WASHINGTON STATE COURT OF APPEALS
DIVISION II

CASE NO. ~~45725-II~~ 45724-5

STATE OF WASHINGTON
RESPONDENT

-v-

SIDNEY A. POTTS
APPELLANT

APPEAL FROM SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR COWLITZ COUNTY

COURT OF

THE HONERABLE JUDGE EVANS

SEPERATE ADDITIONAL GROUNDS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE FACTS

Appellant raises a variety of issues in his Statement of Additional Grounds, and all are affected in some manner by a systematic denial of due process of the law, which, left Appellant without any hope of a fair trial. The errors assigned below were either deliberate, or made by a court not fully competent to determine legal issues. Appellant therefore requests this Court to not only review the issues below for error, but to also determine whether the errors were due to incompetence or bad faith.

ARGUMENT

I. WHETHER, SUPERIOR COURT ERRED IN IT'S MAY, 7,2013 DENIAL OF DEFENDANTS MOTION FOR RETURN OF PROPERTY.

This issue arises from the single search warrant issued on August 2, 2012. Upon issuance, the single search warrant was copied by the applicant and executed at three seperate locations on August 12,2012. **(Attached Ex.A).** The search warrant as issued did not authorize three seperate searches. The specific finding of probable cause on the face of the warrant, was for 411 Oregon Way, and 411 only. There was no mention of a finding of probable cause for, or authorization to search at 1275 Alabama Street or 2839 Louisiana Street.

Appellant brought this discrepancy to the attention of Defense Counsel, Mr. James K. Morgan. Mr. Morgan did not feel that this discrepancy was of any importance, and refused to address the issue in the manner desired by Appellant.

Mr. Morgan questioned the sufficiency of probable cause in the Affidavit, **(See CP #18,#19,#22,#23),** in disregard of Appellants desire to question whether the issuing Judge had in fact, made **[any]** finding of probable cause, as required by the Fourth Amendment, Federal Rule 41, Article 1,Section 7 of the Washington State Constitution, and CrR 2.3, **[prior]** to issuance of the search warrant.

This difference of opinion eventually led to the withdrawal of Mr. Morgan, and the court appointment of Mr. Bruce Hanify, who also refused to present the issue as requested by Potts.

Superior Court originally found that Judge Haan had issued three seperate warrants, **(CP #52).** Superior Court corrected its erronous ruling and found that Judge Haan had signed and issued only a single warrant. **(CP #57).** Its this finding of Superior Court which caused Appellant to finally file a pro se motion for Return of Property. A motion which Mr. Hanify refused to either research or file. **(Ct. Dkt. #82).**

In Judge Warnings denial of the pro se motion, the court held, **" The first paragraph again lists all three addresses and descriptions. In the finding of probable cause and authorization to search, only one of the three addresses is listed. There is no notation of any kind indicating either approval or denial of the authority to search the other two addresses." (CP #57).**

If Judge Warnings finding of fact and conclusion of law had ended there, Appellant would have only argued that there was no finding of fact, or authorization to search the additional two locations, and the executing officers had exceeded the scope of the warrant as issued.

However, Judge Warnings finding of fact and conclusion of law did not end there. He went on to state, **" The question then, is whether**

I can find that the ommission of two of the three addresses from the finding of probable cause and authorization to search was merely a ministerial oversight by the officer preparing the document, the prosecutor, and the judge signing it, or were all the references to the two addresses some sort of surplusage. I believe the only plausible conclusion is that, in the hurry to pursue the investigation, everyone focused on the headings in the documents and did not make sure that the language of the body of the document tracked." (See CP #57).

Judge Warnings finding of fact as to events leading up to issuance of the single search warrant are correct, however, they can not support his erronous conclusion, that, " It was the issuing magistrates intention to authorize the search of all three addresses, and the warrant language is sufficient to make that clear." (See CP #57).

Pursuant to CrR 2.3 and Article 1, Section 7, it would not only be improper, it would be unconstitutional for Judge Warning to speculate that a judge intended to make a finding of probable cause which is not contained within the four corners of the executed warrant. " Judicial orders to search residence and locker of defendant who was serving federal term of supervised release, which were issued to federal probation officers under all writs act, did not necessarily issue upon finding of probable cause, where no such findings were recited on face of orders, and thus were deficient, and searches of defendants home and lockers were presumptively unreasonable." U.S. v Kone, (S.D.N.Y. 2008), 591 F.Supp.2d 593.

On May 7, 2013 Appellant argued this position in the court of Judge Warning. (See RP pgs. 463-468). After hearing Appellants argument, Judge Warning ruled, that, " My feeling is it was ministerial error not to include all three addresses. So I will deny this motion based on that same reasoning." (See RP pg. 468 Lines 4-7).

Judge Warnings ruling was obvious error. Where, it would be an exercise in futility for a scrivener to attempt to implant a ministerial error in the body, if the judge in question has not made the required judicial determination for the scrivener to erronously record in the document. Blacks Law - Ninth Edition, defines Scrivener's Error as " An error resulting from a minor mistake or inadvertance, esp. in writing or copying something on the record, and not from judicial reasoning or determination."

As such, Judge Warnings finding that " Omission of two of the three addresses from the finding of probable cause and authorization to search was merely a ministerial oversight by the officer preparing the document, the prosecutor approving it, and the judge signing it." , does not support a finding of probable cause by the issuing judge. What it does is reveal that Judge Haan has failed in her duty to make a finding of probable cause [prior] to issuance of a search warrant, and " Rubber Stamped " the finding of probable cause proffered by the preparing officer, and approved by the prosecutor with no prior investigation, judicial reasoning or determination. And in fact, did not make the only finding of probable cause within the four corners of the warrant, invalidating the issuance and execution of all three search warrants in this case.

" Although the reviewing courtwill pay substantial deference to judicial determinations of probable cause, the court will insist that the magistrate perform his neutral and detached function and not serve merely as a Rubber Stamp for the police." Aguilar v State of Texas,(U.S. Tex.1964), 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723. " Case law interpreting the Fourth Amendment requires that the crucial determination of probable cause be made by a neutral and detached magistrate." Shadwick v.Tampa, 407 U.S. 345,

350 , 92 S.Ct. 2119,2122, 32 L.Ed.2d 783 (1972), " Magistrate must make the crucial probable cause determination." State V Meyers, 117 Wash.2d 332, 815 P.2d 761 (1991). " A warrant may issue only upon a finding of 'probable cause'. Magistrate is obligated to render judgement based upon commonsense reading of entire affidavit for search warrant." Spinelli v U.S., (U.S.Mo. 1969), 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637. " Both the state and federal constitutions generally require that the facts establishing probable cause for a search warrant be presented under oath, to a neutral and detached magistrate, for impartial review, and that the magistrate make the probable cause determination." State v Garcia, (Wash.App. Div.3 2007), 140 Wash. App. 608, 166 P.3d 848.

Appellant did not argue the sufficiency of probable cause contained in the affidavit in support of the request for warrant because the content of the affadivit is irrelevant to this proceeding. The state can never support a finding of probable cause, that has not been made. Pursuant to Judge Warnings findings, Judge Haan did not even take time to proof read the findings of probable cause prepared for her by a Longview Police Officer, before inappropriately "Rubber Stamping" the warrant.

There should be no doubt that the single warrant issued in this case, was improperly issued, without benefit of the required finding of probable cause, and the Court of Appeals should reverse Superior Courts denial , and grant the Motion for Return of Property unreasonably seized in violation of the Fourth Amendment, Federal Rule 41, Article 1,Section 7 of the Washington State Constitution, and Superior Court Criminal Rules, Rule 2.3.

II. WHETHER, SUPERIOR COURT ERRED IN REFUSING TO ORDER THE RETURN OF APPELLANTS RED CANOE ACCOUNT.

In the matter at hand Appellant filed a Motion Requesting Return of his personal Red Canoe Credit Union Records and Control of the Account. Appellant alleged that the records and account were unlawfully seized by Longview Police Officer, Rocky Epperson. **(See CP #83 and #110).**

The central argument was that Detective Epperson and Deputy Prosecutor Phelan had usurped judicial authority by improper use of the Special Inquiry Subpoena issued by Special Inquiry Judge Gary Bashor, requiring The Custodian of Records at the Red Canoe Credit Union to release copys of Appellants personal records to the Court of Special Inquiry. Detective Epperson somehow obtained a copy of the Subpoena, and with the assistance and guidance of Deputy Prosecutor Phelan, went to the Red Canoe Credit Union, convinced the Custodian of Records to give him the records instead of the Special Inquiry Court Clerk as ordered by the Subpoena. Detective Epperson and Deputy Prosecutor Phelan then used the unlawfully obtained records as probable cause for search warrants and to seize bank accounts, without authorization from Special Inquiry Judge Bashor, and without making a return of service of the Subpoena with the Special Inquiry Court.

The state argued at first that the records and account had been lawfully obtained. At the December 7,2012 hearing, Deputy Prosecutor Phelan stated, **" There was a Special Inquiry Proceeding thats how they got them ".** And , when questioned by the court as to whether the defense had recieved notice of the Special Inquiry Proceeding, Deputy Prosecutor Phelan responded **" no ". (See RP pg. 156, lines 14 - 20).** Superior Court ordered the state to make the information available to to Appellant. Appellant then recieved copies

of the states Motion for Subpoena Duces Tecum, Affidavit for Subpoena Duces Tecum by Rocky Epperson, approved by Deputy Prosecutor Phelan, and a Special Inquiry Subpoena Duces Tecum signed by Special Inquiry Judge, the Honerable Gary Bashor. **(See Ex. E).**

When confronted with his and Detective Eppersons unlawful and unethical conduct and request for full discovery, Deputy Prosecutor Phelan denied that a Special Inquiry Proceeding had occurred. **(See RP pgs. 391 and 392).**

At the hearing on May 7,2013 Superior court ruled, and the state conceeded that Special Inquiry rules were'nt followed and that Appellant had won that issue. **(See RP pg. 339 and 340)**, And set hearing for return of record and account for May 14,2013. At the conclusion of argument on May 14, 2013 Judge Warning granted the return of the unlawfully seized financial records but refused to order the return of the unlawfully seized account.

Judge Warning, relying on the states argument, **(See RP pgs. 478 and 479)**, held that Superior Court does not have authority to return unlawfully seized property pursuant to **RCW 69.50.505**, and denied defendants request for return of the unlawfully seized account by stating, **" In the context of the criminal proceeding, you are entitled to return of the property as long as it is not contraband. Having said that, that doesnt mean that there isnt some other parallel proceeding going on. And I am not going to make a ruling about that." (See RP pg. 498).**

The law concerning this issue has long been settled. Judge Warnings ruling, **RCW 69.50.505** notwithstanding, was clearly made in error. In 1932 the Supreme Court of this State ruled, **" If a defendants documents were wrongfully seized, court, in proceedings to review search warrant and for suppression and return of evidence, could order return."** In support of this holding the court explained, **" If deputy sheriff wrongfully seized**

defendants documents, defendants right to return thereof, held not defeated by alleged prohibition officers. If the deputy sheriff had no right to take or hold those documents, the Appellants right to return of them could not be defeated by the asserted fact that they had been turned over to someone else.

We do not approve any such make-shift. Neither do we incline to say that if this had been the only reason for withholding the return of property, the court, in the proceeding before it, had full authority to order its return. Furthermore, we think the disposition of the property taken under such circumstances must be justified, to the satisfaction of the court, by the parties responsible therefore, or else its future practice should be discouraged by a proper order in this particular case." State v Innocent, 170 Wash. 286, 16 P.2d 439 (1932).

And where Judge Warning had already ruled that the records and account had been unlawfully seized, the Fourth Amendment Exclusionary Rule would have to apply to any [parallel] forfeiture proceeding. " The Fourth Amendment Exclusionary Rule applys to forfeiture proceedings and so precludes the use of illegally seized evidence in those proceedings." State v Deeter, 106 Wash. 2d at 379, 721 P.2d 519 (1986).

Innocenti mandates return of unlawfully seized property, and Deeter specifically excludes forfeiture of property unlawfully seized. As such, Superior Court has committed plain error, and this court should order the return of Appellants Red Canoe Account. Further, the state has been aware the entire time that the contents of the Red Canoe Account is entirely composed of a single check from the Department of Veterans Affairs, for disability due to exposure to Agent Orange during the Viet Nam Conflict, and could not be proceeds of criminal activity.

III. WHETHER, SUPERIOR COURT ERRED IN ITS DENIAL OF MOTION TO SUPPRESS ALLEGED EVIDENCE OBTAINED IN VIOLATION OF RCW 9.73.030 ON AUGUST 10, 2012.

The state has conceeded that no authorization for intercept of private communications on August 10, 2012 has ever been filed with Superior Court. (See RP pg. 518, lines 13-18).

Appellant filed a motion to suppress [any] evidence obtained on August 10, 2012, and further argued in the motion that RCW 9.73,230(8) does not apply in this case. (See CP #108).

Superior Court granted the motion to suppress, holding, " I will grant the motion as to August 10th conversation and exclude any evidence obtained from any August 10th convesation." (See RP pg. 253, lines 1-4)

No ruling as to whether RCW 9.73.230(8) applied was made. When asked for clarification the court responded, " I'am - - I'am only excluding whats recorded. Thats what the statute calls for; thats the remedy." (See RP pg. 525, lines 1-25).

That holding was erronous, RCW 9.73.050 requires exclusion of [any] evidence obtained in violation of RCW 9.73.030, and Superior Court should have excluded the alleged drug transaction and any activity heard or observed by the confidential informant.

Superior Court refused to make a specific ruling as whether RCW 9.73.230(8) applies in this case. However, where the state conceeds, " There would be no mention of the wires from August 10th because there wasnt an authorization, either it was'nt found - - there - - we couldnt find a record authorizing." (See RP pg. 1941, lines 1-25, pg. 1942, lines 1-2), there is in fact no authorization, and where there is no authorization, pertinant case law and RCW 9.73.050 require suppression of [any] evidence obtained inviolation of RCW 9.73.030. " The

Supreme Court has determined that RCW 9.73.230(8), the unaided evidence provision only applies if a recording was actually authorized under RCW 9.73.230. Otherwise, the general provision which excludes evidence obtained in violation of the privacy act applys." RCW 9.73.050. State V Salinas, 121 Wash.2d 689.

In this case there is no valid authorization, and as such, there is no proof of good faith attempt to comply with the requirements of RCW 9.73.230, and all evidence connected with the alleged transaction on August 10, 2012, should have been suppressed. State v Jiminez, 76 Wash.App. 744, 888 P.2d 744 (1995).

Appellant requests this court to find that [any] alleged evidence obtained without authorization on August 10, 2012 should have been suppressed, vacate the convictions for Count I, V, and VI of the information and remand to Superior Court for further proceedings in compliance with this ruling.

IV. WHETHER, SUPERIOR COURT ERRED IN FAILING TO SUPPRESS EVIDENCE OBTAINED IN VIOLATION OF NON-JUDICIAL AGENCY AUTHORIZATION EXCEPTION TO RCW 9.73.030.

Appellant filed a motion with Superior Court claiming that the state had violated the Non-Judicial Agency Authorization exception by intercepting more than one communication per authorization. (see CP #108).

The state argued, and Superior Court ruled that the holding in State v Forest, 85 Wash.App. 62 controls in this case, and denied Potts' motion to suppress. (See RP pgs. 499-526). In Forest the court made several inappropriate and invalid presumptions, and Appellant now appeals the denial by Superior Court under the incorrect holding in Forest.

The Forest court held, " If agency authorizations can encompass only one authorization, most recordings of drug transactions would have to occur under

judicial authorization ..... we conclude that the legislature did not intend to limit agency authorizations to one conversation per authorization."

The Forest court arrived at the wrong conclusion as to Legislative Intent; (1) The Legislature [did] intend to limit agency authorizations to one intercept per authorization. RCW 9.73.230 was enacted as a limited ~~[exception] to the RCW 9.73.090(2) judicial authorization requirement for~~ any intercept of a private communication by law enforcement; (2) The Legislatures specific and unambiguous language limits non-judicial intercept authority to [a] conversation or communication per intercept authorization, and this limitation is the specified intent of the Legislature.

The courts duty in both Forest and this case was to effectuate the intent of the Legislature in enacting the statute. The statute is unambiguous and the courts should have applied the language as the Legislature wrote it, rather than amend it by judicial construction. Bruett v Real Property, 968 P.2d 913, Salts v Estes, 133 Wash.2d 160,170, 943 P.2d 275 (1997).

In this case, as in Forest, the court failed to consider the clear language used in each subsection, and then reach their conclusion as to Legislative Intent through careful consideration of the statute as a whole. RCW 9.73.030 specifically prohibits the intercept, monitoring, or recording of any private conversation or communication without the consent of all parties involved. RCW 9.73.040 creates an exception to RCW 9.73.030 by allowing for ex parte orders by Superior Court Judges for intercept of private communications, after verification from the Attorney General or Prosecuting Attorney that National Security or human life are endangered. RCW 9.73.050 specifically prohibits admission into any civil or criminal

court [any] evidence obtained in violation of RCW 9.73.030. RCW 9.73.090 was enacted to provide specific exception to the above subsections. It sets forth the judicial exception to RCW 9.73.030 thru RCW 9.73.080 and specifically mandates how it applys to controlled substances offenses. RCW 9.73.090(2) - It shall not be unlawful for a law enforcement officer acting in performance of the officers official duties, to intercept, record or disclose an oral communication or conversation where the officer is a party to the communication or conversation or one of the parties to the communication or conversation has given prior consent to the interception, recording, or disclosure: PROVIDED, that, prior to the interception, transmission, or recording the officer shall obtain written or telephonic authorization from a judge or magistrate, who shall approve the interception, recording, or disclosure of communication[s] or conversation[s] with a non-consenting party for a reasonable and specified period of time ... ...RCW 9.73.090(5) states, If the judge or magistrate determines that there is probable cause to believe that the communication or conversation concerns the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell controlled substances as defined in Chapter 69.52 RCW, the judge or magistrate may authorize the interception, transmission recording or disclosure of communication[s] or conversation[s] under subsection (2) of this section.

Pursuant to RCW 9.73.090 subsections (2) and (5) the Legislature has specifically defined the requirements of the judicial exception, which clearly and unambiguously allows for intercept of multiple conversation[s], or communication[s] with a single authorization.

RCW 9.73.230 created a narrowly defined exception to the requirement of judicial authorization, and specifically withheld authority for multiple

interceptions through a single agency authorization. RCW 9.73.230 grants authority to the Chief Law Enforcement Officer of an Agency or his designee above the Rank of First Line Supervisor to " authorize the interception, transmission, or recording of [a] conversation, or communication." RCW 9.73.230(1)(a) states, " At least one party to [the] conversation or communication has consented." RCW 9.73.230(b) states, " Probable cause exists to believe that [the] conversation or communication involves..." RCW 9.73.230(2) - The Agencys Chief Officer or designee authorizing [an] interception, transmission, or recording. RCW 9.73.230(2)(c) - The names of the officers authorized to intercept, transmit, or record [the] conversation or communication. RCW 9.73.230(2)(e) - The expected date, location, and approximate time of [the] conversation or communication. RCW 9.73.230(5) - Each authorization shall independantly meet all the requirements of this section.

