

72304-9

72304-9

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON)

Respondent,)

v.)

Timothy Beeson)
(your name))

Appellant.)

No. COA NO. 72304-9-I

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, TIMOTHY BEESON, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

I BELIEVE THE HONORABLE JUDGE ELIZABETH BURNS COMMITTED AN ABUSE OF HER DISCRETION. (SEE ATTACHED PAPER) and

(Appendix - A)

Additional Ground 2

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2015 MAR 16 AM 9:08

If there are additional grounds, a brief summary is attached to this statement.

Date: 3/10/15

Signature: [Handwritten Signature]

STATEMENT OF ADDITIONAL GROUNDS

My defense attorney filed a motion pre-trial to challenge probable cause that was used in the application for a warrant. (See Appendix A for motion). In this motion he brought up the following facts. 1, The officer who filed for the warrant gave blatant untrue statements; 2, there was no constitutional reason for the stop, and was it a pretext stop; 3, Officers withheld my name from the court thereby undermining the finding of probable cause; 4, the warrant failed to meet the requirements of the 4th Amendment; and 5, the search of the black cloth bag found in the engine compartment exceeded the lawful scope of the warrant.

Upon my arrest I was booked into the Kent city jail and I was immediately released on my own recognizance. I was booked in by my arresting officer under my own name (Timothy Beeson), yet 18 hours later this officer claimed in his warrant application that he did not know who I was. When he pulled me over I gave my name, the vin number and plate number both matched and they were both registered to me. This officer told the court that he was investigating the possibility that this vehicle that was registered to me was stolen, yet surely 18 hours after my arrest he had to know that I was in fact Timothy Beeson, the legal owner of this vehicle, and that I had not made any report of my vehicle being stolen.

This officer applied for a warrant with untrue statements to the court. When he searched my vehicle, he exceeded the scope of the warrant and found a black cloth bag in the engine compartment of my truck. He searched this bag with no warrant. In this bag he found a gun, However, if he thought this bag had any illegal things in it he should have applied for a new warrant.

The Honorable Judge Elizebeth Burns rule in favor of the state and denied my motion. At the time of this ruling Judge Burns gave no points of authority or law to rely on her ruling. I cannot appeal a decision that is not properly rendered verbally or in writing. So in closing I would like for the court to look at the ruling made by the judge and the lack of an opinion and points of law. A defendant has a right to equal and actual protection under the United States Constitution, and the law.

~~pend~~ - A

CONFIRMATION RECEIPT

Case Number: 13-1-13867-7 KNT
Case Title: STATE OF WASHINGTON VS BEESON, TIMOTHY GRANT
Submitted By: Sean Gillespie
Bar Number: 35365
User ID: spgillespie
Submitted Date/Time: 3/21/2014 1:54:12 PM
Received Date/Time: 3/21/2014 1:54:12 PM
Total Cost: \$0.00

DOCUMENTS

Document Type: MEMORANDUM OF DEFENSE ATTORNEY RE MOTION TO SUPPRESS
File Name: VUFA suppression brief (BEESON).pdf
Attachment(s): exhibit 1 (warrant) suppression motion.pdf
exhibit 2 (warrant affidavit) suppression motion.pdf
Cost: \$0.00

Printed On: 3/21/2014 1:56:06 PM

Appendix - A

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13 OCT 02 PM 3:20

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 13-1-13867-7 KNT

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)	
)	Plaintiff,
v.)	No. 13-1-13867-7 KNT
)	
TIMOTHY GRANT BEESON,)	INFORMATION
)	
Defendant.)	

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse TIMOTHY GRANT BEESON of the following crime: **Unlawful Possession of a Firearm in the First Degree**, committed as follows;

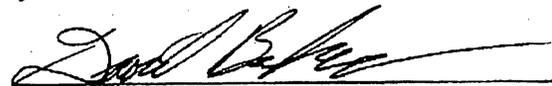
Count 1 Unlawful Possession of a Firearm in the First Degree

That the defendant TIMOTHY GRANT BEESON in King County, Washington, on or about August 1, 2013, previously having been convicted in King County Superior Court of the crime of Violation of the Uniform Controlled Substances Act - Manufacture of Methamphetamine, a serious offense as defined in RCW 9.41.010, knowingly did own, have in his possession, or have in his control, a FNH pistol, a firearm as defined in RCW 9.41.010;

Contrary to RCW 9.41.040(1), and against the peace and dignity of the State of Washington.

