

NO. 65615-5-I

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

STATE OF WASHINGTON,

Respondent,

v.

NICHOLAS MONAGHAN,

Appellant.

FILED
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CLERK OF COURT
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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY

The Honorable Steven j. Mura, Judge

BRIEF OF APPELLANT

JENNIFER M. WINKLER
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

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A. ASSIGNMENT OF ERROR

The warrantless search of a locked container inside the trunk of the appellant's car violated the Fourth Amendment and article 1, section 7 of the Washington Constitution.

Issues Pertaining to Assignment of Error

The appellant consented to a search of the passenger area of his car, not including the glove compartment, after an officer told him he only had time to search that area. A second officer who arrived later took over the search and, claiming he was unaware of the prior limitation, began to open the appellant's trunk. After initially protesting, the appellant consented to the trunk search.

While the appellant's attention was elsewhere, the second officer removed a key from the appellant's key ring and opened a small locked safe located inside a zippered container he found in the trunk. The safe contained methamphetamine.

Under article I, section 7, Washington courts historically defer to the privacy of locked containers located inside a car, even where an exception to the warrant requirement permitted the search of the car. Moreover, Washington case law under the Fourth Amendment holds, with one exception, that consent to search a car does not extend to personal containers located within the car.

a. Should the court have suppressed the evidence where the appellant only consented to allow the officers to search the trunk, but not a locked safe within the trunk?

b. Where no other evidence supported the appellant's conviction, must the conviction be reversed and dismissed?

B. STATEMENT OF THE CASE

1. Charge, motion to suppress, conviction, and sentence

The Whatcom County prosecutor charged Nicholas Monaghan with possession of methamphetamine. CP 41-44. Monaghan moved to suppress the evidence seized in a search of his car. Supp. CP ____ (sub no. 19, Demand for 3.6 Hearing). The trial court denied the motion. CP 32-34.

Monaghan waived his right to a jury trial and stipulated to admission of a police report and an attached lab report. CP 39-40; RP 96-102. Based on those documents, the court found Monaghan guilty and sentenced him within the standard range. RP 22-31.

2. Suppression hearing testimony

Deputy Matthew High stopped Monaghan's car after it went through a stop sign. RP 6. High thought he recognized the passenger as Danielle Fink-Crider. RP 6. While High checked Monaghan's license and registration, he radioed Deputy Anthony Paz and asked him to run

Fink-Crider's name, which revealed a Department of Corrections warrant. RP 7, 22, 40, 50.

When High asked for the name of Monaghan's passenger, Monaghan said it was his girlfriend "Amber." RP 7-8, 55-56. High looked closely at Fink-Crider, purportedly confirming his initial identification, and said, "Hello Danielle." RP 50. High arrested Monaghan for making a false statement. RP 8, 23.

After cuffing and patting down Monaghan, High asked permission to search the car. RP 9, 24-25, 50. High told Monaghan the search was voluntary and Monaghan could limit or revoke consent at any time. RP 10. After Monaghan told High he feared the officer would ransack the car, High promised to be careful and assured Monaghan he had time only to search the passenger compartment. High also promised he would not look in the glove box or trunk. RP 11, 25, 51-52, 56.

Deputy Paz arrived while High was searching the car. RP 8, 12. High testified he told Paz they were only searching the passenger compartment. Paz denied High said that. RP 13, 26, 31, 42.

While Paz was searching, High decided not to detain Monaghan. He removed his handcuffs, intending to release him after issuing a citation. RP 27. Monaghan was surprised when Paz popped the trunk, and he complained to High, "I thought you only wanted to search the

passenger compartment.” RP 14, 27-28, 43. High responded, “I did at the time. Now Deputy Paz wants to search the trunk.” RP 14.¹

Paz lowered the trunk lid and asked Monaghan if he could search the trunk. RP 15. Monaghan balked but eventually told Paz “yeah.” RP 15, 27-28, 74. Paz denied he attempted to intimidate Monaghan or threatened to get a warrant. RP 34.

Fink-Crider, who was detained in a High’s patrol car, notified High that she wanted to speak with Monaghan before going to jail. RP 16. Monaghan left his car to speak with her near High’s car. RP 16.²

While Monaghan was talking to Fink-Crider, Paz unzipped a soft-sided container and found a dictionary-sized safe inside. RP 36. Although the safe was locked, Paz found Monaghan’s key ring on the front seat. RP 36. Paz opened the safe without asking Monaghan’s permission. RP 36-37, 47, 48. Inside the safe, Paz discovered what appeared to be a small amount of methamphetamine and a pipe. RP 38, 47.

