

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
Respondent,)
v.)
ROY L. NEFF,)
Petitioner.)
_____)

No. 79121-0

STATEMENT OF ADDITIONAL
AUTHORITY

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
07 OCT -9 AM 7:59
BY RONALD R. SHERIFF
CLERK

Pursuant to RAP 10.8, Petitioner respectfully submits the following authority in response to the Court's questions at oral argument:

On the question of whether Mr. Neff was charged with being armed with two or three guns:

CP 105 (Second Amended Information) (attached as Appendix A);

On the question of whether the charged guns were loaded as the Court of Appeals decision indicates:

CP 232-33 (Sheriff's Supplemental Report, pages 9-10) (attached as Appendix B);

CP 243, 246 (Property Report for search warrant, pages containing items 79-91 and 118-28) (attached as Appendix C);

On the chronology of questions/answers at the hearing regarding the agreement to proceed on "stipulated facts":

7RP 219-29 (transcript of hearing) (attached as Appendix D).

DATED this 4th day of October, 2007.

Respectfully submitted:



KATHRYN A. RUSSELL SELK, No. 23879
Counsel for Petitioner
RUSSELL SELK LAW OFFICE
1037 Northeast 65th Street, Box 135
Seattle, Washington 98115
(206) 782-3353

CERTIFICATE OF SERVICE BY MAIL

I hereby declare, under penalty of perjury under the laws of the State of Washington, that I mailed a copy of the attached document to the prosecutor named herein, by depositing same in the United States Mail, first-class postage prepaid, at the following address: Ms. Karen Watson, Esq., Pierce County Prosecutor's Office, 946 County City Building, 930 Tacoma Ave S., Tacoma, WA. 98402; and to Mr. Neff, DOC 780428, at his current address in DOC.

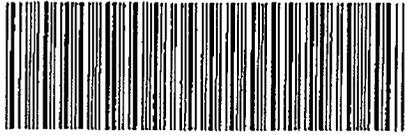
DATED this 4th day of October, 2007.

Signed:



KATHRYN A. RUSSELL SELK, No. 23879
Counsel for Petitioner
RUSSELL SELK LAW OFFICE
1037 Northeast 65th Street, Box 135
Seattle, Washington 98115
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APPENDIX A



02-1-05356-6 20077580 AMINF2 12-01-03



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 02-1-05356-6

DEC 01 2003

vs.

ROY LEN NEFF,

SECOND AMENDED INFORMATION

Defendant.

DOB: 7/3/1956
PCN#: 537669951

SEX : MALE
SID#: 10409422

RACE: WHITE
DOL#: WA NEFF*RL443MC

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse ROY LEN NEFF of the crime of UNLAWFUL MANUFACTURING OF A CONTROLLED SUBSTANCE, committed as follows:

That ROY LEN NEFF, in the State of Washington, on or about the 20th day of November, 2002, did unlawfully, feloniously, and knowingly manufacture a controlled substance, to-wit: Methamphetamine, classified under Schedule II of the Uniform Controlled Substance Act, contrary to RCW 69.50.401(a)(1)(ii), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: Davis Model P380 and/or Colt .45, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of the State of Washington.

DATED this 25th day of November, 2003.

PIERCE COUNTY SHERIFF
WA02700

GERALD A. HORNE
Pierce County Prosecuting Attorney

tjb

By:
JOHN M. SHEERAN
Deputy Prosecuting Attorney
WSB#: 26050

APPENDIX B

**Pierce County Sheriff Department
Supplemental Report**

Incident No. 023240941.3

Page 9 of 10

#74>Paper plate with white residue and the writing "Tim 520 Ronnie 120" Found left in the left-hand bottom drawer of the black metal desk in the garage.

#75>Numerous used coffee filters. Found next to #74.

#76>Numerous empty 1"x1" baggies with a red graphic on them. Found in the center drawer in a desk at the north wall.

#77>Tanita black digital scale. Found next to #76.

