

NO. 33740-1

FILED
COURT OF APPEALS

05 SEP 20 PM 3:03

STATE OF WASHINGTON

BY *[Signature]*
CITY

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

CHARLES MAYFIELD, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Kathryn J. Nelson

No. 04-1-02556-9

BRIEF OF RESPONDENT

GERALD A. HORNE
Prosecuting Attorney

By
ALICIA BURTON
Deputy Prosecuting Attorney
WSB # 29285

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

1. Did the trial court properly exercise its discretion when it excluded pursuant to ER 804(d)(3) Mr. Hartley’s written statements that he was the owner of the drugs that defendant was accused of possessing? (Appellant's Assignment of Error Nos. 1 and 2) 1

2. Is defendant’s claim that the trial court erred by denying defendant’s motion for a continuance wholly without merit where defendant at no time requested a continuance? (Appellant's Assignment of Error No. 1)..... 1

3. Was there sufficient probable cause to support the issuance of a search warrant? (Appellant's Assignment of Error No. 3)..... 1

4. Was there sufficient evidence to prove beyond a reasonable doubt that defendant committed the crime of unlawful possession of methamphetamine? (Appellant's Assignment of Error No. 4) 1

5. Was there sufficient evidence to prove beyond a reasonable doubt that defendant committed the crime of unlawful possession of firearm? (Appellant's Assignment of Error No. 5)..... 2

6. Was there sufficient evidence to prove beyond a reasonable doubt that defendant committed the crime of bail jumping on September 9, 2004? (Appellant's Assignment of Error No. 6)..... 2

B. STATEMENT OF THE CASE..... 2

1. Procedure 2

2. Facts..... 6

C.	<u>ARGUMENT.</u>	
1.	THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION WHEN IT EXCLUDED PURSUANT TO ER 804(d)(3) MR. HARTLEY'S WRITTEN STATEMENTS THAT HE WAS THE OWNER OF THE DRUGS THAT DEFENDANT WAS ACCUSED OF POSSESSING.....	8
2.	DEFENDANT'S CLAIM THAT THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION FOR A CONTINUANCE TO ALLOW A WITNESS ADDITIONAL TIME TO GET TO COURT IS WITHOUT MERIT BECAUSE DEFENDANT NEVER REQUESTED A CONTINUANCE.	17
3.	THERE WAS SUFFICIENT PROBABLE CAUSE TO SUPPORT THE ISSUANCE OF A SEARCH WARRANT.	19
4.	THE STATE PRESENTED SUFFICIENT EVIDENCE TO PROVE THE DEFENDANT GUILTY OF HIS CRIMES.	22
D.	<u>CONCLUSION</u>	32

Table of Authorities

Federal Cases

<u>Chambers v. Mississippi</u> , 410 U.S. 284, 302, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973).....	16
<u>Taylor v. Illinois</u> , 484 U.S. 400, 410, 108 S. Ct. 646, 98 L. Ed. 2d 798 (1988).....	16
<u>Washington v. Texas</u> , 388 U.S. 14, 17-19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967).....	16

State Cases

<u>City of Auburn v. Brooke</u> , 119 Wn.2d 623, 629-30, 836 P.2d 212 (1992).....	30
<u>City of Kirkland v. Ellis</u> , 82 Wn. App. 819, 830, 920 P.2d 206 (1996).....	18
<u>City of Tacoma v. Bishop</u> , 82 Wn. App. 850, 861, 920 P.2d 214 (1996).....	18
<u>In re Sego</u> , 82 Wn.2d 736, 513 P.2d 831 (1973)	23
<u>Nissen v. Obde</u> , 55 Wn.2d 527, 348 P.2d 421 (1960)	23
<u>State ex. rel. Carroll v. Junker</u> , 79 Wn.2d 12, 26, 482 P.2d 775 (1971).....	18
<u>State v. Anderson</u> , 105 Wn. App. 223, 229, 19 P.3d 1094 (2001)	20
<u>State v. Anderson</u> , 107 Wn.2d 745, 750, 733 P.2d 517 (1987)	11
<u>State v. Anderson</u> , 72 Wn. App. 453, 458, 864 P.2d 1001, <u>review denied</u> , 124 Wn.2d 1013 (1994)	22
<u>State v. Barrington</u> , 52 Wn. App. 478, 484, 761 P.2d 632 (1987), <u>review denied</u> , 111 Wn.2d 1033 (1988).....	22
<u>State v. Bradford</u> , 60 Wn. App. 857, 862, 808 P.2d 174, <u>review denied</u> , 117 Wn.2d 1003, 815 P.2d 266 (1991).....	25, 26

<u>State v. Brown</u> , 132 Wn.2d 529, 572, 940 P.2d 546 (1997).....	9
<u>State v. Camarillo</u> , 115 Wn.2d 60, 71, 794 P.2d 850 (1990).....	23
<u>State v. Cantabrana</u> , 83 Wn. App. 204, 208, 921 P.2d 572 (1996).....	25
<u>State v. Casbeer</u> , 48 Wn. App. 539, 542, 740 P.2d 335, <u>review denied</u> , 109 Wn.2d 1008 (1987).....	23
<u>State v. Chapman</u> , 78 Wn.2d 160, 164, 469 P.2d 883 (1970)	22
<u>State v. Collins</u> , 76 Wn. App. 496, 501, 886 P.2d 243, <u>review denied</u> , 126 Wn.2d 1016, 894 P.2d 565 (1995).....	25
<u>State v. Cord</u> , 103 Wn.2d 361, 367, 693 P.2d 81 (1985).....	23
<u>State v. Delmarter</u> , 94 Wn.3d 634, 638, 618 P.2d 99 (1980).....	23
<u>State v. Gore</u> , 143 Wn.2d 288, 296, 21 P.3d 262 (2001).....	19
<u>State v. Green</u> , 94 Wn.2d 216, 221, 616 P.2d 628 (1980).....	22
<u>State v. Harris</u> , 14 Wn. App. 414, 417, 542 P.2d 122 (1975), <u>review denied</u> , 86 Wn.2d 1010 (1976).....	25
<u>State v. Hayes</u> , 81 Wn. App. 425, 432, 914 P.2d 788 (1996).....	30, 31
<u>State v. Helmka</u> , 86 Wn.2d 91, 93, 542 P.2d 115 (1975)	20
<u>State v. Holbrook</u> , 66 Wn.2d 278, 401 P.2d 971 (1965).....	22
<u>State v. Hurd</u> , 127 Wn.2d 592, 594, 902 P.2d 651 (1995).....	18
<u>State v. Mathews</u> , 4 Wn. App. 653, 484 P.2d 942 (1971)	25
<u>State v. McDonald</u> , 138 Wn.2d 680, 693, 981 P.2d 443 (1999).....	9, 10
<u>State v. Oberg</u> , 187 Wash. 429, 432, 60 P.2d 66 (1936).....	30
<u>State v. Osborne</u> , 39 Wash. 548, 81 P. 1096 (1905).....	30
<u>State v. Partin</u> , 88 Wn.2d 899, 904, 567 P.2d 1136 (1977)	20

<u>State v. Pope</u> , 100 Wn. App. 624, 627, 999 P.2d 51, <u>review denied</u> , 141 Wn.2d 1018 (2000)	28
<u>State v. Roberts</u> , 142 Wn.2d 471, 491, 14 P.3d 713 (2000)	10, 11
<u>State v. Sanders</u> , 7 Wn. App. 891, 893, 503 P.2d 467 (1972)	25
<u>State v. Staley</u> , 123 Wn.2d 794, 798, 872 P.2d 502 (1994).....	24, 25
<u>State v. Tadeo-Mares</u> , 86 Wn. App. 813, 816, 939 P.2d 220 (1997).....	25
<u>State v. Thein</u> , 138 Wn.2d 133, 140, 977 P.2d 582 (1999)	19, 20
<u>State v. Thomas</u> , 8 Wn.2d 573, 586, 113 P.2d 73 (1941)	30
<u>State v. Vickers</u> , 148 Wn.2d 91, 108, 59 P.3d 58 (2002)	19, 20
<u>State v. Watson</u> , 69 Wn.2d 645, 650-51, 419 P.2d 789 (1966)	18
<u>State v. Whelchel</u> , 115 Wn.2d 708, 801 P.2d 948 (1990).....	10, 13

Constitutional Provisions

Fifth Amendment, United States Constitution.....	4, 10
Sixth Amendment, United States Constitution	16

Statutes

RCW 10.37.050	31
RCW 10.37.050(5).....	31
RCW 10.37.050(7).....	31
RCW 68.50.401(a)(1)(iii)	2
RCW 69.50.4013	24
RCW 9.41.040(1)(a)	27
RCW 9.41.040(1)(b)	2
RCW 9A.76.170.....	28

RCW 9A.76.170(1)..... 2, 28

RCW 9A.76.170(3)(c) 2, 28

Rules and Regulations

ER 804 10

ER 804(b)(3) 1, 4, 8, 9, 10, 16

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court properly exercise its discretion when it excluded pursuant to ER 804(d)(3) Mr. Hartley's written statements that he was the owner of the drugs that defendant was accused of possessing?

(Appellant's Assignment of Error Nos. 1 and 2).

2. Is defendant's claim that the trial court erred by denying defendant's motion for a continuance wholly without merit where defendant at no time requested a continuance?

(Appellant's Assignment of Error No. 1)

3. Was there sufficient probable cause to support the issuance of a search warrant?

(Appellant's Assignment of Error No. 3)

4. Was there sufficient evidence to prove beyond a reasonable doubt that defendant committed the crime of unlawful possession of methamphetamine?

(Appellant's Assignment of Error No. 4)

5. Was there sufficient evidence to prove beyond a reasonable doubt that defendant committed the crime of unlawful possession of firearm?

(Appellant's Assignment of Error No. 5)

6. Was there sufficient evidence to prove beyond a reasonable doubt that defendant committed the crime of bail jumping on September 9, 2004?

(Appellant's Assignment of Error No. 6)

B. STATEMENT OF THE CASE.

1. Procedure

On May 2, 2005, the State filed a corrected third Amended Information¹ charging CHARLES K. MAYFIELD (hereinafter "defendant") with one count of unlawful possession of methamphetamine with intent to deliver², one count of unlawful possession of a firearm in the second degree³ and two counts of bail jumping⁴. CP 22-24. The bail

¹ The original Information charged the defendant with unlawful possession of methamphetamine and unlawful possession of a firearm. CP 1-3. The Information was amended and corrected several times to add charges of bail jumping, change the dates of offense, and increase the possession of methamphetamine charge to a charge of possession with intent to deliver. CP 7-10, 16-18, 19-21, 22-24.

