

NO. 47239-2-II

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

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STATE OF WASHINGTON, Respondent

v.

RAMSEY RAY SHABEEB, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO.14-1-00769-8

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BRIEF OF RESPONDENT

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## RESPONSE TO ASSIGNMENTS OF ERROR

- I. **The search warrant affidavit set forth facts and circumstances sufficient to establish a reasonable inference that evidence of criminal activity could be found in Mr. Shabeeb's vehicle.**
- II. **Mr. Shabeeb waived his challenge to the imposition of legal financial obligations because he did not object at the trial level.**

## STATEMENT OF THE CASE

### A. PROCEDURAL HISTORY

Ramsey Ray Shabeeb was charged by amended information with Possession of a Controlled Substance – Heroin, and Possession of a Controlled Substance with Intent to Deliver – Schedule III for an incident on or about April 16, 2014. CP 4. Mr. Shabeeb filed a suppression motion under CrR 3.6 seeking to suppress the evidence that was found in his vehicle pursuant to the search warrant and applicable to the possession with intent to deliver count. CP 5-8.

On September 15, 2014, a hearing was held on Defendant's motion. RP 1-45. The Honorable Scott Collier denied Mr. Shabeeb's motion to suppress holding:

[T]he issuing magistrate did not abuse its discretion in finding probable cause where there was 1) a controlled buy

of heroin from the defendant; 2) heroin discovered on the defendant's person after arrest; 3) a suspicious transfer of a backpack from the trunk of one vehicle to the trunk of the defendant; and 4) positive alerts by a trained drug dog to include the trunk of the defendant's vehicle.

CP 50; RP 34-35.

Following the denial of the suppression motion, the State and Shabeeb reached an agreement in which the possession of heroin charge would be dismissed and Shabeeb would proceed to a stipulated facts trial on the possession with intent to deliver count. CP 64-68; RP 58-59, 61-62. On December 12, 2014, the Honorable Scott Collier found Shabeeb guilty of Possession of a Controlled Substance with Intent to Deliver – Schedule III and would eventually sentence him to the Residential Drug Offender Sentencing Alternative. CP 69-70, 76-85; RP 61-64, 2RP 13. Shabeeb filed a timely notice of appeal. CP 75.

#### B. FACTUAL HISTORY

Detective Robert Latter of the Clark-Vancouver Regional Drug Task Force (DTF) authored a search warrant affidavit dated April 18, 2014 that led to the execution of a search warrant on a blue 1995 Audi A6 that Shabeeb had been driving on April 16, 2014. Appendix A.<sup>1</sup> The affidavit in support of the search warrant can be broken down into four parts: Detective Latter's training, experience, and knowledge (App. A at 2, 7-8);

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<sup>1</sup> Affidavit for Search Warrant attached as "Appendix A."

Trooper Charles Gardiner's training, experience, and certification to include his K-9, Corbin. (App. A at 2-4); the confidential informant (App. A at 5-7); and the current investigation into Mr. Shabeeb (App. A at 4-7).

1) Detective Latter's Training, Experience, and Knowledge.

Detective Latter has worked as a law enforcement officer for the Clark County Sheriff's Office for the last ten years, and was assigned as a detective with the DTF. App. A at 2. In addition to over 720 hours of training in criminal investigation, Detective Latter has completed the 40-hour Clandestine Drug Laboratory Safety and Operations Course and the 80-hour Drug Enforcement Administration Basic Narcotics Investigators Course. *Id.* In working with the DTF, Detective Latter indicates that he has participated in several drug investigations and arrests. *Id.* Detective Latter has utilized this experience in numerous narcotics investigations that involved search warrants. *Id.* In addition, Detective Latter has received specialized training on the identification of controlled substances and, as a result, can identify heroin through sight and smell. *Id.*

Based on this training and experience, Detective Latter knows that persons involved in the delivery and/or transportation of illegal drugs often have packaging and drug paraphernalia in their vehicles. App. A at 7. Additionally, those persons often hide illegal drugs in glove

compartments, trunks, secret compartments, and in other areas within their vehicle. *Id.* at 8.

2) Trooper Gardiner's and Corbin's Training, Experience, and Certification

Trooper Gardiner has been with The Washington State Patrol since 1997 and has been a part of the Narcotics K-9 Unit as a Narcotics Canine Handler since 2001. App. A at 2-3. After being assigned to that unit, Trooper Gardiner attended the Washington State Department of Corrections Narcotics Canine Handler Training Class and completed more than 240 hours of training. *Id.* at 3. In 2009, Trooper Gardiner was assigned a new K-9 named Corbin and together they have completed the required 200 hours of detection training to be certified under the WAC and located in excess of 100 laboratory tested narcotic substances and training aids. *Id.* Corbin is trained to alert on cocaine, crack, marijuana, methamphetamine, and heroin. *Id.* Additionally, the team is accredited by the Washington State Police Canine Association. App. A at 4. To remain accredited a team must demonstrate their effectiveness in each area of training and have on-going monthly maintenance training with other canine handlers. *Id.*



### 3) The Confidential Informant

The following was known about the informant as provided in Detective Latter's affidavit in support of the search warrant:

As to the informant's credibility, Sometime between February 8, 2014 and February 21, 2014, Detective Lutz and I met with the CRI to conduct a reliability buy of heroin[.] The CRI was searched for drugs, money, or other contraband and nothing was found. The CRI was then driven to a residence where he/she purchased an amount of heroin using money that I had previously checked out from the DTF Drug Fund. The CRI was kept under observation as he/she walked to the residence and made contact with the supplier The CRI was then given an amount of heroin that was consistent with the amount of money that was paid. The CRI was then picked up by me. The CRI handed me a small amount of a substance inside a piece of a shopping bag that he/she identified as heroin. A subsequent field test of the item showed a positive result for heroin. The CRI was then searched again for drugs, money, or other contraband and nothing was found. This controlled purchase of heroin resulted in the informant becoming reliable.

