

NO. 34740-7-II

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

STATE OF WASHINGTON,

Respondent,

v.

FRED WOODS,

Appellant.

COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY
DEPUTY

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 05-1-01410-3

BRIEF OF RESPONDENT

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This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED February 27, 2007, Port Orchard, WA *Jeremy A. Morris*
Original AND ONE COPY filed at the Court of Appeals, Ste. 300, 950 Broadway, Tacoma WA 98402; Copy to counsel listed at left.

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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether there was sufficient evidence to convict when, viewing the evidence in a light most favorable to the State, a rational jury could have found each element of the crime beyond a reasonable doubt?

2. Whether Woods has failed to show that he was denied effective assistance of counsel when he has not shown that counsel's performance was deficient or that the alleged deficient performance prejudiced him?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Fred Woods was charged by amended information filed in Kitsap County Superior Court with four counts of delivery of a controlled substance and one count of possession of a controlled substance. CP 16. Following a jury trial, the defendant was convicted of the possession count and all but one of the delivery counts. CP 70, 76.¹ The defendant received a standard range sentence. CP 76. This appeal followed.

B. FACTS

Detective Martin Garland of the Bremerton Police Department's Special Operations Group testified concerning a number of "controlled buys"

¹ The jury hung on Count III (delivery of a controlled substance) and that count was eventually dismissed. CP 70, 88.

involving Woods. RP 70. Detective Garland explained that in a controlled buy, the police meet with a confidential informant in a controlled environment, arrange the drug deal, and provide the informant with money to purchase the drugs. RP 72. The officers search the informant and his or her car prior to the deal and then conduct another search after the transaction. RP 72-3. The search is a “pretty detailed search” and is from “head to toe.” RP 73. The informant is also provided with “prerecorded” money to use in the transaction, and Detective Garland photocopies this money ahead of time in order to record the serial numbers of the bills involved. RP 74-5.

i. August 5th Controlled Buy

Detective Garland then testified that he arranged a controlled buy from the Defendant on August 5, 2005, and that this was to take place at the Midtown Market on 6th Street in Bremerton. RP 72, 75. In preparation for the buy, Detective Garland searched the informant’s vehicle and Detective Plumb searched the informant’s person at a secure location. RP 76, 124. No money or drugs were found. RP 80, 124. Detective Garland then followed the informant’s car to the location of the buy. RP 77.

Another detective, Detective Elton, also watched the informant in the parking lot, and saw him have a very quick meeting with Woods in which they had a conversation and then some brief physical contact that the Detective described as a brief “meeting of the hands.” RP 190. Detective

Plumb also watched the informant in the parking lot, and saw him have a very quick meeting with Woods in which there was a conversation and then a handshake. RP 125. Detective Plumb then continued to watch the informant until he got into Detective Garland's car. RP 125. After the transaction the informant handed over a baggie of crack cocaine that he said he had purchased from Woods. RP 78.

ii. August 8th Controlled Buy

On August 8, Detective Garland arranged a second controlled buy from Woods. RP 80. On this date, the informant was able to contact Woods and arrange to meet him in the parking lot of a Wal-Mart store in Bremerton. RP 80. Prior to the buy, Detective Garland searched the informant and found no money or drugs on him. RP 80. The informant was given \$60 in marked money for the transaction. RP 85. Detective Garland then drove the informant to the Wal-Mart in an unmarked police car. RP 81. Detective Garland saw the informant walk up to the front of the store, where he waited until Woods arrived. RP 82. He then saw the informant and Woods appear to exchange pleasantries, and there was "hand-to-hand" contact in which Woods pulled something from his pocket and gave it to the informant, while the informant appeared to cup money in his hand and exchange it with Woods. RP 83. Officer Endicott was also on the scene and believed there was an "exchange." RP 148. Once the informant was clear of the scene and the

officers felt sure that he was not being watched, Detective Garland picked the informant up and took him back to the secure location. RP 83. The informant gave the detective crack cocaine, and the detective also searched him to make sure he did not have any money on his person or any additional drugs. RP 83-4.