DANIEL T. SATTERBERG
Prosecuting Attorney

By:



David A. Baker, WSBA #41998
Deputy Prosecuting Attorney

Daniel T. Satterberg, Prosecuting Attorney
CRIMINAL DIVISION
Maleng Regional Justice Center
401 4th Avenue North, Suite 2A
Kent, WA 98032-4429
(206) 205-7400 FAX (206) 205-7475

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**IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR KING COUNTY**

<p>STATE OF WASHINGTON, Plaintiff, vs. TIMOTHY BEESON, Defendant.</p>	<p>No. 13-1-13867-7 KNT MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS FIREARM EVIDENCE</p>
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TO: CLERK OF THE SUPERIOR COURT;
TRIAL COURT; and
DAVID BAKER, Deputy Prosecuting Attorney

I. INTRODUCTION

Mr. Beeson was detained in a pretext stop by Kent police, who immediately pegged his car as stolen. Following the stop, police seized his truck and secured a warrant with stale information that still did not amount to probable cause. During a search that exceeded even the scope of the faulty warrant, officers found a firearm in a black cloth satchel “wedged” in the engine compartment of the truck.

Evidence of the firearm should be suppressed for four reasons: (1) the search was the product of a pretext stop prohibited by Article 1, Section 7 of the Washington Constitution; (2)

1 the search was the product of a warrant that was not supported by probable cause, thus violating
2 the Fourth Amendment of the U.S. Constitution; (3) the warrant failed the particularity
3 requirement of the Fourth Amendment; and (4) the search exceeded the scope of authority
4 granted by the issued warrant, also violating the Fourth Amendment.

5 II. FACTS & DECLARATION OF COUNSEL

6 On August 1, 2013, Timothy Beeson had parked his Chevy Silverado in front a house on E
7 Seattle Street in Kent, Wash.

8 Sgt. Jon Shipman wrote in his report that he was staking out the house because of its
9 association with criminal activity. The Silverado caught the officer's eye because of its missing
10 front license plate, which he immediately associated with being stolen. As such, the officer ran
11 the plate and found that the tabs had expired a month earlier and that the car was registered to
12 Mr. Beeson.

13 Moments later, Sgt. Shipman watched the truck drive away. He immediately pulled a U-
14 turn so that he could follow it and stop it for investigation. The truck turned and pulled into a
15 field at the officer's signal. Inside the truck were Mr. Beeson and a passenger, eventually
16 identified as Junette Short after she had initially given a false name.

17 Mr. Beeson was instantly and consistently cooperative with Sgt. Shipman, giving him his
18 name and answering questions courteously. The sergeant determined that Mr. Beeson was
19 driving while license suspended.

20 Right away, Sgt. Shipman reported that "I checked the vehicles (sic) VIN number and it
21 matched." Nevertheless, Sgt. Shipman continued "investigating this incident as a possible stolen
22 vehicle."

23 Sgt. Shipman then ordered that Mr. Beeson be handcuffed and declared that he would be
24 booked on for driving without a proper license. The sergeant then read Miranda warnings to the
handcuffed Mr. Beeson and asked him to consent to a search of the truck. Next, said Sgt.

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1 Shipman, "I gave him Ferrier warnings and told him he had the right to refuse this search, limit
2 the area I could search and stop the search at any time."

3 Mr. Beeson took that *Ferrier* warning to heart and consented to a limited search of the
4 truck's passenger cabin. In there, the Sgt. Shipman found behind the truck's center console a
5 purse that contained several several drivers' licenses, credit cards, and checkbooks bearing
6 various names. He also found a scale with a "white powdery residue" that he believed was
7 methamphetamine. The residue was never tested.

8 From the scene, Mr. Beeson and Ms. Short were taken to the Kent Jail, where their
9 identities were promptly confirmed, and the two were quickly booked and released.