As to the informant's basis of knowledge, the CRI has given information to the Drug Task Force that has been corroborated through other sources. The CRI has knowledge of the drug trade from previous involvement in the drug subculture.

As to the informant's motivation the CRI is working for the Clark Vancouver Regional Drug Task Force for possible consideration of a pending felony charge.

As to the informant's criminal history, he/she has no felony convictions and three gross misdemeanor convictions for Malicious Mischief, Assault IV, and Reckless Driving.

App. A at 6-7.

#### 4) The Current Investigation

The investigation into Shabeeb's drug trafficking in which probable cause was established began between February 21, 2014 and April 15, 2014, and involved the observations of officers, information from the confidential informant, and evidence from a controlled buy in which Shabeeb sold heroin to the confidential informant. App. A at 5-6. The following information was provided to the magistrate regarding the controlled buy with Shabeeb:

Detective Lutz and I met with a Confidential and Reliable Informant (CRI) working for the Clark-Vancouver Regional Drug Task Force. Upon meeting with the CRI, I searched the CRI for drugs, money, or other contraband. Nothing was found. I then provided the CRI with money I had checked out from the DTF Drug Fund. I then drove the CRI to a location in Battle Ground, WA. The CRI had placed a call earlier to purchase an amount of heroin from a person the CRI had previously identified as Ramsey R. Shabeeb. Upon arrival at the location I dropped the CRI off, who then went to the residence. Surveillance units in the area were able to observe the CRI walk to the residence.

After a short period of time the CRI walked back to the roadway outside the residence where I picked him up. The CRI handed me a small package of a substance tightly wrapped within a piece of a plastic shopping bag. The CRI identified this item as black tar heroin and the amount of heroin purchased was consistent with the amount of money paid. The CRI was again searched for drugs, money, or other contraband and nothing was located. The CRI was then released.

I later field tested a small amount of the suspected heroin, and the field test showed a color change consistent with a positive field test for heroin.

App. A at 5-6.

On April 16, 2014, following the successful controlled buy, detectives from the DTF began surveilling Shabeeb. *Id.* at 4. The detectives followed Shabeeb as he drove to and parked at a local auto parts business. *Id.* While parked, a blue Force Focus pulled next to Shabeeb's vehicle. *Id.* The driver of that vehicle appeared to converse with Shabeeb before Shabeeb exited his vehicle, retrieved a dark-colored backpack from the trunk of the Ford Focus, and placed it in the trunk of the car he was driving. *Id.* After Shabeeb retrieved the backpack, the Ford Focus left the parking lot. *Id.*

When Shabeeb drove out of the parking lot, he drove slowly past the parking lot in which Detective Latter was parked and appeared to be staring inside Detective Latter's car. *Id.* at 5. Because Detective Latter believed that Shabeeb had discovered he was under observation, Detective Latter decided to stop Shabeeb's vehicle and arrest him on the probable cause developed from the controlled buy. *Id.* at 5. During a search incident to arrest, a black substance that field tested as positive for heroin was found in Shabeeb's left rear pants pocket. *Id.* Following his arrest, Shabeeb stated that the vehicle that he was driving did not belong to him.

*Id.* The vehicle was then seized, secured with evidence tape, and towed to the DTF warehouse. *Id.*

On April 18, 2014, Trooper Gardiner came to the DTF warehouse with Corbin and took Corbin around the outside of the vehicle that Shabeeb had been driving on April 16. App. A at 5. Corbin indicated that drugs were present inside the vehicle by alerting at the rear bumper seam on the driver's side. Corbin also alerted on the passenger door handle and seam, and the driver side air vent on the front windshield. *Id.*

Utilizing the above information, Detective Latter authored a search warrant affidavit and then executed a search warrant on the vehicle. CP 66-67. The backpack that officers had observed Shabeeb place in his trunk was seized, its padlock cut off, and it was then searched. CP 67. Inside the backpack were numerous small baggies each containing pills of different shapes and colors, which included schedule III drugs Oxycodone, Suboxone, and Buprenorphine. CP 65. Also located in the backpack was a small spiral notebook with a couple of pages showing money that needed to be collected and a small, functioning digital scale that appeared to have drug residue on it. CP 67.

## ARGUMENT

As a preliminary matter, though Shabeeb filed a suppression motion below, he raises new theories and arguments for suppression that were not argued or briefed at the trial court level. Before the trial court, Shabeeb argued that the search warrant affidavit did not establish probable cause because the drug dog could have alerted to the presence of marijuana and that the affidavit did not contain sufficient facts to establish probable cause. CP 5-8; RP 1-21, 28-32.<sup>2</sup> Shabeeb now additionally argues that “the warrant did not sufficiently establish the informant’s reliability” and that the warrant did not authorize the seizure and search of the backpack located in the vehicle’s trunk. Br. of App. at 16-21.

The general rule is that an issue, theory, or argument not presented at trial will not be considered on appeal. RAP 2.5(a); *State v. Hayes*, 165 Wn.App. 507, 514, 265 P.3d 982 (2011) (citing *State v. McFarland*, 127 Wn.2d 322, 332–33, 899 P.2d 1251 (1995)). The theory of issue preservation by timely objection also “facilitates appellate review by ensuring that a complete record of the issues will be available, and prevents adversarial unfairness by ensuring that the prevailing party is not

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<sup>2</sup> Shabeeb filed a motion to reconsider the denial of his suppression motion and filed a memorandum with additional bases for suppression; however, the motion was never heard and the additional arguments were not heard or decided by the trial court. CP 51, 61-63; RP 50 (COURT: “I’m going to put kind of a 20-day deadline to notify me if we’re arguing the reconsideration.”), *See* RP.

deprived of victory by claimed errors that he had no opportunity to address.” *State v. Lazcano*, 188 Wn.App. 338, 356, 354 P.3d 233 (2015) (citing *State v. Strine*, 176 Wn.2d 742, 749-50, 293 P.3d 1177 (2013)).

