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NO. 70839-2-1

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

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2011 APR 2 PM 1:14

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STATE OF WASHINGTON,

Respondent,

v.

STEPHEN L. VANNESS,

Appellant.

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BRIEF OF RESPONDENT

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## **I. ISSUES**

1. Does the authority of law for a search of defendant's person incident to arrest included a lockbox located in a backpack worn by defendant at the time of his custodial arrest?

2. Does an inventory search done in accordance with established routine procedures to search any container or article in the arrestee's possession incident to incarceration, reasonably included a lockbox located in the backpack worn by defendant at the time of his custodial arrest?

3. Were observations lawfully made during a search incident to arrest and a valid inventory search properly included in the affidavit for the search warrant?

## **II. STATEMENT OF THE CASE**

### **A. FACT OF THE CRIME.**

On November 29, 2012, a citizen, Kay Deleon, reported that Stephen Lee Vanness, defendant, was in the area of 7800 Timber Hill Drive. Dispatch confirmed that defendant had multiple felony warrants for his arrest. Everett Police Officer Robert Edmonds responded to look for defendant. Subsequently, dispatch advised that defendant was prohibited from the area by a no-contact order. Officer Edmonds had a description of defendant's race, hair color,

height, and weight. When Officer Edmonds contacted and identified him, defendant was on foot, wearing a backpack and carrying a burlap sack. Other officers arrived on scene and Officer Edmonds placed defendant under arrest and advised him of his constitutional rights. Defendant made no further statements. Prior to handcuffing him, Officer Edmonds removed the backpack and had defendant set down the burlap sack. CP 83-84; 1RP 2-5, 15-17, 27.

The backpack and sack were placed on the trunk and defendant was seated in the rear seat of Officer Edmonds patrol car. There was no secure place at the location to leave the backpack and sack. Officer Edmonds asked defendant if anyone could take the backpack and sack. Defendant did not reply. The only option left was for Officer Edmonds to transport the backpack and sack to the property room. Everett Police Department policy requires that an officer conduct an inventory search for dangerous items prior to transporting bags for impound in the property room. Pursuant to policy Officer Edmonds asked defendant for consent to search the backpack. Defendant did not reply. Officer Edmonds observed three fixed blade knives strapped to the outside of the backpack. These knives were determined to be dangerous

weapons under the Municipal Code and defendant was arrested for possessing dangerous weapons. CP 84-85; 1RP 4-8, 18-20, 29.

Inside the backpack Officer Edmonds found a folding knife along with a four inch by six inch by two inch box constructed of flimsy metal with a three tumbler combination lock. Pursuant to policy Officer Edmonds asked defendant for consent to search the lockbox. Defendant did not reply. Officer Edmonds had located a handgun in a similar size lockbox a few weeks prior to this incident while serving a search warrant on a vehicle trunk. Officer Edmonds was also aware the individuals do not always carry firearms in a safe condition and that firearms are often modified making them extremely dangerous to transport. Officer Edmonds also was concerned about the possibility of incendiary devices, hazardous materials, or dangerous chemicals being contained in the lockbox. Just prior to this incident an Everett police officer had impounded a backpack for safe keeping without following the department policy of checking it before transport to the property room. When the backpack was checked at the property room a twelve inch pipe bomb was discovered. That incident provoked additional training regarding inventorying bags prior to impoundment. Officer Edmonds asked defendant for the combination for the lockbox.

Defendant did not reply. Officer Edmonds the asked defendant if there was anything dangerous in the lockbox. Defendant did not reply. CP 84-85; 1RP 8-14, 21-22.

Using a screwdriver, Officer Edmonds pried the lid of the lockbox open approximately ½ inch to check for dangerous items and observed what he recognized as contraband. Having insured that there were no dangerous items in the backpack, Officer Edmonds transported the backpack to the property room and sought a search warrant for the backpack.<sup>1</sup> The search warrant was granted and Officer Edmonds located controlled substance in the lockbox. CP 85; 1RP 14-15, 23-26.

## **B. PROCEDURAL HISTORY.**

On December 17, 2012, defendant was charged with possession of a controlled substance. CP 106-107. Before trial, defendant moved under CrR 3.6 to suppress evidence seized in the search of the lockbox located in the backpack defendant was wearing at the time of his arrest. The trial court heard defendant's motion to suppress the evidence on June 13, 2013. 1RP 2-48.

