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DIVISION II

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STATE OF WASHINGTON
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DEPUTY

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

STATE OF WASHINGTON,

Respondent,

vs.

RENATA ABRAMSON,

Appellant.

APPEAL FROM THE SUPERIOR COURT
OF WASHINGTON FOR KITSAP COUNTY

Cause No. 05-1-01786-2

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

A. The trial court erred when it denied defense's motion to suppress under CrR 3.6 and Franks v. Delaware.

B. The evidence used to convict Ms. Abramson was insufficient to support the jury's convictions, and, all convictions and findings must be reversed.

C. Defense counsel ineffectively assisted Ms. Abramson, and, Ms. Abramson, thus, was denied a fair trial.

D. The trial court erred when it refused to hear defendant's motion for a new trial under CrR 7.5, when it knew that Ms. Abramson's former trial counsel had failed to call an eye-witness who would have offered exculpatory evidence.

E. The trial court failed to adequately instruct the jury.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the trial court committed reversible error when it failed to suppress evidence obtained during the execution of a search warrant. (Assignment of Error A)

2. Whether the trial court committed reversible error when it failed to suppress evidence when the affidavit for the search warrant was insufficient to support the court's decision to grant the officer's request for a warrant. (Assignment of Error A)

3. Whether sufficient evidence existed to support Ms. Abramson's convictions when the state failed to adequately produce evidence as to each and every element of each crime and enhancement charged. (Assignment of Error B)

4. Whether the case should be remanded for a new trial based on evidentiary rulings that resulted in the jury considering evidence that was inadmissible. (Assignment of Error D)

5. Whether the case should be reversed when the Court's Instructions to the Jury indicate the jury was not instructed on each and every offense and relevant definition. (Assignment of Error E)

III. STATEMENT OF THE CASE

A. Procedural History

On November 4, 2005, an Information was filed against Renata Lee Abramson alleging she committed the following crimes: Delivery of Methamphetamine, and Possession of a Controlled Substance (methamphetamine). CP 1-6. On May 16, 2006, an Amended Information was filed alleging (in addition to the above) Possession with Intent to Deliver Methamphetamine, firearm and bus stop enhancements, and unlawful possession of a firearm in the second degree. CP 69-74.

On May 15, 2006, the court heard defense's motion under CrR 3.6 and Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). RP 3-38, CP 32-46; 54-64. The court denied the motions to suppress and attacked the legitimacy of the search warrant and the affidavit in support of the search warrant. RP 31-38¹, CP 305-307.

The matter proceeded to trial, and on May 24, 2006, the jury entered a verdict of guilty on all charges. CP 207, CP 234. The jury found that Ms.

¹ References to RP include the proceedings transcribed beginning on May 15, 2006.

Abramson was armed with a firearm at the time of the alleged crime. CP 236. The jury further found that the alleged crime occurred within 1000 feet of a school bus stop. CP 237. Prior to sentencing, temporary counsel was appointed to assess post-verdict issues and, ultimately, new counsel substituted for sentencing. CP 324, CP 328.

On September 29, 2006, Ms. Abramson was sentenced to 160 months in prison (100 months on Count III plus 60 months for the enhancements). CP 352-361. A notice of appeal was timely filed on October 11, 2006. CP 364. Clerks papers were designated on October 30, 2006. CP 376. An order of indigency was entered on November 16, 2007. CP 382.

B. Facts

In October 2005, Ms. Stacy Maykis was incarcerated in the Kitsap County Jail. RP 105:2-9 She had failed to perform her obligations on a driving while under the influence deferred prosecution, and the deferred status had been revoked. RP 105:2-22, 195:8. Ms. Maykis wanted help expediting her release from incarceration. RP

105:2-22, 195:21-23. Accordingly, she contacted someone she had known for a few years whom she believed could help speed up her release from incarceration - WESTNET Detective John Halstad. RP 105:2-22, 196:8-11. In exchange for getting Ms. Maykis out of jail and onto home monitoring, she agreed to work for Detective Halstad. RP 196:12-16.

The work for which Ms. Maykis had bargained to get out of jail centered around an investigation Ms. Maykis arranged that involved the petitioner in the instant matter, Renata Abramson. RP 110:20-24, 112:10-13. In short, Ms. Maykis made arrangements that had Ms Maykis awaiting for Ms. Abramson at the Kitsap Mall parking lot at a time in which she believed Ms. Abramson would be reporting to her job at the mall. RP 112:10-13, 200:18-22.

Unmarked, plain-clothed WESTNET police officers participated in what Ms. Maykis led them to believe was a "controlled buy." RP 112:16-25, 113:1-7, 218:3, 220:23-25, 238:9-10. Included among the other WESTNET members present was Detective Wiess. RP 113, 236. Ms. Maykis arrived

first at the mall, got out of her car for a time, returned to her car, and, finally, Ms. Abramson arrived and Detective Wiess observed Ms. Maykis approach Ms. Abramson's car in the Kitsap Mall parking lot. RP 113:22-114:21, 414:1-3.

Detective Wiess's testimony included confirmation that he saw two females in Ms. Abramson's car upon Ms. Abramson's arrival. RP 239:25. Detective Wiess testified that he saw Ms. Maykis, Ms. Abramson and Ms. Abramson's passenger standing together outside the car. RP 256:7-10. Detective Halstad indicated, during his testimony, that after the interaction with Ms. Abramson and her passenger, Ms. Maykis was able to produce methamphetamine that she claimed to have recovered from the ground after asserting that Ms. Abramson had placed it on the ground, wrapped in a Kleenex and in a plastic bag. RP 121:11-15.

Several months later, on April 25, 2006, Don Lutes, an investigator, visited Kathy Conway at the Kitsap County Jail. CP 345-348. Ms. Conway was the individual in the vehicle with Ms. Abramson during the alleged drug buy. Id. During said investigative interview, Ms. Conway confirmed

that Ms. Abramson did not have any drugs on her the day in question. Id. Ms. Conway also confirmed that she, and not Ms. Abramson, placed a small plastic bag, wrapped in a napkin, containing methamphetamine residue behind the car in the exact place that the confidential informant claimed she discovered the drugs. Id.

On November 1, 2006, while the detectives were recovering methamphetamine from Ms. Maykis (RP 116), Ms. Abramson and her passenger, Kathy Conway, proceeded to their mutual place of employment at the Kitsap Mall. RP 393:13-15, 428:16-18. While Ms. Abramson presumably worked the rest of the day, Ms. Conway apparently walked away from her employment after only a little more than an hour. RP 428:16-18. Neither woman was arrested at that time.

Based on the above scenario and additional allegations by Ms. Maykis, a detective prepared an affidavit and ultimately obtained a search warrant for the search of Ms. Abramson's home at 2003 Shamrock in Bremerton, Washington. See CP 32-46, 54-64, 305-307, and RP 3-38. After the execution of the search warrant, two additional defendants

were charged with similar offenses to Ms. Abramson's. RP 2:1-5, 3:3-7. The defendants included additional residents of the same address, Ms. Amanda Cormany and her boyfriend Curtis Griffin. RP 2:1-6, 128:12-15.

During the execution of the search warrant, several very small baggies of methamphetamine, packaging and weighing material, and firearms were recovered from 2003 Shamrock. RP 321:12, 322:11, 323:21-25, 324-331. Amanda Cormany admitted all of the drugs found in her bedroom were her own. RP 337:23-338:12. Predominantly, the evidence seized was obtained in the bedroom shared by Ms. Cormany and Mr. Griffin. RP 321:12-322, 337:17-19. Additionally, two firearms were seized from a closet that was near the Conway/Griffin bedroom as well. RP 338:1-15. However, one of the baggies with methamphetamine in it and a grip to a gun (not the gun itself) were seized from a separate section of the home. RP 348, 352.