An exception to this rule exists, however, for manifest errors affecting a defendant’s constitutional rights. RAP 2.5(a)(3); *Hayes*, 165 Wn.App. at 514. “In order to benefit from this exception, ‘the [defendant] must identify a constitutional error and show how the alleged error actually affected the [defendant]’s rights at trial,’” i.e., show that the error is manifest. *State v. Grimes*, 165 Wn.App. 172, 180, 267 P.3d 454 (2011) (alterations in original) (quoting *State v. Gordon*, 172 Wn.2d 671, 676, 260 P.3d 884 (2011)) (quoting *State v. O’Hara*, 167 Wn.2d 91, 98, 217 P.3d 756 (2009)). Consequently, a defendant cannot meet his burden if he “simply assert[s] that an error occurred at trial and label[s] the error ‘constitutional. . . .’” *Grimes*, 165 Wn.App. at 186.

Despite raising new arguments, Shabeeb fails to address RAP 2.5(a) or make any argument as to why this Court should consider the merits of these arguments made for the first time on appeal. Br. of App. at 16-21. Consequently, this Court should decline to consider Shabeeb’s new arguments pertaining to the search warrant affidavit. If, on the other hand, the Court disagrees that the newly raised arguments are waived, the merits of each argument is addressed below.

**I. The search warrant affidavit set forth facts and circumstances sufficient to establish a reasonable inference that evidence of criminal activity could be found in Shabeeb's vehicle.**

Standard of Review

Under both the Constitution of the United States and Washington's Constitution, a search warrant may issue only upon a determination of probable cause. *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). "Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime can be found at the place to be searched." *Id.*

A judge exercises judicial discretion in determining whether to issue a search warrant. *State v. Vickers*, 148 Wn.2d 91, 108, 59 P.3d 58 (2002). That decision "is reviewed for abuse of discretion." *Id.* A search warrant, once issued, is entitled to "a presumption of validity" and all reviewing courts shall accord "great deference to the magistrate's determination of probable cause." *State v. Chenoweth*, 160 Wn.2d 454, 477, 158 P.3d 595 (2007); *Vickers*, 148 Wn.2d at 108; *State v. O'Connor*, 39 Wn.App 113, 123, 692 P.2d 208 (1984) ("Both the superior court and [the Court of Appeals] are required to give great weight to a magistrate's determination that probable cause exists . . .").

As a result, “[d]oubts concerning the existence of probable cause are generally resolved in favor” of the validity of the search warrant. *Vickers*, 148 Wn.2d at 108-109; *Chenoweth*, 160 Wn.2d at 477. Moreover, reviewing courts are to examine affidavits in support of a search warrant in “a commonsense, not a hypertechnical manner.” *State v. Ollivier*, 178 Wn.2d 813, 847, 312 P.3d 1 (2013) (citations omitted). Because at a suppression hearing on a search warrant the trial court acts in an “appellate-like capacity,” a higher appellate court, while still deferring to the magistrate’s determination, reviews *de novo* the “trial court’s assessment of probable cause.” *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008) (citing *State v. Chamberlin*, 161 Wn.2d 30, 40–41, 162 P.3d 389 (2007)).

#### Probable Cause

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.” *Thein*, 138 Wn.2d at 140. Any evidence that would be helpful in the prosecution of a crime has a sufficient nexus to that crime for the purposes of issuing a search warrant. *See Messerschmidt v. Millender*, --- U.S. ----, 132 S.Ct. 1235, 1247-49, 182 L.Ed.2d 47 (2012); *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 307, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967) (holding that the Fourth Amendment allows a



search for evidence when there is “probable cause . . . to believe that the evidence sought will aid in a particular apprehension or conviction”). RCW 10.79.015 supports this proposition as it provides that “[a]ny . . . magistrate, when satisfied that there is reasonable cause, may . . . issue [a] search warrant in the following cases, to wit: . . . (3) *[t]o search for and seize any evidence material to the investigation or prosecution of . . . any felony.*” (emphasis added); *see also* CrR 2.3 (a warrant may be issued “to search for and seize *any* (1) *evidence of a crime*; or (2) contraband, the fruits of crime, or things otherwise criminally possessed. . . .”) (emphasis added).

Furthermore, search warrants, in addition to authorizing a search for direct evidence of the crime at issue, authorize searches for evidence that may “help to establish motive,” “support the bringing of additional, related charges,” or “might prove helpful in impeaching [a defendant] or rebutting various defenses he could raise at trial.” *Messerschmidt*, 132 S.Ct. at 1247-48. The “magistrate may infer the existence of [this type of] evidence from the facts and circumstances provided in the affidavit.” *State v. Maddox*, 152 Wn.2d 499, 510-11, 98 P.3d 1199 (2004) (holding there were facts in the affidavit from which the magistrate could infer the likely presence of drug dealing paraphernalia even though the affidavit was silent as to whether the informant saw those items in the defendant’s

home). Such inferences from search warrant affidavits are allowed because as the Washington Supreme Court has “often stated, the affidavit is not required to establish a prima facie case of guilt, but rather a likelihood that evidence of criminal activity will be found.” *Id.* at 511 (citation omitted); *Messerschmidt*, 132 S.Ct at Fn. 7 (the issuing magistrate does not need “probable cause to believe evidence will conclusively establish a fact before permitting a search, but only probable cause . . . to believe the evidence sought will aid in a particular . . . conviction.”) (citation and quotation omitted).

In making such a determination, a magistrate can take into account the “experience and expertise” of the officer who authored the search warrant affidavit as well as “where evidence is likely to be kept, based on the nature of the evidence and the type of offense.” *Maddox*, at 511, 505. And while “generalizations regarding common habits of drug dealers, standing alone, cannot establish probable cause, *such generalizations may support probable cause* where a factual nexus supported by specific facts is also provided and where the generalizations are based on the affiant's experience.” *Maddox*, 152 Wn.2d at 511 (emphasis added).

