

No. 34019-4-II

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

STATE OF WASHINGTON,
Respondent,

v.

FRED IRVINE LEFFLER,
Appellant.

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APPELLANT'S BRIEF

Carol A. Elewski, WSBA # 33647
Attorney for Appellant
P.O. Box 4459
Tumwater, WA 98501
(360) 570-8339

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A. ASSIGNMENTS OF ERROR

Assignments of Error

1. The trial court erred in finding that the methamphetamine lab team searched the Defendant's entire property for two reasons, possible chemical hazards and the presence of any person posing a threat to the officers. Clerk's Papers (CP) at 110 (finding of fact No. 14).

2. The trial court erred in finding that the officers "smelled chemical odors outside each of" the structures on the property. CP at 110 (finding of fact No. 14).

3. The trial court erred in noting that the methamphetamine lab team conducted chemical hazards assessments of each of the buildings on the property. CP at 111 (finding of fact No. 16).

4. The trial court erred in holding that the "protective search of the fifth-wheel trailer, the mobile home and the shed was valid under the emergency exception because of the chemical smells and possible chemical hazards when considered in conjunction with

the Defendant's comments regarding "gassing." CP at 111 (reason for admissibility No. 3).

5. The trial court erred in holding that the officers conducted "a chemical hazard assessment of the garage." CP at 112 (reason for admissibility No. 4).

6. The trial court erred in holding that if the entry into the garage were unreasonable, "the evidence found in the garage is admissible under the doctrine of inevitable discovery where the evidence found at the other locations on the property supported probable cause to search the entire property. The evidence found in the garage would have inevitably been discovered as a result of the service of the search warrant." CP at 112 (reason for admissibility No. 5).

7. The trial court erred in holding that the warrant was valid because the evidence supplied in the probable cause statement was "lawfully obtained as the fruit of a hazard assessment pursuant to the emergency exception." CP at 112 (reason for admissibility No. 6).

Issue Pertaining to Assignments of Error

When officers smelled a strong, but unidentified, chemical smell emanating from a structure on Defendant's rural premises; believed that a methamphetamine lab was present, but had no reason to suspect a dangerous process was then being conducted; took no steps consistent with an emergency situation other than the contested search; and one officer averred that a telephonic warrant would have been "very doable;" was the emergency exception to the warrant requirement not available because the "emergency" was a pretext to conduct an evidentiary search, there was no objective emergency and the officers could have obtained a telephonic warrant?

Standards of Review

Appellate courts review *de novo* a trial court's conclusions of law regarding a suppression motion. *State v. Cardenas*, 146 Wn.2d 400, 407, 47 P.3d 127 (2002) (citation omitted). Courts review challenged factual findings to determine if they are supported by

substantial evidence. *State v. Johnson*, 104 Wn. App. 409, 414, 16 P.3d 680 (2001) (citations omitted).

B. STATEMENT OF THE CASE

Procedural History

By information, the State charged the defendant in this case, Fred Irvine Leffler, with the unlawful manufacture of a controlled substance, methamphetamine, occurring on April 21, 2005, in violation of RCW 69.50.401(1)(2)(b). CP at 1-2.

Mr. Leffler moved to exclude all the evidence discovered during searches of his property. CP at 3-35. While the evidence was obtained through a search pursuant to a warrant, the warrant was based on information obtained through a warrantless search. Following a hearing, the court, the Honorable John A. McCarthy presiding, denied the motion. CP at 105-113, *Verbatim Report of Proceeding* for 9/15/05 (RP2) at 24-28. Mr. Leffler later was convicted after a bench trial upon stipulated facts, the Honorable Kitty-Ann Van Doorninck presiding. See RP; CP at 114-17.