² In violation of RCW 68.50.401(a)(1)(iii).

³ In violation of RCW 9A.040(1)(b).

⁴ In violation of RCW 9A.76.170(1) and (3)(c).

jumping offenses were alleged to have occurred on September 11, 2004 and November 3, 2004.⁵ CP 22-24.

On August 26, 2004, defendant signed an order promising to appear for an omnibus hearing on September 9, 2004. Ex. 21; CP 152. Defendant did not promise to appear on September 11. Defendant subsequently failed to appear on September 9 and a bench warrant was issued. Ex. 22-24; CP 153-55.

On October 27, 2004, defendant signed a scheduling order promising to appear for an omnibus hearing on November 3, 2004. Ex. 26; CP 156. Defendant failed to appear on November 3, 2004 and a bench warrant was issued. Ex. 27-29; CP 157-59.

The parties appeared before the Honorable Kathryn J. Nelson on April 25, 2005 for pre-trial motions. Defendant moved to suppress all evidence obtained in the search on the basis that the affidavit in support of the search warrant lacked probable cause.⁶ CP 11-15; RP 5-8. The court denied defendant's motion to suppress and made the following oral ruling:

I disagree, and I agree with the State's interpretation. I think there was probable cause for the police and the State to look for the gas tank and the carburetor and other stolen

⁵ The previously filed Informations alleged a date of offense of September 9, 2004 rather than September 11, 2004. CP 1-3, 7-10, 16-18, 19-21.

⁶ The affidavit in support of the search warrant is attached to this brief as Appendix A. This affidavit was not properly filed at the trial court level, but the parties on appeal have stipulated that the document should be considered by this court in determining the merits of defendant's appeal.

parts at Chuck's house next to Swiss Park in Bonney Lake, the residence to which Mr. Ellefson was going when he was stopped for the purpose of obtaining those parts. And I think that, since Mr. Ellefson was going to obtain those parts from Mr. Shockey at Chuck's residence, which was connected with Swiss Park and Bonney Lake, it was proper for the State to look at any vehicles registered to Mr. Shockey that might be located there. I think the warrant is sufficient within its four corners.

RP 13.

At some point prior to trial, Kenneth Hartley admitted in two separate written statements that he was the true owner of the drugs that defendant was charged with possessing. Ex. 43 and 44; RP 258-261, 330. When called to testify during trial, however, Hartley invoked his Fifth Amendment rights. RP 265. Defense counsel moved to admit Hartley's written statements under ER 804(b)(3) as statements against interest. RP 271. The court agreed that ER 804(b)(3) applied, but ruled that the defense had not proven the trustworthiness of the statements as required by the rule itself. RP 273. The court allowed defendant the opportunity to prove trustworthiness. RP 273-74. At a later proceeding, counsel presented an offer of proof regarding the trustworthiness of Hartley's statements. RP 350-54. After considering the arguments of counsel and the offer of proof, the court ruled that the written statements contained in Ex. 43 and Ex. 44 were unreliable and therefore inadmissible. RP 370-72.

Defense also intended to call the defendant's stepfather as a witness. Defense counsel announced her intention to present his testimony on the morning of May 3, 2005. RP 345. On May 3, 2005, counsel advised the court that she was unable to call defendant's stepfather at that time because he was stuck in Ellensburg with car trouble. RP 345. The court advised counsel that she was not going to grant any more continuances for missing witnesses. RP 345-46. Counsel requested a recess until 1:30 p.m. to get the defendant's stepfather into court. RP 373. The court granted the request and recessed the proceedings until 1:30. RP 374. At 1:30, counsel advised the court that she had spoken with the defendant's stepfather and that he was unable to get to court that day or the next day. RP 378-79. Counsel did not request a continuance. Rather, counsel asked the court to allow the stepfather to testify telephonically. RP 378-79. The State objected because telephonic testimony would prevent the jury from assessing the witness's demeanor while testifying. RP 380. The court denied defendant's request to allow the stepfather to testify telephonically. RP 380.

There were no objections to the jury instructions.⁷ The to-convict instruction for Count III of bail jumping required the jury to find that the

⁷ Defense objected to Instruction No. 25 (an instruction on how to deal with the verdict forms), but the State agreed to correct the instruction. RP 390.

defendant committed the crime of bail jumping on September 9, 2004. CP 61-96 (Inst. No. 20). Throughout the trial and during closing argument, the State presented evidence and argument that established that the defendant committed the crime of bail jumping on September 9, 2004. Ex. 21-24; RP 172-73, 408.

The jury returned a verdict of guilty to the crimes of unlawful possession of a controlled substance (no firearm enhancement), unlawful possession of a firearm in the second degree and two counts of bail jumping. RP 496.

The court sentenced the defendant to 51 months in the Department of Corrections, based on an offender score of 12. CP 109-122.

This timely appeal follows. CP 129-141.

2. Facts

On May 22, 2004, Bonney Lake Police Officer Kurt Alfano, came into contact with the defendant at a residence in Bonney Lake. RP 88. Alfano was serving a search warrant on the residence, specifically looking for stolen motorcycle parts and suspect James Shockey. RP 89. During the search, Alfano entered a bedroom and observed drug-related items, including needles (used and new), a book on how to manufacture methamphetamine and a baggie of white powder on the bed. RP 95.

Officer Alfano also observed paperwork belonging to the defendant, Charles Mayfield, in the bedroom. RP 95.

Officers contacted the defendant, who admitted staying in the bedroom where the drugs were seen. RP 97. Defendant denied that the drugs belonged to him, but admitted seeing them in the room prior to the officers' arrival. RP 97-98, 322.

At that point, the officers were forced to apply for an addendum to the search warrant because drug-related evidence was not included in the original search warrant. After the addendum was approved, the officers continued the search and found several drug-related items in the bedroom where defendant's paperwork, wallet and license were also found. RP 101-04. The officers also found a fully operational loaded .45 caliber gun in the same bedroom. RP 101-04, 159, 210. Officer Alfano was unsure exactly where in the bedroom the gun was found, but believed it was in the back corner. RP 140. Defendant is prohibited from possessing a firearm based on a prior felony conviction. CP 34-35.

Officers contacted Frederick Lehman, the owner of the house, who stated that the defendant was staying in the bedroom where the evidence was found. RP 127-131. The defendant was renting the room for \$100/month. RP 127-131.

On May 25, 2004, defendant was arraigned on charges of unlawful possession of a controlled substance and unlawful possession of a firearm in the second degree. Ex. 18; RP 166-70. Bail was set at \$10,000. Ex.

20; RP 168-70. A bonding company posted bail on behalf of the defendant and the defendant was released from custody on May 30, 2004. Ex. 19; RP 171-72. On August 26, 2004, the defendant signed a court order promising to appear in court on September 9, 2004. Ex. 21; RP 172-73. Defendant failed to appear on September 9, 2004 and a bench warrant was issued. Ex. 22-24; RP 174-76.

On October 27, 2004, defendant was back in court and signed an order promising to appear on November 3, 2004. Ex. 26; RP 179. Defendant failed to appear on November 3, 2004 and a bench warrant was issued. Ex. 27-29; RP 180-181.

At trial, defendant admitted that he was not in court on September 8 or November 3. RP 317-18, 320. Defendant did not say anything about September 9 or September 11. Defendant claimed that he didn't think he had to be there on September 8. RP 317. Defendant said he was "snowed in" in Ellensburg for the November 3 hearing. RP 319.

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION WHEN IT EXCLUDED PURSUANT TO ER 804(d)(3) MR. HARTLEY'S WRITTEN STATEMENTS THAT HE WAS THE OWNER OF THE DRUGS THAT DEFENDANT WAS ACCUSED OF POSSESSING.

Defendant claims that the trial court erred when it excluded the out of court written statements of Kenneth Hartley, wherein Mr. Hartley took

ownership of the drugs that the defendant was accused of possessing. Defendant argues that the statements were admissible under ER 804(b)(3) as a statement against interest because Hartley was unavailable to testify.

A trial court's refusal to admit evidence under ER 804(b)(3)'s hearsay exception is reviewed for abuse of discretion. State v. McDonald, 138 Wn.2d 680, 693, 981 P.2d 443 (1999). A trial court abuses its discretion when its decision is manifestly unreasonable or based upon untenable grounds or reasons. State v. Brown, 132 Wn.2d 529, 572, 940 P.2d 546 (1997).

Under ER 804(b)(3), a hearsay statement against the declarant's penal interest may be admissible if the declarant is unavailable and the statement is:

[a] statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. In a criminal case, a statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

ER 804(b)(3). Thus, a hearsay statement against the declarant's penal interest may be admissible (1) if the declarant is unavailable to testify; (2) the statement exposes the declarant to criminal liability and a reasonable person in the same position would not have made the statement unless convinced of its truth; and (3) corroborating circumstances clearly indicate

the statement's trustworthiness. ER 804(b)(3); State v. Whelchel, 115 Wn.2d 708, 715-16, 801 P.2d 948 (1990).

It is undisputed that the declarant here, Kenneth Hartley, was unavailable as a result of him exercising his Fifth Amendment privilege against self-incrimination.⁸ It is also undisputed that his written statements were against his penal interest. The sole issue is whether the trial court properly determined that the statements lacked sufficient reliability. An appellate court reviews a trial court's decision on the reliability of a statement against penal interest for an abuse of discretion. McDonald, 138 Wn.2d at 693.

The Washington Supreme Court has established the following 9-factor test to show reliability and trustworthiness: (1) whether the declarant had an apparent motive to lie; (2) whether the general character of the declarant suggests trustworthiness; (3) whether more than one person heard the statements; (4) whether the statements were made spontaneously; (5) whether the timing of the statements and the relationship between the declarant and the witness suggest trustworthiness; (6) whether the statements contained express assertions of past fact; (7)

⁸ A witness asserting the constitutional privilege against self-incrimination is legally unavailable to testify for purposes of the ER 804 exceptions to the rule against hearsay. State v. Roberts, 142 Wn.2d 471, 491, 14 P.3d 713 (2000); State v. Whelchel, 115 Wn.2d 708, 801 P.2d 948 (1990). Here, Mr. Hartley was transported to court, but invoked his rights when called to testify. RP 265.

whether cross-examination of the declarant's recollection being faulty is remote; and (9) whether the circumstances surrounding the statements give no reason to suppose that the declarant misrepresented the defendant's involvement. See State v. Anderson, 107 Wn.2d 745, 750, 733 P.2d 517 (1987). Not every factor must be satisfied, but the balance of the factors should indicate reliability. Anderson, 107 Wn.2d at 753.

