73446-6

NO. 73446-6-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

In the Matter of Search Warrant for

13811 Highway 99 Lynnwood Washington

City of Lakewood, Appellant and

Kum Im Lee
Yong R. Ludeman, Respondents

APPEAL FROM THE SUPERIOR COURT
FOR SNOHOMISH COUNTY

The Honorable George Bowden, Judge

BRIEF OF RESPONDENTS

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COURT OF APPEALS DIV I
STATE OF WASHINGTON

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B. Findings of Fact, Conclusions of Law and Orders (CrR 2.3(e)) (Judge George Bowden, 4/22/2015)

C. Order on Suppression Hearing (Pierce County No. 15-1-00881-3) (Judge Kitty-Ann van Doorninck, 7/29/2015)

D. King's Massage Clinic, 13811 Highway 99, Lynnwood, Washington, Department of Revenue license status as of May 30, 2014, printed from Washington State Department of Revenue State Business Records Database

E. Lakewood Municipal Court Search Warrant for King's Massage Clinic, 13811 Highway 99, Lynnwood, Washington (no. 15-30) (3/25/2015)

F. Complaint for Search Warrant (Affidavit), Lakewood Municipal Court (no. 15-30), unpaginated 1-14, (3/25/15)

STANDARDS OF REVIEW

An order returning property to aggrieved persons is reviewed for abuse of discretion. The order may be affirmed on any ground supported in the record. Unchallenged findings of fact are verities. Conclusions of law, search warrant laws and statutory questions are reviewed de novo.

1. Background Counter Statement.

a. Pierce County Search Warrant and Charge. Beginning in August, 2014, police officers from the City of Lakewood in Pierce County began what they call "compliance checks" of a massage business named Wellness Clinic located in the City of Fife in Pierce County. The term "compliance checks" is a euphemism for the desire of Lakewood police officers to obtain massages at taxpayers' expense, offer large tips to the masseuses from public funds, and then seek sexual favors so as to have a basis to conduct a criminal investigation of prostitution. At some point, the "compliance checks" at Wellness became a felony criminal investigation of Su Jones, the owner of the business.

As part of the investigation, Lakewood police sought and obtained a search warrant from the Lakewood Municipal Court for the business in Fife and for the personal residence of Ms. Jones in Federal Way in King County. Lakewood Search Warrant [Pierce/King Counties](no. 15-18); Complaint for Search Warrant (Affidavit)(no. 15-18) incorporated verbatim in Complaint for Search Warrant (Affidavit)(no. 15-30)[Snohomish County]. CP 68-92; App. F. Following execution of the warrant, a felony

charge of promoting prostitution was filed against Su Jones in Pierce County Superior Court (no. 15-1-00881-3). In the accompanying Declaration for Determination of Probable Cause submitted by the Pierce County Prosecutor no mention is made of any alleged connection of the charge to any business in Snohomish County or to any alleged criminal activities in Snohomish County. CP 68-92.

At all relevant times herein, Ms. Jones was represented by counsel. Defense counsel moved in the Pierce County Superior Court to suppress all evidence seized from Ms. Jones' residence in King County pursuant to the Lakewood warrant on the ground there was no nexus shown between the alleged activity in Fife and the personal residence. Judge Kitty-Ann van Doorninck granted the motion. App. C; ER 201.

Information gleaned from both the suppressed residence search and the Wellness search lead the Lakewood police to suspect Su Jones might be the owner of a massage business in Snohomish County named King's.

b. Ownership and Regulation of Snohomish County Massage Business

Snohomish County heavily regulates massage businesses within the county. Snohomish County Code 6.07.001-.140. A unique feature of this regulation is that any such business providing bathing services by attendants must also be licensed separately as a bathhouse, S.C.C. 6.47. 001-.140. and the attendants each must obtain an individual license. S.C.C. 6.49.001-.090. Unlike a state Department of Revenue license issued once to a business with a tax registration number, Snohomish County requires a

yearly renewal of both the business bathhouse license and the individual bathhouse attendant licenses. S.C.C. 6.01.050(b)(i) and (ii). Such licenses and renewals must be posted in the business and are a matter of public record. Snohomish County has strict record-keeping compliance requirements and enforcement. S.C.C. 6.07.100; 6.47.100.

> "Such records shall be maintained at the premises for at least three years, and shall be open to inspection by the licensing authority, [Snohomish County] sheriff [S.C.C 6.01.010(38)] or [Snohomish] county health authority [S.C.C. 6.01.010(8)] during business hours."

In addition to its regulatory authority over massage/bathhouse business, the Snohomish County Sheriff is given exclusive investigative powers, including authority to conduct criminal investigations of such businesses. S.C.C. 6.01.047("The sheriff shall investigate the following: (1) Whether any outstanding criminal violations/charges exist ... ."). There is no mention in the Snohomish County Code of any authority granted to the Lakewood police to conduct "compliance checks" in the county.

Su Jones was granted a state license with a UBI number on May 1, 2012 for a business named King's Massage Clinic in unincorporated Snohomish County (Lynnwood) according to the Washington State Department of Revenue State Business Records Database.[1] App. D; ER 201. Two years later, on May 14, 2014, she sold all of her interest in the business to Kum Im Lee, an aggrieved Respondent. App. I (notarized Bill of Sale) and

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1 Washington State Department of Revenue State Business Records Database Detail, *www.dor.wa.gov*, (last visited 9/21/15).

App. II (canceled check for purchase price) attached to Declaration of Tom P. Conom in Support of Motion for Return of Property Illegally Seized, CP 93-112. Two weeks after the sale, the same database from the Department of Revenue reflected the sale and closed the account. App. D. Less than two months later, a new Snohomish County business license (public bathhouse) was issued to Ms. Lee's proxy. App. III to Dec. of T. Conom. By July of 2014, there were no public records, state or county, connecting Su Jones to current ownership of King's.

2. Counter Statement of Facts and Procedure. Based solely on the illegally obtained lead from the Pierce County warrant to the business in Snohomish County, on March 12, 2015 Lakewood detectives Larson (the affiant in both search warrants) and Barnard commenced "a compliance check at King's Massage in Lynnwood."

The ostensible reason for the "compliance check" (as opposed to the officers' predilection for obtaining massage therapy at public expense) was to obtain additional evidence in support of the felony charge against Su Jones in Pierce County.[2] Before receiving their free massages, the officers, as part of their "compliance check," looked "to see if Jones or any of the girls from the Fife location were there." Sno.Co. Affid. at 10. Ms. Jones was not on the premises on that occasion nor at any other time.

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2 There is nothing in the record to show that the Pierce County prosecutor ever asked the Lakewood police to try to obtain additional evidence against Su Jones in a different county. There is nothing to indicate cooperation between the Pierce County prosecutor and the Lakewood police in Snohomish County. Nor was there any coordination with the law enforcement agency charged with enforcement in the county, the Snohomish County Sheriff. As far as the record shows this was pure and simple a fishing expedition with benefits. It is for this reason that Judge Bowden characterized the entire operation as "rogue police offers from Lakewood." VRP (4/10/15) at 22.

For two months prior to the "compliance checks" at the Snohomish County business, Su Jones had been under surveillance by the Lakewood police. Sno.Co. Affid. at unpaginated 7. Ms. Jones was seen to have a regular routine driving back and forth between her residence in King County and her business in Pierce County. She was never observed driving her 2013 Lexus from her residence or from Wellness to King's or from King's to her residence or Wellness. Her vehicle was never observed parked in the business lot available to King's patrons. "At no time did Ms. Jones travel to King's or have contact with Ms. Lee, Ms. Ludeman or any other King's employees."[3] FF 7

In spite of multiple "compliance checks" by the Lakewood police at King's, no evidence was discovered connecting Su Jones to the business or connecting the charge in Pierce County to any activity of Ms. Jones in Snohomish County. Nevertheless, the Lakewood police sought a search warrant for King's on the basis that there was a connection between the charge in Pierce County and Ms. Jones in Snohomish County by the mere fact of her alleged ownership. The Lakewood police did not seek the warrant from the Pierce County Superior Court where the charge was pending against Ms. Jones; nor did the police seek the warrant from a judge in the

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3 Despite not having properly challenged any of the findings of fact so that they are verities, Lakewood makes the incredible assertion that there is no "evidentiary foundation ... no affidavit ... to support" a finding like no. 7 showing Ms. Jones did not travel to King's. Brief of App. at 14-15. This finding comes directly from the search warrant *affidavit* relied on by Lakewood and furnished to the superior court by Lakewood, CP 68-92. In that *affidavit,* Detective Larson swears under oath that "since January of 2015" and continuing through "2-26-15 at 2200 hours" Lakewood police conducted surveillance on Ms. Jones and she was not seen on a single occasion traveling to King's. Lakewood's untimely and unavailing objection is frivolous.

county where the property was located, Snohomish. Instead, Lakewood police went to the Lakewood Municipal Court which granted the warrant on March 25, 2015 (15-30). App. E.

The sole piece of "recent" information provided by Detective Larson in support of the warrant connecting Su Jones to King's reads:

> "As I continued to look into the King's Massage, I was able to confirm through the Washington State Department of Revenue State Business Records Database that Jones has been the Sole Proprietor of the business since 5-1-12 *to the present.* (Tax registration #601793318)." (emph.ad.)

Detective Larson did not attach the business record to his affidavit and there is no showing the municipal court judge saw it. Had the officer provided it – or the judge reviewed it before issuing the warrant – the judge would have seen the assertion was materially false. While it is true that the database shows Ms. Jones was the sole proprietor on May 1, 2012, it also shows that she "closed [the] account" on May 30, 2014 – *ten months* before Larson falsely told the judge his information was current "to the present." App. D.

Detective Larson intentionally or recklessly provided false material information to the municipal judge when he swore his assertion that Ms. Jones owned King's on March 25, 2015 was current information. He intentionally or recklessly omitted from his affidavit the *fact* shown in the public record of the Department of Revenue that the information was

not current but both stale and inaccurate.[4] Additionally, due to their deliberate indifference to Snohomish County licensing law and posting requirements, Lakewood police also recklessly omitted the fact that Su Jones' name was not on any current Snohomish County bathhouse license posted in the business and in public records.

The search conducted at King's went far beyond what was authorized by the warrant. Neither Ms. Lee nor Ms. Ludeman was named in the warrant. Neither of their vehicles was named in the warrant. None of their property was named in the warrant including purses and other containers. Yet, the Lakewood police took it all, returning Ms. Ludeman's vehicle to her after deciding they would rather take Ms. Lee's vehicle. FF1-5.

In support of their motion for return of their property in Snohomish County, Respondents submitted a Declaration from their counsel. CP 93-112. Attached to the Declaration was proof of Ms. Lee's ownership of King's since May 14, 2014 and proof she owned the vehicle seized by Lakewood, Attached to the Declaration was proof of Ms. Ludeman's ownership of her vehicle. The Declaration confirms that the property seized came from within the vehicles, purses or containers in the vehicles.

Lakewood filed no initial affidavit showing any interest in the property of Respondents and filed no responsive affidavit.

The Honorable George Bowden, Judge, conducted an evidentiary

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4 Because Judge Bowden granted the motion for return of property on other grounds, he did not conduct a *Franks* hearing. *Franks v. Delaware,* 438 U.S. 154 (1978). Judge Bowden recognized that Respondents had made a sufficient showing for a *Franks* hearing but "reserve[d] ruling on this issue." CL 19.

hearing on April 10, 2015 on the motion based on the Declaration and attachments submitted on behalf of Respondents and on the four corners of the search warrant affidavit. VRP (4/10/15) 1-26. Judge Bowden granted the motion entering an Order directing the return of the property to the Respondents as aggrieved persons, CP 66-67;App. A and subsequently entered Findings of Fact and Conclusions of Law. CP 13-17; App. B.

ARGUMENT

I. LAKEWOOD HAS NO STANDING; THE APPEAL SHOULD BE DISMISSED

At no time has Lakewood demonstrated that it has *any* legal interest in the property of Respondents, let alone a superior interest. The only interest ever shown by Lakewood is that formerly it was the physical custodian of the property. Lakewood has no standing to appeal.

> "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues."

Warth v. Seldin, 422 U.S. 490, 498 (1975).

A. Lakewood Is Not An "Aggrieved Person" Under CrR 2.3(e)

Since Lakewood is neither "aggrieved[5]" nor a "person[6]" for purposes of CrR 2.3(e), the "interest" it sought to protect in the superior court was that of the *criminal defendant,* the former owner of the Snohomish

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5 "having legal rights that are adversely affected; having been harmed by an infringement of legal rights." Black's Law Dictionary at 80 (10th ed. 2014).

6 A government subdivision or agency is not a person. *Segaline v. Dept. of Labor & Indus.,* 169 Wn.2d 467, 473, 238 P.3d 1107 (2010).

County business, Su Jones. Lakewood's Opposition to Motion for Return of Property at 7, CP 68-92; VRP (4/10/15) at 11-13. But the superior court found that Su Jones was *not* an aggrieved person. FF 6-8 (verities). Moreover, the superior court found that the *only* aggrieved persons were the Respondents, Kum Im Lee and Yong R. Ludeman. FF 1-5 (verities).

B. Lakewood Is Not A Real Party In Interest.

In order to have standing, Lakewood must show that it is a real party in interest. *State ex rel. Schillberg v. Everett District Court,* 90 Wn. 2d 794, 796, 586 P.2d 1177 (1978). There were four possible bases below by which Lakewood might have attempted to establish that it was a real party in interest had it filed an Affidavit/Declaration to meet its burden: 1) claim that the property seized in Snohomish County was relevant to a criminal prosecution in Lakewood Municipal Court[7]; 2) claim the property was contraband; 3) claim the property was stolen; 4) claim the property was owned by someone else.

As to 1), the Lakewood court was without jurisdiction and Lakewood was precluded from making such a claim. As to 2), the property was not contraband. CL 2. As to 3), no claim was made that it was stolen. As to 4), the true owners were Respondents and there was no basis for a claim of ownership by any other person. FF 1-8 (verities).

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7 Nor did the state, a nonparty to this appeal, establish standing to challenge the return of the property to its rightful owners. The Pierce County Prosecutor did not submit an Affidavit/Declaration alleging any connection of the property to the pending Pierce County case or any alleged superior interest in the property, did not file a a notice of appearance, and did not move to intervene. *See* Aggrieved Parties' Response to State's Motion to Reconsider, CP 23-29; Order on Motions [Denying State's Motion for Reconsideration], CP 39-40.

C. No Relief Is Available to Lakewood. Since Lakewood never submitted an Affidavit/Declaration to establish a superior interest to Respondents' property and since it could not and did not meet even its initial burden on this issue and since it is true on appeal that Kum Im Lee and Yong R. Ludeman are the sole rightful owners of their own property, Lakewood is not entitled to any relief and this Court cannot grant any.

Lakewood was merely the physical custodian of illegally obtained property once – and now it is not. There is no dispute left to resolve.

II. UNCHALLENGED AND INADEQUATELY CHALLENGED FINDINGS OF FACT ARE VERITIES ON APPEAL

Lakewood purports to assign error to all 16 findings of fact, most of which were not excepted to in the trial court and none of which are properly assigned as error in this Court. *See* Brief of Appellant at p. 1 attempting to lump 16 assignments of error in one sentence. All findings of fact are verities on appeal. *State v. Fedorov,* 183Wn.2d 669, 674 (2015).

