

**FILED**  
**Court of Appeals**  
**Division III**  
**State of Washington**  
**8/5/2020 10:37 AM**

No. 37160-3-III  
Consol. w/37220-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

---

STATE OF WASHINGTON, RESPONDENT

v.

CHRISTOPHER MORRELL, APPELLANT

---

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

---

**BRIEF OF RESPONDENT**

---

LAWRENCE H. HASKELL  
Prosecuting Attorney

Alexis M. Lundgren  
Deputy Prosecuting Attorney  
Attorney for Respondent

County-City Public Safety Building  
West 1100 Mallon  
Spokane, Washington 99260  
(509) 477-3662

**INDEX**

**I. ISSUES PRESENTED ..... 1**

**II. STATEMENT OF THE CASE..... 1**

**III. ARGUMENT ..... 8**

    A.    SUBSTANTIAL EVIDENCE SUPPORTS SOME OF  
          THE CHALLENGED FINDINGS OF FACT, BUT NOT  
          OTHERS..... 9

        Finding of Fact 5: “The trial judge erred by finding that  
        ‘there are no contested facts.’” ..... 10

        Finding of Fact 7: “The trial judge erred by finding that  
        ‘[t]hese facts form the substance of pending Superior Court  
        case SC 17-1-01403-7.’” ..... 10

        Finding of Fact 8: “Judge Cooney heard and denied a  
        suppression motion in that case.” ..... 10

        Finding of Fact 9: “The trial judge erred by finding that  
        Officer Lesser observed in plain sight ‘multiple cell  
        phones.’” ..... 12

    B.    WHERE NO UNREASONABLE SEARCH OR  
          SEIZURE OCCURRED, THE TRIAL COURT  
          PROPERLY DENIED MR. MORRELL’S  
          SUPPRESSION MOTION. .... 12

        1.    Because the brief investigative stop of Mr. Morrell on  
                August 10, 2017 was supported by reasonable suspicion,  
                it did not violate the state or federal constitutions. .... 13

            a.    The circumstances in this case establish  
                    Ms. Ansbaugh’s reliability..... 15

            b.    Officer Lesser made observations that corroborated the  
                    presence of criminal activity..... 20

        2.    The affidavit described the cell phones with sufficient  
                particularity to comply with constitutional  
                requirements. .... 21

3.	The trial court did not violate the state or federal constitutions when it granted the three search warrants because each was supported by probable cause. ....	24
a.	The trial court properly found probable cause to issue the search warrant for the two cell phones located in Mr. Morrell’s Monte Carlo in August because numerous facts establish a nexus between drug dealing and the phones.....	26
b.	Because probable cause supported each of the items to be seized in all three search warrants, the warrants are not constitutionally overbroad. ....	30
i.	The search warrant for the cell phones was supported by probable cause.....	31
ii.	The search warrants for both vehicles were supported by probable cause.....	34
iii.	Assuming any overbreadth in the warrants, the doctrine of severability applies.....	38
C.	THIS COURT SHOULD DECLINE TO REVIEW WHETHER THE TRIAL COURT ERRED WHEN IT INCORPORATED THE DOCUMENTS ATTACHED TO MR. MORRELL’S SUPPRESSION MOTION BECAUSE THE ISSUE WAS NOT RAISED BELOW. ....	42
<b>IV.</b>	<b>CONCLUSION .....</b>	<b>44</b>

**TABLE OF AUTHORITIES**

***Federal Cases***

*Aguilar v. State of Tex.*, 378 U.S. 108, 84 S. Ct. 1509,  
12 L. Ed. 2d 723 (1964) ..... 17

*Navarette v. California*, 572 U.S. 393, 134 S. Ct. 1683,  
188 L. Ed. 2d 680 (2014)..... 16

*Spinelli v. United States*, 393 U.S. 410, 89 S. Ct. 584,  
21 L. Ed. 2d 637 (1969) ..... 17

*Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) ..... 14

***State Cases***

*In re Marriage of Littlefield*, 133 Wn.2d 39,  
940 P.2d 1362 (1997)..... 26

*Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710,  
225 P.3d 266 (2009)..... 9

*State v. Bean*, 89 Wn.2d 467, 572 P.2d 1102 (1978) ..... 16

*State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015) ..... 42

*State v. Clark*, 143 Wn.2d 731, 24 P.3d 1006 (2001) ..... 26

*State v. Cockrell*, 102 Wn.2d 561, 689 P.2d 32 (1984) ..... 22, 38

*State v. Cox*, 109 Wn. App. 937, 38 P.3d 371 (2002)..... 43

*State v. Day*, 161 Wn.2d 889, 168 P.3d 1265 (2007) ..... 13

*State v. Doughty*, 170 Wn.2d 57, 239 P.3d 573 (2010) ..... 14

*State v. Duncan*, 180 Wn. App. 245, 327 P.3d 699 (2014)..... 42

*State v. Estorga*, 60 Wn. App. 298, 803 P.2d 813 (1991)..... 16

*State v. Garvin*, 166 Wn.2d 242, 207 P.3d 1266 (2009)..... 9

<i>State v. Glover</i> , 116 Wn.2d 509, 806 P.2d 760 (1991) .....	14
<i>State v. Kalakosky</i> , 121 Wn.2d 525, 852 P.2d 1064 (1993).....	26
<i>State v. Kennedy</i> , 107 Wn.2d 1, 726 P.2d 445 (1986) .....	16
<i>State v. Lesnick</i> , 84 Wn.2d 940, 530 P.2d 243 (1975) .....	15, 17, 18
<i>State v. Levy</i> , 156 Wn.2d 709, 132 P.3d 1076 (2006).....	13
<i>State v. Lyons</i> , 174 Wn.2d 354, 275 P.3d 314 (2012).....	25
<i>State v. Maddox</i> , 116 Wn. App. 796, 67 P.3d 1135 (2003), as amended (May 20, 2003), <i>aff'd</i> , 152 Wn.2d 499 (2004) .....	25, 38, 39
<i>State v. Mason</i> , 170 Wn. App. 375, 285 P.3d 154 (2012).....	43
<i>State v. Maxfield</i> , 125 Wn.2d 378, 886 P.2d 123 (1994) .....	13
<i>State v. Mills</i> , 80 Wn. App. 231, 907 P.2d 316 (1995) .....	43
<i>State v. Perrone</i> , 119 Wn.2d 538, 834 P.2d 611 (1992) .....	passim
<i>State v. Powell</i> , 126 Wn.2d 244, 893 P.2d 615 (1995) .....	26
<i>State v. Powell</i> , 166 Wn.2d 73, 206 P.3d 321 (2009) .....	42
<i>State v. Russell</i> , 180 Wn.2d 860, 330 P.3d 151 (2014).....	9
<i>State v. Sieler</i> , 95 Wn.2d 43, 621 P.2d 1272 (1980).....	16, 17
<i>State v. Thein</i> , 138 Wn.2d 133, 977 P.2d 582 (1999).....	25, 26, 27, 28
<i>State v. Valdez</i> , 167 Wn.2d 761, 224 P.3d 751 (2009) .....	13
<i>State v. Vickers</i> , 148 Wn.2d 91, 59 P.3d 58 (2002) .....	10
<i>State v. Williams</i> , 102 Wn.2d 733, 689 P.2d 1065 (1984) .....	14, 25
<i>State v. Z.U.E.</i> , 183 Wn.2d 610, 352 P.3d 796 (2015).....	15, 16, 17, 20
<i>Sunnyside Valley Irr. Dist. v. Dickie</i> , 149 Wn.2d 873, 73 P.3d 369 (2003).....	9