In RCW 9.73.090(2) and RCW 9.73.090(5) the Legislature declared its specific intent with clear and unambiguous language which allowed for granting of judicial authority to intercept multiple conversations with a single authorization. And, just as clearly and unambiguously declared its intent to withhold authority to issue authorization for multiple intercepts with a single authorization in RCW 9.73.230 et. seq..

RCW 9.73.230 was enacted in anticipation of situations dealing with controlled substances in absence of a Judicial Officer, and is a very narrow and specific exception to the requirement of judicial authorization. The Agency Authorization exception only allowed non-judicial authorization to intercept

[a] single conversation or communication with [a] single authorization.

The Legislature did not limit the number of authorizations an Agency could issue, it did however mandate that, **"Each authorization shall [independantly] meet all the requirements of this section."** RCW 9.73.230 (5), State v Jimaze, 888 P.2d 744 (Div.1 1995). Which would seem to indicate a single intercept to a single authorization request.

However, we need not speculate as to Legislative Intent where, the Legislature specifically mandated intercept in the plural in RCw 9.73.090, and the singular in RCW 9.73.230. The Legislature has declared its specific intent. **"Where the legislature uses certain statutory language in one instance, and different language in another, there is a difference in Legislative Intent."** State v Jackson, 137 Wash.2d 712, 976 P.2d 1229 (1999).

Neither Superior Court, in the case at bar, or the Court of Appeals in **Forest**, properly review the statute as a whole. **"Where a statute provides for a stated [exception], no other exceptions will be assumed by implication."** State v Roadhs, 71 Wash.2d 705, 707, 430 P.2d 586 (1967).

Appellant argued that multiple interceptions under authority of a single authorization required suppression in this case. **(See RP pgs 499-526), (CP #108).** Superior Court held that it agreed with the States reading of **Forest**, and went on to point out that it would be a strained and foolish reading of the statute to say that one authorization could only be sufficient for one conversation, and denied the motuion. This, coupled with the final remarks of the Forest court, **"It would be a triumph of form over substance to require police to obtain seperate authorizations for the single transaction here. We decline to do so."**, revealed the personal, and substantive conflict of both courts with the statute as it was written by the Legislature.

Both courts chose to disregard the clear and unambiguous language of

the Legislature's specific declaration of intent, and interpret the subsection to suit its own notions of form and substance. The courts holding has substantially amended the construction of the statute in violation of the principle that the drafting of a statute is a legislative, not a judicial function. State v Enloe, 47 Wash.App. 165, 734 P.2d 520 (1987), Salts v Estes, 133 Wash.2d 160,170, 943 P.2d 275 (1977).

The reading in the Forest court has led to an impermissable result in statutory construction. The Forest courts reading of the statute has undermined the clear legislative intent to limit abuse of self authorized electronic surveillance by law enforcement. State v Knight, 79 Wash.App. 670, 904 P.2d 1159 (Div.2 1995).

In conclusion, Appellant requests this court to find that RCW 9.73.230 only allows the intercept of a single conversation or communication under authority of a single authorization, and remand this case to Superior Court, with instruction for further proceeding in compliance with this ruling.

V. WHETHER, THE HOLDING IN FOREST REQUIRES SUPPRESSION IN THIS CASE.

In Appellants Motion to Suppress, he contended that even if he was incorrect in his belief that RCW 9.73.230 allows only one interception per authorization, the ruling of the Forest court would still support his position. That court ruled that the authorization was valid because the applicant specifically requested authority to intercept two conversations. " The authorization in this case expressly contemplates two conversations, one by telephone to arrange the transaction and one in person to finalize it. It would be a triumph of form over substance to require the police

to obtain seperate authorizations for the single transaction in question. We decline to do so. State v Forest, 85 Wash.App 62.

Appellant does not know whether the applicant in Forest actually complied with the mandate of RCW 9.73.230(e) that, the expected date, location, and approximate time of [both] anticipated interceptions be included in the request and the authorization. But, if the applicant in Forest did not, then, the Forest court should have suppressed, because the authorization violated both RCW 9.73.230(e), and the RCW 9.73.230(5) mandate that, each authorization shall [independently] meet all the requirements of this subsection,

However, even if the Forest reading is not flawed, it still supports Appellants position that any evidence obtained after the initial execution of the authorization, in this case, should be suppressed. Not only because he alleges that the officers should only be allowed to intercept a single conversation for each authorization. But because unlike the applicants in the Forest case, the applicants in this case did not request authorization to intercept two seperate conversations, one by phone to arrange the transaction, and one in person to finalize it. Where there was no request for authorization to intercept or record any second or subsequent conversation, no authorization to intercept or record any second or subsequent conversations was issued.

The applicant in this case specifically requested authority to intercept, monitor, or record a single conversation. (See EX. C). As such, any second or subsequent interceptions were made without authorization, and RCW 9.73. 230.050 requires suppression of any evidence obtained in violation of RCW 9.73.030. State v Salines, 121 Wash.2d 689, State V Gonzales, 71 Wash.App. at 720, State v Jiminez 126 Wash.2d 1021.

896 P.2d 63 (1995), State v Fjermstad, 114 Wash.2d 828, 791 P.2d 897, and further, RCW 9.73.230(8) does not apply in this case, where no authority was requested or granted to intercept more than one conversation per authorization. This argument was raised and argued in Superior Court, and their denial is now appealed herein.

In conclusion, Appellant requests this court to order the suppression of [any] unrequested or unauthorized interceptions, and [any] evidence derived therefrom, and remand this case to Superior Court for further proceedings in compliance with this ruling.

vi. Whether, superior court erred in denying the motion to dismiss for violation of speedy trial, CrR 3.3.

Appellant filed this motion on May 23, 2013, and Superior Court denied it on that same day. **(See RP pgs. 585-596, CP #123).** Superior Court based its denial on several misconceptions of law. (1) That a Special Inquiry Judge may not be statutorily disqualified from presiding over an arraignment because of its non-discretional nature; (2) That CrR 4.1 allows for assignment of a constructive arraignment date, after time for speedy trial has elapsed; (3) That a waiver of speedy trial is valid [prior] to arraignment; (4) That trial court holds discretion to grant continuance prior to initial setting of a trial date.

Appellant was pro se at the time of filing of the Motion to Dismiss, and immediately requested assistance of counsel when he realized what type of treatement he had to look forward to in Superior Court without some of sort of legal assistance.

On May 29, 2013 Appellant filed a pro se Objection to the Out of

Time Amended Information and Arraignment, and Renewal of Motion to Dismiss. **(See CP #129).** Newly appointed counsel filed Objection to Trial Date and Motion to dismiss on May 29, 2013. **(See CP #131).**

Counsel argued the motion in front of Judge Warning on June 4, 2013, and Superior Court denied the motion for the same reasons, **(See RP pgs. 637-652).**

On November 14, 2013 Appellant filed a pro se Motion to Dismiss for Violation of Speedy Arraignment and Speedy Trial. **(See CP #172).** Superior Court denied this motion on November 15, 2013. **(See RP pgs 1300-1305).**

(1) A Special Inquiry Judge may not preside over any proceeding arising out of a Special Inquiry Poceeding.

Superior court erred in holding that Special Inquiry Judge Bashor was not disqualified from presiding over Appellants arraignment because he had presided over the Special Inquiry Proceeding preceding this case. This issue was addressed specifically by the Supreme Court, **" Washington Revised Code 10.27.180 disqualifies the Special Inquiry Judge from acting in any court proceedings which follows the Special Inquiry Judge Proceeding, except the contempt proceedings specified in the statute. Since the Special Inquiry Judge proceedings can be used to gather evidence of a crime before the defendant has been charged with the crime, the effect is to disqualify the Special Inquiry Judge from acting in charging and post charging proceeding in any case which came before him on Special Inquiry."** State v Neslund, 103 Wash.2d 79 (1984).

Pursuant to **RCW 10.27.180,** and the Supreme Courts ruling in Neslund, Judge Bashor lacked subject matter jurisdiction to preside over the purported arraignment in this case, and held no authority to set date for trial.

As such, the arraignment, and any setting of a trial date, were outside the courts jurisdiction, and were null and void. State ex.rel. Patchett v Superior Court for Franklin County, 60 Wash.2d 784,787, 375 P.2d 747 (1962), Grady v Dashiell, 24 Wash.2d 272, 163 P.2d 922 (1945), France v Freeze, 4 Wash.2d 120, 102 P.2d 687 (1940), State v Corrado, 78 Wash.App. 612, 898 P.2d 860 (1995).

All actions taken by Judge Bashor at Appellants initial appearance and arraignment were void, including setting a trial date of October 22, 2012. As a result, any extensions of that trial were based upon a void order and were a nulity. Appellant was not arraigned by a court of competent jurisdiction until May 23, 2013. By that time he had been in custody on the charges herein for over Nine Months and the time allowed for trial under CrR 3.3 had long since expired. Superior Court should have dismissed the information with prejudice as required by CrR 3.3.

(2) Superior Court may not assign a Constructive Arraignment date after the time allowed for Speedy Trial has expired.

Superior Court and the State seem to read more into CrR 4.1 than Appellant can find. Appellant can find no authority, statutory or case law, state or federal, which allows for retroactive application of a constructive arraignment date, once the time for trial has expired. The states argument would make a total nullity of the Speedy Trial Rule.

The courts ruling in this matter, and the states position are in direct conflict with a considered reading of the rule, and the opinions of the courts who have addressed this issue. " The possibility of timely trial 'irrevocably expires' if a preliminary hearing is not held within the statutory number of days of defendants arrest." State v Edwards, 94

Wash.2d 208, 616 P.2d 620 (1980), State v Stanmore, 17 Wash.App. 61, 562 P.2d 251 (1977), (See CP #123, pg. 7).

Therefore, where the initial arraignment and setting of trial date were nullitys, and carried no force of law, all actions purportedly taken by the state and Superior Court prior to May 23, 2013, the date Appellant was finally arraigned were also null and void. And, any possibility of a timely trial irrevocably expired 60 days after the information was filed on August 15,2012.

(3) Any Waiver of Speedy Trial is invalid prior to arraignment.

Any waiver of Speedy Trial signed by a defendant prior to proper arraignment and setting of trial date are invalid and do not toll the running of the clock for Speedy Trial. **" Where there has been no preliminary hearing or arraignment before a court of competent jurisdiction, any waiver signed by defendant would be invalid. Waivers entered after arraignment only relate to the time period between arraignment and trial."** State v Kitchen, 75 Wash.App. 295, 877 P.2d 730 (1994), (See CP #123 Pg.7).

Therefore, even if the court were allowed to assign a retroactive constructive arraignment date of August 29, 2012, the period encompassed by the invalid waivers, signed prior to actual arraignment before a [court of competent jurisdiction] on May 23, 2012, surpassed the time allowed for trial, and would also require Dismissal with Prejudice.

(4) Superior Court lacked discretion to grant any continuances prior to actual arraignment and assignment of trial date by a [court of competent jurisdiction].

In the states Response to Appellants Request for Discretionary Review, the state conceeded that, **" There is no real dispute that Judge**

Bashor was statutorily prohibited from hearing the case." (See States Response, pg. 2, Ex. D). Where the state has factually conceeded that Bashor lacked Subject Matter Jurisdiction to hear Appellants arraignment, or set a valid trial date, Superior Courts reliance upon CrR 4.1, Speedy Trial Waivers, and continuances, ordered prior to the May 23, 2013 assignment of trial date, by a court of [competent jurisdiction], does not conform to rule of law, or the trial courts discretion to act.

An improper continuance to setting of a trial date was considered by the Court of Appeals in State v Jenkins, 76 Wash.App. 378, 884 P.2d 1356, (Div.I 1994). In Jenkins the court held, " the language of Criminal Rule 3.3 is clear: The trial court is not empowered to exercise its discretion to grant an extension until an initial trial date is set."

The key point in Jenkins, just as in this case, was that, the trial date was not set [prior] to expiration of Time Allowed for Trial by the Speedy Trail Rule. As such, no waivers or continuances may save the tolling of the clock, and CrR 4.1 may not allow retroactive assignment of a Constructive Arraignment Date, after the time for trial has expired, and Superior Court should have dismissed the information with prejudice, pursuant to CrR 3.3(h).

VII. WHETHER, THE OFFICERS OF SUPERIOR COURT HAVE, IN BAD FAITH, DELIBERATELY AND COLLECTIVELY DENIED APPELLANT HIS RIGHTS TO DUE PROCESS OF THE LAW, EFFECTIVE ASSISTANCE OF COUNSEL, AND A FAIR TRIAL.

Appellant is sure that the courts improper conduct did not begin at his pre-trial and trial, nor does he claim a conspiracy directly targeting himself. What Appellant suspects is a general decaying of the

integrity of the courts, caused over the years by public opinion and the war on drugs. The officers of that court might no longer even recognize their actions as misconduct, or that these actions violate Statutory, Constitutional, Professional and Judicial Rules, Cannons, Rights, laws and the Oaths sworn as Officers of the Court.

Appellant first noticed the improper interplay between the state, the court and defense counsel at the hearing on November 29, 2012, where Appellant attempted to preserve an issue for appeal, an issue that counsel would not raise, by objecting on the record. The issue, Magistrate's Failure to Make Required Finding of Probable Cause, **(See pg. 1, this Brief)**. Superior Court improperly refused Appellant the right to be heard, and incorrectly advised Appellant as to the weight of an objection preserved in the record. **(See RP pg. 118 line 16 thru pg. 119 line 2)**

> **Mr. Hanify: Your Honor, my client would like to address Your Honor about something.**
>
> **Judge Warning: Go Ahead.**
>
> **Defendant: Your Honor, just to get this in the record in case we have to go to appeal. I think this is somthing that - -**
>
> **Judge Warning: Let me - - Mr. Potts, Let me stop you for a second. I assume this is going to go to appeal. Anything that you say right now, not under oath, doesnt mean bumpkus as part of the record.**

Contrary to Superior Courts deliberate misrepresentation to Appellant, failure to object to a ruling of the court on the record, whether under oath or not, would waive that issue in the Court of Appeals. Not only was Judge Warning's misstatement of the law a substantive denial of due process, his failure to allow Appellant to make his objection on the record, was a flagrant violation of the **Code of Judicial Conduct, Rule 2.6(A); " A judge shall accord to every person who has legal interest**

in proceeding, or that persons lawyer, the right to be heard according to the law."

The next breach of Appellants rights occurred in Judge Warnings Court on December 5, 2012, where Mr. Hanify informed the Court and Appellant that he would file any motion he desired without Appellants prior approval or knowledge. (See RP pg 121, lines 9-19).

~~MR. Hanify to Defendant: Like I said, I'm going to go ahead and~~ file this motion for recon, whether you want me to or not.

Mr. Hanify to the Court: My client does not want me to file that until he has had a chance to look at them.

Mr. Hanify went ahead and filed the motion in deliberate disregard of his clients wishes, after informing Superior Court that he was doing so. In Cowlitz County Superior Court it may have appeared to be a normal everyday occurrance, However, in a proper court of law, it would have been the act of an attorney who had just informed Superior Court that he was filing a motion in disregard of his clients wishes, in deliberate disregard of the Rules of Professional Conduct, Rule 1.2(a) paragraphs (C) and (D), Rule 1.4, 1.4(a), Rule 2, and Rule 4, in disobedience of his clients specific instructions. And Superior Court, who's failure enforce the Rules of Professional Conduct, committed violation of Code of Judicial Conduct, Rule 2.15 - Responding to Judicial and Lawyer Misconduct.

On December 12, 2012, Superior Court made the ruling which removed any doubt as to Appellants right to adversarial effective assistance of counsel. The court informed Appellant and Mr. Hanify that defense counsel did not have to consult with, inform, or allow Appellant to participate in his own defense while the case was in Cowlitz County

Superior Court. Once again in violation of the Rules of Professional Conduct, the Code of Judicial Conduct and Appellants right to Effective Assistance. (See RP pg. 137, lines 8-16)

Defendant: Okay. Can you explain to me what assistance of counsel is.

Judge Warning: I - - your attorney is doing a fine job. He is doing the research he needs to do.

Defendant: Well. Your Honor, I - -

Judge Warning: And, if you and he have a disagreement about the research that is necesssary, I'am going to defer to him.

Superior Court had effectively excluded Appellant from making any decisions or particapating in his own defense. And on January 8, 2013, Superior Court made a ruling that attempted to completely deny Appellants right to Effective Assistance of Counsel and Access to the Courts. (See Rp pg. 194, line 11 thru pg. 196, line 7)

Defendant: Your Honor, I have two motions, A motion to Reconsider - -

JUDGE Warning: Okay.

Defendant: I asked - - can I -- can I finish.

Judge Warning: Mr. Potts because we wer'nt on the record just a moment ago, I'll restate my position. You're represented by counsel. I have stretched an extremely long way in allowing you, in addition to being represented by counsel, to present some issues on your own.

Defendant: (Inaudible) - -

Judge Warning: So I am to the point where I am no longer willing to do that.

Defendant: Your Honor -

Judge Warning: So I am not going to consider your pro se motions.

Defendant: Your Honor, will you explain to me assistance of counsel. I mean, just the basic rule of - - or the parameters of where he assists me in presenting my motions, or - - he presents what he feels like presenting.

Judge Warning: He - - he presents what he thinks has some legally cognizable basis.

Defendant: And the, he's not representing what I want represented in this case at all. He's representing what he wants to represent.

Judge Warning: - - uh - - that - - you and he need to talk. He -

Defendant: Your Honor, I've asked him to represent these issues.

Judge Warning: - - he presents - -

Defendant: And, he will not.

Judge Warning: Mr. Potts? As I said, he presents what he thinks has some viable basis in law. Mr. Hanify understands that his credibility with the court is important on behalf of his client. And, I dont blame him for not presenting a lot of things that he thinks are foolish or have no basis. And I am not going to - -

Defendant: Okay. Well I have the file copy here - -

Judge Warning: - - interfere with your relationship with your - -

Up to this point the court had denied Appellant the opportunity to enter an objection to a court ruling into the record, allowed defense counsel to file a motion, after being informed it was against his clients wishes and instructions. Informed the state, defense counsel and defendant that defense counsel was not required to research matters defendant wished to have researched. That the court would not entertain defendants pro se motions, and defense counsel was not obligated to file motions defendant wanted filed, or raise issues or objections defendant wanted raised in court.

All of the above are direct or indirect violations of the **Code of Professional Conduct, CrR 4.5(d), and the Code of Judicial Conduct.** The violations were flagrant and deliberate violations of Appellants guaranteed right to Due Process of the Law, Effective Assistance of counsel, Access to the Courts, and a Fair Trial. However, the courts abuse of Appellants rights and protections were far from over. The court went on to inform Appellant that he had only two options; (1) proceed without counsel, and

(2) Proceed with Mr. Hanify, counsel who had demonstrated he would not respect his clients wishes or instructions, would not raise issues, make objections, or file motions at the clients request, and had been authorized to proceed in this manner by Superior Court.

When you add the fact that, inmate's like Appellant at the Cowlitz County Jail are not allowed to use the on site Law Library if they are represented by counsel, and then not without Superior Courts express authorization, Appellant has been denied any Assistance of Counsel and Access to the Courts by Superior Courts deliberate abuse of its discretion. (See RP pg. 253, lines 4-18), (RP pg. 303 lines 15-16).