Sentencing was held on October 24, 2005. See *Verbatim Transcript of Proceedings, Sentencing*. Under the Sentencing Reform Act (SRA), Mr. Leffler's offender score was determined to be 3. CP at 121. The offense has a seriousness level of III; providing a standard sentencing range of 68-100 months. RCW 9.94A.517; RCW 9.94A.518. The court sentenced Mr. Leffler to 68 months in custody. CP at 123. It imposed community custody of nine to twelve months. CP at 124. The court imposed a total of \$1,110 in fees. CP at 122.

This appeal followed. CP at 130-142.

Substantive Facts

The Suppression Hearing

In the mid-morning of April 21, 2005, Deputy Jake Greger and his "Community Support Team" responded to an anonymous complaint alleging that "strong chemical smells" were coming from a certain property in Puyallup, particularly from a "fifth wheel," or travel trailer on the property. RP for 9/1/05 (RP1) at 7-8. The property was located in an unincorporated area of Pierce County, accessed off a series of dirt roads and

on a dead end. RP1 at 36 & 50. In addition to the fifth wheel, the property also contained a mobile home, a small shed and a garage. RP1 at 37.

When Greger arrived and exited his car, he could smell a "really harsh chemical smell" from about 30 feet away from the fifth wheel. RP1 at 10. As he approached the fifth wheel, the smell got stronger. RP1 at 10.

While Greger hung back due to the smell, RP1 at 14, his sergeant knocked on the door of the fifth wheel and Mr. Leffler answered the door. RP1 at 10. Upon running his name through the records system, the officers learned that Mr. Leffler had an outstanding Department of Corrections (DOC) felony escape warrant. RP1 at 10 & 15. It had been issued for failure to report and not complying with conditions of supervision. RP1 at 28-29. Greger arrested Mr. Leffler, put him in the patrol car, and read him his *Miranda* rights. RP1 at 11 & 17-18. Greger then turned Mr. Leffler over to a DOC community corrections

specialist, Torrey McDonough, who was a member of the team responding to the complaint. RP1 at 9, 11 & 25.

McDonough spoke to Mr. Leffler about his outstanding probation issues. RP1 at 28-30. He also spoke with Leffler's probation supervisor and learned that he had permission to search Mr. Leffler's fifth wheel. RP1 at 29-30. Mr. Leffler refused to consent to the DOC search. RP1 at 30. Although maintaining he was nevertheless authorized to search, the officer decided not to conduct the search after Mr. Leffler told him that a "gasser" and "muriatic acid" were in the travel trailer. RP1 at 31. McDonough relayed that information to the other officers so that no one unprepared would enter the travel trailer. RP1 at 31.

After McDonough had spoken to Mr. Leffler, Greger also questioned him. RP1 at 18. Mr. Leffler said that a friend, who had left about an hour prior to the officers' arrival, had stopped by the prior night to "pound[] some plugs." RP1 at 19. When the officer inquired about that phrase, Mr. Leffler responded that the friend was "gassing." RP1 at 19. This led Greger

to believe Mr. Leffler was discussing methamphetamine production. The officer was generally familiar with meth production from in-house training and the "close to 100" meth labs he has investigated. RP1 at 20. Mr. Leffler declined to speak further to the officers. RP1 at 19.

Concerned about officer safety because of the chemical smell, Greger called the methamphetamine lab team to search the property. RP1 at 11-12. Because of the chemical smell, no one but the lab team entered any of the structures on the property. RP1 at 41. The team responded in about 45 minutes, at which time Greger released the scene to them. RP1 at 12. From the time of the Community Support Team's arrival at the property, one hour and five minutes elapsed before the lab team arrived. RP1 at 48. Greger apparently did not consider obtaining a warrant for the search, although he noted that telephonic warrants "are very doable." RP1 at 23. He remained on the property for one and a half to two hours, until he transported Mr. Leffler. RP1 at 22.