***Constitutional Provisions***

U.S. CONST. amend IV .....13, 21, 30  
Const.art. I, § .....13, 14, 21

***Rules***

CrR 3.6 ..... 43  
RAP 10.3 ..... 43

***Other Authorities***

22 C.J.S. *Criminal Procedure and Rights of Accused* § 95  
(June 2020 Update) ..... 17  
Callahan, Linda M, 32 WASHINGTON PRACTICE: WASHINGTON  
DUI PRACTICE MANUAL § 20:9 (2019-20 ed.) ..... 17  
Ferguson, Royce Jr., 12 WASHINGTON PRACTICE: CRIMINAL  
PRACTICE & PROCEDURE § 3015 (3d ed.)..... 21, 22  
LaFave, Wayne R., SEARCH & SEIZURE: A TREATISE ON THE  
FOURTH AMENDMENT, § 4.5 (5th ed.) ..... 22

## **I. ISSUES PRESENTED**

- A. Are the challenged findings of fact supported by substantial evidence?
- B. Did the trial court properly deny Mr. Morrell's suppression motion where no unreasonable search or seizure occurred?
  - 1. Did the trial court properly find that reasonable suspicion supported the brief investigative stop of Mr. Morrell in August?
  - 2. Did the trial court properly find that the two cell phones were described with sufficient particularity to satisfy constitutional requirements?
  - 3. Did the trial court properly find that all three search warrants were supported by probable cause?
- C. Where the issue was not raised below, should this Court should decline to review whether the trial court properly incorporated the documents attached to Mr. Morrell's suppression motion into the record?

## **II. STATEMENT OF THE CASE**

On October 2, 2017, the State filed two informations against Christopher Morrell, each charging him with two counts of possession of a controlled substance with intent to deliver. CP 1, 269. The information in Spokane Superior Court case number 17-1-03904-8 alleged the crimes occurred on August 10, 2017, and the information in case number 17-1-03903-0 alleged the crimes occurred on September 28, 2017. CP 1, 269.

In April 2019, the State moved to join and consolidate the two cases and Mr. Morrell moved to suppress the evidence seized during the August

and September searches.<sup>1</sup> CP 2-8. As part of the suppression motion, Mr. Morrell's attorney filed an affidavit which included an attachment that contained all the police reports, declarations for search warrants, and search warrants in both cases. CP 23-80.

The trial court heard the motion to suppress and the motion to join and consolidate in June 2019. Gipson RP 1. The State presented testimony from Spokane Police Department Officer Scott Lesser. Gipson RP 5. At the time, Officer Lesser had been a police officer for nearly ten years and had dealt extensively with narcotics trafficking during that time. Gipson RP 5, 13. Officer Lesser testified to the following facts during the hearing:

During August 2017,<sup>2</sup> Officer Lesser was assigned to the Patrol Anti-Crime Team (PACT). Gipson RP 6. On August 9, at about 11:00 p.m., Officer Lesser responded as a backup officer to a traffic stop made by Officer Winston Brooks. Gipson RP 6. When he arrived at the scene of the stop, Officer Brooks had already arrested Ashley Ansbaugh on an

---

<sup>1</sup> Mr. Morrell appears to have filed only one brief, under case number 17-1-03903-0, arguing for suppression of the evidence obtained during both searches. CP 9.

<sup>2</sup> Officer Lesser mistakenly testified that it was in 2018, but the search warrant affidavits state the crimes were committed in 2017. CP 50, 60, 158; *see also* CP 1, 267 (both informations allege the crimes occurred in 2017).

outstanding felony warrant and found substances on her person that field-tested positive for methamphetamine and heroin. Gipson RP 6-7.

Officer Lesser joined Officer Brooks, who was speaking with Ms. Ansbaugh. Gipson RP 7-8. During the conversation, Ms. Ansbaugh told the officers she had purchased the drugs from someone named “Duffles”—an individual she also knew as Christopher Morrell. Gipson RP 8. Ms. Ansbaugh stated that Mr. Morrell was driving around in a maroon Monte Carlo, that he had more drugs on him aside from those she had purchased, and that he would be coming back to her hotel room with more drugs later that night. Gipson RP 8-9. Neither officer had prior experience with Ms. Ansbaugh or knew if she had previously worked with the police. Gipson RP 25.

However, Officer Lesser was familiar with the nickname Ms. Ansbaugh referenced and knew from a previous investigation at The Apple Tree Hotel that “Duffles” was Christopher Morrell. Gipson RP 8-9. During that prior investigation, police were able to attribute possession of drugs and at least one firearm to Mr. Morrell. Gipson RP 9. Officer Lesser also knew that Mr. Morrell’s name had a gang caution tag designation in the police database. Gipson RP 10.

Ms. Ansbaugh was ultimately taken to jail and Officer Lesser continued on routine patrol. Gipson RP 10. He drove toward the Hillyard

neighborhood and observed a maroon Monte Carlo at a gas station at Nevada and Wellesley. Gipson RP 10-11. He recognized Mr. Morrell as the driver. Gipson RP 10-11. He conducted a traffic stop of the vehicle and confirmed Mr. Morrell was the driver and sole occupant. Gipson RP 12.

Based on his ten years of experience with trafficking of narcotics, Officer Lesser knew it was very common for drug dealers to be robbed, and that as a result, dealers commonly carry guns to protect themselves. Gipson RP 13-14. Because of this knowledge, his prior experience with Mr. Morrell at the hotel with the firearm, and the gang tag, Officer Lesser asked Mr. Morrell to exit the vehicle and pat frisked him for weapons. Gipson RP 13. Officer Lesser did not find any weapons during the frisk, but he noticed what felt like a wad of cash in Mr. Morrell's front pocket. Gipson RP 15. He did not remove it at that time. Gipson RP 15.

In speaking with Mr. Morrell, Officer Lesser noticed he was sweating quite a bit, despite the temperature being only about sixty degrees. Gipson RP 15. He also observed Mr. Morrell was breathing heavily and his fingers were twitching. Gipson RP 15-16. From his training and experience, Officer Lesser knew those three symptoms were side effects of methamphetamine use. Gipson RP 15-16.

Using his flashlight from outside Mr. Morrell's vehicle, Officer Lesser saw an extra-large air freshener in the rear window and one

hanging from the emergency brake, as well as a box of sandwich bags in the back seat and what looked like crystals in the passenger-door storage pocket.<sup>3</sup> Gipson RP 16-17. The air fresheners caught his attention because they were in unusual locations in the vehicle and he knew from his training and experience they are often used by people dealing in heroin to mask the drug's vinegary smell. Gipson RP 17. He noticed the sandwich bags because they were the generic brand without a ziplock and matched the baggie of drugs found on Ms. Ansbaugh earlier that night. Gipson RP 17. Officer Lesser also saw a blue case under the passenger seat of the vehicle and thought it was an odd place to have a storage container. Gipson RP 18.

At that point, Officer Lesser wrote a declaration for a search warrant, requesting permission to search Mr. Morrell and the maroon Monte Carlo. CP 97-102. The search warrant was granted. Gipson RP 18-19; CP 65-69. While executing it, Officer Lesser removed what he had previously thought was a wad of cash from Mr. Morrell's pocket. Gipson RP 19. It was \$246 in twelve \$20 bills, one \$5 bill, and one \$1 bill. RP 19. Then, using a key attached to the same key ring as the vehicle's keys—which Mr. Morrell had been holding—Officer Lesser unlocked the blue container he had seen

---

<sup>3</sup> Officer Lesser did not open any doors during his search. Gipson RP 18. While his testimony was not conclusive, Officer Lesser thought the doors were still open from having Mr. Morrell exit the vehicle. Gipson RP 18.

under the passenger seat and found a drug scale with residue, three baggies of a crystal substance that field tested positive as methamphetamine, and three baggies of a brown substance that field tested positive as heroin. Gipson RP 19-21. The quantity of drugs recovered was much more than a user amount of drugs. Gipson RP 20. Another drug scale with residue was located in the center console of the vehicle. Gipson RP 19. Both drug scales were functional. Gipson RP 19. Officer Lesser also recovered the sandwich bags, which matched the type of baggies containing drugs he had found in the blue container, and two cell phones. Gipson RP 19-20.

