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**COURT OF APPEALS,
DIVISION I,
OF THE STATE OF WASHINGTON**

MATTHEW ALLAN TEMPLE,

Appellant,

vs.

THE STATE OF WASHINGTON,

Respondent.

Review of King County Superior Court Cause No. 09-1-01941-6 SEA

APPELLANT'S BRIEF (RAP 10.2(a))

AND

PROOF OF SERVICE & FILING OF APPELLANT'S BRIEF

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I. INTRODUCTION

Matthew A. Temple, the Appellant and trial court Defendant, was convicted of possession of methamphetamine in Violation of the Uniform Controlled Substances Act following a jury trial.

The defense moved prior to trial to suppress evidence seized pursuant to a warrant on the grounds that the court issuing the warrant lacked authority to issue the warrant, and the warrant was invalid and void. The Warrant was captioned “Redmond District Court King County,” and directed the return go to the judge issuing the warrant or “to the clerk of this court.” The Redmond District Court ceased to exist in 1989.

Alternatively, the defense moved to suppress evidence on the ground both the issuing judge and the seizing officer failed to comply in every respect with the requirements applicable to search warrant applications, search warrants, returns of search warrants, and search warrant inventories [“Application, Warrant, Return & Inventory”] The defense pointed to the complete failure to make any return of the Warrant and inventory of property to the issuing court, and to the complete failure of any of the Application, Warrant, Return & Inventory to be filed with the issuing court, whether to the court identified on the search warrant – the Redmond District Court – or to the King County District Court. This

was true even when the Courts' records were checked almost a year after the purported issuance and execution of the Warrant.

Finally, the defense moved prior to trial to suppress evidence seized pursuant to a search warrant that was overbroad because there was an insufficient nexus between the items sought and the place to be searched and the Warrant authorized search and seizure of items for which probable cause did not exist. The defense argued that there was no factual connection or showing between the items sought in the Warrant and the place to be searched, and that the Warrant was overbroad to the extent it authorized searches of areas and seizure of items not particularly described in the affidavit supporting the Warrant and for which probable cause did not exist.

The trial judge denied the motions to suppress; following which Mr. Temple was convicted of simple possession of methamphetamine. Denial of each of the motions to suppress was reversible error.

II. APPELLANT'S ASSIGNMENTS OF ERROR

ASSIGNMENTS OF ERROR

1. The Trial Court committed reversible legal error when it permitted the State to convict Mr. Temple using evidence which was the subject of an unreasonable search and which had been seized without authority of law in violation of the Fourth Amendment to the U.S. Constitution and Article I, § 7 of the Washington Constitution.
2. The Trial Court committed reversible legal error when it denied the defense motion to suppress evidence seized pursuant to the Warrant where the Warrant was issued by a judge purporting to sit in a non-existent court.
3. The Trial Court committed reversible legal error when it denied the defense motion to suppress evidence seized pursuant to the Warrant where the Warrant was issued by and returnable to a non-existent court.
4. The Trial Court committed reversible legal error when it denied the defense motion to suppress evidence seized pursuant to the Warrant where the Trial Court had no search warrant affidavit to review in evaluating the Warrant.
5. The Trial Court committed reversible legal error when it denied the defense motion to suppress evidence seized pursuant to the Warrant where the Court which purportedly issued the warrant has none of the warrant paperwork on file, *i.e.*: the Court has no search warrant affidavit on file; the Court has no search warrant on file; the Court has no return of the search warrant on file; and the Court has no inventory on file.
6. The Trial Court committed reversible legal error and abused its discretion when it denied the defense motion to suppress evidence seized pursuant to the Warrant where the officer executing the Warrant completely failed to make a return of the search warrant and an inventory of the property to the judge purportedly issuing the warrant.

7. The Trial Court committed reversible legal error when it denied the defense motion to suppress evidence seized pursuant to the Warrant where the Warrant authorized the search for and seizure of items for which probable cause did not exist.
8. The Trial Court committed reversible legal error when it denied the defense motion to suppress evidence seized pursuant to the Warrant where the Warrant authorized the search for and seizure of items for which there was an insufficient nexus between the items sought and the place to be searched.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the Trial Court commit reversible legal error when it permitted the State to convict Mr. Temple using evidence which was the subject of an unreasonable search and which had been seized without authority of law in violation of the Fourth Amendment to the U.S. Constitution and Article I, § 7 of the Washington Constitution?
2. Did the Trial Court commit reversible legal error when it denied the defense motion to suppress evidence seized pursuant to the Warrant where the Warrant was issued by a judge purporting to sit in a non-existent court?
3. Did the Trial Court commit reversible legal error when it denied the defense motion to suppress evidence seized pursuant to the Warrant where the Warrant was issued by and returnable to court which had no legal existence?
4. Did the Trial Court commit reversible legal error when it denied the defense motion to suppress evidence seized pursuant to the Warrant where the Trial Court had no search warrant affidavit to review in evaluating the Warrant?
5. Did the Trial Court commit reversible legal error when it denied the defense motion to suppress evidence seized pursuant to the Warrant where the Court which purportedly issued the warrant has none of the warrant paperwork on file, *i.e.*: the Court has no search warrant affidavit on file; the Court has no search warrant on file; the Court has no return of the search warrant on file; and the Court has no inventory on file?

6. Did the Trial Court commit reversible legal error when it denied the defense motion to suppress evidence seized pursuant to the Warrant where the officer executing the Warrant completely failed to make a return of the search warrant and an inventory of the property to the judge purportedly issuing the warrant?
7. Did the Trial Court commit reversible legal error when it denied the defense motion to suppress evidence seized pursuant to the Warrant where the Warrant authorized the search for and seizure of items for which probable cause did not exist?
8. Did the Trial Court commit reversible legal error when it denied the defense motion to suppress evidence seized pursuant to the Warrant where the Warrant authorized the search for and seizure of items for which there was an insufficient nexus between the items sought and the place to be searched.

III. STATEMENT OF THE CASE

A. Procedural Facts & Theory of the Case

On 6 April 2009, the State charged the defendant appellant, Matthew A. Temple, by information with Assault in the Second Degree – Domestic Violence. The offense was alleged to have occurred on 10 December 2008 in King County. Clerk’s Papers [hereinafter “CP”] 1.

The Court entered an order permitting the filing of an amended information on 14 July 2009, CP 19-20, and pursuant to that order, the State filed an amended 2 count information charging charged Mr. Temple with Assault in the Second Degree – Domestic Violence under the deadly weapon means and Violation of the Uniform Controlled Substances Act – Possession of Methamphetamine – alleged to have occurred on 10 December 2008 in King County. CP 21-22, 1RP 3-4.¹

The State’s original theory of the case was that Mr. Temple assaulted Jessica Allen following a verbal domestic violence incident. Snoqualmie Police Department [“SPD”] officers were dispatched to Mr. Temple’s home in Snoqualmie following receipt of a 911 call where the 911 operator heard a male and a female fighting in the background prior to the call disconnecting. CP 2-3.

