

No. 44166-7-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

WARREN L. LEMMON,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR MASON COUNTY

The Honorable Amber L. Finlay

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. In violation of Mr. Lemmon's constitutional right to privacy and security against unreasonable searches and seizures, the trial court admitted items seized from Mr. Lemmon's property pursuant to a search warrant that was not supported by probable cause, insofar as the affidavit in support of the warrant did not establish the reliability of a confidential informant.

2. The trial court applied the incorrect standard of review when it assessed the reliability of a confidential informant based on "the totality of the information set forth in the affidavit," a standard of review that is incompatible with the Washington Constitution.

3. To the extent it could be considered Findings of Fact and in the absence of substantial evidence in the record, the trial court erred in entering CrR 3.6 Conclusion of Law 4.

4. To the extent it could be considered Findings of Fact and in the absence of substantial evidence in the record, the trial court erred in entering CrR 3.6 Conclusion of Law 6, insofar as it provided, "The controlled buy, as set forth in the affidavit, provides sufficient basis for reliability of the informant."

5. To the extent it could be considered Findings of Fact and in the absence of substantial evidence in the record, the trial court erred in entering CrR 3.6 Conclusion of Law 7.

6. To the extent it could be considered Findings of Fact and in the absence of substantial evidence in the record, the trial court erred in entering CrR 3.6 Conclusion of Law 8.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. In Washington, when an affidavit in support of a search warrant is based on information from a confidential informant, the affidavit must satisfy the two-prong “*Aguilar-Spinelli*<sup>1</sup> test,” that is, it must establish both the credibility of the informant and the basis of the informant’s knowledge. By contrast, federal courts adhere to the “totality of the circumstances test,” wherein the two prongs are considerations only, and a strong showing on one prong can overcome a weak showing of the other prong. Here, when the court referred both to *Aguilar-Spinelli* and to the totality of the circumstances, did the court apply the wrong standard of review? (Assignment of Error 2)

2. When an affidavit in support of a search warrant is based on information from a confidential informant, the affidavit must set forth sufficient facts and circumstances for a magistrate to independently assess

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<sup>1</sup> *Spinelli v. United States*, 393 U.S. 410, 413, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969); *Aguilar v. Texas*, 378 U.S. 108, 114, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964).

the informant's reliability. Here, where the affidavit asserted an informant was reliable based on an improperly executed controlled buy, as well as conclusions and innocuous facts, rather than specific facts and circumstances, did the trial court err in ruling the affidavit established the informant's reliability and probable cause to search Mr. Lemmon's property? (Assignments of Error 1, 3, 4, 5, 6)

C. STATEMENT OF THE CASE

On August 10, 2011, Mason County Sheriff's Office Detective Steve Valley obtained a search warrant for Warren Lemmon's property, attached as Appendix A. CP 57-60. In his affidavit in support of the warrant, Detective Valley asserted a confidential informant reported he could purchase methamphetamine and heroin from Mr. Lemmon at his residence. CP 57. According to Detective Valley, this information was "corroborated by multiple reliable sources over the past year." CP 57. Detective Valley and other officers arranged a purported "controlled buy," where the informant was first searched for contraband, issued inventoried money, and dropped off at an intersection near Mr. Lemmon's residence with instructions to purchase a pre-determined quantity of methamphetamine from Mr. Lemmon. CP 57-58. According to the affidavit, however, officers could not maintain constant surveillance of the confidential informant "due to the rural setting and location of his



residence.” CP 58. Some time later, the confidential informant returned to the intersection, produced methamphetamine he allegedly purchased from Mr. Lemmon, and gave a description of Mr. Lemmon’s property. CP 58.

Detective Valley also asserted the informant had prior felony convictions for theft, possession of stolen property, and felony possession of marijuana, he previously had provided information about illegal activity that resulted in “several arrests and felony charges,” he made statements against his penal interest, he had extensive knowledge of illegal drugs, and he was motivated by the opportunity to receive favorable treatment in charges pending against him. CP 58-59.

On August 15, 2011, officers executed the search warrant for Mr. Lemmon’s property and seized items that resulted in charges against him of possession with intent to deliver a controlled substance, in violation of RCW 69.50.401(1), and unlawful possession of a controlled substance, in violation of RCW 69.50.4013(1).