Additionally, generally an “alert by a trained drug dog is sufficient to establish probable cause for the presence of a controlled substance.” *State v. Jackson*, 82 Wn.App 594, 606, 918 P.2d 945 (1996);

*State v. Flores-Moreno*, 72 Wn.App 733, 741, 866 P.2d 648 (1994); *State v. Wolohan*, 23 Wn.App. 813, 815, 820, 598 P.2d 421 (1979) (holding “the dog by itself provided probable cause for the warrant to issue.”). A drug dog’s reliability, for the purposes of establishing probable cause, can be proven by showing the dog has experience, received training, and is certified. *State v. Stanphill*, 63 Wn.App. 623, 769 P.2d 861 (1989); *Flores-Moreno*, 72 Wn.App. at 741; *Jackson*, 82 Wn.App. at 606.

While the State acknowledges that an alert from a drug dog that is trained to alert to a controlled substance that can now be legally possessed (marijuana), among other unlawful controlled substances, diminishes the probative value of its alerts in general, it should not result in the alert being excluded from the probable cause determination altogether. This is especially the case here, where all the evidence available suggested the drug dog was alerting to an unlawful controlled substance as there had been a recent controlled buy in which Shabeeb had sold heroin, heroin was discovered on Shabeeb’s person following his arrest, and there had been no evidence of marijuana possession. App. A at 4-7.<sup>3</sup> A drug dog’s alert is, therefore, no different than many other fallible observations that may be

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<sup>3</sup> Nor would there be a need to surreptitiously transfer marijuana from the trunk of one car to another via a locked backpack unless the amount possessed was in excess of that allowed by the law.

individually explained away but can form part of a totality of the circumstances analysis establishing probable cause.

For example, if an officer observed in plain view in a vehicle what he believed to be cocaine or what appeared to him to be heroin this observation itself, uncontroversially, would be sufficient to establish probable cause. The necessary corollary to that, however, is that though we know he is probably correct because of his training and experience, he may in fact be wrong and be observing sugar, flour, or some other non-controlled substance similar in appearance. There is little difference in a drug dog's alert except that, because of its training and established reliability, we know that its alert takes place in a closed universe of possibilities; the drug dog *is* alerting to a controlled substance. Accordingly, the trial court correctly concluded that a "positive alert by a trained drug dog combined with other facts or circumstances suggesting criminal activity or evidence of criminal activity can be sufficient to establish probable cause." CP 50 (Conclusion of Law #2).

*State v. Neth*, on which Shabeeb relies, is easily distinguishable. Br. of App. at 8; 165 Wn.2d 177. There, the defendant was stopped for speeding, arrested on a warrant for driving while suspended, found with unused clear baggies in his coat pocket, and told the officer he had between \$2,500 and \$3,500 cash in his car for the purposes of paying rent.

*Neth*, 165 Wn.2d at 179-80. Here, Shabeeb was stopped based on probable cause for the delivery of heroin, arrested for a delivery of heroin, found with heroin on his person, observed engaging in suspicious behavior in which he placed a padlocked backpack in his trunk, and then a trained drug dog then provided a positive alert at the trunk of his car.

Consequently, the State strongly disagrees with Shabeeb's contention that "the circumstances in the instant case are far more innocuous than the circumstances in *Neth*." Br. of App. at 10. Moreover, to the extent that Shabeeb references *Neth* because a drug dog was involved, the case is inapposite on the issue as the dog sniff there was disposed of by the trial court and not raised on appeal by either the appellant or respondent. 165 Wn.2d at 181 ("But inasmuch as the trial court ruled that the magistrate should not have issued the warrant based on the dog sniff because of inadequate foundation that the dog was reliable, we conclude that the dog sniff is not before us."). For that reason it was not factored into the probable cause determination on appeal. *Id.*

In total, the search warrant affidavit was authored by a detective with a substantial amount of training and experience in drug crimes, a defendant for which probable cause already existed for the delivery of heroin and who was found in possession of heroin, and specific facts linking the defendant's drug dealing and/or drug possession to the vehicle,

which includes the suspicious behavior the detective witnessed with the backpack that was put into the trunk, the drug dogs positive alert on the trunk, and the defendant's possession of heroin while in the car. Given the ample facts in the affidavit from which a magistrate could infer the likely presence of heroin, drug paraphernalia and other evidence of criminal activity, the magistrate did not abuse its discretion in finding probable cause for the issuance of a search warrant and the trial court did not err when it denied Shabeeb's motion to suppress.

**II. The search warrant affidavit established the confidential informant's reliability.**

The reliability of a confidential informant is most frequently established "by a showing that the informant has previously supplied accurate, helpful information to law enforcement authorities." *State v. Lair*, 95 Wn.2d 706, 710, 630 P.2d 427 (1981); *State v. Jackson*, 102 Wn.2d 432, 437, 688 P.2d 136 (1984). "The existence of a proven 'track record' of reliability reasonably supports an inference that the informant is presently telling the truth." *Id.* Establishing the track record of an informant sufficient to establish his or her veracity is not an onerous task as general averments that an informant provided information in the past that proved accurate is sufficient. *State v. Fisher*, 92 Wn.2d 962, 964-66, 639 P.2d 743 (1982); *Aguilar v. State of Tex.*, 378 U.S. 108, 115 FN. 5, 84

S.Ct. 1509 (1964) (citing and discussing *Jones v. United States*, 362 U.S. 257, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960)). On the other hand, “the mere statement that an informant is credible is not sufficient.” *State v. Woodall*, 100 Wn.2d 74, 76, 666 P.2d 364 (1983) (quoting *Fisher*, 92 Wn.2d at 965) (holding that an affidavit that merely stated that the informant is “a reliable informant who has proven reliable in the past” was insufficient to establish the informant’s veracity).