Each statement must be considered separately and statements which are self-serving, not inculpatory, or unreliable should be excluded. Roberts, 142 Wn.2d at 494-96.

After a hearing on the reliability of Hartley's statements, the trial court here made the following ruling:

I disagree. I believe the declarant had a motive. He not only was described as looking up to Mr. Mayfield as a father figure, I think it was Ms. Adair who testified that he was a lost soul and that Mr. Mayfield had taken care of him and cared for him. I don't think that there's anything about the declarant that suggests trustworthiness.

We not only have his criminal history, but we also have the fact that his statements themselves contain falsehoods. In both of his statements, he says he will testify at court, and, of course, he's unwilling to do so.

I don't believe I can give any weight one way or another. Only one person heard them. The other two statements appear to be potentially written at the behest of or request of Mr. Mayfield, who knew about them ahead of time and told his defense attorney about them. There's nothing spontaneous about written statements that appear months after the event, nor a scheduled interview in April of '05, almost a year after the event. The fact that there is a second statement with more details than the first statement

suggests that Mr. Hartley was trying to get it right, was trying to make a statement that would accomplish a purpose, which shows a motive.

Ms. Lundahl is correct that there's nothing about the relationship of [the defense investigator] Mr. Fraser and the declarant that would suggest a problem with respect to timing, but once again, Mr. Faser was coming to follow up on two written statements about which there is a lack of trustworthiness, given both the timing and the way that they came about.

It is true that they contain, or at least one them contains express assertions of past fact. It is true that (g) is not applicable, and it is true that the recollection about this event being faulty is remote.

However, I don't believe that the defense has met the burden that the circumstances surrounding the statement give no reason to suppose that the declarant misrepresented defendant's involvement. I think that, although there are a couple factors about faulty memory and whether they're express assertions of past fact, everything else does not fulfill the standard of trustworthiness and the burden has not been met. So, [exhibits] 44 and 43 will be denied, and unless there's some other portion of the interview with Mr. Fraser that's relevant, he'll not be allowed to testify before the jury.

RP 370-72. A review of the record in connection with the nine reliability factors supports the court's determination that Hartley's statements were unreliable.

The first factor to consider is whether the declarant had a motive to lie. There was evidence presented at the hearing that Mr. Hartley was a "lost kid" that the defendant "looked out for" and that Hartley looked up to the defendant as a "father figure." RP 295, 351, 359. Hartley had known the defendant for over ten years at the time that he wrote the

statements. RP 351. It is reasonable to assume that Hartley took responsibility for the drugs out of loyalty to the defendant. The relationship between the defendant and Hartley thus created a motive to lie. This factor weighs against admissibility.

The second factor is whether Hartley's general character indicates trustworthiness. The court had information that Hartley was in custody on drug charges and a pending third degree theft charge at the time he claimed ownership of the drugs. RP 335. Hartley also had an extensive criminal history, including juvenile convictions for third degree theft, taking a motor vehicle without permission and possessing stolen property in the first degree and adult felony convictions for possession of stolen property in the second degree, malicious mischief and possession of controlled substance. RP 335. Hartley's criminal history speaks volumes about his general character. This factor also weighs against admissibility of the statements.

Because Hartley's statements were written, the third factor, which is whether more than one person had heard it, is irrelevant to admissibility. See *Whelchel*, 115 Wn.2d at 722 (factor three is irrelevant where the statement was taped).

The defense agrees that there is no evidence in the record that the statement was not spontaneous, the fourth factor. See Appellant's Brief, at 15. This factor weighs against admissibility.

The fifth factor is whether the timing of the statement and the relationship between the declarant and the defendant indicate trustworthiness. The trial court determined that they did not. As stated earlier and as conceded by defendant, the relationship between the defendant and Mr. Hartley suggested that Hartley looked up to the defendant and viewed him as a sort of role model. Appellant's Brief at 15. Moreover, the statements were written over a year after the incident and the defendant was aware of them, suggesting that the statements may have been written at the defendant's request. Based on these facts it was a proper exercise of discretion for the trial judge to determine that the timing of the statement and the relationship between Hartley and defendant indicated a lack of trustworthiness.

As to the sixth factor, Hartley's statement did contain express assertions of past facts. This factor favors admissibility.

Regarding the seventh factor, cross-examination likely would have served to show Hartley's lack of knowledge concerning the drugs. This factor weighs against admission because cross-examination would have shown Hartley's lack of knowledge. In his first written statement, Hartley

took responsibility solely for the drugs that were found in the bedroom. Ex. 43. In his second letter, Hartley was more specific and not only took responsibility for the drugs, but also the scale and the baggies. Ex. 44. The prosecutor suggested that this was evidence that Hartley was trying to help out the defendant. According to the prosecutor, the State considered dismissing the case if someone else took responsibility for the drugs. RP 367. Thereafter, the State received Hartley's first note. RP 367. But upon receiving the first note, the State determined that it was too general and refused to dismiss case. RP 367. The State then received the more specific letter, suggesting that Hartley was doing everything in his power to exonerate the defendant. RP 367. These facts were key issues for cross-examination.

The eighth factor is whether there is a possibility that declarant's recollection is faulty. Based on the substance of the statements – that Hartley admitted the drugs were his – it is not very likely that Hartley's recollection is faulty. Thus, this factor supports admission.

Finally, the ninth factor concerns whether the general circumstances of the giving of the statements tend to indicate that the declarant may have misrepresented the defendant's involvement. The trial court found reason to question Hartley's representations that the defendant was not involved in the possession of the drugs. Viewing as a

whole the concerns regarding Hartley's relationship with the defendant and Hartley's possible motives for drafting the statements when he did, it was proper to be suspicious of Hartley's representations.

Based on the above considerations, the trial court did not abuse its discretion in excluding the written statements under ER 804(b)(3).

Defendant's claim that the trial court's exclusion of Mr. Hartley's statements denied him his Sixth Amendment right to compulsory process is also without merit.⁹ See Appellant's Brief, at 11-15. The Sixth Amendment compulsory process clause does not confer on a criminal defendant an unfettered right to offer evidence that is inadmissible under standard rules of evidence. Taylor v. Illinois, 484 U.S. 400, 410, 108 S. Ct. 646, 98 L. Ed. 2d 798 (1988). Rather, in exercising the right to present witnesses in his defense, a defendant must comply with established rules of procedure and evidence designed to ensure both fairness and reliability in the ascertainment of guilt and innocence. Chambers v. Mississippi, 410 U.S. 284, 302, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973). As argued above, the trial court properly excluded evidence of Hartley's statements because the statements were determined to be unreliable. The trial court's ruling

⁹ The Sixth Amendment provides, in part: "In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor . . ." This right is applicable in state as well as federal prosecutions. Washington v. Texas, 388 U.S. 14, 17-19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967).

was consistent with the rules of evidence and cases interpreting the rules of evidence. Defendant fails to cite any authority that stands for the proposition that a trial court's exclusion of irrelevant and unreliable evidence violates the defendant's right to present a defense. This court should therefore reject the defendant's unsupported claim.

2. DEFENDANT'S CLAIM THAT THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION FOR A CONTINUANCE TO ALLOW A WITNESS ADDITIONAL TIME TO GET TO COURT IS WITHOUT MERIT BECAUSE DEFENDANT NEVER REQUESTED A CONTINUANCE.

Defendant claims that the trial court erred when it denied his motion for continuance to secure the presence of a defense witness. See Appellant's Brief, at 17. But defendant never moved for a continuance.¹⁰ Instead, defense counsel asked the court to allow the witness to testify via telephone. RP 378-79. The State objected and the court denied defendant's request. The court was never asked to rule on a motion to continue the trial. Since the defendant at no time requested a continuance,

¹⁰ When counsel first discovered that the defendant's father was stuck in Ellensburg, counsel requested a recess until 1:30 p.m. in order to allow the witness additional time to get to court. When counsel returned at 1:30, she advised the court that the defendant's stepfather was unable to get to court that day or the next day. Counsel did not ask for a continuance at that time. Rather, counsel asked that the witness be allowed to testify telephonically, which request was denied.

he cannot now argue that the court's failure to grant a continuance was error.

Moreover, even if defendant had requested a continuance, the court would have acted within its discretion in denying the request. A trial court's decision to grant or deny a continuance to procure a witness is reviewed for abuse of discretion. State v. Hurd, 127 Wn.2d 592, 594, 902 P.2d 651 (1995); State v. Watson, 69 Wn.2d 645, 650-51, 419 P.2d 789 (1966). In exercising its discretion, the trial court may consider various factors including diligence, process, the need for an orderly procedure, the possible effect on the trial, and whether prior continuances were granted. City of Tacoma v. Bishop, 82 Wn. App. 850, 861, 920 P.2d 214 (1996). Whether subpoenas were issued is important because "more than seventy-five years of Washington case law dictate that a continuance is improper when the moving party has failed to exercise due diligence in issuing subpoenas for necessary witnesses." City of Kirkland v. Ellis, 82 Wn. App. 819, 830, 920 P.2d 206 (1996). Denial of the motion to continue will not be disturbed unless the appellant makes a "clear showing" that the decision by the trial court is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." State ex. rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

Here, defense could not guarantee when, or even if, the defendant's stepfather would appear in court. In addition, there was no evidence before the court that the witness had been subpoenaed.¹¹ Thus, even if defense counsel had asked for a continuance, the trial court would have had a tenable basis for denying the motion.

3. THERE WAS SUFFICIENT PROBABLE CAUSE TO SUPPORT THE ISSUANCE OF A SEARCH WARRANT.

Defendant claims that the trial court erred in denying his motion to suppress because there was insufficient probable cause to support the issuance of the search warrant.