Mr. Lemmon moved to suppress the seized items, pursuant to CrR 3.6, on the grounds the search warrant affidavit did not establish probable cause; there was insufficient evidence to establish the reliability of the confidential informant, and the alleged “controlled buy” was not properly executed because the officers did not maintain surveillance on the

informant due to the alleged “rural setting” of Mr. Lemmon’s residence. RP 3-9, 14-15; CP 45-60. He also moved to excise from the affidavit any assertions regarding the purported controlled buy, pursuant to *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1976), on the grounds the affidavit was defective and misleading insofar as it failed to mention the presence of other residences in the area, any one of which the informant could have accessed during the alleged “controlled buy.” CP 28-32. The court denied both motions. RP 18, 107-10; CP 23-24.

Following a trial on stipulated facts, Mr. Lemmon was convicted as charged. RP 111-14; CP 19-21.

D. ARGUMENT

**The trial court erred in denying Mr. Lemmon’s motion to suppress evidence obtained pursuant to a search warrant that was not supported by probable cause, due to the failure to establish the reliability of a confidential informant.**

1. A search warrant must be supported by facts and circumstances that establish probable cause to believe a crime is being committed and evidence of that crime will be found at the location to be searched.

The federal and state constitutions protect citizens from unreasonable searches and seizures. U.S. Const. amend. IV<sup>2</sup>; Wash.

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<sup>2</sup> The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not

Const. art. I, sec. 7.<sup>3</sup> A search warrant may issue only upon a showing of probable cause, commonly established by facts asserted in an affidavit in support of the warrant. *State v. Vickers*, 148 Wn.2d 91, 108, 59 P.3d 58 (2002). Probable cause exists if a reasonable, prudent person would understand from the facts asserted in the affidavit that criminal activity is occurring and that evidence of the activity will be found at the place to be searched when the warrant is executed. *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). The search warrant affidavit must set forth specific facts and circumstances sufficient for a magistrate to independently determine the existence of probable cause. “[T]he determination of probable cause must be made by a magistrate based on the facts presented to the magistrate, instead of being made by police officers in the field.” *State v. Lyons*, 174 Wn.2d 354, 360, 275 P.3d 314 (2012). Mere conclusions, generalizations, suspicions, or the personal belief of the affiant are insufficient. *Thein*, 138 Wn.2d at 148-51; *Vickers*, 148 Wn.2d at 108.

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violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment is applicable to the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

<sup>3</sup> Article 1, section 7 provides, “No person shall be disturbed in his private affairs, or his home invaded, with authority of law.”

A trial court's review of a search warrant is limited to the four corners of the affidavit asserting probable cause. *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). The trial court's determination regarding the sufficiency of the affidavit is a conclusion of law that is reviewed *de novo*. *Id.*; *State v. Chamberlin*, 161 W.2d 30, 40-41, 162 P.3d 389 (2007). Although a trial court's determination is afforded deference, a reviewing court "will not defer to a magistrate's decision if the information on which it is based is not sufficient to establish probable cause. *State v. Perez*, 92 Wn. App. 1, 4, 963 P.2d 881 (2002).

2. In Washington, when a confidential informant's assertions are the basis for probable cause to issue a search warrant, the search warrant affidavit must establish both the informant had a "basis of knowledge" for his allegations and the reliability of the informant.

When a confidential informant provides the basis for probable cause to issue a search warrant, the affidavit in support of the warrant must establish both the basis of the informant's knowledge and the reliability of the informant. *State v. Jackson*, 102 Wn.2d 432, 433, 688 P.2d 136 (1984).

The appropriate analysis under the Washington Constitution on which defendant relies, is the *Aguilar-Spinelli* 2-prong test. This requires that facts and circumstances be shown from which the magistrate can, independently of the officer seeking the warrant, evaluate the informant's basis of knowledge and personal credibility or veracity. Both the reliability of the manner by which the

information was acquired and the reliability of the informant must be shown in an effort to determine present reliability. Conclusory assertions of reliability will not suffice; and our determination of reliability, though limited to the record, will not be limited by the officer's interpretation of any grounds for reliability asserted in the affidavit itself.

*State v. Casto*, 39 Wn. App. 229, 232-33, 692 P.2d 890 (1984); *accord Jackson*, 102 Wn.2d at 435.