In *State v. Fisher*, our Supreme Court reviewed a search warrant affidavit that included the following averment concerning the reliability of a confidential informant: “The informant is reliable in that he/she has given information regarding drug trafficking (sic.) and use in the past which has proven to be true and correct.” 92 Wn.2d at 964. *Fisher*, in reviewing said averment, explained:

Affiant stated that the informant had given him information proven to be true and correct in the past. While this is more than drawing the conclusion that the informant is credible and admittedly less than stating the facts as to why the past information has proven to be ‘true and correct’, it still is a factual statement not a conclusion of the affiant. We hold in this case that it is enough to enable a neutral magistrate to determine if the informant is credible.

*Id.* at 965. *Fisher* found “substantial authority” for the proposition that “general allegations such as those before us are sufficient.” *Id.* at 965 (citations omitted). Specifically, *Fisher* noted that “[i]n *Aguilar* . . . the

Supreme Court . . . approved of an affidavit which it upheld in *Jones*” that “alleged that the informant ‘has given information to the undersigned on previous occasion and which was correct.’” *Id.* at 966. *Fisher* concluded that “[t]his type of allegation informs the magistrate why the affiant believed the informant to be reliable. It states a fact and is more than a bare assertion or conclusion.” *Id.*

A “track record” for providing accurate information to the police is not the only method for establishing the veracity of an informant. *Lair*, 95 Wn.2d at 710-12; *Jackson*, 102 Wn.2d at 437; *State v. Casto*, 39 Wn.App, 229, 233-34, 692 P.2d 890 (1984). For example, a successful controlled buy may itself be sufficient to “establish an informant's reliability.” *State v. Lane*, 56 Wn.App 286, 293, 786 P.2d 277 (1989) (citation omitted); *Casto*, 39 Wn.App. at 233-35.<sup>4</sup> This is because, as *Casto* explained:

[T]he informant's assertion that drugs will be found—the key to a search warrant—puts his own credibility on the line. By “coming out full,” he proves the truth of his earlier assertion and establishes his own credibility, at the same time obtaining information for the law enforcement investigation. Such an informant has a reason to be reliable. As well, the search and surveillance conducted in a controlled buy remove much of the informant's opportunity to fabricate.

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<sup>4</sup> *But see State v. Steenerson*, 38 Wn.App. 722, 726, 688 P.2d 544 (1984) (holding that a controlled buy alone does not establish veracity where a confidential informant was directed by police to go to a given location and buy drugs from a specific person).



39 Wn.App. at 235. In fact, “[p]roperly executed, a controlled buy can thus provide the facts and circumstances necessary to satisfy *both* prongs [(veracity and basis of knowledge)] of the test for probable cause.” *Id.*, at 234 (emphasis in original). In addition, the veracity of an informant can be established by showing that the informant was trading the information for a favorable sentencing recommendation or that under the circumstances the informant had a strong motive to be truthful. *Jackson*, 102 Wn.2d at 437; *State v. Ollivier*, 161 Wn.App 307, 318, 254 P.3d 883 (2011); *State v. Lund*, 70 Wn.App. 437, 451 FN. 9, 853 P.2d 1379 (1983) (collecting cases); *State v. Bean*, 89 Wn.2d 467, 471, 572 P.2d 1102 (1978); *Lair*, 95 Wn.2d at 712.

Here, the information supporting the reliability of the CRI in Detective Latter’s affidavit is plentiful compared to the information in the *Fisher* affidavit and the *Jones* affidavit approved of in *Aguilar, supra*. Detective Latter’s CRI 1) successfully completed a controlled buy prior to completing the subsequent, successful controlled buy with Shabeeb; 2) gave information to the Drug Task Force in the past that been corroborated through other sources; 3) was trading his/her information and cooperation for a favorable sentencing recommendation; and 4) had no prior felony convictions or convictions for crimes of dishonesty. App. A at 5-7. Therefore, the affidavit established the informant’s reliability.

### **III. The search warrant authorized the seizure and search of the backpack found in the vehicle's trunk.**

The permissible scope of search warrant that authorizes the search of a home or vehicle is anywhere in the home or vehicle where one or more of the items specified in the search warrant may be located. *U.S. v. Ross*, 456 U.S. 798, 820-24, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982); *Lair*, 95 Wn.2d at 717-18; *State v. Simonson*, 91 Wn.App. 874, 886-87, 960 P.2d 955 (1998) (holding “a search warrant for a house authorizes a search of containers in the house that could hold one or more of the items specified in the warrant”). Thus, “[a] warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search . . . [and] applies equally to all containers. . . .” *Ross*, 456 U.S. at 821-22.<sup>5</sup>

In this case, the search warrant authorized the search of the vehicle for heroin, records relating to the ordering and possession of heroin to include handwritten notes, and drug paraphernalia, amongst other items. CP 18-19. Plainly, the backpack in question might contain the objects of

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<sup>5</sup> As *Ross* further noted in reference to the permissible scope of a search pursuant to a warrant “[p]laces within the described premises are not excluded merely because some additional act of entry or opening may be required. In countless cases in which warrants described only the land and the buildings, a search of desks, cabinets, closets and similar items has been permitted.” 456 U.S. at 821 FN 27 (quoting 2 W. LaFave, *Search and Seizure* 152 (1978)).

the search. Therefore, the backpack was properly seized and searched pursuant to the search warrant.

**IV. Shabeeb waived his challenge to the imposition of legal financial obligations because did not object at the trial level.**

A defendant who makes no objection to the imposition of discretionary LFOs (legal financial obligations) at sentencing is not automatically entitled to review” of that issue on appeal. *State v. Blazina*, 182 Wn.2d 827, 832, 344 P.3d 680 (2015). The defendant is not entitled to review because in Washington it is “well settled that an ‘appellate court may refuse to review any claim of error which was not raised in the trial court.’” *Id.* (quoting RAP 2.5(a)). Thus, under *Blazina*, it remains the law that “[u]npreserved LFO errors do not command review as a matter of right.” *Id.* Accordingly, *Blazina* held, regarding the consolidated cases on review, that “the Court of Appeals did not err in declining to reach the merits” of the LFO issue, and instead, “properly declined discretionary review.” *Id.* at 830.