10 Some 18 hours later, during his next shift, Sgt. Shipman applied to the King County
11 District Court for a search warrant for Mr. Beeson' truck. The warrant was issued shortly before
12 the search was executed at 11:30 p.m.

13 In searching the engine compartment of the truck, the officers found a black cloth bag
14 wedged behind a fuse box. They pulled out the bag and opened it, finding a gun inside. There
15 was no other evidence of criminal activity found in the truck. Eventually, the officers also found
16 that the hidden VIN matched the previously found VIN and the registration, confirming that the
17 truck was not stolen and did belong to Mr. Beeson.

18 I declare under penalty of perjury under the laws of the state of Washington that the
19 foregoing facts are those which the state's discovery and my investigation lead me to believe will
20 be introduced in the hearing on this motion.

21 Additionally, the challenged warrant and supporting affidavit, as provided by the state
22 through discovery, are attached as Exhibits 1 and 2, respectively.

23 Dated: March 21, 2014, at Seattle, Wash.

24 s/Sean P. Gillespie
WSBA #35365
Carney Gillespie Isitt PLLP
315 5th Ave S., Suite 860
Seattle, WA 98104

CARNEY 315 5th AVENUE SOUTH, SUITE 860
GILLESPIE SEATTLE, WA 98104
ISITT PHONE 206•445•0220
FAX 206•260•2486

Phone: (206) 445-0220
Fax: (206) 260-3277
Sean.Gillespie@CGILaw.com

III. ANALYSIS

Sgt. Shipman had probable cause to believe that Mr. Beeson committed the infraction of driving with an expired registration and driving without a front license plate. He later developed probable cause to believe that Mr. Beeson committed the crime of driving while license suspended. That is as far as his warrantless investigation got him.

Generally, "searches must be conducted pursuant to a warrant backed by probable cause." *New York v. Class*, 475 U.S. 106, 117, 106 S.Ct. 960, 89 L.Ed.2d 81(1986). More precisely, the Fourth Amendment mandates that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. Also under the Fourth Amendment, probable cause to arrest an individual exists only if police have reasonable grounds to believe that the particular individual has committed the crime. *Maryland v. Pringle*, 540 U.S. 366, 371-74, 124 S. Ct. 795, 800-01, 157 L. Ed. 2d 769, 775-76 (2003) (noting that a police officer may reasonably infer a common enterprise among passengers in a vehicle, but that any inference must disappear if a guilty person among them is singled out by the government); *Ybarra v. Illinois*, 444 U.S. 85, 91, 100 S. Ct. 338, 344, 62 L. Ed. 2d 238, 245 (1979); *State v. Smith*, 102 Wash.2d 449, 454-55, 688 P.2d 146, 149-50 (1984).

However, "(i)t is already well established that article I, section 7, of the state constitution has broader application than does the Fourth Amendment of the United States Constitution." *State v. Ladson*, 138 Wash.2d 343, 979 P.2d 833, 837 (1999).

When presented with arguments under both the state and federal constitutions, a Washington court begins its analysis with the state constitution. *State v. Hinton*, No. 87663-1, Page 4 (2014, Supreme Court of Wash.)

CARNEY
GILLESPIE
ISITT

315 5th AVENUE SOUTH, SUITE 860
SEATTLE, WA 98104
PHONE 206•445•0220
FAX 206•260•2486

Appendix A

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2 **A. Traffic Stop Was an Unconstitutional Pretext Stop.**

3 As stated by the Supreme Court clearly and recently:

4 “An officer may not use a traffic infraction as a pretext to stop a citizen and
5 search for evidence of criminal wrongdoing that is unrelated to the reason for
6 the stop. *State v. Ladson*, 138 Wash.2d 343, 357-58, 979 P.2d 833 (1999). The
7 officer's motivation in making the stop must be the traffic infraction, not a
8 desire to arrest the driver and search for evidence. Police officers may enforce
9 the traffic code, so long as they do not use the authority to do so as a pretext to
10 conduct an unrelated criminal investigation. In determining whether a stop is
11 pretextual, the court considers the totality of the circumstances, including both
12 the subjective intent of the officer and the objective reasonableness of the
13 officer's behavior. *Id.*

14 *State v. Snapp*, 174 Wash.2d 177, 199, 275 P.3d 289 (2012). See also *State v. Montes-Malindas*,
15 144 Wash.App. 254, 182 P.3d 999 (2008) (“An unlawful pretext stop occurs when an officer
16 stops a vehicle in order to conduct a speculative criminal investigation unrelated to the driving,
17 and not for the purpose of enforcing the traffic code.”)

