

1 The State presented testimony from Lead Detective Renschler,
2 of the Thurston County Narcotics Taskforce, and two school
3 transportation coordinators Marcia Hanson and Maude Kelleher.

4 Detective Renschler testified that he measured the distance
5 from each buy location, to both related school bus stops.

6 The first buy occurred on April 15, 2009, and Detective
7 Renschler measured a distance of **840 ft.** from the buy location
8 to the school bus stop. (**see: 12-16-09 VRP Pg. 128-134**).

9 The second buy occurred on May 15, 2009, and Detective Renschler
10 measured a distance of **773 ft.** from the buy location to
11 the school bus stop in that area. (**see: 12-16-09 VRP Pg.146,**
12 **Lines 7-12**). Garcia points out that Detective Renschler test-
13 ified that the starting points of both measurements were made
14 from the buy locations, and ended at the school bus stops.

15 Garcia further contends that the "order" of where the meas-
16 urements starting points were conducted is erroneous, and
17 that it should have been the other way around. "Division
18 Three of our court held that the terminal point for each enha-
19 nancement must be the actual site where the offense was committed."
20 **State v. Clayton, 84 Wn.App. 318,322, 927 P.2d 258 (1998).**

21 Detective Renschler's method was erroneous because both buy
22 locations are the starting points, and the school bus stops
23 were the terminal points. This automatically disqualifies
24 both calculations, because its contrary to Division Three's
25 holding that the terminal point must be the actual site of the
26 offense. Garcia points to the dictionary for a definition.

1 (According to Websters II New College Dictionary 1995 Ed).
2 defines:

3 Terminal: 1. Of relating to, situated at,
4 or forming an end boundry.

5 Detective Renschler also testified that he used a measuring
6 wheel to calculate the distance. "ER 901 governs the use of
7 measuring devices." State v. Roberts, 73 wn.App. 141, 867 P.2d
8 697. ER 901 requires evidence to be authenticated. After
9 Detective Renschler conducted his measurements "by-the-road",
10 he could not measure the distance "as-the-crow-flies", because
11 he claimed there were too many private properties which obstr-
12 ucted a direct course between both points. Detective Rensch-
13 ler then testified that he went on Google Earth, and brought
14 up the streets of the areas, and measured them to calculate
15 the distance "as-the-crow-flies." Detective Renschler then
16 provided two maps that he printed out, for illustrative purp-
17 oses. Neither the "wheel measuring device" nor the "maps"
18 were authenticated. Garcia asserts that Detective Renschler
19 is not a certified surveyor, and his calculations could not be
20 scientifically relied upon. (see: 12-16-09 VRP Pages 135-144).

21 The defense objected to the method used by Detective Rensch-
22 ler. (see: 12-16-09 VRP Pg. 134, Lines 15-18). The defense
23 also objected to the map that Det. Renschler presented to the
24 jury alleging the May 15, 2009 buy. (see: 12-16-09 VRP Pg.
25 146, Lines 7-12). "Thus the requirement of authentication is
26 waived when the opponent fails to object on authentication

1 grounds." Seattle v. Bryan, 53 Wn.2d 321, 324, 333 P.2d 680
2 (1958). Garcia can demonstrate that he did indeed object, and
3 did not waive the authentication process.

4 The next part of the school zone issue involves the testim-
5 onies of the two school district transport coordinators, who
6 are Marcia Hanson and Maude Kelleher. Ms. Hanson testified
7 that she used Microsoft "Streets and Maps" to obtain a measu-
8 rement. (see: 12-17-09 VRP Pg.232, Lines 6-10). However, this
9 measurement was 236 yards from the entrance of 12 Ave Ct. E.,
10 which is at the front of the location of the second buy occur-
11 ring on May 15, 2009, and the intersection of 14th Ave E. and
12 97th St. E., which is the intersection of the school bus stop.
13 (see: 12-17-09 VRP Pg.234, Lines 14-15). Although Ms Hanson
14 provided a measurement for the court, the main purpose of her
15 testimony was to verify the existence and location of the nea-
16 rest school bus stop, not provide a measurement of the 1000 ft.
17 range. Ms. Hanson did not know the exact location of the buy,
18 and she only measured from the entrance of 12th Ave Ct.E. to
19 the bus stop. 12th Ave Ct. E. is a circular loop, or cul-de-
20 sac, and the buy occurred further back from the main entrance.