Moreover, this Division of the Court of Appeals has recently held that it will not consider a challenge to LFOs raised for the first time on appeal if the defendant’s sentencing occurred after this court issued its opinion in *State v. Blazina*, 174 Wn.App. 906, 301 P.3d 492 (2013). *State v. Lyle*, 188 Wn.App. 848, 851-52, 355 P.3d 327 (2015). As *Lyle*

explained, “because the sentencing hearing was after we issued our opinion in *Blazina*, counsel should have been aware that to preserve any issue related to the LFOs he was required to object.” *Id.*

Here, Mr. Shabeeb’s sentencing took place on February 13, 2015, which is well after this court issued its decision in *Blazina*. CP 76-85. Mr. Shabeeb did not object to trial court’s imposition of LFOs. Thus, he finds himself in the exact position of the defendant in *Lyle*. This court should follow *Lyle* and decline to address his LFO challenge.

#### CONCLUSION


For the foregoing reasons, this Court should affirm the trial court’s denial of Mr. Shabeeb’s motion to suppress, affirm his conviction, and affirm the imposition of legal financial obligations.

DATED this 17th day of November 2015.

Respectfully submitted:

ANTHONY F. GOLIK  
Prosecuting Attorney  
Clark County, Washington

By:

  
AARON T. BARTLETT, WSBA #39710  
Deputy Prosecuting Attorney

# **APPENDIX A**

COPY

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

STATE OF WASHINGTON,

No.

Plaintiff,

AFFIDAVIT FOR SEARCH WARRANT

SHABEEB, Ramsey Ray

Defendant.

STATE OF WASHINGTON)

COUNTY OF CLARK )<sup>ss</sup>

I, Detective Latter, being first duly sworn upon oath, hereby depose and say that I have good and sufficient reason to believe that the following goods, to wit:

(1) Heroin, a substance controlled by the Uniform Controlled Substances Act of the State of Washington, and items used to facilitate the distribution and packaging of Heroin;

(2) Records relating to the ordering and possession of Heroin, including but not limited to handwritten notes;

(3) Photographs, including still photos, video tapes, films, and the contents therein, and in particular, photographs of co-conspirators and controlled substances in particular Heroin;

(4) Address and/or telephone books, telephone bills, and papers reflecting names, addresses, telephone numbers, of sources of supply;

(5) Records showing the identity of co-conspirators in this distribution operation, including but not limited to address and/or phone books, telephone bills, correspondence, handwritten notes, journals, calendars, receipts, and the like, to include cell phones and the SIM, ESN and IMEI numbers for the cellular phone(s), any passwords or access codes to access the electronic memory of the cellular phone, status of the account, and incoming and outgoing call detail records, said phones to

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Judge's initials

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1 be seized and examined by the Clark County Sheriff's Office Computer Forensics Lab  
2 and or the Clark Vancouver Regional Drug Task Force.

3 (6) Paraphernalia for packaging, including but not limited to pipes, bongs,  
4 rolling papers and other items used in using marijuana; [Make necessary changes for  
5 other controlled substances]

6 (7) Photographs of the crime scene and to develop any photographs taken  
7 of the crime scene, including still photos and video cassette recordings and to develop  
8 any undeveloped film located in the vehicle.

9 Are on this 18th day of April, 2014 in the unlawful possession of the  
10 defendant(s) in:

11 A blue 1995 Audi A6 four door bearing Washington license plate APZ2638.

12 The Vehicle Identification Number is WAUGA84A5SN045192.

13 I am informed and aware, based upon the following:

14 Your affiant is employed by the Clark County Sheriff's Office and has been for  
15 the last ten years. Your affiant is currently assigned to the Clark/Skamania Drug Task  
16 Force. During this employment your affiant has had over 720 hours of training in  
17 criminal investigation and other law enforcement topics. Your affiant has completed  
18 the 40 hour Clandestine Drug Laboratory Safety and Operations Course and the 80  
19 hour Drug Enforcement Administration Basic Narcotics Investigators Course. Your  
20 affiant has participated in several drug investigations and arrests, including having  
21 written or taken part in the service of a number of drug related warrants.

22 Your affiant has received training on the identification of controlled substances  
23 and can identify marihuana, methamphetamine, heroin and cocaine through sight and  
24 smell. Your affiant has personally seized these substances while participating in drug  
25 related arrests and investigations and has confirmed such as controlled substances  
26 through field tests and state laboratory examinations.

27 Additionally, In 1997 Charles Gardiner was commissioned as a Trooper with  
the Washington State Patrol. He is currently assigned to Clark County as a Narcotics

1 Canine Handler. During his tenure as a Trooper, he has initiated and participated in  
2 numerous narcotics related investigations. Trooper Gardiner has received training  
3 from the Washington State Patrol and the Washington State Criminal Justice Training  
4 Commission in narcotics identification and enforcement.

5 In September of 2001, Trooper Gardiner was selected and assigned to the  
6 Washington State Patrol Narcotics K-9 Unit as a Narcotics Canine Handler. In  
7 September of 2001, he attended the Washington State Department of Corrections  
8 Narcotics Canine Handler Training Class. This course consisted of more than 240  
9 hours of classroom and practical applications, which covered all specific areas  
10 required in the W.A.C.

11 Trooper Gardiner advises that the Washington Administrative Code (WAC  
12 139.05.915 [3b]) requires a narcotics dog handler to be trained in a minimum of 200  
13 hours of specific general detection training. Trooper Gardiner was assigned a canine  
14 named Molly who is a Golden Lab. Together they have completed the required WAC  
15 training as a team and during this process located in excess of 300 laboratory tested  
16 narcotic substances and training aids. The substances used for training included  
17 cocaine, crack, marijuana, methamphetamine, heroin and hashish. Molly is trained to  
18 alert on all these odors. Molly retired in August of 2009.