A search warrant may be issued only upon a determination of probable cause. State v. Gore, 143 Wn.2d 288, 296, 21 P.3d 262 (2001). Probable cause exists where the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime may be found at a certain location. State v. Vickers, 148 Wn.2d 91, 108, 59 P.3d 58 (2002); State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). An affidavit of probable cause must show "a

¹¹ The State reviewed the Clerk's file and there are not any defense subpoenas that were filed.

nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched. Thein, 138 Wn.2d at 140. The affidavit must be based upon more than mere suspicion or personal belief that evidence of the crime will be found at the place to be searched. Vickers, 148 Wn.2d at 108.

A judge's decision to issue a warrant is reviewed for abuse of discretion, and great deference is accorded that decision. Id. The affidavit is evaluated in a commonsense manner, rather than hypertechnically, and any doubts are resolved in favor of the warrant. Id. at 108-09; State v. Helmka, 86 Wn.2d 91, 93, 542 P.2d 115 (1975); State v. Partin, 88 Wn.2d 899, 904, 567 P.2d 1136 (1977). If an affidavit does not establish probable cause, however, a defendant's motion to suppress evidence seized as a result of an improper warrant should be granted. State v. Anderson, 105 Wn. App. 223, 229, 19 P.3d 1094 (2001).

The probable cause affidavit in this case supports the magistrate's decision to issue the search warrant. Officers Alfano and Lien knew from their contact with Matthew Ellefson that Ellefson had acquired stolen motorcycle parts from a person by the name of Joe Shockey. Ellefson told Officer Lien that Shockey had the tank and carburetor of the stolen motorcycle at Shockey's brother's house by Swiss Park in Bonney Lake. Officer Alfano was familiar with the residence located next to the Swiss

Sportman's Club and had personally seen Joe Shockey at that residence on prior occasions. This information created a reasonable inference that Joe Shockey was involved in criminal activity (possession of stolen property) and that Shockey could be found at the place to be searched (residence near Swiss Park).

On appeal, defendant takes issue with only one aspect of the search warrant – that Matthew Ellefson did not provide a specific address where the stolen motorcycle parts could be found and that that information came from the officer's personal knowledge. Defendant claims that, "The affidavit essentially amounts to Officer Alfano's mere speculation and personal belief relating to Joe Shockey's possession of stolen property would be found at the address sought to be searched." Appellant's Brief, at 20. But Officer Alfano was not speculating that Joe Shockey might be at the residence. Officer Alfano personally observed Joe Shockey at the residence on prior occasions. Defendant provides no authority for the proposition that an officer cannot rely on his own observations when providing facts to support a search warrant. If anything, the officer's personal observations lends credibility to Mr. Ellefson's story because it provides corroborating evidence that Shockey was at that location.

The affidavit provided the magistrate with probable cause to issue the search warrant. The trial court properly denied defendant's motion to suppress.

4. THE STATE PRESENTED SUFFICIENT EVIDENCE TO PROVE THE DEFENDANT GUILTY OF HIS CRIMES.

Evidence is sufficient to support a conviction if, after viewing the evidence and all reasonable inferences in a light most favorable to the State, a rational trier of fact could find each element of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

A challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. State v. Barrington, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), review denied, 111 Wn.2d 1033 (1988) (citing State v. Holbrook, 66 Wn.2d 278, 401 P.2d 971 (1965)). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. State v. Anderson, 72 Wn. App. 453, 458, 864 P.2d 1001, review denied, 124 Wn.2d 1013 (1994). An appellate court defers to the trier of fact on matters of witness credibility. State v. Chapman, 78 Wn.2d 160, 164, 469 P.2d 883 (1970).

In addition, circumstantial and direct evidence are considered equally reliable. State v. Delmarter, 94 Wn.3d 634, 638, 618 P.2d 99 (1980). In considering this evidence, “[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal.” State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing State v. Casbeer, 48 Wn. App. 539, 542, 740 P.2d 335, review denied, 109 Wn.2d 1008 (1987)). This is because the written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility. The differences in the testimony of witnesses create the need for such credibility determinations. The trier of fact, who is best able to observe the witnesses and evaluate their testimony, should make these determinations. On this issue, the Supreme Court of Washington said:

great deference . . . is to be given the trial courts factual findings. In re Sego, 82 Wn.2d 736, 513 P.2d 831 (1973); Nissen v. Obde, 55 Wn.2d 527, 348 P.2d 421 (1960). It, alone, has had the opportunity to view the witness’ demeanor and to judge his veracity.

State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985).

Therefore, when the State has produced evidence of all elements of a crime, the decision of the trier of fact should be upheld.

a. Unlawful Possession of Controlled Substance

Defendant's claim that there is insufficient evidence to support his conviction for unlawful possession of a controlled substance rests on the erroneous presumption that the search warrant was improperly issued and that the evidence seized pursuant to the search warrant should have been suppressed. Defendant claims that, without the evidence obtained in the search warrant, there was insufficient evidence to convict him. But, as set forth above, the evidence was properly admissible because the search warrant was proper. Notably, defendant does not claim that there was insufficient evidence if the evidence from the search warrant was properly admitted. As set forth below, the properly admitted evidence is sufficient to support the defendant's conviction for unlawful possession of a controlled substance.

It is unlawful for anyone to possess a controlled substance unless the substance was obtained pursuant to a valid prescription. RCW 69.50.4013. In a prosecution for unlawful possession, the State must prove the nature of the substance and possession by the defendant. State v. Staley, 123 Wn.2d 794, 798, 872 P.2d 502 (1994). Possession of a controlled substance can be either constructive or actual. Id. Constructive possession is dominion and control over the substance or the premises

upon which the substance is found. State v. Tadeo-Mares, 86 Wn. App. 813, 816, 939 P.2d 220 (1997). Possession need not be exclusive. State v. Harris, 14 Wn. App. 414, 417, 542 P.2d 122 (1975), review denied, 86 Wn.2d 1010 (1976).

Mere proximity is insufficient to show dominion and control (i.e., constructive possession). State v. Bradford, 60 Wn. App. 857, 862, 808 P.2d 174, review denied, 117 Wn.2d 1003, 815 P.2d 266 (1991). But proximity coupled with other circumstances linking the defendant to the drugs is enough to create an issue of fact of constructive possession. State v. Sanders, 7 Wn. App. 891, 893, 503 P.2d 467 (1972)(citing State v. Mathews, 4 Wn. App. 653, 484 P.2d 942 (1971)).

In determining dominion and control, no one factor is dispositive; the totality of the circumstances must be considered. State v. Collins, 76 Wn. App. 496, 501, 886 P.2d 243, review denied, 126 Wn.2d 1016, 894 P.2d 565 (1995). Dominion and control over the premises raises a rebuttable inference of dominion and control over drugs found inside the premises. Tadeo-Mares, 86 Wn. App. at 816 (citing State v. Cantabrana, 83 Wn. App. 204, 208, 921 P.2d 572 (1996)). The defendant can then rebut the presumption by asserting that possession was unknowing or excusable. Staley, 123 Wn.2d at 798-99.

The evidence here is sufficient to support a finding that the defendant had possession of the drugs. Defendant's personal belongings, including his wallet, were found in the bedroom where the drugs were found. Mail addressed to the defendant was found in the bedroom where the drugs were found. See Bradford, 60 Wn. App. at 864-65 (a defendant's constructive possession of the premises can be found from the presence of receipts bearing the defendant's name and utility and telephone bills addressed to the defendant). The owner of the home testified that the defendant had been renting the room for \$100 a month. Defendant admitted that he had been in the room earlier that day and that he knew there were drugs in the bedroom. Defendant was also present in the house when the drugs were found. This evidence creates a rebuttable presumption of constructive possession of the drugs found in the bedroom. Defendant did not rebut this presumption. Although he claimed that he had not been staying in the bedroom for the week prior to his arrest, he admitted that he was at the residence the day of the arrest, that he knew there were drugs in the bedroom and that he had stayed in the room the night before. RP 98, 308, 321. Defendant also claimed that the drugs belonged to Kenneth Hartley, who was in the process of moving into the bedroom. But Hartley, unlike the defendant, was not present at the scene

when officers served the search warrant. RP 307-08. Based on these facts, the jury was entitled to reject the defendant's testimony.

A reasonable jury could have concluded that defendant had dominion and control not only over the bedroom but also over the drugs found there. Accordingly, the evidence of defendant's constructive possession was sufficient. The defendant's finding of guilt should be affirmed.

b. Unlawful Possession of a Firearm in the Second Degree

A person is guilty of unlawful possession of a firearm under RCW 9.41.040(1)(a) if he "owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted in this state or elsewhere of any serious offense as defined in this chapter." There is no dispute that the defendant had previously been convicted of a serious offense. CP 34-35. The only issue is whether defendant knowingly possessed the weapon.

As argued above, there was sufficient evidence that the defendant had dominion and control over the bedroom where the drugs and weapon were found. The officer was unclear where exactly in the bedroom the weapon was found (RP 140), but thought it might have been near the back corner. The gun was found in a box that was labeled "Republic Arms .45

caliber” literally advertising the contents of the box. RP 105, 120. This was sufficient to prove the defendant knowingly possessed the firearm.

c. Bail Jumping

The essential elements of bail jumping under RCW 9A.76.170 are met if the defendant: “(1) was held for, charged with, or convicted of a particular crime; (2) was released by court order or admitted to bail with the requirement of a subsequent personal appearance; and, (3) knowingly failed to appear as required.” State v. Pope, 100 Wn. App. 624, 627, 999 P.2d 51, review denied, 141 Wn.2d 1018 (2000). Also, the statute implies a nexus between the crime for which the defendant was held, charged, or convicted and the later personal appearance. Pope, 100 Wn. App. at 627.

In the present case, defendant was charged in Count III of the corrected third amended information as follows:

That CHARLES KEITH MAYFIELD, in the State of Washington, on or about the 11th day of September, 2004, did unlawfully and feloniously, having been held for, charged with, or convicted of, Unlawful Possession of a Controlled Substance, with Intent to Deliver, a class “B” or “C” felony, and been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court in this state, fail to appear as required, contrary to RCW 9A.76.170(1) and 9A.76.170(3)(c), and against the peace and dignity of the State of Washington.

CP 22-24. Even though the State charged the defendant with bail jumping on September 11, 2004, all of the evidence presented indicated that the actual date of offense was September 9, 2004. Ex. 21-24; RP 172-73, 408. The jury was also instructed that, in order to convict the defendant, they had to find that he committed the crime of bail jumping on September 9, 2004. CP 61-96 (Inst. 20). There was ample evidence to support the jury's finding that the defendant committed the crime of bail jumping on September 9, 2004.

