

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY [Signature]
DEPUTY

STATE OF WASHINGTON)
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V.)
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AZAEL ORTIZ-LOPEZ)
)
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NO.38558-9-II

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Azael Ortiz-Lopez, have received and reviewed the opening brief prepared by my Attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this statement of additional grounds for review when my appeal is considered on the merits.

Additional Ground 1

DOUBLE JEOPARDY:

I have been charged with two counts of bail jumping which constitute 'same conduct.'

The United states Supreme Court has stated [double jeopardy clause] embodies three protections: "It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense." (Footnotes omitted.) *North Carolina v. Pearce*, 395 U.S. 711, 717, 23 L. Ed. 2d 656, 89 S. Ct. 2072 (1969). For purposes of double jeopardy, perhaps one of the most vexing issues has been to determine what "the same offense" means

The double jeopardy clause, U.S. Const. amend. V; Wash. Const. art.1§ 7, protects a person from being convicted more than once under the same statute for committing a single unit of prosecution. To determine the unit of prosecution, courts first look to the statute. If the statute does not plainly define the unit of prosecution, the courts examine the legislative history to discern legislative intent. Unless the legislature clearly and unambiguously intends to turn a single transaction into multiple offenses, the rule of lenity requires a court to resolve ambiguity in favor of one offense. The remedy for a double jeopardy violation is to vacate any multiple convictions.

These two bail jumping charges are based on the (same act). The courts scheduling order states“each of the DATES set forth above.” I missed all of the dates therefore if the State is correct I should be charged with three counts of bail jumping, for missing the trial date also. Vol. 3 RP 415-416

The *Fourteenth amendment*:

Requires equal treatment under the law. There is not one case I can find where a defendant is charged with multiple counts of bail jumping after being released one time from the county jail, on bond, yet charged with two counts.

The judge in his oral ruling agreed that the State was treating me with a different degree as to my punishment and in the States charging documents. SEE Vol. 3 RP 421

Most importantly the RELEASE ORDER that I signed on the 10th of April 2007 states that MY NEXT COURT DATE IS “CONTACT YOUR _____” (*difficult to decipher*). If the court would please examine the SCHEDULING ORDER it is clear the box is not checked on April 13, 2007 next to the omnibus hearing line. There is a date, but no time in place. The (release order) gives notice so that defendant knows exactly when to be back in court. RP 304

The omnibus was struck, but yet the readiness date was kept on, even after a warrant was issued and the speedy trial clock stopped. How can the readiness hearing proceed without first conducting a omnibus hearing. Vol. 1 RP 20 Warrant issued. RP 320 Vol. 2

I respectfully ask the Court to decide if this is a matter of first impression.

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ADDITIONAL GROUND 2

Ineffective assistance of counsel:

My attorney failed to inform the trier of fact that the renter of the apartment admitted to the police, post-miranda, '.....Julio admitted that the meth we found in the apartment was his.' SEE Drug task force report Case # MC 622-4171 [Appendix C]

I had no dominion over this apartment, and nothing there belonged to me. Vol. 3 RP 338-339, 334 RP 330:8-10. RP 166, 180

My attorney also failed to object to the false evidence presented by the State, concerning the amount of meth discovered in and around the apartment. The prosecutor states to the court that 43 grams of meth was found on the counter. And TEN grams found in the sink. However, this is completely contrary to the record. Vol. 3 RP 342:13-16. RP 257-258
There was a significant amount found on the bathroom floor. Sample on floor....RP 152
Evidence # 39- Bathroom ?

Officer Harris "I then observed various crystal substance throughout the kitchen counter, Packaging materials in the kitchen area, in the sink, and then also *additional crystal substance in the hallway bathroom where the other subject was located.*" RP 198

10 grams scraped out of bowl into a bag. RP 190 RP 256-258

The bowl was found in the dishwasher. RP 158, 188:1

However, the police for evidentiary purposes took a picture of the bowl on the counter. RP 186:8-14, RP 156, 158.

Detective Boardman: "Remnants of crystal residue that I brushed off of the counter into the bag." RP 191-192 Did not test.

Additional Ground 3

Insufficient evidence to prove intent to deliver METH:

The baggies found in and or around the sink were NOT tested. RP 222:6-14

Nor did they contain meth.

However, residue in the sink was positive for meth. RP 152

But, this residue was never tested by the laboratory. RP 259:1.