#78>3"x3"x1" plastic container 1/3 full of a white powder. 15.5 grams by scale from #77. Found next to #77. White powder field test positive for methamphetamine by Orting 106.

#79>One pair of wire dikes and vise grips. Found next to #78.

#80>5-gallon cylinder in the bushes 15' west of the garage.

#81>Federal Equipment safe. In the floor under the desk on the north wall.

#82>Smith and Wesson .357 loaded with 5 rounds. Model 686 Serial # AFP8906. Found in the safe.

#83>Three bags of suspected Marijuana. Found in the safe.

#84>Small plastic container with white powder. Found in the safe. White powder field test positive for methamphetamine by Orting 106.

#85>Colt MK IV .45 caliber, series 80. Serial #SF04000E. One magazine found with 5 cartridges. 31 .45 cartridges found in a plastic box. 1 black leather shoulder holster for .45. Found in the safe.

#86>Large bag of suspected marijuana. Found in the safe

#87>Misc. documents found in the safe

#88>Plastic bag of assorted coins

#89>5-gallon empty container labeled kerosene. Found next to the burn pile directly north of the garage.

#90>Three burnt containers of HEET. One gas line antifreeze container. Burnt pseudoephedrine blister packs. Found in the burn pile of the north side of the garage.

HEET is commonly used during the ephedrine extraction phase of methamphetamine manufacturing.

#91>Two empty cans of starting fluid that have holes punched in their bottoms, empty container of isopropyl alcohol, plastic battery packaging and scorched pseudoephedrine blister packs. Found in a burn pile east of the one directly behind the garage.

It is common for the methamphetamine manufacturer to burn the used ingredient waste which is accumulated during the methamphetamine manufacturing. This is done to destroy evidence.

#92>Home and garden weed sprayer. Found just east of the burn pile. pH 0 by Orting 106.

The garden weed sprayer is commonly used in constructing the HCL generator. The sprayer is used as the container where the muriatic or sulphuric acid is placed.

#93>5-gallon Propane cylinder that is spray painted blue. Found in a wood box 7' south of the first burn pile. pH 14 and field tested positive for ammonia using MSA Detector for ammonia.

**Pierce County Sheriff Department
Supplemental Report**
Incident No. 023240941.3
Page 10 of 10

#94>1-gallon container labeled Kerosene. Found next to #93. pH 7 by Orting 106.

#95>Home and garden weed sprayer with vinyl tubing attached. 5-gallon propane tank spray painted blue that has no valve system. Found next to #94. pH 11 and sample set taken by Orting 106.

#96>20lbs. open bag of ammonium sulfate. Found in the shed on the east side of the garage. This was ¾ full.

#97>5-gallon propane cylinder. Found in the shed on the east side of the garage. pH 14 and field tested positive for ammonia using MSA Detector for ammonia by Orting 106.

#98>5-gallon propane cylinder spray painted black. Found in the trunk of 242GEO, a black four door BMW 325i.

#99>Misc. documents found inside of the car listed in #98. I recovered these items which were strewn about the passenger front side of the car.

#128>Davis Model P 380 Serial #ap201415 in holster with magazine and five cartridges. Found in toolbelt pouch hanging in the rafters in the garage.

The magazine was in the firearm but a cartridge was not chambered.

Nothing further.

Reviewed By:

Reviewed Date:

APPENDIX C

AGENCY: PCSD TPD OTHER _____

DATE 11/21/02

**PROPERTY REPORT
SEARCH WARRANT**

TYPE OF CRIME **UMCS (Methamphetamine)**

PROPERTY ROOM USE ONLY PAGE

02-324-0941

EVIDENCE FOUND LABORATORY WORK REQUIRED: YES
 SAFEKEEPING OWNER UNKNOWN CENSUS DIST.

RELATED CASE NO.