The evidence presented at trial was that (1) on May 25, 2004, the defendant was charged with two felonies alleged to have occurred on May 22, 2004 (Ex. 18; RP 166); (2) on that same day, defendant was arraigned on the charges and bail was set in the amount of \$10,000 (Ex. 20; RP 169); (3) on May 30, 2004, defendant posted bail and was released from custody (Ex. 19; RP 171); (4) on August 26, 2004, defendant signed an order promising to appear for an omnibus hearing on September 9, 2004 (Ex. 21; RP 172-73); (5) the defendant failed to appear on September 9, 2004 (Ex. 22-24; RP 174-78). This is sufficient evidence to support the crime of bail jumping on September 9, 2004.

On appeal, defendant claims that, because the Information charged the defendant with bail jumping on September 11, 2004, that the State had to prove that the crime was committed on that day. It is true that a

defendant may not be convicted for a crime with which he or she was not charged. But here, the Information charged the defendant with committing the crime “on or about” September 11. Where time is not a material element of the charged crime, the language “on or about” is sufficient to admit proof of the act at any time within the statute of limitations, so long as there is no defense of alibi. State v. Hayes, 81 Wn. App. 425, 432, 914 P.2d 788 (1996)(footnotes omitted)(citing City of Auburn v. Brooke, 119 Wn.2d 623, 629-30, 836 P.2d 212 (1992)); see also, State v. Osborne, 39 Wash. 548, 81 P. 1096 (1905) (prosecution for rape where evidence at trial established that the rape occurred a week or two weeks prior to the date alleged in the information); State v. Oberg, 187 Wash. 429, 432, 60 P.2d 66 (1936) (prosecution for sodomy where the State alleged that the act occurred “on or about April 3”, but the victim testified that the act occurred on June 20, over two months later). In State v. Thomas, 8 Wn.2d 573, 586, 113 P.2d 73 (1941), the court held that a variance between the dates in the charging document and the dates in the instructions to the jury was not material in the absence of an alibi defense. Thomas, 8 Wn.2d at 586.

Here, defendant did not offer an alibi defense. Rather, he claimed that he didn’t believe he had to appear. Moreover, the information met the

requirements of RCW 10.37.050¹² because it was filed within the statute of limitations, and “the crime was committed at some time previous to the finding of the indictment or filing of the information.” RCW 10.37.050(5); Hayes, 81 Wn. App. at 432.

The Information did not require the State to prove that defendant committed the crime on September 11, 2004, only that the crime was committed “on or about” September 11, 2004. The State presented evidence that the defendant committed the crime of bail jumping on September 9, 2004. The jury properly considered this evidence and properly found the defendant guilty of bail jumping.

¹² An information is sufficient if it indicates that the crime was committed before the information was filed and within the statute of limitation, and the crime is stated with enough certainty for the court to pronounce judgment upon conviction. RCW 10.37.050(5), (7).

D. CONCLUSION.

For the foregoing reasons, the State respectfully requests this court affirm the defendant's convictions.

DATED: September 27, 2006.

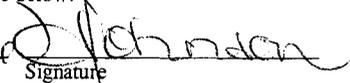
GERALD A. HORNE
Pierce County
Prosecuting Attorney



ALICIA BURTON
Deputy Prosecuting Attorney
WSB # 29285

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

9/28/06 
Date Signature

FILED
COURT OF APPEALS
EMERIT
05 SEP 29 PM 3:03
STATE OF WASHINGTON
BY 
CITY

APPENDIX "A"

*Search Warrant
and
Stipulation Regarding Search Warrant*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

STATE OF WASHINGTON

Respondent,

v.

CHARLES KEITH MAYFIELD

Appellant.

NO. 33740-1-II

STIPULATION REGARDING
SEARCH WARRANT

IT IS HEREBY STIPULATED by and between the parties as follows:

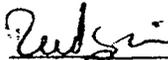
The attached search warrant is a true and accurate copy of the search warrant
was before the trial court at the time of appellant's motion to suppress.

DATED: August 9, 2006.

GERALD A. HORNE
Pierce County
Prosecuting Attorney



ALICIA BURTON
Deputy Prosecuting Attorney
WSB # 29285



REED SPEIR
Attorney for Appellant
WSB # 36270

STIPULATION
MAYFIELD-STIPULATION.doc
Page 1

Office of Prosecuting Attorney
930 Tacoma Avenue South, Room 204
Tacoma, Washington 98402
Main Office: (253) 799-1000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his or her attorney or to the attorney for respondent and respondent c/o his or her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

8.15.06 Theresa K
Date Signature

STIPULATION
MAYFIELD-STIPULATION.doc
Page 2

Office of Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

SEARCH WARRANT
(EVIDENCE)

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAY 26 2004 P.
PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK, County Clerk
DEPUTY

NO: 04-1 07376 8

THE STATE OF WASHINGTON: To any Peace Officer in said state:

WHEREAS, OFFICER, has this day made complaint on oath to the undersigned Judge of the entitled Court in and for the said County that for the time period up to and including May 24, 2004, in Pierce County, Washington, felonies, to-wit: **UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE (METHAMPHETAMINE)**, a violation of **RCW 69.50.401** was committed by the act, procurement, or omission of another, and that the following evidence, to-wit:

- 1) METHAMPHETAMINE;
- 2) BOOKS, RECORDS, RECEIPTS, NOTES, LEDGERS, AND OTHER PAPERS RELATING TO THE MANUFACTURE, DISTRIBUTION, TRANSPORTATION, ORDERING, AND/OR PURCHASING OF METHAMPHETAMINE/CHEMICALS;
- 3) ADDRESSES AND/OR TELEPHONE NUMBERS RELATING TO THE MANUFACTURE, DISTRIBUTION, TRANSPORTATION, ORDERING, AND/OR PURCHASING OF METHAMPHETAMINE/CHEMICALS;
- 4) BOOKS, RECORDS, RECEIPTS, BANK STATEMENTS, MONEY DRAFTS, LETTERS OF CREDIT, PASSBOOKS, BANK CHECKS, AND OTHER ITEMS EVIDENCING THE OBTAINING, SECRETING, TRANSFER, AND/OR CONCEALMENT, AND/OR EXPENDITURE OF MONEY;
- 5) VIDEO TAPES AND/OR PHOTOGRAPHS OF CO-CONSPIRATORS, ASSETS, METHAMPHETAMINE, FIREARMS, MANUFACTURING OPERATIONS, CHEMICALS, AND/OR EQUIPMENT;
- 6) NARCOTICS PARAPHERNALIA, INCLUDING; SYRINGES, PIPES, PACKAGING MATERIALS, AND/OR WEIGHING EQUIPMENT;
- 7) INDICIA OF OCCUPANCY, RESIDENCY, AND/OR OWNERSHIP OF THE PREMISES DESCRIBED IN THE SEARCH WARRANT, INCLUDING BUT NOT LIMITED TO UTILITY BILLS, TELEPHONE BILLS, CANCELED ENVELOPES, REGISTRATION CERTIFICATES, AND/OR KEYS;
- 8) UNITED STATES CURRENCY, STOLEN PROPERTY, AND OTHER ITEMS EVIDENCING AN EXCHANGE FOR METHAMPHETAMINE, CHEMICALS, AND/OR EQUIPMENT;

- 9) FIREARMS
- 10) SURVELIANCE EQUIPMENT
- 11) CELLULAR TELEPHONES AND DIGITAL PAGERS
- 12) COMPUTER EQUIPMENT/ACCESSORIES TO INCLUDE HARD DRIVES, FLOPPY DISKS, PROGRAMS, STORAGE MEDIA, COMPUTER MANUALS, MONITORS, KEYBOARDS, PRINTERS;

are all evidence of an attempt to commit an offense under the Uniformed Controlled Substance Act, R.C.W. 69.50, in violation of R.C.W. 69.50.401. That the above material is necessary to the investigation and/or prosecution of the above described felonies for the following reasons: as evidence of the continuing crimes of **UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE (METHAMPHETAMINE)**, a violation of **R.C.W. 69.50.401**.

Affiant verily believes that the above evidence is concealed in or about a particular house or place, person or thing to-wit:

DESCRIPTION OF PROPERTY TO BE SEARCHED

- 1) The residence is a single story family mobile home, white in color with brown trim. The residence has an attached carport with several vehicles in and around the property. The address is 19616 94th Street East in Bonney Lake, Washington. The residence is registered to Rozella M. Waschell, with Pierce County parcel number 4490500360.
- 2) All vehicle's registered to the suspect James J. Shockey located on the property listed above.
- 3) A blue Dodge Van bearing Washington License number 940-NOR. The vehicle identification number is 2b6hb2379fk295383. The van is located in the driveway to the property.

THEREFORE, in the name of the State of Washington, you are commanded that within ten days from this date, with necessary and proper assistance, you enter into and/or search the said house, person, place or thing, and then and there diligently search for said evidence, and any other, and if same, or evidence material to the investigation or prosecution of said felonies or any part thereof, be found on such search, bring same forthwith before me, to be disposed of according to law.

A copy of this search warrant shall be served upon the person or persons found in or on said house or place and if a person is not found in or on said house or place, a copy of this warrant shall be posted upon any conspicuous place in or on said house, place or thing, and a copy of this warrant and inventory shall be returned to the undersigned judge or his agent promptly after execution. Bail to be set in open court.

Given under my hand this 24TH day of May, 2004.


SUPERIOR COURT JUDGE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAY 26 2004 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

SEARCH WARRANT
(EVIDENCE)

NO: 04-1 07376 9

THE STATE OF WASHINGTON: To any Peace Officer in said state:

WHEREAS, Officer Kurtis M. Alfano, has this day made complaint on oath to the undersigned Judge of the entitled Court in and for the said County that for the time period up to and including May 24th, 2004, in Pierce County, Washington, a felony, to-wit: **POSSESSION OF STOLEN PROPERTY SECOND DEGREE** a violation of R.C.W. 9A.56.160, was committed by the act, procurement, or omission of another, and that the following evidence, to-wit:

- 1) GREEN GAS TANK TO A 1998 SUZUKI KATANA GSX 750 MOTORCYCLE BEARING WASHINGTON LICENSE PLATE NUMBER 595212
- 2) FOUR SILVER GAS CARBURATOR TO A 1998 SUZUKI KATANA GSX 750 MOTORCYCLE BEARING WASHINGTON LICENSE PLATE NUMBER 595212
- 3) THE PERSON OF JAMES J. SHOCKEY.

that the above material is necessary to the investigation and/or prosecution of the above described felony for the following reasons: as evidence of the continuing crime of **POSSESSION OF STOLEN PROPERTY SECOND DEGREE** a violation of R.C.W. 9A.56.160.