¹ The Verbatim Report of Proceedings is contained in four volumes, designated as follows: 1RP – 10/28/2009; 2RP – 10/29/2009; 3RP – 11/3/2009; and 4RP – 11/4/2009.

According to Officer Draveling of the SPD, on arrival at Mr. Temple's home, Officer Draveling asked Mr. Temple what was going on, and Mr. Temple told Officer Draveling he was tired of Ms. Allen's "shit" and told her to move out. CP 2. According to Draveling, Mr. Temple explained the basis of his dispute with Ms. Allen as premised on moving upstairs into his home, not paying rent, and trying to have another male move into her room with her. CP 2. Temple told Draveling that Allen was upstairs, was locked in her room, and had refused to come out. *Ibid.* In response to Draveling's query, Temple told Draveling Allen was Temple's ex-girlfriend. *Ibid.*

Officer Draveling then contacted Ms. Allen upstairs in the home. *Ibid.* On contact, Officer Draveling saw a swollen red mark under Ms. Allen's right eye, and thought it obvious Ms. Allen had been crying and was distraught. *Ibid.*

Allen related that Temple had asked her to move out a couple of days prior to the date of Draveling's contact. Allen told Draveling Temple yelled at Allen that she was not to eat and needed to just move out of the house, and that Temple "wished she would die." *Ibid.* According to Allen, Temple came out of his bedroom holding an axe. *Ibid.*

Allen claimed Temple was holding the axe up with two hands as though he were going to chop wood, directly in Allen's face, while calling

Allen profanities. CP 3. Allen claimed to hear for her life and that Temple might hurt her with the axe. *Ibid.* As Allen was backing away, Temple accidentally stepped on Allen's small dog and slipped. Allen then turned around to go upstairs to her room, and at that point in time, Allen claimed Temple brought the axe down and hit her in the back right shoulder with what Allen thought was Temple's arm. *Ibid.* Officer Draveling didn't see any marks on Allen's back. *Ibid.*

Allen then told Temple she was calling the police. *Ibid.* Allen claimed Temple punched her in the face while holding the axe in his other hand, telling Temple she now had a reason to call the police. *Ibid.* Allen claimed to then run upstairs, call 911, and hide in her room with her dog until the police arrived. *Ibid.*

Officer Draveling then returned outside to speak with Temple and ask him about the punch to the face and the axe. *Ibid.* Temple replied the axe was not used in the argument and was locked in Temple's room with his dog. *Ibid.* Temple also said he didn't punch Allen, but that Allen spit in his face during the argument. *Ibid.*

Officer Draveling then arrested Temple and prior to transporting Mr. Temple, made arrangements for Allen to take care of Mr. Temple's dog. *Ibid.* While another officer transported Temple to the police department, Officer Draveling went into Temple's home to retrieve the

axe, but found Temple's room to be locked. *Ibid.* at pp. 3-4. Although Temple gave permission for Allen to retrieve the axe and give it to Officer Draveling, Officer Draveling was unable to enter Temple's room because he couldn't find any keys. *Ibid.*

At Officer Draveling's request, "Ofc. Moate applied for and was granted a signed search warrant by Judge Jacke (Redmond District Court)." *Ibid.* The warrant states

there is probable cause to believe that the crime(s) of: RCW 9A.36.021 Assault in the 2nd degree has been committed and that evidence of that crime; contraband, the fruits of the crime, or things otherwise criminally possessed; or weapons or other things by means which a crime had been committed or reasonably appears about to be committed; or a person for whose arrest there is probable cause, or who is unlawfully restrained is/are concealed in or on certain premises, vehicles, or persons.

The search warrant identified the court issuing the search warrant at the top of the warrant, CP 58 & Exhibit 4, p. 1 [emphasis in original], as the:

**REDMOND DISTRICT COURT
KING COUNTY**

The warrant further commanded the search of Mr. Temple's home, and told the officers to

seize and search, if located, the following property or person(s):

Any dangerous weapons, firearms. blade weapons, or tools that appear to be used as a weapon in the commission of the

crime(s); specifically a wood handled axe; all ammunition and shell casings, spent or otherwise that may have been used or a result of the crime; Any evidence establishing domain and control of weapons located, to include damage to the property, by axe, knife or firearm; Evidence of examination, by taking video and photographs of the crime scene; canceled mail, rental agreements, utility bills, notices from governmental agencies, and other documents showing dominion and control of the premises; documents, photographs or receipts that show ownership of any firearms.

Ibid.

Pursuant to the search warrant, Officer Draveling gained entry into Temple's bedroom and had another party retrieve a fiberglass handled chopping maul [n.b. the warrant identified a wood handled axe, not a fiberglass handled chopping maul]. After Draveling secured the chopping maul, he entered the bedroom to check for other weapons, including other axe type weapons. *Ibid.* Draveling claimed to notice a small cylindrical container on top of a dresser that had what appeared to be crystal methamphetamine and a metal Oakley glasses case that was in a partially open door with a visible glass methamphetamine smoking pipe. Draveling secured the items as evidence and took digital photographs of the items. *Ibid.* Draveling then left a copy of the search warrant at the residence, booked the items into evidence at the Snoqualmie Police Department, and labeled the alleged methamphetamine for testing. *Ibid.*

B. Motion to Suppress Relating to Search Warrant Issues

Prior to trial, the defense moved to suppress evidence seized pursuant to the search warrant. CP 23-44. Specifically, the defense claimed the warrant was invalid because it was overly broad, issued by a judge purporting to sit in a non-existent court, and issued without a factual connection or showing between items sought and the place to be searched. CP 23-24.

The Court heard testimony on the Defendant's 3.6 motion and the State's 3.5 motion on 28 October 2009. 1RP 3-4. SPD Officers Robert Keeton and Nigel Draveling testified for the State. 1RP 3. The State offered as exhibits (1) the search warrant purportedly issued in Mr. Temple's case and (2) the return of inventory for the warrant. 1RP 24, 30. The Court admitted both exhibits for the purposes of the motion hearing. *Ibid.* No other exhibits, including the search warrant affidavit, were offered at the hearing.

According to Draveling's testimony, Officer Moate obtained a search warrant. 1RP 24. Officer Moate did not testify. 1RP 3, 2RP 2. The search warrant affidavit was not offered as an exhibit into evidence by the State. 1RP 3. The Warrant received by Draveling is un-numbered, captioned "Redmond District Court King County," dated 12-11-08 0113,

and bears Linda Jacke's signature on a line above "signature of judge."

Exhibit 4, 1RP 24; CP 37-38.