> Defendant: I did - - I did ask them... I did file a motion with them to appoint counsel. And, in the meantime, while I'am not represented, I would like to be able to use the Cowlitz County Jail Law Library facility for research on the matter.
>
> Judge Warning: Okay. Well , we will await the decision from them on the motion and then, it's actually through the Court of Appeals now that counsel is appointed so they'll take care of it.
>
> Defendant: Okay. But - - but can I use the law library ?
>
> Judge Warning: So, no - - pending that - - no, we're going to wait until we get a decision from the Court of Appeals for Law Library Access.

Judge Warning disabused any further thought of Assistance of Counsel in Cowlitz County Superior Court when Appellant informed the court that he did not want to proceed pro se, and instead he would like to have an attorney who would work with him on the case, and Judge Warning responded, " Thats not an option". (See RP pg. 199, lines 10-23)

> Judge Warning: Do you want to represent yourself at this point ?
>
> Defendant: I would rather have assistance of counsel that would - - that wants to work with me.
>
> Judge Warning: Okay, Thats not one of the options. You've got two options, and you need to tell me which one your

doing right now.

Defendant: Do they have such a thing as co-counsel, Your Honor.

Judge Warning: One of those is to have Mr. Hanify represent you. The second is to represent yourself without counsel.

On March 26, 2013 Appellant filed a pro se Motion Requesting Appointment of Counsel and Dismissal for Judicial Denial of Effective Assistance of Counsel. Superior Court allowed Appellant to read the Motion into the Record prior to filing it. **(See RP pg. 294, line 25, through RP pg 297, line 15), (CP #96).** Superior Court denied the Motion to Replace Counsel, **(See RP pg. 300, lines 7-25),** and Appellant invoked his right to proceed without counsel. **(See RP pg. 301, lines 5-11),** Superior Court denied the Motion to Dismiss for Judicial Denial of Effective Assistance of Counsel, **(See RP pg. 320, lines 3-20),** and it is this denial which Potts now appeals.

In conclusion, Appellant asks this court to enter a finding that, the Officers of Cowlitz County Superior Court have, in Bad Faith, Deliberately and Collectively, Denied Appellants right to Due Process of the Law, Effective Assistance of Counsel, Access to the Courts, and any possibility of a Fair Trial. Vacate the Sentence and Conviction and Dismiss the Information with Prejudice.

Further, where Superior Court deliberately misinformed defendant as to an attorneys responability to his client, allowed that same attorney to act outside his prescribed role under the **Rules of Professional Conduct,** acted outside the discretion allowed by **Rule of Law, and Code Of Judicial Conduct,** this court should fulfill its role mandated by **Code Of Judicial Conduct, Rule 2.15 - Responding to Judicial and Lawyer Misconduct,** and apply the proper sanctions for conduct which seriously diminishes perception of judicial integrity, and fairness in its proceedings.

VIII. WHETHER, JUDGE WARNING AND DEPUTY PROSECUTOR PHELAN'S IMPROPER EX PARTE COMMUNICATION DENIED POTTS' RIGHT TO DUE PROCESS OF THE LAW, EFFECTIVE ASSISTANCE OF COUNSEL, AND A FAIR TRIAL.

On March 5,2013, Potts filed a pro se Motion Requesting Judicial Sanction, Return of Personal Financial Records, and Control of Red Canoe Account, for Gross Prosecutorial Misconduct. **(See CP #83).** Potts' attorney of record would not research this issue, nor would he file it after Potts completed the research, and prepared the motion. Mr. Hanify's refusal to abide by his clients wishes is explained and authorized by the rulings of Superior Court. **(See Issue VII, THIS DOCUMENT), (RP pg. 548, Line 21 - 25, RP pg. 549, line 1 - 18).** As a matter of record, Potts prevailed on this particular issue, after filing the Motion to Dismiss for Improper Ex Parte Communication. **(See RP pg. 439, Line 14-25, pg. 440, line 1-19).**

On March 19,2013, in response to Judge Bashors question about pending motions, Deputy Prosecutor Phelan, in open court and on the record, stated, **" Mr. Potts filed a number of things with the Court Motions. And, Judge Warning had previously indicated that a state response to those motions were not necessary." (See RP pg. 266, line 1-4).**

Contrary to Deputy Prosecutor Phelan's statement, defendant had never heard Judge Warning make any such statement to that effect. On March 21,2013 Potts' filed a pro se Motion to Dismiss for Judicial and Prosecutorial Misconduct. **(See CP #94), (RP pg 276, line 1-10).** Potts alleged that the Honerable Stephen Warning and Deputy Prosecutor Phelan had had improper ex parte communication concerning pre-determination of pro se motions currently pending, outside the presence of defendant.

There could be no other explanation for Judge Warning to make this statement to Mr. Phelan, ' <u>off the record</u> ', where, **CrR 4.5(d) mandates**

Judicial determination of [all] properly filed motions, and CJC 2.6(A) requires the judge to accord every person a right to be heard, It was outside Superior Courts Judicial Discretion to refuse to adjudicate Potts' pro se motions, or enter into any such agreement with the state.

The Supreme Court has recently clarified what constitutes an improper ex parte communication. The Court defined an ex parte communication as a "communication between counsel and the court when opposing counsel is not present." The Court also noted that, "an ex parte communication is something made by a party to an action. This definition of an ex parte communication assumes that there is an actual proceeding involving counsel and opposing counsel before the court, and the communication is regarding the proceeding." State v Watson, 155 Wash.2d 574, 122 P.3d 903 (2005)

" Former Cannon 3(A)(4) specifically prohibits judges from engaging in ex parte contact, providing; Judges should accord to every person who is legally interested in a proceeding, or that persons lawyer, full right to be heard according to law, and except as authorized by law, neither initiate nor consider ex parte or other communication concerning a pending matter. And while former Cannon 3(A)(4) no longer controls, CJC Rule 2.6(A) requires a judge to accord every person with a legal interest a right to be heard, and CJC Rule2.9(A) prohibits a judge from initiating or considering ex parte or other communications." State v Davis, (Wash. 2012), 175 Wash.2d 287, 290 P.3d 43.

On May 7,2013 Deputy Prosecutor Phelan gave the requested discovery in this matter to defendant, 10 minutes prior to the hearing. Potts requested time to review the discovery before proceeding. Judge Warning disregarded the request, and went forward with a ruling on the Motion.

(See RP pg. 385 lines 1-11)

> Defendant; I have finally recieved discovery and I will re - - go through this discovery when I get back to the jail this evening, Your Honor. And, and until then, I dont think we can proceed any further with this matter.
>
> Judge Warning; Okay. My recollection is the same as Mr. Phelan's, Number One. Number 2; Mr. Potts, you're bringing the motion. The burden is on you to support your motion. We dont have anything to support. I dont have any choice but to deny it.

On May 15,2013 Potts filed pro se motions for Reconsideration of the Premature Dismissal. **(SEE CP#123)**, Request For Discovery, **(See CP #124)**.

Upon receipt of discovery Potts performed an exhaustive review of every court proceeding where the alleged communication could have taken place, and found that the communication specified by Deputy Prosecutor Phelan, and verified by Judge Warning, does not exist in the court record.

On June 10,2013 Defense Counsel filed Potts' affidavit swearing to that fact. **(See Cp #135)**. The affidavit further states that, where, Deputy Prosecutor Phelan and the Honerable Judge Warning have both stated in open court that the communication and its content occurred in open court, the fact that it is not a part of the court record, is proof in itself that the communication was ex parte, held outside the presence of defendant, and was per se improper because, at the very least, it concerned the pro se Motion to Dismiss for Prosecutorial Misconduct pending before that court.

On June 11,2013 Defense Counsel requested the court, due to the allegatons against it, recuse itself. **(See RP 661, lines 1-16)**, Defense request for recusal was denied, **(See RP 662, line 25, pg. 663, lines 1-16)**. Defense Counsel then argued the issue. **(See pg 663, line 7 thru**

pg. 665, line 7).

Superior Court listened to the argument, and denied the motion. (RP pg. 669, line 6 through Pg. 670, line 6).

> Judge Warning: All rught. Thank you. All right. As I said before, and I'll say again, I recall the fact of making that ruling. I do'nt know exactly the circumstances of it ..... So I cant be more specific than that.....We can speculate all day long. The judge isn't the one who turns the record on and off at the end of the calendar if thats what happened.....It was made here in the courtroom and the statement was "while Mr. Potts is represented, you dont have to respond to his motions." I dont see - - there was no ex parte contact. If it happened after we turned the record off, I'm sorry. It was certainly in the presence of his counsel. And, was I still believe a correct statement of the law. So I'll deny the motion.

For several reasons this court should reverse Superior Courts self serving denial of Appellants motion to dismiss.

First, Superior Court abused its discretion in denying Defense Counsels Motion to Recuse, where, the court was a material witness to the proceeding;

> CJC 2.11.(A); A judge shall disqualify himself or herself in any proceeding in which the judges impartiality might be reasonably questioned, including but not limited to the following;
>
> CJC 2.11.(A)(6)(c); The judge - was a material witness concerning the matter.

Judge Warnings disqualification was not discretionary, it was mandated by the Code of Judicial Canduct, and Appelant Court precedent, " When the subject of the hearing is the alleged inappropriate conduct of the trial judge, the judge should not rule on the truth or falsity of the accusation. Jones v Halvorsen-Berg, (Wash.App.Div.3(1993), 69 Wash.App. 117, 847 P.2d 951, and was per se abuse of judicial discretion.

Second, It is beyond Superior Courts discretion to fail to adjudicaate any and all of Appellants [properly] filed pro se motions.

> CrR 4.5(d) - Motions - All motions and other requests prior to trial should be reserved for and presented at the omnibus hearing unless the court otherwise directs. Failure to raise

or give notice at the hearing of any error or issue of which the party concerned has knowledge, may constitute waiver of such error or issue.

CrR 4.5(c)(iii) - Make ruling on any motions other requests then pending, and ascertain whether any additional motions or requests will be made at the hearing or continued portions thereof.

The mandate of CrR 4.5(d) is especially important where Superior Court had already ruled that defendant could not enter objections on the record, defense counsel could file motions against his clients wishes and instructions, defense counsel was not required to research issues defendant wished to have researched, was not obligated to file motions defendant wanted filed or raise issues defendant wanted raised, To disallow defendant to file pro se motions would be a complete unmitigated and per se denial of Appellants right to access the courts, Due Process of the Law, and a Fair trial, which was completely outside Superior Courts authority absent a full and complete competency proceeding and finding that Appellant was not competent to participatin his own defense.

Third, Superior Courts self-serving statement that " It was made here in the courtroom and the statement was 'while Mr. Potts is represented, you dont have to respond to his motions'. I dont see - - there was no ex parte contact. If it happened after we turned the record off, I'm sorry. It was certainly in the presence of his counsel," is simply not sufficient to avoid reversal of Superior Courts Ruling. The court committed plain error in baseing its denial of the Motion to Dismiss on facts which are not part of the required court record, and is further based on the testimony of the accused material witness, which is also not a part of the court record as required by CrR 4.5(f).

CrR 4.5(f) - A verbatim record, (electronic, mechanical, or otherwise), shall be made of all proceedings at the hearing.

> CrR 4.5(h) - At the conclusion of the hearing, a summary memorandum shall be made indicating disclosure made, rulings and orders of the court, stipulations, and any other matters determined or pending.

Where the facts alleged by Superior Court are not contained in the verbatim recording required by **CrR 4.5(f)**, nor the summary memorandum required by **CrR 4.5 (h)**, this court should reverse Superior Courts denial of Appellants Motion to Dismiss for improper ex parte communication.

" Self-serving statements in appellate brief that were unsupported in record would not be considered on Appeal". Housing Authority of Grant County v Newbigging, **(Div.III 2001), 105 Wash.App. 178, 19 P.3d 1081. " Supreme Court would decline to consider facts recited in brief, but not supported by the record."** Sherry v Financial Indemnity Company, **(2007), 160 Wash.2d 611, 160 P.3d 31.**

IN CONCLUSION, Appellant requests this court to find that Superior Court abused its discretion in failing to disqualify itself. And that, the communication between Judge Warning and Deputy Prosecutor Phelan, outside the presence of Appellant and defense counsel was an improper ex parte communication and a per se violation of Appellants right to Due Process of the Law and a Fair Trial.

IN RELIEF, Appellant requests this court to Vacate the Convictions and Sentences in this case and dismiss the Information with Prejudice.

IX. DEPUTY PROSECUTOR PHELAN COMMITTED OUTRAGEOUS MISCONDUCT DURING CLOSING ARGUMENT, RELIEVING THE STATE OF ITS BURDEN OF PROOF BEYOND A REASONABLE DOUBT, AND DENYING APPELLANTS RIGHT TO A FAIR TRIAL.

During Closing Argument Deputy Prosecutor Phelan deliberately presented an improper misstatement of law to the jury;

> Phelan: Jury Instruction No.4. This is the one I want you to think about everytime that: "speculation" word comes in your mind when you are deliberating. It says, " the evidence that has been presented to you may be either direct or circumstantial," Okay? There's another word for speculation, and that word is circumstantial." (RP pg. 2627)
>
> Mulligan: Your Honor? I object to that misstatement of law. Circumstantial Evidence is not speculation. (RP pg. 2627).
>
> Judge Evans: So this is argument: The jury is instructed to refer to the instructions as to any definition. (RP pg. 2627).

Deputy Prosecutor Phelan's deliberate misstatement of law was clearly inappropriate and per se prejudicial. Where Speculation and Circumstantial Evidence are by definition, not the same. " Circumstantial evidence and direct evidence are equally reliable." State v Thomas,(2004), 150 Wash.2d 821, 824, 83 P.3d 970, State v Colquitt, 133 Wash.App. 786, 796, 137 P.3d 892 (2006), " Inferences based on circumstantial evidence must be reasonable and cannot be based on "speculation", State v Vasquez, 178 Wash.2d 647, 309 P.3d 318 (2013). [S]peculation is insufficient to constitute an adequate showing Fed.R.Civ.P. 56(c). Clift v Nelson, 608 P.2d 647 (Div.3 1980). " One may not fill weakness or gaps in the proof by suspicion, speculation, or surmise." State v Hiser, 51 Wash.2d 282, 317 P.2d 1072 (1957).

Superior Court might have cured the prejudice by sustaining, or issuing a curative instruction. However, the court did neither. It instructed the jury

to " **refer to jury instructions as to any definition of law ", and in so doing,** allowed the jury to proceed to the jury room and deliberations under the false premise that speculation and circumstantial evidence are the same. **There is no definition of speculation in the jury instructions !!**

As such, Appellant submits that, Judge Evans committed reversible error by allowing the jury to proceed under the false premise that circumstantial evidence and speculation are the same. **" Where the possibility of such speculation exists, the jury should be instructed what the law allows." State v Redmond, 150 Wash.2d 489, 78 P.3d 1001 (2003).**

The courts failure to sustain the objection or issue a curative instruction relieved the state of its burden of proof beyond a reasonable doubt, and denied appellants right to a fair trial by allowing the jury to base its findings on **[speculation]** as to whether the state had proven the essential elements of the information as charged.

In Relief, Appellant requests the court to vacate all the convictions in this case, where the court should not have confidence that the verdicts were found under a proper consideration of the evidence, supporting a reasonable inference that the state had met its burden of proof, or that the verdicts were the product of mere speculation and surmise.

X. DEPUTY PROSECUTOR PHELAN COMMITTED PROSECUTORIAL MISCONDUCT DURING CLOSING ARGUMENT, BY MAKING FALSE STATEMENTS AS TO THE TESTIMONY OF STATE WITNESS ANGELITA LLANES, NOT PRODUCED BY LLANES' TESTIMONY, NOR IS IT CONTAINED ANYWHERE IN THE TRIAL RECORD.

During closing argument Deputy Prosecutor Phelan used the credibility and integrity of the state to present false statements of fact to the jury

which were not the facts sworn to by State Witness Angelita Llanes.

Deputy Prosecutor Phelan's statements, that, **" Mr. Potts or one of his associates took the other two pounds into the auto shop." (RP pg. 2587). " She told you she had to go back and get the other two pounds after she got rid of the first two pounds, so she continued to go back to Potts for drugs." (RP pg. 2596).**

In fact, Ms Llanes' actual testimony is nothing like Deputy Prosecutor Phelans statements of fact to the jury. (1). Ms Llanes testified that she went to Potts' car lot and one of Potts' associates took out **(two)** of the four pounds and gave them to her, **(RP pgs. 2211-2212)**; and when she ran out of the first two pounds, she testified that she asked one of Potts' friends to take the other **[two]** pounds out of her car, for her. **(RP pg. 2217).**

At no point in her testimony did she testify she had given to, or recieved from Potts, any contraband. Nor did she ever return to Potts for drugs, which pursuant to her own testimony, never left her possession.

Deputy Prosecutor Phelan relied upon the integrity of the state, and false statement of fact, to persuade the jury, that, pursuant to accomplice liability, Potts was guilty of Delivery of Methamphetamine, Count 5, and Possession of Methamphetamine With Intent to Deliver, Count 6.

The Delivery of Methamphetamine, and Possession of Methamphetamine with Intent to deliver, were committed by Angelita Llanes and Christian Velasques, on August 10, 2012, eight hours after Potts' arrest.

Phelans false statements to the jury, that, because Llanes got her drugs from Potts, and she had to return to Potts for more when she ran out, were per se Prosecutorial Misconduct. **" A prosecutor is not permitted to make prejudicial statements unsupported by the record."** State v Jones,

144 Wash.App. 284, State v Hartzell, 156 Wash.App. 918, State v Ramos, 164 Wash.App. 327, 203 P.3d 1268 (2011).

Appellant submits that Phelans previous improper misstatement of law, (speculation), and presentation of false evidence not in the record, should convince the court, that, the states misconduct was not only improper and per se prejudicial, but there is a very substantial likelihood it has affected the jurys verdict. State v McKenzi, 157 Wash.2d 44.

XI. SUPERIOR COURTS INCORRECT INTERPRETATION OF THE LEADING ORGANIZED CRIME STATUTE, HAS DENIED APPELLANTS RIGHT TO A FAIR TRIAL.

The Controlling law for violation of the Leading Organized Crime Statute is , State v Hayes, (Div.II 2011) 164 Wash.App. 801, 312 P.3d 784. The Hayes court held, " Defendant was required to be [t]he leader of a criminal profiteering organization:" " Any such individual cannot be found guilty of leading organized crime unless found to have "[personally]" organized, managed directed, supervised or financed the activity or three or more persons."

The only evidence presented to the jury as to leading organized crime was presented by Ms Llanes, (Llanes Testimony, RP pg. 2206-2231). Nothing in Llanes testimony indicated that Potts was the leader. In fact, Llanes' testimony indicated that Potts was not the leader. It is clear from Llanes' testimony that, (1) Niki and Alfredo sent her to Longview, (2) Niki and Alfredo gave her expense money to reach Longview, (3) After collecting the money for the drugs, she sent it all to Niki and Alfredo, (4) She was working for Niki and Alfredo when she arrived in Longview, (5) She did not know Potts prior to arriving in Longview, (6) Niki and Alfredo gave Llanes Potts' name, and told her to contact him, (7) Niki and Alfredo told her to

stay in Longview and sell the contraband, (8) Niki and Alfredo told her to remain in Longview and sell drugs until they sent someone to take her place, (9) After being arrested Niki and Alfredo gave Llanes $10,000.00 for an attorney.