A. Lakewood Violated RAP 10.3(a)(4), 10.3(g) and 10.4(c). RAP 10.3 (a)(4) requires a "separate concise statement of each error a party contends was made by the trial court ... ." RAP 10.3(g), specifically applicable to findings of fact, mandates a "separate assignment of error for each finding of fact a party contends was improperly made *must* be included with reference to the finding by number" and RAP 10.4(c) directs a party challenging a finding of fact to type the text "verbatim" in the brief. A party may not lump or combine together various assignments into one assignment of error. *Arnold v. Laird,* 94 Wn.2d 867, 874, 621 P.2d 138

(1980); *Bristol v. Streibich,* 24 Wn.2d 657, 660, 167 P.2d 125 (1946). The failure to comply "alone is sufficient to reject the claimed error." *Id.*

More than two decades ago, this Court put prosecutors in Washington on notice that when appealing from the granting of a suppression motion, they must strictly comply with the rules governing assignments of error. *State v. Chaussee,* 77 Wn.App. 803, 809, 895 P.2d 414 (*Div.1*1995). *See also, State v. Earls,* 116 Wn.2d 364, 372, n.3, 805 P.2d 211 (1991) (failure to assign error to findings of fact entered after suppression hearing; "[t]hus, they are verities on appeal."); *State v. Hill,* 123 Wn.2d 641, 644, 870 P.2d 313 (1994)("failure to assign error to the facts entered by the trial court precludes our review of these facts and renders these facts binding on appeal."); RAP 10.3(g)("The appellate court will *only* review a claimed error which is *included in an assignment of error* or clearly disclosed in the associated issue pertaining thereto.")(emph.ad.).

B. Lakewood Failed to Except to Findings of Fact in Trial Court.

Judge Bowden afforded Lakewood an opportunity to except to any of the findings of fact before entry. VRP (April 22, 2015) 1-13. Lakewood not only did not except to many of the proposed findings, but *affirmatively conceded* the appropriateness of many of them, notably FF 1-6.

> Mr. Kaser: ... "I don't have any issues with proposed findings one through six, so let's get those off the table." VRP at 5.

Nor did Lakewood take any exceptions to FF 8, 9, the first sentence of FF 10 and FF 16. The failure to timely except to the findings of fact in the trial court is fatal to further review on appeal independent of the total

failure to properly assign error to the findings as required in RAP 10.3. *E.g., Ford v. Bellingham-Whatcom County Dist. Bd. Of Health,* 16 Wn. App. 709, 713, 558 P.2d 821 (*Div.1*1977)("No exception was taken to this finding of the trial court and we therefore accept it as a verity on this appeal."); *Comfort & Fleming v. Hoxsey,* 26 Wn.App. 172, 179, 613 P.2d 138 (*Div.2*1980)("No exception was taken to this finding, and therefore the defendant has not properly perfected his appeal on this issue."); *Town of Selah v. Waldbauer,* 11 Wn.App. 749, 525 P.2d 262 (*Div.3*1974)("No exception was taken to that finding of fact and it must be accepted as a verity upon appeal.").

Lakewood has failed to preserve error on critical findings of fact. It is not entitled to any further review of such facts – they are verities.

III. THE SNOHOMISH COUNTY SUPERIOR COURT HAD JURISDICTION OVER THE PROPERTY SEIZED IN SNOHOMISH COUNTY AND THE MOTION TO RETURN THE PROPERTY UNDER ART. IV, SEC. 6 AND CrR 2.3(e)

Lakewood now takes the position that the Lakewood Municipal Court had exclusive jurisdiction under CrRLJ 2.3(e) to review a motion to return property, all of which was seized in Snohomish County, and allegedly connected to a pending felony charge in Pierce County Superior Court. This posture is directly contradicted by Lakewood's position before Judge Bowden where its attorney stated, "I'm asking you that ultimately do [sic] is deny the request without prejudice and let a *Pierce*

County Superior Court decide."[8] VRP (4/10/15) at 16. In other words, Lakewood conceded that the superior court had jurisdiction over the motion under CrR 2.3(e), it merely disagreed *which* superior court should exercise that jurisdiction. *See* Brief of App. at 9, text and note 6 and at 13.

To the extent Lakewood now argues that an out-of-county inferior court has jurisdiction to the exclusion of the superior court of the county in which property is seized until, magically, the situation is reversed the moment a criminal charge is filed in the superior court at which time the superior court has exclusive jurisdiction and the inferior court none, Brief of App. at 1, 5-6. 10, 12, such a position if adopted would stand the law on its head. There is a reason why we call the court with plenary authority in a county *superior* as opposed to a court of limited jurisdiction without such authority which we call an *inferior* court. Moreover, Lakewood cites no authority for its position which Judge Bowden soundly rejected. CL 1-2

The Snohomish County Superior Court had primary jurisdiction over the property seized in the county and over the motion for its return under Art. IV, sec. 6, the plain meaning of CrR 2.3(e) and under federal authority from which the court rule was derived.

A. Jurisdiction Granted Under Art. IV, sec. 6. Under Art. IV, sec. 6 of the Washington Constitution, the Snohomish County Superior Court has exclusive jurisdiction over all felonies occurring in Snohomish

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8 It is worth noting that review of the Lakewood search warrant (15-18) actually relating to the Pierce County charge was conducted by the Pierce County Superior Court, App. C, *not* the Lakewood Municipal Court.

County and concurrent jurisdiction with Snohomish County Courts of Limited Jurisdiction over all misdemeanors in the county. CL 3. As Judge Bowden concluded, the constitution affords the "Snohomish County Superior Court...plenary authority to review the legality of any search warrant issued for persons or property located in Snohomish County." CL 1.

A municipal court, on the other hand, has only the authority provided by statute and by court rule issued by the Supreme Court. Art. IV, sec. 12; CL 4-6. Ultimately, the court rules, including CrRLJ 2.3(e), are grounded in the authority provided by the state constitution.

B. Jurisdiction Granted By CrR 2.3(e). CrR 2.3(e) states:

> "A person aggrieved by an unlawful search and seizure may move the court for the return of the property on the ground that the property was illegally seized and that the person is lawfully entitled to possession thereof. If the motion is granted the property shall be returned. If a motion for return of property is made or comes on for hearing after an indictment or information is filed in the court in which the motion is pending, it shall be treated as a motion to suppress."

It is apparent that a motion for return of property under CrR 2.3(e) "may be made at any time," including before any criminal charge is filed or after a conviction. *State v. Card,* 48 Wn.App. 781,786, 741 P.2d 65 (*Div.3*1987); *see also Schillberg, supra,* (addressing pre-charge motion for return of property under precursor rule). Unquestionably, therefore, Respondents as aggrieved persons of an unlawful search and seizure were entitled to move for the return of their illegally seized property under CrR 2.3(e) irrespective of any pending charges.

Lakewood argues, however, that the rule for courts of limited juris-

diction trumps the superior court rule. There are at least four reasons why the city is wrong.

First, Lakewood does not explain how the county of seizure and with sole authority to hear potential criminal charges resulting from the seizure can be entirely divested of jurisdiction by a lower court rule and yet be automatically vested with jurisdiction by the fortuity of the filing of a criminal charge. The controlling rule is directly to the contrary – a motion for *return* of property "pending" in the superior court before charges are filed is simply converted to a motion to *suppress* upon filing. CrR 2.3(e)(final sentence). This is a matter of nomenclature – not jurisdiction.

Second, Lakewood ignores a critical difference between CrRLJ 2.3 (e) and CrR 2.3(e). The former contains the important qualifier "issuing court" whereas the latter does not. That is to say that while an aggrieved person may indeed ask for review from the inferior court if it constitutes an "issuing court," there is no such limitation placed on the superior court rule. An aggrieved person may apply to the superior court *regardless of whether it was the issuing court*. As Judge Bowden noted:

> "Significantly, the superior court rule under which this action is brought does not contain any such restriction upon venue."

VRP (4/10/15) at 24.

Third, both court rules use the term "may" in authorizing the filing of a motion for return of property. When the term "may" is used in a court rule it indicates *discretion,* not a mandatory obligation. *State v. Card,* 48 Wn.App. at 784. Judge Bowden expressly noted that use of the term may

in CrRLJ 2.3(e) "is permissive, it's not mandatory." VRP (4/10/15) at 24. The use of the term "may" in both rules indicates the inferior court and the superior court have concurrent jurisdiction over pre-charge motions for return of property. But because the superior court has greater authority than the inferior court, its jurisdiction should be considered primary and the latter's secondary. Thus, Respondents had the discretion to choose which court was best suited to hear their motion.

Fourth, the structure and language of CrR 2.3(e) clearly anticipate the procedural posture of this case. The rule explicitly contemplates a case where the motion for return of property is filed ahead of any criminal charges and is then pending in the superior court. The rule refers to the filing of an "indictment or information *in the court in which the motion is pending.*" In order to be pending in the superior court, the motion must pre-exist in the superior court. So, for example, if, after Respondents filed their motion in the Snohomish County Superior Court but before a hearing on the motion, the Snohomish County Prosecutor filed charges against them,[9] their "pending" motion in the superior court would then be "treated as a motion to suppress."

This analysis is consistent with the treatment of the federal rule from which CrR 2.3(e) is derived. *See* Fed.R.Crim.P. 41(g)[formerly 41(e)]. As the Supreme Court said about the predecessor to CrR 2.3(e), "while not copied from Fed.R.Crim.P. 41(e), *it was patterned after it.*"

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9 No charges have been filed against Respondents.

Schillberg, supra, 90 Wn.2d at 798 (emph.ad.).[10] Federal authority is therefore persuasive in analyzing CrR 2.3(e). *State v. Card, supra,* 48 Wn.App. at 785-86.

Fed.R.Crim.P. 41(g) explicitly states what CrR 2.3(e) implies:

> "The motion must be filed in the district *where the property was seized.*" (emph.ad.).

See, e.g, In re Grand Jury Proceedings, 115 F.3d 1240, 1247 (5thCir. 1997)(court with jurisdiction to provide preindictment remedy under Rule 41(e)[g] is the court where the property was seized – *not* the court where the warrant was issued).

C. Aggrieved Persons Have Automatic Standing.

Despite the conceded verities, FF 1-5, that Ms. Lee and Ms. Ludeman were aggrieved persons authorized to request return of the property seized from them pursuant to CrR 2.3(e), Lakewood persists on appeal in arguing to the contrary. Brief of App. at 15-16,19. Most of the property was taken directly from Respondents – their cars, their containers inside their cars and their personal property. Under longstanding precedent – which Lakewood ignores – they have automatic standing to claim their status as aggrieved persons. *E.g., State v. Marks,* 114 Wn.2d 724, 734 (1990), quoting with approval, *U.S. v. Wright,* 610 F.2d 930, 939 (D.C.Cir.1979):

> "The seizure of property *from someone is prima facie* evidence of that person's entitlement ... he need not come

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10 Lakewood acknowledged this point below citing *Schillberg* and *Card*: "Where Washington case law does not address the answer to return of property, Washington courts look to federal case law analyzing Federal Rule of Criminal Procedure 41, which contains analogous provisions." Lakewood's Opposition at 6, CP 68-92.

forward with additional evidence of ownership." (emph. in text) To the same effect, *see State v. Card, supra,* 48 Wn.App. at 790 and *cf. State v. Simpson,* 95 Wn.2d 170, 622 P.2d 1199 (1980)(possession alone provides automatic standing).

So strong is this precedent that persons in Respondents' position need do no more than show their property was taken from them to establish they are aggrieved. Of course, here Respondents did much more. They provided proof that they owned both the business that was targeted as well as the vehicles and personal property illegally seized from them.

IV. THE SUPERIOR COURT PROPERLY CONDUCTED AN EVIDENTIARY HEARING BY AFFIDAVIT/DECLARATION IN WHICH RESPONDENTS ESTABLISHED THEIR OWNERSHIP OF, AND EXCLUSIVE RIGHT TO, THEIR PROPERTY ILLEGALLY SEIZED

Lakewood mistakenly complains that an evidentiary hearing was not held on Respondents' motion for return of their property. Brief of App. at 13.[11] The record is directly contrary to the claim. During colloquy at the presentation of the findings of fact, Judge Bowden clearly stated he had conducted a "contested hearing for the return of property" on April 10, 2015. VRP (4/22/15) at 11; *see* App. A (matter came on for "hearing").

Moreover, Lakewood fails to even acknowledge that it never submitted an affidavit asserting an interest in the Respondents' property and thus never satisfied even its initial burden of proof, let alone its ultimate burden, to show a superior interest in the property. Brief of App. at 13-20.

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11 Lakewood fails to assign error to this claim in violation of RAP 10.3(a)(4). *See State v. Chaussee, supra.*

Lakewood now criticizes the Declaration submitted by the Respondents in support of their motion but again completely fails to acknowledge that it never filed a responding Affidavit/Declaration to dispute any of the assertions in the Declaration or in the attached documents of ownership.

Thus, when the superior court conducted the evidentiary hearing it had only the Declaration of the Respondents (and the sworn search warrant Affidavit) properly before it and *no* evidentiary showing otherwise from Lakewood. The time for Lakewood to make its case, if any, was in the trial court, not the appellate court. It utterly failed to do so and is not entitled to a second bite at the apple merely because it is disagrees with the outcome of the hearing.

A. Lakewood's Lack of Affidavit. The requirement that a party file an Affidavit/Declaration in order to establish its interest in seized property is elementary. *State ex rel. Schillberg, supra,* 90 Wn.2d at 795-801; *State v. Card, supra,* 48 Wn.App. at 786. Presumably, Lakewood was aware of this basic requirement because it cited the *Schillberg* case in its submission to the superior court. Lakewood's Opposition at 5, CP 68-92. This is a critical obligation placed on the government entity with physical custody of the property because it is the party with the initial burden to show a sufficient interest in the property. *State v. Card, supra,* at 783. Presumably, Lakewood was aware of the basic affidavit requirement on this ground too because it cited *Card* in its submission. Opposition at 6.

It is not the trial court's obligation to inform an attorney of the duty

to timely file an affidavit in order to dispute the return of property to the rightful owners. Lakewood failed to file an initial affidavit and failed again to file a responsive affidavit to the owners' Declaration.

B. Lakewood Never Met Its Initial Burden. Both in the superior court and on appeal, Lakewood quotes *State v. Marks,* 114 Wn.2d 724, 735, 790 P.2d 138 (1990), for the proposition "[t]he State has the initial burden of proof to show right to possession." Brief of App. at 14; CP 68-92. But that's all the city does – state the rule. It then proceeds to ignore its burden and fails to identify any *evidence* it presented to satisfy it.[12]

The failure of Lakewood to submit *evidence* by way of an affidavit at the *evidentiary* hearing before Judge Bowden means that, as a matter of law, there was a complete failure by Lakewood to meet either its initial, or ultimate, burden of proof to show "a greater right of possession" than Respondents. *State v. Card, supra,* 48 Wn.App. at 791. *See* FF 1-8 (verities). Where the government, here Lakewood, wholly fails to meet its burden to show a greater right of possession than the owners, as here, the court is duty-bound to return the property to the owners.[13] The Order Directing Return of Property therefore must be affirmed. CP 66-67; App. A.

C. Notice To Physical Custodian Was Properly Given.

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12 Lakewood erroneously – contrary to *Marks* and *Card* – urges that *Respondents* have the initial burden of proof. Brief of App. at 15-16. The argument is specious.

13 Of course, where the state fails to meet its burden but the lower court nevertheless denies return of the property to the claimant, the *claimant* would be entitled to a new hearing on remand. *E.g., State v. Agee,* 274 Neb. 445, 741 N.W.2d 161 (Neb.Sup.Ct.2007), citing *State v. Card* with approval.