The two prongs are separate and both must be established in the affidavit for the search warrant; a strong showing on one prong will not overcome a deficiency in the other. *Jackson*, 102 Wn.2d at 437, 441. If either prong is not established, the search warrant is deficient and any evidence obtained pursuant to the defective warrant must be suppressed. *Lyons*, 174 Wn.2d at 368.

3. The trial court applied the incorrect standard of review when it assessed the reliability of a confidential informant based on “the totality of the information set forth in the affidavit,” a standard of review that is incompatible with Article 1, section 7 of the Washington Constitution.

The trial court concluded, “In determining the reliability of the confidential informant, the Court looks at the totality of the information set forth in the affidavit.” CP 24 (CrR 3.6 Conclusion of Law 3). This standard of review has been expressly rejected as inadequate under the Washington Constitution.

Article I, section 7 of the Washington Constitution affords greater protection of an individual's privacy interests than does the Fourth Amendment to the federal constitution. *State v. Valdez*, 167 Wn.2d 761, 771-72, 224 P.3d 751 (2009). Article I, section 7 focuses on the "privacy interests which citizens of this state have held, and should be entitled to hold, safe from government trespass," whereas the Fourth Amendment focuses on the reasonableness of a citizen's expectation of privacy. *State v. Myrick*, 102 Wn.2d 506, 510-11, 688 P.2d 151 (1984).

In *Jackson*, the Court compared the *Aguilar-Spinelli* test to the more lenient Fourth Amendment "totality of the circumstances" test, adopted in *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). 102 Wn.2d at 435-37. The "totality of circumstances" test merely uses the two prongs of *Aguilar-Spinelli* as general factors or guidelines for evaluating the reliability of an informant, whereas the *Aguilar-Spinelli* test requires each prong be independently satisfied. *Id.* at 435-36. The Court specifically rejected the federal "totality of the circumstances" test, and ruled the greater privacy protections, embodied in Article I, section 7, require the search warrant affidavit must establish both the reliability and the basis of knowledge of the informant. *Id.* at 443.

4. The search warrant affidavit did not establish the informant's reliability.

*a. The affidavit did not assert sufficient specific facts to allow an independent assessment of the informant's reliability.*

A heightened showing of reliability is required where, as here, the magistrate does not know the identity of the informant, or the informant is a professional informant, because such informants are more likely to provide information "colored by self-interest." *State v. Ibarra*, 61 Wn. App. 695, 699, 812 P.2d 114 (1991); *accord State v. Rodriguez*, 53 Wn. App. 571, 575-77, 769 P.2d 309 (1989). Here, however, the search warrant affidavit provided only scant specific information about the informant. First, Detective Valley asserted the informant reported Mr. Lemmon sold drugs from his house and "[t]he aforementioned information has been corroborated by multiple reliable sources over the past year." CP 57. This bolstering assertion is conclusory and provides no information for an independent evaluation by a magistrate or reviewing court.

Detective Valley also asserted that the informant gave an accurate description of Mr. Lemmon's property. CP 58. Such innocuous facts, however, merely indicate the informant was familiar with Mr. Lemmon's property, but add nothing to the determination of the informant's credibility. "Corroboration of public or innocuous facts only shows that

the informer has some familiarity with the suspect's affairs. Such corroboration only justifies an inference that the informer has some knowledge of the suspect and his activities, not that criminal activity is occurring." *Jackson*, 102 Wn.2d at 438.

The trial court concluded, "Information the confidential informant has provided information [sic] in the past which has led to arrests and felony charges are enough to establish the reliability of the informant." CP 24 (CrR 3.6 Conclusion of Law 4). Detective Valley asserted the informant had provided "information about narcotic activity, illegal firearms and felony warrants in the past that have led to several arrests and felony charges." CP 58. However, the affidavit did not indicate how far in the past the informant provided that information, the circumstances in which the informant divulged the information, how many "arrests and felony charges" resulted from the past information, or whether the information resulted in any convictions. By contrast, in *State v. Fisher*, the Court noted that reliability may be established "if information has been given which has led to arrests and convictions." 96 Wn.2d 962, 965, 639 P.2d 743 (1982); accord *State v. Taylor*, 74 Wn. App. 111, 119, 872 P.2d 53 (1994) (informant "had a 2 ½ year track record of providing accurate information which led to numerous arrests and drug-related convictions."); *State v. Selander*, 65 Wn. App. 134, 137, 827 P.2d 1090 (1992)



(“Reliability is sufficiently shown if the informant has given information in the past which has led to a conviction.”).