21 Maude Kelleher testified that there was a school bus stop at
22 the intersection of 64th St. W., and 52nd Ave W. However, this
23 was the first buy occurring on April 15, 2009. This buy occur-
24 red upon a hill at the end of a dead end street, up from the
25 intersection of S. Huson St., and 62nd St. Detective Strup,
26 was a part of the operation, testifying to this location. (see:

1 12-16-09 VRP Pg. 196, Lines 6-8). Ms. Kelleher further test-
2 ified that the center radius was at the intersection of S.66th
3 St. and S.Huson St. (see: 12-17-09 VRP Pg. 276 Lines 1-4).

4 Det. Renschler testified that he measured first, from the
5 location at the top of the hill on S. Huson St., which is the
6 location of the first buy. Det. Renschler then went on to de-
7 scribe that he used the measuring wheel, and proceeded down
8 the hill, past the intersection of S. 62nd and S. Huson, all
9 the way to S. 64th and S. Huson St., then turned on S. 64th St
10 and proceeded towards the school bus stop at the intersection
11 of 64th W. and 52nd Ave W. This was conducted "by-the-road",
12 and Det. Renschler's measurement came out to 1300 ft.

13 Again, Det. Renschler used the reverse method contrary to
14 the holding in Clayton by Division III as to the terminal poi-
15 nt. Det. Renschler's measurements both ended with the school
16 bus stops instead of the locations where the buys actually
17 took place. The State used illustrations with Maude Kelleher
18 testifying that the center radius of the first buy was at the
19 intersection of S. 66th and S. Huson St. This would put the
20 radius even further from the buy location, and severely confl-
21 icts with Det. Renschler's method of calculation. (see: Exhibit
22 1. for both Google Maps that Det. Renschler used to depict the
23 locations of the buys, and the school bus stops). "The State
24 was required to prove each element beyond a reasonable doubt
25 and that it did not submit adequate evidence about the distance
26 from the school bus stops to the site of the drug sale." see

1 State v. Tongate, 93 Wn.2d 751. Therefore, the school zone
2 enhancements should be dismissed for lack of sufficient evid-
3 ence.

4 **2. WAS THE BODY WIRE AND RECORDING**
5 **INTERCEPTS PROPERLY AUTHORIZED**
6 **TO BE CONDUCTED OUTSIDE OF THE**
7 **JURISDICTION OF THURSTON COUNTY?**

8 Garcia and his co-defendant, were in Pierce County on the
9 dates of the controlled buys. Det. Renschler along with his
10 taskforce were from Thurston County. Usually, the outside
11 law agency must obtain authorization intercept and record,
12 from the jurisdiction where the operation is taking place.

13 However, there is one exception provided in **RCW 9.73.230(3)**:
14 "Authorization to intercept and record is invalid outside the
15 jurisdiction of the issuing supervisor, except when the non-
16 consenting party or such additional persons cause or invite
17 the consenting party to enter another jurisdiction." Garcia
18 contends that Thurston County Sheriff's did not obtain author-
19 ization to intercept and record from Pierce County Sheriff's.

20 Garcia also contends that Thurston County Sheriff's were not
21 invited, because there's no testimony in the record that Thurston
22 County Sheriff's first called within their own jurisdiction in
23 order to be invited to come into Pierce County. The informant
24 Stephen Santella, and all the detectives from Thurston County
25 testified that they called Garcia's co-defendant from inside
26 Pierce County when they arranged both buys. This shows that
Thurston County Sheriff's were already set in Pierce County's

1 jurisdiction before they conducted each buy. No Pierce County
2 Sheriff or local Tacoma Police testified that Thurston County
3 had obtained any authorization from their agencies in Pierce
4 County. Garcia raises the question of "how did Thurston County
5 get invited, when they were already in Pierce County prior to
6 making both calls?" The informant Stephen Santella had wore a
7 body wire during both controlled buys. Garcia has tried to
8 obtain the transcripts from the body wire to show that the buys
9 were set up at a Tacoma shopping center by cellphone.