Although it is not a properly raised issue, Lakewood ironically complains that other government entities were not given formal notice of the motion for return of property by the Respondents. Brief of App. at 11. This is the same Lakewood that failed to give notice before or during its out-of-county police investigation to: Pierce County Sheriff, Snohomish County Sheriff, City of Lynnwood Police, Pierce County Prosecutor or Snohomish County Prosecutor according to the record. Thus, the irony of its misplaced complaint escapes Lakewood.

The Respondents gave formal notice to the Lakewood Police (and its attorney) as physical custodian of the property in accordance with the procedure established in *Schillberg, supra,* 90 Wn.2d at 799. As the Supreme Court unanimously stated in *Schillberg*, "there is no requirement that notice be given to others claiming an interest in the property." *Id.* The Court held that "[n]otice to the prosecutor should be sufficient" and that the prosecutor "can notify any other parties who might have an interest at stake." *Id.* That is what occurred here. There is no error.

V. AN OUT-OF-COUNTY MUNICIPAL COURT HAS LIMITED JURISDICTION TO ISSUE A SEARCH WARRANT FOR PROPERTY LOCATED IN ANOTHER COUNTY UNDER EITHER RCW 3.66.100 OR RCW 2.20.030

Introduction. Without question, the Snohomish County Superior Court (as well as the Snohomish County District Court, comprised of four divisions), has jurisdiction to issue search warrants for property located within the geographical boundaries of Snohomish County. It is also not in dispute that the Pierce County Superior Court has jurisdiction to issue a

search warrant for property located within Snohomish County alleged to have a nexus to a crime charged in Pierce County. The Snohomish County Prosecutor and/or the Snohomish County Sheriff have authority to apply to the Snohomish County Superior Court for a warrant authorizing a search within the boundaries of Snohomish County. The Pierce County Prosecutor and/or the Pierce County Sheriff have authority to apply to either the Pierce County Superior Court or the Snohomish County Superior Court for a warrant authorizing a search for property in Snohomish County alleged to have a nexus to a crime charged in Pierce County.

In this case a felony charge was pending in the Pierce County Superior Court. CP 68-92. In a purported attempt to obtain additional evidence against the charged defendant, Lakewood police, located in Pierce County, unilaterally decided to seek such evidence in a foreign jurisdiction, Snohomish County, without associating with either the Pierce County Sheriff or the Snohomish County Sheriff.[14] In furtherance of this unilateral investigation, Lakewood police sought a search warrant to be executed in Snohomish County without the prior approval of either the charging prosecutor in Pierce County[15] or the prosecutor in the county of

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14 The Snohomish County Sheriff has exclusive statutory authority over criminal investigations of massage/bathhouse businesses in Snohomish County. S.C.C. 6.01.047(1) (The Snohomish County Sheriff "shall investigate the following: Whether any outstanding criminal violations/charges exist. ...").

15 CP 23-29. Nor did the Lakewood police ask for assistance from the Pierce County Sheriff, the Snohomish County Sheriff, or the local municipal police from the City of Lynnwood, to execute the warrant. Lakewood police did ask, however, for assistance from Homeland Security [!]. Search Warrant (15-30); App. E; CP125-28.

the search, Snohomish,[16] or even the Lakewood prosecutor.[17] Instead of applying for the warrant from the Pierce County Superior Court where the felony charge was pending or from the Snohomish County Superior Court where the property was located, Lakewood police applied to the Lakewood municipal court – a court which had no jurisdiction over the pending charge in Pierce County and no jurisdiction over any charges which might arise from the search and seizure in Snohomish County.[18]

> "One absolutely necessary component of a valid warrant is that it be issued by a magistrate with the legal authority to issue it. [cit.omit.] ... Where a warrant is issued by a magistrate without the authority to do so, it has no more validity than a warrant signed by a private citizen, and can no more serve as the authority of law necessary to satisfy the requirements of Const. Art 1, sec. 7."

City of Seattle v. McCready, 123 Wn.2d 260, 272, 868 P.2d 134 (1994).

A. LAKEWOOD MUNICIPAL COURT HAD NO JURISDICTION TO ISSUE A SEARCH WARRANT FOR PROPERTY LOCATED IN SNOHOMISH COUNTY UNDER R.C.W. 3.66.100(1)

The search warrant was issued for premises in Snohomish County by the Lakewood Municipal Court based ostensibly on a pending felony charge in Pierce County. The municipal court has no authority to hear a felony case regardless of the county in which it may arise. The municipal court has authority to hear only "violations of city ordinances duly adopted

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16 According to a Declaration filed by a Snohomish County deputy prosecutor, the Snohomish County Prosecutor's Office did not receive notice of the Lakewood police activity in Snohomish County until April 6, 2015 – twelve days *after* the search warrant was obtained in the Lakewood Municipal Court. CP 41-42.

17 *See* Complaint for Search Warrant (Affidavit) signed only by Lakewood police detective. CP 68-92.

18 *See* Declaration of Snohomish County Deputy Prosecutor expressing "belief" that if Lakewood search warrant was "lawfully issued," evidence seized "may lead to the filing of criminal charges in Snohomish County ... ." CP 41-42.

by the city." R.C.W. 3.50.020. The municipal court has no authority to hear *any* criminal case not occurring within the city's limits.

Since statehood, the *only* court with jurisdiction to hear a felony case on the merits is the *superior court.* Art. IV, section 6 of the Washington Constitution ("The superior court shall have original jurisdiction ... in all criminal cases amounting to felony."). CL 1; 3.

The Supreme Court explained in *State v. Elgin,* 118 Wn.2d 551, 555, 825 P.2d 314 (1992)(emph.ad.):

> "Being a court of limited jurisdiction, the district court has only such jurisdiction as the Legislature specifically confers. Const. Art IV, section 10. *The Legislature has not granted to the district court criminal jurisdiction over felonies.* R.C.W. 3.66.060(1)."

See also Summers v. Rhay, 67 Wn.2d 898, 900, 410 P.2d 608 (1966)("The Justice Court does not have jurisdiction to hear a felony charge on its merits."), *overruled on other grounds, Honore v. Wash.Bd of Prison Terms,* 77 Wn.2d 660, 466 P.2d 485 (1970).

As a court of limited jurisdiction, the municipal court is governed by the same principles. *See* R.C.W. 3.50.450; CrRLJ 1.1; 1.4(a); 1.4(b).

The jurisdictional question at issue in this search warrant has long been settled. It is governed by R.C.W. 3.66.100(1), *State v. Davidson,* 26 Wn.App. 623, 613 P.2d 564 (*Div. 1*1980) and *City of Seattle v. McCready, supra* ("Washington's longstanding tradition of limiting search warrants to carefully circumscribed statutory categories provides powerful support for the proposition that Const. art 1, sec. 7 prohibits courts from issuing warrants without an authorizing statute or court rule.").

R.C.W. 3.66.100(1) provides:

> "Every district judge *having authority to hear a particular case* may issue criminal process in and to any place in the state." (emph.ad.).

In other words, there is a condition precedent to the authority of a judge from a court of limited jurisdiction to issue statewide criminal process: *before* a judge issues a search warrant outside city or county limits, as the case may be, the issuing court must be competent to *hear* the particular kind of case for which the warrant is sought. If – as in this case – the municipal court has no statutory or constitutional jurisdiction to hear a felony case, it is powerless to issue a warrant for execution beyond the city boundaries. If it nevertheless does so – as in this case – the resulting warrant is null and void. *City of Seattle v. McCready, supra,* 123 Wn.2d at 272 ("If a warrant is not legally valid, it is in fact no warrant at all.").

This Court's decision in *State v. Davidson* confirms this analysis. In *Davidson,* a Seattle District Court judge issued a search warrant for a residence in Snohomish County. The suppression motion was heard by the Snohomish County Superior Court which ordered the evidence seized under the warrant suppressed. Analyzing the earlier version of R.C.W. 3.66.100,[19] this Court affirmed on the basis that the Seattle District Court had no jurisdiction at the time it issued the warrant to hear the resulting case on the merits. 26 Wn.App. at 625.

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19 There has been no material change to the statute since *Davidson* was decided in 1980. And, as noted in the text, R.C.W. 3.66.010(1) was neither repealed nor amended by the Legislature when adopting R.C.W. 2.20.030.

> "Without the authority to hear the matter, the Seattle District Court *had no jurisdiction to issue a warrant to search premises in Snohomish County.*" *Id.* (emph.ad.).

The Court emphasized the jurisdictional nature of the question.

> "Under Const. Art. IV, sections 1, 10 (amendment 65) and 12, the legislature has the sole authority to determine the powers, duties and jurisdiction of justices of the peace *and such other inferior courts as the legislature may establish.*" *Id.* (emph.ad.).

> "The jurisdiction of courts of limited jurisdiction must clearly appear in a statute." ... the territorial limits of an inferior court's authority to issue a warrant is jurisdictional and subject to the constitutional requirement that it be defined by statute."

26 Wn.App. at 626-27.

The Court in *Davidson* declared that in the absence of legislation authorizing a court of limited jurisdiction to issue statewide criminal process without limitation, a power granted only to the superior court, there is an "absolute bar" to an inferior court assuming such power.

> "... the absence of legislation here creating territorial jurisdiction is an absolute bar to its exercise. There being no statutory basis for the warrant issued in this case, the trial court was correct in suppressing the evidence."

26 Wn.App. at 628.

The leading criminal law treatise in Washington treats *Davidson* as settled law:

> "... the statewide criminal process power of a court of limited jurisdiction applies only when the court has jurisdiction to hear the resulting case. Thus, a district court in one county cannot issue a search warrant for a house located in another county.'

R. Ferguson, 12 Washington Practice, Criminal Practice and Procedure, (3d ed. 2004) section 502 at p. 113; *see also,* section 3133 at p. 773.

R.C.W. 3.66.100(1) has not been amended or repealed. The statute's central, *constitutional*, limitation on the jurisdiction of courts of limited jurisdiction to issue statewide criminal process, the requirement that the issuing court have "authority to hear a particular case" *before* issuing process, remains good law as does the governing decisional law, *State v. Davidson.* Judge Bowden correctly ruled that R.C.W. 3.66.100(1) does limit the jurisdiction of an out-of-county municipal court and that *Davidson* retains precedential value." CL 6.[20]

B. LAKEWOOD MUNICIPAL COURT HAD NO JURISDICTION TO ISSUE A SEARCH WARRANT FOR PROPERTY LOCATED IN SNOHOMISH COUNTY UNDER R.C.W. 2.20.030

Following the decision in *Missouri v. McNeely,* 133 S.Ct. 1552 (2013) effectively abrogating Washington's laws authorizing warrantless seizure of blood in alcohol-related traffic offenses, in 2014 our Legislature enacted a statute purporting to authorize a district or municipal court judge sitting in a county in which the offense allegedly occurred to issue a search warrant "for any person or evidence located anywhere within the state." R.C.W. 2.20.030. The explicit reference to a search warrant "for any person" reveals the intent of the statute: to allow for searches for evidence of blood alcohol/drugs in drivers who are no longer within the jurisdiction

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20 Although R.C.W. 3.66.100(1) as interpreted by this Court in *State v. Davidson* was one of the alternative bases on which Judge Bowden ordered the return of property to the aggrieved persons, CL 6, Lakewood neither discusses the issue in its brief nor cites or distinguishes either the statute or the case.

of a city or county with prosecuting authority.[21]

It will be noted that the statute is codified in the obscure chapter 2.20 in Title 2 defining the term "Magistrates" rather than in Title 3, each chapter of which pertains specifically to "Courts of Limited Jurisdiction." Moreover, neither the Legislature nor the Code Reviser acknowledged that there already existed a statute, R.C.W. 3.66.100(1), which authorizes a district or municipal judge with jurisdiction to hear a DUI case to issue statewide process to obtain a blood sample in aid of such prosecution. As noted above, in adopting R.C.W. 2.20.030, the Legislature neither repealed nor amended R.C.W. 3.66.100(1).

The interplay of R.C.W. 2.20.030 and 3.66.100(1) appears to be a matter of first impression. Judge Bowden explicitly addressed the issue in Conclusion of Law no. 7:

> "Arguably, a municipal court's authority has been expanded to grant authority for process to be issued for any offense "alleged to have occurred" within the county in which a city is situated, R.C.W. 2.20.030, but a municipal court's authority has not been expanded to allow process to be issued for crimes which have occurred in any other counties whether felonies or misdemeanors and over which the municipal court has no authority to hear. R.C.W. 3.66.100(1)."

Applying R.C.W. 2.20.030, in light of R.C.W. 3.66.100(1), Judge Bowden concluded, Conclusion of Law no. 8:

> "The authority of the Lakewood Municipal Court judge to issue this warrant for police to conduct this search in Snohomish County

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21 Only R.C.W. 3.66.100(1) explicitly authorizes a search of a "place." By its terms, R.C.W. 2.20.030 is limited to "person[s] or evidence" – it makes no mention of "places" outside the issuing court's borders. There is nothing in the legislative history indicating an intent to authorize out-of-jurisdiction search warrants of residences or businesses in aid of rogue police fishing expeditions. *See* Laws of 2014, ch. 93, sec. 1.

> exceeded that court's authority which could extend only to crimes occurring in Pierce County."

Despite the fact that Judge Bowden clearly addressed the interplay between the two statutes, entered conclusions of law on the issue, CL 6-9, and based his orders, in part, on these legal conclusions, Lakewood has completely failed to address the issue on appeal.

Judge Bowden's conclusions are grounded in his analysis that if R.C.W. 2.20.030 is applicable in this case, then it must be harmonized, if possible, with R.C.W. 3.66.100(1). *See, e.g., Darkenwald v. Employment Security Dept.*, 183 Wn.2d 237, 250, 350 P.3d 647 (2015)("Where potentially conflicting acts can be harmonized, we construe each to maintain the integrity of the other." quoting *Anderson v. Dept. of Corrections,* 159 Wn.2d 849, 859, 154 P.3d 220 (2007)).

The critical limitation in R.C.W. 3.66.100(1) on the power of district and municipal judges to issue search warrants outside their jurisdictions is the requirement that the evidence sought by the warrant must be relevant to the "particular case" which the judge has "authority to hear." This is a constitutional, jurisdictional prerequisite which, if not adhered to, vitiates process issued from a court of limited jurisdiction. *State v. Davidson; City of Seattle v. McCready, supra.*

The critical limitation in R.C.W. 2.20.030 on the power of district and municipal judges to issue search warrants outside their jurisdictions is the requirement that the evidence sought by the warrant must be relevant to the particular case which the judge has authority to hear *or* to a case

occurring in the county where the court sits whether or not the court has the authority to hear the particular case.

Taken together, at a minimum any warrant search *outside* the county in which the court of limited jurisdiction sits must be limited to offenses arising *within* the county where the court sits. On the other hand, if the requirement that the issuing court have authority to hear any case arising from the search is a constitutional or statutory jurisdictional requirement, *State v. Davidson*, then the two statutes must be harmonized in a manner that assures this precondition is satisfied.

Either way, the search warrant in this case (15-30) fails. There is *nothing* on the face of the warrant limiting the authority of the executing officer(s) to seize evidence relating *only* to the pending felony charge against Su Jones in Pierce County.[22] CP 125-28. Nor did the affidavit establish the necessary nexus of alleged criminal activity in Snohomish County to a pending criminal prosecution in Pierce County[23] or that the Lakewood Municipal Court would be authorized to hear a resulting case, if any, based on Snohomish County evidence. There was a complete failure

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22 The relevant language of the search warrant reads: "There is probable cause that Promoting Prostitution in the Second Degree RCW 9A.88.080 was committed." Notably, there is no limiting language relating the authorized search only to evidence relevant to Su Jones and the pending felony charge in Pierce County. Lakewood Search Warrant no. 15-30; App. E. As a result, the warrant does not confine the search to its limited purpose: to obtain evidence pertaining to a criminal case in Pierce County. Instead, it authorizes a general search for evidence of promoting prostitution regardless of the jurisdiction to which any seized evidence would be relevant.