¹ According to Paz, High told Monaghan that *High* said he was only going to search the passenger area, but that didn’t mean *Paz* couldn’t search the trunk. RP 45.

² Monaghan testified that after expressing his frustration that Paz started searching the trunk, the officers asked why he didn’t want them to search the trunk and what he was hiding. RP 53, 55. According to Monaghan, he threw up his hands, said “whatever” and went to speak with Fink-Crider. RP 53, 62. The trial court resolved the “yeah” / “whatever” dispute in the officers’ favor, finding it to be the only disputed fact. CP 37.

Monaghan testified he could not see what Paz was doing in the trunk because he was at High's car speaking to Fink-Crider. RP 54, 64.

3. Court's ruling

After completion of the hearing testimony, the court said it wanted to recess so the parties could review State v. Cole,³ a Division Three case that appeared to support Monaghan's position. The parties agreed to research the case.

At the next hearing, the parties discussed Cole and State v. Mueller,⁴ a Division One case the court believed resolved the issue contrary to Cole. Monaghan argued, however, that Mueller was distinguishable in that it did not address locked containers. RP 87. The court found Mueller controlling despite an apparent conflict with Cole and ruled that Monaghan's general consent to search the trunk permitted Paz to open a locked container without additional consent. RP 96, 104-05. The court also found the officers' testimony credible, although it found few conflicts between the officers' and Monaghan's testimony. RP 100.

The court's written rulings are attached as an Appendix. CP 35-38. The court found facts generally as stated above, and found the only

³ 31 Wn. App. 501, 643 P.2d 675 (1982).

⁴ 63 Wn. App. 720, 821 P.2d 1267, review denied, 119 Wn.2d 1012 (1992).

disputed fact was whether Monaghan said “yeah” rather than “whatever” when Paz asked to search the trunk. CP 37. The court concluded Monaghan voluntarily consented to the car search, including the trunk, and that his consent to search provided “authority to law enforcement to search any containers, locked or unlocked, within the trunk.” CP 37.

C. ARGUMENT

THE OFFICER’S SEARCH OF THE LOCKED CONTAINER
INSIDE THE TRUNK VIOLATED MONAGHAN’S STATE
AND FEDERAL CONSTITUTIONAL RIGHTS AGAINST
WARRANTLESS SEARCHES.

Under neither the state nor the federal constitutions did Monaghan’s consent to search the trunk extend to the locked container located inside. Accordingly, this Court should reverse the trial court’s denial of Monaghan’s motion to suppress and remand for the dismissal of the charges.

1. Overview of the relevant law

The Fourth Amendment provides, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” In contrast, the Washington Constitution article I, section 7, provides: “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.”

Only a valid warrant and a few “jealously-guarded” exceptions to the warrant requirement provide the authority of law required by article I, section 7. State v. Valdez, 167 Wn.2d 761, 772, 224 P.3d 751 (2009). (quoting York v. Wahkiakum Sch. Dist. No. 200, 163 Wn.2d 297, 306, 178 P.3d 995 (2008)). Under both constitutions, the facts that may create an exception to the warrant requirement include consent, exigent circumstances, searches incident to arrest, inventory searches, plain view, and investigative detentions. Katz v. United States, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967); State v. Hendrickson, 129 Wn.2d 61, 70, 917 P.2d 563 (1996). The burden is on the State to prove one of these narrow exceptions applies. Id. Where the State fails to prove an exception, any evidence seized or derived from the illegal search should be suppressed. State v. Ladson, 138 Wn.2d 343, 359, 979 P.2d 833 (1999).

A consent search is valid when consent is freely and voluntarily given, and when the search is conducted within the scope of the consent. State v. Reichenbach, 153 Wn.2d 126, 131, 101 P.3d 80 (2004). “Exceeding the scope of consent is equivalent to exceeding the scope of a search warrant.” State v. Cotten, 75 Wn. App. 669, 680, 879 P.2d 971 (1994).

2. Article I, section 7 jurisprudence protecting locked containers from warrantless searches and narrowly construing what constitutes valid consent requires suppression of the evidence.

When a party claims both state and federal constitutional violations, courts should first review state constitutional claim. State v. Afana, 169 Wn.2d 169, 176, 233 P.3d 879 (2010). Where prior cases firmly establish broader protections under the state constitutional provision, a full analysis under Gunwall is not required. State v. Williams-Walker, 167 Wn.2d 889, 896 n. 2, 225 P.3d 913 (2010) (citing State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986)).

