

COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

BY cn DEPUTY

Court of Appeals NO. 37833-7-II  
Skamania County Superior Court No. 08-1-00039-9

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

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STATE OF WASHINGTON,  
Respondent,

v.

RANDALL J. PATTON,  
Appellant.

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APPEAL FROM THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR SKAMANIA COUNTY

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THE HONORABLE BRIAN ALTMAN, JUDGE

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BRIEF OF RESPONDENT

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## I. STATEMENT OF THE CASE

Although generally in agreement with the Appellant's statement of the case, some additional facts should be brought to the court's attention.

After Mr. Patton presented his defense, the State called one witness in rebuttal. That witness was Ms. Debbie Shelton. She testified that she knew the defendant. R.P. p.192 l. 15. That she had been in his home. R.P. p.192 l.24. She testified that she had been in his home in February of 2008; that she had seen him use a digital scale to weigh out powder; that she believed the powder to be Methamphetamine, based on her experience; and that the defendant delivered the weighed drugs to a women named Tonya. R.P. p. 192 l. 25 to R.P. p. 194 l. 3.

## II. ARGUMENT

### A. Search of the Vehicle

It is well settled in Washington that a search warrant which includes all property, real and personal, owned by the person named in the warrant is valid, and the warrant authorizes

then a search of the owner's vehicles. *State v. Huff*, 33 Wn. App. 304, 654 P.2d 1211 (1982). See also *State v. Frye*, 26 Wn. App. 276, 613 P.2d 152, review denied, 94 Wn. 2d 1008 (1980); *State v. Claflin*, 38 Wn. App. 847, 690 P2d 1186 (1984), review denied, 103 Wn. 2d 1014 (1985).

There was no violation of the Defendant's constitutional rights by execution of the warrant. Items found in the search were admissible, and therefore the "fruit of the poison tree" doctrine does not apply. It is also interesting to note that the Defendant, in his defense case, during cross examination, admitted using the digital scale for weighing drugs.

#### B. Waiver of Jury Trial Valid

Constitutional rights may be waived by knowing, intelligent, and voluntary acts. State v. Stegall, 124 Wn.2d 719, 724, 881 P.2d 979 (1994); Bellevue v. Acrey, 103 Wn.2d 203, 208-09, 691 P.2d 957 (1984); In re James, 96 Wn.2d 847, 851, 640 P.2d 18 (1982). The validity of any waiver of a constitutional right, as well as the inquiry required by the court to establish waiver,

is dependent upon the circumstances of each case, including the defendant's experience and capabilities. Johnson v. Zerbst, 304 U.S. 458, 464, 82 L.Ed 1461, 58 S. Ct. 1019, 146 A.L.R. 357 (1938).

The right to a jury trial is constitutional, and as such a waiver of a jury must be "knowingly, intelligently, and voluntarily made." State v. Treat, 109 Wn. App. 419, 427, 35 P.3d 1192 (2001), citing State v. Bugai, 30 Wn. App. 156, 157, 632 P.2d 917 (1981). The waiver must either be in writing, or done orally on the record. State v. Wicke, 91 Wn.2d 638, 645-46, 591 P.2d 452 (1979); State v. Rangle, 33 Wn. App. 774, 775-76, 657 P.2d 809 (1983).

In the case at bar, there was not only a written waiver, but the trial court judge asked particular questions of the Defendant.

The full text is set forth in R.P. p. 42, as follows:

THE COURT: And the matter of State versus Randall Patton, 08-1-39-5.

MR. QUESNEL: Yes, Your Honor, good morning. This was originally set today for a

jury trial. The first matter I'd like to address with the Court, I've discussed the matter with Mr. Patton. He desires to initiate the process of waiving his right to a jury trial and proceed with a bench trial.

THE COURT: Okay, Do we have a waiver?

MR. QUESNEL: A notice was provided to the State, Your Honor.

THE COURT: Okay. And, let's see, Mr. Patton, you are Randall Patton; correct?

MR. PATTON: Yes, sir.

THE COURT: I have here a Waiver of Jury Trial, I see you signed that, sir? Do you understand you do have a right to a trial by jury and you also have a right to waive that. My understanding is you're waiving your right to a jury trial, which means that a judge will decide your case. Is that your understanding?

MR. PATTON: Yes, sir.

THE COURT: And I should also inform you that it will not be me, it will be a visiting

judge, it will be Judge Altman from Goldendale. . . .

The defense attorney represented on the record that he had discussed the matter with his client and had him sign a written waiver. The Judge inquired of the defendant if that is what he wanted to do. The representation by an attorney, together with the written waiver is considered strong evidence that the accused effectively waived his right to a jury trial.

State v. Downs, 36 Wash. App. 143, 672 P.2d 416 (1985); State v. Wicke, 91 Wn. 2d 638, 591 P2d 452 (1979).

As a represented defendant who signed a written waiver, there can be no doubt that it was freely, voluntarily and knowingly made.

### III. CONCLUSION

The search of Mr. Patton's property, including his own vehicles on the property, was constitutionally valid. Mr. Patton freely, voluntarily and knowingly waived his right to trial, both verbally and in writing. His conviction should be upheld.

Respectfully submitted this 13 day of March, 2009

by:

A handwritten signature in black ink, appearing to read "Peter S. Banks", written over a horizontal line.

Peter S. Banks

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DATED this 13<sup>th</sup> day of MARCH, 2009.



Pamela K. Bell  
Pamela K. Bell  
Legal Secretary  
Skamania County Prosecutor's Office

CERTIFICATE OF SERVICE

COURT OF APPEALS  
DIVISION II  
MARCH 16 2009  
STATE OF WASHINGTON  
BY CA

COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, ) No.37833-7-II  
Respondent, ) Co. No. 08-1-00039-9  
V. )  
RANDALL J. PATTON, ) **CERTIFICATE OF SERVICE**  
Appellant. )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing BRIEF OF RESPONDENT on the following individuals, by mailing or causing to be mailed true copies thereof, certified as such, contained in a sealed envelope, with postage paid, addressed to them at their last known address, and deposited in the post office at Stevenson, WA on the 13th day of MARCH, 2009.

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