As a result of Stacy Maykis's testimony to the officers, Ms. Abramson was charged with Delivery of a Controlled Substance, Methamphetamine. CP 1-6, 69-74. And, as a result

of the service of the search warrant, Ms. Abramson was charged with Possession and Possession with Intent to Deliver a Controlled Substance. Id. She was tried and found guilty of all counts as well as two firearm enhancements and a school zone enhancement.

Ms. Abramson was sentenced to 160 months in the custody of the Department of Corrections. CP 352-360, 361. She timely filed her notice of appeal and this appeal now follows.

IV. ARGUMENT

A. THE TRIAL COURT ERRED WHEN IT DENIED DEFENSE'S MOTION TO SUPPRESS UNDER CrR 3.6 AND FRANKS v. DELAWARE.

(1) The Search Warrant Lacked Probable Cause to Search the 2003 Shamrock Residence; it failed to Demonstrate a Nexus between the Items to be Seized and the Place to be Searched.

In this case, the search warrant is not supported by the evidence that existed at the time of the issuance. See Appendix A, Complaint for Warrant and Search Warrant attached hereto.

A search warrant must state with particularity the location to be searched. State

v. Perrone, 119 Wn.2d 538, 545-547, 834 P.2d 611 (1992). In addition, there must be probable cause for each location to be searched. State v. Thein, 138 Wash.2d 133, 147, 977 P.2d 582 (1999).

Furthermore, broad generalizations do not alone establish probable cause. Id.

Probable cause exists if 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 can be found at the place to be searched. Accordingly, probable cause requires a nexus between the criminal activity and the item to be seized, and also a nexus between the item to be seized, and the place to be searched.

State v. Thein, 138 Wn.2d at 140 (1999).

In Thein, the issue was whether a magistrate could issue a warrant for a home from information on a specific drug dealing at an outside location coupled with the generalization that drug dealers keep drugs in their home. The Supreme Court held that a warrant could not issue. Id. at 146, 147, 148.

Additionally, under Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), the trial court failed to acknowledge the misrepresentations and omissions present in the

affidavit for the warrant. When the trial court failed to suppress, based upon this analysis, it committed reversible error.

In the present case, the affidavit for the search warrant asserted the existence of an informant, her ability to obtain, and having obtained drugs from Ms. Abramson, a controlled buy that occurred away from the residence, previous warrants at the home, and, finally, the informant's statement that she had seen a large quantity of methamphetamine in the home. See Appendix A.

The above factors should have been insufficient for a court to find a nexus between the item to be seized and the location to be searched. The informant's assertion that she had seen methamphetamine in the residence did not articulate a time-frame in which she claimed to have seen drugs in the house. See Appendix A, 2:18-23. Rather, the affidavit in support of the search warrant made what should be characterized as "broad generalization" and thus, it's information failed to establish the requisite nexus between the items to be seized and the

Shamrock Lane residence. Significantly, the affidavit for the search warrant omitted a material fact - that another individual was with Ms. Abramson when leaving her home and arriving at the mall parking lot. See Appendix A, 3:21-24. Accordingly, the affidavit and the warrant should have failed and all items seized should have been suppressed.

(2) The Search Warrant Affidavit Fails because it was Based upon Stale Information

Search warrants are to be issued only upon reasonable cause to believe a crime has been committed and that evidence of that crime will likely be found in the place sought to be searched. State v. Higby, 26 Wash.App. 457, 460, 613 P.2d 1192 (1980), *citing Ker v. California*, 374 U.S. 23, 83 S.Ct. 1623, 10 L.Ed.2d 726 (1963). The affidavit facts 'must support the reasonable probability that the suspected criminal activity was occurring at or about the time the warrant was issued.' Higby, 26 Wash.App. at 460, 613 P.2d 1192, *citing Sqro v. United States*, 287 U.S. 206, 53 S.Ct. 138, 77 L.Ed.2d 260 (1932). An affidavit or search warrant is stale if it just establishes

that criminal activity arose at the place sought to be searched at some time in the past. Id.

The test for staleness of information included in a search warrant is a common sense test to determine if the facts are adequate to support a conclusion by a neutral magistrate that the property sought is still located on the premises or persons to be searched. State v. Bohannon, 62 Wash.App. 462, 470, 814 P.2d 694 (1991); State v. Petty, 48 Wash.App. 615, 621, 740 P.2d 879, *rev. denied*, 54 Wash.App. 240, 773 P.2d 122 (1989) (Information is not stale for purposes of probable cause if the facts and circumstances in the affidavit support a common sense determination that there is a continuing and contemporaneous possession of the property intended to be seized.) State v. Bohannon, 62 Wash.App. at 470 (1991).

The question of staleness entails duration as well as the probability that the property sought would be retained. State v. Young, 62 Wn.App. 895, 903, 802 P.2d 829 (1991). In evaluating whether the facts underlying the search warrant are stale, the court looks at the totality of the

circumstances. Bohannon 62 Wash.App. at 470 (1991). The length of time between the issuance and execution of the warrant is only one factor to consider along with other relevant circumstances, including the nature and scope of the suspected criminal activity. The nature of the criminal activity, the length of the activity, and the nature of the property to be seized are all factors that a court must consider when determining whether the probable cause is stale. State v. Maddox, 152 Wash.2d 499, 505-506, 98 P.3d 1199 (2004). In determining the staleness of probable cause, the key question is how probable it is that the items sought in connection with the suspected criminal activity will be on the premises at the time of the search. State v. Higby, 26 Wn.App. 457, 460-61, 613 P.2d 1192 (1980).

In the instant case, the only information that relates to the 2003 Shamrock residence was that the informant had seen a large quantity of methamphetamine present there in the past and that a search warrant had been served there in 2003. RP 236, RP 198:2-5, RP 199:3-7. See Appendix A,

2:18-23, 5:1-4. This information only leads a person to know that at sometime in the past criminal activity had occurred at this residence. If a warrant merely establishes that criminal activity occurred at the place to be searched some time in the past, then that information should be considered stale and the warrant must fail. As this is the case at hand, all evidence obtained from the search of the 2003 Shamrock residence should have been suppressed. Accordingly, the case must now be remanded to the trial court with instructions for a new trial and to proceed without the evidence obtained from the residence at 2003 Shamrock, pursuant to the warrant.

B. THE EVIDENCE USED TO CONVICT MS. ABRAMSON WAS INSUFFICIENT TO SUPPORT THE JURY'S CONVICTIONS AND ALL CONVICTIONS AND FINDINGS MUST BE REVERSED.

(1) No rational trier of fact could have found the essential elements of the crimes charged beyond a reasonable doubt.

Due process requires the state to prove its case beyond a reasonable doubt, and, thus, sufficiency of evidence is a constitutional question which can be raised for the first time on

appeal. State v. Bland, 71 Wn.App. 345, 359, 860 P.2d 1046 (1993), *citing* State v. Baeza, 100 Wn.2d 487, 670 P.2d 646 (1983); State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980); In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

On review, the critical question is: whether, to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Bland, at 359, *citing*, Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). (emphasis in original). See also, Green 94 Wn.2d at 221-22, 616 P.2d 628. A challenge to the sufficiency of the evidence admits the truth of the state's evidence and any inferences reasonably drawn. State v. Gear, 30 Wn.App. 307, 310, 633 P.2d 930, *rev. denied*, 96 Wn.2d 1021 (1981).