PROPERTY OBTAINED FROM: ADDRESS PHONE
5215 301st ST E Graham, WA

VICTIM	LAST NAME	FIRST	MIDDLE	SUBJECT	LAST NAME	FIRST	MIDDLE
	STREET ADDRESS CITY PHONE				STREET ADDRESS CITY PHONE		
					Neff	Roy	

PROPERTY INVENTORY

PROPERTY ROOM USE ONLY

ITEM	PROPERTY DESCRIPTION / LOCATION	F/O	QTY	SERIAL NO	R/D	LOCATION	RECEIPT NO
79	One pair of wire dikes and vise grips. Found next to #78.	312					
80	5-gallon cylinder in the bushes 15' west of the garage.	312					
81	Federal Equipment safe. In the floor under the desk on the north wall.	312					
82	Smith and Wesson .357 loaded with 5 rounds. Model 686 Serial # AFP8906. Found in the safe.	312			R		
83	Three bags of suspected Marijuana. Found in the safe.	312			R		
84	Small plastic container with white powder. Found in the safe. White powder field test positive for methamphetamine by Oring 106.	312					
	Colt MK IV .45 caliber, series 80. Serial #SF04000E. One magazine found with 5 cartridges. 31 .45 cartridges found in a plastic box. 1 black leather shoulder holster for .45. Found in the safe.	312			R		
86	Large bag of suspected marijuana. Found in the safe	312			R		
87	Misc. documents found in the safe	312			R		
88	Plastic bag of assorted coins	312			R		
89	5-gallon empty container labeled kerosene. Found next to the burn pile directly north of the garage.	312			D		
90	Three burnt containers of HEET. One gas line antifreeze container. Burnt pseudoephedrine blister packs. Found in the burn pile of the north side of the garage.	312			D		
91	Two empty cans of starting fluid that have holes punched in their bottoms, empty container of isopropyl alcohol, plastic battery packaging and scorched pseudoephedrine blister packs. Found in a burn pile east of the one directly behind the garage.	312			D		

PROPERTY SUBMITTED BY: RKOCHER 96003/349 DATE 11/21/02

ADDITIONAL DESCRIPTIONS OR COMMENTS:

"R" = Retained (partial or complete)

"D" = Destroyed

PROPERTY ROOM USE ONLY

PROPERTY RECEIVED: METHOD _____ BY: _____ DATE: _____

PROPERTY INVENTORIED BY: _____ UNIT NO. _____ DATE: _____

AGENCY: PCSD TPD OTHER _____

DATE 11/21/02

**PROPERTY REPORT
SEARCH WARRANT**

TYPE OF CRIME **UMCS (Methamphetamine)**

PROPERTY ROOM
USE ONLY

PAGE

02-324-0941

EVIDENCE FOUND LABORATORY WORK REQUIRED: YES
 SAFEKEEPING OWNER UNKNOWN CENSUS DIST.

RELATED CASE NO.

PROPERTY OBTAINED FROM: ADDRESS
5215 301st ST E Graham, WA

PHONE

VICTIM	LAST NAME	FIRST	MIDDLE	SUBJECT	LAST NAME	FIRST	MIDDLE
	STREET ADDRESS	CITY	PHONE		STREET ADDRESS	CITY	PHONE
					Neff	Roy	

PROPERTY INVENTORY

**PROPERTY ROOM
USE ONLY**

ITEM	PROPERTY DESCRIPTION / LOCATION	F/O	QTY	SERIAL NO	R/D	LOCATION	RECEIPT NO
118	1"x1" plastic baggy containing white powder. Found with #115. Baggy is same as those found in Jeep, #111.	101			R		
119	Torn identification for one Andrea Ne??. Found in the master bedroom.	101			R		
120	Used coffee filters. Found on top of a cabinet on the north wall of the kitchen.	110			R		
121	Third edition of Uncle Fester's "Secrets of Methamphetamine Manufacturing". Found next to #120.	110			R		
122	Sample set A. (Orting Officer Gard)	106			R		
123	Sample set B	106			R		
	Printcard	106	1		R		
125	Photo discs. Retained with case file.	312	8		R		
126	8MM video tape. (Buckley PD Officer Chess)	P-4	1		R		
127	Ithaca 16 gauge pump shotgun. Found master bedroom behind the bed. One round found in the magazine.	280	1		R		
128	Davis Model P 380 Serial #ap201415 in holster with magazine and five cartridges. Found in toolbelt pouch hanging in the rafters in the garage.	312	1		R		

