

10/14/07
JW

No. 35621-0-II

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

STATE OF WASHINGTON,
Respondent,

v.

RODNEY A. WILSON,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE F. MARK McCAULEY, JUDGE

BRIEF OF RESPONDENT

H. STEWARD MENEFEE
Prosecuting Attorney
for Grays Harbor County

BY: Gerald R. Fuller
GERALD R. FULLER
Chief Criminal Deputy
WSBA #5143

OFFICE ADDRESS:
Grays Harbor County Courthouse
102 West Broadway, Room 102
Montesano, Washington 98563
Telephone: (360) 249-3951

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RESPONDENT'S COUNTERSTATEMENT OF THE CASE

Procedural History.

The defendant was charged by Information on April 19, 2006, with the following offenses: Count 1, Burglary in the First Degree in regard to the burglary of the John Gow residence that occurred on April 13, 2006; Count 2, Possession of a Stolen Firearm taken in the burglary of the Gow residence; Count 3, Assault in the Third Degree arising out of his assault on a deputy sheriff on the afternoon of April 13, 2006, when he was confronted shortly after the commission of the Gow burglary and Count 4, Possession of Stolen Property in the Second Degree, a motor vehicle stolen from the residence of Ted Aspen on the day of the burglary of the Gow residence, after having assaulted the deputy and fled on foot..

The State subsequently filed an Amended Information adding additional counts: Count 5, Possession of Stolen Property in the Second Degree for possession of an access device stolen from Mr. Aspen's residence; and Count 6, Possession of a Controlled Substance relating to drugs that were seized from the defendant's person at the time of his arrest on April 18, 2006.

Prior to trial, the defendant moved to sever counts. Following hearing the motion was denied. The defendant filed motions to suppress evidence seized at the time of his arrest, evidence seized from the motor vehicle that he was driving when contacted on April 13, 2006, and evidence seized from a trailer at 35 Leonard Road where he was first confronted by law enforcement. Following hearing, the motions to suppress were denied.

The matter proceeded to jury trial. The defendant was found guilty of the following: Count I, Residential Burglary; Count II, Possession of a Stolen Firearm; Count III, Assault in the Third Degree; Counts IV and V of Possession of Stolen Property in the Second Degree; and Count VI, VUCSA - Possession of Methamphetamine. This appeal followed.

Factual Background.

John Gow lives at 8 Riverview Drive, Humptulips, Washington. (RP 52). On April 13, 2006, he left his home in connection with his employment. He arrived back home shortly before noon. (RP 54). He discovered that the front door to his residence had been kicked in and another door leading into the interior of the residence had been forcibly opened. (RP 54). A number of personal property items were missing, including his VCR, a DVD player, firearms and his son's sleep apnea machine. (RP 55). Gow immediately called law enforcement. (RP 54). Deputy Sean Gow responded to Mr. Gow's residence. (RP 44-45).

The neighbor, Chris Cain was contacted by Deputy Gow. He lived across the street. (RP 47). He explained that he had seen a blue Toyota Celica with pop-up headlights and a spoiler pulling out from in front of Gow's residence shortly before Mr. Gow arrived home. He was suspicious because he did not recognize the vehicle. (RP 62-63).

Deputy Paul Fritts was on patrol on the morning of April 13, 2006. When he heard of the burglary, he went to 35 Leonard Road. Upon arrival, he noticed a blue Toyota Celica that matched the description given by Cain. (RP 71). He also observed the defendant walking out of a trailer home at 35 Leonard Road heading toward the Toyota Celica. (RP 72 - 73). Fritts called out to the defendant and asked the defendant to step toward him. The defendant hesitated then looked around. Fritts again directed the defendant to walk toward him. (RP 73-74).

Upon contact, the defendant identified himself as Roger Wilson. Fritts informed the defendant that he was investigating a burglary and that the vehicle matched the description of the vehicle seen pulling away from the burglary. (RP 74). Fritts told the defendant that he was going to handcuff him for officer safety. As Fritts attempted to restrain the defendant, the defendant turned and swung, hitting Deputy Fritts in the head. (RP 74-75). The defendant ran off on foot. A K-9 track was attempted. The defendant was located hiding in the brush. He threatened to shoot the police dog. Sheriff's deputies were not able to apprehend him that day. (RP 90-93).