10 This would prove Garcia's claims, but Garcia has been having
11 trouble obtaining those particular transcripts. **RCW 10.73.070**
12 provides in part that; "A Washington peace officer may enforce
13 the criminal laws of the State anywhere within the State's
14 boundries upon a written notice of consent issued by the Sher-
15 iff in whose territorial jurisdiction the enforcement occurs."

16 The record is devoid of any evidence that Pierce County ever
17 authorized Thurston County to intercept and record conversat-
18 ions using the body wire that was out-fitted on the informant
19 Stephen Santella during the buys. "A law enforcement officer
20 empowered by **9.73.230** to authorize the interception and recor-
21 ding of a conversation concerning controlled substances, can-
22 not authorize an interception and recording outside the offic-
23 ers jurisdiction." see **Matthews**, 101 Wn.Ap. 894, 5 P.3d 1273
24 (2000); **Kadorian**, 119 Wn.2d 178, 829 P.2d 1061 (1992).

25 Thurston county did not follow the proper procedure provided
26 in the statute (9.73.230) for intercepts and recording outside

1 their jurisdiction, and thus the process by which they obtained
2 evidence was invalid. "Privacy Act cases stress that the self-
3 authorization statutes must be strictly followed for the autho-
4 rizations to be valid." State v. Jimenez, 76 Wn.App. 647, 651,
5 688 P.2d 744 (1995).

6 **3. DID THE GARCIA CONDUCT ACTUAL**
7 **OR CONSTRUCTIVE TRANSFER OF A**
8 **CONTROLLED SUBSTANCE?**

9 Garcia never made verbal or physical contact with the infor-
10 mant or any of the officers involved in the operation. The
11 informant Stephen Santella and Det. Renschler both testified
12 that Garcia's co-defendant Mr. Delores, spoke over the phone,
13 and conducted as well as arranged all of the actual hand-to-
14 hand exchanges in both controlled buys. "A delivery in the
15 meaning of RCW 69.50.401(a) can be accomplished by the actual,
16 constructive, or attempted transfer of a controlled substance
17 from one person to another." The testimony of Det. Renschler
18 claimed that Garcia did not possess, or sell any of the drugs
19 during both controlled buys. (see: 12-16-09 VRP Pg. 182, Lines
20 16-25). "A constructive transfer is the transfer of a controlled
21 substance either belonging to the defendant or his direct or indir-
22 ect control, by some other person or manner at the instance or dir-
23 ection of the defendant." Davila v. State, 664 S.W.2d 772, 724
24 (Tex Crim.App 1984)(interpreting parallel provision of Texas
25 code which, like RCW 69.50, is derived from the Uniform Contr-
26 ol Substances Act)." The State provided no evidence that Mr.

1 Garcia actually or constructively transferred a Controlled
2 Substance to the Thurston County Sheriff's. The aid of an
3 accomplice statute in RCW 9A.08.020(3)(a) provides: "An accom-
4 plice is one who aids the principal with knowledge that will
5 promote or facilitate the commission of the crime." The State
6 never proved that Garcia had any knowledge of any controlled
7 substances, or that Garcia had any knowledge a transaction or
8 controlled substances took place. "We held that guilty know-
9 ledge defined as an understanding of the identity of the prod-
10 uct being delivered was an intrinsic element of the crime of
11 delivery of a controlled substance under subsection 401(a).

12 To convict under that subsection, the State must prove that
13 element beyond a reasonable doubt." State v. Boyer, 91 Wn.2d
14 342, 588 P.2d 1151 (1979).

15 CONCLUSION

16 The State did not adequately prove the distance of both sch-
17 ool zone enhancements, the authorization of intercepts and
18 recording outside their jurisdiction, and that Garcia deliver-
19 ed a controlled substance.