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<sup>1</sup> The affidavit for search warrant was admitted as Exhibit No. 1 at the suppression hearing.

The court denied defendant's motion. CP 87; 1RP 48. Findings and Conclusions entered on August 2, 2013. CP 83-87.

On August 5-7, 2013, the case proceeded to trial on the amended charges of possession of a controlled substance with intent to manufacture or deliver—methamphetamine and possession of a controlled substance with intent to manufacture or deliver—heroin. CP 70-71; 2RP 3-132; 3RP2-59; 4RP 2-45. The jury found defendant guilty as charged in count one; Possession of a Controlled Substance with Intent to Manufacture or Deliver—methamphetamine; and guilty of the lesser included charge in count two of Possession of a Controlled Substance—heroin. CP 30, 33; 4RP 40-43.

Defendant was sentenced on August 27, 2013. The parties agreed that defendant's offender score was 13, with a standard sentencing range of 60 to 120 months on count one.<sup>2</sup> CP 25; 5RP 2-4. The court sentenced defendant to 78 months confinement, 12 months community custody, and ordered defendant to pay \$3,600.00 in legal financial obligations. CP 16-18; 5RP 7-9.

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<sup>2</sup> The court found that counts one and two encompassed the same criminal conduct and therefore, counted as one crime. State's Designation CP \_\_ (sub# 65, Order Amending Judgment and Sentence).

Defendant timely appealed. CP 1-2. He assigns error to the court's order denying the motion to suppress.

### **III. ARGUMENT**

Defendant claims that the search of a locked container found in the backpack he was wearing at the time of his arrest violated the Fourth Amendment of the United States Constitution and article I, section 7 of the Washington State Constitution. Appellant's Brief at 8-22.

#### **A. STANDARD OF REVIEW.**

##### **1. Findings Of Fact And Conclusions Of Law.**

The court reviews a trial court's ruling on a motion to suppress evidence to determine whether substantial evidence supports the trial court's factual findings and whether the factual findings support the trial court's conclusions of law. State v. Winterstein, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009); State v. Garvin, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Unchallenged findings of fact are treated as verities on appeal. State v. Valdez, 167 Wn.2d 761, 767, 224 P.3d 751 (2009), citing State v. Gaines, 154 Wn.2d 711, 716, 116 P.3d 993 (2005). Here, defendant does not challenge the trial court's findings of fact; he challenges the court's conclusions of law. Appellant's Brief at 2, 7; see CP 83-85.

The trial court's conclusions of law are reviewed de novo. Garvin, 166 Wn.2d at 249. Here, the lower court's legal conclusions are supported by the factual findings. In making its review, an appellate court may affirm on any grounds supported by the factual record, regardless whether such grounds were relied upon by the lower court. State v. Avery, 103 Wn. App. 527, 537, 13 P.3d 226 (2007).

## **2. Warrantless Search.**

The court reviews the validity of a warrantless search de novo. State v. Parris, 163 Wn. App. 110, 116, 259 P.3d 331 (2011). Unless an exception is present, a warrantless search is impermissible under both the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution. Gaines, 154 Wn.2d at 716. When a party alleges violation of both the Fourth Amendment and article I, section 7, the court analyzes the Washington Constitution first because it is more protective of individual privacy. State v. MacDicken, \_\_\_ Wn.2d \_\_\_, \_\_\_ P.2d \_\_\_, 2014 WL 766693 at \*2 (Feb. 27, 2014); State v. Byrd, 178 Wn.2d 611, 616, 310 P.3d 793 (2013). A search incident to lawful arrest is an exception to the warrant requirement. MacDicken, 2014 WL 766693 at \*2; Byrd, 178 Wn.2d at 617.

## **B. SEARCH INCIDENT TO ARREST.**

The search incident to arrest exception to the warrant requirement is narrower under article I, section 7 than under the Fourth Amendment. State v. O'Neill, 148 Wn.2d 564, 584, 62 P.3d 489 (2003); State v. Salinas, 169 Wn. App. 210, 216, 279 P.3d 917 (2012) review denied, 176 Wn.2d 1002, 297 P.3d 67 (2013). Under the Washington Constitution, a lawful custodial arrest is a constitutional prerequisite to any search incident to arrest. State v. Moore, 161 Wn.2d 880, 885, 169 P.3d 469 (2007); Salinas, 169 Wn. App. at 216. It is the arrest that constitutes the necessary authority of law for a search incident to arrest.<sup>3</sup> O'Neill, 148 Wn.2d at 585–586; Salinas, 169 Wn. App. at 216. Here, it is undisputed that defendant was under custodial arrest at the time of the search. CP 83-84; 1RP 4; Appellant's Brief at 4.