Bowl found in dishwasher. RP 158, 188:1

Sample tested on floor. RP 152 – Meth in hallway floor. [RP 135-136:1] RP 198

" That the toilet was swirling like it had just been flushed and there was crystalline substance ALL over the bathroom floor." RP 135-136:1

10 grams found in bowl 190. 256-258.

Bowl found in dishwasher. RP 158, 188:1.

Probable Cause declaration: "John Doe" "The residue found in sink field tested positive for meth. *Additionally* approxim. 1 O.Z. (28 grams) of meth was discovered in apartment.

Ground three continued:

It is important to include the **Affidavit for search warrant APPENDIX A.**

This document is signed under the penalty of perjury, by Detective Shane Gardner On April 11, 2007. On PAGE 3 he explains to the court that *“a sandwich bag of an unknown crystalline substance that did not field test positive for the presence of Methamphetamine was located along with a digital scale.”*

APPENDIX B

SEARCH WARRANT;

Everything points to Julio Cabrera-Cardoza.

All of the information refers to Mr. Cardoza. The warrant for the cell phone shows that The phone and apartment are in the sole control of Mr. Cardoza.

None of the information given by the reliable informant refers to me.

And the testing of the baggies, and or lack of testing, does not prove that I possessed Methamphetamine with the intent to deliver.

Ground three continued:

The officer states in the Probable Cause affidavit: that a bag of MSM was found on the kitchen counter. Case# MC 622-4171 [Appendix C]

The record does not show baggies testing positive around the sink or counter. MSM a cutting agent was found on the counter. The lab, nor the (police field) tested these baggies. RP 172, 222:6-14.

The State in the course of the trial portrayed to the trier of fact that the cell phone found in the residence was linked or used by me. This is not the truth. This strategy was used to create the false impression that I was there selling the meth which my co-defendant admitted was all his. I did not own a cell phone. RP 272, 282-283:1-2, 197.

The evidence at trial is insufficient to prove that I possessed any meth with intent to deliver.

State v. Earlie Allen Spruell

COURT OF APPEALS OF WASHINGTON, Division One

57 Wn. App. 383; 788 P.2d 21; 1990 Wash. App. LEXIS 115

The issue is whether the evidence is sufficient to sustain a finding of actual or constructive possession. Actual possession occurs when the goods are in the actual physical possession of the defendant. Constructive possession means that the defendant has dominion and control over the goods. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969).

The record is clear that I just arrived with the renter of the apartment. I did not live there. RP 209

Actual Physical Possession

The evidence is insufficient to support a finding of actual physical possession of the cocaine. On this issue, the facts cannot be distinguished from *Callahan*, where the court {57 Wn. App. 386} found the evidence insufficient to sustain a finding of actual possession. The *Callahan* facts reflect that when the police entered the houseboat, the defendant and another were seated at a desk on which were pills and hypodermic syringes. A cigar box containing drugs was on the floor between the two men. The defendant admitted that two guns, two books on narcotics, and a set of broken scales of a type used for measuring drugs found in the houseboat belonged to him. {788 P.2d 23} *He further admitted that he had actually handled the drugs earlier that day.*

¶ From this evidence, the *Callahan* court concluded that there was no evidence that the defendant was in actual physical possession of the drugs, other than his close proximity

to them at the time of his arrest and the fact that the defendant told the officers he had handled the drugs earlier. The *Callahan* court then stated at page 29:

Since the drugs were not found on the defendant, the only basis on which the jury could find that the defendant had actual possession would be the fact that he had handled the drugs earlier and such actions are not sufficient for a charge of possession since possession entails actual control, not a passing control which is only a momentary handling. See *United States v. Landry*, 257 F.2d 425, 431 (7th Cir. 1958).

The *Callahan* court then proceeded to resolve the case on the basis of whether the defendant had constructive possession of the drugs. The fact that another occupant of the houseboat testified that the drugs were his influenced the court's decision on the issue of constructive possession, but was not a factor in the court's determination that the defendant did not have actual physical possession of the drugs. The facts of *Callahan* on the issue of actual physical possession cannot be distinguished from the facts of the case before us. Hill's fingerprint on the plate proves no more than that he touched the plate. The fingerprint evidence against Hill can have no more weight on an issue of actual possession than the defendant's admission in *Callahan* that he physically handled the drugs earlier in the day.

