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

STATE OF WASHINGTON  
Plaintiff,

vs.

MICHAEL SMITH  
Defendant.

Case No. 66143-4-I

ADDENDUM REPLY

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2011 SEP 22 AM 10:29

COMES NOW, I, Michael Smith, the petitioner, Pro Se in the cause above. (Case No. 66143-4-I ), beseeching this court to, please, accept and consider my Pro Se addendum reply to the respondent, state of Washington's response to my direct appeal and, most pivotal, my SAG.

For sake of beivity I will be laconic and germane; the paramount repartee to state's response is set forth in my counsel, ( Susan F. Wilk Washington Appellate Project) reply brief. Howbeit, I implore the court, even if it must do so parsimoniously, to allow this addendum reply in light of my initial SAG filed, to point out the misinformation apprised in the states response that I have carefully dredged while making a descry of the response. These errors though they may be viewed as innocuous over-

sights by the respondent, when, howbeit unveiled can exonerate my cause further in the view of this court. Ergo, please consider those ( Respondent's errors as follows.

1. **Misstating the Record.**
2. **Misleading the Court.**
3. **Conclusion.**

### **ERRORS**

#### **1. MISSTATING THE RECORD.**

At pg. 7 in the respondent's brief, the respondent misstates the record, averring that I admitted that the cell phone number the informant ( Crasper ) called was my number. In retrospect the record 2RP 122 shows that I testified that 820-5684 was in fact my number 4RP 95-96. And in contrast the record shows that the number Crasper ( Informant) called every time was 360-220-1673 4RP 58. At pg. 39-40 in the respondent's brief, the respondent misstates the record averring that the informant ( Crasper ) testified that she saw appellant approach the car on Sept. 4<sup>th</sup> buy . The record shows 4RP 37-38 that the informant ( Crasper ) testified the white male approached the car Ex. 13. At pg. 34 in the respondents brief, the respondent misstates the record averring that at the time officers had

reason to believe that this "mike" was dealing drugs in the vicinity of or from that apartment and that the apartment was his residence. The record shows 2RP 155 that the state states, he doesn't do any dealing directly out of his apartment as far as we know. The record also shows ( 12-15-2009 Application for a Telephonic search warrant pg. 10-12 ) Seg. Murphy states these particular purchases did occur outside and they were observed by detectives.

## **2. MISLEADING THE COURT.**

The respondent refers to the verbatim report of proceedings in the same manner appellant does but the respondent directs the court to misinformation. At pg. 3 in the respondent's brief. 4RP 12-13 Cludia Murphy testifies to the areas of confidential informants she searches. 4RP 17 Cludia Murphy testifies to the basis of the search warrant. 4RP 24 Cludia Murphy testifies to taking photographs of materials found in my apartment. *MISLEAD: TO LEAD IN A WRONG DIRECTION, TO LEAD INTO WRONGDOING OR ERROR, OFTEN BY PURPOSEFULLY DECEIVING.* At pg. 4 in the respondents brief. 4RP 25 Crasper ( Informant ) states her name and spells her last name. 4RP 26 Crasper ( Informant ) testifies to entering into a contract with the Bellingham police department to work as an informant. 4RP 14 Cludia Murphy testifies to

the white male leaving the apartment and that she didn't see the white male on the other end. 4RP 12-13 Cluida Murphy testifies to the areas of confidential informants she searches. 4RP 27 Crasper (Informant) testifies to the obligations of her contract. 4RP 15 Cludia Murphy testifies to how she couldn't was unable to use a video camera (Sept. 4<sup>th</sup> buy) and how she was part of the search on the 15<sup>th</sup> of Dec. At pg. 5 in the respondents brief. 4RP 28 Crasper (Informant) testifies to making attempts to contact Mr. Smith over the phone. 4RP 15 Cludia Murphy testifies to how she couldn't, was unable to use a video camera ( Sept. 4<sup>th</sup> buy ) and how she was a part of the search on the 15<sup>th</sup> of Dec.. 4RP 17 Cludia Murphy testifies to the basis of the search warrant. 4RP 29-30 Crasper (Informant ) testifies to telephone calls she made to the same number and what Was discussed on the calls. 4RP 16 Cludia Murphy testifies to an evidence log she created of the evidence she collected from my apartment (15th of Dec).4RP 35 Crasper (Informant) testifies to Aug. 28<sup>th</sup> buy (the little bugs deal 2RP 56 ). At pg. 6 in the respondents brief. 4RP 16 Cludia Mruphy testifies to an evidence log she created of the evidence she collected from my apartment (15th of Dec.). 4RP 62 detective Klye Nelson testifies to how he was in radio and telephone conversation with other officers along with telephone conversation with the informant (Crasper). 4RP 130 is not in the record or I can't find it. 4RP 36 Crasper (Informant) testifies to