Unlike the Fourth Amendment, article I section 7 recognizes a person's right to privacy with no express limitations. State v. O'Neill, 148 Wn.2d 564, 62 P.3d 489 (2003). The Washington constitution prohibits not only unreasonable searches, but also searches that would be deemed “reasonable” and therefore might be permissible under the Fourth Amendment. Article I, section 7 protects “those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant.” Ladson, 138 Wn.2d at 348-49.

Freedom from intrusion into locked containers, even those located in a vehicle, is one such “privacy interest.” In State v. Stroud, our Supreme Court held under article 1, section 7 that locked containers within

the passenger compartment of a vehicle may not be searched without a warrant during a search incident to arrest. 106 Wn.2d 144, 147, 720 P.2d 436 (1986); cf. New York v. Belton, 453 U.S. 454, 460, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981) (under Fourth Amendment, police may "examine the contents of any containers found within the passenger compartment" of a vehicle during a valid search incident to arrest).⁵

Although Stroud did not discuss consent searches, State v. Cole⁶ and State v. Cuzick,⁷ did. Both cases remain good law and are discussed in detail below. Those cases suggest that, in the context of consent searches, Washington courts historically recognize privacy interests in locked as well as unlocked personal containers found inside vehicles. Ladson, 138 Wn.2d at 348-49. Here, the container's private and personal nature should have been obvious: It was a locked safe located inside a zippered storage container.

⁵ Stroud and its progeny have been since been overruled on other grounds. Officers are now prohibited from searching a vehicle's passenger compartment during a search incident to the arrestee where the arrestee is handcuffed and restrained in a patrol car at the time of the search. See Valdez, 167 Wn. 2d at 777 (warrantless search of automobile is permissible under the search incident to arrest exception only "when that search is necessary to preserve officer safety or prevent destruction or concealment of evidence of the crime of arrest.").

⁶ 31 Wn. App. 501, 643 P.2d 675 (1982).

⁷ 21 Wn. App. 501, 585 P.2d 485 (1978)

As Stroud makes clear, the contents of a locked container enjoy greater protection under Washington law than unlocked luggage (Cole) or an unlocked briefcase (Cuzick). It is also clear that our courts have applied more stringent requirements for consent searches under Article I, section 7 than under that provision's federal counterpart. See, e.g., State v. Morse, 156 Wn.2d 1, 15, 123 P.3d 832 (2005) (where houseguest lacked authority to consent to search, consent held invalid under the state constitution, notwithstanding officers' reasonable belief, which would have satisfied Fourth Amendment); State v. Ferrier, 136 Wn.2d 103, 116, 118, 960 P.2d 927 (1998) (state provision requires police to tell person from whom they are seeking consent that they may refuse consent, revoke consent, or limit the scope of consent, whereas such an admonition is but one factor under Fourth Amendment voluntariness analysis).

With this in mind, determining whether law enforcement action violates article I, section 7 requires a two-part analysis: First, this Court determines whether the action disturbed the citizen's private affairs. Second, if a privacy interest has been disturbed, this court considers whether the "authority of law" justified the intrusion. Valdez, 167 Wn.2d at 772.

Here, Officer Paz disturbed Monaghan's private affairs by opening Monaghan's locked safe using a key from Monaghan's keychain without Monaghan's permission.

But the State failed to meet its burden to demonstrate that the "authority of law" — valid consent to search the locked container — justified the intrusion. The state constitution grants locked containers additional protections and therefore more specific consent to search such a container was required. The police officers thus exceeded the scope of the consent, Cotten, 75 Wn. App. at 680, and the trial court erred in failing to grant Monaghan's motion to suppress.

3. The Fourth Amendment likewise requires suppression.

The State asserted Monaghan's reluctant consent to search the trunk created an exception to the warrant requirement authorizing the search of the safe. The court agreed. The court's ruling, however, is based on a mistaken view of the Fourth Amendment case law.

In State v. Cole, police officers stopped a car based on a belief the out-of-town driver was involved in drug activity. 31 Wn. App. 501, 502, 643 P.2d 675 (1982). Cole consented to a search but told a detective the two suitcases in the rear of the car were not his. Police searched the car, discovered a stolen handgun, and arrested Cole. The detective continued searching, opened the suitcases, and found drugs. Id. at 502-03.