20 Dated DECEMBER 14, 2010.

21
22 Respectfully submitted

23 X _____
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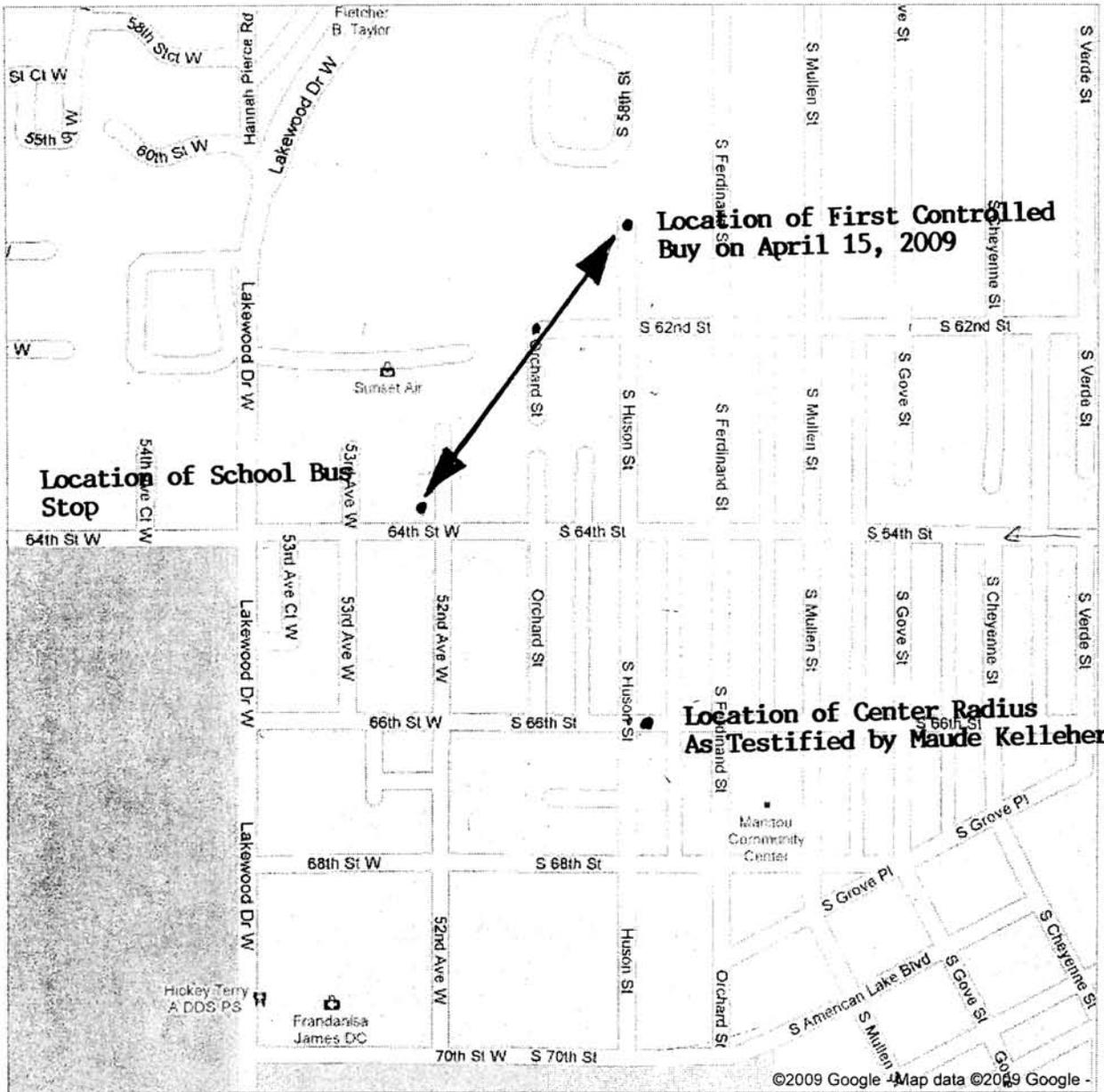
Exhibit 1

EXHIBIT 1

Google maps

Get Google Maps on your phone

Text the word "GMAPS" to 466453

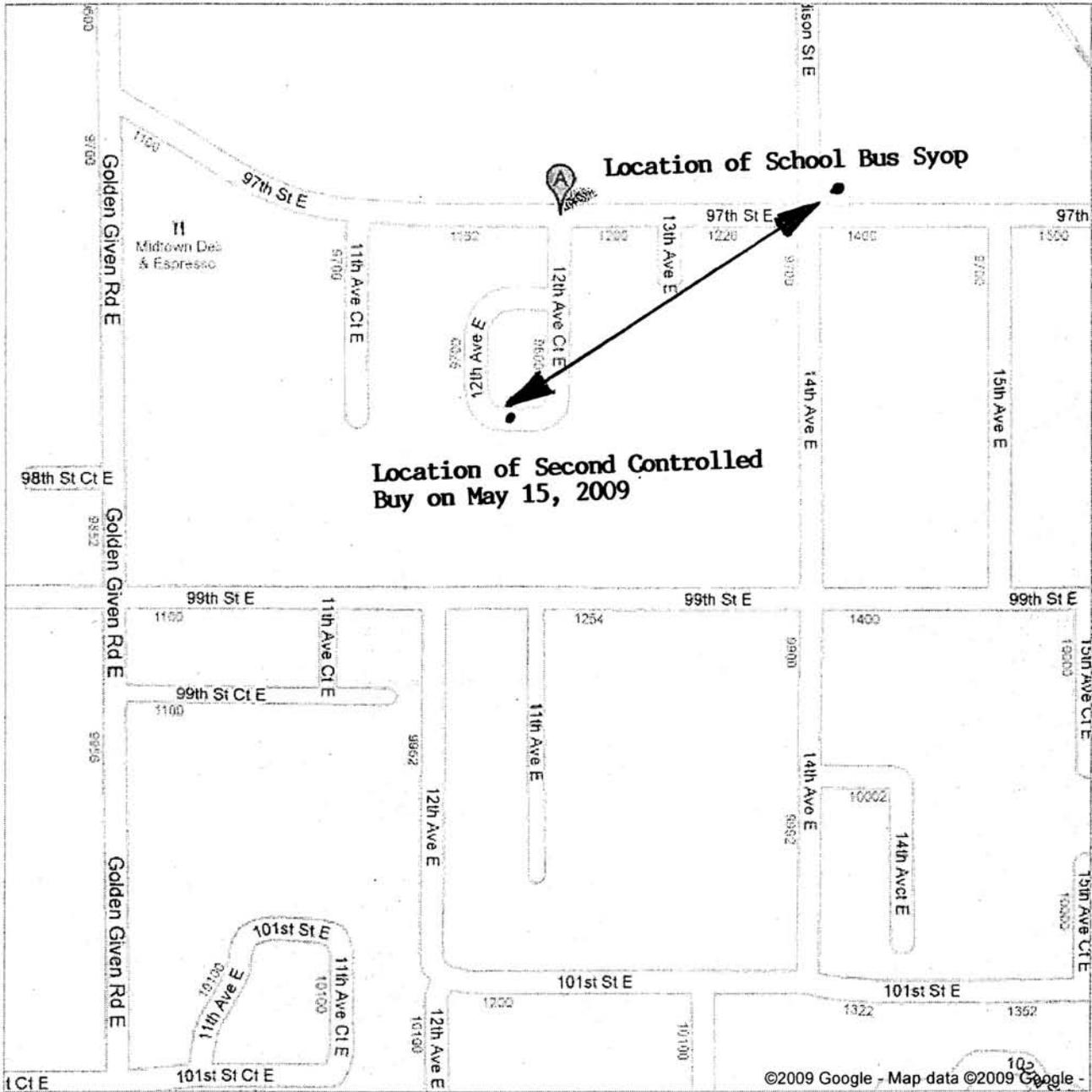


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Google maps

Save trees. Go green!
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 on 12/1/09*

40218-1

Dear Court of Appeals, Division II,

12-13-10

I have enclosed my STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW, and I would like the court to know that I tried to obtain the transcripts from the body wire that was worn by the informant in my case, but was unsuccessful.

I requested this from my trial attorney, but have never received a response. Please look into this, and see if those can be obtained towards determining the issue about the issue of RCW 9.73.230 on intercepts and recording.

Respectfully,

A handwritten signature in black ink, appearing to be a stylized name, possibly "J. P. ...", written over a faint horizontal line.

RECEIVED
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