Contrary to the states position, the evidence does not indicate that Potts was the leader of the criminal enterprise in this case. The evidence presented to the jury could be said to indicate that Potts was a member of the criminal enterprise, by furnishing the customers to Niki and Alfredo. However, it also clearly reveals that the persons managing, directing and financing Angelita Llanes and Christian Velasquez are Niki and Alfredo , in Las vegas.

However, Judge Evans reading of the Leading Organized Crime Statute does not agree with that of the **Hayes** courts. Under Judge Evans interpretation, leading organize crime is like being part of a corporation. Local manager, regional manager, county manager, state manager, or USA manager should all be accountable as the leader of organized crime. **(RP pg. 2471).**

Counsel argued in the Motion to dismiss Count I, that, under **Hayes** there could only be one leader and he must be at the **[Apex]. (RP pg. 2452-2457).** Superior Court denied the Motion to Dismiss and the case proceeded to deliberation under Judge Evans "leader theory" as the **" law of the case."**

Judge Evans' theory is in conflict with the **Hayes** courts reading of the Leading Organized Crime Statute. Potts submitts that a business Corporation, just like a Criminal Profiteering Enterprise, must necessarily have different levels of responsibility. But, in either organization, there is only one leader at the very **[apex]**, and it is **[the]** leader at **[the] [apex]** which the legislature set out to punish for Leading Organized Crime.

Judge Evans allowed defense's proposed instruction, " to convict the defendant, the state must prove beyond a reasonable doubt that the defendant was the leader of a Criminal Profiteering Organization." However, the court refused to enumerate it as an element of the crime, or allow it to be placed with the predicate elements required for conviction.

The placing of the jury instruction was prejudicial, but, Judge Evans interpretation of the Leading Organized Crime Statute which allowed the following state argument, was even more prejudicial;

> Phelan: And thats another thing that I wanted to talk about when we get to leading organized crime, you have to find that he was [A] leader right? But you dont necessarily have to find that he was [the] leader, the top guy, because obviously organizations can - - can - - can start all the way down, you know?
>
> We start with the - - you know, and I think a good example is McDonalds, right? You know, you have your corporate franchise and they send the things out to the various satellite offices, and then you've even got the store managers that are, you know, the - - the supervisors or whatnot for their particular areas. And in this case, if you want to to think of it that way, Mr. Potts is the regional manager for the the Cowlitz County wing of this particular organization." (RP pg.2591, lines 14-25, pg. 2592, lines1-10).

> Phelan: Ladies and gentlemen, we talked about at the beginning of this case that we would be looking at an empire, a small one, but an empire nonetheless. And the head of that empire here in Cowlitz County was the defendant Sidney A. Potts. There may have been other people involved in a much larger enterprise, but there is no doubt that he was the the leader here. (RP pg. 2647, lines 1-19).

Defense counsel could not object to the states improper interpretation of the predicate element of Leading Organized Crime, because where superior court had previously rejected defendants interpretation of the statute, the courts interpretation had become " law of the case ", and the jury was free to assume that the essential element had been proven. " Where the jury must guess at the meaning of essential element of a crime of if jury might assume that an essential element need not be proved, the defendant has been denied a fair trial." State v Smith, (1997) 131 Wash.2d 258 930 P.2d 917).

In conclusion, Appellant respectfully requests this court to find that, Deputy Prosecutor Phelans misstatments of law; **(speculation)**, [A] **leader not [the] leader,** and Superior Courts erronous interpretation of the Leading Organized Crime Statute has allowed the state to avoid its obligation to prove that Appellant was **[the]** leader of three or more persons in a Criminal Profiteering Enterprise, and allowed the jury to find Potts guilty of Leading Organized Crime for conduct which does not violate the statute.

In relief Appellant requests this court to Vacate the Sentence and Conviction for Count I of the information.

XII. SUPERIOR COURT COMMITTED REVERSIBLE ERROR BY NOT PROPERLY RESPONDING TO THE JURY's QUESTION.

On November 26,2013 the jury sent a question to Judge Evans. The question was **" For Count I, Element 1c, does the word 'direct' require one-on-one interaction or can it be through an intermediary?" (RP pg. 2651, Lines 15-18).**

Defense counsel argued that **" Defense position would be they should be told that the direction can not be done through an intermediary." (RP pg. 2652, lines 8-10).** Defense cousel went on to argue that , **" Well, just that seemed to be one of the large issues with the leading organized crime crime, that there was not direct contact, and I think that just giving words their natural meaning when it says that Mr. Potts led, directed in any of these things with Mr. Velasquez, that that needed to be in person, and that was one of the basis for our motion to dismiss the count." (RP 2654, lines 16-23).**

The states final position was, **" its direct as in to send direction,**

and you can send direction through an intermediary." (RP pg. 2652 lines 6-10).

Superior Court ruled, stating, " So your - - position would be that you can't - - basically, the answer would be, " Jury members, it would have to be direct contact, one-on-one?" (RP pg. 2653, lines 15-18). " Alright. I appreciate the input. My thought is that I tend to agree that the accomplice liability doesn't apply to leading organized crime, and yet I think, [circumstantially], that there was some, possibly, communication through Ms. Llanes to Mr. Velasquez. So - - so, I think it should be, " Please carefully review the entirety of the jury instructions and continue deliberating." (RP pg. 2655, line 1-11).

Hayes specifically mandates, " There may well be several individuals involved in a criminal operation, each of them sharing the intention that the operation will engage in a pattern of criminal profiteering activity that involves three or more persons. Still, any such such individual cannot be guilty of the offense of leading organized crime unless found to have '[personally]' organized, managed, directed, supervised, or financed the activity of three or more persons." Hayes is the controlling law in the Appellate Courts of the State of Washington and Superior Court was required to give the proper response to the jury.

Judge Evans should have instructed the jury that Potts must have '[personally] engaged in the essential elements of leading organized crime. The courts failure to give the proper relevant response to the jury's question has denied Potts his right to a fair trial. " It cannot be said that defendant has had a fair trail if jury must guess at meaning of essential element of a crime, or if jury might assume that essential element of a crime need not be proved." State v Smith, (1997), 131 Wash.2d 258, 930 P.2d 917, " Each

party is entitled to have the jury provided with instructions necessary to its theory of the case if there is evidence to support it. Failure to provide such instruction constitutes prejudicial error." State v Riley, 137 Wash.2d 904, 976 P.2d 624 (1999).

In this case, the prosecutors uncorrected misstatements of law, have combined with the courts failure to give the proper response to a jury question, and given rise to the per se prejudicial denial of Potts' right to a fair trial.

In relief, Appellant requests this court to Vacate the Sentence and Conviction for Count I of the information with prejudice.

XIII. VIOLATION OF THE LEADING ORGANIZED CRIME STATUTE IS NOT TRIGGERED BY BY PREDICATE CONVICTIONS UNDER AN ACCOMPLICE LIABILITY INSTRUCTION.

In order to prove that Potts was guilty of Leading Organized Crime the state was required to prove that; Mr. Potts [personally], Led Joe Helsley, Angelita Llanes, and Christian Velasquez in either the crime of Delivery of Methamphetamine, Count 5, or Possession of Methamphetamine with intent to Deliver, Count 6. Both counts were charged and proven under an Accomplice Liability Instruction to the jury.

Prior to giving the jury instructions, Superior Court dismissed the Major Economic Enhancements for Counts 5, and 6 because the jury instructions allowed for conviction under Accomplice Liability. (RP pg. 2406, lines 1-25). Superior Courts dismissal of the enhancement statute was appropriate under both the Major Economic Enhancement Statute, and the Leading Organized Crime Statute. " The Major Economic Offense Sentence Enhancement Statute did not contain a triggering device that would extend its application to a conviction based on accomplice liability, and the jury

was instructed that defendant could be found guilty of the underlying offense based on accomplice liability." State v Hayes, 177 Wash.App. 801, 312 P.3d 784 (Wash.App.Div.2 2013). " It was error to give instructions on accomplice liability that permitted appellant Larry Hayes to be convicted of Leading Organized Crime." State v Hayes, (2011) 164 Wash.App. 459, 262 P3d 538.

This court should be required to reverse the conviction for Organized Crime in the case at bar, where the trial court refused to give the requested defense instruction as to Accomplice Liability and Leading Organized Crime,

> Judge Evans: And then I'm not giving the "Accomplice liability does not apply to the Crime of Leading Organized Crime," because under one theory, it could. That could apply.

and then gave the jury instruction which allowed the essential elements of Leading Organized Crime, (led three or more people), which are only alleged in Counts 5 and 6 of the Information, to be determined under an Accomplice Liability jury instruction.

> Jury Inst.18: A person is an Accomplice in the commission of delivery of a controlled substance, or possession with intent to deliver..... (RP pg. 2573, lines 22-25, pg. 2574. lines 1-25)

In conclusion, where, the jury was not required to make a finding that defendant "personally" led any three or more people in a Criminal Profiteering Enterprise, there would be insufficient evidence to support the conviction for Leading Organized Crime.

In relief Appellant requests this court to vacate the sentence and conviction for Count I of the information.

XIV. By Statute, Potts may not be convicted of Leading and Organizing a State Agent who was acting under State Instructions.

The information is fatally flawed where Joe Helsley had signed a contract to work for the state, and every count charged in the information was initiated by State Agent Joe Helsley, under the direction of his state controller. " Where certain individual agreed to become an informant and to obtain information for the government, individual was thereafter Government Agent and his actions had to be viewed accordingly." U.S. v Cella, (Ca.9 (Cal) 1977), 568 F.2d 1266, citing, Hoffa v United States, 385 U.S. 293, 295-299, 87 S.Ct. 408, 17 L.Ed.2d 374 (1966).

There can be no doubt that Helsley worked for the State and not for Potts, where Deputy Prosecutor Phelan made that stipulation in open court.

> Phelan: So what I;m getting at is that this is the beginning of a State-initiated-action. (RP pg. 1294).

> Phelan: Accomplice liability could apply on August 10 for Angilita Llanes, but Joe Helsley is acting as an agent for the state on August 10th, he is not an accomplice in the crime. (RP 2347, lines 1-18).

The finding of guilt for Leading Organized Crime is fatally flawed where, the required element of proof, ' that Potts [personally] led three or more persons', can not be proven. Joe Helsley is one of the three persons alleged in the information, and Potts could not have led Joe Helsley, who was working under contract to the state, to set up drug deals with Potts.

In relief, Appellant requests this court to Vacate the Sentence and Conviction for Count I of the information in the case at bar.

XV. SUPERIOR COURT ERRED IN ITS DENIAL OF THE MOTION TO DISMISS FOR VIOLATION OF STATE AND FEDERAL PROHIBITION OF DOUBLE JEOPARDY.

On September 5,2013 after opening statement and during testimony by

Detective Epperson, it was discovered that Exculpatory Evidence had been withheld by the state in violation of CrR 4.7 and the Brady rule.

Defense moved to Dismiss pursuant to CrR 8.3, but trial court found that the misconduct was not sufficiently egregious to warrant dismissal, and ordered continuance to allow defense counsel an opportunity to debrief State Agent Joe Helsley and Detective Epperson. **(RP pg. 1122).**

~~After repeated debriefing, it was discovered that the state continued~~ to withhold Exculpatory Evidence from the defense. Defendant then filed a pro se motion to dismiss, and defense counsel renewed the oral motion to dismiss for government misconduct. **(Rp pgs. 1125-1148).**

Superior Court denied both motions, ~~and at the governments request,~~ granted a mistrial, over defendants objection.**(RP pg. 1196, lines 2-19).** In arriving at its decision ruled; **" Previously I'd made a ruling that the failure of Detective Epperson to provide the information he'd learned after the February 2013 interview was violative of Criminal Rule 4.7, and remedy was applied and that remedy was a continuance to allow interviews." (Rp pg. 1184, lines 24-25, pg. 1185, lines 1-4). " The state proffers two options as a continuance of the trial, or a mistrial and start again. The mistrial - - the concern there is that if a mistrial is granted, that jeopardy does not attach and the states - - or the governments bad acts, if you will, or the misconduct is not sufficiently penalized to foster detering that from happening in the future." (Rp pg. 1195, lines 2-10).**

Superior court went on to grant the government requested mistrial after making two specific findings; (1) **" I think, on the whole, that that information is -- is out there, its digestible, and as a whole, Mr. Potts' right to a fair trial still remains, that there's no actual prejudice at this point."** (RP pg.1193, line 2 through Pg.1194, lines

1-23). and (2) " The basis of the mistrial - - and I am going to [grant] a mistrial - - the basis of the mistrial is this: Is that there was the CrR 4.7 violation, which is compounded by the fact that in subsequent interviews, Mr. Helsley shared information about a prior contact, which calls into question veracity and credibility of his explanation and Detective Eppersons explanation of what happened on August 10th, so that applies to Counts V and VI and also Count I, Leading Organized Crime." (RP pg. 1196, lines 2-14).

Defendants counsel did not object to the [granting] of mistrial, but defendant did object to violation of his right to speedy trial, and the courts inference that jeopardy would not terminate upon the [granting] of a mistrial at the states request to cure government misconduct. (RP pg. 1197, lines 14-19).

On September 17,2013 Potts filed a Motion to Dismiss for Violation of State and Federal Prohibition of Double Jeopardy. (RP pg.1208, lines 15-23), (CP #164). On November 13,2013 Potts filed a Supplemental Motion to Dismiss , based on Lack of Manifest Necessity. (CP #171). On November 14,2013 the state filed its response to Potts' Motions. (See Attached Appendix E). On November 15,2013 Superior Court denied the double jeopardy claims, (RP pg. 1269-1276), and it is this denial that is herein appealed.

This issue is argued and preserved in Potts Motion to Dismiss for Violation of State and Federal Prohibition of Double Jeopardy, and the question of improper retrial should be easily put to rest. In any case of mistrial, " the record must reflect the factual basis upon which the court ruled in exercising its discretion to call a halt to proceedings without defendants acquiesence." State v Browning, 38 Wash.App. 772, 69 P.2d 1108, State v Dykstra, 33 Wash.App. 648, 656 P.2d 1137. In the case at bar, the

the court issued several findings which appear on their face to be conflicting. First; " Mr. Potts' right to a fair trial still remains, and that there's no actual prejudice at this point." (RP pg 1194-1195). Second; " The basis for the mistrial is this; Is that there was the the CrR 4.7 violation, which is compounded by the fact that in subsequent interviews, Mr. Helsley shared information about a prior contact, which calls into question veracity and credibility of his explanation and Detective Eppersons explanation of what happened on August 10th, so that applies to V and VI, and also to Count I, Leading Organized Crime. So I am going to [grant] a mistrial." (RP pg. 1196, line 2-25).

This court need not address the conflict in Superior Courts findings, as in neither case would it be appropriate to grant the governments request for mistrial over defendants objection. In the first instance, if as the trial court ruled, there has been no prejudice to defendants right to a fair trial, then there would be no basis for the required finding of Manifest Necessity to grant the states request for mistrial over defendants objection. In the second instance, If as Superior Court ruled, the mistrial was granted at the states request, to avoid dismissal under CrR 8.3, over defendants objection, the combined precedent of the United States Supreme Court and the Supreme Court of the State of Washington would stand to prohibit the retrial of the defendant. " The rule is that when accused is placed upon trial in a court of competent jurisdiction upon a sufficient indictment or information, before a jury legally impaneled and sworn, the discharge of the jury without the consent of the accused is equivelant to an acquital of that charge." State v Brunn, 22 Wash.2d 120 (1945), " The Supreme Court of the United States holds that trial court abuses its discretion by declaration of mistrial to afford the prosecution a more

favorable opportunity to convict." United States v Jorn, 400 U.S. 470, 27 L.Ed.2d 543, 91 S.Ct. 547 (1971). " Where a mistrial has been granted to help the prosecution, retrial is plainly in violation of the Double Jeopardy Clause of the Fifth Amendment. This Court, as well as most others, has taken the position that a defendant is placed in jeopardy once he is put to trial before a jury so that if the jury is discharged without his consent, he cannot be tried again." Green v United States, 355 U.S. 184, 2 L.Ed.2d 199, 78 S.Ct. 221 (1999), Wade v Hunter, 336 U.S. 684, 93 L.Ed. 2d 974, 69 S.Ct. 834, Kepner v United States, 336 U.S.100, 49 L.Ed.2d 114, 24 S.Ct. 797.

In conclusion; This court should find that Superior abused its discretion by granting a mistrial, at the states request, to avoid dismissal under CrR 8.3, over defendants objection. And the court violated defendants Fifth Amendment Double Jeopardy Protections by allowing the state to re-try the defendant.

In Relief, Appellant requests this court to order his immediate release from the unconstitutional detention. Appellant further requests this court to vacate the Sentences and Convictions in this case with prejudice.

XVI. 3165 MICHIGAN STREET WAS NOT A PROPERLY RECORDED AND DESIGNATED SCHOOL BUS ROUTE STOP, AND RCW 69.50.435 ENHANCEMENT DOES NOT APPLY IN THE CASE AT BAR.

The state case that defendant had violated the RCW 69.50.435 School Bus Route Enhancement by committing a drug crime within the 1,000 ft radius of 3165 Michigan Street rests entirely upon the testimony of Rick Lecker,

Transportation Manager for the Longview School District. Mr. Lecker supports his claim that 3165 Michigan Street is a School Bus Route Stop with a map provided by the Prosecution which shows the location of 3165 Michigan Street in Longview, and has a red line encircling the residence which represents a 1,000 ft. radius.

Defendant did not dispute the location of 3165 Michigan Street or the validity of the map representing that fact and the 1,000 ft radius, what defendant disputed was anyones specific designation of 3165 Michigan Street as a School Bus Route Stop as required under the Enhancement Statute. **RCW 69.50.435(f)(3).**

During testimony by Lecker, the state brought out the facts that Mr. Lecker is the Transportation Manager of Longview School District and that it is his responsibility to specifically designate the School Bus Route Stops for that district. Leckers direct testimony also brought out the following fact; **Lecker: " We work all the stops all the time. We present the data for families to get to and from school safely and we give that information to OSPI, (Office of Superintendant of Public Instruction), and those types of things." (RP pg 2369, lines 11-14).** However, later testimony during cross-examination reveals that even though the school maintains a website where all school bus stops are designated, 3165 Michigan Street is not listed as a designated School Bus Route Stop. **(RP 2370-2273).**

On November 25,2013 Defense Counsel moved to dismiss the School Zone Enhancement, **(RP pg. 2314-2416),** and defendant read a pro se motion to dismiss into the record. **(Rp pgs. 2423-2427).** Defendant's position was that the School District must notify the Office of the Superintendant of Public Instruction with the designated cordinates of a School Bus Route Stop before it became a School Bus Stop as required by the statute.

Deputy Prosecutor Phelan argued that it was not necessary to register

the cordinates or address of the alleged School Bus Route Stop with the Office of the Superintendant of Public Instruction, in order to certify that it was a School Bus Route Stop. (RP pg. 2241, lines 1-15).