We reject the State's contention that the facts here show evidence of "flight" by Hill. The evidence shows he was {57 Wn. App. 387} standing in the kitchen at the time the police entered. Apparently, the claim of flight is based upon the inference that he got up out of the chair when the police broke through the front door using a battering ram. This evidence does not amount to evidence of "flight," as there is no evidence that Hill made any effort to leave the premises in order to avoid arrest or took any action that could rationally be attributed to a consciousness of guilt. *State v. Bruton*, 66 Wn.2d 111, 401 P.2d 340 (1965).

The evidence being insufficient to sustain a finding of actual physical possession, Hill's challenge to the sufficiency of the evidence must be resolved as an issue of constructive possession.

Ground 3 continued:

**[State of Washington v. Cheryl Lee Callahan
SUPREME COURT OF WASHINGTON
77 Wn.2d 27; 459 P.2d 400; 1969 Wash. LEXIS 556**

A momentary handling is not sufficient to establish the element of personal custody necessary for actual possession.

Constructive possession of drugs requires that the defendant have dominion and control of either the drugs or the premises on which the drugs were found.

The mere fact that a person has personal possessions of a type other than clothing or toilet articles on premises where drugs are found does not establish that such person has dominion and control of the premises.

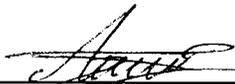
Constructive possession of drugs by an accused cannot be established by purely circumstantial evidence when undisputed direct evidence places exclusive possession in another.]

The evidence is also insufficient to prove that I intended to sale anything.

CONCLUSION:

I respectfully would ask the Court to vacate one of the bail jumps or in the alternative count them as one point for sentencing purposes, only if the Double jeopardy is defeated. Second I would ask that the Court VACATE and dismiss With prejudice the possession with intent to deliver; And the enhancement that is Joined with this case at bar. And or in the alternative I would ask the court to grant Me a new trial due to the ineffectiveness of my attorney as there is no tactical Reason for my attorney's failure to object or bring to the Courts' attention that JULIO admitted to the police, that ALL of the meth was his, in the apartment.

Date 09.04.09

Signature 

APPENDIX A,B,C:

Appendix A

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IN THE DISTRICT COURT OF CLARK COUNTY
STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

AFFIDAVIT FOR
SEARCH WARRANT

vs.

Julio Cabrera-Cardoza 7/26/82

Defendant(s).

STATE OF WASHINGTON)

:ss

COUNTY OF CLARK)

I, Detective Gardner, being first duly sworn upon oath, hereby depose and say that I have good and sufficient reason to believe that the following goods, to wit:

(1) Records relating to the transportation, ordering, manufacturing, possession, sale, transfer and/or importation of controlled substances in particular, methamphetamine, are contained in this cellular telephone, including but not limited to numbers called, Caller ID for incoming calls, phone and/or pager numbers, names and addresses, pin numbers, voice mail access numbers, voice mail password, debit card numbers, calling card numbers, service provider information, on screen images which may contain valuable information, audio voice messages, and text messages.

(2) Records showing the identity of co-conspirators in this distribution operation, including but not limited to numbers called, Caller ID for incoming calls, phone and/or pager numbers, names and addresses, pin numbers, voice mail access numbers, voice mail password, debit card numbers, calling card numbers, service provider information, on screen images which may contain valuable information, audio voice messages, and text messages.

(3) Audio recordings of the voice messages.

Are on this 11th day of April, 2007 in the Clark County Evidence system in:

A black Nokia cellular phone. This phone was logged into the Clark County Evidence system under Case # 622-4171 item # 3725-16. This phone was in the

COPY

possession of Julio Cabrera-Cardoza when he was contacted and arrested on 4/5/07 at a search warrant. The address of the search warrant was 4619 NE 112th Ave #D103, Vancouver, Clark County, Washington. This phone was seized for investigative purposes when he was arrested and has been in the custody and care of the Clark County Evidence system in Clark County, Washington.

I am informed and aware, based upon the following:

I am a Detective with Clark County Sheriff's Department and have been with the department for over 8 years. I am currently assigned to the Clark / Skamania Drug Task Force and have been for over 5 years. During my tenure with the Sheriff's Department I have been involved in 100 plus drug arrests ranging from misdemeanor to felonies. I have written at least 15 district court search warrants. The warrants were for property crimes and controlled substance violations. Upon serving the aforementioned warrants, stolen property and controlled substances were recovered.