Officer Lesser then wrote another declaration requesting a search warrant to search the two cell phones found in the car, which he described as a “White Verizon htc phone with CE2200 marked on the back of the phone” and a “Silver Iphone with black Otter case.” CP 49-54. The search warrant was granted. CP 55-57; Gipson RP 20.

Mr. Morrell was released after the first search warrant was executed. Gipson RP 21; CP 73. Officer Lesser explained that release is common, as PACT hopes that individuals like Mr. Morrell will work with them to find dealers higher up in the supply chain. Gipson RP 21. Officer Lesser attempted to work with Mr. Morrell to locate other drug dealers but was unsuccessful. Gipson RP 21.

On September 28, 2017, Officer Lesser saw Mr. Morrell driving a tan GMC Yukon near Crestline and Wellesley. Gipson RP 22. Officer Lesser stopped Mr. Morrell and arrested him for the incident in August. Gipson RP 22.

During a search of Mr. Morrell incident to arrest, officers located an LG cell phone that continuously rang, \$510 in his wallet, and \$17 in his pocket. Gipson RP 22-23. Officer Lesser also noticed what appeared to be small crystals on the driver's seat of the vehicle. Gipson RP 23. He called for a narcotics dog, who gave a positive alert on the presence of narcotics. Gipson RP 23.

Officer Lesser then wrote a declaration for a search warrant to search the vehicle and a search warrant was granted. CP 157-166; Gipson RP 23-24. In executing it, officers found \$157 in cash, a box of Great Value baggies, empty baggies and packaging, and two baggies containing a crystal substance, a number of papers with Mr. Morrell's name on them, two functional drug scales which appeared to have residue, three baggies of a crystal substance that tested positive for methamphetamine, and a baggie of brown substance that tested positive for heroin. Gipson RP 24. Officer Lesser arrested Mr. Morrell on both the August and September incidents. Gipson RP 24-25.

Following Officer Lesser's testimony and brief argument by counsel on both sides, the trial court denied the motion to suppress, finding enough reliable evidence to support the August traffic stop and weapons frisk, which, consequently, also validated the September arrest. Gipson RP 37-38. The court then granted the State's motion to consolidate the cases under case number 17-1-03903-0. Gipson RP 41-42.

Trial began on October 7, 2019, and two days later the jury found Mr. Morrell guilty of four counts of possession with intent to deliver. CP 211-12, 279-80.

This appeal followed. CP 267-68, 298-99.

### **III. ARGUMENT**

Mr. Morrell assigns error to four of the trial court's findings of fact. He also assigns error to the trial court's denial of his motion to dismiss claiming the searches and seizures in the case violated the Fourth Amendment to the United States Constitution and article 1, section 7 of the Washington State Constitution because they were not supported by probable cause and described the places to be searched with insufficient particularity. Finally, he argues the trial court improperly incorporated into the record the documents attached to Mr. Morrell's suppression motion. Each argument is addressed in turn.

**A. SUBSTANTIAL EVIDENCE SUPPORTS SOME OF THE CHALLENGED FINDINGS OF FACT, BUT NOT OTHERS.**

Mr. Morrell claims four of the trial court's findings of fact lack substantial evidence: 5, 7, 8, and 9. While he is correct that some of the findings lack substantial evidence, those findings are immaterial to the court's analysis.

Where the trial court has weighed the evidence and denied a motion to suppress, an appellate court limits its review to whether substantial evidence supports the challenged findings of fact and whether those findings, in turn, support the trial court's conclusions of law. *State v. Russell*, 180 Wn.2d 860, 866, 330 P.3d 151 (2014); *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009).

Substantial evidence exists when it is enough "to persuade a fair-minded person of the truth of the stated premise." *Russell*, 180 Wn.2d at 866-67. If the standard is satisfied, an appellate court does not substitute its judgment for that of the trial court even though the appellate court might have resolved a factual dispute differently. *Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 879-80, 73 P.3d 369 (2003); *Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 717, 225 P.3d 266 (2009). The party challenging a finding of fact must demonstrate the lack of substantial

evidence to support it. *State v. Vickers*, 148 Wn.2d 91, 116, 59 P.3d 58 (2002).

*Finding of Fact 5: “The trial judge erred by finding that ‘there are no contested facts.’”<sup>4</sup>*

Mr. Morrell claims there were contested facts but fails to identify which material facts were contested. The transcript of the suppression hearing provides no indication that the parties disagreed about the actual facts, although they clearly disagreed on the conclusions to be drawn from them. *See* Gipson RP 5-39. Additionally, Mr. Morrell’s appellate brief recites the same facts that were elicited from Officer Lesser during the hearing. Appellant’s Br. at 4-7. Without a more specific identification of the fact at issue, Mr. Morrell has not shown that this finding lacks substantial evidence.

*Finding of Fact 7: “The trial judge erred by finding that ‘[t]hese facts form the substance of pending Superior Court case SC 17-1-01403-7.’”*

*Finding of Fact 8: “Judge Cooney heard and denied a suppression motion in that case.”<sup>5</sup>*

The above findings refer to the following paragraph in the trial court’s order, which described the investigation at the Apple Tree Hotel:

In this case Officer Lesser has a prior history of investigation regarding the defendant. This includes that the defendant was previously investigated **leaving a hotel room** at the

---

<sup>4</sup> This finding of fact is located at CP 174.

<sup>5</sup> These two findings are located at CP 175.

Apple Tree Motel,<sup>6</sup> that contained substantial narcotics [and] multiple firearms—including one tied to the defendant, **on or about March 13, 2017. During that investigation, the defendant was arrested. During that investigation, an individual was arrested in the possession of suspected heroin (field tested positive) and indicated that the defendant was in a nearby hotel room and possessed heroin and a firearm. Eventually a search warrant was served on the hotel room and a duffle bag was found to contain documents indicating possession of the bag by the defendant. Also in the duffle bag was a loaded firearm and a controlled substance, suboxone. A second loaded firearm was also recovered in this hotel room.**

CP 175 (emphasis added). The text in bold is not supported by the record as to the more specific details of the investigation. However, at the suppression hearing, Officer Lesser testified to the material facts contained in the bolded text when he stated he had prior experience with Mr. Morrell based on an investigation at the Apple Tree Hotel, where they were able to attribute possession of drugs and at least one firearm to Mr. Morrell. Gipson RP 9-10. The details for which there is no evidence are immaterial and should not be considered when evaluating whether the facts support the conclusions of law.

Whether there was a pending case in superior court with that number and whether Judge Cooney had denied a suppression motion in the case are

---

<sup>6</sup> Officer Lesser could not recall whether it was “Hotel” or “Motel.” Gipson RP 9.

facts not in the record but are likewise immaterial to the analysis in this case.

*Finding of Fact 9: “The trial judge erred by finding that Officer Lesser observed in plain sight ‘multiple cell phones.’”<sup>7</sup>*

The State concedes that Officer Lesser found the cell phones at issue after obtaining a search warrant to search the Monte Carlo, and not “in plain sight” during his initial contact with Mr. Morrell. *See* CP 15-17, 19-20. However, the fact that the cell phones were found after searching the vehicle pursuant to the search warrant is immaterial.

As shown, those findings that lack substantial evidence are immaterial and do not impact the analysis of the issues on appeal.

**B. WHERE NO UNREASONABLE SEARCH OR SEIZURE OCCURRED, THE TRIAL COURT PROPERLY DENIED MR. MORRELL’S SUPPRESSION MOTION.**

Mr. Morrell argues the trial court erred when it denied his suppression motion because (1) the police lacked reasonable suspicion to detain him for a traffic stop in August; (2) the search warrant for the two cell phones did not describe them with sufficient particularity to satisfy constitutional requirements; and (3) all three search warrants lacked probable cause and were therefore overbroad.

---

<sup>7</sup> This finding is located at CP 176.