This issue has been addressed by the Court of Appeals. In State v Nunez-Martinez, 99 Wash.App. 250 (1998) the court upheld the state's imposition of a School Bus Route Stop enhancement, because, " an employee of the Longview School District had sent a disc to the Superintendant of Public Instruction that listed the longitude and latitude of each designated school bus stop. The statutory requirement for establishing the existance of the school bus route stop was satisfied by the digitalized data on the computor disc on file with the Superintendant of Public Instruction." This court arrived at the same conclusion in State v Davis, 93 Wash.App. 648 (1999). Nunez-Martinez and Davis have established that in order to meet the statutory requirements to establish a School Bus Route Stop, a school district must certify with the Office of the Superintendant of Public Instruction the address or specific cordinates of the proposed School Bus Route Stop.

In Conclusion, the Longview School District's failure to register or certify 3165 Michigan Street as a School Bus Route Stop, with the Office of the Superintendant of Public Instruction, has left the court without statutory authority to impose an enhancement under RCW 69.50.435.

In relief, Appellant requests this court to vacate the enhancement imposed in this case for violation of the School Bus Route Stop Statute.

DATED THIS 4TH DAY OF December 2014

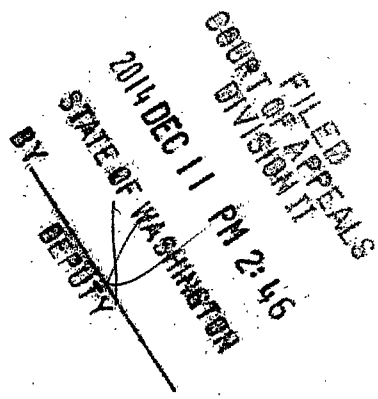
SIGNED Sidney A. Potts pro se

SIDNEY A. POTTS pro se

CERTIFICATE OF SERVICE

On this date a true and correct copy of Appellants Statement of Seperate Additional Grounds, and Appendix of Exhibits, was placed in the United States Mail, addressed to;

Mr. David Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, Washington
98402



Office of the Prosecutor
Cowlitz County Superior court
Attn: David Phelan
312 S.W. First Avenue
Kelso, Washington
98626

an pursuant to State and Federal Mail Box Rule, was deemed filed at the time it was placed in the United States Mail Receptical here at Washington State Penitentiary.

DATED THIS 4th DAY OF December 2014

SIGNED Sidney A. Potts pro se

SIDNEY A. POTTS pro se

CASE NO. 45725-5-II

APPELLANTS APPENDIX

FOR SEPERATE ADDITIONAL GROUNDS

TABLE OF CONTENT

Copy Lot
411 Oregon Way

DISTRICT COURT OF WASHINGTON
FOR COWLITZ COUNTY

STATE OF WASHINGTON,

Plaintiff

vs.

411 Oregon Way
Longview, WA
A light gray single story building,
A light brown detached shed

&

1275 Alabama St
Longview, WA
A white building with green trim

&

2839 Louisiana St
Longview, WA
A brown single story home with
a composite roof and blue
front door

Defendant

No.

SEARCH WARRANT

TO: THE SHERIFF OR ANY CONSTABLE OF COWLITZ COUNTY

Complaint having been made on oath before me by Rocky M Epperson, that he has reason to believe and does believe that evidence of the crimes of possession, delivery or conspiracy to deliver a controlled substance, and leading organized crime can be found in a light gray single story building, and light brown detached shed at 411 Oregon Way, Longview, WA, Cowlitz County; a large white industrial building with green trim located within a fenced yard that contains multiple cars at 1275 Alabama St, Longview, WA, Cowlitz County; and a light brown single story home with a blue door at 2839 Louisiana St, Longview, WA, Cowlitz County.

The attached affidavit for search warrant (Exhibit A) is incorporated herein by reference.

There is now being concealed or kept certain property, to wit:

a. Controlled substances including, but not limited to **Methamphetamine.**

b. Paraphernalia for using, packaging, processing, weighing and distributing controlled substances, including, but not limited to scales, funnels, sifters, grinders, containers, plastic bags or materials used to contain controlled substances, heat-sealing devices, diluents/dilutants, and the like;

pg. 1

c. Personal and/or business books, letters, papers, notes, pictures, photographs, video and/or audio cassette tapes, computers, palm pilots. cell phones, pagers or documents relating names, addresses, telephone numbers, and/or other contact/identification information relating to the possession, processing, or distribution of controlled substances;

d. Books, records, receipts, notes, letters, ledgers, and other papers relating to the possession, processing, distribution of controlled substances, and/or leading organized crime

e. Cash, U.S. currency, foreign currency, financial instruments, and records relating to income and expenditures of money and wealth from controlled substances including, but not limited to money orders, wire transfers, cashier's checks or receipts, bank statements, passbooks, checkbooks, and check registers;

f. Items of personal property which tend to identify the person(s) in business, occupancy, control or ownership of the premises that is the subject of this warrant, including, but not limited to canceled mail, deeds, leases, rental agreements, photographs, personal telephone books, utility and telephone bills, statements, identification documents, and keys;

A copy of the warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at a place where the property is found.

I am satisfied that there is probable cause to believe that the said property is being used to concealed or kept in/on the described business and structures, found in a light gray single story building with the black numerals 411 are affixed to the west side of the building near the southwest corner of the building and a detached storage shed that is light brown with white trim with two doors on the south of the building. These building are located at 411 Oregon Way in Longview, WA Cowlitz County and that grounds for application for issuance of this search warrant exist.

Therefore, you are hereby ordered to search the above named light gray single story building with the black numerals 411 are affixed to the west side of the building near the southwest corner of the building and a detached storage shed that is light brown with white trim with two doors on the south of the building that are located at 411 Oregon Way Longview, WA, Cowlitz County, for the described property specified, serving this warrant, and if the property be found to seize it, leaving a copy of this warrant, and prepare a written inventory of the property seized, and return this warrant and the property seized before me or before some other magistrate or court having cognizance of this case.

This warrant will be served within 10 days of the time it is signed by the judge.

DATED this 2nd day of August, 20 12.

MH Haan

MAGISTRATE

STATE OF WASHINGTON)
) ss
COUNTY OF COWLITZ)

I certify that I received the attached warrant on the 10th day of Aug., 20 12 and have executed it as follows:

pg. (2)

On August 10, 20 12 at 1:02 o'clock P M., I searched the Building/property described in the warrant and left a copy of said warrant on Desk @ the Car lot office.

Attached is an inventory of property taken pursuant to the execution of the search warrant.

DATED this 10th day of August, 20 12.

by: [signature] 3<10
Officer

(3)

Longview Police Department

Evidence/Property Form

RECOVERY DATE: 5-10-12

CASE#: L12-22097

TYPE OF INCIDENT:

ACTIVE CASE: (Yes) No

LOCATION OF INCIDENT: 411 Alder

SUSPECT(S) FULL NAME / DATE OF BIRTH & ADDRESS:

VICTIM(S) FULL NAME / DATE OF BIRTH & ADDRESS:

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Evidence	RH-1		Docs					

SERIAL # OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE:	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN: YES or NO

PROPERTY OWNER FULL NAME DATE OF BIRTH & ADDRESS:

WHO FOUND: Hartley

WHERE FOUND: Car Lot office.

LOGGED BY:

EVIDENCE ROOM BAR CODE

DESCRIPTION OF PROPERTY: Blank Business forms.

DRUG WEIGHT IN GRAMS:

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Evidence	RH 2		Docs.					

SERIAL # OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE:	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN: YES or NO

PROPERTY OWNER FULL NAME DATE OF BIRTH & ADDRESS:

WHO FOUND: Hartley

WHERE FOUND: On office Desk

LOGGED BY:

EVIDENCE ROOM BAR CODE

DESCRIPTION OF PROPERTY: Misc. Document on Desk

DRUG WEIGHT IN GRAMS:

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Evidence	RH-3	57	Keys					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE:	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN: YES or NO

PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS:

WHO FOUND:

WHERE FOUND:

LOGGED BY:

EVIDENCE ROOM BAR CODE

DESCRIPTION OF PROPERTY: Keys from large Key Board

DRUG WEIGHT IN GRAMS:

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Evidence	RH-4	19	Keys					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE:	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN: YES or NO

PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS:

WHO FOUND: Hartley

WHERE FOUND: Office

LOGGED BY:

EVIDENCE ROOM BAR CODE

DESCRIPTION OF PROPERTY: Various Keys from Small Keyboard

DRUG WEIGHT IN GRAMS:

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Evidence	RH-5	67						

SERIAL # OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE:	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN: YES or NO

PROPERTY OWNER FULL NAME DATE OF BIRTH & ADDRESS:

WHO FOUND: Hartley

WHERE FOUND:

LOGGED BY:

EVIDENCE ROOM BAR CODE

DESCRIPTION OF PROPERTY: Cardboard Box containing Files

DRUG WEIGHT IN GRAMS:

OFFICER SUBMITTING EVIDENCE PRINTED NAME: K. Hartley

DATE PLACED IN EVIDENCE: 5/10/12

DATE PROCESSED IN TO EVIDENCE:

PAGE #: 1

Official Copy

AS: (4)

Longview Police Department

Evidence/Property Form

RECOVERY DATE: 5-10-12 | CASE#: 12-22097

TYPE OF INCIDENT | ACTIVE CASE Yes / No | LOCATION OF INCIDENT

SUSPECT(S) FULL NAME / DATE OF BIRTH & ADDRESS | VICTIM(S) FULL NAME / DATE OF BIRTH & ADDRESS

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Evidence	RH-6	1	Computer	HP	100B	BLK.		

SERIAL # OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN: YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND: Hartley | WHERE FOUND: Office | LOGGED BY

DESCRIPTION OF PROPERTY: HP Computer w/ Keyboard & Mouse. | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN

SERIAL # OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN: YES or NO | PROPERTY OWNER FULL NAME DATE OF BIRTH & ADDRESS

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN

SERIAL # OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN: YES or NO | PROPERTY OWNER FULL NAME DATE OF BIRTH & ADDRESS

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN

SERIAL # OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN: YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR FINISH	VALUE	EVIDENCE ROOM BIN

SERIAL # OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN: YES or NO | PROPERTY OWNER FULL NAME DATE OF BIRTH & ADDRESS

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

OFFICER SUBMITTING (IDENTIFIED NAME) | DATE PLACED IN EVIDENCE | DATE PROCESSED INTO EVIDENCE | PAGE: 1/

K. Hartley 5/10/12

RP: (S)

DISTRICT COURT OF WASHINGTON
FOR COWLITZ COUNTY

Copy
home
2839 Louisiana

STATE OF WASHINGTON, Plaintiff vs. 411 Oregon Way Longview, WA A light gray single story building, A light brown detached shed & 1275 Alabama St Longview, WA A white building with green trim & 2839 Louisiana St Longview, WA A brown single story home with a composite roof and blue front door Defendant	)	No. SEARCH WARRANT

TO: THE SHERIFF OR ANY CONSTABLE OF COWLITZ COUNTY

Complaint having been made on oath before me by Rocky M Epperson, that he has reason to believe and does believe that evidence of the crimes of possession, delivery or conspiracy to deliver a controlled substance, and leading organized crime can be found in a light gray single story building, and light brown detached shed at 411 Oregon Way, Longview, WA, Cowlitz County; a large white industrial building with green trim located within a fenced yard that contains multiple cars at 1275 Alabama St, Longview, WA, Cowlitz County; and a light brown single story home with a blue door at 2839 Louisiana St, Longview, WA, Cowlitz County.

The attached affidavit for search warrant (Exhibit A) is incorporated herein by reference.

There is now being concealed or kept certain property, to wit:

a. Controlled substances including, but not limited to **Methamphetamine.**

b. Paraphernalia for using, packaging, processing, weighing and distributing controlled substances, including, but not limited to scales, funnels, sifters, grinders, containers, plastic bags or materials used to contain controlled substances, heat-sealing devices, diluents/dilutants, and the like;

Ag. (6)

c. Personal and/or business books, letters, papers, notes, pictures, photographs, video and/or audio cassette tapes, computers, palm pilots, cell phones, pagers or documents relating names, addresses, telephone numbers, and/or other contact/identification information relating to the possession, processing, or distribution of controlled substances;

d. Books, records, receipts, notes, letters, ledgers, and other papers relating to the possession, processing, distribution of controlled substances, and/or leading organized crime

e. Cash, U.S. currency, foreign currency, financial instruments, and records relating to income and expenditures of money and wealth from controlled substances including, but not limited to money orders, wire transfers, cashier's checks or receipts, bank statements, passbooks, checkbooks, and check registers;

f. Items of personal property which tend to identify the person(s) in business, occupancy, control or ownership of the premises that is the subject of this warrant, including, but not limited to canceled mail, deeds, leases, rental agreements, photographs, personal telephone books, utility and telephone bills, statements, identification documents, and keys;

A copy of the warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at a place where the property is found.

I am satisfied that there is probable cause to believe that the said property is being used to concealed or kept in/on the described business and structures, found in a light gray single story building with the black numerals 411 are affixed to the west side of the building near the southwest corner of the building and a detached storage shed that is light brown with white trim with two doors on the south of the building. These building are located at 411 Oregon Way in Longview, WA Cowlitz County and that grounds for application for issuance of this search warrant exist.

Therefore, you are hereby ordered to search the above named light gray single story building with the black numerals 411 are affixed to the west side of the building near the southwest corner of the building and a detached storage shed that is light brown with white trim with two doors on the south of the building that are located at 411 Oregon Way Longview, WA, Cowlitz County, for the described property specified, serving this warrant, and if the property be found to seize it, leaving a copy of this warrant, and prepare a written inventory of the property seized, and return this warrant and the property seized before me or before some other magistrate or court having cognizance of this case.

This warrant will be served within 10 days of the time it is signed by the judge.

DATED this 2nd day of August, 2012.

M K Horn

MAGISTRATE

STATE OF WASHINGTON)
) ss
COUNTY OF COWLITZ)

I certify that I received the attached warrant on the 10th day of August, 2012, and have executed it as follows:

On AUGUST 10TH, 20 12, at 1223 o'clock P.M., I searched the

RESIDENCE described in the warrant and left a copy of said warrant

COFFEE TABLE.

Attached is an inventory of property taken pursuant to the execution of the search warrant.

DATED this 10TH day of AUGUST, 20 12.

by: S. LIBBY
Officer

A9. (8)

Department **Evidence/Property Form** 5/10/12

TYPE OF INCIDENT	ACTIVE CASE Yes / No	LOCATION OF INCIDENT

SUSPECT(S) FULL NAME / DATE OF BIRTH & ADDRESS	VICTIM(S) FULL NAME / DATE OF BIRTH & ADDRESS

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE.	MAKE.	MODEL	COLOR / FINISH.	VALUE:	EVIDENCE ROOM BIN
EVIDENCE	54-1	MULT	U.S. CURRENCY					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE? YES or NO	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO

ENTERED AS STOLEN YES or NO	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND	WHERE FOUND	LOGGED BY
	ROOM #1 PURSE ON BED	

DESCRIPTION OF PROPERTY: MULTIPLE U.S. CURRENCY — DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE:	MAKE:	MODEL.	COLOR / FINISH.	VALUE:	EVIDENCE ROOM BIN
EVIDENCE	54-2	MULT	DOCUMENTS					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE? YES or NO	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO

ENTERED AS STOLEN YES or NO	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND	WHERE FOUND	LOGGED BY
3L54	ROOM #1 COFFEE TABLE	

DESCRIPTION OF PROPERTY: MULTIPLE DOCUMENTS. — DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE:	MODEL:	COLOR / FINISH.	VALUE:	EVIDENCE ROOM BIN
EVIDENCE	54-3	1	IPAD					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE? YES or NO	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO

ENTERED AS STOLEN YES or NO	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND	WHERE FOUND	LOGGED BY
3L54	ROOM #1 NIGHT STAND	

DESCRIPTION OF PROPERTY: IPAD & PHONE — DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE:	MAKE.	MODEL.	COLOR / FINISH:	VALUE.	EVIDENCE ROOM BIN
EVIDENCE	54-4	MULT	DOCUMENTS					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE? YES or NO	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO

ENTERED AS STOLEN YES or NO	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND	WHERE FOUND	LOGGED BY
3L54	ROOM #1	

DESCRIPTION OF PROPERTY: MISC DOCUMENTS. — DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE.	MAKE.	MODEL	COLOR / FINISH:	VALUE:	EVIDENCE ROOM BIN
EVIDENCE	54-5	MULT	TITLE INFO					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE? YES or NO	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO

ENTERED AS STOLEN YES or NO	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND	WHERE FOUND	LOGGED BY
3L54	ROOM #1 FIREPLACE HEARTH	

DESCRIPTION OF PROPERTY: TITLE INFO — DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

OFFICER SUBMITTING EVIDENCE PRINTED NAME	DATE PLACED IN EVIDENCE:	DATE PROCESSED IN TO EVIDENCE	PAGE #

(9)

Department **Evidence/Property Form** 0/17 -

TYPE OF INCIDENT	ACTIVE CASE Yes / No	LOCATION OF INCIDENT

SUSPECT(S) FULL NAME / DATE OF BIRTH & ADDRESS	VICTIM(S) FULL NAME / DATE OF BIRTH & ADDRESS

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Evid	54-11	Mult	Bank Cards					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS
YES or NO	

WHO FOUND	WHERE FOUND	LOGGED BY
3L54	Room 1	

DESCRIPTION OF PROPERTY	DRUG WEIGHT IN GRAMS
Misc Bank cards	

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Evid	54-12	Mult	Misc Documents					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS
YES or NO	

WHO FOUND	WHERE FOUND	LOGGED BY
3L54	Room 4	

DESCRIPTION OF PROPERTY	DRUG WEIGHT IN GRAMS
Misc Documents	

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Evid	54-13	Mult	Check Books					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS
YES or NO	

WHO FOUND	WHERE FOUND	LOGGED BY
3L54	Room 4	

DESCRIPTION OF PROPERTY	DRUG WEIGHT IN GRAMS
Check Books	

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Evid	54-14	Mult	KEYS					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS
YES or NO	

WHO FOUND	WHERE FOUND	LOGGED BY
3L54		

DESCRIPTION OF PROPERTY	DRUG WEIGHT IN GRAMS
MULTIPLE KEYS	

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
EVIDENCE	54-15	Mult	Documents					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS
YES or NO	

WHO FOUND	WHERE FOUND	LOGGED BY
3L54	Room #4	

DESCRIPTION OF PROPERTY	DRUG WEIGHT IN GRAMS
Mult Misc Financial Documents	

EVIDENCE ROOM BAR CODE

OFFICER SUBMITTING EVIDENCE PRINTED NAME	DATE PLACED IN EVIDENCE	DATE PROCESSED INTO EVIDENCE	PAGE #

PS. (10)

Department **Evidence Property Form** 8/1/ [illegible]

TYPE OF INCIDENT	ACTIVE CASE Yes / No	LOCATION OF INCIDENT

SUSPECT(S) FULL NAME / DATE OF BIRTH & ADDRESS	VICTIM(S) FULL NAME / DATE OF BIRTH & ADDRESS

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Evidence	54-6	1	Flash Drive card					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE*	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS	EVIDENCE ROOM BAR CODE
YES or NO		

WHO FOUND	WHERE FOUND	LOGGED BY
3L54	Room 1 night Stand	

DESCRIPTION OF PROPERTY	DRUG WEIGHT IN GRAMS
Flash Drive card	

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE:	MAKE	MODEL	COLOR / FINISH:	VALUE:	EVIDENCE ROOM BIN
Evid	54-7	1	Photo Album					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE*	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS	EVIDENCE ROOM BAR CODE
YES or NO		

WHO FOUND	WHERE FOUND	LOGGED BY
3L54	Room 1	

DESCRIPTION OF PROPERTY	DRUG WEIGHT IN GRAMS
Photo Album	

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE.	MAKE.	MODEL	COLOR / FINISH.	VALUE.	EVIDENCE ROOM BIN
Evid	54-8	Mult	Baggies					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE*	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS	EVIDENCE ROOM BAR CODE
YES or NO		

WHO FOUND	WHERE FOUND	LOGGED BY
3L54	Room 4	

DESCRIPTION OF PROPERTY	DRUG WEIGHT IN GRAMS
Small zip lock Baggies	

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE:	MAKE	MODEL.	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Evid	54-9	Mult	Receipts					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE*	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS	EVIDENCE ROOM BAR CODE
YES or NO		

WHO FOUND	WHERE FOUND	LOGGED BY
3L54	Room 1	

DESCRIPTION OF PROPERTY	DRUG WEIGHT IN GRAMS
Receipts	

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE:	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Evid	54-10	4	EBT Cards					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE*	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS	EVIDENCE ROOM BAR CODE
YES or NO		

WHO FOUND	WHERE FOUND	LOGGED BY
3L54	Room 1	

DESCRIPTION OF PROPERTY	DRUG WEIGHT IN GRAMS
4 EBT Cards	

OFFICER SUBMITTING EVIDENCE PRINTED NAME	DATE PLACED IN EVIDENCE	DATE PROCESSED IN TO EVIDENCE	PAGE #

PS. (11)

DISTRICT COURT (ASHINGTON
FOR COWLIT)UNTY

Copy 1275 Alabama

STATE OF WASHINGTON,

Plaintiff

vs.