19 In June of 2009, Trooper Gardiner returned back to Narcotic Canine School to  
20 get a new partner. Trooper Gardiner was assigned a yellow Labrador Retriever  
21 named Corbin. Together they have completed the required WAC 139-05-915 [3b]  
22 training requirements as a certified team and during the process located in excess of  
23 100 laboratory tested narcotic substances and training aids. The narcotic substance  
24 used for training included cocaine, crack, marijuana, methamphetamine, and heroin.  
25 Corbin is trained to alert on all of these odors. While handling Corbin during the  
26 training period, Trooper Gardiner had 46 training applications with a total of 169 finds.  
27 During the training four other handlers worked Corbin and recorded 13 additional  
finds.



1 Trooper Gardiner advises that Corbin is a passive alert canine, which means  
2 that she gives a *sit response* or a *pin-point stare* after locating the specific area where  
3 the odor of narcotics is being emitted. This response is accepted by current narcotics  
4 canine standards. The handler is trained to watch for changes of behavior that are  
5 exhibited by the canine when an odor of narcotics is detected.

6 Trooper Gardiner is currently a member of the Washington State Police Canine  
7 Association (WSPCA) and the Oregon Canine Police Association. This organization  
8 facilitates further training for Canine handlers in the State of Washington and Oregon  
9 resulting in continuing and enhanced education for handlers. The WSPCA conducts  
10 testing for Washington State Team Accreditation on an annual basis for its members.  
11 To remain accredited a team must demonstrate their effectiveness in each area of  
12 training and exhibit control, smoothness and effectiveness in all phases of narcotics  
13 work and obedience. Corbin and Trooper Gardiner completed recertification on June  
14 7, 2011 by Washington State Patrol and have on-going monthly maintenance training  
15 with other canine handlers in Washington and Oregon.

16 On April 16, 2014 myself and other detectives assigned to the Clark Vancouver  
17 Regional Drug Task Force (CVRDTF) conducted a surveillance operation on a known  
18 heroin dealer identified as Ramsey Ray SHABEEB. I had previously developed  
19 probable cause for Ramsey's arrest for delivery of heroin to a Confidential and  
20 Reliable Informant (CRI) working for CVRDTF.

21 During the surveillance, detectives observed Ramsey park his vehicle in the  
22 parking lot of a local auto parts business. While parked, a blue Ford Focus vehicle  
23 arrived and parked next to Ramsey's vehicle. They appeared to converse through  
24 their open windows for a time before Ramsey exited his vehicle and retrieved what  
25 appeared to be a dark colored backpack from the trunk of the Ford Focus. He then  
26 placed the backpack in the trunk of his vehicle. The Ford Focus then left and we  
27 observed Ramsey as he went into the auto parts store and returned to begin working  
in the engine compartment of his vehicle.

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Judge's Initials

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1 He was then observed walking back into the auto parts store and while inside  
2 the store the Ford Focus arrived back at the location and parked next to Ramsey's  
3 vehicle. Ramsey exited the store, entered his vehicle and then left the parking lot.

4 Ramsey exited the parking lot and began driving past the parking lot I was  
5 parked in. He drove slowly past my vehicle and appeared to be staring inside. He then  
6 pulled a U-turn and entered the parking lot where I was parked. He again drove slowly  
7 past my vehicle. Fearing that he now knew he was under observation, the decision  
8 was made to stop the vehicle and arrest Ramsey for the probable cause developed on  
9 an earlier date.

10 The vehicle stopped and Ramsey was placed under arrest. During a search  
11 incident to arrest, an amount of a black substance was located wrapped in tin foil in  
12 his left rear jeans pocket. This black substance later field tested positive for heroin.

13 Post Miranda warnings I asked Ramsey for consent to search his vehicle. He  
14 was advised that he could refuse consent, limit the scope of my search, or stop the  
15 search at any time. Ramsey said that the vehicle did not belong to him, so he did not  
16 want the vehicle searched. The vehicle was seized, secured with evidence tape, and  
17 towed to the CVRDTF secure warehouse. Ramsey was transported to the Clark  
18 County Jail where he was booked for one count of 69.50.401-PCS1.

19 On April 18, 2014, Trooper Gardiner arrived at the warehouse with his K-9  
20 partner Corbin. Trooper Gardiner used Corbin to search the outside area of Ramsey's  
21 vehicle. Trooper Gardiner indicated that Corbin alerted to the presence of narcotics  
22 inside the vehicle, alerting at the rear bumper seam on the driver's side. Trooper  
23 Gardner's WSP Canine Activity Report is attached to this affidavit as Appendix A.

24 The probable cause used to arrest Ramsey is as follows;

25 Detective Lutz and I met with a Confidential and Reliable Informant (CRI)  
26 working for the Clark-Vancouver Regional Drug Task Force. Upon meeting with the  
27 CRI, I searched the CRI for drugs, money, or other contraband. Nothing was found. I  
then provided the CRI with money I had checked out from the DTF Drug Fund. I then

1 drove the CRI to a location in Battle Ground, WA. The CRI had placed a call earlier to  
2 purchase an amount of heroin from a person the CRI had previously identified as  
3 Ramsey R. Shabeeb. Upon arrival at the location I dropped the CRI off, who then  
4 went of the residence. Surveillance units in the area were able to observe the CRI  
5 walk to the residence.


6 After a short period of time the CRI walked back to the roadway outside the  
7 residence where I picked him up. The CRI handed me a small package of a  
8 substance tightly wrapped within a piece of a plastic shopping bag. The CRI identified  
9 this item as black tar heroin and the amount of heroin purchased was consistent with  
10 the amount of money paid. The CRI was again searched for drugs, money, or other  
11 contraband and nothing was located. The CRI was then released.

12 I later field tested a small amount of the suspected heroin, and the field test  
13 showed a color change consistent with a positive field test for heroin.