A trial court's findings of fact on a motion to suppress evidence are reviewed for substantial evidence. *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006). "Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." *State v. Maxfield*, 125 Wn.2d 378, 385, 886 P.2d 123 (1994). Unchallenged findings are verities on appeal. *State v. Valdez*, 167 Wn.2d 761, 767, 224 P.3d 751 (2009). The trial court's conclusions of law are reviewed de novo. *State v. Day*, 161 Wn.2d 889, 893, 168 P.3d 1265 (2007).

**1. Because the brief investigative stop of Mr. Morrell on August 10, 2017 was supported by reasonable suspicion, it did not violate the state or federal constitutions.**

Officer Lesser had reasonable suspicion, based on a sufficiently reliable tip from Ms. Ansbaugh, to make the brief investigative stop of Mr. Morrell in August.

The Fourth Amendment to the United States Constitution<sup>8</sup> protects against unlawful searches and seizures. Article I, section 7 of the

---

<sup>8</sup> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend IV.

Washington State Constitution<sup>9</sup> similarly protects against government intrusions into private affairs without authority of law.<sup>10</sup> In applying these provisions, courts have held that “[a]s a general rule, warrantless searches and seizures are per se unreasonable.” *State v. Williams*, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984). There are, however, a few carefully drawn exceptions to the warrant requirement. *State v. Doughty*, 170 Wn.2d 57, 61, 239 P.3d 573 (2010). One such exception is a brief investigatory seizure known as the *Terry*<sup>11</sup> stop. *Id.* at 61-62.

An officer may conduct a *Terry* stop based on less than probable cause for arrest where he has a reasonable suspicion that the defendant engaged in criminal conduct. *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991); *Doughty*, 170 Wn.2d at 62. A reasonable suspicion exists where “the officer can ‘point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’” *Glover*, 116 Wn.2d at 514 (quoting *Terry*, 392 U.S. at 21).

---

<sup>9</sup> “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” WASH. CONST. art. I, § 7.

<sup>10</sup> While Mr. Morrell summarily mentions that the state constitution provides broader privacy protections than the federal constitution, we cannot meaningfully respond on this issue because his brief does not adequately address the implications of that principle on our analysis.

<sup>11</sup> *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

When an officer's reasonable suspicion is based solely on an informant's tip, the State bears the burden of showing that considering the totality of the circumstances the tip carries some indicia of reliability. *State v. Z.U.E.*, 183 Wn.2d 610, 618, 352 P.3d 796 (2015). Reliability may be shown by "circumstances suggesting the informant's reliability, or some corroborative observation which suggests either the presence of criminal activity or that the informer's information was obtained in a reliable fashion." *State v. Lesnick*, 84 Wn.2d 940, 944, 530 P.2d 243 (1975).

a. *The circumstances in this case establish Ms. Ansbaugh's reliability.*

In evaluating the reliability of the informant, courts have generally analyzed whether evidence exists of the informant's veracity and of a factual basis for her knowledge. *Z.U.E.*, 183 Wn.2d at 619. Importantly, courts have declined to adopt a bright-line rule whereby veracity and factual basis are both necessary elements to a showing of reliability, instead emphasizing that "each case must be considered in light of the particular circumstances facing the law enforcement officer." *Lesnick*, 84 Wn.2d at 944.

For example, under the right circumstances, law enforcement's previous experience with an informant who has provided reliable tips may alone be sufficient evidence of reliability because it suggests the

informant's veracity. *State v. Kennedy*, 107 Wn.2d 1, 726 P.2d 445 (1986); *but see State v. Sieler*, 95 Wn.2d 43, 48, 621 P.2d 1272 (1980) (noting that it is illogical not to require some factual substantiation of the report to prevent scenarios in which an honest informant misconstrues innocent conduct or decides to falsify a report). If no history of truthful reporting exists, an informant's veracity may be inferred by circumstances that suggest she is telling the truth, such as the fact that she is named and identifiable and thus criminally accountable for a false report, *Navarette v. California*, 572 U.S. 393, 399-400, 134 S. Ct. 1683, 188 L. Ed. 2d 680 (2014); that she lacked a reason to lie, *Z.U.E.*, 183 Wn.2d at 622; that she had a motive to tell the truth, such as obtaining leniency on a criminal charge, *State v. Estorga*, 60 Wn. App. 298, 304, 803 P.2d 813 (1991) ("Potential risk of disfavor is heightened and consequently a higher motive to be truthful exists where the information is given in exchange for a promise of leniency"), *State v. Bean*, 89 Wn.2d 467, 471, 572 P.2d 1102 (1978); or that the tip was made contemporaneous to the unfolding of the events, *Z.U.E.*, 183 Wn.2d at 622, *see also* Callahan, Linda M, 32 WASHINGTON PRACTICE: WASHINGTON DUI PRACTICE MANUAL § 20:9

(2019-20 ed.) (discussing the instructive, but not controlling, *Aguilar-Spinelli*<sup>12</sup> test for probable cause).

With respect to the factual basis, courts require an “underlying factual justification for the informant’s conclusion ... so that an assessment of the probable accuracy of the informant’s conclusion can be made.” *Sieler*, 95 Wn.2d at 48. That the informant personally witnessed the events reported, that the report contains specific information, and that officers can verify the information in the field are factors that support a finding that an adequate factual basis exists to find the tip reliable. *Z.U.E.*, 183 Wn.2d at 622; 32 WASH. PRAC. § 20:9 (noting that firsthand observations are an “unquestionably reliable” means of obtaining information); 22 C.J.S. *Criminal Procedure and Rights of Accused* § 95 (June 2020 Update).

In contrast, evidence of an informant’s veracity and factual basis would be completely absent in a situation like that found in *Lesnick*, 84 Wn.2d 940, where an anonymous informant reported that illegal gambling activities were occurring in a certain van and provided a description of the vehicle and its license plate number, but failed to disclose

---

<sup>12</sup> *Spinelli v. United States*, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969), *abrogated by Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983); *Aguilar v. State of Tex.*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964), *abrogated by Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983).

the source of his knowledge. *Id.* at 941. In finding insufficient indicia of reliability to support the *Terry* stop, the Court commented:

“It is difficult to conceive of a tip more ‘completely lacking in indicia of reliability’ than one provided by a completely anonymous and unidentifiable informer, containing no more than a conclusionary assertion that a certain individual is engaged in criminal activity.”

*Lesnick*, 84 Wn.2d at 944 (quoting *State v. Lesnick*, 10 Wn. App. 281, 285, 518 P.2d 199 (1973)).

Returning to the facts here, there is evidence of both Ms. Ansbaugh’s veracity and a sufficient factual basis to establish the reliability of her information. Though Mr. Morrell argues there is no evidence of Ms. Ansbaugh’s veracity because she was previously unknown to Officer Lesser and the police in general, that is not the only factor courts consider.

First, unlike the anonymous informant in *Lesnick*, Ms. Ansbaugh was named and identified. Second, while Ms. Ansbaugh had not previously worked with the police, that she was an arrestee makes it more likely that she was telling the truth. If she reported the information in order to better position herself for a favorable plea deal, she would only benefit if the information she provided was true. A false statement to the police is not only unlikely to get her a better deal, but is also grounds for an additional criminal charge. Telling the truth was in Ms. Ansbaugh’s best interest.

Third, the fact that she made the report of her own volition without interrogation by the arresting officers lends credence to her statements. And finally, she made the report shortly after the illegal drug purchase. These circumstances provide reason to believe in the truth of her statements.

But even absent any evidence to suggest Ms. Ansbaugh's veracity, the events surrounding her arrest provide a thorough factual basis for her conclusion that Mr. Morrell was engaged in drug dealing. She was an eyewitness: she knew Mr. Morrell was selling drugs because she had herself recently purchased drugs from him. She did not merely describe an unidentified person by his appearance or clothing, but specifically identified the defendant by his legal name, his nickname, and the vehicle he was driving. In addition, she knew he had more drugs than what she had just purchased from him, and she stated she anticipated him returning to her hotel room that evening with more drugs. These circumstances are sufficiently detailed to suggest her familiarity with Mr. Morrell and establish a solid factual basis for her information. Further, Officer Lesser was able to verify part of this information because of his prior knowledge of Mr. Morrell, his nickname "Duffles," and that he had previously been involved with a drug investigation. Considering all the circumstances, the evidence is more than enough to establish the reliability of Ms. Ansbaugh's tip and justify the *Terry* stop.

b. Officer Lesser made observations that corroborated the presence of criminal activity.