iii. August 9th Controlled Buy

On August 9, 2005, Detective Garland contacted the informant and set up another controlled buy with Woods at the Midtown Market. RP 85. The facts relating to this count were complicated by the fact that on this occasion the informant initially got into a vehicle with Woods' father, later got out, and then contacted Woods and got into a second car with Woods and another unidentified person. RP 86, 127-28. The jury hung on the count relating to this buy.

iv. August 30th Controlled Buy

On August 30, Detective Garland and the informant again arranged a controlled buy from Woods, and arrangements were made for the informant to meet Woods at his apartment at 1121 Callahan in East Bremerton. RP 89, 91. The informant was provided with \$100 in prerecorded money that had been photocopied before the transaction. RP 89. Detective Garland again talked to the informant about what he was supposed to do inside the residence, and the informant was searched for drugs and money and none

were found. RP 90. The informant was instructed to make the purchase from Woods. RP 91. Detective Garland transported the informant to the area where the buy was to occur and then parked in a location where he was able to see the front door of Woods' residence. RP 90-91. Detective Garland then saw the informant walk up and knock on the front door and then enter the residence. RP 91. Three minutes later, the informant came out of the residence and walked down the road, where he was met by Detective Garland. RP 91-92. The informant then gave Detective Garland some crack cocaine. RP 92. The informant was searched after the buy and did not have any money on him. RP 92-3.

v. *September 8th Search Warrant*

On September 8th Detective Garland and several other detectives served a search warrant on Woods' residence at 1121 Callahan. RP 93, 95. Once at the residence, the officers knocked and announced their presence. RP 96. Detective Garland then heard what sounded like somebody running away from the door. RP 97. Forcible entry was then made. RP 97. Once inside, Detective Elton saw Woods running across the living room towards a bedroom and saw Woods drop a baggie of cocaine. RP 192-93. Detective Elton ordered Woods to the ground, and he complied. RP 193. Detective Garland also testified that he saw Woods lying on the floor in his underwear with several bags of cocaine on the ground around him. RP 97-98. The rest

of the apartment was searched, and no one else was found inside. RP 98.

Woods was arrested and placed in hand restraints. RP 99.

Detective Garland then spoke with Woods and went over the Miranda warnings with him. RP 99. Woods indicated that he understood his rights.

RP 100. Detective Garland then testified as follows,

I asked him a number of questions. We talked about the reasons that I was there and I told him that I had him as a suspect in several controlled buys, the ones that we have talked about here today, as well as the evidence that was there at the scene, the two bags of cocaine and such that we have seen already, and then talked about whether or not he wanted to be honest about what had happened and tell me where he got his drugs and things like that.

RP 100. Detective Garland continued,

I spoke with Mr. Woods and told him that I had four controlled buys from him and I knew his source was somewhere across the bridge, meaning Tacoma. Woods responded, quote/unquote, "You caught me, but you don't know nothing about my guy."

RP 100-01. During this conversation, Woods noticed the other officers collecting evidence, and saw one of the detectives counting money from a bag on a table. RP 101-02. Woods stated that the money didn't have anything to do with the drugs, and that it was from work he had been doing. RP 102. The money was collected and compared with the money used in the controlled buys. RP 102. Detective Garland found that five bills that had

been used in the August 30th buy were mixed in with the \$1270 collected from Woods' apartment. RP 102-03.

Detective Plumb also found a plate with a white powder residue and a razor blade in a closet. RP 133. Detective Bernsten testified that when cocaine is "rocked up" into crack cocaine it generally forms a larger rock-like substance, and a razor blade is often used to break up the larger rock of cocaine into smaller rocks for sale and distribution. RP 209-10.

Clothing belonging to Woods was also found in the apartment, as were pictures of Woods and his girlfriend. RP 199-200. Paperwork belonging to Woods (and bearing his name) was also collected from the apartment's bedroom. RP 146-47, 199-200.

Cynthia Graff, a forensic scientist at the Washington State Patrol Crime Laboratory tested the drugs purchased by the informant at the controlled buys and the drugs found at the apartment and found that they each contained cocaine. RP 173-81.

vi. Passing Mention of a "Suppression" Motion.

At the end of the court proceedings on April 11, Woods began to address the court himself, and the trial court instructed Woods to speak through his attorney. RP 155-56. Defense counsel then stated,

Your Honor, one second. I think I can clarify. He wants to talk about the possibility of whether a suppression motion on

the search warrant was filed. I told him I did not file such a motion because I didn't find merit for the motion.