The trailer was later searched pursuant to a search warrant. Rifles belonging to Mr. Gow were located and seized. (RP 98-99). Witnesses identified the defendant as having driven up in the Toyota Celica shortly before sheriff's deputies arrived. (RP 118). According to witnesses, the defendant came into the house and asked if anyone wanted to buy some guns. (RP 119). The defendant went out to the car and retrieved the rifles, bringing them into the trailer. (RP 170).

Deputies also searched the Toyota Celica pursuant to a search warrant. They recovered a number of items taken in the burglary, including the sleep apnea machine, a brief case containing the stolen DVD player and paperwork belonging to Mr. Gow's son and personal effects belonging to the defendant. (RP 101-104).

In April 2006, Ted Aspen was living off and on at 2943 East Hoquiam Road, Hoquiam, Washington. This had been his mother's residence before her death in April 2005. (RP 130-31). The Aspen residence is less than a mile away from the trailer at 35 Leonard Road. (RP 131, 133). Aspen had left his motor vehicle, a 1991 Chevrolet Caprice sedan, parked at his mother's residence while he was working in Seattle.

A neighbor, Nina McFall, noticed the vehicle in the driveway on the afternoon of April 13, 2006, at about 1:30 p.m. By the following morning it was gone. (RP 140). It was several days before sheriff's deputies were notified about the car. Deputy Polly Davin responded to the

Clark residence on April 18, 2006. She found that Mr. Aspen's residence had been burglarized. (RP 143-45).

On April 18, 2006, sheriff's deputies received information that the defendant was staying in the Westport area at the Cranberry Motel. The defendant was registered under an assumed name. (RP 177-78). The defendant had a valid warrant for his arrest for violation of a prior judgment. (RP 43, 09/28/06). The police set up surveillance. They noticed a 1991 Chevrolet Caprice parked outside the Cranberry Motel. When Deputy Schrader checked the license through dispatch he learned that the vehicle belonged to Mr. Aspen. At the same time Deputy Davin was at the Aspen residence investigating the burglary. She heard Deputy Schrader's broadcast and notified him of the burglary and theft of the vehicle. (RP 178-79).

The defendant was arrested from the motel room and searched incident to arrest. (RP 185-86). Credit cards belonging to Jo Ann Clark were found in the defendant's pants pocket. (RP 186-87). Hypodermic needles containing methamphetamine were located in the defendant's sweatshirt. (RP 197-99).

RESPONSE TO ASSIGNMENTS OF ERROR

- 1. The trial court properly found exigent circumstances to waive the requirement of RCW 10.31.040. (Response to Assignment of Error Nos. 1 through 4).**

The undisputed facts are set forth in the court's Findings of Fact entered on October 2, 2006. (CP 126-28). Although the defendant has assigned error to the findings, he has not demonstrated any factual dispute as to these findings. The court found that the defendant, at the time of his initial contact with law enforcement five days earlier, had made a threat to shoot the officer's police dog. Deputies were also aware that the defendant, during the commission of the burglary, had stolen firearms. The court found, based on this, that the officers had a "genuine and articulable concern for their welfare" when approaching the defendant to make the arrest.

The requirements of RCW 10.31.040 may be waived when law enforcement officers can point to "...specific articulable facts and the reasonable inferences therefrom which justify the intrusion." State v. Diana, 24 Wn.App. 908, 911, 604 P.2d 1312 (1979). This requirement is satisfied when police have "...specific prior information that the suspect has resolved to act in a manner which would create an exigency or has made specific preparations to act in such a manner." State v. Coyle, 95 Wn.2d 1, 10, 621 P.2d 1256 (1980).