Even admitting the truth of the state's evidence and taking all of the reasonable inferences in the light most favorable to the state, insufficient evidence exists to convict Ms. Abramson. Ms. Abramson was charged and convicted of: Delivery of Methamphetamine, Possession of a Controlled Substance (with firearm enhancements

and bus stop Enhancements); Possession of Methamphetamine with Intent to Deliver, and Unlawful Possession of a Firearm in the Second Degree.

The evidence was insufficient to support the firearm enhancements because no evidence existed that Ms. Abramson even had knowledge of the firearms, let alone control. Additionally, Ms. Cormany admitted the guns were hers. RP 338:8-12.

Ms. Abramson was sentenced to additional time because her alleged crime occurred within 1,000 feet of a school bus stop. RCW 69.50.435 provides a mandatory sentencing enhancement for individuals that sell illegal narcotics within 1000 feet of a school bus stop. The record is devoid of adequate proof that the location of the narcotics found in Ms. Abramson's house was within 1,000 feet of a school bus stop.

When determining if an offense was committed within 1,000 feet of a school bus stop, evidence must be submitted as to the exact distance between the bus stop and the location of the contraband within the home. It is insufficient to simply measure from the property line to the school bus

stop. State v. Clayton, 84 Wn.App. 318, 927 P.2d 258 (1996).

In Ms. Abramson's case, the record is devoid of any evidence as to the measurement of the exact distance to the bus stop. See RP 143-145. Detective Halstad did not testify regarding the measurement from the exact location where the contraband was found and the school bus stop. Id. Without this essential evidence there is no legally sufficient basis supporting the school bus stop enhancement pursuant to RCW 69.50.435. The jury's finding regarding this sentencing enhancement must be reversed.

(2) No evidence exists to indicate Ms. Abramson possessed, or attempted to deliver methamphetamine.

The evidence presented did not support a conviction for possession or delivery of methamphetamine.

Where one merely possesses a controlled substance without statutory element of intent, one is guilty of simple possession under statute, absent unwitting possession. State v. Sims, 119 Wn.2d 138, 142-143, 829 P.2d 1075 (1992). Court's must be careful to preserve the distinction and

not turn every possession of minimal amount of controlled substance into a possession with intent to deliver without substantial evidence as to the possessor's intent above and beyond the possession itself. State v. Brown, 68 Wn.App. 480, 485, 843 P.2d 1098 (1993).

In the case against Ms. Abramson, a substantial amount of the evidence supporting the state's prosecution was obtained during the execution of a search warrant at 2003 Shamrock. The residence was shared with two other occupants, one who confessed to owning the seized contraband. See RP 338:1-15.

An individual cannot be an accomplice unless he knowingly "solicits, commands, encourages, or requests" the commission of a crime or aids in the planning or commission of a crime. In re Wilson, 91 Wn.2d 487, 588 P.2d 1161 (1979).

Accomplice liability requires:

... some form of overt act;
the doing or saying of
something that either directly
or indirectly contributes to
the criminal act; some form of
demonstration that expresses
affirmative action, and not
mere approval or acquiescence,
which is all that is implied
in assent. To assent to an act

implies neither contribution
nor an expressed concurrence.
It is merely a mental attitude
which, however culpable from a
moral standpoint, does not
constitute a crime, since the
law cannot reach opinion or
sentiment however harmonious
it may be with a criminal act.

State v. Peasley, 80 Wash. 99, 100, 141 P. 316
(1914).

One's presence at the commission of a crime,
even if accompanied by knowledge that one's
presence would aid in the commission of the crime,
will not subject an accused to accomplice
liability unless that person is "ready to assist"
in the commission of the crime. State v. Rotunno,
95 Wn.2d 931, 933, 631 P.2d 951 (1981). There was
no evidence presented that Ms. Abramson was "ready
to assist" in any of the crimes.

Further, presence, coupled with knowledge of
activity, does not constitute complicity. Unless
a person knowingly solicits, commands, encourages
or requests the commission of a crime or aids in
the planning or commission of a crime, he cannot
be held to be an accomplice. State v.
Everybodytalksabout, 145 Wn.2d 456, 39 P.3d 294
(2002).

In Roberts, the court found a defendant could not be found guilty as an accomplice by accepting rent, paying utilities, and not using self-help to terminate sub-tenant's marijuana grow operation; his failure to contact his landlord or police amounted only to presence and assent to criminal activity that could not support finding of accomplice liability. State v. Roberts, 80 Wn.App. 342, 354, 908 P.2d 892 (1996). Cooking and cleaning by a narcotics defendant, which allegedly enabled others to deliver heroin by making life easier for them, were not sufficient acts to expose the defendant to accomplice liability for criminal acts with which her connection was no more than by physical presence and assent. State v. Amezola, 49 Wn.App. 78, 87, 89-90, 741 P.2d 1024 (1987).

Obviously, in order to prove intent to deliver, or possession, the state must prove that Ms. Abramson possessed the methamphetamine in question. Despite the jury's verdict, no evidence exists that Ms. Abramson had possession of the methamphetamine that Ms. Cormany admitted to owning (See RP 338:1-7), and, was found in Ms.

Cormany's room. In fact, the only admissible evidence was that Ms. Abramson did not possess the drugs in question.

At the time of Ms. Abramson's arrest, Ms. Cormany and Mr. Griffin were also arrested. The arresting officer testified that Ms. Cormany testified that all of the illegal contraband was hers. RP 294:17-25. The following dialogue occurred at trial:

Q: An you brought Ms. Cormany into the bedroom?

A: Yes.

Q: And she admitted-you asked her if the items that you had found belonged to her, who they belonged to?

A: The items were kind of laying around in plain view. And I just pointed to them, "Whose is this? Whose is this? Whose is this?"

Q: She State they were hers?

A: Yes.

RP 294:17-25.

After redirect by the prosecutor, Detective Alloway reiterated that Ms. Cormany took responsibility for the contraband on the premises. Detective Alloway testified as follows:

Q. You asked her if she had gotten her methamphetamine from Miss Abramson, hadn't you?

A. I did ask that.

Q. Were you referring to what was found in the bedroom?

A. Yes.

Q. And she told you that she - her and Miss Abramson didn't deal with each other regarding that issue, correct?

A. They didn't talk about it. And she didn't know what Renata would have or not have.

RP 298-299:19-25, 1-2.

(3) No evidence exists that Ms. Abramson ever had possession of the firearm, or, even had knowledge that it was in the house.

In this case, Ms. Abramson was convicted of unlawful possession of a firearm as well as receiving a firearm enhancement. The prosecutor did not present evidence that Ms. Abramson ever had possession of the firearms in this case.

The only meaningful evidence presented at trial regarding the ownership of the firearms was by Detective Alloway. Detective Alloway testified that he was told the firearms were the property of Ms. Cormany. The following exchange occurred regarding Ms. Cormany:

Q. And then you asked her about the firearms, as well, that had been found correct?

A. That's -

Q. She told you those were hers too, didn't she?

A. Yes, she did.

RP 338:7-12.

As with the other contraband, the jury's verdict was based on insufficient evidence. The evidence actually showed that Ms. Abramson had no knowledge that it existed and that someone else (Ms. Cormany) admitted to owing it.

C. MS. ABRAMSON WAS INEFFECTIVELY ASSISTED BY COUNSEL AND THE CASE SHOULD, ACCORDINGLY, BE REMANDED TO A NEW TRIAL.

On April 25, 2006 Don Lutes, an investigator, visited Kathy Conway at the Kitsap County Jail. CP 345-348. Ms. Conway was the individual in the vehicle with Ms. Abramson during the alleged drug buy. Ms. Conway confirmed that Ms. Abramson did not have any drugs on her the day in question. Id. Ms. Conway also confirmed that she, and not Ms. Abramson, placed a small plastic bag, wrapped in a napkin, containing methamphetamine residue behind

the car in the exact place that the confidential informant claimed she discovered the drugs. Id.