A search incident to arrest embraces two analytically distinct concepts. MacDicken, 2014 WL 766693 at \*2; Byrd, 178 Wn.2d at 617. "The first is that a search may be made of the person of the arrestee by virtue of the lawful arrest. The second is that a search

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<sup>3</sup> "In Robinson, the Court held that under 'the long line of authorities of this Court dating back to Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914)' and 'the history of practice in this country and in England,' searches of an arrestee's person, including articles of the person such as clothing or personal effects, require 'no additional justification' beyond the validity of the custodial arrest. 414 U.S. at 235, 94 S.Ct. 467." Byrd, 178 Wn.2d at 617-618.

may be made of the area within the control of the arrestee.” United States v. Robinson, 414 U.S. 218, 224, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973); MacDicken, 2014 WL 766693 at \*2; Byrd, 178 Wn.2d at 617.

A warrantless search of the arrestee's person presumes exigencies of officer safety and evidence preservation, and is justified as part of the arrest; therefore, it is considered a reasonable search as part of the arrest. Robinson, 414 U.S. at 225–226; MacDicken, 2014 WL 766693 at \*2; Byrd, 178 Wn.2d at 618. Once arrested, there is a diminished expectation of privacy of the person, including clothing and personal possessions closely associated with clothing. Salinas, 169 Wn. App. at 220; State v. White, 44 Wn. App. 276, 279-280, 722 P.2d 118, review denied, 107 Wn.2d 1006 (1986) (a search of the person at the time of arrest includes examining the contents of items which may contain contraband or potentially dangerous weapons). “Indeed, the authority for a full blown evidentiary search of the person incident to arrest does not stem from exigency but rather from ‘the fact of the arrest itself and the concomitant lessening of the arrestee's privacy interest.’” Salinas, 169 Wn. App. at 220. Here, it is undisputed that defendant was wearing the backpack when Officer Edmonds

placed him under custodial arrest. CP 84; 1RP 4; Appellant's Brief at 4.

### **1. Article I, Section 7 Authority Of Law.**

The unqualified authority to search an arrestee's person and personal effects flows from the authority of a lawful custodial arrest. Byrd, 178 Wn.2d at 618. "The peace officer empowered to arrest must be empowered to disarm. If he may disarm, he may search, lest a weapon be concealed." Robinson, 414 U.S. at 232, quoting People v. Chiagles, 237 N.Y. 193, 197, 142 N.E. 583 (1923). "Because this exception is rooted in the arresting officer's lawful authority to take the arrestee into custody, rather than the 'reasonableness' of the search, it also satisfies article I, section 7's requirement that incursions on a person's private affairs be supported by 'authority of law.'"<sup>4</sup> Byrd, 178 Wn.2d at 618. In the present case, the search incident to arrest of defendant's person lawfully included the backpack worn by defendant at the time of his custodial arrest.

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<sup>4</sup> "[I]n the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." Robinson, 414 U.S. at 235; Byrd, 178 Wn.2d at 618.

## **2. The Search Incident To Arrest Extended To The Lockbox.**

An article can be searched incident to arrest if the arrestee has actual possession of it at the time of a lawful custodial arrest. Byrd, 178 Wn.2d at 621. This rule reflects the practical reality that a search of the arrestee's "person" to remove weapons and secure evidence must include more than his literal person. Id. "When police take an arrestee into custody, they also take possession of his clothing and personal effects, any of which could contain weapons and evidence." Id. The rule recognizes that the same exigencies that justify searching an arrestee prior to placing him into custody extends not just to the arrestee's clothes, but to all articles closely associated with his person. Byrd, 178 Wn.2d at 622. In the present case, the authority of law to search the backpack worn by defendant at the time of his custodial arrest extended to the lockbox located in the backpack.