411 Oregon Way
Longview, WA
A light gray single story building,
A light brown detached shed

&

1275 Alabama St
Longview, WA
A white building with green trim

&

2839 Louisiana St
Longview, WA
A brown single story home with
a composite roof and blue
front door

Defendant

No.

SEARCH WARRANT

TO: THE SHERIFF OR ANY CONSTABLE OF COWLITZ COUNTY

Complaint having been made on oath before me by Rocky M Epperson, that he has reason to believe and does believe that evidence of the crimes of possession, delivery or conspiracy to deliver a controlled substance, and leading organized crime can be found in a light gray single story building, and light brown detached shed at 411 Oregon Way, Longview, WA, Cowlitz County; a large white industrial building with green trim located within a fenced yard that contains multiple cars at 1275 Alabama St, Longview, WA, Cowlitz County; and a light brown single story home with a blue door at 2839 Louisiana St, Longview, WA, Cowlitz County.

The attached affidavit for search warrant (Exhibit A) is incorporated herein by reference.

There is now being concealed or kept certain property, to wit:

a. Controlled substances including, but not limited to **Methamphetamine.**

b. Paraphernalia for using, packaging, processing, weighing and distributing controlled substances, including, but not limited to scales, funnels, sifters, grinders, containers, plastic bags or materials used to contain controlled substances, heat-sealing devices, diluents/dilutants, and the like;

PS. (13)

c. Personal and/or business books, letters, papers, notes, pictures, photographs, video and/or audio cassette tapes, computers, palm pilots, cell phones, pagers or documents relating names, addresses, telephone numbers, and/or other contact/identification information relating to the possession, processing, or distribution of controlled substances;

d. Books, records, receipts, notes, letters, ledgers, and other papers relating to the possession, processing, distribution of controlled substances, and/or leading organized crime

e. Cash, U.S. currency, foreign currency, financial instruments, and records relating to income and expenditures of money and wealth from controlled substances including, but not limited to money orders, wire transfers, cashier's checks or receipts, bank statements, passbooks, checkbooks, and check registers;

f. Items of personal property which tend to identify the person(s) in business, occupancy, control or ownership of the premises that is the subject of this warrant, including, but not limited to canceled mail, deeds, leases, rental agreements, photographs, personal telephone books, utility and telephone bills, statements, identification documents, and keys;

A copy of the warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at a place where the property is found.

I am satisfied that there is probable cause to believe that the said property is being used to concealed or kept in/on the described business and structures, found in a light gray single story building with the black numerals 411 are affixed to the west side of the building near the southwest corner of the building and a detached storage shed that is light brown with white trim with two doors on the south of the building. These building are located at 411 Oregon Way in Longview, WA Cowlitz County and that grounds for application for issuance of this search warrant exist.

Therefore, you are hereby ordered to search the above named light gray single story building with the black numerals 411 are affixed to the west side of the building near the southwest corner of the building and a detached storage shed that is light brown with white trim with two doors on the south of the building that are located at 411 Oregon Way Longview, WA, Cowlitz County, for the described property specified, serving this warrant, and if the property be found to seize it, leaving a copy of this warrant, and prepare a written inventory of the property seized, and return this warrant and the property seized before me or before some other magistrate or court having cognizance of this case.

This warrant will be served within 10 days of the time it is signed by the judge.

DATED this 2nd day of August, 20 12.

M K Horn

MAGISTRATE

STATE OF WASHINGTON)
) ss
COUNTY OF COWLITZ)

I certify that I received the attached warrant on the 10th day of August, 20 12, and have executed it as follows:

A3. (14)

On 8-10, 20 12, at 13:11 o'clock P.M., I searched the building described in the warrant and left a copy of said warrant inside the building on wall.

Attached is an inventory of property taken pursuant to the execution of the search warrant.

DATED this 10th day of August, 20 12.

by: Kenneth M. Sawyer
Officer

PB. (15)

Department **Evidence/Property Form** 12-22096

TYPE OF INCIDENT: Search Warrant | ACTIVE CASE Yes / No | LOCATION OF INCIDENT: 1275 Alabama

SUSPECT(S) FULL NAME / DATE OF BIRTH & ADDRESS: Sidney A. Potts

VICTIM(S) FULL NAME / DATE OF BIRTH & ADDRESS:

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
EVID	42-1		Drugs					

SERIAL # / OWNER APPLIED # | GUNS > CALIBER | BARREL LENGTH | FIREARM RENDERED SAFE? YES or NO | CHECKED STOLEN DATE | EVIDENCE DISPO DATE | EVIDENCE DISPO

ENTERED AS STOLEN YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND: Sawyer | WHERE FOUND: black tool box | LOGGED BY: Sawyer

DESCRIPTION OF PROPERTY: mirror, scale, crystal substance | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
SEIZE	42-2		Tools					

SERIAL # / OWNER APPLIED # | GUNS > CALIBER | BARREL LENGTH | FIREARM RENDERED SAFE? YES or NO | CHECKED STOLEN DATE | EVIDENCE DISPO DATE | EVIDENCE DISPO

ENTERED AS STOLEN YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY: Powerbuilt socket set | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
SEIZE	42-3		Tools					

SERIAL # / OWNER APPLIED # | GUNS > CALIBER | BARREL LENGTH | FIREARM RENDERED SAFE? YES or NO | CHECKED STOLEN DATE | EVIDENCE DISPO DATE | EVIDENCE DISPO

ENTERED AS STOLEN YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY: Determinator Scan System | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
SEIZE	42-4		Air compressor	Craftsman	150PSI	red		

SERIAL # / OWNER APPLIED # | GUNS > CALIBER | BARREL LENGTH | FIREARM RENDERED SAFE? YES or NO | CHECKED STOLEN DATE | EVIDENCE DISPO DATE | EVIDENCE DISPO

ENTERED AS STOLEN YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND: Sawyer | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY: Craftsman air compressor | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
SEIZE	42-5		tool box	Kobalt		black		

SERIAL # / OWNER APPLIED # | GUNS > CALIBER | BARREL LENGTH | FIREARM RENDERED SAFE? YES or NO | CHECKED STOLEN DATE | EVIDENCE DISPO DATE | EVIDENCE DISPO

ENTERED AS STOLEN YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY: Kobalt tool box | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

OFFICER SUBMITTING EVIDENCE, PRINTED NAME: K Sawyer | DATE PLACED IN EVIDENCE | DATE PROCESSED IN TO EVIDENCE | PAGE # 1 of 4

Revised 4/7/10

AD. (16)

Department **Evidence/Property Form** 12-22096

TYPE OF INCIDENT	ACTIVE CASE Yes / No	LOCATION OF INCIDENT

SUSPECT(S) FULL NAME / DATE OF BIRTH & ADDRESS

VICTIM(S) FULL NAME / DATE OF BIRTH & ADDRESS

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
SEIZE	42-6		tool box	Craftsman		red		

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE? YES or NO	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO

ENTERED AS STOLEN YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY: Craftsman tool box w/ mac box | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE:	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
SEIZE	42-7		Welder	Miller	Thunderbolt	blue		

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE? YES or NO	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO

ENTERED AS STOLEN YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY: Miller welder | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE.	MAKE	MODEL	COLOR / FINISH.	VALUE	EVIDENCE ROOM BIN
SEIZE	42-8		tools					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE? YES or NO	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO

ENTERED AS STOLEN YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY: Misc tools from 42-6 | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
SEIZE	42-9		tool	Ryobi	6"			

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE? YES or NO	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO

ENTERED AS STOLEN YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY: Ryobi bench grinder | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
SEIZE	42-10		Battery charger	Schumacher	SE4020	black		

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE? YES or NO	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO

ENTERED AS STOLEN YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY: battery charger | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

OFFICER SUBMITTING EVIDENCE / PRINTED NAME: [illegible] Carter | DATE PLACED IN EVIDENCE | DATE PROCESSED IN TO EVIDENCE | PAGE # 2 of 4

A3. (17)

Department **Evidence/Property Form** 42-22096

TYPE OF INCIDENT	ACTIVE CASE	LOCATION OF INCIDENT
-	Yes / No	

SUSPECT(S) FULL NAME / DATE OF BIRTH & ADDRESS: -

VICTIM(S) FULL NAME / DATE OF BIRTH & ADDRESS:

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
SEIZE	42-11		Welder	Lincoln	Weld pak	red		

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN: YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS:

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY: Welder | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
SEIZE	42-12		Sander	Snapon	7"/9"			

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN: YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS:

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY: Snap-on sander | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Seize	42-13		buffer	Craftsman	4.5 amp			

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN: YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS:

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY: Craftsman buffer | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Seize	42-14		Sander	Drill master	7"			

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN: YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS:

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY: Drill master sander | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Seize	42-15		floor jack			gray		

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN: YES or NO | PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS:

WHO FOUND | WHERE FOUND | LOGGED BY

DESCRIPTION OF PROPERTY: floor jack | DRUG WEIGHT IN GRAMS

EVIDENCE ROOM BAR CODE

OFFICER SUBMITTING EVIDENCE, PRINTED NAME: K Pace #

DATE PLACED IN EVIDENCE | DATE PROCESSED IN TO EVIDENCE | PAGE # 3 of 4

Revised 4/7/16

Pg. (18)

Longview Police Department

Evidence/Property Form

42-22096

TYPE OF INCIDENT	ACTIVE CASE Yes / No	LOCATION OF INCIDENT

SUSPECT(S) FULL NAME / DATE OF BIRTH & ADDRESS	VICTIM(S) FULL NAME / DATE OF BIRTH & ADDRESS

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE.	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Seize	42-16		tools					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS	EVIDENCE ROOM BAR CODE
YES or NO		

WHO FOUND	WHERE FOUND	LOGGED BY

DESCRIPTION OF PROPERTY	DRUG WEIGHT IN GRAMS
misc tools on red HUSKY bag	

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE.	MAKE	MODEL	COLOR / FINISH	VALUE:	EVIDENCE ROOM BIN
Seize	42-17		tools					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS	EVIDENCE ROOM BAR CODE
YES or NO		

WHO FOUND	WHERE FOUND	LOGGED BY

DESCRIPTION OF PROPERTY	DRUG WEIGHT IN GRAMS
misc tools from 42-5	

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE.	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Seize	42-18		Saw	Rigid				

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS	EVIDENCE ROOM BAR CODE
YES or NO		

WHO FOUND	WHERE FOUND	LOGGED BY

DESCRIPTION OF PROPERTY	DRUG WEIGHT IN GRAMS
Rigid Saw-zaw	

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Seize	42-19		tools					

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS	EVIDENCE ROOM BAR CODE
YES or NO		

WHO FOUND	WHERE FOUND	LOGGED BY

DESCRIPTION OF PROPERTY	DRUG WEIGHT IN GRAMS
misc tools on red tool box	

PROPERTY > STATUS	ITEM #	QUANTITY	ITEM TYPE	MAKE	MODEL	COLOR / FINISH	VALUE	EVIDENCE ROOM BIN
Seize	42-20		tools	Task Force				

SERIAL # / OWNER APPLIED #	GUNS > CALIBER	BARREL LENGTH	FIREARM RENDERED SAFE?	CHECKED STOLEN DATE	EVIDENCE DISPO DATE	EVIDENCE DISPO
			YES or NO			

ENTERED AS STOLEN	PROPERTY OWNER FULL NAME, DATE OF BIRTH & ADDRESS	EVIDENCE ROOM BAR CODE
YES or NO		

WHO FOUND	WHERE FOUND	LOGGED BY

DESCRIPTION OF PROPERTY	DRUG WEIGHT IN GRAMS
Taskforce toolset	

OFFICER SUBMITTING EVIDENCE / PRINTED NAME	DATE PLACED IN EVIDENCE	DATE PROCESSED IN TO EVIDENCE	PAGE #
			4 of 4

Rev. (19)

SUPERIOR JUSTICE COURT OF WASHINGTON FOR COWLITZ COUNTY

STATE OF WASHINGTON, **Plaintiff,** vs. CUSTODIAN OF RECORDS RED CANOE CREDIT UNION 1418 15TH AVENUE LONGVIEW, WA 98632 **Defendant.**	**No. 12-1-00001-5** **LPD No. 12-20492** **MOTION FOR SUBPOENA DUCES TECUM**

COMES NOW Susan I. Baur, Prosecuting Attorney for Cowlitz County, representing the State of Washington, and, based on the sworn attached affidavit of Off. Rocky Epperson, moves this court for a subpoena duces tecum compelling production of the items and information listed in the attached affidavit. The affidavit of Off. Rocky Epperson is attached hereto and incorporated herein by reference.

Respectfully submitted this 9TH day of August, 2012.

Susan I. Baur

SUSAN I. BAUR/WSBA#15221
Prosecuting Attorney

Cowlitz County Prosecuting Attorney
312 SW 1st Street
Kelso WA 98626
Telephone 360 577 3080

RS (10)

SUPERIOR JUSTICE COURT OF WASHINGTON
FOR COWLITZ COUNTY

STATE OF WASHINGTON,	)	12-1-00001-5
	)	No. L12-20492
Plaintiff,	)	
	)	AFFIDAVIT FOR
vs.	)	SUBPOENA DUCES TECUM
	)	
CUSTODIAN OF RECORDS Red Canoe Credit Union 1418 15th Ave LONGVIEW, WA 98632	)	
Defendant.	)	

STATE OF WASHINGTON)
: ss
County of Cowlitz)

I, Rocky M. Epperson, after being duly sworn on oath, depose and say that I am a Detective for the City of Longview, Washington, currently assigned to the Street Crimes Unit (SCU) and have been a police officer since 2008.

I was contacted by a confidential informant, hereby referred to as X in reference Methamphetamine being sold by a male known to X as Sid Potts. X was shown a photograph in which the name was not visible. X stated the male in the photograph was Sid Potts. The photograph was a booking photograph of Sidney Albert Potts (DOB 11/7/50).

X is working with the Longview Police Department Street Crimes Unit in exchange for leniency in a felony criminal matter which he/she was previously involved in. X has provided information into the local distribution of controlled substances, which has been corroborated by other sources. X has admitted to the use/knowledge of methamphetamine, heroin, and marijuana in the past. X has admitted to selling drugs in the past. Based on X's use and experience he/she is familiar with how drug transactions are arranged and completed.

X stated for the past 18 months he/she has sold methamphetamine for Potts. X stated during that time Potts would "front" X methamphetamine (>1 ounce). Then X would sell the methamphetamine. X stated when he/she collected enough money to pay Potts for the methamphetamine Potts "fronted" X then he/she would contact Potts and arrange to meet him (Potts). When X met Potts X would give Potts the money he/she collected and Potts would "front" X more methamphetamine (>1 ounce). X stated during the 18 months he/she sold

methamphetamine for Potts he/she would meet and exchange money for methamphetamine approximately twice a week. Since July of 2012 X has performed 3 controlled buys for the Street Crimes Unit within the last 30 days from Potts. X stated he/she was not the only person selling methamphetamine for Potts. X stated Potts collects in excess of $ 10,000.00 in a month in proceeds from selling methamphetamine.

During one of the controlled buy operations X called Potts to arrange a meeting. Potts told X that he was at the bank and would call him/her back. A short while later Potts called X and arranged to meet X at a location near a local credit union. Approximately nine minutes after receiving this phone call from Potts X arrived at the meeting location and Potts was their waiting for him/her.

When X was asked what Potts does with the money he collects from selling methamphetamine X stated Potts uses the money to finance his business, Potts Family Motors, because Potts spends a lot of money fixing vehicles and doesn't sell any vehicles.

Given the amount of elapsed time from when Potts told X that he was at the bank and the time that he (Potts) arrived at the meeting location it appears Potts was at a branch of the Red Canoe Credit Union since this was the only bank within close proximity to the meeting location that would have allowed Potts enough time that was out of sight of SCU Detectives conducting surveillance in the area.

During the course of this investigation I was contacted by another confidential informant, hereby referred to as Y. Y said he/she had knowledge of Potts' criminal activity and how Potts Family Motors is involved. Y stated he/she has purchased methamphetamine from Potts before. Y also stated he/she has interacted in Potts on a social level before.

I asked Y who was the owner of Potts Family Motors. Y stated Sidney Potts is the owner. Y stated Potts acquires his vehicle for the car lot by purchasing them with proceeds from his drug sales and collecting on drug debts. Y also stated Potts Family Motors sells very few vehicle. Y stated he/she was aware of Potts Family Motors recently selling a few vehicles.

Y stated he/she has seen Potts with what he/she stated was over $40,000.00. Y also stated that he/she knows that Potts deposits money collected from his methamphetamine selling in to his business bank account, Potts Family Motors Inc. Y also stated he/she there is approximately $90,000.00 in this account. Y stated he/she also had knowledge that Potts stated he was going to stop selling methamphetamine because he has enough money saved in his bank account that he can stop selling methamphetamine a run a legitimate car business without financing it with money from selling methamphetamine

I believe that the identity of X and Y needs to be kept secret because his/her usefulness would cease immediately if he/she was identified. In addition, I have heard that people who cooperate with the police would be harmed or otherwise injured if their identities are known.