As previously stated, where insufficient evidence of the informant's reliability exists, the reliability of the tip may be established by corroborating observations, usually by an officer, of the presence of criminal activity. *Z.U.E.*, 183 Wn.2d at 618–19. “These corroborative observations do not need to be of particularly blatant criminal activity, but they must corroborate more than just innocuous facts, such as an individual's appearance or clothing.” *Id.*

Mr. Morrell argues the only corroborating fact was that Officer Lesser observed a maroon Monte Carlo and that this fact was innocuous. But this is not a situation in which an officer merely corroborates one detail of an otherwise unknown individual. Officer Lesser observed the baggie of heroin in Ms. Ansbaugh's possession, which corroborated her story that she had illegally purchased drugs from Mr. Morrell. Officer Lesser then identified Mr. Morrell *specifically*, driving the maroon Monte Carlo Ms. Ansbaugh had described, in an area and at a time close to Ms. Ansbaugh's arrest. These observations corroborate the tip, and consequently, the presence of criminal activity.

Under the totality of the circumstances, where there is evidence of both the informant's reliability and corroborating observations, the

information Officer Lesser had was more than sufficient to establish the reliability of the tip and to provide the reasonable suspicion necessary to conduct the *Terry* stop. The trial court did not err when it denied the suppression motion on these grounds.

**2. The affidavit described the cell phones with sufficient particularity to comply with constitutional requirements.**

Officer Lesser described the cell phones with the reasonable particularity called for by the state and federal constitution.

The Fourth Amendment and Article 1, Section 7 require that warrants particularly describe the place to be searched. U.S. CONST. amend IV; WASH. CONST. art. 1, sec. 7. “The primary purpose of this limitation is to minimize the risk that officers executing search warrants will search a location other than the one intended by the magistrate.” Ferguson, Royce Jr., 12 WASHINGTON PRACTICE: CRIMINAL PRACTICE & PROCEDURE § 3015 (3d ed.). Whether a warrant meets the particularity requirement is reviewed de novo. *State v. Perrone*, 119 Wn.2d 538, 546, 834 P.2d 611 (1992).

Mr. Morrell asks this Court to require the description of the *place to be searched* to be as specific as humanly possible. Appellant’s Br. at 15. However, he relies on principles from *Perrone* that stem from the separate analysis of the specificity required for the *items to be seized*. Where the

challenge is to the description of the place to be searched, a “warrant is sufficiently particular if it identifies the place to be searched adequately enough so that the officer executing the warrant can, with reasonable care, identify the place intended.” *State v. Cockrell*, 102 Wn.2d 561, 569-70, 689 P.2d 32 (1984). Furthermore, “search warrants are to be tested and interpreted in a common sense, practical manner, rather than in a hypertechnical sense.” *Perrone*, 119 Wn.2d at 549.

While Mr. Morrell raises the apparently novel issue of whether the specific cell phones searched were sufficiently described to allow Officer Lesser to identify them, the principles used for the more common challenges to description of premises or vehicles to be searched are instructive. Notably, courts have not required officers to particularly describe every detail of every property or vehicle, though it might be easily ascertained, so long as the officer can identify the place intended. *See* LaFave, Wayne R., *SEARCH & SEIZURE: A TREATISE ON THE FOURTH AMENDMENT*, § 4.5(a)-(e) (5th ed.); 12 WASH. PRAC. § 3015. For example, courts have found identifying premises by street address, and vehicles by either make and license number or make and operator name sufficiently particularized. LaFave, *SEARCH & SEIZURE*, § 4.5(a)-(d) (citing cases); *see also* 12 WASH. PRAC. § 3015 (citing cases).

Here, the search warrant satisfied the particularity requirement for the place to be searched. Both phones were identified by make and color. The first phone was also identified by service carrier (Verizon) and the model number (CE2200). The second was identified by its black Otter case. While Mr. Morrell argues further descriptors of the phones could have been provided, no evidence in the record suggests further identifying information was available. An officer may not be able to readily distinguish the various iPhone models from each other, and Apple does not provide the model number on the back of iPhones. Thus, the only way to obtain this information would be to access the phone's general settings, which would require a search warrant.

Mr. Morrell also argues the warrant could have described the unique features of the phones, such as the lock screen or any scratches. However, the record does not contain evidence that the phones had unique lock screens. In fact, where probable cause exists to suggest these phones were being used for drug deals and multiple phones were used to avoid detection, it is more likely the phones still displayed their default lock screens, rather than personalized photos that could be used to identify the owner. Likewise, nothing in the record suggests these phones had any scratches, let alone scratches that would be unique enough to provide a more meaningful description than that the warrant contained.

Mr. Morrell's last argument on this issue is that the warrant could have described the time and place the phones were seized. The State concedes the warrant *could* have provided these details. But, considering the reasonably specific description of the phones, the fact that the warrant's caption named Mr. Morrell as the defendant and listed the report number associated with the warrant, Officer Lesser could, with reasonable care, easily identify the phones to be searched. Additionally, because Officer Lesser had already seized these two particular phones during the search of the Monte Carlo, they were already in police custody, and no other cell phones were found during this search. Only a strained, hypertechnical review of the search warrant would find that it authorized police to search all the silver iPhones and white HTC phones in the world.

The descriptions of the two cell phones were sufficiently particular to satisfy the constitutional requirement that they allowed the officer to, with reasonable care, identify the place to be searched.

**3. The trial court did not violate the state or federal constitutions when it granted the three search warrants because each was supported by probable cause.**

Mr. Morrell argues the trial court erred when it granted the three search warrants in this case because they lacked probable cause. Specifically, he argues there is insufficient evidence to establish (a) a nexus between the criminal activity and the two cell phones found in the Monte

Carlo, and (b) a nexus between the criminal activity and numerous items listed to be seized in the three search warrants.

To satisfy both the Fourth Amendment and article 1, section 7, any search warrant issued must be based on probable cause. *Williams*, 102 Wn.2d at 736; *State v. Lyons*, 174 Wn.2d 354, 359, 275 P.3d 314 (2012). “To establish probable cause, the affidavit must set 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.” *Lyons*, 174 Wn.2d at 359. “Accordingly, ‘probable cause requires a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched.’” *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999) (quoting *State v. Goble*, 88 Wn. App. 503, 509, 945 P.2d 263 (1997)). Establishing a nexus requires “specific facts; an officer’s general conclusions are not enough.” *Id.* at 145.

However, “[i]t is only the probability of criminal activity, not a prima facie showing of it, that governs probable cause. The magistrate is entitled to make reasonable inferences from the facts and circumstances set out in the affidavit.” *State v. Maddox*, 152 Wn.2d 499, 505, 98 P.3d 1199 (2004). Importantly, “search warrants are to be tested and interpreted in a common sense, practical manner, rather than in a hypertechnical sense.”

*Perrone*, 119 Wn.2d at 549. The magistrate’s finding that probable cause exists is entitled to great deference and is reviewed for abuse of discretion, with all doubts resolved in favor of the warrant’s validity. *State v. Clark*, 143 Wn.2d 731, 748, 24 P.3d 1006 (2001); *State v. Kalakosky*, 121 Wn.2d 525, 531, 852 P.2d 1064 (1993).

A trial court abuses its discretion where its decision is “manifestly unreasonable or based upon untenable grounds or reasons.” *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). “A court’s decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard.” *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997). Its decision “is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.” *Id.*

- a. *The trial court properly found probable cause to issue the search warrant for the two cell phones located in Mr. Morrell’s Monte Carlo in August because numerous facts establish a nexus between drug dealing and the phones.*

The trial court did not err when it issued the cell phone search warrant.