The defendant in this case assaulted the officer who was attempting to arrest him. When chased from the scene, he threatened to shoot the tracking dog. This conduct of the defendant speaks loud and clear about how he intended to react toward the officers five days later when again approached by them to make an arrest. The officers took into account

specific and articulable concerns that were based upon the defendant's prior conduct. See State v. Cardenas, 146 Wn.2d 400, 411-12, 47 P.3d 127 (2002).

It is not for this court to second guess the reasonable and articulable beliefs of the officers. The trial court properly denied the motion.

2. The trial court properly denied defendant's motion to suppress evidence seized from 35 Leonard Road and from the Toyota Celica. (Response to Assignment of Error Nos. 5 and 6).

(a) The defendant has no standing.

The defendant asserts that he has automatic standing to challenge the search of both the trailer and the vehicle. Even assuming that the doctrine of automatic standing is still viable in Washington, the defendant has no basis to challenge the seizure of firearms from the trailer or property seized from the Celica as it relates to the crime of Residential Burglary. In order to assert automatic standing the defendant must be charged with an offense that involves possession as an essential element. State v. Williams, 142 Wn.2d 17, 23, 11 P.3d 714 (2000). Residential Burglary does not involve possession as an essential element.

Furthermore, in order to assert automatic standing, even if he is charged with a possessory offense, the defendant must be in possession of the subject matter at the time of the search. At the time of the search herein, the defendant was not in possession of the firearms or, for that

matter, the items in the motor vehicle. The evidence at trial was that he left the firearms in another person's residence intending to dispose of them by giving them or selling them to others. He had fled the scene, abandoning what interest he may have had in the firearms left at the trailer and abandoning the motor vehicle.

In State v. Zakel, 119 Wn.2d 563, 834 P.2d 1046 (1992), the defendant was charged with possession of a stolen motor vehicle. The motor vehicle was found parked on the street. It was identified as stolen by the police who had lifted the hood and found the serial number on the firewall of the vehicle. The defendant challenged that search. The Court of Appeals ruled that the defendant did not have automatic standing to challenge the search.

The Washington Supreme Court declined to decide the issue of automatic standing, holding that the defendant had no basis to assert automatic standing because he was not in possession of the vehicle at the time of the search. Zakel, 119 Wn.2d at 571:

We decline to decide whether our state constitution requires adherence to the automatic standing doctrine because it is unnecessary for the resolution of this case. The factual prerequisites for automatic standing simply are not present here. Zakel did not possess the RX7 at the time of the search. Without the benefit of automatic standing, Zakel cannot challenge the search of the RX7. Therefore, we affirm Zakel's convictions, but hold the Court of Appeals unnecessarily reached the issue of the continuing validity of the automatic standing doctrine under our state constitution.

The trailer was not the defendant's residence. He went there looking for the owner in order to dispose of the firearms. He left them in the trailer. He was not in possession of the firearms at the time they were seized. Accordingly, even though Possession of a Stolen Firearm may be a possessory offense, he is not entitled the benefit of automatic standing. Similarly, the vehicle was parked in front of the residence. The defendant, by the time the vehicle was searched, had fled the scene. His whereabouts were not known. He was no longer in possession of the vehicle.

By similar reasoning, it is apparent that the defendant essentially abandoned any privacy interest he may have had on the vehicle. A suspect who flees the scene of his arrest has abandoned any privacy interest he may have had in his motor vehicle. See U.S. v. D'Avanzo, 443 F.2d 1224 (Cal. Cir. 1971); Hunt v. Commonwealth, 488 S.W. 2d 692 (Ky.App. 1972); State v. Grissom, 241 Kan. 851, 840 P.2d 1142 (1992); Cooper v. State, 2997 Ark. 478, 763 S.W.2d 645 (1989).

Furthermore, the defendant was not charged with a possessory crime in relation to the items that were seized from the motor vehicle. The items seized from the motor vehicle were evidence of the burglary, stolen property taken from the Gow residence, burglar tools and personal effects of the defendant. That evidence was relevant to the proof of the burglary and identity of the defendant. He was not charged with criminal possession of stolen property for the items in the vehicle. Accordingly, for

this reason also, he does not have automatic standing to challenge the seizure of the items from the motor vehicle.