The court must carefully scrutinize defense counsel's failure to call a witness who could have offered potentially exculpatory testimony. In the instant case, the court should find that defense counsel's failure to call the only exculpatory witness for Ms. Abramson's delivery charge "sufficient to undermine confidence in the outcome." See Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

In Lord v. Wood, the 9th Circuit examined a similar situation, and concluded as follows:

A lawyer who fails adequately to investigate, and to introduce into evidence, [information] that demonstrate[s] his client's factual innocence, or that raise[s] sufficient doubt as to that question to undermine confidence in the verdict, renders deficient performance." Hart v. Gomez, 174 F.3d 1067, 1070 (9th Cir. 1999). Mindful of the deference we owe counsel's trial strategy, we nevertheless conclude that counsel's cursory investigation of the three possible alibi witnesses, and their subsequent failure to put them on the stand, constitute deficient performance that was prejudicial to Lord's defense.

Though trial counsel claim that the statements of Holden, Huff and Ayers were vague and/or inaccurate, the police and investigator reports on which they

relied in 1987 do not support their judgment. Lord v. Wood, 184 F.3d 1083, 1093 (9th Circ. 1999).

As reported in the following excerpt from Lord v. Wood, 184 F.3d 1083 (9th Circ. 1999), the court must engage in inquiry that asks whether defense counsel produced any independent exculpatory evidence, and must examine the prejudice of failing to do so:

In Sanders v. Ratelle, 21 F.3d 1446, 1456 (9th Cir.1994), Sanders's brother made out-of-court confessions to the murder for which Sanders was convicted. We determined that counsel's failure to call the brother to testify at trial or, if he invoked the Fifth Amendment, to introduce the brother's extra-judicial statements, was professionally deficient performance. See Id. at 1457-60. Such evidence would clearly have provided a strong defense and "[counsel's] failure to investigate [was] inexplicable, as [was] his failure to utilize [the brother's] confession, except as the result of incompetence and indifference." Id. at 1459. In Hart v. Gomez, 174 F.3d 1067, Hart was convicted of molesting his daughter during visits to a camping resort. His daughter had testified that "Hart never molested her during visits on which he was accompanied by another adult." Id. at 1067. Hart's girlfriend testified at trial that she had been with him during all of the trips alleged in the information, and had witnessed no molestation. See Id. Hart's trial counsel, however, did not introduce grocery receipts and the girlfriend's personal calendars, which would have corroborated her testimony that she was

present at all of the trips and, thereby, "demonstrate[d] [Hart's] factual innocence [.]" Id. at 1070. We concluded that "[the girlfriend's] evidence, if believed by the jury, would have demonstrated the truthfulness of her testimony and established that ... no molestation occurred during the time period set forth in the information-or at the least that the molestation as charged in the information had not been proved beyond a reasonable doubt." Id.

Lord v. Wood, 184 F.3d at 1096.

Similarly, in the instant case counsel failed to call a witness who stood prepared to offer material exculpatory testimony. Counsel relied only on cross examination of the state's witnesses, rather than to produce a material witness, such as Ms. Conway. Proceeding in this manner went beyond her subjective trial strategy considerations, and consequently, Ms. Abramson was denied a fair trial.

While defense counsel, in the instant case, appears to have been present for the witness's interview, her failure to call the then-available and willing witness left Ms. Abramson without any independent witnesses to the delivery count. Under the circumstances of this case, very little rationale would allow for this deficiency.

Additional exculpatory evidence was not examined, and thus, was not introduced at trial. See CP 339-347. For example, mobile phone records were not examined, and accordingly they were not presented at trial. The records would have shown that Ms. Abramson was not involved in any of the planning that was testified to by the informant regarding the delivery. The records would have corroborated Ms. Abramson's trial testimony as well. Because of counsel's deficiency in this area, the court should reverse Ms. Abramson's convictions.

There is simply no evidence that Ms. Abramson possessed or attempted to deliver methamphetamine. She might have lived at the house where some methamphetamine existed, she might even have driven to work with Ms Conway when some methamphetamine was disposed of. However, no evidence exists that Ms. Abramson possessed the methamphetamine or knew of its existence.

D. THE TRIAL COURT ERRED WHEN IT ALLOWED INADMISSIBLE EVIDENCE TO BE USED AGAINST MS. ABRAMSON DURING THE COURSE OF TRIAL.

(1) Ms. Abramson's right to a fair trial was compromised because evidence was admitted that was not

relevant, which was immaterial, and was unfairly prejudicial.

The defense adequately preserved the record by filing and arguing motions in limine that should have caused the court to limit Ms. Maykis's testimony regarding her prior interactions with Ms. Abramson. See RP 45-95. Rather than granting defense motions in limine on the subject, the court explicitly allowed testimony that Ms. Maykis had purchased illegal drugs from Ms. Abramson several times over the past several months, and that Detective Halstad had observed Ms. Abramson at 2003 Shamrock two years prior when he investigated something else at that address. See RP 45-71, RP 106-107, 197:17-198:17.

The evidence provided regarding allegations of previous drug use and sales was not relevant and unfairly prejudicial. The admission of this evidence allowed the jury to convict Ms. Abramson based upon prior bad acts rather than the facts of this case. See RP 197:17-198:17.

Ms. Maykis indicated on the record that she had previously purchased methamphetamine from Ms. Abramson. These alleged purchases were prior acts

not involved in this case. The following testimony was elicited:

Q: What did you owe her money for?

A: Drugs.

Q: What kind of Drugs?

A: Meth. RP 198:2-5.

...

Q: Now, when you had gone to the home in September and October to purchase drugs from Miss Abramson, had you, in fact, gotten drugs from her at that home on Shamrock Drive?

A: Yes.

RP 199:3-7.

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. ER 401. Generally, all relevant evidence is admissible, except as limited by constitutional requirements or as otherwise provided by statute, by these rules, or by other rules or regulations applicable in the courts of this state. Evidence which is not relevant is not admissible. ER 402.

Only allegations that occurred during the time frames alleged in this case were relevant to the prosecution's case. Despite this, the prosecution put on evidence of multiple uncharged alleged drug allegations. This unfairly prejudiced Ms. Abramson's case. Ms. Abramson had to defend the allegations she was charged with, and, in addition, had to defend against the perception that she sold drugs in the past. Even if events outside the time-frame and individuals described by the information were relevant, the evidence was so unfairly prejudicial and, therefore, should have been barred by ER 403. Evidence Rule 403 states:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

ER 403.

As a general rule, profile testimony that does nothing more than identify a person as a member of a group more likely to commit the charged crime is inadmissible owing to its relative lack of probative value compared to the

danger of its unfair prejudice. For example, in State v. Petrich, 101 Wash.2d 566, 683 P.2d 173 (1984), the court explained that such testimony "invites the jury to conclude that because of defendant's particular relationship to the victim, he is statistically more likely to have committed the crime." Thus, the court ruled that on remand such evidence should be excluded because its "potential for prejudice is significant compared to its minimal probative value." Petrich at 576, 683 P.2d 173.

In this case, the prosecution used profile testimony to prove that Ms. Abramson was within the group of people who sell methamphetamine in Kitsap County and doing so was unfairly prejudicial.

- (2) Ms. Abramson's convictions should be reversed because the court's cumulative errors taken together prejudiced her right to a fair trial.