23 Once the Lakewood police failed to connect Su Jones to King's, they candidly acknowledged they then embarked on a generalized police investigation: "Our mission was to identify additional individuals involved in prostitution activities; along with attempting to see if maybe the women we encountered on the first visit were just rogue employees doing prostitution on their own without the management's knowledge." Sno.Co. Aff. at (unpaginated) p. 12; App. F; CP 125-28.

of jurisdiction under either, or both, statutes. CL 8, 9.

VI. THE MERE FACT THAT POLICE OBTAINED AN ADDRESS OF A BUSINESS THAT SU JONES ONCE OWNED IN SNOHOMISH COUNTY DID NOT ESTABLISH PROBABLE CAUSE FOR THE LAKEWOOD MUNICIPAL COURT TO ISSUE A WARRANT FOR THAT BUSINESS BASED ON A PENDING CRIME AGAINST SU JONES IN PIERCE COUNTY

A. Introduction. The seminal case addressing whether criminal activity discovered in one location in and of itself can establish probable cause to search a separate location connected to the accused is this Court's decision in *State v. Rangitsch,* 40 Wn.App. 771, 700 P.2d 382 (1985), *approved, State v. Thein,* 138 Wn.2d 133, 146 (1999). The prosecutor in *Rangitsch* argued that since the accused was an habitual user of drugs it was reasonable to believe that drugs and paraphernalia would be found in his home and since the police knew where he lived, a warrant issued for the residence should be valid. Labeling such reasoning "mere speculation," this Court disagreed and invalidated the warrant. 40 Wn.App. at 771.

Prosecutors then attempted to extend their speculations to cases involving drug dealers. The argument went, since drug dealers have to store their merchandise somewhere, if evidence is obtained of drug dealing in one location, and the police then obtain the residence address of the dealer, it would be reasonable to believe the illicit storage would occur at the residence and thus a warrant issued for the residence should be valid. It is true that for a time this Court approved this fallacious reasoning and declined to follow its own governing precedent of *Rangitsch.* However, in 1999, the Washington Supreme Court unanimously and powerfully

rejected appellate decisions refusing to abide by *Rangitsch.*[24] In *State v. Thein* the Court held: "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." 138 Wn.2d at 140, quoting with approval, *State v. Goble,* 88 Wn.App. 503, 509, 945 P.2d 263 (*Div.2* 1997).

In the present case the Lakewood police made a similar speculative argument: *We have evidence that Su Jones was receiving profits of prostitution at a business she owns in Pierce County. We learned her residence address and obtained a search warrant for the residence and the business. A felony charge based on this evidence is now pending in the Pierce County Superior Court. As a result of the search warrant executed at the residence*[25] *and at the business in Pierce County, we learned that Ms. Jones currently owns a business in Snohomish County.*[26] *Therefore, it is reasonable to believe that evidence will be found in Snohomish County that Ms. Jones also receives profits of prostitution there.*

It must be kept in mind there is a key difference between the probable cause calculation in an ordinary search warrant and one issued by a court of limited jurisdiction for an out-of-county search. In addition to

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24 *See, e.g., State v. Thein,* 138 Wn.2d at 149, overruling and disapproving of reasoning of *State v. O'Neill,* 74 Wn.App. 820, 879 P.2d 950 (*Div.1*1994) and *State v. Gross,* 57 Wn.App. 549, 789 P.2d 317 (*Div.1*1990).

25 As noted, Pierce County Superior Judge Kitty-Ann van Doorninck suppressed all evidence from the search of Ms. Jones' residence: "There was not enough factual basis to search defendant's house in Federal Way and the evidence is suppressed as there was not proper establishment of nexus pursuant [sic] to *State v. Thein.*" Order on Suppression Hearing; *State v. Jones,* Pierce Co. No. 15-1-00881-3; App. C.

26 As discussed more fully below, this was patently false.

the normal quantum of probable cause which must be shown, there must also be shown probable cause of a nexus between the criminal activity in the city or county in which the issuing court sits and items to be seized in a foreign county as well as a nexus between the person charged in the city or county in which the issuing court sits and the place to be searched in the foreign county.

B. The Snohomish County Address is Fruit of the Poisonous Tree.

Preliminarily, the initial discovery of the address of the business in Snohomish County allegedly connected to Su Jones was the poisonous fruit of the illegal search of Ms. Jones' residence pursuant to the first warrant (Lakewood 15-18). There being no nexus between the Pierce County business in Fife and the residence in Federal Way, King County, all evidence from the residence search was suppressed under the authority of *State v. Thein.* App. C. However, the Lakewood police relied on *all* evidence seized from the residence, as well as from the business, to obtain the business address in Snohomish County.

In the second search warrant affidavit (15-30), after listing the property seized from the business (1-11) and from the residence (12-14), the affiant stated (unpaginated p. 9):

> "*All the items from both locations were booked into Property as evidence.* After executing the search warrant at Jones' business *and residence*, I did some followup investigation into the King's Massage Parlor [sic] in Lynnwood, Wa. (NOTE) *Financial information connecting Jones to the King's Massage was located during the searches.*" CP 68-92; App. F (emph.ad.)

Clearly, the lead to the investigation of the Snohomish County

address came directly from "all the items from both locations" including "financial information connecting Jones to the King's Massage" obtained from *both* "searches." This is classic fruit of the poisonous tree and the municipal court judge should not have considered the information in evaluating the search request. *Wong Sun v. U.S.,* 371 U.S. 471 (1963); *State v. White,* 97 Wn.2d 92, 101, 640 P.2d 1061 (1982)("Under the rule of *Wong Sun*, all evidence which is the product of an illegal search or seizure is suppressed."). There being no other evidence presented to the municipal judge establishing a nexus between Ms. Jones and the Snohomish County business, there was no basis for issuance of the warrant. This Court may affirm Judge Bowden on this alternative ground alone.

C. No Current Underlying Facts Established Nexus Between Su Jones and King's.

It is black-letter law that a search warrant may not be issued unless the underlying facts alleged are shown to be current. *State v. Lyons,* 174 Wn.2d 354, 361, 275 P.3d 314 (2012). A search warrant is invalid if the "affidavit provides no facts to support an inference of recency" and thus lacks "timely probable cause." *Lyons* at 363, 368. Judge Bowden scrupulously applied the *Lyons* principles to the review of the Lakewood warrant. CL 13, 14, 15, 16, 20.

The *only* alleged connection between Su Jones and the charge in Pierce County to a business named King's in Snohomish County was in the (illegally obtained) financial documents leading to information that at

one time Ms. Jones had a state tax registration in her name for King's. The affiant stated that based on a Washington Department of Revenue database Ms. Jones "has been the Sole Proprietor of the business since 5-1-12 to the present. (Tax registration #610793318)." (Sno.Co.Aff. at un-pag. p.12). The problem with this averment is that it is demonstrably false.

What the Department of Revenue database actually says is that while an account was opened in Su Jones' name on May 1, 2012 the account was closed on May 30, 2014 – *ten months before the affiant made his false statements and omissions in support of the warrant.*[27] App. D. The true information contained in the Department of Revenue's records is consistent with the verities that aggrieved person Kum Im Lee purchased King's from Su Jones on May 14, 2014 "and at all relevant times since has been the sole owner of the business." FF 1, 2, 3.

Moreover, unlike the one-time, undated business license for tax registration purposes issued by the Department of Revenue, Snohomish County not only issues initial public bathhouse licenses but also requires yearly renewal licenses for the both the proprietor and workers. S.C.C. 6.01.50(2)(b)(i) and (2)(b)(ii). None of these licenses – public records and posted in the business – contained the name "Su Jones,"[28] a fact which the

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27 As previously noted, Judge Bowden ruled that the "aggrieved parties have made a preliminary showing that the false averment indicating that ownership by Su Jones of King's was current information was made recklessly which would entitled them to a *Franks v. Delaware* hearing" but since the Judge decided the motion for return of property on other grounds, he "reserve[d] ruling on this issue." CL 19.

28 The Lakewood Police seized all of the posted current licenses during the search of King's and noted them in Item no. 1 in the "Property Report Search Warrant." CP 125-28. Unsurprisingly, *none* of the seized licenses contained the name "Su Jones."

affiant omitted from the affidavit. FF 14 (verity).

The only "fact" put forth to the Lakewood judge is that public records showed that Su Jones applied for and was granted a tax license for King's on May 21, 2012 from the Department of Revenue. Even if the falsity of the remaining information/omissions could be ignored, what the Lakewood judge was left with was an assertion that a license issued in May, 2012 was adequate, without more, to establish an ownership interest *three years later.* This is completely insufficient "to support an inference of recency." *State v. Lyons,* 174 Wn.2d at 363. Judge Bowden correctly concluded that, even putting aside the showing of falsity, the information provided to the issuing judge was stale, CL 20, as "there was no temporal connection to justify the issuance of the warrant." CL14. Accordingly, there was no probable cause to support the warrant. FF 16 (verity); CL 16.

D. Even if the Lakewood Judge Could Consider Su Jones' Alleged Ownership of a Business in Snohomish County That is Insufficient To Establish Probable Cause and the Independent Police Investigation Added Nothing.

Even if the Lakewood judge legitimately could consider the "fact" that Su Jones owned King's in Snohomish County at the time of the search warrant application, that "fact" alone would hardly suffice to establish probable cause for issuance of the warrant. *State v. Thein; State v. Rangitsch, supra.* As our Supreme Court explained with irrefutable logic in *Thein* any other rule would authorize "virtually automatic searches of any property used by a criminal suspect." 138 Wn.2d at 133.

Judge Bowden recognized this point in his oral ruling:

> "Even if the defendant in Pierce County had owned this business at the time of this search warrant application, there's nothing to show, as I can see, in the supporting application by Detective Larson any evidence of any knowledge on her part of the unlawful activities occurring here.
>
> "The fact that it may be similar to unlawful activities occurring at some other establishment in Pierce County, as I said at the time, may be interesting, but it doesn't necessarily provide the linkage necessary to provide enough basis for the issuance of a warrant here. Has to be based on probable cause; that's what's missing here. *Even if the representation by Detective Larson about ownership of the business was correct.*" 2 VRP at 11 (emph.ad.).

The analysis of analogous facts in *Thein* is instructive here. Stephen Thein was a suspected drug dealer "based on evidence found in an earlier search at a different location" than Thein's residence. 138 Wn.2d at 136-37. During the execution of a search warrant for premises at the "different location," the police discovered a box of nails addressed to Thein at his residential address. *Id.* The police then confirmed his home address with the state department of licensing. 138 Wn.2d at 138. The Supreme Court described these facts as "innocuous." 138 Wn.2d at 150.

Despite incriminating evidence against Thein at the first address, "none of the evidence found" at that location "linked this activity to" Thein's residence address. 138 Wn.2d at 150. Because of "the strict requirement that probable cause to search a certain location must be based on a factual nexus between the evidence sought and the place to be searched," 138 Wn.2d at 148, the Supreme Court had no difficulty determining that because "the facts do not establish a nexus between evidence" of criminal activity at one location and at a different location, there was no

legal basis for issuance of the warrant for the second location. 138 Wn.2d at 148, 151.

The *Thein* Court, however, did recognize that independent police investigation might supply the missing link pointing to Judge Scholfield's evaluation of such an investigation in *State v. O'Neil,* 74 Wn.App. at 828-832 (Scholfield, J. *dis. op.).* 138 Wn.2d at 144, 150. In *O'Neill,* the police apparently properly obtained the addresses of "properties owned by O'Neill." The police then began two months of surveillance of all the properties, particularly observing an address "at one time" identified by O'Neill as his residence. Judge Scholfield found a critical fact to be that "O'Neill was personally observed many times going to the other addresses listed in the search warrant, but neither O'Neill nor his automobile was ever observed at the [former residence] address." Judge Scholfield found "noteworthy" the fact that the "search warrant affidavit completely omitted some of the evidence pointing to a lack of probable cause for a search of the [former residence] address." This included the fact that although at one time "Washington vehicle registration records" showed that O'Neill registered his car at the former address, the *current* information showed it was registered at a different address. In other words said Judge Scholfield, "the prosecution had no way of tying O'Neill ... to the [former] address, other than the fact that he owned it and formerly had used it as his personal residence." Thus, the police investigation added nothing to the bare circumstance that the target of the search was associated with a place.

In the present case, there were two kinds of police investigation involved. First, there were internal undercover observations made within the respective businesses in Pierce and Snohomish Counties. Second, there were external observations made by clandestine surveillance of Su Jones. By comparing and contrasting the information obtained relating to the Pierce County search (Wellness) and to the Snohomish County search (King's), it will be seen that the latter added nothing to probable cause.

Su Jones was seen numerous times inside the Wellness Clinic and her vehicle was also seen there. Pierce Co. SW Affid. at 5 (para. 1), 6 (para. 4), 7 (para. 2); Pierce Co. Dec. for Prob. Cause at 1 (para. 6).

Su Jones was never seen at King's Massage. Sno.Co.SW Affid. at 10 (para. 2)(Lakewood police went to King's "to see if Jones or any of the girls from the Fife location were there" – *neither she, nor they, were on the premises then – or ever*). Nor was her vehicle ever observed at King's.

Su Jones personally took payment for massage services at Wellness. Pierce Co. SW Affid. at 7 (para. 2); Pierce Co. Dec. for Prob. Cause at 2 (para. 1); Sno. Co. Affid. at 7 (para. 1).

Su Jones was never observed taking payment of any kind at King's.

Other employees at Wellness identified Su Jones as the manager or owner of Wellness. Su Jones identified herself as the owner of Wellness. Pierce Co. SW Affid. at 7 (para. 3); Pierce Co. Dec. for Prob. Cause at 2 (para. 1, 3); Sno. Co. SW Affid. at 7 (para. 2); at 8 (para. 2).

No employees of King's at any time identified Su Jones as the

manager or owner of King's. Sno. Co. SW Affid. at 1-14.

Su Jones never stated she was the owner of King's. *Id.*

Su Jones was personally on the premises during the search at Wellness. Pierce Co. Dec. for Prob. Cause at 2 (para. 2); Sno. Co. SW Affid. at 8 (para. 2).

Su Jones was not on the premises during the search of King's.

The Lakewood police conducted surveillance of Su Jones for a period of two months beginning in January of 2015. The surveillance revealed that Ms. Jones drove a 2013 Lexus. Her residence in Federal Way was confirmed. She was regularly observed driving from her home, leaving at 9:00 a.m., directly to the Wellness Clinic in Fife. She would stay at Wellness all day and evening, leaving the business at 10:00 p.m. and driving directly back home to Federal Way.[29] The last surveillance, which confirmed the same pattern, occurred on February 26, 2015, the day prior to the issuance of the Pierce County warrant (Lakewood 15-18).

During the period of surveillance, Ms. Jones was never observed driving her 2013 Lexus, or any other vehicle, from her residence or from Wellness to King's or from King's to her residence or Wellness. Ms. Jones was never observed at or inside King's. Her vehicle was never

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29 "Since January of 2015 surveillance has tracked Jones ... Shortly after 0900 hours she leaves her residence, and travels to the Wellness Clinic; Shortly after 2200 hours the business "Open" sign goes off, and Jones departs to her residence." Pierce Co. Affid. at 7; Sno. Co. Affid. at 7.

observed parked in the business lot available to King's patrons. Ms. Jones was never observed having any contact with any persons associated with King's. FF 6-8; Pierce Co. Affid. at 7; Sno. Co. Affid. at 7.