The trial court further concluded, “The Court finds that, in itself, the track record of the confidential informant is sufficient to establish reliability of the confidential informant under *Agular-Spinelli* [sic].” CP 24 (CrR 3.6 Conclusion of Law 7). But the court did not identify its understanding of the informant’s track record, thereby precluding appellate review.

***b. The controlled buy was not properly executed.***

The trial court concluded, “The controlled buy, as set forth in the affidavit, provides sufficient basis for reliability of the informant,” and “The use of the word ‘rural’ by Det. Valley in describing the area and location of the Defendant’s residence ... indicates a complete lack of other buildings or residences in the area ....” CP 24, 25 (CrR 3.6 Conclusion of Law 6. A properly executed “controlled buy” may establish an informant’s reliability. *Casto*, 39 Wn. App. at 234. Here, however, the evidence establishing the purported controlled buy was defective, because the officers did not observe the informant go onto Mr. Lemmon’s property and other residences in the area were accessible to the informant.

- i. A properly executed controlled buy requires direct observation or surveillance of the informant.

[A] “controlled buy” is a police operation where an informant and any vehicle being used is searched before a scheduled drug purchase to ensure that the informant does not have any drugs, weapons, or personal money available for use. The informant then receives prerecorded or otherwise traceable money from the police, purchases drugs while under police surveillance, and turns the drugs and any money over to the police. The informant and any vehicle used are immediately searched again after the drug purchase.

*State v. Bertrand*, 165 Wn. App. 393, 396 n.2, 267 P.3d 511 (2011); accord *Casto*, 39 Wn. App. at 234 (“In a ‘controlled buy,’ an informant claiming to know that drugs are for sale at a particular place is given marked money, searched for drugs, and observed while sent into the specified location. If the informant ‘goes in empty and comes out full,’ his assertion that drugs were available is proven, and his reliability is confirmed.”).

- ii. The alleged controlled buy here was improperly executed because the informant was not under direct observation or surveillance, and references in the search warrant affidavit to the controlled buy should have been excised.

In the search warrant affidavit, Detective Valley asserted he did not see the informant enter or leave Mr. Lemmon’s property. “[A Special Operations Group (SOG)] Detective drove the [informant] to the intersection of Centerline and Rivendale. SOG Detectives couldn’t keep a

constant visual on the [informant] all the way down to Lemmon's residence, due to the rural setting and location of his residence. The [informant] walked to Lemmon's residence, at the end of Centerline and purchased a predetermined amount of methamphetamine from Warren Lemmon." CP 58. Accordingly, the informant was not under direct observation or continued surveillance, and the officers could not independently corroborate the informant's allegations that he actually went to Mr. Lemmon's property, as opposed to a different residence in the area.

Following the suppression hearing, the court ruled:

When I see the rural setting location, as I indicated, the Court is thinking of it being amidst some trees and not amidst other residences. And a common sense reading of this is that [the informant] went to that residence in order to obtain the drugs and then came back.

But, I would -- if this was a situation where there was multiple residences in the area, the Court would suppress, but that's not the case. That's not the information provided to the issuing magistrate, not to this court. So, based on the above, the Court would find that the Court will deny the 3.6 motion.

RP 18. At a subsequently conducted a *Franks*<sup>4</sup> hearing, however, Mr. Lemmon established the presence of other residences near his residence that were accessible to the informant. Detective Valley testified that he used the term “rural setting” because Mr. Lemmon’s property was “completely wooded” and zoned Rural 10, that is, ten or more acres. RP 81. He described Mr. Lemmon’s property as located at the end of a dead-end county road that had a driveway across from Mr. Lemmon’s property. RP 81. In addition, Detective Valley described two other driveways and another road near the intersection where the informant was left. RP 93-94; Ex. 12. The detective acknowledged it was “possible” the informant went to another residence in the area. RP 98.

Accordingly, the court’s erroneously failed to excise from the search warrant affidavit all reference to the improperly executed controlled buy, and its reliance on the controlled buy to establish the reliability of the informant was misplaced.