To summarize, the search of the trailer resulted in the seizure of Mr. Gow's stolen firearms. The trial court properly denied the motion to suppress the seizure of the firearms. The defendant had no expectation of privacy in the trailer. He did not live there. He was there only long enough to bring several rifles into the trailer and offer them for sale. By his actions, he abandoned any interest he may have had in the stolen rifles. Even though he may be charged with unlawful possession of the stolen rifles, he may not assert automatic standing to challenge the search because he had abandoned the rifles, leaving them at a place where he had no reasonable expectation of privacy. In short, for purposes of automatic standing analysis, he was no longer in the "possession" of the stolen rifles.

Likewise, the trial court properly denied any motion to suppress evidence taken from the motor vehicle. The defendant had fled on foot and abandoned the motor vehicle in the driveway of another person's residence. He gave up any privacy interest that he may have had in the motor vehicle when he fled. Similarly, the defendant does not have automatic standing to challenge the search of the motor vehicle. He was not in possession of the motor vehicle at the time it was searched. In any event, he was not charged with a possessory crime relating to any property seized from the motor vehicle. No rifles were seized from the vehicle.

The search yielded burglary tools, other stolen property belonging to Mr. Gow, and personal effects of the defendant. (RP 100-104).

In the end, the defendant had no reasonable expectation of privacy in the trailer, the vehicle or any of the property seized therefrom. U.S. v. Huffhines, 967 F.2d 314, 318 (9th Cir. 1992).

(b) The search of 35 Leonard Road and the search of the Toyota Celica were each supported by a valid warrant.

The defendant asserts that the warrant contained material misstatements of fact. Circumstances under which a defendant may challenge the contents of a search warrant declaration are very limited. The burden is on the defendant to demonstrate that "...a false statement, knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the search warrant." Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674, 57 L.Ed.2d 667 (1978). The Washington Supreme Court has recently applied the Franks standard under Article I §7 of the Washington State Constitution. State v. Chenoweth, 160 Wn.2d 454, 158 P.3d 595 (2007).

The State concedes, as demonstrated by the testimony at trial, that there are inaccuracies in the search warrant declaration. While the information may be incorrect, it is not "false" in light of what actually happened. A copy of the search warrant declaration is attached hereto and incorporated herein by this reference. A line-by-line reading of the search

warrant declaration demonstrates that the search warrant declaration contains the essential facts to support the issuance of a search warrant.

There was a burglary at the Gow residence on April 13, 2006. Mr. Gow returned home and found that his house had been burglarized. Firearms had been stolen from the house. This information is reflected in the first lines of the search warrant declaration, which includes a listing of the rifles that were missing.

The next line of the search warrant reads as follows: "... Mr. Gow noticed a 1980s blue Toyota Celica with a spoiler and Washington license 132 MBL, leave from the area of his residence when he arrived home that morning." Admittedly, this is an incorrect statement. It was the neighbor, Chris Cain, and not Mr. Gow who saw the vehicle leave from in front of the Gow residence shortly before Mr. Gow arrived home. Cain did not get the license number. Nevertheless, the information contained in that line is essentially true. A citizen witness saw a blue Toyota Celica with a spoiler leave the scene of the burglary shortly before Mr. Gow arrived home.

Deputy Fritts, when he heard of the burglary, went to 35 Leonard Road where he observed the single-wide mobile home as described on the search warrant affidavit and the blue Toyota Celica with the spoiler. The license number listed came from Fritts' observations. Witnesses at the scene confirmed that the defendant had arrived at the scene in a blue Toyota.

Further, as set forth in the search warrant declaration, deputies were informed that the defendant had arrived at 35 Leonard Road on the day of the burglary in possession of guns that he had for sale. The witness related that some of the weapons had been brought into the trailer and left there. The witness believed that the defendant had left with the rest of the firearms.