The Warrant purported to authorize the seizure of

[a]ny dangerous weapons, firearms, blade weapons, or tools that appear to be used as a weapon in the commission of the crime(s); specifically a wood handled axe; all ammunition and shell casings, spent or otherwise that may have been used or a result of the crime; Any evidence establishing domain and control of weapons located, to include damage to the property, by axe, knife or firearm; Evidence of examination, by taking video and photographs of the crime scene; canceled mail, rental agreements, utility bills, notices from governmental agencies, and other documents showing dominion and control of the premises; documents, photographs or receipts that show ownership of any firearms.

Exhibit 4, 1RP 24; CP 37.

Draveling had another resident of the home open the door to deal with a dog in Mr. Temple's room, and the other resident grabbed the axe at the same time. 1RP 26. After the resident handed Draveling the axe, Draveling entered Mr. Temple's room looking for damage from the axe :showing his aggression," "other items, blade items, knives, any other dangerous weapons, firearms, thinks like that," and "items of dominion and control." 1RP 26-27.

Although Draveling saw books, a dairy, and other papers, he didn't seize any of those dominion and control items. 1RP 26. Rather, as Draveling describes it:

When we walked in the door there was actually two things. There was meth that was on - - just on the dresser, and then in the drawer there was a partially opened like a silver oak leave [Oakley] sunglass case. And that had an obvious methamphetamine pipe that was sitting right there. And it was like, if I remember right, it was like an oak type two or three drawer, and the top drawer was open with that in there, or something. It was right where I could see it easily.

1RP 27 [reference to oak leave should be to a branded “Oakley” sunglass case]. At the time Draveling claims to have seen the meth and the meth pipe, Draveling claims to have been looking for “any other bladed weapons, anything that can be used to hurt somebody, firearms, other to establish dominion and control, if that's his room. Those things.” 1RP 28.

Other than the fiberglass axe, the metal container containing the smoking pipe, and the plastic cylindrical container that contained the suspected methamphetamine, Draveling didn't seize anything else from Mr. Temple's bedroom. 1RP 29.

After the seizure, Draveling prepared an inventory return. 1RP 30. Draveling's regular practice is to fax the inventory return to the judge that “awarded the search warrant. It [the fax] usually prints out a receipt and our records puts that in the case report.” *Ibid.* On direct examination, Draveling believed he faxed the return. 1RP 31.

On cross-examination, Draveling testified that he gave Officer Moate some information for a search warrant. 1RP 34. Draveling had no

evidence of any guns or firearms. *Ibid.* Draveling has never seen Mr. Temple around a gun or a firearm, and had no reason to believe Mr. Temple used a firearm. 1RP 34-35. While waiting for the search warrant, Draveling secured Mr. Temple's home, but didn't notice two people in the home who popped out of a bedroom an hour to an hour and 20 minutes after Mr. Temple was arrested and the house secured. 1RP 36-37.

Draveling believes the warrant was issued at 1:13 a.m., that he received it around 1:20 a.m., and that he inventoried and booked the evidence into the evidence locker in the North Bend Police Station by 1:30 a.m. 1RP 40-41.

Draveling has known Mr. Temple for well over ten years and knew the house searched to be Temple's for ten years. 1RP 43-44.

However, Draveling has no independent recollection of faxing the inventory and return of the Warrant to Judge Jacke or any other judge or court. 1RP 44. Nor did Draveling inventory and leave a copy of the inventory at the Temple residence. 1RP 45. Nor did Draveling leave a copy of the Warrant or the purported affidavit in support of the Warrant at the Temple residence when he left. *Ibid.* According to Draveling, the affidavit in support of the search warrant and the search warrant should have been given to Mr. Temple at booking, and the inventory "should have been [sent] certified mail." 1RP 45. Much of Draveling's testimony

about how and whether Mr. Temple received a copy of the inventory is speculation, as Draveling had no personal knowledge and was processing evidence when he surmised it may have been given to Temple. 1RP 46. Draveling subsequently remembered leaving the “search warrant stuff” at Temple’s residence. 1RP 47.

On re-cross, Draveling acknowledged the Warrant didn’t reference any drug crime and didn’t authorize the search for anything related to drugs. 1RP 52-53. Draveling’s primary concern was weapons and other evidence of assault. 1RP 53. There was no evidence of anything other than a 3 foot axe, which would not fit in the drawers in Mr. Temple’s room. 1RP 53-54.

C. There Is No Redmond District Court.

The heading at the top of the un-numbered search warrant admitted as Exhibit 4 in the motion hearing in bold-faced type is:

**REDMOND DISTRICT COURT
KING COUNTY**

1RP 24; Exhibit 4, p. 1. The command in the warrant includes an instruction to “[p]romptly return this warrant to me, or the clerk of **this court**. The return must contain an inventory of all property seized.” 1RP 24; Exhibit 4, p. 2.

There is and has been no “Redmond District Court” for at least 5 years, if not longer. King County Code §2.68.005(A) converted separate judicial districts that comprised various district courts in King County, including the Redmond District Court, into a unified King County District Court. *Ibid.* Thus, there is no longer a Redmond District Court. *Ibid.*

D. The Affidavit, Warrant, and Inventory Were Never Filed with the Issuing Court.

Neither an affidavit for a search warrant, a search warrant, or an inventory and return of search warrant purporting to authorize the search and seizure of items located within Mr. Temple’s residence at 38375 SE Northern ST, Snoqualmie, County of King, Washington, was filed with either the King County District Court or the “Redmond District Court” at any time from the 10th or 11th of December, 2008 (the date on which the Warrant was purportedly issued), through the 28th of October, 2009, over 10 months later. CP 78-79; 2RP 19-20. This was in spite of the district court clerks’ diligent search for the search warrant affidavit, search warrant, and inventory and return of search warrant. CP 79. Although Draveling testified it was his practice to file the returns, the absence of the records in the various district court files makes clear the affidavit, warrant, and inventory and return were never filed. CP 78-79. Equally importantly, although Draveling states that he made the inventory of items

seized in the presence of Jessica L. Allen, 2RP 29-30, Exhibit 5, p. 2, in fact Draveling's testimony is that he prepared a typewritten inventory at the station without anyone else present when he prepared the inventory that may or may not have been given to or sent by certified mail to Mr. Temple. 2RP 44-47.

E. The Trial Judge Denied the Motion to Suppress.

The trial court judge denied the motion to suppress and did not enter findings of fact and conclusions of law, and no findings of fact and conclusions of law were prepared by the prevailing party – the State.

The judge ruled the issues relating to the unfiled search warrant affidavit, inventory and return are all ministerial, not constitutionally mandated, and did not result in suppression. 2RP 39. Further, the judge found it was “of no moment whether the affidavit was filed.” *Ibid.*

The judge continued by finding the warrant wasn't overbroad, but even if the warrant were overbroad, the *Maddox* (*State v. Maddox*, 116 Wn.App. 796 (2003)) factors applied to make the warrant valid. 2RP 40. Finding the warrant focused on the axe and evidence of dominion and control, *ibid.*, the judge found the disputed items were in plain view while executing a valid part of the warrant, and were not found as part of a generalized search. 2RP 41. Even if the warrant were overbroad, all 5

Maddox factors applied. The Court therefore denied the defense motion to suppress. 2RP 42.