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<sup>4</sup> At a *Franks* hearing, if a defendant establishes by a preponderance of the evidence that the affiant make a material omission or misrepresentation, such omission or misrepresentation must be excised. *Franks v. Delaware*, 438 U.S. 154, 155-56, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1976); *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985); *State v. Chenoweth*, 127 Wn. App. 444, 455-56, 111 P.3d 1217 (2005), *aff’d*, 160 Wn.2d 454, 158 P.3d 595 (2007). An omission rises to the level of a misrepresentation when the challenged information was necessary to establish probable cause. *State v. Atchley*, 142 Wn. App. 147, 158, 173 P.3d 323 (2007). If the modified affidavit does not support probable cause, the warrant is void and the evidence obtained pursuant to the warrant must be excluded. *Chenoweth*, 127 Wn. App. at 456.

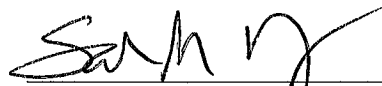
E. CONCLUSION

The trial court used an incorrect, overly lenient standard of review when it determined the search warrant affidavit established the reliability of the confidential informant. The search warrant affidavit did not set forth sufficient specific facts to meet the heightened showing of reliability for an unidentified informant. The assertion that the informant's information was corroborated by other "reliable sources" was simply conclusory. The assertion that the informant accurately described Mr. Lemmon's property was innocuous. The assertion that the informant previously provided tips that led to arrests and charges was extremely vague. The assertion that the informant purchased drugs from Mr. Lemmon at his residence was based solely on an improperly executed controlled buy. As defense counsel argued, "zero plus zero plus zero equals zero." RP 9. For the foregoing reasons, Mr. Lemmon respectfully requests this Court reverse his convictions for possession with intent to deliver a controlled substance and unlawful possession of a controlled

substance, and remand for suppression of the evidence obtained pursuant to a defective search warrant.

DATED this 17 day of June 2013

Respectfully submitted,



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SARAH M. HROBSKY (12352)  
Washington Appellate Project (91052)  
Attorneys for Appellant

## **APPENDIX A**

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office. IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this

10 day of August 2011

Clerk of the District Justice Court of the State of Washington in and for the County of Mason.

RECEIVED

2011 AUG 10 P 4: 12

MASON CO. DISTRICT COURT

BY [Signature]

THE DISTRICT COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF MASON

STATE OF WASHINGTON

Plaintiff,

vs.

Defendant

) S/W Number: 5011-41

) MCSO Case Number: 11-10118

) COMPLAINT FOR SEARCH WARRANT  
) FOR FRUITS / INSTRUMENTALITIES

Parcel # 2216-20-93013, Lot 1-C of SP #2963 of TR 1 S 1/4 NW S 9/257 S 4/70 at the end of Centerline Rd, City of Grapeview, County of Mason, State of Washington, also described as a White with brown trim motor home, with a wood fence and metal gate at the front of the residence. Also known as the Warren L Lemmon residence. Also any outbuildings on the property and/or curtilage, and any vehicles registered to known occupants of the residence and/or vehicles that the occupants have dominion and control.

) AND/OR EVIDENCE OF A CRIME FOR:  
) A violation of the Uniformed Controlled Substances Act ("V.U.C.S.A."), RCW 69.50.401, Possession, Possession with Intent to Deliver a Controlled Substance, to wit: Methamphetamine and Heroin

Detective S. Valley being first duly sworn upon oath deposes and says:

That I am a duly appointed, qualified, and acting commissioned Mason County Deputy Sheriff. I am currently a Detective assigned to the Mason County Sheriff's Office Special Operations Group (SOG). I am charged with the responsibility for the investigation of criminal activity occurring within the State of Washington and I have probable cause to believe, and do, in fact, believe that in violation of the laws of the State of Washington with respect to Possession, Possession with intent to deliver and/or Delivery of a controlled substance to wit: Methamphetamine and Heroin, as defined by law in violation of the Uniformed Controlled Substances Act ("V.U.C.S.A."), RCW 69.50.401, evidence, fruits, and/or instrumentalities of said offense(s) are presently being kept, stored, or possessed, and can be located and seized in

56



1 and on the above described premises and vehicles, said belief being based upon information  
2 acquired through personal interviews with other law enforcement officers and/or review of  
3 reports from other law enforcement officers, personal observations, and witness and suspect  
4 statements.