Affiant verily believes that the above evidence is concealed in or about a particular house or place, person or thing to-wit:

DESCRIPTION OF PROPERTY TO BE SEARCHED

- 1) The residence is a single story family mobile home, white in color with brown trim. The residence has an attached carport with several vehicles in and around the property. The address is 19616 94th Street East in Bonney Lake, Washington. The residence is registered to Rozella M. Waschell, with Pierce County parcel number 4490500360.
- 2) All vehicles registered to the suspect James J. Shockey

THEREFORE, in the name of the State of Washington, you are commanded that within ten days from this date, with necessary and proper assistance, you enter into and/or search the said house, person, place or thing, and then and there diligently search for said evidence, and any other, and if same, or evidence material to the investigation or prosecution of said felony or any part thereof, be found on such search, bring same forthwith before me, to be disposed of according to law.

Search Warrant/Property - 1

A copy of this search warrant shall be served upon the person or persons on said house or place and if a person is not found in or on said house or place, a copy of this warrant shall be posted upon any conspicuous place in or on said house, place or premises. A copy of this warrant and inventory shall be returned to the undersigned judge or clerk promptly after execution. Bail to be set in open court.

Given under my hand this _____ day of May 24

[Signature]
SUPERIOR COURT

1
-
7
J

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

COMPLAINT FOR SEARCH WARRANT
(EVIDENCE)

IN COUNTY FILED CLERK'S OFFICE
MAY 26 2004 P.M.
PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK, County Clerk DEPUTY

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

NO: 04-1 07376 8

COMES NOW Officer Kurtis M. Alfano, who being first duly sworn on oath complains and says: That on or about May 24th, 2004, in Pierce County, Washington, felony, to-wit: **POSSESSION OF STOLEN PROPERTY SECOND DEGREE** a violations of **R.C.W. 9A.56.160**, was committed by the act, procurement or omission of another, that the following evidence, to-wit:

- 1) GREEN GAS TANK TO A 1998 SUZUKI KATANA GSX 750 MOTORCYCLE BEARING WASHINGTON LICENSE PLATE NUMBER 595212
- 2) FOUR SILVER GAS CARBURATOR TO A 1998 SUZUKI KATANA GSX 750 MOTORCYCLE BEARING WASHINGTON LICENSE PLATE NUMBER 595212
- 3) THE PERSON OF JAMES J. SHOCKEY.

that the above material is necessary to the investigation and/or prosecution of the above described felony for the following reasons: as evidence of the continuing crime of **POSSESSION OF STOLEN PROPERTY SECOND DEGREE**, a violation of **R.C.W. 9A.56.160**.

1)The residence is a single story family mobile home, white in color with brown trim. The residence has an attached carport with several vehicles in and around the property. The address is 19616 94th Street East in Bonney Lake, Washington. The residence is registered to Rozella M. Waschell, with Pierce County parcel number 4490500360.

2) All vehicle's registered to the suspect James J. Shockey located on the property listed above.

Affiant believes that the above evidence is concealed in or about this location based upon the following facts and circumstances:

AFFIANT Officer Kurtis M. Alfano
Training and Experience

Affiant Alfano has been a fully commissioned law enforcement officer with the Bonney Lake Police Department since 04/12/2000 and was previously a commissioned law enforcement officer with the Buckley Department for over 5 years; Affiant is currently assigned to patrol with secondary duties as a Bonney Lake Police Department narcotics/property investigator. Affiant Alfano has completed the Washington State Criminal Justice 440 hour Basic Law Enforcement Academy; Affiant Alfano has completed a 40 Clandestine Drug Labs/Marijuana Grow course sponsored by CADRE incorporated. Affiant Alfano is a certified Clandestine Drug Lab Technician and a member of the Pierce County Sheriff Department's Clandestine Lab Team where Affiant has executed numerous controlled substance search warrants. Affiant Alfano has

Complaint for Search Warrant/Property - 1

served numerous controlled substance search warrants in the past as a Bonney Lake Police Officer, and as a member of the Metro-Pierce Special Response/High Risk Search Warrant Entry Team. In addition to formal training, Affiant Alfano has been personally involved in numerous Thefts, Possession of Stolen Property arrests resulting in more than Twenty (20) convictions for Theft, and Possession of Stolen Property related crimes:

PROBABLE CAUSE:

On May 23, 2004 at 1741 hours, Officer Lien responded to the 6700 block of Vandermark Road for a theft/burglary report. Officer Lien contacted the victim John P. Hofer and a witness Edward A. Elliot. Hofer advised Officer Lien that he was missing a yellow Dewalt Blade Saw bearing serial number 114134 from his job site. Hofer advised Officer Lien that the Dewalt Blade Saw was stolen from his job site where he is building a residence under construction. Hofer advised Officer Lien that Elliot is helping him build the residence and that he had information as to who may have taken the saw.

Officer Lien spoke with Elliot. Elliot advised Officer Lien that he lives next door to the residence under construction at 6704 Vandermark Road. Elliot advised Officer Lien that on May 22, 2004 at 8:00 pm, his friend Matthew B. Ellefson came over to his house to borrow some money. Elliot told Officer Lien that he gave Ellefson some money and the keys to his 1986 Dodge Aries "K" passenger car. Elliot stated that around 10:00 pm that night he observed Ellefson and his girlfriend Brandy walking around the new home under construction. Elliot stated that Ellefson was in and out of the house several times throughout the night and the last time he saw him there was at 1:30 am on May 23rd, 2004. At around 2:00 am Elliot stated that he walked over to the house. Elliot said that noticed the saw missing from a red lock box located in the downstairs of the house.

Elliot advised Officer Lien that around 7:30 am on May 23rd, 2004 Ellefson came back to his house. Elliot confronted Ellefson about the missing blade saw. Ellefson denied stealing the blade saw and told Elliot that he would return his vehicle on Monday May 24th.

Hofer told Officer Lien that another neighbor had seen Ellefson and a female subject parked in a car near a wooded area on Vandermark Road. Officer Lien contacted the neighbor who identified himself as Nunzio D. Longordo. Longordo lives at 6606 Old Vandermark Road. Longordo stated that on May 23rd, 2004 at 7:30 am his wife asked him to check on a suspicious vehicle that was parked across the street in a wooded area. Longordo stated that he walked outside and observed a blue mid 1980's four-door passenger car backed up to the wooded area. Longordo stated that the vehicle immediately left the area when the occupants saw him. Longordo stated that a female was driving the vehicle and the other subject was a male passenger. Longordo stated that he was able to obtain a partial license plate of 673-GY. At 1630 hours Longordo walked over to the woods and checked around. Longordo stated that he observed the blade saw underneath some plywood and shrubbery. Longordo walked over to the house and contacted Hofer. Hofer advised Longordo that the blade saw was his. At the time Officer Lien wrote his police report, (04-1232) Ellefson had not returned Elliots vehicle.

On May 24, 2004 at 2120 hours Officer Scott Lien of the Bonney Lake Police Department conducted a vehicle stop on a 1986 Dodge Aries "K" car, bearing Washington License number 673-MGC. Officer Lien stopped the vehicle at 7209 West Tapps Highway in Bonney Lake,

Complaint for Search Warrant/Property - 2

Washington. Officer Lien had previous knowledge that the vehicle was the suspect vehicle in a theft/burglary that occurred on May 23rd, 2004. (The theft/burglary incident is listed above.)

Officer Lien contacted the driver of the vehicle and asked the subject for his license. The driver stated that he did not have a driver's license and identified himself as Matthew B. Ellefson. Officer Lien had Ellefson step from the vehicle and advised him why he was being stopped. Ellefson immediately told Officer Lien that he stole the yellow Dewalt Blade Saw. Ellefson also told Officer Lien that he had a warrant for his arrest out of the City of Bonney Lake. Officer Lien confirmed that Ellefson had the warrant and placed him under arrest. Officer Lien advised Ellefson of his Miranda Rights. Ellefson stated that he understood his rights and agreed to talk with Officer Lien. Ellefson told Officer Lien that he took the Blade Saw in hopes of selling it for money. Ellefson stated that he put the blade saw in the truck of Elliotts vehicle and had Sawyer drive him down the road. Ellefson stated that he put the saw blade in the woods underneath some plywood. Ellefson stated that he then left the area.

Officer Lien saw that there was a female passenger in the car and several motorcycle parts located in the backseat. Officer Lien had Officer James Larsen of the Bonney Lake Police Department contact the female passenger and advise her of what was occurring. Officer Larsen contacted the female and she identified herself as Brandy K. Sawyer. Sawyer advised Officer Larsen that she was the girlfriend of Ellefson. Officer Larsen advised Sawyer what was going on and also told her she was free to leave. Sawyer asked Officer Larsen if it was ok to grab her personal belongings from the trunk of the car. Sawyer opened the trunk of the car and Officer Larsen noticed several more motorcycle parts including a Washington Motorcycle License Plate, bearing number 595212.

At the same time Officer Larsen was releasing Sawyer, Officer Lien questioned Ellefson about the motorcycle parts located in the backseat. Ellefson became very nervous and stated that he just bought a Suzuki Katana motorcycle from a friend named Joe Shockey. Officer Lien observed Sawyer open the trunk of the car and went and contacted Officer Larsen. Officer Larsen noticed that all the parts appeared to come from the same motorcycle. A records check of the license number later revealed that the parts were from a stolen motorcycle reported by the Pierce County Sheriff's Office on May 7th, 2004.

Officer Lien returned and contacted Ellefson. Officer Lien again questioned Ellefson about the motorcycle parts. Ellefson stated that he first observed the motorcycle at Steve and Shari Fishers house in South Hill, Puyallup. Ellefson stated that his friend Joe Shockey brought the motorcycle to the house and wanted to trade the motorcycle to him for a DVD player, a pressure washer, and a battery charger. Ellefson stated that he agreed to the deal and he took the motorcycle over to Sawyer's mothers house at 7520 187th Street Court East about one week ago. Ellefson stated that he returned to the Fisher house a few days later because Shockey had the rest of the parts to the motorcycle. Ellefson stated that he assembled the motorcycle over at Sawyer's house and noticed that he was still missing parts. Ellefson told Officer Lien that he was missing the gas tank and the carburetor. Ellefson spoke with Shockey again and asked him about the gas tank and carburetor. Shockey told Ellefson that the tank and the carburetor were located at his brother Chuck's house over by Swiss Park in Bonney Lake.