Deputy Sheriff Franklin J. Clark, a member of the "clandestine lab team," helped another officer "clear the property for officer safety reasons as well as a performance safety assessment." RP1 at 35 & 37. A "performance safety assessment" is done to ascertain that no active chemical reaction is occurring in a suspected lab that could erupt into flame or explode. RP1 at 37. Clark testified that there was not time to get a search warrant because of the dangers meth labs pose: "reactions . . . have actually exploded;" he knew of tanks leaking ammonia and requiring the surrounding areas to be evacuated; and a byproduct of one method of meth manufacturing is a deadly gas, phosphene gas." RP1 at 47. There was no testimony related to the smell of ammonia or phosphene gas at the hearing. In fact, although the officers spoke of a strong chemical odor at Mr. Leffler's property, it was never identified or characterized at the hearing. See RP1.

After arriving at the scene, the officers spent about ten minutes donning protective gear. RP1 at 39.

They then entered the fifth wheel to conduct a performance safety assessment. RP1 at 38-39. While conducting the safety assessment, they saw items that they believed were related to methamphetamine manufacturing: Jars of liquid, muriatic acid, a bottle with tubing coming out of the top, a crock pot containing an unknown reddish-brown substance, and coffee filters. RP1 at 39-40 & 45.

The officers next "cleared" the mobile home "for officer safety reasons." RP1 at 40. They did not conduct a performance safety assessment of the mobile home. RP1 at 41. While in the mobile home, however, the officers saw items that "appeared to be clandestine lab-related," such as a pressure cooker, bottles of iodine, plastic baggies and a gram scale. RP1 at 41 & 43.

Then the officers went into the shed "to confirm no one was in there" and to do an assessment. RP1 at 42. "[O]dors were also coming from that building." RP2 at 42. Again the officers saw items they believed were related to meth manufacturing, including gas cans

with a white residue and a cooler that contained a white substance. RP1 at 42-43.

Finally, the officers searched the garage "purely for officer safety reasons." RP1 at 44. In it, they saw propane cylinders and other pressurized cylinders which may be used to store anhydrous ammonia, sometimes used in the manufacturing of methamphetamine. RP1 at 44.

These searches were done without a warrant. Clark obtained a search warrant on the basis of his affidavit later that day. RP1 at 46. He initially stated that since houses were "within 100 feet," the danger of explosion or toxic fumes prohibited obtaining a warrant prior to the searches. RP1 at 46-47. He later stated that one house "was off to the west, and I believe there was also a house to the south." RP1 at 50. When the court asked him to be more specific, Clark stated that it was 100 feet from the mobile home to the property line and he "believe[d] there were houses not much farther than that." RP1 at 51.

According to Mr. Leffler, the property comprised one and a half acres in a rural area and the house was in the middle of the lot. RP1 at 54. He estimated that the nearest neighbor to his mobile home was about 200 feet. RP1 at 54-55. He does automotive repair in his garage and had 15 cars on the property. RP1 at 54. At the time the officers knocked on the door of the fifth wheel, he was asleep. RP1 at 52-53.

On the basis of these facts, the court found that the search of Mr. Leffler's property was not pursuant to his probation status with DOC. RP2 at 24. It also held that the search was not a valid protective sweep. RP2 at 25. However, it found that the search was valid under the emergency exception to the warrant requirement. RP2 at 26. Although it noted that searching the garage solely for a protective sweep was not justified, it held that the search of the other parts of the premises was legal. In addition, it held that even excluding the evidence obtained from the garage, the remaining evidence in the affidavit

supported the warrant and the warrant was properly issued. RP2 at 27.

The Findings of Fact and Conclusions of Law

The court's written findings first set forth "The Undisputed Facts," which basically track the facts adduced at the suppression hearing. CP at 105-08. It next describes "The Disputed Facts" and makes findings related to those facts. CP at 108-11. With exceptions noted in the Assignments of Error, these facts also track the testimony from the suppression hearing. However, the findings do not address the feasibility of a telephonic warrant or the potential dangers inherent in meth labs.