Upon attending the Criminal Justice Training Center located in Burien, Washington, I received approximately 400 hours of Basic Law Enforcement Training. Part of this training involved identification and methods of manufacturing controlled substances to wit; marijuana, heroin, methamphetamine and cocaine. I also have attended an 80 hour basic drug training through the United States Drug Enforcement Administration as well as a 76-hour clandestine laboratory investigation and certification course provided by the California Department of Justice. I am certified in spotting outdoor marijuana growing operations from both fixed and rotary winged aircraft.

Prior to my employment by the Clark County Sheriff's Office, I was assigned for two years as the National Guard Counter Drug Liaison to the Clark / Skamania Drug Task Force.

From 1992-1996 I served active duty with the U.S. Army as a Spanish Linguist. My Military Occupational Specialty was 98GQB, Electronic Warfare Voice Interceptor Specialist, Spanish. From 1996 until June 2001, I served in the Washington Army National Guard as an Intelligence Officer supervising linguists while maintaining my Spanish speaking and reading proficiency.

I studied Spanish for four years in high school; graduated as a certified Spanish Linguist from the Defense Language Institute in Monterey, California (1993), participated in the Armed Forces World Wide Language Olympics (1996) as a Spanish Linguist representing the 101st Airborne Division (Air Assault), and have taken several correspondence courses in connection with the Spanish Language.

The Defense Language Institute Foreign Language Center (DLIFLC) is the world's largest foreign language institute. The mission of the DLIFLC is to educate, sustain, evaluate, and support foreign language specialists under the guidelines of the Defense Foreign Language Program, which provides the Department of Defense and other Federal

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agencies with linguists fully capable of supporting United States national interests worldwide.

8/28 In this official capacity, on April 5th 2007 at 2145 hours, a District Court Search warrant was served at 461~~19~~ NE 112th Ave #D103. Upon knocking on the door and announcing our presence and demand to enter, people could be heard running in the apartment. Entry was made and two suspects were located and taken into custody.

Julio Cabrera-Cardoza 7/26/82 was located at the entry to the master bedroom. This is near the main bathroom. It was evident the toilet had just been flushed as the water in it was still swirling around. Crystalline residue found on the bathroom floor field tested positive for the presence of methamphetamine.

I read Julio his Miranda Warnings from my Department issued Spanish Miranda card. After I read each numbered item I asked him if he understood what I had just read and he told me that he did. I asked Julio if he could read and he told me that he could. I put the card in front of him and asked him to read aloud from the card. When he was finished, I asked him if he understood that he did not have to speak to me and he told me that he did. The time was 2200 hours.

I asked Julio how long he had been in the U.S. he told me that he had been here for about 6 months. I asked him if he had any nicknames and he told me that people sometimes called him "Roto". I asked him if people sometimes called him "Carlos" and he admitted that they did. I asked Julio if he had considered my offer to give him consideration for information. Julio admitted to me that the meth we found in the apartment was his, but he would not answer any other direct questions about it. I asked Julio where he bought the cut (MSM) and he told me he got it on the street. I asked him who he bought the meth that we had found from and he told me that he had got it from some guy on the street. When I asked him what the phone number was for the guy he told me that he just would go out and find someone selling it. I asked him to tell me who he had delivered to on the occasion we had observed him visit a house near 121st Ave and Fourth plain and what apartment he had gone to at 2011 Brandt Rd. He would not answer these questions.

I asked Julio if he had a job. He told me that he did off and on. I asked him when the last time was that he worked and he told me that it had been several weeks. I asked him where he worked and he told me that he did landscaping. I asked him for his bosses name or phone number and he could not provide them.

I asked Julio about the cell phone that was ringing during our interview. He told me that it was his. I requested that it be seized so that I could author this search warrant. It was placed in evidence as item 3725-16.

On the kitchen counter a sandwich bag of an unknown crystalline substance that did not field test positive for the presence of methamphetamine was located along with a digital scale. This substance is suspected to be MSM, a nutritional supplement for animals

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frequently used as a cut to add to the methamphetamine to increase its volume. Adding this substance to methamphetamine increases the quantity, so that more profits can be made from a given amount of methamphetamine. Other packaging material was also located in the residence.