In May of 2010 Sidney Potts was released from prison. On 7/31/12 I contacted the Washington State Department of Employment Securities and requested the reported income for Sidney Potts and Thomas Potts (DOB 8/9/48). Thomas Potts is listed as the president of Potts Family Motor Inc, which is listed as a for profit cooperation according to the Washington State Secretary of State Corporations Division. The report showed from the 1st quarter of 2011 through the 1st quarter of 2012 Potts earned $1619.49 while employed by Kamyr Construction which is located in the 1400 block of Alabama St. The report showed no reported income from Potts Family Motors. A separate report showed that for the same time period Thomas Potts reported no income.

The Red Canoe Credit Union will not release customer records without a subpoena. The records are needed in order to establish the money currently in Sidney Potts and/or Potts Family Motors Inc. back account is not reflective in the amount of money Sidney Potts, Thomas Potts, and Potts Family Motors reported to the state.

Based on the above information, there is reason to believe that the crime of **Money Laundering** has been committed and that evidence of that crime can be found within business records, to wit:

ANY AND ALL INFORMATION ON THE RED CANOE CREDIT UNION CUSTOMER "SIDNEY A POTTS" "SOC. SEC. # 532-54-1283", POTTS FAMILY MOTORS INC, and THOMAS POTTS" SOC. SEC. # , 534-44-8346 TO INCLUDE: ADDRESSES, PHONE NUMBERS, AND OTHER APPLICATION INFORMATION, ACCOUNT STATEMENTS, ACCOUNT OPEN AND CLOSE DATES, REASON FOR ACCOUNT CLOSURE, SIGNATURE CARDS, SYSTEM NOTES, CANCELLED CHECK COPIES, DEPOSITS, SUSPICIOUS ACTIVITY REPORTS (SAR), RETURNED CHECKS, REASON FOR REJECTED OR RETURNED CHECKS, NSF CHECKS, AND ALL LETTERS, MEMOS, AND OTHER COMMUNICATIONS BETWEEN CUSTOMER AND RED CANOE CREDIT UNION BETWEEN 5/17/2010 TO 8/9/2012.

Wherefore, I pray that a subpoena duces tecum be granted, compelling the holder of these records to appear before the special inquiry judge of Cowlitz County to give evidence concerning matters there under investigation and to then and there have with them true and correct copies of the above records, and to remain in attendance on said special inquiry until discharged.

The subpoena duces tecum of Rocky M. Epperson is attached to hereto and incorporated herein by reference.

R. Epperson
AFFIANT

Subscribed and sworn before me this 9 day of August, 2012.

JUDGE

Approved for presentation:
WSB# 36657
Deputy Prosecutor
Cowlitz County
Kelso, Washington

Ag (13)

SUPERIOR COURT OF WASHINGTON
FOR COWLITZ COUNTY

PROCEEDINGS BEFORE THE SPECIAL INQUIRY JUDGE	No. 12-1-00001-5 LPD No. 12-20492 SUBPOENA DUCES TECUM

THE STATE OF WASHINGTON to:

CUSTODIAN OF RECORDS
RED CANOE CREDIT UNION
1418 15TH AVENUE
LONGVIEW, WA 98632

IN THE NAME OF THE STATE OF WASHINGTON, **this subpoena is issued pursuant to RCW 10.96.020. A response is due within twenty business days of receipt, unless a shorter time is stated herein, or the applicant consents to a recipient's request for additional time to comply.**

IN THE NAME OF THE STATE OF WASHINGTON, You are hereby commanded to be and appear before the SPECIAL INQUIRY JUDGE of Cowlitz County, State of Washington, at the Cowlitz County Hall of Justice, 312 South West First Avenue, Kelso, Washington, at 1:00 P.M. on August 23, 2012, then and there to give evidence concerning matters there under investigation and to then and there to have with you true and correct copies of records including:

ANY AND ALL INFORMATION ON THE RED CANOE CREDIT UNION CUSTOMER "SIDNEY A POTTS" "SOC. SEC. # 532-54-1283", POTTS FAMILY MOTORS INC, and THOMAS POTTS" SOC. SEC. # , 534-44-8346 TO INCLUDE: ADDRESSES, PHONE NUMBERS, AND OTHER APPLICATION INFORMATION, ACCOUNT STATEMENTS, ACCOUNT OPEN AND CLOSE DATES, REASON FOR ACCOUNT CLOSURE, SIGNATURE CARDS, SYSTEM NOTES, CANCELLED CHECK COPIES, DEPOSITS, SUSPICIOUS ACTIVITY REPORTS (SAR), RETURNED CHECKS, REASON FOR REJECTED OR RETURNED CHECKS, NSF CHECKS, AND ALL LETTERS, MEMOS, AND OTHER COMMUNICATIONS BETWEEN CUSTOMER AND RED CANOE CREDIT UNION BETWEEN 5/17/2010 TO 8/9/2012.

Cowlitz County Prosecuting Attorney
312 SW 1st Street
Kelso WA 98626
Telephone 360 577 3080

pg(24)

AND to remain in attendance on said SPECIAL INQUIRY until discharged, and HEREIN FAIL NOT AT YOUR PERIL.

Dated : 9 Aug 2012

JUDGE

Note: Compliance with said directive can be satisfied by furnishing said documents either by mail or actual appearance with said documents at the Superior Court at 312 SW First Avenue, Kelso, WA. **IF BY MAIL, PLEASE SEND TO GAYLE ENGKRAF, SUPERIOR COURT ADMINISTRATION, 312 SW FIRST AVENUE, KELSO, WA 98626. (EPPERSON, LPD)**

DISCLOSURE OF THIS SUBPOENA BY ANY EMPLOYEE OF RED CANOE CREDIT UNION, IS A MISDEMEANOR PURSUANT TO RCW 10.29.060.

DISCLOSURE COULD IMPEDE AN ONGOING CRIMINAL INVESTIGATION.

PS (25)

Cowlitz County Prosecuting Attorney
312 SW 1st Street
Kelso WA 98626
Telephone 360 577 3080

LONGVIEW POLICE STREET CRIMES UNIT
AUTHORIZATION FOR EVIDENCE INTERCEPT
RCW 9.73.230

AUTHORIZING AGENT: Captain Robert Huhta

OFFICERS AUTHORIZED TO INTERCEPT, TRANSMIT OR RECORD: Detective Rocky Epperson, Detective Kevin Sawyer, Detective Seth Libbey, Sergeant Ray Hartley

PERSONS WHO MAY HAVE COMMITTED OR MAY COMMIT THE OFFENSE: Sidney Albert Potts

CONSENTING PARTY: CI 12-247

EXPECTED DATE: 7/17/2012 **TIME:** 1855 hrs

LOCATION: LONGVIEW, COWLITZ COUNTY, WA

PROBABLE CAUSE TO BELIEVE THE COMMUNICATION WILL INVOLVE VIOLATION(S) OF RCW 69.50, 69.41, OR 69.52:

I, ROBERT HUHTA, being duly sworn on oath depose and say that I am a commissioned Police Officer with the Longview Police Department in Longview, Washington and have been so employed since May 1, 1998. I have held the rank of Police Sergeant for two and half years. I was the Detective Sergeant for the Street Crimes Unit for 18 months. I managed detectives who investigated alleged violations of the Revised Code of Washington, Chapters 69.50, 69.41, and 69.52.The investigations involved the detection and arrest of individuals and organizations engaged in narcotics trafficking. I currently am assigned as a Captain, which is above the level of first line supervisor, and have been so since October 1, 2010. My current assignment is Commander of the Longview Police Department's Investigation Division.

I have had numerous phases and courses of police training. I am a graduate of the Washington State Criminal Justice Training Commission [WSCJTC] Basic Law Enforcement Academy, which included a course of instruction in narcotics recognition and narcotics law enforcement. I hold law enforcement Supervisory certificates from the Washington State Criminal Justice Training Commission. I have completed a training course for Drug Unit Supervisors. I have additional hours of law enforcement supervisory and management training from various sources.

On July 17th , 2012, I was advised by Detective Rocky Epperson the following information concerning his ongoing investigation:

Detective Epperson is working with a confidential informant, hereafter referred to as CI. CI is working with the Longview Police Street Crimes Unit in exchange for leniency in a criminal matter which he/she was previously involved. CI knows that any leniency granted him/her is dependent on the accuracy and veracity of the information provided. CI knows that he/she will not be granted leniency in the pending criminal matter if the information provided is inaccurate.

CI has provided information into the local distribution of controlled substances, which has been corroborated by other sources. CI has admitted to the use/ knowledge of methamphetamine, heroin, and marijuana in the past. CI also has admitted to selling drugs in the past. Based on CI's use and experience he/she is familiar with how drug transactions are arranged and completed.

On July 17, 2012, Detective Epperson spoke with CI regarding methamphetamine being sold by Sidney Albert Potts (DOB 11/7/50) CI stated that he/she has purchased methamphetamine from POTTS in the past. CI stated that he/she could purchase methamphetamine from POTTS. CI stated that he/she could contact POTTS, in Cowlitz County, Washington, and arrange to purchase methamphetamine from him. CI has voluntarily agreed to wear a body wire during the transaction and consents to his/her voice being recorded while wearing the wire.

The case plan at this time calls for Detective Epperson to meet with CI. CI will be searched and provided a sum of U.S. currency, which the serial numbers will be prerecorded. CI will be wearing a body wire and/or digital recording device when he/she meets with POTTS. CI will attempt to purchase methamphetamine from POTTS. CI will make every effort to conduct the transaction in Cowlitz County.

I believe that additional conversation(s) will occur between CI and POTTS in violation of RCW chapter 69.50, 69.41 and/or 69.52. in regards to the sale of controlled substances.

I feel that it is necessary to monitor and record conversation(s) between CI and POTTS because transcripts of the conversation(s) may be necessary to verify the contents of the conversation(s). This will be important to corroborate the event and will also aid in defeating any claims of entrapment by POTTS, which might result in a conflict between CI and POTTS as to the content and context of the conversation(s).

HAS JUDICIAL AUTHORIZATION PURSUANT TO RCW 9.73.090(2) BEEN ATTEMPTED? NO

IF YES, OUTCOME: JUDGE NOT AVAILABLE:_____ APPROVED_____ DENIED_____.

AUTHORIZATION

Based upon the consent of one party to the intended communication and the probable cause set forth above, I hereby authorize the interception, recording or transmission of the proposed private communication indicated.

CAPT - [illegible]

Chief Officer or Designee

Date 7/17/12 **Time** 1854 hrs **am/pm**

Case #: L12-19513

LONGVIEW POLICE STREET CRIMES UNIT
AUTHORIZATION FOR EVIDENCE INTERCEPT
RCW 9.73.230

AUTHORIZING AGENT: Captain Robert Huhta

OFFICERS AUTHORIZED TO INTERCEPT, TRANSMIT OR RECORD: Detective Rocky Epperson, Detective Kevin Sawyer, Detective Seth Libbey, Sergeant Ray Hartley

PERSONS WHO MAY HAVE COMMITTED OR MAY COMMIT THE OFFENSE: Sidney Albert Potts

CONSENTING PARTY: CI 12-247

EXPECTED DATE: 7/18/2012 **TIME:** 1300 hrs

LOCATION: LONGVIEW, COWLITZ COUNTY, WA

PROBABLE CAUSE TO BELIEVE THE COMMUNICATION WILL INVOLVE VIOLATION(S) OF RCW 69.50, 69.41, OR 69.52:

I, ROBERT HUHTA, being duly sworn on oath depose and say that I am a commissioned Police Officer with the Longview Police Department in Longview, Washington and have been so employed since May 1, 1998. I have held the rank of Police Sergeant for two and half years. I was the Detective Sergeant for the Street Crimes Unit for 18 months. I managed detectives who investigated alleged violations of the Revised Code of Washington, Chapters 69.50, 69.41, and 69.52.The investigations involved the detection and arrest of individuals and organizations engaged in narcotics trafficking. I currently am assigned as a Captain, which is above the level of first line supervisor, and have been so since October 1, 2010. My current assignment is Commander of the Longview Police Department's Investigation Division.

I have had numerous phases and courses of police training. I am a graduate of the Washington State Criminal Justice Training Commission [WSCJTC] Basic Law Enforcement Academy, which included a course of instruction in narcotics recognition and narcotics law enforcement. I hold law enforcement Supervisory certificates from the Washington State Criminal Justice Training Commission. I have completed a training course for Drug Unit Supervisors. I have additional hours of law enforcement supervisory and management training from various sources.

On July 18, 2012, I was advised by Detective Rocky Epperson the following information concerning his ongoing investigation:

Detective Epperson is working with a confidential informant, hereafter referred to as CI. CI is working with the Longview Police Street Crimes Unit in exchange for leniency in a criminal matter which he/she was previously involved. CI knows that any leniency granted him/her is dependent on the accuracy and veracity of the information provided. CI knows that he/she will not be granted leniency in the pending criminal matter if the information provided is inaccurate.

RS (28)

CI has provided information into the local distribution of controlled substances, which has been corroborated by other sources. CI has admitted to the use/ knowledge of methamphetamine, heroin, and marijuana in the past. CI also has admitted to selling drugs in the past. Based on CI's use and experience he/she is familiar with how drug transactions are arranged and completed.

On July 18, 2012, Detective Epperson spoke with CI regarding methamphetamine being sold by Sidney Albert Potts (DOB 11/7/50) CI stated that he/she has purchased methamphetamine from POTTS in the past. CI stated that he/she could purchase methamphetamine from POTTS. CI stated that he/she could contact POTTS, in Cowlitz County, Washington, and arrange to purchase methamphetamine from him. CI has voluntarily agreed to wear a body wire during the transaction and consents to his/her voice being recorded while wearing the wire.

The case plan at this time calls for Detective Epperson to meet with CI. CI will be searched and provided a sum of U.S. currency, which the serial numbers will be prerecorded. CI will be wearing a body wire and/or digital recording device when he/she meets with POTTS. CI will attempt to purchase methamphetamine from POTTS. CI will make every effort to conduct the transaction in Cowlitz County.

I believe that additional conversation(s) will occur between CI and POTTS in violation of RCW chapter 69.50, 69.41 and/or 69.52. in regards to the sale of controlled substances.

I feel that it is necessary to monitor and record conversation(s) between CI and POTTS because transcripts of the conversation(s) may be necessary to verify the contents of the conversation(s). This will be important to corroborate the event and will also aid in defeating any claims of entrapment by POTTS, which might result in a conflict between CI and POTTS as to the content and context of the conversation(s).

HAS JUDICIAL AUTHORIZATION PURSUANT TO RCW 9.73.090(2) BEEN ATTEMPTED? NO

IF YES, OUTCOME: JUDGE NOT AVAILABLE:_____ APPROVED_____ DENIED_____.

AUTHORIZATION

Based upon the consent of one party to the intended communication and the probable cause set forth above, I hereby authorize the interception, recording or transmission of the proposed private communication indicated.

CAPT. [signature]

Chief Officer or Designee

Date 7-18-12 **Time** 12-30 **am/pm**

Cert

LONGVIEW POLICE STREET CRIMES UNIT
AUTHORIZATION FOR EVIDENCE INTERCEPT
RCW 9.73.230

AUTHORIZING AGENT: Captain Robert Huhta

OFFICERS AUTHORIZED TO INTERCEPT, TRANSMIT OR RECORD: Detective Rocky Epperson, Detective Kevin Sawyer, Detective Seth Libbey, Sergeant Ray Hartley

PERSONS WHO MAY HAVE COMMITTED OR MAY COMMIT THE OFFENSE: Sidney Albert Potts

CONSENTING PARTY: CI 12-247

EXPECTED DATE: 7/24/2012 **TIME:** 1515 hrs

LOCATION: LONGVIEW, COWLITZ COUNTY, WA

PROBABLE CAUSE TO BELIEVE THE COMMUNICATION WILL INVOLVE VIOLATION(S) OF RCW 69.50, 69.41, OR 69.52:

I, ROBERT HUHTA, being duly sworn on oath depose and say that I am a commissioned Police Officer with the Longview Police Department in Longview, Washington and have been so employed since May 1, 1998. I have held the rank of Police Sergeant for two and half years. I was the Detective Sergeant for the Street Crimes Unit for 18 months. I managed detectives who investigated alleged violations of the Revised Code of Washington, Chapters 69.50, 69.41, and 69.52.The investigations involved the detection and arrest of individuals and organizations engaged in narcotics trafficking. I currently am assigned as a Captain, which is above the level of first line supervisor, and have been so since October 1, 2010. My current assignment is Commander of the Longview Police Department's Investigation Division.

I have had numerous phases and courses of police training. I am a graduate of the Washington State Criminal Justice Training Commission [WSCJTC] Basic Law Enforcement Academy, which included a course of instruction in narcotics recognition and narcotics law enforcement. I hold law enforcement Supervisory certificates from the Washington State Criminal Justice Training Commission. I have completed a training course for Drug Unit Supervisors. I have additional hours of law enforcement supervisory and management training from various sources.

On July 17th , 2012, I was advised by Detective Rocky Epperson the following information concerning his ongoing investigation:

Detective Epperson is working with a confidential informant, hereafter referred to as CI. CI is working with the Longview Police Street Crimes Unit in exchange for leniency in a criminal matter which he/she was previously involved. CI knows that any leniency granted him/her is dependent on the accuracy and veracity of the information provided. CI knows that he/she will not be granted leniency in the pending criminal matter if the information provided is inaccurate.

pg (30)

CI has provided information into the local distribution of controlled substances, which has been corroborated by other sources. CI has admitted to the use/ knowledge of methamphetamine, heroin, and marijuana in the past. CI also has admitted to selling drugs in the past. Based on CI's use and experience he/she is familiar with how drug transactions are arranged and completed.

On July 17, 2012, Detective Epperson spoke with CI regarding methamphetamine being sold by Sidney Albert Potts (DOB 11/7/50) CI stated that he/she has purchased methamphetamine from POTTS in the past. CI stated that he/she could purchase methamphetamine from POTTS. CI stated that he/she could contact POTTS, in Cowlitz County, Washington, and arrange to purchase methamphetamine from him. CI has voluntarily agreed to wear a body wire during the transaction and consents to his/her voice being recorded while wearing the wire.

The case plan at this time calls for Detective Epperson to meet with CI. CI will be searched and provided a sum of U.S. currency, which the serial numbers will be prerecorded. CI will be wearing a body wire and/or digital recording device when he/she meets with POTTS. CI will attempt to purchase methamphetamine from POTTS. CI will make every effort to conduct the transaction in Cowlitz County.

I believe that additional conversation(s) will occur between CI and POTTS in violation of RCW chapter 69.50, 69.41 and/or 69.52. in regards to the sale of controlled substances.

I feel that it is necessary to monitor and record conversation(s) between CI and POTTS because transcripts of the conversation(s) may be necessary to verify the contents of the conversation(s). This will be important to corroborate the event and will also aid in defeating any claims of entrapment by POTTS, which might result in a conflict between CI and POTTS as to the content and context of the conversation(s).

HAS JUDICIAL AUTHORIZATION PURSUANT TO RCW 9.73.090(2) BEEN ATTEMPTED? NO

IF YES, OUTCOME: JUDGE NOT AVAILABLE:_____ APPROVED_____ DENIED_____.

