.

The search of each car yielded the contraband on which the entire prosecution was based. RP (10/7/19) 43-44, 65-68. In addition, the State relied on other items found in the cars, including cash, the two phones, scales, baggies, and documents. RP (10/7/19) 45-56, 65-68. The prosecutor relied on these items in closing. RP (10/9/19) 262-275.

Respondent does not contend that introduction of this evidence was harmless beyond a reasonable doubt. Resp. Brief, pp. 12-42. This failure may be taken as a concession. *See In re Pullman*, 167 Wn.2d 205, 212 n. 4, 218 P.3d 913 (2009); *State v. McNeair*, 88 Wn.App. 331, 340, 944 P.2d 1099 (1997).

Mr. Morrell's convictions must be reversed. The evidence must be suppressed, and the case remanded to the trial court for dismissal.

V. THE TRIAL COURT SHOULD NOT HAVE INCORPORATED “ALL REPORTS... AS ADDITIONAL FACTS” INTO ITS FINDINGS.

The trial court incorporated into its findings “all reports... submitted by the parties as additional facts.” CP 175. A report is not a “fact.”

Thus, incorporating the reports “as additional facts” is meaningless. The court may have meant to incorporate all the *facts* contained in each report.

However, because the reports were not introduced into evidence, Mr. Morrell’s attorney had no incentive to challenge any of the facts outlined therein. Instead, counsel provided the reports to support the request for an evidentiary hearing. CP 23. This does not mean that Mr. Morrell stipulated to their accuracy.

The wholesale incorporation of lengthy police reports as “facts” raises other problems as well. First, it delegates a judicial function—finding facts—to the reports’ authors. Second, it creates an ambiguity; the court’s language does not explain how to treat any conflicts between the incorporated reports and those facts specifically set forth in the court’s other findings. Third, it is unclear whether opinions outlined in a report should be treated as “facts” to be incorporated.

Respondent contends that any error relating to the finding is unpreserved. Resp. Brief, p. 42-43. This is incorrect. After losing a motion, a party cannot be required to relitigate every written finding or to argue with

the court about decisions already made. To obtain review of an erroneous finding, a party need only assign error on appeal. RAP 10.3(g).

This is particularly true where counsel explicitly signs the court's findings "as to form, objections preserved." CP 178. Approval "as to form" is not consent to the substance of an order. Instead, "by approving an order as to form, the party merely indicates that the order accurately sets forth the trial court's ruling." *In re Cauley*, 437 S.W.3d 650, 658 (Tex. App. 2014).

Respondent argues that the phrase "objections preserved" refers only to objections "made on the record during the hearing." Resp. Brief, p. 42. Respondent cites no authority and provides no basis for this argument. Where no authority is cited, the court should presume that counsel found none after diligent search. *Levesque*, 12 Wn.App.2d at 697.

The State also argues that "all of the information in the trial court's findings and conclusions were [sic] testified to by Officer Lesser at the suppression hearing." Resp. Brief, p. 44. This amounts to a concession that no prejudice will flow from striking the reports from the court's findings.

The finding "incorporate[ing] all reports... as additional facts... as if fully set forth herein" must be stricken.

CONCLUSION

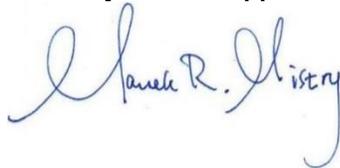
At Mr. Morrell's trial, the court admitted numerous items that were obtained in violation of the Fourth Amendment and Wash. Const. art. I, §7. The convictions must be reversed, the evidence suppressed, and the case remanded for dismissal.

Respectfully submitted on August 29, 2020,

BACKLUND AND MISTRY



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant



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Attorney for the Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

Christopher Morrell, DOC #888194
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Spokane County Prosecuting Attorney
SCPAAppeals@spokanecounty.org

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division III, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on August 29, 2020.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

August 29, 2020 - 3:32 PM

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