Reversal may be required due to the cumulative effects of trial court errors, even if each error standing alone would otherwise be considered harmless. See State v. Coe, 101 Wn.2d 772, 789, 684 P.2d 668 (1984); State v. Badda, 63

Wn.2d 176, 183, 385 P.2d 859 (1963); State v. Alexander, 64 Wn.App. 147, 154, 822 P.2d 1250 (1992). Error may take one of two forms -- constitutional and non-constitutional error. State v. Whelchel, 115 Wn.2d 708, 728, 801 P.2d 948 (1990); State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985) *cert. denied*, 475 U.S. 1020, 106 S.Ct. 1208, 89 L.Ed.2d 321 (1986). Here, all of the errors mentioned above implicated the credibility of Ms. Abramson while bolstering the credibility of the alleged accusers. The result of the trial, more than any other evidence, centered on the credibility of these individuals. Thus, because it cannot be stated beyond a reasonable doubt, that Ms. Abramson's convictions would stand, absent the jury finding her accusers credible and Ms. Abramson not credible, reversal is required.

E. BECAUSE THE TRIAL COURT FAILED TO ADEQUATELY INSTRUCT THE JURY, AND THE JURY RENDERED VERDICTS FOR CRIMES AND ENHANCEMENTS FOR WHICH IT WAS NOT INSTRUCTED, THE COURT MUST NOW REMAND THE MATTER FOR A NEW TRIAL.

The Court's Instructions to the Jury appear to be devoid of instructions defining any of the

"special verdict" enhancements.² See CP 210-229. Additionally, the instruction packet lacks a definition of "accomplice." There is an absence of an instruction for one of the crimes for which the jury found Ms. Abramson guilty. However, the jury clearly possessed and executed verdict forms that included every offence and special verdict for which Ms. Abramson was ultimately sentenced. CP 234-238. Accordingly, the court should reverse on all counts and enhancements.

V. CONCLUSION

Based upon the aforementioned, Ms. Abramson urges this court to reverse her conviction and remand her case for a new trial.

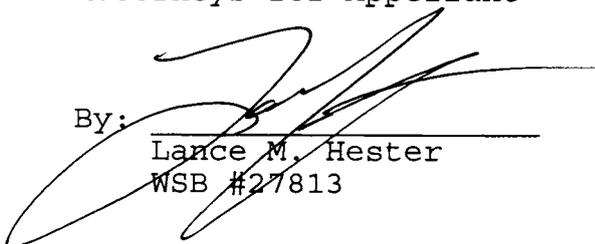
² After sentencing, the Clerk's Papers and comparing the clerk's papers with the transcript pages that include a discussion between the court and counsel regarding the instructions, counsel for appellant is concerned that the instructions in the Clerk's Papers may not be an accurate reflection of what the jury actually possessed. If after further investigation counsel for appellant learns that the Clerk's Papers were inaccurately designated, he will promptly notify the opposing party and the court of the error and withdraw this argument in writing.

VI. APPENDIX

Appendix A - Complaint for Search Warrant and
Search Warrant.

RESPECTFULLY SUBMITTED this 20th day of July,
2007.

LAW OFFICES OF MONTE E.
HESTER, INC. P.S.
Attorneys for Appellant

By: 

Lance M. Hester
WSB #27813

CERTIFICATE OF SERVICE

Lee Ann Mathews, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day set out below, I delivered true and correct copies of brief of appellant to which this certificate is attached, by United States Mail or ABC-Legal Messengers, Inc., to the following:

Russell D. Hauge
Kitsap County Prosecuting Attorney
614 Division Street
Port Orchard, WA 98366

Renata Abramson, DOC #941815
WCCW
9601 Bujacich Road NW
Gig Harbor, WA 98335

Signed at Tacoma, Washington this 20th day
of July, 2007.


Lee Ann Mathews

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

2005 NOV -2 PM 4: 27

DAVID W. PETERSON

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STATE OF WASHINGTON

Plaintiff,

vs.

A grey with dark colored trim single story residence with basement and attic, marked with the numbers 2003, and located at 2003 Shamrock Dr, Bremerton, Kitsap County, Washington State.

) NO. 20050316
)
) COMPLAINT FOR SEARCH WARRANT
) FOR FRUITS / INSTRUMENTALITIES
) AND/OR EVIDENCE OF A CRIME FOR:
) A Violation of the Uniformed Controlled
) Substances Act ("V.U.C.S.A."), R.C.W
) 69.50.401, Possession, Possession with Intent
) to Deliver and/or Delivery of a Controlled
) Substance, to wit: Methamphetamine
)
)

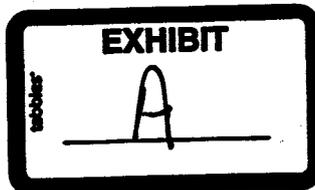
And

A tan 1984 Chevrolet Camaro two door vehicle bearing Washington license plate 839RUV and vehicle identification number 1G1AS87H5EL160866 That is registered to Renata L. Abramson of 2003 Shamrock Lane, Bremerton.

Defendant

Officer John Halsted, Being first duly sworn upon oath, deposes and says:

That I am a duly appointed, qualified, and acting commissioned Police Officer for the Poulsbo Police Department, and I am charged with the responsibility for the investigation of criminal activity occurring within the State of Washington. I have probable cause to believe, and do, in fact, believe that, in violation of the laws of the State of Washington with respect to Possession, Possession with Intent to Deliver and/or Delivery of a Controlled Substance, to wit; Methamphetamine, as defined by law in violation of the Uniformed Controlled Substances Act ("V.U.C.S.A."), R.C.W. 69.50.401, evidence, fruits, and/or instrumentalities of said offense(s) are presently being kept, stored, or possessed, and can be located and seized at the above described premises, said belief being based upon information acquired through personal interviews with



1 witnesses and other law enforcement officers, review of reports from other law enforcement officers,
2 and personal observations, said information being as further described herein;

3 See attached Affidavit A for my training and experience.

4 This affidavit is made in support of an application for search warrant for the residence and/or
5 vehicles described as:

6
7 A grey with dark colored trim single story residence with basement and attic, marked with the
8 numbers 2003, and located at 2003 Shamrock Dr, Bremerton, Kitsap County, Washington State.

9 And

10 A tan 1984 Chevrolet Camaro two door vehicle bearing Washington license plate 839RUV and
11 vehicle identification number 1G1AS87H5EL160866 That is registered to Renata L. Abramson of
12 2003 Shamrock Lane, Bremerton.

13
14
15
16 **Probable cause to request this warrant consists of the following information:**

17
18 I was contacted by a police operative (hereinafter referred to as PO) who advised he or she
19 could purchase methamphetamine from Renata Abramson. The PO said he or she has been buying
20 methamphetamine on a very regular basis for the last couple of months. The PO said Abramson has
21 always had methamphetamine available for the PO to buy. The PO has observed a large amount of
22 methamphetamine at Abramson's residence in the past.

23
24 The PO in this case has worked on and off with WestNET in the past and has made
25 numerous controlled buys from several suspects since the year 2001. The information and
26 cooperation of this PO has led to the arrest and conviction of at least six people for VUCSA. Also, I
27 have obtained two search warrants for residences based on information and cooperation provided by
28 the PO. I have found this PO to be truthful and credible based on years of proven reliability. The PO
29 is familiar with methamphetamine, its use, how it is packaged and distributed. The PO is a prior
30 methamphetamine abuser and distributor.

1 The PO has a felony conviction for Possession of Methamphetamine. The PO also has a
2 conviction for DUI and Obstructing a Police Officer. The PO has no convictions for crimes of deceit.

3
4 On 11-1-2005 at around 1730 hours, I drove past 2003 Shamrock Lane and observed Renata
5 Abramson get into a tan Chevrolet Camaro, license plate 839-RUV. She backed out of the driveway
6 and left toward Kitsap Way. The vehicle is registered to Renata Abramson of 2003 Shamrock Lane
7 in Bremerton.