RP 156. The trial court then asked what evidence Woods was referring to with respect to this question of suppression, and defense counsel responded,

I'm not asking for anything to be suppressed other than what I have already have, Your Honor. I would have filed a motion if I found the motion to be appropriate. I did not.

RP 156-57. The trial court then instructed Woods to speak with his attorney and stated that the court would entertain a further discussion the next morning if needed. RP 157. The record does not indicate what facts or legal basis Woods' believed could have served as a potential basis for suppression motion, and no further discussion took place on the record.

III. ARGUMENT

A. THERE WAS SUFFICIENT EVIDENCE TO CONVICT BECAUSE, VIEWING THE EVIDENCE IN A LIGHT MOST FAVORABLE TO THE STATE, A RATIONAL JURY COULD HAVE FOUND EACH ELEMENT OF THE CRIME BEYOND A REASONABLE DOUBT.

Woods argues that there was insufficient evidence to convict him of the three counts of deliver of a controlled substance. This claim is without merit because, viewing the evidence in a light most favorable to the State, a

rational jury could have found each element of the crime beyond a reasonable doubt.

Evidence is sufficient if, taken in the light most favorable to the State, it permits a rational jury to find each element of the crime beyond a reasonable doubt. *State v. Pirtle*, 127 Wn.2d 628, 643, 904 P.2d 245 (1995), *cert. denied*, 518 U.S. 1026 (1996); *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Moles*, 130 Wn. App. 461, 465, 123 P.3d 132 (2005), *citing State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Additionally, credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Accordingly, a reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

The crime of delivery simply requires the knowing, physical transfer of a controlled substance. *State v. Evans*, 80 Wn. App. 806, 814, 911 P.2d 1344 (1996); *See also*, RCW 69.50.401(a), WPIC 50.06.

On appeal, Woods quotes the defense counsel's closing arguments at trial and argues that these arguments demonstrate that the state failed to prove the charges beyond a reasonable doubt. App.'s Br. at 11-13. While the closing arguments of the defense may show an alternative interpretation of the facts upon which the jury could have conceivably based a not guilty verdict, the mere fact that Woods presented a defense theory does not demonstrate that the evidence was insufficient.

Wood's argument appears to be that the circumstantial evidence was insufficient to support a verdict of guilty because, as defense counsel argued below, the jury could have concluded that the defendant was not guilty despite the circumstantial evidence. Woods' claim in this regard seems to be an attempt to revive the outdated principle that if a conviction is based upon circumstantial evidence, then the circumstances proved must be unequivocal and inconsistent with any possible theory tending to establish innocence. As Washington courts have noted, however, "this principle has been overruled: circumstantial evidence is not necessarily less reliable than direct evidence; even if the only evidence of guilt is circumstantial, the jury need only be convinced of guilt beyond a reasonable doubt and the evidence need not be inconsistent with a hypothesis of innocence." *See, State v. Couch*, 44 Wn. App. 26, 29-30, 720 P.2d 1387 (1986), *quoting State v. Weaver*, 60 Wn.2d 87, 88, 371 P.2d 1006 (1962). Similarly, in *State v. Rangel-Reyes*, the

defendant attempted to argue that circumstantial evidence must be inconsistent with any hypothesis or theory tending to establish innocence. *State v. Rangel-Reyes*, 119 Wn. App. 494, 499 n.1, 81 P.3d 157 (2003). The court, however, rejected this claim, stating that such a rule is, “no longer the rule in Washington.” *Rangel-Reyes*, 119 Wn. App. at 499 n.1, citing *State v. Zunker*, 112 Wn. App. 130, 135, 48 P.3d 344 (2002), *review denied*, 148 Wn.2d 1012, 62 P.3d 890 (2003). See also *State v. Gosby*, 85 Wn.2d 758, 764-67, 539 P.2d 680 (1975) (rejecting multiple hypothesis theory); *State v. Gerard*, 36 Wn. App. 7, 10, 671 P.2d 286 (1983) (recognizing that the *Gosby* Court rejected view that circumstantial evidence must be inconsistent with any theory that tends to establish innocence), *review denied*, 100 Wn.2d 1035 (1984).