Mr. Morrell argues this case is comparable to *Thein*, 138 Wn.2d 133, where the Washington Supreme Court found the evidence insufficient

to establish probable cause for a warrant to search the defendant's Southwest Austin Street residence. The search warrant for the Austin Street residence was based on evidence obtained in an earlier search of a residence on South Brandon Street. *Id.* at 136-39. During that search, police found evidence of the manufacture and distribution of marijuana, including marijuana "shake" and materials commonly used to grow marijuana. *Id.* at 136-37. Mail found in the residence and reports from people living nearby or visiting the residence linked the defendant to the Brandon Street residence and provided evidence he was involved in growing and selling marijuana. *Id.* at 137-38.

However, the police had only two pieces of evidence that linked the defendant to the Austin Street address: a box of nails found during the Brandon Street search addressed to the defendant at the Austin Street address; and a separate Department of Licensing search that returned a vehicle registration listing the defendant's address as the Austin Street address. *Id.* at 137-38, 150. Nonetheless, in applying for a search warrant for the Austin Street residence, the officer relied on his training and experience to establish that drug dealers generally store at least a portion of their inventory and drug-related paraphernalia at their residences. *Id.* at 138-39.

In finding the search warrant for the Austin Street address was issued in error, the court explained that no evidence linked illegal drug activity to the Austin Street residence and that, standing alone, a generalized statement from the officer that drug dealers usually have evidence of drug dealing at their homes was insufficient to establish the necessary nexus between the evidence to be seized and the place to be searched. *Id.* at 148-50.

The facts as presented here would be more akin to that in *Thein* if Officer Lesser had not found any cell phones but had instead found a cell phone bill and confirmed that Mr. Morrell owned a cell phone, and then relied on his knowledge that cell phones are commonly used to facilitate drug deals to support a request to search a cell phone that was not present or connected by any facts to the illegal activity.

But those are not the facts here. Contrary to Mr. Morrell's argument that only generalizations link the cell phones to criminal activity, Officer Lesser's affidavit recited many facts that, when viewed together with his training and experience, establish the nexus required for probable cause.

As discussed in detail above, Officer Lesser had a reliable tip from Ms. Ansbaugh that Mr. Morrell had sold her drugs, that he had additional drugs for sale, that he was driving around in a maroon Monte Carlo, and

that he would be returning to her hotel that night with more drugs. Upon contact, Officer Lesser saw Mr. Morrell was sweating, twitching, and breathing heavily—signs of methamphetamine use.

After obtaining a search warrant for Mr. Morrell and the Monte Carlo, Officer Lesser found, among other things, a large wad of cash, sandwich bags that matched the baggie in Ms. Ansbaugh's possession, two functional drug scales, and methamphetamine and heroin in greater quantity than a single-user amount. The two cell phones at issue were found in the Monte Carlo with the drugs and drug paraphernalia. With this factual basis, Officer Lesser then stated that training and experience had shown him that phones are the main method used to purchase and sell drugs and that drug dealers commonly use multiple phones to avoid detection. CP 53.

This evidence established a clear nexus between the criminal activity and the two phones. The phones were found in the vehicle that Mr. Morrell was driving when he sold drugs to Ms. Ansbaugh, with a large amount of controlled substances, with scales and baggies, and with rolled-up cash. The evidence is more than sufficient for a reasonable person to conclude that it is probable that Mr. Morrell was selling drugs and that he was using his cell phones to do it. As such, the trial court did not abuse its discretion when it granted the search warrant.

b. *Because probable cause supported each of the items to be seized in all three search warrants, the warrants are not constitutionally overbroad.*

Where each of the search warrants were limited by the crime under investigation and each of the items to be seized were reasonably related to that crime, the search warrants in this case did not authorize seizures of items in violation of the Fourth Amendment or Article 1, Section 7.

As a preliminary matter, Mr. Morrell has not identified with any specificity the items found as a result of the search warrants that should be suppressed because of overbreadth. Instead, his argument appears to hinge upon lack of reasonable suspicion for the initial stop, which would require suppression of all the evidence in this case. But assuming this Court finds the trial court properly ruled that Officer Lesser had reasonable suspicion to conduct a *Terry* stop and that probable cause supported the locations to be searched, the issue is whether probable cause supports each of the items listed in the warrants to be seized. If not, the next issue is whether the portions that lack probable cause may be severed from the warrant and evidence obtained as a result of them suppressed.

Because Mr. Morrell has not identified the particular evidence that was obtained as a result of the challenged items, it is unclear whether material evidence was actually found as a result of those portions that would not have otherwise been found. It is the State's position that probable cause

supported each of the challenged items, and that even if certain portions lacked probable cause, the doctrine of severability applies to uphold the remainder of the warrant.

*i. The search warrant for the cell phones was supported by probable cause.*

The search warrant for the cell phones authorized search and seizure of the following:

**All data that can be downloaded from this phone to include:**

- 1) Incoming and outgoing texts (to include SMS, MMS and Chats)
- 2) Incoming and outgoing calls
- 3) Any photos contained on the phone**
- 4) Any deleted data**
- 5) Incoming and outgoing phone call logs
- 6) Incoming and outgoing text message logs
- 7) Any voicemails on the phone
- 8) Contact information logs
- 9) Any app information and password information**
- 10) Subscriber information**
- 11) Incoming and outgoing social media messages

CP 53 (emphasis added); Gipson RP 20. Mr. Morrell challenges the probable cause to seize “[a]ll data that can be downloaded,” as well as items 3, 4, 9, and 10. He argues the warrant is limitless and should have been restricted to evidence between dealers and buyers. Appellant’s Br. at 18.

First, the warrant does not authorize a limitless search. Under a common sense reading of the warrant, the above language is limited by the crime being investigated: possession of a controlled substance. CP 55. Referencing Officer Lesser’s affidavit, the court notes that evidence of that

crime is located on the two cell phones. That reference limits the search to the list of items to the extent they are related to the crime of possession of a controlled substance.<sup>13</sup>

Mr. Morrell then argues, without explanation, that the listed items could not possibly relate to possession of a controlled substance—presumably as opposed to the crime of possession with intent to deliver. Appellant’s Br. at 19. To the contrary, each of the challenged items could just as easily relate to simple possession as to possession with intent to deliver. Drug users may have taken photos of the drugs they purchased and of their activities while under the influence. Deleted data could include text messages, phone calls, and photos between the user and the dealer. A user could locate dealers through mobile applications such as Instagram, Facebook, or even online dating websites. Subscriber information could help determine the person who was in possession of the phone on a given date or time. Each of these items is equally related to the crime of simple possession as it is to possession with intent to deliver, as simple possession clearly requires obtaining the substance from someone who is selling it.

---

<sup>13</sup> It appears to have been an oversight that the crime under investigation on this (second) warrant is listed as simple possession where the first and third warrants list possession of a controlled substance with intent to deliver as the crime under investigation.

Both the buyer and the seller would have to communicate with each other on the same platform.

Second, a factual nexus between the criminal activity and the items listed exists. Though the warrant itself is limited to a search for items related to simple possession, the facts provide probable cause for possession with intent to deliver. Based on previous experience and Ms. Ansbaugh's information, Officer Lesser knew Mr. Morrell was involved in possession and sale of drugs. Ms. Ansbaugh also provided reason to believe Mr. Morrell was in possession of controlled substances that day, and her own purchase and knowledge he would be returning to her hotel room with more supports an inference that he was out buying and/or selling drugs. And as Officer Lesser attested, drug dealers commonly use multiple cell phones to sell their product. These facts establish the necessary nexus between the criminal activity and the items to be searched and seized. From those facts, the court was entitled to make reasonable inferences therefrom, and it was reasonable to infer that there may be photos, deleted data, and application and subscriber information related to simple possession or possession with intent to deliver. The court did not abuse its discretion when it found probable cause for each of the listed items.