It is evident from the recitation above that there was not an iota of information gained during the police investigation of Su Jones *vis a vis* the Snohomish County business (especially as compared to the Pierce County business) which supplied a nexus (a link) between Su Jones and the Pierce County charge to the address of a business in Snohomish County purportedly owned by Ms. Jones. There is a complete failure of probable cause. FF 7, 16 (verities); CL 13-16; 2 VRP at 11; *State v. Thein; State v. Rangitsch; State v. O'Neill (dis. op.* of Scholfield, J.).

VII. THE ILLEGALITY OF THE SEIZURE OF THE AGGRIEVED PERSONS' PROPERTY WENT FAR BEYOND THE SCOPE OF THE ILLEGITIMATE SEARCH WARRANT

This case is about the return of property to the rightful owners illegally seized by law enforcement officers. Some of the property illegally seized was obtained during the execution of the invalid search warrant inside the Snohomish County business. But most of the property seized, notably the aggrieved persons' vehicles, contents of vehicles and contents of containers, was the product of a warrantless – that is to say lawless – search and seizure in a public area.[30] FF 1-5 (verities).

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30 Lakewood police did not file a proper inventory either with the Lakewood Municipal or the Snohomish County Superior Court. CrRLJ 2.3(d); CrR 2.3(d). In the *faux* inventory prepared entitled "Property Report Search Warrant," there are entire categories of seized property never inventoried, most noteworthy of which are the aggrieved persons' vehicles. This is just one more indication that at the time of the search, the Lakewood police knew the property they were seizing was both unrelated to the Pierce County crime supposedly being investigated and far beyond the scope of search permitted by the warrant.

In addition to the illegality of the search warrant itself and the illegality of the warrantless search, there are at least three other fundamental problems with the seizure. First, *none* of the property seized is connected in any way to the limited purpose of the warrant which required a nexus of anything seized to Su Jones and the charge in Pierce County. No nexus exists as to any of the property seized. Second, *none* of the property seized from the aggrieved persons' during the search was identified in the warrant as authorized to be seized. Neither of the aggrieved persons was named in the search warrant, neither of their vehicles was identified in the warrant or authorized to be seized and none of their personal possessions including purses and other containers were identified in the warrant or authorized to be seized. Third, the aggrieved persons are the sole legal owners of their respective possessions and properties. FF 1-5 (verities).

A. Illegal Seizure of Persons of Aggrieved Persons.

Both of the aggrieved persons were illegally seized during the execution of the invalid search warrant. *State v. Smith,* 145 Wn.App. 268, 187 P.2d 768 (*Div. 3* 2008). Ms. Ludeman was "present on the premises during the search." Her locked vehicle was "parked in a public area shared with a neighboring business." Ms. Ludeman was "illegally detained" by the Lakewood police and required to exit the business and then "ordered to provide keys to her vehicle ... ." FF 4. Ms. Lee "arrived at the business driving her personal vehicle ... during the execution of the warrant. She was illegally ordered out of her vehicle in a parking lot open to the public

for several businesses, illegally told to leave her purse in the vehicle and illegally detained." FF 2.

In *Smith,* two women arrived in an SUV at premises which were about to be searched pursuant to a warrant. 145 Wn.App. at 271. Neither of the women nor the SUV were named in the warrant. Both women were seized by the police and one woman's purse was searched resulting in the seizure of drug paraphernalia. The Court of Appeals framed the issue as

> "whether police may lawfully seize at gunpoint and detain for investigation the two occupants of a car who appeared in the driveway of a residence at which officers are preparing to execute a search warrant when neither the vehicle nor any woman was named." 145 Wn.App. at 274.

The Court of Appeals held: "We hold that they may not.[31]" The Court concluded the seizure and resulting search were unconstitutional.

Here, the aggrieved persons moved for the return of their property and possessions on the basis that the entire search and seizure sequence violated their rights under the Fourth Amendment and Art. I, sec. 7 of the Washington Constitution. CP 125. Independent of the invalidity of the search warrant, all property seized from the aggrieved persons following the illegal seizure of their persons must be returned to them.

B. Illegal Search and Seizure of Containers of Aggrieved Persons.

During the execution of the invalid search warrant and following

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31 As the Court of Appeals noted, the state "cites no authority to justify the detention of persons outside of a residence in which the search is to be conducted." *State v. Smith,* 145 Wn.App. at 275.

the illegal seizure of their persons, the containers located within the vehicles of the aggrieved persons were illegally searched and the contents illegally seized. FF 2, 4 (verities). Ms. Ludeman's purse and a suitcase/ valise were inside her locked vehicle. The Lakewood police compelled Ms. Ludeman to open the vehicle after which they seized and searched the purse and other container. Ms. Lee's purse was in her vehicle when she arrived during the search. She was "illegally told to leave her purse in the vehicle" after which the Lakewood police seized and searched the purse.

Police officers in Pierce County were put on notice more than three decades ago that when executing a search warrant the police may *not* search containers such as purses which are clearly associated with a person not named in the warrant. *See, e.g, State v. Worth,* 37 Wn.App. 889, 683 P.2d 622 (*Div.2* 1984). And, even more to the point, police officers in Pierce County were put on notice nearly four decades ago that when executing a search warrant for a massage establishment, the police may *not* search personal containers like purses of employees (not named in the warrant) even when located inside the business. *State v. Scott,* 21 Wn. App. 113, 584 P.2d 423 (*Div.2* 1978).

The warrantless container searches of the aggrieved persons by the Lakewood police were flagrantly illegal. Independent of the invalidity of the search warrant, all property seized from the aggrieved persons resulting from the illegal seizures and searches of their personal containers, including their purses, must be returned to them. *E.g. State v. Worth;*

State v. Scott.

C. Illegal Seizure of Vehicles of Aggrieved Persons.

In the first search warrant served in Pierce County (15-18), Su Jones' vehicle, a 2013 Lexus, was specifically identified in the warrant. But in the second search warrant served in Snohomish County (15-30), *no* vehicle was identified and this means the warrant did not authorize the seizure of either Ms. Lee's 2008 white Lexus SUV or Ms. Ludeman's 2008 gray Lexus SUV.[32] FF 2, 4. These facts alone establish that Ms. Lee and Ms. Ludeman are aggrieved persons, FF 3, 5, who are entitled to the return of their lawlessly seized vehicles.

Moreover, the vehicles were clearly unconstitutionally seized. Not only were the two SUV's not mentioned in the search warrant (or the affidavit), but they were seized on public property and not within any business curtilage. FF 2, 4 (verities). *See, e.g., State v. Graham,* 78 Wn.App. 44, 51-52, 896 P.2d 704 (*Div. 2* 1995)(truck parked next to, and slightly in public street where there was no fence or other barrier between occupant's yard and street **not** within curtilage of house); *State v. Pourtes,* 49 Wn.App. 579, 581, 744 P.2d 644 (*Div. 3* 1987)(street and shoulder of roadway **not** within curtilage of residence); *State v. Niedergang,* 43 Wn.App. 656, 662, 719 P.2d 576 (*Div. 2* 1986)(a vehicle is **not** within

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32 The only mention of "vehicles" in the warrant is some inapplicable boilerplate language relating to "vehicles at the *residence*."

curtilage of house when it is parked in a space that lawfully could be used by anyone coming to adjoining house on legitimate business).

Again, all police officers in Pierce County have been on notice for three decades that when executing a valid search warrant they are not authorized by that warrant to seize vehicles not named in the warrant and not unequivocally located within the curtilage of the premises.

Ms. Ludeman's SUV was temporarily seized with the intention by the Lakewood police to claim it for their own. This seizure was illegal. While seized, the interior was illegally searched and property illegally seized. When Ms. Lee drove up in her SUV, the officers decided to take her vehicle instead and simply commandeered it. The warrantless vehicle seizures from the aggrieved persons by the Lakewood police were flagrantly illegal. The flagrancy is underscored by the refusal of the Lakewood police to return Ms. Lee's SUV to her in violation of Judge Bowden's order to do so forthwith.[33] Independent of the invalidity of the search warrant, both vehicles seized from the aggrieved persons and all property seized from within the vehicles resulting from their illegal seizures and searches must be returned to them.

CONCLUSION

As a result of a rogue police operation conducted unilaterally in Snohomish County by the Lakewood police, an out-of-county city police

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33 It took a contempt motion against the Lakewood Police Chief by Ms. Lee before Lakewood finally returned the illegally seized vehicle to her. CP 37, 38, 43-50.

department, a search warrant was sought ostensibly in aid of a felony criminal prosecution pending in Pierce County Superior Court. The premise for the warrant was a sham. There was no current information connecting the defendant in the Pierce County case to the Snohomish County business. On the contrary, the business had been sold by the defendant nearly a year earlier and public records maintained by the Snohomish County Auditor and the state Department of Revenue showed the defendant had no current connection to the business.

Nevertheless, the Lakewood police went forum shopping in search of a judge who would act as a rubberstamp to authorize a warrant without demanding actual probable cause from the Lakewood affiant. Accordingly, the Lakewood police did not seek the warrant from the Pierce County Superior Court which had jurisdiction over the defendant in that county. Nor did they seek the warrant from the Snohomish County Superior Court which had jurisdiction over both the search in its county and over any subsequent criminal case arising in its county based on the results of the search. Instead, the Lakewood police went to the Lakewood Municipal Court. But that court does not have universal process power; its search authority is strictly limited by statute to cases which may be heard in the city court or cases pending in its county. Either way, a precondition of any such city warrant requires a showing of probable cause of nexus between the case occurring within its county and the place to be searched in the foreign county. No such showing was made in this case within the four

corners of the search warrant affidavit. Nor was any other probable cause shown.

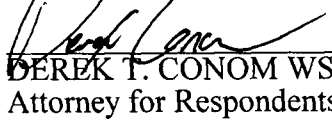
The warrant was invalid. The search pursuant to the warrant was illegal. The seizures beyond the scope of the warrant were illegal.

Kum Im Lee and Yong R. Ludeman are the sole aggrieved parties.

The Snohomish County Superior Court had constitutional and court rule jurisdiction to review the warrant, searches and seizures and to return the property to the rightful owners, Respondents Lee and Ludeman. Judge Bowden of the Snohomish County Superior Court acted within his discretion following an evidentiary hearing by affidavit. The Order Directing Return of Property Illegally Seized from 13811 Highway 99 Lynnwood Washington (CrR 2.3(e)) on April 10, 2015 should be AFFIRMED.

DATED THIS 12th DAY OF OCTOBER, 2015.

TOM P. CONOM WSBA# 5581
Attorney for Respondents



DEREK T. CONOM WSBA#36781
Attorney for Respondents

APPENDIX A

FILED

2015 APR 10 AM 10: 22

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

CERTIFIED COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

In the Matter of Search Warrant for 13811 Highway 99 Lynnwood, Washington	No. 15-2-03194-3 ORDER DIRECTING ~~[PROPOSED]~~ RETURN OF PROPERTY ILLEGALLY SEIZED FROM 13811 HIGHWAY 99 LYNNWOOD WASHINGTON (CrR 2.3(e))

This matter having come on for hearing before the undersigned Judge of the above-entitled Court on the motion of the aggrieved parties for return of property illegally seized pursuant to CrR 2.3(e) and the Court having heard the arguments of counsel for the aggrieved parties and the Chief of Police for Lakewood Police Department and all written submissions of counsel, and the Court being satisfied that the aggrieved parties are the lawful owners of the seized property, now, therefore

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the municipal court judge of the City of Lakewood had neither statutory nor constitutional jurisdiction to issue a search warrant for property located in Snohomish County for the investigation of a felony in Snohomish County; and that the City of Lakewood Municipal Court does not have the authority to hear a felony case on the merits or any other criminal cases on the merits arising outside the boundaries of the City of Lakewood;

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the search warrant issued by the Lakewood Municipal Court (No. 15-30) on March 25, 2015 for property located in Snohomish County is illegal, invalid and null and void.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that all information, material, documents, records, currency and personal property of whatever nature obtained directly or indirectly as a result of the execution of the said illegal, invalid, null and void search warrant may not be retained~~, copied~~, transferred to other agencies or otherwise used in any form or manner;

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Chief of Police of the Lakewood Police Department or his designee or representative, and any and all custodians of property or police officers of the City of Lakewood shall forthwith return all property of whatever nature, seized or obtained as a direct or indirect result from the issuance and execution of the search warrant (No. 15-30) including but not limited to: the 2008 Lexus SUV (VIN 2T2HK31U38C073389) registered to aggrieved person Kum Im Lee; all electronic devices; all records, billings, receipts and other documents; all U.S. currency and all personal possessions, and forthwith return all such property to the aggrieved persons personally or care of their attorney of record: TOM P. CONOM at 7500 212th Street Southwest, suite 215, Edmonds, Washington during business hours between 9:30 a.m. and 4:30 p.m. and shall cooperate in all respects with said Attorney to return the said property at a convenient time.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that no government entity or agency, including the Lakewood Police Department, shall charge any costs or fees for return of the said property including but not limited to: no towing fees, no storage fees, no transfer fees, no transportation fees, no investigative fees.

DONE IN OPEN COURT THIS 10th DAY OF APRIL, 2015.

JUDGE GEORGE N. BOWDEN

Presented by:

TOM P. CONOM WSBA #5581
Attorney for Aggrieved Parties

Copy received and approved as to form:

MATTHEW S. KASER WSBA#32239
City of Lakewood City Attorney

APPENDIX B

FILED

APR 22 2015

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

In the Matter of Search Warrant for 13811 Highway 99 Lynnwood, Washington	No. 15-2-03194-3 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS (CrR 2.3(e))

THIS MATTER HAVING COME ON REGULARLY BEFORE THE UNDERSIGNED JUDGE OF THE ABOVE-ENTITLED COURT ON THE BELOW-STATED DATE, and the Court having previously entered an Order Directing Return of Property Illegally Seized From 13811 Highway 99 Lynnwood Washington on April 10, 2015 now, therefore, the Court enters its:

Findings of Fact

Aggrieved Persons

1. Kum Im Lee. Ms. Kum Im Lee is the owner of the business King's Massage Clinic located at 13811 Highway 99, Lynnwood, Snohomish County, Washington which is the subject of the search warrant. Ms. Kum Im Lee was not named in the warrant or the affidavit. Nor was any of her business property, personal property or vehicle named in the warrant or the affidavit. Ms. Lee purchased the business from Su H. Jones on May 14, 2014 and at all relevant times since has been the sole owner of the business.

2. Illegal Searches and Seizures. Ms. Lee was subjected to the illegal search of her business, her person and her possessions during the execution of the warrant. She was subjected to the illegal seizure of the business books and records, electronics, and U.S. currency. Ms. Lee arrived at the

business driving her personal vehicle, a 2008 White Lexus SUV (VIN 2T2HK31U38C073380) during the execution of the warrant. She was illegally ordered out of her vehicle in a parking lot open to the public for several businesses, illegally told to leave her purse in the vehicle and illegally detained. Her vehicle was illegally seized. Her personal possessions, including her purse, were illegally searched and her personal property, including her cell phone, illegally seized.