The Court noted that while some containers might not produce a reasonable expectation of privacy, the Fourth Amendment protected the contents of luggage and similar containers. Cole, 31 Wn. App. at 507.

Even though Cole consented to a car search, his consent did not extend to the luggage. The detective's search of those bags was therefore unlawful its fruits should have been suppressed. Cole, 31 Wn. App. at 507 (citing State v. Johnson, 16 Wn. App. 899, 904, 559 P.2d 1380 (1977), review denied, 89 Wn.2d 1002 (1978)).⁸

In State v. Cuzick, 21 Wn. App. 501, 585 P.2d 485 (1978), a police officer was dispatched to a reported home invasion. The officer asked Cuzick, who was standing near his car in front of the residence, if he had guns on his person or in his car. When Cuzick said no, the officer asked if he could look in the car, and Cuzick consented. The officer searched the car and found a suitcase in the back seat. Inside the suitcase was a gun.

⁸ Cole relied in part on Arkansas v. Sanders, 442 U.S. 753, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (1979), a probable cause case holding the Fourth Amendment exception to the warrant requirement for vehicle searches did not extend to a search of personal luggage fortuitously found in an automobile. 442 U.S. at 765. The Court abrogated Sanders in California v. Acevedo, which held a warrantless search of a container found in a vehicle is permissible if there is probable cause to believe the item sought will be found in the container. 500 U.S. 565, 111 S. Ct. 1982, 114 L. Ed. 2d 619 (1991) (citing, inter alia, United States v. Ross, 456 U.S. 798, 825, 102 S. Ct. 2157, 72 L. Ed. 2d 572 (1982) (“If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.”)).

Id. at 502-03. The State charged Cuzick with unlawful possession of a firearm, and he moved to suppress the evidence. Id. at 502.

Division Three of this Court held the trial court erred in refusing to suppress the gun, holding that even if Cuzick consented to a *car* search, searching a suitcase exceeded the scope of the consent. Id. at 505 (citing, *inter alia*, People v. Sanders, 44 Ill.App.3d 510, 3 Ill.Dec. 208, 358 N.E.2d 375, 378 (1976) (consent to trunk search did not extend to closed container in trunk)). Cuzick’s consent to search the car did not “permit the officer to rummage through a suitcase containing [Cuzick’s] personal belongings.” Cuzick, 21 Wn. App. at 505.

State v. Fuksman, 468 So.2d 1067 (Fla.App. 1985), which cites both Cole and Cuzick, is also instructive. In that case, the court considered whether the search of a lockable, but unlocked, briefcase was permissible after Fuksman consented to a search of his car.

The Fuksman court rejected another court’s holding that the rationale in United States v. Ross, 456 U.S. 798, 102 S. Ct. 2157, 72 L. Ed. 2d 572 (1982) applies to consent cases. In Ross, the United States Supreme Court held that in traffic stops, the scope of an authorized warrantless search based on probable cause is the same as a search authorized by a warrant supported by probable cause. “If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of

every part of the vehicle and its contents that may conceal the object of the search.” 456 U.S. at 823, 825. The presence of probable cause and the practical considerations in the automobile search context formed the basis for the holding in Ross. The Ross Court emphasized, first, the need for probable cause and, second, the consequences of not allowing a search of containers, including the greater privacy intrusion that would result from waiting for a probable cause determination by a magistrate. Fuksman, 468 So.2d at 1069-70 (citing Ross, 456 U.S. at 806-08). The Ross Court specified it was not deciding the scope of warrantless searches of automobiles done without probable cause. Fuksman, 468 So.2d at 1070 (citing Ross, 456 U.S. at 809 n. 11).

The Fuksman court concluded that the Ross's concerns did not exist in the consent search context, where there is no probable cause: If a person consents to the search of a vehicle that happens to contain luggage, and a search of the vehicle alone reveals nothing, the problem of the possible greater intrusion does not arise because there is no probable cause. “Therefore, the officer has no dilemma because he has no choice; he must let the consenting party be on his way.” Fuksman, 468 So.2d at 1070. The Fuksman court generally upheld the trial court's determination that consent did not extend to the briefcase. Id.