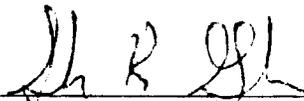
As to the defendant's criminal history, on 4/11/07 I ran an NCIC Interstate Identification Index check of Julio Cabrera-Cardoza 7/26/82. It shows no convictions or adverse findings.

I know from my training, knowledge, and experience that people involved in the illegal distribution of methamphetamine use cellular telephones and pagers as a way to contact one another and set up drug transactions. These telephones are utilized in the distribution of methamphetamine to contact customers, co-conspirators and suppliers.

I know from my training, knowledge and experience, and investigation of this case, the information to be seized is described as: numbers called, caller ID for incoming calls, phone and/or pager numbers, names and addresses, pin numbers, voice mail access numbers, voice mail password, debit card numbers, calling card numbers, service provider information, on screen images which may contain valuable information, audio voice messages, text messages, and the phone number to call this specific cell phone, which are stored and/or accessed within this cellular telephone.

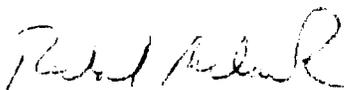
Because the suspect mentioned above is involved in the distribution of controlled substances, to wit: methamphetamine, it is more likely than not that the records of this activity will be found in the Nokia phone described above, which is held in the Clark County Evidence system as an item of evidence in this investigation.

Based on the foregoing, I believe there is probable cause and I pray the court for issuance of a Search Warrant authorizing the search of the aforescribed cellular telephone for the above-described items and if any are found authorizing the seizure of the same as it appears that the above listed cellular telephone is involved in ongoing criminal enterprise involving the manufacture and delivery of the controlled substance methamphetamine.



Detective Shane Gardner
Clark-Skamaniam Drug Task Force

Subscribed and Sworn to before me this 11th day of April, 2007.



District Court Judge
Clark County
State of Washington

Appendix B

07 142

District Court of Clark County State of Washington

State of Washington
Plaintiff,

VS

Affidavit for Search Warrant

John Doe
AKA
Julio Cabrera Cardoza
"Carlos"
Defendant

FILED
APR 06 2007
DISTRICT COURT
CLARK COUNTY, WASH

I, Spencer Harris, being first duly sworn upon oath, hereby depose and say that I have good and sufficient reason to believe that the following person and items, to wit:

1. Methamphetamine, a substance controlled by the Uniformed Controlled Substance
2. *Extra Copies of Affidavit & Search Warrant* possession of a Controlled Substance with the Intent to DW 69.50.401. Consisting of, in part but not limited commonly associated with the storage and distribution States Currency, buyers lists, sellers lists, and records ; books, address books, telephone bills, papers and i names, pagers, and cellular telephones.
3. Photographs, including snail photos, negatives, video tapes, films, undeveloped film and the contents therein, and slides, in particular, photographs of co-conspirators, of assets and /or controlled substances, in particular methamphetamine.
4. United States Currency and financial instruments for the purpose of tracking proceeds and/or profits.
5. Address and/or telephone books, telephone bills and papers reflecting names, addresses, telephone numbers, pager numbers, fax numbers or sources of supply, customers, financial institutions.
6. Correspondence, papers, records, and any other items showing employment or lack of employment of the defendant's income or expenses.
7. Paraphernalia for packaging, weighing, and distributing methamphetamine, including but not limited to baggies, scales, and other items including firearms.

Tanya stated that while in the bathroom of the residence on Wednesday she observed a Geico insurance card for a Julio Cabrera Cardoza. Tanya said that while inside the residence Carlos asked her to help him with an insurance claim. Tanya said "Carlos" spoke "broken" English, but she was able to communicate with him.

Tanya stated the interior of the residence was not furnished. She stated the living room only had a television and a couch, that one of the two bedrooms was empty, and the other bedroom barely had anything in it.

Tanya said while she was in the residence "Carlos" went to the washer/dryer area in a cupboard to collect methamphetamine to put in the methamphetamine pipe he delivered to both Tanya and her friend to smoke. Tanya said this methamphetamine pipe was not her or her friends and the pipe was present inside the residence before they arrived. Tanya said "Carlos" was in possession of the methamphetamine pipe when they left the residence. While inside the residence Tanya observed a black in color digital scale and plastic baggies.

While in the parking lot of the aforescribed residence Tanya pointed out a black in color Nissan 2SXCP parked in front of the "D" building bearing Washington plate #315VYH. A NCIC/WASIC/DOL check of this license plate returned to a 1998 Nissan 2SXCP showing the registered owner as Julio Cabrera Cardoza, 2412 Northeast 138th Avenue apartment #D-39.