The State then dismissed the assault charge against Mr. Temple, and proceeded to trial on the VUCSA charge. 3RP 4. Mr. Temple was convicted following a jury trial of a single count of possession of methamphetamine and sentenced. CP 62-68. This appeal ensued.

IV. SUMMARY OF THE ARGUMENT

The trial court committed reversible legal error when it denied the defense motion to suppress the evidence seized in the execution of the search warrant.

To begin, the Trial Court committed reversible legal error and abused its discretion by denying the defense motion to suppress evidence because the search was undertaken and the evidence was seized in violation of the Fourth Amendment and Article I, § 7.

The seizure was without authority of law because the warrant was purportedly issued by a judge sitting in a non-existent court, the warrant was returnable to a non-existent court, no search warrant affidavit was ever introduced or admitted to justify the issuance of the search warrant, and there was a complete and total failure to comply with the rules regarding filing, returns, and inventories relating to search warrants.

Officer Draveling's complete failure to make a return to the issuing court of the search warrant affidavit, search warrant, and inventory is far worse than a late return or minor non-compliance. The complete failure to properly inventory, return and file the various documents is much more than a ministerial act; it is tantamount to and no better than a general warrant – one of if not the principal evils the Fourth Amendment was intended to prohibit.

The Trial Court also committed reversible legal error and abused its discretion when it denied the defense motion to suppress when the undisputed evidence shows the Warrant where the Warrant was issued by a judge purporting to sit in a non-existent court. Absent a court with jurisdiction to issue a warrant, and a judge sitting in a court with jurisdiction to issue a warrant, the warrant is of no more force than if issued by any other citizen of Washington state.

The trial court was not able to review the unsubmitted search warrant affidavit. Without the warrant, how can the Trial Court determine probable cause existed, let alone determine if the warrant was overbroad? In like fashion, the trial court erred by finding a sufficient nexus between the items sought and the place to be searched when it had no search warrant affidavit to review.

Moreover, the Trial Court committed reversible legal error and abused its discretion when it denied the defense motion to suppress evidence and did not have the search warrant affidavit as part of its review. The State did not offer the search warrant affidavit as an exhibit, and although mentioned, it is not admitted as an exhibit. Considering it to justify the search warrant was prejudicial legal error.

Even if the trial court errors individually did not constitute reversible error, the cumulative effect of the errors denied the appellant a fair trial. The denial of the motion to suppress, coupled with the irregularities in the filing and return of the search warrant affidavit, the search warrant, and the inventory of seized property, together with the lack of judicial oversight available to the issuing court in these circumstances, amounted to such an irregularity in proceedings as to run afoul of both the Fourth Amendment to the U.S. Constitution and Article I, § 7 of the Washington Constitution, and require reversal.

This Court should reverse the conviction and denial of the motion to suppress, and remand for dismissal of the charges against Mr. Temple.

V. ARGUMENT

A. Standard of Review on Appeal.

This Court reviews questions of law *de novo*. *State v. Womac*, 160 Wn.2d 643, 649, 160 P.3d 40 (2007); *citing State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

Judicial determination of “[w]hether a warrant meets the particularity requirement of the Fourth Amendment is reviewed *de novo*.” *State v. Clark*, 143 Wn.2d 731, 753, 24 P.3d 1006 (2001). The same is true of the validity of a warrant. *State v. Reep*, 161 Wn.2d 808, 815, 167 P.3d 1156 (2007). Accordingly, the warrant is subject to *de novo* review by this Court.

B. The Search and Seizure Was Unreasonable In Violation of the Fourth Amendment And In Violation of Article I, § 7, Because It Was Done Without Authority of Law.

The bedrock of a person’s right to be free from unreasonable search and seizure in America is the Fourth Amendment to the United States Constitution:

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.

Article I, § 7, of Washington's Constitution offers individuals broader protection than the Fourth Amendment by providing that no "personal shall be disturbed in his private affairs, or his home invaded, without authority of law." As shown below, the individual and cumulative errors made the trial court's denial of Mr. Temple's motion to dismiss reversible legal error, and violated Mr. Temple's Fourth Amendment and Article I, § 7, rights.

C. The Warrant, Issued By A Court Without Legal Existence, Was Invalid. Any Search Performed Pursuant To That Warrant Was Unreasonable And Performed Without Authority Of Law. The Trial Court's Denial Of Mr. Temple's Suppression Motion Was Reversible Legal Error.

1. The Warrant Was Issued by a Judge in a Non-Existent Court.

The search warrant caption provides that the un-numbered search warrant is issued by a judge sitting in the "REDMOND DISTRICT COURT KING COUNTY." IRP 24; Exhibit 4, p. 1. The command in the warrant includes an instruction to "[p]romptly return this warrant to me [the judge], or the clerk of **this court**. The return must contain an inventory of all property seized." IRP 24; Exhibit 4, p. 2. The reference to "this court," by the four squares of the search warrant, refers to the "Redmond District Court."

The principal problem is there is and has been no "Redmond District Court" for at least 5 years, if not longer. King County Code §

2.68.005. King County Code §2.68.005(A) converted separate judicial districts that comprised various district courts in King County, including the Redmond District Court, into a unified King County District Court and eliminated the individual district courts. *Ibid.* Thus, there is no longer a Redmond District Court. *Ibid.*

2. The Warrant Was Returnable To A Judge Sitting In A Non-Existent Court Or A Non-Existent Court Clerk.

The search warrant, by its terms, commands the executing officer to promptly return the warrant to the judge, “or the clerk of this court. The return must contain an inventory of all property seized.” Exhibit 4, p. 2. As indicated in the search warrant, “this court” is the:

**REDMOND DISTRICT COURT
KING COUNTY**

As noted above, there is no and has not been a “Redmond District Court” for a very long time; long before the warrant was ever issued. Equally important, the warrant was never returned to the Redmond District Court, the King County District Court, Judge Jacke, a clerk of any court, or to any place having any connection with the issuing court.

3. The Redmond District Court Lacked Authority To Issue A Warrant.

A court’s actions, judgments, and decisions are void when the Court is not properly established in accordance with the law. *State v. Canady*, 116 Wn.2d 853, 809 P.2d 203 (1991). Indeed, where a court is

invalidly created, it lacks legal authority and any warrant issued by such a court is invalid and does not establish probable cause to support a search. *Ibid.* at 858; *State v. Perrone*, 119 Wn.2d 538, 558 note 5, 834 P.2d 611 (1992).