5  
6 **Affiants Training and Experience:**

7 See attached Affidavit "A" for your Affiant's training and experience.  
8

9 **This affidavit made in support of an application for search warrant for the property**  
10 **described as:**

11 Parcel # 2216-20-93013, Lot 1-C of SP #2963 of TR 1 S ¼ NW S 9/257 S 4/70 at the end of Centerline Rd,  
12 City of Grapeview, County of Mason, State of Washington, also described as a White with brown trim motor  
13 home, with a wood fence and metal gate at the front of the residence. Also known as the Warren L Lemmon  
14 residence. Also any outbuildings on the property and/or curtilage, and any vehicles registered to known  
15 occupants of the residence and/or vehicles that the occupants have dominion and control.  
16

17 **Probable cause to request this warrant consists of the following information:**

18 During the week of August 8<sup>th</sup>, 2011, Mason County Sheriff's Office (MCSO) Special  
19 Operations Group (SOG) conducted a controlled buy at Parcel # 2216-20-93013, Lot 1-C of SP  
20 #2963 of TR 1 S ¼ NW S 9/257 S 4/70 at the end of Centerline Rd, City of Grapeview, County  
21 of Mason, State of Washington, also known as the Warren Leroy Lemmon residence DOB  
22 3/23/1958.  
23

24 SOG Detectives met with a Police Operative (PO) at a predetermined location. The PO stated  
25 that Lemmon sells Methamphetamine and Heroin and keeps it in his motorhome. The PO stated  
26 that he/she could buy both controlled substances from him. The aforementioned information has  
27 been corroborated by multiple reliable sources over the past year.  
28

29 The PO was searched for any contraband and/or money; none was located. The PO was issued  
30 inventoried monies from the MCSO SOG narcotics investigation fund. After the PO was issued

1 the inventoried money, a SOG Detective drove the P/O to the intersection of Centerline and  
2 Rivendell. SOG Detectives couldn't keep a constant visual on the PO all the way down to  
3 Lemmon's residence, due to the rural setting and location of his residence. The PO walked to  
4 Lemmon's residence, at the end of Centerline and purchased a predetermined amount of  
5 methamphetamine from Warren Lemmon.

6  
7 Once the PO purchased the methamphetamine from Lemmon, he/she walked back out to the area  
8 SOG Detectives, dropped him/her off. The PO called me and informed me that he/she was  
9 walking back to the pickup point. A SOG Detective picked up the P/O and took him/her back to  
10 the predetermined location. The PO did not have contact with anyone unrelated to the  
11 investigation. The methamphetamine was recovered by SOG and the PO was searched for any  
12 contraband and/or monies, nothing was found.

13  
14 While interviewing the PO after the buy, he/she stated that there were two females inside the  
15 motor home smoking Heroin while he/she was inside buying methamphetamine. The PO  
16 described Lemmon's residence as having a wooden fence and metal gate at the front of the  
17 property. The property had Lemmon's motorhome, a travel trailer, and several cars and a little  
18 shed on the property. The PO stated that there was a dog house next to the motorhome with a  
19 very mean pit bull dog on the property.

20  
21 On 8-8-11 a SOG Detective and the MCSO animal control officer drove to Lemmon's property  
22 and verified the PO's information.

23  
24 The PO has been convicted of three felonies, theft 2, in 2009, possession of stolen property 1, in  
25 2005 and VUCSA Possession of marijuana more than 40 grams in 2004, Two gross  
26 misdemeanors, and four misdemeanors The PO has provided SOG with information about  
27 narcotic activity, illegal firearms and felony warrants in the past that have led to several arrests  
28 and felony charges in Mason County Superior Court. The PO's ongoing cooperation is motivated  
29 by receiving a favorable recommendation from SOG, on pending charges in Mason County, in  
30

1 exchange for reliable information that leads to the seizure of controlled substances, related  
2 evidence and successful prosecution of the same.

3  
4 This PO has made numerous statements against his/her penal interest, admitting to having been  
5 involved in the possession, possession with intent to deliver and delivery of methamphetamine.  
6 This PO has extensive knowledge and experience concerning the appearance of  
7 methamphetamine and other controlled substances and the terminology related to the possession,  
8 manufacture and delivery of controlled substances, having been around and involved in these  
9 operations for over 11 years.