In Monaghan's case, the trial court relied on State v. Mueller in denying the suppression motion. Mueller, a state trooper stopped Mueller's car on suspicion of driving while intoxicated. The trooper asked Mueller if he would consent to a search of his car. Mueller consented to a search of the car for guns and drugs. The trooper found a gym bag in the trunk, which Mueller confirmed was his. The trooper unzipped the bag, revealing drugs and drug paraphernalia. Mueller, 63 Wn. App. 720, 721, 821 P.2d 1267, review denied, 119 Wn.2d 1012 (1992).⁹

The Court stated, "A general and unqualified consent to search an area for particular items permits a search of personal property within the area in which the material could be concealed." Mueller, 63 Wn. App. at 721 (citing State v. Jensen, 44 Wn. App. 485, 723 P.2d 443 (holding consent to search car permitted trooper to look in pockets of jacket on the backseat), review denied, 107 Wn.2d 1012 (1986)). Because the express objects of the search — guns and drugs — could have fit in the gym bag, the search had not exceeded its permissible scope under the Fourth Amendment. See Jensen, 44 Wn. App. at 492 (finding specific consent to

⁹ Mueller fails to cite Cole or Cuzick, which appear to remain good law. In State v. Rison, 116 Wn. App. 955, 69 P.3d 362 (2003), review denied, 151 Wn.2d 1008 (2004), Division Three followed Cole in noting that Courts have found an expectation of privacy in a wide variety of containers, including, as in that case, an eyeglass case. No Washington court has followed Mueller in a published opinion, although it is cited by the dissent in Rison, 116 Wn. App. at 965 (Brown, J. dissenting).

search vehicle for letters and papers extended to pocket of jacket found inside vehicle).

The Mueller court also relied on Florida v. Jimeno, 500 U.S. 248, 111 S. Ct. 1801, 114 L. Ed. 2d 297 (1991). There, Jimeno consented to a search of his car during a traffic stop, and the police officer mentioned he would be looking for drugs. During the search, the officer opened a brown paper bag that contained cocaine. The Court stated:

We think that it was objectively reasonable for the police to conclude that the general consent to search respondent's car included consent to search containers within that car which might bear drugs. A reasonable person may be expected to know that narcotics are generally carried in some form of a container.

Jimeno, 500 U.S. at 251.

Significantly, Mueller relies on cases that do not involve luggage but instead a paper bag and a jacket pocket. Disconcertingly, it ignores prior cases recognizing the privacy interests inherent in luggage.

But even if this court holds Mueller is good law, Monaghan's case is factually distinguishable because (1) the officers searched not a gym bag but a locked safe¹⁰ and (2) the officer and Monaghan never agreed

¹⁰ See State v. Johnson, 77 Wn. App. 441, 446, 892 P.2d 106 (1995) (the use of a lock demonstrates the individual's "expectation of privacy"), aff'd, 128 Wn.2d 431 (1996).

what objects could be searched for in the trunk.¹¹ There can thus be no claim Monaghan should have had a “reasonable expectation” certain containers were fair game for search. Even under Mueller, the State’s reliance on consent would fail.

4. Dismissal is required

Without the evidence found in the locked safe, the State cannot prove every element of the offense. This Court should therefore reverse Monaghan's convictions and remand for dismissal with prejudice. Ladson, 138 Wn.2d at 359; State v. Armenta, 134 Wn.2d 1, 17-18, 948 P.2d 1280 (1997) (dismissal appropriate where unlawfully obtained evidence forms the sole basis for the charge).

¹¹ According to Monaghan, High initially said he wanted to search the passenger area for weapons. RP 51, 56; cf. RP 93-94 (prosecutor’s statement, later correctly determined by the court to be inaccurate, that Monaghan told the officers they could search for guns and drugs).

D. CONCLUSION

Under either the state or federal constitutions, or both, suppression of the evidence is required. This Court should reverse and dismiss the charges.

DATED this 28TH day of October, 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



JENNIFER M. WINKLER
WSBA No. 35220
Office ID No. 91051

Attorneys for Appellant

APPENDIX

SCANNED 4

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By M
Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,)	
)	No.: 09-1-00895-0
Plaintiff.)	
)	
vs.)	FINDINGS AND CONCLUSIONS RE:
)	SUPPRESSION
NICHOLAS LEE MONAGHAN,)	
)	
Defendant.)	

ORIGINAL

This matter having come regularly before the Honorable Steven Mura on June 3, 2010 on the motion of defendant to suppress the drugs discovered in a search off defendant's automobile on July 29, 2009 and the court having heard the testimony Deputy Paz, Deputy High, Deputy Anders and defendant and heard the argument of counsel, the court makes the following:

I. UNIDSPUTED FINDINGS OF FACT

1. On July 29, 2009 Deputy High stopped a vehicle for running a stop sign on E. Hemmi Road near Medcalf Road. The driver of the 1989 Accura was defendant, Nicholas Monaghan. Passengers in the vehicle were Danielle Fink-Crider and Wayne Bisbee.