3. Aggrieved Person. Kum Im Lee is an aggrieved person under CrR 2.3(e).

4. Yong R. Ludeman. Yong R. Ludeman is a State of Washington licensed massage therapist and employee of the business located at 13811 Highway 99, Lynnwood, Snohomish County, Washington. Ms. Ludeman was not named in the warrant or the affidavit. Nor was any of her personal property, including her vehicle, named in the warrant or affidavit. She was present on the premises during the search. Her person and possessions were illegally searched. She was illegally detained and ordered to provide keys to her vehicle parked in a public area shared with a neighboring business. Her vehicle, a gray 2008 Lexus SUV (VIN 2T2HK31U58C090629), was illegally searched as were personal possessions inside her locked vehicle including her purse and a suitcase/valise. Ms. Ludeman's personal property including papers, financial documents, electronics and U.S. currency were illegally seized.

5. Aggrieved Person. Yong R. Ludeman is an aggrieved person under CrR 2.3(e).

Non-Aggrieved Person

6. Su H. Jones. The person identified in the search warrant affidavit as the subject being investigated for a felony was Su H. Jones. On March 4, 2015, prior to the application for the search warrant, the Pierce County Prosecutor filed a single count of promoting prostitution in the second degree based solely on activities relating to a business in Fife. In the Declaration for Determination of Probable Cause of the same date, no reference is made to any business in Snohomish County or any illegal activity in Snohomish County.

7. No Claim of Interest in King's Massage Clinic. Su Jones was interviewed by an officer from the Lakewood Police Department following her arrest. She never asserted any ownership interest in King's Massage Clinic. During the searches of Ms. Jones' residence and Fife business pursuant to a separate search warrant, no information was obtained indicating a present ownership interest in King's. The police conducted surveillance of Ms. Jones beginning in January, 2015 (page 7 of affidavit for King's warrant [unpaginated]). At no time did Ms. Jones travel to King's or have contact with Ms. Lee, Ms. Ludeman or any other of King's employees. Su Jones has made no claim that any business or personal property of hers was subject to the illegal search and seizure based on the March 25, 2015 search warrant.

8. Non-Aggrieved Person. Su H. Jones is not an aggrieved person under CrR 2.3(e).

No Probable Cause Within Four Corners of Search Warrant Affidavit

9. The City of Lakewood Police Department sought a search warrant from the Lakewood Municipal Court (no. 15-30) to be executed by the Lakewood Police Department in Snohomish County ostensibly to obtain additional evidence of a felony being prosecuted in Pierce County.

10. The sole alleged nexus between the Defendant Su Jones in Pierce County and the business to be searched in Snohomish County was the affiant's allegation that Ms. Jones currently had an ownership interest in King's Massage Clinic. (page 12 of affidavit). This representation was erroneous.

11. The representation by the affiant in support of the warrant on the basis of the Defendant's present interest in the Snohomish County business lacks any factual support. Defendant had owned the business a year earlier but in selling had relinquished all interest in it. There is no temporal connection to justify the issuance of the warrant on the basis of former ownership.

12. During the interview with Su Jones, the police never asked if she owned, or had an ownership interest, in any business in Snohomish County, including King's Massage Clinic. Ms.

Jones made no admission that she presently had such an interest. The affiant never provided this information to the search warrant judge.

13. The affidavit states both that the police conducted surveillance of Ms. Jones' movements (page 7) and conducted on-the-premises inspections of King's (called "compliance checks" by the undercover police officers, pages 9-13). The affiant never tells the search warrant judge that: a) Ms. Jones is never seen on the premises of King's; b) Ms. Jones is never seen or heard communicating with the new (unnamed) owner of King's; c) Ms. Jones is never seen or heard communicating with any of the employees of King's; d) Ms. Jones never receives anything of value, including business profits, from the actual owner or any employee or representative of King's; e) during multiple "compliance checks," the undercover officers never examine the posted business licenses to determine the identity of the current owner; f) during multiple "compliance checks," the police never ask the employees for the identity of the current owner. None of this information is ever provided to the search warrant judge.

14. The Snohomish County Auditor maintains a public record of every business licensed by Snohomish County. King's prominently posts such a business license on the premises as required. The business license sets forth the name of the licensee. Had the affiant either reviewed the public records of the Auditor or examined the physical license on the premises, he would have seen that since July of 2014, Ms. Jones was not listed as the licensee of Kings. This information was not provided to the search warrant judge.

15. The affidavit indicates that taxpayer funds were used by the Lakewood Police to obtain massages at King's. There is no indication that the serial numbers of the taxpayer monies were recorded or that the bills were otherwise marked. Thus, no information was provided to the search warrant judge that any of Lakewood's money provided to King's employees was transferred to Su Jones. There are no facts in the affidavit stating that Su Jones received a penny

from King's after the sale of the business in May, 2014.

16. There was no probable cause before the municipal court judge to believe that evidence of a felony alleged to have occurred in Pierce County would be found at a business in Snohomish County.

Conclusions of Law

Jurisdiction of Snohomish County Superior Court

1. The Snohomish County Superior Court has plenary authority to review the legality of any search warrant issued for persons or property located in Snohomish County.

2. The Snohomish County Superior Court has jurisdiction pursuant to CrR 2.3(e) to hear the claims of persons aggrieved by an unlawful search and seizure, to determine the legality of such search and seizure, and if determined to be illegal, to order the return of the seized property.

3. The Snohomish County Superior Court has exclusive jurisdiction over all felonies occurring in Snohomish County, Art. IV, sec. 6, and concurrent jurisdiction with Snohomish County Courts of Limited Jurisdiction over all misdemeanors, R.C.W. 3.66.060.

Jurisdiction of City of Lakewood Municipal Court

4. The City of Lakewood Municipal Court has jurisdiction to hear cases involving violation of municipal ordinances and traffic infractions occurring within city boundaries. R.C.W. 3.50.020.

5. The City of Lakewood Municipal Court has no jurisdiction to hear any felony cases. *State v. Elgin, 118 Wn.2d 551, 555 (1992).*

6. The authority to issue criminal process is jurisdictional and is governed by statute and court rule. As courts of limited jurisdiction, a municipal court and a district court are bound by the same court rules, CrRLJ. A district court's authority to issue statewide process is limited by the jurisdictional requirement that it have "the authority to hear a particular case" for which

process is issued. R.C.W. 3.66.100(1). *State v. Davidson, 26 Wn.App. 623 (Div. I 1980).* This same jurisdictional limitation applies to municipal courts. R.C.W. 3.50.450; R.C.W. 2.20.030.

7. Arguably, a municipal court's authority has been expanded to grant authority for process to be issued for any offense "alleged to have occurred" within the county in which a city is situated, R.C.W. 2.20.030, but a municipal court's authority has not been expanded to allow process to be issued for crimes which have occurred in any other counties whether felonies or misdemeanors and over which the municipal court has no authority to hear. R.C.W. 3.66.100(1).

8. The authority of the Lakewood Municipal Court judge to issue this warrant for police to conduct this search in Snohomish County exceeded that court's authority which could extend only to crimes occurring in Pierce County.

9. The Lakewood Municipal Court had no jurisdiction to issue a search warrant (no. 15-30) for a business located in Snohomish County at 138111 Highway 99 Lynnwood, Washington. The warrant is invalid and the searches and seizures based on the invalid warrant are illegal.

10. The property seized was not contraband.

11. There are no pending criminal charges against the aggrieved persons in any court.

12. The aggrieved persons are entitled to immediate return of their property and an Order so providing shall enter.

Probable Cause

13. In order to establish probable cause for issuance of a search warrant, the affiant must establish that at the time of the search there are sufficient facts to show that evidence relating to the alleged crime will be found on the premises. *State v. Lyons, 174 Wn.2d 354 (2012).*

14. In this case it was necessary that the affiant show that Su Jones actually owned the business in Snohomish County at the time of the search. The affiant erroneously represented to the search warrant judge that this was so but the averment was false. Since Ms. Jones had sold

the business nearly a year earlier, there was no temporal connection to justify the issuance of the warrant on this false representation alone.

15. There was no probable cause before the Lakewood Municipal Court judge to believe that evidence of a felony alleged to have occurred in Pierce County would be found at a business in Snohomish County.

16. The warrant is invalid for lack of probable cause and the searches and seizures based on the invalid warrant are illegal.

17. Even if this Court were to find that probable cause was established to believe a crime in Snohomish County had occurred, for the reasons stated the Lakewood Municipal Court Judge had neither authority nor jurisdiction to issue such a warrant.

18. The aggrieved persons are entitled to immediate return of their property and an Order so providing shall issue. CrR 2.3(e).

Other Issues

19. Reckless Misstatement. The aggrieved parties have made a preliminary showing that the false averment indicating that ownership by Su Jones of King's was current information was made recklessly which would entitle them to a *Franks [v. Delaware]* hearing. The Court reserves ruling on this issue.

20. Staleness. The aggrieved parties have made a sufficient showing that the information provided in support of the warrant was stale. They are entitled to an evidentiary hearing on this issue.

21. Scope. The aggrieved parties have made a sufficient showing that in executing the search warrant, City of Lakewood Police Officers exceeded their authority under the terms of the warrant. They are entitled to an evidentiary hearing on this issue.

ORDERS

IT IS HEREBY ORDERED ADJUDGED AND DECREED:

1. The Order Directing Return of Property Illegally Seized from 13811 Highway 99 Lynnwood, Washington entered April 10, 2015 is CONFIRMED.
2. The Court having previously denied the City of Lakewood's oral motion to stay the issuance of the Order Directing Return of Property, and having previously entered on April 15, 2015 written orders denying the motion filed by the Pierce County Prosecutor for an order shortening time and motion for reconsideration [copies of which are attached hereto], those orders are hereby CONFIRMED.
3. There being no authority in CrR 2.3(e) and no showing that any person or entity has superior claim to the property than the aggrieved persons, the City of Lakewood's motion for a stay of the Court's Order of April 10 is DENIED.
4. The foregoing Orders do not preclude the exercise of prosecutorial discretion by an appropriate charging authority in deciding whether or not to bring criminal charges against anyone. The foregoing Orders also do not provide justification for not obeying the Court's ruling that the property must be returned forthwith to the aggrieved parties.

DONE IN OPEN COURT THIS 22nd DAY OF April, 2015

George N. Bowden

THE HONORABLE GEORGE N. BOWDEN

Presented by:

Tom Conom

TOM P. CONOM WSBA #5581
Attorney for the Aggrieved Parties

Copy received and approved as to form:

WSBA # 32239

M. Kaser, Atty. for City Lakewood.

APPENDIX C

15-1-00881-3 45192881 ORRE 07-31-15

FILED
DEPT. 20
IN OPEN COURT
JUL 29 2015
PIERCE COUNTY, Clerk
By _____
DEPUTY

7/31/2015 7861 0185

ORIGINAL

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, and SU HYON JONES, Defendant.	No. 15-1-00881-3 ORDER ON SUPPRESSION HEARING

THIS MATTER having come on regularly before the above-entitled Court, the State being represented by Neil Horibe, Defendant being represented by Geoffrey Cross, Defendant being present and the Court having considered the arguments and briefing of counsel, now, therefore, it is hereby,

ORDERED, ADJUDGED and DECREED that There was not enough factual basis to search defendant's house in Federal Way and the evidence is suppressed as there was not proper establishment of nexus pursuant to state v ~~[illegible]~~ Thein

LAW OFFICES OF
GEOFFREY C. CROSS, P.S., INC.
901 SO. I STREET #202
TACOMA, WASHINGTON 98405
TELEPHONE: (253) 272-8888
FAX: (253) 572-8848
G.CROSS1040@YAHOO.COM

The only evidence suppressed is that seized from her home

DONE IN OPEN COURT this 29th day of July 2015.

JUDGE Kitty-Ann van Doorninck

Presented by:

[redacted] Notice Received; Objects

GEOFFREY C. CROSS, WSB #3089
Attorney for Defendant

Neil Horibe, WSB #36724
Prosecuting Attorney

FILED
DEPT. 20
IN OPEN COURT
JUL 29 2015
PIERCE COUNTY, Clerk
By DEPUTY

LAW OFFICES OF
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7/31/2015 T861 0136

APPENDIX D

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& pay taxes

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ister my business

account

its

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a form or publication

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Back to search results

If "Non-revenue" appears after Tax Registration Number, the account is not registered with the Department of Revenue. However, it may be registered with other agencies in the state.

Washington State Department of Revenue
State Business Records Database Detail

TAX REGISTRATION NO : 601793318
UBI : 601793318
ENTITY NAME : JONES SU H
BUSINESS NAME : KINGS MASSAGE CLINIC

ACCOUNT OPENED :5/1/2012 12:00:00 AM
ACCOUNT CLOSED : 5/30/2014 12:00:00 AM

MAILING ADDRESS :
13811 HIGHWAY 99
LYNNWOOD, WA 98087-1723

BUSINESS LOCATION :
13811 HIGHWAY 99
LYNNWOOD, WA 98087-1723

ENTITY TYPE : SOLE PROPRIETOR

RESELLER PERMIT NO: N/A
PERMIT EFFECTIVE: N/A
PERMIT EXPIRES: N/A

NAICS CODE : 812199
NAICS DEFINITION OTHER PERSONAL CARE SERVICES

FOR NON-COMMERCIAL USE ONLY

9/21/2015 3:22 PM

e need your help.

ke a 30 sec survey .

Help us improve! Take our Survey

APPENDIX E

COPY

IN THE LAKEWOOD MUNICIPAL COURT OF THE STATE OF WASHINGTON IN THE COUNTY OF PIERCE

SEARCH WARRANT

STATE OF WASHINGTON

NO: 15-30

COUNTY OF PIERCE

The State of Washington: To any Police Officer in said State:

WHEREAS, sworn application having been made before me by Detective Ryan Larson, a commissioned Law Enforcement Officer of the Lakewood Police Department, and full consideration having been given to the matter set forth herein, the Court hereby FINDS:

(a) There is probable cause for belief that Promoting Prostitution in the Second Degree RCW 9A.88.080was committed.

(b) There is probable cause for belief that evidence, to include but not limited to;

1) Condoms, lubricants, and sexual devices;

2) U.S. currency obtained from prostitution;

3) Indicia of occupancy, residency, and/or ownership of the premises described in he search warrant, including but not limited to utility bills, telephone bills, canceled envelops, registration certificates, and/or keys;

4) Computers, digital media, cameras, digital/ printed images, DVD's, VHS tapes, disks, diskettes, or any other electronic memory storage devices that may show documentation relating to the practice of prostitution, and commercial sex acts;

5) Books, records, receipts, bank statements, money drafts, letters of credit, passbooks, bank checks, high value items, and any other items evidencing the obtaining, secreting, transfer, and/ or concealment and/ or expenditure of money;

6) Contraband, fruits of the crime, or things otherwise criminally possessed;

7) Travel receipts and tickets for any mode of transportation, to include rental cars and hotel keys/ key cards;

8) Letters, cards, notes, email printouts relating to transportation, sexual exploitation, or which would help identify unidentified males or females;

9) Customer lists, prostitution ledgers, also known as "Trick Books", and notes and documents with identifying names, telephone numbers, and/ or e-mail addresses of possible prostitution victims, offenders, and customers;

11) Clothing, furnishings, and other items visible in photographs placed in escort advertisements;

12) Firearms and other weapons;

13) Keys and documentation providing access or locations for safes, safe deposit boxes, and storage units.