Ellefson told Officer Lien that he became suspicious of the motorcycle and thought it might be stolen. Ellefson advised Officer Lien that he spoke with Shockey again and Shockey agreed to buy the motorcycle back for \$200. Ellefson stated that he was on his way to Shockey's brothers house to contact Shockey and return the motorcycle parts when Officer Lien stopped him.

Complaint for Search Warrant/Property - 3

Officer David Thaves of the Bonney Lake Police Department arrived on the traffic stop and contacted Sawyer. Sawyer advised Officer Thaves that the motorcycle was located at her mother's house. Sawyer advised the officers that she would take them to her mother's house and retrieve the motorcycle. Officer Thaves transported Sawyer to her mother's residence. Officer Thaves obtained consent to search for the motorcycle. Sawyer led Officer Thaves to the motorcycle, which was located on the side of the house. Officer Thaves recovered the motorcycle and obtained photographs. The motorcycle is missing the gas tank, and the carburetor. The motorcycle's vehicle identification number plate had been rubbed off and it was not identifiable.

Officer Lien spoke with the registered owner of the motorcycle and he responded to the traffic stop. The registered owner of the motorcycle identified the parts in the car and later identified the motorcycle as being his. The registered owners name is Lucas Meier. Meier came back as the registered owner of the motorcycle plate in the trunk of the car.

Officer's involved in these incidents, including your affiant are very familiar with the residence located next to the Swiss Sportsmans Club. Your affiant has seen Joe Shockey at the residence on several occasions. Your affiant knows the address to be 19616 94th Street East in Bonney Lake, Washington.

Your affiant requested an NCIC III criminal history check for James J. Shockey, which revealed felony convictions for Attempt to Elude and Unlawful Possession of a Controlled Substance, and misdemeanor convictions for Possession of Stolen Property, and Theft.

Your affiant requested an NCIC III criminal history check for Charles K. Shockey, which revealed felony convictions for Unlawful Possession of a Controlled Substance.

DESCRIPTION OF PROPERTY TO BE SEARCHED

Due to the above information, Affiant verily believes that the above evidence is concealed in or about a particular house or place, to-wit:

- 1) The residence is a single story family mobile home, white in color with brown trim. The residence has an attached carport with several vehicles in and around the property. The address is 19616 94th Street East in Bonney Lake, Washington. The residence is registered to Rozella M. Waschell, with Pierce County parcel number 4490500360.
- 2) All vehicles registered to James J. Shockey
- 3) The person of James J. Shockey.

Based on all the foregoing information, along with Affiant's experience in conducting stolen property investigations, Affiant verily believes that the illegal activity of possession of stolen property exists at the above described properties and that there is probable cause to search the property located at: 19616 94th Street East in Bonney Lake, Washington in Pierce County to include those structures as described in the preceding section and vehicles registered to the suspect (James J. Shockey.) Possessing stolen property 2nd degree is a violation of Revised Code of Washington, Section 9A.56.160.

KMA

Officer Kurtis M. Alfano

Subscribed and sworn to before me this

24

day of

MAY

2006

[Signature]

SUPERIOR COURT

[Signature]

E

- 9) CELLULAR TELEPHONES AND DIGITAL PAGERS
- 10) COMPUTER EQUIPMENT/ACCESSORIES TO INCLUDE HARD DRIVES, FLOPPY DISKS, PROGRAMS, STORAGE MEDIA, COMPUTER MANUALS, MONITORS, KEYBOARDS, PRINTER.
- 11) FIREARMS
- 12) SURVELLANCE EQUIPMENT

are all evidence of an attempt to commit an offense under the Uniformed Controlled Substance Act, R.C.W. 69.50, in violation of R.C.W. 69.50.401. That the above material is necessary to the investigation and/or prosecution of the above described felonies for the following reasons: as evidence of the continuing crimes of **UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE (METHAMPHETAMINE)**, a violation of **RCW. 69.50.401**

- 1) The residence is a single story family mobile home, white in color with brown trim. The residence has an attached carport with several vehicles in and around the property. The address is 19616 94th Street East in Bonney Lake, Washington. The residence is registered to Rozella M. Waschell, with Pierce County parcel number 4490500360.
- 2) All vehicle's registered to the suspect James J. Shockey located on the property listed above.

Affiant believes that the above evidence is concealed in or about this location based upon the following facts and circumstances:

AFFIANT OFFICER KURTIS M. ALFANO
Training and Experience

Affiant Alfano has been a fully commissioned law enforcement officer with the Bonney Lake Police Department since 04/12/2000 and was previously a commissioned law enforcement officer with the Buckley Department for over 5 years; Affiant is currently assigned to patrol with secondary duties as a Bonney Lake Police Department narcotics/property investigator. Affiant Alfano has completed the Washington State Criminal Justice 440 hour Basic Law Enforcement Academy; Affiant Alfano has completed a 40 Clandestine Drug Labs/Marijuana Grow course sponsored by CADRE incorporated. Affiant Alfano is a certified Clandestine Drug Lab Technician and a member of the Pierce County Sheriff Department's Clandestine Lab Team where Affiant has executed numerous controlled substance search warrants. Affiant Alfano has served numerous controlled substance search warrants in the past as a Bonney Lake Police Officer, and as a member of the Metro-Pierce Special Response/High Risk Search Warrant Entry Team. In addition to formal training, Affiant Alfano has been personally involved in numerous Thefts, Possession of Stolen Property arrests resulting in more than Twenty (20) convictions for Theft, and Possession of Stolen Property related crimes:

PROBABLE CAUSE:

On May 23, 2004 at 1741 hours, Officer Lien responded to the 6700 block of Vandermark Road for a theft/burglary report. Officer Lien contacted the victim John P. Hofer and a witness Edward A. Elliot. Hofer advised Officer Lien that he was missing a yellow Dewalt Blade Saw bearing serial number 114134 from his job site. Hofer advised Officer Lien that the Dewalt
Complaint for Search Warrant/Methamphetamine Lab - 2

Blade Saw was stolen from his job site where he is building a residence under construction. Hofer advised Officer Lien that Elliot is helping him build the residence and that he had information as to who may have taken the saw.

Officer Lien spoke with Elliot. Elliot advised Officer Lien that he lives next door to the residence under construction at 6704 Vandermark Road. Elliot advised Officer Lien that on May 22, 2004 at 8:00 pm, his friend Matthew B. Ellefson came over to his house to borrow some money. Elliot told Officer Lien that he gave Ellefson some money and the keys to his 1986 Dodge Aries "K" passenger car. Elliot stated that around 10:00 pm that night he observed Ellefson and his girlfriend Brandy walking around the new home under construction. Elliot stated that Ellefson was in and out of the house several times throughout the night and the last time he saw him there was at 1:30 am on May 23rd, 2004. At around 2:00 am Elliot stated that he walked over to the house. Elliot said that noticed the saw missing from a red lock box located in the downstairs of the house.

Elliot advised Officer Lien that around 7:30 am on May 23rd, 2004 Ellefson came back to his house. Elliot confronted Ellefson about the missing blade saw. Ellefson denied stealing the blade saw and told Elliot that he would return his vehicle on Monday May 24th.

Hofer told Officer Lien that another neighbor had seen Ellefson and a female subject parked in a car near a wooded area on Vandermark Road. Officer Lien contacted the neighbor who identified himself as Nunzio D. Longordo. Longordo lives at 6606 Old Vandermark Road. Longordo stated that on May 23rd, 2004 at 7:30 am his wife asked him to check on a suspicious vehicle that was parked across the street in a wooded area. Longordo stated that he walked outside and observed a blue mid 1980's four-door passenger car backed up to the wooded area. Longordo stated that the vehicle immediately left the area when the occupants saw him. Longordo stated that a female was driving the vehicle and the other subject was a male passenger. Longordo stated that he was able to obtain a partial license plate of 673-GY. At 1630 hours Longordo walked over to the woods and checked around. Longordo stated that he observed the blade saw underneath some plywood and shrubbery. Longordo walked over to the house and contacted Hofer. Hofer advised Longordo that the blade saw was his. At the time Officer Lien wrote his police report, (04-1232) Ellefson had not returned Elliots vehicle.

On May 24, 2004 at 2120 hours Officer Scott Lien of the Bonney Lake Police Department conducted a vehicle stop on a 1986 Dodge Aries "K" car, bearing Washington License number 673-MGC. Officer Lien stopped the vehicle at 7209 West Tapps Highway in Bonney Lake, Washington. Officer Lien had previous knowledge that the vehicle was the suspect vehicle in a theft/burglary that occurred on May 23rd, 2004. (The theft/burglary incident is listed above.)

Officer Lien contacted the driver of the vehicle and asked the subject for his license. The driver stated that he did not have a driver's license and identified himself as Matthew B. Ellefson. Officer Lien had Ellefson step from the vehicle and advised him why he was being stopped. Ellefson immediately told Officer Lien that he stole the yellow Dewalt Blade Saw. Ellefson also told Officer Lien that he had a warrant for his arrest out of the City of Bonney Lake. Officer Lien confirmed that Ellefson had the warrant and placed him under arrest. Officer Lien advised Ellefson of his Miranda Rights. Ellefson stated that he understood his rights and argeed to talk with Officer Lien. Ellefson told Officer Lien that he took the Blade Saw in hopes of selling it for money. Ellefson stated that he put the blade saw in the truck of Elliots vehicle and had Sawyer drive him down the road. Ellefson stated that he put the saw blade in the woods underneath some plywood. Ellefson stated that he then left the area.

Complaint for Search Warrant/Methamphetamine Lab - 3

Officer Lien saw that there was a female passenger in the car and several motorcycle parts located in the backseat. Officer Lien had Officer James Larsen of the Bonney Lake Police Department contact the female passenger and advise her of what was occurring. Officer Larsen contacted the female and she identified herself as Brandy K. Sawyer. Sawyer advised Officer Larsen that she was the girlfriend of Ellefson. Officer Larsen advised Sawyer what was going on and also told her she was free to leave. Sawyer asked Officer Larsen if it was ok to grab her personal belongings from the trunk of the car. Sawyer opened the trunk of the car and Officer Larsen noticed several more motorcycle parts including a Washington Motorcycle License Plate, bearing number 595212.