I checked this license plate through the Vancouver Police Electronic Report writing system (EPR) and learned that on January 26, 2007 this vehicle was involved in a traffic accident in the area of Northeast 78th Street and Northeast Saint Johns Road. During this incident the Clark County Sheriff's Office identified Julio Cabrera Cardoza, date of birth of July 26, 1982, license #CABREJ*182M6, as the driver of a 1998 Nissan bearing Washington plate #315VYH. This case is documented under Clark County Sheriff's Office report #V07-1320.

Tanya also said another male was inside the residence who said his name was "Raul". Tanya described "Raul" as a Hispanic male in his early twenties, approximately 5'6" tall, weighing 160-170 pounds with black hair.

Tanya said she has seen "Carlos" driving the black Nissan bearing Washington plate #315VYH in the past. She also stated she has seen him drive a four door "smoked gray" colored car and further saw this vehicle parked in this Evergreen Park Apartment lot on this same date of March 28, 2007.

I conducted a NCIC/WASIC/DOL check of Julio Cabrera Cardoza, date of birth of July 26, 1982, and learned he gave the Washington State Department of licensing the address of 2412 Northeast 138th Avenue apartment #D-39.

I asked Tanya if she knew what the cellular phone or home number of "Carlos" was and she stated his cellular phone started with the number "448". In researching the Clark County Sheriff's Office report #V07-1320 Julio Cabrera Cardoza gave the Clark County Sheriff's Office the phone number of 448-8730.

I contacted the Washington State Department of Licensing for a license photo of Julio Cabrera Cardoza. Washington DOL emailed me a photograph of Julio. I contacted Clark County Constable Sergeant Williams reference Tanya in custody. He showed Tanya the Washington State DOL photo of Julio. Sergeant Williams showed me Washington DOL photo of JULIO was the person who spoke to me about

I conducted a criminal history check on the name of Julio Cabrera Cardoza, date of birth of July 26, 1982. During this criminal history check I was unable to locate any criminal history under this name.

I contacted the Clark County Records Division and they advised a "Ramiro Pacheco" is listed as receiving utilities to 4619 Northeast 112th Avenue #D103 with a listed phone number of 936-2132. I checked available databascs to me in an attempt to locate a person under the name of Ramiro Pacheco and/or Pacheco Ramiro and was unable to find such a person. In addition, I checked the phone number provided (936-2132) and was unable to find subscriber information.

Based on my training and actual experience, I know people who are involved in this type of criminal activity use United States Currency as a method of payment for illegal controlled substances. They also use items commonly referred to as drug notes. These notes are kept on pieces of paper, phone books, computer disks, computer hard drives, note pads and other items used for storing written information. I have located controlled substance information on small scraps of paper, notebooks, and telephone books.

I know controlled substance users and distributors to use pipes, spoons, straws, and hypodermic needles as ways to ingest methamphetamine. These same individuals will store and/or distribute the illegal controlled substances through the use of small plastic baggies, plastic containers, and other devices designed for that purpose or not. While executing previous search warrants I have located the above items.

I also know from my training and experience that people involved in this type of criminal activity will hide illegal controlled substances in various places. I have located controlled substances hidden in bags, pill bottles, eye glass cases, purses, under drawers, on tables, under furniture, in tool boxes and on persons.

I am aware that people involved in this type of criminal activity will use firearms as a method of protecting their illegal business. These individuals will conceal weapons on their person and throughout the residence for quick access.

From my training and experience I am aware that individuals involved in the consumption/ingestion of illegal controlled substances will sometimes photograph themselves and others taking part.

I am further aware that people involved in this type of criminal activity keep money and notes on their person. They also transport items on their person.

I also know that photographing the crime scene as well as the recovered evidence is critical to showing the court the location of an item at the time of recovery.

Based on the foregoing facts, I ask the court for the issuance of a search warrant for the above described place for the items listed.

I swear under the penalty of perjury that the above is true and correct to the best of my knowledge.