8
9 On 11-2-2005, I met with the PO. Prior to our meeting, the PO had phone conversations with
10 Renata Abramson on her cell phone (number 689-9037). During the conversation, Abramson agreed
11 to sell the PO a quantity of methamphetamine.

12
13 The PO called Abramson again in my presence and Abramson told the PO to meet at the mall
14 in Silverdale at around 1030 hours.

15
16 At 1008 hours I did a complete and thorough search of the PO and the PO's vehicle. No
17 contraband or currency was found.

18
19 I issued the PO a quantity of prerecorded (photocopied) WestNET US currency.

20
21 At around 0945 hours WestNET Detective Sergeant Drake and Detective Alloway set up
22 surveillance of 2003 Shamrock Lane in Bremerton. At around 1042 hours, they observed her leaving
23 the residence in her Chevrolet Camaro and followed her to the Kitsap Mall parking lot. Abramson
24 made no stops between her residence and the Kitsap Mall parking lot.

25
26 As Abramson arrived in the mall parking lot, Sergeant Drake advised Detective Weiss and I
27 via radio. I watched Abramson's car pull into the lot and park on the west side of the mall near the
28 PO. The PO walked over to Abramson's vehicle and made contact with her. There was an unknown
29 female in the passenger seat who got out of the car and stood on the passenger side of the vehicle.
30 Abramson got out of the car and walked to the rear of her Camaro. She then got back into her car
31 and backed up a couple of feet. Abramson then got out of her car, made contact with the PO and then

1 left on foot toward the mall. I observed the PO bend down very briefly behind Abramson's vehicle
2 and then get back into the PO vehicle. Detective Weiss and I then followed the PO to a secure
3 location where the PO turned over a bag containing a crystal substance. The substance later gave a
4 positive field test result for the presence of methamphetamine.

5
6 The PO and the PO's vehicle were searched again. No contraband or currency was found.

7
8 I interviewed the PO who told me the following. The PO walked over to Abramson who was
9 seated in the drivers seat of the vehicle. There was an unknown female in the passenger side of the
10 car. The PO handed Abramson a bag containing the WestNET funds. Abramson placed the bag or
11 currency in her purse. Abramson got out of her car and walked to the rear briefly before getting
12 back into the car and back up into the space further. Abramson then got out of the car and told the
13 PO as she walked away that the meth was in a napkin under and behind her car. The PO walked over
14 and picked up the methamphetamine from the ground under Abramson's car bumper. Abramson and
15 the unknown female left toward the mall on foot.

16
17 I showed the PO a photomontage with six pictures of similar looking females. One of the
18 photographs was a booking photo of Renata Abramson. The PO pointed to that photo and indicated
19 that was Renata.

20
21 Abramson has a long criminal history with arrests in Nevada, California and Nevada. Many of these
22 arrests are for VUCSA.

23
24
25 On May 1st, 2003, Abramson and her then boyfriend John Fowler were arrested in Silverdale after
26 they delivered 4 ounces of methamphetamine to a WestNET police operative. She was later
27 convicted of that crime.

1 On May 20th 2003, WestNET served a Search Warrant at 2003 Shamrock Lane and arrested
2 Renata Abramson again for Possession of Methamphetamine with Intent to Deliver. She was
3 convicted and served prison time.
4

5
6 The PO stated another female lives at the house with Abramson named Amanda Cormany. Police
7 records show Cormany has used this address as late as 10-13-2005 when she reported a burglary to a
8 storage unit. Cormany is currently on felony probation for VUCSA.
9

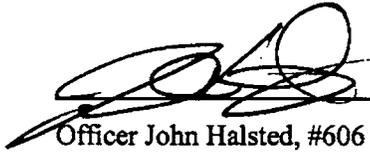
10
11 The PO told me Abramson has a surveillance camera on the front of her house at 2003 Shamrock
12 that she uses to protect her drug operation from law enforcement. The PO has seen firearms at 2003
13 Shamrock within the last two months.
14

15
16 Based upon the facts listed in this affidavit, your affiant has probable cause to believe, and
17 does, in fact, believe, that there is evidence, fruits, and/or instrumentalities of violations of the
18 Uniformed Controlled Substances Act in and on the premises and/or vehicles described above. I
19 request that a search warrant be issued for the following items:

- 20 1. Any and all methamphetamine; and
- 21 2. Any books, records books, research products and materials, tapes, data, calendars, receipts,
22 notes, ledgers, and other papers relating to the sale, ordering, transporting, purchase, possession
23 and distribution of methamphetamine;
- 24 3. Drug paraphernalia (all equipment, products, and materials of any kind which are used, intended
25 for use, or designed for use in compounding, converting, producing, processing, containing,
26 concealing, inhaling, ingesting or otherwise ingesting into a human body, methamphetamine),
27 including but not limited to bags, materials for packaging, cutting, and weighing
28 methamphetamine;
- 29 4. All United States currency and foreign currency, jewelry,
- 30 5. Any weapons and ammunition, including but not limited to, handguns, pistols, revolvers, rifles,
31 shotguns, automatic weapons, and any records or receipts pertaining to the firearms and

- 1 ammunition;
- 2 6. Evidence of occupancy, residency, dominion or control, rental and/or ownership of the premises
3 and/or vehicles described herein, including but not limited to, utility and telephone bills,
4 canceled envelopes, rental, purchase or lease agreements, and keys;
- 5 7. Correspondence, papers, records, and any other items showing employment or lack of
6 employment or reflecting income or expenses, including but not limited to financial statements,
7 credit card records, receipts, and income tax returns;
- 8 8. Any books, papers, documents, records, computer disks, invoices, receipts of real property
9 transactions, records reflecting ownership of motor vehicles, loan records, bank statements and
10 related records, checks and canceled checks, deposit slips and records, money orders and
11 receipts, cashier checks and receipts, wire transfer receipts of memorandums, passbooks, letters
12 of credit, bank drafts, safe deposit boxes, keys relating to the safe deposit boxes of similar secure
13 locations, money wrappers, and other items evidencing the obtaining, secreting, transfer,
14 concealment of assets and/or expenditure of money;
- 15 9. Telephone books and/or address books, and any papers reflecting names, addresses, telephone
16 numbers, pager numbers, mobile telephone numbers, telephone records and bill relating to co-
17 conspirators, sources of supply, customers, financial institutions, and other individuals or
18 businesses with whom a financial relationship exists. Also phone answering devices that record
19 telephone messages left for or by co-conspirators for the delivery or purchase of
20 methamphetamine;
- 21 10. Any electronic equipment, such as pagers, mobile telephones, telephones, answering machines,
22 scanners, computers, calculators and related manuals used to generate, transfer, count, record
23 and/or store information about, possession, possession with intent to deliver and/or delivery of
24 methamphetamine, a controlled substance. Additionally computer software, hardware, tapes and
25 disks, audio tapes, and the contents therein, containing the information generated by the
26 aforementioned electronic equipment;
- 27 11. Also any photographs or video recordings, including still photos, negatives, slides, films,
28 undeveloped film and contents therein that record assets and/or methamphetamine use or
29 transactions by the suspect(s) or co-conspirators for the use, delivery, or purchase of
30 methamphetamine;
- 31 12. Any items used for surveillance or to protect the premises from law enforcement officers.

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Officer John Halsted, #606

SUBSCRIBED AND SWORN BEFORE ME this 21 day of November, 2005.