18 As such, under Article 1, Section 7, “(w)hen an unconstitutional search or seizure occurs,
19 all subsequently uncovered evidence becomes fruit of the poisonous tree and must be
20 suppressed.” *Ladson*, 138 Wash.2d at 359, 979 P.2d 833.

21 Here, Sgt. Shipman’s legal justification for the stop was the infraction of an expired
22 registration and a missing front plate, but his stated motivation for investigating Mr. Beeson’s
23 truck was the unsupported speculation that it might have been stolen. Consistent with that
24 motive, Sgt. Shipman continued to investigate the truck as though it were stolen, even after
confirming that the VIN plate on the dash or the VIN sticker at the door matched the registration
and even after failing to find any report that the truck was stolen.

The traffic stop that led to Mr. Beeson’s arrest, his consent to search the passenger cabin,
and the subsequent discovery a firearm in the engine compartment was a textbook pretext stop.
Sgt. Shipman used enforcement of the traffic code conduct a speculative criminal investigation

1 that eventually proved entirely unwarranted despite the incidental discovery of criminal
2 evidence. As a result, all of the evidence produced by the pretext stop should be suppressed.

3 **B. Warrant Not Supported by Probable Cause.**

4 The state constitution's pretext stop doctrine notwithstanding, Sgt. Shipman's continued
5 investigation also violated the federal constitution because there was no probable cause to
6 support a search beyond the area to which Mr. Beeson consented.

7 Under both the federal and state constitutions, the probable cause standard is an objective
8 one. *Beck v. Ohio*, 379 U.S. 89, 96, 85 S. Ct. 223, 228, 13 L. Ed. 2d 142, 147 (1964); *State v.*
9 *Gaddy*, 152 Wash.2d 64, 70, 93 P.3d 872, 875 (2004). Moreover, the officer's subjective belief is
10 not determinative. *State v. Huff*, 64 Wash. App. 641, 645, 826 P.2d 698, 701 (1992).

11 "Probable cause exists where there are facts and circumstances sufficient to establish a
12 reasonable inference that the defendant is involved in criminal activity and that evidence of the
13 criminal activity can be found at the place to be searched." *State v. Maddox*, 152 Wash.2d 499,
14 505, 98 P.3d 1199 (2004) (citing *State v. Thein*, 138 Wash.2d 133, 140, 977 P.2d 582 (1999)). "It
15 is only the probability of criminal activity, not a prima facie showing of it, that governs probable
16 cause. The magistrate is entitled to make reasonable inferences from the facts and circumstances
17 set out in the affidavit." *Id.* (citing *In re Pers. Restraint of Yim*, 139 Wash.2d 581, 596, 989 P.2d
18 512 (1999)).

19 Here, the salient facts presented to the King County District Court by Sgt. Shipman were
20 that Mr. Beeson's truck's registration was expired; that the registration listed Mr. Beeson as the
21 owner; that the VIN matched the registration; that the truck was missing a front plate; that Mr.
22 Beeson did not have ID; that the ignition had been tampered but was still intact; that there was a
23 scale with "white residue"; that stolen credit cards, identification cards, and checkbooks were
24 found the passenger's purse; and that suspected methamphetamine was found on Junette Short
during her jail booking. Additionally, there was the implied fact that the truck was not reported

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1 stolen, given that Sgt. Shipman ran the license plate through dispatch and was not informed of a
2 stolen vehicle report.

3 In sum, the VIN matched the registration which, in turn, matched the license plate number.
4 And the truck was not reported stolen. To conclude from this information that the truck were
5 stolen is simply an unreasonable inference.