Officer Spencer Harris
Vancouver Police Department

SUBSCRIBED AND SWORN TO BEFORE ME ON

3-30-2007



Judge of the District Court
Clark County
State of Washington

07-142

District Court of Clark County
State of Washington

State of Washington
Plaintiff,

VS

SEARCH WARRANT

John Doe
AKA
Julio Cabrera Cardoza
"Carlos"
Defendant

FILED
APR 06 2007
DISTRICT COURT
CLARK COUNTY, WASH

State of Washington,
Clark County,

The people of the State of Washington, to any Sheriff, Police Officer, or Peace Officer in Clark County: Proof by written affidavit, under oath, made in conformity with the State of Washington Criminal Rules for Justice Court, rule 2.3, having been made to me this day by OFC Spencer Harris of the Vancouver Police Dept, that there is probable cause for the issuance of a search warrant on the grounds set forth in the State of Washington Criminal Rules for Justice Court, rule 2.3, Section (c).

You are therefore commanded, with the necessary and proper assistance, to make a diligent search, good cause having been shown therefore, of the following described property, within 10 days of the issuance of this warrant as a two story apartment complex commonly known as the Evergreen Park Apartments. This apartment is located in the "D" building. The second story of this building is brown in color with the main level of this building is darker brown in color, having a brown in color front door, which faces East with "D103" on a placard to the right of the front door, with the specific address of 4612 Northeast 112th Avenue apartment #D103, City of Vancouver, Clark County, State of Washington, including the curtilage thereto.

AND

The person of "Carlos" and/or Julio Cabrera Cardoza, and/or John Doe being a Hispanic male approximately 29years of age, being approximately 5'4" tall, weighing approximately 130 pounds, with short black hair and browns, with a tattoo on his right shoulder.

AND

A black in color 1998 Nissan 2SXCP, bearing Washington plate #315VYH.

AND

Also to be searched are all rooms, and all other parts therein, and to search any storage rooms, safes, trash containers, storage containers, and surrounding grounds located on the premises, and all vehicles parked in the driveway, in front of the premises, or nearby or adjacent to the location provided that these vehicles can be connected to the defendant.

For the following items to wit:

1. Methamphetamine, a substance controlled by the Uniformed Controlled Substance Act RCW 69.50.401.
2. Evidence of the crime of Possession of a Controlled Substance with the Intent to Deliver (Methamphetamine) RCW 69.50.401. Consisting of, in part but not limited to, containers of various types commonly associated with the storage and distribution of methamphetamine, United States Currency, buyers lists, sellers lists, and records of sales, personal telephone books, address books, telephone bills, papers and documents containing lists of names, pagers, and cellular telephones.
3. Photographs, including still photos, negatives, video tapes, films, undeveloped film and the contents therein, and slides, in particular, photographs of co-conspirators, of assets and /or controlled substances, in particular methamphetamine.
4. United States Currency and financial instruments for the purpose of tracking proceeds and/or profits.
5. Address and/or telephone books, telephone bills and papers reflecting names, addresses, telephone numbers, pager numbers, fax numbers or sources of supply, customers, financial institutions.
6. Correspondence, papers, records, and any other items showing employment or lack of employment of the defendant's income or expenses.
7. Paraphernalia for packaging, weighing, and distributing methamphetamine, including but not limited to baggies, scales, and other items including firearms.
8. Personal property to establish dominion and control of the residence.
9. Personal property to establish and confirm the identity of the defendant.
10. Photographs of the crime scene and recovered evidence and to develop photographs taken of the crime scene, including still photos, video cassette recordings and to develop any undeveloped film located.

11. The person of "Carlos", Julio Cabrera Cardoza, and/or John Doe being a Hispanic male approximately 29 years of age, being approximately 5'4" tall, weighing approximately 130 pounds, with short black hair and browns, with a tattoo on his right shoulder for the crime of delivery of a controlled substance- methamphetamine (RCW 69.50.401 DEL1).

and if you find same, or any part thereof, then bring same and items of identification to identify the residents and residence thereof before the Honorable District Court Judge Ken Kraljick to be disposed of according to law.

This Search Warrant was issued on 03/04/2007 at 1839 hours
by the Honorable Judge [Signature]

Date and time of execution: 03/04/05/07 2145 HRS

By [Signature]

COPY

IN THE DISTRICT COURT OF CLARK COUNTY

STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

SEARCH WARRANT STATEMENT

VS

Julio Cabrera-Cardoza 7/26/82

Defendant(s).