CrR 2.3 and CrRLJ 2.3 contain parallel provisions regarding issuance, execution, and return of search warrants. This warrant was issued by a district court, so the rules applicable to courts of limited jurisdiction apply. CrRLJ 1.1. CrRLJ 2.3(a) grants a “court” authority to issue a search warrant. CrRLJ 1.4(a) provides that “‘court’ means any court of limited jurisdiction.” Notably, CrRLJ 1.4(b) provides a separate definition for “judge” independent of the definition for “court” contained in CrRLJ 1.4(a).

CrRLJ 2.3(c) grants a “court” authority to issue a search warrant upon a “court” determination. It makes certain matters a part of the “court record.” “If the **court** finds that probable cause for the issuance of a warrant exists, it shall issue a warrant or direct an individual whom it authorizes for such purposes to affix the **court’s** signature to a warrant.” The warrant “shall designate the **court** to which” the warrant shall be returned. The warrant “shall be returned to the issuing **court**, and filed in the public files of the **court** unless ordered sealed by the **court**.” [All

emphasis supplied in this paragraph and not contained in original.] There is little doubt that CrRLJ 2.3 applies not to judges, but to courts.

REDMOND DISTRICT COURT is not a “court” as that term is defined in CrRLJ 1.4(a), because it is no longer a court of limited jurisdiction. It ceased to be a court of limited jurisdiction when King County adopted a unified single district court called the King County District Court. The “court” with authority to issue a search warrant was the King County District Court, which was a court of limited jurisdiction when the warrant was purportedly issued, not the Redmond District Court as stated in the warrant.

4. The Return Command Exemplifies the Problem.

As noted, the search warrant commanded the return of the warrant to the judge “or to the clerk of this court.” 1RP 23-24; Exhibit 4, p. 1. As identified on the search warrant, “this court” is the “REDMOND DISTRICT COURT KING COUNTY.” Given that this Court ceased to exist, where is the “clerk of this court” located, and where is the warrant and inventory to be returned? *See* CrRLJ 2.3(c), which requires a warrant designate the court to which the warrant “shall be returned.”

5. A Warrant Issued by A Non-Existent Court Is Invalid.

The warrant in Mr. Temple’s case was issued without authority of law. There is not, has not been for a number of years, and was not at the

time of issuance of the search warrant used in Mr. Temple's case any court, let alone a court of limited jurisdiction, in the State of Washington denominated the "REDMOND DISTRICT COURT." The *Canady* case, which also dealt with issuance of an invalid warrant by a non-existent court, is directly on point.

In *Canady*, the appellant argued that the court department from which the warrant issued had no legal existence, 116 Wn.2d at 854, and that the warrant was therefore invalid. The Washington Supreme Court reversed the conviction because the department of the Seattle Municipal Court that issued the warrant was not created at all, its actions were invalid, and the failure to exclude evidence seized as a result of the invalidly issued warrant in *Canady's* case was reversible error. *Id.* at 855-56, 858.

6. Because The Warrant In Mr. Temple's Case Was Issued by A Non-Existent Court And Is Invalid, The Trial Court Committed Reversible Legal Error When It Denied Mr. Temple's Motion To Suppress.

The same result applies in Mr. Temple's case. CrRLJ 2.3 grants courts – not judges – the authority to issue warrants. Like *Canady*, the court purporting to issue the warrant in Mr. Temple's case had no legal existence when it issued the warrant. Like *Canady*, a court without legal existence may not issue a valid warrant because it lacks authority of law.

And, like *Canady*, the failure to exclude evidence seized as a result of the invalidly issued warrant is reversible error.

Because the Redmond District Court, a court without legal existence, issued the search warrant in Mr. Temple's case, and because the search warrant was issued without authority of law and was invalid, the trial court's denial of the motion to suppress the evidence seized pursuant to the invalid search warrant was reversible error.

D. Officer Draveling's And The "Issuing Court's" Wholesale Failures To Comply With The Warrant Record-Keeping, Filing, And Return Requirements Were More Than "Ministerial" Acts; Cumulatively, They Made The Search Unreasonable And Deprived The Already Invalid Warrant Of Authority Of Law. The Trial Court's Denial Of Mr. Temple's Motion To Suppress Was Reversible Legal Error.

1. Single Isolated Non-Compliant Application, Warrant, Return & Inventory Events Have Been Upheld.

Washington cases have held, as have cases from other states, that a single defect in a search warrant application, warrant, return and/or inventory viewed in isolation is ministerial and does not compel invalidation of the warrant or suppression of its fruits, absent a showing of prejudice to the defendant. *See, e.g., State v. Smith*, 15 Wn.App. 716, 719, 552 P.2d 1059 (1976)(warrant's failure to designate magistrate to whom the warrant shall be returned. *See also State v. Kern*, 81 Wn.App. 308, 311, 914 P.2d 114 (1996):"[a]bsent constitutional considerations, the rules for execution and return of a warrant are essentially ministerial in nature."

In like fashion, Washington courts have held other single defects and omissions in warrants and their record keeping, filing, and return, particularly when subsequently remedied, are ministerial and do not compel a warrant's invalidation or suppression of the warrant's fruits, absent prejudice to the defendant. *See, e.g., State v. Wraspir*, 20 Wn.App. 626, 628-30, 581 P.2d 182 (1978)(suppression inappropriate where inventory made by one officer in the presence of other officers; other officers satisfied requirement of CrR 2.3 that more than one person be present when inventory was made); *State v. Parker*, 28 Wn.App. 425, 426-27, 626 P.2d 508 (1981)(unsigned undated warrant given to defendants at time of search warrant execution ministerial in nature and cured by production of original search warrant); *State v. Kern*, 81 Wn.App. 308, 318, 914 P.2d 114 (1996)(premature filing of inventory and return did not justify suppression); *State v. Bowman*, 8 Wn.App. 148, 150, 504 P.2d 1148 (1972)(officer's failure to properly serve defendant with warrant).

2. Mr. Temple's Case Has Multiple Non-Compliant Application, Warrant, Return & Inventory Events.

In contrast to the limited and isolated complaints referred to in the *Smith*, *Kern*, *Wraspir*, *Parker*, and *Bowman* cases, Mr. Temple's case involves multiple failures to comply with the rules governing Application, Warrant, Return & Inventory, not one of which the record indicates were

remedied prior to Mr. Temple's trial in this matter. *See generally* CrRLJ

2.3. These failures include:

- Search warrant affidavit is not filed with the issuing court, CP 78-79, 1RP 44;
- Search warrant is not filed with the issuing court, CP 78-79, 1RP 44;
- Search warrant return is not filed with the issuing court, CP 78-79, 1RP 44;
- Search warrant return is not accompanied by inventory of property seized, CP 78-79, 1RP 44;
- Search warrant inventory is not filed with the issuing court, CP 78-79, 1RP;
- Search warrant copy is not given to Mr. Temple, 1RP 46;
- Receipt for property taken pursuant to search warrant is not provided to Mr. Temple, 1RP 47;
- Search warrant inventory is not made in the presence of any other person, 2RP 44-47; and
- Inventory and return of search warrant falsely states it was made in the presence of a resident at Mr. Temple's address, 2RP 44-47.