In short, some of the statements contained in the search warrant are incorrect. They are not, however, “false” because, read in a commonsense way, they convey the information that law enforcement knew at the time of the incident. See Janecka v. State, 937 S.W. 2d 456 (Tex. Cr. App. 1996); State v. Ramsey, 209 W.Va. 248, 545 S.E. 2d 853 (2000).

Even if the court assumes that the information contained in the search warrant declaration is “false,” the defendant has not shown that there was a knowing and intentional falsehood or reckless disregard for the truth. The gist of the affidavit contains the essential truth.

A negligent or innocent mistake is insufficient to support warrant suppression. See U.S. v. Capozzi, 347 F.3d 327 (1st Cir. 2003) where the court found that the omissions or mistakes were the product of inattention to detail “... as [the officer] rushed to prepare an affidavit in the midst of the developing investigation.” See also U.S. v. Mick, 263 F.3d 553 (6th Cir. 2001) where the court refused to strike the information from the search warrant affidavit when the finding was that the officer was confused about dates on which different events occurred.

If, and only if, the information contained is found to be intentionally or recklessly made will those statements be redacted from the search warrant declaration. The redaction of such statement occurs only if the defendant proves perjury or reckless disregard. See Lafave, Search and Seizure, section 4.4(b). Thereafter, the question remains whether the remaining declaration establishes probable cause. Automatic exclusion of unintentional or negligent misrepresentations is not appropriate. Lafave, supra, at page 549. State v. Chenoweth, supra.

The trial court had the declaration of Deputy Kolilis concerning the circumstances surrounding the preparation of the search warrant. The circumstances do not support a finding of reckless disregard. (CP 227-28).

Even taking out the objected to information, the search warrant declaration states probable cause. For purposes of this analysis, there is really only one line in the search warrant declaration that is inaccurate. It does, nevertheless, contain the gist of the information known to law enforcement at the time. This Court should consider the search warrant to read as follows, based upon information known to law enforcement:

On April 13, 2006, Deputy Fritts responded to a report of a residential burglary at 8 Riverview Drive, Hoquiam. The owner, John Gow, reported that his house had been burglarized that morning and that five of his six firearms were missing from his house. These include the following: a .410 caliber rifle; a .20 caliber shotgun; a .16 caliber rifle; a 12 caliber rifle; a 303 Infield rifle. In addition [Mr. Gow's neighbor] noticed a

1980s blue Toyota Celica with a spoiler...
leave from the area of Gow's residence...
that morning.

Deputy Fritts was aware that there had been a number of vehicle thefts in the area recently. He had been provided with a list of addresses in the county where detectives believed stolen vehicle and property might be located. The address listed nearest to 8 Riverview Drive was 35 Leonard Road, Hoquiam, Washington, a single-wide mobile with metal siding and a wooden deck on the front and back.

At approximately 12:30 p.m., Deputy Fritts arrived at 35 Leonard Road and contacted an occupant, later identified as Colleen Hicks. Deputy Fritts asked her if she had any information about the 8 Riverview Drive residential burglary, including any guns or the Toyota that had been stolen. Ms. Hicks indicated that Rodney Wilson had arrived at 35 Leonard Road about noon on April 13, 2007, and told her that he had a number of guns for sale. She stated that he had left some of the guns, which she described as long weapons, at the residence behind her couch, and left with the rest of the firearms. Ms. Hicks also confirmed that Wilson had arrived in a blue older model Toyota with a spoiler.

As of the time that this warrant was submitted, Rodney Wilson is in the woods near Humptulips, Washington, surrounded by law enforcement officers, and has threatened to use a firearm.

When read in this common sense fashion, the declaration sets forth probable cause. The motion to suppress was properly denied.

3. The trial court properly denied the defendant's motion for severance. (Response to Assignment of Error No. 7).

The defendant represented himself. He filed a motion for severance. (CP 47-49). The State responded, setting forth the essentially undisputed facts underlying the prosecution in this matter. (CP 44-46).