PROPERTY SUBMITTED BY: RKOCHER 96003/349 DATE 11/21/02

ADDITIONAL DESCRIPTIONS OR COMMENTS:

"R" = Retained (partial or complete)

"D" = Destroyed

PROPERTY ROOM USE ONLY

PROPERTY RECEIVED: METHOD _____ BY: _____ DATE: _____

PROPERTY INVENTORIED BY: _____ UNIT NO. _____ DATE: _____

APPENDIX D

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(Recess.)

(The Court heard another matter.)

THE COURT: We're back on the case of State vs. Roy Neff. And there is apparently a second amended information filed.

MR. SHEERAN: Yes, Your Honor. I've handed forward to the Court a second amended information as well as a stipulation of the parties regarding a stipulated bench trial, and I believe the Court has had a chance to read through the police reports. I'll also hand forward to the Court a firearms report from the Washington State Patrol Crime Lab.

THE COURT: I would like to kind of let the jurors know one way or the other what they have to do today.

MR. SHEERAN: Your Honor, I don't think we can do anything until the Court actually makes a decision based on the paperwork. If we let them go and things go sideways in the next ten minutes, then we have a jury that's been impaneled and released.

THE COURT: So to the second amended information, Mr. Underwood, have you received a copy of that?

MR. UNDERWOOD: I received two copies of

1 the second amended information. I've given a copy to
2 Mr. Neff, who waives formal reading.

3 THE COURT: And the second amended
4 information charges Mr. Neff with one count, a charge
5 of unlawful manufacturing of a controlled substance,
6 methamphetamine, and it also has the firearms
7 sentencing enhancements.

8 MR. UNDERWOOD: And Mr. Neff, formally,
9 I suppose, enters a plea of not guilty, however he has
10 also completed the stipulation to the police reports,
11 et cetera, the other attachments that accompany the
12 stipulation, and is prepared to allow the Court to make
13 a guilty or not guilty determination based upon the
14 Court's review of those records.

15 THE COURT: And Mr. Neff, the
16 stipulation to facts sufficient stipulated bench trial
17 that you signed -- it looks like a five- or six-page
18 document -- did you review this with Mr. Underwood
19 before signing it?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: What's your understanding of
22 this document? What's the effect of this document?

23 THE DEFENDANT: That I'm making a plea
24 deal with the prosecutor.

25 THE COURT: Well, that's part of it.

1 What happens to the jury?

2 THE DEFENDANT: Beyond --

3 (The defendant confers with Mr.
4 Underwood.)

5 THE COURT: I generally don't like to
6 just ask questions that can be answered yes or no
7 because sometimes you don't know whether somebody
8 really knows what they're doing. I like to ask them
9 what their understanding is.

10 MR. UNDERWOOD: Your Honor, I might
11 explain a couple of things. I went over all these
12 items, the constitutional rights. Mr. Neff and I have
13 discussed the facts of this case at length and possible
14 defenses at length. We've talked about the
15 prosecutor's recommendation and the stipulation. I
16 read every word on that document, the stipulation to
17 Mr. Neff. He appeared to be reading along with me.
18 However, sometimes these things can be complicated, so
19 if Mr. Neff is not able to accurately answer your
20 question, I can certainly explain it, but I wanted to
21 let the Court know that.

22 THE COURT: This document has a whole
23 lot of effects, Mr. Neff. One of them is that a trial
24 here won't be a jury trial. The trial will basically
25 consist of me reading the police reports -- and I read

1 most of them earlier; there are a couple I haven't
2 yet -- reading the police reports, reviewing the
3 various exhibits there might be, and I already heard
4 testimony from the suppression hearing and read the
5 transcript of the tape-recording your wife made to
6 Deputy Crawford, and generally there won't be any other
7 evidence presented.