- ii. *The search warrants for both vehicles were supported by probable cause.*

The two vehicle search warrants contained the following, nearly identical,<sup>14</sup> language:

1. controlled substances, in particular; METHAMPHETAMINE AND HEROIN
2. controlled substance paraphernalia, including materials for packing, cutting, weighing, and distributing controlled substances including, but not limited to, scales, baggies, heat sealers, and spoons;
3. firearms and/or other dangerous weapons; to include ammunition, holsters, magazines, gun cleaning supplies and storage containers used to transport or store firearms
4. **books, records, receipts, notes, computer disks/records, ledgers, and other papers relating to the acquisition, transportation, possession, sale and/or distribution of controlled substances, in particular but not limited to (METHAMPHETAMINE AND HEROIN)**
5. **papers, tickets, notes, schedules, receipts and other items relating to the domestic travel including but not limited to travel to, from and between Washington, Idaho, Oregon, and California;**
6. **address and/or telephone books and papers reflecting names, addresses, and/or telephone numbers of suspected co-conspirators or persons to whom controlled substances may have been delivered, or from whom controlled substances may have been obtained;**
7. **books, records, receipts, bank statements and records, money drafts, letters of credit, money orders, and cashier's checks, passbooks, bank checks and other items evidencing the obtaining, secreting, transferring, and/or concealment of assets and the**

---

<sup>14</sup> The only difference is that one listed methamphetamine only in sections 1 and 4, while the other listed both methamphetamine and heroin. *See* CP 104-05, 164-65.

**obtaining, secreting, transfer, concealment, and/or expenditure of money;**

8. United States currency, precious metals, and financial instruments, including, but not limited to, stocks and bonds, and any property having been exchanged for controlled substances;
9. **photographs and/or videotapes, including those which depict co-conspirators, weapons, assets and/or controlled substances, in particular**
10. articles of personal property tending to establish the identity of persons in control of premises, vehicles, storage areas, or containers being searched consisting in part of and including, but not limited to, utility company receipts, rent receipts, addressed envelopes, and/or keys;
11. cell phones or similar digital devices used to send, receive and/or store call histories, phone calls, text messages, e-mails, picture messages, video messages, photographs and to search, view and record the information relating to the acquisition, transportation, possession, sale and/or distribution of controlled substances, in particular, but not limited to a phone associated with
12. **Business records, cash registers, bank accounts for buy money, and all records pertaining to business that may be indicative of money laundering.**

all of which are evidence of the commission, an attempt to commit, or a conspiracy to commit an offense under the Uniform Controlled Substances Act. RCW 69.50.

CP 104-05, 164-65 (emphasis added). Mr. Morrell argues that items 4, 5, 6, 7, 9, and 12 are not supported by probable cause because no facts suggested he would have such items in his possession.

However, as described more fully previously, the facts presented to the court established probable cause to believe Mr. Morrell was engaged in selling controlled substances. From there, the trial court was entitled to

make reasonable inferences that evidence of that criminal activity was likely to take the form of the listed items.

Common sense indicates that someone engaged in any business—trafficking in narcotics included—would keep written records, such as those listed in item 4, of their dealings. The trial court reasonably inferred from facts indicating Mr. Morrell was selling drugs that he would keep written financial records of his activity and that if he were actively selling drugs, he would potentially have those records with him in his vehicle. Probable cause supports this item.

Likewise, the court was entitled to infer that in the course of his business, Mr. Morrell would travel, at least around Spokane, as he was doing on both days he was stopped. Moreover, Officer Lesser's affidavit states that Mr. Morrell had a dangerous drug violation in Arizona. CP 100, 159. These facts support a reasonable inference that Mr. Morrell may travel regionally to facilitate his illegal business. Probable cause therefore supports this item.

Item 6 is also supported by probable cause. Based on evidence that Mr. Morrell was selling drugs, the court could make the reasonable inference that he would likely possess names or contact information for those from whom he purchased his product, or those to whom he regularly

sold substances, and that this information would be necessary to have with him at the time he was engaged in such business.

Similarly, the trial court reasonably inferred from the evidence that Mr. Morrell was trafficking in narcotics that money would have necessarily exchanged hands between him and his dealers and buyers. It is not unreasonable that records of these exchanges would be in Mr. Morrell's possession. Probable cause supports this item.

With respect to item 9, facts establishing Mr. Morrell was engaged in drug dealing provide a reasonable basis to infer that he may possess photos or videos taken by himself, his dealers, or his buyers of the product they were exchanging or of their activities. Item 9 is supported by probable cause.

Finally, item 13 is supported by probable cause. It is reasonable to infer that someone engaged in the illegal business of trafficking in narcotics would be making money, and in order to avoid detection, would attempt to conceal the illicit source of the money to make it appear that it was from a legitimate source.

As each of the challenged items is supported by probable cause both warrants satisfied constitutional requirements and should be upheld. But even if this Court finds some of the listed items were not supported by

probable cause, it should sever those portions from the warrant and uphold the remaining portions that satisfy constitutional standards.

*iii. Assuming any overbreadth in the warrants, the doctrine of severability applies.*

Even if this Court finds certain items in the search warrants lacked probable cause, it should apply the doctrine of severability instead of finding the warrant was invalid in whole.

“Under the severability doctrine, ‘infirmity of part of a warrant requires the suppression of evidence seized pursuant to that part of the warrant’ but does not require suppression of anything seized pursuant to valid parts of the warrant.” *Perrone*, 119 Wn.2d at 556 (quoting *United States v. Fitzgerald*, 724 F.2d 633, 637 (8th Cir. 1983)); *see also Cockrell*, 102 Wn.2d at 570–71. “Thus, the doctrine applies when a warrant includes not only items that are supported by probable cause and described with particularity, but also items that are not supported by probable cause or not described with particularity, so long as a ‘meaningful separation’ can be made on ‘some logical and reasonable basis.’” *State v. Maddox*, 116 Wn. App. 796, 806-07, 67 P.3d 1135 (2003), *as amended* (May 20, 2003), *aff’d*, 152 Wn.2d 499 (2004) (quoting *Perrone*, 119 Wn.2d at 560).

“As the Washington Supreme Court has noted, ‘[i]t would be harsh medicine indeed if a warrant which was issued on probable cause and which

did particularly describe certain items were to be invalidated in toto merely because the affiant and magistrate erred in seeking and permitting a search for other items as well.’” *Maddox*, 116 Wn. App. at 807 (quoting *Perrone*, 119 Wn.2d at 556) (alteration in original). This doctrine applies even when there are First Amendment considerations. *Perrone*, 119 Wn.2d at 556.

For the doctrine to apply, the following five requirements must be met: (1) “the warrant must lawfully have authorized entry into the premises;” (2) “the warrant must include one or more particularly described items for which there is probable cause;” (3) “the part of the warrant that includes particularly described items supported by probable cause must be significant when compared to the warrant as a whole;” (4) “the searching officers must have found and seized the disputed items while executing the valid part of the warrant (i.e., while searching for items supported by probable cause and described with particularity);” and (5) “the officers must not have conducted a general search, i.e., a search in which they ‘flagrantly disregarded’ the warrant’s scope.” *Maddox*, 116 Wn. App. at 807-08.

Here, all five requirements are met. First, the warrant lawfully authorized searches of both vehicles and the two cell phones where probable cause provided a factual nexus between the criminal activity at issue and those locations.

Second, all three warrants particularly described items for which there was probable cause. Mr. Morrell challenges probable cause for only four of the eleven items in the cell phone warrant and does not challenge the particularity of the items to be seized. Similarly, with both vehicle warrants, Mr. Morrell challenges probable cause for only six of twelve listed items and does not challenge their particularity.