6 Moreover, Mr. Beeson allowed Sgt. Shipman to search the entire cabin of the truck. He
7 searched the glove box, around the front seats, behind the seats, and in the center console. Other
8 than the incriminating contents of Junette Short's purse, which could not be individualized to Mr.
9 Beeson, Sgt. Shipman found only a scale with a "white powdery residue." The residue was
10 never tested, and there was not a single other fact to corroborate Sgt. Shipman's suspicion that
11 Mr. Beeson or his truck possessed narcotics.

12 Thus, there also was no probable cause to believe that the search would produce evidence
13 of stolen property or narcotics.

14 **C. Withholding the Confirmation of Mr. Beeson's Identity Dramatically Undermined
15 the Probable Cause Finding.**

16 Beyond the absence of probable cause in the warrant affidavit of Sgt. Shipman, there was a
17 crucial fact known to the officer but not presented to the District Court: Mr. Beeson was held for
18 only momentarily in the Kent Jail before his identity was confirmed. Mr. Beeson's entire stay at
19 the jail lasted only 20 minutes. This fact significantly further undermines the finding of probable
20 cause to believe the truck was stolen.

21 There are two alternative factual scenarios for which the court must question the
22 withholding of this fact. First, was the fact know at the time Sgt. Shipman drafted his warrant
23 affidavit and withheld in reckless disregard of the truth? Or second, did Sgt. Shipman learn that
24 Mr. Beeson's identity was confirmed after he submitted his affidavit to the court?

In either scenario, Sgt. Shipman and officers Ghaderi and Mills knew that Mr. Beeson's

1 identity had been confirmed by the time they jointly executed the warrant. This much is clear
2 from the fact that Officer Ghaderi booked Mr. Beeson into the Kent Jail at 4:08 a.m. He
3 presented Mr. Beeson to the jail with an "INTERVIEW AND RELEASE FORM" before Mr.
4 Beeson was released at 4:28 a.m.

5 1. *Reckless and Material Omission*

6 Where a defendant substantially shows that an intentional or reckless misrepresentation in
7 a warrant affidavit was necessary to the magistrate's finding of probable cause, the court must
8 hold a hearing to determine whether the defendant can prove the allegation by a preponderance
9 of the evidence. *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). If
10 such a material misrepresentation is proven, then the court shall determine whether probable
11 cause existed in the absence of the misrepresentation. *Id.* The *Franks* test also applies to
12 material omissions by the affiant. *State v. Gore*, 143 Wn.2d 288, 296, 21 P.3d 262 (2001)
13 (overruled on other grounds) (citing to *State v. Garrison*, 118 Wash.2d 870, 827 P.2d 1388
14 (1992). "If, as modified, the affidavit does not support a probable cause finding, the search
15 warrant is invalid." *Id.* at 296-297.

16 Here, there is substantial evidence that Sgt. Shipman recklessly withheld the material fact
17 that Mr. Beeson's identity had been confirmed by Kent police some 18 hours before he submitted
18 his affidavit to the District Court. The materiality of this omission is established by Sgt.
19 Shipman's heavy reliance on supposed doubt about Mr. Beeson's identity in an attempt to bolster
20 his argument that there was probable cause to believe the truck was stolen even though it was
21 registered to Mr. Beeson. The sergeant's reckless disregard for the truth is established by his
22 reference to the booking and release of Mr. Beeson's passenger, Junnette Short. In his affidavit,
23 Sgt. Shipman noted that Short's true identity was confirmed and that, during her booking at the
24 Kent Jail, officers found methamphetamine "on her person."

It is extremely unlikely that Sgt. Shipman was aware of Short's custody status and the

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1 details of her booking without also knowing that Mr. Beeson, who was taken to jail by Officer
2 Ghaderi at the same time, had his identity confirmed and was released within 20 minutes.

3 *2. Newly Acquired Information*

4 But even if Mr. Beeson's identity conformation did manage to elude his grasp earlier in the
5 day, Sgt. Shipman certainly knew it by the time he executed the warrant at 11:30 p.m. In doing
6 so, he was accompanied by officers Ghaderi and Mills. It is virtually impossible that, if Officer
7 Ghaderi and his sergeant had not debriefed each other by the end of their graveyard shift on the
8 morning of August 1, they would not at least have done so in the early hours of their shift that
9 night right before executing the warrant.