As Washington courts have rejected similar “multiple hypothesis” claims, Woods’ argument in the present case (that the evidence was insufficient merely because the State relied on circumstantial evidence and the defense was able to put forth an alternative hypothesis in its closing argument) must be rejected.

Even if this court were to examine each issue raised in the defense closing, however, Woods’ argument must still fail because the evidence in the case at bar was sufficient. The basic theme raised by Woods is that because the informant did not testify, the State did not present any direct

testimony regarding the actual exchanges of drugs for money at the controlled buys.

As outlined above, however, circumstantial and direct evidence are equally reliable. *Delmarter*, 94 Wn.2d at 638. While it is true that in the present case the informant (that is, the person who actually purchased the drugs) did not testify, several previous Washington cases have been upheld on sufficiency challenges despite the fact that the actual purchaser did not testified or testified that no illegal activity took place. In each of these cases the courts have held that the circumstantial evidence was sufficient to sustain the convictions for delivery.

For instance, in *State v. Jones*, 93 Wn. App. 166, 968 P.2d 888 (1998), a police officer observed a person named Stubblefield standing outside a car talking to a person named Williams, who was in the car. *Jones*, 93 Wn. App. at 169. Stubblefield then went to a phone booth and made a brief call. Less than a minute later, Jones came out of a nearby apartment building and met with Stubblefield. *Jones*, 93 Wn. App. at 169. The officer then observed an exchange take place between Stubblefield and Jones in which Stubblefield gave Jones what appeared to be money, and Jones gave Stubblefield a small object. *Jones*, 93 Wn. App. at 169. According to Williams' testimony at trial, Stubblefield then came back to the car and gave cocaine to Williams' passenger. *Jones*, 93 Wn. App. at 169. The officer

subsequently approached the car and saw cocaine and cash inside the car. *Jones*, 93 Wn. App. at 169. When the officers found Jones in the apartment building and searched him, they found that he had over \$400 in cash on him, although no drugs were found on him. *Jones*, 93 Wn. App. at 170. Jones was charged with delivery of cocaine, but denied that he had given cocaine to Stubblefield. *Jones*, 93 Wn. App. at 170. Stubblefield also testified that Jones had not given him drugs, but rather, had only given him five dollars to use to purchase cigarettes and beer. *Jones*, 93 Wn. App. at 170. As in the present case, there was no specific, direct testimony that Jones actually gave drugs to Stubblefield. On appeal, Jones challenged the sufficiency of the evidence. *Jones*, 93 Wn. App. at 176-77. The court noted that circumstantial evidence and direct evidence were equally reliable, and held that the State presented sufficient evidence for a rational jury to find Jones guilty of delivery of a controlled substance. *Jones*, 93 Wn. App. at 176-77.

Similarly, in each of the consolidated cases discussed in *State v. Hernandez*, 85 Wn. App. 672, 935 P.2d 623 (1997), police officers at a distant location observed the defendants engage in what appeared to be drug deliveries. *Hernandez*, 85 Wn. App. at 674. In each case, the customer and merchandise were gone by the time the officers arrested the defendants, but the officers did find drugs on the defendants that appeared similar to the items that had been delivered. *Hernandez*, 85 Wn. App. at 674-75. At trial,

the drugs found on the defendants were introduced as circumstantial evidence that the object delivered by the defendants had been drugs. *Hernandez*, 85 Wn. App. at 675. As in the present case, the actual purchasers of the drugs did not testify and, thus, there was no specific, direct testimony that defendants had actually given drugs to the purchasers. On appeal, the defendants challenged the sufficiency of the evidence. *Hernandez*, 85 Wn. App. at 675. The court, however, held that the evidence was sufficient despite the fact that the people who had actually purchased the drugs were not located (and thus did not testify). *Hernandez*, 85 Wn. App. at 679, 680, 682.

In both *Jones* and *Hernandez*, therefore, the courts held that circumstantial evidence was sufficient to prove a delivery charge despite the lack of direct evidence from the actual recipient of the delivery from the defendants. Furthermore, in *Jones* the evidence was held to be sufficient when it essentially showed that a “middleman” was asked to procure drugs and was then observed having a brief exchange with the defendant, after which the “middleman” produced the drugs as requested. In *Hernandez*, the court went a step further and held that the circumstantial evidence was sufficient despite the fact that the actual substances that were delivered were never recovered. Rather, the court held that the officer’s observations and the circumstantial evidence recovered from the defendants were sufficient for a

jury to conclude that the defendants were guilty of delivery of a controlled substance.