10  
11 **Based on the facts listed in this affidavit**, your affiant has probable cause to believe, and does,  
12 in fact believe, that there is evidence, fruits, and/or instrumentalities of violations of the  
13 Uniformed Controlled Substances Act in and on the premises and vehicle described above.

14 Therefore, I request that a search warrant be issued for the following items:

15  
16 (1) Any and all controlled substances, to wit: methamphetamine and Heroin.

17 (2) paraphernalia commonly associated with the packaging for sale or transportation of  
18 Methamphetamine and Heroin, consisting in part of and including, but not limited to, paper  
19 bindles, plastic bags, scales and other weighing devices and any items described as drug  
20 paraphernalia under RCW 69.50.102;

21 (3) any books, record books, research products and materials, including, digital storage,  
22 tapes, receipts, notes, ledgers, or records, and other papers relating to the sale, ordering,  
23 transporting, manufacture, purchase and distribution of controlled substances;

24 (4) drug paraphernalia , all equipment, products, and materials of any kind which are used,  
25 intended for use, or designed for use in compounding, converting, producing, processing,  
26 preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting,  
27 inhaling or otherwise ingesting into human body a controlled substance, including but not limited  
28 to kits used to manufacture controlled substances, scales and balances, bags, materials for  
29 packaging, cutting, weighing and using controlled substances,  
30

- 1 (5) All monies, jewelry, proceeds, securities, and negotiable instruments that relate to the
- 2 possession and distribution of controlled substances;
- 3 (6) Any papers showing evidence of occupancy, residency, and ownership, or dominion and
- 4 control of the premises and vehicle described;
- 5 (7) any records that would indicate how drug transaction funds are utilized, including, but not
- 6 limited to, tax records, bank statements, mail, ledgers, notes, papers, notebooks, computers,
- 7 digital storage and communication devices, and other items of evidence showing the obtaining,
- 8 secreting, transfer, and/or concealment of assets and expenditures of monies and any papers,
- 9 tickets, notes, schedules and receipts;
- 10 (8) Telephone books, telephone records and bills relating to co-conspirators or persons to
- 11 who controlled substances have been delivered. Also photographs or video recordings that
- 12 record drug manufacturing operations, use or transactions by the suspect or co-conspirators for
- 13 the manufacture, use, delivery or purchase of controlled substances;
- 14 (9) Any weapons and ammunition;
- 15 (10) Any items used for surveillance or to protect the premises from law enforcement officers,
- 16 including, but not limited to, scanners, binoculars, and video and audio surveillance equipment;
- 17
- 18
- 19

20 Steve Valley  
21 Detective S. Valley #1194  
22 Mason County Sheriff's Office

23 SUBSCRIBED AND SWORN BEFORE ME this 10 day of August, 2011  
24 TIME 4:06 AM/PM

25  
26 JUDGE Unread

27  
28 RECEIVING OF COMPLAINT AND  
29 ISSUANCE OF SEARCH WARRANT  
30 REVIEWED BY:  
[Signature]  
Deputy Prosecuting Attorney # 31908

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO**

---

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	NO. 44166-7-II
	)	
WARREN LEMMON,	)	
	)	
Appellant.	)	


---

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 7<sup>TH</sup> DAY OF JUNE, 2013, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] TIMOTHY WHITEHEAD	( )	U.S. MAIL
[timw@co.mason.wa.us]	( )	HAND DELIVERY
MASON COUNTY PROSECUTOR'S OFFICE	(X)	E-MAIL VIA COA
PO BOX 639		PORTAL
SHELTON, WA 98584-0639		
[X] WARREN LEMMON	(X)	U.S. MAIL
266893	( )	HAND DELIVERY
LARCH CORRECTIONS CENTER	( )	_____
15314 DOLE VALLEY RD		
YACOLT, WA 98675		

**SIGNED** IN SEATTLE, WASHINGTON THIS 7<sup>TH</sup> DAY OF JUNE, 2013.

X \_\_\_\_\_ 

**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, WA 98101  
☎(206) 587-2711

# WASHINGTON APPELLATE PROJECT

**June 07, 2013 - 3:57 PM**

## Transmittal Letter

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Case Name: STATE V. WARREN LEMMON

Court of Appeals Case Number: 44166-7

**Is this a Personal Restraint Petition?** Yes  No

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Answer/Reply to Motion: \_\_\_\_

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

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