3. Multiple Non-Compliant Application, Warrant, Return & Inventory Events Raise Constitutional Considerations.

Viewed individually, Application, Warrant, Return & Inventory failures do not raise constitutional considerations. When viewed together, however, the complete and wholesale failure to comply with the Application, Warrant, Return & Inventory rules raises constitutional

considerations. This is particularly true when a principal failure is, *e.g.*, the lack of a return to the issuing court.

The requirement of a return “inheres in the Fourth Amendment” because the lack of any return was “one of the oppressive features of the general warrants which were intended to be prohibited by adoption of the [Fourth] Amendment.” W.R. LaFave, *Search and Seizure* § 4.12(c) (3d ed. 1996), *citing* T. Taylor, *Two Studies in Constitutional Interpretation* 41 (1969). In essence, more serious omissions than a delayed or late return to the issuing court parallel the general warrants and writs of assistance the Fourth Amendment sought to bar.

Although no Washington case deals with these more serious omissions, cases from New Mexico and New York address this issue, and not surprisingly, condemn it. In *State v. Montoya*, 86 N.M. 119, 120, 520 P.2d 275, 276 (N.M. App. 1974), the search warrant did not command a return to the issuing magistrate, and no return to the issuing magistrate was ever made. The Court found the pair of failures made the warrant “void and the evidence obtained with the warrant inadmissible.”

The *Montoya* Court discusses the distinction between ministerial acts, which may be excused absent prejudice to the defendant, with cases where no return or inventory was made. *Id.*, 520 P.2d at 277-78. In the latter, uncorrected deficiencies (which could be later remedied) which

remain uncorrected in the course of the litigation amount to the Court permitting “a trespassory invasion of the home or office by general warrant contrary to the Fourth Amendment against unreasonable searches and seizures.” *Id.* at 278.

The New Mexico Court quoted *Berger v. New York*, 388 U.S. 41, 60, 87 S.Ct. 1873, 1884, 18 L.Ed.2d 1040 (1967), which declared New York’s permissive eavesdrop statute unconstitutional:

Nor does the statute provide for a return on the warrant thereby leaving full discretion in the officer as to the use of seized conversations of innocent as well as guilty parties. In short, the statute’s blanket grant of permission to eavesdrop is without adequate judicial supervision or protective procedures.

The danger is in the lack of judicial supervision or protective procedures with the issuing magistrate, and is the same faced by Mr. Temple here. In fact, if anything, the issuing magistrate’s failure to judicially supervise the warrant process as required both by the court rule and Constitutional provisions, coupled with the lack of protective procedures applied to Mr. Temple, operated to convert the search warrant in Mr. Temple’s case into a forbidden general warrant. *See also United States v. Eastman*, 465 F.2d 1057, 1062 (3rd Cir. 1972). *But see Idaho v. Curry*, 103 Idaho 332, 337, 647 P.2d 788 (Idaho App.

1982)(characterizing minor deficiencies in warrant and return filed with issuing court as ministerial, and critiquing holding of *Montoya*).

In fashion similar to *Montoya*, *People v. Washington*, 75 Misc.2d 1005, 349 N.Y.S.2d 544 (1973), suppressed evidence seized pursuant to a search warrant where the government was unable to locate the original of the search warrant on which would have been endorsed the return and inventory of the seized property. Although, identical to Mr. Temple's case, the officers in the *Washington* case believed a return and inventory had been made to the issuing court, they did not recall to whom the return was made, and the Court did not have the return or inventory of the seized property. Acknowledging both the liberality of federal law on filing inventories and returns and the presumption of regularity for court records filed with the Court, the Court found the officer's failure to file the return and inventory deprived the government of the regularity presumption, and required suppression. 349 N.Y.S.2d at 545.

4. The Application, Warrant, Return & Inventory Failures In Mr. Temple's Case Are Not Ministerial. They Collectively Require Invalidation Of The Warrant And Suppression.

If there were a single failure or two with respect to the affidavit, search warrant, return, and inventory, it would be to classify them as ministerial, and affirm suppression. However, that didn't happen in Mr.

Temple's case. As noted *supra* at p. 29, nothing was filed with the issuing court, and nothing is still filed with the issuing court, the issuing judge, or any court for that matter.

This is in stark contrast to ministerial failures that could be and were remedied by a filing with the issuing court prior to the trial being completed. The issuing court has no inventory of the property seized. The inventory presented at trial, but never filed with the issuing court, was done by a single officer, and not in the presence of anyone else, and it falsely stated it was performed in the presence of one of the residents at Mr. Temple's address.

While one or perhaps a pair of these infirmities might be classified as ministerial, there is far too much here. The failure to file anything with the issuing court removes the complete warrant issuance, execution, and return from judicial oversight until litigation converts Mr. Temple's case from a judicially authorized search warrant to a forbidden general warrant over which the only person having any authority over the entire process was Officer Draveling. That is impermissible under the Fourth Amendment and Article I, § 7.

The issuing judge's and the executing officer's non-compliance with the rules governing search warrant issuance, execution, return and inventory are so significant and egregious in Mr. Temple's case as to go

far beyond ministerial, and requires suppression of the evidence seized pursuant to the invalid and void warrant.

E. The Warrant Authorized The Search For And Seizure Of Items For Which Probable Cause Did Not Exist, And For Which There Was An Insufficient Nexus Between The Items Sought And The Place To Be Searched. The Trial Court's Denial Of The Motion To Suppress Was Reversible Legal Error.

1. Search Warrants Must Particularly Describe The Evidence To Be Seized.

Search warrants must be supported by probable cause and must particularly describe the place to be searched and the evidence to be seized. U.S. Const. amend. IV; Const. art. I, sec. 7; CrR 2.3(2). The basic purpose of these Constitutional protections is to safeguard the privacy and security of individuals from arbitrary invasions by government officials. *Camara v. Municipal Court*, 387 U.S. 523, 528, 87 S.Ct. 1727, 18 L.Ed. 2d 930 (1967). Our free society cannot function without these safeguards. *Wolf v. Colorado*, 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782 (1949).