Notably, the court resolved the difference between Deputy Clark's and Mr. Leffler's estimates of the distance to the nearest house by finding that the distance was no more than 200 feet, and that it did not matter if it were actually less than that amount. CP at 110.

Mr. Leffler objects to portions of the following findings:

14. According to Deputy Clark, prior to his arrival members of the community response team were sent in to clear the property for officer safety. They approached the fifth-wheel trailer, mobile home and shed, but did not enter any of the structures because they smelled chemical odors outside each of them. Members of the community response team then called in the meth lab team. Deputies Clark and Banach conducted a protective sweep and hazard assessment of the property. They had two purposes. First, the officers sought to make sure no one else was present who might be a threat to officers. Second, the officers also checked for possible chemical hazards at the scene.

CP at 110.

16. While Deputies Clark and Banach conducted the chemical hazards assessment of each of the buildings they observed chemicals and equipment that were hazardous and that he recognized to be commonly used for the manufacture of methamphetamine.

CP at 111.

The court held that the searches of the fifth wheel, the mobile home and the shed were valid under the emergency exception to the warrant requirement because of the chemical smells and possible chemical hazards indicated by Mr. Leffler's comment regarding "gassing." CP at 111. It further noted that protective sweeps "merely for officer safety from

threats by other persons" would not have been valid.
CP at 111.

The court held that given what the officers found in the first three structures, it was reasonable for them to conduct "a chemical hazard assessment of the garage." CP at 112. Even if entry into the garage were unreasonable, the court held that the evidence recovered from it was admissible under the doctrine of inevitable discovery, as it would have been discovered pursuant to the search warrant.

Finally, the court held that the warrant was valid because the evidence supplied in the probable cause statement was "lawfully obtained as the fruit of a hazard assessment pursuant to the emergency exception." CP at 112. For these reasons, it denied Mr. Leffler's motion to suppress the evidence.

C. ARGUMENT

The Emergency Exception to the Warrant Requirement Was Unavailable in this Case Because The "Emergency" was a Pretext for the Search, No Objective Emergency Existed, and Obtaining a Telephonic Warrant Would Have Been "Very Doable"

The police officers' warrantless searches in this case cannot be justified by the emergency exception to the warrant requirement and, thus, violated Mr. Leffler's state and federal constitutional rights. U.S. Const. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated"); Wash. Const. art. I § 7 ("No person shall be disturbed in his private affairs, or his home invaded, without authority of law.").

"As a general rule, warrantless searches and seizures are *per se* unreasonable." *State v. Ladson*, 138 Wn.2d 343, 349, 979 P.2d 833 (1999) (citations and internal quotation marks omitted). The prohibition against warrantless searches and seizures is "subject to a few jealously and carefully drawn exceptions." *Id.* These exceptions include "consent, exigent

circumstances, searches incident to a valid arrest, inventory searches, plain view, and *Terry* investigative stops." *Id.* The emergency exception falls within the exigent circumstances exception.

The emergency exception requires the State to prove the presence of three circumstances: "(1) the searching officer subjectively believed an emergency existed; . . . (2) a reasonable person in the same circumstances would have thought an emergency existed" (*State v. Thompson*, 112 Wn. App. 787, 798, 51 P.3d 143 (2002) (internal quotes omitted)); and (3) there was "insufficient time to get a warrant." *United States v. Echevoyen*, 799 F.2d 1271, 1279 n.5 (9th Cir. 1986). Encompassed within the first two requirements is proof that "the claimed emergency was not simply a pretext for conducting an evidentiary search." *State v. Lynd*, 54 Wn. App. 18, 20, 771 P.2d 770 (1989) (citation omitted); *United States v. Cervantes*, 219 F.3d 882, 890 & 888 (9th Cir. 2000) (adopting three-part test for emergency doctrine: a) there must be "reasonable grounds" to believe emergency exists requiring

immediate assistance, b) the "search must not be primarily motivated by intent to arrest and seize evidence," and c) "some reasonable basis, approximating probable cause," associates the emergency with the place to be searched). In this case, the emergency exception does not apply because the "emergency" was merely a pretext to support an investigative search, no objective emergency existed, and there was ample time to obtain a telephonic warrant.¹