JUDGE

AFFIDAVIT A

1
2
3 I, Detective John Halsted, being first duly sworn upon oath, deposes and says:
4

5 I am a duly appointed, qualified, and acting commissioned Officer for the Poulsbo Police
6 Department. I am currently assigned as a narcotics detective with the West Sound Narcotics
7 Enforcement Team ("WestNET"), County of Kitsap, State of Washington. I am commissioned as a
8 deputy sheriff by the Kitsap County Sheriff's Department. I have been a full time police officer since
9 1996. Prior to that, I was employed as a Corrections Officer for the Kitsap County Sheriffs Office. I
10 was also a reserve officer for Kitsap County Sheriffs Office and later the Poulsbo Police Department
11 from 1991 to 1996.
12

13 I have attended the Basic Law Enforcement Academy, which consisted of fourteen weeks of training
14 at the Washington State Criminal Justice Training Academy in Burien, Washington. There, I
15 received instruction on drug identification, trafficking, and drug paraphernalia in order to perform
16 duties as a line officer. I have attended the DEA Basic Drug Enforcement 80 hour class. I have
17 attended a 24 hour indoor and outdoor marijuana cultivation class taught by the DEA. I have also
18 attended numerous other conferences and classes on drug enforcement. These classes have included
19 training on clandestine laboratories, drug/narcotic identification, drug enforcement for patrol
20 officers, gang and drug crimes, informant handling, outlaw bikers, Mexican drug trafficking
21 organizations and money laundering techniques. This training was conducted through the
22 Washington State Criminal Justice Training Commission, the Criminal Justice Training Commission
23 Regional Satellite Training Program, the Drug Enforcement Administration, Western State
24 Information Network, and the California Narcotics Officer's Association.
25

26 I have attended a 40-hour clandestine methamphetamine manufacturing course that was taught by
27 CADRE instructors. During this course I learned in great detail how to manufacture
28 methamphetamine and the different processes that are used.
29
30
31

1 In these courses, I have learned more about the drug trade in greater depth and detail. These classes
2 and the academy included information about the use of informants, drug identification, packaging,
3 paraphernalia, language, physiological and pharmacological aspects of drugs, and the operation of
4 drug businesses.

5
6 As of 01-12-2005, I have been the affiant on at least 85 search warrants or court orders. These court
7 orders include but are not limited to those used to intercept or record conversations, seize bank
8 accounts, and subpoena duces tecum inquires into bank records.

9
10 I was a narcotics detection canine handler from 1999 to 2002. During that time, my dog and I
11 assisted numerous local and federal law enforcement agencies in locating drugs as well as currency
12 that had been in recent close contact with drugs.

13
14 I have participated in drug cases involving the purchase of marijuana, methamphetamine, cocaine,
15 ecstasy, ephedrine pills and black tar heroin. I am familiar with drug language, use, packaging,
16 marketing and consumption. I have operated in an undercover role and have made hand to hand
17 purchases of narcotics from numerous offenders. I have assisted in the execution of over 160
18 narcotics related search warrants, which resulted in the seizure of illegal narcotics and related items.

19
20 As a case agent, I have personally investigated over 37 marijuana grow cases which has resulted in
21 the seizure of over 4000 marijuana plants. Additionally, I have assisted other detectives in
22 investigating marijuana grows and have become familiar with the odor of fresh or growing
23 marijuana. I am familiar with the I am a certified aerial marijuana spotter and as of this date I have
24 spotted over 550 growing marijuana plants from both rotary and fixed wing aircraft.

25
26 Based upon my training and experience, and participation in controlled substance investigations and
27 based upon my conversations with other experience law enforcement agents with whom I am
28 associated and based upon my conversations with drug users, I know;

29 1. Drug traffickers maintain books, records, receipts, notes, ledgers, airline tickets, money orders,
30 and other papers relating to the transportation, ordering, possession, sale and distribution of
31

1 drugs. The aforementioned items may be carried by the suspect, or in suspect's vehicle, or be
2 kept in the suspect's house;

3 2. Individuals involved in the distribution of drugs more often than not maintain addresses, and/or
4 telephone numbers in books or papers or in computers that reflect names, addresses and/or
5 telephone numbers for drug customers and associates in their illegal drug organizations;

6 3. Individuals involved in the manufacture and distribution of controlled substances, sometimes
7 take or cause to be taken photographs and video recordings of them, their associates, and their
8 property and their illegal product. These individuals usually maintain these photographs and
9 recordings in their possession of at their premises;

10 4. Individuals involved in the distribution of controlled substances almost always keep
11 paraphernalia for packaging, weighing, and distribution of their illegal drugs. That paraphernalia
12 includes, but is not limited to scales, kits for manufacturing drugs, packaging material,
13 chemicals, to cut the drug product, razor blades, straws, pipes, as well as weapons for their
14 protection of their illegal enterprises;

15 5. That individuals who manufacture and distribute drugs commonly hide the drugs, their
16 paraphernalia, the proceeds of their drug sales, and records of drug transactions in vehicles under
17 their control, on their person, or in their residence, not only for easy access, but also to conceal
18 them from law enforcement personnel;

19 6. That individuals involved in the manufacture and distributions of drugs almost always maintain
20 sums of money, financial instruments, jewelry and valuables, which are proceeds from or
21 intended to be used to facilitate drug transactions. Further that these individuals often place their
22 assets under false names, or under other person's names to avoid detection. Even though these
23 assets are in some other person's name, the drug trafficker continues to use the assets and
24 exercises dominion and control over them. In addition, individuals involved in the manufacture
25 and distribution of controlled substances often use fictitious names on utility records and/or
26 fictitious business names associated with the suspect's property and/or placing property and
27 utility records in the names of others. All such items, in addition to being evidence of drug
28 trafficking violations, are forfeitable to the State pursuant to RCW Chapter 69.50;

29 7. That, individuals who manufacture and distribute illegal controlled substances commonly secret
30 contraband including drugs, the proceeds of drug sales and records of drug transactions in secure
31 locations within the premises under their dominion and control, in their vehicles, safe deposit

1 boxes, self storage units and on their person not only for ready access but also to conceal them
2 from law enforcement;

3 8. That, in addition to weapons, drug manufacturers and traffickers protect their illegal enterprises
4 through the use of surveillance equipment, scanners, binoculars, other miscellaneous equipment,
5 and dogs or other pets situated on the property to warn suspects of intruders or law enforcement
6 personnel;

7 9. That, in order to conduct their enterprise with the smallest amount of detection from law
8 enforcement officers, yet to allow their customers easy access to them, drug manufacturers and
9 traffickers commonly use pagers, cellular telephones, telephones, answering devices, computer
10 monitors, and other types of communication devices;

11 10. With respect to marijuana growers, they may not actually live at the location where they are
12 growing marijuana at, or they allow a caretaker to stay there for a free rent or to "a share crop";

13 11. With respect to indoor marijuana cultivation and propagation operations, suspects routinely
14 utilize the following items and cloaking methods in their attempt to avoid detection:

15 a) blackened out or covered windows, doors or other visibly detectable areas to avoid
16 detection and to preclude outsiders from identifying any portion of the enterprise;

17 b) fixed, movable, or other type of venting systems, usually located away from detection or
18 upon high area off buildings to vent heat and odors escaping the cultivation structure;

19 c) dogs or other pets situated on the property to warn suspects of intruders or law
20 enforcement personnel;

21 d) the diversion of electric power to conceal the large amounts of electricity usually needed
22 to support an indoor marijuana cultivation operation;

23 e) the use of artificial lighting systems utilizing high pressure sodium bulbs, metal halide
24 bulbs and/or fluorescent lighting systems which require large amounts of electrical power
25 for their operation; and

26 12. Marijuana growers often dump out pots of soil outside their residence in order to repot plants.
27 This helps to ensure the health of the plants as frequent repotting ensures that insects or diseases
28 in the soil are removed on a frequent basis.