calling the same number she called before. 4RP 38 Crasper (Informant) testifies the white male approached the car and handed her a cigarette pack and she handed him the money. 4RP 40 Crasper (Informant) testifies how her counts of deliveries will be dismissed and how she avoids from going to prison. At pg 7 in the respondents brief. 4RP 39<sup>Crasper</sup> testifies that she was convicted of theft in the third degree in 2003. 2RP 122 the appellant testifies 820-5684 is in fact his cell phone number. 4RP 38 Crasper (Informant) testifies the white male approached the car and he handed her a cigarette pack and she handed him the money. At pg. 40 in the respondents brief. 4RP 15-17 Cludia Murphy testifies how she couldn't was unable to use a video camera (Sept. 4<sup>th</sup> buy) and how she was part of the search that occurred on the 15<sup>th</sup> of Dec. Also she testifies to an evidence log she created of the evidence she collected from my apartment, and the basis for the search. 4RP 34-35 Crasper (Informant) testifies to meeting the appellant at little bugs store (Aug.28<sup>th</sup>, 2RP 56). At pg. 41 in the respondents brief. 4RP 31 Crasper (Informant) testifies to parking in an alley (Aug.20th) 4RP<sup>36</sup> Crasper (Informant) testifies to calling the same telephone number she had called before.

**3. CONCLUSION.**

The state makes a bold assertion that the evidence to the deliveries is overwhelming, where as the state incorrectly deduces such a conclusion from an informant (Crasper) that had every reason to falsely accuse the appellant 4RP 27. The state submits at 2RP 159-160, If she was out just getting anybody she could to falsely accuse Mr. Smith of the crime she would have done that deal, she would have just gone here's the money, give me the heroin, and driven off, other than aborting the deal and not go through with it. And she's so crafty. The record shows at 4RP 37-38 that is exactly what she did (on Sept. 4<sup>th</sup> buy) handed the white male the money and drove off. The evidence was distorted, altered, (see attached Long Arm case report & 4RP 17) fabricated from the beginning, And was ultimately tainted by the fruits of an illegal search and seizure. All Counts should result in Reversal.

RESPECTFULLY,

DATED THIS 16<sup>th</sup> day of September 2011, in Connell WA, 99326



Michael Smith  
Coyote Ridge Corrections Center  
P.O. Box 769 "IB"-10  
Connell wa 99326

**09B31111 DRUG - NARCOTICS VIOLATIONS**

**NARRATIVE**

**Follow-Up**

Author: **NELSON, KYLE**

Rpt date: **Dec 15, 2009 4:55 PM**

Appvd: **176**

**Charges:**

SMITH, MICHAEL ROOSEVELT	Aug 22, 1971	1 count	69.50.401	Prohibited acts: A--Penalties
		1 count	69.50.4013	Possession Of A Controlled Substance

On 12/15/09 at approximately 1300, I witnessed a black male walking in the alley near 1517 Texas St. The male was wearing a black sweatshirt and blue jeans. The male appeared to match the physical description of MICHAEL SMITH (A1), for whom I had probable cause for his arrest. Detective Laughlin and I attempted to contact the male in the 2400 block of Queen St and identify him. However, when we contacted him, he refused to speak with us and walked away. He walked to the corner of Queen St and Texas St, where he contacted a white female. We then returned to where we had a view of 1517 Texas St. We witnessed the same male walk to the apartment complex and into #23, which is MICHAEL SMITH's (A1) residence. We continued to maintain visual surveillance on #23.

A short time later, the same white female walked down the alley. She walked North past our vehicle to Alabama St and then turned around and began to walk back Southbound. We contacted her in regards to her association with the black male. She was identified as [REDACTED] ALMANZO (C1). I asked her what the male's name was and she stated "Mike." She denied knowing anything about MICHAEL SMITH (A1) being involved in any sale/delivery of narcotics. She was released without incident.

We continued to maintain surveillance on unit #23 (Sergeant Johnson relieved us for a short period of time and then we again took over). The male came out of the residence and onto the porch on two occasions to smoke. He then went back into the apartment. I contacted Sergeant Murphy in regards to the above information. She contacted Prosecutor Chambers and applied for a search warrant. The search warrant was granted. See follow-up report.