As such, search warrants must give a “particular description” of the items to be seized in order to (1) prevent general exploratory searches, (2) to prevent the seizure of items that do not fall within the orbit of the warrant, and (3) to ensure that probable cause exists. *State v. Perrone*, 119 Wn.2d 538, 545, 834, P.2d 611 (1992). The particularity requirement

prevents general searches and eliminates the danger of unlimited discretion in the determination of what to seize. *Ibid.*

“The Fourth Amendment mandates that warrants describe with particularity the things to be seized.” *State v. Riley*, 121 Wn.2d 22, 28, 846 P.2d 1365 (1993). Specifically, the Fourth Amendment provides, “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. Conformance with the particularity requirement “eliminates the danger of unlimited discretion in the executing officer's determination of what to seize.” *State v. Perrone*, 119 Wn.2d 538, 546, 834 P.2d 611 (1992). “The underlying measure of adequacy in the description is whether given the specificity in the warrant, a violation of personal rights is likely.” *United States v. Johnson*, 541 F.2d 1311, 1313 (8th Cir.1976).

State v. Reep, 161 Wn.2d 808, 167 P.3d 1156, 1159 (2007). “Whether a warrant meets the particularity requirement of the Fourth Amendment is reviewed de novo.” *Reep*, 161 Wn.2d 808, 167 P.3d at 1159; quoting *State v. Clark*, 143 Wn.2d 731, 753, 24 P.3d 1006 (2001).

2. Overbroad Search Warrants Violate The Particularity Requirement.

A search warrant is overbroad and violates the particularity requirement of the Fourth Amendment when it fails to satisfy 3 factors:

These are:

"(1) whether probable cause exists to seize all items of a particular type described in the warrant, (2) whether the warrant sets out objective standards by which executing officers can differentiate items subject to seizure from those which are not, and (3) whether the government was able to

describe the items more particularly in light of the information available to it at the time the warrant was issued."

State v. Higgins, 136 Wn.App. 87, 91, 147 P.3d 649 (2006), quoting *United States v. Mann*, 389 F.3d 869, 878 (9th Cir.2004) (quoting *United States v. Spilotro*, 800 F.2d 959, 963 (9th Cir.1986)). As a result, a search warrant is overbroad when probable cause does not exist to seize items listed in the warrant, when the warrant fails to objectively identify those items which may be seized from those that may not, or when the government has information at the time the warrant is issued sufficient to describe the items with particularity, but fails to do so.

The particularity requirement also serves to narrow the areas where an officer may search, and prevent general searches, by limiting places that may be invaded to areas of the premises large enough to hold the item sought. For example, a search for specific controlled substances would permit the search of many small areas of a home, whereas a search warrant for a stolen vehicle would not permit an officer's search of desk drawers. *See State v. Chambers*, 88 Wn.App. 640, 645, 945 P.2d 1172 (1997). Items that are not inherently illicit property require more specific language. *Ibid.* at 644; *see also State v. Thein*, 91 Wn.App. 476, 483 at note 8, 957 P.2d 1261 (1998).

3. Items Not Listed In The Search Warrant May Not Be Seized Unless They Fall Within A General Exception To The Warrant Requirement. Plain View May Not Extend A General Exploratory Search.

An item not listed in the search warrant may not be seized unless the item falls into one of the general exceptions to the warrant requirement. *State v. Rose*, 128 Wn.2d 388, 392, 909 P.2d 280 (1996). Moreover, contraband discovered and/or seized during general exploratory searches must be suppressed. *State v. Legas*, 20 Wn.App. 535, 542, 581 P.2d 172 (1978)(quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 466, 91 S. Ct. 2022, 2038, 29 L. Ed. 564 (1971))("Plain view doctrine may not be used to extend a general exploratory search from one object to another until something incriminating as last emerges.").

Under the plain view doctrine, officers have justification for seizing contraband not specified in the warrant if it is found during the course of a valid search and is within the scope of a valid warrant. *State v. Goodin*, 67 Wn.App. 623, 838 P.2d 135 (1992); see also *State v. Wright*, 61 Wn.App. 819, 810 P.2d 935 (1991). However, officers do not have justification under the plain view doctrine for seizing contraband discovered during a general exploratory search after they have found what they sought under the warrant. *State v. Legas*, 20 Wn.App. 535, 542, 581 P.2d 172 (1978). Nor may the plain view doctrine be used to extend a

general exploratory search from one object to another until something incriminating at last emerges. *See generally*, Utter, Survey of Washington Search and Seizure Law: 2005 Update, 28 *Seattle Univ. L. R.* 467, 579 (Spring, 2005).

4. Higgins, 2nd Degree Assault Cases, Overbroad Warrants, And Suppression; The Higgins Case Is Much Like Mr. Temple's Case.

In *Higgins*, like Mr. Temple, a citizen was charged with second degree assault. The complaint alleged *Higgins* violated RCW 9A.36.021(1)(c) by an assault “with a deadly weapon.” 136 Wn.App. at 90. The *Higgins* warrant authorized the seizure of “certain evidence of a crime, to-wit: ‘Assault 2nd DV’ RCW 9A.36.021.” *Ibid*. The affidavit describing the underlying incident and establishing probable cause to search for “a Glock pistol, unknown serial number or caliber; a spent casing, bullets, and an entry and possibly exit point where the bullet struck” was attached to the warrant. *Ibid*.

The government’s failure to describe with particularity the things to be seized, *ibid. at* 651, coupled with the general reference to a crime which had six means of commission, *ibid.*, and failure to differentiate between things that could be seized and things that could not, *ibid. at* 652, rendered the warrant overbroad and mandated suppression. This was particularly true when the warrant included things that were illicit together

with items not subject to seizure under the plain view doctrine or that were otherwise innocuous or lawful to possess.

In Mr. Temple's case, although the unfiled search warrant affidavit only referred to an axe/hatchet as a weapon, and to the residence and the assault, the judge of the "Redmond District Court" authorized a search at 38375 SE Northern ST in Snoqualmie. The Search Warrant directed the officers to:

2. Seize and search, if located, the following property or person(s):

Any dangerous weapons, firearms, blade weapons, or tools that appear to be used as a weapon in the commission of the crime(s); specifically a wood handled axe; all ammunition and shell casings, spent or otherwise that may have been used or a result of the crime; Any evidence establishing domain and control of weapons located, to include damage to the property, by axe, knife or firearm; Evidence of examination, by taking video and photographs of the crime scene; canceled mail, rental agreements, utility bills, notices from governmental agencies, and other documents showing dominion and control of the premises; documents, photographs or receipts that show ownership of any firearms.

CP 58, Exhibit 4, p. 1.

5. The Warrant Issued In Mr. Temple's Case Is Overbroad.

The warrant issued in Mr. Temple's case is overbroad. None of the items identified in the search warrant are "inherently illegal property." *State v. Wible*, 113 Wn.App. 18, 27, 51 P.3d 830 (2002). An axe,

ammunition, shell casings, and the various documents are presumptively legal, and are not inherently illicit as was the case in the *Chambers* case, which involved controlled substances. Further, although assault in the second degree (RCW 9A.36.021) could be committed at the time of Mr. Temple's alleged offense by 7 different means², the search warrant did not specify which means was used to commit the alleged assault, and did not narrow the items to be searched for with particularity. *See Higgins*, 136 Wn.App. at 93.