The charges filed herein relate to a sequence of events that are all connected together. The events began with the burglary of the Gow residence. The defendant was located a short time later. When confronted, he assaulted the arresting officer. The victim's rifles and other stolen property were recovered from the location where the defendant had been found. The defendant fled on foot. That same afternoon Mr. Aspen's motor vehicle was stolen from a nearby residence. Five days later, the defendant was located in Westport. He was found to be in possession of a credit card stolen from the Aspen residence and drugs. Given these facts, the charges were properly joined for trial.

CrR 4.3(a) provides as follows:

(a) Joinder of Offenses. Two or more offenses may be joined in one charging document, with each offense stated in a separate count, when the offenses, whether felonies or misdemeanors or both:

- (1) Are of the same or similar character, even if not part of a single scheme or plan;
or
- (2) Are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.

Clearly, the charges herein arise out of “a series of acts connected together.” Everything arose from the conduct of the defendant during the commission of the burglary and thereafter when confronted by law enforcement. The rule authorizes joinder of these offenses.

The joinder of offenses was not manifestly prejudicial to the defendant. It is not as though the State has charged unrelated offenses simply because they are of a similar nature. There is no basis to conclude that the defendant would be embarrassed or confounded in presenting separate defenses. See State v. Smith, 74 Wn.2d 744, 755, 446 P.2d 571 (1968). This is not a situation in which unrelated cases are being used to infer criminal disposition or the jury is asked to cumulate evidence of various crimes charged to find guilt. See State v. Bythrow, 114 Wn.2d 713, 718, 790 P.2d 154 (1990).

Indeed, evidence of each crime is admissible under ER404(b) as part of the *res gestae*. The crimes charged are an unbroken sequence of incidents tied to the defendant all of which are necessary for the jury to have the entire story. See State v. Tharp, 96 Wn.2d 591, 594, 637 P.2d 961 (1981). Each crime is a link in the chain which starts at the time of the commission of the burglary and ends upon the defendant’s arrest. State v. Lane, 125 Wn.2d 825, 889 P.2d 929 (1995).

A defendant seeking severance must establish prejudice and must also show that joinder of the offenses would be so prejudicial as to outweigh concern for a judicial economy. State v. Phillips, 108 Wn.2d

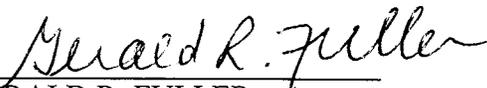
627, 640, 741 P.2d 24 (1987). No such showing has been made.

The trial court properly denied the motion for severance.

CONCLUSION

For the reasons set forth, the convictions must be affirmed.

Respectfully Submitted,

By: 
GERALD R. FULLER
Chief Criminal Deputy
WSBA #5143

FILED

APR 13 2006

DISTRICT COURT
GRAYS HARBOR COUNTY

EVIDENCE NO. 2006139, 200600505

GRAYS HARBOR COUNTY DISTRICT COURT 1

STATE OF WASHINGTON)
) ss. **DECLARATION FOR SEARCH WARRANT**
GRAYS HARBOR COUNTY)

COMES NOW Andrea Vingo, who being first duly sworn, upon oath, complains, deposes and says:

That she has probable cause to believe and in fact does believe that evidence of a crime (THEFT/BURGLARY//POSSESSION OF STOLEN PROPERTY), or contraband, the fruits of crime or things otherwise criminally possessed or weapons or other things by means of which a crime has been committed or reasonably appears about to be committed, particularly described as follows:

1. A .410 caliber rifle;
2. A .20 caliber shotgun;
3. a .16 caliber rifle;
4. A .12 caliber rifle;
5. A .303 Enfield rifle;
6. Indicia of dominion and control over the above listed car and/or above listed residence.

are under the control of, or in the possession of some person or persons and are concealed in or on certain premises, vehicles or persons within Grays Harbor County, Washington, described as follows, to-wit:

1. The residence at 35 Leonard Road, Hoquiam, Washington, a single-wide mobile with metal siding and a wooden deck on the front and back
2. A 1980's blue Toyota Celica with spoiler, Washington license 132 MLB, currently located in or near Humptulips, Washington, Grays Harbor County.