## **3. Locked Container Was Not Located In A Vehicle.**

The search of a vehicle incident to the arrest of a recent occupant encompasses a separate and analytically distinct concept permitting search of the area within the immediate control of the arrestee. MacDicken, 2014 WL 766693 at \*2; Byrd, 178 Wn.2d at 617. Washington courts have long held that constitutionally

protected privacy interests encompass automobiles and their contents. State v. Tyler, 177 Wn.2d 690, 698, 302 P.3d 165 (2013); State v. Parker, 139 Wn.2d 486, 494, 987 P.2d 73 (1999) (citing cases going back to 1922).

Defendant argues that Byrd does not permit the search of a locked container. Appellant's Brief at 11-16. However, the cases cited by defendant address the search of a vehicle, not the search of the arrestee's person. As the Court stated in Byrd, "Neither the United States Supreme Court's decision in Arizona v. Gant, nor our decision in State v. Valdez, restricts searches of the arrestee's person. 178 Wn.2d at 614 (citations omitted). Therefore, defendant's reliance on Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009) (warrantless automobile search incident to arrest of a recent occupant); State v. Snapp, 174 Wn.2d 177, 187, 275 P.3d 289 (2012) (warrantless searches of the defendants' vehicles); State v. Valdez, 167 Wn.2d 761, 766, 224 P.3d 751 (2009) (warrantless search of minivan); and State v. Stroud, 106 Wn.2d 144, 146, 720 P.2d 436 (1986) (search of the unlocked glove) is misplaced.

The search of a locked container located in a vehicle is analytically distinct from the search of a locked container located on

the person of an arrestee. The distinction makes good sense for policy reasons and “can be applied by officers in the real world of investigation.” Davis v. United States, 512 U.S. 452, 461, 114 S.Ct. 2350, 2356, 129 L. Ed. 2d 362 (1994). The arresting officer's lawful authority to search a person incident to arrest would be unpredictably hampered if the arrestee could thwart the exigencies justifying the search—to remove weapons and secure evidence—simply by carrying such items in locked containers.

### **C. INVENTORY SEARCH.**

An inventory search is another one of the carefully drawn exceptions to the warrant requirement of article 1, section 7. State v. Tyler, 177 Wn.2d 690, 698, 302 P.3d 165 (2013) (vehicle impound inventory search); State v. White, 135 Wn.2d 761, 769 n.8, 958 P.2d 982 (1998) (vehicle impound inventory search). Warrantless inventory searches are permissible because they (1) protect the owner's property, (2) protect law enforcement and temporary storage bailees from false claims of theft, and (3) protect police officers and the public from potential danger. Tyler, 177 Wn.2d at 701; White, 135 Wn.2d at 769-770; State v. Houser, 95 Wn.2d 143, 154, 622 P.2d 1218 (1980) (vehicle impound inventory search). In Houser, the Court prohibited the search of a locked

automobile trunk in the context of a vehicle impound inventory search, absent a showing of manifest necessity.<sup>5</sup> Houser, 95 Wn.2d at 156.

Conversely, there is a diminished expectation of privacy in the clothing and personal possessions closely associated with an arrested person. Salinas, 169 Wn. App. at 220. In State v. Smith, 76 Wn. App. 9, 882 P.2d 190 (1994) the court addressed the search of the defendant's purse when being booked into jail.

The inventory search is a recognized exception because, unlike a probable cause search and a search incident to arrest, the purpose of an inventory search is not to discover evidence of a crime, but to perform an administrative or caretaking function. The often-cited reasons justifying the inventory search are to protect the arrestee's property from unauthorized interference while he is in jail; to protect the police from groundless claims that property has not been adequately safeguarded during detention; and to avert any danger to police or others that may have been posed by the property.

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<sup>5</sup> It is unclear whether the rule announced in Houser was based on article 1, section 7 or the Fourth Amendment, since the cases cited in support of the rule were federal court cases. See Houser, 95 Wn.2d at 157-158 (citing Arkansas v. Sanders, 442 U.S. 753, 99 S.Ct. 2586, 61 L.Ed.2d 235 (1979) (abrogated by California v. Acevedo, 500 U.S. 565, 591, 111 S.Ct. 1982, 1997, 114 L. Ed. 2d 619 (1991)), and United States v. Bloomfield, 594 F.2d 1200, 1203 (8<sup>th</sup> Cir. 1979)). Seven years after Houser the United States Supreme Court clarified that the Fourth Amendment is not violated by an inventory of the contents of closed containers contained inside an impounded vehicle. Colorado v. Bertine, 479 U.S. 367, 374, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987).