(a) That said evidence is located in the listed locations/ vehicle(s):

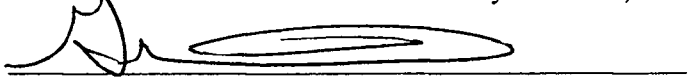
1. *A BUSINESS NAMED KING'S MASSAGE CLINIC AT THE ADDRESS OF 13811 Highway 99 Lynnwood, Wa. 98087. The business is single story structure, that is beige in color, with light colored trim. The business street numbers 13811are mounted on the side of the building that faces Highway 99. There is also a sign for the business next to the building, identifying it as such.*

NOW, THEREFORE, it is HEREBY ORDERED that:

In the name of the State of Washington, you are commanded that within ten days from this date, with necessary and proper assistance you search said residence to include vehicles at the residence and then and there diligently search for said evidence, and any other, and if same or evidence material to the investigation or prosecution of said felony or any part thereof, be found on such search, bring the same forthwith before me, to be disposed of according to law.

A copy of this warrant shall be served upon the person or persons found in said residence/vehicle, or a copy of this warrant shall be posted upon any conspicuous place in or on said residence/vehicle, place or thing, and a copy of this warrant and inventory shall be returned to the undersigned Judge or his agent promptly after execution. As this is a joint investigation being conducted by both federal and local law enforcement agencies, Federal agents, including agents of HSI, are requested to assist with the execution of the warrant.

GIVEN UNDER MY HAND this 25th day of March, 2015.



Lakewood Municipal Court Judge

APPENDIX F

IN THE LAKEWOOD MUNICIPAL COURT OF THE STATE OF WASHINGTON IN THE COUNTY OF PIERCE

COMPLAINT FOR SEARCH WARRANT (AFFIDAVIT)

STATE OF WASHINGTON)

) NO: 15-30

COUNTY OF PIERCE)

COMES NOW DETECTIVE RYAN LARSON #55 LD04033, who being first duly sworn on oath complains and says: That on August 28, 2014 to the present, in Pierce County, Washington, a felony to-wit: Promoting Prostitution in the Second Degree RCW 9A.88.080, was committed by the act, procurement or omission of another, and that the following evidence to-wit:

1) Condoms, lubricants, and sexual devices;

2) U.S. currency obtained from prostitution;

3) Indicia of occupancy, residency, and/or ownership of the premises described in he search warrant, including but not limited to utility bills, telephone bills, canceled envelops, registration certificates, and/or keys;

4) Computers, digital media, cameras, digital/ printed images, DVD's, VHS tapes, disks, diskettes, or any other electronic memory storage devices that may show documentation relating to the practice of prostitution, and commercial sex acts;

5) Books, records, receipts, bank statements, money drafts, letters of credit, passbooks, bank checks, high value items, and any other items evidencing the obtaining, secreting, transfer, and/ or concealment and/ or expenditure of money;

6) Contraband, fruits of the crime, or things otherwise criminally possessed;

7) Travel receipts and tickets for any mode of transportation, to include rental cars and hotel keys/ key cards;

8) Letters, cards, notes, email printouts relating to transportation, sexual exploitation, or which would help identify unidentified males or females;

9) Customer lists, prostitution ledgers, also known as "Trick Books", and notes and documents with identifying names, telephone numbers, and/ or e-mail addresses of possible prostitution victims, offenders, and customers;

10) Bail and bond records;

11) Clothing, furnishings, and other items visible in photographs placed in escort advertisements;

12) Firearms and other weapons;

13) Keys and documentation providing access or locations for safes, safe deposit boxes, and storage units.

(a) *ALL OF WHICH WILL BE EVIDENCE OF THE OFFENSE OF:* Promoting Prostitution in the Second Degree RCW 9A.88.080. That the above material is necessary to the investigation and/or prosecution of the above described felony for the following reasons: As evidence of the crime of Promoting Prostitution in the Second Degree RCW 9A.88.080, *AND THAT EVIDENCE WILL BE FOUND INSIDE THE FOLLOWING LOCATION(S)/ VEHICLE(S);*

1. *A BUSINESS NAMED KING'S MASSAGE CLINIC AT THE ADDRESS OF 13811 Highway 99 Lynnwood, Wa. 98087. The business is single story structure, that is beige in color, with light colored trim. The business street numbers 13811are mounted on the side of the building that faces Highway 99. There is also a sign for the business next to the building, identifying it as such.*

AFFIANT'S BACKGROUND AND EXPERIENCE:

Your affiant has been a Detective with the Lakewood Police Department for over 10 years. Your affiant was previously employed as a detective with the Pierce County Sheriff's Department and was a deputy with the Pierce County Sheriff's department for over 5 years. Your affiant was trained in investigations by the Pierce County Sheriff's Department. Your affiant has received over 500 hours of formal investigative training with the Washington State Criminal Justice Training Commission, the Washington State Attorney General's Office and the Federal Bureau of Investigations. Your affiant has investigated well over 300 felony cases and interviewed numerous subjects during the course of these investigations as well as other complex investigations. Your affiant's experience and training allow your affiant to make accurate and reliable assessments of evidence and circumstances concerning several types of crimes. Your affiant is a member of the South Sound Child Exploitation Task Force, the purpose of which is to

investigate Human Trafficking cases, and as such has received experience and training in this regard.

Affiant's belief is based upon the following facts and circumstances:

(This investigation was initiated by Detective Barnard. See his below statement for initial details)

On 08/28/14 at approximately 1600 hours I assisted Fife PD with a compliance check at Wellness Clinic 4500 Pacific HWY S Suite A&E. As I entered the building I noticed there was a locked door inside the lobby with a video camera above the door. There was a door bell on the side the door and a sign that said ring bell for service. I rang the doorbell and I was greeted by an Asian female approximately 40-45 years old, thin build approximately 5'02" and 120LBS. The Asian female told me her name was Cindy and informed me it was $70 for a massage.

Cindy lead me to a massage room had me disrobe. Cindy took me to another room where she gave me a table shower. Cindy washed my back first then she had me roll over to me front. Cindy passed her hands by my genital area several times, but she did not offer any sexual acts. Once the shower was completed Cindy had me sit in the sauna by myself for a couple minutes. Cindy returned and led me back to the massage room. During the massage Cindy massaged my back first but it felt as if she did not know what she was doing. Cindy work her way down to my buttocks and she would reach up between my legs and her hands brushed past my genital area. Cindy did this several times. Cindy had me roll over onto my back and she instantly grabbed my penis and began to massage it. I removed Cindy hands from my penis and asked her how much. Cindy said there was no extra charge, which made me believe a hand job was included in the price of the massage. I asked Cindy how much extra it would cost for full sex. Cindy said she doesn't provide full sex or blow jobs. Cindy explained her boss would fire her for that. Cindy told me she works 7 days a week for 0900 hours until 2200 hours. Cindy said she will only be in town for one more month. Cindy explained she works two months straight without a day off and then she gets a whole month off. I paid Cindy $90 in investigative founds to include tip.

(End of Barnard's statement)

I'm a Police Detective with the Lakewood Police Department, and I am assigned to the Special Operations Unit working narcotics and vice related investigations. During my time in the unit I've attended numerous trainings regarding all aspects of narcotics and vice operations and transactions. I have taken part, or been the lead investigator for these types of cases at both the State and Federal levels. For the last six years I've also been jointly assigned to the FBI South Sound Child Exploitation Task Force. The goal of the task force is to recover juveniles that have been forced into prostitution and build prosecutable cases against those responsible for forcing them into prostitution. During my time with the task force I have attended numerous specialized trainings regarding prostitution and the unique relationship between pimps and their victims/ prostitutes. I

have also taken part in numerous prostitution operations in the past. During these operations I've conducted several investigations that led to the recovery of prostitution victims, and the successful convictions of their pimps at the State and Federal levels. In addition to working on the FBI Task Force, I've also been working on a Homeland Security Investigations Task Force for the last 2 years. The Task Force works a wide variety of cases, ranging from human trafficking, drugs, and weapons.

On 10-10-14 I began assisting with this investigation. At 1300 hours I entered the business in an undercover capacity to conduct another compliance check, while using the following $150 Visa Vanilla Gift Card that I had purchased for the investigation:

-4847 3561 6750 0458
-expiration 08/21
-security pin 946.

Upon entering I was greeted by an a/f in her 40's 5'0' medium build. She escorted me to a massage room, and advised me that it cost $70 for an hour massage. I agreed and handed her the above Visa card. She then advised me to get undressed, and departed. A few moments later a second a/f also in her 40's 5'3" medium build, entered and told me that there would be an additional $3.00 charge on my card. I said ok, and she left to run it.

The female that ran my card returned, and was the one that gave me my massage. Prior to beginning she escorted me to a shower room, and bathed me. She then had me sit in a sauna room for about 10 minutes, before taking me back to the massage room. The woman identified herself as "Lisa", and began by massaging my back and legs. In conversation she told me that she was originally from Korea, but living in California. She stated that she just got her, and would work every day for two months before getting vacation and returning to California. After around 20 minutes she had me roll over and began massaging my chest, head, and legs. After about 10 minutes she began in an attempt to stroke my penis and testicles. Prior to beginning she at no time asked for additional money. Therefore, the sex act was obviously part of the $70 massage. I had her stop, and she then finished the massage. I then got dressed and walked out towards the door. As I left I noticed several additional massage rooms, and overheard several other customers. Prior to leaving I used the card again to give Lisa a $40 tip. (NOTE) Both the receipts from the transactions will be placed into Property, along with a copy of the Visa card.

After leaving I was sitting in my vehicle writing down some notes, when I saw a newer Lexus Suv (WA# AJT1383) pull in front of the business and park. The back door to the business then opened, and I saw Lisa walk out to greet the driver. The driver was an a/f in her 60's 5'0" with a small build. The two women then removed water, food, paper towels, and other domestic type products from the Lexus and take them inside the business. To me it appeared that some of the women working at the business must be living there, and the older a/f was possibly in charge and bringing basic living supplies.

On 10-16-14 I looked up the account history for the Visa card used at the business on www.vanillavisa.com. The information is as follows:

Account History

Vanilla® Visa® Gift Card Customer Service
PO Box 826 Fortson, GA 31808
1-800-571-1376

(1) 10/12/2014 07:33 PM__WELLNESS CLINIC
FIFE , WA
Reference:
160100 POSPreAuthCompletion:Checking:NoAccount __$73.00_

(2) 10/12/2014 07:33 PM__WELLNESS CLINIC
FIFE , WA
Reference:
160100 POSPreAuthCompletion:Checking:NoAccount __$43.00_

I was also able to confirm through DOL that the driver/ owner of WA# AJT1383 is Su H. Jones. A check through Homeland Security Investigations revealed that Jones has prostitution history dating back to 1995 in Ohio.

On 11-10-14 at 1800 hours I conducted a compliance check at the listed location. As I pulled in I observed the same Lexus Suv parked out front (WA#AJT1383). Upon entering the business and ringing the doorbell, I was greeted by the same woman that gave me a massage the time before. However, last time she stated her name was "Lisa", but this time she said it was "Anna".

Anna escorted me to a massage room, and collected my $70 for an hour massage. She then escorted me to a shower room, and afterwards to a sauna room for 10 minutes. Afterwards she brought me back to the massage room, and began massaging my back and legs. After around 30 minutes she had me roll over, and she began massaging my front side. After 5 minutes or so she began to rub my penis. I asked her if I could get a blow-job or have sex with her, and she said no. Anna then attempted to continue rubbing my penis, but I had her stop. Anna then took me back to the shower room to rinse off the massage oil, and then back to the massage room so I could get dressed. Upon leaving I gave her a $30 tip and departed. The Lexus Suv was still parked out front as I left.

(Detective Barnard Statement)

On 01/21/15 at approximately 1130 hours I conducted a compliance check at the above listed address. As I pulled into a parking stall I noticed vehicle WA AJT1383 was parked in front of the main door to the building. The vehicle was 2013 Lexus registered

to Su Jones. I was greeted at the interior door by Cindy, who was the same female who provided my massage back on 08/28/14. Cindy escorted me to a massage room. She told me it would be $70 for an hour long message. I handed Cindy the money and she exited the room so I could disrobe. Cindy entered the room a short time later and told me a different female would give me my massage.

A short time later an Asian female in her late 30's, small build, approximately 5'00", 100lbs, black and brown eyes entered the room. She told me her name was Tina. Tina led me to the shower and washed my back and legs first. She then had me roll over and she washed my chest, arms and legs. While washing my front Tina began to wash my genitals. During this time she stroked my penis a couple times. Tina stopped, rinsed me off and escorted me to the sauna. Tina had me sit in the sauna for approximately 2 minutes and she escorted me back to the massage room. Tina massaged my back first and she then had me roll over. Once I was on my back Tina instantly started message my penis, without discuss a price. This lead me to believe a hand job was included in the price of the massage. I had Tina stop and I asked her how much for sex. Tina kept telling me, "no, no, no" we could not have sex, while she kept trying to push me back on the table so she could continue to massage my penis. At that point I ended the massage. I provided Tina an additional $20 tip.

As I was leaving I observed an older Asian female possibly in her 60, gray hair and small build. She opened the front and allowed a patron into the business. She escorted the customer to a massage room. She then walked somewhere in the back of the building. The A/F was nicely dressed wearing a white silk blouse and gray slacks. Her attire did not appear to be what a normal masseuse would wear. I returned to the Lakewood Police Department and Detective Larson showed me a DOL picture of Su Jones. Through the DOL photograph I was able to confirm the A/F was Su Jones.

(End of Statement)

In reviewing the information from backpage.com in reference to the ads, the following information was obtained about the person responsible for paying and posting the ads:

User: Joon Yoon

1536 E Ruddock St
Covina, Ca 91724
Jjmedia9026@yahoo.com
(626)221-4806

The user account was created on 10-23-12, and there were several hundreds of ads that had been paid for. It is important to note that in several of the ads, the females pictured appeared to be in their mid-teens.

On 2-25-15 at 1600 hours I conducted another compliance check at the Wellness massage Clinic, in an undercover capacity. Upon arriving I noticed Jones' Lexus Suv

parked out front. I then entered the business, and after ringing the interior doorbell, Jones' answered the door. She then escorted me to a massage room, and asked for my $70 payment for an hour massage. I provided her with a Visa gift-card I had just purchased for the massage. The card number is 4358807490905773 exp 01/23. Jones ran the card, and brought me back a receipt to sign. Jones then left.

A few moments later a second a/f 5'2" 120lbs 45-55 years old, entered the room. The woman then began massaging my back, and identified herself as "Anna" from Korea. I told her that I thought the older woman was going to give me a massage, referring to Jones. The woman laughed, and stated that she doesn't give massages. She identified the woman as "SU", and stated that she is the manager.(NOTE) Su is Jones' first name. The woman massaged my back, and then had me roll over. She briefly massaged my front side, and then began to stroke my penis. I had her stop, at which time she finished my massage. I then got dressed, and gave her a $50 tip from the Visa card.

As I was departing I noticed a door open to a room adjacent to the front counter. Inside I saw a full size bed with a woman lying in it, and various pieces of personal items. From this it appeared that woman may actually be living at the location, and are possibly victims of human trafficking. The card used at the business, along with the 2 receipts, will be placed into Property as evidence.

Surveillance Notes

Since January of 2015 surveillance has tracked Jones on several occasions traveling to and from the business to her residence at 33401 42 Ave Sw in Federal Way, in her listed Lexus Suv. It appears that Jones lives at the residence by herself. Jones' daily timeline looks like this:

-Shortly after 0900 hours she leaves her residence, and travels to the Wellness Clinic;
-Shortly after 2200 hours the business "Open" sign goes off, and Jones departs to her residence. The other females that work inside don't leave. It appears they live at the business.