10 "(W)hen law enforcement receives information, which would negate probable cause, the
11 officers must return to the magistrate for reevaluation of probable cause. This approach ensures
12 that probable cause, as determined by an independent magistrate, exists at the time the warrant is
13 executed." *Maddox*, 152 Wash.2d at 508-09, 98 P.3d 1199. "If the reviewing court decides that
14 the newly acquired information negates probable cause, the evidence will be suppressed. The
15 exclusion of evidence is a strong deterrent to unconstitutional and unreasonable searches by law
16 enforcement." *Id.* at 508, 98 P.3d 1199.

17 *3. Either Scenario Requires Suppression*

18 Whether the confirmation of Mr. Beeson's identity constituted a reckless omission of
19 material fact or new acquired information, the court must reach the same result: The inclusion of
20 that information in Sgt. Shipman's affidavit (and necessarily the exclusion of the contradictory
21 statements regarding the identity) negates the existence of probable cause to believe the truck
22 was stolen. As such, the search for the VIN in the engine compartment was unconstitutional, and
23 the evidence of the firearm must be suppressed.

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E. Search of Black Cloth Bag Exceeded Any Lawful Scope of Search.

1 Finally, not only was the search under the hood of the truck an illegal search unsupported
2 by probable cause, the further search of the black pouch in which the firearm was found was a
3 separate illegal search also unsupported by probable cause. It is squarely analogous to the
4 unconstitutional extended search in *Arizona v. Hicks* because the search was entirely irrelevant to
5 the purported basis for the search. Nothing about finding a black cloth in an engine
6 compartment is remotely evocative of stolen property or drugs or a secret VIN.

7 In *Hicks*, the U.S. Supreme Court delineated the outer limits of the “plain view” doctrine
8 and found that lifting stereo equipment to discover a serial number was an illegal search beyond
9 the scope of the otherwise lawful basis for being in the defendant’s home. *Arizona v. Hicks*, 480
10 U.S. 321, 107 S.Ct. 1149, 94 L.Ed.2d 347 (1987). The officers entered the defendant’s
11 apartment after the tenant below reported that a bullet was shot through his ceiling from above.
12 *Id.* Based on the exigency exception to the Fourth Amendment, the officers legitimately entered
13 the apartment to search for suspects, weapons, and other victims. *Id.* However, the court ruled,
14 when officers lifted “suspicious” stereo equipment to record serial numbers that later revealed
15 that the equipment was stolen, they “did produce a new invasion of respondent’s privacy
16 unjustified by the exigent circumstance that validated the entry.” *Id.* at 325, 107 S.Ct. 1149, 94
17 L.Ed.2d 347.

18 The officers here purportedly needed to open the engine compartment so that they could
19 verify the VIN they had already found. Assuming for the sake of argument that they had
20 probable cause for that search, they had no probable cause to undertake a general search of
21 anything there that they deemed suspicious.

22 “(T)he ‘plain view’ doctrine may not be used to extend a general exploratory search from
23 one object to another until something incriminating at last emerges. *Id.* at 328, 107 S.Ct. 1149,
24 94 L.Ed.2d 347 (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d
564 (1971)). Where officers seeks to corroborate their hunches or suspicions, “(i)t may well be

1 that, in such circumstances, no effective means short of a search exist. But there is nothing new
2 in the realization that the Constitution sometimes insulates the criminality of a few in order to
3 protect the privacy of us all.” *Id.*, 329, 107 S.Ct. 1149, 94 L.Ed.2d 347

4 IV. CONCLUSION

5 In conclusion, the firearm evidence in this case should be suppressed because the seizure
6 and searches that produced it violated the state and federal constitutions.

7
8 Date: March 21, 2014.

9 s/Sean P. Gillespie
10 WSBA #35365
11 Carney Gillespie Isitt PLLP
12 315 5th Ave S., Suite 860
13 Seattle, WA 98104
14 Phone: (206) 445-0220
15 Fax: (206) 260-3277
16 Sean.Gillespie@CGILaw.com

17
18
19
20
21
22
23
24
CARNEY 315 5th AVENUE SOUTH, SUITE 860
GILLESPIE SEATTLE, WA 98104
ISITT PHONE 206•445•0220
FAX 206•260•2486