A. The "Emergency" Was Merely a Pretext for an Evidentiary Search

First, when the officers did not treat the situation as an emergency, other than by conducting an "emergency" search, such search was merely a pretext for an evidentiary search. The officers never evacuated either the property or the surrounding areas, they did not contact the fire department, and Greger, at least, unconcernedly remained on the property for an

¹ This three-part test merges state and federal law on the issue, necessary since the legality of the search turns on both state and federal constitutional law. Although the *Cervantes* court did not specifically include the unavailability of a telephonic warrant in its three-part test, its rule that "immediate assistance" be required may be read to incorporate the earlier requirement. Notably, the *Cervantes* decision did not overrule *Echegoyen*.

hour and a half to two hours. *Cf. Cervantes*, 219 F.3d at 887 (officers evacuated building and ensured all open flames were turned off). Based on these actions, it appears that the officers did not actually believe an emergency existed, and instead searched to recover evidence of a meth lab sufficient on which to base a search warrant. Accordingly, this Court should hold that the emergency exception to the search warrant was not available and reverse the lower court's holding.

B. No Objective Emergency Justified the Warrantless Search

Next, no objective emergency existed in this case. For an objective emergency to exist, the danger must be both imminent and grave:

[W]hen premises contain persons in imminent danger of death or harm [or] objects likely to burn, explode or otherwise cause harm . . . police may search those premises without first obtaining a warrant.

State v. Downey, 53 Wn. App. 543, 545, 768 P.2d 502 (1989) (citation omitted); *Cervantes*, 219 F.3d at 889 (“preservation of life or protection against serious bodily injury” justify emergency exception). For example, in *Downey*, three circumstances justified a

search pursuant to an emergency: a) The presence in a residence of high concentrations of ether, known to be a highly volatile and explosive gas; b) the home's location in a residential area where an explosion would be disastrous; and c) the officer's concern that someone overpowered by the fumes might remain in the residence. *Id.* at 546-47.

Similarly, in *Echegoyen*, "an explosive fire hazard" (ether), the possibility of illegal drug activity, and the remoteness of the location – which established limited fire-fighting capabilities, all combined to create the emergency circumstances. 799 F.2d 1271, 1278-79. Likewise, in *Cervantes*, the situation involved a strong chemical smell consistent with methamphetamine production coming from an apartment in a multi-storied apartment building. 219 F.3d at 886.

No similar situation existed here, where the officers knew three facts prior to the warrantless searches: a) A strong, unidentified "chemical smell" emanated from the fifth wheel and other structures on a

rural property, b) muriatic acid and a "gasser" were in the fifth wheel, and c) a person, then gone, had apparently been "gassing," a step in the meth manufacturing process, on the premises the previous night. RP1 at 10, 19 & 31.

This case differs from both *Echegoyen* and *Downey* in that in those cases, the officers knew what chemical they were smelling and the highly dangerous, explosive properties of that chemical. Here, by contrast, nothing apparently was known about either the chemical causing the smell or its properties. Although the officer discussed the dangers of phosphene gas and ammonia, RP1 at 47, there was no evidence that the officers believed either of those substances were present. In fact, no one even associated the chemical smell with a chemical known to be used in a meth lab. See RP1. Thus, the chemical smell itself could not have created the emergency circumstances.