8 THE DEFENDANT: I understand.

9 THE COURT: If there is sufficient
10 evidence in the reading of the police reports, you
11 could be found guilty.

12 THE DEFENDANT: I understand.

13 THE COURT: The State, if I grant the
14 motion to amend -- there's just one charge, the
15 manufacturing of methamphetamine, but that carries
16 quite a bit of time in prison.

17 THE DEFENDANT: I understand.

18 THE COURT: And this is what you want to
19 do here?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: So I'll be reading the
22 police report and the various materials, report from
23 the labs, and there's a firearm report, I believe.

24 MR. SHEERAN: Yes, Your Honor, that's
25 what I just handed up.

1 THE COURT: And analysis of some of the
2 stuff that was found. And based upon reading that,
3 I'll determine whether you're guilty and whether
4 there's enough evidence to support the firearm
5 enhancement. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: It says, I stipulate there
8 is sufficient evidence to support the charged offense
9 and the firearm enhancement as charged in the second
10 amended information. You, of course, have the right to
11 have an attorney, and this says you can have one
12 appointed if you can't afford one, and Mr. Underwood
13 has been representing you throughout this case.
14 Somebody else was on it, as I recall.

15 THE DEFENDANT: Mr. Whitehead started
16 and Mr. Underwood took over.

17 THE COURT: You have the right to a jury
18 trial. We've already got a jury impaneled. You have
19 the right to a trial here in the county where this
20 occurred. You still -- this is still a trial, but it's
21 a much shorter trial and no cross-examination of
22 witnesses. You won't be presenting any evidence. The
23 trial is me reading the police reports, basically.

24 THE DEFENDANT: I understand.

25 THE COURT: At trial the witnesses

1 testify live, and you would have the right to
2 cross-examination them and ask questions of them that
3 tests whether they knew what they were talking about,
4 and you would be able to subpoena witnesses for your
5 own defense. You would be giving up those rights by
6 this agreement.

7 THE DEFENDANT: I understand.

8 THE COURT: Are you doing that freely
9 and voluntarily?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You're presumed innocent.
12 You're still presumed innocent, of course, until I make
13 a decision here. And it says, I'm reserving the right
14 to challenge sufficiency of evidence to support the
15 conviction while reserving the right to challenge the
16 suppression hearing findings and conclusions. So the
17 issues there you can still appeal.

18 MR. UNDERWOOD: Your Honor, I might have
19 misunderstood you. Did you say that you were reserving
20 the right to challenge the sufficiency of evidence and
21 a suppression hearing?

22 THE COURT: I don't think so. I'm
23 waiving the right to challenge the sufficiency of
24 evidence to support the conviction on appeal. But he
25 does reserve the right to challenge the suppression

1 hearing. So the State's agreeing that they can appeal
2 that?

3 MR. SHEERAN: Yes, Your Honor.

4 THE COURT: And we'll have to do some
5 findings and conclusions?

6 MR. SHEERAN: Yes, Your Honor.

7 THE COURT: The maximum sentence is 20
8 years in prison, Mr. Neff, and there's a standard range
9 which depends on offender score and prior convictions
10 and things. The State says the standard range is 67 to
11 89 months in prison and also 36 months firearm
12 enhancement and 90 months of community custody, and
13 generally if you're sentenced within the standard
14 range, you can appeal that sentence, assuming it's the
15 correct standard range. So the reality, is you're
16 probably going to be sentenced to 67 to 89 months plus
17 36 months, so it looks like 103 to 125 months. Is the
18 State making a specific recommendation at this time?