14 As to the informant's credibility, Sometime between February 8, 2014 and  
15 February 21, 2014, Detective Lutz and I met with the CRI to conduct a reliability buy of  
16 heroin. The CRI was searched for drugs, money, or other contraband and nothing  
17 was found. The CRI was then driven to a residence where he/she purchased an  
18 amount of heroin using money that I had previously checked out from the DTF Drug  
19 Fund. The CRI was kept under observation as he/she walked to the residence and  
20 made contact with the supplier. The CRI was then given an amount of heroin that was  
21 consistent with the amount of money that was paid. The CRI was then picked up by  
22 me. The CRI handed me a small amount of a substance inside a piece of a shopping  
23 bag that he/she identified as heroin. A subsequent field test of the item showed a  
24 positive result for heroin. The CRI was then searched again for drugs, money, or  
25 other contraband and nothing was found. This controlled purchase of heroin resulted  
26 in the informant becoming reliable.

27

AFFIDAVIT FOR SEARCH WARRANT - 6

  
Judge's Initials

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1 As to the informant's basis of knowledge, the CRI has given information to the  
2 Drug Task Force that has been corroborated through other sources. The CRI has  
3 knowledge of the drug trade from previous involvement in the drug subculture.

4 As to the informant's motivation, the CRI is working for the Clark Vancouver  
5 Regional Drug Task Force for possible consideration of a pending felony charge.

6 As to the informant's criminal history, he/she has no felony convictions and  
7 three gross misdemeanor convictions for Malicious Mischief, Assault IV, and Reckless  
8 Driving.

9 As to the defendant's criminal history, Ramsey Shabeeb has two misdemeanor  
10 convictions for DWLS 3 and Disorderly Conduct. Michael Thompson has three felony  
11 convictions for Burglary 2, Controlled Substance Possession, and Community Custody  
12 Violation; two gross misdemeanor convictions for Theft 3 and Reckless Driving; one  
13 misdemeanor conviction for Hit and Run Unattended Vehicle. Leonard Langdon has  
14 two misdemeanor convictions, both for DWLS 3.

15 Based on my training, knowledge and experience, I know that drug dealers and  
16 transporters commonly utilize compartments and hides inside of vehicles to transport  
17 narcotics in an attempt to hide detection.

18 I know from my training knowledge and experience that persons involved in the  
19 delivery and/or transportation of illegal narcotics often have notebooks or notes with  
20 supplier's name and/or address. And it is more likely than not that the records of this  
21 activity will be found in a blue 1995 Audi A6 bearing Washington license plate  
22 APZ2638. The Vehicle Identification Number is WAUGA84A5SN045192.

23 I know from my training, knowledge and experience that persons involved in the  
24 delivery and/or transportation of illegal narcotics have packaging material including  
25 plastic baggies to hold the controlled substances, and have drug paraphernalia in their  
26 vehicle. And it is more likely than not these items will be found in a blue 1995 Audi A6  
27 bearing Washington license plate APZ2638. The Vehicle Identification Number is  
WAUGA84A5SN045192

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Judge's Initials

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1 I know from my training, knowledge and experience that most people in  
2 possession of controlled substances possess items of identification (including but not  
3 limited to driver's licenses, insurance cards, vehicle registrations, bills, and address  
4 books). I also know that these items are relevant to the identity of the possessor of  
5 the controlled substances, possessor of other items seized. It is therefore more likely  
6 than not that item of identification will be found in a blue 1995 Audi A6 bearing  
7 Washington license plate APZ2638. The Vehicle Identification Number is  
8 WAUGA84A5SN045192.

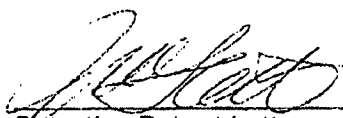
9 I know from my training, knowledge and experience that subjects  
10 involved in possession of controlled substances hide controlled substances in many  
11 places, including but not limited to, glove compartments, trunks and secret  
12 compartments. I am seeking to search all areas of the vehicle. I know from my  
13 training, knowledge and experience that cell phones, drug records, packaging  
14 material, bongs, rolling papers and pipes are tools of the trade and instrumentality of  
15 the crime of possession of controlled substance. That I am seeking to seize these  
16 items.

17 I know from my training knowledge and experience people often communicate  
18 with each other by phone to include cellular phones. Cellular phones store information  
19 within the electronic memory. These records can be accessed directly on the cellular  
20 phone through the electronic memory which can be protected with security codes.  
21 Some cellular phones also function as a digital camera, taking pictures and storing the  
22 picture within the cellular phone memory or with the service provider.

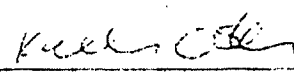
23 Suspect(s) commonly use their phones before, during and after a crime. The  
24 history of phone calls with the phone company/carrier and in the electronic memory of  
25 a cellular phone is a useful aid in identifying additional suspects or witnesses. Call  
26 histories can confirm or refute statements by the suspect(s) and witnesses. Also,  
27 phone call records can establish a time line of contacts made by the suspect(s) and

1 others. That I am seeking to seize those items and submit for analysis with a qualified  
2 examiner.

3 Based on the foregoing, I believe there is probable cause, therefore, your  
4 affiant requests this Search Warrant be issued pursuant to the State of Washington  
5 Criminal Rules for Courts of Limited Jurisdiction, Rule 2.3, Section (c), authorizing the  
6 search of the aforescribed vehicle for the above-described items and if any are  
7 found authorizing the seizure of the same as it appears that the above listed vehicle is  
8 involved in ongoing criminal enterprise involving the possession and delivery of the  
9 controlled substances.

10   
11 \_\_\_\_\_  
12 Detective Robert Latter  
13 Clark Vancouver Regional Drug Task Force

14 Subscribed and Sworn to before me this 18 day of April, 2014.

15   
16 \_\_\_\_\_  
17 District Court Judge  
18 Clark County  
19 State of Washington

## CLARK COUNTY PROSECUTOR

**November 17, 2015 - 12:16 PM**

### Transmittal Letter

Document Uploaded: 5-472392-Respondent's Brief.pdf

Case Name: State v. Ramsey Ray Shabeeb

Court of Appeals Case Number: 47239-2

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

### The document being Filed is:

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Brief: Respondent'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)

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