Moreover, this case occurred neither in a residential area, in which an explosion would have been "disastrous," nor a remote location without readily

available emergency services. While two other houses were in the vicinity, they were at least 100 and likely even 200 feet away, in a rural area at the dead end of a road reached by dirt roads. The sole two neighbors could have been advised of the situation and asked to remain clear. Thus, unlike the situations in *Echegoyen* and *Cervantes*, the premises would have been relatively easy to secure. By the same token, the instant case is distinguishable from *Downey*, where the residence was in such a remote location fire fighting services were not readily available. There is no indication in the record that the fire department would have been unable to respond in this case.

For these reasons, an emergency of the types found in *Echegoyen*, *Downey*, and *Cervantes* did not exist here.

On the other hand, the facts do indicate that the officers believed components of a meth lab were on the property. However, this circumstance does not trigger the emergency exception to the warrant requirement without evidence that a dangerous part of the meth manufacturing process was then taking place or that

other peoples' lives were at risk. *Thompson*, 112 Wn. App. 787; *Cervantes*, 219 F.3d 882.

In *Thompson*, the Court held that the presence of a methamphetamine lab justified an emergency, warrantless search. However, in that case, the officers were apparently concerned that actual "cooking" was then taking place. There, a police officer had, *inter alia*, seen in plain view a glass container with a white crystalline substance through the open door of an oven in a suspect's trailer. 112 Wn. App. at 792. The officer also saw other items consistent with a methamphetamine lab, causing him to call in a clandestine lab investigator. The investigator checked to make sure the oven was off, looked into a burn barrel and burn piles on the property and checked the safety of a corroded propane tank in front of the trailer (he also checked a boathouse on the property, with the owners' valid consent). *Id.* at 793. On these facts, the officer's warrantless searches were reasonable.

Thompson is distinguishable from the instant case as imminent, grave dangers were indicated there and were not indicated here. In *Thompson*, had the oven been on, a dangerous, even explosive, situation would have been present. Similarly, had the burn piles or burn barrel been smoldering, an active risk of fire or explosion might have existed. Thus, the searches were necessary to allay real concerns of imminent, grave dangers.

By contrast, in this case, while the officers had reason to believe illegal activities had taken place on the premises, they had no reason to think those activities were then-ongoing or presented any imminent threat. Mr. Leffler told the officers the person doing the "gassing" had left. Mr. Leffler himself had just been woken up by the officers. Thus, unlike the situation in *Thompson*, where a meth product was in the oven and evidence of burning was present, here there was no reason to suspect that a dangerous stage of methamphetamine production was then being performed.

Moreover, the nature of the officer's search was much more limited in *Thompson*. There, the only structure the lab investigator entered without consent was the trailer, and he did that solely to check the oven. The Court noted that the investigator "entered the trailer to verify that the oven was off, looked into a burn barrel and burn piles on the property that contained evidence of a methamphetamine lab, checked the safety of a corroded propane tank in front of the trailer, and looked inside the boathouse." *Id.* at 793. By contrast, here the team went inside four separate structures, looking around to a degree that appears much more invasive than in *Thompson*.

Next, the risk of death or serious harm was minimal to nonexistent in this case, where the nearest house was 100 feet away. In *Cervantes*, a suspected meth lab justified an emergency search when the suspected lab was in an apartment building, potentially placing many lives at risk. 219 F.3d 882. By contrast, here, where the suspected meth lab was on a dead end in a rural area, reachable only through dirt

roads, neighbored apparently only by two houses at least 100 feet away, the same safety concerns could not have been present. See *United States v. Martin*, 781 F.2d 671, 674-75 (9th Cir. 1985) (holding that potential explosion within an apartment increases the likelihood of finding exigent circumstances).