Smith, 76 Wn. App. at 13. “The central inquiry in an inventory search is whether it is reasonable under all the facts and circumstances of the particular case.” Smith, 76 Wn. App. at 13-14.

Examining all the items removed from the arrestee's person or possession and listing or inventorying them is an entirely reasonable administrative procedure. It is immaterial whether the police actually fear any particular package or container; the need to protect against such risks arises independent of a particular officer's subjective concerns.

Smith, 76 Wn. App. at 14, quoting Illinois v. Lafayette, 462 U.S. 640, 646, 103 S.Ct. 2605, 2609-2610, 77 L. Ed. 2d 65 (1983). “[I]t is not ‘unreasonable’ for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures.” Smith, 76 Wn. App. at 15, quoting Lafayette, 462 U.S. at 648, 103 S.Ct. at 2611.

Officer Edmonds testified to an established policy of inventorying an arrestee's personal possessions for dangerous items prior to booking the item into the property room for safe keeping. Officer Edmonds could not leave the backpack unsecured on the street and there was no one available to pick-up the backpack for defendant. When Officer Edmonds asked for consent to search the backpack, defendant did not respond. Officer

Edmonds then proceeded pursuant to department policy to look through the backpack for dangerous items. 1RP 5-7. This type of inventory serves the purposes of inventory searches as referred to in the case law and clearly demonstrates that the inventory was not just a pretext to look for incriminating evidence. Smith, 76 Wn. App. at 15.

During his search of the backpack Officer Edmonds found three fixed blade knives strapped to the outside of the backpack that were determined to be dangerous weapons under the Municipal Code. Inside the backpack a folding knife and a four inch by six inch by two inch metal lockbox was located. A few weeks prior to this incident while serving a search warrant on a vehicle trunk, Officer Edmonds had located a handgun in a similar size lockbox. Officer Edmonds was aware that individuals do not always carry firearms in in a safe condition and that firearms are often modified making them extremely dangerous to transport.<sup>6</sup> 1RP 7-11.

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<sup>6</sup> Unfortunately, even benign appearing containers can hold loaded weapons that can accidentally discharge. See, e.g., Students return to Bremerton school where girl was shot—a loaded handgun brought to school in a backpack accidentally discharged and the bullet struck the girl, The Seattle Times, 2/22/12, available at [http://seattletimes.com/html/localnews/2017572191\\_bremerton23m.html](http://seattletimes.com/html/localnews/2017572191_bremerton23m.html) (last accessed 3/21/2014).

Further, based on his experience and training, Officer Edmonds also was concerned about the possibility of incendiary devices, hazardous materials, or dangerous chemicals being contained in the lockbox. Just prior to this incident, an Everett police officer had impounded a backpack for safe keeping without following the department policy of checking it before transport to the property room. When the backpack was checked at the property room a twelve inch pipe bomb was discovered. That incident provoked a training bulletin regarding inventorying bags.<sup>7</sup> CP 85; 1RP 11-14.

The reality of danger and the potential for danger is a proper and legitimate concern that supports an inventory search of articles closely associated with the arrestee's person. This conclusion was reached by the Montana Supreme Court in State v. Pastos, 269 Mont. 43, 887 P.2d 199 (1994). The interest asserted in Pastos was the need for police to ensure that the property an arrestee possessed when he was arrested did not pose a threat to persons at the police station.

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<sup>7</sup> Unfortunately, backpacks have been used to carry dangerous items. See, e.g., Boston Marathon Bans Backpacks After Deadly Bombing, Time, 2/27/14, available at <http://nation.time.com/2014/02/27/boston-marathon-bombing-backpack-ban/> (last accessed 3/21/2014).

[The defendant] also asserts that the “less intrusive means rule,” discussed in State v. Sawyer, 174 Mont. 512, 571 P.2d 1131 (1977), and in State v. Sierra, [214 Mont. 472, 692 P.2d 1273 (1985)] should be applied to the inventory of an arrestee's possessions upon his or her incarceration in jail. [The defendant] contends that, as a less intrusive means of dealing with the sorts of potential problems referred to above, the police could have secured his rucksack for safekeeping, could have inventoried valuable items found in plain view, could have marked the rucksack in a manner from which one could determine whether there had been tampering and then could have placed the rucksack in an appropriate area for safekeeping during the arrestee's detention.