At the same time Officer Larsen was releasing Sawyer, Officer Lien questioned Ellefson about the motorcycle parts located in the backseat. Ellefson became very nervous and stated that he just bought a Suzuki Katana motorcycle from a friend named Joe Shockey. Officer Lien observed Sawyer open the trunk of the car and went and contacted Officer Larsen. Officer Larsen noticed that all the parts appeared to come from the same motorcycle. A records check of the license number later revealed that the parts were from a stolen motorcycle reported by the Pierce County Sheriff's Office on May 7th, 2004.

Officer Lien returned and contacted Ellefson. Officer Lien again questioned Ellefson about the motorcycle parts. Ellefson stated that he first observed the motorcycle at Steve and Shari Fishers house in South Hill, Puyallup. Ellefson stated that his friend Joe Shockey brought the motorcycle to the house and wanted to trade the motorcycle to him for a DVD player, a pressure washer, and a battery charger. Ellefson stated that he agreed to the deal and he took the motorcycle over to Sawyer's mothers house at 7520 187th Street Court East about one week ago. Ellefson stated that he returned to the Fisher house a few days later because Shockey had the rest of the parts to the motorcycle. Ellefson stated that he assembled the motorcycle over at Sawyer's house and noticed that he was still missing parts. Ellefson told Officer Lien that he was missing the gas tank and the carburetor. Ellefson spoke with Shockey again and asked him about the gas tank and carburetor. Shockey told Ellefson that the tank and the carburetor were located at his brother Chuck's house over by Swiss Park in Bonney Lake.

Ellefson told Officer Lien that he became suspicious of the motorcycle and thought it might be stolen. Ellefson advised Officer Lien that he spoke with Shockey again and Shockey agreed to buy the motorcycle back for \$200. Ellefson stated that he was on his way to Shockey's brothers house to contact Shockey and return the motorcycle parts when Officer Lien stopped him.

Officer David Thaves of the Bonney Lake Police Department arrived on the traffic stop and contacted Sawyer. Sawyer advised Officer Thaves that the motorcycle was located at her mother's house. Sawyer advised the officers that she would take them to her mother's house and retrieve the motorcycle. Officer Thaves transported Sawyer to her mother's residence. Officer Thaves obtained consent to search for the motorcycle. Sawyer led Officer Thaves to the motorcycle, which was located on the side of the house. Officer Thaves recovered the motorcycle and obtained photographs. The motorcycle is missing the gas tank, and the carburetor. The motorcycle's vehicle identification number plate had been rubbed off and it was not identifiable.

Officer Lien spoke with the registered owner of the motorcycle and he responded to the traffic stop. The registered owner of the motorcycle identified the parts in the car and later identified

Complaint for Search Warrant/Methamphetamine Lab - 4

the motorcycle as being his. The registered owners name is Lucas Meier. Meier came back as the registered owner of the motorcycle plate in the trunk of the car.

Officer's involved in these incidents, including your affiant are very familiar with the residence located next to the Swiss Sportsmans Club. Your affiant has seen Joe Shockey at the residence on several occasions. Your affiant knows the address to be 19616 94th Street East in Bonney Lake, Washington.

Your affiant requested an NCIC III criminal history check for James J. Shockey, which revealed felony convictions for Attempt to Elude and Unlawful Possession of a Controlled Substance, and misdemeanor convictions for Possession of Stolen Property, and Theft.

Your affiant requested an NCIC III criminal history check for Charles K. Shockey, which revealed felony convictions for Unlawful Possession of a Controlled Substance.

ADDENDUM:

On May 24, 2004 at approximately 1330 hours, The Metro Pierce Special Response Team (MPSRT) served a Pierce County Superior Court search and seizure warrant issued on May 24, 2004 by Pierce County Superior Court Judge Sergio Armejo

Pursuant to the search of the property located at 19616 94th Street East, your affiant observed the following items associated with the possession of methamphetamine. Your affiant knows from his training and experience, both as a patrol officer, and as a member of the Pierce County Sheriff's Department Clandestine Lab Team that the items observed at the property are commonly seen in the use of controlled substances.

Your affiant was advised my members of the Metro S.R.T. Unit that they contacted Joe Shockey standing next to a blue Dodge Van bearing Washington License number 940-NOR. While Shockey was being taken into custody Metro Unit Member Bellmer advised that he observed Shockey take an unknown article out of his pocket and toss it inside the van. Officer Bellmer stated that he believed it to be some type of controlled substance.

Upon an initial walk through of the residence your affiant observed several items that are used to inject, or inhale controlled substances. In the southwest bedroom your affiant observed several needles lying on the floor, on the bed and in the dresser. The needles are used to inject controlled substances. You affiant also observed a clear plastic baggie on the bed containing a white powder of suspected methamphetamine. The dresser drawers were open and you affiant observed a red book that was titled "Advanced Techniques of Clandestine Psychedelic Amphetamine Manufacture Your affiant was told by one of the home owners that the room belonged to Chuck Mayfield. Your affiant observed paperwork on the bed that was addressed to Chuck Mayfield. Your affiant spoke with Mayfield and he advised that he did not live at the house. Your affiant received information prior to this incident that Mayfield has been living there for at least a year.

Complaint for Search Warrant/Methamphetamine Lab - 5

DESCRIPTION OF PROPERTY TO BE SEARCHED

Due to the above information, Affiant verily believes that the above evidence is concealed in or about a particular house or place, to-wit:

- 1) The residence is a single story family mobile home, white in color with brown trim. The residence has an attached carport with several vehicles in and around the property. The address is 19616 94th Street East in Bonney Lake, Washington. The residence is registered to Rozella M. Waschell, with Pierce County parcel number 4490500360.
- 2) All vehicle's registered to the suspect James J. Shockey located on the property listed above.
- 3) A blue Dodge Van bearing Washington License number 940-NOR. The vehicle identification number is 2b6hb2379fk295383. The van is located in the driveway to the property.

Based on all the foregoing information, along with Affiant's experience in conducting Methamphetamine investigations, Affiant verily believes that the illegal possession, manufacturing, and/or distribution of Methamphetamine exists at the above described properties and that there is probable cause to search the property located at: 19616 94th Street East in Bonney Lake, Washington in Pierce County to include those structures as described in the preceding section and vehicles registered to the suspect. The possession, manufacturing, and distribution of Methamphetamine is a violation of the Revised Code of Washington, Section 69.50.401.

KMA

OFFICER KURTIS M. ALFANO

Subscribed and sworn to before me this 24th day of May, 2004.

Leander K. Thompson
SUPERIOR COURT JUDGE

BONNEY LAKE POLICE

PROPERTY REPORT

04-1 07376 8

DATE 5/21/04

PROPERTY ROOM USE ONLY PAGE

TYPE OF CRIME SEARCH WARRANT

RELATED CASE # COUNTY

EVIDENCE

FOUND

LABORATORY WORK REQUIRED: YES

SAFEKEEPING

OWNER UNKNOWN

CENSUS

DIST.

A.M. MAY 26 2004

PROPERTY OBTAINED FROM:

ADDRESS

PHONE

19616 94th ST. E

PIERCE COUNTY, WASHING
KEVIN STOCK, County C
5: DEF

VICTIM	LAST NAME	FIRST	MIDDLE	SUBJECT	LAST NAME	FIRST	MIDDLE
	STREET ADDRESS	CITY	PHONE		STREET ADDRESS	CITY	PHONE
					SUBJECT	Samos	S
					19616 94th ST. E.		

PROPERTY INVENTORY

PROPERTY ROOM USE ONLY

ITEM NO.	PROPERTY DESCRIPTION	LOC.	F/O	QTY.	SERIAL NO.	WA/NCIC	LOCATION	RECEIPT NO.
1	SUZUKI GAS TANK	BD	3525	1				
2	PLASTIC BAG W/ WHITE POWDER FROM UN + FOR MATH	BD	3525	1				
3	REPUBLIC ARM .45 CAL ACP	BD	3525	1				
4	BULLETS FROM #3	BD	3525	42				
5	PLASTIC BAG W/ TAN POWDER FROM BEDROOM + FOR MATH	BD	3525	1				
6	WHITE PILLS IN PLASTIC BAG	BD	3525	1				
7	Black wallet w/ CHARLES MATHIAS	BD	3525	1				
8	TIN FOIL W/ COFFEE FILTER	BD	3525	1				
9	BOOK FROM DRAWER	BD	3525	1				
10	ELECTROMAG SCALE	BD	3525	1				
11	BAGGIES	BD	3525	1				
12	BIRD HOUSE CANCEL	BD	3525	1				
13	VIDEO CAMERAS FROM CLOSET	BD	3525	2				
14	BAGGIE OF WHITE POWDER	BD	3525	1				

PROPERTY SUBMITTED BY: [Signature] UNIT NO. 3525 DATE 5/21/04

ADDITIONAL DESCRIPTIONS OR COMMENTS:

BLPD EVIDENCE ROOM

PROP ROOM USE ONLY	PROPERTY RECEIVED: METHOD	BY:	DATE
	PROPERTY INVENTORIED BY:	UNIT NO.	DATE

IN COUNTY CLERK'S OFFICE
 A.M. MAY 24 2004 P.M.
 PIERCE COUNTY WASHINGTON
 KEVIN STEPHENSON County Clerk
 BY _____ DEPUTY

Return of Officer

State of Washington)
) ss: No. 04-1 0737 8
 County of Pierce)

This is to certify that I received the within Search Warrant on the 24 day of May, 2004 and that pursuant to the command contained therein, I made due and diligent search of the person, place or thing described therein and found the following items;

See attached Property Sheet.

Names of persons found in possession of property;

CHARLES MAYFIELD, JAMES SHOCKEY, CARRIE LEHMAN, FREDRICK LEHMAN

Names of persons served with a true and complete copy of Search Warrant;

CHARLES MAYFIELD, JAMES SHOCKEY, CARRIE LEHMAN, FREDRICK LEHMAN

Description of door or conspicuous place where a copy of Search Warrant was posted;

LEFT ON COFFEE TABLE IN KITCHEN

The property is now kept at the Bonney Lake Police Department Property Room located at Bonney Lake Public Safety Building.

Dated this 24th day of MAY, 2004

BONNEY LAKE POLICE
AGENCY

Witnessed:

[Signature]
[Signature]

ORIGINAL
COPIES