That affiant's belief is based upon the facts and circumstances as set forth in the numbered attachments, which are incorporated by this reference.

I am a Prosecuting Attorney for Grays Harbor County. The following information was relayed to me by Detective Don Kolilis.

On or about April 13, 2006, Deputy Fritts responded to a report of a residential burglary at 8 Riverview Drive in Hoquiam. The owner, John Gow, reported that his house had been burglarized that morning and that five of his six firearms were missing from his house. These include the following: a .410 caliber rifle; a .20 caliber shotgun; a .16 caliber rifle; a .12 caliber rifle; a .303 Enfield rifle. In addition, Mr. Gow noticed an 1980's blue Toyota Celica with a spoiler and Washington license 132 MBL, leave from the area of his residence when he arrived home that morning.

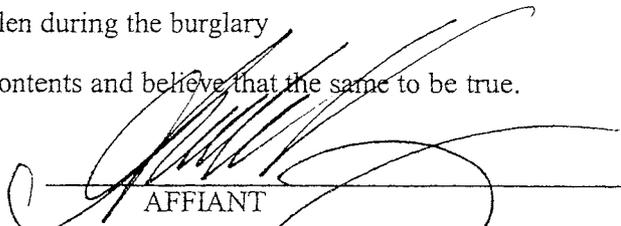
Deputy Fritts was aware that there had been a number of vehicle thefts in the area recently. He had been provided with a list of addresses in the county where detectives believed stolen vehicle and property might be located. The address listed nearest to 8 Riverview Drive was 35 Leonard Road, Hoquiam, Washington, a single-wide mobile with metal siding and a wooden deck on the front and back

At approximately 12:30 pm, Deputy Fritts arrived at 35 Leonard Road and contacted an occupant, later identified as Colleen Hicks. Deputy Fritts asked her if she had any information about the 8 Riverview Drive residential burglary, including any guns or the Toyota that had been stolen. Ms. Hicks indicated that Rodney Wilson had arrived at 35 Leonard Road about noon ^{on 4/3/06} ~~that day~~, and told her that he had a number of guns for sale. She stated that he had left some of the guns, which she described as long weapons, at the residence behind her couch, and left with the rest of the firearms. Ms. Hicks also confirmed that Wilson had arrived in a blue older model Toyota with a spoiler.

As of the time that this warrant was submitted, Rodney Wilson is in the woods near Humptulips, Washington, surrounded by law enforcement officers, and has threatened to use a firearm.

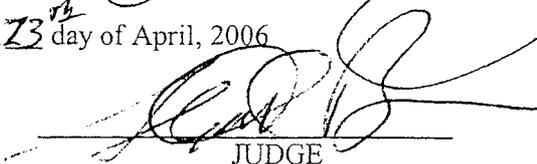
I am asking from this warrant so that law enforcement may search the 35 Leonard Road residence and the Toyota for the firearms that were stolen during the burglary

I have read the foregoing, know its contents and believe that the same to be true.



AFFIANT

SUBSCRIBED AND SWORN: This ^{23rd} day of April, 2006



JUDGE

Certificate of Clerk of the District Court
of Washington in and for Grays harbor County.
The above is a true and correct copy of the
original instrument which is on file or of
record in this Court. Done this 4th day of

Page ___ of ___

October, 2007

STEPHEN E. BROWN, JUDGE

By Melli Shelb

FILED
BY _____
DEPUTY

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

STATE OF WASHINGTON,

Respondent,

No.: 35621-0-II

v.

DECLARATION OF MAILING

RODNEY A. WILSON,

Appellant.

DECLARATION

I, Barbara Chapman hereby declare as follows:

On the 4th day of October, 2007, I mailed a copy of the Brief of Respondent to Peter B. Tiller; The Tiller Law Firm; Attorneys at Law; Post Office Box 58; Centralia, Washington 98531-0058, and Rodney A. Wilson 993138; H-2 B-68; Stafford Creek Corrections Center; 191 Constantine Way; Aberdeen, Washington 98520, by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

Barbara Chapman