19 MR. SHEERAN: Yes, Your Honor, and it's
20 included in the stipulation.

21 THE COURT: And he apparently has a
22 prior conviction, unlawful delivery of a controlled
23 substance or conspiracy, 1997; unlawful possession of a
24 controlled substance, 2002; unlawful possession of a
25 firearm, 2002. And they mention the various fines that

1 will be involved here, and that includes a lab fee
2 clean-up of \$3,000. Pretty steep. And some other
3 fines including victim compensation, reimbursement of
4 defense attorney and things. And there's a mention
5 here about an exceptional sentence. Now, is there
6 going to be any recommendation for that exceptional
7 sentence?

8 MR. SHEERAN: No, Your Honor.

9 THE COURT: If you're found guilty, Mr.
10 Neff, you give up any right you have to possess
11 firearms. And the firearm enhancement that's charged
12 here is additional time consecutive to the basic
13 sentence. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And then it also indicates
16 that because there's a firearm sentencing enhancement
17 here, this is defined as a most serious offense, or a
18 strike as it's sometimes called. Does he have any
19 prior strikes?

20 MR. SHEERAN: No, Your Honor. Not that
21 the State's aware of.

22 THE COURT: And the recommendation by
23 the State is 114 months in the Department of
24 Corrections, and that's inclusive of the firearm
25 enhancement, so 89 plus 36.

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MR. SHEERAN: I'd have to do the math.

THE COURT: Eighty-eight plus 36, it sounds like.

MR. SHEERAN: I believe so, Your Honor.

THE COURT: Or 78 plus 26.

MR. SHEERAN: It's very close to the midpoint of the standard range, plus the 36.

THE COURT: That is correct, so mid-range, and then other things include the DNA testing, which is mandatory, DNA fee, clean-up fee. Now, the important thing, Mr. Neff, is you're the guy who -- you've signed this. You're the one who has to agree to this. Mr. Underwood can't make you do this. Are you doing this freely and voluntarily?

THE DEFENDANT: Yes, sir.

THE COURT: I understand that you're facing a trial here on a number of other charges so maybe that is a factor, but you don't have to do this, you can have your right to trial. We already have the jury impaneled.

THE DEFENDANT: If I may say a few words, if you don't mind, before I say yes, I understand that.

THE COURT: Yes. What do you want to say?

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THE DEFENDANT: I basically made some bad choices.

MR. UNDERWOOD: Before you go on, I would like to say one thing. I advised him that he ought to talk to me first, but he opted to talk to you.

THE COURT: Well, he can talk to you first. I just want to make sure he understands he's the one making this decision, not anybody else.

(The defendant confers with Mr. Underwood.)

THE COURT: I'm not doing any sentencing today so you can say whatever you want at sentencing, but I want you to understand it's up to you to decide to do this.

THE DEFENDANT: I understand that.

THE COURT: And this is your decision?

THE DEFENDANT: Yes.

THE COURT: Mr. Underwood is not making you do this? Mr. Sheeran didn't make any threats to you if you didn't do this?

THE DEFENDANT: No, sir.

THE COURT: And you've gone over this entire document with him, Mr. Underwood?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: Any question in your mind

1 this is freely and voluntarily made?

2 MR. UNDERWOOD: No, Your Honor.

3 THE COURT: Well, I'm going to accept
4 the stipulation as to facts. Can we release the jurors
5 now?

6 MR. SHEERAN: I believe so, Your Honor.

7 THE COURT: I've still got to read
8 through this one report, but I'm 98 percent done,
9 probably.

10 MR. UNDERWOOD: I think that the jury
11 can be released.

12 MR. SHEERAN: Once the Court has
13 accepted the stipulation, it's a question on whether or
14 not the Court enters findings with respect to the --

15 THE COURT: I'm going to, but I want to
16 take a couple minutes to run through this. I would
17 like to release the jury because they've been sitting
18 here real patiently. I did earlier read the
19 information submitted to me by Mr. Sheeran. There's an
20 additional crime lab report here.

21 MR. SHEERAN: In summary, Your Honor,
22 that report simply states that the four firearms that
23 were found were operable.

24 THE COURT: Item 82, Smith & Wesson
25 357-magnum caliber revolver, Colt 45, Colt magazine,