Third, the unchallenged portions of the warrants are significant portions of the warrants overall. Only a third of the cell phone warrant is challenged, and only half of the vehicle warrants are challenged. Even assuming that all the challenged items are invalid, a significant portion of the warrants remains valid.

With respect to the fourth requirement, Mr. Morrell has not identified the specific evidence found that he believes was found in violation of constitutional requirements that would need to be suppressed. As to the cell phone search warrant, the record contains evidence of text messages related to drug transactions, and that portion of the search warrant was not challenged. But without a more specific identification of the disputed evidence, it is difficult to identify whether law enforcement would have found whatever the disputed evidence is during the search for the unchallenged items in the warrant, such as drug transaction text messages.

Likewise, Mr. Morrell does not identify what evidence he believes was found under the challenged items of the search warrant for the two vehicles. The record contains evidence that during the September search officers found dominion and control paperwork, court paperwork, a jail form, and two receipts that belonged to Mr. Morrell—the only evidence that would appear to fall under one of the challenged categories of the search warrant. Weeks RP 4; CP 92-93, 170. No other evidence was found as a result of the challenged items. *See* Weeks RP 159-62 (identifying that no evidence was found as a result of the challenged items). Officers would have necessarily located these items during the search of the vehicles for other listed items in the search warrant that were not challenged. This requirement is satisfied.

Fifth, the officers did not engage in a general search. They searched the cell phones and vehicles for the items listed in the search warrants without searching beyond their respective scopes. Therefore, even if this Court finds that some of the listed items in the search warrants were not supported by probable cause, it should sever those portions and uphold the remainder of the warrants.

Because reasonable suspicion supported the initial stop of Mr. Morrell, and because the subsequent search warrants described with

sufficient particularity the locations to be searched and were supported by probable cause, the trial court properly denied the suppression motion.

**C. THIS COURT SHOULD DECLINE TO REVIEW WHETHER THE TRIAL COURT ERRED WHEN IT INCORPORATED THE DOCUMENTS ATTACHED TO MR. MORRELL'S SUPPRESSION MOTION BECAUSE THE ISSUE WAS NOT RAISED BELOW.**

Because Mr. Morrell did not properly preserve this issue at the trial court, this Court should decline review.

Under RAP 2.5(a), an “appellate court may refuse to review any claim of error which was not raised in the trial court.” *See State v. Blazina*, 182 Wn.2d 827, 833, 344 P.3d 680 (2015); *State v. Duncan*, 180 Wn. App. 245, 253, 327 P.3d 699 (2014). A strict approach to RAP 2.5(a) is warranted “because trial counsel’s failure to object to the error robs the court of the opportunity to correct the error and avoid a retrial.” *State v. Powell*, 166 Wn.2d 73, 82, 206 P.3d 321 (2009).

Mr. Morrell did not object to the court’s findings or conclusions on the suppression motion. *See* CP 178. Instead, through his attorney, he approved them as to form, with “objections preserved.” CP 178. Those objections would refer to those made on the record during the hearing, none of which included an objection to the court incorporating “all reports and the Search warrants submitted by the parties as additional facts in this case

as if fully set forth herein.” CP 175. As the objection was not preserved, this Court should decline to review this issue.

Moreover, Mr. Morrell has failed to identify any authority for his assertion that the trial court erred in incorporating the documents attached to his motion to suppress. *See* Appellant’s Br. at 23-24. Appellate courts do “not consider contentions unsupported by argument or citation to authority.” *State v. Mills*, 80 Wn. App. 231, 234, 907 P.2d 316 (1995); RAP 10.3(a)(6); *State v. Cox*, 109 Wn. App. 937, 943, 38 P.3d 371 (2002); *State v. Mason*, 170 Wn. App. 375, 380, 285 P.3d 154 (2012). Where no citation to authority is provided, this Court should decline to consider the argument.

Even if this Court reviews this issue, it should find no error.

Criminal Rule 3.6, which governs suppression hearings, provides:

(a) Pleadings. Motions to suppress physical, oral or identification evidence, other than motion pursuant to rule 3.5, shall be in writing supported by an affidavit or document setting forth the facts the moving party anticipates will be elicited at a hearing, and a memorandum or authorities in support of the motion... The court shall determine whether an evidentiary hearing is required based on the moving papers. If the court determines that no evidentiary hearing is required, the court shall enter a written order setting forth its reasons.

CrR 3.6(a). The court rule gives the trial court discretion to determine whether the motion will be heard based on only the moving papers, or

whether an evidentiary hearing is required. This implies the authority to decide the issue based on all evidence submitted, by both the defendant and the State. Nothing precludes the court from considering the moving papers in addition to testimony provided at an evidentiary hearing. No error occurred.

But even if an error occurred, it was inconsequential. Mr. Morrell concedes that the court may consider the search warrant affidavits and the search warrants themselves; the only remaining documents attached to his suppression motion are some police reports. Mr. Morrell neither identifies how the subject evidence negatively impacted him, nor asks this Court to reverse on these grounds. Instead, he asks to strike the evidence. But aside from findings of fact 7 and 8, which were immaterial to the court's ruling, all of the information in the trial court's findings and conclusions were testified to by Officer Lesser at the suppression hearing. Where he has not identified legal authority or harm caused by any inappropriate incorporation of evidence, this Court should deny his request.

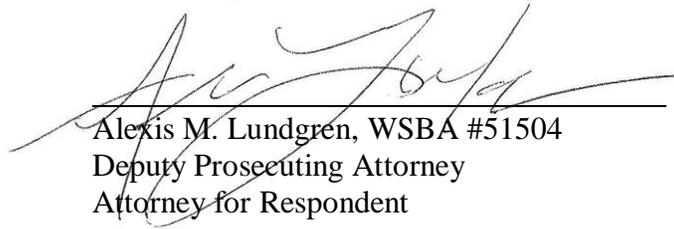
#### **IV. CONCLUSION**

The State respectfully asks this Court to affirm the trial court's decision to deny Mr. Morrell's suppression motion where any unsupported findings of fact were immaterial, no improper search or seizure occurred, and where incorporation into the record of the documents attached to

Mr. Morrell's motion was not timely raised and, even if it had been, was not error.

Dated this 5 day of August, 2020.

LAWRENCE H. HASKELL  
Prosecuting Attorney



Alexis M. Lundgren, WSBA #51504  
Deputy Prosecuting Attorney  
Attorney for Respondent

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

STATE OF WASHINGTON,  
  
Respondent,  
  
v.  
  
CHRISTOPHER MORRELL,  
  
Appellant.

NO. 37160-3-III  
Consol. w/37220-1-III

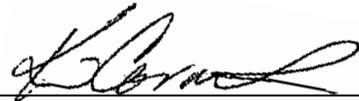
CERTIFICATE OF  
SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that on August 5, 2020, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Jodi Backlund and Manek Mistry  
backlundmistry@gmail.com

8/5/2020  
(Date)

Spokane, WA  
(Place)

  
\_\_\_\_\_  
(Signature)

# SPOKANE COUNTY PROSECUTOR

August 05, 2020 - 10:37 AM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 37160-3  
**Appellate Court Case Title:** State of Washington v. Christopher Robert Morrell  
**Superior Court Case Number:** 17-1-03903-0

### The following documents have been uploaded:

- 371603\_Briefs\_20200805103534D3400244\_7096.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Morrell Christopher - 371603-372201 - Resp Br - AML.pdf*

### A copy of the uploaded files will be sent to:

- backlundmistry1@gmail.com
- backlundmistry@gmail.com
- lsteinmetz@spokanecounty.org

### Comments:

---

Sender Name: Kim Cornelius - Email: kcornelius@spokanecounty.org

**Filing on Behalf of:** Alexis Michelle Lundgren - Email: alundgren@spokanecounty.org (Alternate Email: scpaappeals@spokanecounty.org)

Address:  
1100 W Mallon Ave  
Spokane, WA, 99260-0270  
Phone: (509) 477-2873

**Note: The Filing Id is 20200805103534D3400244**