Keeping in mind that the protection of the arrestee, the police and other persons in and about the station house from the potential harm posed by weapons, dangerous instrumentalities and hazardous substances concealed on or in the arrestee's possessions is the primary justification for administrative inventory searches, as a practical matter, there are several problems inherent in the “less intrusive means” approach.

First, if, as pointed out above, the closed container contains a weapon, it can take but a matter of seconds for the arrestee to retrieve the weapon and use it against an unsuspecting person. This concern alone vitiates [the defendant's] argument that a less intrusive means of conducting an inventory search will accomplish the State's goal of safeguarding persons and property in the station house. A search of a closed container found on or in the possession of the arrestee is the least intrusive method of alleviating any risk from weapons and dangerous instrumentalities that may be used by an arrestee upon his or her release from the jail.

Second, if an arrestee is carrying a concealed bomb, explosive or incendiary device, there is little, short of a physical search of the arrestee's possessions, that the

police can do to protect against the potential harm inherent in such a situation. While [the defendant] suggested at oral argument that the police could store prisoners' personal possessions in a bomb-proof room, it is not likely that Montana police stations and sheriff's offices would have access to such a room and even less likely that city councils, county commissioners and taxpayers would be willing to finance the cost to construct that type of facility. Again, a physical inventory search is the most practical and least intrusive method of dealing with the problem.

Third, it is impractical and unreasonable to expect the police to make decisions on a daily basis about which containers to search and what, if any, is the least intrusive means available to inventory an arrestee's personal property on or in his or her possession. Lafayette, 462 U.S. at 648, 103 S.Ct. at 2610–11. “It would be unreasonable to expect police officers in the everyday course of business to make fine and subtle distinctions in deciding which containers or items may be searched and which must be sealed as a unit.” Lafayette, 462 U.S. at 648, 103 S.Ct. at 2610. The potential for danger alone justifies the inventory of items found on or in the possession of a lawfully arrested person .... “[A] single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.” Lafayette, 462 U.S. at 648, 103 S.Ct. at 2610–11, citing New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981). To a certain extent, we must defer to police departments in their development of standardized administrative procedures which will best serve to protect the interests of the arrestee, the police, others incarcerated in jail, and society at large. Lafayette, 462 U.S. at 648, 103 S.Ct. at 2610–11.

While [the defendant] argues, correctly, that the right of privacy can only be infringed by a compelling state

interest closely tailored to effectuate that interest, it does not follow that the less intrusive means rule mandates that the police use some method short of physically searching the arrestee's possessions. The routine, administrative inventory search of the personal property on or in the possessions of the arrestee ... following arrest is closely tailored to effectuate the compelling interest of safeguarding persons and property in the station house from weapons, dangerous instrumentalities and hazardous substances which might be concealed in the arrestee's possessions.

State v. Pastos, 269 Mont. at 50-51. This rationale applies to the backpack in defendant's possession at the time of his arrest.

Officer Edmonds' inventory search of the lockbox conducted according to the department procedure was reasonable under the facts and circumstances of the present case. The purpose of the department procedure was not for discovering evidence of criminal activity and did not give excessive discretion to the officer. Smith, 76 Wn. App. at 13-14. Using a screwdriver, Officer Edmonds pried the lid of the lockbox open approximately ½ inch to check for dangerous items. He observed what he recognized as contraband. Having insured that there were no dangerous items in the backpack, Officer Edmonds transported the backpack to the property room and sought a search warrant. 1RP 14-15, 20-26. The inventory search involved here was valid under the warrant

clause of the Fourth Amendment and article 1, section 7. Smith, 76 Wn. App. at 16.