On 12/15/09 at approximately 1655, the search warrant was served on unit #23. I knocked and announced our presence. Immediately a male voice stated that he was "coming" to open the door. The same black male opened the door and was directed to his knees for our safety. I placed the male into handcuffs, as the rest of the officers continued to search the residence for any individuals that may have been inside. In the one bedroom, there was a locked closet. The male was asked if there was a key to the door and he stated that it was locked. He was advised that if he did not provide a key to the door, it would be forced open. He refused to provide a key. Due to the fact that there may have been more individuals that could have been hiding in the closet, it was pried open by Investigator DeRuiter for officer safety reasons. The closet was opened and no individuals were located inside. There was a silver lock box that was in plain view inside of the closet on an upper shelf. The lock box was seized and later booked into evidence.

I identified the black male as MICHAEL SMITH (A1) by his Washington State driver's license, which was in his wallet. I located his wallet in his back right pocket at the time of his arrest. \$715 in cash was located inside of his wallet. It was seized and later booked into evidence. A record's check revealed that in addition to the active probable cause, he also had five outstanding warrants for his arrest. See related case #09B-46464.

There were two cats inside of the residence. MICHAEL SMITH (A1) was asked if there was someone who would be able to get the cats. He stated that his cell phone was in his bedroom and asked us to get it. The cell phone was retrieved and then he stated that there was no one who could come get the cats, but wanted to make phone calls to see if someone could bail him out. As MICHAEL SMITH (A1) had no one to take custody of the cats, the Humane Society was contacted and they took custody of the cats. His cell phone was seized and later booked into evidence.

A search of the residence began for any documents of dominion and control. No documents were located in the living room/kitchen area of the apartment. In the bedroom, there was a jar containing a green, leafy material on the bed stand in plain view. Based on my training and experience, I recognized the substance to be marijuana. It was later weighed and field tested by Detective Laughlin. Next to the jar of marijuana was a pipe. Both items were seized. On top of the dresser were seven empty Camel cigarette containers. In the past, MICHAEL SMITH (A1) had delivered heroin in empty Camel cigarette containers. The containers were seized as evidence.

1 Q. And you were aware that day they had contact with her,  
2 correct?

3 A. Yes, sir, they told me they came in contact with her.

4 Q. And based off information you had previously gathered from  
5 Breanna Almanzo, that was part of the basis for the search  
6 warrant you asked for on the house, correct? On the  
7 apartment, I'm sorry.

8 A. Say that again.

9 Q. Based on information you had previously gathered from  
10 Breanna Almanzo, that was the basis for part of your search  
11 warrant for the apartment and for the lockbox?

12 A. That was a very small part of the basis for the search  
13 warrant. The basis for the search warrant was the fact that  
14 we had probable cause for delivery of a controlled substance  
15 from Mr. Smith. That was -- that went to the background of  
16 the search warrant, yes, sir.

17 Q. Okay. And you knew that Breanna Almanzo kept her heroin in  
18 the lockbox, correct?

19 MR. CHAMBERS: I'm going to object, calls for hearsay,  
20 foundation.

21 MR. HALL: It does not call for hearsay.

22 THE COURT: I don't know if it does or does not. I'll  
23 sustain the objection to the question, but you may rephrase  
24 and we'll see where we go.

25 Q. (BY MR. HALL) Did you ever obtain heroin from Breanna

1 **Almanzo?**

2 MR. CHAMBERS: I'm going to object to the relevancy, Your  
3 Honor.

4 MR. HALL: May I approach, Your Honor?

5 THE COURT: Yeah. Why don't you do that.

6 (A sidebar conference was held.)

7 THE COURT: I'll sustain the objection.

8 Q. (BY MR. HALL) Sergeant Murphy, did you ever find any crib  
9 notes connected with or in the bedroom of Michael Smith?

10 A. I'd have to look at the evidence list to see if we actually  
11 took any crib notes from in his apartment. I don't have  
12 that piece of paper with me.

13 MR. HALL: If I may approach, Your Honor.

14 THE COURT: Uh-huh.

15 THE WITNESS: (Reviewing document.) It looks like item  
16 number three that was taken on the evidence seizure list.  
17 It says, "Crib Notes."

18 Q. (BY MR. HALL) And do you have any recollection of what  
19 those crib notes looked like?

20 A. I can give you a general assessment of what crib notes look  
21 like. Specifically to this case, I would have to see them  
22 actually in order to be accurate for the jury to know what I  
23 saw that day.

24 THE CLERK: I'm marking Defendant's Exhibit Number 28.

25 And Defendant's Exhibit Number 29.