On April 11, 2007 at 4:50 A.M./P.M., I, Detective Shane Gardner executed a search warrant signed by Judge Melnick, on April 11th, 2007 at 4:50 A.M./P.M. which directed that a black Nokia cellular phone. This phone was logged into the Clark County Evidence system under Case # 622-4171 item # 3725-16. This phone was in the possession of Julio Cabrera-Cardoza when he was contacted and arrested on 4/5/07 at a search warrant. The address of the search warrant was 4619 NE 112th Ave #D103, Vancouver, Clark County, Washington. This phone was seized for investigative purposes when he was arrested and has been in the custody and care of the Clark County Evidence system in Clark County, Washington.

be searched and I seized the items identified on the attached Property Report from the device described above and have returned the same before Judge Melnick on April , 2007.



Detective Shane Gardner
Clark-Skamania Drug Task Force

SEARCH WARRANT STATEMENT

Appendix C

CLARK-SKAMANIA DRUG TASK FORCE REPORT

X CASE# MC622- 4171 X

NARRATIVE:

Report Written By: Detective Shane Gardner

On April 5th 2007 at 2145 hours, a District Court Search warrant was served at 46119 NE 112th Ave #D103. Upon knocking on the door and announcing our presence and demand to enter, people could be heard running in the apartment. Entry was made and two suspects were located and taken into custody.

Julio Cabrera Cardoza 7/26/82 was located at the entry to the master bedroom. This is near the main bathroom. It was evident the toilet had just been flushed as the water in it was still swirling around. Crystalline residue found on the bathroom floor field tested positive for the presence of methamphetamine.

Post Miranda warnings, Julio admitted to me that the meth we found in the apartment was his.

X Jonathan Ortiz Lopez 8/2/86, was located in the kitchen when entry was made. The kitchen sink was running and approximately 7 sandwich bags were found in the sink. Crystalline residue in the sink also field tested positive for the presence of meth. On the kitchen counter a sandwich bag of MSM was located along with a digital scale. Other packaging material was also located in the residence.

Jonathan told me that he did not know anything about the meth and would not admit that he had been washing it down the sink. Based on the time from the first knock to announce our presence, to us hearing people running in the apartment, to entry being made, it wouldn't be possible for Julio to wash the meth down the sink AND run to the hall bathroom and flush meth down the toilet. It appeared to be a orchestrated response to our presence by both individuals.

RECEIVED

APR 5 2007
PROSECUTOR'S OFFICE

Appendix C

JOHN DOE

ARRESTING OFFICER'S DECLARATION OF PROBABLE CAUSE

DEFENDANT (PRINT LAST, FIRST, MIDDLE): ARA Jonathan Ortiz Lopez 8/2/86

Note: When a defendant has been arrested for a new crime, probable cause must be established. In appropriate cases, please describe the property stolen or damaged, including its value, and how it was derived. In controlled substance cases, please list the type and weight of the drug involved, and the method by which it was field tested. In protection order/no contact violations, describe the specific condition that was violated and how the defendant knew of the order. If a defendant is arrested on a new charge and a warrant, probable cause for the new charge must be demonstrated. Failure to provide a statement of probable cause will result in the prisoner's release. Use an extra sheet if necessary.

The undersigned law enforcement officer states that the Defendant was arrested without a warrant on the date and time shown thereon for the crime(s) committed in Clark County, Washington based on the following circumstances. The reverse of this sheet is hereby incorporated by reference.

My information was derived from W1: _____, W2: _____

W3: _____, S1: _____, S2: _____

Who told me the following:

In addition, my personal observations and investigation in this case are: Upon serving a district court search warrant at 4619 NE 112th Ave #D003 on 5 April 2007 at 2145 hours, Jonathan was found in the kitchen where meth had been poured down the sink. The residue found in the sink field tested positive for meth. Additionally approximately 1 oz. of meth was discovered in the apartment.

The undersigned declares and certifies under penalty of perjury under the laws of the State of Washington that the preceding statement is true and correct to the best of his/her knowledge.

Signed this 5th day of April, 2007 in Vancouver, Clark County, Washington.

[Signature] PSN 3772
Officer's Signature

The Undersigned Judge/Magistrate/Commissioner hereby certifies that I have read or had read to me the above statement of probable cause to arrest and that I find probable cause to arrest is _____ established _____ not established (release defendant).

Signed this _____ day of _____, 200____ in Vancouver, Clark County, Washington.

Judge/Magistrate _____ Time: _____ a.m./p.m.