The warrant was overbroad, like the warrant in *State v. Maddox*, 116 Wn.App. 796, 806, 67 P.3d 1135 (2003), because it authorized the police to “search for many items for which there was no probable cause whatever:”

Any dangerous weapons, firearms. . . . , or . . . ; all ammunition and shell casings, spent or otherwise that may have been used or a result of the crime; Any evidence establishing domain and control of weapons located, to include damage to the property, by axe, knife or firearm; Evidence of examination, by taking video and photographs of the crime scene; canceled mail, rental agreements, utility bills, notices from governmental agencies, and other documents showing dominion and control of the premises;

² The means are (1) intentionally assaulting another and reckless inflicting substantial bodily harm, (2) intentionally and unlawfully causing substantial bodily harm to an unborn child by intentionally and unlawfully injuring the mother of the unborn child, (3) assaulting another with a deadly weapon, (4) with intent to inflict bodily harm, poisoning another, (5) with intent to commit a felony, assaulting another, (6) knowingly inflicting bodily harm in a manner equivalent to torture, and (7) assaulting another by strangulation.

documents, photographs or receipts that show ownership of any firearms.

CP 58, Exhibit 4, p. 1 [with references to blade weapons and a “wood handled axe” removed; emphasis supplied]. In fact, the warrant authorized the search for many more items for which there was not probable cause than for items for which there was probable cause.

6. Severability Does Not Apply.

When a warrant is overbroad, courts sever that portion of the warrant that is overbroad, and analyze materials seized based on the remaining portions of the warrant, so long as certain conditions are met. A review of these factors, applied to Mr. Temple’s case, shows that the severability doctrine should not apply.

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.” 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[.]” 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.”

Reasoning from these generalities, we think that the severability doctrine applies only when at least five

requirements are met. First, the warrant must lawfully have authorized entry into the premises. The problem must lie in “the permissible intensity and duration of the search[,]” and not in the “intrusion per se.”

Second, the warrant must include one or more particularly described items for which there is probable cause. Otherwise, there is nothing for the severability doctrine to save.

Third, 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. If most of the warrant purports to authorize a search for items not supported by probable cause or not described with particularity, the warrant is likely to be “general” in the sense of authorizing ““a general, exploratory rummaging in a person’s belongings[,]”” and no part of it will be saved by severance or redaction.

Fourth, 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). Just as evidence found while executing a wholly invalid warrant would not be saved, and just as evidence found while exceeding the scope of a wholly valid warrant would not be saved, evidence found while executing the unlawful part of a partially valid warrant should not be saved either. As a commentator correctly summarizes:

If the items [that the defendant now seeks to suppress] were discovered before those to which the warrant was properly addressed were found and while the police were looking in places where the latter objects could be located, then it may be said that the discovery occurred while executing the lawful portion of the warrant. Were the circumstances otherwise, then it must be concluded that these other items were found

during execution of the invalid part of the warrant.

Fifth, the officers must not have conducted a general search, i.e., a search in which they "flagrantly disregarded" the warrant's scope. Just as such a search taints all parts of a warrant that was completely valid at the time of its issuance, it taints, a fortiori, all parts of a warrant that was only partially valid at the time of its issuance.

Maddox, 116 Wn.App. at 806-09 [footnotes and citations omitted].

In Mr. Temple's case, these factors weigh against severability, particularly when the only item seized that could arguably and lawfully be covered by the search warrant was a wood handled axe, and the officer seized a grey fiberglass handled chopping maul. The reference to the axe is minor, compared to the remainder of the items for which seizure was authorized. The officer's seizure of the other items was not in connection with seizure of the maul, but on the officer's return to the room for what is best described as a generalized search. Severability does not apply.

7. The Search Warrant In Mr. Temple's Case Was Overbroad And Did Not Satisfy The Particularity Requirement. The Discovery Of The Drug Evidence Occurred During A General Exploratory Search. Denial Of Mr. Temple's Motion To Suppress Was Reversible Legal Error.

The search warrant in Mr. Temple's case was overbroad and did not satisfy the particularity requirement. The seizure of the items recovered following delivery of the axe to Draveling occurred during a general exploratory search, and was outside the scope of the search

warrant. As in the *Higgins* case, when the probable cause is a 2nd degree assault which may be committed in several different ways, specificity and particularity are required to identify not only how the assault allegedly occurred, but to define with particularity the evidence sought.

Much of the evidence sought in the warrant in Mr. Temple's case was evidence unrelated to the alleged assault, evidence that was otherwise innocuous or lawful to possess, and evidence for which probable cause did not exist. None of the items are inherently illegal property, which tips the balance away from particularity.

Moreover, severability does not apply. A review of the *Maddox* factors shows they favor Mr. Temple. In particular, most of the warrant purports to authorize a search for items not supported by probable cause or not described with particularity, the drug evidence was found after the only item identified with at least partial particularity was given to the officer and secured, and the officers failed to seize any of the evidence commanded by the warrant in spite of seeing it in Mr. Temple's room, *e.g.*, papers of dominion and control, and other things identified by the warrant. The warrant is overbroad and does not describe the items to be seized with particularity. Because severability does not apply, the evidence should have been suppressed, and the trial court's denial of the defense motion to suppress was reversible legal error.

VI. CONCLUSION

For the reasons set forth above, this Court should reverse the appellant's conviction and the trial court's denial of the defense motions to suppress, and remand this matter to the King County Superior Court for further proceedings consistent with suppression of the evidence sought to be suppressed by the appellant.

Respectfully submitted this 23rd day of August, 2011.

**GODDARD
WETHERALL
WONDER PSC**

By: 

SCOTT E. WONDER
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Attorney for Appellant
Matthew A. Temple

PROOF OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct: I am competent to testify. I am the Appellants' attorney in this action. On 23 August 2011 I filed the original document bearing this PROOF OF SERVICE & FILING OF APPELLANT'S BRIEF with the Court of Appeals by ABC/LMI legal messenger delivery to the Washington Court of Appeals, Division 1, One Union Square, 600 University Street, Seattle, WA 98101-4170, served a copy of the document bearing this PROOF OF SERVICE & FILING OF APPELLANT'S BRIEF by ABC/LMI legal messenger delivery to the attorneys for respondent, Office of the King County Prosecuting Attorney, Appeals Unit, King County Courthouse, Room W554, 516 Third Avenue, Seattle, WA 98104-2362, and served a copy of the document bearing this PROOF OF SERVICE & FILING OF APPELLANT'S BRIEF by mailing a copy of the document bearing this PROOF OF SERVICE AND FILING, postage prepaid, to the Appellant, 38375 SE Northern ST, Snoqualmie, WA 98065.

Signed at Bellevue, Washington, this 23rd day of August, 2011.

By: 
SCOTT E. WONDER