Most recently on 2-26-15 at 2200 hours Surveillance Officers conducted surveillance at the business. Like usual, the "Open" sign went off around 2215 hours and Jones departed to her residence in her Lexus. No one else was seen leaving the business. Jones was then followed directly to her residence, where she used a garage door opener to gain access into the residence. Jones then remained there.

On 2-27-15 I was granted a search warrant for the Wellness Clinic, along with Su's residence and vehicle. The warrant was executed on 3-2-15 at 1930 hours by the Lakewood Special Operations Unit, along with Homeland Security Agents Schwab, Berg, and Jung.

Upon arriving at the business Su's vehicle was parked out front as usual. Officers then entered the business, and detained the following individuals who were all in separate rooms where they appeared to live:

1. Su Jones;

2. Zhen S. Zordahl;

3. Yan Lin.

Once the business was secure, Officers began to search as Jung and I interviewed the three women separately. The women all spoke limited English, but were fluent in Korean. Therefore, Jung was used to assist with the interviews, as he is Korean himself and fluent in the language.. The first to be interviewed was Su. Prior to the interview Jung advised her of her Rights, which she stated she understood and agreed to give a statement. Su confirmed that she is the owner of the business, and the only one that is licensed to do massages. Su claimed that the other women didn't do massages, but merely helped with cleaning and other simple tasks. I asked Su if any of the women lived at the business, due to there being multiple beds and personal items in the rooms, and she said no. I explained to her the nature of our investigation, and the fact that the other women were giving massages too, but she continued to deny it. I also explained to her how the women were providing prostitution services, and she again angrily denied it. The interviewed lasted about ten minutes, and then Su was transported to the PC Jail.

We next interviewed Zhen. (NOTE) Zhen is the woman that identified herself as "ANNA", and committed the prostitution acts during the last compliance check. Prior to beginning Jung advised her of her Rights, which she stated she understood and agreed to give a statement. Zhen stated that Su is the owner of the business, and that she has been working for her doing massages for the last 1-2 months. I asked Zhen if she had a massage license, and she said no. She stated that Su doesn't give massages. Zhen admitted to giving "Hand-jobs" to the clients with Su's knowledge, after initially denying it. Zhen advised us that Su is well aware of the prostitution activities, and had told her to be cautious, as not to get in any trouble. Zhen stated that just she and Yan work there for Su, and both live at the business. Zhen stated that Su goes home each night. I asked her how much she works, and she stated seven days a week. At the completion of two months she is supposed to go to California to work at another massage business. The interviewed lasted about 15 minutes. Afterwards Zhen was transported to the Fife Jail. (NOTE) A check of Zhen's criminal history revealed that she had prostitution related history in Maryland, and New York.

We lastly interviewed Yan. Prior to beginning Jung advised her of her Rights, which she stated she understood and agreed to give a statement. Yan stated that she has worked at the business for Su for about a month giving massages. She admitted that she lives at the business, and also gives "Hand-Jobs" to clients during the massages. During the month that she has worked there, she claimed to have made over $4,000. Yan stated

that she doesn't have a massage license. The interview lasted approximately ten minutes, and Yan was then released pending possible charges.

While the interviews were being conducted, Officers recovered the following items of evidence from the business:

1. Ledgers;
2. Bank bag with receipts, and the name Su Jones on it;
3. U.S. currency $390;
4. U.S. currency $3,972;
5. U.S. currency $330;
6. Debit card for Yan;
7. D&C for Su;
8. Ledger;
9. I.R.S. letter for a second massage business called King's Massage;
10. Bank documents in Su Jones' name for the business;
11. Wells Fargo Check book belonging to Su Jones.

(NOTE) No items of evidence were recovered from Su's vehicle.

Once the search was complete Officers responded to Su's residence at 33401 42 Ave Sw in Federal Way to execute the warrant there. Upon arrival the residence was secured, and no one was home. The following items of evidence were retained:

12. Financial documents belonging to Su from various banks to include Wells Fargo, Bank of America, BBCN, and Chase Bank;
13. U.S. currency $220;
14. A Bank of America check book.

All the items from both locations were booked into Property as evidence.

After executing the search warrant at Jones' business and residence, I did some follow up investigation into the King's Massage Parlor in Lynnwood, Wa. (NOTE) Financial information connecting Jones to the King's Massage was located during the searches. I began by searching the internet, and came across the following:

King's Suana Massage
13811 Highway 99
Lynnwood, Wa. 98087
(425)743-6183

On 3-12-15 I searched Backpage.com under "Body rubs" and located ad # 15459826; the ad was for the King's Massage, and stated "Nice Place—Sexy Asian girls—beautiful touch---Vip Treatment". The ad also had several pictures of young Asian women dressed provocatively. A copy of the ad will be placed into Property as evidence. As I continued searching the internet I came across the website

Adultsearch.com. The site had a section that covered "Erotic-Massage" parlors, and King's Massage was listed there. There were six reviews that appear to be from clients that had received services at King's. In the reviews the clients confirm that the girls provide "full-service", which means actual sexual intercourse. A copy of the information from the website will be placed into Property.

Later that same day Detective Barnard and I drove to Lynnwood to conduct a compliance check, and to see if Jones or any of the girls from the Fife location were there. We arrived at approximately 1845 hours, and I went inside first. Upon entering I was greeted by an a/f approximately 60-70 years of age. I told her that I wanted an hour massage, and she escorted me to a private room. I asked her if they had pretty girls like the pictures in the ad, and she said yes. She added that she didn't give the massages, she just ran the front desk. The woman then took $60 for the massage from me, and told me to undress. She then left the room. A few moments later a second a/f approximately 40 y/o wearing a tight, short dress that exposed the bottom of her buttocks entered the room. She identified herself as "Lucy", from Korea. She went on to tell me that she had just gotten here two days ago from San Antonio, Tx. (NOTE) The women at the Fife location were also from Korea, which is not normal. Almost every woman from other massage parlors we have investigated were from China.

Lucy began massaging my back and legs, which lasted about 15 minutes. She then told me to roll over, because there was only so much she could do with me on my stomach. After rolling over, she asked me what I wanted. I said everything and she said it would cost an additional $140 for sex, and $60 for a hand-job. I told her I didn't have $140, so a hand-job was fine. She then had me pay her an extra $60, and left the room to take the money somewhere. Upon returning she began giving me a normal massage, but then touched my penis. I told her to stop because I had changed my mind, and she complied. Lucy then finished my massage, and afterwards I got dressed. I then gave her a $20 tip, and she escorted me to the front door. As I was walking out, the older a/f gave me a bottle of water and told me how handsome I was. As I turned away to walk out the door, she slapped me on my buttocks and laughed.

(Barnard's Statement)

On 03/12/15 I assisted Detective Larson with a compliance check at Kings Massage in Lynnwood WA, 13811WA-99. I entered the business at approximately 1845 hours in an undercover capacity. I entered the building through the front door and once I was inside the lobby I noticed there was a locked door with a security camera above the door. After a few minutes an older Asian female, large build approximately 50 to 60yo greeted and led me into the business. She explained to me she was the manager and not the masseuse. She told me it was $60 for an hour long massage. I agreed and asked her if the girls were pretty. She responded by telling me they were very pretty. She collected my $60 and led me to a massage room. She told me to disrobe and my masseuse would be along shortly.

I prepared for the massage and laid face down on the table. A short time later the masseuse entered the room. She told me her name was Lee. Lee was wearing stiletto heels and a black tight fitting evening dress with a low cut back. Lee dress was hiked up so high I could see she was wearing a black thong. Lee gave me a brief massage, while we waited for the shower room to be empty. Lee spoke broken English but she appeared to be able to understand English with no problems. Lee began to rub my back and it appeared she did not know how to give a legitimate massage. Lee climbed up on the table and sat on my back. Lee stopped massaging my back and asked me what I wanted. At this pointed I played dumb and told her I wanted a massage, knowing she was inquiring what type of sexual services I wanted. Lee walked out of the room in a huff. At this point Lee seemed very impatient and only interested in providing a sex act. Lee returned a short time later and escorted me to the shower. Lee washed my back first and then she had me roll over. Once I was on my back Lee washed me head to toe and she paused in the middle to briefly massage my penis. Lee rinsed me off and led me back to the massage room. Lee covered me with towels and again left the room.

Lee returned a short time later removed the towels and briefly massaged my back and legs. Lee again was very impatient and it appeared to me she was not interested in giving me a massage. Lee had me roll and asked me what I wanted. I asked her what was available. Lee explained she could provide me with a nude body rub and finish with a blowjob (oral sex) for $100. I asked Lee if we could have sex. Lee agreed and told me that would cost $140. I explained to Lee I did not have that much money. Lee asked me how much money I had. I told her I had an extra $50. Lee told me for $50 she would give me a hand job at the end of the massage. Lee had me roll back over on to my stomach and she left the room. Lee returned a short time later and she quickly ran her hands across my back and told me to roll. Lee requested the $50. I had Lee the $50 and she exited the room.

Lee returned a short time later with a box of tissues and baby oil. Lee told me to lie on my back and she quickly rubbed baby oil on my penis and she began to massage penis. At that time I stopped the massage and explained to Lee I was nervous and change my mind. I told her I wanted a normal massage. Lee said she would give me a normal massage after she makes me "cum." Lee became very aggressive and tried to force me down on the table with one hand while she tried to massage my penis. I had to push Lee off my penis and again explained to her I wanted a normal massage. Lee exited the room and returned a short time later. She rolled me over again and initially aggressively grabbed at my penis. Lee told me, "You have to cum". I pushed Lee away and told her no and again asked for a normal massage. Lee again left the room. Each to Lee left the room it appeared to me she conversing with possibly the manager on how to deal with me rejecting the sex act. Lee returned again and pleaded with to allow her to give me a hand job. Lee told me she has to make me "cum" or she can no longer work at the massage parlor, which led me to believe the manager was telling her to do this. I explained to Lee I was not interested in a hand job and I began to get dressed. Lee exited the room again. This time I could hear Lee talk with who I assumed was the manager. There were speaking in their native language so I could not understand what they were saying. Lee returned a short time late and gave me back my $50. Lee said since she could not make

me "cum" she was not allowed to keep the money. At that point Lee asked me if I was the "Police." I told her I was not and told her she could keep the $50 as a tip. Lee refused to keep the money. At that time I exited the building.

During my entire contact with Lee she seemed very business-like as if she only wanted to provide the sex act and quickly get me out of the building. Lee demeanor led me to believe she is possible a victim of human trafficking and possible is being forced to work in the business.

During this operation I spent $60 of Detective Larson's investigative funds.

(End of Statement)

As I continued to look into the King's Massage, I was able to confirm through the Washington State Department of Revenue State Business Records Database that Jones has been the Sole Proprietor of the business since 5-1-12 to the present. (Tax registration # 601793318) With this information along with the financial information retained during the previous search warrant, there is two independent pieces of information confirming that Jones is an owner/ manager of the Wellness Clinic in Fife, along with the King's Massage Clinic in Lynnwood.

On 3-25-14 at approximately 1900 hours Detective Barnard and I conducted a second compliance check of the King's Massage. Our mission was to identify additional individuals involved in prostitution activities; along with attempting to see if maybe the women we encountered on the first visit were just rogue employees doing prostitution on their own without the management's knowledge.

Upon entering I was greeted by the same older a/f that this time identified herself as "Young". She escorted me to room #1, and took $60 from me for an hour massage. She then told me to undress, and left the room. A few minutes later the same a/f that gave me a massage the first time entered the room. Again she was wearing a very skimpy tight dress. She asked me if I had been there before, as she obviously didn't remember me, and I said yes. After a quick shower, she began massaging my back and legs. I asked her what her name was, and this time she said "Lucky" from Korea. After approximately 15 minutes of a horrible massage, she asked me what else I wanted and had me role over. I played stupid, and told her that her massage was very good. The woman then began stroking my penis, and said that a hand-job was $40. I asked her if we could actually have sex, and she said yes for $140. I asked her if she had condoms, and she said yes. I told her that I didn't have extra money today, and that I would come back to have sex with her in a couple days. For now I just wanted her to finish my massage. Her demeanor then changed, as she appeared upset that I wasn't going to pay extra for sexual services. She then quickly finished up my massage, and I got dressed.

I gave her a $40 tip, and she told me that Young would escort me out because she had another client. As I walked into the hallway, I saw Young exit a room that appeared to have a bed and other living type items in it. I also heard what sounded like additional

Asian women talking behind a closed door at the opposite end of the hallway. Young then escorted me to the exit, and told me to come back because she had a total of 6 women that worked there. Young went on to tell me that three work at a time, and every two days they rotate.

(Barnard's Statement)

On 03/24/15 at approximately 1900 hours Detective Larson and I conducted a second compliance check at Kings Massage. I was greeted at the door by the same elderly Asian female named Young. Young told me it would be $60 for an hour long massage. During my conversation with Young I could smell a strong odor of intoxicating beverages on her breath and noticed that her speech was slurred. She escorted me to room #3 and collected my $60. Young told me to disrobe and she provided me with a towel to cover myself. A few minutes later Lee entered the room. I immediately recognized Lee as the same female who gave me my massage last time. Lee was wearing the exact same outfit from the last massage.

Lee asked me if I have been at the massage parlor before. I told her no. Lee escorted me to the shower room. Lee provided me with a full body wash and washed my back first, occasionally reaching between my legs and grabbing my genitalia. Lee hand me roll over and she washed my front and she would briefly massaged my penis. After the shower Lee lead me back to room #3 and began to massage my back. Lee briefly ran her hands across my back and removed the towel from my buttocks. Lee asked me what I wanted. Knowing that Lee was looking for me to ask for sex favor, I told her I just wanted a massage. Lee continued with the massage on my back. After a few minutes Lee again had me roll over and asked me what I wanted. At that time I asked her what I could get. Lee told me a hand-job. I asked her how much. Lee did not respond with a dollar amount but motioned with her fingers it would cost extra. I asked Lee if I could get more than a hand-job. Lee asked me how much I was willing to pay. I asked Lee how much did she wanted. At that point Lee told me to never mind she rolled me back over and continued to massage my back. Lee and I started a conversation. Lee told me she was from Seoul, Korea and she is trying to stay in the United States permanently. Lee told me she has to work 13 hours a day, six days a week. Lee told me Sunday is her only day off to do things for herself. Lee had me roll over again and she began massage my chest and legs. Lee grabbed my penis and asked me if I want a hand-job. I told her no and said I only wanted a massage. Lee agreed and completed my massage. As I was leaving Lee escorted me out of the building and I provided her with a $50 tip. During the entire operation I spent $110 in investigative funds.
(End of Statement)

CONCLUSION:

Based on all of the foregoing information your affiant verily believes that Promoting Prostitution in the Second Degree RCW 9A.88.080 was committed on 08-28-14 to the present. Your affiant believes that the listed location(s)/ vehicle(s):

1. *A BUSINESS NAMED KING'S MASSAGE CLINIC AT THE ADDRESS OF 13811 Highway 99 Lynnwood, Wa. 98087. The business is single story structure, that is beige in color, with light colored trim. The business street numbers 13811are mounted on the side of the building that faces Highway 99. There is also a sign for the business next to the building, identifying it as such.*

contains evidence to this crime. Your affiant therefore requests that a search warrant be issued immediately to search the listed locations/ vehicle. As this is a joint investigation being conducted by both federal and local law enforcement agencies, Federal agents, including agents of HSI, are requested to assist with the execution of the warrant.

SUBSCRIBED AND SWORN BEFORE ME THIS 25th Day of March, 2015

Detective Ryan Larson #LK55/ LD04033
Detective/Affiant

JUDGE, LAKEWOOD MUNICIPAL COURT