AUTHORIZATION

Based upon the consent of one party to the intended communication and the probable cause set forth above, I hereby authorize the interception, recording or transmission of the proposed private communication indicated.

CAPT - [illegible]

Chief Officer or Designee

Date 7/24/12 **Time** 2:37 **am/(pm)**

LONGVIEW POLICE STREET CRIMES UNIT
AUTHORIZATION FOR EVIDENCE INTERCEPT
RCW 9.73.230

AUTHORIZING AGENT: Captain Robert Huhta

OFFICERS AUTHORIZED TO INTERCEPT, TRANSMIT OR RECORD: Detective Rocky Epperson, Detective Kevin Sawyer, Detective Seth Libbey, Sergeant Ray Hartley

PERSONS WHO MAY HAVE COMMITTED OR MAY COMMIT THE OFFENSE: Sidney Albert Potts

CONSENTING PARTY: CI 12-247

EXPECTED DATE: 7/31/2012 **TIME:** 1320 hrs

LOCATION: LONGVIEW, COWLITZ COUNTY, WA

PROBABLE CAUSE TO BELIEVE THE COMMUNICATION WILL INVOLVE VIOLATION(S) OF RCW 69.50, 69.41, OR 69.52:

I, ROBERT HUHTA, being duly sworn on oath depose and say that I am a commissioned Police Officer with the Longview Police Department in Longview, Washington and have been so employed since May 1, 1998. I have held the rank of Police Sergeant for two and half years. I was the Detective Sergeant for the Street Crimes Unit for 18 months. I managed detectives who investigated alleged violations of the Revised Code of Washington, Chapters 69.50, 69.41, and 69.52.The investigations involved the detection and arrest of individuals and organizations engaged in narcotics trafficking. I currently am assigned as a Captain, which is above the level of first line supervisor, and have been so since October 1, 2010. My current assignment is Commander of the Longview Police Department's Investigation Division.

I have had numerous phases and courses of police training. I am a graduate of the Washington State Criminal Justice Training Commission [WSCJTC] Basic Law Enforcement Academy, which included a course of instruction in narcotics recognition and narcotics law enforcement. I hold law enforcement Supervisory certificates from the Washington State Criminal Justice Training Commission. I have completed a training course for Drug Unit Supervisors. I have additional hours of law enforcement supervisory and management training from various sources.

On July 31th, 2012, I was advised by Detective Rocky Epperson the following information concerning his ongoing investigation:

Detective Epperson is working with a confidential informant, hereafter referred to as CI. CI is working with the Longview Police Street Crimes Unit in exchange for leniency in a criminal matter which he/she was previously involved. CI knows that any leniency granted him/her is dependent on the accuracy and veracity of the information provided. CI knows that he/she will not be granted leniency in the pending criminal matter if the information provided is inaccurate.

CI has provided information into the local distribution of controlled substances, which has been corroborated by other sources. CI has admitted to the use/ knowledge of methamphetamine, heroin, and marijuana in the past. CI also has admitted to selling drugs in the past. Based on CI's use and experience he/she is familiar with how drug transactions are arranged and completed.

On July 31, 2012, Detective Epperson spoke with CI regarding methamphetamine being sold by Sidney Albert Potts (DOB 11/7/50) CI stated that he/she has purchased methamphetamine from POTTS in the past. CI stated that he/she could purchase methamphetamine from POTTS. CI stated that he/she could contact POTTS, in Cowlitz County, Washington, and arrange to purchase methamphetamine from him. CI has voluntarily agreed to wear a body wire during the transaction and consents to his/her voice being recorded while wearing the wire.

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I feel that it is necessary to monitor and record conversation(s) between CI and POTTS because transcripts of the conversation(s) may be necessary to verify the contents of the conversation(s). This will be important to corroborate the event and will also aid in defeating any claims of entrapment by POTTS, which might result in a conflict between CI and POTTS as to the content and context of the conversation(s).

HAS JUDICIAL AUTHORIZATION PURSUANT TO RCW 9.73.090(2) BEEN ATTEMPTED? NO

IF YES, OUTCOME: JUDGE NOT AVAILABLE:_____ APPROVED_____ DENIED_____.

AUTHORIZATION

Based upon the consent of one party to the intended communication and the probable cause set forth above, I hereby authorize the interception, recording or transmission of the proposed private communication indicated.

CAPT. [signature]

Chief Officer or Designee

Date 7-31-12 **Time** 1:10 **am/pm**

No. 44997-8-II
Cowlitz Co. Cause No. 12-1-00876-8

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

RESPONDENT,

v.

SIDNEY A. POTTS

PETITIONER.

RESPONSE TO MOTION FOR DISCRETIONARY REVIEW

SUSAN I. BAUR
Prosecuting Attorney
DAVID PHELAN/WSBA #36637
Deputy Prosecuting Attorney
Attorney for Respondent

Office and P. O. Address:
Hall of Justice
312 S. W. First Avenue
Kelso, WA 98626
Telephone: 360/577-3080

pg. (34)

TABLE OF CONTENTS

A3 (35)

TABLE OF AUTHORITIES

Cases

Rules

AG (38)

I. IDENTITY OF RESPONDENT

The respondent is herein identified as Susan I. Baur, Prosecuting Attorney for Cowlitz County, represented by her deputy, David L. Phelan, herein standing for the State of Washington.

II. DECISION BELOW

The Petitioner seeks review of the denial of a motion to dismiss based on a time for trial violation under CrR 3.3/constitutional speedy trial violation by the Hon. Judge Stephen Warning of the Cowlitz County Superior Court.

III. ISSUE PRESENTED ON REVIEW

Whether the trial court properly denied the Petitioner's motion to dismiss based on a time-for-trial violation that arose from his arraignment by the Hon. Judge Gary Bashor, who also signed a subpoena *duces tecum* in a special inquiry proceeding brought prior to charging

IV. STATEMENT OF THE CASE

Petitioner Sidney A. Potts was investigated by the Longview Street Crimes Unit for drug distribution and leading organized crime during the summer of 2012. During that investigation, they obtained a subpoena *duces tecum* for bank records related to Mr. Potts. The subpoena was signed by the special inquiry judge, Hon. Gary Bashor. Petitioner was arrested and the State filed an information on August

AS (37)

15th, 2012, alleging numerous charges. Petitioner was arraigned on that information on August 28th, 2012. The judge that handled the arraignment was Hon. Gary Bashor. Petitioner argued to the trial court that the he was not properly arraigned until 9 months later when he entered a plea on an amended information. He argued that because he was not properly arraigned for nine months, his time for trial rights under CrR3.3 and his constitutional speedy trial rights had been violated. The trial court denied his motion to dismiss.

V. ARGUMENT

A. THE SUPERIOR COURT COMMITTED NEITHER OBVIOUS ERROR, OR PROBABLE ERROR THAT ALTERED THE STATUS QUO

The superior court neither committed obvious or probable error in denying the Petitioner's motion to dismiss. The trial court properly considered the Petitioner's argument and found it without merit. Even accepting the Petitioner's claim that the initial arraignment was invalid, there is no remedy available that would establish the need for discretionary review.

Petitioner improperly addressed the consideration for discretionary review by couching the argument in terms of the obvious or probable error of the legal issue, and not of the decision made by the trial court on the motion. There is no real dispute that Judge Bashor was statutorily prohibited from hearing the case, although it is difficult to see how an administrative subpoena that was

PG (38)

simply captioned "special inquiry" without using the actual special inquiry process should qualify. The issue, specifically, is what that means and whether the TRIAL COURT committed error in the ruling, not whether Judge Bashor erroneously arraigned the Petitioner.

The Petitioner has conveniently ignored the actual rule that was likely violated, CrR 4.1, and framed the issue in terms of a CrR 3.3 violation in order to obtain dismissal as a remedy. If the Petitioner was not properly arraigned, the remedy is for the trial court to "establish and announce the proper date of arraignment." CrR 4.1(b). This rule previously existed in Washington caselaw as the "Striker/Greenwood" rule. *State v. Greenwood*, 120 Wn.2d 585, 591, (1993), *State v. Striker,* 87 Wn.2d 870, 875 (1976). Since the rule requires that arraignment take place within 14 days of the filing of the information, the court properly announced the date as August 29th, 2012. The trial court accurately noted that this was one day later than his original arraignment, and also noted that there was no specific issue raised under CrR 3.3 other than the arraignment violation, so it would presume that there was no time for trial violation. Since the only remedy available under CrR 4.1 for a "speedy arraignment" violation is the use of a constructive arraignment date, the Petitioner cannot establish a time for trial violation under CrR 3.3, or a constitutional speedy trial violation. Because the Petitioner has a trial date that is currently set within the allowances of CrR 3.3, even

PS (39)

assuming the constructive arraignment date, there is no current or future time for trial violation and no need for this court to review.

Nor does it matter that the trial date set by Judge Bashor at the arraignment was void, because there was no actual prejudice to the Petitioner. The initial trial date was set within the sixty day period allowable under CrR 3.3 and no objection was made, which would normally constitute waiver under CrR 3.3 (d)(3). Even if the court were to consider that initial trial setting void and forgive the waiver (which would likely be appropriate since the Petitioner was likely unaware of the issue at the time), defense counsel for Petitioner withdrew, with the Petitioner's blessing, within the 60 day period from arraignment, resetting the commencement date under CrR 3.3 and a new trial date was subsequently set within 60 days of that disqualification. CrR 3.3(c)(2)(vii).

Petitioner has shown no actual violation, technical or otherwise of CrR 3.3. Because the Petitioner can show no violation, they are not entitled to dismissal under CrR 3.3, and must instead rely on a constitutional violation. However, where they are unable to show even a technical violation of CrR 3.3, they cannot show a constitutional violation. As the Court in *Fladebo* noted, "the threshold for a constitutional violation is much higher than that for a violation of the superior court rules." *State v. Fladebo*, 113 Wn.2d 388, 393 (1989). There is a four-factor test to determine whether or not a

AJ (40)

constitutional violation has occurred, specifically, the court should consider (1) the length of the delay, (2) reason for the delay, (3)whether or not the defendant asserted the right, and (4) whether there was any prejudice to the defendant. *Id., citing Barker v. Wingo,* 407 U.S. 514, 530 (1972). The petitioner offers no analysis as to any of these factors, and thus does not meet even the minimal threshold for review.

This court should deny discretionary review, because there is nothing to suggest that the trial court committed error in denying the Petitioner's motion to dismiss.

B. THE SUPERIOR COURT HAS NOT DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS

The Petitioner makes no showing regarding why the trial court's conduct in this case departed from the accepted or usual course of judicial proceedings.

C. THE SUPERIOR COURT HAS NOT CERTIFIED THIS MOTION FOR DISCRETIONARY REVIEW

The court did not certify this motion for discretionary review

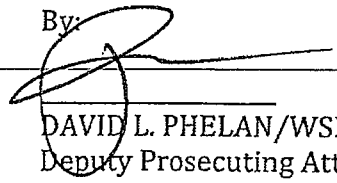
VI. CONCLUSION

The Court of Appeals should not accept review on this case. Petitioner has failed to meet the burden of showing any of the required elements under R.A.P. 2.3 that would justify discretionary review. The trial court properly denied the Petitioner's motion to

dismiss and the Court of Appeals should deny this motion for discretionary review.

Respectfully submitted this 10th day of July, 2013.

SUSAN I. BAUR
Prosecuting Attorney

By: 

DAVID L. PHELAN/WSBA # 36637
Deputy Prosecuting Attorney
Representing Respondent

COWLITZ COUNTY SUPERIOR COURT
IN AND FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Plaintiff, vs. SIDNEY POTTS, Defendant.	No. 12-1-00876-8 STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR DOUBLE JEOPARDY VIOLATION

The Cowlitz County Prosecuting Attorney, Susan I. Baur, by and through her deputy, David Phelan, hereby responds to and opposes the defendant's motion for dismissal based on double jeopardy.

I. FACTS

The court is generally already familiar with the facts and circumstances that lead to the declaration of a mistrial. The State relies generally on the court recording of the September 10th, 2013 hearing and the transcript of that interview provided by the defense. The State will present specific facts where appropriate in the course of argument.

II. ARGUMENT

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pg: (43)

This court should deny the defense motion to dismiss based on double jeopardy grounds. Generally, the double jeopardy clause "applies where (1) jeopardy has previously attached, (2) jeopardy has terminated, and (3) the defendant is in jeopardy a second time for the same offense in fact and law." *State v. Strine*, 176 Wn.2d 742, 752, 293 P.3d 1177 (2013), *citing State v. Ervin*, 158 Wn.2d 746, 752, 147 P.3d 567 (2006). There is no dispute that jeopardy attached and that the defendant now faces the same charges in fact and law. The sole issue is whether jeopardy terminated. Jeopardy is terminated either through acquittal, final conviction, or through the court's dismissal of the jury without the defendant's consent, where the dismissal was not done in the interest of justice. *Id., citing State v. Ervin*, 158 Wn.2d at 752-53, 147 P.3d 567. This case turns on whether or not the court's declaration of a mistrial was done in the interest of justice.

In determining whether the mistrial declaration was done in the interest of justice, and generally when evaluating a court's decision to declare a mistrial, appellate courts give "'great deference' to the trial court's decision to declare a mistrial." *Id.* at 753, 293 P.3d 1177, *citing State v. Jones*, 97 Wn.2d 159, 163, 641 P.3d 708 (1982). To declare a mistrial over the defendant's consent, the court must find there was a "manifest necessity," or a "high degree of necessity." *Id.* at 754, 293 P.3d 1177, *citing Renico v. Lett*, 559 U.S. 766, 130 S.Ct. 1855, 1863-64, 176 L.Ed.2d 678 (2010), *citing Arizona v. Washington*, 434 U.S. 497, 506, 98 S.Ct. 824, 54 L.Ed.2d 717 (1978). The evaluation of whether manifest necessity exists is guided by three main questions, (1) did the court act hastily in declaring the mistrial, (2) did the court give both defense counsel and the State an opportunity to explain their positions, and (3) did it consider alternatives to declaring a mistrial. *See generally State v. Melton*, 97 Wn.App. 327, 332, 983 P.2d 699 (1999). *See also State v. Browning*, 38 Wash.App. 772, 776, 689 P.2d

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pg. (44)

1108 (1984)(noting that trial court had given neither counsel an opportunity to explore or suggest solutions other than a mistrial); *Brady v. Samaha*, 667 F.2d 224 (1st Cir.1981)(abuse of discretion where mistrial declared abruptly without input from either standby defense counsel or the prosecutor); *United States v. Starling*, 571 F.2d 934 (5th Cir.1978); *Vega v. United States*, 709 A.2d 1168 (D.C.1998)(defense counsel should be accorded meaningful participation and hearing); *United States v. Lynch*, 598 F.2d 132, 136 (D.C.Cir.1978)("[t]he nature of the adversary process requires that defense counsel be accorded a meaningful participation and hearing, rather than a cursory opportunity to comment, in a decision to declare a mistrial based on manifest necessity. The decision is of great significance, involving as it does the defendant's constitutional right to be protected from double jeopardy.").

The court's decision in this case was well-reasoned and the declaration of a mistrial was based on a manifest necessity. First, there is simply no evidence to suggest the court acted in an unreasonable, hasty, or ill-considered manner. In fact, after hearing initial argument from both parties on the morning of the 10th, the court recessed until the afternoon to consider its options and review the caselaw that had been provided by both the defense and the State. When the court reconvened in the afternoon, the court asked the parties whether they had any further comments. RP 3. The court then heard additional argument from both sides and questioned the defense about ways the "prejudice" could be mitigated. RP 8-9. After hearing argument, the court ultimately declared a mistrial.

Both sides had ample time to offer their arguments. Defense counsel had a weekend and one business day to formulate their motion to dismiss. In addition to that time and after hearing initial argument, the court gave both defense counsel and the State the opportunity to conduct additional research and provide additional argument. Nor did the court cut off either party in

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their presentation of argument. There is nothing to suggest their court failed to provide a meaningful opportunity for counsel to address the issues relating to the declaration of a mistrial.

Finally, the court did consider alternatives to declaring a mistrial. Specifically, the court initially considered a dismissal as a remedy for the discovery violation. When it determined that a dismissal was not appropriate, the court considered the other alternatives. Factually, at the time of the declaration of a mistrial, the jury for the case was already beyond the initial one-week estimate that the court had originally provided jurors. The trial had already been recessed multiple times to accommodate argument. Further, the trial was recessed all day Friday, 9/6/2013, to allow interviews after the disclosure by the informant. It was scheduled to reconvene on 9/11/2013 at 9am, but at that time the jury was sent home again, to return in the afternoon. The jury was ultimately dismissed later that day.

Additionally, Mr. Mulligan, defense counsel for the defendant, emphasized over and over again how it would be impossible for him to provide effective assistance of counsel given the revelations regarding Mr. Hellesely. Specifically, Mr. Mulligan emphasized the "volume" of the taped recordings and the specific preparation he went through "listening and re-listening to tapes with an eye towards the defense theory." RP 3-4. Further he said that he was "flushing the stuff that's not important." RP 4. He also said that he was NOT looking for the information that would be useful given the situation after Mr. Hellesley's revelations. RP 4. Mr. Mulligan indicated that he "certainly [did] not have time to go back and listen to all those tapes" and emphasized again how he "painstakingly" went through the tapes to the point where he had noted the specific sections down to the second that he would play based on the testimony. RP 4-5. He then noted that there were now five additional interviews and that the tape review represented "just a portion of the trial preparation" that had been done for the case.

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Perhaps more important than the effect on preparation was Mr. Mulligan's belief regarding the way the jury was affected, how different his examination of the witnesses would have been, and how his opening statement would have been different. RP 6. He summarized the problems by noting "opening statement would've been different; testimony would've been different; the jury is now tainted by information that we know is not true; and, I cannot based upon all of the information – and, again, to re-listen to all of those hours of tapes, with a new eye and a new ear... Those things simply can't be done." RP 7-8. After additional argument, Mr. Mulligan again emphasized that he was in a position of "simply not being able to not be effective, to have not done a proper opening statement with regards to what has occurred, the trial simply **cannot proceed...**" *emphasis added.* RP 13. The court specifically recognized this issue, noting that regarding ineffective assistance of counsel, "Mr. Mulligan makes a strong case for that," and recognizing that "there's a lot of information he needs to review with an eye for inconsistency – inconsistencies with the new information." RP 23.

The court specifically considered the impact that a mistrial would have on the defendant's double jeopardy rights. RP 25. The court addressed the issue of simply continuing the trial, but noted that information could go stale in the juror's minds and that defense counsel needed time to get up to speed again. RP 25.

III. CONCLUSION

The trial court's declaration of a mistrial was lawful, appropriate, and the trial court did not abuse its discretion. The trial court's declaration of a mistrial came after careful consideration, both sides were given ample opportunity to provide argument, and the court considered alternatives to granting a mistrial. The facts and circumstances of the case support the trial court's decision. There was a manifest necessity for the mistrial.

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The court should deny the defense motion to dismiss.

DATED THIS 14th day of November, 2013.

For SUE BAUR, Cowlitz County Prosecuting Attorney,

By:

DAVID PHELAN #36637
Deputy Prosecuting Attorney

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PS. (48)