In the present case, the evidence showed that on August 5th the police arranged a controlled buy with Woods and an informant. RP 72, 75. The informant was searched for drugs before the buy, and after none were found, was followed to the buy. RP 76-77, 80, 124. Officers then watched as Woods and the informant had a conversation and a handshake or a “meeting of the hands, and the officers then followed the informant out of the area and the informant handed over a baggie of crack cocaine. RP 78, 125, 190. In short, the informant initially was found to have no drugs, he then briefly met with Woods, after which time he was able to produce the crack cocaine.

Just as in *Jones*, a “middleman” (here, the informant) was asked to procure drugs and was then observed having a brief exchange with the defendant, after which the “middleman” produced the drugs as requested. In addition, the “middleman” in the present case was also searched before the buy and was found to have no drugs on him; a fact which was not present in *Jones*, and which created an even stronger inference in the present case that the drugs came from Woods. Viewing this evidence and all inferences that reasonably can be drawn therefrom in a light most favorable to the State, a rational jury could have concluded that Woods physically transferred cocaine to the informant on August 5th.

Similarly, the evidence showed that on August 8th the police arranged a controlled buy with Woods and an informant. RP 80. The informant was searched for drugs before the buy, and after none were found, was driven to the buy location by an officer. RP 80-82. Officers then watched as Woods and the informant had an “exchange” or “hand-to-hand” after Woods had pulled something from his pocket, and an officer then picked the informant up and he handed over a baggie of crack cocaine. RP 83-84, 148. Again, the informant initially was found to have no drugs, he then briefly met with Woods, and again, after this meeting the informant was able to hand over crack cocaine to the officers. Viewing this evidence and all inferences that reasonably can be drawn therefrom in a light most favorable to the State, a rational jury could have concluded that Woods physically transferred cocaine to the informant on August 8th.

On August 30th, a controlled buy was again arranged between Woods and the informant and was to take place at Woods’ apartment. RP 89, 91. The informant was again searched before the buy, and he was also provided with \$100 in prerecorded money. The police transported the informant to the scene, instructed him to purchase drugs from Woods, and saw the informant go into Woods’ apartment. RP 90-91. The informant came out three minutes later, and gave the officers cocaine. RP 91-92. The State concedes that this initial collection of circumstantial evidence is less convincing than the

evidence in the other deliveries, as the officers did not witness the actual exchange between the informant and Woods. However, there was additional circumstantial evidence regarding this delivery obtained in the search of the Woods' apartment that, when combined with the officers' observations, was sufficient to support the conviction.

When the apartment was later searched, Woods was found inside near two baggies of crack cocaine. Items associated with the act of breaking rocks of cocaine into smaller rocks for sale and distribution were also found. RP 97-98, 192-93, 209-10. In addition to the fact that Woods was the only one in the apartment, other items, such as photographs of Woods and paperwork belonging to him, were also found connecting Woods to the apartment. RP 146-47, 199-200.

Furthermore, five of the prerecorded bills used in the August 30th buy were also found mixed in with money that Woods admitted belonged to him (as he claimed it was from other work that he had done). RP 102-03.

Finally, when Woods was confronted with the fact that the officers suspected him in the four controlled buys at issue and asked him to talk to them about his drug source, Woods told Detective Garland, "You caught me, but you don't know nothing about my guy." RP 100-01. Viewing this evidence and all inferences that reasonably can be drawn therefrom in a light

most favorable to the State, a rational jury could have concluded that Woods physically transferred cocaine to the informant on August 30th

For all of these reasons, there was sufficient evidence on each of the three delivery counts and Woods' arguments to the contrary must fail.

B. WOODS HAS FAILED TO SHOW THAT HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE HE HAS NOT SHOWN THAT COUNSEL'S PERFORMANCE WAS DEFICIENT OR THAT THE ALLEGED DEFICIENT PERFORMANCE PREJUDICED HIM.