2. While Deputy High filled out a traffic infraction, he requested Deputy Paz to run a warrants check on Ms. Fink-Crider. He thought he recognized her and knew of an

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outstanding bench warrant for her arrest. Deputy Paz confirmed the outstanding warrant for Danielle Fink-Crider.

3. Deputy High returned to the driver and asked him about the identity of his female passenger. He said she was his girlfriend and was named Amber Smith. The female name was confirmed as Danielle Fink-Crider and she was arrested on the outstanding warrant.

4. Defendant was arrested for Making False Statements to Law Enforcement and handcuffed. He was read his Miranda rights and waived the same. He was asked for his consent to the search of his vehicle for weapons. He was advised that his consent was purely voluntary and that he could withdraw or limit his consent at anytime. Defendant consented to the search of the passenger compartment of the vehicle.

5. Deputy High commenced the search of the car's interior and turned it over to Deputy Paz. Deputy High then started to complete issuing defendant's citation. Defendant was taken out of handcuffs and stood at the rear of the vehicle with Deputy Anders. Deputy Paz released the trunk latch on the trunk of defendant's vehicle. The hatch popped up a couple of inches, but the interior of the trunk was not visible.

6. Defendant then spoke to Deputy High and said I thought you were only going to search the passenger compartment. Deputy Paz stopped the hatch from rising any higher. Deputy Paz then asked defendant directly if he could search the vehicle's trunk. Defendant hesitated for a few seconds and then said "Yeah, go ahead."

7. Deputy Paz located a soft pack in the trunk of the vehicle and discovered a desk sized dictionary/safe inside. He obtained the keys from the driver's area of the Accura and found a key on the ring that fit the lock of the dictionary/safe. He opened the

dictionary /safe and found three methamphetamine pipes, a baggy with white crystalline substance inside and other drug paraphernalia.

8. Defendant stood at the driver's door of Deputy High's vehicle talking to Ms. Fink-Crider as Deputy Paz searched the trunk and its contents. Parked directly behind the Accura, the headlights of Deputy High's vehicle illuminated the scene. Defendant was within fifteen feet of the trunk of his car and the search. He did not at any time withdraw his consent to the search or limit it in any way.

II. DISPUTED FACTS

1. Defendant testified that he stepped forward and stopped the hatch of his vehicle from rising when its release was engaged by Deputy Paz. Thereafter he did not consent to the search of the trunk, but merely stated, "I am feeling overwhelmed whatever" when asked for his consent to search the trunk. The disputed facts are resolved as per the testimony of the deputies as set forth above.

From the foregoing Findings of Fact the Court makes the following:

III. CONCLUSIONS OF LAW

1. The defendant consented to the search of the trunk area of his automobile. This consent was voluntary and with knowledge of his right to refuse, limit, or terminate the search.

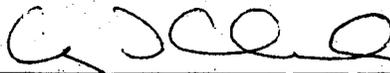
2. His consent to search the trunk ~~also~~ provided ~~consent~~ to search any containers, locked or unlocked, within the trunk.

ADM AUTHORITY TO LAW ENFORCEMENT *ADM*

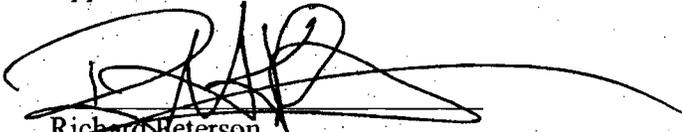
DATED this 15 day of June, 2010.


Judge Steven J. Mura

Presented by:


CRAIG D. CHAMBERS, WSBA #11771
Deputy Prosecuting Attorney

Approved as to Form:


Richard Peterson
Attorney for Defendant

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 65615-5-I
)	
NICHOLAS MONAGHAN,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 28TH DAY OF OCTOBER, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] CRAIG CHAMBERS
WHATCOM COUNTY PROSECUTOR'S OFFICE
311 GRAND AVENUE
BELLINGHAM, WA 98225

[X] NICHOLAS MONAGHAN
5457 MT. BAKER HIGHWAY
DEMING, WA 98244

SIGNED IN SEATTLE WASHINGTON, THIS 28TH DAY OF OCTOBER, 2010.

x *Patrick Mayovsky*