Accordingly, in this case, no objective emergency justified the warrantless search and this Court should reverse the superior court's ruling.²

2 In regard to the superior court's ruling, Mr. Leffler points out that the finding that the lab team searched the mobile home and possibly the garage as part of their safety assessment of a potential lab is not supported by the testimony. See CP at 110 & 111, Assignments of Error Nos. 1-5. Clark stated that he searched both the mobile home and the garage solely for protective sweep reasons, not as part of a safety assessment. RP1 at 41 & 44. Thus, to the extent the court upheld the searches of these structures under the emergency exception, the facts do not support its findings. In addition, given Mr. Leffler's arguments herein, even if the facts supported those findings, the law would not. Further, because Mr. Leffler argues that the searches of the mobile home, fifth wheel and shed were not lawful, he also argues that the evidence discovered in the garage should not have been admitted pursuant to the doctrine of inevitable discovery. Assignment of Error No. 6.

C. The Warrantless Search was Illegal When a Telephonic Search Warrant Was Readily Obtainable

Finally, the search fails to meet the requirements of an emergency search as the officers could have attempted to obtain a telephonic warrant, but failed to do so. Exigent circumstances require that the situation not permit the opportunity for a telephonic warrant. In this regard, the State "must also be prepared to show that a telephonic warrant was unavailable or impractical." *Echegoyen*, 799 F.2d at 1279 (citations omitted).

In *Echegoyen*, the record revealed numerous reasons for not obtaining a telephonic warrant. The officers were in a remote location - forty to forty-five minutes from their station, the warrant would have been required in the middle of the night (the officers began their investigation at 12:30 a.m.), and the officers did not have the necessary forms to read to the judicial officer. 799 F.2d at 1279-80. Under these circumstances and the presence of "the potentially serious fire hazard and potentially dangerous drug

traffickers in an isolated mountain community with little fire and police protection," the court concluded that the delay in getting a telephone warrant would have unduly increased the officers' risk of harm. *Id.* at 1280.

By contrast, here, Greger stated generally that a telephonic warrant is "very doable." This conclusion is supported by the record: The officers were in Pierce County, in the middle of the morning. The responding team contained five members, any one of whom could have been put on the task of obtaining a telephonic warrant. In addition, any danger presented by a potential drug manufacturer was contained as Mr. Leffler was in the back of a patrol car. Moreover, although the delay required to obtain a telephonic warrant is not in the record, the search did not begin until roughly an hour and a quarter from the time Greger first appeared on the scene (one hour and five minutes before lab team arrived, ten minutes to don gear). When all the information in support of a telephonic warrant was known to the officers within

minutes of their arrival on the premises, a warrant might have been obtained not much later than the time the officers actually began searching. Finally, as discussed above, the location of Mr. Leffler's property made the premises very easy to secure. For these reasons, unlike the situation in *Echegoyen*, a telephonic warrant was neither unavailable nor impractical. Thus, this Court should reverse the lower court's ruling.

For all of these reasons, the emergency exception to the warrant requirement is not available in this case and the warrantless searches were unlawful. When the warrant was based on the information obtained from the warrantless searches, the warrant was invalid. The evidence obtained pursuant to the warrant was fruit of the poisonous tree and should be suppressed. *State v. Kinzy*, 141 Wn.2d 373, 393, 5 P.3d 668 (2000) (suppressing evidence found as a result of a Fourth Amendment violation); *Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963). Accordingly, this Court should hold that the evidence

discovered pursuant to all the searches in this case should have been suppressed.

D. CONCLUSION

For all of these reasons, Fred Irvine Leffler respectfully requests this Court to suppress the evidence obtained from both the warrantless and warranted searches of Mr. Leffler's property and reverse his conviction.

Dated this 22th day of May, 2006.

Respectfully submitted,



Carol Elewski, WSBA # 33647
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on this 22th day of May 2006, I mailed one copy of the attached brief, postage prepaid, to the attorney for the Respondent, Kathleen Proctor, Deputy Prosecuting Attorney, 930 Tacoma Avenue S, Tacoma, Washington, 98402-2102, and one copy of the brief, postage prepaid, to Mr. Fred Irvine Leffler, DOC No. 850284, Stafford Creek Correction Center, 191 Constantine Way, Aberdeen, WA 98520.


Carol Elewski, WSBA # 33647

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