Woods next claims that he was denied effective assistance of counsel because his trial counsel did not file a suppression motion. App.'s Br. at 14. This claim is without merit because Woods has failed to show what the alleged basis for the suppression motion would have been or that such a motion would properly have been granted. Woods, therefore, has failed to show either deficient performance or prejudice.

To establish that counsel was ineffective, Woods must show (1) counsel's performance was deficient; and (2) the deficient performance prejudiced him. *State v. Thomas*, 109 Wn.2d at 225-26, 743 P.2d 816 (1987), citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984). A reviewing court will find counsel to be ineffective if his representation fell below an objective standard of reasonableness. *State v.*

Stenson, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997). A defendant is prejudiced where there is a reasonable probability that but for the deficient performance, the outcome of the case would have differed. *In re Pers. Restraint Petition of Pirtle*, 136 Wn.2d 467, 487, 965 P.2d 593 (1998). A defendant must prove both prongs of the test in order to prove ineffective assistance of counsel. *State v. Kruger*, 116 Wn. App. 685, 693, 67 P.3d 1147, review denied, 150 Wn.2d 1024, 81 P.3d 120 (2003).

There is great judicial deference to counsel's performance and the analysis begins with a strong presumption that counsel was effective. *Strickland v. Washington*, 466 U.S. 668, 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

Furthermore, a trial counsel's failure to make a motion does not support an ineffective assistance of counsel claim “unless the defendant can show that the motion would properly have been granted.” *State v. Price*, 127 Wn. App. 193, 203, 110 P.3d 1171 (2005). In addition, the court will not presume that a CrR 3.6 hearing is required in every case, and the failure to make a suppression motion is not per se deficient representation. *State v. McFarland*, 127 Wn.2d 322, 336, 899 P.2d 1251 (1995).

In the present case, Woods’ has failed to provide any argument or evidence that shows that trial counsel failed to bring a suppression motion

that would have been granted below. Rather, in the court below, there was only a very brief mention of a potential suppression motion regarding the search warrant, and defense counsel stated that he would have filed such a motion if it had been warranted, but that he did not file such a motion because he found it meritless. RP 156-57. The record contains no mention of what the potential basis for such a motion would have been. On appeal, Woods seems to imply that the motion would have been based on some sort of claim that the apartment was not Woods' residence. App.'s Br. at 18. The search warrant itself, however, is not in the record, nor is there any evidence that the validity of the search warrant turned on the issue of Woods' legal residency. There is simply nothing in the record that would allow this court to evaluate defense counsel's performance regarding this potential suppression motion.

In addition, Woods admits that, "It is not known whether a CrR 3.6 motion to suppress in the case at bench would have been successful it had been brought." App.'s Br at 20. As by his own concession Woods cannot show that the suppression motion "would properly have been granted," his ineffective assistance claim must fail. *Price*, 127 Wn. App. at 203. For the same reasons, Woods has failed to meet his burden of showing that the performance of his defense counsel was deficient, and he has failed to that there is a reasonable probability that but for the deficient performance, the

outcome of the case would have differed. *In re Pers. Restraint Petition of Pirtle*, 136 Wn.2d 467, 487, 965 P.2d 593 (1998).

Furthermore, under RAP 10.3, this court may refuse to review an issue where a party fails to cite relevant portions of the record or cite relevant authority in her brief. RAP 10.3(a)(5). Here, Woods has failed to support his argument with relevant citations to the record and relevant authority that would have supported a suppression motion.² This court, therefore, need not review this issue.

For all of these reasons, Woods' claim of ineffective assistance of counsel must fail.

IV. CONCLUSION

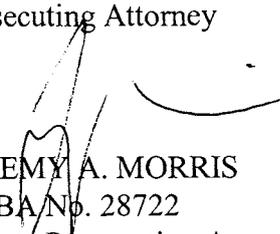
For the foregoing reasons, Woods' conviction and sentence should be affirmed.

² Woods acknowledges in his brief that, "In the case at bench, presumably in order for the appellant to prevail he must bring a personal restraint petition as was done in *State v. Rainey* and in *State v. Reichenbach* because neither the search warrant nor the warrant affidavit are part of this record." App.'s Br. at 25. Despite this concession, Woods still claims that he was denied effective assistance without ever addressing how this Court could find ineffective assistance without the warrant or the warrant affidavit as part of the record.

DATED February 27, 2007.

Respectfully submitted,

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