29 13. With respect to outdoor marijuana grow operations, I know that it takes a greater amount of time
30 for marijuana plants to mature than indoor grow operations. Typically it takes approximately 45
31 to 60 days for indoor marijuana plants to mature.

1 THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF KITSAP

FILED
KITSAP COUNTY CLERK

2005 NOV -2 PM 4:27

DAVID W. PETERSON

3
4 STATE OF WASHINGTON

) NO 20050316

5 Plaintiff,

6 vs.

) SEARCH WARRANT FOR FRUITS /

) INSTRUMENTALITIES AND/OR

) EVIDENCE OF A CRIME FOR:

) A Violation of the Uniformed Controlled

) Substances Act ("V.U.C.S.A."), R.C.W.

) 69.50.401, Possession, Possession with Intent

) to Deliver and/or Delivery of a Controlled

) Substance, to wit: Methamphetamine

7
8 A grey with dark colored trim single story
9 residence with basement and attic, marked
10 with the numbers 2003, and located at 2003
11 Shamrock Dr, Bremerton, Kitsap County,
Washington State.

12 And

13
14 A tan 1984 Chevrolet Camaro two door
15 vehicle bearing Washington license plate
16 839RUV and vehicle identification number
17 1G1AS87H5EL160866 That is registered to
18 Renata L. Abramson of 2003 Shamrock Lane,
19 Bremerton.

20 Defendant

21
22 STATE OF WASHINGTON TO: Any peace officer in said County:

23 WHEREAS, upon the sworn complaint heretofore made and filed in the above entitled court,
24 it appears to the undersigned Judge of the above entitled court that there is probable cause to believe
25 that, in violation of the laws of the State of Washington with respect to the Possession, Possession
26 with Intent to Deliver and/or Delivery of a Controlled Substance, to wit: Methamphetamine, as
27 defined by law in violation of the Uniformed Controlled Substances Act ("V.U.C.S.A."), R.C.W.
28 69.50.401, evidence, fruits, and/or instrumentalities of said offense(s) are presently being kept,
29 stored, or possessed, in violation of the provisions of the State of Washington, in about and upon
30 certain premises and/or vehicles above described within Kitsap County, State of Washington,
31 hereinafter designated and described as;

2

1
2
3 A grey with dark colored trim single story residence with basement and attic, marked with the
4 numbers 2003, and located at 2003 Shamrock Dr, Bremerton, Kitsap County, Washington State.

5 And

6
7 A tan 1984 Chevrolet Camaro two door vehicle bearing Washington license plate 839RUV and
8 vehicle identification number 1G1AS87H5EL160866 That is registered to Renata L. Abramson of
9 2003 Shamrock Lane, Bremerton.
10

11 NOW THEREFORE, in the name of the State of Washington, you are hereby commanded,
12 with the necessary and proper assistance, to enter and search the said premises and/or vehicle and to
13 seize any fruits, instrumentalities and/or evidence of a crime, to wit:

- 14 1. Any and all methamphetamine; and
- 15 2. Any books, records books, research products and materials, tapes, data, calendars, receipts,
16 notes, ledgers, and other papers relating to the sale, ordering, transporting, purchase, possession
17 and distribution of methamphetamine;
- 18 3. Drug paraphernalia (all equipment, products, and materials of any kind which are used, intended
19 for use, or designed for use in compounding, converting, producing, processing, containing,
20 concealing, inhaling, ingesting or otherwise ingesting into a human body, methamphetamine),
21 including but not limited to bags, materials for packaging, cutting, and weighing
22 methamphetamine;
- 23 4. All United States currency and foreign currency, jewelry,
- 24 5. Any weapons and ammunition, including by not limited to, handguns, pistols, revolvers, rifles,
25 shotguns, automatic weapons, and any records or receipts pertaining to the firearms and
26 ammunition;
- 27 6. Evidence of occupancy, residency, dominion or control, rental and/or ownership of the premises
28 and/or vehicles described herein, including but not limited to, utility and telephone bills,
29 canceled envelopes, rental, purchase or lease agreements, and keys;
- 30 7. Correspondence, papers, records, and any other items showing employment or lack of
31 employment or reflecting income or expenses, including but not limited to financial statements,

1 credit card records, receipts, and income tax returns;

2 8. Any books, papers, documents, records, computer disks, invoices, receipts of real property
3 transactions, records reflecting ownership of motor vehicles, loan records, bank statements and
4 related records, checks and canceled checks, deposit slips and records, money orders and
5 receipts, cashier checks and receipts, wire transfer receipts of memorandums, passbooks, letters
6 of credit, bank drafts, safe deposit boxes, keys relating to the safe deposit boxes of similar secure
7 locations, money wrappers, and other items evidencing the obtaining, secreting, transfer,
8 concealment of assets and/or expenditure of money;

9 9. Telephone books and/or address books, and any papers reflecting names, addresses, telephone
10 numbers, pager numbers, mobile telephone numbers, telephone records and bill relating to co-
11 conspirators, sources of supply, customers, financial institutions, and other individuals or
12 businesses with whom a financial relationship exists. Also phone answering devices that record
13 telephone messages left for or by co-conspirators for the delivery or purchase of
14 methamphetamine;

15 10. Any electronic equipment, such as pagers, mobile telephones, telephones, answering machines,
16 scanners, computers, calculators and related manuals used to generate, transfer, count, record
17 and/or store information about, possession, possession with intent to deliver and/or delivery of
18 methamphetamine, a controlled substance. Additionally computer software, hardware, tapes and
19 disks, audio tapes, and the contents therein, containing the information generated by the
20 aforementioned electronic equipment;

21 11. Also any photographs or video recordings, including still photos, negatives, slides, films,
22 undeveloped film and contents therein that record assets and/or methamphetamine use or
23 transactions by the suspect(s) or co-conspirators for the use, delivery, or purchase of
24 methamphetamine;

25 12. Any items used for surveillance or to protect the premises from law enforcement officers.

26
27 And to safely keep that same and to make a return of said warrant within (10) days; with a
28 particular statement of all the articles seized and the name of the person or persons in whose
29 possession the same were found, if any; and if no person is found in possession of said articles, the
30 return shall so state. A copy of said warrant shall be served upon the person or persons found in
31 possession thereof; if no such persons are found, a copy of said warrant shall be posted upon said

1 premises and/or vehicle(s) where the same are found, then in any conspicuous place upon the
2 premises and/or vehicle(s), together with a receipt for all the articles seized.

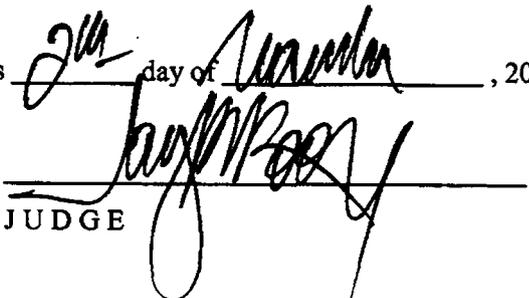
3 The said premises and/or vehicles referred to above, located in Kitsap County, State of
4 Washington, is designated and described as follows:

5 A grey with dark colored trim single story residence with basement and attic, marked with the
6 numbers 2003, and located at 2003 Shamrock Dr, Bremerton, Kitsap County, Washington State.

7 And

8
9 A tan 1984 Chevrolet Camaro two door vehicle bearing Washington license plate 839RUV and
10 vehicle identification number 1G1AS87H5EL160866 That is registered to Renata L. Abramson of
11 2003 Shamrock Lane, Bremerton.

12
13
14 GIVEN UNDER MY HAND this 2nd day of November, 2005.

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18 JUDGE
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