Defendant's reliance on State v. Dugas, 109 Wn. App. 592, 593, 36 P.3d 577 (2001) is misplaced. In Dugas the court addressed whether opening a closed container found in the pocket of Dugas' jacket was reasonably necessary to guard against a false claim of lost property. When police stopped Dugas to talk, he removed his jacket and placed it on his vehicle. Dugas was arrested shortly thereafter and transported to jail; the jacket remained on the vehicle. After Dugas was transported to jail an officer impounded the jacket for safe keeping. Dugas, 109 Wn. App. at 593-594. There were no exigent circumstances and no indication of dangerous contents when the police conducted an inventory search of the jacket. Dugas, 109 Wn. App. at 597, 599. Additionally, the officers testified that their standard procedure for an inventory search included a search for illegal drugs, a purpose outside the scope of a valid inventory search. Dugas, 109 Wn. App. at 599. The court held: "Opening a closed container found in the jacket was not a step necessary or reasonable to guard against a false property loss claim. Dugas, 109 Wn. App. at 599.

In the present case, there were the exigencies of defendant's arrest and presence along with indications of dangerous contents in the backpack at the time of the search. Further, the standard procedure followed by Officer Edmonds was to look for dangerous item and not an indiscriminate search for evidence. The search did not exceed the scope of a valid inventory search.

#### **D. SEARCH WARRANT.**

Defendant claims that the search warrant was based on illegally obtained information and therefore, contained insufficient information to establish probable cause. Appellant's Brief at 22-23. Here, the officer's observations were made pursuant to authority of law—a search incident to arrest and a valid inventory search—and were properly included in the application for the search warrant.

Probable cause to issue a warrant is established if the supporting affidavit sets forth “facts sufficient for a reasonable person to conclude the defendant probably is involved in criminal activity.” State v. Huft, 106 Wn.2d 206, 209, 720 P.2d 838 (1986); State v. Cord, 103 Wn.2d 361, 365–366, 693 P.2d 81 (1985); State v. Wilke, 55 Wn. App. 470, 476, 778 P.2d 1054 (1989). The affidavit supporting a search warrant must show how the affiant

observed the contraband and that the affiant had the necessary skill, training or experience to identify those items. Wilke, 55 Wn. App. at 476.

In the present case, when Officer Edmonds pried open a corner of the box he saw:

[A] large quantity of small plastic stamp sized baggies and a digital scale. I also could smell the distinct odor of vinegar emanating from the box.

Based on his training and experience, he recognized:

[T]his 'vinegar' smell to have the same smell as heroin. I also recognized the small stamp sized baggies as items used to package illegal drugs and the digital scale as an item used in the weighing of illegal drugs.

I recognized these items as being drug paraphernalia and immediately concluded the inventory per department protocol. I was satisfied that the lockbox did not contain any dangerous item, however, I now knew that it contained illegal substances.

State's Designation, List of Exhibits Filed; EX 1.

The reviewing judge found probable cause and issued a search warrant for the backpack to seize controlled substance and drug paraphernalia. A probable cause determination by a magistrate should be given great deference by a reviewing court. Cord, 103 Wn.2d at 366; Wilke, 55 Wn. App. at 476. Evidence obtained pursuant to a warrant is admissible. The evidence in the

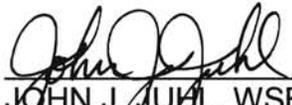
present case was obtained with authority of law not by the exploitation of a prior illegal act. The trial court correctly admitted the evidence.

#### **IV. CONCLUSION**

For the reasons stated above, defendant's conviction should be affirmed and the appeal should be denied.

Respectfully submitted on March 31, 2014.

MARK K. ROE  
Snohomish County Prosecuting Attorney

By:   
\_\_\_\_\_  
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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

THE STATE OF WASHINGTON,  
  
Respondent,  
  
v.  
  
STEPHEN L. VANNESS,  
  
Appellant.

No. 70839-2-I

AFFIDAVIT OF MAILING

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 1<sup>st</sup> day of April, 2014, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope directed to:

THE COURT OF APPEALS - DIVISION I  
ONE UNION SQUARE BUILDING  
600 UNIVERSITY STREET  
SEATTLE, WA 98101-4170

NIELSEN, BROMAN & KOCH  
1908 EAST MADISON STREET  
SEATTLE, WA 98122

containing an original and one copy to the Court of Appeals, and one copy to the attorney for the appellant of the following documents in the above-referenced cause:

BRIEF OF RESPONDENT

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office this 1<sup>st</sup> day of April, 2014.

A handwritten signature in black ink, appearing to read "Diane K. Kremenich", written over a horizontal line.

DIANE K. KREMENICH  
Legal Assistant/Appeals Unit